

Draft Regulation On Online Broadcasting Of Radio, Television and On-Demand Broadcasts

Summary

With the enactment of the Omnibus Law published in the Official Gazette numbered 30373 on 27 March 2018, a new era has begun for the online media services provided under the jurisdiction of Republic of Turkey. The Omnibus Law has introduced the Article 29/A of the Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises, and brought the requirement to obtain license for the media service providers and broadcasting transmission authorizations for the platform operators together with the application of the legal sanctions regarding broadcasting content. Yet the details of this requirement has not been regulated and was creating an uncertain environment because of its contradictory wording.

*A draft regulation, modelled with the mutual contributions of Radio and Television Supreme Council (“**RTUK**”) and Information Technology and Communication Board (“**BTK**”) stipulating the details of the Amended Article 29/A has been published on the official website of RTUK namely Draft Regulation On Online Broadcasting Of Radio, Television and On-Demand Broadcasts (“**Draft Regulation**”). The Draft Regulation sets forth the principles and procedures regarding the provisions of transmission of radio, television and online on-demand broadcasting services, granting broadcasting licenses to online media service providers and broadcasting transmission authorizations to platform operators, and control and supervision of such broadcasts.*

Amendments to the Former Legislation

The prior legislation regarding the media services provided through radio and television channels did not contain any regulation regarding the online media services. The scope of the respective regulations have only covered the services provided by conventional broadcast entities and that provided a free movement area to the players of the online broadcasting services.

Following the increased consumer demand to online media services, Turkish administrative bodies started to work on regulating internet services, radio and television broadcasts, which are gravitating, to the internet. The very first step has been taken with the Omnibus Law and some of the legal requirements were introduced for the online media service, content and hosting providers.

GSG Attorneys at Law

Draft Regulation in a Nutshell

Following the above amendments, the Draft Regulation has been prepared to bring some light to (i) licensing procedures, (ii) obligations of online media service providers and platform operators and (iii) the administrative and judicial sanctions of operating in violation with the related legislation.

i. Licensing Procedures and Requirements

The Draft Regulation sets out differentiated procedures for online media service providers and online broadcasting platform operators. In accordance with Article 5 of the Draft Regulation, the media service providers willing to provide radio, television and on-demand media services exclusively via internet shall obtain **online broadcasting license** from RTUK. Likewise, all platform operators willing to transmit radio, television and on-demand media services via internet shall obtain **online broadcasting transmission authorization** from RTUK.

The very same article also indicates that, the **foreign enterprises** willing to continue their online broadcasting, must obtain online broadcasting license just like the other enterprises under the jurisdiction of the Republic of Turkey; and the platform operators within this scope must also obtain online broadcasting transmission authorization for transmission of such media services.

Article 7 of the Draft Regulation draws a framework for the online broadcasting license application. Accordingly, the online broadcasting license could only be obtained by joint-stock companies established in line with the provisions of the Turkish Commercial Code. The fee for the mentioned license is specified as TRY 100,000.00. On the other hand, if there is a thematic broadcasting, the respective fee for the online teleshopping will be TRY 500,000.00. Additionally as per Article 12 of the Draft Regulation, media service providers, providing services to its subscribers and/or users in exchange for a fee and via on-demand access shall be liable to pay 0.5% of their annual net sales to RTUK each year. Not to mention, the renewal period of each online broadcasting license will be ten years.

For the enterprises who will apply for the online broadcasting transmission authorization, the procedural steps are more flexible. The Draft Regulation allows limited liability companies to apply for the issuance of an online broadcasting transmission authorization unlike the online broadcasting license. The fee for the online broadcasting transmission authorization is stated as TRY 100,000.00 per year. In relation to the mentioned fee, online broadcasting platform operators providing conditional access shall, in addition to this fee, pay 0.5% of their annual net sales to RTUK each year.

ii. Obligations of online media service providers and online broadcasting platform operators

Obtaining an online broadcasting license or online broadcasting transmission authorization is not the only requirement for those entities. The Draft Regulation also sets out various obligations for the online media service provider and online broadcasting platform operators. Some of the significant obligations are as follows:

GSG Attorneys at Law

Online Media Service Providers are obliged:

- a. to remove online on-demand broadcasting services from the program catalogue which are deemed inappropriate by RTUK within the scope of RTUK Law,
- b. to encrypt the voices along with the images in an incomprehensible manner in case of encrypted broadcasts,
- c. to submit subscription rights, necessary software and hardware together with any necessary license and right to use of the said software and hardware as requested by RTUK (for the purpose of remote monitoring and of registration of them in RTUK's registration database when needed),
- d. to deliver a copy of the broadcast record requested by RTUK to it within ten days as of the notification of the letter in this regard,
- e. to notify RTUK of the program catalogues for the online on-demand broadcasts.

Online Broadcasting Platform Providers are obliged:

- a. to notify RTUK of the number of users provided with conditional access in the beginning of December every year and when requested by RTUK;
- b. to submit the broadcasts transmitted by them in a manner that can be recorded into RTUK's recording system if and when requested by RTUK;
- c. to provide RTUK with the required number of subscription rights as requested by RTUK, together with the software and hardware required to this end.

iii. Administrative and Judicial Sanctions of Operating in Violation with the Related Legislation

Legal sanctions set out in the Draft Regulation could be classified under two main sub-headings: (i) revocation of an online broadcasting license and (ii) removal of content and/or blocking order and filing a criminal complaint.

As mentioned, all online media service providers must obtain an online broadcasting license to perform their activities. Even if they obtain a license, they are required to comply with the specifications sought for its issuance. In case where a service provider does not maintain those legal requirements, the administrative sanction will be the revocation of the license.

On the other hand, if the online media service provider is performing its activities without any license, it shall be provided with a period of three months for the fulfilment of the necessary requirements. Any event of the failure, despite the given period, removal of the content and/or a blocking order shall be condemned by the criminal court of peace. In addition to that, the real persons and the members of the board of directors and general manager of the legal entities broadcasting such media services could face criminal charges.

GSG Attorneys at Law

Another sanction set out by the Draft Regulation is the removal of the content. In this regard RTUK will have the right to control the content broadcasted on online platforms.

Conclusion

As the main procedures and principles set out with the Draft Regulation draws a framework on the legal obligations of online media service providers and online broadcasting platform providers, yet it is unknown whether this draft will be enacted as it is or will be revised in accordance with the comments of the relevant parties and interest groups in the sector.

Nilgün Serdar Şimşek

Partner, Attorney

T: +90 (212) 326 6868

nilgun.simsek@gsg hukuk.com

İlke Fadillođlu

Senior Manager, Attorney

T: +90 (212) 326 6060

ilke.fadillioglu@gsg hukuk.com

Cansın Bilal

Attorney

T: +90 (212) 326 6060

cansin.bilal@gsg hukuk.com