[AT] Supreme Court Rules on Hyperlink Liability

IRIS 2001-5:1/18

Albrecht Haller
IFPI Austria

Having previously decided (albeit with no legal basis) that, under copyright law, someone who sets up a hyperlink actually reproduces the "linked-in" contents (see IRIS 2000-7: 9), the Oberster Gerichtshof (Supreme Court - OGH) recently dealt expressly with the question of liability for hyperlinks from a competition law point of view for the very first time.

The facts of the case are as follows: the first plaintiff is the publisher of the Kurier daily newspaper and the second plaintiff is its subsidiary, which deals with advertising. The defendant, an employment agent working in the field of staff recruitment, runs the website www.austropersonal.com, which contains job advertisements for various companies and hyperlinks to the website of an American company (www.jobmonitor.com). The American website also displays job advertisements for different firms, some of which are taken from the Kurier or its online edition.

The plaintiffs applied for a temporary injunction, banning the defendant from promoting foreign competition (ie from the American company) by providing a direct link from the text stored on its website www.austropersonal.com to the website www.jobmonitor.com, where job advertisements taken from the Kurier daily newspaper or its on-line edition (www.kurier.at) were displayed without the permission of the advertisers concerned. The plaintiffs based their application on Sections 1 (immorality) and 2 (misleading advertising) of the Bundesgesetz gegen den unlauteren Wettbewerb (Federal Act against unfair competition - UWG).

Whereas both lower courts decided that the American firm had not acted unfairly, the Supreme Court considered that copying advertisements from the Kurier more or less word-for-word constituted immoral sponging a third party and was thus inadmissible under Section 1 of the UWG. With regard to the defendant's liability for providing a link to the American company's unlawful website, the Supreme Court ruled that "unlike a simple service provider, for example [...], someone who includes a link on his website incorporates into his own website the content of the "linked-in" website in such a real and physical way that it actually becomes a part of it [...]. He is therefore responsible for the content of the "linked-in" website. "The Court deliberately did not clarify whether the same principles also apply to hyperlinks which, unlike in the present case, do not replace a site's own content, but merely serve as pointers (eg lists of links).

© European Audiovisual Observatory (Council of Europe) 2026

Beschluss des Obersten Gerichtshofs vom 19. Dezember 2000, Aktenzeichen 4 Ob 225/00t

Judgment of the Supreme Court of 19 December 2000, file no. 4 Ob 225/00t

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026