**QUESTION B: Question B: What responsibility or obligations should online**

**platforms have when it comes to eliminating infringements by their**

**users, especially in the areas of IP and unfair competition?**

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The starting point for this topic remains the long-standing liability privilege of intermediaries (‘safe harbour’): online platforms that provide pure intermediary services may remain exempt from liability for illegal third-party content and have no general obligation to monitor the content posted by their users.

However, in the last years, it has become increasingly complex to state that intermediaries refrain from ‘pure intermediation’. More and more, platforms influence on user experiences via a mix of ,mainly automatic, content harvesting and organisation mechanisms.

Despite these developments, the safe harbour principle has not (yet?) been completely abolished but has become accompanied by some additional obligations instead, such as in the Digital Services Act (DSA) of the European Union (EU); here, hosting providers are now required to have a mechanism in place allowing third parties to report suspected illegal content and to react immediately on such requests.

In addition, trusted flaggers, as entities designated by national digital coordinators, are new players in this “notice and action” procedure, in which the operator of an online platform must immediately block oPers if it becomes aware of a clear violation under the applicable law. Notices they submit are supposed to be prioritised as they are expected to be more accurate than

average user reports.

Another innovation (in the EU) is the “Good Samaritan” rule in this area, which ensures that online intermediaries do not lose their liability privilege just because they voluntarily review user content. This clause is intended to give providers legal certainty when they check uploaded content to detect infringements proactively.

Interesting developments have also emerged in non-EU jurisdictions. For example, in Brazil, the Civil Framework for the Internet, a federal law enacted in 2014, is currently challenged at the Supreme Federal Court. Central to the issue are legal provisions requiring a court order before illegal content on online platforms can be removed, potentially altering the dynamics of the notice-and-takedown process.

Although these current developments represent a new basis for familiar principles, the significance of their specific details for the protection of intellectual property and unfair competition can be important. Moreover, the practical importance of special entities as experts at detecting certain types of illegal content and notifying online platforms will become apparent with the first experiences with it.

Regardless of jurisdiction, there must be a balance between the aim to tackle illegal content online and fundamental rights such as freedom of expression or the right to a fair

trial.

Questions

This questionnaire aims to learn about the legal situation within the respective jurisdiction. Thus, the questions provided below shall be used as a guideline to allow for a comparison of online platforms’ liabilities and responsibilities in cases of possible infringements by their users in the respective national jurisdictions. We, therefore, appreciate answers guided by the questions raised but understand if an alteration of the scope according to the norms and practice of the respective jurisdiction is needed.

# 1. Historical perspective

The Czech law has continental law roots and has developed for centuries within the Austrian Empire of the Habsburg dynasty. After the First World War, the newly created 1st Czechoslovakian Republic took over this law via the reception Act Nr. 11/1918 Coll. Sb. Consequently, the Austrian Civil Code, *Allgemeines bürgerliches Gesetzbuch für die gesammten Deutschen Erbländer der Österreichischen Monarchie* (“**ABGB**”) was valid and applicable in the Czechoslowakia until the Communists took power and enacted Act Nr. 141/1950 Coll., civil code (“**Civil Code 1950**”).[[1]](#footnote-1) The move towards the socialist society led to Act Nr. 40/1964 Coll., civil code (“**Civil Code 1964**”)., which replaced the Civil Code 1950. Both, the Civil Code 1950 and the Civil Code 1964 recognized the legal concept of responsibility with the right on compensation of harm, i.e. liability and damages.[[2]](#footnote-2) However, considering the given political context and setting, the enforcement of individual claims and generally the entire liability mechanism was not fully applicable and not easily enforceable.

In 1989 came the Velvet revolution and a return to the democratic regime endorsing the capitalist market economy. In 1992, it came the decision to split the country and since 1993, the Czech Republic is an independent country of which the fundamental law is the Act Nr. 1/1993 Coll., the Constitution (“**Czech Constitution**”) and the Act Nr. 2/1993, the promulgation of the Charter of fundamental rights and freedoms (“**Czech Charter**”). The Czech Constitution provides that "*Promulgated international treaties, the ratification of which the Parliament has given its consent and by which the Czech Republic is bound, are part of the legal order; if an international treaty stipulates something different from the law, the international treaty shall apply*” (Art. 10). The Czech Charter provides the privacy protection by stating that “ *(1) Everyone has the right to have their human dignity, personal honour, good reputation and name protected.(2) Everyone has the right to protection against unlawful interference with their private and family life. (3) Everyone has the right to protection against unlawful collection, publication or other misuse of personal data*” (Art. 10). Further, the Czech Charter protects the private ownership by stating that “(*1) Everyone has the right to own property. … (3) Ownership is binding. It may not be abused to the detriment of the rights of others or in conflict with the general interests protected by law. Its exercise may not harm human health, nature and the environment beyond the extent specified by law*” (Art. 11). The Czech Charter its parts about political rights starts with the declaration of freedom of speech and prohibition of censorship by stating that *“(1) Freedom of expression and the right to information are guaranteed. (2) Everyone has the right to express his or her opinions orally, in writing, in print, in pictures or in any other way, and to seek, receive and impart ideas and information freely, regardless of frontiers. (3) Censorship shall be prohibited.(4) Freedom of expression and the right to seek and impart information may be limited by law if such measures are necessary in a democratic society for the protection of the rights and freedoms of others, for the security of the State, for public safety, or for the protection of public health and morals*” (Art. 17). Finally, even the intellectual property is covered by the Czech Charter, see “*The rights to the results of creative intellectual activity are protected by law*”(Art. 34)

In 2004, the Czech Republic, along with nine other central and eastern European countries accessed to the EU and the EU law became valid and enforceable in the Czech Republic along with Czech national law. The Czech Constitution (Art. 10) is generally interpreted as placing the EU law above the Czech national law, but not (necessarily) about the Czech Constitution and Czech Charter.

It took one more decade to completely replace the Civil Code 1964 by a new large Private law code, i.e. the Act Nr. 89/2012 Coll., civil code (“**Civil Code 2012**”), which covers the general private (civil) legal liability regime. The Act Nr. 40/2009 Coll., criminal code (“**Criminal Code**”) is as well from the post-EU accession era and covers the general public (penal) legal liability regime.

The Civil Code 2012 includes provisions regarding the protection against unfair competition and is a *lex generalis* for the intellectual property and intellectual property matters. Regarding various intellectual property assets and rights, a myriad of Czech Acts as *leges speciales* have been enacted and applied, i.e. Act Nr.527/1990 Coll., on inventions, industrial designs and rationalization proposals (“**Czech Patent Act**”), Act Nr. 121/2000 Coll., on copyright (“**Czech Copyright Act**”), Act Nr. 441/2003 Coll., on trademarks (“**Czech Trademark Act**”), etc.

Regarding the digital setting, in particular online platforms and their liability, special Czech national regulation has developed very slowly. Therefore, it has applied the general regime set by the Civil Code 2012 as *lex specialis* with norms about particular intellectual property assets and rights as *leges speciales.* Theoretically, norms of Criminal Code can be applied, but this happens extremely rarely. Czech state prosecutors perceive it as “no violence criminality” (if criminality at all)[[3]](#footnote-3) and Czech criminal courts are notoriously reluctant to pronounce guilty verdicts in such cases.[[4]](#footnote-4) In contrast, the EU has demonstrated a more pro-active approach and almost all Czech national provisions in this arena came as a reaction to the development of the EU law.

Consequently, Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (“**Directive on electronic commerce**”) and Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (“**Directive on privacy and electronic communications**”) led to Act Nr. 480/2004 Coll., about information society services (“**Czech Information Society Services Act**”). Directive 2002/58 on privacy and electronic communications, Directive 2002/77 on competition in the markets for electronic communications networks and services Directive 2018/1972 establishing the European Electronic Communications Code led to Act Nr. 127/2005 Coll., on electronic communication (“**Czech Electronic Communication Act**”) as updated. Pursuant to the Czech Electronic Communication Act, the entrepreneur providing publicly accessible service of e-communication has the duty to provide this service without interruption and in the set quality (§ 61). Directive 2019/790 on copyright and related rights in the Digital Single Market (“**Directive on Copyright in the Digital Single Market** ”) led to Act Nr. 429/2022 Coll., amending the Czech Copyright Act and in particular adding § 46 et following.

The Czech Information Society Services Act has been updated by nine different Czech Acts, but still does not include any definition of a platform. Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (“**Audiovisual Media Services Directive**”), including its amendments by Directive 2018/1808 led to the Czech Act Nr. 242/2022 Coll., on platform services for sharing video recording (“**Czech** **Video Sharing Platform Act**”). Interestingly, the Czech Video Sharing Platform Act defines platform services, platform providers and platforms users (Art. 2), but not the platform as such.

It can be summarized that regarding the providing of the legal regime for the digital setting, including (online) platforms and their liability, the Czech Republic is rather passive and keeps, sometimes eagerly and sometimes reluctantly, following the EU policies and law in this arena. The situation regarding the intellectual property law and competition law is similar, i.e. the Czech national law basically follows (with a certain time delay) the EU law.

This, sometimes a little bit delay, but still rather smooth follow-up trend might get disturbed. Namely, in 2022, the milestone Regulation 2022/2065 on a Single Market For Digital Services and amending Directive 2000/31/EC (“**Digital Services Act**” or “**DSA**“) was enacted and, in 2024, took effect in the entire EU, including the Czech Republic. Naturally, the Czech national law had to be further modified to be in full compliance with the EU, in particular DSA.

The DSA did not receive a warm welcome, both legislative and application instruments have not yet been fully put in place and several well-known and reputable Czech academics and jurists have expressed a myriad of objections against the DSA, its legitimacy, [[5]](#footnote-5) underlying goals and aims and even content.[[6]](#footnote-6) Nevertheless, the Czech Government has realized that the above-mentioned Czech Information Society Services Act is to be updated or perhaps even entirely replaced and the Czech Ministry for Industry and Trade prepared a bill proposing a brand new Act on Digital economy (“**Proposal** **for the Czech Digital Economy Act**” or “**Proposal**”). The Digital Economy Act is to be the so called adaption norm for the DSA, i.e. it should facilitate the application of the DSA and its concepts and instruments, and it should define the functioning of the Czech Telecommunication Office (“**CTO**”), which was appointed by the Czech government to be the Digital Services Coordinator while referring to the deliberation of the Czech Government Nr. 590 from 16 August 2023.

The Proposal for the Czech Digital Economy Act covers both the information society services and digital/data economy. Regarding the information society services, it sets out the definition of information society services valid across the Czech legal system, transposes the Directive on electronic commerce and supports the full transposition of directly applicable norms of the EU law. Regarding the digital/data economy, it develops the Regulation 2022/868 on European Data Governance (“**Data Governance Act**” or “**DGA**”). The goal of this Proposal is to contribute to proper functioning of the internal single market in the field of digital and data economy and to adopt in the Czech Republic the DGA and DSA. Since the majority of the EU member states selected as the Digital Service Coordinator their Telecommunication Authority, the Proposal cements the selection of the CTO for the DSA and for the Office for Personal Data Protection for other competencies, in particular based on the DGA.

Currently, this Proposal for the Czech Digital Economy Act is in the 2nd reading in the Czech Parliament, but considering the fast approaching upcoming election, its approval and enactment in the near future is less likely. Thus, at least, for the time being, the Czech Ministry of Industry and Trade took some action by informing about the DSA, including a posting on its website <https://mpo.gov.cz/en/business/digital-economy/digital-services/digital-services-act/> which summarizes rules and obligations linked to digital services connecting users (consumers) with goods, services and content. It highlighted that the DSA covers a myriad of digital services, including providing digital network infrastructure, webhosting and online platforms such as social media and internet market place. Since these rules and obligations are conceived asymmetrically, in particular vis-à-vis online platforms and very large online platforms, the Czech Ministry of Industry and Trade recapitulates their duties and indicates the link in order to access their list, <https://digital-strategy.ec.europa.eu/en/policies/list-designated-vlops-and-vloses> :

* AliExpress International (Netherlands) B.V. – AliExpres (Netherlands);
* Amazon Services Europe S.à.r.l. – Amazon Store (Luxembourg);
* Apple Distribution International Limited – App Store (Ireland);
* Aylo Freesites Ltd. - Pornhub (Cyprus);
* Booking.com B.V. – Booking.com (Netherlands);
* Google Ireland Ltd. - Google Play (Ireland);
* Infinite Styles Services Co, Ltd – Shein (Ireland);
* LinkedIn Ireland Unlimited Company – LinkedIn (Ireland);
* Meta Platforms Ireland Limited (MPIL) – Facebook (Ireland);
* Meta Platforms Ireland Limited (MPIL) – Instagram (Ireland).

Despite rather optimistic postings placed on websites of the Czech Ministry of Industry and Trade and CTO, it is clear that the Czech Republic is behind and in default regarding DSA reception and full transposition. The passive and procrastinating approach of the state and public law institutions is not mitigated by private players, instead it is rather endorsed by the academia. At the same time, this type and intensity of reluctance do not reach the level of the direct objection or challenge. Consequently, the Czech Republic does not file any claims against DSA with the CJ EU and does not openly shower the DSA with criticism. Instead, it turned the DSA to a low priority (see the legislative process regarding the Proposal for the Czech Digital Economy Act) and does, so far, the strict minimum (if at all). Hence, the definition and regulation of platforms is entirely deferred to the directly applicable provisions of the EU law, including Art. 3 DSA.

# 2. Legal Basis for Liability and Responsibility

In the Czech Republic, the legal basis for the liability of platforms is naturally in the reach of the EU law and Czech national law, of which the most fundamental is the Czech Constitution and Czech Charter. Naturally, a myriad of (general) provisions of the Czech national law have and are applicable to liability, even the liability of online platforms, but until recently the Czech national law has not addressed specifically this particular type of liability. Consequently, the general Civil law regime set by the pertinent Civil Code, historically as well as by the Commercial Code, has applied and this since 2004 along with valid and enforceable provisions of the EU law. The general Criminal law regime set by the Criminal Code could, but has not been, applied in this arena. The alpha and omega of the majority of issues and disputes linked to this particular liability was, is and remains linked to the eternal constitutional balancing (typically refering to the Czech Charter), such as of the freedom of expression and prohibition of censorship (Art. 17), protection of privacy (Art. 10), private ownership (Art. 11) and intellectual property (Art. 34).

The Civil Code 1950 covered the liability in its fourth part (§ 211 - § 508) dealing with obligations, namely it regulated the liability for defects and liability for caused damage, including the liability of the accommodation provider (§ 433). The foundation of the liability for caused damage could be either the intent or negligence and this by a breach of an obligation or other legal duty (§ 337).The Civil Code 1964 established the damage prevention principle by setting that “*everyone has the duty to behave in the manner so no damage on health, property, nature or environment occurs*” (§ 415) and if there is a threat of such a damage, then there is a duty to step against it (§ 417). Generally, everybody was liable for damage caused by the breach of legal duty, unless he/she could prove that he/she did not cause it (§ 420). The current Private law code, i.e. the Civil Code 2012, covers explicitly as one of its fundamental principles that “*Private law protects the dignity and freedom of a human being*”(§ 3) and that “*Everyone has the duty to act in legal relationship honestly. Nobody should have an advantage from its dishonest or illegal act*” (§ 6). Regarding obligations, it set that “*an obligation can arise from a contract, a illegal act or other act which based on the law can be a foundation for an obligation*.” (§ 1723). Regarding contractual obligations, the liability is set generally by parties, while in the case of extra-contractual obligation, the general regime of the Civil Code 2012 applies, in particular the updated subjective legal liability principle and damage prevention principle. Namely, “*the wrongdoer has the duty to compensate for damage regardless its culpability only in cases set by the law*” (§ 2895). However, there are limits, i.e., “*If the circumstances of the case or the customs of private life so require, everyone is obliged to act in such a way as to avoid unreasonable harm to the freedom, life, health or property of another*” (§ 2900) and “*If the circumstances of the case or the customs of private life so require, everyone who has created a dangerous situation or who has control over it, or if the nature of the relationship between persons justifies it, has the obligation to intervene to protect another…*” (§ 2901). These provisions are perceived as rather weak and hardly can lead to a successful case engaging the civil liability. Naturally, a potential plaintiff has better prospects in the case of fault and breach of law, i.e. “*A wrongdoer who, through his/her own fault, breaches an obligation laid down by law and thus interferes with the absolute right of the injured party shall compensate the injured party for what he has caused. The obligation to compensate shall also arise for a wrongdoer who interferes with another right of the injured party by culpably breaching a statutory obligation laid down to protect such a right*” (§ 2910). The case law has emphasized that the general prevention duty got reduced by the Czech Civil Code 2012 and that it extends only to the active acting of the person, i.e it does not apply e.g. to the omission, see the Czech Supreme Court case 25 Cdo 3510/2019 from 27 May 2020 and 25 Cdo 4536/2018 from 28 May 2020.

Hence, the general principle is that the liability, in particular extra-contractual liability, is narrower and requires the fault and is triggered only in the case of an active behaviour. Naturally, it is possible to expand or reduce the liability via contracts and, as mentioned, the law sets special situations and cases, such as in the context of the protection of intellectual property and against unfair competition.

The protection against unfair competition is covered directly by the Civil Code 2012, namely provisions placed towards its end. They include the general clauses stating that “*Anyone who, in economic relations, comes into conflict with good morals of competition by acting in a manner likely to cause harm to other competitors or customers commits unfair competition. Unfair competition is prohibited*”(§ 2976). The liability is set by providing that “*A person whose right has been threatened or violated by unfair competition may demand that the wrongdoer refrains from unfair competition or eliminates the wrong status. He/she may also demand reasonable satisfaction, compensation for damage and the return of unjust enrichment*” (§ 2988). Although the case law does not recognize the application of the safe harbour of Czech Information Society Services Act (§ 5 et foll.) in the case of an online provider who actively rewards users committing the intellectual property infringement, but still the online platform provider might escape the civil liability linked to unfair protection if he does not actively influence the automatic search on his platform, see the Czech Supreme Court in 23 Cdo 2793/2020 from 31 August 2021.

The intellectual property setting is regulated by a set of special Acts, such as the Czech Trademark Act, Czech Patent Act and Czech Copyright Act, i.e. for the liability in this respect is *lex generalis* the Civil Code 2012 and *the lex specialis* one of these special Act. The Czech Copyright Act recognizes the copyright duality – personal (moral) rights and property (economic) rights (§ 10), which include the right to use the copyrighted work (§ 12). The Czech Copyright Act explicitly states that “*The author has the right to use his work in its original form or in a form processed or otherwise modified, separately or in a set or in conjunction with another work or elements and to grant another person by contract the right to exercise this right; another person may use the work without granting such a right only in the cases provided for by this Act…. The right to use a work is in particular … the right to communicate the work to the public*” (§ 12), …. The operation of online platform often touches this right to communicate the work to the public, because “*Communication of a work to the public means making the work available in an intangible form, live or recorded, by wire or wireless means…. also means making the work available to the public in such a way that anyone may access it at a place and time of their own choosing, in particular by means of a computer or similar network. Such communication of a work to the public also means making the work available to the public by a provider of an online content sharing service pursuant to § 46(1), if the work has been uploaded by a user of such a service*”(Art. 18). The academia distinguishes three types of civil liability of (pirate) online platform sharing content and the most strict of these three is the special liability based on Art. 18 in combination with Art. 46, while the “weaker” are the direct liability based on Art. 18 in combination with Art. 40 and the indirect liability based on Art. 5 of Czech Information Society Services Act.[[7]](#footnote-7) The author of the infringed work or work threatened by infringement has a set of claims, including the demand for removal (Art. 40). Naturally, the classic civil law liability setting has been complemented by other acts, such as the above mentioned other special Acts dealing with the intellectual property, i.e. Czech Patent Act, Czech Trademark Act, etc.

The counterpart of the civil liability, the criminal liability, has been set by the Czech Criminal Code and the below recapitulated wording as well as the experience with its half-hearted enforcement in privacy, intellectual property and digital matters suggests that the application of criminal liability in the case of online platform is extremely unlikely. As a matter of fact, not only the breach of unfair competition law but even of anti-cartel and anti-monopoly law hardly leads to guilty verdicts, except the case of public procurement and frauds with EU funds. Pursuant to the Czech Criminal Code, “*A criminal offence is an unlawful act which is defined as criminal by the criminal law and which exhibits the characteristics specified in such law. Criminal liability for a criminal offence requires intentional fault, unless the criminal law expressly provides that fault due to negligence shall suffice*” (§ 13). Hence, not only the fault, but generally also the intent is needed. Similarly, the intent is required for the joint crime, i.e. “*If a crime was committed by the intentional joint action of two or more persons, each of them is liable as if they had committed the crime alone (accomplices)*” (§ 23). In addition, the Czech Criminal Code considers the available knowledge regarding the potential offender via the principle of the acceptable risk, i.e. “*A criminal offence is not committed by anyone who, in accordance with the achieved status of knowledge and information that he had at the time of his decision on further action, carries out, within the framework of his employment, profession, position or function, a socially beneficial activity that endangers or violates an interest protected by criminal law, unless a socially beneficial result can be achieved otherwise. It is not an acceptable risk … the performance of this activity is clearly contrary to the requirements of another legal regulation, the public interest, the principles of humanity or is contrary to good morals*” (§ 31).

This general regime of the Czech Criminal Code is complemented by the special regime linked to the competition, intellectual property, etc. and defining crimes in the context of cartels, unfair competition, patent and trademark infringements, etc. Namely, “*Whoever violates the law regulation on unfair competition by, when participating in economic competition, committing misleading advertising, misleading labelling of goods and services, causing a risk of confusion,…and thereby causes significant damage to other competitors or consumers or thereby obtains significant unjustified advantages for himself or another, shall be punished by imprisonment for up to three years, a ban on activity or forfeiture of property*” (§ 248). Further, the crime for causing damage to a consumer is set by “*Whoever causes more than minor damage to another person's property by deceiving the consumer, in particular by deceiving him/her about the quality, quantity or weight of the goods, or who places products, works or services on the market on a larger scale and conceals their substantial defects, shall be punished by imprisonment for up to one year, a ban on activity or forfeiture of the thing*” (§ 253). Regarding crimes concerning the intellectual property, it is set that “*Whoever puts into circulation products or provides services unlawfully marked with a trademark to which another party has exclusive rights, or with a mark interchangeable with it, or for this purpose offers, brokers, manufactures, imports, exports or otherwise procures or stores such products for himself or another, or offers or brokers such a service, shall be punished by imprisonment for up to two years, prohibition of activity or forfeiture of property*“ (§ 268).

Similarly, “*Anyone who unlawfully interferes with the rights to a protected invention, industrial design, utility model or topography of a semiconductor product, shall be punished by imprisonment for up to two years, a ban on activity or forfeiture of property”* (§ 269). Finally, regarding the copyright criminal liability, it is provided that “*Whoever unlawfully interferes with the rights protected by law to a copyrighted work, artistic performance, sound or audio-visual recording, radio or television broadcast, press publication or database shall be punished by imprisonment for up to two years, prohibition of activity or forfeiture of property”* (§ 270). Plainly, the Sixth Part of the Czech Criminal Code includes, among economic crimes, infringements regarding unfair competition crimes (§ 248), industrial property (§ 268 – 269) and copyright (§ 270 - § 271).

Considering the abuse of operation of online platforms and their (alleged) criminal liability, the most relevant might be provisions included in its Fifth Part of the Czech Criminal Code about Property crimes (§ 205 – 232), such as fraud (§ 209), unauthorized access to a computer system and unauthorized interference with a computer system or information carrier (§ 230), precautions and storage of access devices and passwords to a computer system and other such data (§ 231), unauthorized interference with a computer system or information carrier due to negligence (§ 232), etc. However, these provisions lead only to cases of a clear copying and stealing of data, see e.g. the Czech Supreme Court in 5 Tdo 1085/2017 from 13 December 2017 or a manipulation with databoxes, access to them and communication between them, see the Czech Supreme Court in 8 Tdo 266/2017 from 15 August 2018.

In sum, the general regime of the civil liability via the Czech Civil Code 2012 and the general regime of the criminal liability via the Czech Criminal Code, can hardly sanction per se the liability of online platform operators and providers for the posted “content”, especially if posted by a third (independent) party. The general regime provided by the Civil Code 2012 demands the damage causality aka inflicting (§ 2894) within the context of the general damage prevention duty (§2900) and the general regime provided by the Criminal Code demands the intent and typically the negligence leading to the lack of knowledge about a problematic content of a posting of an online platform is not enough to establish the criminal liability. This general approach avoiding the liability of online platforms is not dramatically changed by the Czech law instruments transposing the EU law, such as the special regulation provided by the Czech Information Society Services Act. In addition, as already stated, Czech judges are not eager to rule in these cases for plaintiffs claiming the liability of online platform operators or providers.

The Czech Information Society Services Act transposed the Directive on electronic commerce into the Czech law while setting the legal liability of information society services providers. They carry the liability for the content of transmitted information via digital networks or digital communication only if they initiate the transmitting or select the user or change the transmitted content (§ 3). Similarly, they carry the liability for the content of information stored based on the request of the user only if they know or should have known about their illegality (§ 5). This safe harbour protects rather strongly online platform providers, namely it states that “*service provides do not have to duty (a) to monitor the content of transmitted or stored information or (b) actively seek out facts and circumstances indicating illegal content of the information*” (§ 6). The strength of this safe harbour is confirmed by the well-established case law. For example, the Supreme Court of the Czech Republic decided in 23 Cdo 2623/2011 PROLUX Consulting Int., s. r. o. v. Internet Info, s. r. o., on 31 July 2013, to definitely reject the claim to withdraw (delete) posted comments and to pay the satisfaction of CZK 50 000 (damages), i.e. highly pejorative articles and comments against PROLUX could stay and only from the expression, “PROLUX lies like a swine” there needed to be removed the vulgarism, i.e. “like a swine.” The Supreme Court emphasized that the defendant was an information society services provider with liability pursuant to § 5, which does not have any duty to monitor the content of the transmitted or stored information and which does not have any duty to actively seek facts and circumstances indicating the illegal content of the information as set by § 6. The Czech Supreme Court made it very clear that the provider of the platform www.mesec.cz does not and even should not check discussion posting done by individuals. In addition, as stated above, often even the safe harbour of the Czech Information Society Services Act (§ 5 et foll.) is not needed, because a mere having (and perhaps even inducing to have) on the platform a content which should not be there considering the intellectual property law or competition law, does not trigger the liability, unless active steps are done to make it available on priority to users, e.g. actively influence the automatic search on the platform, see the Czech Supreme Court in 23 Cdo 2793/2020 from 31 August 2021.

Further, The Czech Copyright Act was amended by Act Nr. 429/2022 Coll. to transpose the Directive on Copyright in the Digital Single Market. This led to the addition of § 46 et following about the use of the work by the service provider for sharing the content online to the Czech Copyright Act in 2023. Thus based on the current (updated) Czech Copyright Act, *“… an online content-sharing service provider means a provider of an information society service, the main purpose or one of the main purposes of which is to store and communicate to the public a large number of works uploaded by a user of such service and which competes or may compete with other online services making works available to the same target group, and the provider of such service organises and promotes those works for profit.. A provider of an online content-sharing service shall not be considered to be a person who provides an information society service, which is a non-profit online encyclopedia, a non-profit educational and scientific repository, a platform for the development and sharing of open source software, an electronic communications service, an online marketplace and a business-to-business cloud service and a cloud service that allows users to upload content for their own use*” (§ 46). The Czech Copyright Act version of the safe harbour is expressed by “*An online content-sharing service provider shall not be liable for the unauthorised communication of a work to the public pursuant to § 18(2) if a) it has used its best efforts to obtain authorisation to exercise that right, b) it has used its best efforts, in accordance with high industry standards of professional care, to prevent the uploading of the work for which the author has provided it with relevant and necessary information, and c) without undue delay after having received a sufficiently reasoned notification from the author, it has disabled access to the work or removed it from its website and has used its best efforts to prevent its re-uploading in accordance with point (b)… In determining whether an online content-sharing service provider has fulfilled its obligations …the following shall be taken into account, in accordance with the principle of proportionality…. When using automatic content recognition tools, the prevention of uploading a work … and the prevention of re-uploading a work … may only occur in cases where the online content sharing service provider assesses the uploaded content as identical or equivalent to the work identified by the author …*” (§ 47). The parameters of the safe harbour are ser by “*An online content sharing service provider whose service has been on the market in the territory of the Czech Republic or one of the Member States of the EU or EEA for less than 3 years and whose annual turnover … is less than EUR 10,000,000 shall not be liable for the unauthorised communication of a work to the public pursuant to § 18(2) if a) it has made best efforts to obtain authorisation to exercise this right; … and immediately after receiving a sufficiently reasoned notification from the author, it has disabled access to the work or removed it from its website… An online content-sharing service provider covered by paragraph 1 whose average monthly number of unique visitors to the service, calculated on the basis of the previous calendar year, exceeds 5,000,000 shall not be liable for the unauthorised communication to the public of a work pursuant to § 18(2), provided that it has also made best efforts to prevent the re-uploading of the work for which the author has provided it with relevant and necessary information*…” (§ 48). The case law includes just a few successful cases based § 46 and typically these are cases of the (very aggressive) Czech collective administrator of audio copyright OSA going after subjects “playing music”, see the Czech Supreme Court in 30 Cdo 1759/2011 from 18 December 2012. Nevertheless, there is at least one precedent by which the Czech Supreme Court “open the gate” to copyright beneficiary fighting against pirate platform, see 23 Cdo 2793/2020 from 31 August 2021.[[8]](#footnote-8)

# 3.-10. Monitoring, Mechanisms in cases of infringement

As stated above, the Czech national law is not per se oriented towards the monitoring and sanctioning online platforms and the general regime of civil and criminal liability is not aggressively enforced, and this especially in the digital context. At the same time, the Czech Republic is neither challenging the supremacy and direct effect of EU law nor openly resisting the EU law application in this arena. For various reasons, ultimately the Czech Republic is more or less in compliance with demands of the EU law and keeps transposing needed norms, but neither in a prompt nor in an extensive manner.

The DSA is a Regulation and so its sufficiently specific provisions are directly applicable in the Czech Republic and have the priority over Czech national law provisions (possibly except the Czech Constitutional law norms). However, many provisions of the DSA need a national legislative enactment, i.e. adoptions norms.

Based on the DSA, each Member state, including the Czech Republic, “*has to designate one or more competent authorities to be responsible for the supervision of providers of intermediary services and enforcement … and …. designate one of the competent authorities as their Digital Services Coordinator. The Digital Services Coordinator shall be responsible for all matters relating to supervision and enforcement*” of DSA (Art. 49). All EU members states had to designate the Digital Services Coordinators by 17 February 2024.

Already in the Summer of 2023, the Czech Government approved the mechanism for DSA monitoring based on the proposal presented by the Czech Ministry for Trade and Commerce and the appointment of the CTO as the digital (services) coordinator.[[9]](#footnote-9) The exact powers and competencies of the digital (services) coordinator as implied by the DSA are to be set by an adaptation norm, i.e. by the Czech Digital Economy Act.

However, so far, this is just a Proposal in the legislative process as the Parliamentary Document 776/0 Government Bill on Digital economy (*Sněmovní tisk 776/0 Vl.n.z. o digitální ekonomice*).[[10]](#footnote-10) This Proposal was prepared by the Czech Ministry of Industry and Trade and the Czech Government submitted it to the Parliament on 27 August 2024.[[11]](#footnote-11) Namely, the Czech Republic was way behind in preparing and launching the legislative process regarding the full implementation of the DSA. In addition, it needs to be emphasized that the general Czech setting is inclined for the strong safe harbour and this principle is further boosted on the constitutional level via bad memories regarding the censorship provided by the declared well-being of people by the Communistic Party of Czechoslowakia.[[12]](#footnote-12)

Since the Czech Republic designated the Digital Services Coordinator, CTO, but did not provide the required DSA reception (transposition) regime by 17 February 2024, as required by the DSA, in particular Art. 49 DSA, and no improvement occurred during the following year, the European Commission decided to sue the Czech Republic, along with Spain, Cyprus, Poland and Portugal.[[13]](#footnote-13) Namely, the European Commission decided to refer Czechia (INFR(2024)2039), Spain (INFR(2024)2165), Cyprus (INFR(2024)2016), Poland (INFR(2024)2041) and Portugal (INFR(2024)2038) to the CJ EU for failing to designate and/or empower a national Digital Services Coordinator under the DSA.[[14]](#footnote-14) Specifically, although the Czech Government designated the CTO, the Czech Republic (Czech Parliament) failed to entrust the CTO with the necessary powers to carry out their tasks under the DSA.[[15]](#footnote-15)

Both, the Czech Government and CTO, are rather stoical in this respect and the Czech Ministry of Industry and Trade and CTO keep embellishing their postings about the DSA and the CTO with rather large powers. As a matter of fact, higher representatives of the CTO do not hesitate to speak about it and describe it.[[16]](#footnote-16) At the same time, it is undeniable that the Digital Economy Act is not to be enacted promptly. Consequently, and for the time being, the CTO can actively exercise only the competences provided by the DSA and by which the CTO will not infringe the rights and duties of subjects. In the context of the traditional Czech setting and the strong, reaffirmed and judicially reconfirmed safe harbour, this means that the CTO can do very little, if anything. So far, the only tangible outcome is the CTO publication of summary information about the framework[[17]](#footnote-17) set by the EU via the DSA[[18]](#footnote-18) and issuance of (non-binding?) Guidelines, prepared by the CTO with the Czech Ministry of Industry and Trade.[[19]](#footnote-19)

Even the rather optimistic CTO admits that the illegal content is not defined by the DSA, but by the EU law and Czech national law and the illegality is to be assessed by providers once they learned about it. The CTO adds that the disinformation content is not, per se, set by the DSA and that VLOPs have to use system measures against risk due to negative consequences for fundamental rights and civil discourse and that the sufficiency of such measures will be assessed by the European Commission.[[20]](#footnote-20)

Interestingly, there is very little third party information about the application of the DSA with the involvement of the CTO. Interestingly, they refer to the newly launched website of the CTO about the DSA[[21]](#footnote-21) and explain that this could help in the fight against Booking, Facebook, Instagram, LinkedIn, TikTok, Youtube, Shein or Temu, in particular regarding the deleted user accounts on Facebook or TikTok, but at the same time they admit that various institutions and individuals believe that the DSA means an increase of censorship.[[22]](#footnote-22) The CTO tries to explain that the assessment of content illegality is not in its competencies and that this will be done by courts, but the laic public expresses often their general disbelief in the entire system and, as stated above, academia expresses its concerns, and this even vis-à-vis the courts to decide such cases. In particular, it is observed that extremely complex issues linked to balancing of constitutional values and fundamental rights and duties should be done by the lowest civil court dealing with the agenda, such as wrongly repaired shoes or poorly cleaned coats.[[23]](#footnote-23) Private initiatives and NGOs are proposing guidelines and offer advices to the CTO about the application and enforcement of the DSA.[[24]](#footnote-24) However, it is questionable who realistic and feasible these suggestions are, especially considering their demands vis-à-vis the Czech Ministry of Industry and Trade and the CTP to spend more and to hire more qualified people.

# 11.-12. Fundamental Rights and Intellectual Property

In personal rights, competition law and intellectual property law disputes, the Czech Constitution and Czech Charter are often referred to and hence regular civil, administrative and criminal judges, including judges from the Czech Supreme Court and Czech Administrative Supreme Court, as well as special constitutional judges from the Czech Constitutional Court, are invited to balance constitutional values, fundamental rights and freedoms, etc. mutually and/or vis-à-vis strictly intellectual property matters.

Regarding the privacy protection (Art. 10), the Czech case law follows the case law of the CJ EU and the European Court of Human Rights while focusing on the respect and integrity of individuals and generally the protection against aggressivity, vulgarisms and hate, see the Czech Constitutional Court in III. ÚS 3006/21 from 22 March 2022.

Regarding the private ownership protection (Art. 11), the primary focus is on the expropriation. Consequently, it can be stated that the Czech law, including the case law, follows the European trends regarding privacy protection and private ownership protection.

A much more developed Czech constitutional case law can be observed regarding the freedom of expression and prohibition of censorship (Art. 17). The Constitutional Court declared in I. ÚS 394/04 from 27 September 2005 the importance of the free flow of information for the free press and in IV. ÚS 1146/16 – 1 from 28 June 2016 that the freedom of expression is linked to the right on information and they both are covered by Art. 17. In the case of conflict between the right on privacy and right on information, the balancing is for the right on privacy only in well founded cases such as in IV. ÚS 1378/16 – 1 from 8 June 2016 about non disclosure via Internet of salaries of employees. A strong rejection of the censorship, and this despite the employment of partial vulgarisms, can be understood from IV. ÚS 1511/13 – 1 from 20 May 2014. Plainly, both regular and constitutional judges do not want to get even remotely close to assessing the information and to becoming arbiters of appropriateness and value preferences. Further, the Czech Constitutional Court declared that the freedom of expression extends even to commercial statements, see II. ÚS 1440/21 from 23 August 2021, and that the entrepreneur has his own autonomy plus right on self-realization and this is to be respected and even can justify discriminatory practices towards certain groups of customers, see II. ÚS 3212/18 from 17 April 2019. This legislative, judiciary and even academic crusade[[25]](#footnote-25) against not only censorship but as well other form of monitoring and controlling business, especially popular businesses, such as Booking.com, by a much less known and popular authority, such as the CTO, makes the destiny of the Proposal rather shaky, especially in the pre-election time.

Finally, even the intellectual property is covered by the Czech Charter, which provides that “The rights to the results of creative intellectual activity are protected by law”(Art. 34). Unsurprisingly, regarding the copyright, a large of bulk of cases which reached the Constitutional Courts were launched by or against the collective administrators, typically regarding the audio communication in public objected by OSA. Often, OSA, has attempted to engage both the civil liability and criminal liability of restaurants, hair dresser salons, spas, etc., because the let play loudly radio with music. In the context of generally low chances to enforce an intellectual property claim, collective administrators and especially OSA, have a high success rate. Their aggressivity, eagerness and reckless behaviour have earned them a very poor reputation and a general reject of the public. It is even argued that the low enforceability of intellectual property claims is due to the general anti-intellectual property enforcement attitude in the Czech society which is caused by historic events as well as current, extremely unpopular, behaviour of OSA and other Czech collective administrators. The Czech Constitutional Court needed to step in and to remind that in the case of an (alleged) copyright infringement, primarily should be engaged the civil liability and not the criminal liability, see I. ÚS 9/06 from 12 October 2006. Regarding patent and trademark disputes, the Czech Constitutional Court attempts to stick with its jurisdiction *stricto sensu* and does not want to get involved in disputes between private parties and the Industrial Property Office regarding oppositions, trademark or patent cancellation, etc., see the deliberation of the Czech Constitutional Court in IV. ÚS 349/03 from 26 February 2004. As a matter of fact, the Czech Constitutional Court, even in the intellectual property cases, directly emphasizes that *vigilantibus iura scripta sunt* in the sense that intellectual property issues are basically civil law issues and should be enforced in the civil setting without reliance on the criminal law and/or constitutional law, see I. ÚS 69/06 from 12 October 2006.

# 13. -14. Reflection

As stated above, the Czech national law is definitely not oriented towards an aggressive engagement of the liability of online platforms providers and merely follows the EU law by doing the strict minimum and this even with a delay. The regular Czech courts are open to hear and decide privacy, expression, intellectual property and unfair competition cases, but despite a progressive improvement, the plaintiff has often a hard time to produce evidence sufficient for the court and even if this is managed, then the Czech courts are very reluctant to grant more than nominal damages. Nevertheless, there are already (lower) court decisions, such as of the Municipal court in Prague in 12 Cm 7/2021 from 26 January 2023, and a noticeable academic tenor correctly pointing to the existence of modern technologies and software tools (often in the hands of potential defendants, such as platforms) which can easily detect any intellectual property infringement and so the question should be not whether they should be used (for sure yes!) but instead who should bear the cost of their operation.[[26]](#footnote-26)

Well, so far, Collective administrators are the exception, but their belligerent approach cements even more the attitude of the courts as well as the society at large to be more for defendants in these cases. Naturally, the intangible nature of the subject matter further “justifies” it, i.e. infringing the intellectual property is marginalized and often perceived as less illegal than in the case of tangibles. In general, the internet setting reduces even further the enforceability of such claims and induces rather the atmosphere of “tolerance”. The Czech Constitutional Court recognizes and interprets constitutional values and balances privacy, intellectual property, unfair competition and other concerns. Nevertheless, it does not engage in judicial activism and by no means wants to get involved in matters belonging in the competence of Czech regular courts. The, so far, decided cases suggest that, in balancing, the Czech Constitutional Court considers carefully the circumstances of each and every case, keeps a rather non radical approach and gets genuinely activated regarding few issues, and one of them is that of censorship. With a touch of exaggeration it can be suggested that information, which is not extremely vulgar, racist or directly criminal, is not to be stopped, deleted or removed from circulation.

In May 2025, the European Commission decided to start an action against the Czech Republic for not fully transposing and implementing the DSA (INFR(2024)2039).[[27]](#footnote-27) Namely, the Czech Republic declined the idea to enact a simple reception norm regarding not fully specific and enforceable DSA provisions and rather opted to prepare a new large national Act addressing the digital economy at large. This Proposal for the Czech Digital Economy Act should be the adaption norm for the DSA as well as to address other issues and aspects of the digital economy and, among else, cancel and replace the Czech Information Society Services Act.

This choice is shown to be problematic. Not only was the Proposal was prepared and submitted to the Czech Parliament late (on 27 August 2024), but then it got stacked in the legislative process.[[28]](#footnote-28) Although the Czech Government expected that the lower chamber, the Assembly of Deputies, will approve it in June 2025,[[29]](#footnote-29) the Proposal was still waiting for the 3rd reading in July 2025. Considering the vacation and upcoming election in the Fall 2025, it is basically excluded that the Proposal will get approved by the Assembly of Deputies, moved to the Senate and be approved by the Senate and reach the President to be signed in the law. The election will be in October 2025 and the prospects of the current Government and Parliamentary majority are not too promising. This suggests a delay and perhaps even the end of this Proposal.

It is highly enlightening and informative to remember that the 2nd reading of the Proposal in the Parliament by the Assembly of Deputies was interrupted in January 2025 and delayed until March 2025 due to a strong criticism presented by the strongest opposition party, ANO, which probably will win election in October 2025.[[30]](#footnote-30) Even more interestingly, the head of ANO, Andrej Babiš, directly stated that this Proposal is “an attempt on the freedom of expression”, but that the digitalization of the state is his priority and that a Digital Economy Act is needed.[[31]](#footnote-31) This suggests that the DSA and readjustment of the safe harbour principle along with the monitoring, flagging and enforcing mechanism are merely reduced in the Czech context to a narrative about the EU dictating, unrealistically pushing the Green Deal, imposing censorship, etc. These words and slogans might attract attention and perhaps even votes. So after all, it is not so much about the very wording and concepts of the DSA, but rather about the embedded hidden mistrust and fear. This is understandable considering the Communistic experience, neither impressive nor well known professional reputation of the CTO and a problematic justice deferral to lowest courts. To put it differently, the CTO is labelled as the fourth worst in the EU[[32]](#footnote-32) and ineffective in protection of the competition against cartels.[[33]](#footnote-33) In addition, the Czech population heavily uses the VLOPs and perceive them rather positively. It appears that that are just few problematic cases and generally Booking, Amazon or Google are perceived as good options for customers and the entire market. Here again, it needs to be emphasized that many industries, goods and services in the Czech Republic (allegedly) suffer by a neither effective nor efficient competition and allegedly the Czech market is often impaired by abuse of monopoly and cartelistic behaviours. The general perception is that the prices in the Czech Republic of many goods and services are higher and the quality lower than in other parts of the EU. Occasionally, this is linked to extremely large Czech businesses, which emerged in the chaos after the Velvet Revolution, and which are linked and/or controlled by leading politicians, see the above-mentioned head of the ANO, Andrej Babiš, and his Agrofert.

In sum, the very large online platforms are not perceived as evil per se, instead they are rather popular, while in contrast, many current policies of the EU and the current Czech government are not popular and subject even of misinformation campaigns. This, in the context of a recognition of intellectual property and unfair competition claims but their not impressive enforceability and in the context of the crusade against the censorship, means that the employment of DSA mechanisms and reduction of online safe harbours is not the priority in the Czech Republic … it is rather something to be endure, ideally sometimes later and only partially. The destiny of the Proposal appears sealed and perhaps only the pressure of the action by the CJ EU will make the (new) Czech Government and Czech Parliament to work on fully transposing of the DSA.

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