

SWEDEN				
QUESTION	ANSWER	SOURCE OF LAW\ INFORMATION	ADDITIONAL INFORMATION / DEFINITION	COURT RULINGS
<i>Where is online hate speech established as a criminal offence?</i>	<p>Swedish law does not specifically mention hate crimes, and only provides the possibility of restricting the freedom to provide information society services in cases where it is necessary to protect “public order and safety”</p> <p>Swedish law does not specifically mention hate crimes online. The provisions of the Criminal Code and the Law on the Freedom of Expression are neutral with regard to technology and thus apply to all offences, including those committed online. The statements disseminated online are referred to as "technical recordings".</p>	<p>The Fundamental Law on Freedom of Expression; Chapter 1 - Articles 1, 4, 5; Chapter 7 – Articles 1 and 2^A</p> <p>Article 4, Chapter 7 of the Freedom of the Press Act.^B</p> <p>Part Two, Chapter 5 –Articles 1, 2, 3; Chapter 16 – Articles 8, 9 of the Penal Code.^C</p>	<p>“Technical recordings” - recordings containing text, pictures or sound, which may be read, listened to or otherwise comprehended only using technical aids.</p> <p>Note that in Sweden, the offence provision does not provide explicit protection against hate speech if committed against individuals. Such offenses may be punished under the article prohibiting defamation, insulting behavior, unlawful threat or abuse; and the hate motive may be deemed as an aggravating circumstance in this case.</p>	<p>In September 2012, Emil Hagberg, the editor of Nordfront, a website for the extremist Swedish Resistance Movement, was sentenced to imprisonment of one month for a comment posted by a reader that portrayed Jews as capitalist parasites and threatening them with the gallows” (Source: https://freedomhouse.org/report/freedom-press/2014/sweden.)</p>
<i>What is the punishment for online hate speech?</i>	A fine or if the crime is "gross", imprisonment for a period of six months to four years.	Part Two, Chapter 16 – Articles 8, 9 of the Penal Code ^C		
<i>Is there a law-based obligation for intermediaries to filter or monitor hate speech?</i>	<p>There is no entity in charge for general monitoring of internet content. Most blocking and filtering is carried out by the internet service providers according to their terms of service.</p> <p>A supplier of an electronic bulletin board is required to monitor the service regularly and in a reasonable manner. Service providers are not</p>	<p>Articles 3, 4, 5 and 7 of the Act on Responsibility for Electronic Bulletin Boards^F</p> <p>Source: Council of Europe Comparative Study on Blocking, Filtering, Take-Down of Illegal Internet Content, 2015. https://www.coe.int/en/web/freedom-</p>		

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	obligated to check all the messages but should conduct periodic controls. They can establish a page for submitting reports by users.	expression/study-filtering-blocking-and-take-down-of-illegal-content-on-the-internet		
<i>Who is responsible to remove hate speech?</i>	<p>Internet service providers are not legally required to block access to internet sites. The service providers voluntarily collaborate with police to block a centralized list of sites.</p> <p>The supplier of an electronic bulletin board must remove or block access if it is apparent that the message is unlawful.</p>	Articles 3, 5 and 7 of the Act on Responsibility for Electronic Bulletin Boards ^F	<p>Electronic Bulletin Boards are services for mediation of electronic messages in the form of text, images, sound or other information, thus for example a website or a blog offering space for others to express themselves. (Article 1)</p> <p>“Service Provider” as defined by the Act on Electronic Commerce and other Information Society Services (Article 2) – natural or legal person providing and information society service.</p> <p>“Information Society Service” - any service normally provided for remuneration and at a distance, by electronic means and at the individual request of a recipient.</p>	
<i>What are the time-frames for removing hate speech?</i>	A service provider should "without delay" prevent the dissemination of the information.	Articles 17 and 18 of the Act on Electronic Commerce and Other Information Society Services ^D		
<i>Is the intermediary liable for hate speech posted on website?</i>	A person who intentionally, or through gross carelessness, violates Article 5 of the Act on Responsibility for Electronic Bulletin Boards shall be sentenced to a fine or to imprisonment for not	<p>Articles 3, 5, 7 of the Act on Responsibility for Electronic Bulletin Boards ^F</p> <p>Article 17, 18 and 19 of the Electronic Commerce and Other</p>		In November 2013, the Supreme Court ruled that newspaper editors were responsible for the articles published on the newspaper website and archives, making them legally responsible for articles approved by their

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	<p>more than six months, or, if the offence is gross, to imprisonment for not more than two years.</p> <p>In the case of media sites, the editor of the media is usually the person responsible for the illegal content.</p> <p>A service provider is not liable for the stored or transmitted content, unless it modified the information. A service provider is only liable for an offence relating to the content if it was committed intentionally.</p>	Information Society Services Act. ^D		<p>predecessors.[Source:</p> <p>In June 2013, an editor of Nordfront, was sentenced to pay a fine for a racist post and a reader's comment and later in June 2014 he received a four-month prison sentence in connection to almost 30 Nordfront reader comments containing racism and hate speech. (Source: https://freedomhouse.org/report/freedom-press/2015/sweden.)</p> <p>In 2007, in a case involving negative remarks about persons with homosexual preferences on a website, the Supreme Court held that while the content constituted ethnic agitation, as this had not been evident to the supplier of the electronic bulletin board, he was subsequently released from all charges. (NJA 2007 s. 805, Source: Council of Europe Comparative Study on Blocking, Filtering, Take-Down of Illegal Internet Content, 2015. https://www.coe.int/en/web/freedom-expression/study-filtering-blocking-and-take-down-of-illegal-content-on-the-internet.)</p>
<i>What are the online reporting mechanisms?</i>	No online reporting mechanisms were found.			
<i>When is the offence considered to have been committed within the territory\under the country's jurisdiction?</i>	Swedish authorities may restrict free movement of services provided from another European Economic Area state if it is necessary to protect public order and safety.	Article 3 of the Act on Electronic Commerce and Other Information Society Services ^D		

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	The Penal Code provides general rules of applicability of the Swedish criminal law.	Chapter 2, Articles 1, 2, 3 of the Penal Code. ^c		

SWEDEN APPENDIX

A. The Fundamental Law on Freedom of Expression of 1991, as Amended up to 2015¹⁰²

Chapter 1 – Basic Provisions

Article 1

“Every Swedish citizen is guaranteed the right under this Fundamental Law, vis-à-vis the public institutions, publicly to express his thoughts, opinions and sentiments, and in general to communicate information on any subject whatsoever on sound radio, television and certain like transmissions, films, video recordings, sound recordings and other technical recordings. The purpose of freedom of expression under this Fundamental Law is to secure the free exchange of opinion, free and comprehensive information, and freedom of artistic creation. No restriction of this freedom shall be permitted other than such as follows from this Fundamental Law (...). Technical recordings are understood in this Fundamental Law to mean recordings containing text, pictures or sound, which may be read, listened to or otherwise comprehended only using technical aids. A database is understood in this Fundamental Law to mean a collection of information stored for automatic data processing.”

Article 4

“Public authorities and other public bodies may not intervene against any person on grounds that he has abused the freedom of expression or contributed to such abuse in a radio program or technical recording, except by virtue of this Fundamental Law. Nor may they intervene against the program or recording on such grounds, except by virtue of this Fundamental Law.”

Article 5

“Any person entrusted with passing judgment on abuses of the freedom of expression or otherwise overseeing compliance with this Fundamental Law should bear in mind that the Freedom of Expression is fundamental to a free society. He or she should direct his or her attention always to the aim rather than the manner of presentation. In case of doubt, he or she should acquit rather than convict”.

Article 7

“In the case of simultaneous and unmodified onward transmission in this country of radio programs under Article 6 emanating from abroad or transmitted to Sweden by satellite but not emanating from Sweden, only the following provisions apply:

Article 3, paragraph one, prohibiting prior scrutiny and other restrictions; Article 3, paragraph three, on the possession of technical aids and the construction of landline networks; Article 4, prohibiting interventions except by virtue of this Fundamental Law; Article 5, on the attitude to be adopted in applying this Fundamental Law; Chapter 3, Article 1, on the right to transmit radio programs by landline; and Chapter 3, Articles 3 and 5, on special legislative procedures and examination before a court of law.

¹⁰² Official version available at https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/yttrandefrihetsgrundlag-19911469_sfs-1991-1469. English translation available at: <http://www.riksdagen.se/en/SysSiteAssets/07.-dokument--lagar/the-fundamental-law-on-freedom-of-expression-2015.pdf>. Note that hate speech appearing in the press is covered by the Freedom of the Press Act and the Freedom of Expression Act. Hate speech content appearing in other platforms is covered by the Criminal Code. but, since the Acts do not contain any penalties provisions, the penalties set out in the Criminal Code for corresponding offenses are applicable (Chapter 7 Article 6).

If the Riksdag has approved an international agreement concerning radio programs, provisions under Article 12, paragraph two, may not constitute an obstacle to onward transmission of radio programs in breach of the agreement. Chapter 10, Article 2, contains provisions concerning the right to communicate and procure information and intelligence for publication in radio programs emanating from abroad.”

Article 8

“In the case of radio programs or part-programs consisting of live broadcasts of current events, or of religious services or public performances arranged by some person other than the person operating the program service, the following provisions are not applied:

Article 2, on the right to communicate and procure information for publication; Article 4, prohibiting interventions; Article 5, on the attitude to be adopted in applying this Fundamental Law; Chapter 2, on the right to anonymity; Chapters 5 to 7, on freedom of expression offences, liability rules and supervision, prosecution and special coercive measures; Chapter 9, on court proceedings in freedom of expression cases; and Chapter 10, Article 2, on the right to communicate and procure information for publication in radio programs emanating from abroad.”

Chapter 5 - Freedom of Expression Offences

Article 1

“The acts listed as freedom of the press offences in Chapter 7, Articles 4 and 5 of the Freedom of the Press Act shall be regarded as freedom of expression offences if they are committed in a radio program or technical recording and are punishable under law. Under the same conditions, unlawful portrayal of violence whereby a person intrusively or protractedly portrays in moving pictures gross acts of violence against persons or animals, with intent to disseminate the item, shall also be regarded as a freedom of expression offence unless the act is justifiable with regard to the circumstances.”

Chapter 6 - Liability Rules

Article 1

“Liability under penal law for freedom of expression offences committed in a radio program or technical recording rests with the responsible editor. If a deputy is acting in place of the responsible editor, liability rests with the deputy. In the case of direct broadcasts of radio programs other than programs under Chapter 1, Article 8, it may be laid down in law that a person taking part in a program shall himself or herself be liable for his or her own utterances.”

Article 2

“Liability under penal law for freedom of expression offences which would otherwise rest with the responsible editor rests with the person responsible for appointing the responsible editor if:

- there was no qualified responsible editor at the time when the offence was committed;
- the responsible editor was appointed for appearance’s sake or was manifestly incapable of exercising the powers set out in Chapter 4, Article 3; or
- information concerning the responsible editor has not been kept available to the general public in the prescribed manner.

If a deputy was acting in place of the responsible editor but was no longer qualified at the time when the offence was committed, or if his or her appointment had been terminated or some circumstance pertained concerning him or her of a nature set out in paragraph one, point 2 or 3, liability for freedom of expression offences rests with the responsible editor.

If a technical recording lacks the information prescribed in Chapter 3, Article 13, paragraph one, concerning who caused it to be made, and clarity cannot be reached concerning his or her identity, or he or she has no known domicile in Sweden and cannot be reached in Sweden during the court proceedings, liability for freedom of expression offences committed in the technical recording rests with the disseminator instead of with the person stipulated in paragraph one.

The provisions laid down in paragraph three concerning a case in which information is lacking apply also if the information provided implies that the person who caused the technical recording to be made is domiciled abroad, or if the information is incorrect and this fact is known to the disseminator.”

Chapter 7 - On Supervision, Prosecution and Special Coercive Measures

Article 1

“The rules laid down in Chapter 9, Articles 1 to 4 of the Freedom of the Press Act concerning supervision and prosecution shall apply also with regard to radio programs and technical recordings, and freedom of expression cases. The Chancellor of Justice may delegate a public prosecutor to act as prosecutor in a freedom of expression case which concerns liability or confiscation on account of

unlawful portrayal of violence, agitation against a population group, offences against civil liberty, unlawful threats, threats made against a public servant or perversion of the course of justice committed in a technical recording. The right to institute legal proceedings may not however be delegated where the matter concerns the freedom of expression offences agitation against a population group or offences against civil liberty.

In the case of radio programs, the period within which legal proceedings may be instituted for a freedom of expression offence is six months from the date on which the program was broadcast, or, where the matter concerns the making available of information under Chapter 1.”

Article 2

“If a freedom of expression offence has been committed in a technical recording and no one is liable under Chapter 6 for the offence, the public prosecutor or the plaintiff may apply to have the recording confiscated instead of instituting legal proceedings. The same applies if no summons can be served in Sweden on the person liable for the offence.”

B. The Freedom of the Press Act of 1978, as Amended up to 2015¹⁰³

Chapter 1 - *On the Freedom of the Press*

Article 9

“The provisions of this Act notwithstanding, rules laid down in law shall govern: 1. bans on commercial advertising insofar as the advertisement is employed in the marketing of alcoholic beverages or tobacco products; 2. bans on commercial advertising employed in the marketing of goods other than tobacco products and services, if the advertisement contains a brand mark in use for a tobacco product, or which under current rules concerning trademarks is registered or established by custom in respect of such a product; 3. bans on commercial advertising introduced for the protection of health or the environment in accordance with obligations pursuant to accession to the European Communities; 4. bans on the publication, within the framework of professional credit information activities, of any credit information which improperly infringes on the personal privacy of an individual or contains false or misleading information; liability for damages for such publication; requirements for justified needs on the part of the party requesting the credit information; the obligation to notify the party about whom the information has been requested; and the correction of false or misleading information; and 5. liability under penal law and liability for damages relating to the manner in which an item of information or intelligence has been procured.”

Chapter 7 – *On Offences against the Freedom of the Press*

Article 4

“With due regard to the purpose of freedom of the press for all under Chapter 1, the following acts shall be deemed to be offences against the freedom of the press if committed by means of printed matter and if they are punishable under law:

1. – 10. (...)

11. agitation against a population group, whereby a person threatens or expresses contempt for a population group or other such group with allusion to race, color, national or ethnic origin, religious faith or sexual orientation;

12. offences against civil liberty, whereby a person makes unlawful threats with intent to influence the formation of public opinion or encroach upon freedom of action within a political organization or professional or industrial association, thereby imperiling the freedom of expression, freedom of assembly or freedom of association; any attempt to commit such an offence against civil liberty;

13. – 14. (...)

15. insulting language or behavior, whereby a person insults another by means of offensive invective or allegations or other insulting behavior towards him;

16. – 18. (...).”

Article 6

“Provisions of law relating to penal sanctions for offences under Articles 4 and 5 apply also in a case in which the offence is deemed to be an offence against the freedom of the press.

¹⁰³ English translation available at <http://www.riksdagen.se/en/SysSiteAssets/07.-dokument--lagar/the-freedom-of-the-press-act-2015.pdf/>.

The Freedom of the Press Act applies to printed matter (Chapter 1 Article 5) that has been published (Chapter 1 Article 6). It also applies to periodicals and to some of the audiovisual media listed in the Fundamental Law on Freedom of Expression (Chapter 1 Article 7).

Provisions concerning private claims on account of offences against the freedom of the press are laid down in Chapter 11. If the defendant is convicted of an offence specified in Article 4, point 14 or 15, and the printed matter is a periodical, an order may be issued, on request, for the verdict to be inserted in the periodical.”

C. Penal Code of 1962, as Amended up to 2016¹⁰⁴

Part Two, Chapter 5 – On Defamation¹⁰⁵

Article 1

“A person who points out someone as being a criminal or as having a reprehensible way of living or otherwise furnishes information intended to cause exposure to the disrespect of others, shall be sentenced for defamation to a fine.

If he was duty-bound to express himself or if, considering the circumstances, the furnishing of information on the matter was defensible, or if he can show that the information was true or that he had reasonable grounds for it, no punishment shall be imposed.”

Article 2

“If the crime defined in Section 1 is regarded as gross, a fine or imprisonment for at most two years shall be imposed for gross defamation.

In assessing whether the crime is gross, special consideration shall be given to whether the information, because of its content or the scope of its dissemination or otherwise, was calculated to bring about serious damage.”

Article 3

“A person who vilifies another by an insulting epithet or accusation or by other infamous conduct towards him, shall be sentenced, if the act is not punishable under Section 1 or 2, for insulting behavior to a fine. If the crime is gross, a fine or imprisonment for at most six months shall be imposed.”

Article 5

“Crimes mentioned in Sections 1–3¹⁰⁶ may not be prosecuted by other than the injured party. If, however, the injured party notifies the crime for prosecution, and if for special reasons prosecution is considered necessary in the public interest, a prosecutor may prosecute for: 1. defamation and gross defamation, 2. insulting behavior towards a person exercising, or for the exercise of, his or her duties in office, 3. insulting behavior towards a person with allusion to his or her race, color, national or ethnic origin or religious belief, or 4. insulting behavior towards a person with allusion to his or her homosexual inclination. If defamation is directed against a deceased person, prosecution may be instituted by the surviving spouse, direct heir or heirs, father, mother or siblings and by a prosecutor if prosecution for special reasons is considered to be called for in the public interest. (...)”

Chapter 16 – Crimes against Public Order¹⁰⁷

Article 8¹⁰⁸

¹⁰⁴ Official version available at http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/brottsbalk-1962700_sfs-1962-700, English version available at <http://www.government.se/contentassets/5315d27076c942019828d6c36521696e/swedish-penal-code.pdf>.

¹⁰⁵ In Sweden, the offence provision currently in force does not provide explicit protection against hate speech, if committed against individuals. Such crimes are often penalized as defamation, insulting behavior, unlawful threat or abuse. In these cases the provision penalizing hate motive as an aggravating circumstance could be used. Stakeholders note, however that it is often difficult to prove the motive of the perpetrator. The European Legal Framework on Hate Speech, Blasphemy and its interaction with freedom of expression, p. 58.

¹⁰⁶ Sections 1–3 refer to insulting behavior and defamation.

¹⁰⁷ In Sweden, the compliance of the provision called ”incitement against a population group” with the freedom of expression was subject to the interpretation of the Supreme Court. The Supreme Court recalled the requirements set up by the ECtHR in its judgments, such as *Steel and Morris v. UK*, by stating that any restriction of the freedom of expression should be necessary and proportionate for the purpose to be achieved. Regarding necessity, it was clarified that a pressing social need is required for any limitations. Besides these two requirements it was considered as important to assess the circumstances of the statement and not only the content thereof. Courts should assess the circumstances, the nature and the purpose of the crime; the existence of factors which could potentially lift the criminal liability of the perpetrator and whether or not the perpetrator’s conduct was gratuitously offensive. The European Legal Framework on Hate Speech, Blasphemy and its interaction with freedom of expression, p. 66.

“Any person who, in a disseminated statement or communication, threatens or expresses contempt for a national, ethnic or other such group of persons with allusion to race, color, national or ethnic origin or religious belief shall, be sentenced for agitation against a national or ethnic group to imprisonment for at most two years or, if the crime is petty, to a fine. If the crime is gross, sentence shall be imprisonment for a period of six months to four years. Aggravating circumstances shall be considered an especially intimidating message, demining content and intention to disseminate it in a large scale.”

Article 9

“A businessman who in the conduct of his business discriminates against a person on grounds of that person’s race, color, national or ethnic origin or religious belief by not dealing with that person under the terms and conditions normally applied by the businessman in the course of his business with other persons, shall be sentenced for unlawful discrimination to a fine or imprisonment for at most one year.

The provisions of the foregoing paragraph relating to discrimination by a businessman shall also apply to a person employed in a business or otherwise acting on behalf of a businessman and to a person employed in public service or having a public duty.

A sentence for unlawful discrimination shall also be imposed on any organizer of a public assembly or gathering, and on any collaborator of such organizer, who discriminates against a person on grounds of his race, color, national or ethnic origin or religious belief by refusing him access to the public assembly or gathering under the terms and conditions normally applied to other persons.

A sentence for unlawful discrimination shall also be imposed on any person designated in the first to third paragraphs above who, in the manner there indicated, discriminates against another on the ground of sexual orientation.”

Chapter 29 – Sentencing and Penalty¹⁰⁹

Article 2

“As aggravating circumstances in assessing the punishment, there shall, in addition to what applies to each specific offense, special consideration to,

1. – 6. (...)

7. An intention to violate a person, an ethnic group or another such group of persons on the grounds of race, skin color, national or ethnic origin, religious belief, sexual orientation or other similar grounds, or

8. (...).”

D. The Act on Electronic Commerce and Other Information Society Services of 2002, as Amended up to 2014¹¹⁰

Article 3

“A service provider established in another EEA state than Sweden, has the right to, notwithstanding Swedish legislation within the coordinated field, provide information society services to recipients in Sweden. A court or another authority may, however, pursuant to a law, take a measure that restricts the free movement of such service, if it is necessary to protect:

1. public order and safety,

2. -3. (...)

Such measures must be directed towards a specific service that damages, or risks causing damage, to any one of these protected interests. The measure must be proportionate to the interest to be protected.”

¹⁰⁸ The provisions only apply to population groups and not to individuals. Hate speech against individuals falls under the provisions on defamation or insulting language, which do not contain any reference to protected characteristics, the Criminal Code, chapter 5, Article 1 and Chapter 5, Article 3.

¹⁰⁹ “There are no specific provisions on liability relating to hate crimes or hate speech in administrative or civil law in Sweden. However, victims of hate speech can file civil claims for the compensation of their damages under the general civil law rules, as set out in the Tort Liability Act.” The European Legal Framework on Hate Speech, Blasphemy and its interaction with freedom of expression, p. 342.

¹¹⁰ Official version available at http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2002562-om-elektronisk-handel-och-andra_sfs-2002-562.

E. Act on Responsibility for Electronic Bulletin Board, 12 March 1998¹¹¹

Section 1 - Scope

“This Act applies to electronic bulletin boards. In this Act, electronic bulletin boards means a service for mediation of electronic messages. In this Act messages means text, images, sound or other information.”

Section 2 “However, the Act does not apply to:

1. the provision of only a network or other channels for the transmission of messages or other services necessary to use a network or other channel,
2. mediation of messages within a government agency or between government agencies or within a company or group of companies,
3. services that are protected by the Freedom of the Press Act or the Fundamental Law on Freedom of Expression, or
4. messages that are only intended for one particular recipient or a designated set of recipients (electronic mail).”

Section 3 - Information to users

“The supplier of an electronic bulletin board shall inform each person who connects himself to the service about his identity and to what extent messages received will be available to other users.”

Section 4 - Supervision of the service

“The supplier of an electronic bulletin board shall, in order to be able to fulfil the obligations under Section 5, supervise the service to an extent that is reasonable considering the extent and objective of the service.”

Section 5 - Obligation to erase certain messages

“If a user submits a message to an electronic bulletin board, the supplier must remove the message, or in some other way make it inaccessible, if :

1. the message content is obviously such as is referred to in the Penal Code, Chapter 16, Section 5, about inciting rebellion, Chapter 16, Section 8 about agitation against a national ethnic group, Chapter 16, Section 10a about child pornography crime, Chapter 16, Section 10b about unlawful depiction of violence, or
2. it is obvious that the user has, but submitting the message, infringed the copyright or other right protected by Section 5 of the Copyright (Artistic and Literary Works) Act (1960:729). In order to be able to fulfil the obligation under the first paragraph, the supplier is allowed to review the content of messages in the service.

The obligation under the first paragraph and the right under the second paragraph also apply to those who have been appointed by the supplier to supervise the service.”

Section 6 - Penalties

“A person who intentionally or through carelessness violates Section 3 shall be sentenced to pay a fine.”

Section 7 - “A person who intentionally or thorough gross carelessness violates Section 5, first paragraph, shall be sentenced to a fine or to imprisonment for not more than six months, or, if the offence is grave, to imprisonment for not more than two years. A sentence shall not be imposed for minor violations. The first paragraph shall not be applied if the act is subject to criminal liability under the Penal Code or the Copyright (Artistic and Literary Works) Act (1960:729).”

Section 8 - Forfeiture

“Computers and other equipment that have been used in an offence under Section 7 of this Act may be declared forfeited, if this is called for in order to prevent further criminality or for other special reasons. Forfeiture may be waived wholly or partly if the forfeiture is unreasonable.”

¹¹¹ Available at <http://www.cyberlawdb.com/gclid/wp-content/uploads/2010/04/bulletin.pdf>.