**Liability of online platforms for their users in Austria, especially in the areas of IP and unfair competition**

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1. **Introduction**

Platforms play a key infrastructural role in today's communication landscape and digital information exchange. As intermediaries, they significantly control access to information and enable interaction and communication in a social and socio-political context. In doing so, they find themselves caught between enabling free exchange of opinions and access to information on the one hand, and monitoring and controlling content on the other.

Pluralistic opinion-forming as a cornerstone of a democratic society requires a diversity of opinions, perspectives, and information in the public sphere. Digital platforms can contribute to the dissemination of opinions, but they also harbor the risk of rapidly spreading misinformation or illegal content. Platforms therefore need a set of rules to counteract harmful effects and promote positive aspects.

As early as 2004[[1]](#footnote-1), Austrian courts dealt with the liability of operators for content violating personal rights on their guestbook forums. In 2021, a package of measures against “hate on the internet”[[2]](#footnote-2) was put together, introducing measures with which civil and media law claims have been expanded and legal enforcement for those affected by hate postings has been made much easier. The Regulation (EU) No. 2022/2065 of the European Parliament and of the Council on a Digital Services Act (DSA ) and the accompanying DSA Act[[3]](#footnote-3), which came into force on 17 February 2024, provided further improvements and relief for victims of online hate. The protection of copyrighted works against unauthorised making available and sending was introduced with the Copyright Amendment 2021. This transposed the guidelines of the DSM Directive on the responsibility of large online platforms whose business model is based on their users uploading large amounts of copyright-protected material to their platforms.

Although the phenomenon of platforms was recognised early on in Austrian law, the current legal framework for platforms is now heavily influenced by EU legislation. In this respect, national Austrian regulations governing specific platform-related aspects coexist with uniform EU-wide rules, such as the DSA. Notably, national peculiarities exist in the area of law enforcement, where the special circumstances of the Austrian legal system are taken into account in relation to platforms.

1. **Concepts covering Platforms in Austrian Law**

The term 'platform' does not originate from law; rather, it describes a real-world phenomenon. In the digital economy, in particular, a platform is understood to be an intermediary that facilitates interaction between users and derives monetary benefit from this. Platforms, thus, act as intermediaries between two parties without directly intervening in the interaction itself. A platform exists whenever a basis is created on which interactions between users can take place, indirectly influenced by the owner of the platform.[[4]](#footnote-4)

Therefore, the term “platforms” does not describe a uniform technical phenomenon. Platforms differ in terms of the activities and functions they perform, the actors they involve, and the way they interact with them in the course of their operations, as well as in terms of their different sources of revenue and associated business models.

Due to the different forms that platforms can take, there is no corresponding broad legal definition. Instead, individual aspects of platforms are singled out for legal categorisation. These aspects then form the basis for legal assessments.

In Austria, there is no uniform description of a platform in this sense; rather, the term is used differently depending on the regulatory context. A rough distinction can therefore be made between:

* 1. **Intermediary services**

The term intermediary services is used in the DSA. These are understood to mean i) Internet providers and hosting services that enable access to the Internet or store content (e.g., cloud providers), ii) online platforms[[5]](#footnote-5), that distribute content or enable transactions, and online marketplaces, iii) search engines, and iv) caching services. The aim of the DSA is to create a safe, predictable and trustworthy online environment that counteracts the spread of illegal online content and the societal risks that the spread of disinformation or other content can bring, and in which fundamental rights are effectively protected and innovation is promoted.[[6]](#footnote-6) The regulation provides for the framework of platforms´ liability and liability privileges (Art. 4 bis 10), due diligence obligations for a transparent and secure online environment (Art. 11 bis 48), sanctions, legal remedies and the implementation of an authority that decides about such appeals of affected persons.

It is important to distinguish between host provider and media owner in the sense of the Austrian Media Act (MedienG)[[7]](#footnote-7). Anyone who passively makes content available on behalf of third parties is a host provider and not a media owner. In media law, website operators are classified as media owners if they invite third parties to upload content or post comments via a comment function, and if the media owner moderates the conversation. It is therefore required that the operator only provides a technical platform for third parties, as is the case with a neutral operator of a chat forum or guestbook. However, if the website operator invites users to upload content or post contributions, even if this invitation is not expressly made, the operator is then classified as a media owner.[[8]](#footnote-8) In such a case, the affected persons are entitled to claims for compensation under media law (Sections 6 et seq. MedienG), a counterstatement (Sections 9 et seq. MedienG) and the confiscation and seizure of websites (Section 36a MedienG); the DSA does to this extent not apply.

Only a kind of pre-moderation would not result in the qualification as media owner, and hence, the media law would not apply. Therefore, if the contributions are not published immediately but are first checked by a computer programme using keywords and then reviewed by journalists and removed if necessary, this alone is not sufficient to establish the necessary link with journalistic activity.

* 1. **Large Online Platforms**

As a subset of host providers within the meaning of Article 14 of Directive (EU) 2019/790 (Copyright in the Digital Single Market; shortly referred to as DMS Directive), providers of large online platforms are understood to be those whose liability has been regulated in Section 18c of the Austrian Copyright Act (UrhG)[[9]](#footnote-9) in implementation of Article 2 (6) of the DSM Directive. Section 18c in conjunction with Sections 89a, 89b, and 89c UrhG regulates their responsibility with regard to the uploading of copyright-protected works by users. These provisions therefore standardize liability for third-party misconduct, whereby a service provider is liable for all protected content to which it has given the public access, regardless of any knowledge of copyright-infringing content.

* 1. **Online Market Places**

According to Section 3 (10) of the Distance and Off-Premises Sales Act (FAGG)[[10]](#footnote-10) and Section 1 (4) Nr 10 Unfair Competition Act (UWG)[[11]](#footnote-11), an online marketplace enables distance contracts to be concluded with consumers or other entrepreneurs through the use of software operated by the entrepreneur. However, pursuant to Article 6(3) of the Digital Services Act (DSA), the liability privilege for platforms does not apply if the consumer can reasonably assume that the online platform itself, or a user acting under its authority, is offering the product or service. This presupposes that the hosting service not only stores information provided by a user on that user's behalf, but also makes it publicly available (see Article 3(i) and Recital 13 DSA). The online platform must enable the conclusion of distance contracts

Section 4a FAGG establishes specific information obligations for online marketplace operators when consumers enter into distance contracts via their platforms. The regulation requires that consumers receive clear and comprehensible information about essential aspects of the transaction before they are contractually bound. This includes transparency regarding the criteria for offer rankings, the legal status of third-party sellers, the applicability of consumer protection rights, the allocation of contractual responsibilities, and the nature of any price comparisons or ticket resales. The rule also mandates that consumers must be informed, in a timely and prominent manner, about the identity of their contractual partner—whether it is the marketplace itself or a third party. Similarly, pursuant to Section 2 (6) Nr 7 UWG, it must be clarified whether a third party offering products on an online marketplace is an entrepreneur or not. A breach of these information obligations may constitute a misleading practice pursuant to Section 2 (5) and (6) UWG.[[12]](#footnote-12)

This is closely related to the prohibition on ranking search results higher in return for payment unless this is clearly disclosed (Point 11a of the annex to the UWG), the prohibition on claiming that product reviews are provided by consumers without adequate and proportionate steps of verification being taken (Point 23b of the annex to the UWG), and the prohibition on submitting fake reviews (Point 23c of the annex to the UWG).

* 1. **Video-Sharing platforms**

The Federal Act on Audiovisual Media Services (Audiovisual Media Services Act – AMD-G)[[13]](#footnote-13) which has been issued as local law transposing the Directive 2010/13/EU on audiovisual media services (Audiovisual Media Services Directive) regulates video sharing platform providers. Video sharing platforms are understood as platform where the main purpose or a separable part of the service or an essential feature of the service consists in making available to the public, via electronic communications networks within the meaning of Article 2(1) of Directive (EU) 2018/1972 on the European Electronic Communications Code, OJ No. L 321 of 17 December 2018, p. 36, for information, entertainment, or education, and whose organization—including automatic means or algorithms, in particular through display, highlighting, and arrangement—is determined by the platform provider.

According to Section 2 No 37a. AMD-G, a video-sharing platform provider (platform provider) is a natural or legal person who operates a video-sharing platform service. The decisive factor is that the platform provider provides a service consisting of making broadcasts or user-generated videos, for which it has no editorial responsibility, available to the general public via electronic communications networks, the organisation of which is determined by the provider, in particular (but not exclusively) by displaying, labelling and arranging the content, whether or not using automatic means or algorithms.[[14]](#footnote-14) Hence, Video sharing platforms differ from video on demand services in that the platform provider does not bear editorial responsibility. As consequence, they must take appropriate measures to block or remove content that has been reported as illegal.

* 1. **Booking platforms**

Point 32 of the annex to the UWG contains a prohibition specifically aimed at booking platforms. These are defined by the fact that accommodation providers can market their services, which mainly refers to platforms that operate in a similar way to “booking.com”. A distinctive feature of Austrian law is that booking platforms are generally prohibited from requiring accommodation providers to offer less favourable prices or conditions through any other distribution channel, including their own website (most favoured nation clause). The Austrian legal situation in this regard is therefore apparently stricter than under European competition law.

* 1. **Online intermediation services**

The Platform-to-Business Regulation[[15]](#footnote-15) (Regulation (EU) 2019/1150, "P2B Regulation") addresses the imbalance of bargaining power between online platforms and the professional suppliers that rely on their services. It applies to online intermediation services which includes e-commerce marketplaces, app stores, social media platforms used for business purposes, booking websites,[[16]](#footnote-16) and search engines. The P2B Regulation introduces, among other things, requirements regarding the transparency of terms and conditions (Article 3), the restriction, suspension, and termination of online intermediation services (Article 4), the parameters determining ranking (Article 5), and access to data (Article 9).

In Austria, due to the reference in Section 1 (3) Fair competition conditions act (FWBG)[[17]](#footnote-17), a violation of the P2B Regulation is deemed a breach of fair competition. As a result, the Cartel Court may issue a cease and desist order. According to Section 7 FWBG, the Federal Competition Authority, the Austrian Federal Economic Chamber, the Federal Chamber of Labour, and associations representing the economic interests of entrepreneurs are entitled to file an application. Notably, any undertaking whose legal or economic interests are affected by the subject matter of the proceedings may also apply for an injunction.

1. **Liability regimes for platforms**

As outlined above, Austrian law contains a large number of regulations aimed at online platforms in relation to intellectual property (IP) and unfair competition. Generally, violations against these provisions can result in fines and liability. The following section deals with a special case in more detail: Liability for third-party content.

* 1. **Liability for third-party content from a civil law perspective**

There are two main reasons why platforms can be held liable from a civil law perspective:

* **Direct liability**: Direct liability may arise if a platform does not limit itself to making third party information available to the public but actively participates in the design and production of the content. If a platform takes such an active role in relation to that content, it will be directly liable for any infringement. Liability therefore exists regardless of whether a platform user has also acted unlawfully.
* **Indirect liability**: As a platform enables different groups of users to interact, it must take reasonable measures and precautions to prevent danger to third parties. If it fails to ensure that its users' illegal actions are stopped, the platform may be held liable as an indirect perpetrator. In such cases, the platform is usually liable in addition to the platform user who has acted unlawfully.
  + 1. **Direct liability**

A platform is directly liable if it infringes the rights of third parties itself or otherwise acts in violation of the law. In the context of online platforms, such direct liability is generally assumed when the infringement results from the platform’s own actions – for example, when the platform publishes its own content. According to a Supreme Court ruling, an online platform for trading event tickets on the secondary market is directly liable if it actively contributes to the creation or reinforcement of misconceptions among ticket buyers.[[18]](#footnote-18)

However, Austrian law also recognises that the distribution of third party content may give rise to direct liability. This is mainly discussed in the context of defamation or libel where the so-called intellectual disseminator (in German: Intellektueller Verbreiter) may be hold liable for the falsity of the content disseminated.[[19]](#footnote-19) An intellectual disseminator is characterised by the fact that he/she has an intellectual relationship with the content of the ideas disseminated. In this context, the decisive factor is whether the third party's statements are recognisably incorporated into the disseminator's own point of view. This is assumed, for example, for the person who has ultimate responsibility for the content of the medium, who, for example, as the administrator of a Facebook page, has the power to delete any comment altogether, to make it invisible to other users and to 'block' other commentators altogether.[[20]](#footnote-20)

The concept of the intellectual disseminator is closely related to the idea of "zu Eigen machen" ("Adopting") in the law of unfair competition. The question here is whether a person who sets a link has to accept the content of an external website as his or her own content. The established case law by the Austrian Supreme court is rather strict:[[21]](#footnote-21) If a link is intended to replace a statement of the author's own, the author of the link must accept responsibility for the content of the external site. This may result in direct liability for a platform. For example, the Austrian Supreme Court has held that direct liability for content may arise if users are encouraged to access content simply by clicking on a link, particularly when this suggests that the statements contained therein are incorporated into the party’s own advertising content.[[22]](#footnote-22)

* + 1. **Indirect liability**

Indirect liability may arise from general principles of civil law. Indirect liability may apply, when there is a causal and reasonable connection between the acts and the infringement. Liability may arise from active assistance to a wrongdoer. This means that any contribution that enables, facilitates, secures or otherwise promotes the execution of an act by another person may give rise to liability, provided that it is causal for the course of the act. It is also important to consider whether the contributory act is socially inappropriate, so that a breach of duty and thus liability should be ruled out in the case of typical everyday actions.[[23]](#footnote-23) Similarly, courts examine whether the accomplice consciously assists the direct infringer and is aware of the facts giving rise to the accusation of unlawful conduct.

Austrian law recognizes two models under which indirect liability for platforms may arise. Firstly, tort law can provide grounds for holding a platform liable if it has acted as an accomplice to a legal violation. According to established case law, an accomplice is defined as someone who intentionally assists the principal offender (“Gehilfenhaftung”); mere facilitation of copyright infringement is not sufficient.[[24]](#footnote-24) For liability to arise, the accomplice must be aware of the circumstances that constitute the unlawful conduct and must have a corresponding duty to investigate. However, this duty to investigate is limited to obvious and egregious violations. The Austrian Supreme Court adopts a relatively lenient approach in this regard. For example, it has held that parents are not generally required to monitor their minor children’s internet use,[[25]](#footnote-25) meaning that accessory liability for file-sharing activities is only applicable in very limited circumstances.

Using the example of the liability of a domain name administrator, the Austrian Supreme Court has clarified the requirements for indirect liability. Indirect Liability (“Gehilfenhaftung”) presupposes that the defendant was actually aware of the infringing act which they are accused of facilitating, or that there was a duty to investigate any possible violations in this regard. If the injured party requests intervention by presenting the relevant facts and the legal infringement is obvious even to a legal layperson without further investigation, indirect liability arises. In such a case, it is reasonable to expect measures to be taken to prevent the continuation of the infringement.[[26]](#footnote-26)

The second possible justification is grounded in the principles of property law (“Störerhaftung”). Unlike the tortious approach, this perspective does not focus on whether a contribution to the violation of rights has been made. Rather, it centers on the existence of a duty to prevent outcomes that constitute a breach of absolute rights. If this duty is violated, the individual is regarded as an indirect interferer (“mittelbarer Störer”). Such a person may only be held liable for removal and injunctive relief, but not for damages.[[27]](#footnote-27) In assessing liability, both the legal and factual ability to prevent or halt the direct infringement, as well as the reasonableness of such measures, must be considered. The decisive factor is whether it is reasonable to expect the person to take steps to prevent the infringement. It remains unsettled, however, whether this concept applies exclusively to intellectual property rights and defamation, or whether it also extends to breaches of unfair competition law.

* 1. **Liability from a criminal law perspective**

In Austria, criminal liability of platforms may result from the Corporate Criminal Liability Act Verbandsverantwortlichkeitsgesetz, VbVG). The VbVG imposes criminal liability on legal entities – including companies and associations –for offenses committed by their decision-makers or employees, provided these actions can be attributed to the organization. The Act distinguishes between offenses committed by decision-makers, such as directors or supervisory board members, and those committed by employees, with liability for employee actions arising when organizational shortcomings are present. Sanctions under the VbVG include fines based on the entity’s annual revenue, and both the organization and the individual offender may be prosecuted independently for the same incident. However, there are no known cases to date in which the VbVG has been applied to platforms.

* 1. **Liability for third-party content in accordance with the DSA**

The DSA is central to the issue of platform liability. It provides for differentiated due diligence obligations for all providers of intermediary services. In particular, they must establish procedures to address illegal content on the internet (in particular the notification and removal procedure pursuant to Art. 16 DSA). However, the Digital Services Act does not define what constitutes illegal content. The respective national regulations apply here.[[28]](#footnote-28) The concept of ‘illegal content’ is therefore defined broadly to cover information relating to illegal content, products, services and activities, and to reflect the existing rules in the offline environment.[[29]](#footnote-29) Hence, not only hate speech or non-authorised copyright protected content but also material that contradicts with the rules of the Unfair Competition Act or the trademark act are qualified as illegal content in the sense of Art 3 lit h DSA.

The DSA was preceded in Austria by the Communication Platforms Act (KoPl-G)[[30]](#footnote-30), which came into force for large social networks such as Facebook, YouTube, Twitter and TikTok on January 1, 2021. It covers communication platforms with a turnover of more than €500,000 and 100,000 users within Austria. Excluded from the scope of application under Section 1(3) were journalistic media content and platforms for educational purposes, as well as online encyclopedias, provided they have altruistic objectives. The KoPl-G regulated the framework conditions for providers of communication platforms[[31]](#footnote-31), without distinction between platforms established in Austria and those established in other Member States. The ECJ has ruled that an EU Member State may not impose general abstract obligations. Austria's KoPl-G on combating illegal content on the internet was therefore deemed as contrary to EU law.[[32]](#footnote-32)

As a regulation, the DSA is directly applicable and therefore does not need to be implemented by national law. Nevertheless, were various accompanying regulations required at national level. The accompanying legislation in Austria is the “DSA Accompanying Act”, which is intended to ensure the implementation of the DSA in Austria. The KoPl-G expired with the DSA Accompanying Act.

In addition, the DSA Accompanying Act regulates the implementation of the obligations arising from the DSA. Primarily, a Coordinator for Digital Services had to be set up or an authority entrusted with this task. According to Section 2 Coordinator for Digital Services Act (KDD-G) the Communications Authority Austria (KommAustria) is responsible for the enforcement of the DSA in Austria as Coordinator for Digital Services and monitors compliance with the DSA for intermediary services based in Austria. Further the remedies of the KommAustria (e.g. upon breach of Art 51 para 3 lit b DSA it can submit an application to the Federal Administrative Court for an order temporarily restricting users' access to the service concerned). and the penal provisions for breaches of the DSA are regulated. The criminal liability of all intermediary service providers within the meaning of Section 5 (1) KDD-G applies in particular to violations of information obligations, as the competent authorities must be notified immediately upon becoming aware of illegal content. In addition, they are obliged to establish efficient complaint mechanisms and to make their general terms and conditions transparent.

As the DSA provides for co-operation between authorities to monitor cross-border online services, the DSA Accompanying Act regulates further which authorities and courts in Austria are involved in the monitoring and regulation of such online services.

The DSA Accompanying Act also provides for other regulations that are necessary as a result of the DSA. For example, the ECG previously contained liability privileges for online service providers. As these are now largely identical provided for in the DSA, the previous liability privileges of the ECG[[33]](#footnote-33) have been repealed. Section 3 of the DSA Accompanying Act further obliges online services, courts, authorities and private individuals to provide information about the names and addresses of users of their services, thereby facilitating law enforcement in cases of online hate speech (Section 13 ECG). This provision also applies to service providers from other Member States. In addition, in proceedings for the issuance of an order to take action against one or more specific items of illegal content (removal order), rapid delivery of a court decision to the intermediary service provider by email is provided for (Section 15 ECG).

* 1. **Selected Issues of Platform Liability**
     1. **Copyright**

Section 81 (1a) UrhG regulates the liability of intermediaries for injunctive relief. It provides for injunctive relief against intermediaries whose services are used by a third party to infringe copyright. Intermediaries within the meaning of the provision are service providers who provide access to a network in the context of the information society in order to transfer data between third parties. According to case law, this also includes access providers.[[34]](#footnote-34) However, if the requirements for an exclusion of liability pursuant to DSA are met, a warning must first be issued. A warning letter is deemed equivalent if the provider receives clarification about the infringement during the proceedings and nevertheless insists that it is not obliged to take action.[[35]](#footnote-35)In addition to the application for injunctive relief, the infringed party can request the removal of the illegal content. This claim is also only directed against the intermediary pursuant to Section 81 (1a) UrhG.

For platforms that do not meet the criteria specified in Section 18c UrhG or are explicitly excluded from Section 18c para 4, the provisions of the DSA apply. This concerns the following platforms: online marketplaces, cloud services provided between companies, and cloud services that enable their users to upload content for their own use. These also include services used for sharing files where the recipient group is not generally public (e.g. WeTransfer).

These are not directly liable for user content, even if it appears as the platform's own content, provided that the platform operator does not directly exploit it. This would only be the case if the provider offers the content as its own and thus constitutes a copyright-relevant transmission or making available. The provisions on indirect liability (see below) apply to the liability of the platform as a host provider.

Section 89a (1) UrhG standardises the liability of the platform provider based on fault. Consequently, the provider of a large online platform can be claimed damages for the unauthorised transmission or making available pursuant to Section 89a UrhG under the conditions set out therein. However, the platform provider shall only be liable for damages for unauthorised (and therefore without the permission of the copyright holder) transmission or making available if it cannot prove that it has fulfilled all the cumulative due diligence requirements set out in Section 89a para 1 no 1) to 3) UrhG, taking into account the principle of proportionality. If it succeeds in proving this, it is exempt from liability for damages.

* + 1. **Trademarks**

The Austrian Trademark Protection Act (MaSchG)[[36]](#footnote-36) does not contain any specific provisions regarding enforcement actions against online platforms. Moreover, to date, the Austrian Supreme Court has not issued any rulings on the liability of platforms for trademark infringements committed by their users.[[37]](#footnote-37) According to the principles outlined above, a platform’s indirect liability arises only once it has actual knowledge of an infringement and subsequently fails to take appropriate action (see ###). However, under the case law of the ECJ, platforms may also incur direct liability if they play an active role and cease to act as neutral technical intermediaries. This is particularly true when platforms actively assist users in designing or promoting their offerings.[[38]](#footnote-38)

The *Amazon/Louboutin* decision by the ECJ[[39]](#footnote-39) is of central importance for determining the direct liability of platforms. The case concerned Amazon, a hybrid platform that both sells goods directly under its own name and account, and facilitates sales by third-party traders via its online marketplace. According to the ECJ, the decisive factor for direct liability is whether a normally informed and reasonably observant user would associate the platform’s services with the trademark in question. This is especially the case if such a user might believe that the platform operator itself distributes the goods bearing the trademark in its own name and on its own behalf. Relevant considerations include whether the operator presents all offers on its platform in a uniform manner, displays its own logo as a reputable distributor on all advertisements (including those for third-party goods), and provides additional services to third-party sellers related to the distribution of trademarked goods, such as storage and shipping. In the absence of a clear distinction between the platform’s own offers and those of third parties, the platform is therefore largely attributed responsibility and may be held directly liable.

The discussion in Austria has centered around the extent to which trademarks can be used for advertising on search engines. Of particular importance is the “*Wintersteiger*” decision,[[40]](#footnote-40) which addressed the question of whether, and under what circumstances, the use of a trademark as a keyword in the context of Google AdWords constitutes trademark infringement. This case is notable because the advertisement was visible on www.google.de but not on www.google.at. This led to a preliminary ruling procedure, in which the ECJ determined that, when a third-party trademark is booked as a keyword for Google AdWords, the court of the country in which the trademark is registered has jurisdiction, even if the advertisement appears on a foreign platform (e.g., google.de).[[41]](#footnote-41)

The Austrian Supreme Court also had to decide on the extent to which third-party trademarks or names can be used as metatags on an online platform. One example is the platform docfinder.at, where the name of a person being searched for (such as a doctor) was used as a metatag to improve the site's discoverability via search engines.[[42]](#footnote-42) The Court held that the use of a third-party trademark or name as a metatag is not per se inadmissible. What is decisive is whether there is a legitimate interest in the use and whether the use of the metatag creates a misleading impression of an economic connection or other relationship. In this case, the platform had a legitimate interest in informing users about the doctor, and the use of the metatag did not result in misleading users.

Furthermore, the *Airbutler* decision[[43]](#footnote-43) is significant. In this case, the Supreme Court had to rule on so-called dynamic search ads—an ad format in Google Ads whereby Google automatically generates ads based on the content of a website. Unlike traditional search ads, advertisers do not need to specify keywords. Instead, Google analyses the content of the specified website and displays ads when search queries match that content. The Supreme Court ruled that the advertiser is liable for trademark infringements even if the ad is generated automatically by Google. It does not matter that the advertiser did not design the ad themselves or did not specifically initiate the use of the trademark; merely commissioning Google is sufficient. The actions of Google are attributed to the advertiser because the latter commissioned Google with the advertising.

This case sets an important precedent for the use of AI in competition and its potential liability consequences, as it establishes that an infringement committed by an algorithm is treated the same as one committed by a natural person.[[44]](#footnote-44)

* + 1. **Unfair competition Law**

In Austria, laws on unfair competition have primarily been applied to address infringements committed by users of platforms. In this context, the question of indirect liability has been discussed, particularly in relation to platforms that enable users to interact with specialised service providers. Here, platforms have often been regarded – without extensive debate – as agents of the service providers and held indirectly liable for their infringements. For example, action has been taken against platforms offering legal services without the necessary authorisation.[[45]](#footnote-45) The applicability of the UWG has also been considered in cases where *Airbnb* was potentially held liable for brokering individual flats for tourist purposes in violation of subletting prohibitions.[[46]](#footnote-46) Furthermore, the Austrian Supreme Court ruled that the platform *Uber* acted as an accomplice to car hire companies that breached local laws when providing passenger transport services, and issued an injunction against *Uber*.[[47]](#footnote-47)

It can also be assumed that a platform may incur indirect liability if it engages unauthorized partners for service delivery. For instance, promotional statements such as “*this tour, led by a local who is not part of the travel industry*,” may be inadmissible. In such cases, platforms can be held liable under competition law if their guides lack the required trade license.

Some Austrian cases concerning (unfair) competition law also involve direct infringements of the law by platforms themselves. For instance, the operator of a service and information portal offering an online directory of psychotherapists and trainees was (unsuccessfully) brought before the courts for data protection violations.[[48]](#footnote-48) Action was also taken against a ticket reseller under unfair competition law for failing to provide essential information in their offer.[[49]](#footnote-49)

It is noteworthy that there are relatively few cases involving 'classic' online platforms in the rulings of the Austrian Supreme Court on unfair competition. This is likely due to the effective enforcement of unfair competition law outside the courts: Not only is the Association against Unfair Competition (Schutzverband gegen den unlauteren Wettbewerb) authorised to take legal action against unfair practices, but it can also resolve cases with platforms out of court as a trusted flagger. As a result, many disputes involving platforms may be settled without recourse to the courts.

* + 1. **Defamation**

Another special basis for liability for platforms exists in the case of the transmission of content that infringes personal rights. Providers are liable for defamatory (Section 1330(1) ABGB[[50]](#footnote-50)) and credit-damaging (Section 1330(2) ABGB) content that they store for their users and make available for retrieval.

On the one hand, character or behavioural accusations, insults and ridicule are incriminating, and on the other hand, the dissemination of untrue facts that are likely to jeopardise the credit, acquisition and advancement of the person concerned. Technical dissemination is sufficient for liability under Section 1330 ABGB. In Section 20(3) ABGB, the legislator codified the right to injunctive relief against a provider who disseminates a violation of the personal rights of a third party. Access providers are exempt from this claim. For providers of a ‘caching’ or ‘hosting’ service, a prior warning is required.

This warning to the host provider is as additional substantive legal requirement for the claim for injunctive relief, with the aim of ensuring that the provider has the necessary knowledge of the illegal information in order to enable it to remove the content immediately; if the service provider does not respond to such a notification, legal action may be taken against it.[[51]](#footnote-51) The warning letter can be replaced by a corresponding submission in an already pending lawsuit, which provides the service provider with clarity regarding the alleged infringement. In this case, a claim for injunctive relief arises if the provider continues the objectionable behaviour or disputes the existence of an infringement. The infringement must be obvious to the provider without the need for further investigation.[[52]](#footnote-52)

Regarding the scope of the injunctive relief against infringing content pursuant to Section 1330 of the ABGB, an injunction may be issued against a platform that applies not only to the specific illegal content but also to content that is identical in wording or meaning. Content that is identical in meaning is content that essentially corresponds to the content deemed illegal.[[53]](#footnote-53)

In addition, Section 16 ECG constitutes the legal basis for non-material damages in the event of defamation in an electronic communications network. Section 16 ECG stipulates that in the event of a "significant defamation of a natural person in an electronic communications network", the user who provided the content must also pay compensation for the personal injury suffered. With regard to the materiality threshold, the explanatory notes state that this includes, for example, "in the general opinion, particularly blatant, derogatory swear words and faecal language", but not "harmless swear words from youth culture".[[54]](#footnote-54)

* 1. **Monitoring of content**

**3.4.1. General requirements under the DSA**

Chapter II of the DSA exempts providers of intermediary services from liability and from the obligation to carry out prior checks under the conditions specified therein. The exemptions from liability should not apply where, instead of confining itself to providing the services neutrally by a merely technical and automatic processing of the information provided by the recipient of the service, the provider of intermediary services plays an active role of such a kind as to give it knowledge of, or control over, that information. Those exemptions should accordingly not be available in respect of liability relating to information provided not by the recipient of the service but by the provider of the intermediary service itself, including where the information has been developed under the editorial responsibility of that provider.[[55]](#footnote-55) If the conditions for an exclusion of liability according to Chapter II of the DSA are met, the action requires a prior warning. The intermediary's own act of infringement is not relevant.[[56]](#footnote-56)

The DSA regulates the liability of providers of intermediary services and contains provisions on the monitoring and removal of illegal content. Art. 8 DSA prohibits a general monitoring obligation, but allows specific monitoring obligations for specific cases. The Supreme Court[[57]](#footnote-57) has now ruled several times, while addressing the objection of limited technological possibilities, that according to Art 8 DSA (formerly Section 18 ECG), access providers and host providers are not subject to a general monitoring obligation with regard to the third-party content they transmit or store. They may therefore not be obliged to actively search for illegal content on their own initiative.

However, the ordering of targeted surveillance measures by national authorities and courts is permissible. This includes, in particular, injunctions issued by civil courts, which may also cover future infringements and also those by other (third party) users (in the sense of an order to remove or block access to information stored by the user that has the same content as the information that was previously declared unlawful).

Cease and desist orders can therefore relate not only to the original illegal content, but also to content that is identical in terms of wording or meaning. Content that is identical in meaning is content that corresponds in essence to the content judged to be unlawful. The "core correspondence" must be apparent at first glance or detectable by technical means (e.g. filter software). In addition, the criteria decisive for the judgement of illegality must be sufficiently specified in the cease and desist order. [[58]](#footnote-58)

**3.4.2. Monitoring in respect to copyright-infringing content**

If the platform transmits or makes available a work or other protected subject matter without authorisation, it is liable to the injured party due to fault if for damages the platform has not made certain efforts (Section 89a (1) UrhG). In order to be able to exempt itself from the claim for damages, the platform provider must be able to provide evidence,

1. has made every effort to obtain the authorisation (§ 18c second sentence),
2. has made every effort, in accordance with high standards of professional diligence customary in the industry, to ensure that certain works and other subject matter for which relevant and necessary information has been provided to him by the rightholders are not available, and
3. has acted immediately upon receipt of a duly justified notice from a rights holder to block access to works or other subject matter or to remove the works or other subject matter from its websites and has made every effort to prevent the future uploading of these works or other subject matter in accordance with item 2. ("stay down")

All the measures under Section 89a para 1 UrhG (measures for preventive blocking or reactive blocking or removal based on information provided; upload filters) must not result in access to a small excerpt from a work or other protected subject matter being blocked by automated means or such an excerpt being removed by automated means (Section 89b para. 3 UrhG). Uploads should therefore – unless preventing the upload would significantly impair the economic exploitation of the work and other measures are taken to ensure that permitted uses are not prevented - not be automatically blocked, if the user combines less than half of a work or protected object of a third party or several works or protected objects of third parties with other content and the use of these parts does not exceed 15 seconds of a film or moving image, 15 seconds of a soundtrack, 160 characters of text, or a photograph or graphic with a data volume of 250 kilobytes each.[[59]](#footnote-59)

Section 89b para 4 UrhG also provides for the labelling of content as permitted (pre-flagging), e.g. for the purposes of caricature, parody, pastiche, or for quotations for purposes such as criticism or review. Such labelling also protects the content against measures under Section 89a para 1 No 2 UrhG. However, the blocked content must still be blocked upon receipt of a sufficiently substantiated notice from a rights holder, which is why Section 89b para 4 UrhG also requires that the rights holder be notified about the upload of the content and informed of the measures available to them.

There is no general monitoring obligation beyond these due diligence requirements. Platforms are therefore not obliged to generally monitor user content for infringements of intellectual property. This follows, among other things, from Section 89b (1) UrhG, which stipulates that service providers are not obliged to carry out general monitoring. It would therefore be inadmissible if the platform provider make efforts had to with regard to user content for which no information was provided or whose illegality could only be determined by independent examination on the basis of the information provided.

According to Section 89b (1) UrhG, measures may not have the effect of making works uploaded by users or other protected subject matter that does not infringe copyright or related rights unavailable. These measures may also not lead to the identification of individual users or serve as a legal basis for the processing of personal data.

Section 89b (2) UrhG also regulates information about this. For example, providers of large online platforms must provide users and user organisations with appropriate information on the functioning of the measures pursuant to Section 89a (1) in an easily accessible manner on their website and in their terms and conditions.

Overall, these regulations ensure that platforms are not obliged to carry out general and comprehensive monitoring of the content uploaded by users and that the privacy of users is protected.

* + 1. **Monitoring in respect to other infringing content**

Defamation: In accordance with the principles of case law about Section 81 para 1a UrhG (see under Article 3.3.1.), Section 20 para 3 ABGB provides for a warning to the host provider as an additional substantive legal requirement for the claim for injunctive relief, with the aim of ensuring that the provider is aware of the illegal information so that it can remove the content immediately; if the service provider does not respond to such a notification, legal action may be taken against it.[[60]](#footnote-60)

Illegal video content: Pursuant to Section 54 e AMD-G platform providers must operate a system that allows users using easy-to-find, permanently available and easy-to-use functions on the video sharing platform to report content to the platform provider , together with the information required for an assessment, and explain to users how their report will be handled and what the outcome of the relevant procedure was. They must also ensure that reported content is removed immediately or access to it is blocked if, on the basis of a reasonable assessment without further investigation, they have a clear, well-founded suspicion that the reported content fulfils one of the offences specified in Section 54d (1).

According to Section 54g (3) AMD-G, the measures required of platform providers may not result in a general prior check of content. The measures must be suitable and proportionate to achieve the intended objectives without creating a general monitoring obligation.

1. **Reporting procedure and complaint management**
   1. **Procedural rules for reporting**

Platforms must provide mechanisms for reporting of content that may infringe intellectual property rights. This obligation arises from several legal provisions.

According to Art. 16 DSA and Section 5 para. 2 no. 1 KDD-G, hosting providers, including providers of online platforms, must set up a procedure for reporting illegal content that is easily accessible and user-friendly.

First, the reporting person must be sent an acknowledgment of receipt immediately (Section 5 para 2 no 3 KDD-G). Providers of hosting service must treat all notices in a timely, diligent, nonarbitrary and objective manner in accordance with Article 16(6) DSA. Furthermore, the individual who made the notice must be informed immediately of the decision regarding the reported information[[61]](#footnote-61), as well as of any legal remedies available against this decision or the use of automated means for processing or decision-making.

Violation of this procedure constitutes an administrative offense punishable by a fine of up to 6% of the global annual turnover of the provider in the previous financial year. Failure to respond alone shall be punishable under Section 6 para 1 lit b of the KDD-G with a fine of up to 1% of the annual income or global annual turnover of the relevant provider or other person in the previous financial year.

* 1. **Trusted Flaggers**

In principle, any organisation in Austria with expertise in a specific type of illegal content can apply for this status. The KommAustria is the empowered entity for the execution of the DSA/KDD-G.

The status of certified trusted flagger is granted in accordance with Art. 21 DSA upon application by the DSC (Digital Services Coordinator) of the Member State in which the applicant organisation is based. The applicant organisation must demonstrate that it:

* has specific expertise and competence in the detection, identification and reporting of illegal content,
* is independent of any online platform provider, and
* carries out reporting activities diligently, accurately and objectively

Currently, six trusted flaggers in Austria are certified by KommAustria as DSCs for Austria.[[62]](#footnote-62) These are:

* Schutzverband gegen unlauteren Wettbewerb (The [Association against Unfair Competition):](https://www.schutzverband.at/) unfair business practices
* Rat auf Draht ([Council on Wire](https://www.rataufdraht.at/)): Children's rights and the protection of minors
* The [Internet Ombudsman's Office of the ÖIAT](https://www.ombudsstelle.at/): Advice centre for problems relating to online shopping, data protection. Right to one's own image, copyright and online hate)
* The [Vienna Chamber of Labour: Consumer Protection](https://wien.arbeiterkammer.at/index.html)
* [LSG - Wahrnehmung von Leistungsschutzrechten GmbH:](https://www.lsg.at/) Protection of copyrights
* ZARA – Zivilcourage und Antirassismusarbeit: Anti-discrimination law, unlawful hate speech, prejudice-motivated hate crime online and cyber violence

Platforms must prioritise notices by trusted flaggers. They have to take the necessary technical and organizational measures to prioritize reports from a trusted flagger as part of the reporting and redress procedure, to process them immediately and to take a decision because otherwise it constitutes an administrative offense (§ 5 Par. 4 Z 8 KDD-G) and the KommAustria can impose a fine of up to 6% of the worldwide annual turnover of this platform provider in the previous financial year (§ 6 KDD-G).

In Austria, trusted flaggers play a crucial role in enforcing laws against online platforms. Legally required to act independently and objectively, they perform an essential filtering function. Employees of Austrian trusted flagger organizations report that some platforms have established dedicated communication channels, enabling more efficient dialogue and cooperation.

A particularly notable feature of the trusted flagger “Association Against Unfair Competition” is its authorisation to take legal action against infringements under Section 14 of the UWG. As a result, a significant amount of relevant expertise is already available, and this provision also opens up an additional avenue for legal enforcement.

* 1. **Complaint handling**
     1. **Copyright protected works**

According to Section 89b (5) UrhG, providers of large online platforms must set up a complaints procedure that gives their users the opportunity to take effective and swift action against an unauthorised blocking of access to the works or other protected subject matter uploaded by them or against the unauthorised removal of the works or other protected subject matter uploaded by them. The complaints procedure is only open to users whose content is affected by prevention, blocking or removal.

If the user initiates a complaint procedure, this must fulfil the requirements of effectiveness and expeditiousness and proceed in accordance with the procedural steps provided for in Section 89b (5) and (6) UrhG. Effective and expeditious within the meaning of this provision means that users can submit their complaints on the online platform by means of easy-to-find, permanently available and easy-to-use functionalities.

The complaints are to be processed immediately, and in a first step the rights holder must be informed about the complaint and requested for its comments without delay, if a user has provided substantiated grounds in the complaint procedure that he has lawfully uploaded a work or other protected object, or that the rights holder is not entitled to the rights claimed. If the rights holder demands that access to the work be blocked or that the work or other protected object be removed, he must provide reasonable grounds for this (see Section 89b para 6 UrhG).

It is not proposed for the user to respond to the rights holder's statement. The platform provider must then take the the decision leading to the prevention, blocking or removal of the user content, taking into account the complaint and the statement. This decision must be carried out by a human being and may therefore not be fully automated (see Section 89b para 5 No 4 UrhG). If the statement is insufficient, the work shall be made accessible without prejudice to the rights holder's right to take legal action against the user (see Section 89b para 6 UrhG).

According to Section 89b para 5 No 5 UrhG, complaint proceedings must be completed within a period of two weeks. The law stipulates that this is ‘as a rule’, which is why exceptions may be permitted in exceptional cases. The content should stay online during the review carried out by humans.[[63]](#footnote-63)

* + 1. **Other content**

Under the DSA an internal complaint handling system has to be provided that enables electronic and free submission of complaints against the decision of the provider of an online platform after receipt of the notification or against subsequent decisions of the provider of an online platform based on the fact that the information provided by the users constitutes illegal content or is incompatible with the general terms and conditions of the platform (Art 20 para 1 DSA in connection with Section 5 para. 4 no. 1 KDD-G).

This complaint-handling system should be easy to use and open to all users, with the platforms also drawing attention to out-of-court dispute resolution. Decisions on complaints should be made objectively and without delay, with 5 para 4 Z 6 stipulating in particular that qualified personnel should supervise these decisions. This is intended to prevent fully automated decisions. In order to prevent the dissemination of illegal content, users who regularly publish such content shall be excluded from the online platform services after a warning (Section 5 para no 9 KDD-G). The same applies to users who abuse the complaint procedure without justification and, where applicable, impair it (Section 5 para 4 no 10 KDD-G).

1. **Dealing with conflicting fundamental rights**

First of all, it must be pointed that in Austria there is no direct effect on fundamental rights between private individuals in Austria. Whether a third-party effect is possible depends on the specific fundamental right and the legal relationship in question.

Since the ECJ decision C-314/12 (UPC Telekabel)[[64]](#footnote-64), it has been clear that the liability privilege under the DSA does not preclude a blocking order if the measures are proportionate and the interests of the parties involved have been weighed up. An appropriate balance between the fundamental rights concerned and intellectual property rights is ensured, in particular by observing the general principles of fundamental rights doctrine.

A claim for injunctive relief under copyright law aimed at prohibiting changes to the work can be opposed e.g. by the constitutionally protected rights of freedom of art and expression (Austrian constitution in Art 17a StGG; Art 10 ECHR). However, an encroachment on copyright with reference to freedom of expression is only considered justified if the latter fundamental right could not be exercised or could only be exercised inadequately without the encroachment. Provided this, the justification for an injunction under the UrhG must be assessed on the basis of weighing up the interests pursued by the author or the person authorised to use the work against the right to freedom of expression.[[65]](#footnote-65) The criteria to be considered when balancing interests can be summarised as follows: The conduct falls within the scope of protection of Art 10 ECHR, and does not involve untrue, defamatory statements of fact; the economic interests of the author are not undermined; the normal exploitation of the work is not impaired; the legitimate interests of the author are not unduly infringed; the fundamental right of freedom of expression cannot be exercised or can only be exercised inadequately without interfering with the copyright or neighbouring right.[[66]](#footnote-66)

From the platform's point of view, the right to freedom of expression and information must be balanced against the copyright in works that are made available. The question of the interference of a blocking order with the fundamental rights of providers arises in particular, if legal content is also made available on the website to be blocked. The Supreme Court has ruled that if only or almost exclusively copyright-protected works are made available on a website, when weighing up fundamental rights, qualitative criteria must also be taken into account in addition to quantitative elements, by including the essential content of the legal information available on the website in the assessment. Legal information that is available exclusively on the website in question must be given greater weight in the required balancing of interests than content that is also available on other websites and therefore cannot exclusively satisfy the information needs of users.[[67]](#footnote-67) Taking into account these conflicting interests, access to online services cannot therefore be blocked solely on the grounds that they provide copyright-infringing content themselves; it may be sufficient that they provide links to external resources that are recognisably unlawful.

In the context of exercising the right to freedom of expression on a rating platform, the Supreme Court of Austria is of the opinion that review platforms cannot be prohibited outright, either because of anonymous reviews or the risk of a bad review[[68]](#footnote-68) (see Supreme Court of Austria, 18 April 2023, 6 Ob 46/23t). However, the Supreme Court acknowledges that the risks to the personal rights of the persons being reviewed associated with the possible misuse of a review platform, as well as the measures taken to prevent such misuse, must be taken into account in the balancing decision[[69]](#footnote-69). The exclusion of ‘free text reviews’ and the fact that reviews could only be viewed by persons who had downloaded the app are considered relevant for this balancing decision. Also in light of the balancing of interests under Art. 6(1)(f) GDPR (and therefore in connection with the permissibility of processing personal data), the Austrian courts assume that anonymous evaluations on a platform may not be generally prevented by requiring the platform operator to verify the identity of users. On this basis, the absence of a check of the review prior to its publication (to determine whether the user actually used the service reviewed) – and thus the fact that a data subject may have to accept the availability of abusive reviews for a certain period of time – does not in itself render the data processing unlawful.[[70]](#footnote-70)

1. **Summary and Outlook**

This analysis has shown that the liability of online platforms for their users in Austria is significantly shaped by principles of European Union law. This is partly due to the strong EU-level determination of IP and unfair competition law. In the context of platforms, there has also been an increase in decisions by the Court of Justice of the European Union, which ensures a uniform interpretation throughout the European Union. As a result, there is little room for national special developments in this area.

It has also become apparent that there are a multitude of different regulations related to platforms, many of which are relatively recent. For the relevant stakeholders, it is indeed a challenge to understand and effectively enforce the individual requirements and their interactions. There is broad consensus that even stronger national regulation of platforms should not take place for the time being, until the EU legal requirements have been fully implemented.

It is worth highlighting the significant role that Trusted Flaggers play in Austria. This is already evident from the large number of Trusted Flaggers: out of 38 Trusted Flaggers across the EU, 6 are from Austria (approximately 16%)—which is significant given that Austria accounts for only about 2% of the EU population. This will ensure efficient enforcement of the law against legal violations in the platform context.

1. Austrian Supreme Court 21.12.2006, 6 Ob 178/04a: The operator of a guestbook forum was classified as a host provider within the meaning of Section 16 ECG, which was applicable at the time. [↑](#footnote-ref-1)
2. Bundesgesetz, mit dem Maßnahmen zur Bekämpfung von Hass im Netz getroffen werden (Hass-im-Netz-Bekämpfungs-Gesetz – HiNBG), BGBl. I Nr. 148/2020. [↑](#footnote-ref-2)
3. DSA-Begleitgesetz (DSA-BegG), BGBl. I Nr. 182/2023. [↑](#footnote-ref-3)
4. S. Holzweber, Zur Haftung von Plattformen für ihre Nutzer, wbl 2020 (8), pp. 427-437. [↑](#footnote-ref-4)
5. In Austria, the term “platform” has so far only been used in the context of communication platforms under the Communication Platform Act (KoPl-G). The KoPl-G expired with the DSA Accompanying Act. According to the KoPl-G, a communication platform was an information society service whose main purpose or essential function was to enable the exchange of messages or performances with intellectual content in words, writing, sound, or images between users and a larger group of other users by means of mass dissemination. [↑](#footnote-ref-5)
6. See EBRV 2309 dB XXVII. GP 1. [↑](#footnote-ref-6)
7. Bundesgesetz über die Presse und andere publizistische Medien (Mediengesetz) BGBl. I Nr. 314/1981, newest version BGBl I Nr. 182/2023. [↑](#footnote-ref-7)
8. Austrian Upper Court Vienna 23. 8. 2023, 17 Bs 119/23h. [↑](#footnote-ref-8)
9. Bundesgesetz über das Urheberrecht an Werken der Literatur und der Kunst und über verwandte Schutzrechte (Urheberrechtsgesetz), BGBl. Nr. 111/1936, newest version BGBl. I Nr. 182/2023. [↑](#footnote-ref-9)
10. Fern- und Auswärtsgeschäfte-Gesetz (FAGG) BGBl. I Nr. 33/2014. [↑](#footnote-ref-10)
11. Bundesgesetz gegen den unlauteren Wettbewerb (UWG) BGBl. Nr. 448/1984, newest version BGBl. I Nr. 99/2023. [↑](#footnote-ref-11)
12. N. Hafner-Thomic, Verbraucherrecht reloaded?, Ein Überblick über das Modernisierungsrichtlinie-Umsetzungsgesetz, ecolex 2022 (9) pp 676-682. [↑](#footnote-ref-12)
13. Bundesgesetz über audiovisuelle Mediendienste (Audiovisuelle Mediendienste-Gesetz – AMD-G) BGBl. I Nr. 84/2001, newest version BGBl. I Nr. 135/2023. [↑](#footnote-ref-13)
14. Austrian Higher Adminstrative Court 6.9.2023, Ro 2023/03/0024. [↑](#footnote-ref-14)
15. Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services, OJ L 186, 11 July 2019, pages 57–79. [↑](#footnote-ref-15)
16. 1 M. Uitz, Die EU-Plattform-to-Business-VO, Nomos, 2023, 58.  [↑](#footnote-ref-16)
17. Ursprüngliche Kundmachung des Gesetzes zur Verbesserung der Nahversorgung und der Wettbewerbsbedingungen, nunmehr „Faire-Wettbewerbsbedingungen-Gesetz (FWBG), BGBl. Nr. 392/1977, newest version BGBl. I Nr. 239/2021. [↑](#footnote-ref-17)
18. Austrian Supreme Court 31.1.2023, 4 Ob 180/22g. [↑](#footnote-ref-18)
19. Austrian Supreme Court 21.12.2006, 6 Ob 178/04a; Austrian Supreme Court 18.12.2002, 3 Ob 215/02t; Austrian Supreme Court 15.3.2001, 6 Ob 51/01w [↑](#footnote-ref-19)
20. Austrian Upper Court Vienna 23.8.2023, 17 Bs 119/23h. [↑](#footnote-ref-20)
21. Austrian Supreme Court 19.12.2023 4 Ob 135/23s, Austrian Supreme Court 22.4.2022, 4 Ob 58/22s [↑](#footnote-ref-21)
22. Austrian Supreme Court 22.4.2022, 4 Ob 58/22s. [↑](#footnote-ref-22)
23. S. Holzweber, Zur Haftung von Plattformen für ihre Nutzer, wbl 2020 (8), pp. 427-437 (434). [↑](#footnote-ref-23)
24. Austrian Supreme Court 21.1.2025, 4 Ob 142/24x, Austrian Supreme Court 10.7.2012, 4 Ob 117/12b. [↑](#footnote-ref-24)
25. Austrian Supreme Court 22.1.2008, 4 Ob 194/07v. [↑](#footnote-ref-25)
26. Austrian Supreme Court 29.3.2022, 4 Ob 44/22g. [↑](#footnote-ref-26)
27. H. Hayden, Das [sachenrechtliche] Haftungskonzept des „mittelbaren Störers“: Wechselwirkungen zum Immaterialgüterrecht und Modifizierung durch das Unionsrecht, wbl 2022 (7), 181-197. [↑](#footnote-ref-27)
28. Art 3 lit h DSA: ‘illegal content’ means any information that, in itself or in relation to an activity, including the sale of products or the provision of services, is not in compliance with Union law or the law of any Member State which is in compliance with Union law, irrespective of the precise subject matter or nature of that law. [↑](#footnote-ref-28)
29. See Recital 12 DSA. [↑](#footnote-ref-29)
30. Kommunikationsplattformen-Gesetz (KoPl-G) BGBl. I Nr. 151/2020, expired with BGBl. I Nr. 182/2023. [↑](#footnote-ref-30)
31. Communication platforms were defined as information society services whose main purpose or essential function is to enable the exchange of messages or presentations with intellectual content in speech, writing, sound or images between users and a larger group of other users by means of mass dissemination. Other online services were not included. [↑](#footnote-ref-31)
32. ECJ 9 November 2023, C-376/22. [↑](#footnote-ref-32)
33. Bundesgesetz, mit dem bestimmte rechtliche Aspekte des elektronischen Geschäfts- und Rechtsverkehrs geregelt werden (E-Commerce-Gesetz – ECG) BGBl. I Nr. 152/2001, newest version BGBl. I Nr. 182/2023. [↑](#footnote-ref-33)
34. Austrian Supreme Court 4 Ob 71/14s; 4 Ob 22/15m. [↑](#footnote-ref-34)
35. See Austrian Supreme Court 19.5.2015, 4 Ob 22/15m [↑](#footnote-ref-35)
36. Bundesgesetz über den Schutz von Marken und sonstigen Kennzeichen (Markenschutzgesetz 1970 – MarkSchG) BGBl. Nr. 260/1970, newest version BGBl. I Nr. 51/2023. [↑](#footnote-ref-36)
37. With regard to the direct liability of a platform for a violation of trademark: Austrian Supreme Court 19.12.2019, 4 Ob 96/19z. [↑](#footnote-ref-37)
38. CJEU, case C‑324/09, L’Oréal SA and Others v eBay International AG and Others, ECLI:EU:C:2011:474, [↑](#footnote-ref-38)
39. CJEU, case C‑148/21, Christian Louboutin v Amazon Europe Core Sàrl, Amazon EU Sàrl, Amazon Services Europe Sàrl, ECLI:EU:C:2022:1019. [↑](#footnote-ref-39)
40. Austrian Supreme Court 10.7.2012, 4 Ob 82/12f. [↑](#footnote-ref-40)
41. CJEU, case C‑523/10, Wintersteiger AG v Products 4U Sondermaschinenbau GmbH, ECLI:EU:C:2012:220. [↑](#footnote-ref-41)
42. Austrian Supreme Court 20.12.2022, 4 Ob 204/22m; Austrian Supreme Court 19.12.2024, 4 Ob 223/19a. [↑](#footnote-ref-42)
43. Austrian Supreme Court 22.11.2022, 4 Ob 134/22t. [↑](#footnote-ref-43)
44. M. Borsky, Haftung für „dynamische Suchanzeigen“ von Google, medien und recht 2022 (7-8), pp. 333-334. [↑](#footnote-ref-44)
45. Austrian Supreme Court 27.6.2023, 4 Ob 77/23m. [↑](#footnote-ref-45)
46. Austrian Supreme Court 22.11.2022, 4 Ob 33/22i. [↑](#footnote-ref-46)
47. Austrian Supreme Court 25.9.2018, 4 Ob 162/18d. [↑](#footnote-ref-47)
48. Austrian Supreme Court 26.11.2019, 4 Ob 84/19k. [↑](#footnote-ref-48)
49. Austrian Supreme Court 30.3.2020, 4 Ob 32/20i. [↑](#footnote-ref-49)
50. Allgemeines bürgerliches Gesetzbuch (ABGB), JGS Nr. 946/1811, newest version BGBl. I Nr. 25/2025. [↑](#footnote-ref-50)
51. Austrian Supreme Court 18.6.2024, 6 Ob 120/23z [↑](#footnote-ref-51)
52. Austrian Supreme Court 6 Ob 145/14p. [↑](#footnote-ref-52)
53. Austrian Supreme Court 30.3.2020, 4 Ob 36/20b. [↑](#footnote-ref-53)
54. [↑](#footnote-ref-54)
55. Recital 18, DSA. [↑](#footnote-ref-55)
56. Austrian Supreme Court 4 Ob 121/17y. [↑](#footnote-ref-56)
57. Referring to considerations of the ECJ in CJEU, case C‑18/18, Eva Glawischnig-Piesczek v Facebook Ireland Limited, ECLI:EU:C:2019:821. [↑](#footnote-ref-57)
58. See Austrian Supreme Court 30 August 2023, 6 Ob 166/22p. [↑](#footnote-ref-58)
59. Section 89b para 3 in connection with EB 143/ME XXVII. GP 41. [↑](#footnote-ref-59)
60. Austrian Supreme Court 30.8.2023, 6 Ob 166/22p. [↑](#footnote-ref-60)
61. See EBRV 2309 dB XXVII. GP 16. [↑](#footnote-ref-61)
62. See https://www.rtr.at/medien/was\_wir\_tun/DigitaleDienste/Regelungen/Trusted\_Flagger.de.html. [↑](#footnote-ref-62)
63. See Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market, COM(2021) 288 final 23. [↑](#footnote-ref-63)
64. CJEU, case C‑314/12, UPC Telekabel Wien GmbH v Constantin Film Verleih GmbH, Wega Filmproduktionsgesellschaft mbH, ECLI:EU:C:2014:192. [↑](#footnote-ref-64)
65. RIS-Justiz RS0115377. [↑](#footnote-ref-65)
66. Austrian Supreme Court 13 July 2010, 4 Ob 66/10z [↑](#footnote-ref-66)
67. Austrian 4 Ob 121/17y - Bit Torrent. [↑](#footnote-ref-67)
68. Austrian Supreme Court, 18 April 2023, 6 Ob 46/23t). [↑](#footnote-ref-68)
69. Austrian Supreme Court 2 February 2022, 6 Ob 129/21w. [↑](#footnote-ref-69)
70. Austrian Higher Administrative Court (Verwaltungsgerichtshof, VwGH) 17 May 2024, Ro 2022/04/0026. [↑](#footnote-ref-70)