



January 29, 2016

Professor David Kaye
Special Rapporteur on the right to freedom of opinion and expression
Office of the United Nations High Commissioner for Human Rights
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RE: Submission to study on private ICT sector responsibilities

The Telecommunications Industry Dialogue is pleased to provide input to the Special Rapporteur's study on the responsibilities of the Information and Communication Technologies (ICT) sector to promote freedom of expression in the digital age.

The Telecommunications Industry Dialogue is a group of telecommunications operators and vendors who jointly address freedom of expression and privacy in the telecommunications sector in the context of the UN Guiding Principles on Business and Human Rights. The companies that are currently participating in the Industry Dialogue are AT&T, Millicom, Nokia, Orange, Telefónica, Telenor Group, TeliaSonera, and Vodafone Group. These companies have a global footprint, providing telecommunications services and equipment to consumers, businesses, and governments in nearly 100 countries worldwide. In March of 2013, the Industry Dialogue adopted a set of 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. It also entered into a collaboration with the multi-stakeholder Global Network Initiative aimed at finding a shared and practical approach to promoting freedom of expression and privacy around the world.

I. Aspects of Industry Dialogue companies' operations that implicate the right to freedom of expression

Telecommunications enable the exchange of ideas and access to information in a way that supports economic and social opportunity, advances knowledge and increases openness and transparency. In their handling of customer communications, telecommunications operators and Internet Service Providers (ISPs) can have an impact on freedom of expression in three principal ways.¹

First, telecommunications companies may receive orders from government authorities to block access to specific Web sites.² The subject of these orders and the method by which they are issued can vary significantly by country, depending on how specific legal and law-enforcement regimes have evolved, and the protections that may be

¹ For more information, see C. Tuppen, *Opening the Lines: A Call for Transparency from Governments and Telecommunications Companies*, Global Network Initiative (2013); Vodafone Group, *Law Enforcement Disclosure Report 2015*, pages 13-18.

² See, e.g., TeliaSonera, *Update, 16 November – Freedom of Expression – Major event as to service limitations in Tajikistan, 9 October 2014*, November 16, 2015.



available for particular types of speech. With that said, these orders most frequently involve sites that contain child sexual abuse images or material that allegedly infringes on an individual's intellectual property rights. While orders to block copyright-infringing content are generally issued by a court, orders to block other types of content may come from a law enforcement or regulatory agency. Some of our member companies also block child sexual abuse images voluntarily in partnership with organizations such as the Internet Watch Foundation or Interpol. In other states such as Russia, the regulatory agency Roskomnadzor maintains a list of Web sites which must be blocked by operators within 24 hours.

Second, telecommunications operators may be ordered to restrict access to communications services, including messaging services or social media platforms.³ The third and broadest type of restriction that telecommunications operators may be ordered to effectuate is a partial or even complete shutdown of communications networks.⁴

Finally, it should be highlighted that government agencies may require communications network and equipment providers to filter content in a way that may be inconsistent with the protection of freedom of expression.⁵

II. Key legal and policy issues in the ICT sector that implicate freedom of opinion and expression

We would highlight three key legal and policy issues related to our member companies' ability to implement the Industry Dialogue's Guiding Principles.

Business enterprises have an obligation to comply with applicable laws and to respect internationally recognized human rights. Telecommunications companies with licenses, equipment and personnel on the ground must respect local laws that place restrictions on freedom of expression. Many countries lack a clear and transparent legal framework regarding government powers to restrict content and to obtain access to customer data. Provisions for adequate, independent oversight of these powers are also often absent.

In July of 2015, the Telecommunications Industry Dialogue launched an online resource which describes some of the most important legal powers available to government authorities seeking to restrict the content of communications or to access communications data in 44 countries.⁶ Some of the legal frameworks included grant broad national security powers to government authorities, which enable them to order the shutdown of communications networks or otherwise restrict content. The Industry Dialogue recognizes that the protection of national security is a legitimate aim of governments. At the same

³ See, e.g., BBC, *Central African Republic Bans Phone Text Messages*, June 4, 2014; Samuel Gibbs, *WhatsApp Blocked in Brazil for 48 Hours by Court*, The Guardian, December 17, 2015.

⁴ See, e.g., Matt Richtel, *Egypt Cuts Off Most Internet and Cell Service*, The New York Times, January 28, 2011; Lucy Purdon, Arsalan Ashraf, and Ben Wagner, *Security vs. Access: The Impact of Mobile Network Shutdowns*, Institute for Human Rights and Business (2015).

⁵ See, Dunstan Allison Hope, *Protecting Human Rights in the Digital Age*, BSR and the Global Network Initiative (2011).

⁶ <http://www.telecomindustrydialogue.org/resources/country-legal-frameworks/>



time, in many cases, demands to restrict freedom of expression are not consistent with the principles of legality, necessity, and proportionality. Where the rule of law is weak and corruption is prevalent, the problem may be compounded, reducing the options available to companies as they seek to balance the need to comply with local law with their responsibility to respect customers' rights.

A second issue is that as a condition of operating in numerous countries, some governments may require unrestricted direct access into companies' infrastructure for the purpose of intercepting communications and/or accessing communications related data. This can leave the company without any operational or technical control of its technology. Your predecessor, Frank La Rue, and the European Court of Human Rights have both recommended that states refrain from imposing such a requirement on business enterprises.⁷ Governments may also use surveillance technology independently in order to gain access to user data without the knowledge of telecommunications operators. It is the position of the Industry Dialogue that government agencies should be required to obtain assistance from companies when they exercise their lawful powers to access communications data in accordance with international standards; e.g., companies should retain the operational and technical means of giving it.

Finally, government orders to restrict content should be accompanied by measures of transparency and accountability. When access to content has been restricted for legal reasons, it is the position of the Industry Dialogue that government authorities should inform users (or permit telecommunications operators to inform them) through an explanatory landing page. We advocate that governments should ensure that orders to restrict content are made by a publicly accountable senior official and that they state the legal basis for the restriction. We also support the availability of a mechanism for appealing the decision to restrict content when a user's freedom to seek, receive or impart information has been affected.

III. The Telecommunications Industry Dialogue as a good practice for ICT companies

Participating in the Telecommunications Industry Dialogue has benefitted our companies in many ways, and below are some ways in which we consider this type of collaboration to constitute good practice.

Participating companies make a public commitment to a set of Guiding Principles, which are based on the UN Guiding Principles on Business and Human Rights.⁸ This commitment shapes internal company policy and procedure, and it lends credibility to efforts by Industry Dialogue companies to push back against government demands that are inconsistent with the protection of freedom of expression.

⁷ Report of the UN Special Rapporteur for freedom of opinion and expression, Frank La Rue, A/HRC/23/40, April 2013, paras. 73 and 96; European Court of Human Rights, *Zakharov v. Russia* (Grand Chamber), App. No. 47143/06, December 4, 2015, paras. 269-70

⁸ <http://www.telecomindustrydialogue.org/about/guiding-principles/>



The Industry Dialogue offers participating companies an opportunity to share lessons and good practices. In the past year, we have discussed (1) good practices related to human rights policies and conducting due diligence, (2) procedures for major events that affect freedom of expression and privacy, and (3) responding to grievances from customers.

Our collaboration has provided a basis for collective action to further respect for freedom of expression and privacy. When a situation affecting these rights arises in a country in which two or more participating companies are present, our shared commitment helps these companies to work together in responding to it.

Finally, the Industry Dialogue has made it a priority to regularly engage with stakeholders from civil society, intergovernmental organizations, investment firms, government agencies, and academia. Over the past year, we have held three stakeholder dialogues in conjunction with Board meetings, and we have met with stakeholders on occasions such as the Freedom Online Conference in Mongolia.

Thank you for the opportunity to present our submission.

Sincerely,

Jeff Dygert
AT&T Services, Inc.
Chair of the Telecommunications Industry Dialogue