

[SE] Report on the need for regulation in the area of data transmission

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A governmental committee in Sweden has examined the need for changes in existing laws in the area of document transmittal and verification by electronic documents and services. The report is based upon three parts. The first part deals with governmental authorities' management of documents and the utilization of IT in administrative functions. The second part addresses questions relating to civil law as it pertains to the management of electronic documentation. The report finds that most of the questions that arise may be answered within the framework of current contractual law, since this is commonly kept and limited to general principles which are appropriate for agreement of varying type. And as far as concerns those questions which cannot be directly dealt with under the prevailing regulations they should still be solved in close relation with the principles of contract law.

The third and final part of the report is more detailed and presents a novelty in suggesting a law focused on suppliers of Bulletin Board Systems and similar electronic services. The report suggests an unsanctioned provision stating that the person who provides the service should have the degree of supervision over the service that is necessary with regards to the scope and aims of the operation. This obligation would be unsanctioned. However an additional obligation is also proposed, under criminal offence, meaning that the service provider will have to inform anyone who wishes to utilize the service about

- who provides the service
- the user's responsibility for the content of the electronic messages submitted
- to what degree received messages will be available to other users

Another obligation under criminal offence is to hinder further distribution of an electronic message if it is obvious that a user by posting the message has made himself liable to a crime, an infringement of intellectual property or that the contents of a message are liable to be used in crime. A precondition though for criminal liability in such cases is the existence of criminal intent.

The report has found that current penal regulations can be applied also to criminal conduct via a network. Although the perpetrator may be difficult to trace, the service provider is - through the proposed legislation given such a position that

he, under certain circumstances, may be judged responsible as an accessory to the users crime according to the Swedish Penal Code, if the provider passively watches when a user carries on a criminal activity via the mediation service.

The proposed new legislation can in practice be applied only to activities which involve Sweden. Involving Sweden means that the physical location of a server is not any decisive criteria for the application of Swedish law, according to the report. If someone moves his mediation service abroad, in order to circumvent Swedish rules, but is still aiming at Swedish users, the proposed law should be considered applicable. The report does not propose any specific regulations regarding the questions of jurisdiction but mentions that such questions must be solved in accordance with general rules and restrictions applicable in the area. The international problems of jurisdiction is not dealt with in the report but it simply refers to international work to solve such problems, such as the Council of Europe and it's Recommendation No R (95) 13 of the Committee of Ministers to Member States Concerning Problems of Criminal Procedure Law Connected with Information Technology.

SOU 1996:40, Elektronisk dokumenthantering.

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