

PRESS RELEASE

Entitlement to remuneration for media: Positive assessment by the collecting societies

The Federal Council has submitted a suitable preliminary draft for the amendment of the Copyright Act for consultation. The Swiss collecting societies, which act jointly as "Swisscopyright", have assessed the proposal legally and in terms of feasibility. The right to remuneration for journalistic media and their media professionals takes up the concerns of content producers and cultural creators: The use of works and services on the internet must also be remunerated. It is advantageous to rely on the collecting societies.

Zurich, 27 July 2023 - Swisscopyright unites the players in the collective exploitation of intellectual property rights in the Copyright Act (URG). Under the leadership of ProLitteris, Swisscopyright has analysed the consultation draft of 24 May 2023 (Federal Copyright and Related Rights Act - ancillary copyright for journalistic publications).

The preliminary draft forms a good basis and sets realistic targets. The benchmarks for remuneration must be defined in a tariff process after the law enters into force. The remuneration amount depends on these upcoming negotiations and on data, it cannot be predicted today.

The amendment to the Copyright Act provides for compensation for added value on the internet. At the opening of the consultation, the Federal Council stated that internet services benefit greatly from the services of journalistic media. The Federal Council's preliminary draft is based on the international situation: in 2019, the European Union issued a directive that gives media companies in EU member states rights over internet services. Currently, most EU states are implementing this directive.

Swisscopyright welcomes the fact that the remuneration claim in Switzerland is entrusted to the collecting societies and that mandatory collective management is used for this purpose. Mandatory collective management is legally secure and practically proven. In this model, for example, the retransmission of radio and TV programmes, the import of storage media and copying in schools are remunerated. The tariff procedure is regulated by law. It provides for official tariff approval (Federal Arbitration Commission, ESchK) and management supervision (Federal Institute of Intellectual Property, IPI). The collecting societies regularly negotiate with the associations of the users concerned - in this case it will be the operators of search engines, for example. In each case, the collecting society most affected is designated as the managing collecting society. In the present case, this is ProLitteris, which brings together the rights holders primarily affected by the remuneration claim: Media companies and media professionals.

The collecting societies mainly analysed the implementation of the remuneration claim. The preliminary draft should be optimised as follows:

- Art. 37a(1)(a) URG: If, in addition to making available, reproduction is also mentioned ("...reproduce journalistic publications or make them accessible in this way..."), search engines that present their search results as AI-generated content could also be covered, provided that a

reproduction precedes, e.g. as input in the training or in the presentation of the search engine. Otherwise, the collecting societies are of the opinion that the draft should not be extended to AI systems.

- Art. 37a (3) URG: The claim of publishers should also be declared indispensable ("The claim to remuneration is indispensable and can only be ..."), just as the participation claim of authors. Furthermore, the collecting societies assume that the participation claim under Art. 37c URG is due to all affected rights holders with contributions in journalistic publications, i.e. also e.g. authors of pre-existing works and holders of neighbouring rights.
- Swisscopyright recommends dispensing with a special provision to cover user-generated content, e.g. content in social media. Although social media and their users regularly make third-party content accessible, a special provision for this is not necessary in this amendment.

The comments of the collecting societies on the consultation will be available on the website www.swisscopyright.ch from 15 August 2023. The consultation will run until 15 September 2023.

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About the Swiss Collecting Societies

The Swiss copyright societies ProLitteris, SSA, SUISA and SUISSIMAGE as well as the society for neighbouring rights SWISSPERFORM represent the rights to artistic and scientific works and performances. As cooperatives, the copyright societies belong to authors (composers, writers, directors etc.), producers and publishers. Members of SWISSPERFORM are the performing artists (musicians, actors, etc.) and the producers of sound and audiovisual carriers as well as the broadcasting organisations. It is these members who decide in the bodies of their societies on strategy, budget, composition of the organs (management/board/commissions) and on changes to distribution and statutes. The societies grant users permission to use copyright-protected works and performances and collect licence fees set by tariffs. The compulsory tariffs for users (compulsory collective exploitation) are negotiated with user associations and approved by the Federal Arbitration Commission (FAC). The distribution goes to the rights holders whose works or performances are used in accordance with the rules and in a transparent manner.

The five Swiss collecting societies represent over 80,000 members in Switzerland and the Principality of Liechtenstein. Through cooperation and reciprocal agreements with around 300 collecting societies in over 120 countries, they represent the rights of rights holders from all over the world.

www.swisscopyright.ch