



4. Country summaries

4.1. AT – Austria²⁷

4.1.1. Key findings

Notions	Existence of definitions/rules
Independent production	Yes
Independent producer	Yes
Legal provisions concerning the transfer or cession of authors'/performers' rights to the producer (e.g. legal presumption, etc.) (Relationship author-producer)	Yes ²⁸
Specific rules related to the assignment or retention of IPR by independent producers (Relationship independent producer-AVMS)	Yes – in Fund Guidelines ²⁹

- The concept of the independent producer of audiovisual works is related to the ownership of the production company as well as of the exploitation rights over the works, the control of the production and the number of programmes delivered to one and the same media service provider.
- In contrast, a producer of audiovisual works is not considered to be independent when a single media service provider participating in the financing of the works holds (directly or indirectly) more than 25% of the production company's shares or voting rights. In the case of joint financing, this percentage should not exceed 50%.

²⁷ The summary on Austria incorporates feedback received from Stefan Rauschenberger, director of the Legal Department at Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH) during the checking round with the national regulatory authorities.

²⁸ According to paragraph 38(1) UrhG (Federal Law on Copyright in Works of Literature and Arts and on Related Rights, in the current version of the Federal Gazette I No. 244/2021) unless otherwise agreed, the author of an audiovisual work is deemed to grant the producer the exclusive right to use the work, including the rights to translation and adaptation. These exclusive rights may be licensed to broadcasters. See <https://www.wipo.int/wipolex/en/text/586610> and Section 6.1.2.2 of the mapping report on national remedies against online piracy of sports content, European Audiovisual Observatory, Strasbourg 2021, available at: <https://rm.coe.int/mapping-report-on-national-remedies-against-online-piracy-of-sports-co/1680a4e54c>.

²⁹ Provided as an addition to the questionnaire shared by the national expert.



- The Austrian funding scheme rules provide for a maximum duration within which an independent producer can license his/her exploitation rights to a broadcaster.
- Broadcasters participating in financing the overall production costs of an audiovisual work may acquire exploitation rights to the work in question which are limited in terms of time, region and dissemination means.
- According to the guidelines of the Austrian Television Fund, in the case of television broadcasters the assignment of exploitation rights may cover a period of five (5) or seven (7) years for the respective broadcasting region and dissemination mode. In the case of pay-TV channels, the conditions of the assignment depend on the industry and market customs.
- According to the FISA Funding Scheme (for films), media service providers participating in financing the overall production costs of a film may acquire exploitation rights covering a maximum period of seven (7) or ten (10) years in the case of a multi-part production. After the first publication of the work, providers may acquire further exploitation rights.

4.1.2. National definition of independent producer/ independent production

Legislation	Summary of the measures
<p>Article 27 (2) of the Federal Act on the establishment of an Austrian Communications Authority (<i>KommAustria-Gesetz</i>)³⁰</p> <p>Article 11 (2) of the Federal Act on the Austrian Broadcasting Corporation (<i>ORF-Gesetz</i>)³¹</p> <p>Federal law to strengthen and internationalise Austria as a film location (<i>Bundesgesetz zur Stärkung und Internationalisierung des Filmstandortes Österreich (Filmstandortgesetz 2023)</i>)³²</p> <p>Guidelines of the Austrian Television Fund 2023 (<i>Richtlinien über die Gewährung von Mitteln aus dem FERNSEHFONDS AUSTRIA</i>)³³</p>	<p>A producer of audiovisual works is considered to be independent when (s)he meets the following criteria:</p> <ul style="list-style-type: none"> - (s)he has ownership of the production company as well as of the exploitation rights to the work; - (s)he has control over the production; - (s)he has financial independence from the television broadcasters. <p>In contrast, a producer is not considered independent when a television broadcaster participating in the funding of the production in question holds a majority share in the production company. A majority share is presumed to exist:</p> <ul style="list-style-type: none"> - when a single media service provider holds (directly or indirectly) more than 25% of the production company's shares or voting rights; or - when two or more media service providers jointly hold more than 50% of the company's shares or voting rights. <p>One or more indirect participations in a production with a share that exceeds 25% or 50% at each level will be</p>

³⁰<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001213>

³¹<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000785>

³²<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20012140>

³³https://www.rtr.at/medien/was_wir_tun/foerderungen/fernsehfonds_austria/Richtlinien/Veroeffentlichung/en/richtlinien_2023.de.html



Article 3 (3)(1) of the Guidelines of the FISA Funding Scheme (<i>Filmstandort Austria</i>) ³⁴	considered as direct participations of more than 25% or 50%, thus as participations based on a majority share.
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4.1.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
<p>Article 4(2) of the Guidelines of the Austrian Television Fund (2023)</p> <p><i>(Richtlinien über die Gewährung von Mitteln aus dem FERNSEHFONDS AUSTRIA)</i>³⁵</p> <p>Article 9 (6)(4) of the FISA+ Funding Guidelines (<i>Filmstandort Austria</i>)³⁶</p>	<p>According to Article 4(2) of the Guidelines of the Austrian Television Fund, broadcasters participating in financing the overall production costs of an audiovisual work may only acquire rights which are limited:</p> <ul style="list-style-type: none"> - to a period of no more than five years and, with multi-part productions, no more than seven years; - to the intended broadcasting region of the respective television broadcaster; and - with respect to the content or subject matter <ul style="list-style-type: none"> (a) to free TV or (b) to live streaming (within the framework of integrated retransmission of the broadcaster's channel over the internet) and (c) to catch-up TV offered in the form of free video-on-demand no earlier than seven days before and no later than 90 days after the broadcast. <p>Pay-TV channels which participate in financing the total production costs may acquire pay-TV rights for corresponding areas and periods on the basis of conditions customary in both the industry and the market.</p> <p>According to Article 9 (6)(4) of the Guidelines of the FISA+ Funding Scheme, media service providers participating in the financing of the total production costs of a film may acquire exploitation rights limited to:</p> <ul style="list-style-type: none"> - a maximum of seven (7) years, or - a maximum of ten (10) years in the case of a multi-part production. <p>After the first publication of the work, providers may acquire further exploitation rights.</p>

³⁴https://api.fisaplus.com/fileadmin/user_upload/MediaLibrary_ABAFILM/Dokumente/FISA_Richtlinien_1.1.2023_final.pdf

³⁵https://www.rtr.at/medien/was_wir_tun/foerderungen/fernsehfonds_austria/Richtlinien/Veroeffentlichungen/richtlinien_2023.de.html

³⁶https://api.fisaplus.com/fileadmin/user_upload/MediaLibrary_ABAFILM/Dokumente/FISA_Richtlinien_1.1.2023_final.pdf