

**GNI Submission in Response to Version 3.0 of UNESCO's  
"guidelines for a multistakeholder approach in  
the context of regulating digital platforms"**

## QUESTION 1

Should we look to a principle-based document or a document that also offers detailed regulatory guidance for digital platforms?

Perspective 1 - The level of detail that the Guidelines provide in most of the sections is necessary, which includes principles and regulatory guidance. This is an example of a written comment that further explains this perspective: *"We appreciate the Guidelines for recognizing and incorporating the following:*

1. *Detailing the criteria for composition and scope of powers of independent regulators,*
2. *Requiring human rights compliance and transparency in respect of both content moderation and content curation functions performed by digital platforms,*
3. *Special attention to the employment status and conditions of work of human moderators as a factor affecting the quality of content moderation efforts,*
4. *Significance of digital platforms conducting periodic human rights due diligence of their operations,*
5. *Specific attention to gendered disinformation and online gender-based violence.*

*We believe there is still room for continuing improvement with respect to several of the aforementioned areas and a need for UNESCO to provide more granular guidance, as well as a few additional areas of concern. While the document currently provides some detail on the need to consider the differences between enumerated categories of services, further guidance is necessary to assess the inclusion of different types of services and enable relevant actors to make appropriate determinations."*

Perspective 2 - The Guidelines should be a principle-based document. This is an example of a written comment that further explains this perspective: *"The guidelines should be slimmed down considerably to include general requirements of states, regulators, and platforms with a few specific requirements – for example, transparency, systems and processes, risk assessments, etc. with the remainder moved into a separate annex. The details about the constitution of the regulator could also be moved into a separate document."*

Perspective 3 - Balance between both a principle-based document and a detailed regulatory principles and regulatory guidance.

18. Should we look to a principle-based document or a document that guides the review and implementation of regulatory processes? See above for the more detailed explanation of the possible Perspectives. Please note you are welcome to submit another Perspective by selecting 'Other.'

Perspective 1 - The level of detail that the Guidelines provide in most of the sections is necessary, which includes principles and regulatory guidance.

Perspective 2 - The Guidelines should be a principle-based document.

Perspective 3 - There should be a balance between a principle - based document and should add some level of detail in relevant sections.

Other

19. Please explain why you believe this is the best approach.

If applicable: please include your suggestions and specific changes to incorporate in different paragraphs.

As GNI stated in its earlier [submission](#) on version 2.0: “At a general level, we recommend that UNESCO should reframe this exercise as being focused on ‘safeguards to protect freedom of expression and access to information’ in the context of government initiatives around regulation of digital platforms (rather than putting forward a “framework,” “guidance,” or “guidelines”). This would help mitigate the risk, which was clearly articulated by many key stakeholders at the Global Conference, that this document and any resulting dissemination or discussion thereof will be misinterpreted as a mandate, encouragement, or approval of any particular government effort.”

Beyond this principles-level focus, GNI is also concerned that the Guidelines’ focus on top-down content regulation as the primary mechanism for addressing platform-related concerns predetermines a strategy that should be established by each member state based on democratic debate and process. This focus results in an overly narrow set of prescriptions. For instance, in paragraph 9 of version 3.0, UNESCO states that the Guidelines “apply regulation in a manner that is consistent with international human rights standards including with Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR)<sup>10</sup>, which recognizes that any restriction to freedom of expression must be provided by law, and is necessary and proportionate,” without acknowledging the first provisions of that Article, which sets out the affirmative and unrestricted right to hold opinions without interference. This narrow approach implies inaccurately that the only analysis necessary is whether any restrictions imposed on freedom of expression comply with the provisions in part three.

Among the wide-range of approaches that states might take to content regulation, the Guidelines continue to rely on “lessons from. . . broadcast regulation.” As GNI noted in our second [submission](#) to UNESCO, “Approaching internet regulation from a broadcast-like, license-based approach would create significant risks for freedom of expression and could undermine the co-existence and mutual benefits of and between the legacy media and digital platforms.” The prevailing jurisprudence and experience have shown that broadcast regulation approaches create risks of censorship in the form of disproportionate website blocking, network disruptions, and pro-incumbent manipulation of public opinions.

## QUESTION 2

What types of digital platforms should be included in the scope of the Guidelines?

Perspective 1 - Risk based approach. This is an example of a written comment that further explains this perspective: *"when considering scope, a risk-based approach is most appropriate, i.e. a focus on actors that are most likely to have an impact on either a significant number of the population or on vulnerable groups"*.

Perspective 2 - Size and market share. This is an example of a written comment that further explains this perspective: *"Regulations should not concern companies below X size or X market share, to ensure that there are not significant barriers to entry for new platforms and promote competitiveness. However, some requirements – e.g., in relation to content management or transparency be required of all companies regardless of size"*

Perspective 3 - Services, only user to user. This is an example of a written comment that further explains this perspective: *"The Guidelines should focus on those digital platforms that provide user to user services only. Leaving aside search engines, messaging apps, etc."*

20. What types of digital platforms should be included in the scope of the Guidelines? See above for the more detailed explanation of the possible Perspectives. Please note you are welcome to submit another perspective by selecting 'Other.'

Perspective 1 - Risk based approach

Perspective 2 - Size and market share

Perspective 3 - Services, only user to user

**Other**

21. Please explain why you believe this is the best approach. If applicable: please include your suggestions of specific changes to incorporate.

As GNI noted in our last [submission](#), "notwithstanding our previous recommendation to UNESCO, this draft still fails to draw out the relevant differences that distinct services have regarding visibility, influence over, and directionality of content." This comment remains true and is symptomatic of the broader failure of UNESCO's approach to recognize and appreciate the nuances that are required to regulate different issues or concerns that may be relevant to "digital platforms."

The reality is that there is no one-size-fits-all approach to the scope of companies that should be covered in content regulations. GNI's *Content Regulation & Human Rights Policy Brief* ("Policy Brief") explains that in the information and communications technology (ICT) context, the principle of necessity under international human rights law suggests that "lawmakers should focus regulation on particular services in order to minimize its impact on expression." While the ICT ecosystem is complex and constantly evolving, "as a general rule, the further away a particular service is from the end user, the less visibility and granular control it has over user-generated content. Lawmakers and regulators would be well served to carefully consider which types of private services, at which layers in the ecosystem, are most appropriately positioned to address the specific concern(s) at issue and constrain their approaches to those best positioned to address those concerns." In addition, UNESCO would be well served to consider that determinations on scope may differ considerably between countries that represent large or lucrative markets for platforms, and those that do not.

Finally, the Guidelines explicitly focuses on "companies," without recognizing that some digital platforms are provided by not-for-profit entities, while others may be partially or fully state-owned or controlled. The Guidelines should either explicitly acknowledge these distinct forms of ownership and clarify which provisions may apply distinctly based on ownership structure, or they should articulate a compelling justification for limiting their focus to private companies.

### QUESTION 3

How should a multi-stakeholder approach in a regulatory process look?

This is an example of a written comment that may explain further this question:

*"In order for civil societies to play their critical role effectively, they need proper access to digital platforms, their decision makers and formalized channels with regulators and policymakers that will facilitate multistakeholder approach in a meaningful way. Social media platforms must engage with local and regional human rights experts, civil society organizations, and other relevant stakeholders to advise on and monitor each platform's response and the impact their self-regulatory measures have on human rights. National regulators and policymakers should establish proper expert groups and advisory committees where CSOs' representatives are adequately represented and can contribute to developing regulatory standards in this area. While multistakeholder approach is being emphasized throughout the text of the Guidelines, regrettably, the Guidelines fail to provide any granular operational recommendations how to safeguard CSOs active role in consultations on the operation of the self-regulatory and regulatory system".*

When responding to this questions think on the role of the governments, civil society, media and journalism.

22. Overall, how should a multi-stakeholder approach in a regulatory process look? See above for the more detailed explanation of the possible Perspectives.

Perspective 1 - The level of description of multistakeholderism in the Guidelines is sufficient and does not require further detail.

Perspective 2 - It would be useful to describe the role of the different stakeholders in a more detailed manner.

23. Please explain why you believe this is the best approach. If applicable: please include your suggestions of specific changes to incorporate.

Version 3.0 contains some bracketed text articulating several categories of relevant stakeholders and otherwise continues to emphasize that content regulation should be “open, transparent, and evidence-based and should allow for meaningful multistakeholder participation,” in line with GNI’s [initial feedback](#) on version 1.0. Unfortunately, it fails to take up the recommendation made in our [second submission](#) that “the next iteration should explain in detail what each of [those] terms means in the context of legal and regulatory development,” as well the suggestion to refer more explicitly to and more directly link these Guidelines to UNESCO’s existing ROAM principles.

As GNI has continuously emphasized throughout our participation in this endeavor, the process by which regulation is developed is critical in determining the likelihood that the substance will be effective and rights-respecting. It is therefore imperative that UNESCO provides a clear outline of process-related expectations and related metrics. This would serve as a guide for well-intentioned law-makers, and as an accountability mechanism through which UNESCO should evaluate its own engagements with regulators. In addition, it is critical that UNESCO also establish a process by which it will receive feedback from non-governmental stakeholders about regulatory efforts that it is involved with and a mechanism for determining when any particular member states’ efforts may run afoul of these process recommendations. In order to avoid being used as cover for regulation that is likely to infringe on human rights, UNESCO must commit to being transparent in its assessment of such feedback and to publicly calling out and distancing itself from any resulting issues.

Finally, UNESCO should also strengthen the language in the Guidelines (paragraphs 58 and 59) around stakeholder engagement by digital platforms to make it clear that this is a critical and necessary, not an optional, aspect of regulatory design.

24. More specifically, should the Guidelines further address the role of the media and journalism? If yes, how so?

25. More specifically, should the Guidelines provide further information about the role of the Civil Society? If yes, how so?

26. More specifically, should the Guidelines provide further information about the role of the governments? If yes, how so?

## QUESTION 4

During the second open consultation of the Guidelines, the content management section received a significant amount of comments. In those, there was agreement about:

- The necessity to ensure that the Guidelines aim to safeguard freedom of expression and information in the context of any digital platform regulatory process, regardless of the regulatory goal.
- The importance of focusing the Guidelines on the structures and processes to moderate and curate content - and not in individual pieces of content.
- The importance to refer to legitimate restrictions of content as stated in international instruments of human rights.

27. During the second open consultation of the Guidelines, the content management section received a significant amount of comments. Does version 3.0 suitably incorporate these points? Are we missing something else about content management? See above for the more detailed explanation of the possible Perspectives.

Perspective 1 - These 3 issues have been suitably incorporated in the new version of the Guidelines.

Perspective 2 - The guide requires fine-tuning some details related to this section.

28. Please explain why you believe this is the best approach. If applicable: please include your suggestions of specific changes to incorporate.

GNI has consistently articulated support for “systems-based approaches” to regulation, over those that attempt to hold companies responsible for specific decisions they make regarding content and appreciates UNESCO’s efforts to underscore these three points. While the focus on systems and processes is appropriate, as GNI stated in our [last submission](#), without appropriate clarity and safeguards, a systems-based approach can still “empower[] regulators to bend private companies’ systems and processes toward inappropriate ends.” Notwithstanding some improvements that have been made, there is still more that could be done to clarify the human rights duties of state actors, including regulators, when developing and enforcing regulations, and to improve the articulation of

“responsibilities of digital platforms,” consistent with the UN Guiding Principles on Business and Human Rights (UNGPs).

For instance, while it is appropriate to expect companies to design their products, features, and systems in accordance with human rights principles, it is also important to recognize that these principles have distinct implications in the context of company decision making. For example, while the principle of “legitimacy” enumerates specific purposes that states can cite as a legitimate basis for restricting freedom of expression, as private actors companies are not similarly constrained in terms of what expression they may choose to restrict on their platforms. As GNI explained in our [last submission](#), “there is an ever-present risk that states could misuse regulation to prohibit or circumscribe speech in ways they would not otherwise be able to do directly.” Unfortunately, despite being well understood, this distinction is still not articulated in the third iteration of these Guidelines.

Furthermore, while it is appropriate to call for “fair” and non-discriminatory application of company policies, rules, and actions regarding content, it is simplistic and unrealistic to insist that they be applied “consistently,” especially considering the admonition that such actions must also “the context, the wide variation of language nuances, and the meaning and linguistic and cultural particularities of the content.” Finally, GNI [pointed out](#) that version 2.0 did “not acknowledge the fact that user reporting mechanisms are unfortunately abused in many contexts to harass, intimidate, and silence other users.” Regrettably, this concern remains unacknowledged and unaddressed in version 3.0.

Additional evidence of the lack of coherence in the Guidelines’ provisions on content moderation can be found in the reference to “*systematic* risk assessments,” which implies a process-driven approach to risk. This is in contrast to the “severity” approach set out in the UNGPs and the “systemic risk” approach set out in the Digital Services Act and other regulatory approaches, which encourage prioritization of risks based on criteria such as likelihood, as well as the scale, scope, and remediability of impacts.

## QUESTION 5

Future Proofing. How can we ensure that the guidelines are flexible enough to adapt to new and emerging technologies?

Perspective 1. The Guidelines should have a mandatory revision in X number of months. This is an example of a written comment that may explain further this question: *“The guidelines should be a living document with a mandatory process of revision every 18 months when new significant technology developments arise and require and require an specific assessment”*

Perspective 2. The Guidelines do not require further revision.

Perspective 3. Other.

29. How can we ensure that the guidelines are flexible enough to adapt to new and emerging technologies? See above for the more detailed explanation of the possible Perspectives.

Perspective 1. The Guidelines should have a mandatory revision in X number of months.

Perspective 2. The Guidelines do not require further revision.

#### Other

30. Please explain why you believe this is the best approach. If applicable: please include your suggestions of specific changes to incorporate.

The best way to “future proof” the Guidelines is to conduct thorough consultation and assessment on the objectives and risks of this exercise, in order to develop a coherent set of indicators against which impacts - both positive and negative - can be measured. If UNESCO is serious about ensuring that the Guidelines will safeguard freedom of expression, it must take seriously the calls that free expression experts and advocates have been making and take the time needed to conduct an impact assessment on the Guidelines themselves. This would not only help identify and mitigate unintended consequences of the exercise, but also model appropriate process-related good practice to the very regulators that it hopes to influence.

To this end, GNI recommends the following resources, which may be useful:

- The Internet Society’s [Internet Impact Assessment Toolkit](#);
- The UN B-Tech [resource](#) on regulating business conduct in the technology sector; and
- The Danish Institute for Human Rights’ [work](#) on Human Rights Impact Assessments for digital development projects.

Once potential risks are identified, a set of impact-related indicators can be established and UNESCO can then put in place mechanisms for gathering and evaluating feedback *on a regular and ongoing basis*. As stated in GNI’s response to Question 3 above, this will allow UNESCO to determine when any particular member states’ efforts may run afoul of the process and to appropriately call out and distance itself from such measures.

## QUESTION 6

Groups have been consulted to introduce a gender and intersectional approach in the Guidelines. Are there specific elements that should be considered to ensure the guidelines are sensitive to gender and intersectionality?



The gender perspective looks at the impact of gender on people's opportunities, social roles and interactions

An intersectional approach shows the way that people's social identities can overlap, creating compounding experiences of discrimination.

31. Are there specific elements that should be considered to ensure the guidelines are sensitive to gender and intersectionality? See above for the more detailed explanation. If possible, refer to the corresponding paragraphs or to the need to add new specific provisions.

Draft 3.0 has a section on “specific measures to counter online gender-based violence.” However, the provisions in this section do not define either the intended scope of what is covered by the term “gender” (although it seems to focus specifically on “women and girls”) or on what is meant by “violence” (although it sets out prescriptive measures focused on “systemic risks to women and girls” and “gender bias”). Gender-related risks are systemic and critical ones for most platforms. However, the lack of clarity and consistency within this section, and the absence of any articulated justification for why other at-risk and marginalized groups are not included, raises questions and concerns. Meanwhile, the concept of intersectionality, which can be a useful way to understand and assess platform-related risks, is not referenced in version 3.0.

To the extent that gender-specific section provisions remain in the text, the following language may be incorporated into the “specific measures to counter online gender-based violence” section to further clarify its intent and scope:

**“Gender is socially constructed; differs between and within cultures; and includes differences in roles, responsibilities, opportunities, needs and constraints. Addressing gendered issues requires recognizing other intersecting identities—ethnicity, religion, disability, age, etc—and the existence of more genders than the heteronormative man-woman binary. Furthermore, confronting gendered harms requires understanding how inequalities affect men and boys as well as women and girls.”**

Further suggestion to expand demographic in paragraph 60(e):

“Conduct annual human rights and gender impact assessments, including algorithmic approaches to gender-specific risk assessment, with a view to identify the systemic risks to **women, girls and others marginalised on the basis of their gender** and to adjust policies and practices to mitigate such risks more effectively.”

Further suggestion to expand demographic in paragraph 60(g):

“Create dedicated, **gender diverse** engineering teams who are specifically trained to develop algorithmic solutions to **curb online gender-based violence**.”

**QUESTION 7.**

## General and specific comments

If applicable, please refer to the specific paragraph of the current 3.0 version of the Guidelines.

32. Beyond the previous questions, please add any general or specific comment to the different sections or paragraphs of the guidelines.

In line with our response to Question 6 above, GNI reiterates its [previous recommendation](#) which “strongly encourage[d] UNESCO to consider narrowing the focus, for instance by removing the section on elections, and engaging in robust, thematic consultations with experts in each of the specific fields that remain within scope.” As a general matter, “the broader and more ambitious [the Guidelines are], the more background research, expert engagement, and consultation will be required to ensure that it does not duplicate existing efforts, overly-simplify complex issues, or unintentionally displace or undermine existing good practice.” For instance, while focus on the “integrity of elections” and “emergencies, conflict, and crisis” may be highly relevant for some platforms, they may be less relevant and therefore unnecessarily burdensome for others.

Separately, while GNI appreciates the extensive focus in version 3.0 on transparency-related measures, the current draft fails to acknowledge the legitimate restrictions that may exist for limiting transparency, as well as the ways in which full transparency can at times create risks to freedom of expression and privacy. Going forward, GNI recommends that UNESCO consult the [Action Coalition on Meaningful Transparency](#)’s resources, including the [discussion paper](#) on “Categorizing Barriers to Transparency.”

Finally, notwithstanding GNI’s [earlier recommendation](#) highlighting “the vital role that encryption and anonymity play in preserving and protecting privacy and freedom of expression in certain products and services,” version 3.0 continues to lack any references to, much less guidance on, these critical issues. GNI also reiterates our previously expressed concerns about the manner in which the Guidelines seem to draw on broadcast regulation as a model for platform regulation, and its continued reliance on the under-conceptualized idea of “information as a public good.”

**QUESTION 8**

## Consultation process

33. The consultation process of the Guidelines is available for revision in the UNESCO Internet for Trust webpage (<https://www.unesco.org/en/internet-conference>). Please provide any comments you would like to give to evaluate this process.

GNI's [first submission](#) underscored "that UNESCO should slow down and scale back this initiative considerably in order to conduct the type of thorough, multistakeholder consultation that an effort of this import deserves, and which can lead to the kinds of durable, rights-enabling impacts that UNESCO envisions." GNI appreciates UNESCO's efforts to improve the consultation process on the Guidelines. However, we note that our recommendation to open up and provide additional transparency about the role of the so-called "Catalyst Group" has not been addressed, despite repeated requests for clarification. GNI also notes with concern the impression that a number of digital rights groups have expressed that their input, while welcomed, has not been heard or taken seriously. When credible civil society organizations express views - whether during in-person meetings or through written statements - those concerns should be taken seriously, regardless of whether the individuals or groups expressing those concerns have submitted them through the formal channels that UNESCO has established.

Dozens of GNI members have participated in the consultations on these Guidelines. Our engagement stems from our long-standing respect for UNESCO and its role in protecting freedom of opinion and expression globally. GNI hopes that these comments, as well as those of our members, will be taken into account going forward.