



**State of Israel
Ministry of Justice**

Office of the Deputy Attorney General (International Law)

**GOI Reply to the Questionnaire by the
Special Rapporteur on the Promotion of
the Right to Freedom of Opinion and
Expression on:
Freedom of Expression in the
Telecommunications and Internet
Access Sector**

November 2016

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Further to your letter dated August 9, 2016, we are honored to submit Israel's response to your questionnaire on Freedom of Expression in the Telecommunications and Internet Access Sector.

We hope you will find this information useful.

General information

The Ministry of Communications has granted a special license for Internet switching to the Israel Internet Association (Non-Profit Organization), through which the Association manages the Internet Exchange in Israel. This Association is operating independently.

Question No. 1

GOI Reply: Section 4I of the *Communications Law (Bezeq and Broadcasting) 5742-1982*, whose heading is "Offensive Websites and Content on the Internet" imposes obligations on Internet access providers to notify subscribers regarding offensive websites and offensive content, and the possibilities of protection against them, including technological means which are intended to filter such websites or content, and information on additional hazards of Internet use and possible protection against them.

In addition, Section 4I authorizes the Minister of Communications to set rules with respect to the obligation of the Internet access provider to notify subscribers of various matters that pertain to the offensive websites, the offensive contents, and the additional hazards of Internet use.

Section 4I requires the Internet access provider to offer its subscribers a website filtering service, and to provide it, free of charge, to anyone who is interested.

The full text of the section is as set forth below:

4I. (a) In this section –

“Offensive Website” – an internet website, the main content of which is Offensive Content;

“Offensive Content” – each one of the following:

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(1) The presentation of any obscene publication, as construed in the Penal Law, including –

- (a) The presentation of sexual relations involving violence, abuse, debasement, degradation or exploitation;
- (b) The presentation of sexual intercourse with a minor or with a person alleging to be a minor;
- (c) The presentation of a person or any of his organs as an object that is available for sexual use;

where the presented content is devoid of any artistic, scientific, news, educational or advocacy value which justifies, under the circumstances of the matter, the presentation thereof;

- (2) racial or nationalistic incitement;
- (3) gambling;
- (4) games that include violent acts;

“Internet Access Provider” - anyone who has received a license pursuant to this Law or anyone acting by virtue of a general permit pursuant thereto that provides an internet access service, including the holder of a general license for the provision of mobile radio telephone services and the holder of a license for mobile radio telephone via another network, who provide the said service through mobile terminal equipment.

(b) The Minister shall set out, in regulations or in the license of an Internet Access Provider, provisions with respect to the obligation of an Internet Access Provider to inform its subscribers of –

- (1) Offensive Websites and Offensive Contents on the Internet and possibilities of protection against them, including technological means intended for filtering such websites or contents;
- (2) Additional hazards of using the Internet and possible protection against them, as shall be determined by the Minister with the approval of the Knesset's Economic Affairs Committee.

(c) An Internet Access Provider shall notify its subscribers, in accordance with subsection (b), in all of the following ways:

- (1) By sending the subscriber, by post, a printed information pamphlet, on the date on which the agreement for the receipt of Internet access service was signed and on the date of the renewal thereof, as well as once every year, at least, during the term of the agreement;
- (2) By publishing the information on the Internet Access Provider's website;

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(3) By presenting the information in the agreement signed with the subscriber;

(4) By providing the information to the subscriber through the Internet Access Provider's customer service representative.

(d) An Internet Access Provider shall offer its subscribers, in the manner determined by the Minister in regulations or in the License, and it shall provide to any subscriber who has so requested, an efficient filtering service of offensive sites and offensive contents on the Internet, having due regard to the accepted practices in the field; Internet Access Providers shall not charge the subscribers any fee for a filtering service under this subsection, in addition to the payment it charges them for the Internet access service.

In addition, Section 13 ("Provision of Telecommunication Services to the Security Forces"), Section 13A ("Instruction during a State of Emergency") and Section 13B ("Instructions in the Event of a Significant Fault in or Cessation of the Provision of Telecommunication Services or Broadcasts") in the *Communications Law* relate to special situations in which a minister may issue instructions to the licensee, both for the purpose of operating the Internet and for the provision of the services. Each one of the sections sets forth different conditions and only upon the satisfaction thereof may the competent entity issue the instruction – thus, Section 13 authorizes the Prime Minister to issue such an instruction, following consultation with the Minister of Communications, at the request of the Minister of Defense, the Minister of Public Security, the Israeli Security Agency, or the Institute for Intelligence and Special Tasks, which was made due to considerations of national security or the public safety, and after giving the licensee an opportunity to present its claims, and taking into account the circumstances of the matter, as well as the considerations set forth in Section 4(b) and the impact of the instruction on the licensee and on its subscribers. Sections 13A and 13B authorize the Minister of Communications to issue these instructions, upon the existence of special circumstances (a state of emergency or a significant fault or cessation).

Question No. 2

GOI Reply: The references made in Section 1 above in relation to Section 4I of the *Communications Law* are also relevant with respect to this matter, as well as Section 30A of the *Communications Law*, which concerns restrictions to the transmission of a

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commercial using a telecommunications facility (known as the “*Spam Law*”). This Section applies to electronic messages (“an encrypted telecommunications message that is transferred on the Internet to an addressee or a group of addressees, which can be saved and retrieved using a computerized method”) and it prohibits the sending of advertisements without the prior written explicit consent of the addressee. The section contains specific exceptions to this prohibition, and it contains provisions with respect to the details that will appear in the commercial. The section sets forth various sanctions both against the advertising corporation (including the possibility of compensation without proving damage) and against the manager of the corporation and the person responsible for the marketing or advertising in the corporation.

Question No. 3**GOI Reply:**

In General, in accordance with Section 2 of the *Communications Law*, activities according to those specified in this question, which require the implementation of actions or telecommunications services (with the exception of the exclusions set forth in Section 3 of the Law) require a license from the Minister of Communications. Thus, for example, the operation of a submarine cable requires a communications license. The terms and conditions for obtaining such a license and the procedure for receiving it are set in the relevant regulations for this type of license. The types of communications licenses which are relevant to the question are given in accordance with: the *Communications Regulations (Bezeq and Broadcasts) (Proceedings and Conditions for Obtaining a Combined General License)* 5770-2010, and the *Communications Regulations (Bezeq and Broadcasts) (Application Details for a Special License)* 5764-2004. The license fee is set in the relevant fee regulations – the *Communications Regulations (Bezeq and Broadcasts) (A Fee for a Special License)*, 5762-2001 and the *Communications Regulations (Bezeq and Broadcasts) (A Fee for a Combined General License)* 5771-2010.

In addition, in accordance with Section 5 of the *Wireless Telegraph Ordinance [New Version]* 5732-1972, no person shall set up or maintain a wireless telegraph station, and no person shall install, operate or maintain a wireless telegraph instrument, in any place in Israel or on a sailing vessel or in aircraft which are registered in Israel, except

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pursuant to a telegraph license. The types of licenses and certificates given, and the fees charged, by virtue of the *Telegraph Ordinance* are regulated in the *Wireless Telegraph Regulations (Licenses, Certificates and Fees)* 5747-1987. When the matter concerns a license that regulates activities which also constitute telecommunications activities, then at times, the private company receives a combined license which regulates both the telecommunications activities and also the telegraph activities.

Question No. 4

GOI Reply: The receiving and holding of information on consumers of communication firms is regulated by several laws, including the *Criminal Procedure (Enforcement Powers – communication data) Law* 5768-2007, *The Wire-Tapping Law* 5739-1979 (Section 9c) and the *Israel Security Agency Law* 5762-2002 (Section 11). With respect to interim remedies in cases of unjustified restrictions to Internet access and to communications, or unjustified access to information relating to consumers, the consumer has the option of applying to the relevant Court and file a tort claim against the State. According to Section 11 of the *Communications Law*, the Minister of Communications has the authority to issue instructions for the safekeeping of the regular communications service, and also, pursuant to Section 13B of the Law, to issue instructions in the event of a significant fault or cessation in the provision of the telecommunications services or in the airing of broadcasts.

Question No. 5**GOI Reply:**

With respect to laws, policies and additional initiatives, which serve to advance or increase the availability of the Internet and interconnectivity, including means to advance network neutrality, please note that the communications licenses obligate some of the communications companies to provide nationwide services – to anyone who so requests, in any place whatsoever, without any geographical limitation. In the field of landline service, this concerns general licenses for the provision of nationwide, landline telecommunications services of BEZEQ – The Israel Telecommunication Corp. Ltd. and HOT Telecom Limited Partnership, and also a general license for the provision of a nationwide landline (infrastructure) telecommunications services for I.B.C. Israel Broadband Company (2013) Ltd. (the

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fiber venture of a subsidiary of the Israel Electric Corporation). In the field of cellular services, all of the holders of general licenses for the provision of cell phone services operate according to the cellular method (as of November 2016 there are five such companies). In addition, in recent years, the Ministry of Communications has determined a network-sharing policy that is designed to make it easier for the cellular companies to provide state-of-the-art mobile communications services by way of the deployment of an access network that is shared by more than one company. In addition, the Ministry holds tenders for the distribution of frequencies through which the services may be provided, while setting terms and conditions that will require the companies to provide the services.

With respect to the neutrality of the network, Section 51C of the *Communications Law*, titled “Prohibition of Restriction or Blocking”, regulates the matter:

51C (a) In this section –

“Licensee” – the bearer of a license, the bearer of a license for broadcasting or any entity that operates by virtue of a general permit;

“Security Forces” - as defined in section 13;

“Trade” – as defined in section 5(a1) of the *Wireless Telegraph Ordinance [New Version] 5732-1972*;

“Trade in Communications Equipment” – imports, distribution, sale, rental, lending or holding of communications equipment;

“Communications Equipment” – equipment that is intended or required for the purpose of receiving the Licensee’s services.

(b) A Licensee, a person who engages in trading in Terminal Equipment which is mobile radio telephone equipment (in this section - M.R.T. Terminal Equipment) and any person who engages in trade in communications equipment, shall not cause a restriction or blockage of the following, on his own or through another person, including by way of setting tariffs:

(1) The possibility that is available to a subscriber to make use of any service or application which are provided over the Internet;

(2) The intrinsic properties and characteristics of Terminal Equipment or Communications Equipment;

(3) The possibility that is available to the subscriber to make use of Terminal Equipment or Communications Equipment over any

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telecommunications network or on a network that is used for the distribution of the broadcasts of the Licensee (in this section – the “Network”), if the said equipment is designed, in terms of the nature and characteristics thereof, to be operated in networks of the same type.

(c) Notwithstanding the provisions of subsection (b) –

(1) The provisions of paragraph (1) of the said subsection shall not apply to a restriction or blockage as stated in that paragraph, which is necessary for the proper and fair management of the telecommunications messages that are transferred over the Licensee’s Network; the Minister may give instructions with respect to those conditions where, upon the satisfaction thereof, a restriction or blockage shall be considered to be necessary for the proper and fair management as aforesaid;

(2) The provisions of paragraphs (1) to (3) of the said subsection shall not apply if one of the following has been satisfied:

(a) A subscriber or a group of subscribers have so requested, with regard to all or any of the said paragraphs, from a Licensee or a person who engages in trading in M.R.T. Terminal Equipment or a person who engages in Trade in Communications Equipment, in a detailed and express request that was delivered separately of the contractual agreement; if the said request was delivered to a Licensee, the subscriber or the group of subscribers, as the case may be, and the Licensee, may stipulate in the contractual agreement between them that it shall not be possible to remove the restriction or the blockage or they may set out the conditions for the removal of the restriction or blockage as stated in those paragraphs;

(b) The Minister has permitted this, with regard to all or any of the said paragraphs, in special cases, including at a request by the Security Forces; for this purpose, the Minister shall grant such permission while taking into account the considerations as stated in Section 4(b), and for the shortest specified period as required under the circumstances of the matter, and he may extend this period by additional said periods, if he considers it necessary under the circumstances of the matter.

(c) The restriction or the blocking were done pursuant to an instruction of an entity who is authorized pursuant to law to issue such an instruction or in accordance with the decision of the Court.