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Turkey's internet restrictions – a hindrance to the country's IT ambitions?

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Recent years have seen internet use greatly increase throughout Turkey, reaching 40 million broadband internet subscribers in the third quarter of 2014. With a young and dynamic population, increased internet penetration and a rise in the number of smart devices, Turkey is in a prime position to increase development of its IT industry.

However, changes introduced to the main legislation, applying directly to information published online and the responsibilities of parties engaged in these activities in Turkey, has the potential to hinder any such development.

In 2014, a series of amendments were made to law on the Regulation of Broadcasts and Publications via the Internet and Prevention of Crimes Committed through Such Broadcasts (Internet Law). The most significant were through the Omnibus Law that came into effect on 19 February 2014, with further changes on 1 March 2014 and 11 September 2014.

The amendments have introduced new obligations for content providers, hosting providers and internet access providers. Of

particular importance is the obligation imposed on hosting providers to store traffic data for a period of up to two years and the somewhat vaguely defined obligation imposed on those providers that any information requested by the Telecommunication and Communication Directorate for the purposes of the execution of the Directorate's statutory duties must be provided in the format requested.

Additionally, one of the amendments has introduced a new form of notification to these parties. Any communication to the aforementioned parties – domestic or foreign – through such means as communication tools on their websites, email or other means of communication through their domain name or IP address will now be regarded as an "official notification" that will have effect with regards to the procedures under the Internet Law.

This new form of notification contravenes current notification requirements under Turkish Law and, by allowing for all forms of communication to be regarded as "notifications", places an undue burden on these parties, which may hinder their right to reply.

Blocking orders

One of the most criticised additions to the Internet Law has been the provision calling for the establishment of the Association of Internet Access Providers. This association will be formed of all of the authorised internet access providers and any other operators that provide internet access services.

Membership of the association – which will be closely supervised by the Information and Communications Technologies Authority (ICTA) – will be compulsory for all parties providing internet-related services. The association will act as a representative of these parties, although its primary role will be the implementation of any blocking orders that have been notified to it by the courts and authorities.

A new procedure for the issuing of blocking orders against internet content has also been established by amendments to Article 9 and the introduction of Article 9A to the Internet Law. Under the previous version of the Internet Law, blocking orders granted upon the application of real or legal persons could only be issued once an application had been made to the content or hosting provider.

Under the new Article 9, an application can be made directly to the court for the issuing of a blocking order against content that infringes a person's personal rights. Furthermore, under Article 9A, the Directorate has also been granted the right to issue blocking orders themselves, in situations of necessity where the further passage of time will be detrimental to the protection of personal privacy.

Disproportionate application

Even though, in accordance with the provisions of the Internet Law, such blocking orders should be issued on a URL basis - with the blocking of an entire website being stated to be an exception - in practice, the application by the courts and the directorate has not been this way.

For a number of reasons, ranging from the technical impossibility of applying certain blocking orders to politically motivated applications, blocking of access to entire websites despite the offending content being limited to certain URL addresses has continued. This disproportionate application was highlighted during the recent controversial blockings of Twitter and YouTube.

Increased obligations, such as the requirement to store traffic data for a period of up to two years, imposed on parties operating in this sector, has the potential to increase the costs of companies operating in Turkey, as they will be responsible for establishing the required infrastructure.

These increased operating costs, when combined with the uncertainties surrounding the application of the new provisions of the Internet Law and the fines that can be issued in cases of non-compliance with these provisions, can be said to pose certain operational risks. Consequently, this uncertainty – if not clarified in practice and through regulation – may lead to foreign companies hesitating in establishing bases of operation in Turkey, and thus may hinder the much-needed development of the Turkish IT sector.

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