[AT] High Court on Retransmission of Broadcast Programmes in a Hotel

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The facts of the case were as follows : the defendant runs a hotel. The hotel rooms are equipped with television sets capable of showing not only the terrestrial channels broadcast by the Austrian Broadcasting Corporation (ORF) but also programmes from the ASTRA satellite picked up by a satellite dish installed on the hotel roof. These programmes are selected, processed and amplified in an indoor unit and fed over a coaxial cable to the individual hotel rooms after demodulation and conversion.

The plaintiff, a collection society, requested that the defendant be required to render an account or supply information, pleading that the use described was either a cable transmission or a public performance, subject in either case to remuneration.

The defendant submitted that the claim should be dismissed on the grounds that the reception of satellite programmes is not covered by copyright. http://services.obs.coe.int/en/index.htm In its decision, viewed by many as contrary to the Convention (referring to the revised Berne agreement) and TRIPS, the High Court found that the defendant's satellite installation was a community antenna and consequently an exception to exclusive broadcasting rights provided for in Austrian copyright law; furthermore, reception of broadcasts in a hotel room was equivalent to the accepted use of broadcasts in private homes and accordingly not a public performance subject to remuneration.

Urteil des Obersten Gerichtshofs vom 16. Juni 1998, Aktenzeichen 4 Ob 146/98v.

High Court judgement dated 16 July 1998, reference 4 Ob 146/98v.

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