

# INTERNET FREEDOM REPORT 2014: HUNGARY

Overall Internet freedom score: **28/50**  
 Gross domestic product per capita: €16,595 per annum<sup>1</sup>  
 Population: 9.9 million  
 Percent of individuals using the Internet in 2013: 72.64<sup>2</sup>  
 Facebook subscribers: 4,265,960<sup>3</sup>  
 Average broadband speed: 33.58 Mbps (22nd out of 192 countries)<sup>4</sup>

Freedom of Expression	7
Maximum potential score	15
Big Brother	10
Maximum potential score	15
Legal Maze	5
Maximum potential score	10
Open Government	6
Maximum potential score	10
<b>Total Score</b>	<b>28</b>
Maximum potential score	50

## A Safe Space No More? Looming Threats to Internet Freedoms

*International pressure forced the Hungarian government to roll back a few of the most severe restrictions on online and other media, but the scope of media and Internet regulation has still increased significantly over the past four years, and publishers and bloggers remain vulnerable to heavy fines, sanctions, and informal government pressure. Regulatory bodies lack transparency and diversity of membership.*

by Gábor Polyák, Joost van Beek and Kate Coyer\*

The Hungarian government has been strongly criticized for increasingly authoritarian policies since 2010. International bodies, human rights organizations, former dissidents, foreign politicians, and others have variously warned about the erosion of democratic checks and balances, the excessive concentration of powers, insufficient transparency, and attempts to control civil society. Criticism has also focused on encroachments on media freedom, religious freedom, minority rights, constitutionalism, and

judicial independence.<sup>5</sup> Concerns over the state of democracy in Hungary were pulled back into the spotlight<sup>6</sup> when Prime Minister Viktor Orbán announced that “the new state that we are constructing in Hungary is an illiberal state.”<sup>7</sup>

<sup>1</sup> Organisation for Economic Co-operation and Development (OECD), converted from USD at European Central Bank exchange rate, December 31, 2013. See: <http://stats.oecd.org/index.aspx?queryid=558>

<sup>2</sup> International Telecommunication Union statistics, [http://www.itu.int/en/ITU-D/Statistics/Documents/statistics/2014/Individuals\\_Internet\\_2000-2013.xls](http://www.itu.int/en/ITU-D/Statistics/Documents/statistics/2014/Individuals_Internet_2000-2013.xls)

<sup>3</sup> Internet World Stats, December 31, 2012, <http://www.internetworldstats.com/stats4.htm>

<sup>4</sup> Ookla Net Index Explorer, accessed October 8, 2014, <http://explorer.netindex.com/>

\* Gábor Polyák is a member of the Faculty of Law, University of Pecs, Hungary, Joost van Beek is a Researcher at the Center for Media, Data and Society (CMDS) at Central European University, Budapest, Hungary, and Kate Coyer is Director of the Civil Society and Technology Project at CMDS.

<sup>5</sup> Andrew MacDowall, “Hungary Risks Putinization, Isolation After Orbán Re-election,” April 10, 2014, *World Politics Review* (<http://www.worldpoliticsreview.com/articles/13694/hungary-risks-putinization-isolation-after-orban-re-election>); European Parliament Committee on Civil Liberties, Justice and Home Affairs, Report on the situation of fundamental rights: standards and practices in Hungary, <http://bit.ly/1A8bNzS>; Human Rights Watch, “Wrong Direction on Rights: Assessing the impact of Hungary’s new constitution and laws”, <http://bit.ly/1sZcyUn>; Hungarian Civil Liberties Union, “HCLU: The Hungarian Example”, <http://bit.ly/1viCYHd>.

<sup>6</sup> Anita Komuves, “‘Illiberal’ Catchphrase Awakens U.S. Media to Story of Hungary,” *American Journalism Review*, October 6, 2014, <http://ajr.org/2014/10/06/illiberal-state-hungary-coverage/>

<sup>7</sup> [http://mandiner.hu/cikk/20140728\\_Orban\\_viktor\\_a\\_munkaalapu\\_allam\\_korszaka\\_kovetkezik\\_beszed\\_tusvanyos\\_2014](http://mandiner.hu/cikk/20140728_Orban_viktor_a_munkaalapu_allam_korszaka_kovetkezik_beszed_tusvanyos_2014) (accessed August 4, 2014). The text is available in English at: <http://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktor-Orban-s-speech-at-the-25th-balvanyos-summer-free-university-and-student-camp>

The country has been on the receiving end of more and sharper criticism of its media legislation than any other European Union (EU) member state in the past four years, since the conservative, statist Fidesz party came to power and immediately began overhauling the country's constitution and legislative framework on a wide range of issues. New media laws were among the very first the new authorities drafted in 2010, and they have been amended several times since.

The current media regulations were adopted without public consultation with opposition parties, business, civil society, or other stakeholders. The legislation triggered protests by the EU, the Organization for Security and Co-operation in Europe (OSCE), and the Council of Europe, and by Hungarian civic and professional organizations and human rights groups. As a result, the parliament amended several of the most severe media restrictions while leaving the structure of media regulation mostly intact.

The overall framework for freedom of expression changed radically under the new media laws. The state of online freedom of expression must be viewed in light of the overall restructuring of the media environment and challenges to free expression, together with the new powers and instruments granted to allow the media regulator, the National Media and Infocommunications Authority (NMHH), to sanction previously unregulated online content.

In mid-2014, a wave of developments contributed to the new state of affairs, including new tax burdens placed on all media (online and traditional); the firing of the editor in chief of a major online news outlet following publication of an investigative piece into government expenses; and investigations into Norwegian-funded grants that included police raids on the NGOs managing the grants and demands to grantees to submit to government inspections (including transparency, anti-corruption, and investigative reporting organizations as well as the online watchdog NGO *Atlatszo*).<sup>8</sup>

<sup>8</sup> See "Norway condemns Hungarian NGO crackdown," *Reuters*, September 9, 2014, <http://uk.reuters.com/article/2014/09/09/uk-hungary-norway-idUKKBN0H41LU20140909>; Attila Mong, "Amid government crackdown, Hungary's journalists look for new ways to work," *Committee to Protect Journalists*, <https://cpj.org/blog/2014/10/amid-governmentcrackdown-hungarys-journalists-look.php>; "Norway-funded NGOs reflect in aftermath of Okotars raid – part II," *The Budapest Beacon*, September 19, 2014, <http://budapestbeacon.com/featured-articles/norway-funded-ngos-reflect-aftermath-okotars-raid-part-ii/>.

All these developments raised serious concerns about the direct and chilling effect such measures could have on freedom of expression. In October 2014, the government proposed a new Internet tax that would be levied according to level of data usage.<sup>9</sup> (The proposal was withdrawn a week later following large public protests.)

The media law today, with its opaque and excessive regulations and sanctions, is no more effective than pre-2010 criminal and civil codes. The new Criminal Code is unclear, and leaves room for abuse of authority. The code allows for general filtering of online content and requiring Internet service providers (ISPs) to block certain content. Although some level of content filtering and blockage is common in the EU, concern has been heightened in Hungary owing to the lack of transparency and independence of the media regulatory authority, the NMHH, which was established in 2010.

Not all the changes, however, have restricted freedom of expression for journalists, bloggers, and other producers of Internet content. Online journalists are now entitled to the same protection of sources as other journalists; copyright law protections are in line with EU law; and recent changes to the Criminal Code remove criminal liability for peer-to-peer sharing of copyrighted content.

Despite these advances, the current laws seek to regulate content online to an extent that curbs freedom of expression to an unnecessary degree. Unclear legal definitions and the potential for lawsuits over user comments leave bloggers and website operators uncertain as to whether they are affected. Laws ensure government transparency and freedom of information in principle, but the rules are unevenly applied and legal appeals take years to resolve. The government does not mandate filtering, but there are several ways in which court proceedings or the NMHH media regulator can trigger the blocking of online content.

The current structure and rules governing the election of NMHH members do not insulate the agency from political influence and thus do not provide adequate safeguards for independent regulatory oversight.

<sup>9</sup> The draft 2015 tax bill submitted to parliament on October 21, 2014, contains a provision for Internet providers to pay a tax of 150 forints (50 cents) per gigabyte of data traffic, though it would also let companies offset corporate income tax against the new levy. <http://www.reuters.com/article/2014/10/22/us-hungary-internet-tax-idUSKCN0IBORN20141022>

## CONCLUSIONS AND RECOMMENDATIONS

### FREEDOM OF EXPRESSION

- The legal requirement for media, including online news sites, to register with the Media Council, needs to be more clearly defined, and remains controversial even after being eased under pressure from the EU.
- Specific media laws regulating content are unnecessary and inconsistent with international norms and standards.<sup>10</sup>
- New revenue-based tax burdens on media outlets impose undue pressure on media companies and should be based on profits rather than revenue or withdrawn altogether.
- An Internet tax on usage should not be introduced.
- Defamation and libel should be decriminalized (so those accused are subject only to civil actions, not, as at present, to criminal prosecution).

### BIG BROTHER

- The powers of the media regulator to oversee online content should be rolled back, and its politically controlled membership structure reformed; there should be representation of diverse political and professional views and experiences.
- The EU should consider a freeze on allocation to Hungary of regional development funds until the government more adequately addresses the persistent concerns about undue state influence over the media. The EU should undertake a formal investigation as to whether the Hungarian government's actions have breached Article 2 of the EU Treaty, including respect for the rule of law and respect for human rights.<sup>11</sup>

<sup>10</sup> See Central European University, Center for Media and Communication Studies, *Hungarian Media Laws in Europe: An Assessment of the Consistency of Hungary's Media Laws with European Practices and Norms*, 2012, <http://cmds.ceu.hu/sites/cmcs.ceu.hu/files/attachment/article/274/hungarianmedialawsineurope0.pdf>.

<sup>11</sup> See European Parliamentary Research Service, "Article 7 TEU: a mechanism to protect EU values," <http://epthinktank.eu/2013/10/07/article-7-teu-a-mechanism-to-protect-eu-values/>.

- The scope of fines and sanctions that the media regulatory authority (NMHH) can impose should be reduced.

### LEGAL MAZE

- The media laws fail to provide adequate safeguards to guarantee pluralistic and autonomous oversight by the NMHH.
- Recent changes eliminated criminal liability for making copyrighted content available through peer-to-peer sharing.

### OPEN GOVERNMENT

- By law, public interest data are publicly available and may be accessed by anyone.
- Access to government information and court databases is uneven, and databases are hard to search.
- The rules against "abusive data requests" have the effect of arbitrarily restricting the disclosure of public data, and should be repealed; additionally, court rulings that go against the data manager should not be subject to appeal to the higher court.
- Online databases providing access to court judgments and data concerning public contracts must be significantly improved to increase ease-of-use and searchability; the obligation to publish public contract-related data must be enforced more consistently.
- The decisions and procedures governing the blocking of criminal online content should be made fully transparent.
- Clear time limits and transparency requirements should be imposed on the National Authority for Data Protection and Freedom of Information in order to shorten the vastly protracted procedures involved in appealing refusals to provide data.

## FREEDOM OF EXPRESSION

**2/5:** *The legal framework and instances of prosecutions entailing denial of freedom of expression.*

**3/5:** *Legal rights and protections for online expression and their status compared with print and broadcast rights.*

**2/5:** *Cases of bloggers or online journalists being prosecuted, fined, or jailed for defamation or libel.*

One of the Fidesz government's most controversial steps was the passage of new legislation on the media in 2010 and subsequent amendments.

All media outlets carrying commercial content, both online and offline, are now required to register with the state. Vague provisions on respecting "human dignity" leave room for misuse. The framework for online freedom of expression changed radically as a result of this legislation, which expanded the scope of media regulation and the media regulator's sanctioning instruments to swaths of previously unregulated online content. Notification requirements and content regulations introduced under the new media laws cover "online press products" and on-demand media services. The media regulator, NMHH, may apply fines of up to 50 million forints (€164,800) and far-reaching sanctions on such online services.

The potential for lawsuits over user comments leaves bloggers and website operators uncertain of their legal status. However, online journalists are now entitled to the same protection of sources and other rights as other journalists.

### The New Legal Framework

The regulatory framework for online communications falls into two parts. First, Internet communications are subject to general civil, criminal, copyright, and data protection law requirements, and these are complemented by EU-standard provisions on e-commerce and

information services.<sup>12</sup> At the same time, a significant portion of online content falls under media laws that were adopted in 2010, many of whose provisions extend to "online press products" and on-demand media services, whereas specific media laws had previously not applied to the Internet. They impose new content-related requirements and specify sanctions that may be applied by the Media Council, a body within the NMHH with broad and autonomous regulatory powers.

The media legislation's definition of "press products" refers not just to newspapers and periodicals but also to "online newspapers or news portals", and specifies that products fall under this definition if they "are offered as a business service" and editorial responsibility is exercised.<sup>13</sup> The definition of "business service" is ambiguous. In practice, the NMHH does not consider a blog a business venture merely because the provider places an advertisement next to posts. But confusion about this definition was exacerbated when a member of the Media Council wrote that a blog would be included if it were produced for a living.<sup>14</sup>

Operators of new online press products must notify the NMHH within 60 days.<sup>15</sup> Failure to submit this notification may result in a fine of 1 million forints (€3,280). Under the content provisions extending to online press products, the publication of content that violates human dignity<sup>16</sup> or the constitutional order, incites hatred or aims to exclude, or violates provisions on the protection of children or those concerning advertising, may result in the Media Council levying a fine of up to 25 million forints (€82,400).<sup>17</sup>

<sup>12</sup> Act CVIII of 2001 on certain issues of electronic commerce services and information society services, [http://english.nmhh.hu/dokumentum/150094/108\\_2001\\_el\\_comm\\_torv\\_20070502.pdf](http://english.nmhh.hu/dokumentum/150094/108_2001_el_comm_torv_20070502.pdf).

<sup>13</sup> Act CIV of 2010 on Freedom of the Press and the Fundamental Rules of Media Content, Article 1.6.

<sup>14</sup> Freedom House, *Freedom on the Net 2013: Hungary*, p. 7.

<sup>15</sup> Act CLXXXV of 2010 on Media Services and Mass Media, Article 41 (2).

<sup>16</sup> Act CIV of 2010, Article 14 (1) stipulates that "the media service provider shall respect human dignity in the media content that it publishes," while Article 14 (2) specifies that "no wanton, gratuitous, and offensive presentation of persons in humiliating, exposed, or defenseless situations shall be allowed."

<sup>17</sup> Act CIV of 2010, Articles 14, 16-20; Act CLXXXV of 2010, Article 187 (2-3). See Section 3 for more detail on hate speech and child protection provisions.

One positive effect of the regulation of online press products is that journalists who work for them are now entitled to the same rights as other journalists, primarily the right to protect their sources.

If an on-demand service contains motion pictures, it qualifies as an on-demand media service rather than an “information society service”<sup>18</sup> and is covered by the same regulations as online press products, as well as additional requirements regarding the protection of children (see “Big Brother” below). The NMHH may fine on-demand media services up to 50 million forints (€164,800) for violations, and can apply sanctions, including striking the service from the registry.<sup>19</sup>

## Defamation and Libel

Civil law protections of personal reputation and honor, and criminal law prohibitions on defamation and libel, are applicable to online journalists. An ongoing libel suit concerns a 2009 article published on the Index news portal ([index.hu](http://index.hu)) about irregularities surrounding the public energy regulator.<sup>20</sup> Citing the Constitutional Court and Strasbourg case law on the protection of press freedom, the Budapest Metropolitan Court acquitted the journalist who wrote the article. In November 2013, Hungary’s highest judicial authority, the Curia or Supreme Court, granted a prosecutor’s motion for review on the grounds that the lower court had failed to determine that the journalist’s actions were carried out in good faith and with due professional diligence.

The past few years have witnessed a number of instances of legal proceedings over user comments on websites. Several such cases were initiated by politicians against those writing comments as well as against those operating the websites where the comments appeared.<sup>21</sup>

<sup>18</sup> Act CIV of 2010, Article 1.4, defines on-demand media services as “the media services where, on the basis of a catalogue of programs compiled by the media service provider, the user may, at his/her own request, watch or listen to the programs at any time of his/her own choice.”  
<sup>19</sup> Act CLXXXV of 2010, Article 11; Act CLXXXV of 2010, Article 187 (2-3).

<sup>20</sup> Zsófia Lehóczki, “The one-dollar case,” <http://mertek.eu/en/article/the-one-dollar-case>.

<sup>21</sup> See Attila Mong, “Várijk Papcsák Ferencet a bejáratnál!” <http://mertek.hvg.hu/2012/11/17/varjuk-papcsak-ferenceta-bejaratnal/>; Attila Mong, “Rágalmazni csak pontosan, szépen ...,” <http://mertek.hvg.hu/2013/04/12/ragalmazni-csak-pontosan-szepen/>.

In one case, a court established the liability of an Internet content provider in a civil lawsuit but did not require the provider to pay damages.

In another, a publisher settled out of court and paid damages to a politician who had sued over a user comment. In both cases, criminal proceedings alleging defamation were also launched against the commenters in question; those decisions were still pending at the end of 2014.

The legal dilemma facing website operators was described by the chair of the Association of Hungarian Content Providers (MTE), Péter Nádori, who argued that, under the law on electronic commerce, “a comment that has been posted could technically be brought to court even if it were deleted minutes later, rendering website moderating a less useful method for avoiding legal liability.” But at the same time, the MTE chair wrote, “requiring prior approval from the website administrator before comments are posted may [...] be considered editing,” which would imply its own legal responsibilities.<sup>22</sup>

In May 2014, the Constitutional Court ruled that content providers have unconditional responsibility for unlawful third-party comments posted on their websites, regardless of whether they moderate such comments or not, even when they are not aware of those comments or when they have immediately removed them upon being warned about them.<sup>23</sup> In practice, this ruling could result in content providers choosing not to let readers comment on their articles.

<sup>22</sup> Péter Nádori, “Kommentek a magyar interneten: a polgári jogi gyakorlat” (Comments on Hungarian Internet: civil code practice), in *Medias res*, I, Nr. 2, 2012, Pp. 319–333, cited in Freedom House, *Freedom on the Net 2013: Hungary*, p. 13.

<sup>23</sup> “Az Ab szerint sem korlátlan a kommentelés szabadsága” (According to the Constitutional Court, the freedom to comment is not unlimited), May 28, 2014 ([http://hvg.hu/itthon/20140528\\_komment\\_alkotmanybirosag](http://hvg.hu/itthon/20140528_komment_alkotmanybirosag), accessed August 3, 2014). “Ruling of Hungarian Constitutional Court can further curb freedom of expression, warns OSCE media freedom representative,” May 29, 2014, <http://www.osce.org/fom/119216>. “Court decision a blow to internet comment,” *The Budapest Times*, June 22, 2014, <http://budapesttimes.hu/2014/06/22/court-decision-a-blow-to-internet-comment/>.

## Threats to Independence of Online News

The provision in the 2010 media laws requiring media, including online services, to register and receive prior authorization from the Media Council proved very controversial and led to complaints from the Council of Europe<sup>24</sup> and the European Commission. In 2011, these and other media law provisions were amended to bring Hungarian legislation in line with EU law, particularly by allowing media providers to register within 60 days after beginning service, rather than prior to launch.<sup>25</sup>

<sup>24</sup> <https://wcd.coe.int/ViewDoc.jsp?id=1751289>.  
<sup>25</sup> [http://europa.eu/rapid/press-release\\_MEMO-11-89\\_en.htm](http://europa.eu/rapid/press-release_MEMO-11-89_en.htm).

In June 2014, Gergo Saling, the editor in chief of online news outlet, Origo, was fired in a decision that sparked protest.<sup>26</sup> Origo is owned by Magyar Telekom, a subsidiary of Deutsche Telekom. The editor was fired following publication of an investigative piece on the foreign travel expenses of Prime Minister Viktor Orbán's chief of cabinet.<sup>27</sup> This incident has raised serious concerns about the future of independent online media: Origo is the largest online news provider and widely regarded as the most independent news source in the country.

<sup>26</sup> "The Lazar affair," *The Economist*, June 14, 2014, <http://www.economist.com/news/europe/21604214-freedom-expression-under-threat-lazar-affair>.

<sup>27</sup> Gábor Csuday, "Press crackdown – and pushback – in Hungary," *Columbia Journalism Review*, June 9, 2014, [http://www.cjr.org/behind\\_the\\_news/press\\_crackdown\\_and\\_pushback\\_i.php?page=all&print=true](http://www.cjr.org/behind_the_news/press_crackdown_and_pushback_i.php?page=all&print=true)

### Taxing The Media - and the Internet?

In June 2014, the Hungarian parliament passed a new, progressive tax on the annual advertising revenues of media companies operating in Hungary, with a maximum rate of 40 percent on revenues above 20 billion forints (€66.4 million). The tax met with opposition from across the otherwise seriously divided media industry. The television station with the largest audience share in the country, RTL Klub, will bear the heaviest financial burden from the new tax because it brings in revenues above the 20 billion forint threshold, but the tax affects all non-state-owned media companies, Hungarian and foreign, including online news providers. The European Commission has spoken out against the new tax law.<sup>1</sup>

In October 2014, the government proposed a new tax law that included a provision subjecting Internet providers to a tax of 150 forints (50 eurocents) per gigabyte of data traffic, though it would let companies offset corporate income tax against the new levy. The unexpected proposal raised concerns that it would lessen pluralism in the Internet market by pushing ISPs out of business, as analysts calculated that the proposed rate would add up to more than the sector's total annual revenue, and that costs would be passed on to customers.<sup>2</sup> The spokesperson for the then European Commissioner for Digital Agenda, Neelie Kroes, said the proposal was "part of [a] pattern of actions which have limited freedom," and that taxing the Internet "in a country that is already below the average on digital indicators is a particularly bad idea."<sup>3</sup> The government response, suggesting a ceiling to the tax of 700 forints per month for individuals and 5,000 forints for companies, did not quell protests and, after 100,000 Hungarians took part in a protest rally organized through Facebook on 28 October, Prime Minister Orbán announced that the tax could not be introduced "in its current form."<sup>4</sup>

<sup>1</sup> [http://ec.europa.eu/commission\\_2010-2014/kroes/en/blog/media-freedom-remains-under-threat-hungary](http://ec.europa.eu/commission_2010-2014/kroes/en/blog/media-freedom-remains-under-threat-hungary).

<sup>2</sup> "Hungary plans new tax on Internet traffic, public calls for rally," Reuters, <http://www.reuters.com/article/2014/10/22/us-hungary-internet-tax-idUSKCN0IBORN20141022>.

<sup>3</sup> "Commission slams Hungary's Internet tax," EurActiv.com, <http://www.euractiv.com/sections/infosociety/commission-slams-hungarys-internet-tax-309559>.

<sup>4</sup> "Around 100,000 Hungarians rally for democracy as internet tax hits nerve," Reuters, <http://www.reuters.com/article/2014/10/29/us-hungary-internet-protest-idUSKBN0IH29M20141029>; "Hungary internet tax cancelled after mass protests," BBC News, <http://www.bbc.com/news/world-europe-29846285>.

## BIG BROTHER

**3/5:** *Censorship – laws and implementation, and pressure-group activity, including requests to remove material.*

**3/5:** *Filtering and blocking of Internet content by state and other actors.*

**4/5:** *Published information on government surveillance/tapping – by government and by private companies.*

The new media laws introduced broad provisions against calls to ostracize individuals or groups, or inciting hatred against social groups, and civil law provisions against hate speech were broadened in 2014. A blogger was given a suspended prison sentence in 2013 for inciting violence against the Roma, and a news outlet was fined over an anti-Roma op-ed, but the application of hate speech laws overall has been limited. The Electronic Communications Act follows the EU regulatory framework on net neutrality and its consumer protection approach. The act states net neutrality as a fundamental principle, but lacks explicit provisions.<sup>28</sup>

Revisions are needed to reformulate or remove vague wording in the media laws describing offenses concerning the violation of human dignity and the incitement of hatred or exclusion of “any nation, community, national, ethnic, linguistic, or other minority or any majority as well as any church or religious group.” As with the provision in the Fourth Amendment to the Hungarian Constitution, which prohibited “violating the dignity of the Hungarian nation,” hate speech provisions should also be more clearly and narrowly formulated to protect minority views rather than majority views or institutions.

The government does not mandate filtering, but there are several ways in which court proceedings can trigger the blocking of online content, and Media Council proceedings can also result in an obligation being placed on

<sup>28</sup> Act C of 2003, Article 2ba, bc, bf.

ISPs to block content. An NMHH database of online content that could be blocked has been criticized as “a non-transparent blacklist.” There is no evidence that the state has conducted unlawful surveillance of its citizens.

## Censorship and Hate Speech

Formal state-sponsored censorship does not exist, but self-censorship, as well as political and economic pressures on editors or owners aimed at influencing or restricting coverage, do have an impact on online journalism.<sup>29</sup> This was dramatically evident in the highly publicized firing of the editor of the online news website Origo in June 2014 (see “Freedom of Expression” above).

Both criminal law and the new media laws include limitations on hate speech. The Civil Code, which entered into force on March 15, 2014, widens the number of opportunities to file a suit over hate speech.<sup>30</sup> The fourth amendment to the Constitution, adopted in March 2013, includes an even further-reaching limitation on free expression, stipulating that “the right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial, or religious community.” This wording “creates the risk that freedom of speech in Hungary could, in the future, be curtailed in order to protect Hungarian institutions and office holders,” the Council of Europe’s Venice Commission warned.<sup>31</sup>

Since the 1990s the only binding criminal conviction for hate speech occurred in January 2013, when an extreme-right blogger received a suspended prison term for urging violence against the Roma minority and that Roma be

<sup>29</sup> MerteK Media Monitor, “The Reins on Freedom: Self-Censorship in the Hungarian Press,” <http://www.mertek.eu/en/reports/self-censorship-in-the-hungarian-press>.

<sup>30</sup> G. Szabó Dániel, “Az egész élete megváltozhat az új polgári törvénykönyvtől”, *Index*, March 16, 2014, [http://index.hu/belfold/2014/03/16/uj\\_ptk\\_hatalybalapese/](http://index.hu/belfold/2014/03/16/uj_ptk_hatalybalapese/).

<sup>31</sup> European Commission for Democracy through Law (Venice Commission), *Opinion on the Fourth Amendment to the Fundamental Law of Hungary*, June 17, 2013, pp. 12, 31, <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282013%29012-e>.

excluded from society.<sup>32</sup> No proceedings have been initiated against the most prominent extreme-right portal, *kuruc.info*, even though the site was frequently referenced as a reason for toughening laws against hate speech.<sup>33</sup>

The new media laws state that media content (including “online press products” and on-demand media services) “may not incite hatred against [...] or exclude any nation, community, national, ethnic, linguistic, or other minority or any majority as well as any church or religious group.”<sup>34</sup> The law stipulates fines of up to 50 million forints (€164,800) and sanctions extending to ordering the ISP to suspend the transmission of the site or service and deleting the media service from the register.<sup>35</sup> These provisions were criticized by the Hungarian Civil Liberties Union (HCLU) as producing “a chilling effect” on journalism and by Article 19, a London-based human rights organization, as not constituting a “legitimate restriction on freedom of expression.”<sup>36</sup>

The Media Council acted against the newspaper *Magyar Hírlap* over an op-ed, published both online and in print, that questioned the humanity of the Roma minority.<sup>37</sup> The council issued a fine of 250,000 forints (€800), of which 150,000 forints was assessed on the online version because it was available publicly for

<sup>32</sup> Helsinki Figyelő: Mikor Tomcatet elítélik, <http://helsinkifigyelo.hvg.hu/2013/01/09/mikor-tomcatet-elitelik/>. The blog included incendiary comments referring to the Roma such as: “Say, doesn’t your street corner boast its own tanned gallery? Gather 20 people, get down there, and thrash them thoroughly without so much as a word,” and “They need to be oppressed and excluded from the public and from cultural life. Any type of ethnic expression needs to be suppressed mercilessly.”

<sup>33</sup> Gábor Polyák, *A Kuruc.info-paradoxon*, *Fundamentum* 2013/4.

<sup>34</sup> Act CIV of 2010, Article 17.

<sup>35</sup> Act CLXXXV of 2010, Article 187.

<sup>36</sup> Article 19, “Hungary: Controversial New Media Laws Cast Shadow on Presidency,” January 17, 2011, <http://www.article19.org/data/files/pdfs/press/hungary-controversial.pdf>; Hungarian Civil Liberties Union, “Concerns about media legislation in Hungary (part I),” January 3, 2011, <http://iasz.hu/node/1700>.

<sup>37</sup> Zsolt Bayer, “Ki ne legyen?” *Magyar Hírlap*, January 5, 2013, <http://www.magyarhirlap.hu/ki-ne-legyen>. The article featured the following passage: “And the facts are as follows: a significant segment of the Gypsy population is unfit for co-existence. It is not fit for living among humans. This portion of the Gypsy population consists of animals and behaves as such. [...] And animals ought not to exist. Not in any shape or form. That is what needs to be achieved – right now and in any way possible!”

an extended period of time.<sup>38</sup> However, the online piece continues to be available, and the prosecutor’s office has not initiated proceedings against the newspaper.

There are no distinct regulations concerning online content about religion, though it may be limited by the provisions on hate speech and exclusion.

On-demand media services may make available online programs that contain graphic scenes of violence or sexual content, pornography, and extreme or unreasonable violence only if they can ensure that minors cannot access them. If that is not possible, the content must be accompanied by a warning message.<sup>39</sup>

## Intermediary Liability and Restrictions on Advertising

In line with EU regulations, intermediary service providers are not liable for legal violations and damages caused by the content they transmit, store, or make available, as long as they do not modify the content or its addressees and are unaware of any legal issues with the content. They are not obliged to verify content or investigate whether it breaks any laws, and are not liable for infringements as long as they “act expeditiously to remove or to disable access to” the content as soon as they learn about it.<sup>40</sup> Content providers, however, carry unlimited responsibility for third-party comments posted on their websites as a consequence of a recent Constitutional Court ruling, as discussed in the “Freedom of Expression” section above.

## Government Requests to Remove Material

The transparency reports by global ICT companies record regular data requests, and their number is in most cases in line with those requests made by other Visegrad country governments.

<sup>38</sup> A Nemzeti Média-és Hírközlési Hatóság Médiatanácsának 802/2013. (V. 8.) számú határozata, May 8, 2013, <http://mediatanacs.hu/dokumentum/160197/m080220130508.pdf>.

<sup>39</sup> Act CIV of 2010, Article 19.

<sup>40</sup> Act CVIII of 2001, Articles 7-12.

Google's Transparency Report records 554 requests for disclosure of user data from the Hungarian government between July 2010 and June 2014. Google did not comply with any of the requests.<sup>41</sup>

In its transparency report covering the first half of 2013, Apple distinguished between information requests about users and devices.<sup>42</sup> It lists no requests from the Hungarian government for more privacy-sensitive user data.

Facebook's transparency reports have signalled a steady increase in the number of Hungarian government data requests. There were 25 in the first half of 2013, 38 in the second half of 2013, and 57 in the first half of 2014, involving 78 users/accounts. Facebook disclosed at least some data in 29-36 percent of those cases. Twitter's report no longer includes Hungary.<sup>43</sup>

Microsoft's reporting for 2013 and the first half of 2014 reveals 184 data requests, potentially impacting 278 Microsoft or Skype accounts. Only basic subscriber data was disclosed, in approximately 15 percent of the cases no data were found, and in one case the request was rejected.<sup>44</sup>

## Filtering and Blocking

The Hungarian telecommunications infrastructure is not conducive to centralized control of content, as the government does not restrict bandwidth,

routers, or switches,<sup>45</sup> and ownership is not monopolized or consolidated in the hands of the state.

The government does not mandate technical filtering of websites, blogs, text messages, or social media.<sup>46</sup> However, there are several ways in which court proceedings can trigger the blocking of online content.

## How to Block Online Content, Legally

- Criminal Code provisions that went into effect in July 2013 stipulate that a court may order data to be "rendered permanently inaccessible" if making it publicly available constitutes, or is part of, a criminal offense.<sup>47</sup> If the hosting service does not delete the data even after being fined, the court can order communications networks to block it.
- Online content can be blocked by a court decision or a motion by a prosecutor in child pornography cases if the hosting service fails to delete it.
- A court can block online content even while legal proceedings are still under way, though this applies only in cases involving child pornography, crimes against the state, or terrorist acts.
- Hungarian courts may also order the blocking of foreign data if the authority in the foreign country does not comply with a request to do so.

The new media laws establish additional ways in which online content can be blocked. If the Media Council issues a fine against an online press product or on-demand media service, or obliges it to publish a statement, and the publisher fails to comply, the council can order the ISP to suspend the site or service, and may levy a fine of up to 3 million forints (€9,920).<sup>48</sup>

41 Google Transparency Report, Hungary, <https://www.google.com/transparencyreport/userdatarequests/HU/>, accessed September 30, 2014.

42 Apple, Report on Government Information Requests, published November 5, 2013, <http://images.apple.com/pr/pdf/131105reportongovinforequests3.pdf>.

43 Facebook, Global Government Requests Report, Hungary: <https://govtrequests.facebook.com/country/Hungary/2014-H1/>; "Big jump in requests by Hungarian government for data on Facebook users", Politics.hu, <http://www.politics.hu/20141110/big-jump-in-requests-by-hungarian-government-for-data-on-facebook-users/>; Twitter, Transparency Report, <https://transparency.twitter.com>, accessed September 30, 2014.

44 Microsoft, Microsoft's Law Enforcement Requests Report for 2013 and the first half of 2014, <http://www.microsoft.com/about/corporatecitizenship/en-us/reporting/transparency/>, accessed September 30, 2014.

45 Freedom House, *Freedom on the Net 2013: Hungary*, p. 4.

46 Freedom House, *Freedom on the Net 2013: Hungary*, p. 6.

47 Act C of 2012, Section 77. Also see Act XIX of 1998 on the Hungarian Criminal Procedure Code, Section 158/A-B; and Article 91 of the Decree with the force of law No. 11 of 1979 on penalties and the implementation of measures.

48 Act CLXXXV of 2010, Article 188 (2), 189 (3-4, 9).

Enforcement of blockages falls under the authority of the NMHH. To that end, it administers a database and informs all communications service providers about the data to be blocked. This database is not public; the law specifies that only the court, the public prosecutor, the investigating office, and the members of the competent parliamentary committee can have access.<sup>49</sup>

Freedom House has criticized this database as “a non-transparent blacklist [...], under which ISPs could be obligated to temporarily block content even before a court ruling.”<sup>50</sup> The HCLU warned that the new provisions increase “the likelihood that legal content could be unlawfully censored,” and the MTE called them “disproportionately severe” and “unconstitutional.”<sup>51</sup>

## Official and Commercial Surveillance

Investigating authorities and intelligence services can conduct surveillance of online communications without the target’s knowledge only if a judge approves a prosecutor’s request to do so, and only in cases concerning an investigation into a crime that carries a sentence of more than five years in prison, or if the law specifically provides for it (e.g. abuse of authority, child pornography, human trafficking).<sup>52</sup>

There is no evidence that the state has conducted unlawful surveillance of its citizens. Surveillance of communications such as email and messaging is in any case difficult, since Hungarians often use services based in other countries.

ISPs and content providers are not obliged to monitor their customers for illegal activity, but have to “act expeditiously to remove or to

disable access to” information related to illegal activity as soon as they are made aware of it.<sup>53</sup> If the illegal content is involved in a criminal procedure, the ISPs also have to preserve it.

<sup>53</sup> Act CVIII of 2001, Article 7 (5), Articles 9-11.

## News Portals and Government Targeted by Cyberattacks

A number of politically and commercially motivated cyberattacks came to light in 2012-2013. Turkish hackers claimed to have compromised Pepsi.hu, resulting in a major misuse of personal data.<sup>1</sup> The popular news portal Index suffered a severe distributed denial-of-service (DDoS) attack while reporting on events during a politically charged national holiday.<sup>2</sup> Other victims were the news site hvg.hu and the Hungarian electronic road toll system.<sup>3</sup>

The personal web page of the then Secretary of State for Education, Rózsa Hoffmann, was one of several targets of DDoS attacks in 2012, most likely by a local Anonymous cell as a protest against a controversial education reform.<sup>4</sup> Anonymous also claimed responsibility for temporarily blocking access to two of Prime Minister Orbán’s websites in January 2013,<sup>5</sup> and for changing the text of the newly adopted Hungarian Constitution on the website of the Constitutional Court in early 2012.

<sup>1</sup> “Pepsi Hungary hacked, 50,000+ user credentials leaked,” *Cyber War News*, <http://www.cyberwarnews.info/2012/10/12/pepsi-hungary-hacked-50000-user-credentials-leaked/>, accessed December 17, 2013.

<sup>2</sup> “Túlterheléses támadás érte az Indexet,” *Index*, October 23, 2013, [http://index.hu/tech/2013/10/23/tulterheleses\\_tamadas\\_erte\\_az\\_indexet/](http://index.hu/tech/2013/10/23/tulterheleses_tamadas_erte_az_indexet/), accessed December 17, 2013.

<sup>3</sup> “Túlterheléses támadás érte a hvg.hu-t is,” *Heti Világgazdaság Online*, October 23, 2013, [http://hvg.hu/tudomany/20131023\\_Tulterheleses\\_tamadas\\_erte\\_a\\_hvghu\\_t\\_is](http://hvg.hu/tudomany/20131023_Tulterheleses_tamadas_erte_a_hvghu_t_is); “Megtámadták az e-útdíj informatikai rendszerét,” *Heti Világgazdaság Online*, July 1, 2013, [http://hvg.hu/gazdasag/20130701\\_Megtamadtak\\_az\\_eutdij\\_informatikai\\_rends](http://hvg.hu/gazdasag/20130701_Megtamadtak_az_eutdij_informatikai_rends), accessed December 17, 2013.

<sup>4</sup> “Meghékkeltek Hoffmann Rózsa honlapját,” *Népszabadság Online*, [http://nol.hu/belfold/meghekkelték\\_hoffmann\\_rozsa\\_honlapjat](http://nol.hu/belfold/meghekkelték_hoffmann_rozsa_honlapjat), accessed December 17, 2013.

<sup>5</sup> “Feltörték Orbán honlapját,” *Index*, January 23, 2013, [http://index.hu/tech/2013/01/23/feltortek\\_Orban\\_honlapjat/](http://index.hu/tech/2013/01/23/feltortek_Orban_honlapjat/).

<sup>49</sup> Act C of 2003 on Electronic Communications, Article 159/B(3).

<sup>50</sup> Freedom House, *Freedom on the Net 2013: Hungary*, p. 7.

<sup>51</sup> EDRI, “Abandoning safe harbors: Hungarian online freedoms at risk,” November 21, 2012, <http://edri.org/edriagramnumber10-22hungarian-online-freedoms-abandon/>.

<sup>52</sup> Act XIX of 1998, sections 200-204.

Investigating authorities, prosecutors, and judges can ask for additional information such as IP addresses. The provider can be ordered to pay a fine for failure to turn over this data.

The Electronic Communications Act includes rules that are required by the European Data Retention Directive. Mobile phone companies and ISPs have to retain certain categories of data for a minimum of one year for the purposes of criminal investigation, national security, or national defense. These include personal data, location, caller phone numbers, the duration of phone conversations, IP addresses, and user IDs. No information is publically available about how often such data is requested by investigating authorities.<sup>54</sup>

There are no restrictions on the use of encryption and security tools. Legislation establishes minimum data security requirements for those processing personal data in order to protect the right to privacy, as well as for state organizations and some commercial data processors that deal with classified information.<sup>55</sup>

## LEGAL MAZE

**2/5:** *Transparency of legal procedures and appeals mechanisms*

**3/5:** *Copyright laws, fair use – laws and practice*

The present media laws have been criticized for failing to provide adequate safeguards to guarantee pluralistic and autonomous oversight of online or other media. The rules on the election of Media Council members do not insulate the body from political influence, and, in fact, all current Media Council members were nominated by the governing Fidesz party.

<sup>54</sup> Freedom House, *Freedom on the Net 2013: Hungary*, p. 14.

<sup>55</sup> Act CXII on the Right of Informational Self-Determination and on Freedom of Information; Act I on the Information Security of State and Municipal Organizations.

Co-regulation agreements with the Media Council (explained below) mean that self-regulating online content provider associations are freed from the threat of fines but these have been criticized for “intrusive” provisions.

The Media and Communications Commissioner was originally given broader powers, but those were struck down by the Constitutional Court in 2011. The commissioner handles complaints about conduct that may harm the interests of consumers even if it does not break the law. Copyright law protections are in line with EU legislation. Recent changes to the Criminal Code remove criminal liability for making copyrighted content available through peer-to-peer sharing.

## Regulatory Bodies

There is no separate regulatory body overseeing the Internet and ICTs. As outlined above, however, a range of online content now falls under the authority of the NMHH and the sanctioning powers of the Media Council.

Under the rules governing the election of the president and members of the Media Council, the prime minister appointed the president and the governing Fidesz party nominated the other council members.<sup>56</sup> Such a partisan grip on the appointment process creates the possibility of the ruling party having undue influence over the council’s decisions concerning management of the media market (granting licenses, etc.) and its control over media content.

As noted, supervision of any blocking of online content is the responsibility of the NMHH, and the relevant procedures have been criticized for their lack of transparency.

## Media and Communications Commissioner

There is no Ombudsman or equivalent institution in Hungary to specifically safeguard Internet rights, obligations, and freedoms.

<sup>56</sup> Central European University, Center for Media and Communication Studies, *Hungarian Media Laws in Europe: An Assessment of the Consistency of Hungary’s Media Laws with European Practices and Norms*, 2012, pp. 1-4.

The fundamental right of freedom of expression applies equally online and offline. If a public authority violates someone's right to free expression, that person may approach the Commissioner of Fundamental Rights to initiate proceedings. The commissioner may also proceed *ex officio*.<sup>57</sup>

In addition, the new media laws established a Media and Communications Commissioner, who fulfils a mediating function of sorts. Appointed by the NMHH president, the commissioner handles complaints and pursues "conciliation procedures" about conduct that does not break any law but nevertheless may "cause harm to the equitable interests" of media consumers. In cases concerning electronic communications services, the commissioner can demand relevant data from the provider, and failure to comply may lead to a fine of up to 25 million forints (€82,400).<sup>58</sup> This is not the case with press and media services (including online press products and on-demand media services), where the commissioner may act only if the complaint concerns repeated conduct, or conduct by several media content providers, and "affects a significant part of the viewers, listeners, or readers."

The commissioner's original, broader authorities were struck down in December 2011 by the Constitutional Court, which ruled it unconstitutional to limit editorial freedom over violations of "unspecified 'equitable interests' or the threat thereof." Even now, the notion of "equitable interests" remains undefined.<sup>59</sup>

## Self-regulatory Mechanisms

The MTE, the Association of Hungarian Content Providers, has promoted self-regulation instruments to minimize state intervention in Internet regulation, and governs itself according to a code of ethics.<sup>60</sup> The editors of market-leading online news outlets such as Index

<sup>57</sup> The Commissioner "shall examine or cause to examine any abuses of fundamental rights of which he or she becomes aware, and shall propose general or special measures for their remedy," Article 30 (2) of the Hungarian Constitution, the Fundamental Law.

<sup>58</sup> Act CLXXXV of 2010, Article 140, Article 142 (1-3).

<sup>59</sup> Council of Europe, *Expertise by Council of Europe Experts on Hungarian Media Legislation*, May 11, 2012, p. 37.

<sup>60</sup> MTE, *Etikai Kódex*, <http://www.mte.hu/etikaikodex.html>.

and Origo take part in the Forum of Editors in Chief, which has its own self-regulatory ethical guidelines.<sup>61</sup>

The 2010 media laws established a co-regulation system, proposed as an alternative to direct control by the media authority, allowing media operators to implement content regulation within the framework of self-regulatory bodies. Based on agreements with the Media Council, self-regulatory groups like the MTE handle complaints, settle disputes between companies, and supervise the operations of service providers. These agreements include a professional code of conduct, separate from the ethical code of MTE and other ethical codes, and in essence replicate the media laws.

The most significant advantage of co-regulation for the providers is the absence of any provision to impose fines. The most substantial sanction that can be imposed is a temporary exclusion from the co-regulation system. However, the Media Council may intervene if it believes mistakes or omissions have been made. In such cases, the council may also suspend co-regulatory cooperation.

The system has not been without critics. An international group of freedom of expression and media development groups warned in November 2011 that co-regulation is "effectively outsourcing censorship." A report by Council of Europe experts in 2012 observed that the legal provisions are "far too detailed and intrusive into matters that should be the sole concern of the self-regulatory body," and that "the provisions around the Code of Conduct remove any autonomy for the self-regulatory body."<sup>62</sup>

## Copyright

Although the Hungarian Copyright Act does not contain the words "Internet" or "online," the statute nevertheless "includes the legal

<sup>61</sup> Főszerkesztők Fóruma, *Self-regulatory ethical guidelines*, [http://foszerkesztokforum.files.wordpress.com/2012/01/english\\_ethical-guidelines\\_final.pdf](http://foszerkesztokforum.files.wordpress.com/2012/01/english_ethical-guidelines_final.pdf).

<sup>62</sup> "Hungary: International mission condemns chilling effect and calls for change," November 17, 2011, <http://www.article19.org/resources.php/resource/2851/en/hungary:-international-mission-condemns-chilling-effect-and-calls-for-change>; Council of Europe, *Expertise by Council of Europe Experts on Hungarian Media Legislation*, May 11, 2012, p. 43.

framework for online uses in comprehensive form<sup>63</sup> by incorporating the so-called Internet treaties adopted by the World Intellectual Property Organization in 1996.<sup>64</sup>

Since the Copyright Act covers all types of individual access to protected works,<sup>65</sup> making something accessible online constitutes a new type of use in Hungarian copyright law and requires the content provider to submit a direct request for use to the creators or their legal representatives. The content provider is subject to copyright, civil, and criminal liability.

Hosting services can also bear civil liability when they are aware that content they are hosting violates or may violate copyright laws and do not act expeditiously and with due diligence to remove or block such content when they are informed about it, for example through a notice and takedown request.<sup>66</sup>

Criminal law provisions relating to copyright violations were scaled down when a new Criminal Code entered into force in June 2013. Copyright infringements that cause financial injury remain punishable by imprisonment. However, as before, merely downloading infringing content is not a criminal offense, and making content that violates copyright “publicly available for download” (e.g. through peer-to-peer networks) is also no longer a criminal offense.<sup>67</sup> In such cases, copyright owners can rely only on copyright and civil law.

<sup>63</sup> András Szinger and Péter Benjámín Tóth, *Gyakorlati útmutató a szerzői joghoz*, Novissima Kiadó, Budapest 2004, p. 205.

<sup>64</sup> World Intellectual Property Organization Copyright Treaty, WIPO Performances and Phonograms Treaty.

<sup>65</sup> Act LXXVI of 1999 on Copyright, Article 26 (8): “The author shall further have the exclusive right to communicate his work to the public in a manner other than broadcasting or the means referred to in Paragraph (7) and to authorize another person thereto. This right shall in particular cover the case when the work is made available to the public by cable or any other means or in any other manner so that the members of the public can choose the place and time of the availability individually.” See also: András Szinger and Péter Benjámín Tóth, *Gyakorlati útmutató a szerzői joghoz*, p. 205.

<sup>66</sup> Act CVIII of 2001, Article 7 (3), 10, and 13.

<sup>67</sup> Act C of 2012, Article 385 (5), provides that “a violation of someone’s copyright or associated rights established pursuant to the Copyright Act by the means of reproduction or by making publicly available for download does not constitute a criminal offense as long as the person committing the act does not intend to use it for the purposes of raising revenue.”

## OPEN GOVERNMENT

**3/5:** *Quality of access to information legislation and Internet provisions.*

**3/5:** *Access on Internet to government and parliament decisions, court cases and decisions; right and speed of access to data through requests, and capacity of authorities to answer complex information requests.*

The Hungarian rules on freedom of information, in principle, ensure broad openness in the functioning of government. Enterprises using public funds or assets must, for example, publish all data related to how they use them. However, rules are sometimes unevenly applied, including online publication of the most important data in large public contracts, and legal appeals against failures to satisfy data requests take years to resolve. In 2013, vaguely worded legislation was adopted that could arbitrarily restrict the disclosure of public data in the name of curbing “abusive data request” practices. The new law could also make it harder to obtain judicial review if data requests are not satisfied.

## Access to Information Legislation

By law, public interest data are publicly available and may be accessed by anyone.<sup>68</sup> A data request may be submitted in any form, including electronically, and the data manager must respond within 30 days. In most cases, the person requesting the data is not liable to pay costs. In cases of failure to satisfy data requests, the law provides for judicial remedies.

<sup>68</sup> Hungarian law defines public interest data as any type of data and information, in any format, that is handled by any entity or person that discharges state or municipal government functions or other legally specified public duties, or was generated in the course of, or refers to, their activities. See further: WAN-IFRA/CIMA, *Capturing Them Softly: Soft Censorship and State Capture in Hungarian Media*, 2013, p. 45, <http://issuu.com/cima-publications/docs/cima-hungary>.

The law also requires bodies that handle public interest data to publish some of it online, including organizational and staff data as well as information on the organization's activities, operations, and financial management.<sup>69</sup> Such data should be accessible without restrictions and without requiring personal identification; it should be possible to print and copy, free of charge, without any loss or distortion of details.

The regulations do, however, restrict access to state secrets, information on the decision-making processes of public bodies, and personal data.<sup>70</sup> Commercial secrets are exempted too, except when a company uses public funds, in which case it must publish information on how the money is spent. Data disclosure by the national security services is decided by government decree.<sup>71</sup>

In May 2013, parliament debated and adopted the same day a measure that severely limited freedom of information in order to rein in what were called "abusive" data requests. After Hungarian President János Áder sent the bill back because he considered the new limitations vague and disproportionate, lawmakers passed a new version that uses a different formulation but is equally broad in scope. The new provisions restrict access to data that would amount to a "comprehensive," "invoice-based," or "itemized" audit of the financial management of a body with public sector duties. Since it is at the discretion of such bodies to decide which data need not be released, Transparency International Hungary warned against the "arbitrary restriction of public interest data disclosure."<sup>72</sup>

## Online Access to Legislation, Political Records, and Court Decisions

The Hungarian parliament publishes on its website bills, amendments, protocols of

committee and plenary sessions, and roll calls, as well as the texts of laws it adopts.

The official government website has a "Documents" section with a considerable amount of public interest data on work conducted by government ministries.<sup>73</sup> Only a summary of cabinet meetings is written up, and it is not publicly available.<sup>74</sup>

All case law of higher courts, as well as the judgments of lower courts in cases reviewed by higher courts, must be published online.<sup>75</sup>

Most data included in public contracts worth at least 5 million forints (€18,000), as well as any changes to the data, must be published online within 60 days of the contract's entry into force.<sup>76</sup> The *Atlatszo.hu* watchdog organization has shown that data managers comply with this requirement to varying degrees.<sup>77</sup> There is a search engine for all published data, but it is awkward to navigate.<sup>78</sup>

Political parties must publish a financial report annually in the Hungarian Official Journal and on their websites.<sup>79</sup> The State Audit Office's reports on the political parties are also available online.<sup>80</sup>

## Efficiency of Responses to Data Access Requests

In practice, the greatest impediment to access to information is the lengthy process of legal appeals against failures to satisfy data requests. The vast majority of data requests that are denied concern financial interests, and it takes approximately two years to arrive at a final court decision.<sup>81</sup>

<sup>73</sup> Dokumentok, <http://www.kormany.hu/hu/dok>.

<sup>74</sup> Government decision 1144/2010 (VII.7).

<sup>75</sup> Act CLXI of 2011 on the Organization and Administration of the Courts, Article 163.

<sup>76</sup> Act XXIV of 2003 on the Amendment of Specific Acts Related to the Publicity, Transparency and Control of the Appropriation of Public Funds and the Use of Public Property.

<sup>77</sup> *Atlatszo.hu*, *Üvegzszeb figyelő*, <http://atlatszo.hu/uevgzseb-figyelo/>.

<sup>78</sup> Ministry of National Development, *Közadatkereső*, <http://kozadat.hu/kereso/>.

<sup>79</sup> Act XXXIII of 1989 on the Operation and Financial Management of Political Parties, Article 9.

<sup>80</sup> State Audit Office of Hungary, <http://www.asz.hu>.

<sup>81</sup> Tamás Bodoky, editor-in-chief of *atlatszo.hu*, personal communication.

<sup>69</sup> Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information, [http://www.naih.hu/files/ActCXIIof2011\\_mod\\_lekt\\_2012\\_12\\_05.pdf](http://www.naih.hu/files/ActCXIIof2011_mod_lekt_2012_12_05.pdf).

<sup>70</sup> Act CXII of 2011, Section 27.

<sup>71</sup> Act CXII of 2011, Section 37 (1), (4).

<sup>72</sup> Transparency International Hungary, "One Step Forward, Two Backwards: Freedom of Information Still at Stake,"

June 14, 2013, [http://www.transparency.hu/One\\_step\\_forward\\_two\\_backwards\\_freedom\\_of\\_information\\_still\\_at\\_stake](http://www.transparency.hu/One_step_forward_two_backwards_freedom_of_information_still_at_stake).

Under the new legislation, those whose request for data is rejected can turn to a new agency that replaced the Parliamentary Commissioner for Data Protection office in 2012, the National Authority for Data Protection and Freedom of Information (NADPFI). However, Transparency International Hungary has warned that this change might merely constitute an additional step, allowing “authorities, by endlessly delaying the case, [to] jeopardize the option of the judicial remedy.”<sup>82</sup> The replacement of the Data Protection Commissioner by the NADPFI was itself the object of European Commission infringement proceedings over alleged violations of the body’s independence.<sup>83</sup>

<sup>82</sup> Transparency International Hungary, “One Step Forward, Two Backwards: Freedom of Information Still at Stake.”

<sup>83</sup> European Commission, “Hungary – infringements: European Commission satisfied with changes to central bank statute, but refers Hungary to the Court of Justice on the independence of the data protection authority and measures affecting the judiciary,” April 25, 2012, [http://europa.eu/rapid/press-release\\_IP-12-395\\_en.htm](http://europa.eu/rapid/press-release_IP-12-395_en.htm).

## **NOTE ON METHODOLOGY:**

The four country reports were drawn up based on a common methodology, with a set of questions for each section. The research teams’ scores were drawn up by the analysts in the respective countries, peer-reviewed in-country, reviewed by Transitions Online and PASOS, then subject to a final comparative peer-review across the four countries.

The scale for each question is from 0 to 5, where 0 indicates no openness/freedom at all, and 5 indicates maximum degree of openness.

For each score, researchers were asked the following questions:

- *Is the body of laws/regulations/practice optimal/not needing any reforms to protect freedoms on the internet?*
- *Is the body of laws/regulations/practice generally adequate to protect freedoms on the internet?*

- *Are there significant gaps in the given area, where it is necessary to introduce and implement changes/statutory reforms to sustain open government/protection of freedoms/protection of privacy/clarity and transparency of legal framework?*
- *Is there a serious lapse in open government/protection of freedoms/protection of privacy/clarity and transparency of legal framework?*

The score (0-5) was assessed for each of the following questions within the four main chapters:

### **Section 1: Freedom of Expression**

Freedom of expression on the Internet – laws, definitions, and de facto regulation

- *The legal framework and instances of prosecutions entailing denial of freedom of expression.*
- *Legal rights and protections for online expression and their status compared with print and broadcast rights.*
- *Cases of bloggers or online journalists being prosecuted, fined, or jailed for defamation or libel.*

### **Section 2: Big Brother**

- *Censorship – laws and implementation, and pressure-group activity, including requests to remove material.*
- *Filtering and blocking of Internet content by state and other actors.*
- *Published information on government surveillance/tapping – by government and by private companies.*

### **Section 3: Legal Maze**

- *Transparency of legal procedures and appeals mechanisms*
- *Copyright laws, fair use – laws and practice*

### **Section 4: Open Government**

- *Quality of access to information legislation and Internet provisions.*
- *Access on Internet to government and parliament decisions, court cases, and decisions; right and speed of access to data through requests, and capacity of authorities to answer complex information requests.*

This study was written as part of the project, **Internet Freedom Report 2014: Visegrad Four**, a project of Transitions (TOL) and PASOS (Policy Association for an Open Society). The preparation of the reports was supported by Google. The reports were prepared with full research independence and the views expressed herein are views of the authors only (and not of Google).

The research is based on detailed analysis of the current situation - in law and in practice - using a methodology that examines Internet Freedom by looking into four main areas, namely *Freedom of Expression*, *Big Brother* (surveillance, regulation, and interference by the state), the *Legal Maze* (the clarity of the legal framework in terms of its letter and practice), and *Open Government* (transparency and online disclosure by government of its functioning and decisions, such as budget information and tender contracts).

The study, **Internet Freedom 2014: Visegrad Four**, was conceived with a view to raising the public profile of Internet freedom and censorship issues in the Visegrad countries within the region and internationally. Further objectives included the aim of addressing governments in the four countries to persuade them to take a consistent, open approach to Internet freedoms and transparency of government on the Internet, and the generation of empirical-based input to consultations in the European Union on digital rights and Internet freedom. The project also provides a template for evaluating and monitoring Internet freedom over time.

**Internet Freedom 2014: Visegrad Four**, compiled by independent think-tanks in the four countries, is the result of a project led by Transitions (TOL) to a methodology designed by PASOS (Policy Association for an Open Society). The participating think-tanks were the Association for International Affairs (AMO), Czech Republic, the Center for Media & Communication Studies, School of Public Policy, Central European University, Hungary, the Institute of Public Affairs (IPA), Poland, and the Institute for Public Affairs (IVO), Slovakia.

This publication has been peer-reviewed, but the final text is the responsibility of the authors. The publisher confirms that this policy analysis has been prepared in accordance with the PASOS principles for effective quality controls in the work of independent think-tanks.



**The Center for Media, Data and Society, affiliated with the School of Public Policy at Central European University, is a leading center of research on media, communication, and information policy.**

CMDS - Center for Media, Data and Society, Central European University  
Nador u. 9., 1051 Budapest, Hungary  
Tel: +361 3273000/2609  
Email: @ceu.hu  
[www.cmcs.ceu.hu](http://www.cmcs.ceu.hu)

**PASOS (Policy Association for an Open Society) is a network of independent think-tanks working to strengthen participatory policymaking at the local, national, and international level.**

PASOS  
Těšnov 3, 110 00 Praha 1, Czech Republic  
Tel: +420 2223 13644  
Email: info@pasos.org  
[www.pasos.org](http://www.pasos.org)

**Transitions (TOL) is a publishing and training organization with a mission of strengthening the professionalism, independence, and impact of the news media in the post-communist countries of Europe and the former Soviet Union.**

Transitions  
Baranova 33, 130 00 Praha 3, Czech Republic  
Tel: +420 222 780 805  
Email: info@tol.org  
[www.tol.org](http://www.tol.org)