AUSTRIA				
QUESTION	ANSWER	SOURCE OF LAW	ADDITIONAL INFORMATION/ DEFINITIONS	COURT RULINGS
Where is online hate speech established as a criminal offence?	The Austrian Penal Code establishes responsibility for hate speech, regardless of the communication method. The content is prohibited if it is made available to the "public" and exceeds a certain threshold – i.e., if it violates human dignity or if the content is aimed at provoking violence. The National Socialism Prohibition Act punishes the denial, minimizing, condoning or attempts to justify the Nazi genocide or other Nazi crimes against humanity in printed work, on broadcasting or in any other media, or whoever otherwise publicly in a matter that it makes it accessible to "many people".	Article 283 of the Penal Code [A] The Austrian Penal Code is undergoing amendments preparing Austria to ratify the Council of Europe's Additional Protocol to the Convention on Cybercrime. Article 3h of the National Socialism Prohibition Act[B]	"Public" as recently redefined by the Criminal Code means approximately 10 people. (Article 283.1) "Many people" is defined as approximately 30 individuals. (Article 283.1)	
What is the punishment for online hate speech?	Imprisonment for up to two years. If the content is accessible to the "general public" (through distribution in media) – a maximum of three years of imprisonment. From one to ten years imprisonment; up to twenty years in case of special perilousness of the offender.	Article 283 of the Penal Code [A] Article 283.2 of the Penal Code [A] Article 3h of the National Socialism Prohibition Act [B]	"General public" is defined as approximately 150 individuals.	

AUSTRIA				
QUESTION	ANSWER	SOURCE OF LAW	ADDITIONAL INFORMATION/ DEFINITIONS	COURT RULINGS
Is there a law-based obligation for intermediaries to monitor hate speech?	Intermediaries do not have a monitoring obligation. Hate speech can be posted anonymously and there is no systematic monitoring of the content[9]. After receiving a court order, internet providers are obligated to provide facilities required for intercepting hate speech. Service Providers are not obliged to monitor the information stored, transmitted or made available by them or to actively research circumstances indicating illegal activity.	Austrian Telecommunications Act [D] Code of Criminal Procedure Article 18 of the E-Commerce Act [F]	"Service Provider" is defined as a natural or legal person or other institution with legal capacity which provides an information society service.	
Who is responsible to remove /block access to hate speech?	Service Providers may block the websites in response to a hate speech notification report received from a user. Moreover, the Federal Agency for State Protection and Counter Terrorism may contact a respective Service Provider and ask them to inform a provider or a foreign partner of the violation to enable them to take an action. The Federal Minister of Transport, Innovation and Technology may, to maintain public order, shut down the operation of telecommunications systems in part or in full or for specific types of systems for a limited or unlimited periods of time and impose temporary restrictions on the use of specific systems.	Article 89 of the Austrian Telecommunications Act of 2003[D] E-Commerce Act [F]	**"**information society service**"** - a service normally provided in return for consideration electronically by distance selling at the individual retrieval of the recipient particularly the online marketing of goods and services, online information offers, online advertising, electronic search engines and data enquiry options as well as services which transmit information via an electronic network and provide access to such a network or store the information of a user.	

AUSTRIA				
QUESTION	ANSWER	SOURCE OF LAW	ADDITIONAL INFORMATION/ DEFINITIONS	COURT RULINGS
What is the required time frame, if any, for removing hate speech?	The relevant Austrian laws do not specify timeframes for removal, as there is no law-based obligation to monitor or remove the content, unless receiving a court order. Upon receiving knowledge of the illegality of the content, service providers should act expeditiously to remove or to disable access to the information.	Article 16 of the E-Commerce Act [F]		
Is the intermediary liable for hate speech posted on a website?	Service providers are not liable for the information if they had no knowledge about the illegal nature of its content, unless they modify it.	Articles 14 – 17 of the E-Commerce Act [F]		During 2015, an administrator of a webpage was charged by Austrian prosecutors with inciting to hatred on account of posts appearing on the webpage calling for the creation of "work camps" for migrants where they could be kept until they were deported. The post also referred to them as those that "bring their ignorance, illiteracy and hatred for whites". The post called for a "phased plan" of deportation of migrants out of Austria. As of 2016, the court case is still pending. (Source: http://www.thelocal.at/20160318/austrian-charged-for-inciting-hatred-online.)
Are there online mechanisms for anyone to report about hate speech content?	The Austrian website "Stopline" (http://www.stopline.at/en/ueberuns/) is an internet hotline which enables users to anonymously file reports on hate speech, among other things.	Stopline operates in accordance with the National Socialist Prohibition Law and the Law against the Wearing of National Socialist Insignia and Symbols and in cooperation with the Internet Service Providers Association.		
When is the online offence considered to have been committed within the territory\under country's jurisdiction?	The offense is considered to have been committed in Austria under any of the following circumstances: In case of violations by the media, then the territorial jurisdiction is deemed in accordance with the registered residential address, the actual residential	Section 5, Paragraph 33 of the Media Act [E] (Source: Source: Final Report of the International Legal Research Group on Online Hate Speech, *available at* http://files.elsa.org/AA/Final_Report_OHS_Final.pd		

AUSTRIA				
QUESTION	ANSWER	SOURCE OF LAW	ADDITIONAL INFORMATION/ DEFINITIONS	COURT RULINGS
	address or the registered office of the media owner. In case the media's address is abroad – then the place out of which the content was first been distributed or made available for download in the Austrian market, or any place from which it was possible to download the content in the Austrian market. When the perpetrator is an Austrian at the time of the offence, or gained Austrian citizenship afterwards; When the perpetrator has domicile or general residence in Austria; When the offence is committed on behalf of a legal entity which has its seat in Austria; When the offence is committed against Austrian official authorities, including national or federal parliaments, governments, courts or against the Austrian people, European Union authorities When the perpetrator was a foreigner at the time of the offence, but is now in Austria and cannot be extradited. The free movement of information from another European Union country may be limited. Such measures are directed against a service provider that impedes maintenance of public order, e.g. the prevention, investigation, clarification and prosecution of punishable acts, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, creed or nationality; protection of dignity of individuals**.**	f, p. 13.) Article 22 of the E-Commerce Act [F]		

AUSTRIA				
QUESTION	ANSWER	SOURCE OF LAW	ADDITIONAL INFORMATION/ DEFINITIONS	COURT RULINGS
Is there an obligation to disclose data of hate speech offenders?	Yes. The information about the originator and the access to the master (e.g. name, academic degree, address, contact information) data about the offender must be provided to the law enforcement authorities. Operators of "public communication services" as defined in the Austrian Telecommunications Act are required to transfer master data to courts, police and prosecutors. There is no judicial approval need to make such a request in case there is a concrete suspicion. Data should be provided without delay, but only after receiving a court-approved order. Based on a domestic court order, an order from an administrative authority or at the request of third parties that have an overriding legal interest the service providers have to transmit the information.	Section 76 of the Code of Criminal Procedure [C] Article 102b of the Telecommunications Act [D] Article 18 of the E-Commerce Act [F]	"Operator of communication services" - an undertaking which exercises legal control over the functions in their entirety that are needed to provide the respective communications service and which offers the service to others.	

AUSTRIA APPENDIX

A. Penal Code of 1974, as Amended up to 2016[10]

Article 283- *Incitement*
"1. Who publicly in a manner suited to jeopardize public order, or in a manner perceivable to the general public incites or instigates to violence against a church or religious denomination or any other group of persons defined by criteria of race, color of skin, language, religion or ideology, nationality, descent or national or ethnic origin, sex, a disability, age or sexual orientation or a member of such a group, explicitly on account of his/her belonging to such a group, shall be punished with imprisonment of up to two years.
2. Likewise, a person shall be punished, if he/she in a manner perceivable to the general public, stirs up hatred against one of the groups defined in para 1 or who verbally harasses such groups in a manner violating their human dignity and who thereby seeks to decry them."[11]

B. National Socialism Prohibition Act of 1947, as Amended Up to 1992[12]

Article 3h
"In accordance with § 3g, anybody who denies, grossly minimizes, approves or seeks to justify the National Socialist genocide or any other National Socialist crimes against humanity in a publication, a broadcasting medium or any other medium publicly and in any other manner accessible to a large number of people shall also be punished.
"whosoever in a printed work, on broadcasting or in any other media, or whoever otherwise publicly in a matter that it makes it accessible to many people, denies, belittles, condones or tries to justify the Nazi genocide or other Nazi crimes against humanity shall be punished with imprisonment for one year up to ten years, in the case of special perilousness of the offender or the engagement up to twenty years"[13].[14]

C. Code of Criminal Procedure of 1975, as Amended up to 2015[15]

Article 446
"After the implementation of Directive 2006/24/EC, it is possible in Austria pursuant to Section 76 of the Code of Criminal Procedure, to hand over the information about the originator and provide access to data to law enforcement authorities. Operators of public communications services are required to transfer to the courts, the prosecutors and the information about the master data. This includes the name, academic degree, address, subscriber number and other contact information on the nature and content of the contract, provided that this is feasible in technical terms.
Such requests may be made by the police, the prosecution, without the need for judicial approval or consent, or by the court. The requesting authority has to state the concrete suspicion on the committal of a criminal offense by a particular person. There is no restriction on the criminality threshold of the committed offense. The authority must, however, act by more than a suspicion. Basing a request on the need to acquire information in order to prove that a person could be suspected of an offense is therefore insufficient. The accused and the victims (as they relate to the data) have the right to inspect the results of the information. At their request (and also ex officio), the data obtained are to be deleted if they cannot be of importance for the procedure or if the evidence shall not be used. A special statutory prohibition on the use of evidence is not provided".[16]

D. Telecommunications Act of 2003[17]

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10 Federal Act of 23 January 1974 on the acts threatened with judicial punishment (Criminal Code), available at http://www.legislationline.org/documents/section/criminal-codes. The Austrian Penal Code is undergoing amendments preparing Austria to ratify the Council of Europe's Additional Protocol to the Convention on Cybercrime. The main amendments consist of: to add all protected grounds in the definition of incitement to hatred , including race, color, language, religion or belief, citizenship, descent or national or ethnic origin, gender, disability, age, or sexual orientation. Moreover, while the old version required that an act of incitement would be "public and adequate to imperil public order" the new version punishes any act that is also "noticeable to the public at large". The amendment also broadens the protected scope to include not only groups but also individuals who are characterized by their affiliation with a certain group defined by protected grounds.

12 Federal Law Gazette No. 13/1945, as amended by Federal Law Gazette No. 148/1992, Author of the translation - Federal Chancellery, Website https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erv&Dokumentnummer=ERV_1945_13.

14 Source: International Legal Research Group on Online Hate Speech in Cooperation with Council of Europe and European Law Students Association. *Available at* http://files.elsa.org/AA/Final_Report_OHS_Final.pdf, p. 20.

15 Code of Criminal Procedure of Original version *available at* https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002326.

16 Source: International Legal Research Group on Online Hate Speech in Cooperation with Council of Europe and European Law Students Association. *Available at* http://files.elsa.org/AA/Final_Report_OHS_Final.pdf, p. 9. .

17 *Available at* https://www.rtr.at/en/tk/TKG2003

Article 3 - *Within the meaning of this Federal Act*

"(…)

1. "communications network provider" means an undertaking which constructs, operates, controls or makes available a communications network;
2. "communications service operator" means an undertaking which exercises legal control over the functions in their entirety that are needed to provide the respective communications service and which offers the service to others;
3. "communications network operator" means an undertaking which exercises legal and actual control over the network functions in their entirety. Operation of a communications network within the meaning of this Act shall not be the case if the connection to other public communications networks is exclusively effected via the interfaces generally used for the local loop;
4. "end-user" means a user not providing public communications networks or publicly available communications services;"

Article 89 - *Shut down of operation*

"(1) To maintain public law and order the Federal Minister of Transport, Innovation and Technology may shut down the operation of telecommunications systems in part or in full or for specific types of systems for a limited or unlimited period of time and impose temporary restrictions on the use of specific systems.

(2) An order pursuant to Par. 1 shall take utmost account of the operator's economic and operational interests; it shall not constitute any claim to compensation."

Article 102b - *Provision of information on retained data*

"1. Information on retained data may be provided solely on the basis of a court-approved order from the public prosecutor's office for the investigation and prosecution of criminal acts whose severity justifies an order pursuant to Article 135 Par. 2a Code of Criminal Procedure.

2. The data to be stored pursuant to Article 102a are to be stored in such a way that they can be transmitted without delay to the competent authorities pursuant to the provisions of the Code of Criminal Procedure and in accordance with the procedures set forth in the Code of Criminal Procedure for the provision of information on communications data.

3. The data is to be provided in an appropriately protected form in accordance with Article 94 Paragraph 4."

E. Federal Act on the Press and other Publication Media (Media Act – MedienG)[18]

Paragraph 33

"A sentence for media contents offence shall, on request of the prosecution, include the withdrawal of the media products intended for circulation or the deletion of the parts of the website constituting the penal act (withdrawal). The same shall apply in the case of acquittals under Â§ 29 para 3, notwithstanding § 446 Code of Criminal Procedure".

Paragraph 40

1. "For investigation proceedings because of media contents offence, territorial jurisdiction shall rest with the public prosecution office of the district of the registered residential address, the actual residential address or the registered office of the media owner. If the imprint does not correctly disclose these data, territorial jurisdiction shall also rest with the public prosecution office of the district containing the place indicated in the imprint…"

"If the places indicated in para 1 are located abroad or if they cannot be retrieved, the relevant place shall be such place out of which the medium has first been distributed, broadcast or made available for download for the domestic market, if also such place is missing, then it shall be any place at which it was possible to distribute, receive or download the medium on the domestic market".

F. Federal Act Governing Certain Legal Aspects of Electronic Commercial and Legal Transactions ("E-Commerce Act – ECG")[19]

Article 3 – *Definition*

"In the terms of this Federal Act:

1. "information society service" shall mean a service normally provided in return for consideration electronically by distance selling at the individual retrieval of the recipient (§ 1 para. 1 sub-para. 2 of the Notification Act of 1999), particularly the online marketing of goods and services, online information offers, online advertising, electronic search engines and data enquiry options as well as services which

[18] Federal Act on the Press and other Publication Media (Media Act – MedienG), Federal Law Gazette No. 314/1981, as Amended up to 25 February 2015. *Available at* https://www.ris.bka.gv.at/

[19] Federal Act governing certain legal aspects of electronic commercial and legal transactions **("E-Commerce Act – ECG")**, Original version: Federal Law Gazette I No. 152/2001, as amended by Federal Law Gazette I No. 34/2015. Date of the version: 1 January 2016. *Available at* https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erv&Dokumentnummer=ERV_2001_1_152.

transmit information via an electronic network and provide access to such a network or store the information of a user;

2. "service provider" shall mean a natural or legal person or other institution with legal capacity which provides an information society service;

3. "established service provider" shall mean any provider who effectively pursues an economic activity using a fixed establishment for an indefinite period, whereby the presence and use of the technical means and technologies required to provide the service do not, in themselves, constitute an establishment of the provider;

4. "user" shall mean any natural or legal person or other institution with legal capacity which uses an information society service for professional or other purposes, particularly in order to obtain information or make information available;

5. "consumer" shall mean any natural person who acts for purposes which are outside his or her trade, business or profession;

(2) The transmission of information and provision of access in the terms of Para. 1 shall include the automatic, intermediate and transient storage of the transmitted information, provided such storage takes place for the sole purpose of carrying out the transmission in the communication network and provided the information is not stored any longer than is normally necessary for the transmission. (…)".

Article 14 - *Exclusion of responsibility for search engines*

"(1) A service provider which provides users with a search engine or other electronic aids to search for third-party information shall not be responsible for the information retrieved, provided the service provider:

1. does not initiate the transmission of the retrieved information;
2. does not select the receiver of the retrieved information; and
3. does not select or modify the retrieved information.

(2) Para 1 shall not be applicable if the person from whom the retrieved information stems is subordinate to or supervised by the service provider."

Article 15 - *Exclusion of responsibility for caching*

"(1) A service provider which transfers information input by a user in a communication network shall not be responsible for any automatic, intermediate and temporary storage for the sole purpose of rendering more efficient the transmission of information to other users when called up, provided the service provider:

1. does not modify the information;
2. complies with the terms and conditions on accessing the information;
3. complies with rules regarding the updating of the information as specified in standards generally accepted and used by industry;
4. does not interfere with the admissible use of technologies, which have been determined in standards generally accepted and used by industry, to obtain data on the use of the information; and
5. acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement."

Article 16 - *Exclusion of responsibility for storage of third-party content (hosting)*

"(1) A service provider which stores information input by users shall not be responsible for the information stored on behalf of a user, provided the service provider:

1. does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
2. upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

(2) Para. 1 shall not be applicable if the user is subordinate to or supervised by the service provider."

Article 17 - *Exclusion of responsibility for links*

"(1) A service provider which provides access to third-party information by means of an electronic link shall not be responsible for such information, provided the service provider:

1. does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
2. upon obtaining such knowledge or awareness, acts expeditiously to remove the electronic link.

(2) Para 1 shall not be applicable if the person from whom the information stems is subordinate to or supervised by the service provider or if the service provider presents the third-party information as its own."

Article 18 - *Scope of duties of service providers*

"(1) The service providers mentioned in articles13 to 17 shall not be obligated to monitor in a general fashion the information stored, transmitted or made available by them or to actively research circumstances indicating illegal activity.

(2) At the order of any domestic court authorised by law for this purpose, the service providers mentioned in articles 13 and 16 must transmit to such court all information based on which the users of their services with whom they have concluded agreements concerning the transmission or storage of information can be investigated in order to prevent, investigate, clarify or prosecute legally punishable acts.

(3) Based on any order from an administrative authority, the service providers mentioned in § 16 must transmit to such authority the names and addresses of the users of their services with whom they have concluded agreements concerning the storage of information, provided knowledge of such information constitutes a material prerequisite for realising the duties assigned to the authority.

(4) The service providers mentioned in § 16 must transmit the names and addresses of any user of their services with whom they have concluded agreements concerning the storage of information at the request of third parties, provided such third parties have an overriding legal interest in determining the identity of the user or any particular illegal state of affairs, and furthermore substantiate that knowledge of such information constitutes a material prerequisite for legal prosecution.
(5) No other duties of the service providers to provide information to and co-operate with authorities or courts shall be prejudiced hereby."

Article 22 - *Variation from country of origin principle*
"(1) At variance with the country of origin principle, a court or administrative authority may take measures within the framework of its legal authority to limit the free movement of the information society services from another Member State. However, such measures must be necessary to protect the legal interests mentioned in Para 2. Such measures may only be directed against a service provider which impedes one of these legal interests or seriously and grievously threatens to do so. Such measures must also stand in a reasonable relation to the objectives pursued therewith.
(2) The free movement of the information society services from another Member State may only be limited for the following reasons:

1. maintenance of public order, e.g. the prevention, investigation, clarification and prosecution of punishable acts, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, creed or nationality;
2. protection of the dignity of individuals;
3. protection of public health;
4. protection of public safety, including the safeguarding of national security and defence interests;
5. protection of consumers, including investors. "

Article 23
" (1) An administrative authority must communicate to the European Commission and the competent agencies of another Member State its intent to take measures which restrict the free movement of information society services from the Member State and request the European Commission and the competent agencies of the other Member State to initiate suitable measures against the service providers. The authority may only carry out the intended measures if the competent agencies of the other Member State have not responded to such request within a reasonable period or if the measures taken thereby are inadequate.
(2) In the event of imminent danger, the administrative authority may even take the measures intended by it without the approval of the Commission and without requesting the competent agency of the other Member State. In such event, the administrative authority must communicate the measures taken by it immediately to the Commission and the competent agency, specifying the grounds for the assumption of imminent danger.
(3) Paras 1 and 2 shall not be applicable to court proceedings."