Questions of Liability in the Provision of Information Services

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Questions of Liability in the provision of Information Services [1]

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Introduction

1. Today the total numbers of databanks is still increasing and online information providers are facing quasi-unlimited opportunities to expand their services both on a national and international level. Unfortunately for databank producers this also means increasing the risk of liability as the number of potential users and kind of uses of the information is growing. This risk of liability is not a fiction. The user expects the information he receives to be reliable and accurate. In case of unreliability or inaccuracy, he will blame the person who provided him with the information.

2. Though everybody may be convinced the question is an important one, surprisingly up till now very few cases have been brought before courts concerning the liability of online information services. Therefore one has to refer to liability law regarding more traditional means of providing information such as the printed page.

Professor Yves Poullet

Although there is a temptation to view automated information services as a new and distinct type of industry, there seems to be no basis to distinguish these types of services, since reading data from a computer screen is really little different

[1] *Paper based on the Research Project sponsored by EUSIDIC. The research project was accomplished with the collaboration of J. Derenne and J.P. Triaille.*

from reading it in a newspaper. The information provider may then be seen as the author of the work and the service provider fulfills the function of publisher, normally just collecting and transmitting the information. The scope of this paper will be limited to the liability of the electronic information provider and service provider.

3. Basically, liability law emanates from three important sources: the law of torts, the law of contracts, and strict liability law.

Contract law occurs when a contractual relationship exists between two parties. Regarding the provision of online information services, contract law will apply whenever the parties are linked directly by a written agreement. The liability will be determined by the terms of the contract.

Tort law (or negligence) on the other hand, applies to those persons who are not in a contractual relationship. In principle, the person causing damages due to his own fault or negligence will be liable for these damages.

In exceptional cases, *strict liability* without proof of fault may be imposed against a manufacturer or seller of goods, sold with a defect which is unreasonably dangerous to a customer. The essential distinction with tort law is that the absence of negligence on the side of the producer will not as such excuse liability.

4. Before a more detailed examination of these different liabilities, we would like to stress the fundamental distinction that should be made between liability of a technical nature and liability linked to the content of the information. Basically, online information services involve two main functions: the production function and the provision function.

Generally, the production function is covered by the databank producer or information provider, who could be considered the manager of the information system, responsible for the content of the product offered to the public. Once the databank is created, the producer may decide to license it to an online service provider. The service provider is the person or organisation offering the final information product to the user. The provision function embraces the material and technical provision of the information to the end-user and the commercialisation of the information (marketing, billing for the service). Finally, provision necessarily implies carriage of the information. The carriage function is often separated from the provision function strictly speaking, because it generally involves two distinct partners.

It should be noticed that quite commonly production function and provision function will be exercised by one and the same person, as in the integrated information provider.

5. The variety of actors involved is of prime importance in respect of the issue of liability as the obligations of the actors vary according to each specific function.

All the actors involved in the provision of the information to the user could be potential defendants in liability suits:

a. The information provider: the author of the information will almost certainly be named as defendant in a suit for inaccurate information liability. The author could be the information provider himself, if primary information has been stored in the database, or another person, author of the original work being reproduced in the database. His liability will mainly concern the quality of the information stored in the database

(accuracy and completeness), though it may sometimes extend to the quality of the service rendered. Up till now there are only very few cases in which the liability of online information providers has been upheld, such as in the case of Dun & Bradstreet v. Greenmoss Builders[1], in which the credit reporting agency was found liable for inaccurately reporting in an online information service that Greenmoss had voluntary filed for bankruptcy.

b. The service provider: the service provider merely disseminates the information but has no part in its generation. He will be liable for the errors which occur within his system, such as data entry, editing and dissemination mistakes as well as the quality of the service rendered (response time, availability etc.). As far as we know, no electronic service provider has yet been held liable.

c. The software developer: where automated information services are concerned, the software programmer plays an important role. If negligent programming produces inaccurate or misleading information, although possibly unavoidable, the end-user may well have an action against the software programmer. In the US for instance, a software developer was found liable for the death of a cancer patient due to an X-ray overdose, which had been caused by a 'software-bug' in the computer calculating the X-rays. [2]

d. The network provider: the public provider offers the means by which the information may be transferred and also plays a significant part in the electronic information provision. Data loss or modifications are often caused by a technical fault attributable to the network. In Italy, for instance, the Italian Constitutional Court has recently ruled that services such as the PTT should operate as enterprises and likely be liable in cases of negligence. [3] However, in most European countries, the liability of the PTT is completely excluded by the law or, as in Germany or in France, limited to certain circumstances.

e. The user or end-user: the part played by the (end)-user himself to whom the information is sent is often quite opposite to neutral. The user is involved in the searches he makes or participates in the process by the data he himself has to supply, so that it is sometimes very delicate to determine the original cause of the loss. Moreover, the user will be responsible for the use he makes of the information once it has been obtained.

A *broker or intermediary*: may also be liable if, due to an inadequate search, his client suffers losses. In Germany, for instance, a court held a specialised (patent and engineering) information service responsible for not having used updated materials. The court came to the conclusion that the information service had grossly infringed on its duties towards its clients. [4]

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[1] *Dun & Bradstreet v. Greenmoss Builders, 472 US 749 (1985)*

[2] *'Software bugs: a matter of life and liability', Datamation, 1987, p.88*

[3] *Constitutional Court, March 17, 1988, (Decision 303) and Constitutional Court, December 20, 1988 (Revision 1104)*

[4] *'Doppelparker-case' (OLG Karlsruhe GRUR 1979 p.267)*

The scope of this paper will be limited to the liability of the electronic information provider and service provider.

6. Within the limits of this study, we have only examined the liability for the provision of inaccurate, incomplete or out-of-date information. But the question of responsibility may raise in several other situations.

Even accurate information may cause damage when infringing the lawful rights of another person, such as copyright or privacy rights. With respect to the provision of online information, the regulations of *copyright law* are of prime importance to the provider of secondary information. He must respect the lawful copyright of the authors of the information stored in his database. [1] If he stores personal information in a database, *privacy laws* are important. But because of the variety of regulations involved, as well as the lack of harmonisation within different countries, we will not be able to examine in this paper the penal and copyright liabilities with respect to the provision of information, but we would like to stress the fact that these liabilities exist and that the sanctions are considerable.

Part I: Liability in Tort

7. Liability in tort, based on proof of fault, primarily applies to those situations where the persons involved have no contractual relationship, even if in some countries actions in tort and actions for breach of contract may concur. The most striking point within this field of study is the total absence of any case law of direct relevance to the provision of information systems. We have therefore examined case law concerning more traditional means of providing information such as paper editing and press.

8. *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.* [2]

Dun & Bradstreet is a credit reporting agency which provides financial information about businesses. Upon request by one of its clients, the agency sent a report, indicating that a company named 'Greenmoss Builders' had filed a voluntary petition for bankruptcy. While discussing the possibility of future financing with its bank, Greenmoss was told that the bank had received the bankruptcy report. Greenmoss Builders questioned Dun & Bradstreet, which apologised for its mistake due to an error committed by a summer student, a mistake which had not been corrected by Dun & Bradstreet before reporting it.

Greenmoss, however, considered that an apology was not sufficient and it sued the credit agency for punitive damages as it considered that D&B had not only been negligent but reckless. Dun & Bradstreet argued that on the basis of the First Amendment principle of freedom of speech, it could not be held liable for defamation as the information was confidential and only revealed to the subscribers of the service.

The Court held that the First Amendment principle only applies in "matters of public concern", whereas "speech on matters of purely private concern is of less First Amendment concern". With regard to databases, the information will not be

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[1] *S. DENIS and Y. POULLET, 'The legal framework of electronic information', Newsidic Feb. 1989*

[2] *472 US 749 (1985)*

protected by the First Amendment if it does not concern the general public interest.

Before this case the American courts had, on several occasions, stressed the 'chilling effect' of liability for mispresentation which would stop the business' expansion, for instance for errors committed by the *Wallstreet Journal* [1] as it considered that the user cannot blindly rely on the information and cannot expect this information to be a 100% reliable.

However in the Greenmoss case the court considered that there would be no such 'chilling effect' since the market provides a powerful incentive to the credit reporting agencies to be accurate. For database producers, this could result in a troublesome distinction that would be made between traditional means of reporting and the electronic ones, the electronic ones being more easily liable because the market offers to those services sufficient incentive to expand despite potential liability.

9. *Saloomey v. Jeppesen* [2]

The second case is important insofar as it is the first case in which the principle of strict liability has been applied to an information service. It concerned a very experienced pilot who flew an aircraft which was equipped with navigational charts produced by Jeppesen. Three types of charts are generally furnished: en route charts, area charts and approach charts. The pilot decided to change his airport destination to an airport for which he had only an area chart and not a detailed approach chart. The Jeppesen's area chart said the airport chosen by the pilot contained a full instrument landing system, though it did not. The plane crashed in unclear circumstances and the occupants were killed. No evidence of aircraft malfunction or pilot infirmity was discovered and the company sued Jeppesen for negligence and strict product liability.

Jeppesen's main argument was that the navigational charts are services rather than products and therefore not subject to a strict product liability claim. The Court, however, defined the chart as a *product* stating that the charts "reach (the pilot) without any individual tailoring or substantial change in contents — they are thus simply mass-produced . . . By publishing and selling the charts, Jeppesen undertook a special responsibility, as seller, to insure that consumers will not be injured by the use of the charts".The Court concluded that Jeppesen was to bear the costs of accidents that were caused by defects in the charts.

If this case is to be a precedent for future cases, information would be considered as a product when it is widely diffused by the 'information seller' in a product aspect: chart, database contained on disk, CD-ROM, etc. and when the user uses it without any change to the content. However, one can not draw a general conclusion of this case as American courts often have circumstantial reactions and in other cases [3] information was held a service. Law seems to be made on a case-by-case

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[1] *Gutter v. Dow Jones Inc., 490 N.E. 2d 898 (Ohio 1986)*

[2] *707 F.2d 671 (1983)*

[3] *Brown v US, 790, F.ed 199 (Ist cit. 1986)*

basis following the circumstances and the impression of the situation by judges.

10. *Decimal Point Mistake-case* [1]

The first European case is a German case in which the publisher of a medical book was sued by a victim of mistreatment who nearly died from a misprint. A decimal point was missing in one of the medical formulae (the advice to inject a "2.5% NaCl infusion" read a "25% NaCl infusion"). The court stated first that readers never can demand a complete absence of misprints in the field of 'normal' print products. However, publishers have a special obligation to use all suitable techniques to avoid misprints, especially with regard to special information such as mathematical or medical information. In this particular case, however, every medically educated person should have noticed the misprint and therefore the publisher was under no duty to take extraordinary preventive measures to avoid misprints. The claim was therefore rejected.

11. *Gribinsky v. Nathan* [2]

The French case is important because of the court's severe attitude towards the publisher. A practical German guide was translated and published in France under the title 'Fruits et plantes comestibles'. The book described the wild carrot as being edible but unfortunately a person died as a result of confusing the wild (edible) carrot with the very similar but poisonous hemlock. The Court held that the French publisher of the book committed a fault as he has a duty to make sure before the publication of a book on edible fruits and plants, that the readers can fully rely on the contents of the book. He was found liable for not taking enough precautions for avoiding the negligence of the author as a fatal accident was caused directly by a confusion between an edible and a poisonous plant. The French publisher was held liable with the German publisher of the original copy and the German author who were all under the same duty to verify the quality of a book before publishing it. This seems to be a very extensive obligation for the publisher, who has no power of control over the information but merely passes it on to the public. In the case of an online information provider, such an obligation would almost be impossible regarding the amount and speed at which information is transferred.

Conclusion

12. When examining the above mentioned case-law, the courts seem to make a distinction by reason of the content of the information provided for. General information services such as newspapers or broadcasting services are considered differently from other services that supply specialised data intended to meet the needs of professionals.

13. As a matter of principle, *general information services* have a duty to give correct information and to check the information for errors. Even the principle of freedom of information does not discharge information services from the general duty of care imposed on everyone. The situation seems to be slightly different in common law countries such as the US, where there is an obligation to show "actual malice" of the press to prove its liability.

With regard to the not-grossly negligent misstatements, Courts seem more

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[1] *BGH NJW 1970, p 1963*

[2] *T.G.I. Ier, 28-5-1986, D. 1987 IR, 3R*

reluctant to conclude responsibility of public information services. Undetected minor errors or mere oversights during testing will not usually be sufficient to establish damage, if proper and reasonable procedures have been followed.

14. The services that supply *specialised information*, on the other hand, to a limited group of persons, seem to be subject to a higher duty of care to avoid negligence. Commercial information agencies, such as credit information agencies, should be careful, especially when dealing with information about another person and check the information carefully. Their liability will be upheld if the victim can prove a fault (or negligence) by the credit agency, which, had the credit agency undertaken sufficient investigation, would not have happened. It would not be enough for the professional information provider to show that he has taken all reasonable measures to avoid errors, but he will have to prove that he has acted the way a reasonable information provider would act when placed in the same circumstances, regarding the nature of the information provided for (scientific, medical or other sensitive information), the expectations of the users (professional or not, the price he paid for the services, etc.) the type of damages suffered (personal injury or economic loss), etc.

15. However, generally these kinds of information services will be provided on a *contract basis* and the parties will use contractual remedies whenever the information is wrong or incomplete. The nature of the obligation of the information providers will depend upon the contractual terms, which will be examined in the next part.

Part II: Contractual Liability

Introduction

16. Despite developments in the law of tort and product liability, when a question of liability arises with regard to the online provision of information, it will generally be in the context of a contractual relationship concluded with the user. Contrary to tortious liability which is based on a general duty towards even third parties, contractual liability requires breach of specific contractual obligations. We have examined a number of contracts to trace the chain of liability from the information provider to the user and clauses concerning their respective liabilities.

I. General remarks

17. Generally, the contractual framework seems to be characterised by two features, the first being often the lack of contractual relationship between the initial provider of information and the user. Empirical analysis shows that most of the user's contracts are stipulated only with the service provider so that the user's only contractual remedy lies against the latter. As such the user's only course of action against the information provider will be in tort (negligence) as contracts are only enforceable between contractual parties (autonomy of contractual obligations, doctrine of privity in English law). A contract cannot confer rights or impose obligations on third parties. For instance, the end-user cannot benefit from any provision of the agreement between the provider and service provider which should result in a supplementary liability of the service provider, not explicitly provided for in his own agreement. Similarly, the information provider will not be bound by any obligation in the contract between service provider and the end-user.

However, the doctrine of privity can be circumvented if, for example, the service provider refers in the contract with the

end-user to the obligations contracted by the information provider in a separate contract between information provider and service provider. By virtue of such explicit contractual reference, the end-user will be entitled to invoke the terms of the agreement between service and information provider to which he is not an original party. Such an explicit reference is therefore always advisable, as the contracts are part of a 'group' of contracts and that the obligations of, for instance, the service provider will largely depend upon the corresponding obligations contracted by the information provider. The fact that we are facing a group of contracts raises the question of the consequences of the invalidity of one contract on the other ones. It also affects the question of liability of each party with regard to the general service rendered. Therefore, quite often not one single party will be liable but the responsibility will be shared between different intervening parties.

18. The second striking point when examining contracts is the widespread use of standard form contracts. Most of these contracts are difficult to read and understand and tend to deal with as many aspects as possible, generally without real structure or plan. The multiplication of certain contractual disclaimers could be viewed by the end-user as a way for the information provider to avoid total liability. The user has the uncomfortable feeling that the information provider will not support any liability for the service provided.

19. In our opinion, the main reason for these contractual disclaimers is the fact that the service providers and the information providers have not yet a clear identification of the different risks they occur when disseminating information online. Therefore, the information and services providers should first:

1) Identify the risks

2) Define the means by which they will not eliminate but reduce the risk.

3) Take specific commitments on this solution

4) Provide for a well-balanced financial remedy in case of non-respect of the commitment

For example, even if the information and service provider cannot make a commitment to have complete and accurate data on a specific topic, he can explicitly make a commitment about the way or the means data are identified, evaluated and selected.

II. Validity of exemption clauses [1]

A. The common law countries

20. By virtue of the principle of contractual freedom, parties are free to stipulate whatever they want. Although primarily the terms of the contract are those expressly agreed by the parties, the contract may also contain terms which are implied, either because of the presumed intention of the parties, or by operation of law. With regard to these implied terms of a contract, the UK Supply of Goods Act 1982 could influence automated information service contracts, in as far as the *obligation to carry out the service with reasonableness* would be considered automatically implied in every contract, subject to exclusion or variation by express agreement.

21. At common law, the basic principle is that all clauses contained in a valid

[1] *N. BROUWERS, 'Liability Issues and Information Market', Computer Law and security report, 1990/5, p.12 etc.*

contract would be given effect as between the parties according to their tenor, even liability for a fundamental breach of contract may be excluded. However both the US and the UK have enacted specific legislation that affect the validity of certain contractual terms. The UK Unfair Contract Terms Act 1977 certainly affects the validity of exemption clauses *vis-à-vis* customers. First it prohibits exemption for liability for personal injury, defects or statutory warranties. Other exemption clauses are subject to the requirement of reasonableness. With regard to these provisions, exemption clauses for negligence or mispresentation in the provision of information services will be regarded as invalid with regard to personal injury and presumed to be unreasonable with regard to damages other than personal injury. The person invoking the clause will have to prove that the requirement is satisfied and that the clause consequently should be considered valid. The criterion to determine reasonableness is not specified, except for clauses limiting the liability to a certain monetary amount. For these clauses, the court is to consider the resources available to the person invoking the limitation and the insurability of the risk. Should the supply of information be assimilated to the supply of goods (arguments contra, see section on strict liability), with regard to exoneration clauses, the courts should then consider the respective bargaining position of the parties, the availability of other terms of supply and the customers' knowledge of the terms.

22. The law in the US is different from the law in England. [1] Courts in the United States are quite ready to invalidate exemption clauses in contracts on the grounds of public policy. Manufacturers and distributors of products are held strictly liable in tort for the physical harm they cause by being defective. The picture is naturally rather complex. This is partly because the speed of consumer protection has varied from state to state, partly because the Uniform Commercial Code is quite un-uniform in certain salient respects and partly because interrelationship of contract and tort is understood differently in different jurisdictions.

23. Case law in the UK concerning the application of the Unfair Contract Terms Act to traditional information services is still uncertain. In one case [2], the court ruled that it could not be fair and reasonable for a professional expert, who knew that his information would be relied upon by his client who paid for it, to avoid liability on the basis of a general disclaimer. In another similar case [3], the Court held that the expert owed no duty of care because of the disclaimer in the contract signed by the clients. Since in this case there was not duty of care, the requirement of reasonableness did not apply. Hence the disclaimer succeeded in preventing the duty of care from arising with respect to the negligent mis-statement.

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[1] *T. WEIR, 'Products Liability and Exemption Clauses — English Law', In Memoriam J. Limpens, Centre Interuniversitaire de droit comparé, Kluwer 1987, p.153*

[2] *Smith v. Eric S Busch (1987) 3 All ER 179)*

[3] *Harris and Another v. Wyre Forest District Council and Another (1988) 1 All ER 691*

B. The 'Code Napoleon' countries [1]

24. A contractual agreement requires two corresponding acts: offer and acceptance. By virtue of the principle of contractual freedom, parties are free to stipulate whatever they want within the limits of the public policy and good morals and provided they respect the law. There are no specific legal requirements concerning the provision of automated information systems. It should be noted that liability may raise before the signature of the agreement as a result from negligence in the course of contracting or negotiating the contract (*culpa in contrahendo*).

25. With regard to liability clauses, as a general rule, it is forbidden in these countries [2] to exonerate intent or gross negligence. In France, the Courts do not accept exoneration for intent or for gross negligence. The 1978 Consumer Protection and Information Act stipulates that clauses are considered abusive for having as an objective or as an effect stopping or reducing the right to damages of the non-professional or of the consumer, in cases when the professional does not execute his obligations. A professional person who uses a service which is outside his field of competence is considered a consumer. Recent case law seems to limit the application of the act to sales contracts, in which case it might not apply to information provision contracts.

In other countries such as Luxembourg [3] and Spain [4], they have similar legislation. In Belgium, the courts have developed a special theory that allows exoneration clauses as a matter of principle, but forbids them to annihilate the essence of the contract itself.

3. The 'good faith' countries

26. In The Netherlands, the Supreme Court has stated that clauses that limit liability have to be evaluated on the basis of good faith. The Dutch Supreme Court has formulated a number of circumstances that are to be taken into account for the evaluation of good faith, e.g. the nature and the content of the contract, the social position and the mutual relations of the parties and the extent to which the opposing party was aware of the content of the liability clause.

27. In Germany, standard business terms are regulated by the 1976 Standard Business Terms Act. This law covers almost all types of contractual agreements. This law applies regardless of whether or not foreign law is applicable to the contract. As a general principle the law states that provisions in standard business conditions are invalid if they unreasonably disadvantage one of the contracting parties (principle of good faith). The law mentions clauses that are invalid *per se* without the possibility of evaluation, and clauses which are not necessarily prohibited but may be viewed as subject to a 'reasonableness test'. Moreover the law excludes exoneration of liability for gross negligence.

Part III: Strict Liability

28. The final question examined here is whether the EEC Directive of July 1985 on liability for defective products applies

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[1] *N. Brouwers, op.cit., p.12 etc.*

[2] *France, Luxembourg, Spain, Belgium, Italy, Greece, Portugal*

[3] *The Consumer Protection Act 1983*

[4] *Consumers and Users Protection Act*

to databases and to information providers. At first sight, it may seem strange to consider a database as a product; but it seems that more and more producers include their databases on CD-ROMs, which are then delivered to users. Contrary to what happens with online distribution of information, a material support is delivered to the users. This circumstance has led some authors to consider that the EEC Directive should apply to such cases.

29. What is the importance of such question? What would be the consequence if one came to the conclusion that the Directive applies to such cases? First, the Directive introduces in Europe the principle of liability without fault for defective products, which is similar to a certain extent to the situation in the US. And secondly, the Directive prohibits the recourse of liability, so that exemption clauses are to be considered as invalid in relation to the injured person.

So, one can understand the importance of the question: in certain US courts' decisions, judges have come quite close to applying strict liability to 'information products', and to defective information: see for instance the Jeppesen case, explained hereabove, concerning flight navigation charts. If the Directive is applicable to databases in Europe (and to other supports of information, such as books), the situation would be even more clear then in the US, with a well-established principle of strict liability for information!

30. To summarise the Directive very briefly, one should stress the following points:

- it establishes a liability irrespective of any fault or negligence for the producer of defective products
- it applies to all movables which can be subject to economic activities (very broad definition)
- it prohibits disclaimers of liability in relation to the consumer
- the fact that there is a contractual relation between the producer and the victim may be disregarded.

Some factors do limit the possibilities for application of the Directive:

- first, it only applies to products, not to services
- secondly, it only covers material damage to private items of property, as well as damage resulting from death or personal injuries. So for example, financial damage, economic damage suffered by an enterprise or damage to one's reputation are not covered.

31. Does the Directive apply to databases and to information providers (such as publishers) in general? A first objection to such application is that the Directive only applies to products and not to services and the providing of information as such, is a service. However, information is generally integrated on a material support such as a book, a tape, a film, a map, a CD-ROM, to which the Directive applies. What about online databases? In such cases, there is no transfer of a material support to users. However, all the information is integrated on a support which is located, e.g. on the producer's premises. Such support is not transferred, but is made available to users, like books are available in a library. And the Directive does not require any physical transfer, but only the 'putting into circulation' of a good. So online distribution, it can be sustained, is just one form of 'putting into circulation' of a product.

To summarise the argument: the provision of information (= the service) is generally accompanied by the provision of a support of information (= the product). To what extent does the Directive apply to the support? To answer

that question one must distinguish the support itself from its content: the support is material. But it is hard to find examples where it could cause damages to 'readers', except in the famous story of Umberto Eco ('The Name of the Rose') where the poison of the ink kills the reader of the book. Its content (the information), on the contrary, is immaterial. The question is: 'Does the Directive cover intangible goods?' The answer is controversial, and some authors sustain that it does apply to intangible goods. We do not think that it does, because otherwise many of its provisions would become difficult to understand: raw materials, component parts, importer, trademark affixed on it, presentation of the product, etc. . . More basically, for information, who would be the producer, the author or the publisher? One can see that the Directive would create many difficulties: if information is included, where do we stop: a lawyer gives 'information' to his clients, so does an architect and the doctor!? . . . Should the fact that the information is printed on a support change anything? We do not think so.

32. To conclude, two things:

1) Since the Directive does not apply to information, the liability remains based on negligence (traditional system for negligence). And concretely speaking, it also means that disclaimers of liability (which are forbidden by the Directive) remain valid for information providers. However, Court decisions in Member States indicate that even a criterion of negligence can be very strict upon producers and that there are already certain limits to the validity of exemption clauses.

2) We cannot examine here the question itself of the advisability of imposing strict liability for information. What is clear is that it never was one of the objectives that EEC officials and legislators had in mind. And since the question involves important policy issues, it should first be discussed by all parties concerned and the answer should only come from the legislator.

Some issues, indeed, are far too important to be decided upon by legal scholars — or, to put is differently: if you try to pull on the string too far, it may well break your arm . . .

Questions of liability in the provision of information services

Introduction

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2. Tortious, contractual and strict liability

3. Production function — provision function

Part I : Liability in tort

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Decimal point mistake BGH NJW 1970, p1963)

"2.5% NaCl infusion" read as "25% NaCl infusion"

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Part III: Strict liability

1. The EEC Directive of July 25, 1985 on product liability

2. Applicability of the EEC Directive to databases and information

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Editor's note: *The EUSIDIC 'Research Study on Questions of Liability in the Provision of Information Services,' of which this current paper is an extract, is available to the 11 sponsoring members of the study from March 1990. It will be available for purchase by non-sponsors from September 1990 onwards.* ■