



6. Country reports

This section outlines the national legal summaries of each European country, based on the generalised questionnaire distributed.

6.1. AT – Austria – National legal summary³⁵⁴

6.1.1. General legal framework

6.1.1.1. National legislation on copyright³⁵⁵

In Austria, the Copyright Act (*Bundesgesetz über das Urheberrecht an Werken der Literatur und der Kunst und über verwandte Schutzrechte (Urheberrechtsgesetz –UrhG)*)³⁵⁶ is the general act that regulates the scope and the enforcement of copyright and related rights.³⁵⁷

³⁵⁴ The country report on Austria incorporates the feedback received from Thomas Rainer Schmitt (Supervisory Authority for Collective Management Organisations) during the checking round with the national competent institutions.

³⁵⁵ The information contained in this country report is based on the data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

³⁵⁶ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001848>.

³⁵⁷ It is worth noting that the Austrian concept of *Urheberrecht*, as a subjective right, is not fully synonymous with the concept of copyright, but has a narrower scope, describing the non-transferrable relationship of the author to their work. Possible exploitation rights and other norms that are encompassed by the term copyright, as well as questions determining the content, scope, transferability and consequences of infringement of such rights, build on this concept of *Urheberrecht* as a subjective right. However, all of this is considered to be encompassed by the legal scope of *Urheberrecht* which is comparable to the scope of copyright at large.



Other relevant legislation concerning the enforcement of copyright includes:

- The Austrian E-Commerce Act (*Bundesgesetz, mit dem bestimmte rechtliche Aspekte des elektronischen Geschäfts- und Rechtsverkehrs geregelt werden (E-Commerce-Gesetz - ECG)*)³⁵⁸
- The Austrian Access Control Act (*Bundesgesetz über den Schutz zugangskontrollierter Dienste (Zugangskontrollgesetz – ZuKG)*)³⁵⁹
- The Austrian Exclusive Rights for Broadcasting Act (*Bundesgesetz über die Ausübung exklusiver Fernsehübertragungsrechte (FernsehExklusivrechtgesetz – FERG)*)³⁶⁰
- The Austrian Media Act (*Bundesgesetz vom 12. 6. 1981 über die Presse und andere publizistische Medien (Mediengesetz – MedienG)*)³⁶¹
- The Austrian Audiovisual Media Act (*Bundesgesetz über audiovisuelle Mediendienste (Audiovisuelle Mediendienste-Gesetz – AMD-G)*)³⁶²
- The Austrian Act on Collective Management Organisations (*Bundesgesetz über Verwertungsgesellschaften (Verwertungsgesellschaftengesetz 2016 – VerwGesG 2016)*).³⁶³
- The Austrian Anti-Piracy Act (*Bundesgesetz, mit dem ergänzende Regelungen zur Durchsetzung der Rechte geistigen Eigentums durch die Zollbehörden erlassen werden (Produktpirateriegesetz 2020 – PPG 2020)*).³⁶⁴

In Austria, copyright infringement is considered mainly as a civil law violation; however, the Copyright Act also provides for a criminal liability and specific procedural remedies for copyright infringements in certain cases which affect the exploitation rights of the copyright owner (§§ 91–93 UrhG).

If the infringement is committed for commercial purposes, repeatedly and for profit, § 91 paragraph 2a UrhG and § 70 of the Austrian Criminal Code provide for a more severe punishment. In cases where criminal liability is applicable, imprisonment and fines can be applied. Under § 91 UrhG and § 19 of the Austrian Criminal Code, the fine is calculated to cover the daily income of up to 360 days (with a daily rate between EUR 4 and EUR 5 000).

³⁵⁸ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001703>.

³⁵⁹ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20000792>.

³⁶⁰ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001413>.

³⁶¹ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000719>.

³⁶² <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001412>.

³⁶³ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009532>.

³⁶⁴ <https://www.ris.bka.gv.at/NormDokument.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010791&FassungVom=2021-05-13&Artikel=&Paragraf=0&Anlage=&Uebergangsrecht=>.

6.1.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

The Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)³⁶⁵ has not been transposed to date (as at August 2021).

Table 12. Regulatory framework

EU directive	National law
DSM Directive	N/A
Intellectual Property Rights Enforcement Directive (IPRED)	2006 Austrian Copyright Amendment Act (<i>Bundesgesetz, mit dem das Urheberrechtsgesetz geändert wird (Urheberrechtsgesetz-Novelle 2006 – UrhG-Nov 2006)</i>)
Information Society (InfoSoc) Directive	2003 Austrian Copyright Amendment Act (<i>Bundesgesetz, mit dem das Urheberrechtsgesetz geändert wird (Urheberrechtsgesetz-Novelle 2003 - UrhG-Nov 2003)</i>)
E-Commerce Directive	Austrian E-Commerce Act (introduced by the Austrian Act to Regulate E-Commerce) (<i>Bundesgesetz, mit dem bestimmte rechtliche Aspekte des elektronischen Geschäfts- und Rechtsverkehrs geregelt werden (E-Commerce-Gesetz - ECG)</i>) on the aspects of electronic commerce and legal transactions in cooperation with other states
Conditional Access Directive	Austrian Access Control Act (<i>Bundesgesetz über den Schutz zugangskontrollierter Dienste (Zugangskontrollgesetz - ZuKG)</i>) on the legal protection of service providers, providing television broadcasting, radio broadcasting, or other paid for or access controlled services.

Source: Austrian response to European Audiovisual Observatory standardised survey

6.1.2. National rules applicable to audiovisual sports content

6.1.2.1. Legal definitions of “broadcaster” and “sports event organiser”

In Austrian law, the definition of the term “broadcaster” (*Fernsehveranstalter*) is provided by § 2, No. 17 of the Austrian Audiovisual Media Act, as follows:

an entity that creates, compiles and distributes television programmes (analogue or digital) for distribution in cable and other electronic communications networks, by satellite

³⁶⁵ Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.



or by wireless terrestrial means or has them distributed in full and unchanged by third parties [... however] a broadcaster is not an entity that exclusively rebroadcasts television programmes.

There is no legal definition of “sports event” or “sports event organiser” in Austrian law.

6.1.2.2. Legal protection related to sports events

Austrian copyright law contains special provisions concerning organisers of a (sports) event. Namely, according to § 72 UrhG, all event organisers have primary exploitation rights in the respective broadcast of the event. The organiser who has arranged the performance shall have the exclusive right, in addition to the performer, to record the performance on a visual or sound carrier and to make the performance available to the public, to broadcast the performance by radio, unless the broadcast is made by means of a video or audio carrier produced and distributed with his/her consent; and to reproduce the performance in public by means of loudspeakers or any other technical device outside the place where it takes place, unless the reproduction is made by means of a video or sound carrier produced and distributed with his/her consent or by means of an authorised radio broadcast.³⁶⁶

Where applicable, the organiser is entitled to take legal action in case of infringement of his/her exploitation rights (e.g. the organiser can claim appropriate remuneration pursuant to § 86 (1) 3).

³⁶⁶ *Schutz des Veranstalters – § 72. (1) Der Veranstalter, der die Darbietung angeordnet hat, hat mit den von diesem Bundesgesetz bestimmten Beschränkungen neben dem ausübenden Künstler das ausschließliche Recht, 1. die Darbietung auf einem Bild- oder Schallträger festzuhalten und die Darbietung der Öffentlichkeit zur Verfügung zu stellen, 2. die Darbietung durch Rundfunk zu senden, es sei denn, dass die Sendung mit Hilfe eines Bild- oder Schallträgers vorgenommen wird, der mit seiner Einwilligung hergestellt und verbreitet wurde, und 3. die Darbietung durch Lautsprecher oder durch eine andere technische Einrichtung außerhalb des Ortes (Theater, Saal, Platz, Garten u. dgl.), wo sie stattfindet, öffentlich wiederzugeben, es sei denn, dass die Wiedergabe mit Hilfe eines Bild- oder Schallträgers, der mit seiner Einwilligung hergestellt und verbreitet wurde, oder mit Hilfe einer zulässigen Rundfunksendung vorgenommen wird.*

(2) Ohne Einwilligung des Veranstalters hergestellte oder verbreitete Bild- oder Schallträger dürfen zu einer Rundfunksendung oder öffentlichen Wiedergabe der Darbietung nicht benutzt werden.

(3) Ob gegenüber dem Veranstalter von Darbietungen die Verpflichtung besteht, daran mitzuwirken und eine Verwertung zu gestatten, ist nach den das Rechtsverhältnis der Mitwirkenden zum Veranstalter regelnden Vorschriften und Vereinbarungen zu beurteilen. Hiernach richtet sich auch, ob einem Mitwirkenden ein Anspruch auf ein besonderes Entgelt gegen den Veranstalter zusteht. In jedem Fall hat der Veranstalter, mit dessen Einwilligung eine Darbietung festgehalten werden soll, hievon die Mitwirkenden, auch wenn sie zur Mitwirkung verpflichtet sind, vorher auf angemessene Art in Kenntnis zu setzen.

(4) Die Verwertungsrechte der Veranstalter erlöschen fünfzig Jahre nach der Darbietung, wenn aber vor dem Ablauf dieser Frist eine Aufzeichnung der Darbietung veröffentlicht wird, fünfzig Jahre nach der Veröffentlichung. Die Fristen sind nach § 64 zu berechnen.

(5) Im Übrigen gelten für die Verwertungsrechte des Veranstalters nach Abs. 1 die für die Verwertungsrechte des ausübenden Künstlers geltenden Bestimmungen entsprechend.



However, mere sport performances do not usually meet the standard of a protected performance, and therefore sports event organisers will only occasionally benefit from the protection of § 72 UrhG. This might be different in the case of, e.g. figure skating, where choreography is used to convey emotions as well.

Most relevant in relation to sports events is the protection granted to the producers of static or moving pictures (e.g. photographers of football stars) who also benefit from “ancillary” (or related) rights (*Leistungsschutzrechte*) over that content, pursuant to § 74 UrhG. These rights encompass the rights to reproduction, communication to the public, broadcasting, or other dissemination. Furthermore, in the case of broadcasting, the broadcaster holds exclusive rights over the signals, such as the right to record the broadcast or the right to communicate the broadcast to the public (e.g. public viewing), pursuant to § 76a UrhG. These rights are not in conflict with any other special provisions, as outlined below, that may apply in addition to the above.

Beyond this, audiovisual recordings of sports events and live broadcasts of the same can fall under the protective umbrella of copyright law per se. In fact, although sports performances or events are not protected per se by copyright, the audiovisual content of sports performances or events may be considered as works and benefit from copyright protection, if they meet certain minimum standards of idiosyncrasy, such as the use of camera work, video repetitions, etc.³⁶⁷ In this case, the audiovisual recording itself is protected as an object of copyright, and consequently copyright is assigned to the natural person(s) responsible for it. The copyright holder is granted a set of exploitation rights (*Verwertungsrechte*) that are similar to the related rights mentioned above (e.g. including rights of reproduction, dissemination or broadcast). However, pursuant to the legal presumption of § 38 UrhG, relevant rights of use regarding films are considered to be transferred to the producer in the case of a commercially produced audiovisual medium. These exclusive rights may be licensed to the broadcasters.

6.1.2.3. Other specific rules applicable to sports events

No other specific rules are applicable to sports events, as far as the enforcement of copyright and related rights is concerned. No specific rules are provided under Austrian law concerning the use of sports content in social media.

³⁶⁷ See the ruling of the Austrian Supreme Court in OGH – 4 Ob 208/15i – 7.1.2016, and 4 Ob 184/13g – 17 December 2013.

Table 13. Definitions of the main concepts relating to audiovisual sports events

Concept	Existence of a definition	Relevant rights ³⁶⁸
Broadcaster	Yes, paragraph 2 No. 17 of the Austrian Audiovisual Media Act	Related rights
Sports event organiser	No	Exploitation rights including broadcasting rights provided that the event shows the interpretation of a work (e.g. figure skating) or the organiser is also the photographer/record producer/broadcaster or has licensed the respective rights

Source: Austrian response to European Audiovisual Observatory standardised survey

6.1.3. Remedies and sanctions applicable in the event of infringement

6.1.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

Sanctions, remedies and injunctions are granted in case of breach of rights under the Copyright Act. As the InfoSoc Directive and the IPRED 2004/48/EC have been transposed into the Copyright Act, these standard measures also apply to online infringement of audiovisual sports content.

The Copyright Act allows claims for the following: cease and desist and removal (§§ 81 and 82 respectively); publication of an adverse court verdict (§ 85); appropriate remuneration (§ 86); damages and absorption of profit (§ 87) and in connection to this accounting information (§ 87a); and information with respect to potential intermediaries and logistical channels of distribution (§ 87b). All of these claims, with the exception of the last two and the claim for publication of an adverse court verdict, can be secured by means of a preliminary injunction (§ 87c).

Furthermore, when access to sports content distributed as a television broadcast, radio broadcast or via an information society service is protected and subject to payment,

³⁶⁸ A definition of the producer of static or moving pictures is provided in paragraph 74(1) of the Austrian Copyright Act. He/she holds exploitation rights including broadcasting rights.



such content falls within the definition of a protected service within the meaning of § 2, No.2 of the Austrian Access Control Act. The civil law sanctions and remedies provided under §§ 5–9 of the Austrian Access Control Act are therefore applicable to such content, as follows: (i) an order to cease and desist the infringing behaviour; (ii) disposal or elimination of unlawful status, e.g. by elimination/destruction of technology used to circumvent access control; (iii) payment of damages and absorption of profits unlawfully gained; (iv) provision of accounting information; (v) a preliminary injunction.

Also, §§ 10–12 of the Austrian Access Control Act provide for additional criminal sanctions and remedies, in particular: (i) imprisonment and fines; (ii) confiscation of technology used to circumvent access control.

In general, all sanctions and remedies outlined above are applicable in principle and could be invoked in cases concerning online piracy of audiovisual sports content.

6.1.3.2. National bodies with competences on copyright enforcement

There is no national authority (e.g. administrative body) other than judicial bodies with competences to address copyright infringement in Austria. Disputes over Austrian copyrights are under the competence of Austrian courts.

6.1.3.3. Codes of conduct and Memorandums of Understanding

No codes of conduct or Memorandums of Understanding have been adopted at national level by public and/or private entities with regard to the enforcement of intellectual property rights and the fight against online piracy.

6.1.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

Pursuant to § 81 of the Copyright Act, the rightsholder may request a cease and desist order by the competent court against the alleged infringer and possible intermediaries. However, if the intermediary is privileged by virtue of §§ 13–18 of the E-Commerce Act (e.g. in cases of caching, hosting, search engines, etc., the Act being generally applicable to access and hosting providers but not to content providers), a warning/notice must be issued first.

6.1.3.5. Removal and blocking orders

Non-copyright specific remedies apply, in accordance with §§ 379 and 381 of the Austrian Injunction and Enforcement Code (*Exekutionsordnung*). In addition, paragraph 87c UrhG

allows for preliminary (or “temporary”) injunctions³⁶⁹ in copyright matters that can be granted to secure (a) the claim and (b) relevant evidence with respect to said claims.

Injunctions can be granted to achieve a (temporary) cease and desist order, or to secure monetary claims. Requirements for injunctions are eased in the case of infringement for commercial (i.e. repeated, profit-driven) purposes.

Blocking injunctions are covered under standard cease and desist procedures. Dynamic blocking injunctions (in a broad sense) are possible under Austrian law. Austrian courts have recognised the principle of “outcome prohibition” (*Erfolgsverbot*). When applying this principle, the courts oblige the infringing party to achieve a compliant result but do not specify the measure(s) they need to undertake, which can concern content that is merely “similar”.

As regards the relevant procedure to request removal and blocking orders according to § 81 UrhG, the rightsholder may request a cease and desist order by the competent court against the infringer and possible intermediaries, if there are any. Such claims can be supported with a corresponding preliminary blocking injunction pursuant to § 87 UrhG against the internet access provider. The Austrian Supreme Court has found that there is no legal basis for requesting certain specific measures (such as Internet Protocol (IP) blocking), but that the injunction may impose the aforementioned “outcome prohibition” (*Erfolgsverbot*).

Austrian courts have recognised that competing legitimate interests (such as legal access to information on a website that may be blocked) and the realistic ability of the infringing party to correct the infringing state or behaviour must be considered. With respect to the above, no case law has been detected at the time of writing that concerns online piracy of audiovisual sports content, but these principles remain applicable to such matters.

In order to achieve a preliminary (blocking) injunction, the infringed party must submit an appropriate request that outlines (1) a substantiated set of facts that give rise to the claim that is to be secured; (2) the risk to the claimant due to the alleged infringer’s behaviour; (3) the type of injunction sought (e.g. a blocking injunction); and (4) the duration of the injunction sought. Pursuant to § 87c paragraph 3, the risk necessitating the preliminary injunction does not need to be further substantiated. The infringing party can delay the preliminary injunction via an “impugnation filing” (*Impugnationsklage*) claiming it has taken all adequate measures to prevent infringement.³⁷⁰

From a procedural point of view, §§ 378 and following of the Austrian Injunction and Enforcement Code (*Exekutionsordnung*) with respect to requests for a cease and desist

³⁶⁹ A preliminary injunction is a court order made in the early stages of a lawsuit or petition which prohibits the parties from performing an act which is in dispute, thereby maintaining the status quo until there is a final judgment after trial.

³⁷⁰ Austrian Supreme Court Case OGH – 4 Ob 71/14s – 24 June 2014.



order applies to such proceedings. In the case of a preliminary injunction ordered before the starting of an ordinary proceedings, the court will also set a deadline for the infringed party to file a respective lawsuit.

6.1.3.6. Measures against end-users

Internet access can be blocked with respect to certain domains by the internet access provider for all of its customers. Publicly available information suggests that suspension or blocking of individual internet access is not done in Austria at this time.

It is also to be noted that the lack of traffic data that is available to the infringed party limits opportunities to pursue potential remedies. In fact, access providers are not allowed to collect or disclose traffic data in case of an information request based on a suspicion of copyright infringement. Indeed, pursuant to paragraph 87b paragraph 3 UrhG, hosting and access providers have to provide information (i.e. name and address) about an infringer in the case of a prima facie substantiated request if possible. However, the provision of the data has to be balanced with the infringer's privacy and data protection rights. In addition, information service providers are under a legal obligation to delete or anonymise identifying information (i.e. traffic data) after a connection has been established to the infringer. As a result, according to the Austrian Supreme Court (OGH - 4 Ob 41/09x - 14.7.2009 and 6 Ob 119/11k - 22.06.2012), Austrian law currently does not allow providers to share said data in the case of suspected copyright infringement.

6.1.3.7. Criminal sanctions

In the case of some types of intentional infringement (i.e. infringement of so-called exploitation rights – *Verwertungsrechte* – of the rightsholder, which also include certain *Leistungsschutzrechte*, such as related rights of record producers and broadcasters), the Copyright Act allows for criminal proceedings and consequently penalties and remedies, pursuant to §§91–93. Notably, individuals are shielded from criminal liability in the case of piracy for their personal use or for the use of someone else on their direction pursuant to § 91 2nd sentence.

The statute of limitations is one year, or five years if the infringements were committed for profit (§ 57 of the Criminal Code).

Infringement for commercial (i.e. repeated, profit-driven) purposes allow a more severe punishment (§ 91 Abs. 2a UrhG and § 70 of the Criminal Code).

In the case of criminal liability both imprisonment and fines can be ordered. Penalties for criminal law violations are dependent on the perpetrator's income. In the case of copyright violations, the fine is calculated to cover the daily income of up to 360 days (with a daily rate between EUR 4 and EUR 5 000) (§ 91 UrhG and § 19 of the Criminal Code).

In some cases, criminal penalties under the Austrian Access Control Act may also apply to online piracy. Similarly, criminal proceedings are only initiated if requested by the copyright holder.

The rightsholder bears a cost risk when instigating criminal proceedings, but court costs may be collected from the infringer in the case of a successful verdict.

Regarding criminal sanctions, §§ 10–12 of the Austrian Access Control Act provide, in particular, for imprisonment and fines, and for the confiscation of the technology used to circumvent access control.

All of the above criminal sanctions must be requested at the competent criminal court by the rightsholder or his/her affiliates who also have to prove the infringer's deeds and guilt. The Public Prosecutor's Office will not be involved in any such proceedings. Therefore, criminal sanctions are rarely preferred over civil litigation.

In specific cases, the infringer's behaviour can, however, also be qualified as an offence such as fraud, which will be investigated and brought before the court by the Public Prosecutor's Office. Rightsholders can also inform the Public Prosecutor's Office of any facts to trigger such proceedings. In the course of such proceedings, rightsholders may also claim damages (§ 69 of the Code of Criminal Procedure).

Table 14. National regulation applicable to audiovisual sports content

Specific features on sports	Description
Specific rules on sports content copyright	No, national copyright law is applied
Specific rules on the use of sports content in social media	No
Specific competent bodies (other than judicial bodies)	No
Entitlement to take legal action	Yes, rightsholders (mainly producers and broadcasters)
Codes of conduct	No
Specific proceedings	No
Specific remedies	No

Source: Austrian response to European Audiovisual Observatory standardised survey



Table 15. National remedies in the case of copyright infringement

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	Yes
Removal and blocking injunctions	Yes
Dynamic and/or live blocking injunctions	Yes
De-indexing injunctions	N/A
Damages and orders to cease and desist	Yes
Administrative offence and remedies	No
Notice and take-down procedures	Yes

Source: Austrian response to European Audiovisual Observatory standardised survey

6.1.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions in relation to online infringement of audiovisual sports content.

Table 16. Relevant case law related to copyright infringement of audiovisual sports content

Content	Substance of the decision	Decisions
Communication to the public	<p>Unlicensed communication to the public via public viewing in a betting office of the live broadcast of a sports event is a copyright infringement.</p> <p>An online file-sharing platform can meet the criteria of communication to the public and may therefore be considered as a copyright infringement.</p>	<p>OGH – 4 Ob 208/15i – 27.01.2016</p> <p>OGH – 4 Ob 184/13g – 17.12.2013</p> <p>OGH – 4 Ob 121/17y – 24.10.2017</p>
Hosting providers' knowledge and awareness of illegal activity	<p>To have knowledge, it is sufficient to have the possibility to detect an activity as illegal.</p> <p>It is not mandatory for hosting providers to review the content unless there is a</p>	<p>OGH – 3 Ob 1/18w – 24.1.2018</p> <p>OGH – 4 Ob 71/14s – 24.6.2014</p> <p>OGH – 4 Ob 121/17y – 24.10.2017</p> <p>OGH – 4 Ob 41/09x – 14.7.2009</p>



Content	Substance of the decision	Decisions
	notification/request.	
Notice and take-downs	A notification (<i>Abmahnung</i>) must outline concisely the facts underlying the copyright (infringed rights, ownership, facts of the case) and the type of copyright infringement; this is true only when the recipient is able to identify the relevant infringement without any more research.	OGH – 4 Ob 140/14p – 21.10.2014
Measures against end-users	Internet access can be blocked with respect to certain domains.	OGH – 4 Ob 71/14s – 24.06.2014 OGH – 6 Ob 195/19y – 15.09.2020
Criminal sanctions	N/A	N/A

Source: Austrian response to European Audiovisual Observatory standardised survey

6.1.4.1. Communication to the public

Several important national court decisions examined the nature of copyright protection attached to sports content, in particular in relation to the right of communication to the public. For example, the Austrian Supreme Court found, in a ruling of 17 December 2013, that live broadcasting of sport events can be protected under copyright law as a work of cinematographic art within the meaning of §4 UrhG (if the camera work, picture direction including repetitions, insertion of graphics and other design elements, and, where applicable, the commentary as well, allow individual attribution to the corresponding creator) and that its unlicensed communication to the public via public viewing in a betting office constitutes copyright infringement.³⁷¹ In addition, the court found, in a decision of 24 October 2017, that the operation of a torrent platform for online file sharing classes as “communication to the public”.³⁷²

³⁷¹ OGH – 4 Ob 184/13g – 17.12.2013, https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20131217_OGH0002_00400B00184_13G0000_000; see also, OGH – 4 Ob 208/15i – 27.01.2016, https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20160127_OGH0002_00400B00208_15I0000_000.

³⁷² OGH – 4 Ob 121/17y – 24.10.2017, https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20171024_OGH0002_00400B00121_17Y0000_000.



6.1.4.2. Online infringement of audiovisual sports content

There is no jurisprudence of the Austrian Supreme Court on online piracy of audiovisual sports content per se. However, the most important decisions of the Austrian Supreme Court in cases relating to online piracy in general, are as follows:

- The court allowed a blocking injunction against an internet access provider, in which the internet access provider unsuccessfully claimed that the imposition of IP blocking measures by a lower court were an unreasonable burden and a general Domain Name System (DNS) blocking measure was adequate to block end-users from accessing certain websites.³⁷³
- The court found that an internet access provider can be obliged to ensure that an “infringing outcome” or act (e.g. end-user access to illegal content) does not materialise (Erfolgsverbot), with the internet access provider itself being able to choose the appropriate means to achieve this result (e.g. through DNS and IP blocking measures).³⁷⁴
- The court also found that websites that have a “structurally infringing” character may be subject to a complete blocking injunction and operation of a torrent platform for online file sharing classifies as “communication to the public”. In the case in question, the court considered that the website had a “structurally infringing character” as it was facilitating the “massive exchange of illegal reproductions of music files” via indexed BitTorrent-files on the website in question and because the name of the platform hinted at illegal activity (“thepiratebay”).³⁷⁵
- Another case relating to the practicability of enforcement saw the Austrian Supreme Court decide that rights holders cannot successfully request information relating to the identity of a potential infringer from an access provider, as the access provider must delete identifying “traffic data”.³⁷⁶

6.1.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal

³⁷³ OGH – 3 Ob 1/18w – 24.1.2018,
https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20180124_OGH0002_00300_B00001_18W0000_000.

³⁷⁴ OGH – 4 Ob 71/14s – 24.6.2014,
https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20140624_OGH0002_00400_B00071_14S0000_000.

³⁷⁵ OGH – 4 Ob 121/17y – 24.10.2017,
https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20171024_OGH0002_00400_B00121_17Y0000_000.

³⁷⁶ OGH – 4 Ob 41/09x – 14.7.2009,
https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20090714_OGH0002_00400_B00041_09X0000_000.

activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

The level of information that is necessary pursuant to § 16 of the Austrian E-Commerce Act, which codified Article 14 of the E-Commerce Directive, is actual knowledge (with reference to § 5 paragraph 3 of the Austrian Criminal Code).

Knowledge must include not only the activity itself but also the illegality of said activity. The legislative materials³⁷⁷ suggest that this is the case if the illegality is plainly obvious even to a non-professional.

The Austrian Supreme Court has clarified the concepts of knowledge and awareness. The court stated that it does not have to be obvious to a person – who does not have legal knowledge – that an illegal activity is occurring by him/herself, but it is necessary for the person to be able to detect the possibility of the activity being illegal after receiving a notice (*Glaubhaftmachung*).³⁷⁸

The legislative materials demand a narrow interpretation of the concept of actual knowledge; “ought to know” is not sufficient to disable the liability shield of § 16 of the Austrian E-Commerce Act.

In light of the Austrian Supreme Court decisions, hosting providers are not obliged to proactively review the contributions of users/customers unless they have received a notice from a potentially infringed party, in line with § 18 of the E-commerce Act and the prohibition of general monitoring as provided in Article 15 of the E-Commerce Directive.³⁷⁹ However, a heightened standard of control obligation applies if previous infringements have been notified already.³⁸⁰

6.1.4.4. Notice and take-down requirements

A notice needs to make an infringement plausible (*Glaubhaftmachung*), i.e. substantiating the claim to the extent that an infringement is at least probable in the eyes of the court,³⁸¹ but does not have any formal requirements under Austrian law.

³⁷⁷ Legislative materials are supporting documentation accompanying legislation drafts. They are often used for interpretative purposes as they contain further details and indicate the legislator’s intent.

³⁷⁸ OGH – 6 Ob 244/16z – 22.12.2016,
https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20161222_OGH0002_00600B00244_16Z0000_000.

³⁷⁹ OGH – 6 Ob 178/04a – 21.12.2006,
https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20061221_OGH0002_00600B00178_04A0000_000.

³⁸⁰ OGH – 6 Ob 178/04a – 21.12.2006,
https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20061221_OGH0002_00600B00178_04A0000_000 and Zankl, paragraph 16 ECG in E-Commerce Gesetz (Commentary), 2nd ed.

³⁸¹ See, e.g. 4 Ob 22/15m – 19.5.2015,



The jurisprudence of the Austrian Supreme Court has not investigated formalities requirements under § 16 of the Austrian E-Commerce Act, which codified Article 14 of the E-Commerce Directive, in particular with respect to audiovisual sports content.

With respect to the corresponding § 81 UrhG that regulates the cease and desist procedure, the Austrian Supreme Court found that a notification (*Abmahnung*) must outline concisely the facts underlying the copyright and the type of copyright infringement.³⁸² In a case, concerning the unlicensed printing of sports photographs, the court found that a notification is given only if the addressee is able to understand the infringement without any further research. In the case in question, the copyright holder submitted fee-notes/invoices to a newspaper for the photographs which were printed without his/her authorisation. The court found that the mere submission of these invoices without context or any additional information did not classify as a notification.

6.1.4.5. Removal and blocking orders

Due to the wide range of possible blocking orders (i.e. *Erfolgsverbot*), and the fact that illegal content is usually not hosted by hosting providers within reach of the Austrian legal system, blocking orders are usually addressed to internet access providers (in cases where the website in question is mainly used for copyright infringement) or to the respective hosting provider (in cases where the specific infringing material is embedded in an otherwise legitimate website). No quantitative data with respect to the *ratio* of such orders is publicly available.

6.1.4.6. Measures against end-users ordered by the courts

Measures against end-users are limited under Austrian law. Currently, internet access providers are not allowed to collect or share traffic data in the event of an information request based on a suspicion of copyright infringement. Information network providers are under the legal obligation to delete or anonymise identifying information (i.e. traffic data) after a connection has been established. As a result, according to case law, Austrian law currently does not allow providers to give up said data in the case of suspected copyright infringement.³⁸³ Given this restrictive regime, and in lieu of measures against

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20150519_OGH0002_00400B00022_15M0000_000.

³⁸² OGH – 4 Ob 140/14p – 21.10.2014,

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20141021_OGH0002_00400B00140_14P0000_000.

³⁸³ OGH – 4 Ob 41/09x – 14.7.2009,

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20090714_OGH0002_00400B00041_09X0000_000.

end-users, the rightsholders are more likely to ask for removal and blocking orders instead.³⁸⁴

In any case, internet access can be blocked with respect to certain domains by the access provider for all of its customers. Publicly available information suggests that the suspension or blocking of individual internet access is not done in Austria at this time.

6.1.4.7. Compensation criteria adopted by the courts

Regarding compensation criteria applied by the courts, under the Copyright Act, claims for lost profits (§ 87 paragraph 1) and “appropriate compensation” for non-monetary damages (§ 87 paragraph 2) are provided. In lieu of lost profits, the infringed party can also claim a fee of twice the market rate for the object of infringement (§ 87 paragraph 3). Alternatively, the infringed party can claim the infringer’s profit in certain cases (§ 87 paragraph 4). Claims for lost profits and return of the infringer’s profit will usually exclude each other, except in the case of damages that exceed the realised profit of the infringer.

Also, similar remedies apply for claims under the Austrian Access Control Act (§ 7).

6.1.4.8. Criminal sanctions ordered by the courts

In Austria, criminal sanctions are rare due to a liability shield that applies to many cases of infringement for personal use in § 91 UrhG. The Austrian Supreme Court has not applied criminal sanctions to online piracy of audiovisual sports content specifically. Relevant proceedings in lower courts may have occurred.

6.1.5. Reports and studies

In Austria, no studies or reports about online piracy of protected content have been identified. Furthermore, reports that deal specifically with illegal online transmission of sports could not be identified nor any other studies reporting on technologies and business models used for the illegal streaming of sports content or describing the legal offer of online sports content.

Instead, campaigns with respect to general online piracy, not limited to sports piracy, have been organised. Such campaigns led to the insertion of short informational films or advertorials that were shown in movie theatres or inserted on data drives such as movie DVDs in the last 20 years. Currently, the most active entity in this area is the Association against Piracy in the Movie and Video Industry (*Verein für Anti-Piraterie der*



Film- und Videobranche) and its body dedicated to the enforcement of copyright against online piracy.³⁸⁵

Some associations of broadcasters and rightsholders actively work to address the issue of online piracy of audiovisual sports content. Multiple collective management organisations (*Verwertungsgesellschaften bzw. -einrichtungen*) with different levels of rightsholder involvement are active with respect to audiovisual content, in particular the following:

- VGR – Verwertungsgesellschaft Rundfunk GmbH
- VdFS – Verwertungsgesellschaft der Filmschaffenden reg. Genossenschaft mit beschränkter Haftung
- VAM – Verwertungsgesellschaft Für Audiovisuelle Medien GmbH
- RAW – Einrichtung zur Geltendmachung der Rechte der öffentlichen Aufführung/Wiedergabe von Audiovisuellen Medien GmbH
- LSG – Wahrnehmung von Leistungsschutzrechten Ges.m.b.H.

6.1.6. Data compilation

This country report is based on data compiled by Maximilian Gartner, researcher at the Alma Mater Research Center for Human-Centered Artificial Intelligence at the University of Bologna and alumnus of the Austrian law firms Binder Grösswang, Fellner Wratzfeld & Partner and Alix Frank Attorneys at Law.

³⁸⁵ A non-Austria specific report is the one by the European Commission on "Estimating displacement rates of copyrighted content in the EU", <https://op.europa.eu/en/publication-detail/-/publication/59ea4ec1-a19b-11e7-b92d-01aa75ed71a1>. For further information, see also <https://www.wko.at/branchen/gewerbe-handwerk/film-musikwirtschaft/aktivitaeten.html> (source in German).

6.1.7. Annex

Table 17. Overview of relevant transposition measures

EU directives	National law ³⁸⁶
Conditional Access Directive 98/84/EC	Access Control Act (<i>Bundesgesetz über den Schutz zugangskontrollierter Dienste (Zugangskontrollgesetz – ZuKG)</i>)
InfoSoc Directive 2001/29/EC	Copyright Amendment Act (<i>Bundesgesetz, mit dem das Urheberrechtsgesetz geändert wird (Urheberrechtsgesetz-Novelle 2003 - UrhG-Nov 2003)</i>)
Article 6 InfoSoc – Obligations as to technological measures	§ 90c UrhG
Article 8 InfoSoc – Sanctions and remedies	§§ 81 paragraph 1a, 82 paragraph 1 and 2, 87a paragraph 1, 87b UrhG
IPRED 2004/48/EC	Copyright Amendment Act (<i>Bundesgesetz, mit dem das Urheberrechtsgesetz geändert wird (Urheberrechtsgesetz-Novelle 2006 – UrhG-Nov 2006)</i>)
Article 6 IPRED – Evidence	§§ 303–307 Code of Civil Procedure (<i>Zivilprozessordnung</i>)
Article 7 IPRED – Measures for preserving evidence	§ 87c UrhG
Article 8 IPRED – Right of information	§§ 325, 326, 333, 337ff, 384ff Code of Civil Procedure; §87b paragraph 2 UrhG
Article 9 IPRED – Provisional and precautionary measures	§ 87c UrhG
Article 10 IPRED – Corrective measures	§ 82 UrhG
Article 11 IPRED – Injunctions	§ 81 UrhG
Article 13 IPRED – Damages	§ 87 UrhG
Article 14 IPRED – Legal costs	§ 41 Code of Civil Procedure
Article 15 IPRED – Publication of judicial decisions	§ 85 UrhG

³⁸⁶ The national law mentioned in this column can be accessed at <https://www.ris.bka.gv.at/>, the Legal Information System of the Republic of Austria. Some acts are also available in English; for an alphabetical list, check <https://www.ris.bka.gv.at/RisInfo/LawList.pdf>.



EU directives	National law ³⁸⁶
E-Commerce Directive 2000/31/EC	Act to Regulate E-Commerce and to amend the Signature Act and the Civil Code of Procedure (<i>Bundesgesetz, mit dem bestimmte rechtliche Aspekte des elektronischen Geschäfts- und Rechtsverkehrs geregelt (E-Commerce-Gesetz – ECG) und das Signaturgesetz sowie die Zivilprozessordnung geändert werden</i>); E-Commerce Act (<i>Bundesgesetz, mit dem bestimmte rechtliche Aspekte des elektronischen Geschäfts- und Rechtsverkehrs geregelt werden (E-Commerce-Gesetz - ECG)</i>)
Articles 12 – 15 E-Commerce Directive	§§ 13 – 19 E-Commerce Act
Article 17 Abs. 1 E-Commerce Directive	§§ 577 paragraph 3 and 592 paragraph 1 Code of Civil Procedure
Article 20 E-Commerce Directive	§§ 26 and 27 E-Commerce Act
DSM Directive EU 2019/790	Not transposed into Austrian law as at August 2021