

**Executive Committee, Paris March 10, 2007**

## **RECENT DEVELOPMENTS IN AUSTRIA**

**Michel Walter**

### **I. Legislation**

- Copyright Act Amendment 2003  
Implementation of the InfoSoc-Directive
- Copyright Act Amendment 2005  
Implementation of the Resale-Right-Directive
  - Minimalist approach
  - entrance threshold € 3.000,00
  - no obligatory collective managementBlank Tape Levy:
  - Distribution via E-Commerce from abroad (e.g. Luxembourg):
  - distribution of carrier material (*Trägermaterial*) in Austria falling under the Blank Tape Levy
- Copyright Act Amendment 2006  
Implementation of the Enforcement-Directive
  - new: *Saisie contrefaçon* and other evidence preservation (*Piller* order) (Article 7) provisional procedure
  - right of information (Article 8) further developed:
    - material claim
    - internet service provider: right to information  
(Supreme Court July 2005<sup>1</sup> : irrespective of data protection and/or telecommunication secret [criminal case])
    - [injunction: notice and take-down solution (prior notice required if exemptions pursuant to E-Commerce-Law apply)]
  - no implementation of Article 6 (evidence presentation by the opposing party)
- New Law on Collecting Societies 2006
  - New law on the basis of the existing law of 1936
  - Only corporations and cooperative societies admitted
  - Supervision of collecting societies strengthened: new administrative body installed (appeal to a quasi judicial body called "Copyright Senate")
  - Arbitration procedure reorganised (problems related to the rather rigid framework of Austrian constitutional law eliminated - however new problems arise) "Copyright Senate" deciding disputes between collecting societies and users as well as between collecting societies in first and last instance
  - Social and cultural institutions reorganised

### **II. Jurisprudence**

- Supreme Court July 2005 - "Gericom" Decision<sup>2</sup>:

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<sup>1</sup> Supreme Court 26.07.2005 11 Os 57/05z, 58/05x und 59/05v – "Telekommunikation" EvB12005/176, 847 = JB12006, 130 (*Heigenhauser*) = MMR 2006, 827 (*Wiebe*) = MR 2005, 352 (*Daum*) = RiZ 2006/17, 178.

<sup>2</sup> Supreme Court 12.07.2005 4 Ob 115/05y - „Gericom/Computer-Festplatten" MR 2006, 19 = RdW 2005/758, 691 (LS) = EvB12005/192, 963 = ÖJZ-LSK 2005/242 = eclex 2006/91, 228 (LS) = GRURInt 2006, 770.

Blank Tape Levy with regard to MP3-players, chips and cards  
no levy on hard-disks (questionable)  
open question: MP3-handies

- Supreme Court August 2006 – “phonogram producer”<sup>3</sup>  
notion of phonogram producer: person taking the economic risk and organising the recording (questionable)  
distribution of recordings from abroad to Austria: laws of the target country apply
- Supreme Court October 2006 - „distribution of blank tapes through mail-order”<sup>4</sup>:  
Article 5 No3 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (place where the harmful event occurred) does not apply since, since claims to an equitable remuneration are deemed to be of a quasi contractual nature (questionable)
- Supreme Court October 2006 – “Sunglasses”<sup>5</sup> :  
parallel protection under Copyright and related rights protection of photographs  
parallel protection under Copyright and Unfair Competition Law  
no elevated level of originality required for Copyright protection  
first sale doctrine only applies to particular copies of a work  
only a natural person qualifies for original authorship  
Private International Law: the laws of the country of protection apply  
no International Copyright Convention applies to the Related right of photographers  
Berne Convention applies to works protected under Copyright except for evidence made by the opposing party (prima facie evidence in favour of a protection under the Berne Convention)

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<sup>3</sup> Supreme Court 09.08.2006 4 Ob 135/06s - „Tonträgerhersteller/Gruppe D" ZfRV 2006, 197 = ZfRV-LS 2006/28 = MR 2006, 387 (*Walter*) = ÖJZ-LK 2006/254, 258 = EvB1 2007/3, 27.

<sup>4</sup> Supreme Court 17.10.2006 4 Ob 174/06a- „Leerkassettenversandhandel/Leerkassettenvergütung IV" MR 2007/1 (*Walter*) = ZfRV 2006/35,235 = ÖB1-LS 2007/41 = EvB1 2007/25, 148.

<sup>5</sup> Supreme Court 20.06.2006 4 Ob 47/06z - „Sonnenbrillen/Werbefotos« MR 2007/1 (*Walter*) = GRUR Int 2007, 167 = ÖB1 2007/8, 37 (*Fallenböck*).