Public service streaming portal Filmmit passes public value test

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On 13 November 2019, the Austrian media regulator, KommAustria, approved an application from the public service broadcaster ORF to provide an on-demand service offering mainly fictional content (films and box sets).

ORF currently operates the commercial online film library Filmmit through several subsidiaries. In order to make Filmmit into a public-service, ad-free, on-demand service, ORF asked KommAustria to carry out a so-called public value test in accordance with Article 6a of the ORF Act. In its application, ORF stated that the on-demand service would mainly provide content that had already been or would in future be broadcast on an ORF television channel and that had been available to download from ORF's 'TVthek' for no more than seven days. Third-party productions that would only be available on-demand and that would not be broadcast on ORF's linear channels would make up no more than 5% of the on-demand service's content and would only be used to 'contextualise' other content. The on-demand service would be funded partly through broadcasting licence fees and partly through a user subscription charge, with the provision of the platform itself funded through the licence fee and the additional costs of acquiring and using content financed through the user subscription fee.

According to the European Commission's 2009 Communication, a public value test should always be carried out if a public service broadcaster wants to introduce a significant new service or make significant changes to an existing one. Under the ORF-G, the test involves deciding whether the proposed service meets the social, democratic and cultural needs of the Austrian population, and fits in with the core remit of a public service broadcaster. Its potential impact on service diversity, market conditions and competition should also be evaluated. The benefits to society and potential market effects must then be weighed against each other.

In its decision, KommAustria noted, first of all, that the conditions for a public value test had been met. Although ORF was already operating the Filmmit on-demand service as a commercial online service, it would now form part of its public service remit, so it would be treated as a new service.

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KommAustria thought the on-demand service would make an effective contribution to ORF's fulfilment of cultural requirements and its public service remit, and would not be disproportionately detrimental to competition or service diversity. The Filmmit on-demand service was an online service in keeping with the organisation of broadcasting. The same applied to the content that would only be available on-demand and that would not be shown on ORF's linear channels, since it would make the on-demand service more attractive. This was also an economically viable service and the fact that it was subscription-based did not make it incompatible with ORF's public service remit. Contrary to the objections raised by the Verband Österreichischer Privatsender (Austrian Private Broadcasters' Association – VÖP), there was no reason to prohibit the service under the ORF-G. In particular, the provision of online services was not covered by the ban on e-commerce since, logically speaking, this only applied to e-commerce within its narrow sense. In concrete terms, the service would help to meet cultural requirements and the related public service remit because it would mean some of the content broadcast on ORF's television channels could remain available permanently or for a much longer period than the seven days currently provided by the 'TVthek'. This particularly included Austrian films and TV series (co-)produced as part of ORF's public service remit using the licence fee or commissioned by ORF, which would reach a wider audience if they were available online for longer. This was especially appropriate in view of the anticipated continuation of the drop in linear television consumption. The proposed service was not expected to harm any other companies operating in Austria.

Bescheid der KommAustria

https://www.rtr.at/de/m/KOA1128019011/38742_KOA%2011.280_19-011.pdf

KommAustria decision

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