



**ProLitteris**

Swiss Copyright Society for Literature and Visual Arts

**SSA**

Swiss Cooperative Society for Authors' Rights on Dramatic and Audiovisual Works

**SUISA**

Swiss Cooperative Society for Authors and Publishers of Music

**SUISSIMAGE**

Swiss Cooperative Society for Authors' Rights on Audiovisual Works

**SWISSPERFORM**

Swiss Neighbouring Rights Administration Society

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## **Common Tariff 4i 2022 – 2024**

### **Levy for storage media and hard disk drives built into digital devices**

Approved by the Federal Arbitration Commission for the Administration of Copyrights and Neighbouring Rights on 21.05.2022 and published in the Official Journal (FOSC) on 08.06.2022

Collective Management Organisation entrusted with collection (collection centre)

#### **SUISA**

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## 1. Scope of the Tariff

1.1 This Tariff regulates the levy provided for in Article 20(3) of the Swiss Copyright Act, respectively Article 23(3) of the Liechtenstein Copyright Act, for the private copying of works and performances protected by copyright or neighbouring rights onto microchips, hard disks and similar digital storage media (hereafter referred to as “private copying” onto “blank media”). This Tariff applies to blank media built into:

- devices intended primarily for storing and playing back protected audio works and performances, namely mp3 walkmen, mp3 juke-boxes (or others with similar compression procedures), iPods or audio hard disk recorders;
- devices intended primarily for storing and playing back protected audiovisual works and performances such as satellite receivers with built-in hard disks, set-top boxes with built-in hard disks, television sets with built-in hard disks, DVD recorders with built-in hard disks, digital video recorders (DVR) and personal video recorders (PVR) with built-in hard disks or multimedia servers;
- smartphones. Smartphones mean mobile phones capable of storing audio, audio-visual or visual contents via a connection to a PC or other device, or directly via the Internet, and to play back such content;
- tablets. Tablets mean portable devices having a touch screen with a display measuring at least 7 inches in the diagonal;
- portable computers (laptops, notebooks), having as a rule a built-in keyboard with physical keys, but which may also be used as a tablet, within the above meaning;

or made available to consumers together with such devices.

This Tariff also applies to external hard drives, including SSD hard drives, designed to be connected to a personal computer.

1.2 This Tariff also applies to recorded storage media where they are offered for use as a data storage medium for private copying.

1.3 This Tariff does not apply to the private uses of works referred to under Article 20(2) of the Swiss Copyright Act.

1.4 This Tariff does not regulate private copying onto other blank media such as blank audio and video tapes, minidisks, DATs, audio CD-R/RWs, data CD-Rs and recordable DVDs (CT 4), or storage media made available to the end-consumer for a fee or free of charge (CT 12).

1.5 This Tariff does not apply to storage media built into desktop computers.

Nor does it apply to USB sticks.

## 2. Manufacturers and Importers

- 2.1 This Tariff applies to manufacturers and importers of blank media.
- 2.2 A manufacturer is any party who produces blank media in Switzerland or the Principality of Liechtenstein, and markets them in their customary form to retailers or directly to the consumer.
- 2.3 An importer is any party who imports blank media from other countries into Switzerland or the Principality of Liechtenstein, whether for their own use, for sale or for direct delivery to the consumer. For reasons of proportionality, private persons who carry single blank media across the border for their personal use do not qualify as importers for the purposes of this Tariff.
- 2.4 Foreign-based mail order businesses offering blank media to consumers in Switzerland and Liechtenstein also qualify as importers if the consumer is served in the same way as they are when they purchase the blank media from a domestic supplier.

## 3. Collective management organisations, Exemptions

- 3.1 SUISA is the managing organisation for this Tariff and represents the following collective management organisations:
- PROLITTERIS
  - SOCIETE SUISSE DES AUTEURS
  - SUISSIMAGE
  - SWISSPERFORM
- 3.2 Provided manufacturers and importers pay the amounts due by them in accordance with this Tariff, they shall be exempted from the obligation to pay remuneration for copyrights and neighbouring rights on blank media marketed to the public or retailers in Switzerland or the Principality of Liechtenstein.

## 4. Remuneration

The levy is calculated per unit of storage media and depends on the storage capacity. The levy is charged at the following rates:

- 4.1 for blank media in devices intended primarily for storing and playing back protected audio works and performances:

| <u>Storage capacity</u>     | <u>Copyright</u> | <u>Neighbouring rights</u> | <u>Total</u> |
|-----------------------------|------------------|----------------------------|--------------|
| - up to and including 4 GB  | CHF 1.83         | CHF 0.57                   | CHF 2.40     |
| - up to and including 8 GB  | CHF 3.21         | CHF 0.99                   | CHF 4.20     |
| - up to and including 16 GB | CHF 3.59         | CHF 1.11                   | CHF 4.70     |
| - up to and including 32 GB | CHF 5.96         | CHF 1.84                   | CHF 7.80     |
| - over 32 GB                | CHF 9.47         | CHF 2.93                   | CHF 12.40    |

## 4.2 for all other blank media under this Tariff

| <u>Storage capacity</u>                 | <u>Copyright</u> | <u>Neighbouring rights</u> | <u>Total</u> |
|---|------------------|----------------------------|--------------|
| - over 16 GB, up to and including 32 GB | CHF 1.61         | CHF 0.49                   | CHF 2.10     |
| - up to and including 64 GB             | CHF 2.22         | CHF 0.68                   | CHF 2.90     |
| - up to and including 128 GB            | CHF 2.95         | CHF 0.90                   | CHF 3.85     |
| - up to and including 256 GB            | CHF 3.68         | CHF 1.12                   | CHF 4.80     |
| - up to and including 512 GB            | CHF 4.29         | CHF 1.31                   | CHF 5.60     |
| - up to and including 1 TB              | CHF 4.98         | CHF 1.52                   | CHF 6.50     |
| - up to and including 2 TB              | CHF 5.74         | CHF 1.76                   | CHF 7.50     |
| - over 2 TB                             | CHF 6.36         | CHF 1.94                   | CHF 8.30     |

For devices with storage capacity of 16 GB or less, no levy is due.

For external hard drives, including SSD hard drives, used in connection with a personal computer, the maximum levy is CHF 4.50.

- 4.3 Once this Tariff is approved and comes into full force, the levies for blank media which have not been reported to SUISA in accordance with this Tariff will be charged at double the rate after a single payment reminder from SUISA.
- 4.4 Members of the professional associations of manufacturers or importers which facilitate the work of the collective management organisations are entitled to a rebate of 5% provided they comply with all their tariff-related obligations.
- 4.5 The levies set forth in this Tariff do not include value-added tax. If value-added tax is due based on a mandatory objective tax liability or the exercise of a tax option, it is payable additionally by the manufacturer or the importer at the applicable legal rate.

## 5. Start of the obligation to pay the levy

Unless otherwise provided in the agreements with SUISA, the obligation to pay the levy starts:

- 5.1 for importers: on the date the device is imported into Switzerland.
- 5.2 for manufacturers: on the date the device is shipped from their plant or their own warehouse.

## **6. Refunds**

Amounts paid will be refunded to the manufacturer or importer in respect of:

- 6.1 blank media which they can prove were exported from Switzerland.
- 6.2 Refunds are set off against the levies due.

## **7. Settlement**

- 7.1 Manufacturers and importers are required to provide SUI SA all requisite invoicing information including, in particular, the following data broken down per category or format of the blank media subject to remuneration:
  - the quantity of produced or imported blank media with the relevant storage capacity;
  - the quantity of exported blank media, and the relevant storage capacity, together with a copy of the relevant customs documents.
- 7.2 Unless otherwise agreed, such data and documents must be communicated on a monthly basis, no later than 20 days after the end of each month.
- 7.3 At SUI SA's request, manufacturers and importers must grant SUI SA access to their warehouses and books for verification purposes. SUI SA may request a corresponding confirmation from the manufacturer's or importer's auditors. Verification may be entrusted to an independent third party; if the verifications show that the information provided by the manufacturer or importer was false or incomplete, the latter must bear the verification costs, otherwise those costs will be for the account of the party who requested third-party intervention.
- 7.4 If the information is not forthcoming within an additional time limit set in writing, SUI SA may conduct the necessary investigations, or entrust such investigations to a third party, at the manufacturer's or importer's cost; SUI SA may also estimate the information and base its invoice on its estimate. Invoices prepared on the basis of estimates are deemed accepted by the manufacturer or the importer unless the latter provides SUI SA with complete and accurate information within 30 days of the invoice date.

## **8. Payments**

- 8.1 All invoices issued by SUI SA are due and payable within 30 days.
- 8.2 In cases where customers do not fully or adequately fulfil their obligations, SUI SA may request monthly payments or other payments on account and ask for additional securities.

## **9. Validity**

- 9.1 This Tariff enters into effect on 1 July 2022 and applies to all blank media sold by manufacturers and importers to retailers, or consumers directly, from this date. This Tariff is valid until 31 December 2023.
- 9.2 In case of a significant change in circumstances, the Tariff may be amended earlier.
- 9.3 The Tariff will be automatically extended for one year until 31 December 2024, unless it is terminated by one of the negotiating parties by written notice to the others one year prior to the expiry date. Such termination does not preclude an application for extension to the Federal Arbitration Commission for Copyright and Neighbouring Rights.
- 9.4 If no subsequent tariff has been put in place after the expiry of this Tariff and the filing of an application for approval, the validity of this Tariff shall be provisionally extended until the expiry of the time limit for appeal against the decision of the Federal Arbitration Commission approving the subsequent tariff.