

E-LAWS IN BELARUS

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This article is covering the scope and impact of newly adopted regulations on e-commerce in Belarus. Special attention is given to the obligation of internet-providers to ensure identification of users. Article also covers the issues of mandatory hosting in Belarus for commercial companies and registration of web-sites and internet shops. Expected developments in this field are mentioned.

GENERAL OVERVIEW

Before July 2010 the Internet activities were regulated only fragmentary, mainly covering the retail e-shops. However in February, 2010 Decree of the President of the Republic of Belarus No 60 "On the Measures to Improve the Use of the National Segment of the Internet Network" (**Decree No 60**) was issued to enter into force from July, 2010, later supplemented by a number of subordinate acts. These new legislation introduced a number of important innovations in Internet regulation:

- obligation of internet providers to ensure identification of users and store data regarding provided internet services;
- registration of informational resources, i.e. web-sites, databases and other resources available via internet;
- Belarusian companies' web-sites intended to conduct business in Belarus must be hosted exclusively in Belarus;
- access to the certain types of information (pornography, trafficking in people, propaganda of violence and other actions prohibited by law) must be restricted for the state authorities (except law-enforcement and tax agencies), culture and educational facilities.
- access to such types of resources may be restricted also for other users upon their request. Internet providers must ensure the capacity to render such services;
- audio, video, scientific and other types of content subject to intellectual property protection may be published in the internet only upon consent of the right-holders;
- informational materials (news, publications etc) may be republished in Internet only with hyperlink to the source of information. However, the owner of the news-portal may determine other rules of dissemination;
- registration of optical fiber channels (excluding indoor).



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Decree No 60 is being permanently commented by the officials of various levels, so in absence of practical application and lack of special regulations the comprehension of Decree No 60 is constantly changing. E.g. the position regarding registration of e-mail accounts changed from necessity to register in February to official statement in May that e-mails are not subject to registration.

IDENTIFICATION OF USERS

General idea of the Decree No 60 is to ensure that every user connected to the internet can be identified. As of July, 2010 the special regulations concerning identification of users is pending, and currently the explanations of officials are the only available means of interpretation.

1.1. Internet providers

Internet providers must identify any subscriber's unit (ADSL/3G modem, mobile phone etc.), and such unit must allow to identify the final user (individual or a company). Identification must be ensured by provider (passport must be provided by the individuals, legal address and business name is necessary requisites of the company). Due to this requirement the selling of widely used "internet-cards" (plastic cards with login and password for internet-access printed on their back) is restricted, since this method of internet-selling doesn't ensure proper identification of users.

Internet providers are also obliged to store information about the sessions of every user (MAC-address and internal and external IP-addresses of access device, date and time of the session, domain names and IP-addresses of visited resources) within 5 years from the date of the session. However the use of proxies, anonymizers etc. is not prohibited and there is no legal ground to block such services for private users.

Currently there is a concern that black market for ID-safe SIM cards and internet-cards purchased by tramps may develop.

1.2. Collective access points

The owners of collective access points also must provide for identification and recording of information about each session (MAC-address and IP-addresses of access device, date and time of the session, domain names and IP-addresses of visited web-resources) and store this information for 1 year after the session.

Collective access points include not only public Wi-Fi hotspots and internet cafes, but also home networks and any access point not secured from external connection, including Wi-Fi hotspots of companies and individuals.

Identification of users of Wi-Fi hotspots may be ensured not only by means of passport. Today the possibility of identification via SMS-messages is widely discussed (upon request user receive SMS with a pin-code to ensure the identification of user, since the owner of SIM-card has already provided passport details to the mobile operator).

As far as the owner of the most public Wi-Fi hotspots is currently the state company "Beltelecom" and access is provided by means of "internet cards" the main proposal regarding it is to sell these cards only upon production of the passport, so the relevant data may be stored in special registers.

USAGE OF NATIONAL INTERNET SEGMENT

According to the new legislation Belarusian companies must use web-sites hosted only in Belarus, when conducting business activity in Belarus. These web-sites must also be duly registered by the Ministry of Communication. However, any first level domain name (not only .BY) may be used.

REGISTRATION OF WEB-SITES

General rule, established by Decree No 60, is that all web-sites must be registered. However, personal pages of citizens and pages of commercial companies that contain only contact information are free from registration.

The procedure of registration is performed by Ministry of Communications upon application filed by providers of internet services and payment of administrative fee (approx. EUR 4). The registration must be ensured by provider even in case he only provides for the frames for the servers of the client, or uses virtual server system.

Application must be submitted only in the electronic form, by means of special freely distributed software. Duly filled and submitted application cannot be refused. Pending special regulations the purpose of registration seems to be solely informational, the registration can not be revoked or suspended.

REGISTRATION OF INTERNET-SHOPS

From July, 2010 retail trade via internet may be conducted only upon registration of respective internet-shop. Registration is effected within 1 business day after receipt of the application, stating the domain name and types of goods.

As opposed to registration of web-sites, registration of internet-shops is intended to defer owners from the violation of administrative regulations concerning trade. In this case registration may be revoked and new internet shop may be registered only after expiration of 12 month period.

EXPECTED DEVELOPMENTS

Currently Decree No 60 and subordinate acts provide for that a number of complementary legal acts are to be issued in the near future. In particular, the liability for the internet offences and regulations on advertisement in internet are supposed to be next area for regulations.

Currently the only liability for the violation of the Decree No 60 is the suspension of internet-services up to 1 month upon request of the law-enforcement agency issued after the prior notice to the violator. Such suspension may be challenged in court.

However, in the next session the parliament is expected to pass the law introducing criminal and administrative responsibility for certain offences in the sphere of Internet regulation, particularly in the field of copyright.

Nowadays the general rule regarding internet-advertising formulated by the officials is that the services and goods may be advertised in the web-sites outside Belarus only in case the goods or service is intended to be sold outside the Belarus. However, the respective amendments to the laws on advertisements are going to be introduced by the Ministry of Trade.

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