

SWISSPERFORM - 2019 in brief

Gross tariff revenue 2019:

CHF 58'323'980.41

(+0.49%)

Members and principals

18'166

(+9.73 %)

Promotion of cultural and social projects

CHF 5'801'179.44

Administrative expenses

CHF 8.33%

(2018: 9.41%)

Gross expense ratio: 11.67%

(2018: 12.94%)

Employees: on average

24.54

(2018: 23.92) 20.41 Full-time positions (2018: 19.83)

Evaluated broadcast events audio sector

3'297'452

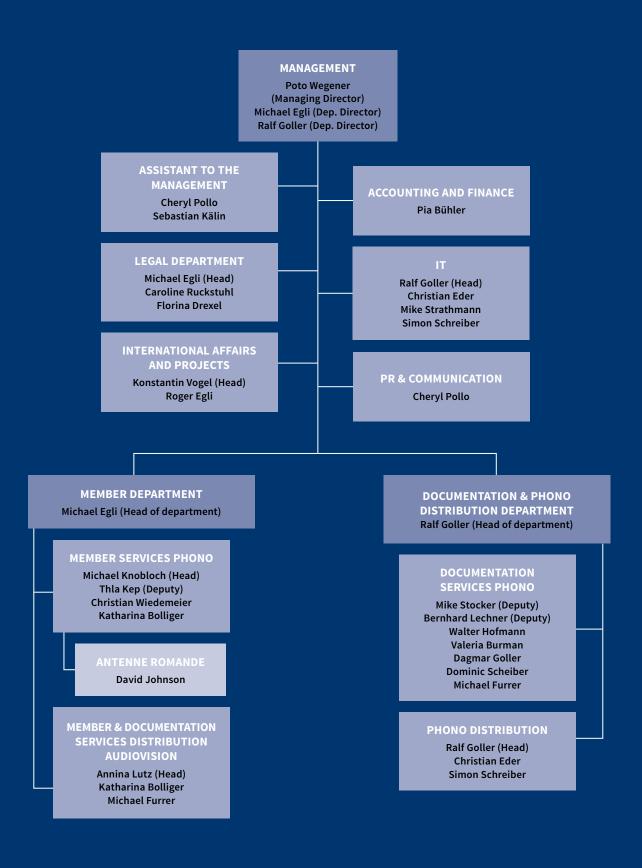
(2018: 3'573'238) with 214'510 recordings in 9'300 works in the the audio sector (2018: 194'149)

Evaluated broadcast events audiovisual sector

58'397

(2018: 50'033) audiovisual sector (2018: 9'209)

The following persons worked for SWISSPERFORM at the end of 2019:



Offices



Poto Wegener (Managing Director)



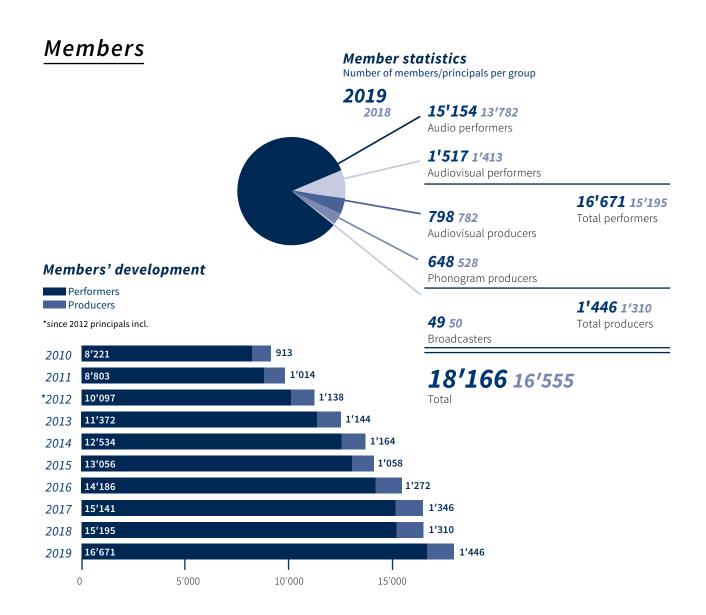
Michael Egli (Deputy Director)

- Head of legal services
- Head of members department



Ralf Goller (Deputy Director)

- Head of IT
- Head of documentation & distribution department phono



Collection and tariffs

Tariff negotiations

The tariff year 2019 was marked by the understanding that the collecting societies have to place the negotiations regarding the blank media levies on the agenda annually. The users' associations terminated the CT 4i which regulates, among others, the remunerations for smart phones and tablets, only three weeks after its entry into force as per the earliest possible date. In the negotiations of the subsequent tariff, an agreement was reached only because the users' association insisted on having the possibility to terminate the tariff after a one-year validity. It remains to be seen whether the users' next claim for reduction will have to be negotiated in 2020.

On the other hand, it was positive that an agreement could be reached in the negotiations of the Radio and TV Tariff with SRG (Tariffs A) given that this seemed quite unrealistic only shortly before. An agreement regarding the determination of flat rates was reached. For both parties these flat rate tariffs signify the end of several years of legal disputes before the courts up to the Swiss Federal Supreme Court.

Tariff A Television until 2019

Use of commercially published sound recordings and audiovisual recordings by Schweizerische Radio- und Fernsehgesellschaft (SRG) for broadcasting purposes on television and related uses

At the time of the editorial deadline the Federal Supreme Court had not yet rendered its decision on Tariff A TV 2014 – 2017 regarding the contentious question as to how much SRG has to pay for broadcasting commercially published sound recordings that were integrated into its inhouse production and commercials. This issue will also affect the renewal tariffs agreed for the years 2018 and 2019.

Tariff A Radio

Use of commercially published sound recordings by Schweizerische Radio- und Fernsehgesellschaft (SRG) for broadcasting purposes on the radio and related uses

At the time of the editorial deadline the Federal Supreme Court had not yet rendered its decision on Tariff A TV 2014 – 2017. These proceedings deal with an appeal of SWISSPERFORM filed on March 27, 2019 claiming that the online availability of radio programmes (Article 22c CA) of SRG shall be limited to seven days.

Tariffs A Radio and Television (SRG) as from 2020

The two new Tariffs A Radio and TV as from 2020 were negotiated in parallel. The discussions turned out to be very intense because the parties disagreed with regard to numerous issues. The fact that the Federal Arbitration Commission (FAC) denied a jointly signed request for extension of the deadline of one month made things even more difficult. Accordingly, the last negotiation meeting was long and tough. However, since both parties expressed their will to come to an agreement, they finally reached a mutually acceptable solution. Thereby, they achieved a goal both parties

had hoped for but which seemed unrealistic until shortly before: Instead of use-related tariffs with a percentage (to be applied to the revenue and the protected repertoire), the remuneration was determined to be an annual flat rate for both radio and tv. It is distributed among the two tariffs as follows:

Tariff A Radio:

- CHF 6.05 Mio. (excl. US repertoire)
- CHF 210'000.– for US repertoire.

With regard to Tariff A Radio SWISSPERFORM had to accept a reduction of the remuneration in the amount of about CHF 500'000.— compared to SRG's previous payments. The reasons for this are, for instance, the reduction of the RTVA fees and SRG's internal shifting of funds from radio to television.

Tariff A TV:

- Adopted radio programmes: CHF 70'000.-
- Commercially published sound recordings in own productions and commercials: CHF 577'000.-
- Commercially published audiovisual recordings: CHF 1.673 million
- Music films: CHF 30'000.-

With regard to Tariff A TV the increase amounts to about CHF 880'000.—. The two primary reasons for this are – apart from the above-mentioned shifting of funds from radio to TV – on the one hand, the pending lawsuit before the Federal Supreme Court in the sector of «commercially published sound recordings in own productions» (see above) and, on the other hand, a detailed analysis of previous SRG broadcast lists in the sector of «commercially published audiovisual recordings» showed that the share of protected commercially published audiovisual recordings is higher than assumed before.

On October 28, 2019 and November 1, 2019, the two tariffs were approved by the Federal Arbitration Commission (FAC). The initial term of the tariffs is until the end of 2021 (with automatic extension until the end of 2029 at the latest).

CTS

Broadcasters

A settlement could be reached in the negotiations between collecting societies and the private radio and television broadcasters with regard to a new CTS as from 2020. Under the new tariff the broadcasters will no longer be allowed to deduct advertising acquisition costs. Hence, the gross principle which is generally applicable in the tariff system (i.e. the gross revenue is relevant for the calculation of the tariff) was implemented. Given that the Federal Arbitration Commission (FAC) requested that this change shall be cost or remuneration-neutral, respectively, the tariff now provides for additional discounts. For instance, broadcasters that are members of a relevant broadcasters' association that supports the work of the collecting societies will get a

discount. Moreover, broadcasters that submit the broadcast reports in a correct and timely manner will get a discount as well.

By order of September 30, 2019, the Federal Arbitration Commission (FAC) approved of the Tariff. The initial term is until the end of 2022 (with automatic extension until the end of 2025 at the latest).

CT 3a

Making available of broadcasts as well as use of sound recordings and audiovisual recordings, in particular background music

An appeal of GastroSuisse, the Swiss Chamber of Commerce, DUN and Swiss Fashion Stores against the CT 3a 2017 2021 was pending before the Federal Administrative Court. The users' appeal was directed against the decision of the Federal Arbitration Commission (FAC) to increase the basic remuneration by 14% and the additional remuneration by 2.6%. According to the Federal Arbitration Commission (FAC) this increase was intended to be valid as from 2019, i.e. as from the time of the discontinuation of Billag, on the basis of the revised RTVA and the corresponding takeover of the collection by SUISA. By decision of May 23, 2019 the Federal Administrative Court dismissed the appeals and thus approved of these tariff increases. The decision has become res iudicata because none of the users' associations filed an appeal.

CT 4i

Remuneration on digital storage media integrated in devices

The term of the last negotiated CT 4i was from January 1, 2019 until June 30, 2020. Already three weeks after the beginning of the term, the users' associations gave notice of termination. Therefore, in 2019 a new tariff valid as from July 1, 2020 was negotiated. The parties primarily discussed the issue whether the copying behaviour of the end consumers significantly changed within one year, i.e. - as claimed by the users – away from private copies on device memories towards copies in the cloud and mere streaming. Uncontested was that the prices of the devices, which are decisive for the determination of the remuneration, had decreased further. After intense negotiations the parties finally reached a settlement according to which the remunerations were, in principle, reduced. In particular, the remuneration rates for smart phones were reduced, depending on the memory capacity, by between 5% and 19%. For tablets the reduction amounted to between 5% and 12%. With respect to the tariff period it was agreed that the CT 4i shall be valid from July 1, 2020 until June 30, 2021 with an extension option until June 30, 2022 unless it is terminated by one of the parties.

On November 28, 2019 the Settlement Tariff was submitted to the Federal Arbitration Commission (FAC) for approval. At the time of the editorial deadline the approval was still pending.

CT 5

Rental of copies of works

With respect to CT 5 2019 – 2021 Bibliosuisse filed an appeal with the Federal Administrative Court in July 2019. At issue is the question whether the change of system requested by the collecting societies and approved by the Federal Arbitration Commission (FAC) is valid. Said change would result in higher remunerations. The proceedings are still pending.

CT 10

Use of sound recordings and audiovisual recordings by people with disabilities

Given that the course of the revision of the Federal Act on Copyright and Related Rights Article 24c CA was revised, the collecting societies terminated CT 10 as per the end of 2020. The new tariff shall, in particular, define the availability as well as the import and export of work copies adapted to the needs of the disabled. The tariff negotiations are ongoing.

CT 11

Use of archived recordings of broadcasters

SRG and several broadcasters plan to make their archives accessible online. However, in their opinion the CT 11 in its present form is not feasible and, therefore, renegotiations were started in early 2019. In the course of the negotiations the parties became aware that they will need more time to negotiate; therefore, the parties agreed to extend the previous tariff for another year. On September 26, 2019 the Federal Arbitration Commission (FAC) approved of the respective request submitted by the parties on May 17, 2019. The negotiations of a new CT 11 as from 2021 are ongoing.

CT 12

Remuneration for making set-top boxes with a memory and vPVR (virtual Personal Video Recorder) available for use

With respect to CT 12 2017 - 2019 an appeal of the broadcasters is pending before the Federal Supreme Court. The broadcasters appeal against the decision of the Federal Arbitration Commission (FAC) that time-shift television, i.e. Catch Up TV, constitutes a private copy falling under collective management. The broadcasters are of the opinion that this right must be licensed individually by the rights holders. At stake in the proceedings before the Federal Supreme Court is, for the time being, the question whether the broadcasters have standing to sue. The negotiations of a new CT 12 as from 2021 began in mid - 2019. To avoid an influence of the pending proceedings before the Federal Supreme Court on these negotiations, the broadcasters' request was stayed for the time being.

CT Z

Circus

The collecting societies terminated the CT Z as per the end of 2020. With regard to a new tariff a clearer distinction between the circus tariff (CT Z) and the concert tariff (CT K) for certain musical uses is a matter of concern to the collecting societies. The negotiations are still pending.

Tariff revenues

After we had to deal with a decrease in revenues in 2018 for the first time since 2010, 2019 provided a slight upward trend: Tariff revenues of CHF 58'323'980.41 correspond to an increase of 0.49%.

Due to the strong increase of the tariff revenues as from 2011, the barrier of CHF 60 million was exceeded for the first time in 2017. However, at that time it was already obvious that it would be difficult to maintain this development. In 2018 three important tariffs (CT 1, Tariff A Radio, CT S) had a shortfall in revenues and this caused a decrease of the total revenues of about 3.68%. However, the downward trend could be stopped in 2019. The increase in revenues of CHF 281'602.87 is only marginal but in view of the difficult environment it may be considered satisfying. The major factor for the positive development is the increase in revenue from the blank media levies and the broadcasting rights.

Also, the cost rate showed a positive development. Even in this respect a negative trend reversal occurred in 2018; the percentage of costs compared to the revenues increased for the first time since 2013. However, this increase was not caused by higher administrative costs but by the decrease in tariff revenues as well as by a poor financial result due to the tense situation in the financial markets at the end of 2018. In 2019 the costs were maintained. At the same time, a positive development in the financial markets and the ensuing financial result resulted in a reduction of the cost rate: In 2019 the net administration cost rate amounted to 8.33% (previous year: 9.41%), the gross administration cost rate amounted to 11.67% (previous year: 12.94%).

The development of the individual rights sectors shows the following picture:

Re-transmission rights: The revenues from the re-transmission rights decreased by CHF 750'590.37 (-3.07%). This decrease is primarily caused by the diminution in revenues from CT1 (- CHF 557'798.45 / -2.34%).

Performance rights: The performance rights proved to be consistent. The revenue amounted to about CHF 8.2 million; this constitutes an increase of CHF 55'542.75 (+0.68%). Also, the remunerations from CT 3a (public performance, radio/TV) that were collected by SUISA instead of Billag for the first time in 2019, remained stable. The total revenues radio and TV of CHF 5.9 million constitute a decrease of CHF 1'359.20.

Blank media levy: In 2019, the remunerations in the blank media levy sector increased by CHF 415'347.11 (total CHF 13'654'712.21 / + 3.14%). The development of the revenues from the mobile phones (+ CHF 332'030.71 / +17.93%) and the tablets (+ CHF 53'996.34 / +4.98%) turned out positive. The remunerations from CT 12 (set-top-boxes / replay TV) increase further (+ CHF 152'352.31 / + 1.68%); however, the upward trend CT 12 has shown for years decreased.

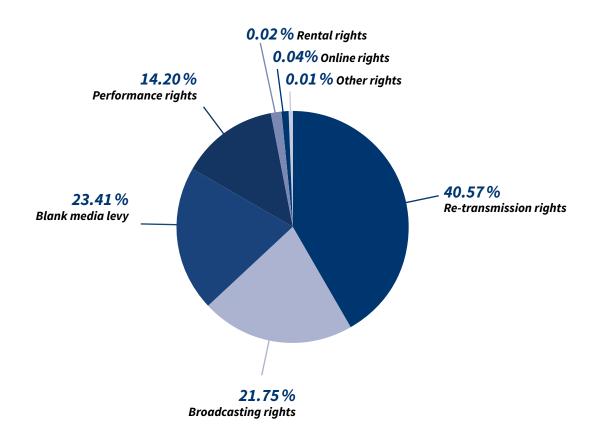
Broadcasting rights: The revenues from the broadcasting rights increased by CHF 548'560.33 to CHF 12'686'195.31. The main reason for this increase was an extraordinary payment of SRG in Tariff A in the amount of CHF 1'000'000.— for the use of the US repertoire from 2013 until 2019. Tariff A Radio showed a decrease of CHF 430'000.— because so far we were unable to reach a settlement with SRG regarding the final accounts 2017 and 2018. Moreover, in 2019 we also received an extraordinary payment in the amount of CHF 190'000.— regarding CT S Advertising Slots TV to cover the years 2014—2017. We suffered a deficit of CHF 65'458.63 under CT 1 Mixed Packages Offers Initial Dissemination. This development can be attributed to the fact that SUISSIMAGE as collection society also received corrections from customers which exceeded the revenues from the previous year.

Other sectors: The revenues from CT 10 and CT 13 continue to be minor. The same applies to the online rights for which SWISS-PERFORM manages the collections only in peripheral areas.

Tariff revenues from the various rights

Tariff	2014	2015	2016	2017	2018	2019
Re-transmission rights	23'007'901.32	24'148'123.08	24'242'369.46	26'443'057.01	24'410'362.90	23'659'772.53
Performance rights	7'914'562.11	8'262'965.82	8'409'983.82	8'092'602.42	8'227'534.11	8'283'076.86
Blank media levy	7'389'348.95	7'672'900.05	10'115'620.79	12'497'592.44	13'239'365.10	13'654'712.21
Rental rights	60'189.91	38'357.71	68'473.99	33'885.55	18'409.20	9′319.90
Broadcasting rights	10'316'682.81	11'337'148.75	11'978'063.22	13'179'934.75	12'137'634.98	12'686'195.31
Online rights		13'000.00	19'577.81	2′000.00	450.00	22′360.00
Other rights	0.00	77'662.06	8'637.43	8′753.30	8'621.25	8′543.60

Total	48'688'685.10	51'550'157.47	54'842'726.52	60'257'825.47	58'042'377.54	58'323'980.41
Administrative costs	7.88%	7.75%	7.55%	7.07%	9.41%	8.33%



Gross Tariff Revenue 2019 compared to the previous year

Tariff abbreviation	Collection by	Tariff designation	2019	2018
Re-transmission	n rights		CHF	CHF
CT 1	SUISSIMAGE	Re-broadcasting of programmes via cable	23'281'662.48	23'839'460.93
CT 1	SUISSIMAGE	Additional collections	43'570.50	140'140.06
CT 1	SUISSIMAGE	Mixed packages share re-broadcasting (10%)	-7'273.19	13'413.03
CT 2a	SUISSIMAGE	Re-broadcasting via converters	0.00	19'173.42
CT 2b	SUISSIMAGE	Re-broadcasting via IP-based networks	341'812.74	398'175.46
Performance rig	ghts		CHF	CHF
CT 3a	SUISA	Public performance radio/background music/TT	4'554'961.97	4'460'788.34
		Public performance TV basic and additional collections	1'358'912.88	1'454'445.71
CT 3b	SUISA	Background entertainment in vessels, trains, advertising, etc. TT	10'031.15	11'993.12
		Background entertainment in coaches TT/TBT	18'648.85	28'762.95
		Background entertainment in airplanes TT/TBT	41'740.01	45'779.72
CT 3c	SUISA	Public Viewing	27'866.72	3'761.23
ст с	SUISA	Use of sound and audiovisual recordings in churches	25'317.32	27'844.28
CT E	SUISA	Use of sound and audiovisual recordings in cinemas	174'918.55	197'221.60
ст н	SUISA	Use of sound and audiovisual recordings in restaurants	633'451.76	620'743.74
СТ НЬ	SUISA	Use of sound and audiovisual recordings for dance and entertainment	389'750.63	384'544.54
ст ну	SUISA	Hotel-Videos	6'907.06	11'211.43
ст к	SUISA	Concerts and concert-like performances	837'464.96	754'533.04
CT L	SUISA	Dance and ballet schools	175′100.95	189'908.18
СТ Ма	SUISA	Jukeboxes	17'621.13	22'500.01
стт	SUISA	Performance of audiovisual recordings/«telekiosk»/«audiotex»	6'135.91	8'040.03
ст z	SUISA	Performance of sound and audiovisual recordings in the circus	4'247.01	5'456.19
Blank media lev	vies .		CHF	CHF
CT 4	SUISA	Private copying, blank media/audio	2'467.42	3'746.60
		Private copying, blank medica/video	17.13	16.60
CT 4	SUISA	Private copying, CD-R	22'570.47	55'291.26
CT 4	SUISA	Private copying, DVD	59'957.96	119'441.81
CT 4i	SUISA	Private copying, digital audio recorders	72'810.29	105'236.99
		Private copying, digital video recorders	21'856.56	26'502.77
CT 4i	SUISA	Remuneration for digital memories in mobile phones	2'183'775.52	1'851'744.81
CT 4i	SUISA	Remuneration for memories in tablets	1'137'894.98	1'083'898.64
CT 7	PROLITTERIS	Use in schools / audio	26'984.20	26'733.90
		Use in schools / video	539'684.05	534'677.60
		Network technology	119'606.50	116'360.95
CT 9	PROLITTERIS	Use in businesses	248'794.70	249'773.05
CT 12	SUISSIMAGE	Set-Top boxes (incl. share additional fee top 50 %)	8'341'632.83	8'170'264.17
CT 12	SUISSIMAGE	Share additional fee Top (50 %)	876'659.60	895'675.95

Tariff abbreviation	Collection by	Tariff designation	2019	2018
Rental rights			CHF	CHF
CT 5	SUISA	Rental of sound recordings	2'779.90	1'543.80
		Rental of audiovisual recordings	5'903.10	16'406.15
CT 6	PROLITTERIS	Rental of sound recordings in public libraries	360.85	242.60
		Rental of audiovisual recordings in public libraries	276.05	216.65
Broadcasting rig	ghts		CHF	CHF
CT 1	SUISSIMAGE	Mixed packages share initial dissemination (90%)	-65'458.63	120'717.20
CT 1	SUISSIMAGE	Initial dissemination of programmes via cable	65'927.67	67'528.52
A Radio US-Repertoire	SWISSPERFORM	Broadcast remuneration of SRG, sound recordings (US repertoire)	1'000'000.00	0.00
A Radio	SWISSPERFORM	Broadcast remuneration of SRG, audio recordings	6'050'000.00	6'480'000.00
A TV	SWISSPERFORM	Adopted radio programmes	70'002.00	70'002.00
	SWISSPERFORM	Commercially published sound recordings in own productions	276'996.00	276'996.00
	SWISSPERFORM	Commercially published audiovisual recordings	1'050'000.00	1'050'000.00
	SWISSPERFORM	Music films	43'002.00	43'002.00
CT S Radio	SUISA	Use of sound recordings by private radio stations	3'219'933.88	3'290'742.71
CT S TV	SUISA	Use of sound/audiovisual recordings by private TV stations	4'590.80	0.00
	SUISA	Commercially published sound recordings	264'249.84	285'821.87
	SUISA	Commercially published audiovisual recordings	53'475.39	71'068.59
	SUISA	Music films	25'817.83	10'410.17
		Foreign private TV stations for Swiss advertising slots	478'469.04	230'994.00
CT S	SIG	Simulcasting abroad	40'000.00	30'000.00
CT Y Radio	SUISA	Use of sound recordings by subscription radio	927.93	-7'813.66
CT Y TV	SUISA	Use of sound/audiovisual recordings by subscription TV		7'133.40
	SUISA	Commercially published sound recordings	84'624.60	86'042.15
	SUISA	Commercially published audiovisual recordings	23'636.96	25'231.51
	SUISA	Music films	0.00	-241.48
Other rights			CHF	CHF
GT 10	PROLITTERIS	Use of works by persons with disabilities	8'383.60	8'621.25
GT 13	SWISSPERFORM	Use of rights in orphan works	160.00	0.00
Online rights			CHF	CHF
Online rights	SWISSPERFORM		22'360.00	450.00
Total			58'323'980.41	58'042'377.54

Financial statements

Balance of Accounts	Item in Annex	2019 CHF	2018 CHF
Liquid assets	1	64'261'848.84	67'732'851.62
Securities	2	12'263'151.00	9'625'798.00
Accounts receivable rights users	3	3'370'005.35	1'380'485.09
Other short-term receivables	4	98'350.41	101'001.98
Prepaid expenses	5	1'484'431.62	3'576'980.12
Current assets		81'477'787.22	82'417'116.81
Property	6	288'979.50	261'621.30
Financial assets	7	30'075'733.17	28'075'733.17
Fixed assets		30'364'712.67	28'337'354.47
Assets		111'842'499.89	110'754'471.28
Liabilities neighbouring rights	8	1'702'000.08	770'462.51
Liabilities neighbouring rights Advance payments received rights users	9	35'424.97	0.00
Other short-term liabilities	10	1'085'484.25	1'158'792.71
Short-term provisions	11	56'475'054.22	56'299'423.23
Deferred income	12	118'392.03	131'299.62
Short-term liabilities		59'416'355.55	58'359'978.07
Long-term provisions	13	52'426'144.34	52'394'493.21
Long-term borrowed capital		52'426'144.34	52'394'493.21
Borrowed capital		111'842'499.89	110'754'471.28
Basic capital and reserves	14	0.00	0.00
Equity capital		0.00	0.00
Liabilities		111'842'499.89	110'754'471.28

	Item in	2019	2018
Income statement	Annex	CHF	CHF
Revenue from the administration of neighbouring rights in Switzerland	15	60'844'012.70	60'499'445.64
Revenue from the administration of neighbouring rights abroad	16	1'251'164.87	423'917.36
Other operating income	17	1'335'663.89	3'373'048.21
Collection compensation	18	-2'520'032.29	-2'457'068.10
Deduction for cultural and social purposes	19	-5'740'374.10	-5'801'179.44
Net proceeds		55'170'435.07	56'038'163.67
Distribution neighbouring rights	20	-51'985'844.99	-50'922'161.15
Bodies and commissions	21	-307'735.82	-289'142.80
External assignments	22	-680'012.78	-781'315.35
Personnel expenses	23	-2'848'576.15	-2'767'650.99
Other general expenses	24	-815'365.60	-729'299.49
Depreciation of property	6	-70'961.82	-35'915.18
Operating expenses		-56'708'497.16	-55'525'484.96
Operating result		-1'538'062.09	512'678.71
Financial income	25	1'743'350.49	354'029.96
Financial expenses	26	-203'570.90	-865'008.67
Financial result		1'539'779.59	-510'978.71
Ordinary result/earnings before taxes		1'717.50	1'700.00
Taxes		-1'717.50	-1'700.00
Annual earnings		0.00	0.00

Cash flow analysis		2019 CHF	2018 CHF
Annual earnings		0.00	0.00
Depreciation of property	+	70'961.82	35'915.18
Value adjustments of financial assets	+/-	0.00	0.00
Change in provisions	+/-	207'282.12	12'367'803.83
Decrease/increase in securities	+/-	-2'637'353.00	635'868.00
Decrease/increase account receivables rights users	+/-	-1'989'520.26	-133'692.48
Deacrease/increase other short-term receivables	+/-	2'651.57	190'284.53
Decrease/increase prepaid expenses	+/-	2'092'548.50	-1'238'467.86
Decrease/increase liabilities neighbouring rights	+/-	931'537.57	73'724.16
Decrease/increase advance payments received rights users	+/-	35'424.97	-1'163'160.00
Decrease/increase other short-term liabilities and deferred income	+/-	-86'216.05	-381'158.83
Operating cash flow	=	-1'372'682.76	10'387'116.53
Investments in property	-	-98'320.02	-243'066.87
Financial investments	-	-2'000'000.00	-10'000'000.00
Divestments of financial assets	+	0.00	5'000'000.00
Cash flow from investment activities	=	-2'098'320.02	-5'243'066.87
Cash flow from financing activities	=	0.00	0.00
Change in liquid assets		-3'471'002.78	5'144'049.66
Verification fund:			
Liquid assets as per 1.1.		67'732'851.62	62'588'801.96
Liquid assets as per 31.12.		64'261'848.84	67'732'851.62
Change in liquid assets		-3'471'002.78	5'144'049.66

Legal Notice

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