

SUMMARY

THE INTERNET AND THE PROTECTION OF INTELLECTUAL PROPERTY-THE SCOPE OF LIABILITY OF INDIVIDUAL PERSONS WITHIN THE LAW OF THE EUROPEAN COMUNITIES AND THE USA

Internet service providers' (or online service providers') liability for the copyright infringement incurred by an individual user of the Internet is not an absolutely new issue anymore. Not later than in 1998, the U.S. legislators enact the Digital Millennium Copyright Act (DMCA). This amendment to the US copyright law introduces the concept of „safe harbor“ that limits the online service providers' liability when they act only as a passive conduit and at the same time they do not have actual knowledge of the copyright infringement incurred through their systems. In the absence of such actual knowledge, they may not be aware of facts or circumstances from which infringing activity is apparent. Furthermore, an Online service provider is obliged upon obtaining such knowledge or awareness (e.g. by obtaining a notice), to act expeditiously to remove, or disable access to, the material. This requirement is well known as a „take down notice procedure“.

As a response to the U.S. regulation, in 2000, the European Commission and the European parliament pass the „so called“ E-commerce directive regulating the liability of above mentioned subjects in the very similar way. The rules of the directive are incorporated to the Czech legal system four years later. While the U.S. approach of regulation is vertical and the DMCA incorporates the liability limitation only for the copyright infringement, the European approach is horizontal. It means that the E-commerce directive as well as the Czech Act on regulation of certain information society services establishes the limited liability of internet service providers for all branches of law generally.

Comparison of the two above mentioned regulations is the main goal of this paper. Paper interprets particular sections of the limited liability provisions and outlines the existing positives and drawbacks. Since the term „online service provider“ covers a number of various subjects, it is not possible to discuss all of them in more detail. Therefore, the paper focuses mainly on the internet connection providers liability and the liability of free space providers („hosting liability“).

Moreover, law and rules applicable before the enactment of the particular provisions on the limited liability are mentioned also. The paper discusses all doctrines of American secondary liability (contributory liability, vicarious liability and inducement liability) and their application to the online service providers liability. Concerning Czech law, general principles of civil liability relating to the online service providers are also mentioned.