

LIVESTREAMING

GEMA Tariff for the use of musical work in the GEMA repertoire as part of audiovisual livestreams and linear streams on the Internet

Tariff VR-OD 15

Net amounts with the addition of statutory value-added tax

24.11.2021

I. SCOPE

This tariff shall apply to uses of musical work in the GEMA repertoire as part of audiovisual livestreams and linear streams on the Internet in accordance with the following definition.

1. Licensing object

- a. The licensing object is the respective livestream or other linear stream, which meets the requirements in accordance with letters b. and c.
- b. A livestream within the meaning of this tariff is a linear audiovisual broadcast, which is made accessible via the Internet for simultaneous reception by the end users and is not integrated into a broadcast schedule or a programme. During the term of the provision of the livestream, insofar as the end user is enabled by the organiser (1) to pause and continue the livestream up to a maximum of 120 minutes after pausing it and/or (2) to fast-forward or rewind (timeshift), this shall be covered by the licensing; restarting the livestream after the end of its broadcast shall not be covered. Livestreams are characterised by the fact that, as a rule, they represent a self-contained individual event and have a fixed start. They can be offered in return for payment or free-of-charge on the Internet, for example, via a dedicated website, an online portal or special software.
- c. Re-runs, i.e. rebroadcasts of livestreams after their initial broadcast, time-delayed broadcasts of previously recorded live events or the broadcast of pre-produced programmes for simultaneous reception must be licensed in accordance with livestreams under this tariff and meet the requirements according to letter b.
- d. Livestreams that are exclusively broadcasted via social media platforms, for which (1) a licence agreement exists between a collecting society and the operator of the social media platform, which extends to the rights of use covered by this tariff, and (2) no separate streaming-related revenues (particularly additional revenues from ticketing, crowdfunding, donations or other end-user fees) are being generated with the respective livestream, are not subject to separate licensing in accordance with this tariff.

2. Licensee

A licensee is the natural person or legal entity, who causes the livestream to be broadcasted on the Internet, for example, via a dedicated website, an online portal or special software (“organiser”).

3. Limitation of the scope

Uses that do not fall under the scope of this tariff especially include minor uses with up to 137,940 retrievals per year and revenues of less than € 24,000 per year within the 1. category resp. with up to 524,724 retrievals per year and revenues of less than € 24,000 per year within the 2. category, which fall under tariff VR-OD 10, as well as uses that fall under the tariffs VR-OD 4, VR-OD 7, VR-OD 8 and VR-OD 9. This tariff also does not apply to uses of music in broadcasts within regular linear programmes, i.e. according to a broadcast schedule (radio, Internet TV).

II. ROYALTY FEE

Depending on the categorisation into the livestream categories shown below, the regular royalty fee calculated according to Section 1 is payable by Licensee, unless a higher amount results from using the relevant minimum royalty fee according to Section 2, in which case the royalty fee shall be the applicable minimum fee amount.

- Category 1:** Music livestreams; for example, music concerts or DJ sets
- Category 2:** Other livestreams with a music share of more than 66.67 %; for example livestreams of fitness courses with music or gaming streams with continuous background music
- Category 3:** Other livestreams with a music share of between 33.34 % and 66.66 %; for example livestreams of mixed stage performances and galas
- Category 4:** Other livestreams with a music share of up to 33.33 %; for example livestreams of sports events, comedy or political events

The music share is calculated on the basis of the ratio of the music playing duration to the total playing time of the respective livestream.

1. Regular royalty fee

- a. The regular royalty fee is comprised of a percentage participation rate of the organiser’s stream-related revenues according to Section 1. b., depending on the respective livestream category:

Livestream category	Royalty fee
Category 1	12.5 %
Category 2	6.67 %
Category 3	4 %
Category 4	1.33 %

For the market introduction of the tariff, a discounted royalty fee of 10 % temporarily applies in Category 1 until 30 June 2022.

- b. Stream-related revenues are all of the net revenues generated by the organiser with the livestream (gross revenues less the applicable value-added tax). Inter alia, this includes ticket sales for the retrieval of the livestream, revenues from advertising, sponsoring, crowdfunding, donations and trading, compensation or gift transactions, other end-user fees and separately financed or charged non-cash benefits and consideration, e.g. transmission and availability fees.

If events are offered in parallel, as live events in front of an audience and as a livestream, the revenues that are already part of the assessment basis for licensing the live event are not additionally taken into consideration as stream-related revenues.

2. Minimum fee

- a. The minimum fee per broadcasted livestream is calculated according to the number of accesses in the respective livestream category and the length of the respective livestream in minutes:

Livestream category	Minimum fee per access and event minute
Category 1	€ 0.00029
Category 2	€ 0.00019
Category 3	€ 0.00011
Category 4	€ 0.00004

An individual access is each retrieval of a livestream by an end user. Multiple accesses by the same end user (“unique user”) are deemed to be one access. A minimum dwell time does not exist for the end user. Retrievals that are not fully implemented, so-called terminations, are also deemed to be access.

If a continuous livestream can be divided into multiple integral parts, separated by content, organisationally and in terms of timing (e.g. individual performances as part of a festival), these integral parts are deemed to be one livestream each, for the purpose of calculating the minimum fee. The duration of the respective integral part replaces the length of the entire livestream. The minimum fees that are calculated in this way for the individual integral parts are added together in order to calculate the minimum fee for the entire livestream.

- b. The minimum amount is € 10.00 for a Category 1 livestream and € 5.00 for a Category 2 - 4 livestream, however, not less than € 20.00 per month. The minimum amount shall be offset from the regular or minimum royalty fee incurred.

III. GENERAL PROVISIONS

1. Obligation to pay royalties

The obligation to pay royalties is incurred:

- a. by broadcasting musical work as part of the livestream and/or
- b. through an end user actually accessing the livestream

To the extent acts of use 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 acts of use are deemed not remunerated in accordance with this tariff, insofar as the requirements of the copyright limitation provision are fulfilled.

2. Extent of the grant of rights

- a. The grant of rights to the use of musical works and rights of the GEMA repertoire within the scope of livestreams is limited to the non-exclusive usage rights required to broadcast livestreams. It does not cover any on-demand transmission.
- b. The granted rights of use are not transferable to third parties.
- c. The granted rights do not include other rights, in particular the right to edit and the right to combine works in GEMA's repertoire with works from other genres (synchronization right) and do not include offering dramatic-musical works, either in their entirety or as a cross-section, nor in larger parts (so-called "Grand Rights"), as well as the graphic rights, the musical notation rights, and the lyric rights. Ancillary rights as set out in Part 2 of the German Copyright Act (UrhG) are also not included.
- d. The moral rights of the author may not be violated. Alterations to a musical work in order to use it in a livestream, in particular by abridging the work, must comply with any requirements of Articles 14 and 39 of the German Copyright Act (UrhG). Insofar as musical works in GEMA's repertoire 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 organiser.

3. 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 broadcasting the respective livestream.

4. Third-party rights

The rights of third parties shall remain unaffected.

5. Subject to adaptation

The setting of the parameters used as a basis for the tariff is subject to continued monitoring and analysis by GEMA. Changes to offers available on the market and the modification of user behaviour may result in future adaptations to the set parameters.

This Tariff has been issued in German and English language versions. In case of doubt, the German language version of the tariff shall be decisive.