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Question B: What responsibility or obligations should online platforms have when it comes to eliminating infringements by their users, especially in the areas of IP and unfair competition?

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1. Introduction

Unlike its neighbouring countries and the European Union, Switzerland has not (yet) adopted any specific legislation relating to the digital world, particularly with regard to platform liability and the elimination of intellectual property (hereinafter: "**IP**") or unfair competition infringements committed by their users.

It is key to note in this context that Switzerland is completely isolated from its European neighbours, which have all implemented the provider liability as enshrined in the Directive 2000/31/EC on E-commerce (hereinafter: "**EC-D**"). Articles 12 to 14 EC-D set out the "notice and take down"-principle, according to which information society service providers ("ISSPs") are not liable for third party content that they merely transmit ("caching"), or store ("hosting") as long as they do not modify the information and as long as they have no knowledge of the illicit nature of that information or act expeditiously to remove such information after having obtained such knowledge. These principles have remained unchanged under the Digital Services Act (hereinafter: "**DSA**") recently entered into force.

With the exception of one legal provision in the Federal Act on Copyright and Related Rights (Copyright Act, hereinafter: "**CopA**")[1], namely article 39*d* CopA, *Swiss law does not contain any specific provisions relating to the liability of online platforms for IP or unfair competition infringements committed by their users*.

As a result, their responsibility in this context has to be analysed in the light of legal provisions that usually apply to determine the liability of a (direct) perpetrator of an IP or unfair competition infringement and therefore *not to the liability of an online platform for third-party content*. In this article, we refer to these legal provisions as non-specific legal provisions, i.e. provisions that do not govern specifically the liability of online platforms for third party-content. These legal provisions provide for both civil and criminal liability, as well as different types of mechanisms in the event of infringement.

To the best of the authors' knowledge, there is no Swiss Supreme Court decision which relates to the liability of online platforms or hosting providers for third party-content in case of IP or unfair competition infringements. With the exception of a decision rendered by the Civil Chamber of the Geneva Court of Justice (hereinafter: the "**Geneva Court of Justice**"), the authors did not identify any other cases of published case law with regard to lower authorities. The case law to be analysed in this context is therefore limited.

In contrast, *in the area of personality rights infringements, there are several Swiss Court decisions concerning the civil liability of hosting providers for third-party content.*

The authors will therefore analyse these decisions *in order to identify principles that could be applied when examining platforms' liability for IP or unfair competition infringements committed by their users*.

Furthermore, in view of the definition currently used in Swiss law for the concept of platforms and its close links with the concept of hosting providers, the authors analyse in the present article the liability of both online platforms and hosting providers for eliminating infringements by their users, particularly with regard to IP and unfair competition.

[1] Federal Act on Copyright and Related Rights (Copyright Act, CopA) of 9th October 1992 (Status as of 1st July 2023), SR 231.1.

Finally, it shall be noted that the Trade association for the information and communication technology and online industry ("swico") has adopted a "Code of Conduct Hosting" that sets out a procedure to be followed in the event of illegal content being stored on a hosting provider's servers.[2] However, these rules have no legislative force and are merely self-regulatory guidelines. They are not covered by this publication.

The present article provides a historical perspective (*infra* section 2.), before examining the legal basis for liability (*infra* section 3.) and the mechanisms in cases of infringement (*infra* section 4.). It then examines the potential tensions between the enforcement of IP rights and fundamental rights (*infra* section 5.) before presenting the authors' reflections and conclusions on platform liability with regard to eliminating IP and unfair competition infringements (*infra* section 6.).

2. Historical perspective

2.1. Federal Council Report of 11th December 2015, on the civil liability of Internet service providers

The first notable historical development since the LIDC Congress held in Oxford in September 2011 is the publication of a report by the Federal Council on 11th December 2015, on the civil liability of internet service providers ("*La responsabilité civile des fournisseurs de services Internet*", hereinafter: "**FC Report**").

The aforementioned FC Report was issued in the context of the mandate given by the Federal Council to the Federal Department of Justice and Police (hereinafter: "**FDJP**") on 9th October 2013, to examine whether legislation on the civil liability of Internet service providers was necessary and, if so, to prepare a consultation draft by the end of 2015. The FC Report hence presents the results of the work carried out by the working group set up under the auspices of the Federal Office of Justice (hereinafter: "**FOJ**"), with representatives from the Federal Office of Communications, the Federal Institute of Intellectual Property and the State Secretariat for Economic Affairs.[3]

[2] Code of Conduct Hosting, available at https://www.swico.ch/media/filer_public/54/82/5482a501-5c3f-4578-9250-d34b233924d8/20022025_cch_update_2025-mit-integration-dsa-en_vischer_110325.pdf. Accessed 21st July 2025.

[3] Report of the Federal Council of 11th December 2015, La responsabilité civile des fournisseurs de services Internet, p. 12.

The FC Report provides useful guidance on *the definition of "platforms" and how it differs from "hosting providers*". The FC Report defines the concept of "platform" and "hosting providers" as follows:

i. *Platforms* provide users with a framework for exchanging content that the latter have created or reproduced. Platforms are responsible for the architecture and design of the communication platform, as well as for choosing the options for interaction and content dissemination. Their terms of use may indicate which content or behaviour is undesirable or not permitted. However, their editorial control is limited compared to that of traditional media. While traditional media generally entrust an editorial committee with selecting content before publication (*ex ante*), social media control is exercised after publication (*ex post*). Content that does not comply with the terms of use, or which is criticised by other users, is only removed after the fact. Unlike hosting providers and access providers, platform operators do not constitute a legally defined category. In any case, the definition must highlight that platform operators have more influence over content than operators of technical infrastructure, who simply ensure the storage and automated availability of other people's files, as hosting providers traditionally do.

ii. *Hosting providers* offer the technical infrastructure (memory space, computing power and transmission capacity) required for automated online data publication in exchange for payment. Platform operators often use their services. As with most platform operators with a significant market share in Switzerland, the majority of hosting providers are based abroad. They are generally not liable for editorial content, but depending on the circumstances, they are technically able to remove unwanted content from their computers.[4]

The FC Report draws attention to the fact that the boundary between these two concepts is sometimes blurred and that platform operators can also act as hosting providers.[5]

No specific legislation has been enacted on the basis of the FC Report or, more precisely, following the mandate given by the Federal Council to the FDJP on 9th October 2013.

Indeed, *in 2015, the Federal Council concluded that there was no need for specific legislation on civil liability of Internet service providers*, deeming that the existing non-specific legal provisions relating to the protection of personality, competition law, unfair competition law, data protection law and criminal law already provided a satisfactory legal framework in this context.

From the perspective of the Federal Council, it was hence more appropriate for the courts to examine individual cases on the basis of existing non-specific regulations, rather than formulating specific binding, abstract general regulations, given the large number of players involved and the constantly changing technical landscape.[6]

[4] Report of the Federal Council of 11th December 2015 (op. cit. 3), p. 19-20.
[5] *Id*., p. 20.
[6] Report of the Federal Council of 11th December 2015 (op. cit. 3), p. 19. In relation to the conclusions of the aforementioned report, see also: Report of the Federal Office of Communications of 17th November 2021, Intermédiaires et plateformes de communication, Effets sur la communication publique et approches de gouvernance, p. 49.

2.2. Introduction of a notice-and-staydown obligation for internet hosting service providers (article 39*d* CopA)

Notwithstanding the Federal Council's conclusion, a new legal provision was introduced in 2020 to the Copyright Act, namely article 39*d* CopA. *This legal provision establishes specific liability for internet hosting service providers under certain circumstances and introduces a notice-and-stay down obligation in this context*.[7]

The aim of the revision of the CopA was to ensure that Swiss hosting providers do not host piracy platforms, and that they intervene rapidly via their servers in the event of copyright infringement.[8]

Under article 39*d* CopA, hosting providers are required to take action in order to prevent further infringements in cases where a work or other protected object has been made available to third parties in an unlawful manner through their services.[9]

2.3. Towards an adaptation of Swiss law to European Law ?

On 1st November 2022, respectively 17th February 2024, the Digital Markets Act (hereinafter: "**DMA**")[10] and the DSA entered into force at the European level.

As it stands, neither the DMA nor the DSA have (yet) been transposed into Swiss law. These European laws are therefore not applicable in Switzerland.

On 8th March 2023, two parliamentary motions were filed to instruct the Federal Council to propose an amendment to the law so that the key objectives of transparency and accountability set out in the DSA are also enshrined in Swiss law, and to implement the main objectives of the DMA in Switzerland.[11]

On 5th April 2023, the Federal Council tasked the Federal Department of the Environment, Transport, Energy and Communications in collaboration with the FOJ with drafting a consultation paper on the regulation of communication platforms by the end of March 2024.

The deadline of March 2024 has since been extended and recently, i.e. on 16th April 2025, the Federal Council postponed its agenda item relating to the proposed regulation of digital platforms.

The current situation in Switzerland, and in particular, the postponement of the regulation of digital platforms has attracted criticism, especially by NGOs.[12]

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[7] Message of the Federal Council of 22nd November 2017 concerning the amendment of the Copyright Act, the approval of two World Intellectual Property Organization treaties and their implementation, FF 2018 559, p. 601-604.
[8] Message of the Federal Council of 22nd November 2017 (op. cit. 7), p. 601.
[9] Message of the Federal Council of 22nd November 2017 (op. cit. 7), p. 602.
[10] The DMA, however, only became applicable on 2nd May 2023.
[11] Motions 23.3068 and 23.3069 and of 8th March 2023 "Create a law on digital services for Switzerland" from Parliamentarians Jon Pult, respectively Marti Min Li.
[12] See the statement of Algorithmwatch/CH and in particular their open letter to the Federal Council following its session of 16th April 2025, available at https://algorithmwatch.ch/fr/reglementer-les-plateformes/. Accessed 21st July 2025.

3. Legal Basis for Liability

3.1. Specific legal basis for the liability of hosting providers in the event of copyright infringement (article 39*d* CopA)

The only specific provision in Swiss law which relates to responsibilities and obligations of hosting providers in relation to eliminating IP infringements by their users is article 39*d* CopA. *This legal provision introduces a notice-and-staydown obligation for hosting providers in case of copyright infringement.*

Article 39*d* CopA provides as follows:[13]

> [1] The provider of an internet hosting service which stores information entered by users is required to prevent a work or other protected subject matter from being unlawfully remade available to third parties through the use of its services, if the following requirements are fulfilled:
>
> a. The work or other protected subject matter has already been unlawfully made available to third parties via the same internet hosting service.
> b. The provider has been notified of the infringement.
> c. The internet hosting service has created a particular risk of such infringements, specifically due to a technical mode of operation or an economic orientation which encourages infringement.
>
> [2] The provider must take the technical and economic measures reasonably expected of them, taking into account the risk of such infringements.

According to the above, the provider of an internet hosting service which stores information entered by users may be held liable under certain circumstances, i.e. if the three following conditions are met:

i. The protected work must already have been made available to third parties unlawfully via the same internet hosting service: this may occur directly (works saved on the host's servers) or indirectly through links saved on the host's servers that redirect to works or objects stored elsewhere. In any case, article 39*d* CopA concerns (only) illegal content or links that have already been removed from the host's servers and subsequently reposted online.

ii. The provider must have been made aware of the infringement: in practice, this information is likely to be sent to the hosting provider electronically in most cases. The notification must describe the infringement and contain sufficient information to enable the protected work or object in question to be clearly identified (e.g. by means of a digital fingerprint).

iii. The provider's service must generate a particular risk that such an infringement is committed. Article 39*d* CopA thus targets hosting providers that generate a particular risk of copyright infringement. There is a particular risk when the service provided by the host facilitates copyright infringements due to its technical functioning or economic objectives. The judge must examine the criteria in letter c in each individual case, taking into account a range of factors which, when assessed as a whole, are likely to give rise to a particular risk.[14]

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[13] Art. 39*d* CopA (op. cit. 1).
[14] Message of the Federal Council of 22nd November 2017 (op. cit. 7), p. 602-603.

The three aforementioned conditions are cumulative and must, therefore, all be met in order to trigger the application of the notice-and-staydown obligation provided for in article 39*d* CopA.

The implementation of the notice-and-staydown obligation provided for in article 39*d* CopA is discussed below (*infra* section 4.1.).

3.2. Non-specific legal provisions

3.2.1. Overview

For other IP infringements (i.e. any other situation than the one described in article 39*d* CopA), respectively in relation to unfair competition infringements, the liability of platforms and hosting providers must be analysed on the basis of non-specific provisions of IP and unfair competition law.

This section sets out the relevant legal provisions of IP law and unfair competition law relating to IP and unfair competition infringements in relation to both civil and criminal liability.

3.2.2. Copyright infringements

In addition to article 39*d* CopA, the CopA contains a non-specific provision, namely article 62 CopA, that applies to copyright infringements more generally.

Article 62 CopA provides as follows:

> [1] Any person whose copyright or related right is infringed or threatened may request the court:
>
> a. to prohibit an imminent infringement;
> b. to remedy an existing infringement;
> c. to require the defendant to provide information on 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 customers.
>
> [1bis] A threat to copyright or related rights is in particular present in acts mentioned in Article 39*a* paragraphs 1 and 3 and Article 39*c* paragraphs 1 and 3 and in the case of breach of the obligations under Article 39*d*.
>
> [2] Actions brought under the Code of Obligations for damages, satisfaction and handing over of profits in accordance with the provisions concerning agency without authority remain reserved.
>
> [3] 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.

Article 62 para. 1 CopA provides for civil actions for performance available to any person whose copyright or related right is infringed or threatened.

Article 62 para. 2 CopA specifies that these measures are also available in cases of violation of article 39*d* CopA. Thus, it is on this basis that the civil court will order, where appropriate, a judicial order of a stay down (article 62 para. 1 let. a and para. 1bis combined with article 39*d* CopA).

In addition, actions may be brought under the Swiss Code of Obligations (hereinafter: "**CO**")[15] for damages, moral tort or handing over of profits in accordance with the provisions concerning agency without authority (article 62 para. 2 CopA).

With regard to criminal liability, the CopA provides for different criminal provisions in articles 67 et seq. CopA, in particular in relation to copyright infringement (article 67 CopA), omission of source (article 68 CopA), infringement of related rights (article 69 CopA), offences relating to technical protection measures and to rights- management information (article 69*a* CopA) and unauthorised assertion of rights (article 70 CopA).

3.2.3. Patent infringements

Article 66 Patents Act (hereinafter: "**PatA**")[16] provides as follows with regard to patent infringements:

> In accordance with the following provisions, the following persons may be held liable under civil and criminal law:
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> a. any person who uses a patented invention unlawfully; imitation is also deemed to constitute use;
> b. any person who refuses to notify the authority concerned of the origin and quantity of products in his possession which are unlawfully manufactured or placed on the market, and to name the recipients and disclose the extent of any distribution to commercial and industrial customers;
> c. any person who removes the patent mark from products or their packaging without authorisation from the proprietor of the patent or the licensee;
> d. any person who abets any of the said offences, participates in them, or aids or facilitates the performance of any of these acts.

This legal provision thus specifies the circumstances giving rise to liability.

When the conditions are met, a distinction must be made between civil and criminal liability.

With regard to civil liability and civil law remedies, articles 72 et seq. PatA provide for protection under civil law and in particular that the two following civil actions are available:

i. Action for injunction or remedy (article 72 para. 1 PatA): any person who is threatened with or has his rights infringed by an act referred to in article 66 PatA may demand an injunction or that the unlawful situation be remedied.

ii. Action for damages (article 73 PatA): any person who performs an act referred to in article 66 PatA either wilfully or through negligence shall be required to pay damages to the injured party according to the provisions of the CO.

With regard to criminal liability, articles 81 et seq. PatA provide for criminal provisions in the case of patent infringement (article 81 PatA), false information concerning the source (article 81*a* PatA) and false patent marking (article 82 PatA).

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[15] Federal Act on the Amendment of the Swiss Civil Code (Part five: The Code of obligations) of 30th March 1911 (Status as of 1st January 2025), SR 220.
[16] Federal Act on Patents for Inventions (Patents Act) of 25th June 1954 (Status as of 1st July 2023), SR 232.14.

3.2.4. Design infringements

Article 9 Designs Act (hereinafter: "**DesA**")[17] provides as follows with regard to design infringements:

> [1] The design right confers on the right holder the right to prohibit others from using the design for commercial purposes. Use includes, in particular, manufacturing, storing, offering, placing on the market, importing, exporting and carrying in transit, as well as possession for any of these purposes.
>
> [1bis] The right holder may prohibit the import, export and transit of commercially manufactured goods even if this is for private purposes.
>
> [2] The right holder may also prohibit third parties from participating in, encouraging or facilitating such unlawful use.

With regard to civil law remedies, article 35 DesA provides for an action for performance for a right holder whose right has been infringed or threatened.

Such right holders may request the court to (article 35 para. 1 DesA):

i. prohibit an imminent infringement (let. a);

ii. remedy an existing infringement (let. b);

iii. require the defendant to provide information on the origin and extent of unlawfully manufactured items in his possession and to name the recipients and disclose the extent of any distribution to commercial customers (let. c).

In addition, actions may be brought under the CO for damages, satisfaction and handing over of profits in accordance with the provisions concerning agency without authority (article 35 para.2 DesA).

With regard to criminal liability, article 41 DesA provides for criminal offences in case of infringement of a design right, being specified that according to article 41*a* DesA, acts under article 9 para. 1[bis] DesA are not criminal offences.

[17] Federal Act on the Protection of Designs (Designs Act) of 5th October 2001 (Status as of 1st July 2023), SR 232.12.

3.2.5. Trademark infringements

Article 55 Trade Mark Protection Act (hereinafter: "**TPA**")[18] provides as follows with regard to trademark infringements:

> [1] Any person whose right to a trade mark or an indication of source is infringed or threatened may request the court:
>
> a. to prohibit an imminent infringement;
> b. to remedy an existing infringement;
> c. to require the defendant to provide information on the origin and quantity of items in his possession that unlawfully bear the trade mark or the indication of source and to name the recipients and disclose the extent of any distribution to commercial and industrial customers.
>
> [2] Actions brought under the Code of Obligations for damages, satisfaction and handing over of profits in accordance with the provisions concerning agency without authority remain reserved.
>
> [2bis] An action for performance may be instituted only after the entry of the trade mark in the Register. Claims for damages may be made retroactively from the time at which the defendant obtained knowledge of the content of the application for registration.
>
> [3] The use of a guarantee or collective mark contrary to the applicable regulations also constitutes an infringement of a trade mark right.
>
> [4] Any person who holds an exclusive licence is entitled to bring a separate action irrespective of the registration of the licence in the Register unless this is expressly excluded in the licence agreement. Any licensees may join an infringement action in order to claim for their own damages.

This legal provision therefore provides for civil law remedies (article 55 para. 1 TPA) and specifies that civil liability may be incurred in relation to trademark infringements (article 55 para. 2 TPA). Hence, a person who has been harmed may seek compensation for damages, moral tort, or the handover of profits, in accordance with the provisions concerning agency without authority.

Furthermore, article 61 TPA makes the infringement of a trade mark right a criminal offence.

3.2.6. Unfair competition

Unfair competition is governed by the Unfair Competition Act (hereinafter: "**UCA**")[19].

This law provides for a general and subsidiary liability clause in article 2 which applies only in the absence of a specific act of unfair competition provided for by articles 3 to 8*a* UCA.

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[18] Federal Act on the Protection of Trade Marks and the Indications of Source (Trade Mark Protection Act) of 28th August 1992 (Status as of 1st July 2023), SR 232.11.
[19] Federal Act on Unfair Competition (Unfair Competition Act) of 19th December 1986 (Status as of 1st January 2025), SR 241.

Only the legal text of article 2 is reproduced below for the purposes of understanding:

> Any conduct or business practice that is misleading or which otherwise violates the principle of good faith such that it influences the relationship between competitors or between suppliers and customers is unfair and unlawful.

With regard to civil law remedies, any person who is threatened with or sustains damage to their customer base, their credit or professional reputation, their business operations or otherwise to their economic interests as a result of unfair competition may request the court to (article 9 para. 1 UCA):

i. prohibit imminent damage (let. a);

ii. redress existing damage (let. b);

iii. determine the illegality of the damage if this is continuing to have a disruptive effect (let. c).

Any such person may also bring an action for damages and satisfaction and for delivery of profits in accordance with the provisions on agency without authority (article 9 para. 3 UCA).

In terms of criminal liability, article 23 UCA renders the unfair competition acts described in articles 3, 4, 5 and 6 criminal offences.

3.3. Geneva Court of Justice case law in the field of UCA and DesA infringements

In a decision rendered in 2022,[20] the Geneva Court of Justice ruled that the offering for sale of a counterfeit watch by a Swiss online platform – moreover for a sum well below the purchase price of the imitated watch – constituted a breach of both the UCA and the DesA.

First, the Geneva Court of Justice considered that such behaviour *constitutes a parasitic behaviour within the meaning of article 3 para. 1 let. e UCA and hence an act of unfair competition*. As a result, the person who suffers an infringement can ask the judge to prohibit it if it is imminent in accordance with article 9 para. 1 let. a UCA.

Second, the Geneva Court of Justice considered that this behaviour *infringes the design right of its owner* (cf. article 9 para. 1 DesA). The latter hence has the right to take action against any person who participates in the infringement and to apply to the court for a prohibition (cf. article 35 para. 1 let. a DesA).

The factual context of the abovementioned decision is summarised as follows.

A Swiss online platform which operated by automatically importing product data — such as photos, descriptions, and prices — provided by third-party sellers into its own online catalogue. When end users purchased products on the platform, the latter in turn ordered the corresponding products abroad and eventually delivered them to the end users.

The case concerned a counterfeit watch (sold CHF 124.50 on the platform, though the original cost CHF 577’000.-). The online platform did not deny the fact that the watch was a counterfeit, but argued that it

[20] Civil Chamber of the Geneva Court of Justice, decision ACJC/1723/2023 of 22nd December 2023.

was not responsible for this, given the fact that it merely automatically imported the data. To the contrary, the Geneva Court of Justice ruled that, *by offering for sale a counterfeit watch, notwithstanding the automatic importation of the corresponding data, the online platform was liable*. Accordingly, the court ordered the platform to desist from commercialising the litigious watch.

The case did not go further, given the fact that it seemed that no litigious watches had actually been sold by the online platform.[21] It should be noted that the fact that the online platform was based in Switzerland significantly simplified the process for the trademark holder, because it meant there was no need to have a foreign judgment recognised and enforced abroad. Instead, the trademark owner could bring the claim before a Swiss court and obtain a judgment that was immediately enforceable in Switzerland, avoiding the often lengthy and costly procedures of cross-border recognition and enforcement.

This decision is similar to the recent judgment of the Court of Justice of the European Union (hereinafter: "**CJEU**") in the Louboutin/Amazon case[22], where the *active making available* of counterfeit products led to the platform's liability. However, it cannot be used as a definitive frame for assessing liability of platforms for third-parties infringing content in Switzerland. *Indeed, the platform not only displayed third-party content but used it as its own (since it sold in its own name the corresponding products), thus had an active — not only passive — role; also, the counterfeit nature of the watch in this case was obvious and uncontested*. Last but not least, it is a local decision. Nevertheless, it is a useful guidance for the liability of platforms which actively display content that infringes unfair competition and IP rights.

3.4. Analysis of decisions related to the liability of platforms and hosting providers in relation to personality rights infringements

3.4.1. Preliminary remark

As previously mentioned, the legal provisions of IP and unfair competition law detailed in section 3.2 do not contain any specific provision on the liability and obligations of online platforms and hosting providers in relation to IP and unfair competition infringements committed by their users.

The question of their application to establish the liability of platforms or hosting providers for third-party content is therefore uncertain.

To the best of the authors' knowledge, there is no Swiss Supreme Court decision which relates to the liability of online platforms or hosting providers for IP or unfair competition infringements committed by their users. With the exception of the decision rendered by the Geneva Court of Justice (*supra* section 3.3.), the authors did not identify any other cases of published case law with regard to lower authorities.

Given the lack of topic case law, the authors of this report further analysed decisions which have been rendered against hosting providers in relation to personality rights infringements committed by their users, i.e. articles 28 et seq. Swiss Civil Code (hereinafter: "**CC**").[23] These decisions were also based on the non-specific provisions related to personality rights infringement, i.e. provisions that did not specifically address the liability of platforms and hosting providers for third-party content. From the authors' point of view, the case law on the

[21] Had it been the case, the platform would have had to pay damages (generally corresponding to the net profit resulting from the infringing behaviour); see *infra*, section 4.2.
[22] CJEU, joined cases C-148/21 and C-184/21, *Christian Louboutin v Amazon Europe Core Sàrl, Amazon EU Sàrl, Amazon Services Europe Sàrl, Amazon.com Inc., Amazon Services LLC*, ECLI:EU:C:2022:1016.
[23] Swiss Civil Code of 10th December 1907 (Status as of 1st January 2025), SR 210.

liability of platforms and hosting providers for personality rights infringement committed by their users provides a further useful starting point with regard to the principles that may apply when IP and unfair competition law non-specific provisions are applied to the civil liability of platforms and hosting providers for third-party content.

For clarification purposes, it should be noted that the protection of personality rights provided for in articles 28 et seq. CC applies only in the absence of more specific protective provisions such as the ones provided for by IP and unfair competition law.[24]

This section analyses the key decisions in which Swiss courts have applied legal provisions on personality rights infringement to the liability of platforms and hosting providers for third-party content. On this basis, it seeks to identify applicable principles for determining the liability of online platforms and hosting providers' responsibility for IP or unfair competition infringements committed by their users, in accordance with the non-specific provisions of IP law and unfair competition law (*supra* section 3.2.).

3.4.2. Protection of personality rights

Protection of personality rights is enshrined in articles 28 et seq. CC.

According to article 28 para. 1 CC, any person whose personality rights are unlawfully infringed may petition the court for protection against all those causing the infringement.

Swiss law hence enables a person whose rights have been infringed to take action against any person having participated in the infringement.[25]

The key question when it comes to assessing the responsibility and obligations of online platforms and hosting providers for potential personality rights infringements committed by their users, is therefore to determine the scope of such "participants" in order to determine *whether, in such a case, online platforms and hosting providers may be considered as participants to the infringement*.

As explained below, Swiss Courts initially adopted a very broad interpretation of the concept of participation, before narrowing it down by applying the principle of causality and the principle of proportionality.

3.4.3. Broad interpretation of the concept of participation

In 2011, the Geneva Court of Justice issued the first published ruling in Switzerland relating to hosting provider liability for personality rights' infringement for third party content.

The question pertained to the liability of a newspaper editor (the "Tribune de Genève") in relation to infringement of personality rights on one of its hosted blogs.[26] It should be noted that the media would likely be considered a platform rather than a mere hosting provider, pursuant to the definitions of both notions set out above (*supra* section 2.1.).

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[24] N. Jeandin, in: Pichonnaz/Foëx/Fountoulakis (eds), Commentaire romand - Code civil I, Art. 1-456 CC, 2nd edition, Basel 2024, Art. 28, N 5.
[25] Article 50 CO; article 66*d* PatA; article 9 para. 2 DesA; article 28 para. 1 CC.
[26] Swiss Supreme Court, decision 5A_792/2011 of 14th January 2013 ("Tribune de Genève").

In this case, the Court of Justice admitted the liability of the media for a third-party content that infringed the personality rights of the person concerned by the publication.[27]

This decision has been appealed and the Swiss Supreme Court had to rule on the matter.

In 2013, in the "Tribune de Genève" case, the Swiss Supreme Court advocated a limitless comprehension of the notion of "participation" and concluded that it was up to the legislator to lift the serious consequences that the strict application of article 28 CC triggers for the internet and for hosting providers.[28]

This decision – which could be interpreted as implying an obligation for hosting providers to monitor the digital content and to take action notwithstanding any notice of the infringement – sparked significant criticism among legal scholars.

Central to this criticism was *the concern that the ruling failed to provide a clear, principled, and practically workable definition of participation*. Some authors highlighted that this lack of clarity risked expanding liability in an unmanageable and legally incoherent way. Without a meaningful limitation of who may be held liable, the door was opened to increasingly absurd consequences, such as the potential responsibility of peripheral service providers like electricity companies.[29]

Scholars also emphasised the uncertainty introduced by the ruling, especially around where exactly the line would be drawn. It remained unclear whether the court's logic could eventually extend to access providers or others even further removed from the origin of an infringing act.[30]

Adding to this criticism was the observation by several authors that the Swiss Supreme Court failed to engage with a well-developed body of academic literature that had long advocated for a more restrained interpretation of participation.[31]

Generally, the scholars advocated for a teleological reduction of the legal norm, arguing that the provision must be interpreted in light of its historical context. When article 28 CC was enacted, the modern Internet as we know it did not exist, and the legislature could not have anticipated the role of infrastructure providers in the digital age[32].

Overall, the critics converged on a common theme: that a dogmatic and practical limitation of the notion of "participation" was essential to ensure that the notion remained workable and fair in the digital era. They called for an approach grounded in proportionality, reasonableness, and technological feasibility, warning against a limitless extension of liability that would ultimately undermine legal certainty and impose undue burdens on actors who are far removed from the original infringement.

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[27] Civil Chamber of the Geneva Court of Justice, decision ACJC/1281/2011 of 13 October 2011.
[28] Swiss Supreme Court, decision "Tribune de Genève" (op. cit. 26), rec. 6.3.
[29] See e.g. D. Rosenthal, Entwicklungen im privaten Datenschutzrecht [April 2011 until March 2013], in: Aktuelle Anwaltspraxis, Furrer (ed), Bern 2013, p. 728.
[30] L. Bühlmann, Blog-Hoster sind mitverantwortlich für persönlicheitsverletzende Blogbeiträge, in: Digitaler Rechtsprechungs-Kommentar, Push-Service Entscheide, 13th March 2013.
[31] N. Schoch/ M. Schüepp, Provider-Haftung «de près ou de loin»?, in: Jusletter 13th May 2013, N 44-45; A. Kernen, Volle Verantwortlichkeit des Host Providers für persönlichkeitsverletzende Handlungen seines Kunden, in: Jusletter 4th March 2013, N 20.
[32] P. Frech, Zivilrechtliche Haftung von Internet-Providern bei Rechtsverletzungen durch ihre Kunden, Zürich/Basel/Geneva 2009, p. 274.

Responsive to this criticism, the Federal Council affirmed in its Report (i.e. the FC Report) that the capacity to be sued in relation with the protection of personality rights cannot be boundless. To the contrary, certain requirements for the materiality of a contribution to the offence must be observed. More specifically, the Federal Council argued that two general principles serve to concretise the circle of those against whom a claim can be affirmed: causality and proportionality.[33]

As a matter of fact, already before the issuance of the Federal Council's report did the Swiss Supreme Court react to the widespread criticism that "Tribune de Genève" had sparked, precisely by applying the causality and proportionality limitations. These considerations are detailed below (*infra* sections 3.4.4. and 3.4.5.).

3.4.4. Natural and adequate causality as limitation of the notion of "participation"

Following its decision in the "Tribune de Genève" case (*supra* section 3.4.3.), the Swiss Supreme Court rendered two decisions in which it ruled that capacity to be sued may be admitted only in case there is a causal effect between the defendant's behaviour and the infringement of the plaintiff's personality rights.

The first of them is the "Carl Hirschmann" judgement of 6th May 2015. In this decision, the Supreme Court began by quoting the "Tribune de Genève" case and then went on with the following line of reasoning:[34]

> "The Court of Commerce is correct in ruling that it is not sufficient for a participation in the sense described if the website of defendant 1 itself contains a general link to the website of a newspaper or a radio station that is (commercially or economically) controlled by defendant 1. Such a "link" is too unspecific to be able to cause, enable or favour the infringement by a specific media report".

"Too unspecific" implies a notion of adequacy that limits the chain of mere natural causation. Consequently, the capacity to be sued of the media was rejected in relation with the general link to the websites of its subsidiaries.

The second decision was issued on 9th November 2015 in the framework of a claim against the chairman of the board of a company that had published content that allegedly infringed the claimant's personality rights. In this decision, the Swiss Supreme Court also began by referring to "Tribune de Genève", but it went on by stating that *some kind of conduct on the part of the author himself is a prerequisite for participation under art. 28 CC* and concluded as follows:[35]

> "In other words, the broad understanding of participation in the sense of art. 28 para. 1 CC does not change the fact that there must be a relationship of cause and effect, i.e., a causal connection, between the conduct of the person who is sued and the violation of personality rights".

By making the participation subject to such a qualified causal connection, the Swiss Supreme Court decisively limited the practical impact of "Tribune de Genève", where no such limitation had been mentioned (which was

[33] FC Report (op. cit. 3), p. 31-32 and 97.
[34] Swiss Supreme Court, decision 5A_658/2014 of 6th May 2015 ("Carl Hirschmann"), rec. 4.2 (English translation).
[35] Swiss Supreme Court, decision 5A_963/2014 of 9th November 2015 ("Blackmailing tactics"), published in BGE 141 III 513, rec. 5.3.1 (English translation).

precisely what had earned criticism from diverse commentators). *Without surprise, this judgment has been greeted positively by legal scholars.*[36]

Very recently, the Commercial Court of Zürich rendered a decision in which it *rejected FIFA's claim against Google, based on the lack of natural causality between the infringement of FIFA's rights and Google's search engine*.[37]

In this decision, the court dismissed Google's capacity to be sued, based on the fact that the litigious webpages did not appear in a search using solely the word "FIFA", but appeared only when additional keywords were entered, such as excerpts of the webpages' content. The court thus held that Google's search engine was not causal to the users being presented with the litigious content.

It should be noted that logically, *the required causality cannot be given as far as access providers are concerned*.[38] While access providers obviously "participate" in a possible personality infringement insofar as they provide the technical infrastructure that renders the accessibility to the content possible in the first place, holding them accountable, obviously, would be nonsensical given the public interest in maintaining such an infrastructure. Indeed, no access to content published on the Internet would be possible without access providers. Consequently, adequate causality must be denied for access providers.[39] The Swiss Supreme Court has endorsed this viewpoint in the field of copyright in a decision involving Swisscom, stating that the latter did not make any contribution in connection with making the disputed works available on the streaming platforms, but merely provided the technical infrastructure enabling Internet access[40]. Along the same line, the Swiss legislator only targeted *hosting providers* (not access providers) in the only specific provision enacted in Swiss law, namely article 39*d* CopA described above (*supra* section 3.1.).

3.4.5. Proportionality as further limitation of liability

As previously mentioned, Swiss Courts apply the principle of proportionality in the examination of claims for infringements to personality rights, as called upon by the Federal Council as a second boundary to limit the range of article 28 CC.

As a matter of fact, *both the Swiss Supreme Court and the legal scholars agree on the fact that a claim may only be admitted if the relief that is sought complies with the principle of proportionality*.[41] In particular, the

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[36] F. Thouvenin, Vergleichs- und Bewertungsdienste: eine Analyse aus Sicht des Wettbewerbsrechts [UWG], in: Werbung – Online, Thouvenin/Weber (eds), Zürich/Basel/Geneva 2017, p. 150

[37] Commercial Court of Zürich ("Handelsgericht Zürich"), decision of 24th August 2024, FIFA vs. Google, rec. 3.2.4.2.6 (our emphasis).

[38] D. Rosenthal, Zivilrechtliche Haftung von Internet-Providern für Unrecht Dritter, sic! 2006, p. 514-515; R. H. Weber, E-Commerce und Recht, 2nd ed., Zürich/Basel/Geneva 2010, p. 509-510.

[39] R. H. Weber (op. cit. 38), p. 510

[40] Swiss Supreme Court, decision 4A_433/2018 of 8th February 2019 ("Swisscom"), published in BGE 145 III 72, rec. 2.3.2.

[41] Swiss Supreme Court, decision 4A_340/2022 of 18th April 2023 ("Schwarzarbeits-affäre"), rec. 10.7; Swiss Supreme Court, decision 5A_188/2008 of 25th September 2008 ("Rosmarie V."), published in BGE 135 III 145, rec. 5.2; A. Meili, in: Geiser/Fountoulakis (eds), Basler Kommentar, Zivilgesetzbuch I, Art. 1-456 ZGB, 7th ed., Basel 2022, Art. 28a N 2.

court's injunction must be suitable, necessary and proportionate to the aim that is pursued.[42] The defendant's freedom must not be restricted excessively.[43]

In this framework, the judge shall carry out a second balance of interests[44] (after a first analysis aiming at ascertaining whether the alleged participation of the defendant can at all be qualified as a form of participation that is adequate causal).

In particular, a measure may appear disproportionate if it imposes upon the defendant a financial sacrifice which is excessive compared to the violation.[45] Therefore, a claim against a participant who cannot prevent or remedy the infringement of the personality rights with reasonable means cannot prevail.[46]

3.4.6. Takeaways

In the opinion of the authors, the following principles can be drawn from Swiss Courts rulings related to the liability of platforms and hosting providers for personality infringements for third-party content.

The first question is *whether the platform or the hosting provider may be deemed to be a participant to the IP or unfair competition infringement*. This should be the case if the platform or the hosting provider had or could have had a causal role in the infringement.

On this subject and in the authors' perspective, the decision particularly relevant for determining a platform's liability is the decision of the Swiss Supreme Court in the "Carl Hirschmann" case. Indeed, media is arguably much closer to the infringing content published by an affiliated entity than an agnostic platform: the latter only displays content uploaded by third parties; the former links to its own legal subsidiaries over which it exercised legal and factual control. When applying the principles set out by the Supreme Court in the "Carl Hirschmann" case, one should come to the conclusion that the behaviour of a platform which merely displays content uploaded by others is not adequately causal to the infringement. The opposite is true if, as in the "Tribune de Genève" case presented above (*supra* section 3.4.3.), the platform uses this content as its own to conduct its business.

Second, with regard to the measures that may be taken against the online platform or the hosting provider in order to remedy an IP or unfair competition infringement, it should be borne in mind that *such measures should only be ordered if they comply with the principle of proportionality.* Hence, these measures must appear suitable, necessary and proportionate to the aim that is pursued. In particular, the interests of the person affected by the infringement must be weighed against the fundamental rights of the online platform or and hosting provider. This article will later examine which fundamental rights may be particularly relevant in the context of IP and unfair competition infringements (*infra* section 5.).

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[42] Swiss Supreme Court, decision 1C_262/2011 of 15th November 2012, published in BGE 139 II 28, rec. 2.7.1; Swiss Supreme Court, decision 5P.308/2003 of 28th October 2003, rec. 2.4, "Eric Stauffer"; H. Hausheer/R. E. Aebi-Müller, Das Personenrecht des Schweizerischen Zivilgesetzbuches, 5th ed., Bern 2020, N 788; N. Schoch/M. Schüepp (op. cit. 31), N 40.

[43] P.-H. Steinauer/C. Fountoulakis, Droit des personnes physiques et de la protection de l'adulte, Berne 2014, N 582.

[44] R. E. Aebi-Müller, Personenbezogene Informationen im System des zivilrechtlichen Persönlichkeitsschutzes, Bern 2005, N 285; T. Geiser, Die Persönlichkeitsverletzung insbesondere durch Kunstwerke, Basel/Frankfurt-am-Main 1990, N 10.15; P. Tercier, Le nouveau droit de la personnalité, Zürich 1984, N 960.

[45] P. Tercier (op. cit. 44), N 963.

[46] FC Report (op. cit. 3), p. 31; P. Frech (op. cit. 32), p. 274.

3.5. Intermediary conclusion

The absence of a specific legal framework in Switzerland regulating the liability of platforms or hosting providers, respectively of specific legal provision relating to platforms and hosting providers' liability in relation to IP or unfair competition infringements committed by their users (other than article 39*d* CopA) gives rise to a number of consequences.

First, it raises the question of whether the liability of platforms or hosting providers for IP or unfair competition infringements committed by third parties can be established on the basis of the non-specific provisions of IP and unfair competition law.

In this article *we have identified the following principles* that could be applied to answer this question:

i. *The notion of causality, in particular, limits their liability.* It is likely that if the platform exercises an actual control over the uploaded content, its liability will more easily be retained by Swiss courts. On the contrary, hosting providers with no control over the uploaded content will less likely be considered as participants to the infringement.

ii. Should the liability of online platforms and hosting providers be ruled by the courts in relation to infringement of IP or unfair competition committed by their users, *the courts shall determine the applicable measure (take-down only, staydown etc.), in compliance with the principle of proportionality*.

Second, due to the absence of a specific legal framework in Switzerland, comparable to the DMA or the DSA, there is *no statutory obligation for online platforms or hosting providers to actively monitor the content of their users*. The only statutory obligation on behalf of hosting providers is the notice-and-staydown obligation provided for in article 39*d* CopA which is triggered only under specific conditions and, above all, which occurs only upon notice.

Following on from the above, it should be noted that *there is also no privilege, such as for instance a Good Samaritan privilege, that platforms or hosting providers could rely upon, under Swiss law*.

4. Mechanisms in cases of infringement

4.1. Implementation of the notice-and-staydown obligation provided for in article 39*d* CopA

The notice-and-staydown obligation provided for in article 39d CopA may be implemented by various measures, the choice of which is left to the hosting provider. However, the measures must be appropriate for the legal obligation to be considered fulfilled. Article 39*d* para. 2 CopA limits the obligation to measures that can be reasonably expected of the hosting provider from a technical and economic point of view, taking into account the risk of violation.[47]

The scope of the obligation therefore depends on the specific case and, in particular, on the memory space, size and professionalism of the provider.[48]

[47] Message of the Federal Council of 22nd November 2017 (op. cit. 7), p. 603.
[48] *Ibid*.

If the hosting provider fails to take any stay down measures or takes insufficient measures to remove the unlawful content, the rights holder may request that a court issue a preventive injunction, i.e. the judicial order of a stay down.[49]

The court may, in its judicial order of the stay down, issue a threat of criminal penalty under article 292 of the Swiss Criminal Code,[50] i.e. the criminal offence provided for in the event of contempt official orders.

In addition, the hosting provider which has breached his obligations arising from article 39*d* CopA may be held liable, from a civil perspective, and hence may be required to pay compensation for the damage caused, provided however that the general conditions set out in art. 41 et seq. CO are met.[51]

Given the existence of the aforementioned legal provision, the host will not be liable as a mere participant, but for its own unlawful act.[52]

4.2. Other cases of infringements to IP or unfair competition law

For other cases of infringements to IP or unfair competition law by users of platforms or hosting providers, the situation is more uncertain.

Swiss law does not provide for any special liability regime for Swiss hosting providers for other cases of infringement of IP rights and unfair competition other than those provided for in article 39*d* COPA.

Insofar as one considers that platforms or hosting providers may be held liable for an IP or unfair competition infringement by their participation to their users' infringement, the injured party could use one the other or both of the following mechanisms:

i. *Bring defensive actions* in order in particular to ask the court to prohibit an imminent infringement or remedy an existing infringement (articles 62 para. 1 CopA, 72 para. 1 PatA, 35 para. 1 DesA, 55 para. 1 TPA, 9 para. 1 UCA; *supra* section 3.2.).

ii. *Bring remedial actions*, i.e. action for damages, moral tort or handover of profits, in accordance with the provisions concerning agency without authority in order to seek financial compensation for the infringement (articles 62 para. 2 CopA, 73 PatA, 35 para. 2 DesA, 55 para. 2 TPA, 9 para. 3 UCA). The conditions of liability and compensation provided for in articles 41 et seq. CO in relation to claim for damages or moral tort, respectively those provided for in articles 419 et seq. CO in relation to agency without authority must be met.

Remedial actions thus require in principle a *fault* of the service provider.[53]

There has been no case law in Switzerland defining under which conditions such fault shall exist. However, the legal scholars, together with the Federal Council, consider that fault requires inaction (i.e. non-removal)

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[49] Message of the Federal Council of 22nd November 2017 (op. cit. 7), p. 603.
[50] Swiss Criminal Code of 21st December 1937 (Status as of 1st January 2025), SR 311.0.
[51] V. Salvadé, La responsabilité des plateformes au regard de la révision du droit d'auteur, in: Jusletter 25th May 2020, p. 10.
[52] *Ibid*.
[53] Art. 41 et seq. and 423 CO (referred to by article 28*a* para. 3 CC, article 9 para. 3 UCA, article 62 para. 2 CopA, article 55 para. 2 TPA, article 35 para. 2 DesA).

after (i) a valid notice of the infringement and (ii) such infringement to be obvious (notice-and-takedown).[54] Accordingly, the legal scholars exclude any obligation to monitor the uploaded content, subject to copyright infringements which provide, under certain circumstances, for a notice-and-staydown obligation (*supra* section 3.1.).

The Code of Conduct Hosting[55] explicitly excludes such obligation and sets out a notice-and-takedown procedure when it "appears highly likely that the content is illegal".[56] The burden of proof of the infringing nature of the content thus lies upon the infringed person.

Should a platform be at fault, the infringed person may claim for financial compensation. As a prerequisite, the infringed person shall prove the infringement, the existence of a damage and a causal effect between the infringement and such damage. In this context, it will be difficult to prove a damage associated with the platform's behaviour, subject to being able to prove e.g. a loss of sales following an infringing publication which has not been removed by the platform.

In the absence of a fault and as far as the infringement of IP rights is concerned, the claimant has the possibility to claim for royalties based on enrichment without just cause.[57] However, it shall be pointed out that it may reveal difficult to define which kind of royalties would generally apply for the use of the IP right on a platform.

5. Balance with Fundamental Rights

In general, platform liability is likely to interfere with the rights to freedom of expression combined with the right to information,[58] as well as of economic freedom.[59]

The rights to freedom of expression combined with the right to information shall put a boundary to the liability of internet providers, namely by limiting such liability to content that is obviously infringing, as has been ruled by the CJEU.[60]

Indeed, should internet providers bear liability even in non-obvious infringement cases, this would amount for them to be forced to remove content without review at the mere request of an affected party in order to avoid exposing themselves to liability risks. There would then be a risk that Internet providers would systematically

[54] R. H. Weber (op. cit. 38), p. 517; D. Rosenthal, Internet-Provider-Haftung – ein Sonderfall?, in: Jung (ed), Aktuelle Entwicklungen im Haftungsrecht, Zürich 2007, N 95; C. Fountoulakis/J. Francey, La diligence d'un hébergeur sur Internet et la réparation du préjudice, medialex 2014, N 179 et seq.; FC Report (op. cit. 3), p. 66. Regarding the necessity to limit liability to infringements that are obvious, see also *infra*, section 5.
[55] Code of Conduct Hosting (op. cit. 2).
[56] Code of Conduct Hosting (op. cit. 2), see art. 4-6.
[57] Based on art. 62 CO; see Swiss Supreme Court, decision 4A_145/2024 of 11th September 2024 ("Feuerring II").
[58] Article 16 Federal Constitution of the Swiss Confederation of 18th April 1999 (Status as of 3rd March 2024), SR 101.
[59] Article 27 Federal Constitution of the Swiss Confederation (op. cit. 58).
[60] See CJEU, case C-460/20, *TU and RE v Google LLC*, ECLI:EU:C:2022:962, rec. 71 relating to search engines: "In that regard, there would be a real risk of a deterrent effect on the exercise of freedom of expression and information if the operator of the search engine undertook such a de-referencing exercise quasi-systematically, in order to avoid having to bear the burden of investigating the relevant facts for the purpose of establishing whether or not the referenced content was accurate". This position is shared by the Federal Council: FC Report (op. cit. 3), p. 63.

and uncritically comply with requests for removal, the so-called chilling effect,[61] putting the right to information at risk.[62]

Such a consequence would amount to private censorship.[63] This, in turn, would lead to a problematic restriction of freedom of expression.[64]

As far as economic freedom is concerned, it shall be pointed out that Internet providers' liability triggers costs for (i) receiving notices, (ii) reacting to such notices, (iii) removing infringing content and (iv) where applicable, monitoring the platform to prevent any new infringement.

The providers' rights to economic freedom shall be safeguarded by the application of the limitation of proportionality to their liability. As seen above, a measure shall be considered disproportionate if it imposes upon the defendant a financial sacrifice which is excessive compared to the violation.[65]

6. Reflection and conclusion

Swiss law generally is mute about the specific liability of internet providers for infringement of third parties' rights, in particular IP rights (save for copyright infringements)[66] and unfair competition.

As the authors have shown in this article, the somewhat contradictory decisions rendered by the Swiss courts in the past years trigger a high level of uncertainty as to the legal framework governing the liability of hosting providers or platforms.

Against this background, the obvious desirable outcome from a legal policy point of view is a Swiss practice that is harmonised with the surrounding European countries, i.e. a Swiss legal framework corresponding to the notice-and-take-down regime for infringements that are obvious. The most evident way to achieve this would be to adopt a clear legislation applicable to the digital market.

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[61] See C. Fountoulakis/J. Francey (op. cit. 54), N 169 et seq.; P. Frech (op. cit. 32), p. 277.
[62] Cantonal Court of Jura, February 12, 2011, "Robert Kennedy College v. Google Inc.", p. 9.
[63] M. Lavanchy, La responsabilité délictuelle sur Internet en droit suisse, Neuchâtel 2002, p. 31; see also, with regard to Internet providers: J. Bénédict, La responsabilité civile des prestataires techniques sur Internet, in: Responsabilité civile et assurance, Etudes en l'honneur de Baptiste Rusconi, Lausanne 2000, p. 41.
[64] M. Lavanchy (op. cit. 63), p. 71; see also: F. Werro, Les services Internet et la responsabilité civile, medialex 2008, p. 129.
[65] P. Tercier (op. cit. 44), N 963; FC Report (op. cit. 3), p. 31; P. Frech (op. cit. 32), p. 274.
[66] See above section 3.1 reg. art. 39*d* CopA.