

## **Royalty Rates Schedule VR-OD 5**

### **for the use of works from GEMA's repertoire Music-on-Demand for private use (excluding ringtone melodies)**

Net amounts plus value added tax at the current rate of 7 %

#### **I. Scope of Application**

The royalty rates apply exclusively to Music-on-Demand audio offers (music recordings) and Music-on-Demand music video offers (concert recordings, video clips, etc.) including platforms with user-generated contents from the Internet or similar data networks (Music-on-Demand offers), the object of which is to store works and make them accessible to the end user for streaming and/or downloading by the end user, excluding ringtone melodies. The royalty rates shall also apply to Music-on-Demand offers for mobile use by the end user.

The Music-on-Demand offer includes the possibility for the end user to select one or more works or a given combination of works for his or her private use.

The end user is that person, who makes use of the Music-on-Demand offer for private use with or without a fee.

#### **II. Royalties**

##### **1. Percentage royalties**

The following, differing percentage royalties for the use of works from GEMA's repertoire will be determined by the respective monetary advantages. The monetary advantages will be taken as a basis for the calculation of the royalty after deduction of value added tax.

The royalty shall amount to 15 % of the ultimate selling price.

In respect of subscription payments, the royalty shall amount to 15 % of the relevant payments.

In case of other monetary advantages, such as for example monetary advantages arising from advertising, sponsoring, barter, compensation or gift transactions, the royalty shall amount to 22.5 % of the relevant monetary advantages.



Separately financed or calculated monetary benefits and considerations, such as for example transmission fees, shall be added to the above monetary advantages for the purpose of calculating the royalty.

Direct foreign or indirect foreign income from the Music-on-Demand offer, e.g. arising from advertising, sponsoring, etc. and relating to Germany, shall be added to the respective German income or added to such German income on a pro rata basis.

In those cases, where the Music-on-Demand offer involves different monetary advantages, the respective percentage royalty shall be applied to each of the different monetary advantages and to the uses attributable to them. The total royalty is calculated from the sum of the individual royalties resulting here from.

The following minimum royalties shall apply per work, if the percentage royalty taking account of the pro rata calculation referred to in Section II, No. 3. results in a lower royalty per work than the minimum royalty.

## **2. Minimum royalties**

The following, different minimum royalties will be determined by the respective monetary advantages, excluding value added tax.

In the case of Music-on-Demand offers financed wholly or in part on the basis of ultimate selling prices or subscription payments or other monetary advantages, such as for example from advertising, excluding sponsoring, barter, compensation or gift transactions, the minimum royalty per work from GEMA's repertoire with a playing time of up to 5 minutes and used with or without a fee shall amount to € 0.1278.

If the playing time of the work is longer than five minutes, an additional royalty shall be payable per work of one fifth of the minimum royalty referred to in the above paragraph for each additional minute.

If a Music-on-Demand offer is financed partially or wholly by sponsoring, barter, compensation or gift transactions or sales of services or products other than those belonging to the Music-on-Demand offer, the minimum royalty per work from GEMA's repertoire with a playing time of up to five minutes and used with or without a fee shall amount to € 0.1916.

If the playing time of the work is longer than five minutes, an additional royalty shall be payable per work of one fifth of the minimum royalty referred to in the above paragraph for each additional minute.

In those cases, where the Music-on-Demand offer involves different monetary advantages, the respective minimum royalty shall be applied to each of the monetary advantages and to the uses attributable to them.

## **3. Pro rata calculation**

In the case of Music-on-Demand offers involving the use of works from GEMA's repertoire together with contents, in and to which GEMA holds no rights, e.g. subscription models, a deduction shall be made from the monetary advantages referred to in Section II No. 1 for that portion of use not attributable to GEMA repertoire. If the respective portion not attributable to GEMA repertoire was not documented in good time prior to use, the latter will be fixed by GEMA.



### **III. General Provisions**

#### **1. Scope of authorisation**

The authorisation for the Music-on-Demand offer with download facility shall cover exclusively the rights specified in Art. 16 and Art. 19 a of the German Copyright Act. By way of example and only for this purpose, the following uses shall be covered:

- Recording of works from GEMA's repertoire and their technical preparation for use as well as
- Incorporating works from GEMA's repertoire into databases, documentation systems or similar storage media (e.g. server computers) and
- Making them available.
- If applicable, the storage of the work on a data carrier for private use by the end user (downloading).

(2) The authorisation shall not cover any other rights, in particular the right to combine works from GEMA's repertoire with works of other types, or offers of dramatics-musical works, either in their entirety, as a cross-section, or major parts thereof (so-called "Grand Rights"), nor shall it cover graphic rights or rights in the sheet music or text-related images.

(3) The authorisations of the rights owners must be obtained, whenever advertising is directly or indirectly associated with the use covered by the tariff, regardless of the authorisations to be obtained at the royalty rates hereunder, pursuant to Section III, No. 1. Par. (1).

(4) The moral rights of authors may not be violated. Any alterations to a work with a view to using it in the Music-on-Demand offer with download facility, in particular by abridging the work, must comply with any requirements of Articles 14 and 39 of the German Copyright Act.

#### **2. Acquisition of authorisation in due time**

The rights shall only be deemed to have been granted, if GEMA's authorisation was obtained for the rights referred to under Section III No. 1 Par. (1) before the works from GEMA's repertoire were incorporated into databases, documentation systems or similar storage media.

Music-on-Demand offers as a part of platforms

The present royalty rates also apply to Music-on-Demand offers being part of platforms providing other forms of use.

#### **4. Delimitation**

The royalty rates shall not apply to the use of works from GEMA's repertoire in the form of ringtone melodies for private use or dial-tone background melodies.

Where the Music-on-Demand offer for private use also covers uses and/or affects rights other than those covered by these royalty rates, the rights in question shall be obtained separately in accordance with the relevant royalty rates schedules.



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## **5. Rights of third parties**

Rights of third parties, for example in the case of using scores for which royalties have been paid, shall remain unaffected.

## **6. Territorial scope**

These royalty rates shall apply to Music-on-Demand uses by end users, which take place within Germany.

## **7. General agreement**

Members of organisations, which have concluded a general agreement with GEMA for the VR-OD 2 royalty rates, are granted a general-agreement discount on the relevant royalty rates upon conclusion of each individual agreement. A condition for concluding a general agreement is that electronic usage reports are agreed and works protected against unlawful use in conformity with the available technical standards.

## **8. Period of validity**

The royalty rates shall apply to the period from 1 January 2009.

▣ <http://www.gema.de/en>