

Global Network Initiative

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



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RE: Submission on Freedom of Expression and the Telecommunications and Internet Access Sector

The Global Network Initiative (GNI) is pleased to provide input to the Special Rapporteur's study on freedom of expression in the telecommunications and Internet access sector.

GNI is a unique multi-stakeholder forum bringing together Information and Communications Technology (ICT) companies, civil society organizations, investors, and academics to forge a common approach to protecting and advancing free expression and privacy online. GNI has developed a set of Principles and Implementation Guidelines to which all members commit, and which guide responsible company, government, and civil society action when facing requests from governments around the world that could impact the freedom of expression and privacy rights of users.¹ GNI is the only multi-stakeholder initiative with a specific focus on free expression and privacy in the ICT sector. Our vision is to create a corporate responsibility standard on freedom of expression and privacy across the industry. A diverse stakeholder group that included telecommunications companies originally developed GNI's Principles. GNI's current Executive Director, as well as its founding Executive Director, joined the initiative after spending large portions of their careers working in the telecommunications industry.

This input on telecommunications and Internet Service Providers ("Telcos" and "ISPs") builds upon GNI's submission to the Special Rapporteur's previous report, and is aligned with the submission of the Telecommunications Industry Dialogue ("Industry Dialogue").

¹ The GNI Principles and Guidelines are available at <https://globalnetworkinitiative.org/corecommitments/index.php>.



GNI and the Telecommunications Sector

Since 2013, the GNI and the Industry Dialogue have engaged in a collaboration focused on the challenges faced by ICT companies when government demands conflict with the rights to freedom of expression and privacy. From February 1, 2016, Millicom, Nokia, Orange, Telefónica, Telenor Group, Telia Company, and Vodafone Group have held official observer status within the GNI. Observer status lasts for one year and precedes full GNI membership.² Becoming official observers is the next step in this engagement. The agreed aim is that at the completion of the observer year in March 2017, these seven companies become full members – a move that would extend GNI’s global company constituency to encompass Internet companies, telecommunications operators and telecommunications equipment vendors. For the first time, Internet and telecommunications and vendor companies will be working together within a single multi-stakeholder human rights initiative. This creates a uniquely authoritative voice for working with governments and international institutions. We welcome interest from Telcos and other companies to extend our network around the world and across the ICT sector.

In 2013, GNI published a report, “Opening the Lines: A Call for Transparency from Governments and Telecommunications Companies,” that illustrates the types of requests and requirements telecommunications companies face and explores how they can respond to them in ways that respect human rights.³ Informed by case study review of the laws and regulations governing telecommunications companies in the European Union, and at the national level in Russia, Sweden, and the United Kingdom, the report demonstrated that the risks to free expression and privacy in the sector are not limited to the United States. Authored by Chris Tuppen, senior partner of Advancing Sustainability LLP and the former Chief Sustainability Officer at BT, the report made specific recommendations around how to increase transparency by governments and companies. Although legal frameworks have changed since the report’s

² “The Global Network Initiative and the Telecommunications Industry Dialogue join forces to advance freedom of expression and privacy,” February 1, 2016, available at <https://www.globalnetworkinitiative.org/news/global-network-initiative-and-telecommunications-industry-dialogue-join-forces-advance-freedom>.

³ Chris Tuppen, *Opening The Lines: A Call for Transparency from Governments and Telecommunications Companies*, GNI, July 2013, available at <https://globalnetworkinitiative.org/news/new-report-calls-transparency-governments-and-telecommunications-companies>.



publication, we commend this study for an overview of the particular challenges facing the Telco and ISP sector.

In particular, the report identified key trends in the operating landscape that are relevant to human rights concerns. These include convergence of technologies, which has blurred the traditional boundaries of service providers, brings new companies into the market, and has driven calls for new legislation and regulations. Ownership models are another key factor, with full or partial state ownership of network operators contributing to closeness between companies and governments. Finally, regulation, governance and technical protocols and standards are of critical importance within the sector, and are directly related to issues such as blocking or interception of network traffic.

Telecommunications and Transparency

GNI has urged governments that have made commitments to human rights online to report on the requests they make of companies to take down content or produce user data, and to make it legally possible for companies to report regularly to the public on the government requests that they receive from law enforcement as well as national security authorities.⁴ GNI has raised this issue with the Freedom Online Coalition, has issued specific recommendations to increase transparency by governments, and has worked as a member of the FOC Working Group on Privacy and Transparency Online, to develop good practice in this area.⁵

Despite increasing numbers of Telcos and ISPs adopting the practice of releasing transparency reports with information about government requests for user data, many governments' legal frameworks continue to prohibit publication of such data by companies. For example, in their most recent report, Vodafone noted that in Ghana and Kenya, the legal position remains unclear as to whether Telcos can publish statistics about user data demands. And despite extensive engagement, Ireland continues to inform operators that they cannot disclose information about lawful interception demands.⁶

⁴ "GNI Writes to the 21 Governments in the Freedom Online Coalition," September 19, 2013, available at <https://globalnetworkinitiative.org/news/gni-writes-21-governments-freedom-online-coalition>.

⁵ *Freedom Online Coalition Working Group 3: Privacy and Transparency Online*, November 2015, available at <https://www.freedomonlinecoalition.com/wp-content/uploads/2015/10/FOC-WG3-Privacy-and-Transparency-Online-Report-November-2015.pdf>.

⁶ *Vodafone Law Enforcement Disclosure Report 2015*, available at http://www.vodafone.com/content/index/about/sustainability/law_enforcement.html.



I) Trends in Laws, Regulations, and Other Extralegal Measures Affecting Business's Ability to Respect Freedom of Opinion and Expression

The multi-stakeholder nature of GNI gives us a deep capacity for informed and authoritative engagement with governments, intergovernmental organizations and international institutions. The GNI advocates for laws that align with international human rights standards and which meet the principles of legality, necessity, and proportionality. In our previous submissions to the Special Rapporteur's office, GNI has highlighted concerns around laws on intermediary liability, the use of overbroad laws prohibiting extremist content, proposals that intend to or have the effect of weakening encryption standards, the need for mutual legal assistance reform, and the need for greater government transparency.⁷ Each of these areas also affects Telcos and ISPs and merits attention from the Special Rapporteur. GNI encourages Telcos and ISPs to engage early with proposed legislation that could negatively impact freedom of expression and privacy rights, and to collaborate with other stakeholders to advocate for rights-based approaches to telecommunications laws and policies.

Network Shutdowns

GNI and the Industry Dialogue are deeply concerned by the increasing number of government orders to shut down or restrict access to communication networks and related services around the world. The joint statement issued by both organizations in July 2016 is available on our website.⁸

Since 2011, GNI has issued public statements condemning network shutdowns in Ethiopia, Brazil, Turkey, Uganda, Iraq, Syria, Tajikistan, and Egypt.⁹ These incidents represent only a

⁷ GNI Submission to study on private ICT sector responsibilities, available at

<http://www.ohchr.org/Documents/Issues/Expression/PrivateSector/GlobalNetworkInitiative.pdf>.

⁸ "Global Network Initiative and Telecommunications Industry Dialogue Joint Statement on Network and Service Shutdowns," available at <https://globalnetworkinitiative.org/news/global-network-initiative-and-telecommunications-industry-dialogue-joint-statement-network-and->

⁹ "Global Network Initiative Concerned by Internet Shutdown in Ethiopia," October 6, 2016, available at <https://globalnetworkinitiative.org/news/global-network-initiative-concerned-internet-shutdown-ethiopia>; "Once Again, Brazilian Judge Orders WhatsApp Block" July 19, 2016, available at <https://globalnetworkinitiative.org/news/once-again-brazilian-judge-orders-whatsapp-block>; "Turkey:

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portion of the increasing number of shutdowns that have occurred in recent years. A new study by the Brookings Institution documented 81 shutdowns from July 2015 – July 2016, which the author estimates collectively cost approximately \$2.4 billion in gross domestic product.¹⁰ The report stresses that this estimate is a conservative one, as it does not include loss of tax revenue, opportunity costs for businesses and individuals, and other costs to the economy due to services being disrupted.

Government-mandated disruptions of communications networks, network services (such as SMS), or internet services (such as social media, search engines, or news sites) can undermine security and public safety, threaten free expression, restrict access to vital emergency, payment and health services, and disrupt contact with family members and friends. In some countries, the orders frequently occur at politically sensitive moments, during unrest or in the lead-up to elections, restricting the free flow of information.

Disruptions also negatively affect a broad range of economic activity, preventing financial transactions, stalling e-commerce and undermining business operations. Even temporary disruptions may complicate the provision of medical care and education, which increasingly rely on the sharing of digital information.

The protection of national security and public safety are important government concerns. Network shutdowns, and the wholesale blocking of Internet services, however, are drastic measures that often risk being disproportionate in their impact. Governments that employ

Stop Blocking Social Media," March 27, 2014, available at <https://globalnetworkinitiative.org/news/turkey-stop-blocking-social-media>; "GNI condemns Election Day shutdowns of social media in Uganda," February 18, 2016, available at <https://globalnetworkinitiative.org/news/gni-condemns-election-day-shutdowns-social-media-uganda> ; "Blocking Social Media Threatens Citizens' Rights in Iraq," June 13, 2014, available at <https://globalnetworkinitiative.org/news/blocking-social-media-threatens-citizens%E2%80%99-rights-iraq>; "Syrian Internet Shutdown," March 1, 2013, available at <https://globalnetworkinitiative.org/news/syrian-internet-shutdown>; "Ensure the Free Flow of Information in Tajikistan," August 1, 2012, available at <https://globalnetworkinitiative.org/news/ensure-free-flow-information-tajikistan>; "Global Network Initiative Statement on Internet Shutdown in Egypt," January 28, 2011, available at https://globalnetworkinitiative.org/newsandevents/Global_Network_Initiative_Statement_on_Internet_Shutdown_in_Egypt.php.

¹⁰ Darrell M. West, *Internet shutdowns cost countries \$2.4 billion last year*, Brookings Institution, October 2016, available at <https://www.brookings.edu/wp-content/uploads/2016/10/intenet-shutdowns-v-3.pdf>.



these measures often do so without justifying them as necessary and proportionate under international human rights standards.

Clear, precise and transparent legal frameworks regarding government authority to restrict communications do not exist in all states, and provisions for adequate, independent oversight are often absent. Such safeguards are critical to ensure restrictions are strictly necessary and proportionate. Where the rule of law is weak, these orders can present even greater human rights risks.

Collaboration to Address Network Shutdowns

Following our joint statement, GNI has convened experts, engaged in shared learning, and accelerated our policy and advocacy activities on this issue. We have benefitted from the participation of the Special Rapporteur's team in shared learning on this issue, and are working on a series of publications and public events that will aim to offer practical recommendations to address shutdowns.

In October 2016, GNI released a report, "The Economic Impact of Disruptions to Internet Connectivity," which highlights the significant economic damage caused when governments around the world deliberately shut down or disrupt Internet services.¹¹ The report, which was prepared by Deloitte and made possible by funding from GNI member Facebook, lays out a framework for measuring shutdown costs in terms of the daily gross domestic product lost in countries with varying levels of Internet connectivity. Based on this approach, the report estimates that an average high-connectivity country stands to lose at least 1.9% of its daily GDP for each day all Internet services are shut down. For an average medium-level connectivity country, the loss is estimated at 1% of daily GDP, and for an average low-connectivity country, the daily GDP loss is estimated at 0.4% of daily GDP.

GNI supports additional multi-stakeholder collaboration to document the costs and demonstrate the total human impact of shutdowns, which are a threat to both human rights and economic growth.

Some additional initial insights from this work stream include the following points:

¹¹ Deloitte, *The Economic Impact of Disruptions to Internet Connectivity*, October 2016, available at <http://globalnetworkinitiative.org/sites/default/files/The-Economic-Impact-of-Disruptions-to-Internet-Connectivity-Deloitte.pdf>.

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- The loose coalition of civil society organizations, companies and governments concerned by increasing network shutdowns should be broadened to include more diverse companies and governments, as well as institutions concerned with sustainable development. This should include international financial institutions engaged in support for ICT sector development.
- Robust engagement with governments who order shutdowns is needed before and after such disruptions, not just during moments of crisis. In particular, outreach to government agencies responsible for commerce and economic development may help bolster arguments against shutdowns within key governments.
- Particular attention should be given to situations where shutdowns are employed to conceal state-sponsored violence and mass atrocities.

II) Business Policies, Processes and Practices to Prevent, Mitigate or Challenge the Human Rights Impact of State Laws or Actions that Suspend or Restrict Access to Communications or Provide Access to Customer Data

GNI Principles and Guidelines

The GNI Principles and Guidelines inform responsible decision-making when companies face requests from governments around the world that could impact the freedom of expression and privacy rights of users. Although Telcos and ISPs do face challenges that are specific to their sector and business models, the GNI Principles and Guidelines are relevant across the diverse range of companies in the ICT sector. In particular, the Responsible Company Decision-Making section of the Implementation Guidelines provides detailed guidance on issues including Board oversight, human rights impact assessments, working with partners, suppliers, and distributors, and integration of the GNI Principles into business operations.

The GNI Principles and Implementation Guidelines provide companies with a framework for addressing government requests that implicate the rights of freedom of expression and privacy. Our framework does not require or expect that companies will violate local law, even when that law is inconsistent with international human rights norms. The GNI Principles do require companies to assess risks to privacy and free expression from local law and to take

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measures to mitigate those risks. GNI encourages companies in some circumstances to use legal means to challenge government requests that may violate human rights, and to educate and participate in local government and international-level policy discussions toward the end of bringing local laws into alignment with human rights standards.

GNI Independent Company assessments

The GNI Independent Company Assessment process is made up of a review of relevant internal systems, policies and procedures for implementing the GNI Principles (“the process review”), and an examination of specific cases or examples that show how the company is implementing those principles in practice (the “case review”).

GNI has completed two cycles of independent assessments of its company members. The assessment first cycle was completed in November 2014, and covered founding company members Google, Microsoft, and Yahoo.¹² These companies undertook their second assessment in 2015/2016, at the same time that Facebook and LinkedIn participated in their first independent assessment.¹³

The GNI Assessment process is confidential. This allows the multi-stakeholder Board of ICT companies, civil society organizations, academics, and investors to review sensitive case studies of government requests from countries around the world, and for these to be discussed in detail within its forum. 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. To preserve confidentiality, cases presented in public reports on the assessment process are aggregated, and most are anonymized.

In 2016, to increase transparency around the assessment process, GNI for the first time made public the Assessment Guidance and Reporting Framework used to conduct the assessments.¹⁴

¹² GNI, *Public Report on the Independent Assessment Process for Google, Microsoft, and Yahoo*, January 2014, available at <http://globalnetworkinitiative.org/sites/default/files/GNI%20Assessments%20Public%20Report.pdf>.

¹³ GNI, *Public Report on the 2015/2016 Independent Company Assessments*, July 2016, available at <http://globalnetworkinitiative.org/sites/default/files/Public-Report-2015-16-Independent-Company-Assessments.pdf>.

¹⁴ Assessment Guidance available at <http://globalnetworkinitiative.org/sites/default/files/Assesment%20Guidance.pdf>; Assessment Reporting

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These documents are in addition to Case Selection Guidance where GNI's non-company constituencies recommend specific cases, jurisdictions or key issues for freedom of expression and privacy to be covered by the assessors.¹⁵

For more information about the assessment process, see the Public Report on the 2015/2016 Independent Company Assessments.¹⁶

Conclusion

The challenges at the intersection of technology and freedom of expression are too complicated for any single company—or even any single industry—to manage alone. GNI has demonstrated that companies that compete commercially can work together to advance human rights, and our collaboration with the Industry Dialogue has greatly enhanced that capacity. This report provides an important opportunity to raise these issues with both governments and companies that have yet to engage fully in multi-stakeholder dialogue about business and human rights in the ICT sector.

Framework available at

<http://globalnetworkinitiative.org/sites/default/files/Assesment%20Reporting%20Framework.pdf>.

¹⁵ Summary of Case Selection Guidance available at

<http://globalnetworkinitiative.org/sites/default/files/Case%20Guidance.pdf>.

¹⁶ GNI, Public Report on the 2015/2016 Independent Company Assessments.