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Subject: Film Piracy: Austrian Distributors Detail Enforcement Problems, German-Language Piracy Platform "KINO.TO"

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REVIEW AUTHORITY: Clarke Ellis,
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1. SUMMARY: Austrian film producers and distributors, in cooperation with the music industry, founded an anti piracy association (VAP) to fight illegal distribution of DVDs and CDs via pirated disks and Internet downloads. VAP estimates yearly film piracy losses in Austria of \$4.5 million. The biggest problems are

– pirated disks produced in the Czech Republic and distributed by small traders (mainly Chinese and Vietnamese) in Vienna, and -- downloads from the Internet platform KINO.TO where most international films with German translations are stored (NOTE: "Kino" is German for "cinema").

A VAP lawyer told us Austria's anti-piracy laws are strong in principle, but implementation challenges and legal snafus undermine enforcement. END SUMMARY.

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2. (U) Embassy representatives recently met with industry representatives including VAP (Verein für Anti-Piraterie der Film- und Videobranche = Organization for Anti-Piracy in the Film and Video Industries) [redacted]

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[redacted] In June 2009, VAP drew local attention by publicly destroying 30,000 pirated copies of movies in Vienna worth nearly \$300,000. VAP blame Chinese and Vietnamese "Mafioso" networks who distribute the disks, which are mainly sourced in the Czech Republic.

3. (U) Although film profits in Austria have grown in recent years, losses remain significant particularly from Internet piracy, say interlocutors. In Austria and elsewhere in the German speaking world, the "streaming video" website KINO.TO is the biggest problem as the origin downloads of films and television series with German dubbing. Apparently the KINO.TO server is located in Russia; the internet service provider (ISP) is unknown, and VAP assumes that the site's "masterminds" are in Germany. Since the domain registration authority for Tonga refuses to provide data about the domain name holders, film right holders have no leverage against the site.

4. (U) [redacted] argued the governments should press ISPs to be more cooperative in cases of alleged copyright infringement and to carry out aggressive campaigns against illegal downloads. It was regrettable that illegal downloads are still viewed as a "peccadillo" rather than a true crime. [redacted] portrayed the verdict against the "Pirate Bay" activists in Sweden as a model and praised new French anti-piracy legislation. [redacted] noted though that Internet platforms can sometimes promote sales (if consumers like downloaded content, they often buy the DVD or go to a cinema.

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5. (U) With regard to pirated disks, VAP representatives said that the laboratories for optical disks sold in Austria are mostly located in the Czech Republic and operated there by Vietnamese immigrants. The police often carry out raids at the Czech-Austrian border and in illegal warehouses in Vienna (even using sniffer dogs) but they are only able to catch "smalltime sellers" -- mostly Chinese. Those caught tend to have strong "clan ties" and never cooperate with police to send their bosses (who ultimately profit) to jail. Our interlocutors are aware that the Czech Republic is on the U.S. Special 301 Watch List and say that nothing has improved there in recent years. VAP representatives expressed frustration that Austrian authorities can do little to stop the inflow, since the Czech Republic belongs to the Schengen area and EU single market.

6. (U) The enforcement of Austrian copyright law is in line with "satisfactory" EU directives in this field, but has problems in practice according to [redacted] praised the Austrian system of "private prosecution" in copyright cases (criminal proceedings can be initiated by individuals or private organizations), he sees three serious problems in pursuing police investigations where prosecution is privately initiated:

- the police cannot investigate against unknown perpetrators (only named persons/organizations);
- it is practically impossible to execute search warrants in private cases, since defendants must be notified in advance (unlike in investigations initiated by prosecutors/police);
- in most private cases, police are not entitled to seize pirated copies in private houses, nor to clarify identities.

In some private IPR enforcement cases, police have been accused of breaching the rights of defendants. [redacted] opined that these

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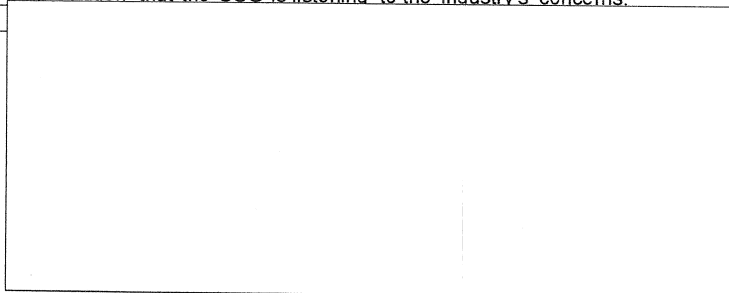
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problems could be addressed by introducing slight changes to the Austrian Code of Criminal Procedure — or perhaps even through a different interpretation of current laws by the Ministry of the Interior.

7. (SBU) COMMENT: Austria's anti-film-piracy representatives express appreciation that the USG is listening to the industry's concerns.



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