



**CENTRE FOR LAW
AND DEMOCRACY**

Jordan

**Comments on the Law Amending the Press
and Publications Law of 2012**

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Introduction

On 2 June 2013, Jordan's Press and Publications Department issued an order blocking hundreds of news websites from being accessed from within the country.¹ The action came as a result of a package of amendments made in 2012 to Jordan's Press and Publications Law (2012 amendments), which included a requirement for websites to register with the government, with fines and mandatory blocking for any that failed to comply.

There are a number of problems with Jordan's legal framework governing freedom of expression. For example, Article 195 of the Penal Code, which criminalises insulting the dignity of the sovereign, has been used to imprison political dissidents.² However, the 2012 amendments represent a troubling move to extend government control over online speech, curtailing the forum in Jordan through which the greatest degree of free and open debate is possible.

Although the unique character of the Internet presents a number of legal challenges, governments seeking to regulate it should exercise caution to avoid restrictions which chill the vibrant character of online speech. The Internet has a unique role in promoting and delivering human rights, most notably the right to freedom of expression. Moreover, the centrality of the Internet to the actualisation of fundamental rights has led to increasing recognition that access to the Internet itself should be considered a human right.³ Laws which threaten online speech not only violate the freedom of expression rights of those who live in the country that passes them; they also pose a general threat to the Internet's uniquely open character, by balkanising the web according to territorial boundaries. In other words, problematic Internet laws in one State impact in negative ways on the Internet everywhere.

This Analysis examines the 2012 amendments from the perspective of international guarantees of freedom of expression. It discusses the major problems introduced by

¹ Rana F. Sweis and Jodi Rudoren, "Jordan Blocks Local Access to News Sites", *New York Times*, 3 June 2013. Available at: <http://www.nytimes.com/2013/06/04/world/middleeast/jordan-blocks-local-access-to-300-news-web-sites.html>. The exact number has been reported variously as over two hundred and over three hundred.

² Amnesty International, *Amnesty International Report 2013: The State of the World's Human Rights* (London: Amnesty International Ltd, 2013). Available at: http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf.

³ In clause 6(a) of their 1 June 2011 Joint Declaration, the special international mandates for freedom of expression stated: "Giving effect to the right to freedom of expression imposes an obligation on States to promote universal access to the Internet." Available at: <http://www.law-democracy.org/wp-content/uploads/2010/07/11.06.Joint-Declaration.Internet.pdf>. See also the Centre for Law and Democracy, *A Truly World-Wide Web: Assessing the Internet from the Perspective of Human Rights* (Halifax: Centre for Law and Democracy, 2012). Available at: <http://www.law-democracy.org/wp-content/uploads/2010/07/final-Internet.pdf>.

the amendments and makes recommendations as to how the law should be reformed to respect international human rights standards.

1. Jordan and Freedom of Expression

A free press is vital to a healthy democracy and accountable government, and a core facet of the right to freedom of expression. Jordan's government has made numerous international commitments to uphold the integrity of freedom of expression.

Most significantly, Jordan has ratified the *International Covenant on Civil and Political Rights* (ICCPR), which protects freedom of expression in Article 19:

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.
3. 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;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.⁴

Jordan has also ratified the Arab Charter on Human Rights, Article 32 of which states:

1. The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries.
2. Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals.⁵

Freedom of expression is also protected by Article 15 of Jordan's Constitution:

1. The State shall guarantee freedom of opinion; and every Jordanian shall freely express his opinion by speech, writing, photography and the other means of expression, provided that he does not go beyond the limits of the law
(...)

⁴ UN General Assembly Resolution 2200A(XXI) of 16 December 1966, in force 23 March 1976.

⁵ League of Arab States, *Arab Charter on Human Rights*, 15 September 1994. Available at: <http://www.refworld.org/docid/3ae6b38540.html>.

3. The State shall guarantee the freedom of the press, printing, publication and information media within the limits of the law.⁶

In addition to these legal protections, Jordan's King Abdullah II said in 2007 that it was his vision, and an official policy of Jordan's government, not to regulate news websites.⁷ However, several aspects of the 2012 amendments are incongruous with these statements, as well as the international commitments Jordan has made to respect freedom of expression and the ability of the online press to freely operate.

2. Registration Requirements

Due to the fundamental role that the press plays in establishing and maintaining government accountability – which has led to the term 'fourth estate' being used to describe the media – regulation of the press is an extremely sensitive issue. There is tremendous scope for abuse if press regulations are structured problematically and, in general, international standards hold that the government should avoid imposing onerous registration restrictions on the media.

Although the number of news outlets in Jordan has increased in recent years, media in the country face a difficult regulatory environment. A prime problem is the imposition of a mandatory licensing scheme for publications. Under international law, registration requirements for the print media are regarded with suspicion, in part because they may be abused by the government to exert control over the media. As the (then) three special international mandates on freedom of expression – the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression – stated in a Joint Declaration of 18 December 2003:

Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided.⁸

While international law does not entirely rule out registration of the print media, to be legitimate, registration systems must meet certain conditions. As the special mandates noted in the same 2003 Joint Declaration:

⁶ *Constitution of the Hashemite Kingdom of Jordan*, 1 January 1952. Available at: <http://www.refworld.org/docid/3ae6b53310.html>.

⁷ Libby Morgan & Douglas Griffin, eds., *Introduction to News Media Law and Policy in Jordan* (Amman: IREX, 2011). Available at: <http://www.irex.org/resource/introduction-news-media-law-and-policy-jordan>.

⁸ 18 December 2003. Available at: <http://www.osce.org/fom/28235>.

Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.

Jordan's Press and Publications Law runs afoul of this standard by requiring publishers to pay a registration fee of 2,000 JD (approximately USD 2,800), and to hire members of the Jordanian Journalist Association as editors. However, the 2012 amendments massively expanded this problematic system. Pursuant to Article 49(a.1) of the revised Press and Publications Law:

If the dissemination of news, features, articles and comments related to the Kingdom's internal or external affairs is among the activities of an electronic publication, the publication shall be obliged to register and obtain a license from the director. The owner of the electronic publication shall reconcile his situation in accordance with the provisions of this law within a period that does not exceed 90 days from the date he is notified of the director's relevant decision.

In addition to online sources which constitute news outlets as commonly understood, in the sense of carrying information which is subject to an editorial process, this definition could cover a host of other websites, including individual blogs and social media sites which host commentary on current affairs in Jordan. The use of the term 'dissemination', rather than the term 'production', further expands the ambit of the law to include any website where links to discussions of current events are posted, such as search engines, even where the website's hosts have no connection to, or even knowledge of, the content.

Jordan's registration requirements were problematical even before the 2012 amendments, but this expansion is particularly harsh since many websites earn little, if any, revenue from their operations. Part of the great value of the Internet is its low barrier to entry, whereby any user with access can potentially tap into a national, or even a global audience. Although it remains unclear whether websites will have to pay the same registration fee as other publications, forcing them to pay a significant fee and to hire professional editors prices small-scale or unfunded users out of the online world, effectively turning the Internet into a professional medium with little scope for amateur commentary or newsgathering. It is worth noting that imposing these restrictions at the front-end is particularly problematic, since even websites which today are colossal, like Google or YouTube, once began as start-ups.

Recommendations:

- The mandatory registration and licensing requirements should be repealed or, at the very least they should only apply to entities that have an editorial process and that produce regular and original news content.

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- If the requirement to register is retained, it should be free and should not include any onerous requirements, such as being forced to hire members of the Jordanian Journalist Association.

3. Sanctions and Blocking Provisions

Pursuant to Article 48 of the revised Press and Publications Law, non-compliance with the registration requirement may result in a fine of between JD 1,000 and JD 5,000 (approximately USD 1,400 to 7,000). However, Article 49(g) also requires the Press and Publications Department to block any website that violates any provision of the amended Press and Publications Law, or any other law.

Under international standards, blocking of websites is considered an extreme measure. A 2011 Joint Declaration by the four special international mandates on freedom of expression – the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information – set out clear standards in this area:

3. Filtering and Blocking

- a. Mandatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure – analogous to banning a newspaper or broadcaster – which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse.⁹

It is a broadly recognised principle of international human rights law that the imposition of disproportionately harsh sanctions for prohibited expressive activity violates the right to freedom of expression even if the restriction is otherwise legitimate.¹⁰ Using website blocking as the default penalty for any breach of the law is clearly very problematical.

This problem is exacerbated by the lack of procedural protections or oversight. Although Article 42 of the amended law designates a specialised court to deal with publication related offences, such as civil defamation suits and security-related crimes, the Article 49(g) blocking orders are imposed by the director of Jordan’s

⁹ Note 3.

¹⁰ See, for example, *Tolstoy Miloslavsky v. United Kingdom*, 13 July 1995, Application No. 18139/91 (European Court of Human Rights).

Press and Publications Department. The court appears to have no role in determining whether or not the blocking of websites is legitimate. This is a clear breach of the rule, noted above, that registration systems should be overseen by bodies which are independent of government.

Recommendations:

- Article 49(g) of the 2012 amendments, which imposes blocking as the mandatory penalty for any breach of the law, should be repealed.
- Any imposition of sanctions for breach of registration rules should be imposed only by a body which is independent of government.

4. Online Comment Moderation

As a heavily decentralised medium with a strong emphasis on user-generated content, the Internet relies on the principle of safe harbour in order to function effectively. This means that websites that do not moderate user-submitted material are generally not held liable for its content. Better practice in this area is to provide complete protection against liability. As the 2011 Joint Declaration by the special international mandates on freedom of expression states:

2. Intermediary Liability

a. No one who simply provides technical Internet services such as providing access, or searching for, or transmission or caching of information, should be liable for content generated by others, which is disseminated using those services, as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content, where they have the capacity to do so ('mere conduit principle').¹¹

At a minimum, intermediaries should not be held liable until they receive an actual and reliable notification of a breach of the law. For example, if a user posts a video to YouTube with a defamatory message, most jurisdictions will impose liability for the statement only on the user, and not on YouTube. YouTube does not have a policy of moderating content posted to its website, and should not be held liable, at least unless and until it refuses to take steps to remove illegal material after it has been informed about it. Without safe harbour protections, many websites would simply collapse under the liabilities imposed upon them. Social media networks could be sued for every problematic post uploaded by their users, and search engines could be held responsible for virtually all illegal material on the Internet. In other words, enormous parts of the web would not be able to operate.

¹¹ Note 3.

A significant problem with the 2012 amendments is that they undermine this principle by treating all hosted material as journalistic material, to which the same publication standards apply:

Article 49

...

c) Comments published in electronic websites are considered as journalistic material for the purposes of the responsibility of the electronic publication, its owner and editor-in-chief jointly and severally.

d) The electronic publication may not publish comments if they include information or facts not related to the topic of the news, which has not been validated or which constitutes an offense in accordance to the provisions of this or any other law.

This means that websites subject to the law are required to monitor comments for their compliance with the Press and Publications Law, and to delete any comments which violate Jordan's publication standards, including the requirements that they must be related to the news and that they must have been verified as true. Any website which fails to comply with this rule faces liability, as well as mandatory blocking pursuant to Article 49(g).

Comment sections on news websites can be an important forum to engage in debate around current affairs. Imposing moderation standards severely limits this discourse, particularly when the standards are as vague as those spelled out in Article 49(d) and where the mandatory penalty for non-compliance is a blocking order. In face of these rules, many websites will simply cease to host user-generated content, while others will apply a strict and cautionary editorial approach to it, thus significantly undermining its benefits. Yet others will simply go offshore, removing themselves from the jurisdictional reach of Jordan (although the requirement to block access to these websites inside of Jordan may remain).

Even if this standard was only imposed on professional news media outlets, it would be highly problematic. However, because of how broadly the Press and Publications Law applies, these provisions are imposed on a very wide range of websites. According to the law, for example, Facebook would be required to delete any unverified or irrelevant content that any of its over a billion users posts. Its failure to do so creates a legal requirement for the Press and Publications Department to block the site in its entirety. Google, whose search function "publishes" virtually the entire web, faces an even more herculean task. In practice, proper implementation of these rules would deny Jordanians access to many of the most popular international websites.

Recommendation:

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- Articles 49(c) and (d), which impose moderation requirements, should be repealed.

5. Monitoring Provisions

The Internet is known for its freewheeling discourse, and as a place where controversial opinions can be expressed in relative safety. Although this can lead to discussions where civility and good taste are disregarded, there is genuine value to the unfiltered nature of online discussion, since it provides a window into users' true feelings about particular people, policies or events.

Article 49(e) of the revised Press and Publications Law undermines the ability of users to comment anonymously by imposing a requirement for all websites subject to the law to record identifying information about anyone who posts comments:

Electronic publications should keep a special record of published comments, provided this record includes all the information related to the comment senders and material for a period no less than six months.

The unique relationship between anonymity and online speech has given rise to an emergent understanding of the nexus between privacy and freedom of expression on the Internet. Regulations which track and monitor users are controversial due to their potentially chilling impact on the online discourse, undermining the liberating sense of anonymity that the Internet provides. A 2013 report by the UN Special Rapporteur on Freedom of Opinion and Expression emphasised the importance of privacy to freedom of expression online:

The right to privacy is often understood as an essential requirement for the realization of the right to freedom of expression. Undue interference with individuals' privacy can both directly and indirectly limit the free development and exchange of ideas...Communications surveillance should be regarded as a highly intrusive act that potentially interferes with the rights to freedom of expression and privacy and threatens the foundations of a democratic society. Legislation must stipulate that State surveillance of communications must only occur under the most exceptional circumstances and exclusively under the supervision of an independent judicial authority.¹²

The importance of anonymity was also recognised in the Council of Europe's *Declaration on Freedom of Communication on the Internet*:

¹² Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, A/HRC/23/40, 17 April 2013. Available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf.

In order to ensure protection against online surveillance and to enhance the free expression of information and ideas (...) States should respect the will of users of the Internet not to disclose their identity.¹³

In Jordan, this type of provision can be expected to generate significant suspicion among the online community, and to have a concomitant chilling effect on the ability of users to speak their minds.

Recommendation:

- Article 49(e), which requires websites to retain information about any user who submits comments, should be repealed.

¹³ Adopted 28 May 2003. Available at:
http://www.coe.int/t/information/society/documents/Freedom%20of%20communication%20on%20the%20Internet_en.pdf.