



February 21, 2019

Public Comment regarding the 2019 Special 301 Report

Switzerland's Comments on Copyright Protection and Enforcement

Switzerland welcomes the opportunity to provide an update on the revision of its national copyright system and to respond to the main concerns expressed by the United States and its industry stakeholders.

I. Draft Amendment to the Swiss Copyright Act

The draft bill¹, adopted by the Federal Council at its meeting on November 22, 2017, aims at further modernizing Swiss copyright law for the purposes of the digital environment and steps up the fight against Internet piracy. The draft is based on a compromise found by the stakeholders concerned as well as the comments received during the public consultation process.

The draft bill includes effective remedies for the main concerns raised by the United States and its industry stakeholders as to the ability of copyright owners to protect their rights in the online environment in Switzerland. It contains a “stay-down” obligation for hosting providers who will have to ensure that infringing content, once removed, remains off their servers. It also contains a provision that clarifies that the processing of data for the purposes of prosecuting copyright infringement is permissible. This provision also extends to civil claims insofar as the path to civil proceedings is open following a criminal complaint. This puts an end to the debate that followed the *Logistep* decision. Both of these provisions have been uncontroversial in the parliamentary discussions so far and are not expected to be in danger of being removed from the draft during the ongoing deliberations. For details, Switzerland refers to its submission in the context of the 2018 Special 301 Report procedure.

Switzerland is confident that the revision of the Swiss Copyright Act will constitute an important step in more effectively addressing the challenges posed by the Internet. The parliamentary discussion of the draft bill is well underway and progressing steadily. The National Council unanimously accepted the draft bill on December 14, 2018. The Council of States is scheduled to vote on the draft in the coming March 2019 Spring Session. Switzerland expects the amendments to pass and enter into force as early as January 2020. Updated and detailed information regarding the ongoing legislative process is available on the website of the Swiss Federal Institute of Intellectual Property.²

¹ <https://www.admin.ch/opc/fr/federal-gazette/2018/655.pdf>

² <https://www.ige.ch/en/law-and-policy/national-ip-law/copyright-law/revision-to-copyright-law.html>

II. Comment in Response to Industry Submissions

Switzerland would like to provide a brief response specifically to two concerns raised in this year's Special 301 submission by the IIPA, the question of enforcement and the exception and limitation for hotel rooms.

In conjunction with copyright enforcement in Switzerland, the IIPA, as in recent years, has named the corporations *Cyando AG/Uploaded.net* and *oboom.com* as examples for piracy heavy hitters operating in or from Switzerland (see pages 167 to 169 of the IIPA 2019 submission). IIPA seems to be unaware that a criminal proceeding has been conducted against *Cyando AG/Uploaded.net*. The investigation showed that there are no real ties to Switzerland and that the operation is very likely conducted from a neighboring EU member state. While the investigation proved unsuccessful for lack of ties to Switzerland, it nevertheless proves the ability and willingness of the Swiss authorities to act against Internet piracy. Concerning *Oboom*, consulting the Commercial Register shows that the company is being liquidated and is therefore no longer a threat to copyright owners.

On a further note, the exception and limitation in Article 19 that is currently being debated in Parliament (as mentioned on page 170 of the IIPA submission) is restricted to the setting up of TV and radio reception devices on the *private premises* of hotels, holiday apartments, hospitals and prisons only, and not a general exemption for these institutions. Similar in content to the exception for hotel rooms in 17 U.S.C. §111(a)(1), the proposed exemption establishes a *de minimis* exception to the copyright owner's rights, limited through its wording and compatible with the 3-step test.

Finally, with respect to the further concerns raised by the IIPA with regard to the Draft Amendment to the Swiss Copyright Act and Swiss copyright law in a more general sense, Switzerland refers to its submissions in Special 301 Report procedures from previous years, which contain relevant information and responses. The Swiss Federal Institute of Intellectual Property is available to provide interested parties with additional information and clarifications.

III. Conclusion

Despite the erroneous picture the industry submissions convey, enforcement of copyright protection in the online context is possible in Switzerland. The Draft Amendment to the Swiss Copyright Act constitutes a further important step up in the fight against online piracy and should put an end to criticism directed against Switzerland as a host country for infringing sites. Switzerland looks forward to continuing to work with the U.S. to further clarify any issue relating to online piracy. Given the steady progress made in the ongoing legislative process, Switzerland considers a further inclusion on the Watch List to be unjustified and inappropriate.