

A c t
on provision of information society services

(458/2002)

Chapter 1

Scope of application and definitions

Section 1

Scope

This act shall prescribe for matters relating to provision of information society services, in particular, for freedom to provide services, for the obligation by service providers to give information, for meeting formal requirements on contracts electronically and for exempting service providers acting as intermediaries from liability.

Section 2

Information society services

In this act, information society services shall refer to services provided:

- 1) as distance services, i.e. without the parties being present at the same time;
- 2) electronically, i.e. by sending and receiving services via devices handling information electronically or via storage of information so that only cables, a radio connection, optical equipment or other electro-magnetic equipment are used for sending, transmitting and receiving services;
- 3) as data transfers requested personally by recipients of services; and
- 4) usually against a payment.

Section 3

Other definitions

For the purposes of this act:

- 1) *service provider* means any natural or legal person who provides information society services;
- 2) *state of establishment* means any state where a service provider in fact pursues an economic activity using a fixed establishment;

- 3) *recipient of the service* means any natural or legal person who, for professional ends or otherwise, uses information society services, in particular for the purposes of seeking information or making it accessible;
- 4) *regulated profession* means any profession within the meaning of Article 1(d) of Council Directive 89/48/EEC on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration or of Article 1(f) of Council Directive 92/51/EEC on a second general system for recognition of professional education and training to supplement the said Directive;
- 5) *co-ordinated field* means the requirements laid down in Member States' legal systems which service providers must comply with when commencing and continuing their operations, such as requirements concerning:
 - a) qualifications, authorisation, registration or notification to the authorities;
 - b) procedures, advertising and other marketing, the quality and content of the service, contracts or the liability of the service provider.

Section 4

Restrictions on the scope

This act 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 97/66/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the telecommunications sector;
- 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.

Sections 5 and 6 of this act shall not be applied 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) issue of electronic money when some of the waivers prescribed in Article 8(1) of Directive 2000/46/EC of the European Parliament and of the Council on the taking up, pursuit of and prudential supervision of the business of electronic money institutions has been applied to an issuer by a Member State;
- 3) advertising of units of undertakings for collective investment in transferable securities referred to in Article 44(2) of Council Directive 85/11/EEC on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);
- 4) issues relating to freedom of establishment, free provision of insurance and to the law applicable on contracts of insurance prescribed in Articles 7 and 8 of the Second Council Directive 88/357/EEC on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance; in Article 4 of the Second Council Directive 90/619/EEC on the co-ordination of

- laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services; in Article 30 and Title IV of the Third Council Directive 92/49/EEC on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance; and in Title IV of the Third Council Directive 92/96/EEC on the co-ordination of laws, regulations and administrative provisions relating to direct life assurance;
- 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 e-mail communication.

Chapter 2

Freedom to provide information society services

Section 5

Freedom to provide services

No requirements, falling within the co-ordinated field, which restrict provision of information society services in Finland, must be imposed on 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 powers, separately prescribed, 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 point 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 Communities 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 Section 2 notwithstanding. The Commission of the European Communities and the Member State where the service provider is established, must be notified immediately of the restrictions and of the reasons why the case is considered urgent.

The provisions in paragraphs 2 and 3 shall not apply to crime investigation or when hearing the case in court.

Section 6

Observance of the Finnish law

Competent authorities in Finland must supervise that the 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.

Chapter 3

Information requirements, and electronic orders and contracts

Section 7

General information to be provided

In addition to the provisions elsewhere in the law on obligations to give information, 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, e-mail 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 the 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, service providers which practise a regulated profession 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 are supplied when providing information society services, they must 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 a price of consumer goods and services.

Section 8

Obligation to give information when placing an order

In addition to the provisions elsewhere in the law on obligations to give information, the service providers must, before the recipient of the service places an order, have

available to him/her 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 contract concluded 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 paragraph 1 shall not be applied to contracts concluded by solely using e-mail or a corresponding personal method of communication. A contract may deviate from the provisions of paragraph 1 unless the consumer is a party to the contract.

Section 9

Supply of contractual terms

Service providers must supply recipients of services with contractual terms so that the recipients may store and reproduce them.

Section 10

Order and acknowledgement of receipt

If an order is placed using technical means, service providers must immediately electronically notify receipt of the order. There is no need to supply an acknowledgement of receipt if the ordered goods or services are 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 paragraphs 1 and 2 shall not be applied to contracts concluded by solely using e-mail or a corresponding personal method of communication. A contract may deviate from the provisions of paragraph 1 and 2 unless the consumer is a party to the contract.

Section 11

The time of receipt

The order and the acknowledgement of receipt, referred to in Section 10 above, is regarded as received when it is available to the party it was addressed to.

Section 12

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 paragraph 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 paragraphs 1 and 2 shall not be applied to a contract concerning a property deal or any other transfer of a property or a contract relating to family or estate law.

Chapter 4

Exempting service providers, acting as intermediaries, from liability

Section 13

Exemption from liability in data transmission services and communication network services

When an information society service is provided, which consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, the service provider is not liable for the content or transfer of the information transmitted if he/she:

- 1) does not initiate the transmission;
- 2) does not select the receiver of the transmission; and
- 3) does not select or modify the information contained in the transmission.

The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

Section 14

Exemption from liability when caching the information

When an information society service is provided that consists of the transmission in a communication 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 he/she:

- 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 by industry;
- 4) does not interfere with the lawful use of technology, widely recognised and used by 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 that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

Section 15

Exemption from liability in hosting services

When an information society service is provided that consists of the storage of information provided by a recipient (*content producer*) of the service, the service provider is not liable for the information stored or transmitted at the request of a recipient of the service if he/she acts expeditiously to disable access to the information stored:

- 1) upon obtaining knowledge of the order concerning it by a court or if it concerns violation of copyright or neighbouring right upon obtaining the notification referred to in Section 22;
- 2) upon otherwise obtaining actual knowledge of the fact that the stored information is clearly contrary to Section 8 of Chapter 11 or Section 18 of Chapter 17 of the Penal Code (39/1889).

The provisions in paragraph 1 shall not apply if the content producer is acting under the authority or the control of the service provider.

Section 16

An order to disable access to information

On application by 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 service provider, referred to in Section 15, to disable access to the information stored by him/her 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 must urgently process the application. The application cannot be approved without reserving for the service provider and the content producer 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 producer. If the content producer is not known, the court may order the 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 a complainant 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 service provider and the content producer 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 Act (307/1986) of the general court of first instance on dealing with non-contentious civil cases 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 17

Competent court

The application referred to in Section 16 above shall be heard by the court of the 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 18

Legal safeguards of the content producer

If the service provider has prevented access to information under paragraph 1(2) of Section 15, he/she must immediately notify the content producer of this in writing or electronically so that the content of the notification cannot be unilaterally altered and that it remains accessible to the parties. The notification must state the reason for prevention as well as information on the right of the content producer to bring the matter for a court hearing. The notification must be made in the mother tongue of the content producer, in Finnish or in Swedish. The notification may also be made in another language agreed with the content producer.

The content producer has the right to bring the matter concerning prevention to be heard by the court referred to in Section 17 within 14 days from the receipt of the notification referred to in paragraph 1. The provisions of paragraph 4 of Section 16 shall be observed during the hearing of the case concerning prevention.

Section 19

Obligation by the service provider to take action to implement a decision by the authorities

The provisions of Sections 13-15 on the 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.

Chapter 5

Notification procedure

Section 20

Prevention of access to material infringing copyright or neighbouring right

A holder of copyright or his/her representative may request the service provider referred to in Section 15 to prevent access to material infringing copyright as prescribed in this Section and in Sections 22-24. The same applies to a holder of neighbouring right and his/her representative if it concerns material infringing this right.

A request must be presented to the content producer whose material the request concerns. If the content producer 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 service provider by notification prescribed in Section 22.

Section 21

Service provider's contact point

The service provider must give a contact point where the notification referred to in Section 22 and the response referred to in Section 23 may be delivered. The contact information of the contact point must be easily and continuously accessible.

Section 22

Form and content of the notification

The notification must be made in writing or electronically so that the content of the notification cannot be unilaterally altered and that it remains available to the parties. The notification must 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 his/her sincere opinion, illegally accessible in the communication network;
- 4) information concerning the fact that the notifying party has in vain submitted his/her request to the content producer or that the content producer 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 by the notifying party.

The notification, which does not meet the requirements in paragraph 1, is invalid. If the shortcomings in the notification solely concern the information referred to in paragraph 1(2), the service provider must, however, take reasonable steps to contact the notifying party and to let him/her know the shortcomings discovered.

Section 23

Notification to the content producer and the plea

The service provider must immediately notify the content producer of prevention of access to the material supplied by him/her and to supply the content producer with a copy of the notification on the basis of which prevention was made.

If the content producer 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 22, within 14 days of receiving the notification. A copy of the plea must be delivered to the service provider. The plea must include:

- 1) the name and contact information of the content producer;
- 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 producer.

Section 24

Returning the material

If the plea, meeting the requirements of Section 23, is delivered within the time limit, the 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 producer or by an order or decision by a court or by any other authority.

Section 25

Liability to compensate

He/she who gives false information in the notification referred to in Section 22 or in the plea referred to in Section 23, is 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.

Chapter 6

Supervision and *sanctions*

Section 26

Supervision and the supervising authority's right to obtain information

Compliance with Sections 7-10 and Section 21 of this Act shall be supervised by the Communications Regulatory Authority. In addition, the provisions of the Consumer Protection Act (38/1978) on the supervisory authority of the Consumer Ombudsman shall be in force regarding supervision of compliance with Sections 7-10 of the Act.

The Communications Regulatory Authority and the Consumer Ombudsman must have an appropriate co-operative relationship between themselves. The secrecy provisions notwithstanding, the service provider must, on request, give the Communications Regulatory Authority any necessary information for supervision. The Act on the Consumer Agency (1056/1998) shall prescribe for the Consumer Ombudsman's right to obtain information.

Section 27

Administrative coercive means

If the service provider defaults on the obligation prescribed in Sections 7-10, Section 21 or paragraph 2 of Section 26, the Communications Regulatory Authority may request the service provider to meet the obligation within the time limit. The Communications Regulatory Authority may impose a penalty payment as a sanction for the request as prescribed by the Penalty Payment Act (1113/1990). If the service provider acts contrary to the provisions of the Consumer Protection Act when violating the provisions of Sections 7-10, the separate provisions on coercive means shall be in force.

Chapter 7

Entry into force

Entry into force

This Act shall enter into force on 1 July 2002.