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The Right to Access Legal Information: Progress and Evolving Norms in a Digital Age

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The Right to Access Legal Information: Progress and Evolving Norms in a Digital Age*

Heidi Frostestad Kuehl**

The right to access information is a historically fundamental right according to international legal norms. During an era of increasingly complex innovation and burgeoning digital legal information, the tension between access and barriers to easily accessible legal information like encryption and privacy have changed the landscape of open access. This article addresses the traditional international law facilitation of open access to legal information and current legislative efforts for protection of these norms. It also offers a matrix of international and national initiatives as model regimes for this important right to access information and, especially, preserving open access to legal information.

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Introduction: An Overview of Open Access to Legal Information

¶1 Public viewing of, knowledge about, and access to available laws of nation-states has existed since ancient times when all laws were written in stone and displayed in public, such as the Code of Hammurabi.¹ Efforts to promote open access to legal information in modern times have existed since the inception of the Internet and are representative of democratic societies.² In the 1990s, the movement toward providing access to Supreme Court decisions online blossomed at Case Western University through Project Hermes, and Cornell Law School developed the highly successful Legal Information Institute.³ The World Legal Information Institute followed to promote the digitization of primary materials worldwide.⁴ More recently, the Durham Statement articulates efforts to provide open access to legal information in the United States and promote the scholarly enterprise.⁵ The Montreal Declaration on Public Access to Law (2002) outlines important goals in the open access movement to maximize access to information to promote justice and the rule of law, positing that public legal information is common digital property and should be accessible by all free of charge, and nonprofit groups have a right to freely publish legal information to create access even if the government controls the information.⁶ There are also ongoing initiatives to offer free PACER at prominent law schools like Northwestern,⁷ comprehensive efforts to digitize reporters at the Harvard Law Library through the Library Innovation Lab,⁸ and continuation of historic efforts to provide a comprehensive U.S. legal repository in the spirit of open access.⁹

1. See, e.g., Leesi Ebenezer Mitee, *The Right of Public Access to Legal Information: A Proposal for Its Universal Recognition as a Human Right*, 18 GERMAN L.J. 1429 (2017).

2. See, e.g., Michael W. Carroll, *The Movement for Open Access on Law*, 10 LEWIS & CLARK L. REV. 741 (2006).

3. See Mitee, *supra* note 1, at 1441; see also CORNELL L. SCH., LEGAL INFO. INST., <https://www.law.cornell.edu/> [<https://perma.cc/RP3T-PA66>].

4. See WORLD LEGAL INFO. INST. (WORLDLII), <http://www.worldlii.org/> [<https://perma.cc/7BP6-XJLT>].

5. See Richard A. Danner, Kelly Leong & Wayne V. Miller, *The Durham Statement Two Years Later: Open Access in the Law School Journal Environment*, 103 LAW LIBR. J. 39, 2011 LAW LIBR. J. 2.

6. MONTREAL DECLARATION ON FREE ACCESS TO LAW (2002), <https://www.canlii.org/en/info/mtldeclaration.html> [<https://perma.cc/86SF-SG75>].

7. See Adam R. Pah et al., *How to Build a More Open Justice System*, 369 SCI. 134 (2020).

8. See CASE LAW ACCESS PROJECT, HARV. L. SCH., <https://case.law/> [<https://perma.cc/3CAL-DLUL>]; Project: Caselaw Access Project, LIBR. INNOVATION LAB, HARV. L. SCH., <https://lil.law.harvard.edu/projects/caselaw-access-project/> [<https://perma.cc/Y2EB-3AWD>].

9. See, e.g., FREE L. PROJECT, <https://free.law/> [<https://perma.cc/93JM-V3QH>].

¶12 An emerging international issue that often works in tandem with open access and freedom of information is the advancement of digital technologies such as artificial intelligence (AI), authentication of legal information, and encryption.¹⁰ Perplexing barriers to universal access are the sophistication of encryption, commercial ownership, and emerging AI in the public and private international law spheres and use of AI by corporations in international business.¹¹ International organizations, such as the OECD (Organisation for Economic Co-operation and Development) and World Bank, are working to ensure cooperation by the G20 countries to promote and secure open access to information while developing AI technologies in the commercial context.¹² Corporate actors in G20 nations will need to continue to provide access to data in a cross-border context with accountability, transparency, and inclusion standards in accordance with other OECD conventions for multinational corporations.¹³ Since these standards were recently adopted in 2019, it will be interesting to see how AI developments and transparency of legal information in this new landscape of encryption technologies evolve. Ideally, best practices will emerge from the OECD guidelines and World Bank AI procedures.¹⁴ Other regional and international organizations will likely continue efforts to provide open access to legal information, but an effective framework of implementation of standards and best practices must continue at national levels to prevent widespread global encryption barriers.¹⁵ Nations will increasingly continue to

10. See, e.g., U.N. Special Rapporteur on the Promotion & Protection of the Right to Freedom of Opinion & Expression, *Report to the General Assembly on Artificial Intelligence Technologies and Implications for Freedom of Expression and the Information Environment*, U.N. Doc. A/73/348 (Aug. 29, 2018), <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/ReportGA73.aspx> [<https://perma.cc/T97L-JZ5E>]; see also U.N. Hum. Rts. Spec. Procs., *Mandate of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Research Paper 1/2018 (June 2018), <https://www.ohchr.org/Documents/Issues/Opinion/EncryptionAnonymityFollowUpReport.pdf> [<https://perma.cc/Y3NA-BJQV>].

11. See U.N. Special Rapporteur on the Promotion & Protection of the Right to Freedom of Opinion & Expression, *Fact Sheet, Artificial Intelligence Technologies and Freedom of Expression*, https://www.ohchr.org/Documents/Issues/Expression/Factsheet_3.pdf [<https://perma.cc/JMZ3-745U>]; see also Country Visits: *Special Rapporteur on Freedom of Expression and Opinion*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R, <https://www.ohchr.org/en/special-procedures/sr-freedom-of-opinion-and-expression/country-visits> [<https://perma.cc/T8FT-7LNF>].

12. OECD, *Recommendation of the Council on Artificial Intelligence*, OECD/LEGAL/0449 (2019), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449> [<https://perma.cc/8EB9-2G47>]; Bank Policy: *Access to Information*, WORLD BANK (July 1, 2015), <https://ppfdocuments.azureedge.net/3693.pdf> [<https://perma.cc/3WNE-9WJQ>].

13. See OECD, *G20 Ministerial Statement on Trade and Digital Economy*, <https://www.mofa.go.jp/files/000486596.pdf> [<https://perma.cc/7C6X-WVKT>].

14. See *Role of the AI Committee*, WORLD BANK, <https://www.worldbank.org/en/access-to-information/ai-committee> [<https://perma.cc/BP8C-ECJN>]; *Access to Information Directive/Procedure*, WORLD BANK (Oct. 18, 2019), <https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=e5c12f4e-7f50-44f7-a0d8-78614350f97c> [<https://perma.cc/496G-8DMK>].

15. See, e.g., Hague Convention on Private Int'l Law (HCCH), Convention of 25 October 1980 on International Access to Justice (1980), <https://www.hcch.net/en/instruments/conventions/full-text/?cid=91> [<https://perma.cc/PAS6-JTM5>]; see also Timothy L. Coggins & Sarah G. Holterhoff, *Authenticating Digital Government Information*, in GOVERNMENT INFORMATION MANAGEMENT IN THE 21ST CENTURY 133 (Peggy

grapple with encryption devices and uniformity for creating free access until standards solidify for regions and nations.¹⁶ This article introduces the international and national standards for combatting encryption barriers and problematic AI. Then, it gives background to the legal structures that exist for encryption/AI and privacy or other legal rights. Finally, the article illustrates successful jurisdictional approaches and best practices for balancing open access and privacy rights within the context of international business. As encryption technologies continue to advance with high velocity, we must continue to educate and inform businesses, governments, and international organizations to advance the rule of law while uniformly applying the human rights norms of universal open access to legal information.

International Law Protections and Emerging Legal Standards for Access to Information

¹³ The international law community and national governments continue to grapple with the concept of open access to legal information during a digital age and have advanced open dissemination of information since the inception of their international organizations.¹⁷ The United Nations promulgated guidelines for open access to legal information in the context of Access to Justice initiatives; it even recently updated those guidelines to include the context of the pandemic.¹⁸ Nations and their governments have struggled to provide access to legal information across the globe.¹⁹ New technologies on a global scale like sophisticated encryption and AI complicate open access

Garvin ed., 2011), <https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1954&context=law-faculty-publications> [https://perma.cc/6TMJ-PMGS].

16. See, e.g., DANIEL CASTRO & ALAN McQUINN, UNLOCKING ENCRYPTION: INFORMATION SECURITY AND THE RULE OF LAW (Mar. 2016), <http://www2.itif.org/2016-unlocking-encryption.pdf> [https://perma.cc/48R4-ZVMA]; see also AMNESTY INT'L, ENCRYPTION: A MATTER OF HUMAN RIGHTS, AI INDEX POL 40/3682/2016 (Mar. 2016), https://www.amnestyusa.org/wp-content/uploads/2017/04/encryption_-_a_matter_of_human_rights_-_pol_40-3682-2016.pdf [https://perma.cc/8GN4-YUYV]; U.N. Hum. Rts. Spec. Procs., *supra* note 10.

17. OECD, *Legal Aspects of Open Access to Publicly-Funded Research*, in ENQUIRIES INTO INTELLECTUAL PROPERTY'S ECONOMIC IMPACT 373 (2015), <https://www.oecd.org/sti/ieconomy/Chapter7-KBC2-IP.pdf> [https://perma.cc/P3EE-GPCS]; see also Daniel Poulin, *Open Access to Law in Developing Countries*, FIRST MONDAY (2014), <https://firstmonday.org/ojs/index.php/fm/article/view/1193/1113> [https://perma.cc/SM4C-JBKR].

18. See U.N. OFF. ON DRUGS & CRIME, GUIDANCE NOTE, ENSURING ACCESS TO JUSTICE IN THE CONTEXT OF COVID-19 (May 2020), https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf [https://perma.cc/43D5-UXWF]; see also *United Nations and the Rule of Law: Access to Justice*, U.N., <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice> [https://perma.cc/X6QP-BMHM].

19. See, e.g., H.M. Hashim, *Developing a Model Guideline Addressing Legal Impediments to Open Access to Publicly Funded Research Data in Malaysia*, 18 DATA SCI. J. 27 (2019), <https://datascience.codata.org/article/10.5334/dsj-2019-027/> [https://perma.cc/7T62-D4GX]; J. Ramon Gil-Garcia, *Collaborative E-Government: Impediments and Benefits of Information-Sharing Projects in the Public Sector*, 16 EUR. J. INFO. SYS. 121 (2006); see also Olufunmilayo B. Arewa, *Open Access in a Closed Universe: Lexis, Westlaw, Law Schools, and the Legal Information Market*, 10 LEWIS & CLARK L. REV. 797 (2006).

initiatives.²⁰ Corporations increasingly need access to valuable encrypted or AI-driven information in international business transactions, so the OECD has recently developed its 2019 Principles on Artificial Intelligence.²¹ The United States and 59 other countries have affirmed the principles and collected AI policies from their governments.²²

UN Governance

¶4 Historically, the United Nations has led the world community in articulating standards for freedom of information and enhancing access to information to facilitate the rule of law in many contexts.²³ In 1948, the United Nations released the Universal Declaration of Human Rights, including Article 19, which protects the fundamental rights of freedom of expression and freedom of information.²⁴ The work of UNESCO (United Nations Educational Scientific and Cultural Organization) and the UN OHCHR (Office of the High Commissioner for Human Rights) protects freedom of information through their international work and development of standards for the human rights norms and rule of law globally.²⁵ Resolution 59 of the UN General Assembly also protects access to information, and later UN human rights instruments, such as the International Covenant on Civil and Political Rights and the American Convention on Human Rights in the 1960s, made additional strides toward enshrining

20. See, e.g., James A. Lewis, Denise E. Zheng & William A. Carter, Ctr. Strategic & Int'l Stud., *The Effect of Encryption on Lawful Access to Communications and Data* (Feb. 2017), <https://www.csis.org/analysis/effect-encryption-lawful-access-communications-and-data> [<https://perma.cc/G8XC-8Z53>]; Cynthia Brumfield, *Justice Department Takes Another Run at Encryption Backdoors with Lawful Access*, CSO Online (Oct. 2019), <https://www.csoonline.com/article/3444205/justice-department-takes-another-run-at-encryption-backdoors-with-lawful-access.html> [<https://perma.cc/4R77-3W2Y>] (Cloud Act agreement); see M. Perc et al., *Social and Juristic Challenges of Artificial Intelligence*, 5 HUMANITIES & SOC. SCI. COMM'NS art. 61 (2019); John Delaney & D. Sean West, *Open Access, Open Source, and the Battle to Defeat COVID-19*, JDSUPRA (Apr. 22, 2020), <https://www.jdsupra.com/legalnews/open-access-open-source-and-the-battle-73150/> [<https://perma.cc/A59L-N9GZ>]; Exec. Order No. 13,859, 84 Fed. Reg. 3967 (Feb. 14, 2019).

21. *Artificial Intelligence*, OECD, <https://www.oecd.org/going-digital/ai/> [<https://perma.cc/T9YJ-FSEN>]; *OECD AI Principles Overview*, OECD AI POLICY OBSERVATORY, [HTTPS://OECD.AI/EN/AI-PRINCIPLES](https://oecd.ai/en/ai-principles) [<https://perma.cc/K6MG-24V3>]. These new guidelines supplement the 1980 OECD Privacy Guidelines for the technological age.

22. *National AI Policies & Strategies*, OECD AI POLICY OBSERVATORY, <https://oecd.ai/dashboards> [<https://perma.cc/RPA6-J44V>].

23. *Freedom of Information*, U.N., <https://www.un.org/ruleoflaw/thematic-areas/governance/freedom-of-information/#:~:text=Freedom%20of%20information%20is%20an,right%20of%20freedom%20of%20expression> [<https://perma.cc/GCB7-5NS8>].

24. Toby Mendel, *Freedom of Information as an Internationally Protected Right*, ARTICLE 19, <https://www.article19.org/data/files/pdfs/publications/foi-as-an-international-right.pdf> [<https://perma.cc/HG2T-J8NJ>].

25. See Press Release, U.N. Hum. Rts. Off. of the High Comm'r, COVID-19: Governments Must Promote and Protect Access to and Free Flow of Information During Pandemic—International Experts (Mar. 19, 2020), <https://www.ohchr.org/en/press-releases/2020/03/covid-19-governments-must-promote-and-protect-access-and-free-flow> [<https://perma.cc/UM8F-FWZG>].

freedom of information as a basic right.²⁶ The UN special rapporteur on freedom of opinion and expression makes country visits to assess the human rights condition for member states with respect to freedom of information and accessibility of information.²⁷ For example, the report for the recent visit to Ethiopia notes improvements by the government for public access to information.²⁸ The UN bodies, treaties, and monitoring mechanisms greatly facilitated the evolution of the ancient tradition of freedom of information, and then access to legal information from governments, as a basic human right norm.²⁹

15 The United Nations also oversees publication of innovative reports on changes of technologies globally, and these topical reports summarize developments for more recent challenges to freedom of access to information.³⁰ Member states are given the opportunity to respond and provide national guidance to make the special thematic reports even more valuable.³¹ These issues include surveillance and privacy, the pandemic and access to information, AI technologies and implications for the information environment, access to information in international organizations, encryption, online content regulation, the role of digital access providers, contemporary challenges to freedom of expression, and protection of sources and whistleblowers.³² This international cooperation for open access to information is essential as modernization of technologies continues and as we enter the Fourth Industrial Revolution in tandem with the pandemic.³³ The United Nations also facilitates efforts for big data, AI regulation, and the rule of law.³⁴ The Sixth Annual Conference on Big Data is being held this year, and the UN Global Working Group developing the Big Data Project Inventory is enhancing access to statistics for policymaking and open access.³⁵ Professors John Ackerman and Irma Sandoval-Ballesteros also have revealed the recent global explosion of freedom of information laws.³⁶ Overall, the United Nations and G7 discussions toward

26. International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. 95-20, 999 U.N.T.S. 171; American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123.

27. *Country Visits*, *supra* note 11.

28. U.N. Hum. Rts. Council, 44th Sess., Visit to Ethiopia, U.N. Doc. A/HRC/44/49/Add.1 (Apr. 29, 2020).

29. See Mendel, *supra* note 24; Paul Sturges & Almuth Gastinger, *Information Literacy as a Human Right*, 60 LIBRI: INT'L J. LIBRS. & INFO. STUD. 195 (2010).

30. *Country Visits*, *supra* note 11.

31. *Id.*

32. See, e.g., U.N. Special Rapporteur on the Promotion & Protection of the Right to Freedom of Opinion & Expression, *Disease Pandemics and the Freedom of Opinion and Expression*, U.N. Doc. A/HRC/44/49 (Apr. 23, 2020), <https://www.ohchr.org/en/documents/thematic-reports/ahrc4449-disease-pandemics-and-freedom-opinion-and-expression-report>.

33. See *Fourth Industrial Revolution*, WORLD ECON. F., <https://www.weforum.org/focus/fourth-industrial-revolution#:~:text=The%20Fourth%20Industrial%20Revolution%20represents,second%20and%20third%20industrial%20revolutions> [https://perma.cc/5PQA-F5FN].

34. *6th International Conference on Big Data for Official Statistics*, U.N. DEP'T OF ECON. & SOC. AFFS., (2020), <https://unstats.un.org/unsd/bigdata/conferences/2020/> [https://perma.cc/YMM7-E4EF].

35. *Big Data Project Inventory*, DATA ECON. LAB, <https://thedataeconomylab.com/explorer/big-data-project-inventory/> [https://perma.cc/9WFY-C9JS].

36. John M. Ackerman & Irma E. Sandoval-Ballesteros, *The Global Explosion of Freedom of*

international cooperation on AI have also expanded the international conversation toward access to justice for legal information and the rule of law.³⁷

OECD Governance of AI in a Technological Age

¶6 The OECD developed a Committee on the Digital Economy in 2016 to begin discussing the implications of AI for international business.³⁸ Then, in 2018, an OECD expert group on AI convened to work on the Principles for Artificial Intelligence (2019).³⁹ The cooperation with international organizations and regional organizations when issuing the reports is timely and advanced, with discussions of using emerging technologies in the public sector, trustworthy AI, AI in the investment and business contexts, and, more recently in 2020, identifying and measuring developments in global AI.⁴⁰ The World Bank also developed a comprehensive *Access to Information Survey* with many countries contributing their national legislative efforts.⁴¹ AI is having a drastic and steady impact on corporate transactions by business throughout the world.⁴²

¶7 The OECD recognizes that bribery, corruption, and investment transactions in international business often use complicated technologies and are facilitated by AI and other emerging technologies.⁴³ International investment law is also being driven by AI initiatives during the last information age.⁴⁴ To that end, the World Bank and ICSID (International Center for Settlement of Investment Disputes) continue to note how

Information Laws, 58 ADMIN. L. REV. 85 (2006).

37. See, e.g., *Canada-France Statement on Artificial Intelligence*, GOV'T CAN. (July 6, 2018), https://www.international.gc.ca/world-monde/international_relations-relations_europe/2018-06-07-france_ai-ia_france.aspx?lang=eng [<https://perma.cc/J57S-68M6>].

38. *OECD Creates Expert Group to Foster Trust in Artificial Intelligence*, OECD (Sept. 13, 2018), <https://www.oecd.org/sti/ieconomy/oecd-creates-expert-group-to-foster-trust-in-artificial-intelligence.htm> [<https://perma.cc/L563-XSNF>].

39. *Forty-Two Countries Adopt New OECD Principles on Artificial Intelligence*, OECD (May 22, 2019), <https://www.oecd.org/science/forty-two-countries-adopt-new-oecd-principles-on-artificial-intelligence.htm> [<https://perma.cc/HW3G-9MBW>]; *List of Participants in the OECD Expert Group on AI (AIGO)*, OECD, <https://oecd.ai/en/list-of-participants-oecd-expert-group-on-ai> [<https://perma.cc/RVC3-937V>].

40. *Artificial Intelligence*, *supra* note 21; *Identifying and Measuring Developments in Artificial Intelligence*, OECD I LIBR. (May 1, 2020), https://www.oecd-ilibrary.org/science-and-technology/identify-ing-and-measuring-developments-in-artificial-intelligence_5f65ff7e-en [<https://perma.cc/9LJE-VHZD>].

41. *Access to Information*, *supra* note 14.

42. Martin Petrin, *Corporate Management in the Age of AI*, 2019 COLUM. BUS. L. REV. 965.

43. Austin Pulle, *Corrupt Payments in International Business*, 4 INT'L TRADE & BUS. L. ANN. 177 (1999); Nora M. Rubin, *A Convergence of 1996 and 1997 Global Efforts to Curb Corruption and Bribery in International Business Transactions: The Legal Implications of the OECD Recommendations and Convention for the United States, Germany, and Switzerland*, 14 AM. U. INT'L L. REV. 257 (1998); Carl Pacini, *Foreign Corrupt Practices Act: Taking a Bite Out of Bribery in International Business Transactions*, 17 FORDHAM J. CORP. & FIN. L. 545 (2012); Peter Muchlinski, *Human Rights, Social Responsibility and the Regulation of International Business: The Development of International Standards by Intergovernmental Organisations*, 3 NON-ST. ACTORS & INT'L L. 123 (2003); Attila Menyhard, Richard Thomas & David Dederick, *International Business and Law in Cross-Border Transactions: A European Perspective*, 34 SUFFOLK TRANSNAT'L L. REV. 347 (2011).

44. Justin Shields, *Smart Machines and Smarter Policy: Foreign Investment Regulation, National Security, and Technology Transfer in the Age of Artificial Intelligence*, 51 JOHN MARSHALL L. REV. 279 (2018).

technology and AI may assist with investing in developing countries and encouraging growth.⁴⁵ Multinational enterprises will have to wait and see how the new guidelines will impact their AI-driven businesses and the blossoming of the rule of law in regional and national contexts.⁴⁶ Often, information management advances have deep effects in international business and achieve efficiencies while balancing challenges of privacy and encryption.⁴⁷ These efforts work to complement the UN and regional efforts to safeguard access to information and innovation.⁴⁸ The impact of the high velocity of technological advancements in the business world is yet to be gauged, but the international community is currently responding appropriately with working groups to grapple with the myriad international business effects.⁴⁹

Regional Efforts and Legal Norms

18 Regional and supranational organizations, such as the OAS (Organization of American States), ASEAN (Association of Southeast Asian Nations), and EU (European Union), have been proactive during the digital age with promoting access to justice and the free access to legal information while also balancing the need to innovate with AI and other technologies.⁵⁰ The European Commission has recently drafted a white paper titled “Artificial Intelligence—A European Approach to Excellence and Trust.”⁵¹ The OAS developed a clear policy on transparent access to legal information for all regional laws and instruments.⁵² The Inter-American Legal Framework for Access to Legal

45. Davide Strusani & Georges Vivien Hounbonon, *The Role of Artificial Intelligence in Supporting Development in Emerging Markets*, EM COMPASS, July 2019, at 1, <http://documents1.worldbank.org/curated/en/539371567673606214/pdf/The-Role-of-Artificial-Intelligence-in-Supporting-Development-in-Emerging-Markets.pdf> [<https://perma.cc/6NU7-YUTA>]; *How Can Artificial Intelligence Support Development? We Asked a Robot*, WORLD BANK (May 24, 2018), <https://www.worldbank.org/en/news/feature/2018/05/24/how-can-artificial-intelligence-support-development-we-asked-a-robot> [<https://perma.cc/Q9VK-HR9C>]; see also Catherine Cheney, *The Promise and Pitfalls of Artificial Intelligence for Global Development*, DEVEX (Jan. 23, 2018), <https://www.devex.com/news/the-promise-and-pitfalls-of-artificial-intelligence-for-global-development-91881> [<https://perma.cc/VC4U-R2B7>]; Leebong Lee & Young-Jin Choi, *The Rise of Artificial Intelligence: What Does It Mean for Development?*, WORLD BANK BLOGS (June 28, 2017), <https://blogs.worldbank.org/digital-development/rise-artificial-intelligence-what-does-it-mean-development> [<https://perma.cc/ZCB5-3WKW>].

46. A.I. Sukhorukov et al., *Tendencies of Information Management Development in the Conditions of the Origin of a New Ecosystem of the Digital Economy*, in 2018 ELEVENTH INTERNATIONAL CONFERENCE “MANAGEMENT OF LARGE-SCALE SYSTEM DEVELOPMENT” 1 (2018).

47. Ashley Deeks, *The International Legal Dynamics of Encryption*, Hoover Institution Series Paper No. 1609 (2016), https://www.hoover.org/sites/default/files/research/docs/deeks_webready.pdf [<https://perma.cc/K2MT-JURG>].

48. Mark Barnes et al., *Senate Introduces the Safeguarding American Innovation Act*, ROPES & GRAY (June 22, 2020), <https://www.ropesgray.com/en/newsroom/alerts/2020/06/Senate-Introduces-the-Safeguarding-American-Innovation-Act-Targeting-Research-Theft> [<https://perma.cc/GU63-LYJ8>].

49. *Id.*

50. Commission White Paper on Artificial Intelligence—A European Approach to Excellence and Trust, COM (2020) 65 final (Feb. 19, 2020).

51. *Id.*

52. *Frequently Asked Questions on Access to Information*, OAS, http://www.oas.org/airf/access_to_information_faq.aspx [<https://perma.cc/GU9G-N9XS>].

Information creates a robust structure for the OAS and Inter-American Commission of Human Rights documentation.⁵³ The OAS is also investigating the use of big data and AI and its impact on the rule of law and enforcement in the region.⁵⁴ AI is also exploding in Asia and leading world development, so laws and regulations are lagging for increasingly technological realms.⁵⁵ There is a need for continued freedom of access to information and a recognition of access to justice issues that stem from rapid rates of change in technological advancements.⁵⁶

¹⁹ Historically, the Council of Europe promulgated uniform standards for the access of information among its members.⁵⁷ In 2009, the Council of Europe enacted the Convention on Access to Official Documents.⁵⁸ This treaty, which has 10 ratifications so far, protects the fundamental right to access official documents held by public authorities.⁵⁹ The only exceptions to open access according to the Access to Official Documents treaty are privacy, defense, or national security of the member states.⁶⁰ The EU similarly protects openly accessible information by Council Regulation No. 1049/2001 *Regarding Public Access to European Parliament, Council and Commission Documents*, Art. 4.⁶¹ Recent cases in the European Court of Justice (ECJ), such as *Access Info Europe v. Council of the European Union* in 2011, affirmed the right to access European Parliament, Council, and Commission documents.⁶² Article 42 of the European Charter of Fundamental Rights expressly gives the right to access information for EU institutional documents in addition to the Treaty of Lisbon's Article 15

53. OAS, *THE INTER-AMERICAN LEGAL FRAMEWORK REGARDING THE RIGHT TO ACCESS TO INFORMATION* (2d ed. 2012), <https://www.oas.org/en/iachr/expression/docs/publications/2012%2009%2027%20ACCESS%20TO%20INFORMATION%202012%20edits.pdf> [<https://perma.cc/P3NP-JPF9>].

54. Victor Muñoz, Sylvia Constain & Luis Almagro, *OAS Member States Use Big Data, Artificial Intelligence and Analytics to Combat Corruption*, FIN. AMS. (n.d.), <https://financetnt.com/oas-member-states-use-big-data-artificial-intelligence-and-analytics-to-combat-corruption-inform-citizens/> [<https://perma.cc/Q8XE-CHU7>].

55. Ayesha Khanna & Parag Khanna, *Where Asia Is Taking the World with AI*, FORBES (May 21, 2020), <https://www.forbes.com/sites/insights-ibmai/2020/05/21/where-asia-is-taking-the-world-with-ai/#63798bd67947> [<https://perma.cc/BW6T-BN82>]; MCKINSEY & CO., *ARTIFICIAL INTELLIGENCE AND SOUTHEAST ASIA'S FUTURE*, <https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/Artificial%20Intelligence/AI%20and%20SE%20ASIA%20future/Artificial-intelligence-and-Southeast-Asias-future.ashx> [<https://perma.cc/5DBL-J48N>].

56. LAW LIBR. CONG., *REGULATION OF ARTIFICIAL INTELLIGENCE IN SELECTED JURISDICTIONS* (Jan. 2019), <https://irp.fas.org/eprint/lloc-ai.pdf> [<https://perma.cc/M5XP-8CMF>].

57. *Standards on Access to Information*, COUNCIL EUR., <https://www.coe.int/en/web/documents-records-archives-information/council-of-europe-standards> [<https://perma.cc/6LBU-ZNW7>].

58. Council of Europe Convention on Access to Official Documents, CETS No. 205, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205> [<https://perma.cc/5TGA-8BSG>].

59. *Id.*

60. *Id.*

61. Council Regulation 1049/2001, art. 4, 2001 O.J. (L 145) (EC) 43, 45.

62. *Access Info Europe v. Council of the European Union*, GLOBAL FREEDOM OF EXPRESSION, COLUM. UNIV., <https://globalfreedomofexpression.columbia.edu/cases/ecj-access-info-europe-v-council-european-union/> [<https://perma.cc/CT2T-JDK5>].

protections.⁶³ Numerous protections exist in member states within the EU as well for ensuring open access to legal documentation and governmental information.⁶⁴

¶10 Other regions and nations are following suit with open access laws and digital initiatives like those enhancing open access in the United States and Europe.⁶⁵ Comprehensive access to laws for free continues to expand in the EU, such as EUR-Lex and the HUDOC system at the European Court of Human Rights, and other admirable examples exist within EU Member Countries like France (Legifrance) and the United Kingdom (HMSO).⁶⁶ Other worldwide efforts to provide access like the original Cornell Legal Information Institute include CanLII, BAILII, AUSTLII, ASIANLII, and WorldLII with comprehensive sets of digitized laws, regulations, and case law for the public.⁶⁷ Africa has also recently made strides with protecting the fundamental right to access information.⁶⁸ Africa still struggles with providing comprehensive access to information in certain countries, though, because of the lack of governmental support and infrastructure.

National Legal Efforts in an Age of AI

¶11 AI is impacting the development and advancement of the rule of law and access to information, especially in the context of communications and data protection.⁶⁹ Data protection laws are being promulgated to protect private data in various countries around the globe with emerging technologies threatening privacy.⁷⁰ DLA Piper has a comprehensive dataset for world data protection laws and national legislation.⁷¹ UNCTAD (United Nations Conference on Trade and Development) also keeps a comprehensive portal of legislation in effect and pending legislation for international data

63. Charter of Fundamental Rights of the European Union, art. 42, 2012 O.J. (C 326) (EC) 391, 404.

64. See, e.g., Freedom of Information Act 2000, c. 36 (U.K.), <https://www.legislation.gov.uk/ukpga/2000/36/contents> [<https://perma.cc/GN98-R5S7>].

65. See, e.g., *WJP Rule of Law Index 2021*, WORLD JUSTICE PROJECT, <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2021> [<https://perma.cc/TD4P-W5HH>]; *Democracy Index 2021: The China Challenge*, ECON. INTEL. UNIT, <https://www.eiu.com/topic/democracy-index> [<https://perma.cc/W9BU-PHYD>].

66. See, e.g., EUR-LEX: ACCESS TO EUROPEAN UNION LAW, <https://eur-lex.europa.eu/homepage.html> [<https://perma.cc/TXC9-X3EM>]; LÉGIFRANCE, <https://www.legifrance.gouv.fr/> [<https://perma.cc/T49P-YRYU>]; LEGISLATION.GOV.UK, <https://www.legislation.gov.uk/> [<https://perma.cc/5M89-C4LB>].

67. See, e.g., CANLII, <https://www.canlii.org/en/> [<https://perma.cc/2DA4-VFWD>]; BAILII, <https://www.bailii.org/> [<https://perma.cc/Q8QH-D9SE>]; AUSTLII, <http://www.austlii.edu.au/> [<https://perma.cc/6HHH-AQGR>]; WORLIDLII, <http://www.worldlii.org/> [<https://perma.cc/8PRG-C9LX>]; ASIANLII, <http://www.asianlii.org/> [<https://perma.cc/X778-7ZVH>].

68. See, e.g., *How to Build a Free or Open Access Legal Website*, AFRICANLII, <https://africanlii.org/content/how-build-free-or-open-access-legal-website> [<https://perma.cc/792M-RV4E>].

69. See LAW LIBR. CONG., *supra* note 56.

70. See, e.g., *Brazil: Personal Data Protection Law Enacted*, LAW LIBR. CONG., <https://www.loc.gov/item/global-legal-monitor/2018-08-28/brazil-personal-data-protection-law-enacted/> [<https://perma.cc/67U5-NNBP>].

71. *Data Protection Laws of the World*, DLA PIPER, <https://www.dlapiperdataprotection.com/> [<https://perma.cc/9PR9-5585>].

protection and e-commerce.⁷² In an increasingly technological age, there are tensions between the right to access laws and legal information and the right to privacy in certain contexts.⁷³ As a result, governments and international organizations have passed many iterations of data protection laws in a broad attempt to regulate interception of data while using technologies.⁷⁴ The European Union also developed the strict EU General Data Protection Regulation, which imposes hefty fines for violations.⁷⁵ The EU GDPR is meant to protect data privacy in a digital age.⁷⁶ Many nations are now enacting additional legislation and regulations to supplement privacy laws in a time of great technological innovation and during the onset of the pandemic.⁷⁷ The GDPR is a directive which requires each member nation of the European Union to implement national legislation to protect digital privacy accordingly.⁷⁸ The OAS and Latin America are also modernizing their regional laws and conventions to reflect privacy protection in a digital age.⁷⁹ Overall, the international community and national legislatures are responding with modernized approaches to balance the privacy interests and using robust technologies while balancing competing fundamental rights to open access for information.

72. *Data Protection and Privacy Legislation Worldwide*, UNCTAD, https://unctad.org/en/Pages/DTL/STI_and_ICTs/ICT4D-Legislation/eCom-Data-Protection-Laws.aspx#:~:text=132%20out%20of%20194%20countries,23%20are%20least%20developed%20countries [<https://perma.cc/4LZ5-YY82>].

73. See David Townsend, *Privacy, Health Insurance, and Medical Research: Tensions Raised by the European Data Protection Law*, 29 CRITICAL STUD. CONTEMP. BIOSCIS. 477 (2010), Jeanette The, Note, *Privacy Wars in Cyberspace*, 4 YALE J.L. & TECH. 1 (2001–2002); Susan Maret & Antoon De Baets, *The Tension Between Privacy and Security*, 1 SECRECY & SOC'Y no. 1, art. 9 (2016), <https://scholarworks.sjsu.edu/cgi/viewcontent.cgi?article=1011&context=secrecyandsociety> [<https://perma.cc/8V5P-A878>].

74. Christopher Kuner, *Data Protection Law and International Jurisdiction on the Internet (Part 1)*, 18 INT'L J.L. & INFO. TECH. 176 (2010).

75. *What Is GDPR, the EU's New Data Protection Law?*, GDPR.EU, <https://gdpr.eu/what-is-gdpr/#:~:text=The%20General%20Data%20Protection%20Regulation,to%20people%20in%20the%20EU> [<https://perma.cc/6GXK-DX5Y>].

76. See *Data Protection in the EU*, EUROPEAN COMM'N, https://ec.europa.eu/info/law/law-topic/data-protection/data-protection-eu_en [<https://perma.cc/6B93-8X9L>].

77. See Daniel Mikkelsen et al., *Privacy, Security, and Public Health in a Pandemic Year*, MCKINSEY & Co. (June 15, 2020), <https://www.mckinsey.com/business-functions/risk/our-insights/privacy-security-and-public-health-in-a-pandemic-year> [<https://perma.cc/NZ6B-AMQN>]; Khari Johnson, *How Congress Is Shaping Data Privacy Laws During the Pandemic*, VENTURE BEAT (May 18, 2020), <https://venturebeat.com/2020/05/18/how-congress-is-shaping-data-privacy-laws-during-the-pandemic/> [<https://perma.cc/8654-L7EM>]; see also Samuel D. Goldstick et al., *COVID-19: Privacy and Cybersecurity Regulatory and Enforcement Guidance*, FOLEY (Apr. 30, 2020), <https://www.foley.com/en/insights/publications/2020/04/covid19-privacy-cybersecurity-guidance> [<https://perma.cc/9FDA-4CGB>].

78. See, e.g., *Data Protection Laws of the World: France*, DLA PIPER, <https://www.dlapiperdataprotection.com/index.html?t=law&c=FR> [<https://perma.cc/52EZ-QHR8>].

79. OECD, *Privacy Protection, in BROADBAND POLICIES FOR LATIN AMERICA AND THE CARIBBEAN: A DIGITAL ECONOMY TOOLKIT*, ch. 15, <https://www.oecd-ilibrary.org/sites/9789264251823-18-en/index.html?itemId=/content/component/9789264251823-18-en> [<https://perma.cc/4XAT-RRZ4>].

Barriers and Opportunities for Open Access and AI Management: Encryption, Privacy, and National Legislative Efforts

¶12 This section gives an overview of the barriers to open access and AI management opportunities through technologies and legislation. These include encryption, privacy, and national legislative initiatives for innovative technologies like AI.⁸⁰

Encryption Barriers

¶13 Information in the cloud and other digital mediums presents myriad access and legal issues even though the word “cloud” itself denotes happy, light, and positive imagery.⁸¹ There is often a lack of control over stored information and misunderstanding by users about third-party access and user agreements, and encryption muddles up information access although it safeguards privacy.⁸² Most countries regulate encryption as a dual-use technology, which has both military and commercial uses.⁸³ Since the advent of AI, encryption increasingly is more complex, and international organizations and corporations have grappled with more sophisticated encryption with transmission of information for business.⁸⁴ Multinational enterprises typically use encryption and AI for confidentiality, automation of business processes, cognitive technologies, and data security.⁸⁵ The OECD has been a leader in developing cryptography policy.⁸⁶ In 1997, the OECD created the Guidelines for Cryptography Policy, which have provided an overarching gold standard for the evolution of international cryptography regulation.⁸⁷ The World Bank also monitors the national implementation of encryption technologies in international business and finance.⁸⁸ Recent encryption disputes with Apple, WhatsApp, Google, and other high-profile international businesses highlight the

80. See, e.g., David W. Opperbeck, *Encryption Policy and Law Enforcement in the Cloud*, 49 CONN. L. REV. 1657 (2017).

81. David Lametti, *The Cloud: Boundless Digital Potential or Enclosure 3.0*, 17 VA. J.L. & TECH. 190 (2012).

82. *Id.*

83. See Nathan Saper, *International Cryptography Regulation and the Global Information Economy*, 11 NW. J. TECH. & INTELL. PROP. 673 (2013).

84. *Id.*; see also VB Staff, *Meet the New Twist on Data Encryption That Promises Better Privacy and Security for AI*, VENTURE BEAT (Jan. 16, 2020), <https://venturebeat.com/2020/01/16/meet-the-new-twist-on-data-encryption-that-promises-better-privacy-and-security-for-ai/> [<https://perma.cc/EAP7-ZTPX>]; Matt Burgess, *How Google's AI Taught Itself to Create Its Own Encryption*, WIRED UK (Oct. 31, 2016), <https://www.wired.co.uk/article/google-artificial-intelligence-encryption> [<https://perma.cc/TV9S-TSYQ>].

85. Emilie C. Schwarz, *Human vs. Machine: A Framework of Responsibilities and Duties of Transnational Corporations for Respecting Human Rights in the Use of Artificial Intelligence*, 58 COLUM. J. TRANSNAT'L L. 232 (2019).

86. *OECD Guidelines for Cryptography Policy*, OECD (Mar. 27, 1997), <https://www.oecd.org/sti/ieconomy/guidelinesforcryptographypolicy.htm> [<https://perma.cc/C8GY-YENF>].

87. *Id.*

88. *Identification for Development, Practitioner's Guide: Encryption*, WORLD BANK, <https://id4d.worldbank.org/guide/encryption> [<https://perma.cc/2B9R-C4LH>].

tensions between protection of data and other interests in foreign countries as well as in the United States.⁸⁹

¶14 Encryption also spurs human rights debates for access to information for countries according to international law norms.⁹⁰ Even though national norms exist for encryption technologies, there seems to be little coordination internationally for regulation despite the existence of the OECD Guidelines.⁹¹ We seemingly should be living in an era of transparency for the historic right to legal information and transferability of that right to the digital realm, but we have many contradictions with the current range of encryption, cryptography, and AI technologies to safeguard information.⁹² National governments are even struggling to access information for law enforcement and to adhere to legal norms.⁹³ Many AI and encryption efforts thwart international cyber-crime enforcement and effective prosecution of other international criminal networks like human trafficking.⁹⁴ The encryption debate continues in the EU,⁹⁵ and the EU does not have plans to restrict use of encryption through EU legislation or other initiatives anytime soon, although EU general policies exist.⁹⁶ Because of the world's reliance on encryption in a technological age, it will continue to exist, and world regulations must adapt to emphasize access to necessary information and to strengthen the rule of law.⁹⁷

89. See, e.g., Natasha Lomas, *Facebook Has Funds Frozen in Brazil in Another WhatsApp Encrypted Data Dispute*, TECHCRUNCH (July 1, 2016), <https://techcrunch.com/2016/07/01/facebook-has-funds-frozen-in-brazil-in-another-whatsapp-encrypted-data-dispute/> [<https://perma.cc/MZ4A-FZAE>].

90. Agnes Zaure, *The Application of International Human Rights Online* (2016) (LL.M. thesis, University of Tartu), <https://dspace.ut.ee/handle/10062/52081> [<https://dspace.ut.ee/handle/10062/52081>].

91. Ashley Deeks, *The International Legal Dynamics of Encryption*, Hoover Inst. Paper No. 1609 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3587438 [<https://perma.cc/8JLJ-QFUA>].

92. David Kaye, *Challenges to Freedom of Information in the Digital Age*, 7 J. INT'L MEDIA & ENT. L. 129 (2017–2018).

93. NAT'L RSCH. COUNCIL, *ENGAGING PRIVACY AND INFORMATION PRIVACY IN A DIGITAL AGE* (James Waldo, Herbert S. Lin & Lynette I. Millett eds., 2007), <https://www.nap.edu/catalog/11896/engaging-privacy-and-information-technology-in-a-digital-age> [<https://perma.cc/C5CU-KS8C>].

94. *Artificial Intelligence Will Save Encryption from Irrelevance*, INFINIGATE (Nov. 25, 2016), <https://www.vsec.infinigate.co.uk/blog/artificial-intelligence-encryption-cybercrime> [<https://perma.cc/G8NK-BVX2>]; see also Paul M. Schwartz, *Legal Access to the Global Cloud*, 118 COLUM. L. REV. 1681 (2018); Dustin Taylor Vandenberg, *Encryption Served Three Ways: Disruptiveness as the Key to Exceptional Access*, 32 BERKELEY TECH. L.J. 531 (2017).

95. Maria Kooman, *The Encryption Debate in the European Union* (May 30, 2019), <https://carnegieendowment.org/2019/05/30/encryption-debate-in-european-union-pub-79220> [<https://perma.cc/QE24-2LB6>].

96. *Encryption Policies*, EUROPEAN COUNS., MIGRATION & HOME AFFS., https://ec.europa.eu/home-affairs/what-we-do/policies/cybercrime/encryption_en [<https://perma.cc/7EQN-QRR7>]; see also Covington Team, *Encryption Policy Issues in the EU* (May 25, 2018), <https://www.globalpolicywatch.com/2018/05/encryption-policy-issues-in-the-eu/> [<https://perma.cc/5FSX-HY6Z>]; Anjum Shabbir, *Insight: "Encryption: A Double-Edged Sword—EU Law Protections Simultaneously Impeding Cross-Border Serious Crime Investigations?"*, EU L. LIVE (June 11, 2020), <https://eulawlive.com/6324-2/> [<https://perma.cc/C3BB-EB3H>].

97. Mark Ward, *How the Modern World Depends on Encryption*, BBC NEWS (Oct. 25, 2013), <https://www.bbc.com/news/technology-24667834> [<https://perma.cc/U979-M8UA>]; see also World Map of Encryption Laws and Policies, GLOBAL PARTNERS DIGITAL, <https://www.gp-digital.org/world-map-of-encryption/> [<https://perma.cc/U258-YNXV>]; Stephen Tully, *A Human Right to Access the Internet—Problems*

Big data movements also have blossomed in a legal litigation context,⁹⁸ but these datasets also create access barriers for free access.⁹⁹ For the last 20 years, the United States and the international community have grappled with encryption and cryptography, and the landscape is becoming only more complex.¹⁰⁰ The Wassenaar Arrangement has solidified some restrictions on encryption exports.¹⁰¹

Privacy Protections Inherent in Emerging Technologies

¶15 Emerging technologies, including more advanced encryption and artificial intelligence in the law, are causing legal paradigm shifts and tensions between privacy protections and access.¹⁰² In May 2015, the United Nations released its comprehensive report on encryption, anonymity, and the human rights framework.¹⁰³ It provides a contemporary view of encryption and compelling rights of privacy and access through the lens of Special Rapporteur David Kaye.¹⁰⁴ Rapidly advancing technologies are challenging our domestic and international courts to grapple with complicated privacy issues in tandem with accessibility of information.¹⁰⁵ Some scholars argue that soft law norms may be a supplement to the lack of hard law standards and interagency cooperation for technological challenges on a national and international stage,¹⁰⁶ but these aspirations for soft law norms are not keeping pace with the high velocity of change for

and Prospects, 14 HUM. RTS. L. REV. 175 (2014).

98. See, e.g., David J. Walton, *Litigation and Trial Practice in an Era of Big Data*, LITIG., Summer 2015, at 55; Brian Dalton, *Big Data and the Litigation Analytics Revolution*, ABOVE THE L. (2020), <https://abovethelaw.com/law2020/big-data-and-the-litigation-analytics-revolution/> [<https://perma.cc/D7CT-TLY2>].

99. Daniel L. Rubinfeld & Michal S. Gal, *Access Barriers to Big Data*, 59 ARIZ. L. REV. 339 (2017); see also Tully, *supra* note 97.

100. See Rändi Bessette & Virginia Haufler, *Against All Odds: Why There Is No International Information Regime*, 2 INT'L STUD. PERSPS. 69 (2001); Ryan Budish, Herbert Burkert & Urs Gasser, *Encryption Policy and its International Impacts: A Framework for Understanding Extraterritorial Ripple Effects*, Aegis Series Paper No. 1804 (Mar. 2, 2018), <https://www.hoover.org/research/encryption-policy-and-its-international-impacts> [<https://perma.cc/M6QY-9C8M>].

101. See Implementation of Certain New Controls on Emerging Technologies Agreed at Wassenaar Arrangement 2018 Plenary, 15 C.F.R. § 774 (2021).

102. W. Keith Robinson & Joshua T. Smith, *Emerging Technologies Challenging Current Legal Paradigms*, 19 MINN. J.L. SCI. & TECH. 355 (2018).

103. See David Kaye (U.N. Special Rapporteur on the Promotion & Protection of the Right to Freedom of Opinion & Expression), *Report on Encryption, Anonymity, and the Human Rights Framework*, U.N. Doc. A/HRC/29/32 (May 22, 2015), <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/CallForSubmission.aspx> [<https://perma.cc/47P6-UQDT>]; see also Hum. Rts. Watch, UN: *Online Anonymity, Encryption Protect Rights* (June 17, 2015), <https://www.hrw.org/news/2015/06/17/un-online-anonymity-encryption-protect-rights> [<https://perma.cc/8G9K-RCCU>].

104. See Kaye, *supra* note 103.

105. See Gary E. Marchant, *Emerging Technologies and the Courts*, 55 CONN. L. REV. 146 (2019); see also Mark Fenwick et al., *Regulation Tomorrow: What Happens When Technology Is Faster than the Law?*, 6 AM. U. BUS. L. REV. 561 (2017); Michael Guihot et al., *Nudging Robots: Innovative Solutions to Regulate Artificial Intelligence*, 20 VAND. J. ENT. & TECH. L. 385 (2017).

106. See Ryan Hagemann et al., *Soft Law for Hard Problems: The Governance of Emerging Technologies in an Uncertain Future*, 17 COLO. TECH. L.J. 37 (2018).

innovative technology.¹⁰⁷ Contemporary societies demand access to information as a historic human right, but the privacy laws and regulations often prevail for certain types of information.¹⁰⁸

¶16 Some worldwide privacy laws, regulations, and cases are informative for the modern technological age.¹⁰⁹ The *Microsoft Ireland* (2018) Supreme Court case is one recent case that illuminates the tensions between international access to data and legislative reform in the form of the CLOUD (Clarifying Lawful Overseas Use of Data) Act.¹¹⁰ In this case, the Court addressed whether data stored in a server overseas by a U.S. corporation would be accessible through a warrant in the United States according to the Stored Communications Act.¹¹¹ The Supreme Court then deferred the modernized extraterritorial issues in the Stored Communications Act to the legislature, and Congress responded quickly with the CLOUD Act.¹¹² The future remains murky regarding how the CLOUD Act will intersect with competing GDPR regulations in Europe.¹¹³ The U.S. regulation of privacy continues to be conflicted in an age of numerous technological disputes.¹¹⁴

¶17 Internationally, privacy laws and regulations for emerging technologies are more structured and robust in certain jurisdictions.¹¹⁵ The OECD updated its privacy guidelines during the last decade to enhance privacy guidance in a digital age.¹¹⁶ The 2011 OECD Recommendation on Privacy Law Enforcement and Co-Operation is a great cross-border effort among member countries.¹¹⁷ The World Bank is also facilitating the rule of law in the context of privacy issues with a new working group policy on

107. See generally *Data Privacy on a Global Scale: Keeping Pace with an Evolving Environment*, INTERNET SOC'Y (May 16, 2012), <https://www.internetsociety.org/resources/doc/2012/data-privacy-global-scale-keeping-pace-evolving-environment/> [<https://perma.cc/P2QS-VM3P>]; see also Gary E. Marchant, *A Dangerous Master: How to Keep Technology from Slipping beyond Our Control*, 56 JURIMETRICS 209 (2016); Paolo Davide Farah & Marek Prityi, *Public Administration in the Age of Globalization and Emerging Technologies from Theories to Practice*, 88 UMKC L. REV. 397 (2019).

108. Peter K. Yu, *Data Producer's Right and the Protection of Machine-Generated Data*, 93 TUL. L. REV. 859 (2019).

109. See Urs Gasser, *Recoding Privacy Law: Reflections on the Future Relationship Among Law, Technology, and Privacy*, 130 HARV. L. REV. FORUM 61 (2016).

110. See Jennifer Daskal, *Microsoft Ireland, the CLOUD Act, and International Lawmaking 2.0*, 71 STAN. L. REV. 9 (2018).

111. See *United States v. Microsoft Corp.*, No. 17-2 (U.S. Apr. 17, 2018) (*per curiam*) (*Microsoft Ireland*).

112. *Id.*; see also Daskal, *supra* note 110.

113. See Daskal, *supra* note 110.

114. Peter Margulies, *Global Cybersecurity, Surveillance, and Privacy: The Obama Administration's Conflicted Legacy*, 24 IND. J. GLOBAL LEGAL STUD. 459 (2017).

115. See DLA PIPER, *DATA PROTECTION LAWS OF THE WORLD: FULL HANDBOOK* (Mar. 6, 2019), https://iapp.org/media/pdf/resource_center/Data-Protection-Full.pdf [<https://perma.cc/3P6K-HSC7>].

116. OECD, *Recommendation of the Council Concerning Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data*, OECD/LEGAL/0188 (Sept. 22, 1980; amend. July 10, 2013); see also OECD, *THE OECD PRIVACY FRAMEWORK* (2013), https://www.oecd.org/sti/ieconomy/oecd_privacy_framework.pdf [<https://perma.cc/8U9U-HK3K>].

117. See OECD PRIVACY FRAMEWORK, *supra* note 116.

Personal Data Privacy and Access to Information.¹¹⁸ The OAS has been working on Principles for Privacy and Personal Data Protection in the Americas and made some national legislative advancements.¹¹⁹ The European Union's privacy regulations are embodied in the EU GDPR and implemented at the national level within member states, and the GDPR will drive privacy protections for data in the future.¹²⁰ Privacy laws and regulations will become only more of a hot topic with the backdrop of the pandemic and a more urgent need for access to legal information for the public.¹²¹

National Legislation—Advancements in AI Initiatives

¶18 National legislative efforts to regulate AI are already blossoming and becoming sophisticated.¹²² Brazil recently innovated a structure for AI regulation and trade through the partnership of ICC Brazil and UNCTAD to regulate technologies.¹²³ Brazil also enacted a Data Protection Law No. 13,709 in 2018 to give more security for consumers of emerging technologies.¹²⁴ Article 1 of the law provides for digital privacy and protection to protect personal fundamental rights.¹²⁵ Canada's approach, on the other hand, tends to be policy-based and nonlegislative.¹²⁶ Canada was the first country to

118. See *Policy & Procedure Framework: Personal Data Privacy*, WORLD BANK, <https://policies.worldbank.org/en/policies/all/ppfdetail/15176fac-233e-4482-8e47-d0d82754b703> [https://perma.cc/BJ66-WLF3]; see also Ethiopis Tafara, *The Importance of Protecting "Privacy" in the Age of Digital Data*, WORLD BANK BLOGS (Feb. 7, 2020), <https://blogs.worldbank.org/digital-development/importance-protect-ing-privacy-age-digital-data> [https://perma.cc/9ETL-DCEU].

119. OAS, Inter-Am. Juridical Comm., Privacy & Data Protection, *OAS Principles on Privacy and Personal Data Protection with Annotations*, OAS Doc. OEA/Ser.Q CJI/doc. 474/15 rev. 2 (Mar. 26, 2015), https://www.oas.org/en/sla/dil/docs/CJI-doc_474-15_rev2.pdf [https://perma.cc/UU8N-N26Z]; see also OAS, Comm. on Juridical & Pol. Affs, *Preliminary Principles and Recommendations on Data Protection (The Protection of Personal Data)*, OAS Doc. OEA/Ser.G CP/CAJP-2921/10 rev. 1 corr. 1 (Oct. 17, 2011), http://www.oas.org/dil/CP-CAJP-2921-10_rev1_corr1_eng.pdf [https://perma.cc/9Z8U-5YM8]; OAS, SECRETARIAT FOR LEGAL AFFAIRS, DEP'T INT'L L., MODEL INTERAMERICAN LAW ON ACCESS TO PUBLIC INFORMATION AND ITS IMPLEMENTATION GUIDELINES (2012), https://www.oas.org/en/sla/dil/docs/Access_Model_Law_Book_English.pdf [https://perma.cc/VD35-6MDZ].

120. See *Complete Guide to GDPR Compliance*, GDPR.EU, <https://gdpr.eu/> [https://perma.cc/Z5FX-LDWE].

121. See, e.g., HUM. RTS. WATCH, *Human Rights Dimensions of COVID-19 Response* (Mar. 19, 2020), <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response> [https://perma.cc/5NAZ-5SE5]; see also Laurel S. Terry, *Global Networks and the Legal Profession*, 53 AKRON L. REV. 137 (2019).

122. See LAW LIBR. CONG., *supra* note 56.

123. ICC Brazil and UNCTAD *Sign Deal to Harness Technology in International Trade*, UNCTAD (Apr. 16, 2018), <https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1722> [https://perma.cc/T7UJ-FXJD].

124. See Brazil Data Protection Law No. 13,709 (2018), [https://www.dlapiperdataprotection.com/index.html?t=law&c=BR#:~:text=Brazil%20enacted%20the%20Brazilian%20General,LGPD\)%2C%20Federal%20Law%20no.&text=Certain%20LGPD%20provisions%20were%20already,Data%20Protection%20Authority%20\(ANPD\)](https://www.dlapiperdataprotection.com/index.html?t=law&c=BR#:~:text=Brazil%20enacted%20the%20Brazilian%20General,LGPD)%2C%20Federal%20Law%20no.&text=Certain%20LGPD%20provisions%20were%20already,Data%20Protection%20Authority%20(ANPD)) [https://perma.cc/FS29-WV5Z].

125. *Id.* at art. 1, http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2018/Lei/L13709.htm [https://perma.cc/35QR-6FTN].

126. See, e.g., *Canada's AI Imperative: Public Policy's Critical Moment*, DELOITTE, <https://www2.deloitte.com/ca/en/pages/deloitte-analytics/articles/public-policys-critical-moment.html> [https://perma

develop a national AI strategy and action plan in 2017.¹²⁷ Singapore followed Canada's lead shortly thereafter.¹²⁸ Canada, which is a recent technological hub for AI innovation,¹²⁹ also developed the Canada-France Statement on Artificial Intelligence in 2018 as a cross-border collaboration.¹³⁰ Australia is using AI-driven technologies in businesses at a rate of over 50 percent, and the Australian government negotiated a billion-dollar deal with IBM in 2018 to innovate the market.¹³¹ Indonesia is a leader for AI developments and strategies in Asia and recently revised the Governmental Regulation No. 71 in 2019 for data protection.¹³² Data protection standards and AI developments continue to evolve around the world during a time of great technological change.¹³³ Regional and national efforts are slow to keep up with the pace of evolving technologies, and the right to open access to regulations and laws in various contexts may be constantly evolving for many years.¹³⁴

Recommendations for Future Efforts: UN, OECD, and Regional Norms as Success Stories

¶19 There is a classic tension between machine-learning technologies, such as AI, and expansion of open access to legal materials.¹³⁵ On one hand, there is certainly tre-

.cc/TXR7-5LBF]; *Canada's AI Imperative: Start, Scale, Succeed*, DELOITTE, <https://www2.deloitte.com/ca/en/pages/deloitte-analytics/articles/start-scale-succeed.html> [https://perma.cc/Q7W4-EX2Y].

127. Tim Dutton et al., *Building an AI World: Report on National and Regional AI Strategies*, CIFAR (May 2020), https://cifar.ca/wp-content/uploads/2020/05/buildinganaiworld_eng.pdf [https://perma.cc/NT9W-KT5L].

128. See Dongwoo Kim & Jia Yuan Loke, *Singapore's National AI Strategy: A Springboard for Canadian Collaboration*, ASIA PAC. FOUND. CAN. (Dec. 23, 2019), <https://www.asiapacific.ca/publication/singapores-national-ai-strategy> [https://perma.cc/MS44-A64P].

129. See Rahul Kalvapalle, *AI Fuels Boom in Innovation, Investment, and Jobs: U of T Report*, U OF T NEWS (June 23, 2020), <https://www.utoronto.ca/news/ai-fuels-boom-innovation-investment-and-jobs-canada-report-says> [https://perma.cc/GAN8-P3M5].

130. See Canada-France Statement, *supra* note 37.

131. See Tom Burton, *Australian Government and IBM Sign \$1 Billion Deal for Blockchain and AI Technologies*, SMARTCOMPANY (July 9, 2018), <https://www.smartcompany.com.au/technology/emerging-technology/australian-government-ibm-1-billion-deal-blockchain-ai/> [https://perma.cc/J2UX-BMFP].

132. See, e.g., Made Anthony Iswarda, *Indonesia Sets Sights on Artificial Intelligence in New National Strategy*, JAKARTA POST (Aug. 14, 2020), <https://www.thejakartapost.com/news/2020/08/13/indonesia-sets-sights-on-artificial-intelligence-in-new-national-strategy.html> [https://perma.cc/Z4LB-BBTN]; see also Steffen Hadi et al., *Indonesia*, in DATA PROTECTION LAWS AND REGULATIONS (2022), <https://iclg.com/practice-areas/data-protection-laws-and-regulations/indonesia> [https://perma.cc/FR33-EAWA].

133. See DLA PIPER, *Indonesia, in DATA PROTECTION LAWS OF THE WORLD* (Dec. 17, 2021), <https://www.dlapiperdataprotection.com/?t=law&c=ID> [https://perma.cc/H34F-M592].

134. See Pamela Samuelson, *Freedom to Tinker*, 17 THEORETICAL INQUIRY L. 563 (2016); John O. McGinnis, *How Innovation Makes Us More Equal*, 39 HARV. J.L. & PUB. POL'Y 47 (2016); see also *Global Data Governance: Part Two: Evolving Government Data Collection Practices*, FOREIGN POL'Y (June 26, 2020), <https://foreignpolicy.com/2020/06/26/data-governance-privacy-surveillance-covid-ai-encryption-technology-internet-power-map/> [https://perma.cc/42XK-K4H9].

135. See, e.g., Scott Neuman, *The UN Warns That AI Can Pose a Threat to Human Rights*, NPR (Sept. 16, 2021), <https://www.npr.org/2021/09/16/1037902314/the-u-n-warns-that-ai-can-pose-a-threat-to-human-rights> [https://perma.cc/8ZFA-CZHQ].

mendous potential for informing, using, and promulgating essential information and access to legal materials.¹³⁶ On the other hand, though, are the competing concerns of data protection, privacy, and security. Several leading international and regional organizations have successfully navigated this historic challenge and provided guidance.¹³⁷ It is imperative for governments and leaders of organizations to develop a set of “best practices” tailored to each industry and setting to promote democratic access to legal information. This section discusses the successful initiatives of the UN, OECD, and several regional and national models as examples.

UN Overarching Norms: Fundamental Human Rights

¶20 The United Nations spearheaded the labeling of access to information and, eventually, laws and governmental information as a fundamental right for human rights and facilitating international development of the rule of law. As a beacon of organized committee work to implement the UN documentation stemming from this human rights norm, the UN recognized the early fundamental right to access information as a subset of freedom of expression as embodied in Article 19 of the Universal Declaration of Human Rights.¹³⁸ Later, other UN instruments, such as the International Covenant on Civil and Political Rights, also recognized access to information as a fundamental right.¹³⁹ UNESCO advocates for the right to access information and freedom of expression in the public international law sphere.¹⁴⁰ Freedom of expression and access to information also facilitates the rule of law in the UN bodies as a thematic area supported by UNESCO and OHCHR.¹⁴¹ Freedom of information and open access to governmental information promotes democracy and rule of law throughout the world.¹⁴²

136. See Steven D. Jamar, *The Human Right of Access to Legal Information: Using Technology to Advance Transparency and the Rule of Law*, 1 GLOBAL JURIST i (2001); see also Patrick Birkinshaw, *Freedom of Information and Openness: Fundamental Human Rights*, 58 ADMIN. L. REV. 177 (2006); Brittany Grasmick, *Recognizing Access to Information as a Basic Human Right: A Necessary Step in Enforcing Human Rights Provisions within Free Trade Agreements*, 12 LOY. U. CHI. INT'L L. REV. 215 (2015).

137. See, e.g., Ngozi J. Adombana & Kafayat Motilewa Quadri, *Institutional Framework on the Right to Information*, 11 BEIJING L. REV. 244 (2020); Kiffi Aggarwal, *Basic Elements of Right to Information Law*, 5 SUPREMO AMICUS 109 (2018).

138. See *Access to Information Laws*, UNESCO, <https://en.unesco.org/themes/access-information-laws> [<https://perma.cc/GS8Q-QNSL>]; see also *Universal Declaration of Human Rights-English*, U.N., <https://www.ohchr.org/en/human-rights/universal-declaration/translations/english> [<https://perma.cc/WMJ7-FS4A>].

139. See *International Covenant on Civil and Political Rights*, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20; 6 I.L.M. 368 (1967), https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf [<https://perma.cc/CHA3-ZRuz>].

140. *Access to Information Laws*, *supra* note 138.

141. *Freedom of Information*, U.N., <https://www.un.org/ruleoflaw/thematic-areas/governance/freedom-of-information/> [<https://perma.cc/W2V4-LTUD>].

142. See *Access to Information*, UNCAC COALITION, <https://uncaccoalition.org/learn-more/access-to-information/> [<https://perma.cc/GFV7-WJH6>]; see also *Freedom of Expression*, AMNESTY INT'L, <https://www.amnesty.org/en/what-we-do/freedom-of-expression/> [<https://perma.cc/F9M6-6K6T>].

Certain studies and country data reveal that UN efforts and initiatives have facilitated open access to information laws throughout the world.¹⁴³

¶21 UN conventions, such as the UN Convention Against Corruption (UNCAC), also include protections for freedom of information and transparency of information in the context of the conventions or treaties.¹⁴⁴ Many countries adhere to access to legal information norms within the landscape of treaties or conventions to which they are a party.¹⁴⁵ The United Nations also has contemplated the modern issues of AI and privacy in the context of access to information through its committee work. In 2021, UNESCO led the adoption by 193 countries of the first-ever AI agreement with an emphasis on worldwide AI ethics.¹⁴⁶ The goals of the agreement include transparency, open access, privacy protection, and accountability to facilitate AI opportunities and projects on an international scale.¹⁴⁷ The UN Special Rapporteur on Privacy is diligently monitoring privacy aspects of AI and access to information in this modern digital age and is a leader in the commentary on this important issue.¹⁴⁸ Finally, leading UN entities, such as the OHCHR and UNCTAD, are thoughtfully considering digital competencies, privacy, AI and legal aspects, and monitoring mechanisms through legislation.¹⁴⁹ Future UN initiatives seek to demystify AI and harness the good opportunities for open access to legal information in conjunction with other legal implications and worldwide regulations.¹⁵⁰

143. See, e.g., *By Country*, GLOBAL RIGHT TO INFO. RATING, <https://www.rti-rating.org/country-data/> [<https://perma.cc/TR9H-X9YL>].

144. See, e.g., *Stolen Asset Recovery Initiative: UNCAC*, WORLD BANK, <https://star.worldbank.org/focus-area/uncac> [<https://perma.cc/PY2T-29U2>].

145. See U4 Anti-Corruption Resource Centre, *UNCAC in a Nutshell*, U4 BRIEF, June 2010, at 1, <https://www.cmi.no/publications/file/3769-uncac-in-a-nutshell.pdf> [<https://perma.cc/9GXU-L73T>].

146. See UNESCO, *Draft Text of the Recommendation on the Ethics of Artificial Intelligence* (2021), UNESCO Doc. SHS/IGM-AIETHICS/2021/JUN/3 Rev.2, <https://unesdoc.unesco.org/ark:/48223/pf0000377897> [<https://perma.cc/X3A6-TGJC>]; *193 Countries Adopt First-Ever Global Agreement on the Ethics of Artificial Intelligence*, U.N. News (Nov. 25, 2021), <https://news.un.org/en/story/2021/11/1106612> [<https://perma.cc/MEL8-BE3B>].

147. *193 Countries Adopt*, *supra* note 146.

148. *Digital Space and Human Rights*, OHCHR, <https://www.ohchr.org/en/topic/digital-space-and-human-rights> [<https://perma.cc/7XTH-RFZ7>]. The most recent work by the OHCHR, a collaboration with Berkeley, is quite substantive and impressive for this topic. See OHCHR, *THE BERKELEY PROTOCOL ON DIGITAL OPEN SOURCE INVESTIGATIONS* (2022), https://www.ohchr.org/sites/default/files/2022-04/OHCHR_BerkeleyProtocol.pdf [<https://perma.cc/4GLA-AVYB>].

149. See, e.g., U.N. High Comm'r for Hum. Rts., *The Right to Privacy in the Digital Age*, U.N. Doc. A/HRC/48/31 (Sept. 15, 2021); see also U.N. Econ. & Soc. Comm'n W. Asia [ESCWA], *Developing an Artificial Intelligence Strategy: National Guide*, U.N. Doc. E/ESCWA/CL4.SIT/2020/TP.8 (Oct. 15, 2020), <https://www.unescwa.org/sites/default/files/artificial-intelligence-strategy-national-guide-english.pdf> [<https://perma.cc/7D7V-R2BG>]; UNCTAD, *Building Digital Competencies to Benefit from Frontier Technologies*, U.N. Doc. UNCTAD/DTL/STICT/2019/3 (2019), https://unctad.org/system/files/official-document/dtlstict2019d3_en.pdf [<https://perma.cc/HC7Y-JWRP>].

150. U.N. Econ. & Soc. Council, *Artificial Intelligence Demystified*, ECE/TRADE/C/CEFACT/2021/19 (Apr. 13, 2021), https://unece.org/sites/default/files/2021-04/ECE_TRADE_C_CEFAC2021_19E-AI_0.pdf [<https://perma.cc/X6LY-C2XB>]; see also U.N. Comm'n on Int'l Trade L., *Legal Issues Related to the Digital Economy—Artificial Intelligence*, U.N. Doc. A/CN.9/1012/Add.1 (May 7,

OECD Initiatives for International Business

¶22 The OECD has a similarly robust set of responses and governance mechanisms for AI and privacy in the digital age. The OECD and other regional models do not reach the scope, detailed discussion, and robust nature of the UN committee work, though. In the private international law realm, the OECD work in this area is well recognized and innovative for data governance and creating legal information protection and access by AI, combating misinformation, and enhancing access to OECD data.¹⁵¹ The OECD governance mechanisms include sophisticated public governance and combating misinformation in society to strengthen democracies around the world.¹⁵² The OECD has further refined a data-sharing and public governance network for private international law to meet current and future challenges.¹⁵³ These OECD structures are helpful for balancing the privacy aspects while safeguarding open access to accurate information in a digital landscape.

World Bank—Doing Business and Economic Guidelines

¶23 The World Bank has made significant progress with access to information standards and addressing governance issues like privacy and encryption.¹⁵⁴ The World Bank “Access to Information” standards and documentation provide a model to the world community since the access policy’s inception in 2010 to preserve knowledge.¹⁵⁵ This foundational document facilitated numerous projects, including the *Doing Business in* series, and private international law data with constant editing and refining of that data to eliminate bias.¹⁵⁶ Overall, the World Bank provides an excellent example of a diligent

2020); U.N. Comm’n on Int’l Trade L., *Legal Issues Related to the Digital Economy—Proposal for Legislative Work on Electronic Transactions and the Use of Artificial Intelligence and Automation*, U.N. Doc. A/CN.9/1065 (May 5, 2021).

151. See *Recommendations*, *supra* note 116; *OECD Work on Privacy*, OECD, <https://www.oecd.org/sti/ieconomy/privacy.htm> [<https://perma.cc/T5TZ-MBEG>].

152. See, e.g., *Public Governance*, OECD, <https://www.oecd.org/governance/> [<https://perma.cc/WG4C-37WQ>]; see also *Building Trust and Reinforcing Democracy*, OECD, <https://www.oecd.org/governance/reinforcing-democracy/> [<https://perma.cc/G92Q-KJ9U>]; *Public Governance Responses to Mis- and Disinformation*, OECD, <https://www.oecd.org/governance/reinforcing-democracy/responses-to-mis-disinformation/> [<https://perma.cc/G92Q-KJ9U>].

153. See Monica Brezzi et al., *An Updated Framework on Drivers of Trust in Public Institutions to Meet Current and Future Challenges*, OECD (Dec. 21, 2021).

154. See, e.g., Jim Anderson, *Where to Go for Information on Access to Information*, WORLD BANK BLOGS (Sept. 28, 2018), <https://blogs.worldbank.org/governance/where-go-information-access-information> [<https://perma.cc/L3N2-X432>]; Press Release, World Bank, World Bank Announces Open Access Policy for Research and Knowledge (Apr. 10, 2012), <https://www.worldbank.org/en/news/press-release/2012/04/10/world-bank-announces-open-access-policy-for-research-and-knowledge-launches-open-knowledge-repository> [<https://perma.cc/6QYU-6KA2>].

155. *Access to Information*, *supra* note 14.

156. See, e.g., *Countries and Economies*, WORLD BANK, <https://data.worldbank.org/country> [<https://perma.cc/PJ7N-4QV9>]; *Business Enabling Environment (BEE)*, WORLD BANK, <https://www.worldbank.org/en/programs/business-enabling-environment> [<https://perma.cc/N8AK-8SWR>]. The World Bank reviewed its dataset for the *Doing Business in* series and decided to refine the future data project after biases were uncovered. See Statement, World Bank, World Bank Group to Discontinue Doing Business

and robust open business and legal information environs to facilitate healthy international information systems and projects.¹⁵⁷

EU/OAS—Access to Information Models

¶24 The EU and the OAS also provide access to information guidance and model laws. The OAS delineated clear standards for access to information for its members and region in 2009.¹⁵⁸ The OAS further developed a Model Inter-American Law on Access to Information with the goal of strengthening democracy.¹⁵⁹ A detailed guide proactively informs OAS members of the implementation process for the model law and provides guidance for common law and civil law jurisdictions.¹⁶⁰ The EU also provides substantial information and clear structure for freedom of information as embodied in the European Charter of Fundamental Rights.¹⁶¹ The European Court of Human Rights also reaffirmed the right of access to information while balancing privacy in juxtaposition to a national Freedom of Information Act in the *Case of Youth Initiative for Human Rights v. Serbia*.¹⁶² The right to access the information was granted by the Court in this unique case interpreting Article 10 of the Convention and the Joint Declaration by the United Nations Special Rapporteur on Freedom of Opinion and Expression.¹⁶³ This holding by the European Court of Human Rights affirmed the Declaration of the Special Rapporteur that “the right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation.”¹⁶⁴ The *Handbook on European Law Related to Access to Justice* also includes the governing treaties and procedure in the EU that govern the

Report (Sept. 16, 2021), <https://www.worldbank.org/en/news/statement/2021/09/16/world-bank-group-to-discontinue-doing-business-report> [<https://perma.cc/KQ4E-8TAR>].

157. See WORLD BANK, ACCESS TO INFORMATION ANNUAL REPORT FY 2020, <https://thedocs.worldbank.org/en/doc/d9f3b0bfe732902a12fdc904e7dae7fb-0090012021/original/Access-to-Information-FY20-annual-report-revA.pdf> [<https://perma.cc/FR6C-DG6W>]; *Policy & Procedure Framework, The World Bank Policy on Access to Information*, WORLD BANK (July 1, 2015), <https://policies.worldbank.org/en/policies/all/ppfdetail/3693> [<https://perma.cc/8PX2-77QN>].

158. See, e.g., OAS, Inter-Am. Comm'n on Hum. Rts., *The Right of Access to Information* (2009), https://www.oas.org/dil/access_to_information_iachr_guidelines.pdf [<https://perma.cc/6RGN-MW7Z>].

159. See *Model Inter-American Law on Access to Information*, OAS, https://www.oas.org/en/sla/dil/access_to_information_model_law.asp [<https://perma.cc/FY3S-B9AW>].

160. See OAS, Comm. on Juridical & Pol. Affs., *Commentary and Guide for Implementation for the Model Inter-American Law on Access to Information*, OAS Doc. OEA/Ser.G CP/CAJP-2841/10 (Apr. 23, 2010), https://www.oas.org/en/sla/dil/docs/CP-CAJP-2841-10_eng.pdf [<https://perma.cc/962C-9AKJ>].

161. See, e.g., Pamela Bartlett Quintanilla et al., *Guide on Access to EU Documents*, ACCESS-INFO (Jan. 2013), https://www.access-info.org/wp-content/uploads/EN_ONLINE_Guide_on_access_to_EU_Documents.pdf [<https://perma.cc/3KDE-7FHZ>].

162. See Eur. Ct. Hum. Rts., Judgment, *Case of Youth Initiative for Human Rights v. Serbia*, App. No. 48135/06 (Sept. 25, 2013), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-120955%22%7D> [<https://perma.cc/73RP-K4EU>].

163. *Id.* at 3. The Special Rapporteur stated that “[a]ccess to information is a citizens’ right. As a result, the procedures for accessing information should be simple, rapid and free or low-cost. The right of access should be subject to a narrow, carefully tailored system of exceptions to protect overriding public and private interests, including privacy.” *Id.*

164. *Id.*

right to access information, including the principles and legal norms from the Council of Europe, EU, and UN standards.¹⁶⁵

United States—Extraterritorial Guidance After the CLOUD Act

¶25 The United States has long safeguarded the right to access information and has significant contributions to open access to legal information.¹⁶⁶ One of the most recent and fascinating examples of data privacy and access to information encrypted in the cloud occurred in the context of the *United States v. Ireland* case involving Microsoft Corporation's data and overseas storage.¹⁶⁷ This appeal to the Second Circuit and then to the Supreme Court is a contentious modern case involving the balance of privacy interests with access to data and online storage in our increasingly digital universe.¹⁶⁸ Ultimately, though, the CLOUD Act passed in 2018 and revised the Stored Communications Act to create an extraterritorial cause of action and right to information abroad that Microsoft had stored overseas in Ireland.¹⁶⁹ This legislative action was unique for storage of digital data and paved the way for modernization of U.S. lawsuits and enhanced access to data with international corporate actors involving digital stored communications anywhere in the world.¹⁷⁰ The United States also has advancements for regulation of AI while preserving the historic right of access to information.¹⁷¹

Conclusion: Hope for Future Open Access Innovations

¶26 Many laudable efforts toward open access to the law, legal information, and free governmental information exist and are continually expanding for a digital age. Future

165. See EU AGENCY FUNDAMENTAL RTS. & COUNCIL OF EUR., HANDBOOK ON EUROPEAN LAW RELATING TO ACCESS TO JUSTICE (2016), https://www.echr.coe.int/documents/handbook_access_justice_eng.pdf [<https://perma.cc/CSG3-KJP6>].

166. See, e.g., *What Is FOIA?*, FOIA.GOV, <https://www.foia.gov/about.html> [<https://perma.cc/4JPH-X9B6>]; see also HARV. L. SCH., CASELAW ACCESS PROJECT, <https://case.law/> [<https://perma.cc/Q868-D3G3>].

167. See *Microsoft Ireland*, *supra* note 111; see also Jennifer Daskal, *Microsoft Ireland Argument Analysis: Data, Territoriality, and the Best Way Forward*, HARV. L. REV. BLOG (Feb. 28, 2018), <https://blog.harvardlawreview.org/microsoft-ireland-argument-analysis-data-territoriality-and-the-best-way-forward/> [<https://perma.cc/S9NA-SG2B>].

168. See *Matter of Warrant to Search a Certain E-Mail Account Controlled and Maintained by Microsoft Corp.*, 829 F.3d 197 (2d Cir. 2016).

169. The Second Circuit decision was then remanded and vacated and, thus, the Supreme Court writ of certiorari was moot because there was no longer a dispute for the appeal. See *Microsoft Ireland*, *supra* note 111.

170. See *CLOUD Act Resources*, U.S. DEP'T JUSTICE, <https://www.justice.gov/dag/cloudact> [<https://perma.cc/N22X-Q47Z>]; CLOUD Act, H.R. 4943, 115th Cong. (2018).

171. See, e.g., *Legislation Relating to Artificial Intelligence*, NAT'L CONF. STATE LEGISLATURES (Aug. 26, 2022), <https://www.ncsl.org/research/telecommunications-and-information-technology/2020-legislation-related-to-artificial-intelligence.aspx> [<https://perma.cc/W48K-QWX5>]; see also the laudable world AI legislative efforts impressively compiled by the Law Library of Congress: LAW LIBR. CONG., REGULATION OF ARTIFICIAL INTELLIGENCE IN SELECTED JURISDICTIONS: BRAZIL, CANADA, MEXICO, UNITED STATES (2019), <https://www.loc.gov/item/2019668143/> [<https://perma.cc/LEH6-DZJH>].

thought should be invested in cross-border cooperation and collaboration and procedural norms for ensuring access and discovery of information.¹⁷² Collaborations by law librarians and scholars, a Hague convention, a UN treaty conference effort, or a regional conference on the expansion of digital rights and privacy could better promote cross-border collaboration and the rule of law. More certainty and uniformity will be needed to better protect open access in the uncertain time of COVID-19 and its aftermath and the need for digital information. Governments and corporate actors are well poised to collaborate on open access and refine coordinated standards based on the overarching UN, OECD, and other regional initiatives. Law libraries, law schools, and global and national think tanks are also ready partners for open access initiatives in the law and expanding international access to justice in an uncertain epoch.

172. See Morgan Corley, *The Need for an International Convention on Data Privacy: Taking a Cue From the CISG*, 41 BROOKLYN J. INT'L L. 722 (2016).

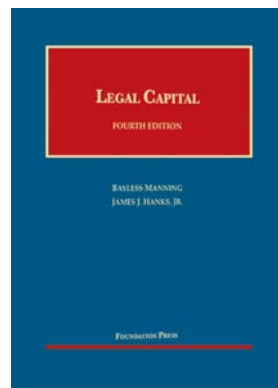


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