Input to the High Commissioner report on the practical application of the UNGPs to the activities of technology companies

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INTRODUCTION

BSR welcomes the opportunity to share views on the practical application of the UN Guiding Principles on Business and Human Rights (UNGPs) to the activities of technology companies. This submission draws upon BSR's experience working with technology companies on human rights issues for the past two decades:

- **Collaboration:** Facilitating the creation of the Global Network Initiative (GNI), Responsible Business Alliance (RBA), and Technology Against Trafficking (TAT), as well as engagements with the Global Internet Forum to Counter Terrorism (GIFCT).

- **Human Rights Due Diligence:** Extensive engagements with over thirty global technology companies on human rights due diligence, including around 100 human rights assessments. These assessments have encompassed elements as diverse as geographies, products, customers, and governance; it is important to note that while some BSR human rights assessments are public, the vast majority are not public.

- **Research:** Publications that share best practices and insights from our work, including on human rights assessment, human rights based approaches to content governance in the social media industry, conflict sensitivity analysis, and technology and human rights during times of public health emergency.

We have organized this input in line with the four themes of the consultation.

HUMAN RIGHTS RISKS IN BUSINESS MODELS

The need to understand the human rights impacts arising from business models (i.e., how companies create value) has rightly grown in focus over recent years. We make two observations.

- **Human rights due diligence practitioners can further define what human rights due diligence of business models means in practice.** It is common for key elements of business models to be included in human rights due diligence today, such as market entry and exit, sales due diligence (e.g., when selling technology to an industry vertical), and human rights due diligence of new products before they are launched. However, more holistic approaches are needed that bring these different elements together into a more cohesive whole. It is also important to note that business models can exist at product, company, and industry levels.

- **Venture capital (VC) requires more attention.** By providing critical funding for technology start-ups, VC firms play a crucial gatekeeper role, deciding which companies make it onto the market and which technologies shape our lives. This has far-reaching consequences for human rights, and for this reason VC

firms should undertake their own human rights due diligence and provide space and resources for entrepreneurs to do their own due diligence. BSR is investing in this priority.

HUMAN RIGHTS DUE DILIGENCE AND END-USE

BSR's engagements with companies on human rights due diligence have taken a variety of different forms, including geography (e.g., market entry, market exit, ongoing presence), products (e.g., entire platforms, new features and functionalities, product research and development), customers (e.g., industry verticals, specific customers, use cases), and governance (e.g., product / content policies, decision making processes, mergers and acquisitions). These engagements have also spanned the technology ecosystem, including component and hardware vendors, consumer devices, telecommunications operators, social media companies, and cloud services providers.

This diversity leads us to caution against "one size fits all" approaches to human rights due diligence, and to appreciate the value of tailoring approaches to secure maximum traction across the wide range of functions— such as engineering, product management, policy, and sales—that need to be engaged. We make the following observations.

- **Human rights assessment constitutes just one part of a broader human rights due diligence framework.** It is easy to conflate human rights assessments and human rights due diligence as the same, but they are not. As the UNGPs clearly state, a human rights assessment is one part of a human rights due diligence framework, which should also include integrating the results of assessments into decision-making, tracking the effectiveness of responses to assessments, and communicating how impacts are addressed. These elements take on special significance in the technology industry, where human rights impacts change over time as technologies advance and the real-world use of a product takes hold, making the "ongoing" characteristic of due diligence essential. Methods may include providing channels to report product misuse, pinpointing data trends that may signify a problem, and sustained engagement with stakeholders over time.

- **Users play a significant role in shaping impact.** A significant challenge when assessing human rights impacts is the interplay between the design of the product by the technology company and how it is used in real life, whether by individuals, enterprise customers, or governments. When providing services to individual users, companies are challenged by the need to address tensions between the rights of different users (such as freedom of expression, privacy, safety, non-discrimination, and access to culture); when providing services to enterprise or public sector customers, technology companies often lack visibility into the data needed to spot misuse. We sometimes undertake human rights assessment for technology companies and conclude that we could achieve more impact by undertaking an assessment of the entity using the technology, not the company designing or selling it. For more, see BSR's [report on downstream human rights due diligence](#).

- **The substitutability problem is real.** "If we don't enter this higher risk market then someone else will" is a common refrain in the technology industry—and while not unique to the technology industry, this problem does take on special significance. Today's concerns around facial recognition illustrate the point perfectly: the overall realization of human rights is not improved if a "responsible" company decides not to provide service to a nefarious actor and a "bad" company chooses to do so anyway. At the global scale, there is no shortage of technology companies willing to step in where rights-respected companies decide not to. For this reason, setting minimum standards, multi-stakeholder efforts, and rights-respecting regulation by governments are essential to effectively addressing adverse impacts. These efforts should aim to actively disincentivize the deployment of technology for nefarious purposes.

- **Systemwide approaches are needed.** While today's human rights assessments are typically undertaken for a single company, solutions are often more effective at the system level. For example, the risk of governments gaining access to data and using it to violate human rights—extreme mass surveillance, for instance—cannot be addressed by one company acting alone; similarly, a decision taken at one part of the technology ecosystem can have adverse consequences elsewhere in the ecosystem, such as how anti-money laundering efforts may reduce the risk of harm in one country but [deny access](#) to financial services elsewhere.

- **A "human rights by design" approach should be taken.** The quality of human rights due diligence improves significantly when it draws upon insights from a range of professional communities—business and human rights teams, product managers, research and design teams, and sales and marketing teams—to fully integrate human rights considerations into the design, development, and sale of new products, services, and technologies. This approach enhances the product design process by ensuring that respect for human rights is deliberately integrated throughout and that more rights-respecting design choices can be made.

- **All industries deploying technology are relevant—not just technology companies.** As we continue to address the human rights impacts arising from the technology industry, we've come to believe that one important constituency needs to participate much more actively: the "non-technology" companies integrating technology into their business operations, strategies, and plans. Dialogue about technology and human rights risks being too focused on the technology itself, with insufficient attention given to the companies deploying it. One solution is the completion of sector-wide human rights impact assessments for the industries using technology—such as financial services, healthcare, automotive, retail, and law enforcement—to provide companies and policy makers with actionable recommendations on how human rights impacts arising from technology use can be addressed by entire value chains acting in collaboration. This would also help fulfill the need for system-wide approaches (see above).

- **More engagement is needed with vulnerable users.** The UNGPs make clear that human rights assessments should involve meaningful consultation with potentially affected groups and pay special attention to human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization. In the technology industry, companies identify "personas" to represent the different user types that might use a product, service, or technology and design with their needs in mind. Human rights assessments would benefit from the more deliberate identification of "personas" from a much more diverse range of backgrounds, as well as engagement with real potential and existing users to understand how their rights may be impacted.

- **More engagement is needed with vulnerable non-users.** Human rights due diligence in the technology industry often uses the terms "user" and "rightsholder" interchangeably and focuses almost exclusively on the rights of those using the product. However, a significant number of "non-users" can also be impacted (e.g., hate speech on social media may be associated with real-world harm). It is essential that human rights due diligence incorporates this perspective.

- **The field would benefit from integrating futures methodology into human rights due diligence.** Futures thinking, also known as strategic foresight, provides tools for companies to address rapid change, uncertainty, and complexity—the very same characteristics that make human rights assessments in the technology industry challenging. We are experimenting with the use of these tools in human rights assessments as a method of recognizing potential nefarious uses of technology that we might otherwise miss, identifying the

human rights impacts associated with these cases, and putting in place measures to address them. Early pilots have been promising, and companies we've worked with have found that uncovering blind spots and broadening horizons enable more informed decision-making and helps prepare them for an uncertain future. There is potential to use futures thinking much more than we do today and to broaden participation to stakeholders outside the company.

ACCOUNTABILITY AND REMEDY

BSR's human rights due diligence engagement with companies increasingly emphasizes ongoing methods for accountability—for example, transparency as an enabler of accountability—and the role of a company in an overall remedy ecosystem. We make the following observations.

- **Companies should be more transparent about the results of human rights due diligence.** Over the past decade there has been a significant increase in disclosure from companies about the methodology and results of human rights due diligence; however, the field still falls short of the expectation in the UNGPs that companies should "provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved" (Principle 21). Publishing human rights assessments in full can make a significant contribution to the field, but it is unlikely to be the best approach in all cases—among other reasons, it can provide a false sense of stability (i.e., single-moment-in-time assessments rapidly become dated) and can detract attention away from more systemwide priorities. Rather, we envision an ideal where companies publish a summary of the results of human rights assessments and progress in human rights due diligence overall on a regular cadence as part of overall "sustainability" disclosures. The recent integration of the UNGPs into the [Global Reporting Initiative Universal Standards](#) and the [draft EU sustainability reporting standard](#) are encouraging in this regard, and will likely accelerate company practice in this direction.

- **Access to remedy in a B2B and B2G setting needs exploration.** BSR has undertaken several dozen human rights assessments in B2B and B2G settings (e.g., a cloud services company making AI/ML products available to financial services companies), leading us to explore the question of operational grievance mechanisms and access to remedy more broadly in these contexts. Questions arising have included whether the AI/ML vendor should "require" the buyer to have reporting channels in place, whether the AI/ML vendor should have its own mechanism in place (even though the victim may have no way of knowing the identity of the vendor), and how responsibility for providing remedy should be distributed across a complex web of vendors, systems integrators, and customers.

- **Access to Remedy in a social media context needs to better consider the needs of non-users.** While far from perfect, systems for enabling user appeal against social media content moderation decisions have advanced considerably over recent years, with the [Meta Oversight Board](#) ([for which BSR undertook a human rights assessment](#)) being a prime example of innovation. However, while non-users are impacted by user generated content, they are often unable to access social media company appeals channels unless they have an active account.

THE STATE'S DUTY TO PROTECT

Principle 3 of the UNGPs states that governments should "enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights", and over recent years governments have become increasingly active in proposing and implementing regulations relevant for human rights in the technology industry. We make the following observations:

- **Human rights due diligence by companies can inform policy making.** As described above, many adverse human rights impacts in the technology industry cannot be addressed by responsible companies acting alone, such as situations where "bad acting" companies step in to provide a service where "responsible" companies refuse to, when users disregard product terms of service, or if human rights risks are systemwide in nature. By systematically identifying adverse impacts, we believe that human rights assessments can provide insights to inform the creation of standards, policies, and regulations, and for this reason we welcome companies that publish human rights assessments as an input into a broader policy dialogue.

- **Government regulations relevant to human rights due diligence should be consistent with the UNGPs and interoperable.** The flurry of regulatory action in the European Union (for example, the General Data Protection Regulation, Digital Services Act, and AI Act) all contain elements (such as impact assessments and transparency requirements) that work with the grain of human rights due diligence, and have positively impacted our work as a result. However, we recommend greater consistency in the following areas: (1) making it clear that all human rights are potentially relevant for technology companies, rather than governments naming a sub-set of rights; (2) framing risk as "for the rightsholder" rather than "for the business", and determining risk severity using definitions consistent with the UNGPs; and (3) making clear that human rights due diligence is always required, rather than pre-determining certain technologies as inherently high or low risk.

- **Bad laws also set bad examples.** BSR is concerned about the growth of regulatory proposals from governments that would bring adverse human rights impacts in the technology sector, such as efforts that seek to establish liability for "lawful but awful" content (which will result on overbroad restrictions on freedom of expression), attacks on the use of end-to-end encryption (which is essential to protect rightsholders, especially human rights defenders, children, and other vulnerable users), and data localization laws (which can limit cross-border communication and present severe privacy risks). While regulations such as these may have lesser adverse impacts in countries that maintain good rule of law, they have much greater impacts when copied by countries that do not.