**Global Network Initiative**
*Protecting and Advancing Freedom of Expression and Privacy
in Information and Communications Technologies*

**Issues for Consideration in GNI Implementation Dialogue**

## A. Background

The GNI Principles and Implementation Guidelines were drafted using a multi-stakeholder approach involving companies, investors, academics and NGOs. Among the companies were three internet firms (Google, Yahoo and Microsoft) and three telecommunications firms (Vodafone, France Telecom and TeliaSonera) and for this reason the content of the GNI's Principles and Implementation Guidelines reflects the specific circumstances faced by these companies.

Today there is great interest in understanding how the GNI's Principles and Implementation Guidelines may be adapted to apply to other segments of the ICT industry, such as equipment manufacturers, consumer electronics brands, handset manufacturers and the providers of security and filtering services, enterprise management software and databases. The GNI has established an "Implementation Dialogue" to achieve this objective.

## B. Key Issues

Since the launch of the GNI in October 2008 the organization has engaged in conversations with a wide variety of ICT companies including semiconductor manufacturers, software providers, equipment manufacturers, consumer electronics brands and telecommunications services providers. These conversations have tended to converge on three important questions:

1.  What do ICT companies view as their main privacy and freedom of expression risks and opportunities?

2.  What do these risks and opportunities reveal about the relevance of the existing GNI Principles and Implementation Guidelines?

3.  Can the existing GNI Principles and Implementation Guidelines be adapted or supplemented to increase their relevance to a wider range of ICT companies?

Despite the diversity of companies that together constitute the whole ICT industry, views about the relevance of the existing GNI Principles and Implementation Guidelines have been remarkably consistent.

First, and very importantly, there are large sections of the GNI documents that are entirely relevant to the whole ICT industry. This includes, for example, the top level commitments to protecting and advancing freedom of expression and privacy and the commitments relating to responsible company decision making, human rights impact assessments and multi-stakeholder collaboration to advance human rights.

Second, there is broad alignment around four **interrelated** questions that need further exploration in order to increase the relevance of the principles and implementation guidelines to a wider range of ICT companies. This document sets out these four interrelated questions in more detail and will be used to inform the GNI Implementation Dialogue.

**1. Understanding freedom of expression and privacy risk associated with <u>product functionality</u>.**

The GNI's documents are currently focused on the level of the *content* (e.g. circumstances in which a company should/ should not remove content) and at the level of *personal information* (e.g. circumstances in which a company should/ should not disclose personal information to law enforcement agencies).

However, to become relevant for a wider group of companies, we need to explore how the GNI documents may apply at the level of the *product functionality* – in other words, what impact the product functionality created by the ICT company can have on freedom of expression and privacy. Key questions include:

- What ability does an ICT company have to design or control the functionality of products to minimize censorship or illegitimate access to personal information? For example, this could include network equipment functionality that enables intercept and surveillance, or pre-installed products in consumer electronics such as filtering and surveillance software.

- Are there ways to design future ICT networks or create global product standards that will minimize risks to privacy and freedom of expression at every stage of the ICT value chain?

- How can ICT companies collaborate on a common freedom of expression and privacy agenda given that multiple companies products work together as parts of one overall, interdependent network?

**2. Human rights <u>due diligence</u> on who ICT companies sell to, and understanding the <u>intended use</u> of the ICT product, service, technology or functionality.**

The GNI documents already have content relating to the use of human rights risk assessments to inform company strategies and approaches to freedom of expression and privacy. However, to be more relevant and useful for a wider group of ICT companies, the following questions would need to be explored in further depth:

- How can ICT companies assess the risk that customers (i.e. public sector or enterprises) will use the product, service, functionality or technology being provided to violate human rights?

- What strategies can be put in place to mitigate that risk?

- What would due diligence look like at the level of the country (i.e. market entry or exit) and at the level of the customer (i.e. customers a company could choose not to sell to)?

- Are there certain customers (e.g. public security customers in certain high risk locations) that an ICT company may choose not to sell to, and how can a company decide?

- There are many relevant laws that already exist for customer relationships in high risk locations (e.g. export control laws), but what guidance or criteria may exist beyond this for customer engagements that may be 'legal but unethical', or which may be invasive of privacy and freedom of expression?

- How can an ICT company interpret the intended use of the ICT product, service or technology when the same functionality can be used for good or for ill? For example, the same functionality that allows remote access to a PC for maintenance and trouble shooting can have more negative applications too. What are the boundaries of responsibility for the ICT company?

**3. Many ICT companies provide <u>consulting advice</u> alongside the product, service or technology.**

Many ICT companies not only provide hardware or software products "off the shelf" but also provide consulting advice and guidance on how to make the best use of the product or service. While it certainly can be difficult to "understand the intent" when selling a product or service "off the shelf", this position is less credible when consulting services are provided to customers alongside the product. Some questions to explore include:

- What kinds of consulting services are provided that might advise customers on how to use products for censorship or to facilitate illegitimate access to personal information?

- Can human rights guidelines be provided on the types of consulting advice that should be provided?

- What responsibility does the ICT company have if the advice about the use of their products is provided by contractors that are independent of the company – but who may have been trained by them?

**4. Responding to <u>government demands and mandated standards</u>.**

There is a concern that companies are going to increasingly receive requests and demands from governments to modify hardware and software products in ways that will make them more freedom of expression or privacy invasive – for example, by mandating certain product functionalities or software installations. There is a great deal of content in the GNI documents on how to respond to government demands, but (as described above) these cover the level of the *content or personal information*, not the level of the *functionality*. Questions include:

- How should ICT companies' respond to government demands to alter functionality or adhere to certain product standards?

- How can ICT companies collaborate with each other and with other stakeholders in response to such mandates?

**<u>D. Timeline</u>**

During the two years of negotiations to create the GNI documents the group considered multiple examples, case studies and scenarios relating to the specific circumstances faced by internet and telecommunications companies. A huge amount was learned during these discussions and it was only as a result of that dialogue that we were able to agree the final text – and now the same will also be true for companies from other parts of the ICT industry.

The questions contained in this document represent the starting point for this further exploration, which the GNI hopes to complete by the fall of 2010.