

The Austrian Supreme Court transfers its jurisdiction from analogue photography to digital photography

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A photographer took a portrait of a lawyer, who subsequently published the portrait in numerous newspaper articles. A lawsuit was initiated by an association enforcing the rights of the photographer. The photographer had sent the picture to the lawyer in JPEG-format. In the IPTC-metadata of the file (thus data which contain information about other data), there was a mention of the author of the photo. The newspaper, which was sued by the association for enforcement of the photographer's rights, had used the photo to illustrate the lawyer's articles without indicating the name of the photographer.



The plaintiff applied to order the defendant to cease and desist from publishing the photo without indicating the author appropriately in the sense of sec. 74 para. 3 of the Austrian Copyright Act (UrhG). The newspaper argued that the right to be identified as an author requires that there be an objectively close link between the photo and the author, a requirement which was not met by the mere mention in the metadata.

In judgment [4Ob 43/17b](#) of March 28, 2017, the Austrian Supreme Court confirmed the second instance judgment which granted the plaintiff's request, and explained that an obligation to indicate the name of the author of a photo requires that the respective request was made in a manner which was sufficiently closely connected to the photo and that in the present case the mention in the metadata was sufficient.

According to prior case law, it was sufficient to write the name on the cover of the negatives of the photos or on the back of the paper prints. A characteristic of that case law was the fact that the author was not required to write their name directly on the photo. It was decisive that the opponent could see the name of the author in the ordinary course of business. In the sense of that established case law, the link of the metadata of a photo was sufficiently close to grant the author the right to be mentioned. This is particularly true since the metadata can easily be read. Thus the nomination of the author in the metadata of a digital photo is sufficient to give cause for the right of the author to be mentioned according to sec 74 para 3 of the Austrian Copyright Act.

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