

# Solutions for eGovernment

Working group

Overcoming Barriers in the field of Liability

Wednesday 31<sup>st</sup> October 2007

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# Outline

- Problems concerning liability
- Possible solutions
- Proposed solution



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# Problems concerning liability

## Causes of damages

- Reliance on incorrect information
- Unavailability of services information
- IPR infringement



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# Problems concerning liability

Who bears the burden of damages?

- Basically the victim
- Exception: rule of liability
- Fragmented harmonisation
- Rules of liability pervasive.



# Problems concerning liability



Why is application of rules of liability burdensome in eGovernment context?

- Complexity of relationships
- Predictability of risk
- Identification of wrongdoer
- Tracing malignant parties
- Relation between conduct and damage
- Extent of damages

# Problems concerning liability



What is actually the problem of liability in eGovernment? What is the barrier?

- A public body having to pay damages
- A lack of trust in eGovernment
- A chilling effect on new eGovernment initiatives

# Possible solutions



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Possible avenues:

- Take more precautionary measures
- Make financial arrangements
- Exclude liability
- Create a legal exemption from liability

# Possible solutions

How to choose?

- Determine the goal(s)
- Do not bet on one horse
- Pay attention to the embedding of the solution package





# Proposed solution: the goals



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Which goals?

- Build trust in eGovernment
- Stimulate new eGovernment initiatives
- Not: Avoiding having to pay damages

# Proposed solution: the goals



The goals place opposite demands on the level of liability

- Build trust in eGovernment requires 'high level' of liability
- Stimulate new eGovernment initiatives requires 'low level' of liability

But is this a problem?

- Acceptance of a level of liability concomitant with the position of the actor.

# Proposed solution: on which horses to bet?



A statutory exemption? No, because:

- A statutory exemption has a strong symbolic effect and may therefore harm trust in eGovernment
- Avoid fragmentation of the liability
- A statutory exemption can give but a coarse indication of liability

# Proposed solution: on which horses to bet?



Exclude liability? Yes, it is a disclaimer but not as you know it.

- Not as a unilateral proclamation
- Fine tuned to the situation at hand

Or use a variant:

- Expectation management by information provision

# Proposed solution: on which horses to bet?



Precautionary measures and financial arrangements?

Yes, because:

- Trust
- Peace of mind

But how many precautionary measures?

- Learned Hand formula useable in eGovernment context?

# Proposed solution: how to embed?

Not just 'what' but also 'how'!

- Complaint-handling
- Standardised solutions
- Alternative Dispute Resolution (ADR)
- Online Dispute resolution (ODR)



# Finally



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Thank you for your attention!