

Macedonia: Online Privacy in 2009

Report on privacy and related digital rights

METAMORPHOSIS 

Foundation for sustainable ICT solutions

Macedonia: Online Privacy in 2009

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Executive summary

Legal framework in Macedonia is conducive to protection of privacy, as the key element—the Law on Personal Data Protection—firmly based on the international standard and in compliance with the relevant EU directives and COE declarations. However, recent changes in other laws and regulations undermine these foundations.

The competencies of the relevant independent regulator, the Directorate for Personal Data Protection, have been expanded to status of the misdemeanor body. The regulator reported increase of its activities including providing expert opinions and reacting to citizen's complaints. Dominant online area of these interventions has been social media, reflecting the overall trend of their increased use in Macedonia during 2009.

Low public awareness on privacy issues remains a major obstacle to development of information society in general and e-commerce in particular. This refers both to the knowledge about basic concepts and rights, and to the skills on how to protect these rights among the regular citizens. The lack of awareness about the complementary right of free access to information hampers the increase of much needed transparency and accountability of public institutions.

Overwhelming majority of almost hundred percent of Macedonian websites lacks privacy policies. The research included automatic and manual processing of large samples of URLs, including over 13 thousand domains from MARNet's register, and over two thousand links from the Macedonia Search Directory. Most importantly, all .GOV.MK websites do not have privacy policies. Significant portion of new e-commerce websites also lack this basic feature.

Among other developments, in some cases Government officials stipulated use of foreign e-mail and other services, inciting the citizens to put their personal data outside the jurisdiction of the Macedonian regulator, increasing the privacy-related risks.

The complimentary right of free access to information has been affected by the lack of accountability and transparency in the process of amending the relevant legislation, and the continuous mute refusal by the administration.

This situation can be redeemed by adoption and enforcements of standards obligatory for all e-government websites, including development of procedures and publishing a privacy policy demonstrating adherence to the Law on Personal Data Protection and proactive implementation of the Law on Free Access to Information of Public Character, leading to increase of much needed quantity and quality of local e-contents.

Raising awareness leading to adoption of voluntary codes of conduct among web-publishers from the other sectors can also help in raising the level of privacy protection on the Macedonian web space.

1. Introduction

The aim of this report is to document the developments related to online privacy and related areas in Macedonia during 2009, and provide expert interpretations and recommendations, aimed both to decision makers and the general public.

The report also contains information on the implementation of the right that covers the data flow in the "reverse direction," the freedom to access the information of public character possessed by state institutions.

The following information, conclusions and recommendations comes as a result of the efforts of a multidisciplinary team composed of ICT and legal experts, and the input from the relevant stakeholders and the general public, generated through consultations conducted online and through public events.

This report builds upon on the work done by the contributing institutions and organizations in the past, through participation in the preparation of the Macedonia section of Privacy and Human Rights: An International Survey of Privacy Laws and Developments, published by EPIC and Privacy International, and monitoring and reporting activities done within the framework of EDRI – European Digital Rights association.

Institutions and organizations involved in the compilation of this report included the Directorate for Personal Data Protection, the Legal Program of the Foundation Open Society Institute – Macedonia (FOSIM), and the Metamorphosis Foundation.

2. Privacy protection

2.1 Legal framework

2.1.1 Constitutional privacy framework

The Constitution of the Republic of Macedonia¹ recognizes the rights of privacy, data protection and secrecy of communications.

Article 25 states:

Each citizen is guaranteed the respect and protection of the privacy of his or her personal and family life and of his or her dignity and reputation. No one may interfere in the personal and family life, except in cases in which the expression and conduct of the person threatens the generally accepted social norms.

Article 26 states:

The inviolability of the home is guaranteed.
The right to the inviolability of the home may be restricted only by a court decision in cases of the detection or prevention of criminal offences or the protection of people's health.

Article 18 states:

The security and confidentiality of personal information are guaranteed.
Citizens are guaranteed protection from any violation of their personal integrity deriving from the registration of personal information through data processing."

Equally guaranteed is the freedom and confidentiality of correspondence.

Article 17 states:

The freedom and confidentiality of correspondence and other forms of communication is guaranteed.
Only a court decision may authorize non-application of the principle of the inviolability of the confidentiality of correspondence and other forms of communication, in cases where it is indispensable to a criminal investigation or required in the interests of the defense of the Republic.

¹ Published in the Official Gazette of the Republic of Macedonia, Nos. 52/91, 01/92, 31/98, 91/01, 84/03. The Constitution is available at the website of the Constitutional Court <http://www.ustavensud.mk/>.

2.1.2 Legal data protection framework

Several laws regulate the right of privacy in the Republic of Macedonia.² The Law on Personal Data Protection (LPDP) was adopted on January 25, 2005, and amended in July 2008 to ensure Full harmonization of the national legislation with the legislation of the European Union (Directive 95/46/EC), the Council of Europe (CoE) Convention No. 108, and the Additional Protocol to the CoE Convention 108/81.³

The LPDP explicitly identifies the exceptions from its application, focused on processing of personal data performed by natural persons purely for personal or household activities, processing of personal data in criminal procedure, as well as protection of the interests of security and defense of the Republic of Macedonia.

The Directorate for the Protection of Personal Data, as an independent supervisory agency, was established in June 2005.⁴ The LPDP provisions regulate the establishment of the Directorate as an independent and autonomous state body with the capacity of a legal entity, managed by a director appointed by the Parliament of the Republic of Macedonia. The work of the Directorate is fully funded by the Budget of the Republic of Macedonia.

The Directorate assesses the legality of the processing of personal data; publishes the principles of processing of personal data and ensures that the data controllers respect them; investigates and has access to the collections of personal data established by data controllers; maintains a Central Register of collections of personal data; maintains records on the transfer of personal data to other countries; receives reports or complaints related to the processing of personal data by data controllers; issues prohibitions of further processing of personal data to data controllers; provides opinion on the secondary legislation of the data controllers; and performs other tasks established by law. The Directorate also provides expert opinions and interpretations in the area of personal data protection.

According to the law, the personal data shall be processed fairly and lawfully, in conformity with the law and shall be collected for specified, explicit and legitimate purposes and shall be processed in a manner according to these purposes; they shall be adequate, relevant and not excessive in respect to the purposes they are collected or processed for. The data shall be

² Information in this section is based on the report on Macedonia included in the Privacy and Human Rights 2007: An International Survey of Privacy Laws and Developments, published by EPIC (www.epic.org) and Privacy International (<http://www.privacyinternational.org>). Available at <http://www.metamorphosis.org.mk/publications/english-publications/report-on-macedonia-included-in-the-privacy-and-human-rights-2007-epic-report/details.html>. In addition the Report by Metamorphosis Foundation for EDRI – Macedonia: Privacy Developments in 2008 was used, available at <http://www.metamorphosis.org.mk/publications/english-publications/privacy-in-macedonia-in-2008/details.html>.

³ The updated text of the Law on Personal Data Protection is available online on the website of the Directorate for Personal Data Protection http://dzlp.mk/files/uploads/global/ZZLP_Precisten%20tekst.pdf.

⁴ The Directorate for Personal Data Protection Republic of Macedonia website, available at <http://www.dzlp.mk>.

accurate, complete and updated as needed. Inaccurate or incomplete data, having in mind the aims for which they were collected or processed, will be erased or rectified. The personal data shall be kept in a form that enables identification of the subject of personal data for not longer than it is necessary to fulfill the purposes for which the data were collected or for which they are further processed. The data controllers are responsible for complying with the abovementioned principles concerning the quality of personal data.

The LPDP provides that consent of the data subject is mandatory for processing of personal data. Exceptions from this rule include performance of a contract where the subject of personal data is a contracting party, or upon a request of the subject of personal data, prior to entering into a contract; for compliance with a legal obligation of the data controller; for protection of the vital interests of the subject of personal data; for performance of activities of public interest or of official authority vested in the data controller or a third party to whom the data were disclosed. Furthermore, the law prohibits processing of special categories of personal data. The LPDP stipulates that processing must be specially designated and protected, while transfer through a telecommunications network may be carried out if the data are specially protected with encryption methods to render them unreadable during transmission.

The rights of the data subject include the right to examine the data collection; the right to submit a request to rectify, erase or block the processing of personal data, if the data are incomplete, inaccurate or out of date, or if their processing is not in conformity with the provisions of this law; and the right to request that their personal data are not used for advertising purposes. Furthermore, the LPDP guarantees that no court decision that produces legal effects concerning the performance of certain person can be based solely on automated data processing, the purpose of which is evaluation of certain personal aspects relating to that person.

The LPDP also established an obligation for data controllers to notify the Directorate for Protection of Personal Data before performing wholly or partly automatic processing operations. Additionally, transfer of personal data to other countries can be performed only if the third country provides an adequate level of protection of personal data.

The constitutional guarantee of protection of personal data is also regulated by the Criminal Code. The "abuse of personal data" is considered a crime under the Criminal Code. Punishments include a fine or prison sentence of up to one year for the perpetrators, which can be both natural and legal persons. The criminal offense of "abuse of personal data" has an aggravated form if committed by officials carrying out their duty, and that punishment is a prison sentence of three months to three years. The attempt to commit such a crime is also punishable. The Criminal Code also prohibits computer crimes (Article 251).

Illegal invasion of the privacy of communications is prohibited and punishable. In accordance with the Law on Electronic Communications, the holders, operators of telecommunication networks and means, as well as the providers of public telecommunication services are obliged to provide inviolability of message confidentiality within their technical abilities. As such, it provides privacy protection with prohibition of unauthorized wiretapping and data retention, defining lawful wiretapping, and prohibition of un-requested communication including

telemarketing and spamming in compliance with EU standards (opt-in for inclusion in mailing lists, and the right to opt-out for users of existing mailing lists).

The Law on Electronic Communications stipulates creation of an inspectorate within the Agency for Electronic Communications⁵ which stipulates monetary penalties of 4-7% of the annual income for legal entities and additional €1500-8000 for the responsible individuals.

Other laws regulating the protection of private data include:

- The Law on Electronic Communications
- The Law on Organization and Operation of State Administrative Bodies;
- The Law on the Voter List;
- The Law on Reporting Dwellings and Residence of Citizens;
- The Law on Asylum and Temporary Protection;
- The Law on Personal Identification Number;
- The Law on Classified Information;
- The Law on State Statistics;
- The Law on the National Bank of the Republic of Macedonia;
- The Law on Single Registry of the Population in the Republic of Macedonia;
- The Law on Personal Identification Records of the Insured and Beneficiaries of Pension and Disability Insurance Rights;
- The Law on Keeping Labor Records;
- The Law on Social Care;
- The Law on Family;
- The Law on Health Care;
- The Law on the Protection of the Population from Contagious Diseases
- Law on Broadcasting (Article 62)

as well as by the Code of Police Ethics, and the Code of Journalists of Macedonia.

2.2 National legislation – developments during 2009

2.2.1 Amendments to the Law on Personal Data Protection

The amendments and modifications to the Law on Personal Data Protection (“Official Gazette of the Republic of Macedonia” no.103/08) that entered into force in August 2008 strengthened the legal framework in the area of personal data protection.

Furthermore, the Parliament of the Republic of Macedonia enacted the Law on ratification of the Additional Protocol of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flow (“Official Gazette of the Republic of Macedonia” no.103/08). Republic of Macedonia transmitted the ratification instrument of the Additional Protocol to the Convention 108, with entry into force on 1st January 2009.

The Law on Amendments and Modification to the Law on Personal Data Protection stipulates that the articles referring to inspection will enter into force after the transitional period that

⁵ Agency for Electronic Communications, available at <http://www.aec.mk>.

expired on 28th of February 2009. With the implementation of the new inspection provisions, persons authorized for performing the inspection became inspectors for personal data protection, and are authorized to issue decisions in the cases when violation of the Law is determined. An appeal for administrative dispute to the Administrative Court could be applied against the inspector's decision. If the inspectors during the inspection determine a violation of the Law of Personal Data Protection, they take a legal action for alignment accordingly to the Law of Misdemeanors, but if an alignment is rejected, the inspector files a request for initiation of a misdemeanor procedure to the Misdemeanor Commissions of the Directorate. Accurate and short terms are determinate for the procedure that is taken during the inspection.

According to the amendment XX of the Constitution of the Republic of Macedonia and the new Misdemeanor Law, Directorate for Personal Data Protection reach a status of the misdemeanor body that pass sentence upon misdemeanor sanction. This competence, until adopting the amendments and modifications to the Law on Personal Data Protection, was in the competence of the Macedonian courts but now is placed apart in a special chapter of the Law, dedicated solely to the Misdemeanors. For realization of this new competence, the Directorate for Personal Data Protection already constituted Misdemeanor Commission composed of three experienced lawyers, who will conduct and implement the misdemeanor procedure in practice. This will contribute with the increasing of citizen's confidence in the legal system in general, and especially in the protection of personal data protection, as well as improvement of privacy.

Besides the transfer of the jurisdiction for misdemeanor body that pass sentence upon misdemeanor sanction, adopting the amendments and modifications on the Law of the Personal Data Protection will raise the fines, depending on the gravity of the infringement.

Now, they are divided into three groups: the fines for natural persons that are between €500 and €900, for responsible persons within legal entities the fines are from €700 up to €1200, and finally fines for legal entities are from €2000 up to €4000. In the Law there are fines for the processors: for natural persons fine is €600, for responsible persons within legal entities is €700 up and the fine for legal entities is from €2500.

According to the provisions of Law on Personal Data Protection, the following bylaws were adopted:

- Rulebook for the manner of the evidence files for the misdemeanors, the sanctions imposed and the decisions adopted, as well as for the manner of access to the information contained in the evidence files (Official Gazette of the Republic of Macedonia no. 136/08)
- Rulebook for the manner of performance of inspections (Official Gazette of the Republic of Macedonia no.143/08 and 38/09)
- Rulebook for the manner of the form and content of the official identity card, as well as the manner of issuance and revocation (Official Gazette of the Republic of Macedonia no. 143/08)
- Rulebook for the form and the notification form as well as the manner of notification in the Central Register of personal data collections (Official Gazette of the Republic of Macedonia no. 155/08)
- Rulebook on the technical and organizational measures on provision of secrecy and personal data protection (Official Gazette of the Republic of Macedonia no. 38/09)

The Directorate for Personal Data Protection has filed Annual Report about the working period from January 1 to December 31, 2008. This Annual Report represents an act for achievements and realized program activities in 2009, but also a perspectives and recommendations for 2010.

2.2.2 Law on National Criminal-Counterintelligence Data Base

The Law on National Criminal-Counterintelligence Data Base was adopted by the Parliament of the Republic of Macedonia on September 28th 2009⁶. The Law was proposed by the Ministry of Interior, on behalf of the Government of Republic of Macedonia, and in order to establish a central and integral informational system for processing and exchanging data among the institutions with competences in combating organized crime. In addition, the Law is expected to harmonize the domestic legislation with EU *acquis* and especially with the EU Council's decision to establish the European Police Office (EUROPOL)⁷ in respect of data exchanging.

The necessity for adopting such a Law was explicitly approved, both by the governing and by the parties in opposition, as the Law aims to overcome the lack of lawful procedure for the exchange of data held by the relevant institutions. However, many aspects of the Draft Law were seriously criticized by the opposition MPs and by the civil society organizations participating the open session of the Parliamentary Standing Inquiry Committee for the Protection of Civil Freedoms and Rights⁸.

The wide-ranging content of the data that is going to make up the integrated data base, as well as the unclear provisions⁹ that regulate the content were subject to many discussions and submissions of amendments in Parliament. In addition, the provisions that regulate the establishment of the Commission, the goal of which is to provide for efficient cooperation among the relevant institutions were also largely criticized as the Commission was not given the status of an independent body¹⁰. Therefore, the provision on the adoption of bylaws regulating the (1) access to the data-base and (2) the method of processing and maintaining the data by the Government, was argued as an insufficient solution and one that harms the principle of separation of powers.

In accordance with the Law on National Criminal-Counterintelligence Data Base, the abovementioned bylaws are expected to be adopted in mid October 2010. The process of adoption and the content of the bylaws will be closely analyzed in the upcoming reports.

⁶ Official gazette 120/09

⁷ 8706/3/08 REV 3 from October 9th 2008

⁸ The Committee held a public session at the first reading stage of the Draft Law on September 1st 2009.

⁹ In addition to the provisions according to which an individual's data is subject to being added to the data-base based on a suspicion that they have committed or have attempted to commit a criminal act, the law also includes a vague provision that extends the use of the Law over "*certain persons, criminal-law events or criminal occurrences organized in criminal dossiers*" [literal translation]. Furthermore, the Law also extends over any person who may in the future appear as a witness not just in a criminal, but also in any judicial procedure.

¹⁰ The Commission is made up of members from the Ministry of Interior; the Customs Directorate, the Financial Police Directorate; the Directorate for Public Revenues; the Directorate for the Protection of the Personal Data and the Directorate for the Security of Classified Information. The Commission's administrative-technical functions will be carried out by the Ministry of Interior.

2.3 Performance of the main competencies of the Directorate

2.3.1 Control over the legality of personal data processing and administrative supervision over personal data controllers

Inspection of legality of the activities for processing and protection of personal data over the controllers and processors i.e. the holders of personal data collections is one of the key competences of the Directorate.

Priority areas for inspection in this period were: education, health, social security, telecommunications, property insurance and local self government. Inspections were performed in state bodies, local self government, NGO's, health institutions, public enterprises and other legal persons with different activities.

During the period from January 1 to June 30, 2009 the Sector for inspection performed 3 inspections in the area of Electronic Communications. Also 3 other inspections in the same area were performed during the period from July 1 to December 31, 2009.

During reporting period, citizens especially were submitting initiatives for performing inspection on personal data processing over the video surveillance, processing of biometrical data for purposes of employees control, collecting of the personal identification number of the citizens without legal basis and retaining of the personal card of the citizens while entering official premises of certain controllers.

During reporting period against two decisions issued by the Directorate for personal data protection was initiated administrative dispute, for which the procedure at the Administrative court of the Republic of Macedonia is still running.

2.3.2 Providing expert opinions

The Directorate has been continuously providing opinions on personal data matters, majority of which are regarding by laws created by personal data controllers, draft laws and international agreements as well as assessments if the conditions required for transfer of personal data to other countries are fulfilled, questions by natural or legal persons, particularly related on abusing the personal data on Internet, protecting the personal data at work, abusing the personal data collected and processed by video surveillance. The Directorate also issues reprimands for consequently enforcement on the provisions and principles for data protection from the controllers and processors of the personal data collection.

In the past year during the first reporting period from January 1 to June 30, 2009 the Directorate provided 16 opinions and 1 reprimand in the Electronic Communications area. During the second half of reporting period from July 1 till December 31, 2009, the Directorate provided 34 opinions and 4 reprimands in the same area, making it total of 52 opinions and 5 reprimands.

2.3.3 Complaints handling and request by citizens

The issue which the Directorate focused on the most was the complaints handling and requests filed by the natural persons for the entrenchment of the violation of the right to personal data protection. The Directorate is legally bound to investigate whether there was misuse of personal data or not.

The term "complaint" refers to requests that are compliant with Article 18 of the Law on Personal Data Protection and submitted for determining a violation of the right to private data protection. The term "request" refers to all other requests (non-compliant with Article 18) submitted by natural persons to the Directorate.

Of the total number of 32 **complaints** filed for the period from January 1 to December 31, 2009, 4 of them were submitted for violations made on-line. Two of the complaints were for revealing and abuse of personal data on the internet, and two of the complaints was for abuse of personal data for the means of the internet social networks like Facebook, Hi5, Twitter and etc.

The total number of **requests** by citizens regarding the abuse of personal data on internet social networks for the past year is 66. During the first half of the reporting period, from January 1 to June 30, 2009, the number of requests by citizens regarding the abuse of personal data on internet social networks was 54. During the second half of reporting period from July 1 to December 31, the citizens made 12 requests.

The most common violations included: identity theft, publishing photos on You Tube, creating blogs and fan groups using data from other persons, misuse of the user name and password.

Activities during 2009	First half	Second half	Total
Inspections	3	3	6
Expert opinions	16	34	52
Reprimands	1	4	5
Complaints (online cases)	3	1	4
Citizens' Requests (social networks)	54	12	66

Table 1: Activities of the Directorate for Personal Data Protection during 2009.

2.3.4 Public awareness rising

Public awareness rising and informing the citizens about the right of personal data protection and privacy was and is a key imperative of the work of the Directorate. Therefore, the Directorate made several appearances in various mediums for the purpose of rising public awareness. The number of appearances in traditional media is documented in Table 2.

Media Type	Appearances
Printed media	80
Electronic media	72
Total	152

Table 2: Overview of awareness raising efforts by DPDP in 2009

2.4 (Lack of) Presence of privacy policies on the Macedonian web

In order to determine the level of presence of privacy policies on the Macedonian websites, three samples were examined:

1. Sample consisting of all .MK domains registered by MARNet.¹¹
2. Sample consisting of websites registered by the Macedonia Search directory.
3. Sample consisting of all websites which use .gov.mk domains, owned by the Macedonian central and local governments and their subsidiary institutions.

Examination of each samples proceeded in two phases:

- First Phase: Automatic data processing to filter domains referring to websites which possibly have privacy policies, based on the keyword analysis of the contents of their front pages.
- Second Phase: Manual check-up of the filtered list to determine if the referred websites indeed possess a privacy policy, and to weed out duplicates.

During the first phase, an automated script crawled all the domains from the list, and made a copy of the front page of each website (HTML format) and placed it into a database. The domains referring to web pages which contained a list of predefined keywords that can be part of a link towards a privacy policy were singled out to be examined manually.

The research team attempted to identify all the keywords which can be used in the various forms of text links that can lead to a privacy policy, or a document which serves the same purposes. These keywords included the strings:

- "приватно*" & "privatno*" indicating the pages containing the Macedonian term for privacy policy ("политика за приватност" or "политика по приватност")
- "правна*" & "pravna*" indicating the pages containing the Macedonian term for legal precept ("правна поука") used as a link to a de-facto privacy policy on the websites of T-home¹²
- and the strings leading to the various forms of the term "personal data protection" ("Заштита на лични податоци"), as used on the e-shop Exquisite¹³

During the second phase, all domains leading to web pages which yielded presence of such keywords were placed in a separate list and examined manually. This examination included identification if any of the above keywords is indeed part of a text link leading to a privacy policy. In addition, this check-up also involved identifying duplicates, i.e. if any of the domains lead to the same webpage. The basic criteria involved

2.4.1 Second and third-level .MK domains

¹¹ <http://dns.marnet.net.mk>

¹² <http://t-home.mk>

¹³ <http://www.ex.mk>

Data collection for the first sample was performed in April 2009 and January 2010, using the list of second and third-level .MK domains registered by MARNet.

Within this sample, the research team also identified one Macedonian website¹⁴ which had a privacy policy, but did not have a text link leading to it, but a .GIF image with the word "Policy." Having no ALT tag for this image, this domain/website was 'missed' by the automatic search. This led to incrementing the total number of domains and web sites with privacy policies, presented in Table 3.

	March 2009	February 2010
Total registered domains	13931	13777
Domains that return errors	4708	4671
Active domains	9223	9106
Domains leading to placeholder pages	932	403
Domains containing the relevant keywords	208	233
Web pages with links to privacy statements (incl. duplicates)	65	110
Websites with privacy statements	24	41

Table 3: Results of the analysis of the second and third-level .MK domains.

Basic limitation of this sample is that it covered only second and third-level .MK domains—the .com.mk, .edu.mk, .gov.mk, .inf.mk, .name.mk, .net.mk, and .org.mk—but did not consider the third-and-above level domains as separate websites. Therefore, the sampling did not include the blogs from the local platform Bloggeraj (over 20000 at *.blog.com.mk, and around 2000 at *.blog.mk at the time), or various sub-sites such as forums, regardless if their url was in the form forum.websitename.com.mk or websitename.com.mk/forum.

Whether one considers the blogs separate websites, or parts of one huge website can be subject of a debate outside of the scope of this report. The number of other websites which have fourth-level sub-sites/separate sites is much lower.

Even though not all blogs from Bloggeraj have been manually tested, the team members have examined quite a few of them and none had separate privacy policy, while the other fourth-level sub-sites generally follow the lead of the main site in regard to presence of a privacy policy. Even though this decision meant that a number of websites based on the same domain would not be included in the sample, it is the opinion of the researchers that the sample still remains large enough, and provides valid snapshot of the overall situation on the Macedonian web. Exclusion of the blogs from the sample also prevented further skewing of the results in the direction of lack of privacy policies.

The decline in the total number of registered domains between 2009 and 2010 is due to the fact that some of the registered domains do not remain active indefinitely. In September 2009 MARNet temporarily closed about 2000 domains owned by entities which “forgot” to renew their subscription over the years, as a consequence of the decision announced July 20, 2009.¹⁵ Some of the owners of these domains did not continue their subscription even after the 90-day grace period, and the domains became inactive - at disposal to others.

¹⁴ <http://www.kinomilenium.com.mk>

¹⁵ <http://dns.marnet.net.mk/izvesti.php>

The research team invested much effort in establishing the automated data processing methodology that would determine if more than one domain directs towards the same website, including identifying placeholder pages. These are web pages generated automatically by the hosting providers for registered domains which have no files on the server. For instance "Soon to be hosted on On.net/ONE" with 705 domains in 2009 sample and 381 in 2010 sample, or PLESK logo by MOL with 227 domains in the 2009 sample and 22 in the 2010 sample. The decline of this type of domains is a clear indicator of the impact of MARNet's decision discussed above.

Based on the above data, when compared to the total number of active domains, in March 2009 less than one percent of the MK domains lead to a webpage containing a link to a privacy statement (0.69%). The situation somewhat improved in February 2010, when 1.2% of the domains lead to such a webpage.

Even if the number of identified websites is compared to the number closer to the real number of actual websites related to the sampled domains (active domains minus the domains leading to placeholder pages), the percentages remains under one percent: 0.29% for the 2009 sample and 0.47% for the 2010 sample.

Assuming that *each* website related to the domains from the above sample registered *all* the available versions of their domain name, for instance [websitename.com.mk](#) and [websitename.mk](#); or [websitename.org.mk](#), [websitename.net.mk](#) and [websitename.mk](#); or [websitename.gov.mk](#) and [websitename.mk](#), implying that the actual percentage of websites with privacy policies should increase 3-4 times, the end result would still be quite pessimistic: between 90-95% of the Macedonian websites would still have no privacy policy.

All of the above figures clearly indicate that overall presence of the websites containing privacy statements on the Macedonian web remains very low.

2.4.2 Websites registered by Macedonia Search Directory

Macedonia Search, established in December 1999, ranks among the earliest and most reputable Macedonian portals, maintaining possibly one of the largest directories of Macedonia-related websites.¹⁶

The links in the directory are categorized by topic, and the linked websites may use either .MK domains or foreign domains, mostly .COM. The links in the directory have been inputted manually by the portal administrators, through proactive efforts to cover as many of the existing websites, and by the users/website owners through a web-form.

	March 2009
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¹⁶ Macedonia Search uses the domains <http://www.org.mk> or <http://macedonia.eu.org> as entry points. Other Macedonia-related web directories which span decades include now defunct MKD Directory by UNET and the English-language only <http://directory.macedonia.org>.

Total registered websites	2006
Dysfunctional websites	303
Active websites	1703
Websites with front-pages containing the relevant keywords	81
Web pages with links to privacy statements (incl. duplicates)	29
Websites with privacy statements	25

Table 3: Results of the analysis of the websites from Macedonia Search Directory

The percentage of identified websites with privacy statements compared to the total number of active websites is 1.47%. The percentage could increase slightly, depending on the rate of duplicates among the all active websites. The estimation that this increase would not be dramatic is based on the fact that unlike the whole .MK sample, the directory contents has been subject to moderating and checking at the point of entry/approval of the links, which in effect resulted in general removal of duplicates within the categories.

The rate of duplicates among the manually checked sample of 81 links containing the keywords was less than 5%, which differs widely from the rate of duplicates among the .MK domains taken from the MARNet list in February 2010, which amounted to over 37%. However determining the actual rate of duplicates for any of these samples through manual checking would require investment of resources outside of the scope at the disposal of the project team.

This assumption is corroborated by the circumstantial evidence collected through analysis of an even more restricted sample, containing 63 Macedonian websites reviewed through the regular column "Website of the Day" run by Metamorphosis Foundation and appearing in the daily newspaper *Vreme* during 2009.¹⁷ This sample cannot be taken as representative of the whole Macedonian web, as it has been heavily biased in favor of interesting and notable websites, many of them examples of best practices in their field. However, as presented in Table 4, even with such prior filtering, only 24% of the reviewed websites had privacy policies.

Domain	Number	Has a PP	Percentage
.mk	42	12	29%
other (.com, .net, .org, .se)	21	3	14%
Total websites	63	15	24%

Table 4: Presence of privacy policies (PP) within Macedonian websites reviewed in "Website of the Day" during 2009.

Determining the exact rate of duplicates in the general samples used in this research remains a challenge and limits the ability to pinpoint the exact percentage of Macedonian websites with privacy policies. Even though, the results on the actual number of websites remain valid, and lead to conclusion that only a very small minority of Macedonian websites from these quite significant samples possess privacy policies.

¹⁷ <http://www.metamorphosis.org.mk/activities/analiza-na-domeni-i-politiki-na-privatnost-na-makedonskite-veb-sajtovi-recenzirani-vo-rubrikata-veb-sajt-na-denot.html>

In addition, as is the case with other systems containing thousands of members,¹⁸ the larger rate of duplicates assumed among the .MK domains from the first sample can possibly decline—even out—if this population of websites is paired with all the other Macedonian websites which prefer using foreign/international domains. Taking into consideration that the MARNet registry contains quite a few duplicate domains and much higher percentage of erroneous web addresses, this 'super sample,' or the total 'population' of Macedonian websites possibly resembles the sample from the Macedonia search directory.

2.4.3 Governmental websites (.GOV.MK)

In addition to the above general samples, the presence of privacy policies was examined in detail on one special segment of the Macedonian web: the governmental websites using the .GOV.MK domains, based on the available records in the MARNet's register. One limitation is that examined domains were up to and including third level domains (*.GOV.MK), while fourth and higher level domains—which can be added or removed by their system administrators without public record or any links leading to them—were not included in the survey. These include the websites of the central and local government, as well as government bodies and institutions, as well as some public enterprises.

A limitation to this segment of the research involves the fact that some governmental websites also use second-level domains, such as www.vlada.mk, or even .COM, such as www.investinmacedonia.com. The number of these websites seems small in comparison to the number of "regular" GOV.MK websites, and it is the opinion of the research team that the results obtained through analysis of the larger segment can be generalized to the overall web presence of the state and local public institutions.

All the.GOV.MK domains from MARNet's register were subjected to automatic check-up similar to the one for the general .MK sample above, excluding the 56 domains that returned errors during this phase. Those that have been deemed functioning have been checked manually, and 33 of them have found to be dysfunctional. Each front page was examined for links leading to a privacy policy, or a document serving such a purpose. The results are presented in Table 5.

.GOV.MK	February 2010
Total registered domains	269
Domains that return errors & dysfunctional domains	88
Active domains	180
Domains leading to placeholder pages	10
Duplicate domains	15
Functioning websites	165
Websites with privacy statements	0

Table 5: Results of the analysis of the second and third-level .MK domains.

¹⁸ As demonstrated in James Surowiecki's [The Wisdom of Crowds](#) (2005, ISBN 0385721706), and Phillip Ball's [Critical Mass: How One Thing Leads to Anothers](#) (2005, ISBN 9780099457862).

Note: several government websites have functional www.websitename.gov.mk address, but failed to activate the redirection from the domain websitename.gov.mk, without the [www.](http://www) prefix. These were considered functional domains. The functional domains also included 5 domains which contained content in Albanian language only.

Placeholder pages provided a wide variety of messages, from "Soon to be hosted at [ISP name], to "It works!". At the time of the check-up, one of the domains categorized as dysfunctional domains even redirected to an adult website seemingly hosted in Russia. Only one functional GOV.MK website had a link to a privacy statement, which did not function – the link redirected back to the front page.¹⁹

In effect, not one website owned by the various levels of government in Republic of Macedonia could be identified as having a privacy policy, a percentage lower than the already established low presence of such documents on the general Macedonian web.

2.4.4 Local E-Commerce Websites

Opening of the domestic payment processor in 2008, which resulted in founding of a number of e-commerce websites aiming at the local audience during the first half of 2009 was one of the most important developments during that year. By September at least 16 e-shops offered transactions via VISA or MasterCard, using 3 banks as intermediaries.²⁰

Many of these new e-shops introduced privacy policies in consultation with DPDP, practically contributing to establishing this important website element. However, the actual e-commerce market in Macedonia remained quite small by the end of the year, involving only several thousand people at the most, performing not more than few thousand transactions of relatively small size.

However, while the number of local e-shops rose to 29 by the beginning of 2010, a surprisingly large percentage of them do not feature privacy policies, even though the overall situation is improving. Metamorphosis team surveyed them all, based on the links offered by the banks that act as intermediaries for e-commerce accounts (please see Appendix I for details). The results are presented in Table 6.

.GOV.MK	Sept. 2009	April 2010
Local e-shops	16	29
Websites with privacy statements	9	18
Percentage of e-shops with privacy policies	56%	62%

Table 6: Presence of privacy policies on the Macedonian e-shops catering to local audience

¹⁹ <http://caa.gov.mk/>

²⁰ F. Stojanovski. (2009). Impact of Social Media on Internet Marketing in Macedonia. IAE DE Paris (University Paris 1 Panthéon Sorbonne). [Graduate thesis for Master of e-Business Management program]

In addition, a survey by New Moment done in early 2010 established that e-commerce customers from Skopje "do not know if the Macedonian e-shops offer safe purchasing,"²¹ confirming the lack of confidence in online transactions.

²¹ <http://komunikacii.net/04/22/internet-trgovija-2/>

2.5 Notable online privacy-related developments

2.5.1 Rise of Facebook

The most significant development on Macedonia-related internet in 2009 has been the explosive growth of social media use, resulting from the increasing popularity of Facebook (FB). The number of FB users from Macedonia, which was on the rise in 2008 too, dramatically increased in 2009 - from around 83,000 in January to almost 500,000 by the end of December.²²

One factor influencing this trend was overcoming the language barrier identified in 2004 survey by Metamorphosis and FOSIM.²³ Multilanguage interfaces introduced in August 2008—including Macedonian and Albanian—effectively opened FB to the ¾ of Macedonian population lacking working knowledge of English.

Existing cultural preference for social networking as a form of interpersonal communication and entertainment provided strong potential for a fit with ICT solutions that augment these activities. In 2009, even the customarily slow-to-catch-up traditional media begin to provide frequent coverage of Facebook related developments, which supports the argument that online social media become an integral element of the mainstream culture in Macedonia.

The trend of presence of politicians online from 2008²⁴ continued in 2009. During the Elections which took place in March and April, candidates for president and mayors started using social media such as Facebook and blogs as part of their election campaign, alongside personal or political party websites.

Research by Metamorphosis revealed that candidates failed to address all potential voters by using the relevant local languages in their web presence, did not provide regular updates or respond to e-mail, and in general did not seem to grasp the new technologies. Alongside, this research revealed surprisingly high correlation in regard to the support provided to the presidential candidates on Facebook and the number of the actual votes gained in both round of the elections, pointing to possible use of social media as market research tool on issues which mobilize critical mass of users.²⁵

State institutions were affected by the rise of Facebook's popularity. Some, including the Parliament, blocked use of this service on their office networks.

On the other hand, the Ministry of Interior Affairs opened a short-lived "unofficial" personal profile in April. This caused some journalists to question the motives of invitation to become *friends* with the Ministry – which would enable its operator to view their profiles and activities

²² Info sources used: Komunikacii.net, IT.com.mk, and Facebakers.com.

²³ <http://www.metamorphosis.org.mk/docman/research/macedonian-narrative-report-general-data-about-the-situation-regarding-the-ict-in-macedonia/details.html>

²⁴ <http://www.metamorphosis.org.mk/macedonia/macedonia-flirting-online-with-the-politicians.html>

²⁵ <http://metamorphosis.org.mk/dmdocuments/2009-Izbori-Makedonija-internet.pdf>

too.²⁶ Facebook shut down the MOI profile because it violated the terms of service, which allow only individuals to have personal profiles, while legal entities need to use *pages*.²⁷

The level of public awareness about privacy, and especially digital privacy issues, remains very low, which has been pointed as major obstacle by the stakeholders.

2.5.2 Use of foreign-based services by Government bodies

During 2009, several cases of use of services based abroad by the government bodies also raised privacy concerns, because it involved placing citizens' personal data outside of the borders of Republic of Macedonia. Namely, in order to conduct various official businesses, representatives of several government bodies have required or invited the citizens to send their personal data via foreign services, such as e-mail providers or social networks. In effect, the citizens' private data was placed outside of the jurisdiction of the relevant Macedonian authorities (DPDP), as the foreign companies are subject to the laws of their respective countries.

In general, use of free e-mail providers remains widespread among the employees of all levels of government, who often use their Yahoo, Gmail or Hotmail account instead of an official e-mail address on a GOV.MK domain/the domain of their respective institution for correspondence. This practice also concerns establishment of ICT standards within the public institutions and the archiving of the correspondence, which should be part of the institution's system, and which needs to remain at the disposal for audits and other purposes.

For example, in an advertisement published July 9 as part of the efforts to "upgrade the concept of accountability and closeness to the citizens" the ruling political party published the e-mail addresses of its 52 MPs.²⁸ Most of them use foreign-based services, such as Yahoo (50%), Gmail (4%) and Hotmail (1%), while the rest used the Parliament's e-mail @sobranie.mk (38%) or other Macedonian providers (6%).

A particular instance of this tendency involved the celebration of the visa liberalization with the EU, which involved a round-trip to Paris for a hundred citizens chosen at random, organized by the Secretariat of European Affairs on December 17. To participate in the draw, the citizens had to possess a biometric passport and send their personal data (name, surname, passport ID number, and telephone) in hardcopy through regular mail or by e-mail to a Gmail account.²⁹

2.5.3 Use of YouTube for initiation of political scandals

During 2009 YouTube was used at least two occasions to disclose of classified or wiretapped content, as a device to initiate political scandals. In both cases the person/s that uploaded the

²⁶ <http://www.metamorphosis.org.mk/macedonia/citizens-can-now-be-facebook-friends-with-the-ministry-of-interior.html>

²⁷ <http://globalvoicesonline.org/2009/04/09/macedonia-facebook-removes-ministry-of-the-interiors-personal-profile/>

²⁸ http://www.scribd.com/full/31992778?access_key=key-wkktl6f0zhenkwl6asy

²⁹ <http://volanskopje.blogspot.com/2009/12/100-19-2009.html>

clips has not been revealed, nor has information about possible police investigation been disclosed to the public.

The first such case took place during November and December 2009, involving opposition party leader Ljube Boshkoski and a series of clips displaying his alleged "betrayal" of Johan Tarchulovski during their trial in front of the International Criminal Tribunal for the former Yugoslavia. The clips showing Boshkoski reading an allegedly incriminating document during a court procedure in Pula, Croatia, were first published on YouTube and then widely propagated by pro-Government traditional media, including Sitel TV³⁰ and the National Broadcaster Macedonian Radio and Television.³¹ This so-called "internet war" escalated two weeks later, when new clips appeared featuring statements by Tarchulovski,³² who through his lawyer then claimed that they are forgeries.³³ Even though one of the lawyers involved claimed that publishing of the classified documents used in the Tribunal proceedings is a crime under Macedonian law,³⁴ the law enforcement agencies have not informed the public about the investigation in this regard.

The second case of using YouTube to start a political scandal took place in late December, and involved publishing of an audio recording of a seemingly wiretapped conversation between the head of Market Inspectorate Sasho Akjimovski and a discothèque owner, during which they conspire to put a competitor out of business. The link spread through social and traditional media which presented it as scandal revealing corruption within the current administration. Even though Akjimovski claimed that he was framed,³⁵ he was fired two days later.³⁶ The Minister of Economy announced a comprehensive investigation,³⁷ but the Public Prosecutor announced that the clip cannot be used as sufficient evidence to start an investigation regarding the accusations of corruption.³⁸ The authorities have not tackled the issue of discovering the source of the recording, either.

2.5.4 Lack of protection from spam

The Agency for Electronic Communications is in charge of enforcing the Law on Electronic Communications through an inspectorate, but so far there has been no public information on the activities of the inspectorate prescribed by the Law in regard to articles relevant to privacy issues, including provisions against direct marketing by legal entities.

In general, Macedonian companies continue to use mailing lists compiled without the explicit permission of the recipients as one of their primary marketing tools. However, a number of

³⁰ <http://www.utrinski.com.mk/?ItemID=184294DF47CC5142B762BDE342CD97DD>

³¹ <http://www.utrinski.com.mk/?ItemID=773CA2844760514A9D2C1D093A0FDCB5>

³² <http://www.utrinski.com.mk/?ItemID=BE360433665DCA4CA08C0EEFB25B8A6E>

³³ <http://www.vecer.com.mk/default.asp?ItemID=A313D5B1EA03674487CC6C910C5EF5F6>

³⁴ <http://www.vreme.com.mk/DesktopDefault.aspx?tabindex=6&tabid=1&EditionID=1886&ArticleID=128414>

³⁵ <http://www.utrinski.com.mk/?ItemID=F80AD48A1B953248BBA8D0F0EBCDF628>

³⁶ <http://www.utrinski.com.mk/?ItemID=F30D332E1ABE764CB81C01A721C6CDA2>

³⁷ <http://www.utrinski.com.mk/?ItemID=FE8CD84CA147ED42B047D0158241EE3A>

³⁸ <http://www.vest.com.mk/?ItemID=6AA0F50D12B8494C80FF0E87C9666C50>

consulting companies and marketing agencies specialized in online promotion have reacted to increased activities by the DPDP and digital rights NGOs by adding an opt-out footer in their e-mails.

2.5.5 Collecting private data without explanation

As established above, the websites owned by the various government bodies in general lack privacy policies. In a number of instances, besides this they collect additional data from the users without providing any explanation what would happen with it, how it will be archived, and for what purposes it will be used.

An example of a GOV.MK website collecting private data without a privacy policy or an explanation why is the section of the website of the Ministry of Information society for download of new Macedonian fonts, which requires the users to input their e-mail address.³⁹

Instances of governmental websites which do not use GOV.MK domain include the website of the Parliament, which uses second-level .MK domain,⁴⁰ and the website of the Government's anti-drugs campaign which uses .COM.MK domain, being outsourced through a private advertising agency.⁴¹

Neither these two website has a privacy policy, even though they collect private data. In the case of the Parliament the users who want to communicate with the deputies via online form need to input their name, surname and e-mail.⁴² Government's campaign against drugs asks the visitors to participate in an online survey about their illegal drugs use, i.e. to provide incriminating information that can potentially be linked with their IP or other personal data left on the website, such as via the forum feature.

2.6 Privacy-related civil society activism

During 2009 Metamorphosis Foundation conducted two privacy-related projects: Online Privacy Initiative and Online Privacy Made Easy. As part of the former project, Metamorphosis served as watchdog through monitoring, reporting and public awareness raising about privacy issues, as well as proposing practical solutions to some of the technical and legal challenges. In addition, Metamorphosis continued to provide two-way translations (Macedonian-English) of at least one to two privacy-related articles per week from Macedonia and the EDRI-gram, and promotion of good practices and useful websites and initiatives through the regular column "Website of the day" in *Vreme* daily, and its affiliated blog.

³⁹ <http://www.mio.gov.mk/?q=node/2241>

⁴⁰ <http://sobranie.mk>

⁴¹ <http://zivototemojotfilm.com.mk/>

⁴² <http://www.sobranie.mk/default.asp?section=kontaktPratenik>

As part of the later project, building upon the CRISP project which finished in 2008,⁴³ Metamorphosis continued to cater to the needs of children and teenagers for more educational e-content by continuing to provide age-relevant information through a column of the weekly supplement for kids *Kolibri* in *Nova Makedonija* daily, on the *Safely on the Internet* website,⁴⁴ and through commencing production of educational videos and games.

As part of the International Action Day "Freedom not Fear 2009 – Stop Surveillance Mania!",⁴⁵ Metamorphosis, FOSIM and six other NGOs (Internet Hotline Provider Macedonia, Macedonian Young Lawyers Association, Youth Educational Forum, ELSA-RM, and Macedonian Center for European Education), joined with the DPDP to organize distribution of flyers in Macedonian and Albanian, and provided expert consultations/hands-on-education for citizens on September 12 in Skopje.⁴⁶

Privacy and transparency issues were raised during the Fifth International Conference e-Society.Mk "I Media"⁴⁷ organized in Skopje December 2-3, within the context of development of new media and enhancing active civic participation. Localization and adaptation of the applications by the British NGO MySociety⁴⁸ been proposed as a solution to the need for establishing of multi-directional communication systems between the citizens and various levels of government. Metamorphosis and FOSIM undertake the initiative to adapt several applications from this open standards/FOSS-based suite. Applying this example of best practice will also affect the area of privacy, because the applications put minimum requirements from the citizens to disclose their private data, which is related to the issue of unnecessary collection and undefined retention by the current government applications.

⁴³ <http://www.epractice.eu/en/cases/crisp>

⁴⁴ <http://bezbednonainternet.org.mk/> in Macedonian and <http://internetisigurt.org.mk> in Albanian language.

⁴⁵ <http://freedom-not-fear.eu>

⁴⁶ <http://www.metamorphosis.org.mk/activities/macedonia-freedom-not-fear-2009-activities-for-citizen-education-about-their-rights.html>

⁴⁷ <http://e-society.org.mk/portal/content/view/88/56/lang.en/>

⁴⁸ <http://mysociety.org>

3. Access to information

3.1 Legal framework

3.1.2 Constitutional framework for free access to information

The Constitution of the Republic of Macedonia recognizes the right to free access to information within paragraph 3 of the

Article 16, which states:

The freedom of personal conviction, conscience, thought and public expression of thought is guaranteed.

The freedom of speech, public address, public information and the establishment of institutions for public information is guaranteed.

Free access to information and the freedom of reception and transmission of information are guaranteed.

The right of reply via the mass media is guaranteed.

The right to a correction in the mass media is guaranteed.

The right to protect a source of information in the mass media is guaranteed.

Censorship is prohibited.

3.1.3 The amendment of the Law on Free Access to Information of Public Character

For the first time after the adoption of the Law on Free Access to Information of Public Character in January 2006, the Law underwent substantial amount of changes in early January 2010⁴⁹. The Ministry of Justice drafted amendments to the existing Law in October 2009 in a non-transparent process, without the participation of the Commission, the experts in the area or representatives of civil society, although the process for amendment of the Law was initiated and supported by the FOSIM and the OSCE spill over mission in Skopje.

After two years of monitoring of the implementation of the Law, the idea for amendment of the Law was launched in middle 2008 in order to amend the located weakness of the Law and to improve the exercise of the right to free access to information. The two partner organizations, FOSIM and the OSCE spill over mission in Skopje, established an expert task group that worked on drafting of the amendments together with a team consisted of Ministry of Justice officials. The main challenges of the working group were aimed towards:

- (1) improving the definition on information holder and information of public character;
- (2) regulating the exercise of the harm test;

⁴⁹ The Law also underwent minor changes of the misdemeanor sanctions in 2008 in order to harmonize with the Misdemeanor Law that was adopted in 2007.

- (3) imposing obligation for information holders to disclose information of public character such as relevant laws, bylaws and draft legislation, statistical data, press releases and reports of the work of the specific institution on the institutions' official web site;
- (4) improving and regulating the right to appeal in several circumstances in which the right to access to information did not have efficient protection;
- (5) improving the independent status of the Commission for Protection of the Right to Free Access to Information of Public Character⁵⁰ (Commission) and redefining the composition and the conditions that a candidate for president, vice president or a member of the Commission should fulfil;
- (6) improving the administrative capacities of the Commission;
- (7) redefining the content of the obligatory annual report that each information holder submits to the Commission and
- (8) improving the respect of the right to access to information by imposing various of misdemeanour sanctions both to the authorised officials and to the official persons when failing to lawfully provide access to information of public character to a requester.

Beside the joint work of the expert group and the Ministry of Justice, the amendments submitted to the Parliament of the Republic of Macedonia, by the Ministry, had several substantial shortcomings. Therefore, FOSIM advocated for the improvement of the amendments by participation at the session of Parliamentary Committee on the Political System and Inter-ethnic Relations in the stage of the first reading of the proposed amendments. Furthermore, FOSIM drafted amendments to the proposed changes and submitted them to the Assembly of the Republic of Macedonia through the Chairperson of the Standing Inquiry Committee for Protection of Civil Freedoms and Rights.

Most of the FOSIM's amendments were conducted in order to stress the importance of charging the Commission with competences to impose misdemeanour sanctions to information holders when failing to provide access to information and also to legally bind the information holders to disclose the draft legislation. The previous was pointed out in order to strengthen the position of the Commission and to improve the implementation of the law with the Commission's competence to carry out misdemeanour procedures. However, this argument was not accepted by the Parliament and the Courts continued to have the only jurisdiction for misdemeanour procedures. Although the importance for making draft legislation available was pointed out at the European Commission Report for the Progress of the Republic of Macedonia, the amendment for imposing obligation for information holders to make public such information was not approved either.

The amendments of the Law were enacted by the Assembly of the Republic in January 2010, encompassing some of the amendments proposed by FOSIM.

3.2 FOI-related civil society activism

⁵⁰ Commission for the Protection of the Right to Free Access to Information of Public Character, independent body responsible for deciding upon appeals against rejected access to information requests. More information on the Commission and its work are available at www.komspi.mk.

FOSIM continues to promote the right to free access to information. Project activities in 2009 focused on monitoring the implementation of the Free Access Law, providing free legal aid for rejected requests and strategic litigation to test the Law. FOSIM in cooperation with Youth Educational Forum and Macedonian Young Lawyers' Association submitted a total of 800 (115 FOSIM, 190 MYLA, and 495 YEF) requests to over 90 institutions.⁵¹ The process of providing free legal advice and protection of the citizens' rights before the relevant institutions continued during 2009 by secured free legal representation in cases where access to information is denied. More than 20 trained attorneys from MYLA were litigating nearly 115 cases for which complaints were submitted to the Commission. Most of the appeals were successful. The monitoring results showed that while progress is registered in comparison to previous years after the adoption of the Free Access Law, its implementation is still not satisfactory. Silence of the administration (mute refusal) continues to be a challenge to the implementation of the Law, since approximately 30% of the requests were answered only after appeals were submitted to the Commission. Also, there was one administrative court dispute initiated during 2009, while one dispute in front of the Administrative Court initiated in 2008 was finalized in favor of the information requester in June 2009.

Free legal advice for citizens continued to be provided through a free help line that gives an opportunity for interested persons to ask questions related to free access to information and receive answers. 51 calls related to different legal issues were registered in 2009. This indicates that the population is not acquainted not only of the existence of the Law, but also of their rights that this law guarantees. Despite this, through the help line MYLA has helped citizens in preparing request forms, providing them with information as to how they can maximize obtaining information, as well as explaining matters of their interest.

FOSIM in cooperation with YEF organized training for students. The procedure and the aim of the Law on Free Access to Information were clarified and detailed before 35 participants. The purpose of the training was to encourage participants and equip them with relevant knowledge on the use of the right to free access to information. Following the training, 287 requests were submitted by the participants. On the basis of data collected through the submitted FOI requests, YEF with the support of FOSIM prepared and published a publication on the implementation of the European Credit Transfer System in the Republic of Macedonia, also containing a report from the monitoring of the implementation of the FOI law.

Additionally, in cooperation with MYLA, two discussion sessions were held on the topic of the Law on Free Access to Information of Public Character and the potentials for its use for research purposes. The first was held with a group of journalists and focused on the possibilities for investigative journalism stemming from the Law. The second discussion session was held in cooperation of the Faculty of Law "Iustinianus I" at the University "Sts. Cyril and Methodius",⁵² where before a group of 30 teaching assistants and researchers from the Faculty, the

⁵¹ Based on the monitoring results, MYLA publishes monthly reports and an annual analysis of the situation with free access to information in Macedonia, which are regularly distributed to the media. On the basis of data collected through the submitted FOI requests, Youth Educational Forum with the support of FOSIM prepared and published a publication on the implementation of the European Credit Transfer System in the Republic of Macedonia, also containing a report of the FOI law implementation monitoring. These results were publicly presented by FOSIM at the promotion of the publication.

⁵² Faculty website <http://pf.ukim.edu.mk>, university website <http://www.ukim.edu.mk>.

advantages of application of the Law on Free Access to Information for academic research were presented.

FOSIM, through a public bid, chose a research agency to conduct a public survey for citizens and public officials regarding the free access to information. The results of the survey were devastating – more than majority of the citizens did not know that the law even exists. Additionally, there were major differences between the opinions of the citizens and the information holders. In order to present the findings, a press conference was organized in May 2009. The main research findings are provided in a separate document.⁵³ Based on the findings of the survey, FOSIM produced recommendations to the authorities, aimed at increasing the transparency and accountability in their work.

⁵³ Available online in English, at: http://soros.org.mk/dokumenti/Survey_Public_Perception_FOI_Law.pdf

4. Conclusions and recommendations

4.1 Conclusions

- Even though the basic legal framework for privacy protection in Macedonia remains satisfactory, it is jeopardized by enactment of laws and regulations in other spheres, particularly through non-accountable and non-transparent procedures.
- Public awareness about digital privacy issues has been improved as a result of various efforts and increased use of new technologies, but remains far from satisfactory. More efforts in this area are needed, particularly directed to the most vulnerable groups, primarily children and teenagers.
- Macedonian websites in general, including the e-commerce sites, and in particular the websites of government bodies at central and local level lack privacy policies.
- Practices such as using foreign providers for conducting official communication placing citizen's personal data outside of jurisdiction of national regulator, and requesting data without adequate need or explanation undermine the privacy protection efforts.
- The Government changed the Law on Free Access to Information of Public Character through a non-transparent process, without participation of relevant stakeholders, reducing the competences of the Commission,
- The implementation of this law somewhat improved, but still remains unsatisfactory, with the pervasive mute refusal of requests by the administration.

4.2 Recommendations

- The government bodies which propose changes in the legislative framework affecting the rights to privacy need to provide conditions for open and timely public debate and expert scrutiny, while the stakeholders from all other sectors, especially the traditional and new media, need to remain vigilant to prevent mishaps. Alongside local stakeholders, the international community—in particular the EU—needs to continue to act proactively in this regard.
- Public awareness about digital privacy issues has been improved as a result of various efforts and increased use of new technologies, but remains far from satisfactory. More efforts in this area are needed, particularly directed to the most vulnerable groups, primarily children and teenagers.
- Macedonian web publishers in general and in particular the websites of government bodies at central and local level lack privacy policies – which are

basic features for providing transparency and accountability in this sphere towards their users.

- Introducing privacy policies as basic features for providing privacy-related transparency and accountability on the Macedonian websites will lead to increased trust and user confidence, and will benefit the overall awareness raising efforts.
- Establishment of clear and all-encompassing standards for the websites owned by the central and local government and other public bodies remains badly needed in Macedonia. These standards need to include respect for privacy and transparency as basic value, putting the needs of the citizens at the core of all ICT-related efforts.
- Macedonian web publishers need to establish and adhere to a voluntary set of rules and procedures which will show their concern for protection of the personal data of their users, and their adherence to the relevant laws and regulations.
- Efforts for implementation of the right to free access to information of public character need to continue both at policy level through future legislative changes that would provide greater independence and authority for the regulative body, and at implementation level through increasing the precision of the structure of requests by the authorities, and through continuing the function of a watchdog by the NGOs and the media.

Appendix I

The following table has been compiled based on the data provided by the banks that offer e-commerce intermediary services for Macedonian companies which strive to open e-shops that can operate with local credit and debit cards. These banks include UniBank,⁵⁴ which enables use of Master cards, IK Banka (Import and Export Bank),⁵⁵ which enables use of VISA cards, and NLB Tutunska Banka⁵⁶ which provides both access to Master and VISA networks.

e-shop	September 2009				April 2010			
	UNIBank	E. & C. Bank	NLB Tutunska	PP?	UNIBank	E. & C. Bank	NLB Tutunska	PP?
www.vip.mk	1	1	0	1	1	1	0	1
www.sunwireless.com.mk	1	1	0	0	1	1	0	0
www.trimaks.com.mk	1	1	0	1	1	1	0	1
www.crm.com.mk	1	0	0	0	1	0	0	0
www.exploringmacedonia.com	1	1	0	0	1	1	0	0
www.marhost.mk	1	0	0	1	1	0	0	1
www.exquisite.mk	1	1	0	1	1	1	0	1
www.shopping.tim.com.mk	1	1	0	1	1	1	0	1
www.humanost.org.mk	1	1	0	0	1	1	0	0
www.doma.com.mk	1	1	0	1	1	1	0	1
www.dino.com.mk	1	0	0	0	1	1	0	0
www.ict-act.org	1	0	0	0	1	0	0	0
www.kupi.se	1	1	0	1	1	1	0	1
www.mkhost.com.mk	0	1	0	0	0	1	0	0
www.avtozona.mk	0	1	0	1	0	1	0	1
www.step.mk	0	0	1	1	0	0	1	1
www.alphagroup.com.mk					1	0	0	1
www.parknow.mk					1	1	0	1
www.kulturnariznica.mk					1	1	0	1
www.emimedia.mk					1	1	0	1
dulicarpet.com					1	0	0	0
www.parfem-shop.com					1	0	0	1
www.server.com.mk					0	1	0	0
www.eurotourist.com.mk					0	1	0	0
www.d.tiktak.me					0	1	0	1
www.e-voucher.mk					0	0	1	1
secure.on.net.mk					0	0	1	0
optimuscarrental.com					0	0	1	1
www.tc.mk					0	0	1	1
Total	13	11	1	PP?	19	18	5	PP?
	16			9	29			18

⁵⁴ <http://unibank.com.mk/categories/view/402>

⁵⁵ <http://ikbanka.com.mk/?ItemID=12AA52E37515AC43B8D865BB19C82A41>

⁵⁶ <http://nlbtb.com.mk/Default.aspx?mid=259&IId=1>