



GNI SUBMITS COMMENTS ON OECD GUIDELINES FOR MNES

The Global Network Initiative (GNI) welcomes the opportunity to provide input on the targeted update of the [OECD Guidelines for MNEs and Implementation Procedures](#). Fifteen years ago, the [GNI Principles on Freedom of Expression and Privacy](#) and [Implementation Guidelines](#) (together, “the GNI framework”) were created to establish a human rights-based framework for information and communication technology (ICT) companies responding to government pressures, demands, and restrictions. The GNI framework is centered around conduct of holistic human rights due diligence (HRDD) to identify, prevent, evaluate, mitigate and account for risks to the freedom of expression and privacy rights that are implicated by the company’s products, services, activities and operations. Five years ago, GNI completed a review and revision of this framework to ensure its consistency with the OECD Guidelines and the UN Guiding Principles on Business and Human Rights (UNGPs).

GNI is a multistakeholder initiative (MSI) that brings together 85 leading academics, civil society organizations, ICT companies, and investors from around the world. Through our unique assessment process, GNI member companies undergo periodic, independent review of the systems, policies, and processes they have put in place to implement the GNI framework, as well as their experiences implementing it in practice. These assessments give us unique insights into the challenges that ICT companies face with regard to a diverse set of products and services in a wide range of jurisdictions. GNI also facilitates shared learning on relevant topics and engages in policy advocacy to strengthen freedom of expression and privacy globally.

GNI welcome the targeted edits to the OECD Guidelines. In particular, as detailed below, we welcome clarification of and expanded guidance regarding the holistic nature of HRDD, the importance of robust stakeholder engagement, and the important role that MSIs can play.

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Please include any comments you wish to make on this specific chapter of the consultation draft (max. 2000 characters)

Chapter II: General Principles

- GNI recommends that the OECD consider adding language into this Chapter recognizing the importance of considering the safety and liberty of company personnel when designing and executing laws, regulations, systems, and policies related to responsible business conduct.
- GNI welcomes the edits to Commentary #2 and #28, which recognize and elaborate on the importance of stakeholder engagement. However, by limiting the definition of “relevant stakeholders” to those who “are or could be adversely impacted ... or their legitimate representatives” the draft language may exclude experts like technologists, academics, researchers, or human rights defenders not directly tied to particular risks, whose input into HRDD may be necessary in order to better understand and prioritize relevant impacts.
- GNI also welcomes the language in Commentary #2 identifying social partners and civil society as “partners with governments in the development and use of both voluntary and regulatory approaches,” as well as in #12 and #27 recognizing the important role of MSIs. We encourage the OECD to recommend that governments regulating on RBC center those efforts on existing frameworks like the Guidelines and the UNGPs and consider potential co-regulatory roles for credible and transparent MSIs.
- GNI appreciates edits in Commentary #18 and #20 clarifying that HRDD should be conducted holistically, focusing on known and reasonably foreseeable circumstances. In line with the UNPGs, the Guidelines should make clear that the scope of HRDD and understanding of “business relationships” includes the full value chain, incorporating both "upstream" and "downstream" risks. In our experience, companies have demonstrated that this is not only feasible, but essential to comprehensively address human rights risks. GNI suggests removing the reference to “supply chain” and adding a reference to entities that market, sell or re-sell products or services in Commentary #16.

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Chapter IV: Human Rights

- GNI applauds the language in Commentary #46 recommending that enterprises “cooperate in their remediation,” in line with edits to #24 recommending collaboration “with other enterprises to pool leverage and implementing common

standards of” RBC and in #26 on participation “in industry-wide collaborative efforts ... to coordinate due diligence policies and risk management strategies.” GNI and Business for Social Responsibility recently developed an “[Across the Stack Tool](#)” to encourage such collective, ecosystem approaches to understanding and addressing digital rights risks.

- GNI acknowledges the importance of the effectiveness criteria for grievance mechanisms defined in the UNGPs, and suggests adding language requiring NPCs to fully align with the effectiveness criteria in their design and operations.

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Chapter VIII. Consumer Interests

- GNI appreciates the edits in Paragraph 2 adding references to “privacy issues” and “dispute resolution and redress options,” and encourages the OECD to add language encouraging enterprises to disclose information about “control and use of personal data,” in line with Paragraph 6 of this Chapter. In addition, GNI suggests including language to encourage disclosure of “meaningful information about the use of automated decision making systems.”

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Chapter IX: Science, Technology and Innovation

- GNI welcomes clarification of the importance of risk-based due diligence with regard to “the development, financing, licensing, sale, trade and/or use of technology,” as set out in Paragraph 1 and Commentary #100, as well as the attention placed in the edits on the importance of confidentiality, privacy, and data protection.
- GNI also appreciates the focus in new Paragraph 6 on enhancing transparency of data access and sharing arrangements and “adoption of responsible data governance practices throughout the data value cycle.” GNI is helping to foster greater coordination and inclusion around data transparency through the [Action Coalition on Meaningful Transparency](#) and is pleased to have a representative from the OECD Digital Economy Policy Division participating in its Advisory Group.
- GNI deeply appreciates the renewed call in new Paragraph 7 for enterprises to support “cooperative efforts ... to promote Internet Freedom, including through respect of the freedoms of expression, peaceful assembly and association online,” and suggests that “privacy” be added to this descriptive list. GNI staff is proud to

have participated/be participating in a range of such initiatives, including the Freedom Online Coalition Advisory Network, the Christchurch Call Advisory Network, the Global Internet Forum to Counter Terrorism Independent Advisory Committee, and the OECD Voluntary Transparency Reporting Framework.

- GNI recommends that this Chapter include language acknowledge the important role that governments play as purchasers, end users, and regulators of technology, as well as through demands, restrictions, and pressure placed on technology companies by law enforcement and national security agencies, and emphasizing the importance of transparency, accountability, oversight, and remedy with respect to such activities. In this regard, we also encourage a cross-reference to the recent OECD [Declaration on Government Access to Personal Data Held by Private Sector Entities](#).

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