



Institute for Development  
of Freedom of Information

# BLOCKED WEBSITES IN GEORGIA

LEGAL AND PRACTICAL ANALYSIS





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## Main Findings

- Internet service provider companies are the technical enforcers of website blocking in Georgia. The Georgian National Communications Commission addresses providers based on appeals from customers and other subjects (including state organs).
- The Commission is never a primary initiator of website blocking. It only has a kind of intermediary role between appealing subjects and providers.
- In the period from 2017 to September 26, 2022, the Commission sent 65 addresses to providers. Overall, 480 websites were requested to be blocked.
- The Commission has not requested the blocking of any website in 2017. The highest number of blocked websites took place in 2022 (only for the first 9 months of 2022).
- The majority of blocked websites are copyright violating content (77%), then - other production violating Georgian legislation (16.5%), followed by - pornography (6.5%).
- Most often the Commission was addressed by state organs (38%), followed by legal entities (31%) and individuals (20%).
- The actual rate of blocking of requested websites is about 55%.
- Various ways to avoid blocking have been identified, such as mobile apps. In addition, owners of blocked websites use different platforms (e.g. Telegram) to provide customers with information about new registered domains (of the same website).
- Owners of blocked websites, in one way or another, are still able to disseminate inadmissible production. Especially popular websites are able to do this easily.
- The low rate of blocking and the number of cases to avoid it in one way or another could put the effectiveness of the web-blocking mechanism in Georgia under question.
- The normative regulation of website blocking contains many shortcomings which, in turn, have the potential to be misused against fundamental human rights, including the freedom of expression. The study has not revealed a systemic practice of abuse of this authority by the Commission.
- Neither the Communications Commission, nor internet service providers, nor other state bodies publish information about the use of the website blocking mechanism.

## Introduction

Following the virtualization of public life, regulation of information exchange via the internet has become an important legal issue. Virtual relations need certain regulations to protect legal interests, such as the right of property, public order, prevention of crimes, etc. To achieve this goal, in Georgia, as well as in other countries, a legal basis for blocking and filtering internet content is in place.

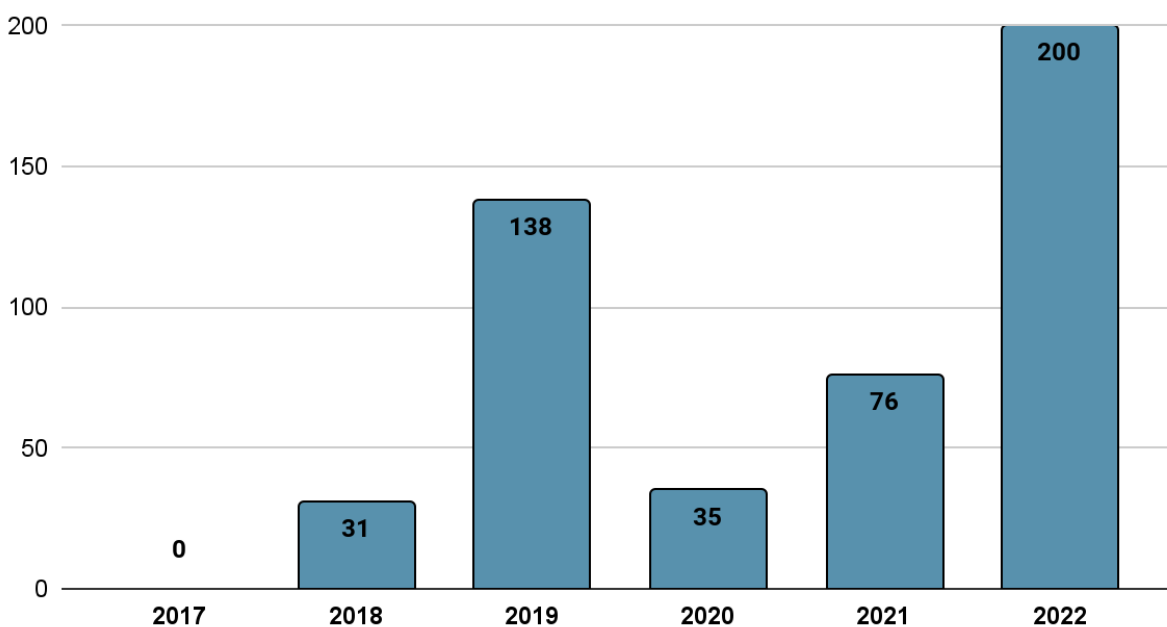
The aim of this analysis is to review the legal model of internet-blocking in Georgia, its normative grounds, and aspects of its implementation in practice.

## Methodology and Scope of the Analysis

On September 12, 2022, IDFI requested public information from the Georgian National Communications Commission (“Communications Commission” or “Commission”) about the appeals to block internet pages sent to internet-providers from 2017 up until that date. The analysis covers the period from 2017 to September 26, 2022.

Although the research period includes 2017, the information provided by the Commission shows that there were no blocked websites in 2017, and the highest number comes for 2022.

### Dynamics of Blocked Websites by Years



Internet service provider companies are the technical enforcers of website blocking. As the information we requested shows, individuals, companies, or state organs address the Commission. The Commission, for its part, sends addresses to internet service provider companies based on these correspondences. But any person is entitled to directly address internet service provider companies. Therefore, the statistical information presented below may not fully show the general state of web-blocking in Georgia.

## **1. What can be a basis for blocking a website**

In accordance with article 17, paragraph 7 of the Constitution of Georgia, the Commission is the body established to protect the rights of consumers and entrepreneurs in the field of broadcasting and electronic communications. Resolution № 3 of March 17, 2006, of the Commission "the Regulations in Respect to the Provision of Services and Protection of Consumer Rights in the Sphere of Electronic Communications" ("The Resolution") defines preconditions that could become a basis for blocking or restricting some information on the internet. Such information and service falls under the term "inadmissible production".

### **1.1 What is "inadmissible production"**

The Resolution defines the types of information dissemination that are inadmissible via the internet. Namely, according to the Resolution, inadmissible production is "production transmitted by means of electronic communications, such as pornography, items featuring especially grave forms of hatred, violence, invasion of a person's privacy, as well as slanderous, insulting, violating the principle of presumption of innocence, inaccurate, and other products transmitted in violation of copyright and the Georgian Legislation".

### **1.2 Interpretation of the Constitutional Court of Georgia regarding "inadmissible production"**

Following the decision<sup>1</sup> of August 2, 2019, the Constitutional Court of Georgia declared the restriction of the dissemination of information based on inadmissible production to be unconstitutional. The legal definition of "inadmissible production" contains 9 types of information. The Constitutional Court reviewed only 6 of them (Items featuring especially grave forms of hatred; Invasion of a person's privacy; Slanderous; Insulting; Violating the principle of presumption of innocence; Inaccurate)<sup>2</sup> and considered that the restriction of content based on all of these 6 types is unconstitutional.

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<sup>1</sup> Judgment №1/7/1275 of the Constitutional Court of Georgia of August 2, 2016<sup>9</sup> on the case "Aleksandre Mdzinarashvili v Georgian National Communications Commission".

<sup>2</sup> Because the subject matter of the dispute was limited only to these categories.

The Constitutional Court considered that the Commission was not entitled to establish legal grounds for the restriction of dissemination of information. This was considered as a violation of formal constitutional guarantees providing for the freedom of expression.

Therefore, after the decision of the Constitutional Court, according to the current legal state of affairs, the Commission remains authorized to restrict access to inadmissible production only in the cases of:

- Pornography
- Violation of copyright
- Violation of the Georgian Legislation

## **2. The current model of blocking websites, i.e. How the power of the Commission works in practice**

According to article 25, paragraph 1, „the Commission oversees the protection of the rights and legal interests of consumers in the field of electronic communications and under its auspices operates the service of public defender of consumer interests”. Subparagraph “g” of paragraph 4 of article 25 of the resolution also obligates internet service providers “to respond to the received information concerning the publication of inadmissible production and adopt appropriate measures in order to eliminate it.” The cited norm uses the terms "information" and "appeal." At the same time, neither the norm nor the other requirements set out in the Resolution stipulate who may initiate the appeal and/or specifically what kind of evidence should be submitted to the Commission. One of IDFI’s studies<sup>3</sup> revealed that one of the tested methods is the provision of information by the Commission to internet service providers.

This was also mentioned by the Commission in the Constitutional Court: “On a practical level, internet service providers usually do not make decisions on their own initiative and only enforce the appeals sent by the Commission or other state organs”.<sup>4</sup>

Following the current practice, the Commission sends addresses based on the appeals from consumers and other subjects (including state organs).

The study shows that it takes about 18 days for the Commission to respond to requests. However, the Commission’s response times for different appeals vary widely. Specifically, in some cases the Commission sends an address within one day following an appeal, and in some

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<sup>3</sup> IDFI, INTERNET FREEDOM AND DIGITAL RIGHTS IN GEORGIA: SYSTEMIC CHALLENGES. Available: <https://bit.ly/3hfSvWQ> access date: 13.11.2022.

<sup>4</sup> Judgment №1/7/1275 of the Constitutional Court of Georgia of August 2, 2019 on the case “Aleksandre Mdzinarashvili v Georgian National Communications Commission”.

cases it takes 3 months. It is not clear, from the information received from the Commission, what is the reason for such an inconsistency in response times.<sup>5</sup>

## **2.1 Total quantitative and qualitative information on fully/partially blocked websites**

During the research period, the Commission addressed internet service providers 65 times. In many cases, blocking of multiple websites was requested by a single address. In total, the Commission requested 480 websites to be blocked.<sup>6</sup>

## **2.2 Who requests websites to be blocked?**

The Commission usually does not monitor websites on its own initiative. Individuals, legal entities, and state organs address the Commission.

On its own initiative, the Commission addressed internet service providers to block websites only 7 times (11% of cases). But it should be mentioned that the Commission has never been the original initiator of blocking in all of these 7 cases. More specifically, when the Commission, based on the letter of LLC “Cavea Plus”, requested the blocking of certain websites, to specify this request, an additional 6 requests were sent (without an appeal from “Cavea Plus”), mentioning Commission’s monitoring results revealing other websites that transmit inadmissible production.<sup>7</sup>

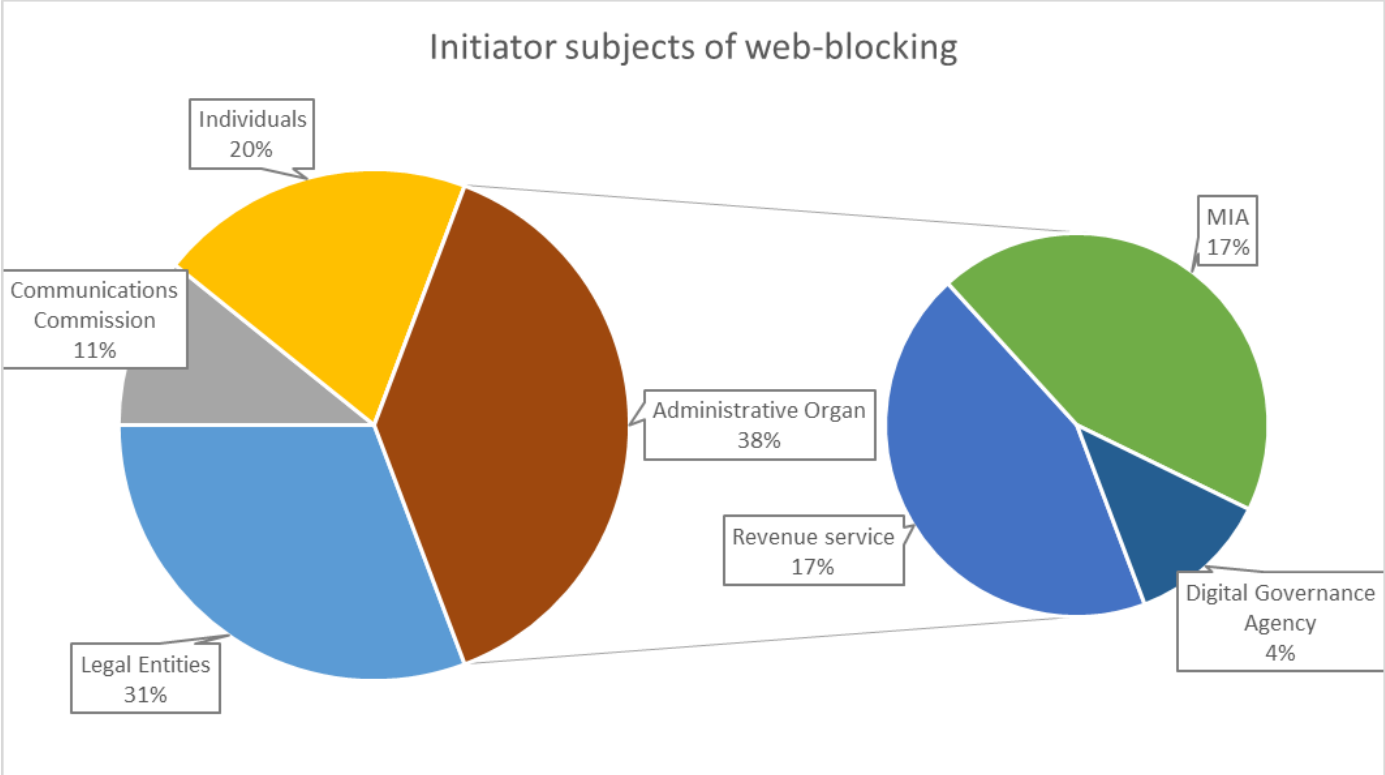
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<sup>5</sup> Response times by legal grounds are: Copyright - 35 days, personal data - 25 days, drug sale - 17 days, interference in computer system - 12 days, prostitution - 7 days and gambling - 6 days.

<sup>6</sup> Some of them are full websites and some of them are specific content published on websites.

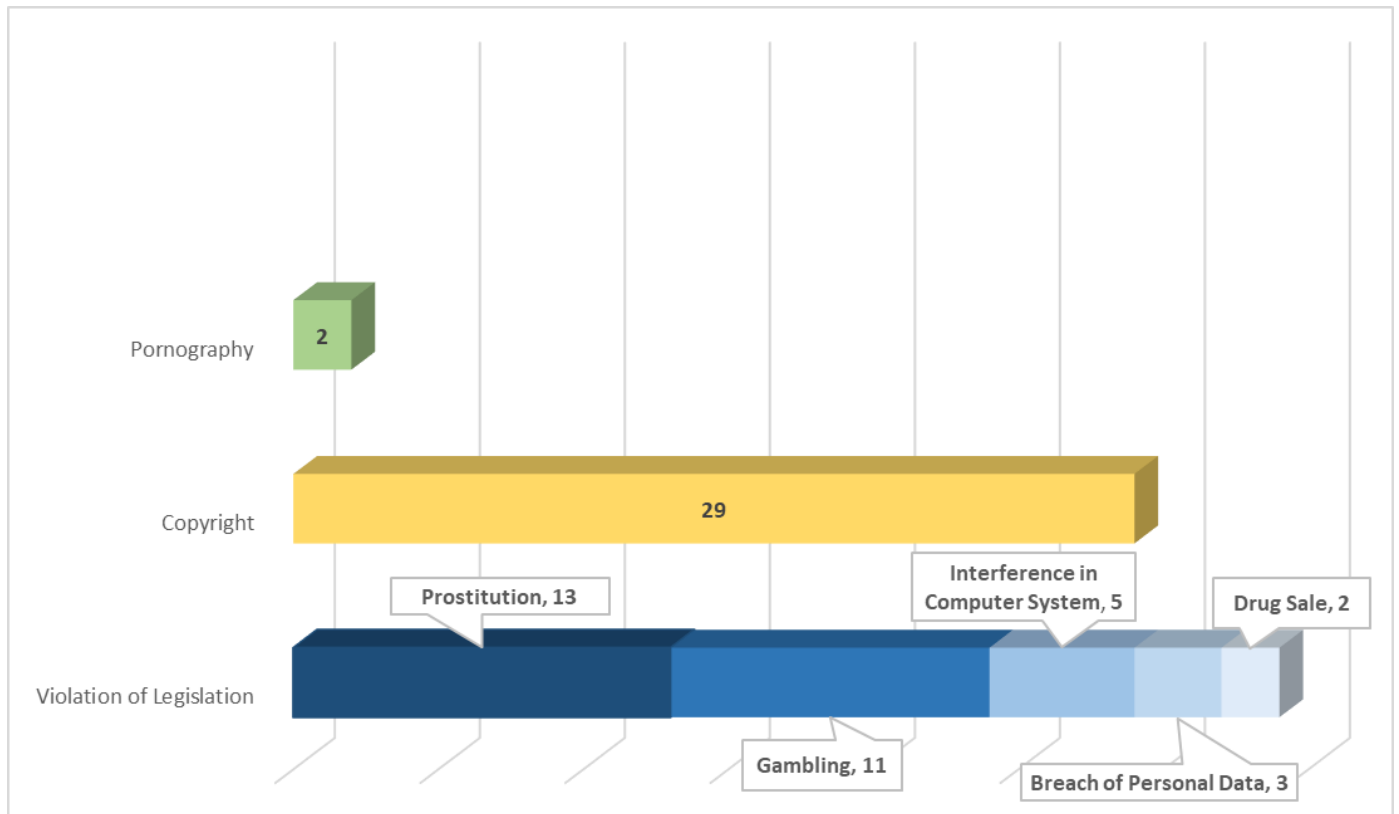
<sup>7</sup> The 7<sup>th</sup> address is similar. At first, the Commission addresses internet service providers based on Ana Bukia’s (film director) appeal, but the second time it addresses on its initiative mentioning that named websites are still accessible.





**2.3 Analysis of Commission’s requests in terms of content**

As mentioned above, several content-based legal grounds can become the reasons for blocking websites. The statistics of reasons/legal grounds for blocking websites by the Commission’s 65 requests are as follows:



### **Pornographic production (2 requests)**

In these two cases the Commission was addressed by the Special Cybercrime Unit of the Ministry of Internal Affairs (MIA) of Georgia requesting the blocking of websites disseminating pornographic production containing images of minors. According to the Unit’s information, pornographic works containing images of minors had been disseminated via these websites.

MIA requested 31 websites to be blocked. In 28 out of these 31 cases (90%), access to internet content is restricted, while the remaining 3 websites are still accessible.

On the 4<sup>th</sup> of November, 2022, the Constitutional Court of Georgia delivered a judgment<sup>8</sup> regarding the constitutionality of Article 255, Paragraph 1 of the Criminal Code of Georgia, which establishes criminal liability for illegal production, dissemination, or advertisement of pornographic works, printed publications, images, or similar items, as well as trade in or storage of these items for marketing or dissemination purposes.

<sup>8</sup> Judgment N1/8/926 of the Constitutional Court of Georgia of November 4, 2022 on the case “Giorgi Logua v the Parliament of Georgia”.

The Constitutional Court found that this norm is so vague that it does not meet the principle of specificity and comes into conflict with Article 31, Paragraph 9 of the Constitution of Georgia (“No one shall be held responsible for an action that did not constitute an offense at the time when it was committed.” The so-called principle “there is no crime without law”). Despite this, the Constitutional Court did not assess the constitutionality of this norm in relation to freedom of expression. The estimation of correctness of this decision is irrelevant within the framework of this study, although its results should be reviewed to the extent that they can have an effect on the grounds for blocking websites on the internet. The Court deferred the norm to be declared void to May 1, 2023, until the Parliament defines what a “pornographic work” means.

The decision of the Constitutional Court poses many questions, but the purpose of this study is not to examine them. However, it is important that the establishment of the legal definition of pornography will have an effect on blocking internet content based on this legal ground.

### **Production violating copyright (29 requests)**

The vast majority of websites are blocked based on this ground. As practice shows, the Commission is addressed by copyright owner subjects who request the restriction of access to websites that violate legal interests of copyright owners. The Commission usually checks whether the copyrights are violated by the content placed on websites on its own before informing internet service providers. For example, we can refer to several requests from LLC “Cavea Plus” requesting the blocking of Georgian websites transmitting audio-visual content without proper rights.<sup>9</sup> The Commission checked the existence of copyright, corresponded with Sony Picture Distribution, and after receiving an email from them (in which the company confirmed that the listed websites had not had the right to disseminate their product), requested the blocking of these websites.

In the vast majority of cases, based on this ground, the Commission was addressed by copyright owners of audiovisual works, referring to the fact that the listed websites were disseminating content without proper permission and license. For example, the production company “Magnet Films”, which has been producing audiovisual content since 2015, requested for certain webpages, where the film “Negative Numbers” was placed without proper license, to be blocked. In two cases the Commission was addressed by individuals–film directors. Their films were placed on pirated and torrent sites without permission.<sup>10</sup>

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<sup>9</sup> Websites like [adjaranet].[com], [imovies].[cc], [movie].[ge], etc.

<sup>10</sup> Dea Kulumbegashvili’s film: “Beginning” and Ana Bukia's film: „I Swam Enguri”.

Copyright owner companies usually attached documents verifying their rights to their appeal letters. For example, LLC “GMI”, music publisher and manager of rights to phonograms, which exclusively manages copyright and related rights of Georgian composers/lyrics authors and performers, was requesting the blocking of websites that illegally reproduced phonograms/musical works. To verify its rights, the company submitted to the Commission the license agreements with authors/performers about the management of their exclusive rights.

Copyright-violating production includes production that violates related rights as well.<sup>11</sup> For example, organizations that have rights to broadcast sports events (Eurasian Broadcasting Enterprise Limited (“Setanta Sport”) and LLC “Adjarasport.tv”) addressed the Commission in order to block websites that illegally broadcasted sports events. These organizations, in order to verify their rights, submitted the certificate of the license-issuing entities on the exclusive rights for sports events in the territory of Georgia and corresponding license agreements.

It should be mentioned, however, that the rate of actual restriction of internet-content based on this ground is quite low. Namely, there were 29 letters that, overall, requested 373 websites to be blocked. In the scope of this research, 307 of them were checked<sup>12</sup> and 159 of them are still accessible as of today (51.8% of the content).<sup>13</sup>

### **Other products transmitted in violation of the Georgian Legislation (34 requests)**

Out of 34 cases of transmittal of information in violation of Georgian legislation, the situation by specific grounds is as follows:

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<sup>11</sup> According to Article 46, Paragraph 1 of the Law of Georgia on “Copyright and Related Rights”: “Subjects of related rights are: performers, producers of phonograms and videograms, and broadcasting organizations.”

<sup>12</sup> In the remaining 66 cases, for some reasons, it was impossible to check the content and/or the access status is unknown.

<sup>13</sup> In some cases, websites redirected consumers to other domains (but to the same content and/or to the other type of inadmissible content). In such cases, technically, the access to requested content is not restricted and for the purposes of this research, such a website is not considered as “blocked”. In some cases, the website itself is available, but specific content is removed (for example, as a result of Commission’s address, a specific film is not placed anymore). In such cases, for the purposes of this research, websites are considered as “blocked”.

The study also revealed cases where website owners tried to avoid restriction in one way or another. For example, the website [prime-movies].[tv] offers users upon entering to download the mobile application. Access to restricted content is possible only via this application, and it is not uploaded on the website itself. Such cases, for the purposes of the research, are not considered as restricted content. And in some cases, websites, upon entering, ask for registration (e.g. [gelexy].[ru]) and only after this can content be accessed. These cases were not tested via registration, and it is unknown whether the content is available or not after authorization. Therefore, such cases will not be considered in the statistics.

### **Prostitution<sup>14</sup> and promotion of prostitution<sup>15</sup> (13 requests)**

Based on this ground, the requests to the Communications Commission overall referred to 30 websites, 19 of which have been blocked (63% of the cases).

In the majority of cases, the Commission responded to letters of consumers and individuals and, in its addresses to internet service providers, specified that prostitution is an offence defined by the Administrative Offences Code. In two cases, the Commission responded to the letters of the unit of the Ministry of Internal Affairs combatting trafficking and illegal migration, where the unit, in the framework of criminal investigation on the facilitation of prostitution case, revealed certain websites and requested them to be blocked.

It should be mentioned that both consumers' and MIA's letters referred to similar websites<sup>16</sup>, but in its addresses the Commission refers to the Administrative Offences Code when addressed by consumers and the Criminal Code when addressed by the MIA.

### **Provision of gambling services without proper permission, violating the Law of Georgia “On Organizing Lotteries, Games of Chance and Other Prize Games” and the Law of Georgia on “Licenses and Permits” (11 requests)**

In order to block websites based on this ground the Commission was addressed by LEPL Revenue Service. In the letters of the Revenue Service, it is mentioned that listed websites do not have relevant permission issued by the Revenue Service, which grossly violate the Georgian legislation and reduces budget revenues. Via these websites, Georgian citizens can register, take part in gambling, place money on account and cash out.<sup>17</sup>

Based on this ground, 18 websites were requested to be blocked, but access to only 3 of them is restricted (17%).

### **Illegal interference in computer system for financial gain<sup>18</sup> (5 requests)**

Based on this ground, in order to restrict access to certain websites, the Commission was addressed by the Special Cybercrime Unit of the Ministry of Internal Affairs (MIA) of Georgia. The Commission has responded to the websites, revealed in the framework of a criminal investigation, that, according to the MIA, were used in order to interfere in citizens' computer systems for financial gain.

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<sup>14</sup> Article 172<sup>3</sup> of the Administrative Offences Code of Georgia.

<sup>15</sup> Article 254 of the Criminal Code of Georgia.

<sup>16</sup> In each case, it was about blocking the websites containing contact information of so-called “sex workers”.

<sup>17</sup> So-called online-casinos, betting websites, and etc. (e.g. [1xbet].[com], [betvictor].[com] etc.).

<sup>18</sup> Article 286<sup>1</sup> of the Criminal Code of Georgia.

5 websites were requested to be blocked by this legal ground. Access to all 5 of them is restricted.

### **Breach of personal data<sup>19</sup> (3 requests)**

Based on this ground, the Commission was addressed by LEPL Digital Governance Agency. In two cases, the requests concerned the illegal appropriation of personal data, and in one case – the publication of personal data. Namely, personal data, including a database of ID cards and verification photos, was uploaded to the websites.

The interface of one website was similar to the interface of “TBC Internet Bank” and, in such a way, customer data (account numbers and other identification data) was fraudulently phished.

All 15 requested websites have been blocked.

### **Illegal sale of drugs<sup>20</sup> (2 requests)**

Blocking of websites based on this ground was preceded by information provided by the Ministry of Internal Affairs of Georgia about drug trade via certain websites.

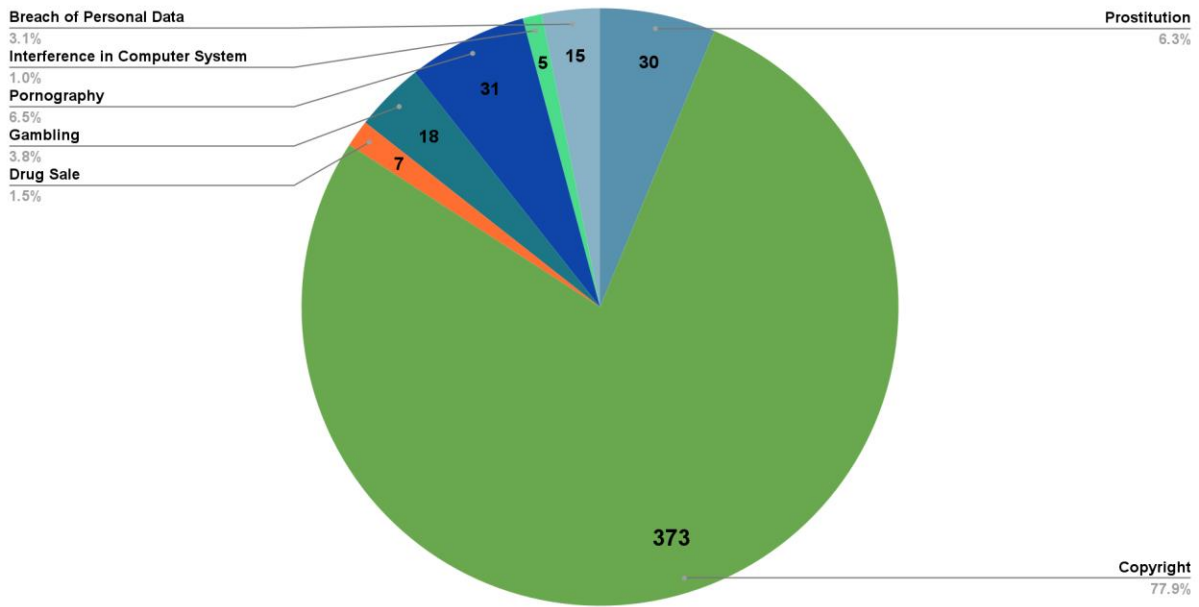
8 websites were requested to be blocked based on this ground. Within the framework of the research, it was possible to check 7 of them, and in all 7 cases access to the content is restricted.

The statistics of websites blocked by the grounds for blocking is as follows:

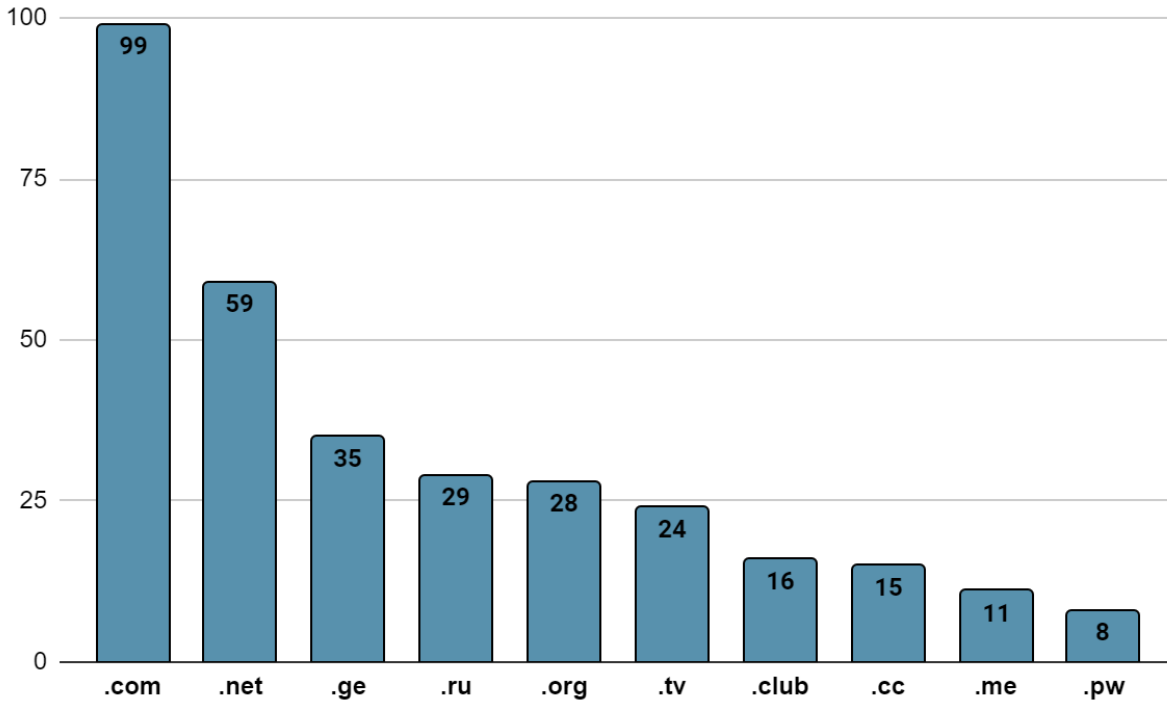
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<sup>19</sup> Article 157 of the Criminal Code of Georgia.

<sup>20</sup> Article 260 of the Criminal Code of Georgia.



Statistics of blocked websites by domain types are as follows (top 10 most commonly used domain types):



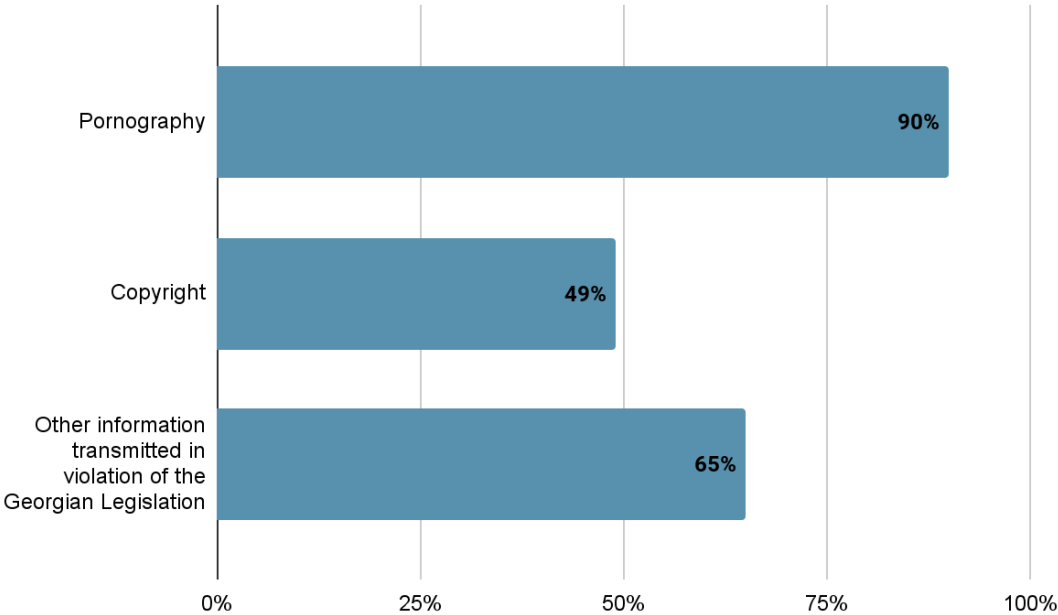
And top 5 country code top-level domains (ccTLD) by countries:

Country	Domain	Number of Websites
Georgia	.ge	35
Russia	.ru	29
Tuvalu	.tv	24
Cocos Islands (Australia)	.cc	15
Montenegro	.me	11

**2.4 How effective is website blocking in practice**

The low rate of actually blocked websites can put the enforcement of this authority of the Commission under question. Specifically, the actual rate of blocking is about **55%**.

And the blocking rate by legal grounds is as follows:



Detailed table:



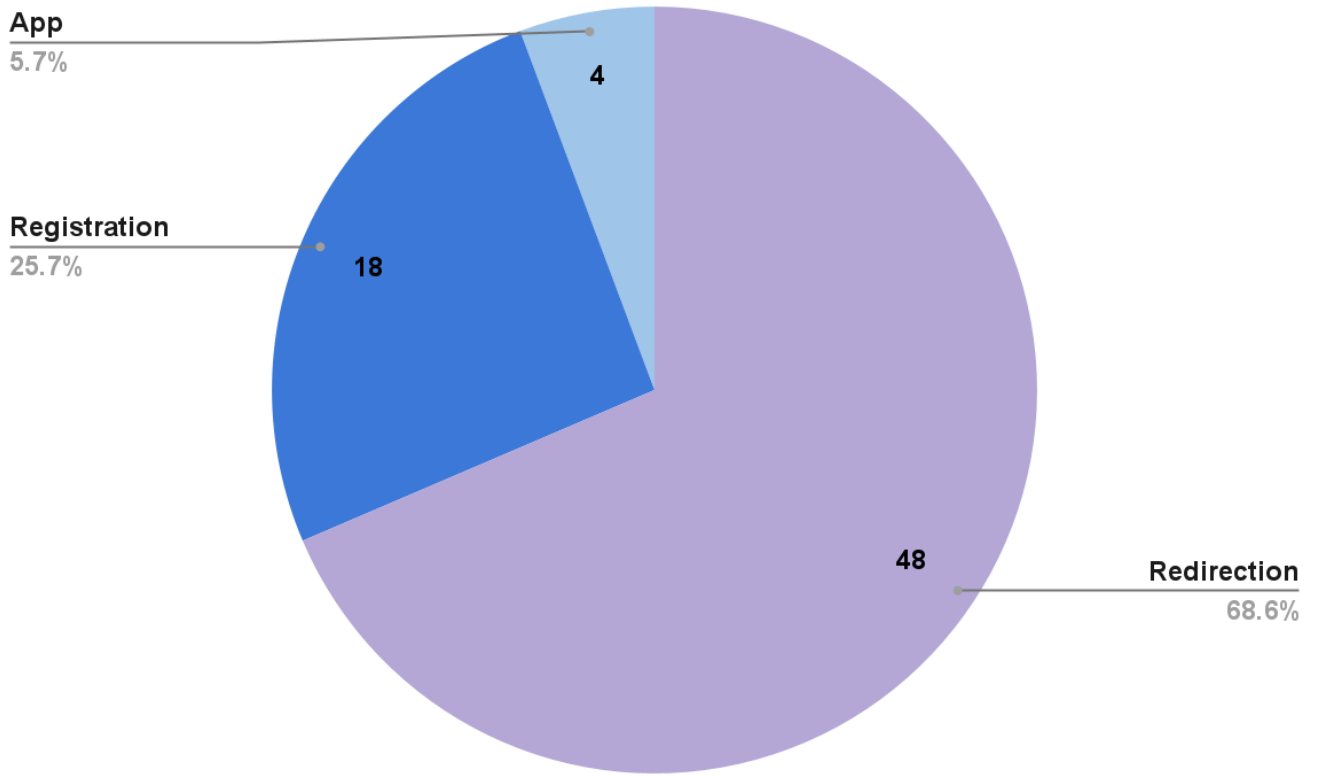
Legal Ground	Number of Requested Websites	Actual Rate of Blocking
Breach of Personal Data	15	100%
Drug Sale	7	100%
Illegal Interference in Computer System	5	100%
Pornography	31	90%
Prostitution	30	63%
Copyright	373	49.1%
Gambling	18	17%

It should be mentioned that the rate of actual blocking is significantly higher when the Commission is addressed by state organs (considering only the MIA and Digital Governance Agency, the rate is almost 95%).

Within the framework of the research project, several methods of avoidance of blocking were identified. In some cases, websites redirected users to other domains (but to the same content and/or to other types of inadmissible content). In such cases, technically, access to requested content is not restricted and, for the purposes of this research, such a website is not considered “blocked”.

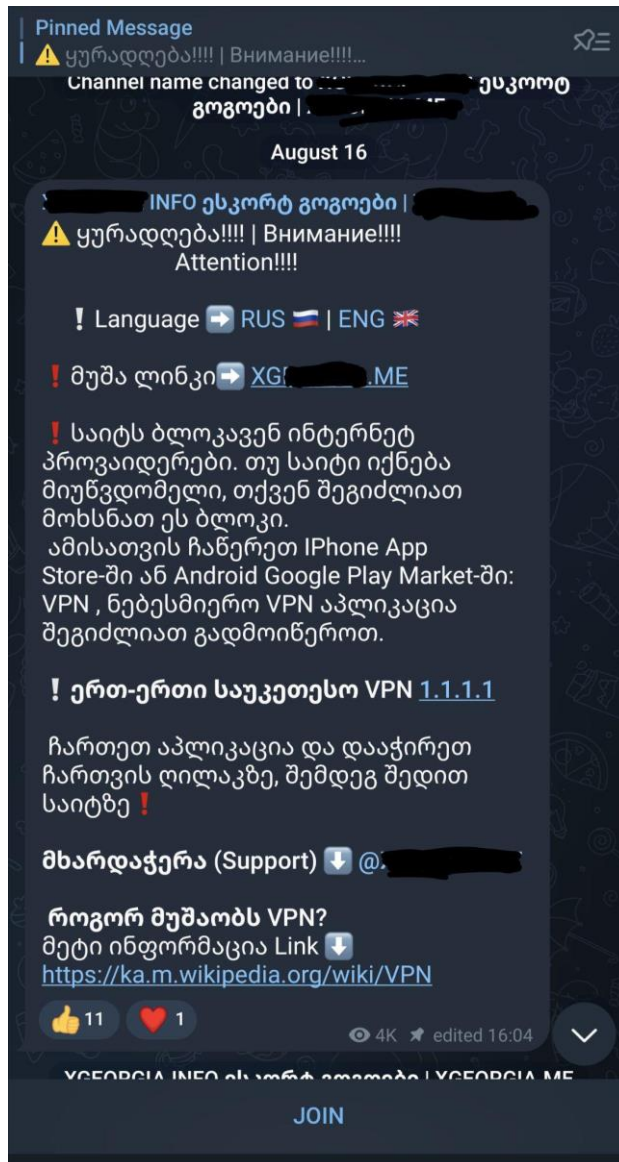
Offering users to download an app was also used to avoid blocking. In these cases, websites, upon entering, offer users to download the mobile app. Access to restricted content is possible only via this application, and it is not placed on the website itself. And in some cases, websites, upon entering, ask for registration, and only after this can content be accessed – only for authorized users.

Statistics of such cases:



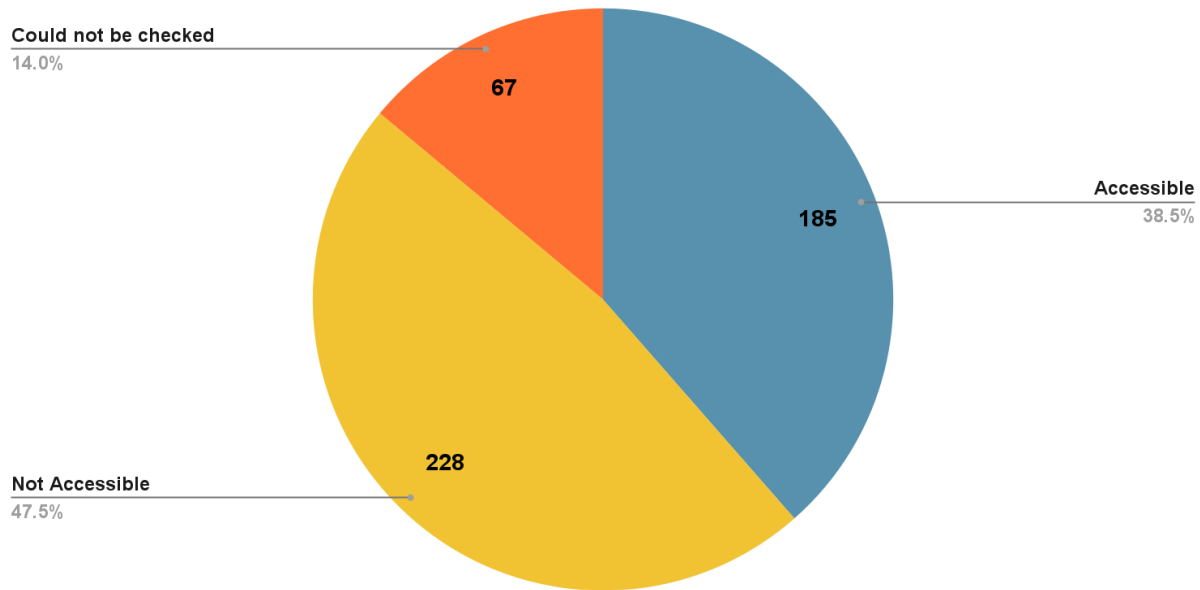
The research revealed a tendency that website owners use different platforms (e.g. Telegram) to communicate with customers. They operate under their branding (name, logo) and are easily accessible for customers.

On these platforms, customers are informed about every new-registered domain address (to avoid blocking, new domains are registered), as well as about different ways to access a blocked website. For example, a download link of one of the VPNs and instructions on how to use it:



Therefore, website owners, in one way or another, still disseminate inadmissible production and easily avoid “blocking”.

The overall statistics of 480 websites examined within the framework of this research are as follows:



### 3. Procedural ambiguities: the potential of misuse of the website blocking mechanism

The aim of this research study was not to examine the lawfulness of each case of a blocked website, but at the systemic level, it does not appear that the Commission abuses procedural shortcomings of the website blocking mechanism. It also does not appear that this mechanism is used against informational websites. However, there are many shortcomings, mostly procedural, which show that the current mechanism of website blocking has significant potential for misuse against the freedom of expression.

In particular, the resolution and other acts of the Commission do not define procedural rules on how addresses shall be reviewed and a decision shall be made. The absence of such rules poses a number of risks regarding restriction of fundamental human rights. For example, response times for different appeals vary widely. In some cases, the Commission sends a letter within one day of an appeal, while in other cases it takes 3 months.

It is not normatively defined what procedural and/or material standards the Commission must follow when deciding the compliance of content with requirements of the resolution. For example, whether to communicate with website owners, whether to hear them out about the content's legal compliance,<sup>21</sup> or what the scope of the Commission's authority in determining

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<sup>21</sup> Examples of such kind of communication were only identified in some cases regarding copyright violating content. In particular, the Commission informs providers that it has already addressed website owners and asked them to remove content. The Commission requests such websites to be blocked because of the lack of response from website owners. In majority of the cases it is unclear whether the Commission takes into account the position of website owners.

whether the content falls under “inadmissible production is” Such questions are especially relevant in terms of “other information transmitted with violation of Georgian legislation”. Often, the Commission assesses/evaluates how the content falls under “inadmissible production” on its own, and if an appellant is a state organ, fully relies on the provided information. Shortcomings in normative regulation, overall, put the effective protection of website/domain address owners’ rights in administrative proceedings under question.<sup>22</sup>

In addition, the transparency of the current website blocking mechanism should be noted. Namely, reports of the Communications Commission and the agency of Public Defender of Consumers Interests operating under its auspices do not contain any information about the number of blocked websites throughout the years, reasons of blocking, and/or other relevant issues regarding the enforcement of this mechanism. Such information is not published either by internet service providers or other state bodies. Additionally, as it was mentioned above, the Commission is not the only state body which can send requests to internet service providers about website blocking. It is unknown for us how often and based on what grounds these internet service providers exercise powers of website blocking.

## **Conclusion**

Excluding the websites that could not be checked for one reason or another, the actual rate of website blocking under the Commission’s authority is **55%**. Such a rate and the number of cases of avoidance could put the enforcement of this authority of the Commission under question.

In addition, the Commission was not actually the original initiator of website blocking in any of the cases. It only has a kind of intermediary role between appealing subjects and providers.

It is also worth mentioning that the Commission, before the decision of the Constitutional Court was delivered, had not been blocking websites based on the grounds that were declared to be unconstitutional. The trend revealed within this research study also does not indicate that the Commission uses its powers as a means of censorship against informational websites (none of the blocked websites are media outlets).

The Commission, almost in every case, makes its decision/address without prejudicial decision (e.g., a judgment of conviction that proves that the content transmitted via the website violated the Criminal Code of Georgia). Often, the Commission assesses/evaluates whether the content

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<sup>22</sup> More detailed information about systematic challenges of freedom of internet can be seen here: <https://bit.ly/3G7djdL>

falls under “inadmissible production” on its own, and if an appellant is a state organ, fully relies on provided information.

One of the grounds for blocking – “Other information transmitted in violation of the Georgian legislation” is quite vague and could be interpreted broadly. Despite the fact that within the framework of the research only 5 categories were revealed of the websites that were blocked based on this ground (prostitution, gambling, interference in computer system, breach of personal data, and drug sale), the wording itself leaves room for wide interpretation and abuse. This gives the Commission an opportunity to assess on its own whether the content violates Georgian legislation or not, which can include any normative act.

On the systemic level, it does not appear that the Commission abuses procedural/material shortcomings of the website blocking mechanism. However, there are a number of shortcomings, mostly procedural, which show that the current mechanism of website blocking has significant potential for misuse against the freedom of expression.

The detailed database of blocked websites is published on [datalab.ge](http://datalab.ge).

