



UKRAINE'S DIGITAL RIGHTS VIOLATIONS INDEX FOR MAY – SEPTEMBER 2019

The monitoring of digital rights violations has been implemented by the Human Rights Platform (HRP) civil society organisation. The monitoring period covers five months from 1 May to 30 September 2019. It was conducted in line with the Methodology, developed earlier by the HRP experts together with the members of Coalition “For the Free Internet” with the aim to reveal digital rights violations in Ukraine and identify their quantitative and qualitative characteristics.

As a result of the work completed by the experts of the Human Rights Platform CSO, the following digital rights violations were revealed in the reporting period.

I. General violations of digital rights (*violations affecting an unlimited number of individuals*).

1. Internet Access.

1) In the period of May-September 2019, **240 websites were blocked** on the basis of **two** Decrees of the President of Ukraine of 15 May 2017¹ and 14 May 2018². We highlighted these cases in all monthly analytical reports stemming from the monitoring of digital rights violations in Ukraine.³ The official type of sanction for the websites was formulated as "blocking access to Internet resources, including their subdomains, by the Internet providers". Referring to these regulations, the Security Service of Ukraine disseminated among providers a list of websites with a demand to block Internet users from accessing them.⁴ These sanctions have been applied for 3 years.

A legal analysis of the Presidential Decree of 2018 has been prepared and published by the Coalition “For the Free Internet”. It contains conclusions that are largely relevant to the first Decree.⁵

Some of the key conclusions:

- the sanction, as a means of restricting human rights and freedoms, does not meet the constitutional standards and requirements and reflects an unrestricted discretion of the government;

¹ <https://www.president.gov.ua/documents/1332017-21850>

² <https://www.president.gov.ua/documents/1262018-24150>

³ <https://www.ppl.org.ua/monitoring/monitoring-cifrovix-prav>

⁴ <https://www.unian.ua/politics/10187052-v-ukrajini-zablokuyut-shche-180-saytiv-spisok.html>

⁵ <https://www.ppl.org.ua/yuridichnij-analiz-ukazu-prezidenta-pro-blokuvannya-sajtiv.html>

- the sectoral nature of the sanction means it needs a positive vote in the Verkhovna Rada of Ukraine to come into force;
- the mechanism in the part of websites blocking does not comply with the national law and violates the fundamental constitutional rights of citizens;
- the practice of blocking hundreds of websites in the manner applied by the authorities does not meet the criterion "prescribed by law" in the light of international treaties and the European Court of Human Rights case law;
- such blocking does not meet the criterion of the "necessity in a democratic society" and is disproportionate to a legitimate aim.

These digital rights violations are continuing violations and general in their nature, since they relate to an unlimited number of persons. No improvements in the situation have been observed during the reporting period.

- 2) **17 news websites** were blocked from end-July to September 2019 pursuant to the decision of the Pechersk District Court of Kyiv in its case No. 757/38387/19-k. The judgement was about the arrest of "tangible intellectual property rights of Internet users" arising "when they are using web-resources" (this decision was adopted in criminal proceedings). This case has already been addressed in our previous reports.⁶ Under this decision, a number of major Ukrainian ISPs were obliged to block access to the following websites: <http://go338.top>; <https://trident-ua.info>; <https://enigma.ua>; <https://blogs.korrespondent.net>; <https://seychas.press>; <https://netadvocate.org>; <https://compromate.ws>; <https://sled-net-ua>; <https://ua-24.com>; <https://moscow-post.press>; <https://novindoosh.com>; <https://stalker-world.net>; <http://rospress.press>; <https://informator.news>; <https://ustav.press>; <https://ukrpress.info>.

The appellate hearing of the case is systematically postponed (during 4 court hearings the case has not been considered in substance yet). During those periods websites cannot function properly, disseminate information and lose their audiences.

- 3) A similar blocking of the website <https://vilkov.com> took place pursuant to the decision of an investigating judge of the Svyatoshynskyy District Court of Kyiv.⁷

Digital rights violations take place every time the courts decide in criminal proceedings to arrest "tangible intellectual property rights of Internet users" for the purpose of blocking websites.

This is a speculative legal basis not really based on law, since only the authors (creators) or their successors can hold the tangible intellectual property rights, as well as the persons to whom the authors (creators) or their successors have transferred their intellectual property rights under the contract (which generally should be in writing and comply with the law). Website users do not belong to any of the following categories of people. Moreover, the so-called "tangible intellectual property rights" do not apply to things that can be seized in criminal proceedings, as laid down in Ukraine`s Criminal Procedure Code.

⁶ <https://www.ppl.org.ua/monitoring/monitoring-cifrovix-prav>

⁷ <https://nkrzi.gov.ua/index.php?r=site%2Findex&pg=99&id=1759&language=uk&fbclid=IwAR231IHho75QqpFDjQULMrXAdTBfqUjjqmwLzPtBNtT0IFjhZ1Ug07I2iW0>

During the reporting period, **18 websites were blocked** on the basis of court orders in violation of the Ukrainian legislation requirements and international standards in the freedom of speech realm.

- 4) Blocking of other web resources took place, such as "Mova"⁸ public account on Facebook (the most popular one about the Ukrainian language) with some 520 thousand subscribers, or the Facebook account of VinMedia (Vinnytsia website).⁹

All in all, **6 general violations of digital rights** in the form of access restrictions covering **260 websites** were spotted in the territory controlled by the Government of Ukraine.

Importantly, digital rights violations of a general nature were reported in the temporarily uncontrolled territories of the East of Ukraine.¹⁰ According to the Digital Security Lab CSO, hundreds of websites appear blocked for the users from those territories by unidentified persons, under unknown regulations and in an unclear way. There was also a blocking by the Russian Federal Service for Supervision of Mass Communications and Communication (Roskomnadzor) of the international volunteer intelligence community InformNapalm website¹¹, which deals with OSINT-investigations, as well as restricting access to Enigma.ua – a Ukrainian platform for bloggers¹².

2. Internet and Election Process.

16 (sixteen) judgments in cases pertaining to the violation of campaigning rules were published in the Unified State Register of Judgments in the reporting period. All those cases resulted from the publication of photos on Facebook by its users showing the voting ballot with a ticked choice at the time when voting was still going on.

It follows that dissemination of the personal voting results with the elements of secret voting violation is gaining popularity, which poses a threat to the right to free elections.

In addition, experts of the Human Rights Platform have detected 1 (one) violation of the rules of informing and campaigning during the election by some media outlets. In particular, it was reported that a number of Rivne mass media published the so-called results of polls without necessary information stipulated by law, yet looked manipulative, unreliable and beneficial for particular politicians.

Another 2 (two) election-related violations of digital rights involved the maintenance of fake pages and accounts. Specifically, a fake page of the Kyiv International Institute of Sociology shared mock public poll results from constituencies. On behalf of the fake account of a candidate running for the Parliament has been disseminated some information that could be qualified as voter bribery.

In sum, **19 (nineteen) facts of election-related violations of digital rights were detected** during five months of monitoring.

⁸ https://ms.detector.media/web/social/feysbuk_zablokuvav_naybilshiy_pablik_pro_ukrainsku_movu/

⁹ <https://vinmedia.com.ua/posts/facebook-zablokuvav-sait-vinmedia-cherez-ataku-botiv>

¹⁰ Згідно методології зазначені факти не включаються в результати, але такі випадки, особливо стосовно порушень загального характеру відобразатимуться у звітах.

¹¹ <https://detector.media/infospace/article/170075/2019-08-22-roskomnaglyad-zablokuvav-dostup-do-saita-informnapalm/>

¹² <https://www.facebook.com/photo.php?fbid=451841705408524&set=a.181383999120964&type=3&theater>

II. Individual violations of digital rights (*infringements affecting individual right-holders and with no direct impact on wide audience*).

1. Violations of the right to freedom of expression

The five-month monitoring revealed the next facts of infringements on the freedom of expression in the digital environment:

1) physical attack on a journalist and video blogger (Vadym Komarov), causing him serious injuries, as a result of which he died – 1 episode;

2) physical attacks on journalists of online media outlets and/or bloggers – 5 episodes;

3) dissemination of fake news by hacking Ukrainian websites or imitating their design – 2 episodes;

4) attacks on websites and other web resources, including their blocking, spamming of virus-infected files – 13 episodes;

5) investigative searches, equipment seizure, questioning of editorial staff – 2 episodes;

6) defamation suit to protect honour, dignity and reputation with excessive claims for non-pecuniary damage (amounting to UAH 628,000), caused by dissemination of some information on Facebook – 1 episode;

7) limitation of discussion bearing public interest on the Internet – on the basis of a court decision that failed to meet standards in the field of freedom of speech (ruled on the basis of the legislation that had expired, regardless of the public interest and public status of the plaintiff) – 6 episodes;

8) application by the court of a legal remedy that infringes copyright on the Internet – 1 episode;

9) application by the courts in one case of such remedies as the refutation and removal of disputed information from the website without justifying the pressing need for that and without providing arguments for the "necessity in a democratic society" – these sanctions have been applied simultaneously to the same defendant – 1 episode;

10) the court found information in question as inaccurate and obliged to refute it without involving due defendants – 2 episodes;

11) violation of the right of access to public information by non-disclosure of such information on the official website of a state body – 1 episode;

12) a court decision demanding to remove credible information about an influential politician from the Open Register of Politically Exposed Persons of Ukraine on the ground of unlawful use of the plaintiff's name that allegedly involves a censorship effect – 1 episode.

All in all, our five-month monitoring allowed to detect 36 (thirty-six) episodes of violation of the right to freedom of expression in the digital environment.

2. Privacy and Data Protection

The following types of digital rights violations that affect privacy and data protection have been revealed in the reporting period:

- 1) leakage of journalists' personal data, which entails potential threats – 1 episode;
- 2) deliberate dissemination of documents containing confidential information (copies of another person's passport) obtained upon the deputy's request and made available on a Facebook page – 1 episode;
- 3) improper storage of the video filmed by the public authorities and made public on Facebook by a third party combined with a refusal of administrative courts to protect personal data of the plaintiff – 1 episode;
- 4) sale of Ukrainian citizens' database containing such data as name, surname, and patronymic, identification codes and place of registration – 1 episode;
- 5) fraud on the Internet by means of retrieved personal banking information of users – 1 episode;
- 6) collection and dissemination of confidential information about subscribers by the mobile operator – 1 episode;
- 7) hacking a personal page on Facebook – 1 episode;
- 8) disproportionate interference with the privacy of letters and correspondence, as well as the provision of excessive access to information about the consumer of Internet services – detected in the criminal proceedings of courts – 3 episodes.

In sum, 10 (ten) facts of violations affecting privacy and data protection in the digital environment have been revealed.

3. Potential threats to free speech and the right to privacy on the Internet in Ukraine

The monitoring allowed to identify the following potential threats to the exercise of the right to freedom of expression and the protection of privacy on the Internet:

- 1) the [draft law No. 1129](#) “On Operative Investigation Activity”, tabled by MP Andriy Kozhemyakin, contains a legal norm allowing to carry out operative investigation actions in urgent cases, including removal of information from the transport telecommunication networks and from electronic information systems, to control correspondence, other **without a court order, only with the permission of the relevant operational unit head or a person performing his duties**, followed by an immediate notification of those actions to the prosecutor. If voted by MPs, it might enact control of the Internet traffic of users and their wiretapping without any court decision – 1 episode;
- 2) collection of personal data of users: technical devices and smartphone applications users, social networks users, etc. without their consent and/or dissemination of personal data on the Internet or mobile applications without their consent – 5 episodes;
- 3) access to personal data of a user without his consent, including through fake applications, messages about blocking of the page in a social network, wiretapping/intercept of conversations, hacking, fake advertising/news – 6 episodes;

- 4) vulnerabilities of the social networks` software, of smartphones, Internet platforms and services that allow collection and/or dissemination of personal data of users without their consent – 6 episodes;
- 5) phishing of Facebook public pages of Ukrainian civil society organisations – 2 episodes;
- 6) use of artificial intelligence to generate fakes that might incite the commission of crimes (in particular, fraud) or to develop programs that violate the privacy of an individual and his/her reputation – 2 episodes;
- 7) downs in the functioning of social networks – 3 episodes;
- 8) blocking or threats to block TV channels on YouTube, demands to remove content published on this platform – 3 episodes.

All in all, 28 (twenty-eight) potential threats to the freedom of expression and the right to privacy on the Internet in Ukraine have been detected during the five-month monitoring.

To sum up, monitoring of digital rights violations in Ukraine in May - September 2019 revealed **25 facts** of the digital rights **general violations**, of which **6** episodes pertain to **260 web resources**, and **19** election-related violations of digital rights.

In parallel, **46 individual cases** of digital rights violations have been spotted, of which **36** constituted infringements of the right to freedom of expression and **10** were violations of the right to privacy and data protection in the digital environment.

28 threats to the freedom of expression and the right to privacy on the Internet in Ukraine have been detected as well.