



Telecommunications Industry Dialogue
1200 18th Street NW Suite 602
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Dear Rebecca,

The Telecommunications Industry Dialogue would like to thank you for taking the time to speak with several of our members by conference call on January 31, 2014 about the methodology to be used by the Ranking Digital Rights project in assessing the performance of telecommunications companies in the areas of freedom of expression and privacy, as well as for providing some insight into how the research and ranking will take place. The Industry Dialogue recognizes the importance of the project in advancing the global protection of these rights in the ICT sector and observes that the draft criteria reflect a diligent study of the telecommunications industry. We look forward to providing more detailed feedback on the methodology once it is published for consultation. In the meantime, we wanted to share some reflections after last week's conference call.

The Industry Dialogue notes that in developing the criteria, you are conscious of the challenges inherent in ranking company performance on issues on which public debate is rapidly evolving. As the introductory paragraphs of the criteria indicate, "the criteria we have included in this draft already represent a major challenge to most companies" and reflect "a higher but not unattainable standard of commitment, practice and transparency" when compared to the Global Network Initiative's (GNI) Principles and Implementation Guidelines. At the same time, we ask whether a ranking that reflects practices currently in place in the industry, rather than those which merely a few companies employ, might be more conclusive.

We note that the ranking will take into account whether companies use an independent third-party assessment process to verify their compliance with freedom of expression and privacy policies and to evaluate the quality of their human rights impact assessments. According to the draft criteria, this element was inspired by the GNI's independent third-party assessment, which is validated by a multi-stakeholder process. As you are aware, most Industry Dialogue companies undergo external assurance of their corporate sustainability reports (which include sections devoted to freedom of expression and privacy) based on standards such as the ISAE 3000 or the AA 1000. The assurance is performed by external assessors such as Ernst & Young or Deloitte. We hope that the Ranking Digital Rights project takes into account the existence of an assessment model that



differs from that of the GNI but that also serves to verify compliance with freedom of expression and privacy policies.

Along similar lines, we consider that certain criteria may not be feasible for companies with the most advanced policies on freedom of expression and privacy to meet at this time. For example, G1.8 asks whether a company has embedded its commitment to respect users' rights to free expression and privacy into its operating licenses with governments. Because the terms of operating licenses are generally dictated by the national law on telecommunications, companies rarely have the power to insert terms into them freely. Instead, they rely on internal policies and procedures that govern respect for these rights in company operations. While criteria G2.4 and others related to grievance mechanisms reflect tools that many companies are working to put into place, few companies in any industry have implemented the type of grievance mechanism envisioned by the UN Guiding Principles on Business and Human Rights at this time. A similar statement may be made regarding criteria P3.3 and P3.4 regarding transparency reports, which very few telecommunications companies are in the initial stages of producing. On a related point, telecommunications companies generally face strict limitations on their capacity to report on any aspect of their cooperation with government authorities for national security related purposes (see, e.g. Criteria G3.6).

With regard to criteria F2.4 and P2.4 (pursuing legal action in response to certain government demands that affect users' rights), the Industry Dialogue believes that legal action is one tool of many which a company might use to respond to government actions that appear to be illegitimate. As the GNI Implementation Guidelines recognize, a series of factors (including the likelihood of success and the potential impact of the case) will influence a company's decision to challenge a government request in a court of law. Balancing such factors in a way that produces a reliable score for the company would appear to be a difficult task.

Finally, the broad phrasing of G2.5 (whether the company has a process to evaluate and decide whether and how to comply with government demands to install specific equipment or software on their networks) may produce inconsistent results, due to the complexities of this issue in practice. In some jurisdictions, a telecommunications company is legally compelled to comply with government demands to install equipment on its networks, and it is often unaware of precisely how this equipment is used by the government. In some cases, monitoring equipment is purportedly placed on networks for legitimate purposes, such as to calculate a company's tax liability.

Thank you for giving us the opportunity to provide feedback during this process. We look forward to continuing our discussions in the coming months.

Sincerely,

Lisl Brunner

Facilitator for the Telecommunications Industry Dialogue