Responsible Product Use in the SaaS Sector

BSR®

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Executive Summary

According to many ethical and human rights frameworks, software-as-a-service (SaaS) companies have a responsibility to address adverse impacts that may be associated with their business relationships and use of their products and services. However, implementing this responsibility in practice has several challenges:

- Little consensus on the correct "degree of responsibility" residing with SaaS companies compared to others in the technology industry.
- Uncertainty on where lines should be drawn on topics such as hate speech.
- Variable and often limited insights into how customers use products and services in practice.
- Business models that may not allow for the same degree of "know your customer" due diligence screening that exist in other settings, such as finance.

This paper explores how SaaS companies should develop, implement, and promote ethical use practices, encompassing acceptable use policies and service terms, best practices for customer gating, transparency measures, reporting channels, and training for customers, employees, and users.

It is based on the premise that ethical use strategies will be influenced by both the severity of the potential harm and the business and service model deployed, which varies significantly across SaaS companies.

Open platforms where content sharing is core to the service model will deploy different strategies than providers of technical infrastructure. Companies operating a "sales-assisted sign-up" model will deploy different strategies than companies operating a customer "self-sign-up" model.

This paper proposes four foundational elements to help move the field forward:

1. **Standard components to be included in most SaaS company Acceptable Use Policies (AUPs).** This "AUP base layer" should include a description of prohibited uses of the technology or service, prohibited content, and the company's enforcement practices.
2. **Custom components to be included in the AUP based on the business and service model of the company.** This "custom AUP layer" should describe additional components that address the unique considerations of the company's business model, service type, company priorities, ethos, and values.
3. **Guiding questions to help companies establish customer gating processes and thresholds.** These questions will help companies define boundaries on who they will and will not do business with and how to implement these limitations.
4. **Guidance on the implementation of additional ethical use practices, especially reporting mechanisms, transparency measures, and training.** Reporting channels and grievance mechanisms provide a medium through which employees, customers, users, and other rightsholders can raise concerns related to the misuse or abuse of a company's services. Meanwhile, training and transparency provide education about the technology or service offering in question, a description of intended use cases, best practice guidelines, and in-product guidance or support.

BSR anticipates that SaaS companies will face increasing pressure to address the adverse impacts associated with their business relationships and the use of their products and services. At the same time, they will face heightened expectations to demonstrate measures taken to implement ethical use strategies to address those adverse impacts. These four elements, described in further detail in the full paper, are intended to serve as a starting point for further dialogue and exploration of the role, responsibility, and leverage that SaaS companies have in the development, implementation, and promotion of effective ethical use strategies.

INTRODUCTION

The de-platforming of Parler in January 2021 catalyzed a debate about the connection between software-as-a-service (SaaS) providers and the harms perpetrated by their customers or users.

Amazon Web Services (AWS) and Google's Android and Apple's iOS app stores made the decision to cut ties with Parler based on violations of their acceptable use policies and terms of services. However, companies operating elsewhere in the technology ecosystem, such as those providing services not directly linked to the content hosted on Parler, were faced with less clear-cut paths forward and limited ethical and legal guidance on what to do.

Parler was a specific and high-profile case, but it illustrates the dilemmas facing SaaS companies on who to provide services to and with what conditions.

According to many ethical and human rights frameworks, SaaS companies have a responsibility to address adverse impacts that may be associated with their business relationships and use of their products and services.

However, implementing this responsibility in practice has several challenges. This includes:

- A lack of consensus on the correct "degree of responsibility" residing with SaaS companies compared to others in the technology stack,[1] and where lines should be drawn (e.g. on hate speech).[2]
- Variable and often limited insights into how customers use products and services in practice.
- Business models that may not allow for the same level of "know your customer" due diligence screening that may exist in other settings (e.g. large enterprise contracts).

Given these challenges, there is a need to explore how SaaS companies should develop, implement, and promote ethical use practices, both as individual companies and as an industry.

This exploration can include acceptable use policies (AUPs) and service terms[3] as well as more holistic approaches to ethical use, such as best practice guidance and industry standards on customer gating processes,[4] transparency measures, reporting channels, and customer, employee, and user training.

Significant value can be gained from industry alignment on minimum standards, best practices, and expectations on ethical issues. However, any standards or frameworks developed will need to be flexible enough to account for a wide range of service models, customer engagement practices, and target markets of SaaS companies. They also should mitigate the risks of creating overly restrictive practices that inhibit freedom of expression or access to technology and appreciate the inherent value arising from companies pursuing distinct approaches according to their own values.

[1] A tech stack refers to a set of tools, programming languages, and technologies that work together to build digital products or solutions such as websites, mobile, and web apps. It can be formally divided into two parts, the client-side (front-end) and the server-side (backend). Each layer of the application in question is built atop the one below, thus creating a stack. For further analysis about the tech stack and content moderation, see Navigating the Tech Stack: When, Where and How Should We Moderate Content? by Joan Donovan, and A Framework for Moderation, by Ben Thompson.

[2] Ben Thompson's piece in Stratechery, "Moderation in Infrastructure," highlights varying opinions on the level of responsibility across the tech stack through interviews with the CEOs of four technology companies.

[3] An acceptable use policy is an agreement or set of rules outlining the ways in which a network, website, service, or product can or cannot be used by a customer or user.

[4] Gating processes, also known as "allow lists" or "block lists", delineate who a company will or will not sell or who they will or will not do business with.

Industry-wide approaches should (1) build upon existing best practices, (2) receive input from and be credible with stakeholders and experts, (3) meet international standards for business conduct, such as on human rights, and (4) anticipate future trends.

Ten companies came together as a working group to explore:

- Best practices for the industry
- Norms and expectations for the role and responsibility of SaaS companies in addressing ethical use challenges
- Appropriate action to address potential harms associated with business relationships, and product and service use

This paper highlights findings and insights from this engagement and recommends next steps. It was written by BSR, and BSR maintains editorial control over its contents; however, this paper was informed by a series of discussions and dialogues with the companies participating in the working group.

A Note on Human Rights

All companies have a responsibility to avoid infringing on the human rights of others and to address adverse human rights impacts with which they are involved, using methods consistent with the UN Guiding Principles on Business and Human Rights (UNGPs). BSR has written about the application of the UNGPs in the technology industry extensively, such as here, here, and here.

This paper builds upon BSR's prior analysis on how to apply the UNGPs in the technology industry. However, the focus of this paper is on practical approaches to responsible product use, and we have not attempted to interpret specific elements of the UNGPs in detail. BSR has other workstreams underway to do this.

PROMINENT THEMES

For this engagement, BSR reviewed existing acceptable use policies, user-related policies (including service agreements, codes of conduct, community standards, and advertisement policies), and conducted interviews with working group members. We also reviewed relevant literature and insights gained from prior BSR project work, including engagement with stakeholders.

We identified six key themes related to ethical use across SaaS companies:

1. **A company's service model shapes its AUP and approach toward ethical use.** Content posting, community platforms, and companies engaging with user-generated content have significantly different ethical concerns than companies focused on data collection, internal information sharing, and backend infrastructure.
2. **Existing AUPs take a broad range of approaches.** BSR identified several differences across AUPs, such as the issues they cover, varying levels of breadth and depth, and whether the company took proactive or reactive approaches to monitoring ethical use. Many AUPs read as though individual clauses were added ad hoc over time as the company addressed emerging issues and current events, rather than through a structured and formalized policy making approach.
3. **Not all AUPs address the topic of hate speech or activities that incite violence.** Addressing "hate speech" and "hate/violence-inciting activities" is newly emerging in SaaS company AUPs, and questions remain about how companies at different places in the technology stack may appropriately take different approaches. These discussions are further complicated by the fact that there is little consensus on the definitions of key terms such as terrorism, violent extremism, and hate speech, especially across different jurisdictions.
4. **Opportunities for customer gating are influenced by the company's approach to sales**. Many SaaS companies engage customers via "self-sign-up" models, while others deploy "sales-assisted" approaches, and some deploy a combination of the two. The model used significantly alters opportunities for sales due diligence, though there is a common desire for more consistent and codified decision-making processes.
5. **There is a need for flexible industry guidance and direction that accounts for unique service models, company priorities, challenges, and the differing values and ethos of the company.** Companies are looking for consistency and standardized guidance, but nuance based on each company's unique needs and priorities also needs to be addressed. There is a need for best practices that guide the development and implementation of ethics and human rights-based rules and approaches at each individual company, rather than a list of "one size fits all" rules or restrictions, which would raise a variety of concerns regarding competition, freedom of expression, and access to technology.
6. **Companies can leverage transparency measures, customer and user training, and reporting channels to promote ethical use of their technologies.** Companies have a range of tools they can deploy to ensure the ethical and rights-respecting use of their technology; however, few companies focus on the development and implementation of holistic, educational approaches to ethical use, including the upskilling and awareness-raising of ethical issues among customers and users or the deployment of accessible channels through which misuse can be reported.

While guidance and best practices are limited, the identification of these key themes prompted discussion on how SaaS companies should approach the topic of ethical use, based on their respective service models, company values, and international standards of business practice.

Existing acceptable use policies and current approaches to ethical use fall along two spectrums, **(1) a "minimalist to maximalist" spectrum and (2) a "reactive to proactive" spectrum.**

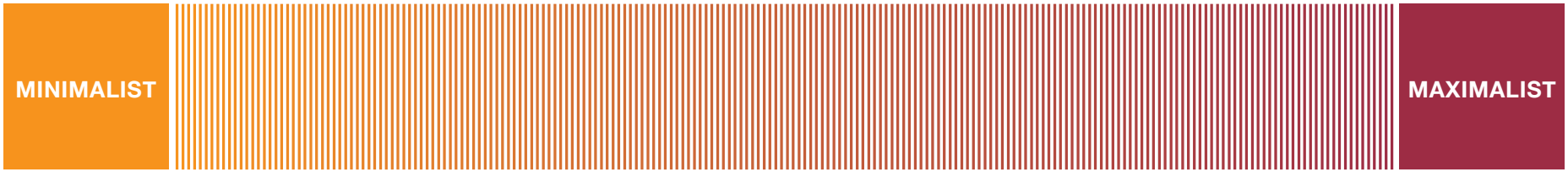
(1) Minimalist to Maximalist Spectrum

The minimalist to maximalist spectrum denotes how much responsibility a company adopts for how its products and services are used.

Companies taking a minimalist approach to ethical use maintain that the customer or user is responsible for monitoring use of the platform and addressing unethical use.

Companies falling in the middle of the spectrum often defer to commonly used language that covers a comprehensive range of illegal activities, discrimination, pornography, and technical malice. This may include harmful and violence-inciting activities.

Those taking a maximalist approach adopt more responsibility for the use of their platform or services and typically maintain the right to act beyond the scope of explicit language in the policy if they are acting in the spirit of the policy.



"[Company] is under no obligation to monitor, review, filter, moderate, or remove any Content from the [Company's] Products."

"Customer may not use the Services to process or transmit any material or content that:

(A) violates any applicable local, state, federal or international law;

(B) is pornographic or obscene;

(C) infringes the intellectual property rights or other rights of third parties;

(D) is libelous, defamatory, malicious, degrading, harmful towards any person or entity;

(E) is discriminatory or prejudicial towards anyone, whether based on age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, or other protected category;

(F) incites violence against any person or entity; or

(G) contains viruses, Trojan horses, spyware, worms or any other malicious, harmful, or deleterious programs."

"Under this policy, we reserve the right to remove content that is inconsistent with the spirit of the guidelines, even if it's something that is not forbidden by the letter of the policy. In other words, if you do something that isn't listed here verbatim, but it looks or smells like something listed here, we may still remove it."

(2) Reactive to Proactive Spectrum

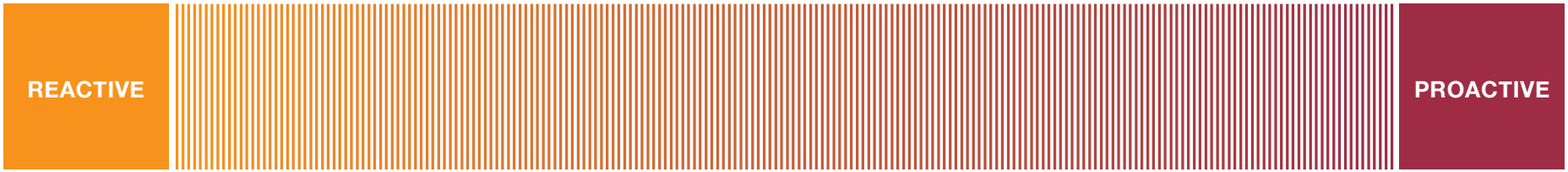
The reactive to proactive spectrum denotes how a company prepares for and manages violations of its acceptable use policy or ethical use principles.

A company's position on this spectrum is often shaped by where a company sits in the tech stack, with companies closer to content development or sharing taking more proactive approaches than those more distant from it. As conversations about ethical use evolve, there are nuanced questions to address about when more proactive approaches may pose new risks, such as to freedom of expression, non-discrimination, and access to the benefits of technology.

By evaluating their respective positions on these two spectrums, companies can take stock of their current approaches, assess how they compare with peers, and prompt conversations about the company's interest or need to take more structured or resource-intensive approaches to ethical use issues.

However, further guidance is needed to establish the appropriate direction of travel for individual SaaS companies and the industry as a whole.

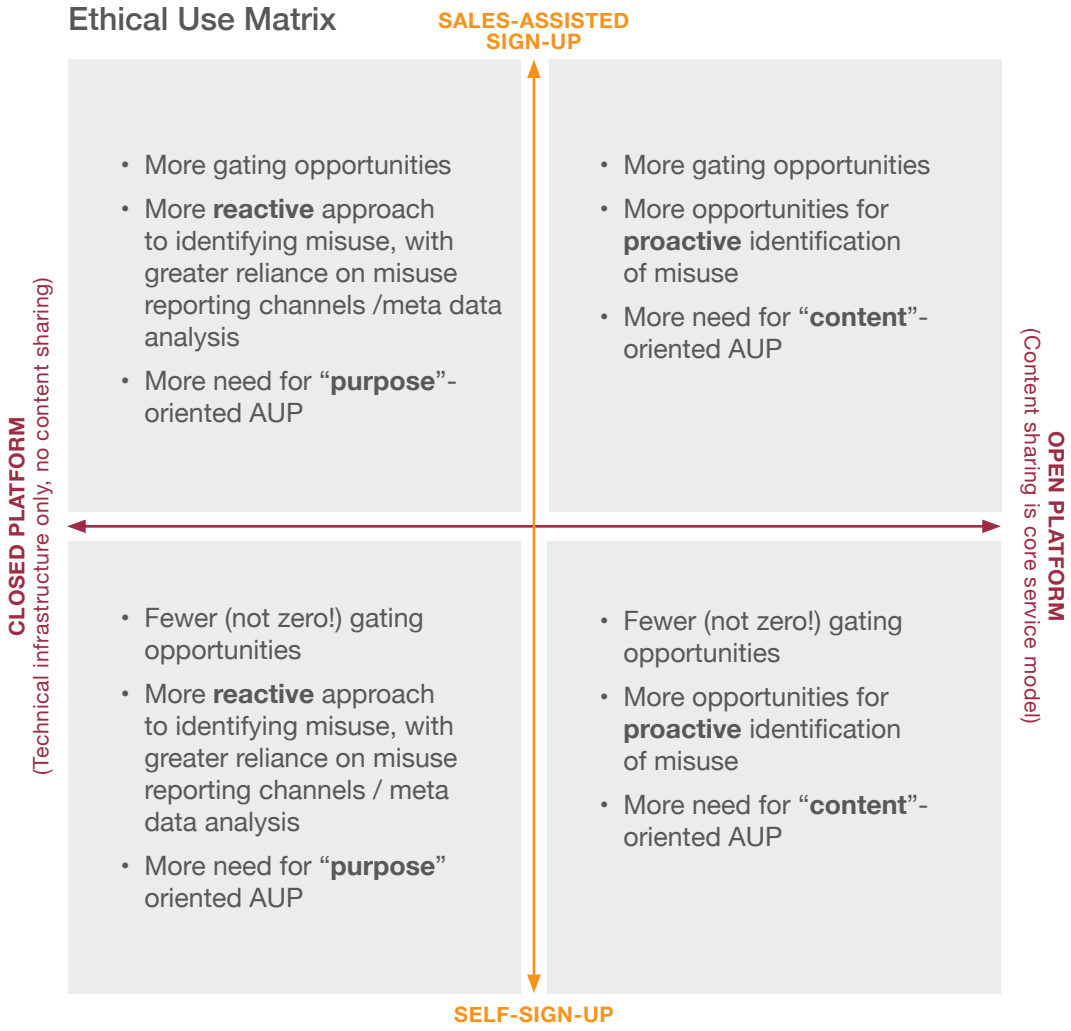
This direction of travel on ethical use is often shaped by the business and service model deployed, which varies significantly across SaaS companies. The specificities of the service model and how companies engage with customers will surface different risks of misuse, use and abuse and provide different amounts of leverage to address them.



Address ethical use concerns or violations of the Acceptable Use Policy, following a complaint submitted by a user or negative press.

Explicitly lists prohibited customer business usage domains—such as gambling and the sale of firearms—and integrates this into customer gating processes.

Actively monitors and seeks out incidents of non-compliance with the AUP.



To capture these differences and to help identify the actions most relevant to the different types of SaaS companies, BSR created a draft Ethical Use Matrix. The matrix outlines suggested approaches on ethical use based on:

- if a company's model is open (e.g. content sharing is core to the service model) or closed (e.g. technical infrastructure only, no content sharing).
- whether services/platforms are self-sign-up or sales-assisted sign up.

The matrix is intended to provide companies with a starting point for explorations around acceptable use strategies. Minimalist and maximalist strategies can be pursued in each segment of the matrix.

RECOMMENDED ACTIONS

Building upon this matrix, we believe that four initial steps can be taken to establish a foundational approach to ethical use across SaaS companies and to develop best practices for individual companies based on their service models.

ACTION 1

Establish standard components to be included in most AUPs.

These components will serve as the foundation of most AUPs, noting that business model, service type, and customer/user sign-up flows may make some elements not applicable for some SaaS companies. We have named this the 'AUP Base Layer'.

As part of this project, BSR worked with participating companies to create a full AUP guide describing the "AUP Base Layer" with detailed descriptions of the suggested sections and components, examples of existing AUPs that include these components, and suggested language that companies can use or build upon for their own AUPs.

SECTION 1 OVERVIEW

- Overview of the AUP

SECTION 2 TECHNICAL COMPONENTS

- Prohibited technical usage of the company's services

SECTION 3 BEHAVIORAL COMPONENTS

- Illegal Activities
- Fraud
- Misrepresentation of identity
- Unsolicited communications/spam
- Soliciting users for commercial purposes
- Violation of privacy and confidentiality
- Disparaging the company and/or vendors
- Discriminatory behavior
- Stalk, harassment, bully, threaten with violence
- Terrorist and violent extremist behavior
- Harassment or abuse of company's employees

SECTION 4 CONTENT COMPONENTS

- Infringes on the IP of others
- Deceptive, fraudulent, illegal, libelous, obscene, defamatory, threatening
- Encourages illegal conduct
- Terrorist and violent extremist content
- Attacks others based on race, ethnicity, national origin, religion, sex, gender, sexual orientation, disability, or medical condition
- Hate speech

SECTION 5 ENFORCEMENT

Description of company's position and process to enforce the components of the AUP. Sample enforcement measures include:

- content monitoring
- process to review, investigate, and address complaints of acceptable use violations
- process for suspending or terminating a customer's service due to the violation of the AUP

Description of enforcement actions to uphold the AUP:

- Terms of Service
- Termination Clauses
- Reporting channels (emails, forms, websites)

Note: This could link to company's terms of service if it details the enforcement of policies and service suspension/termination guidelines.

ACTION 2

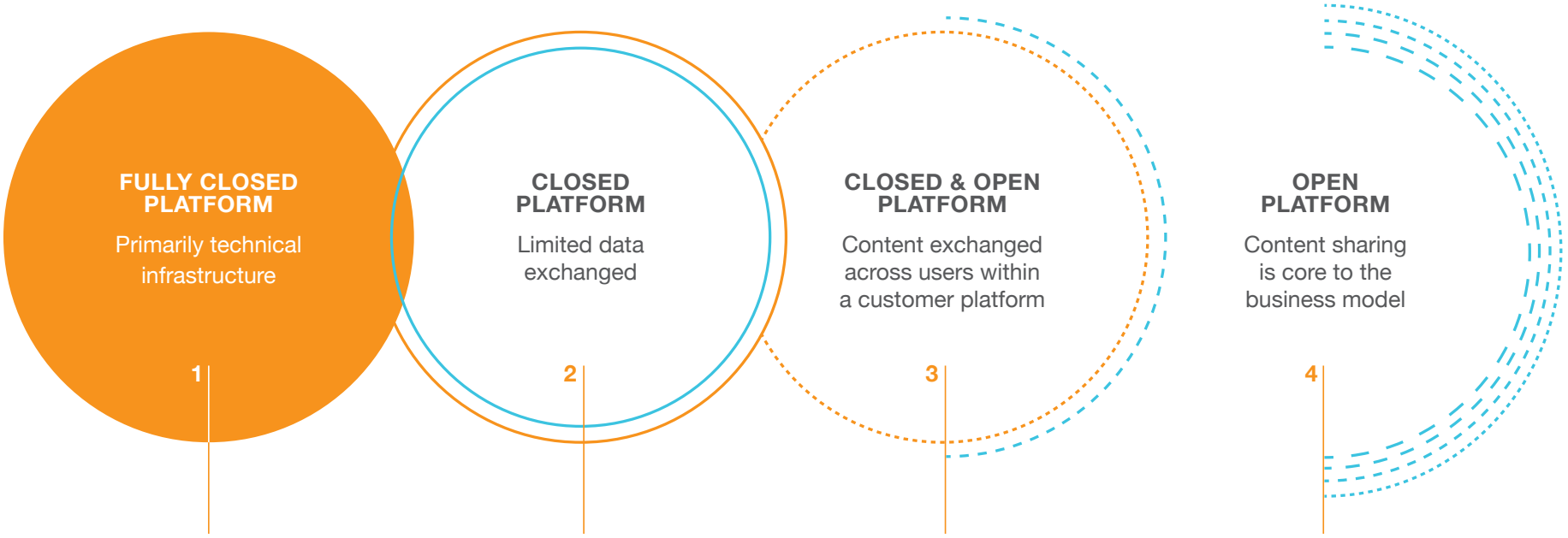
Establish custom components to be included in the AUP based on the business and service model of the company.

This "custom AUP layer" should describe additional, specific components that can be added on to the "AUP base layer" to address the unique considerations of the company's business model, service type, company priorities, ethos, and values.

To identify the components most relevant for the different types of SaaS companies, we created four categories based on the Ethical Use Matrix above. These categories highlight where the company's service model falls on the spectrum of open (content sharing is core service model) to closed (technical infrastructure only, no content sharing) platforms. It should be noted that one company may have multiple products and services and that these may be positioned differently across the spectrum.

Each of these categories elicits distinct risks of misuse and prompts the need for customized language and specific considerations within the AUP.

To accompany this categorization, BSR collaborated with members of the Ethical Use working group to create a full "AUP custom layer" guide with suggested components for inclusion based on service model, examples of AUPs that already include similar components, and accompanying sample language.



AUP FOCUS:			
	Likely the most narrow AUP scope—mostly technical and standard base AUP	Transmission of content, data, and materials	Communication between users within the same company, and content that is shared for user and community viewing	Likely the broadest scope of AUP—covers technical components and standard AUP, and it may extend to overlap with some community guidelines

The custom layer focuses on components that address the following:

- The customer's responsibility to identify and address prohibited use.
- Descriptions of prohibited misuse of transmitted data (e.g., prohibiting use of data for discriminatory purposes).
- A requirement that customers maintain a content moderation policy and operation if user-generated content exists as part of their platform.
- Governance structures that support AUP implementation.
- A more explicit focus on prohibiting hate speech,violence-inducing language, and terrorism.
- Expectations for acceptable use by free users, paid users, and customers—if there are differences.
- Specific reference or linkage to community usage policies.
- Ongoing risk assessments for different user/customer demographics as they relate to behavioral risks.

While not all SaaS companies will fall neatly into one of the four categories, working through the process of identifying where they fit on the "open to closed" spectrum will help companies to better understand which elements may be specifically relevant to their business and should be considered for inclusion in their approach to ethical use.

ACTION 3

Create guiding questions to assist companies in the development of customer-gating processes and thresholds.

These questions should help companies explore where to establish boundaries and limitations on who they will and will not do business with and consider how they will take action to implement these limitations.

These limitations could be based on industry ("we don't do business with industry X"), the intended purpose or use of the product or service ("we won't make sales where the intended use is X"), or geography ("we won't sell to customers in country or region X").

We have drafted initial questions to help companies establish their position on the breadth and depth of customer gating parameters. By exploring each question, the company's harm mitigation priorities should surface. This will help to illuminate the boundaries for the types of customers, customer services, customer behaviors, and customer impacts that a company's services will be permitted to empower, and which they will not.

What type of harm and risk is the company seeking to mitigate through customer gating measures?

What elements of your company's philosophy, mission, values, and ethos would impact your stance on customer gating? (e.g. ethos of maintaining neutrality as a core infrastructure or owning a proactive role in mitigating harm)

What existing precedent has been set related to customer gating—i.e. customers your company will or will not do business with, the reasons behind those decisions, and behaviors or actions that have resulted in the termination of a customer's service?

What types of customer behavior, services, or impact on the world are clear candidates for gating (i.e. customers that your company is not interested in doing business with)?

What social responsibility; social impact; diversity, equity, and inclusion; sustainability; and/or climate change goals and commitments are critical for your customer/ user base to align with?

What types of customers and industries might you terminate business with (if any), if you received pressure from internal and external stakeholders (e.g. employees, advocacy groups, press, social media)?

Based on the answers to the previous questions, who are the types of customers that do not align with ethical use of your company's services?

What risks to freedom of expression, non-discrimination, or access to technology may arise from a customer gating process?

ACTION 4

Develop guidance on the implementation of additional ethical use practices, including establishing reporting mechanisms, transparency measures, and training of customers on ethical use.

Reporting channels
Reporting channels and grievance mechanisms provide a medium through which employees, customers, users, and other rightsholders can raise concerns related to the misuse or abuse of a company's platform, products, or services, and related grievances. Reporting channels can also act as an early warning mechanism for issues that may become more significant over time.

Instituting these mechanisms helps accomplish two goals:

1. Provide a channel for anyone to surface instances of product or service misuse and abuse.
2. Create an operational grievance mechanism where an aggrieved party seeks remedy for a harm.

In practice, a single channel or mechanisms may serve both purposes; however, it is important to note that there are two distinct uses.

Reporting channels are an important complement to AUPs and a significant method to identify non-compliance. While many companies have "hotlines" or "ethics lines" for internal employees, very few have channels specifically designed to receive feedback on the way their products and services are being used, especially misuse or abuse.

Companies should consider who should host the reporting channel (e.g., the developer/seller of the technology, the customer/company deploying the technology, or both), and what type of reports might be reasonably anticipated on each.

We recommend that each company establish their own reporting channel or integrate external reporting mechanisms into existing hotlines and "speak up" channels. Key characteristics of these reporting channels, based on international best practice (such as Principle 31 of the UNGPs), include:

- **Accessible:** known by those for whose use they are intended; considerations of language, accessibility, prominence, etc.
- **Predictable:** these channels should not be "a mystery" but provide a known procedure with clear communications with the reporter at each stage.
- **Equitable:** clear information and guidance on how to use.
- **Source of learning:** gain insights into misuse in order to improve AUPs, gating, etc.

Transparency Measures and Training
Regardless of the customer engagement model, SaaS companies should provide training and guidance on the intended use of the product, platform, or services to both their own employees and customers. This includes educational content on the technology or service offering in question, a description of intended use cases, best practice guidelines, and in-product guidance. These materials could also be accompanied by supplemental platforms, such as employee, customer, or user forums.

Where relevant, companies could also include a summary of the gating process, a description of how the AUP is implemented, or measures taken to address concerns related to ethical use.

Training and guidance should highlight acceptable use of the product or service and note any limitations that could result in unintentional or intentional misuse or abuse. Trainings should be designed to raise awareness among employees and customers of the potential considerations around ethical use that might arise.

Training and guidance will be most impactful if the customer has a company-wide, integrated approach to ethical use.

WHAT'S NEXT

BSR anticipates that SaaS companies will face increasing pressure to address the adverse impacts associated with their business relationships and the use of their products and services and to demonstrate measures taken to implement ethical use strategies. Companies will also need to address risks associated with making mistakes along the way, which can arise when acting in response to real-time events in complex contexts.

The dialogue taking place today serves as an entry point for deeper discussion and exploration of the role, level of responsibility, and leverage of SaaS companies in the development, implementation, and promotion of AUPs and broader approaches to ethical use.

We believe the issues explored in this paper will benefit from further dialogue, such as a deeper exploration of how to apply the UNGPs, a greater understanding of how different business models may result in different approaches, and research into the freedom of expression, non-discrimination, and access to technology risks that can arise from ethical use strategies. BSR looks forward to exploring these topics in partnership with SaaS companies, BSR member companies, and stakeholders.

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