

Audit of the supervision of copyright management organisations

Swiss Federal Institute of Intellectual Property

Key facts

Five organisations manage copyright in Switzerland. They are ProLitteris, Société Suisse des Auteurs (SSA), SUISA, Suissimage and Swissperform. Each of them is specialised in specific fields (literature, visual arts, music, etc.). They are authorised and have de facto monopoly status for the mandatory collective management of rights. In 2021, these rights were worth around CHF 300 million. The Swiss Federal Institute of Intellectual Property (IPI) is responsible for the supervision of the management organisations.

As part of its supervision, the IPI monitors the activities of the management organisations and ensures that they fulfil their obligations. The Institute undertakes procedures of a legal nature (granting of authorisation to manage rights, approval of the regulations for the distribution of rights, investigations in cases of unlawful exercise of rights, etc.). Each year, the IPI also carries out analytical checks on its activities and management during the approval procedure for the activity reports. The audit by the Swiss Federal Audit Office (SFAO) focused on this last task to determine whether it is effective and efficient. It carried out analyses at the IPI and at two copyright management organisations, SUISA, which manages the music repertoire, and SSA, which manages the repertoire of dramatic and audiovisual works.

The IPI has a standardised and coherent monitoring approach. It is based on information that is generally relevant and reliable. To improve its efficiency, the IPI should adapt its supervision to the specificities of each management organisation, analyse certain information in depth and improve its expertise in financial analysis. The cost of supervision is reasonable for the management organisations.

The specificities of management organisations should be taken into account

IPI supervision is standardised: identical analyses cover the same topics for all management organisations. The supervision approach is coherent. However, the review of different topics at SUISA and SSA shows that the IPI should take better account of the specific risks of each management organisation. A multitude of areas may be concerned, such as the scope of the rights under supervision, the type of collection and distribution activity, the levels of fees charged, the investment strategy, the links with subsidiary organisations, the existence of reserves, the use of rights without a known beneficiary and the IT environment.

An important element in supervising sound and economical management is the gross administrative expense ratio of the management organisations. There is scope for interpretation in the calculation of this rate and the method of calculation may complicate its analysis over time (rate evolution).

The information required by the IPI directive should be analysed in depth. This mainly concerns the detailed auditors' report, the risk management of the management organisations

and their investment strategy. In addition, a visit by the IPI to these organisations would help to obtain useful clarifications and a better understanding of their specificities.

Further expertise in financial analysis is needed

As part of its supervision, the IPI reviews the sound and economical management of the management organisations. This review is carried out on the basis of accounting, financial and auditing information submitted each year by the management organisations. The SFAO found that the IPI's financial analysis skills need to be improved.

The IPI charges the management organisations for its supervisory services in the form of a fee for the approval of the annual report, i.e. an average of CHF 2,000 per year per management organisation. This amount is low in relation to the volume of fees levied by these organisations and the number of hours invoiced is lower than the time actually spent on supervision. The management organisations that were interviewed each spend two to five days preparing the required documents and information. The supervisory workload can be considered reasonable.

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