



FINLAND
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Country Report

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1. Topic:	Interim injunction / Direct mail advertising to minors
Who:	Consumer Ombudsman vs. Radiolinja
When:	September 2002
Where:	Finland
What happened:	<p>A Finnish mobile teleoperator Radiolinja has sent to users of Telia City connection direct mailings including a SIM card and a pre-filled Radiolinja's subscription agreement. The direct mails have also been sent to minors (persons under 18 years of age) with their own names. The Consumer Ombudsman used its strongest means to stop the marketing: the Consumer Ombudsman issued an interim injunction prohibiting Radiolinja from sending such direct mails to minors. The injunction was given under a penalty of a fine of EUR 100.000. The interim injunction shall be complied with immediately and if opposed by Radiolinja, injunction will be handled and decided upon bindingly by the Market Court.</p> <p>According to the Consumer Ombudsman many of the new mobile services are as such directed to children and youngsters. Parents try to keep the costs for the use of mobile phones by minors reasonable by using blocking services and other means available. Minors are not allowed to execute subscriptions by themselves and the parents are also responsible for their telephone bills. The Consumer Ombudsman wants to maintain the parents' power to decide what goods or services they wish to buy to their children and pay for. Marketing directed to children often leads to the wished result – children pressuring their parents to buy the goods or services being advertised. As there already have been several excessively indebted youngsters due to unpaid mobile phone bills, it is obvious that even youngsters over 18 years are not always able to evaluate the economic effects of using mobile phones.</p>

2. Legislation	
Topic:	Finnish Act on “Provision of Information Society's Services” implementing the Electronic Commerce Directive (2000/31/EC), effective from 1 July 2002
When:	July 2002
Where:	Finland
Summary:	<p>In comparison to the Directive, it should be noted that the Finnish legislation goes further in relation to the procedures regarding hosting services and the removal of unlawful or infringing content: the Finnish legislation namely adopts the so-called notice-and-takedown procedures.</p> <p>1. Applicability</p> <p>According to the legislation, the officials of Finland supervise, that the service providers located in Finland follow the above-mentioned legislation. The Finnish legislation follows the country of origin, in this case, the “country of location” –principle, which means that all the member countries of EU supervise those service providers that can be said to be located in the member country in question. However, if the service provider would be deemed to be located outside of the EU, neither the above-mentioned directive nor the Finnish legislation would be applicable.</p> <p>2. Hosting services and the prevention of stored information</p> <p>Although the Finnish legislation is similar to article 14 of the Directive, it is to notice that article 14 (a) has been specified further as follows:</p> <p>"The service provider is not liable for the information stored at the request of the recipient of the service, if the service provider</p> <p>(a) After receiving a court order, or if it is a question of material which infringes copyright, after receiving a notice from the copyright owner or his representative, or</p> <p>(b) after otherwise receiving actual knowledge regarding the fact that the stored information is clearly to be considered being an incitement against a nationality or a certain group of people or a picture of indecency, which is being distributed acts immediately in order to prevent the receipt of such information.</p> <p>What has been stated above, is not applied, if the content provider has acted under the supervision of the service provider"</p> <p>2.1 Court order</p> <p>According to the legislation a court can order the service provider to remove content</p>

specified above, if the making of the content available to public or distributing it is punishable as a crime or if it is a basis for a liability of damages. The court order must additionally be served to the content provider.

Such a court order will become void however, if no charges are being made in regard of the crime or if it is a question of liability for damages, no lawsuit has been brought up after 3 months from the date, on which the court order was given. It is to notice that this term of 3 months can be lengthened by additional 3 months, if so requested by the injured party, the party involved or by the prosecuting attorney.

The legislation states further that it is possible for the service and content provider in 14 days after receiving the original court order, to apply for an annulment of the order as well. The prosecuting attorney has a right to make an appeal regarding such an annulment.

2.2 If the stored information would be considered being an incitement against a nationality or a certain group of people or a picture of indecency, which is being distributed

If the service provider has prevented the reception of information on the basis of the sub-section (b) above, the service provider must notify the content provider of such prevention immediately, either in writing or in such an electronic form, that it cannot be unilaterally altered and that is available for both parties. The notification must include the grounds for the prevention and information regarding the fact that the content provider can bring the matter into court. The notification must be made in the mother tongue of the service provider, either in Finnish or in Swedish, if it has not been agreed otherwise. The content provider has a right to bring the matter into court in 14 days after receiving the notification.

2.3 Notice-and-takedown

In regard of the sub-section (a) above, the legislation includes a so-called notice-and-takedown procedure.

According to the legislation, the copyright owner or his representative can claim the service provider to prevent the reception of infringing material. Such demand must first be made to the actual content provider, but if he is not recognised or if he does not remove the content or prevent the reception, the claim can be made to the service provider as well.

In regard of the claim to be submitted to the service provider, the service provider must have announced a contact-point, where such claims can be delivered. Information in regard of the contact-point must be easily and continuously obtainable.

The legislation gives a detailed statute regarding the content of the claim in order for it to be effective.

If the service provider has prevented the reception, the service provider must notify the content provider of such prevention of infringing material immediately and provide the content provider with a copy of the claim. If the content provider considers the claim as ungrounded, he can have the content restored by delivering a statement of defence in 14

days time after receiving the notification to the party that had made the claim, either in written or such electronic form that has been specified above. The content provider must provide the service provider with a copy of the statement. The legislation gives a detailed stipulation regarding the content of such statement of defence.

If such a statement of defence has been delivered, the service provider cannot prohibit the restoring of such information and its availability, unless an agreement between the service provider and the content provider or alternatively, a court order or other official's stipulation otherwise states.

If a party gives false information in the claim or in the statement of defence, he is liable for damages that result from it. Such liability for damages does not exist however, if the party had a reason to expect that the information he submitted was correct or if the false information had only a minor importance, when the whole content of the claim or the statement of defence has been taken into account.