Advocate General opinion in case of *Sky Österreich Fernsehen GmbH v. Verein für Konsumenteninformation*

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On 26 February, Advocate General Szpunar delivered an opinion in the case of *Sky Österreich Fernsehen GmbH v. Verein für Konsumenteninformation* , analysing the concepts of “digital content” and “digital service”.

Sky Österreich Fernsehen GmbH (Sky), a private television company established in Austria, offers subscription-based streaming services, the content of which is accessible via a link or an app. Customers can watch programmes live, on demand, or download them for offline viewing once within 48 hours. When subscribing, users must consent, by clicking, to Sky beginning the contract before the 14-day withdrawal period expires, which means that they lose their right of withdrawal.

The consumer protection association (*Verein für Konsumenteninformation* - VKI) argued that the information provided to users when giving their consent is insufficient. It claimed in particular that streaming subscriptions constitute a “digital service”, meaning that only the full supply of the service renders the right of withdrawal void where the consumer has acknowledged that he or she will lose that right. However, Sky maintained that streaming services are “digital content” for which the right of withdrawal expires as soon as performance of the contract begins (see the exception to the right of withdrawal provided for in Article 16(m) of the Consumer Rights Directive 2011/83).

While the first instance Court dismissed VKI’s claim, the appellate court overturned it and classified streaming services as “digital services”. Sky then appealed to the Austrian Supreme Court (*Oberster Gerichtshof*), which referred a question to the Court of Justice of the European Union (CJEU), asking how to determine whether streaming services such as the one in question should be deemed “digital content” or “digital services” under the Consumer Rights Directive.

The Advocate General observes the definitions of both “digital service” and “digital content” contained in Article 2(11) and (16) of the Consumer Rights Directive. “Digital content” is data produced and supplied in digital form, while “digital service” is a service that lets the consumer create, process, store, or access data in digital form, or interact with such data. Because the literal

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interpretation does not allow the identification of a demarcation line between the supply of digital content and digital services, the Advocate General further carried out a systemic and a teleological interpretation. With regard to the former, the aAdvocate General highlights several recitals from the Consumers Rights Directive, and emphasises the importance of the trader's involvement in distinguishing both concepts. Digital content involves a one-off or limited act of supply, whereas a digital service presupposes ongoing performance and trader engagement over time. From a teleological perspective, the Advocate General further clarifies that the withdrawal exception for digital content aims at protecting traders when the content is known and can be immediately consumed. By contrast, consumers need a right of withdrawal right to benefit from an appropriate period for reflection during which they can examine and test the goods acquired.

The opinion rejects the idea that this classification would let consumers abuse the system by briefly subscribing to watch premium content and then cancelling. It points out that EU law already requires the consumer to pay a proportionate amount for what has been supplied up to withdrawal, which is meant to protect the trader.

Advocate General Szpunar concludes his Opinion by proposing to interpret Article 2(11) and (16) and Article 16 (m) of the Consumer Rights Directive as meaning that "a streaming service, in the context of which the content made available to the consumer is stored on a server which customers may access via a hypertext link or an app in order to view it live, on demand or offline after downloading it, does not constitute an offer of 'digital content'". A consumer's 14-day withdrawal right does not therefore disappear once performance begins.

Opinion of Advocate General Szpunar, Sky Österreich Fernsehen GmbH v. Verein für Konsumenteninformation, Case C-234/25

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