



Technology and human rights

Parallel session

27 November

15:00-18:00

Part 1: Addressing access to remedy in the digital age: Corporate misconduct in sharing and processing personal data

15:00-16:25

Organized by The Human Rights, Big data and Technology Project, Human Rights Centre of the University of Essex and the Permanent Mission of the Federal Republic of Germany to the United Nations

Part 2: The Proposal for a Digital Geneva Convention - Implications for Human Rights

16:35-18:00

Organized by Microsoft

Part 1: Addressing access to remedy in the digital age: Corporate misconduct in sharing and processing personal data

Background and objectives:

Information Communication Technologies (ICTs) and the Internet have become essential to the conduct of government operations, to business, and to individuals' day-to-day lives. The 'datafication' of life has led to individuals continuously generating data through their online and offline activities, without being fully aware of the kind of data they generate, how that data is collected, retained, processed, or shared and what the implications of such uses may be. Significantly, the corporate value of information no longer solely resides in its primary purpose. Instead, the true value of data lies in its secondary use, either by the entity that originally collected the data, or by others.

Businesses, particularly ICT companies, are at the forefront of these developments. The Special Rapporteur on freedom of opinion and expression has already highlighted the multitude of roles that such companies have 'in organizing, accessing, populating and regulating the Internet' (A/HRC/32/38, paras. 15-25). Many businesses monitor users of their services and their behaviour, with or without

the knowledge of those users. A considerable amount of the data that is being thus generated includes personal information or allows for such information to be deduced.

Data is increasingly used for purposes that were not anticipated at the time of collection. In light of the value of data in the digital age, many companies relying on data-driven business models have adopted a 'vacuum-cleaner approach' to data by collecting and retaining all data available, with the anticipation that secondary uses of the data will become discernible in the future.

The private sector also plays a substantial role in providing governments with tools and assistance for surveillance and censorship, including through providing access to user information. There is a growing reliance by States on the private sector to conduct and facilitate digital surveillance (A/HRC/27/37 para. 3ff), and the capacity of States in this respect may even 'depend on the extent to which business enterprises cooperate with or resist such surveillance' (A/HRC/32/38, para. 57).

In this context, addressing the role and responsibilities of businesses with respect to the enjoyment of human rights on the Internet is crucial. The above described data-sharing practices may have far-reaching implications for users' human rights, including the right to privacy, the right to freedom of expression, the right to political participation, as well as other civil and political, and economic, social and cultural rights. These developments also raise questions as to the adequateness of existing legal mechanisms and safeguards. The individuals affected by these practices are frequently unaware of the interference or do not possess the information necessary to link the adverse impact on their human rights with the processing or sharing of their personal data. Even in cases where such links can be made, jurisdictional complexities may pose additional impediments in challenging measures and seeking remedy.

Against this background, the **panel will aim to:**

- Identify the main challenges to ensuring access to legal as well as non-legal remedies in the context of data processing and data-sharing by corporations with their business relationships, in line with Pillar 3 of the Guiding Principles;
- Address the shortcomings in ensuring access to remedy in the context of data-sharing in response to requests by public authorities, justified on grounds of national security or law enforcement interests;
- Benefitting from the multi-stakeholder perspective represented on the panel, explore potential solutions and good practices regarding the remediation of adverse impact of corporate misconduct and steps that can be taken on part of companies and the state in this regard (including through public-private partnerships).
- Explore potential solutions and relevant good practice, including but not restricted to: means and modalities for ensuring enhanced control of individuals over their personal data and better safeguards to mitigate the reduced foreseeability of consequences linked to algorithmically-driven decisions; operationalizing transparency on part of businesses and governments; as well as exploring additional means and modalities for ensuring remediation, including through public-private partnerships.

Key questions:

- What are the main difficulties faced by data subjects regarding the exercise of control over their personal data, including how it is collected, retained, processed, and shared by business enterprises.
- Tackling the reduced foreseeability of implications of data use in the age of algorithmic decision-making.
- Impact of these challenges on ensuring access to remedy in line with Pillar 3 of the UN Guiding Principles on Business and Human Rights.
- Challenges and main shortcomings when it comes to ensuring access to remedy, in response to negative human rights implications of data sharing by corporations in the context of their business relationships.
- The duty of care in the data supply chain as well as challenges linked to the particular nature of the data supply chain.
- Complications caused by the cross-border nature of data flows, frequently involving multiple state and non-state actors, and the resulting jurisdictional complexities.
- Implications of the CJEU's Schrems v. Data Protection Commissioner judgment (Case C-362/14) and the newly set up EU-US Privacy Shield framework will also be tackled.
- What challenges arise when ensuring access to remedy for misconduct in the context of data sharing in response to government requests justified by national security or public order interests?

Speakers:¹

- **Professor Sheldon Leader**, University of Essex, Director of the Essex Business and Human Rights Project and member of the Human Rights, Big Data and Technology Project, housed at the Essex Centre for Human Rights (**Moderator**)
- **Ms. Nighat Dad**, Founder and Executive Director, Digital Rights Foundation
- **Dr. Krisztina Huszti-Orban**, Senior Researcher, the Human Rights, Big Data and Technology Project, Human Rights Centre, University of Essex
- **Mr. Bernard Shen**, Assistant General Counsel, Microsoft
- **Professor Changrok Soh**, Korea University, Director of the Human Rights Centre, Member of the Advisory Committee to the Human Rights Council

Format:

The parallel event will be open to participants of the Forum and will be held in English. The discussion will be led by a Moderator who will begin with opening remarks, introducing the issues to be discussed (5-7 minutes).

Two rounds of discussion of 30 minutes each will follow, led by the Moderator, allowing each panelist three to five minutes of initial speaking time. The rest of the time will be dedicated to interaction between participants and panelists. Participants are encouraged to intervene in an interactive way, through questions, comments and sharing of experiences, best practices and challenges, as well as suggested recommendations on the way forward, with a view to stimulating constructive debate.

¹ Further information on speakers provided in Annex

Part 2: The Proposal for a Digital Geneva Convention - Implications for Human Rights

Brief description: Microsoft has outlined a framework for a Digital Geneva Convention aimed at protecting and defending civil populations and infrastructure against state-sponsored cyberattacks. This proposal calls for a set of binding agreements between nations backed by a tech sector accord and supported by an independent attribution organization to identify, ban and remedy state-sponsored cyberattacks. The proposal builds upon and extends existing international legal rules that apply to nation state behavior in cyberspace. The proposed ban – as well as the steps that companies would take to help make it effective – would protect freedom of expression, privacy as well as other civil and political rights, and therefore implement the UN Guiding Principles on Business and Human Rights in the cyberspace.

Session objectives: The session is aimed at discussing the human rights implications of state-sponsored cyberattacks and the responsibilities of various stakeholders in addressing those attacks and their implications.

Key discussion questions:

- What are the human rights implications of nation-sponsored attacks in peace time?
- From a human rights perspective, what does the concept of nation-sponsored attack encompass?
- What is the business responsibility of the tech sector in respecting human rights in the face of nation-sponsored attacks?
- How should the tech sector, civil society, academia and the public prevent and remedy attacks?

Speakers:

- **H.E. Ms. Monique T.G. van Daalen**, Ambassador Extraordinary and Plenipotentiary Permanent Representative of the Kingdom of the Netherlands to the United Nations Office and other international organisations in Geneva
- **Mr. Laurent Gisel**, Legal adviser, International Committee of the Red Cross
- **Mr. Jean Yves Art**, Senior Director, Strategic Partnerships, Microsoft Corporation (**moderator**)

Format of the session:

5 minutes: Presentation on the rationale and proposal for a Digital Geneva Convention

10 minutes: Prepared remarks from H. E. Ambassador Van Daalen

10 minutes: Moderated discussion with speakers

45 minutes: 3 break-out groups within the room with each group workshopping (1) the binding agreement between states, (2) tech sector accord, and (3) independent arbitration organization

10 minutes: Report-out from each group

Background material:

- The Need For A Digital Geneva Convention, Blogpost by Brad Smith, President and Chief Legal Officer, Microsoft Corporation, available at <https://blogs.microsoft.com/on-the-issues/2017/02/14/need-digital-geneva-convention/>
- We need to modernize international agreements to create a safer digital world, Blogpost by Brad Smith, President and Chief Legal Officer, Microsoft Corporation, available at <https://blogs.microsoft.com/on-the-issues/2017/11/10/need-modernize-international-agreements-create-safer-digital-world/>

ANNEX. SPEAKERS SHORT BIOS.

Sheldon Leader

Professor, University of Essex

Sheldon Leader, a graduate of Yale and Oxford Universities, is the founder and Director of the [Essex Business and Human Rights Project](#) (EBHR) and a member of the [Human Rights Centre](#) at University of Essex. His work with the EBHR involves advice and training on issues involving business and human rights in various parts of the world. He also leads the [Human Rights, Big Data and Technology Project](#)'s work on regulatory responses to big data and associated technologies. Along with his work as Professor of Law at Essex, he regularly lectures at the University of Paris-Ouest and at a number of universities in Europe and the US.

Nighat Dad

Executive Director, Digital Rights Foundation

Ms. Dad is a Pakistani lawyer and Internet activist who runs the not-for-profit organization Digital Rights Foundation. She has been campaigning and engaging at a policy level on issues focusing on Internet freedom, technology and women's empowerment, and digital security. Ms. Dad has been included in Next Generation Leaders List by TIME magazine for her work on helping women fight online harassment in 2015, and was awarded the Digital Freedom Award by the Atlantic Council and the Human Rights Tulip Award by the Government of the Netherlands in 2016.

Krisztina Huszti-Orban

Senior Researcher, Human Rights, Big Data and Technology Project, Human Rights Centre, University of Essex

Krisztina Huszti-Orban is a senior researcher with the Human Rights, Big Data and Technology Project, funded by the Economic and Social Research Council and based at the University of Essex's Human Rights Centre. Her work focuses on the human rights impact of data-driven technologies, including on regulatory and governance responses to the use of such technologies at the international and multi-stakeholder level.

Bernard Shen

Assistant General Counsel, Microsoft

Bernard Shen is an Assistant General Counsel in the Corporate, External, and Legal Affairs department at Microsoft Corporation. His work focuses particularly on: (1) Microsoft's participation in and work with the Global Network Initiative, a multi-stakeholder organization that focuses on the freedom of expression and privacy rights of users of information and communication technologies and services; and (2) Microsoft's policy and practice across its products and services in respecting the freedom of expression and privacy rights of its users.

Changrok Soh***Professor, Korea University***

Mr. Changrok Soh is Director of the Human Rights Centre and Professor at the Graduates School of International Studies at Korea University. He is a member of the Advisory Committee to the United Nations Human Rights Council, serves as an International Human Rights Committee Commissioner at the National Human Rights Commission of Korea and is the President of Human Asia.