SWITZERLAND

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)
2018 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendations: IIPA recommends that Switzerland remain on the Watch List in 2018.[1]

Executive Summary: Right holders continue to face serious difficulties in enforcing their rights online as a result of inadequacies in Switzerland's legal framework and enforcement regime. In 2013, the multi-stakeholder *Arbeitsgruppe Urheberrecht 2012*, or Working Group on Copyright (AGUR12) issued a "compromise" recommendation, partly steered by the government. In November 2017 the Federal Council adopted a "dispatch" (i.e., an explanatory report) and a legislative draft, which will now be debated by the National Council and the Council of States. The proposed amendments to the Swiss Copyright Act fall short of AGUR12's unanimous 2013 recommendations. While certain aspects of the draft amendments provide positive and welcome changes, such as an increased term of protection to match that offered elsewhere, they contain a number of troubling provisions. Moreover, the draft amendments omit important and much-needed protections. In particular, the government persists in its position that individual downloads from illegal sources are not themselves actionable.[2] And while the draft offers one isolated enforcement instrument (a stay-down duty for certain hosting providers), it leaves large parts of Switzerland's enforcement deficit unresolved (including by not providing for access blocking or providing for a legal basis for obtaining injunctions against intermediaries). It also introduces a troubling collective management remuneration right for Video on Demand (VoD) that will interfere with industry practice, including in the music industry. The government's dispatch and public comments on the draft demonstrate an unwillingness to address either of these two key issues, siding with Internet Service Provider (ISP) preferences against enforcement needs. Moreover, until the Copyright Act amendments are enacted, which will be no earlier than 2019, unprecedented restrictions remain in place, arising out of the *de-facto* ban on the use of IP address evidence in civil and criminal copyright actions as a result of the 2010 *Logistep* case, which effectively eliminates the ability of right holders to enforce their rights online.

The overall timeframe for reform remains frustrating for right holders: the AGUR12 working group was established in 2012, but legislative amendments are not expected to be adopted before 2019. Moreover, the absence of a meaningful reform bill can only be attributed to a reluctance on the part of Swiss leadership to live up to the country's obligations under international agreements to provide remedies that prevent and deter infringements. IIPA urges the U.S. Government to send a clear message that the proposed amendments are unsatisfactory and insufficient. The enforcement deficit remains deeply problematic, particularly within the context of our otherwise strong bilateral trade relationship. IIPA further urges the U.S. Government to work closely with the Government of Switzerland to improve ISP cooperation as part of the work needed to address the piracy enforcement situation, the dire state of which raises serious questions about Switzerland's commitment to comply with its obligation under the WTO TRIPS Agreement to provide a remedy for any form of infringement, including on a cross-border basis. The Government of Switzerland should address online piracy now and revise the draft amendments to the Copyright Act to bring it in line with the TRIPS requirements, including by providing a site-blocking mechanism.

[1]For more details on Switzerland's Special 301 history, see previous years' reports at https://iipa.org/reports/reports-by-country/. For the history of Switzerland's Special 301 placement, see https://iipa.org/files/uploads/2018/02/2018SPEC301HISTORICALCHART.pdf.

[2]Press release, "Federal Council adapts copyright law to the digital age," November 22, 2017, available at https://www.ejpd.admin.ch/ejpd/en/home/aktuell/news/2017/2017-11-221.html ("the principle that consumers who take advantage of such illegal offers will not be criminalised.").

PRIORITY ACTIONS REQUESTED IN 2018

- Improve the draft Copyright Act amendments to provide efficient tools against all types of piracy, regardless of technical details and including cross-border piracy. This should include a mechanism to block access to copyright infringing websites and effective remedies with regard to intermediaries or ISPs.
- Accelerate implementation of positive developments in the draft Copyright Act amendments, for example, the extension of term of protection for producers and performers to 70 years.
- Eliminate from the draft Copyright Act amendments proposed new provisions that impede VoD exploitation and the development of on-demand/non-linear services in Switzerland, notably the proposed collective VoD remuneration. If elimination is not possible, at minimum, concert films and music videos should be excluded from the scope of the remuneration for VoD provisions, as recommended by the AGUR12 working group.
- Require datacenters and ISPs to implement better "know-your-customer" policies and enforce that requirement.
- Publicly affirm that Switzerland's exceptions to copyright permit single copies for private use only if they derive from a legal (authorized) source. Also, end the Federal Arbitration Committee's levy on "Catch-Up TV," which is based on the presumption that the recording and making available of entire TV channels is covered by the private use exception.
- Endorse the standing opinion of the Federal Data Protection and Information Commissioner (FDPIC) clarifying permissible evidence collection practices under the Data Protection law in criminal online copyright enforcement actions, and ensure that this extends to civil enforcement actions.
- Clarify those areas of the so called "unique distributor clause" in the Swiss Film Act that currently negatively affect the distribution of audio-visual works in Switzerland, including, most notably, VoD and limit the accompanying reporting obligations to apply only to distributors or platforms located in Switzerland.
- End the discrimination against neighboring rights under collective rights management by deleting the 3% cap in Article 60(2) of the Swiss Copyright Act.

THE NATURE OF PIRACY IN SWITZERLAND

Overall, enforcement marginally improved in 2017, but levels of Internet-based piracy in Switzerland remain unacceptably high due to weak enforcement and weak laws. As discussed throughout this submission, the government has refused to sanction the private consumption of works from clearly illegal sources, and the options open to right holders for tackling illegal sources are very limited as there is no website blocking remedy. Thus, Switzerland suffers from high domestic piracy rates for music, film, video games, and entertainment software. It also serves as a base of operations for some ISPs dedicated to piracy on a global scale. In particular, there is a serious problem with host and data centers based in Switzerland that provide hosting services to other ISPs, including pirate services, often without checking into the identities or businesses of their customers.

At the same time, Switzerland's legitimate online market is growing, with Netflix's entry into the market and the building of Subscription Video on Demand (SVoD) libraries by local telecom operators. There are 29 legitimate digital services available for recorded music in Switzerland.[3] Digital recorded music revenue in 2016 was $117.8 million, up from $115.4 million the previous year.[4] But legitimate music services face stiff and unfair competition from illegal offerings. Piracy undermines and disrupts the growth of the legitimate digital content market. Although the Swiss music market has been growing for the last three years, it still accounts for less than one-third of the revenues it generated 20 years ago. Thus, it is as important as ever that the Government of Switzerland strongly enforce against piracy that could disrupt the growth of the legitimate market.

Illegal streaming platforms operated from remote or unknown jurisdictions continue to be highly popular in Switzerland, and carry copyrighted material that undermines the legitimate market, such as films early in their exploitation cycle. This is facilitated by a general understanding (supported by the government) that private use of

[3]See http://www.pro-music.org/legal-music-services-europe.php.
[4]IFPI, *Global Music Report* (April 2017), at p. 117, available at http://www.ifpi.org/recording-industry-in-numbers.php ("GMR 2017").

such platforms is legally permitted. Peer-to-Peer (P2P) BitTorrent activity for the purposes of sharing infringing material remains popular. Stream-ripping sites and applications, which permit users to create a local copy of unauthorized streamed content, are still widely used. Downloading and streaming of unauthorized content for private use are likewise viewed by many as legal in Switzerland, as long as no uploading occurs.

Cyberlocker services for storage and sharing of illegal files also continue to be a concern. For example, the popular cyberlocker site *oboom.com* is hosted via SwissBrothers AG. Industry reports a number of host and data centers based in Switzerland that provide hosting services to other ISPs, often without any review to ensure their customers do not include pirate services. For example, before it was removed by RIPE, which controls the allocation of IP addresses in Europe, Panama Connection, a Switzerland-based "bulletproof" ISP, offered "no questions asked" hosting services and was also involved in other criminality. Likewise, some ISPs that purport to be based in the Seychelles in fact have data centers in Switzerland. Another example is Private Layer, which provides hosting services for numerous BitTorrent sites including *bitorent.am*, *bitsnoop.com*, and *1337x.to*, which benefit from access to P.O. box services and possibly server capacity. Private Layer, apparently a Panama based organization with no or unknown operation in Switzerland, seems to use server capacity at an ISP in the Zurich area. It also appears to use Swiss telephone numbers, and as of early 2017, used a Swiss P.O box. These distributors of pirated content rely on and refer to Switzerland's legislation that sets high value on privacy protection. Further revisions to the draft Copyright Act amendments should require host and data centers to implement a "know-your-customer" policy to avoid providing hosting to pirate services.

While the Government of Switzerland has demonstrated a willingness to pursue pirate sites on the *.ch* domain (the Swiss country code TLD (ccTLD)), formerly problematic sites on this domain, such as *Torrented.ch,* now have migrated to websites using other domains. Other problematic sites, such as *Torrentflow.com* and *torrentproject.org*, no longer utilize *.ch* domains, but are hosted by Switzerland-based ISPs—Rook Media GmBH and Private Layer, respectively. IIPA recommends that the Government of Switzerland expand its enforcement actions, as its jurisdiction is not necessarily limited to sites with a *.ch* domain.

Finally, piracy activities targeting the neighboring markets of Germany, France, and Italy also affect the markets in the respective language communities in Switzerland. For example, Italian language platforms, even those blocked in Italy, are accessible and popular in the Italian-speaking regions of Switzerland. There is no clear legislation and no tested court practice for disabling access to such platforms in Switzerland.

COPYRIGHT ENFORCEMENT IN SWITZERLAND

Copyright industries in Switzerland have made efforts to resume criminal and civil actions against online infringement under Swiss law, which almost entirely ceased in the aftermath of the 2010 *Logistep* decision of the Swiss Federal Supreme Court. Prosecutors—although now beginning to voice their own frustration with the situation—have interpreted the *Logistep* precedent broadly as a *de-facto* ban barring the collection and use of any IP address data identifying defendants in criminal copyright cases.[5] With some exceptions, prosecutors tend to consider copyright enforcement cases as non-priority. While some prosecutors do pursue investigations against cyberlockers and structurally infringing sites, they seem unsure how to enforce existing laws and lack resources to freeze assets or secure evidence residing on servers (which may contain significant quantities of infringing materials). The proposed Copyright Act amendments would clarify that IP address data may be used for criminal copyright cases — however, as explained later in this submission, it does not change the status of IP address collection for civil cases. Until the draft amendments are enacted, right holders remain proscribed from collecting and analyzing the IP addresses of suspected infringers for purposes of establishing the existence of an underlying direct infringement, or as part of a secondary liability claim.

[5]While enforcement of copyright law against private users may still be technically possible, as highlighted by the Government of Switzerland in its public comment regarding the 2016 Special 301 report, industry sectors report that prosecutors remain unsure how to reconcile the *Logistep* case with the need for IP address based evidence.

A test case on website blocking is pending in the Swiss courts. This litigation seeks an access-blocking order against the market leader ISP in Switzerland, and has been pending since 2015. Prior to this promising litigation, courts declined to order the blocking of access to illegal sites due to a lack of clear legal grounds for doing so. The claim was brought in absence of any provision of law specifically dealing with access providers' responsibilities. The first instance judgment was expected in late 2017, but as of January 2018 had not yet been issued. Depending on its outcome, this case could be appealed to the Federal (Supreme) Court.

A Kodi Box (ISD) distributor operating in the French part of Switzerland continues to be in business, despite an ongoing criminal investigation. IIPA is informed that prosecuting authorities now seem to be taking the case seriously, after a two-years' delay. However, the future of that prosecution remains uncertain given the unclear legal status of linking as infringement, and the stated position of the government that private use of works from illegal sources is not actionable.

The current uncertainty around ISP liability, and Switzerland's strong privacy laws, have operated in favor of ISPs and tend to protect even repeat infringers from prosecution. The website hosting industry's trade association has established a code of conduct, which it administers autonomously and defends against interference by government or right holders. Hosting providers affiliated with the trade association purport to be taking down notified content, while "sharehosters," such as *Uploaded.net*, practice takedown but do not prevent from (and even support) quick re-upload, thus avoiding effective stay-down. These provisional measures, in principle, could work well; however they fail to be effective in halting online infringement due to the lack of clear and tested liability rules. The Government of Switzerland should encourage ISPs to work together with right holders to improve the voluntary notice and take-down process and to agree on measures that have been demonstrated to effectively prevent or restrain infringement, and should also move as swiftly as possible to implement legislation establishing such a process and imposing liability for ISPs that host infringing content. Moreover, ISP host "know your customer" policies are needed in order to stop at the outset the provision of hosting services to ISPs that support pirate sites or directly to pirate sites. The government should revise the draft Copyright Act amendments to require or encourage host and data centers to adopt and enforce such policies.

COPYRIGHT ACT AND RELATED LAWS IN SWITZERLAND

While the Swiss Government made progress this year toward the goal of Copyright Act reform, one glaring position threatens to undermine the entire project: downloading by individuals from illegal sources is still considered legal if it is a "private copy, and there are no effective options for tackling this problem.

Copyright Reform

On November 22, 2017, the Federal Council adopted a bill with draft Copyright Act amendments and an explanatory memo providing an article by article commentary (a "dispatch"). The dispatch and the draft amendments will now be up for parliamentary deliberation, which is expected to start in early 2018 and to last for several months. The project grows out of the AGUR12 working group,[6] but falls short of implementing the full AGUR12 compromise recommendations.[7] Substantial revisions to the draft amendments are needed to adequately address right holder concerns. Notably, in the press release regarding the draft amendments, the government steadfastly announced that it did not intend to criminalize or otherwise sanction so-called "private use" of materials obtained from illegal sources. This is a blow to right holders and does not comply with Switzerland's international obligations.

The draft Copyright Act amendments include a few positive changes to the Act. In particular, the draft amendments extend the term of protection for sound and audiovisual recordings and recorded performances from 50

[6]For a full description of the AGUR12 process, see prior years' IIPA Special 301 reports, at https://iipa.org/reports/reports-by-country/.
[7]See https://www.ige.ch/fileadmin/user_upload/Urheberrecht/d/Schlussbericht_der_AGUR12_vom_28_11_2013.pdf for the complete AGUR12 report recommendations. See https://www.ige.ch/fileadmin/user_upload/Urheberrecht/e/Medienmitteilung_zum_Schlussbericht_AGUR12_EN.pdf for an English summary of the recommendations.

years to 70 years, in line with the term for other works. (Article 39, paragraph 1). This will provide greater incentives for the production of sound recordings, and also provide producers with a stronger incentive to invest in the local recording industry, spurring economic growth as well as tax revenues, and enabling producers to continue offering recordings to local consumers in updated and restored formats as those formats are developed. This brings Switzerland in line with the EU term of protection. Broadcasts, on the other hand, receive only a 50 year term of protection; this should be increased to 70 years as well.

However, certain changes and late additions to the amendments raise serious concerns or fail to meet the promises of the AGUR12 compromise.

Revisions to Article 77i are meant to address the de-facto ban on the use of IP address evidence in civil and criminal copyright actions arising out of the 2010 *Logistep* case. However, while the proposed amendment allows right holders to use personal information (including IP addresses) for the purposes of filing criminal complaints, it does not allow for collection or processing of this information solely to bring civil claims. The proposed amendment and explanatory comments do state that the information may be used to assert civil claims in the context of a criminal proceeding or after criminal proceedings have concluded. However, this needlessly limits right holders' ability to pursue their rights. To properly address the privacy concerns raised surrounding the *Logistep* decision, the proposed amendment should be modified to simply limit data collection to that which is reasonably necessary for the pursuit of violations of law (this would mirror the standing opinion of the FDPIC,[8] as well as the recommendation of the AGUR12).

The amendment offers one promising enforcement instrument, a "stay-down" obligation for certain hosting providers that creates a "particular danger" of copyright infringement. (Article 39d.) However, it is left to the courts to determine whether the hosting provider in fact has a such a business model, which will create legal uncertainty.

One unexpected negative change appeared for the first time in this draft amendment. Under the original AGUR12 recommendations, a compulsory collective right to remuneration for authors and performers of audiovisual productions for exploitation of these works on online platforms (VOD) had expressly exempted concert films and music videos, because music interpreters already have, as a rule, a contractual share in the online revenues. This clear carve-out, unfortunately, was removed from the draft amendment without notice. (This collective right of remuneration only applies to audiovisual works produced in Switzerland or other nations with a similar collectively enforced right of remuneration.) This approach disregards the AGUR12 consensus and could pose major problems and market uncertainties for Swiss record producers and producers of music videos. If enacted, artists may earn substantially less money from the online exploitation of music videos under this provision than they do presently as a result of agreements negotiated by their record company with online platforms. Moreover, prior to introducing any new or novel rights, the Swiss Government should concentrate on addressing the existing problem of discrimination in the collectively managed rights area. The compulsory collective right of remuneration provisions are in Articles 13a and 35a and should be deleted.

Other notable provisions in the draft amendments include:

(i) "Extended collective licensing" ("ECL"), i.e. collective licensing schemes including non-affiliated rights owners, with a case-by-case opting-out option (Article 43a). Although the proposal is purportedly motivated by the desire to make content accessible that otherwise is barred due to licensing difficulties, such as large archive stock, its scope is not so limited. This creates a risk that extended collective licenses could be applied in areas where they undermine individual licensing, such as online services, where individual licensing is the norm. An opt-out provision, as proposed, does not render an extended collective license voluntary, and the language of the provision suggests that opting

[8]A standing opinion of the Federal Data Protection and Information Commissioner (FDPIC) made in the wake of the *Logistep* decision—even as it stood by the Federal Court's opinion—underscored, in the context of online piracy cases, that "we still believe that there is an overriding interest involved which would justify a violation of privacy rights as a result of the data processing."

out must be declared for each individual license, and right holders would have to monitor ECL announcements. There is substantial risk that extended collective licenses applied in the online space would depress the value for creative works, setting a tariff "norm" that could undermine licensing terms for right holders who choose to exercise their exclusive rights and opt-out. In addition, requiring opt-out in order to exercise exclusive rights could constitute a formality prohibited by international law, including the Berne Convention and TRIPS. In short, extended collective licenses are wholly inappropriate with respect to services that are already licensed directly around the world, even with opt-out rights.

(ii) An orphan works provision (Article 22b), including compulsory licensing of extended orphan works. This provision allows works to be considered "orphan" after "research performed with appropriate thoroughness." The dispatch on this article troublingly notes that "this responsibility is considered fulfilled if [the users] have consulted the relevant databanks for the corresponding work category." A better standard would be the requirement for "diligent search" set out in the Orphan Works Directive.[9] The draft provision should be amended to make clear there is no recordation requirement for right holders to protect their works, or this could constitute a formality prohibited by international law, including the Berne Convention and TRIPS. Also, the provision does not specify that the institution (such as a public or publicly accessible library, school, museum, collection, archive or broadcaster) possessing the orphan work copy must be domiciled in Switzerland; it merely requires that the copy have been created, copied or made available in Switzerland, including, potentially, copies made available from foreign sources, thus opening the provision to content hosted outside of Switzerland.

(iii) A free reproduction license for scientific research (Article 24d), meant to cover "text-and-data mining." There is a potential for this license to exceed its intended purpose. For example, if combined with other exceptions such as the existing, unusually broad permission of use inside companies and organizations, (Article 19 (1) c).

(iv) Protection of photographs regardless of their "individual character" or level of creativity (Article 2, paragraph 3*bis*).

As expected, the draft amendments do not include a legal basis for website access-blocking. According to the Swiss Government, this element "would not find a majority" in the parliament. However, IIPA notes that in spring 2017, parliament adopted a website blocking provision regarding illegal foreign gambling sites. Illegal copyright piracy sites should receive similar treatment.

Additional Concerns Under the Copyright Act and Related Laws

IIPA continues to have other long-standing concerns with certain aspects of the copyright and related laws in Switzerland. None of these concerns have been remedied by the proposed Copyright Act amendments.

Private Copy Exception: The private copy exception in Article 19 of the Copyright Act is too broad, and has been interpreted to allow the making of copies of works or phonograms that come from unlawful sources. The Swiss Government has confirmed in numerous statements that downloading from an illegal source is to be permitted, and the current draft amendments do not make any changes to Article 19. This broad private copying exception, together with serious concerns regarding the protection of technological protection measures (TPMs) (see below), constitute significant hurdles for the protection against stream-ripping services that dominate the list of top pirate services. Moreover, the Swiss Federal Arbitration Commission has imposed a levy on catch-up TV, placing these services within the scope of the private copy exception. Cable and over-the-top (OTT) providers, including major telecom corporations, offer seven-day catch-up services on integral recordings of hundreds of TV programs, relying

[9]Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on Certain Permitted Uses of Orphan Works, Article 3 and Recital 14 ("A diligent search should involve the consultation of sources that supply information on the works and other protected subject-matter as determined, in accordance with this Directive, by the Member State where the diligent search has to be carried out. In so doing, Member States could refer to the diligent search guidelines agreed in the context of the High Level Working Group on Digital Libraries established as part of the i2010 digital library initiative.").

on this government-approved collective remuneration tariff. This precludes direct licensing by right holders, including the initial broadcaster, on a platform-by-platform basis. This extension of the private copy exception to catch-up TV services impinges on the exclusive making available right, and thus may violate Switzerland's international obligations, including under the WIPO Copyright Treaty (WCT).

Circumvention of Technological Protection Measures (TPMs): Swiss law allows acts of circumvention of TPMs "for the purposes of a use permitted by law" (Article 39(a)(4)). This exception is far too broad, particularly given the inappropriately wide scope of the private copy exception. Taken together, these exceptions allow individuals to circumvent access or copy control measures in order to copy from illegal sources and share with friends. As a consequence, circumvention devices and software are widely available in Switzerland. Furthermore, the country's Monitoring Office for Technological Measures (OTM) is currently evaluating country restrictions that affect the cross-border portability of copyright protected content.[10] This appears to be in service of assessing the possibility of legislating the portability of audiovisual content similar to and inspired by the European Union's Portability Regulation.[11] This consultation is particularly troubling in light of the broader "Digital Switzerland" Strategy, also currently underway.[12]

Discrimination Against Neighboring Rights: Article 60(2) of the Copyright Act caps the remuneration payable to right holders (collected via collecting societies) at 10% of the licensees' income for authors and 3% for neighboring rights owners. This cap on right holders is wholly unjustified in the present reality of the music markets. The discrimination against the neighboring rights owners leads to revenues that are substandard in comparison to most European countries. In 2010, the Swiss performing artists and record producers collecting society "*Swissperform*" initiated arbitration proceedings against this cap. In 2014, the Swiss Federal Supreme Court dismissed the case in the final instance. In its judgment, the Federal Supreme Court stated that the 3% and 10% caps serve as a rule of thumb for what is an equitable remuneration under collective rights management. It acknowledged that the remuneration for performing rights are in fact higher in other European countries, but was unable to intervene on the merits. Rather, it held that it is up to the Swiss legislature to set these caps based on a political assessment. With this judgment, the Swiss Federal Supreme Court clearly showed the path for reform—yet it did not make its way into the draft Copyright Act amendments. Rather, those amendments create an "extended collective licenses" provision that, when combined with the existing remuneration caps, fall short of the country's international obligations. This unusual and unjustified discrimination against the neighboring rights owners should be ended, and replaced with a fair and equitable remuneration for both performing artists and producers.[13]

Criminal Sanctions Needed for Distribution that Prejudices the Public Performance Right: Article 12 Section 1*bis* of the Copyright Act states that copies of audiovisual works may not be distributed or rented if this prejudices the right holder's public performance right—e.g., if a motion picture audiovisual work is still in the theaters. An explicit criminal sanction for the violation of this principle is needed, in order to deal effectively with an influx of French-language DVDs imported from Canada and freely distributed while those motion pictures are still playing in Swiss cinemas.

Amendments to the Swiss Film Act: Amendments to Switzerland's Federal Act on Film Production and Film Culture (Film Act), known as "extended unique distributor clause", have been in effect since 2016.[14] They require that any form of exploitation in the Swiss film market, including theatrical, DVD/physical home entertainment, and all forms of video-on-demand/online distribution (with the exception only of linear television) may be undertaken

[10]See https://www.ige.ch/en/protecting-your-ip/copyright/monitoring-office.html.
[11]Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market.
[12]See https://www.bakom.admin.ch/bakom/en/homepage/digital-switzerland-and-internet/strategie-digitale-schweiz.html.
[13]Moreover, the government should not be attempting to create additional collectively managed rights (in the proposed Copyright Act amendments) without addressing first the fundamental unfairness in Switzerland's collective management system—namely, the discrimination against neighboring right holders. This discrimination is fundamentally contrary to the standard U.S. policy of not establishing a hierarchy of rights, and should be resolved prior to entertaining proposals regarding collective management.
[14]See https://www.admin.ch/opc/en/classified-compilation/20001389/index.html#a19.

only by an organization that controls the rights for all available language versions and regions exploited in Switzerland.

This law has interfered with the internationally established practice of cross-border licensing to multi-territory online platforms for specific language versions or language regions. If construed so as to require exclusive licensing and/or package licensing of various forms of online distribution, the law interferes with practices of non-exclusive licensing and of separate licensing for transactional video on demand (TVoD), SVoD and advertising video on demand (AVoD). While the markets are adapting to licensing practices, adverse effects of this regulation on the market remain probable. No sanctions have been imposed yet. The amended law also imposes registration and detailed reporting of exploitation data upon entities (including foreign) for films exploited in Switzerland in all sectors, effective 2018 (for figures collected in 2017). This will likely result in substantial additional cost and effort to enter the market.

COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES

Switzerland is a member of the Berne Convention, TRIPS, WCT, and the WIPO Performances and Phonograms Treaty (WPPT). It is thereby obligated under these international agreements to provide "effective" remedies to prevent and deter infringement. Under Article 41(1) of TRIPS (and similarly the WCT Article 14(2) and WPPT Article 23(2)) it is required to "ensure that enforcement procedures . . . are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements." It is not currently doing so, as explained in this report, and the draft Copyright Act amendments do not do enough to bring Switzerland in line with its existing obligations.