GNI Submission to US State Department on the US National Action Plan for Responsible Business Conduct

Background

The Global Network Initiative (GNI) welcomes this opportunity to provide input into the United States government's second National Action Plan (NAP) on Responsible Business Conduct. The decision to conduct a NAP reflects a commitment by the US government (USG) to continuing to uphold and support the OECD Guidelines on Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, two critical frameworks for understanding responsible business conduct. The GNI Principles on Freedom of Expression and Privacy, together with our more detailed Implementation Guidelines, build on these international documents to provide consistent and more specific guidance to companies in the information and communication technology (ICT) sector.

GNI is a unique, multistakeholder initiative that brings together leading academics, civil society organizations, ICT companies, and investors in support of freedom of expression and privacy rights. We build trust and collaboration across our diverse membership through an independent assessment process, facilitated learning activities, and collective advocacy. GNI is also committed to engaging in and supporting external processes focused on the advancement of these rights, and is actively engaged in numerous such initiatives through the Christchurch Call, the Council of Europe, the Danish Tech for Democracy Initiative, the Freedom Online Coalition, the OECD, and various UN entities and processes.

Context

The timing of this NAP process coincides with a period of significant disruption. Networked technologies are changing the nature of social, political, and economic activities. As a result, the relationship between governments, companies, civil society, and citizens is also evolving. These changes raise questions about how old rules should apply and what new rules may be necessary to govern these technologies. These are important questions that should be addressed squarely by democratic and rule-of-law abiding states, responsible companies, and engaged civil society

and citizens. Failure to engage thoughtfully, transparently, and humbly risks ceding space to those who seek to reinterpret existing norms and establish new ones that may be inconsistent with human rights principles and democratic values.

The NAP is, at its core, an opportunity for the US government to demonstrate the many ways it is engaging on these matters *and* a process for deepening and expanding such efforts. When it comes to technology and human rights, we encourage the US government to use the NAP to achieve three core and interrelated objectives:

- **Articulate a Positive Vision**: The ICT landscape is increasingly contested and fragmented. Earlier efforts to expand Internet connectivity and interoperability, as well as to protect users' rights, relied upon a governance approach that disfavored government regulation and relied heavily on private and multistakeholder efforts. Today's critical challenge is to identify a coherent approach to ICT governance that affords a role for government regulation consistent with human rights principles, while continuing to accommodate (and where possible enlarging) space for voluntary efforts, co-governance, and creative community-led initiatives.
- **Lead by Example**: The U.S. government's ability to convince other governments and non-governmental stakeholders of the value of human rights-aligned approaches to ICT sector governance hinges in no small part on its ability to lead by example. Although the reach of such efforts may depend in part on other branches of government, there are concrete and important steps that the executive branch can undertake on its own to demonstrate leadership.
- **Build Bridges with Partners**: The U.S. government's global impact on ICT and digital policy has always depended in large part on collaboration and coordination with like-minded, non-governmental partners. The proliferation of new contested issues and spaces underscores the need to enhance mechanisms for fostering this collaboration.

GNI has made a few, illustrative suggestions of steps we believe would be achievable and impactful along these lines below. We acknowledge that there are many more ideas that would be consistent with and could help achieve these objectives, and we look forward to additional opportunities to engage with US government officials and other stakeholders to explore those over the coming months.

Recommendations

Positive Vision

1. *Guidelines for rights-respecting tech regulation.* The NAP should initiate a process that convenes relevant USG agencies and offices, together with key industry and civil society partners, to outline a set of human rights-based recommendations that may guide approaches to tech regulation. These recommendations should include both procedural and substantive good practices. The recommendations can be general, and/or adapted to specific issue areas such as privacy, content regulation, or competition.

   The purpose of this NAP commitment would not be to develop detailed, prescriptive administrative positions on specific topics (although those may be worth developing through separate processes), but rather to articulate guidance to help ensure that the governmental approaches to tech regulation take human rights commitments into account. These recommendations could help set clear expectations for the US Congress, as well as express a clearer USG articulation of how democratic and human rights committed states should approach tech regulation, which will help USG officials more clearly and consistently engage with like-minded partners.

2. *Reinvigorating the Freedom Online Coalition* - Through the NAP, the USG should articulate a vision to help strengthen and expand the FOC's engagement, membership, and impact. The rights-affirming vision of ICTs is perhaps most comprehensively articulated in the various founding and subsequent articulations by and initiatives of the [Freedom Online Coalition](#) (FOC). The USG helped establish the FOC in 2011 and has been a critical leader of the organization since. Despite this strong and consistent engagement, the USG has never chaired the FOC.

   The USG should articulate an agenda for the FOC that addresses at least three, key priorities. First, building on the FOC's core mandate to facilitate multilateral coordination in support of digital rights, it should deliberately and more formally expand these efforts to additional multilateral venues, including the Council of Europe (CoE), the Organization of American States (OAS), the Organization for Economic Cooperation and Development (OECD), and the UN First Committee. These efforts can also help suppor enhanced coordination with the private sector and civil society in and around those forums. Second, the FOC should re-double its efforts to recruit new member states, including by expanding outreach to some of the 20+ non-FOC members that recently signed the Declaration for the Future of the Internet, whose principles are largely aligned with the FOC's. This work should also include efforts to continue expanding the circle of non-state actors currently being engaged through the FOC's Advisory Network, task forces, and working groups and articulate clear criteria and process around that engagement. Finally, the USG should work to establish a financing facility to create a more stable and

significant financial base to fund the FOC's expanding activities. Additional funding can support the FOC's ability to hire staff in critical nodes such as New York, Paris, and Geneva to better coordinate FOC work, as well as to improve coordination on diplomatic and non-state outreach.

Lead by Example

1. *Leverage purchasing power for more responsible surveillance tech* - The USG should develop a coherent approach to using its bully pulpit and procurement power (e.g., via the DEA, FBI, DHS, etc.) to incentivize more responsible business conduct by companies providing digital forensic, surveillance, and intrusion tools to governments ("surveillance tech"). This would build on existing and laudable efforts to control and provide guidance for exports of surveillance tech. This should include efforts to use USG bidding and contracting processes to encourage enhanced expectations and transparency around human rights due diligence, including know your customer processes, by companies providing these products and services.

   These steps would demonstrate further leadership and catalyze parallel efforts by other democratic states. In this regard, it may be worth looking at the model that the USG has put in place for encouraging more responsible business conduct from private security companies via the International Code of Conduct Association for Private Security Service Providers, ISO Standards 18788 and 28007, and U.S. State Department contracting practices.

2. *Institutionalizing support for open-source public digital infrastructure* - The USG should work with Congress to build on and institutionalize its laudable record of supporting digital technology by establishing a permanent commitment to funding and supporting the development of technologies that expand access, affordability, security, and usability of democracy and rights-supporting tools.

   The USG has successfully supported the development and promoted the use of a variety of technologies that are key to today's ICTs, from the early conceptual work around networked computing by J.C.R. Licklider at the Defense Advanced Research Projects Agency, to support from the Open Technology Fund and the State Department for the Signal Protocol for end-to-end encryption. Most recently, the USG announced a new "Grand Challenge on Democracy-Affirming Technologies" as part of its Summit for Democracy. Creating more predictability and sustainability around federal government

support will catalyze further investments from other sectors and allow for better long-term planning and investment.

Build Bridges

1. *Facilitate digital rights risk assessment* - The USG should commit to establishing a mechanism through which US embassy and consular officials meet regularly with local civil society, journalists, technologists, and human rights defenders, as well as partner government missions and ICT company representatives, to identify and communicate local, context-specific ICT-related risks in a timely and actionable manner.

   ICT companies, including those that are GNI members, use human rights due diligence tools and stakeholder engagement to understand, anticipate, and mitigate human rights risks associated with their products and services. The USG should leverage its vast and expert network of in-country assets to encourage and support ICT company risk assessment, especially in high-risk contexts. This approach could begin with a few pilot missions in especially challenging countries and then expand over time.

2. *Strengthen support for collaboration on digital rights* - The State Department should use the NAP to establish a regularly occurring [International Visitor Leadership Program](#) (IVLP) to bring human rights defenders and digital rights activists to the United States to meet with and build relationships with USG officials, ICT companies, civil society organizations, investors, and academics.

   GNI has fourteen years of experience facilitating relationship and confidence building across distinct ICT-focused constituencies. In our experience, these relationships help foster deeper understanding and collaborative approaches to problem solving on a range of challenges, including those associated with the human rights risks of ICTs. The State Department's experience developing and funding IVLPs positions it well to support further bridge building along these lines.

3. *Facilitate multistakeholder collaboration around access to data for digital rights research* - The USG should use the NAP to establish a forum to bring ICT companies, researchers, civil society organizations, and relevant government agencies together on a regular basis to discuss how to facilitate access to data held by government agencies and companies that would support digital rights efforts.

   This work could build off and help support existing efforts, such as the [Information Integrity R&D Interagency Working Group](#), and could help coordinate research agendas and collaboration to avoid duplication and gaps. It can also help identify obstacles that U.S. government agencies and regulators may be well positioned to help address. GNI,

together with a variety of other civil society partners, has established an [Action Coalition on Meaningful Transparency](#) to help facilitate efforts like this and stands ready to engage with relevant USG offices to support work along these lines.

Closing

The task of putting principles into practice is necessarily aspirational and ongoing. This NAP is neither the beginning, nor the end of US government efforts to support responsible business conduct. However, it is an important opportunity that should be capitalized upon to reaffirm and expand US leadership on this topic. Nowhere is the need and the opportunity for this leadership more pronounced than on matters of technology and human rights. We close by reiterating our appreciation for the opportunity to participate in this process and expressing our willingness to continue engaging constructively and collaboratively moving forward.