

Corrigendum Q&A IFTA regarding "Licensing in Switzerland and the Impact of the Swiss Film Act".

In May 2017, the IFTA (Independent Film & Television Alliance, 10850 Wilshire Boulevard, 9th Floor, Los Angeles, CA, USA 90024-4311, www.ifta-online.org) published a Q&A to support its own members in licensing matters for film exploitation in Switzerland (see Annex). IFTA claims that its Q&A is based on recent discussions with the Film Section of the Federal Office of Culture.

IFTA's publication is not correct. Swiss Film Distributors¹ note that the Q&A of IFTA contradicts the information provided by the Film Section of the Federal Office of Culture (published on its website) and also contains incorrect information which is subsequently corrected.

1. Wording of Art. 19 Film Act and Art. 2 letter a RTVA

Federal Act on Film Production and Film Culture (Film Act, FIA) of 14 December 2001 (SR 443.1)²

Art. 19 Linguistic diversity

¹ *Films subsidised by the Confederation must be made available in more than one national language.*

² *A company may distribute a title for its first public showing in the cinema or for other uses of the work only if it holds the rights for the whole of Switzerland to all language versions that are available for exploitation in Switzerland.*

³ *The foregoing does not apply to exploitation by broadcasting organisations in programme services under Article 2 letter a of the Federal Act of 24 March 2006 on Radio and Television.*

Federal Act on Radio and Television (RTVA) of 24 March 2006

Art. 2 Definitions

In this Act:

- a. *programme service means sequence of programmes which are offered continuously, defined in time and transmitted using telecommunications techniques and which are intended for the public;*

2. For the territory of Switzerland, all language versions must be licensed exclusively to a single distributor

The Federal Office of Culture determines:

Acquisition of rights:

There are four fields of exploitation in which film broadcast rights may be acquired:

1. *Cinema (theatrical)*

¹ Agora Films / Ascot Elite Entertainment Group / Columbus Film / Filmcoopi Zürich / Frenetic Films / Impuls Pictures / Pathé Films / Praesens Film / Xenix Filmdistribution

² Legal texts available at <https://www.admin.ch/gov/de/start/bundesrecht/systematische-sammlung.html>

2. *Physical media (DVD, video)*
3. *TV and, where applicable, 7 day catch-up*
4. *Non-linear media (VOD in its various forms)*

These rights must be acquired within the boundaries of the Federal Film Act and may not be shared by several holders. Consequently, these rights are exclusive to the entire territory of Switzerland.³

It is clear from the above text of the Federal Office of Culture that there are four categories of rights (cinema rights, physical media, TV, non-linear media) and that these categories of rights cannot be divided and apply exclusively to the territory of Switzerland.

The national languages of Switzerland are German, French, Italian and Romansh⁴. These languages are spoken all over the country, although mainly in individual language regions. Switzerland is not divided into individual language regions but unites citizens who speak one (or more) of the four national languages in a single territory. According to the Federal Constitution, the Confederation (and the cantons) promotes communication and exchange between language communities⁵. One of the means to this end is Art. 19 of the Film Act with its marginal "linguistic diversity" (see above).

The licensing agreements with the distributor for Switzerland are aimed at ensuring that the territoriality principle is respected and that all language versions used in Switzerland are exclusively licensed to the distributor. Contrary to what IFTA has said, Windows and holdback regulations are not essential for licensing agreements with distributors, but rather regulations on protective measures, particularly geoblocking, in order to prevent the exclusive licenses of the individual distributors in Switzerland and the neighbouring countries (Germany, Austria, France, Italy) from being infringed.

3. The Film Act also applies to catch-up offers

The Film Act applies in principle to all digital offers. Excluded are only linear TV offers and the associated so-called 7 day catch-up offers. Only these 7 Day Catch-up offers are - via a legal fiction - equated with linear TV. Linear TV offers are a sequence of programmes which are offered continuously, defined in time and transmitted using telecommunications techniques and which are intended for the public (see above, Art. 2 lit a RTVA).

An extension of the 7 day catch-up is not under discussion.

4. The Film Act applies to all online VOD offers

The Film Act applies to all forms of digital and non-linear exploitation rights. These exploitation rights cannot be divided into individual digital partial rights (see point 2 above).

5. The Film Act promotes nationwide active, culturally committed and healthy distribution structures.

The Film Act requires that distribution companies contribute to the diversity of their activities (Art. 17 (1) FIA). Distributors can make this contribution to a wide range of services if they have all the

³ (See <https://www.bak.admin.ch/bak/en/home/cultural-creativity/film/film-rechtliche-informationen/amendment-to-clause-on-exploitation-in-switzerland--art--19-para.html>; copied on 02.01.2018)
4 Art. 4 Federal Constitution of the Swiss Confederation, SR 101

⁵ Art. 70 para 3 Federal Constitution of the Swiss Confederation, SR 101

rights for the whole of Switzerland. Many Swiss distributors strive to acquire all exploitation rights to a film title.

According to the Film Act, there can only be one distributor in each field of exploitation (cf. No. 2 above) who must also have an exclusive license.

If the distributor of the cinema rights is a legal entity, it and its members of management must have their registered office in Switzerland⁶.

6. Every distributor in Switzerland must comply with reporting obligations

Film distributors in Switzerland must comply with reporting obligations:

The distribution companies must submit a report every month on titles of the films distributed, the places of screening, the screens on which they are projected and the number of admissions attained (cinema attendance).⁷

Companies that exploit films in order to use the works outside cinemas shall file a report every year on the results obtained from the exploitation of the firms according to language version.⁸

Violations of the reporting obligation are punishable by law⁹.

In case of questions please contact [filmdistribution switzerland \(info@filmdistribution.ch\)](mailto:filmdistribution.switzerland@filmdistribution.ch).

Berne, 13. February 2018

⁶ Art. 23 Film Act, SR 443.1

⁷ Art. 24 para 2 Film Act, SR 443.1

⁸ Art. 24 para 3^{bis} Film Act, SR 443.1

⁹ Art. 28 Film Act, SR 443.1