



ICLG

The International Comparative Legal Guide to:

Telecoms, Media & Internet Laws & Regulations 2015

8th Edition

A practical cross-border insight into telecoms, media and internet laws and regulations

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EDITORIAL

Welcome to the eighth edition of *The International Comparative Legal Guide to: Telecoms, Media & Internet Laws & Regulations*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of telecoms, media and internet laws and regulations.

It is divided into two main sections:

Two general chapters. These chapters provide overviews of the EU regulatory framework and of the different approaches and attitudes towards mobile network consolidation in the United States and Europe.

Country question and answer chapters. These provide a broad overview of common issues in telecoms, media and internet laws and regulations in 34 jurisdictions.

All chapters are written by leading telecoms, media and internet lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Rob Bratby of Olswang LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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1 Overview

- 1.1 Please describe the: (a) telecoms; (b) audio-visual media distribution; and (c) internet infrastructure sectors in Finland in particular by reference to each sector's: (i) importance (e.g. measured by annual revenue); (ii) 3-5 most important companies; (iii) whether they have been liberalised and are open to competition; and (iv) whether they are open to foreign investment.**

The Finnish market for telecoms, audio-visual media distribution and internet is fairly competitive, although new actors rarely enter the market. The Finnish Communications Regulatory Authority (FICORA) regulates telecommunications by supervising and issuing technical regulations and guidelines on equipment and networks. The telecoms, audio-visual media and internet infrastructure sectors are open to competition and no regulatory barriers exist for foreign investment in any of the sectors.

(a) 9.3 million mobile connections and 750,000 landline connections were in use in Finland (having a population of 5.5 million) at the end of 2013.

The biggest telecommunications companies in 2014 are TeliaSonera Finland Oyj, Elisa Oyj and DNA Oy.

(b) The market for electronic mass communications, encompassing television, radio and internet media, has increased during recent years with an annual revenue of MEUR 4,327 in 2012. Key companies are the Finnish Broadcasting Company Oy, Sanoma Oyj and Bonnier Ab.

In 2013, 90 per cent of all Finnish households received television broadcasts, of which 49 per cent were through the terrestrial network, 46 per cent through the cable network, 3 per cent through the satellite network and 13 per cent through IPTV.

Digita Oy and DNA Oyj own the infrastructure for terrestrial television and radio. Digita Oy, DNA Oyj and Anvia Oyj hold the terrestrial television network licences. The largest cable television network transmitter is DNA Welho Oy, a part of DNA Oy. The television channels are positioned in eight nationwide and one local channel bundle, as well as one bundle for mobile television (DVB-T2). Five of the channel bundles are capable of transmitting HD TV.

The largest programme licence holders in digital terrestrial television are MTV Oy and Sanoma Television Oy. The Finnish Broadcasting Company Oy is permitted to broadcast in the terrestrial television network by virtue of law. The most prominent among the 25 notified cable television operators is Sanoma Television Oy. Satellite television is operated in Finland, e.g. by

Canal Digital Finland Oy and Viasat Finland Oy. As for radio operations, 10 nationwide and 56 local radio programme licences were granted.

(c) Approximately 87 per cent of all Finnish households had a broadband internet connection in 2013. Key companies are TeliaSonera Finland Oyj, Elisa Oyj, DNA Oy and the Finnet group.

- 1.2 List the most important legislation which applies to the: (a) telecoms; (b) audio-visual media distribution; and (c) internet, sectors in Finland.**

The Communications Market Act governs the markets of network services and communications services. The Act on Television and Radio Operations (744/1998) regulates television and radio programming operations. The Act on Radio Frequencies and Telecommunications Equipment ("Radio Act", 1015/2001) and the Act on Auctioning Certain Radio Frequencies (462/2009) lay down provisions on radio equipment and planning and usage of radio frequencies. The Act on Provision of Information Society Services (458/2002) governs certain matters relating to the provision of internet services.

The Act on Protection of Privacy in Electronic Communications (516/2004), together with the Data Protection Act (523/1999) and the Penal Code (39/1889), govern confidentiality and information security in electronic communications. The legal relationship between the consumer and the telecommunications operator is covered by the Consumer Protection Act (38/1978). The Act on Audiovisual Programmes (710/2011) sets down provisions for age limit classification of audio-visual programmes.

The Finnish telecommunications and media legislation is undergoing a reform and several of the above-mentioned acts are planned to be merged into a single act called the Information Society Code. Finland's Government submitted its proposal for the Information Society Code to Parliament in January 2014 and it is scheduled to enter into force on 1 January 2015.

- 1.3 List the government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in Finland?**

Telecoms regulation in Finland falls within the responsibilities of the Ministry of Transport and Communications. Certain decisions are reserved for the Council of State. FICORA is an independent authority under the Ministry and is responsible for regulating communications markets.

The Finnish Competition and Consumer Authority (FCCA) monitors competition restrictions, and the Consumer Ombudsman and Consumer Agency are responsible for matters relating to consumer protection.

The Finnish Centre for Media Education and Audiovisual Media is the national authority for the supervision and classification of audio-visual media and the coordination of media education.

The major self-regulatory bodies are the Council for Mass Media, the Council of Ethics in Advertising and the Ethical Committee for Premium Rate Services.

1.4 Are there any restrictions on foreign ownership or investment in the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in Finland?

There are no such restrictions.

2 Telecoms

General

2.1 Is Finland a member of the World Trade Organisation? Has Finland made commitments under the GATS regarding telecommunications and has Finland adopted and implemented the telecoms reference paper?

Yes, Finland has been a WTO member since its establishment in 1995 alongside the EU. The EU, and Finland as its Member State, have given commitments regarding telecommunications services, including the telecoms reference paper which has been appended to the schedule of commitments. The reference paper and the relevant EU legislation have been implemented in Finland.

2.2 How is the provision of telecoms (or electronic communications) networks and services regulated?

Finnish legislation in the field of telecoms is based on the EU legal framework. The Communications Market Act governs the provision of communications networks and communications services. The act applies primarily to 'telecommunications operators', who are either network operators or service operators. Under the act, FICORA has been empowered to issue technical regulations in the field of telecoms. Its duties also include the economic regulation of telecommunications. Telecoms legislation is based on the principle of technology neutrality. The radio spectrum is regulated by the Act on Radio Frequencies and Telecommunications Equipment.

Services in the field of telecoms are also subject to the provisions of the Act on Provision of Information Society Services and the Act on Television and Radio Operations. Privacy-related matters in electronic communication are regulated most prominently by the Act on the Protection of Privacy in Electronic Communications. Providers of telecoms are also subject to general competition and consumer legislation.

2.3 Who are the regulatory and competition law authorities in Finland? How are their roles differentiated? Are they independent from the government?

General telecommunications guidance and development are the responsibility of the Ministry of Transport and Communications,

including preparing legislation in the field of telecoms. FICORA supervises compliance with the Communications Market Act and issues regulations under it. FICORA also ensures effective competition within telecoms, but is required to cooperate with the European Commission when carrying out market definitions and analyses and imposing obligations on operators with significant market power. The authority to grant licences, allocate frequencies and certain other powers resides with the Council of State.

Communications markets are also under the scrutiny of the FCCA by virtue of the general legislation governing competition and consumer fields, and FICORA acts in cooperation with those authorities. FICORA and FCCA make their decisions independently from the government and its political decision-making processes.

2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?

Yes, the decisions of FICORA are appealable. The competent court depends on the subject matter of the decision; as a main rule, decisions are appealed to one of the regional Administrative Courts. Decisions relating to e.g. imposing obligations to operators having significant market power are appealed to the Supreme Administrative Court. FICORA's decisions relating to the prohibition of an unfair agreement term are appealed to the Market Court.

Licences and Authorisations

2.5 What types of general and individual authorisations are used in Finland?

A licence is required to provide a network service that uses radio frequencies in a digital terrestrial mass communications network or in a mobile network practising public telecommunications. The Council of State has the general authority to grant such licences. The provision of public telecommunications (for example, as a mobile communications network operator, internet service provider, cable network operator and a radio programme service carrier) requires that a telecommunications notification be submitted to FICORA. The provision of other types of telecommunications does not require a telecommunications notification. Licences to certain radio frequencies are granted by auction.

2.6 Please summarise the main requirements of Finland's general authorisation.

If a telecommunications notification is required, it shall include all information necessary for the purposes of supervision. A telecommunications operator subject to notification duty or a licence shall pay an annual communications market fee. If requested, FICORA will provide a confirmation of a notification indicating the rights and obligations of telecommunications operators in Finland under the Communications Market Act. Telecommunications operators have a number of obligations under the Communications Market Act, including interconnection obligations, a duty to maintain information security in electronic communications and networks' and services' functionality, and a duty to prepare for exceptional circumstances. Operators also have duties relating to service agreements.

2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded.

Generally, licences are granted by the Council of State. Regarding wireless broadband services and short-term services, a licence may also be granted by the Ministry of Transport and Communications or by FICORA, respectively. Licences are granted for a fixed period of up to 20 years. Licences are non-transferable, and they may be cancelled if the effective control in respect of the licence holder changes; however, an internal transfer of a licence between a parent company and a wholly owned subsidiary is allowed. Further, the licence holder may request to be informed in advance whether a licence would be cancelled due to a contemplated transfer. As an exception to the above, an auctioned licence can be leased with the Council of State's permission and the Council may also transfer the licence on its holder's request.

Public and Private Works

2.8 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

The Land Use and Building Act (132/1999) and the Communications Market Act contain provisions that allow the location of telecommunications cables and related minor equipment, structures and installations on property owned by another. If no agreement is reached with the owner, the local building supervision authority may make a decision to allow the location.

Access and Interconnection

2.9 How is network-to-network interconnection and access mandated?

The Communications Market Act stipulates that a network operator has an obligation to negotiate in good faith on interconnection with another network operator. FICORA may impose an obligation on an operator with significant market power to connect a communications network or communications service to the communications network or communications service of another telecommunications operator. In more exceptional situations, interconnection can be mandated also on an operator that does not have significant market power. FICORA also has various powers relating mainly to operators with significant market power to impose obligations to allow access to, for example, mobile networks and to rent a leased line.

2.10 How are interconnection or access disputes resolved?

If the parties do not agree on the details of the interconnection (either voluntarily or after FICORA's decision, see question 2.9), a communications operator, under an interconnection obligation set by FICORA, is obliged to follow the default rules on interconnection as set out in the Communications Market Act. Operators can refer violations of the act for examination to

FICORA, which shall resolve the matter within four months unless the case is unusually extensive. Mediation at FICORA is also possible.

2.11 Which operators are required to publish their standard interconnection contracts and/or prices?

FICORA may impose obligations on a telecommunications operator to publish its terms and prices regarding leasing obligations, access rights or interconnection. A great number of operators with significant market power are subject to such a duty regarding different communications markets.

2.12 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?

FICORA may require an operator to: 1) set prices for relinquishing access rights, roaming or interconnection in such a way as to ensure that the prices are either cost-oriented (i.e. reasonable, taking into account the costs incurred and the efficiency of the operation) or non-discriminatory, or both cost-oriented and non-discriminatory; 2) otherwise apply non-discriminatory terms; and 3) apply, in exceptional cases, a maximum price for leased line and local loop access rights. For instance, FICORA has often required prices to be cost-oriented and non-discriminatory. In addition, FICORA has the power to decide on a maximum price when assessing whether an obligation to observe cost-oriented pricing has been followed, and has also exercised this power.

2.13 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

FICORA has required several operators having significant market power to employ accounting separation for e.g. functions related to relinquishing access rights. Thus far, no decisions have been made to mandate functional or legal separation.

2.14 Are owners of existing copper local loop access infrastructure required to unbundle their facilities and if so, on what terms and subject to what regulatory controls? Are cable TV operators also so required?

If FICORA has found a telecommunications operator to have significant market power, it may impose an obligation to lease out a local loop of a fixed telephone network or part of it, as well as part of the local loop capacity or transmission capacity for shared use. No such duty exists if privacy would be endangered or leasing is technically inappropriate or otherwise unreasonable. If the operator is under the duty to observe cost-oriented pricing, it may charge a fee for shared use of a local loop amounting to no more than half of the fee charged by the operator for an equivalent local loop unless the network operator proves that its costs are higher.

In relation to cable TV operators having significant market power, they may be required to relinquish access rights to cable television network capacity. There is no obligation to allow local loop leasing type access to cable TV networks. There are no cable TV operators having significant market power and thus no obligations have been issued.

2.15 How are existing interconnection and access regulatory conditions to be applied to next-generation (IP-based) networks? Are there any regulations or proposals for regulations relating to next-generation access (fibre to the home, or fibre to the cabinet)? Are any 'regulatory holidays' or other incentives to build fibre access networks proposed? Are there any requirements to share passive infrastructure such as ducts or poles?

Due to the technology neutral policy adopted in the legislation, next-generation networks are subject to the same legislation as traditional networks. Since March 2013, the major SMP operators have been required by FICORA to observe cost-oriented pricing for local loop unbundling in next-generation networks.

In addition, legislation has been adopted to provide public financial aid for broadband building in sparsely populated areas; such aid is only available for networks that allow minimum connection speeds of 100 Mbit/s and open network access to competing service providers. No 'regulatory holidays' are contemplated.

FICORA may oblige an operator to lease out part of a cable duct and to share poles and related equipment under certain conditions.

Price and Consumer Regulation

2.16 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

The retail markets are competitive and no operator has been defined as having significant market power in retail markets. Therefore, no retail price controls have been imposed on operators on the basis of their significant market power. However, operators assigned as universal service providers are required to render the universal service at a reasonable price.

2.17 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?

Chapter 7 of the Communications Market Act, containing provisions relating to users' rights, is compulsory legislation in consumer relationships. The chapter governs, for instance, the content of the communications service agreement.

Numbering

2.18 How are telephone numbers and network identifying codes allocated and by whom?

FICORA coordinates numbering in telecommunications networks, specifies the national numbering plan and bans categories and issues regulations on numbering. FICORA also allocates number blocks and codes for operators on application.

Numbers and identifiers are to be distributed in a manner that treats telecommunications operators and other persons as fairly as possible taking into account the nature and extent of operations.

2.19 Are there any special rules which govern the use of telephone numbers?

The Consumer Ombudsman may order a telecommunications

operator to close a number if the service seeks unlawful financial benefit by providing users with essentially false or misleading information in marketing material.

2.20 Are there any obligations requiring number portability?

Number portability is regulated in FICORA's Regulation on number portability (46 H/2011) that has been issued under Sections 51 and 52 of the Communications Market Act. For example, the regulation provides that a subscriber may retain his/her mobile phone number irrespective of the telecommunications operator providing the communications service.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

FICORA oversees the use of radio frequencies in Finland. The Council of State decides upon spectrum auctions and network licences.

3.2 How is the use of radio spectrum authorised in Finland? What procedures are used to allocate spectrum between candidates - i.e. spectrum auctions, comparative 'beauty parades', etc.?

The possession and use of a radio transmitter requires a radio licence generally granted by FICORA. Radio licences are granted on a first-come, first-served basis. If radio licences cannot be granted to all applicants due to the insufficiency of radio frequencies, the licence must be granted on virtue of a 'beauty parade' to those applicants whose operations best promote the aims of the Radio Act.

In addition to the radio licence, the provision of mobile and digital terrestrial television network services requires a licence granted by the Council of State. Most of these licences have been granted in comparative 'beauty parades'. Certain frequencies are auctioned whereby the spectrum is granted to the highest bidder. Participating in a spectrum auction is subject both to notification to FICORA and to a participation fee.

3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions?

According to the Radio Act, the possession and use of a radio transmitter requires a radio licence, unless the radio transmitter only functions on the collective frequency designated for it by FICORA and if its conformity has been confirmed in the manner laid down in the Radio Act, the radio transmitter has been permanently rendered technically inoperable for radio communication, or it is otherwise evident that the possession is not for the purpose of radio communication.

Some specific radio transmitters have been exempt from licensing by FICORA.

3.4 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

A frequency fee is collected on radio licences granted by FICORA. The frequency fee is defined according to the usability of the

frequencies in the radio licence. For short-term radio licences, the frequency fee is calculated based on how long the frequencies are used.

The licences for mobile and digital terrestrial television networks granted by comparative 'beauty parades' do not carry an authorisation fee. As for auctioned licences, the authorisation fee is composed of the winning bid.

Further, in addition to the frequency fee, radio broadcasters are obligated to pay an annual fixed supervision fee in order to cover the expenses incurred by FICORA due to the administration of broadcasting activities.

3.5 What happens to spectrum licences if there is a change of control of the licensee?

At the request of a licence holder the Government may transfer a licence, provided that it has no especially weighty reasons to suspect that the transfer might prevent competition or endanger interference-free radio communications or apparently risk national security.

Changes in the effective control with regard to the licence holder are also regarded as a transfer. Any changes in the effective control shall immediately be reported to the licensing authority. The Government shall make a decision about a transfer within two months from the reception of a transfer application or information referred to above. A licence transfer may also apply to only part of the frequencies included in the licence. The licence holder shall explain in the transfer application as to who would be responsible for paying the licence fee after the transfer.

However, a transfer within a corporate group between the parent company and its fully owned subsidiary shall not be regarded as a licence transfer. The Government shall be informed of such a transfer.

All rights and responsibilities of the licence holder shall transfer to the new licence holder. Along with the licence transfer, the related frequency reservation or radio licence shall also transfer in part or in full. The licence transferor shall immediately inform FICORA of the transfer.

3.6 Are spectrum licences able to be assigned, traded or sub-licensed and if so on what conditions?

The radio licences granted by FICORA can be transferred only if the licence conditions permit such transfers.

The licences for mobile and digital terrestrial television networks are non-transferable. The licences may be transferred within consolidated corporations, but the Council of State shall immediately be informed of the transfer, as well as of any change of control of the licence holder. The Council of State may cancel a licence if the effective control in respect of the licence-holder changes. Any such change shall be notified immediately to the licensing authority. The Council of State shall decide on whether to cancel the licence within two months of the notification.

Auctioned licences can be assigned and sub-licensed (leased). Both the transfer and lease require a clearance from the Council of State.

4 Cyber-security, Interception, Encryption and Data Retention

4.1 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications.

The main legislative acts are the Communications Market Act (393/2003), the Act on the Protection of Privacy in Electronic Communications (516/2004) and the Coercive Criminal Investigation Means Act (806/2011). Criminal sanctions for the non-compliance with the Act on the Protection of Privacy in Electronic Communications have been set out in the Criminal Code (39/1889).

4.2 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities. Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?

Such requirements have been set out in the Communications Market Act. The Act provides that a telecommunications operator shall equip its communications network and communications service with technical instruments and features that allow the interception of electronic communications and telecommunications monitoring as referred to in the Coercive Criminal Investigation Means Act, the Police Act, and the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union.

4.3 How does the state intercept communications for a particular individual?

Communications interception is regulated under the Coercive Means Act. Further, the Police Act authorises the police to use tele surveillance and metering of telecommunications for reconnaissance purposes.

4.4 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state.

There are no specific rules governing the use of encryption.

4.5 What call data are telecoms or internet infrastructure operators obliged to retain and for how long?

A service operator obliged to submit a telecommunications notification shall ensure that data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks are retained for a period of 12 months from the date of the communication. Such data may be used only for the purposes of investigating, solving and considering charges for criminal acts subject to the Coercive Measures Act. The ministry is considering revising the retention obligations in the light of EU Court judgment which declared the Data Retention Directive to be invalid (C-293/12 and 594/12).

The retention obligation currently in force applies to data related to: 1) a service operator's telephone service or additional service through a fixed network, telephone service, additional service, SMS service, EMS service or multimedia service through a mobile network; 2) internet connection service provided by a service operator; 3) email service provided by a service operator; 4) internet telephony service provided by a service operator; and 5) a call for which a connection has been established, but the call remains unanswered or is prevented from being connected due to network management measures. The retention obligation does not apply to the contents of a message or identification data generated through the browsing of websites.

5 Distribution of Audio-Visual Media

5.1 How is the distribution of audio-visual media regulated in Finland?

The main legislative acts are the Communications Market Act, governing television network operations, and the Act on Television and Radio Operations, governing the broadcasting of television programmes. The Ministry of Transport and Communications and FICORA act as the main regulatory bodies, supervising and regulating the field, as well as issuing network licences and programme licences, respectively.

5.2 Is there a distinction between the linear and non-linear content and/or content distributed over different platforms?

The Act on Television and Radio Operations applies to both linear and non-linear content, including on-demand services, free and pay services and broadcasting on any distribution platform (e.g. analogue and digital terrestrial television, satellite television, cable television and internet-based distribution systems).

5.3 Describe the different types of licences for the distribution of audio-visual media and their key obligations.

Operating television network services in the terrestrial mass communications network requires a network licence. The holder of a network licence is responsible for putting together the television channel bundles as well as maintaining the television transmission services. The broadcasting of television programmes in the terrestrial mass communications network requires a programme licence. A supervision fee is collected from licenced television broadcasters. All audio-visual programmes must be classified with an age limit and appropriate labels.

Operating television network services or broadcasting television programmes in the cable and satellite network does not require a licence. Operators providing network services in cable television networks have an obligation to transmit certain television programmes without a charge (the so-called must carry obligation).

5.4 Are licences assignable? If not, what rules apply? Are there restrictions on change of control of the licensee?

A licence granted for television or radio broadcasting may not be assigned to another party. If the licence holder assigns the licence to another party, the licence becomes void. The licensing authority must make a formal decision confirming that the licence has become void.

If the effective control with regard to a licence holder changes, the licensing authority may approve the changes or cancel the licence. The same applies to the powers of the licensing authority; if the effective control of the licence holder with regard to the operations referred to in the licence changes in that the licence holder can no longer be regarded as a broadcaster as regards operations referred to in the licence.

Any transfer or change shall be notified immediately to the licensing authority. The licence holder may request a preliminary ruling on the matter. The licensing authority shall decide the matter within two months of reception of notification or application.

An internal transfer of a licence within a group between the parent company and a wholly owned subsidiary is not considered to be a licence transfer that would require avoidance. Such a transfer shall be notified immediately to the licensing authority.

6 Internet Infrastructure

6.1 How have the courts interpreted and applied any defences (e.g. 'mere conduit' or 'common carrier') available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

We are not aware of any court decisions relating to network operators' or internet service providers' defence of acting as a 'mere conduit' under the Act on Provision of Information Society Services (458/2002), implementing the EU Directive on Electronic Commerce (2000/31/EC). However, the Supreme Court of Finland has considered copyright infringement in a peer-to-peer file sharing network in the *Finreactor* case. The court held that the administrators could not benefit from the exemption from liability for hosting services because they had participated in the provision of the service and copyright infringement by administering torrent descriptor files, etc.

6.2 Are telecommunications operators and/or internet service providers under any obligations (i.e. provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

Under the Copyright Act (404/1961), courts may order a service provider to surrender the contact information of a subscriber who makes infringing material protected by copyright available to the public. Further, courts may grant an injunction to discontinue against a service provider whose services are used to make copyright-infringing material available to the public. Several ISPs in Finland have been ordered to block access to certain domains and IP addresses by such injunctions.

In addition, subject to the Act on Provision of Information Society Services (458/2002), a holder of copyright or his/her representative may request the service provider to prevent access to material infringing copyright or a neighbouring right. 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.

6.3 Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks? Are there any 'net neutrality' requirements?

There is currently no explicit legislation requiring net neutrality. While communications service agreements may not restrict users' rights to choose a content service provider, operators may treat different types of traffic differently if they adhere to the general rules that govern informing their customers about such activity. However, the proposed new Information Society Code includes a net neutrality provision.

6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content?

The Act on Preventive Measures Relating to Distribution of Child Pornography (2006/1068) set up a system with the purpose of preventing access to foreign websites containing child

pornography. Under the act, the police have set up a list of pages containing illicit material that telecommunications operators are entitled to, but not required to, use to block access to those sites by their IP address.

In addition, ISPs can be required to block access to content or sites by court order under the Act on the Exercise of Freedom of Expression in Mass Media (460/2003) regarding content, the distribution of which to the public is a criminal offence, or for infringement of an intellectual property right.

6.5 How are 'voice over IP' services regulated?

In keeping with the principle of technology neutrality, VoIP services are regulated by the same general rules as other services on the communications markets. Where VoIP services are based on peer-to-peer technology and the service provider merely provides a directory service, the Communications Market Act will not apply (although the service may still be considered an information society service).

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Prior to joining Attorneys at law Borenius Ltd, Jukka worked as an adviser and member of the board of directors in an IT company that he established, and as a lawyer in another law office specialising in technology and media contract law. In ICT outsourcing projects and ICT procurement cases Jukka typically acts for the client procuring the ICT services.

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