


sets out in the Directive, which acknowledges the limitations placed on state taxing authorities by *Quill*, and then finds facts that he contends establish “physical presence” in Massachusetts for all internet vendors who engage in \$500,000 of transactions with Massachusetts customers in a year. The basis for his factual findings is not included in the Discussion. It appears to this court that the Directive is a paradigm example of “a requirement of general application and future effect adopted by an agency to implement or interpret the law enforced or administered by it.” *Kneeland Liquor*, 346 Mass. at 234. Affected persons and businesses should have the opportunity for notice, input, and perhaps debate before it is effective provided them by the APA.

ORDER

For the foregoing reasons, Final Judgment shall enter (a) as to Count One of the Complaint, declaring that the Directive is a regulation promulgated without compliance with Sections 2 or 3 of G.L. Chapter 30A and, therefore, invalid; and (b) as to Counts Two through Four, dismissing these counts without prejudice.⁷


Mitchell H. Kaplan
Justice of the Superior Court

Dated: June 28, 2017

⁷ Nothing in this memorandum of decision should be construed as suggesting this court’s position on the merits of the claims asserted in Counts Two through Four. As the court has entered final judgment under Count One, it was unnecessary for the court to address the issue of irreparable injury.