

AUDIOBOOKS, RADIO PLAYS & COMPARABLE PRODUCTIONS DOWNLOAD AND STREAMING

GEMA Tariff for the use of works in the GEMA repertoire as part of on-demand services for audiobooks, radio plays and comparable productions via download and/or streaming via so-called unlimited subscription

Tariff VR-OD 12

Net amounts plus VAT at the statutory rate

21.07.2022

I. Scope of Application

The following royalty fees apply exclusively

1. to the use of works and rights in the GEMA repertoire (hereinafter "musical work" or "musical works") as part of on-demand services, which involve the download of musical works as part of audiobooks, radio plays or comparable productions, such as guided meditations (hereinafter also referred to collectively as "musical content" or "musical contents") by the end user via Internet or mobile services. Download refers both to the final and temporary storage of musical content on a storage medium of the end user(s). The royalty fees in accordance with Section II.2. c) also apply to limited download subscriptions.
2. for chargeable unlimited subscriptions (so-called flat rates or "all you can eat" (AYCE) offers) for musical content for streaming with limited reproduction options ("subscription audiobook/radio play on-demand" or "S-HoD").

An audiobook, radio play or comparable production, such as a guided meditation, within the meaning of this tariff exists when spoken text, whether dramatised, read or otherwise edited, is combined with musical works. Usually, the focus is not on music.

Audiobooks, radio plays or comparable productions may consist of one or more chapters; they are always treated as a whole (e.g. in terms of total playing time) (hereinafter "product").

The end user is the person who uses the offer of audiobooks, radio plays or comparable productions for private use against payment or free of charge.

Uses that do not fall under the scope of this tariff include uses of musical works as part of on-demand services that due to their content fall under the tariffs VR-OD 4, VR-OD 7, VR-OD 8, VR-OD 9, VR-OD 10 or VR-OD 14.

II. Royalty Fees

1. Obligation to Pay Royalties

The obligation to pay royalties is incurred, depending on the type of use:

- a) by the reproduction of musical works as part of audiobooks, radio plays or comparable productions in databases, documentation servers, or similar storage media (e.g. server computers),
- b) by making musical works available to the public as part of audiobooks, radio plays or comparable productions,
- c) by transmitting musical works as part of audiobooks, radio plays or comparable productions,
- d) by the actual retrieval of a musical work by the end user as part of audiobooks, radio plays or comparable productions or
- e) by concluding a subscription under which musical works are made available for download as part of audiobooks, radio plays or comparable productions, even if a corresponding download of musical contents by the end user has not taken place.

As far as uses covered by this tariff are permissible in accordance with a copyright limitation provision (e.g. Section 53 German Copyright Act (UrhG)), it is clarified that these uses are deemed not remunerated in accordance with this tariff, insofar as the requirements of the copyright limitation provision are fulfilled.

2. Royalty Fee for Downloads of Audiobooks, Radio Plays or Comparable Productions

- a) **Royalty Rate for Downloads of Audiobooks, Radio Plays or Comparable Productions**
The royalty rate amounts to 8.5% of the computation basis, taking into account the pro rata share of musical works in the audiobook, radio play or comparable production. The music share is calculated precisely to the second in accordance with Section II. 5.
- b) **Minima for Downloads of Audiobooks, Radio Plays or Comparable Productions**
The minima amounts to € 0.008 per minute of playing time of the audiobook, radio play or comparable production taking into account the pro rata share of musical works in the audiobook, radio play or comparable production. The music share is calculated precisely to the second in accordance with Section II. 5.
- c) **Royalty Fee Provisions for "Limited Subscriptions"**
 - aa) **Definition**
A "limited subscription" exists if the end user purchases a fixed quota of download options for a specific, possibly recurring period of time, giving them access either only to freely selectable products ("homogeneous subscriptions") or also other content (e.g. games, applications) or audiovisual content ("heterogeneous subscriptions") via download.
 - bb) **Royalty Rate for Limited Subscriptions**
The provisions under Section 2. a) apply to the royalty rate for limited subscriptions.
 - cc) **Minima for Limited Subscriptions**
The provisions under Section 2. b) apply to the minima for limited subscriptions.

3. Royalty Fee Provisions for Streaming in Unlimited Subscriptions

- a) **Royalty Rate for Streaming of Audiobooks, Radio Plays or Comparable Productions**
The royalty rate amounts to 12.5% of the computation basis, taking into account the pro rata share of musical works in the audiobooks, radio plays or comparable productions made available to the public by the platform. The music share is calculated precisely to the second in accordance with Section II. 5.

- b) **Minima for Streaming of Audiobooks, Radio Plays or Comparable Productions in Unlimited Subscriptions**
The minima for unlimited subscriptions amounts to € 0.9 per month and end-customer, taking into account the pro rata share of musical works in the audiobooks, radio plays or comparable productions made available to the public on the platform. The music share is calculated precisely to the second in accordance with Section II. 5.

4. Computation Basis

The computation basis shall be all net revenues (gross revenues less the applicable value-added tax) generated with the use of the audiobook, radio play or comparable production and therefore in particular

- the net end user price for the respective retrieval of an audiobook, radio play or comparable production or the subscription, i.e. the respective fee paid by the end user less the value-added tax, and
- separately financed or charged non-cash benefits and considerations, e.g. transmission and availability fees, or revenues from advertising, sponsoring, barter, compensation or gift transactions. This also applies to foreign revenues, insofar as these relate to the operation of the service to be licensed in Germany.

5. Calculation of the Music Share

The royalty fee is calculated on a pro rata basis in consideration of the total playing time of the audiobook, radio play or comparable production in relation to the music share of the audiobook, radio play or comparable production, i.e. the total playing time of the musical works contained in the audiobook, radio play or comparable production.

In a first step, the total playing time of the musical works of the audiobook, radio play or comparable production is calculated precisely to the second according to the following specifications:

- a) Musical works where no text is narrated at the same time: The playing times of the respective musical works are cumulated, calculated in minutes and seconds.
- b) Musical works where text is narrated at the same time: The playing times of the respective musical works are cumulated, calculated in minutes and seconds, and divided in half.
- c) The total playing time of the musical works: The total playing time is calculated from the sum of the playing times calculated according to paragraphs a) and b) above.

In a second step, the total playing time of the musical works is put into proportion with the total playing time of the audiobook, radio play or comparable production. If an audiobook, radio play or comparable production consists of several chapters, these shall be considered as a unit for the determination of the total playing time of the musical works as well as for the total playing time of the audiobook, radio play or comparable production.

6. Share Calculation

If the service to be licensed does not solely contain offers falling within the scope of application of the present tariff, this shall be taken into consideration in determining the computation basis. Nevertheless, the revenue thus deducted may be used within the scope of any licensing that may be necessary for other offers of the service to be licensed, which do not fall under this tariff.

7. Minimum Fee

Irrespective of the above royalty fees in accordance with Section II Subsections 1. to 6., the minimum fee for the use of works and rights of the GEMA repertoire under this tariff are 240.00 € (net) per year, i.e. 20.00 € (net) per month. This amount can be offset against usage-based billing but is not refundable.

III. General Provisions

1. Extent of the Grant of Rights

- a) For the purposes of offering audiobooks, radio plays or comparable productions on demand, the grant of rights is limited to the right according to Article 16 of the German Copyright Act (UrhG) to reproduce musical works as part of audiobooks, radio plays or comparable productions, and the right according to Article 19a of the German Copyright Act (UrhG) to make musical works available to the public as part of audiobooks, radio plays or comparable productions. Within the scope of and for the purpose of the on-demand offer of audiobooks, radio plays or comparable productions of the licensee, subject to proper licensing,
- musical works may be incorporated into databases, documentation systems or similar storage media (e.g. server computers),
 - musical works may be made available to the public,
 - musical works may be stored as a download on a terminal device for private use by the end user,
 - musical works may be temporarily reproduced without the possibility of permanent storage to play the work once on the playing device of the end user.
- b) The granted rights of use are non-exclusive and non-transferable to third parties. This tariff shall apply to uses and for corresponding offers in Germany and/or for the German market.
- c) The granted rights do not include other rights, in particular the right to edit and the right to combine musical works with works from other genres (sync rights), as well as the graphic rights, the musical notation rights, and the lyric rights. Neighbouring rights are also not included.
- d) The moral rights of the author may not be violated. Alterations to a music work for utilization in the on-demand offer of audiobooks, radio plays or comparable productions of the licensee, particularly by abridging the musical work, must comply with any requirements of Articles 14 and 39 of the German Copyright Act (UrhG). Insofar as the musical works are used directly or indirectly for advertising purposes, the relevant authorisations with regard to the moral rights of the author must be obtained separately by the licensee.

2. Timely Acquisition of the Utilisation Right

The rights forming the subject of this tariff shall only be deemed to have been granted, if GEMA's authorisation was obtained prior to commencement of use, i.e., especially before incorporating the musical works into databases, documentation systems or similar storage media.

3. Third-Party Rights

The rights of third parties shall remain unaffected.

4. Territorial Scope

This tariff shall apply to uses and for corresponding offers in Germany and/or for the German market.

5. Umbrella Agreement

Members of organisations, which have concluded an umbrella agreement with GEMA for the above royalty fees, are granted an umbrella-agreement discount on the respective royalty fees upon conclusion of a corresponding individual agreement.

6. Right to Adjustment and Period of Validity

The royalty fees of this tariff are set subject to continued monitoring and analysis by GEMA. Changes to services supplied on the market as well as changes to user behaviour may result in future adjustments to the defined tariff parameters.

The royalty fees shall apply for a test period until 30 June 2024.

NOTE: This tariff has been issued in German and English language versions. In case of doubt, the German language version of the tariff shall apply.