



February 13, 2014

## Public Comment with Regard to the 2014 Special 301 Report

### Switzerland's Comments on Copyright Protection and Enforcement

Switzerland wishes to reiterate its full commitment to effective and adequate copyright protection and to combating online piracy. Switzerland welcomes this opportunity to provide additional and updated information on the work conducted in the Stakeholders' Working Group on Copyright (AGUR12) set up by the Minister of Justice and in the Roundtable established by the State Secretariat for Economic Affairs (SECO) with regard to meaningful enforcement of copyright on the Internet under Swiss law.

In December 2013, the AGUR12 concluded its work on the modernization of copyright law with regard to ongoing technical developments and published its final report. The AGUR12's final report along with an English translation of its recommendations is available at [www.swiss-copyright.ch](http://www.swiss-copyright.ch). The AGUR12 recommends the adoption of a package of measures aimed at increasing the attractiveness of legal offers and simplifying the fight against piracy. They include take down and stay down obligations for hosting providers, IP and DNS blocking of web portals featuring obvious illegal sources, a copyright alert system where users receive a one-off notification, and data processing by right holders for the purposes of investigating copyright infringement.

The AGUR12 concluded that meaningful copyright enforcement on the Internet is best achieved by targeting rogue sites and peer-to-peer network users who massively infringe copyright. Prosecuting the everyday user, however, was seen as counterproductive. It was therefore concluded that a download from the Internet by an individual exclusively for private use should not be made a crime. In the AGUR12 process, the consensus reached between artists and representatives of producers, the economy, users and consumers takes into consideration many sensitive aspects, including free speech, access to information, privacy, and personal data protection.

We note that the International Intellectual Property Association's (IIPA) submission to the 2014 Special 301 Report acknowledges Switzerland's commitment to effective copyright protection and combating online piracy. The IIPA also expressly welcomes the outcome of the AGUR12 process. Partly directed toward rights owners and collecting societies and partly toward the legislative authorities and the federal administration, this broadly supported compromise opens the way for political acceptance of further steps toward a copyright that responds to the challenges posed by the Internet.

As to the more general issues raised by the IIPA in its submissions to the 2012 and 2013 Special 301 Report, Switzerland calls attention to the information it provided in its respective past submissions in the context of the Special 301 Report procedure.

Established by SECO under the US-Swiss Trade and Investment Cooperation Forum following the Swiss Federal Supreme Court's *Logistep* decision, the *Roundtable* continued its work aimed at recognizing possible paths for successful copyright enforcement. The *Roundtable* includes representatives of copyright holders, enforcement authorities and various government agencies. More narrowly defined than the AGUR12's objectives, its mandate focused,

in particular, on measures against infringers and the responsibility of ISPs under the current legislation. Consequently, the rights owners participating in the *Roundtable* launched a test case, thereby adhering to recommendations issued by the Federal Data Protection and Information Commissioner on how to collect IP addresses of copyright infringers. Their objective is to obtain a decision from a court in this new context with regard to the legal channels available to enforce copyright in the digital environment. As noted by the IIPA, a decision by the Superior Court of the Canton of Zurich is expected in due time. In addition, the *Roundtable* explored possible amendments to current legislation (on copyright, data protection and telecommunications secrecy, for instance) as well as various complementary measures (such as take down, DNS blocking and voluntary best practices) to facilitate the fight against online piracy. The *Roundtable* issued a report in January 2014, concurring with the AGUR12 that the next step should consist of adaptations of relevant Swiss law.

With regard to the protection of broadcasts on the Internet, as raised by the Sports Coalition in its submission to the 2014 Special 301 Report, we point out that Switzerland is one of few states that already recognize the “right of making available” for broadcasts and provide for legal remedies against their unauthorized online retransmissions. Moreover, the Swiss Broadcasting Corporation (SRG) has confirmed on more than one occasion that signal piracy does not occur in Switzerland. We are therefore surprised by the Sports Coalition’s critique but remain at their disposal for further clarifications on the legal and factual situation in Switzerland.

Switzerland looks forward to continuing to work with the U.S. to further clarify any of the above-mentioned issues and, where appropriate, to working toward mutually satisfactory solutions.

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