Chapter 19
Restricted Access and Blocking Websites, Internet Regulations and Turkey Practices

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ABSTRACT

In Turkey, access blocking to websites by judicial orders has especially come into spotlight with the blocking of globally renowned websites such as www.youtube.com and www.wordpress.com. After the police operations in 2006 concentrating on internet child pornography, the need for legal provisions to regulate internet has started to be widely discussed and Law No. 5651 on the Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publications was enacted on 25 May, 2007. This law has generally defined the actors related to internet and has regulated the access blocking in the scheme of suppression of the crimes listed below. Telecommunications Communication Presidency is entitled to the enforcement of the law that has come into effect as of 23 October 2007. This work aims to trace the short history of access blocking and try to assess the subject in the light of cases from the applications in Turkey.

INTRODUCTION

It is historically the peculiarity of new technology that it presents itself as a fact to the legislator long before the law seizes it. Internet has for a long time grown and thrived without engaging with the law, the virtual community that it had created was rather governed by sui generis regulation mechanisms. Is it possible to say that the
legislator, the lawyer and the politician should remain silent to a technological revolution that is as important as the invention of printing press back in the day that links millions of people in the world, has become one of the major platforms of commerce and created a free flow of information? (de Fillon F., 1997) Clearly, the general principles of law were challenged by this new technology, which transcends national borders and cannot be governed by any public or private authority.

As a matter of fact, as of today, a number of States around the world have made efforts to block or delimit Internet access. Some states have blocked access entirely, rendering justifications like “protecting public from destructive thoughts” or “national security and integrity”. Some states, only the ISPs that are under the guidance of the political power are allowed to operate and hence the inhabitants of that state can use the Internet within the frame that is approved by the government. Another limitation method is to register all the users in a system that allows the government to trace their every activity online (Reporters Sans Frontières, 1999).

The first Internet connection in Turkey was established in 12 April 1993 in Middle East Technical University and has developed widely ever since. According to www.internetworldstats.com, 26 million people use Internet in Turkey as of December 2008, which make up 35% of the population and 6.8% of the European users (http://www.internetworldstats.com/stats4.htm, 2009). Almost half of the Turkish Internet users are between age 15 and 24. (Mestçi, 2005) The expansion of Internet usage is also encouraged by the State as it is stated in the 8th five-year (2001-2005) development plan: “Internet access capacity will be elevated to the level that necessitates the international developments... the necessary legal and institutional regulations within the frame of international rules and standards will be made to provide information security.” (DPT, 2009)

STATE INTERERENCE TO CYBERSPACE IN TURKEY

In Turkey, state interference to Internet content has started with cases about crimes committed through the medium of Internet and continued with access blocking to websites by judicial orders. This has especially come into spotlight with the blocking of globally renowned websites such as www.youtube.com and www.wordpress.com in the recent years. Yet, Turkish Parliament had started regulating the Internet content in 2001 and the judiciary intervened hitherto within the frame of general provisions regulating expression and intellectual property.

During the period of absence of regulation governing the Internet, the courts have compared the position of a forum moderator to that of a newspaper editor, treating Internet related criminal cases like ordinary mass media cases for the application of the highly controversial article 159 of the previous Turkish Criminal Code (article 301 in the current Turkish Criminal Code, with slight changes) which makes it illegal to insult Turkey, the Turkish ethnicity, or Turkish government institutions. Court of Cessation reversed this ruling because of an amendment made to the article 159 and in some civil cases openly announced that claims made to get web pages taken-down or blocked should be rejected since there was no law governing the Internet (Akdeniz & Altıparmak, 2008). However the counterview is also argued in the Turkish doctrine for the crimes committed through the medium of the Internet. According to this view, when the possible means through which the crimes may be committed are defined, expressions like “all means of mass communication, all types of publication” are used and consequently the acts realized through the mass communication means that will appear in the future are also included in the scope of the regulation. (Öngören, 2000; Sinar, 2000)

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