

## Censoring the Internet: The Situation in Turkey

by Kemal Altintas,  
Tolga Aydin,  
and Varol Akman

### Abstract

Censoring the Internet is quite prevalent, though the extent of this activity markedly differs from country to country. While some prohibit controversial sites such as those with explicit sexual images or blatantly racist remarks, others implement restricted access. Turkey, showing the symptoms of a developing country, has not yet established the jurisprudence necessary for the Internet. The existing Turkish laws, especially the Press Law, are naively applied to alleged lawbreakers on the Internet, resulting in ludicrous outcomes. This paper investigates the Turkish case of Internet censorship, focusing on two publicized cases with some political content.

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### Introduction

"The claim that one has never broken any of one's country's laws is (a) incredible and (b) unnecessary."  
— William F. Buckley Jr.

Many governments around the world are doing their best to eradicate the potentially unlimited freedom of expression made possible by the Internet. Oppressive governments as well as governments of Western democracies take part in this endeavor, contending that they want to protect innocent children, thwart cold-blooded terrorists, and silence vicious racists. Regrettably, successful censorship ventures in the U.S. and Europe usually justify or legitimize similar efforts in other countries, which target sex, terrorism, and racism, but also pro-democracy discussions and human rights issues.

Turkey has also played its part in the efforts to regiment the Internet. Although there are no specialized Turkish laws directly targeting the Internet, there have been several attempts to pass some restrictive acts in the parliament. Thanks to a fierce and consistent reaction from the public (or, more precisely, the Turkish intelligentsia), some of these draft acts have not even been brought into the parliamentary agenda.

This article discusses the issue of censorship on the Internet, focusing on the Turkish situation. Two incidents, which have resulted in the application of the existing laws that have normally been designed for mass media, are investigated. A brief overview of the proposed Turkish laws about the Internet is also given.

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#### ABOUT THE AUTHORS

*Kemal Altintas*

*Tolga Aydin*

*Varol Akman*

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## Why the Internet is censored

Governments try to keep the Internet under control for various reasons. Some countries claim that they ban only those sites with explicit sexual, racist, or terrorist content. Thus, sites containing child pornography are universally accepted to be abhorrent and revolting [1]. Although there is no common agreement on a tractable definition of terrorism (see below), sites that are thought to belong to terrorist groups are usually banned by many governments.

Another motive to control the Internet is to stop the spread of 'unfriendly' ideas (e.g., dissent). A defiant party situated in a domineering or bullying political medium may choose to prepare a Web site or a mailing list to broadcast its opinions instantly to thousands (even millions) of their national sympathizers or citizens of the world. Totalitarian governments that have little or no public support obviously wish to control the Internet just for this reason.

Economic considerations might play an important role in these efforts. Some governments do not want to share the profit that they owe to the monopolistic character of the Internet services they provide with other, independent operators and try to keep the Internet 'under their thumb.'

Adding to the complexity of the problem is the fact that presently there is no magic sieve winnowing contemptible content (child porn being probably the sole exception) that deserves to be banned by governments all around the world. Something considered harmful and illegal in one place might be seen totally harmless and lawful in another. Thus, a group of people fighting against a government might be considered despicable, inhuman terrorists by that government and her allies, whereas others may officially regard the group as freedom fighters with honorable goals.

As for censorship, all countries, including the U.S. and EU countries, try to apply pressure to circumscribe Internet freedoms. The rules are invariably strict and the punishments are harsh when the statutes are violated. Regrettably, the use of the Internet is more often than not considered to be a privilege that can be restricted any time. The information below is compiled from several sources [2].

In the United States, there are strict rules about sexual content including or targeting people under the age of 18. Some of the rules applied to the Internet are more restrictive than those applied to the press. More importantly, there is a general tendency to oversee the use of the Internet. For example, the FBI is known to have an operational system to monitor e-mail traffic between designated individuals. Officially, the authorities would declare that only the suspects are monitored. However, an independent examination of the documents made available by legal authorities demonstrated that this watchdog activity was far more powerful and potentially intrusive than federal agents had led the public to believe.

In China, people are prohibited from accessing sites that threaten the status quo and the socialist system in general. Chinese users of the Internet had to register with the authorities in the past. Although this is no longer necessary, the police can interrogate ISPs about the identities of their subscribers. In May 1999, the Chinese Ministry of State Security installed systems on the servers of the country's ISPs to monitor the content and destinations of e-mail messages. Later, some users have been arrested and imprisoned for sending e-mail messages with 'antagonistic' subject matter.

The Internet does not even exist in North Korea. There are no ISPs and no servers to relay domestic e-mail. The few official sites owned by the government exist solely for propaganda purposes. They are hosted in other countries, particularly in Japan.

Saudi Arabia tries to keep the entire Internet connection under control by directing all communications to a central server, thus transmogrifying the Internet to a huge Intranet spanning the kingdom. Many 'unacceptable' sites are filtered through this proxy server. Although the Saudi authorities cite pornography as their main *cheval de bataille*, they do not contest the fact that they block access to numerous (inherently political) sites such as those run by the human rights organizations.

Uzbekistan, India and some other countries keep the cost of access to the Internet very high in order to prevent people from using it. Net access or providing access to the Net may also be subject to registering with authorities.

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## Turkish legal background

The existing Turkish laws do not cover transgressions committed on the Internet. Sections of various laws are 'applied' to the Internet, but this practice is invariably based on crude analogies.

A general tendency of the law enforcement bodies in Turkey has been to apply the Turkish Press Law to the Internet. However, the Internet is not only a part of the mass media. It is true that many newspapers have Web sites, providing people with the content of their printed periodicals (and more). But, it is also possible to take part in say, commercial or educational activities via the Internet. Thus, perceiving the Internet as yet another — technologically superior — member of mass media would be dramatically misleading.

The Press Law requires each periodical have a responsible manager who is at least a high school graduate and above the age of 21. One copy of each issue of the newspaper or journal must be submitted to the local prosecutor's office as soon as it appears in circulation. These regulations turn out to be totally impractical when applied to the Internet.

A draft law accepted by the Parliament and later vetoed by the President of the Republic — the infamous "Radio and Television Higher Council" (*Radyo ve Televizyon Üst Kurulu, RTÜK*) Law — said [3]:

"The methods and foundations of any type of broadcasting and services, realized by any type of technology in any type of communication medium are identified by the RTÜK based on the strategy defined by the Communication Higher Council and are submitted to the approval of the Communication Higher Council."

Another draft which was prepared by the Turkish Ministry of Defense, "The National Information Security Act" (*Ulusal Bilgi Güvenli\_i Kanun Tasarisi*), introduces stiff regulations to control the Internet traffic and prescribes heavy punishments to those who refuse to obey (e.g., prison sentences from three to six years and fines from 35,000 to 150,000 €). This act declares any personal, commercial, etc. data flowing through the national communication networks to be under the direct control of the Turkish government. It requires the ISPs to respond to all requests by the "National Information Security Organization," such as access to e-mail messages or any kind of information sent over the Internet. Refusing to comply with such requests would make their administrators liable for one to five years of imprisonment [4]. This act was withdrawn due to reactions from the members of Parliament and the general public.

Law enforcement bodies and some attorneys argue that there is no need for a specialized law regarding the Internet. They'd rather see some sections of the existing laws modified or new sections added in a piecemeal fashion to cover the Internet [5]. NGOs, on the other hand, argue that specially designed laws for the Internet — even separate laws for different aspects of the Internet — are needed. They also maintain that a body like the "Internet High Council" is not necessary, because one cannot hope to consolidate problems related to diverse aspects of the Internet (such as digital signatures, electronic notaries, virtual terror) under the umbrella of the same body [6].



## The Cofkun Ak trial

Cofkun Ak was the moderator of the forums operated by Superonline, one of the largest ISPs in Turkey. He was sentenced to 40 months in prison due to a particular message; the author of the message is still unknown. The details are as follows [7].

Superonline normally starts an interactive forum page after receiving many supporting messages from its users. The aim of such a forum is to broadcast messages from its subscribers in a liberated atmosphere while choosing a new topic for discussion each week.

The title of the discussion for the week of 26 May 1999, was "Human Rights Violations in Turkey;" One of the messages was a long (24 pages) text sent by someone using the nickname "one person" (*bir insan*). It was broadcast along with other messages in the forum.

Several users sent replies, either supporting or criticizing this text. Macit Musal, another Superonline user, sent a message to Cofkun Ak, stating that the aforementioned text had portions which could be thought of as containing criminal content and warned him to expunge it. Ak did not delete the text. Musal then informed the Ministry of Justice about the developments and the latter forwarded copies of the text to the office of the prosecutor. The prosecutor's office initiated the legal process.

According to the prosecutor's office, the official crime of Ak was to violate the Turkish Criminal Law, Section 159. The allegation stated that:

"Cofkun Ak, thinking that the message had no criminal merit, did not remove the page despite warnings, and waited until the end of the one-week period. During this period, the Internet page, which includes insulting remarks about the constitutional organizations, was left handy for the perusal of Internet users.

Although there is no law in Turkey about crimes committed through the Internet, the situation of the accused is similar to that of a periodical's responsible manager (or publisher) ... It is concluded that Cofkun Ak, by leading the design of the page, by not deleting the message from the Internet despite warnings, and by keeping it for the perusal of Internet users has committed crimes."

In his defense, Ak stated that the Internet is an unprecedented communication infrastructure that allows people to communicate:

"[The Internet] is a worldwide network of computers; any computer network, provided that it is compatible with the TCP/IP protocol, can connect to the Internet. There is no owner, operator, or central authority that manages and controls the Internet.

The first thing needed to connect to the Internet is a computer with a modem. Then, communication channels, which are in principle built and operated by the governmental postal agencies, are needed. Finally, some agents [ISPs] to provide the users with connectivity are necessary ...

It can easily be seen from the above description that connecting to the Internet is an easy task. This is in the precise spirit of the idea behind the Internet. In today's world, where communication does not retain any boundaries, where it is possible to communicate through cellular phones regardless of state borders, where it is possible to patronize another country's ISPs, the definition of the Internet as a communication medium without borders is clear and self-explanatory.

The Internet is also developing and spreading in Turkey at an unbelievable speed. Government organizations, universities, companies, mass media, and countless other organizations have started to operate through the Internet.

Superonline is a company in Turkey, providing Internet access and Internet publishing services. I am working as the coordinator in the interactive sections of the company .... In order to use the interactive sections of our Web site, users are not required to pay a fee or become a member or submit to an identity check. Any Internet user can freely access and peruse our pages.

The forums are a part of the interactive sections and are opened under a general or a specific title. Any user, who wants to add his/her message to a forum, can do so by just clicking a few buttons. The messages are directly added to the forum. The messages are kept on the page for a limited period and then deleted to reclaim space. This is a practice developed by Superonline, and not my personal choice. Due to [my] workload in the interactive sections, it is impossible to read all of the messages meticulously.

The message that is the subject matter of this trial was published in the 'Discussion Platform' on May 26, 1999, under the title 'Human Rights Violations in Turkey.' It was also subject to the ground rules defined earlier and was published for four days before it was deleted during the weekly update process.

One important difference between the Internet and the conventional press is that the Internet is interactive. In a traditional newspaper, the editor is presented with a piece of writing, which is published based upon the decision of the editor. In the Internet, however, the editor sees the text after it is published. Any message posted before a holiday is normally edited at the end of the holiday period. [On the other hand,] employing a filtering mechanism [to accept] the messages [selectively] is against the nature of the Internet.

I personally do not agree with the content of the message in question and do not support the views that it advocates. However, due to the responsibilities of my editorial post, I try to approach all of the messages with a level and impartial stance.

In conclusion, I am being tried because of a message that I do not know the author of and that I do not agree with. I have never had any aspirations to insult or weaken the Republic of Turkey, her values, and her institutions. I have never succumbed to a bad intention and harmful purpose in publishing this message."

Fikret \_lkiz, Ak's attorney, said:

"The forums on Superonline are initiated under a general or a specific name in order for the Internet users to participate in discussions in their areas of interest. The page 'Human Rights Violations in Turkey' was also opened for this reason. Any user, with a nickname, can submit a message to the forums and the message is published 'as is' instantaneously. Responses and comments on the messages are also shown on the same page instantaneously and everybody can peruse these messages. Thus, the act of 'publishing' here is very different from the act of 'publishing' (*yayın/nefir*) defined in the Press Law. Due to the different nature of this act, the accused cannot be considered as a responsible manager as defined in Section 16 of the Press Law ...

The general method developed by Superonline is to publish the incoming messages for a limited period and then delete them. This is not a method developed by the accused, but rather a *modus operandi* of Superonline. It was dutifully applied to the message in question: the message was deleted after having remained on the page for four days.

In traditional press, radio, or television, it is usually possible to see the news, comments, and critiques beforehand and decide/decline to publish. However, on the Internet, the editor can see messages only after they are published ...

In conclusion, while it is impossible to determine the actual author of the email and try him, the accused is being tried for a message with which he does not agree and for a crime that is not defined in the law.

The criminal law is based on the principle that 'there is no crime and punishment without a law.' This principle is interpreted as follows: when there is no clear ruling of the law, it is impossible to define the notions of crime and punishment.

The Criminal Law Sections 525/a, b, c, and d organize and define crimes committed on the electronic media such as obtaining or corrupting data/programs. However, there is no mention of crimes committed on the Internet.

The criminal law holds the publisher and the editor of a printed periodical responsible when a crime is committed in that medium. One item of discussion should be this: what would be the responsibilities of an ISP? Is it right to accept Ak as accused and try him as the perpetrator of the crime? It should be clarified whether Superonline has any legal responsibilities related to content while carrying out its duties as a service provider ..."

The Istanbul Fourth Heavy Criminal Court stated its decision. The official responsibility of Ak was formulated as follows:

"[The] message was published in the forum page during the predefined period of the forum. Despite the fact that another Internet user, Musal, had sent him messages through the Internet stating that the message in question embodies criminal content, Ak did not delete it (whereas he had the means to do so) ..."

The court decided to sentence Ak for insulting and weakening the Republic of Turkey, Military Forces, Security Forces, and Ministry of Justice, to one year in prison for each insult separately, totaling four years. Later, the good conduct of the accused in court was taken into account and his sentence was reduced to 10 months for each insult, totaling 40 months.

On 14 November 2001, the Supreme Court reversed this ruling. It was decided that

Ak's case should be reconsidered, once experts selected from universities look at the situation:

"... investigate the responsibilities of Superonline (as an ISP), where Ak worked at the date of the crime ... whether it can be regarded as a content provider and the exact position of Ak in the company ..."

As of 12 February 2002, the trial started again in the Criminal Court. The prosecutor noted that an alteration in Section 159 of the Criminal Law in favor of the accused was presented to the approval of the President of the Republic and requested from the court to wait until the approval process comes to a close. The trial was postponed to a later date [8].

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## The Emre Ersöz trial

In another incident, Emre Ersöz was sentenced to 10 months imprisonment due to a message he posted to a forum operated by Turk.net. The details are as follows [9].

On 7 December 1997 a group of blind citizens gathered to protest the Municipality of Ankara since one of their friends had fallen into a pit excavated by the Municipality. The security forces of the Municipality (*zabıta*) violently suppressed the demonstration. The events were broadcast in graphic detail on Turkish television.

One unknown Turk.net client sent a message to a forum on the Web site of the company:

"I could not believe what I saw on TV today. The *zabıta* were beating a group of sightless people while swearing heavily. The group committed the 'crime' of protesting the Municipality for opening a hole in which a friend of theirs fell. Regardless of its justification, it is unforgivable to beat a blind person. I protest those who did this despicable beating."

Ersöz, an 18-year-old high school senior, contributed another message to the forum criticizing the "security (police) forces" with similar statements. He added his real name and e-mail address. A person who read this message informed the government offices about Ersöz's message.

Very early in the morning on 24 December 1997, an anti-terror team armed with automatic weapons engrossed Ersöz's home where he lived with his family. He was arrested and cross-examined in the "Anti-Terror Center" (*Terörle Mücadele Merkezi*). The following day, some team members consigned him to the Karaköy Police Station. After staying there for one night, he was interrogated by the prosecutor's office and was freed on probation.

Later he was sued for "insulting and weakening the security forces of the state," in the light of Section 159/1 of Turkish Criminal Law. On June 1, 1998, the Criminal Court of Bakırköy sentenced Ersöz to 10 months in prison. His punishment was postponed due to his good manners in the court [10].

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## Conclusion

Turkey, having the problems of a developing country, has not yet established the legal background demanded by the Internet. Approaching the Internet as a potential instrument for crime is just not right. Wise governments understandably hesitate to impose harsh rules in order to not interrupt the development of this great new medium. The Turkish government needs to take heed and not hurry to categorize the Internet as a traditional medium.

There must not be any *a priori* censorship of online communication and Web pages. Requiring Web page designers, page owners, and content providers to submit a copy of a Web page, e-mail message, or similar information flowing through the Internet to designated government organizations is against the nature of the Internet and cannot be tolerated. Any requests for data must be accompanied by an independent court order and cannot be left to an organization like the "Internet Higher Council," which is under the hegemony of the government.

Any restrictions should be clearly stated in the law and content that is not addressed by the law must not be considered as criminal. Besides, a certain degree of forgiveness

(a principle of charity) is necessary. Especially in Turkey, constitutional notions — such as the “indivisible unity of the state with its country and people” (*devletin ülkesi ve milletiyle bölünmez bütünlüğü*) — are defined fairly vaguely so that it is in principle possible to charge dissenting, nonviolent individuals with a breach, and demand heavy punishment.

In order to install democracy in Turkey, the government must consider the Internet as an opportunity. People should discuss freely and be informed about news items that do not sometimes find an outlet in the traditional mass media. The Internet is important for Turkey and should not be sacrificed under the well-known pretexts of national security, sovereignty of state, and other excuses. 

## About the authors

**Kemal Altıntaş** is a doctoral student in the Department of Computer Engineering at Bilkent University. He holds an M.S. degree in Computer Engineering from the same university.

E-mail: kemal [at] cs [dot] bilkent [dot] edu [dot] tr

**Tolga Aydın** is a doctoral student in the Department of Computer Engineering at Bilkent University. He holds an M.S. degree in Computer Engineering from the same university.

E-mail: atolga [at] cs [dot] bilkent [dot] edu [dot] tr

**Varol Akman** was educated at Rensselaer Polytechnic Institute, Troy, N.Y. He joined Bilkent University in 1988. His current research is concentrated in artificial intelligence, natural language, and the Internet (social aspects). He teaches a new graduate course, CS513 — Implications of the Internet, at Bilkent.

E-mail akman [at] cs [dot] bilkent [dot] edu [dot] tr

## Notes

1. It is conceivable that pages that have explicit sexual content might not have been published directly for obscene purposes. For example, some human rights organizations have pages showing tortured women and children. Violence against females usually includes sexual assaults addressing genitals and other parts of their body. Having the relevant pictures on a Web site would clearly not be equivalent to running a porn site. See Anon., “Silencing the Net: The Threat to Freedom of Expression On-line,” *Human Rights Watch Report*, volume 8, number 2 (May 1996), at [http://www.epic.org/free\\_speech/intl/hrw\\_report\\_5\\_96.html](http://www.epic.org/free_speech/intl/hrw_report_5_96.html).

2. See Anon., “Silencing the Net: The Threat to Freedom of Expression On-line,” *Human Rights Watch Report*, volume 8, number 2 (May 1996), at [http://www.epic.org/free\\_speech/intl/hrw\\_report\\_5\\_96.html](http://www.epic.org/free_speech/intl/hrw_report_5_96.html); Anon., “The 20 Enemies of the Internet,” at <http://www.rferl.org/nca/special/enemies.html>; and, Anon., “Yabancı Ülkelerde İnternet Hukuku (Internet Law in Foreign Countries),” at <http://arsiv.hurriyetim.com.tr/dosya/internet/alt3.htm>.

3. Mustafa Akgül, *Hülya Pekfirin, “İnternetin Yasal Düzenlemesi* (Legal Regulation of the Internet),” at <http://www.internetvehukuk.org/rythm02.asp>.

4. Anon., “The 20 Enemies of the Internet,” at <http://www.rferl.org/nca/special/enemies.html>; Özgür U. Kan, “İnternet ve Düzenleme Kavramı: ‘Üst’ Kurullar ve \_fade Özgürlüğü (Internet and the Concept of Regulation: ‘High’ Councils and Freedom of Expression),” at <http://www.internetvehukuk.org/rythm01.asp>; and, Anon., “Ulusal Bilgi Güvenliği Tefkilatı ve Görevleri Hakkında Kanun Tasarısı (Draft Act About the National Information Security Agency and Its Duties),” at <http://arsiv.hurriyetim.com.tr/dosya/internet/ulusal.htm>.

5. Gülden Tozkoparan, “İnternet Yayıncılığı İnin Hukuksal Yön (Legal Aspects of Internet Publishing),” at <http://www.turk.internet.com/haber/yaziqoster.php3?yaziid=1988>.

6. Özgür U. Kan, “İnternet ve Düzenleme Kavramı: ‘Üst’ Kurullar ve \_fade Özgürlüğü (Internet and the Concept of Regulation: ‘High’ Councils and Freedom of Expression),” at <http://www.internetvehukuk.org/rythm01.asp>.

7. Gülden Tozkoparan, “Cofkun Ak Davasının Tüm Ayrıntıları (Complete Details of the Cofkun Ak Trial),” at <http://www.turk.internet.com/haber/yaziqoster.php3?yaziid=1865>.

8. For more information on the Ak trial, see Anon., “Kanunsuz Su. (Crime without a Law),” at <http://arsiv.hurriyetim.com.tr/dosya/internet/alt5.htm>; Gülden Tozkoparan, “Avukat Fikret \_kiz: Sansüre Hazir Olun! (Attorney Fikret \_kiz Says: Get Ready for Censorship!),” at <http://www.turk.internet.com/haber/yaziqoster.php3?yaziid=1831>; Gülden Tozkoparan, “Cofkun Ak Davasında Sona Do\_ru (Towards a Finale in the Cofkun Ak Trial),” at <http://www.turk.internet.com/haber/yaziqoster.php3?yaziid=2826>; Gülden Tozkoparan, Cofkun Ak Yargıtay’dan Geri Döndü (The Cofkun Ak Case Rejected by the Supreme Court),” at <http://www.turk.internet.com/haber/yaziqoster.php3?yaziid=3009>; and, “İnternet’te Neler Oluyor? (What’s Happening on the Internet?),” at <http://www.interreks.com/quide/sansur/index.php>.

9. Anon., “Kanunsuz Su. (Crime without a Law),” at

<http://arsiv.hurriyetim.com.tr/dosya/internet/alt5.htm>; Gülden Tozkoparan, "Emre Ersöz'ün Ertelenen Mahkumiyeti (The Postponed Sentence of Emre Ersöz)," at <http://www.turk.internet.com/haber/yazigoster.php3?yaziid=1866>; Anon., "Siber Haklar ve Özgürlükler Üzerine (On Cyber Rights and Freedoms)," at [http://www.bthaber.net/266/menu\\_haber\\_11.htm](http://www.bthaber.net/266/menu_haber_11.htm); *2000 World Press Freedom Review*, at <http://www.freemedia.at/wpfr/turkey.htm>; and, Anon., "Internet Suçlusu İlk Türk (The First Turkish Internet Criminal)," at <http://www.radikal.com.tr/1998/06/02/turkiye/01int.html>.

10. In recapitulating the matter in court, Ersöz held that the Internet is not a public place since it is open only to the Internet users. Accordingly, even if there is an insult, the insult is not public knowledge. Moreover, he said, he had read a message about the zabita beating the blind and he somehow thought the police (and not the zabita) did the beating, for he was drunk at the time. Contributing to this confused state of affairs, he added, was a past maltreatment he had had in the hands of the police.

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