



What Would A User Generated Content Platform Provider Need To Know When Entering Turkish Market?

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From promoting a new brand to preserving the market presence of an already established one, User Generated Content (“UGC”) has become an uncanny tool to initiate and preserve consumer engagement. With that, social network providers have transformed from mere conduits of social interaction between individuals, to multifaceted platforms that enable businesses to reach their consumers. As UGC became more and more mainstream, pulled millions of users and created some of the biggest tech companies, many countries try to catch up with regulations such as Turkey.

We aim to explain the two main regulatory obligations a UGC platform may need to know; (i) the internet legislation and (ii) media legislation and not to focus on legislations applicable to companies that are willing to enter Turkish market in general such as corporate law, commercial law, data protection law and competition law.

(i) Need-to-Know Obligations In Terms of Internet Law

The first regulation of the internet was the Law on Regulation of Broadcasts via Internet and Prevention of Crimes Committed through Such Broadcasts (“Law No. 5651”), which was changed significantly over the time. The latest pilot decision with application no. 2018/14884 shows that there is still room for development for the Law No. 5651¹. Under the Law No. 5651, there are three main actors (i) content providers, (ii) hosting providers and (iii) access providers. In the simplest sense, content providers are the content creators, which are users in UGC platforms, the hosting providers are the actors that host the means for the content creators such as providing platforms, which would be the UGC platforms themselves (except the content they create their own) and access providers are those that provide technical access to UGC platforms such as internet service providers. As the hosting provider itself becoming a content provider is a rare occasion, we will be focusing on hosting provider

¹ Please see <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/14884> (last accessed on March 7, 2022)

liabilities under the Law No. 5651. For sure, as the internet environment has no location, different jurisdictional rules may clash and international rogatory and mutual legal assistance procedures may be in question, however as these would depend on the situation and legal rules the headquarters of the hosting provider is in, we are not taking the conflict of law principles into question for this article.

(i) Hosting providers are obligated to provide information of their residence/headquarters location, electronic communication address and phone number in their website, under communication title accurately, up-to-date and completely.

(ii) Hosting providers are not obligated to check the content it hosts or research whether there is an unlawful activity. However, hosting providers are obligated to remove the content if it is notified in accordance with Article 8² and 9³ of the Law No. 5651.

(iii) Hosting providers are obligated to store traffic⁴ information for the services they host content for six months.

The Law No. 7253 on the Amendment to the Law on Regulation of Broadcasts via Internet and Prevention of Crimes Committed through Such Broadcasts (“Amendment Law”) introduced changes to the Law No. 5651 through bringing in the definition of a “social network provider” and imposing significant obligations on such. Social network providers are defined in the Amendment Law as “*real or legal persons that enable users to create, view or share content such as text, images, audio, location on the internet medium for social interaction purposes.*”, which could also encompass UGC platform providers.

The Amendment Law sets forth a variety of obligations on social network providers, while reserving the obligations of hosting and content providers that have been previously stipulated. According to the Amendment Law, foreign social network providers with more than one (1) million daily accesses from Turkey (“Large Social Network Providers”) are obliged to appoint at least one (1) person to be its representative in Turkey in order to meet the requests, notifications or notices that will be sent by governmental, judicial, and administrative authorities, and to respond to the applications which will be made by individuals within the scope of the Amendment Law, (ii) and shall include the

² Removal and access ban procedure for a set of catalogue crimes i.e. encouraging suicide, sexual abuse of children, facilitating use of drugs and stimulants, obtaining materials dangerous to health, obscenity, prostitution, enabling and providing location for gambling, crimes against Atatürk and crimes relating to betting and gambling on football and other sports, including Article 8/A, which is the emergency removal procedure for national security, which obligates removal within four hours upon notice.

³ Removal and access ban procedure for personal right violations including Article 9/A, which is the removal procedure for violation of privacy of private life.

⁴ Information such as source IP address, destination IP address, communication date and time information, queried page address, transaction information (GET, POST command details) and result information

contact information i.e. address and e-mail address for notification of this person in an easily visible and directly accessible manner on its website.

Social network providers have additional obligations. Large Social Network Providers are obligated to (i) create, publish (on its website) and notify (to the Information and Communication Technologies Authority) statistical and categorical information reports related to implementation of removal of content and/or access ban decisions and individual applications (in accordance with Article 9 and 9/A) it was notified in six months intervals in Turkish and (ii) take necessary measures to store the data of users in Turkey, within Turkey. All social network providers shall respond (positively or negatively) to applications of persons within the scope of Article 9 and 9/A.

Administrative fines for violation of the Law No. 5651 vary depending on the situation and the role and change based on the yearly reevaluation rates. For the year 2022, for hosting providers, the penalties start from around 6,000 (approximately EUR 390) Turkish Liras and may be up to around 1,500,000 Turkish Liras (approximately EUR 97,000). For Large Social Network Providers, the penalties are heavier and may be up to around 14,800,000 Turkish Liras (approximately EUR 954,000). Continuous failure to appoint and notify a representative may be subject to heavy sanctions on Large Social Network Providers, such as advertisement ban and bandwidth throttling.

(ii) Need-to-Know Obligations In Terms of Media Law

UGC providers providing media and streaming services or platforms may be subject to media legislation, the main of which is the Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises (“RT Law”). Article 29/A of the RT Law and the Regulation on Provision of Radio, Television and On-Demand Broadcasts on Internet Medium (“Regulation”) could encompass such UGC providers.

The Regulation and RT Law defines media service provider (“MSP”) as the legal entity that has “editorial responsibility” for choosing the content of radio, television and on-demand broadcast services and determines the manner in which this service is organized and broadcasted. The “editorial responsibility” is the main and probably the most important distinction to determine whether a UGC provider to be subject to the RT Law and Regulation. In the simplest sense, editorial responsibility is correlated with the control over the content. A UGC platform operator that merely provides hosting for content would be outside the scope while a platform that has editorial control such as creating a specific schedule for broadcasting, list of contents, deciding on what to include or not to the platform may be considered within the scope. In that sense, small interventions not aiming an editorial customization such as implementation of policies, removal or restriction of unlawful content,

recommendation algorithms or child safety measures should not be deemed sufficient to be considered having editorial control.

Pursuant to the Regulation, media service providers that are willing to broadcast their radio, television and on-demand broadcast services solely through internet must obtain a broadcast license from Radio and Television Supreme Council (“RTSC”).

The Regulation is applicable to the content or hosting providers in a foreign country, or for media service providers that are under the jurisdiction of another country, or for media service providers which broadcast in Turkish through internet targeting Turkey or in another language but targeting Turkey and including commercial broadcasts to Turkey, if RTSC determines these broadcasts to be in violation of RT Law and international treaties.

Per paragraph (3) of Article 5 of the Regulation following licenses are granted to the following broadcasting types:

INTERNET-RD	Granted for media service providers that file a request to provide radio broadcasts through Internet
INTERNET-TV	Granted for media service providers that file a request to provide TV broadcasts through Internet
INTERNET-IBYH	Granted for media service providers that file a request to provide on-demand broadcasting service through Internet

Relevant types of service are defined under Article 4 of the Regulation as follows:

- **On-demand broadcasting service through Internet:** Except for individual communication services, broadcast services which are watched or listened by the users upon their personal request at the time determined by the user and subject to a program catalogue which has been specified by a media service provider, through Internet, by direct or conditional access.
- **Radio broadcast through Internet:** Except for individual communication services, audio and data broadcast of programs through Internet based on a broadcasting schedule.
- **TV broadcast through Internet:** Except for individual communication services, broadcasting of an encrypted or unencrypted audio-visual broadcasting service through Internet, provided

by a media service provider for the purposes of watching programs based on a broadcasting schedule.

For the year 2022, the fee for Internet-TV or Internet-IBYH license type is 182,168 Turkish Liras (approximately EUR 11,700) and the fee for Internet-RD license type is 18,217 Turkish Liras (approximately EUR 1,170).

Additionally, per Article 7 of the Regulation, licenses for broadcasting through Internet are only granted to joint-stock companies established per Turkish Commercial Code clauses for the sole purpose of providing radio, television or on-demand broadcasting services. However, it is essential to note that this does not mean that foreign companies are excluded from this obligation. It is in fact expected for them to establish such companies in Turkey to be able to provide the services in Turkey. In a relatively recent press release⁵ published on its official website, RTUK stated that even if the content or hosting provider is located abroad, broadcasting organizations that broadcast and place advertisements in Turkish or another language for Turkey are also within this scope.

While any UGC platform operators entering Turkish market would need to know and comply with the Law No. 5651, UGC platform operators that provide media services should first identify whether they are within the scope of the media legislation and make the necessary preparations before entering the Turkish market.

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(First published by Mondaq on March 15, 2022)

⁵ Please see <https://www.rtuk.gov.tr/ust-kurul-baskanligi-son-gunlerde-ozellikle-bazi-basin-ve-yayin-organlarinda-yer-alan-rtuk%E2%80%99e-yonelik-haksiz-ithamlar-karsisinde-basin-aciklamasi-yapti/4217> (accessed on March 7, 2022)