

The Expression Online Initiative

Searching for Freedom: Online Expression in Azerbaijan





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This report is a publication by the Expression Online Initiative, a consortium of Azerbaijani freedom of expression organizations including the Azerbaijan Human Rights Club, the Azerbaijan Media Center and the Institute for Reporters' Freedom and Safety.



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Executive Summary

This report is a publication by the Expression Online Initiative, a consortium of Azerbaijani freedom of expression organizations including the Human Rights Club, the Azerbaijan Media Center and the Institute for Reporters' Freedom and Safety (IRFS). It has been developed in partnership with ARTICLE 19 and International Media Support.

As host of this year's Internet Governance Forum, which will take place in Baku in November 2012, Azerbaijan's record on Internet freedom has become a topic of increasing interest and scrutiny, by actors within the country and by the international community. This report explores the key trends and challenges to the right of all Azerbaijanis to seek, receive and impart information and ideas of all kinds through the Internet.

In developing this report, the Expression Online Initiative sought to assess the situation of Internet freedom in Azerbaijan and to advocate international best practices at the national level. This report is intended as a reference tool to inform and stimulate the debate on Internet freedom in Azerbaijan, and as a contribution to the development of a comprehensive, multi-stakeholder strategy on Internet freedom.

As this report shows, while the Internet in Azerbaijan can be considered partly free, there are some obstacles which must be addressed to ensure full Internet freedom in the country. Some of these are technical forms of censorship, such as data-filtering and content-blocking, and there are concerns that use of such methods to restrict free expression could increase in the future.

At present, however, the most significant threat to freedom of expression online in Azerbaijan is the targeting by authorities of individuals who take to the Internet to voice critical opinions. For the most part, Azerbaijanis are technically able to do what they like online, but that does not mean there will not be repercussions. On the contrary, those who cross certain lines in their online postings – such as calling for protests, exposing official corruption, or criticizing the president and his family – do so at significant risk.

Topics examined in this report include: international standards for Internet freedom; the national legal framework for Internet freedom; the national context for Internet use; persecution of cyber dissidents; online surveillance and content-filtering; Internet access and infrastructure; the profile of Azerbaijan's Internet users; and implementation of Azerbaijan's e-government strategy.

This report highlights the need for a robust Internet freedom strategy which would establish the environmental, institutional and professional conditions necessary to guarantee Internet freedom for every citizen of Azerbaijan. A number of recommendations are provided to the authorities for steps needed to improve Internet freedom in Azerbaijan. The Expression Online Initiative emphasizes that achieving full Internet freedom – and indeed broader democratic freedom in the country – will require serious political will by the authorities.

Recommendations

The Expression Online Initiative calls on the Azerbaijani authorities to immediately take steps to improve Internet freedom in the country. First and foremost, this will involve creating an environment conducive to freedom of expression and human rights more broadly. Journalists, bloggers, activists and ordinary citizens must be able to freely express themselves and participate in public life without fear of harassment, intimidation, threats, attacks or imprisonment, both on- and offline, in accordance with Azerbaijan's international obligations.

Specifically, the Expression Online Initiative calls on the Azerbaijani authorities to undertake the following steps:

Persecution of cyber dissidents:

- Immediately and unconditionally release all persons in detention or in prison in connection with exercising their right to freedom of expression online, including Nijat Aliyev, Vugar Gonagov, Zaur Guliyev, Taleh Khasmammadov, and Faramaz Novruzoglu;
- Immediately drop the politically motivated charges against Mehman Huseynov and Elnur Majidli;
- Cease practices of targeting social media users who express opinions critical of the authorities or use the Internet to call for or organize protests;
- Redouble efforts to investigate the violation of Khadija Ismayilova's privacy and the blackmail attempts against her, and bring those responsible to justice;

National legal framework:

- Reinforce Azerbaijan's international obligations by aligning its Internet policy with the requirements of international law and principles, ensuring that the Internet remains an open and public forum for freedom of expression;
- Ensure that any interferences with Internet users' enjoyment of their rights have a legitimate aim and are proportional to that aim, in accordance with international standards;
- Refrain from applying "Internet kill switch" provisions as they are incompatible with the fundamental right to communicate;
- Introduce specific regulations to ensure network neutrality and guarantee universal access to a minimum standard quality of Internet throughout the country, ensuring no unjustified restrictions are imposed on Internet users;
- Establish an independent body to regulate all telecommunications issues;
- Take effective measures to ensure the privatization of the telecommunications industry in order to establish a competitive market and prevent governmental law enforcement bodies from unlawfully interfering in the activities of ISPs and Internet users;

Online surveillance and content-filtering:

- Ensure that any restrictions of online content comply with the three-part test in accordance with international standards;
- Avoid deployment of state-level upstream blocking or filtering systems;
- Conduct comprehensive content accessibility tests in Azerbaijan's regions, including Nakhchivan

and the occupied territories, and publish the findings;

Internet access and infrastructure:

- Invest in Internet infrastructure and work towards universal, affordable, high-speed Internet access nationwide;
- Take steps towards abandoning dial-up and DSL Internet services and switch to fiber optic Internet communications;
- Develop frequency distribution policies in favor of mobile operators and other operators of 4G Internet;
- Create healthy and favorable conditions for investment in ICT development, providing equal conditions for both local and foreign investors;
- Cease practices which encourage monopolies in the ICT sector and create healthy conditions for new players to enter the market;
- Consider other policies to encourage universal Internet use, such as guaranteeing low-cost high-speed Internet access for every Azerbaijani family, and providing colleges and universities with free WI-FI;

Implementation of Azerbaijan's e-government strategy:

- Create a user-friendly e-government portal: instead of using a complicated system involving several ID numbers and passwords issued by different government agencies, allow individuals to register online with a single ID number and password;
- Provide for the secure transfer of information: ensure that third parties and the general public do not have access to information which should be kept private;
- Increase the number of interactions between citizens and government agencies: provide more interactive services on the websites of government agencies, including searchable databases, options to order copies of government publications, and options to check or update personal forms;
- Educate and motivate: invest in creating advertisements to educate the public on the benefits of using e-services, and create incentives to increase the number of e-government users.

Introduction

The last several years have seen a marked increase of Internet use, both globally and within Azerbaijan, as technological developments and a rising consumer demand have made it possible for more and more people to access the Internet. In parallel to this growth in Internet use, however, have come increased measures to restrict how people can access the Internet and what they can do online.

As host of this year's Internet Governance Forum, which will take place in Baku from 6 to 9 November 2012, Azerbaijan's record on Internet freedom has become a topic of increasing scrutiny and interest by actors within the country and by the international community. This report explores the key trends and challenges to the right of all Azerbaijanis to seek, receive and impart information and ideas of all kinds through the Internet.

This report is grounded in the principle that universal human rights, including the fundamental freedoms of expression, assembly and association, extend to the digital sphere, as has been confirmed by international law. In order to protect these rights in practice, access must be available to all users and guaranteed by relevant legislation and policies. At the same time, healthy market competition and advanced infrastructure are needed to ensure full Internet freedom.

The overall objectives of this report were to assess the situation of Internet freedom in Azerbaijan and to advocate international best practices for Internet freedom at the national level. The principle aims were to provide a reference tool to inform and stimulate the debate on Internet freedom in Azerbaijan, examining what is needed to establish an environment conducive to freedom of expression both on- and offline, and to contribute to the development of a comprehensive, multi-stakeholder strategy on Internet freedom that tilts the balance in favor of those who would use the Internet to promote democracy and free expression, and away from those who would employ it to silence criticism.

It is clear that in Azerbaijan, those pushing for real democratic change are increasingly using the Internet to get news, images, information, and campaign messages to a wider audience. For ordinary citizens too, the Internet has become an easy way to share information about local events and changes to their communities brought in by a government eager to expand its wealth and develop its influence in the region. But with the authorities becoming increasingly aware of how powerful online tools can be, particularly in the wake of the Arab spring, there are signs that tighter restrictions on Internet use and online content are on the horizon.

This report highlights the need for a robust Internet freedom strategy which would establish the environmental, institutional and professional conditions necessary to guarantee Internet freedom for every citizen of Azerbaijan.

Background

This report is an output of the Expression Online Initiative, a pioneer campaign launched in May 2012 by a consortium of Azerbaijani freedom of expression organizations including the Human Rights Club, the Azerbaijan Media Center and the Institute for Reporters' Freedom and Safety (IRFS). The Expression Online Initiative seeks to develop best practices and promote an informed public dialogue to advance Internet access and freedom in Azerbaijan. The report was developed in partnership with ARTICLE 19 and International Media Support, and

supported by the National Endowment for Democracy and Open Society Foundations.

In June 2012, the Expression Online Initiative formed a working group of experts to conduct in-depth research exploring Internet accessibility, access to information, implementation of Azerbaijan's e-government strategy, and the situation of freedom of expression online, in a thorough and objective manner, investigating the consequences of the current and anticipated government trends in filtering and other restrictive practices, and the implications of such practices for democracy and transparency. Put simply, the objective of this research was to study the situation of Internet freedom in the country and to develop best practices and recommendations to promote Internet freedom in Azerbaijan. The working group was comprised of Azerbaijan's foremost Internet experts from civil society and academia.

Methodology and structure

The information used in this report was obtained through a combination of desk- and field-based research, subjected to qualitative analysis by the Expression Online Initiative's working group. In researching for this report, members of the working group undertook fact-finding missions to several regions of Azerbaijan, conducted interviews, monitored court proceedings, monitored media content, and analyzed relevant local and international publications.

Prior to this introduction, the Expression Online Initiative and its partners provide a number of recommendations to the Azerbaijani authorities on steps needed to improve Internet freedom in the country. Following this introduction, the report is divided into two sections. The first section looks at the relevant standards, legal framework, and the national context for Internet freedom. The second section examines Internet freedom in practice in Azerbaijan.

Chapter One, contributed by ARTICLE 19 with input from international legal expert Dr. Yaman Akdeniz, sets out international standards for Internet freedom. Chapter Two, contributed by Media Rights Institute Director Rashid Hajili with input from Dr. Yaman Akdeniz, examines the relevant national legal framework. Chapter Three, written by social media expert and blogger Ali Novruzov with input from independent consultant Vugar Gojayev, describes how and for what purposes the Internet is used in Azerbaijan. Chapter Four, written by Human Rights Club Chairman Rasul Jafarov with input from Ali Novruzov and Vugar Gojayev, outlines cases of persecution of Azerbaijan's "cyber dissidents" – those who have been targeted in retaliation for posting critical opinions online. Chapter Five, written by an Azerbaijani ICT expert who wished to remain anonymous, explores practices of online surveillance and content-filtering in Azerbaijan. Chapter Six, contributed by IRFS Chairman Emin Huseynov, analyzes facts and statistics pertaining to the state of Internet access and infrastructure in Azerbaijan. Chapter Seven, written by Ali Novruzov and drawing heavily on researcher Katy Pearce's analyses, examines the profile of Azerbaijan's Internet users. Chapter Eight, contributed by social media expert and blogger Bakhtiyar Hajiyev, assesses the state of implementation of Azerbaijan's e-government strategy. The Expression Online Initiative's conclusion follows Chapter Eight. A list of acronyms and technical terms is provided at the end of the report.

Chapter One: International standards on Internet freedom

The rights to freedom of expression and information are fundamental and necessary conditions for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of all human rights in a democratic society. Through its membership in the United Nations, the Council of Europe, and the Organization for Security and Co-operation in Europe (OSCE), and through its accession to major international and regional human rights treaties, Azerbaijan is committed to respect and protect the rights to freedom of expression and information.

The protection of freedom of expression under international law

International law holds that freedom of expression must be protected in all forums, including online. On 5 July 2012, the UN Human Rights Council passed a landmark resolution on the promotion, protection and enjoyment of human rights on the Internet.¹ The resolution was supported by 82 States, Azerbaijan among them. It provides for the right to freedom of expression online in the following terms:

The same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice.

Universal Declaration of Human Rights

Although the UN Human Rights Council resolution reaffirmed the need for the protection of freedom of expression online, international law has long provided for the right to freedom of expression regardless of frontiers. The Universal Declaration of Human Rights (UDHR)² first guaranteed this right in Article 19, which stipulates:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.

While the UDHR is not a binding treaty, the right to freedom of expression as defined in Article 19 is widely recognized as a rule of customary international law, meaning it has become binding on all States.³

International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR)⁴ likewise upholds the right to freedom of expression regardless of frontiers. Azerbaijan ratified the ICCPR in 1992⁵ and is therefore bound to its provisions. Article 19 of the ICCPR states:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

In July 2011, the UN Human Rights Committee, the treaty-monitoring body for the ICCPR, issued General

¹ See A/HRC/20/L.13, available at <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session20/Pages/ResDecStat.aspx>

² UN General Assembly Resolution 217A(III), adopted 10 December 1948

³ *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd circuit)

⁴ UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, entered into force 23 March 1976

⁵ Adopted by Decision No. 227 of the Azerbaijani Parliament, 21 July 1992

Comment No. 34, which provides an authoritative interpretation of the minimum standards guaranteed by Article 19.⁶ General Comment No. 34 is considered to be a progressive clarification of international law related to freedom of expression and access to information.⁷ It is particularly instructive on a number of issues related to freedom of expression on the Internet.

Importantly, General Comment No. 34 states that Article 19 of the ICCPR protects all forms of expression and the means of their dissemination, including all forms of electronic and Internet-based modes of expression. In other words, the protection of freedom of expression applies online in the same way as it applies offline.⁸

At the same time, General Comment No. 34 requires States party to the ICCPR to consider the extent to which developments in information technology, such as Internet and mobile-based electronic information dissemination systems, have dramatically changed communication practices around the world. In particular, the legal framework regulating the mass media should take into account the differences between the print and broadcast media and the Internet, while also noting the ways in which media converge.⁹

As a State party to the ICCPR, Azerbaijan must ensure that any of its laws attempting to regulate electronic and Internet-based modes of expression and content comply with Article 19 of the ICCPR as interpreted by the UN Human Rights Committee.

Furthermore, the four special mandates for the protection of freedom of expression highlighted in their Joint Declaration on Freedom of Expression and the Internet of June 2011¹⁰ that regulatory approaches in the telecommunications and broadcasting sectors cannot simply be transferred to the Internet. In particular, they recommend the development of tailored approaches for responding to illegal content online, while pointing out that specific restrictions for material disseminated over the Internet are unnecessary.

Council of Europe Commitments

At the regional level, freedom of expression is protected under Article 10 of the European Convention on Human Rights (ECHR). Through its membership in the Council of Europe since 2001, Azerbaijan is bound to comply with the ECHR (which it ratified in 2002¹¹) and with the jurisprudence of the European Court of Human Rights (ECtHR). According to the Court, freedom of expression is one of the preconditions for a functioning democracy, and States must ensure that private individuals can effectively exercise the right of communication among themselves. Moreover, the Court has stressed that States are required to create a favorable environment for participation in public debate by all persons concerned, enabling them to express their opinions and ideas without fear.¹² Despite this recognition, there are still many outstanding

⁶ See CCPR/C/GC/3, available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>

⁷ See, for example <http://www.article19.org/resources.php/resource/2631/en/un:-article-19-welcomes-general-comment-on-freedom-of-expression>

⁸ <http://www2.ohchr.org/english/bodies/hrc/comments.htm>

⁹ Ibid

¹⁰ <http://www.article19.org/data/files/pdfs/press/international-mechanisms-for-promoting-freedom-of-expression.pdf>

¹¹ Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome, Italy, 4 November 1950

¹² See *Dink v. Turkey*, application no. 2668/07 and others, § 137, 14 September 2010

problems in the implementation of ECtHR judgments in Azerbaijan.¹³

Article 10 of the ECHR states that:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interferences by public authority and regardless of frontiers.

According to the ECtHR, the Internet “is an information and communication tool particularly distinct from the printed media” and the “risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms is certainly higher than that posed by the press.”¹⁴

The Parliamentary Assembly of the Council of Europe issued a resolution in 2008 on the functioning of democratic institutions in Azerbaijan, which asked the Azerbaijani authorities, with regards to freedom of expression, to “initiate the legal reform aimed at decriminalizing defamation and revise the relevant civil law provisions to ensure respect for the principle of proportionality.”¹⁵

Specifically, in relation to the Internet, the Council of Europe has published several politically important documents including declarations and recommendations with regards to freedom of expression and information on the Internet since 2003.¹⁶ Currently, the Council of Europe is trying to develop a framework of commitments, based on the Council of Europe’s core values and principles on Internet governance, to protect the Internet’s universality, integrity and openness as a means of safeguarding freedom of expression regardless of frontiers.¹⁷

As part of its commitment to protect the universality, integrity and openness of the Internet, in September 2011 the Committee of Ministers of the Council of Europe passed a recommendation to member States on the protection and promotion of the universality, integrity and openness of the Internet.¹⁸ It states:

¹³ See Committee on Legal Affairs and Human Rights, States with major structural/systemic problems before the European Court of Human Rights: statistics, AS/Jur/Inf (2011) 05 rev 2, 18 April 2011

¹⁴ See Editorial Board of Pravoye Delo and Shtekel v. Ukraine, application no. 33014/05, judgment of 05.05.2011, para 63

¹⁵ Resolution 1614 (2008)

¹⁶ Important Council of Europe documents regarding freedom of expression and the Internet include: Recommendation CM/Rec(2007)16 of the Committee of Ministers to member States on measures to promote the public service value of the Internet, adopted on 7 November, 2007 at the 1010th meeting of the Ministers’ Deputies; Recommendation CM/Rec(2008)6 of the Committee of Ministers to member States on measures to promote the respect for freedom of expression and information with regard to Internet filters, adopted on 26 March, 2008 at the 1022nd meeting of the Ministers’ Deputies; Recommendation CM/Rec(2009)5 of the Committee of Ministers to member States on measures to protect children against harmful content and behavior and to promote their active participation in the new information and communications environment, adopted on 8 July 2009 at the 1063rd meeting of the Ministers’ Deputies; Recommendation CM/Rec(2012)3 of the Committee of Ministers to member States on the protection of human rights with regard to search engines, adopted on 4 April 2012 at the 1139th meeting of the Ministers’ Deputies; and Recommendation CM/Rec(2012)4 of the Committee of Ministers to member States on the protection of human rights with regard to social networking services, adopted on 4 April 2012 at the 1139th meeting of the Ministers’ Deputies.

¹⁷ Council of Europe, Internet Governance 2012-2015: Draft Council of Europe Strategy, 20 September 2011

¹⁸ Recommendation CM/Rec(2011)8 of the Committee of Ministers to member States on the protection and promotion of the universality, integrity and openness of the Internet, adopted 21 September 2011. Available at <https://wcd.coe.int/ViewDoc.jsp?id=1835707&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F>

The right to freedom of expression, which includes the freedom to hold opinions and to receive and impart information and ideas without interference, is essential for citizens' participation in democratic processes. This right to freedom of expression applies to both online and offline activities, regardless of frontiers. In a Council of Europe context, its protection should be ensured in accordance with Article 10 of the Convention and the relevant case law of the European Court of Human Rights.

OSCE Commitments

Azerbaijan has also committed to uphold freedom of the media and guarantee its citizens the right to freedom of expression through its membership in the OSCE since 1992, as outlined in the Helsinki Final Act¹⁹ and many other OSCE documents. At the Budapest Summit in 1994, the participating States reaffirmed "that freedom of expression is a fundamental human right and a basic component of a democratic society. In this respect, independent and pluralistic media are essential to a free and open society and accountable systems of government." In 1999, the OSCE published the Charter for European Security, in which the participating States reaffirmed "the importance of independent media and the free flow of information as well as the public's access to information." In 2004, the OSCE Permanent Council issued Decision No. 633, in which participating States committed to "take action to ensure that the Internet remains an open and public forum for freedom of opinion and expression, as enshrined in the Universal Declaration of Human Rights, and to foster access to the Internet both in homes and in schools."²⁰

In July 2011, the Office of the Representative on Freedom of the Media published a report entitled Freedom of Expression on the Internet, which provided a study of legal provisions and practices related to freedom of expression, the free flow of information and media pluralism on the Internet in OSCE participating States.²¹ The study concluded that access to the Internet remains the most important prerequisite to be part of and take part in the Information Society and recommended that participating States take action to ensure that the Internet remains an open and public forum for freedom of opinion and expression, as guaranteed by OSCE commitments and enshrined in the UDHR, the ICCPR and the ECHR.

Limitations on the Right to Freedom of Expression

With regards to freedom of expression and content-related regulations, any restriction must meet strict criteria under international and regional human rights law. While the right to freedom of expression is a fundamental right, it is not guaranteed in absolute terms. Article 19(3) of the ICCPR permits the right to be restricted in the following respects:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

¹⁹ Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1 August 1975. Available at <http://www.osce.org/mc/39501>

²⁰ OSCE PC.DEC/633 on Promoting Tolerance and Media Freedom on the Internet, endorsed by MC.DEC/12/04 at the OSCE Ministerial Council in Sofia, 7 December 2004. Available at <http://www.osce.org/mc/23133>

²¹ Akdeniz, Y., Freedom of Expression on the Internet: Study of legal provisions and practices related to freedom of expression, the free flow of information and media pluralism on the Internet in OSCE participating States, OSCE Representative on Freedom of the Media, July 2011. Available at <http://www.osce.org/fom/80735>

(b) For the protection of national security or of public order, or of public health or morals.

Similarly, Article 10(2) of the ECHR provides that:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The ECtHR established that, subject to paragraph 2 of Article 10, freedom of expression is applicable not only to “information” or “ideas” that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no “democratic society;”²² States may only restrict information received from outside their jurisdiction within the confines of the justifications set out in Article 10(2).²³

Any restriction to the right to freedom of expression must meet a strict three-part test. This test, which has been confirmed by the UN Human Rights Committee and the ECtHR, requires that restrictions: (i) are provided by law; (ii) pursue a legitimate aim; and (iii) conform to the strict tests of necessity and proportionality.²⁴

- **Provided by law:** the ECtHR and Article 19(3) of the ICCPR require that any interference by a public authority with the exercise of freedom of expression should be lawful and restrictions on the right to freedom of expression must be “prescribed by law.”²⁵ In particular, the law must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.²⁶ Ambiguous or overly broad restrictions on freedom of expression are therefore impermissible under Article 19(3).
- **Legitimate aim:** Interferences with the right to freedom of expression must pursue a legitimate aim as exhaustively enumerated in Article 19(3)(a) and (b) of the ICCPR. As such, it would be impermissible to prohibit information dissemination systems from publishing material solely on the basis that they cast a critical view of the government or the political social system espoused by the government.²⁷ Similarly, a restriction on freedom of expression cannot be a pretext for protecting the government from embarrassment or exposure of wrongdoing, to conceal information about the functioning of its public institutions, or to entrench a particular ideology.
- **Necessity:** States party to the ICCPR and the ECHR are obliged to ensure that legitimate restrictions

²² See *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24

²³ See *Cox v. Turkey*, application no. 2933/03, § 31, 20 May 2010

²⁴ *Velichkin v. Belarus*, Communication No. 1022/2001, UN Doc. CCPR/C/85/D/1022/2001 (2005)

²⁵ The national authorities must give due reasons for their decisions to show the existence of a “pressing social need.” See, for example, *Fatullayev v. Azerbaijan*, application no. 40984/07, § 100, 22 April 2010

²⁶ *Leonardus J.M. de Groot v. The Netherlands*, No. 578/1994, UN Doc. CCPR/C/54/D/578/1994 (1995)

²⁷ UN Human Rights Committee Concluding observations on the Syrian Arab Republic CCPR/CO/84/SYR

on the right to freedom of expression are necessary in a democratic society and proportionate to the legitimate aim pursued.²⁸ Necessity requires that there must be a pressing social need for the restriction.²⁹ The party invoking the restriction must show a direct and immediate connection between the expression and the protected interest. Proportionality means that if a less intrusive measure is capable of achieving the same purpose as a more restrictive one, the least restrictive measure must be applied.

Therefore, the necessity of the content-based restrictions must be convincingly established by the State.³⁰ Furthermore, in democratic societies, the press has a vital role of “public watchdog”³¹ and according to the ECtHR, in cases concerning the press and the dissemination of political speech, the national margin of appreciation is circumscribed by the interest of the democratic society in ensuring and maintaining a free press. The ICCPR and ECHR criteria should be taken into account in developing freedom of expression and content-related policies and legal measures by States.

The same principles apply to electronic forms of communication or expression disseminated over the Internet. In particular, the UN Human Rights Committee has said in its General Comment No. 34 that:

Any restrictions on the operation of websites, blogs or any other Internet-based, electronic or other such information dissemination system, including systems to support such communication, such as Internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government³².

These principles echo the findings of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, in his report from May 2011.³³

Conclusion

These international legal instruments make it clear that in committing themselves to protect free expression, States – including Azerbaijan – are obligated to protect it both on- and offline. In further developing the national legal framework for Internet freedom – which is examined in Chapter Two of this report – Azerbaijan should ensure that its policies align with these international standards, and that any restrictions imposed on online free expression meet the three-part test, in accordance with its international obligations.

²⁸ See *Bladet Tromsø and Stensaas v. Norway* [GC], application no. 21980/93, ECtHR 1999-III

²⁹ See *Sürek v. Turkey* (No. 1), application no. 26682/95, judgment of 8 July 1999, Reports 1999; and *Sürek* (No. 3) judgment of 8 July 1999

³⁰ *The Observer and The Guardian v. the United Kingdom*, judgment of 26 November 1991, Series A no. 216, pp. 29-30, § 59.

³¹ See *Goodwin v. the United Kingdom*, 27 March 1996, § 39, Reports 1996-II

³² *Ibid*

³³ Available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf

Chapter Two: National legal framework for Internet freedom

Legal framework for Internet governance

Azerbaijan's legal system is modeled on Continental European law, with some holdover elements from the previous Soviet communist system. After the collapse of the Soviet Union, Azerbaijan took some steps towards establishing a free economy and a pluralistic political system, and towards protecting human rights. However, some of the old traditions remain. Due to a lack of rule of law in the country, there are no effective mechanisms protecting citizens' ability to exercise their civil and political rights.

The Constitution of the Azerbaijani Republic was adopted in 1995.³⁴ Amendments were made through referendums in 2002 and 2009.³⁵ The Constitution protects human rights and fundamental freedoms, including inter alia the right to freedom of thought and expression (Article 47), the right to freedom of assembly (Article 49), the right to access information (Article 50), and the right to freedom of association (Article 58).

Article 12 of the Constitution states that "The highest priority objective of the state is to provide for the rights and freedoms of a person and citizen." Furthermore, Article 12 states that "The rights and freedoms of a person and citizen listed in the present Constitution are implemented in accordance with international treaties wherein the Azerbaijani Republic is one of the parties."

Azerbaijan is party to all major regional and international human rights treaties guaranteeing freedom of expression, including the ICCPR and the ECHR. By virtue of Article 151 of the Constitution, international agreements binding upon Azerbaijan prevail over domestic legislation, with the exception of the Constitution itself and acts accepted by way of referendum. Thus, in the case of a conflict between the provisions of the ICCPR or the ECHR and the provisions of any domestic laws pertaining to Internet governance, the former shall prevail.

Telecommunications regulation

So far as the Internet is concerned, the key laws from a technical aspect are those pertaining to telecommunications regulation. The Law of the Azerbaijani Republic on Telecommunications (adopted on 14 June 2005) has been in effect since 9 August 2005.³⁶ This law established the following standards: the equality of providers, operators and users; the unacceptability of a monopoly in the telecommunications service market and the need to ensure healthy competition; and the separation of state regulatory functions from economic functions in the field of telecommunications. However, neither the law nor government practices have created a mechanism for the application of these standards.

Cybercrime

Azerbaijan signed the Council of Europe's Convention on Cybercrime on 30 June 2008, ratified the Convention on 15 March 2010, and the Convention came into force on 1 July 2010.³⁷ Upon ratification, Azerbaijan declared that subject to Article 38 of the Convention "it is unable to guarantee implementation of the Convention in the territories of the Republic of Azerbaijan which have been occupied by the Republic of Armenia, until the liberation of those territories from occupation."

³⁴ <http://www.e-qanun.az/print.php?internal=view&target=1&docid=897&doctype=0>

³⁵ <http://www.e-qanun.az/print.php?internal=view&target=1&docid=897&doctype=0>

³⁶ <http://www.mincom.gov.az/az/main.html>

³⁷ <http://www.mincom.gov.az/az/main.html>

On 29 June 2012, amendments were made to Azerbaijani Criminal Code in reference to the Convention on Cybercrime.³⁸ Chapter 30 of the Criminal Code, called “Cyber Crimes,” contains provisions to ensure the confidentiality of computer data and systems, to maintain data integrity and the integrity of computer systems, and to prevent the use of computers for criminal purposes. Chapter 30 also includes a list of content-related offenses.

Regulation of Internet content

Online and offline content is regulated by nearly the same laws in Azerbaijan. Article 3 of the Law on Mass Media³⁹ includes the Internet in the same group as other forms of media. However, it does not clarify whether there is any obligatory registration and licensing requirement for Internet-based media, or whether any property, financial or other restrictions can be applied to Internet-based media, as is the case with other media outlets. However, in practice, no restrictions or registration requirements are applied to the creation of websites or the distribution of content via the Internet.

Content is regulated not only by the Constitution, but also by the Constitutional Law on Regulation of the Implementation of Human Rights and Freedoms (adopted in 2002),⁴⁰ the Law on Mass Media (adopted on 7 December 1999),⁴¹ the Law on Television and Radio Broadcasting, the Civil Code,⁴² the Criminal Code⁴³ and other relevant laws and regulations.

The Constitutional Law of the Azerbaijani Republic on Regulation of the Implementation of Human Rights and Freedoms, which has been legislated to take into account the requirements of the ECHR and its protocols, has defined the legitimate boundaries to which extent freedom of expression (per Article 47 of the Constitution) and freedom of information (per Article 50 of the Constitution) can be restricted. Freedom of expression and information can be restricted only subject to Article 3.1 of the Constitutional Law.⁴⁴ According to Article 3.4 of this law, these restrictions must be proportionate to the legal purposes envisaged in the Constitution and in the Constitutional Law.⁴⁵ Article 3.6 of the Constitutional Law provides a list of the legitimate aims justifying restrictions on human rights, including freedom of expression.⁴⁶ This

³⁸ <http://president.az/articles/5426>

³⁹ http://www.medialaw.az/index.php?option=com_content&view=article&id=26:kuetlvi-informasiya-vasitlri-haqqnda-qanun&catid=54:media-qanunvericiliyi&Itemid=59

⁴⁰ <http://www.parliament.gov.az/?/az/topcontent/33>

⁴¹ http://www.medialaw.az/index.php?option=com_content&view=article&id=26:kuetlvi-informasiya-vasitlri-haqqnda-qanun&catid=54:media-qanunvericiliyi&Itemid=59

⁴² <http://www.e-qanun.az/print.php?internal=view&target=1&docid=8&doctype=1>

⁴³ <http://www.e-qanun.az/print.php?internal=view&target=1&docid=11&doctype=1>

⁴⁴ 3.1. Human rights and freedoms, provided for in the Constitution of the Republic of Azerbaijan and in various international agreements acceded to by Azerbaijan, shall be subject for restriction only by law.

⁴⁵ 3.4. Restrictions on human rights and freedoms imposed by law should be compatible with the aims of that law.

⁴⁶ 3.6. Other grounds include rights and freedoms provided for in paragraph III of Article 28, and Articles 32, 33, 47, 49, 50, 51 and 58 of the Constitution may be subject to restrictions as are necessary in the interests of national security, for the protection of health or morals, for the protection of the rights and freedoms of others, or for the prevention of crime; rights and freedoms provided for in Articles 32, 33, 47, 49, 50 and 58 of the Constitution, for the prevention of disorder or crime; rights

and freedoms provided for in paragraph III of Article 28, and Articles 47, 48, 49, 50 and 58 of the Constitution, in the interests of public safety; rights and freedoms provided for in paragraph III of Article 28, and Articles 32, 33 and 48 of the Constitution, for the protection of public order; rights and freedoms provided for in Articles 32 and 33 of the Constitution, in the interest of the

article mirrors the restrictions listed in Article 10.2 of the ECHR.

Specific provisions regulating Internet content

Defamation, insult and the protection of private life

Defamation⁴⁷ and insult⁴⁸ are considered specific crimes in the Criminal Code. Furthermore, humiliation of the honor and dignity of the Azerbaijani president is criminalized, carrying a penalty of up to two years of imprisonment.⁴⁹ A violation against the National Flag or the State Emblem of Azerbaijan is also considered a crime and is punishable by imprisonment for up to one year.

There are also civil law provisions for defamation. Article 23 of the Civil Code gives citizens the right to appeal to the courts for the protection of personal honor and dignity and professional reputation. A person can demand a refutation of a statement which he or she thinks violates his or her honor, dignity, or professional reputation. If information harming the honor, dignity or professional reputation or disclosing a secret of private and family life of a natural person was disseminated in the mass media, the information should be declared as untrue via the same media outlet.

According to Article 44 of the Law on Mass Media, "In the case of dissemination in the mass media of information humiliating the honor and dignity of persons or legal entities, they have the right within one month to require the given mass media outlet to provide a retraction of the information and a correction, and to publish an apology." Apart from refutation, the discredited person can demand compensation for material (loss of benefits) and moral damages. If the person who disseminated the information proves the accuracy of this information, he or she is exempted from responsibility.

Article 62 of the Law on Mass Media specifies concrete cases which are exempt from such responsibility: "The editorial office or journalist does not bear responsibility for information disseminated by official state bodies or their press services, obtained from news agencies or press services of entities, plants, organizations, political parties and public associations, obtained from other mass media outlets which were not previously refuted, elapsed during live streaming, or obtained in texts which are not subject to editing."

economic well-being of the country; rights and freedoms provided for in Articles 47 and 50 of the Constitution, in the interests of territorial integrity, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary; and rights and freedoms provided for in Article 48 of the Constitution, in the interests of public safety, for the protection of public order, for the protection of health or morals, or for the protection of the rights and freedoms of others.

⁴⁷ Article 147.1 of the Criminal Code states: "Slander is distribution of obviously false information which discredits the honor and dignity of any person, or undermines his reputation publicly or through a mass media outlet, is punishable by a fine or imprisonment for up to six months." Article 147.2 of the Criminal Code follows: "Slander, which is connected with an accusation of committing a serious or especially serious crime, is punishable by imprisonment for up to three years."

⁴⁸ Article 148 of the Criminal Code states: "Insult is deliberate humiliation of the honor and dignity of a person, expressed in indecent form in a public statement, publicly or a product shown in the mass media, is punishable by imprisonment for up to six months."

⁴⁹ Article 323.1 of the Criminal Code, which is specific to humiliation of the honor and dignity of the President, states: "Humiliation of the honor and dignity of the President of the Azerbaijani Republic in a public statement, a publicly shown product, or in the mass media, is punishable by imprisonment for up to two years." Article 323.2 follows: "The same acts connected to an accusation of committing a minor serious or very serious crime, are punishable by imprisonment for up to five years."

An individual's private life is protected by both the criminal and civil codes. According to Article 156 of the Criminal Code, illegal distribution of information concerning an individual's private life, which includes personal or family secrets of that person, is punishable by a fine or imprisonment for up to one year.

Prohibition of national, racial and religious discrimination, racism, xenophobia and hate speech

According to Article 283.1 of the Criminal Code, "Incitement of national, racial or religious hostility, humiliation of national honor, as well as discrimination of citizens based on their national, racial or religious background committed publicly or with the use of mass media, is punishable by a fine or imprisonment up to four years." However, concepts such as "Incitement of national, racial or religious hostility" and "humiliation of national honor" are not clearly defined in national legislation. Therefore, these concepts are not duly applied in practice by the courts, resulting in serious consequences.

Incitement to terrorism

There is no special legislative provision that criminalizes the use of the Internet for terrorism-related purposes. However, certain provisions make it criminal to commit terrorist acts or related threats and spread wrongful information on terrorist plans, irrespective of the media through which these actions are committed. According to Article 214 of the Criminal Code, "Terrorism, that is, perpetration of an explosion, arson or other acts creating a danger to human life or significant material damage or other grave consequences, if such acts are carried out for the purpose of undermining public security, frightening the population or exerting influence on the State authorities or international organizations to make certain decisions, as well as the threat to carry out the above-mentioned acts with the same purposes, shall be punishable by deprivation of liberty for a term of eight to 12 years together with confiscation of property."

Under Article 216 of the Criminal Code, the following actions are considered criminal: "Distribution of an obviously untrue report on the preparation of an explosion, arson or other actions leading to killing people, causing significant damage to property or other socially dangerous consequences."

Criminalization of obscene publications and child pornography

Azerbaijani law prohibits the dissemination of content containing pornographic elements. The dissemination of erotic content on television is not prohibited, but is limited to certain times as set out by the Broadcasting law. Article 242 of the Criminal Code criminalizes illegal manufacturing, distribution, or advertising of pornographic materials or subjects, as well as illegal trade in printed editions, movie or videos, images or other objects of a pornographic nature.

The concept of "pornographic materials and subjects" is not detailed in criminal law. The 29 June 2012 amendments to the Criminal Code related to child pornography (Article 171.1)⁵⁰ criminalize producing, offering or making available, distributing or transmitting, procuring, or possessing child pornography. Here the term "child pornography" includes pornographic material that visually depicts a minor or a person appearing to be a minor engaged in real or simulated sexually explicit conduct, or any materials or items depicting the sexual organs of such persons for sexual purposes, including realistic images representing a minor engaged in sexually explicit conduct.

⁵⁰ <http://president.az/articles/5426>

Prohibition of the distribution of “harmful content”

The Criminal Code prohibits publicizing opinions that instigate extremism. Article 281 states: “Public appeals for the violent seizure of power, retention of authority or violent change to the constitutional order or infringement of the territorial integrity of the Azerbaijani Republic, as well as distribution of such materials, is punishable by imprisonment for up to five years.”

Article 220 of the Criminal Code criminalizes the acts of “Organizing mass disorders or participation in such disorders, accompanied by violence, robbery, arson, demolition of property, use of firearms, explosives, and armed resistance to a representative of authority.”

According to Article 220.2 of the Criminal Code, “Appeals to active insubordination of legal requirements of representatives of authority and to mass disorder, as well as appeals to violence against citizens, is punishable by imprisonment for up to three years.”

The Criminal Code has prohibited actions instigating extremism. One such action is a public appeal to launching an aggressive war, as stated in Article 101. The second section of that Article follows: “The same appeals made through mass media are punishable by imprisonment for up to five years.” Article 104 of the Criminal Code also criminalizes the propagation of, or open incitement to genocide. Furthermore, Article 236 of the Criminal Code criminalizes incitement to the consumption of narcotics or psychotropic substances.

Responsibilities of intermediaries

The Law on Mass Media considers the Internet a form of media. Under Article 60 of this law, the editor, editorial office, and the chief editor of a publication bear responsibility for published content, in addition to the content’s author. The editorial office or the broadcaster is exempted from responsibility only if the information was disseminated by official state bodies or their press services (including official documents of state structures and court decisions), obtained from other mass media outlets which were not previously refuted, elapsed during live streaming, or obtained in text forms which are not subject to editing.

Blocking access to websites and Web 2.0 services

There are no special laws sanctioning the blocking of websites and access to Web 2.0 services. Neither legislation, nor regulatory acts have provisions such as “blocking access to websites” or “application of blocking systems.” In practice, there have not been any administrative or court decisions ordering the blocking of access to web-based content. Nevertheless, there have been cases of blocking online content in Azerbaijan.⁵¹

Azerbaijani legislation retains the power to impose sanctions on mass media outlets based on the content they disseminate. Article 19 of the Law on Mass Media specifies the terms and conditions for cessation of the production and distribution of mass media. As this law regards the Internet as a mass media outlet, the same sanctions can be applied to the Internet.

Among other sanctions that can be applied by the courts is suspension of the work of a media outlet for two months. In addition, a media outlet can be barred from producing and distributing content if it disseminates pornographic content or appeals for information that causes serious damage to the territorial integrity and

⁵¹ <http://www.azadliq.org/content/article/371534.html>

security of the state or to public order. An appeal to shut down production and distribution can be filed by the Ministry of Internal Affairs, the Prosecutor General's Office, or the Ministry of National Security.

The same measure is applied if a media outlet is illegally financed by a foreign organization, a physical person or a legal entity, or if the media outlet is censored by courts more than three times in one year on charges of defamation, insult, or interference with private and family life.

The same measures can be applied if such materials are distributed online. No other measures such as blocking or filtering websites or removal of web-based content are provided for in legislation. However, it is possible that courts could take such measures. Because of the vagueness of the Mass Media law, similar restrictions as those mentioned above could be extended to Web 2.0 services on the basis of this law.

Specific legislation on Internet access

There is no specific law or normative legal act in Azerbaijan regulating or ensuring citizens access to the Internet. Access to the Internet can be defined as the right to access information or documents disseminated via the Internet. Thus, everyone's right to seek, prepare, obtain and disseminate information comprises everyone's right to use technical devices to access to such information. This right can also be understood as part of the right to education.

The right to Internet access can be understood as part of the right to use telecommunications services. However, this right is not interpreted as everyone's right to access high quality Internet in all regions of the country.

There are no laws in Azerbaijan ensuring "network neutrality," which is the principle based on equal access to the Internet, irrespective of origin and type of content or access point. The law does not guarantee equal access to the Internet without discrimination or prevent Internet service providers (ISPs) from restricting consumers' access to networks that connect to the Internet. This undermines users' rights for full access to web content, applications and web services.

One of the main documents regulating the relations between ISPs and Internet users is the "Rules for Using Internet Services" (hereafter "the Rules") introduced by the Azerbaijani Ministry of Communications and Information Technologies (ICT Ministry) on 24 February 2000.⁵² According to these rules, ISPs must fully inform users about the services they provide. The regulations have not specified restrictions on access to the Internet other than those listed below. So, generally speaking, everyone should enjoy the right to full and high-quality Internet access and to use web services and applications. But these rights are not guaranteed in any way. Neither legislation, nor official policy documents regarding the Internet have set a minimum-quality requirement for the provision of Internet services, or mechanisms for protecting users' consumer rights. Users are not informed about the quality of Internet services, restrictions on access to and use of content, services or applications, or procedures for regulating traffic flow in the network in order to avoid saturation or overloading.

Clause 4.2 of the Rules allows ISPs to unilaterally suspend services provided to subscribers without their agreement. ISPs can suspend services provided to a single user if they: (i) violate the rules stipulated in the Telecommunications law or in clause 4.2(a) of the Rules; (ii) provide services to a third party without a

⁵² <http://www.mincom.gov.az/az/main.html>

proper license (clause 4.2(q)); or (iii) connect uncertified or defective systems to the network (clause 4.2(d)).

Under clause 5.2(a) of Amendment 1 to the Rules,⁵³ Internet services can be suspended if a user disseminates information that damages the good name of other subscribers (physical persons or legal entities) or the ISP's staff.

However, clause 4.2 (a) and 4.2(q) are not clearly defined. It is unclear to which rules or laws clause 4.2 refers. It is also unclear on which provisions of the Telecommunications law the violations in the Rules are based. The concept of "uncertified and defective systems" in clause 4.2(d) poses a threat to the use of safe equipment and systems by users. In an environment where equipment and systems are developing so rapidly, it is not reasonable to demand certificates for safe equipment and systems. Clause 5.2(a) of the Amendments allows ISPs to restrict the freedom of expression of users.

Furthermore, the Rules have not specified how decisions to suspend Internet services are made, what constitutes grounds for such decisions, whether users can participate in the decision-making process, or whether they have the right to appeal such decisions.

Under clause 5.1(q) of the Rules, users undertake an obligation before the ISP not to distribute state secrets or insulting opinions about legal entities or physical persons.

The circumstances that would allow ISPs to cut off Internet services are even vaguer, as their scope is even wider than that of the restrictions stipulated in the laws. An ISP is entitled to cut the Internet services of all users in war and emergency situations (clause 4.2(b)) and natural disasters or catastrophes (clause 4.2(v)) – effectively an "Internet kill switch."

According to clause 8.0.12 of the Law on Emergency Situations (adopted on 8 June 2004),⁵⁴ in cases of emergency situations, freedom of the press can be restricted through the application of preliminary censorship measures. Under clause 8.0.22 of this law, special rules for using communication services can be applied in cases of emergency situations. According to Article 16 of the law, in emergency situations, authorized state organizations have the advantage in using necessary telecommunications networks, equipment and tools; they can restrict or suspend their usage, or set special rules for their use. The article stipulates that Internet operators and providers should prioritize the distribution of information about urgent measures to ensure the protection and security of the country during natural disasters, epidemics and catastrophes. Article 11.2 of the Law "On Martial Law" (adopted on 6 January 1994)⁵⁵ also provides for restrictions on mass media outlets.

Thus, it is apparent that the magnitude of the cases defined in the Rules that allow ISPs to cut off the Internet services of the users is wider than the extent to which freedom of expression is limited in emergency situations or martial law. Although freedom of expression is not legally restricted in cases of natural disasters or accidents, the Rules give ISPs such a right. As is the case with the suspension of Internet

⁵³ Amendment 1 outlines the main terms and conditions for the contracts between ISPs and users

⁵⁴ <http://www.parliament.gov.az/?/az/legislation/view/641>

⁵⁵ Collection of Legislation of the Azerbaijani Republic, Volume 1, page 411

services for a single user, the Rules have not specified how a decision to shut down Internet services is made, what constitutes grounds for such a decision, or whether there is a right to appeal such a decision.

It should be noted that in a recent report entitled Freedom of Expression, the OSCE Office of the Representative of the Freedom of Media recommended that “the participating States should refrain from developing, introducing and applying ‘Internet kill switch’ plans as they are incompatible with the fundamental right to information.”⁵⁶

Conclusion

There are no specific laws regulating the Internet in Azerbaijan. Internet content is regulated by the general rules regulating the content of all mass media. Application of those rules to Internet-specific content regulation measures (i.e. blocking, filtering, or removal of content) raises a number of legal questions. The lack of clear definitions of terminology such as “incitement to terrorism,” “ethnic, racial or religious hatred and humiliation,” or “open calls against the state,” is one of the grounds for arbitrary use of those laws against the right to free expression. Therefore, legal provisions should not be vague and open to wide or subjective interpretation.

The “Rules for Using Internet Services” provide extensive powers to ISPs to limit or even cut individual users’ access to the Internet. As there is no independent regulatory body and no clear and transparent rules about the procedures of ISPs, they are in the position of making and implementing decisions with no oversight.

As an independent regulatory body in the ICT sector does not exist, the government controls the industry, and network operators and ISPs are heavily dependent on the government. This relationship is tantamount to an unofficial and non-transparent control mechanism which could lead to unofficial surveillance and filtering or blocking of Internet content by the authorities through pressure applied to the industry. To prevent this from happening, the authorities should enact measures to ensure Internet freedom in the country. A number of specific steps are proposed in the Recommendations section of this report.

⁵⁶ OSCE Office of the Representative on Freedom of the Media, Freedom of Expression on the Internet, page 34

Chapter Three: Internet in Azerbaijan: the national context⁵⁷

As in many other parts of the world, in recent years, the Internet has played an increasingly important role in social and political life in Azerbaijan. As the Azerbaijani authorities continue to stifle the more traditional forms of media, the Azerbaijani public has flocked to the Internet to satisfy their information and entertainment needs. Online, Azerbaijani journalists, bloggers, activists, and ordinary citizens can access a wide variety of information and freely express their opinions in a way that is no longer possible in any other forum.

Although the Internet remains a largely free arena in Azerbaijan, the authorities have taken steps to exert control over what citizens can access and what they can say online, and individuals who take to the Internet to criticize the authorities or call for protests face the risk of retaliation. As Freedom House has reported, the growth in Internet usage in Azerbaijan “has spurred increasing efforts by the authorities to exert greater control over the medium, though it remains much less restricted compared to print and broadcast media, the main sources of information for most citizens.”⁵⁷

Azerbaijan’s media landscape

Azerbaijan’s media are highly polarized, and the independent and opposition press are the targets of continual pressure by the authorities. Azerbaijan is consistently ranked poorly in international reports on media freedom, and its position has worsened in recent years.⁵⁸ Defamation remains a criminal offence and journalists who criticize the authorities are frequently prosecuted and imprisoned.⁵⁹ In 2011, 32 defamation lawsuits were filed against journalists, most of them against pro-opposition dailies, mainly Yeni Musavat and Azadliq newspapers.

The space for investigative journalism is extremely narrow and journalists undertake significant risks in investigating stories on certain topics. Self-censorship is pervasive, as journalists, bloggers and human rights defenders fear possible legal or physical repercussions should they publicly criticize the authorities. Particularly taboo topics include official corruption, business monopolies, and the business interests of the first family.

The country does not lack media outlets, as print, electronic and online media have created multiple sources of information for citizens. However, the government has used its regulatory authority to strengthen and increase the number of pro-governmental media outlets, while weakening and making survival difficult for those that produce critical content. In January 2009, the authorities imposed a ban prohibiting foreign broadcasters from accessing national frequencies, effectively taking the Azerbaijani services of Radio Free Europe/Radio Liberty, Voice of America and the BBC off the air. This step eliminated the only independent news sources for many Azerbaijanis.

Through arbitrary and politically motivated regulations, direct ownership or indirect economic control,

⁵⁷ Freedom House, Freedom on the Net 2012 - Azerbaijan report. Available at <http://www.freedomhouse.org/report/freedom-net/2012/azerbaijan>

⁵⁸ For example, Azerbaijan ranked 162 out of 179 in the Reporters Without Borders press freedom index in 2012. The same organization labeled President Ilham Aliyev a “Predator of press freedom”, and the Committee to Protect Journalists has characterized Azerbaijan as one of Europe and Central Asia’s worst jailers of journalists.

⁵⁹ The OSCE and the Council of Europe have long called on the government to decriminalize defamation. Even though local NGOs worked out draft laws together with international experts, the government has not hurried to adopt the law.

the government has strengthened its hold over broadcast media. Television remains the major source of information for about 90 percent of the population. All national television channels in Azerbaijan are under strict government control. There are no live or pre-recorded political talk shows, and influential opposition and civil society figures are conspicuously absent from television programs.

Even foreign soap operas are banned from broadcasting on national television channels, presumably in order to subvert possible influence from Azerbaijan's bigger neighbors – Turkey, Russia and Iran – and the West. As one news commentator noted, "Azerbaijan has moved from censoring news to censoring fiction."⁶⁰

The situation for Azerbaijan's print media is also dire. Circulation figures for newspapers, the majority of which are no longer pluralistic, have gone below 10,000. Only a handful of opposition newspapers continue to criticize top government officials, and self-censorship is a widespread practice. When journalists from the Azerbaijani service of Radio Free Europe/Radio Liberty recently released an investigative report into the first family's fortunes, only two national media outlets dared to run stories about it – the opposition Azadliq newspaper and independent Turan news agency, which publishes only online.

Recent pressure on distribution networks and the dismantling of newsstands across Baku and the nearby city of Sumgayit has largely prevented newspapers from reaching a wider audience and left them without the financial means to survive. At the time of publication, one of the most popular newspapers in the country, the daily opposition newspaper Azadliq, was on the verge of closure under political and financial pressure.⁶¹

Thus, in severe financial, managerial and creative crises, and under constant political pressure and control, the country's traditional media have been rendered unable to perform their basic function - to provide the public with a wide variety of information and a plurality of views.⁶²

Control over the Internet

The government has increasingly attempted to exercise greater control over the Internet, though it remains much less restricted than print and broadcast media, which are the main sources of news for most citizens. In the Law on Mass Media of 1999, the Internet was categorized as part of the mass media. Because of this, all rules applied to the traditional media, which media freedom advocates consider highly problematic, could be used for Internet regulation as well.⁶³ The ICT Ministry is the major body responsible for regulating the Internet, but experts have emphasized the urgent need for this role to be shared with

⁶⁰ Giorgi Lomsadze, Azerbaijan Bans Foreign TV Series, Eurasianet.org, 7 May 2012. Available at <http://www.eurasianet.org/node/65367>

⁶¹ BBC Azərbaycanca, Azadlıq qəzeti və saytı sabah oxucuları ilə vidalaşa bilər. Available at http://www.bbc.co.uk/azeri/azerbaijan/2012/09/120902_azadlig_newspaper_closure.shtml

⁶² Ali S. Novruzov, Republic of Facebook vs. Republic of Azerbaijan, Eastern Partnership Community, 4 August 2011. Available at <http://www.easternpartnership.org/community/debate/republic-facebook-vs-republic-azerbaijan>

⁶³ Law of the Republic of Azerbaijan On Mass Media, Azerbaijan National Academy of Sciences, http://ict.az/en/index.php?option=com_content&task=view&id=477&Itemid=95

an organization that is not under state control.⁶⁴ According to IRFS, there are restrictions imposed on the assignment of the “.AZ” national domain to legal entities, which is controlled by the ICT Ministry.⁶⁵

While online media are largely free from government censorship in Azerbaijan, the authorities have expressed a strong desire to regulate it.⁶⁶ They have a long record of monitoring, interfering with, and sometimes censoring online expression, occasionally blocking pro-opposition and critical websites and prosecuting persons in connection with their use of social media. The government was believed to be behind the sabotaging of the e-mail and Facebook accounts of critical journalists, human rights defenders and opposition political party activists.⁶⁷ A number of journalists and activists have been imprisoned in connection with their online postings.

While no specific legislation restricting the Internet exists, statements by top government officials suggest that some legal mechanisms of control may be forthcoming, including the licensing of Internet-based television programming.⁶⁸ These worrisome statements, which were mostly made with regards to online video and audio content, show that the state may soon interfere with the online broadcast news not covered by local television and radio, and views that differ from the official positions.⁶⁹

Internet television stations, such as Obyektiv TV, enjoy popularity among young Azerbaijanis because of their independent coverage and focus on issues of public interest as well as politically sensitive issues. The emergence of the newly-launched pro-governmental Yurd TV was seen as the government’s attempt to compete with the popular U.S.-financed Objectiv TV project.⁷⁰ Media experts remain divided about the advantages of Internet television, as “more than 60 percent of Azerbaijan’s Internet users still rely on slow dial-up connections.”⁷¹

Both the ICT Minister and the head of the National Television and Radio Company – which lacks independence from the government – have underscored the need to license websites and online commercial services for information security purposes. (Note: This step would go hand-in-hand with the licensing of television and radio stations, a process which has also not yet been formalized.) In early 2010, the government expressed its intent to require ISPs to obtain licenses and sign formal agreements with the ICT Ministry, although those plans seem to have been put on hold.⁷²

⁶⁴ Mina Muradova, “Azerbaijani Government Pondering Ways to Control the Web,” Eurasianet.org, 13 May 2010. Available at <http://www.eurasianet.org/node/61060>

⁶⁵ IRFS, Azerbaijan Critical Voices in Danger, Semi-annual Azerbaijan freedom of expression report, January 01-July 01, 2012. Available at <http://www.icontact-archive.com/53tHymf7jTJbUJz-qxnkuFbTdNmNpNbP?w=1>

⁶⁶ Mina Muradova, “Azerbaijani Government Pondering Ways to Control the Web,” Eurasianet.org, 13 May 13 2010. Available at <http://www.eurasianet.org/node/61060>

⁶⁷ “Opposition’s Facebook Accounts Under Hacker Attacks”, Azerireport, 21 April 2012, available at http://azerireport.com/index.php?option=com_content&task=view&id=2095; and

Spotlight on Azerbaijan, Foreign Policy Center, April 2012, available at <http://fpc.org.uk/fsblob/1462.pdf>

⁶⁸ “Control Over Online Sources and Facebook-like sites in Azerbaijan,” Today.az, 27 November 2010. Available at <http://www.today.az/view.php?id=77287>

⁶⁹ Rashid Hajili, “Freedom of Media in Azerbaijan,” <http://fpc.org.uk/fsblob/1462.pdf>

⁷⁰ IREX Media Sustainability Index 2012

⁷¹ For more information see Chapter Six

⁷² Freedom House, Freedom on the Net 2011. Available at <http://www.freedomhouse.org/images/File/FotN/Azerbaijan2011.pdf>

In November 2010, it was announced that the Press Council – which also lacks independence from the government – will start monitoring online news sources for their compliance with the rules of professional journalism.⁷³ Such statements by the authorities have been denounced by media experts, who believe that the government’s aim is to further control the alternative media and the free flow of information online.

In May 2011, officials made the act of spreading “misinformation” a “cyber-crime” and targeted Skype and Wikipedia as potential threats to national security.⁷⁴ By criminalizing the spread of misinformation, media expert Alasgar Mammadli believes the new charges of “spreading false information” could potentially be used to intimidate and censor online journalists, bloggers and social network users.⁷⁵

The authorities have stated that the proposed changes to the Criminal Code are meant only to bolster the country’s electronic security.⁷⁶ Under amendments proposed by the Ministry of National Security, attacks on computer networks and websites, virus attacks, online money-laundering, theft of funds from e-payment systems, online copyright violations, the dissemination of “misinformation,” and false terrorist threats would be considered criminal offences.

Criticizing the government’s effort to maintain its monopoly on information, Reporters Without Borders has said:

The authorities keep on making dramatic statements about their desire to protect the country’s morals, but in practice what they want is to maintain their monopoly of news and information... They already control TV and the most part of print media and now they are staging a shameless offensive against the Internet.⁷⁷

The government, for its part, denies these claims, with President Ilham Aliyev stating that there are no restrictions on access to the Internet in Azerbaijan, in line with the government’s desire to promote media freedom. He said:

Some countries impose restrictions on the Internet. [But] the Internet is free in Azerbaijan, which shows that we pay attention to freedom of the press...Unrestricted access to the Internet and freedom of speech naturally go hand in hand.⁷⁸

However Mammadli’s assumption proved to be true when the Ministry of Justice issued a warning to IRFS on 12 February 2012, citing the dissemination of biased information via www.nakhchivan.org.az. A month later IRFS’ chairman received an email from the Director of Network Technologies (a company which

⁷³ “Control Over Online Sources and Facebook-like sites in Azerbaijan, “Today.az, 27 November, 2010. Available at <http://www.today.az/view.php?id=77287>

⁷⁴ The Anti-Cybercriminal Organization is the main body working against cyber-attacks in Azerbaijan. The country ratified the Council of Europe’s Convention on Cybercrime in March 2010, and it took effect in July 2010

⁷⁵ Shahin Abbasov, “Baku Moving to Restrict Online Free Speech,” Eurasianet.org, 25 May 2011. Available at <http://www.eurasianet.org/node/63554>

⁷⁶ “Baku Moving to Restrict Online Free Speech?, ” available at <http://www.eurasianet.org/node/63554>

⁷⁷ Reporters Without Borders, “Disturbing plan to introduce Internet TV licensing in run-up to legislative elections,” 6 May 2010. Available at <http://en.rsf.org/azerbaijan-disturbing-plan-tointroduce-06-05-2010,37403.html>

⁷⁸ RFE/RL, “Azerbaijani President Praises Country’s ‘Internet Freedom’ ”, 13 July 2011. Available at http://www.rferl.org/content/president_praises_azerbaijan_internet_freedom/24264938.html

registers websites to the “.AZ” domain), who mentioned pressure from the authorities and asked IRFS to stop using the domain.⁷⁹

Sarah Kendzior and Katy Pearce, two researchers of the Internet in Central Asia and the Caucasus, have highlighted what they view as the Azerbaijani authorities continuously demonizing the Internet in order to keep their citizens offline:

Over the past few years, the Azerbaijani government has waged an aggressive media campaign against the Internet. Social media has become synonymous with deviance, criminality, and treason. Television programs show “family tragedies” and “criminal incidents” after young people join Facebook and Twitter. In March 2011, the country’s chief psychiatrist proclaimed that social media users suffer mental disorders and cannot maintain relationships. In April 2012, the Interior Ministry linked Facebook use with trafficking of woman and sexual abuse of children. Since May 2011, the Azerbaijani parliament has been debating laws to curtail social media, citing the deleterious effect on society. Social media has become a vital political issue despite the fact that 78 percent of Azerbaijanis have never used the Internet, only 7 percent go online daily, and just 7 percent—almost all male, highly educated, and wealthy—use Facebook.⁸⁰

Bloggers and civic and political activists who use the Internet to criticize the authorities or call for protests face the risk of jail-time and other forms of retaliation. Amnesty International listed Azerbaijan as one of “5 countries where your online comments could land you in jail.”⁸¹ Cases where bloggers and activists were imprisoned or criminally charged in connection with their posts online are outlined in Chapter Four of this report.

A new era for online activism

Perhaps the most internationally well-known case of a crackdown by the Azerbaijani government on online activists was the arrest of two bloggers, Emin Milli and Adnan Hajizade, in July 2009. They were arrested following their involvement in a satirical YouTube video critical of the authorities, and imprisoned on politically motivated charges of hooliganism, sentenced to two and a half and two years’ imprisonment, respectively.

Milli and Hajizade’s arrest marked the start of a new era for online activism in Azerbaijan. As blogger Ali Novruzov wrote in 2009, their conviction encouraged Azerbaijani activists to embrace new technologies and find creative ways to get their message out:

During the four months that Emin and Adnan spent in confinement before and during their trial, their friends turned Facebook into a modern telegraph; their status updates were news dispatches, rather than answers to what-are-you-doing questions.

⁷⁹ IRFS, Azerbaijan Critical voices in Danger,

⁸⁰ Sarah Kendzior and Katy Pearce, How Azerbaijan Demonizes the Internet To Keep Citizens Offline, Slate, 11 May 2012. Available at http://www.slate.com/blogs/future_tense/2012/05/11/azerbaijan_eurovision_song_contest_and_keeping_activists_and_citizens_off_the_internet_.html

⁸¹ Bryna Subherwal, 5 Countries Where Your Online Comments Could Land You In Jail, Amnesty International, 15 November 2011. Available at <http://blog.amnestyusa.org/asia/5-countries-where-your-online-comments-could-land-you-in-jail/>

Chanting “Freedom” outside the court and waiting painstakingly for the first footage to be uploaded to YouTube became equally sacred rituals. And since the assault on the bloggers and their detention, countless text messages, phone calls, Facebook status updates, instant messages, emails, tweets, and blog posts were flying around.⁸²

Another journalist observing the trial also reported the active use of social media:

During his courtroom address, Milli asked supporters to turn to online sites like Facebook, Twitter and YouTube to publicize the case. Throughout the trial, social media has stepped in to fill the void left by traditional Azerbaijani media, which has largely ignored the proceedings. Twitter users covertly used their cell phones during the trial to send out updates, which were often highly opinionated.⁸³

As noted by then-Azerbaijan Country Director for the International Republican Institute Jake Jones, Azerbaijan was far ahead of its neighbors in terms of online activism, where “we have seen the creation of these uber-networks, where people collect 800 or 900 friends and use that large number to disseminate opinions that normally wouldn’t be seen in mainstream media.”⁸⁴

Though Milli and Hajizade’s imprisonment created widespread negative publicity for the Azerbaijan government, it didn’t stop them from taking further action against online activists. When a group of online activists took to Facebook to call for a series of protests inspired by uprisings in the Middle East and North Africa, the government’s response was swift and harsh.⁸⁵

Milli, Hajizade, and other activists imprisoned in connection with exercising their right to freedom of expression online, were released after intense national and international campaigns, and they continue their online activism. While some online activists have since become more vocal and outspoken in their criticism of the government, their imprisonment sent a strong message to many Internet users, who continue to engage in self-censorship in fear of retaliation. Until the government adapts a more progressive attitude towards the Internet and Internet-users, and in the absence of broader democratic changes in the country, those engaged in online activism remain at risk.

⁸² Ali S. Novruzov, How We Used Facebook To Try To Free Azerbaijan’s ‘Donkey Bloggers’, RFE/RL, 19 November 2009. Available at http://www.rferl.org/content/How_We_Used_Facebook_To_Try_To_Free_Azerbaijans_Donkey_Bloggers/1882215.html

⁸³ Jessica Powley Hayden, Azerbaijan: Court Convicts Youth Activists and Bloggers, Eurasianet.org, 10 November 2009. Available at <http://www.eurasianet.org/departments/civilsociety/articles/eav111109.shtml>

⁸⁴ Ibid

⁸⁵ See, for example, Amnesty International, The Spring that Never Blossomed, Freedoms Suppressed in Azerbaijan, available at <http://www.amnesty.org/en/library/asset/EUR55/011/2011/en/831dedec-1c7a-47a3-99ec-f59d1c2f3a19/eur550112011en.pdf>

Chapter Four: Persecution of Azerbaijan's cyber dissidents

In conducting the research for this report, it emerged that persecution of cyber dissidents currently presents the greatest obstacle to Internet freedom in Azerbaijan. Although – as examined in other chapters in this report – there are reports of some technical restrictions, such as content-blocking and data-filtering, the Internet currently remains a largely open space in Azerbaijan. However, it cannot be considered completely free, as instances of non-technical forms of censorship are increasingly common. This is reflected in the recent categorization of Azerbaijan as “partly free” by Freedom House in its Freedom on the Net 2012 report.⁸⁶

As Internet use increases in Azerbaijan, so too do the number of activists who use social networking and other online tools to express critical views in a way that is not possible through more traditional forms of media, which are dominated by the state. But those who use the Internet to express views that are critical of the authorities or to call for protest do so at significant risk, as they face retaliation for doing so, such as harassment, intimidation and imprisonment.

This chapter examines cases of persecution of individuals in connection with exercising their right to freedom of expression online – who are referred to here as “cyber dissidents” – from the post-elections period in November 2005 through September 2012.

Early cases of retaliation for online activities

The crackdown imposed by the Azerbaijani authorities on freedom of expression following the November 2005 parliamentary elections was not limited to more traditional forms of media; it was in this period that the authorities began taking action to limit freedom of expression online. One of the first cases when the posting of content online landed the authors in trouble took place from 2006 to 2007. As reported by the OpenNet Initiative:

The author of the Web site <http://www.pur.gen.az>, infamous for its biting humorous content, posted a caricature of the president of Azerbaijan in 2006. In 2007, the Ministry of National Security searched one of the Internet cafés in Baku and discovered this caricature on the cache page. The author and the webmaster of the site, as well as several café guests, were arrested and indicted for organized criminal activities. The individuals were released several days later, but the Web site was shut down by its owners in order to avoid further prosecution.⁸⁷

The year 2007 also saw the arrest of Eynulla Fatullayev, an independent journalist and a publisher of two popular newspapers, in part based on comments attributed to him which were posted in an online forum, AzeriTriColor. Fatullayev was convicted on criminal defamation charges and sentenced to two and a half years' imprisonment. In April 2010, the ECtHR issued a judgment on this case, finding that Fatullayev's imprisonment on these charges constituted a violation of his rights to freedom of expression and a fair trial.⁸⁸

Also in 2007, a young activist, Bakhtiyar Hajiyev, was briefly detained after he created a petition website, Susmayaq.biz (“let us not be silent” in Azerbaijani), in order to voice the population's discontent with increasing prices.

⁸⁶ <http://www.freedomhouse.org/report/freedom-net/2012/azerbaijan>

⁸⁷ OpenNet Initiative, Azerbaijan profile. Available at <http://opennet.net/research/profiles/azerbaijan>

⁸⁸ Case of Fatullayev v. Azerbaijan, (Application no. 40984/07), 22 April 2010

Self-censorship extended to the blogosphere in 2009, when the authorities launched criminal charges against two bloggers and youth activists, Emin Milli and Adnan Hajizade. Both had used YouTube, Facebook and blogs to mobilize Azerbaijani youth in peaceful political activism in an environment where freedom of expression had increasingly come under threat. As active bloggers, they had an estimated audience of around 10,000 Internet users in Azerbaijan, addressing issues such as education, abuse of power, corruption and mismanagement of oil revenues. Weeks prior to their arrest, the two had posted to YouTube a satirical video criticizing the authorities, who had spent a large amount of public funding importing two donkeys from Germany. Milli and Hajizade's involvement in this video was widely considered to be the main reason for their arrest. The verdict against these bloggers set a strong example and intimidated other bloggers, contributing to the widespread self-censorship in the country.⁸⁹

A new wave of repression following the Arab Spring

A new cycle of intimidation and harassment against social media activists started in early 2011, when the Azerbaijani authorities detained dozens of people for participating in a series of pro-democracy protests inspired by events in the Middle East and North Africa. In addition to arresting several online activists involved in organizing the demonstrations, police questioned a number of bloggers and social media users in connection with their activities and political writings on Facebook.⁹⁰ These cases signaled an alarming new strategy on the part of Azerbaijani authorities and frightened the activists' peers. As a result, Azerbaijan's frequent Internet users became less engaged in activism, and online dissent has quieted.⁹¹

Jabbar Savalan

In February 2011, student and opposition activist Jabbar Savalan posted on Facebook, advocating an Azerbaijani "Day of Rage." He was arrested the next evening without explanation in the city of Sumgayit as he was returning home from a meeting of an opposition political party. Savalan was handcuffed and manhandled in and out of a vehicle before being searched at a police station, where police officers claimed to have found 0.74 grams of marijuana in his outer jacket pocket. Despite the blood test taken following his arrest, which showed no traces of drug use, Savalan was convicted and sentenced to two and a half years of imprisonment. Savalan served 11 months in prison on trumped-up charges of drug possession before his early release by presidential pardon in December 2011.

There has been no investigation into the allegations that police planted evidence on Savalan. Amnesty International considered him to be a prisoner of conscience, detained solely for the peaceful exercise of the right to freedom of expression and assembly. His arrest and conviction was possibly more about teaching a lesson to the young people in Azerbaijan inspired by the Arab spring to protest against the government.⁹² Following his release, Savalan was almost immediately called to fulfill his compulsory military service.

⁸⁹ Vugar Gojajev, "Azerbaijan: Donkey Bloggers Punished", Index on Censorship, 25 November 2009, <http://www.indexoncensorship.org/2009/11/azerbaijan-donkey-bloggers-punished/>

⁹⁰ IRFS, Azerbaijan Critical voices in Danger

⁹¹ "This is What Can Happen To You": Networked Authoritarianism and the Demonization of Social Media in the Republic of Azerbaijan, [http://caucasusedition.net/analysis/"this-is-what-can-happen-to-you"-networked-authoritarianism-and-the-demonization-of-social-media-in-the-republic-of-azerbaijan/](http://caucasusedition.net/analysis/)

⁹² Ali Novruzov, Mr. U.S. Ambassador To Baku: They're Arresting Our Youth, RFE/RL, February 8, 2011. Available at http://www.rferl.org/content/baku_young_people_watchdog/2301516.html

Bakhtiyar Hajiyev

Bakhtiyar Hajiyev, a Harvard University graduate and a member of the “Positive Change” youth movement, was arrested on 4 March 2011 in advance of a planned 11 March 2011 protest that he actively promoted through social media. He was charged with evading mandatory military service and sentenced to two years in prison. Hajiyev alleges that police severely beat him while he was in their custody, but the prosecutor’s office has failed to investigate his complaint about the abuse. He was released in June 2012 following a widespread international campaign for his release.⁹³

Hajiyev ran as an independent candidate in the November 2010 parliamentary elections, calling for democratic reforms in Azerbaijan. Soon after the elections, he posted videos on YouTube and other social networks condemning the results of the elections. In one of the videos, Hajiyev was trying to interview the head of a polling station and asking him questions about taking the ballot-box into his personal office.⁹⁴ He was one of the administrators (the only one physically residing in Azerbaijan, as the others were living abroad) and active members of the “Great People’s Day” protest page on Facebook.

Elnur Majidli

Azerbaijani blogger and journalist Elnur Majidli, who resides in France, was one of the founders of two Facebook pages “March 11, Great People’s Day” and “April 2, Great Wrath Day,” created in 2011. Soon after the creation of the pages and his active involvement in discussions about the planned protests, a criminal case was launched against Majidli under Article 281.1 of the Criminal Code, by the Department for the Investigation of Grave Crimes under the Prosecutor General’s Office. Dozens of other online activists were summoned to testify as witnesses during the investigation in April 2011.

Majidli was charged under two articles of the criminal code, under a total of five sub-articles: (i) Article 281.1 (appeals for violent capture of authority, violent deduction of authority or violent change of constitutional grounds or infringement of the territorial integrity of the Azerbaijani Republic, as well as distribution of materials containing such content, which is punishable by up to five years’ imprisonment); (ii) Article 281.2. (the same acts committed repeatedly or by group of persons, which is punishable by imprisonment from five to eight years); (iii) Article 281.3 (the acts provided by Articles 281.1 and 281.2 of the present Code, committed by orders of foreign organizations or their representatives, which is punishable by imprisonment from seven to 12 years); (iv) Article 220.2 (appeals for mass disorders and active insubordination to the legal requirements of representatives of authority, as well as appeals for violence against citizens, which is punishable by restrictions on freedom for up to three years or imprisonment for the same term); and (v) Article 220.2 (appeals to active insubordination to legal requirements of representatives of authority and to mass disorders, as well as appeals to violence above citizens, punishable by restriction freedom for up to three years or imprisonment for the same term).

As Majidli lives in France, he managed to avoid arrest, despite the fact that the Azerbaijani authorities placed an Interpol request for his arrest. The Prosecutor General’s Office announced a search for him and suspended the criminal case, but the charges against him have not been dropped. If Majidli returns to Azerbaijan or is captured and surrendered to Azerbaijan, he may be arrested.⁹⁵

⁹³ IRFS, Azerbaijan Critical voices in Danger

⁹⁴ Qutu əməliyyatı (“Ballot-box operation”), available at <http://www.youtube.com/watch?v=ITG1hngaBtY>

Majidli's photo is among the "wanted" persons photos displayed in most police stations, and his family has faced harassment and pressure as result of the criminal proceedings. His father, Abdulla Majidov, who was working for the press service of the Azerbaijan State Caspian Shipping Company, and his brother, Nijat Majidov, who was an inspector at the Ministry of Economic Development, were dismissed from their jobs and are still unemployed. The police last visited his family's home in July 2012 and asked questions about Majidli.

Majidli maintains that he never made such appeals against the state (forceful capture of power) on the Facebook pages; he only noted that there was a need for peaceful change of power in his personal blog and the abovementioned Facebook pages.⁹⁶

Current cases of detention and imprisonment

Following the wave of arrests of protesters and online activists in March and April 2011, the authorities continued to target those expressed critical opinions online. Some of these used the Internet to expose human rights violations in the country ahead of the Eurovision Song Contest, which was held in Baku in May 2012, embarrassing the government, which had dedicated significant resources to promoting a glamorous image of Azerbaijan during this period of intense scrutiny by the international media. Others simply shed light on issues the authorities preferred to keep hidden – such as corruption. At the time of publication, a total of five cyber dissidents remained in detention or imprisoned, and another faced criminal charges, in connection with exercising their right to freedom of expression online.

Taleh Khasmammadov

On 12 November 2011, human rights defender Taleh Khasmammadov was summoned to the Ujar Regional Police Office, on the grounds of investigating a complaint he had filed. Instead, Khasmammadov was detained on charges of hooliganism and resisting the police. On the same day, police conducted a search of Khasmammadov's house and the office of Khasmammadov's NGO, Law and Order LLC-2010, without providing any explanation. His computers and other materials were confiscated. On 20 April 2012, Khasmammadov was sentenced to four years in jail by the Kurdamir Regional Court.

As part of his work as a human rights defender, in October 2011, Khasmammadov had started to upload to YouTube interviews with victims of human rights abuses. He uploaded videos more frequently in November 2011, and was then arrested and had his computers confiscated. The last video was posted on 11 November 2011 (the day before his arrest) and attracted 6,512 views.⁹⁷ Most of the videos showed interviews with victims of crimes committed by the so-called Qurdlar Vadisi ("the Valley of the Wolves") gang in the Ujar region. The victims claimed that this gang had connections to police officers, whom they alleged were directly involved in some of the crimes.⁹⁸

Khasmammadov's appeal is currently under consideration by the Shirvan Appellate Court. In the meantime,

⁹⁵ "Charges Against Azerbaijani Facebook Activist Suspended," available at http://www.rferl.org/content/charges_against_azerbaijani_facebook_activist_suspended/24215210.html

⁹⁶ Interview with Elnur Majidli, August 2012

⁹⁷ http://www.youtube.com/watch?v=z-y1083_YnY&feature=related

⁹⁸ <http://www.youtube.com/watch?v=UBxkPbL53qQ&feature=relmfu>, <http://www.youtube.com/watch?v=vIHVSUtMpjU&feature=relmfu>, <http://www.youtube.com/watch?v=9iq5jF2X-FM&feature=relmfu>, <http://www.youtube.com/watch?v=OpJQOnOuHp4&feature=relmfu>

officers from the Ujar Police Station have filed an appeal with the court an extension of Khasmammadov's jail term.⁹⁹

Khayal TV journalists

On 1 March 2012, mass protests broke out in Guba (a northern region of Azerbaijan), as local residents demanded the resignation of the regional mayor, Rauf Habibov, triggered by the release of a video showing Habibov making derogatory remarks about local residents. The video was posted to YouTube a few days before the protests, and attracted 42,162 views.¹⁰⁰

As a result of the protests, Habibov was dismissed from his appointed position. However, a criminal case was launched against 30 persons in connection with the protests, and 18 protesters were arrested. Two Khayal TV journalists, Executive Director Vugar Gonagov and Editor-in-chief Zaur Guliyev, were among the detainees. They have been charged with editing the video which triggered the protests, uploading the video on YouTube, and calling for the violent overthrow of power. They were detained on 13 March 2012, and on 8 September 2012 their pre-trial detention term was extended until 1 December 2012. Both Gonagov and Guliyev have reported being tortured and subjected to inhuman treatment in detention. Under pressure by the investigator, Gonagov refused the services of his lawyer, Elchin Sadigov. Gonagov and Guliyev have denied their involvement in posting the video to YouTube. If convicted, the men face up to 10 years' imprisonment.¹⁰¹

Nijat Aliyev

On 20 May 2012, Nijat Aliyev, the editor-in-chief of the website www.azadxeber.az, was detained near a metro station in Baku and taken to the Yasamal District Police Station number 27. He was charged under Article 234.1 of the criminal code (illegal manufacture, purchase, storage, transportation, transfer or sale of narcotics/psychotropic substances) and sentenced to two months of pre-trial detention. Aliyev was reportedly beaten and tortured by police officers at the Yasamal District Police Station after he was arrested.¹⁰² On 16 August 2012, the Nasimi District Court extended Aliyev's pre-trial detention for two additional months. He is currently being held in the Kurdakhani detention center. If convicted, Aliyev faces up to three years' imprisonment.

The Azad Xeber ("Free News") website ceased operations after Aliyev's arrest. It was a well-known source on political and social issues among the religious community. It published critical materials about the government's current policy on various issues, including religion. The website reported on the court cases of arrested members of the Azerbaijan Islamic Party and other religious followers, particularly those arrested for protesting the ban on wearing the Islamic veil, the hijab, in schools.

In the weeks prior to Aliyev's arrest, the website criticized issues related to the Eurovision Song Contest, including the government's high expenditures for the event and LGBT issues in connection with the contest, and questioned the need for the contest to be held in Azerbaijan.

⁹⁹ "Human Rights activist Taleh Khasmammadov's Appeal Heard," available at <http://www.irfs.az/content/view/8847/28/lang,en/>

¹⁰⁰ <http://www.youtube.com/watch?v=LTCc21nMiWU&feature=related>

¹⁰¹ "Azerbaijan: Ensure Detained Journalists Access to Lawyer, Family," available at <http://www.hrw.org/news/2012/03/31/azerbaijan-ensure-detained-journalists-access-lawyer-family>

¹⁰² "Azerbaijan: Editor claims he was tortured in detention," available at <http://freespeechreform.com/azerbaijan-editor-claims-he-was-tortured-in-detention/>

Mehman Huseynov

Multimedia journalist and online activist Mehman Huseynov was summoned to the Sabayil District Police Station in Baku, and was taken into police custody at approximately 09:00 on 12 June 2012. He was held for 48 hours after three hours of questioning.¹⁰³ Huseynov was released on 13 June 2012, but the criminal charges against him still stand. He has been charged with hooliganism, under Article 221.2 of the criminal code, facing up to five years in prison if convicted. The charges stem from Huseynov's scuffle with a police officer during an unsanctioned protest in Baku on 21 May 2012, which Huseynov was attempting to photograph.

Huseynov is one of Azerbaijan's most well-known multimedia journalists. His video clips and photographs are widely disseminated via social media and are often picked up by the local and international press. Huseynov has collaborated with numerous international media outlets, particularly ahead of the Eurovision Song Contest. He was active with the Sing for Democracy campaign, which used Eurovision as a platform to promote democratic change in Azerbaijan.¹⁰⁴ In April 2012, Huseynov was featured in a German mini-documentary on Eurovision.¹⁰⁵ He was also one of the winners of the 2010 U.S. State Department's Democracy Photo Challenge. Huseynov's YouTube channel has nearly 2,000 subscribers and nearly 2.5 million views.¹⁰⁶

Huseynov was previously detained by Ministry of Internal Affairs officials on 7 March 2011. He was handcuffed and taken to the Ministry's Organized Crime Department, where employees interrogated him about his activities on social media networks, particularly Facebook, and advised him to be less active.¹⁰⁷

Faramaz Novruzoglu

Another person targeted in connection with online activism and criticism is freelance journalist Faramaz Novruzoglu (also known as Faramaz Allahverdiyev), who has worked for several opposition and independent newspapers, the last one being Milletim newspaper. Novruzoglu was arrested during a special operation of the Department for the Investigation of Grave Crimes under the Prosecutor General's Office. At the time of arrest, Novruzoglu was told he was being charged under Article 182 (extortion) and 182.2 (extortion by group of people through intimidation) of the Criminal Code. Only at his trial did it come out that he was actually being accused of other offences. Novruzoglu was sentenced to four and a half years in jail on 22 August 2012, for calling for protests (on Facebook, under the nickname of Elchin Ilgaroglu, ahead of the 11 March 2011 "Great People's Day") and for crossing the border into Turkey and living there illegally from November 2010 until October 2011.¹⁰⁸

Novruzoglu was widely talked about after his critical posts on Facebook and other social networks. His latest Facebook posts were somehow deleted following his arrest. Novruzoglu had previously been

¹⁰³ "Azerbaijan retaliates against Eurovision democracy activists," available at <http://www.amnesty.org/en/news/azerbaijan-retaliates-against-eurovision-democracy-activists-2012-06-13>

¹⁰⁴ <http://www.singfordemocracy.org/en/about-campaign/our-mission>

¹⁰⁵ http://www.ndr.de/fernsehen/sendungen/zapp/medien_politik_wirtschaft/baku207.html

¹⁰⁶ <http://www.youtube.com/user/HOSTEL19AZ>

¹⁰⁷ "IRFS staff interrogated, harassed by police," available at http://www.ifex.org/azerbaijan/2011/03/10/irfs_harassment/

¹⁰⁸ "Independent journalist jailed in Azerbaijan," available at <http://cpj.org/2012/08/independent-journalist-jailed-in-azerbaijan.php#more>

arrested on defamation charges in 2007¹⁰⁹ and pardoned after serving one year in jail. He served another six-month sentence in 2009 on similar charges. In March 2010, Novruzoglu was summoned to the Ministry of National Security regarding his articles about the murder of the late editor-in-chief of Monitor magazine, Elmar Huseynov, where he was questioned for nearly five hours.

Zaur Gurbanli

Blogger, activist and board member of the NIDA Citizens' Movement Zaur Gurbanli was arrested on 29 September 2012 by plain-clothed persons identifying themselves as officers of the Ministry of Internal Affairs' Organized Crime Unit. Following Gurbanli's arrest in front of his house, police conducted a search of his house and in the office of the "Positive Change" youth movement, where NIDA is also based. During the search, police seized NIDA materials, including brochures depicting Azerbaijan President Ilham Aliyev's face with the question "What if I leave in 2013" (referring to the upcoming 2013 presidential election). Police also seized other NIDA materials and Gurbanli's laptop from his home. Gurbanli was held incommunicado for more than 48 hours, without access to a lawyer or his family or any official acknowledgment of or explanation for his arrest.¹¹⁰

Gurbanli's detention at the Organized Crime Unit was finally confirmed on 1 October 2012. The Ministry of Internal Affairs stated that Gurbanli had been sentenced to 15 days of administrative detention for resisting police during an investigation into drug trafficking. The decision was apparently issued by the Absheron District Court on 29 September 2012. Gurbanli was released from detention on 14 October 2012.

Gurbanli is one of Azerbaijan's most active bloggers, and was well known for his criticism of government policies and of the president. Two days prior to his arrest, Gurbanli wrote a blog piece criticizing the inclusion of a poem by the president's daughter as mandatory reading in national school curriculum. Gurbanli was also active in the Sing for Democracy campaign.¹¹¹

Other forms of persecution

Arrest and imprisonment are not the only forms of persecution faced by those who express critical opinions online. In March 2011, prominent investigative journalist and active social media user Khadija Ismayilova was subjected to a particularly vicious blackmail attempt. She received a collection of intimate photographs of her through the post, with a note warning her to "behave" or she would be "defamed." After Ismayilova refused to be silenced, a sex video of her filmed by hidden camera was posted to the Internet, for which she was subjected to scathing criticism in the pro-government Yeni Azerbaijan and Iki Sahil newspapers.¹¹²

¹⁰⁹ "Azerbaijan: Journalists imprisoned and sentenced to 'corrective labor' for defamation," available at <http://www.englishpen.org/azerbaijan-journalists-imprisoned-and-sentenced-to-corrective-labour-for-defamation/>

¹¹⁰ "Azerbaijan detains youth activist in ongoing post-Eurovision crackdown", available at <http://www.amnesty.org/en/news/azerbaijan-detains-youth-activist-ongoing-post-eurovision-crackdown-2012-10-01>

¹¹¹ "NIDA Activist Gurbanli Sentenced to 15 Days in Jail, Held Under Further 'Investigation'," available at http://azerireport.com/index.php?option=com_content&task=view&id=3723&Itemid=42

¹¹² CNN "Salacious video defames journalist critical of Azerbaijani government," 20 March 2012. Available at <http://edition.cnn.com/2012/03/19/world/asia/azerbaijan-video-defamation/index.html>. Also see, "In solidarity with Khadija Ismayilova," statement by the International Partnership Group for Azerbaijan, March 2012. Available at <http://azerbaijanfreexpression.org/library/press-releases/637-2/>

As an active user of social media networks, Ismayilova's fame on the Internet undeniably contributed to the attempt to silence her. Ismayilova has been particularly outspoken on the taboo subject of the business interests of the president and his family and has published several investigative articles unearthing official corruption. She often posts and discusses politically sensitive issues on Facebook, which has made it possible for her work to reach a wider audience.

Chapter Five: Online surveillance and content-filtering

As Internet use continues to rise in Azerbaijan, so too do attempts by the authorities and other parties to limit access to information on politically and culturally sensitive topics and to monitor the online activities of government critics.

In 2011 and 2012, following one series of protests inspired by uprisings in the Middle East and North Africa and another in connection with the Eurovision Song Contest, which took place in Baku in May 2012, the Azerbaijani government began expanding its methods of control and monitoring forms of digital media content. Although the government generally did not restrict access to the Internet, it repeatedly blocked some websites offering alternative views on a series of demonstrations by opposition groups, and harassed the online community by targeting “cyber dissidents,” as examined in the previous chapter of this report.

Today, the Internet plays an important role in everyday life in Azerbaijan, covering the distribution of information resources, social services, and political life, mainly in the capital, but also, to a lesser extent, in the cities outside of Baku. This role has increased significantly over the past 18 months, with the advent of cheaper smartphones and 3G services. The Internet is becoming an increasingly important means of communication and activism, and a vital source of news, especially given the lack of pluralism in other forms of media. Youth activists and opposition political groups in particular use the Internet as a communication platform, which has led to periodic reprisals from the authorities. The last three years have been marked by surveillance and arrests of a number of traditional and online journalists. There have also been reports of disruption of Internet access in connection with sensitive social and political events.

Internet surveillance

Azerbaijani law does not provide for surveillance of the Internet and mobile phones. Nevertheless, surveillance does occur, mainly using specially equipped “black boxes” or “black rooms” installed in server farms of mobile telecommunications companies and major ISPs.

As online activists have increased their activity on Facebook, the Azerbaijani government has also increased its attention to the surveillance of social networking sites. According to Azadliq newspaper, for instance, in June 2010, pro-government youth were encouraged to join Facebook with the purpose of exposing those with online contacts in “enemy” nations.¹¹³

According to the international hacking group Anonymous, Virginia-based consulting company Booz Allen Hamilton is developing software that is used against dissidents in several countries, including Azerbaijan. The group, which claims it holds documents and e-mails which prove its allegations, states that the software, which has led to the arrest of pro-democracy dissidents in Azerbaijan, creates “armies of fake people” through social networks like Facebook, identifying dissidents with anonymous profiles.¹¹⁴

An investigative documentary shown on Swedish public service broadcaster SVT revealed in fascinating depth the extent to which the Stockholm-based telecommunications firm Teliasonera is linked to spy agencies in Azerbaijan, Kazakhstan, Uzbekistan, Tajikistan, and Georgia, facilitating crackdowns on dissident politicians and independent journalists. Several Azerbaijanis reported that they had been summoned

¹¹³ <http://www.edri.org/edriagram/number9.6/identify-dissidents-online>

¹¹⁴ Ibid

by police and subjected to interrogation after phone records showed they had voted for the Armenian competitor during the Eurovision Song Contest in 2009. One man said he was told by security officials that he was a “traitor” because he had voted for the Armenian entry.¹¹⁵

Other cases were far more serious and sinister. Documents obtained by SVT showed an Azerbaijani who had his phone tapped after he published a piece about being beaten by government security agents while investigating a story. He was subsequently stabbed in a violent attack and later left the country. He has since taken up a case against the security agency and Azercell at the European Court of Justice.¹¹⁶

A report by Freedom House, entitled *Safety on the Line: Exposing the myth of mobile communications security*, evaluates the ability of mobile phone services to protect security and privacy and to circumvent censorship in 12 countries, including Azerbaijan. The assessment covered a range of mobile technologies, including operating systems, applications and mobile protocols. Findings showed that, across the spectrum, these technologies fail to protect users and are highly vulnerable to misuse by autocratic regimes.¹¹⁷

Data-filtering

There have also been reports of data-filtering. For example, the web forum of the Free Azerbaijani Movement (<http://www.azdiaspora.org>), created by an Azerbaijani military officer, is currently not accessible through ISPs connected via Delta Telecom, while those connected via Azertelecom allow access to the site. This suggests that Delta Telecom is engaged in data-filtering. Other websites, such as <http://www.d2diego2variedades.com>, are not accessible through the EuroSel and Azertelecom networks; the displayed message “HTTP 403 Forbidden” indicates that the website owners have set geographical limitations on access (this particular site has also been reported inaccessible in Russia).

Azerbaijani secondary schools have limited access to 18 million websites in 90 thematic groups that contain harmful information. The filtering was introduced by WebSense, which was setup by AzEduNet (a former AzNet project), on the Azerbaijani Education Network developed under the State Program on ICT for the Educational System from 2008 to 2012. According to the Ministry of Education’s Bureau on ICT for Education, the definition of the thematic groups of malicious web-based resources was developed by “the Council on the organization of Internet use and content filtering in educational institutions.” Access is limited to web-based resources such as pornography, violent behavior, extremism, the promotion of drugs and alcohol, as well as sites that do not conform to certain ethical and moral standards. Access to web resources with a potential threat of virus attacks on computer systems has also been restricted.¹¹⁸

Restrictions on adult content and social networking sites have been reported in Internet cafes in the Shirvan district. Another instance of restrictions on adult content was reported at a women’s Internet cafe in Baku.

¹¹⁵ http://www.slate.com/blogs/future_tense/2012/04/30/black_box_surveillance_of_phones_email_in_former_soviet_republics_.html

¹¹⁶ Ibid

¹¹⁷ <http://www.rfaunplugged.org/2012/08/01/new-report-highlights-new-technologies-risks-from-government-monitoring-and-surveillance/>

¹¹⁸ <http://www.contact.az/docs/2012/Social/071300005317en.htm>

Restrictions in the regions

On 1 March 2012, residents of the northern city of Guba gathered in a number of spontaneous protests against the city mayor, who had made remarks captured in a video posted on YouTube calling local residents “traitors” and “sell-outs.” After the protest, some of which resulted in attacks on property belonging to the mayor, local authorities conducted raids of Internet cafes in an attempt to find out who was responsible for posting the video. As a result, Vugar Gonagov (Khayal TV Executive Director), Zaur Guliyev (Khayal TV Editor-In-Chief) and the owner of the Internet cafe “MMM” are currently in detention.

Following the Guba protests, Internet access was limited in other regions of Azerbaijan. Bizim Yol newspaper reported that in Sabirabad, Internet access was blocked for the better part of two days. Local residents said, “We cannot get access to the Internet for about 15 hours per day. Whenever access is possible, we still have problems. The speed is much lower than usual...There are problems with access to the social network Facebook.” According to the residents, the telecommunications authority in the region said that access had been cut from Baku.¹¹⁹

The head of the opposition party Musavat’s local branch in Sabirabad, Azar Ismail, confirmed that there were problems with Internet access in the region: “In the last month, we have faced serious problems with access in the region. The speed is unusually low. Over the last two days, access to the Internet was completely restricted. It was only possible to access the Internet at night.” Ismail explained the reasons for the limitation of the Internet: “People have become more active in the region. They assert their rights with a loud voice now. Protests have taken place in the regions, and people are making extensive use of social networks. Additionally, the negative things happening in the regions are covered on the Internet very quickly, so cutting off the Internet in the region is directly related to the growth of social activity there. Obviously, the government is worried.”¹²⁰

The Azerbaijani exclave of Nakhchivan is the region with the most expensive and highly controlled Internet. In Nakhchivan, Internet access is provided by a single landline ISP (Nakhinternet) and three mobile operators (Azercell, Bakcell and Azerfon) with quality service only in Nakhchivan City.

Nakhchivani residents have reported they were unable to view the websites of the opposition newspapers Azadliq and Bizim Yol. Access was also blocked to the website of Radio Free Europe/Radio Liberty’s Azerbaijani service, www.azadliq.org. Each episode of blocking lasted a few days and was reported to be done under orders from the head of Nakhchivan’s parliament, Vasif Talibov.

In February 2012, the Ministry of Justice issued a warning to IRFS, referring to the spread of “biased” information through the website of its Nakhchivan branch, www.nakhchivan.org.az. A month later, IRFS’ Chairman received a letter from the Director of Network Technologies (the company that registers .AZ domain names), referring to pressure from the authorities and asking IRFS to stop using the domain.

Cyber wars

Another obstacle faced by Azerbaijani Internet users is the scarcity of Azerbaijani-language content. One

¹¹⁹ <http://turkhan.wordpress.com/2011/03/02/internet-has-been-cut-off-in-some-cities-in-azerbaijan/>

¹²⁰ Ibid

reason for this is the increasing occurrence of cyber-attacks between Azerbaijan and neighboring Armenia and Iran. Cyber wars between Azerbaijan and Armenia began alongside the increase of Internet penetration in both countries. An organized series of hacker attacks took place on both sides. Each year up to and during significant historical dates related to the Nagorno-Karabakh conflict, hackers on both sides organize mass defacing of web resources important to the other side. In most cases, the hackers leave aggressive messages on the hacked websites and the lost data is usually recovered within one to two days. In recent years, attacks have become larger in scale and have been “signed” by online groups of hackers (such as Azerbaijan Defacersi M4H! R, MetaizM BOT_25, anti-Armenian Team, Anti-armenia.ORG, and pirate crew).⁶

Recently, Armenian hackers carried out denial-of-service (DDOS) attacks on 31 August 2012 against major Azerbaijani news sites: www.day.az; www.1news.az; www.apa.az; www.news.az; www.vesti.az; www.aztv.az; and President Ilham Aliyev’s website, www.president.az. The DDOS attacks began in response to the extradition from Hungary of Azerbaijani military officer Ramil Safarov, and his immediate presidential pardon. Safarov had been serving a lifetime prison sentence following his conviction for murdering an Armenian officer during a NATO training exercise in Budapest. The DDOS attacks were from Armenian, Iranian and Russian IP addresses.

The mutual cyber-attacks between Iran and Azerbaijan are another example of cyber warfare. Political tensions between Iran and Azerbaijan increased during 2012 as a result of growing pressure on Iran from the U.S. and the European Union to cease its nuclear program, Azerbaijan’s pro-Western position on this issue, the strategic partnership between Azerbaijan and Israel, and Iran’s friendly relations with Armenia. As a result, hacker groups in Iran and Azerbaijan engaged in a cycle of mutual cyber-attacks.

On 16 Jan 2012, the websites of Israeli airline “El Al” and the Tel Aviv Stock Exchange “TASE,” were attacked and damaged within a short period. The IP address behind the attack was based in Saudi Arabia. The same day, a few official Azerbaijani websites with the gov.az domain, hosted by the Special Communication and Information Security Department of the Special State Protection Service, were attacked by a group of Iranian hackers called “hack Cocaine Warriors of Persia.” On 17 January 2012, 35 Iranian websites and 315 Armenian websites were defaced by a group of Azerbaijani hackers called “Pirates of the crew.” Later, several Saudi Arabian sites were also attacked. The attacks on the Azerbaijani sites were investigated by the ICT Ministry and the Information Security Department of the Ministry of National Security. The ICT Minister commented on the event, reporting that 24 out of 25 of the attacks generated in Iran, the other from the Netherlands.

In many cases, the geographic sources of these cyber-attacks can define “allies” and “enemies.” Attacks on Azerbaijani websites during the 2012 Eurovision Song Contest, held in Baku in May, stemmed mainly from Armenia, Iran and Russia.

Major political events and general political sensitivities often affect the availability of Internet content generated by “enemies.” For example, the Azerbaijani version of the Iranian National Broadcasting website (<http://azeri.iri.ir/>) has been reported to be inaccessible by Azerbaijani IP addresses, while a website focused on the massacre of Azerbaijani citizens in Khojaly (<http://justiceforkhojaly.org>) has been reported to be inaccessible in Armenia.

Other attacks

Several attacks against the Azadliq daily newspaper’s website have been reported, originating from an IP address registered to the Azerbaijani ICT Ministry: 188.72.183.50 IP. The hosting company reported these

attacks and displayed the following message about a temporary block on the website's search engine: "We blocked the attacker's network 188.72.183.0/24 in our firewall. The attacker did many concurrent searches to exhaust the maximum connections to the database. The search engine is always one of the heaviest parts of the websites, because it is not cached. As a temporary measure to stop similar attacks, we have blocked the search engine in your website."

While previously hacker attacks most took place against critical websites and independent media, now hackers are beginning to target the state-controlled media. In January 2012, hackers launched an attack on 15 websites in Azerbaijan, mainly the official websites of government agencies, including the Constitutional Court, the Ministry of Internal Affairs, the Ministry of Education, the ICT Ministry, the State Security Service, the ruling Yeni Azerbaijan Party, and the websites of several pro-governmental media outlets. After the hacking took place, people sent messages promoting the wearing of the hijab (last year the Ministry of Education banned the wearing of headscarves in schools) and criticized Baku for cooperation with Israel and for corruption. The hackers called themselves the Azerbaijan Cyber Army, and warned that the Azerbaijani government would share the fate of former Arab dictators. The Trend News Agency website was also hacked after a story critical of the Azerbaijani-Israeli relations was posted on the site. Hackers also attacked the website of the Committee on State Support for NGOs (cssn.gov.az) and the Absheron Regional Executive Authority (absheron.gov.az).

Regulation of mobile phone usage

On 28 December 2012, the Cabinet of Ministers approved a set of rules on the registration of mobile devices. All mobile phones and other mobile devices must be registered in Azerbaijan in accordance with the "Complex Action Plan on the prevention of cases on wrongful information about terrorism."¹²¹ All available mobile devices must be registered in the registration system of mobile devices. This system, to which telecommunication networks of mobile operators will connect, will be installed by the ICT Ministry.

According to the Cabinet of Ministers' decision, several indicators will be included in the registration system. These indicators include International Mobile Equipment Identity (IMEI) codes, mobile network numbers, SIM cards, and affirmation codes of mobile device type. According to the rules, the registered phones will be categorized. A "white page" will include registered devices, and a "black page" will list unregistered devices. Under these rules, operators must limit the services for unregistered devices. The rules stipulate that mobile devices with IMEI codes listed on the "white page" are used only via their designated phone numbers. Importers of mobile phones to Azerbaijan for private usage will have to apply to the registration center, customer service departments of mobile operators, or post offices. These rules also pertain to devices sent via the postal service.

If it is determined that an IMEI number is on the "white page" or was copied, that number is immediately included on the "black page." The applicant is sent official information. While it is in use, the user will receive short messages from the operator. Operators limit the function of mobile devices which are listed on the "black page." According to the new rules, a person whose mobile phone was lost or stolen can apply to the registration center to limit its usage. According to the decision, this registration will start after the installation of the necessary equipment.

¹²¹ See <http://news.az/articles/tech/51997> and <http://www.cabmin.gov.az/?/az/pressreliz/view/608/>

A recent amendment to the criminal code regarding cybercrime and pornography gives courts the power to issue decisions related to content-based website filtration.¹²² Currently most illegal adult content generated in Azerbaijan is disseminated through mobile Internet (WAP sites hosted on free hosting servers). Some locally generated content is disseminated through peer-to-peer mobile communication. The filtration of WAP sites (mostly hosted abroad and on free hosting servers) could cause unavailability of legitimate content hosted on the same servers.

Other government security measures

The Convention on “crimes” that Azerbaijan joined in late June 2008, provided for the establishment of a Coordinating Center for network threats and cybercrime under the Ministry of National Security.¹²³

Currently the governmental Computer Emergency Response Team (CERT), accredited by Trusted Introducers and FIRST, functions under the Special Communication and Information Security Department of the Special State Protection Service.¹²⁴

According to the head of the Azerbaijani Parliament’s Department of European Integration, Rashad Azizov, a law on the development of anti-spam measures has been drafted and submitted to the appropriate legal bodies.¹²⁵ The law will set out procedures for dealing with the unauthorized use of e-mail accounts and mobile phone numbers.

Azerbaijan has recently toughened the penalties for cybercrimes and the dissemination of child pornography. According to the latest amendments to the criminal code from 29 June 2012, the crimes of illegal intrusion into computer systems, falsification of documents, money laundering in connection with cybercrime, and falsifying data carry a penalty of up to two years’ imprisonment. If such crimes are committed by a public official, they carry a penalty of a fine of between 2,000 and 3,000 AZN or two to four years’ imprisonment. If such crimes are carried out against a socially significant website, they carry a penalty of four to six years’ imprisonment.¹²⁶

Another amendment to the criminal code sets a penalty of between 8,000 and 10,000 AZN or up to five years’ imprisonment for crimes related to facilitating the distribution of child pornography. If such crimes are committed by an organized group, are intended to yield a profit, or are committed by the parents or guardians of minors, they carry a penalty of between five and eight years’ imprisonment. If such crimes are committed by persons in positions of authority over children, they carry a penalty of up to three years’ imprisonment.¹²⁷

¹²² <http://abc.az/eng/news/66095.html>

¹²³ <http://en.trend.az/regions/scaucasus/azerbaijan/2024343.html>

¹²⁴ See <http://cert.gov.az>

¹²⁵ http://abc.az/eng/news_06_10_2011_58334.html

¹²⁶ <http://www.meclis.gov.az/?/az/legislation/view/2089>, <http://abc.az/eng/news/66095.html>

¹²⁷ Ibid

Chapter Six: Internet access and infrastructure

The current state of Internet infrastructure in Azerbaijan can be characterized as ambiguous. While the technical capabilities of one of part of the telecommunications market are in line with the best international standards, the other part still uses outdated technology, which affects the quality of the Internet as a product. There is also a degree of irrationality in public investment into the ICT sector, and excessive bureaucratic barriers to private investment.

Despite the fact that compared to the previous two to three years, 2012 was a watershed for the ICT sector in the country, Azerbaijan has yet to take decisive steps to bring its ICT infrastructure in line with modern advanced standards. For example, while in 2012 the use of 3G technology became widespread in Azerbaijan,¹²⁸ this process could have been completed five years earlier. If Azerbaijani is serious about its desire to develop from an oil-producing country into one with advanced ICT capabilities, it should provide for a widespread transition from 3G to 4G technology as soon as possible, and replace the poor quality of broadband DSL connection with high-speed fiber-optic connection. This must be ensured throughout the country, not just in the capital city of Baku.

The reasons for the slow development of ICT infrastructure also include an unfavorable investment climate for foreign investors; excessive bureaucracy and slowness of governmental regulatory agencies; a high level of government corruption; the lack of an enabling environment for competition; a monopoly of certain private and public ICT companies; still relatively high prices for Internet connection; and the prevalence of dial-up and ADSL connections to end-users, despite sufficient economic resources in the country to provide the entire population with a high-speed fiber-optic connection.

International experience demonstrates that pricing and the level of ICT development are interrelated. Countries with relatively low prices have a relatively high level of ICT development, and countries with relatively high prices have a relatively low level of ICT development. Unfortunately, to date, Azerbaijan can be characterized as a country with relatively high prices and a relatively low level of development of ICT infrastructure.

The Azerbaijani government continues to remain reluctant to address civil society's concerns regarding Internet governance and the general state of ICT in the country, and does not seem to be receptive to recommendations from civil society organizations.

Technically speaking, it is possible to achieve a high level of ICT progress within the next two years;¹²⁹ however this could happen only if there were political will to provide a favorable investment climate for domestic and foreign investors, and to minimize government involvement in the ICT industry, particularly with regards to Internet connection, which should be limited to financing various innovative ICT solutions proposed by the private sector. At the same time, Internet governance should be approached as a multi-stakeholder responsibility which implies involvement of the state, industry and civil society.

¹²⁸ At the beginning of 2012, all mobile operators were granted a 3G licence, which resulted in healthy competition between them, and reduced the prices for 3G services.

¹²⁹ By this time, a full transition from analogue to digital broadcasting will have taken place in Azerbaijan and there will be new empty frequencies for 4G. In addition, Azerbaijan will release its own telecommunications satellite in 2014 and the fibre-optic network will be expanded across the country.

State of the wired network

Main backbone providers

Azerbaijan's backbone providers play an important role in the country's high-speed access to the Internet and are a factor in shaping pricing in the consumer Internet market in Azerbaijan.

Until 2011, the only Internet backbone provider allowing for communication with the outside world was Delta Telecom Ltd. For 10 years, this company provided careless oversight of the market. The ownership of Delta Telecom Ltd remains unclear, although it is assumed that without the government's support and protection its monopoly position would be impossible.

After many years of the Delta Telecom Ltd monopoly, in 2011, a relatively new company, Azertelecom Ltd, began to provide services in the backbone Internet connections market. Azertelecom shareholders include the private mobile telecom operator Azerfon (95 percent) and two state-owned companies, Aztelecom (2.5 percent) and Production Association for Baku Telephone Communication (BTRIB) (2.5 percent).¹³⁰

Delta Telecom and Azertelecom now have land access to the global network through backbone cabling infrastructure in five directions, four of which are terrestrial cables (to Russia, Georgia, Turkey and Iran) and one an underwater cable.

Improvements to the throughput capacity of the main bases are expected in early 2013, after the final incorporation of the Azerbaijani segment of the Internet into the new international Europe Persia Express Gateway (www.epegcable.com).¹³¹

At present, two major backbone providers, Delta Telecom and Azertelecom, control 98 percent of international web traffic in Azerbaijan.¹³² These companies distribute traffic between ISPs, as well as among the three mobile telecom operators in Azerbaijan.

ISPs account for about 70 percent of the total consumption of international traffic from Delta Telecom and about 20 percent from Azertelecom. Delta Telecom provides Internet traffic for the mobile telecom operator Azercell, and Azertelecom provides it for the mobile telecom operators Bakcell and Azerfon.

In general, the throughput capacity of these backbone providers could provide Azerbaijani users with high-speed and uninterrupted Internet. However, the lack of a high-quality and high-speed ground distribution network at the ISPs in Azerbaijan hinders further development of the Internet.

Internet Service Providers

There are over 40 ISPs in Azerbaijan.¹³³ Two main factors limit their effectiveness: the fact that they provide most services through dial-up and low-quality broadband ADSL Internet connection; and the slow rate at

¹³⁰ <http://www.azertelecom.az/en/whoweare/>

¹³¹ <http://www.epegcable.com/#page-about-the-project>

¹³² http://abc.az/eng/news_05_01_2012_61142.html

¹³³ According to information provided by the ICT Ministry in response to IRFS' request

which they are upgrading their networks delivering content to end-users.

The uneven distribution of the market has a negative impact on the activities of private ISPs, which is due to unfair competition regulation by the state. It should be noted that in the regions outside of Baku, Internet distribution is mainly provided by the public ISP Aztelecom, which gives it a monopoly. Another large state-run company is Bakinternet, which is engaged in Internet distribution in Baku. Although, unlike in the regions, there are over 20 private entities in the capital, along with state-run providers, Bakinternet still enjoys tacit privileges in the Internet business in the capital.

Fiber-optic Internet services for end-users (the people of Azerbaijan) cannot be regarded as significant as it currently accounts for less than one percent of the country's Internet connection. This is due to the high cost of both the connection and the traffic. Even in central Baku, to obtain fiber-optic Internet services, users have to pay very high prices for the installation of cables from the nearest point of access. For example, to lay fiber-optic cable over a distance of 300 meters from the nearest point of access, an ISP would charge around 3,000 AZN (at a rate of 10 AZN for one meter of cable).¹³⁴

However, in recent months, in a number of residential areas (with high-rise and multi-unit buildings) in central Baku, at their own expense, several ISPs have started laying fiber-optic cables to residential buildings, providing users with high-speed and high-quality Internet.

Private ISPs often complain about the decreasing margin of profit. This stems from the fact that the ISPs periodically lower prices for their consumers, while the backbone providers often do not reduce the wholesale prices for the ISPs themselves.

Azerbaijani Internet users need more than the occasional reduction in price for low-quality DSL connection. The providers should completely abandon these outdated methods of content delivery, and focus on the development of optical high-speed wired and wireless channels to deliver traffic.

Wireless Internet

Mobile Internet Infrastructure

The development of mobile Internet in Azerbaijan was stymied from 2008 to 2011, despite the fact that the 3G standard announced in 1999 was actively implemented at the international level from 2005 onwards.¹³⁵ Thus, despite their stated willingness to provide 3G communication services, the authorities failed to give the appropriate licenses to the mobile telecom operators with many years of experience, such as Azercell and Bakcell. Instead, the authorities issued a license to Azerfon, which held a monopoly in the field of mobile 3G from its opening in 2008 until early 2012.

So far, 2012 has been a successful year in terms of the development of mobile Internet in Azerbaijan. In the run-up to the Eurovision Song Contest, held in Baku in May 2012, Azercell and Bakcell received their

¹³⁴ <http://ritn.nakhchivan.az/modules.php?name=i010>

¹³⁵ <http://en.wikipedia.org/wiki/3G>

long-awaited 3G licenses, ensuring competition and improving the quality of the market for mobile Internet. To date, all three mobile operators have been given the opportunity to purchase mobile Internet connection either through smart phones or USB 3G + modems. However, the average connection speed for mobile Internet is less than 1.5 Mbps, which is almost 10 times lower than the standard capacity of 3G+.

According to the State Statistics Committee, from 2008 to 2011 the country officially imported about 500,000 cell phones. In general, experts estimate that every eighth cell phone is delivered to Azerbaijan through smuggling.¹³⁶ Because of corrupt practices at the State Customs Committee, the national statistical agencies cannot provide accurate figures regarding the importation of mobile phones.

To date, the market for mobile Internet services in Azerbaijan mainly includes used smart phones running on iOS, Blackberry, Android and Windows Mobile operating systems.

Average estimates show that the active subscribers of mobile operators are distributed as follows: Azercell – 3,200,000; Bakcell – 2,500,000; and Azerfon - 1.5 million subscribers; for a total of about 7,200,000 mobile phone users in the country.¹³⁷ It is assumed that on average, 30 percent of mobile phone users throughout the country use mobile Internet connection, meaning that the number of actual mobile Internet users in Azerbaijan could exceed two million.

At first glance, two million out of 7,000,000 active mobile phone users is an impressive result for the initial phase of development of the mobile Internet. Today, about 30 percent of all phones used in the country are technically advanced smart phones allowing the customers to use the Internet.¹³⁸

However, the majority of smart phone owners does not actually use the Internet through mobile communication due to its relatively high cost when viewing high-volume multimedia content (audio and video), preferring instead to use WI-FI networks. At the same time, the most active users of mobile Internet use it mainly for social networking.

Overall, only 50 percent of these two million people are regular and active users of the mobile Internet.¹³⁹

Over the next two years, 4G Internet connection is expected to become widely available through Azerbaijan's mobile telecom operators. The construction of this will be based on the LTE standard.¹⁴⁰ From May 2012, the mobile telecom operator Azercell started to offer its customers an unlimited Internet connection using LTE technology. Through this connection, with a 4G USB modem operating at a frequency of 1,800 MHz, it is possible to use mobile Internet at speeds of over 100 Mbps. This mobile Internet-based 4G connection is currently up to 10 times more expensive than the 3G package and it is available only in the capital, due to the low number of base stations. The exclusivity of 4G Internet service through Azercell is used as a marketing tactic to showcase the company's high-tech development. However, another

¹³⁶ <http://news.day.az/society/354113.html>

¹³⁷ According to information provided by official representatives of these companies

¹³⁸ A survey taken among 25 cell phone sales points (located in Baku and regions) confirms this

¹³⁹ A survey taken among 200 smartphone users in Baku revealed that only half of them regularly use mobile internet

¹⁴⁰ <http://en.trend.az/regions/scaucasus/azerbaijan/2029690.html>

operator, Bakcell, says that it is ready to introduce 4G services based on LTE, and even has the required frequency range. The operator Azerfon also provides a 4G LTE service. The regulators insist that all the three operators can implement 4G Internet connections on the basis of operating frequency bands.

Azerbaijan's transition from analog to digital television broadcasting will allow the release of a significant frequency range and its use for a wireless 4G Internet connection. However, the digital switchover is currently experiencing considerable delays.

Over the past two years, the provision of broadband wireless Internet-based standard WiMax¹⁴¹ has been introduced by two new companies, represented by the trademarks Sazz.az and WIMAX. AZ. They provide Internet speed up to 10 Mbps, while the relatively old companies in the wireless Internet, Elcell and Hot Net, provide wireless Internet access at speeds up to 2 Mbps.

Wireless Internet has already significantly increased the availability of the Internet and enabled many Internet users to abandon dial-up connection. It will no doubt develop further over the coming years.

Internet in numbers

In 2011, Azerbaijan's Internet infrastructure provided various economic entities with Internet communication services (including broadband) at nearly 62 million AZN (of which 23 million AZN was taxpayer money), while the total value of mobile services reached 784 million AZN (670 million AZN of which was taxpayer money).

Out of Azerbaijan's population of nine million, there are about two million households, half of which have been connected to 1,317,000 fixed telephone numbers. Each of them is a potential means of communication that could be used for dial-up or DSL (ADSL, ISDN, or HDSL) connection. However, according to the same government statistics, only 323,000 of these have been connected to the Internet.

According to official statistics, in 2011, there were about 110,000 DSL connections in Azerbaijan. It can be assumed that about 200,000 of these were in dial-up mode.

Of the telecommunication services provided to the population, the share of the Internet is 2.9 percent, while the share of cellular communication is 83.3 percent, and the share of urban phone service is 3.7 percent.

There is much speculation as to the number of Internet users in Azerbaijan. The authorities claim that in 2011, 48 out of 100 people were computer users, and from those same 100 people 65 were Internet users.

According to the International Telecommunication Union (ITU), in 2011, 50 percent of the Azerbaijani population could be considered Internet users.

Independent experts have suggested that to date, about 1.2 million Azerbaijanis are users of cable Internet and 2.2 million are users of wireless Internet.¹⁴²

¹⁴¹ <http://en.wikipedia.org/wiki/WiMAX>

¹⁴² <http://www.socialbakers.com/facebook-statistics/azerbaijan>

At present, Azerbaijan has more than 600 Internet clubs. More than half are concentrated in Baku. The lowest concentration of Internet clubs is in the Nakhchivan Autonomous Republic, an exclave of Azerbaijan. The results of monitoring undertaken for this report in Nakhchivan showed that for a population of 220,000, there are only 20 Internet clubs, 16 of which are located in the capital, Nakhchivan City, and four others exist in the four regional centers (one Internet café in each).

AZ domain zone

Launched in August 1993, the domain zone .AZ currently has 13,833 registered domain names for all of Azerbaijan. The company Network Technologies, a subsidiary of the company INTRANS, holds a monopoly over the sale of .AZ domain names. While in most of the world international and foreign national domain names can be purchased just in a few minutes online, in Azerbaijan the method of selling domain names has not changed since the introduction of the .AZ domain zone.

Anyone who wants to buy a .AZ domain must first make a request and send it to the e-mail address of the company. The application is considered within days, after which, if the company agrees to sell the domain, the buyer has to take his or her passport to the offices of Network Technologies and pay 20 AZN to process the domain, and an additional 20 AZN for annual rent of the name. Notably, the company may refuse to sell the domain name without indicating the legal grounds for the refusal. For example, the company refused to sell the domain names “respublika” and “sex,” justifying the denial in the official response to the potential buyer, saying that the domain is not for sale under the direction of the company’s management.

Another downside is the absence of an automated panel for setting the technical parameters of the .AZ domain. For example, to change the Primary Name Server records, the domain owner should submit a request to Network Technologies via e-mail, and the company will then make the changes.

In general, the national register .AZ domain is considered by national experts to be technologically inadequate and to not meet the rules of fair competition.

Internet connection speed

The average speed of Internet connection is a significant indicator of the development of Azerbaijan’s Internet infrastructure. According to the influential Net Index by Ookla¹⁴³ - a ranking of average download speeds of the Internet –with a speed of 3.55 Mbps, Azerbaijan ranked 106th in the list of 176 countries. In comparison, Hong Kong, which holds first place in the ranking, has a rate of 43 Mbps; Lithuania, which is second, has 35 Mbps; and South Korea, which is third, has 35 Mbps.

In the same ranking of data-uploading speeds on the Internet, Azerbaijan took 98th place out of 176 countries, with a speed of 1.40 Mbps. In comparison, Hong Kong, which took first place, had a speed of 28 Mbps; South Korea, which took third place, had a speed of 35 Mbps; and Lithuania, which took fourth place, had a speed of 22.72 Mbps.¹⁴⁴

¹⁴³ Ookla is the global leader in broadband testing and web-based network diagnostic applications

¹⁴⁴ Ibid

Azerbaijan's closest neighbors – Russia, Georgia, Armenia and Turkey – are well ahead of Azerbaijan in terms of average download speed (Russia - 16.54 Mbps; Georgia - 11.89 Mbps; Turkey - 6.92 Mbps; Armenia - 6.40 Mbps) and average upload speed (Russia - 13.55 Mbps; Georgia - 9.95 Mbps; Armenia - 6.40 Mbps; Turkey - 1.92 Mbps).

Throughout the country, the highest quality of Internet connection is found in the country's capital city of Baku and its suburbs. For example, the average download speed in Baku is 3.51 Mbps, while in Sumgayit, it is 2.59 Mbps; in Jalilabad, 2.40 Mbps; and in Goychay, 2.40 Mbps. The average upload speed in Baku is 1.29 Mbps, while in Sumgayit, it is 0.78 Mbps; in Jalilabad, 0.70 Mbps; and in Goychay, 0.70 Mbps.

The lowest quality Internet connection in Azerbaijan is found in the Nakhchivan Autonomous Republic. This is due to the fact that Internet traffic is controlled by a state monopoly, the ISP Nakhtelecom.¹⁴⁵

¹⁴⁵ <http://ritn.nakhchivan.az/modules.php?name=i002>

Chapter Seven: Azerbaijan's Internet users

One of the main challenges in analyzing issues pertaining to the Internet in Azerbaijan is the lack of reliable data about Azerbaijan's Internet users. Most experts are skeptical about the accuracy of official or semi-official statistics released by governmental institutions, and there are few alternative sources of information on this topic. The Caucasus Research Resource Centers' (CRRC) comprehensive survey about social capital, media and gender examined in this chapter is one of – if not the only – reliable academic data profiling Internet usage in Azerbaijan.

According to official data released by an ICT Ministry spokesperson in July 2012, the number of Internet users in Azerbaijan constitutes 65 percent of the total population. In Baku, the percentage is even higher at 89.5 percent, and in the rest of the country, slightly below the average – at 60 percent. Out of all of the Internet users in the country, only 30 percent have a broadband connection, which most Internet users (70 percent) are using either dial-up or mobile Internet.¹⁴⁶

The International Telecommunications Union (ITU) reported that the percentage of individuals using the Internet in Azerbaijan was 50 percent in 2011 and there were 10.73 fixed (wired) broadband subscriptions per 100 people.¹⁴⁷

However, at least one very serious academic survey contradicts official ICT Ministry and ITU statistics. It is the latest "Social Capital, Media and Gender Survey" in Azerbaijan that was conducted by the CRRC between December 2011 and March 2012, commissioned by the Swedish International Development Agency. It was a nationally representative survey with complex sampling (stratified and cluster) and the targeted sample size was over 1,200 with a response rate of around 83 percent. The research methodology and other details are available from the CRRC website, as well as the survey data itself.¹⁴⁸

Katy Pearce, a researcher and Assistant Professor of Communication at the University of Washington, has analyzed this data and compared it with data from surveys conducted in Georgia and Armenia using the same methodology. Pearce came up with a number of interesting conclusions.¹⁴⁹

Starting from the very basics, household PC ownership in Azerbaijan in 2011 was only 15 percent, while in Armenia and Georgia it was 40 percent and 33 percent respectively. Household mobile ownership was 89 percent, more than in Georgia (80 percent), but still less than in Armenia (92 percent).

Of the survey participants, 88.5 percent were aware about the Internet, but only 26.2 percent integrated it into their lives. In Armenia and Georgia, this constituted 37 percent of their populations. Of the Azerbaijanis

¹⁴⁶ Qafqazinfo news agency citing ICT Ministry spokesman Mushfig Amirov on 4 July 2012. Available at http://qafqazinfo.az/AZ%C6%8FRBAYCANDA_INTERNET_ISTIFAD%C6%8F%C3%87IL%C6%8FRININ_SAYI_Y%C3%9CKS%C6%8FK_H%C6%8FDD%C6%8F_%C3%87ATDI-21241-xeber.html

¹⁴⁷ International Public Union statistics via Google Public Data, available at http://www.google.com/publicdata/explore?ds=em9ik86jcuic_&ctype=l&strail=false&bcs=d&nسلم=h&met_y=i992&scale_y=lin&ind_y=false&rdim=world&idim=world:Earth&idim=country:JP:KR:FR:DE&ifdim=world&hl=en_US&dl=en&ind=false&icfg#!ctype=l&strail=false&bcs=d&nسلم=h&met_y=i992&scale_y=lin&ind_y=false&rdim=country&idim=country:AZ&ifdim=country&hl=en_US&dl=en&ind=false

¹⁴⁸ The Caucasus Research Resource Centers, Social Capital, Media and Gender Survey in Azerbaijan, available at <http://crrccenters.org/activities/research/?id=70>

¹⁴⁹ In this chapter, Katy Pearce's research has been extensively cited with her permission. More information on her research is available on her website at KatyPearce.net, and her presentations can be viewed at slideshare.net/katyp1.

surveyed, 62.2 percent replied they never used the Internet and only 6.7 percent were daily Internet users. In comparison, daily Internet users in Armenia were 21.9 percent, and in Georgia, 20.1 percent.

Of those who never used the Internet, 14 percent replied they did not need it, 11 percent said they did not know how to use it, nine percent were not interested, and four percent “had no time.”

One point of interest is the fact that out of the three South Caucasian countries, only in Azerbaijan was the “immorality” of the Internet mentioned as a reason not to use it, a response given by one percent of the respondents.

When asked about their activities online, 58 percent replied that they were searching for information and 38 percent said they were using e-mail. Using Facebook was the third most popular activity at 35 percent. One in four Internet users was reading news and two percent were reading and writing blogs. Finally, three percent were shopping online.

As for location and devices, 38 percent of all users replied they were accessing the Internet from their own computers. Twenty-three percent were going online in Internet cafes, 18 percent at work, 10 percent via their mobile phones and eight percent via their friends’ machines.

Based on her analysis of this data, Pearce revealed that despite Azerbaijan being rich and more populous than its two South Caucasian neighbors, it was lagging behind in many aspects regarding ICTs.

Pearce has identified significant technical, political, social and demographic barriers in the integration of the Internet in Azerbaijani society. As her analysis of the survey results clearly demonstrates, the people who were not aware about the Internet or did not use it were poorer and older than those who did know and used it. Women were also disproportionately represented in this category.

Another problematic issue is that of frequent Internet users. Despite Internet penetration in Azerbaijan increasing significantly, frequent users have remained mostly among the same demographic group: young, educated, well-off urban residents who live mostly in the capital city of Baku. Most were highly educated and only one quarter was women. Pearce dubbed this situation as the “elite-only” Internet:

The consequences of an ‘elite only’ Internet in Azerbaijan are as yet unknown. However, in circumstances like this, the resources which Internet and technology use can provide increase the gap between the haves and have-nots. Thus, technology amplifies inequality in Azerbaijan. Furthermore, those elite individuals cautiously treading online are possibly ‘escaping’ Azerbaijani reality. While this may not be a sophisticated bread-and-circuses effort on behalf of the Azerbaijani government, the effects could be similar.¹⁵⁰

Other barriers to awareness about and usage of the Internet were poverty, age and gender, as well as a lack of proficiency in English and low levels of education.

However, the repressive political atmosphere in the country is also a bigger obstacle. As Pearce describes it:

¹⁵⁰ Dr. Katy E. Pearce, Information and Communication Technology in Azerbaijan in Spotlight on Azerbaijan, ed. by Adam Hug, Foreign Policy Centre, 2012. Available at <http://fpc.org.uk/fsblob/1462.pdf>

First, the Azerbaijani government uses media coverage to demonize technology through framing... The Azerbaijani government-controlled media often runs stories that social media use with mental illness and treason. For example, television shows describe “family tragedies” and “criminal incidents” after young people join Facebook and Twitter. Moreover, in March 2011, the Azerbaijani government’s Chief Psychiatrist said that social media users avoid real-life communication, have psychological problems and cannot maintain relationships...In May 2011, Parliament discussed the bad influence that social media has on Azerbaijan and began proposing laws to curtail it, which received substantial media coverage...Second, the Azerbaijani government monitors its citizens’ use of social media. Azerbaijanis believe that their government is watching “everyone” on social media. In addition, there is evidence for this: users have had their Facebook accounts as well as Yahoo! and G-mail e-mail accounts compromised. This causes self-censorship amongst those that do use social media while discouraging those too fearful to engage...Third, the government arrests online activists.¹⁵¹

In observing the group of frequent Internet users in Azerbaijan, it becomes apparent that they have become more deeply and frequently engaged in social media and have moved forward significantly in comparison with the rest of the population in embracing new technologies. They have been employing new technologies to evade the government’s control of the media and disseminate critical information.¹⁵²

The cumulative effect of these Azerbaijani Internet users’ online activities on various social media platforms, their campaigns, and political and civic activism have led to a phenomenon which has been jokingly dubbed the “Republic of Facebook,” which Pearce pointed out could also be viewed as “escaping” Azerbaijani reality. As noted by Azerbaijani blogger Ali Novruzov:

There is a stark contrast between the content in the Azeri segment of the Internet and daily life in Azerbaijan. While everyday life in [this] tightly-controlled country becomes dull, routine and free from politics, many people in their on-line life turn to social networking sites like Facebook and Twitter for advocacy and activism.¹⁵³

Facebook and Twitter are the two main platforms where Azerbaijani online activists gather for discussion. YouTube is also popular, and independent blogs play a small but influential role. Disput.az, a gathering point for Russian-speaking Azerbaijanis, also remains vibrant.

According to Alexa Internet, a company measuring traffic data, global rankings and other information about websites, the most popular website in Azerbaijan is Facebook, followed by YouTube.

The first 10 websites also include the Russian social networking site Odnoklassniki.ru, and Twitter, while

¹⁵¹ Ibid

¹⁵² See, for example, Ali S. Novruzov, How We Used Facebook To Try To Free Azerbaijan’s ‘Donkey Bloggers,’ RFE/RL, 19 November 2009, available at http://www.rferl.org/content/How_We_Used_Facebook_To_Try_To_Free_Azerbaijans_Donkey_Bloggers/1882215.html and Ali S. Novruzov, Republic of Facebook vs. Republic of Azerbaijan, Eastern Partnership Community, 4 August 2011, available at <http://www.easternpartnership.org/community/debate/republic-facebook-vs-republic-azerbaijan>

¹⁵³ Ali S. Novruzov, Republic of Facebook vs. Republic of Azerbaijan

Blogger, Disput.az and V Kontakte, another Russian social networking site are in the top 20.¹⁵⁴ Socialbakers, another website that tracks statistics related to social media websites, reports more than 870,000 Facebook users in Azerbaijan, which ranks the country 83rd globally:

Facebook penetration in Azerbaijan is 10.50% compared to the country's population and 23.63% in relation to number of Internet users. The total number of FB users in Azerbaijan is reaching 871620 and grew by more than 89620 in the last 6 months.¹⁵⁵

Half of Azerbaijani Facebook users are under 24 years old, and women constitute only 37 percent of all Facebook users.

Though Twitter is not as popular and is not as frequently used as Facebook, it serves as a very important platform for online activism and the dissemination of information. Twitter users played a prominent role in reporting from political trials, a role highlighted during the trial of "donkey bloggers" Emin Milli and Adnan Hajizade in 2009.¹⁵⁶ Azerbaijan's small but very active IT community also has a very active presence on Twitter.

AzTwi.com, a start-up set up by three tech experts – @anarek, @elvin85 and @freeyorker – is keeping an eye on the Azerbaijani "Twitterati." They prepare rankings of Azerbaijani Twitter users, the most discussed topics, and other interesting information about Twitter use in Azerbaijan. Their data from 7 June 2012 showed that the number of Twitter users in Azerbaijan was around 40,000, although the majority of users were not active.¹⁵⁷

AzTwi.com processes on average 15,000 Tweets per day, though only 12.3 percent of Azerbaijani Twitter users post daily. However, looking at the trending topics on Azerbaijani Twitter for the first half of 2012, it seems use of the site is less politicized than that of Facebook. These trending topics included the Eurovision Song Contest, hava (weather), Google, foto (photo), #aztwi, Android, iPhone, futbol (soccer), xəbər (news), and Türkiyə (Turkey).¹⁵⁸

Blogging is still somewhat influential in Azerbaijan, and was especially popular immediately after Milli and Hajizade's arrest. The use of blogs, however, seems to be in decline, leaving only dedicated activists who continue to publish their blogs, but with less frequency than in previous years.

With the advance of smartphones, the average Azerbaijani frequent Internet user has started to use mobile platforms and apps more frequently. The popularity of iPhones and Android phones has surged and new Azerbaijani applications continue to pop up in online markets. The average Azerbaijani online activist has entered a new stage, no longer being confined to the desktop, but more frequently using mobile Internet via smartphones. The proliferation of a new generation of smartphones will likely further encourage Azerbaijani online activists to become more mobile.

¹⁵⁴ Alexa Internet, "Top sites in Azerbaijan," available at <http://www.alexa.com/topsites/countries/AZ>

¹⁵⁵ Socialbakers, "Azerbaijan Facebook statistics," available at <http://www.socialbakers.com/facebook-statistics/azerbaijan>

¹⁵⁶ Milli and Hajizade's case is described in greater detail in Chapter Four of this report

¹⁵⁷ Twitterin Azərbaycan segmentinin son dövrlər üzrə statistikas [infoqrafika]. Available at <http://weboxu.com/blog/aztwi/2104.html>

¹⁵⁸ Ibid

Chapter Eight: Implementation of Azerbaijan's e-government strategy

"The impact of e-government at the broadest level is simply better government – e-government is more about government than the "e." It enables better policy outcomes, higher quality services and greater engagement of citizens."¹⁵⁹

Over the past few years, as a part of its partnership with international organizations, e-government reform has become one of the top priorities of the Azerbaijani government. In a Cabinet of Ministers meeting dedicated to social and economic development in 2011, Azerbaijani President Ilham Aliyev asked his ministers to implement an e-government strategy. He said: "Transition to e-government principles will be an effective factor in our fight against corruption. Generally, we need to minimize government official – citizen interaction as much as possible."¹⁶⁰

Successful implementation of state programs for e-government reforms will provide better government services to citizens; better interaction and partnership opportunities to businesses and industries; more access to information; and transparency in government activities.

Despite the fact that the Azerbaijani parliament has adopted several laws on e-government services since 2004, the government did not begin to introduce a wide range of services since 2011. Currently, most of these services are either inactive or inefficient.

Major obstacles to the introduction of e-services include the lack of sufficient infrastructure, the uncertainty of government structures, and difficulties in integrating independent government services into one main portal.

Legislative framework

Law on electronic signatures and electronic documents

In 2004, the Azerbaijani parliament adopted the law on electronic signatures and electronic documents, which was approved by a presidential decree on 26 May 2004. The law and the decree stipulated that the government would create accreditation centers in order to provide e-signature services to entities and individuals, to check e-signatures signed abroad, and to check and protect e-documents.

However, the government did not create these centers until 2010. In 2010, an independent candidate for parliament was unable to submit an electronically signed document (which had been signed abroad) for registration as a candidate. There were no government agencies or accreditation centers to recognize electronically signed documents, as provided for by law.¹⁶¹

Seven years after the adoption of the legislation on electronic signatures and electronic documents, in September 2011, the ICT Ministry created national accreditation centers to provide electronic signatures.¹⁶²

Law on electronic commerce

In 2005, the Azerbaijani parliament adopted a law on electronic commerce. So far, there are several private

¹⁵⁹ Organisation for Economic Co-operation and Development, The e-government imperative: main findings, available at <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN015120.pdf>

¹⁶⁰ <http://en.president.az/articles/4017>

¹⁶¹ <http://www.var.az/arxiv/676-bxtiyar-hacyevin-namizdliyi-qbul-olunmaya-bilr>

¹⁶² http://e-imza.az/index.php?option=com_content&view=article&id=147&Itemid=83&lang=az

companies providing services to citizens to pay for goods and services and to transfer money online. Compared to e-government services, e-commerce services provide high quality service to customers and there is visible development and competition in this sector.

National Action Program for the more effective protection of human rights and freedoms

The Azerbaijani government also sees the introduction of e-government as a part of the basic protection of human rights. On 27 December 2011, the president approved a National Action Program for the more effective protection of human rights and freedoms, which includes several provisions related to e-government: introducing an e-government portal; ensuring the provision of electronic services; providing an electronic signature option with government agencies; and creating regional terminals of electronic applications and encouraging the use of these terminals to expand application opportunities.

Reform initiatives

E-government portal

One of the main components of the e-governance policy of Azerbaijan has been to introduce an e-government portal, EHDIS. The e-government portal aims to create a single integrated platform for government services. According to Elmir Valizadeh, the Deputy ICT Minister, to date the country has already introduced more than 10 of the 20 services envisaged by the 2010-2012 State E-Government Development Program and the 2010-2011 Action Plan.¹⁶³

On 25 April 2012, the ICT Ministry held a presentation about the first phase of the e-government portal. The portal, which is available at www.ehdis.az, currently provides more than 120 services from 26 government agencies.

However, most of these services are informative only, inactive, or trivial. For example, one of the main services provided by the Ministry of Justice returns a single-line response with the meaning of a person's name. In order to use this service, a user must physically go to one of three government agencies (the ICT Ministry, the Ministry of Taxes, or a local post office), submit their documents and sign a contract to get the eight-digit user ID and two different passwords necessary to log in online.

Two of the other top three e-government services provided by the Ministry of Justice provide information about things like birth certificates and notary registrations. This information already appears on the Ministry of Justice's website.

Most of the services provided by the Ministry of Education are inactive. One of the services requires users to enter their university diploma series information and number in order to provide more information about the diploma and its holder. This service could eliminate the need for notary authorization of university diplomas and could increase the effectiveness of diploma recognition. However, several sample tests conducted by researchers for this report using real university diplomas returned no results.

Some of the other services provide only trivial information. One of these services belongs to the Ministry of Internal Affairs. A citizen is required to obtain a user ID, log in to the website, and enter a PIN code provided

¹⁶³ http://abc.az/eng/news_14_01_2011_50861.html

by the Ministry of Internal Affairs to see his or her ID information, which includes name, surname, date of birth and place of birth. A user is not allowed to check the information of other citizens. It is unclear for what purpose someone would go to the trouble of submitting several documents and getting a PIN code to gain access to the portal in order to see this information, which they already have.

ASAN service centers

On 13 July 2012, President Aliyev issued a decree establishing a new government agency, the State Agency for Public Services and Social Innovations. The decree stipulates that the government will offer a number of services online (but not necessarily only online) in order to increase citizens' satisfaction.¹⁶⁴ This decree replaced the president's previous order to establish the State Agency on e-government under the ICT Ministry, issued on 14 July 2010.

The Agency has been tasked with creating the Azerbaijan Service and Assessment Network (ASAN, which means "easy" in Azerbaijani) service centers.¹⁶⁵ These centers will have two main functions. Firstly, they will serve as a hub for certain government agencies, which will have representatives for specific services. These representatives will be trained by Agency staff and will provide the services assigned to their respective agencies. Secondly, the ASAN centers will integrate the databases of these government agencies and offer a singular point to access these online services, via the ASAN website. According to Agency officials, the government plans to open the first ASAN service center in Baku within the next few months.

The decision to create this new Agency to provide better electronic services to citizens followed the launch of the e-government portal, EHDIS. Since the order to establish the ASAN centers was issued, some have argued that EHDIS had failed to meet expectations, particularly in regards to coordinating and integrating the services provided by separate government agencies, necessitating the establishment of the new Agency to coordinate these services.

Electronic signature (e-signature)

Despite the fact that the Law on electronic signature and electronic documents was adopted and approved in 2004, the ICT Ministry did not establish a national accreditation center to provide and recognize e-signatures until 2011. So far, only 2,000 e-signatures have been obtained by individuals and organizations.¹⁶⁶

Other services

According to the National Action Plan to promote open government, signed on 5 September 2012, the State Agency for Public Services and Social Innovations will create a single platform for government entities to exchange official documents and information.¹⁶⁷

Problems in implementation

¹⁶⁴ <http://www.president.az/articles/5416>

¹⁶⁵ <http://abc.az/eng/news/66551.html>

¹⁶⁶ <http://www.milli.az/news/hitech/131083.html#popupInfo>

¹⁶⁷ <http://www.president.az/articles/5712>

Informative, not interactive services

Under the e-government strategy, most government agencies have provided mainly informative services to citizens. Very few government websites provide interactive services. This means that while these websites provide information about how to use specific services, they do not provide the services themselves online, despite the fact that doing so would require minimal additional effort and resources.

Integration to a single platform

Government agencies have so far been allowed to create their own e-services with their own budgets. Some ministries (e.g., the Ministry of Taxation) and State Committees and Commissions (e.g., the State Commission on Students' Admission) have successfully created their own e-services sections on their websites and offer interactive services to citizens, while others have lagged behind and offer only informative services. The fact that each body has been left to implement its own project at its own discretion has created a huge gap among the platforms. Coordinating and integrating all of these services to a single platform, converting millions of database entries to a new format, will prove to be a serious challenge.

Privacy vs. transparency

There is a common concern among government institutions about the privacy and security of the information they disclose. When institutions provide e-services, they make a trade-off between disclosing personal information on the Internet and protecting individuals' right to privacy. However, Azerbaijani society does not appear to be very sensitive to privacy issues. For example, the website of the Central Election Commission provides an e-service to check voter lists online. An individual may enter the name and surname of another individual and find their personal information online. This information includes dates of birth and home addresses. Other services provided by the ICT Ministry allow individuals' landline phone numbers to be found by entering their names and surnames. So far, there has been no public criticism about these services.

Conclusion

As this report has shown, while the Internet in Azerbaijan is currently partly free, there are some obstacles which must be addressed to ensure full Internet freedom in the country. Some of these are technical forms of censorship – such as data-filtering and content-blocking – and there are concerns that use of these methods to restrict free expression could increase in the future.

At present, however, the most significant threat to free expression online is the targeting by authorities of individuals who take to the Internet to voice critical opinions. For the most part, Azerbaijanis are technically able to do what they like online, but that does not mean there will not be repercussions. On the contrary, those who cross certain lines in their online postings – such as calling for protest, exposing official corruption, or criticizing the president and his family – do so at significant risk.

Prior to the introduction of this report, the Expression Online Initiative has provided a set of recommendations to the authorities for steps needed to improve Internet freedom in Azerbaijan. The Expression Online Initiative urges the authorities to take these recommendations seriously and use them as a starting point in pursuing a comprehensive, multi-stakeholder strategy on Internet freedom.

The Expression Online Initiative emphasizes, however, that achieving full Internet freedom – and indeed broader democratic freedom in the country – will require serious political will by the authorities. Universal Internet access is a worthy goal, but means little in the absence of a climate conducive to freedom of expression both on- and offline.

Acronyms and technical terms used in the report

ADSL	Asymmetric digital subscriber line
ASAN	Azerbaijan Service and Assessment Network
AZN	New Azerbaijani Manat
CERT	Computer emergency response team
CRRC	Caucasus Research Resource Center
DDOS	Denial of service attacks
DSL	Digital subscriber line (a family of technologies that provide Internet access)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EHDIS	Azerbaijan’s e-government portal
HDSL	High-bit-rate digital subscriber line
ICCPR	International Covenant on Civil and Political Rights
ICT	Information and communications technology
ID	Identification
IMEI	International mobile equipment identity
IRFS	Institute for Reporters’ Freedom and Safety
ISDN	Integrated services digital network (an all-digital communications line allowing for the high-speed transmission of voice, data, video and graphics)
ISPs	Internet service providers
IP	Internet protocol (as in IP address – a numerical label assigned to every device that connects to the Internet)
ITU	International Telecommunication Union
LTE	Long term evolution (standard for wireless communication of high-speed data)

Mbps	Megabits per second
MHz	Megahertz
NATO	North Atlantic Treaty Organization
NGOs	Non-governmental organizations
OSCE	Organization for Security and Co-operation in Europe
PC	Personal computer
PIN	Personal identification number
SIM	Subscriber identity module (as in SIM card – a portable memory chip used in some mobile phones)
UDHR	Universal Declaration of Human Rights
UN	United Nations
USB	Universal serial bus (an industry standard defining the connection between computers and electronic devices)
USD	United States Dollars
WAP	Wireless application protocol (a technical standard for accessing information over a mobile wireless network)
WIMAX	Worldwide interoperability for microwave access (technology enabling the delivery of wireless broadband access)
3G	Third generation (of mobile communications standards)
4G	Fourth generation (of mobile communications standards)



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