

Kluwer Copyright Blog

Austrian Supreme Court finds YouTube not responsible for copyright infringements by users

Rainer Schultes, Alexander Schnider (Geistwert) · Tuesday, May 31st, 2022

The Austrian Supreme Court held that YouTube – as a host service provider – was not responsible for copyright infringements by its users as long as it was not put on notice of the infringements (17. 9. 2021, 4 Ob 132/21x).

For monetizing uploaded videos, the uploading user has to confirm that they have read the copyright provisions and have the copyright or usage rights to the videos. Puls 4 had argued that YouTube was responsible for copyright infringement by its users. YouTube, on the other hand, relied on the liability privilege for providers.

The Austrian Supreme Court and the German Federal Supreme Court had asked the European Court of Justice (Cases C-500/19, C-682/18 and C-683/18) for interpretation of the law on related matters. According to the ECJ's judgment, YouTube does not have to automatically check every video for copyright infringement. Following the ECJ ruling, the Austrian Supreme Court denied a communication to the public in the sense of Art 3 para 1 EC Directive 2001/29 (respectively § 18a Austrian Copyright Act).

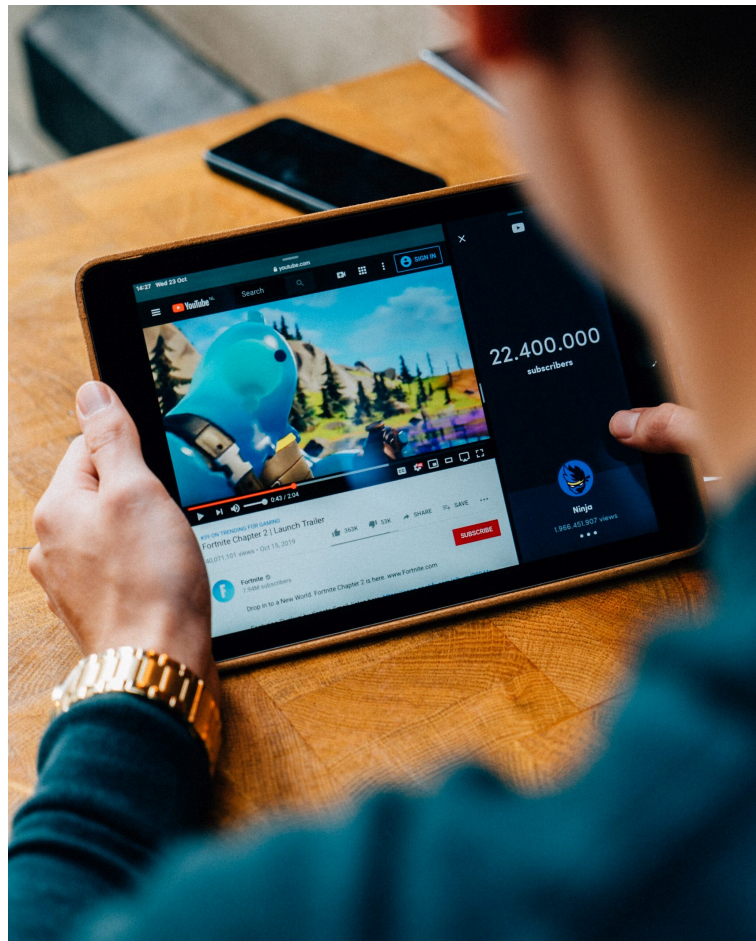


Photo by [CardMapr](#) on [Unsplash](#)

Although the platform operator plays a central role in making content posted by users accessible, this alone is not sufficient for a communication to the public. The liability privilege therefore also applies to cease and desist claims, unless a prior warning letter was sent and the allegedly infringing content was not taken down quickly enough after a reasonable review

It is worth noting, however, that this decision was rendered before Austria transposed the EU Directive on copyright and related rights in the Digital Single Market 2019/790 of 17 April 2019 into national law.

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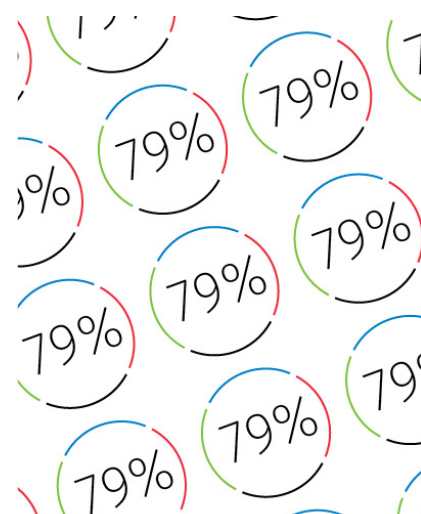
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