[AT] Federal Administrative Court upholds complaints about ORF's "Wahl 13" and "Skiweltcup" apps

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Robin Zeiger
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a decision of 11 February 2015 (case no. W120 2008698-1), the Austrian Bundesverwaltungsgericht (Federal Administrative Court - BVwG) ruled that online services provided by the Austrian public service broadcaster, Österreichischer Rundfunk (ORF), may not be designed specifically for mobile devices, but must be independent of the technology later used to download them.

The decision followed a complaint submitted by the Verband Österreichischer Privatsender (Association of Austrian Private Broadcasters - VÖP) to the Austrian regulator KommAustria about the ORF apps dedicated to the 2013 parliamentary election ("Wahl 13") and the 2013/14 Ski World Cup ("Skiweltcup"). The VÖP argued that the apps had been designed specifically for mobile devices, which was prohibited under Article 4(f)(2)(28) of the ORF-Gesetz (ORF Act - ORF-G). After KommAustria partially upheld the complaint, both ORF and the VÖP appealed to the BVwG against its decision.

In its recent decision, the BVwG rejected ORF's complaint as unfounded, but upheld the VÖP's appeal. It found that online services created specifically for mobile devices clearly infringed Article 4(f)(2)(28) ORF-G. It explained that not every service was admissible under Article 4f(2)(28) ORF-G just because it was mirrored in an equivalent online service. The law made it absolutely clear that existing online services could be used on mobile devices in a technology-neutral way, but that creating content specifically for mobile devices was prohibited.

Erkenntnis vom Bundesverwaltungsgericht (BVwG) vom 11. Februar 2015 - Geschäftszahl: W120 2008698-1 -

http://www.ris.bka.gv.at/Dokumente/Bvwg/BVWGT_20150211_W120_2008698_1_00/BVWGT_20150211_W120_2008698_1_00.pdf

Decision of the Federal Administrative Court of 11 February 2015 - case no. W120 2008698-1 -

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