



# e-Commerce 2014

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# Estonia

**Kaupo Lepasepp and Mihkel Miidla**

Sorainen

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## General

- 1 How can the government's attitude and approach to internet issues best be described?

The Estonian government's approach is very positive and forward-looking and they pay close attention to internet issues. The government is actively implementing initiatives to develop projects dealing with internet services and e-solutions. In 1996 the Tiger Leap project began, which allowed educational institutes to have access to computers in order to prioritise IT infrastructure. The internet has also been considered as part of Estonia's identity and is often utilised to introduce the country to the outside world. 'E-State' is the term used for the variety of e-solutions and which the Estonian government takes great pride in. Information technology is an instrument for increasing administrative capacity and ensuring an innovative and convenient living environment for its citizens.

In 2005, the Estonian government launched the Information System of Government Sessions, which introduced a paper-free working environment to streamline the government's decision-making process. Different e-services include e-Business Register, e-Tax, Electronic Health Record, e-Prescription, Digital Signature, e-School, e-Police, e-Voting, mobile-ID, m-Parking etc. A long-term goal is to make all procedures in the public sector electronic, which would make the process more cost-effective and faster. Creating a safe and open digital society is an important mission for legislators and state authorities. This includes educating citizens in using the internet and its different services. The target is that every citizen has at least elementary skills to use the internet and that websites of public sector institutions would be accessible to people with special needs.

Heading into its third decade of e-society development, Estonia is now the training ground for countries that want to introduce powerful e-solutions: at present more than 40 countries around the world are using e-solutions created and implemented in Estonia (see [www.e-estonia.com](http://www.e-estonia.com) for more information).

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## Legislation

- 2 What legislation governs business on the internet?

There is no single regulatory instrument governing business on the internet. The same legal rules apply as to businesses off the internet: primarily, the General Part of the Civil Code Act and the Law of Obligations Act. Other regulations that may be relevant for conducting online business include the Trading Act, Advertising Act, Consumer Protection Act, Electronic Communications Act, Information Society Services Act, Digital Signatures Act, Personal Data Protection Act, Gambling Act, the Copyright Act and tax laws. In addition, different 'soft law' instruments may be relevant (eg, guidelines and recommendations by the supervisory bodies, and the regulations of specific trade associations).

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## Regulatory bodies

- 3 Which regulatory bodies are responsible for the regulation of e-commerce and internet access tariffs and charges?

No single specific regulatory body is responsible for the regulation of e-commerce. Internet access tariffs and charges are not regulated in Estonia. The Ministry of Economic Affairs and Communications is responsible for developing and implementing the state's plans in the field of trade and commerce, among others. In addition, different state authorities regulate and exercise supervision in different fields of e-commerce and within the limits of their competence (eg, the Consumer Protection Board, the Technical Surveillance Authority, the Data Protection Inspectorate, the Estonian Competition Authority, and the Estonian Tax and Customs Board).

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## Jurisdiction

- 4 What tests or rules are applied by the courts to determine the jurisdiction for internet-related transactions (or disputes) in cases where the defendant is resident or provides goods or services from outside the jurisdiction?

### EU

Estonian courts follow the regulations adopted in the EU, especially in Regulation No. 44/2001 (Brussels I) for determining the applicable jurisdiction in civil and commercial matters between EU member states. Under a general principle the jurisdiction is to be exercised by the EU member state in which the defendant is domiciled, regardless of the nationality of the defendant. Domicile is determined in accordance with the domestic law of the EU member state where the matter is brought before a court.

In contractual B2B matters where a valid contractual choice of jurisdiction is absent, the defendant can be brought before the court of his domicile or registered office or before the court of the place of performance of the obligation.

In contractual B2C matters where a valid contractual choice of jurisdiction is absent, consumers may bring proceedings either into the courts of the EU member state in which the defendant is domiciled or into the courts of the place where the consumer is domiciled. Applicable law for internet-related transactions is based on the EC Regulation 593/2008 for contractual obligations (Rome I).

### Non-EU

Where parties have not chosen a jurisdiction to cover the contract and no other specific treaties cover business relations between the two countries (eg, the Lugano Convention with EFTA countries), the issues of cross-border transactions are resolved under the Estonian Private International Law Act. In Estonia this generally means that the transaction is governed by the law of the state with which the contract is most closely connected. However, in the case of consumer contracts, a choice of law cannot have the result of depriving

the consumer of the protection afforded to him by the mandatory rules of his state of residence.

### Contracting on the internet

- 5 Is it possible to form and conclude contracts electronically? If so, how are contracts formed on the internet? Explain whether 'click wrap' contracts are enforceable, and if so, what requirements need to be met?

Yes. Parties can conclude a contract through electronic means. The procedure does not differ substantially from concluding a contract in a regular (written or oral) procedure. A contract is entered into by an offer being made and accepted or by the mutual exchange of declarations of intent in any other manner if it is sufficiently clear that the parties have reached an agreement.

'Click wrap' contracts are enforceable under similar terms as 'regular' contracts. Whether the parties have reached an agreement is decisive. Under Estonian law a transaction may be entered into in any format unless a mandatory format of the transaction is provided by law. According to the Estonian General Part of the Civil Code Act a transaction can also be entered into in a format enabling repeated written reproduction, if the law does not prescribe a specific format for this type of agreement. The agreement should contain the names of the persons entering into the transaction, but need not contain handwritten signatures.

- 6 Are there any particular laws that govern contracting on the internet? Do these distinguish between business-to-consumer and business-to-business contracts?

The specifications for entry into a contract through a computer network are regulated in the Law of Obligations Act. These are mandatory for B2C contracts. For entry into contract through a computer network the terms of the contract, including the standard terms, have to be presented to the customer in a manner that enables them to be saved and reproduced (eg, possibility to download, send to an e-mail, print).

Agreements must be accessible and customers must be able to identify and correct typing errors before transmitting their orders. Before transmission of an order the supplier shall notify the customer of the technical stages involved in entering into the contract, whether the supplier will preserve the text of the contract after entry into the contract and whether the text will remain available to the customer, the languages in which the contract may be entered into and the rules observed by the supplier, and the electronic means for examining the rules.

- 7 How does the law recognise or define digital or e-signatures?

The Estonian Digital Signatures Act defines a digital signature as a data unit that is created using a system of technical and organisational means, which is used by a signatory to indicate his link to a document. The law recognises a digital signature as having the same legal consequences as a handwritten signature if these consequences are not restricted by law and if certain requirements of digital signature are lacking. Digital signatures of other countries are recognised if these meet the technical standards set by law.

- 8 Are there any data retention or software legacy requirements in relation to the formation of electronic contracts?

Similarly to paper documents, digital documents must also be retained for the purposes of accounting, taxation etc. Digital documents can be used in court proceedings as evidence, so retention of such data may be in the interests of the contracting party in order to produce evidence in any subsequent proceedings.

### Security

- 9 What measures must be taken by companies or ISPs to guarantee the security of internet transactions?

According to the Electronic Communications Act, a communications undertaking is required to take appropriate technical and organisational measures to manage the risks related to the security and integrity of the communications services and network. These measures must be proportionate to the potential emergency situation and ensure minimum impact of incidents endangering the ensuring of security and integrity on users of communications services and related networks and to ensure continuity of the provided services.

- 10 As regards encrypted communications, can any authorities require private keys to be made available? Are certification authorities permitted? Are they regulated and are there any laws as to their liability?

According to the current legislation there is no explicit obligation to disclose private keys to the authorities. The Digital Signatures Act does prescribe that persons who create private and public keys for other persons cannot create copies of the keys for themselves or for third parties. However, if necessary in a criminal investigation, the authorities can ask for these keys to be made available under general provisions.

Certification authorities, or certification service providers, are regulated under the Digital Signatures Act, which sets out the requirements on relevant certificates, as well as the certification service providers. These may be state agencies or persons registered in the corresponding register in Estonia. Under the Digital Signatures Act, the service providers are liable for damages caused as a result of a violation of their obligations. This liability may not be limited in case of intent or gross negligence, due to the automated processes of the service provider, which would not make the service provider liable in most cases.

### Domain names

- 11 What procedures are in place to regulate the licensing of domain names? Is it possible to register a country-specific domain name without being a resident in the country?

The Estonian Internet Foundation adopted a new '.ee' Domain Regulation on 1 March 2013. The registration of a domain name may be applied by all persons (ie, no need to be a resident in Estonia), whose identity is verified and who has submitted the required information and documents to a registrar. A registrant has to authorise an administrative contact to represent the registrant, who must be a person with an Estonian personal identification code who is either a citizen of the Republic of Estonia or a citizen of the EU, a member state of the European Economic Area or the Swiss Confederation, whose place of residence is registered as Estonia.

The number of domain names per registrant is not limited. A domain is registered for one year and the registrant has to pay a fee to the registrar. After one year, the term may be renewed.

'.ee' domain registration and all other registration services are performed by registrars accredited through the Estonian Internet Foundation.

- 12 Do domain names confer any additional rights (for instance in relation to trademarks or passing off) beyond the rights that naturally vest in the domain name?

No. Domain names do not confer any additional rights to its holders that are beyond the rights naturally vested in the domain name.

- 13** Will ownership of a trademark assist in challenging a 'pirate' registration of a similar domain name?

Yes. A similar domain name can be challenged in court or in a Domain Disputes Committee (DDC), consisting of national experts. The Estonian Supreme Court has confirmed that the functions of a domain name are similar to that of a trademark. A domain name can be challenged on the basis of the Estonian Trade Marks Act. Addressing disputes regarding domain names to the DDC does not exclude the possibility to turn to court. Recent disputes regarding domain names that have resulted in handing over the domain name to the trademark owner include, among others, Adwords, VISA, Vodafone, Wikipedia and Fedex.

### Advertising

- 14** What rules govern advertising on the internet?

Advertising on the internet is governed by the Advertising Act. The same general principles apply as for any other means of advertising. The use of electronic contact details for direct marketing is regulated under the Electronic Communications Act, the Information Society Services Act and Law of Obligations Act. In addition to relevant legislation, advertising regulations are also interpreted and guidelines given by the Consumer Protection Board and Advertising Council established under the Consumer Protection Board.

With some exceptions, the use of the electronic contact details of a natural person for direct marketing is generally allowed only with the person's prior consent (opt-in). The use of a legal person's electronic contact details for direct marketing is allowed if a clear and distinct opportunity is given to refuse such use of contact details upon their use (opt-out). This possibility has to be free of charge and easy and the person must be allowed to exercise their right to refuse over an electronic communications network.

- 15** Are there any products or services that may not be advertised or types of content that are not permitted on the internet?

The same restrictions apply as for any other form of advertising. Content that is misleading to the consumer or contains pornography or promotes violence or cruelty is prohibited.

The advertising of the following products, persons and services are prohibited or very strictly limited: trustees in bankruptcy, notaries and bailiffs, sexual services, tobacco, narcotic drugs and psychotropic substances, weapons, firearm accessories and ammunition, explosive substances and pyrotechnic articles, gambling, health services (including artificial insemination) and infant formulae.

In addition, the law limits the advertising of plant protection products, biocidal products, alcohol, financial services, attorneys, sworn translators and patent attorneys, and medicinal products. There are rules in place for advertisements directed at children, and advertising of goods and services that are technically complex, contain hazardous substances or require special operating skills.

### Financial services

- 16** Is the advertising or selling of financial services products to consumers or to businesses via the internet regulated, and, if so, by whom and how?

The advertising of financial services is regulated in the Advertising Act and non-binding guidelines by the Consumer Protection Board drafted in collaboration with the Estonian Financial Supervisory Authority. The selling of financial services to consumers via the internet is regulated in the Law of Obligations Act.

According to the Advertising Act, the advertisement of financial services has to include a statement inviting the consumer to examine the terms and conditions of the financial services and to consult an

expert if necessary. Any advertisement that offers a credit or arrangement of credit contracts and in which a rate of interest or any figures relating to the cost of the credit are indicated has to include a statement of the annual percentage rate of charge. This information has to be presented with a representative example if necessary. The cost of the credit must be shown in the form of a typical example, which has to comprise at least the following components: cost of the credit, average length of the credit and average total sum of the credit.

In addition, the Advertising Act prescribes how to present such statement in online advertisements. According to the non-binding guidelines by the Consumer Protection Board, the statement has to be visible for each financial service offered on the website or, as a minimum, the front page of the website has to include the following statement: 'This website belongs to an undertaking providing financial services and it is recommended to examine the terms and conditions of the financial services and to consult an expert if necessary before concluding any agreements.'

The statement has to be presented on textlinks, banners, price calculators, social media pages and offers (where client information obtained legally from other channels or legal entities is used to make an offer and the clients receive similar offers).

If there is no specific reference to a financial service, the requirements from the Advertising Act do not apply (ie, when the commercial announcement includes only the business name or trademark of the service provider). If the advertisement refers specifically to the service, then the statement inviting consumers to examine the terms and conditions of the financial services and to consult an expert if necessary must be included.

A credit broker has to notify the consumer of the extent of the powers of the credit broker prior to entry into a credit brokerage contract. This means, in particular, disclosing the information whether the credit broker works with one or more creditors or independently in the advertisement itself. For advertisements comprising only the trademarks of the service provider, this requirement does not apply.

During the term of the contract the consumer is entitled to receive the contractual terms and conditions on paper.

### Defamation

- 17** Are ISPs liable for content displayed on their sites?

Obligations of ISPs are regulated in the Information Society Services Act. According to this Act, the liability of ISPs is restricted under certain conditions, which are dependent on the type of service provided (information transmission, provision of access to public data communications network, temporary storage in cache memory, storage). Furthermore, ISPs are under no obligation to monitor information provided by the recipients of their services or actively seek illegal activities. It is rather the website owner who is liable for the content displayed on his or her website, not the ISP.

In the Estonian Supreme Court's prior practice the court has ruled that a news website that has an integrated interactive commenting environment, and actively invites its visitors to comment in this environment, has control over it and could not be regarded as an ISP. Accordingly, the court found that liability restrictions deriving from the Information Society Services Act do not apply for such websites. The news website is thus responsible for removing any incompatible and offensive comments.

- 18** Can an ISP shut down a web page containing defamatory material without court authorisation?

No restriction of this kind is established under Estonian law. Usually, ISPs have included provisions regarding the right to shut down a website in their terms of use or in the contract concluded with a

respective customer. This means that the ISP must comply with these terms and contracts when shutting down a website.

The Supreme Court has found that the owner of an internet portal is justified to restrict the commentators' freedom of speech due to an obligation to respect the personality rights of third persons. This means, in principle, that the owners of such websites not only have the option to take down defamatory content, but also have the obligation to do so in order to avoid liability or reduce potential damages. The liability of the website owner can be limited if he or she can show that he or she has acted reasonably and done everything in his or her power to remove any defamatory content.

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### Intellectual property

**19** Can a website owner link to third-party websites without permission?

Estonian law does not provide any specific regulation on web linking and there is no case law regarding the matter. Linking to third-party websites is used very often in practice. However, each case of linking should be considered individually, as it is possible to conflict with regulations dealing with misleading advertising, unfair competition, etc.

**20** Can a website owner use third-party content on its website without permission from the third-party content provider?

There are no special rules governing the matter, the general rules of the Copyright Act apply. Whether the website owner is allowed to use third-party content on its website without permission depends on who the owner of the website is and the purpose for using the third-party content. Using third-party content is allowed under provisions regulating fair use of works in the Copyright Act.

**21** Can a website owner exploit the software used for a website by licensing the software to third parties?

The website owner may exploit the software used for its website if it does not violate the rights of a third party (eg, he or she has copyright or licence rights to the software or a consent from the owner of such rights). If the website owner does not have the intellectual property rights and he or she does not have explicit permission from their respective owner, then exploiting the software is not allowed.

**22** Are any liabilities incurred by links to third-party websites?

There is no specific law governing the matter. Where linking violates other laws or contracts, then liability is incurred under general provisions.

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### Data protection and privacy

**23** How does the law in your jurisdiction define 'personal data'?

The Estonian Personal Data Protection Act defines personal data as any data concerning an identified or identifiable natural person, regardless of the form or format in which such data exists. In addition, the law differentiates sensitive personal data, which includes data revealing political opinions or religious or philosophical beliefs, ethnic or racial origin, state of health or disability, genetic information, biometric data (above all fingerprints, palm prints, eye iris images and genetic data), information on sex life, trade union membership or commission of an offence or falling victim to an offence before a public court hearing, or making a decision in the matter of the offence or termination of the court proceeding in the matter.

**24** Does a website owner have to register with any controlling body to process personal data? May a website provider sell personal data about website users to third parties?

There is no general obligation to register with the Data Protection Inspectorate.

The processor of personal data is required to register the processing of sensitive personal data with the Data Protection Inspectorate, unless the processor has appointed a person responsible for protection of personal data. This person must be independent in his or her activities from the processor of personal data and monitors the compliance of the processor of personal data upon the processing of personal data. If the person is not appointed, a registration application for entry in the register of processors of personal data has to be submitted. This must be done at least one month before the processing of sensitive personal data commences.

If the website provider wishes to sell personal data to third parties, he or she must obtain the explicit consent from the data subject to do so.

**25** If a website owner is intending to profile its customer base to target advertising on its website, is this regulated in your jurisdiction? In particular, is there an opt-out or opt-in approach to the use of cookies or similar technologies?

Profiling is not prohibited provided that data protection rules are followed. If profiling results in an automated decision that is made in the process of entry into or performance of a contract at the request of the data subject then the data subject must be given an opportunity to object against the decision to protect his or her legitimate interests. Automated decisions are also allowed if making the automated decision is prescribed by law and if the law provides measures for the protection of the legitimate interests of the data subject.

In Estonia there is an opt-out approach to the use of cookies. An opportunity to refuse cookies is sufficient and no express consent to cookies is needed.

**26** If an internet company's server is located outside the jurisdiction, are any legal problems created when transferring and processing personal data?

If the server is located outside Estonia and the services provided are not governed by Estonian law the Estonian Data Protection Act is not applicable.

Transfer of personal data from Estonia is permitted only to a country that has a sufficient level of data protection. Transfer of personal data is permitted to EU member states and the states party to the agreement of the European Economic Area, and to countries whose level of data protection has been evaluated as sufficient by the European Commission (eg, where the data is transferred to the US and the data processor in the US has obtained the EU-US Safe Harbor certificate).

Personal data may be transferred to a foreign country that does not meet the above-mentioned conditions only with the permission of the Data Protection Inspectorate, unless the data subject has consented to the transfer of personal data.

**27** Does your jurisdiction have data breach notification laws?

There is no general obligation to notify of data breaches. However, communications undertakings are required to notify the Data Protection Inspectorate of personal data breaches at the earliest opportunity.

Additionally, where the data processor is processing sensitive personal data and has appointed a person responsible for the protection of personal data, this person has to inform the processor of personal data of a violation discovered upon the processing of

personal data. Only after the processor of personal data does not take measures to terminate the violation does the person responsible for the protection of personal data then have an obligation to inform the Data Protection Inspectorate of the discovered violation.

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### Taxation

**28** Is the sale of online products subject to taxation?

Online products are subject to VAT in Estonia as regular goods and services. When it comes to income tax, these products are subject to taxation only if the seller is deemed to have a permanent establishment in Estonian territory.

**29** What tax liabilities ensue from placing servers outside operators' home jurisdictions? Does the placing of servers within a jurisdiction by a company incorporated outside the jurisdiction expose that company to local taxes?

A server by itself does not constitute a permanent establishment. Placing a server in Estonia by a company incorporated outside Estonia can constitute a permanent establishment if the foreign company has full control over the server and the server is used to carry out the business of the foreign company. Permanent establishment is not founded if the server is used for preparatory or auxiliary activities.

**30** When and where should companies register for VAT or other sales taxes? How are domestic internet sales taxed?

Companies that are engaged in distance selling have to register as a VAT taxable person with the Estonian Tax and Customs Board if the taxable value of the supply of distance selling in Estonia exceeds €35,000 as calculated from the beginning of a calendar year. The registration obligation shall arise for the person as of the date on which the supply reaches the specified amount.

Domestic internet sales are taxed by the same general rules as regular sales. Domestic internet sales are subject to VAT of 20 per cent, with lower rates for particular products listed in the Value Added Tax Act.

**31** If an offshore company is used to supply goods over the internet, how will returns be treated for tax purposes? What transfer-pricing problems might arise from customers returning goods to an onshore retail outlet of an offshore company set up to supply the goods?

There is no specific regime regulating the matter. Regular transfer-pricing rules apply and if they are related persons, then transfer-pricing rules must be obeyed.

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### Gambling

**32** Is it permissible to operate an online betting or gaming business from the jurisdiction?

Yes, remote gambling is allowed under the Gambling Act after the operator has obtained a relevant activity licence and an operating permit for organising remote gambling. The Estonian Tax and Customs Board has the right to block remote gambling sites that do not have the required licences to operate in Estonia.

**33** Are residents permitted to use online casinos and betting websites? Is any regulatory consent or age, credit or other verification required?

Residents are permitted to use online casinos and betting websites. However, the Tax and Customs Board has the right to block illegal operators' websites and issue a precept to payment service providers

to stop the debiting and crediting of the account used for organising illegal remote gambling.

The use of online casinos is prohibited for persons under 21 years of age and the use of betting websites is prohibited for persons under 18 years of age who play by remote gambling in Estonia. The gambling operator has to ensure the identification of each player, the registration of each player's forename and surname, personal identification code or date of birth in the absence of a personal identification code.

Additionally, a gambling operator must verify that a person is not listed in the database of persons with restrictions on playing games of chance in Estonia. This is a central database operated by the Estonian Tax and Customs Board, where players can self-exclude themselves from gambling.

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### Outsourcing

**34** What are the key legal and tax issues relevant in considering the provision of services on an outsourced basis?

Services provided on an outsourced basis are not regulated under any specific law. The relationship constitutes a regular contractual relationship. The most important aspects of such contract include the scope and definition of the services provided, liability and indemnity in case of non-compliance with the terms of the agreement, the possibility of making amendments to the agreement, applicable law and dispute resolution mechanisms, intellectual property rights, exit management and data protection matters.

**35** What are the rights of employees who previously carried out services that have been outsourced? Is there any right to consultation or compensation, do the rules apply to all employees within the jurisdiction?

In cases of business transfer (ie, transfer of an economic entity that retains its identity), employees who previously carried out services are automatically transferred to the new employer. The employment relationship continues on the same terms and conditions as provided in their employment contracts if the parties do not agree otherwise. The information and consultation procedure must be carried out at least one month before the transfer of an undertaking. The trustee of the employees (or all employees, if there is no trustee elected) must be notified and, within 15 days after receiving the notice, the trustee (or the employees) is entitled to meet with the representatives of the transferor and the transferee and make proposals relating to the measures planned with regard to the employees. The transferor and the transferee must justify any disregard of the proposals.

Employment contracts cannot be terminated due to a business transfer. However, it may happen that an employee's position is terminated for economic reasons due to restructuring. In the event of redundancy, employees must be paid compensation equal to one month's salary by the employer. The Unemployment Insurance Fund will pay additional compensation of one month's salary if the employee has worked for five to 10 years and two months' salary if the employee has worked for more than 10 years. While notifying the employees about the redundancy, the prior notification period must be followed (15 to 90 days depending on the length of service); if the employee is not given the full notification period, he or she has the right to receive compensation up to what they would have had the right to obtain following the term of advance notice.

An additional information and consultation process must be applied in the event of collective redundancy (starting from five employees in cases of small companies, up to a limit 19 employees).

The rules apply for all employees within the jurisdiction. However, the employment contract or the collective agreement may provide more favourable rules for employees.

**Online publishing**

**36** When would a website provider be liable for mistakes in information that it provides online? Can it avoid liability?

The violation of personality rights or interference with the economic or professional activities of a person by way of disclosure of incorrect information or by the incomplete or misleading disclosure of factual information concerning the person or the activities of the person is unlawful. Such activity is not unlawful if the person who discloses such information can prove that he or she was unaware and was not required to be aware that the information was incorrect or incomplete at the time of disclosure. The disclosure of defamatory facts concerning a person or facts that may adversely affect the economic situation of a person is deemed to be unlawful, unless the person who discloses such facts proves that they are true. Regardless of these rules, the disclosure of information or facts is not deemed to be unlawful if the person who discloses the information or the person to whom such information is disclosed has a legitimate interest in the disclosure and if the person who discloses the information has checked the information with a thoroughness that corresponds to the gravity of the potential violation.

If incorrect information has been disclosed then the victim can ask the person who disclosed such information to refute the information or publish a correction. This obligation cannot be excluded; the victim may also ask for compensation to be paid by the person who disclosed the incorrect information.

**37** If a website provider includes databases on its site, can it stop other people from using or reproducing data from those databases?

If the database is a protected database under the Copyright Act, then the website provider can restrict the use and reproduction of the data contained in the database. The lawful user of a database or of a copy thereof is entitled, without the authorisation of the author and without payment of additional remuneration, to perform any acts necessary for the purposes of access to the contents of the database and normal use of its contents. If the lawful user is authorised to use only part of the database, this provision shall only apply to the corresponding part of the database or of a copy thereof. Any

**Update and trends**

It is likely that trading of traditionally restricted goods and services will gradually be opened up to e-commerce. For example, recently regulations enabling the online selling of medicines were introduced and pharmacies can now apply for the right to sell medicines online.

contractual provisions that prejudice the exercise of the right are void.

The lawful user of a database that is made available to the public in whatever manner has the right to make extractions and to reutilise insubstantial parts of its contents for any purposes. However, a lawful user of a database that is made available to the public in whatever manner may not infringe the copyright or related rights of the database maker, and he or she may not perform acts that conflict with normal use of the database or unreasonably prejudice the legitimate interests of the maker of the database.

A lawful user of a database may also extract or reutilise a substantial part of the database without the authorisation of its maker and without the payment of remuneration in the case of extraction for private purposes of the contents of a non-electronic database; extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved; or extraction or reutilisation for the purposes of public security or an administrative or judicial procedure to the extent justified by the purposes of public security or an administrative or judicial procedure.

**38** Are there marketing and advertising regulations affecting website providers?

Website providers are obligated to follow the same regulations on marketing and advertising as any other business. There are no other specific restrictions for such marketing and advertising than for online marketing, or regular marketing and advertising in general (see questions 14 and 15).



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