



## **GNI statement on Türkiye's continued push to regulate digital content and pressure intermediaries**

The Global Network Initiative (GNI), a global, multistakeholder organization focused on freedom of expression and privacy in the information and communications technology (ICT) sector, expresses deep concern about new laws targeting social media and private messaging services in Türkiye. GNI calls on the Turkish government, regulators, and policymakers to reconsider these laws. In the interim, we encourage these authorities to pause enforcement or otherwise ensure that the new laws are implemented in a manner consistent with Türkiye's international commitments and constitutional guarantees.

On October 13, 2022, the Turkish Parliament passed a new legislation consisting of 40 articles amending a range of existing laws, including the Internet Law, the Press Law and the Turkish Penal Code. The legislation introduces provisions that are likely to significantly complicate the operation of social media and private messaging services in Türkiye and undermine the rights to freedom of expression and privacy. These amendments add to the concerns GNI has [previously expressed](#) about the increased pressures on ICT companies in Türkiye, and risk a significant shrinking or complete closure of online space in the run-up to a hotly-contested election. We share concerns expressed by [human rights experts](#) about the potential for these new laws to be used to continue to [muzzle critical commentary](#), restrict democratic debate online, and jeopardize the privacy and security of private communications.

Unfortunately, this effort by the government of Türkiye to regulate digital content is the latest in a series of steps taken in recent years to create broad and unchecked powers that are likely to lead to unjustified censorship in contravention of Türkiye's international human rights commitments. In 2020, amendments to the Internet law required certain social media companies to appoint local representatives and store user data within Türkiye. The new amendments build on those earlier ones by expanding regulatory and judicial authorities tasked with oversight and enforcement, introducing more onerous requirements for formalizing companies' presence in Türkiye, and increasing the extent of criminal, administrative, and financial liability for noncompliance.

The law equips the Information and Communication Technologies Authority (Bilgi Teknolojileri ve İletişim Kurumu, BTK), charged with regulating the internet, with additional far-reaching powers to compel companies, including over-the-top service providers (OTTs), to comply with requests to take down online content and disclose user data.

The new amendments introduce broader definitions of OTT services and OTT service providers, expanding the scope of companies tasked with enforcing new and existing requirements. An OTT service is defined as “interpersonal electronic communication services in the scope of voice, text or visual communication, that are offered via a publicly available software to subscribers and users that have internet access, independent of operators or provision of internet service.” This definition targets online messaging, email, video conferencing, and VoIP services that were previously not covered under the law. These OTT service providers may be forced to restrict access to content and services in disproportionate ways or enable government access to users’ data without adequate safeguards. For example, the law could be interpreted to require providers of end-to-end encrypted services to disclose users’ messages in decrypted form – a requirement that would likely raise questions about companies’ ability to continue to provide critical protections and put the security and privacy of user communications at risk. The law also stipulates that OTT service providers can offer services only through companies established in Türkiye and authorized by the BTK.

In addition, under the new legal authorities, if a service has more than 10 million daily users, it must appoint technically, administratively, legally, and financially accountable individuals who are not only Turkish nationals but also residents of Türkiye, or establish local branches that are directly connected to the parent company by 18 April 2023.

On top of these substantive provisions, the law introduces severe penalties for failure to comply with content blocking or removal requests, demands for user data, or relevant registration requirements. These penalties include throttling of bandwidth to services by up to 90%, advertisement bans, and fines of up to 3% of a companies’ global revenue. The penalties associated with failing to adequately comply with data requests by law enforcement apply to 19 offenses, which include “disseminating misleading information” and other offenses that have been used to stifle civil society and journalists in Türkiye, such as “Offenses against the Constitutional Order and its Functioning.” Meanwhile, the timeline for complying with demands for content removal from BTK has been shortened to four hours.

This powers provided by this legislation are particularly concerning considering Türkiye’s lack of an independent judiciary and poor rule of law, as highlighted in [reporting by the World Justice Project](#) (in which Türkiye ranks 116<sup>th</sup> out of 140 countries surveyed), and its established record of online repression, exemplified by a “not free” rating in the 2022 [Freedom on the Net report](#).

GNI has consistently [raised concerns](#) about proposals to compel local representation, data localization, and arbitrary and inflexible removal timelines on the grounds that they create unnecessary and disproportionate impacts on users’ rights. In 2020, GNI conducted an analysis using human rights principles of existing and proposed governmental efforts to address various forms of online harm related to user generated content — a practice we refer to broadly as “content regulation.” After [extensive consultations](#) with GNI members and outside stakeholders, including governments, in a wide range of jurisdictions, GNI published a policy brief titled [“Content Regulation and Human Rights: Analysis and Recommendations.”](#) which provides a detailed analysis and set of recommendations for regulating content in a manner that upholds

and strengthens human rights. As we note in the policy brief, careful and public deliberation can help ensure that laws are appropriate to achieve their protective function, are the least intrusive instrument amongst those which might achieve their protective function, and are proportionate to the interest to be protected, in line with the human rights principle of necessity.

It is worth noting that the Council of Europe's expert legal body, the Venice Commission, has already expressed [deep concern](#) that the new amendments threaten freedom of expression, concluding that the Turkish measures go beyond Europe's approach on content regulation. There is also widespread concern over contradictory translations of the amendments between the draft, the official translation, and the version registered with the Turkish Parliament. The lack of clarity is troubling and likely to add to the uncertainty for companies tasked with implementation, who already face stiff penalties for noncompliance

GNI recognizes and appreciates the range of challenges that Internet users and governments face when grappling with illegal content online. Taking time to consider specific concerns and to consult broadly, including with civil society, on the most effective ways to address them will lead to more proportionate, lasting solutions that minimize impacts on users' rights.

In order to ensure that Türkiye acts consistently with its international obligations and avoids creating disproportionate human rights risks, we call on Turkish authorities to reconsider these amendments and allow greater debate and deliberation on its broader legal framework for content regulation. In the meantime, we call on the Turkish government to pause implementation and enforcement of these laws. GNI stands ready to engage in open, transparent consultations and to otherwise support responsible and rights-respecting content regulation.

### **About GNI**

The Global Network Initiative (GNI) is a multistakeholder initiative that brings together 85 prominent academics, civil society organizations, ICT companies, and investors from around the world. Members' collaboration is rooted in a shared commitment to advancing the [GNI Principles on Freedom of Expression and Privacy](#), which are grounded in international human rights law and the [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#). For over a decade, the GNI Principles and corresponding [Implementation Guidelines](#) have guided ICT companies to assess and mitigate risks to freedom of expression and privacy in the face of laws, restrictions, and demands.