



## **ICTA's New Procedures and Principles on Social Network Providers**

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ICTA's Procedures and Principles on Social Network Provider ("Procedures") were published on the Official Gazette on October 2, 2020. The Procedures provide the detailed framework for the obligations of "social network providers", a new concept that was introduced at the end of July by the Amendment Law on the Law No. 5651 on Regulation of Broadcasts via Internet and Prevention of Crimes Committed Through Such Broadcasts ("Amendment Law").

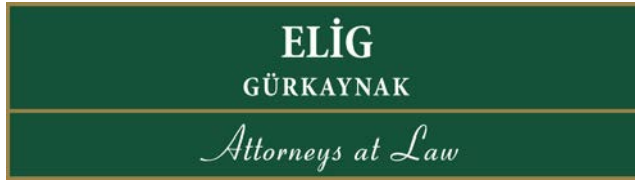
The Procedures entered into force as of October 2, 2020.

### **A. Main Issues Regulated under the Procedures**

#### **I. Scope**

The Procedures exclude (i) real and legal persons that display content that is suitable for social interaction on only a certain part of the broadcast and (ii) platforms where the function for content for social interaction is provided as a secondary and ancillary service, such as personal websites, news websites and e-commerce sites. These platforms will not be subject to the requirements imposed upon social network providers.

The Procedures further provide a clearance mechanism: In cases where the social network provider's number of daily access is "continuously" less than 1 million, the social network provider may file a request to the Information and Communication Technologies Authority ("ICTA") asking to be considered out of the scope. If this request is deemed appropriate as a result of the technical evaluation, ICTA will notify the social network provider that it is outside the scope. However, if ICTA determines that the daily access from Turkey increases to more than 1 million, ICTA will notify the social network provider that it is within the scope.



## **II. Representative**

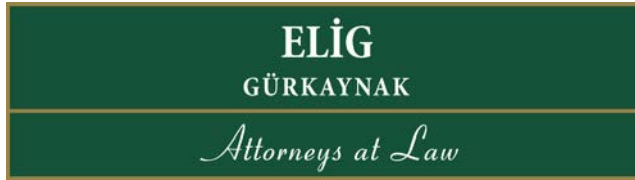
The Procedures clearly indicate that the representative can be a real or legal person. Legal person representative(s) must be established in Turkey and gain corporate identity in Turkey. Real person representative(s) must be a Turkish citizen.

Duties of the representative as set through these Procedures are to ensure the following:

- (i) Compliance with formally served documents, notifications, or requests sent by ICTA, Access Providers Union (“APU”) as well as judicial and administrative authorities.
- (ii) Responding to submissions made by individuals within the scope of Law No. 5651.
- (iii) Compliance with the reporting obligation.
- (iv) Compliance with social network provider’s duties and obligations as the content or hosting provider.
- (v) Compliance with other obligations within the scope of the Law No. 5651.

Social network provider is obliged to provide the ICTA with the information regarding the representative, and report any changes regarding the representative’s information to the ICTA. The changes regarding the representative’s identity, title and contact information must be reported immediately and within twenty four (24) hours at the latest.

As governed under the amendments to the Law No. 5651, there is a 5-tiered sanction mechanism that would apply respectively in case the social network provider continues to violate this obligation within the periods: (i) administrative monetary fine of 10 Million Turkish Liras (in case the obligation is not fulfilled within 30 days as of notification of the ICTA), (ii) additional administrative monetary fine of 30 Million Turkish Liras (in case the obligation is not fulfilled within 30 days as of first administrative fine), (iii) prohibition for the resident tax payers to place advertisements on the social network provider (in case the obligation is not fulfilled within 30 days as of the second monetary fine), (iv) bandwidth throttling of 50% (in case the obligation is



not fulfilled within 3 months as of the advertisement ban decision), (v) bandwidth throttling up to 90% (in case the obligation is not fulfilled within 30 days as of the first bandwidth throttling). In the latter throttling decision, the judge may determine a throttling ratio (not less than 50% by also considering the nature of the services).

As per the Procedures, the advertisement ban explained under (iii) will be published in the Official Gazette and relevant public entities and authorities will monitor the implementation of advertisement prohibition.

### **III. Individual requests**

As per the Procedures, social network provider must ensure that this submission can be made easily along with an option to make a submission in Turkish language. Submissions made in Turkish must be responded in Turkish.

Non-compliance with this obligation will trigger an administrative monetary fine of 5 million Turkish Liras. The Procedures governs that ICTA will evaluate whether the social network has fulfilled its obligation upon the compliant of the applicant and will assess the complaints filed due to non-compliance with this obligation on individual requests on a collective basis during the reporting periods (semi-annually). ICTA will take the following into consideration during its assessment:

- Whether the social network has the necessary systems to comply with this obligation in an effective manner,
- Whether the social network is consistently giving negative responses to certain persons or entities,
- Whether the social network is systemically violating the required turn around times and,
- Whether the negative responses have reasoning.



#### **IV. Semi-Annual Reports**

As per the Procedures, matters pertaining to the preparation and publishing of these reports and its notification to the ICTA can be determined by and communicated to the social network by ICTA.

#### **V. Data Localization**

Measures regarding keeping fundamental user information along with data relating to matters that might be notified by the ICTA in Turkey should be prioritized. The measures taken by the social network must be notified to ICTA during each reporting periods.

Considering that the Procedures are introduced in a short time following the regulation of social network providers' status and obligations under the Amendment Law, ICTA seems to be keen on monitoring the enforceability of the Amendment Law, and keeping an eye on the social network providers. The Procedures might require local and foreign social network providers to take strategic decisions in Turkey following the enactment of both the Amendment Law and Procedures.

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