Privacy & Data Protection

UKRAINE: DIGITAL THREATS TO DEMOCRACY

Censorship

Digital Security

Connectivity

accessnow

WE DEFEND AND EXTEND THE
DIGITAL RIGHTS OF USERS AT
RISK AROUND THE WORLD

accessnow.org

INTRODUCTION

Ukraine has gone through some positive changes over the last six years since its last democratic revolution. Despite the ongoing military conflicts in its territories, the country has held two parliamentary and two presidential elections, as well as implemented a number of positive reforms since the ouster of President Viktor Yanukovych in 2014. However, the country is still striving to move toward the democratic goals that the revolution had promised. The achievement of those goals, such as respect for the rule of law, governmental transparency and accountability, and respect for human rights, is impossible without protection of the digital rights[1] of Ukrainian citizens. Internet disruptions and lack of connectivity, censorship, digital security threats, and insufficient protection for users' data and privacy have profound consequences for Ukraine's young democracy.

CONNECTIVITY

Connectivity, which is central to developing Ukraine's democracy and economy, has improved in recent years. There were 26 million internet users in Ukraine in January 2019, which is a 10% increase since 2018.[2] Out of those 26 million, 20 million were wireless internet subscribers.[3] In February 2019, there were 13 million Facebook users in Ukraine, with three million added in 2018, including one million in the last quarter of the the year.[4] According to Ookia, there have also been some improvements in Ukraine's mobile and broadband connection.[5] As a result of the country's competitive market of Internet Service Providers (ISPs) — more than 6,000 registered and more than 1,500 providing services — Ukrainians enjoy one of the world's cheapest subscription plans, ranging from five to eight dollars per month for broadband internet.[6]

However, due to territorial conflicts, deliberate network disruptions, and blocking of popular web services, having meaningful access to the internet depends on where in Ukraine you happen to be. For instance, people in rebel-held regions, like Donetsk, have experienced limited access to mobile and internet services due to conflicts over which authorities are responsible for providing those services.[7] In addition, there is also a trend of shutting down the internet and disrupting networks. De facto authorities have disrupted access to telecommunications services and have used political reasons to pressure ISPs to block news

1

[1] We define digital rights as human rights in the digital space.

[2] GOST of Ukraine, "Number of subscribers as of January 1, 2018," http://www.ukrstat.gov.ua/operativ/operativ2018/zv/az/az_u/az0118_u.htm; GOST of Ukraine, "The number of subscribers as of January 1, 2019" http://www.ukrstat.gov.ua/operativ/operativ2019/zv/az/az_u/az0119_u.htm. These numbers exclude the Crimea, Donbass, and Luhansk regions.

[3] GOST of Ukraine, "The number of subscribers as of January 1, 2019."

[4] "With 13 million users, Facebook is now Ukraine's leading social network," Ukraine Digital News, February 25, 2019, https://www.uadn.net/2019/02/25/with-13-million-users-facebook-is-now-ukraines-leading-social-network-in-ukraine/.

[5] Ookia, "Speedtest Global Index: Ukraine November 2019," December, 2019, https://www.speedtest.net/global-index/ukraine.

[6] "Low prices, good connectivity – Ukrainian Internet infrastructure allows usage to grow rapidly," DW.com, July 1, 2019, https://www.dw.com/en/low-prices-good-connectivity-ukrainian-internet-infrastructure-allows-usage-to-grow-rapidly/a-49266786; "Ukraine has world's cheapest broadband internet," Emerging Europe, November 6, 2018, https://emerging-europe.com/news/ukraine-has-worlds-cheapest-broadband-internet/.

[7] "Интернета в Донецке нет? Что предлагают местные операторы «ДНР»," Novosti Donbassa, October 21, 2017, http://novosti.dn.ua/article/6881-ynterneta-v-donecke-net-chto-predlagayut-mestnye-operatory-dnr-.

websites in Donetsk, Luhansk, and Crimea.[8] Even outside of the occupied territories, Ukrainian law on State of Emergency allows for certain restrictions on the connection and transmission of information through computer networks during emergencies.[9]

Internet shutdowns and network disruptions harm everyone — businesses, emergency services, journalists, human rights defenders, and demonstrators — and therefore pose a direct threat to democracy and human rights in Ukraine. While it is certainly challenging for the Ukrainian authorities to affect the situation in rebel-held and occupied regions, Ukrainian leaders should still strive to ensure that all individuals in Ukraine have uninterrupted access to the internet, irrespective of their location within the country.

CENSORSHIP

Article 34 of Ukraine's Constitution grants the right to free speech to all citizens of Ukraine; Article 15(3) of the Constitution forbids state censorship.[10] It is important that this right is recognized in the digital age. However, there has been a significant level of targeted blocking of particular sites in the past couple of years, including Russian social media platforms Vkontakte and Odnoklassniki and the search engine Yandex, which were blocked as a part of sanctions against Russia.[11]

Legislative proposals in recent years have also contained broad provisions for blocking websites and penalizing media outlets on national security grounds.[12] Luckily, the drafts haven't been passed, due to the pressure from the civil society. Most recently, two new laws were introduced in the Parliament that threaten freedom of expression in Ukraine. If passed, the Media Law will allow the State Television and Radio Broadcasting Commission to revoke media licenses for broadcasting illegal content — including attacks on the territorial integrity of Ukraine, calls for overthrowing the state system, and spreading propaganda — as well as to block websites with such content.[13] The proposed Disinformation Law creates a state-controlled association of professional journalists, as well as a new information commissioner with the power to block and fine journalists and media outlets for "fake news."[14]

While criticism of the government is generally allowed and practiced in Ukraine, the Criminal Code criminalizes certain kinds of speech. Articles 109(2)-(3) and 110 of the Code provide for up to five years of imprisonment for public calls for forceful overthrow of the government or violation of Ukraine's territorial integrity, including through distribution of materials.[15]

---

8 Freedom House, "Ukraine Freedom of the Net 2018 Report," https://freedomhouse.org/report/freedom-net/2018/ukraine.

9 Id.

10 Constitution of Ukraine (2004, amended 2019), https://www.legislationline.org/documents/section/constitutions.

11 Alec Luhn, "Ukraine blocks popular social networks as part of sanctions on Russia," The Guardian, May 16, 2017, https://www.theguardian.com/world/2017/may/16/ukraine-blocks-popular-russian-websites-kremlin-role-war

12 Freedom House, "Ukraine Freedom of the Net 2018 Report."

13 Oleksiy Sorokin, "'Straight-up censorship' as critics decry lawmakers' media proposals," Kyiv Post, January 23, 2019, https://www.kyivpost.com/ukraine-politics/straight-up-censorship-as-critics-decry-lawmakers-media-proposals.html?.

14 Freedom House, "Ukraine Freedom of the Net 2018 Report."

15 Criminal Code of Ukraine (2001, Amended 2016), http://www.legislationline.org/documents/section/criminal-codes/country/52.

In addition, online users and journalists are under constant pressure to self-censor, especially on topics related to national security.[16] These issues also overlap with attacks on and physical intimidation of journalists. We have seen raids on the offices of Strana, Vesti, and RIA Novosti, as well as arrests of a number of social media users and journalists, some of whom were charged with treason.[17] The Independent Institute of Mass Information registered 243 media freedom violations in 2019 (10 more than in 2018), 179 of which involved physical aggression against journalists.[18] While some of the targeted media outlets and journalists are often associated with foreign government interests, nevertheless such treatment of the media cannot be justified.

Legislators and policy makers need to ensure that freedom of speech is secured under the law, and courts and law enforcement need to protect journalists from violence and intimidation.

DIGITAL SECURITY

In 2017, the "NotPetya" cyberattack, reportedly traced back to Russia, wiped data from the computers of banks, energy firms, senior government officials, and an airport, destabilizing Ukraine's vital infrastructure.[19] Further examples of online attacks are those observed by the Access Now Digital Security Helpline. As of January 2020, Access Now's Digital Security Helpline has taken 64 cases related to digital security issues in Ukraine, ranging from account compromises and information leaks to DDoS attack prevention and mitigation. Attacks have been recorded against journalists, NGOs, and human rights defenders working on a diverse range of issues, from transparency and anti-corruption to election monitoring and humanitarian aid. The Independent Institute of Mass Information also documented 18 cases of cyber attacks against journalists in 2019, up from 15 in 2018.[20]

The Ukrainian government has a responsibility to protect the internet infrastructure and users from cyber attacks. However, the measures taken have to be consistent with human rights principles of necessity and proportionality and should not result in the securitization of the internet and incursions on digital freedoms.

PRIVACY AND DATA PROTECTION

It is essential that proper privacy laws and commensurate data protection laws are in place in Ukraine. The rights to privacy and data protection are cornerstones of modern digital society as enablers for the enjoyment of other human rights, including the rights to freedom of expression and of association. Ukraine still lacks comprehensive privacy legislation,

16 Freedom House, "Ukraine Freedom of the Net 2018 Report."

17 Id.

18 The Independent Institute of Mass Information, "Freedom of Speech in Ukraine Deteriorated - IMI," January 17, 2020, https://imi.org.ua/en/monitorings/freedom-of-speech-in-ukraine-deteriorated-imi-i31288.

19 Ellen Nakashima, "Russian military was behind 'NotPetya' cyberattack in Ukraine, CIA concludes," Washington Post, January 12, 2018, https://www.washingtonpost.com/world/national-security/russian-military-was-behind-notpetya-cyberattack-in-ukraine-cia-concludes/2018/01/12/048d8506-f7ca-11e7-b34a-b85626af34ef_story.html.

20 The Independent Institute of Mass Information, "Freedom of Speech in Ukraine Deteriorated - IMI," January 17, 2020.

while its current data protection framework is out of date. We welcome the news of the recent efforts by the Ukrainian government to bring their data protection legislation into compliance with human rights standards.[21]

Ukraine should also revise its current legal framework on access to data, in particular in the context of law enforcement activities, to ensure respect for human rights. As noted by Freedom House, the existing legislation, such as the Law on Operative Investigative Activity, does not specify the circumstances under which the security services are allowed to use wiretapping devices on communications technology.[22] It also does not provide for proper data minimization procedures for their implementation.[23]

We encourage further reforms to advance robust privacy and data protection rules applicable to both public and private actors in Ukraine. Throughout these much-needed reforms, attention must be paid to the protection of minority groups' data, including of the LGBTQ community, which should be treated with a high level of security.

CONCLUSION

The 2014 democratic revolution was an incredible opportunity for the Ukrainian people to rewrite their history. Progress has been achieved in the area of political rights and civil liberties, including freedom of speech and information.[24] However, we need to make sure that progress goes forward and the gains to civil society are not eroded by internet disruptions, website blocking, surveillance, and violence and threats against journalists. While digital and military threats coming from outside of the country are real, Ukrainian authorities should avoid using them to justify incursions on digital freedoms. Improving connectivity, avoiding censorship, securing against digital security threats, and protecting users' data and privacy will help secure Ukrainian democracy from digital threats.

For further information, please contact:

Natalia Krapiva
Tech-Legal Counsel, Access Now
natalia@accessnow.org

21 Council of Europe, "Newsroom EU and Council of Europe working together to strengthen the Ombudsperson's capacity to protect human rights," January 30, 2020, https://www.coe.int/fr/web/national-implementation/-/new-data-protection-legislation-of-ukraine-is-being-developed-with-the-expert-support-of-the-council-of-europe.
22 Freedom House, "Ukraine Freedom of the Net 2018 Report."
23 Id.
24 Freedom House, "Ukraine Freedom of the Net 2018 Report," https://freedomhouse.org/report/freedom-net/2018/ukraine.

accessnow