

**UNESCO
WORLD ANTI PIRACY OBSERVATORY**

AUSTRIA

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Country profile based on information provided by the Permanent Delegation of Austria to UNESCO, January 2009

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I. Legislation

1. Copyright laws

Copyright is protected in Austria through international Agreements, the [Copyright Act of 1936](#) (in German), the Collecting Societies Act of 2006, as well as other legislation related to enforcement of copyright or affecting copyright protection.

Copyright Act 1936

Bundesgesetz über das Urheberrecht an Werken der Literatur und der Kunst und über verwandte Schutzrechte (Urheberrechtsgesetz)

BGBI.1 Nr. 111/1936 idF BGBI. Nr. 206/1949, BGBI. Nr. 106/1953, BGBI. Nr. 175/1963, BGBI. Nr. 492/1972, BGBI. Nr. 142/1973 (DFB), BGBI. Nr. 422/1974, BGBI. Nr. 321/1980, BGBI. Nr. 295/1982, BGBI. Nr. 601/1988, BGBI. Nr. 612/1989, BGBI. Nr. 93/1993, BGBI. Nr. 151/1996, BGBI. I Nr. 25/1998, BGBI. I Nr. 110/2000, BGBI. I Nr. 32/2003, BGBI. I Nr. 22/2006 and BGBI. I Nr. 81/2006

Collecting Societies Act 2006

Bundesgesetz über Verwertungsgesellschaften (Verwertungsgesellschaftengesetz 2006 – VerwGesG 2006) BGBI. I Nr. 9/2006 idF BGBI. I Nr. 82/2006

2. Other laws

The other laws or regulations pertaining to anti-piracy measures and copyright enforcement are:

- **The Law on jurisdiction in civil procedures**

Gesetz vom 1. August 1895, über die Ausübung der Gerichtsbarkeit und die Zuständigkeit der ordentlichen Gerichte in bürgerlichen Rechtssachen (Jurisdiktionsnorm – JN)

See especially Section 51 (2) 10

- **The Law on civil procedure**

Gesetz vom 1. August 1895, über das gerichtliche Verfahren in bürgerlichen Rechtsstreitigkeiten (Zivilprozessordnung – ZPO)

- **The Code of Enforcement**

Gesetz vom 27. Mai 1896, über das Exekutions- und Sicherungsverfahren (Exekutionsordnung – EO)

- **The Code of Criminal Procedure (CCP)**

Strafprozeßordnung 1975

- **The Council Regulation (EC) No 1383/2003** of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.

- **The Commission Regulation (EC) No 1891/2004** of 21 October 2004 laying down provisions for the implementation of Council Regulation (EC) No 1383/2003 concerning customs action

¹ “Bundesgesetzblatt” which means “Federal Law Gazette”

against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.

- **Austrian Implementing Law** of 4 June 2004 [Bundesgesetz, mit dem ergänzende Regelungen über das Vorgehen der Zollbehörden im Verkehr mit Waren, die ein Recht am geistigen Eigentum verletzen, erlassen werden (Produktpirateriegesetz 2004 – PPG 2004)].

3. Latest developments and perspectives

Criminal offences in copyright cases are always offences with private prosecution, which are only prosecuted upon the **request of the injured party**. The improvement of the procedural rights of this private prosecutor is currently under discussion.

4. Summary of legislation

In the field of copyright and related rights Austria shares a broad set of harmonized rules with the other Member States of the European Union. The European legislation concerned can be found on the website of the European Commission's DG Internal Market:

http://ec.europa.eu/internal_market/copyright/documents/documents_en.htm

- *Exclusive rights of the authors and of the owners of neighbouring rights*

Authors enjoy the exclusive rights of authorizing the reproduction (section 15), of the Copyright Act similar means including cable and satellite; section 17), public performance (section 18), and making available to the public (sections 15 to 18a of the Copyright Act).

Performers enjoy the exclusive rights of authorizing the fixation, reproduction, distribution and rental (Sections 66 and 67 of the Copyright Act). Only with regard to their unfixed performances they are granted the exclusive right of broadcasting (section 70 of the Copyright Act) and only with regard to unfixed and not broadcasted performances the exclusive right of public performance (section 71 of the Copyright Act). Finally, they enjoy the exclusive right to make their performances available to the public (section 71a of the Copyright Act).

Producers of photographs and cinematographic products have the exclusive right to reproduce, distribute, publicly present by means of optical devices, broadcast and make their photographs or cinematographic products available to the public (section 74 of the Copyright Act).

Producers of sound recordings have the exclusive right to reproduce, distribute and make their recordings available to the public (section 76 of the Copyright Act).

Broadcasting organizations have the exclusive right to rebroadcast their broadcasts by wire or wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee. Furthermore they have the exclusive right to fix the broadcast and to reproduce and distribute the fixation and to make the fixation available to the public (section 76a of the Copyright Act).

Publishers of previously unpublished works have the same exclusive rights as authors (section 76b of the Copyright Act).

Database producers have the exclusive right to reproduce, distribute, rent, broadcast, publicly communicate and make the database as a whole or a qualitatively or quantitatively substantial part of the database available to the public (section 76d of the Copyright Act).

- *Allowed use of a work without the permission of the owner of the copyright*

Sections 41 to 56d of the Copyright Act provide for certain limitations to the authors' exclusive rights. Corresponding limitations to the exclusive rights of other right holders are stipulated by the provisions governing the related rights concerned.

Cases in which uses of a work without the permission of the right holder are allowed are the use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings (section 41), transient and incidental acts of reproduction (section 41a), reproduction for personal and private use (section 42), reporting of current events (section 42c), use for the benefit of disabled persons (section 42d), political speeches and speeches delivered in the course of legal proceedings (section 43), use of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character, in cases in which the use concerned is not expressly reserved (section 44), use for educational purposes (sections 45, 51, 54, 56c), quotations (sections 46, 47, 48, 52, 54), certain other uses of minor importance especially concerning public performance (sections 50, 53), use for the purpose of advertising the public exhibition or sale of artistic works and use of works, such as works of architecture or sculpture, made to be located permanently in public places (section 54), use in connection with the demonstration or repair of equipment (section 56), provision of video or audio media to certain federal institutions (section 56a), use of video or audio media in libraries (section 56b) and public communication in accommodation enterprises (section 56d). Furthermore certain official texts are excluded from protection (section 7 of the Copyright Act).

- *Protection of the foreign works*

According to section 94 of the Copyright Act a work enjoys copyright protection under this Law if the author or a joint author is an Austrian national. Furthermore, according to section 95 of the Copyright Act copyright protection is provided for all works which have been published in Austria. As regards other works of foreign authors protection is granted subject to international treaties or reciprocity (section 96 of the Copyright Act).

These rules apply to performances (section 97 of the Copyright Act), photographs and cinematographic products (section 98 of the Copyright Act), audio recordings and broadcasts (sections 99 and 99a of the Copyright Act), posthumous works (section 99b of the Copyright Act) and databases (section 99c of the Copyright Act) accordingly.

- *Period of copyright protection*

Copyright in works of literature, music and art terminates 70 years after the death of the (known) author; in the case of a work jointly created by more than one author 70 years after the death of the last surviving joint author (Sections 60 to 65 of the Copyright Act).

Performers' exclusive rights terminate 50 years after the performance or if a fixed performance is published before the expiry of this term, 50 years after publication (Section 67 of the Copyright Act)

The protection of photographs and cinematographic products terminates 50 years after they were made or, where the photograph or cinematographic product is made public before the expiry of that term, 50 years after publication (Section 74 (6) of the Copyright Act).

The protection of audio recordings terminates 50 years after their production, or if the recording is made public before the expiration of such term, 50 years after publication (Section 76 (5) of the Copyright Act).

The protection of broadcasts terminates 50 years after the broadcast (Section 76a (4) of the Copyright Act).

The protection of posthumous works terminates 25 years after the publication (Section 76b of the Copyright Act)

The rights in databases expire 15 years after the completion of the database, or, if the database is published before the end of that period, 15 years after publication.

- *Registration*

In accordance with Article 5 (2) of the Berne Convention protection is not subject to any formality.

5. International treaties

Austria is a member of the following International Convention and Treaties on Copyright and Related Rights:

- The [Berne Convention on the Protection of Literary and Artistic Works](#), in force since October 1, 1920.
- The [Universal Copyright Convention](#), accession on April 2, 1957 to UCC 1952 and on May 14, 1982 to UCC of 1971.
- The [Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations](#), in force since June 9, 1973.
- The [WTO Agreement on Trade Related Aspects of Intellectual Property Rights](#) (TRIPS), in force since January 1, 1995.
- [Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms](#), in force since August 21, 1982
- [Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite](#), in force since August 6, 1982.

Ratification planned for:

- [WIPO Copyright Treaty \(WCT\)](#), signature on December 30, 1997.
- [WIPO Performances and Phonograms Treaty \(WPPT\)](#), signature on December 30, 1997.

II. Measures and remedies

1. Copyright infringement

Remedies provided against a copyright infringement simply require that an exclusive right under this law has been infringed (Sections 81, 82, 85, 86, 87b(2) of the Copyright Act).

There are no specific provisions against internet piracy in the Austrian Copyright Act.

2. Remedies to protect copyright holders

As regards civil remedies the Austrian Copyright Act provides for injunctions (Section 81), cease and desist orders (including destruction; Section 82), publication of the judgment (section 85), equitable remuneration (section 86), damages and surrender of profits (section 87), rendering of accounts (section 87a), information (section 87b).

With regard to all these remedies section 87c of the Copyright Act provides for (also pre-trial) provisional measures including measures to preserve relevant evidence (including seizure).

Section 91 of the Copyright Act provides for criminal sanctions against the infringement of copyright or related rights. However, the illegal private or internal use of works or other subject matter does not constitute a criminal offence.

According to Sections 92 and 93 of the Copyright Act the criminal courts may order the seizure, the destruction and the rendering unusable of all infringing copies and all equipments or devices predominantly used in the manufacture of the infringing copies.

3. Provisional measures

As regards injunctive relief, cease and desist orders, equitable remuneration, damages and surrender of profits provisional measures can be issued both for the protection of the right and for the preservation of evidence. With regard to equitable remuneration, damages and surrender of profits provisional measures can be issued in case of infringements on a commercial basis if it is probable that the performance of these rights is endangered. As regards injunctive relief, cease and desist orders temporary injunctions may be granted even in the absence of the conditions stipulated in Article 381 of the Code of Enforcement which means that it is not necessary to prove that the enforcement of the right would be endangered without the provisional measure. If a delay would probably cause irreparable harm to the endangered party or if evidence might be destroyed provisional measures are to be issued upon the request of the endangered party without hearing of the opponent. (section 87c of the Copyright Act)

4. Penalties for copyright infringement

- *For criminal offence in copyright cases*

The Austrian Copyright Act provides for criminal law provisions in its sections 91 to 93. According to section 91 any person who commits a copyright infringement is liable to imprisonment not exceeding six months or to a fine not exceeding 360 times the daily rate. If the offence has been committed on a commercial basis the offender might be fined with imprisonment not exceeding two years. The infringement is not punishable if it only involves the unauthorized reproduction or an unauthorized recording of a recitation or a performance for personal use.

Criminal offences in copyright cases are always offences with private prosecution, which are only prosecuted upon the request of the injured party.

- *Seizure, confiscation, forfeiture and destruction of all infringing copies*

According to Sections 92 and 93 of the Copyright Act the criminal courts may order the seizure, the destruction and the rendering unusable of all infringing copies and all equipments or devices predominantly used in the manufacture of the infringing copies.

- *Publication of the judgment in newspapers or professional magazines*

In principle the right to publication of the court decision as well as the right to adequate damages has to be enforced in civil procedures. However, criminal courts may decide about civil claims if such a decision does not delay the criminal procedure

5. Requirements for foreign persons

In civil cases the courts may in certain circumstances order the claimant to provide security for costs. Furthermore, there are restrictions to the ability of foreign attorneys at law to represent parties before Austrian courts.

III. Enforcement

1. Enforcement authorities

a) Authorities responsible for enforcing the copyright law

As copyright infringement is a private criminal offense and only prosecuted upon request by the right holder concerned neither public prosecutors nor the police have a relevant role to play for criminal enforcement of copyright law. Thus, apart from customs authorities and the courts no “enforcement authorities” exist in Austria.

However, referring to the rules on border measures section 110 (3) n^o4 of the Law on criminal procedure empowers the criminal investigators to seize infringing goods.

b) Enforcement bodies entitled to act *ex-officio* in copyright infringement cases

See answer to questions III 1.

c) Courts dealing with copyright cases

In accordance with Section 51 para 2, Z 10 of the Law on jurisdiction in civil procedures disputes involving legal procedures referring to copyright disputes irrespective of the value of the object disputed fall within the competence of the commercial courts (at the time being there is only one commercial court situated in Vienna) and/or the commercial senates of the respective provincial courts.

Penal proceedings in accordance with the Copyright Act rest with the judge sitting alone at the court of the first instance (Section 91 para 5 of the Copyright Act). Criminal offences in copyright cases are always offences with private prosecution, which are only prosecuted upon the request of the injured party. Thus, the public prosecutors are not in charge with the enforcement of the Copyright Act.

For further details about the jurisdiction of the Austrian courts please see: http://ec.europa.eu/civiljustice/jurisdiction_courts/jurisdiction_courts_aus_en.htm

2. Enforcement at the border

- COUNCIL REGULATION (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:196:0007:0014:EN:PDF>
- COMMISSION REGULATION (EC) No 1891/2004 of 21 October 2004 laying down provisions for the implementation of Council Regulation (EC) No 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:328:0016:0049:EN:PDF>
- AUSTRIAN IMPLEMENTING LAW of 4 June 2004 [Bundesgesetz, mit dem ergänzende Regelungen über das Vorgehen der Zollbehörden im Verkehr mit Waren, die ein Recht am geistigen Eigentum verletzen, erlassen werden (Produktpirateriegesetz 2004 – PPG 2004)]
<http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=20003379>
- *Competent authority responsible for administering applications for copyright infringements at borders:*

Zollamt Klagenfurt Villach
Competence Center Gewerblicher Rechtsschutz
Ackerweg 19
A-9500 Villach

Phone: +43 (0) 1 51433 564054
Fax: +43 (0) 1 51433 5964054
E-Mail: ipr@bmf.gv.at

- *Security/equivalent assurance imposed in order to protect the defendant and prevent abuse:*

No security/equivalent assurance imposed in order to protect the defendant and prevent abuse. But applications for action have to be accompanied by a declaration according to Article 6 of Regulation (EC) No 1383/2003.

- *Notification to the importer and the copyright holder of the suspension of the release of the goods by the customs:*

The right-holder and the declarant or holder of the goods (within the meaning of Article 38 of Regulation (EEC) No 2913/92) are immediately informed of customs action. This information includes the actual or estimated quantity and the actual or supposed nature of the goods whose release has been suspended or which have been detained.

- *Time limit for the suspension of the goods by customs authorities:*

There is a time limit of 10 working days. This period may be extended by a maximum of 10 working days in appropriate cases.

- *The competent authorities and the right to order the destruction or disposal of infringing goods:*

The competent authorities have the right to order the destruction or disposal of infringing goods.

- *Customs authorities and copyright infringement cases*

When the customs authorities have sufficient grounds for suspecting that goods infringe an intellectual property right, they may suspend the release of the goods or detain them for a period of three working days.

- *Law and provisions for a de minimis import exception*

Goods are considered to be outside the scope of Regulation (EC) No 1383/2003 where a traveller's personal baggage contains goods of a non-commercial nature within the limits of the duty-free allowance and there are no material indications to suggest the goods are part of commercial traffic.

IV. Public Awareness

As a Member State to the European Union, Austria has implemented the EU-Directive 2004/48/EC on the enforcement of intellectual property rights. Several public-private initiatives aim at consumer education about the value of copyright such as:

<http://www.ideensindetwaswert.at/>

<http://www.saferinternet.at/>

- 1. Awareness campaigns and actions**
- 2. Promotion of legal exploitation**
- 3. Associations and organizations with awareness-raising purpose**
- 4. Best practices**

V. Capacity-building

As a Member State to the European Union, Austria has implemented the EU-Directive 2004/48/EC on the enforcement of intellectual property rights. Several public-private initiatives aim at consumer education about the value of copyright such as:

<http://www.ideensindetwaswert.at/>

<http://www.saferinternet.at/>

1. **Training**
2. **Establishment of specialized units and intersectoral groups**
3. **Best practices**

VI. Other

1. TPM/DRM

Section 90c of the Copyright Act provides for legal protection against the circumvention of technical measures designed to prevent or restrict the use of works or other subject-matter as well as against devices which enable or facilitate the circumvention of such technological measures.

Section 90d of the Copyright Act provides for legal protection against the removal or alteration of any electronic rights-management information and the distribution of copies from which electronic rights-management information has been removed or altered.

2. Licensing schemes

Information not available

3. Optical discs

Information not available

4. Hotlines

Information not available

5. Relevant contacts and links

Authorities:

Federal Ministry of Justice, Unit. I.4.,
Neustiftgasse 2, A-1070 Wien/Austria
Telephone: +43-1-52152-2126
Fax: +43-1-52152-2829
E-Mail: christian.auinger@bmf.gv.at

Enforcement at the border:

Federal Ministry of Finance, Unit V.8,
Hintere Zollamtstrasse 2b, A-1030 Wien/Austria
Telephone: +43-1-51433-504227
E-Mail: post.iv-8@bmf.gv.at

Contact: Mr. Gerhard Marosi
Phone.: +43 1 51433 - 504 227
E-Mail: Gerhard.Marosi@bmf.gv.at

Information on the Ministry's website: <https://www.bmf.gv.at/Zoll/Produktpiraterie/ start.htm>

NGOs

Two Austrian NGOs are specifically dedicated to the fight against copyright piracy:

Verein für Antipiraterie der Film-und Videobranche, Stephansplatz 6, A-1010 Wien
www.vap.cc

Verband der Österreichischen Musikwirtschaft – IFPI Austria, Schreyvogelgasse 2/5
1010 Wien

E-Mail: ifpi@at , www.ifpi.at

Telefon: +431 5356035