

# The Challenges and Opportunities of Swiss Copyright Laws Related to Cultural Heritage and the Role of Pro Litteris

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# Copyright Basics (1)

Copyright protected works are:

- literary and artistic
- intellectual creations
- with individual character
- irrespective of their value or purpose.

→ All works relevant to cultural heritage potentially fall under copyright regulation

# Copyright Basics (2)

## Copyright

- is **essentially a monopoly** of the copyright holder to use protected works
- by default **excludes everybody** except the holder
- in general, **use** of protected works is permitted **only with consent** of the copyright holder

However, there are **limitations and exceptions** to this monopoly of the copyright owner

# Copyright Limitations / Exceptions

The rights of copyright owners may be restricted by law for the **benefit of the public** (e.g. culture, education, research, press etc).

1. Copyright has a **time limit** (50 or 70 years)
2. Swiss law provides for many **exceptions**

# Copyright Exceptions

- Private use (art. 19)
- Use of orphan works (art. 22b)
- Archive and backup copies (art. 24)
- Temporary copies (art. 24a)
- Use of works for the purposes of scientific research (art. 24d)
- Inventories (art. 24e)
- Quotations (art. 25)
- Museum, exhibition and auction catalogues (art. 26)

# Obtaining Copyright Permission

**3 different ways:**

## **By discretion of the copyright holder**

- Individual contract between copyright holder and copyright user
- Copyright holder grants a CC (Creative Commons) license to the public

## **By legal exceptions**

- The law grants permission to the users without consent of the copyright holder (e.g. private use, archive and backup copies, quotations etc.)

## **Via collective management**

- The copyright holder appoints CMOs (collective rights management organisations) to license his work and collect fees
- The law appoints or allows CMOs to grant licenses to users

# Compensation of Copyright Owners

## Individual

- direct contract and payment between copyright owner and user

## Collective

- via collective rights management organisations (CMO)

# Collective Rights Management Organisations (CMO)

- Usually copyright owners manage and negotiate their rights with users on an individual basis.
- However, individual rights management is often **impracticable** for the right holder or **undesired** because of a higher public interest
- In these cases collective management organisations (CMOs) may manage the rights



# CMOs in Switzerland

Five CMOs manage rights in different areas:

- **ProLitteris** for literature, photography and visual art
- **Société Suisse des Auteurs** for dramatic works, musicals and audio-visual works
- **SUISA** for musical and non-theatrical works
- **SUISSIMAGE** for audiovisual works
- **SWISSPERFORM** for related rights

# What do CMOs do?

## CMOs

- represent right holders
- negotiate fees with users
- establish **tarifs** for different uses  
<https://prolitteris.ch/dokumente/>
- grant licenses to users
- collect license fees from users
- distribute fees to right holders

# Benefits to Cultural Heritage

If common copyright exceptions fail and dealing with individual copyright owners is impossible or impracticable, CMOs may be involved to apply the following mechanisms:

- Orphan works (art. 22b)
- Extended Collective Licences (art. 43a)

# Orphan Works

A work is considered to be orphaned if the right holders **remain unknown or cannot be found following an appropriate research effort**

**Permission to use can be obtain from CMO if:**

- work is contained in collection held by public or publicly accessible libraries, ed-ucational institutions, museums, collections and archives
- was produced, copied, or made available in Switzerland, or handed over to an institution mentioned above

# Extended Collective Licences

- allows to obtain exclusive rights for a large number of published works
- even if right holders are not represented by the CMO
- the licensed use must not impair the normal (often = commercial) exploitation of the works
- use limited to Switzerland