

MUSIC & MUSIC VIDEO DOWNLOAD

*GEMA Royalty Rates Schedule for the use of works from GEMA's repertoire
for downloading single titles and albums as well as for limited subscriptions*

Tariff VR-OD 7

Net amounts plus value added tax at the statutory rate

01.03.2020

I. Scope of Application

The following royalty rates apply exclusively to the use of works and rights in and to GEMA repertoire within the scope of Music-on-Demand offers, which involve the downloading of audio works of music and/or of music videos (in particular music video clips, concert recordings) – hereinafter collectively referred to as “musical works” – by the end user via internet-based or mobile services.

Downloading describes both the ultimate storage and the production of a restricted copy (tethered download) of a musical work on a storage medium of the enduser. The copy is restricted in that playing is tied to a particular time. The end user is that person, who makes use of the Music-on-Demand offer for private purposes with or without a fee.

In particular streaming uses as well as ringtone melodies and dial tone background melodies shall be excluded from the scope of application of this tariff.

II. Royalties

1. Obligation to pay royalties

The obligation to pay royalties is incurred:

- a) by the reproduction of musical works from GEMA's repertoire in databases, documentation servers or similar storage media (e.g. server computers),
- b) by making musical works from GEMA's repertoire available to the public,
- c) by transmitting musical works from GEMA's repertoire,
- d) by the actual download of a musical work from GEMA's repertoire by the end user, or
- e) by the conclusion of a subscription, under which musical works from GEMA's repertoire are provided for download, even if there has been no corresponding download of the musical works on the part of the end user.

To the extent acts of use covered by this tariff are freely permitted in accordance with the statutory limiting provision (e.g. Section 53 UrhG), it is clarified that these acts of use are not considered to be remunerated according to this tariff, providing the requirements of the statutory limiting provision are met.

2. Standard royalty for downloading single titles and albums

The standard royalty amounts to 10.25 % of the computation basis.

Within the meaning of this tariff, an “album” is defined as a compilation of any number of single titles, which is created by a record label itself or, if created by the licensee, was approved by a record label. Single titles compiled into bundles, playlists or the like by the end users themselves shall be excluded from the definition of album for the purposes of this tariff.

3. Minimum royalty for downloading single titles and albums

The minimum royalty for each musical work and/or album accessed by the end user amounts to

Amount in euros (€)

0.091	per single title
0.0875	for each title in an album with 2 to 7 musical works,
0.075	for each title in an album with 8 to 12 musical works,
0.0725	for each title in an album with 13 to 15 musical works,
0.0625	for each title in an album with 16 and 17 musical works and
0.0563	for each title in an album with 18 or more musical works.

Notwithstanding the above, full units comprising 26 titles each shall be remunerated at 0.0563 € for albums that were not compiled by a record label. The remuneration for works exceeding such 26 tracks shall be calculated at the graduated minimum royalty rates listed above.

The above minimum royalty rates apply to musical works with a playing time of up to 10 minutes. If the playing time of the musical work is longer than 10 minutes, the minimum royalty relating to the respective musical work is increased by one fifth for each additional minute.

4. Royalty provisions for “limited subscriptions”

a) Definition of term

A “limited subscription” shall be deemed to exist when the end user obtains for a particular, possibly recurring, period of time a fixed contingent of specific on demand options, with which he/she can either access only musical works that can be freely selected (“homogeneous subscriptions”) or other contents (e.g., games, applications) or audio-visual contents (“heterogeneous subscriptions”) by way of downloading.

b) Standard royalty for limited subscriptions

The standard royalty for limited subscriptions is calculated according to the provisions in Section 2.

c) Minimum royalty for limited subscriptions

The minimum royalty for limited subscriptions shall be subject to the provisions under Section 3.

5. Computation basis

The computation basis shall be all net revenue (gross revenue less value added tax at the applicable rate) accruing through the use of music and therefore in particular

- the net end-user price for the respective download of a musical work or album and/or the subscription, i.e. the respective amount paid by the end user less value added tax, and
- separately financed or calculated monetary benefits and considerations, such as for example transmission and provision fees, or payments arising from advertising, sponsoring, barter, compensation or gift transactions. The same shall also apply to foreign revenue, provided it relates to the operation of the service to be licensed in Germany.

6. Pro rata calculation

- a) In the event that 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 on a pro rata basis in determining the computation basis as per Section 6, notwithstanding the fact that the revenue deducted in this way can 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.
- b) In the event that musical works, in which GEMA holds no or only pro rata exploitation rights, are used within the scope of the service to be licensed, this shall be taken into account on a pro rata basis in the calculation of the royalty in compliance with the above provisions.

7. Audio samples

In case the service to be licensed grants the end user the possibility of downloading excerpts of works from GEMA's repertoire up to 90 seconds in length by streaming for the purpose of promoting the sale of downloads and without the possibility of ultimate storage on a storage medium of the end user (so-called audio samples), the following royalty provisions shall apply:

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|---|---------------------|
| ▪ for a service to be licensed with up to 1 million individual downloads | 187.50 € / annum |
| ▪ for a service to be licensed with up to 10 million individual downloads | 625.00 € / annum |
| ▪ for a service to be licensed with over 10 million individual downloads | 2.500.00 € / annum. |

Notwithstanding the above, the service to be licensed remains obliged to provide clarification pursuant to Paragraph III, Section 1, Subsection d).

8. Minimum amount

Irrespective of the above remuneration rates in accordance with Section II 2. to 8., the minimum amount for the use of works and rights of the GEMA repertoire under this tariff is 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. Scope of grant of rights

- a) The grant of rights for the operation of the service to be licensed shall be restricted to the right pursuant to Article 16 UrhG (German Copyright Act) to reproduce works from GEMA's repertoire, and the right arising from Article 19a UrhG to make works from GEMA's repertoire available to the public. Within the scope of operation of the service to be licensed, the following uses may be covered, subject to proper licensing:
 - Incorporating works from GEMA's repertoire into databases, documentation systems or similar storage media (e.g., server computers).
 - Making works from GEMA's repertoire available to the public.
 - Storing works from GEMA's repertoire as a download on terminal equipment for private use by the end user.
- b) The exploitation rights granted may not be transferred to third parties.

- c) The granting of rights shall not cover any other rights, in particular arrangements and the right to combine works from GEMA's repertoire with works of other types, nor shall it cover graphic rights or rights in the sheet music or text-related images.
- d) 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, in particular by abridging the work, must comply with any requirements of Articles 14 and 39 of the German Copyright Act (UrhG). Where works from GEMA's repertoire are used directly or indirectly for advertising purposes, the relevant authorisations must be obtained separately by the service provider of the service to be licensed, insofar as moral rights of authors are involved.

2. Acquisition of authorisation for use in due time

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. in particular before the works from GEMA's repertoire were incorporated into databases, documentation systems or similar storage media.

3. 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.

4. Territorial scope

This tariff shall apply to acts of usage and corresponding offers, which are made within Germany and/or for the German market.

5. General agreement

Members of organisations, which have concluded a general agreement with GEMA for the above royalty rates, are granted a general-agreement discount on the respective royalty rates upon conclusion of the relevant individual agreement.

6. Period of validity

The royalty rates shall apply to the period as of 1 January 2013. The provision on the Minimum Amount (Section II 8.) shall apply to the period as of 1 July 2018.

NOTE: In case of doubt regarding the meaning of the wording within the present tariff the German version shall be decisive