

Global Network Initiative

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

Governance, Accountability and Learning Framework

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This document describes a Governance, Accountability and Learning Framework that, along with the Principles and Implementation Guidelines, is central to the Global Network Initiative.

1. Governance

In order to further the objectives of the Initiative, the participants will establish a multi-stakeholder Organization, initially under the auspices of an existing entity. The Organization's ongoing mission will be to help enable companies and other stakeholders in the information and communications technology (ICT) industries to respect and protect freedom of expression and privacy globally through individual and collective actions.

In that context, the Organization will work to advance governments' respect for the human rights of freedom of expression and privacy within the scope of the ICT sector; to enable innovative and sustainable solutions to these challenges; and to improve the ability of the Organization to advance respect for these rights worldwide.

The Organization will assist companies implement the Principles in a manner that protects both the rights of their users and the safety of their employees when facing demands from governments that may threaten freedom of expression or privacy.

The work of the Organization will include:

- Recruiting new participants, both companies and non-companies.
- Establishing learning and collaboration forums.
- Providing human rights information resources.
- Establishing a channel for third-party grievances, questions and concerns.
- Developing an independent accountability system for assessing company compliance with the Principles.
- Seeking opportunities to collaborate on public policy issues.

The Organization will be governed by a Board of Directors with equal representation from company and non-company participants that will strive to operate on a consensus basis. The participants commit to complete a Governance Charter within six months of the launch of the Initiative. Each of the initial participating companies will commit \$100,000 a year over the two-year start-up period to fund the initial work of the Organization. This amount will be adjusted as additional companies participate in this process and as the accountability process takes shape in the second and third phases, or as needed by other changing circumstances.

The Board will recruit and hire a full-time professional staff, including an Executive Director. The Executive Director will be responsible for implementing the strategy of the Organization as set by the Board of Directors. The Board will also hire additional staff as necessary to achieve its objectives. The Organization's activities will be focused on all regions of the world where participating companies are operating, but will focus special attention on those places where there are particularly serious challenges to freedom of expression and privacy.

On an annual basis the Organization will publish a report of its activities describing progress by participating companies implementing and complying with the Principles. The Organization's report will provide the public with information about emerging trends, the challenges ICT companies face and how the group is working to meet them. The report will also promote best practices within the ICT industry, including recommendations on the accountability process, public policy engagement, and other enhancements to the Initiative.

2. Accountability and Learning

Phase One: Building Capacity (2009 & 2010)

Participating Companies

Each participating company will put in place internal policies and procedures necessary to implement the Principles and will provide annual updates to the Organization on its progress.

The Organization

During this phase the Organization will focus on recruiting new participants, both companies and non-companies; promoting the Principles as a global standard; compiling information on government laws, policies and practices that pose challenges to freedom of expression and privacy; engaging in shared learning; and providing advice to participating companies.

Independent Assessment

During this phase the Board of the Organization will approve independence and competence criteria for the selection of independent assessors to be used in subsequent phases, including criteria for subject matter expertise; experience in assessment and evaluation; independence from the company (including full disclosure of any prior or current relationship with the company, its partners and related parties); and ability to handle confidential information. The Organization will develop guidance to help companies prepare for external reviews of company compliance which will take place in subsequent phases.

Reporting

At the end of Phase One, the Organization will produce its first annual report outlining the start-up efforts of both the Organization and the participating companies.

Phase Two: Independent Process Review (2011)

Participating Companies

The internal policies and procedures developed by the companies during Phase One shall become fully operational within two years of agreeing to participate in this Initiative, and shall be described in preliminary reports submitted by participating companies to the Organization.

Independent Assessment

Independent assessors that meet the competency and independence criteria adopted by the Board during Phase One will conduct process assessments of each participating company to review and evaluate their internal systems that implements the Principles. It is assumed that different participating companies will be subject to independent assessments at different times during Phase Two as suited to their own internal company annual cycles.

In close consultation with the Organization, each company will select its own independent assessor (or team of independent assessors) who meet the independence and competence criteria approved by the Board in Phase One. Each company will work with the Organization and if necessary the Board to resolve any concerns regarding the company's selection of assessor(s). The participants in the Initiative anticipate that different types, pairings or teams of independent assessors may be appropriate for different participating companies.

To initiate the independent assessment, each company will prepare a detailed report describing its internal processes that implement the Principles. The independent assessors will review the company's report as a baseline and also review the companies' internal implementation processes in operation. Based on these reviews the independent assessors will prepare a written evaluation of the company's internal processes that implement the Principles.

In order to perform the assessment and prepare the written evaluation, the independent assessors will have access to other relevant company data, in addition to the company's report. However, the participants recognize that in some situations a company will decide to withhold information because the company has determined the law prohibits disclosure, or because the company has determined that withholding information is necessary to protect trade secrets or preserve attorney-client privilege.

The independent assessors and the Organization will work in close consultation with the company to ensure that the written evaluation is accurate and does not disclose trade secrets of the company, waive the company's legal privileges or violate legal prohibitions against disclosure.

The Organization

The staff of the Organization will continue to work with participating companies and others to recruit new companies to join the process. The staff also will continue to foster shared learning and information exchange among the Organization's participants.

Also during this phase, the staff of the Organization will inform the Board, at regular intervals, of its findings with respect to both the accountability process generally and the independent assessments completed for participating companies. This will be done to distribute best practices for implementation of the Principles, to share suggestions for improvements, and to foster learning within the Initiative.

At the end of Phase Two, the Organization and the participants in the Initiative will review the accountability process and consider improvements, including, if necessary, a refinement of the independence and competence criteria for independent assessors.

Finally, the staff of the Organization will work closely with each of the companies and other participants to develop clear, achievable guidelines for a Phase Three independent assessment of company compliance with the Principles. Based on participants' experiences during Phase One and Phase Two, the Board will have the option, with consensus of the participants, to incorporate improvements in the Principles, Implementation Guidelines and this Governance, Accountability and Learning Framework. Additional recommendations by new or potential members will also be considered.

Reporting

At the end of Phase Two, the Organization will produce a report outlining its activities during the year, including a description of the independent assessment process.

Phase Three: Independent Process and Case Review (2012 onwards)

Participating Companies

Each participating company will submit an annual report to the Organization detailing its experiences in making the Principles operational, including challenges the participating company has faced and the nature of the reactions of governments. These reports will follow the format developed by the Organization during Phase Two.

Independent Assessment

In Phase Three, the Board of the Organization will accredit a pool of independent assessors for all subsequent assessments. The accreditation process will include an evaluation of whether certain otherwise qualified assessors do not meet the independence criteria for certain companies. Participating companies, in close consultation with the Organization, will select their independent assessors from the pool of assessors accredited by the Board. If independence concerns arise upon selection of an independent assessor the Board will resolve any such conflicts.

The Phase Three assessment will review company process steps, and will also review company responses to specific government demands implicating freedom of expression or privacy. One aim of this accountability aspect of the assessment is to understand and evaluate in practice each company's actual experiences in responding to specific demands that implicate freedom of expression and privacy and to evaluate the effectiveness of the company's specific responses in implementing the Principles.

Throughout Phase Three, the Organization will consider how to best incorporate successful responses to government demands into general guidance for participating companies to follow.

During the Phase Three assessment, the independent assessors will prepare detailed reports explaining each company's responses to specific government demands, and evaluating the effectiveness of the company responses individually and overall in implementing the Principles. Where appropriate the independent assessors will recommend steps the company should take to better implement the Principles in the future. Each company will have the opportunity to review and respond in writing to the independent assessors' draft report and final report. The company's responses to the independent assessors' draft and final reports will be provided to the organization's staff for further review and evaluation. Ultimately the Board of the Organization will assess whether the company is in compliance with the Principles and this determination will be made public.

In reviewing actual company experiences in applying the Principles, the independent assessors will review information provided by the company or third parties, supplemented by information they gather from the company during the review or which is brought to their attention by third parties. The independent assessors will be permitted to review the facts about actual experiences in cases that the independent assessors reasonably deem appropriate and necessary to preparing their assessment.

Each participating company will be expected to provide the independent assessor with sufficient information to complete its evaluation of the company's compliance with the Principles. However, the participants recognize that in some situations a company will decide to withhold information because the company has determined the law prohibits disclosure, or because the company has

determined that withholding information is necessary to protect trade secrets or preserve attorney-client privilege. Such withholding will be reported by the assessors in their reports and be a factor in the evaluation of a company's compliance. Among other things, the assessors may comment on whether the inability to access information affected the assessors' ability to evaluate a company's compliance with the principles.

Each participating company will be required to identify to the independent assessor with as much specificity as is practicable the limitations, if any, that necessitated the exclusion of certain responses to specific instances of government demands implicating freedom of expression and privacy. The independent assessor should disclose in its report to the organization any requests made for information and whether the information was provided. If such requests were denied, the independent assessor's report should state the reasons given by the company in denying access to the information and should factor all limitations on access into the assessment of the company's overall compliance with the Principles.

The Organization

As in Phase Two, the Organization will help the companies address any systemic challenges that are identified by the independent assessor. This process will afford an opportunity for the participating company, within a reasonable period of time, to help rectify any compliance issues prior to any decision by the Board on overall compliance or any public statement by the Organization or Board on overall compliance with the Principles by a particular company.

The staff of the Organization will continue to work with participating companies and others to recruit new companies to join the process. The staff also will continue to foster shared learning and information exchange among the Organization's participants.

Reporting

After evaluating a summary of the independent assessors' reports and the companies' responses, the Board of the Organization will again publish its annual report assessing each participating company's compliance with the Principles, describing its findings, matters learned, compliance challenges, impact on freedom of expression and privacy, and its path forward.

3. New Participating Companies

New participating companies joining the Initiative after its launch will also have two years from the date their participation began to prepare for their first independent assessment. However, if the Initiative has already reached Phase Three when the new participating company is ready for its first assessment then this assessment will include both process review and case review.