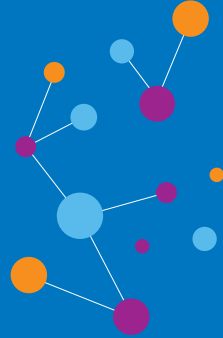


Addressing Business Model Related Human Rights Risks

A B-Tech Foundational Paper



OVERVIEW

The *UN Guiding Principles on Business and Human Rights* (UNGPs) provide **a principled and pragmatic framework to address situations in which the most serious risks to people are inherent to the business models of technology companies**. They offer a set of guardrails and guidance for all companies across the sector—as well as civil society, investors and regulators—striving to embed respect for human rights within the commercial logic of 21st century technological advancements.

Under the UNGPs, **companies are expected to conduct human rights due diligence across all of their business activities and relationships**. This implies that they should: i) pro-actively identify when their business model-driven practices, and related technology designs, create or exacerbate human rights risks; and ii) take action to address these situations—**whether by mitigating risks within existing business models or by innovating entirely new ones**.

Any effort to address human rights risks related to technology company business models will require that markets, regulators and society build enabling environments for responsible business practices - and where necessary alternative business models—to prosper. **The UNGPs reflect critical aspects of the wider systems changes—for example in market incentives, public policy and law—that may be needed**. They set the expectation that institutional investors should integrate human rights considerations throughout their investment lifecycle. And they re-affirm that States have a duty to protect against business-related human rights harms by deploying a smart mix of policy and regulatory measures.

Providing insight and guidance to support companies, investors and States to implement these expectations is an important focus of the B-Tech project's work ahead.

ABOUT THIS PAPER¹

This paper is written for leaders from across the technology sector, investor community, civil society, and government seeking to use the [UN Guiding Principles on Business and Human Rights](#) as a key tool to avoid human rights risks being embedded in technology company business models.

The paper is part of the UN Human Rights [B-Tech Project](#) foundational paper series, which have been developed to **launch and frame discussions among diverse stakeholders as part of a global process to produce guidance, tools and practical recommendations** to advance implementation of the UN Guiding Principles in the technology sector.

The additional papers in the series are listed below (links forthcoming):

- *An Introduction to the UN Guiding Principles in the Age of Technology.*
- *Key Characteristics of Business Respect for Human Rights.*
- *Identify and Assessing Human Rights Risks Related to End Use.*
- *Taking Action to Address Human Rights Risks Related to End Use.*
- *Paths for Accountability and Remedy in the Technology Industry.*
- *The State Duty to Protect and Tech: Advancing a “Smart-Mix”.*

HEADLINES

1. **Technology company business models, and the commercial underpinnings of 21st century technological advances, are being increasingly criticised for creating or exacerbating negative impacts on a range of human rights.** Business executives and entrepreneurs across the technology industry are being called on to address this concern. That companies do so in credible ways is fast becoming essential to gain (or regain) trust from stakeholders, build resilience into business models and sustain their legal and social license to operate.
2. **Under the UNGPs, companies are expected to conduct human rights due diligence across all of their business activities and relationships. This includes addressing situations in which business model-driven practices and technology design decisions create or exacerbate human rights risks.** This will require engagement from boards of directors, executives, entrepreneurs, and founders that have an influence on company strategy, not only individuals traditionally leading the implementation of a company’s human rights, ethical or responsible business programmes.
3. **Institutional investors—including asset managers, pension funds, private equity firms, and venture capitalists—have a responsibility to respect human rights consistent with the UNGPs.** This means that they should integrate human rights considerations in all stages of investing, including in how they inform and influence investee’s business model choices.

¹ This paper has been developed with inputs from a variety of stakeholders including at an expert meeting hosted by the Harvard Kennedy School [Carr Center for Human Rights Policy](#) in February 2020. The concepts and ideas have also been informed by Shift’s [Business Model Red Flags](#) resource developed as part of its Valuing Respect Project.

4. The UNGPs reinforce that **States should apply a “smart-mix” of measures to: reward companies** that take reasonable steps to avoid or mitigate human rights risks that flow from their business models; **hold companies to account** that do not; and **support enterprises and entrepreneurs pursuing alternative business models** that carry fewer and less severe human rights risks.
5. **A shared understanding among all stakeholders** of how different technology business models might lead to human rights harms, how this plays out in reality and what is being done, or can be done, to avoid harms will create a strong foundation for multi-stakeholder dialogue and co-creating paths to improve business practices and protect human rights.

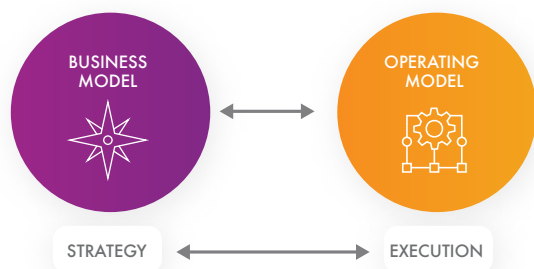
DEFINING “BUSINESS MODEL”

The B-Tech project is using the term business model to denote **“the value a company seeks to deliver, and to whom and how it delivers that value in the pursuit of commercial success”**. UN Human Rights is also drawing on two complementary ways of understanding business models that help bring focus to their importance for companies respecting human rights.

1. **Business model choices substantially influence day-to-day business practices.** Business model choices are made and reviewed by the top leadership of an enterprise responsible for strategy. Executives and senior managers then work to ensure that these strategic choices are reflected in the company’s operating model. Where this process establishes business processes, incentives and practices that increase risks to workers, communities or consumers, a tension has arisen between a company’s ability to respect human rights and its business model.
2. **Business models are made up of three elements all of which can create human rights risks.**
 - A **Value Proposition**: What the company offers and to whom. For tech companies this includes the products, services, insights or solutions it delivers to customers, and who those customers are.
 - A company’s **Value Chain**: How the company delivers value and who or what it relies on, to do so. For tech companies this includes how they source, treat and uses data.
 - The **Revenue Model**: How the company generates financial income in order to be profitable.

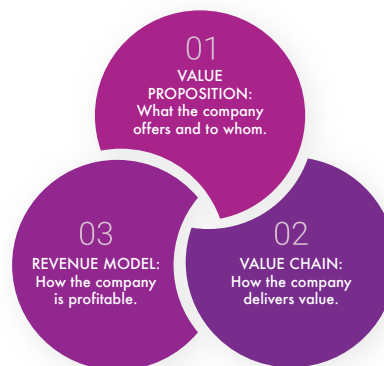
DEFINING "BUSINESS MODEL"

"A business model defines how an organization creates and captures value. This is distinct from an operating model which is made up of the processes that transform assets into the valuable actions that the business model depends on"



Credit: Professor Nien-hê Hsieh, Harvard Business School

"A company's business model can be broken down into three key elements, the features of which may bring with them inherent human rights risks"



Credit: The Shift Project

ONE

Technology company business models, and the commercial underpinnings of 21st century technological advances, are being increasingly criticised for creating or exacerbating negative impacts on a range of human rights.

The business models deployed in the technology industry in the past few decades have supported remarkable innovation and enabled unforeseen access to life-changing technologies for vast populations. However, there is **growing evidence that features of these same business models can also influence corporate conduct and technology design decisions in ways that contribute to human rights harms, threaten democratic values and exacerbate inequalities.**

An array of voices from within the investor community, government, civil society, academia and even tech employees and enterprise customers are coalescing around this shared concern. By way of illustration²:

- The business models of **social media and search** companies have been called out by human rights organisations³ for depending on business practices, and underlying algorithmic systems, that manufacture virality and preferentially—if unintentionally—promote content that contributes to online and offline human rights harms and grave human rights abuses, including genocide⁴.

² There are modes of generating revenue that use technology but are already recognised as illegitimate and illegal – such as cyberextortion, ransomware attacks, and cybersex trafficking. These are issues that demand ongoing and urgent action by States, civil society and the private sector. But they are not included under the rubric of "business models" in this paper.

³ See, for example: [It's Not Just the Content, It's the Business Model: Democracy's Online Speech Challenge](#) (Ranking Digital Rights); and [Surveillance Giants: How the Business Model of Google and Facebook Threatens Human Rights](#) (Amnesty International).

⁴ See [Report of the Independent International Fact-finding Mission on Myanmar](#) (A/HRC/39/64)

- Local communities, academics, researchers and politicians have challenged the business model of **short-term rental platforms** for leading to escalated rental prices and reducing housing stock with disproportionate impacts on the right to housing for poorer residents.
- **Gig-economy companies** have been widely criticised for deploying a business model that depends for its profitability on vast numbers of workers delivering services without basic labor rights protection including to freely associate and receive sick pay and social security benefits.
- Some technology companies have been urged by their stakeholders to **exclude certain customer segments** (the different groups that an enterprise aims to serve) from the company's business model and strategy. One notable example of this is tech firms selling surveillance tools to State security agencies, immigration departments or law enforcement.

The increasing reports of technology's role in exacerbating human rights harms have thrown into sharp relief the prospect that individual incidents are not so much outliers as somehow built into the logic of how the business of technology has been constructed and evolved.

In her book, *The Age of Surveillance Capitalism*⁵, Harvard Professor Shoshana Zuboff posits that the underpinning logic of today's tech company business models is to accumulate extensive behavioural data to make increasingly accurate and highly lucrative predictions about the interests and behaviours of individuals and groups in society. All of this, she argues, **with devastating, historically unprecedented consequences for our privacy, our rights to form and hold opinions, and for democracy**.

Another wide-ranging concern is that Artificial Intelligence technologies that "differentiate, rank and categorize" are in essence "systems of discrimination"⁶. This is not to suggest that all business models that rely on AI will in fact undermine equality and the right to discrimination. But companies who are profiting from the use or sale of these tools need to take pro-active steps to prevent discriminatory outcomes. This might include ensuring that training data does not embed biases, or scrutinising sales to companies and institutions that have a track record of discriminating against vulnerable or marginalised groups.

It is also important to note that many of the analyses about tech business models are intertwined with questions about the design of underlying technologies. The social media and search example above fits into this category. Algorithmic systems may be legitimately designed to promote content that will increase engagement or keep users on a site, in turn increasing advertising revenue. But these same design features also, even if unintentionally, promote inflammatory and abusive content.

On the flip side, technological design processes aimed at respecting rights may narrow the options for the company to mitigate human rights risks. By way of illustration, anonymous messaging boards and discussion platforms with a value proposition grounded in guarantees of privacy may encounter legitimate challenges in identifying and removing users whose posts are inciting violence and threatening human security.

⁵ Zuboff, Shoshana. *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (New York, PublicAffairs, 2019).

⁶ Sarah Myers West, Meredith Whittaker and Kate Crawford, *Discriminating systems: gender, race and power in AI*, (New York, AI Now Institute, 2019)

Finally, almost all of the critiques of business models in the technology sector simultaneously recognise the vast benefits that frontier technologies have already brought, and might bring in future, to people across the globe. Two examples of the benefits from new technologies are the ways in which human rights defenders and activists are equipped with tools to share ideas and organise, and where technology companies innovate in ways that support advancements in public health and safety.

This reinforces the important notion that **efforts to address human rights risks in tech business models must be pursued in a deliberate and smart way so as not to unwittingly take away the significant benefits of new technologies or create more severe human rights risks.**

TWO

Under the UNGPs, companies are expected to conduct human rights due diligence across all of their business activities and relationships. This includes addressing situations in which business model-driven practices and technology design decisions create or exacerbate human rights risks. Business leaders and entrepreneurs should see this as an opportunity to innovate and increase business model resilience.

Business respect for human rights is about **preventing harms to people that are connected to business activities, with particular attention paid to those people who may be most seriously impacted.** The idea is that respect for the rights and dignity of people must become part of the DNA of doing business.

Human rights policies, impact assessments and action plans cannot be divorced from how everyday business gets done. Addressing risks to people that flow from the day-to-day functioning of a company—for example in procurement, marketing, operations, M&A, and increasingly product design and stewardship—is now widely considered as critical to a company acting responsibly and securing its social license to operate.

This means that business leaders should be **interrogating what risks to people emerge as a consequence of the very essence of how their companies make money, serve customers, and increase market share and share price.** The case of the so-called “fast fashion” business model illustrates this point. The value proposition to offer consumers the latest fad at the blink of an eye and at extremely low costs, has proven to lock-in retailer and brand procurement practices that squeeze the ability of suppliers to guarantee basic labour rights for many millions of workers.

This scenario—and analogous situations across diverse industries—are not about peripheral business practices and decisions creating unintended negative externalities. **Rather, the ways in which these businesses seek to liver value, generate revenue and reduce costs can perpetuate, or are at least be reliant on, the most marginalised sections of society being at risk or experiencing harm.** The risks to people are baked into the business model and strategy.

However, just because a business model or strategy carries inherent human rights risks does not necessarily mean that a company will be unable to operate with respect for human rights or that the business model needs to be entirely discarded. **Rather, the challenge becomes to demonstrate that the company is taking reasonable steps—consistent with the UNGPs—to prevent, mitigate and remediating harms to people.** These actions will vary from company-to-company, but it is clear that business leaders should be prepared to:

- **Review performance incentives** for top management and key functions (such as product design, marketing or sales teams) to reward actions that prevent or mitigate human rights harms, not just those actions that deliver value to customers and increase revenue for the business.
- **Stress-test—and as necessary improve—the design of technologies** in ways that demonstrably minimise the risks of severe human rights harms, versus only optimising for maximising revenue, or delivering the maximum benefit or convenience for the most people.
- **Scrutinise plans for testing and expansion in new markets**, with a focus on whether the local context exacerbates business model human rights risks. This could occur due to lack of enforced human rights protections, lower levels of digital literacy or wider political, social and cultural dynamics.
- **Engage in collective action** with peers, professional associations, customers, civil society and government to develop and implement standards of business conduct and technological design that will reduce human rights risks associated with business models.
- **Ensure the company plays a constructive role in processes to develop laws and regulations aimed at increasing human rights protections** for affected groups that the firm’s business model, intentionally or otherwise, puts at risk. This includes not undermining these processes via lobbying or wider public policy advocacy.

If the company cannot take effective steps to prevent or mitigate negative human rights impacts within the framework of its existing business model then that model—or features of it—will need to be adapted or perhaps even transformed by the company acting alone, on an industry-wide basis, or as a consequence of regulatory action.

Open, respectful and mutually rewarding engagement with external stakeholders, especially affected stakeholders, is a critical aspect of operating with respect for human rights. This is no different when a company is focused on addressing business-model related human rights risks. Indeed, many in civil society have already demonstrated via their advocacy efforts that they can bring important knowledge, experiences and perspectives to the task. And engaging affected rights-holders is essential to fully understanding the negative impacts they experience. Moreover, doing so is essentially a form of user-centred, rights-based design with the potential to uncover new ways of creating value that work for normally marginalised individuals and groups.

Further deliberations involving technology companies, civil society, investors, and governments are needed to agree what “reasonable action consistent with the UNGPS” to address business model related human rights risks looks like in practice. **As a starting point, senior leaders, founders and governing bodies should ensure they understand—and be prepared to engage with stakeholders about—how their business model-driven practices may be, or are already, negatively impacting human rights.**

Institutional investors have a responsibility to respect human rights. This means that they should integrate human rights considerations in all stages of investing, including in how they inform and influence investee’s business model choices.

As business enterprises themselves, institutional investors also have a responsibility to respect human rights. By providing the capital that fuels companies developing new digital technologies, institutional investors—whether asset managers, pension funds, private equity firms, or venture capitalists—may be connected to adverse impacts on human rights as a result of their ownership or management stakes in companies with certain business models.

Investors are expected to formally communicate their human rights expectations to existing and potential portfolio companies as well as asset owners and managers. They should also conduct human rights due diligence in order to identify real and potential human rights impacts when deciding whether to invest in a company and as part of their stewardship activities. Where risks are identified, **investors should exercise and maximise their leverage to incentivise portfolio companies to prevent, mitigate, and where appropriate, remediate human rights harms.**

For instance, venture capital investors and private equity firms play an important role in shaping the business models of start-up enterprises and how those models evolve as enterprises grow. **It is critically important for these investors to consider human rights standards and risks when evaluating a technology company’s business model—as well as products, management, and operating history—prior to investing and on an ongoing basis once invested.** At a minimum, investors should seek to structure financing in ways that allow time for an evaluation of human rights risks associated with business models, and innovation to avoid these risks.

Investors in **publicly traded technology companies, including minority shareholders and those invested in passively managed index funds, should also address risks to people connected to portfolio company business models.** This normative expectation is increasingly embraced by a number of investors in public technology companies⁷. Notable examples include asset owners and managers, individually or jointly, calling on companies to strengthen corporate human rights governance and due diligence practices in order to address salient human rights issues embedded in business models. Efforts have included engaging portfolio companies through letters, constructive dialogues, and filing shareholder resolutions that reflect the expectations of the UNGPs.

The investor responsibility to respect human rights provides a starting point for shifting the behaviors of actors that own or manage the vast amounts of capital in the technology sector. As part of the B-Tech project, UN Human Rights intends to actively engage tech investors and diverse stakeholders to develop recommendations and guidance for integrating human rights considerations into their investment decisions and stewardship.

⁷ See for example, the [Investor Alliance on Human Rights](#) whose members include asset management firms, trade unions funds, public pension funds represent US\$4 trillion assets under management and 18 countries.

The UNGPs reinforce that States should apply a “smart-mix” of measures to: reward companies that take reasonable steps to avoid or mitigate human rights risks that flow from their business models; hold companies to account that do not; and support enterprises and entrepreneurs pursuing alternative business models that carry fewer and less severe human rights risks.

Any effort to address human rights risks related to technology business models will require an enabling environment for responsible business practices—and where necessary alternative business models—to prosper. Alongside action by investors, the policy frameworks, laws and regulations that governments put in place to shape the sector’s business practices are of critical importance.

This brings into play a key aspect of the UNGPs framework that is critical to addressing business model related human rights harms: **that States have a duty to protect against business-related human rights harms by deploying a smart mix of measures**. This may include national laws, regulation, guidance, voluntary standards, and public procurement incentives⁸. But it may also require international instruments and measures, especially where setting and enforcement globally applicable expectations about technology company conduct is necessary.

Further deliberations involving States, civil society and technology companies are needed to explore the opportunities and challenges for States to require and steward action for the tech industry to address human rights harms related to business models. *What is absolutely clear is that any action by States in this area must be transparent, accountable and in line with international human rights standards.*

One near-term avenue for State action, consistent with the UNGPs, may be to **encourage transparency and shared knowledge among stakeholders**. A clear opportunity is to finding ways to incentivise—or require—company executives and governance bodies to identify, assess, and explain how they are addressing, human rights risks baked into their business models. The UNGPs have been embraced by States and other standard setters around the world, including in the form of reporting requirements and regulations for mandatory human rights due diligence⁹. Alongside these regulatory levers, States should also convene, support and participate in policy dialogues involving all relevant stakeholders about how technology business models work and ways to address human rights risks within them without creating new, unintended human rights issues and abuses.

⁸ The overlap between States fulfilling their Duty to Protect as outlined by the UNGPs and their role in guarding against anti-trust and protecting competition may value from exploration where new, more rights-respecting business models are struggling to succeed due to acquisition by, or the business practices of, larger, established firms.

⁹ See UN Human Rights “[Issues Paper](#)” on [Legislative Proposals for Mandatory Human Rights Due Diligence by Companies](#)

A shared understanding among all stakeholders of how different technology business models might lead to human rights harms, how this plays out in reality and what is being done, or can be done, to avoid harms will create a strong foundation for multi-stakeholder dialogue and co-creating paths to improve business practices and protect human rights.

One barrier to effectively addressing human rights risks related to technology industry business models is the lack of shared knowledge and understanding across the private sector, civil society and States about how business models, in practice, may increase human rights risks as well as how those risks can be eliminated or mitigated. Without a shared baseline of understanding—and space to deliberate on these issues—it will likely prove very challenging to identify solutions that work for affected people and do not lead to new, unintended harms.

As such, a key step in the journey ahead may lie in demystifying business models and strategies in the technology sector so as to support multi-stakeholder dialogue, and ultimately develop tools and guidance that companies, investors, civil society and regulators can use in their work. The exact modalities of such efforts would need to be carefully designed, but three dimensions that appear important to consider are:

- **The diversity of business models within the sector.** The technology industry is not homogenous and includes a vast array of companies delivering a range of products and services to individual users, enterprises across all industry sectors, civil society and governments. Further, an individual company may have different product areas and operate in many distinct market segments, each demanding their own business models and strategies. Ultimately, each individual company will need to scrutinise its particular blend of revenue models, value propositions and value chain relationship to address any “baked in” business practices that create significant and recurring risks to people.

As such, there may be merit in segmenting the technology industry to look at the distinct business model and strategy related human rights risks in each of these. This is one step above a focus on individual companies but would allow for a dialogue and subsequent work that is neither overly specific nor overly general. Distinct segments to focus on might include social media companies; cloud computing services; gig economy platforms; telecommunications; hardware/equipment suppliers; dating apps; AI research; surveillance and monitoring applications; data brokers; and ad-tech / marketplace companies.

- **Common business model features across the sector.** There are commercial logics and accepted norms of the tech marketplace or ecosystem that have become the cause of concern from a human rights perspective but may escape attention when the focus is on a specific company or part of the industry. As such, there is likely to also be merit in looking at business model features that broadly cut across and exist in all parts of the technology industry. Features to focus on here might include:
 - The **reliance on more, and more intimate, data** about people’s lives and predictions about their behaviour such that adverse impacts on the right to privacy, right to form opinions, freedom of thought and a range of associated human rights harms become more and more likely for more and more people.

- The **propensity to act fast including when “testing in the wild” and deploying innovations at scale** in ways that can undercut the effectiveness of a) the company’s own human rights due diligence; and b) society’s ability to understand and govern the most serious risk to people that result from new technologies being used. This feature
- Where a company’s **commercial success substantially depends upon a technology that when used as intended or misused can result in human rights abuses**. Exploration in this area will have to contend with at least two realities: First, that the more powerful and efficient a tool is in terms of delivering legitimate economic and societal benefits, the more harm it can likely do when used for bad ends. Second, that understandable proprietary interests can strongly disincentivise companies from being pro-active in identifying and discussing human rights risks associated with the technology.
- When **commercial incentives focus the company on value-creation for paying customers** in ways that increase human rights risks for users or other groups. Paying customers could, for example, be advertisers or government agencies.
- **Stages of evolution in a company’s business model**. Opportunities to address business model related human rights risks will look very different depending on whether the “enterprise” is a tech idea in need of seed funding, in start-up mode, seeking to achieve considerable scale or be acquired, or is a large publicly-traded corporation. Creating resources, tools and support systems for entrepreneurs and executives across this spectrum will be important. Moreover, differing parts of the investor community and different parts of government will be key to driving systems change.

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UN Human Rights invites engagement from all stakeholders across all focus areas of the [B-Tech Project](#). For more information please see the project [Scoping Paper](#). Please contact us if you would like to engage with our work, including if you have recommendations for practical tools, case studies and guidance that will advance company, investor and State implementation of the *UN Guiding Principles on Business and Human Rights* in the business of technology.



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