

Code for Effective Open Voluntarism: Good design principles for self- and co-regulation and other multistakeholder actions

Profile of the Respondent

Do you reply as: -single choice reply-(compulsory)	on behalf of an organisation:
Type of organisation: -single choice reply-(compulsory)	other
Please write in the text box below the type of organisation you represent -open reply-(optional)	The Global Network Initiative (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.
Name of organisation -open reply-(compulsory)	
Global Network Initiative	
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What is the country of main establishment of your organisation? -single choice reply-(compulsory)	Other
Please write in the text box below your country of establishment. -open reply-(compulsory)	
USA	

Consultation

1. Please comment on the draft code

There are two options to transmit your comments:

- a: Fill in the text box below, or
- b: Download the document, insert your comments in track changes and re-upload below

Download: Draft Code

-open reply-(**optional**)

The Global Network Initiative (GNI) welcomes the opportunity to contribute to the European Commission Directorate General for Communications, Networks, Content and Technology (DG Connect) public consultation on a Code for Effective Open Voluntarism. GNI is a multi-stakeholder initiative with the goal of protecting and advancing freedom of expression and privacy rights in Information and Communications Technologies (ICT). Our participants have made a public commitment to a set of Principles grounded in international human rights standards. GNI helps technology companies navigate these complex issues by providing them with expert guidance, shared learning, and policy engagement while ensuring accountability and transparency. Please find our specific comments on the draft code attached. We support the objective of the Code and commend its focus on transparency and accountability. Although the substance of GNI's work is specifically freedom of expression and privacy rights, many of our Principles and processes are more widely applicable to voluntary multi-stakeholder actions. GNI is the only multi-stakeholder initiative in the ICT sector that features independent assessment of its participant companies on their implementation of the Principles, which provides credibility and accountability for the process. A

short overview of GNI's governing documents may provide useful input for the draft code. The documents, along with our annual reports, have been included with this submission. The foundational documents were collaboratively drafted by companies, investors, civil society organizations and academics over an 18-month period, from January 2007 through June 2008. The work of key academic institutions, consultations with other stakeholders, and the experiences of other voluntary human rights initiatives influenced the drafting. GNI's Principles on Freedom of Expression and Privacy state the overarching commitments of our participants, and also provide high-level guidance on how they should collaborate, with specific commitments to multi-stakeholder collaboration and to governance, accountability, and transparency. In addition, our Implementation Guidelines provide more detailed guidance to ICT companies on how to put the Principles into practice, and also provide the framework for collaboration among companies, NGOs, investors and academics. And the Governance, Accountability, and Learning Framework sets out a multi-stakeholder governance structure, goals for collaboration and a system of company accountability to support the Principles, maximize opportunities for learning and ensure the integrity and efficacy of the Initiative. Comments on the draft code: The code refers at different times to stakeholders, companies, actors, parties, and participants. We recommend using standardized, clearly defined terms. Our edits propose using "stakeholders" who have an interest in the initiative, and "participants" who are party to it.

1.1 Openness Regarding participation by government, because the GNI Principles concern how companies respond to requests by governments that impact rights to free expression and privacy, governments are not participants. GNI engages in outreach to governments, inter-governmental organizations and global policy bodies to encourage them to support the Principles and their adoption by local companies. We suggest defining key terms such as "open exchange with all interested parties" to ensure that there is an objective standard to be met. To ensure our constitutive texts are widely available GNI has published its Principles and other core documents on its website, with translations in all the UN languages. Regarding open governance in the operation of an agreement, GNI has developed a multi-stakeholder governance structure to ensure accountability for the implementation of its Principles and their continued relevance. We would recommend that a representative and inclusive multi-stakeholder governance structure be incorporated under this point.

1.2 Objectives GNI has found that our firm grounding in international human rights standards has helped to ensure the legitimacy of our efforts. Although it is challenging for a code that is intended to apply to a range of multistakeholder actions across many industries, where appropriate we would encourage a more specific aim to ensure its legitimacy with reference to international and European frameworks.

1.3 Representativeness Regarding the role of public authorities in moderating discussions and promoting engagement with other actors in the field, GNI has appreciated the support it has received from public officials at the European and national levels.

1.4 Legal Compliance GNI provides guidance to companies facing government demands that may be inconsistent with internationally recognized laws and standards. It does not contravene the law. Although it is recognized that it is neither practical nor desirable for companies to do so in all cases, participant companies commit to challenge the government in domestic courts or seek the assistance of relevant authorities, international human rights bodies or non-governmental organizations when faced with a government demand that appears inconsistent with domestic law or procedures or international human rights laws and standards on freedom of expression or privacy. Regarding consultation with competition authorities, GNI has an anti-trust policy that was developed concurrently with our core documents. We would be happy to discuss the process of developing this policy with the Commission.

1.5 Good Faith Regarding participants of different sizes and types, including small and medium enterprises (SMEs), GNI has benefitted from the experience of our new company participants Evoca and Websense, companies at different stages of growth and in different parts of the ICT sector value chain. The addition of observer companies Facebook and Afiliias has also contributed to increasing the breadth of our company membership.

2. Implementation Please see GNI's Implementation Guidelines, our Governance, Accountability and Learning Framework, and the Governance Charter for more details on our approach to implementation. Links to these resources have been included with our submission.

2.1 Iterative Process With regard to "quick start, quick accountability" GNI is concerned that the emphasis on "quick" may not reflect the degree of difficulty involved in effective multi-stakeholder action. This will depend on the scope of the action, and may be more difficult for new issue areas. Based on our own experience and that of GNI Board members with experience on multistakeholder initiatives for other industries (including extractives industry and apparel manufacturing), the time required to generate meaningful progress on accountability can be significant and should not be underestimated.

2.2 Financing Regarding financing, GNI is funded by contributions from its members and through support from private foundations. Company membership fees are determined using a sliding scale based upon annual revenues, while other participants pay a nominal fee of \$100 to \$1,000.

2.4 Reporting In some situations pertaining to information that is confidential or may not be disclosed due to legal requirements, it may not be possible for all reports to be made public. GNI has found that although it is not always easy, it is generally possible to maintain confidentiality while publicly reporting on our work through mechanisms such as aggregate reporting.

2.5. Compliance GNI is currently developing its public engagement and grievance mechanism. More detail on this work is available here: <http://www.shiftproject.org/project/advising-global-network-initiative-public-engagement-mechanism>. In addition, we would advise the Commission to look carefully at the third pillar of the United Nations Guiding Principles on Business and Human Rights, on access to effective remedy.

2a. Are you interested to take part in a network of excellence and community of practice of effective open voluntarism? Yes

-single choice reply-(optional)

2b. Please indicate in the text box below any existing reference material or experience you consider useful to share within this network of excellence and community of practice, in terms of website, reports or events. Feel free to upload any relevant material.

-open reply-(optional)

Please see the following reference materials that we have uploaded: GNI Principles Implementation Guidelines Governance, Accountability and Learning Framework Governance Charter Also see our Annual Reports, available on our website:
http://globalnetworkinitiative.org/files/GNI_2011_Annual_Report.pdf https://globalnetworkinitiative.org/files/GNI_Annual_Report_2010.pdf
GNI 2011 Annual Report GNI 2010 Annual Report

3. Please share your knowledge, ideas and opinions about how best to ensure that voluntarism receives its appropriate share of attention in the policy-making toolbox. How best can we address the grey area of self-regulation that are not quite as purely autonomous as the wording in the **2003 Inter-institutional Agreement** on better lawmaking implies, and yet has none of the characteristics required in that Agreement for a system to qualify as co-regulation, and how best to give a new momentum to self- and co-regulation and open voluntarism to ensure that they are duly considered and practiced when they appear to be the most efficient route to the societal benefits in point. This does NOT mean voluntarism should substitute for lawmaking and regulation in any systematic manner, rather making the best possible use of voluntarism is critical to a highly effective policy approach. Please use the text box below or upload any additional relevant material.

-open reply-(optional)

GNI looks forward to contributing to dialogue on this topic. Credible voluntary corporate action is particularly important in the ICT sector, where rapid technological innovation, with significant impact on freedom of expression and privacy rights of users, often outpaces legislative and regulatory efforts. At the same time, our Principles commit our participants “to engage governments and international institutions to promote the rule of law and the adoption of laws, policies, and practices that protect, respect and fulfill freedom of expression and privacy.” The challenges of navigating the nexus of human rights and technology are too complicated for any single stakeholder group or policy approach, hence the need for a collaborative, multi-stakeholder approach grounded in accountability and transparency.