

# Turkey

Stretched between Asia and Europe, Turkey amalgamates the cultural, historical, and sociopolitical diversity of two continents. The government has implemented legal and institutional reforms driven by the country's ambitions to become a European Union member state, while at the same time demonstrating its high sensitivity to defamation and other "inappropriate" online content, which has resulted in the closure of a number of local and international Web sites.



## Background

Turkey was established as a secular state in 1923 by Mustafa Kemal Atatürk. The "Father of the Nation" transformed the government from Islamic rule to a secular modern state, with laws based upon the Swiss civil code. The principle of secularity is enshrined in the Constitution<sup>1</sup> to ensure that religious matters do not interfere with state affairs. The Turkish military powers consider themselves to be the guardians of secular democracy and in the past have actively pursued this role, resulting in the forced removal of elected governments on a number of occasions. The Turkish military

### RESULTS AT A GLANCE

| Filtering             | No Evidence of Filtering | Suspected Filtering | Selective Filtering | Substantial Filtering | Pervasive Filtering |
|-----------------------|--------------------------|---------------------|---------------------|-----------------------|---------------------|
| Political             |                          |                     | •                   |                       |                     |
| Social                |                          |                     | •                   |                       |                     |
| Conflict and security | •                        |                     |                     |                       |                     |
| Internet tools        |                          |                     | •                   |                       |                     |

  

| Other Factors | Low | Medium | High | Not Applicable |
|---------------|-----|--------|------|----------------|
| Transparency  |     | •      |      |                |
| Consistency   | •   |        |      |                |

| KEY INDICATORS  |                    |
|---|--------------------|
| GDP per capita, PPP (constant 2005 international dollars) | 11,825             |
| Life expectancy at birth (years)                          | 72                 |
| Literacy rate (percent of people age 15+)                 | 89                 |
| Human development index (out of 179)                      | 76                 |
| Rule of law (out of 211)                                  | 98                 |
| Voice and accountability (out of 209)                     | 121                |
| Democracy index (out of 167)                              | 87 (Hybrid regime) |
| Digital opportunity index (out of 181)                    | 52                 |
| Internet users (percent of population)                    | 33.1               |

Source by indicator: World Bank 2009a, World Bank 2009a, World Bank 2009a, UNDP 2008, World Bank 2009b, World Bank 2009b, Economist Intelligence Unit 2008, ITU 2007, ITU 2008.

has developed a long history of involvement in politics, and as a result the government remains dependent upon it to maintain a balance between religious and secular institutions.

Since Turkey's establishment as a secular republic, the nation has become increasingly integrated with the West through membership in such organizations as the Council of Europe, NATO, the Organization for Economic Cooperation and Development, the Organization for Security and Cooperation in Europe, and the G-20 major economies. Free expression of opinion in Turkey is guaranteed by Article 10 of the European Convention on Human Rights and Fundamental Freedoms, ratified by Turkey in 1954, and by various provisions of the International Covenant on Civil and Political Rights, signed by Turkey in 2000.

Despite Turkey's commitment to free expression and freedom of information, the Penal Code broadly restricts such freedoms by criminalizing speech that insults the Turkish nation, Turkish government institutions, and Turkish ethnicity. A number of other legal acts shape the information available on the Internet by allowing state institutions to apply widely filtering and blocking mechanisms in order to prevent illegal information online.

### Internet in Turkey

Turkey's Internet market is growing quickly. Internet penetration was at 7.5 percent in 2004, but increased to 33.1 percent by 2008. The Internet subscribers (i.e., the actual number of dial-up, leased line, and fixed broadband Internet subscribers) were just 7.89 per 100 inhabitants for 2008.<sup>2</sup> Overall, the market witnessed considerable growth propelled by the increase in the number of broadband subscribers during 2006, with ADSL being the predominant broadband access technology.<sup>3</sup>

The telecommunications market has seen a major structural change toward liberalization, after the fixed-telephony network was opened to competition in 2005. Previously a monopoly, Turk Telecom (TT) is still the dominant telecom and broadband Internet operator in the country, preserving a de facto monopoly of the fixed-line services. Before liberalization, Turk Telekomünikasyon A.Ş. (Turk Telecom) was a state company entirely owned by the Undersecretary of the Treasury. After years of national debate and international pressure, the company's privatization was carried out in November 2005 when 55 percent of the shares were bought by private investors.<sup>4</sup> Subsequently, 15 percent of the remaining shares were sold and have recently begun to be traded on the stock market.

There is a growing number of ISPs in the country.<sup>5</sup> Through its wholly owned subsidiary TTNNet A.Ş., Turk Telecom focuses on development of broadband services to compensate for the loss of revenue in the liberalized fixed-line voice market. According to a report by the National Telecommunications Authority for the telecoms market in 2007, TTNNet had a market share of 95.7 percent in retail ADSL Internet access services, while other operators hold the remaining 4.3 percent.<sup>6</sup> The company has announced plans to invest nearly USD 800 million over the next few years in the sector and increase Internet usage in both urban and rural areas.<sup>7</sup>

Turk Telecom owns international channels for Internet traffic. It operates the Internet backbone network (through TTNNet) and leases lines to other providers. Thus, the prices for external and sometimes internal lease of TT's infrastructure affect most of the ISPs.

In July 2008, Turk Telecom began offering VDSL2 (very high speed digital subscriber line 2) service across 73 of 81 provinces. Turk Telecom wholesales this service to ISPs. The VDSL2 service is transmitted over phone lines and increases the Internet connectivity in Turkey eightfold, bringing it into the top third of 23 European countries in terms of fastest connectivity using DSL technology.

The main commercial ISPs in Turkey are TTNNet, Superonline, Sabanci Telecom, Kocnet, Smile, Doruknet, DoganOnline, and IsNet. Superonline is owned by the Çukurova Group, which is one of the leading Turkish business conglomerates.<sup>8</sup> Superonline's lines, just like those of other providers, pass through Turk Telecom. Superonline is awaiting approval of a WiMAX license, which would allow it to provide "triple-play" services without being dependent on Turk Telecom's infrastructure.<sup>9</sup>

Some of the other main ISPs are affiliated with banking and media groups, including the Sabanaci Group's turk.net, Is Bank's is.net, and Koc's koc.net. Sabanci Telecom was created through the merger of TTNNet, Sabanci Telecom, and AK Internet. The provider offers a range of services (data communications, Internet access, VoIP, and mobile data services in partnership with the mobile operator Telsim).<sup>10</sup> In 2006, Sabanci's investment in the ISP market reached 63 million liras.

Turkey has one official Internet exchange point (IXP), the Turkish Information Exchange, or TIX.<sup>11</sup> Established in 1997 as a private initiative with a large number of members in its first years, TIX languished after it was restructured into a company in 2002.<sup>12</sup> Subsequently, a second IXP was established in June 2003 with the collaboration of a number of leading ISPs. Although this second platform was used extensively for a couple of months, the traffic on this exchange point has also declined, starting at the end of December 2003, as a result of the severe price competition ISPs faced from Turk Telecom.<sup>13</sup>

Following liberalization, Turk Telecom had to transfer its cable assets to a governmental entity (Turksat) responsible for communications satellites as proposed by the Turkish Competition Authority. The largest share of investments in the original cable telecoms company was made by private operators. Government control over the telecom pipelines is expected to be only a temporary solution, but it has caused serious concerns among private operators regarding the certainty of their investments.<sup>14</sup> Of 24 satellite platform operators in the country, Turksat is the main one. The company is also responsible for designing the government portal offering e-government services.

The main mobile operator is the private Turkcell with more than 28.7 million subscribers as of March 31, 2006.<sup>15</sup> The largely private mobile company Telsim is second with 8 million subscribers, followed by Aria with 4 million.<sup>16</sup> Both Turkcell and Telsim have been issued 25-year licenses to operate in the mobile phone sector.

Before initiating operation, VoIP operators need to obtain a license. The “Authorization Regulation on the Telecommunications Services and Infrastructures” of August 26, 2004, states that the general authorization granted to ISPs for performing activities does not include provision of VoIP services (Article 5.1 of Annex A6). Pursuant to Article 4.1. of Annex A9 of the same regulation, the ISPs willing to provide VoIP services would need to obtain a license for long-distance telephony services from the Telecommunications Authority. However, compared to the environment before the market liberalization, VoIP services are more accessible now. There are a number of local VoIP clients providing an alternative to Skype that targets Turkish and even international markets.<sup>17</sup>

## **Legal and Regulatory Frameworks**

### **Regulatory Framework**

The Telecommunications Authority (TA) was established under Law No. 4502 in 2000.<sup>18</sup> Prior to that time, the Ministry of Transportation handled regulatory issues in the field of telecommunications. This ministry still approves the changes in license fees proposed by the telecoms agency. The so-called independent regulatory authorities, including the TA, were recently established in Turkey to regulate and monitor sectors of strategic importance for the state.<sup>19</sup> While these authorities are part of the adminis-

trative system and are therefore state agencies, they are organized in a manner that permits a certain level of independence from the executive body (i.e., they do not operate under the traditional administrative hierarchy; their decisions and acts are not subject to the approval or permission of the central administration, nor can their decisions or acts be revoked or amended by the central administration). However, certain legal provisions imply that the central administration, and in particular the government, still maintains considerable control over the Telecommunications Authority. Most notably, pursuant to Article 8 of Law No. 2813, members of the Telecommunications Board (the highest decision-making body of the TA) are appointed by the Council of Ministers. Even the amendments to the law discussed in the following paragraphs do not succeed in safeguarding the independence of the TA from political interference.

The Authorization Regulation of the Telecommunications Services and Infrastructures of 2004 envisions a permissive regime to the ISPs for entering the local market. Providers are required to apply for and obtain a general authorization from the Telecommunications Authority to provide telecommunications services. Internet Law No. 5651, established in 2007, expands the group of regulated providers to include all access and hosting providers.

The Telecommunications Authority Regulation of October 24, 2007, specifies the prerequisites that hosting and access providers need to comply with when applying for an issuance, transfer, renewal, or cancellation of licenses and imposes a number of responsibilities on providers. One of these charges both the access and hosting providers with the duty to remove illegal content from their system upon notification from the Communications Presidency, to the extent that it is technically possible. However, the regulation reaffirms the principle laid out in the Law No. 5651 that neither the access providers nor the hosting providers are under an obligation to ensure the legality of the content they provide.

The licenses granted to hosting providers are valid for five years and are renewable. The licenses issued to access providers are valid for the period during which the relevant provider has been authorized by the Telecommunications Authority to provide telecommunications services.

### **Legal Framework**

Turkey's aspiration to join the EU has been a major influence in driving reform and liberalizing its telecommunications sector.<sup>20</sup> As a candidate to the EU, Turkey is under an obligation to align its national legislation with that of the EU in all 31 areas of the *acquis communautaire*, which includes telecommunications and IT. The EU's telecommunications policies call for liberalization of the sector with a view to making the EU one of the most competitive and dynamic knowledge-based economies by 2010.<sup>21</sup>

In recent years, Turkey has taken substantial steps to reform its telecommunications laws. In this regard, the adoption of Law No. 4502 in 2000, which provides a legal

framework for liberalization of the sector and establishes the telecommunications regulatory authority, is particularly noteworthy. Furthermore, the opening of the market to competition by removal of Turk Telecom's monopoly in the sector is another positive development.

Nevertheless, as stated in the "Turkey 2007 Progress Report," prepared by the European Commission, a number of issues still remain to be addressed regarding Turkish harmonization of telecommunications laws. In this regard, the licensing regime and the high communications taxes imposed on operators are considered particularly problematic.<sup>22</sup> The restrictive licensing scheme imposed on access providers by the Telecommunications Authority is out of line with the EU directives. Turkey will need to abolish its licensing regime for electronic communications services and replace it with a clear, predictable, and transparent general authorization process, as proposed by the EU.

A further concern is that Turk Telecom's owners possess a 21-year concession agreement over all equipment, which has to revert to the government at the end of the concession. This provision by itself is inconsistent with the overall character of EU telecommunications law.

### **Turkey Mass Media Laws Regulating Freedom of Expression**

The legal framework that regulates the freedom of expression and freedom of press in Turkey consists of the Press Law<sup>23</sup> and the Law on the Establishment of Radio and Television Enterprises and Their Broadcasts (the RTUK Law).<sup>24</sup> The current Press Law applies only to the print media, while the RTUK Law covers TV and radio broadcasts.

Turkey's 2004 Press Law No. 5187 annuls the former Press Law No. 5680 and its amendments, which was heavily criticized for bringing Internet broadcasting within the ambit of press legislation, thereby subjecting Web sites and ISPs to monitoring standards entirely incompatible with the characteristics of the Internet.<sup>25</sup> After reaffirming the constitutional principle that the press is free, Article 3 of the Press Law goes on to state that "this freedom may be restricted in accordance with the requirements of a democratic society to protect the reputation and rights of others as well as public health and public morality, national security, and public order and public safety; to safeguard the indivisible integrity of its territory; to prevent crime; to withhold information duly classified as state secrets; and to ensure the authority and impartial functioning of the judiciary." In addition, the Press Law sets certain limits on the freedom of press on the following points:

- Compromising the judicial process (Art. 19)
- Encouraging sexual assault, murder, or suicide (Art. 20)
- Illicit disclosure of identities (Art. 21)
- Failure to publish reply and correction (Art. 18)

The RTUK Law's objective is "to prescribe the principles and procedures relating to the regulation of radio and television broadcasts and to the establishment, duties, competence and responsibilities of the Radio and Television Supreme Council." Article 4 of this law provides an extensive list of broadcasting standards that need to be complied with in TV, radio, and data broadcasts, thereby setting the limits on how the TV and radio broadcasting enterprises can exercise their freedom of expression and freedom of press. The list risks burdening the media, as it includes vaguely framed phrases such as "national and moral values of the community," "give rise to feelings of hatred in the community," and "raise the feeling of fear." The Radio and TV Supreme Council is responsible for overseeing the TV and radio stations' adherence to these broadcasting standards and imposing the prescribed sanctions in case a violation occurs. Pursuant to Article 33 of the RTUK Law, the available sanctions are issuance of a warning, fine, suspension, and revocation of broadcasting license permit.

#### **Turkey Internet Laws Regulating Freedom of Expression and Freedom of Information**

Until 2005, the Internet in Turkey was a largely free medium. However, in 2005 this situation quickly changed when laws were introduced to restrict Internet content. Widespread use of the Internet and growing concerns about the uncontrolled amount of sensitive content available online pushed authorities to adopt a special law on the Internet. The Law on the Internet (or the Regulation of Broadcasts via Internet and Prevention of Crimes Committed Through such Broadcasts) No. 5651 was passed by the parliament on May 4, 2007, and signed by president Ahmet Necdet Sezer on May 22. This law introduces criminal liability for people who post certain categories of illegal content online. According to this law, if such content is posted it should be taken down immediately either by authorities or by the ISPs themselves.

The law establishes a model that allows a large group of actors, including the government, to petition the court or the Telecommunications Authority to filter certain Internet content. "Sufficient suspicion" that an offense is committed is a sufficient test to meet under the Internet Law to allow block of access. As a result of this law and related legislation, a number of Web sites have been blocked over the past few years in Turkey. This censorship has led to an uproar from large communities within Turkey and abroad, and has placed concerns about filtering of Internet content high on the national agenda.

The most common crime is posting obscene content—that is, content in violation of Article 8, paragraph A (5) of the Internet Law. Statistics provided by a Communications Presidency representative reveal that the posting of obscene content accounts for more than half of the total number of court rulings for blocking Internet access so far—5,629 since November 2007.<sup>26</sup> The remaining rulings banned access to the following types of proscribed content (from most to least common):

1. Crimes against Atatürk (Article 8/b)
2. Prostitution
3. Providing place and opportunity for gambling
4. Sexual abuse of children
5. Encouraging people to commit suicide
6. Supplying drugs that are dangerous for health
7. Facilitation of the abuse of drugs

The second most common reason for shutting down a Web site is posting content insulting Atatürk. A number of such incidents occurred in 2007, as this was the first year in which sites were blocked under direct application of the Internet Law. For the definition of "crimes against Atatürk," the law refers to Turkish Law No. 5816 on Crimes against Atatürk, which criminalizes certain activities against the founder of modern Turkey. As Atatürk is the founder of the secular Turkish state, an insult to him is considered an insult to Turkey's governing system in general and an act of state treason. A closer look at the internal division between secularists and people of faith demonstrates that by insulting Atatürk, one is thought to be insulting the Turkish interpretation of secularism.<sup>27</sup>

The recent Law No. 5728, dated February 2008, introduces a ninth category of crimes in addition to the ones provided in Article 8 of the Law on the Internet. Based on this recent amendment, access to content related to unauthorized online gambling and betting can be banned. These activities were initially prohibited under Law No. 7258 and sanctioned with a fine. Law No. 5728, however, penalizes such conduct as a crime when carried out online. As evident from these laws, activities in Turkey can be criminalized not only in the Criminal Code but in special laws enacted by the Parliament as well.

In addition to the Internet Law, Turkish courts base their access-blocking decisions on violations of other crimes and even some private law rules. Based on statistics from Turk Telecom,<sup>28</sup> banned sites based on norms other than the controversial Article 8 of Internet Law No. 5651 numbered 153 in 2005, 886 in 2006, and 549 in 2007. Turkish authors<sup>29</sup> referring to Turk Telecom's statistics state that access-blocking decisions rendered in violation of norms other than the ones enlisted under Article 8 have been based primarily on the following grounds:

- Downloading of MP3 and movies in violation of copyright laws
- Insults against state organs and private persons
- Crimes related to terrorism
- Violation of trademark regulations
- Unfair trade regulated under the Turkish Commercial Code
- Violation of Articles 24, 25, 26, and 28 of the Constitution (freedoms of religion, expression, thought, and freedom of press)

Under the Internet Law, ISPs become responsible for blocking access to illegal Web content even before the judge rules so. The Telecommunications Authority is tasked with identifying the actor responsible for the offensive content.

The recently created Information Denouncement Center accepts complaints submitted by e-mail or phone that report Web sites that allegedly carry content subsumed in any of the crimes typified in Article 8 of Law No. 5651. A complaint against online content may be submitted to a prosecuting attorney who then must lodge it with the court within 24 hours. In event of an emergency request, the prosecuting attorney may impose a ban on the Web site himself and submit it to a judge within 24 hours. The Internet Law provides for quick procedures and stipulates that once a judge decrees a blocking order, it should be delivered to the relevant ISP for implementation within another 24 hours. Sanctions envisioned for the ISPs or hosts who refuse to block access to offensive content include imprisoning owners or managers for six months to two years.

The law provides that the Telecommunication and Transmission Authority can impose bans on Internet sites without a prior judicial approval if

- the offending Web site hosts the previously mentioned crimes and is hosted outside Turkey, or
- a Web site contains sexual abuse of children or obscenity and its host resides in Turkey.

In this case, the prosecuting attorney may start a criminal action against those responsible for posting the offensive content once they are identified.

In addition to the preceding procedures, anyone may file a formal complaint against posted online content with the Communication Presidency, an entity established under the Internet Act. An individual claim may be sufficient to ban an entire site when the personal rights of the claimant have been violated. The individual can directly request that the content or hosting provider remove the offensive content.

Following the request, the content or hosting provider has to post a response to it within seven days on the Web site where the content is hosted. The provider should begin processing the request within two days. If prolonged, the request is considered rejected. The next recourse to the aggrieved party is to file a complaint with the local Criminal Peace Court within 15 days. The court will then make a decision within three days without a trial, and this decision can be appealed at a higher court. After the court decision, the content or hosting provider must remove or block the content and publish a reply to the claimant within two days. Noncompliance with the court decision is sanctioned with imprisonment. For example, a Google Groups ban was enforced following an individual claim against a blogger who posted a defamatory comment about the claimant on the server.<sup>30</sup>

The Turkish Internet Law provides the opportunity for Web site owners to exercise their right of reply against a content ban. However, this right is usually given after the site has been already blocked. There is no guaranteed right of reply to Web site owners whose content has been banned for a reason other than the ones listed in the Internet Law.

One of the main concerns with court decisions on Internet cases is the lack of proportionality. When the court considers certain content illegal, it orders a complete ban on the Web site hosting the content, instead of only blocking the particular material. Typically, the rulings of the Criminal Peace Court only cite the relevant legal provisions on which they are grounded and the final court order. This procedure does not provide the accused with the rationale behind the decisions, nor does it provide the right to defend against the charges. In addition, the time for submitting the appeal is very short, being only seven days.

Generally, court rulings in Turkey remain hidden from the public eye. The Turkish Attorneys Law does not provide guarantees for publicity of court decisions without regard to the particular type of dispute. Instead, this law restricts the right to make a copy of a court decision, which for privacy concerns remains available only to the party's attorney. Technically, the Attorneys Law allows all attorneys regardless of whether they are representing parties in a particular case to examine court decisions. However, reports from ONI field researchers indicate that attorneys who have made requests to review particular decisions issued in the application of the Internet Law have been denied access by court clerks, because of privacy concerns. This lack of access makes it difficult for Web site owners and their representatives to know how they can fully comply with the law.

Authorities often apply the Internet Law to ban access to online content, as the law provides quick enforcement mechanisms. Since the law does not provide the definitions of the criminalized activities, the court frequently refers to a number of other laws in its rulings, including the Penal Code and the Law on Crimes against Atatürk.

Article 301 was enacted into the Turkish penal code on June 1, 2005, as part of a package of penal-law reform enacted prior to Turkey's proposal for membership into the EU. Between 2005 and 2008, it was used to bring charges in more than 60 cases, many of which were high profile, such as that against internationally renowned novelist Orhan Pamuk.<sup>31</sup> From its inception, Article 301 received significant opposition. Following the 2007 murder of Turkish-Armenian journalist Hrant Dink,<sup>32</sup> such opposition increased significantly, resulting in former deputy prime minister and foreign minister Abdullah Gül declaring that the law was in need of revision.<sup>33</sup> On April 30, 2008, the law was only slightly modified to include lighter sentencing,<sup>34</sup> replacement of "Turkishness" with "Turkish nation" (even though public denigration of the Turks' culture and identity is a crime), and a requirement that the justice minister approve all cases in

which Article 301 is to be used.<sup>35</sup> Article 301 has been widely applied by the Criminal Courts of Peace to regulate online activities.

Any proscribed content under Article 301 is immediately removed without first requesting the content provider to remove it. This was the case against YouTube in 2007 and 2008. The media-sharing site was blocked a number of times, primarily because of content that allegedly offended Kemal Atatürk or the so-called “Turkishness.” YouTube made an express agreement to take down offensive videos if advised.<sup>36</sup> Despite this agreement, Turkish courts ordered Turkish Telecom to block access to the entire site rather than requesting YouTube to take action.

In addition to Article 301, two other articles broadly limit free speech in Turkey: Article 312 of the Penal Law imposes three-year prison sentences for incitement to commit an offense and incitement to religious or racial hatred,<sup>37</sup> and Article 81 of the Political Parties Law forbids political parties from using languages other than Turkish in written material or at public meetings. The latter affects Turkish Kurds in particular.<sup>38</sup>

### **Defamation**

Defamation is sanctioned under the Turkish criminal law as well as under the civil law. The Penal Code considers defamation an offense against honor. Article 125, entitled “Defamation,” contains the following provisions:

1. Any person who acts with the intention to harm the honor, reputation or dignity of another person through concrete performance or giving impression of intent, is sentenced to imprisonment from three months to two years or imposed punitive fine.
2. The offender is subject to above stipulated punishment in case of commission of offense in writing or by use of audio or visual means directed to the aggrieved party.
3. In case of commission of offense with defamatory intent:
  - a) Against a public officer,
  - b) Due to disclosure, change or attempt to spread religious, social, philosophical belief, opinion and convictions and to obey the orders and restriction of the one’s religion,
  - c) By mentioning sacred values in view of the religion with which a person is connected, the minimum limit of punishment may not be less than one year.
4. The punishment is increased by one sixth in case of performance of defamation act openly; if the offense is committed through press and use of any one of publication organs, then the punishment is increased up to one third.

By providing that defamation can be committed by use of audio or other visual means, the second paragraph of Article 125 brings defamatory acts committed on the Internet within the ambit of criminal law, with the consequence that the persons who commit this offense may face imprisonment or fines.<sup>39</sup>

Numerous civil law defamation claims have been brought before courts in the recent years. The legal basis for civil law defamation claims in Turkish law is Article 41 and Article 49 of the Code of Obligations.

Article 41 contains the following stipulations:

A person who wrongfully harms another either intentionally, negligently or imprudently, is under an obligation to compensate the other party for this harm.

A person who knowingly harms another through an immoral act is also under an obligation to compensate the other party for this harm.

Article 49, entitled "Harm to Personal Interests," states the following:

A person whose personal rights have been unlawfully violated is entitled to bring a claim for monetary compensation for the nonpecuniary damages he has incurred.

The Turkish Code of Obligations provides for a civil law claim for defamation whereby the claimant can ask for monetary compensation instead of blocking access to content. However, most claimants prefer to turn to the Internet Law's protection when such is provided. One of the reasons for this preference is that the Turkish Code of Obligations bans excessive enrichment through compensation while the Internet Law provisions allow claimants to apply for a direct access ban.

Reports indicate that the Telecommunications Authority has announced plans to bring defamation carried out online and hacking under the scope of Article 8 of Law No. 5651, thereby providing people whose personal rights have been violated by online content with an alternative mechanism that would allow them to seek an access-banning remedy instead of monetary damages under the Law of Obligations or fines under criminal law.<sup>40</sup> As the procedure for obtaining a remedy under Internet Law is more expedient than in civil and criminal law cases, this amendment equips the aggrieved party with a much easier and quicker mechanism against online defamatory content.

### **Surveillance**

The National Security Bill, or the "Draft Act on National Information Security Agency and Its Tasks," does not include a provision on the Internet. The bill envisages the establishment of a national information security agency as a public body. It requires the public bodies and agencies as well as private entities (companies, etc.) to provide "national information" necessary to ensure national information security to the security agency when requested to do so. "National information," however, is vaguely defined in the bill's present version. The bill, if enacted, may be used by the government to compel ISPs to supply the state with information on users' communications and activities at any time.

At present, the Telecommunications Authority Regulation of 2007 introduces state monitoring over access and hosting providers and their activities. Article 15-c of the regulation stipulates that access providers that cease their operations are obliged to submit all records of traffic logs pertaining to their last year of operation, as well as their user IDs, to the Telecommunications Authority.

### **ONI Testing Results**

Turkey has one main commercial backbone connection, owned and controlled by Turk Telecom and the educational network, UlakNet. Most of the filtering of international traffic takes place on the Turk Telecom network, which links to other commercial ISPs within the country. Testing by the OpenNet Initiative shows that the academic network does not currently engage in filtering. UlakNet primarily provides Internet access to academic centers and some government institutions, including the military.

The ONI testing found a number of sites blocked on Turk Telecom in a variety of categories. Sites containing information on Turkish Kurds, including [www.pajk-online.com](http://www.pajk-online.com), [hpg-online.com](http://hpg-online.com), and the official Web site of the Kurdistan Workers' Party, or PKK were blocked. Interestingly, two sites belonging to well-known Muslim creationist Adnan Oktar ([adnanoktar.wordpress.com](http://adnanoktar.wordpress.com) and [yahyahun.com](http://yahyahun.com)) were blocked, as was 19.org, the site of Oktar's rival Edip Yuksel. According to some reports, Oktar is responsible for the bans on Yuksel's sites and Wordpress, as well as the 2008 blocking of evolutionist Richard Dawkins' site in Turkey.<sup>41</sup> Other blocked sites included P2P sites such as the Pirate Bay ([thepiratebay.org](http://thepiratebay.org)) and [myp2p.eu](http://myp2p.eu). Gambling sites were also blocked.

Since the Internet Law came into effect, the number of blocked sites has drastically increased. The most high-profile filtering has been of the popular video-sharing site YouTube.com. YouTube access has been blocked a number of times in 2007 and 2008, in response to complaints about specific videos, most of which were considered to "insult Turkishness." Access has been restored following the takedown of each video. Wordpress and all blogs on the Wordpress domain, as well as popular blogging platform Blogspot, have been blocked and unblocked a number of times as well.

### **Conclusion**

Turkey has implemented a series of reforms in its telecommunications and Internet sectors, showing its firm determination to stay on the membership path to the European Union. Nonetheless, further reforms are needed to terminate the de facto monopoly of the main telecoms and Internet service provider Turk Telecom. All Internet traffic passes through Turk Telecom's infrastructure, thereby allowing centralized control over online content and facilitating the implementation of shutdown decisions. Unless the government rethinks its current Internet policy and abandons blocking

Web sites as a method for combating illegal content, freedom of expression in Turkey will remain compromised.

### Notes

1. The Constitution of the Republic of Turkey, Article 2.
2. International Telecommunication Union (ITU), "Internet Indicators: Subscribers, Users, and Broadband Subscribers," 2008, September 2008, [http://www.itu.int/ITU-D/icteye/Reporting/ShowReportFrame.aspx?ReportName=/WTI/InformationTechnologyPublic&RP\\_intYear=2008&RP\\_intLanguageID=1](http://www.itu.int/ITU-D/icteye/Reporting/ShowReportFrame.aspx?ReportName=/WTI/InformationTechnologyPublic&RP_intYear=2008&RP_intLanguageID=1).
3. Paul Budde Communication, Pty., Ltd., "Turkey," 2007.
4. Oger Telekomünikasyon A.Ş. (a Consortium led by Saudi Oger and Telecom Italia).
5. Some authors claim that the number of active ISPs is as high as 250. See Aytac Mestci, "Turkie Internet Raporu 2007" [Turkey Internet Report 2007], InternetPazarlama.net, <http://ab.org.tr/ab08/bildiri/17.pdf>; Turk Telecom reports that Internet operators are no more than 95. See Turk Telecom, "Yetkilendirme ve Hizmet Türlerine göre İşletmeci Sayıları" [Number of Operators According to Types of Authorization and Services], [http://www.tk.gov.tr/doc/lisans/isletmeci\\_sayilari.htm](http://www.tk.gov.tr/doc/lisans/isletmeci_sayilari.htm).
6. Türkiye Telekomunikasyon Sektorundeki Gelismeler ve Egilimler, 2007 Yili Raporu, Telekomunikasyon Kurumu Sektorel Arastirma ve Stratejiler Dairesi Baskanligi, Subat 2008.
7. Turk Telecom announced that the number of ADSL subscribers reached 5 million by the end of 2007. Turk Telecom, <http://www.turk.internet.com/haber/yazigoster.php3?yaziid=20773>.
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