

İSTANBUL BİLGİ ÜNİVERSİTESİ
LİSANSÜSTÜ PROGRAMLAR ENSTİTÜSÜ
BİLİŞİM VE TEKNOLOJİ HUKUKU YÜKSEK LİSANS PROGRAMI

**AN ANALYSIS OF THE IMPACT OF THE TURKISH LEGISLATIVE
FRAMEWORK ON INTERNET INTERMEDIARIES IN TURKEY**

Bentli James YAFFE

114692002

Dr. Öğr. Üyesi Mehmet Bedii KAYA

İSTANBUL

2018

An Analysis of the Impact of the Turkish Legislative Framework on Internet Intermediaries in
Turkey

Türkiye’deki Yasal Çerçevenin Türkiye’deki İnternet Aracıları Üzerine Etkisinin
Değerlendirilmesi

Bentli James Yaffe
114692002

Tez Danışmanı : **Dr. Öğr. Üyesi Mehmet Bedii Kaya** (İmza)
Yıldırım Beyazıt Üniversitesi

Jüri Üyeleri : **Doç Dr. Leyla Keser Berber** (İmza)
İstanbul Bilgi Üniversitesi

Dr. Öğr. Üyesi Tayfun Acarer (İmza)
İstanbul Bilgi Üniversitesi

Tezin Onaylandığı Tarih : 22.06.2018

Toplam Sayfa Sayısı : 123

Anahtar Kelimeler (Türkçe)

- 1) İnternet Aracıları
- 2) Bilgi Toplumu
- 3) Ağ Toplumu
- 4) Hukuki Çerçeve
- 5) Yerel Olarak Barındırılan İçerik

Anahtar Kelimeler (İngilizce)

- 1) Internet Intermediaries
- 2) Information Society
- 3) Network Society
- 4) Legislative Framework
- 5) Locally Hosted Content

TABLE OF CONTENTS

ABBREVIATIONS	vi
LIST OF FIGURES	vii
LIST OF TABLES	viii
ABSTRACT.....	ix
ÖZET.....	x
INTRODUCTION.....	1
SECTION ONE.....	5
1. INSTITUTIONAL AND LEGISLATIVE FRAMEWORK	5
1.1. OVERVIEW	5
1.2. INSTITUTIONAL FRAMEWORK.....	5
1.2.1. Main Institutions	5
1.2.1.1. Ministry of Transport, Maritime Affairs and Communications	5
5	
1.2.1.2. Information and Communication Technologies Authority	7
1.2.1.3. Presidency of Telecommunication and Communication.....	9
1.2.1.4. Access Providers Association.....	10
1.2.2. Ancillary Institutions	11
1.2.2.1. Ministry of Development.....	11
1.2.2.2. Ministry of Customs and Trade	12
1.2.2.3. Personal Data Protection Authority.....	13
1.2.2.4. Internet Development Board	13
1.3. LEGISLATIVE FRAMEWORK.....	17
1.3.1. Main Legislation	17
1.3.1.1. Electronic Communications Law	17
1.3.1.2. Law on the Regulation of Broadcasts via Internet and	
Prevention of Crimes Committed Through Such Broadcasts.....	20
1.3.1.3. Relevant Regulations	28
1.3.2. Ancillary Legislation	29

1.3.2.1. Electronic Commerce Law.....	29
1.3.2.2. The Law on the Protection of Personal Data	30
SECTION TWO.....	32
2. STRATEGY GOALS.....	32
2.1. OVERVIEW	32
2.2. PAST STRATEGY DOCUMENTS.....	32
2.3. PRESENT STRATEGY DOCUMENTS.....	36
SECTION 3.....	40
3. IMPACT OF FRAMEWORK	40
3.2. INTERNET INTERMEDIARIES.....	40
3.2.1. Definition of Internet Intermediaries	40
3.2.2. Impact and Role of Internet Intermediaries.....	44
3.3. POTENTIAL FOR POSITIVE EFFECT	46
3.4. POTENTIAL FOR RESTRICTING EFFECT.....	52
SECTION 4.....	64
4. DISCUSSION	64
4.1. THE RESTRICTIVE NATURE OF THE INSTITUTIONAL AND LEGISLATIVE FRAMEWORK.....	64
4.1.1. Provisions That Have Direct Restrictive Effect and Censorship of Internet Content in Turkey	64
4.1.2. Indirectly Restrictive Nature of the Framework	71
4.1.3. Case Study: A Comparison of Local Hosting Costs.....	78
4.2. IMPACT ON TRANSITION TO AN INFORMATION SOCIETY	87
4.2.1. Definition of Information Society	87
4.2.2. Theory of the Network Society	89
4.2.3. The Role of Internet Intermediaries in Transitioning to an Information Society.....	94
CONCLUSION.....	103

BIBLIOGRAPHY.....118

Abbreviations

ADSL	Asymmetric Digital Subscriber Line
APA	Access Providers Association
DNS	Domain Name System
Et. al.	Et alia
EU	European Union
F/O	Fibre Optic
ICTA	Information and Communication Technologies Authority
ICT	Information and Communications Technology
IP	Internet Protocol
IP Law	Law numbered 5846 on the Intellectual and Artistic Works
IXP	Internet Exchange Point
OECD	Organisation for Economic Cooperation and Development
OFCOM	Office of Telecommunications
Pg.	Page
RTUK	Radio and Television Supreme Council
TIB	Presidency of Telecommunication and Communications
TRY	Turkish Lira
UK	United Kingdom of Great Britain and Northern Ireland
URL	Uniform Resource Locator
USA	United States of America
USD	United States Dollar
VPN	Virtual Private Network

List of Figures

Figure 3.1 Stylised Representation of Internet Intermediaries' Roles.....	pg. 41
Figure 3.2 Increase in Turkish Internet Subscribers 2008 – 2017.....	pg. 47
Figure 3.3 OECD Members Broadband Penetration Rates for 2017.....	pg. 49
Figure 3.4 OECD Fixed Broadband Penetration Percentage Increase per 100 Inhabitants, June 2016 – June 2017.....	pg. 50
Figure 4.1 Obligations of Internet Service Providers and Hosting Providers in Turkey.....	pg. 77
Figure 4.3 Locally-Relevant Content Being Hosted Abroad.....	pg. 98
Figure 4.4 Locally-Relevant Content Being Hosted Locally.....	pg. 99

List of Tables

Table 2.1 Social Transformation Targets Identified in the 2006 – 2010 Information Society Strategy Document.....	pg. 34
Table 2.2 Internet Use and Penetration Targets.....	pg. 36
Table 4.1 The Average Price of Hosting 1 GB in Each Case Study Country.....	pg. 81
Table 4.2 Proportion of Hosting Costs to Net Monthly Income.....	pg. 84

Abstract

The purpose of this work is to evaluate the impact of the institutional and legislative framework in Turkey on the functions and development of Turkish Internet Intermediaries, and the effect such an impact may have on the goal of transitioning to an Information Society. In this context, the impact of the institutional and legislative framework has been presented primarily in relation to the operations of the main Internet Intermediaries of Internet access providers and hosting providers in Turkey.

The study consists of four main parts. In the first part, the current institutional and legislative framework in Turkey is explained. In the second part, the relevant short-term and long-term goals for the telecommunication and Internet sectors as determined by Turkish state bodies are reviewed. The third section presents the definition and role of Internet Intermediaries and discuss the potential positive and restrictive effect that the institutional and legislative framework may have on such Intermediaries. The fourth chapter details the restrictive impact that the framework currently has on the operations of Internet Intermediaries in Turkey and discusses the implications with regard to a transition to an Information Society.

Keywords: Internet Intermediaries, Information Society, Network Society, Legislative Framework, Locally Hosted Content

Özet

Çalışmanın amacı, Türkiye’deki kurumsal ve hukuki çerçevenin Türkiye’deki İnternet Aracılarının faaliyetleri ve gelişimi üzerindeki etkilerini ve bu etkilerin Bilgi Toplumuna geçiş hedefi üzerindeki etkisini değerlendirmektir. Bu kapsamda kurumsal ve hukuki çerçeve temel olarak ana İnternet Aracıları olan İnternet servis sağlayıcıları ve yer sağlayıcılarının faaliyetleri açısından ele alınmıştır.

Çalışma dört ana bölümden meydana gelmektedir. İlk bölümde Türkiye’deki mevcut kurumsal ve hukuki çerçeve açıklanmaktadır. İkinci bölümde telekomünikasyon ve İnternet sektörleri için Türkiye’deki resmi kurumlar tarafından belirlenmiş olan alakalı kısa ve uzun dönem hedefler incelenmiştir. Üçüncü bölüm İnternet Aracılarının tanımını ve rollerini sunmakta ve kurumsal ve hukuki çerçevenin bu Aracılar üzerindeki pozitif ve kısıtlayıcı etkilerini ele almaktadır. Dördüncü bölüm çerçevenin halihazırdaki kısıtlayıcı etkilerinin İnternet Aracı faaliyetlerine sonuçlarını detaylandırmaktadır ve bu sonuçların Bilgi Toplumuna geçiş açısından çıkarımlarını tartışmaktadır.

Anahtar Kelimeler: İnternet Aracıları, Bilgi Toplumu, Ağ Toplumu, Hukuki Çerçeve, Yerel Olarak Barındırılan İçerik

INTRODUCTION

The Internet market in Turkey is developing rapidly. Significant development of the market truly began with the liberalisation of the fixed-telephony network following the privatisation of the state-owned Türk Telekomünikasyon A.Ş. in 2005. In the immediate aftermath of the privatisation, Internet penetration that had been at 7.5% in 2004, increased to 33.1% in 2008. Since the initial liberalisation of the Turkish telecommunication and Internet sectors, the adoption and use of ICTs and the Internet have been constantly increasing.

Just as the aforementioned liberalisation process was achieved through legislative and regulatory means, the spread and adoption of these technologies in Turkey has also been facilitated through legislative means. Such legislation had a number of different aims ranging from establishing the central obligations of the stakeholders operating in these sectors to ensuring competitive and affordable options to the benefit of consumers.

As a result, the telecommunications and Internet sectors in Turkey are regulated to an extensive degree, with regulatory conditions imposed both on market entry and on the actors providing services in Turkey pursuant to obtaining the required authorizations. These sectors are regulated by a number of institutions and through the combination of a number of legislative and regulatory measures. Throughout this work reference will be made to the institutions and legislation that govern the telecommunication and Internet sectors under the general phrase institutional and legislative framework.

This work will study the impact that the current institutional and legislative framework has on the telecommunications and Internet sectors in Turkey; particularly with regard to the aims and goals stated in the applicable ICT Strategy Documents prepared by the relevant public institutions.

The work will attempt to highlight both the positive and negative impacts of the institutional and legislative framework in Turkey and provide an answer as to whether the current framework provides suitable grounds for the short-term aims relating to a transition to an Information Society as expressed within the aforementioned documents.

In order to focus the scope of the study, this work will primarily focus on the impact on Internet Intermediaries. As per the definition adopted by the OECD; *“Internet intermediaries bring together or facilitate transactions between third parties on the Internet. They give access to, host, transmit and index content, products and services originated by third parties on the Internet or provide Internet-based services to third parties”*¹.

This specific focus has been chosen in order to present a realistic boundary for the research and discussion that will be undertaken in this work. The telecommunication and Internet sector is a diverse ecosystem, with the inherent nature of developing technology constantly leading to the creation of new areas of activity and new emerging actors. Consequently, in order to provide a more effective review of the potential issues caused by the institutional and legislative framework, this work has chosen to focus on issues particular to Internet Intermediaries.

Within this context, this work will attempt to answer two main questions;

- 1) Whether the current institutional and legislative framework applicable to the telecommunication and Internet sectors in Turkey impose any unduly restrictive effects on Internet intermediaries in Turkey?
- 2) Whether any potential restrictive effects may have an adverse effect on the transition towards an Information Society?

¹ OECD. ‘The Economic and Social Role of Internet Intermediaries’ (2010) pg. 9

In order to better illustrate some of the central ideas relating to the potentially restrictive effects, this work will also include a case study on local hosting costs and their proportional comparison to the average wages in the country of hosting. It should be noted that, while the case study is based on publicly accessible information and data on hosting providers, it does not purport to be a structure or semi-structured empirical study. The case study will be presented in order to support some of the points that are brought up within the course of the doctrinal legal research.

The findings presented in this work will be subject to certain limitations; while some of these limitations have been imposed in order to ensure a manageable scope for the study, there have also been other limitations due to the nature of the area of study and the applied methodology. The limitations affecting this work have been detailed in the sections that are relevant to the effects of said limitations.

In addition to the Introduction and Conclusion sections, this work is made up of four main sections.

Section 1 of this work will detail the institutional and legislative framework that governs the Turkish telecommunication and Internet sectors. The section will detail both the key institutions and fundamental legislation and the ancillary institutions and legislation that impact the stakeholders operating in these sectors.

Section 2 of this work will discuss the short-term and long-term goals for the telecommunication and Internet sectors in Turkey as determined by the relevant state bodies and organizations. Brief explanations will also be provided on previous strategy documents and how the stated aims of those documents shaped the current landscape of the Turkish telecommunication and Internet ecosystems.

Section 3 of this work will detail the potential positive and restrictive impacts of the institutional and legislative framework. Both types of impact will be presented within the scope of the existing literature and established concepts that are applicable to these sectors.

Section 4 of this work will discuss the findings with regard to potential restrictive impacts that they have on achieving the selected goals and aims from the Strategy Documents. The aforementioned case study on local hosting costs will also be presented in this section and its findings will be reviewed in light of the relevant literature in an attempt to answer the main questions posed by this work.

Finally, the Conclusion Section of this work will summarize the findings of this work, discuss the limitations encountered and will make suggestions for further areas of research.

SECTION ONE

1. INSTITUTIONAL AND LEGISLATIVE FRAMEWORK

1.1. OVERVIEW

In order to provide analysis of the effectiveness and functions of the Turkish Internet ecosystem, first the institutional and legislative framework governing these areas must be introduced.

An understanding of the fundamental institutional and legislative measures is essential to be able to analyse the source of the obligations imposed on the actors operating in these sectors and the degree to which such measures may implement wider issues of adoption and utilization of various technologies.

Furthermore, the various ancillary institutions and ancillary legislation must also be covered, as the interaction between different spheres of institutional and legislative authority and implementation will also be featured in subsequent discussions in this work.

1.2. INSTITUTIONAL FRAMEWORK

1.2.1. Main Institutions

1.2.1.1. Ministry of Transport, Maritime Affairs and Communications

The establishment of the Ministry of Transport, Maritime Affairs and Communications dates back to 1939, when the Ministry of Transportation was granted authority over matters of Transportation and Communication.

The Ministry has gone through a number of re-organisations during the years; however, the changes to the structure of the Ministry that are relevant to this work are the main changes relating to telecommunication and Internet governance.

With Law numbered 4502 that came into effect on January 27th, 2000, the Telecommunication Authority was established as an associated institution of the Ministry. The development of the Telecommunication Authority is expanded upon below.

Decree Law numbered 655 on Structure and Duties of the Ministry of Transport, Maritime Affairs and Communication² changed the structure of the Ministry and established its current organizational structure.

Article 2(1) defines the responsibilities of the Ministry, with the responsibilities that are relevant to the scope of this work presented below:

- Determining, implementing and reviewing national policy, strategy and targets for the development, establishment and maintenance of communication services,
- Ensuring that communication services are provided freely, fairly and sustainably in an environment that is economic, suitable, safe, of high quality, with the least possible damage to the environment and that takes into account the public benefit,
- Cooperating with the relevant public bodies and institutions within the scope of the information society policy, targets and strategies, and developing action plans and providing coordination and monitoring activities for these plans.

The Electronic Communication Law also contains provisions on the scope of responsibility and authority of the Ministry. Article 5(1) defines the responsibilities of

² Official Gazette numbered 28102 (1st Repeating) and dated 01.11.2011

the Ministry, with the responsibilities that are relevant to the scope of this work presented below:

- Determining targets, principles and policies aimed at developing a competitive electronic communication sector and the transition to an information society,
- Determining policies aimed at installing, developing and maintaining electronic communication infrastructure and services in accordance with technical, economic and social needs, the public benefit and national security,
- Contributing to the determination of policies aimed at developing the electronic communication devices industry and incentivising local production,
- Carrying out the research required for the determination and implementation of electronic communication policies,
- Setting aside no more than 20% of the income of the Information and Communication Technologies Authority for projects that incentivise the local development and production of electronic communication systems.

In light of these responsibilities, the Ministry of Transport, Maritime Affairs and Communications plays an important role in determining policy and strategy relating to the development of electronic communications and other ICTs in Turkey.

1.2.1.2. Information and Communication Technologies Authority

In 2000, the Information and Communication Technologies Authority (hereafter “ICTA”) was established in accordance with the policies of the Ministry of Transport, Maritime Affairs and Communications, as the main regulatory body for telecommunication in Turkey.

The scope of the ICTA's responsibilities is established in the Electronic Communications Law numbered 5809³. Article 6(1) defines the responsibilities of the ICTA, with the responsibilities that are relevant to the scope of this work presented below:

- Enacting measures aimed at ensuring competition in the electronic communication sector, imposing necessary obligations on operators with significant market power and implementing the measures laid out in the legislation,
- Implementing the measures and inspections required for the rights of users and consumers and the processing and confidentiality of personal information,
- Keeping track of the developments in the electronic communication sector, carrying out the research required to incentivize the development of the sector, and cooperate with the relevant bodies and institutions,
- Planning and designating the frequencies, satellite positions and numbering plans required for the infrastructure for the provision of electronic communication services,
- Taking into account Ministry of Transport, Maritime Affairs and Communication strategy and policies and enacting the required regulations for areas such as authorization, fees, access, numbering, and spectrum management,
- Obtaining all required information and documentation from operators, public bodies and institutions, and real and legal person in relation to electronic communication, keeping the required records and providing the information requested by the Ministry for the determination of strategy and policies,
- Drafting general criteria to be applied to access providers relating to the subscriber fees, user agreements, technical matters and other issues falling

³ Official Gazette numbered 27050 (1st Repeating) and dated 10.11.2008

under their scope of responsibility, and reviewing and approving subscriber fees,

- Determining the conditions applicable to the authorization for electronic communication infrastructure and services, and taking the required measures that are foreseen in the legislation,
- Implementing measures on the electronic communication sector that relate to national security, public order or the carrying out of public services,
- Determining the principles applicable to access, including matters relating to interconnection, and implementing the required measures as foreseen in the legislation to prevent practices that restrict competition and/or harm consumer rights.

In light of these responsibilities, the ICTA plays an important role within the scope of the telecommunication and ICT ecosystem in Turkey. In addition to contributing to the policy and strategy making duties of the Ministry of Transport, Maritime Affairs and Communications, the ICTA is also the main body responsible for the drafting and implementation of regulatory measures regarding the telecommunication sector in Turkey. Furthermore, as it will be explained below in the heading relating to the Presidency of Telecommunication and Communication, the ICTA is also the main body responsible for the implementation of the regulatory framework applicable to the Internet ecosystem in Turkey.

1.2.1.3. Presidency of Telecommunication and Communication

The Presidency of Telecommunication and Communication (hereafter, “TIB”) was a public body that was established within the ICTA in August 2005. The main scope of responsibility of the TIB was authority and supervision over surveillance and interception of electronic communication.

Until 2016, the Internet Law granted TIB the authority for executing access restriction decisions that had been issued by judicial authorities and the authority to issue and shut implement administrative access restriction orders on its own initiative. However, Decree Law numbered 671 and dated August 15th, 2016⁴ shut down the TIB and transferred all powers and responsibilities that had previously been granted to TIB to the ICTA.

1.2.1.4. Access Providers Association

The Access Providers Association (hereafter, “APA”) was established pursuant to 2014 revisions to the Law on the Regulation of Broadcasts via Internet and Prevention of Crimes Committed Through Such Broadcasts.

As per Article 6/A that was added to the Internet Law, the main objective of the APA has been defined as implementing the access restriction decisions that are issued in accordance with the Internet Law. However, the scope of responsibility established by Article 6/A also states that implementing access restriction decisions issued as per Article 8 is not within the responsibilities of the APA. In other words, the APA is mainly responsible for the implementation of access restriction decisions granted based on the protection of personal rights.

The APA has been established by the applicable legislation as a top-down industry association, with membership mandatory for all Internet service providers that are duly licensed in Turkey. The Internet Law states that Internet access providers that are not members of the APA cannot provide services in Turkey. As per Article 6/A, the APA has a legal entity and is headquartered in Ankara. The Internet Law also specifies that the working principles of the APA are to be determined in a charter that must be

⁴ Official Gazette numbered 29804 and dated 17.06.2016

approved by the ICTA; thereby emphasizing the fact that the APA has been established by law and is a top-down association that is enforced by State apparatus.

The APA is responsible for receiving the designated access restriction decisions issued as per the Internet Law. Any notification of such a decision to the APA is accepted to be a legal notification to the Internet service providers that are the members of the APA. Should it believe that the decisions are not in accordance with the applicable laws, the APA has been granted to object to any of the decisions it has been notified with.

The budget of the APA is provided by membership dues from the member Internet service providers. Article 6/A states that these dues must be determined by the APA in a way that is proportional to net sales of each member. The members of the APA are also responsible for ensuring that they provide all required hardware and software required for the application of the decisions. Neither the ICTA, nor the Ministry of Transport, Maritime Affairs and Communications have designated any funding or support for the activities of the APA.

1.2.2. Ancillary Institutions

1.2.2.1. Ministry of Development

The Ministry of Development was established in 2011 after the reorganisation of the State Planning Organization as per Decree Law numbered 641 on the Structure and Duties of the Ministry of Development⁵.

As per Decree Law numbered 641, the Ministry is in charge of developing processes that guide the development Turkey on a macro level, and the drafting and publication of the policy and strategy documents that aim to provide such guidance.

⁵ Official Gazette numbered 27958 (1st Repeating) and dated 08.06.2011

Article 2(1) defines the responsibilities of the Ministry of Development, with the responsibilities that are relevant to the scope of this work presented below:

- To coordinate the activities of Ministries, public bodies and institutions relating to social, economic and cultural policy, and effectively guide the implementation of these activities,
- Preparing policies, aims and strategies relating to the information society, coordinating activities of public bodies and institutions, non-governmental organisation and the private sector, and effectively guiding the implementation of these activities.

The Ministry of Development is significant for the scope of this work as it is the public body responsible for coordinating and determining strategy and policy regarding the information society. Therefore, it has been this Ministry that coordinated and prepared the majority of the Strategy Documents that were reviewed within the scope of this work.

1.2.2.2.Ministry of Customs and Trade

The Ministry of Customs and Trade was established pursuant to Decree Law numbered 640 on the Structure and Duties of the Ministry of Customs and Trade⁶. This Ministry is significant within the scope of this work due to the fact that it is the Ministry that drafted and implements the Electronic Commerce Law. As it will be expanded upon in further detail below, the Electronic Commerce Law has provided a degree of clarification regarding the liabilities of some categories of Internet Intermediary that are engaged in e-commerce activities in Turkey.

⁶ Official Gazette numbered 27958 and dated 08.06.2011

1.2.2.3. Personal Data Protection Authority

The Personal Data Protection Authority (henceforth, “Data Protection Authority”) was established with Law numbered 6698 on the Protection of Personal Data.

The Data Protection Authority is governed by the Personal Data Protection Board that was also established by the same law. As per Article 20 of the Law on the Protection of Personal Data, the Data Protection Board is responsible for monitoring and developing practices and implementations relating to the protection of personal data in Turkey. The Data Protection Board is also responsible for ensuring coordination between public bodies and institutions, non-governmental organisations, industry associations and universities in order to further these goals.

As a public body that has only recently started operations, the Data Protection Authority is significant for the scope of this work due to the fact that the Law on the Protection of Personal Data has introduced new obligations and liabilities that impact many parties in Turkey, including Internet Intermediaries. Furthermore, the Data Protection Board have also started the process for the drafting and enacting of various ancillary regulations that have the potential to impose further technical and operational liabilities on Internet Intermediaries in Turkey with regard to how personal data is collected, processed and transferred.

1.2.2.4. Internet Development Board

The Internet Development Board has been established as per Article 29 of Decree Law numbered 655 on Structure and Duties of the Ministry of Transport, Maritime Affairs and Communication. Within the scope of Article 2(1), the Internet Development Board has been designated as a permanent board operating under the structure of the Ministry of Transport, Maritime Affairs and Communications.

Article 29(6) defines the broad responsibilities of the Internet Development Board as:

- Preparing policies and strategies that will promote the efficient, widespread and accessible use of the Internet in economic, commercial, social, scientific, education and cultural areas, and presenting these recommendations to the Ministry,
- Carrying out activities and preparing recommendations to present to the Ministry regarding increasing online content about Turkish Culture, Turkish History and the Turkish World,
- Preparing recommendations to present to the Ministry on the safe, unrestricted, free and beneficial use of the Internet to create added-value,
- Carrying out similar duties assigned by the Ministry.

The broad areas of responsibility of the Internet Development Board were further defined in the Regulation on the Internet Development Board⁷. Article 5 of the Regulation specifies that the Board is made up of seven members that are appointed from amongst the Ministry of Transport, Maritime Affairs and Communication, public bodies and institutions, universities, non-governmental organisations and persons who have worked in the relevant field. The term of each member is four years and the Chairman and members of the Board are appointed by Ministerial Decree.

The Regulation extensively defines the areas of responsibility of the Internet Development Board. As per Article 6 of the Regulation, the responsibilities of the Internet Development Board have been defined as:

- Preparing policies and strategies that will promote the efficient, widespread and accessible use of the Internet in economic, commercial, social, scientific, education and cultural areas, and presenting these recommendations to the Ministry,

⁷ Official Gazette numbered 28851 and dated 14.12.2013.

- Carrying out activities and preparing recommendations to present to the Ministry regarding increasing online content about Turkish Culture, Turkish History and the Turkish World,
- Preparing recommendations to present to the Ministry on the safe, unrestricted, free and beneficial use of the Internet to create added-value,
- Generating public awareness about the benefits of Internet use,
- Participating in activities relating to the Internet, and cooperating with universities, public, private and non-governmental organisations to ensure productivity,
- Determining methods to inform the public about online broadcasts and services, providing recommendations to the Ministry regarding this issue,
- Carrying out studies into the more frequent use of the Internet in extending the scope of State implementations and public services,
- Determining policies pursuant to carrying out studies into the safe use of the Internet and safe Internet, and determining the safety criteria in cooperation with the ICTA,
- Supporting activities on the safe, unrestricted, free and beneficial use of the Internet to create added-value,
- Carrying out activities for the preparation of national software programs to protection individuals and society from harmful online content,
- Carrying out the required activities to increase public awareness regarding issues such as developing Internet culture for children and families, and the classification of games containing abuse and violence,
- Making recommendations regarding increasing the number of content and hosting providers, and the creation of a national search engine,
- Making recommendations to increase local production of all products used in ICTs,

- Determining and evaluating projects and recommendations to overcome the digital divide and contribute to the formation of the information economy, carrying out the risk assessment of such recommendations and contributing to the implementation of the plans,
- Making recommendations for harmonization of Internet legislation with internationally accepted practices and the relevant EU legislation,
- Meeting with Internet service providers individually or jointly to determine sectoral issues and provide recommendations as to solutions for these issues,
- Organising workshops and conferences with the participation of public bodies and institutions, industry associations, non-governmental organisations, private sector representatives and experts,
- Meeting with public Internet providers, determining their issues and recommending solutions,
- Making recommendations regarding measures to be taken online for cyber security,
- Carrying out studies in the areas requested by the Ministry to contribute to the determination of Ministry policies.

While the Regulation has provided an extensive list of responsibilities relating to the development of the Turkish Internet ecosystem for the Internet Development Board, the official website of the Internet Development Board does not contain any information about projects that have been carried out in accordance with the scope of responsibilities granted by the Regulation. Under the section detailing “Work Carried Out”, there is currently only an explanation as to the number of meetings that have been held by the Internet Development Board, but no information as to completed or ongoing projects have been provided⁸.

⁸ The official website of the Internet Development Board <<http://www.hgm.gov.tr/tr/sayfa/21#Calisma>> was accessed most recently on 05.04.2018. At the time of accessing, there had been no official information or update regarding the activities of the Board.

1.3. LEGISLATIVE FRAMEWORK

1.3.1. Main Legislation

The main legislative measures that are relevant to scope of this study are the Electronic Communications Law and the Law on the Regulation of Broadcasts via Internet and Prevention of Crimes Committed Through Such Broadcasts. Together, these two laws and their ancillary regulations that are relevant to this work form the framework of the regulatory regime that is applicable to the telecommunication and Internet sectors in Turkey.

1.3.1.1. Electronic Communications Law

The Electronic Communications Law numbered 5809 came into effect on November 5th, 2008⁹. The Electronic Communications Law establishes the legislative and regulatory framework that applies to the telecommunication sector in Turkey. While the Electronic Communications Law provides many of the key definitions, principles and procedures that govern telecommunication regulation, as this work focuses on Internet Intermediaries only the terms and provisions related to this scope will be discussed in detail.

The relevant definitions provided under Article 3 are the definitions for electronic communication, electronic communication services and operators. Electronic communication is defined as *“the transmission, sending and receipt over cable, optical, electrical, magnetic, electromagnetic, electrochemical, electromechanic and other relaying systems of all kinds of signal, symbol, voice, video and data that can be converted to electrical signals”*. Electronic communication services are defined as *“providing as a service a part or the entirety of the activities falling under the definition of electronic communication”*. Operator is defined as *“company that provides an*

⁹ Official Gazette numbered 27050 (1st Repeating) and dated 10.11.2008

electronic communication service and/or provides electronic communication network and maintains infrastructure”.

With regard to Internet Intermediaries, the Intermediaries such as Internet services and access providers would be considered to be providing electronic communication services and will therefore fall under the scope of the Electronic Communication Law.

In order to begin operating as an authorised operator in accordance with the Electronic Communication Law, a company must file an application to the ICTA to obtain authorization. As per Article 9 of the Law, these applications are either in the form of a notification or an application for a right of use. In situations where the operators do not require allocation of resources such as numbers, frequencies and satellite allocation, they are only under the obligation to make submit an application of notification to the ICTA. As Internet service and access providers do not require such an allocation, they are only required to submit a notification application for licensing by the ICTA.

Once licensed by the ICTA as an authorised operator, Internet access providers must adhere to the obligations set out in the Internet Communication Law and the relevant ancillary regulations. Along with obligations regarding periodic notification, data retention and network security, authorized operators are also under the obligation to pay the annual authorization fee. As per Article 63, should a company provide electronic communication services without first making a notification application for licensing to the ICTA they may be sanctioned with a judicial fine ranging from 1,000 days to 10,000 days.

The Electronic Communication Law also contains provisions that aim to ensure competition and consumer protection in the electronic communication sector. Article 13 provides that the ICTA may impose conditions regarding the determination of subscriber fees on licensed operators with significant market power. Articles 16 and 17 state that the ICTA may determine obligations relating to the right of access and co-location on operators to ensure competition and favourable conditions for consumers

in Turkey. Furthermore, though not directly related to the services provided by Internet service providers, the Electronic Communication Law also contains provisions that impose obligations on different categories of operators to ensure competition, more beneficial circumstances for consumers and the increased adoption of communication technologies. One such obligation is the obligation to ensure number transferability that has been imposed on operators as per Article 32.

The rights of consumers are also covered by the Electronic Communication Law. Within the scope of this work, the most relevant provisions are the right to obtain equal services, the protection of consumers and end-users and obligations relating to service quality. Article 47 of the Electronic Communication Law states that licensed operators are under the obligation to provide services to consumers and end-users in the same positions under equal conditions and without making any distinctions. Article 48 establishes the general competence of the ICTA to draft and enact principles and procedures that aim to protect the rights and interests of consumers and end-users that make use of electronic communication services. Article 52 states that the ICTA may impose certain requirements and obligations on licensed operators relating to service quality levels.

The Electronic Communication Law is significant as it provides the basis of the licensing regime for companies providing electronic communication services in Turkey. As Internet service providers fall under this definition, they are a category of Internet Intermediary that must obtain an operating license pursuant to the procedures set out in the Electronic Communication Law and its ancillary regulations.

Furthermore, in line with the general purpose of the legislation, the Electronic Communication Law also provides the ICTA with powers and duties aimed at drafting and enacting ancillary regulations that ensure a competitive telecommunication sector in Turkey. Both the measures of the Electronic Communication Law and the various ancillary regulations that have been passed by the ICTA contain provisions that impose

obligations on operators to prevent the implementation of anti-competitive practices. Such obligations include measures relating to subscriber fees of operators determined to have significant market power, obligations to provide access and open infrastructure to co-location.

1.3.1.2. Law on the Regulation of Broadcasts via Internet and Prevention of Crimes Committed Through Such Broadcasts

The Law numbered 5651 on the Regulation of Broadcasts via Internet and Prevention of Crimes Committed Through Such Broadcasts (hereafter, “Internet Law”) came into effect on May 23rd, 2007¹⁰. The measures of the Internet Law provide the basis for the regulatory regime applicable to three main areas; the liability of Internet Intermediaries, the access restriction procedure and the notice-and-takedown procedure.

It should be noted that the initial purpose of the Internet Law, as stated in the preamble to the Law, was to afford protection to children and families. Therefore, the initial structure of the Internet Law focused predominantly on establishing the responsibilities of the categories of stakeholders that had been identified, establishing a system to judicially and administratively restrict access to content deemed harmful and illegal, and introduce a basic notice-and-takedown process. However, revisions to the Internet Law in 2014 and 2015 made significant changes to both the access restriction regime and the notice-and-takedown procedure.

Article 2 of the Internet Law has identified four main categories in terms of establishing liability; content providers, access providers, hosting providers and public-use providers. Content providers are defined as *“real or legal persons that create, alter and provide all kinds of information or data provided to users over the Internet”*.

¹⁰ Official Gazette numbered 26530 and dated 23.05.2007

Access providers are defined as “*all kinds of real or legal persons providing their users with access to the Internet*”. Hosting providers are defined as “*real or legal persons who provide or maintain systems that host services and content*”. Public-use providers are defined as “*providers that provide persons with the opportunity to use the Internet at a certain place and for a certain time*”.

The main procedures that have been defined by the Internet Law are the access restriction procedures defined in Articles 8 and 8/A, and the notice-and-takedown procedures defined in Article 9 and 9/A.

Article 8 lays out the procedure relating to access restriction in situations where illegal content has been identified. The crimes that form the basis of illegal content are listed exhaustively in Article 8 as; inducing people to commit suicide, sexual exploitation of children, facilitating drug-use, obtaining of substances that are dangerous to health, obscenity, prostitution, providing an environment for gambling as defined in the Turkish Criminal Code. Additionally, offences against Atatürk as defined in Law numbered 5816 on Crimes Against Atatürk are also listed as grounds for issuing access restriction decisions. Should content relating to such crimes be determined, the access restriction decision can be issued by the courts; however, if there is a requirement for fast action during the investigation stage such a decision can also be issued by the prosecutor.

Once an access restriction decision has been issued and notified, it must be implemented within four hours of receipt. If an Internet service provider or hosting provider does not implement an access restriction decision issued as a protective measure by a judicial authority, they may be punished with a judicial fine ranging from 500 days to 3000 days. However, if the failure to implement the decision qualifies as a crime with a heavier penalty, said heavier penalty will be enforced. If an access restriction decision issued as an administrative decision is not implemented, the Internet service providers can be sanctioned with an administrative fine ranging from

10,000 TRY to 100,000 TRY¹¹. Following the issuing of an administrative fine, if an Internet service provider persists in not implementing the decision, the ICTA may revoke its operational license.

Article 8/A was added to the Internet Law in 2015 and extends the application of the access restriction procedure in emergency situations. As per Article 8/A, in the situation that one or more of the grounds of the protection of the right to life, the protection safety and property, the protection of national security and public order, the prevention of crime or the protection of general health the courts may issue an access restriction order. In cases of emergency, such orders may be issued by the Prime Minister's Office and ministries are also entitled to order the ICTA to restrict access to content. These orders are immediately notified to Internet service providers and the other Intermediaries, and the orders must be implemented within four hours. The Internet service providers, content providers and hosting providers that do not implement the access restriction and/or removal orders can be sanctioned with an administrative fine ranging from 50,000 TRY to 100,000 TRY¹².

It should also be stated that other legislative measures in Turkey contain provisions that allow different Ministries or public institutions the right to issue access restriction orders or to apply to the courts to obtain an access restriction ruling. However, the majority of these measures include procedures and provisions that are not completely in accordance with the procedures and access restriction regime that has been set out under the Internet Law. In light of the examples presented below, it can be said that the scope and implementation of the access restriction regime as defined in the Internet Law has been extended in ways that were not originally intended; both in terms of

¹¹ At the time of writing, the equivalent to 2,243 USD – 22,431 USD. It should be noted that 1 USD is equivalent to about 4.458 TRY (based on 15.05.2018, Turkish Central Bank FX Buying Rate)

¹² At the time of writing, the equivalent to 11,216 USD – 22,432 USD. Please see note 9 for the applied conversion rate.

situations that access restriction orders can be issued and in terms of the competent bodies authorized to issue them.

For example, as per Article 58 of the Turkish Commercial Law numbered 6102, in situations of unfair competition the competent commercial courts are granted the ability to issue measures that include temporarily restricting access to Internet content that constitutes unfair competition. As per Article 18 of the Pharmaceutical and Medical Preparations Law numbered 1262, should the Ministry of Health determine that illegal promotion or sales of pharmaceuticals are being carried out, the Ministry can issue a decision of access restriction and notify this decision to the ICTA for implementation. As per Article 6 of the Law numbered 663 on the Presidency of Religious Affairs, Its Establishment and Obligations, in situations that infringe the provisions of said law the Presidency can apply to the civil court of peace for a ruling for access restriction. As per Article 5 of the Law numbered 7258 on Betting Activities Related to Soccer and other Sports Matches, it is stated that the access restriction measures of the Internet Law will be implement in situations where the crimes defined in Law 7258 have been committed.

Article 9 lays out the notice-and-takedown procedure. The notice-and-takedown procedure allows real and legal persons claiming that their rights have been violated by Internet content to make an application to the content provider, or, if they cannot reach the content provider, the hosting provider in order to have the content removed. The content and/or hosting provider must respond to the request of the applicant within 24 hours at the latest.

Before the revisions to the Internet Law in 2014, applicants where required to make an application to the content/hosting provider before filing a request to the competent courts. However, following the revisions applicants under Article 9 may follow the alternative route of applying directly to the criminal court of peace for an access restriction order without first making an application to the content/hosting providers.

Should the court accept the application, it will issue an access restriction decision and this decision will be notified directly to the APA for implementation within four hours at the latest. While the 2014 revisions require that such decisions be proportional and only apply to the URL's that contain the offending material, if the court decides that such URL-based restriction is not sufficient it may rule for access restriction to the entire website. The responsible parties that do not implement the ruling of the criminal court of peace can be sanctioned with a judicial fine ranging from 500 days to 3,000 days.

Article 9 also states that an applicant may use an access restriction decision issued in accordance with the provision against any other instance of the same offending content being published on other websites without having to obtain a separate new ruling.

Article 9/A was introduced to the Internet Law with the 2014 revisions and lays out emergency application measures for when Internet content violates the right to privacy of an individual. In such circumstances, the individuals claiming that their right to privacy has been violated can apply directly to the ICTA for the implementation of a protection measure. Should the ICTA accept the application, they will notify the decision to the APA for implementation by Internet service providers within four hours at the latest. In situations of emergency where a delay may cause harm, the restriction of access is directly implemented by the ICTA, rather than Internet service providers. Following the notification by the ICTA, the applicant must apply to the competent court of the criminal court of peace within 24 hours to confirm the ICTA's decision. The court must then issue their ruling within 48 hours at the latest, and if they are unable to do so the access restriction order issued by the ICTA automatically becomes null and void.

The measures that lay out the access restriction procedure and notice-and-takedown procedure both contain provisions relating to circumstances where the access restriction decision or the notice-and-takedown ruling become void. With regard to

access restriction decisions issued as per Article 8, should it be ruled that the investigated content does not constitute a crime, the access restriction decision initially issued by the court or prosecutor will become null and void. If the content that is ruled to constitute the crimes listed under Article 8 is removed, the access restriction decision is lifted by either the prosecutor or the court. The removal of the offending content has also been listed as grounds for nullifying the court decision with regard to a notice-and-takedown application made pursuant to Article 9. For the provisions of Articles 8, 8/A, 9 and 9/A that require an applicant to apply to the court within a certain time period or for the court to issue a ruling within a certain time period, should these time periods pass without an application made any access restriction order issued also becomes null and void.

The 2014 revisions to the Internet Law introduced the process of URL-based restriction to content that was the subject of an access restriction order. As per the text included in Articles 8/A, 9 and 9/A, access restriction orders are issued by referring to the specific URL of the offending content. Thereby, in theory, unless it is absolutely necessary access restriction orders will be limited to the specific address the content is located on rather than being implemented to restrict access to an entire webpage. However, the 2014 revisions also state that should URL-based blocking not be technically applicable or if URL-based blocking is not able to prevent the infringing situation, an access restriction order can be issued against the entirety of the website. It has been highlighted by practitioners practicing in the area of Turkish Internet Law that blocking access to encrypted content (such as URL's starting with "https://") is not technically possible, therefore resulting in access restriction orders against such content resulting in access restriction to the entire website¹³.

¹³ Mehmet Bedii Kaya. 'The regulation of Internet intermediaries under Turkish law: Is there a delicate balance between rights and obligations?' *Computer Law & Security Review* (2016) pg. 765.

While the access restriction and notice-and-takedown provisions contain obligations for all the identified stakeholders, the Internet Law also contains separate liabilities for each category of stakeholder.

Article 4 defines the liabilities and obligations of content providers. The general rule is that content providers are liable for any content that they place online. The exception to this rule is that content providers are not liable for content belonging to others that they only provide a link to. However, if it clear from the way the content is linked to that the content provider approves of the linked content and clearly aims to direct users to said content the content provider remains liable for the linked content. Article 4 also establishes a broad obligation for content providers to provide the ICTA with any information it may request and to implement any measures as notified by the ICTA.

Article 5 defines the liabilities of hosting providers. The general rule is that hosting providers are not liable to check the legality of the content that they host, they are only required to remove content upon notification of a access restriction and/or takedown order issued pursuant to Article 8 and 9 of the Internet Law. Hosting providers must also retain traffic information for a period of a year, and ensure that the accuracy, integrity and confidentiality of this information. Much like the obligation that applies to content providers, hosting providers are also under the obligation to provide the ICTA with any information it may request and implement any measures that are notified to them by the ICTA. Failure to do so can be sanctioned with an administrative fine ranging from 10,000 to 100,000 TRY¹⁴.

While hosting providers are not required to be licensed by the ICTA as per the Electronic Communication Law, the Internet Law requires that make a notification to the ICTA before commencing operations. Failure to make the notification can be

¹⁴ At the time of writing, the equivalent to 5,608 USD – 22,432 USD. Please see note 9 for the applied conversion rate.

sanctioned with an administrative fine ranging from 10,000 to 100,000 TRY¹⁵. Article 5 also states that hosting providers may be further categorised in terms of different obligations and liabilities based on the nature of their operations and that this categorisation can be implemented via regulation. As of the date of writing, such ancillary regulations that further distinguish between categories of hosting providers has yet to be published by the ICTA.

Article 6 defines the obligations and liabilities of the Internet service providers. The general rule in terms of Internet service provider liability is that they are not liable for checking the legality of the content that their users access through their services. However, in the situation that they are notified of any illegal content Internet service providers are under the obligation to restrict access to said content. Internet service providers are also under the obligation to take measures to prevent all form of alternative access to content that is the subject of an access restriction order. Much like hosting providers, Internet service providers are also under the obligation to retain traffic data for a period of one year and ensure the accuracy, integrity and confidentiality of said data. In the situation that an Internet service provider is to cease their activities, they are under the obligation to notify the ICTA, content providers and their customers at least three months in advance and hand over records relating to retained traffic data to the ICTA. Internet service providers that do not carry out any of their obligations relating to the restriction of access and data retention can be sanctioned with an administrative fine ranging from 10,000 TRY to 50,000 TRY.

Much like content providers and hosting providers, Internet service providers are also under the obligation to provide the ICTA with any information it may request and implement any measures that are notified to them by the ICTA. Furthermore, Internet

¹⁵ At the time of writing, the equivalent to 5,608 USD – 22,432 USD. Please see note 9 for the applied conversion rate.

service providers are under the obligation to become members of the APA, as service providers that are not APA members cannot provide services in Turkey.

The Internet Law also contains a number of other relevant obligations and liabilities for the categories identified by the Law. Article 3 of the Law introduces the requirement of transparency. This requirement requires Internet service providers and hosting providers to provide up-to-date identification information in a manner that users can access said information on the Internet. Furthermore, the requirement also states that legal notifications can be made via e-mail and other communication methods to Internet Intermediaries over the information obtained from the communication tools, domain names, IP addresses and other communication tools.

1.3.1.3.Relevant Regulations

While there are a number of regulations that have been passed pursuant to the Internet Law, the only regulation that is relevant to the scope of this work is the Regulation on the Principles and Procedures Relating to Broadcasts via the Internet¹⁶.

Rather than introduce extensive supplementary measures, the Regulation mostly affirms the provisions of the Internet Law. The most significant aspect of the Regulation is that it affirms that in situations where the investigation and/or prosecution into potentially criminal content find the content to not be in violation of the catalogue crimes listed in Article 8 of the Internet Law, any restriction of access decision that had been implemented as a protective measure shall become null and void.

It should also be noted that this Regulation has not been amended since it came into effect in 2007. Therefore, particularly in light of the 2014 and 2015 revisions to the

¹⁶ Official Gazette numbered 26716 and dated 30.11.2007.

Internet Law, the effectiveness and accuracy of the provisions of the Regulation may be questioned.

1.3.2. Ancillary Legislation

In addition to the Electronic Communication Law and the Internet Law, there are a number of other legislative measures that are important in relation to the liability and operations of Internet Intermediaries in Turkey.

1.3.2.1. Electronic Commerce Law

The Law numbered 6563 on Electronic Commerce (hereafter, “E-Commerce Law”) came into effect on May 1st, 2015¹⁷. The E-Commerce Law provides the basis of regulation of the electronic commerce sector in Turkey, particularly the liabilities and responsibilities of the stakeholders operating in this sector. The two main stakeholders that are identified by the E-Commerce Law are e-commerce service providers and intermediary service providers.

Article 2 of the E-Commerce Law defines e-commerce as “*real or legal persons engaging in electronic commerce activities*” and intermediary service providers as “*real and legal persons that provide the electronic platform where others can conduct financial and commercial activities*”.

While the main scope of the E-Commerce Law is to regulate the activities of e-commerce service providers, it also issues a major clarification regarding the liability of the intermediary service providers. As per Article 9 of the E-Commerce Law, the intermediaries are not under the obligation to review the legality of the content, goods or services provided by the real and legal persons using the provided platform. By

¹⁷ Official Gazette numbered 29166 and dated 05.11.2014.

establishing the non-liability of intermediaries providing e-commerce platforms, the E-Commerce Law provides a level of protection for a category of Internet Intermediary that is not readily defined and recognized by the Internet Law.

The Regulation on Electronic Commerce Service Providers and Intermediary Service Providers¹⁸ provides further measures regarding the liability of intermediary service providers. The Regulation reaffirms the non-liability of the intermediary service providers with regard to the content, goods and services provided by the service providers. However, Article 6 of the Regulation states that the intermediaries are required to provide identification information regarding their operations and ensure that service providers using their platform also provide the requisite identification information. As per the E-Commerce Law, in the situation that intermediary service providers do not satisfy their obligations regarding the provision of identification information can be sanctioned with an administrative fine ranging from 1,000 TRY to 5,000 TRY¹⁹.

1.3.2.2. The Law on the Protection of Personal Data

The Law numbered 9968 on the Protection of Personal Data (hereafter, “Data Protection Law”) came into effect on April 7th, 2016²⁰. Before the publication of the Data Protection Law, the protection of personal data in Turkey was governed by a piecemeal regime that was primarily based on the Turkish Constitution and the Turkish Criminal Code. While there were sector specific data protection measures, such as the data protection provision of the Electronic Communication Law, the general rules and

¹⁸ Official Gazette numbered 29457 and dated 26.08.2015

¹⁹ At the time of writing, the equivalent to 225 USD – 1123 USD. Please see footnote 9 regarding the applied conversion rate.

²⁰ Official Gazette numbered 29677 and dated 07.04.2016.

principles regarding fundamental issues such as consent, processing and transfer were derived from the piecemeal regulatory regime.

With regard to the activities of Internet Intermediaries, the Data Protection Law provided clarification as to the conditions of obtaining consent for the processing and transfer of personal data. While none of the provisions of the Data Protection Law are specific to Internet Intermediaries and their operations, the data protection framework that was introduced with the Law has imposed obligations and liabilities on all parties engaged in the collection, processing and transfer of personal data in Turkey.

Considering that many categories of Internet Intermediaries deal with a high volume of personal data from their subscribers and users, it is evident that the obligations and procedures introduced by the Data Protection Law will be applicable to their operations. Consequently, Internet Intermediaries will need to ensure that their processes for obtaining consent, maintaining personal data within their operation and the scope of any personal data transfer activity is compliant with the provisions of the Data Protection Law.

It should also be noted that, despite the Data Protection Law coming into effect and establishing the Data Protection Authority as the competent body in the area of the protection of personal data in Turkey, other Ministries and public bodies have continued to draft and implement measures relating to the protection of different categories of personal data. Particularly for the electronic communication sector, additional obligations for consent, processing and period of retention have the potential to impose additional liabilities and infrastructural costs on Internet Intermediaries.

SECTION TWO

2. STRATEGY GOALS

2.1. OVERVIEW

The relevant institutional bodies governing the Turkish telecommunication and internet sectors have published multiple strategy documents that set out their short-term and long-term goals and targets. These goals are important as they set out both the long-term strategy of ICTs and their utilization in Turkey and overarching approach and intentions of the institutions that will be drafting and enforcing the legislative framework.

Before reviewing strategy goals for the future, past Strategy Documents should also be reviewed so as to better understand the guiding principles that have shaped the current institutional and legislative framework. The goals laid out in previous Strategy Documents will also help contextualise both the positive and negative impacts observed under the current institutional and legislative framework.

Once the past Strategy Documents have been presented, the relevant short-term and long-term goals from the present Strategy Documents will be discussed.

2.2. PAST STRATEGY DOCUMENTS

Turkey's short-term and long-term goals relating to ICT adoption and transitioning to an Information Society has been clearly laid out in multiple Strategy Documents. However, in order to better understand the development of the current ecosystem, the findings and goals laid out in the 2006 – 2010 Information Society Strategy document should first be presented.

Prepared by the State Planning Organization and published in July 2006, the document outlines the strategies and goals that were determined to transition to an Information Society. The main aim of the transition process is stated in the document as “being a country that is the focus of scientific and technological production, that utilises information and technology effectively, that generates value through information-based decision-making processes and that is successful and has a high level of prosperity”²¹.

The 2006 – 2010 Information Society Strategy document upholds the premise that the overall goal of the strategies and policies contained in the document is to ensure that Turkey is able to successfully transition to an Information Society. While the document did not provide a clear definition for Information Society, the main aim identified the importance of the generation of value through information-based processes and emphasised the role of the underlying technology. The Strategy Document also recognizes that transitioning to an Information Society is an integrated process that requires cooperation and coordination of both traditional economic mechanisms and social and cultural change²².

While the 2006 – 2010 Information Society Strategy Document identified the long-term goal of transitioning to an Information Society, many of the short-term goals are identified as increasing the adoption and use of underlying ICTs. The Strategy Document states that ICTs and the ICT sector play the role of “establishing the service-provider infrastructure” that is essential for the transition to an Information Society²³. Consequently, many of the strategy aims identified in the 2006 – 2010 Information Society Strategy focuses on increased adoption of ICTs.

Within this context, the Strategy Document identifies 7 key strategic priorities in the transition to an Information Society. These 7 priorities are: Social Transformation,

²¹ Devlet Planlama Teşkilatı. 2006 – 2010 Bilgi Toplumu Stratejisi (2006) pg. 1

²² Devlet Planlama Teşkilatı. 2006 – 2010 Bilgi Toplumu Stratejisi (2006) pg. 21

²³ Devlet Planlama Teşkilatı. 2006 – 2010 Bilgi Toplumu Stratejisi (2006) pg. 17

Penetration of ICTs in the Business World, Transition to Citizen-Focused Services, Modernisation of Public Management, Internationally Competitive ICT Sector, Competitive, Widespread and Affordable Communication Infrastructure and Services, and the Development of Research and Development and Innovation.

As it can be seen from the titles of the 7 strategic priorities, an emphasis on the increase of use, penetration and affordability were the guiding principles of the previous Strategy Document. The strategic priorities that are relevant to the scope of this work are the headings of Social Transformation and Competitive, Widespread and Affordable Communication Infrastructure and Services.

While the heading of Social Transformation is quite broad, the actual targets that are identified under this heading focus primarily on increasing the adoption and use of ICTs. The main targets identified under this heading are presented in the table below.

Table 2.1. Social Transformation Targets Identified in the 2006 – 2010 Information Society Strategy Document

Indicator	Current Situation (%)	Target (%)
Internet Users	14	51
• Students	53	96
• Employees	17	77
• Unemployed	21	56
Broadband Internet Penetration	2	12.5
Employees and Unemployed using the Internet for Education Purposes	1.2	39

Students using the Internet for Education Purposes	34	78
Individuals using Online Banking	2.1	33
Individuals using Online Shopping	2.2	30
Individuals using E-State Services	5.9	35
Individuals accessing the Internet from Public Internet Access Centres	0.2	5.1

Source: Devlet Planlama Teşkilatı. 2006 – 2010 Bilgi Toplumu Stratejisi (2006)

As it can be seen from the table above, the concrete targets identified exclusively focus on an increase to the number of individuals that can access and make use of ICTs. However, one of the methods identified to achieve these aims was the increase and development of locally-relevant content on the Internet²⁴. Therefore, the Strategy Document did identify the importance of content in both increasing the adoption of said ICTs and a transition to an Information Society.

The heading of Competitive, Widespread and Affordable Communication Infrastructure and Services emphasizes the importance of the relationship between affordability of services and the adoption of ICTs by the general population. The focus of the targets under this heading also predominantly focus on the increase in adoption of ICTs by the general population and the affordability of services in proportion to income per capita. However, this heading also identifies that legislative and regulatory

²⁴ Devlet Planlama Teşkilatı. 2006 – 2010 Bilgi Toplumu Stratejisi (2006) pg. 25

measures must be implemented to impose obligations on companies to adhere to the principles of competitiveness and affordability²⁵.

In light of the strategic priorities and the more specific goals identified by the 2006 – 2010 Information Society Strategy Document, it can be surmised that the subsequently drafted and implemented legislative framework had the primary purpose of ensuring a competitive ICT sector, increasing affordability for consumers and thus increasing adoption and penetration rates. As it will be seen below, these guiding principles also guided subsequent Strategy Documents.

2.3. PRESENT STRATEGY DOCUMENTS

Following up on the 2006 – 2010 Information Society Strategy Document, the 2010 – 2018 Information Society Strategy and Action Plan Document was prepared by the Ministry of Development. Much like the previous 2006 – 2010 Document, it identifies the central aim of transitioning to an Information Society.

Stating that the targets identified in the 2006 – 2010 Information Society Strategy Document has been achieved at a success rate of 64.1%, the 2010 – 2018 determines 8 areas of strategic priority²⁶. These 8 areas of priority are: the ICT Sector, Broadband Infrastructure and Sectoral Competition, Qualified Workforce and Employment, Penetration of ICTs, Information Security and User Security, Innovative Solutions Supported by ICTs, Internet Innovation and e-Commerce and User-Focused Efficient Public Services.

While the number of targets identified under these 8 areas are more extensive than the 2006 – 2010 Information Society Strategy Document, the majority of said targets once again focus on the adoption and use of underlying technologies such as ICTs and

²⁵ Devlet Planlama Teşkilatı. 2006 – 2010 Bilgi Toplumu Stratejisi (2006) pg. 41

²⁶ Kalkınma Bakanlığı. 2015 – 2018 Bilgi Toplumu Stratejisi ve Eylem Planı (2015) pg. 15

software. However, the adoption and use of these technologies is clearly linked to trying to change the approach of the Turkish public and trying to increase both the adoption and penetration of these technologies and the generation of locally-relevant content.

The 2010 – 2018 Strategy Document identifies targets for the increase of Internet use and penetration. Said targets have been presented in the table below.

Table 2.2. Internet Use and Penetration Targets

Targets	2014	2018
Percentage of Internet use	48,5	75
Percentage of Internet use by disabled individuals	10.4	25
Percentage of Internet use by women	38.8	65
Percentage of Internet use by persons over the age of 45	19	30
Percentage of households with access to broadband Internet	57.2	75

Source: Kalkınma Bakanlığı. 2015 – 2018 Bilgi Toplumu Stratejisi ve Eylem Planı (2015)

The 2010 – 2018 Strategy Document also contains aims and targets regarding the development of locally-relevant content and application in Turkey²⁷. The identified aims and action plan focus on determining the needs of individuals who are not frequent users of ICTs and the Internet and developing relevant and suitable content for use by such individuals. The determined actions plan states that such content may be created by public bodies or that it may be obtained by public bodies from private sector companies. Thus, the 2010 – 2018 Strategy Document recognises the importance of

²⁷ Kalkınma Bakanlığı. 2015 – 2018 Bilgi Toplumu Stratejisi ve Eylem Planı (2015) pg. 115

locally-relevant content, both in terms of driving further adoption of ICTs and in terms of aiding the transition to an Information Society.

The 2017 – 2020 National Broadband Strategy Action Plan prepared by the Ministry of Transportation, Maritime Affairs and Communication builds upon the strategic priorities and targets that were identified in the previous Strategy Documents. The National Broadband Strategy Action Plan has identified strategies and action plans for 2020²⁸. The fundamental principles that were identified in the National Broadband Strategy Action Plan are; developing the broadband infrastructure in Turkey by developing the F/O infrastructure, increasing the connection capacity of fixed and mobile Internet services, creating a competitive and innovative market and increasing the variety of content provided over broadband²⁹.

The National Broadband Strategy Action Plan has also identified the importance of locally-relevant content in generating a demand for increased broadband adoption and increasing use of the Internet by the general public³⁰. The National Broadband Strategy Action plan makes reference to the fact that locally-relevant content is essential as users prefer content in their native language over content provided by larger global players; even if the latter may be content of higher general quality³¹. Consequently, the Action Plan has identified the creation of locally-relevant content in Turkish (both Internet content and applications) as a key target to help generate an increased demand for broadband and increased Internet use.

Other official Strategy Documents and Action Plans also make reference to the long-term goal of transitioning to an Information Society. The 2014 – 2018 Strategic Plan

²⁸ Ulaştırma, Denizcilik ve Haberleşme Bakanlığı. Ulusal Genişbant Stratejisi ve Eylem Planı 2017 – 2020 (2017) pg. 8

²⁹ Ulaştırma, Denizcilik ve Haberleşme Bakanlığı. Ulusal Genişbant Stratejisi ve Eylem Planı 2017 – 2020 (2017) pg. 8

³⁰ Ulaştırma, Denizcilik ve Haberleşme Bakanlığı. Ulusal Genişbant Stratejisi ve Eylem Planı 2017 – 2020 (2017) pg. 71

³¹ Ulaştırma, Denizcilik ve Haberleşme Bakanlığı. Ulusal Genişbant Stratejisi ve Eylem Planı 2017 – 2020 (2017) pg. 72

prepared by the Ministry of Development identifies transitioning to an Information Society as essential in achieving Turkey’s 2023 development plans³². The Ministry of Development Strategic Plan also emphasises the importance of utilising ICTs more efficiently so as to achieve a transition to an information-based economy. The Government Programme of the 65th Government also mentions the importance of a transition to an Information Society and an information-based economy³³. Stating that previous governments have undertaken projects to increase Internet access and penetration, the Government Programme states that a major policy aim is the utilisation of the underlying ICTs to develop an information-based society and economy³⁴.

Therefore, it is clear that the transition to an Information Society has been solidly established as a major strategic and policy priority. This is evident by the fact that the strategy goals that have been determined by the relevant bodies within institutional framework make regular reference to a transition towards an Information Society. Recent Strategy Documents have identified the importance of generating local and locally-relevant content and the importance of local Internet Intermediaries in the development of such content. However, it is also clear that the general approach established in the previous Strategy Documents with regard to prioritizing the adoption, use and affordability of ICT is still prevalent in the current Strategy Documents.

³² Kalkınma Bakanlığı. 2014 – 2018 Stratejik Planı. pg. 32

³³ Türkiye Cumhuriyeti Başbakanlık. 65. Hükümet Planı. pg. 57

³⁴ Türkiye Cumhuriyeti Başbakanlık. 65. Hükümet Planı. pg. 84

SECTION 3

3. IMPACT OF FRAMEWORK

3.1. OVERVIEW

In light of the institutional and legislative framework presented above, this section will highlight some of the positive and negative effects that may arise from said framework. Before presenting these effects, the main actors that are the subject of this work and their place and importance in the Internet ecosystem will be defined and the scope of this work's focus will be further defined.

3.2. INTERNET INTERMEDIARIES

3.2.1. Definition of Internet Intermediaries

As explained in the introduction of this work, in order to limit the scope of study for this work the current institutional and legislative framework was reviewed with reference to impact and effects on Internet Intermediaries.

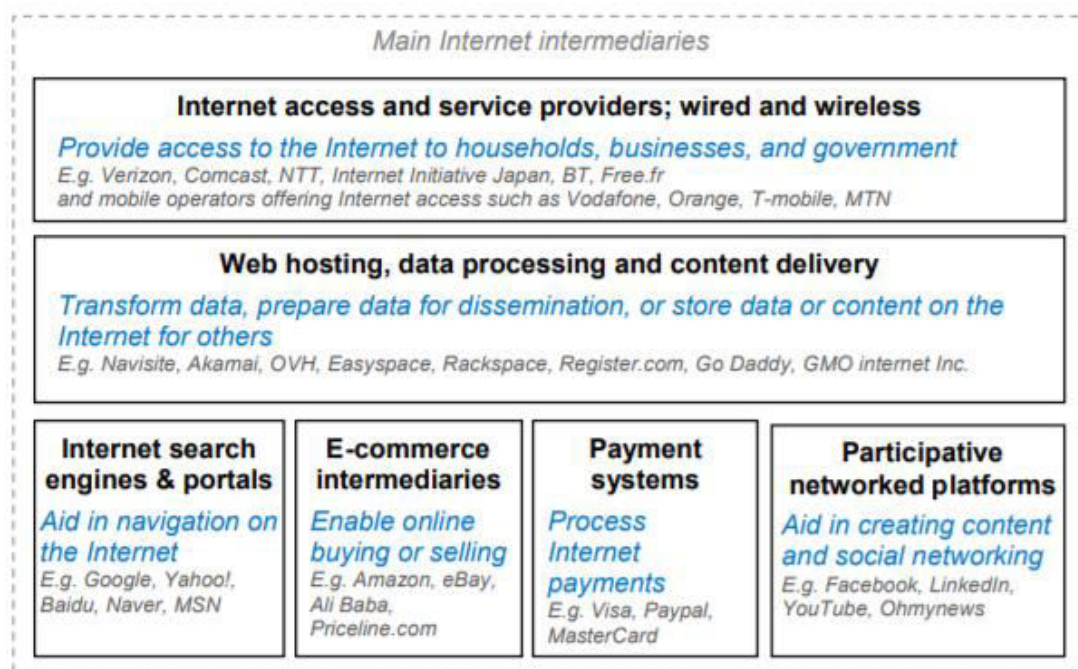
The definition accepted by this work for Internet Intermediaries is the definition that has been presented by the OECD. As per the OECD, *“Internet Intermediaries bring together or facilitate transactions between third parties on the Internet. They give access to, host, transmit and index content, products and services originated by third parties on the Internet or provide Internet-based services to third parties”*³⁵.

Due to the dynamic nature of the Internet sector, the range of all Internet Intermediary activities cannot be defined in an exhaustive way. However, the OECD has provided a number of categories of Intermediaries based on current business areas within the

³⁵ OECD. 'The Economic and Social Role of Internet Intermediaries' (2010) pg. 9

Internet sector. The Internet Intermediary categories identified by the OECD are: Internet access and service providers, data processing and web hosting providers, Internet search engines and portals, E-commerce intermediaries, Internet payment systems and participative networking platforms³⁶. The figure presented below provides a summary on the roles and functions of each Intermediary.

Figure 3.1. Stylised Representation of Internet Intermediaries' Roles



Source: OECD. 'The Economic and Social Role of Internet Intermediaries' (2010)

Within the scope of Internet Intermediaries, this work will more specifically focus on the two main types of Intermediary; Internet access and service providers and web hosting providers. These two categories of Intermediaries together provide the two essential services that form the backbone of interaction with the Internet ecosystem. Internet access and service providers (henceforth referred to as Internet service providers) provide the ICT infrastructure that allows people to connect to the Internet,

³⁶ OECD. 'The Economic and Social Role of Internet Intermediaries' (2010) pg.9

whereas web hosting providers (henceforth referred to as hosting providers) provide the tools that allow the generation, storage and dissemination of content over the Internet. All other categories of Intermediaries that have been identified by the OECD use the infrastructure and tools provided by these two main Internet Intermediaries. Therefore, particularly in terms of reviewing the interaction between Internet Intermediaries and a transition to a more network and information-based Information Society, it is clear that these two categories carry more weight and importance within the Internet ecosystem.

As per the OECD Internet Intermediary topology, Internet service providers are defined as *“Internet access providers, which provide subscribers with a data connection allowing access to the Internet through physical transport infrastructure”* and are distinguished from other Intermediaries that provide tools of access such as hosting providers³⁷. The category of hosting providers is defined by the OECD as *“firms that provide infrastructure for hosting or data processing services”* and include actors such as web hosting service providers and domain name registrars³⁸.

Before defining the role and importance of said Intermediaries, the OECD adopted topology for Internet Intermediaries should also be considered in light of the legislative framework in Turkey. For Internet service providers, it can be said that such Internet Intermediaries clearly fall under the scope of the terms “operator” as defined in the Electronic Communication Law and “access provider” as defined in the Internet Law.

However, with regard to the current legislative framework in Turkey, it is clear that the applicable definitions within the Internet Law does not provide such clarity with regards to hosting providers as defined under the OECD Internet Intermediary topology. As explained in the sections above, the term “hosting provider” in the Internet Law is defined as *“real or legal persons that provide or operate systems that*

³⁷ OECD. ‘The Economic and Social Role of Internet Intermediaries’ (2010) pg.11

³⁸ OECD. ‘The Economic and Social Role of Internet Intermediaries’ (2010) pg. 11

host services and content”, whereas “content provider” is defined as “*real or legal persons that produce, change and provide all information or data that is presented to users over the Internet*”.

Particularly for the OECD defined Internet Intermediary categories of Internet search engines and portals, E-commerce intermediaries and participative networked platforms, there is a lack of clarity regarding which definition of the Internet Law will apply. For some of these Intermediaries, such as search engines and portals, it is not always possible to say that they produce the content or data that is made available on their services. This is also the stance taken in the USA and the EU with provisions such as the Safe Harbour recognition and the protections under the EU Electronic Commerce Directive that have been afforded to such Intermediaries³⁹. On the other hand, it is also not possible to say that these other categories of Intermediaries provide comprehensive services that are akin to the services of hosting provider Intermediaries. Therefore, it can be said that there is a lack of clarity in distinguishing between different categories of Internet Intermediaries in Turkey as the definitions in the Internet Law does not provide for the variation in services that are provided under a modern Internet ecosystem.

The exact classification of such Intermediaries is important in Turkey as being classified as a hosting provider under the Internet Law will impose more extensive obligations on these entities. Additionally, it has been shown that a lack of certainty regarding the exact nature of their obligations and the scope of their responsibilities has an impact on the operations of Internet Intermediaries, particularly with regard to optimal investment for infrastructure and innovation, the willingness of new players to enter the market and self-adopted approaches to content filtering that may go beyond the extent legally required⁴⁰.

³⁹ OECD, ‘The Role of Internet Intermediaries in Advancing Public Policy Objectives’ (2011) pg. 41

⁴⁰ Joanna Hornik & Carmen Villa Llera. ‘An Economic Analysis of Liability of Hosting Services: Uncertainty and Incentives Online’ *Bruges European Research Papers* (2017) pg. 11

The lack of legal and regulatory certainty in terms of the scope of obligations and the applicability of the definitions and the impact that such uncertainty has on the operations of Internet Intermediaries will be further expanded below.

3.2.2. Impact and Role of Internet Intermediaries

The discussion below on the relationship between the impact of the current framework and the strategy goal of transitioning to an Information Society will further expand on the roles that Internet Intermediaries may play in these transitions – particularly within the context of the importance of local Internet Intermediaries. However, it is also important to establish the general importance of Internet Intermediaries and the role that they can play within the Internet ecosystem.

As they constitute the private sector element of the Internet ecosystem, Internet Intermediaries have been recognised as a key engine for economic and social development at both a global and national level⁴¹. The role that Internet Intermediaries play is also closely linked to the fact that the existence of Internet Intermediaries, their interactions and the strength of their environment have all been identified as factors that Internet-enabled innovation is built upon⁴².

The importance of Internet Intermediaries in terms of driving economic and social policy is not limited to their own value-generating operations, as they have also been identified as crucial partners for governments to cooperate with in order to develop, strengthen and uphold social policies relating to the Internet. The OECD has stated that such cooperation between governments and Internet Intermediaries is crucial to achieving the goals that were agreed upon by OECD members in the Seoul Declaration⁴³. The goals agreed upon in the Seoul Declaration include ensuring Internet

⁴¹ OECD. 'The Economic and Social Role of Internet Intermediaries' (2010) pg. 4

⁴² OECD. 'The Economic and Social Role of Internet Intermediaries' (2010) pg. 5

⁴³ OECD. 'The Economic and Social Role of Internet Intermediaries' (2010) pg. 5

access, higher levels of connectivity, expanding Internet use and user choice; all of which are goals that can be better achieved through cooperation with a functional and empowered Internet Intermediary ecosystem⁴⁴.

The open and decentralised nature of the Internet is a major reason why Internet Intermediaries are so closely connected to the development of the Internet economy and Internet social policy⁴⁵. This meant that for many categories of Internet Intermediaries, standards and practices that became guiding principles for policy originated in a bottom-up manner from the Intermediaries themselves. In this way, the Internet differs from sectors such as telecommunication where the policies guiding access, control and development was generally the result of top-down government regulation⁴⁶. Therefore, as Internet Intermediaries currently inhabit the spheres that governments are attempting to utilize and build upon, the experience and operational realities of such Intermediaries have become essential to understanding and developing these spheres in line with governmental social and public policy.

In addition to their role in support of general public policy, Internet Intermediaries also play an important role with regard to individuals operating within the Internet ecosystem. An OECD report into the role of Internet Intermediaries in public policy has concluded that Intermediaries are increasingly important and empower end-users in the Internet ecosystem⁴⁷. Participative networked platforms, a category under the OECD Internet Intermediary topology, provide unprecedented access for individuals to a very wide range of content. This, in turn has impacted the habits and methods of individual persons in how they create, disseminate, view and use knowledge and information⁴⁸. Furthermore, by providing new methods and tools of creation and

⁴⁴ OECD. 'The Economic and Social Role of Internet Intermediaries' (2010) pg. 5

⁴⁵ OECD. 'The Economic and Social Role of Internet Intermediaries' (2010) pg. 37

⁴⁶ OECD. 'The Economic and Social Role of Internet Intermediaries' (2010) pg. 37

⁴⁷ OECD, 'The Role of Internet Intermediaries in Advancing Public Policy Objectives' (2011) pg. 15

⁴⁸ OECD, 'The Role of Internet Intermediaries in Advancing Public Policy Objectives' (2011) pg. 43

communication the Internet Intermediaries have played the role of facilitating interactions, transactions and activities between third parties⁴⁹.

An important element of Internet Intermediary contributions to the development of social policy, digital economy and individual empowerment has been legal and regulatory measures such as liability limitations⁵⁰. The legal certainty afforded by such measures has allowed Internet Intermediaries to develop, thereby expanding the sphere and influence of the digital economy and Internet ecosystem⁵¹.

It is clear that Internet Intermediaries play an important role in the development of the Internet ecosystem. Due to the history and dispersed nature of the Internet, many types of Intermediaries have been pioneers in their areas of activity and have therefore cooperated to develop the principles and standards that have been adopted by their fields of activity. This has meant that Internet Intermediaries are both a valuable partner for governments in establishing and developing public policy and an important factor that grow the Internet ecosystem by empowering end-users with options for services and tools of connection, communication and content generation.

3.3. POTENTIAL FOR POSITIVE EFFECT

Having expanded upon the legislative and regulatory framework that governs the Turkish telecommunication and Internet sectors, it is clear to see that ensuring favourable conditions for consumers is a priority within the Turkish regulatory regime. This stance is also supported in the Strategy Documents that have guided the development of the institutional and legislative framework applicable to the telecommunication and Internet sectors.

⁴⁹ OECD, 'The Role of Internet Intermediaries in Advancing Public Policy Objectives' (2011) pg. 189

⁵⁰ Joanna Hornik & Carmen Villa Llera. 'An Economic Analysis of Liability of Hosting Services: Uncertainty and Incentives Online' *Bruges European Research Papers* (2017) Pg. 16

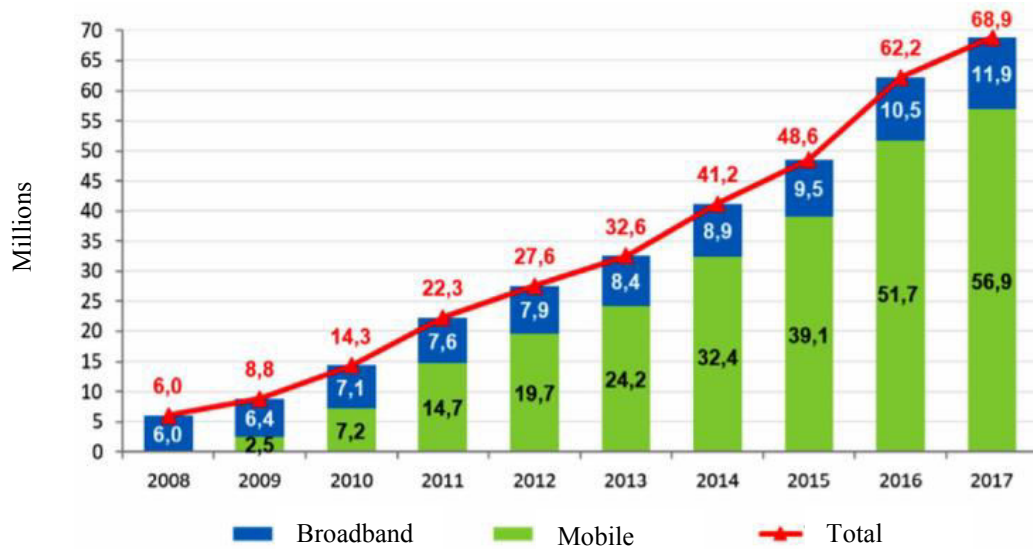
⁵¹ OECD, 'The Role of Internet Intermediaries in Advancing Public Policy Objectives' (2011) pg. 189

Within the scope of this work, there are two primary areas of positive effect that are considered relevant: rate of adoption of ICTs and Internet penetration, and pricing of the services.

As highlighted in the previous section on Strategy Documents, one of the main strategy goals that were identified for the ICT and Internet sectors in Turkey was increased adoption of the underlying technology. While this primarily required an increase in infrastructure investment across the country, its primary aim was an increase in the number of users making use of these technologies. To achieve this goal, previous Strategy Documents contained targets for the increase in the number of Internet users.

The figure below shows the increase in the number of Internet users in Turkey from 2008 to 2017. As it can be seen in the figure, the number of Internet users has increased from a total of 6 million users in 2008 to 68.9 million users in 2017. While the majority of the increase has been in the form of mobile Internet users, there has also been an increase in the total number of broadband Internet users in Turkey.

Figure 3.2. Increase in Turkish Internet Subscribers 2008 – 2017



Source: ICTA. Türkiye Elektronik Haberleşme Sektörü Pazar Verileri Raporu (2017)

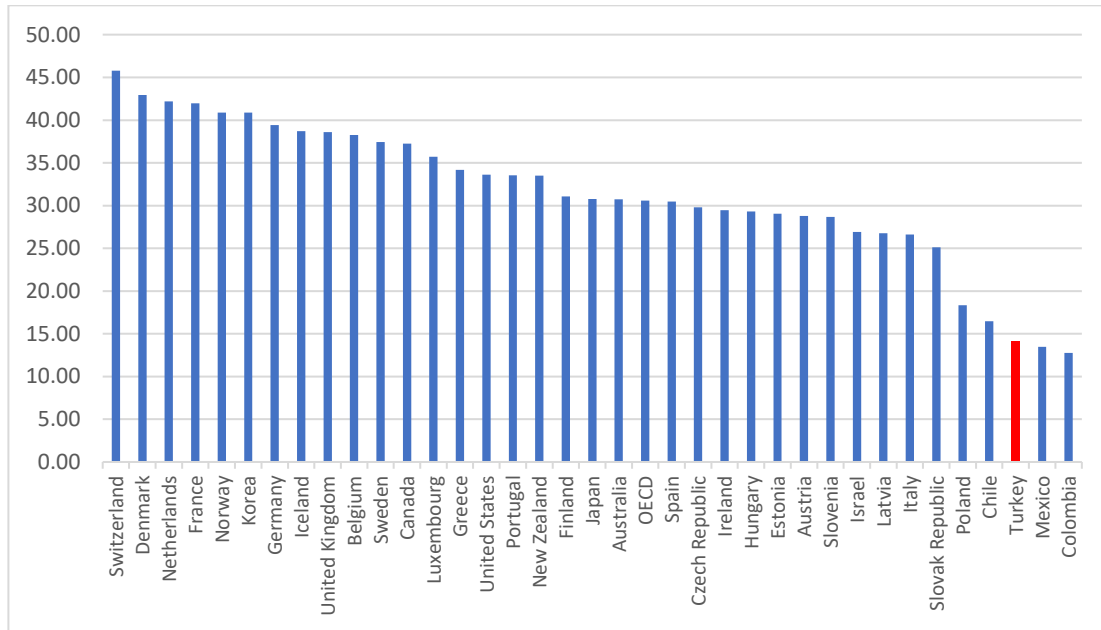
While exact causation cannot be established by only referring to the increase in the number subscribers, the increase in the total number of Internet subscribers does seem to indicate that the targets and methods that were identified in previous and current Strategy Documents have been successful in increasing the adoption of the underlying ICTs in Turkey.

However, in order to contextualise this rate of increase, the overall number of Internet users should be compared to the relevant figures in other OECD members. A review of the OECD data on Internet subscriptions ranks Turkey 34th out of 35 countries in terms of fixed broadband subscriptions per 100 inhabitants, whereas in terms of mobile broadband subscriptions per 100 inhabitants Turkey is ranked 30th out of 35 countries⁵².

Based on the extrapolations from the Internet subscriber data, the OECD has calculated broadband penetration rates across OECD member states. As seen in the figure presented below, the broadband penetration rate in Turkey ranks as one of the lowest amongst OECD members. Therefore, while there have been positive developments in terms of the adoption and use of the underlying ICTs in Turkey that can be attributed to the policies and legislation implemented as per the Strategy Documents, Turkey is still comparatively behind many of the other OECD member. Despite the positive developments, the underlying ICT indicators for Turkey still require growth and development in order to achieve some of the broader goals stated in the Strategy Documents.

⁵² Source: OECD, Broadband Portal, <www.oecd.org/sti/broadband/oecdbroadbandportal.html> (accessed 16.04.2018)

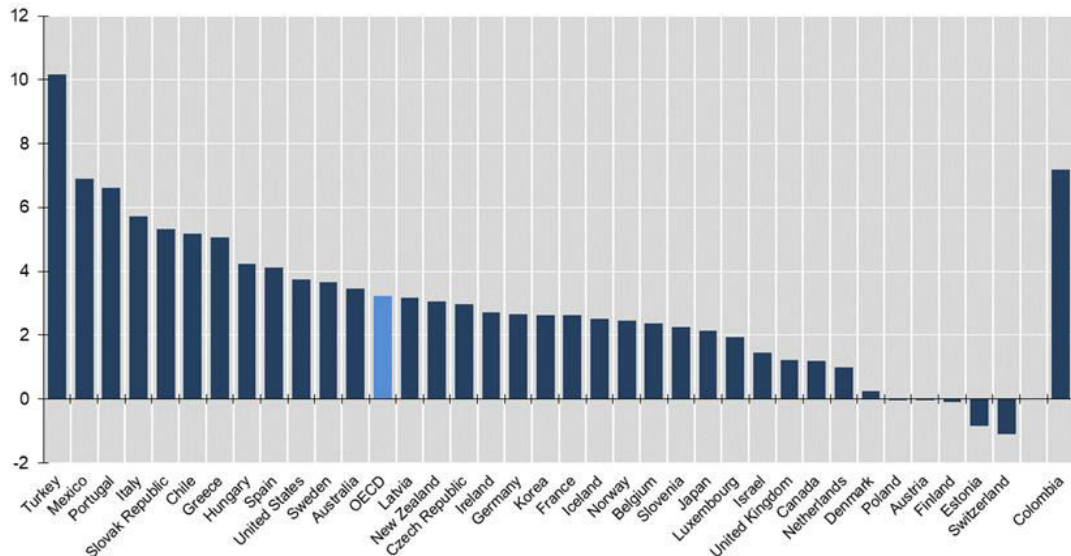
Figure 3.3. OECD Members Broadband Penetration Rates for 2017



Source: OECD, Broadband Portal, www.oecd.org/sti/broadband/oecdbroadbandportal.htm, February 2017.

However, despite the comparatively lower broadband Internet penetration rate and ratio of Internet-user subscriptions amongst OECD member states, OECD data also shows that the broadband penetration percentage increase per 100 inhabitants is also the highest in Turkey. While this may in part be due to the comparatively lower penetration rate in Turkey providing easier growth, it also shows that the conscious effort of the relevant public bodies to implement the goals of the Strategy Documents is having the intended effect of an increase in the penetration rates.

Figure 3.4. OECD Fixed Broadband Penetration Percentage Increase per 100 Inhabitants, June 2016 – June 2017



Source: OECD, Broadband Portal, www.oecd.org/sti/broadband/oecdbroadbandportal.htm

Another area of potential positive effect of the current institutional and legislative framework in Turkey is the area of pricing and affordability. As highlighted in the section relating to the Electronic Communication Law and its ancillary regulations, the Electronic Communication Law has adopted a stance of increasing access to electronic communication services by ensuring a level of affordability and competitiveness.

Studies carried out by the OECD into broadband and mobile Internet pricing across OECD member states has provided a better understanding of the range of affordability that can be found across the member states. The studies carried out by the OECD focus on both the actual prices of the provided services and the prices as adjusted for Purchasing Power Parities (“PPP”). The OECD defines PPPs as “*the rates of currency conversion that equalize the purchasing power of different currencies by eliminating the differences in price levels between countries. In their simplest form, PPPs are*

simply price relative that show the ratio of the prices in national currencies of the same good or service in different countries”⁵³.

Based on the OECD studies into prices for broadband and mobile Internet for low user brackets, with PPP adjusted prices Turkey ranks 7th out of 35 countries for fixed broadband prices and 4th out of 25 countries for mobile broadband prices⁵⁴. The fact that Turkey ranks well in terms of affordability of low user brackets that provide basic Internet access indicates that the policies of ensuring affordability to promote increased use and adoption of ICTs are currently succeeding. Particularly by ensuring that basic Internet access remains affordable, these policies also attempt to bridge the digital divide in Turkey and expand the opportunities of using such electronic communication technologies.

The positive impacts of the framework that is relevant to this work are mostly effects that primarily benefit consumers in Turkey. However, the institutional and legislative framework also have potentially positive effects on Internet Intermediaries as well. First of all, logically the increased number of Internet subscribers and the policies aimed at increasing ICT use and adoption would benefit Internet Intermediaries that provide such services by increasing the size of their potential market. While increased market volume may also increase the demand for the range of services provided by Internet Intermediaries, the provision and development of said services may be restrictively affected by the factors that will be discussed in the section below.

Additionally, both the Electronic Communication Law and the ancillary regulations contain measures that aim to prevent incumbent operators with significant market

⁵³ OECD website Purchasing Power Parities Frequently Asked Questions <<http://www.oecd.org/sdd/purchasingpowerparities-frequentlyaskedquestionsfaqs.htm>> (accessed 25.04.2018)

⁵⁴ OECD and Teligen, a division of Strategy Analytics Ltd. ‘OECD Fixed Broadband basket, Low user, including 20 GB / month. 0.250 Mbps and above, June 2017’; OECD and Teligen, a division of Strategy Analytics Ltd. ‘OECD Mobile broadband basket, Low user, including 100 calls + 500 MB, May 2017, VAT included’

power from restricting competition and to increase the competitive nature of the telecommunication and Internet sectors. Such measures include co-locations, number transferability and obligations relating to access and transfer⁵⁵.

3.4. POTENTIAL FOR RESTRICTING EFFECT

The previous section established that the current institutional and legislative framework has positive effects; particularly in the area of user ICT adoption and penetration rates in Turkey. The current framework also benefits Internet Intermediaries by fostering a competitive environment that is not solely dominated by incumbent operators. However, it should also be recognized that the elements of the institutional and legislative framework may also have a restricting effect on Internet Intermediaries.

These potential restricting effects may have different causes. Some will be the natural results of measures that were introduced to ensure the aforementioned positive effects of increased adoption, penetration and affordability that were implemented as per the previously discussed Strategy Documents. In jurisdictions where the telecommunication and Internet sectors are regulated, measures that are imposed to safeguard consumer rights or more general rights such as IP rights have been shown to increase operational burdens and costs for Internet Intermediaries⁵⁶. However, while recognising that such measures may have a restrictive effect on Internet Intermediaries, it is also important to note that they are necessary to ensure that the goals outlined in

⁵⁵ While the legislative framework does impose obligations on incumbent operators with regard to co-location and right of access, allegations have been made against operators such as Turk Telekomunikasyon A.Ş. stating that the operators are not fully carrying out these obligations. For further information please see the 2016 decision of the Competition Authority numbered 16-20/326-146 and dated 09.06.2016 that finds Türk Telekomunikasyon A.Ş. to be in violation of said obligations.

⁵⁶ Joanna Hornik & Carmen Villa Llera. 'An Economic Analysis of Liability of Hosting Services: Uncertainty and Incentives Online' *Bruges European Research Papers* (2017) Pg. 12

the Strategy Documents relating to access to technology, affordability and competition are realized⁵⁷.

However, other restricting effects can be independent from measures that are primarily intended to ensure that the positive effects in the Strategy Documents are realized. These other effects may either be caused by elements of the institutional and legislative framework that have directly restrictive application or indirectly by elements of the framework that lack defined certainty.

The access restriction procedure and the notice-and-takedown procedure under the Internet Law is the primary example of measures that have the potential to be directly restrictive on Internet Intermediary activity, as they require Internet Intermediaries to take actions to limit services, content and operations in Turkey. As explained above, the measures of the Internet Law that lay out the access restriction procedure impose certain obligations on Internet Intermediaries. These obligations are primarily the duty to implement the judicial and administrative decisions regarding content that is found to be contrary to the applicable provisions of the Internet Law.

While access restriction and notice-and-takedown models are not necessarily always unduly restrictive in themselves, the regime that has been established by the Internet Law has the potential to have restrictive effect on the operations of Internet Intermediaries. For Internet service providers, Article 6/A requires that “*all kinds of software and hardware that are necessary for the implementation of the decisions*” must be obtained by the Internet Service Providers. This obligation may be regarded as particularly burdensome in light of the URL-based restriction method that was introduced to the Internet Law in 2014. Applying URL-based restriction will require significant infrastructure upgrades and investment by Internet service providers, as the

⁵⁷ Niver Bengü Karabacak. ‘Telekomünikasyon Hizmetleri Pazarında Fiyat Düzenlemeleri: Fiyat Sıkıştırması Sorunu. (2007) pg. 9

restriction required Internet service providers to be able examine the entire traffic online⁵⁸.

Furthermore, for encrypted Internet content that cannot be readily filtered there is a lack of certainty as to the exact scope of responsibility of Internet service providers. Defining the boundaries of this scope of responsibility for Internet service providers has become complicated by the revisions to the Internet Law in 2014. As per the 2014 revisions, the text specifying that Internet service providers had to only restrict access to illegal content “*to the extent that they have the possibility of blocking such access in technical terms*” was removed. Therefore, as per the provisions of the Internet Law, Internet service providers remain under the obligation to make the required investments to keep their infrastructure up-to-date and able to deal with the technical requirements of blocking all forms of access to illegal content.

The removal of the phrase “*to the extent that they have the possibility of blocking such access in technical terms*” also causes uncertainty with regard to the scope of responsibility for hosting providers in relation to removing illegal content. As per Article 5(2) of the Internet Law, hosting providers are under the obligation to remove illegal content upon being notified in accordance with Articles 8 and 9 of the Internet Law. The Internet Law defines the removing of illegal content as “*the content being removed from the servers or the hosted content by content or hosting providers*”. Therefore, it is unclear whether only applying geographically-specific blocking measures rather than physically removing the content would absolve hosting providers of liability⁵⁹. Should the liability for removal of content be interpreted strictly, this would require that hosting providers establish the required technical infrastructure to

⁵⁸ Mehmet Bedii Kaya. ‘The regulation of Internet intermediaries under Turkish law: Is there a delicate balance between rights and obligations?’ *Computer Law & Security Review* (2016) pg. 765.

⁵⁹ Mehmet Bedii Kaya. ‘The regulation of Internet intermediaries under Turkish law: Is there a delicate balance between rights and obligations?’ *Computer Law & Security Review* (2016) pg. 770.

ensure that all illegal content could be identified and removed in accordance with the definition provided by the Internet Law.

Therefore, the access restriction and the notice-and-takedown model as implemented by the Internet Law does arguably place additional financial and administrative burdens on the relevant Internet Intermediaries. Even though the notice-and-takedown model is similar to the model implemented in the EU pursuant to the E-Commerce Directive, the extended scope of administrative and technical responsibility can be categorized as having more restrictive effect. These potentially restrictive effects are emphasized by the fact that the Internet Law has foreseen a broad range of judicial and administrative fines on Internet service providers and hosting providers that fail to adhere to their obligations established under the Law. Furthermore, the Internet Law also states that Internet service providers that fail to adhere to administrative access blocking orders may have their operating licenses revoked by the ICTA. The existence of these sanctions may place a greater burden on local Internet Intermediaries to remain cautious and interpret the provisions of the Internet Law more broadly so as to avoid facing such sanctions.

The potentially restrictive effect of the current access restriction and notice-and-takedown regime may have been further expanded by the 2014 and 2015 revisions to the Internet Law. Article 8/A was incorporated in 2015 and has increased the grounds and situations where access restriction decisions can be issued, thereby increasing the number of scenarios where Internet Intermediaries may be requested to filter content. Furthermore, pursuant to revisions to the Internet Law in 2014, the notice-and-takedown model under Article 9 was also amended. With the 2014 revisions to the Internet Law, the mandatory follow-up element of the notice-and-takedown process was abolished. Pursuant to the revisions, persons making an application under Article 9 can apply directly to the criminal court of peace rather than making an application to the content or hosting provider.

Article 9/A was also incorporated to the Internet Law in 2014, and this provision allows for persons to apply directly to the ICTA in situations where they claim that the Internet content is in violation of their right to privacy. As per Article 9/A (3), the ICTA then notifies this application to the APA for implementation within four hours of the receipt of notification. As per the provisions of Article 9/A, the applicant must follow up their application to the ICTA with a legal application to the criminal court of peace within 24 hours, and if they fail to do so the access restriction decision is supposed to automatically expire.

Therefore, particularly as a result of the 2014 and 2015 revisions to the Internet Law, both the scenarios where access restriction/removal decisions can be issued have been increased and the scope of responsibility of Internet Intermediaries regarding restricting and removing such content has been broadened. Furthermore, the number of competent authorities that can receive such applications and ask the ICTA to issue rulings to be notified to Internet Intermediaries have also increased.

In addition to the directly restrictive nature of the access restriction measures, the scope of liability established under the Internet Law also has the potential to be restrictive on Internet Intermediary activity. In principle the Internet Law has adopted a liberal liability regime that is modelled on the EU's E-Commerce Directive⁶⁰. However, while the Internet Law does explicitly state that Internet service providers are not under the obligation to actively monitor their system for any illegal activity, there is a degree of uncertainty regarding the obligations of hosting providers.

While Article 5 of the Internet Law does state that hosting providers are not liable for controlling the content that they host or for investigating said content for illegal activities, Erdem and Beceni argue that in practice there is still a tendency to hold

⁶⁰ Mehmet Bedii Kaya. 'The regulation of Internet intermediaries under Turkish law: Is there a delicate balance between rights and obligations?' *Computer Law & Security Review* (2016) pg. 764.

hosting providers liable for illegal content⁶¹. Kaya presents that this practice may be caused by the fact that the term hosting provider as defined in the Internet Law is too broad and currently can be applied to Internet Intermediaries that go beyond acting as “mere conduits” in terms of hosting content⁶². Erdem and Beceni also argue that the measures of the Law numbered 5846 on the Intellectual and Artistic Works (hereafter referred to as “IP Law”) that relate to online copyright infringement may also lead to liability being imposed on hosting providers⁶³. As the IP Law does not define the terms of service provider, hosting provider and content provider, the liability regime regarding the notice-and-takedown process and the judicial process implemented pursuant to the defined limitation of liability means that the liability regime in Turkey deviates somewhat IP Law is not clear. In fact, the relevant provisions of the IP Law have previously been applied against Internet Intermediaries that fall under the definition of hosting providers as established by the Internet Law.

The effect of a vaguely from the “mere conduit” exemption that is implemented in the EU as per the E-Commerce Directive. This deviation in terms of liability causes a degree of lack of certainty regarding the exact scope of obligations and liabilities for Internet Intermediaries in Turkey; particularly Intermediaries that fall under the scope of hosting provider as per the Internet Law. In situations of such legal certainty regarding Internet Intermediary liability, it has been shown that there is a trend for the Intermediaries – the majority of which are private commercial enterprises – to preemptively impose restrictions and filtering to their operations to the detriment of content providers that are making use of their services⁶⁴. Furthermore, it has also been

⁶¹ Nilay Erdem & Yasin Beceni, ‘Online Intermediaries Case Studies Series: Turkey (eBay Case)’ in Urs Gasser and Wolfgang Schulz, *Governance of Online Intermediaries: Observations From a Series of National Case Studies* (2015) <https://publixphere.net/i/noc/page/NoC_Online_Intermediaries_Research_Project_Synthesis> (accessed 18.04.2018).

⁶² Mehmet Bedii Kaya. ‘The regulation of Internet intermediaries under Turkish law: Is there a delicate balance between rights and obligations?’ *Computer Law & Security Review* (2016) pg. 769

⁶³ Nilay Erdem & Yasin Beceni, See note 59.

⁶⁴ Ronald Deibert, John Palfrey, Rafal Rohonzinski, Jonathan Zittrain. *Access Controlled, The Shaping of Power, Rights and Rule in Cyberspace* (MIT Press, 2010) pg. 74

shown that a lack of certainty regarding Internet Intermediary liability and obligations also drive up the operational costs of Intermediaries as they are required to make increased investment to try and ensure that they will not face administrative and/or legal action⁶⁵.

The Internet law also contains provisions that have the potential to impose additional costs and administrative burdens on Internet Intermediaries. One such provision is the transparency requirement that is set out under Article 3 of the Internet Law. This requirement requires Internet service providers and hosting providers to provide up-to-date identification information in a manner that users can access said information on the Internet. Furthermore, the requirement also states that legal notifications can be made via e-mail and other communication methods to Internet Intermediaries over the information obtained from the communication tools, domain names, IP addresses and other communication tools. The Internet Law does not make a distinction between these different methods of notification, thereby leaving the method of notification as to any of the obligations of the Internet Intermediaries vague⁶⁶.

While maintaining this information and ensuring that all of the communication tools are regularly monitored for official notifications may not place an economic burden on larger Intermediaries, they may have a more burdensome effect on medium and small-scale operations.

The requirement of mandatory membership to the Access Providers Union is another measure that may have restrictive effect. As the membership is mandatory, every Internet service provider operating in Turkey is under the obligation to pay membership dues to an industry association that was formed by legislation, rather than bottom-up by industry stakeholders. Furthermore, the provisions of the Internet Law require that all Internet service providers bear the costs of the infrastructure required to implement

⁶⁵ Joanna Hornik & Carmen Villa Llera. 'An Economic Analysis of Liability of Hosting Services: Uncertainty and Incentives Online' *Bruges European Research Papers* (2017) pg. 13

⁶⁶ Nilay Erdem & Yasin Beceni, see note 59.

access restriction decisions and the costs of measures to prevent all alternative access methods to content that has been blocked pursuant to an access restriction decision. All of these measures have the potential to impose operational burdens and further costs on local Internet Intermediaries; costs that may then be passed on to the users in Turkey.

The Electronic Communication Law, the Internet Law and other legislative measures also place other obligations on Internet Intermediaries, some of which could have direct and indirect restrictive effects. As a primary consideration, both legislative measures include provisions establishing a general obligation to provide information to the ICTA. The relevant provisions in both legislative measures does not define the scope of this obligation. Therefore, the ICTA has been granted broad discretion as to the information they can request for Internet Intermediaries and similarly broad discretion as to the measures that they can request the Intermediaries implement. The undefined nature of this general obligation can also be said to introduce an element of legal and regulatory uncertainty as to the operations of local Internet Intermediaries.

Similarly, as detailed in Section 1, the legislative framework also imposes extensive traffic retention requirements on Internet service providers and hosting providers. In addition to having to collect and retain traffic information, as per Article 8/A of the Internet Law, Internet service providers and hosting providers are also under the obligation to provide judicial authorities with all necessary information required to identify suspects that are being investigated for crimes that fall under Article 8/A. Furthermore, as Internet Intermediaries that are also subject to the Electronic Communications Law, they are also under the obligation to adhere to the retention and data protection requirements that are set out under those measures.

The combination of the aforementioned broad obligation of cooperation with the ICTA and the obligations relating to information retention has the potential to increase the infrastructure and administrative costs of local Internet Intermediaries. This, in turn,

may lead to such higher operational costs being reflected onto users in Turkey by Internet Intermediaries.

As it was highlighted in Section 1, the operations of Internet Intermediaries are subject to the purview of a number of different Ministries and public bodies. Previous examples of different Ministries and public bodies regulating the sphere of telecommunication, Internet and data protection have led to complications in Turkey where different Ministries have drafted and enacted regulatory measures that have later been challenged before administrative courts⁶⁷. During the administrative challenge processes, these measures that sometimes impose contradictory obligations remained in effect and thus placed a greater operational burden on stakeholders. Furthermore, it has also been the case that measures passed by different Ministries and public bodies have implemented different requirements as to information retention and reporting that are applicable to Internet Intermediaries.

The fact that many of these measures have been implemented through regulations that are passed by individual Ministries and/or competent public bodies indicate the likelihood that measures relating to what is fundamentally the same area of regulation were drafted and enacted without the requisite consultation and cooperation across all competent Ministries and bodies. The institutional schizophrenia that can be said to result from this situation and an analysis of some of its more concrete consequences will be reviewed further in Section 4.

In addition to potential restrictive effect on Internet Intermediaries that provide the underlying services forming the backbone of Internet access, the measures of the

⁶⁷ For example the cancellation by the Turkish Constitutional Court of the previous provision in the Electronic Communication Law relating to the processing and confidentiality of personal data, the ruling of which was published in the Official Gazette numbered 29072 and dated 26.07.2014, and the provisions of the Regulation on Processing and Ensuring the Privacy of Personal Health Data that was published by the Ministry of Health that were challenged before administrative courts and were subsequently amended by the Ministry of Health with the regulation published in the Official Gazette numbered 30250 and dated 24.11.2017.

Internet Law also have the potential to restrict the activities of other categories of Intermediaries that mainly focus on generating the products and content that add value to the Internet. The issues that may be caused due to the lack of clarity of the term “hosting provider” as per the Internet Law have already been presented. The Internet Law also places obligations and liability on content providers. Most importantly, content providers are also subject to the broadly defined obligation to provide the ICTA with the requested information and implement the measures requested by the ICTA.

Additionally, as per the revised text of the provisions of the Internet Law laying out the notice-and-takedown, applicants no longer have to initially apply to the content providers. Instead, as per Article 9 applicants can directly apply to the criminal court of peace and as per Article 9/A the applicants can directly apply to the ICTA. As the subsequent judicial or administrative decisions will be notified to the APA, there may be cases where the content provider has not been provided with any notice or warning as to the decision to restrict access to the content that they created and/or disseminated. In such a situation, depending on the scope of the restriction of access, it may take a period of time for the content provider to realise that access to specific content has been blocked from Turkey. This may have the effect of discouraging content providers from generating content or investment into locally-relevant and accessible content in Turkey.

A further potential manifestation of such far-reaching regulatory measures relating to traffic retention and providing information to the ICTA can be more informed and privacy-conscious consumers preferring Internet Intermediaries that operate outside of Turkey to the extent that is possible. Such a preference may not be possible for Internet Intermediaries that provide country-specific services, such as Internet service providers and certain cases of payment systems. However, particularly for Intermediaries such as hosting providers, consumer concerns over privacy, access and information shared with government bodies and institutions may cause a preference for

While the policies of the relevant institutions and their reflection in legislation has had a demonstrable positive impact in areas such as penetration and adoption of ICTs, it is also clear that the existence of certain measures in the Internet Law and the absence of clarifying ancillary regulations to define aspects of the legislative framework have the potential to cause restrictive effects on Internet Intermediaries. Such restrictive effects may manifest as either unwillingness of new actors to enter the market, slower development of the Internet ecosystem or on higher operational costs being reflected in the prices offered by local Internet Intermediaries to consumers in Turkey.

However, highlighting the fact that the current institutional and legislative framework may cause restrictive effects, particularly on market entry and operations of Internet Intermediaries, should not be construed as a disproportionate criticism of the entire framework in place in Turkey. It is without a doubt that both the telecommunication and the Internet sectors are very suitable for the emergence of natural monopolies; particularly due to the initial costs of investing in the necessary hardware and infrastructure⁶⁸. Therefore, the existence of at least some level of state intervention and regulation is necessary to be able to ensure a fair and competitive marketplace.

In light of the above, it can be argued that the current institutional and regulatory framework in Turkey does have the potential to have restrictive effects on the operations and development of Internet Intermediaries. Whether such restrictive effects can actually be identified within the scope of the current operations of Internet Intermediaries in Turkey will be further detailed in Section 4. However, in order to better illustrate some of the potential restrictive effects that have been discussed, this work has focused on trying to identify comparison points that highlight the existence of restrictions placed on Turkish Internet Intermediaries. In order to better achieve this, the Case Study presented in the next section has focused on the impact that regulatory

⁶⁸ Niver Bengü Karabacak. 'Telekomünikasyon Hizmetleri Pazarında Fiyat Düzenlemeleri: Fiyat Sıkıştırması Sorunu. (2007) pg. 9

uncertainty and restrictive elements of regulation may have on actual hosting costs in Turkey.

SECTION 4

4. DISCUSSION

4.1. THE RESTRICTIVE NATURE OF THE INSTITUTIONAL AND LEGISLATIVE FRAMEWORK

This section will expand on trying to determine the actual effect that the institutional and legislative framework may be having on the Strategy Goals of transitioning to an Information Society.

Building on the potential restrictive effects that were reviewed in the previous section, this section will begin with a discussion of more concrete indicators as to the actual restrictive effect the institutional and legislative framework is having on Internet Intermediaries in Turkey. This section will also present a Case Study focusing on a comparative analysis of hosting prices in Turkey, so as to better illustrate the existence of issues that are impacting the operations of local Internet Intermediaries.

Following a discussion of more concrete examples of the restrictive effects, this section will further explore the concept of the Information Society and the role that Internet Intermediaries play in transitioning to such a society.

4.1.1. Provisions That Have Direct Restrictive Effect and Censorship of Internet Content in Turkey

As discussed in the previous section, the current institutional and legislative framework has elements that can be regarded as directly restricting the operations and development of Internet Intermediaries in Turkey. In Section 3, the measures that had the potential to have a direct restrictive effect were identified as the measures relating to the access

restriction procedure and the notice-and-takedown procedure defined under the Internet Law.

While such procedures are not measures that have an inherent and automatic restrictive effect, the disproportionate implementation of the measures combined with the extensive administrative and technical obligations placed on the Internet Intermediaries can cause undue restrictive effect. As explained in Section 3, the Internet Intermediaries are under the obligation to make the investments required to implement the judicial and administrative decisions notified to them and ensure that all alternative methods of accessing said content is prevented. This includes monitoring their networks for circumvention methods such as proxies, VPNs, DNS-based filters and ensuring that their infrastructure is always up-to-date and has the technical capacity to prevent such alternative methods of access. Kaya highlights that this obligation is strictly implemented in Turkey and that it was the basis of Internet service providers in Turkey blocking access to Google DNS and Twitter IP addresses in Turkey following a court decision issues in 2014⁶⁹.

In order to better determine the true impact of elements of the framework that may have direct restrictive effect, the implementation of the access restriction regime in Turkey must be reviewed further. If the measures of the Internet Law can be said to be implemented in a disproportionate manner, this will mean that Internet Intermediaries and content providers are being unduly restricted in terms of their operations in Turkey.

It should be noted that there is limited literature – particularly in the English language – regarding the actual impact the institutional and legislative framework has on Turkish Internet Intermediaries has been limited. While there have been primary resources that discuss the element of the Internet Law that can be construed as restrictive, most of these resources have focused on the element of restriction of fundamental rights

⁶⁹ Mehmet Bedii Kaya. ‘The regulation of Internet intermediaries under Turkish law: Is there a delicate balance between rights and obligations?’ *Computer Law & Security Review* (2016) pg. 767.

through censorship. However, the criticisms voiced against the provisions of the Internet Law have argued that the provisions of the law and the implementation of the access restriction regime within the Law have been disproportionately restrictive⁷⁰.

Akdeniz and Altıparmak argue that the regime introduced by the Internet Law fails to adhere to standards of proportionality; particularly with regard to the disproportionate implementation of the access restriction measures⁷¹. Their argument focuses on the claim that the Turkish courts and other competent bodies do not observe a balance of rights that are required to maintain proportionality, even in situations where an access restriction order is issued against an entire website rather than specific content⁷².

Akgül and Kırılıdoğ have listed examples of the access restriction regime being implemented in disproportionate ways, in terms of either implementing a restriction on the entire website or implementing a restriction for an indeterminate period of time or both. These examples include restriction of access to Eksisozluk.com, Youtube.com, Wordpress.com, Ateizm.org, Alibaba.com, Egitimsen.org.tr, Geocities.com, Blogger.com, Sites.google.com, Facebook and Twitter⁷³. Many of the examples provided by Akgül and Kırılıdoğ are websites that would fall under different categorisations of Internet Intermediaries as per the OECD topology, particularly Internet portals and Participative networked platforms. Therefore, disproportionate implementation of the access restriction regime, particularly if it is intended for only specific content on various larger platforms, poses the risk of directly restricting Internet Intermediary operations in general. Kaya has also highlighted the potentially

⁷⁰ This work will only present a brief summary of the criticism of the provisions and implementation of the Internet Law in terms of censorship and restriction of fundamental rights. For a more detailed examination, see Yaman Akdeniz and Kerem Altıparmak, *Internet: Restricted Access – A Critical Assessment of Internet Content Regulation and Censorship in Turkey* (İmaj, 2008) and Mehmet Bedii Kaya, *Teknik ve Hukuki Boyutlarıyla İnternete Erişimin Engellenmesi* (On İki Levha, 2010).

⁷¹ Yaman Akdeniz & Kerem Altıparmak, *Internet: Restricted Access – A Critical Assessment of Internet Content Regulation and Censorship in Turkey* (İmaj, 2008), pg. 51

⁷² Yaman Akdeniz & Kerem Altıparmak, *Internet: Restricted Access – A Critical Assessment of Internet Content Regulation and Censorship in Turkey* (İmaj, 2008), pg. 53

⁷³ Mustafa Akgül & Metin Kırılıdoğ. 'Internet Censorship in Turkey' *Internet Policy Review Volume 4 Issue 2* (2015), pg. 7

unjust nature of the implementation of the access restriction regimes as per the Internet Law by referring to the court ruling against Blogger.com and how the implementation of said order also restricted access to all of the other blogs hosted on the website⁷⁴. Studies into the situation in Turkey also suggests that the courts still tend to issue a restriction of access order against the entire website, rather than specific offending material⁷⁵.

The decisions of the Turkish Constitutional Court in 2014 regarding the access restriction decisions implemented on Twitter and Youtube also provided some insight into the judicial interpretation that restricting access to an entire website could be construed as a disproportionate implementation. Others have also made reference to the ECHR ruling in the *Ahmet Yıldırım v. Turkey* case as external affirmation that the restriction regime as per the Internet Law has the potential to be implemented in a disproportionate manner⁷⁶.

Akdeniz, Altıparmak and Kaya also highlight that such disproportionality is emphasized the fact that the access restriction model itself is not an efficient method of preventing the existence of such infringing content. Kaya states that despite the restriction of access order implemented against Youtube.com, it remained one of the most visited websites from Turkey⁷⁷. Akdeniz and Altıparmak also point out that for almost all cases of access restriction, circumvention of the restrictions is possible and the content continues to be accessed from Turkey⁷⁸. This, Akdeniz and Altıparmak

⁷⁴ Mehmet Bedii Kaya, *Teknik ve Hukuki Boyutlarıyla İnternete Erişimin Engellenmesi* (On İki Levha, 2010), pg. 30

⁷⁵ Ronald Deibert, John Palfrey, Rafal Rohozinski, Jonathan Zittrain. *Access Controlled, The Shaping of Power, Rights and Rule in Cyberspace* (MIT Press, 2010) pg. 250

⁷⁶ Gonenc Gurkaynak and others. 'Exploring New Frontiers in the Interface between Free Speech and Access Bans' *European Journal of Law and Technology* (2014) <<http://ejlt.org/article/view/282/425>>

⁷⁷ Mehmet Bedii Kaya, *Teknik ve Hukuki Boyutlarıyla İnternete Erişimin Engellenmesi* (On İki Levha, 2010), pg. 141

⁷⁸ Akdeniz & Altıparmak (2008), pg. 51

argue, shows that the main purpose of the access restriction regime is actually state-sponsored censorship.

It is clear that such disproportionate use of the access restriction and notice-and-takedown procedures will have a number of unduly restrictive effects on Internet Intermediaries operating in Turkey. First and foremost, disproportionate use means additional burdens on Internet service providers and hosting providers that are under the obligation to ensure such content is restricted/removed and that their infrastructure is kept up-to-date and able to carry out the requirements of the Internet Law.

The processes foreseen in the Internet Law for when the initial judicial or administrative decisions become null and void is another problem regarding the implementation of the access restriction and notice-and-takedown procedures in Turkey. As detailed in Section 1, the Internet Law contains provisions outlining the situations where access restriction decisions issued by the courts or as administrative measures become null and void should. However, in practice, despite such situations taking place (such as the offending content being removed or the competent court issuing a final verdict that the content does not constitute a crime) the access restriction orders are not regarded as automatically null and void and removed as required. Therefore, even though the Internet Law requires these restrictions to be removed after the underlying decision has been rendered null and void, it is regularly observed that the restrictions are not removed.

The rulings of the courts are also deemed to be insufficient, with the ruling most regularly just citing the relevant provisions of the Internet Law and issuing the final verdict for the restriction of access⁷⁹. Therefore, the accused content providers are generally left without an explanation as to the grounds and reasons that required the access restriction ruling. The situation is even more problematic if the access restriction

⁷⁹ Ronald Deibert, John Palfrey, Rafal Rohonzinski, Jonathan Zittrain. *Access Controlled, The Shaping of Power, Rights and Rule in Cyberspace* (MIT Press, 2010) pg. 350

has been implemented pursuant to an administrative decision, with the ICTA online database for restricted website merely stating that an administrative decision has been issued against the website but not listing the grounds the decision was based on. Furthermore, as stated in the Section 1 discussion about the Internet Law, the current legislative framework also allows other Ministries and public bodies to issue administrative decisions for restriction of access, thereby further reducing the transparency of the access restriction implementations. Research carried out by the ONI has also expressed the difficulties of accessing the content of these decisions; both by the website owners and their legal representatives⁸⁰.

It should be noted that due to the nature of the access restriction and notice-and-takedown procedures, there is a lack of reported cases that detail such decisions and appeals made against them. However, looking at the transparency report that is regularly published by Twitter.com may be used as an indication of the high volume of removal orders that stem from the frequent and disproportionate implementation of the provisions of the Internet Law. As per the report published by Twitter, Turkey ranked highest in terms of the number of removal requests submitted to Twitter in 2017 with a total of 1,181 courts orders and 5,823 other legal removal requests from government bodies⁸¹.

Studies into Internet Intermediary liability has shown that when faced with liability that has not been clearly labelled and the potential for sanctions, Intermediaries may adopt pre-emptively restrictive strategies with regard to removing content or refusing services to users⁸². The combination of the liabilities and obligations imposed on

⁸⁰ Ronald Deibert, John Palfrey, Rafal Rohonzinski, Jonathan Zittrain. *Access Controlled, The Shaping of Power, Rights and Rule in Cyberspace* (MIT Press, 2010) pg. 351

⁸¹ Figures obtained from Twitter Removal Requests Reports for January to June 2017 <<https://transparency.twitter.com/en/removal-requests.html#removal-requests-jan-jun-2017>> and June to December 2017 <<https://transparency.twitter.com/en/removal-requests.html#removal-requests-jul-dec-2017>>

⁸² Ronald Deibert, John Palfrey, Rafal Rohonzinski, Jonathan Zittrain. *Access Controlled, The Shaping of Power, Rights and Rule in Cyberspace* (MIT Press, 2010) Pg. 79

Internet Intermediaries as per the Internet Law and the disproportionate implementation of the access restriction provisions may also lead to a similar situation in Turkey, where Intermediaries attempt to avoid potential sanctions and pre-emptively implement measures that filter types of content and/or types of users they offer services to.

In light of the arguments presented in this section, it can be said that there is a visible trend where the access restriction and notice-and-takedown processes in Turkey are applied in a disproportionate manner. As discussed above, the disproportionate application can have directly restrictive effects on the operations and development of Internet Intermediaries, particularly with due to their technical obligations and the scope of services that may be impacted when access is restricted. These effects may manifest in increased operational costs, lower levels of local content and fewer local content creators and Internet Intermediaries adopting a pre-emptive and restrictive approach themselves so as to limit their own liability.

In addition to the access restriction and notice-and-takedown processes, the Safe Internet Service initiated by the ICTA may also have restrictive effects on Internet Intermediary operations. With the 2011 By-Law on the Principles and Procedures Concerning the Safe Internet Service, the ICTA required that Internet service providers provide a package that would filter harmful Internet content for child and family profiles. The content that is to be filtered on either profile is based on lists notified to the Internet service providers by the ICTA, with the content of the list determined by the Safe Internet Service Working Board that operated under the Ministry of Family and Social Policies. Any changes to the lists for the profiles are notified to the Internet service providers who are under the obligation to apply the updates and maintain their systems accordingly. As per the By-Law, Internet service providers must provide the filtering service to their users for free and are under the obligation to ensure that their technical systems are able to implement the required filtering for each profile. Thus, in addition to the access restriction and notice-and-takedown procedures, there is another

procedure that requires Internet Intermediaries to limit and restrict services and content that may contribute to the development and growth of the Internet ecosystem.

4.1.2. Indirectly Restrictive Nature of the Framework

In addition to the directly restrictive effects of the institutional and legislative framework, the obligations and liability regime established by the framework also have a number of effects that can indirectly restrict the operations and development of Internet Intermediaries.

As discussed in Section 3.4, uncertainty regarding the scope of liabilities of Internet Intermediaries may lead to indirect restriction on the operations and development of the Intermediaries. These restrictions can be in the form of increased operational costs to try to mitigate any potential sanctions or self-imposed scaling back of services and products so as to avoid potential sanctions or issues of liability. The administrative and judicial fines that can be imposed on Internet Intermediaries as per the Internet Law also factor into these indirect restrictions. The range of the value of the fines is quite broad, with the higher fines in the Internet Law reaching 100,000 TRY per violation. Therefore, in light of legal uncertainty on the scope of liability, it is understandable if Internet Intermediaries exercise caution and pre-emptively implement policies that restrict their own operations and the content/users that they provide a platform to.

Studies into Internet Intermediary liability has shown the existence of a trend for Internet Intermediaries to implement such self-imposed restrictions due to legal uncertainty and the overarching threat of sanctions⁸³. LinkedIn using IP-based blocking against Syrian users and Twitter using country-based restrictions for content are examples of Intermediaries pre-emptively restricting their services so as to minimize

⁸³ Ronald Deibert, John Palfrey, Rafal Rohozinski, Jonathan Zittrain. *Access Controlled, The Shaping of Power, Rights and Rule in Cyberspace* (MIT Press, 2010) pg. 77

the risk of sanctions. As the scope of authority granted to the ICTA by the legislative framework can be considered to be quite broad and as the sanctions that can be implemented are high, it is not illogical to argue that local Internet Intermediaries in Turkey might choose to also pre-emptively apply such self-restrictive practices.

The current institutional and legislative framework indirectly leading to self-imposed restrictions may also lead to further negative effects on the Internet ecosystem. As Internet Intermediaries make choices to restrict services based on the possibility of sanctions, the possibility will also arise that other financial considerations are also taken into account by such Intermediaries. Pre-emptive self-restriction paths the way for Intermediaries “optimising their client base” in order to minimise regulatory issues and financial burdens⁸⁴. While the Electronic Communication Law does contain the obligation of equal treatment, the Internet Law does not contain such a provision. Furthermore, the obligations on Internet service providers and hosting providers to ensure that access restriction orders are carried out and Internet service providers’ obligations to prevent all alternative forms of access may also be presented as justification as to such optimization. It should also be noted that Internet service providers can only filter content for grounds established in the Internet Law or in accordance with the Safe Internet Service established by the ICTA. Therefore, any such self-imposed restrictions must still adhere to the scope established by the legislative framework.

In light of the above, it can be said that the current framework may cause self-imposed restrictions by local Internet Intermediaries in Turkey. Primary reasons behind such self-imposed restrictions are the legal uncertainty regarding the regime of liability and the scope of obligations and the regulatory overreach that has been granted to the ICTA in terms of the right to request information or request the implementation of measures. The undefined scope of liability for Internet Intermediaries – particularly hosting

⁸⁴ Ronald Deibert, John Palfrey, Rafal Rohonzinski, Jonathan Zittrain. *Access Controlled, The Shaping of Power, Rights and Rule in Cyberspace* (MIT Press, 2010) pg. 79

providers – is in contradiction to the recommendations of the OECD and the principles listed in NETmundial. As per the OECD Council Recommendation on the Principles for Policy Making, the importance of the definition and limitation of liability is emphasized⁸⁵. The importance of defining and limiting Internet Intermediary liability is also a feature of NETmundial, citing it as a necessary element of promoting economic growth, innovation and the free flow of information⁸⁶.

In addition to the self-imposed restrictive implementations that are indirectly caused by the framework, another effect restricting Internet Intermediaries and the Internet ecosystem in Turkey may be consumer preferences. Both due to the aforementioned likelihood of local Internet Intermediaries in Turkey self-imposing more restrictive and selective policies and due to the broad obligations imposed by the Internet Law to supply the ICTA with any requested information, content producers in Turkey may prefer the services of Internet Intermediaries abroad. In fact, a review of Internet Intermediary filtering has shown that users in such countries do prefer to engage online services hosted in countries with less restrictive Internet filtering/restriction regimes⁸⁷. The migration of content providers to Internet Intermediaries abroad has a detrimental impact on the operations of local Internet Intermediaries, as they are both losing customers to Intermediaries that are not subject to the same regulations that they are, and they are having to compete with larger global companies.

While the exact extent of such a migration in Turkey would be the topic of a more detailed separate study, the potential existence of the migration of such locally-relevant content can be illustrated by looking at the top sources of online news in Turkey. As

⁸⁵ OECD Council Recommendation on Principles for Internet Policy Making (13 December 2011) adopted at the High Level Meeting on the Internet Economy: Generating Innovation and Growth 28 – 29 June 2011, <<https://www.oecd.org/internet/ieconomy/49258588.pdf>> (accessed 26.04.2018)

⁸⁶ NETmundial – Global Multistakeholder Meeting on the Future of Internet Governance, NETmundial Multistakeholder Statement, April 24th, 2014 <<http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf>> (accessed on 02.05.2018)

⁸⁷ Ronald Deibert, John Palfrey, Rafal Rohonzinski, Jonathan Zittrain. *Access Controlled, The Shaping of Power, Rights and Rule in Cyberspace* (MIT Press, 2010) pg. 83

per a directory of the top 30 Turkish newspapers and news media, the top 10 sources have been identified as Sabah.com.tr, Onedio.com, Ensonhaber.com, Haber7.com, Hurriyet.com.tr, Milliyet.com.tr, Yenisafak.com, Yeniakit.com.tr, Sozcu.com.tr and Haberturk.com⁸⁸.

The hosting service providers of each of these websites were identified by using the website WhoIsHostingThis.com. The results of searches showed that of the top 10 online newspaper and news media sources in Turkey only four of the websites were hosted locally in Turkey, with the top three sources all being hosted abroad. Out of the newspaper and news media sources hosted abroad, four were hosted in the USA, one was hosted in the Netherlands and one was hosted in Germany. While this example does not prove any correlation between the effects of the institutional and legislative framework and the migration of content providers to Internet Intermediaries abroad, it does serve the purpose of illustrating that there may be such a trend in Turkey.

The institutional framework in Turkey also imposes additional burdens on the operations and developments of Internet Intermediaries. While the main competent body regulation the telecommunication and Internet sectors is the ICTA, there are multiple examples of other Ministries and public bodies drafting and implementing measures that fall under the purview of the ICTA and/or fall within the scope of the Internet Law. The examples provided in Section 1 of other Ministries and public bodies having enacted measures that grant them the authority to issue access restriction decisions illustrate this situation.

The fact that other Ministries and public bodies have enacted measures that extends and distorts the scope of application of the access restriction regime established by the Internet Law could be an indication of a degree of institutional schizophrenia within

⁸⁸ Rankings of the Turkish newspapers and news media taken from <<http://www.allyoucanread.com/turkish-newspapers/>> (Accessed on 08.05.2018)

the Turkish institutional framework⁸⁹. In the context of the Turkish institutional framework, institutional schizophrenia is intended to describe the tendency of Ministries and other public bodies drafting and implementing legislative and regulatory measures that are outside of the scope of their authority. In terms of the legislative framework applicable to the Turkish Internet sector, these measures generally have a distorting effect to the regime of liability and obligations of Internet Intermediaries.

As per the examples provided about the extension of the access restriction regime, many of these measures have been implemented without a proper understanding of the regime and practices established with the Internet Law. Some of the measures have granted competence to courts other than criminal courts of peace, others have extended the scope of the access restriction regime to crimes that are not listed under Article 8 of the Internet Law. The extension of situations in which access restriction may be implemented and increasing the number of competent bodies that may decide for such implementation contributes to the lack of certainty regarding the scope of liability.

In addition to institutional schizophrenia's impact on the scope of liability established under the Internet Law, there are other examples that may potentially impact Internet Intermediaries. Another such example is the implementations in the area of data protection in Turkey. While the Data Protection Law has empowered the Data Protection Authority as the competent body for the drafting and implementation of data protection-related measures, there have been recent examples of both the Ministry of Health and the ICTA drafting regulatory measures that focus on personal data that said bodies regard as falling under their purview. These measures have led to situations where regulatory measures either contradict the main legislative regime or where they

⁸⁹ The term "institutional schizophrenia" is not an original idea attributable to the author of this work. It is a term that was discussed by the author and the advisor to this work, with reference to work previously viewed by the advisor. However, as it has not been possible to locate the original work that establishes and discusses this term, the author has provided a brief definition for use in this work.

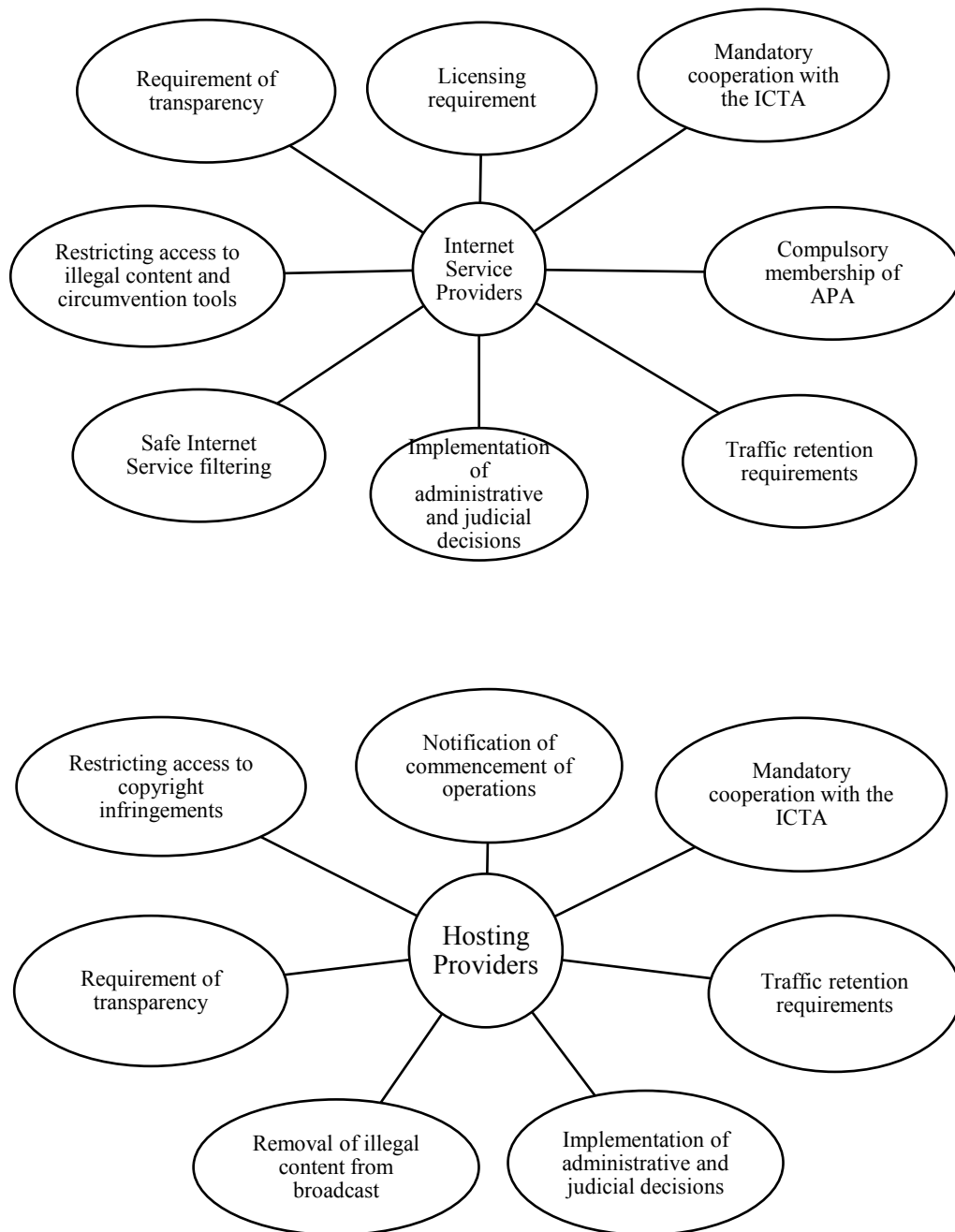
have introduced measures that were more restrictive than originally intended by the main competent Ministry and/or public body.

In terms of Internet Intermediaries, another recent example involves the ongoing debate around the regulation of content broadcast on online platforms. The Radio and Television Supreme Council (“RTUK”) – the authorized body responsible for regulating radio and television broadcasts in Turkey – had repeatedly claimed that it had the authority to supervise and regulate online content that could be categorised as radio and television broadcasts. With the Omnibus Law passed by the Turkish Parliament in March 2018, RTUK’s scope of authority was broadened to also cover such broadcasts and a new licensing regime was foreseen for content providers that can be categorised as broadcasting radio, television and on-demand content online. Such authority will also include the extension of the implementation of access restriction procedures. As per the Omnibus Law, the principles and procedures regarding the issuing of broadcasts licenses for online television, radio and on-demand broadcasts will be determined by a regulation that will be drafted jointly by the ICTA and RTUK. Thus, a new competent body has been established with authority over some areas of the Internet ecosystem. While the exact effects of such a situation cannot be accurately predicted, it is likely that recognising another competent body with the right to determine principles, procedures, implementation and sanctions for Internet content will contribute to the aforementioned legal uncertainty of Internet Intermediary liability and operations. This likelihood is based on the fact that the institutional schizophrenia that has contributed to the extension of scope and implementation of the access restriction regime has led to increased legal uncertainty that can impact Intermediary liabilities and operational costs.

In addition to the issues regarding lack of certainty as to the scope of Internet Intermediary liability and institutional schizophrenia in Turkey, the number of obligations that Internet Intermediaries are subject to is also a consideration of indirectly restrictive effect. The figure below provides a representation of the

obligations of both Internet service providers and hosting providers as established by the current legislative framework.

Figure 4.1. Obligations of Internet Service Providers and Hosting Providers in Turkey



As it can be seen from the figures above, both Internet service providers and hosting providers are subject to broad range of liabilities and obligations. Taking into account that many of these obligations require continuous investment in technical infrastructure (both for access restriction/removal and for traffic retention and reporting purposes) another indirectly restrictive effect of the current framework may be an increase in operational costs. Should the costs of compliance to the legislative framework require additional investment by local Internet Intermediaries, there is a very high possibility that such costs will be reflected onto the users in Turkey. In other words, the broad scope of obligations that have been imposed by the current legislative framework may indirectly cause higher prices for content providers wanting to make use of the services offered by local Internet Intermediaries.

4.1.3. Case Study: A Comparison of Local Hosting Costs

This section will aim to illustrate some of the restrictive effects that can be indirectly caused by the current institutional and legislative framework; particularly those effects leading to higher costs for Internet Intermediaries. The case study will present an analysis of the costs of hosting locally in Turkey in comparison to local hosting costs in a number of selected countries.

The countries that have been selected for this case study for comparison with the situation in Turkey are: the United States of America, Germany, the United Kingdom, France, the Netherlands, Italy and Spain. The selection of countries was determined based on three main factors.

The first factor was the hosting volume ranking of the countries. This was determined based on publicly available data on two websites; Hostadvice.com and Webhosting.info. Webhosting.info provides rankings of hosting providers in each country based on the number of domains that are hosted by each provider. Hostadvice.com provides information on the percentage of the international and

domestic market share of the hosting sector. All of the selected countries were ranked higher than Turkey, both in terms of number of domains hosted and in terms of the percentage of the international Internet hosting sector. Of the selected countries five of the countries were within the top ten both in terms of market share of the hosting sector and in terms of number of domain names hosted. These countries are; the United States, Germany, the United Kingdom, France and the Netherlands.

However, not every country that was ranked above Turkey was selected for the purpose of this case study. A second determining factor was to ensure that the reviewed countries shared a similar understanding with regard to principles that guide Internet policy. For this reason, countries that were higher ranked than Turkey in terms of hosting capacity but were not OECD members were eliminated from the case study. As the OECD has published multiple resources to guide its members on good Internet governance and the development of the Internet economy, the assumption was made that OECD member states would share common ground with regard to the underlying principles of good Internet governance; both with regard to balancing the rights of the stakeholders and ensuring an appropriate level of regulatory control.

A final determining factor aimed to further limit variables regarding legislative and regulatory approaches towards the underlying electronic communication technologies that are utilized by hosting providers. For this purpose, a preference was made for the selection of European Union Member States. The only case study country selected for comparison that is an exception to this is the United States of America. This exception was made as the United States of America is the world's leading hosting country with a market share of almost 40%.

After determining the countries that were to be reviewed, a further determination was made as to the exact type of hosting providers hosting packages to be considered to establish a price point. The hosting service providers were selected based on their market share ranking on Hostadvice.com. Even though Webhosting.info provided

rankings based on the number of domains hosted, the rankings on this website did not differentiate between companies that provided web hosting services and companies that merely offered domain registrar and hosting services.

Based on the market share rankings on Hostadvice.com, for each studied country the local hosting providers with more than 2% of the domestic market share were selected. Not all of the hosting providers with more than 2% market share were selected as hosting providers who did not explicitly provide shared web hosting services were discounted. This was to ensure that the service/product that was the basis of the comparison was a basic hosting service that would be the most readily accessible and relatable to the average consumer.

In order to establish a degree of uniformity for the case study, shared hosting plans that provided unlimited bandwidth were selected for review. For many of the hosting providers these features were included within their most basic/standard hosting plans. However, in cases where the bandwidth was not unlimited, plans with the highest bandwidth limit were selected for comparison. The standard plans of certain hosting providers were also advertised as having unlimited disk space with their Terms & Conditions and Use Policy documents applying to the scope of the term unlimited. The common element to unlimited plans was that the hosting provider retained the right to ask users to sign up for a private dedicated server if their website hosted on the shared server was deemed to be causing issues to other sites on the same server. However, these guidance documents of the hosting providers providing unlimited hosting services did not specify an upper limit in terms of GB-storage that would be deemed overuse of the shared server space. Therefore, in order to be able to establish a price-per-1 GB value for these hosting providers, the storage space of the unlimited packages was equated with the largest storage space offered in a standard package by their competitors in the relevant country.

Several major limitations that were encountered should be highlighted before presenting the collated data and the results of the price comparison. These limitations all stemmed from the availability of data and the reliability of data sources. As stated above, this case study does not purport to be carried out in accordance with empirical analysis methodology. Publicly available data on Hostadvice.com and Webhosting.info was relied upon for the selection of the compared countries and the individual hosting providers. As no comprehensive and reliably maintained official data source was available, it was only by referencing these two sources that the countries and hosting providers to be reviewed could be selected. However, as public websites that do not provide guarantees as to the current and complete nature of their content, the data that forms the basis of this case study cannot be said to satisfy the conditions for empirical research methodology.

Having established the criteria for the selection of the countries and the hosting packages to be reviewed, the table below lists the top hosting providers that satisfy the aforementioned conditions for each country and the calculated cost of hosting 1 GB of data under each hosting plan.

As the OECD data on average wage of members is specified in USD, the cost of hosting per 1 GB of data has also been calculated and/or converted into USD.

Table 4.1. The Average Price of Hosting 1 GB in Each Case Study Country

Country	Hosting Providers and Selected Hosting Plans	Average Price of Hosting 1 GB of Data Per Month
United States of America	GoDaddy Economy Plan 3.99\$ per month for 100 GB	0.045 \$
	BlueHost Basic Plan 2.95\$ per month for 50 GB	
	HostGator Hatchling Plan	

	3.95\$ per month for 100 GB	
	DreamHost Start Here Plan 7.95\$ per month for 200 GB	
Germany	1&1 Basic Plan 7.99\$ per month for 100 GB	0,25 \$
	Strato PowerWeb Starter Plan 4.19\$ per month for 15 GB	
	Hetzner Web Hosting Level 4 Plan 4.36\$ per month for 10 GB	
	Host Europe Basic Plan 5.24\$ per month 25 GB	
United Kindom	Heart Internet Starter Pro Plan 3.69\$ for 5 GB	0,49 \$
	FastHosts Business Bronze Plan 7.30\$ for 50 GB	
	Webfusion Starter Pro Plan 3.66\$ for 5GB	
	TSOHost Standard Plan 5.22\$ for 15 GB	
France	OVH.com Kimsufi Web Plan 1.57\$ for 1 GB	0,81\$
	Online.net Personal Plan 2.25\$ for 150 GB	
	Gandi.net Simple Hosting M Plan 8.48\$ for 10 GB	
Netherlands	Leaseweb L Plan 8.45 for 5 GB	1,02 \$
	TransIP New WebHosting S Plan	

	3.37\$ for 10 GB	
Italy	Aruba Easy Plan 4.57\$ for 10 GB	0,52 \$
	Register.it Smart Plan 8.68\$ for 100 GB	
	Seeweb Windows Shared Plan 10.40\$ for 10 GB	
Spain	Asys.es Advanced Plan 7.89\$for 50 GB	1.16 \$
	Dinahosting Professional Plan 11.00\$ for 6 GB	
	Acens Hosting Home Plan 4.39\$ for 20 GB	
	CDmon Senior Plan 12.39 \$ for 5 GB	
Turkey	Natro Start Plan 2.49\$ for 1 GB	1.21 \$
	SadeceHosting Small Plan 1.58\$ for 1 GB	
	Netinternet Standard Plan 3.63\$ for 5 GB	
	Doruknet Standard Plan 6.50 \$ for 10 GB	
	Radore Standard Hosting Plan 1.52\$ for 2 GB	
	Turhost Bireysel Starter Plan 1.13 \$ for 1 GB	
	Net Direkt PHP Silver Plan	

	1.42\$ for 4 GB	
	IHS Telekom Nano Plan	
	0.99\$ for 1 GB	

Source: *Hostadvice.com. Global Web Hosting Market Share 2018*
 <<https://hostadvice.com/marketshare/>> (accessed 05.04.2018)

Having established the average cost of hosting 1 GB of data for each of the countries, the Net National Income for each country as determined from the OECD database is presented below⁹⁰.

Table 4.2. Proportion of Hosting Costs to Net Monthly Income

Country	Net National Income (Annual/USD)	Net National Income (Monthly/USD)	Proportion of Monthly Income to Hosting Costs
United States of America	49,636	4,141	0,00011% of Monthly Income
Germany	41,173	3,431	0,000073% of Monthly Income
United Kingdom	36,188	3,016	0,00016% of Monthly Income
France	34,570	2,881	0,00028% of Monthly Income
Netherlands	41,717	3,476	0,00029% of Monthly Income
Italy	31,663	2,638	0,00020% of Monthly Income

⁹⁰ OECD (2018), Net national income (indicator) <<https://data.oecd.org/natincome/net-national-income.htm>> (accessed on 13 April 2018)

Spain	29,990	2,499	0,00046% of Monthly Income
Turkey	21,132	1,761	0.00069% of Monthly Income

Source: OECD (2018), Net national income (indicator) <<https://data.oecd.org/natincome/net-national-income.htm>> (accessed on 13 April 2018)

As it can be seen from the results of the basic comparison presented above, the costs of local hosting in proportion to the average wage is at a higher level in Turkey. The proportion of hosting costs to Net Monthly Income in Turkey is more than two times the proportion recorded in the countries that are within the top ten in terms of hosting services.

However, even though this case study shows that the hosting costs for standard Internet hosting services are higher in proportion to the Net Monthly Income it cannot definitively be said that this situation is caused directly by the institutional and legislative framework. In other words, it is not possible to conclusively state that the findings of the case study prove direct correlation between the impact of the institutional and legislative framework and the increased cost of local hosting in Turkey. While it is likely that the aforementioned restrictive impacts of the institutional and legislative framework have had an effect on the proportionally higher local hosting costs in Turkey, there are multiple other elements that may have a direct or indirect effect upon local prices. Infrastructure costs for electricity and rent, costs occurring due to foreign exchange rates applying to hardware that local Intermediaries have to obtain from outside of Turkey and the comparatively lower number of domains hosted in Turkey may all be contributing factors to higher local hosting costs.

However, the results of the case study can be used to highlight the fact that local hosting costs in Turkey are indeed comparatively higher in terms of general affordability. As the current framework that is applicable to Internet Intermediaries has been shown to

have potentially negative impact on the operations of such Intermediaries, even if the current framework only partially contributes to the comparatively higher costs the case can be made that there has been an impact on both Intermediaries and users in Turkey. This impact is in the form of contributing to comparatively higher local hosting costs in Turkey.

Another interesting result of the case study is that it shows that number of hosting providers that had higher than a 2% market share and provided shared Internet hosting products on local servers were higher in Turkey. This fact can once again reinforce the argument expressed in the section on positive impacts that the current framework does facilitate a more competitive market with easier market access opportunities. However, this finding also highlights the fact that a more competitive ecosystem for hosting service providers has not had a similar reflection on local hosting costs. This, in turn, supports the argument that the current institutional and legislative framework has created a system where measures benefiting the consumer (such as accessibility, increased competition, affordability of underlying communication technologies) are favoured over measures that take into account the operations and actual operational costs of Internet Intermediaries providing the tools and services used to generate content and value in the Internet ecosystem.

Another observation regarding the hosting providers in Turkey is that many of the Turkish hosting providers within the scope of the case study did not offer unlimited bandwidth capacity as a part of their standard hosting plans. While storage space offered on standard plans varied across the reviewed hosting providers from the other countries, the bandwidth capacity offered was almost always unlimited. It may be the case that operational costs that are borne out of the increased obligations under the Internet Law and the aforementioned regulatory uncertainties are factored in by Turkish hosting providers when deciding on the level of bandwidth capacity that is offered in their standard plans. Once again, while not proving correlation, the fact that the majority of hosting providers in Turkey differ from hosting providers in the other

studied countries and do not offer unlimited bandwidth capacity does indicate that there are factors impacting Internet Intermediaries in Turkey that are comparatively more restrictive.

4.2. IMPACT ON TRANSITION TO AN INFORMATION SOCIETY

4.2.1. Definition of Information Society

As highlighted in the previous section on strategy goals, transitioning to an Information Society has been listed as an official target in many different Strategy Documents. In order to better analyse the components of this goal, first the term “Information Society” must be reviewed in detail.

OECD material on measuring the Information Society begins by recognising that there is no comprehensive definition for the term and instead focuses on a practical definition for the term that “*encompasses the widely agreed elements of ICT supply, ICT demand, ICT infrastructure, ICT products and “content”*”⁹¹. This definition emphasises the central importance of the spread and use of the underlying ICTs in establishing an Information Society.

Other theories on Information Society have gone beyond a term that merely encompasses the underlying modern technologies. However, it should be stated that the concept of the Information Society still does not have an accepted uniform definition, with debate even existing on the use of the actual phrase of Information Society.

Stehr’s approach to Information Society (referred to as Knowledge Society in his works) is that “contemporary society may be described as a knowledge society based on the extensive penetration of all its spheres of life and institutions by scientific and

⁹¹ OECD (2011), *OECD Guide to Measuring the Information Society 2011*, OECD Publishing, Pg. 12

technological knowledge”⁹². Castells criticizes the term of Information Society and instead uses the term Informational Society to define a society where “a specific form of social organization in which information generation, processing and transmission become the fundamental sources of productivity and power”⁹³.

Van Dijk defines Information Society as;

“a modern type of society in which the information intensity of all activities has become so high that this creates:

- An organization of society based on science, rationality and reflexivity;
- An economy with all values and sectors, even the agrarian and industrial sectors, increasingly characterised by information production;
- A labour market with a majority of functions largely or completely based on tasks of information processing requiring knowledge and higher education (hence, the alternative term knowledge society);
- A culture dominated by media and information products with their signs, symbols and meanings.”⁹⁴

By reviewing different definitions put forth for the Information Society – both technical and more general – it can be said that commonly agreed upon elements of an Information Society is the widespread use and adoption of ICTs and the utilization of these underlying technologies for the increased generation of knowledge.

However, the term Information Society has also been criticized as not being a sufficiently descriptive term aimed at understanding and characterizing the interrelated factors and relationships that characterize an evolution in society⁹⁵. This criticism

⁹² Nico Stehr. *Knowledge and Economic Conduct: The Social Foundations of the Modern Economy* (University of Toronto Press, 2002) pg. 18

⁹³ Manuel Castells, *The Information Age: Economy, Society and Culture. Vol I: The Rise of the Network Society* (Wiley-Blackwell, 1996), pg. 21

⁹⁴ Jan Van Dijk, *The Network Society* (Sage Publications, 2012) pg. 23

⁹⁵ Darin Barney, *The Network Society* (Polity Press, 2010) pg. 25.

stems from the argument that such definitions take into account the quantity of information generated in these societies, but the term and definition does not provide an explanation as to the new system and characteristics that this modern society should adopt⁹⁶.

Instead, Castells and Van Dijk suggest that we should be viewing this new model of society under the term of “Network Society” to better evaluate a modern society that is borne from the presence of sophisticated and almost exclusively digital technologies⁹⁷. Therefore, as the reviewed Strategy Documents have determined the importance of utilizing ICTs for a transition to a modern information-based society, the term Network Society should also be reviewed for applicability.

Despite the criticism of the term, Van Dijk does state that the term Information Society can be used in combination with the term Network Society to best describe a “contemporary developed and modern society marked by a high level of information exchange and use of ICTs”⁹⁸. Therefore, after having defined the more recent debate on the definition and use of the term Network Society, this work will continue using the term Information Society to specify the term that was a goal in the reviewed Strategy Documents.

4.2.2. Theory of the Network Society

The application of the Network Theory that is relevant to the establishment of the role of Internet Intermediaries and users in the context of a transition to such a society are the theories of Manuel Castells and Jan Van Dijk, who coined the term ‘Network Society’. Both of these theories rely heavily on the changes in society introduced by information and digital technologies.

⁹⁶ Van Dijk (2012) pg. 24

⁹⁷ Barney (2010) pg. 25

⁹⁸ Van Dijk (2012) pg. 23

In the first volume of his work *The Information Age: Economy, Society and Culture*, titled “The Rise of the Network Society”, Castells presents his own interpretation of the Network Society. Castells defines Network society as being “made up of networks of production, power and experience, which construct a culture of virtuality in the global flows that transcend time and space”⁹⁹. Castells argues that the networks form the basis of the new social structure of modern society and therefore can be considered to be the basic units of our society¹⁰⁰

Castells defines the network as “a set of interconnected nodes” and that the topology of society is defined according to whether a node is a member of a particular network¹⁰¹. He asserts that “inclusion/exclusion in networks... configure dominant processes and functions in our societies”¹⁰².

According to Castells, power in this new society comes from access to the network, where “presence or absence in the network and the dynamics of each network *vis-à-vis* others are critical sources of domination and change in our society”¹⁰³. This feature of Castells’ Network Society emphasizes the importance of access and connection in order to maintain relevance within the structure of society. Therefore, the ability to participate, contribute and create in such a society is directly linked to the levels and opportunities of access granted to citizens.

Digital technologies and ICTs have allowed networks of communication to span globally, allowing instantaneous connection between nodes located in different geographies. The ever-expandable global quality of the network challenges the capabilities of the sovereign nation state¹⁰⁴. Castells argues that due to the prevalence

⁹⁹ Manuel Castells, *The Information Age: Economy, Society and Culture. Vol III: End of Millennium* (Oxford: Blackwell, 1998) pg. 370.

¹⁰⁰ Castells (1996)

¹⁰¹ Castells (1996) pg. 501

¹⁰² Castells (1996) pg. 501

¹⁰³ Castells (1996) pg. 500

¹⁰⁴ Castells (1998)

of these networks and the new modes of governance and structure they create, it should be recognised that they are “a superior organisational form” upon which an entire social order can, and probably should, be built¹⁰⁵.

In contrast to Castells, Jan Van Dijk presents an alternative theory as to the content and context of Network Society. Van Dijk criticizes Castells’ argument that networks are the basic units of our society¹⁰⁶. Instead, Van Dijk defines network society as “a modern type of society with an infrastructure of social and media networks that characterises its mode of organisation at every level: individual, group/organisational and societal”¹⁰⁷. Thus, he presents that “in western societies, the individual linked by networks is becoming the basic unit of the network society”¹⁰⁸. However, both Van Dijk and Castells agree that we are experiencing a shift away from a mass society to a new kind of society that is related to the increased flow of information over networks.

Van Dijk claims that while information society is linked to the intensity of information processing, the concept of network society “emphasizes the form and organization of modern society”¹⁰⁹. Van Dijk presents the idea of the ‘seven laws of the web’ in order to explain the structural properties of networks¹¹⁰. The laws that are particularly relevant to this study are; the law of network externality that dictates the pressure on things external to the network to connect and the power law in networks that states that units that already have many links acquire even more following a pattern of continuous growth of links and preferential attachment¹¹¹. Van Dijk’s arguments also highlight the importance of connection to the network in order to maintain validity in society, however the fact that protection is still required for the less powerful nodes such as

¹⁰⁵ Castells, *The Internet Galaxy: Reflections on the Internet, Business and Society*. (Oxford University Press, 2001) pg. 2

¹⁰⁶ Jan Van Dijk, ‘The One-Dimensional Network Society of Manuel Castells’, *New Media and Society*, 1(1): 127 – 38, 1999

¹⁰⁷ Van Dijk (2012) pg. 24

¹⁰⁸ Van Dijk (2012) pg. 24

¹⁰⁹ Van Dijk (2012) pg. 23

¹¹⁰ Van Dijk (2012)

¹¹¹ Van Dijk (2012) pg. 37 - 42

individuals, from larger nodes such as the economic powerhouses of the social web and the digital market is also noted.

Van Dijk argues that the issues of governance and control over networks are a balance between what is ideal and what is feasible. Van Dijk presents four different categories of Internet governance: Denationalised Liberalism, Networked Nationalism, Global Governability and Cyber-Conservatism¹¹².

The position of Networked Nationalism, defined by Mueller as the “want[ing] to cope with transnational problems through a mix of trans-governmental networks, delegation to private actors, or formal intergovernmental treaties, but all international institutions would be rooted in states”¹¹³ is presented by Van Dijk as the model closest to the current realities of Internet governance in Western nations.

Van Dijk asserts that “networks have centres too... embodied by government, big business and technological control”¹¹⁴. By acknowledging the existence of organisational centres, he goes on to state that “online power cannot go ahead of power in the offline world – they can only run in parallel”¹¹⁵. Thus, concerning the interaction between the network and governance, Van Dijk’s central assertion is that the position of networked nationalism must currently be adhered to as “currently only states have a countervailing power” with regards to the strong big business interests exerted over the network¹¹⁶. In order to establish control and ensure law and order throughout the network, Van Dijk highlights the importance of market control, self-regulation and technological control coordinated by governmental bodies.

¹¹² Van Dijk (2012)

¹¹³ Milton L. Mueller, *Networks and States: The Global Politics of Internet Governance*. (The MIT Press, 2010) pg. 258

¹¹⁴ Van Dijk (2012) pg. 148

¹¹⁵ Van Dijk (2012) pg. 150

¹¹⁶ Van Dijk (2012) pg. 150

Another area of consideration regarding the interaction between Network Society and governance, particularly in terms of the legitimacy and modes of control over the content and community that is created as a result of these new technologies.

One legal argument is that the new boundaries defined by digital technologies and ICTs should remain regulated by law¹¹⁷. This argument presents that the same technologies, particularly those regarding the processing of data and the communication of such data, that has enhanced the influence of networks, can be used to assert the power structures of sovereign states¹¹⁸.

The economic element of Network Society is also highly relevant to this work. Barney states that the idea that information is central to production is a central characterisation of Network Society, which is an economy driven by the circulation and application of knowledge¹¹⁹. Within the scope of this economy, Barney identifies network technologies as critical to the coordination of this economic structure¹²⁰.

Van Dijk identifies the Internet Intermediaries that form the infrastructure of the Internet as the gatekeepers of network and therefore essential to the economy of the Network Society¹²¹. Barney also emphasizes the importance of Internet Intermediaries by recognising that “the network business model is information and communication intensive, requiring rapid and reliable exchange, storage, retrieval and processing of massive volumes of process-relevant data, unfettered by geographic distance”¹²². Due to the scope of activities provided by Internet Intermediaries, it is clear that their existence and operations are essential to establishing and developing the economic model that stems from and sustains a Network Society.

¹¹⁷ Joel Reidenberg, ‘Technology and Internet Jurisdiction’ University of Pennsylvania Law Review, Vol. 153, p. 1951, 2005; Fordham Law Legal Studies Research Paper No. 79

¹¹⁸ Reidenberg (2005)

¹¹⁹ Barney (2010) pg. 77

¹²⁰ Barney (2010) pg. 77

¹²¹ Van Dijk (2012) pg. 84

¹²² Barney (2010) pg. 90

Despite the ongoing academic debate surrounding the scope and definition of Information Society and Network Society, it is clear that there are a number of defining features that are common to the proposed models. Within the scope of this work, the most important of these defining features is the central value of the ICTs that form the underlying networks and access to the technologies and services that are essential to the new modes of producing the knowledge and information that is essential to this concept of society. The value and nature of the Information/Network Society comes from both the underlying technologies and the increased volume of knowledge and information content that can be generated and disseminated over it.

4.2.3. The Role of Internet Intermediaries in Transitioning to an Information Society

Having established some of the main characteristics that a society should have in order to better facilitate a transition to an Information Society, the role of the Internet Intermediaries can be further discussed.

As presented in the previous section, a transition to an Information Society requires widespread access to both the underlying connecting ICTs and the tools and resources to be able to generate value in line with the new modes of networked and information-based economy. Therefore, it is clear that Internet Intermediaries – a group that encompasses both the provision of underlying ICTs and further tools and services to generate content and value – will play an essential role in facilitating such a transition.

The role that Internet Intermediaries can play, both in terms of cooperation with governments in order to further public policy and in terms of empowering individual end-users, was detailed in Section 3. The scope of services provided by Internet Intermediaries form the backbone of the networks that are essential to the structure of an Information Society and provide individuals access to these networks and to the

tools and services that are required to generate and disseminate information and knowledge content over these networks.

Due to the globally networked nature of the Internet it is possible to obtain services from Internet Intermediaries that are not necessarily local to the person obtaining the services¹²³. Within the context of this work, the question that should be asked is whether choosing Internet Intermediaries that are not local over local Intermediaries will have an impact on the development of the local Internet Intermediary ecosystem and the transition to an Information Society. If local Internet Intermediaries and local content do hold a position of importance within the scope of facilitating a transition to an Information Society, it would then reason that ensuring the development of said local Intermediaries would be an essential element of any strategy aimed at transitioning to an Information Society.

An OECD report into the impact of local Internet content titled the Relationship Between Local Content, Internet Development and Access Prices showed “a strong correlation between local content, infrastructure development and access prices”¹²⁴. Having emphasised the importance of local content, the OECD report further recognised that the higher bandwidth required would have significantly higher costs, particularly if content providers were having to resort to obtaining services from abroad rather than obtaining them locally¹²⁵. However, these costs may not necessarily be borne exclusively upfront by the content providers themselves. Instead, content providers preferring to obtain services for content hosting abroad would necessitate

¹²³ OECD. ‘The Relationship Between Local Content, Internet Development and Access Prices’ (2011) pg. 23

¹²⁴ OECD. ‘The Relationship Between Local Content, Internet Development and Access Prices’ (2011) pg. 2

¹²⁵ OECD. ‘The Relationship Between Local Content, Internet Development and Access Prices’ (2011) pg. 33

content delivery over expensive international networks, thereby driving up the costs of Internet Intermediaries such as underlying Internet service providers¹²⁶.

A study conducted into the strengthening of local hosting providers by Kende and Rose also confirmed this effect. Their study shows that in cases where local content providers host content abroad in an attempt to offset higher local hosting costs, this action imposes additional costs on local Internet Service Providers who have to bear the costs of higher transit costs to deliver the content to local users – and usually at a much slower speed than if the content had been hosted locally¹²⁷. By reviewing hosting preferences in Rwanda, Kende and Rose were able to ascertain that the negative circumstances caused by an increased volume of content being hosted abroad led to a diminished user experience, which in turn led to “reduced usage and the stifling of the Internet ecosystem”¹²⁸.

While this study is not equating the volume and size of the Internet ecosystem in Rwanda with the current Internet ecosystem in Turkey, the findings presented by Kende and Rose can be seen as relevant to the questions asked by this study. Based on their study of the situation in Rwanda, their work presented that the preference of foreign hosting providers led to the actual usage of the Internet being lower than the potential provided by access and connectivity infrastructure that was present in the country¹²⁹. The reduced use caused by this under-utilisation led to what they termed as “a stifling of the Internet ecosystem” where the Internet ecosystem does not develop in line with the available underlying connective capacity¹³⁰.

¹²⁶ OECD. ‘The Relationship Between Local Content, Internet Development and Access Prices’ (2011) pg. 33

¹²⁷ Michael Kende and Karen Rose, ‘Promoting Local Content Hosting to Develop the Internet Ecosystem’ (2015) pg. 2

¹²⁸ Kende and Rose (2015) pg. 2

¹²⁹ Kende and Rose (2015) pg. 7

¹³⁰ Kende and Rose. (2015) pg. 8

A proposed solution to the problem of under-utilisation of a country's Internet infrastructure has been to utilize locally relevant content in order to increase adoption and usage of the Internet to suit the underlying potential capacity¹³¹. However, Kende and Rose argue that increasing locally relevant content must also be accompanied by a focus on developing local Internet Intermediaries such as hosting providers. Based on their analysis of the Internet ecosystem in Rwanda, they argue that “locally hosted content” is as important a factor as the creation of “locally relevant content”¹³². This argument is mainly based on the findings that even if content is locally relevant, hosting such content abroad may cause issues in the speed and costs of accessibility, thereby having an overall impact on usage and the Internet ecosystem¹³³.

Within the scope of their study, “locally hosted content” is defined as “locally relevant content that is hosted-country, either on servers, in caches, or delivered by content delivery networks with a presence in the country”¹³⁴. The findings of the study emphasize the importance of locally hosted content as having an impact on three factors that affect the development of the Internet ecosystem: cost, latency and usage. The interaction between these three factors have been presented as the increase in costs for Internet service providers and increased latency leading to a reduction in general usage of the Internet¹³⁵.

The relationship between the location of hosting and the Internet ecosystem is better illustrated in the figures below.

¹³¹ OECD, ‘The Role of Internet Intermediaries in Advancing Public Policy Objectives’ (2011) pg. 23

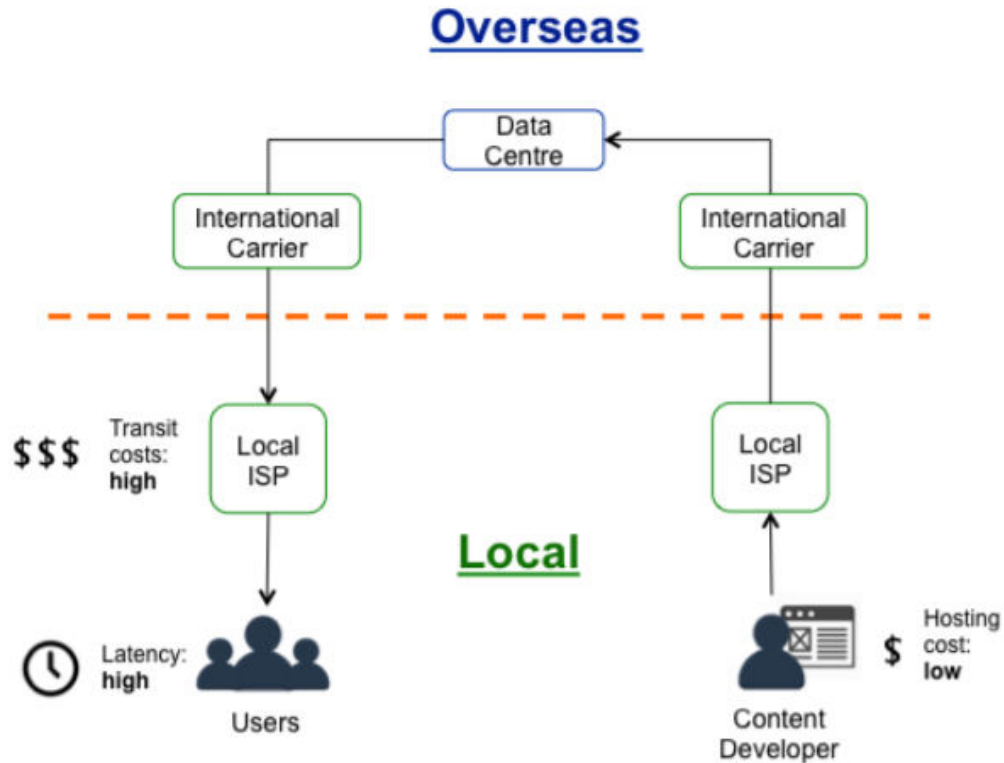
¹³² Kende and Rose. (2015) pg. 7

¹³³ Kende and Rose. (2015) pg. 8

¹³⁴ Kende and Rose. (2015) pg. 8

¹³⁵ Kende and Rose. (2015) pg. 9

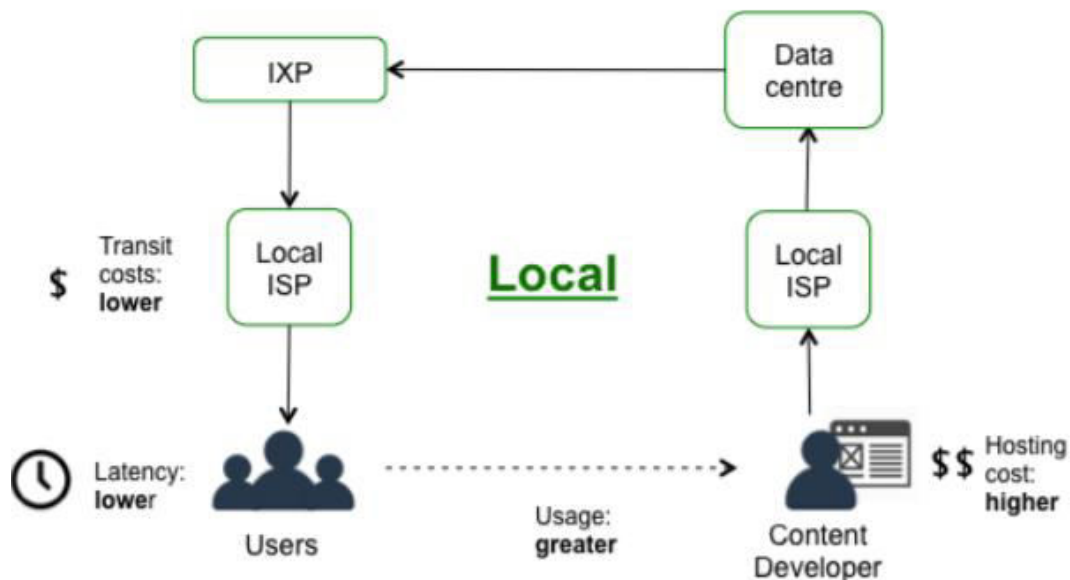
Figure 4.3. Locally-Relevant Content Being Hosted Abroad



Source: Michael Kende and Karen Rose, 'Promoting Local Content Hosting to Develop the Internet Ecosystem' (2015)

As the figure shows, despite the fact that initial costs of hosting content abroad are lower than hosting locally, hosting locally-relevant content abroad increases the transit costs and causes latency. The increased costs of Internet Service Providers are reflected onto the other components of the Internet ecosystem, while latency issues cause a stifling effect on the development of the local Internet ecosystem.

Figure 4.4. Locally-Relevant Content Being Hosted Locally



Source: Michael Kende and Karen Rose, 'Promoting Local Content Hosting to Develop the Internet Ecosystem' (2015)

As seen in the figure detailing the results of hosting locally-relevant content locally, despite the initial hosting costs appearing to be higher, the lower transit costs and lower latency enhances the end-user experience and thus leads to greater usage and content generation.

In light of the two systems that are compared in the figures above, it can be suggested that factors that cause local Internet Intermediary services to appear less appealing to local content creators forces such content creators to seek out Intermediaries abroad to sustain locally-relevant content. Likewise, in situations where local hosting is not the preferred option for hosting locally-relevant content, this may then lead to a knock-on effect where costs are reflected onto other Internet Intermediaries, thereby impacting the strength and development of the Internet ecosystem.

Kende and Rose highlight that local hosting opportunities could “initiate a positive cycle of lowered costs for access, which could spur an increased demand for, and supply of, local content”¹³⁶. The study of the situation in Rwanda and the Internet Society study on the impact of locally-relevant content in Kenya being hosted locally does seem to indicate that strengthening local hosting providers did have a significant positive impact on the Internet sector¹³⁷. In other words, the development of local hosting providers so as to ensure a greater degree of locally hosted content is essential to the development of the Internet ecosystem as it incentivizes the creation, sharing and accessing of content. As established in the preceding section, the creation, sharing and accessing of such content/information is essential for the development of the structures and knowledge that is required for a transition to an Information Society.

Furthermore, it can also be said that the lack of locally hosted content can have a significant detrimental impact on the Internet ecosystem of a country. Due to the aforementioned issues regarding cost, latency and use, a lower level of locally hosted content may restrict the creation of Internet content, thereby limiting the development of the country’s Internet ecosystem¹³⁸.

Merely investing in equipment and hardware for underlying technologies is not sufficient to guarantee the success of a country’s Internet ecosystem¹³⁹. The development of local content is also essential to be able to build up a strong ecosystem. The underlying infrastructure and content development can be viewed as a two-sided relationship, particularly as an increase in local content can also lead to an increase in demand for access and coverage that would be afforded by a more developed underlying network¹⁴⁰. Internet Intermediaries provide the scope of services that range

¹³⁶ Kende and Rose (2015) pg. 10

¹³⁷ Kende and Rose (2015) pg. 9, Internet Society Study, pg. 14

¹³⁸ Kende and Rose (2015) pg. 32

¹³⁹ OECD, ‘The Role of Internet Intermediaries in Advancing Public Policy Objectives’ (2011) pg. 33

¹⁴⁰ OECD, ‘The Role of Internet Intermediaries in Advancing Public Policy Objectives’ (2011) pg. 54

from the underlying infrastructure to the tools required to generate, store and disseminate content.

The discussions presented in this section support the argument that local Internet Intermediaries are essential in the development of the local Internet ecosystem and that limitations on local Internet Intermediaries may have a restrictive impact on the development of the Internet ecosystem and the generation of content and knowledge. Therefore, it can be presented that a society aiming to transition to an Information Society must also ensure the existence of strong and functional local Internet Intermediaries. In light of this assertion, elements of an institutional and legislative framework that have restrictive effect on the operations and development of Internet Intermediaries in Turkey may also negatively impact the development and access to networks and tools that form the basis of a transition to an Information Society.

While the cost of local Intermediaries that was the main focus of this section is an important factor, other factors such as policy and legal considerations can also impact the use and development of local Internet Intermediaries. Measures that impose obligations regarding blocking access to websites or reporting and surveillance obligations have also been found to impact whether or not local Internet Intermediaries are preferred¹⁴¹. As established, factors that restrict or limit local Internet Intermediaries then have similarly limiting effects on the development of the Internet ecosystem and the modes of communication and production that are required for an Information Society.

With regard to the situation in Turkey, as highlighted in Section 4.1, there appears to be situations where important locally-relevant content for Turkey is being hosted outside of Turkey. This work has been unable to establish clear causation between the restrictive elements of the current institutional and legislative framework in Turkey and the amount of content that is being hosted outside of Turkey. However, considering the

¹⁴¹ Kende and Rose (2015) pg. 19

fact that a number of potentially restrictive measures are in effect and the fact that local hosting costs are comparatively proportionally more expensive in Turkey, it is at the very least probable that there has been an impact both on the amount of locally-relevant content that is generated in Turkey and such existing content that is hosted outside of Turkey.

On a related note, it should also be highlighted that as per Van Dijk's arguments about governance the networks that form the basis of an Information Society, a developed and strong local Internet Intermediary ecosystem would also benefit government policy. The opportunity to interact and cooperate with a strong local Internet Intermediary ecosystem would grant the Turkish state the ability to provide the countervailing power that Van Dijk suggests would otherwise manifest in the dominance and control of big business interests exerted over the networks.

CONCLUSION

As stated in the Introduction Section, this work attempted to answer two main questions;

- 1) Whether the current institutional and legislative framework applicable to the telecommunication and Internet sectors in Turkey imposed any unduly restrictive effects on Internet intermediaries in Turkey?
- 2) Whether any potential restrictive effects may have an adverse effect on the transition towards an Information Society?

In order to find answers to these questions, doctrinal legal research was carried out that focused on Turkish telecommunication and Internet sectors; with a particular focus on Internet Intermediaries. After establishing the current institutional and legislative framework in Turkey and the short-term and long-term strategy goals, this work presented both the potential positive and negative effects of said framework in terms of the telecommunication and Internet sectors in general. After presenting the potential impacts, the framework and the potential negative impacts were discussed in relation to the short-term and long-term strategy goals that were selected as the focus of this work. A case study comparing local hosting prices was used in order to illustrate the more specific impact these negative effects have on Turkish Internet Intermediaries.

In light of the discussions of the previous section, this work would posit that the answer to both of these questions is affirmative. In other words, it can be said that the current institutional and legislative framework in the telecommunication and Internet sectors in Turkey do impose restrictive effect on Internet Intermediaries in Turkey, and these restrictions may indeed have an adverse effect on the transition towards an Information Society.

With regard to restrictive effects, it is clear that the obligations and processes set out in the Internet Law itself imposes restrictions on Internet Intermediaries. These

restrictions are both in the form of direct restrictions due to the implementation of the access blocking and restriction regime and restrictions that are imposed indirectly due to the other obligations imposed on the Intermediaries. Furthermore, the impact of the patchwork nature of legislation, regulation and enforcement in this area can also be said to have further restrictive effects, particularly in reference to the aforementioned ideas on institutional schizophrenia.

While the statement that such restrictions are “unduly restrictive” may be challenged, the review of the legislation and implementation pertaining to the Internet access regime in Turkey does indicate that the regime in Turkey is restrictive to a greater degree due to disproportionate implementation. Therefore, the institutional and legislative framework itself has been shown to have restrictive effects beyond that which was intended.

It should once again be highlighted that establishing the existence of such restrictive effects are not intended to completely undermine the existing institutional and legislative framework. As established in the section discussing the positive effects, this framework was successful in increasing the adoption of Internet technologies; one of the primary aims that had been laid out in earlier Strategy Documents. Some restrictive effects of the framework can be viewed as a side effect of a strategic agenda to increase adoption and use of technology by making it more affordable and accessible to consumers in Turkey. Furthermore, as goals of transitioning into a productive Information Society have been expressly stated in the Strategy Documents, it is difficult to argue that many of these legislative measures were drafted and implemented with the primary aim of restrictive effect in mind¹⁴².

¹⁴² While this approach can be more readily applied to a review of the institutional and legislative framework in general, it is also clear that a number of the measures established in the Internet Law – particularly the revised measures relating to restricting access to content – were drafted with knowledge and intention of such potential restrictive implementation. Furthermore, provisions of the Internet Law have also been applied by administrative and judicial bodies with the explicit aim of restricting access beyond the scope intended by the original Internet Law.

However, highlighting the restrictive effects that have can be said to have been caused by the current institutional and legislative framework is important to generate recommendations that may rectify the current situation; particularly by contributing to the goal of transitioning to an Information Society. The strength and function of local Internet Intermediaries are important in transitioning to a society that increasingly adopts both the underlying Internet technologies and engages in the creation of locally relevant content. Access to and utilization of such creative tools allow users to build upon the opportunities offered by the underlying technologies and generate additional value¹⁴³.

While there is no uniform definition for the concept of an Information Society, by drawing upon different definitions for Information, Informational and Network Society as presented above, this work has attempted to identify shared common characteristics that would be necessary for a transition to such a society. An individual's ability to access local Internet resources and capacity to utilize such tools to generate content and value has been identified as an important common characteristic and one of the driving forces behind the new modes of creation and economy that is referenced in different theories on Information, Informational and Network Society.

In light of the claim that the aforementioned restrictive effects have had an impact on the development of local Internet Intermediaries in Turkey, it can also be said that these effects will also have an impact on a transition to an Information Society. Internet Intermediaries are an important element of any such transition as these Intermediaries have been shown to play an important role in the addressing such issues as access to local content and access to local tools that would form the building blocks of such a transition. Therefore, any attempt to implement a strategy of comprehensive transition to an Information Society must take these effects into account and take steps to overcome them.

¹⁴³ OECD. 'The Economic and Social Role of Internet Intermediaries' (2010) pg. 26

The issue of increased costs is of particular concern, as this has a direct impact on the accessibility and affordability of locally available tools to produce local content. The work conducted by Kende and Rose emphasized that issues such as affordability of local hosting were directly linked to the creation of local content and the development of the local Internet ecosystem. Therefore, out of all the potential negative effects that have been identified above, the elements of the institutional and legislative framework that may be linked to higher local costs poses the most significant obstacle to a comprehensive and quick transition to an Information Society.

It should be noted that, as laid out in the section detailing the positive impact of the institutional and legislative framework, the positive developments in Turkey in the area of ICT adoption are also significant. The framework that was established in accordance with previous Strategy Documents, particularly the early Information Society Strategy Documents, has enabled widespread adoption of ICT over a relatively short period of time, with Turkey currently having the highest increase in broadband penetration from amongst all OECD members. However, as expressed above in Section 4, merely providing access to ICTs is not in itself sufficient to foster a more production-based Information Society. In order to achieve a transition to an Information Society, a society should be placed in a position where they have easy access to the both the modes of communication and the modes of creation that are required.

As this work has posited that the current institutional and legislative framework in Turkey is not fully facilitative of a transition to an Information Society due to restrictive effects on Internet Intermediaries, the recommendations will primarily focus on methods that would rectify this situation.

The primary problems that have been identified in this work are those relating to restrictive effect on Internet Intermediaries. These restrictive effects are also reflected onto Turkish end-users, such as by impacting access to affordable local tools to generate locally-relevant and locally hosted content in Turkey. As established in the

conclusion above, an argument can then be made that the current legislative and regulatory regime applicable to the telecommunication and Internet sectors in Turkey is not fully facilitative of a transition to either an Information Society or a Network Society. While the current framework has been beneficial in increasing the adoption and penetration rate of the underlying technologies, further steps must be taken in order to provide easier and more affordable access to tools to generate content.

A few recommendations as to potential solutions can be made; however, they are limited by the limitations that will be presented below.

First and foremost, the review and revision of the legislative framework is essential to achieve an environment that is more conducive to the practical operations of these Intermediaries. Particularly the provisions in the Electronic Communication Law and the Internet Law that impose generally worded and uncertain obligations on Intermediaries – such as the undefined obligation to provide any information that the ICTA may request – should be reviewed. Insufficiently defined scopes of responsibility and obligations have been shown to cause burdensome effects that increase the burden on daily operations of Intermediaries. Considering that the local hosting costs in Turkey were found to be higher in comparison to the countries of the Case Study, any such legislative measure the scope of which remains undefined or unclear has the potential to continue hindering the development of Turkish Internet Intermediaries.

Any revisions to the legislative framework should take into account the impact that such insufficiently defined obligations will have on both the operations of the Internet Intermediaries and how they are reflected to the end-users. As highlighted by Kaya, the issues of infrastructure costs and judicial and administrative costs applicable to Internet Intermediaries in Turkey currently disrupt the balance of rights and obligations that are imposed on the Intermediaries¹⁴⁴. Therefore, any such revisions should aim to

¹⁴⁴ Mehmet Bedii Kaya. ‘The regulation of Internet intermediaries under Turkish law: Is there a delicate balance between rights and obligations?’ *Computer Law & Security Review* (2016) pg. 172

rebalance the rights and obligations in a way that will ease the administrative and regulatory burdens on Intermediaries. With regard to the scope of liability for hosting providers, the provisions of the Internet Law that allows for further categorisation and separation of hosting providers could be relied upon to draft ancillary regulations that distinguish between different categories of Internet Intermediaries and provide clearly defined scopes of liability for each.

Any revision would benefit from the participation of both public and private sectors, as the situation will remain a case of balancing operational realities and more general policy concerns stated in the Strategy Documents, such as forming the basis of a successful transition to an Information Society. In this sense, a multistakeholder approach to any such review and revisions process would be the most viable option.

The multistakeholder approach to determining Internet governance issues has also been endorsed by many international bodies functioning in this area¹⁴⁵. However, as presented by the Internet Society literature on multistakeholder governance, the model itself should not be viewed as a singularly applicable solution¹⁴⁶. As expressed by the Internet Society, “in reality there is no single model that works everywhere or for every issue. Instead, the multistakeholder approach is a set of tool or practices that all share one basis: Individuals and organizations from different realms participating alongside each other to share ideas of develop consensus policy”¹⁴⁷.

¹⁴⁵ Internet Society. ‘Internet Governance An Internet Society Public policy Briefing’ <<https://cdn.prod.internetsociety.org/wp-content/uploads/2017/09/ISOC-PolicyBrief-InternetGovernance-20151030-nb.pdf>> (accessed 26.03.2018); Internet Society. ‘Internet Governance Why the Multistakeholder Approach Works’ <<https://cdn.prod.internetsociety.org/wp-content/uploads/2016/04/IG-MultiStakeholderApproach.pdf>> (accessed 21.03.2018)

¹⁴⁶ Internet Society. ‘Internet Governance Why the Multistakeholder Approach Works’ pg. 1 <<https://cdn.prod.internetsociety.org/wp-content/uploads/2016/04/IG-MultiStakeholderApproach.pdf>> (accessed 21.03.2018)

¹⁴⁷ Internet Society. ‘Internet Governance Why the Multistakeholder Approach Works’ pg. 4 <<https://cdn.prod.internetsociety.org/wp-content/uploads/2016/04/IG-MultiStakeholderApproach.pdf>> (accessed 21.03.2018)

Therefore, merely recommending a multistakeholder approach is not a sufficiently comprehensive recommendation in itself. Despite establishing the purpose of this multistakeholder approach as bringing together stakeholders to ensure that the institutional and legislative framework maintains a balance of rights and obligations, a recommendation must also be presented as to how such a model may be applied in Turkey. In other words, in order to implement such a multistakeholder approach in Turkey it is clear that a model of cooperation and facilitation must be established.

While a recommendation for a comprehensive framework for a multistakeholder model in Turkey would be the subject of detailed further research, a potential idea for the greater facilitation of a multistakeholder approach would be the review and revision of the tasks and purview of the Internet Development Board. As established above, as per the Regulation on the Internet Development Board, a wide range of capacities and responsibilities regarding the review and drafting of Internet policy has been granted to the Internet Development Board. However, the Internet Development Board has not listed any ongoing or completed projects on their official website and has seemingly not assumed a dominant and proactive role in the area of Internet governance. Therefore, revising the relevant legislation to empower the Internet Development Board to deal with specifically reviewing and addressing obstacles to the development of Internet in Turkey and enabling the Board is granted appropriate resources and official advisory capacity that is more consulted by the Ministry and the ICTA may be one way to ensure that a public institution has been tasked with a purview that will regularly bring together public and private Internet stakeholders in Turkey.

Empowering a body such as the Internet Development Board would also be beneficial for a multistakeholder approach due to increased representation of the different stakeholders in the sector. As per the Regulation on the Structure of the Information and Communication Technologies Authority¹⁴⁸, ensures that the decision making body

¹⁴⁸ Official Gazette numbered 27958 and dated 08.06.2011

of the ICTA has board members that are selected from private stakeholders and consumers from the telecommunication industry. Keeping in mind such guaranteed representation from the private sector and the consumers in the Internet sector may be beneficial in any potential revision of the legislation relevant to the structure and responsibilities of the Internet Development Board.

An area of priority that should be considered within the scope of a multistakeholder approach should be the issue of the governance of the Internet sector in Turkey. While it is apparent that the institutional and legislative framework for the telecommunications sector in Turkey has adopted a state-driven and regulated approach to governance, the implementation of a self- or co-regulatory model for the Internet sector can still be discussed; particularly for categories of Internet Intermediaries that do not clearly fall under the definitions of access provider and hosting provider in the Internet Law.

Self-regulation is when the non-governmental stakeholders coordinate their conduct in order to respond to policy objectives, while co-regulation is the interaction of self-regulatory initiatives and explicit government mandates based on legislative and regulatory provisions¹⁴⁹. The institutional and legislative trend in Turkey has clearly favoured the dominance of government mandates that are implemented by an institutional and legislative framework. While the APA may be presented as an attempt to introduce a co-regulatory approach to the Internet ecosystem, the legal mandate, structure and compulsory nature of the Association cannot really be deemed as a true implementation of a co-regulatory approach.

However, the fact remains that in industries that are as dynamic as Internet Intermediaries many Internet markets have adopted self- and co-regulation approaches

¹⁴⁹ OECD, 'The Role of Internet Intermediaries in Advancing Public Policy Objectives' (2011) pg. 91

that are frequently supported by varying degrees of public sector endorsement¹⁵⁰. Leaving particular industries to determine and implement a self-regulation model does have benefits such as allowing greater flexibility and adaptability to the dynamic nature of said industry, reducing regulatory burdens and overreaching and even instances of industry stakeholders implementing higher standards¹⁵¹. However, a solely self-regulation model does pose certain risks such as issues relating to comprehensively safeguarding consumer rights and the potential for incumbent stakeholders to implement measures that reduce or restrict competition¹⁵². Such risks, particularly with regard to consumer protection and competition issues, are not compatible with the current framework in Turkey and the aims and ethos outlined in the past and current Strategy Documents.

In contrast to self-regulation models, a co-regulatory approach incorporates safeguards and guarantees by a state institutional and legislative framework for determined fundamental rights and principles. The industry stakeholders themselves build upon the state mandated rights and principles and ensure that regulatory and industry-approved principles and standards are implemented for areas and conditions that are not explicitly covered in the underlying legislative framework. Therefore, it can be said that a co-regulatory approach finds middle ground between the riskier self-regulation and the more rigorous solely state mandated regulatory regime.

This work has tried to highlight the fact that the current institutional and legislative framework in Turkey has certain issues regarding legal uncertainty and regulatory rigidity. A multistakeholder approach to discuss the implementation of a co-regulatory model for the different categories of Internet Intermediaries in Turkey has the potential

¹⁵⁰ RAND Europe (2008), Options for and Effectiveness of Internet Self- and Co-Regulation, Prepared for European Commission DG Information Society & Media, www.rand.org/pubs/technical_reports/TR566.html.

¹⁵¹ Office of Fair Trading 'Policy statement: The role of self-regulation in the OFT's consumer protection work' (2009) pg .14

¹⁵² Office of Fair Trading 'Policy statement: The role of self-regulation in the OFT's consumer protection work' (2009) pg .15

to address both of these issues. Adoption of such a model pursuant to actively and genuinely involving private stakeholders in the consultation process may yield a governance model that remains bound by the core principles highlighted in the Strategy Documents while also allowing a greater degree of flexibility to the operational needs and realities of the industry¹⁵³.

This work has also attempted to highlight the fact that the institutional and legislative framework has had effects that are not fully in line with the aims and goals explicitly stated in the Strategy Documents. As discussed above, it is not clear to what degree the impact of some of the restrictive measures were actually intended by the bodies drafting and implementing the measures. For certain measures that may cause restrictive effect, the actual intention of the legislature and/or executive branches were concerns that generally have restrictive effects such as national security and consumer protection. However, this is not the case for the entire legislative framework and as highlighted in this work and in work by Kaya and Beceni, regardless of underlying intent these measures do have the potential to have restrictive effects on Internet Intermediaries.

One method that can be recommended to mitigate the unintended restrictive effects that new legislation and regulations may have on Internet Intermediaries is the more regular and comprehensive utilization of processes set out under the Regulation on Procedures and Principles of Preparing Legislation.

As per Article 24 of the Regulation, which was amended on 14.03.2016, a Regulatory Impact Analysis must be prepared for draft laws and decree laws. Article 24(1) states that a partial Regulatory Impact Analysis must be prepared for draft laws and decree laws that are predicted to have an annual impact of less than thirty million Turkish Lira, while a full Regulatory Impact Analysis must be carried out for draft laws and decree

¹⁵³ During the course of the preparation of this work, there have been unofficial sources indicating that efforts are underway in Turkey to form an industry association for local hosting providers. As of the date of completion of this work, there have not been any official sources that confirm the formation of such an association. However, any such initiative on behalf of local Internet Intermediaries would be a welcome development; particularly in light of the findings and recommendations of this work.

laws that are predicted to have an annual impact of more than thirty million Turkish Lira.

As per Article 24(5) of the Regulation, a partial Regulatory Impact Analysis must contain; the reasons necessitating the measure, an evaluation of alternative solutions, an analysis of the potential benefits and costs, any additional costs that the measure may have on the budget, the effect the measure will have on social, economic and commercial life, the environment and relevant persons, the probable annual impact of the measure, the contribution the measure will have to the reduction of bureaucratic formalities and the consultation process for the drafting of the measure. A full Regulatory Impact Analysis has the same headings but must contain detailed information and evaluations regarding the analysis of potential costs and benefits, the effect the measure will have on social, economic and commercial life, the environment and relevant persons and the consultation process for the drafting of the measure.

Article 24(8) states that the Prime Ministers' Office can request that partial or full Regulatory Impact Analysis be prepared for other legislative measures and Article 24(9) states that the Prime Ministers' Office can request the preparation of a Regulatory Impact Analysis to measure the effect of laws that are current in effect. Therefore, considering the current size and aspirations of the Turkish telecommunication and Internet sectors, it would be advisable to more regularly utilize the Regulatory Impact Analysis tool. This is particularly important in light of the arguments presented above about the interconnectedness of the Internet ecosystem and the role of Internet Intermediaries in generating value both for the Internet ecosystem and the digital economy in general.

Furthermore, Article 6 of the Regulation sets out the consultation process for draft legislative measures. Within the scope of the consultation process, Article 6(3) states that drafts that concern matters regarding the public can be published for public opinion by the drafting ministry. This process has been used with increased regularity by

ministries and public bodies such as the ICTA and the Personal Data Protection Board for the purpose of obtaining public opinion and suggestions on draft regulations. An active effort by the institutional framework to more regularly utilize the tools of public consultation and Regulatory Impact Assessment would be an efficient method of evaluating and balancing the rights and obligations in the Turkish telecommunication and Internet sectors.

This recommendation can also be viewed in connection to the previous recommendation relating to the adoption of a more efficient multistakeholder approach, as conducting Regulatory Impact Assessments in a regular and comprehensive manner would facilitate increased private sector involvement and enable a better understanding by public bodies of the operational necessities faced by Internet Intermediaries.

Some of the limitations to this work – particularly those relating to the presented Case Study - have already been defined in earlier sections. However, having presented a discussion of the findings and the conclusion of these discussions, these limitations and their impact on this work should be revisited to contextualize the work and determine beneficial paths of further research and study.

An important limitation the work encountered was the data available for the Case Study. As comprehensive and trustworthy official data was not available on Internet Intermediaries such as hosting providers, the data used had to be obtained from public sources that did not guarantee the current or complete nature of their records. Consequently, all data used for the Case Study was used based on the understanding that it was not guaranteed to be reliable to a degree that structured or semi-structured empirical study could be carried out.

In addition to the added costs caused by the institutional and legislative framework, a number of different factors were also identified as potentially affecting Internet Intermediary operations and prices offered to end-users in Turkey. These factors included costs of infrastructure and utilities in Turkey and the volume of the market

providing a natural cap on the prices Intermediaries could realistically offer in Turkey. The lack of comprehensive official data for the wide range of data points that would have to be taken into account also limited the ability of this work to determine the proportion of cause and effect regarding the current framework and other contributing factors.

However, the inability of this work to undertake a comprehensive review of all such pertinent contributing factors was also due to the fact that the scope of study was limited by necessity. Furthermore, this work also imposed various other limitations to the scope of study so as to ensure that central focus remained on Internet Intermediaries; both in terms of how they were impacted by the current institutional and legislative framework and how their current situation impacted the goals that were set out in the Strategy Documents.

As discussed above, there is still ongoing debate about the definition and scope of the terms of Information/Informational and Network Society. In order to be able to review the interaction between the current institutional and legislative framework in Turkey and the determined short-term and long-term goals in the Strategy Documents, this debate was presented very briefly and certain common characteristics of an Information Society that are relevant to the scope of this work were determined. Should a study in a discipline other than legal studies focus on the wider considerations of the policies laid out in the Turkish Strategy Documents, the definition of an Information Society can be further explored and expanded. Reducing the debate on the definition of this term to identifying the relevant commonalities served the purpose of better identifying the role that could be played by Internet Intermediaries. However, such a reduction may have also had a limiting effect on the exploration of the achievability of the goals set out in the Strategy Documents.

Having considered the conclusions of this work and the aforementioned limitations, several areas of further research can be recommended.

The main recommendation for further research would be conducting more detailed research into the range of factors that may affect the operation of Internet Intermediaries in Turkey; particularly with regard to increased costs of local Internet Intermediaries that are then reflected onto Turkish consumers. One possible method would be to expand the case study that was presented under Section 3 of this work through the collection and incorporation of more extensive and detailed data. This would then allow a structured or semi-structured empirical methodology to be applied. Increasing the data incorporated into the case study would be able to take into account a wider range of factors, such as differences in local infrastructure costs and consumer habits. Carrying out a wider and more comprehensive comparison using this data would be able to better determine how much of the increased local costs in Turkey were actually caused by differences in the institutional and legislative framework.

Expanding the scope of the Case Study could also be carried out by conducting further research into differences in Internet Intermediary operations and functions across countries with significantly different approaches to Internet governances and the principles governing issues of governance and state control. Due to the need to limit the scope of research, this work only compared the Intermediary ecosystem in Turkey to OECD countries that had agreed upon and adopted the same guiding principles for Internet governance, the growth of the digital economy and Information Society. However, countries such as China and Russia also have a significant share of the global hosting market. By expanding the Case Study to consider countries outside of the OECD, further research could reveal the impact that different models of Internet governance have on the functions and contributions of Internet Intermediaries.

Another area of possible further research should be a comprehensive review of the potential implementation of multistakeholder approaches to the telecommunication and Internet sectors in Turkey. As the analysis of the current institutional and legislative framework revealed, the current trend in Turkey favours stricter control by state bodies in terms of the governance and regulation of said sectors. However, in light of the

discussion above about the importance of an empowered and strong local Internet Intermediary ecosystem, further research into possible multistakeholder models and their implementation in Turkey would be beneficial. Such further research could also focus on the viability of the implementation of self- or co-regulation models for the different Internet Intermediary sectors in Turkey, particularly by drawing comparison to other OECD countries that have been able to adopt successful co-regulation models so as to ease regulatory burdens.

As established by this work, the current institutional and legislative framework imposes restrictions on Turkish Internet Intermediaries that place them at a comparative disadvantage to Intermediaries in other countries. Based on this assertion, another area of possible further research might look into potential incentives that can be provided to Turkish Internet Intermediaries so as to increase their competitiveness. While some of the existing measures regarding the localisation of certain financial data in Turkey will create increased demand for services offered by local Intermediaries, incentives in areas such as establishing data centres and promoting local and locally relevant content might also be reviewed in detail.

A final area of suggested research would be to look into the specifics of generating and increasing local and locally relevant content in Turkey. Within this scope, the purpose and duties of the Internet Development Board can be further analysed, and recommendations can be made as to how this institution may be empowered so that it takes a more active and well-defined role in facilitating the creation of local content in Turkey. Such a review may also focus on evaluations of public information resources, such as Wikipedia.org and Wikihow.com, to compare the volume, quality and detail of Turkish content to content in other languages.

Bibliography

- AKDENİZ, Yaman & ALTIPARMAK, Kerem
AKGÜL, Mustafa & KIRLIDOĞ Metin
BARNEY, Darin
BTK
CASTELLS, Manuel
CASTELLS, Manuel
CASTELLS, Manuel
ERDEM, Nilay & BECENİ, Yasin
DEIBERT Ronald,
PALFREY John,
ROHONZINSKI Rafal,
ZITRAIN Jonathan
- Internet: Restricted Access – A Critical Assessment of Internet Content Regulation and Censorship in Turkey, İmaj, 2008
‘Internet Censorship in Turkey’ Internet Policy Review Volume 4 Issue 2, 2015
The Network Society, Polity Press, 2010
Türkiye Elektronik Haberleşme Sektörü Üç Aylık Pazar Verileri Raporu (2017 Yılı 4. Çeyrek), Ankara 2018
The Information Age: Economy, Society and Culture. Vol I: The Rise of the Network Society, Wiley-Blackwell, 1996
Manuel Castells, The Information Age: Economy, Society and Culture. Vol III: End of Millennium, Oxford: Blackwell, 1998
The Internet Galaxy: Reflections on the Internet, Business and Society, Oxford University Press, 2001
‘Online Intermediaries Case Studies Series: Turkey (eBay Case)’ in Urs Gasser and Wolfgang Schulz, Governance of Online Intermediaries: Observations From a Series of National Case Studies’, 2015
https://publixphere.net/i/noc/page/NoC_Online_Intermediaries_Research_Project_Synthesis (online)
Access Controlled, The Shaping of Power, Rights and Rule in Cyberspace, MIT Press, 2010

Devlet Teşkilatı	Planlama	2006 – 2010 Bilgi Toplumu Stratejisi, Ankara 2006
DIJK, Jan Van		‘The One-Dimensional Network Society of Manuel Castells’, <i>New Media and Society</i> , 1(1): 127 – 38, 1999
DIJK, Jan Van		The Network Society, Sage Publications, 2012
GURKAYNAK, Gonenc et al.		‘Exploring New Frontiers in the Interface between Free Speech and Access Bans’, <i>European Journal of Law and Technology</i> , 2014 http://ejlt.org/article/view/282/425 (online)
HORNIK, Joanna & LLERA, Carmen Villa		‘An Economic Analysis of Liability of Hosting Services: Uncertainty and Incentives Online’, Bruges European Research Papers, 2017
Internet Society		Internet Governance Why the Multistakeholder Approach Works https://cdn.prod.internetsociety.org/wp-content/uploads/2016/04/IG-MultiStakeholderApproach.pdf (online)
Internet Society		Internet Governance an Internet Society Public Policy Briefing https://cdn.prod.internetsociety.org/wp-content/uploads/2017/09/ISOC-PolicyBrief-InternetGovernance-20151030-nb.pdf (online)
Internet Society		Local Content an Internet Society Public Policy Briefing https://cdn.prod.internetsociety.org/wp-content/uploads/2017/09/ISOC-PolicyBrief-LocalContent-20151030_nb.pdf (online)

- KARABACAK, Niver Bengü Telekomünikasyon Hizmetleri Pazarında Fiyat Düzenlemeleri: Fiyat Sıkıştırması Sorunu, BTK Uzmanlık Tezi, Ankara 2007
- Kalkınma Bakanlığı 2015 – 2018 Bilgi Toplumu Stratejisi ve Eylem Planı, Ankara 2015
- Kalkınma Bakanlığı 2014 – 2018 Stratejik Planı, Ankara 2015
- KAYA, Mehmet Bedii Teknik ve Hukuki Boyutlarıyla İnternete Erişimin Engellenmesi, On İki Levha, 2010
- KAYA, Mehmet Bedii ‘The regulation of Internet intermediaries under Turkish law: Is there a delicate balance between rights and obligations?’, Computer Law & Security Review, 2016
- KENDE Michael & ROSE, Karen Promoting Local Content Hosting to Develop the Internet Ecosystem, 2015
<https://www.internetsociety.org/wp-content/uploads/2017/08/Promoting20Local20Content20Hosting20to20Develop20the20Internet20Ecosystem.pdf> (online)
- KOSKE, I et al. The Internet Economy – Regulatory Challenges and Practices, OECD Economics Department Working Papers No. 1171, OECD Publishing, Paris
<http://dx.doi.org/10.1787/5jxszm7x2qmr-en> (online)
- MUELER, Milton L. Networks and States: The Global Politics of Internet Governance, The MIT Press 2010
- NETmundial Global Multistakeholder Meeting on the Future of Internet Governance, NETmundial Multistakeholder Statement, April 24th, 2014

- <http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf> (online)
- OECD Bridging the Rural Digital Divide, OECD Digital Economy Papers No. 265, OECD Publishing
<http://dx.doi.org/10.1787/852bd3b9-en> (online)
- OECD The Role of Internet Intermediaries in Advancing Public Policy Objectives, OECD Publishing, 2011
<http://dx.doi.org/10.1787/9789264115644-en> (online)
- OECD The Relationship Between Local Content, Internet Development and Access Prices, OECD Publishing, 2011
<https://www.oecd.org/internet/ieconomy/50305352.pdf> (online)
- OECD The Economic and Social Role of Internet Intermediaries, OECD Publishing, 2010
<https://www.oecd.org/internet/ieconomy/44949023.pdf> (online)
- OECD OECD Guide to Measuring the Information Society 2011, OECD Publishing, 2011
<http://dx.doi.org/10.1787/9789264113541-en> (online)
- OECD Broadband Portal,
www.oecd.org/sti/broadband/oecdbroadbandportal.html (online)
- OECD Net National Income (indicator)
<https://data.oecd.org/natincome/net-national-income.htm> (online)

OECD	Council Recommendation on Principles for Internet Policy Making (13 December 2011) adopted at the High Level Meeting on the Internet Economy: Generating Innovation and Growth 28 – 29 June 2011 https://www.oecd.org/internet/ieconomy/49258588.pdf (online)
Office of Fair Trading	Policy statement: The role of self-regulation in the OFT’s consumer protection work, 2009 http://webarchive.nationalarchives.gov.uk/20140402161708/http://www.offt.gov.uk/OFTwork/publications/publication-categories/corporate/general/ (online)
RAND Europe	Options for and Effectiveness of Internet Self- and Co-Regulation, Prepared for European Commission DG Information Society & Media, 2008 www.rand.org/pubs/technical_reports/TR566.html (online)
REIDENBERG, Joel	‘Technolog and Internet Jurisdiction’, University of Pennsylvania Law Review, Vol. 153, p. 1951, 2005
STEHR, Nico	Knowledge and Economic Conduct: The Social Foundations of the Modern Economy, University of Toronto Press, 2002
Türkiye Cumhuriyeti Başbakanlık	65. Hükümet Planı, Ankara 2016
Twitter	Twitter Removal Requests Report https://transparency.twitter.com/en/removal-requests.html#removal-requests-jan-jun-2017 (online)

Ulaştırma, Denizcilik
ve Haberleşme
Bakanlığı

YALKIN Çağrı,
KERRIGAN Finola,
LEHN Dirk vom

Ulusal Genişbant Stratejisi ve Eylem Planı 2017 – 2020,
Ankara 2017

Legitimisation of the Role of the Nation State:
Understanding of and reactions to Internet Censorship in
Turkey, *New Media & Society*, Vol 16, Issue 2, pp. 271
– 289

www.webhosting.info

www.hostadvice.com

<http://www.allyoucanread.com/turkish-newspapers>