

TURKEY

| | 2009 | 2011 |
|----------------------------------|--------------------|--------------------|
| INTERNET FREEDOM STATUS | Partly Free | Partly Free |
| Obstacles to Access | 12 | 12 |
| Limits on Content | 14 | 16 |
| Violations of User Rights | 16 | 17 |
| Total | 42 | 45 |

POPULATION: 73.6 million
INTERNET PENETRATION: 36 percent
WEB 2.0 APPLICATIONS BLOCKED: Yes
SUBSTANTIAL POLITICAL CENSORSHIP: Yes
BLOGGERS/ONLINE USERS ARRESTED: No
PRESS FREEDOM STATUS: Partly Free

INTRODUCTION

Internet and mobile-telephone use in Turkey has grown significantly in recent years, though access remains a challenge in some parts of the country, particularly the southeast. The government had a hands-off approach to regulation of the internet until 2001, but it has since taken considerable legal steps to limit access to certain information, including some political content. According to various estimates, there were over 5,000 blocked websites as of July 2010, spurring street demonstrations against internet censorship.¹ A related and significant threat to online freedom has been the repeated blocking of certain applications, particularly file-sharing sites like YouTube, Last.fm, and Metacafe. Over the last two years, users of these sites have filed cases with the European Court of Human Rights, after unsuccessfully appealing the ban in local courts. The YouTube block was lifted in November 2010 only after disputed videos were removed or made unavailable within the country. Despite the restrictive legal environment, the Turkish blogosphere is surprisingly vibrant and diverse. Bloggers have critiqued even sensitive government policies and sought to raise public awareness about censorship and surveillance practices, yielding at least one parliamentary inquiry into the latter.

Internet use in Turkey became popular in the mid-1990s with the introduction of home dial-up connection services. Since then, the number of dial-up users—and since 2006 the number of ADSL broadband users—has grown considerably. The government in 2003 launched the E-Transformation Turkey Project, which aims to ensure the transition to an information society.

¹ Yigal Schleifer, “Turkish Internet Users Taking It to the Streets,” Eurasianet.org, <http://www.eurasianet.org/node/61553>.

OBSTACLES TO ACCESS

Despite an increasing penetration rate in the last few years, obstacles to internet access remain. According to the International Telecommunication Union (ITU), Turkey had approximately 27.2 million internet users in 2009, for a 36 percent penetration rate.² Turk Telekom announced that it reached 6.5 million broadband users in May 2010. The number of mobile-telephone subscriptions in 2009 was nearly 63 million, for a penetration rate of some 84 percent,³ and third-generation (3G) data connections have been offered by all mobile-phone operators since June 2009. Although many people access the internet from workplaces, universities, and internet cafes, poor infrastructure—including limited telecommunication services and even lack of electricity in certain areas, especially in the eastern and southeastern regions—has a detrimental effect on citizens' ability to connect, particularly from home. High though decreasing prices, bandwidth caps, and a lack of technical literacy, especially among older Turks, also inhibit wider internet use. Bandwidth capping has become standard practice and formed part of the broadband services offered by major providers during 2010.

The population generally enjoys widespread access to internet technology, and diverse news sources are available to users. Popular social networks such as Facebook and MySpace, and other applications like Skype, can be used in Turkish. However, the government routinely blocks advanced web content and applications including video- and music-sharing sites such as YouTube, MySpace, Last.fm, Metacafe, and Dailymotion; blog-hosting sites like WordPress and Blogspot; Google groups; and the photo-sharing website Slide. In the case of YouTube alone, access was blocked roughly 20 times between March 2007 and November 2010. The block instituted in May 2008 was lifted in October 2010, only to be re-instated a few days later, then again lifted.⁴ The video sharing site Vimeo was blocked in September 2010. In most instances, these large-scale shutdowns have been blunt efforts to halt the circulation of specific content that is deemed undesirable or illegal by the government. Circumvention tools are widely used to access blocked websites, and the government has not restricted their use to date.

There are 117 internet-service providers (ISPs) in Turkey, but the majority act as resellers for the dominant, partly state-owned Turk Telekom, which provides more than 95

² International Telecommunication Union (ITU), "ICT Statistics 2009—Internet," <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx#>, accessed June 15, 2010.

³ ITU, "ICT Statistics 2009—Mobile Cellular Subscriptions," <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx#>, accessed June 15, 2010.

⁴ Marc Champion, "Turkey Blocks, Unblocks YouTube," *Wall Street Journal*, November 2, 2010, <http://online.wsj.com/article/SB10001424052748704462704575590420251199614.html>. See also, "YouTube Removed Videos of Former Opposition Leader," *Bianet.org*, November 10, 2010, <http://bianet.org/english/freedom-of-expression/125993-youtube-removed-videos-of-former-opposition-leader>.

percent of the broadband access in the country. Liberalization of local telephony is still pending, and the delay undermines competition in the fixed-line and broadband markets. ISPs are required by law to submit an application for an “activity certificate” from the Telecommunications Communication Presidency (TIB), a regulatory body, before they can offer services. Internet cafes are also subject to regulation and registration. Those operating without an activity certificate from a local authority representing the central administration may face fines of 3,000 to 15,000 lira (\$1,900 to \$9,600). Mobile-phone service providers are subject to licensing through a regulatory authority, and a licensing fee set by the cabinet.

The Information and Communication Technologies Authority and the TIB, which it oversees, act as the regulators for all of these technologies and are well staffed and self-financed.⁵ However, the fact that board members are government appointees is a potential threat to the authority’s independence, and its decision-making process is not transparent. Nonetheless, there have been no reported instances of activity certificates being denied. TIB also oversees the application of the country’s website-blocking law, and is often criticized by pressure groups for a lack of transparency. The Computer Center of Middle East Technical University has been responsible for managing domain names since 1991. Unlike in many other countries, individuals in Turkey are not permitted to register and own “.com.tr” and “.org.tr” domain names unless they own a company or a civil society organization with the same name as the requested domain.

LIMITS ON CONTENT

Government censorship of the internet is relatively common and has increased in recent years. In May 2007, the government enacted Law No. 5651, entitled “Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publication,” which proscribes the responsibilities of content providers, hosting companies, mass-use providers, and ISPs.⁶ Its most important provision allows the blocking of websites that contain certain types of content, including material that shows or promotes sexual exploitation and abuse of children, obscenity, prostitution, or gambling. Also targeted for blocking are websites deemed to insult Mustafa Kemal Atatürk, modern Turkey’s founding father. Domestically hosted websites with proscribed content can be taken down, and those based abroad can be blocked and filtered through ISPs. A January 2010 report by the Organization for Security and Cooperation in Europe (OSCE) estimated that 3,700 websites

⁵ Information and Communication Technologies Authority, <http://www.tk.gov.tr/Eng/english.htm>.

⁶ Law No 5651 was published on the Turkish Official Gazette on 23.05.2007, No. 26030.

had been blocked as of December 2009, the number of which seems to have grown to about 5,000 by mid 2010.⁷

The procedures surrounding decisions to block websites, whether by the courts or the TIB, are nontransparent, creating significant challenges for those seeking to appeal. Judges can issue blocking orders during preliminary investigations as well as during trials. The reasoning behind court decisions is not provided in blocking notices, and the relevant rulings are not easily accessible. As a result, it is often difficult for site owners to determine why their site has been blocked and which court issued the order. The TIB's mandate includes executing judicial blocking orders, but it can also issue such orders under its own authority for certain content. Moreover, it has in some cases successfully asked content and hosting providers to remove offending items from their servers, allowing it to avoid issuing a blocking order that would affect an entire website. According to TIB statistics as of May 2009, the courts are responsible for 21 percent of blocked websites, while 79 percent are blocked administratively by the TIB. The regulator has refused to publish blocking statistics since May 2009, and legal proceedings are under way to force the release of the data under Turkey's freedom of information law.⁸

Two groups, the All Internet Association (TID) and the Turkish Informatics Association (TBD), have brought cases to the Council of State in an effort to annul as unconstitutional all the secondary regulations drawn up on the basis of Law No. 5651. The TID has particularly faulted the TIB's authority to issue administrative blocking orders without judicial involvement. The cases were still pending as of June 2010.

Although Law No. 5651 was designed to protect children from illegal and harmful internet content, its broad application to date has effectively restricted adults' access to legal content. In some instances, the courts have blocked websites for political content using other laws. For example, access to the websites of several alternative news sources such as Atilim, Özgür Gündem, Keditör, Günlük Gazetesi, and Firat News Agency are blocked indefinitely by the courts. Access to the website of Richard Dawkins a British etiologist, evolutionary biologist, and popular science writer has been blocked since September 2008 after a pro-creationist Islamist claimed that the website contents had insulted him, his work, and his religion. The website of El Mundo, a Spanish newspaper, has been banned in Turkey since April 2010 because of a single video clip deemed to be illegal.

Certain leftist and pro-Kurdish news websites are blocked consistently,⁹ especially those dealing with southeastern Turkey, home to most of the country's Kurdish population. Additionally, Gabile.com and Hadigayri.com, which together form the largest online gay

⁷ Yaman Akdeniz, *Report of the OSCE Representative on Freedom of the Media on Turkey and Internet Censorship* (Vienna: OSCE, January 2010), http://www.osce.org/documents/rfm/2010/01/42294_en.pdf. Also see "OSCE Calls on Turkey to Stop Blocking YouTube," Reuters, June 22, 2010, <http://www.reuters.com/article/idU5TRE65L3MP20100622>.

⁸ Reporters Without Borders, "Telecom Authority Accused of Concealing Blocked Website Figures," news release, May 19, 2010, <http://en.rsf.org/turkey-telecom-authority-accused-of-19-05-2010,37511.html>.

⁹ Yaman Akdeniz, *Report of the OSCE Representative on Freedom of the Media on Turkey and Internet Censorship* (Vienna: OSCE, January 2010), http://www.osce.org/documents/rfm/2010/01/42294_en.pdf.

community in Turkey with approximately 225,000 users, were also blocked for approximately seven days during 2009 by order of the TIB. Access to popular sites such as MySpace.com, Last.fm, and Justin.tv has been blocked on the basis of intellectual-property infringement.¹⁰

In June 2010 Turkish activists initiated a legal challenge against the government's controversial move to block Google related services, which left millions of internet users frustrated. This was a reaction to 44 IP addresses jointly used by YouTube and Google being initially blocked by the TIB, and then by the Ankara's 1st Criminal Court of Peace. The reason behind the IP address blocking was to make it even harder to access YouTube from Turkey (which had been already blocked since May 2008) but the IP blocking paralyzed access to numerous Google-related services such as Analytics, Translate, Docs, Books, Map, and Earth. However, following the unblocking of YouTube in November 2010, access to other Google services was restored.

Despite the large number of sites blocked, circumvention techniques and technologies are widely available, enabling even inexperienced users to avoid filters and blocks. Each time a new order is issued and a popular website is blocked, a large number of articles are published to instruct users on how to access the banned websites. In a sign of the extent of this phenomenon, even during the 2.5-year block, YouTube was still the eight-most-accessed site in Turkey.¹¹ In July 2010, Internet users organized a major protest against Internet censorship, the first of its kind. The protest gathered approximately 2,000 people in Istanbul who demanded the abolishment of Law No. 5651.¹²

Turkish users are increasingly relying on internet-based publications as a primary source of news. There is a wide range of blogs and websites on which citizens question and critique Turkish politics and leaders, including on issues that are generally viewed as politically sensitive. The majority of civil society groups maintain an online presence, and social-networking sites such as Facebook, FriendFeed, and especially the microblogging platform Twitter are used for a variety of functions, including political campaigns. Thus far, however, mobile phones and short-message service (SMS, or text messaging) technology do not seem to play a large role in social or political mobilization.

¹⁰ In March 2010, a law professor filed a case at the European Court of Human Rights in a bid to lift the October 2009 block on Last.fm.

¹¹ According to Alexa, a web information company, as of August 26, 2010, <http://www.alexa.com/topsites/countries/TR>.

¹² CyberLaw, "Turks marched against government censorship of the Internet in Istanbul," July 19, 2010, <http://cyberlaw.org.uk/2010/07/19/17-temmuz-2010-internette-sansuru-protesto-etmek-icin-2000-kisi-yuruduk/>

VIOLATIONS OF USER RIGHTS

The constitution includes broad protections for freedom of expression, stating that “everyone has the right to express and disseminate his thought and opinion by speech, in writing or in pictures or through other media, individually or collectively.” Turkish law and court judgments are also subject to the European Convention on Human Rights and bound by the decisions of the European Court of Human Rights. While thousands of websites have been blocked under Law No. 5651, there have been no prosecutions of individuals for publication of the proscribed content. There are no laws specifically criminalizing online expression or activities like posting or downloading information, sending e-mail, or transmitting text messages. However, many provisions of the criminal code and other laws, such as the Anti-Terrorism Law, are applicable to both online and offline activity. Article 301 of the criminal code has been used against journalists who assert that genocide was committed against the Armenians in 1915, discuss the division of Cyprus, or write critically about the security forces. Book publishers, translators, and intellectuals have also faced prosecution for insulting Turkish identity. Thus far there have been no prosecutions under Article 301 for online material, but the possibility of such charges significantly contributes to self-censorship.

The constitution states that “secrecy of communication is fundamental,” and users are allowed to post anonymously online. The constitution also specifies that only the judiciary can authorize interference with the freedom of communication and the right to privacy. For example, judicial permission is required for technical surveillance under the Penal Procedural Law. However, the anonymous purchase of mobile phones is not allowed, and would-be buyers need to provide official identification. The use of encryption is currently not prohibited or regulated by law, and Turkey has yet to adopt a data-protection law.

Despite the constitutional guarantees, most forms of telecommunication have been tapped and intercepted in practice.¹³ Between 2008 and 2009, several surveillance scandals received widespread media attention, and it has been alleged that all communications are subject to interception by various law enforcement and security agencies, including the Gendarmerie (military police). Some reports indicate that up to 50,000 phones—both mobile and land-line—are legally tapped daily in Turkey, and 150,000 to 200,000 interception requests are made each year. During 2009 it was alleged that phone conversations involving members of the parliament, journalists, Supreme Court and other judges, and prosecutors including the chief public prosecutor were tapped.¹⁴

¹³ For a history of interception of communications, see Faruk Bildirici, *Gizli Kulaklar Ulkesi* [The Country of Hidden Ears] (Istanbul: Iletisim, 1999); Enis Coskun, *Kuresel Gozalti: Elektronik Gizli Dinleme ve Goruntuleme* [Global Custody: Electronic Interception of Communications and Surveillance] (Ankara: Umit Yayincilik, 2000).

¹⁴ “Başsavcı Engin dinlenmiş ve takip edilmiş” [The Chief Public Prosecutor’s Calls Are Tapped], *Radikal*, November 12, 2009.

Such actions have been challenged in court on at least one occasion. In 2008, responding to complaints lodged by the TIB, the Supreme Court of Appeals overruled a lower court's decision to grant both the Gendarmerie and the National Intelligence Agency (MIT) the authority to view countrywide data traffic retained by service providers. The court stated that "no institution can be granted such authority across the entire country, viewing all people living in the Republic of Turkey as suspects, regardless of what the purpose of such access might be."¹⁵ Nonetheless, similar powers to access and monitor data traffic have been granted to the MIT and the National Police Department. Faced with criticism on the issue, the parliament in 2008 launched a major inquiry into illegal surveillance and interception of communications. However, the inquiry concluded in January 2009 without finding any "legal deficiencies" in the interception regime.

ISPs are not required to monitor the information that goes through their networks, nor do they have a general obligation to seek out illegal activity. However, all access providers, including internet cafe operators, are required to retain all communications (traffic) data for one year. Administrative fines of 10,000 to 50,000 lira (\$6,400 to \$32,200) can be imposed on access providers if they fail to comply, but to date no ISP or other provider has been prosecuted.

All mass-use providers are required to use one of the filtering programs approved by the TIB, which are published on the TIB's website. However, criteria for approval of these programs are not publicly available, and it remains unclear whether the approved programs filter websites other than the ones formally blocked by the courts and the TIB. As a result, the system could lead to systematic censorship of websites without the necessary judicial or TIB orders.

There were no reports of extralegal intimidation or harassment of bloggers or others for their online activities, though some internet content was believed to have contributed to the 2007 murder of Hrant Dink, the editor in chief of the bilingual Turkish-Armenian newspaper *Agos*. He had received several death threats via e-mail, and it was reported that his teenage killer was influenced by the writings on certain ultranationalist websites and online forums. Such sites are not covered by Law No. 5651 and have not been subject to blocking or regulation.

Unlike physical attacks, technical attacks are becoming increasingly common. On June 18, 2010 a serious denial of service (DoS) attack hit the websites of the Ministry of Transportation (<http://www.ubak.gov.tr/>), Information and Communication Technologies Authority (BTK) (<http://www.tk.gov.tr/>), and the Telecommunications Communication Presidency (TIB) (<http://www.tib.gov.tr/>). These websites were inaccessible for exactly 10 hours.¹⁶ A press release sent by the hackers stated that they stopped the attack as a

¹⁵ "Supreme Court of Appeals Overrules Gendarmerie Call Detail Access," *Today's Zaman*, June 6, 2008, <http://www.todayszaman.com/tz-web/news-144038-supreme-court-of-appeals-overrules-gendarmerie-call-detail-access.html>.

¹⁶ The Register: DoS attack stuffs Turkey's internet censors, June 18, 2010, http://www.theregister.co.uk/2010/06/18/turkey_dos_attack/.

goodwill gesture, but the reason behind the attack was to protest against the unlawful blocking of access to YouTube and related IP services which crippled popular Google related services such as Maps, Docs, and Analytics from Turkey in June 2010. Turkish hackers are known to engage in minor cyberwars with their Greek and Israeli counterparts as well.