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# The Business Case for Digital Rights

## A Briefer on the Current Philippine Digital Environment

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Foundation for Media Alternatives - September 2019



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## Introduction

Business has an enormous impact on the human rights of consumers and on the communities where they operate. Majority of the largest economic entities in the world are corporations with revenues larger than the Gross Domestic Product (GDP) of not just developing countries, but also of a number of industrialized economies<sup>1</sup>. This immense economic power of corporations enables them to steer policies in their favor, which usually puts human rights at a disadvantage. Business models also put a premium on short-term profits and rapid growth, which drive most of the current global issues such as climate change and misuse of personal data. For example, a 2017 report shows that only 100 companies are responsible for more than 70% of greenhouse gas emissions since 1988<sup>2</sup>. Traditionally, the institutional responsibility of upholding human rights is placed on the State. However, as corporations wield greater economic and socio-political power, their responsibility to adopt and uphold human rights in the way they do business becomes undeniable.

In the information and communications technology (ICT) industry, personal data is the most valuable commodity. The industry has been growing rapidly; it is estimated that the digital economy has grown more than twice as fast as the global GDP in the last 15 years<sup>3</sup>. In relation to this, technologies that utilize personal data such as social media, mobile apps, and the like have become ingrained in people's lives. In recent years, we have witnessed how personal information has been irresponsibly handled exposing consumers to privacy risks as well as how technology has been used for mass surveillance and to propagate misinformation. A recent high-profile case, the Cambridge Analytica scandal, put the issue of data rights in the spotlight forcing corporations and governments to re-evaluate its policies and practices on the right to privacy and freedom of expression<sup>4</sup>.

The Foundation for Media Alternatives (FMA) mapped the policies and practices of ICT companies in the Philippines relating to freedom of expression and right to privacy. FMA reviewed the policies and practices of 25 companies, consulted with select business groups, and conducted literature review to map the Philippine ecosystem on digital rights.

This briefer presents emerging issues in digital rights in the Philippines and recommendations on how the Philippine government can further protect citizens' digital rights. The issues identified include increased exposure to cybersecurity risks, inadequate privacy policies and accountability mechanisms, and lack of transparency. To address these issues, this briefer recommends the creation of a National Action Plan on Business and Human Rights and improved transparency and remedy mechanisms.

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<sup>1</sup> Joe Myers, "How Do the World's Biggest Companies Compare to the Biggest Economies?", World Economic Forum, published on October 19, 2016, <https://www.weforum.org/agenda/2016/10/corporations-not-countries-dominate-the-list-of-the-world-s-biggest-economic-entities/>; "69 of the Richest 100 Entities on the Planet are Corporations, Not Governments, Figures Show," Global Justice Now, published on October 17, 2018, <https://www.globaljustice.org.uk/news/2018/oct/17/69-richest-100-entities-planet-are-corporations-not-governments-figures-show>.

<sup>2</sup> "New report shows just 100 companies are source of over 70% of emissions," CDP, published on July 10, 2017, <https://www.cdp.net/en/articles/media/new-report-shows-just-100-companies-are-source-of-over-70-of-emissions>.

<sup>3</sup> Makada Henry-Nickie, Kwadwo Frimpong & Hao Sun, "Trends in the Information Technology Sector," Brookings, published on March 29, 2019, <https://www.brookings.edu/research/trends-in-the-information-technology-sector/#footnote-2>.

<sup>4</sup> Issie Lapowsky, "How Cambridge Analytica Sparked the Great Privacy Awakening," *Wired*, March 17, 2019, <https://www.wired.com/story/cambridge-analytica-facebook-privacy-awakening/>.

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# Emerging Digital Rights Issues in the Philippines

According to the *Digital 2019* report of Hootsuite and We are Social, the Philippines has 76 million internet users,<sup>5</sup> which comprises 72% of the country's population. All of the internet users in the country are on social media, with 72 million Filipinos accessing social media through a mobile device<sup>6</sup>. Filipinos are the heaviest internet users globally, spending an average of 10 hours per day on the internet, 4 hours of which is spent on social media<sup>7</sup>. Social media penetration in the Philippines is at 71%, which is way above the global average of 45%<sup>8</sup>. With the internet and social media becoming an integral part of everyday life, Filipinos are becoming more prone to digital rights abuses, especially their right to freedom of expression and privacy. Below are some of the emerging issues on digital rights in the Philippines.

## Data breaches are exposing Filipinos to cybersecurity risks.

In a recent study by Microsoft and International Data Corporation (IDC), 44% of Filipino consumers have had their trust compromised when using digital services<sup>9</sup>. To date, some of the largest data breaches in the country involving the ICT sector include the Cambridge Analytica scandal, in which social networking giant Facebook compromised the user data of 1.2 million Filipinos in launching targeted misinformation campaigns during the 2016 elections<sup>10</sup>. In October 2018, a separate Facebook data breach affected 750,000 Philippine-based users<sup>11</sup>. In 2019, Globe Telecom reported a data breach that affected 9,000 of its subscribers<sup>12</sup>. Registration confirmations to Globe's concert ticket promo were sent to the wrong individuals, compromising the privacy and security of the users registered to the program. Data breaches pose a threat to consumers because it exposes them to identity theft, extortion, and, in extreme cases, physical harm.

## Company privacy policies do not satisfy data protection standards.

The privacy policies of most Philippine-based tech companies reviewed by FMA used vague and technical language that is more suitable for a lawyer than the average internet user. In terms of transparency, most of the privacy policies reviewed did not provide adequate information about how data is handled, how they are kept secure, or what measures are taken when a breach takes place. Also, many companies place the responsibility of learning about the changes in their terms and policies on the user/customer (e.g. no notifications sent to users/customers regarding changes in their

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<sup>5</sup> "PH takes top spot as heaviest internet users worldwide — report," *CNN Philippines*, February 1, 2019, <https://cnnphilippines.com/lifestyle/2019/02/01/2019-digital-hootsuite-we-are-social-internet-philippines-facebook.html>.

<sup>6</sup> CNN Philippines, "PH takes top spot as heaviest internet users worldwide — report"

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> "Digital Trust Insight: Less Than Half of PH Consumers Trust Digital Services, According to Microsoft-IDC Study," Microsoft News Center Philippines, published on June 19, 2019, <https://news.microsoft.com/en-ph/2019/06/19/digital-trust-insight-less-than-half-of-ph-consumers-trust-digital-services-according-to-microsoft-idc-study/>

<sup>10</sup> "Press Statement from Privacy Commissioner Raymund Enriquez Liboro on the Facebook Controversy involving Cambridge Analytica," National Privacy Commission, published on April 6, 2018, <https://www.privacy.gov.ph/2018/04/press-statement-from-privacy-commissioner-raymund-enriquez-liboro-on-the-facebook-controversy-involving-cambridge-analytica/>.

<sup>11</sup> Denise Valdez, "Facebook ordered to help Filipino victims of data breach," *BusinessWorld*, October 19, 2018, <https://www.bworldonline.com/facebook-ordered-to-help-filipino-victims-of-data-breach/>.

<sup>12</sup> Denise Valdez, "Globe Reports Data Breach Affecting 8,000 Customers," *BusinessWorld*, January 30, 2019, <https://www.bworldonline.com/globe-reports-data-breach-affecting-8000-customers/>.

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terms and policies and explicitly stating in the policies that users should regularly check their terms and policies for changes). Furthermore, consent to the terms of use and privacy policy is automatically assumed with the use of the website/app/service. This does not give users/customers adequate options to regulate the amount of data they share.

## **Lack of corporate governance and accountability mechanisms.**

Freedom of expression and right to privacy are rarely mentioned in corporate governance documents and annual company reports of the companies reviewed by FMA. This shows that digital rights, including the rights to privacy and free expression, are not institutionalized in companies. Mechanisms such as senior-level oversight, due diligence and impact assessments, and stakeholder engagement are close to non-existent in the company policies examined. Accountability mechanisms such as grievance redress systems, which provide recourse for citizens whose rights have been violated, are also lacking. The most common way for users/customers to report privacy-related grievances is by sending an email to a generic email address. Information on standard operating procedures, processing time, and appeals are not made publicly available. There is also a reliance on reporting to the National Privacy Commission (NPC), a regulatory body with limited implementing powers.

## **Lack of transparency regarding data breaches, content moderation, and government data demands.**

Transparency is an important aspect of digital rights because it provides citizens information on how their data and content are being managed. This allows them to make informed decisions in using a company's services, while increasing consumer trust in the company. However, although ICT companies operating in the Philippines have community standards that define prohibited content on their platforms, the manner by which content is moderated is unclear. Companies also provide limited information on how they handle government requests. It is rare for them to publish information on content moderation and government requests for data.

## **Policies on Business and Human Rights**

Policies and guidelines on business and human rights are available for companies who want to adopt human rights standards in their operations. At the global level, the *United Nations Guiding Principles on Business and Human Rights (UNGP BHR)* and the *Global Network Initiative (GNI) Principles on Freedom of Expression and Privacy* provide non-binding human rights guidelines for businesses. At the national level, the *Data Privacy Act of 2012 (Republic Act No. 10173)* mandates Philippine companies and organizations to adopt practices that respect citizens' right to privacy.

### **United Nations Guiding Principles on Business and Human Rights (UNGP BHR)**

The United Nations Human Rights Council unanimously endorsed the UNGP BHR in 2011. The UNGP BHR adopts the "Protect, Respect and Remedy Framework." The first pillar affirms the State's duty to **protect** its citizens against human rights abuses committed by businesses. This entails the establishment and implementation of effective laws and policies that prevent and address human rights abuses. In the second pillar, the UNGP BHR also affirms business' responsibility to **respect** human rights, which entails identifying their actual and potential human rights impacts and implementing measures that prevent or mitigate human rights abuses.

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**The UNGP BHR outlines three components of this pillar:**

- 1) A policy commitment to respect human rights;
- 2) Human rights due diligence to identify, prevent, mitigate, and account for human rights impact; and
- 3) Remediation process for any adverse human rights impact of the company.

Finally, when human rights violations have been committed by business, individuals and communities should have access to effective **remedy**. This third pillar is the responsibility of both the State and companies. States should ensure access to remedy through its judicial system and alternative non-judicial grievance redress mechanisms. On the other hand, companies should establish or participate in effective grievance mechanisms for individuals or communities adversely impacted by its operations. Furthermore, the UNGP BHR recommends multi-stakeholder and other collaborative initiatives in providing effective access to remedy.

<b>PROTECT</b>	<b>RESPECT</b>	<b>REMEDY</b>
Sets out the responsibilities of <b>governments</b> .	Sets out the responsibilities of <b>businesses</b> .	Sets out the responsibilities of both <b>governments and businesses</b> .
Focuses on ensuring that there are appropriate laws, regulations and policies in place so that businesses respect human rights.	Focuses on ensuring that businesses respect human rights in practice.	Sets out the responsibilities of both governments and businesses.

Source: Global Partners Digital, How to Respect Privacy and Free Expression as a Tech SME in the Philippines

**Global Network Initiative (GNI) Principles on Freedom of Expression and Privacy**

The Global Network Initiative (GNI) is a multi-stakeholder coalition of businesses, civil society organizations, academics, and investors. It aims to protect and uphold freedom of expression and right to privacy by providing a framework for ICT companies that can be adopted in their operations. It highlights the need for responsible company decision making, multi-stakeholder collaboration, and governance, accountability and transparency.

The GNI's Implementation Guidelines<sup>13</sup> provide details to ICT companies on how to operationalize the GNI Principles. It also provides a framework for multi-stakeholder collaboration among business, civil society, academics and investors.

- **Freedom of expression and privacy:** The implementation guidelines list specific steps on how companies can carefully scrutinize and challenge government policies and requests that may violate freedom of expression and privacy. It also explicitly outlines how to properly collect data and communicate with users and the public.
- **Responsible company decision making:** The implementation guidelines recommend board oversight on matters concerning freedom of expression and right to privacy. Companies are encouraged to review freedom of expression and privacy risks, provide relevant risk training, and adopt human rights principles in their operations.
- **Multi-stakeholder collaboration:** The implementation guidelines recommend the engagement in public policy and participation in advisory and learning forums.

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<sup>13</sup> Global Network Initiative, *Core Commitments*, available at <https://globalnetworkinitiative.org/core-commitments/>.

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- **Governance, accountability and transparency:** The implementation guidelines encourage transparency and accountability through independent assessments of the implementation of the GNI Principles and regular communication of the outcome of the independent assessments to the public.

### **Data Privacy Act of 2012 (Republic Act No. 10173)**

In the Philippines, the Data Privacy Act of 2012 recognizes “the fundamental human right of privacy”. It ensures that personal data collected by both public and private organizations are secured and protected. The Act clearly outlines the rights of citizens with regard to their right to privacy. In general, it states that citizens have the right to be informed about how their data is going to be used, to access their data, and to rectify or withdraw their personal data from the company’s system, among other rights. On the part of companies collecting personal data, the Act requires the proper processing of personal data. This entails obtaining consent to collect and process personal data, transparency in how data will be used, regular updating of data, collecting only what is needed, and storing data only when necessary.

The Act requires entities collecting personal data to “implement reasonable and appropriate organizational, physical and technical measures intended for the protection of personal information.” This is to protect individuals from their data being accidentally or illegally destroyed, altered, disclosed or processed. Finally, the Data Privacy Act of 2012 provides remedies for violations to privacy rights. Privacy rights abuses can be taken to court with penalties corresponding to the violation’s degree of severity.

## **Enhancing Consumer Trust: Recommendations for ICT Companies**

Filipinos value privacy, compliance to policy, and security<sup>14</sup>. According to the *2017 Unisys Security Index*, 88% of Filipinos are concerned with cybersecurity in relation to viruses, unsolicited e-mails, and hacking<sup>15</sup>. In *The State of Cybersecurity 2017 – Southeast Asia*, a report by Limelight Networks, 74% of surveyed Filipino consumers expressed “extreme concern” about cybersecurity<sup>16</sup>. The report also says that 71% of users have had a negative perception of a company after a cybersecurity incident and 40% of the surveyed respondents said that they will cease using online transaction services of a website that was hacked<sup>17</sup>. This response is consistent with Microsoft and IDC’s study where 57% of its respondents said that they would switch to another company offering the same services as a response to a breach of trust<sup>18</sup>. Thirty eight percent of respondents also said that they would reduce their usage of the service, while 31% said that they would stop the usage of the service altogether<sup>19</sup>.

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<sup>14</sup> Microsoft News Center Philippines, “Digital Trust Insight: Less Than Half of PH Consumers Trust Digital Services, According to Microsoft-IDC Study”

<sup>15</sup> “Are We Paranoid? These Two Security Issues Worry Filipinos the Most,” *Interaksyon*, August 8, 2017, <http://www.interaksyon.com/breaking-news/2017/08/08/89624/are-we-paranoid-these-two-security-issues-worry-filipinos-the-most/>.

<sup>16</sup> Patrizia Paola Marcelo, “Cybersecurity a Growing Concern among Many Filipinos – Report,” *BusinessWorld*, January 8, 2018, <https://www.bworldonline.com/cybersecurity-growing-concern-among-many-filipinos-report/>.

<sup>17</sup> Patrizia Paola Marcelo, “Cybersecurity a Growing Concern among Many Filipinos – Report”

<sup>18</sup> Microsoft News Center Philippines, “Digital Trust Insight: Less Than Half of PH Consumers Trust Digital Services, According to Microsoft-IDC Study”

<sup>19</sup> Ibid.

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In general, companies who go beyond the minimum of what is required by law are more trusted by consumers. According to a study published in the Harvard Business Review, a good privacy policy can protect companies from financial harm brought by a data breach, while a flawed policy can exacerbate problems caused by a breach<sup>20</sup>. A good privacy policy which offers transparency and control over personal data fosters a sense of trust, provides more accurate data, and were more likely to give positive feedback about the company<sup>21</sup>. Below are some recommendations for companies on how to adopt digital rights in their policies and practices, which could enhance consumer trust in their brands.

### **Practice transparency and fair content moderation<sup>22</sup>.**

Aside from practicing transparency in the company policies, companies should also disclose comprehensive, systematic, accessible, and comprehensible information about moderated content, government requested data, instances where users' data have been compromised, etc. An example of this is Google's Transparency Report,<sup>23</sup> which is readily available online. The Transparency Report provides digestible information about the company's community guidelines enforcement (e.g. number of removed content, number of flagged content, etc.), data on government requests to remove content, and the like. To ensure that content moderation does not violate freedom of expression, Freedom House recommends that companies:

- Provide a clear and concrete definition of what types of content are not allowed on the service;
- Consider less invasive action before restricting speech outright (e.g. giving warnings, adjusting algorithms that unintentionally promote disinformation);
- Ensure that content removal requests from the government adhere to international human rights standards; and
- Provide an appeal mechanism for users who believe that their speech was unduly restricted<sup>24</sup>.

### **Provide effective grievance and remedy mechanisms<sup>25</sup>.**

Companies should be able to provide a grievance or remedy system that is accessible and responsive to their needs and has clear standard operating procedures. Users should be able to report and file complaints about violations to their privacy and right to freedom of expression while using the company's services.

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<sup>20</sup> Kelly Martin, Abhishek Borah & Robert Palmatier, "Research: A Strong Privacy Policy Can Save Your Company Millions," *Harvard Business Review*, February 15, 2018, <https://hbr.org/2018/02/research-a-strong-privacy-policy-can-save-your-company-millions>.

<sup>21</sup> Ibid.

<sup>22</sup> Ranking Digital Rights, *2019 Ranking Digital Rights Corporate Accountability Index*; Freedom House, *Freedom on the Net 2018*.

<sup>23</sup> <https://transparencyreport.google.com/?hl=en>

<sup>24</sup> Freedom House, *Freedom on the Net 2018*.

<sup>25</sup> Ranking Digital Rights, *2019 Ranking Digital Rights Corporate Accountability Index*

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## **Incorporate freedom of expression and right to privacy in company board oversight and due diligence mechanisms<sup>26</sup>.**

Board oversight and comprehensive due diligence mechanisms allows companies to ensure that their business practices adhere to international human rights standards. It also allows companies to review how their operations affect the right to information and privacy in the places where they operate. For example, a local telecommunications company reviewed by FMA conducts regular cybersecurity audits where the results are reported to the company's board. Cybersecurity issues, such as data breaches, and updates are also reported in the company's annual reports which are accessible on the company's website.

## **Engage with stakeholders including civil society groups<sup>27</sup>.**

Companies should engage with stakeholders such as local experts and civil society groups in places where they have a presence or where their services are widely used. Regular engagement with local experts and civil society should inform the company's approach to content moderation, government request for data, transparency, etc. Companies and stakeholders can also work together to proactively address freedom of expression and privacy issues.

## **Conclusion**

Upholding human rights is good business. As consumers become more conscious of how companies handle and manage their personal data, it is in the best interest of companies to adopt human rights practices in its operations. High levels of consumer trust in a company would not only bring short-term benefits, but would also ensure long-term sustainability. Adopting good business practices in handling and managing private information shows consumers that the company cares for them and the communities where they operate. This is the foundation of trust which would lead the path to corporate sustainability.

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<sup>26</sup> Ibid.

<sup>27</sup> Ranking Digital Rights, *2019 Ranking Digital Rights Corporate Accountability Index*; Freedom House, *Freedom on the Net 2018*.

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