



February 8, 2016

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62 Britton Street
London
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RE: Direct state access to telecommunications networks

The Telecommunications Industry Dialogue on Freedom of Expression and Privacy welcomes the inquiry from Privacy International addressed to several of our company members. We have prepared the following joint statement in response to your questions which you may publish on your website.

Companies participating in the Telecommunications Industry Dialogue work to respect the freedom of expression and privacy rights of their users and customers while complying with local law. The issue of direct state access to telecommunications networks is one that has long been of serious concern to the Industry Dialogue and Industry Dialogue companies feel strongly that government agencies should be required to obtain assistance from companies when they exercise their lawful powers to access communications data.

1) Defining direct access

The Industry Dialogue defines direct access as systems that allow government authorities real-time access to the networks of telecommunications operators without making specific or periodic demands of the operator.

Direct access systems are generally mandated in law. These laws typically specify the authorities who are allowed to engage in interception or access communications-related data and under what circumstances (e.g. for specific crimes). The laws usually require a court or senior government official to authorize the interception beforehand with an official order. In some cases there are oversight mechanisms or audits of these processes. There is, however, no requirement that government officials contact the operator before interception begins, and operators lack control over the surveillance, lacking information about its scope or who authorized it. Operators themselves may be subject to audits to ensure they do not interfere in the interceptions, and sanctions may apply.



2) Due diligence

Companies in the Industry Dialogue conduct 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. This is one of the elements of the ID Guiding Principles all member companies have adopted. Please see the below links to company reports on implementation of the ID Guiding Principles.

Licensed telecommunications operators are bound by laws and regulations in each of their markets that govern how the authorities may intercept communications, obtain access to communications data, or restrict the content of communications. Hence, mapping legal powers of governments over telecom networks is a key part of human rights impact assessments of operators. The pertinent legal framework may be contained in a variety of different norms and may not be subject to uniform interpretation by government authorities. In order to shed more light on telecom companies' legal obligations, the Industry Dialogue has brought together information on legal frameworks published by Vodafone Group in June of 2014 and February of 2015 and by Telenor Group in May of 2015 with additional material that the Telecommunications Industry Dialogue published in June of 2015.¹ In addition to the aforementioned company reports covering the pertinent legal frameworks in 39 countries, the Industry Dialogue published reports on five countries – Colombia, Jordan, Kazakhstan, Pakistan, and Russia – that represent the diversity of its member companies' global footprint. These materials indicate some instances in which direct access to telecom networks is mandated by law.

The Industry Dialogue and its participating companies aim to further expand on this resource this year. 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.² In addition, Telefónica has published a comprehensive Transparency in Communications 2016 global report with the objective of providing information on the regulatory environment facing the company in each country where it operates.³

¹ Information on Country Legal Frameworks Pertaining to Freedom of Expression and Privacy in Telecommunications available at <http://www.telecomindustrydialogue.org/resources/country-legal-frameworks/>.

² See http://www.teliacompany.com/globalassets/telia-company/documents/about-telia-company/ledr_oct2016_final.pdf.

³https://www.telefonica.com/documents/1258915/129595464/Telefonica_Transparencia_ENG_interactive.pdf/7b0a3737-e3be-4dd4-8d60-f47643b52a48



3) Challenging direct access

The issue of direct state access to telecommunications networks is one that has long been of serious concern to the Industry Dialogue. In July 2014 we stated, “governments should not conduct any type of registry, search, or surveillance by means of direct access to companies’ infrastructure without any technical control by the company or without the company controlling the scope of the data collection.”⁴

Industry Dialogue companies feel strongly that government agencies should be required to obtain assistance from companies when they exercise their lawful powers to access communications data in accordance with international standards; i.e., companies should retain the operational and technical means of giving it.

4) Market entry and direct access

Individual company decisions about whether and when to enter a particular market are highly sensitive and turn on a broad range of factors and information, both public and confidential or proprietary. The Industry Dialogue is unable to comment on such decisions.

5) Obstacles to bringing this practice to an end

In most cases, ending direct access arrangements would require law reform. The sensitivity of matters of national security and law enforcement, and the secrecy that direct access systems often entail complicate efforts to reforming laws and policies in this area. It is noteworthy that some countries’ laws prohibit operators from revealing that a direct access regime has been implemented. Such enforced secrecy is difficult to reconcile with the principle of transparency, according to which the rule of law is strengthened when laws are clear and publicly accessible.

6) Responding to direct access

Governments and ICT companies can foster greater accountability by increasing transparency around direct access systems. The Industry Dialogue suggests that governments make their laws, regulations and oversight mechanisms relating to direct access public. Increased transparency gives civil society and oversight bodies

⁴ <http://www.telecomindustrydialogue.org/wp-content/uploads/IDCommitmentUserPrivacy20141.pdf>
In addition, see submissions to David Kaye, available at <http://www.telecomindustrydialogue.org/wp-content/uploads/Telco-Industry-Dialogue-Submission-to-SR-FOE-Telco-Report-Nov-1-2016-1.pdf> and <http://www.telecomindustrydialogue.org/wp-content/uploads/Telco-ID-input-to-UN-Rapporteur-David-Kaye-Jan-2016.pdf>.



the basis to determine whether the resulting interference with the right to privacy meet the tests of legality, necessity, and proportionality.

Greater transparency regarding direct access practices will give the public more insight into how governments obtain and use direct access systems to monitor communications. This information will facilitate a more informed debate about whether these systems meet the rule of law principles of accountability, transparency, and respect for fundamental rights.

The Industry Dialogue supports collective efforts by governments, companies, civil society organizations, and other key stakeholders to advocate for laws and policies that meet international human rights standards. We particularly encourage governments, such as the members of the Freedom Online Coalition, to lead by example with respect to their own laws.

7) Understanding the value chain

The provision of international voice and data services depends upon a complex network infrastructure that involves a wide range of actors, including companies, standards bodies, and regulatory authorities. In addition to submarine cable operators and Internet Exchange Points, traffic in telecommunications networks is also routed via international clearinghouses and carriers and roaming hub services. We encourage other telecommunications and ICT industry companies to work together with us and the GNI to strengthen human rights commitments across the ICT value chain.

Thank you for the opportunity to present this information.

Sincerely,

Laura Okkonen
Nokia Group
Chair of the Telecommunications Industry Dialogue



Industry Dialogue Company Reporting

AT&T

http://about.att.com/content/dam/csr/Transparency%20Reports/ATT_Transparency_Report_July2016.pdf

Millicom

http://www.millicom.com/media/4562097/millicom_tr_law_2016_final_300316.pdf

Nokia

http://company.nokia.com/sites/default/files/download/nokia_group_human_rights_policy.pdf

http://company.nokia.com/sites/default/files/download/nokia_people_and_planet_report_2015.pdf

Orange

<http://www.orange.com/en/content/download/37558/1150696/version/2/file/Transparency+report+on+freedom+of+speech+and+privacy.pdf>

Telefónica

https://www.telefonica.com/documents/1258915/129595464/Telefonica_Transparencia_ENG_interactive.pdf/7b0a3737-e3be-4dd4-8d60-f47643b52a48

Telenor Group

https://www.telenor.com/wp-content/uploads/2015/05/Authority-Requests-Disclosure-Report-2015_04.pdf

Telia Company

http://www.teliacompany.com/globalassets/telia-company/documents/about-telia-company/ledr_oct2016_final.pdf

Vodafone Group

http://www.vodafone.com/content/index/about/sustainability/law_enforcement.html
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