



The Practical Application of the UN Guiding Principles on Business and Human Rights: Investor Engagement with Technology Companies

Events throughout the past decade have placed a spotlight on the human rights risks linked to technology companies, from spreading misinformation and hate speech, to enabling political extremism and discrimination. The negative impacts often extend beyond the direct products and services of technology companies and can contribute to serious human rights abuses.¹ Investors recognize the need to hold technology companies in their portfolios to account for the actual and potential human rights risks associated with their activities, operations, products, services, and business relationships, which can also contribute to significant business and investment risks. With coordination from the Investor Alliance for Human Rights, since late 2018, a group of investors have been using the UN Guiding Principles on Business and Human Rights (UNGPs) to drive and deepen engagements with technology companies on their duty to identify, prevent, mitigate, and redress human rights risks. As a result, investors have leveraged the UNGPs and their influence to drive real change in their engagements with technology companies, including by contributing to the uptake by technology companies of a public board commitment to human rights,² which is the foundation for developing and implementing human rights due diligence processes to address salient risks.

Addressing human rights risks in business models

Governments, civil society, investors, and other stakeholders have highlighted concerns about business models deployed in the technology industry that can lead to human rights abuses. For instance, business models that rely on the collection of personal data can infringe upon users' privacy rights; companies that rely on artificial intelligence can reinforce and exacerbate discrimination.³ Against this backdrop, companies should, as part of their responsibility to respect under the UNGPs, take steps to anticipate and address instances where their business models might create human rights risks. There is a significant opportunity for investors to integrate attention to human rights risks in technology company business models in their investment analysis, decision-making and client engagements. This is consistent with investors' responsibilities under the UNGPs and is also one way

¹ Amnesty International, *Surveillance Giants: How the Business Models of Google and Facebook Threatens Human Rights*, pp. 27-38 (2019), <https://bit.ly/3K7N3ib>.

² AccessNow, *After nearly two decades in the dark, Facebook releases its human rights policy* (Mar. 16, 2021), <https://bit.ly/3CfPsVm>; Patrick McGee, *Apple commits to freedom of speech after criticism of China censorship*, *Financial Times* (Sept. 3, 2020), <https://on.ft.com/3C7ttzK>; Siobhan Riding, *Alphabet faces investor backlash over human rights policies*, *Financial Times* (Feb. 23, 2020), <https://on.ft.com/3IBnx4o>.

³ New America, *It's Not Just the Content, It's the Business Model: Democracy's Online Speech Challenge*, pp. 21-28 (Mar. 17, 2020), <https://bit.ly/35pJRQf>.

for investors to focus attention on the most salient risks to people that may also be financially material.

Investors have applied the UNGPs in their direct engagements with technology companies to address weak digital rights governance and the lack of transparency and accountability in the sector, leveraging benchmark data from Ranking Digital Rights (RDR) Corporate Accountability Index on technology companies' respect for freedom of expression and privacy (digital rights). In July 2021, 76 investors representing over US\$5.85 trillion in assets sent a statement to 26 technology companies outlining their digital rights expectations ("Digital Rights Engagement"),⁴ specifically calling out their surveillance-based business models that have and continue to cause and contribute to human rights harms to users and society at large. This engagement has resulted in ongoing dialogue with 12 companies covering their policies related to human rights and due diligence processes. The engagements have also resulted in the filing of proposals at [Facebook](#) and [Alphabet](#), which includes proposals asking the Boards to undertake human rights impact assessments as it relates to their [targeted advertising business models](#).

Through the digital rights engagement coordinated by the Investor Alliance, investors use the UNGPs framework as a useful reference point in their corporate engagements, particularly as a tool to point to human rights impact assessments across regions. For example, Aviva Investors has been engaging on human rights for a number of years across regions and sectors, and as an active member of the Digital Rights Engagement Initiative Aviva has used the UNGPs in conversations with companies, encouraging them to better demonstrate how these principles are ensured. Aviva Investors has been engaging with technology companies to commit to respecting human rights, as well as better understand their human rights impacts and mitigate them. Aviva Investors engaged with a European Telecoms company, as well as an Asian technology company and a North American company with Latin America presence. Whilst these companies are at different stages in embedding the framework, progress can be encouraged and monitored on the UNGPs.

Investors also continue to support regulatory and legislative efforts that codify the obligations of companies under the UNGPs to respect human rights throughout their operations. In January 2022, the Investor Alliance released a statement signed by 65 investors representing over US\$8.7 trillion in assets under management and advisement that called on the European Union to develop rights-respecting internet regulation via the Digital Services Act (DSA).⁵ Investors specifically called for regulations that protect digital technology users' rights to privacy and freedom of expression, and that address the harms of surveillance-based advertising. Investors also highlighted the need for such regulation to enable responsible and rights-respecting investment decisions in line with their own obligations under the UNGPs.

Human rights due diligence and end-use

Investors recognize the importance of engaging with technology companies to ensure human rights due diligence processes are regularly carried out in product and service design, development, and

⁴ Investor Statement on Corporate Accountability for Digital Rights (Jul. 2021), <https://bit.ly/3IEuGRo>.

⁵ Investor Statement in Support of Digital Rights Regulation (Jan. 2022), <https://bit.ly/3tgLeIU>.

use. Investors can be directly linked to adverse impacts through their investments in technology companies and rely on comprehensive human due diligence to identify human rights risks and fulfill their responsibilities under the UNGPs. Further, the UNGPs provide a standard framework for investors to engage companies to push for meaningful human rights due diligence processes and to ensure that technology companies are held accountable for the end-use of their products and services.

Facial racial technology (FRT) which promised efficient and secure solutions for everyday use of private and public services, has benefited from huge investments for its development and deployment.⁶ United Nations and civil society experts have raised concerns on the negative human rights impacts of FRT, including the potential for FRT to exacerbate existing inequalities and contribute to discrimination,⁷ and the weaponization of FRT by law enforcement, national security, criminal justice, and border management systems against marginalized communities around the world.⁸ In recognition of these human rights risks and their responsibilities under the UNGPs, investors led by Candriam developed an initiative to engage with technology companies involved in FRT.⁹ Using the UNGPs, Candriam developed investor guidance and coordinated an investor statement calling on companies to undertake human rights due diligence (HRDD) for all their FRT activities and take proactive steps to prevent harm.¹⁰ Investors have also filed proposals with tech companies asking for them to conduct customer HRDD under the UNGPs to ensure responsible end use of their products and services. Since 2019 and continuing this 2022 proxy season,¹¹ such HRDD proposals have been filed by the Investor Advocates for Social Justice with Amazon on their products and services with surveillance capabilities.

Investors have also joined civil society in calling for better government regulations that outline companies' responsibilities to conduct human rights due diligence. Members of the Investor Alliance have noted in their engagements with companies that many are not doing enough to implement their obligations under the UNGPs, and in some instances are not aware of the UNGPs. They point to the need for binding legislation to ensure full implementation of the UNGPs by technology companies and to support their engagements. In October 2021, 94 investors representing over US\$6.3 trillion in assets under management and advisement signed a public statement in support of the European Union's legislative proposal on mandated human rights and environmental due diligence

⁶ Zack Whittaker, Despite controversies and bans, facial recognition startups are flush with VC cash, TechCrunch (Jul. 26, 2021), <https://tcrn.ch/3pvrfoT>; Simon Jessop and Ross Kerber, Investors call for ethical approach to facial recognition technology, Reuters (Jun. 8, 2021), <https://reut.rs/3sBiGLa>.

⁷ United Nations High Commissioner for Human Rights, The right to privacy in the digital age, pp. 4-6, UN Doc. No. A/HRC/48/31 (Sept. 15, 2021); Center for Strategic & International Studies, Facing the Risk Part 2: Mapping the Human Rights Risks in the Deployment of Facial Recognition Technology, pp. 10-24 (Jul. 2021), <https://bit.ly/3sCSZKe>; European Digital Rights (EDRI), Facial recognition and fundamental rights 101, <https://bit.ly/3htFE0m>.

⁸ United Nations High Commissioner for Human Rights, The right to privacy in the digital age, pp. 6-8, UN Doc. No. A/HRC/48/31 (Sept. 15, 2021); Amnesty International, Ban dangerous facial recognition technology that amplifies racist policing (Jan. 26, 2021), <https://bit.ly/3tva346>.

⁹ Candriam, Facial Recognition and Human Rights: What is the Role of Responsible investors? (Jun. 7, 2021), <https://bit.ly/3HvXlKR>.

¹⁰ Id.

¹¹ See Investor Advocates for Social Justice, IASJ Shareholder Proposals, <https://iasj.org/resolutions/> (last accessed Mar. 3, 2022).

(mHREDD).¹² In the statement, investors highlighted their responsibilities to conduct due diligence under the UNGPs and affirmed that mHREDD legislation would enable them to make more informed and sustainable investment decisions. Such legislation would also better equip investors to engage more directly with technology companies on access to remedy and company grievance mechanisms, which are a critical aspect of the UNGPs.

¹² Investor Statement in Support of Mandated Human Rights and Environmental Due Diligence in the European Union (Oct. 2021), <https://bit.ly/3sxrL7z>.