[CH] Parallel Import of Audiovisual Works into Switzerland Subject to Consent of Rightsholder

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According to the new Article 12(1) of the Federal Law on copyright and neighbouring rights (LDA), copies of an audiovisual work may no longer be re-sold or circulated in any other way unless the originator either sells it in Switzerland or has authorised its sale in Switzerland. This statutory provision has been included in the new Federal Law on cinematographic culture and production (Cinema Act - LCin) and came into force on 1 August 2002, thereby prohibiting parallel imports of audiovisual works unless the holder of the rights for the work concerned has authorised this in advance. The ban applies more particularly to videos and DVDs put onto the Swiss market at the same time as and in parallel with the audiovisual work being shown in cinemas.

This means that Article 12(1 bis) of the LDA introduces the concept of the exhaustion of the right to circulate audiovisual works at national level. In other words, a copy of a work may only be circulated in Switzerland if the owner of the rights has consented to such circulation. Subject to this sole condition, the copy may then be freely circulated or re-sold in Switzerland. However, the holder of the rights may object to parallel imports of copies of the work onto the Swiss market if consent is limited to the circulation of such copies in other countries.

In order to exercise the rights conferred by Article 12(1 bis) of the LDA, the holder of the rights concerning the audiovisual work may resort to the protective measures provided for in civil law as regards copyright. The holder may therefore apply to the appropriate court for a ban on unlawful parallel imports and the confiscation and destruction of works imported into Switzerland unlawfully. The holder of the rights concerning the audiovisual work may also claim both damages and the profits made by the importer. Lastly, the judge may order preventive measures, particularly in order to ensure the conservation of evidence, to determine the place of origin of the unlawfully imported works, or to allow the provisional exercise of applications to prevent or stop the nuisance caused by the parallel import.

Article 12 al. 1bis de la loi fédérale du 9 octobre 1992 sur le droit d'auteur et les droits voisins (LDA), introduit par l'article 36 ch. 3 de la loi fédérale du 14 décembre 2001 sur la culture et la production

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cinématographiques (loi sur le cinéma, LCin), en vigueur depuis le 1 août 2002

http://www.admin.ch/ch/f/rs/231_1/index.html

Article 12(1 bis) of the Federal Law of 9 October 1992 on copyright and neighbouring rights (LDA), introduced by Article 36(3) of the Federal Law of 14 December 2001 on cinematographic culture and production (Cinema Act - LCin), in force since 1 August 2002

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