Internet shutdowns: The risks and opportunities for technology sector investors

This briefing outlines the financial and reputational risks to investors with holdings in companies associated with the shutdown of internet services. We highlight the opportunity to make governance recommendations to companies in order to mitigate exposure to these risks.

Involvement in internet shutdowns raises financial and reputational concerns for information and communication technology (ICT) companies and their investors. Internet shutdowns are here understood as the intentional disruption of internet or electronic communications, rendering them inaccessible or effectively unusable for a specific population or within a location, often to exert control over the flow of information.[1] These disruptions occur with increasing frequency, threatening the rights and interests of technology sector investors, companies, and customers worldwide. This briefing highlights that implementing some targeted governance measures can significantly improve the investment risk profile of companies involved with shutdowns.

The issue is more pressing than ever. There have been at least 40 shutdowns all over the world, from Bahrain to India to Ethiopia, thus far in 2016. The most high-profile disruption occurred during the attempted coup d'état in Turkey in July 2016, when media coverage of the coup detailed the unavailability of social media platforms Facebook, Twitter and YouTube for two hours.[2,3] The Turkish Government passed a law in 2007 that gives it greater scope to moderate internet content, and the Government also updated its licensing law in June 2016 to require ICT companies to comply with shutdown orders.[4] These expanded measures — and the reported disruptions during the coup d'etat — place companies operating in Turkey at significant risk. But many ICT companies operate globally across different continents, compounding their risk. During a recent shutdown in Uganda surrounding presidential elections, for example, the Government blocked social media and mobile money at an estimated loss of USD $23 million per day to mobile banking companies alone.[5] The shutdown lasted three days.

While the reported occurence of shutdowns increases, this briefing details associated risks and provides recommendations for improved corporate governance and policy commitments intended to mitigate exposure to those risks. It also lists key recent global developments relating to this topic.

Risks for investors

- **Immediate financial risks**: ICT companies and businesses relying on internet services can lose substantial revenue resulting from the interruption of services.
- **Long-term financial risks**: ICT companies can lose market share to their competitors due to widespread or repeated disruptions.

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Responding to incidents, publicly and privately, requires attention from executives and can become a major, unexpected draw on their time. Because of modern reliance on ICT companies, these risks also potentially impact other businesses that have operations in the country or area affected by the shutdown.

- **Litigation risks**: Costs loom as companies respond to lawsuits over lost profits, disruption of businesses dependent on mobile services, blocking of emergency services, and more.
- **Reputational risks**: Customers lose trust in the company's ability to protect their interests and seek more trustworthy competitors.
- **Domestic legal risks**: Courts may look to hold corporate and government officials responsible for shutdowns and their varied economic and social costs.
- **International legal risks**: Companies and their investors may be held to account following the United Nations (UN) Human Rights Council's resolution against shutdowns, when perceived as complicit.

Background

The risks of shutdowns to companies and investors first came to the fore during the Arab Spring of 2011. Then, the UK-based company Vodafone shut down services in Egypt at the request of then President Hosni Mubarak. ShareAction and Access Now engaged Vodafone and its investors to address these issues,[6] with positive developments that are profiled below. Recommendations for companies are provided in this briefing to facilitate constructive engagement by investors with ICT companies operating in national contexts where shutdown requests by local governments are an ongoing possibility.

Shutdowns don't occur in isolation and require at least two major stakeholders to be carried out: governments and ICT companies. Shutdowns are often justified by governments on security grounds, citing the need to prevent individuals threatening local or national security from communicating. While the onus of responsibility for that decision rests with governments, shutdown orders are enacted and carried out by ICT companies that operate within the jurisdictions of specific governments.

Stakeholders have published key statements that push back on increasingly prevalent internet shutdowns. The Global Network Initiative (GNI), a multi-stakeholder group seeking to advance privacy and free expression in the ICT sector, and the Telecommunications Industry Dialogue (TID), a group of ICT operators and vendors, jointly stated that the "protection of national security and public safety are important government concerns. Network shutdowns, and the wholesale blocking of internet services, however, are drastic measures that often risk being disproportionate in their impact."[7] The GSM Association, one of the world's largest technology associations, also issued new guidelines in July 2016 for ICT companies receiving what it calls Service Restriction Orders.[8] The UN Human Rights Council approved a resolution in June that unequivocally condemned the use of internet shutdowns, demonstrating the growing international consensus against such measures.[9]

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>
> - Global Network Initiative and Telecommunications Industry Dialogue joint statement on internet shutdowns

Investors have an opportunity to ensure that ICT companies have the appropriate governance structures and policies in place to mitigate risks arising from internet shutdowns. These risks and recommendations are detailed below.

Major risks for investors

There are financial and reputational risks associated with investments in ICT companies that facilitate or contribute to internet shutdowns. Companies lacking an accountable governance structure, a clear policy development process, and disclosures on threats to customers' privacy and freedom of expression remain vulnerable to these various risks.

Financial risk

The cessation of normal operating practices predictably cuts the revenue of ICT companies. The shutdown of services in Egypt in 2011 for five days resulted in direct costs of at minimum USD $90 million according to the Organisation for Economic Co-operation and Development (OECD);[10] other sources have highlighted that this is a conservative assessment.[11] Former Egyptian President Hosni Mubarak faced significant fines — collectively over USD $60 million (EGP 540 million) — through Egyptian courts for the financial impact of the shutdowns on the three ICT companies operating in Egypt in 2011.[12]

> “Even relatively brief shutdowns can drive customers to competitors. In Brazil, millions of users downloaded the mobile messaging app Telegram when a court-ordered block shut down its rival WhatsApp (Facebook) for 24 hours in December 2015.

In an analysis of shutdowns in Pakistan conducted in collaboration with ICT company Telenor Pakistan, the Institute for Human Rights and Business highlighted that telecom companies lost USD $25 million in the shutdown during Eid in August 2012 alone.[13]

Even relatively brief shutdowns can drive customers to competitors. In Brazil, millions of users downloaded the mobile messaging app Telegram when a court-ordered block shut down its rival WhatsApp (Facebook) for 24 hours in December 2015.[14] The customers leaving for Telegram have not returned to WhatsApp.[15]

The limit on revenue is the most accessible assessment of the financial risk of internet shutdowns. Nevertheless, the secondary economic impacts to ICT companies resulting from loss of customer trust should be acknowledged. Universal investors will also be concerned with impacts on the wider economy from inevitable restraints on online business, mobile money programs, and tourism. Unexpected draws on executive time spent responding to the often-abrupt disruptions constitute significant costs.[16]

> “The [June 2016 UN Human Rights Council] resolution agreed by consensus supports human rights online and specifically condemns internet shutdowns as a barrier to human rights.

Reputational risk

ICT companies are dependent on the trust of their customers. With increased competition and lower switching costs, customer trust in these companies stands at risk, especially when users perceive corporations as complicit in unlawful or unethical practices. The shutdown of services has direct impact on that trust and is often profiled in the international media, impacting on the company’s brand.

The growing recognition of internet connectivity as a human rights issue raises the reputational risk associated with internet shutdowns. The risk has been framed on the international stage by a June 2016 UN Human Rights Council resolution. The resolution agreed by consensus supports human rights online and specifically condemns internet shutdowns as a barrier to human rights.[17] Moreover, international experts and institutions are specifically challenging the reasoning that shutdowns are justified in conflict situations and for security purposes, highlighting that the risk to security is often overblown while the human rights impacts are undeniable and significant. These developments are detailed below.[18]

Recommendations for investors in ICT sector

Ensure accountability

Investors should encourage companies to appoint a member or committee from the Board of Directors to be responsible for policies and related risk management on internet shutdowns (including but not limited to policies and practices developed when entering a national market, and a clear understanding of the laws in those markets that might lead to a shutdown request).

Establish policy

Investors should ensure companies have a clear policy development process for operational decision making relating to entering and operating in countries where governments may request the disruption of services. This policy should make clear the conditions in which a company will operate in a country, demonstrate an understanding of the risks in that country, and outline how it will respond to a request by the government to suspend services, including disclosure to customers.

Enforce transparency

Investors should encourage companies to publish transparency reports, to the extent legally possible, that list the countries in which they operate, and clarify in which countries they have received requests for service shutdown or monitoring. While public reporting remains in its infancy, this is becoming increasingly valuable for companies to assert a strong public image and disclose the operational challenges they face.

Key global developments

The international community and civil society have been looking more closely at the issue of internet shutdowns in recent years. This increased attention, and greater scrutiny of company policy, brings more exposure to shutdowns when they occur. This in turn creates opportunities for responsible investors to better manage the risks associated with this issue through engaging with stakeholder initiatives and companies.

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International law

The UN Human Rights Council agreed by consensus in June 2016 to a resolution supporting human rights online and specifically condemned internet shutdowns as a barrier to human rights.[19] Paragraph ten of the resolution “... condemns unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law and calls on all States to refrain from and cease such measures.”[20] This resolution focuses on the role of states as well as acknowledging the key importance of the private sector in promoting and protecting human rights online.

> Investors ranked Goal 9 as the one with the clearest role in helping them meet their investment objectives. [...] Goal 9 includes this target on [internet] connectivity.

This resolution builds on two other initiatives taken in 2015 to promote global connectivity to the internet. In May 2015, international human rights experts, including the UN Special Rapporteur on Freedom of Opinion and Expression, David Kaye, published a declaration stating that the "Filtering of content on the internet, using communications 'kill switches' (i.e. shutting down entire parts of communications systems) and the physical takeover of broadcasting stations are measures which can never be justified under human rights law."[21] The joint declaration specifically addressed the question of internet connectivity in times of conflict. This is a clear and helpful response from the international human rights community and legal experts regarding governments' use of security as grounds for justifying internet shutdowns.

In addition to this, the Sustainable Development Goals (Global Goals) include targets on global connectivity to the internet by 2020. The 17 goals were adopted by 193 countries at the UN Sustainable Development Summit in September 2015 and cover a wide range of social, environmental and economic targets for sustainable development. Goal 9 (Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation) includes this target on connectivity: "9.c. significantly increase access to information and communications technology and strive to provide universal and affordable access to the internet in least developed countries by 2020."[22]

In March 2016, ShareAction published a report on the role of institutional investors around the Global Goals. Significantly, investors ranked Goal 9 as the one with the clearest role in helping them meet their investment objectives.[23] Investors recognise the value of global connectivity to the internet. The flip side of that is that the shutdown of internet and electronic communication poses a risk to investors' objectives.

Stakeholder initiatives

Seven companies from the TID received official observer status at the GNI in February 2016. These seven telecommunication companies are Millicom, Nokia, Orange, Telefónica, Telenor Group, TeliaSonera and Vodafone Group.[24] These companies are supporting the GNI's work that seeks to protect and advance freedom of expression and privacy in the ICT sector.[25]

In July 2016, the GNI and TID jointly released a strong statement highlighting the adverse impacts of internet shutdowns on human rights.[26] As the statement notes, "Disruptions also negatively affect a broad range of economic activity, preventing financial transactions, stalling e-commerce and undermining business operations. Even temporary disruptions may complicate the provision of medical care and education, which increasingly rely on the sharing of digital information." The groups called for governments to be transparent about their "role in shutting down or restricting networks and services, and the legal justifications for any restrictions." Companies should also be permitted to explain publicly why services are restricted, they stated.

Specific recommendation

We recommend investors promote the GNI and TID initiative to ICT companies that are not yet observer members of the GNI, as part of an effort to coordinate the pushback on internet shutdowns and promote good governance structures and policy commitments that mitigate associated risks.

Company initiatives

In 2010, Google published the first transparency report aimed at disclosing threats to user privacy and free expression. Since then, at least 60 companies have published similar reports, including Vodafone's "Law Enforcement Disclosure Report" in 2014 and 2015.[27,28,29] Such disclosure is a strong mechanism for companies to maintain the trust of the public by showcasing threats to customers, while highlighting the challenges of operating transnationally and in jurisdictions that may intentionally limit citizens' rights to privacy and self-expression.

Corporate transparency reports can communicate risks and safeguards to stakeholders on a variety of privacy and freedom of expression issues, and set out for investors the particular challenges of a company's global operations. Additionally, the process of assembling the reports improves communication across the branches of a company and ensures consistent application of corporate policies. Greater control over subsidiaries by group-level executives helps to identify, prevent, and mitigate adverse events affecting a company's financial, legal and reputational well-being.

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Specific recommendation

At a minimum, we recommend that investors request a company's transparency reports include statistics and information on:

1. Government and private party demands for access to user data;
2. Takedown or restriction of content or accounts, including information on network disruptions;
3. Clear explanation of corporate processes and policies responding to these requests and incidents. To date, company transparency reports often fail to disclose enforcement of companies' own terms of service or use, a gap that should be remedied, especially as governments begin using these terms and mechanisms to flag and report content they want restricted.

Independent global ranking

Ranking Digital Rights' (RDR) 2015 Corporate Accountability Index, a research initiative within New America Foundation's Open Technology Institute, established a global standard for ICT companies' respect for customer privacy and freedom of expression. RDR analysed and ranked eight internet and eight telecommunications companies on their commitments to users' rights, as well as specific commitments and efforts to respect users' freedom of expression and right to privacy. Such a ranking provides a framework within which to engage companies and encourage improved performance in accordance with the ranking.

There is significant room for investor engagement with companies regarding their scores in the RDR Index. Google scored highest (65%) amongst the eight internet companies and Vodafone scored highest (54%) amongst telecommunication companies.[30]

Following the publication of the ranking, civil society organisations engaged the 16 companies on their performance. They offered targeted advice aimed at aligning the companies' disclosures and practices with international human rights standards on freedom of expression and the right to privacy.[31] Twelve of the companies responded and the engagement is ongoing.[32] Tencent (China), America Móvil (Mexico), Etisalat (UAE) and Bharti Airtel (India) have not yet engaged with the RDR recommendations. Notably, these companies performed poorly in the RDR Index and have been connected to internet shutdowns.

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Specific recommendation

We encourage investors to seize the opportunity to participate in this engagement, encouraging companies to adopt the targeted advice offered. As the RDR methodology analyses corporate policies and practices related to internet shutdowns, we recommend investors point to the methodology as a standard for corporate approaches to this issue, among others.

Case study: Vodafone

In one sense, internet shutdowns are not a new issue. The Egyptian government's order to shutdown telecommunication networks in early 2011 spurred public engagement with the sector on its human rights responsibilities. Yet the problem of shutdowns has resurged in the form of more insidious, targeted blocking aimed at society's most popular communications tools, in countries across the globe. Worse, most officials ordering the disruptions enjoy impunity – unlike the Mubarak regime, which toppled shortly following the shutdown.

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Positively, corporate awareness of the problem has increased and companies are beginning to adopt more transparent and accountable responses. Vodafone in particular revamped its freedom of expression and privacy approaches in the years following the shutdown in Egypt. Vodafone joined with other ICT companies to create the TID in late 2011.

Access Now and ShareAction attended Vodafone's 2012 annual general meeting encouraging the company to release a transparency report. Two years later, Vodafone issued its ground-breaking Law Enforcement Disclosures Report, which still counts among the most robust transparency initiatives in the sector. The company's leadership in the TID likely helped spur the group's decision to join the GNI as an observer, and to issue the recent joint statement on internet shutdowns. We expect Vodafone to continue engaging with RDR and other civil society groups and investors to confront the sector's most vexing human rights challenges.

Specific opportunities for investors

Internet shutdowns present clear risks for ICT companies and investors. While the responsibility for a shutdown rests with governments, the opportunity for investors rests in ensuring that companies have the appropriate governance structures and policy commitments in place to consider financial and reputational risks as well as the accountability mechanisms to address the aftermath of a shutdown.

The recommendations set out above offer a framework with which investors can engage ICT companies on the risks associated with internet shutdowns. In addition to this, investors may wish to take action on the specific opportunities below:

- Join the GNI as investor members;
- Encourage TID member companies to move from observer status to full members of the GNI;
- Contribute to the revision of RDR Corporate Accountability Index methodology, and to engage Access Now and the Business & Human Rights Resource Centre on targeted recommendations to improve corporate rankings ahead of the 2017 Index;
- Raise corporate attention to the Access Now Telco Action Plan and Telco Remedy Plan, which provides foundational guidance for companies to better prevent and mitigate their contribution to human rights infringement;
- Ensure the UK National Action Plan on Business & Human Rights addresses the impacts of the technology and telecommunication sectors, and is fully implemented.[33]

By mitigating the risks to companies and investors, company engagement on the topic of internet shutdowns builds on the momentum against shutdowns – most recently formalised by the UN Human Rights Council – and for global connectivity to the internet, as set out in the Global Goals.

Questions for ICT companies based on recommendations

- Is a member or committee of the Board of Directors in charge of policies and risk management related to internet shutdowns, as well as any response to shutdowns?
- Is there a company policy or policy development process for operational decision

making on entering and operating in countries where governments may request a disruption of services? Such policies should make clear the conditions in which a company will operate in a country, demonstrate an understanding of the risks in that country, and outline how it will respond to a request by the government to suspend services, including disclosure to customers.
- Is the company publishing transparency reports that address:

1. Government and private party requests for access to user data;
2. Takedown or restriction of content or accounts, including information on network disruptions;
3. Clear explanation of corporate processes and policies responding to these requests and incidents? If not, when does the company plan to publish a transparency report?

Conclusion

The intentional disruption of internet or electronic communications, rendering them inaccessible or effectively unusable for a specific population or within a location, raises key financial and reputational concerns for ICT companies and their investors. This briefing updates investment industry professionals on key developments in this space, as well as profiling the risks to investors resulting from shutdowns alongside the opportunities of engaging ICT companies on mitigating those risks.

While governments hold the responsibility of ordering a shutdown, investors and ICT companies have an opportunity to mitigate the financial and reputational risks arising from those situations. We encourage investors to engage ICT companies on this topic using the recommendations detailed in this briefing and listed as questions we have outlined.

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ShareAction (Fairshare Educational Foundation) is a registered charity that promotes Responsible Investment practices by pension providers and fund managers. ShareAction believes that Responsible Investment helps to safeguard investments as well as securing environmental and social benefits.

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About Access Now

Access Now is an international organisation that defends and extends the digital rights of users at risk around the world. By combining innovative policy, user engagement, and direct technical support, Access Now fights for open and secure communications for all.

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