

# Proposed Film Act revision: investment obligation for online film providers and quotas for European films

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## Introduction

The [Film Act](#) is under revision, with major implications for online film providers. Embedded in the Swiss cultural policy for 2021 to 2024, the current Swiss film policy is aimed at boosting the diversity and quality of film offers while strengthening Swiss film culture and preserving Swiss film heritage. As such, the Federal Council has proposed a revision of the Film Act, which is currently under discussion in Parliament.

The proposed revision is groundbreaking for its inclusion of online film providers within the scope of the act. Under the revised act, companies that show films in Switzerland in their programmes or as 'electronic services on demand or by subscription' (ESDS) must use at least 1% of their gross revenues to:

- invest in independent Swiss film productions; or
- pay a compensation fee.

In addition, companies offering films in Switzerland as ESDS must allocate a minimum of 30% of their platform capacity to European films.

## Investment obligation of 1% of gross revenues

In the context of digitalisation of the film market, there is an imbalance between traditional players (eg, broadcasters) and ESDS providers when it comes to the funding of domestic film productions. With the proposed revision of the Film Act, the existing investment obligation of broadcasters will be extended to online film providers. Companies offering films as part of their programmes or as ESDS in Switzerland will have to use 1% of their gross revenue to invest in independent Swiss film productions or to pay a compensation fee, unless they are exempt from paying the levy (eg, if a certain minimum turnover is not reached, if films are shown only occasionally or if programmes or offerings of third parties are offered unchanged). This obligation will also apply to companies domiciled abroad. Expenses for the purchase, production or co-production of Swiss films and recognised Swiss-foreign co-productions can be offset against such investment amount.

Under Article 2(2) of the [Film Act](#), a 'Swiss film' is currently defined as one which:

- has, to a substantial extent, been created by an author who is of Swiss nationality or domiciled in Switzerland;
- has been produced by a natural person who is domiciled in Switzerland or a company with a registered office in Switzerland in which the equity and borrowed capital, as well as the management, is predominantly held and controlled respectively by persons who are domiciled in Switzerland; and
- was produced, insofar as possible, using performers and technicians who are of Swiss nationality or domiciled in Switzerland and by technical cinematographic companies in Switzerland.

'Gross revenues' are all revenues accruing to a company in connection with its film offering. However, for foreign companies, only gross revenues generated in Switzerland is relevant. Gross revenues include not only remuneration received directly from end consumers for a film's consumption, but also revenues stemming from

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advertising and sponsorship and remuneration received for the use of data in connection with a film offering.

### **Quotas for European films**

To enhance the diversity of films offered online, the revised Film Act proposes a quota for European films. This change is aligned with the EU Audiovisual Media Services Directive, which provides for similar quotas. Sub-quotas for Swiss films within such European quota are not envisaged. Online film providers must allocate a minimum of 30% of their platform capacity to European films. This obligation applies only to online film providers selecting the film offer (ie, companies bearing the editorial responsibility of their offer). However, this obligation does not extend to platform providers that only make available existing catalogues or provide user-generated content. Further exemptions are possible. Special labelling and easy-to-find placement of such films are other new requirements proposed by the revised Film Act.

### **Registration, reporting and notification duties**

With the proposed revision of the Film Act, companies offering films in Switzerland in their programmes or as ESDS, irrespective of their legal seat, must register with the Swiss federal public register (currently led by the Federal Office of Culture). This obligation also applies to companies that are exempt from paying the levy due to minor turnovers. Under the proposed revision, foreign companies must further indicate a domicile for service in Switzerland. In addition, domestic and foreign companies offering films in Switzerland in their programmes or as ESDS must observe further reporting and notification duties. Reporting duties include providing evidence on the abovementioned quota and figures on gross revenues with possible deductions.

### **What's next?**

The proposed revision of the Film Act is being discussed in Parliament. The proposed new obligations for online film providers are expected to enter into force in January 2022 at the earliest. Even though the details of the proposed revision have yet to be finalised, the current loose legal landscape for online film providers is likely to become stricter in Switzerland. Online film providers should prepare to implement these new requirements from a technical, financial and administrative perspective.

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