

UNESCO
WORLD ANTI PIRACY OBSERVATORY

SWITZERLAND

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I. Legislation

1. Copyright laws

The copyright legislation in Switzerland is composed of the following statutes:

- [Federal Law on Copyright and Neighboring Rights](#) (Federal Copyright Law) (of October 9, 1992, as amended by the Law of June 20, 2003) (Status as of July 1st, 2008) hereinafter called Copyright Act or CA
- [Ordonnance du 26 avril 1993 sur le droit d'auteur et les droits voisins](#) (Ordonnance sur le droit d'auteur, ODAu)

2. Other laws

The other laws pertaining to anti-piracy measures and copyright enforcement are:

- Code pénal suisse du 21 décembre 1937
- Loi fédérale du 22 mars 1974 sur le droit pénal administratif (DPA)
- Loi fédérale du 30 mars 1911 complétant le code civil suisse (Livre cinquième: Droit des obligations)
- Loi fédérale du 19 décembre 1986 contre la concurrence déloyale (LCD)
- 26 cantonal codes of criminal procedure
- 26 cantonal codes of civil procedures

3. Latest developments and perspectives

No amendments are currently planned.

4. Summary of legislation

- *Exclusive rights of the authors and of the owners of neighboring rights*

Exclusive Rights of the authors

The Swiss Copyright Act confers an all-inclusive protection to authors. The relevant provisions are:

- article 9 CA Reconnaissance de la qualité d'auteur
- article 10 CA Utilisation de l'œuvre
- article 11 CA Intégrité de l'œuvre

Consequently each use of a protected work requires permission either through a license from the rights holder or through a compulsory license (see next question).

Exclusive right of the owners of neighboring rights

Performers, producers and broadcasters on the other hand are accorded an exhaustive number of exclusive rights and entitlements to remuneration. The relevant provisions are:

For performers:

- article 33 CA (communication to the public, fixation, making available, broadcast of the fixation, rebroadcast of the fixation, reproduction of fixations, distribution and communication to the public of reproductions of fixations)
- article 35 CA (remuneration for broadcasting of phonograms or videograms that are published for commercial purposes)
- article 33 CA (performers' moral rights)

For **producers**:

- article 361 CA (reproduction, distribution, making available to the public of the recording)
- article 35 CA (remuneration for broadcasting of phonograms or videograms that are published for commercial purposes)
For broadcasters:
- article 37 CA (retransmission, communication to the public, fixation of broadcast, reproduction and distribution of fixations, making available to the public of the broadcast)

- *Exceptions and limitations to copyright / Permitted Acts in relation to copyright works*

The above item 13 of Article 97 (1) is the provision concerning Internet copyright infringements.

- article 19 CA – Private purposes
- article 20 CA - Remuneration for private use
- article 21 CA Decoding of computer programs
- article 22 CA Distribution of broadcast works
- article 22a CA Use of the broadcasting organizations' archives
- article 22b CA Use of orphan works
- article 22c CA Provision for broadcasted musical works
- article 23 CA Compulsory licenses for manufacturing of phonograms
- article 24 CA Archive and Backup Copies
- article 24a CA Temporary Reproductions
- article 24b CA Reproduction for broadcasting
- article 24c CA Use for persons with sensorial perception difficulties
- article 25 CA Quotations
- article 26 CA Museum, fair and auction catalogs
- article 27 CA Works in public places
- article 28 CA Reporting on current events

- *Protection of foreign works*

As a consequence of the principle of national treatment, foreign works are protected as well. There is no differentiation between nationals and foreigners in the Swiss copyright act.

There is one notable exception: The remuneration for broadcasting of phonograms or videograms that are published for commercial purposes (art. 35 CA) is accorded to foreign performers residing outside Switzerland solely if the state of which the performer is a national accords a corresponding right to Swiss rights owners.

- *Period of copyright protection*

The term of protection ends 70 years after the death of the author., seventy years after publication if the author is anonymous and fifty years in the case of computer programs and of neighboring rights (art. 29 and 39 CA). The moral rights of performers end with the death of the performer (art. 33a CA).

- *Registration*

There is no copyright register in Switzerland.

5. International treaties

Switzerland is a member of the following International Convention and Treaties on Copyright and Related Rights:

- [Berne Convention on the Protection of Literary and Artistic Works](#)
- [Universal Copyright Convention \(UCT\)](#)
- [Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations](#)
- [WTO Agreement on Trade Related Aspects of Intellectual Property Rights \(TRIPS\)](#)
- [WIPO Copyright Treaty \(WCT\)](#)
- [WIPO Performances and Phonograms Treaty \(WPPT\)](#)
- [Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms](#)
- [Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite](#)

II. Measures and remedies

1. Copyright infringement

The Swiss copyright act does not contain a definition. However, in application of the 'nullum crimen' rule article 67 CA contains an exhaustive list of infringing acts:

- uses a work under a false designation or a designation that differs from that decided by the author
- publishes a work
- alters a work
- uses a work to create a derived work
- manufactures copies of a work in any manner
- offers for sale, sells or otherwise distributes copies of a work
- offers for sale, sells or otherwise distributes copies of a work
- recites, performs or presents a work or makes a work perceivable in any other way either
- broadcasts a work by radio, television or a similar process, including electromagnetic waves, directly or with the help of any type of means;
- cable or other means of conduction, or rebroadcasts a broadcast work by means of technical installations the operator of which is not the original broadcasting organization;
- makes a broadcast or rebroadcast work perceivable;
- refuses to inform the responsible authority of the origin of copies of a work in his possession that have been unlawfully manufactured or marketed;
- hires out a computer program

2. Remedies to protect copyright holders

The remedies to protect copyright holders are:

- preliminary injunction (art. 65 CA)
- injunction (art. 62 CA)
- damages (art. 62 CA)
- seizure and destruction (art. 63 and 72 CA)
- penalties (art. 67 - 69, 70 and 71 CA)

3. Provisional measures

Article 65 of the Federal Law on Copyright and Neighboring Rights provides that:

Any person who provides reasonable evidence that his copyright or neighboring right is infringed or is likely to be infringed and that the infringement is likely to result in a prejudice for him that may not be He may request, in particular, that the court order measures to secure evidence, to determine the origin of unlawfully manufactured or marketed articles or to maintain the existing situation, or measures for the provisional execution of preventive and restraining injunctions.

Precautionary measures shall be ordered by:

- a. the court of the place where proceedings have been instituted;
- b. where no proceedings have been instituted, the court having jurisdiction under Article 64.1.

Articles 28.c to 28.f of the Swiss Civil Code shall apply *mutatis mutandis* in all other cases.

According to those articles, and especially article 28c, the following conditions must be fulfilled in order to be able to obtain a temporary injunction. The claimant must establish that:

- 1) he is the object of an imminent or actual unfair attack, and
- 2) the attack creates the danger of a significant prejudice to him

4. Penalties for copyright infringement

- *In civil cases*

The civil sanctions in copyright cases are:

- Injunction against an infringer who infringed the legally protected sphere of interest of the claimant
- Removal of an illicit situation
- Seizure or destruction of products or installations
- Publication of the sentence
- Damages, tort and surrender of illicit profit

Damages can only be awarded if the defendant acted faultily, by intent or negligence.

The claimant must prove that he has suffered damage. However, at the initiation of the law suit, he will very often not be in a position to define the exact amount of the damage. Only after the taking of evidence will he know enough facts to be able to establish the damage. If the damage cannot be established, the judge will often fix an amount corresponding to the sum which the defendant would have to pay if he had obtained a license from the claimant.

If the claimant has suffered a particular personal tort (violation of his personal sphere particularly gross fault), a separate amount may be allocated for reparation of the tort.

The legal cause for the surrender is the reasoning that defendant has been acting as voluntary agent without mandate and that therefore the benefit of his action belongs to the principal.

Objective illicitness is sufficient, and the profit must be surrendered even if the claimant has not suffered any damage.

- *For criminal offence in copyright cases*

The penalty for a person who is guilty of a criminal offence in copyright cases is:

- Imprisonment up to one year (and generally not less than six months; art. 40 Swiss criminal code)
- Monetary fine up to CHF 1'080'000 (article 67 and 69 CA). If committed on a commercial scale: imprisonment up to five years or a monetary fine up to CHF 1'080'000, whereby any imprisonment must be combined with a monetary fine (art. 67 and 69 CA and art. 333 Criminal Code).

The penalty for an omission of source is a monetary fine up to CHF 10'000 (article 68 CA and article 333 Criminal Code).

- *Seizure, confiscation, forfeiture and destruction of all infringing copies*

The court may order the seizure, confiscation, forfeiture or destruction of all infringing copies and all equipments or devices used in the manufacture of the infringing copies with the notable exception of infringing executed works of architecture (article 63 and 72 CA)

- *Publication of the judgment in newspapers or professional magazines*

Art. 66 CA provides for the possibility of publication of a decision in a civil procedure. However the sole criterion for a publication is a need for information. There is no publication as a penalty.

- *Payment to the copyright holder of adequate damages to compensate the injury he suffered including appropriate attorney's fees and profits of which the copyright holder has been deprived*

Switzerland does have provisions for such compensation. However, they are not penal in nature but of a purely restitutory nature.

5. Requirements for foreign persons

Foreign persons are not required to obtain any special approvals, engage any special agents, or present any special documentation in order to gain access to national courts, customs officials, or police officials to obtain enforcement of their copyright in Switzerland.

III. Enforcement

1. Enforcement authorities

a) Authorities responsible for enforcing the copyright law

Article 64 CA requires the cantons to designate a single tribunal for civil procedures. Generally the cantonal court of appeals is designated. The competent authorities for criminal procedures are designated in the cantonal rules of criminal procedures.

b) Enforcement bodies entitles to act ex-officio in copyright infringement cases

The enforcement bodies are entitled to act ex-officio in copyright infringement cases. Articles 7 and 69 CA require the competent authorities to act ex officio if the infringement is committed on a commercial scale.

c) Courts dealing with copyright cases

Article 64 CA requires the cantons to designate a single tribunal for civil procedures. Generally the cantonal court of appeals is designated. The competent authorities for criminal procedures are designated in the cantonal rules of criminal procedures.

2. Enforcement at the border

There are specific measures under articles 75-77h CA.

The competent authorities responsible for administering applications for copyright infringements at borders are the customs authorities (article 75 CA).

Article 77h CA empowers the customs authorities to impose security or equivalent assurance to protect the defendant and prevent abuse. The relevant form is made available on the Internet under

http://www.ezv.admin.ch/zollinfo_firmen/besonderheiten/00387/index.html?lang=de&download=M3wBPqDB/8ull6Du36WenojQ1NTTjaXZnqWfVpzLhmfhnappmmc7Zi6rZnqCkkIN4f3aAbKbXrZ6lhuDZz8mMps2gpKfo&typ=.pdf

The importer and the copyright holder are notified in a timely fashion of the suspension of the release of the goods by the customs (article 77 CA). The time limit for the suspension of the goods by customs authorities is ten working days. Where justified by the circumstances, the customs authorities may withhold the goods concerned for an additional period of 10 working days at most.

Article 77C and d CA provides that the competent authorities may order the destruction or disposal of infringing goods.

The customs authorities are entitled to act ex-officio in copyright infringement cases in a limited way. They may notify the rights owners of potentially infringing goods and suspend these goods for up to three days in order to enable the rights owner to file a request for assistance (article 75 CA)

The law provides for a de minimis import exception (such as the import for personal use of a non-commercial quantity and new items acquired for personal use).

The private use exemption ("Published works may be used for private purposes" article 19 CA) is applicable to importation as well. Consequently import for personal use is permitted.

IV. Public Awareness

1. Awareness campaigns and actions

The Campaign of the five Swiss collecting societies: [Respect Copyright!](#) provides awareness activities for pupils at school. Those activities are free and are incorporated in their study programme. The pupils receive information related to the following questions:

- How to become an artist? What happens when an artistic work is created? What shall be taken into consideration?

- What shall be taken into consideration for the production of a CD, video, a text or a picture specifically?
- What happens to the copyright protection of musical and artistic works when those works are diffused on-line?
- Can text, pictures or music from the Internet be downloaded and transmitted to third parties?

2. Promotion of legal exploitation

The Swiss Federal Institute of Intellectual Property combined forces with the ICC Switzerland (Swiss National Committee of the International Chamber of Commerce) to create the Swiss Anti-Counterfeiting and Piracy Platform in July 2005. The STOP PIRACY Association aims to mount a vigorous and long-term fight against counterfeiting and piracy through active awareness-building and enhanced coordination and cooperation between, as well as within, the private and the public sectors (<http://www.stop-piracy.ch/en/home/h1.shtm>).

Moreover the Swiss Federal Institute of Intellectual Property had created an information platform, accompanying the implementation of the WCT and the WPPT (<http://www.urheberrecht.ch/E/index.php>).

Last but not least the Swiss Federal Institute of Intellectual Property is very active in the field of international cooperation with a focus on anti-piracy training (<http://www.ige.ch/e/jurinfo/j5.shtm>). Country specific projects exist with Azerbaijan, China (EU-China IPR II), Ghana, Jamaica, Kenya and Vietnam.

3. Associations and organizations with awareness-raising purpose

The authorities, associations, NGOs and other bodies engaged in copyright enforcement and anti-piracy activities are:

- [Swiss Federal Institute of Intellectual Property](#):
- [Swiss Federal Customs Administration](#)
- [STOP PIRACY Association](#)
- [SAFE, "Swiss Anti-Piracy-Federation"](#)

Additional links may be found under: <http://www.stop-piracy.ch/en/services/s1.shtm>

- [SUISSIMAGE](#), Société suisse pour la gestion des droits d'auteurs d'œuvres audiovisuelles
- [ProLitteris](#)
- [SUISA](#), Société suisse pour les droits des auteurs d'œuvres musicales
- [SSA](#), Société Suisse des Auteurs
- [SWISSPERFORM](#), Société suisse pour la gestion des droits voisins

The role of STOP PIRACY

STOP PIRACY is a unique public-private Initiative with currently about 30 groups participating in the association including numerous trade associations.

STOP PIRACY's areas of action are:

- Synchronizing activities aimed at counterfeiting and piracy
 - Within the government
 - Within the private sector
 - Between government and business
 - Including collaboration with Swiss missions abroad
- Internal information exchange

- Direct access to all important players in the fight against counterfeiting and piracy
- Knowledge transfer over the extranet
- Knowledge transfer at regular meetings
- Making information available to Swiss missions abroad
- External information
 - Making the consequences of acquiring counterfeited or pirated products public (endangering consumers, supporting organised crime, weakening the economy etc.)
 - United, powerful and believable awareness campaigns (e.g. through billboards, film ads, posters in trains, media work, websites etc.)
 - Common training events on counterfeiting and piracy
 - Answering queries from the one-stop shops

The role of SAFE

SAFE, the "Swiss Anti-Piracy-Federation", founded in 1988, is an organisation defending the rights of the audiovisual industry and which main goal is to fight against copyright piracy. SAFE lists the violations of copyright and communicates its observations to the copyright holders and to the authorities. It is a member of an international network affiliated to the Motion Pictures Association (www.mpaa.org) and is collaborating with the Gesellschaft zur Verfolgung von Urheberrechtsverletzungen of Hambourg (The German Federation of anti-piracy, www.gvu.de).

The Role of the Swiss Federal Institute

The Swiss Federal Institute of Intellectual Property has its headquarters in Bern. It is the federal agency for matters concerning intellectual property in Switzerland. It was founded in 1888. It received its present status as an organization incorporated under public law on January 1, 1996. In terms of business structure, the Institute is autonomous, has its own legal entity and is entered in the Commercial Register. It keeps its own accounts and is independent of the Swiss federal budget in every way. The Institute is the federal agency for intellectual property matters (Art. 29 para. 1 OV-EJPD).

Its primary task is to be the point of contact for customers regarding industrial protective rights (trademarks, patents and designs) in Switzerland and, to some extent, for corresponding international applications. It examines the Swiss national filing applications, and grants industrial property rights and administers them. These sovereign responsibilities are regulated in the special legislation on intellectual property (trademark, patent and design laws).

It also has a service agreement with the Federal Department of Justice and Police (FDJP) by which it is charged with the tasks of drafting legislation in the field of intellectual property, acting as advisory to the Federal Council and other federal administrators and representing Switzerland at the international level.

The Institute statute also mandates it to offer services in the area of trademark research and patent information on the basis of private law.

Finally, the Institute has the task of promoting the intellectual property system, and, above all, the benefits of it, in Switzerland. In particular, small and medium sized businesses (SME's) should be sensitized to an active protective rights policy. This also includes being made aware that the important information available in protective rights can be exploited to their advantage for a reasonable price.

4. Best practices

STOP PIRACY's highlights:

- 16 January, 2007: press conference with Federal Counsellor Christoph Blocher, Thomas Pletscher and Felix Addor
- Since 16 January, 2007: billboard campaigns in the nine largest Swiss urban areas, train stations, airports, customs offices, car parks and trade fairs
- July / August 2007: second-phase awareness campaign with billboards in airports and border stations, posters in trains, film ads in 41 open-air cinemas and 435 regular cinemas etc.
- June 26, 2008: press conference "Improved protection for intellectual property as of 1 July, 2008", with Federal Counsellor Eveline Widmer-Schlumpf and other high-ranking officials.
- 25 October, 2008: first Switzerland-wide STOP PIRACY DAY with various events at pharmacies, cinemas and retail stores; broad advertising through radio, television and film ads with Anatole Taubman and Marc Sway

SAFE provides the latest news in regards to anti-piracy on its website:

<http://www.safe.ch/franz/info/news/index.php?navid=10>

STOP piracy provides a link to the latest events on anti-piracy taking place in Switzerland and coordinates the latest news on anti-piracy around the world

- The general releases are on <http://www.stop-piracy.ch/fr/news/n10.shtm>
- The media releases are on <http://www.stop-piracy.ch/en/news/n50.shtm>
- The media coverage on <http://www.stop-piracy.ch/fr/news/n20.shtm>
- The service and links are on <http://www.stop-piracy.ch/fr/services/s1.shtm>

V. Capacity-building

1. Training

The Swiss Federal Institute of Intellectual Property offers a series of [training courses](#) on various aspects of intellectual property, in particular the specifics on the protective titles and the information contained therein. The legally available protection is explained through examples. They also teach where the information is available and how to access it.

2. Establishment of specialized units and intersectoral groups

Creation of an intellectual property unit

- [Swiss Federal Institute of Intellectual Property:](#)
- [Coordination Unit Cybercrime](#)
- [Swiss Federal Customs Administration](#)

Creation of a collective management organization

- [Groupe national suisse de l'International Federation Of Producers Of Phonograms And Videograms](#)
- [AudioVision Suisse](#)
- [Campaign of the five Swiss collecting societies](#)

3. Best practices

The Cybercrime Coordination Unit Switzerland provides each year a rapport of their [activities and actions against piracy](#).

VI. Other

1. TPM/DRM

The law provides for Technical Protection Measures. The relevant dispositions are articles 39a, 39b and 69a CA. The system is fashioned after article 6 of the EU-Infosoc directive. Circumvention and preparatory acts are prohibited. However, circumventions that are effected in order to exercise a lawful use (e.g., educational purposes) are not punishable. Moreover an independent office for monitoring how technological measures are affecting the lawful use of works and whether public interests are being impacted was established.

2. Licensing Schemes

3. Optical Discs

4. Hotlines

5. Contact Details

Institute of Intellectual Property
Address: Stauffacherstrasse 65/59g, CH-3003 Bern
Tel: +41 (0)31 377 77 77
Fax: +41 (0)31 377 77 78
E-mail: [infoanti spam bot@ipianti spam bot.ch](mailto:infoanti_spam_bot@ipianti_spam_bot.ch)

SUISSIMAGE
Address : Neuengasse 23, 3001 Berne
Tel : 031 313 36 30
Fax : 031 313 36 37
E-mail : christine.schoder@suissimage.ch
Website : www.respectcopyright.ch; www.suissimage.ch

ProLitteris
Société suisse de droits d'auteur pour l'art littéraire et plastique
Address : Case postale, 8033 Zurich
Tel : 043 300 66 15
Fax : 043 300 66 68
E-mail : mail@prolitteris.ch, www.prolitteris.ch

SUISA, Société suisse pour les droits des auteurs d'œuvres musicales
Address : Bellariastrasse 82, case postale 782, 8038 Zurich
Tel : 044 485 66 66

Fax : 044 485 43 33
E-mail : suisa@suisa.ch, www.suisa.ch

SUISSIMAGE, Société suisse pour la gestion des droits d'auteurs d'œuvres audiovisuelles
Address : Neuengasse 23, 3001 Berne
Tel : 031 313 36 36, fax 031 313 36 37
E-mail : mail@suissimage.ch, www.suissimage.ch

SSA, Société Suisse des Auteurs
Address : Rue centrale 12/14, case postale 7463, 1002 Lausanne
Tel : 021 313 44 55
Fax : 021 313 44 56
E-mail : info@ssa.ch, www.ssa.ch

SWISSPERFORM, Société suisse pour la gestion des droits voisins
Address : Utoquai 43, case postale 221, 8024 Zurich
Tel : 044 269 70 50, fax 044 269 70 60
E-mail : info@swissperform.ch, www.swissperform.ch

Directorate General of Customs
Address: Monbijoustrasse 40, 3003 Bern
Tel: +41 (0)31 322 65 11
Fax: +41 (0)31 322 78 72