

May 2013-July 2014: Turkey's Long Year of Content Restrictions Online

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Understanding restrictions on the media sphere is an indispensable part of discussing how the Internet is governed in Turkey. As Aslı Tunç notes in the third section of this report, one of the striking features of the Gezi Park protests in June 2013 was how protesters turned to online platforms, especially Twitter, Facebook, and live-streaming services like Ustream, to publicize events that the traditional media ignored. For a brief period, Turkey was an antidote to pessimism about the Internet and political activism after the painful descent of the Arab Spring into counter-revolution and civil war. Although overwhelming police force eventually broke the Gezi protests, new online media outlets continued to flourish in Turkey through 2013 and 2014, seeking to capture the momentum of the summer.

At the same time, the government has intensified its efforts to control the Internet since Gezi through punitive and legislative means. In Izmir, 29 Twitter users are on trial for inciting riots after retweeting information about Gezi protests, in a case where then-Prime Minister Recep Tayyip Erdoğan is listed as a victim. In April, columnist Önder Aytaç was sentenced to 10 months in prison for swearing at the prime minister in a tweet, and authorities have brought similar charges against the editor of Today's Zaman newspaper for tweets on his personal account. Although these cases are especially relevant because they concern social media content, in important respects they are continuations of historical practice offline in Turkey.

The chief mechanism of control of most media in Turkey is not a law but the relationships between media owners and the government. The country's largest media outlets are owned by corporate holding companies that depend heavily on government procurement contracts in areas like construction, housing, transport, and logistics. This makes the outlets vulnerable to government pressure, and incentivizes holding

companies to use their media arms as lobbying firms for major government contracts. Online, Türk Telekom continues to hold a monopoly in Internet infrastructure and broadband services, despite the privatization of Türk Telekom in 2005 and the nominal opening of the market to competition. With Türk Telekom still 30 percent state-owned, the independence of the country's dominant Internet provider is a matter of serious concern.⁸

Turkey retains a repressive set of legal tools that are actively used to punish dissent. These include criminal and civil defamation laws, which the government uses extensively against all sorts of protected speech. President Erdoğan himself has filed hundreds of defamation suits, including concerning online speech. This continues despite a 2012 European Court of Human Rights (ECtHR) ruling in *Tuşalp v. Turkey* stating the use of civil defamation laws to afford greater protection to public officials is a violation of Article 10 of the European Convention on Human Rights. Antiterrorism laws also give latitude to judges and prosecutors to consider politically sensitive speech as "propaganda," even if it is published in a registered media outlet and no organizational link is proven between the publisher and a terrorist organization. Thousands of people, mostly from Kurdish and leftist movements, have served time in jail under the antiterrorism laws in the past decade.

As it has grown in scale, the online sphere has also been subject to increasing restrictions. Since passing **Law No. 5651** in 2007, the Turkish government has blocked tens of thousands of websites.⁹ Under 5651, the Telecommunications Communication Presidency (TİB) was not required to notify content or hosting providers that a block was being imposed, meaning that subjects of blocks often did not know their website was being blocked. In December 2012, the ECtHR found that 5651 lacked a strict legal framework



A protester wearing a gas mask reads the news on his phone on June 13, 2013 during the Gezi Park protests. Ozan Köse/AFP/Getty Images

for blocking orders and their contestation. The court held that the law violated Article 10 of the European Convention on Human Rights, a ruling that is legally binding upon Turkey as a signatory.¹⁰ Yet the government made no moves to revise 5651 until more than a year after the ruling.

The government only moved to change 5651—in the opposite direction to what ECtHR recommended—when Internet use appeared to threaten its rule. On December 17, 2013, prosecutors arrested influential figures close to the government, including the head of the state bank Halkbank, several construction magnates, and the sons of three government ministers, as part of a sweeping corruption investigation. As with the Gezi Park protests, the ruling AK Party and Erdoğan saw the investigation as a coup attempt, in this case launched by its former ally the Gülen movement. While the government pushed back on the investigation, including by reassigning thousands of police and prosecutors around the country, dozens of recordings of wiretapped conversations allegedly showing top government officials engaged in corruption and manipulation of the media began to appear

on Twitter and YouTube. Some of the first measures to block the leaks were ad hoc. The online news site VagusTV was blocked in January under 5651 for more than a week in unclear legal circumstances; another news site, T24, was ordered to take down coverage of the corruption investigation.

The government gave itself new powers to curb the leaks. In a rushed process in January–February 2014, parliament passed amendments to 5651 that strengthened the powers of the TİB. Hosting providers are now required to retain user information for one to two years. The legal framework that ECtHR had said must be remedied remained unchanged, while a new blocking measure was added under Article 9 allowing the TİB to issue blocking orders itself, which hosting providers must implement within four hours. ISPs will now be required by law to join a providers' association and will bear responsibility for implementing orders. Twitter, Facebook, and other platforms defined as "hosting providers" under the law will also be required to obtain a certificate in order to operate in Turkey. In sum, the 5651 amendments took the law in the opposite direction as that required by the European court's

ruling and added new measures intensifying control.

The 5651 amendments were followed in April by **amendments to the National Intelligence Organization (MIT) law** that empowered the agency to access any information, documents, data, or records from public institutions, financial institutions, and entities with or without a legal character, including access to archives, electronic data centers, and communications infrastructure. The law established that no other legal obligation, national or international, could overrule an MIT request, and made the refusal to comply with a request punishable by up to five years in prison. Acquiring or publishing information about MIT activities—including on social media—is now punishable by up to nine years in prison.

With the new laws in place but the leaks still continuing, and with pivotal nationwide local elections on March 30, the government pulled the plug. Speaking on the campaign trail on March 20, Erdoğan said, “We will tear this Twitter-shmitter out at the roots. The international community can say this or that, it has nothing to do with them. This has nothing to do with freedom-shmeedom. We will show the strength of the Turkish Republic.” The next day, the government blocked Twitter, followed by YouTube on March 27. The government claimed that the actions were in response to individual citizen complaints of privacy violations, but they did not follow either the requirements of the ECtHR or the new procedures under the amended 5651.

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On April 2, Turkey’s Constitutional Court held that the Twitter block violated the constitution’s Article 26, which protects freedom of expression. A similar ruling regarding YouTube followed on May 28. The rulings came after the local elections, however, which were held with both social media platforms blocked throughout the country. Both platforms are now accessible again, but after Twitter sent a delegation to Turkey on April 14, the government has begun making content removal requests to Twitter extensively. In 2013, Turkey sent nine official requests to Twitter for content removal; Twitter complied with none. In the first half of 2014 alone, Turkey sent 186 removal

requests, and Twitter complied with 30 percent.¹¹ This substantiates concerns that Twitter is shifting its policies to comply more frequently with removal requests, even in authoritarian countries where it does not have employees or servers.

These are likely not the last changes to be made to the legislative framework governing speech online. A **modification of the Press Law (Basın Kanunu)**, now in the committee stage in parliament, would make online news sites fall under the same regulations as print. The law defines “online news sites” so broadly that blogs and amateur commentary could easily fall under the regulations. Among other administrative requirements, all news sites under the definition would be required to include a “masthead” with the publisher, managing director, and hosting provider listed. Any website blocked under Article 9 of the new amendments to 5651 would also have its privileges as a press outlet—including press cards and official advertising—suspended. Those websites not driven out of business by the new expenses and administrative burdens would be left highly vulnerable to politically motivated blocking.

On July 23, during his campaign for president, Erdoğan announced that the powers of the TİB should be transferred to the National Intelligence Organization (MIT). Responsibility for blocking websites and monitoring user data would thus fall to the intelligence organization, which is run by a close ally of the prime minister. This change would confirm what two of Turkey’s most prominent Internet freedom experts said at the time of the February amendments to 5651, that the TİB was being transformed into an intelligence organization.¹²

This whirlwind of events—all taking place during the last 15 months—has raised the question of what the Internet in Turkey will look like in the future. The rapid passage of regressive new laws and the promise of new restrictions, like the Press Law, threaten the development of the Turkish telecommunications sector, especially its vibrant new media startups. As the government catches up to the Internet as a space for expression and applies the same repressive laws and practices that have historically undermined free speech in Turkey, it is placing at risk the benefits of the open Internet for Turkey. Repressive regulations could stifle the very innovation that has drawn so much positive attention to Turkey’s Internet in the past year.