[AT] Cease and desist order against hosting provider

IRIS 2020-7:1/14

Gianna Iacino
Legal expert

On 30 March 2020, Austria's *Oberster Gerichtshof* (Supreme Court – OGH) decided in preliminary proceedings that cease and desist orders against hosting providers could apply to content with identical words or meaning, but only within Austria (Case no. 4Ob36/20b).

A politician from the Freiheitliche Partei Österreichs (Freedom Party of Austria – FPÖ) had published on his Facebook page an edited photo of a well-known ORF newsreader, the rights to which were owned by the ORF. The following text had been added to the image in clearly visible lettering: "There's a place where lies become news. It's the ORF." The following words had appeared in smaller lettering: "The best fake news, lies and propaganda, pseudo-culture and a compulsory fee. Regional and international. On television, on the radio and on the Facebook profile of Armin Wolf". A picture of Pinocchio with a long nose had also been shown.

The ORF asked Facebook several times to delete the post, but without success. In the preliminary proceedings, it demanded that Facebook prevent third parties from distributing the photo and alleging that it spread fake news or making any similar claims. Its action was based on its right to injunctive relief under Article 81 of the *Urhebergesetz* (Copyright Act – UrhG) and the infringement of its personality rights under Article 1330 of the *Allgemeines Bürgerliches Gesetzbuch* (General Civil Code – ABGB).

The court of first instance granted the preliminary injunction, a decision that was upheld by the court of appeal and the Supreme Court.

The Supreme Court explained that the cease and desist order was compatible with European law. In the case at hand, the behaviour that the defendant had been asked to cease had been clearly specified. The order had therefore been sufficiently specific and non-excessive, and had not created a disproportionate obligation for the defendant. Although Article 15 of EU Directive 2000/31/EC did not prevent member states from imposing a general obligation on hosting providers to monitor the information that they stored, this did not apply to "specific cases". Such a case existed, for example, if a domestic civil court ordered targeted surveillance measures. Such orders could, for example, cover future rights infringements and rights infringements by third parties. A cease and

© European Audiovisual Observatory (Council of Europe) 2026

desist order could cover content with identical words or meaning, with content deemed to have an “identical meaning” if it was immediately obvious to a non-expert or could be determined by technical means that it was “essentially the same” as content that had been considered unlawful.

However, the cease and desist order only applied in Austria in relation to the alleged breaches of both copyright and personality rights. Although a cease and desist order could, in principle, have worldwide effect, internationally recognised legal principles had to be respected. Copyright was subject to the territoriality principle. Since the protection claimed by the plaintiff under Austrian copyright law only applied in Austria, the claim for injunctive relief was limited to Austria. As regards the personality rights infringement, the plaintiff needed to clearly define the geographical scope of protection if it extended beyond Austria, since the territoriality principle did not apply. As the plaintiff had not provided such a definition, it should be assumed that protection was only being sought in Austria.

Entscheidung des Obersten Gerichtshof Österreichs vom 30.03.2020 - Az.: 4Ob36/20b

https://www.ris.bka.gv.at/Dokumente/Justiz/JJT_20200330_OGH0002_0040OB00036_20B0000_000/JJT_20200330_OGH0002_0040OB00036_20B0000_000.html

Decision of the Austrian Supreme Court of 30 March 2020, case no. 4Ob36/20b

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026