

*Development of a
National Broadband Strategy*
Legal and regulatory review

Workshop
Gaborone, 9-10 April 2013

Legal and Regulatory Review

- NBS needs a supportive legislative & regulatory framework-
 - To introduce a paradigm shift in re legal thinking, interpretation and drafting
 - > Traditional common law approach generally not supportive of e-documents & transactions
 - To build confidence and trust in the usage of broadband services
 - To ensure integrity and security of networks
 - To facilitate the deployment and utilisation of the broadband infrastructure
- **Identified Gaps in the legal & regulatory framework ;**
 - Lack of comprehensive legislation dealing with
 - > data crimes.
 - > undesirable content.
 - > e-commerce
 - > online consumer protection and general enforcement powers
 - > personal data protection.

Objectives of Legal Reform in e-Legislation Environment

- To ensure legal acceptance of electronic documents in commerce and other use such
 - Legal proceedings (acceptance in evidence of e-documents)
 - Personal proceedings
 - E-Government
- To create Legal framework for the enforceability of electronic transactions.
- To offer legal protections in an e-environment including;
 - Protection of personal privacy and data
 - Deal with computer related crimes,
 - Protection of the integrity of networks/ infrastructure etc.

Best Practice/General Principles (1/2)

➤ **Media Neutral legislation Principle**

- Ensure neutrality in terms of the medium used to communicate
- Avoid access bias towards paper based and oral transactions. National Legislation should general be media neutral.

➤ **Voluntary Submission Principle**

- Legislation should provide for the opting in and or opting out of e-legislation coverage

➤ **Few and objectively justifiable Exceptions Principle -**

- exceptions should be few, based on law and objectively justifiable. E.g. Wills; Public policy considerations; difficult of validation

➤ **Presumption against invalidity of electronic transactions**

- a transaction or a contract is not invalid solely by virtue of the fact that it is electronic; so is a signature

Best Practice/General Principles (2/2)

- **Creation of Language Equivalences in Statutes / Avoidance of Piece meal amendments**
- **Adoption of a functional approach .**
- **Effective Enforcement Principles**
 - Legislation to provide similar legal protections to e-transactions as it does to face to face transactions
 - Recognise and provide for remedies for cross boarder transactions
- **Protection of fundamental rights**
 - Protection of privacy and personal data
 - Regulation of 'inappropriate content'
 - Computer related crimes

Conclusions And Recommendations

Botswana's legal framework was reviewed against:

- The general best practice as evidenced
 - By the above principles
 - The Global Approach (UNCITRAL)
 - The emerging SADC Approach

- **Our overall conclusion is that:**
 - **The SADC Model Laws are broadly in line with international best practice.**
 - **Revisit and act on the relevant Maitlamo Legal Change Report recommendations**

Legal and Regulatory Tools

Recommendation 15: We propose and recommend that Botswana should domesticate the SADC Model Law on Electronic Transactions and E-Commerce.

Recommendation 16: Botswana should domesticate the relevant provisions of SADC Model Law on Electronic Transaction and Electronic Commerce to address consumer protection in electronic commerce context.

Recommendation 17: we recommend that Botswana should domesticate the SADC Model Law on Data Protection as such model, in our opinion is fully compliant with best practice.

Recommendation 18: In the premises we recommend a review of the Cyber and computer related Crimes Act to align it to the SADC Model law.

Thank you for your attention



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