Abstract

The final thesis addresses certain aspects of current topic of online intermediaries’ liability for user-generated content (“UGC”). Under Act No. 480/2004 Coll., on certain information society services (“2004 Act on ISS”), which transposes e-Commerce Directive 2000/31/EC, online intermediaries in the Czech Republic benefit from “safe harbours”. Essentially, it means that online intermediaries can be held liable for UGC only if they had actual or constructive knowledge of illegality of the content.

This rule implicitly creates the so called “Notice and Take Down” procedure (“NTD”). Online intermediary upon receiving a notice, and thereby learning about the illegality of the content, is obliged to expeditiously take down the illegal content in order to preserve his immunity. However, NTD is neither expressly regulated within the ECD nor within the 2004 Act on ISS. Therefore, the purpose of the thesis is to illuminate NTD procedure and provide guidelines for it successful application within the Czech Republic. The thesis should be helpful not only to online intermediaries, but also to aggrieved parties serving notices. For this purpose the thesis looks not only at the ECD and its transpositions in various Member States, but also at American Digital Millennium Copyright Act 1998 that has been the main inspiration for the ECD.

First, the thesis outlines the scope of the 2004 Act on ISS. Then it explains that, although notices can be served anonymously and under certain circumstances with minimum information, it is not in the interest of notifiers. Notices with insufficient information may not cause actual knowledge on part of the online intermediary and therefore may be ineffective. The thesis also explains that online intermediary’s duty to act expeditiously will depend on both, the quality of the online intermediary and also the quality of the notified content. Expect that, online intermediaries need to be aware that although they have taken down certain content, their liability may be established if that content appears again and it is not automatically removed. The final chapter puts NTD into broader context and explains that NTD will need to be supported by other proactive measures on part of online intermediaries.