Executive Committee, Paris March 10, 2007

RECENT DEVELOPMENTS IN AUSTRIA

Michel Walter

I. Legislation

- Copyright Act Amendment 2003
  Implementation of the InfoSoc-Dir
- Copyright Act Amendment 2005
  Implementation of the Resale-Right-Dir
  Minimalist approach
  entrance threshold € 3,000,00
  no obligatory collective management
  Blank 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-Dir
  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\footnote{1} : 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\footnote{2}:

\footnote{1} Supreme Court 26.07.2005 11 Os 57/05z, 58/05x und 59/05v – “Telekommunikation” EvB12005/176, 847 =
\footnote{2} Supreme Court 12.07.2005 4 Ob 115/05y - „Gericom/Computer-Festplatten“ MR 2006, 19 = RdW 2005/758,
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”³
  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“⁴:
  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”⁵:
  parallel protection under Copyright mad 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)

³ Supreme Court 09.08.2006 4 Ob 135/06s „Tonträgerhersteller/Gruppe D“ ZfRV 2006, 197 = ZfRV-LS

⁴ Supreme Court 17.10.2006 4 Ob 174/06a „Leerkassettenversandhandel/Leerkassettenvergütung IV“ MR

⁵ Supreme Court 20.06.2006 4 Ob 47/06z „Sonnenbrillen/Werbefotos« MR 2007/1 (Walter) = GRUR Int