



## 4th Working Round Working Group WG D1

**“Legal framework and e-business in Greece – interaction  
and perspectives”**

### BRIEF CONCLUSION

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One of the most **pivotal** obstacles **that** contributed to the **constraint** of electronic entrepreneurship was definitely the lack of clear legislative regulations in relation to crucial Internet issues. This caused legal uncertainty, which, not only intimidated the already hesitating consumers, but also led to the **fall back** of the companies **that** attempted to hold leading positions in this particular area.

The very nature of the Internet is **the one causing** this wide legal gap. Its particular features such as (indicatively) the following:

- its **ubiquity** that rejects any sense of territoriality and creates a new global market;
- **the** dematerialization of all real elements;
- the interference **of technology in** all transactions (commercial and non commercial **ones**)

hinder full enactment of **the present** legislation and **hold back the invocation** of jurisprudence in e-transactions. Therefore, without **experiencing a** complete invalidation of applicable legal provisions, most of them cannot meet the needs and technical specifications of cyberspace. **This fact is creating confusion** in digital transactions.

## SCOPE

Given that this legal matter needs to be fully revised, cleared and **specified** by means of the involvement not only of specialized jurists, but also with the **participation** of **both the** representatives of productive social classes and **the** consumers, the aforementioned working group has been set up **in order to deal in brief** with the following:

- the registration of Greek and European legislation on e-transactions;
- the study and commentary on the major legal **issues** resulting from the **electronic commercial** transactions per se, such as: acceptability (e.g. digital signatures, validity of documents, etc.) validity of contracts, settlement of disputes, safety in general (e.g. personal data, undesired third party interference with transactions, domain names, etc.), consumer protection, etc.;
- the registration of indicative shortfalls in the relevant regulatory framework;
- and the suggestion of best legal practices to companies involved in e-business (in the form of indicative suggestions on what course of action companies must take in any case).

## DELIVERABLES

The group's deliverables are:

- Codified presentation (guide) of the institutional framework governing individual aspects of e-business in Greece and the European Union.
- Last deliverable including an analysis and presentation of the legal framework and an indication of best legal practices to companies involved in e-business, as well as suggestions to State authorities legislating on matters related to e-business (in the form of an indicative list of shortfalls in the relevant regulatory framework)

- A summary of the final deliverable including the codified form of all of the above.

## RESULTS

The results produced by the proposed working group will materially contribute to:

- the protection of businesses with long-term prospects in the field of operations from unfair competition of speculator peers, whose activity undermines consumer confidence towards all **e-companies**
- the **enhance** of information, protection, higher confidence and motivation of consumers in using the Internet for their transactions with businesses and public agencies
- the strengthening of healthy competition and smooth operation of the market
- the facilitation of competent state authorities in applying the relevant legislation
- the expansion of e-business in Greece.

## EXECUTIVE SUMMARY<sup>1</sup>

In brief, the subjects reviewed by the group are:

**I. How will the ON-LINE PRESENCE OF A COMMERCIAL ENTERPRISE be LEGAL**

**II. How will it CONCLUDE CONTRACTS USING ELECTRONIC MEANS and what is the EVIDENTIARY STRENGTH of ELECTRONIC DOCUMENTS**

**III. Which are the legal conditions for ADVERTISING AND COMMERCIAL COMMUNICATION over the Internet**

**I. THE LEGAL PRESENCE of a COMMERCIAL ENTERPRISE ON-LINE**

**This matter** is directly related to the creation of the website and **the** upload of the **enterprise** on the Worldwide Web.

Hence the company's presence on the Internet must combine **marketability**, which is related mainly to the **artistic** part of the website **and legitimacy**, which is related to a set of rules that must be **followed** and information that must be furnished to consumers.

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<sup>1</sup> Drafting of final deliverable- WG D1 Rapporteur  
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The main elements that on-line companies must take into consideration are:

## 1. DOMAIN NAME

When a company selects a domain name its ultimate goal should be that the buying public is able to track the company easily in the chaotic Internet market. This will enable the increase of the number of hits of the site and could lead to the increase of profitability.

For that reason, companies usually choose to use as domain name either their name or the name of their most marketable and known product.

However, it is not always easy for the company to obtain the domain name it wishes, because:

- domain names are unique (contrary to trademarks and company names that may belong to more than one party);
- the main principle governing the acquisition of a domain name is “first come first served”;
- should someone else have rights over the specific name in the off-line world, like for instance someone that has registered it as a trademark or trade name, this can put in question the domain name at any time and deprive the company from its use;
- the system of temporary or definite domain name deletion that is in place nowadays is extremely time consuming and a company may waste valuable time in court cases and conflicts.

In addition, domain names, being a transferable good, are intangible assets of a company, which acquire their value according to their reputation and their brand-name.

For that reason, companies, before deciding which domain name to acquire, must first check if that specific name is free for use in the physical world pursuant to applicable regulations on trade names and trademarks, and then investigate whether such name can also be obtained as a domain name. In any case what so ever, it is useful for a companies to get hold of a name both as its domain name and as its trademark so that it can be fully protected.

Nowadays, both Greek and foreign persons (natural and legal) can obtain domain names and each of them can obtain as many domain names as it wishes.

Lastly, according to the new EETT decision, FORTH ICS has no longer the monopoly as the sole Greek domain names Registration Authority. Pursuant to international practice, the market of domain names Registries shall open up and anyone wishing to become a Registrar shall be allowed to do so.

## 2. THE RELATION OF THE COMPANY WITH THE INTERNET SERVICE PROVIDER (ISP) HOSTING ITS WEBSITE

In order for a company to go **on line**, it must be hosted by an ISP that dispose of the appropriate technical infrastructure to place the website on the Internet and to allow access **to the commercial website**.

Therefore, the company must **establish a contractual relationship** with the ISP that **will host its website**. This contract is of great importance **since it will regulate** the relationship **of the parties**. Thus it should include:

- the technical features of the hosting service; and
- the safety specifications that must be met

**Moreover, in particular** for companies that anticipate a high volume of transactions over their website, **it is necessary** for the abovementioned contract to be accompanied by a Service Level Agreement (SLA) including, but not limited to, the following:

- the level of technology used (under which the ISP may not fall);
- the safety measures available to protect at each time against undesired intrusions (such as hacking);
- the possibility of recording **any** transactions **made** and the number of **people visiting** the website;
- the maintenance & upgrade of the technology used, both in terms of connection speed and presence of the website on the Internet;
- the ISP response time in the event of technical problems attributable to the ISP.

Special provision is made in EU regulation, in respect to the responsibility of the ISP content of the website, for a free of liability regime, given that the ISP **removes IMMEDIATELY or makes inaccessible any website, as soon as information is provided that there are grounded cases of illegal activities**.

### **3. WEBSITE TERMS OF USE AND GENERAL TERMS AND CONDITIONS FOR TRANSACTIONS.**

The Internet is a new commercial channel where transactional customs have not yet been clearly defined. Therefore, in order to delimit the relations between the company and consumers, it is considered necessary for all commercial websites to have special links or banners describing the website terms of use, including any disclaimers and informing users on any general terms and conditions.

#### **A. General Terms and Conditions for Transactions**

General Terms and Conditions for Transactions:

1. are contractual terms;
2. **that** have been previously set;
3. **with** uniform content **addressed** to an indefinite number of future contracts; and
4. are posed by one party to the other upon conclusion of the contract

Therefore, what must companies do in order for its general terms and conditions to be legally **included** in the transaction?

1. **bring to** the attention of the visitors the general terms and conditions;
2. **meet all requirements set by the law**
3. **identify the specific terms as general terms and conditions;**
4. **set the general terms and conditions** in the language **of** the transaction (definitely in Greek in the case of Greek websites);
5. **in any case, the purpose is to provide to the users all information necessary on the content of general terms and conditions**

## **B. Disclaimers**

In general, companies must **avoid posing particularly stringent terms to consumers**. In particular, they should not attempt to put all responsibility for possible faults of either the system or the product on their customers.

**Any disclaimer set must be:**

- **expressed with precise terms;**
- **using rational and legal provisions**

**in order to provide actual protection** to the company. Hence, the use of disclaimers is imperative but only as a **preventive measure**.

## **C. Website Terms of Use**

These may include, but not be limited to, the following:

- all information imposed by law with regard to the conclusion of e-contracts;
- **special terms clarifying** as much as possible general terms such as **“force majeure, due diligence, etc.”**;
- **special reference must be made in the event that** a specific website uses **cookies** or **any other** spying software and **analysis of the reasons for its use**;
- special reference must be made **in case of collection and processing of the personal data of** users/customers;
- the means rendering electronic transactions and personal data of the users safe, as well as the level of their protection must be mentioned in particular.

## **II. CONCLUSION OF ELECTRONIC CONTRACTS – EVIDENTIARY VALIDITY OF ELECTRONIC DOCUMENTS**

### **1<sup>st</sup> Electronic documents as the **CONSTITUENT FORM** of electronic contracts**

**Electronic documents have become equal to private documents and there is no legal hurdle to their drafting as such.**

The issue of **the use of digital signatures** in e-commerce transactions **is not a condition for **formulating valid electronic documents****.

After all, **according to Greek Law**, commercial transactions are informal and **therefore they may also be carried out orally without any documents signed**. It is obvious that **the same can** apply to electronic transactions as well.

The use of digital signatures is only related to the ensurance the safety of **any** transactions over the Internet, and to the evidentiary validity of electronic documents **in relation to:**

- the identity of the parties;
- the authenticity and acceptability of the content.

## A. How are contracts concluded with the use of electronic means?

### 1. Conclusion of contracts by e-mail

In general, in electronic transactions it is considered **that messages are received** as soon as they have successfully been delivered to the inbox of the receiver.

In terms of commercial transactions, in particular, **the seller must notify his intention to use his e-mail address in the course of commercial matters.**

**As soon as the message enters the sphere of influence of the receiver (his inbox), then the latter is responsible for any **damage or failure**, while prior to **that point** such responsibility lies with the sender**

### Procedures that companies must follow when exchanging e-mail messages

- They must distinguish commercial **from** personal transactions.
- They should set limits on the transactions made by means of electronic documents. For instance, they should **define the maximum** quantity of goods or amount of money **for which** an order can be placed electronically.
- They should set a specific electronic address through which their communication shall be effected.
- They must name contact persons.
- They must request **regular changes of the PIN and password (the security measures) of the electronic address through which communications are effected.**
- They should set – if possible – the times during which e-mail shall be checked.
- They must require notification **upon** receipt of any e-mail

### 2. Conclusion of contracts through websites

AN EXAMPLE:

A user visits the website. They see the book “Matomena Homata” by Dido Sotiriou at the surprising price of € 2 and wants to buy it. **He clicks** on the appropriate icon and a **form appears asking for the consumer to fill it. The contract is concluded when the user clicks on the “send” button.** Thus, the seller/ business, must send the book and the buyer must pay € 2.

Therefore, the company must state expressly one or all of the elements listed next:

- **“the offer is valid until out of stock ”**

- **“the offer is valid until..... (date)”**
- **“this form is not a proposal ”,**

otherwise, it shall be responsible, pursuant to the terms of the sale, upon receiving the consumer’s form completed.

### **Information that companies must provide **on the conclusion** of sales contracts over the Internet**

The law sets some information requirements that the company must provide to the consumers upon conclusion of the contracts (**not applicable** to contracts by e-mail or B2B contracts).

#### **1.Information provided **PRIOR** to the conclusion of an online contract:**

- It **is necessary** to provide to consumers the information set under Directive 1997/7/EC (already in Article 4 (2) of Law 2251/1994) before they click on the “I Agree” **button and the deal is concluded**
- **All information** included in Directive 2000/31/EC (Articles 4 and 9 of Presidential Decree 131/2003 on e-commerce) **must** be part of the Website Terms of Use.

#### **2. Information provided **WHILE** the conclusion of the online contract **is being processed**:**

- **All information provided** in Article 4 (9) of Law 2251/1994 **must be included** in the General Terms of the Sale

#### **3. Information provided **FOLLOWING** the conclusion of an online contract**

- **All information provided for under article 4 of Law 2251/1994 on remote transactions must be included** in the order confirmation.

### **2<sup>nd</sup>. Electronic documents as **EVIDETIAL MEANS** of electronic contracts**

**Digital signatures are the method of proving the authenticity of an electronic document, namely that this is originated from its issuer.**

The signatures placed on a private agreement are called upon to prove three very important elements:

- the identity of the parties;
- the authenticity of the document;
- the acceptance of the content.

A distinction is made under Article 3 (1), (2) of Presidential Decree 150/2001 of digital signatures, and consequently of electronic documents in two categories:

#### **A. Electronic documents with recognized digital signature**

Pursuant to Law (Articles 3 & 1 of Presidential Decree 150/2001), digital signatures that replace handwritten signatures are only the “**advanced digital signatures**” generated by “**a safe signature generation configuration**” and is based on “**a recognized certificate**” issued by a Certification Services Provider meeting all of the requirements under Appendix III of the Presidential Decree.

Hence, only the aforementioned category of electronic documents is fully and automatically **considered by law to be equivalent to private documents**.

The validity of any other type of documents must be set by the Court of Law depending on the terms of formation and dispatch.

**B. Description of the current status, given that the digital signatures system is not yet being widely adopted**

### **B1. Electronic addresses as proof of the authenticity of electronic documents**

In accordance with recent case-law the e-mail address of each user proves his identity. In any case the burden of proof lies with them.

**B1a. What must companies know when they carry out transactions using electronic documents without a recognized digital signature:**

- **The use of electronic mail is an unsafe way of performing electronic transactions.** Nonetheless, it provides information (whose validity must be carefully examined each time) about the **issuer's identity**.
- At the same time, electronic addresses also certify (having however low evidentiary validity) **the recipient's identity**.
- Companies must avoid, in general, carrying out transactions **through** general electronic addresses accessible to many people, because it is difficult to prove the identity of the person having received or sent, respectively, an electronic document. Such e-mail addresses usually are: info@ebusinessforum.gr, webmaster@ebusinessforum.gr etc.

### **B2. Electronic documents as voluntary proof (namely a proof agreed upon by the parties)**

Companies may, in the context of their commercial transactions, mutually agree that the electronic documents transmitted shall constitute full proof **equivalent to** private documents, **even without the use of electronic signatures**.

**Such an agreement is a proof of the transactional practices used by the parties and therefore they should be accepted as such in front a Court of Law.**

**B2a. Useful advice to companies carrying out transactions using electronic documents without a recognized digital signature**

- They should define the form of electronic documents they wish to use by setting specific standardization rules.
- They should set a specific technical jargon to be used.

- They should accurately set the time when electronic declarations of will take legal effect, using special clauses called “documentation procedures”.
- They should agree upon the evidentiary validity of the messages exchanged.

### III. ADVERTISING AND COMMERCIAL COMMUNICATION

#### 1. Advertising

Advertising on the Internet is based on **two-way communication** and the actual participation of users at any time.

Hence the Internet offers the possibility for:

- messages to **be addressed personally to each user**;
- **acquisition of information of the user's need allowing for commercial messages tailored to his consumer profile**;
- useful **statistical indications for the enterprises** from the collection and processing of various information such as the number of people having viewed the advertisement, the number of people that have responded to it, the time during which consumers have viewed the message, etc.

**Both misleading advertising (namely the one deceiving the public), and unfair advertising are forbidden on the Internet .**

Unfair advertising is advertising against moral standards. For that reason, companies must at least see to the following:

- that there is a real relation between the advertising message and the product;
- that advertising tricks aiming at the subconscious (subliminal advertising) are avoided;
- that hidden advertising is avoided;
- that **illegal comparative** advertising is avoided;

#### DIRECT MARKETING

The company:

1. must obtain the user's consent in order to send direct marketing e-mail messages;
2. consumer's personal data used by the company (or any third party on its behalf) must have been collected on legal grounds;
3. advertising must be such so that it does not offend the privacy of users;
4. in any case, the company must provide consumers with the possibility to request the interruption of indirect marketing;

#### 2. COMMERCIAL COMMUNICATION

##### Commercial communication using electronic means in general

In accordance with the legal framework the most important element in commercial communication is the **IDENTIFICATION**:

- of the communication per se as being commercial;
- of the natural or legal person effecting such communication;
- of offers and gifts;
- of contests and games.

Thus, in general, sending promotional commercial material:

- either in the form of advertisements;
- or in the form of a proposal for making an "advantageous" agreement by e-mail

is allowed, provided that consumers **opt in**.

Just like, for instance, clicking on a box next to relevant question in the seller's site.

**So, what must companies do?**

- They must avoid overloading the networks of consumers with repeated and large e-mail messages (spamming).
- In any case, even if a user had initially stated that they wished to receive promotional material, they should be given the possibility to state otherwise.