[AT] Administrative Court classifies video offering of Tyrol daily newspaper as audiovisual media service

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In the legal dispute between New Media Online and the Bundeskommunikationssenat (Federal Communications Board) (Case 2015/03/0004), the Verwaltungsgerichtshof (Administrative Court) decided on 16 December 2015 that the video offering on the plaintiff's website was to be classified as an audiovisual media service within the meaning of the Audiovisual Media Services Directive (AVMSD). The video offering, it said, was independent and not (no longer) linked to the journalistic activity.

The Tyrol daily newspaper's online service, which is operated by the plaintiff, provides not only articles but also videos with local news, sports and entertainment footage. In a subdomain, more than 300 videos can be accessed. They are all very short and last several minutes at most. The communications authority KommAustria established in a written decision that the video offering was an audiovisual media service within the meaning of the Österreichisches Audiovisuelles Mediendienstegesetz (Austrian Audiovisual Media Service Act - AMD-G), which transposes the AVMSD into Austrian law. The plaintiff challenged KommAustria's decision (see IRIS 2013-3/9) and took the case to the Administrative Court, which stayed the proceedings and referred two questions concerning an interpretation of the AVMSD to the European Court of Justice (ECJ). The ECJ ruled in a judgment of 21 October 2015 (Case C-347/14) that the provision of short videos on demand - as in the case of the website of the plaintiff in issue - was covered by the term "programme" within the meaning of Article 1(1)(b) of the AVMSD. However, it went on, whether the video offering constituted the principal purpose of the plaintiff's service depended on whether it was independent of the press articles also made available or whether the videos were inseparably linked to the written articles. That assessment, according to the ECJ, was a matter for the referring court. The ECJ pointed out in its decision, however, that based on the evidence available only few videos were linked to press articles (see IRIS 2015-10/3 and IRIS 2015-8/3).

The Administrative Court agreed with the ECJ's assessment and established that the service in question met all criteria required to classify it as an audiovisual media service within the meaning of the Directive, stating that the service offered was comparable in form and content to television programmes because footage like that contained in the short videos on the website was also shown in television programmes. Furthermore, the videos were directed at a mass audience and

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could therefore have a clear impact. The video service offered in the subdomain was also independent of the press articles in both content and function since there were no indications that the videos were linked to the press articles.

Entscheidung des Verwaltungsgerichtshofs (Geschäftszahl 2015/03/0004) vom 16. Dezember 2015

https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2015030004_20151216X00/JWT_2015030004_20151216X00.pdf

Decision of Administrative Court (Case 2015/03/0004) of 16 December 2015

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