



Tonucci & Partners

MEMO

DIGITAL LEGAL CHECK

A NEW SERVICE FOR COMPANIES



Tonucci & Partners makes available to clients the new service called "*Digital Legal Check*" aimed at providing technical-specialist legal advice on the compliance of companies' electronic platforms (web sites and portals, marketplaces, social media platforms, mobile commerce platforms and apps, etc) with the requirements set forth in the national and EU ICT law rules on digital activities carried out online in electronic markets.

The service is marked by maximum flexibility and speed, being provided and carried out entirely online and remotely.

Digital Legal Check: what the service consists of.

The company indicates the web address of its Internet site or other digital location of the electronic platform to be examined.

Tonucci & Partners proceeds, through its specialized lawyers, to conduct a compliance analysis of the structure and legal content as published online by the company, with specific reference to the following areas and regulatory sources:

- **Online personal and non-personal data collecting and processing**

EU General Data Protection Regulation 679/2016

Guidelines of the European Data Protection Board applicable to online activities and data processing (e.g., Guidelines on dark patterns; Guidelines on targeting of social media users; Guidelines on retention of credit card data for the sole purpose of facilitating subsequent transactions; Guidelines on principles of privacy by design and privacy by default; Guidelines on online consent; Guidelines on processing of personal data in the context of providing online services to data subjects).

The service also includes compliance legal review of electronic platforms under EU Regulation 2022/868 (*Data Governance Act*) on the governance of personal and non-personal data, applicable as of September 24, 2023.



In addition, in the medium-term perspective, the service also includes legal compliance examination of electronic platforms under:

- the so-called E-Privacy Regulation - still in the process of final approval - which will replace EU Directive 2002/58 on the protection of personal data in the context of electronic communications.
- the so-called EU Data Act Regulation - still in the process of final approval - where applicable to the company's electronic platform.
- **E-commerce activities and selling products or services online by entering into distance contracts (B2C - B2B - B2G - B2E - M-commerce)**

Legislative Decree No. 70 of April 9, 2003, implementing EU Directive 2000/31/EC on electronic commerce

EU Regulation 2022/2065 (Law on Digital Services) updating and supplementing EU Directive 2000/31/EC on electronic commerce, applicable from February 24, 2024

EU Regulation 2022/1925 (Law on Digital Markets) updating and supplementing EU Directive 2000/31/EC on electronic commerce, applicable from May 2, 2023

Consumer Code - Legislative Decree No. 206 of September 6, 2005, updated with new 2022 regulations resulting from the implementation in the text of:

- EU Directive No. 770/2019 on certain aspects of contracts for the supply of digital content and digital services
- EU Directive No. 771/2019 on certain aspects of contracts for the sale of goods
- Directive (EU) 2019/2161 on the modernization of Union rules on consumer protection
- Legislative Decree No. 59 of March 26, 2010, on the provision and sale of online services

Regulation (EU) 2019/1150 on fairness and transparency for business users of online brokerage services (where the company's site is on marketplaces)

Regulations and Guidelines of the Antitrust Authority for online consumer activities.



- **Online intellectual property protection (copyright in the digital marketplace and copyrighted content published online on electronic business platforms)**

Copyright Law - L. April 22, 1941, No. 633 as amended by Directive (EU) No. 2019/790 of the European Parliament and of the Council of April 17, 2019, on Copyright and Related Rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC

- **Online industrial property protection (IP assets, trademarks, designs, etc published online on electronic business platforms)**

Industrial Property Code – Legislative decree as of February 10th, 2005, no. 30. Codice della Proprietà Industriale - d.lgs. 10 Febbraio 2005, n. 30

- **Domain names protection**

The *Digital Legal Check* service also includes checking for possible *cyber-squatting* of the corporate domain name, i.e., hypothesis of abusive grabbing of corporate domain names, abusively registered by third parties with different geographical or generic suffixes.

- **Cookie, online identifiers and other tracking systems on electronic platforms**

Italian Data Protection Code – Legislative decree as of June 30th, 2003, no. 196 coordinated to the GDPR – Title X – Electronic Communications (artt. 121-132-*quater*)

Italian Data protection Authority's General Deliberation no. 231/2021 on cookies and online identifiers

The Digital Legal Check service also includes technical verification of cookies as actually sent by the client's electronic platform, with delivery of the technical report thereof.

- **Online Advertising**

Self-Discipline Code of Advertising

IAB (Interactive Advertising Bureau) Guidelines

- **Compliance with specific provisions of the Italian Civil Code about information to be mandatorily published on websites**



- **Compliance with specific constraints provided by the National Revenue Agency about tax information/codes to be mandatorily published on websites**

Practical ways of delivering the Digital Legal Check service

The service is provided in two phases.

In the first phase Tonucci & Partners examines the compliance of the contents available on the client's electronic platform concerned, according to the areas and all regulatory sources mentioned above, and set up a summary assessment of any criticalities detected (e.g.: lack of mandatory legal contents or non-compliance of legal contents, procedures addressed to users/customers not compliant, etc.).

At the outcome of this summary assessment, Tonucci & Partners sends a communication via email to the requesting company containing a concise report on any critical issues found.

The second phase of the service is eventual (being in fact possible that the company's website/app/platform/electronic resource turns out to be fully compliant) and is activated upon specific request of the company. If, on the other hand, the latter, from the outcome of the first phase, gets indications of non-compliance and legal criticalities and deems it necessary to avail itself of specialized consultancy to resolve the criticalities eventually detected may contact the email digitalcheck@tonucci.com to get the advice.

The advisory activity of this second phase - provided remotely - involves the provision of specialized legal services and content articulated as follows.

Customized legal content drafting service

The company that has received the *report* may request the drafting of customized contents and compliant legal notes made specifically for its electronic platform.



ADDITIONAL SERVICES

Cookie, Online identifiers or other tracking systems on electronic platforms.

The service involves the provision of a specific practical business procedure to ensure compliance with the provisions on cookies, online identifiers and tracking, for websites, native and web applications (for mobile and non-mobile devices) and digital platforms in general.

Indeed, the delicacy and importance of the issue at hand are topical, not only for companies in the ICT sector, but for all those that in any case address the market with their own websites and web platforms, especially after the entry into force of the new Guidelines of the Italian Guarantor last January 10, 2022.

In view also of the relevant sanctions potentially applicable by the Italian Data Protection Authority, Tonucci & Partners has designed a specific *Cookie Procedure*.

The Procedure is included in a process document (which is delivered to the company) and is based on 14 practical areas of verification with the immediately operational indication of: (1) the verifications to be carried out; (2) the activities and consequent fulfillments to be put in place for websites, apps, platforms, based on the whole regulatory framework that mentioned above; (3) the Corporate Departments to be involved, with the specification of who has to do what, how and when.

In addition, the Procedure - as an internal compliance process document maintained by the company - is also relevant for the purposes of articles 5.2 and 24 of the GDPR, constituting not only the "processing policy" on the matter (art. 24.2 GDPR), but also the process document that must document its implementation (*accountability* as per art. 5.2 GDPR) to be exhibited in case of inspection by the Italian Data Protection Authority.



Companies' domain names recovering service.

Where at the outcome of the checks of the first phase of the *Digital Legal Check Service* it is found that domain names corresponding to trademarks or the company name or other distinctive signs of the company have been abusively registered by third parties, it is possible to request the activation of the recovery service.

The recovery of the domain name(s) is done through our specialized attorneys who (1) draft the complaint introducing the re-assignment procedure (2) file it before the competent national and international administrative authorities (or private arbitration bodies called *Dispute Resolution Service Providers*) and (3) manage on behalf of the company the procedure from start to end, until the issuance of the final decision on the reassignment of the domain name (the duration of the administrative procedure for reassignment is approximately 60 days from its establishment, both nationally and in international fora).

Further Information or the activation of the *Digital Legal Check* service may be requested via email at: digitalcheck@tonucci.com.



Because we care.

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