

**Executive Committee Paris February 27, 2009**

**RECENT DEVELOPMENTS IN AUSTRIA**

*(Michel Walter)*

**I. Legislation**

No new legislation to be reported

**II. Jurisprudence**

- **Supreme Court August 26, 2008 – „Lageplan“ [site map]<sup>1</sup>**
- parts of works are protected on the condition that these parts themselves are deemed to be original – the characteristic elements of the whole work must not necessarily be expressed in such parts
- copyright protection of maps – stylized design - no artistic quality needed
- no protection for geographical facts
- copyright contracts are to be construed according to the general rules of contract law
- in case of doubt of the only such rights are deemed to be transferred as necessitated by the very purpose of the contract – this holds true with regard to alterations of the work as well
- the use of a work in a web presence is to be regarded as a making the work available to the public
- the author's right to be credited
  
- **Supreme Court September 23, 2008 – „Schulfilm“ [performances of films in schools]<sup>2</sup>**
- a performance is understood to be ‘public’, if it does not take place in a private circle (close relatives, friends and acquaintances)
- the notion of ‘public’ may be interpreted to some extent differently depending upon the context within the Copyright Act
- in the case of performances of cinematographic works in classrooms (schools) or lecture halls (universities) the question whether such performances are deemed to be public is to be answered to on the basis of typical situations – thus such performances are regarded to be public
- in Austrian copyright the author does not enjoy an exclusive rights in such cases – however under § 56c Copyright Act author may claim an equitable remuneration to be managed by collecting societies only

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<sup>1</sup> 4 Ob 111/08i – „Lageplan“ MR 2008, 357 (*Walter*).

<sup>2</sup> 4 Ob 131/08f – „Schulfilm“ MR 2008, 299.

- **Supreme Court August 26, 2008 – „Premiere“<sup>3</sup>**
  - pursuant to § 17 para 3 Copyright Act the retransmission via cable of broadcasts of the Austrian Broadcasting Organisation (ORF) in Austria is to be regarded as forming part of the initial broadcast and thus does not require the author's consent
  - in the case 'Premiere' the Supreme Court held that this provision applies to the retransmission of such broadcasts by cellular broadcasting networks (UMTS) by means of streaming as well
  - the retransmission by means of cell phones (in German 'Handies' respectively 'Handy-TV') is not to be regarded as public broadcast reception either.

### **III. Activities of the Austrian Group of ALAI since March 2008**

- Opinion of the Austrian Group on the request of the Federal Ministry of Justice on the European **Commission's Proposal** for a Directive amending the **Duration Directive** 1993/2006 which is, in principle, in favour of the proposed amendment as regards musical works with text, but opposed to the proposed prolongation of the term of protection with respect to performing artists and producers of sound carriers. The latter for several reasons, in particular with regard to the fact that the proposed extension of the term of protection would in the first line be in favour of producers of phonograms rather than in favour of performing artists.
- **Study session** of the Austrian Group with the Vienna University on February 20, 2009 dealing with the same topic (extension of the terms of protection for sound recordings and certain performing artists).

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<sup>3</sup> 4 Ob 89/08d – „Premiere“ (not yet published).