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Introduction

The Telecommunications Industry Dialogue was a group of telecommunication operators and vendors that jointly addressed freedom of expression and privacy in the telecommunications sector in the context of the UN Guiding Principles on Business and Human Rights. Until March 2017, companies participating in the Industry Dialogue (ID) included AT&T, Millicom, Nokia, Orange, Telefónica, Telenor Group, Telia Company, and Vodafone Group. Together, these companies have a global footprint, providing ICT services and equipment to consumers, businesses, and governments in over 100 countries worldwide.

The foundation for the Industry Dialogue was a set of Guiding Principles that explore the interaction and boundaries between a government’s duty to protect human rights and the corporate responsibility of telecommunications companies to respect human rights.

In March 2017, seven of the former ID companies officially transitioned to full membership of the Global Network Initiative (GNI). The multi-stakeholder GNI brings together ICT companies, human rights and press freedom groups, academics, and investors to protect and advance global free expression and privacy in the information and communications technology (ICT) sector.

In the Telecommunications Industry Dialogue 2015 Annual Report, released in
June 2016, companies emphasized the lessons they learned from sharing good practices in implementing the ID Guiding Principles in their operations, since first launching the ID in March 2013. The report highlighted three significant areas of progress in particular: human rights impact assessments, grievance mechanisms, and responding to "major events."  

Last year’s report also featured a watershed moment for ID-GNI collaboration: in February 2016, seven ID companies joined forces with the GNI under observer status, with the aim of full GNI membership following a year as GNI observer companies.

This observer period included hands-on participation in GNI committees and policy work, the sharing of best practices on conducting human rights due diligence, and working together on a review of the GNI Implementation Guidelines to cover the range of companies in the ICT sector.

During this time, companies continued to participate in the Industry Dialogue, remaining committed to the ID Guiding Principles and building on the joint efforts to address freedom of expression and privacy in the telecommunications sector from years past. This report closes the book on the Industry Dialogue by highlighting the extensive shared accomplishments of the group in this final year of collaboration, covering activities from April 2016 through March 2017.

Our Work in 2016-17

In 2016-17, companies participating in the ID continued to share knowledge and develop best practices on issues related to free expression and privacy in the telecommunications sector and the challenges companies face in scenarios where these rights may be affected.

Companies met bi-weekly via conference calls, as well as in person on both sides of the Atlantic, including meetings in Oslo in April 2016, Brussels in June, New York in September, and Paris in December.

The ID was governed by a board, consisting of one representative per company with a rotating position of Chair elected from its members. Jeff

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1 For the Industry Dialogue, the following are examples of situations that may constitute “major events”: 1) denial or restriction of a communications service; 2) shutdown of communications networks or controlling access to these networks; 3) overbroad government access to communications content or data; 4) government-mandated communications; 5) significant changes to operational surveillance techniques; 6) significant changes to a market’s legal regime; and 7) misuse (or intended misuse) of a product.

2 For previous reports covering joint activities and companies’ implementation of the principles since March 2013, as well as public submissions highlighting sector-wide challenges and joint positions, visit the ID resources page.
Dygert of AT&T, Sidsela Nyebak of Telenor Group, and Laura Okkonen of Nokia served terms as chair during the period covered by this report.

**Country Legal Frameworks Pertaining to Freedom of Expression and Privacy in Telecommunications**

Companies participating in the Industry Dialogue call attention to the challenges they face in respecting users’ rights to privacy and freedom of expression when the local laws in their operating environments are unclear or lack uniform interpretation.

In 2016-17, the *ID Country Legal Frameworks Resource* continued to underpin stakeholder engagement. This resource outlines important powers available to government agencies and authorities seeking to access customer communications or restrict the content of communications in nearly 50 countries in which companies participating in the ID have a presence.

The reports for 39 of the countries included in the resource when it was published in 2015 were commissioned by Vodafone Group and Telenor Group, and both companies have updated the information on their respective markets.³

Since publishing the resource in 2015, ID companies have continued to identify additional markets that warrant inclusion and commissioned reports on them; in 2016-17, Millicom, AT&T, and ID companies as a group supported the publication of reports on Mexico, Rwanda, Guatemala, Honduras, Paraguay, and El Salvador. The entire set of updated country pages will be migrated to the GNI website, and GNI will continue exploring avenues for building upon the resource.

In 2016-17, ID companies also explored new approaches to *sharing knowledge* on the legal frameworks in their respective markets: Telia Company has published a list of the most relevant laws on signals intelligence and real-time access to communications in 15 of its markets as well as for Russia and Turkey.⁴ Vodafone Group’s updated legal annexe featured a section covering the laws governing encryption. And Telefónica’s “Report on Transparency in Communications” identified the relevant laws and regulations for government requests to access data or restrict communications in each of the countries where Telefónica has operations.

Telenor Group: “Authority Request for Access to Electronic Communication”

Within the ID Guiding Principles, companies commit to:
"Report externally on an annual basis, and whenever circumstances make it relevant, on their progress in implementing the principles, and on major events occurring in this regard."

Reporting on the ID Guiding Principles

In 2016-17, each of the companies participating in the ID reported publicly on their implementation of the ID Guiding Principles in practice, in accordance with their commitments within the ID Guiding Principles.

Additionally, AT&T, Millicom, Orange, Telenor Group, Telia Company and Vodafone Group updated their reports on law enforcement requests for customer data in certain markets. For the first time, Telefónica joined with this group and released data—wherever possible—about requests in each of their markets, covering the years 2013, 2014, and 15.

ID companies benefit from regular exchange of good practices on transparency and individual companies model new and innovative approaches for reporting. For example, Nokia published real-world examples of human rights diligence cases in their annual sustainability report in an effort to move the discussion on transparency beyond and from the numbers to more narrative-focused reporting.

Shared Learning

Since the Industry Dialogue was launched in March 2013, participating companies have repeatedly met in person to share their experiences, insights, tools and best practices in implementing the ID Guiding Principles in their company operations—both within the group and with external stakeholders.

Companies participating in the ID continued this practice in 2016-17; for example, in Paris in December 2016, a representative from global risk and strategic consulting firm Maplecroft joined the group to share progress on a project with Orange analyzing the legal gaps between domestic law and international human rights commitments in Orange’s markets.

Learning sessions involving external stakeholders took place alongside each in-person meeting of the Industry Dialogue. These sessions involved representatives from international organizations, civil society groups, investors, telecommunications companies and assurance providers.

In Oslo in April 2016, in the first of two discussions with stakeholders, companies explored the growing frequency and sophistication of government attempts to shut down or restrict the internet and

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5 Companies up-to-date reporting at the time of this report can be found on the ID website archive
6 See pages 104–107 of Nokia’s “People and Planet Report 2016”
communications services. Participants identified the need for better measurements on the impact of shutdowns, tools at companies’ disposal to limit the impact of shutdowns, and bases for collective action in response.

In the second session in Oslo, AT&T, Millicom, Telenor Group, and Telia Company shared their approaches to public reporting on ID commitments. Guests and companies explored ways in which these processes could be improved, while recognizing the distinct restrictions companies face in their various operating environments.

**In Brussels on June 2, 2016,** representatives from participating companies Millicom, Nokia, Orange, Telefónica, Telenor Group, Telia Company and Vodafone Group collaborated with GNI representatives to host a joint learning session featuring EU government officials and EU civil society organizations. This session explored the prevention and mitigation of network shutdowns and rights-respecting approaches to extremist content online.

During a **September meeting of the Industry Dialogue in New York,** companies discussed the increasing extraterritorial applications of domestic legal frameworks and widening gaps between international norms and domestic laws impacting companies’ abilities to respect free expression and privacy in their operations. Additionally, companies shared their experiences in reporting publicly on statistics about law enforcement requests to access data or restrict communications.

The New York meetings also featured a learning session co-hosted with GNI, “Human Rights Risks in the Era of Network Shutdowns,” which brought together companies, civil society, international institutions, investors and philanthropic foundations to explore points of mobilization and engagement to curb the rise of shutdowns.

During two days of meetings in **December 2016 in Paris,** ID companies hosted two distinct learning sessions with guests: the first session featured MapleCroft and Orange presenting their aforementioned research, and the second featured Nokia sharing insights from their groundbreaking human rights due diligence reporting (see page 6) with fellow ID companies.

Additionally, the ID invited guests from the Swedish Exports Credits Guarantee Board (EKN)—an agency commissioned by the Swedish government to promote exports and the internationalization of Swedish companies—to explore an export-credit perspective on telecommunications companies and human rights, including the application of human rights due
"GNI is excited to integrate the expertise and experience of the Telecommunications Industry Dialogue into our own. Our entire membership, as well as millions of ICT users and customers around the world will benefit as we build on the shared policy and learning work of our close collaboration since 2013."

— Judith Lichtenberg, Executive Director, Global Network Initiative

diligence for telecommunications company export credits. The EKN was working with the Institute for Business and Human Rights on a report on the subject, which ID companies would later provide input to as a group (See page 15)

The Telecommunications Industry Dialogue and the Global Network Initiative

Since its founding in 2013, the Industry Dialogue has collaborated with the Global Network Initiative, sharing best practices; meeting and jointly engaging stakeholders; and reviewing their respective sets of principles and approaches to accountability with views of ways to align them. The ID and the GNI have continuously collaborated through meetings, joint learning forums, and roundtable discussions, as well as presenting together at numerous public events over the years.

Membership in the Global Network Initiative

GNI membership offers a channel for wider stakeholder engagement across the ICT sector. GNI participants include leading internet companies, global digital rights and press freedom groups, academic experts on free expression, privacy, and/or business and human rights, and investors with an interest in ICT-sector issues.

The GNI Principles on Freedom of Expression and Privacy provide a resource for ICT companies developing policies to guide their responses to government requests to disclose, censor or restrict access to user data. The GNI Principles are informed by international human rights instruments, including the UN Guiding Principles on Business and Human Rights. The

7 For more about collaboration in past years, see the 2015 Industry Dialogue Annual Report and "The Telecommunications Industry Dialogue at Two Years"
“When we launched the Industry Dialogue in March 2013, a core aim was to share insights with relevant and interested stakeholders and raise awareness about the shared challenges—and opportunities—for telecoms on free expression and privacy.

We have valued the close collaboration with the GNI over the past four years, and we look forward to deepening our dialogue with nearly 50 diverse organizations, refining our own best practices and building leverage to promote rights globally in the process.”

— Patrik Hiselius, Telia Company, founding Chair of the Industry Dialogue
extremist content online while respecting human rights. This report was a culmination of a 18-month-long dialogue with global stakeholders. As operators, telecommunications companies can face particular pressures to block entire sites in response to a controversial piece of content on an online platform, and there are important distinctions between blocking sites and/or content and blocking services, i.e. restricting SMS. The policy brief was informed by this perspective from ID company participants.

Global Network Initiative and Industry Dialogue Joint Statement on Network Shutdowns and Service Disruptions

The GNI/ID joint statement on network and service shutdowns marked the first time that internet and telecommunications and vendor companies had come together to express concern about the increasing number of government orders. This statement served as the basis of extensive joint policy advocacy on network shutdowns for GNI and companies participating in the ID. The full text of the July 2016 statement is below.

The Global Network Initiative and the Telecommunications 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.

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.

“Government-ordered disruptions of communications networks and services are on the rise. The consequences of such orders can be as dire as the security threats they ostensibly target,” said Mark Stephens, CBE,
Independent Chair of the GNI Board.

“They cut off citizens from essential information and contact with loved ones, impede the work of emergency and security services, and undermine economic activity,” he said.

In a recent landmark resolution, the United Nations Human Rights Council stated that it “Condemns unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law.” The UN HRC specifically “calls on all States to refrain from and cease such measures.”

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 who employ 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.

As a first step, the Industry Dialogue and the GNI urge governments to be transparent with their citizens about the government role in shutting down or restricting networks and services, and the legal justifications for any restrictions. Importantly, shutdown orders should permit companies to disclose in a timely manner to their customers that services have been restricted pursuant to a government order.

“ICT companies, from mobile network operators to social media companies, should cooperate with each other and with experts across academia, governments, international institutions, civil society, and the media to raise awareness of the serious, long-term social and economic impacts of these disruptions, said Sidsela Nyebak of Telenor Group, [then] Chair of the Telecommunications Industry Dialogue. Stakeholders should work to inform public debate and encourage human rights-based laws and policies,” she said.
Activities and Engagement as a Group

Participation in External Events

In 2016-17, ID company representatives continued to promote best practices for the telecommunications sector and to share the work of the Industry Dialogue through participation in public discussions and international events.

In London in April 2016, Laura Okkonen of Nokia joined a public roundtable session co-organized by GNI: "Cross-Border Data Requests and the Investigatory Powers Bill." This session spotlighted the challenges for law enforcement and companies alike under existing cross-border data sharing arrangements; attendees included MPs and Lords, officials from the UK Foreign Office, Cabinet Office, and the National Crime Authority, civil society organizations, academics, and technology companies.

In October 2016 in San José, Costa Rica, Milka Pietikainen of Millicom joined a series of panels at the annual Freedom Online Coalition (FOC) conference, which gathers a diverse set of relevant stakeholders for discussions on rights online (the FOC is a partnership of 30 governments, working together to advance Internet freedom). Topics included multi-stakeholder approaches to privacy challenges online featuring representatives from AT&T and New America’s Open Technology Institute, as well as a discussion of network shutdowns with a particular focus on shutdowns around elections and representatives from the United States and Ghanaian governments.

Paloma Villa Mateos of Telefónica participated in the first-ever Global Internet and Jurisdiction Conference in Paris in November, which explored issues around laws governing cross-border data flows and trends toward a more localized and fragmented web in response.

Within the ID Guiding Principles, companies commit to:

"Share knowledge and insights, where relevant, 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."

"Help to inform the development of policy and regulations to support freedom of expression and privacy, including, alone or in cooperation with other entities, using its leverage to seek to mitigate potential negative impacts from policies or regulations."

UN Forum for Business and Human Rights in Geneva in November 2016. Photo courtesy of Patrik Hiselius, Telia Company
Annette Fergusson of Vodafone Group attended a roundtable discussion with investors organized by ShareAction in November in London, following the release of a brief for investors in technology companies on the risks companies face from network shutdowns and opportunities to mitigate such risk.

Also in November, Patrik Hiselius of Telia Company, Laura Okkonen of Nokia and Yves Nissim of Orange joined the UN Forum on Business and Human Rights in Geneva. Mr. Hiselius presented on Telia Company’s experience in implementing respect for human rights in their operations in a panel, “Embedding human rights within a company; strategies, challenges (and successes),” moderated by Business for Social Responsibility (BSR) and featuring representatives from Yahoo and BP P.L.C.

At the 2016 Internet Governance Forum in Guadalajara, Mexico in December, Patrik Hiselius joined GNI Executive Director Judith Lichtenberg on a panel discussion: “Direct Access & the Next Billion: Policy, Problems & Proposals,” highlighting some of the obstacles companies face with transparency and avenues to mitigate rights risks in response to governments’ direct access to telecommunications company networks.

Finally, Industry Dialogue companies were well represented at RightsCon Brussels 2017 in March, with company representatives participating in a series of panel discussions.

......... Engagement with governments and international institutions and experts

In 2016-17, the companies participating in the Industry Dialogue undertook extensive engagement with policymakers, international institutions, civil society groups and other key stakeholders, supporting both the development of policies and regulations that are conducive to free expression and privacy at the local and international levels and companies’ efforts to raise awareness on free expression and privacy challenges.

UN Special Rapporteur for Freedom of Opinion and Expression

In his March 2017 report to the UN Human Rights Council, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression David Kaye explored state regulation and action that affects access to telecommunications and internet networks and services, building upon his report from the previous year mapping free expression

ID companies’ participation in RightsCon Brussels:

• “In Search of Rights-Respecting Surveillance Laws,” Sidsela Nyebak of Telenor Group presented on direct state access to telecommunications infrastructure.

• “At What Cost? Teelcoms and Internet Companies Discuss Internet Shutdowns,” Yves Nissim of Orange spoke on shutdowns at a GNI-organized panel.


• “Getting to know the Global Network Initiative,” Milka Pieikainen of Millicom joined a lunchtime briefing about GNI.

• From Vodafone, Matt Peacock was represented on a panel discussing encryption and Annette Fergusson on a panel discussing the Ranking Digital Rights Project.
Companies provided input throughout the consultations and reporting for the project: Millicom joined an early brainstorming session with Special Rapporteur Kaye and civil society, company, and academic representatives in London in July; Millicom, Nokia, and Telia Company attended an experts meeting hosted by the University of Connecticut in October informing the report; Special Rapporteur Kaye held one-on-one consultations via phone and in-person with multiple companies participating in the ID; and companies joined side meetings with Special Rapporteur Kaye at the Internet Governance Forum and RightsCon.

Companies provided a joint written submission to Special Rapporteur Kaye’s report in November. The call for submissions asked stakeholders to “analyze the relevant internal policies and practices of Telco’s, ISPs and associated businesses,” and ID companies identified notable “trends in laws, regulations, and other extralegal measures affecting business’s ability to respect freedom of opinion and expression” in the submission:

In addition, companies outlined steps they were taking to combat, mitigate, or challenge threats to free expression and privacy—via implementation of the ID Guiding Principles—with real-world examples for each principle.

### Direct State Access to Telecommunications Networks and Infrastructure

In previous years, companies participating in the Industry Dialogue have expressed their joint concerns about direct state access to telecommunications networks, conveying their belief that companies should retain the operational and technical means of granting access.

In February 2017, ID companies provided a joint response to a series of questions from Privacy International, who were investigating direct state access.

The submission laid out the challenges companies face as governments may have legally-mandated access that companies are unaware of; highlighted existing company due diligence efforts; and identified best practices, calling on governments to be transparent about the laws and regulations governing direct state access and to give the public more insight into how governments obtain and use these systems to monitor communications. This transparency

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9 See more on previous ID engagement with SR David Kaye in the 2015 Industry Dialogue Annual Report. The ID provided written input to SR David Kaye’s 2016 report to the UN Human Rights Council as well.

10 See pages 18-24 of “Supplementary Materials Accompanying Annual Report A/HRC/35/22”
allows for a more informed debate about the necessity, proportionality and accordance with rule of law of such systems. Participating companies also called for collaboration on this work across the ICT value chain.

**Good Practices on the Lawful Disruption of Access to Online Services**

The UN Human Rights Committee and the Special Rapporteur for freedom of opinion and expression have established that the restriction of online content interferes with the right to freedom of expression and should satisfy the tests of legality, necessity, and proportionality established in Article 19 of the International Covenant on Civil and Political Rights.

In an effort to help identify good practices for governments regarding disruptions of access to online services, e.g. the blocking of websites, that meet these requirements, Industry Dialogue companies welcomed the chance to submit written views on the Australian Government’s draft guidelines for the use of Section 313(3) of the Telecommunications Act 1997 by government agencies.

ID companies praised a number of elements of good practice reflected in the guidelines.

**Telecommunications Companies and Human Rights from an Export-Credit Perspective**

Building on the December learning discussion in Paris, Industry Dialogue companies were invited to provide feedback on a draft study by the Institute of Business and Human Rights, Swedish Export Credits Guarantee Board, and Swedish Export Credit Corporation, “Telecommunications and Human Rights - An Export Credit Perspective.”

The study clarified that export credit institutions should require risk-based human rights due diligence when providing guarantees or financing in telecommunications-sector transactions, and mapped a framework for what this could look like in practice.

ID companies’ broader experiences with free expression and privacy in the sector helped inform the study. Particular points of emphasis included the distinct EU requirements around exports for dual-use technology, incorporating the approaches and terminology of the UNGPs into the submission, and recognizing the pressures shifting domestic laws further away from international human rights norms.

### Good practices reflected in draft guidelines for use of Section 313(3) of the Telecommunications Act 1997:

- The requirement that a government agency head must authorize the blocking of websites and that senior government officials should approve individual blocking requests.
- The automatic expiration of blocking requests after a certain time period.
- Limiting blocking to cases involving serious criminal or civil offenses or threats to national security and providing agencies with a list of factors to consider prior to making requests.
- The use of landing pages to inform internet users when content has been restricted pursuant to a government request.
- The requirement that agencies establish complaint and review processes that allow affected parties to contest a decision to disrupt access.
- Recommending consultation with technical experts and internet service providers prior to requesting the disruption of access to online services.
Looking Ahead

ICT companies share escalating global challenges related to free expression and privacy, including increasing demands on companies to censor controversial content online; pressures, lawful or otherwise, for more surveillance in response to national security threats; the challenge of respecting human rights when governments and law enforcement request access to data stored across borders; and shifting international norms that may conflict with local laws. These issues often affect multiple companies and levels of the ICT value chain.

Joining with GNI’s multi-stakeholder group of civil society organizations, academics, investors and internet company representatives supplements the expertise of the telecommunications companies that formerly participated in the ID and facilitates their continued work on free expression and privacy issues. GNI membership opens up new opportunities for this diverse group of stakeholders and perspectives to work together to address overbroad or inappropriate government requests, to enhance best practices, and to continue to build a strong platform to advocate for the free expression and privacy of billions of users and customers around the world.

Patrik Hiselius of Telia Company, the Industry Dialogue’s founding Chair, offered a promising outlook for the future of the ICT sector:

“We have an exciting couple of years ahead of us, with new technologies like 5th generation mobile networks and the internet of things bringing huge opportunities. These tools also bring new risks as ICT technologies grow more pervasive in our everyday lives, and the issue of government surveillance deserves more attention than ever. Together in the GNI, we can push for freedom of expression and privacy on the ground as part of the ongoing transition into the digital age, setting a standard for not just telecommunications and vendor companies, but for the entire ICT sector.”

The Telecommunications Industry Dialogue would like to extend a special thanks to Ms. Lisl Brunner, who served as the Industry Dialogue Facilitator from the launch of the ID in 2013 until mid-2016, and to the GNI secretariat, for their staffing support through integration in March 2017.