

Bahnhof - a Free Speech ISP

Bahnhof is proud to be known as a Free Speech ISP. We do not enforce tighter restrictions on "speech" than the law demands. If the site and content is legal in Sweden, you may host it with Bahnhof. The Kingdom of Sweden has one of the oldest and strongest Freedom of Speech regulations in the world.

Many providers have very strict Terms and Conditions for content – if you actually read them. We picked some hosters at random and found writings like the following:

"The service shall not be used to post, transmit, re-transmit or store **material which, in the judgment of [name of hosting firm] could adversely affect any individual, group or entity.**

Well isn't that great? If your content in theory could adversely affect one government, person, organization or corporation on earth you can immediately be shut down.

Another says:

"Transmission of any material in violation of **any Country, Federal, State or Local regulation is prohibited.**"

Really? Iran and China may not have the same view of Freedom of Speech as many jurisdictions in the West but do we really all want to abide by those?

A third hosting firm prohibits clients from using the hosting service ...

"... for any unlawful purpose or for the publication, **linking to**, issue or display of **any unlawful material ... whether under English law or regulation, the laws or regulations of the Client's country or any other place where the results of such purpose or the material in question can be accessed**".

So you may not even link to material that could be unlawful anywhere on earth. What good is Internet if we all must bow to the strictest regimes in the world? Even North Korea supposedly has Internet connection for its leadership and could access your content - or links!

If you are based in a foreign jurisdiction and wish to host with Bahnhof we wish to inform you about the following:

What Bahnhof will not do

* **Bahnhof will not respond to any demands from authorities in other countries for information about clients, logs or data or anything else.** These must direct their demands to relevant Swedish authorities which may then possibly contact Bahnhof in the ways that Swedish legislation stipulates.

* **Bahnhof will not comply with demands from Swedish authorities to a higher**

extent than Swedish law demands. Bahnhof is proud to keep updated on legislation concerning privacy and freedom of speech questions. Any demands outside routine cases are raised to the highest management level in order to protect the firm's reputation for privacy and freedom of speech. Bahnhof has a history of challenging demands in court if the issue at hand concerns important principles or has few precedents.

* **When it comes to "speech", i.e. content published, Swedish authorities apply Swedish law.** Swedish authorities will not act upon demands from other countries to restrict what is published from servers in Sweden as long as it does not break Swedish free speech legislation. Neither will Bahnhof.

* **Note on global reach of the internet:** If you run a web site or servers in Sweden but target e.g your own home nation with your published information, that nation may consider you as an offender within their jurisdiction, although it is not an offense from a Swedish perspective.

What Bahnhof has to do

Bahnhof is subject to certain legislation in Sweden that we have to follow as a network operator and hoster.

In general Bahnhof is not liable for content that you as a client publishes. You are!

This follows from EU's E-commerce **Directive 2000/31/EC**, Section 4 (Articles 12-15), which was transposed into Swedish law as **Act on Electronic Commerce and other Information Society Services** [Lag (2002:562) om elektronisk handel och andra informationssamhällets tjänster].

Hosters do not have a general obligation to seek facts or circumstances indicating illegal activity. When the hoster obtains such knowledge it may however be required to remove and block such content.

What Bahnhof can do

Since your site may affect the quality, stability and security for other customers or Bahnhof we must subject our operation to certain conditions however. There may be circumstances when Bahnhof will have to act although the information you publish is legal.

As a large free speech network operator with several data centers, outstanding bandwidth and excellent peering around Europe Bahnhof has both the will and technical endurance to host even demanding customers.

We can do a lot. Upholding freedom of speech may however have a price. Hence, in addition to normal hosting costs Bahnhof retain the right to - in special cases and circumstances - demand an up-front deposit from the client from which Bahnhof's

costs for keeping information online will be covered.

These costs may include:

- * bandwidth and engineering time, skills and resources to protect the site and Bahnhof's network from e.g. DDoS attacks.
- * time used by abuse and complaints staff
- * management time
- * time spent with media inquiries
- * costs for increased security

If Bahnhof is unable to contact the client to inform about the necessity for an up-front deposit, then Bahnhof may suspend the service as an emergency measure. Service may also be suspended until a deposit has been cleared.

Freedom of Expression in Sweden

What is illegal to publish in Sweden?

- There are 20 categories of prohibited speech but many have to do with war-time or Swedish national security.
- The relevant categories are:
 - inciting rebellion
 - agitation against a national or ethnic group ("hate speech"). The law applies to the following categories: race, skin-color, national/ethnic origin, religious faith, sexual orientation.
 - unlawful depiction of violence (photos and videos of primarily gross sexual violence)
 - defamation, where it should be noted that Sweden values freedom of expression higher than many other countries and is generally considered a bad jurisdiction for defamation lawsuits
 - different categories of threats: unlawful threat + threat to public servant + interference in a judicial matter (threat against witnesses e.g.) + crime against civil liberty (unlawful threats aiming to undermine freedom of speech or freedom of association)
 - child pornography, which in Sweden includes not just photos or videos but also drawn images, like underage Japanese manga
 - copyright infringement

Many countries have some general laws that prohibit obscenity. Sweden does not, since 1971.

Legal treatment of offenses against Freedom of Expression

It is not a coincidence that Wikileaks chose Swedish ISP Bahnhof for its most demanding and sensitive release or that they wished to set up a headquarters in Sweden and registering as a protected publication.

Since 1766 Sweden has Freedom of Speech and Freedom of Information included in its Fundamental Laws. First in the world, it is claimed.

Any publication (including web site or blog) with a sufficient connection to Sweden and fulfilling some minimal requirements can register to receive special Fundamental Law protection.

Registering gives benefits compared to unregistered sites:

- Unique trial within Swedish court system with more extensive possibilities for acquittal. Only one person, the Chancellor of Justice, may prosecute a protected publication. This is the only trial where a jury is used in Sweden.
- Swedish authorities are **prohibited** from interfering with someone making research or writing for a protected publication.
- Swedish authorities are **prohibited** from investigating leaks and sources for protected publications.
- Higher requirements for search of premises of offices or people involved in production and publication of protected publications.
- Journalists are legally bound by confidentiality and can be **prosecuted** for revealing sources when working for protected publications.
- Individual journalists are **not** personally liable for what they write in a protected publication.
- Personal Data Act is automatically waived for protected publications.
 - A protected publication must register a Responsible Editor. This physical person has to reside in Sweden (but citizenship is not required) and has the duty to check material before it is published and make sure it does not break any of the (few) restrictions on speech, mentioned above. Such editorial work is supposed to be done in Sweden to get this enhanced protection. It is this person (only) who can be prosecuted for breaking laws on speech by a protected publication.
 - Non-registered publications and web sites (or personal unregistered bloggers e.g.) have to follow the same speech laws. Breaches against those are however handled in the normal court system and they are not given those extras, like legal protection of sources.

- Two kinds of speech are not protected by Fundamental Law but are always handled according to normal criminal law: child pornography and copyright infringement.
- Bahnhof can advice on requirements and handle formalities around registering a web site for Fundamental Law protection with Myndigheten för Radio och TV <http://www.radioochtv.se/> (with official English name The Swedish Broadcasting Authority, although their web site is entirely in Swedish).
- **Personal Data Act**
- All member states in the European Union are subject to the **Data Protection Directive 95/46/EC**, which can put limits to speech with the purpose of guaranteeing the individual's right to privacy. Sweden's **Personal Data Act** [= Personuppgiftslag (1998:204), normally abbreviated PUL] serves as the national transposition of that directive.
- The Data Inspection Board [Datainspektionen] is a state authority supervising the Data Protection Act <http://www.datainspektionen.se/in-english/>
- The Data Protection Act is sometimes invoked against groups or individuals that collect and publish personal data about others in order to injure them, personally, socially or in other ways. There may be other offenses committed at the same time, e.g. defamation or "hate speech".