

Office of the United Nations High Commissioner for Human Rights (OHCHR)
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Global Network Initiative Submission to the United Nations High Commissioner for Human Rights on the right to Privacy in the Digital Age

1. Introduction

The Global Network Initiative (GNI) is a multistakeholder initiative that brings together Information Communications and Technology (ICT) companies, civil society organizations, investors, and academics to forge a common approach to protecting and advancing freedom of expression and privacy online. GNI welcomes the opportunity to provide input for the report of the United Nations High Commissioner for Human Rights on human rights challenges relating to the right to privacy in the digital age, including on principles, standards and best practices with regard to the promotion and protection of the right to privacy.

We commend the Office of the High Commissioner's focused and dedicated attention to the issue of privacy in the digital age. GNI has been a strong supporter of the Office of the High Commissioner's mission to set principles and standards with regard to the promotion and protection of the right to privacy, grounded on international human rights laws. To aid the Office of the High Commissioner's efforts to document the technological developments in electronic surveillance and interception that threaten fundamental human right to privacy and free expression, GNI provided input for the 2014 report of the High Commissioner¹, entitled "The right to privacy in the digital age". Prior to providing input to the report, GNI sent a letter to the High Commissioner with substantive and procedural recommendations for the report.² While GNI was unable to attend the February 19-20, 2018 event, several GNI members participated and have shared valuable feedback.

The GNI Principles (the Principles) and Implementation Guidelines (the Guidelines) introduced below are widely endorsed by international human rights experts, ICT companies, and civil society as a framework for rights-respecting decision-making. We believe the Principles and the Guidelines can serve as models for the "principles, standards and best practices" that the Office of the High Commissioner is seeking to develop. This submission also includes information on

¹ Available at <http://www.ohchr.org/Documents/Issues/Privacy/GlobalNetworkInitiative.pdf>

² Available at <https://globalnetworkinitiative.org/wp-content/uploads/2016/10/GNI-letter-to-UN-Human-Rights-Commissioner.pdf>

the GNI Country Legal Frameworks Resource that provides insights on what legal constraints impact ICT companies from protecting user privacy rights.

2. GNI's mandate and core commitments on privacy

The Office of the High Commissioner and GNI share similar objectives to protect and advance freedom of expression and privacy in the ICT sector by setting global standards for appropriate government actions and responsible company decision making, as well as by serving as leading voices for freedom of expression and privacy rights.

GNI's launch in 2008 was a result of proactive and collective efforts by ICT companies, human rights and press freedom organizations, academics, and investors to address increasing demands by governments on ICT companies to censor and/or hand over user data. GNI has developed a set of Principles and Implementation Guidelines based on international human rights laws and standards which guide responsible company action when facing restrictions from governments around the world that could impact the freedom of expression and privacy rights of users, and to which all GNI members commit.³ More than 1.5 billion people in over 120 countries in Africa, North, Central and South America, Europe, the Middle East and the Asia-Pacific are affected by the standards and user rights protections outlined by our principles.

To ensure accountability, GNI assesses company compliance with the GNI Principles and Implementation Guidelines. The assessment process seeks to determine whether GNI member companies are making good faith efforts to implement the Principles and demonstrating improvement over time.

On the basis of the trust built among members through assessment, GNI also fosters internal shared learning. Harnessing the collective intellectual and practical experience and capability of our diverse membership enables GNI to bring unparalleled resources to bear upon new challenges at the intersection of free expression, privacy, and the ICT sector. In addition to structuring and facilitating internal discussion and information exchange, we also proactively engage external stakeholders through our annual learning forum and other topic-specific learning events.

Lastly, GNI actively engages in relevant policy discussions to promote rule of law and the development of laws, policies and practices that promote and protect freedom of expression and privacy. GNI's policy work includes support for and amplification of the work that our members conduct in their individual capacity, as well as coordinated and collective engagement through GNI.

³ GNI Principles and Guidelines are available at <https://globalnetworkinitiative.org/corecommitments/index.php>.

a. GNI Principles on Privacy

The GNI Principles provide high-level guidance to the ICT industry on how to respect, protect, and advance user rights to freedom of expression and privacy, including when faced with government demands for censorship and disclosure of user's personal information. As stated in our Principles, we believe privacy is a human right and guarantor of human dignity. Privacy is important to maintaining personal security, protecting identity, and promoting freedom of expression in the digital age.

Everyone should be free from illegal or arbitrary interference with the right to privacy and should have the right to the protection of the law against such interference or attacks. The right to privacy should not be restricted by governments, except in narrowly defined circumstances based on internationally recognized laws and standards. These restrictions should be consistent with international human rights laws or standards, the rule of law and be necessary and proportionate for the relevant purpose.

Under our Principles, participating companies are asked to employ protections with respect to personal information in all countries where they operate in order to work to protect the privacy rights of users. Participating companies commit to respect and work to protect the privacy rights of users when confronted with government demands, laws or regulations that compromise privacy in a manner inconsistent with internationally recognized principles and standards.

b. GNI Implementation Guidelines on Privacy

Our Guidelines provide more detailed guidance to ICT companies on how to put the Principles into practice, and also provide the framework for assessment and collaboration among company, NGO, investor, and academic members. Below, we summarize the key concepts related to privacy, which are set out in more detail in the Guidelines.

i. Government Demands, Laws and Regulations

The Guidelines ask companies to proactively engage with governments to apply restrictions in a manner consistent with GNI principles and international laws and standards on freedom of expression and privacy. Participating companies will encourage governments to be specific, transparent, and consistent in the demands, laws, and regulations that impact the right to privacy, including demands that are issued regarding privacy in communications.

The Guidelines advise participating companies to adopt policies and procedures that set out how the company will assess and respond to government demands for restriction to communications or access to content, or disclosure of personal information. These policies will

also address situations where governments may make demands through proxies and other third parties to evade domestic legal procedures.

Participating companies will require governments to follow established domestic legal processes when they are seeking to access personal information. The Guidelines ask participating companies to request clear written demands, keep records of verbal and oral demands, and narrowly interpret and implement demands that compromise privacy, including by limiting compliance to users within that country.

When government restrictions or demands appear overbroad, unlawful, or otherwise inconsistent with domestic laws or procedures or international human rights laws and standards on privacy, participating companies will in appropriate cases and circumstances: seek clarification on such requests; seek the assistance, as needed, from relevant government authorities, international human rights bodies or non-governmental organizations; and challenge the government in domestic courts in selected cases.

ii. Data Collection

The Guidelines also encourage companies to consider human rights, including privacy, as part of their longer-term strategic planning and investment decisions. For instance, participating companies will assess the human rights risks associated with the collection, storage, and retention of personal information in the jurisdictions where they operate and develop appropriate mitigation strategies to address these risks.

iii. Communications with Users and the Public

Participating companies will be transparent about government access to personal information and communications. The Guidelines encourage participating companies to disclose what laws and policies compel them to provide personal information to government authorities, what personal information the participating companies collect, and the company's policies and procedures for responding to government demands.⁴

c. Company Assessment and Accountability

Companies participating in GNI are independently assessed every two years on their progress in implementing the GNI Principles. The purpose of the assessment is to enable the GNI Board to determine whether each member company is "making good faith efforts to implement the GNI

⁴ As noted in more detail in section 3 of this submission, the GNI Country Legal Frameworks Resource includes standardized reporting of many of the laws relevant to government requests to companies for data, and is an important resource for companies, digital rights groups, media, and academics alike. See, <https://globalnetworkinitiative.org/policy-issues/legal-frameworks/>

Principles with improvement over time.” The assessment consists of a review of relevant internal systems, policies, and procedures for implementing the Principles and an examination of specific cases or examples that show how the company is implementing them in practice.

After self-reporting from the companies to GNI after the first year of membership, an independent assessment is conducted of each company member every two years. This assessment is conducted by independent, GNI-accredited assessors.

The GNI assessment process is confidential. This allows GNI’s multi-stakeholder Board to review and discuss in detail sensitive case studies of government requests from countries around the world. It also allows the GNI to review the evolution of the internal systems, processes, and policies our member companies use to protect the privacy and free expression rights of their users.

It is the role of the GNI Board to review the company assessments and to conclude whether the GNI member company is making good faith efforts to implement the Principles with improvement over time. The GNI’s evaluation of compliance by participating companies is based on an assessment of the totality of a company’s record during the assessment phase to put into operation the Principles and the Implementation Guidelines.

3. GNI Country Legal Frameworks Resource

The digitization of our societies is exponentially increasing the speed and scale of the data generated and stored. This data relates to a wide swath of economic, social, political, educational and health-related activities. This includes some of the most sensitive types of data – private thoughts, communications, and ideas, as well as personal information, plans, and activities. In this contemporary digital context, any laws or policies enabling governments to lawfully request and access electronic evidence must be carefully designed to respect and protect internationally recognized human rights. They should be developed with multi-stakeholder input, include measures and commitments on transparency, require independent authorization and oversight of such requests, and ensure accountability.

GNI and its members have been closely monitoring and documenting trends in laws and regulations around the world that have impact on user privacy rights. One method through which we conduct such analysis and contribute to broader understanding of the legal landscape within which ICT companies operate, is our Country Legal Frameworks Resource (CLFR). The CLFR currently contains analysis of the laws and regulations that impact freedom of expression and privacy in the telecommunications sector across 53 countries representing every region of the world. Developed and supported by GNI companies and partners, CLFR is an objective, consistently updated resource that allows companies, academics, and advocates to enhance

their understanding of applicable domestic laws specifying when a government may intercept and disrupt communications or require the blocking of content or access to user data.⁵ The project also serves as a basis for the development of industry best practices, and for advocacy with individual governments to improve human rights.

GNI and its members will continue tracking, encouraging open and constructive dialogue around, and advocating around ways to ensure that privacy is adequately acknowledged and protected in the digital age.

4. Conclusion

GNI appreciates the inclusive process of consultation and engagement that the Office of the High Commissioner has developed for this report, and we hope that this submission provides useful information that will inform its development. As always, we are available to answer any questions that may arise from this submission or in connection with the report. As we work on issues within this space, we look forward to continuing and strengthening our collaboration with the Office of the High Commissioner and other relevant UN agencies, as well as with UN member states and other relevant stakeholders.

⁵ Available at <https://globalnetworkinitiative.org/policy-issues/legal-frameworks/>