

Form No:HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No. W. P. No.958/2013.

Bytes for all

Versus

Federation of Pakistan, etc.

S.No. of order/ Proceedings	Date of order/ Proceedings	Order with signature of Judge and that of Parties of counsel, where necessary.
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08	25.07.2013	Mr. Yasser Latif Hamdani, Advocate for the petitioner. Mr. Nasir Javed Ghuman, Standing Counsel. Mr. Yasir Qadir, Member (Tech), MOIT. Kamran Ali, Member (Legal), MOIT. Mr. Waseem Tauqeer, Director General, (S&D), PTA, Islamabad. Barrister Mehwish Hameed, Assistant Director (Law). Ms. Farieha Aziz, Executive Director, Blo Bhi, University of Karachi, Amicus Curiae. Khurram Zafar, Software Engineer and Member Visiting Faculty Information Technology University, Punjab, Amicus Curiae.
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Vide order dated 04.07.2013 Mr. Waseem Tauqeer, Director General, (S&D), PTA, Islamabad was directed to hold a meeting with the petitioner, as well as, the representatives of MOIT and I.T. Experts in the following manner:-

“4. It appears that the answer to the reopening of **YOU TUBE** lies in the technological ability of MOIT/PTA to block controversial content as and when it appears on **YOU TUBE**. In order to assess and explore the state of technological ability available in the country, I direct Mr. Waseem Tauqeer, Director General, (S&D) PTA to hold a meeting with the petitioner, as well as, representatives of MOIT, and the I.T. experts which may be arranged by the petitioner or approach the departmental representative directly after reading this Court order, which has been placed on the website for public convenience. Departmental representative will organize this meeting before the next date of hearing and explore various technologies that can enable MOIT/PTA to block the controversial sites and yet make available the educational and informational content on **YOU TUBE** for the general public. Mr. Waseem Tauqeer will place the minutes of the meeting on the record before the next date of hearing and shall also personally appear before the Court to render assistance.”

2. Today the said officer has placed on record the Minutes of Meeting held on 22.07.2013 at PTA Headquarter, Islamabad which states as under:-

“5. Conclusion

Based on the afore-mentioned discussion and deliberations on technicalities with regard to URIs (HTTP & HTTPS) web blocking the following is concluded:

- i) There are two cable landing station operators in Pakistan i.e. PTCL & TWA. Their traffic does not converge at one single point. Therefore, all blocking efforts have to be carried out by both the operators respectively.
- ii) The two Landing station operators and all major Internet Service Providers are capable of managing and blocking HTTP URIs manually which are blasphemous, once the URIs are identified. The capability of blocking URIs manually varies from operator to operator.
- iii) Currently, automated blocking of Blasphemy content on Internet is not possible:
 - a) Technical Experts stated that automatic blocking is not possible for blasphemy as no vendor exists today who have prepared such a list commercially for automated use;
 - b) Secondly all experts agreed that definitions of blasphemy are not consistent worldwide.
- iv) **No** system within Pakistan has been deployed which is capable of blocking viewership of “innocence of Muslims” video on HTTPS without disrupting other HTTPS traffic.
- v) If IPs are blocked the whole site is blocked. In case of unblocking of IPs e.g. Youtube, the blocking of HTTP URIs shall be done manually subject to identification of URIs and within the constraints of the system & Human resource at landing stations. Keeping in view the system constraint and large numbers of blasphemous URIs there will be instances where the video “Innocence of Muslims” and other blasphemous content

will be available on Youtube. There is a huge possibility of availability of new such links on daily basis.”

3. The representative of MOIT has pointed out that in response to order dated 26.04.2013 Google Asia Pacific Pte. Ltd. has responded to the Court’s notice through an email dated 02.07.2013 addressed to the Member (Legal), MOIT, however, the same was not earlier placed before this Court. The reply submitted by Google through Mike Orgill, Country Lead, Public Policy and Government Affairs, Asia Pacific is as under:-

“Re: Lahore High Court You Tube Case

We appreciate the opportunity to comment further on the ongoing You Tube ban in Pakistan. You Tube is a video sharing platform used by millions of people around the world every day to exchange content and ideas, and also as a platform for economic, cultural and educational initiatives; in fact over 100 hours of video is uploaded to the site globally every minute. We regret, therefore, the unavailability of You Tube.com to users in Pakistan, and very much hope that the ban will be lifted as soon as possible. This will enable the people of Pakistan to access and contribute content to the site once more as well as benefit from the many opportunities and resources You Tube offers.

With respect to your questions, You Tube operates under transparent global Community Guidelines, found here, which set out the rules as to what is acceptable or not acceptable content on the site. If we are notified of the specific urls of any videos that appear to breach these guidelines (and there is the possibility for anyone to flag any concerns they have below each video on the site), our reviewers will assess each reported url on a case-by-case basis and remove those specific urls where the content is deemed to be in breach of these rules.

In some cases, content may not breach the global guidelines but may still be flagged as particularly sensitive for some viewers. This is the case, for example, with the ‘Innocence of Muslims’ video. In this case, we add a warning interstitial page that users see before they accept to continue through to the video itself. The warning states: *“The following content has been identified by the You Tube community as being potentially offensive or inappropriate. Viewer discretion is advised”*. It was

on the basis of this interstitial page that the Government of Bangladesh, for example, lifted its earlier ban on You Tube.

In some countries, You Tube has additional functionality and customization that allows for the highlighting to users of local content within a country. You can see a list of these countries in the 'country' menu at the bottom of a You Tube [page](#). The decision as to whether to offer this service is a business, legal and commercial decision, and takes into consideration, for example, whether there is adequate legal certainty and protections for the provision of such online services in the country. We have been discussing this in the context of the need for intermediary liability protection for online platforms and a clear notice-and-take-down mechanism in Pakistan to bring these provisions into line with international best practice (such as the OECD guidelines). For example, any notice-and-take-down requirements should be based on legal process, address individual video urls as opposed to requiring broad general monitoring and pre-emptive removals, and allow for counter-notice from content owners. Whilst, without prejudice to any jurisdictional argument, we are grateful for any offer to provide additional legal certainty and protections, we believe that only a legislative change such as a clarification within appropriate legislation would ensure the necessary consistency across multiple judicial bodies and address the international best practice requirements above. The provision of such legal certainty would also, we respectfully suggest, open up the broader exciting opportunities of the digital economy to Pakistan.”

4. The observation made in order dated 04.07.2013 regarding Google for not responding to the order of this Court is, therefore, recalled to that extent.

5. I have heard the representatives of PTA, as well as, MOIT. In essence the outcome of the submissions is that it is not possible to absolutely block every controversial website/URL/URI accessible in Pakistan. This inability is grounded in the absence of any technology available that can ensure complete blocking of controversial sites over the Internet.

6. In spite of the above, time and energy is being spent by the Ministry, as well as, PTA on making efforts to block controversial websites. It has been pointed out to the Court and accepted by the departmental representative that in reality even today **You Tube** can be accessed in Pakistan by even a school going kid. Even today phonographic and controversial Films are accessible in Pakistan over the Internet. Therefore, the statement made by the MOIT that **You Tube** has been banned, does not carry much weight and at best passes for a political statement to appease the uninformed segment of our society.

7. It is also important to understand the nature of the problem. In today's digital age, information over the Internet cannot be blocked but can be intelligently regulated. There are no borders or walls that can limit this information from flowing into Pakistan unless of course we shut down Internet completely and sever our links with the outside world. It appears that a sustainable answer to the problem is self regulation at the individual and house-hold level. World Wide Web has all sorts of information ranging from 'very useful' to 'out right offensive'. The choice is ours, we can either draw upon the useful information for our national development or fall prey to the negative content and immerse ourselves into moral and cultural chaos. The choice is ours.

8. The Court has been informed by the experts namely; Ms. Fariha Aziz and Khurram Zafar that Pakistan's Virtual University (VU) has served online education content to 13,900 subscribers through 7000 educational videos that have been viewed 11.5 million times. Khan Academy, also has online educational set up from Pakistan, has served content to 1.2 million subscribers through 3600 videos that have been viewed 285 million times. It is also submitted that total offensive content reported from all countries to

Google amounts to approximately 9000 out of 120 million videos.

9. The Court has been made to understand by the submissions made by the parties that the “complaint driven” strategy adopted by the MOIT needs to be seriously revisited. The public needs to be candidly informed that answer to the problem does not lie in generating false hope that controversial websites can be blocked but in taking up the issue head on and by evolving a code of self regulation for ourselves based on our cultural and religious sensitivities. It appears from the submissions made before the Court that we as a nation need to regulate ourselves rather than take up a defenceless battle against the digital age and the global information available on the world wide web. In the end, the responsibility and the choice is of the individual to watch or not to watch a controversial websites as the same cannot be effectively blocked according to the level of technology present in our country today.

10. Google in its email to the MOIT dated 02.07.2013 has indicated that any offensive or controversial website carries a warning which states that “viewer discretion is advised”. A possible solution could be that such sites are ignored as we move on to search for more productive and useful information on the net. At the end of the day it is a policy issue and it is for the government of the day to take up a position on the Internet policy of the country keeping in view the constitutional cultural and social norms of the peoples of the Pakistan. The information over the web cannot be effectively blocked, therefore, any policy to be framed by the government must keep in mind this hard fact.

11. The issue in hand has to be first tackled by the Government of the day through a robust and transparent Internet Policy. I would, therefore, like to hear the position taken by the Federal Minister, I.T. and the Secretary

MOIT/Inter Ministerial Committee (“IMC”) who shall appear before this Court in person on the next date of hearing. Office will fax a copy of this order to the MOIT for compliance.

12. To come up on 02.08.2013.

(Syed Mansoor Ali Shah)
Judge

*M. Tahir**