

Jurius

Audiovisual media services legislation

CJEU – Short videos on a newspaper’s website may fall under audiovisual media services legislation. Such is the case when the offer has content and form which is independent of that of the journalistic activity of the online newspaper. (Judgement C-347/14)

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[Rz 1] New Media Online, a company established in Innsbruck (Austria), operates the online newspaper «Tiroler Tageszeitung online» (www.tt.com). That website contains articles mainly from the written press. However, at the material time (in 2012), a link entitled «video» led to a subdomain on which it was possible, thanks to the search catalogue, to watch more than 300 videos. Those videos, which can vary in length from 30 seconds to several minutes, concerned various subjects such as local news and events, vox-pop interviews on current topics, sports events, film trailers, craft activities for children, or readers» videos selected by the editors. Very few of the videos were related to the items listed on the newspaper's website. Moreover, some of the videos were produced by a regional broadcaster, Tirol TV, and were also accessible on that broadcaster's website.

[Rz 2] According to the Austrian communications authority (KommAustria), the video subdomain in question constitutes an on-demand audiovisual media service, subject, in Austria, to a reporting obligation. The Bundeskommunikationssenat (Austrian authority with jurisdiction to hear actions against the decisions of the Austrian communications authority) upheld that assessment. New Media Online then appealed to the Verwaltungsgerichtshof (Administrative Court, Austria). The latter asked the Court of Justice to give an interpretation of the Audiovisual Media Services Directive¹. The Directive aims, inter alia, to protect consumers and, in particular, minors. It thus establishes requirements which audiovisual media services must meet, in particular, with respect to commercial communications and sponsorship.

[Rz 3] According to the Directive, an audiovisual media service is either a television broadcast or an on-demand audiovisual media service. Furthermore, its principal purpose is to provide programmes to inform, entertain or educate the general public. The Directive expressly provides that it does not apply to electronic versions of newspapers and magazines.

[Rz 4] By its judgment, the Court answers, firstly, that the provision on a subdomain on a newspaper website, of videos of short duration consisting of local news bulletins, sports and entertainment clips falls within the concept of «programme» within the meaning of the Directive.

[Rz 5] The Court observes in particular that the length of the video is irrelevant and that the manner in which the videos at issue are selected is no different from that proposed in the context of on-demand audiovisual media services. In addition, videos such as those at issue compete with the news services offered by regional broadcasters and with music channels, sports channels and entertainment programmes. The purpose of that directive is precisely to apply, in a particularly competitive media landscape, the same rules to actors competing for the same audience and to prevent on-demand audiovisual media services, such as the video collection at issue, from engaging in unfair competition with traditional television.

[Rz 6] Secondly, the Court answers that, in order to assess the principal purpose of a service making videos available offered in the electronic version of a newspaper, it must be examined whether that service has content and form which is independent of that of the journalistic activity of the operator of the website, and is not merely an indissociable complement to that activity, in particular as a result of the links between the audiovisual offer and the offer in text form. That assessment is a matter for the Verwaltungsgerichtshof.

[Rz 7] The Court points out in that regard that an electronic version of a newspaper, notwithstanding the audiovisual elements within it, must not be regarded as an audiovisual service where those audiovisual elements are incidental and serve only to complement the provision of written press articles.

[Rz 8] However, the Court considers that an audiovisual service must not be systematically excluded from the Directive's scope solely on the ground that the operator of the website concerned is a publishing company of an online newspaper. A video section which, solely as part of a website, meets the conditions to be classified as an on-demand audiovisual media service, does not lose that classification merely because it is accessible on the website of a newspaper or because it is offered within that site.

[Rz 9] In the present case, it appears that very few press articles are linked to the video clips at issue. Moreover, it appears that the majority of those videos can be accessed and watched regardless of whether the articles of the electronic version of a newspaper are consulted. Those factors tend to show that the service at issue could be regarded as having form and content which is independent of that of the journalistic activity of New Media Online, thereby constituting a distinct service from the other services offered by that company. Such an assessment is however a matter for the Verwaltungsgerichtshof.

Judgment of the CJEU in Case C-347/14 of 21 October 2015 – New Media Online GmbH vs. Bundeskommunikationssenat

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