

OBLIGATIONS AND SANCTIONS APPLICABLE IN PANAMA TO INTERNET COMMERCIAL SERVICE PROVIDERS

POR PUBLIO CORTÉS

The Pandemic has boiled e-commerce in Panama, both established businesses and a tide of entrepreneurs have taken social networks and all the forms available via the internet by storm, to offer goods and services, being that in many cases, not even merchants or clients, have paid much attention to the Law that establishes some guidelines on the matter. A “flyer” is artistically prepared, it is disseminated and a “start-up” emerges.

Within this panorama, it is good to briefly review some of the main obligations and sanctions established in a legislation whose most recent update dates from 2012 and its regulations from 2019.



Obligations

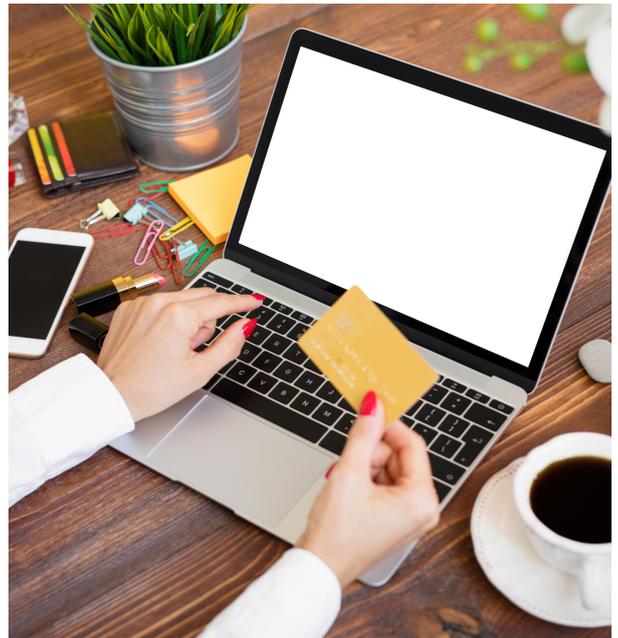
Although the basic rule of the legal framework of Panama is that e-commerce is not subject to prior authorization and free competition will be promoted, technological neutrality and international compatibility, this does not mean that it is a world free of rules and supervision by the authority of the State.

Let's look at some of those rules:

(1) The competent authorities may request to the General Directorate of Electronic Commerce (DGCE) of the Ministry of Commerce and Industries (MICI), the interruption of a commercial service over the internet, when they consider that it threatens public safety; public health; due process; the protection of youth and childhood and the protection of consumers, including the power to block access to national territory of a service provider located in another State.

(2) The general rules of civil, criminal and administrative liability that apply to all merchants also extend to the Internet merchant.

(3) Commercial communications must be identified as such and identify the people on behalf of whom they are sent and must include the ways in which the receiver can reject future messages. If it is by email, the "subject" must indicate that it is "ADVERTISEMENT". If they are offers and / or contests,



they must comply with the general rules, but also with DGCE regulations, regarding the conditions of access and participation.

(4) In addition to complying with the Data Protection Law, the Electronic Commerce Law has a data protection rule in force for the email address, according to which, if as a result of a digital commercial contract or subscription, the customer shares their email, the merchant is obliged to request authorization if he intends to use that mail in the future for commercial purposes. This authorization is revocable and an easy way to communicate the revocation should be established.

(5) OPTIONAL: Register with the DGCE to exercise e-commerce, proving company address data, details of its owners and other records.

(6) The merchant via internet must notify the DGCE of the substitution and / or cancellation of their domain names. You must also apply and comply with all DGCE regulations.

(7) COMPULSORY: The merchant must give access by electronic means (website and others) to its customers and the authorities of the following information:

- a. Name, address and email
- b. Registration data in the Public Registry and Notice of Operation or equivalent in the country where you have your main domicile
- c. If it is a regulated activity, the data of the authorization to operate
- d. The Unique Taxpayer Registration number (RUC)
- e. Terms and conditions of the service with clear and exact information on price and applicable taxes, shipping costs, return procedure and the security policies of the systems through which it operates
- f. The codes of conduct to which it is adhered and the way to consult them electronically

Sanctions

It all depends on the type of infractions, namely:

Minor Infractions

Fines for minor infractions range from US\$100.00 to US\$500.00. These are the behaviors that apply:

- (1) Not allowing the provision of information, access and collaboration to the DGCE in its supervision work.
- (2) Breach of obligation regarding commercial communications, that is, they must be identified as such and identify the people on behalf of whom they are sent and must include the ways in which the receiver can reject future messages. If it is by email, the "subject" must indicate that it is "ADVERTISEMENT". If they are offers and / or contests, they must comply with the general rules, but also with DGCE regulations, regarding the conditions of access and participation.



(3) Failure to comply with the obligation to acknowledge receipt of a document, contract or communication, when its exclusion has not been agreed or the contract has been concluded with a consumer, unless it constitutes a serious infringement.

Serious infractions

The fines for serious infractions range from US\$500.00 to US\$5,000.00. These are the punishable behaviors:

(1) Forward a message, send a new message, and / or use another email address to re-contact a recipient that rejected future communications, when the respective procedure has been completed; the DGCE determines that the service provider acts intentionally and / or habitually.

(2) Not making the privacy, security and terms of service policies available to the recipient of the service to which, where appropriate, the contract is subject, in the manner provided by the Law and its regulations.

(3) The repeated breach of the obligation to acknowledge the receipt of an acceptance when its exclusion has not been agreed or the contract has been concluded with the consumer.

(4) The resistance, excuse or refusal to the inspection action of the bodies empowered to carry it out in accordance with the Law.

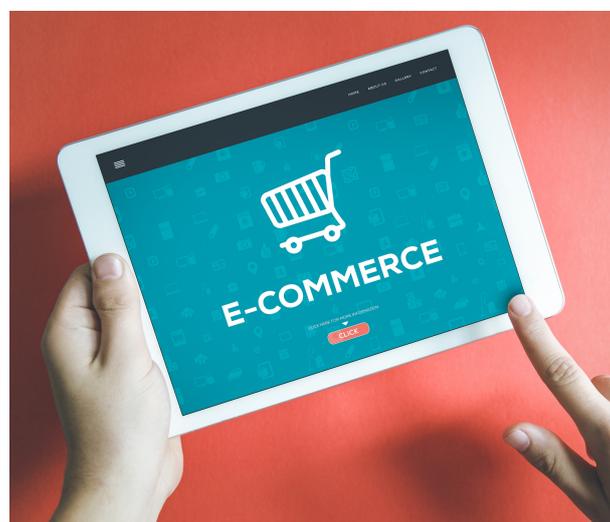
Very serious infractions

Fines for very serious infractions range from US\$5,000.00 to US\$10,000.00. These are the behaviors that would receive this type of sanction:

(1) Failure to comply with orders issued by the competent administrative authority for the protection of the general interests indicated in the Action for Suspension that seeks to stop the activity of the internet merchant for committing acts contrary to the Law.

(2) Failure to comply with the obligation to suspend transmission, data hosting, access to the network or the provision of any other equivalent intermediation service, when ordered by a competent administrative authority.

(3) The improper, fraudulent or unauthorized use by the DGCE of a Trust Seal, that is, of the certification granted by the DGCE in order to promote the use of the Internet as a secure means to offer and obtain commercial goods and services.



Final Comments

E-commerce legislation is more complicated than what is discussed here. However, the foregoing is enough to illustrate a fact that seems obvious and that is that much of what the regulations indicate is not being complied with. As in other cases, the lack of compliance with the Law is most likely due to various reasons. One of them could be the little administrative capacity of the State to put the regulations into practice. However, in this particular case, we think that most likely the main reason is that the Law is a bit distant from reality and from the speed of how e-commerce evolves.

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WWW.LEGALADVISORPANAMA.COM

M: +507 6679-4646 E: CORTES@LEGALADVISORPANAMA.COM

   @PUBLIOCORTES.LAWYER