

BILL MEMO ISRAEL'S MINISTRY OF JUSTICE:
ELECTRONIC COMMERCE LAW - 2005

Hebrew Original Official Full Version: <http://www.4law.co.il/ginat6.pdf>

Unofficial Translation. 4Law.co.il © 2006 All Rights Reserved

BILL MEMO ELECTRONIC COMMERCE LAW - 2005

ELECTRONIC COMMERCE LAW - 2005

1. Definitions...

Electronic Document

Electronic document

2. An electronic document is an electronic message that is accessible for further use and is retrievable.

Accessibility and irretrievability of an electronic document

3. (a) An electronic document is deemed accessible for further use if the information it contains is available and can be visually decoded by the reader.

(b) An electric document is deemed retrievable when the following conditions are upheld:

(i) an electronic message is preserved electronically in the same form in which it was created, sent, or received, or in a manner that does not materially change the information contained in the original message;

(ii) the information in the electronic message can be produced as output (hard copy).

Conveying information by means of an electronic message

4. (a) When legislation requires that information be conveyed in writing, it may also be conveyed by means of an electronic message, providing that the information it contains is accessible for further use.

(b) A legislative requirement that a person must provide a specific person with written information may be fulfilled by means of an electronic document.

Electronic contracts and electronic legal actions

Reservation on the validity of use of an electronic document

5. (a) A contract, or a legal action that is not a contract, may be made or applied, as the case may be, by means of an electronic document; however, said contract and legal action will be invalid in cases where they appear on the list of contracts or legal actions contained in the Appendix.

(b) The Minister of Justice is entitled to amend the Appendix by issuing an order.

Disclosure of information before or after making a contract

6. (a) If legislation requires disclosure of information before or after making a contract, but does not require the disclosure to be made in a specific way, that requirement can be fulfilled by means of an electronic document.

(b) In a contract that is made other than between a consumer and a dealer, where legislation requires that the disclosure stipulated in subclause (a) above must be given in writing, the party which is obliged to disclose is entitled to deliver the information it discloses via an electronic document, on condition that the following details are also delivered to the document's addressee:

(i) the actions required in order to sign the electronic contract;

(ii) if the contract will be generated by the other party as a print document;

(iii) the steps it must take for the electronic document to be accessible;

(iv) the technical means for identifying and correcting keyboarding errors before executing the order, including presentation of the transaction's details prior to its final authorisation.

Examination by a party of the details of an electronic contract drafted by another party

7. A party proposing that a contract to be drawn up with it should be an electronic one, and which drafts the contract's conditions, must provide the other party with a reasonable opportunity to examine the conditions before signing.

The date, place of dispatch, and the receipt of an electronic message

8. (a) It is presumed that an electronic message has been sent when it enters the information processing system that is outside the sender's; if the sender and the addressee use the same information processing system, it is presumed that the electronic message has

been sent from the moment that the message becomes accessible and retrievable, so that the addressee is then able to make further use of it;

(b) it is presumed that an electronic message has been received by the addressee when it enters the information processing system used by the addressee to receive documents of the type sent, and that the message is accessible for further use and is retrievable by the addressee;

(c) it is presumed that the place of business or place of residence of the sender is the site from where the document was sent, and the place of business or place of residence of the addressee is the site where the document was received.

Flaws in making
an electronic
contract with an
electronic agent

9. (a) A person who associated in an electronic contract with the electronic agent of another person is entitled to annul a contract if all of the following conditions are upheld:

(i) an error occurred in the contract as defined in Section 14 (d) of the Contract Law (General Section) -- 1973, and if the electronic agent did not provide the addressee with a reasonable opportunity to examine or correct it;

(ii) the party claiming the existence of an error notifies the other party of the error as soon as possible after becoming aware of it;

(iii) the party claiming that an error exists took reasonable steps to carry out the instructions of the second party concerning repayment of the consideration, if any was paid, or concerning the wiping out of the consideration;

(iv) the party claiming that an error exists has not used or generated any material benefit from the consideration.

(b) in this clause, "**electronic agent**" - a computerised means programmed to automatically perform specific actions by means of electronic communication.

Reservations concerning the liability of Internet service-providers

Definitions in this
section

10. In this section -- "**temporary storage-services provider**" - a provider who provides a service entailing the automatic,

temporary storage of information on an electronic communication network, in order to facilitate the transfer of information on the network and to enhance the speed of the transfer;

"**hosting-service provider**" - a provider that provides a service entailing the storage on its computer servers of information supplied by subscribers to the service, or by providing a site to publish information whose contents were drafted by another person on his/her Internet site, in order to disseminate it on an electronic communication network, including a service comprising a search engine;

" **access-service provider**" - a provider that provides a service entailing the provision of access or a connection to an electronic communication network;

" **an electronic communication network**" - including the Internet.

Reservation regarding the liability of an access-service provider

11. A provider of access services shall not bear tort liability for damage caused as a result of the content of information drafted by a third party, when all the following conditions are upheld:
 - (i) the provider did not initiate transfer of the information;
 - (ii) the provider did not select the addressee;
 - (iii) the provider neither selected nor changed the information that it transmitted.

Reservation regarding the liability of a temporary storage-service provider

12. A provider of temporary storage-services shall not bear tort liability for damages incurred due to the content of information that was drafted by a third-party, if all the following conditions are upheld:
 - (i) the provider did not change the information that it transmitted;
 - (ii) the supplier complied with the specifications generally applied in the industry which are stipulated for the transfer of information, updating its content, and obtaining data concerning its use;
 - (iii) the provider acted quickly to remove the information or to block access to it, as soon as it was notified that the information was originally removed due to its offensive content, or that the

competent authority or court has instructed it to block access to the information.

Reservations regarding the liability of a hosting-service provider

13. A provider of hosting services shall not bear tort liability for damage incurred due to the content of information drafted by third-party, conditional on the following being upheld:
- (i) the provider did not know and was not bound to know that the contents constituted a misdemeanour;
 - (ii) the author of the content was not acting on behalf of the provider and was not subject to its control;
 - (iii) once the provider became aware of the content of the information claimed to constitute a misdemeanour, the provider acted to remove the information or block access to it, in accordance with the requirements of the Notification and Removal procedure specified in clause 14 below.

Notification and Removal procedure

14. (a) A provider of hosting services shall not bear tort liability due to its applying the Notification and Removal procedure and it shall not be deemed a breach of contract.
- (b) for the purposes of this law, the "Notification and Removal" procedure is a procedure in which the following conditions are upheld:
- (i) removing information following notification by a person about his/her claim that disseminating the information content constitutes a misdemeanour towards him/her, that the information exists on the provider's servers or on its website and that s/he intends to take legal steps against the author of the information;
 - (ii) notifying the author of the information - if the author can be found by reasonable means - concerning the information's removal as close in time as possible to the removal;
 - (iii) if the author provides notification that s/he disagrees with the claim that the information's content constitutes a misdemeanour, and that s/he intends to discuss this with the entity seeking the information's removal -- the information's return to the server or to his/her Internet site, as the case may be, following receipt of the notification.
- (c) The Minister is entitled to stipulate in the regulations governing

this matter - on the question of notifications - which documents should be attached and the dates on which the information must be removed and returned by the hosting-service provider.

Duty of confidentiality and disclosure of details

15. (a) A provider of hosting services and a provider of access services shall not disclose any details liable to identify the author of the information, unless the author has given explicit written consent to this, or if the author is obliged to do so pursuant to the instructions of any law.

(b) Notwithstanding the foregoing in subclause (a), if it is proven to a court's satisfaction that solid concerns exist regarding the commission of a misdemeanour or offence, the court is entitled to instruct the provider of hosting services and the provider of access services, following an application by a person maintaining that disseminating the content of information on the provider's network constitutes a misdemeanour towards him/her or an offence, to provide the applicant with the details in its possession that will enable the information's author to be identified.

(c) The documents that must be attached with the application and the conditions on which the court will grant the required remedy will be stipulated in the regulations.