

UNITED KINGDOM				
QUESTION	ANSWER	SOURCE OF LAW\ INFORMATION	ADDITIONAL INFORMATION / DEFINITIONS	COURT RULINGS
<i>Where is online hate speech established as a criminal offence?</i>	Hate speech is established as an offence in the Public Order Act of 1986.	The Public Order Act ^D		In 2012, a disseminator of racist hate speech on Twitter was convicted to imprisonment. Due to the explicit racist nature of the content, together with the offender's evident intent to cause racial offense, he was sentenced to immediate imprisonment. (<i>R v Liam Stacey, Swansea Crown Court (2012)</i>).
<i>What is the punishment for online hate speech?</i>	On conviction on indictment: imprisonment for a term not exceeding seven years or a fine or both. On summary conviction: the punishment is imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.	Article 27 of the Public Order Act ^D		
<i>Is there a law-based obligation for intermediaries to monitor hate speech?</i>	There is no particular UK entity that has a function to actively monitor internet to ensure compliance with legal requirement. However, the review of Internet content takes place voluntarily and according to informal notice. Blocking and filtering of illegal internet content is characterized by Internet Service Providers' self-regulation. They partner with domain name hosts, industry regulatory bodies, police and other authorities.	UK Internet Service Providers' Association Code of Practice ^A Council of Europe comparative study on Blocking, Filtering and 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 .		

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<i>Who is responsible to remove hate speech?</i>	There are no statutory provisions in either criminal law or civil law, which provide for removal of illegal internet content. But many hosts remove the materials regardless of the legitimacy of the complaint in order to avoid being held liable. They may also remove it according to take-down procedures, upon an informal notice or a request from police.			<i>See appendix B - Cartier International AG and Ors v British Sky Broadcasting & Ors</i> ¹¹² . ^B The decision contains requirements as to the content that should be displayed on the blocked website.
<i>What are the time-frames for removing hate speech?</i>	The Internet Service Provider or the host have to expeditiously remove the information or disable access to it when they find out that the content of the material is threatening and was intended to stir-up hatred.	Article 19 of the E-Commerce Regulations ^C		
<i>Is the intermediary liable for hate speech posted on website?</i>	Internet Service Providers and Hosts are not liable for potentially illegal internet content, if they remove or disable the material when they acquire actual or constructive knowledge about it. The person considered liable is usually the one directly responsible for posting or editing the offending material.	E- Commerce Directive Regulations ^C		In 2006, the High Court ruled that internet service providers had a "qualified immunity" for defamatory content, provided they did not engage in editing of the content. (<i>Bunt v Tilley</i> , 2006, England and Wales High Court 407, Queen's Bench Division) In 2013, the Court of Appeal ruled that Google, as a provider of an internet platform, could not be regarded as a publisher, but could be

¹¹² available at <http://www.bailii.org/ew/cases/EWHC/Ch/2014/3444.html> .

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				liable after receiving notification of defamatory postings and failing to remove it. (Tamiz v Google Inc [2013] England and Wales Court of Appeal Civil Division 68.)
What are the online reporting mechanisms?	The “True Vision” was created by the Association of Chief Police Officers, with the aim to inform citizens and to follow them during the process of reporting hate crimes online. It attracts the attention of Police and the Crown Prosecution Service to the reports, making them aware hate crimes committed online.	The link to the website, where the reporting can be done: http://www.report-it.org.uk/your_police_force		
When is the offence considered committed within the territory\ under the country’s jurisdiction?	Provision of the information Society Service in the United Kingdom or another European Economic Area member State. Where the established service provider, as defined by the law, has the center of activities.	Articles 2 and 4 of the E-Commerce Regulations. ^C	"Established Service Provider" - the definition can be found in the Electronic Commerce Regulations, Article 2 of the E-Commerce Regulations ^E	

UNITED KINGDOM APPENDIX

A. Internet Service Providers Association Code of Practice¹¹³

“5. Internet Watch Foundation

5.1 ISPA membership does not automatically confer IWF membership. Members are encouraged to consider direct IWF membership.

5.2 ISPA co-operates with the IWF in its efforts to remove illegal material from Internet web-sites and newsgroups. Members are therefore required to adhere to the following procedures in dealing with the IWF. 5.3 Members shall provide ISPA with a point of contact to receive notices from the IWF.

5.4 Where the IWF has notified them that Internet sites they host and/or Usenet news groups contain material which the IWF considers to be illegal child abuse images, members shall remove the specific web pages and/or Usenet articles. If it is not technically possible for them to remove the material, Members shall notify the IWF of the reasons as soon as reasonably practical.

5.5 Where lawfully requested by the IWF or a legitimate law enforcement authority, and where they technically able to do so, Members shall retain copies of removed material for a reasonable period of time. 5.6 Members should take careful consideration of all other IWF notices and recommendations.”

¹¹³ Available at <http://www.ispa.org.uk/about-us/ispa-code-of-practice/>.

B. The case of *Cartier International AG and Ors v British Sky Broadcasting & Ors* (2014). “First, it was held that future orders should also expressly permit affected subscribers of the ISP to apply to the Court to discharge or vary the orders. Secondly, it is advised that the page displayed to users who attempt to access blocked websites should state not merely that access to the website has been blocked by court order, but should also identify the party or parties which obtained the order and state that affected users have the right to apply to the Court to discharge or vary the order. In certain cases, it may also be appropriate to incorporate a “sunset clause”, such that the orders will cease to have effect at the end of a defined period unless either the ISPs consent to the orders being continued or the Court orders that they should be continued.”

C. The Electronic Commerce (EC Directive) Regulations, 2002¹¹⁴

Interpretation. “established service provider” means a service provider who is a national of a member State or a company or firm as mentioned in Article 48 of the Treaty and who effectively pursues an economic activity by virtue of which he is a service provider using a fixed establishment in a member State for an indefinite period, but the presence and use of the technical means and technologies required to provide the information society service do not, in themselves, constitute an establishment of the provider; in cases where it cannot be determined from which of a number of places of establishment a given service is provided, that service is to be regarded as provided from the place of establishment where the provider has the center of his activities relating to that service; references to a service provider being established or to the establishment of a service provider shall be construed accordingly.”

Section 4 - Internal market

“1. Subject to paragraph (4) below, any requirement which falls within the coordinated field shall apply to the provision of an information society service by a service provider established in the United Kingdom irrespective of whether that information society service is provided in the United Kingdom or another member State.

2. Subject to paragraph (4) below, an enforcement authority with responsibility in relation to any requirement in paragraph (1) shall ensure that the provision of an information society service by a service provider established in the United Kingdom complies with that requirement irrespective of whether that service is provided in the United Kingdom or another member State and any power, remedy or procedure for taking enforcement action shall be available to secure compliance.

3. Subject to paragraphs (4), (5) and (6) below, any requirement shall not be applied to the provision of an information society service by a service provider established in a member State other than the United Kingdom for reasons which fall within the coordinated field where its application would restrict the freedom to provide information society services to a person in the United Kingdom from that member State.

4. Paragraphs (1), (2) and (3) shall not apply to those fields in the annex to the Directive set out in the Schedule.

5. The reference to any requirements the application of which would restrict the freedom to provide information society services from another member State in paragraph (3) above does not include any requirement maintaining the level of protection for public health and consumer interests established by Community acts.

6. To the extent that anything in these Regulations creates any new criminal offence, it shall not be punishable with imprisonment for more than two years or punishable on summary conviction with imprisonment for more than three months or with a fine of more than level 5 on the standard scale (if not calculated on a daily basis) or with a fine of more than J100 a day(a)”.

Section 19 – Hosting

“Where an information society service is provided which consists of the storage of information provided by a recipient of the service, the service provider (if he otherwise would) shall not be liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that storage where—

(a) the service provider—

(i) does not have actual knowledge of unlawful activity or information and, where a claim for damages is made, is not aware of facts or circumstances from which it would have been apparent to the service provider that the activity or information was unlawful; or

(ii) upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information, and

(b) the recipient of the service was not acting under the authority or the control of the service provider.”

¹¹⁴ Electronic Commerce (EC Directive) Regulations 2002 (Statutory Instrument 2013/2002), available at <http://www.legislation.gov.uk/ukSI/2002/2013/contents/made>.

D. Public Order Act of 1986, as Amended up to 2016¹¹⁵

“Meaning of “racial hatred”.

In this Part “racial hatred” means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.”

Section 18 - Use of words or behaviour or display of written material

“1. A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of an offence if—

a. he intends thereby to stir up racial hatred, or

b. having regard to all the circumstances racial hatred is likely to be stirred up thereby.

2. An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.

3. (...)

4. In proceedings for an offence under this section it is a defence for the accused to prove that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or any other dwelling.

5. A person who is not shown to have intended to stir up racial hatred is not guilty of an offence under this section if he did not intend his words or behaviour, or the written material, to be, and was not aware that it might be, threatening, abusive or insulting.

6. This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme (...).”

Section 19 - Publishing or distributing written material

“1. A person who publishes or distributes written material which is threatening, abusive or insulting is guilty of an offence if—

a. he intends thereby to stir up racial hatred, or

b. having regard to all the circumstances racial hatred is likely to be stirred up thereby.

2. In proceedings for an offence under this section it is a defence for an accused who is not shown to have intended to stir up racial hatred to prove that he was not aware of the content of the material and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

3. References in this Part to the publication or distribution of written material are to its publication or distribution to the public or a section of the public.”

Section 21 - Distributing, showing or playing a recording

“1. A person who distributes, or shows or plays, a recording of visual images or sounds which are threatening, abusive or insulting is guilty of an offence if—

a. he intends thereby to stir up racial hatred, or

b. having regard to all the circumstances racial hatred is likely to be stirred up thereby.

2. In this Part “recording” means any record from which visual images or sounds may, by any means, be reproduced; and references to the distribution, showing or playing of a recording are to its distribution, showing or playing of a recording are to its distribution, showing or playing to the public or a section of the public.

3. In proceedings for an offence under this section it is a defence for an accused who is not shown to have intended to stir up racial hatred to prove that he was not aware of the content of the recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

4. This section does not apply to the showing or playing of a recording solely for the purpose of enabling the recording to be included in a programme service.”

Section 23 - Possession of racially inflammatory material

“1. A person who has in his possession written material which is threatening, abusive or insulting, or a recording of visual images or sounds which are threatening, abusive or insulting, with a view to—

a. in the case of written material, its being displayed, published, distributed, or included in a cable programme service, whether by himself or another, or

b. in the case of a recording, its being distributed, shown, played, or included in a cable programme service, whether by himself or another,

is guilty of an offence if he intends racial hatred to be stirred up thereby or, having regard to all the circumstances, racial hatred is likely to be stirred up thereby.

¹¹⁵ Public Order Act of 1986, as amended up to 2016, available at <http://www.legislation.gov.uk/ukpga/1986/64>.

2. For this purpose regard shall be had to such display, publication, distribution, showing, playing, or inclusion in a programme service as he has, or it may reasonably be inferred that he has, in view.
3. In proceedings for an offence under this section it is a defence for an accused who is not shown to have intended to stir up racial hatred to prove that he was not aware of the content of the written material or recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.
4. (...)"

Section 27 - Procedure and punishment

- "1. No proceedings for an offence under this Part may be instituted in England and Wales except by or with the consent of the Attorney General.
2. For the purposes of the rules in England and Wales against charging more than one offence in the same count or information, each of sections 18 to 23 creates one offence.
 3. A person guilty of an offence under this Part is liable—
 - a. on conviction on indictment to imprisonment for a term not exceeding seven years or a fine or both;
 - b. on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both."

Section 28 - Offences by corporations

- "1. Where a body corporate is guilty of an offence under this Part and it is shown that the offence was committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
2. Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as it applies to a director."

Section 29 - Interpretation

- "In this Part -
- "distribute", and related expressions, shall be construed in accordance with section 19(3) (written material) and section 21(2) (recordings);
- "dwelling" means any structure or part of a structure occupied as a person's home or other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose "structure" includes a tent, caravan, vehicle, vessel or other temporary or movable structure;
- "programme" means any item which is included in a programme service;
- "programme service" has the same meaning as in the Broadcasting Act 1990;
- "publish", and related expressions, in relation to written material, shall be construed in accordance with section 19 (3);
- "racial hatred" has the meaning given by section 17;
- "recording" has the meaning given by section 21(2), and "play" and "show", and related expressions, in relation to a recording, shall be construed in accordance with that provision;
- "written material" includes any sign or other visible representation."

Section 29A - Meaning of "religious hatred"

"In this Part "religious hatred" means hatred against a group of persons defined by reference to religious belief or lack of religious belief."

Section 29B - Use of words or behavior or display of written material

- "1. A person who uses threatening words or behaviour, or displays any written material which is threatening, is guilty of an offence if he intends thereby to stir up religious hatred [F2or hatred on the grounds of sexual orientation].
2. An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.
 3. (...).
 4. In proceedings for an offence under this section it is a defence for the accused to prove that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or any other dwelling.
 5. This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme service."

Section 29C. Publishing or distributing written material.

“1. A person who publishes or distributes written material which is threatening is guilty of an offence if he intends thereby to stir up religious hatred or hatred on the grounds of sexual orientation.”
2. References in this Part to the publication or distribution of written material are to its publication or distribution to the public or a section of the public.”

Section 29E - Distributing, showing or playing a recording.

“1. A person who distributes, or shows or plays, a recording of visual images or sounds which are threatening is guilty of an offence if he intends thereby to stir up religious hatred or hatred on the grounds of sexual orientation.

2. In this Part “recording” means any record from which visual images or sounds may, by any means, be reproduced; and references to the distribution, showing or playing of a recording are to its distribution, showing or playing to the public or a section of the public.

3. This section does not apply to the showing or playing of a recording solely for the purpose of enabling the recording to be included in a programme service.”

Section 29F - Broadcasting or including programme in programme service

“1. If a programme involving threatening visual images or sounds is included in a programme service, each of the persons mentioned in subsection (2) is guilty of an offence if he intends thereby to stir up religious hatred.”

2. (...).”

Section 29G - Possession of inflammatory material

“1. A person who has in his possession written material which is threatening, or a recording of visual images or sounds which are threatening, with a view to—

a. in the case of written material, its being displayed, published, distributed, or included in a programme service whether by himself or another, or

b. in the case of a recording, its being distributed, shown, played, or included in a programme service, whether by himself or another,

is guilty of an offence if he intends [F2thereby to stir up religious hatred or hatred on the grounds of sexual orientation].

2. For this purpose regard shall be had to such display, publication, distribution, showing, playing, or inclusion in a programme service as he has, or it may reasonably be inferred that he has, in view.]”

Section 29J - Protection of freedom of expression

“Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytizing or urging adherents of a different religion or belief system to cease practicing their religion or belief system.”