July 7, 2014

Rebecca MacKinnon
Director, Ranking Digital Rights
The New America Foundation
1889 L Street NW, Suite 400
Washington, DC 20036

Dear Rebecca,

The Telecommunications Industry Dialogue appreciates the opportunity to provide comments to Version 2 of the Ranking Digital Rights Phase 1 Methodology. The Industry Dialogue notes that several of our comments to earlier drafts of the criteria and methodology have been taken into account, and our interchanges have been a source of learning for participating companies, particularly in terms of gaining a deeper understanding of the concerns of their stakeholders. We hope that the Telecommunications Industry Dialogue Guiding Principles and reports published by several participating companies (all of which are available on our Web site, www.telecomindustrydialogue.org) are useful as you continue to compile relevant resources that inform the project.

We have a number of specific comments in relation to the indicators:

In relation to the indicators referring to Human Rights Impact Assessments (G1), we would note that while some companies have published information about the results of these assessments in certain situations, there are generally significant obstacles to revealing the details that emerge from HRIA and how the results influence company decision-making and suggest that there should not be a requirement for the results of HRIs to be made public. We also hope that the research done in relation to these indicators will recognize that different terminology can be used for activities that assess the impact of certain services or relationships on human rights, including for example supplier assessments, product and services reviews etc.

It is currently difficult to understand what indicator G4 regarding meaningful efforts by the CEO, would consider as full scoring and we hope that the accompanying guidance will make this clearer. We suggest that evaluation against this question should recognize for example the existence of policies with Board or equivalent oversight and company position statements as CEO involvement.
With regard to indicator G10, the Industry Dialogue would like to clarify that while companies may disclose the fact that they provide lawful interception capability or employ packet inspection technology,¹ they may seldom disclose information about specific instances in which this occurs.

In relation to indicator P4, it is difficult to understand what this question would mean in practice for telecom operators. We believe it would be unworkable for companies to, for example, provide a list outlining how long each different type of data is retained for and why. Telecoms operators are required to retain metadata in accordance with national laws (and so these will vary by country) and to bill customers, for example. We suggest that it may be more workable for this indicator to explore whether companies have appropriate data retention policies in place.

It would not be possible for telecom operators to publish the information required for indicator P5 as there would be so many potential variations. In some cases, the data and traffic data will transmit across various networks – for example, a phone call from one country to another country. When a customer is roaming in another country, they will be roaming on another company's network in that country and thus subject to the jurisdiction of the country in which they are roaming.

We suggest that, similarly to indicator F4, indicator P11 should say “if permissible under law.”

Additionally, the Industry Dialogue believes that the terms of service indicators throughout are more appropriately aimed at Internet companies than telecom operators. Telcom operators cannot and do not have one broad set of terms of service that apply to all customers in all of the countries in which they operate. Each country and each product or service would have its own terms and conditions and it would be a significant research undertaking to gather all of this information.

The Industry Dialogue would also highlight that indicators relating to a company’s response to private requests to restrict access to content (F5) or to provide user data (P8 and P12) are also less relevant for telecommunications operators and the services they provide than they are for Internet companies. While there are some exceptions (for example, participating companies may have content filters to restrict access to child abuse images through the IWF), telecommunications operators seldom receive requests from private parties outside of the context of legal proceedings.

Finally, the Industry Dialogue would welcome the opportunity for the Ranking Digital Rights project to work in collaboration with similar initiatives that rank and evaluate the performance of ICT companies, such as those compiled by Privacy International, the Electronic Frontier Foundation, and Reporters without Borders, to cite a few, as to avoid any possible duplication of efforts.

We look forward to continuing to engage with Ranking Digital Rights as the project moves forward.

Sincerely,

Lisl Brunner
Facilitator for the Telecommunications Industry Dialogue