

HOST PROVIDER LIABILITY FOR HATE SPEECH POSTS AND OBLIGATION TO DELIVER USER DATA

NO LIABILITY OF HOST PROVIDERS FOR UNLAWFUL CONTENT OF INTERNET-USERS IN CASE OF TIMELY DELETION OF HATE SPEECH POSTS | OBLIGATION TO DELIVER USER DATA IN CASE CONVICTION IS POSSIBLE OR NOT TOTALLY EXCLUDED

The operator of an online discussion forum in principle cannot be held liable for unlawful content of users provided that the incriminated content is deleted in due time. The deletion of posts on the day of the service of the lawsuit is seasonable. The operator is obliged to deliver user data upon a third party's request in case the prosecution of the alleged infringement initiated by the plaintiff is "possible" or "not totally excluded".

FACTS OF THE CASE

As part of an online discussion forum operated by a media owner internet users published posts designating the plaintiff and CEO of another media group in Austria as rat/unprincipled person ("Charakterschwein") and retard ("Vollidiot") and comparing him to Joseph Goebbels. Subsequently, the entrepreneur concerned without prior request filed a lawsuit – based on Sec. 1330 General Civil Code – against the operator of the online discussion forum seeking omission of the distribution of libelous language about him as well as delivery of the users' names and address.

REQUEST FOR CEASE-AND-DESIST ORDER

In its decision 6 Ob 188/16i of 30 January 2017 the Supreme Court of Justice dismissed the plaintiff's request for omission. Only at first sight this decision is somewhat unexpected, ultimately, however, absolutely accurate: In fact the Supreme Court with good reason set forth that readers of contents of an online discussion forum will not commonly assume that a user's post mirrors the forum operator's opinion. In the view of the trial senate, the operator of the online forum as host provider pursuant to Sec. 16 E-Commerce-Act cannot be held liable for unlawful content of users provided that he has not caused such content by his own conduct and the content in dispute is deleted in due time. In the present case the sued forum operator deleted the incriminated content on the day of the service of the lawsuit and therefore immediately after having gained knowledge thereof. Hence, the request for omission was dismissed in its entirety.

REQUEST FOR DELIVERY OF DATA

Pursuant to Sec. 18 para 4 E-Commerce-Act the operator of the online-forum was obliged by the Court's decision mentioned above to deliver the user data. The defendant as host provider upon a third party's request must deliver the user's name and address if there is an overriding interest in ascertaining the user's identity with regard to a specific unlawful

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matter. This is the case in particular if the prosecution of the alleged infringement has a certain prospect of success. Objectively, based on the incriminated posts the prosecution of the authors of the posts pursuant to Sec. 1330 General Civil Code is possible or not totally excluded. As a consequence, the operator is obliged to deliver the user data to the plaintiff.

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