



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 75/15**

Luxembourg, 1 July 2015

Advocate General's Opinion in Case C-347/14  
New Media Online

---

**Advocate General Maciej Szpunar considers that the website of a daily newspaper containing audiovisual material is not an audiovisual service within the meaning of EU law**

*Possible difficulties arising from the need for the national regulatory authorities to assess the character of the services existing on the market cannot justify extending the scope of the Audiovisual Media Services Directive to cover in practice all current audiovisual content on the internet*

Directive 2010/13<sup>1</sup> lays down in particular that an audiovisual media services is a service which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes, in order to inform, entertain or educate, to the general public by electronic communications networks. Such an audiovisual media service is either a television broadcast or a non-linear audiovisual media service (on-demand service).

New Media Online GmbH, a company incorporated under Austrian law ('New Media Online'), operates the website of the *Tiroler Tageszeitung* newspaper under the name *Tiroler Tageszeitung Online*. That website contains, together with other content, a separate section entitled 'Video' which, at the time of the facts of the main proceedings, included a catalogue of around 300 videos. Those videos, whose length varied from tens of seconds to several minutes, were more or less linked thematically to the other content of the website, and originated from various sources (its own material and material produced by local television or supplied by users of the website, etc).

In 2012 the Kommunikationsbehörde Austria (the Austrian regulatory authority) found that the 'Video' section on the website *Tiroler Tageszeitung Online* was an on-demand audiovisual media service subject to a reporting obligation. New Media Online brought an action against that decision. The Verwaltungsgerichtshof (Supreme Administrative Court), hearing the appeal against the judgment dismissing that action, asked the Court of Justice for a preliminary ruling on the interpretation of certain criteria enabling a service to be regarded as an audiovisual media service within the meaning of Directive 2010/13.

In today's Opinion, Advocate General Maciej Szpunar observes to begin with that the principal purpose of an audiovisual media service is to provide programmes, that is to say, the elements of a traditional television schedule, but in the case of a non-linear service those programmes are not provided at a particular time, but rather on demand by the user. In addition, the EU legislature expressly pointed out – albeit in an anachronistic manner from the point of view of today's level of development of internet technology – in the preamble to the directive that it did not intend to include internet information portals within its scope.

Therefore, an internet portal of this kind, such as the *Tiroler Tageszeitung Online* website, does not meet the requirements for being regarded as an audiovisual media service within the meaning of the directive. Firstly, the emergence of multimedia internet portals containing audio and audiovisual material in addition to written content and photographs is not the result of the technological

---

<sup>1</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (OJ 2010 L 95, p. 1).

development of television, but an entirely new phenomenon linked primarily with the increase in the bandwidth of telecommunication networks. Secondly, the multimedia nature of portals such as the Tiroler Tageszeitung Online website does not permit the audiovisual content placed on it to be analysed separately from the rest of the portal, even if those audiovisual materials are collected in a separate section of the portal. The essence of a multimedia service is the combination of different forms of communication – word, image and sound – and the specific architecture of the portal is merely a secondary technical aspect. Thirdly and finally, such a multimedia internet portal is the current form of what the legislature, when working on the Audiovisual Media Services Directive, could still describe as the ‘electronic version of newspapers or magazines’.

The Advocate General accordingly takes the view that neither the website of a daily newspaper containing audiovisual material nor any section of that website constitutes an audiovisual media service within the meaning of the directive.

The Advocate General goes on to state that he does not share the concerns that such an interpretation of the directive will allow persons who are actually providing audiovisual media services to pass themselves off as multimedia information portals and thus circumvent the law governing that area. Naturally, the application of the provisions adopted on the basis of Directive 2010/13 by the national regulatory authorities of the Member States requires an assessment of the character of the services which exist on the market for the purpose of classifying them, or not, as audiovisual media services within the meaning of the directive. However, possible difficulties arising therefrom cannot justify an interpretation of the directive as in practice covering all current audiovisual content on the internet, thereby going beyond the scope of regulation sought by the legislature.

The fact that in theory it is difficult to come up with an abstract definition of an audiovisual media service does not, in the Advocate General's view, mean that in practice it will not be easy to identify such a service. The great majority of services of that kind of service offer feature-length films, television serials, sports events and the like on websites. This is therefore the kind of communication which can easily be classified as typical television communication. Uncertainties must, however, be dispelled in accordance with the purpose of the directive, so that it is not applied to multimedia websites. Therefore, the only websites to be regarded as audiovisual media services must be those which undoubtedly satisfy all the criteria of such a service.

That does not mean, however, that content placed on the internet, including audiovisual content, cannot or must not be subject at all to regulation by law, including the provisions of EU law, on matters such as the protection of minors and public policy, advertising, or the rules on the broadcasting of important events. Those provisions must, however, be adapted to the specific characteristics of the internet, in particular to its multimedia nature.

---

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

---

*Unofficial document for media use, not binding on the Court of Justice.*

*The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.*

*Press contact: Christopher Fretwell ☎ (+352) 4303 3355*