

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2005 SPECIAL 301

SPECIAL MENTION

SWITZERLAND

The Federal Copyright Act of 9 October 1992 as amended is currently undergoing further revision in order to implement the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) into Swiss law. IIPA is concerned with the way in which the two treaties are being implemented in the country. The Swiss Federal Institute for Intellectual Property continues to delay the implementation of the WIPO Copyright Treaties. In September 2004 a draft implementation was released, but is problematic in several respects: it has an overly broad private copying exception (indeed the current exception is problematic and certain groups argue that downloading infringing copies of copyright works from peer-to-peer (P2P) networks is legal in Switzerland); inadequate protection of technological measures (including over-broad personal use exemptions); and burdens on rightholders employing technological measures (including labeling obligations).

Furthermore, the Swiss government should seek to make the use of P2P networks for copyright infringement more difficult. SAFE (the Swiss Anti-Piracy Federation) continues to investigate portal sites, which are generally hosted by foreign providers. In March 2004, police (cooperating with SAFE and the German Anti-Piracy organization [GVU]) raided the home of the Swiss creator of an eDonkey portal offering an extensive number of links to movies, cartoons, PC and console games, software, books and pornography (averaging 220,000 visitors per day). This individual will be prosecuted for copyright offenses, the first such prosecution against the creator of a portal for a P2P network in Switzerland.