Questionnaire for the ALAI Study Days 2015 in Bonn

Answers of the Austrian Group of ALAI

(Michel Walter)

Answers in italics

Remuneration for the use of works

Exclusivity v. other approaches

A. Questions in relation to scope and enforcement of exclusive rights under existing law

In many areas, exclusive rights can be exercised and enforced in relation to users either on the basis of license agreements or, in cases of infringements, on the basis of enforcement rules and mechanisms. However, in particular in the internet environment, it may be difficult to identify users, who may be anonymous, so that a license agreement in the first place cannot be concluded and infringements are difficult to pursue. The first set of questions addresses these problematic areas. Since most problems arise in the digital environment, questions focus thereon.

1. How are the following acts covered by the copyright law of your country (statute and case law):

   i. Offering of hyperlinks to works
   ii. Offering of deep links to works
   iii. Framing/embedding of works

Answer: *The Austrian Copyright Act does not explicitly allude to these acts. In jurisprudence the Supreme Court in 2011 held*[1] *that in case of hyperlinking there is no reproduction made in the users's computer and that hyperlinking is not to be regarded as an act of communication to the public. In doctrine, however, deep linking as well as framing is deemed to be communication to the public*[2].

   iv. Streaming of works

Answer: *As to streaming there is no doubt that the active making available of copyright subject matter by means of streaming is dependent upon the author's consent*[3] *However the act of "reception" by the user is to be regarded as covered by the exception in favor of temporary, transient or incidental reproduction under Article 5(1) of the InfoSoc-Directive. However, it is an open question whether this holds true in cases where such streams are made available illegitimately. In my opinion, also in this context, the legitimacy of the source is a prerequisite for the application of this exception, as this is the case in regards*

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1 Supreme Court 20.09.2011 4 Ob 105/11m – „123people/Vorschaubilder/Thumbnails" MR 2011, 313 (*Michel Walter*) = ecolex 2012/29, 64 (*Axel Anderl*) = wbl 2012/38, 105 = RZ 2012/76, 123 (LS) = ÖBl 2012/45, 175 (*Manfred Büchele*).

2 Cf e.g. *Bettina Stomper* und *Michel Walter*.

3 Making available right under § 18a (authors) respectively § 71a (holders of related rights) of the Austrian Copyright Act,

of private copying[4]*.The Austrian Supreme Court inter alia marginally dealt with this question in its order for reference to the ECJ in the case „*kino.to/UPC I*“*[5].

v. Download of works

Answer: It is out of question that the downloading of copyright material is an act of reproduction. However, such act may be permitted under the private copying exemption under article 5(2)(b) of the InfoSoc-Directive, which has been implemented in § 42(4) of the Austrian Copyright Act in 2003.

vi. Upload of works

Answer: The upload of works e.g. to an internet platform is to be regarded as an act of reproduction, which in principle is performed under the uploader's liability.

vii. Supply of a platform for 'user-generated content'

Answer: As far as the supplying of platform is concerned, see the comments below as to host-provider' liability. As to 'user-generated content' containing works of third parties, which have not been created by the 'generating user' him/herself, there is no specific regulation in the Austrian Copyright Act, and, as far as I can see, no jurisprudence so far. If the 'generating user' is an adaptation of preexisting works, depending upon the case, the provision of § 5(2) of the Austrian Copyright Act may apply exempting from the original author's consent cases where the adaptation is enough far away from the original. However, the jurisprudence of the Austrian Supreme Court is rather severe with this regard.

viii. Other novel forms of use on the internet.

2. In cases in which there are practical obstacles to the conclusion of licensing agreements, in particular where multiple individual (end) users do not address right owners before using works (eg, users uploading protected content on platforms like Youtube), are there particular clearing mechanisms? In particular, are license agreements possible and practiced with involved third parties, such as platforms, regarding the exploitation acts done by the actual users (e.g., license agreements with the platform operator rather than with the platform users (uploaders))?

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[4] See ECJ 10.04.2014 C-435/12 – „ACI Adam/Thuiskopie“ MR-Int 2014, 42 *(Michel Walter)* = EuZW 2014, 501 *(Carl C Müller/Sören Rößner)* = ZUM 2014, 573 *(Anne Lauber-Rönsberg)* = ecolex 2014/297, 727 *(LS) (Adolf Zeman)* = MMR 2014, 679 = ÖBl 2014, 232 *(Johannes Burgstaller/Mona Philomena Ladler).*

[5] Supreme Court 11.05.2012 4 Ob 6/12d – MR 2012, 190 *(Michel Walter)* = ecolex 2012/291, 708 *(Axel Anderl)* = wbl 2012/180, 473 = GRUR Int 2012, 934.

Answer: *CMOs in principle are prepared to license platforms rather than users. The Austrian author's societies are aware of the problem, however things are getting settled slowly, since not all platforms are ready to get the material made available by them to the public licensed. As far as I am informed the Austrian authors' society, which manages the rights in musical works, already has concluded a license agreement with YouTube for instance.*

3. a) If there is infringement of copyright, in particular of exclusive rights covering the acts listed under 1. above, and the direct infringer cannot be identified or addressed, does your law (including case law) provide for liability of intermediaries or others for infringement by third persons, namely:
   - for content providers
   - for host providers
   - for access providers
   - for others?

Answer: *In case of infringement, rightholders in the first line tried to sue several content providers (uploaders e.g. active file sharing partners) for copyright infringement. However, this turned out burdensome, because the Austrian Supreme Court held*[6] *that rightholders may not exercise their right to information against access providers though this right is clearly set out in article 8(3) of the Enforcement-Directive*[7] *and explicitly provided for in § 87b(3) of the Austrian Copyright Act. According to the Court's argumentation such information presupposes the storing of personal data in case of dynamic IP-addresses, and such storing should have been provided for explicitly in the Copyright Act or in the Law on Telecommunication, which was (and is) not the case. Until now the Austrian legislator did not fill in this lacuna, which is why the enforcement of copyright still is rather difficult in the internet environment.*

Later rightholders sued access providers for copyright infringement an claimed injunction in arguing that also access providers enabling their clients the access to infringing websites ("kino.to"*) are liable. This procedure led to the ECJ's judgment in the case* „Constantin Film/UPC Telekabel/kino.to"[8] *and further to the Supreme Court's final*

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6 See Supreme Court 14.07.2009 4 Ob 41/09x – „LSG/Tele2/MediaSentry III/Vermittler III" MR 2009, 251 (*Felix Daum*) = MR 2011, 55 (*Stefan Briem*) = ecolex 2009/421, 1072 (Kurzanm *Michael Horak*) = ÖBl 2010, 85 (*Manfred Büchele*) = GRURInt 2010, 345 = jusIT 2009/85, 178 = NLMR 2009, 244 = lex:itec 2009/4, 32 = jusIT 2009/103, 206 (*Zykan*) = SZ 2009/92.

7 See ECJ 19 February 2009 case C-557/07 *LSG/Tele2* 19.02.2009 Rs C-557/07 – „LSG/Tele2" MR 2009, 40 (*Felix Daum*) = MMR 2009 242 = RdW 2009/146, 181 = jusIT 2009, 22, 53 (*Mader*) = GRUR 2009,579 = GRUR Int 2009, 711 = EuZW 2009, 704 = MR 2009, 415 (*Barbist*) = wbl 2009, 180/77 = ecolex 2009, 200 (*Daum*) = ZfRV-LS 2009, 66/16 ff (*Alina Lengauer*) = EuGRZ 2009, 131 = ÖBl-LS 2009/233, 170 (*Manfred Büchele*).

8 ECJ 27.03.2014 C-314 CRi 2014, 48 MR 2014, 82 (*Michel Walter*) = GRUR 2014, 468 (*Jochen Marly*) GRUR Int 2014, 469 = EuZW 2014, 388 (*Harald Karl*) = MMR 2014, 397 = ecolex 2014, 546 (*Arthur Stadler/Stephan Strass*) = ZUM 2014, 494 (*Jan Bernd Nordemann*) = CR 2014, 469 = ZIR 2914, 219 (*Arthur Stadler/Stephan Strass*).

decision in this case[9] *aligning the ECJ's guidelines with the Austrian law on enforcement (*Exekutionsordnung - EO*).*

As to the liability of host providers no specific provision in the law touches upon this question, except for the rules set out in the E-Commerce-Directive[10]*. Not even the question, which activity is to be understood as 'hosting' the content provided by third parties. In my view internet platforms are not deemed to be host providers in this sense, but rather as the persons or enterprises making the copyright content available to the public and hence primarily liable for this activity.*

b) If so, under what conditions are they liable, and for what (in particular, damages, information on the direct infringer, information on the scope of infringement to estimate the amount of damage)?

Answer: *See above – injunction, destruction of infringing copies, information, equitable license fee, damages depending upon the case and taking into consideration the exceptions as laid down in the E-Commerce-Directive. The damages may be computed as lump sum payments (to the amount of double of the equitable license fee/market price) even if there is no damage at all. Immaterial damages may be claimed as well (§ 87 (2) and (3)).*

4. In these cases of infringement, who has standing to sue:
   - the author
   - the exclusive licensee
   - the non-exclusive licensee
   - the employer of the author
   - the CMO that manages the exclusive right?

Answer: *If the author has granted exclusive licenses (*ausschließliche Werknutzungsrechte*), in the first place the exclusive licensee has the standing to sue*[11]*. However, some claims (e.g. for injunction) may be asserted even after having granted exclusive licenses*[12] *by the author as well as by the exclusive licensee.*

To the contrary, non-exclusive licensees have no standing to sue.

Normally the members of CMOs grant exclusive-licenses to their collecting societies, which is why they have the standing to sue. It is, therefore, an open question, whether CMOs have the standing to sue as regards foreign repertory, since under according to the CMO-

9 Supreme Court 26.06.2014 4 Ob 71/14s – „UPC-Telekabel II/kino.to" MR 2014, 201 (*Michel Walter*) = ÖBl 2014, 237 (*Philipp Anzenberger*) = ecolex 2014/375, 8/87 (*Adolf Zeman*) = GRUR Int 2014, 1074 = RdW 2014/715, 650 = EvBl 2015/2.

10 Implemented in the Austrian law on E-Commerce (ECG).

11 § 24 and 26 of the Austrian Copyright Act.

12 § 26 last sentence oft he Austrian Copyright Act.

Directive agreements of reciprocal representation may only provide for non-exclusive licenses.

The employer of the author has the standing only if vested with exclusive licenses by the author. This must not necessarily be performed in writing; to the contrary, licences even may be granted tacitly. However, there is a far reaching presumption in favor of the employer in case of computer programs created by employees.

B. Questions regarding mechanisms to ensure adequate remuneration for creators and performers in their relationship with licensees

If authors and performers exercise their exclusive rights by licensing them to exploitation businesses, such as publishers, the question arises how they best may ensure an adequate remuneration from such licenses.

1. Does your law provide for legal rules, including by case law, on mechanisms for authors and performers to ensure an adequate remuneration in relation to exploitation businesses in the following cases:

   - as a general rule for all kinds of contracts;
   - as regards 'best-seller' situations (i.e., when parties did not presume that the work would become a best-seller);
   - in the case of oppressive contracts;
   - in other cases;

   and if so, under what conditions?

Answer: *There are no specific rules set out in the Austrian Copyright Act. However, according to the Austrian Supreme Court's continued jurisprudence, in case of doubt, the author only confers as much of rights on the licensee as the very purpose of the contract requires (*"Zweckauslegungsregel*" so-called)*[13]*. This is, however, only a rule of construction and must not be confused with the German "*Zweckübertragungslehre*", which is enshrined in § 31(5) of the German Copyright Act and which is to be understood as a corrective of the contract on several conditions.*

It may be worthwhile noting that in doctrine it is discussed, whether the Zweckübertragungslehre *in the strict sense and/or the bestseller-rule may be argued on the grounds of general civil law*[14]*.*

*There are provisions of general character in the Austrian Civil code (*ABGB[15]*), which apply to copyright contracts as well, e.g. § 879* ABGB *concerning contracts* contra bonos

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13 Since the judgment of the Supreme Court 02.06.1981 4 Ob 347/81 – *„Hiob"* ÖBl 1982, 52 = GRUR Int 1982, 138 = Schulze Ausl Österr 81 *(Robert Dittrich)* = UFITA 94 (1982) 372.

14 See *Michel Walter*, Handbuch des Urheberrechts I Rz 1786 et seq.

mores *or § 864a* ABGB *regarding unexpected and disadvantageous provisions contained in General Terms and Conditions*[16].

2. If your law provides for rules as addressed under B. 1. above, does the law determine the percentage of the income from exploitation to be received by authors and performers, or does it otherwise specify the amount of remuneration?

3. Please indicate also whether these mechanisms that are addressed under B. 1. and 2. above are efficient in practice.

C. Questions in relation to statutory remuneration rights

The questions below concern the question of the scope of remuneration rights and their enforcement (which usually takes place through collective management organizations (CMOs)) towards users.

1. In which cases do statutory remuneration rights exist in your country, e.g., public lending rights, resale rights, remuneration rights for private copying, or others (often, they are provided in the context with limitations of rights)?

Answer: There is a series of statutory claims to an equitable remuneration provided for in Austrian law, as there are:

1. According to Union law

- *public lending right (§ 16a of the Copyright Act);*
- *resale right (§ 16b of the Copyright Act);*
- *private copying on other material than paper or equivalent material (§§ 42, 42a, and § 42b of the Copyright Act);*
- *copying on paper or equivalent material (§§ 42, 42a, and § 42b of the Copyright Act);*
- *use made of orphan works, as soon as the authors shows up (§ 56e of the Copyright Act);*
- *broadcasting and communication to the public by means of commercially produced phonograms (article 12 of the Rome Convention respectively § 76(3) of the Austrian Copyright Act).*

2. According to national law

- *some cases of reproduction for one's own (but not necessarily private) use as non-commercial research, specific cases of reproduction by libraries or archives, specific*

15 Allgemeines Bürgerliches Gesetzbuch.
16 Allgemeine Geschäftsbedingungen (AGB).

cases of reproduction by schools and universities (§§ 42, 42a, and § 42b of the Copyright Act);

- *special cases of use by impaired persons (§ 42d of the Copyright Act);*
- *use of audio and audiovisual material in libraries on the spot (§ 56b of the Copyright Act);*
- *public performance of cinematographic works in schools and universities (§ 56c of the Copyright Act);*
- *public performance of cinematographic works in lodging establishments – so-called "bad weather program" (§ 56d of the Copyright Act);*
- *Use of literary and art work for quoting purposes and in reading books for school use and use of musical works in songbooks for school use (§ 45, § 51, and § 54 of the Austrian Copyright Act).*

2. Is there the possibility of obtaining compulsory licenses, and if so, under what conditions and for what categories of works?

<u>Answer</u>*: There is only one case of compulsory licenses provided for in Austrian law according to article 13 of the Berne Convention (§ 58 Austrian Copyright Act).*

However, it must be noted, that CMOs are to grant licenses to all interested users, if there is no specific reason for denying such grant to a particular user[17].

i. For which statutory remuneration rights does your law provide for obligatory collective management?

<u>Answer:</u> *For all statutory remuneration rights mentioned above except for the resale rights according to § 16b of the Austrian Copyright Act.*

ii. For which statutory remuneration rights does your law not provide for obligatory collective management, but in practice, the right is managed by a CMO?

<u>Answer:</u> *As far as the exception mentioned above is concerned (resale right), in practice many artists confer their resale rights on the competent CMO, however, there is a number of exceptions.*

iii. Who has to pay the remuneration regarding each of these statutory remuneration rights – the user, a third person (e.g., a copy shop or a manufacturer

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17 Article 17 of the law on collecting societies *(Verwertungsgesellschaftengesetz - VerwGesG).* See Supreme Court 12.04.2011 4 Ob 222/10s – *„AKM-Aufführungsverbot"* MR 2011, 278 *(Michel Walter)* = ÖBl 2011/44, 184 *(Manfred Büchele)* = RZ 2011/EÜ 167/168, 221 = RdW 2011/504, 476 = SZ 2011/46.

of a copying equipment and devices) or a tax payer (through money allocated from the public budget)?

Answer:

- public lending right: should be paid by libraries, but in practice is paid by the State from the general Budget;
- resale right (in principle the vendor, but the involved persons from the art marked are solidly liable for payment);
- private copying on other material than paper or equivalent material (producers and importers of 'blanc tapes' – sellers on particular conditions are solidly liable for payment);
- copying on paper or equivalent material (producers and importers of copying machines respectively copy shops and educational establishments);
- use made of orphan works, as soon as the authors shows up (benefiting libraries);
- Broadcasting and communication to the public by means of commercially produced phonograms (broadcasting organizations and organizers of public performances).
- some cases of reproduction for one's own (but not necessarily private) use as non-commercial research, specific cases of reproduction by libraries or archives, specific cases of reproduction by schools and universities (the respective establishments);
- special cases of use by impaired persons (the user e.g. publisher);
- use of audio and audiovisual material in libraries on the spot (libraries and archives);
- public performance of cinematographic works in schools and universities (the maintainers of schools and universities);
- public performance of cinematographic works in lodging establishments – so-called "bad weather program" (the lodging establishments);
- Use of literary and art work for quoting purposes and in reading books for school use and use of musical works in songbooks for school use (the maintainers of schools).

iv. How is the tariff / the remuneration for each of these remuneration rights fixed (in particular, by contract, by law, by a Commission, etc.)?

Answer:

- *public lending right: (lump sum payment by the State of Austria);*
- *resale right (the rates are set out in the Austrian Copyright Act in accordance with the Resale Right Directive – implemented on the lowest level);*
- *private copying on other material than paper or equivalent material (General agreement between CMOs and the representative body of importers with the chamber of commerce);*
- *copying on paper or equivalent material (General agreement between CMOs and the representative body of importers and retailers respectively copyshops with the chamber of*

commerce / as to use in schools and universities Agreements with the Federal Ministry of Sience and/or Education etc);

- *use made of orphan works, as soon as the authors shows up (no experience so far);*
- *broadcasting and communication to the public by means of commercially produced phonograms (General agreement between CMOs and broadcasting organizations respectively with the representative body of such organizations [private broadcasting]).*
- *some cases of reproduction for one's own (but not necessarily private) use as non-commercial research, specific cases of reproduction by libraries or archives, specific cases of reproduction by schools and universities (General agreement between CMOs and the representative body of importers with the chamber of commerce);*
- *special cases of use by impaired persons (no experience so far);*
- *use of audio and audiovisual material in libraries on the spot (no experience so far);*
- *public performance of cinematographic works in schools and universities (sort of General Agreement between CMOs and the Federal Ministry of Education, a representative body of universities [*Universitätskonferenz*], the single Austrian States [*Bundesländer*], and the representative body of Austrian Municipalities [*Gemeinden*]);*
- *public performance of cinematographic works in lodging establishments – so-called "bad weather program" (General Agreement respectively decision of a special body that is no more existing after the entering into force of the Austrian Act on CMOs in 2006 – this Agreement is of no practical importance, since there seems to be no interest for this particular exception from copyright protection);*
- *Use of literary and art work for quoting purposes and in reading books for school use and for the use of musical works in songbooks for school use (Agreements between CMOs and the respective maintainers of schools).*
- *In all of these cases there is a particular procedure provided for in the Austrian Act on CMOs of 2006, according to which the copyright senate [*Urheberrechtssenat*] so-called is to decide on the equitable remuneration (tariff) if there is no Agreement between the partners upon request of each party.*

v. Is there supervision of CMOs regarding tariffs, and if so, what are the criteria for supervision?

<u>Answer:</u> *No, there is no direct supervision provided for, but all CMOs are generally supervised by a special authority called "*Aufsichtsbehörde für Verwertungsgesellschaften*" with the Federal Ministry of Justice* [Bundesministerium für Justiz].

CMOs are to publish their tariffs on their website. However, such unilateral tariffs are not binding and may be disputed in court proceedings. In case of General Agreements the tariffs and conditions agreed upon therein are binding for all members of the bodies that

have concluded such Agreements; furthermore agreed upon tariffs as a rule equal the market price, which in principle applies.

vi. What problems exist when right holders assert the statutory remuneration right in relation to users or others who are obliged to pay the remuneration (e.g., a claim is rejected and results in long legal proceedings; those who are obliged to pay in the meantime go bankrupt, etc.)?

Answer: If the claims are rejected by those who are to pay such remuneration court proceedings and/or proceedings with the Urheberrechtssenat *may go to considerable length. This was and still is the case e.g. as regards payments for computer hard-disks under the 'blank tape' levy provision of the Austrian Copyright Act. In principle, however, the ECJ[18] as well as the Austrian Supreme Court[19] already recognized the levy on hard-disks respectively the Austrian system of reimbursement is cases where no use is made for purposes that are not liable for payment. But there are still legal questions and questions of fact to be resolved by courts.*

vii. If problems to assert the remuneration exist, does your law provide for any solutions to these problems (e.g., an obligation to deposit a certain amount in a neutral account)?

Answer: Yes, this is the case according to § 17 of the Austrian Act on CMOs of 2016. However, this holds true only in cases where the amount of money claimed by CMOs (the tariff) is disputed.

D. Mechanisms to ensure adequate remuneration for creators and performers

The questions below address the issue of existing mechanisms, in particular within CMOs, to ensure that authors and performers, also in relation to exploitation businesses such as publishers and phonogram producers, receive an adequate remuneration.

1. In respect of the statutory remuneration rights under your law, does the law determine the percentage of the collected remuneration to be received by particular groups of right owners (e.g., the allocation between authors and producers, among different kinds of authors, performers, and producers, et al.)?

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18 See ECJ 27 June 2013 C-521/11 *austro mechana/Amazon Gesellschaften*[18] [2013] MR 172 (*Michel Walter*) = [2013] ecolex 337, 812 (*Axel Anderl*) = [2013] GRUR 1025 = [2013] GRUR Int 949 = [2013] EuZW 741 = [2013] CRi 632 = [2013] ÖBl 69, 283 = [2013] ZUM 780 = [2013] ZIR 378 (*Sascha Jung/Georg Streit*).

19 Supreme Court 17.12.2013 4 Ob 138/13t – „HP Computer-Festplatten" MR 2014, 21 (*Michel Walter*) = ÖBl 2013/21, 90 (*Roman Heidinger*) = GRUR Int 2014, 402 = ZIR 2024, 149 = RdW 2014/378, 341.

Answer: *In principle, there is no determination of percentages of the different groups of authors, performing artists, producers etc, except for the equitable remuneration granted to performing artists and producers of phonograms in regards of the broadcasting and/or communication to the public by means of industrial phonograms (§ 76(3)of the Austrian Copyright Act), which is distributed 50:50, if not otherwise agreed upon.*

In all other cases there are Agreements between CMOs. If no agreement applies, in principle the Urheberrechtssenat *is not to resolve such problem. In practice often arbitration tribunals are agreed upon.*

As regards the distribution of the proceeds from cable distribution between film authors (and performing artists) on the one hand and film producers on the other, the Austrian Copyright Act provides a rule of distribution, which is rather detrimental for authors and performers in allocating only a third to creators and performers and two thirds to producers (§ 38(1a) of the Austrian Copyright Act).

2. If so, what percentages are fixed by the law? Are these percentages different for different statutory remuneration rights?

Answer: See above no 1.

3. If there are no such legal determinations, how are the percentages or the otherwise fixed distribution keys for the different rights of remuneration determined in practice (in particular, by which decision-making procedures and by whom are these distribution keys determined inside CMOs)? Which percentages are in practice applied?

Answer: See above no 1.

In principle the 50:50 rule (in some cases 60:40 in favor of authors) is applied by CMOs on the grounds of internal decisions. But there are cases, where the percentages are more complex (e.g. as regards the distribution between the different categories of film authors and film performers)

4. If owners of derived rights (such as publishers who derived the rights from their authors) transfer these derived statutory remuneration rights to a CMO, how and on the basis of which agreement is the remuneration distributed between them in this case?

Answer: *In principle CMOs do not take into consideration, who – the author or the publisher – transfers (cedes) the remuneration right to the CMO. The proceeds are distributed according to internal rules of the respective CMO. It may be worthwhile mentioning that already the 'old' Austrian Law on CMO dating from 1936 mentioned in its Explanatory*

Memorandum that publishers may benefit from the income of collecting societies even if they do not own the right in question (e.g. the broadcasting right or the right of communication to the public). The reasoning was that editors in their function as authors' partners in publishing (e.g. books) contribute to the exploitation of the works in question in general and should, therefore, also participate in the proceeds.
The question appears to be of crucial and actual interest against the background of the German Federal Court of Justice's (BGH) *order of suspension of the case* Martin Vogel vs VG Wort and the case "Reprobel"[20] *pending before the ECJ.*

5. Which mechanisms of supervision exist in your country to control the distribution keys applied by CMOs, if any?

Answer: *As already mentioned, the Austrian* Aufsichtsbehörde für Verwertungsgesellschaften *in general controls the activities of CMOs. This authority must be informed about (new) schemes of distribution.*
The schemes may be disputed in court proceedings. However, there is no large experience so far.

E. Questions on new business models and their legal assessment

1. Which new business models do you know in your country in respect of the supply of works via the internet?

   Please list such business models, such as Spotify, Netflix, etc., and describe them briefly.

2. Which of these business models have raised legal problems, which are, or have been, dealt with by courts? If there have been problems, please describe them and the solutions found

3. In your country, are there offers that are based on flat rates, 'pay-per-click' or on other micro-payment models? Please indicate how popular (frequently offered or used) each of these models is.

4. Within these business models, how do authors and performers get paid?

20 See case C-572/1 – „*Hewlett-Packard Belgium/Reprobel*" and the opinion of the General Advocate *Pedro Cruz Villalón* dated 11 June 2015.

Answer: Please refer to the Answers of the German Group of ALAI. The situation in Austria is comparable.

Please send your completed questionnaire to elisabeth.amler@ip.mpg.de by 15 March 2015