

# MUSIC & MUSIC VIDEO STREAMING

*GEMA Royalty Rates Schedule for the use of works from GEMA's repertoire within  
the scope of so-called ad-funded streaming offers*

*Tariff VR-OD 9*

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's repertoire within the scope of Music-on-Demand offers, if and in so far as the service to be licensed allows the end user the possibility to access audio music works and/or music videos (in particular music video clips and live concert recordings) in GEMA's repertoire – hereafter collectively referred to as "musical works" – via Internet services or mobile-based services and to playback these music works by means of a playback medium, without being able to save a restricted-use file (a so-called tethered download) or a permanent file.

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

In particular, streaming uses according to VR-OD 8 involving a fee for end users as well as ringback tones 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 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 to a third party, or
- d) by the actual retrieval of a musical work from GEMA's repertoire by 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 ad-funded streaming services

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

## 3. Minimum royalty for ad-funded streaming services

The minimum royalty shall amount to

- in case of high interactivity of the service 0.00375 € per stream,
  - in case of low interactivity of the service 0.001 € per stream.
- a) High interactivity of the service to be licensed shall be deemed to apply when the end user has extensive control over the selection of the music, in particular when the end user can select the song, album, or artist.
- b) Low interactivity of the service to be licensed shall be deemed to apply when the end user has only very limited control over the selection of music; in this respect the maximum permissible range is that the end user can determine the beginning, intervals and continuation and, if applicable, skipping to the next song in a playlist, which is specified by the service to be licensed but is not visible to the end user.

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. Special provision for new services

- a. If a service is offered in Germany for the first time (excluded from this are in particular a service that has changed its name or when there is an alteration in an already existing service), then the licensee has the possibility before the service becomes active to select in the first year of operation – in deviation from the minimum set royalty rates listed under II. 3 for the following flat rates – one of these options, based on the estimated and expected number of streams:

streams per year	high interactivity	low interactivity
Up to 200 million streams per year	187.500 €	50.000 €
Up to 400 million streams per year	562.500 €	150.000 €
Up to 800 million streams per year	1.125.000 €	300.000 €
Up to 1.2 billion streams per year	1.875.000 €	500.000 €
Up to 1.6 billion streams per year	2.625.000 €	700.000 €
Up to 2 billion streams per year	3.375.000 €	900.000 €

Evidence of the validity of the licensee's prognosis must be presented to GEMA in the form of reliable and significant documents – such as, for example, business plans, market analyses, or other appropriate material. If the service is already operating outside of the Federal Republic of Germany, then the appropriate reference data must be presented as the essential foundation for the prognosis and must take into account the distinctive features of the national market. In addition, the prognosis must be confirmed in writing by an expert, independent Third Party, in particular by a certified public accountant or registered auditor.

If the actual number of streams in the first year exceeds the prognosis by more than 30 percent, then the licensee does not have the possibility in the second year of operations of selecting an option under b). If this is deemed to be the case, then as of the second year the royalty specifications for rates under II. 2. and 3. shall apply.

- b. If a service is offered in Germany for the first time (excluded from this are in particular a service that has changed its name or when there is an alteration in an already existing service), then before the beginning of the second year of operations the licensee has the possibility of – in deviation from the set minimum royalty rates under II. 3. for the following flat rates – of selecting for the second year, based on the forecasted number of streams, one of these options:

streams per year	high interactivity	low interactivity
Up to 200 million streams per	281.250 €	75.000 €
Up to 400 million streams per	843.750€	225.000 €
Up to 800 million streams per	1.687.500 €	450.000 €
Up to 1.2 billion streams per	2.812.500 €	750.000 €
Up to 1.6 billion streams per	3.937.500 €	1.050.000 €
Up to 2 billion streams per year	5.062.500 €	1.350.000 €

Evidence of the validity of the licensee's prognosis must be presented to GEMA in the form of reliable and significant documents – such as, for example, business plans, market analyses, or other appropriate material. The reference data from the first year of the service's operations are to be used as the essential foundation for the prognosis.

- c. If the licensee selects the option of one of the flat rates listed under a) and b) as part of the minimum royalty rates, then the standard royalty rate set under II. 2. increases from 15 percent to 16,75 percent of the assessment base. The increase is not restricted; it applies to the entire assessment base.
- d. The licensee is obligated at the end of the first year and at the end of the second year, respectively, to notify GEMA in writing within a period of two months whether the licensee waives the options listed under a) and b). If the licensee waives an option, then the royalty rates under II. 2. and 3. shall apply.
- e. The special provisions in 4. a) and b) make allowance for the special features of the set-up period for this business model with ad-funded streaming. The licensee only has the possibility of exercising the corresponding royalty option when the licensee, after the phase covered in the special provisions in 4. a) and b) ends, agrees to undertake one of the following:
  - To accept the standard royalty rates listed under 3., or
  - To deposit in an escrow account the royalty rates listed under 3. in accordance with Paragraph 34 of the Act on the Management of Copyright and Related Rights by Collecting Societies/Collecting Societies Act (VGG), or
  - To cease using the works and rights in GEMA's repertoire, and thus to act overall in a legal manner.

## 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 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. 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 of the UrhG (German Copyright Act) to reproduce works from GEMA's repertoire, and the right arising from Article 19a of the 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 the 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.
- 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 offers of dramatico-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 in order to use it in the Music-on-Demand offer, in particular the abridgment of 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 to use works 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

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