CONSULTATION QUESTIONNAIRE FOR ITU/UNICEF GUIDELINES FOR INDUSTRY ON
CHILD ONLINE PROTECTION
December 2013

The Institute for Human Rights and Business (IHRB) appreciates the opportunity to provide written comments on the Draft Guidelines For Industry On Child Online Protection. As requested, our comments respond to the questions presented at the end of the draft.

PARTICIPANT INFORMATION

1. Please tell us about yourself. Alternatively, you may provide your input anonymously.

About IHRB – www.ihrb.org

IHRB is a global think tank working on the relationship between business and internationally proclaimed human rights standards. We provide a trusted, impartial space for dialogue and independent analysis to deepen understanding of human rights challenges and issues and the appropriate role of business. The Institute works to raise corporate standards and strengthen public policy to ensure that the activities of companies do not contribute to human rights abuses, and in fact lead to positive outcomes.

2. In what capacity are you responding?

Professional

3. Input provided will not be publicly attributed to any organization or individual. However, please indicate if we may disclose the fact that you or your organization provided input in the process.

Yes

4. Which sector do you belong to? Please check one box.

Civil Society

5. May we add your contact information to our “Interested persons” list to keep you
informed about the process related to the development of the Guidelines and/or in the event we need to contact you to clarify your responses?

Yes

A. ASSESSING THE COVERAGE AND CONTENT OF THE DRAFT GUIDELINES

6. Please comment on the scope of the draft Guidelines. Are there topics covered that should not be, or are there gaps?

We don’t agree with the scope of the Guidelines.

7. Please explain or provide other comments on the scope/coverage of the draft Guidelines:

There are several issues we feel have not been addressed in the draft, either sufficiently or at all, that would ultimately strengthen the usability and impact of the finished Guidelines:

1. The draft does not recognise upfront the balance that must often be struck between child protection and freedom of expression of other users. We agree that child sexual abuse images do not represent expression that should be protected and are illegal under international law, but in seeking to suppress or eliminate those images, care must be taken to ensure that those steps do not unduly restrict other’s freedom of expression. We have provided further comments to specific sections later in this submission, but companies must ensure that measures to protect children online are targeted and do not unduly restrict the enjoyment of freedom of expression for other children or adults.

2. The draft does not address the particular risks to children’s privacy online in one place. We would suggest collating this information in one place upfront in the draft, particularly concerning data collection, parental consent to data collection and data use and collecting location information. The draft also does not raise the issue of the appropriateness or inappropriateness of the sale of children’s data, nor provide guidance on dealing with this issue.

3. There are a number of child-specific risks that are not adequately addressed in the draft guidelines. We would suggest that these risks to children should be highlighted upfront and then specifically dealt with in the Guidelines:
   • Use of facial recognition software in social media
   • Use of location services
   • Posting information online about unaccompanied children on privately-run, post-disaster family reunification websites or social media pages, exposing the children to the risk of exploitation or trafficking
4. The draft mentions the UN Guiding Principles on Business and Human Rights in the Overview and Glossary, and states its intention to be aligned with the Guiding Principles but contains little further reference and uses terminology inconsistent with the Guiding Principles. The draft does not refer to the concept of due diligence as an essential part of a company’s corporate responsibility to respect human rights. The Guiding Principles state that human rights due diligence, “should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships.” In addition there is no mention of how a company should consider business relationships or how to assess if their product/service is directly linked to potential human rights impacts.

Given the connectivity of many different parts of the ICT industry, understanding and addressing the risks of direct linkage to child rights abuses through business relationships should be a core part of the Guidelines. In addition, the draft does not reference or address the third pillar of the Guiding Principles, access to remedy. In order to be aligned with the UN Guiding Principles, it would be important to address how companies can provide access to remedies, including through operational level grievance mechanisms on-line. Reporting is part of the answer but not for the full range of issues, including breaches of privacy, for example.

The General Guidelines refer to raising the profile of child protection within the company and hiring more staff to moderate content. First of all, not all companies will need content moderators but more importantly, this does not clearly article the important policy-process-accountability steps that must be taken within a company to embed a child rights approach in line with the corporate responsibility to respect under the UN Guiding Principles. We recognise that this is a very consolidated version of the UN Guiding Principles approach, but it is not accurate in summarising the key management steps that are needed; of all the choices that could be made to focus on, these two points would not be the key ones in embedding a child rights approach in company policies, procedures and management. We suggest referring to this publication for more guidance: European Commission, ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights.

5. While the draft does refer to reporting mechanisms throughout, it is often unclear to whom the reporting should take place, by whom, and crucially, on the need to follow up with those who report, particularly where they have reported about abuse they have suffered. It is also unclear if reporting refers only to sexual abuse, and if so, what is the process of reporting other issues online and is the recommendation that there is a separate reporting process?

6. The draft often states that companies should address the issue of bullying and grooming, but does not give actual guidance as to the best course of action or even point companies to resources to deal with the issue.
7. The draft refers several times for the need to have clearer terms and conditions for the users – the idea being that children should clearly understand what sort of experience they will get. But it is unlikely that children would read the long text that is part of most terms and conditions (adults rarely read those). Companies should not rely on those texts, or even agreements, as evidence of having clearly communicated with the children.

8. The draft often refers to “illegal content” but does not define what this is upfront.

9. The document says early on “Studies show that the majority of young people are aware that they can report, but do not have sufficient skills, knowledge or confidence in the process actually to do it.” – but then does not provide any specific guidance on how companies can better shape reporting to be effective; instead the Guidelines simply repeat the point about reporting throughout the text.

10. While the definition section has a definition of child, this is not applied consistently throughout the text (see for example, see p. 23) and there are several references to “minor.” In addition the text Guidelines refer to “child pornography” a term the introduction specifically said would not be used.

11. There is surprisingly little on appropriate marketing to children.

12. There is other text that should perhaps be general points upfront. For example, in the Hardware Manufacturing section on p37, the following recommendation would usefully be moved up to the general guidelines section.

   “Share information with your customers/ users regarding the applicable legal framework for the online protection of children, under which your organization is operating. [This framework should also be reflected on your organization’s relevant policies.]”

13. Finally, there are quite some inconsistencies among the sections and points included in specific sections – both substantively, but also in the terminology and abbreviations used (for example sometimes the text refers to “you”, sometimes “your organization”). We assume that the final document will get a thorough edit.
8. Please comment on the content of the draft Guidelines, including any suggestions for redrafting of particular provisions. Use additional space as needed.

We welcome the development of specific, targeted Guidelines by industry sub-sector.

Part I: Five Key Areas for Protecting and Promoting Children’s Rights:

2) Develop processes for handling child sex abuse content, (p7)

Companies should be aware that if their policies require them to terminate the accounts of users who violate terms and conditions or community guidelines, then that should not interfere with any ongoing criminal investigation into child exploitation. Individuals whose accounts are terminated may be able to open another account offering the same material, so companies should also consider what measures they have in place to prevent this happening.

4) Educate children, parents, and teachers about children’s safety and responsible use of ICTs (p9)

“Companies do invest in education programs designed to enable users to make informed decisions about the content and services they use.”

This is an example of where the draft addresses certain issues but does not give concrete guidance as to the best course of action. It would be useful if the document offers examples of good practice by other companies.

General Guidelines for All Related Industry:

Develop a safer and age appropriate service environment (p12)

The draft should clearly state that it is essential for companies to implement and adapt heightened/enhanced security measures to protect any personal information that has been collected from children, including any location-related information that could pose particular risks to children. The draft does not give guidance on whether and how children’s data should be used or sold. The default option should be to collect minimal information, and where appropriate, parental consent (or legal guardian’s consent) be obtained. The draft should also discuss situations where children are able to set up accounts on social networking websites by claiming to be older than they are while opening accounts.

Part 2: Sector Specific Checklists:

Mobile Operators (p17)

It is unclear whether the term “managing reputation” refers to educating children about managing their own reputation online and thinking about the content they post that
could be detrimental in later life, or the reputation of companies. We feel suggesting that civil society work with companies on “managing reputation” is inappropriate and not a productive way for companies to engage with civil society groups. If this does refer to educating children, we suggest a less business-like term is used, such as “considering the effects of posting certain content online”.

**Internet Access in public spaces (p18)**

“Develop procedures for handling child sex abuse content- access to web addresses known to contain illegal content.”

Blocking specific content is not a simple matter. Small businesses that lack resources, such as public internet cafes, may lack the staff or familiarity with appropriate processes to block specific content (such as child abuse images), and there is risk of over-compliance, i.e. the business implementing sweeping blocking measures that could restrict legitimate services and impact freedom of expression. We suggest the draft should give more detailed explanation about how a business such as an internet café providing wi-fi access would deal with this issue and what is involved, as well as cost implications, if any.

**Internet Access: Internet Service Providers.**

“Is it appropriate to use tools such as hash scanning and image recognition software or URL blocking on your service?” (p21)

It would be useful to specify what criteria were used to decide if these tools are appropriate for the purpose. In particular, is using facial recognition software on children appropriate on certain services at all due to the increased threat to privacy and security?

**Regarding the requirement detailing the ‘Report abuse’ button on page 21.**

There are several mentions of reporting in the draft, but it is often unclear to whom, by whom, and the need to follow up with those who report. It is important that the company follows up with the user who has reported the abuse, so that the user does not feel increasingly isolated or ignored.

**On page 33 the document calls upon companies to prohibit registered sex offenders, specifically saying: “Social networking sites should ban registered sex offenders from setting up accounts on their sites using technology that already exists today.”**

This requirement can pose complications, unless there is a court order banning the individual from permanently accessing the internet or social networking websites. What methods or technology would a company deploy to get such information about users?
Are there not privacy implications in doing so?

On page 34 the document mentions a number of measures that may be used to protect online users against inappropriate or illegal user generated content. There is specific reference to “Automatic filters”. The part says:

“Inappropriate words can be blocked from user names and messages at the point of posting. This filter includes swearing, sexual terms, and racist or homophobic language. Non in-house URLs can also be blocked, along with email addresses. In addition wherever possible and appropriate companies should develop tools which allow them actively to seek out and remove content which is in breach of their Ts&Cs. Tools can be develop to prevent the uploading of known illegal content or to detect known illegal content that is already present on the site.”

These measures are sweeping and do not consider the impact on freedom of expression. Arguably, a case can be made to make these measures as acceptable if the user-generated content/site in question is aimed solely at children. But if the site has a wider demographic (such as including adults or teenagers) then blocking information on sexual health, or imagery, or language like swearing would not be appropriate, and the company may run the risk of infringing on freedom of expression. It is also important to know who decides that a specific word or list of words can be blocked because they are offensive. If so, is there an oversight mechanism? Any blocking mechanism must have accountability. It is also not clear what “non-in-house” URLs means.

As regards the measure dealing with “preventing the uploading of illegal content”, it appears that the action required conflicts with the notion of “intermediary liability” and accepted “notice and takedown practices”, as outlined in the European Commission’s Commerce Directive (2000). Is the illegal content referred to here concerning child abuse images? Some companies do have tools to detect illegal content already uploaded on their site – this includes mostly copyrighted content such as music and TV shows. Google have a system called “Content ID” which scans YouTube for copyrighted content and notifies the rights holder. The rights holder can then decide whether to leave the content and place advertising around it, or have it removed.

However, pre-screening content before it is uploaded is not practical for any company; for example on YouTube alone over 100 hours of content gets uploaded every minute.

Hardware Manufacturers, (p37)

In this section, the distinction between hardware and software manufacturers is not clear. For example this is clearly referring to software,

“Use Terms and Conditions to draw users’ attention to the availability of content found in their online services (App Stores), that may be deemed inappropriate, either originating from the manufacturers themselves or from any other Third-party.”
Although a company may manufacture both the hardware and Operating System (software) for its products and therefore run its own App Store (as Apple does) this is not the case with all companies so a distinction should be made.

This section is missing the whole dimension of the actual manufacture of products. That would include paying attention to the potential for child labour both in manufacturing and disposal of hardware (e-waste).

9. Should the Guidelines distinguish more clearly between must dos and nice to haves?

Yes

If so, how?

Prioritise risk and immediacy, both in the sense of short term and long-term action. For example, one priority would be tackling child abuse content, and assisting law enforcement to find and rescue the child, if possible. Whereas biometric age verification systems are suggested in the draft, in reality this measure would be highly controversial and would require extensive stakeholder consultation to consider the impact on freedom of expression and privacy. This is one area where the draft does not consider this balance between child protection and other rights.

B. CONSIDERATIONS ON APPLYING THE GUIDELINES

10. Please share one or more examples of a policy, practice or initiative your organization is involved in that is relevant to the draft Guidelines and the topic of child online security and ICTs (links to existing material are fine). (The partner organizations may draw on this material for good practice examples of how to implement the Guidelines).

IHRB and Shift recently wrote the European Commission ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights.


This is a practical guide for ICT companies (such as telecommunications, web-based services, device manufacturers, component manufacturers and software developers) on how to ‘translate’ respect for human rights into their operations, detailing what each step of the Guiding Principles on Business and Human Rights expects and examples of how this may apply to an ICT company.

The following resources were referenced in the EC ICT Sector Guide:

- EU Safer Internet Programme includes various principles on networking and mobile use that seek to ensure the safety of children using such services
11. How might the Guidelines be helpful to you and your organization?

If the Guidelines build more on the UN Guiding Principles on Business and Human Rights, they will be useful in our work with companies to demonstrate alignment between different global organisations in building a rule-based framework for business with regard to human rights.

12. What would be helpful to include in commentary and documentation that accompanies the final version of the Guidelines? (Select all that apply)

- The business case for the Guidelines
- Case Studies / Good Practice Examples
- Assessment tools to measure progress
- Evidence – through data, facts and figures, backing up the claims and recommended actions.
- More extensive Glossary of Terms
- A list of specific resources

Other, please specify:

It is important to have more examples of inappropriate content that companies should look out for, such as content promoting self-harm, suicide, bullying, eating disorders, and the sale of harmful products to children, such as alcohol, tobacco, firearms, and other weapons, including knives, to children.

C. THOUGHTS ON NEXT STEPS

15. Once the Guidelines are finalized, what steps should be taken with regard to these Guidelines? (Select all that apply):

* Collect and share resources/guidance materials and tools that may help businesses/organizations with their application of the Guidelines
* Collect and share good practice examples illustrating action businesses/organizations can take to help with their application of the Guidelines

* Work with others to fill gaps in guidance on specific issues relating to ICTs and children (please specify any needs below)

Create a forum where companies, stakeholders, and officials can meet periodically to exchange experiences and ideas of mutual concern regarding the Guidelines and their implementation

Please elaborate or indicate any other recommendations here:

**D. ADDITIONAL COMMENTS AND/OR QUESTIONS** Please limit your input to 500 words.

**18. If you have additional comments, kindly indicate them below.**

There are points in the draft that would benefit from being brought upfront or made into clear sections to avoid them being lost. The material is difficult to access, and it is important that the document articulates the case more clearly. Using bullet points to separate the ideas, or boxes to allow for deeper reflection on a specific issue, would be useful.