Promoting Innovation Worldwide

ITI Response to Request for Input Regarding "The relationship between human rights and technical standard-setting processes for new and emerging digital technologies (2023)" - Report of the High Commissioner for Human Rights

In response to the United Nations Office of the High Commissioner for Human Rights (UNOHCHR) request for input regarding the relationship between technical standards and human rights, the Information Technology Industry Council (ITI) respectfully submits the below feedback.

For background, ITI is the premier global advocate for technology, representing the world's most innovative companies. Founded in 1916, ITI is an international trade association with a team of professionals on four continents. We promote public policies and industry norms that advance competition and innovation worldwide. Our diverse membership and expert staff provide policymakers the broadest perspective and thought leadership from technology, hardware, software, services, and related industries. Nearly 25 percent of ITI's member companies are headquartered outside the United States.

Technical standards generally reflect an agreed-upon approach to address a specific technological issue or problem - a "common language" in the form of specifications. Technical standards are consensus-based solutions that specify technical requirements to further enable safety, security, quality, performance, interoperability and other attributes across systems and devices. This in turn can help facilitate and accelerate the entry of new products and services into the market. Technical standards often serve as the shared foundations upon which innovations in technology, products, and services are built. A product often implements many standards that enable the product to be interoperable or otherwise useful in the marketplace. As an example, laptop computers incorporate hundreds of technical standards that enable shared functionality such as networking (e.g., Wi-Fi, Bluetooth, internet communication protocols), security (e.g. data security, biometrics), system support (e.g., programming languages, audio and video rendering, database management), as well as physical connections like electric power cables and thumb drives.

While technical standards are important tools, they do not guarantee outcomes, because they are implemented in combination with non-standardized technology in products and services that humans use.

Participation in Standards Development:
The standards-setting landscape is comprised of hundreds of different standards setting organizations (SSOs). These include: (a) SSOs where membership and/or participation in the SSO is typically organized through national or regional delegations, (b) SSOs that are open to direct membership/participation from a broad range of industry, government, and societal stakeholders, and (c) SSO consortia groups that are focused on developing standards/specifications for a specific and focused set of topics.

Most SSOs follow principles and widely recognized best practices to enable fair, open/inclusive and consensus-based standardization outcomes. SSOs generally have robust, written procedures and policies that further articulate important due-process-based procedural safeguards and requirements, such as openness, transparency, public comment opportunities (when available), the fair consideration of all contributions and concerns, consensus outcomes, a neutral complaint and/or appeals process, and sufficient record-keeping. The Decision of the WTO TBT Committee on principles for the development of International Standards[1] provides a useful framework for generating confidence in the process by which many standards organizations develop their standards.

A key principle shared by nearly all standards setting organizations is the equitable treatment of all participants/stakeholders and the fair consideration of all proposals. Therefore, the process is impartial -- SSOs do not favor any proposals over others based on the topic or submitter, and decisions are made by consensus where all views are considered. The ability of all interested stakeholders to participate, and the equal and fair treatment of all participants and their contributions, help to ensure that the resulting standards are globally relevant and recognized in their intended field.

Participation in the development of these consensus-based documents is open to any interested stakeholder on a non-discriminatory basis. This generally includes participants from industry, academia, societal stakeholders, and government/policy makers representatives. In addition, many SSOs include opportunities for public comment during which any interested party can review a standard under development and submit comments even if they are not a member or participant of the SSO.

Standards Development vs Standards Application:
ITI respects UNOHCHR's interest in the relationship between technical standards-setting processes and human rights, and condemns the misuse of technology for perpetration of human rights abuses. In the context of technical standards, it is important to distinguish between the *development of technical standards* and the *use of the finished product*. As articulated above, the development of technical standards focuses on aspects such as architecture, functionality and/or interoperability of products and systems in order to address a shared technical need and/or issue.

Unfortunately, nearly any technology or related product can be misused or abused for inappropriate or harmful purposes. It is important to underscore that, in the context of this consultation, the end use of the product or service may be the source of possible human rights-related concerns. In that context, it may therefore be more appropriate and effective to focus on *end usage* when identifying ways to be more effective and address these concerns. As UNOHCHR studies implications of human rights in technical standards development work, ITI encourages the agency to make a clear distinction between the technical standards development process and the use or misuse of the finished product or service.

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[1] https://www.wto.org/english/tratop_e/tbt_e/principles_standards_tbt_e.htm

In the standards-specific context, human rights considerations are taken into account during the development phase of certain technical standards. For example, the development of standards that enable protection of an individual's privacy, make technology accessible to people with diverse abilities, and facilitate online freedom of opinion and expression are all examples of how technical standards development work takes human rights implications into account. And, as artificial intelligence (AI) becomes more prolific, SSOs are working with a wide array of stakeholders to develop standards to address bias, fairness, human oversight, privacy, ethics and other important considerations. (One of the key technical committees working on AI standardization efforts is the ISO/IEC Joint Technical Committee 1 (JTC 1) SC 42. A summary of this group's current work items can be found here.)

However, it is important to understand that the overwhelming majority of technical standards, including for new and emerging technologies, likely will not – by themselves – create threats to human rights. As noted, these technical standards generally are focused on addressing one or more specific technical issues such as interoperability, system architecture, system terminology and/or specific functionality. ITI also notes that the diversity of stakeholders in the standards development process – including those with expertise on ethics, privacy, and civil rights and civil liberties – helps ensure that the standards development process reflects analysis and input from numerous angles. Furthermore, if a stakeholder were to put forward a contribution to a standard or a proposed work stream that did not align with the remit of the SSO or its policies (and did not receive broad and consensus-based support), the proposal would not advance. The international standards development process has enabled the use of products and services across the globe, and ITI strongly supports the multi-stakeholder process and encourages all interested stakeholders to participate.

ITI encourages interested stakeholders to raise concerns as participants in standards development, while respecting the well-established principles of impartiality and consensus. Proposals that would seek to require that SSOs include a uniform consideration of all potential human rights issues in connection with all technical standards development processes (including through the potential formulation of special categories of participation for stakeholders representing human rights interests) are unlikely to achieve the intended goals, and would instead likely disrupt the inclusive and well-functioning global standardization system that has produced countless international standards with no indication of any efforts to undermine human rights or related effects. ITI respects and supports the imperative of governments and international organizations to protect human rights, and we encourage UNOHCHR to base its work on broad stakeholder engagement, and a comprehensive understanding of the state of technology, global and relevant standardization efforts, and implications for the global marketplace.

Specific to technical standards, ITI would be happy to provide human rights experts and advocates with additional information regarding relevant standardization processes, engagement best practices, and briefings on the work of technical standards bodies of interest.