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Source: Secretaría de Estado para las Telecomunicaciones y la Sociedad de la Información (SETSI)

Title: Act 34/2002, of 11 July, on information society and e-commerce services

I General provisions

Head of State

No. 13758 Act 34/2002 of 11 July 2002

An act respecting information society and electronic commerce services

**JUAN CARLOS I
KING OF SPAIN**

To all to whom this Act may come, be seen or be known: Know ye that Parliament has adopted the following law and that I have given it royal assent.

Overview

I

The purpose of this Act is to incorporate, within Spanish legislation, Directive 2000/31/EC of the European Parliament and of the Council, of 8 June 2000, on certain legal aspects of information society services, in particular electronic commerce, in the internal market (Directive on electronic commerce). In addition, it incorporates in part Directive 98/27/EC of the European Parliament and of the Council, of 19 May 1998, on injunctions for the protection of consumers' interests, by establishing provisions in accordance with that Directive with respect to injunctions against actions committed in breach of the provisions of this Act.

What Directive 2000/31/EC refers to as the "information society" is the result of the extraordinary expansion of telecommunication networks, and particularly the Internet as a vehicle for conveying and exchanging information of every kind. Bringing the information society into the mainstream of economic and social life offers a vast array of advantages, among them an

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improvement in business efficiency, a broadening of user choice and the emergence of new sources of employment. But as the Internet and other new technologies become established, they raise a number of legal issues that need to be clarified by establishing an appropriate legal framework that can win the necessary trust on the part of all players concerned so that this new medium may be used to its fullest advantage.

Accordingly, this Act takes as its basis those general and special provisions that have already been established to govern activities now being conducted by electronic means, and focuses on those areas which existing provisions do not already cover either because they relate to new activities or because they are activities that present special features when they are conducted by electronic means.

II

The Act adopts a broad concept of "information society services" which encompasses not only the concluding of contracts for goods and services by electronic means but also the supplying of information by electronic means (as is done by newspapers and magazines whose content can be read on the Web), intermediation activities with regard to the provision of Internet access services, the transmission of data over telecommunication networks, the making of a temporary copy of an Internet page at the request of a user, the storage in proprietary servers of data, services or applications provided by others, and the provision of tools with which to search for or link to other Internet sites, as well as any other service that may be provided in response to an individual request by a user (the downloading of audio or video files, etc.) provided that it constitutes an economic activity for the provider of the service. Such services are offered by telecommunication operators, Internet service providers, portals, search engines or any other subject party having an Internet site through which it performs any of the activities mentioned, including electronic commerce.

With respect to subject parties, the Act applies generally to service providers established in Spain. The place where a provider is established is understood to mean the place from which an economic activity is directed and conducted, which is a definition adapted from the concept of a tax domicile under Spanish tax law and is compatible with the physical concept of establishment under Community law. The Act also applies to anyone that provides information society services through a "permanent establishment" situated in Spain even though that provider may not be resident in Spain. In the latter case, the party is subject to the Act only in part, with respect to those services rendered from Spain.

The place at which a service provider is established is a key element in the Act because that determines the scope of application not only of the present Act but also of all other Spanish laws and regulations that may apply depending on the activity being conducted. Similarly, the place at which a service provider is established determines which national legislation will apply and which competent authorities will enforce it, in accordance with the principle of the application of the law of the country of origin as reflected in Directive 2000/31/EC.

In addition, the free provision in Spain of information society services from other countries in the European Economic Area may only be restricted in those cases permitted under Directive 2000/31/EC, where there is a risk of serious harm to certain fundamental values such as public order, public health or the protection of minors. In addition, the provision of services from such countries may be restricted if such services relate to any of the subject areas excluded from the principle of country of origin as specified in Article 3 of the Act and if the provisions of Spanish law that would apply to them are breached.

III

The Act provides for the domain name or names corresponding to a service provider to be entered in the public register, together with the name of the service provider in question, whether

for the purpose of being incorporated as a legal person or simply for the purpose of public information, so as to ensure that information associating the service provider, the place where it is physically established, and its Web location as indicated by its Internet address may be readily available to the general public and the Public Administration alike.

The Act also establishes the duties and responsibilities of service providers that perform intermediation activities such as transmitting, copying, storing or locating data on the Web. In general, the duty is imposed on such operators to cooperate in halting the dissemination of certain unlawful services and content. The responsibility that may arise by reason of failure to comply with these provisions consists not only of administrative responsibility but also of civil or criminal liability depending on the legal assets affected and the laws and regulations that may apply.

The Act also places emphasis on protecting the interests of the recipients of services so that they may enjoy adequate guarantees when they contract for the provision of a good or service via the Internet. To that end, the Act imposes on service providers: the obligation to provide anyone visiting their Internet sites with access to identification data; the obligation to inform recipients of the prices charged for their services; and, where applicable, the obligation to permit recipients to read, print and retain a copy of the general terms and conditions to which the contract is subject. In a situation where a contract is being concluded with a consumer, the service provider must also give the consumer guidance during the process of establishing the contract, indicate the steps that need to be taken and the way to correct any errors made when filling in information, and confirm acceptance upon receipt.

With respect to commercial communications, the Act requires that they be identified as such and prohibits their being sent by electronic mail or other equivalent means of electronic communication unless the recipient has given consent to receiving them in this way.

IV

The Act also seeks to facilitate the concluding of contracts by electronic means inasmuch as it establishes that consent given by electronic means is valid and effective in accordance with the underlying principle governing the formalization of contracts under Spanish law, that there is no need for an express reference to electronic means to be included in order for a contract to be made effective between the parties, and that paper documents and electronic documents are equivalent for purposes of fulfilling the "in writing" requirement which appears in various laws.

In addition, advantage is taken of the opportunity to define the time and place at which an electronic contract is deemed to have been concluded. Here, a single solution has been adopted to replace the divergent provisions heretofore contained in the Civil Code and Commercial Code, which is also applicable to other kinds of contracts concluded at a distance.

The provisions contained herein concerning general considerations with respect to the concluding of electronic contracts, and provisions concerning the validity and effectiveness of electronic contracts and the time at which consent is given shall apply even if neither of the parties to the contract is a provider or recipient of information society services.

The Act promotes the development of codes of conduct in the areas for which it provides, inasmuch as they are viewed as a tool for self-regulation that is particularly well suited to the various provisions laid down in the Act and the specific nature of each sector. Because of their simplicity, speed and convenience for users, the Act also seeks to strengthen procedures for arbitration and the alternative dispute resolution procedures that may be created under codes of conduct for dealing with any disputes that may arise in the concluding of electronic contracts and the use of other information society services. In addition, the use of electronic means is encouraged in carrying out those procedures, subject where applicable to any provisions concerning the use of

electronic means of communication established in specific laws and regulations respecting arbitration.

In accordance with the provisions of Directives 2000/31/EC and 98/27/EC, the Act regulates the bringing of actions to obtain injunctions aimed at halting any activity contrary to the Act that might put the interests of consumers or users at risk. For the bringing of such actions, not only the provisions of this Act but also the provisions of the General Act incorporating Directive 98/27/EC into Spanish law must be taken into account.

The Act also provides for the possibility of citizens and organizations to contact various ministries and administrative bodies to obtain practical information about various aspects of the matters with which this Act deals, and this will make it necessary for mechanisms to be established to assure full coordination amongst them and to ensure that users are provided with consistent information.

Lastly, the Act establishes a system of sanctions that is proportionate but effective, as called for in Directive 2000/31/EC, to dissuade service providers from failing to comply with the provisions of this Act.

In addition, the Act contains a series of provisions aimed at ensuring that persons with disabilities will have access to information provided by electronic means, and particularly to information provided by the Public Administrations, a commitment contained in the Council Resolution of the European Union of 25 March 2002 on the accessibility of public websites and their content.

This legislation has been drawn up following an extensive public consultation process and according to the procedure for the provision of information in the field of technical standards and regulations as established pursuant to Directive 98/34/EC of the European Parliament and of the Council, of 22 June 1998, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998, and to Royal Decree 1337/1999 of 31 July 1999.

PART I

General provisions

CHAPTER I

Purpose

Article 1. Purpose

1. The purpose of this Act is to regulate the legal regime for information society services and the concluding of contracts by electronic means with reference to the obligations of service providers, including those that act as intermediaries in conveying content over telecommunication networks, commercial communications transmitted by electronic means, information prior and subsequent to the concluding of an electronic contract, terms and conditions with respect to the validity and effectiveness thereof, and the system of sanctions applicable to providers of information society services.

2. The provisions of this Act shall be without prejudice to the provisions of other laws and regulations of Spain or of its Autonomous Regions which lie outside the coordinated field of laws and regulations, or whose purpose is to protect public health or security, including national defence, the protection of consumers' interests, the tax regime applicable to information society services, the safeguarding of personal data, and laws and regulations governing competition safeguards.

CHAPTER II

Scope

Article 2. Service providers established in Spain

1. This Act shall apply to providers of information society services established in Spain and to services provided by them.

A service provider shall be deemed to be established in Spain when the service provider's place of residence or business domicile is located on Spanish soil, provided that such place of residence or business domicile is the location where the management and administration of the service provider's business dealings are indeed centred. Otherwise, the service provider shall be deemed to be established at the location where such management and administration activities are carried on.

2. In addition, this Act shall apply to information society services offered by providers resident or domiciled in another State through a permanent establishment located in Spain.

A provider shall be deemed to be operating by means of a permanent establishment located in Spain if, on a continuing or regular basis, it has workplaces or facilities on Spanish soil where some or all of its activities are carried out.

3. For the purposes of this article, it shall be assumed that a service provider is established in Spain if it or any of its branch offices is registered in the Trade Register or in such other Spanish public register as may be necessary in order for it to be incorporated as a legal person.

The use of technical facilities situated in Spain in order to provide the service or access it shall not, *per se*, constitute evidence that the provider is established in Spain.

4. Providers of information society services established in Spain shall be subject to any other Spanish laws and regulations that may be applicable, depending on the activities in which they engage, irrespective of whether electronic means are used to carry on those activities.

Article 3. Service providers established in another Member State of the European Union or of the European Economic Area

1. Without prejudice to the provisions of Article 7, paragraph 1, and Article 8 below, this Act shall apply to providers of information society services established in another Member State of the European Union or the European Economic Area if the recipient of the services is based in Spain and the services pertain to the following areas:

- (a) Intellectual or industrial property rights.
- (b) Advertising by mutual investment institutions.
- (c) Direct insurance activities carried out under a regime of right of establishment or a regime of freedom to provide services.
- (d) Obligations arising from contracts concluded by natural persons who are consumers.
- (e) Regime for the choosing by the contracting parties of the legislation applicable to their contract.
- (f) The legality of unsolicited commercial communications transmitted by electronic mail or other equivalent means of electronic communication.

2. In any case, the creation, transfer, modification and extinguishing of rights in real property situated in Spain shall be subject to the formal requirements as to validity and effectiveness established under Spanish law.

3. The service providers referred to in paragraph 1 shall also be subject to the provisions of Spanish law governing the areas specified in that paragraph.

4. The provisions contained in the foregoing paragraphs shall not apply in those cases where, pursuant to the laws and regulations governing the areas specified in paragraph 1, the laws of the country in which the consumer of the service resides or is established do not apply.

Article 4. Providers established in a country that is not a Member State of the European Union or the European Economic Area

Providers established in countries that are not Member States of the European Union or the European Economic Area shall be subject to the provisions of Article 7, paragraph 2, and Article 8.

Providers that address their services specifically to Spain shall, in addition, be subject to the obligations established under this Act provided that such does not contravene the provisions of any international treaties or agreements that may apply.

Article 5. Services excluded from the scope of the Act

1. The following information society activities and services shall be governed by their own specific laws and regulations:

(a) Services rendered by notaries and property and trade registrars in the performance of their public functions.

(b) Services rendered by lawyers in the performance of their functions in representing and defending their clients' interests.

2. With the exception of Article 7, paragraph 1, the provisions of this Act shall apply to information society services relating to games of chance which involve wagering a stake with monetary value, without prejudice to the provisions contained in the relevant legislation of Spain or its Autonomous Regions.

PART II

Provision of information society services

CHAPTER I

Principle of freedom to provide services

Article 6. No requirement of prior authorization

The provision of information society services shall not be subject to the requirement of prior authorization.

The foregoing shall not apply to authorization regimes established under Spanish law that do not specifically and exclusively refer to the provision by electronic means of the services covered.

Article 7. Principle of freedom to provide services

1. The provision of information society services deriving from a provider established in a Member State of the European Union or of the European Economic Area shall be pursuant to the regime of freedom to provide services, and no restrictions may be established with respect to them

for reasons deriving from the coordinated field of laws and regulations, except in the cases specified in Articles 3 and 8.

2. The application of the principle of freedom to provide information society services to providers established in countries that are not Member States of the European Economic Area shall depend on the applicable international agreements.

Article 8. Restrictions on the provision of services

1. If a particular information society service is or risks being contrary to the principles enumerated below, the authorities competent to uphold those principles may, in the exercise of their lawful functions, take the necessary measures to suspend the service or remove the data placed at risk. The principles in question are as follows:

- (a) The safeguarding of public order, criminal investigations, public security or national defence.
- (b) The protection of public health or the health of natural persons who are consumers or users, including such natural persons when they are acting as investors.
- (c) Respect for human dignity and for the principle of non-discrimination on the basis of race, sex, religion, views, nationality, disability or any other personal or social circumstance.
- (d) Protection of minors.

In the application of the restrictive measures referred to in this paragraph 1, the guarantees, rules and procedures established under the law shall in all cases be upheld and maintained in order to safeguard rights to personal and family privacy, to the protection of personal data, and to freedom of expression and freedom of information, where such rights may be affected.

In all cases where the Constitution, the laws and regulations governing the rights and freedoms in question, or the laws and regulations that may apply with respect to the various subject areas establish that legal bodies are competent to intervene in the pursuing of activities or exercising of rights, only the competent judicial authority may take the measures provided for under this article.

2. If, in order to ensure that a decision to suspend a service or to remove data coming from a provider established in another country is effectively carried out, the competent body should consider it necessary to prevent access thereto from Spain, that body may, either directly or by means of a request to the Ministry of Science and Technology in which proper grounds are cited, order providers of intermediation services established in Spain to take the necessary measures to prevent such access.

The provisions of Article 11 shall apply when the data to be removed or the service to the suspended come from a provider established in Spain.

3. The restrictive measures referred to in this article shall be objective, proportionate and non-discriminatory, and shall be taken either on a precautionary basis or pursuant to the implementation of a decision issued in accordance with legally established administrative procedures or the applicable procedures provided under legislation governing litigation.

4. Outside the sphere of claims brought before the courts, when restrictive measures are established that pertain to an information society service coming from any Member State of the European Union or the European Economic Area other than Spain, the following procedure shall be followed:

- (a) The competent body shall ask the Member State in which the provider in question is established to take the appropriate measures. If such measures are not taken, or if the measures

taken are inadequate, that body shall give advance notification to the European Commission, or if applicable to the Joint Committee of the European Economic Area, and to the Member State, of the substance of the measures that it intends to take.

(b) If it is a matter of urgency, the competent body may take the appropriate measures and give notification thereof to the Member State where the provider is established and to the European Commission, or, where applicable, to the Joint Committee of the European Economic Area, within two weeks after the measures have been taken. In this case, it must state the reason for the urgency.

The requests and notifications referred to in this paragraph shall in all cases be conveyed through the National Public Administration body that is the designated channel of communication vis-à-vis the European Communities.

CHAPTER II

Obligations and responsibilities of providers of information society services

Section 1. Obligations

Article 9. Domain name registration

1. Every provider of information society services established in Spain shall inform the Trade Register in which it is registered, or any other public register in which it may be registered for purposes of being incorporated as a legal person, or solely for public notice purposes at least, of a domain name or Internet address, as applicable, that it uses to identify itself on the Internet, as well as of any replacement or cancellation of its domain name or Internet address unless such information is already on record with the register in question.

2. Each register shall record domain names and the replacement or cancellation thereof according to its own rules.

Entries made in the Trade Registers shall be communicated immediately to the Central Trade Register so that they may be included among the data that it compiles for public information purposes.

3. The communication referred to in paragraph 1 above must be made within one month after the domain name or Internet address in question has been obtained, replaced or cancelled.

Article 10. General information

1. Without prejudice to the information requirements that may be established in the applicable laws and regulations, a provider of information society services shall be obliged to have means in place to ensure that recipients of the service and the competent bodies may have easy, direct and permanent access to the following information, by electronic means, free of charge:

(a) The provider's name; its residence or domicile or, in lieu thereof, the address of one of its permanent establishments in Spain; its electronic mail address; and any other information making it possible to communicate with the provider directly and effectively.

(b) Data concerning the provider entered in the Register as referred to in Article 9 above.

(c) If the provider's activity should be subject to a regime of prior administrative authorization, the data pertaining to that authorization and the particulars of the competent supervisory body.

(d) If the provider engages in a regulated profession, he must indicate:

1. Information on the professional association to which he belongs, if applicable, and his registration number in that association.
 2. The official academic or professional title that he holds.
 3. The Member State of the European Union or the European Economic Area in which the title was granted and, if applicable, the corresponding attestation of equivalency or recognition.
 4. The professional rules and regulations pertaining to the practice of his profession and the means whereby they may be consulted, including electronic means.
- (e) The provider's tax identification number.
- (f) Clear and precise information on the price of the product or service, including whether the price is inclusive of tax, and on any shipping costs if applicable.
- (g) Any codes of conduct to which the provider subscribes, and the electronic means whereby they may be consulted.

2. The obligation to provide this information shall be deemed to have been fulfilled if the supplier posts the information in question on its webpage or at its Internet site in accordance with paragraph 1.

Article 11. Obligation to cooperate with providers of intermediation services

1. When it is ordered by a body competent in the subject area in question, in the exercise of its lawful functions, that the provision of an information society service coming from a provider established in Spain be suspended or that certain content from a provider established in Spain be removed and that the cooperation of providers of intermediation services is needed to that end, it may order such providers, either directly or by means of a request to the Ministry of Science and Technology in which proper grounds are cited, to suspend the transmission, storage of data, access to telecommunication networks or provision of any other equivalent intermediation service that they perform.

2. In the application of the measures referred to in paragraph 1, the guarantees, rules and procedures established under the law shall in all cases be upheld and maintained in order to safeguard rights to personal and family privacy, to the protection of personal data, and to freedom of expression and freedom of information, where such rights may be affected.

In all cases where the Constitution, the laws and regulations governing the rights and freedoms in question, or the laws and regulations that may apply with respect to the various subject areas establish that legal bodies are competent to intervene in the pursuing of activities or exercising of rights, only the competent judicial authority may take the measures provided for under this article.

3. The measures referred to in this article shall be objective, proportionate and non-discriminatory, and shall be taken either on a precautionary basis or pursuant to the implementation of a decision issued in accordance with legally established administrative procedures or the applicable procedures provided under legislation governing litigation.

Article 12. Obligation to retain traffic data on electronic communications

1. Operators of electronic communication networks and services, providers of telecommunication network access and providers of data storage services shall be required to retain connection and traffic data generated by communications established during the provision of an information society service for a maximum period of 12 months, in accordance with the terms of this article and the implementing regulations established pursuant to it.

2. The data that operators of electronic communication networks and services and providers of telecommunication network access are required to retain under the foregoing paragraph shall consist solely of those data necessary to enable the terminal equipment used by the user in transmitting the information to be located.

Providers of data storage services shall be required to retain only those data that are essential to identify the origin of the data stored and the time when the provision of the service commenced.

In no case shall be obligation to retain data infringe upon the confidentiality of communications.

The operators of electronic communication networks and services and the providers of the services referred to in this article may not use the data retained for any purpose other than those indicated in the following paragraph or otherwise permitted by law, and must take appropriate security measures to prevent loss or alteration of the data or unauthorized access to them.

3. The data shall be retained for use in the context of a criminal investigation or to safeguard public security or national defence, and shall be turned over to the courts or the Ministry of Revenue upon request. The communication of these data to the security forces shall be subject to the provisions of the laws and regulations on the protection of personal data.

4. Regulations shall be established specifying the categories of data to be retained depending on the service provided, the period during which the data must be retained in each case, subject to the maximum laid down in this article, the conditions in which the data are to be stored, handled and held, and, where applicable, the manner in which the data are to be turned over to authorized bodies in response to their requests and the manner in which they are to be destroyed at the end of the required retention period, unless the data are needed for these or other purposes established by law.

Section 2. Liability

Article 13. Liability of providers of information society services

1. Providers of information society services shall be subject to general civil, criminal and administrative liability as established under the law, without prejudice to the provisions of this Act.

2. The liability of providers of services in connection with the carrying on of intermediation activities shall be as set forth in the following articles.

Article 14. Liability of network operators and access providers

1. Telecommunication network operators and access providers that provide an intermediation service consisting of transmitting information provided by the recipient of the service by means of a telecommunication network, or providing access to a telecommunication network, shall not be liable for the information transmitted unless such operators or providers have initiated the transmission, selected or modified the information, or selected the recipients of the information.

The strictly technical processing of files containing information which takes place during transmission shall not be deemed to constitute modification of the information.

2. The acts of transmission and of provision of access referred to in the foregoing paragraph include the automatic, intermediate and transient storage of the information transmitted insofar as this takes place for the sole purpose of carrying out the transmission by the telecommunication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

Article 15. Liability of service providers that make a temporary copy of information requested by users

A provider of an intermediation service which transmits information provided by a recipient of the service by means of a telecommunication network and which, for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, stores that information in its systems on an automatic, intermediate and temporary basis, shall not be liable for the content of that information or for the temporary reproduction thereof on condition that:

- (a) It does not modify the information.
- (b) It permits access to the information only by recipients that meet the conditions laid down for that purpose by the recipient of the service whose information is being requested.
- (c) It complies with the rules for updating information as generally accepted and applied by the sector.
- (d) It does not interfere with the lawful use of technology generally accepted and used by the sector to obtain data on the use of the information.
- (e) It removes the information it has stored or it disables access to it upon effectively becoming aware:
 1. That the information has been removed from the place in the network where it was originally located;
 2. That access to it has been disabled; or
 3. That a court or competent administrative body has ordered that the information be removed or that access to it be disabled.

Article 16. Liability of providers of data storage or hosting services

1. A provider of an intermediation service that consists of storing data provided by the recipient of the service shall not be liable for the content of the information stored at the recipient's request on condition that:

- (a) It does not have actual knowledge that the activity or the information stored is unlawful or that it infringes upon the property or rights of a third party that could give rise to indemnification; or
- (b) Upon obtaining such knowledge, it acts expeditiously to remove the information or disable access to it.

The service provider shall be deemed to have the actual knowledge referred to in subparagraph (a) above when a competent body has declared that the information is unlawful or ordered that it be removed or that access to it be disabled, and the provider has become aware of that decision, without prejudice to any procedures with respect to the detection and removal of content that providers may apply under voluntary agreements or any other means of gaining actual knowledge that may be established.

2. The exemption from liability established in the foregoing paragraph 1 shall not apply when the recipient of the service is acting under the direction, authority or control of the provider.

Article 17. Liability of service providers that provide links to content or search engines

1. A provider of information society services that provides links to other content or includes content in its own directories or search engines shall not be liable for the information to which it directs the recipients of its services on condition that:

(a) It does not have actual knowledge that the activity or the information that it recommends or to which it provides a link is unlawful or that it infringes upon the property or rights of a third party that could give rise to indemnification; or

(b) Upon obtaining such knowledge, it acts expeditiously to delete or disable the link in question.

The service provider shall be deemed to have the actual knowledge referred to in subparagraph (a) above when a competent body has declared that the information is unlawful or ordered that it be removed or that access to it be disabled, and the provider has become aware of that decision, without prejudice to any procedures with respect to the detection and removal of content that providers may apply under voluntary agreements or any other means of gaining actual knowledge that may be established.

2. The exemption from liability established in the foregoing paragraph 1 shall not apply when the recipient of the service is acting under the direction, authority or control of the provider that is facilitating the finding of that content.

CHAPTER III

Codes of conduct

Article 18. Codes of conduct

1. Public Administrations shall, through coordination and advisory services, encourage the drawing up and implementation of voluntary codes of conduct by commercial, professional and consumer associations, organizations and corporations in regard to the subject areas governed by this Act. In particular, the National Public Administration shall encourage the drawing up of codes of conduct at the European Community and international levels.

Codes of conduct may deal in particular with procedures for detecting and removing unlawful content and the protection of recipients of services from the receipt of unsolicited commercial communications, and with extrajudicial procedures for resolving any disputes that may arise in regard to the provision of information society services.

2. In drawing up these codes, steps must be taken to assure participation by consumer and user associations and organizations representing persons with physical or mental disabilities, where the interests of such groups may be affected.

Codes of conduct shall particularly take into account the protection of minors and human dignity insofar as the content of such codes may pertain to these areas; and, where necessary, codes specifically concerned with these areas may be established.

Government authorities shall especially promote the establishment of common standards agreed by industry for classifying and labelling content, and shall encourage providers to adhere to them.

3. The codes of conduct referred to in the foregoing paragraphs must be accessible by electronic means. So that they may be more widely disseminated, their translation into other official languages of the European Community shall be encouraged.

PART III

Commercial communications by electronic means

Article 19. Legal regime

1. Commercial communications and promotional offers shall be governed by this Act, as well as by their own laws and regulations and the applicable laws and regulations pertaining to commerce and advertising.

2. In any case, the General Act on the Protection of Personal Information (Act 15/1999, of 13 December 1999) and the implementing regulations established pursuant to it shall apply, with particular reference to obtaining personal data, informing the parties concerned and establishing and maintaining personal data files.

Article 20. Information required in connection with commercial communications, promotional offers and contests

1. Commercial communications made by electronic means must be clearly identifiable as such, and must indicate the natural or legal person on whose behalf they are being made.

If they are made by electronic mail or by an equivalent means of electronic communication, they shall include the word "Publicidad" ["Advertisement"] at the beginning of the message.

2. In cases involving promotional offers, such as discounts, premiums and gifts, or promotional contests or games, the necessary prior authorization must be obtained and steps must be taken to ensure not only that the requirements laid down in the foregoing paragraph are met together with those of the applicable commercial laws and regulations, but also that they are clearly identified as involving promotional offers, contests or games and that the conditions for access to them or, if applicable, participation in them, are presented clearly and unambiguously.

Article 21. Prohibition on the sending of unsolicited commercial communications by electronic mail or equivalent means of electronic communication

It shall be prohibited to send advertising or promotional communications by electronic mail or any other equivalent means of electronic communication unless such is expressly authorized or requested in advance by the recipients of such communications.

Article 22. Rights of recipients of commercial communications

1. If a recipient of services is required to provide his electronic mail address as part of the process of concluding a contract for or subscribing to a service, and the provider intends to use that electronic mail address subsequently to send commercial communications, the provider must inform its customer of that intent and request the customer's consent to receive such communications before the procedure for concluding the contract is finalized.

2. The recipient may, at any time, revoke his consent to receive commercial communications simply by notifying the sender of his decision in this regard.

To this end, service providers shall be required to provide simple procedures, free of charge, whereby recipients of services may revoke any consent they have given.

In addition, information concerning such procedures, accessible by electronic means, must be provided.

PART IV

Concluding of contracts by electronic means

Article 23. Validity and effectiveness of contracts concluded by electronic means

1. Contracts concluded by electronic means shall serve for all purposes established under the law if they have been properly accepted and meet all other necessary requirements in order to be valid.

Electronic contracts shall be governed by the provisions of this Part IV, the Civil Code, the Commercial Code and any other civil or trade provisions relating to contracts, including in particular laws and regulations that relate to consumer and user protection or that govern commercial activity

2. In order for a contract concluded by electronic means to be valid, it shall not be necessary for the parties to have agreed in advance on the use of electronic means.

3. Wherever the law requires that a contract or any information relating thereto be recorded in writing, this requirement shall be deemed to have been met if the contract or information is recorded on an electronic device.

4. The provisions of this Part IV shall not apply to contracts pertaining to family law or the law of succession.

Contracts, business dealings or legal acts which, under the law, must take the form of public documents in order to be valid or to serve for specific purposes, or which, under the law, require the intervention of legal bodies, notaries, property or trade registrars, or public authorities shall be governed by the specific legislation applicable in each case.

Article 24. Evidence of contracts concluded by electronic means

1. Evidence of a contract concluded by electronic means and of the obligations deriving from it shall be subject to the general rules of law and, where applicable, to the provisions of legislation on electronic signatures.

2. In any case, the electronic device on which a contract concluded by electronic means has been recorded shall be admissible for legal purposes as documentary evidence.

Article 25. Intervention by a trusted outside party

1. The parties may agree that an outside party should have custody of the declarations making up an electronic contract and should record the date and time when such communications were made. Such intervention by an outside party may not alter or take the place of the functions that must be performed by authorized persons under the law for the purpose of establishing a public record.

2. The outside party shall hold the declarations made between the parties by telematic means, on a data device, for such time period as may be agreed, which in no case may be less than five years.

Article 26. Applicable law

The provisions established under Spanish law with respect to private international law shall govern the law applicable to electronic contracts, and the provisions of Articles 2 and 3 of this Act shall be taken into consideration for the application thereof.

Article 27. Obligations prior to the concluding of a contract

1. A provider of information society services that carries on activities involving the concluding of contracts by electronic means must comply with the information requirements established under current laws and regulations and, in addition, shall have the obligation to inform the recipient clearly, comprehensively and unambiguously, before beginning the contracting procedure, of the following points:

- (a) The different technical steps to be followed in order to conclude the contract;
- (b) Whether the electronic document constituting the contract will be retained, and whether it will be accessible;

(c) The technical means it is providing for identifying and correcting inputting errors;
and

(d) The language or languages in which the contract may be concluded.

2. The provider shall not be required to provide the information indicated in the foregoing paragraph if:

(a) The contracting parties so agree, and neither party is a consumer; or

(b) The contract has been concluded solely by an exchange of electronic mail or by equivalent electronic communication of some other kind, on condition that such means have not been used solely for the purpose of avoiding the requirement that this obligation be fulfilled.

3. Without prejudice to the provisions of specific legislation in the matter, contract offers or proposals made by electronic means shall be valid during such time period as may be determined by the party making the offer or, in lieu thereof, for so long as recipients of the service continue to have access to them.

4. Before beginning the contracting procedure, the service provider must make available to the recipient the general terms and conditions that will apply to the contract if it is concluded, in such a way that the recipient is able to store them and reproduce them.

Article 28. Information subsequent to the concluding of the contract

1. The offeror shall be required to confirm receipt of the acceptance of the offer to the acceptor, by any of the following means:

(a) By sending an acknowledgement of receipt by electronic mail or by some other means of electronic communication to the address indicated by the acceptor, within 24 hours after receiving the acceptance; or

(b) By confirming the acceptance received, by equivalent means to that used in the contracting procedure, as soon as the acceptor has completed that procedure, provided that the confirmation can be filed by the recipient thereof.

In cases where the obligation to issue a confirmation is the responsibility of a recipient of services, the provider shall facilitate the fulfilment of that obligation by making any of the means indicated in this paragraph available to the recipient. This obligation shall apply irrespective of whether the confirmation is to be addressed to the provider itself or to another recipient.

2. The acceptance and the confirmation thereof shall be deemed to have been received when the parties to which they are addressed are able to verify their receipt.

If the receipt of the acceptance is confirmed by means of an acknowledgement of receipt, the addressee shall be deemed to have been able to verify receipt as from the moment when the acknowledgement has been stored on the server on which the addressee's electronic mail account is administered, or in the device used for receiving communications.

3. It shall not be necessary to confirm receipt of the acceptance of an offer if:

(a) The contracting parties so agree, and neither party is a consumer; or

(b) The contract has been concluded solely by an exchange of electronic mail or by equivalent electronic communication of some other kind, on condition that such means have not been used solely for the purpose of avoiding the requirement that this obligation be fulfilled.

Article 29. Place where the contract is deemed to have been concluded

Contracts concluded by electronic means, in which one party is a consumer, shall be deemed to have been concluded at the location where the consumer has his customary place of residence.

Electronic contracts between businesspeople or professionals shall be deemed to have been concluded at the location where the service provider is established, unless otherwise agreed by the parties.

PART V
Judicial and extrajudicial resolution of disputes
CHAPTER I
Injunctions

Article 30. Injunctions

1. An action for an injunction may be brought with respect to any activity contrary to the present Act that infringes upon consumers' collective or individual interests.

2. The purpose of bringing an action for an injunction shall be to obtain a ruling requiring the respondent to cease such activity that is contrary to the present Act and to prohibit its resumption in the future. In addition, such an action may be brought for the purpose of prohibiting an activity that has already been carried out prior to the issuing of the injunction if there are sufficient grounds for believing that such activity may imminently be resumed.

3. Injunctions shall be issued in accordance with the specific provisions in this regard laid down in the Civil Procedure Act.

Article 31. Persons and bodies qualified to bring an action

The following shall be qualified to bring an action for an injunction:

- (a) Natural or legal persons holding a right or having a legitimate interest.
- (b) Groups of affected consumers or users, in the cases and subject to the provisions laid down in the Civil Procedure Act.
- (c) Consumer and user associations that meet the criteria laid down in the General Consumer and User Protection Act (Act 26/1984, of 19 July 1984) or, if applicable, in the consumer protection legislation of the Autonomous Regions.
- (d) The Ministry of Revenue.
- (e) The National Bureau of Consumer Affairs [Instituto Nacional del Consumo] and analogous bodies in the Autonomous Regions and competent local authorities concerned with consumer protection issues.
- (f) Entities of other Member States of the European Union established for the purpose of protecting the collective or individual interests of consumers, which have been qualified by the European Commission and included in the list published in that connection in the *Official Journal of the European Communities*.

That list shall be accepted by the courts as evidence that a body is qualified to bring an action, without prejudice to the examining of any action brought to determine whether it is founded or whether the interests affected constitute proper grounds therefore.

CHAPTER II

Extrajudicial settlement of disputes

Article 32. Extrajudicial settlement of disputes

1. A provider and recipient of information society services may submit any disputes to the arbitration mechanisms established under legislation concerning arbitration and consumer and user protection, and to any extrajudicial dispute settlement procedures established under codes of conduct or other self-regulating instruments.

2. In the extrajudicial dispute settlement procedures referred to in the foregoing paragraph, electronic means may be used in accordance with the applicable terms and conditions established in the governing laws and regulations.

PART VI

Information and oversight

Article 33. Information for recipients and providers of services

Recipients and suppliers of information society services may contact the Ministry of Science and Technology, the Ministry of Justice, the Ministry of Economic Affairs, the Ministry of Health and Consumer Affairs and such bodies as may be specified by the Autonomous Regions and local governments in order to obtain:

- (a) General information on their contractual rights and obligations pursuant to the laws and regulations applicable to the concluding of contracts by electronic means;
- (b) Information on the judicial and extrajudicial resolution of disputes; and
- (c) Particulars concerning organizations, associations and entities that might provide them with additional information or practical assistance.

Communications with the aforesaid bodies they be conducted by electronic means.

Article 34. Communication of relevant decisions

1. The General Council of the Judiciary shall send the Ministry of Justice, in such a form and at such intervals as may be agreed between them, copies of all judicial decisions in any way pertaining to the validity and effectiveness of contracts concluded by electronic means, the use of such contracts as evidence for legal purposes, and the rights, obligations and liability regime of recipients and providers of information society services.

2. Arbitration bodies and those responsible for the other extrajudicial dispute settlement procedures referred to in Article 32, paragraph 1, shall inform the Ministry of Justice of any significant decisions or settlements in connection with the provision of information society services and electronic commerce pursuant to the criteria indicated in the foregoing paragraph.

3. When communicating the decisions and settlements referred to in this article, the necessary precautions shall be taken to uphold the right to privacy and protect personal information concerning the persons identified in them.

4. The Ministry of Justice shall forward the information received in accordance with this article to the European Commission and shall facilitate access to that information for any interested party.

Article 35. Supervision and oversight

1. The Ministry of Science and Technology shall monitor the fulfilment by providers of information society services of the obligations established in this Act and in the implementing regulations established pursuant to it insofar as they relate to information society services proper.

The foregoing notwithstanding, the references to competent bodies contained in Articles 8, 10, 11, 15, 16, 17 and 38 shall be understood to refer to the corresponding legal or administrative bodies having responsibility in each area.

2. The Ministry of Science and Technology may conduct such inspections as may be necessary in order to carry out its oversight function.

Officials of the Ministry of Science and Technology who conduct such inspections shall be considered to be acting by virtue of public authority in carrying out their functions.

3. In any case, and notwithstanding the provisions of the foregoing paragraph, if any activities carried on by providers of information society services are subject, by reason of the area of activity or the nature of the entity in question, to the specific spheres of competence of particular oversight bodies which have been assigned such competence pursuant to legislation governing the sector in question, then, irrespective of whether the activities are carried on using telematic or electronic means or technology, such oversight bodies shall perform the oversight functions for which they are responsible.

Article 36. Obligation to cooperate

1. It shall be the duty of providers of information society services to provide the Ministry of Science and Technology and the other bodies referred to in the foregoing article with any information or assistance they might require in order to carry out their functions.

In addition, they shall be required to provide the representatives or inspection personnel of those bodies with access to their facilities and to permit them to examine any relevant documentation in regard to the oversight function in question, for which purpose the provisions of Article 8, paragraph 5, of the Administrative and Dispute Jurisdiction Act (Act 29/1998, of 13 July 1998) shall apply.

2. Where, as the result of an inspection, information is uncovered concerning actions that could constitute breaches of other national laws or laws of the Autonomous Regions, such information shall be communicated to the competent bodies or agencies for enforcement purposes.

[...]

First supplementary provision. Definitions

For the purposes of this Act, the definitions set forth in the annex shall apply.

Second supplementary provision. Medications and health products

The provision of information society services relating to medications and health products shall be governed by the specific legislation pertaining thereto.

Third supplementary provision. Consumers Arbitration System

A provider and recipient of information society services may submit any disputes to the mechanism established for consumer arbitration by placing them before the Consumer Arbitration System.

The National Consumer Arbitration Board [Junta Arbitral Nacional de Consumo] and other such bodies established at the local and regional levels, as authorized by the National Bureau of

Consumer Affairs, may resolve disputes received from consumers in accordance with the provisions of Royal Decree 636/1993, of 3 May 1993, which governs the Consumer Arbitration System, by telematic means.

Fourth supplementary provision. Amendment of the Civil Code and the Commercial Code

One. Article 1262 of the Civil Code is hereby amended to read as follows:

"Consent shall be evidenced when both an offer and an acceptance exist with respect to a thing and the consideration being exchanged for it, which are to constitute the contract.

"If the party making the offer and the party accepting it are in different places, there is consent as from the time when the offeror becomes aware of the acceptance or, if the acceptor has sent the acceptance to the offeror, as from such time as the offeror cannot be unaware of such acceptance without acting contrary to good faith. In that case, the contract is deemed to have been concluded in the place where the offer was made.

"In the case of contracts concluded using automatic devices, there is consent as from the time when acceptance is evidenced."

Two. Article 54 of the Commercial Code is hereby amended to read as follows:

"If the party making the offer and the party accepting it are in different places, there is consent as from the time when the offeror becomes aware of the acceptance or, if the acceptor has sent the acceptance to the offeror, as from such time as the offeror cannot be unaware of such acceptance without acting contrary to good faith. In that case, the contract is deemed to have been concluded in the place where the offer was made.

"In the case of contracts concluded using automatic devices, there is consent as from the time when acceptance is evidenced."

Fifth supplementary provision. Accessibility of information provided by electronic means for persons with disabilities and for elderly persons

One. The Public Administrations shall take the necessary measures to ensure that the information available on their Internet pages can be accessed by persons with disabilities and by elderly persons in accordance with generally recognized standards for content accessibility, by 31 December 2005.

In addition, they may require that the aforesaid accessibility standards be applied to Internet pages whose design or maintenance receives their fund.

Two. Similarly, service providers and hardware and software manufacturers shall be encouraged to adopt accessibility standards to facilitate access to digital content by persons with disabilities and by elderly persons.

Sixth supplementary provision. Allocation system for <.es> domain names

One. Pursuant to the sixteenth supplementary provision of the Trademark Act (Act 17/2001 of 7 December 2001), this provision establishes the basic principles of the system for allocating domain names under the country code for Spain, namely <.es>.

Two. Pursuant to the sixth supplementary provision of the General Telecommunication Act (Act 11/1998 of 24 April 1998), the corporate public entity Red.es is the allocating authority with responsibility for managing the register of <.es> Internet domain names.

Three. The allocation of <.es> Internet domain names shall take place according to the terms established in this provision, as well as in the National Plan for Internet Domain Names and other specific rules issued pursuant thereto by the allocating authority and, insofar as they remain

compatible with such provisions, with the general practices and recommendations of international organizations and agencies active in areas relating to the management of the Internet domain name system.

The rules for allocating <.es> domain names shall maintain the appropriate balance between, on the one hand, the confidence and legal certainty necessary for the development of electronic commerce and other electronic services and activities and, on the other, the flexibility and adaptability needed to respond to the demand for allocation of <.es> domain names, thereby furthering the development of the information society in Spain.

Separate lower-level domains may be created within the <.es> domain to facilitate the identification of content either by title or by the type of activity concerned. For instance, names may be created which refer to education, entertainment or the appropriate moral development of children and young people. The allocation of these third-level domain names shall take place in accordance with the terms established in the National Plan for Internet Domain Names.

Four. Pursuant to the National Plan for Internet Domain Names, any person or body having interests in or links to Spain, regardless of whether it has been incorporated as a legal person, may apply for a <.es> domain name provided that it meets all the other requirements for obtaining such a domain name.

The allocation of <.es> domain names shall be on a first-come, first-served basis to eligible applicants, and no preferential treatment of a general nature may be afforded, for the purpose of obtaining or using a domain name, to the holders of any particular rights.

The allocation of a domain name entitles the owner to use and to retain that name, provided that the owner fulfils any particular requirements that may be established. In the event that the allocating authority finds evidence of a failure to fulfil such requirements, and upon completion of the relevant procedures determined for each case, which shall include a hearing for the parties concerned, the domain name shall be cancelled.

The owners of <.es> domain names shall comply with any technical rules and conditions which may be established by the allocating authority to ensure the smooth functioning of the <.es> domain name system.

Persons or organizations for which a domain name has been registered are responsible for using it correctly in accordance with the law, and for acting with respect for industrial or intellectual property rights, pursuant to the provisions of this Act. The allocating authority shall cancel domain names whose owners fail to respect those rights or conditions, provided that such cancellation is pursuant to a legal decision to that effect, without prejudice to the provisions contained in paragraph 8 of this supplementary provision.

Five. The National Plan for Internet Domain Names shall provide for appropriate mechanisms to prevent the unlawful or speculative use of domain names or the improper exploitation of generic terms or place names, and, more generally, to prevent disputes arising over the allocation of domain names.

The Plan shall also include the necessary safeguards to reduce the likelihood of error or confusion on the part of users with respect to the ownership of domain names.

To that end, the corporate public entity Red.es shall ensure the necessary coordination with Spanish public registers. The owners must facilitate access to and consultation of such public registers, which shall in all cases remain free of charge to Red.es.

Six. Domain name allocation shall be carried out by telematic means that ensure the flexibility and reliability of the registration procedure. Applications and notifications shall be sent

electronically, except insofar as alternative provisions exist in the allocation procedures and other operations relating to domain name registration.

Registration agents, as intermediaries in procedures relating to domain name registration, shall be entitled to provide auxiliary services for the allocation and renewal of such names, in accordance with the requirements and conditions established by the allocating authority, which must, in all cases, ensure respect for the principle of free competition between such agents.

Seven. The National Plan for Internet Domain Names shall be adopted by order of the Minister of Science and Technology, upon the proposal of Red.es.

The Plan shall be supplemented by allocation procedures and other operations relating to the registration of Internet domain names and addresses laid down by the chairman of Red.es, pursuant to the eighteenth supplementary provision of the Fiscal, Administrative and Social Policy Measures Act (Act 14/2000 of 29 December 2000).

Eight. In accordance with the applicable provisions, the allocating authority may establish an extrajudicial dispute settlement system concerning the use of domain names, including disputes over industrial property rights. This system shall provide the parties concerned with adequate legal guarantees, and shall not prejudice any legal action they may wish to take.

Nine. With a view to encouraging the development of electronic administration, the corporate public entity Red.es may provide a service of telematic administrative notifications and offer reliable proof of the date and time of their receipt.

Sole transitory provision. Entry in the corresponding public registers of domain names granted before the entry into force of this Act

Service providers that, as of the effective date of this Act, have already been using one or more domain names or Internet addresses shall be required to request that at least one of them be entered in the public register in which the service provider is registered for purposes of incorporation or public notice, within one year of the effective date of this Act.

First final provision. Amendment of Article 37 of the General Telecommunication Act (Act 11/1998 of 24 April 1998)

In the General Telecommunication Act (Act 11/1998 of 24 April 1998), paragraph 1, subparagraph (a) of Article 37 is hereby amended to read as follows:

"(a) That all citizens may obtain a connection to the fixed public telephone network and have access to the fixed public telephone service available to the general public. The connection must allow the user to make and receive domestic or international calls, and permit voice, fax and data transmission at a speed adequate to provide functional Internet access.

"For these purposes, the adequate speed referred to in the foregoing paragraph shall be the speed generally used to access the Internet by subscribers to the fixed telephone service available to the general public, with connection to the Web by means of copper pairs and a voice band modem."

Second final provision. Amendment of the sixth supplementary provision of the General Telecommunication Act (Act 11/1998 of 24 April 1998)

In the General Telecommunication Act (Act 11/1998 of 24 April 1998), paragraph 10 of the sixth supplementary provision is hereby amended to read as follows:

"10. Assignment fee in respect of domain names and Internet addresses, which are a limited resource.

"(a) Fee basis

"The basis for the assignment fee in respect of domain names and Internet addresses consists in the activities that must be performed by the corporate public entity Red.es in assigning and renewing domain names and Internet addresses under the country code for Spain, namely <.es>.

"(b) Parties subject to the fee

"Anyone applying for the assignment or renewal of a domain name or Internet address shall be required to pay the fee.

"(c) Amount of the fee

"There shall be a single fee applicable for each domain name or Internet address for which an assignment or renewal application is made. In no case may a name or address be assigned or renewed without the fee first being paid.

"The amount of the fee shall be determined on the basis of certain quantification factors and criteria, and the number of factors and criteria used and their particulars may only be changed by law.

"For the purposes of the foregoing paragraph, the following are the quantification factors and criteria to be used in determining the amount of the initial annual assignment fee to be charged in respect of domain names and Internet addresses: the cost of reviewing and verifying assignment applications, the level at which the assignment is made and, in the case of annual renewals in subsequent years, the cost of maintaining the assignment and verifying and updating the respective information. In addition, the number of domain names or Internet addresses assigned and the activities of registry agents will be taken into account in determining the amount of the fee.

"The amounts resulting from the application of the quantification factors and criteria referred to in the foregoing paragraphs may be established and modified by ministerial order.

"Notwithstanding the provisions of the foregoing paragraphs, in exceptional cases provided for pursuant to the National Plan for Internet Domain Names and in accordance with the terms established therein, where a special market value pertains to the use of certain names and addresses, the amount of the fee for the first year's assignment may be replaced by a figure determined as the result of a bidding procedure in which an initial estimated reference value shall be established. If the amount of the successful bid is higher than the reference value, the fee shall be set in the amount of the bid. In cases where such a bidding procedure is to be followed, the Ministry of Science and Technology shall, before initiating the bidding procedure, ask the competent authority for the Domain Name Register to suspend the granting of names and addresses that it regards as having special economic value. The corresponding bid documents – which shall establish the requirements, terms and conditions, and procedures governing the call for bids, taking into consideration the provisions contained in the National Plan for Internet Domain Names – shall then be drawn up and approved.

"(d) Payment deadline

"The fee shall be due and payable on the date on which the assignment or renewal application in respect of the domain names or Internet addresses is received, in accordance with the terms and conditions established by regulation; and the application shall not be processed unless the payment has been made.

"(e) Processing of payment

"The corporate public entity Red.es shall be entitled to collect the fee pursuant to its administrative authority, and the procedure for the collection and payment of the fee shall be established by ministerial order.

"Reporting forms, time limits and payment procedures shall be approved by decision of the corporate public entity Red.es.

"The proceeds of this fee shall be used to defray the expenses of the corporate public entity Red.es arising from the carrying out of the functions assigned to it pursuant to paragraphs (a), (b), (c) and (d) of paragraph 4 of this provision; and any surplus shall be paid into the Public Treasury in such proportion and amount as may be determined by joint decision of the Department of the Secretary of State for the Budget and National Expenditure and the Department of the Secretary of State for Telecommunications and the Information Society, upon the proposal of the latter."

Third final provision. Amendment of the General Telecommunication Act (Act 11/1998 of 24 April 1998) by adding a new transitory provision

The General Telecommunication Act (Act 11/1998 of 24 April 1998) is hereby amended by the addition of a new twelfth transitory provision reading as follows:

"Twelfth transitory provision. Criteria for implementing the technical upgrading plan for the access network of the fixed public telephone network

"Within five months after the entry into force of this provision, the designated operator for the provision of universal service shall submit to the Ministry of Science and Technology a detailed upgrading plan to ensure that connections to the fixed public telephone network will enable subscribers to have functional Internet access, with particular reference to subscribers connected by means of Rural Mobile Telephone Access. The Ministry shall receive comments from the Telecommunication Market Commission and have one month to approve the upgrading plan.

"Implementation of the plan shall be subject to the following conditions:

"(a) It shall include efficient technical solutions that are available in the marketplace in order to guarantee users within the coverage area the right, once the plan is approved, to be able to obtain functional Internet access within 60 days of applying for it. These technical solutions must provide for upgrading to broadband speeds over the medium term, without this necessarily involving the complete replacement of the system.

"(b) The installation within the access network of the technical solutions referred to in paragraph (a) above must make it possible for those persons who are subscribers to the fixed telephone service available to the general public, and who at the moment the plan is approved are unable to have functional access to the Internet, to have such access according to the following timetable:

"1. At least 30 per cent of affected subscribers by 30 June 2003.

"2. At least 70 per cent of affected subscribers by 31 December 2003.

"3. 100 per cent of affected subscribers by 31 December 2004.

"In any case, implementation of the plan shall, as a minimum, reach 50 per cent of affected subscribers in each of the Autonomous Regions by 31 December 2003.

"(c) In the implementation plan, priorities must be established in the roll-out referred to in paragraph (b) above, on the basis of those areas having the greatest density of affected subscribers.

"(d) For the purposes of the foregoing paragraphs, should it be necessary, the operator designated to provide universal service may conclude contracts with other operators holding public-domain spectrum licences in order to assign rights to the use of the frequency bands necessary in order to meet the objectives established herein. Such contracts must be submitted to the Ministry of Science and Technology for prior approval, and the Ministry may establish such conditions for protecting the public interest as it may think fit."

Fourth final provision. Amendment of the sole derogation provision contained in the General Telecommunication Act (Act 11/1998 of 24 April 1998)

[...]

Fifth final provision. Amendment of the regulations governing the concluding of contracts by telephonic or electronic means to bring them into line with the general terms and conditions of this Act

[...]

Sixth final provision. Constitutional basis

[...]

Seventh final provision. Authorization to the Government to establish implementing regulations pursuant to this Act

[...]

Eighth final provision.

Within one year after the effective date of this Act, the Government shall approve an emblem with which to identify service providers that have agreed to abide by codes of conduct established with the participation of the Consumers and Users Council [Consejo de Consumidores y Usuarios]. Such codes of conduct shall include, *inter alia*, acceptance of the Consumer Arbitration System or other extrajudicial dispute settlement systems that adhere to the principles established in European Community laws and regulations with respect to alternative systems for resolving consumer disputes, according to such terms and conditions as may be established by regulation.

Ninth final provision. Entry into force.

[...]

Annex

Definitions

For the purposes of this Act, the following definitions shall apply:

(a) "information society services" or "services": Any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

The concept of an information society service also includes services for which the recipient does not pay, provided that they constitute an economic activity for the provider of the service.

The following, *inter alia*, are information society services provided that they represent an economic activity:

1. The concluding of contracts for goods or services by electronic means.
2. The organization and operation of auctions by electronic means, or of virtual markets or commercial centres.
3. The operation of purchases on the Web by groups of persons.
4. The sending of commercial communications.
5. The supply of information by telematic means.
6. Video-on-demand, as a service in which the user may select, by means of the Web, both a desired programme and the time when it is to be supplied and received, and, in general, the provision of content in response to an individual request.

Services that do not meet the criteria set forth above in this paragraph (a), and in particular those services listed below, shall not be considered information society services:

1. Services provided via voice telephony, fax or telex.
2. The exchange of information via electronic mail or any other equivalent means of electronic communication for purposes other than the economic activity of those using it.
3. Television broadcasting services (including near-video-on-demand services) pursuant to Article 3.a) of Act 25/1994 of 12 July 1994, whereby Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities was incorporated within Spanish law, or any other Act that may succeed it.
4. Sound broadcasting services.
5. Televised teletext and other equivalent services such as electronic programme guides offered via televisual platforms.

(b) "intermediation service": An information society service whereby the provision or use of other information society services or access to information is facilitated.

The provision of Internet access services, the transmission of data over telecommunication networks, the making of a temporary copy of an Internet page at the request of a user, the storage in proprietary servers of data, applications or services provided by others, and the provision of tools

with which to search for, obtain access to or assemble data or links to other Internet sites are intermediation services.

(c) "service provider" or "provider": Any natural or legal person that provides an information society service.

(d) "recipient of the service" or "recipient": Any natural or legal person who, for professional ends or otherwise, uses an information society service.

(e) "consumer": Any natural or legal person under the terms of Article 1 of the General Consumer and User Protection Act (Act 26/1984, of 19 July 1984).

(f) "commercial communication": Any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organization or person pursuing a commercial, industrial, craft or professional activity.

For the purposes of this Act, the following shall not be considered to constitute commercial communications: information allowing direct access to the activity of a person, company or organization, such as a domain name or electronic mail address; or communications relating to the goods, services or image of the person, company or organization if they are prepared by a third party without financial consideration.

(g) "regulated profession": A professional activity that may be performed only by a person holding the corresponding licence in accordance with the applicable laws or regulations.

(h) "contract concluded by electronic means" or "electronic contract": A contract in which both the offer and the acceptance of that offer are transmitted by means of electronic data processing and storage equipment connected to a telecommunication network.

(i) "coordinated field of laws and regulations": All requirements applicable to providers of information society services whether pursuant to this Act or to other provisions governing the carrying on of economic activities by electronic means, or pursuant to any general legislation that may apply, with respect to the following:

1. The initiation of activity, with particular reference to any professional or other occupational licences, certifications or qualifications that may be required, public notice of registration data, specific administrative authorizations or authorizations granted by professional bodies, and requirements with respect to the notification of any public or private organization or entity.

2. The subsequent carrying on of such activity, with particular reference to requirements relating to the behaviour of the service provider, or to the quality, safety and content of the service, and requirements relating to advertising, the concluding of contracts by electronic means and the service provider's liability.

The coordinated field of laws and regulations shall not include provisions relating to physical goods or services or the delivery thereof, or to services not provided by electronic means.

(j) "competent body": Any legal or administrative body – whether forming part of the National Public Administration, the Public Administrations of the Autonomous Regions, local governments, or any of the public departments or agencies thereof – that exercises the functions legally assigned to it.