

Global Network Initiative

Corporate Responsibility to Respect Human Rights Sector Guidance Project

Comments on the ICT Sector Discussion Paper

July 13, 2012



Protecting and Advancing
Freedom of Expression and
Privacy in Information and
Communications Technologies

The Global Network Initiative (GNI) welcomes the European Commission's Directorate-General for Enterprise and Industry project to develop guidance on the corporate responsibility to protect human rights in the Information and Communication Technology (ICT) sector. We look forward to working with the Institute for Human Rights and Business (IHRB) and Shift as they implement this project. GNI Executive Director Susan Morgan serves on the Sector Advisory Group, as do GNI Board members Rebecca MacKinnon and Lewis Segall. We look forward to working with the Project Team on this important initiative and we offer the following comments on the Discussion Paper:

- 1) The UN Guiding Principles on Business and Human Rights cover a wide range of human rights issues. Developing guidance that is specific but still covers the range of human rights risks facing the ICT sector is a challenging task. Those issues that were the first to be in the global spotlight, such as labor rights and supply chains, have more established practices for responsible corporate behavior, compared to the freedom of expression and privacy issues that GNI was formed to address. We support an approach by the Project Team that builds upon existing efforts.
- 2) The need to respect human rights principles whilst addressing security issues and risks is something that we strongly support. Our view, in line with international standards on human rights is that all are indivisible, interdependent and interrelated, that the improvement of one right facilitates the advancement of others.
- 3) The privately owned and operated nature of much of the internet means companies play a critical role in relation to the rights of their users through the decisions they take in response to government requests or demands. Through a multi-stakeholder process lasting two years, GNI developed a set of Principles and Implementation Guidelines to provide a framework for responsible company decision-making for companies across the ICT sector in response to government requests that could impact on the freedom of expression and privacy rights of their users. These are publicly available on our website at: <http://www.globalnetworkinitiative.org>.
- 4) GNI recently completed the first independent assessment of technology companies' policies and procedures for responding to government requests affecting free speech and privacy. Our 2011 annual report describes the assessment process undertaken by the founding GNI companies—Google, Microsoft, and Yahoo!.¹
- 5) States have legitimate purposes for surveillance for national security and law enforcement purposes, but in pursuing legitimate objectives they can make requests of ICT companies that threaten the rights of users. GNI commissioned an academic

¹ Global Network Initiative "2011 Annual Report," April 2012, at http://globalnetworkinitiative.org/files/GNI_2011_Annual_Report.pdf.

report to explore these issues, entitled “Digital Freedoms in International Law: Practical Steps to Protect Human Rights Online,” by Dr. Ian Brown of the Oxford Internet Institute and Douwe Korff of London Metropolitan University.² The report is based on extensive consultation with international stakeholders, including meetings with governments, companies, civil society, investors and academics held in London, Washington, and New Delhi. We hope that the report will stimulate further discussion and debate.

- 6) The Discussion Paper identifies several organizations and agencies that contribute to global Internet governance in section 4.1, but it misses several key institutions and does not differentiate between multi-stakeholder processes and state-based multilateral organizations. For example, the Internet Corporation for Assigned Names and Numbers is a nonprofit organization with a bottom-up, consensus-driven, multi-stakeholder model, whereas the International Telecommunication Union is a specialized UN agency whose decision-making is controlled by member states. Multi-stakeholder bodies that develop technical standards such as the Internet Engineering Task Force and the World Wide Web Consortium should also be incorporated into this contextual analysis. GNI has urged the retention of the multi-stakeholder approach to Internet governance as global policy forums create policy for the future.³
- 7) Although the Discussion Paper identifies a range of human rights impacts resulting from companies in the ICT sector, it would benefit from a more rigorous mapping of the specific risks facing different companies operating across the value chain. GNI commissioned a report, “Protecting Human Rights in the Digital Age,” by Dunstan Allison Hope of the corporate responsibility consultancy BSR, which provides this analysis.⁴
- 8) One of the key issues that companies in the sector are grappling with is the distinction between FoE and privacy risks associated with *content* and those associated with *product functionality*. Issues around content are well-summarized in the Discussion Paper and addressed by the GNI Principles and Implementation Guidelines. GNI has identified product functionality and dual-use hardware as a key issue for further study in a discussion paper available on our website, and the Digital Freedoms in International Law report offers recommendations intended to stimulate debate among stakeholders on measures to address this area.⁵
- 9) Depending on their position in the ICT value chain and their global footprint, companies receive different numbers and types of requests from governments under varying legal frameworks. For example, telecommunications firms tend to receive a much higher volume of government requests compared with Internet content firms. Lawful interception requests can also differ between targeted requests and mass

² Ian Brown and Douwe Korff, “Digital Freedoms in International Law: Practical Steps to Protect Human Rights Online,” GNI, June 2012, at <https://globalnetworkinitiative.org/news/new-report-outlines-recommendations-governments-companies-and-others-how-protect-free>.

³ Global Network Initiative, “The Multi-stakeholder Model of Internet Governance Needs to be Retained,” June 22, 2012 at <http://globalnetworkinitiative.org/news/multi-stakeholder-model-internet-governance-needs-be-retained>.

⁴ Dunstan Allison Hope, “Protecting Human Rights in the Digital Age: Understanding Evolving Freedom of Expression and Privacy Risks in the Information and Communications Technology Industry,” BSR, February 2011 at <http://www.bsr.org/our-insights/report-view/protecting-human-rights-in-the-digital-age>.

⁵ Global Network Initiative, “Issues for Consideration in GNI Implementation Dialogue,” at http://globalnetworkinitiative.org/sites/default/files/Key_Issues_for_GNI_Implementation_Dialogue_3.pdf.

intercepts. We encourage the Project Team to look closely at these distinctions and their implications for companies, while keeping in mind the importance of a common set of standards for the sector centered on the human rights of the user, who may not distinguish between the services, networks, and hardware that are all necessary to use ICTs to engage in social, economic, and political activity.

- 10) Over the past several years, GNI and its members have undertaken a number of workstreams related to implementation of our Principles. Some of this work is public, for example the report released by the Center for Democracy & Technology and the Berkman Center for Internet & Society on “Account Deactivation and Content Removal: Guiding Principles and Practices for Companies and Users.”⁶ This document grew out of the GNI’s learning series on the impact on user rights of the moderation, takedown, and abuse-prevention mechanisms adopted by platforms that host user-generated content. Other activities have been developed for GNI participants only, such as continuing work on Human Rights Impact Assessments (HRIAs). We anticipate making public some of the work on HRIAs and would invite the Project Team to be in touch with us on this in the near future.

GNI is a multi-stakeholder group of companies, civil society organizations (including human rights and press freedom groups), investors and academics, who have created a collaborative approach to protect and advance freedom of expression and privacy in the ICT sector. GNI provides resources for ICT companies to help them address difficult issues related to freedom of expression and privacy that they may face anywhere in the world. GNI has created a framework of principles and a confidential, collaborative approach to working through challenges of corporate responsibility in the ICT sector.

⁶ Erica Newland, Caroline Nolan, Cynthia Wong, and Jillian York, “Account Deactivation and Content Removal: Guiding Principles and Practices for Companies and Users,” Berkman Center for Internet & Society and Center for Democracy and Technology, September 2011, available at https://www.cdt.org/files/pdfs/Report_on_Account_Deactivation_and_Content_Removal.pdf.