

Licensing in Switzerland and the Impact of the Swiss Film Act

Amendments to [Switzerland's Film Act](#) intended to promote the exploitation of films in all language regions of the country continue to generate confusion among distributors in Switzerland, Germany, France and Italy with respect to the licensing of films and television programming within Switzerland. As of 1 January 2016, the "Linguistic Diversity" provisions of [Article 19](#) of the Film Act which were previously limited to a film's first public showing in a cinema, have been extended to include "other uses". Linear television broadcast services and catch-up TV within the seven day period from the linear broadcast were excluded from the scope of Article 19. Subsequently, the Swiss Government has provided [guidance](#) to clarify the scope of the amended Film Act.

To assist Members address licensing questions for distribution within Switzerland, IFTA has developed the following Frequently Asked Questions based on recent conversations with the Film Section of the [Swiss Federal Office for Culture \(FOC\)](#):

▪ **What are the specific amendments to Article 19 of the Film Act?**

Previously limited to theatrical distribution, the specific amendments to Article 19 of the Film Act expand the scope of Article 19 to "other uses" (excluding broadcast television) and are as follows (in red with emphasis added):

Article 19(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*.¹"

New Article 19(3)

"The foregoing does not apply to exploitation by broadcasting organisations in programme services under Article 2 letter of the Federal Act of 24 March 2006² on Radio and Television."³

The complete text of the Film Act is available from the Swiss Government at <https://www.admin.ch/opc/en/classified-compilation/20001389/index.html>

▪ **Does the Film Act mandate that all languages (German, French and Italian) must be licensed to a single distributor in Switzerland?**

No. The FOC has confirmed that the amended Article 19(2) provides that an entity may only distribute audiovisual content in Switzerland if it holds rights to all language versions that are ***actually exploited*** in the country in the particular method of distribution, with the exception of television broadcasts which are specifically exempted by Article 19(3).

The new law does not mandate that licensors exclusively contract with a single distributor for Switzerland, or that all language versions of a film must actually be exploited in the country,

¹ Amended by No I of the Federal act of 19 June 2015, in force since 1 Jan. 2016 ([AS 20155637](#); [BBI 2015 497](#)).

² SR [784.40](#)

³ Inserted by No I of the Federal act of 19 June 2015, in force since 1 Jan. 2016 ([AS 20155637](#); [BBI 2015 497](#)).

although each (sub) distributor that exploits a film in a particular form of distribution (*e.g.*, home video, video on demand) in Switzerland must hold rights to all those language versions that are actually exploited in the country in that particular method of distribution. There may in fact be multiple distributors in each media that are authorized to exploit the same content in Switzerland, *provided that* each of those authorized distributors *have access to* all of the language versions of that particular content that are made available in that media.

In terms of coordinating license agreements with German, French and Italian distributors that may exploit those language versions in Switzerland, it will be important to ensure that each distributor exploits the film in Switzerland has access to all of those language versions that are actually exploited in the country. This will be a matter of coordinating windows and holdbacks for certain language versions, and particularly important where exploitation of the French language version in Switzerland will be coordinated with [statutory release windows in France](#).

▪ **Does the Film Act apply to catch-up TV operated by broadcasters?**

Amended Article 19(2) of the Film Act does not apply to online catch-up operated by the linear TV broadcaster, *provided that* it occurs during a seven-day period following the initial broadcast. When the amendment was adopted by the Swiss Parliament, the seven-day periods was the common standard in Switzerland. It's unclear if or when this seven day period will eventually be expanded. To the extent that a broadcaster operates separately from its linear broadcast services, an ancillary and non-linear services such as SVOD or TVOD, Article 19(2) of the Film Act would apply.

▪ **Does the Film Act apply to online VOD services?**

Yes. Article 19(2) is applicable to all other forms of exploitation and applies on a media-by-media basis *i.e.*, cinema (theatrical); physical media (DVD, video); TV and, where applicable, catch-up (more than seven days from a linear broadcast); non-linear media (VOD in its various forms). It is important to note that to the extent that a broadcaster operates ancillary non-linear services such as SVOD or TVOD, Article 19(2) of the Film Act would apply.

▪ **Does the Film Act mandate that there may be only a single distributor for all methods of exploitation in Switzerland?**

No. In the instances where Article 19(2) applies, there may in fact be multiple distributors in each media that are authorized to exploit the same content in Switzerland, *provided that* all authorized distributors (except linear broadcast services) have access to all language versions which are made available in Switzerland in that media. Note that the theatrical distributor for Switzerland must be a legal entity registered/organized within Switzerland.