



# Telecommunications Industry Dialogue on Freedom of Expression and Privacy

## Guiding Principles

*Version 1*

*March 6, 2013*

# Introduction

- Freedom of expression and privacy are human rights, which derive from the inherent dignity of all persons.
- These principles address the issues of privacy and freedom of expression<sup>i</sup> as they relate to the telecommunications sector, specifically exploring the interaction and boundaries between a government's duty to protect human rights and the corporate responsibility of telecommunications companies to respect human rights.
- The principles are developed by a group of telecommunications operators and vendors (the 'participating companies') that have come together to address the issues of privacy and freedom of expression in an industry dialogue.
- The principles are based on internationally recognized laws and standards for human rights, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and are guided by the OECD Guidelines for Multinational Enterprises and the United Nations business and human rights 'Protect, Respect, and Remedy' framework.<sup>ii</sup>
- The UN 'Protect, Respect, and Remedy' framework defines it as;
  1. the state's duty to *protect* human rights, and
  2. the corporate responsibility to *respect* human rights.<sup>iii</sup>
- The ICCPR recognises that the rights to freedom of expression and privacy can only be restricted in limited circumstances.<sup>iv</sup>
- The OECD framework states that "[a] State's failure either to enforce relevant domestic laws, or to implement international human rights obligations or the fact that it may act contrary to such laws or international obligations does not diminish the expectation that enterprises respect human rights. In countries where domestic laws and regulations conflict with internationally recognised human rights, enterprises should seek ways to honour them to the fullest extent which does not place them in violation of domestic law".<sup>v</sup>
- Telecommunications enable the exchange of ideas and access to information in a way that supports economic and social opportunity, advances knowledge and increases openness and transparency. Telecommunications are also vital in times of crisis and can be a critical tool for governments to help protect public safety or security in certain exceptional circumstances. The ITU Constitution includes articles on the stoppage of telecommunications<sup>vi</sup>, the suspension of services<sup>vii</sup> and the secrecy of telecommunications.<sup>viii</sup>
- Telecommunications technologies can also, in exceptional circumstances, be mis-used by governments in a way that can impact the freedom of expression and privacy of their citizens. These principles are intended to address such exceptional situations.
- The advancement of freedom of expression and privacy globally can be best achieved through engagement between governments, industry, civil society (including human rights experts), investors, supra-national organisations, and other affected stakeholders. The participating companies will communicate and engage on these principles within the industry and with other relevant stakeholders.

## Key Principles

Principles have been developed that guide and inform the participating companies in their internal policies and processes and engagement with external stakeholders.<sup>ix</sup>

As Telecommunications companies we strive to deliver a secure and reliable infrastructure, and to ensure that our services are always available. We recognize the responsibilities that come from providing communications infrastructure, products and services. These businesses, and the investments needed to build and maintain the necessary infrastructure, rely on long-term, stable relationships with and between commercial entities, governments and customers.

Telecommunications companies should, to the extent that does not place them in violation of domestic laws and regulations, including license requirements and legal restrictions on disclosure:

1. Create and/or maintain relevant policies, with Board oversight or equivalent, outlining commitment to prevent, assess, and mitigate to the best of their ability the risks to freedom of expression and privacy associated with designing, selling, and operating telecommunications technology and telecommunications services;
2. Conduct regular human rights impact assessments and use due diligence processes, as appropriate to the company, to identify, mitigate and manage risks to freedom of expression and privacy – whether in relation to particular technologies, products, services, or countries – in accordance with the Guiding Principles for the Implementation of the UN ‘Protect, Respect and Remedy’ framework;<sup>x</sup>
3. Create and/or maintain operational processes and routines to evaluate and handle government requests that may have an impact on freedom of expression and privacy to:
  - a. Ensure that government demands are reviewed by appropriately qualified and experienced personnel in order to assess their compliance with legal and due process. For demands for continuous access, such review will take place at the time of the initial request;
  - b. Establish in advance guidance to relevant personnel on how to interpret government demands as specifically as possible;
4. Adopt, where feasible, strategies to anticipate, respond and minimise the potential impact on freedom of expression and privacy in the event that a government demand or request is received that is unlawful or where governments are believed to be mis-using products or technology for illegitimate purposes which may include, if appropriate:
  - i. Reviewing the demand with the relevant authority in order to seek clarification or modification;

- ii. Seeking judicial review (court-procedure), where available;
  - iii. Appealing to other relevant branches of the administration, such as regulators or governmental departments;
  - iv. Seeking alternative measures that would minimise or mitigate the practical impact on freedom of expression and privacy;
  - v. Engaging UN- or other supranational bodies and/or other governments/institutions for diplomatic support; and
  - vi. Engaging other stakeholders, such as media/NGOs, as appropriate, in support of freedom of expression and privacy;
5. Always seek to ensure the safety and liberty of company personnel who may be placed at risk;
6. Raise awareness and train relevant employees in related policies and processes;
7. Share knowledge and insights, where relevant and appropriate, with all relevant and interested stakeholders to improve understanding of the applicable legal framework and the effectiveness of these principles in practice, and to provide support for the implementation and further development of the principles;
8. Report externally on an annual basis, and whenever circumstances make it relevant, on their progress in implementing the principles, and as appropriate on major events occurring in this regard;
9. Help to inform the development of policy and regulations to support freedom of expression and privacy including, alone or in cooperation with other entities, seeking to mitigate potential negative impacts from policies or regulations;
10. Examine, as a group, options for implementing relevant grievance mechanisms, as outlined in Principle 31 of the UN Guiding Principles for Business and Human Rights.

The principles will apply to participating companies where they have operational control.<sup>xi</sup> Where they do not have operational control, participating companies will seek to use their influence to promote the principles.

The participating companies aim, together as a group, to compile and make available guidance and information on the main laws, regulations and standards telecommunications companies operate under, to be used for informational purposes.

## Stakeholders

As stated in the Introduction, the advancement of freedom of expression and privacy globally can be best achieved through engagement between governments, industry, civil society, investors, supra-national organisations, and other affected stakeholders.

*The participating companies encourage all stakeholders to consider the role of telecommunications and;*

- Invest the time and resources to understand the impacts and obligations different players have with regard to freedom of expression and privacy;
- Maximise the potential for telecommunications to support economic and social opportunity, advance knowledge and increase openness and transparency;
- Strive to engage in a meaningful dialogue to raise individuals' awareness of their rights and available mechanisms to seek remedy in cases when their rights are violated.

*The participating companies believe governments, when considering the role of telecommunications, should:*

- Protect human rights, including ensuring that national laws, regulations and policies are consistent with international human rights laws and standards on freedom of expression and privacy;
- Define with care the balance between freedom of expression and privacy and other legitimate societal needs, such as national security, public safety, law enforcement and protection of children. This is not the role of companies;
- Communicate transparently about the laws, regulations and policies relating to freedom of expression and privacy, and their implementation;
- Assess laws and regulations periodically, addressing any gaps or need for changes, and basing new regulation on a full understanding of technologies and the global context of their use;
- Provide pro-active support to international companies headquartered in their territory in diplomatic dialogue with the governments of third countries where those companies have operations and where risks related to freedom of expression and privacy are emerging;
- Avoid mandating more restrictive standards for intermediaries than is the case with traditional media regarding freedom of expression or holding intermediaries liable for content and communications that they transmit or disseminate.

*The participating companies hope civil society, when considering the role of telecommunications, will:*

- Engage in constructive dialogue with governments and industry to collectively seek globally applicable solutions to best protect and respect freedom of expression and privacy.

The final version of this text will, for reference purposes, be translated into equally authentic versions in Arabic, Chinese, French, Russian, Spanish and Turkish. The English version is the authentic version and shall prevail in case of conflict.

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- <sup>i</sup> The right to privacy is enshrined in the Universal Declaration of Human Rights (UDHR), Article 12, and in the International Covenant on Civil and Political Rights (ICCPR), Article 17. The right to freedom of opinion and expression is enshrined in the UDHR, Article 19, and the ICCPR, Article 19. Note that the principles in this document specifically address the right to freedom of *expression specifically (i.e. not freedom of opinion)*.
- <sup>ii</sup> The UN 'Protect, Respect and Remedy' Framework for Business and Human Rights – UN Special Representative, Professor John Ruggie, endorsed by the United Nations Human Rights Council in June 2011.
- <sup>iii</sup> The UN Guiding Principles are grounded in recognition of the role of business enterprises as specialised organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights. The requirement for business to respect human rights means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. (pages 6 and 13)
- <sup>iv</sup> The International Covenant on Civil and Political Rights (1966), Article 4 and Article 19. The UN Human Rights Committee, General Comment no. 34.
- <sup>v</sup> OECD Guidelines for Multinational Enterprises (2011 Edition), Commentary on Human Rights, Comment 38.
- <sup>vi</sup> ITU Constitution: ARTICLE 34 - Stoppage of Telecommunications
- <sup>vii</sup> ITU Constitution: ARTICLE 35 - Suspension of Services
- <sup>viii</sup> ITU Constitution: ARTICLE 37 - Secrecy of Telecommunications
- <sup>ix</sup> The principles do not seek to alter the participating companies' involvement in initiatives that seek to identify, prevent and limit access to child sexual abuse images.
- <sup>x</sup> This principle does not seek to alter any participating company's existing obligations to carry out impact assessments of e.g. their privacy or data protection policies.
- <sup>xi</sup> Operational control in this context is defined as the power to determine, directly or indirectly, the management policies of such company or entity, through the ownership of a majority of its stock voting rights, or being entitled to appoint a majority of its board of directors or body performing a similar function, or by agreement or otherwise.