

# Romania: State of Affairs Report

## Part 1: Country Snapshot

### 1.1. Internet Freedom State of Affairs

In general, Romania has a functional free and open Internet. The significant competition between ISPs in the past 15 years has created a vibrant national market, where broadband Internet services are accessible at good speed and decent prices, with some exceptions in the rural areas.<sup>6</sup>

This current situation, together with a low involvement of the Government in Internet-related regulation (but not as an official strategy) and the independence of ISPs from Internet content providers has been instrumental for the current freedom of the Internet in Romania.

However, the past years have seen an increase of attempts and results to limit the freedom of the Internet, starting with Internet blocking schemes and ending up with privacy infringing laws and practices on collecting Internet content and meta-data that are slowly eroding the digital civil rights of the Romanian citizens. With these laws and mechanisms in place, it would be extremely easy to misuse them for power and political purposes in the future in a more pervasive limitation of Internet freedom rather than blatant actions which could create protests. The nature of these laws makes it almost impossible to determine if and how much they are being misused even now.

### 1.2. Brief Country Data

Romania is a Eastern European country organized as a semi-presidential republic where executive functions are shared by both government and the president, with the government holding the major part of these functions. The Romanian Parliament, formed by two chambers – Senate and the Chambers of Deputies, performs the legislative function. Its members are elected every four years (next election will be on 11 December 2016). The justice system is independent and is made up of a hierarchical system of courts.<sup>1</sup> Romania is part of NATO from 2004 and is a member of European Union from 2007.

The Country has approx. 20 million inhabitants, with about 55% living in the urban area. Bucharest is the main city with a population of about 2 million citizens.<sup>2</sup> In 2015 Romania had a GDP (PPP) of approx 414 billion USD and a GDP per capita of 20 787 USD<sup>3</sup>. The GDP per capita in 2015 was at a 57% of the EU average, but with a steady increase from the past 10 years.<sup>4</sup>

## Part 2: Access to Internet & Internet Services

### 2.1. Penetration

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1 More info at <https://www.cia.gov/library/publications/the-world-factbook/geos/ro.html>

2 See more statistical data at the National Institute of Statistics - <http://www.insse.ro/cms/en>

3 Data from <http://databank.worldbank.org/data/reports.aspx?source=2&country=ROU>

4 Data available from the EuroStat - <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tec00114&plugin=1>

According to Eurostat<sup>5</sup>, the household Internet penetration rate is at 68%, one of the lowest in the EU. But 2/3 of those people are located in urban areas<sup>6</sup>. Other EU statistics<sup>7</sup> estimate the number of Internet users at 52% of the population aged 16-75.

There is a marked demographics divide between the urban and the rural areas when it comes to Internet penetration. When taking a closer look, the National Telecommunication Regulatory Agency (ANCOM) statistics<sup>8</sup> reveal the fact that, despite a relatively low overall penetration rate, the available services are very fast.

By 30 June 2016, the vast majority (94.1%) of all fixed Internet connections provided in Romania are broadband FTTx<sup>9</sup>. Furthermore, 57.04% of these connections are more than 100Mbps and only 0.63% are below 2Mbps.

ANCOM's statistics regarding the high speed of the Internet connections in Romania are confirmed by Akamai's State of The Internet Report<sup>10</sup>. In Q2 2016, Romania's average connection speed was 15.8Mbps (9th in Europe) and its peak connection speed was 84.2Mbps (1st in Europe and 8th worldwide).

The penetration rate of fixed Internet connections is just 22%, but this is complemented by the evolution of the Internet access market towards mobile connections. Actually the penetration rate of 3G+ mobile Internet connections is 74.8% and, when slower technologies are taken into account, the penetration rate of mobile Internet connections is 95.2%.

## 2.2. Demographics

ANCOM's statistics reveal a marked divide when it comes to fixed Internet connections between urban areas and rural areas. While the overall fixed Internet connection penetration rate is 22%, it is 29.5% in urban areas and only 13.3% in rural areas.

The reasons for this are numerous: from the increased costs of deploying fixed infrastructure in rural areas compared to urban areas, especially in remote villages in the mountains or hillside, to lower education levels in rural areas, lower disposable income in rural areas, depopulation caused by people moving to the cities, leaving to work abroad or emigrating altogether etc.

However, we believe that the largest barrier to fixed Internet penetration in rural areas is the lack of demand and the cost/benefit calculation of the ISPs that comes with this lack of strong demand. This is confirmed by the fact that mobile Internet penetration is close to 100% although the consumers are the same for both types of Internet access services.

## 2.3. Uses of Internet

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5 [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=isoc\\_ci\\_in\\_h&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=isoc_ci_in_h&lang=en)

6 According to data from National Institute of Statistics 2015 - <http://www.romania-insider.com/statistics-61-of-romanian-households-own-a-computer-and-have-access-to-the-internet/>

7 Data from 2014. Sell full data for Romania in the Digital Economy and Society Index at the <https://ec.europa.eu/digital-single-market/scoreboard/romania#3-use-of-internet>

8 [https://statistica.ancom.org.ro:8000/sscpds/public/files/125\\_ro](https://statistica.ancom.org.ro:8000/sscpds/public/files/125_ro)

9 Explanation of the term here - [https://en.wikipedia.org/wiki/Fiber\\_to\\_the\\_x](https://en.wikipedia.org/wiki/Fiber_to_the_x)

10 Report, State of the Internet / Connectivity, Akamai Technologies, available in English at: <https://www.akamai.com/us/en/our-thinking/state-of-the-internet-report/>

The EU study Digital Economy and Society Index (DESI) for 2016<sup>11</sup> is the most clear analysis on the Internet use in Romania. As a general note, the propensity of individuals to use Internet services is among the lowest in the European Union:

*“They read news online (67%), listen to music, watch films and play games online (46%), use the Internet to communicate via voice or video calls (42%) or through social networks (78%), and obtain video content using their broadband connections (mostly through Video on Demand – 36%). (...) While Romanians are keen to engage especially in social networks they are very reluctant to engage in online transactions. Despite progress, the shares of Romanian Internet users that use online banking (9.6%) or shop online (18%) are the lowest of all EU countries. “*

It's also worth underlining that the same study acknowledged the lack of digital skills of the workforce (46% compared with the 72% in the EU) and the lack of integration of Digital Technology by businesses (where Romania scores last in the EU).

This is confirmed by other independent studies that conclude that “the poor digital skills of Romanian society creates an especially big obstacle for going digital.”<sup>12</sup>

#### **2.4. Barriers to access (ex. Government, poverty, etc)**

Poverty, lack of specific computer work and the limited digital public services<sup>13</sup> are some of the main barriers to access the Internet. Many people with lower socioeconomic status, especially from rural areas just don't see the need to use of Internet as part of their daily lives.

On the technical and regulation side - in urban areas deploying of cables for Internet connection was in fact helped by a lack of clear regulation by mid-2000, especially in urban areas, although this created a chaotic image for the urban landscape and other related problems.<sup>14</sup> However some of the local authorities, especially in many of the largest cities created local regulation forcing ISPs to use underground cables and, at the same time, made exclusive deals with various companies that deployed underground cabling networks. Because of the exclusivity offered by these deals, these companies became, overnight, infrastructure monopolies<sup>15</sup> which every telecommunication provider had to use unless they already had their own underground cables laid out before that. Using that monopoly power, they started to charge discriminatory prices to the various ISP on the market in need of their services<sup>16</sup>.

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11 See the full details at <https://ec.europa.eu/digital-single-market/scoreboard/romania#3-use-of-internet>

12 See country report Digital Transformation of Small and Medium Enterprises in Romania available at <http://www.delab.uw.edu.pl/wp-content/uploads/2016/05/DELAB-raport-B5-ROMANIA.pdf>

13 See DESI report quoted above for the current rankings for digital public services.

14 See a few images and reports here - <http://www.likeatrippie.com/2010/06/07/is-this-what-city-network-means/>

15 Article, 5 March 2008. Firmele de cablu sustin ca monopolul UTI hotnews.ro, available in Romanian at: <http://economie.hotnews.ro/stiri-it-2511834-firmele-cablu-sustin-monopolul-uti-proiectul-netcity-poate-impinge-faliment.htm>

16 Article, 28 February 2013. Furnizori de internet reclama taxe abuzive, hotnews.ro, available in Romanian at: <http://economie.hotnews.ro/stiri-telecom-14320391-furnizori-internet-reclama-taxe-abuzive-preferentiale-proiectul-netcity-cer-interventia-ancom-rcsrds-upc-sunt-avantajati-fata-operatorii-mici-spune-mihai-batraneanu-seful-anisp.htm>

Some of the ISPs, through the The National Association of Internet Service Providers (ANISP), contested this at ANCOM<sup>17</sup>, at the Competition Council and they even filed a criminal complaint<sup>18</sup>.

Although we can't point any major shortcomings yet, creating such cabling monopolies presents a major problem when it comes to Internet freedom: instead having multiple independent overlapping networks to deal with, someone wanting to censor or to wiretap the communications of a city is almost trivially easy.

In rural areas, deploying new infrastructure was hindered by increased costs, limited commercial interests by ISPs, but also complicated bureaucratic building permits, which proved to be detrimental even in the cases when public funding was available for such new infrastructure<sup>19</sup>.

This should be improved by a new law regarding telecommunication infrastructure deployment that came into effect<sup>20</sup> on 28 June 2016, which explicitly includes transparent and non-discriminatory provisions for the procedures regarding property access, infrastructure sharing and the pricing of doing so.

### **Part 3: ICT Actors & Infrastructure**

#### **3.1. Fixed Communication**

From the middle of the '90s until around 2008, before the advent of the mobile Internet, in Romania there has been a boom in fixed Internet development. Due to lax, almost nonexistent regulation concerning computer network infrastructure development and unfettered Internet development on all fronts, so called "neighborhood networks" have been created in all cities starting from people living in the same block creating their own network, then by interconnecting the networks of several blocks in the same neighborhood and finishing with small local ISPs rising up from these socially developed networks. Because of the way these networks were developed, they were very high speed networks and it did not take long before people started to want to interconnect them in order to better take advantage of this speed.

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17 Article, 27 August 2013. NetCity Telecom a oprit investitiile in reseaua de fibra optica din Bucuresti hotnews.ro, available in Romanian at: <http://economie.hotnews.ro/stiri-telecom-15455684-netcity-telecom-oprit-investitiile-reseaua-fibra-optica-din-bucuresti-pana-finalizarea-conclitului-juridic-arbitrul-telecom-care-este-stadiul-retelei-netcity-cat-primariei-dezafecteze-cablurile-stalp.htm>

18 Article, 19 Iunie 2013. Furnizorii de internet au sesizat DNA pentru posibile fapte de coruptie hotnews.ro, available in Romanian at: <http://economie.hotnews.ro/stiri-telecom-17511579-furnizorii-internet-sesizat-dna-pentru-posibile-fapte-coruptie-savarsite-primarul-general-sorin-oprescu-directorii-responsabili-proiectul-netcity.htm>

19 This is the case of the Ro-Net project financed with 69 million euros, which was supposed to connect 783 disadvantaged localities from Romania – how was postponed several times so far. See details at

[http://ec.europa.eu/regional\\_policy/en/projects/romania/ro-net-building-broadband-internet-access-to-boost-the-economy](http://ec.europa.eu/regional_policy/en/projects/romania/ro-net-building-broadband-internet-access-to-boost-the-economy) and <http://www.romaniajournal.ro/ro-net-project-to-be-completed-by-year-end-ancom-official-assures/>

20 Press Release, 27 July 2016. O nouă lege privind infrastructura de telecomunicații este în vigoare, ANCOM, ancom.org.ro, available in Romanian at: <http://www.ancom.org.ro/o-noua-lege-privind-infrastructura-de-telecomunica539ii-este-n-vigoare-5608>

This phase of the development of the Internet in Romania ended around 2008, after which a consolidation phase followed with many smaller ISPs selling their business to bigger ones. However, there are still a lot of fixed ISPs across the entire country: 695 according to ANCOM.

As a result of that massive consolidation spurt there are currently only 3 major fixed Internet providers: Telekom (formerly Romtelecom, the incumbent), RDS and UPC. Lately, Orange and Vodafone have started to build fixed infrastructure and to offer fiber Internet connections to their clients.

Also, there are two large Internet Exchange Points in Romania: InterLAN<sup>21</sup> and RoNIX<sup>22</sup>.

ANCOM has recently ruled that there is a dynamic competition for both the retail and wholesale fixed broadband markets, so by the end of 2016 there will be a complete deregulation of the market for wholesale local access provided at a fixed location.<sup>23</sup>

### 3.2. Mobile Connection

ANCOM lists 7 mobile Internet service providers, but one of them, Lycamobile, is an Mobile Virtual Network Operator<sup>24</sup> and another one, Telemobil, is basically not active on the market anymore. Therefore there are 4 major operators - Orange, Telekom (2 branches), Vodafone and RDS. The first 3 are multinational corporations active all over Europe and beyond. RDS is the only local brand.

### 3.3. International Communication

Bucharest, in particular, hosts multiple Internet Exchange Points (InterLAN and RoNIX). Romania-based companies and InterLAN and RoNIX themselves are members and/or partners in other international Internet Exchange Points such as Balkan Internet Exchange<sup>25</sup> and NetXI<sup>26</sup>, to name a few. Quite a few ISPs, the larger ones in particular, also directly buy transit and/or have direct peering agreements with networks from abroad. Traditionally, the majority of the upstream links to the Internet backbone have been through Germany, via Hungary. However, Romanian ISPs have alternate routes through Bulgaria and the Balkans area so they are not wholly dependent on these connections through Hungary.

## Part 4: Regulatory ICT Policy

### 4.1. Regulatory/governing bodies and standards (National & International)

ANCOM<sup>27</sup> is the national independent electronic communication regulatory authority. Created in 2002, it oversees the competition in the electronic communication and postal markets by creating and imposing secondary legislation. ANCOM is not in charge with media content regulation.

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21 <http://www.interlan.ro/>

22 <http://www.ronix.ro/>

23 See more details at

<https://www.telegeography.com/products/commsupdate/articles/2016/01/07/ec-supports-romanias-wholesale-broadband-local-access-deregulation/>

24 Basically it means that it buys access in bulk from the providers that have actual physical network infrastructures and just sell services to their clients

25 <https://www.b-ix.net/>

26 <http://www.netix.net/>

27 <http://www.ancom.org.ro/index.php/>

The Ministry of Communication and for Information Society (MCSI)<sup>28</sup> is the government branch that is in charge with the strategy for the IT&domain, including the proposals for primary legislation in this area. It also have specific attributions on e-signature and other trusted services, but also some basic attributions for information society services (based on Law 365/2002 on e-commerce).

The National Audiovisual Council (CNA)<sup>29</sup> is the independent regulator for the broadcast sector. The CNA issues decisions and norms and monitors compliance with legal provisions in broadcasting. The main law governing ownership in broadcasting is the 2002 Audiovisual Law.. By the implementation of the EU Audio Visual Media Services directive, CNA has also some attributions for online audiovisual services.

The National Data Protection Authority (ANSPDCP)<sup>30</sup> is the independent data protection authority set up in relation with the data protection requirements at the EU level and in relation with the Council of Europe 108 convention.

There are constant issues raised on the political independence of the regulatory authorities mentioned above, as it is sometimes a clear decision to appoint the heads of these institutions on political grounds and less on the expertise of these leaders.<sup>31</sup> We may highlight that when proper independence and stability of the institution has been achieved, the authorities have functioned quite well – ANCOM is a good example in this regard in the past 5-6 years after a more turbulent start.

On standardization aspect, Romania generally adopts the EU standards on all ICT issues.

## **Part 5: Information Security, Data Protection and Privacy**

### **5.1. Internet Infrastructure (susceptibility to cyber crime, terrorism, and attacks)**

Generally, the Romanian Internet infrastructure is decentralized enough to cope with an Internet attacks, but in terms of network IT security things are much more complicated, especially if they are not managed by professional IT companies. Lack of basic IT security skills make some of there networks or computers to become sources for botnets or other malicious activities.

Officially, Romania is making a priority out of the adoption of measures for combating cybercrime, computer and network security incidents, and any other malevolent actions or abusive use of infrastructure which might affect cybersecurity.

In 2011, Romania established a Computer Emergency Response Team. CERT-RO<sup>32</sup> is a specialized organization responsible for preventing, analyzing, identifying and reacting to cybersecurity incidents.

Also, the Romanian secret service (SRI) was designated as a national cyberintelligence authority and thus created National Cyberint Center.<sup>33</sup> Officially they have the main mission “to intertwine technical defense systems with intelligence capabilities in order to identify and provide legal beneficiaries with the necessary information to prevent, stop, and / or contain the consequences of acts of aggression on the

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28 <https://www.comunicatii.gov.ro/>

29 <http://www.cna.ro>

30 <http://www.dataprotection.ro>

31 See examples in the study Mapping Digital Media: Romania - page 79

<https://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-romania-20130605.pdf>

32 See <https://cert.ro/>

33 Details at <http://www.sri.ro/cyberintelligence-en.html>

IT&C systems representing critical infrastructures.” But there is no public report on what this center is actually doing.

## 5.2. Types of attacks, actors, and those targeted

In the past years there were no major DDOS attacks or other cyber attacks that affected a large part of the Romanian population or Internet infrastructure.

ANCOM publishes a yearly report on major security incidents that affected the electronic communications and in its 2015 version<sup>34</sup> from the total of 168 security reports received only 8 were related to a malicious activity. The average duration of security incidents was a bit under 4 hours.

According to CERT-RO 2015 cybersecurity alerts report, the major ones were the 366 described at cyber attack incidents. From the total number of security alerts, only 20% contain information regarding the type of malware (page 8 lists top 10 malware in Romania in 2015).<sup>35</sup>

The most significant IT security incidents from the past years included:

- a 2012 partially successful attack in the .ro administration<sup>36</sup> which redirected major domain names such as google.ro, yahoo.ro to another webpages;
- a 2015 incident when the mayor of a small city in Romania decided to cut off<sup>37</sup> all the cables of Internet and CATV to the city – in order to prevent the inhabitants to see an investigative report about his activities;
- a much reported September 2016 failed cyber-attack directed at the Romanian anti-corruption prosecutor head, allegedly orchestrated by a former Secret Service (SRI) officer<sup>38</sup> by hiring an Israeli cyber-intelligence unit.

## 5.3. Government surveillance

There is no official system of mass surveillance in place, but there are widespread suspicions of misuse of surveillance activities from different people and media outlets. They are fueled by several activities and information that appear in public, usually from opaque and unclear activities of the secret services, such as:

- the electronic communications wiretapping system is based on a technical system installed and managed entirely by the secret service (SRI), without any real kind of external supervision. A recent decision of the Constitutional Court from February 2016<sup>39</sup> barred the secret services in also performing the wiretapping, but the technical system is unchanged.

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34 Report available at [http://www.ancom.org.ro/uploads/links\\_files/Raport\\_incidente\\_FINAL\\_public\\_machetat\\_ro\\_21iunie2016.pdf](http://www.ancom.org.ro/uploads/links_files/Raport_incidente_FINAL_public_machetat_ro_21iunie2016.pdf)

35 Report, 2 October 2016. CERT-RO 2015 cybersecurity alerts report available in Romanian at: <https://cert.ro/vezi/document/161>

36 See details at <http://economie.hotnews.ro/stiri-it-13738980-administratorul-domenii-admite-abia-cinci-zile-dupa-incident-avut-loc-atac-informatic-asupra-server-elor-sale.htm>

37 See report at <http://www.paginademedia.ro/2015/10/cablul-tv-de-la-patru-companii-taiat-duminica-seara-in-tot-orasul-navodari-antena-3-spune-ca-primarul-orasului-a-incercat-sa-i-opreasca-pe-locuitori-sa-urmareasca-o-ancheta-a-emisiunii-in-premiera>

38 Details of the case at <http://www.nineoclock.ro/former-sri-officer-detained-in-black-cube-case-dnas-kovesi-targeted-by-tornado-operation/>

39 Decision 51 from 16 February 2016 [https://www.ccr.ro/files/products/Decizie\\_51\\_2016\\_ENG.pdf](https://www.ccr.ro/files/products/Decizie_51_2016_ENG.pdf)

- The allegation of misuse of the wiretapping system is completed by constant leaks in the media of wiretappings from on-going criminal cases for which Romania has been condemned at the European Court of Human Rights several times.<sup>40</sup>
- The Romanian Intelligence Service (SRI) has been recently granted EU funds for a project called “SII Analytics” that aims at providing SRI with unfettered access to all the data from all the major state-owned databases (e.g. citizens and company registry, health card data, fiscal data). The data would be joined into one large system, through which any of the involved public institutions would potentially have unlimited and warrantless access to all the personal data collected by the other institutions involved in this scheme.<sup>41</sup> After several NGOs criticized this mass surveillance project<sup>42</sup>, it has been revealed that the system has been in place since 2003<sup>43</sup> and that this latest development only refers to increased analysis capabilities to search and query the databases.

## Part 6: Legal Overview

### 6.1. Current Laws

The main Internet legal framework<sup>44</sup> is based mostly on adoption of European Union corresponding normative framework.

This includes the Emergency Government Ordinance no. 111 of 14 December 2011 regarding **electronic communications**, which includes rules for the networks and ISPs that must be implemented by ANCOM. A recent law on infrastructure 159/2016 complements these rules.

Other laws deal with **online providers**, such as Law 365/2002 on e-commerce that also include legal details for the responsibilities of intermediaries.

Provisions regarding **privacy and confidentiality of communications** can be found in the Constitution, Civil Code, Criminal Code, Law 677/2001 on data protection and Law 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector.

Concerning **media regulation**, there is Law 504/2002 on broadcasting which prevents content censorship and establishes a National Audiovisual Council (CNA) assigned to sanction any wrongdoing. There are no such laws regarding the written media.

Regarding **Internet content regulation**, there are general legal provisions only at the national level that are applying online, such as the ones outlawing discrimination, incitement to hatred, terrorism and

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40 See Casuneanu vs Romania <http://hudoc.echr.coe.int/fre?i=001-118582> or Voicu Vs Romania - <http://hudoc.echr.coe.int/fre?i=001-144897>

41 More information available in English at: <https://edri.org/romania-mass-surveillance-project-disguised-egovernment/>

42 Letter, 8 August 2016. No to surveillance open letter signed by the Association for Technology and Internet and 3 other NGOs, available in Romanian at: [https://www.apti.ro/sites/default/files/Scrisoare%20publica%20impotriva%20proiectului%20SRI%20de%200supraveghere%20generalizata\\_0.pdf](https://www.apti.ro/sites/default/files/Scrisoare%20publica%20impotriva%20proiectului%20SRI%20de%200supraveghere%20generalizata_0.pdf)

43 Article, 10 August 2016. *Elefantul din cameră –sistemul Big Brother al SRI e vechi de 13 ani*, Violeta Stoiciu, romaniacurata.ro, available in Romanian at: <http://www.romaniacurata.ro/elefantul-din-camera-sistemul-big-brother-al-sri-e-vechi-de-13-ani/>

44 The text of the laws in Romanian that we are pointing our here are available online in a structured form at <http://www.legi-internet.ro/legislatie-itc.html>

terrorist propaganda - Government Ordinance 137/2000 on discrimination and Government Emergency Ordinance 31/2002 regarding the prohibition of organizations and symbols with a fascist, racist or xenophobic character and the promotion of cult of persons guilty of committing offenses against peace and the human race contain limitation as to the content published online. At the same time, the publication of protected works without the copyright holder's permission, including online, is punishable according to Law 8/1996 on copyright.

There are also **cybercrime criminal provisions** now included in the Criminal Code (the crimes) and in the Procedural Criminal Code (the procedures) that are following closely the Budapest 2001 Council of Europe Cybercrime Convention. They also outlaw any content of child pornography distributed via electronic means.

When it comes to **Internet censorship**, restrictions are found in 4 laws that mandate blocking via ISPs - related to blocking and filtering of sites with pornographic content, online gambling, child pornography and selling illegal psychoactive products. Only one seems to be enforced – on unauthorized online gambling - the National Gambling Office issued Decision no. 17 from 26.06.2015 forcing ISPs to block unauthorized online gambling sites and redirect visitors to a page hosted by the Special Telecommunication Service (STS). This practice is problematic not only from a freedom of expression point of view, but also from a privacy point of view since the users accessing a blacklisted website are automatically directed to a site maintained by an external militarized service, with no transparency regarding the user's data.<sup>45</sup>

Moreover, Romania adopted in 2001 a **freedom of access to information law** (Law 544/2001) and has specific legislation on **re-use of public sector information** (Law 109/2007). In addition, Romania signed the **Open Government Partnership** in 2011 and committed to promote transparency and the use of new technologies and to fight corruption in order to enhance the governance and dialogue with citizens.<sup>46</sup>

## 6.2. Litigation (Past & Ongoing Cases)

### Freedom of expression and privacy violations. Interceptions.

In 1996, the Romanian Intelligence Service (SRI) illegally intercepted conversations of journalist Mircea Toma. SRI also registered conversations Toma had with his under-aged daughter. The case finally reached the ECtHR<sup>47</sup> that recognized a breach of privacy. Although this case refers to phone interceptions, this case is of significant importance because it probably set the first step for Romania's adoption of whistleblower regulation (which was adopted in 2004 - Law 571/2004) and it contains relevant information for understanding the general context in which media is operating in Romania - under constant threat of surveillance and state censorship.

In the past years constant leaks in the media of wiretappings from on-going criminal cases where the basis for which Romania has been condemned at the European Court of Human Rights several times.<sup>48</sup>

**Blogging and freedom of speech.** In 2012 a blogger was charged with 5000 RON (approximately 1111 Euro) moral damages for an online poll ironically asking the public opinion about how much the family

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45 <https://privacy.apti.ro/2015/10/05/de-ce-blocarea-internetului-incalca-libera-exprimare-si-dreptul-la-viata-privata/>

46 <http://www.opengovpartnership.org/country/romania>

47 <http://hudoc.echr.coe.int/fre?i=001-115844>

48 See Casuneanu vs Romania <http://hudoc.echr.coe.int/fre?i=001-118582> or Voicu Vs Romania - <http://hudoc.echr.coe.int/fre?i=001-144897>

honor of a corrupt politician is worth.<sup>49</sup> In a different court case, Automatic Inc, the company which owns Wordpress was sued by a Romanian private company because an anonymous blog hosted on Wordpress.org contained a defamatory article regarding the company's product. The company claimed that the content be taken down and the personal data of the blogger be revealed. The case was dismissed by the court<sup>50</sup>.

**Internet blocking.** An ISP filed a lawsuit against the National Gambling Office (ONJN) decision which introduces the mandatory obligation to block blacklisted websites. An unconstitutionality exception was raised before the Constitutional Court regarding article 10 para. (7) of Emergency Government Ordinance 77/2009 on the organization and exploitation of online gambling and the court was asked to decide whether the blocking measures violate fundamental rights, namely privacy and freedom of expression.<sup>51</sup> The hearing for this case was held on 13 September 2016, however unfortunately the Constitutional Court denied the unconstitutionality claims.

**Media freedom and corruption cases.** Businessman Sorin Ovidiu Vântu has been involved in several corruption cases and has been investigated by the National Anti-corruption Department (DNA) in multiple files. As the interceptions in these files show, Sorin Ovidiu Vântu financed media publications such as Academia Cațavencu and Realitatea Media and ordered what type of news to be published, against whom and in what context.<sup>52</sup>

This scandal is not the only one of its type. After the National Anti-corruption Department (DNA) placed Elena Udrea (the leader of a political party) under criminal investigation, she accused the heads of SRI of funding media institutions and journalists with the help of some business men.

On the other hand the prosecutors accused her, among other things, that she hired with 10 000 Euros/month an army of Internet trolls that were making positive comments for her and negative for her opponents on the newspapers commentaries and on social media.<sup>53</sup>

**Other cases** involve recent court decisions mandating an ISP to block a webpage, obliging online classifieds intermediaries to restrict the publication of classifieds in a certain section on their website, or compelling journalists to delete articles from online newspapers, on the accusation that these include defamatory content.<sup>54</sup>

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49 <http://legi-internet.ro/blogs/index.php/breaking-news-wordpress-dat-in-judecata-in-romania-sau-bloggerii-sondajul-indoiala-si-colonul>

50 Idem

51 <https://privacy.apti.ro/2016/08/31/blocarea-internetului-ajunge-la-curtea-constititionala/>

52 Freedom of the Media annual report, 2010, page 18 and available in Romanian at: <http://activewatch.ro/Assets/Upload/files/FreeEx%202010%20ro.pdf> and

*Stenograme integrale in dosarul Vantu. Pasaje intregi n-au aparut in presa. Citeste in intregime discutiile lui SOV cu Sergiu Toader, Corina Dragotescu si Stelian Tanase. Cum si-a lasat Vantu supape majore in trust, Victor Cozmei*, 19 October 2010, hotnews.ro, available at: <http://www.hotnews.ro/stiri-esential-7946399-stenograme-integrale-dosarul-vantu-pasaje-intregi-aparut-presa-citeste-intregime-discutiile-lui-sov-sergiu-toader-corina-dragotescu-stelian-tanase-cum-lasat-vantu-supape-majore-trust.htm> and *Stenograme din dosarul SOV: Căăin Popa ș Vintu stabilesc strategia editorială de campanie*, mediafax.ro, 18 October 2010, available at: <http://www.mediafax.ro/social/stenograme-din-dosarul-sov-catalin-popa-si-vintu-stabilesc-strategia-editoriala-de-campanie-7490460>

53 See <http://www.agerpres.ro/justitie/2015/03/20/dna-postacii-de-pe-internet-o-costau-pe-elena-udrea-10-000-euro-lunar-17-18-55>

54 See the FreeEx reports from Activewatch for details -

[http://www.activewatch.ro/Assets/Upload/files/FreeEx%20Report%202014-2015\(3\).pdf](http://www.activewatch.ro/Assets/Upload/files/FreeEx%20Report%202014-2015(3).pdf)

In Decision no. 17/2015 on the unconstitutionality claims of the cybersecurity law, the Romanian Constitutional Court recognizes that an IP address needs to be considered personal data.<sup>55</sup>

### 6.3. Legislation

#### 6.3.1. Current debates

A recent EU wide legislation on **net neutrality** is now in place and since the end of August 2016 clear rules apply in order to avoid Internet discrimination by ISPs<sup>56</sup>.

Regarding **cybersecurity** legislation, at the end of 2014 the Romanian Parliament adopted a cybersecurity law which gave the Romanian Intelligence Service (SRI) access to any computer data owned by private companies, without a court order for cybersecurity purposes<sup>57</sup>. After strong protests from human rights NGOs, a group of Members of Parliament from the Liberal Party sent the law to the Constitutional Court for analysis.<sup>58</sup> In January 2015, the Romanian Constitutional Court made its decision declared the cybersecurity law unconstitutional in its entirety<sup>59</sup>.

In 2016, a new cybersecurity law proposal has been published<sup>60</sup>. The text of the law brings few changes and completely disregards the Constitutional Court's decision.<sup>61</sup> The Ministry for Communications and for Information Society organized at the pressures of civil society organizations two public debates and received comments during the public consultation period. After the meetings organized in February 2016<sup>62</sup>, there were no official updates regarding this law, therefore we assume the proposal is still in inter-ministerial debate.

There have been several attempts to introduce **data retention** laws, however Law no. 298/2008 transposing Directive 2006/24/EC as well as Law no. 82/2012 on data retention have both been declared unconstitutional. Law 82/2012 has been declared unconstitutional on 8 July 2014.

At the present moment, the access of law enforcement to traffic data is regulated by a new law in 2015, which also has some vague articles and remains insufficient in terms of preventing abuses and guaranteeing the right to privacy and data protection<sup>63</sup>.

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55 See para. 75 of Decision no. 17 from 21 January 2015 on the unconstitutionality claims of the cybersecurity law, Romanian Constitutional Court, available in English at:

[https://www.ccr.ro/files/products/Decizie\\_17\\_2015\\_EN\\_final.pdf](https://www.ccr.ro/files/products/Decizie_17_2015_EN_final.pdf)

56 See <http://www.theverge.com/2016/8/30/12707590/eu-net-neutrality-rules-final-guidelines-berec>

57 <https://privacy.apti.ro/2014/12/19/mos-craciun-ne-aduce-calul-troian-securismul-cibernetice/>

58 13 NGOs ask to stop the cybersecurity law, letter available at

<https://privacy.apti.ro/2014/12/21/noul-presedinte-al-romaniei-are-un-prim-test-sa-opreasca-legea-securitatii-cibernetice/> and the Association for Technology and Internet amicus curiae in support of the unconstitutionality claims available in Romanian at: <https://privacy.apti.ro/2014/12/24/liberalii-ataca-legea-securitatii-cibernetice-iar-noi-sustinem-demersul-cu-un-amicus-curiae-la-ccr/>

59 Decision no. 17 from 21 January 2015 on the unconstitutionality claims of the cybersecurity law, Romanian Constitutional Court, available in English at:

[https://www.ccr.ro/files/products/Decizie\\_17\\_2015\\_EN\\_final.pdf](https://www.ccr.ro/files/products/Decizie_17_2015_EN_final.pdf)

60 <http://www.mcsi.ro/Transparenta-decizionala/Proiecte-2016/Securitatea-cibernetica/lege-securitate-cibernetica>

61 <https://privacy.apti.ro/2016/01/29/noua-propunere-de-lege-a-securitatii-cibernetice-de-ce-e-aceiasi-marie-cu-alta-palarie/>

62 <https://privacy.apti.ro/2016/02/19/ce-vrem-de-la-dezbaterile-pe-propunerea-de-lege-privind-securitatea-cibernetica/>

63 For more information please see: <https://privacy.apti.ro/2015/10/05/inca-nu-avem-transparenta-promisa-domnule-presedinte-studiu-de-caz-modificarea-legii-5062004/>

### 6.3.2. Upcoming

As detailed above, at the beginning of 2016 the second **cybersecurity** proposal was published. After facing severe criticism from civil society organizations, the initiator of the bill, the Ministry for Communications and for Information Society did not release any updates on this subject. Therefore, we assume the text is still under analysis and can shortly expect further developments regarding this law.

On the 6th of September 2016, the Ministry for Communications and for Information Society published in a less visible section of its website the 5th proposal for **registering prepaid SIM card** users, after the last one was declared unconstitutional in 2014. Several NGOs heavily criticized the ministry's proposal and requested a public debate. The law proposal is now suspended<sup>64</sup>.

On the 19th October 2016 a new Emergency Government Ordinance has been proposed by the Ministry of Interior to reorganize one of its departments for internal protection as a militarized **intelligence** unit, granting it national security capabilities, with no external control mechanisms, functioning under the command of a military officer appointed by the Ministry. The new service has the potential to become a military unit, performing interceptions without judicial warrant and under no civilian control<sup>65</sup>.

Other legislative acts with potential impact on Internet Freedom are discussed in different EU bodies, such as:

- A new proposal for a Directive on copyright in the Digital Single Market includes a destruction of liability protections, creating thus censorship due to liability and upload filtering due to legal obligations<sup>66</sup>.
- A draft directive on combating terrorism with vague terms that might include mandatory Internet blocking in all EU member states<sup>67</sup>.

### 6.3.3. Significant effects

If approved, all the above mentioned will have significant negative impact on privacy and freedom of expression and will conduce to increased intelligence powers and more surveillance.

## 6.4. Limitations for advancing IF through legal means

Besides the issues that have been raised above, Romania's policy towards adopting increased cybersecurity legislation without balancing human rights and giving increased responsibilities to its intelligence services is one of the direct barriers to guaranteeing and developing Internet Freedom.

Another source of concern is the political will to introduce provisions which **incriminate insult and defamation**. Such regulation would have severe implication in the online world and would lead to self-

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64 Ministry for Communications and for Information Society  
[https://www.comunicatii.gov.ro/?page\\_id=3517](https://www.comunicatii.gov.ro/?page_id=3517)

65 <http://www.romanalibera.ro/actualitate/eveniment/tudorache-vrea-ca-noul-dipi--sa-intercepteze-telefoane-430891>

66 More details available at <https://edri.org/commissioner-defends-nuclear-attack-internet-freedom/>

67 Brief analysis is available at [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_BRI\(2016\)586628](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2016)586628)

ensorship, would diminish the incentives for whistleblowers and journalistic sources to speak up and would limit the freedom of expression - all very dangerous effects, detrimental for a democratic society. Media monitoring organization ActiveWatch together with 35 international organizations and OSCE – all reacted against initiatives to re-criminalizing free speech in Romania<sup>68</sup>.

## **6.5. Opportunities for growth through legal means**

Although civil society has generally promptly reacted to attacks to Internet freedom in various legislative actions, there is limited understanding on both government and legislative branch on the value of human rights. Consequently laws are passed usually in a rush and with no careful analysis, especially if there are needed for “security” purposes.

For example every draft law should include an analysis for relevant case law from ECtHR or European Court of Justice, but this is ignored constantly. Moreover, no legislation was ever accompanied by a human rights impact report.

As far as we are aware, there are no proposals or initiatives of legislation for a “positive agenda” for digital rights by any authority or political party.

## **Part 7: Information Campaigns and Internet Activism**

### **7.1. Advocacy work on IF**

At the moment, there is concentrated effort connected to the European copyright reform, a proposal which is completely disconnected from the digital reality. The new text contains provisions regarding automated filtering of user generated content and introduces liability for online platforms. There is an ongoing consultation process organized by the Ministry of Culture and several stakeholders expressed concerns regarding the fact that the proposal does not take into consideration user rights<sup>69</sup>.

Other attempts are reactions to the “security” related legislation, mentioned throughout this report and more specifically in points 6.3.1. and 6.3.2.

### **7.2. Topics of activism, activist networks and campaign**

There are several collaboration forms, mostly informal, between civil society organizations dealing with human rights - usually activated by abusive law proposals of the government. Other more formal ones, such as the Open Data Coalition, work on transparency projects needed for the public sector.

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68 For more information please see *Opinie referitoare la proiectul de reîncredinare a insultei și calomniei*, ActiveWatch, 7 December 2015, available at: <http://activewatch.ro/ro/freeex/reactie-rapida/opinie-referitoare-la-proiectul-de-reincriminare-a-insulte-si-calomniei> and *UPDATE. 35 de organizații din întreaga lume cer autorităților române să nu reîncredineze insulta și calomnia*, ActiveWatch, 17 December 2013, available at: <http://activewatch.ro/ro/freeex/reactie-rapida/update-35-de-organizatii-din-intreaga-lume-cer-autoritatilor-romane-sa-nu-reincrimineze-insulta-si-calomnia> and *OSCE media freedom representative calls on Romania not to re-criminalize free speech*, OSCE, 12 December 2013, available at: <http://www.osce.org/fom/109459>

69 The Association for Technology and Internet preliminary opinion on the copyright reform is available partly in English in at: <http://www.apti.ro/opinie-preliminara-reforma-copyright-ministerul-culturii>

For example in 2014, the informal network TheSponge.eu was initiated, aiming at connecting networks and communities of media visionaries and innovators throughout Eastern Europe. The project is designed to build a collaboration platform for media visionaries: journalists, coders, activists, legal experts, designers and students in order to create an experimental media lab, an open interdisciplinary space governed by Free Software ethics, which grows via the voluntary contribution of its members<sup>70</sup>.

Other initiatives from civil society organizations aimed to bring together human rights experts with technical experts for hackathons or a better understanding and action of digital rights.

More recently, with the aim of raising awareness on net neutrality, the Association for Technology and Internet (ApTI) joined the SaveTheInternet.eu network and coordinated a national campaign in support of strong European regulation on net neutrality<sup>71</sup>.

### **7.3. Mediums: social media, journalism, blogs, etc**

Media monitoring organization ActiveWatch produced in 2014 a study and interactive map of the local television channels and their current status regarding the political and economical pressure they are subject to<sup>72</sup>.

The net neutrality campaign mentioned above was supported voluntarily by 12 bloggers that promoted and explained the subjects<sup>73</sup> in the public debate.

Social media is often used by formal and informal civil society groups for organizing themselves or organizing protests of every kind.

### **7.4. Government Response**

The Government and its responsible ministries, usually the Ministry for Communication and for Information Society, generally display a lack of interest and understanding regarding open Internet principles and Internet freedom in general. There is a constant lack of transparency and a severe incapacity to correct ill practices by learning from previous mistakes (see for example the cybersecurity law proposals, the two unconstitutionality decisions on data retention and the 5 attempts to introduce legislation for registering prepaid SIM card users).

There is no relevant public authority that promotes or defends human rights in general. The Ombudsman is generally not present in these debates and the Parliament Committees on human rights have no real discussions and are just a formal thing.

The opinion of the institutions that may provide relevant input – such as the Data Protection Authority – are either ignored or not even demanded.

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70 For more information please see <http://thesponge.eu/>

71 More information is available in Romanian at: <http://www.apti.ro/raport-neutralitatea-netului>

72 <http://www.activewatch.ro/ro/freeex/evenimente-si-activitati/studiul-harta-politica-a-televiziunilor-locale>

73 <https://neutralitate.apti.ro/ro/>

On a positive note, in the area of transparency and access to public information things seems to be moving into the good direction, with the Government Chancellery and the Ministry of Justice leading the Open data initiatives. More recently a newly set up Ministry for Public Consultation and Civic Dialogue<sup>74</sup> is making significant efforts to promote access to public information and transparency, although it is not always successful.

### **7.5. Opportunities for additional/alternative advocacy**

At the moment in Romania media is considered by some a vulnerability to national security. In a recent statement, a member of the National Broadcasting Council openly supported maintaining media on the list of vulnerabilities to state security in the future National Defense Strategy<sup>75</sup>. In our opinion, this policy needs to be corrected.

Based on the large number of cases, we observe that freedom of the press and freedom of expression are gravely affected by the general surveillance and intimidation practices journalists face. Therefore, we support the opinion that one of the reform pillars in Romania should be that national security laws explicitly include the interdiction for intelligence services to recruit collaborators, press agents and even judges.

We would also welcome a positive agenda and clear actions taken by the public authorities in order to upheld digital rights.

One of these measures which is necessary in a medium and longer term is the need of media and digital literacy projects at a wide educational level. Without a critical understanding of media and Internet for large parts of the population, we will likely have generations of Internet consumers and not of Internet users that actively participate in online activities.

This is also true in regards to Internet Freedom advocacy. Without a solid base of national Internet users that are active in saying why their rights matters and supporting them, we'll have high chances to have the civil society working on this subject being either prone more to donor's requirements than to real needs, either to fade away when enthusiasm diminishes. Good communication and marketing techniques are needed in order to attract the digital natives into these debates and to teach them that the "Like" button is NOT an advocacy tool.

On a more narrower action field we believe that a concentrated awareness program on Internet Freedom targeted at magistrates (and maybe other legal professionals) is highly needed. There is no formal education for magistrates providing a proper technical and legal explanation on different open Internet aspects or describing the critical role of Internet intermediaries. Therefore, raising the level of information and awareness on Internet principles (both from a technical as well as from a human rights perspective) among Romanian legal professionals, especially judges, who play a role in taking decisions that shape the future of the Internet in Romania, should be considered a priority from our point of view.

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74 <http://dialogcivic.gov.ro/>

75 ActiveWatch, Freedom of Expression annual report, page 27, 2015-2016, available in Romanian at: <http://activewatch.ro/Assets/Upload/files/FreeEx/rapoarte/Raport%20FreeEx%202015-2016.pdf>