

[AT] ORF Facebook Pages Unlawful

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In its decision of 25 January 2012 (KOA 11.260/11-018), the Austrian communications authority, KommAustria, concluded that various Facebook pages provided by the public service broadcaster ORF in connection with its television programmes constituted unlawful cooperation with Facebook as a social network. The ORF-Gesetz (ORF Act) prohibits ORF from offering online services in the form of social networks, including links to and other forms of cooperation with them.

The case concerned a total of 62 different ORF Facebook pages. Some content was provided by commissioned producers and some directly by ORF staff and editors. The pages contained not only the type of information found on a traditional website, but also opportunities to interact with registered Facebook users.

Article 4f of the ORF-Gesetz regulates the provision of online services by ORF, including a list of services that may not be offered by ORF. Under Article 4f(2)(25), these include social networks and links to social networks and other forms of cooperation with them. An exception applies to links related to ORF's own online news reports, i.e., links shown editorially, including as part of a report. This exception did not apply in the cases examined here.

ORF particularly argued that the pages were not social networks, but marketing activities or web content which it, like any other company, provided as part of its online activities and which were comparable to traditional websites. The regulator disagreed, especially since Facebook was more or less the prototype of a social network. It also noted that, in order to participate, Facebook's terms of use had to be accepted, which amounted to a form of cooperation.

In summary, KommAustria concluded that 38 Facebook pages produced by ORF staff members or employees of ORF-commissioned producers should be attributed to ORF and infringed the restrictions set out in Article 4f ORF-Gesetz.

Entscheidung KOA 11.260 / 11-018 der KommAustria, 25. Januar 2012

http://www.rtr.at/de/m/KOA1126011018/KOA_11.260_11_018_Bescheid_ORF_-_Facebook_01.pdf

KommAustria decision KOA 11.260 / 11-018, 25 January 2012

