



Business and Human Rights: The ICT Sector

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Ethical Capitalism?



Sure!
But to “internalize the externalities” (prevent harm) capitalism requires incentives and regulation

What Are Human Rights?

- **Human Rights are made by states** in the last 100 years (but especially the past 60 years). They are duties placed on states to protect their citizens.
- **Human Rights are proclaimed by national laws or international treaties** - e.g. UNDHR, ICCPR, ICESR, ILO Conventions, Geneva/Hague/Rome. In many places they have become law or integrated into regulation.
- **Human Rights are those things states should *not do*** to their citizens, e.g. execute, arrest without due process, torture, discriminate, etc.
- **...and those things which states should make sure people have, e.g.** decent work, access to food, shelter, water, education, etc.

Do Human Rights Apply to Business?

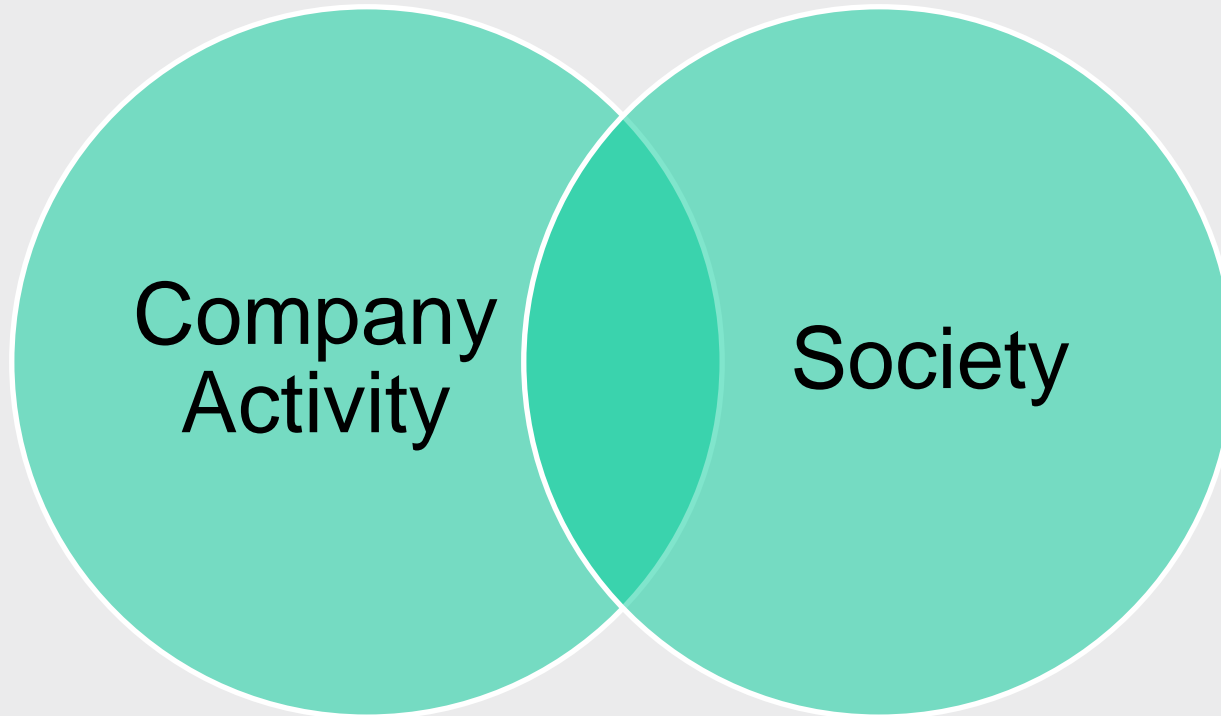
Yes. A company has a “**responsibility to respect**” all internationally proclaimed human rights.

Who says?

The United Nations, OECD, the EU, ASEAN, Member States, the ICC, NGOs

What does it mean?

Business Responsibility



Responsibility arises when a company activity (operation or relationship) results in a risk of a human rights violation.

A minimum obligation is to do no harm.

What does this responsibility mean in practice?

III Due Diligence

Business should identify and mitigate human rights risk.

IV Identify the Risk

What is the potential for harm or damage to people? Is the company involved? How?

V Manage the Risk

What rights are at issue? What tools or options do we have to ensure we respect those rights?

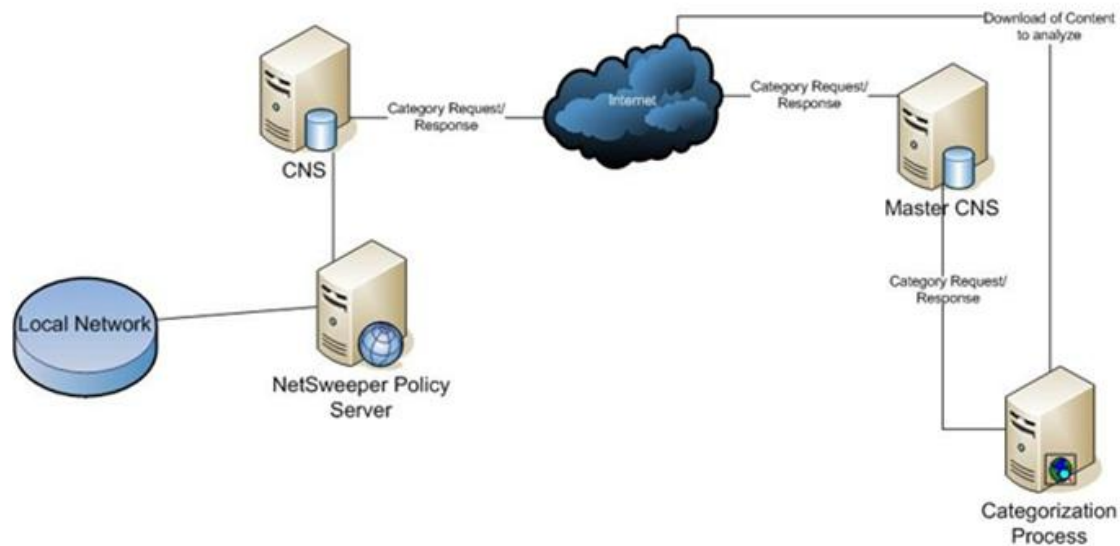
End-Use Risks to human rights



- **Privacy**
- **Article 12, UDHR**
- No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

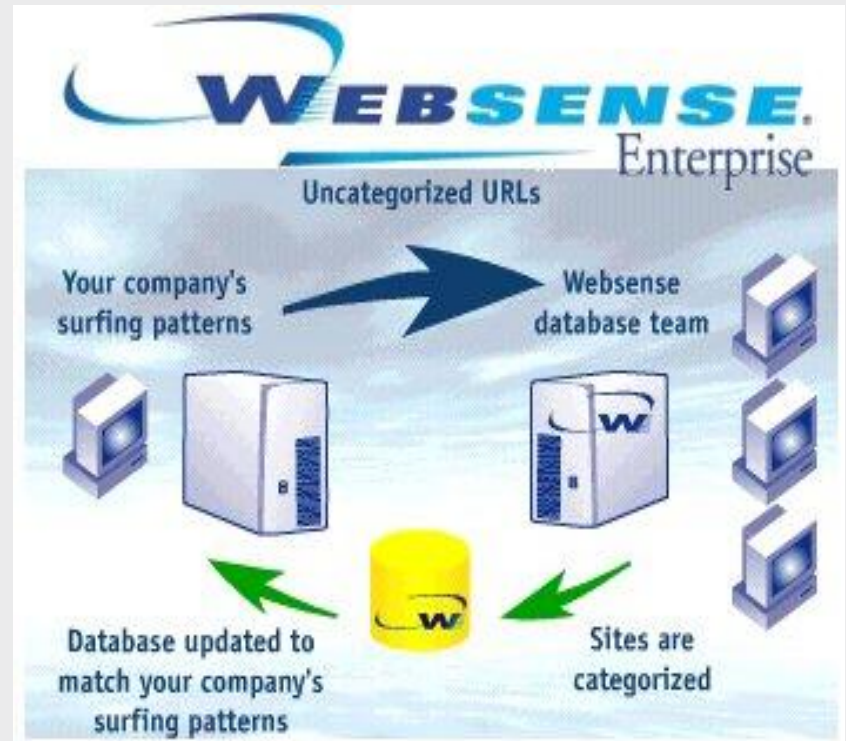
“...(this) isn’t just about Foursquare or GAM; it is about the perils of geolocation and the aggregation of social networking data.... the aptly named “Creepy” is a software package that allows users to find out where a person lives, works, and hangs out, based on the shared photos they post online. The app can retrace your tracks using geographic data embedded within shared photos.

Netsweeper Filtering Process



End-Use Risks to Human Rights

- **Freedom of Expression**
- **Article 19 UDHR**
- Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.



- “Western companies are playing a role in the national politics of many countries....by making software available to regimes, they are potentially taking sides against citizens and activists who are prevented from accessing and disseminating content thanks in part to filtering software”, ONI, 2011

Liability Risks of Dual-Use Technology

Red Flag # 7. Providing the Means to Kill

Businesses may face liabilities if they provide weapons or dual-use equipment to governments or armed groups who use those products to commit atrocities. This may be the case even where import and export regulations are fully respected.

A court in the Netherlands imprisoned a Dutch businessman for providing chemical components which the Iraqi military used against Kurdish civilians in 1988. The accused challenged the allegations. On appeal, the court confirmed the conviction, increasing the sentence to 17 years.



Supply Chain Risks to Human Rights

- Universal Declaration on Human Rights
 - Economic and Social Rights
 - Freedom from forced labor (art. 4)
 - Migrant Labour



Supply Chain Risks to Human Rights

- Metals used in high-tech components

- wolframite (tungsten ore)
- cassiterite (tin ore)
- coltan (tantalum ore)

- UN Sanctions require due diligence

- US Dodd-Frank Act 1502



Regulatory Responses for Human Rights

Category	Sources	Examples
Criminal liability	<p>International criminal / Humanitarian law</p> <p>Individuals or states in international courts</p> <p>Companies increasingly liable under national criminal / civil law</p>	<p>Amesys in Libya (“Eagle” system of email/internet surveillance)</p> <p>Qosmos in Syria (deep packet inspect)</p> <p><i>Frans van Anraat</i>: sentenced to 17 years for providing chemical pre-cursor to Iraq’s chemical weapons programme. I</p> <p><i>Decision criminalized a business transaction</i></p>
Civil liability	<p>National civil law</p> <p>EU and US law permits suits by victims for harms suffered abroad</p>	<ul style="list-style-type: none"> • «Golden Shield», Cisco in China • Yahoo in China • <i>Shell Nigeria in NL</i> • <i>Nokia in China (HBV discrimination)</i>
Non-judicial mechanisms	<p>National policy frameworks:</p> <ul style="list-style-type: none"> • OECD National Contact Points • Voluntary Principles on Security and HR • Extractive Industries Transparency Initiative 	<ul style="list-style-type: none"> • Gamma / Trovicor in Bahrain • Aker Kværner (Guantanamo Bay) • Afrimex UK



Liability Risk is Increasing

- **Evolution of corporate liability** (for 'social harms') is happening through interaction of national and international law
- **Next five years** will see more cases: we are at a point where it is catching on and internationalizing (and campaigners will use the laws)
- **Law Free Zones are Shrinking:** increasingly transnational law/remedies are being exploited...corporate counsel are going to face increasing demands
- **No definitive clarity as to the limits of liability:** an objective standard of compliance will not be set by the courts
- **Due Diligence is a potential safe harbour:** Companies that want to do the right thing need to know about, avoid/mitigate the risks (sources of social harms). Legal evolution may make *real* DD a defence.