Austrian copyright at a glance

by Andreas Foglar-Deinhardstein and Paul Hoffmann, Austria

1. Austrian copyright at a glance

The leading Austrian statute of copyright is the Urheberrechtsgesetz. The constitutional base is laid down in the Austrian Constitution in Article 10, Section 1, clause 6, which vests the regulatory and executive power in the federal authorities.

Under the Austrian law, protection for copyright is granted to original intellectual creations in the fields of literature, music, pictorial art and films. Apart from this, several rights with similar protection exist, as performing rights, rights to photographs, soundcarriers, broadcastings, letters and portraits. Computer programs can be works of literature as defined by the statute.

The courts determine what original intellectual creations are. They must be of a certain qualified standard, that of creative originality.

2. Copyright and autorship

The copyright consists of the right to use the creation and to the protection of its intellectual interests. These rights consist of the right to give out the first information of the contents of the work, the right of translation and adaptation, the rights to copy, to distribute, to publish, to broadcast and to translate the work. Further they include the protection of authorization, the right to be named and acknowledged as author and the protection of creations.

Copyright exists from the date of creation of the work. Registration is neither required nor provided for.

The Urheberrechtsgesetz defines the author as the person who created the work. A person is also named as author to whom the copyright passed after the creators death. If two or more persons create a work which is indivisible, they are co-authors. If they link their different works, they are partial authors. If the creation of one of the authors can be used separately, this criterion will be decisive of the fact that they are not co-authors. A partial author can realize his creation separately from the other. The co-authors have their copyrights only together.

3. Assignments and licenses

The copyright is inheritable and can also be transferred by legacy, but is not transferable by contract. Nevertheless, the author can assign singular rights to other persons. The two forms of assignment are of the right to use the work exclusively and of the license to use the work in a specified manner. Despite this, the copyright belongs to the author.

By a license the author grants other persons the right to use his work. If he grants an exclusive right, he himself is excluded from realizing the assigned right but, in addition to the assignee, he retains the right to pursue infringements of the copyright. If the assigned right ends, the right to realize revives (so called elasticity of the copyright). The right to use the work is inheritable and transferable. It is also possible to dispose of not-yet created works. The acquisition of the right takes place with the perfection of the work.

4. Remedies

Where a copyright is infringed or an infringement is expected, the author and his assignee can apply for an injunction, even when the infringe acted without fault. The plaintiff may move for a court order obliging the defendant to reestablish the lawful prior situation.
The defendant can be compelled to destroy all objects used for the infringement. If the defendant acted culpably, the plaintiff can claim for damages and restitution of profits. The judgment may be published. The employer is liable for infringements made during the course of *business* by his employees.

Infringements made deliberately may result in criminal sanctions. The employer is also liable to punishment if he does not prevent the infringements of his employees. This procedure must be started by the author within six weeks from the point at which he has knowledge of the infringement.

The sentence may be published; confiscation and destruction of items used by the infringer is also provided for.

© Foglar-Deinhardstein & Brandstätter