



## Law Proposal Amending the Press Law and Further Laws Has Been Published

**Authors:** Gönenç Gürkaynak, Esq., Ceren Yıldız and Nazlı Gürün, ELIG Gürkaynak Attorneys-at-Law

On May 27, 2022, the Law Proposal Amending the Press Law and Further Laws (“*Draft*”) has been published on Grand National Assembly of Turkey’s (TBMM) website, which includes significant amendments to various laws. The Draft is currently submitted before the relevant commissions (i.e. Justice Commission and Digital Platforms Commission) for discussions, and it is one of the agenda items of the Digital Platforms Commission’s meeting of June 1, 2022. The Draft is anticipated to be published within the second quarter of 2022.

The Draft includes significant amendments in terms of (i) Press Law (e.g. including online news websites within the scope of the Press Law along with the printing and publication of printed works), (ii) Turkish Criminal Code (by introducing a new crime titled Public Dissemination of Misleading Information), (iii) Electronic Communications Law (by introducing the concept of Over the Top – OTT – services for the first time) and finally (iv) the Law No. 5651 (also known as the Internet Law), by introducing several significant obligations and liabilities on social network providers.

Below is an overview of the most crucial amendments that would have an impact on social network providers:

**1. Representative:** According to the Draft, real person representatives of foreign social network providers (“*SNPs*”) with daily access of more than 1 million, must be Turkish citizens and residing in Turkey. Therefore, in terms of real person representatives, the obligation to reside in Turkey has been introduced.

In terms of legal entity representatives, the Draft requires the legal entity representatives to be established by the relevant SNP as a branch office incorporated in form of a stock corporation. In terms of Turkish corporate law perspective, there is no concept as “a branch office incorporated in form of a stock corporation”. However, we infer that the intention with the Draft is to drive SNPs incorporation of a “branch office of foreign entity” as at least one manager having full authority to represent the branch office has to reside in Turkey regardless of his/her citizenship.

These representatives of the SNPs should have full technical, administrative, legal and financial authority and responsibility.

Draft states that SNPs which already appointed a representative should comply with the new requirements within six (6) months following the publication date of the law. Otherwise advertisement

ban and bandwidth throttling will directly apply, without implementing the notice and administrative fine steps.

**2. Reporting Obligations:** Draft states that SNPs should include information on title tags, algorithms regarding the contents that are put forward or that are reduced, advertisement and transparency policies in their reports. SNPs should also include the measures taken to ensure equality and impartiality against the users, and to enable users to update their preferences regarding the contents suggested to them and options for limiting data privacy options, by also adding measures regarding therein within the report. SNPs should also provide the information requested by ICTA. SNPs are also required to take necessary measures in their own systems, mechanisms and practices in cooperation with ICTA in order to prevent contents and title tags pertaining to crimes under the Law No. 5651.

Additionally, SNPs should establish and publish an advertisement library which contains information on advertisement contents, advertisers, advertisement period, number of targeted persons or groups, etc. on its website, and include such information in the reports.

**3. Information Requests and Audit:** The Draft requires the representative of the SNPs to provide the information which is requested by the public prosecutor and courts for the identification of the potential perpetrators of the following crimes under the Turkish Criminal Code: sexual harassment of children, public dissemination of misleading information, damaging the government's union and integrity, crimes against the Constitution, crimes against government secrets and spying. If such obligation is not fulfilled, the relevant public prosecutor might apply to Ankara Criminal Judgeships of Peace to request reducing the internet bandwidth of the relevant SNP at the rate of 90%.

Additionally, the Draft also authorizes the ICTA to request any information including but not limited to information systems, corporate structure, algorithms, data processing mechanisms and commercial approach for the compliance with the Law No. 5651, and SNPs should provide such information at the latest within three (3) months. Draft entitles ICTA to conduct on-site examinations regarding SNPs' compliance with Law No. 5651.

**4. Increased Sanctions:** Draft authorizes the President of ICTA ("*President*") to decide on advertisement ban decision for up to six (6) months, for the Turkish taxpayers, if the content removal/access ban decisions granted by the President are not enforced by the SNPs, in addition to the administrative sanctions regulated under Articles 8 and 8/A of the Law No. 5651. The President might also apply to the criminal judgeships of peace to request bandwidth throttling at the rate of 50%, and request bandwidth throttling at the rate of 90% in case the throttling decision is not enforced within thirty (30) days following the notification.

Besides, the Draft also foresees sanctions (i.e. administrative fine from ten thousand Turkish Liras up to one hundred thousand Turkish Liras) for the Turkish taxpayers who do not comply with the advertisement ban decisions.

In addition to the sanctions which are already in force, the Draft provides an administrative fine sanction which will be calculated as 3% of the previous year's global revenue, in case of failure to comply with obligations on data localization, separated services to children, user rights, notification of identity for dangerous contents to life and property, failure to share information requested by ICTA regarding compliance with the Law No. 5651 and crisis plan.

**5. Liability and Notification:** Draft holds SNPs liable for the third party contents which constitute crimes, if it is obvious that the SNP aims users' access to the relevant contents through title tags or distinguishing (e.g. promoting) methods. Besides, the Draft requires SNPs to report the content provider's information to legal enforcement authorities for the contents which constitute danger to the safety of life and property and in non-delayable cases.

Some of the provisions related to news websites will enter into force on January 1, 2023 and the other provisions will be effective immediately as of the publication date.

Article contact: Gönenç Gürkaynak, Esq.

Email: [gonenc.gurkaynak@elig.com](mailto:gonenc.gurkaynak@elig.com)

*(First published by Mondaq on June 7, 2022)*