

CENSORSHIP: CASE FINLAND

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Abstract: In this paper the Finnish censorship system—purported to censor child pornography—and its major problems is presented. The paper is based on public discussions, legal documents, critiques of the law and its effects. The law and its execution is undoubtedly problematic if the accusations of its critics that practically 99% of the known over 1000 blocked web sites contain no child pornography at all are true. No contradictory evidence is found, however, and the estimate seems to hold. This is the typical problem of all censorship systems; they censor more or less arbitrarily, based on the prejudices of the censor.

1 Introduction

In 2005 the then Finnish Minister of Communications Susanna Huovinen and others started a project to censor foreign web sites which offer child pornographic material in the Internet. The bill [HE 99/2006] was passed in 2006 and was taken into use in January 2007. The aim of the project was to censor sites which cannot, through legal means within Finland or with international cooperation be taken down. The way the project was framed was the following: Internet Service Providers (ISPs) can take the list into use voluntarily—and if they do not, we will pass a law which mandates the taking into use. Feel free to not take the list into use, as this is all voluntary. [Tietokone, 2006; Lausuntokooste, 2006]

Child pornography is a gross violation of children's rights. Despite of this, the project was criticized from the beginning by various electronic activists and activist groups. The project was seen as a first step towards wider and deeper censorship of material in the Internet. These fears have now been realized. In the black list (A 'black list' (vs. a 'white list') refers to a list which is not (directly) available for public scrutiny) created by one member of the Finnish National Bureau of Investigations (NBI), it has been found out through indirect means, at least 1000 of the 1700 web pages blocked [Nikki, 2008] seem to be sites which the Finnish law does not forbid (a very preliminary analysis available at: <http://maraz.kapsi.fi/sisalto-en.html>). Most of them appear to be normal pornographic material, which, even if morally questionable, is not illegal in Finland. Many seem to be gay pornography, again, not in any way illegal in Finland. A fewer number still appear to be sites which promote child models, and finally, some sites are perfectly

mundane, such as Japanese Okubo Violin store web site <http://www.nn.ij4u.or.jp/~nekokubo/>. Thus, *at least half* of the web sites blocked contain *no illegal material at all*. This seems extremely worrying to anyone interested in freedom of expression and legal procedure.

To make the things worse, there have already been several suggestions to extend the black list. The first mentioned in media was to block web sites which distribute or provide links to illegal downloads of copyrighted material in the Internet. The latest call is for the list to be extended to Internet poker sites, which according to a study [Määttä, 2008, pp. 52] ‘cause addiction to the Finnish population’. Other suggestions for additions to the list of censored things have also been proposed, as was feared to be expected shortly.

Unfortunately the problems do not end here. A web site specifically created to critique the law (lapsiporno.info – in English, “childporn.info” – one may discuss the pro’s and con’s of the choice of the name, but the *content* of the site is not in question, there is *no child pornography what so ever* at the web site) has already been added to the list. Thus, even discussion of the content of the black list is added under censorship in Finland. This, apparently, is illegal, as well as immoral. The law specifically states, that it is to be applied to *foreign* web sites, not ones in Finland – as the police, of course, has the duty to investigate and the prosecutor to prosecute any web sites in Finland offering child pornography. NBI Police Sergeant Lars Henriksson, responsible for the upkeep of the black list has stated publicly, that any web sites offering links to web sites offering child pornography is guilty of abetting child pornography [Tekniikka & Talous, 2008]. However, how is the public to discuss whether the list contains child pornography or not, if listing the sites is forbidden? Also, passive links (which the person using a browser need but copy/paste to the address line) are allowed, as no such web sites have been censored (at least yet)—with the exception that lapsiporno.info remains on the censored list even though the links have now been removed. The current Minister of Communications Suvi Lindén has also warned the public in the television news to not test the list nor to question the content of the list ‘at their own peril’. Fear, uncertainty and doubt (FUD) seems to be the strategy applied by the administration to the issue. The discussion (or the aims to *stop it*) starts to resemble some of the tactics employed by totalitarian societies, instead of democratic, transparent legal systems.

From a political-legal perspective, the traditional division of the authorities to executive, judicial and political branches is also in question, when one (1) person at the NBI decides

- 1) what is illegal (and as has been seen a lot of it is not)
- 2) what is to be done about it (censorship), and
- 3) who and to whom can be complained (no notification of ending up at the list is provided and only an email address directed to the same person is provided).

In the paper I will go through the issues in more detail and discuss the fears raised by the possible future implied by these policies.

2 Main problems with the current law

The main problem with the child pornography censorship is of course censorship *per se*. If something illegal is done through expression, those responsible ought be brought to court of law

and punished through normal legal procedure. As is said in the law itself [HE 99/2006, 1§], this is not possible in Finland when the web sites offering alleged child pornography do not reside at Finnish servers. International cooperation *is* however possible. As most of the web sites found by a Finnish Internet activist Matti Nikki (<http://lapsiporno.info>) are registered either in USA or (far less) within EU countries [Nikki, 2008, <http://lapsiporno.info/suodatuslista> - unfortunately censored, but fortunately mirrors such as <http://www.helsinki.fi/~mjrauhal/lapsiporno.info/suodatuslista/> are still available through even major Finnish operators) it seems ludicrous that the police and ISPs in Finland would need to censor them. Clearly contacting FBI or a similar organisation within an EU country by NBI would lead to a criminal investigation and shut down of the web site if there was a reason for it. This, however, does not seem to be the case. As practically none of the pages (except the ones clearly containing child pornography, and reported to the correct authorities in the countries the sites reside by Internet activists) are shut down, the NBI either has not contacted the relevant authorities or the authorities are not doing their job (which does not seem to be the case with the sites *actually* containing child pornography, as they disappear quickly) – or, which is even more frightening, most of the censored sites do not actually contain any child pornography, and are thus illegally censored.

It seems that the list is comprised of page lists kept by national and international organizations fighting against child pornography, through private tips, ISPs or public authorities [HE 99/2006, 4§] and actually done by one NBI police officer, Lars Henriksson, who is the police spokes person if any questions about the list are made [Tietokone, 2008]. As originally it was planned that the person responsible would spend ½ of their working hours on the upkeep of the list [Lausuntokooste, 2006], it seems unlikely that there would be many persons in charge, although information on this is not available, as the police continuously refuse to answer who does the up keeping. The NBI only answer that they have found material which is according to the Finnish law child pornography and that they have proof of this. Proof, which is not given to any outsiders, due to it of course being illegal child pornographic material, the claim goes. This, however, the public cannot verify as giving it to the public would be a violation of the law on distributing child pornographic material.

The web page one is redirected to does not offer much room for complaint:

PÄÄSY ESTETTY • INTRÄDE BLOCKERAT

Selaimesi on pyrkinyt sivustolle, jolle pääsy on estetty lapsipornografian levittämisen estotoimista annetun lain (1.12.2006/1068) perusteella. Poliisi ylläpitää ja päivittää luetteloa näistä lapsipornosivustoista. Sivustoilla olevien kuvien hallussapito ja levittäminen on säädetty rangaistavaksi. Poliisille kuvat ovat todisteita lapsiin kohdistuneista seksuaalirikoksista.

Asiaan liittyvät mahdolliset viestisi voit lähettää keskusrikospoliisiin, sähköpostiosoitteeseen krp-nettieto@krp.poliisi.fi

Tästä linkistä pääset lukemaan, mitä rikostain 17 luvussa lapsipornografiaan liittyvistä rikoksista on säädetty.

Den webbläsare har försökt komma in på en webbplats som är blockerad i enlighet med lagen om åtgärder som hindrar spridning av barnpornografi (1.12.2006/1068). Polisen för och uppdaterar en förteckning över webbplatser med barnpornografi. Spridning och innehav av bilderna på webbplatserna är straffbart. För polisen är bilderna bevis om sexualbrott mot barn.

Dina eventuella meddelanden om saken kan du skicka till centralkriminalpolisens, e-postadress krp-nettieto@krp.poliisi.fi

I 17 kap. strafflagen stadgas om barnpornografibrott [följande](#).

Tällä toiminnolla estetään pääsy lapsipornosivustoille. Toiminta on osa EU:n poliisijärjestöjen käynnistämää lapsipornografian torjuntahanketta. Med denna funktion förhindras inträde till sidor som innehåller barnpornografi. Veksamheten är en del den bekämpning av barnpornografi som EU:s polisöcher har uppgett. The Child Sexual Abuse Anti-Distribution Filter (CSAAFDF) is part of the COSPOL Internet Related Child Abuse Material Project (CIRCAMP). The project is initiated by the European Police Chief Task Force - aimed at combating organized criminal groups behind commercial sexual exploitation of children.

VASTAUKSIA YLEISIMPIIN
KYSYMYKSIIN

Figure 1. Pääsy Estetty – Inträde Blockerat (eng. Access Denied). A blocking page the user ends up seeing if the web site allegedly contains child pornography. Screen shot taken when attempting to access the site by Matti Nikki, <http://lapsiporno.info>.

The only information on how to contact the police is an email address, krp-nettieto@krp.poliisi.fi, no contact info through telephone, no information who to complain to if the person ending up on the page feels the page should not be censored, no information on how to contact the ISP actually censoring the page, but most importantly no information on how to contact the alleged distributor of child pornography to inform them that their web page is being censored by the NBI/ISP. Apparently sending email to the police does not result in any action at all. Several complaints about the law have been made to the Office of the Chancellor of Justice [see e.g. EFFI, 2008]. The complaints are being processed, but no results have been heard.

Another option to complain about the censorship would of course be to sue the ISP censoring. Unfortunately this would have to be a civil suit and as the web page keepers are not informed that they are censored, they have an apparent difficulty suing the ISP. Also, as the list is a 'black list' and thus not available, it is not clear whether it could be used as evidence in the case if the one suing would be a user of the services of the ISP instead of the site provider.

As is clearly visible from the list at <http://lapsiporno.info/suodatuslista/?lang=en> (if you have access to it), majority of the listed web sites reside in the USA. As laws against child pornography in the USA are quite severe, it seems improbable that most or frankly even many of the blocked web sites would contain child pornography. Most estimates by those who have gone through the list found by Nikki estimate that very few, even down to approximately 1%, of the blocked pages actually contain clear child pornography [see e.g. <http://maraz.kapsi.fi/sisalto-en.html>]. Unfortunately no one (including the NBI) seems to have the resources to actually contact all the blocked sites allegedly distributing child pornography to verify whether they are following the law or not. Considering the amount of sites blocked (approximately 1700), that is of course understandable, although the NBI ought be capable of contacting either the distributor or the local law enforcement agencies if it really has reason to believe that the sites contain child pornography.

As suspicion (clear suspicion that the models at the web site are under the legal age) is enough for a site to be blocked, border-line cases are censored “just in case”. This is especially problematic since the owner of the web site is not informed that they are being censored in Finland. The reversal of the western liberal societies legal tradition is thus taking place, where the supplier is 1) considered guilty until they can prove themselves innocent and 2) not informed that they are considered guilty, just arbitrarily censored, even when contacting them would be relatively easy.

Blocking sites is not doing anything about the sites existence. It has been compared to the police going to a book store to ‘censor’ the part of the book store containing child pornography instead of taking the material away.



Figure 2. Ironic critique of the policy by concerned citizens. The text in the green placard says “Child porn” and instead of taking it away from the book store, the police is depicted to have circled it with signs which say “Police – STOP – ACCESS DENIED”. The books themselves of course have nothing to do with child pornography.

Of course, the advantage of this is, that when the user is accused of trying to access child pornography page, he (intentional) is hardly likely to contact the police and *admit* that he was accessing a child pornography site unless he has 1) not tried to access *any* pornography at all, and considering that a surprisingly large amount of the sites blocked are *gay* web sites, gay pornography at that that becomes especially problematic even in a society like Finland where being gay ought be acceptable but in practice is not and 2) is quite secure in his knowledge that the site does not contain such information.

Censoring sites within Finland is of course most problematic. There are no known web sites containing child pornography in Finland. The only site blocked by the system in Finland is that of Internet activist Matti Nikki, <http://lapsiporno.info>, which would loosely translate as “childporn.info”. The name is, of course provocative. Apparently the provocation was too much for the NBI to handle and they have, apparently illegally censored the web site. Censoring Finnish citizens is illegal according to the Constitution of Finland [12§, Suomen perustuslaki, 1999] and also according to the law on preventing the distribution of child pornography [1§]. That Finnish citizens critiquing the law on censorship can be censored in Finland is a scary thought.

This of course leads to the next problem with the law. It has already been suggested that the law should be extended to various other purposes. Some of these include blocking Internet gambling [Määttä, 2008, pp. 52; Helsingin Sanomat, 2008a], illegal distribution of copyright protected material would be a prime target, as ‘organized discussion’ on how to by-pass digital rights management (DRM) software is already illegal [<http://mjr.iki.fi/eucd/>] (see also the case in Denmark where Tele2 has been required to block Pirate Bay, a Swedish link list used for distributing copyright protected material illegally) and distribution of violent material and other pornography [Helsingin Sanomat, 2008b]. There is no reason, what so ever, to expect the censorship to stop there. As already political sites even in Finland are censored, there is clear precedent for the citizenship to be alerted by the proposed extensions of the censorship.

3 Discussion

The resources used for keeping the censorship in place are of course away from real police work; from both national police work and international cooperation to actually take the sites distributing child pornography away from the Internet. As most child pornography is *not* distributed through open web sites in any case, the law seems to be of not much use at best, and at worst blocking hundreds of web sites that are clearly legal in Finland.

The resources spent in cooperation between the NGOs and various police authorities in tackling the real problem of child pornography would result in better outcomes than the ‘close your eyes, maybe it goes away’ approach taken in Finland, as well as many other European countries, such as Sweden, Denmark, Norway, Netherlands, UK and others.

As censorship never seems to stop at what it originally was meant for, as is the case already for this particular law, the law is taking us one more step towards a society of control at the price of such central freedoms as freedom to expression. As pointed out by one critic of the system, “[in regard to censorship] we seem to be on a flight to China – and it is not going to be a holiday trip.”

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