LIABILITY OF INFORMATION PROVIDERS: RECENT DEVELOPMENTS IN FRENCH LAW CONTRASTED WITH LOUISIANA CIVIL LAW OF LIABILITY AND UNITED STATES COMMON LAW OF TORTS

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INTRODUCTION

Information communicated to another person at his request, for instance by a stock market information service to its customer, or disseminated to the public by means of mass media, may cause loss or damage if it is inaccurate, biased, incomplete, or sometimes even simply when it is transmitted late. Moreover, the expansion of automated data processing services has resulted in increasing kinds of risks, and therefore the possibility of very serious consequences. The main hazard is commercial or economic loss, which can flow from incorrect financial, technical, or legal information, but the possibility of personal injuries is also a matter for concern.

Scope of the study: liability for economic loss or personal injury. This study does not encompass questions of liability for abuse of information, such as defamation or libel, which are generally well settled, but focuses mainly on damages caused by defective information and on situations akin to products liability, issues which are far less easy to tackle. The creation of a large range of information services available through Minitel in France, which includes various data banks and all sorts of interactive services, such as the recently publicized experimental services involving patients' medical records or detection of diseases, calls for consideration in that respect. In the United States, a case like *Daniel v. Dow Jones*,[1] involving false news provided by a computerized data base in the field of securities investment, shows that the issue is critical.

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1. 137 Misc.2d 94, 520 N.Y.S.2d 334 (N.Y. Civ. Ct. 1987), and on that case see also *infra*.

However, liability of information providers has rarely been addressed.[2] It is true that the examination of the subject raises a complex set of questions with many aspects, including the possibility of failure of technical means used to provide information, considerations relating to the quality of the content of the information, and even touching on freedom of expression. This is true even if we set aside the fact that the information provider may be held liable under numerous existing rules in communications law, such as those protecting private data or secrets of various kinds, or as a result of restrictions relative to commercial advertising.[3] Thus, companies using, processing, and transmitting data run the risk of being ordered to pay compensation on a number of counts in the course of exercising their activity.

The object of this article is to show how the French courts apply the general principles of delictual and contractual liability to the activity of information providers and to contrast that with the solutions given by Louisiana courts, where the same principles are laid down by the civil code, as well as in American common law jurisdictions. The comparison is significant because such liability is often found in

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2. In France, one of the major treatises on civil liability, LE TOURNEAU, LA RESPONSABILITÉ CIVILE (Dalloz 1982), which describes many factual situations, contains the word "information" in the index, but it refers to "consumer information" and to "duty to disclose" in a contractual relationship.

In the United States, P. KEETON, PROSSER AND KEETON ON THE LAW OF TORTS (5th ed. 1984), does not deal with the issue; a two-volume treatise like M. STUART MADDEN, PRODUCTS LIABILITY, (1988), contains no hint as to information providers' liability, neither in the index nor in the table of contents; however, J. PHILLIPS, PRODUCTS LIABILITY IN A NUTSHELL, 1-2 (1988), recognizes the problem under the heading, "What is a Product?": he states that product liability has been applied to writings such as mass-produced aircraft navigational charts, but that otherwise it has been held that a publisher has no duty to warn the public of defective ideas in a book published by it.

A law review article has been recently devoted to the topic, B. Sookman, *The Liability of Information Providers in Negligence*, 5 COMPUTER LAW and PRACTICE 141 (1988), which shows that in Canada a duty of care was imposed by a court on a computerized information provider in a case where a customer had been compelled to change the name of its corporation because of the failure of the data bank to reveal that this name was previously registered. *See* Canada Limited v. The Queen, 53 CPR (2d) 177 (1981).

3. On these questions see, in France, J. HUET et H. MAISL, *Le marché de l'information, in* DROIT DE L'INFORMATIQUE ET DES TÉLÉCOMMUNICATIONS, Ch. VI, (1989); in the U.S., GILLMOR AND BARRON, MASS COMMUNICATION LAW, CASES AND COMMENT (1984).

France, whereas the rule is generally to the contrary in the United States.

Liability of information providers in the United States. American courts are reluctant to admit the liability of information providers. The rule was established in *Jaillet v. Cashman*[4] in 1921, the landmark case on the subject. An investor sued Dow Jones & Co. when the latter carried an inaccurate report on its wire service that the U.S. Supreme Court had decided that stock dividends constituted taxable income. The investor believed that this would depress the market and sold his stocks. When the report was corrected forty-five minutes later, the market rose and the investor suffered financial losses. The Court held that the relationship of the ticker service to the public was the same as that of the publisher of a newspaper to the readers, and that the service provider was not liable for negligent mistakes as long as there was no contract or fiduciary relationship with the customer. The same solution was adopted in *Gutter v. Dow Jones, Inc.*,[5] decided in 1986 in a similar situation, as well as in many other cases.[6] These cases show that an important element in the debate is the number of persons who might suffer a loss: as Section 552.2 of the Restatement (second) of Torts puts it, the courts generally think that recovery is available only in instances where a limited group of persons might sustain damage.[7] Another way to phrase the requirement, as many cases do, is to say that a "special relationship"[8] with the plaintiff must exist in order to hold the

4. 115 Misc. 383, 189 N.Y.S. 743 (1921), *aff'd*, 202 App. Div. 805, 194 N.Y.S. 947 (1922), *aff'd*, 235 N.Y. 511, 139 N.E. 714 (1923).

5. 490 N.E.2d 898 (Ohio 1986).

6. *See, e.g.*, Gale v. Value Line, Inc., 640 F. Supp. 967 (D. R.I. 1986) (financial publications' omission of certain information regarding particular securities); First Equity v. Standard & Poor's Corp., 670 F. Supp. 115 (S.D. N.Y. 1987), *aff'd*, 869 F.2d 175 (2nd Cir. 1989)(high priced publication marketed primarily to securities brokers, erroneous information).

7. RESTATEMENT (SECOND) OF TORTS, § 552.2 : "(1) One who supplies false information ... is subject to liability ... if he fails to exercise reasonable care ... (2) The liability ... is limited to loss suffered ... by one of a limited group of persons"; *see also* Gutter v. Dow Jones, Inc., 490 N.E.2d 898 (Ohio 1986), at 900.

8. On this "special relationship" limitation on liability, see Daniel v. Dow Jones, Inc., 137 Misc.2d 94, 520 N.Y.S.2d 334, 337 (N.Y. Civ. Ct. 1987).

information provider liable; this necessarily limits the number of persons entitled to obtain damages.

The most recent case in that line of decisions is *Daniel v. Dow Jones, Inc.*,[9] decided in 1987, which again dismissed the claim of a person who suffered economic damage because of false information. Relying on an electronic news service, the subscriber of that service was misled by a report that failed to specify that the price of a transaction involving the restructuring of an oil company, a Canadian corporation, was in Canadian and not in United States dollars. The plaintiff was not allowed compensation and the Court stated that, though "the advances of technology bring the defendant's service into the home or office of more than 200,000 persons; . . . there is no functional difference between the defendant's service and the distribution of a moderate distribution paper."[10]

It is most unlikely that a French court would so discharge the information provider of any obligation to compensate for the loss, absent a clear waiver of liability in the contract with the customer.[11]

The only instances of liability being imposed on the information provider in the United States involve error in navigational charts that led to air or sea accidents, and most often the charts originated from the U.S. Government. It was held that the Government, in publishing such charts, had the duty of using due care in their preparation and dissemination.[12] Moreover, private publishers of charts were even

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9. 137 Misc.2d 94, 520 N.Y.S.2d 334 (N.Y. Civ. Ct. 1987)

10. *Id.* at 337.

11. On French law, see *infra*, Part II; and on the utility of the waiver in Canadian law and practice, see B. Sookman, *supra* note 2, at 143 : "information providers ... can, and usually do, attempt to insulate themselves from liability in negligence."

12. *See* Reminga v. United States, 631 F.2d 449 (6th Cir. 1980). (Inaccurate information in an aeronautical chart, plane struck a wire, death of airplane passengers); Murray v. United States, 327 F. Supp. 835 (D. Utah 1971), *modified on other grounds*, 463 F.2d 208 (10th Cir. 1972); *see also* DeBarbelene Marine Corp. v. United States, 451 F.2d 140 (5th Cir. 1971)(sea chart obsolete, barge ruptured underwater natural gas pipe line, explosion and fire; however, Government had published notices advising of issuance of new updated charts, and so escaped liability); *but see* Sullivan v. United States, 299 F. Supp. 621 (N.D. Ala. 1968), *aff'd*, 411 F.2d 794 (5th Cir. 1969)(Government not liable for incorrect weather forecasts, this being an area of indeterminate reliability).

found strictly liable for the defect in their product when the chart contained contradictory or inaccurate information.[13]

In Louisiana, though there is a principle of liability of the utmost generality laid down in article 2315 of the Civil Code in words identical to those of the French code,[14] courts do not rely upon that principle in such circumstances. They prefer to cite common law precedents. In fact, in *Pittman v. Dow Jones, Inc.*,[15] decided in 1987, though the United States District Court for the Eastern District of Louisiana did cite article 2315 of the Civil Code, above all it heavily relied on *Gutter*, and on other cases of common law courts, stating that, "no duty in torts exists for a newspaper publisher to investigate its advertisers for the correctness of the ads placed in the publication."[16] The plaintiff claimed he lost $50,000 invested in a financial institution which went bankrupt. The institution had advertised in the *Wall Street Journal* proposing "jumbo" interest rates on deposits, and it was said that funds deposited were insured by the U.S. Government. This statement was false and the *Journal* was not aware of it. The court's decision was that a newspaper "has no duty whether by torts or contracts to investigate the accuracy of advertisements placed with it."[17] This decision is certainly sound as long as an advertisement does not consist of information created and shaped by the *Journal* itself for its readers; the advertisement should expose only the advertiser to liability. The same solution would likely be sustained in France. However, the reasoning and authorities given by the court show its

13. *See* Aetna Casualty and Surety Co. v. Jeppesen & Co., 642 F.2d 339 (9th Cir. 1981)(inconsistency between scales of some graphic depictions, "chart unreasonably dangerous and a defective product," plane crashed in Las Vegas). In Brocklesby v. United States, 759 F.2d 794, *amended*, 767 F.2d 1288 (5th Cir. 1969), *cert. denied*, 474 U.S. 1101 (1986), there was a defect in a chart developed by the Government and published by Jeppesen, Jeppesen chart was a product and was defective, Jeppesen was unable to escape liability; ***but see*** Times Mirror Co. v. Sisk, 122 Ariz. 174, 593 P.2d 924 (Ariz. Ct. App. 1978)(mountain not shown on a chart drawn on the basis of information furnished by Federal Aviation Administration, Pan Am Cargo crashed: court held publisher liable, but avoided determining whether chart was a "product").

14. The French art. 1382 C. Civ. reads: "Tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé, à le réparer."

Art. 2315 of the Louisiana Civil Code reads: "Every act whatever of a man that causes damage to another obliges him by whose fault it happened to repair it."

15. 662 F. Supp. 921 (E.D. La. 1987), *aff'd*, 834 F.2d 1171 (5th Cir. 1987).

16. Pittman v. Dow Jones, Inc., 662 F.Supp. at 923.

17. *Id.* at 923.

adherence to the general rule at common law that publishers of newspapers, or any information providers, are not liable for damages caused by the information they disseminate.

Reasons for the difference with French law. Many reasons can explain the difference between, on the one hand, Louisiana civil law and U.S. common law,[18] and on the other, French civil law. Three should be emphasized. First, in the United States, the law of torts is still in a process of developing causes of action. The question "is there a duty of care?," which is one of the four questions flowing from the four requisites for an award of damages, can be given a negative answer in numerous cases, including the case of information provision by way of media. In France, on the contrary, this question does not arise. Only three conditions exist for somebody to be held liable: a fault, a damage, and a causal link. The scope of liability is wider and anyone who causes a loss or an injury to another as a result of his unreasonable conduct is under an obligation to repair the damage.

Second, the notion of contract is narrower in common law than in civil law, especially French civil law. French courts do not give the concept of privity too strict a meaning. This explains why the reader of a newspaper, or of a book, can be considered a buyer, in privity with the publisher, and as a consequence there can exist a contractual liability of the publisher to repair damages sustained by any reader.

Third, another reason for the difference is that, in the United States, the reluctance to impose liability on information providers is closely related to First Amendment considerations. In France, though

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18. A striking picture of the difference between the two systems can be found in a comparison between the *Affaire de "La cigue,"* or "hemlock" case, Trib. gr. inst. de Paris, 28 mai 1986, *Soc. Fernand Nathan*, D.1986, flash, no. 25, REV. TRIM. DR. CIV. 1987, 552, obs. J. Huet, where the liability of the publisher of a book was upheld (see this case *infra*, examined in the text), and Cardozo v. True, 342 So.2d 1053 (Fla. Dist. Ct. App. 1977), *cert. denied*, 353 So.2d 674 (Fla. 1977), where that of a bookseller was not admitted. Although the French case involved a publisher and the American case a seller, both cases were decided in similar circumstances of omission of information on plants, the result of which was the injury or death of some readers.

freedom of speech is fully recognized as a constitutional principle embodied in the first *Déclaration des droits de l'Homme*, there is no such idea, at least not expressly stated in judicial opinions, that imposing a liability on information providers would act as a deterrent of the free flow of information.

However, if the principle of liability of information providers is accepted in France, it proves difficult to put into practice. Some preliminary observations will help in this regard.

The numerous parties contributing to the loss or damage. One of the difficulties is that, in situations where information is provided by modern electronic means, it is common for several defendants to be implicated in one single action for damages, usually two persons at least, e.g., both the information service provider and the data bank producer. It is probable that following the example of what happens in the field of product distribution,[19] the contractor who is the closest to the user will tend increasingly to have direct responsibility for the product, this party having then a right to sue his own supplier.[20]

Looking from another point of view, one may notice that often the role played by the user to whom the information is sent is often not at all neutral. The user is involved in the searches he does or, where he

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19. In this connection, the distribution of information would be treated in the same way as distribution of goods, while, elsewhere, it would be treated rather like a supply of services.

20. In detail, however, the question of the liability of the information service provider who provides third parties with data calls for a more finely balanced analysis. A distinction must be drawn between (i) whether the intermediary involved has a purely technical task (in which case it does not seem that he can in any way be involved in the content of the service supplied to the third party (the producer remains entirely in control of this), but only liable for malfunctions linked with the technical implementation, such as the processing of software), and (ii) whether he is involved in the marketing of the services (which puts him in direct contact with the customers, with whom he would most often be contracting directly; it is to him that the user/victim would apply at the outset).) And so far as third parties likely to suffer loss as a result of defective information are concerned, the question would arise in similar terms; the information service provider may be held liable if the data is supplied under his name or trademark, and not if he remains entirely invisible in the operation (unless, here, too, he is proved to have been involved in the technical methods implemented).

is a patient receiving long-term treatment, participates in the process by supplying data himself, so that it will often be a very delicate matter to untangle the original cause of the loss. Moreover, there is a specific problem in some telematic communication systems offered to the public, such as free-access electronic mail-boxes in the so-called "Kiosque" system of the Minitel network. In this system the service is billed by the public operator which in turn pays the service provider the amount due.[21] Although it is evident that loss caused to third parties as a result of information exchanged is the liability of the actual users of the service who are also the authors of the data, it remains to be decided whether the provider of the service is of necessity totally free of responsibility.

The various categories of victims of defective information. Another factor contributing to the difficulty is that the data may affect a number of different people at the same time. Sometimes a person who has paid to obtain data for his use will be damaged: the victim is the person for whom the information is intended under a contract. In other cases, incorrect information is given about a third party: it is the subject of the information who will have grounds for complaint. Sometimes such a victim in fact is linked to the information provider by an agreement, for example, a tradesman who has asked to be included in a professional directory distributed to the general public, but whose name is omitted from the list or whose details are listed incorrectly. The situations are innumerable.

At the same time there is an overlap of contractual and non-contractual liability in this field. In French law, these differ from one another, in particular with respect to the possibility of restricting or excluding liability by means of special clauses.

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21. On the so-called "Kiosque" system, see J. HUET et H. MAISL, *La télématique*, in DROIT DE L'INFORMATIQUE ET DES TÉLÉCOMMUNICATIONS (1989). In the United States, since 1987, the Bell companies are allowed to provide this billing service, and, as long as telematics is not available as it is in France, it applies mainly to telephone services used by customers.

In addition, along the same lines, it can be noted that the existence of a contract does not always permit the liability to be limited. In the case of telematics services available on the Minitel network and passing through the so-called "kiosque" system,[22] the agreement concluded between the service provider and the user is most often an implied contract because the user has access to the service without previously contracting for it. In such circumstances limitation or waiver of liability seems extremely unlikely both in fact (for commercial reasons, as the process would not be very attractive), and in law (because a party who did not agree to the advertised clause might dispute its validity).

Lastly, the means of transmitting the data may be implicated in causing the loss. Even assuming that one can surmount the obstacle of the difficulty of proving that the incident was caused by the communication, rather than by the information system itself, compensation will not necessarily be obtained. Where the operators are public telecommunications authorities, liability is generally excluded or substantially reduced.[23] However, private companies operating so-called "value-added networks," particularly in the form of leased lines, often give a guarantee of high reliability.

Evolution of the law in France. No doubt, there must always have been liability based on incorrect or ill-transmitted data,[24]

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22 . About that system, see *supra*, text and note 21.

23. In France, article L. 37 of the Post & Telecommunications Code in both this field and that of the supply of lists of subscribers (*see infra*, Part II) limits the liability of telecommunications authorities to cases of serious fault. In the case of networks such as Transpac, which is operated by a private entity subsidiary of the public operator, liability is indirectly limited by the same legislation since, in the contract concluded with the user, the supplier is exempted from liability for acts outside its control, including defects in the means of transmission supplied by the authorities (Transpac contract, art. 9 Responsabilité-Risques); and *see* J. HUET et H. MAISL, *Les Télécommunications*, in DROIT DE L'INFORMATIQUE ET DES TÉLÉCOMMUNI-CATIONS (1989).

24. Examples of this kind of liability, rather than being sought in cases of copyright, which is traditionally considered to be a field where style is more important than the content, should be sought in the field of patents. One example is the transfer of an invention coupled with a guarantee against inherent defects. The guarantee can be implemented by the courts on the various occasions when loss is caused by a design fault

although this point has seldom been discussed.[25] But nowadays, the increasing importance of data processing in all sectors of commerce and society plus the new factor of interactive information services add a dimension to the problem that is quite different from the previous situation. And because of the lack of adequate points of reference, insurance against the resulting risks, which is so essential in many applications of this kind of activity,[26] seems very difficult to organize.

In France, a number of court cases have started the slow process of establishing the principles applicable to liability in the information sector. The evolution began with the *Branly*[27] case in 1951, and since that time various cases were decided relating to commercial information supplied by banks or specialized agents.[28] Then in the 1980s, the *Galande*[29] and *Polac*[30] cases, and finally the so-called *Affaire de "La cigue,"* or "hemlock" case (where the publisher of a book about wild plants was held liable for the death and injuries of

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rather than by faulty operation on the part of the transferee; *see, e.g.*, Cour de Cassation, Com. 24 juin 1975, D.1976, 193, note J. Schmidt (patented process of prefabricated panels with a defective seal). *See also* CHAVANNE et BURST, DROIT DE LA PROPRIÉTÉ INDUSTRIELLE, n° 211 (1980).

However, this kind of liability, when applied to data processing, is more closely analogous to liability for poor quality of processing tools, *e.g.*, software, and less analogous to product liability for the information itself. But it is true that both aspects are closely linked.

25. It is seldom discussed so far as the transmission of information is concerned, apart from cases involving the postal service and cases of delays or non-arrival of post; still the Authority's liability is also very strictly limited in this connection; *see* J. Huet, *Mandataires méfiez-vous du courrier postal*, 1986 REV. TRIM. DR. CIV. 134 (about Cour de Cassation, Civ. 1ère, 2 octobre 1984).

26. One thinks in particular of those information services that can affect users personally, directly or indirectly: e.g., medical diagnosis by computer, or, more simply, information given by Minitel about cosmetics.

27. Cour de Cassation, Civ. 27 février 1951, D. 1951. 329, note Desbois, J.C.P. II. 6193, note Mihura, a landmark case where the author of a book on the history of radio did not mention the name of a well-known scientist who had played a leading role in that field. The author was held liable and damages were awarded to the heirs of the scientist. *See infra.*

28. On these cases, see *infra.*

29. Trib. gr. inst. de Paris, 24 avril 1984, *Fiduciaire de France et autres v. Galande*, D.1985. I.R. p. 47, obs. H. Maisl, REV. TRIM. DR. CIV. 1984.517, obs. J. Huet.

30. Trib. gr. inst. de Paris, 29 janvier 1986, *affaire Polac*, D. 1986, flash, n° 10.

readers)[31] were decided, not to mention numerous precedents involving omissions or errors in telephone directories[32].

Anyway, these cases where liability has been discussed and often upheld simply are examples of the many different situations to which one has to apply the general principles of law contained in articles 1382 *et seq.* of the Civil Code[33] (for cases involving loss caused to third parties, raising questions of delictual liability), or articles 1137 and 1147 of the same code relating to dealings between contracting parties (where the liability is deemed to be of a contractual nature).

Distinction between liability of a technical nature and liability linked to the content of the information. In determining questions of liability, it is certainly necessary to classify separately those matters concerning the satisfactory technical functioning of the system operated by the supplier, in particular its availability.

In many situations when information is to be furnished, the loss or damage a user can suffer will frequently be minimal, and he will not envisage seeking compensation if he is able to have access to another source of data or to wait for the information. When the question of liability arises, it is generally in the context of a contractual relationship between the producer of the information itself and the information service provider who makes the service available to the customers: failures, especially if they are prolonged, then result in loss of turnover of business to the producer of the service. In principle, the parties provide for these consequences by appropriate clauses: they determine a rate of availability, restrict the maximum amount, and often exclude any right to compensation if the interruption in the service is caused by

31. Trib. gr. inst. de Paris, 28 mai 1986, *Soc. Fernand Nathan*, D.1986, flash, n° 25, REV. TRIM. DR. CIV. 1987, 552, obs. J. Huet.

32. On these cases, see *infra*.

33. The wording of art. 1382 is the same as that of art. 2315 of the Louisiana Civil Code; *see supra* footnote 14.

the public telecommunications networks or power outages, both of which are presented as cases of *force majeure*.[34]

But all types of provisions may be included depending on the stakes. Between professionals, and for applications demanding the highest degree of reliability, strict guarantees are given. Stipulations of this kind are common in value-added networks[35] of a certain size.

In any case, a clause precisely defining liability from this point of view will be all the more necessary for detailing the obligations of the information service provider who, in view of its responsibility for the technical operation of the system, will tend to be held strictly liable towards the other contracting party. And the same argument may apply where the software used to process the data is supplied by a third party, and this software causes a malfunction. In such circumstances, when the data processed results in loss, the supplier of the data will not avoid having to pay compensation, although subsequently he may in turn be able to sue the person who supplied the software. Again, special provisions in the contract dealing with liability can prove useful.

Main division. In this study, the focus is on the subject of liability incurred by reason of the content of the information. In that respect, a convenient distinction can be drawn which reflects the case law developed on the above-mentioned articles of the French code. Although both sorts of activities may overlap, there is a tendency to examine separately the public communication services, which can more easily be classed with other mass media, and the supply of specialized data intended to meet the needs of professionals.[36] In the first

34. Example of a clause in a telematics service contract concluded between a producer and an information service provider: "If, as a result of circumstances outside its control, X . . . is unable to perform the contract in whole or in part, it will not assume any liability as a result of this. It is hereby agreed between the parties that X . . . may not be held liable in any of the following events, although the following list is not exhaustive: company disputes, riot, war, storm, interruption of power supply."

35. The fact that this kind of network is extensively constructed using specialized lines provides for greater reliability; on these networks, *see* J. HUET et H. MAISL, *supra* note 23.

36. This distinction, which, moreover, is not very scientific and is based on an impression that the courts tend to treat cases from the two regimes differently, is

category, the courts hesitate to uphold liability too strictly and never depart from the requirement of showing negligence to justify the obligation to compensate (Part I). Conversely, in the second category of activity, the information provider can be held liable more easily, and sometimes even strictly (Part II).

I. INFORMATION AND PUBLIC COMMUNICATION: LIABILITY FOR ABUSE OF FREEDOM OF EXPRESSION OR FOR NEGLIGENCE

Some of the cases submitted to the French courts are in the field of public communication, more precisely the print media, where the questions raised are often closely related to the principle of freedom of expression. For example, it was held in *Soc. Bayard Presse,* decided in 1985, that in the absence of an outrageous attack, the author of a letter published in a magazine intended for the clergy could not be held liable for its contents when these were clearly not inspired by a desire to injure or by hatred, but merely by a difference of opinion on religious grounds; the judges also held that the state courts have no right to make any decision on a debate about the catechism.[37]

Nevertheless, just as the right to information is subject to restrictions, so is the freedom of expression, including, of course, that of respect for the right to privacy, which has so often been the subject of litigation in its various forms.[38] Another restriction stems from a

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closely akin to the distinction drawn between the two different sorts of so-called "Kiosque" system; between kiosks open to the general public and kiosks intended for professional use.

37. Trib. gr. inst. de Paris, 9 juillet 1985, *Soc. Bayard Presse*, D. 1985, flash, n° 33; *see also*,Trib. gr. inst. de Paris 13 juillet 1985, *Fresnay*, D. 1985. flash n° 34, where the court considered that it could not give an opinion on a debate relating to historical events, namely the French "resistance" during World War II, in order to require certain passages of a film to be deleted.

38. For example, the right of publicity, *see*: Cour de Cassation, Civ. 1ère, 4 juillet 1984, *Soc. Cogedipresse*, D. 1984, flash, n° 30: expression of opinion,

third party's commercial interests, for example, the right of a manufacturer whose products are disparaged. The classic example of this is the liability of consumer associations if they publish malicious articles on commercial products.[39]

Obligation to provide prudent and objective information. Generally, *a priori*, information that is made public must be "prudent and objective," as the Paris trial court reiterated in the *Polac* case.[40] During a program in the "Right to Reply" TV series devoted to the Pari-Mutuel-Urbain (a bookmaking association) and horse-racing, the presenter of the program was held liable for having "exceeded the limits of the right to inform" because, although "freedom of the press requires that all information on the chosen subject may be divulged and opinions may be expressed--even very severe criticisms," the producer of the program should have "shown circumspection and objectivity" and respected the demands of his "task to inform" better than he did by the choice of witnesses asked to take part in the program, by his attitude consisting of letting certain guests speak who criticized alleged actions, and by interrupting a party who wished to explain; in addition, incomplete information was given on certain questions in a dispute mentioned in the program.[41]

However, this decision has been quashed by the Paris court of appeal.[42] While holding that a journalist must "in all circumstances, even in giving a critical opinion, show circumspection and objectivity," and that if he does not do so he commits "a wrongful act in the sense of article 1382 of the Civil Code," the court held that a principle of this kind only applies "in the context of a classic issue of information or a traditional debate, such as those used in politics," and not in cases like

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homosexual summer-school, reproduction of the effigy of a participant, description of the event in a tone of mockery, interference with right of publicity and respect of privacy.

39. *See* GUYON, DROIT DES AFFAIRES (Economica 1986).

40. Trib. gr. inst. de Paris, 29 janvier 1986, *affaire Polac*, D. 1986, flash, n° 10.

41. *Id.*

42. Paris, 1ère Ch. Sect. A, 6 octobre 1987, unreported; and on the fact that the program was broadcast live, see *infra*.

the "Right to Reply," the main characteristic of which--as viewers well know--consists of highlighting an institution or activity without hiding anything--even its most negative aspects--by deliberately introducing controversial themes so as to make the discussion appear spectacular, to make up for what it lacks in depth."[43] But this kind of legal argument is very unsatisfactory, for it seems to allow multiple weights and measures. Therefore, if this case had been appealed further to the Court of Cassation, the French Supreme Court, most likely the court of appeal's judgment would have been sent back for retrial,[44] despite the fact that there were a variety of other grounds for the decision, in particular the carefully collected documentation for the program which was evidence of the serious attitude of the presenter.

Other restrictions on the free flow of information. Another illustration of the restrictions on the free flow of information, along different lines, is set out in a law passed on 31 December 1987 which has added articles 318-1 and 318-2 to the Penal Code, sanctioning those who encourage others to commit suicide. This legislation, which imposes criminal liability on anyone responsible for encouraging another person to commit suicide, should put an end to certain abuses of freedom of expression which have recently given rise to emotional reaction in France.[45]

There are numerous other aspects of liability incurred in the context of public communication activities which might be put forward. Certain acts are sanctioned by the criminal law, in particular, interference with a person's honor or reputation, which falls within the scope of defamation, or divulging false news, which if it results in loss can give rise to a right to compensation. The various criminal sanctions covering the press by virtue of the Law of 1881 dealing with this

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43. *Id.*

44. On the subject of liability, the Cour de Cassation supervises the assessment of fault made by the judges on the merits of the case.

45. These reactions were provoked by the publication of a book entitled, "Suicide, mode d'emploi" (how to commit suicide); regarding cases dealing with that book, decided prior to the 1987 Law, see the decisions cited in REV. TRIM. DR. CIV. 1987, 552, J. Huet, *La responsabilité du fait de l'information: obligations de l'éditeur et obligations de l'auteur* (relating to the "hemlock" case).

medium of expression, or falling under certain special provisions of the Penal Code,[46] would apply to cases of automated supply of information unless the application of this legislation is restricted to communication in the form of print, which is rarely the case.

The Law of 1881 places primary criminal responsibility on the manager of the publication or the publisher of the information; then it names successively the author, the printer, and the other persons involved in circulation; civil liability follows the same reasoning. Even if the author of the information is not sued in the first place, he always can be cited as an accomplice. In the case of audiovisual and telematic services, which include the various information services available on Minitel, the same system--apart from one or two slight differences--is applied by way of provisions dating from 13 December 1985, which refer to infringements of the Law of 1881 and are maintained in force by the law of 30 September 1986 relating to freedom of communication.[47]

Difficulties arising in the application of the negligence rule. Apart from the provisions of the criminal law, whenever imprudence or negligence on the part of the author or publisher of information causes prejudice to a third party, civil liability may be incurred. This applies to examples involving the print media.[48]

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46. Especially articles 283 *et seq.* relating to offenses of indecency, although this legislation is seldom invoked.

47. *See* J. HUET et H. MAISL, *supra* note 21. This mechanism of strict liability applied automatically, operating all down the line, also figures in article 285 of the Penal Code concerning indecency offenses. Its effectiveness is nonetheless limited by the fact that this body of rules has been separated from the Law of 1881, which is sometimes referred to. This is the case in the Law of 1985, which provides that telematics businesses must have a publication manager, but which only provides for liability down the line for infringements of the Law of 1881, and not for violations of the Penal Code. A difficulty then arises so far as electronic mail-boxes are concerned, where strict liability cannot be applied automatically to the publication manager when those initiating the indecent communication are merely users of the communications system: the supplier of the service can only be charged as an accomplice.

48. Thus, in the so-called *Affaire de "La cigue,"* or "hemlock case," the publisher and the author of a cookbook on Wild plants were both held liable because of the inadequate information supplied to the readers, Trib. gr. inst. de Paris, 28 mai 1986, *Soc. Fernand Nathan*, D.1986, flash, no. 25, REV. TRIM. DR. CIV. 1987, 552, obs. J. Huet, and on this case see *infra* Part II.

The same solutions might be followed in cases involving telematics. The producer of the data supplied and possibly the information service provider may find themselves held liable in all circumstances where their negligence causes loss or damage to the user.

However, certain difficulties may arise. When the person causing the loss is a user of a communication service open to the public, such as an electronic mail-box, in principle it is that user who is liable. The fact that this kind of situation is not merely theoretical is highlighted by the misadventure suffered by the company "La commande electronique." This company fell victim to false information stating that its contract with its American software supplier had been terminated, which resulted in the company's value plummeting on the stock exchange.[49] In such a case, the difficulty will often be that of identifying the author of the message, for in this medium of communication the interlocutors are usually protected by anonymity. Yet, at the same time it is far from certain that the supplier of the service can be held liable since the messages are generally received as soon as they are sent, leaving very little possibility of supervision before they are consulted by the addressees. In fact, the law of 1985, which provides that every audiovisual communications service must have a publication manager, does not make this person criminally liable unless "the message in question was fixed prior to its communication to the public."[50] It will be up to the courts to assess what fault has been committed and therefore what precautions should be taken.

Where necessary, the courts will have to define the scope to be given to the professional code of ethics appended to the standard form agreement for the so-called "Kiosque"[51] information services offered to the general public. This standard agreement stipulates that "the supplier of the service undertakes to supervise data made available to the public

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49. *See*, Le Quotidien de Paris 14 août 1987, *Le Minitel fait scandale en bourse*, and Trib. gr. inst. 5 juillet 1988, *Affaire Winner et la commande électronique*, Droit de l'informatique et des télécoms 1989-3, p. 46 *et seq.*, note F. Toubol, where the penal liability of the service provider has not been upheld.

50. This provision was passed above all to cover radio and television and it refers to live broadcasts.

51. On the "Kiosque" system, see *supra*.

at all times so as to eliminate to the maximum any message to the public that may be in breach of the laws and regulations in force."[52]

Already, in the case of television, we have seen the liability of a producer called into question. Although the producer cannot "be held responsible for statements put forward by people taking part in a live broadcast expressing themselves without any control by the presenter before the program is transmitted," the producer is liable for his behavior which allowed certain people to speak to the detriment of others.[53] This shows that even in cases of information broadcast live, the person who manages the program may not necessarily escape all liability. However, in this case, the Paris Court of Appeal took the opposite stand, holding that in the absence of "any connivance between him and the participants in the program," the producer "cannot be held responsible for statements . . . made by his guests in live broadcasts."[54]

Thus, in the case of public communication services, the idea of liability for wrongful acts and the need to sanction abuses of freedom of expression are interconnected--although, on the latter point, the courts are often extremely cautious.

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52. On that standard agreement, see J. HUET and H. MAISL, *supra* note 21. The implementation of this undertaking will not be enforced without difficulty, for it is imprecise both as to the obligatory nature of the supervision (which has to be carried out "to the maximum") and as to its aim. From the second point of view, although one might imagine that it would be relatively easy to recognize items offending public decency (and at present the only items that fall into this category are matters which are particularly offensive: paedophilia or scatology, etc.), it is very difficult for the supplier to get a clear idea of those items that might cause loss engendering civil liability, even if the item is indeed an act that is contrary to the law (e.g., an act violative of articles 1382 *et seq.* of the Civil Code). The case of "La commande électronique," *supra* note 14, is a good illustration of this, since the cause of the fall on the stock market was information about a contract to which the company in question was a party: the information would not have given rise to suspicion. And more generally, in the case of information relating to the stock market exchanged between users of an electronic mail-box service, it is quite clear that it is out of the question for the supplier of the service to check on the accuracy of the information in question.

Regarding the ethical code of practice for telematics services available to the general public, see: REV. TRIM. DR. DE L'INFORMATIQUE ET DES TÉLÉCOMMUNICATIONS, 1981-1; and see also J. HUET et H. MAISL, *supra* note 21.

53. Trib. gr. inst. de Paris, 29 janvier 1986, *Affaire Polac*, cited *supra* note 40.

54. Paris, 1ère Ch. Sect. A, 6 octobre 1987, cited *supra* note 21.

II. SPECIALIZED INFORMATION SERVICES: LIABILITY FOR SERIOUS FAULT, OBLIGATION TO PROVIDE MEANS AND OBLIGATION AS TO RESULT

In the field of information services, the most important issues are not related to subjects which are debatable; they are above all situations in which the accuracy, updating, exhaustiveness, or speed of the transmission of the information are in question. Here we are dealing with the supply of specialized information, and the communications exchanged are often private correspondence.

Here again, the rules applicable are to be found in the general law relating to contractual and non-contractual liability, and there are few illustrative cases for our consideration. The most common situation is one where the parties are bound by an agreement, and clauses dealing with liability are therefore likely to be included. However, the information provider can also be exposed to delictual liability.

A. Contractual liability. The underlying reason for the contract may not be the provision of information to a person who wishes to obtain it, but may rather be to publicize information about a person who has asked for it to be distributed, generally for professional purposes. Several times the courts have had to rule on erroneous information or omissions from telephone or professional directories. These cases have often been brought before the administrative courts because they related to the telephone directory supplied by the public telecommunications authority. The cases have seldom resulted in compensation because under article L. 37 of the French Post and Telecommunications Code, the Authority's liability is limited simply to cases of gross negligence. Accordingly, the simple omission of a subscriber from the directory is not sufficiently serious to result in

liability.[55] And when claims have been settled by courts other than the administrative courts,[56] the question has been raised in fairly similar terms by reason of clauses narrowly limiting the responsibility of the company handling the information. On a number of occasions the courts have ordered compensation in cases where the operator committed a serious error or infringed an obligation that was an essential term of the contract; for example, compensation was ordered to be paid to a trader who had applied for his name to be inserted in a directory and which was omitted.[57] It thus seems clear that, although the words "gross negligence" and "serious error" were similar, the interpretation given by civil courts was more favorable to the victim than in the decisions rendered by the administrative courts.

In addition, it is possible that, in the case of the electronic telephone directory, subscribers should find it easier to obtain compensation even in the area of administrative law, since in this case any error can easily be corrected at the subscriber's request--so that this kind of error should no longer be permitted.

In other cases where the parties are bound by a contract--and these are the most common--the person criticizing the information is the person to whom it has been supplied for his use. It is not uncommon for liability to be incurred because the information supplied has turned out to be incorrect or even insufficiently precise.

The cases show that compensation is due provided the supplier of the information is proved to have committed a fault. The latter,

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55. This limitation also applies both to the telecommunications services themselves and to the directory. *See*, regarding this law, J. HUET et H. MAISL, *supra* note 23. Regarding cases on this point, see in particular, LESCASTRYES et CHEYRON, *Les erreurs ou omissions dans l'annuaire téléphonique*, LES PETITES AFFICHES, 29 janvier 1988. Although the omission in itself is not deemed to be a serious fault, nor is the refusal to distribute a rectification before the publication of the following year's directory, if the Authority fails to deal with a subscriber's complaint when the Authority takes the initiative in rectifying an error, this does constitute gross negligence. For a case involving a barrister, see Conseil d'Etat 5 novembre 1982, *Cassard*, Gaz. Pal 1983.1.88, D. 1984. I.R. 27, obs. Moderne et Bon.

56. This could happen in the case of insertions of a commercial nature even in the case of official directories, for the body involved here, l'Office des annonces, falls within the realm of private law.

57. Cour de Cassation, Com. 17 janvier 1984, Bull. civ. IV, n° 20, REV. TRIM. DR. CIV. 1984.727, obs. J. Huet.

therefore, simply has an obligation to use best efforts (so-called obligation "to provide means," *obligation de moyens*, in the French doctrine and case law), a standard which can readily be justified by the hazardous nature of the service. An everyday illustration of this is commercial information, whether provided free of charge or for a fee.[58] As the law stands at present, data banks, for example, would seem to be subject to the same system.

And even though it is possible to provide clauses in the contract to settle in advance questions of liability that are likely to arise, it seems that it is not possible to exclude liability entirely without striking at the very essence of the operation: it is impossible to imagine a supply of information which provides no guarantee of content. Even a clause simply limiting the supplier's obligations is likely to be declared ineffective in the face of gross negligence or total failure to perform the contract if the poor quality of the data defeats the purpose of the contract or worse still produces a result contrary to that expected.[59]

In contracts offered to users of data banks, the producer often declines all liability not only as to the adequacy of the information for the customer's particular needs, but also for the accuracy or completeness of the data provided.[60] It is not certain whether on this latter point exemption can always be deemed valid. The same applies

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58. *See*, 1984 REV. TRIM. DR. CIV. 517, obs. J. Huet; and regarding commercial information, and the sources used by those supplying it, see the interesting article *L'entreprise face au risque-client: l'utilité des renseignements de notoriété*, PROBLEMES ÉCONOMIQUES, LA DOCUMENTATION FRANÇAISE, n° 1730, juillet 1981, p. 15 *et seq.*

And compare, on the question of criminal liability, in all likelihood, Cour de Cassation, Com. 9 juin 1980, Bull, civ. IV, n° 241: partial order for compensation made against a financial institution which had not fulfilled its two-fold obligation of information and prudence in replying to an inquiry from a creditor of one of its customers within the limits of banking secrecy, since in its reply it should have included indications arousing the addressee's suspicions and should not have given an impression of creditworthiness.

59. Thus, in the case of an advertisement to be published in a directory, the error committed may have more serious consequences than an absence of publishing; for example, for a trader whose telephone number is replaced with that of one of his competitors, see J. Huet, *Inefficacité en présence de l'inexécution d'une obligation essentielle ou d'une inexécution totale par le débiteur: jeux de hasard et annonces publicitaires,* 1984 REV. TRIM. DR. CIV. 727, and the cases referred to.

60. *See* M. CHOISY, BANQUES DE DONNÉES, ASPECTS CONTRACTUELS (1983) 53 *et seq.*, and the clauses referred to in it, *id.* 108 *et seq.*

to clauses whereby an information service provider declares that any liability relating to the content of the data is the sole responsibility of the producer.

Moreover, one may wonder whether in cases where information is supplied by electronic means the supplier's liability should not be assessed on the basis of stricter criteria than proven fault. It is true that the service relates to a changing and complex product to which one might be reluctant to ascribe objective liability. Also, under the general law, it is admitted in principle--as this is a service which is intellectual in nature--that the supplier's liability is limited to using his best efforts.

So far as data banks are concerned, it is also clear that the quality of the information obtained depends to a large degree on the intelligence with which the search is carried out. The user plays a crucial role. Contracts underline this point, exempting the supplier from liability for all the consequences of a search carried out incorrectly. It might also be pointed out that it is up to the user of the data to check to some extent the reliability of the information supplied to him, at least to screen patent errors. In cases where the decisions or processes implemented on the basis of the information requested can give rise to important implications, it is up to the user to take additional precautions, if necessary, by seeking confirmation from other sources. It is true that in the field of information it is necessary to make constant comparisons.

However, the fact that the means of communication involved is so highly technical may substantiate the idea of stricter obligations; and sometimes it would be possible to envisage placing the supplier of the data processed under an obligation "as to a result," which means that he has to guarantee the quality and efficiency of the information service provided to the customers (so-called *obligation de resultat* in the French doctrine and case law). This argument would readily be accepted in the case of the transmission of payment notices or stock exchange instructions, delays in which may have important consequences. Automation of the process should go hand in hand with a strict

liability.[61] Furthermore, the parties themselves may make provision in their contract for such an obligation. The same standard could be applied to the quality of the information provided or processed, and not solely to situations where timely transmission is at stake. One thinks of sophisticated applications such as the telemaintenance of a system operating industrial processes or the determination of an aircraft flight plan on the basis of computer generated data.

A recent case decided in a more traditional, though nonetheless tragic, situation adds its weight to the idea of the supplier of information being bound by an obligation as to a result. The judgment rendered in 1986 against the publisher in the so-called *Affaire de "La cigue"*,[62] or "hemlock" case, was based on the fact that the publisher did not make adequate checks to detect the negligence on the part of the author of a cookbook on edible wild plants. The author had failed to give sufficient information to the reader on one of these wild plants, thereby causing the death of a reader who mistook a deadly wild plant containing hemlock for an edible one. The publisher and the author were both held liable because of the inadequate information supplied and the risk thus created. No doubt the circumstances explain the strictness of the assessment of liability. But the grounds for the decision leave the possibility of a publisher being held liable, for want of verification, in many cases where the information turns out to be inaccurate. And this solution, which is not far from imposing an obligation as to a result, namely avoiding any inaccuracy or any risk of loss in the information made available to third parties, can be applied to information service providers.

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61. Moreover, this does not prevent the person who sent the message from having to prove that the message transmitted was in fact received by the person who was due to transmit it, so that he possibly remains responsible. Regarding the liability of its author in the transmission of an order, see, J. HUET et H. MAISL, *Formalisme et preuve,* in DROIT DE L'INFORMATIQUE ET DES TÉLÉCOMMUNICATIONS, (1989).

62. *See supra* note 48. This situation where the publisher's liability was upheld may be contrasted with the American case, Cardozo v. True, 342 So.2d 1053 (Fla. Dist. Ct. App. 1977), *cert. denied*, 353 So.2d 674 (Fla. 1977), where a woman became ill after eating a small slice of raw dasheen plant, which she planned to cook and eat according to a recipe given in a cookbook, where the book failed to warn that uncooked dasheen plants were poisonous: absent knowledge of the danger, the bookseller was not liable in the the court's view because he only warrants the physical properties of the book and not the thoughts or ideas contained therein.

Besides, in all cases where the information provided is supplied via a medium which gives it the appearance of a "product," such as an ROM compact disc, automatic liability on the part of the producer should come into play, by virtue of the European Community law relating to strict liability for defective products.[63]

B. Non-contractual (or delictual) liability. The supply of information may also cause loss or damage to third parties. There are several court decisions on this point. The *Branly* case[64] gives a picturesque illustration of such liability involving a historian who, in an article devoted to the origin of radio-telegraphy, deliberately did not cite the name of the famous scientist who was generally considered to have contributed to developments in this field: the author had thus failed in a professional obligation by not complying with the "requirements of objective information."[65]

But it is not necessary that the wrongful act should be committed deliberately in order for liability to be incurred. The decision in the *Galande* case, decided in 1984, is an example of this. Here a data bank was discovered to contain inaccurate information. Several companies obtained a court order requiring the information in question to be rectified and prohibiting the data bank from communicating the information until the necessary corrections had been made.[66]

There is another problem with a third party's right to expect that information distributed about him should be accurate. A variety of

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63. Council directive of 25 July 1985 on liability for defective products, OJEC L 210/29; regarding this legislation, see J. HUET, RESPONSABILITÉ DU VENDEUR ET GARANTIE CONTRE LES VICES CACHÉS (1987), n° 102 *et seq.*

64. Cour de Cassation, Civ. 27 février 1951, D. 1951. 329, note Desbois, J.C.P. 1951. II. 6193, note Mihura, and see also on that case J. Carbonnier, *Le silence et la gloire*, D. 1951. Chron. 119, and N. Dejean de la Batie, Droit Civil Français par Aubry et Rau, T. VI-2, *La responsabilité civile* (1989), n° 35, "Cas particulier, l'omission de citer une personne."

65. *Id.*

66. Trib. gr. inst. de Paris, 24 avril 1984, *Fiduciaire de France et autres v. Galande*, D.1985. I.R. p. 47, obs. H. Maisl, REV. TRIM. DR. CIV. 1984.517, obs. J. Huet.

information is in fact collected from the public authorities responsible for registering it, for example, the information that companies have a duty to communicate to the clerk of the commercial court.[67] The same observation applies in many other fields where the information provided by the authorities is of major economic importance, e.g., statistical, geographical, or meteorological information. Here again the question arises as to the liability of the public authorities for data distributed by them,[68] just as it arises in connection with defects in means of communication offered to the public.

Additional comments on evidence and loss. Lastly, two additional comments need to be made which show the difficulty of mastering these questions of liability from other points of view. The first relates to evidence. In order to prove loss and its cause, one must prove what information was supplied. The question will cause few problems if the information was communicated or distributed in printed form. It will be quite the contrary in the case of electronic services and transmissions. How is one to prove the contents of the information supplied (loss resulting from its inaccuracy) or even merely the time when it was delivered (loss caused through delay)? The success of an action for compensation will often be jeopardized by this. Liability is thus closely connected to the problems of evidence raised by data processing.

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67. *See* on this point, *L'entreprise face au risque-client: l'utilité des renseignements de notoriété*, *supra* note 58, p. 15 *et seq.* cited above; the article emphasizes that "agencies have many sources of information" and that "the main source is the commercial courts."

And more generally, on the use of data originating from authorities, see J. HUET & H. MAISL, *supra* note 3.

68. Liability of this kind has already been allowed in a certain number of circumstances by the administrative courts: *e.g.*, with regard to a note of information issued by a town planning department which did not indicate all the town planning servitudes to which the plot of land in question was subject, in particular ones that would prevent the issuance of planning permission, Conseil d'Etat 10 juillet 1964, D.1964.772, with the interesting conclusions of Mr. Rigaud. *See also*, Odent, Contentieux administratif, Cours I.E.P. 1977. This case is based on the principle that the authorities are at fault if they supply incomplete or erroneous information. *See* conclusions of Rigaud cited above. However, it is of fairly limited application in view of the illustrations that it deals with, and the fact is that this kind of liability only exists vis-à-vis the person receiving the information who asked for it to be communicated.

In addition, there may be other obstacles to compensation. The existence of the loss may be disputed in a case where the information service was not available when it should have been, but the user could have mitigated his damages by applying to another source. It will often be put forward that the user was at fault, in particular if it appears that he ought to have checked the quality of the information provided. Frequently it will be difficult to assess the loss suffered, as in cases of mental distress or commercial loss caused by an error in information distributed publicly. In addition, so far as methods of compensation are concerned, one will be more inclined in this kind of case to think of "obligations in kind," such as that of correcting inaccurate information,[69] which, moreover, will somewhat ease the difficulties of financial compensation.

Conclusion. Only a few cases dealing with the liability of information providers involve electronic means of communication. The *Galande* case[70] in France and *Daniel v. Dow Jones, Inc.*[71] in the United States can be cited as examples. It is clear that issues of liability are more critical in such instances than in the traditional situation involving the print media. The discrepancy between the solution held in France, where the liability of information providers is easily accepted, and in the United States where there is much reluctance to do so, shows that the question is highly debatable.

However, contemporary society is becoming more and more dependent on the use of information. This may lead to the conclusion that information providers must be liable when the information they supply turns out to be false or outdated. There is no proof that such a solution would inhibit the free flow of information. The same argument could have been invoked against strict liability of product

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69. This kind of compensation will often apply in the case of information made public, as in the *Galande* case cited above; but it may turn out to be effective too in the case of data kept by a firm or by authorities for their own use.

70. *Supra*, note 66.

71. Daniel v. Dow Jones, Inc., 137 Misc.2d 94, 520 N.Y.S.2d 334 (N.Y. Civ. Ct. 1987)

manufacturers. But the threat of such liability has not impeded the production of goods; it simply provides an incentive to make them as safe as possible. Along the same lines, one may think that imposing liability on information providers can only help reliable information to circulate and be disseminated.