



The Internet and the Law in Egypt Series

(Second Part: Digital media)

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Prepared by: The Research Unit of the Association for Freedom of Thought and Expression (AFTE)

Publisher:
Association o Freedom of
Thought and Expression

info@afteegypt.org
www.afteegypt.org

هذا المُصنَّف مرخص بموجب
رخصة المشاع الإبداعي:
النسبة، الإصدارة ٤.٠.



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مؤسسة حرية الفكر والتعبير
Association for Freedom of Thought and Expression

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Methodology

The second part of “The Internet and the Law in Egypt Series” is based on an analytical reading of the laws of freedom of digital media, namely the Law on Combating Information Technology Crimes No. 175 of 2018, the Press and Media Regulation Law No. 180 of 2018, as well as Law of Regulating Communications No. 10 of 2003. The paper is also based on reading reports and statements issued by the Supreme Council for Media Regulation (SCMR).

Introduction

The Association for Freedom of Thought and Expression (AFTE) issued the first part of the series “The Internet and the Law: Centralization of Telecommunications”, which dealt with a background on the beginnings of the internet in Egypt, the laws governing the communications system, as well as the authorities affiliated with those laws that mainly control the management of communications and the internet in Egypt -The National Telecommunications Regulatory Authority (NTRA).

In the second part of this series, the association covers the laws regulating digital media, their effects in terms of creating digital media, the possibility of these websites being subjected to internet censorship by the Egyptian authorities, and criminal prosecutions against those responsible for digital media, which in total constitute a package of obstacles to the freedom of digital media.

The importance of this reading in the laws related to digital media increases, in light of the continued blocking of many press websites, at least 125 out of the total number of 554 blocked websites, and the consequent problematics in achieving economic revenues for blocking websites, as well as the visitor’s access to the content published through these press websites.

AFTE hopes that this part will contribute to raising the awareness of digital media workers about the laws that intersect with their work, and the penalties they may be exposed to, which constitutes a main guarantee for dealing with legally enforced restrictions.

First: The Difficulties of Establishing Digital Newspapers

Before addressing the difficulties facing the establishment of digital newspapers, there is a need to know the body that regulates press and media affairs in Egypt, and its independence from the executive authority. As part of the state's efforts to control the media, a law was issued in 2018, regulating the press and media, and combating information technology crimes.

The state considered the two laws to be very important, both in regulating the work of press organizations, and in protecting Internet users. However, there were negative effects of these two laws on freedom of expression and information circulation in general, and on the freedom of digital media in particular. Restrictions have been placed on creating websites, and allowing blocking of those websites for reasons that are not clear, and by many bodies.

SCMR is making efforts to confront the hostile media, explaining that it held a conference during which it discussed the role of the media in supporting the Egyptian state, supporting its national situations, and discussing proposals to confront hostile media that broadcast lies and rumors about the Egyptian matter, and ways to confront them and raise the facts, in light of transparency. and defending the principles of the Egyptian state.

The third annual report of the SCMR

SCMR is the most prominent body in placing obstacles in the way of digital media, which the Law Regulating the Press and Media stipulated for its formation. Article (73) of the Press and Media Regulation Law No. 180 of 2018 regulates the formation of the SCMR, and the President of the Republic issues a decision appointing the nine members of the Council, and selects two members from among them directly¹, in

1. Article 73 of Press and Media Regulation Law No. 180 of 2018: "SCMR is formed by a decision of the President of the Republic from nine members, chosen as follows:

1. The President of the Council, chosen by the President of the Republic.
2. Vice-President of the State Council, chosen by the Special Council for Administrative Affairs of the State Council.
3. Head of the Competition Protection and Prevention of Monopolistic Practices Authority.
4. A representative of NTRA, chosen by the Chairman of the NTRA's Board of Directors.

addition to selecting members from among the candidates of entities (the Supreme Council of Universities, Office of Parliament, Journalists Syndicate, Media Syndicate). The law obliges these bodies to nominate twice the number specified for them in the law, and to notify the President of the Republic, in order to choose from among them the required number.

The powers of the President of the Republic in forming the SCMR undermine the independence of the Council from the executive authority. On the other hand, the President of the Republic is the head of the executive authority, and the majority of the Supreme Media's members represent executive bodies².

Digital newspapers face great difficulties in establishing, due to these laws regulating digital media, as follows:

1. Obtaining licenses:

“It is not allowed to establish or manage websites in the Arab Republic of Egypt, or to operate offices or branches of websites operation from outside the Republic, except after obtaining a license from SCMR in accordance with the rules and conditions it sets in this regard. Without breaching to the enforced criminal penalties, SCMR may, in case of violation of the provisions of the previous paragraph, take the necessary measures, including canceling the license, stopping the website's activity or blocking it in the event of not obtaining a valid license. Those concerned may appeal the decision before the Administrative Court.”

5. A member of an experienced public figure, chosen by the President of the Republic.

6. A member of the journalists, based on the nomination of the Board of Directors of the Syndicate of Journalists who are not members.

7. A member of the media, based on the nomination of the Board of Directors of the Media Syndicate, who is not a member.

8. A member of public figures and experts, based on the nomination of the House of Representatives office, who is not a member of the House of Representatives.

9. A representative of the Supreme Council of Universities, one of the professors of journalism and media working in Egyptian universities, based on the nomination of the Supreme Council of Universities.

The bodies referred to in items No. (6,7,8 and 9) shall, during the three months preceding the end of the council's term of office, nominate twice the required number of each of them for membership in the SCMR, and notify the President of the Republic of their names, to choose from among them the required number. As well as notify the Council of any change in their qualifications”

2. AFTE “A Reading into the competencies and practices” 2018, last visit in June 2021, link:

https://afteegypt.org/en/media_freedom-2/2019/04/22/17432-afteegypt.html

Article 6 of Press and Media Regulation Law No. 180 of 2018

In conjunction with the issuance of the Law Regulating the Press and Media, it became necessary to obtain a license to create a website, as Article (6) of the Law Regulating the Press and Media No. 180 of 2018, stipulating a number of conditions for websites to obtain a license from the SCMR³.

These conditions were not clear when the law was issued, until SCMR issued Decision No. 26 of 2020 regarding “regulating licenses in SCMR”, which included a number of procedures/ requirements/ obligations, most notably the financial amounts, as the regulation requires obtaining website licensing, the license applicant shall take the form of a company with a capital of at least 100,000 EGP, in addition to paying a fee of 50,000 EGP to obtain a work license.

2. Ethical codes:

The licensed website bears legal responsibility for any fault in the practice of its activity, or violation of written values, standards or rules (Laws) issued by SCMR, under the name “Rules and Standards Regulation necessary to ensure that press and media organization adhere to the professional origins and ethics and maintain intellectual property rights related to its content, professional rules and standards governing journalistic, media and advertising performance, and written norms”. Seven codes of ethics⁴, these codes revolve around vague terms of public morals and public order, as well as the preservation of societal norms and traditions, which shall be executing by websites, so they can carry out their work and avoid revocation of the license.

All of this enables SCMR to use its wide discretionary powers to refuse to grant licenses to certain websites, or to delay that indefinitely, as digital newspapers face obstacles to adjust their situation according to the new law. For example, the “Masr Al-Arabiya”

3. Press and Media Regulation Law No. 180 of 2018.

4. Decision No, 62 of 2019, “Regulation of rules and standards necessary to ensure that press and media organizations adhere to the profession’s principles and ethics and preserve intellectual property rights related to its content, and professional rules and standards governing journalistic, media and advertising performance, and written norms’, September 2019, date of last visit in August 2021, link: <http://www.alamiria.com/ar-eg/archiving-service/Pages/decision-details.aspx?decisionID=150086>

website announced the invisibility, due to the difficulty of obtaining a license⁵.

As there are many websites that did not obtain a license due to the intransigence of the SCMR, their number is estimated at dozens. SCMR announced that 150 websites had applied for a license in 2019, of which 40 press websites obtained the license.

Article 70 of the Egyptian Constitution differentiates between paper newspapers and digital newspapers, as the establishment of paper newspapers is through notice, while the establishment of paper newspapers is according to the regulation law.

5. Masr Al-Arabiya website, "Masr Al-Arabiya asks its visitors permission to invisibility", April 2021, last visit August 2021, link: <https://www.facebook.com/masralarabiaofficial/posts/1595907120602370>

Second: Blocking Digital Newspapers

In addition to those conditions regulating obtaining a license to operate digital newspapers, the expansion in legalizing blocking of websites is a major reason for restricting the freedom of digital media. The Telecommunication Regulation Law stipulates, in Article 67 of it, the possibility of subjugating telecommunications networks in favor of the competent authorities in the state, and thus the possibility of requiring them to block websites, without any restriction.

The provision of Article (49) of the Anti-Terrorism Law is the first clear legal ground directed at blocking websites, as it states: “The Public Prosecution or the competent investigation authority may block the websites stipulated in the first paragraph of Article 29 of this law, or block what is contained in any one of the aspects of use stipulated in this article and the reservation of devices and equipment used in the crime”. This provision lacks clarity on the procedural steps involved in blocking websites. thereby, this article was based on the decision of the execution judge and the Muslim Brotherhood Funds Committee to block more than 16 sites affiliated with the organization, in 2016⁶. These are the websites that have been officially recognized by the Egyptian authorities as being blocked.

According the issuance of Combating Information Technology Crimes Law No. 175 of 2018, there is a legal provision that clarifies the cycle of procedures required to block websites, as Article (7) of this law stipulated for the possibility of blocking websites, which may pose a threat to national security by the public Prosecution/ competent investigation body, in addition to granting the investigation and seizures (The Police) the authority to approve blocking in the event of urgency -without specifying the cases of urgency- by informing the NTRA. With the addition of a subsequent judicial procedure on the blocking, by submitting the blocking order to a competent court within 24 hours.

6. AFTE “Occasionally by Decree.. Update on the Block of Websites in Egypt”, 2018, last visit in June 2021, link: https://afteegypt.org/en/digital_freedoms-2/2017/12/05/13659-afteegypt.html

Successively, The Press and Media Regulation Law was issued, which stipulated in Article (6) that the authority to block websites was given to the SCMR⁷. And whose powers were not limited to press/ news websites, but extended to include blocking personal accounts with more than 5.000 followers, according to Article (19) of the Press and Media Regulation Law⁸.

The third annual report of the SCMR issued a decision to block 212 accounts on Facebook, 10 accounts on Twitter and 5 accounts on Instagram⁹, which makes the SCMR responsible for enforcing collective censorship on the internet.

All of this has indications of the widening powers of enforcing censorship on the internet within the frame of distributing blocking websites to many bodies between the Public Prosecution/ the competent investigation authority, and the investigation and seizures authorities (The Police), as well as the SCMR with the permanent presence of the NTRA as a link between the authorities previous mentioned and telecom companies to inform them of blocking websites.

And its negative impact on the freedom of digital media and the possibility of work. In recent years, at least five press websites have been closed¹⁰.

7. Article (6) of Press and Media Regulation Law No. 180 of 2018 “It is not allowed to establish or manage websites in the Arab Republic of Egypt, or to operate offices or branches of websites operation from outside the Republic, except after obtaining a license from SCMR in accordance with the rules and conditions it sets in this regard. Without breaching to the enforced criminal penalties, SCMR may, in case of violation of the provisions of the previous paragraph, take the necessary measures, including canceling the license, stopping the website’s activity or blocking it in the event of not obtaining a valid license. Those concerned may appeal the decision before the Administrative Court.”

8. “It is prohibited for a newspaper, media, media outlet, or websites to publish or broadcast false news or what calls or incites violations of the law, violence or hatred, or involves discrimination among citizens, calls for racism or intolerance, or includes insults to the honor of individuals, or slandering them, or insulting the religions beliefs. As an exception to the provision of Article 1 of the articles of this law, each personal website, personal blog, or personal electronic account with five thousand followers or more is bound by the provisions of this article. Without prejudice to the legal responsibility resulting from violating the provisions of this article, the SCMR shall take the appropriate action in respect of the violation, and for this purpose, it may suspend or block the website, blog, or account referred to by a decision from it.

9. Al Youm Al Sabea “The SCMR in it’s annual report”, March 2021, last visit in June 2021, link: <https://www.youm7.com/story/2021/3/27/%D8%A7%D9%84%D8%A3%D8%B9%D9%84%D9%89-%D9%84%D9%84%D8%A5%D8%B9%D9%84%D8%A7%D9%85-%D9%81%D9%89-%D8%AA%D9%82%D8%B1%D9%8A%D8%B1%D9%87-%D8%A7%D9%84%D8%B3%D9%86%D9%88%D9%89-213-%D8%B4%D9%83%D9%88%D9%89-%D9%81%D9%89-6-%D8%A3%D8%B4%D9%87%D8%B1/5259000>

10. AFTE “Out of sight: A study on the effects of three years of blocking news websites”, June 2020, last visit in August 2021, link: https://afteegypt.org/en/digital_freedoms-2/2020/06/25/19529-afteegypt.html

Third: The Criminal Prosecution in Digital Media

Without prejudice to the right to appropriate compensation, imprisonment and a fine of not less than five hundred pounds and not exceeding than twenty thousand pounds, or either of these two penalties, shall be punished by:

1. Use or assist in the use of illegal methods to make communications.
2. Deliberately disturbing or harassing others by misusing communications equipment.

Article 76 of the Telecommunication Regulation Law No. 10 of 2003

In the beginning, defendants were tried in cases related to digital expression, under the Panel Code and the Telecommunication Regulation Law, but in light of the general trend of the state to enforce restrictions on online content, whether by limiting access or blocking content, in context of combating terrorism, and through justifications such as protecting national security, and the state's interest. As well as Anti-Terrorism Law No. 94 of 2015 was issued, which legalized the enforcing of restrictions on digital freedom of expression, by criminalizing and enforcing severe penalties on internet users, in addition to providing for the possibility of blocking websites. It was followed by laws such as Combating Information Technology Crimes Law and Press and Media Regulation Law, all of which are laws restricting digital rights, directed primarily at crimes committed through the internet.

The penalties stipulated within the aforementioned laws are divided into penalties and financial fines for users, and penalties for telecommunications and Internet service providers, in addition to a travel ban as a precautionary measure.

In addition to the restrictions represented in blocking websites, or restricting the work of websites by setting conditions for obtaining licenses, enforcing severe penalties is one of the most important factors restricting the work of digital media, and a real deterrent to achieving freedom of access to the internet. Many penalties are applied, ranging from deprivation of liberty to enforce fines on users, in the event of violating

some articles of those aforementioned laws. Penalties are intertwined within the laws under study to restrict freedom of digital expression in general and freedom of digital media in particular.

With the difficulty of procedures and the intransigence faced by press websites in particular in legalizing their situations in accordance with the Press and Media Regulation Law and the licensing regulations issued by the SCMR, digital newspapers and their managers face many penalties, which threaten the existence and work of digital media in general.

The Anti-Terrorism Law stipulates in Article (29)¹¹ of it a minimum penalty of five years imprisonment for creators and users of websites in promoting the commission of terrorist act¹², a vague accusation that enables the authorities to interpret it in a way that includes any internet user, especially with the difficulty of defining what is “Terrorism” and who is the “Terrorist” within the Anti-Terrorism laws, and terrorist organizations, which is what the investigation and seizures authorities use to expand the circles of suspicion and accusation, relying on the wide discretionary powers granted to them by the law.

Article (35)¹³ of the same law stipulates a fine of not less than two hundred thousand pounds, and not exceeding than 500 thousand pounds, for anyone who deliberately publishes false news about terrorist acts, in violation of official statements issued by the

 11. “Whoever establishes or uses a website on telecommunications networks, the international information network, or others, for the purpose of promoting ideas or beliefs calling for the commission of terrorist acts, or broadcasting what aims to mislead the security authorities, or influence the conduct of justice in relation to any terrorist crime, or the exchange of messages and the issuance of assignments between terrorist groups or their affiliates, or information related to the actions or movements of terrorists or terrorist groups at home and abroad, shall be punished by rigorous imprisonment for a period of no less than five years.”

12. Article 29 of the Anti-Terrorism Law No. 95 of 2015 “Whoever establishes or uses a website on telecommunications networks, the international information network, or others, for the purpose of promoting ideas or beliefs calling for the commission of terrorist acts, or broadcasting what aims to mislead the security authorities, or influence the conduct of justice in relation to any terrorist crime, or the exchange of messages and the issuance of assignments between terrorist groups or their affiliates, or information related to the actions or movements of terrorists or terrorist groups at home and abroad, shall be punished by imprisonment for a period of no less than five years. As well as whoever unlawfully or illegally accesses a website affiliated with any government agency, with the intention of obtaining, accessing, changing, erasing, destroying, or falsifying its content, for the purpose of committing or preparing for one of the crimes referred to in the first paragraph of this article, shall be punished with rigorous imprisonment for a period of no less than ten years.

Article 35 of the Terrorism Law: “In cases where the crime is committed by a legal person, the person responsible for the actual acts of this person shall be punished with the same penalty .”
 prescribed in the first paragraph of this article as long as the crime was committed for his account or for his benefit, and the legal person shall be jointly responsible for what is judged of fines
 —“and compensations. In all cases, the court may decide to prevent the convict from practicing the profession for a period not exceeding one year, if the crime is a breach of his professionalism

Ministry of Defense. It should be noted here, that the provisions of this article are not limited to limiting the state/ Ministry of Defense's narrations as the only narration of events, but also extend to the possibility of blocking digital newspapers with limited resources, due to the large financial fine stipulated by the law, in addition to enforcing the penalty on websites administrators also, which necessarily negatively affects digital newspapers, and their ability to continue, and in the context of the intersection of the Combating Information Technology Crimes Law with Anti-Terrorism Law and the Press and Media Regulation Law in allocating an entire part -exclusively- to enforce penalties on website administrators:

Article 11 of the Combating Information Technology Crimes Law stipulates: "Anyone who establishes a website on an information network that aims to promote the commission of any crime stipulated in the Penal Code or any of the private laws, shall be punished by imprisonment for a period of not less than 3 years and a fine of not less than 100.000 pounds". As well as Article (27) of the same law stipulates, A person shall be punished by imprisonment for a period of not less than two years and/or a fine of not less than LE 100,000 and not more than 300,000 pounds, if he/she creates, administers or uses a special website or account on an information network aimed at committing or facilitating one of the crimes punishable by law.

In accordance with Article (28): A penalty of not less than 6 months imprisonment and/or a fine of not less than 20 thousand and not exceeding 200 thousand or shall be enforced on anyone responsible for the administration of a website or private account, e-mail or information system if he/she withholds or manipulates digital evidence for any crime mentioned in the law, which took place on a site or electronic account or email with the aim to impede the work of the competent official authorities.

According to Article (29): A penalty of not less than one year imprisonment and/or a fine of not less than 20 thousand and not exceeding 200,000 pounds shall be enforced on any person responsible for the administration of a website or private account or e-mail or information system that subjects them to one of the crimes mentioned in this law.

The law punished website managers for their lack of technical knowledge, as paragraph (2) of Article (29) stipulates that: A penalty of not less than 6 months imprisonment and/

or a fine of not less than 10 thousand pounds and not exceeding 100 thousand pounds shall be enforced on anyone responsible for managing website or private account, e-mail or information system, whose negligence caused any of them to be exposed to one of the crimes stipulated in this law, by not taking the insurance measures and precautions mentioned in the executive regulations.

Article (101) of the Press and Media Regulation Law No. 180 of 2018 stipulates: “A fine of not less than 50 thousand pounds and not exceeding 200 thousand pounds shall be enforced on any editor-in-chief or manager responsible for a newspaper, media outlet, or website that violates the provisions of Articles (21) and (22) of this law”.

As Article (105) of the Press and Media Regulation Law No. 180 of 2018 stipulates: “A fine of not less than one million pounds and not exceeding three million pounds shall be enforced on anyone who violates the provisions of Article (59) of this law, which stipulates the necessity of obtaining a license from the SCMR, in addition, the court shall order the blocking and confiscation of equipment, devices and their components that were used in the commission of the crime”.

On other hand, Article (24)¹⁴ of the Cybercrime Law stipulates a penalty of imprisonment for a period of not less than three months, and/or a fine of between ten thousand and thirty thousand pounds, “for anyone who creates an email, website or account and falsely attributes it to a legal person”, and in the event of damage, the penalty increases to imprisonment for a period not less than one year and a fine of between 50 and 100 thousand pounds. In the event that the damage is done to a public legal person, the penalty is increased to imprisonment -that is, deprivation of freedom for more than three years- and a fine of between one hundred thousand and three hundred thousand pounds. Which can apply to the owners of sarcastic accounts and pages on social

 14. A penalty of imprisonment for a period of not less than three months, and/or a fine of between ten thousand and thirty thousand pounds, “for anyone who creates an email, website or account and falsely attributes it to a legal person. If the offender uses the fake email, website, or private account in a matter that offends the person attributed to it, a penalty shall be imprisonment for a period of not less than one year and/or a fine of not less than fifty thousand pounds and exceeding than two hundred thousand pounds.

If the crime is committed against a public legal person, the penalty shall be imprisonment and a fine of no less than one hundred thousand pounds and not exceeding than three hundred thousand pounds.

media¹⁵, and legalize the tracking of those accounts to reach owners, and to prosecute them criminally.

“A penalty of imprisonment for a period of not less than one year and/or a fine of not less than five hundred thousand pounds and not exceeding one million pounds, shall be enforced on any service provider it refrains from executing the decision issued by the competent criminal court to block one of this websites, links or content referred in the first paragraph of Article 7 of this law.

Article (30) of the Combating Information Technology Crimes No. 175 of 2018

Here completes the cycle of restrictions enforced on the freedom of digital media with the enforcing of penalties on telecommunications/ internet service providers, as Article (30), which criminalize their refrain to block website or links with imprisonment for one year -as a minimum- and a fine ranging from 5000 pounds to one million pounds, and confirms what we mentioned previously, the tightening of control and the centralization of management by the state authorities.

15. AFTE “New Laws... the State’s Big Stick”, 2018, last visit date in June 2021, link:

Conclusion

Overall, we can say that the requirements for websites to obtain licenses by the SCMR, and the distinction between notice to newspapers and their affiliated websites, is only an indicator added to many indicators issued by the state in its direction to taking control over everything related to freedom of access/use the internet, especially with the expansion of granting many authorities the authority to block websites/ personal accounts.

In addition to the enforcement of penalties and fines on users on the one hand, and on telecommunications companies on the other hand, it clamps down on users' ability to express their opinions in the only outlet left for them. As well as affects the possibility of having and continuity of digital media that is independent and able to operate in an environment that allows pluralism and freedom of expression. It should also be noted here that the penalties stipulated in the aforementioned laws -the Combating Information Technology Crimes Law in particular- stipulate penalties according to the mechanism used to commit the crime. The criterion here is the mediator used -the Internet- and not the crime itself¹⁶.

16. EIPR, "Anti-Technology", June 2016, available at the following link: <https://eipr.org/sites/default/files/reports/pdf/cybercrime.pdf>