



February 19, 2020

## Public Comment regarding the 2020 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 U.S. industry stakeholders.

#### I. Amendment to the Swiss Copyright Act

Over the last few years, Switzerland has remained in close contact with the United States and regularly provided information on the advancements of the legislative process to modernize Swiss Copyright Law. In September 2019, the Swiss Federal Assembly approved a revision to the Copyright Act. The newly approved bill provides key updates to Swiss copyright law. It meets the challenges of the digital environment and steps up the fight against Internet piracy. It is based on a compromise incorporating the stakeholders involved as well as comments received during the public consultation process. As per Switzerland's constitutional requirements, citizens were given 100 days to request a popular vote on the approved bill. This deadline lapsed on 16 January 2020. Switzerland is thus able to confirm that the revised law can now be enacted as approved by the Federal Assembly. It is set to come into force on 1 April 2020.

The revised Copyright Act provides for effective remedies addressing the main concerns that had been raised by the United States and its industry stakeholders in recent years in the context of the Special 301 Report as to copyright owners' ability to protect their rights in Switzerland's online environment. If pirate sites are hosted in Switzerland, the revised legislation targets them by creating a "stay-down" obligation. Such hosting providers will have to ensure that infringing content, once removed, remains off their servers. It also contains a provision that clarifies that data can be processed for the purposes of prosecuting copyright infringement. This provision also extends to civil claims insofar as the path to civil proceedings is open following a criminal complaint or by joining the civil claims to the criminal proceeding. This puts an end to the debate that followed the *Logistep*<sup>1</sup> decision. Detailed information regarding the revised Copyright Act is available on the website of the Swiss Federal Institute of Intellectual Property.<sup>2</sup>

#### II. Comment in Response to Industry Submissions

Switzerland would like to respond to this year's Special 301 submissions by the International Intellectual Property Alliance (IIPA) and the U.S. Chamber of Commerce (USCC), which both include chapters on Switzerland. Switzerland is pleased that both submissions are positive about some of the provisions that the revised Copyright Act includes, such as the above-mentioned "stay-down" obligation and the clarification that data can be processed for the purposes of prosecuting copyright infringement, as well as a carve-out for certain rights holders

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<sup>1</sup> For more details, Switzerland refers to its submission in the context of the 2018 Special 301 Report procedure.

<sup>2</sup> <https://www.ige.ch/en/law-and-policy/national-ip-law/copyright-law/revision-of-copyright-law/the-key-reforms.html>

to collective management remuneration for Video-on-Demand (VOD), from which U.S. rights holders will be able to benefit.

The majority of concerns raised in this year's IIPA and USCC submissions have already been responded to in detail by Switzerland in the context of the Special 301 Report procedure in previous years. For more details on the "private use" exception (2014/2015), site blocking provisions (2018), the remuneration cap for collective rights management of neighboring rights (2016), amendments to the Swiss Film Act (2018), protection for technological measures (2006), the ability to use IP-address evidence to bring civil claims (2018) and the allegation that Switzerland remains an attractive base for internet piracy services (2019), Switzerland refers to its respectively indicated submissions from previous years in the context of the Special 301 Report procedure, which contain relevant information and responses.

Regarding the allegation that Switzerland is a base for internet piracy services, the revised Copyright Act offers measures such as the "stay-down" provision that will make it easier for right holders to proceed against internet piracy services based in Switzerland. Furthermore, the IIPA in its submission points out that the *Réseaux IP Européens* (RIPE), which controls the allocation of IP addresses in Europe, has been successful in removing Switzerland-based Internet Service Providers (ISPs) involved in internet piracy. It thereby illustrates that there are already effective measures in place for right holders to successfully act against internet piracy services based in Switzerland.

Pertaining to concerns raised about some of the new provisions of the amended Copyright Act, specifically the new extended collective licensing (ECL) regime for audiovisual works, the shorter protection term for photographs without an "individual character" and the compulsory collective right to remuneration for authors and performers for exploitation of their audiovisual works on VOD online platforms, Switzerland would like to point out that these new provisions directly reflect the *recommendations of rights holder representatives* who were part of the Working Group on Copyright (AGUR12) that laid the groundwork for the Copyright Act amendment bill. It is hard to see why these provisions should be detrimental to the right holders, when these provisions were introduced at their request. Furthermore IIPA raises concerns that the newly introduced orphan works provision and reproduction license for research have the potential for overbroad interpretation and therefore might not be in line with existing international obligations. Switzerland disagrees with this assessment and is confident that these provisions establish *de minimis* exceptions to the copyright owner's rights, limited through their wording and compatible with the 3-step test.

Regarding the "stay-down" obligation, catch-up TV availability and extended collective licenses, Switzerland would like to point out that the stakeholders involved in the revision of the law, including the rights holder representatives, opted for self-regulation, which guarantees efficient, effective, fast and flexible answers. Nevertheless, the Swiss government is further discussing catch-up TV availability in the context of a broad, new "media regulation".

The Swiss Federal Institute of Intellectual Property is available to provide interested parties with additional information and clarifications.

### **III. Conclusion**

With the conclusion of the revision to its Copyright Act, Switzerland further demonstrates its commitment to copyright protection and enforcement. The revised law constitutes an important step in effectively addressing the challenges posed by the Internet and includes effective remedies against copyright piracy on the Internet. It should thus put an end to criticism directed against Switzerland as a host country for infringing sites. With the upcoming enactment of the revised Copyright Act as of 1 April 2020, Switzerland considers a further inclusion on the Watch List to be unjustified and inappropriate.