

**Markt/2006/09/E**  
**Service Contract ETD/2006/IM/E2/69**

**STUDY ON THE LIABILITY OF  
INTERNET INTERMEDIARIES**

**COUNTRY REPORT – Czech Republic**

**Executive summary**

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## Part 1: Legislation

The E-Commerce-Directive was implemented into the Czech law by the Act no. 480/2004 Sb. (Certain Services of Information Society Act). As mentioned in all of the submitted questionnaires and confirmed by the research of the case-law databases, there is no relevant case-law concerning the responsibility of ISPs up to date. Although there might exist some first instance decisions based on the legislation regulating the responsibility of ISPs (decisions of the courts of first and second instance are just publicly proclaimed but not accessible in databases), they were spotted neither by the practitioners, nor by the doctrine. Thus, the interim report can not contain the part with translations of relevant cases.

Reasons for the missing relevant case-law might be seen first in the grounds of the recent Czech legal culture, namely in relative formalism of procedures and the conservatism of the legal practice. As the procedure of the civil litigation is formally relatively complicated and time-costly, parties of ICT-based disputes choose rather other forms of settlement of disputes. Moreover, the most relevant legislation, i.e. the Act no. 480/2004 Sb., came into force in late 2004 and consequently, it took time for the practice to recognize the change. Also, it might take more than two years for a complex or complicated case to reach the supreme level of courts, whose case-law might be relevant for further practice. Thus, we predict the first rise of cases concerning responsibility of ISPs in the forthcoming years.

The Czech law fully adopts the definition of ISPs from the Directive No. 98/34/EC as amended by the Directive No. 98/48/EC. The legislation divides ISPs into three main groups, i.e. to the mere conduit providers, the caching providers and the storage providers. All three types of ISPs are liable for the quality of information that is found accountable to them (i.e. in case they create, modify or choose the recipients of the respective information). Up to this, caching providers are also liable for the quality of the information stored in breach of technical requirements. Storage providers are then also liable for the quality of the information in case they are or could be aware of its illegal nature, i.e. on the principle of *culpa levis*.

The ISPs are relieved from monitoring obligations by *expressis verbis legis*. There are also no general information obligations for the ISPs. However, the service providers of electronic communications have particular duties to store and reveal the identification data about mediated connections (data retention duties).

There are no regulations of notice and takedown procedures. In practice, informal customary ways of notices are developed, but no codes of conduct are reported, best practices or even concerted practices. ISPs providing storage space for 3<sup>rd</sup> party content are often using takedown contractual clauses allowing them to takedown their services without any penalty until the final decision on the content is issued. Existence of such clauses enables consequently most of the notice and takedown procedures to be swift and fluent.

## **Part 2: National Case Law**

The missing case law leaves relatively a lot of interpretational questions, namely on the field of classification of various services and ISPs. In the case of intermediaries of the 3<sup>rd</sup> type, i.e. storage service providers, it remains unclear, how the concept of *culpa levis* will be applied in practice.

## **Part 3: Notice and take down procedures**

### **A. Regulation**

### **B. Self-regulation**

### **C. Co-regulation**