



## **Racially Inflammatory Material on the Internet**

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## **Introduction**

This guide is designed to provide basic information relating to racially inflammatory material on the Internet.

The Guide is not a definitive statement of the law or of the application of the law in any particular circumstances. The subjective nature of some of the assessments required in this area mean that to attempt a definitive guide would be impossible and misleading. What follows is an assessment of the relevant issues in various circumstances.

Given the fast-moving nature of the Internet and changes in the way that the courts interpret the law this guide will be up-dated and expanded where necessary.

This edition relates to the law in England and Wales as of December 2001.

## **Government Policy**

### On Racism

*The Government is committed to creating One Nation, a country:*

- *where every colour is a good colour;*
- *where every member of every part of society is able to fulfil their potential;*
- *where racism is unacceptable and counteracted;*
- *where everyone is treated according to their needs;*
- *where everyone recognises their responsibilities; and*
- *where racial diversity is celebrated.*

# The Law

## Incitement to racial hatred

1. The criminal law most closely linked to racially inflammatory material is the incitement to racial hatred offences contained in Part III of the Public Order Act 1986.

### The Basics:

2. It is an offence to use or publish insulting or abusive words (or behaviour) with an intention to stir up racial hatred or, in the circumstances, racial hatred is likely to be stirred up.
3. Racial hatred here means hatred against a group of people in Great Britain defined by reference to colour, race, nationality or ethnic or national origin.
4. The offence is closely based on the public order offences (sections 4, 4A and 5 - see below) in that they cover “**threatening, abusive and insulting**” words as well as other written and broadcast media. The additional aspect is the intent to stir up hatred against a racial group.
5. These offences are designed to deal with people who seek to stir up hatred against racial groups. They are commonly used, for example, against those who publish leaflets and newsletters, which deliberately seek to advocate violence against racial groups or individuals from racial groups.

### Range of Offences

6. Incitement to racial hatred is not one but several related offences. The offences are:

Section 18 – using threatening, abusive or insulting words or displaying material.

Section 19 – publishing or distributing written material

Section 20 – public performance of a play

Section 21 – distributing showing or playing a recording

Section 22 – broadcasting or including a programme in a cable programme service

## Section 23 – Possession of racially inflammatory material

7. The most commonly used are sections 18, 19 & 23. Sections 19 and 23 are particularly relevant to material on the Internet.

### **Scope of the Incitement to Racial Hatred Offences**

8. The laws on incitement to racial hatred were drafted long before the invention of the Internet. However, whilst not originally designed to apply to material on the Internet, the offences by covering written material, images and sounds are suited to the multimedia nature of the Internet.

### **“Threatening, abusive and insulting”**

9. The requirement that the words or behaviour must be threatening, abusive or insulting is the first part of the incitement to racial hatred offences. The words themselves do not have to be racist in content as long as they are threatening, abusive and insulting and stir up (or are likely to stir up) hatred against a racial group.
10. What amounts to threatening, abusive or insulting is ultimately a question for the courts. Guidance from case law is not extensive but it does indicate that threatening, abusive and insulting are to be given their ordinary meanings.
11. Whilst these questions may appear to be rather subjective the general line is to take the ordinary meaning of the words in the wider context in which they are placed and in consideration of the intent behind the words.

### **“Intended to stir up racial hatred”**

12. The second part of the offence requires the material to be intended to stir up racial hatred or likely to stir up racial hatred in the circumstances. The question of intent can be inferred from the evidence available. In many cases the intent to stir up hatred will be clear from the very words or behaviour used. In other cases intent may be inferred by taking into account the wider circumstances of the case.
13. It is not a defence to simply say that you did not intend to stir up racial hatred if, having regard to all the circumstances, racial hatred is likely to be stirred up anyway.

### **“against a Racial Group”**

14. 14. A “racial group” is defined in section 17 of the Act as, “a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.” This definition follows that used in the Race Relations Act 1976 and the case law developed under that Act could apply by analogy to this offence.
15. In practice this means that material designed to incite hatred against a person or group of persons because they are black or white is an offence by reference to "colour" e.g. for words such as "go and kill the blacks". "Race" is a wider issue and is often taken together with "ethnic origin" and "nationality". In this way material aimed against Chinese people could be considered under race, ethnicity or nationality.
16. Nationality can include hatred against people from countries not associated with minority ethnic communities, for example Germans, French or Greeks if the hatred is designed to stir up a group. In other words, white on white racism can still amount to incitement to racial hatred if the hatred is directed at a group defined by their nationality.
17. National origin has been taken to include Scottish, Irish, Welsh and English.
18. It is a question for the courts to determine whether a particular group is a racial group for the purposes of this Act. In this way the courts have held that Jews and Sikhs are ethnic groups in this context – as well as religious groups (see section on Religion below). The Courts have more recently held – in a Race Relations Act case - that Irish Travellers are racial group (Gypsies were already considered as a racial group).
19. This is therefore a part of the law which is still developing and where the general trend is to be more inclusive of diverse groups.
20. Prior to the introduction of the Anti-terrorism, Crime & Security Act 2001 (ATCS Act), Part III of the Public Order Act limited the incitement to racial hatred offences to racial groups “in Great Britain”. Since the ATCS Act came into force on 13 December 2001, it is now possible to incite hatred against a racial group abroad. See paragraph 32 below for further information.

### **The Possession Offence**

21. Section 23 of the Public Order Act 1986 makes it an offence to possess racially inflammatory material. However, the possession offence is not absolute. It is not an offence to simply hold this material nor, it would appear, to simply download the material. It is only an offence to possess material with a view to distribution and an intent to stir up racial hatred. In

this way the law on incitement to racial hatred differs significantly from that relating to child pornography.

### **Other aspects of the offence**

22. These offences require the consent of the Attorney General for prosecution. Investigations of criminal offences are clearly a matter for the police. The police and CPS will then seek the consent of the Attorney General to prosecute – or the Attorney General will bring the prosecution. The Attorney General seldom denies his consent. The maximum penalty for the offences under Part III of the Public Order Act 1986 is now 7 years' imprisonment (raised from 2 years by the ATCS Act 2001)

### **Defences:**

#### **Dwelling defence**

23. An incitement offence can be committed in a public or a private place but there is a "dwelling defence". The defence essentially states that an offence has not been committed if the offensive words or behaviour are used, or the material displayed, inside a dwelling and not seen or heard outside of that or another dwelling.
24. This reflects the public order nature of the offences. In terms of material on the Internet, it is unlikely to apply where a web site, for example, is open to public access. It could apply however where an e-mail containing racially inflammatory material is passed privately between two individuals and is not meant for public distribution. If that material did become public it could be argued as a defence that the defendant 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.

#### **No Knowledge defence**

25. This applies where it can be shown that a person did not know they were in possession of the material or genuinely did not know that the material was threatening, abusive or insulting. In this way an ISP could invoke this defence against charges against hosting material. This defence is also in keeping with the liabilities of ISPs outlined in the EU's E-Commerce Directive.

## The Offence in Practice

### What kind of material on the Internet is potentially illegal under the incitement provisions.

26. Looking at past cases against spoken and printed material it is possible to gather an idea of what material on the Internet, if within the UK's jurisdiction, is likely to be considered illegal.

### Threats of Direct Violence

27. The most obvious example of incitement are calls for people to act violently against members of racial groups. This may be directed at named individuals or to the racial groups. For example:  
  
"Kill the Jews"; "Lets lynch a nigger" or "Race war! Kick some black ass" have all appeared in publications which have been successfully prosecuted.
28. These kinds of blatantly violent phrases are the clearest examples of incitement to racial hatred offences. They may of course also amount to other offences (in these examples, incitement to murder or soliciting to murder.)
29. Publishing names and addresses of people from racial groups or who are in a mixed race relationship with clearly threatening overtones and suggesting others should commit acts of violence has been held to be inciting racial hatred.
30. Less direct material can also be covered if it is threatening abusive or insulting. In this way anti-Semitic material accusing Jews of a whole range of illegal or anti-social activities has been prosecuted.
31. 31. Words clearly can incite hatred although they may not be specifically racist as long as they are offensive and are intended to incite hatred. Images alone may be sufficient to make a case in the same way.
32. Material which incites hatred but against a racial group outside of Great Britain. This is one of the changes made by the ATCS Act 2001. It is relatively easy to stir up hatred against a minority racial or religious group to phrase the hatred in a way that has an impact on communities here but which the perpetrators claim was directed abroad. The change in the ATCS Act was designed to ensure, first that hatred originating in this country but directed abroad is covered by the law, and second, that hatred, which is sometimes directed at nationalities or groups abroad but which is designed to impact on British communities here is also covered

by the expanded provisions. An example of the latter might be where hatred is directed against "Israelis", but it is clear from the material that the intended victim of the hatred is the Jewish community in Britain. However, it should be remembered that it is still necessary to show that the behaviour directed abroad was intended to, or likely in the circumstances, to incite racial hatred. (Note. Incitement of terrorist acts abroad will be a criminal offence under the Terrorism Act 2000.)

33. In most cases however it is the overall effect of a range of words, behaviour and images that has to be taken into account. Threatening language, offensive remarks targeted against a racial group, images with known racist connotations (see Annex) are all indicators of a potential offence.

## The Offence in Practice

### What may not be illegal

34. Again, material has to be considered in context. **Quotes** taken out of context may amount to an offence if the intent is to incite hatred but this does not mean that the full text of a document or book may be seen as inciting hatred. In this way Hitler's "Mein Kampf" is lawfully sold in British bookshops but a quote taken from the book may be taken as evidence of an offence.
35. **Historical documents or artefacts** are in themselves unlikely to be taken as inciting racial hatred. To display or sell Nazi memorabilia is unlikely to be an offence unless there is evidence that the display, in the context, is designed to incite racial hatred.
36. Material, which incites **religious hatred** (see section below) or **Holocaust denial** (see below) may not amount to incitement to racial hatred.

## **Other Offences**

### **Common Law Incitement**

37. Incitement occurs where one person encourages, persuades or tries to persuade another person to commit an offence. This is the common law of incitement.

### **Other Public Order Offences**

38. There are three other offences contained in the Public Order Act which can be used to deal with racist material or behaviour. These offences are contained in sections 4, 4A & 5 of the Act.
39. These offences are similar to the incitement offences in that they outlaw the use of threatening, abusive or insulting behaviour. They are more directed to the effect this behaviour has on an individual and do not require an intention to stir up racial hatred.

### **Section 4 Public Order Act 1986: Threatening words or behaviour**

40. Under this section it is an offence to use threatening, abusive or insulting words or behaviour towards another person or to distribute or display to another threatening, abusive and insulting writing, sign, visible representation with intent to cause that person to believe immediate unlawful violence used or provoked against him by defendant or another or person likely to believe such violence will be used or likely to be provoked.

### **Section 4A Public Order Act 1986: Intentional harassment, alarm or distress**

41. With intent to cause a person harassment, alarm or distress uses threatening, abusive, insulting words or behaviour, or disorderly behaviour or displays any writing, sign or visible representation which is threatening, abusive and insulting, causing that or another person harassment, alarm or distress.

### **Section 5 Public Order Act 1986: Disorderly conduct**

42. Uses threatening, abusive or insulting words or behaviour or disorderly behaviour or displays writing, sign or visible representation within hearing or sight of a person likely to be caused harassment, alarm or distress.

### **Relevance to Internet**

43. These offences could be invoked where a person posts threats against another that are seen by that person, on a web site, web site guest book, IRC or newsgroup. It should be noted that the person who feels threatened or is likely to be caused harassment, alarm or distress need not be the person to whom the threat is directed. In this way an offence may be committed where other members of, for example a newsgroup, felt threatened by a posting.

### **Racially or Religiously Aggravated Offences**

44. The words or behaviour, which constitute an offence under sections 4, 4A and 5 of the Public Order Act, need not be racist. However, the Crime & Disorder Act 1998 introduced racially aggravated versions of these offences.
45. This means that where there is evidence of a racist motive or racial hostility in connection with the offence the offence is racially aggravated. Racially aggravated offences carry higher maximum penalties than the basic offence (for example, the basic section 4 offence carries a maximum penalty of six months imprisonment the racially aggravated offence maximum is two years imprisonment.)
46. The ATCS Act 2001 expanded racially aggravated offences to cover racially or religiously aggravated offences. Religiously aggravated offences are not separate from racially aggravated offences but the definition of religiously aggravated is slightly different. Under the amended Crime & Disorder Act 1998 an offence is religiously aggravated where there is evidence of a religious motive or religious hostility, against a religious group, in connection with the basic offence. Religion is not designed in the ATCS Act but "religious group" is defined by reference to religious belief or lack of religious belief. The Government has made it clear that this is designed to cover a wide range of religions and religious practices. It also covers atheists who have no belief as well as persons who may have a religious belief or may not but who are characterised by the perpetrator of these offences as members of a group which do not share the beliefs of the perpetrator. In this way offences against "the infidels" could be considered as religiously aggravated.

## **Protection from Harassment Act 1997**

47. Another possible legislative tool against racist crime on the Internet is provided by the offences contained in the Protection from Harassment Act 1997. This act is often referred to as the anti-stalking law but it has wider uses.
48. The two relevant offences are contained in sections 2 and 4 of the Act, the latter being the more serious offence.

### **Section 2: Harassment without violence**

49. It is an offence to pursue a course of conduct (harassment) on at least two occasions whilst knowing or ought to know that the conduct amounts to harassment of another.

### **Section 4: Harassment with fear of violence**

50. It is an offence to pursue a course of conduct (harassment) on at least two occasions whilst knowing or ought to know amounts causes another to fear violence will be used against him or her.

### **Possible uses relating to Internet**

51. The Protection from Harassment offences are designed to cover a course of conduct which taken together amounts to harassment. The individual acts in that course of conduct may not be criminal or particularly threatening, it is the overall effect of the course of behaviour which is taken into consideration. In this way repeatedly e-mailing a person may be seen as a course of conduct amounting to harassment.
52. As the offence requires a course of conduct one event is not sufficient to make an offence – although that single event may constitute an offence under, for example section 4 or 5 of the Public Order Act. Two events can however constitute a course of action.

### **Racially or Religiously Aggravated Offences**

53. As with the public order offences above, these harassment offences need not be racist in nature. Where however there is a racist or religious element to the conduct then aggravated versions of these two offences are available under the Crime & Disorder Act 1998 as amended. Again, these carry higher maximum penalties where there is evidence of racist or religious motive or hostility.

## **Holocaust Denial**

54. Holocaust denial is essentially the practice of denying or questioning either the existence of the Holocaust or the basic historical facts of the Holocaust. Holocaust denial sites form a significant proportion of hate sites on the Internet.

### **The Law**

55. Holocaust denial per se is not an offence in the United Kingdom. Unlike other European countries the UK has no specific Holocaust denial law.
56. The Attorney General has confirmed that whilst Holocaust denial material is “undoubtedly offensive and its content untruthful”, it is not generally insulting within the meaning of section 19 {of the 1986 Act}. Therefore the incitement to racial hatred laws do not generally cover Holocaust denial material.
57. In 1996 after copies of “66 Questions and Answers on the Holocaust” was distributed to schools in Hemel Hempstead, the CPS concluded the material was not “insulting” in the context of the Act.

### **When Holocaust denial material can be illegal**

58. Holocaust denial material has been prosecuted, but where it forms part of a wider anti-Semitic campaign and therefore directly linked to racial hatred. In this way Lady Birdwood was successfully prosecuted for her anti-Semitic publications, which frequently referred to the “Holocaust Myth”. In March 1997 three Combat 18 members were sentenced to 18 months imprisonment for distributing hate material including Holocaust denial newsletters. In May 1998 two leading BNP members (Nick Griffin and Paul Ballard) were given suspended sentences for publishing an edition of “The Rune” magazine which included a Holocaust denial article.
59. In short, where there is evidence that Holocaust denial is expressed in a threatening, abusive or insulting way and linked to anti-Semitism or racism and intended to incite hatred then the material can be considered illegal.

## Religious Hatred

60. As stated above the law on incitement to racial hatred covers words and behaviour intended to stir up hatred against a racial group. Racial group is defined with reference to colour, ethnicity, nationality or national origins. Racial group does not however extend to religious groups. The UK therefore has no legislation outlawing inciting hatred against a religious group (but see below).

### Some religious groups are also racial groups

61. Case law under the Race Relations Act has created a situation where some religious groups are also considered as racial groups and therefore covered by the incitement provisions. The courts have set down criteria to determine what factors indicate that a group is of ethnic origin. In this way **Jews and Sikhs** have been held to be ethnic groups protected by the legislation but Muslims and Christians are not since they cover a range of ethnic groups.
62. This is an area of law which is also being developed by the courts. The Government is also considering how to implement EU anti-discrimination legislation will apply to religious discrimination in employment but this legislation has little bearing on inflammatory material on the Internet.

### When religious hatred can be illegal

63. Religious hatred may be illegal when it is actually racial hatred. Many people who advocate religious hatred appear to do so not because they take issue with the tenets of a faith but because they associate that faith with minority ethnic groups. For example, hostility towards Muslims seen on some web pages appears to arise from hostility towards racial groups (i.e. people of Pakistani and Bangladeshi origin) which are associated in the UK with Islam rather than with the religion itself.

64. An example of this kind of mixing of hatred is seen below in newsgroup posting:

"Hi i'm a 18 year old boy from Denmark i just whant to tell, you one thing, FUCK YOU, what is your problem, are you are jude, or a negger, it's true what the other gentlemen on your hate mail is saying neggers and judes are taken over, manly neggers around my country, we here in denmark have the same problem whit muslims, you know what that, they come here to destroy our faith in our father god, and his son, and the holly ghost, i say BURN THE MUSLIMS AND ALL OTHER NONE WHITE PROTESTANTS. HEIL HITLER. PS. the klan ku klux klan) is okay to."

65. Where there is evidence that there is racial as well as, or as part of religious hatred, than the racial hatred can be an offence. Where the words or material refer only to "Muslims" this does not mean that an offence has not been committed. Again, the words and behaviour have to be considered in the wider context.

## **Religiously Aggravated Offences**

66. Whilst the British law does not have an incitement to religious hatred offence (a similar offence does exist in Northern Ireland) since the introduction of the ATCS Act 2001 the law in England and Wales does cover religiously aggravated offences. The operation of these offences is described at paragraph above 46 above.

## **Blasphemy**

67. Blasphemy remains a criminal offence in the UK albeit one which has not be prosecuted for many years.
68. Blasphemy is however an offence specific to causing insult to the established church, i.e. the Church of England. It does not apply to insults directed against other religions.

## **Extracts from Relevant Legislation**

Public Order Act 1986, Part III (as amended by Anti-Terrorism, Crime and Security Act 2001)

### *Public Order Act, Part III*

## **RACIAL HATRED**

### **Meaning of "racial hatred"**

17. 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.

### **Use of words or behaviour or display of written material**

18-(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) (a) he intends thereby to stir up racial hatred, or
- (b) (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) A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this section.

(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 included in a programme service.

## **Publishing or distributing written material**

**19.**-(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.

## **Public performance of play**

**20.**-(1) If a public performance of a play is given which involves the use of threatening, abusive or insulting words or behaviour, any person who presents or directs the performance is guilty of an offence if

- (a) he intends thereby to stir up racial hatred, or
- (b) having regard to all the circumstances (and, in particular, taking the performance as a whole) racial hatred is likely to be stirred up thereby.

(2) If a person presenting or directing the performance is not shown to have intended to stir up racial hatred, it is a defence for him to prove-

- (a) that he did not know and had no reason to suspect that the performance would involve the use of the offending words or behaviour, or
- (b) that he did not know and had no reason to suspect that the offending words or behaviour were threatening, abusive or insulting, or
- (c) that he did not know and had no reason to suspect that the circumstances in which the performance would be given would be such that racial hatred would be likely to be stirred up.

(3) This section does not apply to a performance given solely or primarily for one or more of the following purposes-

- (a) rehearsal,
- (b) making a recording of the performance, or
- (c) enabling the performance to be included in a programme service;

but if it is proved that the performance was attended by persons other than those directly connected with the giving of the performance or the doing in relation to it of the things mentioned in paragraph (b) or (c), the performance shall, unless the contrary is shown, be taken not to have been given solely or primarily for the purposes mentioned above.

(4) For the purposes of this section-

- (a) a person shall not be treated as presenting a performance of a play by reason only of his taking part in it as a performer,
- (b) a person taking part as a performer in a performance directed by another shall be treated as a person who directed the performance if without

reasonable excuse he performs otherwise than in accordance with that person's direction, and

- (c) a person shall be taken to have directed a performance of a play given under his direction notwithstanding that he was not present during the performance;

and a person shall not be treated as aiding or abetting the commission of an offence under this section by reason only of his taking part in a performance as a performer.

(5) In this section "play" and "public performance" have the same meaning as in the *Theatres Act 1968*.

(6) The following provisions of the *Theatres Act 1968* apply in relation to an offence under this section as they apply to an offence under section 2 of that Act-

- section 9 (script as evidence of what was performed),
- section 10 (power to make copies of script),
- section 15 (powers of entry and inspection).

## **Distributing, showing or playing a recording**

**21.**-(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 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 or religious 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.

## **Broadcasting or including programme in cable programme service**

**22.**-(1) If a programme involving threatening, abusive or insulting visual images or sounds is included in a programme service, each of the persons mentioned in subsection

(2) is guilty of an offence if-

- (a) he intends thereby to stir up racial or religious hatred, or
- (b) having regard to all the circumstances racial or religious hatred is likely to be stirred up thereby.

(2) The persons are-

- (a) the person providing the programme service,
- (b) any person by whom the programme is produced or directed, and

- (c) any person by whom offending words or behaviour are used.
- (3) If the person providing the service, or a person by whom the programme was produced or directed, is not shown to have intended to stir up racial or religious hatred, it is a defence for him to prove that-
- (a) he did not know and had no reason to suspect that the programme would involve the offending material, and
  - (b) having regard to the circumstances in which the programme was included in a programme service, it was not reasonably practicable for him to secure the removal of the material.
- (4) It is a defence for a person by whom the programme was produced or directed who is not shown to have intended to stir up racial or religious hatred to prove that he did not know and had no reason to suspect-
- (a) that the programme would be included in a programme service, or
  - (b) that the circumstances in which the programme would be so included would be such that racial or religious hatred would be likely to be stirred up.
- (5) It is a defence for a person by whom offending words or behaviour were used and who is not shown to have intended to stir up racial or religious hatred to prove that he did not know and had no reason to suspect-
- (a) that a programme involving the use of the offending material would be included in a programme service, or
  - (b) that the circumstances in which a programme involving the use of the offending material would be so included, or in which a programme broadcast or so included would involve the use of the offending material, would be such that racial or religious hatred would be likely to be stirred up.
- (6) A person who is not shown to have intended to stir up racial or religious hatred is not guilty of an offence under this section if he did not know, and had no reason to suspect, that the offending material was threatening, abusive or insulting.

## **Possession of racially inflammatory material**

**23.**-(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 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 racial or religious hatred to be stirred up thereby or, having regard to all the circumstances, racial or religious hatred is likely to be stirred up thereby.

(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 or religious 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) [Repealed by Broadcasting Act 1990, s. 164 (4) (c).]

## **Powers of entry and search**

**24.-** (1) If in England and Wales a justice of the peace is satisfied by information on oath laid by a constable that there are reasonable grounds for suspecting that a person has possession of written material or a recording in contravention of section 23, the justice may issue a warrant under his hand authorising any constable to enter and search the premises where it is suspected the material or recording is situated.

(2) [Applies in Scotland only.]

(3) A constable entering or searching premises in pursuance of a warrant issued under this section may use reasonable force if necessary.

(4) In this section "premises" means any place and, in particular, includes-

- (a) any vehicle, vessel aircraft or hovercraft,
- (b) any offshore installation as defined in section 1(3) (b) of the Mineral Workings(Offshore Installations) Act 1971, and
- (c) any tent or movable structure.

## **Power to order forfeiture**

**25.-** (1) A court by or before which a person is convicted of-

- (a) an offence under section 18 relating to the display of written material, or
- (b) an offence under section 19, 21 or 23,

shall order to be forfeited any written material or recording produced to the court and shown to its satisfaction to be written material or a recording to which the offence relates.

(2) An order made under this section shall not take effect

- (a) in the case of an order made in proceedings in England and Wales until the expiry of the ordinary time within which an appeal may be instituted or where an appeal is duly instituted, until it is finally decided or abandoned;
- (b) in the case of an order made in proceedings in Scotland, until the expiration of the time within which, by virtue of any statute, an appeal may be instituted or, where such an appeal is duly instituted, until the appeal is finally decided or abandoned.

(3) For the purposes of subsection (2) (a)-

- (a) an application for a case stated or for leave to appeal shall be treated as the institution of an appeal, and
- (b) where a decision on appeal is subject to a further appeal, the appeal is not finally determined until the expiry of the ordinary time, within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

(4) For the purposes of subsection (2) (b) the lodging of an application for a stated case or note of appeal against sentence shall be treated as the institution of an appeal.

## **Savings for reports of parliamentary or judicial proceedings**

**26.**-(1) Nothing in this Part applies to a fair and accurate report of proceedings in Parliament.

(2) Nothing in this Part applies to a fair and accurate report of proceedings publicly heard before a court or tribunal exercising judicial authority where the report is published contemporaneously with the proceedings or, if it is not reasonably practicable or would be unlawful to publish a report of them contemporaneously, as soon as publication is reasonably practicable and lawful.

## **Procedure and punishment**

**27.**-(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.

## **Offences by corporations**

**28.**-(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.

## **Interpretation**

**29.**- 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.

## Summary of Offences relating to Racist Behaviour

### Points to Prove

#### Racially Aggravated Offences

Section 28 Crime and Disorder Act 1998 provides a definition of the term 'racially aggravated'. An offence is racially aggravated if- at the time of committing the offence, immediately before or after doing so, the offender demonstrates towards the victim hostility based on the victim's membership (or presumed membership) of a racial group

OR

The offence is motivated (wholly or partly) by hostility towards members of a racial group based on their membership of that group.

Section 39 of the Anti-terrorism, Crime and Security Act 2001 expanded this definition to cover religiously aggravated offences.

This term applies to the following offences: assaults (s29) criminal damage (s30) public order (s3 1) harassment (s32).

## OFFENSIVE BEHAVIOUR

### Threatening words or behaviour

Act Section 4 Public Order Act 1986

Points to prove use

threatening/abusive/insulting

words/behaviour

towards other person OR

distribute/display to another

threatening/abusive/insulting

writing/sign/visible representation

With intent to:

cause that person to believe

immediate unlawful violence used or provoked

against him by defendant or another

or person likely to believe

such violence will be used or likely to be provoked

Penalty Summary 6 months

Racially or religiously aggravated penalty On indictment 2 years

Power of arrest Found committing

### Intentional harassment, alarm or distress

Act Section 4A Public Order Act 1986

Points to prove With intent to cause a person harassment, alarm or distress  
uses threatening/abusive/insulting words or behaviour, or  
disorderly behaviour OR  
displays any Writing/sign/visible representation  
which is threatening/abusive/insulting,  
causing that or another person  
harassment, alarm or distress  
Penalty Summary 6 months  
Racially or religiously aggravated penalty On indictment, 2 years.  
Power of arrest Found committing

### **Disorderly conduct**

Act Section 5 Public Order Act 1986

Points to prove uses threatening/abusive/insulting  
words or behaviour OR  
disorderly behaviour OR  
display writing/sign/visible representation  
within hearing/sight of  
person likely to be caused  
harassment, alarm or distress  
Penalty Fine not exceeding level 3  
Racially or religiously aggravated penalty Fine not exceeding level 4  
Power of arrest Found committing, but only after warning if conduct continues

### **Harassment Stalking without violence**

Act Section 2 Protection from Harassment Act 1997

Points to prove pursue  
a course of conduct (harassment)  
on at least two occasions  
whilst knowing/ought to know  
amounts to harassment of another  
Penalty Summary 6 months and Court may impose restraining  
order  
Racially or religiously aggravated penalty On indictment 2 years  
Power of arrest Arrestable offence

### **Harassment / Stalking with fear of violence**

Act Section 4 Protection from Harassment Act 1997

Points to prove knows/ought to know  
a course of conduct  
on at least two occasions  
causes another  
to fear violence will be used against him/her  
Penalty On indictment 5 years

Racially or religiously aggravated penalty On indictment 7 years  
Power of arrest Arrestable offence

**Racial Hatred-words/behaviour/written material**

Act Section 18 Public Order Act 1986

Points to prove uses words or behaviour/display written material  
threatening/abusive/insulting

with intent/likely to

stir up racial hatred

Penalty On indictment, 2 years

Racially or religiously aggravated penalty Not applicable

Power of arrest Found committing

Comment Consent of Attorney General required for prosecution 1

**Racial Hatred-publish/distribute written material**

Act Section 19 Public Order Act 1986

Points to prove publish or distribute  
written material

threatening/abusive/insulting

intending/likely to

stir up racial hatred

Penalty On indictment, 2 years

Power of arrest Arrestable offence

Comment Consent of Attorney General required for prosecution

**Racial Hatred-public performance of a play**

Act Section 20 Public Order Act 1986

Points to prove public performance of a play

threatening/abusive/insulting

words or behaviour

any person directs

intent to stir

racial hatred

Penalty On indictment, 2 years

Power of arrest No specific power

Comment Consent of Attorney General required for prosecution

**Racial Hatred-distribute/play/show a recording**

Act Section 21 Public Order Act 1986

Points to prove distribute/show/play

recording

threatening/abusive/insulting

visual images/sounds

intending/likely to

stir up racial hatred

Penalty On indictment, 2 years

Power of arrest No specific power  
Comment Consent of Attorney General required for prosecution

**Racial Hatred-broadcasting racist programme service**

Act Section 22 Public Order Act 1986  
Points to prove broadcasting/including material  
programme service  
visual images/sounds  
threatening/abusive/insulting  
with intent/likely to  
stir up racial hatred

Penalty On indictment, 2 years  
Power of arrest No specific power  
Comment Attorney General required for prosecution

**Racial Hatred-possess racially inflammatory material**

Act Section 23 Public Order Act 1986  
*Points to prove* possession of  
threatening/abusive/insulting  
written material  
for display/publication/distribution  
OR  
recording of visual images or sounds  
for distribution/show/play/included in programme  
by himself or another  
with intent/likely to  
stir up racial hatred  
*Penalty* On indictment, 2 years  
*Power of arrest* No specific power  
*Comment* Consent of Attorney General required for prosecution

**Football offences-indecent or racist chanting**

Act Section 3 Football (Offences) Act 1991  
*Points to prove* designated football match  
take part  
indecent/racist  
chanting (in concert with one or more others)  
*Penalty* Fine not exceeding level 3  
*Power of arrest* No specific power  
*Comment* Consent of Attorney General required for prosecution

**Send letter or article to cause distress or anxiety**

Act Section 1(1) Malicious Communications Act 1988  
*Points to prove* (a) send to another person  
letter/article conveying

indecent/grossly offensive message  
OR threat  
OR false information known or believed to be false  
for purpose of causing anxiety/distress  
to recipient/other person to whom intended communicated  
(b) send to another person other article wholly/partly of an  
indecent/grossly offensive nature for purpose of causing distress/anxiety  
to recipient/other person to whom intended communicated  
Penalty Fine not exceeding level 4  
Power of *arrest* No specific power

### **Nuisance phone calls**

Act Section 43(1) Telecommunications Act 1984

*Points to prove* (a) send  
by public telecommunications system  
message/other matter  
grossly offensive  
OR indecent/obscene/menacing character  
(b) send  
by public telecommunications system  
to cause to another  
annoyance/inconvenience/needless anxiety  
a message knowing it to be false  
OR persistently make use of  
public telecommunications system  
for that purpose  
Penalty Summary 6 months  
Racially aggravated penalty Not applicable  
Power of *arrest* No specific power

## **COMMUNITY LEGISLATION**

The Crime and Disorder Act 1988 introduced a wide range of measures for preventing crime and disorder.

### **Anti-social behaviour orders**



Section 1 creates a new community-based order, the anti-social behaviour order. The police or the local authority, in consultation with each other can apply for this. Orders can be made against an individual or several individuals (e.g. a family) whose behaviour has caused harassment, alarm or distress to one or more people not in the same household as him/herself. Orders can be made on those aged 10 years and above, and applications are made to the magistrates' court in its civil capacity. Orders are preventative in nature and are to be used to end persistent and serious anti-social behaviour. The minimum duration for an order is 2 years, and a breach of the order is an arrestable offence, carrying a maximum penalty of 5 years imprisonment.


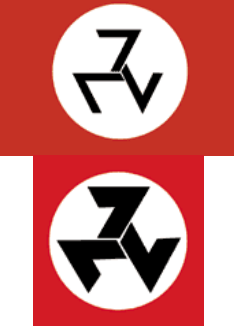







## ANNEX C

This annex and annexes D & E are designed to give some background information on some of the symbols, abbreviations and numbers used in some extremist racist sites. The presence of any of these items does not however mean that the site is potentially criminally racist. It should also be remembered that several symbols, for example, are appropriated from other cultures and contexts and do not always have racist connotations.

### Symbols

Symbol	Description	Comments
	Celtic Cross or Odin's Cross	<p>This is one of the most popular symbols for neo-Nazis and white supremacists. First popularised by the Ku Klux Klan, the symbol was later adopted by the National Front and other racists such as Don Black on his Web site, Stormfront, and the racist band Skrewdriver to represent international "white pride." It is also known as Odin's Cross.</p> <p>It is important to note that the Celtic Cross is used widely today in many non-racist contexts. It should not therefore be assumed that a Celtic Cross, divorced from other trappings of extremism, automatically denotes use as a hate symbol.</p>
	Norse Rune	<p>While not by nature a racist religion, Odinism is popular among white supremacists because its Old Norse origins are seen as representative of Aryan heritage and cultural pride. The symbol was common within Celtic and ancient Germanic cultures and was later adopted by the Nazis for this reason. There are many variations of this symbol.</p>

	<p>White Power Fist</p>	<p>The Aryan fist is a symbol of white power – the opposite of the black power symbol of the black fist. The laurel wreath appearing is a reference to “Fred Perry” shirts popular with British skinheads.</p>
	<p>Three-Bladed Swastika, "Flowering Power", Three Sevens Link</p>	<p>A variation of the swastika used by Nazi Germany, the "Three Sevens" or "Three-Bladed Swastika" is comprised of three backward sevens to symbolize supremacy over the devil (frequently represented by 666). It is a symbol used by racist skinheads, neo-Nazis, especially European neo-Nazis in support of Apartheid.</p>
	<p>Hammerskin Nation</p>	<p>This is the name of a specific neo-Nazi skinhead organization. The British Hammerskin chapters in the many abroad are united by an ideology that focuses on white pride and white power music. Crossed hammers are the basic component in the group’s symbol, which is adapted and localized for each chapter. The hammers are often placed on a background that represents the area where the chapter is located, such as a national flag. HFFH stands for "Hammerskins forever, forever Hammerskins."</p>
	<p>Ku Klux Klan (KKK)</p>	<p>Common KKK sign with variants. According to the Klan, the blood drop represents the blood shed by Jesus Christ as a sacrifice for the White Aryan Race</p>
	<p>National Alliance "Life Rune" surrounded by a band of ivy on each side</p>	<p>The "Life Rune" was a character from the Runic Alphabet, which signified life, creation, birth, rebirth and renewal. The "Life Rune" symbol was also used by the Nazis on the graves of SS soldiers signifying the soldier's date of birth (while the "Death</p>

		Rune," an upside-down "Life Rune," was used to signify date of death). Also employed to denote women in the white supremacist movement.
	Spider Web Tattoo	The spider web design tattoo is said to be found on the arms or under the arms of racists who have spent time in jail. In some places, one apparently "earns" this tattoo by killing a person from a minority. However, non-extremists may sometimes sport this tattoo as well, unaware of its other symbolism
	World Church of the Creator (WCOTC)	American organisation but the symbol appears on some sites with British contents. A "W" representing the white race and a crown and halo above signifying the group's belief in the elite and sacred nature of the white race.

## ANNEX D

### Numbers

Some common numbers used in web sites or e-mails.

Number	Meaning	Comments
C18 or 18	Meaning Combat 18 – the 18 refers to the first and eighth letters of the alphabet i.e. A & H being the initials of Adolf Hitler.	Whilst Combat 18 exists as a small extremist organisation, there are many references to C18 by sites and individuals who are not in fact connected with the organisation.
88	Representing the letters H & H i.e. Heil Hitler	Often found on hate group flyers, in both the greetings and closing comments of letters written by neo-Nazis, and in e-mails and e-mail addresses.
20/4 or 4/20	Refers to the 20 <sup>th</sup> of April, Hitler's birthday.	The anniversary of Adolf Hitler's birthday is also used as a tattoo by racists and neo-Nazis, to affirm their belief in the ideals of National Socialism
5	Or "Five Words", refers to the phrase, "I have nothing to say"	Another American white supremacist phrase. Meant to demonstrate a "code of silence" and to help avoid prosecution.
311	The eleventh letter of the alphabet is the letter "K"; thus 3 times 11 equals "KKK," or Ku Klux Klan.	311 is sometimes used as a greeting to demonstrate membership of the KKK or simply sympathy with the Klan and its ideology.
33/6	Thirty-three is 3 times 11. Since the eleventh letter of the alphabet is K, three Ks signify KKK or Ku Klux Klan.	The "6" signifies the sixth or current era of the Klan. 33/6 is also used as a greeting by Klan members.
14	Refers to the 14 words, " <i>We must secure the existence of our people and a future for white children.</i> "	Mainly used in American sites but some British references. Essentially the battle cry and rallying slogan for the white supremacist movement

## ANNEX E

### Acronyms

Some common acronyms used in web sites or e-mails.

<b>Acronym</b>	<b>Meaning</b>	<b>Comments</b>
RAHOWA	Racial Holy War	The expression "Racial Holy War," signifies the battle that racists believe will pit the white race against minorities and Jews and lead to Aryan rule over the world.
ZOG/JOG	Zionist-Occupied Government/Jewish-Occupied Government	These terms refer to the belief that the Jews occupy and control the government, as well as the media. The letters often appear in a circle with a slash over it.
SWP	Supreme White Power	Often used to sign off e-mails etc.
WPWD	White Pride World Wide	Used as a greeting by white supremacists to show pride in the white race around the world.

## ANNEX F

### Internet Service Provider – terms & conditions of service

The following are extracts from the terms of conditions of popular web hosts relating to racist or offensive material. (Text in bold – our emphasis)

#### America Online

[AOL users]"Terms of Service Agreement and Rules of the Road. The America Online service ("AOL") is provided by America Online Inc. ("America Online," "AOL Inc." or "we") to you ("Member" or "you"), subject to the terms of this Agreement and AOL Inc.'s operating policy, which is incorporated herein and referred to as the "Rules of the Road" or "ROR" and shall be collectively referred to as "TOS.... transmit any unlawful, harmful, **threatening, abusive, harassing, defamatory, vulgar, obscene, hateful, racially, ethnically or otherwise objectionable Content...**"

#### Angelfire

[Angelfire users]"Pages can not contain, or contain links to, any of the following: nudity, sex, pornography, foul language, **hate propaganda**, anything illegal, mail fraud, pyramid schemes **or be insulting to another person(s)** or Company."

#### BT

The Service must not be used: (a) fraudulently or in connection with a criminal offence; (b) to send, receive, upload, download, use or re-use any material which is **offensive, abusive**, indecent, defamatory, obscene or **menacing**, or in breach of copyright, confidence, privacy or any other rights;

...In particular, you must not use expressions that are offensive to others on grounds of gender, **race colour, religion or other similar categories**.

#### Fortune City

"Do not use your web space for providing material that is **grossly offensive** to the Web community including **blatant expressions of bigotry, racism, hatred**, or profanity. Promoting or providing instructional information about illegal activities, or **promoting physical harm or injury against any group or individual**"

#### Geocities : *Page Content Guidelines & Member Email Guidelines*

"**Providing material that is grossly offensive to the Web community including blatant expressions of bigotry, racism, hatred**, or profanity. Promoting or providing instructional information about illegal activities, or **promoting physical harm or injury against any group or individual**  
Developing pages that consist PRIMARILY of hyperlinks to content not allowed in GeoCities, including adult oriented sites **and racial bigotry sites** Members who

are in violation of these policies may be deleted and their pages removed without warning."

### NTL

Nobody may use the Services, either directly or indirectly:

(a) to transmit, publish, link to, make available or receive any material which is defamatory, **offensive, abusive**, obscene, indecent, **racist, harmful, threatening or menacing**;

### Tripod : *Tripod Inc. Membership Terms of Service*

"**Material that is grossly offensive to the Tripod Community, including clear expressions of bigotry, racism, or hatred.** Pages that promote illegal activity. Material that defames, **abuses or threatens** others. Pages that contains material inconsistent with the values of the spirit of the Tripod Community. Tripod may terminate Membership and any and all information, communications, Postings, or Web pages at any time, without notice, for conduct that violates this Agreement or other policies or guidelines set out by Tripod elsewhere on the Site".

### XOOM : *XOOM Membership Terms of Service*

XOOM reserves the right to modify or remove anything submitted to XOOM, and to cancel any membership, at any time for any reason without prior notice. Actions or activities that may cause termination of your membership and/or removal of your page(s) include, but are not limited to submitting any page, message board posting, or chatroom statement that contains, or provides links to: **hate propaganda or hate mongering**, swearing, or fraudulent material or activity;

### YAHOO

You agree to not use the Service to:

- a. upload, post, email or otherwise transmit any Content that is unlawful, harmful, **threatening, abusive, harassing**, tortious, defamatory, vulgar, obscene, libellous, invasive of another's privacy, **hateful, or racially, ethnically or otherwise objectionable**;

[abuse@uk.yahoo-inc.com](mailto:abuse@uk.yahoo-inc.com)

## AUCTION SITES

### **Yahoo Auctions UK**

<http://uk.auctions.yahoo.com/phtml/auc/uk/refinedguidelines/revisedguidelines.html>

“Yahoo! Auctions has refined its product guidelines as part of our ongoing effort to provide buyers and sellers with the highest quality experience. Yahoo! Auctions generally does not allow the buying and selling of items associated with groups that promote or glorify hatred and violence. Prohibited listings include items such as Nazi militaria and Ku Klux Klan memorabilia.”

### **EBay UK**

(E-Bay has detailed policies on offensive material see links below)

<http://pages.ebay.co.uk/help/community/png-offensive.html>

<http://pages.ebay.co.uk/help/community/png-nazi-items.html>

“Please remember that items that promote or glorify hatred, violence, or racial intolerance, or items that promote organisations (such as the KKK, Nazis, neo-Nazis or other extreme nationalist movements) with such views, are never allowed on any eBay site.”

## ANNEX G

### Links

Anti-racist Internet Watchdogs

<http://www.hatewatch.co.uk/> - British site of Hatewatch.org

<http://www.bcpl.net/~rfrankli/hatedir99.htm#CH> - List of hate web sites, ftp sites and newsgroups. (Also available as pdf file.)

<http://www.wiesenthal.com/watch/index.html> - Wiesenthal Centre

<http://www.nizkor.org/> - Reaction to Holocaust denial material on the Internet.

## ANNEX H

### Some Useful Contacts

#### Home Office

Race Equality Unit

12<sup>th</sup> Floor

50, Queen Anne's Gate

London SW1H 9AT

Contact: Neil Stevenson

Tel: 020 7273 3384

Fax: 020 7272 3771

E-mail: [NeilJ.Stevenson@homeoffice.gsi.gov.uk](mailto:NeilJ.Stevenson@homeoffice.gsi.gov.uk)

#### Metropolitan Police Service

Racial & Violent Crime Task Force

New Scotland Yard

Broadway

London SW1H 0BG

Tel 020 7230 4374

e-mail: [athena.metpolice@gtnet.gov.uk](mailto:athena.metpolice@gtnet.gov.uk)

#### Commission for Racial Equality

<http://www.cre.gov.uk/>