



Institute for
Human Rights and Business

How to Apply the UN Guiding Principles on Business and Human Rights to Operational Challenges

Internet Engineering Task Force Meeting Berlin

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How do we understand and address human rights challenges and dilemmas in our organizations?

Recognizing that some organizations and issues are unique. . . .

- Consult applicable laws, policies, standards
- Carry out a reasonable inquiry and analysis
 - Before decision making or in relation to full products/services life-cycle
 - Human rights due diligence
 - Organization-wide systematic process of inquiry - human rights impact assessment
- Consult sector- or issue-specific due diligence guidance
- Consult case studies on how organizations address dilemmas
- Apply risk assessment frameworks for decision making
- Engage with policy makers and stakeholders
- Socialize the challenges and dilemmas

ICT Sector Guide for the European Commission:

A joint project between IHRB and Shift

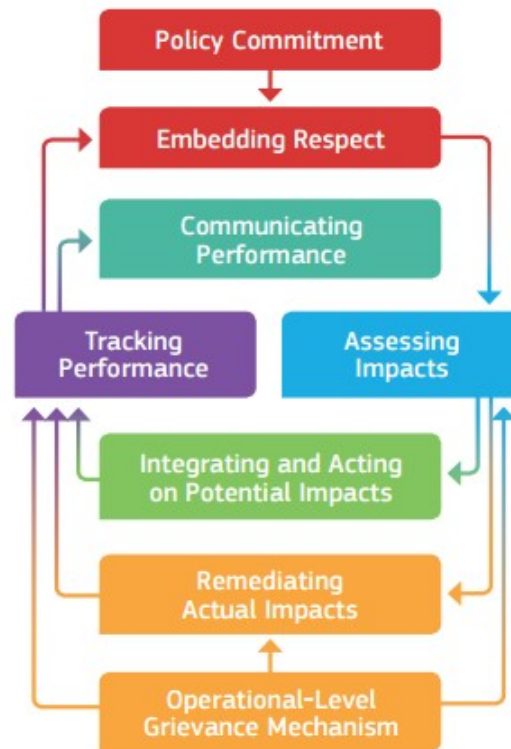
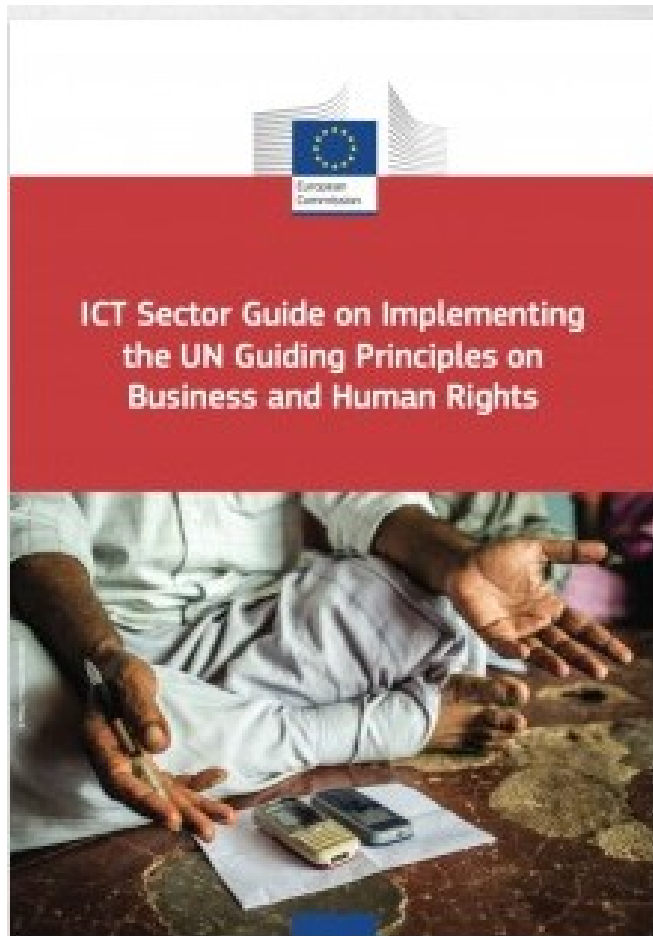


Figure 1: Key Elements of the Corporate Responsibility to Respect

Key Due Diligence Steps:

- Develop a **human rights policy**
- **Assess** its actual and potential human rights impacts
- Integrate the findings and act to **prevent or mitigate negative impacts**
- **Track** how effectively risks are addressed
- **Communicate** how risks are addressed
- Work to **remedy** negative impacts it has caused or contributed to

techUK Guide on Cyber Security Exports and Human Rights



- First tech sector guidance of its kind
- Helps cyber security companies:
 - Look at the capabilities of the product/service for export
 - Examine the places where they are exporting to
 - their political and legal frameworks
 - the state's human rights track record
 - potentially vulnerable people
 - Assess end purchaser and its intended use of product/service
 - Evaluate potential business partners and re-sellers
 - Include risk management clauses into the contract
- Reduces the likelihood of technology being used to help perpetrate human rights abuses
- Reduces the likelihood of reputational damage to British companies

Cyber security as a double edged sword

How to avoid abuses?

Figure 3: Example filter companies can apply to a deal

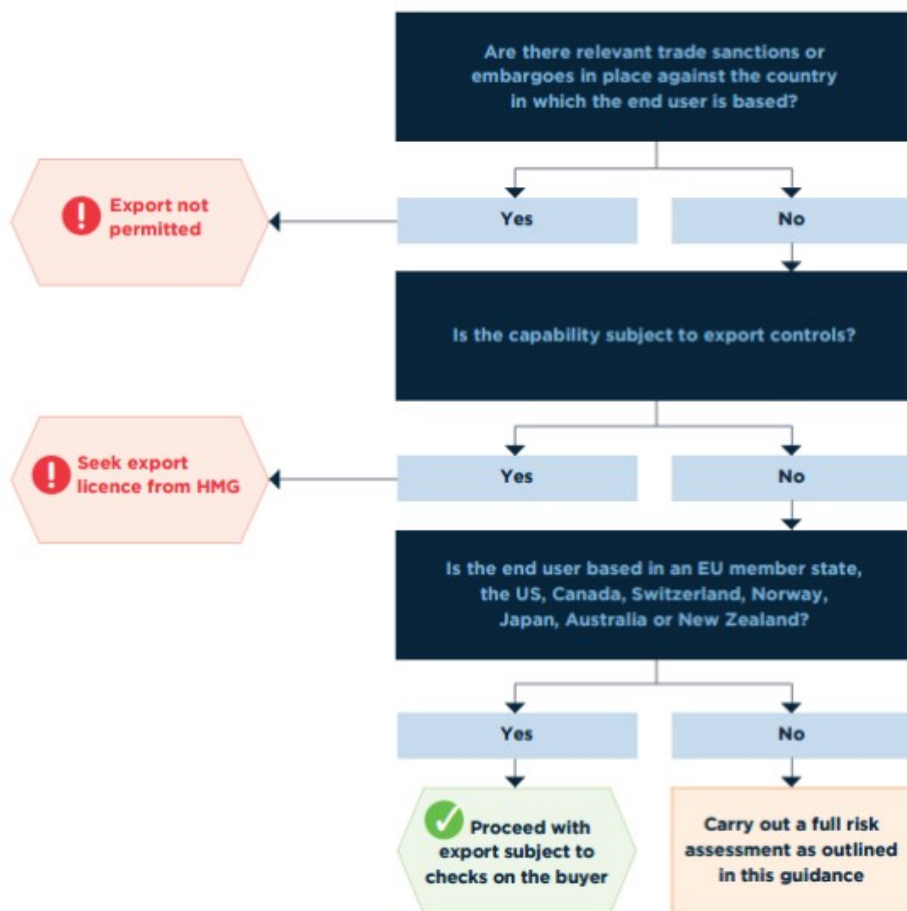
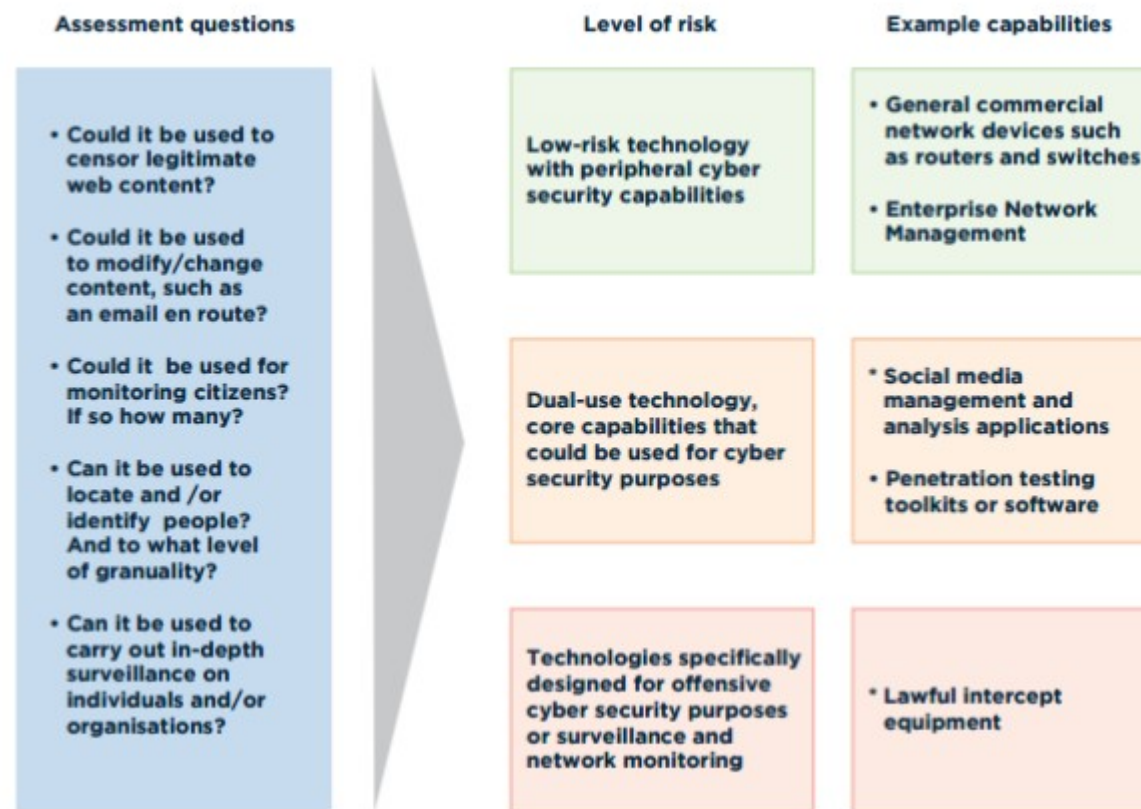


Figure 4: Assessing the risk of products and services





Digital Dangers Case Studies

Human Rights Challenges for Telecommunications Vendors:
Addressing the Possible Misuse of Telecommunications System
Case Study: Ericsson (Nov 2014)





Risk assessment framework when financing exports of telecommunications systems: the 4 “Ps”

- **Purpose:** Assessment of the use of technology as intended by the exporter
- **Place:** What is the human rights situation in a country assessed against the “Freedom Online” framework?
- **Product:** Has the exporter carried out the relevant legal reviews in relation to the technology proposed for export, and are all relevant export licenses in place?
- **Purchaser:** Is it state-owned? What is the purchaser/operator policy to respect human rights online and offline? What is its practice? How does it respond to state orders to monitor/surveil, block or filter content, or to implement network shutdowns?

*When issues with some of the Ps: engagement with senior management

**When all 4 Ps are problematic & cannot be mitigated: no go scenario

Source: Various IHRB work products



Engagement with ICANN: Two Streams of Human Rights Inquiry, as part of IANA Transition

Approach	Main Focus	Methodology
Normative/ Legalistic	<ul style="list-style-type: none">To enhance ICANN accountability, new ICANN bylaw provisions include a human rights statement: <i>Within its Core Values, ICANN will commit to respect internationally recognized Human Rights as required by applicable law.</i>This change becomes effective with a framework of interpretation	Bylaws interpretation: <ul style="list-style-type: none">Which human rights apply?<ul style="list-style-type: none">Identification of key rights (see next slide)Do UNGPs apply to ICANN?
Empirical: Impacts analysis	<ul style="list-style-type: none">Systematic analysis of ICANN operational function against a human rights framework to understand adverse human rights impactsThis may lead to ICANN's human rights reporting, as well as human rights policy statement	Human Rights Impact Assessment to identify the relevant human rights impacts and to manage future adverse impacts / produce reporting: <ul style="list-style-type: none">Domain of ICANN physical and operational footprintDomain of ICANN policies

ICANN

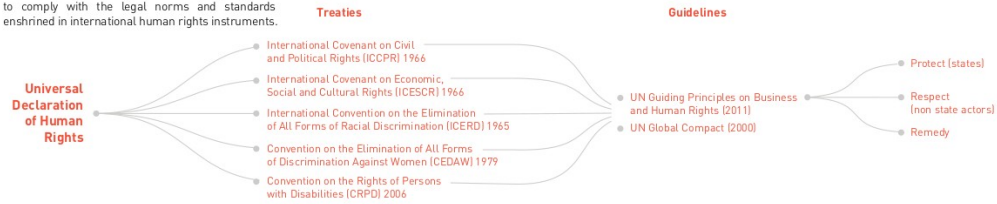
POLICIES AND HUMAN RIGHTS

HUMAN RIGHTS PRINCIPLES

INHERENT: human rights derive from the humanity of each person.
UNIVERSAL: all human beings have the same human rights.
INALIENABLE: human rights cannot be given up.
INDIVISIBLE: there are no conflicts between rights and no priorities among rights. There will be situations or occasions where rights must be balanced and prudent decisions taken about how all rights can best be protected and promoted.

INTERDEPENDENT AND INTERRELATED: the enjoyment and fulfillment of any right depends on the enjoyment and fulfillment of other rights.
EQUALITY AND NON-DISCRIMINATION: all individuals are equal as human beings and by virtue of the inherent dignity of each human person.
PARTICIPATION AND INCLUSION: all people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being.
ACCOUNTABILITY AND RULE OF LAW: States and other duty-bearers are answerable for the

observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in international human rights instruments.



RIGHTS INVOLVED

THEME

ICANN POLICY OR PROCESS

Scoping the relation between ICANN and Human Rights

RIGHT TO PRIVACY

RIGHT TO FREEDOM OF ASSOCIATION

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

RIGHT TO FREEDOM OF EXPRESSION

RIGHT TO SECURITY

PARTICIPATION, INCLUSION, EQUALITY AND NON-DISCRIMINATION

DUE PROCESS

Documentary Information Disclosure Policy

2014 Registrar Accreditation Agreement

2013 Registrar Accreditation Agreement

WHOIS

New gTLD subsequent procedures WG

New gTLD subsequent procedures WG

IP addresses

Free and fair use of domain names

New gTLD subsequent procedures WG

Internationalized Domain Names

Rights Protection Mechanisms

DNSSEC

Protection of rights to fair and equal treatment

PDP procedure

GAC early warning

Reconsideration Request

IRP Process

All Dispute Resolution processes within ICANN

Documentary Information Disclosure Policy

- Defined conditions of non-disclosure
- Data escrow provider financial support
- WHOIS accuracy specification requirement
- Thick WHOIS implementation review team
- Next generation gTLD registration directory service
- RDAP changes and privacy
- Applicant guidebook
- Application fees
- Registrar accreditation process & insurance requirements
- GNSO new gTLD auctions proceeds drafting team
- Coordination and distribution of IP addresses
- The right to use all words and names in domain names
- Content-based gTLD String Evaluations
- Applicant guidebook
 - Sensitive strings
 - Community based TLD
- Implementation of Internationalized Domain Names
- Review of protection IGO/NGO names in all gTLDs
- Review of curative rights protections in IGO/INGOs in gTLDs
- New gTLDs subsequent round WG
- PDP to review RPMs in all gTLDs
- Implementation of DNSSEC
- Implementation of DANE
- Awareness of Ombudsman office for complaint
- GNSO PDP improvements discussion group
- Effect of failure and the use of the Ombudsman
- Need to ensure that parties know about Ombudsman for unfair process
- Documentary Information Disclosure Policy requests

ICANN
 The Internet Corporation for Assigned Names and Numbers coordinates the policy making and distribution of domain names and IP numbers. It therefore is often dubbed as the 'telephone book of the Internet'.

- ICANN GLOSSARY**
- DANE:** DNS-based Authentication of Named Entities
 - DCND:** Defined conditions of nondisclosure
 - DIDP:** Documentary Information Disclosure Policy
 - DNSSEC:** Domain Name System Security Extensions
 - GAC:** Governmental Advisory Committee
 - GNSO:** Generic Names Supporting Organization
 - gTLD:** Generic top-level domain
 - IDNs:** Internationalized Domain Names
 - IGOs:** Inter-Governmental Organisations
 - INGOs:** International Non-Governmental Organizations
 - IRP:** Independent Review Panel
 - PDP:** Policy Development Process
 - RDAP:** Registration data access protocol
 - RPMs:** Rights Protection Mechanism (as related to Intellectual Property Rights)
 - WHOIS:** an Internet service that provides information about a domain name or IP address

This illustration has been produced by the Cross Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights

This is a preliminary scoping, pending a full Human Rights Impact Assessment

Source: <https://community.icann.org/display/gnsononcomstake/CCWP+on+ICANN's+Corporate+and+Social+Responsibility+to+Respect+Human+Rights>



Engagement and Advice to Myanmar / UK Governments on Surveillance Laws and Human Rights

- “Lawful Interception and Government Access to User Data: Designing a Rights-Respecting Model” – based on a detailed sector-wide impact assessment of the ICT sector in Myanmar
- Rights-respecting model with seven components:
 1. Prerequisites
 2. Authorisation Processes
 3. Oversight
 4. Notification of Individuals
 5. Remedy
 6. Transparency
 7. Provision for Framework Review

Guidance on Respecting LGBTI Rights

IHRB is working on a set of guidance for companies on LGBTI issues with the UN Human Rights Office – key principles under consideration include:

- **Respect human rights, through**
 - Making policy commitment
 - Undertaking due diligence
 - Establishing remedies
- **Eliminate discrimination, through**
 - Effective recruitment policies
 - Eliminating harassment
 - Ensuring access to all customers
- **Provide support, by**
 - Backing and establishing LGBTI staff groups
 - Extending benefits without discrimination
 - Guaranteeing privacy
- **Act in public sphere, through:**
 - Public advocacy
 - Collective action
 - Non-compliance with abusive orders





To go or not to go?

How companies might operate in different legal and cultural environments

- Variations among companies' approaches to ensuring equality among employees
- Three approaches are not mutually exclusive

Approaches	How it works	What it does
"When in Rome"	Adapt to local conditions; allow workers to "opt out" of postings in hostile jurisdictions	A compromise approach; recommend transitioning to the "Embassy" mode
"Embassy"	Corporate policy enforced even in hostile jurisdictions and create safe space	Could help to promote tolerance among local staff
"Advocate"	Influence local regulations	Could help others beyond local staff



To go or not to go?

Human Rights-based Considerations for Meeting Venues

- General human rights track record of the country?
 - Via externally available database
- A visible pattern of abuse of human rights that central to the organization's mission and values?
- Views of local peers and NGO stakeholders?
- Mere presence legitimatizing the government or expressing solidarity with the local stakeholders?
- Hospitality / use of facilities / subsidy by the government offered?
- Specific safety threats or restrictions to some/all members?



Thank you!

Questions?

Contact me:

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