



## Online Contents Re. COVID-19: Internet Law Perspective

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The unprecedented COVID-19 pandemic has been the main topic of discussion for people across the globe in the first months of 2020 and there are no signs of the pandemic disappearing anytime soon. Millions of people, locked in their houses due to the public health emergency, are turning to the internet both as a source of information and as a means of a social expression. As a result, the internet is filling up with more and more posts, articles and content relating to this illness.

Coronavirus has been the biggest internet search topic in a great number of countries and worldwide<sup>1</sup>. Technology giants like Google<sup>2</sup> and Facebook<sup>3</sup> are setting up information centers to equip users worldwide with useful knowledge on the pandemic. Individuals with millions of followers on social media platforms are using their voices to raise awareness about the pandemic.

COVID-19 is posing challenges not only in terms of the public health systems but also with respect contents published online. In the face of the global crisis, social media networks are updating their safety policies to prohibit contents that “*could place people at a higher risk of transmitting COVID-19*”<sup>4</sup>. Twitter recently announced that they “*will require people to remove Tweets that include content that increases the chance that someone contracts or transmits the virus, including: (i) denial of expert guidance, (ii) encouragement to use fake or ineffective treatments, preventions, and diagnostic techniques and (iii) misleading content purporting to be from experts or authorities*”<sup>5</sup>.

All of the foregoing brings very fundamental questions into light, once again. *What are the limits of freedom of expression?* During these difficult times, how can we, *as individuals*

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<sup>1</sup> <https://trends.google.com/trends/explore?q=%2Fm%2F0866r,%2Fm%2F05jhg,%2Fm%2F01cpyy>  
<https://techcrunch.com/2020/03/21/google-launches-covid-19-page-and-search-portal-with-safety-tips-official-stats-and-more-us-only-for-now/>

<sup>2</sup> <https://www.google.com/covid19/>

<sup>3</sup> <https://www.adweek.com/digital/facebook-begins-rolling-out-a-coronavirus-information-center/>

<sup>4</sup> <https://twitter.com/TwitterSafety/status/1240418439870607361>

<sup>5</sup> <https://twitter.com/TwitterSafety/status/1240418440982040579>



*being restricted from the public sphere in ways that we have never experienced before, express ourselves on the internet? On the other hand, how can our personal rights and right to information be protected with more people than ever talking about the Coronavirus online?*

## **I. Online Content Regulation**

According to the Turkish Constitution, “*everyone has the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. This freedom contains the freedom of receiving or giving news or opinions without the intervention of the public authorities*”. Freedom of expression is not merely protected by domestic laws but is also warranted by the International Covenant on Civil and Political Rights and the European Convention on Human Rights, both of which were ratified by Turkey. Moreover, Turkey is subject to the jurisdiction of the European Court of Human Rights (“ECHR”). Although everyone has the right to express his/her thoughts, this freedom is not *absolute*.

Law No. 5651 on Regulation of Broadcasts via Internet and Prevention of Crimes Committed through such Broadcasts (“Law No. 5651”) is the main legislation regulating online environment in Turkey.

### *a. Violation of Personal Rights*

Per Article 9 of Law No. 5651, anyone who claims that his/her personal rights are violated due to a content broadcasted on the internet medium may apply to the content provider, or in certain cases to the hosting provider and request removal of content by the notice method or may directly apply to a criminal judgeship of peace, and request access ban to the content. Alternatively, individuals may also apply to the Turkish Data Protection Authority if the relevant content violates their right to protection of their personal data.

By way of an example, if there is an online content about the Coronavirus which violates a person’s privacy of personal rights, such content could be removed/access banned. However, it is important to note that the authorities will have to strike a balance between the freedom of expression, information and the relevant individual’s personal rights.



*b. Protection of Public Health*

The contents about COVID-19 might also be subject to certain restrictions which may be put in place to uphold the right to life, protection of national security and public order or protection of public health (Article 8/A of Law No. 5651). Pursuant to the procedure set out under the relevant provision, removal of content and/or access ban may be decided by the judge or the Information and Communication Technologies Authority (“ICTA”), if failure to do so might result in delay and cause irreparable damages, upon the request of relevant ministers due to protection of public health.

*c. Medical Products and Health Claims*

A recent article published by Europol revealed that “*the pandemic has opened up a business opportunity for predatory criminals*”<sup>6</sup>. According to the relevant article, nearly 34,000 counterfeit surgical masks were sold online and authorities around the world seized these products. Meanwhile, law enforcement officers identified more than 2.000 links to products related to COVID-19. Turkish authorities recently initiated an investigation against celebrities who have been promoting and advertising a supplementary medical product with the claims that the product protects against the Coronavirus disease<sup>7</sup>.

Article 18 of the Law on Pharmaceuticals and Medical Preparations entitles access ban decisions if the advertisement or sale of a health product made through the internet and such product is against the law. The Ministry of Health is entitled to render access ban decision and send its decision to ICTA for execution. Certain contents related to the pandemic might be deemed in violation of the foregoing provision.

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<sup>6</sup> <https://www.europol.europa.eu/newsroom/news/rise-of-fake-%E2%80%98corona-cures%E2%80%99-revealed-in-global-counterfeit-medicine-operation>

<sup>7</sup> <https://www.ntv.com.tr/yasam/sahte-coronailaci-reklamı-yapan-unlulere-sorusturma,qYiaTVnOgUCk4ghiIWw0YQ>

## II. Freedom of Expression

It is clear that COVID-19 has its impact on the online contents as well and certain online contents might be doing more harm than good. These contents might require regulation and/or removal from the internet medium. However, freedom of expression is still extremely important at these times in which (i) people are in need of expressing themselves more than ever as they are strictly isolated from the public sphere all around the world and (ii) information is key in protecting ourselves from the new Coronavirus and tackling this global emergency.

Especially during these times in which *information* might be the humankind's greatest tool in the fight against this unknown and unprecedented emergency, the right to information and public benefit should not be disregarded. Public benefit might simply be defined as "*the interest of the public in accessing the content*". The precedents under Turkish laws and the international treaties that Turkey has duly approved and enacted indicate that public benefit prevails over personal/individual benefit in the assessment of "freedom of expression" claims.

Turkish Constitutional Court stated that freedom of expression does not only include freedom of "*having thoughts and opinions*", but the freedom of "*expressing and disseminating thoughts and opinions*", and accordingly, "*freedom of receiving and imparting information*"<sup>8</sup>.

Freedom of expression in this context, means the individuals being able to access news and information, opinions of others, not to be condemned for his/her thoughts and opinions and being able to express, tell, defend, relay and disseminate them by themselves or with others in various ways.

As the Turkish Constitutional Court states "*internet has an essential value for using fundamental rights and freedoms, especially the freedom of expression in modern democracies. The social media is a media platform which provides opportunity for individual participation in ways of creating, broadcasting and interpreting the media content providing a transparent communication platform. Internet provides an essential social media platform*

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<sup>8</sup> Turkish Constitutional Court, Application No: 2014/4705



*for people to express, share and disseminate their information and thoughts. Therefore, it is clear that the states and administrative authorities must be extremely sensitive in the regulation and practice for internet and social media instruments, which became one of the most effective and widespread methods to express thoughts”<sup>9</sup>.*

As ECHR frequently mentions in its decisions on freedom of expression; for the freedom of expression to satisfy its social and individual function, the news and thoughts that could even disturb the state or one part of the society or that are considered negative or wrong by them must be freely expressed and not just the “news” and “thoughts” the society and the state deems positive, right or harmless. The individuals must also be in comfort that they will not be sanctioned due to these expressions. Freedom of expression is the basis of pluralism, tolerance and open-mindedness, there cannot be any “*democratic society*” without this freedom<sup>10</sup>.

### **III. Conclusion**

Individuals, entities, organizations and states all around the world are facing the challenge posed by the Coronavirus disease. With the public spaces emptying, our lives are being transferred to the online environment. Internet has always been, but now more than ever is, becoming our primary source of information and the most prominent mean to express ourselves. Naturally, this is bringing questions about regulation of online contents and freedom of expression to light. While regulating the online environment in order to keep it safe and healthy for all of us, the authorities must keep in mind the principles on protection of freedom of expression and right to information.

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<sup>9</sup> Turkish Constitutional Court, Application No: 2014/4705

<sup>10</sup> Handyside v. United Kingdom, Application No: 5493/72