

VIDEO-ON-DEMAND DOWNLOAD AND STREAMING

*GEMA Royalty Rates Schedule for the use of works in GEMA's repertoire in video-on-demand services and offers via
download and/or streaming
(including so-called "unlimited subscriptions")*

Tariff VR-OD 4

Net amounts plus value added tax at the statutory rate

01.06.2019

I. Scope of Application

The following royalty rates apply exclusively:

1. To the use of works and rights in GEMA's repertoire in video-on-demand services and offers ("Video-On-Demand Offers"), which are downloads of film or video works as defined under Section II, Subsection 2, b) by the end user via internet services or mobile-based services.

The term "download" refers to permanent as well as temporary storage of a film or video work on the end user's storage medium.

2. To Video-On-Demand Offers, if and in so far as the service to be licensed offers film and video works that use GEMA's repertoire for downloads and for playback via a playback medium by the end user, without the end user being able to make a permanent copy ("Streaming").
3. To paid subscription (so-called "flat rates" or "all you can eat" ("AYCE") offers for film and video works for download where copying is limited ("Subscription Video-on-Demand" or "S-VoD").

The end user is the person who uses the fee-based or free-of-charge Video-On-Demand Offers for personal use.

This rate especially does not apply to music videos and live video recordings of concerts that do not fall within the scope of Section II, Subsection 2b), gg).

II. Royalties

1. Royalty fee obligation

A royalty fee becomes obligatory when:

- b) Music works in GEMA's repertoire are reproduced in databases, documentation servers, or similar storage media (e.g., servers).
- b) Music works in GEMA's repertoire are made available to the public.
- c) Music works in GEMA's repertoire are transmitted.
- d) A music work in GEMA's repertoire in a film or video work is retrieved by an end user.
- e) A subscription is purchased and the subscription offers retrievals of film and video works that contain music works in GEMA's repertoire; a royalty fee becomes obligatory even if the end user has not performed a corresponding retrieval of the film and video works.

To the extent acts of use covered by this tariff are freely permitted in accordance with the statutory limiting provision (e.g. Section 53 German Copyright Act (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 fee and minimum royalty fee for Video-On-Demand Offers

- a) The following royalty fee percentages for the use of works in GEMA's repertoire are in reference to the assessment criteria and exclude the statutory sales tax. The percentage rates and royalty rates take into account a flat rate and a previously prorated music percentage.

Nr.	Category	Download to own		Streaming	
		Standard royalty fee (in %)	Minimum royalty fee (in euros)	Standard royalty fee (in %)	Minimum royalty fee (in euros)
1	Feature film	3.15 %	0.1650 €	2.60 %	0.0550 €
2	Series (long) (per episode)	3.00 %	0.0490 €	2.50 %	0.0235 €
3	Short film	3.12 %	0.0210 €	2.60 %	0.0080 €
4	Series / show / reality show (short) (per episode)	1.33 %	0.0180 €	1.10 %	0.0060 €
5	Show / reality show (long) (per episode)	1.75 %	0.0750 €	1.50 %	0.0250 €
6	Concert film / music formats (if it is a series: per episode)	5.40 %	0.3135 €	4.50 %	0.1045 €
7	Documentary film / documentation (if it is a series: per episode)	2.10 %	0.0225 €	1.75 %	0.0087 €
8	Advice program, news coverage, news reports (if it is a series: per episode)	1.20 %	0.0100 €	1.00 %	0.0022 €
9	Clips (if it is a series: per episode)	1.50 %	0.0050 €	1.25 %	0.0011 €

The streaming royalty rate includes the option of making a temporary copy on the end user's storage medium, whereas the copy must be limited to a period of thirty (30) days and to a playback time of forty-eight (48) hours once playback has started.

b) **Terminology**

The categories of film and video works named under Section II, Subsection 2, a) are regardless of the country where the film and video works were produced and their original language version, and are defined in terms of this rate as follows:

aa) **Feature film:**

Feature film: a feature film or television film with a fictitious plot, or which simulates reality and serves to entertain.

A feature film has a minimum running time of sixty (60) minutes. Animated films and children's films are included in the definition of "feature film." Typical examples are first-run feature films (cinema films), D2V ("direct-to-video"), MOTW ("movie of the week" / television films), and so-called mini-series, whereas for compensation purposes an individual film in a mini-series counts as one feature film (a mini-series consists of several television films, outlines a self-contained plot, and as a rule does not consist of more than twelve (12) individual films). The category "short film" applies when the running time is less than sixty (60) minutes.

bb) **Series (long):**

A television program that consists of several individual program segments and is, in reference to this rate, exclusively a fictional program. The individual program segments are called episodes. The episodes form seasons, based on the annual or semi-annual premiere broadcasts of the new episodes. Accordingly, they are always a series format with a script and a director (so-called "scripted entertainment"). The "series (long)" has a minimum running time of forty (40) minutes and less than sixty (60) minutes. If the running time is less than forty (40) minutes, then the category "series (short)" applies, and if the running time is more than sixty (60) minutes the category "feature film" applies. The royalty fee is for an individual episode. Typical examples for the category "series (long)" are comedy series, dramas, and animated programs.

cc) **Short film:**

A short film is a feature film with a minimum running time of ten (10) minutes and a running time less than sixty (60) minutes.

dd) **Series (short) / show (short) / reality show (short):**

- (1) The definition of a "series (short)" is the same as the definition of a "series (long)"; however, the running time in the category "series (short)" is at least ten (10) minutes but less than forty (40) minutes. The royalty fee is for an individual episode. Typical examples are sitcoms, soap operas, telenovelas, and animated programs.
- (2) A "show (short)" is a television program that consists of several individual segments, seasons, and episodes, or consists of only one individual segment that does not have a continuation. As a rule, a presenter in front of an audience hosts the broadcast. The running time of a "show (short)" is at least ten (10) minutes and less than forty (40) minutes. The difference to a "series (short)" is that a "show (short)" is always a program without a script or stage directions (so-called "unscripted entertainment"). If the running time is longer, then the category "show (long)" applies. With a series, the royalty fee applies to each individual episode. Typical examples are game and talk shows.
- (3) The definition of "show (short)" applies to the category "reality show (short)," whereupon the format attempts to portray reality with the participants. In addition, "scripted reality" formats are defined as "reality TV" (i.e., reality TV where a reality show is only simulated – the scenes are performed by amateur actors and actresses and they have a director, a so-called "docusoap"). The category "reality show (short)" has a minimum running time of ten (10) minutes and a running time less than forty (40) minutes. With a series, the royalty fee applies to each individual episode.

ee) **Show (long) / reality show (long):**

- (1) For the category "show (long)," the definition of the category "show (short)" applies; however, the running time of "show (long)" is at least forty (40) minutes.
- (2) The definition of the category "reality show (long)" is the same as the category "reality show (short)"; however, the minimum running time of the category "reality show (long)" is forty (40) minutes.

ff) **Documentary film / documentation:**

A non-fictional film or a non-fictional episode in a series. The attempt is made to capture an actual event, whereas the circumstances as a rule are based on journalistic and/or scientific research. Fundamentally, no actors or actresses are involved

and the sequences shown are commented on verbally. Interviews can be another part of the documentation. The minimum running time is 10 minutes. Typical examples are documentations from the areas of politics, history, lifestyle, nature, and the environment (films about animals or nature). With a series, the royalty fee applies to each individual episode.

gg) **Concert film / music formats:**

A documentation, feature film, or show where the focus is on the music. The minimum running time is 10 minutes. With a series, the royalty fee applies to each individual episode. A concert film is to be differentiated from an unadulterated live recording of a concert, and features an editorial news report that goes beyond an unadulterated playback. Depending upon the platform offer, a live video recording of concerts is subject to the music-on-demand rates VR-OD 7 to 9.

hh) **Advice program, news coverage, news reports**

The umbrella term "advice program, news coverage and news report" covers non-fictional and educational formats where the focus is on a solution to a certain problem and news reports and presentations that are reported directly. The formats can also be offered as a series. The minimum running time is ten (10) minutes. Typical themes for an advice program are consumer rights, finances, travel, automobiles, fashion, education, health, and family issues. Sports are a typical subject for news coverage / news reports. With a series, the royalty fee applies to each individual episode.

ii) **Clips:**

The umbrella term "clip" refers to fictional and non-fictional films, episodes in a series, and audio-visual sequences, which are shorter than ten (10) minutes. The category includes formats with and without a script or a director (scripted and unscripted entertainment). With a running time of ten (10) minutes or more, the respective appropriate next higher category applies. A clip is different from a music video; depending upon the platform offer the music-on-demand rates VR-OD 7 to 9 apply. Typical examples of clips are mobile television series, informational films, gossip reports and lifestyle reports.

If it is not possible in an individual case to clearly classify a format, then the royalty rate for the category that has the most similarities with that format applies.

3. Assessment basis

The assessment is based on all of the causally determined net earnings from the film and video use (gross earnings minus the value added tax), and is therefore in particular based on the following:

- The net end user price for the respective download and the subscription, i.e. the respective fee paid by the end user minus the sales tax. It is hereby clarified that the net end user price for a subscription is without any deductions and is independent of the number of retrievals performed.
- Separately financed or calculated non-monetary prerequisites and services in return, such as, for example, transmission fees, and fees from advertising (including advertising revenue from advertisements and/or banner advertisements, which are embedded in the stream of the film or video work ("instream advertising revenue")), sponsoring, barter transactions, compensation transactions, and gifts. This also applies to foreign income, as far as these involve the business operation of the licensing service in Germany.

4. Pro Rata calculation / reporting

- a) If the licensing service does not exclusively provide offers that are found under the applications in the present range of rates, then this will be appropriately taken into account in accordance with Section II Subsection 3. It is still possible that in this manner income deducted as part of the required licensing (if such a licensing is in fact required) of the remaining offers provided by the licensing service covered by this rate can be included in the calculation.
- b) If film and video works contain music works for which GEMA does not administer the rights of use or administer a share of the rights of use and these music works are used as part of the licensing service, this will be taken into account proportionately in the calculation of the royalty fee in accordance with the present terms.
- c) With regard to the extent of reporting, it is hereby clarified that the licensee shall not solely report the film and video work but shall report the music works that are in the film and video work, including all of the appropriate information on the authors.

5. Special regulation for standard royalty fee and minimum royalty fee for S-VoD offers as defined in Section I Subsection 3. (trial royalty rates)

For paid subscription (so-called “flat rates” or “all you can eat” (“AYCE”), and so-called “unlimited subscriptions”) offers for film and video works on demand where copying is limited (“Subscription Video-on-Demand” or “S-VoD”) the following royalty rates are applicable as trial royalty rates:

a) Standard royalty rate for unlimited subscriptions

The standard royalty rate amounts to 3.125 per cent of the assessment basis.

b) Minimum royalty rate for unlimited subscriptions

The minimum royalty rate amounts to 0.25 euro per month and subscriber/ end user (“per-subscriber-minimum” or “PSM”).

c) The royalty rates specified under lit. a) and b) are applicable to the following offers:

Offers where the licensing service during a specific, recurring period and against a subscription fee paid by the end user, transmits film or video works, which contain musical works from GEMA’s repertoire, in electronic or similar form and enables the end user to, (i) play these back by use of an active internet connection and (ii) if applicable, make a limited copy within the allowed use only, which enables playback of the film or video works without an active internet connection (“Tethered Download”). The limitation requires that download and playback options are bound to (i) a limited download period of one (1) month from the copy being made or 48 hours from activation of the playback function by the end user and cumulatively to (ii) individual devices, device groups or to the limitation of the number of videos at any one time and in total. Offers which enable downloads by the end user in a way that does not comply with the restrictions herein, are not covered by this provision.

d) The licensing service can, at any time, opt for the standard royalty fee and minimum royalty fee for the Video-On-Demand Offers in accordance with Section II, Subsection 2 of this tariff.

e) The preceding provisions shall apply to payments of offers as set out in this special regulation, however excluding the provisions in Section II Subsection 2 and Subsection 4, b), which are not applicable.

6. Minimum Amount

Irrespective of the above remuneration rates in accordance with Section II Subsection 2. or 5., 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. Extent of the granting of rights

- a) The granting of rights for the business operation of a licensing service is restricted to the right according to Paragraph 16 of the German Copyright Act (UrhG) to reproduce works in GEMA's repertoire, and the right according to Paragraph 19a of the German Copyright Act (UrhG) to make works in GEMA's repertoire available to the public. In this manner, as part of the business operation of the licensing service –providing that a legal licensing has taken place and insofar as this is covered by the respective payment regulation – the following can be done:
- Works in GEMA's repertoire can be placed in databases, documentation systems, or in similar types of storage media (e.g., servers).
 - Works in GEMA's repertoire can be made available to the public.
 - Works in GEMA's repertoire can be saved as a download on an end device by an end user for the end user's personal use.
 - Works in GEMA's repertoire can be reproduced temporarily, without the possibility of storing them permanently, for the purpose of playing the work one time on the end user's playback device.
 - Works in GEMA's repertoire can be saved as a limited copy on an end device for the end user's personal use.
- b) The granted rights of use cannot be transferred to a Third Party.
- c) The granted rights do not include other rights, in particular the right to adapt and the right to combine works in GEMA's repertoire with works from other genres, and it does not include the rights to offers of dramatico-musical works, either of a complete work or an excerpt of a work, or of larger segments (so-called "grand rights"), as well as the graphic rights, the musical notation rights, and the lyric rights.
- d) The moral rights of the author cannot be violated. Alterations to a music work in order to use it in a Video-On-Demand Offers, in particular the abridgement of a work, must satisfy the contingent demands of Paragraphs 14 and 39 of the German Copyright Act (UrhG). Insofar as the use of the works in GEMA's repertoire is done directly or indirectly for advertising purposes, the service provider of the licensing service must obtain in matters involving the moral rights of the author the corresponding permissions separately.

2. Timely acquisition of the right of use

The rights subject to the royalty rate are only considered to be granted if permission from GEMA is granted before use, in particular before works in GEMA's repertoire are placed in databases, documentation systems, or in similar types of storage media.

3. Third-party rights

Third-party rights remain unaffected.

4. Territory validity

This rate is valid for use and for corresponding offers in Germany and for the German market.

5. Umbrella agreement

The members of organisations that have signed a joint contract with GEMA for the present royalty rates will be granted a joint contract rebate for the respective royalty rates after the hereunto relevant individual contract has been signed.

6. Validity Period / Trial royalty rate phase for S-VoD offers

The royalty rates for uses according to Section I Subsections 1 and 2 are valid as of January 1, 2011. The provision on the Minimum Amount (Section II Subsection 6.) shall apply to the period as of 1 July 2018. The royalty rates for use in accordance with Section I Subsection 3 (S-VoD) apply for the period from 01.01.2009; in this respect, these are trial royalty rates.