[AT] KommAustria blocks ORF plans for exclusive YouTube channel and “Flimmit” pay-TV service

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In two decisions published at the start of May, the Austrian regulator KommAustria imposed new limits on public service broadcaster ORF’s Internet-based activities. KommAustria rejected requests from the broadcaster to set up its own channel on the online video platform YouTube (KOA 11.278/18-001) and refused to grant public service status to the commercial online video library “Flimmit”, which it owns through subsidiary companies, so that it could be partially funded through the licence fee (KOA 11.280/18-004).

ORF had hoped that by setting up its own YouTube channel it would be able to increase its social media presence and make its own productions available outside its own online video platform ORF TVthek from where, under current legislation, programmes can only be downloaded for seven days after they are broadcast. KommAustria did not deny that ORF’s social media presence on a platform such as YouTube could help it to fulfil its core public service remit in the sense that it made public service content more accessible, which was important for democratic and political reasons. However, it disagreed with the way in which ORF wanted to develop such a presence. If a channel was set up only on YouTube, for example, other video platforms would automatically be put at a disadvantage. Such discrimination was unlawful under Article 2(4) of the Bundesgesetz über den Österreichischen Rundfunk (Federal Act on the Austrian Broadcasting Corporation - ORF-G). The creation of a YouTube channel would also weaken the existing ORF TVthek, which the legislator considered to be important for the “effective fulfilment of the core public service remit”. Finally, KommAustria did not rule out the possibility of making programmes available for a longer period of time on the existing platform.

In a separate request, ORF had asked to add a streaming service to its public service activities. Under this plan, the online video library “Flimmit” would be operated under its public service remit, with 95% of its content comprising previous ORF TV broadcasts and the remaining 5% made up of third-party content. The service would be funded through subscription fees, individual download charges and part of the broadcasting licence fee. However, in KommAustria’s opinion, this financing strategy which, together with the impact of potential factors of uncertainty, had not been adequately explained in the application, failed to demonstrate that the service would be financially

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sustainable. Financial sustainability had to be demonstrated under Article 4f(1) ORF-G. The proposed financing concept for the new video library did not specify how much of the funding would need to come from ORF licence fee revenue. This was due partly to uncertainty over factors such as user acceptance, that is to say future subscriber and download figures, and the payment of producers' rights, and partly to a lack of clear information about which costs would be covered by users' subscription or individual download fees.

Neither of these KommAustria decisions are final, although ORF has indicated that it has abandoned its plans to set up its own YouTube channel.

Bescheid KOA 11.278/18-001

https://www.rtr.at/de/m/KOA1127818001/36835_KOA%2011.278-18-001%20.pdf

Decision KOA 11.278/18-001

Bescheid KOA 11.280/18-004

https://www.rtr.at/de/m/KOA1128018004/36836_KOA%2011.280-18-004.pdf

Decision KOA 11.280/18-004

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