

Small Group Session: Liability

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Issues:

- Government activities
- Parties involved
- Worst-case scenarios
- Government's legal position
- How to limit liability
- Inventory





- Information delivery: on demand or on own initiative
- E-services
- E-decisions (permit)
- E-contract
- Financial transactions
- Interactive communication
- Provide software or hardware for e-communication



Parties involved



- Government
- Companies
- Citizens
- Providers of infrastructure and communications transfer
- Internet Service Providers
- Third parties
- Other government agencies



Worst-case scenarios (1)



1. Inaccurate information in a message
2. Violation of integrity of a message
3. Violation of confidentiality
4. Loss of a message
5. Message received twice
6. Incorrect time of delivery or sequence of messages
7. Delay of delivery
8. Delivery at wrong receiver
9. Incorrect name of sender



Worst-case scenarios (2)

10. Non-repudiation
11. Mistakes in TTP-certificate
12. Wrong certificate downloaded
13. Certificate database not available
14. Violation of intellectual property rights
15. Slander
16. Violation of data protection law
17. Violation of Public Records Act (archives)
18. Violation of Freedom Of Information Act



- Liability in tort for indemnity (civil law)
- Contractual liability for indemnity
- Administrative liability for indemnity (administrative law)
- Special liability position for governments:
 - > Government must know it's own laws
 - > Leaving damage of a wrongful decision for government is more reasonable than for the citizen
 - > Balancing of powers
 - > Government acts as public/private party?



How to limit liability



- Act in accordance with the law
- Act in compliance with contractual provisions and general obligations for contracting parties
- Formulate obligations of exertion (effort) in your contracts
- Secure your communications processes
- Effect insurances
- Limit or exclude liability?





- What are most important government activities?
- Are there good/bad examples of public private partnerships?
- Are there other worst-case scenarios?
- How is liability regulated in your country?
- Does government have a special liability position in your country?
- Are there other important liability issues?
- Do and should governments exclude liability?



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