

# MUSIC & MUSIC VIDEO STREAMING SUBSCRIPTION

*GEMA Royalty Rates Schedule for the use of works from GEMA's repertoire within the scope of streaming offers subject to a fee (so-called "unlimited subscriptions")*

## *Tariff VR-OD 8*

Net amounts plus value added tax at the statutory rate

01.01.2019

### **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, when and if the service to be licensed offers in return for a fee audio works of music and/or of music videos (in particular music video clips, concert recordings) from GEMA's repertoire – hereinafter collectively referred to as "musical works" – for a particular recurring period of time for the purpose of calling down and playing by the end user using a playing medium, without the end user being able to produce a permanent copy (downloading). This tariff also covers such services, in which the end user can in addition to playing the musical works also produce a copy with restricted scope of use (so-called tethered download), thus enabling the end user to play the musical work without having constant access to the Internet. The copy is restricted in that playing is tied to the subscription period and in addition to individual pieces of equipment or equipment groups.

The end user is that person, who makes use of the Music-on-Demand offer for private purposes in return for a fee.

In particular dial tone background melodies, as well as streaming offers involving no fee for the end user and uses in the context of business-to-business (B2B) models 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 works from GEMA's repertoire in databases, documentation systems, 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 to a third party,
- d. by the actual retrieval of a musical work from GEMA's repertoire by the end user, or

- e. by the conclusion of a subscription, under which musical works are provided for retrieval, even if there has been no corresponding retrieval of 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 unlimited subscriptions

The standard royalty amounts to 15 % of the computation basis.

## 3. Minimum royalty for unlimited subscriptions during the test period until 31 December 2019

For a test period lasting until 31 December 2019 the minimum royalty for unlimited subscriptions shall initially amount to:

- for single platforms 0.75 € per month and per end customer, and
- for multiple platforms 1.25 € per month and per end customer.

In this context, a “single-platform subscription” shall be deemed to be a subscription offer, within the scope of which the end customers are granted the possibility of accessing musical works against payment of a non-usage-related royalty, such that for the duration of the subscription and subject to continued payment of the non-usage-related royalty the end customer has the possibility to access the musical works provided for call-down by the service to be licensed exclusively via terminal equipment that is primarily and predominantly used from a fixed base (e.g., PC, laptop, tablet PC, stationary home consumer electronics; e.g., set-top box, stand-alone players or the like) and use of musical works is possible only by way of streaming. Usage of musical works by way of simultaneous use on more than one terminal device must be excluded.

In this context, a “multiple-platform subscription” shall be deemed to be a subscription offer, which does not fall under the above definition of the single-platform subscription; i.e. the term shall cover in particular subscription offers, within the scope of which the end customer is granted the possibility of accessing musical works against payment of a non-usage-related royalty, such that for the duration of the subscription and subject to continued payment of the non-usage-related royalty the end customer has the possibility to access the musical works provided for call-down by the service to be licensed via terminal equipment that is primarily and predominantly used from a fixed base and/or via terminal equipment that is primarily and predominantly used from a mobile base (e.g., PC, laptop or the like and MP3 players, mobile telephones or the like) and/or simultaneous use of musical works is possible on more than one playing or storage medium, e.g., by playing or by storage limited for the duration of the subscription (so-called “tethered download”).

These provisions shall initially and only apply up to and including the 2019 calendar year. During this test phase, GEMA will collect and analyse further information about the business models, and in particular about user behaviour, substitution effects among the services offered and intensity of usage and revise and/or reformulate the royalty provisions on the basis of its findings.

## 4. Special provision for time-restricted special conditions of this service

Insofar as services are offered to the end user that are regulated by this Rate Schedule under time-restricted special conditions, this can be taken into account through an individual adjustment of the basic royalty rates due. The following regulations apply for such an adjustment:

- 4.1 A prerequisite for the reduction of the relevant royalty rates is an increase in the royalty rates at another position, based on the expected development of the service, in order to work towards an economic adjustment.
- 4.2 The ratio between the intensity of use and the number of users of the service under these special conditions on the one hand and the intensity of use and the number of users under regular conditions on the other hand is to be reasonably taken into account. This can be achieved, for example, through the establishment of conversion rates in the individual case.
- 4.3 The expected advantages as part of the flexibility of the special conditions are to be ensured – for example, by means of a payment of a reasonable minimum guarantee.

4.4 The licensee is continuously obligated, at minimum on a quarterly basis, to provide comprehensive information on:

- the function method of the service offered,
- the development of the user's conduct, in particular in respect to the development of the ratio in accordance to Section 4.2, and specifically in relative as well as in absolute numbers,
- the further effects of the special conditions on the service.

4.5 An adjustment of the royalty rates in accordance to this provision will be made for a maximum period of two years, respectively, and subsequently is to be reevaluated for the future based on the information provided in accordance with Section 4.4.

4.6 The adjusted royalty rates in accordance with this provision are not a valid precedent for subsequent negotiations.

4.7 A prerequisite for a special provision for the royalty as part of the parameters described above is the previously written individual agreement between the Parties.

## 5. Computation basis

The computation basis shall be all net revenue of the service to be licensed (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 call-down and/or 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 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. Minimum amount

Irrespective of the above remuneration rates in accordance with Section II 2. to 7., 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,
  - Transmitting works from GEMA's repertoire to an end user,
  - Temporarily reproducing works from GEMA's repertoire without the possibility of ultimate storage to play the work once on the playing medium of the end user,
  - Storing works from GEMA's repertoire as tethered download and hence as restricted copy on a terminal device for private use by the end user.
- b. The exploitation rights granted may not be transferred to third parties.
- c. The grant 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 offers of dramatic-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.
- 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 provider of the service to be licensed, insofar as moral rights of authors are involved.

#### 2. Acquisition of the 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 2019. The provisions on the minimum royalty shall apply exclusively and limited to the test period until 31 December 2019.

**NOTE: In case of doubt, the German language version of the tariff shall apply.**