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electronic marketplaces for international business

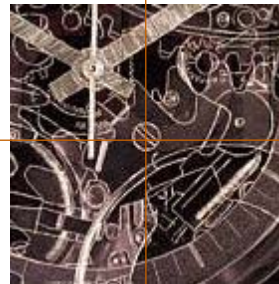
LIABILITY

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Introduction

The information on a web page may at times be false or fictitious, thereby causing harm to one of the parties or both. There are specific provisions and case law, which determines when a company or individual is liable for any unlawful or damaging information on a web page, although, as we shall see below, these rules may at times be deficient.

False or fictitious information on a web page

There is no trans-national or Community law determining liability arising from the inclusion of such information on one's own web page. Community legislation, as we now shall see, only provides for liability where this conduct is by third parties, without the knowledge of the owner of the web page. Consequently, in order to determine liability, the injured party will have to rely on the national legislation of the country of the individual who included the incorrect information.

Liability of third party intermediaries

The EU Electronic Commerce Directive (Directive 98/48) establishes the liability of third-party Internet service providers (ISPs). However, since in most cases the latter are unaware of the content of all the information on the pages they host, the liability of these providers is limited. But if they are aware of the existence on a page they host of this type of harmful content, they must require the site in question to rectify the incorrect and injurious information. Otherwise, the intermediary transmitter of information will be fully liable.

Liability for the contents of other web pages

This issue arises when we include a link to another site in our web page. In general, this should entail no responsibility, but liability may arise if it is proven that you were aware of the contents of the page to which you have the link. Notwithstanding the principle that the service provider is not liable (see above), it is important to point out that:

- (a) If the Internet service provider (ISP) provides only transmission services, it will be liable if they are the source of the transmission, if they select the recipient of the transmission and if they select or change the information transmitted.
- (b) If the ISP provides storage services, it will be liable if it has modified the information, if it has failed to comply with the requirements for access to the information or the requirements for updating the information, if it has used its technology illegally to obtain data from the information, if it has not exercised care in restricting or removing cached information when that information has disappeared from the source or its access has been restricted by court order.
- (c) Where the ISP provides storage services on a server, it will be liable if it has actual knowledge of the illegal acts or information about the facts, which reveal it to be illegal, and fails to remove or diligently disable access to the information after becoming aware that it is illegal.

Liability arising from comments by third parties in your interactive area

These disputes arise in forums and other interactive areas for the exchange of opinion, where there is participation by users unrelated to the owner of the virtual space.

Where there is editorial control over the contents of the interactive zone (for example, if you are the moderator of a discussion group), you are liable. Conversely, you are not liable if there is no control and you have provided the means for communicating the possible presence of offensive content, but erase it as soon as it is detected. In any event, the EU electronic commerce Directive establishes the principle that the service provider is not liable. However, if you are contractually obliged to supervise content, then you may be liable.