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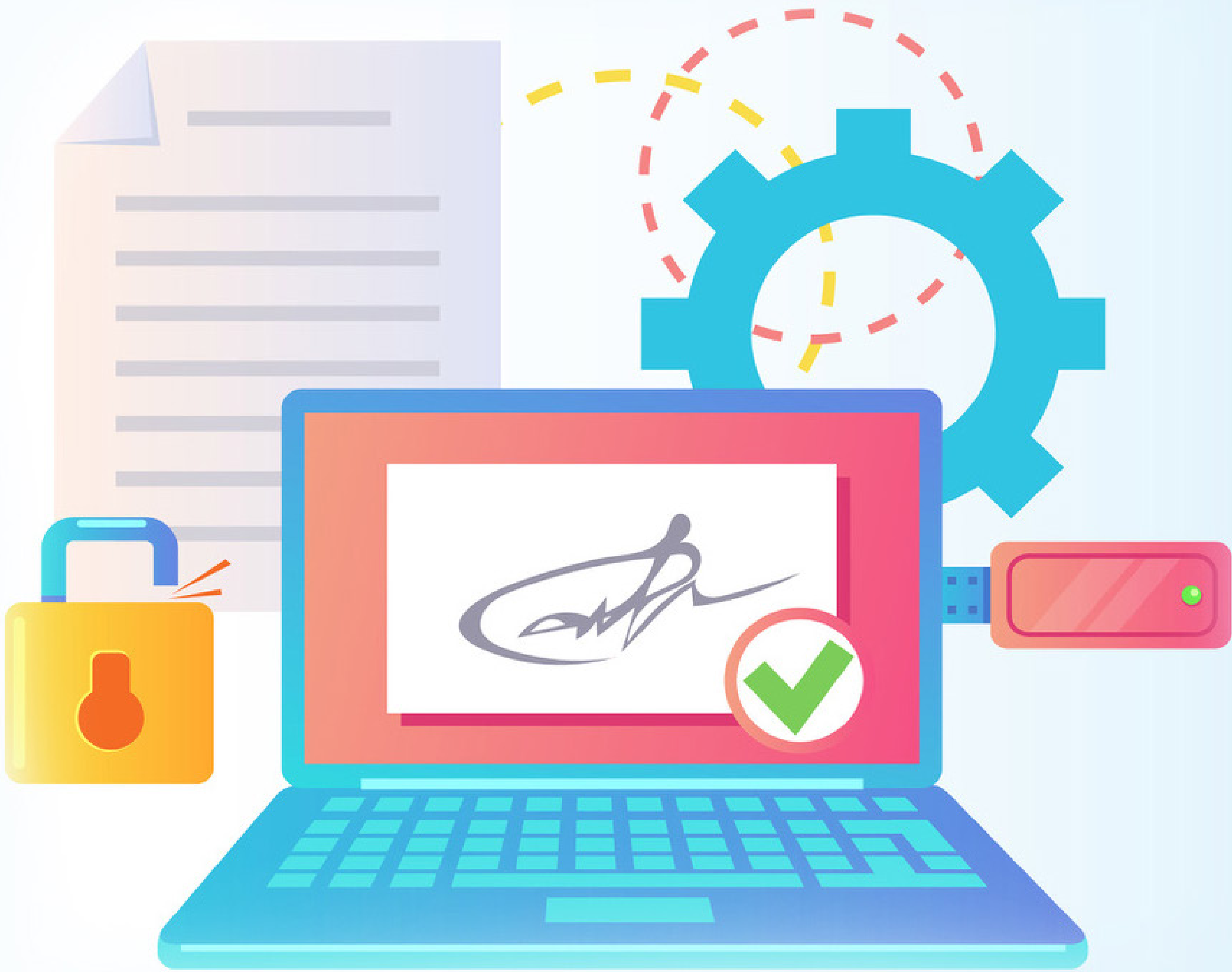
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# Fine PRINT

August 2019

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## REGULATION ON BROADCASTING SERVICES PROVIDED ON THE INTERNET IS PUBLISHED



### Highlights of this issue

New Decisions Of Turkish Data Protection Board

## REGULATION ON BROADCASTING SERVICES PROVIDED ON THE INTERNET IS PUBLISHED

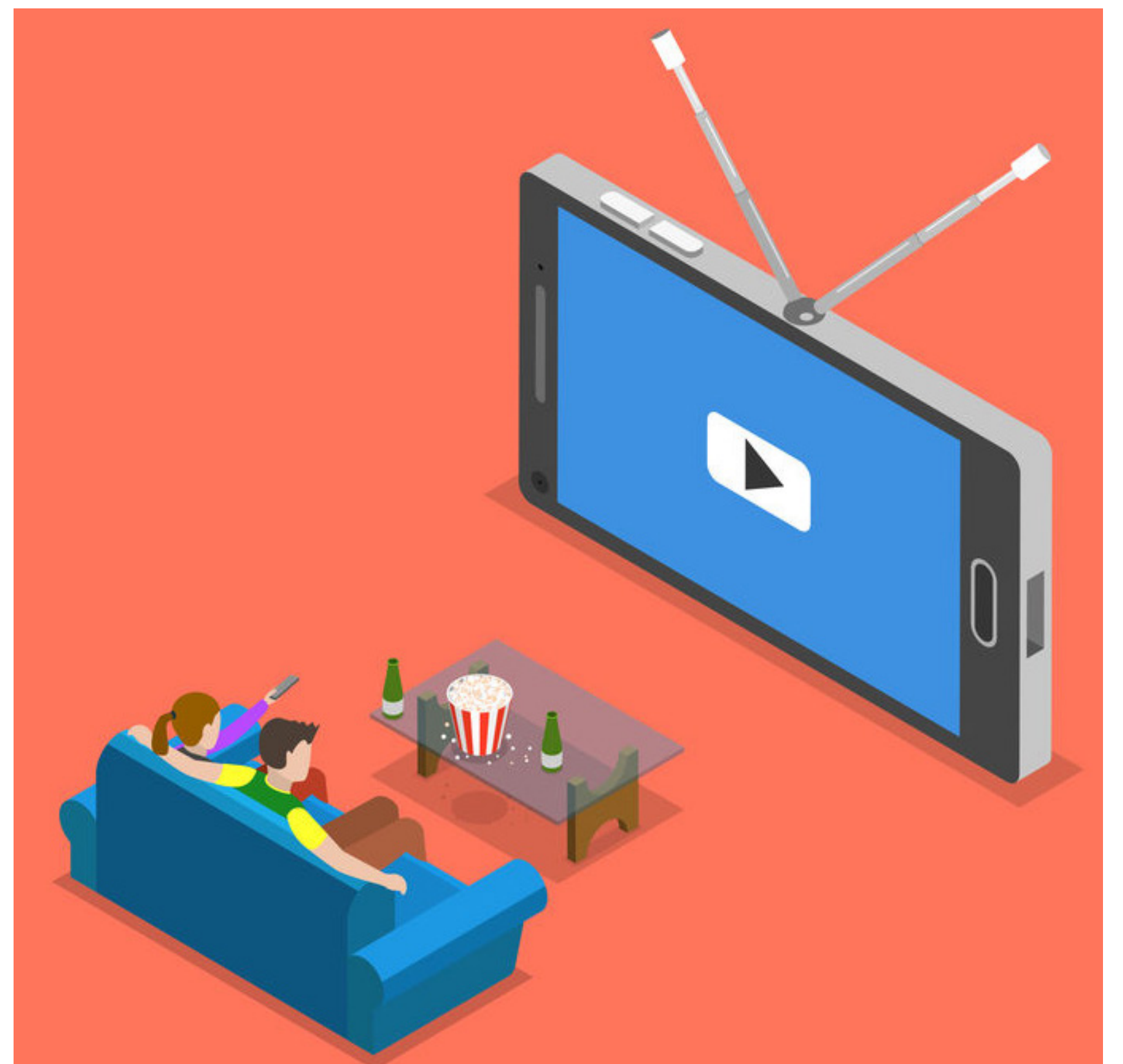
Following the amendments to the Law on the Establishment and Broadcasting Services of Radio and Television Enterprises (RTUK Law) in 2018, it has been expected to put a regulation regarding broadcasting services provided on the Internet into force. The expected regulation was published by the Radio and Television Supreme Council (RTUK) in the Official Gazette on 01.08.2019 under the name of Regulation on the Presentation of Radio, Television and On-Demand Broadcasting on the Internet Medium (Regulation). Within the scope of the Regulation, many parties broadcast on the Internet medium were obliged to comply with the related legislation in many different aspects such as provision and transmission of broadcasting services on the Internet; licensing and authorization of broadcast transmission and supervision of the related broadcasts.

First of all, it should be stated that the Regulation has excluded real and legal persons which solely provide hosting services for the radio, television and on-demand broadcasting from its' scope in line with the law numbered 5651. Accordingly, in a broad sense, it might be noted that those conduct their business as hosting service provider for the relevant contents do not fall within the scope of the Regulation.

The Regulation designates the obligations and the supervision of two players in the market basically. Within this framework, media service providers having responsibility and authority to regulate and control the broadcast stream with content and selection of programs in radio and television broadcasts are one of the players in the Regulation. The other is on-demand broadcasting service providers having the responsibility for the content selection and presentation them in a catalog and to determine the regulation and transmission format of this service. In addition, platform operators providing transmission of a large number of radio, television and on-demand services through their own URL address and/or applications and making them available for users directly and/or with conditional access are another player in the Regulation.

### License and Authorization

Within the scope of the Regulation, the obligation to obtain a broadcast license was brought for the media service providers wishing to procure radio, television and on-demand broadcasting services exclusively on the Internet. Accordingly, the enterprises with provisional broadcasting rights and/or broadcasting licenses obtained from RTUK may also provide their broadcasts on the Internet, provided that they comply with the relevant legislation. Platform operators wishing to





transmit broadcast services through the Internet are obliged to obtain broadcast transmission authorization from RTÜK. The obtained license applies to a single service; same media service provider can only provide a radio or a television or an on-demand broadcasting service and must obtain separate broadcast licenses for these different mediums. Other noteworthy provision under the Regulation is that the foreign entities are also subject to the Regulation within a certain scope. In this context, in case the content or hosting service provider is located abroad, the Regulation applies to (i) the media service providers and platform operators broadcast in contravention of RTÜK Law and the international agreements which Turkey is a party to, (ii) broadcasting organizations targeting the audiences in Turkey and providing content in Turkish or (iii) broadcasting organizations having commercial communications target the audiences in Turkey but not in Turkish. Therefore, these organizations are obliged to obtain broadcast licenses or broadcast transmission authorization according to their activities.

License to broadcast on the Internet will be granted to the joint stock companies established for providing radio, television and on-demand broadcasting services and in accordance with the provisions of the Turkish Commercial Code. It is sought to be a limited liability company and joint stock company established in accordance with the provisions of the Turkish Commercial Code in order to grant the broadcast transmission authorization.

Within the framework of the Regulation, broadcast license and broadcast transmission authorization fees are also determined. In this context, the license fee for radio broadcasts on the internet is 10.000 TL, the license fee for television and on-demand broadcast services is 100.000 TL. Related broadcasting license is granted for a period of 10 years. Furthermore, media service providers that offer broadcast services with conditional access and charge their subscribers or users must pay %0.5 of their annual net sales to RTÜK at the end of the following year's April in addition to license fees. Authorization fee for broadcast transmission on the Internet is determined as 100.000 TL per year. Additionally, platforms that offer broadcast services with conditional access and charge their subscribers or users must pay %0.5 of their annual net sales to RTÜK at the end of the following year's April in addition to license fees.

## Sanctions

In case RTÜK determines any broadcasting on the Internet without obtaining a broadcasting license, it will be announced on the website of RTÜK, and the real or legal person providing these broadcasting services will be notified regarding the application for broadcasting. They also may continue to provide broadcasting services for three months if they pay the license fee corresponding to three months. In case of any delay of granting license, the period granted for broadcasting might be extended for another three months, provided that the relevant fee is paid in advance. Related person must either terminate the broadcasting service within seventy-two hours of the publication of this announcement or submit a letter of undertaking with its' application request. Otherwise it is possible to request for the removal of content or access denial decision from the criminal court of peace. In addition a criminal complaint might be filed against the members of the board of directors and the general manager of the legal persons, and the real persons. The relevant provision of the Regulation will enter into force on 1 September 2019.



In accordance with the provisional article of the Regulation, media service providers providing broadcast services on the Internet and not having any temporary broadcast rights and/or broadcast licenses, and the platform operators who transmit the broadcast services are required to apply for broadcast license and broadcast transmission authorization until 1 September 2019. In the event that the application is not made or completed, removal of the relevant contents and/or access denial decision might be requested.

Other obligations required to comply with by the media service provider and the internet broadcast platform operator are brought by the Regulation. In this context, the media service providers shall fulfill many obligations such as removing the on-demand broadcast that does not comply with the RTUK Law from their catalog; providing adequate number of subscription, software, hardware, license and right of usage in order to ensure that RTUK monitors and evaluates their services; using protective symbols ; notifying the their program catalog to RTUK; and declaring the commercial revenues and paying the RTÜK share corresponding to it. Platform operators, on the other hand, shall fulfill the obligations such as reporting the media service providers that do not obtain broadcast license or possess an expired broadcast licenses; providing adequate number of subscription and technical system in order to ensure the supervision of the RTUK, acting impartially to the service providers, providing remote access and recording rights to audio and video files; and sharing the relevant contact details of the media service providers with RTUK.

## Conclusion

Prior to the entry into force of the Regulation, there was no supervision mechanism conducted by RTÜK for the broadcasts on the Internet. With the Regulation, broadcasts on the Internet and relevant activities of the aforementioned providers are subject to the supervision of RTÜK within the limits set out by the Regulation. Within this framework, since there has been no such regulation so far, those providing broadcast and transmitting its' broadcasting services on the Internet should review their compliance with the relevant legislation and take required actions to comply with, if necessary, as soon as possible.

## NEW DECISIONS OF TURKISH DATA PROTECTION BOARD

Turkish Personal Data Protection Board (Board) has issued precedential decisions that closely concern the data processor, data controller and related person regarding personal data protection and data security since the day that the Law on the Protection of Personal Data (Law) came into force. Recently, certain issued decisions are crucial due to their potential impact on many sectors. You may find some of the relevant summaries below.

### Board's Decision no. 2019/204: Unlawful processing and acquisition of personal data

An administrative fine was imposed on the data controller for an unlawful processing due to using the mobile phone number of the former customer of its' personnel without obtaining explicit consent and for advertising/information purposes. In addition, Board has decided about the personnel that shares the personal data of the customers in previous workplaces. Accordingly, it was decided to inform the applicant regarding the offense of "unlawful possession or acquisition of personal data" under the Article 136 of the Turkish Penal Code. Full text of the decision can be found at:

<https://www.kvkk.gov.tr/lcerik/5517/2019-204>



### **Board's Decision no. 2019/157: Transfer of personal data abroad by corporate e-mail and storage services**

Upon the request of the data controller wishing to receive corporate e-mail services from the service provider whose data centers are located abroad, Board stated that receiving services such as infrastructure or storage from the service providers whose data centers or servers are located abroad, would deemed as transferring abroad and such transfer shall be made in compliance with the Law. Considering that the Board has not yet declared the countries having adequate level of protection, it was once again stated the fact that data controller should take the required steps outlined in the Law when transferring the personal data abroad. Full text of the decision can be found at:

<https://www.kvkk.gov.tr/lcerik/5493/2019-157>



### **Board's Decision no. 2019/159: Processing of personal data against the law and the rules of bona fides.**

The Board considers the messages received from an asset management company (data controller) with the purpose of collecting the debts as being in the scope of mandatory data processing activity for the establishment, exercise or protection of any right which is one of the processing exceptions set out by the Law to obtain the explicit consent. However, sending the messages with the same content more than once on different dates constitutes an abuse of the right which is against the principle of “processing of personal data lawfully and in conformity with the rules of bona fides”. Full text of the decision can be found at: <https://www.kvkk.gov.tr/lcerik/5494/2019-159>

### **Board's Decision no. 2019/162: Commercial electronic messages in the light of personal data**

In line with the previous resolution of the Board; the conditions required by the Law must be met in order to process telephone number; otherwise it would constitute a violation of the Law. The relevant decision is important since the legislation on commercial electronic messages was evaluated in conjunction with and the legislation on personal data. Full text of the decision can be found at: <https://www.kvkk.gov.tr/lcerik/5495/2019-162>

### **Board's Decisions no. 2019/81 and 2019/165: Processing of biometric personal data**

In the summary of the relevant decisions, data processing activities such as monitoring the entrances and exits by hand reading system and displaying information such as passport photographs or last visits of the related persons were evaluated. It is significant that the Board refers to the regulations of European General Data Protection Regulation (GDPR) and the decisions of European Court of Human Rights (ECHR) when assessing the concrete situations.



In the related summary text, subsequent to the elaboration of the Board regarding the characteristics of the explicit consent, Board stated that there were violations in the relevant concrete cases in which the consent of obtaining hand prints is designated as a mandatory pre-condition to execute the online contract offered to the related persons. Accordingly, it is decided that such consent is not considered as obtained with “free will”. Therefore, it is concluded that the processing of hand print data of the individuals is incompatible with the principle of “being relevant with, limited to and proportionate to the purposes for which they are processed”, while alternative methods may be used by the data controller. Full text of the decision can be found at: <https://www.kvkk.gov.tr/lcerik/5496/2019-81-165>

### **Board’s Decision no. 2019/104: Evaluation of the violation of Facebook**

As you may recall, the data breach announced by Facebook in December 2018 as a photo API error was also raised before the Board in April 2019. The Board decided to carry out an ex-officio inquisition on the grounds that it had not received any notification, in spite of the notification of Facebook stating the fact that approximately 6.8 million users are likely to be affected due to the violation which lasted for a total of 12 days in September 2018. In this context, the Board emphasized that there were multiple data breaches in the event; the failure to respond to the violation in a timely manner indicates a lack of the required security measures considering the violation lasts for 12 days; there is an access to personal data exceeding the limits of the explicit consent obtained; so that the principle of being relevant with, limited to and proportionate to the purposes for which they are processed cannot be met and since changing the privacy settings is not allowed during the installation of applications, there is a violation of the principle of processing personal data complying with the law and the rules of bona fides. Therefore it was decided to impose a total of TL 1,650,000 administrative fines on Facebook. Full text of the decision can be found at:

<https://www.kvkk.gov.tr/lcerik/5481/2019-104>

### **Endeavor Turkey Has Selected New Members of Board of Directors and Audit Committee**

The general assembly of Endeavor Turkey which is a part of an international network aiming to contribute to sustainable economic development by supporting entrepreneurs has been recently held. Congratulations to the all members in particular to Koray Gültekin Bahar who has been elected as a board member and our managing partner Gökem Gökçe elected as the member of the audit committee.





# Answers. Not theories.

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### About our firm

Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, debt recovery, real property, and commercial litigation. Please visit our web site at [www.gokce.av.tr](http://www.gokce.av.tr) for further information on our legal staff and expertise.

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