[AT] Video Section of Newspaper Website is Notifiable On-Demand Service

IRIS 2013-3:1/9

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In a decision of 13 December 2012, the Austrian Bundeskommunikationssenat (Federal Communications Senate - BKS) ruled that the video section of a newspaper's website meets all the criteria of an on-demand service in the sense of Article 2(4) in conjunction with (3) of the Audiovisuelle Mediendienste-Gesetz (Audiovisual Media Act - AMD-G). Under Article 9 AMD-G, it must therefore be notified to the regulatory authority.

The "Tiroler Tageszeitung" operates a news portal, www.tt.com, which contains the online edition of its daily newspaper. Under the subdomain video.tt.com, the operator provides access to videos that are divided into categories (including news, culture, politics and economy) and can be searched. The video section has the same design and general navigation system as the rest of the newspaper's website.

The operator argued that the videos merely supplemented the rest of the website. They were not an on-demand service since the videos were not the principal purpose of the overall service. Furthermore, they were only short videos, which were not "television-like" in the sense of recital 24 of the Audiovisual Media Services Directive (2010/13/EU - AVMSD).

The BKS disagreed. Firstly, it was not obvious why the individual videos in the various categories were not "television-like". In terms of content and form, the videos were no different from traditional linear television broadcasts. In addition, the legislation did not set a minimum duration for a programme.

According to the BKS, the video section should also not be considered an incidental element of the newspaper's website. The videos were part of a separate subdomain that, apart from short descriptions, was reserved for exclusively audiovisual content and represented a "consumable" service without any textual content. The presentation and content of the videos stored in this subdomain confirmed that they did not merely fulfil the secondary or subordinate function of illustrating a particular text. The catalogue of programmes contained in the video section was therefore separate from the rest of the www.tt.com website and should therefore be treated as an independent service. According to the AVMSD, and in line with the AMD-G, such on-demand audiovisual services are notifiable and subject to the corresponding regulations.

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Entscheidung des BKS vom 13. Dezember 2012 (GZ 611.191/0005-BKS/2012)

http://www.bundeskanzleramt.at/DocView.axd?CobId=49930

BKS decision of 13 December 2012 (GZ 611.191/0005-BKS/2012)

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