



# Copyright 2025

11<sup>th</sup> Edition



Contributing Editors:

**Phil Sherrell & Rebecca O'Kelly-Gillard**

Bird & Bird LLP

**glg** Global Legal Group

# Expert Analysis Chapter

1

A Deep Dive into Cyprus' IP Box: Trends and Opportunities  
Andreas Georgiou, SPL Audit (Cyprus) Ltd

## Q&A Chapters

9

**Canada**  
Catherine (Cat) Lovrics & Anna Morrish,  
Marks & Clerk Law LLP

18

**Czech Republic**  
Rudolf Leška, Monika Slováková, Jiří Štáidl &  
Ondřej Kolisko, ŠTAIDL LEŠKA ADVOKÁTI

24

**France**  
Catherine Mateu, Armengaud Guerlain

31

**Ghana**  
Sarah Norkor Anku, Onyinyechukwu  
MaryMagdalene Okeyea-Dotsey & Cedric Nudanu,  
SN ANKU IP FIRM

39

**Greece**  
Marios D. Sioufas, Sioufas and Associates Law Firm

46

**India**  
Manisha Singh & Manya Jain, LexOrbis

55

**Israel**  
Liad Whatstein & Oren Weiner, Liad Whatstein & Co.

62

**Japan**  
Kenji Tosaki, Nagashima Ohno & Tsunematsu

68

**Netherlands**  
Simone Poot, ARQUE Advocaten

78

**Philippines**  
Vida M. Panganiban-Alindogan,  
SyCip Salazar Hernandez & Gatmaitan

87

**South Africa**  
Elaine Bergenthuin, Bergenthuin Inc.

94

**Spain**  
Javier Fernández-Lasquetty Quintana &  
Alba María López, ELZABURU

101

**Switzerland**  
Dr. Marco Bundi & Benedikt Schmidt,  
Meisser & Partners AG

107

**Taiwan**  
Steven Hsu & Jim Chang, Hsu & Associates

114

**Ukraine**  
Oleg Zhukhevych, Olga Danish & Olga Kreshchenko,  
ADVANCE PARTNERS

122

**United Kingdom**  
William Wortley, Bird & Bird LLP

129

**USA**  
Christopher V. Carani, Dunstan H. Barnes,  
Sarine R. Hagopian & John C. Dewar,  
McAndrews, Held, and Malloy

# Switzerland



Dr. Marco Bundi



Benedikt Schmidt

Meisser &amp; Partners AG

## 1 Copyright Subsistence

### 1.1 What are the requirements for copyright to subsist in a work?

This question is answered by the Federal Act on Copyright and Related Rights of 9 October 1992 (CopA). Art. 2 (1) defines works as literary and artistic intellectual creations with individual character, irrespective of their value or purpose.

Three requirements have to be met in order to qualify as a work:

- it must be an “intellectual creation”;
- it must fall under “literature and art”; and
- it must have an “individual character”; the act was revised in 2019 and para. 3*bis* was inserted, after which point photographs of three-dimensional objects were treated in the same way as protected works, even if they do not have an individual character.

A work must always be an intellectual creation, i.e., the expression of a person’s intellectual activity.

### 1.2 Does your jurisdiction operate an open or closed list of works that can qualify for copyright protection?

Switzerland is based on an open system. The categories of works specified in CopA are just examples, it is not an exhaustive list; however, any work with individual character may fall hereunder.

### 1.3 In what works can copyright subsist?

Copyright can subsist in any works that are literary and artistic intellectual creations with individual character, irrespective of their value or purpose. These include, in particular:

- a. literary, scientific and other linguistic works;
- b. musical works and other acoustic works;
- c. works of art, in particular paintings, sculptures and graphic works;
- d. works with scientific or technical content such as drawings, plans, maps or three-dimensional representations;
- e. works of architecture;
- f. works of applied art;
- g. photographic, cinematographic and other visual or audio-visual works; and
- h. choreographic works and works of mime.

According to the law, computer programs are also works. Drafts, titles and parts of works, insofar as they are intellectual creations with an individual character, are also protected. Furthermore, since 1 April 2020, Photographic depictions and depictions of three-dimensional objects produced by a process similar to that of photography are considered works, even if they do not have individual character.

### 1.4 Are there any works which are excluded from copyright protection?

Art. 5 CopA specifies the works that are excluded from protection, namely:

- a. acts, ordinances, international treaties and other official enactments;
- b. means of payment;
- c. decisions, minutes and reports issued by authorities and public administrations; and
- d. patent specifications and published patent applications.

### 1.5 Is there a system for registration of copyright and, if so, what is the effect of registration?

There is no registration system for copyright in Switzerland. A work is protected by copyright as soon as it is created (or parts thereof), irrespective of whether it has been fixed on a physical medium.

### 1.6 What is the duration of copyright protection? Does this vary depending on the type of work?

Protection expires according to Para. 29 (2), CopA:

- a. in the case of computer programs, 50 years after the death of the author;
- a.<sup>bis</sup> 50 years after production for photographic depictions and depictions of three-dimensional objects produced by a process similar to that of photography if the depictions do not have individual character; and
- b. in the case of all other works, 70 years after the death of the author.

Where it is has to be assumed that the author has been dead for more than 50 or 70 years ([https://www.fedlex.admin.ch/eli/cc/1993/1798\\_1798\\_1798/en#fn-d8e1352](https://www.fedlex.admin.ch/eli/cc/1993/1798_1798_1798/en#fn-d8e1352)) respectively, protection no longer applies.

### 1.7 Is there any overlap between copyright and other intellectual property rights such as design rights and database rights?

Yes. Works that are protected by copyright may, under certain circumstances, also be registered as designs (insofar as it is new and has individual character). In such cases, it is always advisable to register the work as a design as well. Unlike the European Union, Switzerland does not have a “*sui generis*” property right for databases. Irrespective of the copyright qualification, databases constitute a work result within the meaning of Art. 5 lit. c of the Federal Act on Unfair Competition. Furthermore, rights for topographies of semi-conductors and also neighbouring rights may overlap with copyrights.

### 1.8 Are there any restrictions on the protection for copyright works which are made by an industrial process?

As long as the work keeps the required characteristics, there are no restrictions. However, the work itself must be made by an intellectual creation. How it is subsequently processed, is not relevant for the protection itself.

### 1.9 Would Copyright subsist in a work which is created by a Generative AI tool?

No, since a work must always be an intellectual creation, created by a human being.

## 2 Ownership

### 2.1 Who is the first owner of copyright in each of the works protected (other than where questions 2.2 or 2.3 apply)?

Following Art. 6 CopA, the author is the natural person who has created the work.

Where two or more persons have contributed as authors to the creation of a work, copyright belongs to all such persons jointly. Unless they have agreed otherwise, they may only use the work with the consent of all authors; consent may not be withheld for reasons contrary to the principles of good faith. Important to note is that each joint author may independently bring an action for infringement, but may only ask for relief for the benefit of all.

### 2.2 Where a work is commissioned, how is ownership of the copyright determined between the author and the commissioner?

Moral rights will always belong to the actual author. However, the economic exploitation rights may be transferred to the commissioner. This will depend on the content of the contract agreed by the parties. If nothing specific is agreed, all the rights that are not necessary to exercise the contractual rights remain with the author. Therefore, it is important for the commissioner to clearly assign all required rights to him/her.

### 2.3 Where a work is computer-generated (whether or not using AI), who is the first owner of copyright?

In order to qualify as a work, it must be generated or created by a human being. Therefore, it is questionable as to whether a computer-generated work would qualify as a copyrighted work at all.

### 2.4 Is there a concept of joint ownership and, if so, what rules apply to dealings with a jointly owned work?

Yes, there is a concept, and it is regulated by Art. 7 CopA. Please see question 2.1.

## 3 Exploitation

### 3.1 Are there any formalities which apply to the transfer/assignment of ownership?

Copyrights (except moral rights) are transferable by assignment or by inheritance. This is stated by the law, Art. 16 (1) CopA. All rights of use can be transferred individually or globally to any third party. It is important to note that the transfer of copyrights has an effect *in rem*, and can be asserted against any third party.

### 3.2 Are there any formalities required for a copyright licence?

No. The transfer of the copyright (or single property rights) is not subject to any formal requirement. Theoretically, a licence can therefore be tacit. While the law does not advocate a formal requirement, doctrine asks for a written document.

### 3.3 Are there any laws which limit the licence terms parties may agree to (other than as addressed in questions 3.4 to 3.6)?

The Code of Obligations is applicable on any general contract the parties may agree upon. As such, a contract is void if its terms are impossible, unlawful or immoral. According to common practice, indefinite, not terminable agreements are not permissible under Swiss law.

### 3.4 Which types of copyright work have collective licensing bodies (please name the relevant bodies)?

The author may not always be in a position to exploit his property rights himself. In such cases, the law prescribes collective exploitation, i.e., collecting societies taking over exploitation from the rights holders. This enables the use of protected content while the rights holders are adequately compensated. Such bodies are:

- **ProLitteris** for the exploitation of rights to literature, photography and visual arts.
- **Société Suisse des Auteurs (SSA)** for the exploitation of rights to literary and musical-dramatic works and audio-visual works.

- **Suisa** for the exploitation of rights to musical, non-theatrical works.
- **Suissimage** for the exploitation of rights to audiovisual works.
- **Swissperform** for the exploitation of neighbouring rights.

### 3.5 Where there are collective licensing bodies, how are they regulated?

Collective licensing bodies are regulated in Art. 40 CopA. Any person who exploits rights that are subject to federal supervision requires authorisation from the Swiss Federal Institute of Intellectual Property (IPI). Authorisation is only given to collective rights management organisations that:

- a. have been founded under Swiss law, are domiciled in Switzerland and conduct their business from Switzerland;
- b. have the management of copyright or related rights as their primary purpose;
- c. are open to all holders of rights;
- d. grant an appropriate right of participation in the decisions of the society to authors and performers;
- e. guarantee compliance with the statutory provisions, in particular in terms of their articles of association; and
- f. give rise to the expectation of the effective and economic exploitation of rights.

### 3.6 On what grounds can licence terms offered by a collective licensing body be challenged?

Those can be mainly challenged if the terms are not in line with the tariffs or the principles of distribution of the tariffs.

## 4 Owners' Rights

### 4.1 What acts involving a copyright work are capable of being restricted by the rights holder?

The author has the exclusive right to his own work and the right to recognition of his authorship. The author has the exclusive right to decide whether, when and how the work may be altered, and/or whether, when and how the work may be used to create a derivative work or may be included in a collected work. Even where a third party is authorised by contract or law to alter the work or to use it to create a derivative work, the author may oppose any distortion of the work that is a violation of his personal rights.

### 4.2 Are there any ancillary rights related to copyright, such as moral rights, and, if so, what do they protect, and can they be waived or assigned?

Yes. The author has moral rights over the work. Those rights are perpetual, inalienable and imprescriptible.

### 4.3 Are there circumstances in which a copyright owner is unable to restrain subsequent dealings in works which have been put on the market with his consent?

Yes, when the work is sold, the copyright is exhausted. The copyright owner therefore cannot stop third parties from

further selling the work. This restricts the exclusive right of the author to offer, sell or otherwise distribute copies of the work (Art. 10 para. 2 lit. b CopA).

## 5 Copyright Enforcement

### 5.1 Are there any statutory enforcement agencies and, if so, are they used by rights holders as an alternative to civil actions?

The assignment of rights by the holder of rights to the collecting body is often accompanied by an assignment of certain copyrights. The collecting body thus becomes the owner and can assert the rights in its own name. It can then collect compensation and to pass it on to the authors, publishers and producers. However, generally, it is up to the authors to enforce their rights.

### 5.2 Other than the copyright owner, can anyone else bring a claim for infringement of the copyright in a work?

Yes. Any person who holds an exclusive licence is entitled to bring a separate action, unless this is expressly excluded in the licence agreement. Any licensees may join an infringement action in order to claim for their own losses. Furthermore, as stated in question 5.1, collecting bodies can also bring a claim for infringement.

### 5.3 Can an action be brought against 'secondary' infringers as well as primary infringers and, if so, on what basis can someone be liable for secondary infringement?

Yes. The action can be brought against any person who cooperates in the infringement. As soon as the person is knowingly involved in this behaviour, he/she becomes liable.

### 5.4 Are there any general or specific exceptions which can be relied upon as a defence to a claim of infringement?

There are exceptions to the copyright, such as private use, use of orphan works, quotations of certain parts, freedom of panorama, parody, and use for educational or scientific purposes.

### 5.5 Are interim or permanent injunctions available?

Both are available. The courts are competent to issue such injunctions. Any person requesting preliminary measures may, in particular, request that the court orders measures to:

- secure evidence;
- establish the origin of items unlawfully manufactured or placed on the market;
- preserve the existing state of affairs; or
- provisionally enforce claims for injunctive relief and remedy infringement.

Furthermore, the person whose copyright or related right is infringed or threatened may request that the court:

- a. prohibit an imminent infringement;
- b. remedy an existing infringement;
- c. require the defendant to provide information on the origin and quantity of items in their possession that have

been unlawfully manufactured or placed on the market and name the recipients and disclose the extent of any distribution to commercial and industrial consumers.

Besides civil lawsuits, the author may also proceed and file a criminal complaint.

#### 5.6 On what basis are damages or an account of profits calculated?

According to court practice, there are two methods for calculating damages: the concrete calculation method and the licence analogy. According to the licence analogy, the lost profit, i.e., the damage is calculated on the basis of the customary remuneration rates for the use of the copyrighted work (such as tariffs of the collecting societies). However, in Swiss practice, it not easy to obtain damages in general. Unlike other jurisdictions, there is no injury surcharge.

#### 5.7 What are the typical costs of infringement proceedings and how long do they take?

Besides the fees for a party's own attorney, the courts ask for an advance payment for entertaining the lawsuit. This fee typically ranges between CHF 10,000 and CHF 20,000 (depending on the amount at issue). The length of proceedings very much depends on the relevant court. There are specialised courts in certain Cantons of Switzerland that will process lawsuits much more quickly than other courts. Generally, proceedings take around two to three years.

#### 5.8 Is there a right of appeal from a first instance judgment and, if so, what are the grounds on which an appeal may be brought?

Yes, the decision can be appealed to the next instance. However, since copyright infringements are already entertained directly by the High Courts of the Cantons, the appeal has to be directed within 30 days to the Swiss Supreme Court, which then decides the case at final instance. As most appeals are dismissed, the chances of success in the higher courts are limited.

#### 5.9 What is the period in which an action must be commenced?

If *ex parte* measures are taken into consideration, they should be filed as soon as possible, and within three months at the latest. Otherwise, the courts tend to dismiss the case due to lack of urgency. As long as the infringing behaviour continues, there is no specific period in which action needs to be taken.

## 6 Criminal Offences

#### 6.1 Are there any criminal offences relating to copyright infringement?

On the complaint of the person whose rights have been infringed, any person who wilfully and unlawfully commits any of the following acts is liable to a custodial sentence not exceeding one year or a monetary penalty:

- a. uses a work under a false designation or a designation that differs from that decided by the author;
- b. publishes a work;

- c. modifies a work;
- d. uses a work to create a derivative work;
- e. produces copies of a work in any manner;
- f. offers, transfers or otherwise distributes copies of a work;
- g. recites, performs or presents a work or makes a work perceptible somewhere else either directly or with the help of any kind of medium;
- g.<sup>bis</sup> makes a work available through any kind of medium in such a way that persons may access it from a place and at a time individually chosen by them;
- h. broadcasts a work by radio, television or similar means, including by wire, or retransmits a broadcast work by means of technical equipment, the operator of which is not the original broadcasting organisation;
- i. makes a work available, a broadcast work or a retransmitted work perceptible;
- j. refuses to notify the authority concerned of the origin and quantity of items in his possession that have been unlawfully manufactured or placed on the market, and to name the recipients and disclose the extent of any distribution to commercial and industrial consumers; or
- k. rents out a computer program.

Furthermore, the omission of source, infringement of related rights, offences relating to technical protection measures and to rights-management information, and unauthorised assertion of rights are liable to criminal sanctions.

#### 6.2 What is the threshold for criminal liability and what are the potential sanctions?

All criminal provisions of CopA are designed as intentional offences. Contingent intent is also sufficient. It is therefore not necessary for the perpetrator to be certain of the existence of copyright protection.

Potential sanctions for criminal acts include a monetary penalty or, whoever commits such crimes for commercial gain, a custodial sentence not exceeding one year or a monetary penalty. In practice, monetary penalties are the most common sanction. It is only repeat offenders that, at some point, would face a custodial sentence.

## 7 Current Developments

#### 7.1 Have there been, or are there anticipated, any significant legislative changes or case law developments?

To strengthen the position of creative artists and cultural industries, the fight against online piracy is being made more efficient. Under the revised Copyright Act, hosting providers that present a particular risk for copyright infringement must ensure that copyright-infringing content that has already been removed once remains permanently removed. This measure is specifically targeted towards piracy platforms. In addition, the law also clarifies that data processing is permissible for the criminal prosecution of copyright infringement.

The position of authors was strengthened further due to greater protection for photographs, an extended term of protection for performers and producers and more efficient management of video-on-demand rights.

Further information to the reforms may be found on <https://www.ige.ch/en/law-and-policy/national-ip-law/copyright-law/revision-of-copyright-law/the-key-reforms>

**7.2** Are there any particularly noteworthy issues around the application and enforcement of copyright in relation to digital content (for example, when a work is deemed to be made available to the public online, hyperlinking, in NFTs or the metaverse, etc.)?

Swiss courts will only be competent if the infringement has taken place in Switzerland. As for online infringements, it depends whether the website in question targets the Swiss consumer or not. Swiss courts will only judge a case if the website targets Swiss consumers.

**7.3** Have there been any decisions or changes of law regarding the interaction between copyright law and the creation and deployment of artificial intelligence systems? In particular, please reference any pending (or decided) disputes where copyright owners have challenged AI developers in relation to the use of works in the development of AI tools.

The Swiss Trademarks Office published an interesting interview on these questions online (<https://www.ige.ch/en/blog/blog-article/kuenstliche-intelligenz-koennen-ki-tools-urheberrecht-verletzen>). It was emphasised that such works do not fall under the scope of copyright protection, nevertheless, they may infringe third party rights if the chatbot has taken protected parts from other works.



**Dr. Marco Bundi** studied law in Zurich. He was admitted to the Bar in Switzerland in 2005 and subsequently became a member of the Swiss Bar Association. After practising law before the cantonal courts, he obtained his LL.M. degree at the University of Bern. He joined Meisser & Partners in 2006, after having worked for the United Nations at the Special Court in Sierra Leone. Up to now, he has written several articles on various aspects of trademark law; he is also a regular contributor to *\*WTR\** Daily. He graduated in 2008 from the University of Berne as a Doctor of Law. His practice includes enforcement of IP rights, domain disputes, protection against unfair competition (including counterfeiting and passing off), and copyrights and managing trademark proceedings before national authorities and courts. He became a partner of Meisser & Partners AG in 2012. He is currently an extraordinary judge in the district court in Viamala.

**Meisser & Partners AG**

Bahnhofstrasse 6  
7250 Klosters  
Switzerland

Tel: +41 814 102 323  
Email: bundi@swisstm.com  
URL: www.swisstm.com



**Benedict Schmidt** has written several articles on various aspects of trademark law, as well as three chapters within a standard publication on geographical indications. His practice includes counselling on registrability and enforcement of IP rights – mainly trademarks, design patents and copyrights – including anti-counterfeiting, customs measures, domain disputes and protection against unfair competition. He is a member of the Swiss Bar Association, the Swiss Association for Intellectual Property Law, INTA, the International Association for the Protection of Intellectual Property and the Pharmaceutical Trademarks Group.

**Meisser & Partners AG**

Bahnhofstrasse 6  
7250 Klosters  
Switzerland

Tel: +41 814 102 323  
Email: schmidt@swisstm.com  
URL: www.swisstm.com

The law firm Meisser & Partners AG, providing advice in all IP and related matters, is located in the beautiful mountain area of Klosters (Switzerland). The firm is fully specialised in trademarks work and related areas. The company represents many international clients in Switzerland and is internationally responsible for a number of well-known brands, amongst others in the fields of tobacco (cigars), cosmetics, tourism, financial services, stock exchange indices, food, textiles, sporting goods, supermarkets, technical products and names of celebrities.

The company is led by the two partners Benedikt Schmidt and Dr. Marco Bundi, both attorneys at law and admitted to the Swiss Bar.

[www.swisstm.com](http://www.swisstm.com)





The **International Comparative Legal Guides** (ICLG) series brings key cross-border insights to legal practitioners worldwide, covering 58 practice areas.

**Copyright 2025** features one expert analysis chapter and 17 Q&A jurisdiction chapters covering key issues, including:

- Copyright Subsistence
- Ownership
- Exploitation
- Owners' Rights
- Copyright Enforcement