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**RE: Submission on freedom of expression and the telecommunications and internet access sector**

Telefónica is pleased to provide input to the Special Rapporteur’s study on freedom of expression in the telecommunications and Internet access sector.

Telefónica is a telco company aware of the new challenges posed by the Digital Revolution we live in and the impact of telecommunication technologies in our economies, societies and culture. We have more than [322 million clients](https://www.telefonica.com/en/web/about_telefonica/geographic_spread) in [21 countries](https://www.telefonica.com/en/web/about_telefonica/geographic_spread). Telefónica is a 100% listed company with more than one and a half million shareholders, traded in several of the most important stock markets around the world and an average of 125,000 professionals. Consolidated revenues of 25,235 euros in January-June 2016 and more than 347.5 million total accesses at June 2016: more than 272.5 million mobile phones accesses; 39.2 million fixed telephony accesses; more than 21.6 million Internet and data accesses and 8.4 million pay TV accesses.

Since 2013, Telefónica, as member of the Industry Dialogue (ID) and observer of the Global Network Initiative (GNI), has adopted a set of [Guiding Principles](http://www.telecomindustrydialogue.org/about/guiding-principles/), which explore the interaction and boundaries between a government’s duty to protect human rights and the corporate responsibility of telecommunications companies to respect human rights.  Telefónica submits a contribution to the present report in addition to ID and GNI submission.

1. **Ensure that policies and practices other than those identified in (1) (for example, policies and practices that affect network neutrality) respect freedom of expression;**

Telefonica approach to the net neutrality goes beyond the principle of openness that we firmly support the understanding that Internet users should have an unrestricted and non-discriminative access to any content of their choice, through any device of their choice and running any application of their choice.

Telefonica is aware on the potential link between this understanding of net neutrality and human rights as deviations of this principle may lead to restrictions on freedom of expression when there are circumstances of undue blocking of content or services or unreasonable discrimination from telecom operators.

Those circumstances have to be distinguished though from blocking performed under the mandate of a law enforcement body.

Telefónica’s position in the net neutrality debate addresses mainly the protection of users’ rights and their freedom of user choice, while at same time claiming for the ability to manage traffic on our networks, and permit differentiation of Internet access service. In fact, it is necessary to emphasize operators’ need to manage traffic on their networks to deliver the best Internet access service in terms of price and characteristics, subject to guarantees of transparency and of no anticompetitive discrimination.

In our view it is essential that the net neutrality debate does not move into an arena of limitations or prohibitions of new business models based on network management capacities from network operators. Those business models are core to ensure the business sustainability that is required to invest in network infrastructure and expand connectivity which is at the core of the exercise of other human rights such as access to adequate health services or education bringing enormous economic and social value.

Potential breaches of the net neutrality principles committed by network operators presumably respond to business or commercial reasons, not to ideological motivations.

National provisions on Net Neutrality Regulation, Competition Law as well as other provisions such as those related to Privacy and Data Protection can tackle any other potential concerns on this subject.

The network neutrality regulation (currently in 28 countries) standard establishes neutrality Internet access service. Services and applications that Internet providers offer end users on networks are not subject to the regulation of network neutrality.

Indeed, digital platforms and services have already become essential for the Internet and the digital experience of users regarding the fulfillment of their rights, in particular privacy and freedom of expression. Just as an example, Whatsapp already has over 93 million users in Brazil, 93% of the country’s Internet population, who spend on average 28 minutes per day using the messaging App. This compares with an average of 26 sent SMS per user & month. In fact, total number of SMS sent in Brazil show a 60% reduction in just three years, from 2012 to 2015.

This is only an example of how the new digital services and platforms has an increased role given the fact that there are new positions of dominance in other parts of the value chain beyond connectivity that may lead to potential breaches of Digital Neutrality and abuses of gatekeepers that could have an effect on privacy and freedom of expression.

**II) Business policies, processes and practices to** **prevent, mitigate or challenge the human rights impact of State laws or actions requiring your business to:**

* + 1. **suspend or restrict access to websites or telecommunications and Internet networks; and**
    2. **provide access to customer data;**

Telefónica does complain with domestic laws and regulations, including license requirements and legal restrictions. Telefónica is utmost supportive to comply with all legal and licence obligations within the countries in which we operate while at the same time being supportive of human rights concerns.

Telefónica’s positioning regarding privacy and freedom of expression is based on a set of Guiding Principles (see below). We have included here the 2016 progress of Telefónica Implementation:

| **Guiding Principle** | **Progress of Telefónica Implementation** |
| --- | --- |
| 1. Create relevant policies, with Board oversight or equivalent, outlining commitment to prevent, assess and mitigate to the best of their ability the risks to freedom of expression and privacy associated with designing, selling and operating telecommunications technology and telecommunications services. | Our Business Principles, revised in 2010, recognise the right to privacy as the foundation for a trust-based relationship with our stakeholders.  Moreover, the Group has a Privacy Policy, approved by the Board in March 2013, which is binding in all the countries in which we operate. During 2015 the Policy was updated to align it with the new challenges facing the sector.  We also have a Data Protection Instruction which establishes specific mandatory measures for the companies of the Telefónica Group, developing the principles of the Privacy Policy and thereby guaranteeing proper processing of personal data, without detriment to the provisions of the current legislation of each country. It was implemented during 2015 in all the countries in which we operate, with the Privacy Committee carrying out the monitoring thereof.  The Group has a Chief Privacy Officer, who is responsible for the implementation and monitoring of the Policy. Furthermore, a Chief Data Officer has been introduced to be the person responsible for the Group’s data, protecting it, storing it and designing the database of the future.  With regard to security management, the Group has the Corporate Information Security Policy, which is based on international standards and updated in accordance with growing international demand in matters of security. In addition to receiving policy-specific training, all our employees have access to the Policy via the Group Intranet. |
| 2. Conduct regular 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 – whether in relation to particular technologies, products, services, or countries – in accordance with the Guiding Principles for the implementation of the UN Protect, Respect and Remedy framework. | In 2012 **Telefónica** performed an assessment, following the framework offered by the Guiding Principles on Business and Human Rights, and with the support of [Business for Social Responsibility](http://www.bsr.org/) – within all its operations in order to evaluate the global impact of its activities. In 2014, Telefónica continued integrating the results of the assessment on the impact on Human Rights that was carried out in 2012 via its business units.  This included a new evaluation to assess on a global scale how its operating businesses respond to governmental requests for users' personal data or content restriction, as well as the circumstances and contexts in which these petitions are generally received. As part of this process, in 2015, Telefónica will develop a global procedure guide regarding governmental requirements.  Respect and commitment to Human Rights is one of the foundations of our Business Principles. Therefore, in 2012, in accordance with the framework provided by the Guiding Principles on Business and Human Rights, we conducted an assessment, with the support of Business for Social Responsibility, of all our operations to assess the global impact of our activity. During 2015 the following due diligence processes were performed:  Periodical reviews of the most significant risks in matters of privacy and security which affect our business at a global level.  Preparation and presentation by the Privacy Committee of the Guide to procedure in the event of certain requirements by the authorities.  Monitoring of the implementation of the Data Protection Instruction by the local Chief Protection Officers. |
| 3. Create operational processes and routines to evaluate and handle government requests that may have an impact on freedom of expression and privacy. | **Telefónica** has various processes in place to attend to requests made by local/governmental authorities. These processes are the responsibility of the General Secretary and Security of each of the Group's companies. The Privacy Committee and the Security Committee endeavor to sensitize and inform on the necessity to document such processes.  Telefónica has formal processes in place to attend to requirements received from local/governmental authorities. These are the responsibility of the departments of the General Secretary and Security in each of the Group companies.  In 2015 the Privacy Committee presented the Guide to procedure in the event of certain governmental requirements, applicable to all companies  comprising the Telefónica Group. |
| 4. Adopt, where feasible, strategies to anticipate, respond and minimise the potential impact on freedom of expression and privacy in the event that a government demand or request is received that is unlawful or where governments are believed to be misusing products or technology for illegitimate purposes. | In addition to the formal processes stipulated in the above principle, the Chief Privacy Officer, at a global level, and the Data Protection Officers ensure greater uniformity of the procedures and processes which affect the privacy of our customers.  Furthermore, the Chief Data Officer has been introduced to be the person responsible for the Group’s data, protecting it, storing it and designing the  database of the future. |
| 5. Always seek to ensure the safety and liberty of company personnel who may be placed at risk. | Health, security, and occupational well-being are the three pillars of **Telefónica**, not only guaranteeing the protection of employees, but also to having a direct influence on their job satisfaction at the Company. Regarding physical security, the Global Security Directorate has established a series of guidelines to be followed, adapted to the risks identified for each country, as well as to cover the displacement process.  Health, safety and occupational well-being are the three pillars of Telefónica, not only ensuring the protection of its employees, but also having a direct influence on their satisfaction in their work for the Company.  In terms of physical security, the global security directorate establishes a set of guidelines to be followed, appropriate to the risks identified in each country, and which also covers the displacement process. Further information can be found in the “Occupational Health and Safety” section |
| 6. Raise awareness and train relevant employees in related policies and processes. | The Telefónica Group has designed a specific plan to train its employees in the policies and processes which affect them.  This continuous training programme is conducted both in person and online. During 2015 more than 49,300 employees were trained in Data Protection and Information Security. |
| 7. Share knowledge and insights, where relevant, with all relevant and interested stakeholders to improve understanding of the applicable legal framework and the effectiveness of these principles in practice, and to provide support for the implementation and further development of the principles. | **Telefónica** has undertaken a project to map local stakeholders for whom freedom of expression and privacy are key issues.  The company will then use this data to determine how to engage with different stakeholders and improve the company’s responsiveness to stakeholder inquiries.  We consider essential to maintain an ongoing dialogue with our stakeholders in order to identify and mitigate risks and to develop new business opportunities. We believe that both transparency and knowledge sharing with this group is essential to promoting these Guiding Principles. In this sense we should highlight:   * As members of the Telecom Industry Dialogue we participate in the Learning Forum with Stakeholders. * Drawing up of a global map of stakeholders on issues of Privacy and Freedom of Expression. * Preparation of a stakeholder panel to serve as a platform for formal and structured dialogue with our main stakeholders. The results of the Stakeholder Engagement will serve to enrich the study of materiality and focus Company planning, both globally and locally, on its social, environmental and ethical initiatives, including Privacy.   For further information, refer to the section titled “Relationships with our interest groups” |
| 8. Report externally on an annual basis, and whenever circumstances make it relevant, on their progress in implementing the principles, and on major events occurring in this regard. | The sustainability report summarises the progress made by the Telefónica Group in matters of privacy and freedom of expression in an annual basis.  For further information, you can also refer to the Digital Trust chapter of the above mentioned Report. |
| 9. Help to inform the development of policy and regulations to support freedom of expression and privacy, including, alone or in cooperation with other entities, using its leverage to seek to mitigate potential negative impacts from policies or regulations. | At Telefónica we are convinced that the best way of achieving global progress with respect to freedom of expression and privacy is through dialogue between governments, industry, civil society (including human rights experts), investors, supranational organisations and other affected interested parties.  We participate in public consultations relating to privacy and freedom of expression conducted by various different national and international  organisations.  We contribute to dialogue on national and international policies in different forums and events relating to Privacy and Freedom of Expression, both at a Company level (2015 Annual Data Summit and 2015 Global Dialogue on Data Protection) and by means of the Telecommunications Industry Dialogue Group, whose initiatives can be found on its website. |
| 10. Examine, as a group, options for implementing relevant grievance mechanisms, as outlined in Principle 31 of the UN Guiding Principles for Business and Human Rights. | During 2015 we worked internally to establish a proper complaints mechanism to cover different aspects of Human Rights, including Privacy and Freedom of Expression. |

For more information, please see:

* Human rights: <https://www.telefonica.com/en/web/sustainability/our-commitments/human-rights/introduccion>,
* Global Privacy Center: <https://www.telefonica.com/en/web/about_telefonica/privacy-centre>
* Freedom of expression : <https://www.telefonica.com/en/web/sustainability/-/libertad-de-expresion>

Thank you for the opportunity to present our submission.