



## **MAIN THEME: COPYRIGHT, NEIGHBOURING AND SPECIAL RIGHTS STATE OF AFFAIRS AND FURTHER OUTLOOK**

### **Answers to the questionnaire from the Austrian Group of ALAI**

*(Michel Walter)*

#### **PANEL I – PERFORMER’S RIGHTS – A COMPARATIVE OVERLOOK**

**1- What types of performers are there according to your legal framework?**

All performers are protected under neighbouring right on the condition that they perform copyright works (of whatever kind) or contribute to such performance artistically (§ 66 of the Austrian Copyright Act) - therefore, e.g. dancers performing choreographic works are protected as well

Circus artists or artists in variety shows are not explicitly included, but enjoy protection as far as they perform copyright works

**2- Do all types of performers enjoy Neighbouring Rights protection?**

All types of performers enjoy protection included such performing in groups (orchestra, choir, corps de ballet etc), the latter may exercise their rights only through a representative; this representation is regulated specifically if no agreements exist (§ 70 of the Austrian Copyright Act)

**3- Does the law distinguish between featured/non-featured performers? How?**

There is no differentiation made by the law between featured and none featured performers (see no 3 above). However, in practice session musicians (*Studio Musiker* so-called) perform under buyout agreements getting lump sum payments only

**4- Which rights are awarded to each type of performer?**

See § 67 and 76(3) of the Austrian Copyright Act

**I- Live performances:**

a) Fixation; yes

b) Broadcasting; yes<sup>1</sup>

bb) exclusive right to prohibit or authorize the transmission of the performance outside the room (theatre, concert hall et cetera) where the performance takes place, except for cases, where the performance is carried out by means of recordings or broadcasts

**II- Fixed performances:**

c) Reproduction; yes

d) Distribution; yes

e) Rental; yes / lending: remuneration right

f) Making Available to the public; yes

g) Communication to the Public and h) Public performance;

no exclusive right of public performance, but claim to an equitable remuneration according to article 8(2) of the Rental and Lending Rights Directive (§ 76(3) of the Austrian Copyright Act)

i) Broadcasting; no – see g) and h)

special feature of Austrian law:

the use of an illegal recording for broadcasting or communication to the public purposes is prohibited (not the broadcasting or communication to the public as such)

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<sup>1</sup> If not carried out by means of a legitimate phonogram (see II below).

- j) Retransmission; yes, however unclear whether the exception as regards broadcasts carried out by means of phonograms applies to the case of retransmissions of such broadcasts as well; in my view this is not the case.
  - k) Direct Injection; yes (Copyright Amendment of 2021)
  - l) Any other rights – see i) above
- III- Are moral rights attributed to performers? Which prerogatives does it comprehend?
- Yes, (§ 67 of the Austrian Copyright Act)
- Including the right to decide whether the performer is to be credited or not, and under which name as well as the
- right to oppose alterations or communications to the public in a way which is prejudicial to his or her honour or reputation as a performer
- 5- What is the nature of those rights? – Statutory? Contractual?
- Exploitation rights as well as moral rights are statutory (§ 66 et seqq of the Austrian Copyright Act)
- 6- Which of them are exclusive rights/remuneration rights?
- 6.1 All of the performers' rights are exclusive (§ 68 of the Austrian Copyright Act), except for the public lending right (§ 16a of the Austrian Copyright Act)
- 6.2 The broadcasting or communication to the public by means of phonograms published for commercial purposes triggers claims to an equitable remuneration – such claim does not extend to other phonograms (not published for commercial purposes) nor is the sound track of videograms, which is why their communication to the public or broadcasting is not subject to payment of an equitable remuneration
- 7- Which exceptions/limitations generate remuneration rights for performers?
- 7.1 reproduction for private use (performing artists participate in the proceeds from the 'blank tape levy' (*Speichermedienvergütung*) (§ 42b of the Austrian Copyright Act and references to the rights of performing artists)
- 7.2 use in favour of visually impaired persons (§ 42d of the Austrian Copyright Act), digital use for teaching (academic teaching included) purposes (§ 42g of the Austrian Copyright Act), use of orphan performances (if the performing artist shows up) (§ 56e of the Austrian Copyright Act), and use of out of commerce performances (§ 56f of the Austrian Copyright Act).
- 8 Which rights are transferred to music/audiovisual producers? For how long?
- In principle no transfer by law or on the grounds of legal presumptions with regard to phonogram producers; however, as regards producers of cinematographic works according to a specific regulation regarding performances carried out in the framework of the production of a cinematographic work (§ 69 of the Austrian Copyright Act) all rights are vested originally in the producers; it is submitted that this rule is questionable from the perspective of union law.
- (sub-exception: claims to an equitable remuneration)
- 9- Are there any legal presumptions of transfer or is it voluntary/contractual?
- Except for the rule regarding performances in cinematographic works<sup>2</sup> no legal presumptions are provided for – thus, any transfer of rights to producers (of phonograms) are carried out on the grounds of agreements
- 10- Are there any unwaivable and inalienable remuneration rights?

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<sup>2</sup> See no 8 above.

Only the right to share in the proceeds from rental is explicitly declared unwaivable (§ 16a(5) of the Austrian Copyright Act). However, as far as cinematographic works are concerned, it is explicitly referred to unwaivable claims to an equitable remuneration which are not, at least not explicitly set out in the Austrian copyrightability<sup>3</sup>.

The Explanatory Memorandum of the Amendment of 2021<sup>4</sup>, however, holds that claims to an equitable remuneration may be transferred, since unwaivability does not include untransferability (inalienability). In my view, this is not convincing, in particular against of background of the ECJ's jurisprudence.

11- What type of compensation is paid in exchange? How is it set? For how long?

The claims to an equitable remuneration of performing artists are managed by CMOs – the allocation is agreed upon by the different participating CMOs. In case of dissent no specific procedure is provided for in the Austrian Act on CMOs of 2016, which is a remarkable shortcoming of the Act.

As to the participation of performing artists in the proceeds of the exploitation of exclusive rights transferred to producers by contract, the usual contractual provisions apply, which are mostly set out by producers and, therefore, more or less in their favour. As to the rule of contract law as provided for in the DSM-Directive, these provisions have been implemented by Copyright Amendment 2021, however, in my view in a restrictive way.

12- How is “streaming” qualified in your Country for rights awarding purposes?

Streaming is considered broadcasting, if the streamed content may be accessed (perceived) at one specific point of time only (§ 17 of the Austrian Copyright Act) – otherwise streaming is deemed to be qualified as making available to the public (§ 18a of the Austrian Copyright Act)

13- Whose authorization is required for the “streaming” of music/audiovisual content?

In principle the consent of the individual rightholder is required, however, in some cases this exclusive right is managed by CMOs

14- What is the estimated level of copyright infringement in your Country?

The level of copyright infringement in Austria equals to that in other central European countries, as e.g., Germany and Switzerland

15- What is the current level of disclosure on economic returns from digital platforms?

No information available to the Austrian Group of ALAI

16- How is performer’s compensation determined for each business model?

The Austrian Group of ALAI does not have any specific information.

17- Are there minimum amounts due? Any other economic benefits?

As far as contracts of performing artists with phonogram producers are concerned, guaranteed amounts are rare exceptions. However, if the performer produces the phonorecord him/herself and ‘sells’ it to the ‘producer’ (‘tape-takeover’<sup>5</sup> so-called), as a rule, minimum amounts are agreed upon, which differ significantly in terms of their amount, and rather serve as a compensation of the production costs.

18- Do UGC platforms contribute to such compensation schemes? How?

As far as the Austrian ALAI Group is informed, such contributions for the time being are rare exceptions.

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<sup>3</sup> The claim to participate in the proceeds from the exploitation of the rental right by the rightholder (producer) is deemed a participation claim rather than a claim to an equitable remuneration in the proper sense of the word.

<sup>4</sup> The Amendment entered into force on 1 January 2022.

<sup>5</sup> *Bandübernahme*.

- 19- Has the Beijing Treaty been implemented in your Country, at least, in part?  
Austria did not yet accede to the Beijing Treaty.
- 20- Which rights are collected by Collective Management Organizations (CMOs)?  
Communication to the public and broadcasting (claims to an equitable remuneration), cable retransmission/direct injection, podcasting, media libraries, background music on websites, blank tape levy, public lending right
- 21- Which CMOs represent performers in your Country?  
Austrian Performers' Society (OESTIG<sup>6</sup>) as a shareholder of the LSG<sup>7</sup> representing both performing artists (with regard to fixed performances) as well as phonogram producers
- 22- Do these CMOs comply with transparency principles?  
Yes – Austrian CMOs are, in particular, supervised by a specific authority, namely the 'Supervisory authority for CMOs' (*Aufsichtsbehörde für Verwertungsgesellschaften*)
- 23- Is it possible to find out how much income is provided by each type of rights?  
Yes – CMOs are to publish transparency annual reports, in particular providing information on the sums collected per field of exploitation, which must be published on their websites.
- 24- What is the current litigation level for performers' rights in your Country?  
There is intensive litigation in the field of photographs, which are protected by copyright in the strict sense as well as by a specific related right in Austria, in particular for photographs lacking originality – as far as related rights of performing artists are concerned litigations are rare.
- 25- Are there any relevant Court Decisions concerning performer's rights?
- Austrian Supreme Court 8 September 2009 *Schutzfristverlängerung*<sup>8</sup>:  
No equitable remuneration for film authors and film performers on the occasion of the prolongation of the term of protection – an authentic interpretation by a Copyright Amendment insofar has retroactive effect.
  - Austrian Supreme Court 16 December 2009 *Künstlerexklusivvertrag/Künstler-Produktionsvertrag*<sup>9</sup>:  
The withdrawal of rights granted to a phonogram producer cannot be circumvented by a clause granting the option to extend the duration of the agreement
- 26- Does the Principle of National Treatment apply to all foreign performers?  
No, it does not. However, all performances taking place in Austria enjoy protection regardless of the performer's nationality (§ 97(1)). Other performances are protected in Austria on the condition of reciprocity. Obligations emanating from the International treaties as the Rome Convention, the TRIPs Agreement, or the WPPT are to be respected.  
Under the Rome Convention the following reservations have been deposited: Article 16(1)(a)(iii) and (iv) and 1(b) [1973, p. 67];  
Under the WPPT no reservations have been made.
- 27- Are there "appropriate and proportionate remuneration" provisions?  
Insofar in Austria the provisions as set out in the DSM Directive, implemented by Copyright Amendment 2021, apply (§ 37b and § 68(4) of the Austrian Copyright Act). However, with regard to performances executed in cinematographic works see also no 8 above and no 30 below.
- 28- Are CMO's mandates always exclusive and encompassing all rights?

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<sup>6</sup> Österreichische Interpretengesellschaft.

<sup>7</sup> Leistungsschutzgesellschaft.

<sup>8</sup> No 4 Ob 53/09m MR 2010, 136 (*Michel Walter*) = SZ 2009/118.

<sup>9</sup> No 4 Ob 178/09v MR 2010, 133 (*Michel Walter*).

As a rule CMOs are mandated exclusively; the exclusive rights (exclusive licenses - *Nutzungsrechte*) of CMOs encompass only specific rights and claims to an equitable remuneration.

- 29- Are there any partial/global revocation of transfer of rights agreements provisions?

Yes, in Austria such revocation rights have been provided for (§ 29 of the Austrian Copyright Act) already prior to the implementation of the pertinent provision of the DSM-Directive – the Copyright Amendment of 2021 did not elaborate on this issue further, whereas questions of interpretation arise in this context. It is worthwhile noting that these provisions do not extend to performers in cinematographic works.

Furthermore, the provisions of the Term Extension Directive of 2011 have been implemented in Austria with Copyright Amendment of 2013 (use-it-or lose-it clause).

- 30- Are there any provisions on contractual remuneration adjustments?

Insofar in Austria the provisions as set out in the DSM Directive apply (§ 37c and § 68(4) of the Austrian Copyright Act). However, with regard to the special regime provided for performances in cinematographic works (§ 69), according to which the rights of performers originally vest in the producers of such films, it may be questionable whether there is room for remuneration adjustments in these cases. It is submitted that this is the case, since this provision is to be construed in the sense of a legal presumption.

## PANEL II – PHONOGRAM PRODUCERS' RIGHTS

- 1- Which rights are awarded to phonogram producers? (§ 76a of the Austrian Copyright Act)
  - c) Reproduction; yes
  - d) Distribution; yes
  - e) Rental; yes - lending: remuneration right
  - f) Making Available to the public; yes
  - g) Cable retransmission; yes
  - h) Direct Injection; yes (Copyright Amendment of 2021)
  - i) Any other rights:  
Communication to the Public and broadcasting  
no exclusive right of communication to the public (public performance included), but claim to an equitable remuneration according to article 8(2) of the Rental and Lending Rights Directive (§ 76(3) of the Austrian Copyright Act) instead
- 2- What is the nature of those rights? – Statutory? Contractual?  
Statutory related right (neighboring right)
- 3- Which of them are exclusive/remuneration rights?  
See I.6. above.
- 4- Which exceptions/limitations generate remuneration rights for phonogram producers?  
See I.7. above correspondingly  
– it is disputed, however, to what extent they participate both as holders of original rights in their capacity as producers as well as in their capacity of holders of derivative rights
- 5- Are there any legal presumptions of transfer or is it voluntary/contractual?  
The neighboring rights in a commercially produced phonogram are deemed to be originally vested in the producer (§ 76(1) of the Austrian Copyright Act). However, the rights of the recorded artists are transferred to the producer by means of contractual agreement only.
- 6- What type of compensation is paid in exchange? How is it set? For how long?  
See I.11 above
- 7- How is producer's compensation determined for each business model?  
The Austrian Group of ALAI does not have specific information.
- 8- Are there minimum amounts due? Any other economic benefits?  
The Austrian Group of ALAI does not have specific information.
- 9- Is digital piracy/streamripping still a major concern for phonogram producers?  
Digital piracy/streamripping still is a concern for phonogram producers
- 10- Which rights are currently being collected via CMOs?  
See I.20 above
- 11- Which CMOs represent phonogram producers in your Country?  
LSG Leistungsschutzgesellschaft GmbH (see 21 above)  
(acting jointly for recorded artists and producers)
- 12- Do these CMOs comply with transparency principles?  
Yes, see I.22 above
- 13- Is it possible to find out how much income is provided by each type of rights?  
Yes, see I.23 above
- 14- What is the current litigation level for phonogram producers in your Country?

There is litigation in this field from time to time, but not frequently

15- Are there any relevant Court Decisions concerning phonogram producer's rights?

- Austrian Supreme Court 9 August 2006 *Tonträgerhersteller/Gruppe D*<sup>10</sup>:  
Notion of producer of phonograms: The producer of the phonogram is the natural or legal person who provides the organizational, economic and technical services associated with the production of the phonogram.

- Austrian Supreme Court 24 October 2017 *BitTorrent*<sup>11</sup>:

The provision and operation of a BitTorrent platform with the purpose of online file sharing among the users of this platform is deemed a communication to the public within the meaning of Article 3 Information Society Directive.

16- Are there any revocation of transfer of rights' agreements provisions?

No specific regulation as regards the transfer of rights by phonogram producers, however, revocation rights of performers vis-à-vis phonogram producers (see I.29 above).

17- What is considered a "phonogram published for commercial purposes"?

Only phonograms published for direct commercial purposes (selling) are considered as phonograms published for such purposes; publishers' phonograms so-called<sup>12</sup>, to the contrary, are not.

18- Is there any type of phonograms that is published for non-commercial purposes?

See the preceding no 17 and footnote 9.

19 - Which rights are involved in audiovisual synchronization ("production music")?

In the first place the reproduction right.

20- Which rights are involved in mood music/sound branding licensing?

In the first place the reproduction right.

### **PANEL III- BROADCASTERS AND FILM/AUDIOVISUAL PRODUCERS RIGHTS**

1- Which rights are awarded to **broadcasters** in your Country? (§ 76a of the Austrian Copyright Act)

- a) Fixation; yes
- b) Reproduction; yes
- c) Communication to the public (with /without admission fees), yes – with admission fees only
- d) Distribution; yes
- e) Simultaneous retransmission by wire or wireless means; yes
- f) Deferred retransmission by wire or wireless means; no - however, reproduction right applies for these purposes
- g) Making available to the public by wire or wireless means; yes
- h) Pre-broadcast program carrying signal protection; no/yes –not provided for explicitly, however arguable
- i) Any other rights? Yes, namely  
Rental - lending: remuneration right  
Integral cable retransmission, according to jurisprudence, however disputed

<sup>10</sup> No 4 Ob 135/06s MR 2006, 387 (*Michel Walter*).

<sup>11</sup> No 4 Ob 121/17y MR 2017, 317 (*Felix Daum*) = GRUR Int 2018, 479 (*Michel Walter*).

<sup>12</sup> *Verlagstonträger* published for publicity purpose and/or only serving as samples for broadcasting organizations.

- 2- What is the nature of those rights? – Statutory? Contractual?  
Statutory related right (neighboring right)
- 3- Which of them are exclusive/remuneration rights?  
All of the broadcasting organizations' rights are exclusive, except for the public lending right
- 4- Which exceptions/limitations generate remuneration rights for broadcasters?
  - 4.2 use in favour of visually impaired persons (§ 42d of the Austrian Copyright Act), digital use for teaching (academic teaching included) purposes (§ 42g of the Austrian Copyright Act), use of orphan broadcasts (§ 56e of the Austrian Copyright Act), and use of out of commerce broadcasts (§ 56f of the Austrian Copyright Act).
  - 4.1 no 'blank tape levy' (*Speichermedienvergütung*) (§ 42b of the Austrian Copyright Act) with regard to reproductions for private use
- 5- Are there any legal presumptions of transfer or is it voluntary/contractual?  
The rights in broadcasts are deemed to be originally vested in the broadcasting organization (§ 76a(1) of the Austrian Copyright Act). There are no legal legal presumptions provided for with regard to the transfer of rights (by authors or performing artists) to broadcasters.
- 6- What is the relevance of copyright infringement in relation to broadcasters' rights?  
Copyright infringements as regards broadcasters' rights still are relevant
- 7- Is digital piracy/streamripping still a major concern for broadcasters?  
Digital piracy/streamripping still is a concern for broadcasters
- 8- Do UGC platforms contribute to broadcasters' rights? How?  
As far as the Austrian Group of ALAI is informed, until now no significant contribution appears to be noticeable.
- 9- What is the current litigation level for broadcasters' rights in your Country?  
Public broadcasters as well as private organizations regularly litigate.
- 10- Are there any relevant Court Decisions concerning broadcasters' rights in your Country?
  - Austrian Supreme Court 17 December 2013 *Fußballübertragungen/Live-Sportübertragungen II*<sup>13</sup>:  
The live transmission of a sporting event may be considered as a cinematographic work if original.
  - Austrian Supreme Court 23 February 2016 *Krone-Hit/Preroll-Werbung*<sup>14</sup>:  
The operation of a web radio, i.e. the offering of a running program by way of streaming, is to be understood as broadcasting. The operator, therefore, enjoys protection under the broadcasters' neighboring right.  
Broadcasters enjoy the exclusive right of integral retransmission by cable.  
The Linking to a third party's web content is to be considered as communication to the public if it is addressed to a new public. The author's reservation clause is not sufficient. However, a relevant restriction can be achieved by the design of a website and the access software. If a website is only accessible to subscribers or only after a "preroll-advertisement" has been played, this requirement is complied with.  
Austrian law applies to infringements on the internet with regard to the Austrian territory.
  - Austrian Supreme Court 23 August 2018 *VGR/Hotel Edelweiß II*<sup>15</sup>:

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<sup>13</sup> No 4 Ob 184/13g MR 2014, 75 (*Michel Walter*).

<sup>14</sup> No 4 Ob 249/15v MR 2016, 135 (*Roman Heidinger*) = ÖBl 2016/34, 142 (*David Plasser*) = GRUR Int 2016, 589 (*Michel Walter*) = ecolex 2016/275, 605 (*Adolf Zemann*).

<sup>15</sup> No 4 Ob 124/18s MR 2018, 232 (*Michel Walter*) = ecolex 2019/69, 162 (*Adolf Zemann*) = GRUR Int 2019, 299 (*Stefan Sporn*) = ÖBl 2019/25, 98 (*Klamert/Lederer*).

1. Broadcasting organizations enjoy the exclusive right of retransmission (with or without cable). Austrian law thus goes beyond the minimum protection as provided for in the Rental and Lending Directive restricted to wireless retransmission.
  2. The broadcasting organizations enjoy the right of communication to the public (other than retransmission) only if such communication takes place in places accessible to the public against payment of a fee in the form of an "entrance fee".
  - 3 The retransmission of broadcast signals to television sets in the premises of a hotel is considered communication to the public by retransmission reaching out a new audience.
  4. The exemption for small community antenna systems not exceeding 500 subscribers (§ 17(3)b of the Austrian Copyright Act<sup>16</sup>) does not comply with EU law; however, an interpretation complying with EU law fails because of the *contra legem* rule.
- Austrian Supreme Court 26 November 2020 *OTT-Dienste II*<sup>17</sup>:
    1. The broadcasting organization's protection extends to wireless retransmission as well as to retransmission by wire or cable. The retransmission must not necessarily take place via cable, nor must retransmission necessarily take place within a network continuously controlled by the transmitting organization.
    2. The scope of a license granted to a CMO only is based on the agreement (private autonomy). The exception of certain transmission technologies (in the case at issue: live streaming via OTT services) is permissible.
  - 11- Are broadcasters acting as One-Stop Shop in relation to retransmission operators?

No, they are not acting as One-Stop Shops, except for those derivative rights transferred to them by other rightholders (authors, performing artists, film producers)
  - 12- Which rights are awarded to **audiovisual producers** in your Country?

*It is to be noted that audiovisual producers are vested with original rights in their capacity as producers of first fixations of films<sup>18</sup> on the one hand, and as owners of rights derived from authors and performing artists. In answering to the following questions it will be indicated what the answer refers to.*

*This question is answered to from the perspective of first fixations of films (§ 74(2) et seqq of the Austrian Copyright Act)*

    - a) Reproduction; yes
    - b) Broadcasting; yes
    - c) Communication to the public; yes (display be optical means)
    - d) Distribution; yes
    - e) Rental; yes lending: remuneration right
    - f) Making available to the public; yes
    - g) Retransmission; yes
    - h) Direct Injection; yes
    - i) Any other rights? no
  - 13- What is the nature of those rights? – Statutory? Contractual?

*This question is answered from the perspective of first fixations of films*

Statutory related right (neighboring right)
  - 14- Which of them are exclusive rights? Which of them are remuneration rights?

*This question is answered from the perspective of first fixations of films*

All of them are exclusive, except for the public lending right
  - 15- Which exceptions/limitations generate remuneration rights for audiovisual producers?

*This question is answered to from the perspective of first fixations of films*

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<sup>16</sup> Abolished only with Copyright Amendment 2021.

<sup>17</sup> No 4 Ob 185/20i MR 2020, 80 (*Michel Walter*) = ÖBl 2021/95, 280 (*Manfred Büchele*).

<sup>18</sup> Producer of ‚*Laufbilder*‘ (‚moving pictures‘).

15.1 reproduction for private use (audiovisual producers participate in the proceeds from the ‘blank tape levy’ (*Speichermedienvergütung*) (§ 42b of the Austrian Copyright Act) – it is disputed, however, to what extent they participate both as holders of original rights in their capacity as producers as well as in their capacity of holders of derivative rights

15.2 use in favour of visually impaired persons (§ 42d of the Austrian Copyright Act), digital use for teaching (academic teaching included) purposes (§ 42g of the Austrian Copyright Act), specific use in public libraries (§ 56b of the Austrian Copyright Act), use for teaching purposes other than digital (§ 56c of the Austrian Copyright Act), specific use in accommodation facilities (§ 56d of the Austrian Copyright Act), use of orphan audiovisual productions (if the producer shows up) (§ 56e of the Austrian Copyright Act), and use of out of commerce performances (§ 56f of the Austrian Copyright Act).

16- Which rights are transferred to audiovisual producers? For how long?

*This question is answered to from the perspective of first fixations of films*

The rights in a commercially produced audiovisual production are deemed to be originally vested in the producer (§ 74(1) of the Austrian Copyright Act) – for the full period of protection .

17- Are there any legal presumptions of transfer towards audiovisual producers?

*This question is answered to from both perspectives*

As far as cinematographic works are concerned, there is – instead of the previous *cessio legis* rule<sup>19</sup> so-called – an unlimited legal presumption in favour of the film producer (§ 38(1) of the Austrian Copyright Act). However, according to the second sentence of § 38(1) of the Austrian Copyright Act, film authors may transfer their rights to the producer irrespective of a prior transfer e.g. to an authors’ society. In my view, this regulation is questionable from several perspectives, inter alia also from the perspective of EU law.

With regard to the integral cable retransmission, there is a claim of participation provided for, which – in my view – is insufficient as to the rate (one third only) as well as with regard to the organization of this claim (§ 38(1a) of the Austrian Copyright Act).

However, as regards the audiovisual producer's related right, there is no corresponding presumption provided for in the law.

18- What type of compensation is paid in exchange? How is it set? For how long?

See the previous paragraph

19 - How is audiovisual producer’s compensation determined for each business model?

*This question is answered to from both perspectives*

The audiovisual producer’s compensation in his/her capacity of a related right usually is negotiated jointly with the rights in a cinematographic work. As to details of the various models of agreements and compensation schemes the Austrian Group of ALAI does not dispose of specific information.

20- Are there minimum amounts due? Any other economic benefits?

No information available to the Austrian Group of ALAI

21- Do UGC platforms contribute to such compensation schemes? How?

No information available to the Austrian Group of ALAI

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<sup>19</sup> According to this rule the rights were originally vested in the producer (unlike the designation would suggest).

22- Is digital piracy/streamripping still a major concern for audiovisual producers?

As far as the Austrian Group of ALAI is informed, piracy including streamripping is still a problem

23- What is the most recent estimation of rights' loss on account of digital piracy in your Country?

No information available to the Austrian Group of ALAI

24- What is the current rule in terms of audiovisual exploitation windows in your Country?

No information available to the Austrian Group of ALAI

25- Which CMOs represent audiovisual producers in your Country?

*This question is answered to from both perspectives*

In Austria film producers' rights are collectively managed by the

**VAM** Verwertungsgesellschaft für audiovisuelle Medien GmbH (in short VAM) and by the

**VGR** Verwertungsgesellschaft Rundfunk GmbH, which manages the (original and derived) rights of broadcasting organizations.

Besides, the

**RAW** Einrichtung zur Geltendmachung der Rechte der öffentlichen Aufführung/Wiedergabe von Audiovisuellen Medien GmbH manages specific rights of communication to the public (this is an independent management entity)

26- Do these CMOs comply with transparency principles?

*This question is answered to from both perspectives*

Yes – Austrian CMOs are, in particular, supervised by a specific authority, namely the 'Supervisory authority for CMOs' (*Aufsichtsbehörde für Verwertungsgesellschaften*)

27- Is it possible to find out how much income is provided by each type of rights?

*This question is answered to from both perspectives*

Yes – CMOs are to publish transparency annual reports, in particular providing information on the sums collected per field of exploitation, which must be published on their websites.

28- What is the current litigation level for audiovisual producers' rights in your Country?

*This question is answered to from both perspectives*

There is litigation in this field from time to time.

29- Are there any relevant Court Decisions concerning audiovisual producer's rights?

No specific jurisprudence

30- Are audiovisual producers acting as One-Stop Shop in relation to retransmission operators,

No, except for broadcasting organization to some extent (see above)

#### **PANEL IV - DATABASE PRODUCERS' AND PUBLISHERS RIGHTS**

1- Are Databases legally protected in your Country? How?

The protection of databased in Austria is carried out on the basis of the EU Database Directive. Therefore, the protection granted is twofold: Original structures of databases enjoy copyright protection, whereas 'simple databases' enjoy a *sui generis* protection which is organized in the form a related rights' protection.

2 – Is there a Sui Generis Database producers' right or equivalent protection in your Country?

Yes, see no 1 above.

3 – Is it possible to evaluate its efficiency and level of enforcement?

As far as the Austrian Group of ALAI is informed, the protection is efficient.

4 – Is there any different form of protection for Database producers or for ownership of data?

No – unfair competition law may apply supplementarily

5 – How does it work? Is it effective?

See the previous answer.

6 – How do the courts of your Country balance the sui generis right with freedom of information and freedom of competition?

No jurisprudence with this regard in Austria.

7 – Is the sui generis right protected against circumvention of TPM designed for controlling access?

No information available to the Austrian Group of ALAI.

8 – Is there a special protection against online uses of press publications in your Country?

Yes, according to the DSM Directive

9 – Does it apply to scientific journals and hyperlinks? How does it work

No, neither as regards scientific publications nor as to hyperlinking.