[AT] Internet forum operators must disclose user data

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In a decision of 23 January 2014, the Austrian *Oberste Gerichtshof* (Supreme Court - OGH) ruled that a website's operators were obliged under Article 18(4) of the *E-Commerce-Gesetz* (E-Commerce Act - ECG) to disclose to the party concerned the e-mail addresses of users who had posted insulting comments about him. The court rejected the defence of editorial confidentiality.

The defendant operates an online discussion forum on its Internet site. The plaintiff, a politician, had demanded that the forum operator disclose the e-mail addresses of four of its users who had written unlawful comments about him. He had also asked for these remarks to be removed. The defendant deleted the comments, but refused to disclose the information requested on the grounds of editorial confidentiality.

Arguing that some of the claims made in the postings were contrary to criminal law, the politician asked the court to order the defendant to reveal the identity of the users concerned.

The OGH shared the lower-instance courts' view that the defence of editorial confidentiality under Article 31(1) of the Austrian *Mediengesetz* (Media Act) was inapplicable. This provision guarantees the protection of journalists' sources.

The court held that the mere operation of an online forum that was not moderated and on which all user comments were published did not constitute any form of journalistic activity.

The OGH also considered that legitimate claims must be enforceable. The plaintiff's right to take action against the website operator, to which the defendant had referred, was therefore insufficient, since the perpetrator could simply switch to another Internet site and continue infringing the plaintiff's rights. This would merely force the injured party to institute further legal proceedings. The defendant was therefore obliged to disclose the e-mail addresses.

Beschluss des OGH vom 23. Januar 2014 (Gz. 6Ob133/13x)

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Supreme Court decision of 23 January 2014 (case no. 6Ob133/13x)

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