



**THE DANISH
INSTITUTE FOR
HUMAN RIGHTS**

THE HUMAN RIGHTS
COMPLIANCE ASSESSMENT
TOOL
**PRODUCT QUALITY
AND MARKETING
PRACTICES**

THE HUMAN RIGHTS COMPLIANCE ASSESSMENT TOOL
PRODUCT QUALITY AND MARKETING PRACTICES
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INTRODUCTION

Welcome to the Product Quality and Marketing Practices section of the Human Rights Compliance Assessment (HRCA) tool. This section concerns how human rights are respected in product quality and marketing.



The sub-categories for this section are:

- Product Quality and Use
- Product Marketing
- Intellectual Property Rights
- Research/Testing on Human Subjects

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You can also contact us directly: hrib@humanrights.dk

4.1 PRODUCT QUALITY AND USE

No. 4.1.1	Area Product quality and marketing practices	Section Product quality and use
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Question

Does the company ensure that its products meet the highest health and safety standards?

Yes	No	F/A	N/A

Description

The company has a responsibility to the user to ensure that its products, when used appropriately, are safe and suitable for their intended purposes. The company must test products thoroughly before releasing them into the market, and should remain alert for defects at all times. If a defect is discovered which has the potential for causing serious injury or harm to the user, the company must immediately notify the consumers and recall the product for repair at no cost to the consumer.

Products or services to which children may be exposed should be safe and shouldn't cause mental, moral or physical harm. The company should ensure that the design of all products and services for children is in line with national laws and safety standards, and, in the absence of adequate national legal frameworks, refer to relevant international and/or industry standards. Products and services not designed for children's use, but nonetheless posing hazards to children, must also address safety concerns. Businesses can adopt proven methods of risk reduction, such as requiring child-resistant packaging and warning labels for medications and substances that are toxic to children. Products and services might also be misused for purposes that exploit children. For example, Internet access, travel services and hotels may be used to facilitate child exploitation and abuse. All companies must consider whether they are providing products, services or resources to employees and customers that make it easy or even encourage the exploitation and abuse of children.

Suggested Indicators

- 1 The company has policies in place outlining how it ensures the safety of consumers/users, including children when using or exposed to its products and services, including in research and testing, as relevant.

True	False	F/A	N/A

2 The company complies with all applicable product health and safety law as per its products.

True	False	F/A	N/A

3 The company policy outlines age restrictions for product use, and an age minimum for adult supervision and guidance.

True	False	F/A	N/A

4 Company food products are sold, prepared, packaged, stored and transported under sanitary conditions.

True	False	F/A	N/A

5 The company tests its products thoroughly before releasing them into the market.

True	False	F/A	N/A

6 The company monitors the safety hazards and use of its products after they are distributed/sold to the public.

True	False	F/A	N/A

7 The company recalls and/or repairs products that could cause injury to consumers.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), Article 25; OECD Guidelines for Multinational Enterprises (2000), s.VII, Article 1; Tripartite Declaration on the Responsibilities of Transnational Corporations (1977), Article 37

No. 4.1.2	Area Product quality and marketing practices	Section Product quality and use
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Question

Does the company attempt to mitigate inappropriate uses of its products, which violate the privacy of others?

Yes	No	F/A	N/A

Description

Technology companies often create sophisticated equipment capable of being used by others to invade privacy. For example, information can be gathered on the Internet in such a way that the end user has little or no idea that information is being collected, stored, and sold to other businesses. In order to avoid an infringement of another's right to privacy; the company should do its part to discourage the inappropriate use of such products.

Suggested Indicators

1 Product literature discourages the inappropriate use of company products, including children, and warns against the dangers of violating another's right to privacy.

True	False	F/A	N/A

2 The company assists persons whose privacy has been invaded by one of its products to find a solution to end the invasion.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), Article 12; International Covenant on Civil and Political Rights (1966), Article 17

No. 4.1.3	Area Product quality and marketing practices	Section Product quality and use
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Question

If the company provides a utility which is a basic public service, does it provide access on a non-discriminatory basis and comply with the highest international and national standards regarding the provision and quality of the service?

Yes	No	F/A	N/A

Description

Companies providing utilities and other 'public necessities', such as water, are held to a higher standard under international human rights provisions. Public utilities are subject to four conditions: 1. Availability: refers to the obligation to create the service (which originally belongs to government, but can be contracted to a private company), 2. Accessibility: includes the duty to take special measures to ensure services for minority groups which might be excluded due to cultural or social practices (in particular, the self-imposed exclusion of women from spheres dominated by men must be taken into account). The final aspect of accessibility requires that services be affordable to all. This might necessitate reduced pay schemes for poorer households, and free services for those without income. 3. Concerns subjective assessments of the rights holders' perceptions about the public service and its delivery. A distinction is made between consumer and cultural acceptability. *Consumer acceptability* includes the characteristics of for example the water (e.g. smell, taste and colour) as well as procedural considerations (e.g. the behaviour of water suppliers). *Cultural acceptability* refers to subjective perceptions based on the culture of individuals, minority groups and communities. The high degree of subjectivity makes it very difficult to identify relevant generic indicators at international and national level and a comprehensive assessment of the acceptability criterion should ideally be carried out through a dialogue-based qualitative assessment at local level. Attention should be given to identification and engagement with marginalised and minority groups in local communities. 4. Quality: requires that the services be of a quality which meets the basic needs of the population.

Suggested Indicators

- 1 Company policy states that it must meet or exceed national laws regarding the quality of the basic services it provides.

True	False	F/A	N/A

-
- 2 The company has an independent grievance mechanism, through which affected individuals, including children and their guardians, and communities can lodge grievances about access to or quality of services.

True	False	F/A	N/A

3 The company regularly undertakes a general survey of the community to which it provides its basic services, to ensure that all individuals, including children, have access to the service and find this acceptable as consumers and from a cultural perspective.

True	False	F/A	N/A

4 In cases where an individual is unable to pay for an essential service, the company does not cut off the service but rather attempts to facilitate access by establishing an agreement with the local government to subsidize or provide more appropriate equipment, such as water or energy efficient apparatus, for the service provision in that case.

True	False	F/A	N/A

5 If the company provides water or sewage treatment, regular quality testing is undertaken.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), Article 25; International Covenant on Economic, Social and Cultural Rights (1966), Article 11 (2)

No. 4.1.4	Area Product quality and marketing practices	Section Product quality and use
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Question

Does the company ensure that military, security or police equipment it produces are not used for torture or other cruel, inhuman or degrading treatment or punishment?

Yes	No	F/A	N/A

Description

The company refrains from manufacturing or selling military, security or police equipment that is especially designed to inflict torture or other cruel, inhumane or degrading treatment or punishment. However, torture is often committed by legitimate law enforcement equipment, which may easily be misused for improper purposes. Such equipment includes handcuffs, tear gas, and police batons. Since export licensing of non-military security equipment is universally minimal and often ignores the technical specifications of the goods, such as the degree of physical or mental harm they could inflict on a person, the company must take stringent measures to ensure that its products are not used for acts of torture or other cruel, inhumane or degrading treatment or punishment.

Suggested Indicators

- 1 The company screens the human rights records of all buyers and countries they come from and does not sell to those with known human rights violations.

True	False	F/A	N/A

2 The company requires customers to sign an agreement containing a clause stating that they will not use the equipment in acts of torture and other cruel, inhuman or degrading treatment or punishment.

True	False	F/A	N/A

3 The company makes all sales of military, security or police equipment known to the public.

True	False	F/A	N/A

4 The company uses independent auditors or an NGO to monitor and report on use of company products in acts of torture and other cruel, inhuman or degrading treatment or punishment.

True	False	F/A	N/A

5 When a company product is misused for torture practices, the company assesses whether the product should be recalled and its sale discontinued.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), Article 5; International Covenant on Civil and Political Rights (1966), Article 7; UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), Article 11 (d)

No. 4.1.5	Area Product quality and marketing practices	Section Product quality and use
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Question

Does the company take appropriate measures to prevent dual-use products from being used for acts of torture and other cruel, inhuman or degrading treatment or punishment?

Yes	No	F/A	N/A

Description

Torture is often inflicted by implements not specially designed for that purpose. Examples of dual use products are electro cattle prods and certain medical devices. The company must take appropriate measures to prevent its products from being used for acts of torture and other cruel, inhuman or degrading treatment or punishment.

Suggested Indicators

- 1 The company screens potential buyers of dual use products for their human rights records and planned use of the product.

True	False	F/A	N/A

- 2 The company does not sell dual use products to buyers whom the company suspects may

True	False	F/A	N/A

use the products for torture, and requires other buyers to sign an agreement that they will not use the product for use in acts of torture and other cruel, inhuman or degrading treatment or punishment.

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3 The company engages an independent auditor to monitor and report on the use of company products, including any possible dual uses for torture and other cruel, inhuman or degrading treatment or punishment.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), Article 5; International Covenant on Civil and Political Rights (1966), Article 7; UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), Article 11 (d)

No. 4.1.6	Area Product quality and marketing practices	Section Product quality and use
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Question

Does the company refrain from researching, manufacturing or selling equipment that is banned under international humanitarian law, or which is especially designed to commit torture or other atrocities against humans?

Yes	No	F/A	N/A

Description

The company must refrain from researching, manufacturing or selling security equipment that is especially designed to inflict torture or other cruel, inhuman or degrading treatment or punishment. This includes leg irons, thumbscrews, sharp hand cuffs and electro-shock belts whose use is inherently cruel, inhuman or degrading. The company must also refrain from researching, manufacturing, or selling military weapons that are banned under international humanitarian law, such as soft-nosed bullets, anti-personnel mines and lethal gasses.

Suggested Indicators

- 1 Company policy states that the company does not research, manufacture or sell equipment that is banned under international humanitarian law or which is designed to commit torture or other atrocities on humans.

True	False	F/A	N/A

Verification: Policy

-
- 2 The company keeps informed about scientific and/or technological developments in non-lethal restraint and containment weapons, that may affect whether its products could be banned under international humanitarian law.

True	False	F/A	N/A

-
- 3 The company does not use torture and other cruel, inhuman or other degrading treatment or punishment to test the extent to which a product can produce extreme psychological or physical harm or death.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), Article 5; International Covenant on Economic, Social and Cultural Rights (1966), Article 7; UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), Article 3

No. 4.1.7	Area Product quality and marketing practices	Section Product quality and use
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Question

Does the company refuse to manufacture, sell or distribute deadly or life-threatening products, and take adequate measures to prevent harm in use or consumption of its other products?

Yes	No	F/A	N/A

Description

Some products, such as weapons for law enforcement and combat, are specifically designed to harm human life. In cases where such a product clearly has the objective of killing non-combatants, then its manufacture, sale and distribution constitutes a violation of the right to life under international law. Some products are not designed with the specific objective of taking human life, but in fact threaten the right to life by containing poisonous ingredients, causing dangerous defects or side effects, or by being easily misused and leading to injury or death. The company has a responsibility to take reasonable measures to prevent both the intentional misuse and unintentional wrongful use of any of its products that could lead to a loss of life, by using appropriate warnings on the company products. All known dangers associated with the use or misuse of a product should be clearly identified on the product packaging in a language understandable to the targeted consumers of the product. Products that through their expected use risk causing harm, such as cigarettes and alcohol, must be adequately and clearly labelled so that the consumer is able to make an informed choice. Finally, products should contain instructions regarding use and warnings as required to prevent any reasonably foreseeable harmful use of the products.

Suggested Indicators

1 The company does not produce, sell or distribute weapons or other equipment that is designed or used exclusively to harm non-combatants.

True	False	F/A	N/A

2 The company takes all measures to eliminate or reduce from its products any ingredients that are life-threatening or which cause harmful defects or side effects.

True	False	F/A	N/A

3 The company assesses the impact of products and services on different age groups to ensure that they are not harmful to consumers, including children.

True	False	F/A	N/A

4 When company products are potentially harmful or life threatening, the company provides clear warnings and proper use instructions in the packaging or on the product, including instructions to ensure child safety.

True	False	F/A	N/A

5 All products requiring assembly or directions include clear instructions.

True	False	F/A	N/A

6 The company complies with all relevant laws with regard to proper product information and labelling.

True	False	F/A	N/A

7 If use of a company product is linked to unforeseen harm to the consumer, including to children, the company immediately informs consumers, and recalls the product.

True	False	F/A	N/A

8 The company controls the availability of products that are known to cause harm, by for example allowing it to only be sold through health care professionals or licensed dealers.

True	False	F/A	N/A

9 The company employs communications to educate parents and guardians on children’s proper and safe use of products or services.

True	False	F/A	N/A

Comments

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), Article 3; International Covenant on Civil and Political Rights (1966), Article 6 (1); ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977), Article 37.

4.2 PRODUCT MARKETING

No. 4.2.1	Area Product quality and marketing practices	Section Product marketing
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Yes	No	F/A	N/A

Question

Does the company refrain from using or encouraging the dissemination of discrimination, hate speech or incitement to violence in its advertising and marketing campaigns?

Description

The freedom of expression must be limited under certain circumstances to secure the rights and freedoms of others. The public expression of some forms of ideas, specifically the dissemination of 'hate speech', or advocating national, racial, or religious hatred, is prohibited. When developing advertising and marketing materials, the company should ensure that these do not in any way disseminate hate speech or convey messages that constitute incitement to discrimination, hostility or violence against particular ethnic, religious or other minority groups. Such messages could include, but are not limited to, portraying members of ethnic minorities as being the cause of, or somehow responsible for, major societal problems like violence, poverty, etc.

Suggested Indicators

- 1 The company has well developed guidelines specifying what communication is appropriate in its advertising and marketing material, which includes a prohibition on hate speech.

True	False	F/A	N/A

- 2 The company's marketing campaigns are tested on vulnerable groups, including children, in the area to ensure that the groups do not feel degraded or the target of hatred or discrimination.

True	False	F/A	N/A

3 The company identifies, assesses and monitors its risks to and impacts on vulnerable groups, including, related to content and visuals used in its marketing and advertising.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), Article 19; International Covenant on Civil and Political Rights (1966), Article 20; Convention on the Protection of All Migrant Workers and Members of Their Families (1990), Article 13(3)(d); Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War (1978), Articles 2(3), 3(2); Declaration on Race and Racial Prejudice (1978), Article 5(3)

No. 4.2.2	Area Product quality and marketing practices	Section Product marketing
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Question

Does the company protect customer data by obtaining customers' consent before it shares their customer data with other companies or business partners, and by disposing of customer information properly?

Yes	No	F/A	N/A

Description

As a holder of personal data about its customers, the company is in a special position of trust and must not breach that trust by transferring, selling or exchanging data with other companies without the consent of the individual concerned. In this context, medical data is particularly sensitive. The company should make its privacy policy available to customers, and provide a mechanism for customers to be able to remove their personal data from company records. The company must also appropriately dispose of sensitive information.

Suggested Indicators

- 1 The company has a publicly available privacy policy outlining how customer information is used and safeguarded.

True	False	F/A	N/A

-
- 2 Customers, including children, have access to any information about them held by the company, and can access a process to have such information deleted.

True	False	F/A	N/A

-
- 3 Customers report that the company has sought their consent before transferring, selling or exchanging customer data with any other parties.

True	False	F/A	N/A

-
- 4 The company shreds any paper documents that contain private information on customers and other individuals, before disposing of them.

True	False	F/A	N/A

5 The company deletes all information about customers and other individuals before selling or disposing of used computer equipment.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), Article 12; International Covenant on Civil and Political Rights (1966), Article 17

No. 4.2.3	Area Product quality and marketing practices	Section Product marketing
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Question

Does the company respect the right to privacy in its marketing practices?

Yes	No	F/A	N/A

Description

The company's right of expression also carries with it special duties and obligations, such as ensuring the accuracy of sources, and respecting the privacy rights of others. In particular, articles and sales brochures should not impair the reputation and dignity of any individual or group. In telemarketing, if the company monitors the telephone calls of customer service representatives for quality control purposes, the company should notify both the employees and the customers that the conversations are being monitored. One common way of doing this is to play an automated announcement at the beginning of the conversation which informs the parties that the discussion may be recorded. Some methods of solicitation are more invasive to privacy than others, and the company should select the least invasive method possible to avoid violating the privacy rights of the potential customer. Persistent phone calls and door-to-door solicitation may be perceived to be a violation, unless it is requested. The company must also respect a potential customer's request to end the solicitation.

Suggested Indicators

- 1 Company editors and publishers are trained not to disclose information that a reasonable person would deem highly offensive and invasive.

True	False	F/A	N/A

-
- 2 The company obtains written consent before including information about persons or groups in company sales brochures and other marketing materials.

True	False	F/A	N/A

-
- 3 The company has set clear standards for privacy and the collection of personal data on or from children.

True	False	F/A	N/A

-
- 4 If marketing calls might be monitored or recorded, customers are either informed by the company sales staff or by a recorded message at the beginning of each call.

True	False	F/A	N/A

5 Company representatives do not call by phone or make house visits between 8:00 PM and 10:00 AM, unless requested to do so.

True	False	F/A	N/A

6 Company marketers immediately end their marketing telephone calls or house visits when customers indicate that they do not want to be solicited or do not want to purchase the product or service.

True	False	F/A	N/A

7 Customers are immediately removed from mailing or calling lists upon request.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), Article 12; International Covenant on Civil and Political Rights (1966), Article 17

4.3 INTELLECTUAL PROPERTY RIGHTS

No. 4.3.1	Area Product quality and marketing practices	Section Intellectual property rights
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Question

Does the company obtain employees' informed consent and provide them with compensation for inventions or other works generated in whole or in part by them?

Yes	No	F/A	N/A

Description

Not all countries have ratified the relevant instruments of international law relating to human rights and intellectual property or recognised the impact of customary international law, and those who have may fail to sufficiently implement these issues into national law. The company is advised to familiarise itself with all applicable laws and uphold the higher standards, usually found in international law, when possible to avoid implication in human rights abuses. Local peoples and communities that use traditional or customary ownership systems may face special difficulties when it comes to intellectual property, as their knowledge may not be officially recognised, and recourse to justice is difficult to obtain. Indigenous peoples have a particularly strong protection in international law, aimed at protecting their specific social and cultural identity. National intellectual property laws may not provide for special measures for local or indigenous peoples intellectual property rights. All or some of the local or indigenous community may also be protected, depending on the nature of the employee's contribution and the customs of the people.

Suggested Indicators

- 1 The company has an agreement with its workers about how intellectual property rights for products created or invented in whole or in part by workers are to be shared.

True	False	F/A	N/A

2 The company obtains the informed consent of local or indigenous knowledge holders or negotiates an agreement with them, before using their knowledge or having them participate in research and development, even if their ownership rights are not protected by national law.

True	False	F/A	N/A

3 The company policy on ownership of the intellectual property rights for inventions and other works is agreed upon by employees and their representatives, and includes special provisions to protect the interests of local and indigenous knowledge holders.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), article 27 (2); International Convention on Economic, Social and Cultural Rights (1966), Article 15 (c); ILO Indigenous and Tribal Peoples Convention (C169, 1989), Article 2 (2b), 4 (1) and 8 (2); UN Declaration on the Rights of Indigenous Peoples (2007), Article 31

No. 4.3.2	Area Product quality and marketing practices	Section Intellectual property rights
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Question

Before entering into any agreements with local intellectual property-related indigenous knowledge holders, does the company investigate whether ownership of local or indigenous knowledge or items is individual or collective?

Yes	No	F/A	N/A

Description

Some local or indigenous knowledge might be collectively held among some or all of the members of a local or indigenous people. A company must guard against entering into an agreement with one individual (generally a chieftain or tribal elder) who purports to own the rights to the property under customary law, but who is in fact misrepresenting the ownership of the property for his or her own benefit. Sufficient research must be done to establish that the people in general, including women and other subgroups, want to pursue this action.

Suggested Indicators

- 1 It is company policy to respect ownership of intellectual property when it is held individually or collectively.

True	False	F/A	N/A

- 2 The company consults with the local or indigenous people regarding their tradition of knowledge ownership to confirm that all relevant parties or persons have given informed consent to use intellectual property, before entering into an agreement with anyone.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), article 27 (2); International Convention on Economic, Social and Cultural Rights (1966), Article 15 (c); ILO Indigenous and Tribal Peoples Convention (C169, 1989), Article 6 (a); UN Declaration on the Rights of Indigenous Peoples (2007), Article 31

No. 4.3.3	Area Product quality and marketing practices	Section Intellectual property rights
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Yes	No	F/A	N/A

Question

Does the company conclude negotiations to get the informed consent of local and indigenous knowledge holders, using expert and unbiased information, even if ownership of the item is in dispute?

Description

Sometimes a host government might refuse to recognize the ownership of intellectual property as determined by the customs of the local or indigenous people, due to the government's interest in economic development, or a desire to dis-empower a local or indigenous people. The company could find itself in violation of the intellectual property rights of one of these groups, if it blindly relies on the government's assertion regarding ownership and thereby fails to recognise the rights of the local or indigenous people and obtain informed consent to use the intellectual property. To resolve the dispute, the company should seek advice from unbiased experts regarding the true ownership of the property before conducting any business deals regarding the property.

Suggested Indicators

- 1 The company maintains and uses a list of unbiased experts and sources of information about the local and indigenous cultures in its area of operations, including local and indigenous knowledge.

True	False	F/A	N/A

2 The company has a policy stating that it respects traditional and indigenous knowledge holders and will include all relevant traditional or indigenous peoples in discussions concerning intellectual property.

True	False	F/A	N/A

3 The company negotiates permission and assignment/licensing agreements with local and indigenous knowledge holders in all disputed ownership cases involving local and indigenous knowledge holders.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), article 27 (2); International Convention on Economic, Social and Cultural Rights (1966), Article 15 (c); ILO Indigenous and Tribal Peoples Convention (C169, 1989), Article 2 (2b) and 4 (1); UN Declaration on the Rights of Indigenous Peoples (2007), Article 31

No. 4.3.4	Area Product quality and marketing practices	Section Intellectual property rights
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Question

Does the company obtain the informed consent of the owners and provide recognition to the creators before using locally sourced musical or artistic material, maps, computer programs or other copyrightable works in advertising campaigns or product development?

Yes	No	F/A	N/A

Description

A company may wish to use or copyright local artistic or other copyrightable work. However, if it does not obtain authorization from the owner(s) and provide recognition to the creator(s), a copyright or the related rights that apply to performing artists and broadcasters might be violated. Even if the material is already widely used, or is centuries old, a local or indigenous knowledge holder(s) could consider themselves the owner of the intellectual property through cultural identification, which affects the interpretation of ownership in national and international law. In many countries, there is no need for an author or owner to apply for or register copyright in order to protect his or her interests. Material that may automatically be protected by copyright includes, among other things, literary, artistic, architectural, musical, audio-visual works, maps and technical drawings, databases, and computer programs. Most of these products are protected with a 50-year minimum term for exclusive ability to authorize use. 'World music', and the music of local and indigenous peoples, constitutes a growing market, as do mythical stories based on local legends and folklore. The company may want to modify the original work, so that it can be copyrighted as new or original. Such actions, however, might still violate the intellectual property rights of the owner(s), or might also risk altering the cultural perception of the local group itself, through the unintended use of music/stories or other artistic expressions closely associated with its culture. It is advisable to first obtain the informed consent of the author(s)/owner(s) in all cases. The customary system of ownership within the local or indigenous group should be recognized.

Suggested Indicators

- 1 Company due diligence processes for use of material potentially protected by copyright include careful research of the material to determine its origin, authorship and ownership.

True	False	F/A	N/A

2 Company due diligence processes for use of material potentially protected by copyright give due consideration for customary systems of property ownership.

True	False	F/A	N/A

3 Negotiations to obtain informed consent are concluded with all property owners, including local or indigenous peoples, before using their protected or protectable materials.

True	False	F/A	N/A

4 When using locally-sourced artistic or other copyrightable material, due recognition to the creator is provided on the product or marketing materials.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), article 27 (2); International Convention on Economic, Social and Cultural Rights (1966), Article 15 ; ILO Indigenous and Tribal Peoples Convention (C169, 1989), Articles 2 (2) (b) and 4 (1); Berne Convention for the Protection of Literary and Artistic Works (1979), Article 7(2); WIPO Copyright Treaty Convention, Article 7(2)]; UN Declaration on the Rights of Indigenous Peoples (2007), Article 31

No. 4.3.5	Area Product quality and marketing practices	Section Intellectual property rights
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Question

Does the company obtain authorization from existing patent holder(s) before commercially exploiting any locally patented invention?

Yes	No	F/A	N/A

Description

The company must negotiate with and obtain authorization from the patent holder(s) of inventions prior to commercially exploiting the invention. Generally, to qualify as an invention, something must be novel/original, demonstrate an inventive step, and have industrial usage. The company should check all relevant national laws, and all applicable international intellectual property agreements.

Suggested Indicators

- 1 As part of its due diligence processes, the company contacts the patent offices to obtain information about inventions it may wish to use.

True	False	F/A	N/A

- 2 The company obtains authorization from patent holders before commercially exploiting any locally patented ideas or products.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), article 27 (2); International Convention on Economic, Social and Cultural Rights (1966), Article 15 (c)

No. 4.3.6	Area Product quality and marketing practices	Section Intellectual property rights
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Question

If the company plans to commercially exploit a locally-identified invention that is unpatentable due to its lack of novelty, does it still negotiate with the local or indigenous owner to obtain their informed consent?

Yes	No	F/A	N/A

Description

The company might wish to commercially exploit an invention it identifies in the host country that is unpatentable because it is not new. Local and indigenous inventions are in many cases unpatentable due to lack of novelty, because the inventions have been in use for a long period of time within the local or indigenous community. If local beliefs conclude that the invention is the property of a local or indigenous group, international law recognizes that, and the company should accordingly still obtain the owner(s) informed consent before exploiting the invention.

Suggested Indicators

- 1 Company policy states that the company will respect international law concerning local and indigenous inventions, including obtaining the informed consent of the owner(s).

True	False	F/A	N/A

- 2 The company obtains the consent of local and indigenous owners of locally identified inventions before commercially exploiting the inventions.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), article 27 (2); International Convention on Economic, Social and Cultural Rights (1966), Article 15 (c); ILO Indigenous and Tribal Peoples Convention (C169, 1989), Articles 2 (29 8b) and 4 (1); UN Declaration on the Rights of Indigenous Peoples (2007), Article 11, 12, 31

No. 4.3.7	Area Product quality and marketing practices	Section Intellectual property rights
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Question

Does the company obtain the informed consent of rights holders in local or indigenous communities before patenting new products designed using their expertise?

Yes	No	F/A	N/A

Description

Cases in which violations are likely to occur are where a member of a local or indigenous community assists researchers in identifying local or indigenous medical technology, which is later used or synthetically reproduced to create a patentable pharmaceutical product. If the knowledge is owned by the local or indigenous community or a subsection of it, rather than by the individual, the company should obtain the authorization of the indigenous community as a whole. Obtaining informed consent is particularly important in the case of indigenous people, whose intellectual property rights are even more stringently protected under international law.

Suggested Indicators

- 1 Company guidelines require the company to negotiate with the local or indigenous community to obtain their informed consent prior to starting research in which their tradition-based information and technology will be used for research and development of products.

True	False	F/A	N/A

2 It is company practice to establish a contract on how shared local or indigenous knowledge may be used commercially by the company and how the community is to be reimbursed.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), article 27 (2); International Convention on Economic, Social and Cultural Rights (1966), Article 15 (c); ILO Indigenous and Tribal Peoples Convention (C169, 1989), Articles 2 (2 b) and 4 (1); UN Declaration on the Rights of Indigenous Peoples (2007), Articles 11, 12, 31

No. 4.3.8	Area Product quality and marketing practices	Section Intellectual property rights
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Question

Does the company respect the intellectual property rights of prior knowledge holders of a patentable invention before and after the company obtains a patent for it?

Yes	No	F/A	N/A

Description

Some inventions by local or indigenous knowledge holders may be patentable under national intellectual property law, even though the local or indigenous knowledge holders have not pursued, or do not intend to pursue, a patent. In some cases the local or indigenous group simply lacks the necessary familiarity with the states intellectual property system and the legal resources to file for a patent. In other cases, customary rules of the local or indigenous knowledge holders might already address ownership of the intellectual property and thereby protect such inventions under international law. To act in compliance with international law, the company should negotiate with the local and indigenous knowledge holders for informed consent before using the invention. If the company seeks enforcement of its exclusive rights, the prior users of the invention could be prevented from using it without compensating the company. In this case, the grant of the patent itself is a violation of the intellectual property rights of the people, but is

nonetheless possible under some national systems. In order to mitigate the effects of such a violation, the company should refrain from exercising its exclusive rights with respect to the particular people who were prior knowledge holders. Indigenous peoples, in particular, may have a special right to use their inventions, regardless of intellectual property law.

Suggested Indicators

- 1** Company due diligence processes include procedures to identify local or indigenous ownership of unpatented but patentable inventions.

True	False	F/A	N/A

- 2** The company obtains the informed consent of local or indigenous prior knowledge holders before applying for a patent for their invention.

True	False	F/A	N/A

- 3** The company informs the prior knowledge holders of their right to use the invention without compensating the company.

True	False	F/A	N/A

- 4** The company allows prior knowledge holders to continue to use the patented invention without compensating the company.

True	False	F/A	N/A

5 The company's lawyers do not file cases against prior knowledge holders for their continued use of the patented invention.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), article 27 (2); International Convention on Economic, Social and Cultural Rights (1966), Article 15 (c); ILO Indigenous and Tribal Peoples Convention (C169, 1989), Article 2 (2 b) and 4 (1); UN Declaration on the Rights of Indigenous Peoples (1994), Articles 11, 12, and 31

No. 4.3.9	Area Product quality and marketing practices	Section Intellectual property rights
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Question

If the company obtains information about a local or indigenous product or a process that is ordinarily kept secret, does it seek the informed consent of the owner(s) before using it?

Yes	No	F/A	N/A

Description

A person may reveal secret information to the company regarding a locally made product, process or other item. The information revealed may be legally protectable intellectual property if it meets the following conditions: (1) it has been kept secret from others who ordinarily deal with that kind of information, (2) its secret nature makes it commercially valuable and (3) the person controlling the information has taken steps to secure its secrecy (WTO TRIPS Agreement (1995), Articles 28 (1a and b)). The company should note that local or indigenous peoples might also have protectable trade secrets and forms of enterprise within their own culture which should also be respected by obtaining informed consent prior to use.

Suggested Indicators

- 1 The company seeks the informed consent from local or indigenous peoples before using any information that is considered secret or confidential according to their culture.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), article 27 (2); International Convention on Economic, Social and Cultural Rights (1966), Article 15 (c); ILO Indigenous and Tribal Peoples Convention (C169, 1989), Article 2 (2 b) and 4 (1); UN Declaration on the Rights of Indigenous Peoples (2007), Articles 11, 12, 31; WTO TRIPS Agreement (1995), Article 28 (1a and b)

No. 4.3.10	Area Product quality and marketing practices	Section Intellectual property rights
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Question

Does the company obtain the informed consent of the designer(s) or owner(s) to use a locally sourced industrial design, with special care for indigenous people's special rights?

Yes	No	F/A	N/A

Description

Use of an industrial design for commercial purposes without the authorization of the owner(s) of the industrial design might be an abuse of intellectual property rights. For an industrial design to qualify for protection under international law, it must be either novel or original. National intellectual property regimes differ as to whether or not one must register an industrial design in order to obtain protection, which is permissible under international law. Customary ownership systems will have an impact on the perception of ownership in international intellectual property law. Even if a company has respected the protected period for an indigenous person or people's industrial design, the company might abuse indigenous people's rights if the company utilises the design without their authorization even after the protected period has expired. After the expiration of the protected industrial design period under international intellectual property law, the states' obligation under international law to respect the integrity of the practices and institutions of indigenous peoples further obliges the company to respect the customary ownership of the industrial design by the indigenous people. Note that this provision refers to

the specific category of indigenous peoples only. Non-indigenous peoples in general are not covered by this strong protection under international law.

Suggested Indicators

1 Company due diligence processes require that any locally identified industrial design proposed for commercial use is checked with the state registry for industrial designs, and if it is not registered carefully researched for local or indigenous ownership.

True	False	F/A	N/A

2 The company obtains the informed consent to use an industrial design from indigenous people.

True	False	F/A	N/A

3 The company obtains informed consent to use an indigenous industrial design even after the legally protected period expires, and respects the indigenous owner's refusal to authorize the company's use of the industrial design.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), article 27 (2); International Convention on Economic, Social and Cultural Rights (1966), Article 15, ILO Indigenous and Tribal Peoples Convention (C169, 1989), Article 2 (2) (b) and 4 (1); UN Declaration on the Rights of Indigenous Peoples (2007), Articles 11 and 31

No. 4.3.11	Area Product quality and marketing practices	Section Intellectual property rights
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Question

Does the company obtain informed consent before using locally created symbols and images for product development or in its advertising or marketing campaigns?

Yes	No	F/A	N/A

Description

Companies that use local signs, numbers, letters, images, and even sounds or smells, to identify their products, might violate the trademark rights of a pre-existing user. If the company has adopted an image or sign that is an imitation, modification, translation, or liable to create confusion with the original model on which it is based, the company might also be violating the owner's intellectual property rights. Under national law, there may or may not be a requirement that symbols used as trademarks be registered. One example of a trademark violation is the adoption of a motif or word that ordinarily serves to identify a traditional or indigenous people or community. That community itself might be the collective trademark holder of the motif or word, and the company's use of the symbol/trademark might create a misleading impression that the company's goods are 'authentic', i.e. made by the traditional or indigenous people themselves. Many states already respect as trademarks special certification marks that identify the works as authentic works by indigenous peoples.

Suggested Indicators

- 1 Symbols or images proposed for use in the product development process or in the company's advertising or marketing are systematically checked with the state registry for trademarks prior to use.

True	False	F/A	N/A

2 When using symbols and images that have a basis in a local or indigenous culture, the company discusses the potential impacts of the commercialization of their symbol or image with the group, and obtains their informed consent before using them in company product development and marketing processes.

True	False	F/A	N/A

3 In company marketing practices and in the labelling of company products, the origin of symbols or images used in the marketing product are disclosed.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), article 27 (2); International Convention on Economic, Social and Cultural Rights (1966), Article 15 (c); ILO Indigenous and Tribal Peoples Convention (C169, 1989), Articles 2 (2)(b), 4 (1) and 6 (a); Paris Convention on the Protection of Industrial Property (1883), Article 7; UN Declaration on the rights of Indigenous Peoples (1994), Articles 13 and 31

4.4 RESEARCH/TESTING ON HUMAN SUBJECTS

No. 4.4.1	Area Product quality and marketing practices	Section Research/testing on human subjects
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Question

Does the company obtain free and informed consent from its human research subjects prior to engaging in the research?

Yes	No	F/A	N/A

Description

Before conducting research on a human subject, the company must obtain 'informed consent' from the participant. When seeking consent from a prospective subject, the researcher must first communicate all relevant information about the study in terms that are easily understandable to that individual. All essential information about the project should be communicated in both written and verbal form, and must include the following items: the purpose of the study, the likely benefits and foreseeable risks, including risks to reproductive health, alternative procedures, confidentiality of participation, available medical services, compensation and the right to withdraw from the research without penalty. After being informed of all relevant information, the person must be allowed as much time as necessary to ask questions of the researcher before giving consent. Once a person has agreed to participate in a project, he/she must confirm in writing that he/she is a willing participant in the research, and is not participating under duress (i.e., via intimidation or threats), against his or her will, or as a result of 'undue inducement' (i.e. offered a reward of such proportions that his/she agrees to participate in research which would normally be against his or her better judgment). In some cultures or communities, however, signed consent forms may be viewed with suspicion, the prospective subjects may be illiterate, or the forms may conflict with specific confidentiality agreements. Under those circumstances and with the approval of an independent ethics committee, consent may be expressed verbally or via voluntary actions. Young children lack capacity to give informed consent, but a parent or guardian may substitute his or her own consent when the child's participation is essential and has already been approved by an independent ethics committee. To prevent guardians from exploiting a child for financial gains, guardians should not receive remuneration for the child's participation, except for the reimbursement of out of pocket expenses. Human subjects should not be used in research if the research carries more than a minimal risk to the reproductive health of the subject or his or her future offspring. As a general rule, pregnant or nursing women should not be subjects of any clinical trials except such trials designed to protect or advance the health of pregnant or nursing women, fetuses or nursing infants, and for which women who are not pregnant or nursing would not be suitable subjects.

Suggested Indicators

- 1 The company only uses human participants who have provided free and informed consent prior to initiating testing and research.

True	False	F/A	N/A

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- 2 If research subjects are detainees, the company itself obtains the informed consent of each detained individual prior to initiating testing.

True	False	F/A	N/A

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- 3 If research objects are minors, the company obtains the informed consent from parents or guardians prior to initiating testing.

True	False	F/A	N/A

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- 4 The company consistently provides complete information to each prospective participant as part of the procedure for obtaining free and informed consent.

True	False	F/A	N/A

5 Test subjects are fully informed of any potential damage to their reproductive health and/or to the health of their future offspring before their consent to participate in testing or research is obtained.

True	False	F/A	N/A

6 Any compensation provided to research subjects is carefully structured so as not to constitute undue inducement.

True	False	F/A	N/A

7 If product testing is undertaken by an outside institution, the company ensures the outside institution is aware of its guidelines related to use of detained individuals in human testing.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), Article 16 and 25; International Covenant on Civil and Political Rights (1966), Article 12 (1); Convention on the Rights of the Child (1989), Article 32; WHO & CIOMS International Ethical Guidelines for Biomedical Research Involving Human Subjects (1993), Guidelines 1 to 3, 16

No. 4.4.2	Area Product quality and marketing practices	Section Research/testing on human subjects
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Question

Does all of the company's product-testing on human subjects pose negligible risk to the lives of the participants?

Yes	No	F/A	N/A

Description

The individual informed consent of each human subject is required prior to initiating any product testing. However, when the subjects are prisoners, detainees, or the detained mentally ill, the requirements for what constitutes proper informed consent are more stringent. Offering certain types or amounts of inducements to participate in research could constitute undue inducement to the detained individuals, making it too difficult for them to exercise appropriate judgement under the circumstances.

Suggested Indicators

- 1 The company does not engage in research and development studies on human subjects that are reasonably believed to threaten the life of the participants, even if they have provided informed consent.

True	False	F/A	N/A

- 2 The company keeps test subjects informed about any potential hazards of the research and does not expose them to life-threatening tests.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), Article 3; International Covenant in Civil and Political Rights (1966), Articles 7 and 9 (1); WHO and CIOMS: International Ethical Guidelines for Biomedical Research Involving Human Subjects (1993), Guideline No. 4

No. 4.4.3	Area Product quality and marketing practices	Section Research/testing on human subjects
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Question

If children participate in company testing, does the research purpose and methods comply with international ethical standards for research using children?

Yes	No	F/A	N/A

Description

Research must not be conducted on children unless the research is necessary and specific to the health needs of children and the research cannot successfully be carried out on adults. Before conducting research on a child, the company must ensure that the risks to the child are low and the importance of the knowledge to be gained by the research is great. Although the consent of the parents must be obtained prior to the child's participation in the research, the refusal of the child to participate must be respected regardless of the parent's approval.

Suggested Indicators

- 1 Minors participate in research only if they have provided free and informed consent, with the approval of a parent or guardian and an ethics committee.

True	False	F/A	N/A

- 2 The company respects the child's refusal to participate in research, even if the parents have given permission.

True	False	F/A	N/A

3 The company does not compensate parents and guardians for the child's participation in the research.

True	False	F/A	N/A

4 All research conducted on children serves an important purpose and is necessary for the health needs of children.

True	False	F/A	N/A

5 The research conducted on children subjects can not be conducted successfully on adult subjects.

True	False	F/A	N/A

6 The risk of harm caused by the research on the child subjects in the study is low.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), Article 25; Convention on the Rights of the Child (1989), Articles 19 and 24; WHO & CIOMS International Ethical Guidelines for Biomedical Research Involving Human Subjects (1993), Guideline

No. 4.4.4	Area Product quality and marketing practices	Section Research/testing on human subjects
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Question

Does the company adhere to international ethical standards when conducting research on persons who are legally incompetent or physically or mentally incapable of giving consent?

Yes	No	F/A	N/A

Human rights implicated

Right to life, liberty and security of person; right to health

Description

The elevated requirements for conducting research on children apply equally to persons with mental or behavioural disorders. All research conducted on persons with decreased mental capacity must relate specifically to the health needs of those people, and informed consent from a legal guardian must be obtained if the person lacks capacity to give the appropriate consent him/herself. A person's own refusal to serve as a participant must be respected by the researcher, regardless of the consent rendered by a legal guardian. At no time should research be conducted on a person with mental or behavioural disorders if the research could be successfully performed on a person with full mental capacity, who is able to give the appropriate informed consent. Finally, the degree of anticipated risk for research not directly benefiting the participant should be low and reasonable when considered in relation to the importance of the knowledge expected to be gained by the study.

Suggested Indicators

- 1** The company does not conduct research on persons who are legally incompetent or physically or mentally incapable of giving consent unless the research is specifically relevant to the health needs of those people.

True	False	F/A	N/A

- 2** The risks and benefits to be gained by the research to be conducted on persons who are legally incompetent or physically or mentally incapable of giving consent are evaluated and provided to prospective participants and their guardians before any clinical trials are conducted.

True	False	F/A	N/A

- 3** The company obtains informed consent from a legal guardian before conducting research if the person lacks capacity to give the appropriate consent him/herself.

True	False	F/A	N/A

- 4** The company does not compensate a legal guardian for the participation in research of an individual, who is physically or mentally incapable of giving consent.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), Article 25; WHO & CIOMS International Ethical Guidelines for Biomedical Research Involving Human Subjects (1993), Guideline 6

No. 4.4.5	Area Product quality and marketing practices	Section Research/testing on human subjects
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Question

Does the company adhere to international ethical standards regarding the participation of pregnant or breast feeding women in research?

Yes	No	F/A	N/A

Description

Pregnant or nursing women should not be made the subjects of research, unless the research carries no more than minimal risk to the fetus or nursing infant and the objective of the research is to obtain new knowledge about pregnancy or lactation. As a general rule, pregnant or nursing women should not be subjects of any clinical trials except such trials designed to protect or advance the health of pregnant or nursing women, fetuses or nursing infants, and for which women who are not pregnant or nursing would not be suitable subjects.

Suggested Indicators

- 1 The company does not conduct research on pregnant or nursing women, unless the research is designed for the benefit of pregnant or nursing women or fetuses.

True	False	F/A	N/A

2 Any proposed research on pregnant or nursing women poses no greater than minimal risk to the fetus or nursing infant.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), Article 25; International Covenant on Civil and Political Rights (1966), Article 12 (2a); Convention on the Rights of the Child (1989), Article 24 (e); WHO & CIOMS International Ethical Guidelines for Biomedical Research Involving Human Subjects (1993), Guideline 11

No. 4.4.6	Area Product quality and marketing practices	Section Research/testing on human subjects
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Question

Does the company refrain from forcing its employees to participate in product testing and research experiments as a condition of (continued) employment?

Yes	No	F/A	N/A

Description

The company must not condition employment on an employee's willingness to participate in research experiments, nor should the company offer employment or monetary incentives which would unduly influence an employee's judgment regarding experiment and product testing participation.

Suggested Indicators

1 The company does not offer employees large monetary rewards for participating in product research or testing experiments.

True	False	F/A	N/A

2 The company recruits subjects from the general population and does not place the burden of product testing and research experiments on its employees.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), Articles 23, 24 and 25; International Covenant on Economic, Social and Cultural Rights (1966), Article 7 (b); International Covenant on Civil and Political Rights (1966), Article 7

No. 4.4.7	Area Product quality and marketing practices	Section Research/testing on human subjects
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Yes	No	F/A	N/A

Question

Does the company respect the privacy rights of test groups in its research and development or testing of new products?

Description

In advance of testing, individuals participating in product research should be informed about how the information will be collected and who will have access to the research. Once collected, the company should not publish or disseminate private information about the research subjects without their consent.

Suggested Indicators

- 1 Researchers conducting tests for the company are given guidelines relating to the test subjects' right to privacy.

True	False	F/A	N/A

- 2 When conducting customer surveys, the company informs participants of the reason for the data collection.

True	False	F/A	N/A

- 3 The company does not publish, sell or disseminate information collected during the testing process about test subjects.

True	False	F/A	N/A

4 The company scrambles or codes data concerning the identification of individuals taking part in test groups.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references: Universal Declaration of Human Rights (1948), Article 12; International Covenant on Civil and Political Rights (1966), Article 17; UN Guidelines for the Regulation of Computerized Personal data Files (1990), Articles 1, 3 and 7; OECD Guidelines: On the Protection of Privacy and Transborder Flows of Personal Data (1980), Articles 7, 9, 10 and 11
