

# INFORMATION SOCIETY CODE 7.11.2014/917

## Chapter 22

### Information society services

#### Section 173

##### *Restrictions on the scope*

The provisions of this Chapter shall not apply to:

- 1) taxation;
- 2) issues included in the scope of application of Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data and of Directive 2002/58/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the telecommunications sector (Directive on Privacy and Electronic Communications);
- 3) activities of notaries public and of corresponding professionals which include the use of public authority;
- 4) activities of an attorney or a legal counsel in court;
- 5) lottery operations against payment.

The following sections 174 and 175 shall not apply to:

- 1) copyright, neighbouring rights, industrial property rights or the rights referred to in Council Directive 87/54/EEC on the legal protection of topographies of semiconductor products and in Directive 96/9/EC of the European Parliament and of the Council on the legal protection of databases;
- 2) issuance of electronic money, if the Member State has adopted some of the optional exemptions referred to in Article 9(1) of the Directive 2009/110/EC of the European Parliament and of the Council on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC;
- 3) advertising of units of undertakings for collective investment in transferable securities (*UCITS*) referred to in Article 44(2) of Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities;
- 4) issues relating to freedom of establishment, free provision of insurance and to the law applicable on contracts of insurance;
- 5) freedom of the parties to choose the law applicable to contract;
- 6) contractual obligations in consumer contracts;
- 7) mandatory provisions of the law in a State where the property is located regarding the form of a contract when the right to the property is established or transferred by contract;
- 8) permissibility of unsolicited commercial email communication.

#### Section 174

##### *Co-ordinated field and freedom to provide information society services*

*Co-ordinated field* means the requirements laid down in Member States' legal systems which information society service providers must comply with when commencing and continuing their operations, such as requirements concerning:

- 1) qualifications, authorisation, registration or notification to the authorities;
- 2) procedures, advertising and other marketing, the quality and content of the service, contracts or the liability of the service provider.

No requirements, falling within the co-ordinated field, which restrict provision of information society services in Finland, must be imposed on information society service providers established in another State of the European Economic Area. However, a court or some other competent authority may restrict provision of certain services in accordance with its separately prescribed powers, if:

- 1) restrictions are necessary to maintain public order or security, to safeguard public health or to protect consumers;

2) restrictions are directed at services which damage the objectives referred to in paragraph 1 or may seriously endanger their attainment; and

3) restrictions are in proportion to the objective.

Restrictions must not be implemented before the Member State where the service provider is established has been asked to take action in the matter, but the Member State of establishment has not implemented the action or the action has not been sufficient. In addition, the Commission of the European Union and the Member State where the service provider is established must be notified of the restrictions before their implementation.

In urgent cases, restrictions may be implemented, the provisions in subsection 3 notwithstanding. The Commission of the European Union and the Member State where the service provider is established shall be notified immediately of the restrictions and of the reasons why the case is considered urgent. The provisions in subsections 3 and 4 shall not apply to crime investigations or when hearing the case in court.

#### Section 175

##### *Observance of Finnish law*

Competent authorities in Finland shall supervise that the information society service providers established in Finland observe the Finnish law in the co-ordinated field also when provision of services is solely or mainly directed at another Member State within the European Economic Area.

#### Section 176

##### *General obligation to provide information*

In addition to the provisions elsewhere in the law on obligations to give information, information society service providers must have at least the following information easily, immediately and continuously available to the recipients of the services and to the authorities:

1) the service provider's name, geographical address in the state of establishment, email address and other contact information through which the service provider may be contacted quickly, directly and effectively;

2) the trade register or any other corresponding public register where the service provider has possibly been entered and the service provider's company and corporate ID or any other corresponding identification in said register;

3) the contact information for the appropriate supervising authority if pursuit of the operations requires a licence or registration;

4) the VAT identification if the service provider is pursuing operations subject to VAT.

In addition to the provisions in paragraph 1, information society service providers which practice a regulated profession in the meaning of Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications must have available the following information:

1) any professional body or a corresponding association to which the service provider belongs;

2) the occupational title and the Member State where it was awarded;

3) a reference to the professional code of conduct applicable in the state of establishment and as to where and how it is accessible.

If information on the prices of goods or services is supplied when providing information society services, they shall be supplied clearly and unambiguously. The information must indicate whether VAT and delivery charges are included in the price. There are separate provisions on notifying about the price of a commodity.

#### Section 177

##### *Obligation to give information when placing an order*

In addition to the provisions elsewhere in the law on obligations to give information, the information society service providers shall, before recipients of the service place an order, have available to them clear and easy to understand information at least on the following matters:

1) technical stages when concluding a contract;

- 2) whether the service provider is storing the concluded contract and whether it is accessible to the other party;
- 3) technical means which may be used to identify and correct errors of entry before placing an order;
- 4) languages which may be used to conclude a contract;
- 5) codes of conduct concerning the matter, observed by the service provider, and where and how they are electronically accessible.

The provisions of subsection 1 shall not be applied to contracts concluded by solely using email or a corresponding personal method of communication. A contract may deviate from the provisions of paragraph 1 unless a consumer is a party to the contract.

#### Section 178

##### *Supply of contractual terms*

Information society service providers shall supply recipients of services with contractual terms so that the recipients may save and reproduce them.

#### Section 179

##### *Order and acknowledgement of receipt*

If an order is placed using technical means, information society service providers shall immediately electronically notify receipt of the order. There is no need to supply an acknowledgement of receipt if the ordered commodity is delivered electronically without delay.

Appropriate, effective and easy to use technical means must be made available by service providers to recipients of services allowing them to identify and correct entry errors before placing an order.

The provisions of subsections 1 and 2 shall not apply to contracts concluded by solely using email or a corresponding personal method of communication. A contract may deviate from the provisions of subsections 1 and 2 unless a consumer is a party to the contract.

#### Section 180

##### *Time of receipt*

The order and the acknowledgement of receipt, referred to in section 179 above, is regarded as received when it is available to the party it was addressed to.

#### Section 181

##### *Meeting the formal requirements on a contract electronically*

If a contract must be concluded in writing according to the law, this requirement is also met by an electronic contract with contents that cannot be unilaterally altered, and which remain accessible to the parties. If a contract must be signed according to the law, the separate provisions on electronic signatures shall be applied. The provisions of this subsection shall correspondingly apply to notifications and other measures by the parties relating to the contractual relation which according to the law must be in writing or signed.

If a notification relating to a contract must be supplied verifiably according to the law, this requirement may also be met by such an electronic method with which it can be demonstrated that the recipient has received the notification.

The provisions of subsections 1 and 2 shall not apply to a contract concerning a property deal or any other transfer of a property or a contract relating to family or estate law.

#### 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;
- 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 recognised and used in the industry;
- 4) does not interfere with the lawful use of technology, widely recognised 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 neighbouring 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 189

##### *Prevention of access to material infringing copyright or neighbouring right*

A holder of a copyright or his/her representative may request the information society service provider referred to in section 184 to prevent access to material infringing copyright as prescribed in this section and in sections 191–193. The same applies to a holder of a neighbouring right and his/her representative if it concerns material infringing this right.

A request must first be presented to the content provider whose material the request concerns. If the content provider cannot be identified or if he/she does not remove the material or prevent access to it expeditiously, the request may be submitted to the information society service provider by notification prescribed in section 191.

#### Section 190

##### *Information society service provider's contact point*

The information society service provider shall give a contact point where the notification referred to in section 191 and the plea referred to in section 192 may be delivered. The contact information of the contact point shall be easily and continuously accessible.

#### Section 191

#### *Form and content of the notification*

The notification referred to in section 189 shall be made in writing or electronically so that the content of the notification cannot be unilaterally altered and it remains available to the parties. The notification shall include:

- 1) the name and contact information of the notifying party;
- 2) an itemisation of the material, for which prevention of access is requested, and details of the location of the material;
- 3) confirmation by the notifying party that the material which the request concerns is, in its sincere opinion, illegally accessible in the communications network;
- 4) information concerning the fact that the notifying party has in vain submitted its request to the content provider or that the content provider could not be identified;
- 5) confirmation by the notifying party that he/she is the holder of copyright or neighbouring right or entitled to act on behalf of the holder of the right;
- 6) signature of the notifying party.

A notification that does not meet the requirements in subsection 1 is invalid. If the shortcomings in the notification solely concern the information referred to in subsection 1(2), the information society service provider shall, however, take reasonable steps to contact the notifying party and to communicate the shortcomings discovered.

#### 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 itemisation of the material for which prevention is considered groundless;
- 4) signature by the content provider.

#### Section 193

##### *Returning the material*

If the plea, meeting the requirements of section 192, is delivered within the time limit, the information society service provider must not prevent the material specified in the plea from being returned and kept available unless otherwise provided by an agreement between the service provider and the content provider or by an order or decision by a court or by any other authority.

#### Section 194

##### *Liability to compensate*

A person who gives false information in the notification referred to in section 191 or in the plea referred to in section 192 shall be liable to compensate for the damage caused. However, there is no liability to compensate or it may be adjusted if the notifying party had reasonable grounds to assume that the information is correct or if the false information is only of minor significance, when taking into account the entire content of the notification or the plea.