SWITZERLAND

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)
2024 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendations: IIPA recommends that Switzerland be placed on the Watch List in 2024.[1]

Executive Summary: The last revision of Switzerland's copyright law dates back to 2020, and those amendments failed to address substantial concerns related to copyright enforcement. IIPA urges the U.S. government to convey to the Government of Switzerland that its copyright law does not sufficiently comply with Switzerland's obligations to provide for effective and deterrent remedies against any act of copyright infringement, especially with respect to the use of unlawful sources, cross-border infringement, and intermediary liability. The enforcement deficit remains problematic, particularly within the context of our otherwise strong bilateral trade relationship with Switzerland. IIPA further urges the Government of Switzerland to consider additional amendments to the Copyright Act to strengthen enforcement tools for rights holders and bring the copyright law in line with its international treaty obligations, current best practices in Europe, and international norms.

PRIORITY ACTIONS REQUESTED IN 2024

Legal Reforms

- Further amend the Copyright Act to provide sufficient tools to combat all types of piracy, including cross-border piracy, regardless of technical details, including by providing mechanisms that ensure Internet service providers (ISPs) can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities.
- Require marketplaces and strongly encourage all relevant intermediaries, including data centers and ISPs, to implement and enforce better "know-your-business-customer" (KYBC) protocols.
- Further amend the Copyright Act to affirm that Switzerland's private use exception permits single copies for private use only if they derive from a legal (authorized) source, and restrict the permission for third parties to provide services for private use to prevent unlicensed, commercial services affecting, or competing with, rights holders' exploitations.
- Ensure narrow practical application of the extended collective licensing (ECL) regime.
- Amend the Copyright Act to redress the unreasonable and commercially damaging statutory restrictions on rights holders' freedom to negotiate licensing terms for the use of their respective rights.
- End the unfair treatment of neighboring rights under collective rights management by modifying the 3% cap in Article 60(2) of the Copyright Act, which remains below other European countries and substantially below the cap of 10% for authors.
- Revise additional provisions of the Copyright Act to ensure Switzerland provides adequate and effective copyright protection and enforcement and meets its international obligations.
- Amend the Copyright Act to enable rights holders to collect evidence to enforce rights (e.g., collection or processing of Internet protocol (IP) addresses to bring *direct* civil claims without a related criminal proceeding).

Market Access

- Abolish or ease provisions of the Swiss Film Act that negatively affect the distribution and making available of audiovisual works in Switzerland and remove streaming and broadcasting quotas.
- Materially simplify all filing and reporting obligations imposed on the audiovisual industry, including under the Copyright Act and under the Film Act.

[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://www.iipa.org/files/uploads/2024/01/Appendix-B-2024.pdf.

LEGAL REFORMS

- **Further amend the Copyright Act to provide sufficient tools to combat all types of piracy, including cross-border piracy, regardless of technical details, including by providing mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities.**

Past experience shows that rights holders lacked efficient legal instruments to enforce their rights, against both domestic and, especially, cross-border infringement, and against involved intermediaries. While the operation of notorious cyberlockers based in Switzerland has ceased, the country is becoming an attractive base of operations for some Internet service providers (ISPs) dedicated to piracy on a global scale. Moreover, cyberlockers continue to be widely used by the Swiss audience. Notorious cyberlockers like *rapidgator.net*, which received close to 900,000 visits during Q2 2023 according to SimilarWeb, attract a significant number of visits from Switzerland.

Piracy continues to undermine and disrupt the growth of the legitimate digital content market and leads to less willingness to pay for legitimate offerings. Although the Swiss music market has been growing for the last three years, it still accounts for less than one-third of the revenue 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. The main methods of music piracy remain cyberlockers, stream ripping, and BitTorrent indexing sites.

Rights holders do not currently have effective remedies against a wide range of copyright infringements, both civil and criminal. As discussed below, Switzerland does not allow for collection or processing of personal information solely to bring civil claims. In addition, where a copyright infringing online service operates anonymously and from undisclosed locations, a rights holder cannot bring a direct legal action against the infringing service without knowing whom to sue and where they should be served with court papers. In criminal enforcement cases, law enforcement authorities face the same challenges when dealing with a copyright infringing online service operating anonymously and from an undisclosed location. Switzerland should therefore provide mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities. It is notable that Switzerland had a referendum in June 2018 on a gambling law amendment, which would allow blocking of unauthorized gambling sites. The referendum approved the amendment by a good majority.[2] Therefore, it is evident that there are no bars in principle to the extension of this form of injunctive relief to copyright cases, but political will to do so is absent (a remedy of this kind was rejected by the federal government in the ongoing copyright amendment process).

Stream-ripping sites and applications, which permit users to create an unauthorized local copy of streamed content, are still widely used, and there is currently no effective solution in Switzerland. According to SimilarWeb's data, there were 21 million visits to stream-ripping sites from Switzerland from June 2022 to June 2023. Fourteen stream-ripping websites had over 100,000 visits each from Switzerland during Q3 2023, according to SimilarWeb, with *YTMP3.nu* receiving over 350,000 visits, *Savefrom.net* more than 250,000 visits, and *x2download.app* over 200,000 visits.

Illegal streaming platforms operated from remote or unknown jurisdictions continue to be popular in Switzerland and carry copyrighted material that undermines the legitimate market. This is facilitated by the notion that private use of copyrighted works from illegal sources is legally permitted. Peer-to-peer (P2P) BitTorrent activity for sharing infringing material remains popular. Downloading and streaming of unauthorized content for private use are permitted if no uploading occurs, as held in a 2019 federal court decision, which has poignantly shaped consumers' expectations and attitudes. Several BitTorrent indexing sites, including *Yggtorrent*, *thepiratebay.org* and *1337x.to*, are

[2] 72.9 percent of voters. See https://www.bbc.co.uk/news/world-europe-44430267.

also very popular in Switzerland. *Yggtorrent* is a French-language BitTorrent group of sites that regularly change top-level domains to avoid attempts by French courts to block access to the site in France. According to Q2 2023 SimilarWeb data, the *Yggtorrent* group of sites recorded 1.4 million visits, making them some of the most popular pirate sites in Switzerland.

While the Government of Switzerland has demonstrated a willingness to pursue pirate sites on the *.ch* domain (the Swiss country code top-level domain (ccTLD)), numerous copyright infringing sites that have been adjudicated as illegal in other countries rely on the *.ch* domain, such as *yggtorrent.ch*, *kickass2.ch*, *wootly.ch*, *movierulz.ch*, *project-free-tv.ch,* and *torrentdownload.ch*. IIPA recommends that the Government of Switzerland expand its enforcement actions, as its jurisdiction is not necessarily limited to sites with a *.ch* domain in Switzerland.

As discussed above, Switzerland lacks meaningful remedies and effective enforcement against online copyright infringement, and rights holders in Switzerland often have very little recourse against piracy sites, particularly those operated or hosted outside Switzerland. In addition to the introduction of more effective remedies, better cooperation from intermediaries is crucial to effectively tackle the problem of illegal content in Switzerland. Switzerland has never introduced reliable rules for considering ISP liability, which should be aligned with international standards, and the broad private use exception, discussed further below, also impairs cooperation.

Article 39d of the Copyright Act provides a "stay down" provision for certain hosting providers that create a "particular danger" of copyright infringement. It has not been enforced since its inception in 2020, after the last notorious Swiss cyberlocker, *Uploaded*, ceased operation. Going forward, Article 39d may serve as a deterrent against similar services. However, it will require potentially intricate and lengthy pilot proceedings to become enforceable, given its vague and unclear legal requirements. The provision addresses an isolated phenomenon but does not provide an efficiently enforceable overall framework for intermediary liability.

It remains critical that the Swiss government come into compliance with the Berne Convention, WTO TRIPS Agreement, the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties), and internationally acceptable enforcement standards. Necessary minimum changes include: (1) ensuring broader liability under Swiss law for parties who facilitate, encourage, and profit from widespread infringement; (2) engaging ISPs, including access providers, in the fight against online piracy; (3) affirming that current law does not permit copying from unauthorized sources; and (4) implementing adequate civil and criminal enforcement tools.

- **Require marketplaces and strongly encourage all relevant intermediaries, including data centers and ISPs, to implement and enforce better "know-your-business-customer" (KYBC) protocols.**

The music and motion picture industries report several 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. Panama Connection, a Switzerland-based "bulletproof" ISP, offered "no questions asked" hosting services and was also involved in other criminality, before it was removed by Reseaux IP Europeens (RIPE), an entity that controls the allocation of IP addresses in Europe.[3] Following the removal action by RIPE, the company dissolved. Some ISPs that purport to be based elsewhere, for example in Seychelles, in fact, have data centers in Switzerland.

Swiss authorities should act to ensure that these ISPs and data centers operate meaningful KYBC policies and take action to have these policies enforced. Switzerland has not adopted such practices, which have become standard elsewhere in Europe. KYBC policies for ISP hosting services are needed to prevent ISPs from providing hosting services on online platforms that facilitate infringing activity. The government should amend the Copyright Act or pass other implementing legislation to require marketplaces and strongly encourage other intermediaries, including

[3] Some hosting providers are referred to as "bulletproof" because their terms of service allow their customers to upload and distribute infringing content without consequence.

host and data centers, to adopt and enforce such policies, which reflect the basic duty of care applicable to these businesses.

- **Further amend the Copyright Act to affirm that Switzerland's private use exception permits single copies for private use only if they derive from a legal (authorized) source, and restrict the permission for third parties to provide services for private use to prevent unlicensed, commercial services affecting, or competing with, rights holders' exploitations.**

A long-standing priority of the creative industries is to narrow Switzerland's private copying exception, which is overbroad and exceeds the limits of the three-step test. The exception has been interpreted to allow the making of copies of works or phonograms that come from unlawful sources. This broad private copying exception, together with the inadequate protection accorded to technological protection measures (TPMs, discussed below), constitute significant hurdles for protection against stream-ripping services that dominate the list of top music pirate services as well as other infringing services. This is because there is no remedy against private copying from illegal sources or unlicensed services, and rights holders do not have a legal basis to challenge services offering stream-ripping functionality to create such private copies. The Swiss Federal Supreme Court, in a 2019 decision, rejected an application to order one of the country's largest Internet access providers to block pirate sites, stating that although it is clear that operators of illegal streaming websites are violating the law, there is no way of connecting a Swiss Internet access provider to that infringement because the Article 19 "private use" exception to copyright (which covers any streamed or downloaded content regardless of whether or not it comes from an unlicensed source) means that there is no copyright infringement by the access provider's customers.[4]

Furthermore, the Copyright Act permits third parties to provide a broad range of commercial services to facilitate private use, including copying or reproduction, recording, and in some cases making available, with limits that are not adapted to the digital environment and have become mostly obsolete. This opens the door to unlicensed commercial services, offering works, performances, and recordings on a commercial scale, competing against regular exploitation, and undercutting licensing opportunities. For instance, the Swiss Federal Arbitration Commission relies on the private copy exception to permit cable and over-the-top (OTT) providers, including major telecom corporations, to offer seven-day "catch-up" services on integral recordings of hundreds of TV programs, imposing a government-approved collective remuneration tariff for these services. This system abolishes exclusivity of audiovisual works and precludes direct licensing by rights holders, which limits their right to maximize and exclusively control these significant primary rights, including the use by the initial broadcaster, on a platform-by-platform basis. This extension of the private copy exception to these catch-up TV services undermines the exclusive making available right, and thus is inconsistent with Switzerland's international obligations, including under the WCT. As noted above, it has also been an impediment to the assertion of rights against intermediaries, which rely on their users' private use permission.

- **Ensure narrow practical application of the extended collective licensing (ECL) regime.**

Article 43a of the 2020 Copyright Act provides for ECL, a collective licensing scheme including non-affiliated rights owners, with a case-by-case opting-out provision. Although the provision was purportedly motivated by the desire to make difficult-to-license content, such as large archive stock, more accessible, and has been applied in that area so far, the provision's scope is overly broad. This creates a risk that extended collective licenses could be applied in areas where they undermine the enforcement and exercise of exclusive and individual licensing. The opt-out provision does not render an ECL voluntary, and the language of the provision suggests that opting out must be declared for each individual license. Therefore, there is a substantial risk that ECLs applied in the online space would devalue the market value of the work, setting a tariff "norm" that could undermine exclusivity and licensing terms for rights holders who choose to opt out and exercise their exclusive rights. An initial tariff was agreed upon and became effective in 2022. In addition, requiring a rights holder to opt out to exercise exclusive rights could constitute a formality prohibited by

[4] *FSCD 4A_433/2018* (4A_433/2018 08.02.2019 - Schweizerisches Bundesgericht (bger.ch))

international law, including the Berne Convention and the WTO TRIPS Agreement. In short, ECLs, even with opt-out rights, are wholly inappropriate with respect to services that are already licensed directly around the world.

The Swiss government should ensure that the ECL regime in practice applies: (1) only to uses that are onerous to license on an individual basis; (2) without impacting any other exploitations of those works; and (3) where collecting societies already represent a significant number of rights owners. In addition, opting out must be a simple and efficient process. Furthermore, the Government of Switzerland should not permit ECL-based licensing for uses of copyrighted works from unauthorized sources. In particular, a problematic private streaming service for schools and educational institutions is being created, which would make use of thousands of DVD/Blu-Ray copies of copyrighted works, including many works owned or distributed by U.S. rights holders, from schools and libraries without authorization from rights holders. While the operators of the streaming service have engaged in a dialogue with rights holders, the operators could ultimately try to secure an ECL or lobby for a new educational exception to avoid properly licensing these uses. The Government of Switzerland should not permit ECL-based licensing for these uses and should reject any new educational exception that would enable uses without a proper license.

- **Amend the Copyright Act to redress the unreasonable and commercially damaging statutory restrictions on rights holders' freedom to negotiate licensing terms for the use of their respective rights.**

Article 47 of the Swiss Copyright Law severely restricts the ability of music rights holders to exercise their rights to license their music for use in broadcasting and public performance. The rights in question must be exercised collectively, and the relevant collective management organizations (CMOs) are required by statute to first agree to a joint tariff that would then be presented to users. This means that authors of musical works and sound recording rights holders (i.e., producers and performers) are compelled to agree to a joint tariff. This situation is similar in practice to a statutory imposition of a single-window licensing requirement. As such, it puts Switzerland at odds with the international standard, because the vast majority of countries do not compel such cooperation but instead leave it to the rights holders to voluntarily agree on the extent of cooperation. Even in these cases, music authors on the one hand, and music producers and performers on the other, maintain separate licensing tariffs. This unreasonable requirement leads to protracted, difficult, and costly negotiations and impairs the functioning of collective management in Switzerland. Moreover, rights holders have no option to opt out of this system as the exercise of these rights in Switzerland is subject to mandatory collective management.

In addition, Swiss law requires that representatives of users (e.g., broadcasters) be members of the CMO (Swissperform), which is entitled to license sound recording related rights for broadcasting and public performance. Accordingly, there is a conflict of interest, because both rights holders and users are members of the same CMO. This statutory requirement impairs the ability of music producers and performers to negotiate terms reflecting the economic value of their content and further compounds the restrictions on the ability of the recorded music industry rights holders to exercise their commercial rights freely.

- **End the unfair treatment of neighboring rights under collective rights management by modifying the 3% cap in Article 60(2) of the Copyright Act, which remains below other European countries and substantially below the cap of 10% for authors.**

Article 60(2) of the Swiss Copyright Act continues to cap the remuneration payable to rights owners at 10% of the licensees' income for authors and 3% for owners of related rights. First, it is problematic that remuneration is limited by statute to a given percentage of business revenues and set at such a low level. Second, the caps operate in a discriminatory way by providing 10% for authors and 3% for sound recording rights holders (the provision is worded as granting the remuneration to performers, with income to be shared with producers). This discrimination against related rights holders leads to low revenue levels for artists and record companies. It also differs from the international norm (which does not involve such caps). Remuneration that is capped by legislation at a given percentage of business revenue is not compatible with the concept of securing licensing terms reflecting the ever-changing economic value of

the content in trade. This provision also undercuts any scope for bargaining and free-market commercial negotiations. In 2010, Swissperform, the Swiss CMO for performers and producers, initiated arbitration proceedings against this cap, but in 2014 the Federal Supreme Court upheld the cap. The Court acknowledged that the remunerations for performing rights are, in fact, higher in other European countries, but decided not to intervene on the merits. Instead, the Court ruled that it is up to the Swiss legislature to set these caps based on a political assessment. Unfortunately, the legislature declined to address this issue in the recent Copyright Act amendments. This unusual and unjustified discrimination against neighboring rights owners should be ended and replaced with a fair and equitable remuneration for both performing artists and producers.[5] IIPA notes that there are no independent broadcasting and public performance rights for sound recording producers under current Swiss law, as producers merely have an entitlement to receive a share of artists' remuneration.

- **Revise additional provisions of the Copyright Act to ensure Switzerland provides adequate and effective copyright protection and enforcement and meets its international obligations.**

The Swiss government should revise the following additional provisions of the Copyright Act to ensure Switzerland provides adequate and effective copyright protection and enforcement and meets its international obligations.

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 and inconsistent with Switzerland's obligations under the WIPO Internet Treaties, which require "adequate legal protection and effective legal remedies" against circumvention of TPMs.[6] Moreover, given the inappropriately wide scope of the private copy exception (discussed above), this exception to the circumvention of TPMs could be interpreted to permit individuals to circumvent access or copy controls that protect copyrighted content and disseminate that content widely.

Orphan works provision (Article 22b): This provision allows for compulsory licensing of orphan works, where works are considered "orphan" after "research performed with appropriate thoroughness." The dispatch on this article produced during the legislative process troublingly noted 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 a "diligent search," as set out in the European Union (EU) Orphan Works Directive. A recordation requirement for rights holders to protect their works could constitute a formality prohibited by international law, including the Berne Convention and the WTO TRIPS Agreement. 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 requires only that the copy is created, copied, or made available in Switzerland, including, potentially, copies made available from foreign sources. As a result, the provision could be applied to content hosted outside of Switzerland.

Free reproduction license for scientific research (Article 24d) and related exceptions: The license under this provision, which is meant to cover "text-and-data mining," could exceed its intended purpose. For example, it is possible this provision could be combined with other exceptions such as the existing, unusually broad private use exception, which can apply to commercial organizations.

Likewise, the potentially large scope of the statutory license for businesses and organizations to copy or reproduce (and in some cases, make available) works for "internal information or documentation" (Article 19(1)(c) of the Copyright Act) needs clarification and a narrow interpretation. The statutory license should exclude all uses in which such works serve as material for commercial or other offers outside the business or organization. It should also be

[5] Moreover, as discussed above, it is inappropriate and detrimental that the government has created additional collectively managed rights in the Copyright Act without first addressing the fundamental unfairness in Switzerland's collective management system—namely, the discrimination against neighboring rights holders. This discrimination is fundamentally contrary to the important U.S. policy of not establishing a hierarchy of rights and should be ended by modifying the cap.
[6] See Article 11 of the WIPO Copyright Treaty (WCT) and Article 18 of the WIPO Performances and Phonograms Treaty (WPPT).

made clear that a reproduction made under a specific statutory license may not be diverted to further use by another business or organization, which would effectively circumvent the restrictions on each such license.

Protection of photographs regardless of their "individual character" or level of creativity (Article 2, paragraph 3bis): In keeping with international norms, all types of photographs should be protected under the same standard generally applicable to other copyrightable works (e.g., music, film, literature). Under Swiss law, photographs that "do not necessarily have an individual character" are protected for just 50 years after their publication (or production). This dual standard for photographs should be eliminated and the term of protection for all copyrighted photographs should be 70 years.

- **Amend the Copyright Act to enable rights holders to collect evidence to enforce rights (e.g., collection or processing of Internet protocol (IP) addresses to bring *direct* civil claims without a related criminal proceeding).**

The application of Swiss privacy law to prevent, in general, the use of IP addresses in court proceedings is disproportionate and conflicts with Article 41 of the TRIPS Agreement, which requires an effective remedy to be available against acts of copyright infringement. The ruling of the Federal Court in the *Logistep* case (1C_285/2009 and 1C_295/2009) made it practically impossible to collect IP addresses, even though such evidence is often essential for copyright enforcement purposes (in both civil and criminal cases). The Court prohibited rights holders in Switzerland from collecting IP addresses of suspected copyright infringers in order to file complaints with the police, if the procedure would involve identification of the suspect by the police and the possibility of seeking a settlement from them in advance of any criminal conviction. While this decision has been partially limited by the reforms brought about by the 2020 Copyright Act amendments, the current law still does not allow for collection or processing of this information solely to bring *direct* civil claims without a criminal proceeding.[7]

The amended Copyright Act brought a new legal basis allowing rights holders to use personal information (including IP addresses) for the purposes of filing criminal complaints. The amended law also allows the use of personal information for the purposes of civil claims, but only if such claims are raised in a criminal proceeding or afterwards. However, Swiss law still does not allow for collection or processing of this information solely to bring *direct* civil claims without a criminal proceeding. In this regard, the legal situation remains, in effect, unchanged and incompatible with international legal norms. This needlessly limits rights holders' ability to enforce their rights, essentially forces rights holders to rely exclusively on criminal enforcement, and puts copyright holders at a disadvantage against other claimants.[8] Additionally, criminal enforcement alone is grossly inadequate because prosecutors rarely bring criminal cases against piracy due to resource constraints and a general reluctance.[9]

MARKET ACCESS

[7] The 2020 Copyright Act amendments unfortunately fell short of implementing the full Working Group on Copyright (AGUR12) compromise recommendations agreed to by rights holders. For a full description of the AGUR12 process, see prior years' IIPA Special 301 reports, at https://iipa.org/reports/reports-by-country/.
[8] In 2021 amendments to the ordinances of the Telecommunications Act entered into force that may create a further obstacle for anti-piracy activities because the ordinances will make it harder for rights holders to gather information about the domain name registrants and operators of infringing websites. While registrars will have to identify "holders" (i.e., registrants), (i) publication of such domain registrant's identification and contact details in WHOIS is banned for individuals and is not an obligation even where the registrant is a legal entity; and (ii) there is no obligation for registrants to provide and update all information, which is needed for enforcement purposes. While free-of-cost access for rights holders to non-public domain registrant data is provided in principle, its quickness and effectiveness will depend on the access proceedings and the required level of substantiation, unilaterally defined by the registrar.
[9] The Swiss government has not shown adequate ability or will to engage in effective copyright enforcement. For example, a criminal trial against the notorious cyberlocker *Cyando/Uploaded*, which facilitates rampant infringement, ended in March 2019 with the prosecutor's announcement that it found "no real ties" to Switzerland, despite the parent company Cyando AG's apparently blatant ties to Switzerland. Criminal prosecution in the canton Vaud against a seller and provider of Kodi Boxes connected with an unauthorized streaming and streaming link service, initiated in 2016, has not made progress for several years.

- **Abolish or ease provisions of the Swiss Film Act that currently negatively affect the distribution of audiovisual works in Switzerland and remove broadcasting quotas.**

Film Act: Effective since 2016, a Film Act provision known as the "unique distributor clause" has been extended to all forms of exploitation, including DVD/physical home entertainment and all forms of video-on-demand (VOD)/online distribution, with the exception only of linear television (broadcasters' ancillary on-demand rights are excepted only for seven-day catch-up). Exploitation of a film in any media in Switzerland now requires control over all language versions in Switzerland, to the extent actually exploited, in the hands of a single distributor. This is accompanied by laborious registration and reporting duties, which address foreign entities owning and exploiting rights in Switzerland. Despite a revised guideline published by the Federal Office in 2020, the provision still lacks clarity regarding the extent of "grandfathering" protection for existing contractual fragmentation of film rights: output deals made prior to 2016 lost "grandfathering" treatment as of 2019. In sum, this amendment interferes with internationally established licensing practices.

Another amendment to the Swiss Film Act, adopted in May 2022, introduced an investment obligation for non-domestic VOD services targeting the Swiss market. The 4% investment obligation is based on Swiss revenues and must be invested in Swiss filmmaking. In September 2023, the Federal Council adopted these amendments, as well as those that require compliance with a 30% European works quota. These obligations will enter into force in 2024. The revised Film Act also sets a 30% quota for European works for non-domestic VOD services targeting Switzerland beginning January 2024.

Broadcasting Quotas: The Federal Act on Radio and Television obligates broadcasters to reserve half of their transmission time for European works, where practicable. This obligation should be removed to ensure a level playing field for U.S. audiovisual works.

- **Materially simplify all filing and reporting obligations imposed on the audiovisual industry, including under the Copyright Act and under the Film Act.**

The Copyright Act includes a compulsory collective right to remuneration for authors and performers for exploitation of their audiovisual works on VOD online platforms. This mandatory collective remuneration scheme applies only if a film is of Swiss origin or produced in a country that provides a similar collectively enforced right of remuneration.[10] This provision, which became operative under the corresponding tariff (CT13), has resulted in highly complex, time-consuming reporting obligations for foreign operators that is out of proportion with the volume of remuneration actually owed. There is also a significant risk of over-payment and liability due to this complexity. The Swiss government should materially simplify all filing and reporting obligations imposed on the audiovisual industry under this provision, as well as the provisions regarding the content quota, investment duty, and statistics required under the Film Act, discussed above.

SWITZERLAND'S COMPLIANCE WITH EXISTING INTERNATIONAL OBLIGATIONS

Switzerland is a member of the Berne Convention, WTO TRIPS Agreement, WCT, and WPPT. Switzerland is thereby obligated under these international agreements to provide "effective" remedies to prevent and deter infringement. For example, under Article 41(1) of the WTO TRIPS Agreement (and similarly WCT Article 14(2) and WPPT Article 23(2)), Switzerland 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." Switzerland is not currently doing so, and as explained in this report, the amended Copyright Act does not bring Switzerland in line with its existing obligations. In addition, as noted above, Switzerland is not presently

[10] The Memorandum accompanying the adopted Copyright Act states that the Government of Switzerland anticipates to "grant" reciprocal rights to foreign authors of audiovisual works from: Argentina, Belgium, Bulgaria, France, French-speaking Canada, Italy, Luxembourg, Monaco, Poland, and Spain.

providing “adequate legal protection and effective legal remedies” against the circumvention of TPMs, as it is required to do under Article 11 of the WCT and Article 18 of the WPPT.