

## Preamble

To address the suppression of the objectionable YouTube video in question, we first note the following points:

- a) There are more than 1,500 separate instances of the video on YouTube and other sites which link to the YouTube video. Many of these instances have been located by a diligent search conducted by the Ministry of IT and PTA and Google has been made aware of these instances. However, since any user in the world can create new instances at any time, the list of video instances cannot be complete, as a matter of practice.
- b) As a result of the efforts of MoIT and PTA, Google has flagged many instances of the video with Warning pages. These "interstitial" pages now warn the user that they are requesting objectionable content. However, due to the impossibility of creating a fully comprehensive list of all instances of the video, these warning pages cover only those instances that have been "flagged" by MoIT and PTA and appropriately marked by Google. There remains the possibility of "unflagged" instances that would not have this warning page.
- c) The current solution adopted (turning off YouTube in its entirety) has overwhelming negative consequences that have been highlighted in the matter at hand, including preventing access to educational videos, political debate, economic gain, and cultural expression. In addition, it is severely restrictive of freedom of expression, including the right of millions of Pakistani Muslims to generate counter narrative to faith based hate speech.
- d) YouTube runs in two modes: http (open and unsecure) and https (encrypted and secure). In Open mode, the PTA can easily block specific instances of the video. In Encrypted mode, this blocking of the video is not possible since the specific video being requested by the user cannot be detected by an intermediary such as the PTA.

The nature of YouTube and the Internet in general is such that there are essentially only two choices:

- a) Draconian solutions which, for example, bar all access to YouTube. We note that even these solutions are not complete since the video in question is accessible on sites other than YouTube, as well as via proxy servers and VPNs
- b) A partial solution which attempts to limit access on a "best effort" basis that recognizes that complete suppression will not be achieved but also balances the social benefits of open access to the Internet in general and YouTube in particular

This is essentially a Hobson's choice. The first, currently adopted option, shares the problematic incomplete suppression of the video of the second choice but imposes a strong negative cost on society by barring YouTube access.

In our opinion, the only viable choice is hence the second choice where a "best effort" attempt is made to suppress the video.

## Review and Recommendations

Based on our deliberations and discussion, a “best effort” attempt can be achieved through two separate means that are shown in the table below along with their associated advantages and disadvantages:

<b>Option A: Through PTA turning off encrypted mode access to YouTube while retaining open mode access</b>	
Advantages	Disadvantages
<p>All “known” instances of the video will be blocked in open mode access</p> <p>YouTube will be available for viewing only to the public at large</p>	<p>Google is in the process of shifting all access to YouTube to encrypted mode only. Were this to happen, Option A would stop working as all access to YouTube would again be turned off in Pakistan</p> <p>Users in Pakistan will not be able to upload videos to YouTube since that requires encrypted mode access and this a significant limitation of free expression</p> <p>A precedent of turning off encrypted mode on specific Internet services will be established. This has important consequences for the general principle of allowing the citizens of Pakistan uninterrupted and unmonitored access to the Internet which is ultimately only possible via encrypted mode. This has an especially strong impact in electronic commerce related activities since citizens will be reluctant to use sensitive information such as credit card and banking information without the security of encrypted mode access. As such, this step has the potential of future far-reaching consequences</p>
<b>Option B: Through MoIT and PTA flagging the video and Google introducing the “interstitial” warning pages and turning on full access to YouTube</b>	
Advantages	Disadvantages
<p>The citizens of Pakistan gain access to YouTube both in terms of viewing and uploading videos. This has important social, cultural and educational benefits</p> <p>The general principle of access to the Internet and the exercise of this democratic right is preserved and strengthened</p>	<p>Users will be able to access the video. However, they will be able to do so, only through actively choosing to navigate to the page and deliberately ignoring a warning page.</p>

Based on our review of the options, the Committee of Experts believes that YouTube access should be restored.

Mr. Salman Akhtar of the Committee of Experts believes that YouTube access be restored in Pakistan as per Option (B) while PTA continues to flag known copies of the objectionable video to

Google. Mr. Salman Akhtar notes that with the presence of the warning pages, users will need to deliberately choose to navigate to the video and then, as a second step, choose to ignore the Google warning. He also strongly reiterates support for the democratic principle of allowing the citizens of Pakistan access to the Internet both in open and encrypted modes.

Mr. Wahaj us Siraj of the Committee of Experts considers the launch of localized version of YouTube as most preferred solution for which Ministry of IT is requested to expedite the requisite enabling legislation. Being a member of the drafting committee of the draft Prevention of Electronic Crimes Bill (PECB), Mr. Siraj is of the view that promulgation of PECB (in which intermediary liability protection clause is provided at Section 26) by the honourable legislature would take significant time. YouTube/Google can be provided intermediary liability protection through an amendment in one of the relevant existing statutes, i.e., Electronic Transaction Ordinance, 2002 or Pakistan Telecommunication (Re-organisation) Act, 1996. Since the National Assembly has already passed a resolution to unblock YouTube, passing of such focused amendment can be achieved by the Ministry of IT within weeks. Mr. Siraj leaves Options (A) and (B) to the Honorable Court to decide by considering the larger context of citizens' choice for viewing videos on Internet versus provision of filtered access by the Government in light of constitution.

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