[AT] Administrative Court exempts streaming devices from licence fee

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In a ruling of 30 June 2015 (ZI. Ro 2015/15/0015), which has now been published in full, the Austrian Verwaltungsgerichtshof (Administrative Court - VwGH) decided that notebook computers that can only receive streamed content from the Internet are not broadcast reception devices and are therefore not subject to the broadcasting licence fee.

The court held that the legislator at the time of the adoption of the Bundesverfassungsgesetz vom 10. Juli 1974 über die Sicherung der Unabhängigkeit des Rundfunks (Federal Constitutional Act of 10 July 1974 on guaranteeing the independence of broadcasting - BVG-Rundfunk) had not intended that the Act should cover electronic transmissions via the Internet. This was demonstrated by a teleological reduction of Article 1(1) BVG-Rundfunk: under Article 2(16) of the Audiovisuelle Mediendienste-Gesetz (Audiovisual Media Services Act - AMD-G), television channels include not only audiovisual channels within the meaning of the BVG-Rundfunk, but also other audiovisual media services broadcast via electronic communications networks and provided for simultaneous viewing. In the VwGH's opinion, this additional provision would be superfluous if audiovisual media services broadcast via electronic communications networks (for simultaneous viewing) were included in the concept of broadcasting within the meaning of the BVG-Rundfunk. However, it was generally assumed that the legislator did not legislate unnecessarily.

Although live streaming therefore fell under the concepts of 'television broadcasting' in AVMS Directive 2010/13/EU and 'television channel' in Article 1a(2) of the ORF-Gesetz (ORF Act), it did not meet the definition of 'broadcasting' in the BVG-Rundfunk.

Broadcast reception devices were therefore only devices that used 'broadcast technologies', i.e. aerials, cable networks or satellite. The same applied to computers that could receive broadcast channels via a TV or radio card or a DVB-T module, for example. However, if a computer only had an Internet connection but no broadcast technology, it was not a broadcast reception device. Users of such devices were therefore exempt from the broadcasting licence fee.

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Urteil des Verwaltungsgerichtshofs vom 30. Juni 2015 (ZI. Ro 2015/15/0015)

https://www.vwgh.gv.at/medien/ro_2015150015.pdf?4zdiv7

Ruling of the Administrative Court of 30 June 2015 (ZI. Ro 2015/15/0015)

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