REVIEWS AND ANNOTATIONS

Maisner, Martin. Act on Certain Information Society Services. A Commentary. Prague: C. H. Beck, 2016, 209 pp.[1]

Martin Maisner, a significant expert and, in particular, practising attorney-at-law who, in 2012, gained the prestigious award Lawyer of the Year in this specialization, wrote this interesting publication titled *"Act on Certain Information Society Services. A Commentary."* which appeared at the end of 2016 in the edition line of the C. H. Beck Publishing House. The author's main specializations are, however, not only information technology law and the protection of data, but also contractual relationships in general, and dispute resolution in the sphere of IT where he operates as an arbitrator at both Czech and international levels. He is the founding partner of a reputable law firm, gives lectures on business law, and operates in a number of international professional and scientific associations. He has written more than ten professional publications in the sphere of Internet law, liability outsourcing and dispute resolution in the sphere of IT and regularly speaks at Czech and foreign professional conferences.

This expert publication introduces a comprehensive and well-arranged commented interpretation of the Act on Certain Information Society Services and so gives everyone an idea of, and enables easy orientation in, this issue. Hence, the objective of the commented Act on Certain Information Technology Services is to contribute to the sustainable development of not only technologies but also the society that uses such technologies. The author focuses on the general interpretation and the practical impacts of the application of the Act. In addition to broadening readers' legal cognizance, he is trying to provide a practical, comprehensive and directly applicable interpretation comprehensible for anyone governed by the Act. The publication, on the one hand, exhibits the author's endeavour to emphasise the need for protecting the Internet as a free global platform serving, in particular, for exchanging information and developing digital economy, but, on the other, considers as important the need for protecting affected persons from the misuse and breach of individual rights. The commentary tries to thoroughly apply the current state of legal cognizance, professional literature, the decision-making practise of Czech and foreign courts, and relevant foreign legislations. Issues in which the matter commented on suffers from lack of judicature and jurisprudence are interpreted by the author with emphasis on the methodologically correct and, in particular, practically oriented interpretation of legal rules.

As usual, the author draws from the theoretical grounds of, and from interesting references to various rigmaroles and cases relating to, the given matter which, despite its relatively short existence, already has its history. Nevertheless, a substantial part of the author's work is formed by a substantive-law analysis in broader historical, technological and legal contexts. It is a topical and, at the same time, both theoretically and practically significant theme with characteristic interdisciplinary overlaps, which, after all, is also the nature of the subject of his work – information technology law which, by opening up the until then unknown legal problems and the possible new direction of the influences of law on social and technical reality, brings the need for a reconsideration from new perspectives of the sense of law as a specific phenomenon associated with human existence. The theme then becomes a kind of a frontier of the development of law, in particular, in terms of the future development of technologies and their social application where the significance of the influence of meta-legal issues on the law itself, which is still underestimated by lawyers, grows even more. There-

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fore, it may seem that the publication, stemming from these presumptions, contains deep, but very abstract and, to a regular, practise-oriented lawyer, distant, conjectures, but it is quite the contrary – it is written in a highly approachable and, for readers, refreshing way and brings many practical legal views and solutions.

In his commentary, the author draws from Czech sources and from the (thematically absolutely indispensable) laws of the EU, including extensive related decisions of the European Commission, The European Court of Justice, and Czech and foreign literature and judicature. Hence, the commentary is inspired not only by the available contemporary legal knowledge but also by professional literature and the decision-making of Czech and foreign courts and its author is not afraid of comparing Czech and foreign legislations. A dominant part of the author's text is formed by a critical comment on the existing legislation, specifying its weaknesses and strengths. The text so follows the published texts relating to this domain and appropriately complements them.

The structure of the commentary logically copies the Section-based wording of the Act commented on by the author. As stated by the author, the commentary does not end where actual problems begin. It states particular examples and does not avoid a detailed legal analysis of individual provisions of the Act. Hence, the commentary first deals with the issue of information society and electronic trade services, in particular, when it comes to the concepts of liability for providing caching, hosting and mere conduit services and the safe harbour procedure, and analyses in detail the provisions pertaining to the domain of electronic communications services and the issues of distribution of commercial communications. However, in this respect, most attention is paid to Sections 5 and 6 of the commented Act (service providers' liability for contents) and the ongoing discourse concerning the conditions of the establishment and maintenance of the so-called safe harbour. The part of the Commentary dealing with the issue of exclusion of liability and its transposition, where the author draws from the theses of David G. Post, in the opinion of whom the conditions of a virtual world differ from the "standard" ones to such an extent that they deserve special legal regulation, can be considered as extraordinarily good.[2] This view is also supported by the author himself.

In the next part of the commentary, the author very practically and factually informs readers on the basic principles governing the electronic distribution of commercial communications (opt-in and opt-out principles) and provides a very detailed analysis of Section 7 of the commented Act (distribution of commercial communications) where he deals with the key aspects of the relationship between the sender and the addressee of a commercial communication, asking a practical question as to what the relationship between the sender and the addressee of a commercial communication pursuant to Section 7(3) must be, i.e. how to interpret the statutory provision *"from his customer in relation to the sale of a product or service*" implying the question as to whether, in order to fulfil the condition, it is necessary to conclude a contract or whether the condition is fulfilled already upon the achievement of a particular phase of contracting. In the author's opinion, the text of the commented provision may be interpreted both ways. On the one hand, there is the word 'customer', which, in itself, evokes an already concluded contract. If the legislator had wanted to support the option of the mere contracting, it could have used, for example, the attribute 'potential customer'. Conversely, the contracting option is supported by the second part of the condition stating *"in relation to the sale of a product or service*". A contrary option would have been, for example, *"in the sale of a product or service*", which would not raise doubts. However, in this context, it is necessary, in the opinion of the author of the commentary, to consider the fact that practically an identical regulation is also applied in the already mentioned Section 2986(2) of the Civil Code, which contemporary theory interprets by stating that it is sufficient for the parties to reach a certain more advanced phase of

[2] Compare POST, D. G. Against Cyberanarchy. *Berkeley Technology Law Journal*. 2002, No. 17, p. 1365.

contracting, whereby the conclusion of a contract itself does not need to take place[3]. The same opinion is then supported by the author of the commentary.[4]

The final phase of the commentary deals with the supervision over the distribution of commercial communications and the option to impose sanctions if they are distributed unlawfully. This part will certainly be appreciated, in particular, by information society service providers – senders of commercial communications – who will undoubtedly find the publication to be a comprehensive and practical guide for the safe sending and conceiving of commercial communications and the elimination of the possible risk of delinquent conduct.

The publication is primarily conceived as an expert commentary and is aimed, in particular, at the informed professional public. Alongside academicians, the group of potential readers may include practising lawyers and, at least partially, legally instructed users working with information technology law. The publication may also be suitable for law faculty students, legal studies students, law-oriented students of economic universities or faculties, and, more generally, students of technical universities dealing with the ICT domain since the publication is not only of a high professional level but also well-arranged and approachable, which will be appreciated even by those readers who are not specialists in the given domain.

Overall, it can be stated that the reviewed publication is drawn up carefully, thoroughly paraphrases the literature and judicature, and includes practically all essential aspects of the commented issue. Thus, the reviewed work is fully comparable with the international standards. A list of the abbreviations and concepts used in the publication and an alphabetical register are a matter of course. However, the reviewed publication suffers from the absolute absence of a list of used literature, including a register of related judicature, which is its only obvious, but otherwise completely extraordinary, deficiency.

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[3] See, for example, KOTÁSEK, J., in: HULMÁK, M. et al. *Civil Code VI. Obligation Law. Special Part (Sections 2055–3014). Commentary.* Prague: C. H. Beck, 2014, p. 1835.

[4] It is also possible to agree with the author that another reason for such interpretation may also be the potential contribution for consumers, lying in the fact that, even if no contract has been concluded previously, a commercial communication may bring such an advantageous offer (e.g. in the form of a discount) that the contract may be concluded this time.

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