

FINLAND				
QUESTION	ANSWER	SOURCE OF LAW\ INFORMATION	ADDITIONAL INFORMATION / DEFINITIONS	COURT RULINGS
<i>Where is online hate speech established as a criminal offence?</i>	<p>The Criminal Code prohibits ethnic agitation, including disseminating such materials, and hate speech falls under this category of offences. Moreover, in preparing to amend the country's criminal code, the expression "making available to the public" was explained to mean, <i>inter alia</i>, that the materials were made available to the public online.</p> <p>Section 184 of the Information Society Code refers to Sections 10 and 10a of the Criminal Code while establishing obligations in hosting services.</p>	<p>Criminal Code of 1889, Chapter 11, Sections 10 and 10(a)^A</p> <p>Section 184 of the Information Society Code of 2015^B</p>	<p>A "hosting service" is defined in Section 184 of the Information Society Code: an information society service, which consists of the storage of information provided by a recipient (content provider) of the service upon his request.</p>	<p>In a Supreme Court ruling given in 2012, it was confirmed that posting materials on a blog accessible to the public was deemed as "distributing materials to the public".³²</p>
<i>What is the punishment for online hate speech?</i>	<p>"Ethnic agitation" is punished by a fine or imprisonment for up to 2 years.</p> <p>If ethnic agitation involves incitement to serious violence and endangers public order or safety, then imprisonment for four months to four years.</p>	<p>Criminal Code, Chapter 11, Sections 10 and 10(a)^A.</p>		
<i>Is there a law-based obligation for intermediaries to monitor hate speech?</i>	<p>There is no central monitoring agency in Finland.</p>			

³² KKO 2012:58 (n 8), see also KouHO 2012:9. Source: International Legal Research Group on Online Hate Speech, *available at*: http://files.elsa.org/AA/Final_Report_OHS_Final.pdf.

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<i>Who is responsible to remove hate speech?</i>	<p>The Hosting Service Provider. Upon receiving a request from a public prosecutor or a person in charge of inquiries or on application by a party whose right the matter concerns, a court may order the information society service provider to disable access to the information stored by it.</p> <p>Additionally, hosting providers are required to act even before receiving a court order if they know of hate speech content being posted.³³</p>	Section 185 of the Information Society Code ^B		
<i>What is the required timeframe, if any, for removing hate speech?</i>	Hate speech should be removed, or the access to it disabled, "expeditiously", upon being made aware of the fact.	Section 183 of the Information Society Code ^B		

³³ Source: Comparative Study on Blocking, Filtering and Take Down of Illegal Internet Content, 2015. Available at: <http://www.coe.int/en/web/freedom-expression/study-filtering-blocking-and-take-down-of-illegal-content-on-the-internet>.

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<p><i>Is the intermediary liable for hate speech posted on website?</i></p>	<p>The intermediary responsible for data transfer services and network services is not liable for the content or transfer of the information transferred, provided it did not (1) initiate the transfer, (2) select the receiver of the transfer; or (3) select or modify the information contained in the transfer. The intermediary responsible for caching the information is not liable for the automatic, intermediate and temporary storage performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, provided that the service provider, <i>inter alia</i>, didn't modify the information and acted expeditiously to remove or to disable access to the information.</p> <p>The intermediary responsible for hosting services is not liable for the content of the information stored or transmitted if, among other things, it acts expeditiously to disable access to the information upon obtaining knowledge of a court order or a notification.</p>	<p>Sections 182, 183 and 184 of the Information Society Code of 2015^B</p>	<p>In Finnish law, an internet intermediary is defined as a service provider transmitting electronic communication, including an access provider and hosting provider. The law does not distinguish between the two.</p> <p>"Caching of information" means the transfer in a communications network of information provided by a recipient of the service (Information Society Code, Section 183).</p> <p>"Hosting service" means storage of information provided by a recipient (content provider) of the service upon his request</p>	
<p><i>What are the online reporting mechanisms?</i></p>	<p>The Police manages a service for submitting information for suspicious material found on the internet.</p> <p>Another hotline has been operating since 2002 and enables the public to</p>	<p>Net Tip: https://www.poliisi.fi/nettip</p> <p>https://www.pelastakaalapset.fi/en/our-work-in-finland/children-and-digital-media/finnish-</p>		

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	<i>report on illegal online content.</i>	hotline-nettivilje/		
<i>When is the offence considered to have been committed within the territory/under the county's jurisdiction?</i>	The Criminal Code determines that an offence “stipulates that an offence is deemed to have been committed both where the criminal act was committed and where the consequence of the offence became apparent. Therefore, when materials constituting ethnic agitation are made accessible to the public online, and distributed in Finland and abroad, or if the materials are made available outside of Finland but their consequences of the offence become apparent in Finland, then Finland may claim jurisdiction. ³⁴	Sections 1, 3, 5, 6, 7, 8, 10 of the Criminal Code ^A		In 2003, the Helsinki Court of Appeals ruled on an online hate speech case. The offender had used his home computer to upload materials to a server located in the U.S. and maintained by an entity in Australia. The Court ruled that an important factor was the location of the intended recipients. Since the offender used the Finnish language in his materials, it was evident the intent was to target the Finnish public. As the messages were also available in Finland, the distribution was thus deemed to have occurred in Finland. ³⁵

³⁴ Source: International Legal Research Group on Online Hate Speech, *Available at:* http://files.elsa.org/AA/Final_Report_OHS_Final.pdf.

³⁵ HeHO 2009:2370. Source: International Legal Research Group on Online Hate Speech, *Available at:* http://files.elsa.org/AA/Final_Report_OHS_Final.pdf.

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<p><i>Is there an obligation to disclose data of hate speech offenders?</i></p>	<p>A court may order the intermediary (or on the request of the authorities of a foreign state) to release the information required for the identification of the sender of a network message to the requester, provided there is probable cause to believe that distributing the contents to the public is a criminal offense.</p> <p>Under the Police Act the police has the right to receive information from a telecommunications company or a community subscriber which allows them to identify the telecommunications terminal from where an anonymous message was sent, i.e. identify the sender³⁶.</p>	<p>Section 17 of the Act on the Exercise of Freedom of Expression in Mass Media^c</p> <p>Section 36 of the Police Act</p>		<p>The European Court of Human Rights in its judgement <i>K.U. v. Finland</i> from 2 December 2008 held that: “Although freedom of expression and confidentiality of communications are primary considerations and users of telecommunications and Internet services must have a guarantee that their own privacy and freedom of expression will be respected, such guarantee cannot be absolute and must yield on occasion to other legitimate imperatives, such as the prevention of disorder or crime or the protection of the rights and freedoms of others”³⁷.</p>

³⁶ The police must first receive a court order addressed to the administrator of that discussion forum to reveal the IP address of the user, after which the telecommunications company which hosts that IP address must be contacted to get the subscriber information of the IP address in question.

³⁷ *K.U. v. Finland*, no. 2872/02, 2 December 2008, available at <https://www.coe.int/t/dghl/standardsetting/dataprotection/Judgments/K.U.%20v.%20FINLAND%20en.pdf>.

FINLAND APPENDIX

A. Criminal Code of 1889 as Amended up to 2015³⁸

Chapter 1 - Scope of application of the criminal law of Finland

Section 1

“Offence committed in Finland

(1) Finnish law applies to an offence committed in Finland.

(2) Application of Finnish law to an offence committed in Finland’s economic zone is subject to the Act on the Economic Zone of Finland (1058/2004) and the Act on the Environmental Protection in Navigation (300/1979).”

Section 3 - Offence directed at Finland

“(1) Finnish law applies to an offence committed outside of Finland that has been directed at Finland.

(2) An offence is deemed to have been directed at Finland

(1) if it is an offence of treason or high treason,

(2) if the act has otherwise seriously violated or endangered the national, military or economic rights or interests of Finland, or

3) if it has been directed at a Finnish authority.”

Section 5 - Offence directed at a Finn

“Finnish law applies to an offence committed outside of Finland that has been directed at a Finnish citizen, a Finnish corporation, foundation or other legal entity, or a foreigner permanently resident in Finland if, under Finnish law, the act may be punishable by imprisonment for more than six months.”

Section 6 - Offence committed by a Finn

“(1) Finnish law applies to an offence committed outside of Finland by a Finnish citizen. If the offence was committed in territory not belonging to any State, a precondition for the imposition of punishment is that, under Finnish law, the act is punishable by imprisonment for more than six months.

(2) A person who was a Finnish citizen at the time of the offence or is a Finnish citizen at the beginning of the court proceedings is deemed to be a Finnish citizen.

(3) The following are deemed equivalent to a Finnish citizen: (1) a person who was permanently resident in Finland at the time of the offence or is permanently resident in Finland at the beginning of the court proceedings, and (2) a person who was apprehended in Finland and who at the beginning of the court proceedings is a citizen of Denmark, Iceland, Norway or Sweden or at that time is permanently resident in one of those countries.”

Section 7 - International offence

“(1) Finnish law applies to an offence committed outside of Finland where the punishability of the act, regardless of the law of the place of commission, is based on an international agreement binding on Finland or on another statute or regulation internationally binding on Finland.”

Section 8 - Other offence committed outside of Finland

“Finnish law applies to an offence committed outside of Finland which, under Finnish law, may be punishable by imprisonment for more than six months, if the State in whose territory the offence was committed has requested that charges be brought in a Finnish court or that the offender be extradited because of the offence, but the extradition request has not been granted.”

Section 9 - Place of commission

“(1) An offence is deemed to have been committed both where the criminal act was committed and where the consequence contained in the statutory definition of the offence became apparent.

(3) An offence by an inciter and abettor is deemed to have been committed both where the act of complicity was committed and where the offence by the offender is deemed to have been committed.”

³⁸ The Criminal Code of Finland of 1889, as amended up to 2012. Available at <http://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>.

Section 10 - Ethnic agitation

“A person who makes available to the public or otherwise spreads among the public or keeps available for the public information, an expression of opinion or another message where a certain group is threatened, defamed or insulted on the basis of its race, skin colour, birth status, national or ethnic origin, religion or belief, sexual orientation or disability or a comparable basis, shall be sentenced for ethnic agitation to a fine or to imprisonment for at most two years.”

Section 10(a) – Aggravated ethnic agitation

“If the ethnic agitation involves incitement or enticement

- 1) to genocide or the preparation of genocide, a crime against humanity, an aggravated crime against humanity, a war crime, an aggravated war crime, murder, or manslaughter committed for terrorist intent, or
- 2) to serious violence other than what is referred to in paragraph 1 so that the act clearly endangers public order and safety, and the ethnic agitation also when assessed as a whole is aggravated, the offender shall be sentenced for aggravated ethnic agitation to imprisonment for at least four months and at most four years.”

B. Information Society Code of 2015³⁹

Section 3 - Definitions

“(3) Internet access service means a communications service enabling access to services available on the Internet;

(...)

(28) information security means the administrative and technical measures taken to ensure that data are only accessible by those who are entitled to use it, that data can only be modified by those who are entitled to do so, and that data and information systems can be used by those who are entitled to use them;

(29) information society service means services provided as electronic distance services usually requested by recipients against payment;

(30) subscriber means a legal or natural person who is party to an agreement concerning the provision of a communications service or an added value service for a purpose other than telecommunications operations;

(37) communications service means a service consisting either completely or primarily of transmitting messages in a communications network, and of transfer and transmission service in a mass communications network;

(38)-(43) (...).”

Section 182 - Exemption from liability in data transfer services and network services

“When an information society service consists of the transmission in a communications network of information provided by a recipient of the service, or the provision of access to a communications network, the service provider is not liable for the content or transfer of the information transferred if it does not:

1) initiate the transfer;

2) select the receiver of the transfer; and

3) select or modify the information contained in the transfer.

The acts of transfer and provision of access referred to in subsection 1 include the automatic, intermediate and temporary storage of the information transferred in so far as storage takes place for the sole purpose of carrying out the transfer in the communications network, and provided that the information is not stored for any period longer than is reasonably necessary for the transfer.”

Section 183 Exemption from liability when caching the information

“When an information society service consists of the transfer in a communications network of information provided by a recipient of the service, the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information’s onward transmission to other recipients of the service upon their request, if the service provider:

1) does not modify the information;

³⁹ Information Society Code of 1 January 2015, (917/2014), available at <http://www.finlex.fi/en/laki/kaannokset/2014/en20140917.pdf>.

- 2) complies with the conditions on access to the information;
- 3) complies with rules regarding the updating of the information, specified in a manner widely recognized and used in the industry;
- 4) does not interfere with the lawful use of technology, widely recognized and used in the industry, to obtain data on the use of the information; and
- 5) acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact: a) that the information at the initial source of the transmission has been removed from the network; b) access to it has been disabled; or c) a court or an administrative authority has ordered such removal or disablement.”

Section 184 - Exemption from liability in hosting services

“When an information society service consists of the storage of information provided by a recipient (content provider) of the service upon his request, the service provider is not liable for the content of the information stored or transmitted at the request of a recipient of the service if it acts expeditiously to disable access to the information stored upon: 1) obtaining knowledge of a court order concerning it or if it concerns violation of copyright or neighboring right upon obtaining the notification referred to in section 191; 2) otherwise obtaining actual knowledge of the fact that the stored information is clearly contrary to section 10 or 10(a) of Chapter 11 or section 18 or 18(a) of Chapter 17 of the Criminal Code. The provisions in subsection 1 shall not apply if the content provider is acting under the authority or the control of the service provider.”

Section 185 - Order to disable access to information

“Upon request from a public prosecutor or a person in charge of inquiries or on application by a party whose right the matter concerns, a court may order the information society service provider referred to in section 184 to disable access to the information stored by it if the information is clearly such that keeping its content available to the public or its transmission is prescribed punishable or as a basis for civil liability. The court shall urgently process the application. The application cannot be approved without an opportunity for the service provider and the content provider an opportunity to be consulted except if the consultation cannot be arranged as quickly as the urgency of the matter so necessarily requires. A court order must also be made known to the content provider. If the content provider is not known, the court may order the information society service provider to take care of notification. An order ceases to be in effect unless charges are raised for an offence based on the content or transmission of information referred to in the order or, when concerning a liability, action is brought within three months of issuing the order. On request by a public prosecutor, by an injured party or by an interested party within the time limit referred to above, the court may extend this time limit by a maximum of three months. The information society service provider and the content provider have the right to apply for reversal of the order in the court where the order was issued. When dealing with a matter concerning reversal of the order, the provisions of Chapter 8 of the Code of Judicial Procedure shall be observed. However, the court takes care of the necessary procedures to hear a public prosecutor. The reversal must be applied for within 14 days of the date when the applicant was notified of the order. The information must not be made available again when the hearing of the case concerning the reversal is pending unless otherwise ordered by the court dealing with the case. A public prosecutor has also the right to appeal the decision that reversed the order.”

Section 186 - Competent court

“The application referred to in section 185 above shall be heard by the court of the information society service provider’s domicile. However, the application may also be heard by the court in Helsinki. A chairman of the court alone may also constitute a quorum.”

Section 187- Legal safeguards for the content provider

“If the information society service provider has prevented access to information under section 184(1)(2), it shall immediately notify the content provider of this in writing or electronically so that the content of the notification cannot be unilaterally altered and it remains accessible to the parties. The notification must state the reason for prevention as well as information on the right of the content provider to bring the matter for a court hearing. The notification must be made in the mother tongue of the content provider, in Finnish or in Swedish. The notification may also be made in another language agreed with the content provider. The content provider has the right to bring the matter concerning prevention to be heard by the court referred to in section 186 within 14 days from the receipt of the notification referred to in subsection 1. The provisions of section 185(4) shall be observed during the hearing of the case concerning prevention.”

Section 188 - Information society service provider’s obligation to take action to implement a decision by the authorities

“The provisions of sections 182–184 on the information society service provider’s exemption from liability shall have no effect on the service provider’s obligation, under any other law, to take necessary action to implement an order or a decision by a court or by any other competent authority.”

Section 192 - Notification to the content provider and the plea

“The information society service provider shall immediately notify the content provider of prevention of access to the material supplied by him/her and to supply the content provider with a copy of the notification on the basis of which prevention was made. If the content provider considers that prevention is groundless, he/she may get the material returned by delivering to the notifying party a plea in writing or electronically, as prescribed in section 191, within 14 days of receiving the notification. A copy of the plea shall be delivered to the service provider. The plea must include: 1) the name and contact information of the content provider; 2) the facts and other reasons under which prevention is considered groundless; 3) an itemization of the material for which prevention is considered groundless; 4) signature by the content provider.”

C. Act on the Exercise of Freedom of Expression in Mass Media of 2003⁴⁰

Section 2 - Definitions

“For the purposes of this Act:

(1) the public means the group of freely determined message recipients; (2) a network message means information, an opinion or some other message provided to the public by means of radio waves, an electronic communications network or some other comparable technical arrangement; (3) a program means a coherent set of network messages that are primarily expressed as sound or moving picture; (4) a publication means printed matter, a data disc or some other text, sound or picture record produced by means of duplication, when provided to the public; (5) a periodical means a publication intended to be issued regularly, at least four times per year; (6) a network publication means a set of network messages, arranged into a coherent whole comparable to a periodical from material produced or processed by the publisher, and intended to be issued regularly; (7) publishing means the provision to the public of publications and network messages other than programs; and (8) broadcasting means the provision of programs to the public. In the application of this Act, the headline banners and attachments of periodicals and network messages shall be considered to be parts thereof.”

Section 17 - Release of identifying information for a network message

“On the request of an official with the power of arrest, as referred to in chapter 1, section 6(1), of the Coercive Measures Act (450/1987), a public prosecutor, or an injured party, a court may order the keeper of a transmitter, server or other similar device to release the information required for the identification of the sender of a network message to the requester, provided that there are probable reasons to believe that the contents of the message are such that providing it to the public is a criminal offence. However, the identifying information may be ordered to be released to the injured party only in the event that he or she has the right to bring a private prosecution for the offence.

The request shall be filed with the District Court of the domicile of the keeper of the device, or with the District Court of Helsinki, within three months of the publication of the message in question. The court may reinforce the order by imposing a threat of a fine. A court order on the release of identifying information shall be open to appeal as a separate matter. The order shall not be enforced until it has become final, unless the appellate court otherwise orders. Identifying information may be ordered to be released on the request of the authorities of a foreign state, if the provision of the relevant message to the public would constitute an offence in Finland under the prevailing circumstances, or if the release is based on an international agreement or on some other international obligation binding on Finland. (...).”

Section 18 - Order to cease the distribution of a network message

“On the request of the public prosecutor, the head of a pre-trial investigation, or the injured party, a court may order that the publisher, broadcaster or keeper of a transmitter, server or other comparable device is to cease the distribution of a published network message, if it is evident on the basis of the contents of the message that providing it to the public is a criminal offence. The court shall deal with the request as a matter of urgency. Before issuing a cease order, the court shall reserve the intended addressee of the order and the sender of the network message an opportunity to be heard, unless the urgency of the matter otherwise necessitates. Notice of the cease order shall be served also on the sender of the network message referred to therein.

If the sender is unknown, the court may order that the keeper of the transmitter, server or other comparable device sees to the service. A cease order referred to in subsection (1) shall lapse, unless within three months of its issue a charge is brought for an offence arising from the contents of the relevant message, or a demand referred to in section 22 is made, or a tort action pertaining to the contents of the message is brought. On the request of the public prosecutor or the injured party, submitted before the deadline referred to above, the court may extend that deadline by three months at the most. The person who has been issued with a cease order, as well as the sender of the network message, have the right to apply for the reversal of the cease order from the court that originally issued it. The provisions of chapter 8 of the Code of Judicial Procedure apply to the proceedings for the reversal of a cease order. (...).”

⁴⁰ Available at <http://www.finlex.fi/fi/laki/kaannokset/2003/en20030460.pdf>.