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Court classes pornographic broadcast as information society service

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The Supreme Court has held (Case 4 Ob 219/03) that a pornographic 'live-cam' broadcast can be classed as an information society service for the purposes of the [E-commerce Act](#). As a result, it found that the website on which the broadcast was transmitted had failed to fulfil certain of the act's requirements - for example, a telephone or fax number should have been provided as part of its contact details, rather than just an email address.

The plaintiff offered pornographic services on the Internet. The defendant operated various websites with domain names referring to sexual practices. These websites provided links to another website, which advertised itself as a free-entry domain to other pornographic sites and live-cam broadcasts.

The plaintiff sought a court declaration that the defendant should cease and desist (i) operating websites without showing prices for the goods and services offered, and (ii) advertising that online access to live-cam broadcasts was free when it was not. The plaintiff claimed that the website's failure to provide a working telephone number in its online contact details violated Section 5 of the act. However, the defendant countered by arguing that a live-cam broadcast does not fall under the scope of the act as it is not an information society service.

The Supreme Court ruled in favour of the plaintiff, stating that if a website owner links to another website, he/she intends to connect the content of that website to the content of his/her own site. The provider of the link is therefore liable for the content of both sites.

The act defines an 'information society service' as any service normally provided at distance and for remuneration, by means of electronic equipment that is used to process and store data, which can then be independently accessed by the user. The main feature of an information society service is that it is interactive - in this case the interactive element consisted of the user's ability to access the broadcast when he/she chose. As the live-cam broadcast was transmitted point-to-point, in a similar way to on-demand video, it was classed as an information society service.

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When considering the issue of contact details, the court held that the wording of Section 5 was ambiguous as to which contact details should be made available in addition to an email address. However, the court did find that the defendant had failed to provide either a contact telephone or fax number on the website, thus clarifying the interpretation of Section 5.

The Supreme Court also stated that if website operators fail to provide the correct information under Section 5, they may also violate the Unfair Competition Law and face damages claims from competitors.

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