

FREEDOM ON THE NET 2017

Thailand

33
/100

NOT FREE

A. <u>Obstacles to Access</u>	15/25
B. <u>Limits on Content</u>	11/35
C. <u>Violations of User Rights</u>	7/40

LAST YEAR'S SCORE & STATUS

34/100 ● Not Free

Scores are based on a scale of 0 (least free) to 100 (most free). See the [research methodology](#) and [report acknowledgements](#).



Introduction

Internet freedom declined to its lowest level yet in 2017, continuing a downward spiral that began when the junta seized power. Censorship increased following the death of the king, and a slew of laws codified repressive measures introduced under a state of emergency.

Thailand entered its third year under the military regime during the reporting period. High-ranking military officers effected a *coup d'état* in May 2014, and renamed themselves the National Council for Peace and Order (NCPO). A roadmap to return to civilian rule has been repeatedly postponed. In August 2016, a national referendum on a new constitution was held under a law which effectively prohibited campaigning against it. That constitution came into effect on April 6, 2017, retaining the NCPO's absolute authority to make important government appointments and issue directives without oversight.

In October 2016, the widely-revered King Rama IX passed away at 89 years old, launching a year of mass grief and unprecedented restrictions on content, many of which are justified under laws that ban criticism of the monarchy. Media suspended regular programming for 30 days, and news regarding the ascension of King Rama X to the throne was tightly controlled. Foreign news was subject to blocking, and a prominent anti-junta student activist was arrested after he shared a BBC Thai article about the new king on Facebook.

Regressive legislation further undermined internet freedom. The independence of the National Broadcasting and Telecommunications Commission (NBTC) was significantly reduced, and all TV, radio, and telecommunications spectrum returned to government control, undercutting two decades of media reform efforts.

The amended Computer Related Crimes Act (CCA) passed in January 2017, despite significant opposition from internet freedom activists. Internet users, journalists, and activists continue to be prosecuted because of the law's problematic terminology, which the amendments rendered even more ambiguous. A notice and takedown procedure for internet intermediaries could encourage more widespread content

removals. The law also grants the authorities more powers to block and remove offending content.

Efforts to control online expression look set to continue, including a proposal to license journalists and bloggers under a state-linked media association that could create a chilling effect and reduce the diversity of information and viewpoints available online in the future.

A. Obstacles to Access

Internet access is considered affordable, but faces an increasing tendency of tighter control by the government, whether through computer or mobile devices. During the reporting period, the junta government has shown a continuing commitment to design authority and devise various technologies and means to control online activities of Thais.

- Availability and Ease of Access

Internet penetration steadily increased over the reporting period (see “Availability and Ease of Access: Key Indicators”). The overwhelming majority of internet users access the internet through their mobile (90 percent), followed by desktop computers (50 percent). **1** Internet-capable smartphones have overtaken feature phones as the most common mobile device, and the National Broadcasting and Telecommunications Commission (NBTC), Thailand’s telecommunications regulator, reported that the mobile data market grew more than 40 percent between 2015 and 2016. **2**

The price for 1 Kbps of mobile data shrank from THB 1.30 in 2008 to THB 0.07 in 2015, **3** placing Thailand fourth in Southeast Asia in terms of affordability calculated by comparing price to the minimum wage in one 2016 assessment. **4** Official figures show 40 percent of internet users pay THB 200-399 (US\$ 6-12) per month to access the internet; 19 percent pay under THB 200 (US\$ 6) per month, 14 percent pay THB 400-599 (US\$ 12-18) per month; another 14 percent access the internet through free programs. **5**

Government programs have sought to reduce a persistent digital divide between urban and rural areas. Under the “Return Happiness to the Thai People” program, the NCPO continued an ICT Free Wi-Fi program initiated under the previous government, although many users have complained of connectivity issues. In early 2016, the then-Ministry of Information and Communication Technology (MICT) announced a collaboration with the NBTC to provide broadband internet via wireless and fixed-line access points at reasonable cost to all 79,000 villages nationwide. ⁶ Execution was delayed, purportedly while the ministry was restructured (see “Regulatory Bodies”). ⁷ The ministry also announced plans to implement high-speed internet nationwide as part of its investment in telecommunications infrastructure, a key element of the government’s economic development plan. The program was subsequently criticized by the Office of the Auditor General of Thailand for inefficiencies and overlap with existing programs. ⁸

• Restrictions on Connectivity

There were no reports of the state blocking or throttling internet and mobile connections for political or security reasons during the coverage period of this report, though the state is extending control of the infrastructure.

Out of ten National Internet Exchanges that connect to international networks, the government-run Communication Authority of Thailand (CAT) Telecom operates the country’s largest. Access to the international internet gateway was previously limited to CAT until it opened to competitors in 2006. ⁹ In 2015, *TelecomAsia*, a telecom news website, received leaked documents which suggested that returning to a centralized gateway model had been a military priority since 2006. ¹⁰

Within a week of the May 2014 coup, an MICT official announced plans to establish a “national digital internet gateway” through CAT Telecom, TOT Telecom, and 6 other ISPs, enabling the ministry to interrupt access. ¹¹ The junta-appointed Cabinet ordered the MICT to proceed with “implementation of a single gateway to be used as a device to control inappropriate websites and flow of news and information from overseas through the internet system.” ¹² Internet users and experts attacked the plan as a Chinese “Great Firewall,” enabling censorship and personal data collection,

while undermining speed and security. ¹³ After intense public opposition, Deputy Prime Minister Somkid Jatusripitak said the plan had been halted. ¹⁴

In 2015, the MICT separately announced plans to set up a “national broadband company” to consolidate and spearhead the expansion of broadband access, primarily through CAT Telecom. ¹⁵ Observers feared this amounted to another attempt to control the infrastructure, ¹⁶ but no progress was announced during the reporting period.

Thailand’s international bandwidth usage amounted to 3,666 Gbps in February 2017, and domestic bandwidth amounted to 4,103 Gbps, ¹⁷ 46 percent and 17 percent higher than the same month in the previous year respectively. Bandwidth usage consistently increased every month throughout 2016, at an average of 4 percent (domestic) and 1.5 percent (international) per month.

• ICT Market

High-speed internet is concentrated in a handful of large providers, and the trend points toward more concentration. Though many are privately owned, “successive Thai governments over the past few decades have maintained close relationships with private telecommunication companies and ISPs through appointments which starkly exemplify the revolving door between the government and the private telecommunications sector;” according to a UK-based Privacy International research report published in 2017. ¹⁸

Although 20 ISPs have licenses to operate in Thailand, TRUE online retained the highest market share at the end of 2016 (38 percent), followed by Jasmin (32 percent). TOT, a state-owned enterprise, retained third place but saw its market share fall significantly from 31 percent to 21 percent. Advanced Info Service (AIS), Thailand’s number one mobile service provider, entered the fixed-line broadband market in 2015 and accounted for more than 3 percent. It is expanding fiber optic network and is expected to increase competition in the sector. ¹⁹

AIS had the highest market share among mobile service providers at the end of 2016 (44.3 percent), followed by Norwegian-controlled DTAC (27.4 percent) and TRUE

(26.2 percent). ²⁰ AIS and DTAC operate some spectrum under concessions from state-owned TOT and CAT Telecom, an allocation system that does not entirely enable free-market competition.

• Regulatory Bodies

The National Broadcasting and Telecommunication Commission, the former regulator of radio, TV, and telecommunications, was stripped of its authority, revenue, and independence during the coverage period. It endures as a government agency half its original size, authorized to implement policy set by a commission led by the prime minister and other new entities with overlapping functions.

The NBTC was set up under the twin principles of independence and spectrum as a public good. Neither principle holds true since Section 60 of the new constitution came into effect in April 2017, stipulating that “the state shall protect all spectrum ... for maximum benefit to the country and the people.”

The National Legislative Assembly (NLA) passed laws to formalize the reshuffle, including many contentious features from ten “digital economy” laws which were ostensibly withdrawn after intense public opposition. Regulatory authority was reassigned between the following official bodies:

- The Ministry of Digital Economy and Society (MDES) was established by the NLA in June 2016, replacing the MICT. ²¹ The MDES is responsible for implementing policy and enforcing the Computer-related Crimes Act.
- The Commission for Digital Economy and Society (CDES) is responsible for formulating policy under the Digital Development for Economy and Society Act (DDA), which came into effect in January 2017. ²² Chaired by the prime minister, the commission is comprised of government ministers and no more than eight qualified experts. ²³ It is stipulated as a legal entity, not a government body, absolving it of accountability under laws that govern government agencies, though it has authority over the MDES and the NBTC. The commission operates through the Office of the National Digital Economy

and Society Commission. Section 25 of the Act mandates that the NBTC transfer revenue to that office “as appropriate.”

- The NTBC was formally transformed into a government agency under another law passed in March 2017. **24**

The DDA redirects up to THB 5 billion of NBTC licensing revenue towards a new Fund for Developing Digital for Economy and Society, a broad legal entity authorized to regulate policy and receive profits from business joint ventures or its own operations. The new law also effectively replaced a public body, the Software Industry Promotion Agency, with a similarly broad entity, the Office of Digital Economy Promotion (ODEP). Like the CDES, neither the Fund nor the ODEP is classified as a government body accountable to the public, leading to serious concerns about transparency and conflicts of interest. **25**

The number of NBTC commissioners was reduced from 11 to 7, and their eligible age range narrowed from 35-70 to 40-70 years old. Candidates will be selected based on their rank in the government, military, or police, rather than their expertise. The nomination committee, previously comprised of 15 people from related professions, was reduced to 7 people holding various bureaucratic and judicial positions affiliated with the government. Candidates will be vetted by the senate secretariat and endorsed by the senate, which will be effectively appointed by the junta for the first five years under the new constitution.

The junta also continued to block the use of radio spectrum which the government and the military were due to reallocate to the NBTC by April 2017. In December 2016, NCPO order no. 76/2016 extended the state’s use of the spectrum for another five years. The order, issued under Section 44 of the interim constitution which is not subject to appeal, thereby scuttled a program of spectrum reform advocated by media and civil society for more than two decades. **26**

Another regulatory decision raised concerns of possible content control. In April 2017, the NBTC board classified over-the-top (OTT) content as broadcasters, subject to licensing and content regulation. Popular paid OTT operators in Thailand include Netflix, Iflix, Primetime, Advanced Info Service’s AIS Play, and TrueVisions’ Anywhere.

The NBTC board resolution was based on a study by Thai company Time Consulting that recommended that the commission register and ultimately license OTT TV operators and regulate OTT content through the existing broadcast classification system. A subcommittee will advise the NBTC on OTT regulation in the next year. **27**

B. Limits on Content

Momentous events during the reporting period led to much stricter control of online content. The NCPO forbade criticisms of the draft constitution ahead of national referendum in August 2016, and controls tightened significantly following the death of King Rama IX in October 2016. The junta-appointed National Legislative Assembly (NLA) is trying to write new rules to regulate the media, including bloggers. Some activism continues, though its impact is limited in the stifled political climate.

- **Blocking and Filtering**

Website blocking of antiroyal content is widespread and lacks transparency, particularly since the coup. During the reporting period, censors newly blocked thousands of web pages after the death of the king, and new regulations significantly expanded the number of people authorized to implement blocks. Censorship tests revealed restrictions on circumvention tools that can be used to bypass blocking.

Censorship reached an unprecedented level of intensity during the 30-day period following King Rama IX's passing on October 13, 2016. **28** The MDES appointed 100 staff responsible for monitoring and censoring online content to a Cyber Security Operations Center (CSOC) based inside the state-owned telecom TOT. **29** The NTBC enforced a mourning period for all media outlets (see "Media, Diversity, and Content Manipulation"), and requested that ISPs cooperate to monitor online content for blocking or deletion (see "Content Removal"). More than 1,370 websites were shut down in October alone, according to The Associated Press. **30**

Strict measures remained in place as the crown prince was named king at the end of 2016. English-language news reports about the King Rama X were newly blocked, including articles published by Bloomberg, the *New York Post*, and the *Wall Street*

Journal. While many Thai-language outlets adopted a cautious tone when reporting on the new monarch, one December 2016 profile published on the BBC Thai website became famous overnight for pulling no punches, and was shared over 2,000 times on Facebook. It was quickly blocked; police also visited the BBC's local office, and among all those who shared it, one known activist was singled out for arrest (see "Prosecutions and Detentions for Online Activities"). **31**

The impact of these incidents on the online environment compared to existing, longstanding restrictions is difficult to measure. The MDES reported it had obtained court orders to block 8,192 URLs for *lèse majesté* between September 2016 and February 2017, **32** but official figures may be exaggerated to show allegiance to the monarchy, and eroding transparency surrounding censorship means there are no reliable figures for comparison. **33**

Other categories of content are also subject to blocking. In May 2017, the Thai Internet Service Providers Association (TISPA) said its members have blocked access to over 6,300 URLs pursuant to NBTC orders for threatening national security, which includes *lèse majesté* content, or hosting pornography or gambling, among other issues. **34** The prohibition on criticizing royalty extends to related content: In October 2016, several ISPs blocked a *Phnom Penh Post* article reporting that Cambodian authorities received a request to extradite three people suspected of *lèse majesté* to Thailand. **35**

Some blocks affect entire websites, not just URLs for individual articles or posts. A research study by the global Open Observatory of Network Interference (OONI) software project, the Malaysian civil society organization Sinar Project, and the Thai Netizen Network, tested 1,525 URLs on 6 ISPs between November 2016 and February 2017, and found 13 websites completely blocked. **36** At least one news website, the UK *Daily Mail*, was blocked at the domain level by TOT and 3BB. Websites offering tools for anonymity and circumventing censorship, as well as VPNs, were also blocked on more than one network. **37** The study revealed significant inconsistencies across ISPs, suggesting some providers may implement discretionary restrictions without prior authorization. The website of the *New York Post*, for example, was blocked by mobile phone operator DTAC in February 2017 but otherwise available.

Legislation passed during the reporting period may increase such inconsistencies by empowering more bodies to assess blocking requests and expanding the kind of content subject to blocking. Article 20 of the 2007 Computer-related Crimes Act (CCA) authorized MICT officials to request court orders to block content that is deemed a threat to national security, or contravenes public morals or public order.

38 Amendments to the law adopted on December 16, 2016 established a nine-member ministry-appointed “computer information screening committee” which may also authorize officials to apply for court orders to block content. Three members must be from the media, human rights, and information technology sectors. Section 20 (3) appears to authorize the committee to order restrictions on content that threatens public order or morals even if the content does not actually violate any law, meaning courts could be asked to issue orders to block even legal content at the discretion of a committee that is not accountable to the public. **39**

A draft decree expanding on the amendment authorizes the service provider to block access “using whichever technical measures necessary.” **40** The amendments codified orders issued in the wake of the May 2014 coup, when the NCPO ordered ISPs to proactively prevent dissemination of any information that could provoke disorder; **41** the NBTC issued a similar order in 2015. **42**

Section 20 of the 2016 CCA further gives the MDES authority to establish a “centralized censorship system” connected to the service provider’s network, enabling authorized officials to implement blocks without assistance from company staff. A ministerial decree expanding on these new provisions was still pending in mid-2017. The military government had previously explored the idea of a centralized point of internet access and censorship, but appeared to back down after intense public opposition (see “Restrictions on Connectivity”).

• Content Removal

Like blocking and filtering, content removal increased after the death of the king. Legal amendments modified intermediary liability, but the military leadership continued to pressure intermediaries to censor political information, with some success.

One incident illustrated the extent of government content removal requests, though the content in question ultimately remained available. In October 2016, *Pratachai* reported that the Thai investigative news outlet *Isranews* was contacted by CS Loxinfo, a Bangkok-based service provider that hosts its website, requesting the removal of one 2014 article about a female TV anchor. The article became relevant again in 2016 when the anchor's name was reported in connection with government officials' alleged misappropriation of public funds. CS Loxinfo told *Isranews* that cooperation had been requested by a government agency but declined to provide details in writing, and *Isranews* refused to comply. **43**

International companies were also served with requests to remove content. The Thai ISP Association reported that it sought cooperation overseas to remove pages, since at least 600 URLs containing banned content were impossible to block on platforms accessed through encrypted HTTPS connections. **44** In early 2016, a media reform committee within the junta-appointed National Reform Steering Assembly (NRSA) had separately proposed that the government set up a special unit to filter social media content in cooperation with Google, Facebook, and Line. **45**

Some companies acknowledged that they cooperated to remove content in certain cases. In January 2017, junta critics stationed overseas reported that internet users in Thailand could not access some of their Facebook posts because the company had withheld them for breaking local laws; the same individuals were subject to an MDES order banning social media users from following them in April (see "Media, Diversity, and Content Manipulation"). **46** Facebook said the company removed 10 pieces of content within Thailand between January and June 2016, a number that increased to 40 between July and December, the period coinciding with the king's death. **47** Google reported receiving 102 government requests to remove content between July and December, up from 59 between January and June. Most involved content on YouTube, and more than 90 percent of requests involved criticism of the government. The company reported different compliance rates for judicial and executive orders, and an overall removal percentage of 89 percent. **48**

Content providers or intermediaries have complied with removal requests in the past because they were subject to possible prosecution under the 2007 CCA for allowing

the dissemination of content considered harmful to national security or public order.

49 That framework was modified during the reporting period but still contains considerable scope for abuse. The amended CCA implements rules and procedures for takedown requests, and clearly grants immunity to “mere conduits” and cache operators. However, intermediaries are still subject to possible prison terms for content created by a third party. The amendment requires them to establish a complaints system for users to report banned content and incentivizes intermediaries to act on every complaint to avoid liability.

The MDES decree expanding on the law was enacted in July 2017. **50** According to this decree, the intermediary must remove any alleged infringing content within seven days in the case of alleged false or distorted information, three days in the case of alleged pornographic content, and within twenty-four hours in the case of alleged threat to national security, after receiving notice of it from any internet user. There were no procedures for intermediaries to independently assess complaints. The only way owners can contest removal of their content is to file a complaint at a police station, then submit that complaint along with the request to rescind removal to the intermediary, who has final authority. This process creates an onerous burden on the content owner, and could lead to intimidation by the authorities. And companies that refuse to comply remain subject to the same penalty as the author of banned content, up to a maximum 5 years in prison, as they were under the 2007 law.

The newly amended CCA also appears to hold individuals responsible for erasing banned content on personal devices, though how it might be enforced remains unclear. Section 16/2 states that any person knowingly in possession of data that a court has found to be illegal and ordered to be destroyed could be subject to criminal penalties if they fail to destroy it. **51** Analysts feared the language could lead to the destruction of archival data, but there was no clear case of the provision being enforced in the weeks after the law became effective in May 2017.

• Media, Diversity, and Content Manipulation

Social networks and digital media provide opportunities for discourse when traditional media is subject to restrictions, but the authorities also issued laws and

directives to control online discussions of sensitive topics during the reporting period. The most popular social media and communications apps in 2016 were Facebook (used by 92 percent of all internet users), followed by Japanese messaging service LINE (85 percent) and Google Plus (67 percent), according to a local advertising association. **52**

The king's death prompted new measures to control traditional media, apparently driving more people online. The NBTC ordered television and radio channels to suspend entertainment broadcasting for 30 days after the October 2016 passing of King Rama IX and refrain from "interpretation, analysis, and/or criticism" of the event, instead rebroadcasting state coverage from an official TV pool. The NBTC may forbid broadcasts of content deemed to threaten the monarchy, national security, public order, or good morals, under order no. 41/2016, though it lacks authority to regulate the content of online media. International bandwidth saw an unusual 10 percent jump in November, suggesting more people turned to the internet for news and entertainment. Domestic bandwidth also increased by 6 percent. **53**

Self-censorship also increased online, however. On October 14, 2016, *VoiceTV*, a critical news outlet owned by former Prime Minister Thaksin Shinawatra, temporarily suspended its Facebook page to avoid breaking the law. **54** Several news outlets deleted online articles stating a regent would assume royal responsibilities instead of the crown prince without publishing a correction. **55** The *Khaosod English* news website republished an edited version, saying the original had been censored on the instruction of its parent company. **56**

Traditional media controls may increasingly be felt online as the sectors converge. TV channels already stream content online or on YouTube, and many began broadcasting on Facebook in the past year, spurred by the success of a Workpoint Entertainment masked singing contest which reached an additional 800,000 viewers when screened simultaneously on Facebook Live. **57** A handful of monthly print magazines ceased to publish in 2016, including *Volume*, *Vogue*, *Cosmopolitan*, *Seventeen*, and *Sakulthai*. Daily print newspapers also shut down, including *Baan Muang*, but several online-only media startups entered the market, including *The Matter* and *The Momentum*.

Though healthy, the online media market does not necessarily represent diverse viewpoints for two reasons. One is economic: Media outlets almost universally use Facebook “likes” and similar indicators when seeking revenue. As the advertising model moves away from banner ads that support independent websites, sites are more likely to privilege popular entertainment content over complex or underrepresented information.

The second is the restrictive political environment, which encourages self-censorship. The junta government continues to openly monitor social media and prosecute high-profile critics (see “Violations of User Rights”). In January 2017, for example, the National Security Council (NSC) announced it was seeking cooperation from Laos to arrest a handful of people responsible for disseminating anti-royal content through radio and social media. **58**

Several directives on social media use were issued in the past year. In April 2017, the MDES ordered internet users to refrain from following, contacting, or distributing posts by Somsak Jeamteerasakul, Pavin Chachavalpongpun, and Andrew MacGregor Marshall, on grounds that their work had been ruled illegal. All three either live in exile or are banned from Thailand for criticizing the monarchy in academic or media reports. The statement was not based on a court order, and the ministry subsequently clarified that it was intended as a public relations warning to “use social media carefully.” **59** Marshall’s wife was briefly detained in Bangkok in 2016 after officials accused him of doctoring images of the crown prince on Facebook (see “Intimidation and Harassment”); separately, at least six people were detained for sharing content posted by Somsak in May 2017 (see “Prosecutions and Detentions for Online Activities”). Another directive warned internet users not to discuss content of the draft constitution ahead of the August 2016 national referendum; users of a free app released by the Election Commission of Thailand (ECT) to familiarize voters with the draft reported that searches for “vote no” returned an automatic error message. **60**

One piece of proposed legislation could limit both press freedom and online speech, though it was tempered following public opposition. The NRSA media reform committee proposed establishing a national media council, including two high-

ranking government representatives, to register and license “professional” journalists broadly defined as anyone routinely engaged in publishing to a wide audience for direct or indirect profit. The draft law would punish working without a license with prison sentences, ⁶¹ and gave the council authority to levy fines, ⁶² both deterrents to online and citizen journalists. Facing nearly universal opposition, the NRSA removed the criminal and financial penalties before approving the draft. ⁶³ According to the new constitution, it must undergo public hearings and pass the Cabinet before being tabled at the National Legislative Assembly (NLA); in May 2017 the NLA chairman conceded that it will be an uphill battle to pass it. ⁶⁴

The media reform committee separately proposed establishing a special agency to filter “fake news” and rumors in April 2017. The agency would act on user complaints and employ filtering software, but the plan was not taken up by the legislative council by the end of the reporting period. ⁶⁵

There was no public documentation of paid actors manipulating political content on the internet during the coverage period, though there were organized efforts to restrict political engagement online. Officials offered financial incentives to citizens to monitor one another online (see “Surveillance, Privacy, and Anonymity”), and many organized informally to harass the junta’s opponents (see “Intimidation and Violence”).

• Digital Activism

Social media, chat applications, and online petition sites such as Change.org are essential tools for digital activism under the junta government. During the reporting period, one petition collected hundreds of thousands of signatures.

Since the coup, many bloggers, activists, and human rights lawyers have formed coalitions such as Thai Lawyers for Human Rights (TLHR) to monitor the situation and document human rights violations by the junta. Anonymously operated Facebook pages became a crucial space for individuals to share their opinions and organize political activities, including *Stop Fake Thailand*, which has over half a million followers.

The Foundation for Internet and Civic Culture (Thai Netizen Network) gathered over 300,000 signatures opposing the junta’s draft amendment of the Computer Related Crime Act in December 2016. Although the CCA sailed through National Legislative Assembly to become law with very few changes, the anti-CCA campaign was one of the largest since the 2014 coup.

C. Violations of User Rights

Thailand’s new constitution came into effect in April 2017, but the NCPO leader still holds absolute power. During the mourning period after the death of the king, rights violations increased significantly. Businesses as well as supporters of the regime pursued criminal lawsuits against their critics. The reporting period saw the passage of a slew of new restrictive laws, including the amended Computer Related Crimes Act (CCA).

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- **Legal Environment**

A new constitution went into effect on April 6, 2017 after it was accepted in a national August 2016 referendum. It replaced an interim constitution introduced after the coup d’etat in 2014. Section 44 of the interim constitution authorized the NCPO to issue any legislative, executive, or judicial order without accountability, and dozens of so-called “absolute power” orders were issued during the reporting period. All previous and future NCPO orders remain in effect under the new constitution, which also kept Section 44 of the interim constitution on the books until the next general election. **66**

The August referendum took place amid intense restrictions on free speech (see “Media, Diversity, and Content Manipulation”). The Referendum Act, introduced in April 2016 and upheld by the Constitutional Court in June, punishes anyone “deceiving, forcing, or influencing a voter” with up to 10 years’ imprisonment or fines up to THB 200,000 under Section 61 (2). Critics said this broad wording effectively criminalized free speech and campaigning. At least 104 people still faced charges

under the Referendum Act in mid-2017, including for campaigning against the constitution in various forums. ⁶⁷ Several people were arrested for criticizing the constitution on Facebook (see “Prosecutions and Detention for Online Activities”).

The new constitution followed historical norms by enshrining basic rights, but Section 25 stipulates that all rights and freedoms are guaranteed “insofar as they are not prohibited elsewhere in the constitution or other laws;” and that the exercise of those rights must threaten national security, public order, public morals, or any other person’s rights and freedoms.

Section 44 of the interim constitution was introduced under martial law in 2014, though the NCPO issued only one order invoking it that year. Though martial law was lifted in April 2015, the number of orders has risen dramatically every year since, from 41 in 2015 to 78 in 2016; 22 were issued in the first four months of 2017 alone. ⁶⁸ Many of the orders have internet freedom implications, including NCPO order no. 76/2016 to extend state control of radio spectrum (see “Regulatory Bodies”). Others criminalized speech and expanded military court jurisdiction over civilians, including individuals who peacefully express critical opinions of the junta government. ⁶⁹ The military court has no appellate or higher division, and has handed down the longest sentences ever passed for *lese majeste* offenses. ⁷⁰

In September 2016, the month Thailand was due to respond to international criticism of its human rights record at the United Nations Human Rights Council, the NCPO chief revoked the use of military courts to try new charges of sedition and *lese majeste* under order no. 55/2016. ⁷¹ The court retains jurisdiction in ongoing cases. ⁷²

The NCPO-appointed government, made up of the National Reform Steering Assembly (NRSA) and the National Legislative Assembly (NLA), has passed laws to consolidate its power. Many have reduced the efficiency and transparency of independent regulators and government agencies in the name of “reforming” bureaucracy and the media.

The revised Computer-related Crimes Act (CCA) was adopted on December 16, 2016, to widespread outcry from internet users. Section 14(1) of the original 2007 law

banned introducing false information into a computer system, which experts understand to refer to technical crimes such as hacking. **73** Judges, however, have shown limited understanding of this application, and the clause has been widely used in conjunction with libel charges to prosecute speech. Observers say this provided grounds for Strategic Lawsuits Against Public Participation (SLAPP), allowing government officials and large corporations to file charges in order to intimidate and silence their critics.

Lawmakers sought to limit this abuse by adding new language, “in which the perpetration is not a defamation offense under the Criminal Code.” **74** Yet the law retains the problematic term “false” computer information, and adds another, “distorted” computer information. As a result, the incorrect interpretation of the law persists and individuals continue to face charges for publishing allegedly false content on the internet (see “Prosecutions and Detention for Online Activities”). Other problematic sections of the CCA also went unchanged, including Section 14(3), which criminalizes online content deemed to “affect national security” and is frequently used in conjunction with *lèse majesté* charges. The revised CCA also extended the scope of online censorship (see “Blocking and Filtering”) and altered the legal framework for intermediary liability (see “Content Removal”).

Pending legislation includes a draft media reform law establishing a national media council (see “Media, Diversity, and Content Manipulation”), and a controversial draft cybersecurity act that was widely criticized on its introduction in 2015 for clauses that would invade privacy and enable surveillance. In mid-2017 it was under MDES review.

A revised criminal procedural law also pending in mid-2017 would separately grant surveillance powers to authorized police officials. The draft stipulates a wide range of offenses for which surveillance is lawful; in addition to violations of national security and organized crime, it includes broad categories like “complex” crimes. **75**

Under a separate draft law for the prevention and suppression of materials that incite dangerous behavior, officials would require a warrant to access any private information that is deemed to provoke dangerous behavior such as sexually deviant acts, child molestation, or terrorism. Creating and distributing such information would be punishable by one to seven years in prison and fines up to THB 700,000.

Access providers (as defined by the CCA) that know such information exists in the computer system under their control but fail to remove it also face a maximum 5-year jail term and THB 500,000 fine. **76** The draft was still pending at the end of reporting period.

• Prosecutions and Detentions for Online Activities

Criminal prosecution is one of the junta's main strategies to combat opposition, despite talk of reconciliation and reform. Police and the Attorney General's office continue to pursue charges which clearly infringe on basic rights. The burden of deciding for or against regime critics is therefore passed to the court, resulting in an unprecedented number of prosecutions for online speech.

Courts dismissed some cases, though few articulated freedom of speech protections as the reason, and the time, money, and uncertainty involved exacted a heavy burden on defendants.

Other cases resulted in prison sentences lasting over a decade:

- On June 1, 2016, a criminal court sentenced Thanat Thanawatcharanon, a 58-year-old country singer and political activist known as Tom Dundee, to 15 years in prison on three counts of *lèse majesté* committed in public speeches that were broadcast on YouTube in 2013. **77** That sentence was reduced to seven years and six months because he pleaded guilty. In July, a military court separately sentenced him to three years and four months on the same charge, reduced from five because he pleaded guilty, but bringing his total sentence to over ten years in prison. The case came under military jurisdiction because one of the videos remained online after the 2014 coup. **78**
- On January 27, 2017, a military court sentenced political activist Burin Intin to seven years in prison for *lèse majesté* and violating the CCA in a comment posted underneath a YouTube clip, and an additional ten years in prison for separate comments made in a private Facebook Messenger chat. **79** The court increased the total penalty because of his prior record, then reduced it because he pleaded guilty, resulting in an overall jail term of 11 years and 4 months. **80**

Court documents included transcripts that prosecutors said were of his private Facebook Messenger chats, although news reports say he declined to provide his password when he was arrested in April 2016. Patnaree Charnkij, the mother of prominent student activist Sirawit Serithiwat, also faces charges for failing to criticize or take action against Burin when he made *lèse majesté* comments in their private Facebook Messenger exchange. Though police dismissed that charge in July 2016, they were overruled by military prosecutors and the case was pending in mid-2017. ⁸¹

- In June 2017, outside the coverage period of this report, a military court sentenced a man to 70 years in prison for posting lese majeste content on another user's Facebook account, supposedly to punish the owner; the sentence was reduced to 35 years because he pleaded guilty. ⁸²

Activists, former politicians, and ordinary internet users were newly charged for criticizing the monarchy or the NCPO leadership:

- Nattharika Worathaiyawich and Harit Mahaton were charged with *lèse majesté* over opinions expressed on Facebook. ⁸³ The two were among a group of eight internet users arrested in April 2016 for operating a Facebook page famous for popularizing satirical memes featuring Gen. Prayut Chan-ocha, ⁸⁴ and remained in detention after the remaining six were released on THB 200,000 bail each on May 10.
- Jatuphat Boonpattaraksa, a student pro-democracy activist, was arrested on December 3 for sharing a BBC Thai profile of King Rama X on his personal Facebook page, though hundreds of others circulated the same content without reprisals (see “Blocking and Filtering”). ⁸⁵ He was charged with *lèse majesté* and violating the CCA. ⁸⁶ His initial THB 400,000 bail was revoked on December 19 after he joked on Facebook that the government needed it to salvage the weak economy. In August 2017, outside the reporting period, he was sentenced to five years in prison, reduced to two and a half after he pleaded guilty. ⁸⁷
- On March 7, 2017, the Criminal Court issued an arrest warrant for That Wanparuehat, a former senior official in the Pheu Thai government ousted by the coup, for criticizing the junta on Twitter. He had attacked the NCPO chief

and criticized a military crackdown on the Buddhist *Dhammakaya* sect. He faces charges of defamation and bringing false computer information into the system under the CCA, but was not immediately detained. ⁸⁸

- On March 9, a warrant was issued for prominent activist Weera Somkwamkid on charge of bringing false information into the system after he conducted a parody political poll on Facebook to conclude that respondents had lost confidence in the junta leadership. ⁸⁹ The case was still pending in mid-year.
- On April 19, the Technology Crime Suppression Department (TCSD) charged junta critic and former Pheu Thai politician Wattana Muengsuk with posting false computer information after he reported online about the disappearance of a public plaque commemorating the 1932 revolution which ended Thailand's absolute monarchy. ⁹⁰ Wattana reported to the TCSD and publicly terminated his investigation into the plaque; ⁹¹ charges of sedition and violating the CCA were still pending in late 2017 over Facebook comments about a separate political trial. ⁹² He separately faced charges over a Facebook post stating that the NCPO would not return power to the people; the plaintiff said the NCPO had announced its roadmap to elections. That charge was dismissed by a South Bangkok court in October 2016 on grounds that a roadmap may be subject to change, so the defendant's statement could not be false. ⁹³ In August 2017, outside the coverage period of this report, Wattana was twice given suspended jail sentences for contempt of court after he broadcast court proceedings on social media. ⁹⁴
- On May 3, human rights lawyer Prawet Praphanukul was detained for *lèse majesté* and sedition after sharing a Facebook post by Somsak Jeamteerasakul, an academic living in France. That post also involved the missing 1932 plaque written about by Wattana Muengsuk. ⁹⁵ At least five other people around the country were detained in relation to the same content, and government officials issued a statement warning internet users of repercussions for following or interacting with Somsak and two other individuals (see "Media, Diversity, and Content Manipulation").

At least two cases during the reporting period involved allegations of torture against military officials:

- On July 26, 2016, military officers sued human rights defenders Somchai Homlaor, Pornpen Khongkachonkiet, and Anchana Heemmina, with defamation and violations of the CCA based on a report published on a blog which accused government agents of committing torture and human rights abuses in areas of southern Thailand in 2014 and 2015. The charges were withdrawn in March 2017 on condition that “all future reports of human rights abuses must be done through various mechanisms that will be set up for co-operation.” ⁹⁶
- In March 2017, a police commander for the southern border provinces accepted a defamation and CCA violation suit brought by a military officer against Narissarawan Kaewnopparat, an employee of a government welfare office. An arrest warrant had been issued for Narissarawan in February 2016 and executed in July after she posted on Facebook that her uncle, a military conscript, had died following brutal hazing by fellow soldiers in 2011. She was released on bail, and the Attorney-General’s office subsequently dismissed the suit, but police overruled the prosecutors’ decision not to press charges under NCPO order no. 115/2014. ⁹⁷

Nonstate actors also pursued criminal charges for online speech. Although the CCA was amended during the reporting period, companies and officials can still abuse the law to launch burdensome prosecutions—often repeatedly—in order to deter rights defenders, environmental activists, and investigative journalists who publish in any online forum (see “Legal Environment”).

Dozens of such charges were ongoing during the reporting period:

- In July 2016, a court in Pichit province accepted charges of defamation and violating the CCA against prominent environmental activist Somlak Hutunuwatr for criticizing the environmental and health impact of a local mining company on Facebook. Courts in Bangkok have dismissed two similar lawsuits brought against Somlak by the same company. ⁹⁸
- On September 20, a court in South Bangkok found British human rights defender Andy Hall guilty of bringing false computer information into the system via an online report for Finland-based NGO Finnwatch that charged the Thai canning company Natural Fruit with labor rights abuses. Hall refused to

present his sources as witnesses and the court ruled that he could not prove the allegations were true. He was separately found guilty of defamation for distributing the same allegations in print, and sentenced to a total 3-year suspended prison term and a THB 150,000 fine. ⁹⁹ The Supreme Court dismissed a separate case involving the same charges on November 3 due to investigative irregularities, among other issues. ¹⁰⁰

- On November 8, an appeal court upheld a lower court verdict sentencing Facebook page administrator San Thanakornphakti to nine months in prison and a THB 40,000 fine for defamation and violating the CCA. Piyasvasti Amranand, a former energy minister and current chairman of the state-owned energy company PTT, filed charges in relation to a post on the Facebook page “Reclaiming Thai Energy” that held Piyasvasti responsible for high energy prices. The appeal court ruled that the opinion expressed in the post constituted false computer information because it characterized the behavior of the plaintiff subjectively. A separate suit brought by PTT against San for another post on the same Facebook page was being heard in the appeal court in mid-2017. ¹⁰¹
- In February 2017, BBC correspondent Jonathan Head was sued under the CCA by an individual named in a 2015 BBC report in connection with a forgery scam in Phuket province. The individual claimed that the article, which was published online, was false computer information. ¹⁰² The charge against Head was dropped in August but a trial involving his source continued. ¹⁰³
- On March 13, 2017, the Electricity Generating Authority of Thailand (EGAT) said it had filed 15 separate complaints of defamation and CCA violations against internet users who accused EGAT power plants of damaging public health through air pollution. ¹⁰⁴
- On March 30, a lawyer representing former Prime Minister Thaksin Shinawatra filed a complaint of defamation and CCA violations with the Technology Crime Suppression Division (TCSD). The complaint named Pleo See-nguen, the penname used by an anonymous columnist of the broadsheet *Thai Post* newspaper, which also has a website, because of an article implicating Thaksin in the high profile tax evasion scandal that led to his ouster in 2006. ¹⁰⁵

At least one criminal defamation sentence was overturned on appeal during the reporting period, almost two years after it was first passed. On December 6, 2016, the

appeal court overturned a fine and suspended prison sentence handed to environmental activist Kampol Jittanung by a lower court. An academic from Prince of Songkla University sued Kampol for defamation and violating the CCA in relation to a September 2014 Facebook post in which he questioned the independence of research findings supporting the use of an industrial byproduct in the construction of artificial reefs to prevent coastal erosion. ¹⁰⁶ The appeal court found that Kampol's opinion was expressed in good faith. ¹⁰⁷

• Surveillance, Privacy, and Anonymity

The junta government actively monitored social media and private communications in the past year. The legal framework governing surveillance is inadequate, and got worse during the reporting period.

Instead of clear procedures, surveillance is facilitated by “the Thai government’s control of the internet infrastructure [and] a close relationship with internet service providers.” ¹⁰⁸ CCA amendments passed during the coverage period (see “Legal Environment”) allow officials to instruct service providers to retain computer traffic data for up to two years, up from one year in the 2007 version. Providers must otherwise retain data for at least 90 days under the law. Though official requests to access that data require a warrant, a 2012 cabinet directive placed several types of cases, including CCA violations, under the jurisdiction of the Department of Special Investigation (DSI). Under rules regulating DSI operations, investigators can intercept internet communications and collect personal data without a court order, so internet users suspected of speech-related crimes are particularly exposed. Even where court orders are still required, Thai judges typically approve requests without serious deliberation.

Many prosecutions during the reporting period were based on private chat records, including those of Burin Intin and Patnaree Charnkij (see “Prosecutions and Detentions for Online Activities”). At least one prosecution was brought based on private Line chat: on March 24, 2017, Suriyasak Chatphithakkhun, chairman of the Surin chapter of United Front of Democracy Against Dictatorship (UDD), a major antigovernment group, was accused of *lèse majesté* over messages he sent to a Line

private chat group, among other charges; he remained under investigation in mid-2017. ¹⁰⁹

It is not clear how military or police officials accessed chat records in these cases, though military and police have created fake accounts in order to join secret chat groups, even baiting users to criticize the monarchy or the junta. ¹¹⁰ In several cases where individuals were summoned or arrested, the authorities also confiscated smartphones to access social media accounts.

Officials also sought cooperation from international companies. Facebook, Google, and Line reported a handful of requests to access user data from Thailand, but all indicated that they did not comply. ¹¹¹ Facebook said that it never disclosed private user information to the Thai government or surveilled user conversations; Line said the company could not access messages shared between users because they are encrypted. ¹¹²

The government took steps to undermine encryption during the reporting period. Section 18 (7) of the amended CCA enables officials to order individuals to “decode any person’s computer data” without a court order. ¹¹³ While some companies may be unable to comply with such orders, the law could provide grounds to punish providers or individuals who fail to decrypt content on request. Privacy International reported other possible ways for Thai authorities to circumvent encryption, including impersonating secure websites to intercept communications and passwords, or conducting downgrade attacks, which force a user’s communications with an email client through a port that is unencrypted by default. ¹¹⁴ The group challenged Microsoft for trusting Thai national root certificates, leaving them vulnerable to measures that would undermine security for users visiting certain websites; Microsoft said a trustworthy third party vets authorities that issue certificates before the company accepts them. ¹¹⁵

Government agencies also possess surveillance technologies. Some bought spyware from the Milan-based Hacking Team between 2012 and 2014, according to leaked documents; ¹¹⁶ and Thailand has also obtained licenses to export telecommunications interception equipment from Switzerland and the UK. ¹¹⁷ According to Privacy International, the licenses indicate the probable acquisition of

IMSI (International Mobile Subscriber Identity) catchers, devices which intercept data from all phones in the immediate area regardless of whether they are the focus of investigation.

Government supporters assist in monitoring perceived opponents, activity that intensified after the passing of King Rama IX in October 2016. The MDES established a cybersecurity center based in state-owned telecommunications company TOT to monitor for inappropriate content (see “Blocking and Filtering”). ¹¹⁸ A cyber scout program, through which students and regular citizens can apply to receive training on monitoring and reporting inappropriate content, has been operational since before the coup.

Opportunities for using the internet anonymously are also declining under the junta. The NBTC confirmed plans to verify mobile users’ identity using biometric data, and said it would require mobile operators to collect fingerprints from new SIM card registrants and send them to a central repository at NBTC. ¹¹⁹ The program was still pending implementation in May 2017. Separately, a draft law to register and license journalists—including anyone routinely engaged in publishing to a wide audience for direct or indirect profit—was under consideration during the reporting period (see “Media, Diversity, and Content Manipulation”). ¹²⁰

• Intimidation and Violence

Violence in reprisal for online speech intensified following the death of King Rama IX, as his supporters channeled grief and anger towards critics of the monarchy.

During the mourning period, vigilante groups exposed the identities and locations of dozens of Facebook users they accused of antiroyal speech. Targets were surrounded and forced to apologize in front of the King’s photo, sometimes violently. Video of the harassment was subsequently posted on Facebook; subjects were beaten and kicked, and some were also charged with *lèse majesté*. ¹²¹ A pattern of attacks was noticeable in many provinces, including Phuket, Rayong, Chantaburi, Chonburi, and Beungkan. Justice Minister Gen. Paiboon Koom-chaya appeared to endorse the witch hunts in comments praising social sanctions. ¹²²

Ultra-royalist groups have organized on Facebook before, notably the “Rubbish Collection Organization,” whose targets can also be ostracized socially and professionally. The organization also asks Thais based abroad to help track down “fugitives” overseas. ¹²³

As in past years, people were summoned for military interrogation, and police and military officials continued to use disproportionate force and violate due process when investigating perceived dissidents. In one example, news reports said police harassed a woman because of Facebook posts shared by her husband overseas. At 7am on July 21, 2016, at least 20 police officers raided the home of Noppawan Bunluesilp, the wife of Scotland-based journalist Andrew McGregor Marshall, after officials accused him of criticizing the monarchy on Facebook. Marshall was formerly based in Bangkok and his wife was there visiting relatives. ¹²⁴ Police took Noppawan and her three-year-old child for questioning but denied her access to a lawyer because she had not been charged; they also seized her computer, tablet, and phone. ¹²⁵

• Technical Attacks

There have been sporadic reports of cyberattacks on online news outlets in Thailand in the past. None were documented during the coverage period of this report, though in January 2017, Privacy International reported that the authorities have the capability to use downgrade attacks or man-in-the-middle attacks to circumvent encryption (see “Surveillance, Privacy, and Anonymity”).

Hackers targeted government sites in the past year, notably in protest when the NLA passed the CCA in December 2016. Websites operated by several government agencies were defaced by hackers who displayed a symbol that was developed to oppose a plan to strengthen control of the internet by imposing a single gateway (see “Restrictions on Connectivity”); ¹²⁶ others were brought offline by DDoS attacks. Several people suspected of involvement were subsequently arrested and interrogated at a military base, ¹²⁷ including a 19-year-old. ¹²⁸

Footnotes

- 1 National Statistical Organization Thailand. “Number of Internet Users by Information Technology Devices to Access Internet and Area: 2016.” National Statistical Organization Thailand, 2016. http://service.nso.go.th/nso/nso_center/project/table/files/S-ict-hh-q/...
- 2 The National Broadcasting and Telecommunications Commission (NBTC). “Communication Market 2015 and Outlook 2016.” The National Broadcasting and Telecommunications Commission (NBTC), 2016. <http://webstats.nbtc.go.th/netnbtc/DL.php?act=SUNUbWFyazVoNThfRmluYWwuc...>
- 3 NBTC, “Internet Market Report: Price/Kbps,” http://www.nbtc.go.th/TTID/internet_market/price_kbps/.
- 4 “The cost of mobile data in Southeast Asia (INFOGRAPHIC),” TechInAsia, January 20, 2016, <https://www.techinasia.com/cost-mobile-data-southeast-asia-infographic>.
- 5 National Statistical Organization Thailand. “Number of Internet Users by Expenditure to Use Internet per Month, Region and Area: 2016.” National Statistical Organization Thailand, 2016. http://service.nso.go.th/nso/nso_center/project/table/files/S-ict-hh-q/...

More footnotes 



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Country Facts

Global Freedom Score

36/100  **Partly Free**

Internet Freedom Score

39/100  **Not Free**

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