

IT LAW NEWSLETTER

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▣ Introduction.

The following document is an approach to last year's most significant legal e-commerce developments in Spain. In addition we briefly summarize what we consider will be the most significant legal e-commerce issues in 2010.

▣ Most significant legal e-commerce developments in the Spanish jurisdiction during 2009.

a. Act 29/2009, 30th of December that modifies unfair competition and publicity legal regime in order to improve consumers and users' protection (BOE 315, 31st December 2009) Adopts to the Spanish Legislation the Directive 2005/29/EC concerning unfair commercial practices.

This Act was published on the 31st of December 2009 and it modifies, among others, the Spanish Unfair Competition Act, in particular introduces a new provision regarding "Aggressive commercial practices". According to this provision it is considered unfair practice to make repeatedly unsolicited commercial communications via phone, fax, email or other means of communication, except when it is done in a way that is justified in order to comply with a contractual obligation.

When carrying out these commercial communications the trader or professional will have to use systems that enable the consumer to proof its opposition to receive any more commercial communications from the trader or professional.

The provisions on aggressive commercial practices cover those practices which significantly impair the consumer's freedom of choice by using harassment or coercion.

This amendment to the Unfair Competition Spanish Act gives an extra legal protection to the consumers in addition to those provisions contained in the Spanish Personal Data Protection Legislation and the Information Society Services legislation.



b. Royal Decree 899/2009, 22nd May, that approves the Letter users' rights relating to electronic communications networks and services (BOE 131, 30th of May 2009) adopts to the Spanish Legislation the 2002/22/EC of the European Parliament and the Council of 7th March 2002 on universal services and users' rights relating to electronic communications.

This Royal Decree establishes the universal service of telecommunications that grants certain services to all the end-users, independently of their geographical location, at an affordable price and with certain quality level.

c. In June 2009 AECEM (Spanish Association of E-Commerce and Marketing), with the collaboration of the Ministry of Industry, Commerce and Tourism published the "Libro Blanco del Comercio Electrónico" (E-Commerce White Book). It is an useful guide for those that pretend to sell its products or services on the internet.

It contains quantitative data (statistics, analysis and projections) as well as examples, references and useful tools for all those companies that want to carry out e-commerce activities in Spain. The guide book includes the basic legal provisions that need to be taken into account when developing e-commerce activities in Spain.

■ Most significant legal e-commerce issues in the Spanish jurisdiction in 2010.

a. A project of Law adopting the Directive 2008/48/EC of the European Parliament and of the Council on credit agreements for consumers ("*Anteproyecto de Ley de contratos de crédito al consumo*") is currently being studied by the Spanish Council and it might be approved this year. It includes the possibility to conclude the credit agreements at the consumer's request using a means of distance communication. In these cases special provisions are included in order to protect the consumer's rights.

b. A Project of Law of Economía Sostenible ("*Anteproyecto de Ley de Economía Sostenible*") was approved by the Spanish Council last 27th of November 2009. Currently it is being analysed by different advisory bodies. If it is finally approved it will modify numerous Spanish laws and regulations.

The Information Society Services and E-Commerce Spanish Act will be amended in order to increase the protection of the Copyright within the Information Society Services. In this sense the infringement of Copyright will be one of the causes that might authorise the competent organism to adopt the necessary measures to interrupt Information Society Services.

In addition the Spanish Copyright Act will be also amended allowing the Ministry of Culture to watch over the potential infringement of Copyrights by the Information Society Services providers. A Copyright Commission is created within the Ministry of Culture to carry out this vigilance's tasks.



Even before their final approval these modifications have been harshly criticised by different sectors, especially by the internet users, that consider that this would be an unacceptable interference of the government in the internet use and activities.

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