

# Implementing directives the Austrian way

Werner Richter

When the Digital Single Market (DSM) Directive was passed in the European Parliament, many of us all over Europe had high hopes that our national ministries of justice would perform well—after all, the necessity to implement the directive provided an excellent opportunity to modernize and improve existing copyright law. In Austria for instance, the last substantial copyright reform had been decades ago, so artistic/cultural associations in this country saw an open door (or, at least, light at the end of the tunnel) and soon united to form *Initiative Urheberrecht* ('The Copyright Law Initiative'). We managed to bring all genres and fields together (film, music, literature, visual arts, theatre), and were quick to agree on a joint statement putting forth our main expectations from a modern and author-friendly copyright law.

## Battle lines

Then, after a government upheaval, we got a conservative/Green government that even put 'fair remuneration for artists' in their programme. And although the pandemic certainly shifted the focus to other political issues, there

was still some hope for an artist-friendly interpretation of the directive, as both the ministries of justice and cultural affairs had landed in Green hands. Then again, the Greens are often on the side of 'cyberculture' whose freebie attitude is somewhat at odds with artists asking for fair remuneration for the use of their works. Still, it felt better than once again having a minister from the conservative side stonewalling our demands for decades in the interest of 'the economy', i.e. commercial producers.

However, our initial impression was that the responsible officials had good intentions, which must have been on the instructions of the minister (a really competent woman and the first Austrian minister from an immigrant background, itself news to Austrian politics). The Ministry of Justice opened the debate with plenary meetings to assemble all the stakeholders, i.e. representatives of the creative professions and of the exploiters/producers of artistic output. Plus their lawyers, I should add, though we have some legal counsel on our side as well, fortunately. Soon enough the battle lines became evident. The

producers (especially the movie and music businesses, the radio stations and to a lesser extent art galleries and publishers) as well as the libraries (!) were most vociferous in calling for minimum implementation of the directive and rejected ‘gold-plating’, their term for better conditions for artists than the DSM asked for.

When our Initiative made negotiation offers, the producers turned us down, but behind the scenes they must have exerted considerable pressure on the ministries since the recently published proposal for a new copyright act is far below our expectations—and also much less favourable to artists’ demands than some of what was previously discussed in the plenaries. The Initiative (and all member associations individually) have been (and still are) very active in getting that proposal changed and improved, with the cultural department seemingly giving us some support, but the latest government crisis has been putting every prognosis into the realm of crystal-ball reading.



*‘Only fair funding will lead to fair pay’  
Photo: Hanneke van der Heijden*

Our main complaints with the currently planned copyright act are as follows:

- The central demand of **Adequate Remuneration** for creative output (phrased in Article 18 of the DSM directive) is allowed to be ‘subject to contractual agreement’ (according to Austrian proposal §37f), i.e. any contract can now state that §37b (on fair remuneration) shall not be applied, and poof goes the fairness. What’s more, many translators (or other artists, for that matter) won’t even notice because who will look up copyright law to check what §37b is actually about?
- The **Transparency Obligation** (Art.19 of the DSM-D), i.e. the right to information on the revenues generated by our work, is not enforceable because of a sweeping exception clause (Austrian proposal §37d: no obligation to inform if such information ‘is disproportionate for other reasons’).
- There are no provisions for **Collective Action**/collective bargaining (cf. Recital 73 of the DSM-D).
- A so-called ‘**Bagatelle Boundary**’ (minimum claims limit) for online excerpts (less than 15 secs of music, 160 characters of text, 250kB of image data) does not require permission—good for quotations, also for parody etc.—but it doesn’t establish any entitlement to remuneration either. The new German copyright law, on the other hand, does speak of ‘adequate remuneration’ here!
- Overall, the German implementation of the directive, though far from perfect, is a lot better than the Austrian proposal in numerous cases, in particular in those instances where the German law provides for remuneration, while the Austrian does not:
  - compensation for online uses

directly from platforms

- compensation for uses for the purpose of online citations, parody, caricature, pastiche
- compensation for the above minimum uses on online platforms.

Other creative genres have other axes to grind with the proposed copyright act, but I have stuck to those points that concern us, literary translators, most acutely.

### A foot in the door

Currently (end of October) various associations of ‘creative workers’ as well as *Initiative Urheberrecht*, acting as their umbrella organization, have sent their position statements to the ministries and to the parliament website, and the Initiative has also had a meeting in person with the two ministries and their staff, bringing along three (in Austria) well-known movie actors who supported the artists’ demands—a good way of trying to get the attention of the mass media.

**“Our expectations are far from great...”**

The message of the (Green) minister was that the other party (conservatives) would not allow too much improvement of copyright law (because this runs counter to the interests of the ‘creative industries’, i.e. commerce) but that at least we’d have a foot in the door for future changes.



**Artists in Austria demand fair remuneration**  
**Photo: Hanneke van der Heijden**

We all have been active by supplying arguments in favour of our positions to the ministries, and my own association of translators (*IG Übersetzerinnen Übersetzer*) called out to all our international allies, such as FIT, CEATL, and EWC, all of which have reacted at short notice—which has really reassured me about the professionalism of those organizations, all of which are largely dependent on voluntary work. We’re very grateful for all the support! Previous campaigns in the interest of artists’ rights have sometimes been of an activist nature, with writers, painters and musicians marching through the city centre (along the Ringstraße, one of the main avenues in Vienna) dressed as hospital patients, carrying a stretcher with ‘ailing art’ on it, complete with IV drip and bloody bandages. We’ll see what the collective power of imagination will bring forth this time – and keep you posted if it’s an idea worth copying.

At any rate, the next step will be the presentation of the proposal



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**Photo: P.P. Wiplinger**

to Parliament by the judiciary committee, to be voted upon most likely before the end of this year. And our expectations are far from great...

**“We all have been [...] supplying arguments in favour of our positions to the ministries”**

#### **Addendum end of November 2021**

The proposed bill seems to be heading for the Justice committee without much discussion in Parliament. The usual evaluation procedure has been skipped, and any criticism at this high-handed approach is met with remarks of annoyance. Obviously, ‘the industry’ (i.e. the film and music producers) have had their say, and the conservatives dictated a minimum implementation of the EU directive. So they just did what they had to do, which is still better than what we had, but so much for the opportunity to make a copyright law that would have strengthened the position of creators.