[AT] Arbitration Committee Decides on Rules for Compulsory Licence for Specific Public Film Broadcasts

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The 1996 amendment to the Copyright Act (which came into force on 1 April 1996) introduced the following compulsory licence of Section 56d, para.1 into Austrian copyright law: "Accommodation undertakings may publicly broadcast cinematographic works for their guests on conditions that: 1. at least two years have passed since the film was first shown either in Austria or in the German language or in a language of one of the recognised ethnic groups in Austria; 2. an image or sound carrier produced commercially [commercialised in a Member State of the European Community or the European Free Trade Association with the consent of the entitled party] is used; and 3. no charge is made to viewers." Paragraph 2 states further that the copyright-holder may claim equitable remuneration from the performing rights society in respect of such public performances. For cinematitographic products (films), Section 56d applies by analogy.

The spiritual father of this compulsory licence is the Austrian tourist trade lobby: on the one hand Austrian accommodation undertakings are instructed to offer the possibility of video viewing (this argument has led to the nickname of "the bad weather channel"), while on the other they are not in an economic position to acquire the necessary rights on the market to the required extent. National and foreign critics of this compulsory licence claim that it is contrary to the Berne Convention and the TRIPs Agreement.

Negotiations between the public-sector professional organisation of accommodation undertakings (specialist union of the Austrian Chamber of Commerce for the hotel industry) and the relevant performing rights authorities on the conclusion of a comprehensive contract broke down for lack of agreement on the amount of remuneration. The specialist union for the hotel industry called moreover for rules to be drawn up by the new arbitration committee on the basis of performing rights legislation.

The main features of the rules published by the members of the arbitration committee in the official announcements column of the Wiener Zeitung are as follows: The monthly remuneration for the public performances described above amounts, according to the number of beds in the accommodation undertaking, to between ATS 415.00 and 4 200.00 (fixed value, but plus turnover tax); for

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performances using a central player unit the contributions may be increased according to the number of channels. The remuneration is payable per calendar month in which the accommodation undertaking makes use of the compulsory licence. The accommodation undertaking must always notify the beginning of use (by transmitting the information needed for deciding the rate payable) and any later changes in such use; in addition, it must give details within six weeks of the end of the calendar year of the titles of videos and films shown in the course of the previous year.

The rules are retroactive to 1 April 1996; the first notifications of use were to be notified by 1 September 1997.

Schiedskommission gemäß § 14 Verwertungsgesellschaftengesetz / Bekanntmachung (Amtsblatt zur "Wiener Zeitung" vom 14. August 1997, Seite 22)

Arbitration Committee in accordance with Section 14 of the Performing Rights Act / Notification (announced officially in the "Wiener Zeitung" of 14 August 1997, p.22

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