



# e-Commerce 2014

in 26 jurisdictions worldwide

# 2014

Contributing editor: Robert Bond



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*Getting the Deal Through*  
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**e-Commerce 2014**  
Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 7908 1188  
Fax: +44 20 7229 6910  
© Law Business Research Ltd 2013

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First published 2004  
Tenth edition

ISSN 1473-0065

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Tel: 0844 2480 112

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# Lithuania

**Renata Beržanskienė and Laurynas Ramuckis**

Sorainen

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## General

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

Lithuania has the highest FTTH (fibre to the home) penetration rate in Europe and is among the highest in the world. This could not have been achieved without the government's initiative, therefore demonstrating that our government considers internet and related issues as a major economic, cultural and social drive which already has a huge impact on our economy.

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## Legislation

- 2 What legislation governs business on the internet?

Business on the internet in Lithuania is mainly governed by the Law on Services of Information Society. Its last revision came into effect on 1 January 2013. This law implements Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (OJ 2004 special edition, chapter 13, volume 25, p. 399).

Certain provisions from the Civil Code, especially the ones related to the contracts concluded by electronic means, also apply. In addition, other generally applicable laws (advertising laws and regulations, laws related to intellectual property and unfair competition, consumer-related laws, data protection law and various regulations related to trading) will also apply to business on the internet.

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## Regulatory bodies

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

The Information Society Development Committee under the Ministry of Transport and Communications and the Communications Regulatory Authority.

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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 countries (except Denmark)

Different rules apply, depending on whether the defendant is resident in, or provides goods or services from, an EU or a non-EU country, also there are exceptions related to jurisdiction for relations with Denmark. Where a defendant is resident in, or provides goods or services from, an EU country, Council Regulation No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters applies. In a

contractual business-to-business conflict, in the absence of a contractual choice of law, the defendant can be brought before the court of his or her domicile or registered office or before the court of the place of performance of the obligation.

In contractual business-to-consumer matters, in the absence of a valid contractual choice of law, the consumer can only be brought before the courts of his or her domicile; professionals can be brought either before the court of the consumer's domicile, or before the court of their own domicile or registered office. In matters relating to tort, delict or quasi-delict, the courts of the place where the harmful event occurred (or may occur) have jurisdiction. This rule allows Lithuanian courts to confirm their jurisdiction, especially with respect to advertising.

### Denmark

Defendants residing in, or providing goods or services from, Denmark are subject to the Brussels Convention of 27 November 1968. The rules of this Convention are quite similar to those in Council Regulation No. 44/2001.

### Non-EU countries

For other countries, bilateral conventions can be applied. As a general rule, and subject to a number of exceptions, the courts of the defendant's domicile have jurisdiction.

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## 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?

In general, it is possible to form and conclude contracts electronically in Lithuania. However, not all contracts can be concluded electronically. Lithuanian law prohibits contracts that must be notarised or require other legal registration from being concluded by electronic means. Contracts on the transfer of rights in rem to real estate and restraint of rights in rem, marriage contracts before and after the wedding and other transactions that have to be verified by the notary according to the Civil Code cannot be concluded electronically.

'Click wrap' agreements are valid as such, but in order to be enforceable against the customer, the customer must have the option of consulting the terms and conditions before entering into the agreement. Click wrap agreements are formally enforceable against customers. However, usually the customer does not have the option to consult the terms and conditions before entering into the agreement. As a result, from a practical point of view, 'click wrap' agreements do not have the same evidentiary value as agreements signed manually.

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

Contracting on the internet in Lithuania is governed by the Civil Code (articles 6.366 and 6.367), by the Law on Services of Information Society, also the Regulations for the Sale of Goods and Supply of Services under Distance Contracts Concluded by Means of Communication (the Order of the Minister of Economy, No. 258 of 17 August 2001).

The legislation distinguishes between business-to-consumer and business-to-business contracts. In business-to-business contracts the parties are free to contractually deviate from some obligations and share the commercial risk. Legislation on business-to-consumer contracts specifies a comprehensive duty on the seller to provide information to the consumer and enshrines more rights for consumers as a weaker contracting party. The consumer has the right to withdraw from the sale within seven days. General legislation on contracting also distinguishes business-to-consumer from business-to-business contracts. The prohibition of unfair business-to-consumer commercial practices is imposed by the Law on Prohibition of Unfair Business-to-Consumer Commercial Practices.

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

The Law on Electronic Signature submits the definitions of electronic signature and secure electronic signature.

An electronic signature is defined as data that is inserted, attached to or logically associated with other data for the purpose of confirming the authenticity of the latter or identification of the signatory.

A secure electronic signature is defined as a signature that meets all of the following requirements:

- it is uniquely linked to the signatory;
- it is capable of identifying the signatory;
- it is created using means that the signatory can maintain under his or her sole control; and
- it is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable.

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

The Order of the Minister of Economy of the Republic of Lithuania regarding the Rules of Sale of Goods and Providing Services when Contracts are Awarded by the Means of Communication stipulates that a seller or service provider must ensure a secure data transmission channel to set up a contract by direct access mode and, if necessary, to execute a contract.

However, there are no comprehensive rules that impose data retention or software legacy requirements in relation to the formation of electronic contracts.

## Security

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

The provider of publicly available electronic communications services must implement appropriate technical and organisational measures to safeguard the security of its services, if necessary in conjunction with providers of public communications networks with respect to network security. These measures shall ensure a level of security appropriate to the risk presented. In case of a particular risk of a breach of the security of the electronic communications network or part thereof, the provider of publicly available electronic communications services must inform subscribers of such risk and, where the risk lies outside the scope of the measures to be taken by

the service provider, of any possible remedies including an indication of likely costs involved.

The State Data Protection Inspectorate of the Republic of Lithuania is developing methodological recommendations regarding the assurance of security of public electronic communications services and networks. These recommendations are available on the official website of the Inspectorate in Lithuanian.

The government has approved the Programme for the Development of Electronic Information Security (Cyber-Security) for 2011–2019.

- 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?

Private keys can be required to be made available, if it is necessary for an ongoing criminal investigation.

To issue a certificate, a signatory shall sign a contract with a certification service provider. In drawing up a contract, the certification service provider must ensure protection of a person's data, regulated by the Law on Legal Protection of Personal Data and other Lithuanian laws. The certification service provider shall suspend the validity of the certificate upon the request by law enforcement institutions authorised by the government, in seeking to prevent crimes.

## 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?

There is no comprehensive legal regulation on domain names except for the rules establishing the registration procedure of the domain name .lt. The official administrator of the .lt top-level domain is the Information Technology Development Institute at Kaunas University of Technology (KTU ITPI). The .lt top-level domain administration principles and procedures are described in the Procedural Regulation for the .lt Top-level Domain.

The procedures are carried out according to the following principles: the principle of 'first come, first served', the principle of the uniqueness of names, the principle of non-discrimination, the principle of impartiality, the principle of data correctness.

It is possible to register a domain name without being a resident of Lithuania; this is assured by the principle of non-discrimination.

The Specific Rules of use of the Lithuania Name in Internet Domain Names (approved by the Resolution of 7 October 2009 the government of Lithuania) apply to the use of the official country name in domain names. The Rules provide that individuals have the right to register domain names containing the official long or short country name of Lithuania (Lithuanian Republic or Lithuania) only when the respective permit of the Lithuanian Communications Regulatory Authority is issued.

- 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?

The registration of a domain name does not of itself confer any additional rights, but the use of a domain name can constitute earlier rights, which may be defended by the provisions of unfair competition.

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

The ownership of a trademark will assist in challenging a 'pirate' registration of a similar domain name. The proprietor of a registered mark has an exclusive right to prevent all third persons not having consent use his or her mark in the course of trade when such mark is identical or similar and creates consumer confusion. Since no specific laws regulate domain names, Lithuanian courts usually apply other legal acts, including EC Regulation 874/2004 by analogy.

#### Advertising

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

The general rules of advertising in Lithuania are governed by the Law on Provision of Information to the Public and the Law on Advertising. The requirements in these laws are also applicable for advertising on the internet.

Some aspects of advertising are regulated in more detail by the specific laws (eg, the Law on Alcohol Control, the Law on Tobacco Control) and secondary legislation (resolutions of the government of Lithuania).

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

Article 19 of the Law on Provision of Information to the Public provides a list of information that is not permitted to be published in the media (including on the internet), including:

- information that incites changing the constitutional order of Lithuania through the use of force;
- information that instigates attempts against the sovereignty of Lithuania, its territorial integrity and political independence;
- information that instigates war, hatred, ridicule, humiliation, discrimination, violence or physical violent treatment of a group of people or a person belonging thereto on the grounds of age, sex, sexual orientation, ethnic origin, race, nationality, citizenship, language, origin, social status, belief, convictions, views or religion;
- information that disseminates, promotes or advertises pornography, or propagates or advertises sexual services and paraphilia; and
- information that promotes or advertises addictions and narcotic or psychotropic substances.

Furthermore, it is prohibited to disseminate disinformation and information that is slanderous and offensive to a person or that degrades his or her honour and dignity, or to disseminate information that violates the presumption of innocence and impedes the impartiality of judicial authorities.

The advertising of tobacco products (stipulated by the Law on Tobacco Control) is prohibited. Strict restrictions for the promotion of the sale of alcoholic beverages (stipulated by article 29 of the Law on Alcohol Control) and gambling (stipulated by paragraph 9 of article 10 of the Gaming Law) also apply.

The Law on Protection of Minors Against the Detrimental Effect of Public Information distinguishes additional restrictions to the public information (including content on the internet), which is available or intended for minors.

#### 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 general advertising requirements follow from the Law on Consumer Credit (article 4).

The more detailed Guidelines on Financial Services Advertising were approved by the Bank of Lithuania in 2012. These guidelines encompass 'all sorts' of financial advertising, including adverts on the internet. The guidelines seek to clarify the advertising components of Lithuania's Law on Consumer Credit, in particular requiring advertisers to give a clear indication of both the costs and benefits of financial products. The central bank covers both general advertising requirements and specific requirements for investments, deposits, insurance and credit in the new rules. The aim of these guidelines is to protect consumers against unjustified expectations or deception, helping to promote confidence in financial markets.

#### Defamation

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

The manager of the information society media shall be liable for the content thereof. An ISP is liable for any content it displays itself on its website.

However, the liability of an ISP for content posted on its websites by third parties or for content posted by its customers on websites hosted on its servers is limited. ISPs are not liable for displayed information, if ISPs themselves do not initiate the transmission of information, do not select the receiver of that information and do not select or modify the information transmitted.

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

An ISP can shut down a web page containing defamatory material without court authorisation, provided it has informed the public prosecutor of such material and that it does not delete the material.

#### Intellectual property

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

In general, linking to third-party websites does not require any special permission as there is no specific legal regulation. However, the terms and conditions of use posted on many websites sometimes seek to prohibit linking without prior consent. These terms and conditions must be respected and can be significant in the event of disputes between the parties. Linking can infringe copyrights or trademarks owned by the linked website owner if they duplicate the information contained in the linked page and incorporate it. To avoid any misunderstandings, a link should simply transport the visitor to the other site, without repeating the content found there.

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

First, the ability to use content from other sources is limited by copyright and trademark laws. In general, it is prohibited to use any content without the owner's permission. The owner has exclusive rights to authorise or to prohibit any of the acts described in the Law on Copyright and Related Rights, including broadcasting and retransmission of a work, as well as communication to the public of a work in any other way, including making a work available to the public over computer networks (on the internet).

Websites usually have their own terms and conditions. These terms and conditions must be followed by visitors of the site. In such terms and conditions general statements regarding the privacy policy, limitation of liability, data protection and copyright are usually described. In each particular case, these rules may be different. Before using the content from the third-party content provider, it is necessary to access the mentioned terms and conditions. The stated conditions and permission requirements can be different. In some cases, it may be sufficient to specify the original source of the



information (ie, website and authors of content). In any case, the website must specify the ownership and copyrights of the content.

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

If the website owner owns the intellectual property rights to the software, it may license it to third parties. If it is only a licensed user of third-party software, it will have to seek permission to license such software (unless such permission is already granted in the licence agreement).

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

There is no liability incurred by links to third-party websites itself. However, irresponsible linking may lead to the infringement of certain rights.

### Data protection and privacy

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

Personal data – any information relating to a natural person – the data subject who is identified or who can be identified directly or indirectly by reference to such data as a personal identification number or one or more factors specific to his physical, physiological, mental, economic, cultural or social identity (paragraph 1 of article 2 of the Law on Legal Protection of Personal Data). Special categories of personal data shall mean data concerning racial or ethnic origin of a natural person, his or her political opinions or religious, philosophical or other beliefs, membership in trade unions, and his or her health, sexual life and criminal convictions.

- 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?

In Lithuania, personal data may be processed by automatic means only when the data controller or his or her representative in accordance with the procedure established by the government notifies the State Data Protection Inspectorate (the Inspectorate). However, there are a few statutory exceptions listed in article 31 of the Law on Legal Protection of Personal Data, when such notification is not required (eg, personal data processing for a controller's internal administration purposes). The data controller, when notifying the inspectorate of data processing, has to submit a standard notification form and attach to it the filled questionnaire on technical and organisation security measures. The notification is free of state fees at present and it usually takes up to one month. There are specific rules for notification of sensitive personal data processing and publicly available databases.

Normally website providers are not allowed to sell personal data about website users to third parties, unless web users have given their consent.

- 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?

The use of cookies is permitted only if preliminarily approved by the web user (opt-in approach). However, consent is not required for cookies used for a website's technical structure and for cookies used for showing a website's content. Furthermore, consent is not required for session ID cookies and for so-called 'shopping basket' cookies (these exceptions do not apply if such cookies are used for collecting statistical information on website usage). It is required to

provide clear and exhaustive information on cookie use including information about the purposes of cookies related to data processing. This information should be provided in the privacy policy of the website.

The State Data Protection Inspectorate has published recommendations in Lithuanian regarding the use of cookies or similar technologies (recommendations are available on [www.ada.lt/images/cms/File/naujienu/slapuk\\_DV.pdf](http://www.ada.lt/images/cms/File/naujienu/slapuk_DV.pdf)).

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

A Lithuanian based data controller who for its own website employs servers located outside Lithuania must comply with the Lithuanian data protection laws, including rules regulating personal data transfers and relations with data processors. Personal data to data importers in the European Economic Area shall be transferred on the same conditions and in accordance with the same procedure as is applicable to data importers established in Lithuania. The transfer of personal data to data importers in third countries (outside of the European Economic Area) shall be subject to prior authorisation from the State Data Protection Inspectorate, unless statutory exceptions provide that such authorisation is not required.

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

So far in Lithuania data breach notification law applies to providers of publicly available electronic communications services or networks only.

### Taxation

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

Income from the sale of online products by a Lithuanian entity or by a foreign entity with a permanent establishment in Lithuania is taxable with 15 per cent corporate income tax. Furthermore, the sale of online products may be subject to 21 per cent Lithuanian VAT.

- 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?

Placing a server in Lithuania by a foreign company and carrying out an active trade through such server may lead to the foreign company having an obligation to register a permanent establishment in Lithuania and being subject to Lithuanian taxation.

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

Foreign companies are obliged to register for VAT purposes in Lithuania if they carry out transactions that are subject to Lithuanian VAT, regardless of the turnover. Lithuanian companies are obliged to register for VAT purposes if their sales subject to VAT exceed 155,000 Lithuanian litas in any 12-month period. An application should be filed by the companies obliged to register for VAT purposes to the Lithuanian tax authorities.

Domestic internet sales (ie, sales by local companies or foreign companies with a permanent establishment in Lithuania to Lithuanian customers) for taxation purposes are treated as any other supply of goods or services and may be subject to Lithuanian corporate income tax and VAT.

### Update and trends

There are two major draft amendments to the Gaming Law that relate to legalisation of online gaming. One was submitted by the working group of Parliament (XIP-4393) and another submitted by Member of Parliament Mr Šilgalis (XIP-3447). On 8 May 2013, both drafts were considered by the Budget and Finance Committee of the Parliament and the following results were reached.

The draft law (a more liberal approach to online gaming) of MP Šilgalis was rejected during the meeting of the Committee, and the alternative draft law (XIP-4393, working group's draft) was chosen to be approved. This decision was made after an evaluation of the received comments and proposals from interested persons and

institutions. A rejected draft law may be submitted repeatedly, but not earlier than six months after the rejection of the draft (ie, 8 October 2013).

Draft law XIP-4393 (the working group's draft, which is a more conservative approach that contains various restrictions as to online gaming providers) has received more favourable support and as a result was submitted for public comments. All the received comments and suggestions must be evaluated by the lead committee and the decision as to whether to approve a draft law is then adopted. Once this happens, the draft law is considered by Parliament itself and is either adopted or rejected by majority vote.

- 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?

If an offshore company (ie, a company not established in Lithuania and without a permanent establishment in Lithuania) sells goods over the internet to Lithuanian customers, it should not be subject to Lithuanian taxation. The mere fact that a local company is undersigned to take care of returns should not create a permanent establishment in Lithuania for the foreign company. Transactions between the offshore company and the local company taking care of returns should not be treated as supply of goods but rather as a supply of services, which should be remunerated at an arm's-length price.

### Gambling

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

Gambling activity in Lithuania has been legalised in 2001. So far, there is no special legislation with regard to online betting or gaming. Under the existing regulation, it is not permissible to operate an online betting or gaming business. However, several draft laws are being considered by parliament, which, if passed, would result in legalising online gambling.

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

Although the Lithuanian law prohibits gambling operators to offer online gambling to Lithuanian residents, gambling services online are available. There are no obstacles for Lithuanian players to use online gambling services offered by gambling operators registered in foreign countries.

In general, persons who are under 18 years of age shall be prohibited from participating in gaming. Persons who are 21 years of age and over may participate in gaming operated in gaming establishments (casinos). Persons under 21 years of age will be refused entrance to gaming establishments (casinos).

### Outsourcing

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

The key issues to be taken into account in case of the provision of services on an outsourced basis to our understanding are input VAT deductibility (ie, the purchaser of services being able to deduct input VAT), transfer pricing (if services are outsourced to a related entity) and taxation of employees (ie, fringe benefits, income in kind, non-taxable income, etc).

- 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?

Depending on the factual circumstances, such situations may qualify as a transfer of undertaking or a part of undertaking. The employees' rights in case of transfer of undertaking are regulated by the Labour Code of the Republic of Lithuania, which implements Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

If a particular outsourcing situation qualifies as a transfer of undertaking, the employees in question shall be protected against employment termination or a change of their employment conditions on the ground of a transfer of undertaking. The entity taking



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over the outsourced services shall have an obligation to take over all the employees who were carrying out the services before the transfer of undertaking. Also, prior to the transfer, the employees' representatives are entitled to an information and consultation procedure. These rules apply to all employees in Lithuania.

However, not all outsourcing situations qualify as transfers of undertaking, where the above guarantees to employees apply. Each case of outsourcing should be analysed separately to determine whether it qualifies as a transfer of undertaking.

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### Online publishing

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

A website provider is liable for the information it provides online. Every producer of public information or a participant thereof must appoint a person responsible for the content of the media.

Editorial responsibility shall not apply to a producer or disseminator of public information and they shall not be held liable for publication of false information where they have indicated the source of information and the cases are specified in paragraph 1 of article 54 of the Law on the Provision of Information to the Public.

In these cases, liability for the publication of false information shall fall upon those who were the first to publish such information.

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

The Law on Copyright and Related Rights regulates the rights of makers of databases. A database means a compilation of works, data or any other material arranged in a systematic or methodical way and individually accessible by electronic or other means, except for computer programs used in the making or operation of such databases.

The scope of rights can depend on whether a website provider is the maker of a database and whether the database was made available to the public.

In general, the maker of a database shall have the right to prohibit any form of making available to the public of all or a substantial part of the contents of a database by the distribution of copies, by renting them, by transmitting all or a substantial part of the contents of a database over computer networks (the internet) or any other mode of transmission. However, the maker of a database that is lawfully made available to the public (hosted on the website) may not prevent lawful users of the database from extracting and reutilising insubstantial parts of its contents, evaluated qualitatively or quantitatively, for any purposes whatsoever.

A lawful user of a database that is lawfully made available to the public in whatever manner may not perform acts that conflict with normal exploitation of the database or unreasonably prejudice the legitimate interests of the maker of the database, also must not cause prejudice to the rights of the owners of copyright and related rights in respect of works or subject matter contained in the database.

The rights of makers of databases shall run for 15 years from the date of completion of the making of the database. If the database is made available to the public in whatever manner within this period, the rights of the maker of the database shall expire 15 years after the date of its making available to the public.

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

There is no special regulation affecting website providers. For marketing and advertising issues, website providers must follow general rules, which are regulated, first of all, by the Law on Advertising.



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