

Jurius

Federal Council Adapts Copyright Law to the Digital Age

With the revision to the Copyright Act, the Federal Council wants to strengthen the rights and interests of creative artists and the cultural industries by taking a resolute approach to pirated online content. At the same time, it upholds the principle that consumers who take advantage of such illegal offers will not be criminalised.

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[Rz 1] By providing measures that support research and libraries, it also wants to take advantage of the new opportunities that digitalisation has opened up. It approved the corresponding draft act and dispatch at its meeting on 22 November 2017. The draft bill is based on a compromise agreed upon by various stakeholders in a working group set up by the Federal Department of Justice and Police (FDJP). Today, numerous websites offer films, music, video games and books illegally. Such illegal offers are not only an economic problem for creative artists and producers. The use of content without the consent of the rights holder also infringes the rights of the various stakeholders involved. Curtailing this misuse is therefore for the benefit of everyone, which is why a key concern of the revision to the Copyright Act is to combat piracy.

[Rz 2] The anti-piracy measures are aimed not only at respecting the rights of creative artists and remunerating them for their work, but also at allowing producers to better enforce their rights so that they can safeguard their investments. These measures also encourage the creation of diverse legal offers for consumers.

[Rz 3] Those who make content available on the internet illegally are the target of the anti-piracy measures. However, consumers who take advantage of illegal offers remain unpunished. This means, for example, that consumers will still be able to download a piece of music made available on the internet without the permission of the rights owner for their own private use.

[Rz 4] The fight against piracy is to take place where it is most effective, i.e. with hosting providers. Hosting providers are internet service providers who make storage space available to their customers for the purpose of storing information. They are the ones who have the possibility of ensuring that their servers do not host piracy sites and who can quickly remove infringing content. Hosting providers who present a particular risk for copyright infringement must therefore in future ensure that copyright-infringing content, once removed, remains off their servers. They are therefore subject to what is known as a stay down obligation. The draft bill also clarifies that the processing of data for the purposes of prosecuting copyright infringement will be permissible. Both of these measures end a long debate on the obligations of providers and therefore create legal certainty for all parties. However, no provision is made in the draft bill for internet blocking.

[Rz 5] In addition to the anti-piracy measures, the draft bill also contains various innovative reforms for adapting copyright law to the most recent technological developments. In doing so, the Federal Council would also like to open up the new opportunities of digitalisation to the area of copyright. As a result, researchers and libraries are to be able to use their inventories for specific purposes without the explicit consent of rights owners.

[Rz 6] In turn, artists and producers are also to benefit from an improved situation. This is to reduce the imbalance between the increasing online use of works and stagnating proceeds. As a result, copyright protection for performances is to be extended from 50 to 70 years, which will give producers more time to recoup their investments.

[Rz 7] Creative artists are also to benefit from broader protection for photography as well as a more efficient management of video-on-demand rights. For consumers, no increase in costs is expected with regard to remuneration for video-on-demand. The proposed amendments are all part of a compromise agreed upon by the Working Group on the Revision to the Copyright Act (AGUR12) set up by the FdJP. The bill therefore strikes a balance between the various stakeholders.

[Rz 8] **The modernisation of copyright law – The chronology of the dispatch**

- In 2012, Federal Councillor Simonetta Sommaruga, head of the Federal Department of Justice and Police (FDJP), convenes a working group (AGUR12) to examine the existing situation concerning copyright and to highlight any adjustments necessary as a result of technological developments. All stakeholders are represented in the AGUR12 (creative artists, producers, cultural intermediaries and consumers).
- In December 2013, the AGUR12's final report is ready. Its package of measures is aimed at simplifying anti-piracy measures, expanding legal offerings and providing better information for consumers.
- In June 2014, the FDJP receives the mandate from the Federal Council to present a draft for consultation by the end of 2015. The consultation runs until the end of March 2016 and results in a total of 1'224 comments and 8'000 pages being received. Many of them have strongly diverging stances – including on the points in which the draft for consultation closely follows the recommendations and consensus of the AGUR12.
- In order to increase acceptance of the bill, Federal Councillor Sommaruga reconvenes the working group (this time including internet service providers). In March 2017, they agree on a compromise.
- The dispatch, approved by the Federal Council on 22 November 2017, is based on this compromise as well as the comments received during the consultation procedure.

Source: Press Release of the IPI No. 68908 of 22 November 2017

Further Information:

- [Message](#) (in German)
- [Draft](#) (in German)