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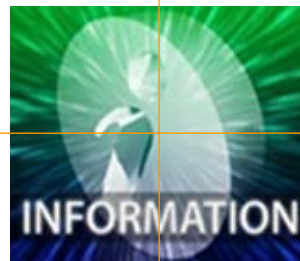
WHAT GENERAL INFORMATION DO EMARKETPLACES HAVE TO PROVIDE ON THEIR SITES?

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Abstract

This is the second article, in a four-part series. Its aim is to explain all the mandatory information that should be displayed by any website. In this text Teresa Rodríguez de las Heras Ballell answers the question of how the mandatory information should be presented, the requirements of this information, as well as what is the specific data that has to be made available. Useful and well explained, this article was prepared by Teresa who is an Associate Professor in Commercial Law at the Carlos III University of Madrid, Spain, a recognized expert in this field and the author of the book on legal aspects of E-Marketplaces “El régimen jurídico de los Mercados Electrónicos Cerrados (e-Marketplace)”.

General Information

The content of the general information obligation laid down in the regulations is not especially complex, nor is complying with this obligation overly burdensome. All the same, two considerations regarding the nature of the electronic environment strongly suggest paying careful attention to how the information duty is complied with.

First, the possibilities offered by the Web for organizing information, illustrating data, incorporating multimedia resources or expanding the content without any time or space restrictions require a more demanding assessment of the quality, sufficiency and informative power of the mandatory data. In this regard, it is advisable not to hold back on making available information of relevance that properly identifies the provider. Nevertheless, the ease with which information can be organized in the digital arena makes it advisable to use the mechanisms available for structuring data by level of importance, for pooling information and for simple and direct location of content by search criteria. An effort must be made to avoid having information overkill, which can be easily achieved in the electronic world, from actually leading to users being underinformed.

Second, it must be borne in mind that due compliance with the disclosure requirements that are legally placed on providers has to satisfy a number of requirements:

- **PERMANENT:** the information must be available permanently, which in practice requires strengthening of the controls/mechanisms to ensure continuous accessibility to the Web. Too frequent and too many interruptions, serious breakdowns, or unreasonable website failures would entail the breach of this requirement.
- **EASY:** the information must be easily accessible, which requires special care in designing the website to ensure the information is simple to locate for the average user, that it is identified under sufficiently expressive titles (Company

data, Who we are, Meet us, Contact info, Identifying particulars, General information) and located in a visible spot on the screen. In this regard, the rather common practice of placing this information in a "Legal Notice" link normally found at the bottom of the page, together with the links to the data protection policy and terms of use of the website is not very convincing. This option cannot be considered satisfactory for several reasons: first, the link is usually at or near the bottom of the page, so it is not visible on the screen unless the user scrolls down (the "low-traffic" zone); second, the expression "Legal Notice" used to name the link to the provider's identifying particulars and other general information does not seem to be the most appropriate, because despite the legal origin of the disclosure requirement, it contains neither an alert nor a warning; third, the "Legal Notice" link is usually the place chosen for inclusion of all information of legal implications (industrial and intellectual property, prohibitions on use, disclosures by publicly traded companies and even the personal data protection policy), which can create a hodgepodge where it is hard to quickly find the desired information. More meaningful expressions such as those referred above (Company data, Who we are, Meet us, Contact info, Identifying particulars, General information) that link to general information about the company are strongly suggested. Moreover, privacy policy should be included separately in a sufficiently clear link titled "Privacy Policy" or "Personal Data Protection" (or similar). Likewise, those terms regulating the use of the website by the users should be gathered under the title "Terms and Conditions", "Terms of Use" or equivalent.

- **DIRECT:** the information should be directly accessible. This raises the question as to whether the identifying particulars can be placed in a link or should be permanently visible in some part of the home page or the website frame. The aesthetic and commercial demands of the website's design generally lead service providers to reject the most rigorous option, which would require the information to be displayed on the home page. Moreover, this option would once again imply placing unnecessary space constraints on the information itself. So it seems perfectly acceptable to have the information located behind a link with a sufficiently descriptive name. The legal requirement that this information be directly accessible seeks to avoid situations in which the data, at least those of mandatory disclosure, are concealed behind an endless chain of links that make it overly cumbersome for the user to find and consult the information.

In relation to this condition of direct accessibility, there is another structural question of significance regarding the layout and design of the website. Given the ever more common installation in access devices of filters and mechanisms for blocking pop-ups, insofar as possible, it may be a good idea to avoid having this basic information placed on a pop-up screen in order to keep the risk of access being blocked or hindered to a minimum.

The above requirements of permanent, easy and direct access are expressly stated in the applicable community rules. Additionally from a reading of the Spanish regulations that have been transposed from the relevant EU law we find further requirements:

- **FREE:** access to the information must be free of charge, which is guaranteed by posting the mandatory information on the website. Obviously, the fact that Internet access requires that users pay a fee to their Internet service provider

does not contradict this legal requirement. But the free-of-charge condition would be violated if the mandatory information is not accessible until after the contracting of some good or service that requires prior payment by the user.

- **ELECTRONIC ACCESS:** access to the information must be through electronic means. This is easily complied with by making the requisite information available to the user on-line on the website.

- **ASSURANCE OF TRUTHFULNESS:** the utmost assurances should be given as to the veracity and authenticity of the information shown on the website. In order to comply with the proposed measure, it is proposed that all information on each service offering be notarized in the relevant public instrument, with express mention of the number of the notary record and the specific notary office, for the sake of greater safeguards and transparency for the market and, naturally, to safeguard the rights of the service users. This requirement would be particularly important in relation to pre-contract disclosure.

Subject to the conditions and applying the precautions discussed above, the specific information that must be made available to the user is:

- a. **Name** of the service provider (registered name, corporate name)
- b. Registered office or geographical **address** where the provider is established
- c. **E-mail address** and any other details that allow direct and effective contact with the service provider
- d. **Registry** particulars if the provider is registered in the Companies Registry or some other public register
- e. **Taxpayer identification number**
- f. Information on the prior **administrative authorization**, if applicable
- g. In the case of regulated professions, data on the professional association, **qualifying title** obtained and the applicable professional rules and standards
- h. Clear and exact information on the **price of the product**, indicating whether the price includes the applicable taxes and shipping costs
- i. **Codes of conduct** to which the provider adheres to, and provides instructions on how to consult them on-line. In the Directive this point is covered as purely pre-contract information, whereas in some national laws, such as in Spain, it is included as part of the general information

It is readily seen that the required legal disclosures are not excessive or overly difficult to comply with. It is nevertheless advisable to choose a compliance strategy which, while fulfilling the technical, aesthetic and commercial demands of the company, adequately ensures the access conditions imposed by the law.

In the forthcoming Article 3, disclosure obligations prior to concluding a contract will be discussed.