

SUMMARY

This thesis is describing transactions concluded over the internet from the international private law point of view. Consumer e-contracts for CDs, DVDs and downloads protected by DRM and connected matters like rights of the users of copyright protected work, consumer protection, product liability and privacy protection as regulated in the Czech, EC and US law are to be examined.

E-contracts are usually concluded between persons from different jurisdictions; so the issue arises, which court will have the jurisdiction, which law will the forum apply and whether the judicial decision will be enforced.

In the examined transactions, all the Czech, European and US law choose the jurisdiction based on particular contacts of the defendant to the forum. meaning a US e-seller of the CD/digital format containing DRM protected copyright works can be sued in the Czech Republic based on his seat, agency or at least damage caused in the Czech Republic. However, because of the limitation of the Regulation Brussels I, a Czech court will hardly find its jurisdiction in a consumer e-contract suit over an American e-seller, who does not have any seat or agency neither in the Czech Republic nor in other EU member states and the Czech consumer will have to sue in the US state court. Anyway, prorogation of the forum in the consumer e-contract might be the solution.

The Czech court will choose the applicable law based on the Czech Statute on International Private Law, Rome Treaty, Regulations Rome I and Rome II. The Regulation Rome I has a provisions for choosing applicable law in consumer contracts with an official interpretation of targeting e-commerce into the country of the consumer based on the interactivity of

the web page of the e-seller. In case a US state court has jurisdiction and applies US states choice of laws rules, it is quite difficult to foresee which law will be chosen for an e-contract, as the case law and statutes do not stipulate uniform way of choosing it.

However, in both the Czech and the US states law the consumer rights are protected in form of a public order reservation; it means that even if foreign law is chosen the consumer rights of the forum country are applied.

Choice of laws in the civil delicts is usually connected to the place where the injury/damage was suffered or where the illegal acting took place.

Choice of laws in the case of intellectual property is always linked to the country which provides the protection to the intellectual property. The issue is that different countries provide the IP protection differently; what is protected in the Czech Republic does not need to be protected according to the US federal and state law meaning the owner of the intellectual property might have different rights in each jurisdiction. This would be especially problematic in case of recognition and enforcement of foreign judicial judgments.

Recognition and enforcement of foreign judicial judgments is usually possible under the condition it will not contravene the public order. Therefore, foreign judicial judgments on prohibiting particular acting (e.g. intrusion into the privacy) might not be recognizable and enforceable in the country which does not prohibit such acting.

Examined e-contracts are concluded regarding copyright works protected by DRM. DRM regulation by the WIPO Treaties was implemented into the Czech, European and US federal law. However, the implementation is rather extensive and gives the copyright owners more rights than they used to have. This causes harm to the users; the users usually can not make

copies for their own use or can not play the CD/digital format in all players. As the copyright law does not provide enough rights to the users, they have to protect themselves through the consumer protection laws. These are aimed at providing necessary information to the consumer regarding usage of the CD/digital format and fulfilling consumers' legitimate expectations. Both Czech implementing EC law and US federal and states law provide quite sufficient consumer protection.

Sometimes DRM in the CD/digital format can cause damage to the users' computers or other players. This is solved by the product liability law which is based in all examined jurisdictions on objective liability. US states law provides better protection to the users than the Czech law implementing the EC law as there is no bottom limitation of the damage caused required.

Also the DRM can install special software into the users' computers which is used to track the behaviors of the users without their agreement. Privacy protection law is especially good evolved in the Czech and EC law; on the other hand, the US law does not protect the privacy of the users against intrusive DRM sufficiently. Therefore, the e-buyers should be extremely cautious who they buy CD/digital formats on the internet from and what type of information they provide about themselves.

DRM was originally implemented by the big music and movies publishing companies to control the big sellers as Apple and Microsoft. However, some e-sellers as Amazon.com already got rid of the DRM in their CDs and proved that DRM is not so much about antipiracy as about monopolizing the music market.

Although DRM is being slowly abolished, it might still take some time and it is good for the consumers to know their rights.