[CH] New Rules on Parallel Importing of Videogrammes Come into Force

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Since 1 April 2004, the parallel importing of DVDs and videocassettes into Switzerland is authorised as soon as the film in question is no longer being shown as a current film in cinema theatres. Thus the entry into force of the new Article 12(1)(a) of the Federal Act of 9 October 1992 on copyright and neighbouring rights (Copyright Act LDA) marks the end of a lively controversy produced by the introduction of the previous version of this statutory provision when the Federal Cinema Act of 14 December 2001 was adopted. The old version of Article 12(1)(a) of the LDA prohibited the parallel importing of videogrammes without the authorisation of the author or his beneficiary, and this caused a wave of protest on the part of importers and distributors of DVDs and videos (see IRIS 2002-8: 14 and IRIS 2003-8: 14).

The ban on parallel importing while a new film is still being shown in cinema theatres applies irrespective of the language version of the videogrammes imported into Switzerland. Thus, for example, a film may not be sold or rented out as a DVD or video in an original English version during the protected period. However, the new Article 12(1)(a) of the LDA only protects the first showing of a film in cinema theatres; the provision therefore does not apply to, for example, re-showings of old cinematographic works or the premieres of films shown in cinema clubs.

Lastly, Article 12(1)(a) of the LDA allows for differentiated exploitation of audiovisual works in the various language regions of Switzerland (German-, French-, Italian- and Romansch-speaking areas). The new regulations take into consideration the fact that films are generally shown on different timescales in cinema theatres in the different language regions. Thus the parallel importing of DVDs and video cassettes was possible in a language region as soon as the first commercial showing of the film was over in that region. This means that the opening of the videogramme market can be controlled independently and gradually, according to the staggering of cinematographic exploitation in the country's different language regions. Thus Article 12(1)(a) of the LDA preserves the principle of the serial exploitation of cinematographic works without necessarily hindering competition on the market for DVDs and videos by a total ban on parallel importing.

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Loi fédérale du 9 octobre 1992 sur le droit d'auteur et les droits voisins. Publiée au Recueil systématique du droit fédéral

http://www.admin.ch/ch/f/rs/2/231.1.fr.pdf

Federal Act of 9 October 1992 on copyright and neighbouring rights, published in the gazette of Federal legislation

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