

Regulations regarding copyright of images

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The internet has fundamentally changed the way we deal with the arts and culture. Many films, songs, novels, historical photographs and books are now available online. This is one of the reasons why the Swiss Federal Act on Copyright and Neighbouring Rights was amended as of 1 April 2020.

All images are now protected, even those that do not meet the requirements for a work pursuant to Article 2(1) of the Swiss Copyright Act (CopA), including those of amateur photographers.

Moreover, because many people are now more aware of their own rights (and thus also of the right to their own image), it is recommended that the association's rights to use copyrighted material and the right to the images of association members be specified in separate regulations.

The drafting of such regulations is usually the responsibility of the Board of Directors, provided this is specified accordingly in the Articles of Association. If this is not the case, it is recommended that the Articles of Association be amended accordingly.

Members of the association are informed about newly adopted regulations through the usual channels of communication, such as newsletters, association bulletins, notices on the notice board or executive committee meetings. New members are informed of the regulations when they join the association and agree to them with their declaration of membership.

Rights of use – what should be included in the Regulations for Photographers?

The Regulations for Photographers govern the rights of use by the association to copyright material created by members of the association, such as photos, clips, illustrations, etc. The Regulations for Photographers are binding on all members of the association and contain the following provisions:

- The agreement concerns the association and its members and grants a licence to use texts, images, video clips, graphics, etc.
(This, therefore, concerns all content protected by copyright.)
- The use of the material is not limited in space, time or location.
(The association is to be able to use the images for the entire duration of the copyright protection.)

- The type of use of the material is not restricted in terms of media.
(The association may therefore use the images in print as well as online/digitally and for marketing purposes on its social media channels.)
- The material can be used free of charge.
- Once granted, the right of use can only be revoked for important reasons.
(Important reasons are, for example, justified claims by third parties for removal of the image.)
- No further written agreement is required; the informal/implicit granting of permission is sufficient, such as also the sending of data by e-mail to the person responsible for the relevant media.
(Whenever someone sends an image to the person responsible for the association's communication, it should be assumed that such person is authorised to use the image accordingly.)
- The association's use is not exclusive.
(The member may therefore also use or exploit the images in other ways as long as the association can continue to use them.)
- Indemnification in case of third-party claims.
(The photographer will be responsible for any claims for damages made by a third party. Experience shows that this can lead to discussions because photographers do not know what this will entail. Therefore, the association must exercise good judgement and be accommodating.)
- Concluding provisions:
 - Disputes (mediation).
Before going to court, the parties should first be obliged to reach an amicable settlement, if necessary with the help of a mediator. Recourse to courts is possible only if and when such course of action has failed.
 - Applicable law and jurisdiction.
Swiss law, in particular copyright law; The place of jurisdiction is the registered office of the association, and jurisdiction lies with the ordinary Swiss courts.

Right to one's own image – how are the rights of persons depicted regulated?

A regulation of the persons depicted governs the use of images that depict members of the association as well as the use of such material by the association. It contains the following provisions:

- The agreement concerns the association and its members.

- It includes a general “model release” (image release) for images in which members are visually recognisable.
- The use of the material is not limited in space, time or location.
- The type of use of the material is not restricted in terms of media.
(Print, online, especially also social media channels.)
- The person depicted waives any financial compensation in the event that the material is used.
- Once granted, the right of use can only be revoked for important reasons.
(When the revised Swiss Data Protection Act comes into force, it will enhance the position of the person depicted in the digital/online use of images; the circle of subjects will be much broader.)
- No further written agreement between the association and its members will be required.
(An informal/implicit permission is sufficient, for example, if the member participates in an association event at which photographs are taken.)
- The regulations must be handed over to a parent or guardian in the case of minors; the parent or guardian must agree to the regulations. As they are not members themselves, written consent of the legal guardians is recommended. The association should file and archive such consent form internally.
- Concluding provisions:
 - Disputes (mediation).
Before going to court, the parties should first be obliged to reach an amicable settlement, if necessary with the help of a mediator. Recourse to courts is possible only if and when such course of action has failed.
 - Applicable law and jurisdiction.
Swiss law, in particular personality/moral rights The place of jurisdiction is the registered office of the association, and jurisdiction lies with the ordinary Swiss courts.

Further information

- B-DUR No. 46, May 2022, copyright law: www.vitaminb.ch/publikationen/b-dur/
- Website of vitamin B: www.vitaminb.ch/vereinsglossar/urheberrecht/
- Overview provided on the website of the Swiss Federal Institute of Intellectual Property: www.ige.ch/en/law-and-policy/national-ip-law/copyright-law/revision-of-copyright-law
- Online version the Swiss Federal Act on Copyright and Neighbouring Rights, CopA: www.fedlex.admin.ch/eli/cc/1993/1798_1798_1798/en