



complicated and challenging. Significant power imbalances in relation to the availability of resources can deter human rights organisations from pursuing litigation against private sector actors. The transnational and extraterritorial dimensions of multinational corporations can further complicate the process. Fortunately, digital rights litigators are not the first to experience this problem.

In the digital rights context, these considerations can be complex and layered. You may have instances where private actors are collaborating with the state. For example, private actors who assist in the development of surveillance technology, or communications companies that allow their services to be used for state surveillance. In 2019, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in the context of surveillance and human rights, observed that “[d]igital surveillance is no longer the preserve of countries that enjoy the resources to conduct mass and targeted surveillance based on in-house tools. Private industry has stepped in, unsupervised and with something close to impunity.” In addition, there may be direct violations from private actors, such as facial recognition companies that are violating privacy rights.

This may be further complicated in the context of free speech, social media companies, and content moderation.⁶⁵ The surveillance and technology sector, the software sector, and the electronic sectors have been alleged to have caused or been complicit in human rights violations.⁶⁶ Litigation around indigenous rights, environmental rights, and access to health care often involved litigation against powerful corporate interests such as multinational mining or oil and gas companies, big pharmaceuticals or tobacco corporations, and may therefore provide useful comparative case studies for litigants seeking to go after big tech companies. However, an antagonistic relationship with private actors may not always be the case – in some instances, they could be allies in litigation against the state. In other instances, the dispute may be between a private actor and the state and may benefit from a human rights perspective. For example, and as noted above, civil society actors have sought to intervene in a dispute between Telegram and Russia, in order to advance rights-based arguments.

Guideline 30: Different actors may cause rights violations. It is important to be alive to that fact when deciding on your litigation strategy.

⁶⁵ See EDRI, ‘Digital Services Act: what we learned about tackling the power of digital platforms’ (2020) (accessible at <https://edri.org/our-work/digital-services-act-what-we-learned-about-tackling-the-power-of-digital-platforms/>).

⁶⁶ Policy Department for External Relations, ‘Study: Access to legal remedies for victims of corporate human rights abuses in third countries’ (2019) at 20 – 30 (accessible at [https://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU\(2019\)603475_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU(2019)603475_EN.pdf)).