

Belarus and the Internet: beyond the misunderstanding,
still a web under control

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A Law that has recently entered into force in Belarus caused global concern because of its assumed negative impact on Internet freedom. Not only is the Law just an enforcement of the previous Edict N° 60's provisions that are already in force, but the media have caused confusion by making assumptions on the basis of a misinterpretation. Nevertheless, beyond the ignorance of the global trend of an ever more monitored Internet, the misunderstanding may have been partially fuelled by the recurrent episodes of censorship that Belarus has experienced and which still anonymously occur nowadays, despite the legal framework.

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Introduction

The news that *“Belarus bans browsing of all foreign websites”*¹ made the headline of major online newspapers. A part of the initial interpretation of the recent Internet legislation was however proven to be a source of confusion as it was, apparently, taken out of its context. Indeed, last Friday (January the 6th), its author recognised in a private email that a phrase from his article was misinterpreted. Nevertheless, while various media resources hurried to republish the initial assumptions as understood from the US Library of Congress’s publication, thus fuelling the confusion in the world media; only a couple of titles wrote that *“contrary to reports, Belarus plans no Internet censorship”*² and that there was *“No great firewall of Belarus”*³, in a fade attempt to clear the misunderstanding.

But the Law that caught the online media’s attention corresponds only to the tip of the legal iceberg that the Belarusian authorities have been building for the past couple of years so as to control the Internet, last presumed independent medium. This body of rules concerning Internet is mainly made up of the Edict N° 60 (hereinafter the Edict)⁴ enacted in February 2010 and entered into force in July 2010 as well as of the Law Amending the Administrative Offences Code (hereinafter the Law) that has entered into force on January the 6th 2012.

Regrouping and explaining the effective Belarusian Internet regulation should thus compensate for the lack of objective and qualified information that have partly led to the misunderstanding. And by retracing authorities’ attempts to censor Internet, that have paved the way for the legal instruments, an environment of a free and, at the same time, controlled Internet in Belarus, is to be highlighted. Finally, in the context of an ever more tightened Internet regulation’s global trend, the experience of the Belarusian regulation may be interesting as such kind of laws may be enacted in other states.

I. Another brick to the legal framework: pursuing the global trend

Enacting on February the 1st 2010 the Edict N° 60⁵, Belarus had made its first steps in the regulation of the Internet, domain by then already subjected in many countries to a specific legislation. Considered a free medium without any major interference of the government until 2010, the fast

¹ http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402929_text

² Deutsche Welle, January 5th 2012

³ <https://www.eff.org/deeplinks/2012/01/week-censorship>

⁴ From a legal point of view it is more appropriate to use the term Edict (Edict No 60, rus. Указ No 60), as in Belarus there are two types of legal acts issued by the President: first, the Decree (rus. Декрет, “Decret”) and, second, the Edict (rus. Указ, “Ukaz”).

⁵ The full text is available at <http://pravo.by/main.aspx?guid=3871&p0=P31000060&p2={NRPA}> (in Russian)

growth of the number of Internet users over the course of fifteen years, as well as the global trend of Internet control and governance, stimulated the Belarusian government to do the same. Hence this first and ambitious rule on regulation of Internet, the Edict of February 1st 2010, which aim is *“to protect the rights of Belarusian citizens, the society and the state in the field of information, to improve the quality of Internet services and make them cheaper, and to encourage further growth of the national segment of the Internet network”* (preamble).

Despite of making the headline of the newspapers only now, most of the controversial measures brought up by the media, have already been implemented for the past year and a half, as the Edict N° 60 has entered into force on July the 1st 2010. Thus the Edict established the special Internet regulatory body – the Operational and Analytical Center (hereinafter OAC), whose independence is contested by Reporters without Borders⁶; and, covered various fields including Internet filtration, data retention, freedom of information and online business regulation.

The Law that caught media attention, which came into force on January the 6th 2012, has only amended the Administrative Offences Code and enacted an enforcement⁷ of the sanctions for the violation of the provisions of the pre mentioned Edict. While the Law did not prescribe any limitation of access to websites, as media assessed, the violation of the rules would be punished with a fine between approximately thirty-two and ninety-six euro, fine given only to legal entities and entrepreneurs, but not to individuals.

Nevertheless, despite what it may seem harmless at a first glance, the Edict contains on one hand provisions that are new and up-to-date stimulating the development of the Internet and freedom of information; and, others that are ambiguous and unclear or even contradictory to the purposes of the Edict. Even if *“the law says very specifically what the restrictions are”*, according to Keir Giles⁸, as quoted by Deutsche Welle, the ambiguity of the Edict is nonetheless one of the causes of the recent misunderstanding. And for cause, one of the Edict’s clauses which contain limitations in operating websites in Belarus may be considered very unclear as there are different variants of interpretation. However, the OAC has given an official position, which was published on the official website⁹ on January the 5th.

⁶ http://www.lemonde.fr/europe/article/2012/01/05/un-cran-de-plus-dans-le-controle-d-internet-en-bielorussie_1626435_3214.html

⁷ Detailed explanations on the enforcement of the Law : http://books.google.fr/books?id=V-PZfNhjmUEC&pg=PA140&lpg=PA140&dq=public+Belarus+reaction+to+identify+in+Internet+cafes+2010&source=bl&ots=50kni-mbt1&sig=Vnf8jjPR8dPdVbyops9PER_NteA&hl=fr&sa=X&ei=IKAKT7G6IMGKhQeM9J2_CQ&ved=0CHEQ6AEwCQ#v=onepage&q=public%20Belarus%20reaction%20to%20identify%20in%20Internet%20cafes%202010&f=false

⁸ Director of Conflict Studies Research Centre, an Oxford-based non-profit research institute that provides analysis on Russia and the region

⁹ <http://oac.gov.by/news/29.html>

Thus, the Clause 2 stipulates that *“Activity on selling goods, performing works or rendering services on the territory of the Republic of Belarus with use of information networks, systems and resources connected to Internet shall be conducted by legal entities, their branches and representative offices, established in accordance with the legislation of the Republic of Belarus, located in the Republic of Belarus ... with use of information networks, systems and resources located (hosted) in the Republic of Belarus and duly registered”*¹⁰. It enacts the requirement for legal entities and entrepreneurs to host websites, which conduct activity on selling of goods, rendering of services, performing works, within the territory of the Republic of Belarus. However, the common interpretation, indirectly confirmed by article 22.16 of the recent Law, does not refer, on one hand, to international Internet service providers like Google or Amazon and, on the other, to Internet users accessing websites in violation of the clauses of the Edict (contrary to media reports). This rule is, therefore, only applied to Belarusian legal entities and entrepreneurs. One way to explain this would be that the government tends to adopt a protectionist attitude stimulating the use of Belarusian hosting or, presumably, that it intends to establish control over the activity of Belarusian legal entities and entrepreneurs conducting business online by keeping its hosting in Belarus. It seems so, as many Belarus-based companies turn to foreign Internet service providers in order to rent hosting services for cheaper prices, which may be a problem in collecting tax revenue from e-commerce services. Obviously, the pre mentioned clause and its complementary financial sanction limit the freedom of online business and may damage investment and business climate, though Belarusian companies are expected not to take the Law into consideration as the fine would be considered insignificant.

However, French legislators, for instance, tried in their struggle against illegal content to enact requirements that, according to critics, would have made the French users to turn to non-French hosting providers. Indeed, on August 2nd, 2000 French Parliament proposed amendments to the French Law on Freedom of Communication from September 30th 1986¹¹ obliging all individual subscribers with websites to register their personal details with their hosting providers. Draft contained severe measures: *“Those who fail to do so, or who give incorrect details, risk up to six months in prison or over 7,000 Euros in fines”*¹². Thus the law was widely criticized: *“This law could push French users to use non-French hosting providers in order to avoid both the possible bureaucracy of this system and to avoid any possibility of coming under a jurisdiction where incorrect registration could land you in prison for six months... As a result such kind of law may have exactly the opposite effect from its good intentions.”*¹³ In the end the attempt to enact registration requirement failed.

¹⁰ <http://pravo.by/main.aspx?guid=3871&p0=P31000060&p2={NRPA}>

¹¹ Law №2000-719 from September 30th, 1986 on Freedom of Communication, available at:

http://www.lexinter.net/lois/loi_du_30_septembre_1986.htm, last visited: 20.07.2010

¹² McNamee, Joe, Noose of red tape tightens around French Internet industry, march 27th, 2000, Les Iris, available at: <http://www.iris.sgdg.org/actions/loi-comm/comm-isp-an2.html>, last visited: 20.07.2010

¹³ McNamee, Joe, Noose of red tape tightens around French Internet industry, march 27th, 2000, Les Iris, available at: <http://www.iris.sgdg.org/actions/loi-comm/comm-isp-an2.html>, last visited: 20.07.2010

So, one can see how sometimes the Belarusian authorities can be preceded by other countries' decisions with serious effects on Internet and the interests of its users, but, more often, they are a more authoritarian version in order to get the "discontent" ones caught in the web.

II. Online identification and Personal Data Retention: Getting people caught in the web

When they are facing critics from the west, Belarusian authorities react by saying that they were not the first or not the only one to do so. And sometimes the line works and it would have if one takes into account the EU Directive 2006/24/EC¹⁴ prescribing EU member States to retain Internet traffic and transaction data for six months up to two years. Both European and Belarusian decisions proceeded partly from a concern towards the modern threat of terrorism and online crime, as according to Belarusian statistics, cybercrime knew from 2008 to 2009 a growth up to 33%. And the authorities would only proceed to enforcing the rules after the Minsk metro attack of April 2011. But, comparing the Directive to the Edict N° 60, its clause 6, amongst others, seems peculiar.

Indeed, according to clause 6, Internet Service Providers (hereinafter ISP) require to identify users and technical devices providing connection and retain personal information and logs for one year. Moreover, and that may be the Belarusian peculiarity, the clause also requires organisations providing public Internet access, such as Internet cafes or restaurants, to identify and to register users by demanding the user to provide a passport or any other identification document. While the Edict brought a legal responsibility upon these organisations, the Law provides a fine in case they would not comply with this obligation. However, users can neither be taken responsible, nor fined for having access without identification. Not only had the requirement caused negative reaction in the Belarusian society and bad international reputation, but the additional human and financial resources and time needed to exercise compulsory registration of users and data retention may lead to a decrease of number of facilities with public Internet access under threat of sanctions.

Concerning the access to personal information of users, despite the fact that the Edict provides a closed list of authorized institutions, they have unlimited access to personal data, contrary to some of the European member States whom, transposing the EU Directive, have chosen to require judicial authorisation for each request to access the retained data¹⁵. The Law on Information, Informatization and Protection of Information¹⁶, in force since May 2009 and replacing the 1995 Law, only provides a general framework for personal data protection and maintains a certain number of provisions as well as consequences on citizens' rights to information, hence no adequate Personal Data Protection Law and a lack of guarantees of privacy.¹⁷ The elaboration of data protection legislation is all the more

¹⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0054:0063:EN:PDF>

¹⁵ http://ec.europa.eu/commission_2010-2014/malmstrom/archive/20110418_data_retention_evaluation_en.pdf

¹⁶ <http://pravo.by/main.aspx?guid=3871&p0=H10800455&p2={NRPA}>

¹⁷ <http://www.osce.org/fom/31227>

urgently needed as it represents a real threat of monitoring of opposition and opponents to political regime for the purpose of subsequent repressions. Having become a tool in the hands of the regime, many believe that by intercepting the emails, activists were arrested.¹⁸ And this is how it began the censorship's regulation.

III. A history of Internet censorship: becoming object of regulation

With a rather free access to Internet for a long time, Belarus was considered in 2002 in comparison with the other CIS State members, the country with the highest rate of individual access to the Internet.¹⁹ That led some authors to the conclusion that *"opinion and information are certainly not monopolised in Belarus"*²⁰, though others already at that time believed that the authorities were *"forbidding Internet sites spreading critical information"*²¹. If nowadays some aspects may be still partly true, they face an increasing threat from the authorities as, for example, the written media, mostly forbidden in their classical form²², turn towards Internet in order to spread information.

However, Belarusian residents do not face any legal obstacles to operate a website under international top-level domain names (like .com, .net) or national domain names (.ru, .ch, .it) in the same way as non-residents whom have the possibility to register websites under the national domain zone (.by). It seemed to be the case in 2005 as well for the gay community, succeeding after five years of attempts to have the National Committee for the Security of Information recognise the websites "gay.by" and "pride.by".²³ On the contrary, the Russian gay and lesbian websites were blocked the same year, on order of a government commission in order to fight against pornography and violence. At the time, it was *"the only case of a formal decision to block particular content"*²⁴.

Today, Internet is used by almost half of the Belarusian population²⁵, and the use of social networks has also increased²⁶. As a result, the government's efforts to limit access to certain web content have turned from ad-hoc²⁷ to a legalised one by adopting the Edict N° 60.

¹⁸ <http://www.freedomhouse.org/images/File/FotN/Belarus2011.pdf> p. 7

¹⁹ Belarusian Ministry of Foreign Affairs, Main social and economic indicators of the Republic of Belarus, Minsk

²⁰ Stewart Parker: "The last soviet Republic, Alexander Lukashenko's Belarus", Trafford, UK, 2007, page 106, 249 pp.

²¹ J-Ch Lallemand & V Symaniec: "Biélorussie: Mécanique d'une dictature", Les Petits Matins, Paris, 2007, page 85, 255 pp.

²² <http://www.unhcr.org/refworld/country,,CPJ,,BLR,,4dd27f1023,0.html>

²³ Similar to note 21, page 96

²⁴ <http://www.freedomhouse.org/images/File/FotN/Belarus2011.pdf> p. 5

²⁵ <http://www.internetworldstats.com/euro/by.htm>

Once only a common practice, the Internet censorship has become the most disputable provision of the Edict as it is a very ambiguous and sensitive issue. The clause 8 provides a list of harmful information to which access can be limited and that constitute reason to blacklist and block websites.

The list contains six general motives like carrying out extremist activity, assisting illegal migration and human trafficking or spreading pornography. It also defines as harmful information the illicit circulation of weapons, ammunition, detonators, explosives as well as contaminating, aggressive, poisonous, and toxic substances, drugs, psychotropic substances, and their precursors. Finally, all information related to promulgating violence, brutality and *“other acts prohibited”* by law are included in the list of reasons to limit or block a website. OSCE experts claim that the definitions of types of harmful and illegal information set forth in the Belarus legislation are very ambiguous. In particular, the wording *“other acts prohibited by law”* leaves too much discretion to authorities to interpret or define the concerned acts. It appears that opposition websites charter97.org, belaruspartisan.org, online currency exchange prokopovi.ch as well as blogger’s Eugeny Liapkovich livejournal are added to the blacklist due to broad interpretation of *“other acts prohibited by law”* wording of clause 8.

The Edict also enacts two schemes of Internet filtration: one where internet service providers are obliged to carry out filtration for government authorities and organs, as well as education and cultural establishments (compulsory scheme); the other is voluntary and the limitation of access can be applied only on the ground of Internet user’s request (voluntary scheme). Nevertheless, despite being illegalknown some cases when mobile network operators take the liberty of arbitrary blocking independent websites. In this case, as well as any other blockage of web resource can be appealed in court.²⁸

The limitation procedure is described by the Regulation N° 4/11 of the OAC and the Ministry of Information of June the 29th 2010. The filtration is carried out by ISPs on the ground of publicly open blacklists which are managed by the specialized body – the State inspection on electronic communications (hereinafter BelGie – special agency within the structure of the Ministry of Communications).

Furthermore, organs of criminal investigation, prosecution, courts and the OAC are entitled with the right to supplement blacklists with new web resources containing harmful information in the meaning of Clause 8. Chief executives of these organs should submit to BelGie a request with information indicating the web resource (IP address, URL, domain name) and the reason of censorship, specifying the law which qualifies its information as illegal. Internet users, companies and organizations can initiate, as well, the inclusion on the blacklist of the websites which they consider harmful. If BelGie finds that the request does not correspond to the requirements or, the reasons for

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<https://docs.google.com/spreadsheet/ccc?key=0AvnaWMlyQJtSdG5HdGhPYXZQMmNtd3RZd0hFMGhwRWc&pli=1#gid=2>

²⁷ Similar to note 17

²⁸ <http://charter97.org/en/news/2012/1/6/46467/>

filtration are not clear enough, it has the right to deny the request. Nowadays, the list already contains almost sixty sites, though certain are still available in some establishments.²⁹

IV. The anonymous attacks: pursuance of informal censorship beyond the legal framework

Despite these legal measures, it seems that the authorities may also use unconventional ways to censor Internet³⁰ but, it is difficult to prove that they would be their author, as they are carried out anonymously.

The confusion that was spread by newspapers, for instance, according to which access to international websites would be blocked, was probably fuelled by the previous episodes of Internet censorship in Belarus. Even though, the massive blockage does not take place, the authorities often intervene to temporarily block certain Internet websites around the dates of scheduled protests or other important dates like elections. In particular, around the dates of protests, opposition and independent websites are routinely subjected to denial of service attacks (hereinafter DDoS). Opposition news resources Charter97³¹, Belaruspartisan, Nasha Niva and Euroradio websites are usually the main targets of attackers. Similarly as during previous the presidential elections in 2001 and 2006, the pre mentioned websites with a number of other independent websites were inaccessible during the last presidential elections on December 19th 2010. However this time the attack on Internet was especially powerful, as experts reported blockage of international connections to ports 443 and 465, which prevented users from securely posting content to international sites like Facebook and Twitter and from sending mail through international carriers like Gmail.³²

Vkontakte is the most popular social network in Belarus (like a local Facebook) which Belarus authorities actively target. Vkontakte is hosting the *"Movement for the Future - Revolution through Social Network"* group, where citizen actions are announced, commented and reported on. Instead of blocking the whole network, Belarusian authorities deployed more creative approaches³³. After repeatedly organised series of peaceful protests since the December elections, groups of the protestors on social media sites were blocked. Later on, around July the 13th 2011, access to the whole Vkontakte site was blocked in Belarus for several hours before and during the action of that

²⁹ <http://charter97.org/en/news/2012/1/9/46534/>

³⁰ <http://belarusdigest.com/story/how-belarus-authorities-fight-revolution-internet> (this article is very informative on different kinds of non-traditional Internet censorship in Belarus)

³¹ http://www.ccdcoe.org/publications/virtualbattlefield/11_PAVLYUCHENKO_Belorussia.pdf

³² More information here : <http://blogs.law.harvard.edu/hroberts/2010/12/19/independent-media-sites-in-belarus-reportedly-hijacked-during-election/>

³³ <http://censorshipinamerica.com/2011/07/18/protests-in-belarus-provoke-internet-censorship/> (this article describes how government used Internet instruments to stop protests organised via social networks)

day.³⁴ The authorities did not give any comments, but experts say that the block was employed at Beltelecom level. Without blocking the whole Internet connection, authorities managed to neutralize the main communication source of protesters, preferring, on one hand, to spread propaganda and, on the other, to obtain information about the opposition by the means of blogs and social media networks. They have also proceeded to arrests and intimidation of activists and opposition members in order to put an end to their activity on social network sites.³⁵ On certain occasions, the experience of seventeen years of Lukashenka's regime, even without direct intimidation, may lead to a certain degree of self-censorship.

As a result, despite the Edict and the Law, hypothetical risk of the Internet cut off still exists. The state-owned telecommunications operator Beltelecom and newly established governmental the National Traffic Exchange Centre (hereinafter NCOT) have in fact monopolist control over the external Internet gateway and held the exclusive right for interconnection with foreign telecommunications operators. Thus Internet turn off button is in the hands of the state alone, which is a dangerous precondition for the Internet total control and the risk of shut down of the Internet under Egypt scenario as last resort measure.

Despite of media's concern, the access to foreign websites is not going to be blocked, at least not on the legal ground in accordance with the Edict or Law; but more likely the censorship may take the form of segmental blockages, anonymous DDoS attacks on independent websites and intimidation of users under threat of being monitored.. But even under censorship's threat, there will always be a way for Belarusians to express their opinion because Internet, more than the written press under Soviet times, is a snowball which, once kicked off, it cannot be stopped from rolling and getting bigger unless, completely disconnected from the world. And even if some consider access Internet not to be a human right³⁶; that is not likely to happen if one takes into account that the authorities use Internet for their purposes as well.

³⁴ The most recent analysis: <http://www.charter97.org/en/news/2012/1/9/46522/>

³⁵ <http://rt.com/news/belarus-kgb-social-networking/>

³⁶ http://www.nytimes.com/2012/01/05/opinion/internet-access-is-not-a-human-right.html?_r=2