



**SUISA**

Swiss Cooperative Society for Authors and Publishers of Music

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## **Tariff PI 2015 – 2023**

### ***Sound recordings and music videos intended for the public***

Approved by the Federal Arbitration Commission for Copyrights and Neighbouring Rights on 26 August 2014 and published in Official Journal (FOSC) N° 228 of 25 November 2014.

## **SUISA**

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## **A. Scope of Application**

- 1 This Tariff applies to
  - 1.1 persons who produce sound recordings or music videos to be made available to the public for their own private use, or who have such sound recordings and music videos produced;
  - 1.2 persons who import sound recordings or music videos into Switzerland or Liechtenstein which have not yet been licensed for distribution in these countries.
- 2 A “principal” or “producer” means the person having the exclusive right to exploit a sound recording or music video. He is the person who is first and foremost liable for the payment of royalties.
- 3 Principals, producers, importers, manufacturers and persons making reproductions and copies are hereafter collectively referred to as “clients”. If several clients jointly produce and commercialise a sound recording or music video, they shall be jointly liable towards SUISA for fulfilling the obligations under this Tariff.

## **B. Sound recordings, music videos**

- 4 For the purpose of this Tariff, a sound recording means any audio carrier suitable for recording and playing music in use by mid-2014. In consultation with Swiss user associations, SUISA may apply this Tariff to sound recordings on other, subsequently appearing, types of carriers.
- 5 Music videos, within the meaning of this Tariff, are audiovisual recordings mainly containing music in audiovisual form, i.e. the theme and content of the audiovisual recording is dedicated to music (music films, video clips) whereby such recordings are offered to the public for their audiovisual music content. All other audiovisual recordings, in particular feature films and documentaries, are regulated by Tariff VI.

Audiovisual recordings are understood as meaning all customary and suitable carriers in use by mid-2014 for the recording and playing of audiovisual works. In particular, carriers in the DVD video and Blu-ray disc formats.
- 6 A carrier holding both audio and audiovisual recordings qualifies as a music video if the playing time of the audiovisual recording (music film, video clip) accounts for more than 50% of the total playing time of the carrier. Otherwise, the carrier shall be licensed as a sound recording.
- 7 This Tariff does not apply to music boxes.
- 8 For the purpose of this Tariff, sound recordings and music videos are hereafter referred to as "Music Recordings".

## C. Use of Music

- 9 For the purpose of this Tariff, "music" means music, with or without lyrics, which is protected by copyright and belongs to the worldwide repertoire managed by SUISA.
- 10 For Music Recordings regarded as exports under the present Tariff, the applicable term of protection is stipulated by law in the country of sale. If there is no copyright protection in the country of sale, Swiss law shall apply.
- 11 This Tariff relates to:
- Music Recordings intended for sale to the public, and the production, recording and reproduction of such Music Recordings;
  - the import, dissemination and sale of Music Recordings to the public for private home use.
- 12 This Tariff does not apply to the rental of Music Recordings.
- 13 The use of a Music Recording for advertising purposes (e.g. premium uses) – other than for the purpose of advertising the Music Recording itself – is subject to the right-holder's express consent. Clients shall obtain such consent beforehand. Licences issued by SUISA are not valid without the prior consent of the right-holders.
- 14 SUISA does not manage the rights to arrange musical works. Authors' moral rights and the right to arrange authors' works are reserved. Clients shall obtain consent beforehand. Licences issued by SUISA are not valid without the prior consent of the right-holders.
- 15 *Nor does SUISA manage any authors' rights other than authors' musical rights. SUISA licenses music videos under the proviso that the owners of the music rights have given any requisite consents pertaining to the synchronisation rights (the right to combine music with other genres of work). SUISA may demand proof of such consent.*
- 16 SUISA does not manage performers' rights in their own performances, producers' rights in their own productions or broadcasters' rights in their own broadcasts. SUISA's licences do not apply to Music Recordings produced in violation of performers' or producers' copyrights.

## **D. Remuneration**

### **I. General Provisions**

#### **a) Calculation basis**

17 Remuneration is calculated as a percentage of one of the following amounts:

17.1 the wholesale price of the Music Recording; namely

- for sound recordings, the client's highest published price or, if the client is not a distributor, the highest price published by the client's distributor for sale to dealers (hereafter PPD = published price for dealers);
- for music videos, the actual invoiced price (AIP), i.e. the highest actual wholesale price invoiced by the client or, if the client does not distribute the music videos directly, the highest actual wholesale price invoiced to retailers by the client's official distributor; this price takes into account any rebates granted to the retailer; however, any discounts, bonuses, sales premiums and similar credits and any free copies (see point 55) are not taken into account in determining this price.

17.2 the retail sales price of the Music Recording

17.3 the costs (production and manufacturing costs) of the Music Recording.

18 PPD, AIP and retail prices are net of turnover, value-added or similar taxes charged to the retailer.

#### **b) Percentage rates**

19 The remuneration is equal to

19.1 for sound recordings

- 11% of the PPD; or
- 10% of the retail price if the client sells the sound recording directly to private consumers, or if no PPD is available; or
- 10% of costs if all copies of the sound recording are distributed for free.

19.2 for music videos

- 5.8% of the retail price; or
- 5.8% of costs if all copies of the music video are distributed for free.

20 The rate for Music Recordings which do not entirely consist of protected music shall be reduced

20.1 for sound recordings, pro rata the ratio

$$\frac{\text{playing time of the protected music}}{\text{total playing time of the sound recording, not counting breaks}}$$

if the client gives SUISA the exact breakdown of the recorded music and at least 100 units of the recording are produced.

20.2 for music videos, pro rata the ratio

$$\frac{\text{playing time of protected music}}{\text{total duration of music}}$$

if the client gives SUISA the exact breakdown of the contents of the music video and at least 100 units are produced.

Any feature films or documentaries, still pictures, menu tables etc. contained in the music video are already taken into account in the rates indicated in point 19.2. If the music video only contains still pictures with music, the rates for sound recordings shall apply (point 19.1).

### c) Ordinary minimum fee

21 The ordinary minimum fee is:

21.1 Sound recordings

|                        |              |             |          |
|------------------------|--------------|-------------|----------|
| 45 UpM                 | 17 cm single | (up to 10') | CHF 0.22 |
| 45 UpM                 | Maxi-single  | (up to 23') | CHF 0.40 |
| 33 UpM                 | 30 cm LP     | (up to 80') | CHF 0.80 |
| CD single              |              | (up to 10') | CHF 0.22 |
| CD single              |              | (up to 23') | CHF 0.35 |
| Normal CD 12 cm        |              | (up to 80') | CHF 0.70 |
| Audio DVD              |              | (up to 80') | CHF 0.80 |
| Single music cassettes |              | (up to 10') | CHF 0.22 |
| Single music cassettes |              | (up to 23') | CHF 0.40 |
| MC                     |              | (up to 80') | CHF 0.65 |

21.2 Music videos

|            |             |          |
|------------|-------------|----------|
| DVD videos | (up to 90') | CHF 0.60 |
| DVD videos | (up to 60') | CHF 0.40 |
| Videotapes | (up to 90') | CHF 0.60 |

## 21.3 Other Music Recordings, subject to point 7

per minute of protected music CHF 0.075

Parts of a minute on a sound recording are added together; a fraction of a minute counts as a total minute.

22 The minimum fee will be reduced in accordance with point 20.

23 Double and triple albums etc. count as a single sound recording.

**d) Minimum fee for budget re-releases**

24 The minimum fee for budget re-releases of normal CDs (12 cm, up to 80') is CHF 0.57. For all other sound recordings, the minimum fee is 57% of 66.66% of the fee under point 19.1 or point 45, calculated on the basis of the usual PPD for the relevant sound recording.

25 "Budget re-release" means a sound recording which is re-released at least one year after the first release and which is sold at a PPD of maximum CHF 12.00 or a retail price of maximum CHF 16.61 in the case of a normal CD. For all other sound recordings, the PPD or the retail price must be at least 35% under the original PPD or retail price.

**e) Minimum fee for sound recordings distributed to the public for free**

26 The minimum fee for sound recordings distributed free of charge, for the relevant minimum quantity, is :

|                                       |                                 |
|---------------------------------------|---------------------------------|
| 2,000 units of the same sound carrier | 70% of the ordinary minimum fee |
| from 5,001 units                      | 65% of the ordinary minimum fee |
| from 10,001 units                     | 60% of the ordinary minimum fee |
| from 20,001 units                     | 55% of the ordinary minimum fee |
| from 25,001 units                     | 50% of the ordinary minimum fee |
| from 50,001 units                     | 45% of the ordinary minimum fee |
| from 100,001 units                    | 40% of the ordinary minimum fee |
| from 250,001 units                    | 35% of the ordinary minimum fee |
| from 500,001 units                    | 30% of the ordinary minimum fee |

The number of units has to be reached within a single accounting period. The entire re-release must be distributed free of charge.

The sound recordings must be clearly marked as being not for sale.

The reductions under point 26 may not be accumulated with those under point 24. The most favourable calculation for the client shall apply.

**f) Number of works or fragments**

- 27 The above-mentioned fees apply to Music Recordings containing no more than the following number of works or fragments:

|                       |             | Works | Fragments |
|-----------------------|-------------|-------|-----------|
| 45 UpM 17 cm Single   | (up to 10') | 5     | 12        |
| 45 UpM Maxi Single    | (up to 23') | 5     | 12        |
| 33 UpM 30 cm LP       | (up to 80') | 20    | 40        |
| CD single             | (up to 10') | 5     | 12        |
| CD single             | (up to 23') | 5     | 12        |
| CD normal             | (up to 80') | 20    | 40        |
| Audio DVD             | (up to 80') | 20    | 40        |
| MC single             | (up to 10') | 5     | 12        |
| MC single             | (up to 23') | 5     | 12        |
| MC                    | (up to 23') | 5     | 12        |
| MC                    | (up to 80') | 20    | 40        |
| DVD videos            | (up to 90') | 20    | 40        |
| DVD videos            | (up to 60') | 10    | 20        |
| DVD Video Compilation | (up to 90') | 24    | 48        |
| Videotapes            | (up to 90') | 20    | 40        |

If a Music Recording contains several recordings of the same work or fragment of a work, such recordings count as one work or fragment of a work.

- 28 "Compilation" sound recordings (LP, MC, CD, audio DVD) may contain up to 24 works or 48 fragments of works.
- 29 For sound recordings containing examples reproduced for teaching purposes and which are sold with a music book, the applicable rates for works and fragments under points 27 and 28 shall be doubled.
- 30 For Music Recordings containing a complete recording of a protected work or fragment of a work, each work counts for two points and each fragment for one point. The total number of points corresponds to the number of works or fragments in point 27.
- 31 A fragment of a work means a recording with a playing time not exceeding 1 min. 45 secs which is not a recording of a complete work.
- 32 If a Music Recording contains more works or fragments than foreseen in point 27, or if the playing time stipulated in point 21.1 is overstepped by more than 60 seconds, the fees shall be increased proportionately.
- 33 The fragmentary reproduction of a work is subject to the right-holders' consent, which the client shall obtain directly; the client shall communicate a copy of the consent to SUIA. SUIA shall communicate the right-holders' addresses to the client if it can.

**g) Minimum fee per licence**

- 34 The minimum fee per licence shall in any event be CHF 100.00. For clients who have concluded a contract with SUISA, the minimum fee is CHF 10.00 per settlement.

**h) Taxes**

- 35 The fees set forth in this Tariff do not include value-added tax. If, pursuant to a mandatory provision of fiscal law or the exercise of a tax option, value-added tax has to be added, it shall be additionally payable by the client at the applicable legal rate (2015: reduced rate 2.5%).

**i) Surcharge in case of infringement**

- 36 In the following cases, fees shall be payable at twice the applicable rate under this Tariff:
- if music is used without the requisite licence from SUISA,
  - if a client reports false or incomplete data and accounts with a view to gaining undue advantage.
- 37 Moreover, SUISA reserves the right to claim additional damages.

**j) Obligation to pay fees, waivers and refunds**

- 38 The entitlement to remuneration starts when a Music Recording is produced or, for Music Recordings imported into Switzerland and Liechtenstein, when they arrive at the importer's depot.
- 39 SUISA waives its fees when the entire production of a Music Recording is destroyed without a single unit reaching the market.

SUISA waives remuneration on Music Recordings that have to be destroyed for copyright reasons (e.g. plagiarism).

If part of a Music Recording production has been distributed and another part of the same Music Recording production is destroyed before it reaches the market (delivery to retailers), SUISA shall waive its fee on the destroyed Music Recordings up to a maximum of 10% of the total number of units produced.

- 40 Remuneration already paid shall be refunded commensurately with the waiver in point 39.



### k) Exports

- 41 For exported Music Recordings, the calculation basis is the sales price in the country of destination. If the currency of the country of destination is not convertible, or the client cannot document the sales price, the applicable price shall be the domestic price or, failing a domestic price, the most customary domestic price for the same type of Music Recording. The present Swiss Tariff is applicable.

## II. Special terms and conditions for contractual clients

- 42 SUIA concludes standard contracts with clients who

- regularly produce, import or distribute Music Recordings as a business and pay annual fees of at least CHF 5,000 to SUIA pursuant to this Tariff;
- have their registered office in Switzerland or Liechtenstein, and actually manage and run their business from here;
- keep orderly books and a proper inventory accounting system;
- offer the assurance that they comply with copyrights and are prepared to provide security.

- 43 Such contractual parties will be granted the following privileges and reductions.

Such privileges and reductions shall be canceled if the client does not comply with any contractual terms and conditions, or with the terms and conditions of this Tariff.

- 44 The terms and conditions applicable to sound recordings under this section are essentially based on the BIEM-IFPI Standard Contract. The BIEM-IFPI Standard Contract is the standard contract for the phonographic industry negotiated between BIEM (Bureau international des sociétés gérant les droits d'enregistrement et de reproduction mécanique) and IFPI (International Federation of the version effective on 1 July 1997 Producers of Phonographs and Videograms) in the version effective on 12 November 2013. Amendments which are not of essential significance made in the Standard Contract during the lifetime of this Tariff may be applied by SUIA in agreement with the associations of record producers with no need for a revision of the Tariff.

### a) Percentage rates for sound recordings

- 45 Deviating from the provisions of point 19.1, the fee for sound recordings equals:

- 11% of the PPD; 12% is deducted from this PPD to allow for customary rebates. From the remaining 9.68%, a further flat-rate reduction of 10% is made to reach a final net remuneration of **8.712 %**
- 8% of the retail sales price, minus a flat-rate reduction of 7.5%. The fee equals **7.4% net**.
- 10% of costs with no further deductions.

These rates are subject to the minimum fee (point 21).

**b) Percentage rates for music videos**

46 Deviating from the provisions of point 19.2, the fee for music videos equals:

- 7.238% of the retail price; or
- 5.8% of the retail price if the client sells the music video directly to private consumers, or if no AIP is available; or
- 5.8% of costs if all copies of the music video are distributed for free.

These rates are subject to the minimum fee (point 21).

**c) Bargain sales**

47 For sound recordings expressly offered “on sale”, the remuneration equals

- 10% of the invoice amount without any deductions
- but at least 20% of the minimum remuneration in point 21

provided that SUISA receives 30 days’ notice and is allowed to make verifications.

48 Such sales are authorised

- for symphonic, dramatic and chamber music, not before two years after the date of first release
- for singles, not less than three months after the date of first release
- for all other sound recordings, not less than six months after the date of first release.

49 Sound recordings manufactured especially for bargain sales do not qualify as an offer “on sale” for the purpose of this section.

**d) Sales promotions**

50 A sales promotion is defined as the sale to retailers of an individual album at a reduced PPD during a limited time frame within an accounting period agreed between SUISA and the client.

51 SUISA shall take the promotion PPD into account in calculating the licensing fee

51.1 if the sales promotion is announced to it at the latest on the day it starts, indicating

- the catalogue number of the sound recording
- the distribution channel
- the duration of the promotion
- the promotional PPD

51.2 and provided the promotion lasts at least 20 consecutive days.

52 The special code assigned by SUISA shall be used in such declarations. Any changes in data during the promotion must be promptly notified to SUISA.

If a promotion involves more than one reduced PPD, the highest one shall serve as the promotion PPD.

SUISA does not take any promotion PPD into account in the case of multi-albums and reduced-price re-releases.

53 All rates are subject to the minimum fees in accordance with point 21.

**e) Club sales**

54 Sound recordings delivered to resellers at a price at least 20% under the PPD qualify as club sales provided the reseller sells such specially priced sound recordings only to club members. Club members must be private consumers (end users) of the sound recording. Such club sales benefit from an additional rebate of 5% on the net licence rate under point 45.

**f) Exempt copies**

55 Copies of new releases of Music Recordings actually given to the media free of charge for promotional purposes or for critical review (sampling), and specimen copies for performers and licensors (exempt copies) shall be exempt from remuneration subject to the following conditions:

- For all normal CD, LP, MC and MD formats released as one-disc or multi-disc albums, the number of exempt units shall be limited to maximum 1000. Of these, between 400 and maximum 600 may be used for sampling in Switzerland and another 400 to maximum 600 altogether for sampling abroad.
- For single formats, the number of units is not restricted.
- In the case of music videos, the number of free units is limited to 500 in Switzerland, with an additional 300 altogether for other countries.

- Exempt copies for international sampling shall be distributed by the client directly, not by a third-party distributor. At SUIISA's request, the client shall provide appropriate substantiation (e.g. evidence that he used normal promotion channels directly). Any foreign sampling shall be declared to SUIISA immediately – not at the end of the accounting period.
- Exempt copies may not be sold and must be marked “not for sale”. Like other sound recordings, they must be declared to SUIISA for verification purposes.

56 Sound recordings reproducing fragments of works from the client's catalogue which are intended for the information of the buyer or the client's employees and are given to them free of charge are exempt up to 500 copies. The restrictions under points 27 and 28 are not applicable.

Such sound recordings are to be clearly marked as samples not for sale and may not contain any advertising other than for the client's catalogue.

**g) Obligation to pay remuneration, returns**

57 Derogating from point 38, fees for contractual clients shall be due and payable as soon as the Music Recordings leave the client's depot. In the case of imports by a retailer, fees are due at import.

58 No remuneration is payable in respect of returns. Returns are Music Recordings sent back into the client's depot for which the client receives no payment. They must be returned to the unlicensed Music Recording depot or destroyed.

59 The client shall notify SUIISA in advance if it intends to destroy unlicensed Music Recordings.

60 The total returns for any accounting period may not exceed the total outgoings for the same Music Recording. Excess returns may be carried forward to the next accounting period.

61 For new Music Recording releases or Music Recordings promoted on Swiss television, the client may, in the first accounting period, settle 75% of the delivered Music Recordings with SUIISA. At the end of the second next six-monthly accounting period, the client shall account for the remaining 25% delivered Music Recordings deducting any returns.

This clause on reserved returns only applies if the client declares the total returns in advance, if his distribution system allows returns on shipments and if the client accounts with SUIISA at least every six months. The time limits under point 66 shall be observed.

## **h) Exports**

- 62 For exported Music Recordings, the calculation basis is the sales price in the country of destination. If the currency of the country of destination is not convertible, or the client cannot document the sales price, the applicable price shall be the domestic price or, failing a domestic price, the most customary domestic price for the same type of Music Recording. For exports to countries where the remuneration is set by law, that remuneration shall apply.
- 63 In respect of exported Music Recordings, remuneration is calculated in accordance with the tariff of the country of destination. If the tariff is unknown or otherwise inapplicable, the present Tariff shall apply. Section 55 remains reserved.

## **E. Accounting**

### **a) Statements of recordings / lists of works to be recorded**

- 64 Unless otherwise agreed in the licence, the client shall declare the Music Recordings it intends to produce, supply or import to SUISA at least 10 days before the relevant production or recording, giving the following indications:

- 64.1 for all works recorded on a sound recording:

- title
- names and first names of the composers, writers of lyrics and arrangers
- names and first names of the main artists / names of the performing group or orchestra
- publisher's name
- playing time
- ISRC (International Standard Recording Code), if available

with the following information about the sound recording:

- label
- catalogue number
- matrix number
- for re-recordings of masters or sound recordings supplied by third parties: the matrix or catalogue number and the name and address of the third party who granted the re-recording authorisation
- press or reproduction facility

Clients who have concluded a multi-annual contract with SUIISA shall communicate the necessary information to SUIISA on an ongoing basis - if possible before delivery of a sound recording, but no later than 30 days after its release.

If SUIISA does not manage the rights in a given sound recording, it will inform the client as soon as possible.

#### 64.2 For recordings on music videos

- original title and possible sub-titles for Switzerland
- original producer, unless the client himself is the producer
- country of origin of the music video
- format of the music video (video tape, DVD, etc.)
- exact description of the contents, indicating the playing time of the music film portion and, if available, of the documentary film portion
- title, duration and author/publisher of all music sequences.

When an existing film is used for which there is a cue sheet, the latter must also be provided.

Clients that conclude multi-annual music video contracts with SUIISA shall report the necessary information to SUIISA on an ongoing basis - if possible before delivery of the music video, but at the latest 30 days after its release.

#### **b) Statements of productions / statements of outgoings / import and export statements**

65 For all Music Recordings reproducing works of SUIISA's repertoire, the client shall provide SUIISA, within 10 days of production, a statement containing all necessary details for the calculation of the remuneration.

66 Three, six or twelve-month accounting periods may be agreed with clients who have signed a multi-annual contract with SUIISA.

The necessary information shall be filed with SUIISA in digital form within 30 days of the end of relevant settlement period.

67 Where applicable, clients shall communicate the necessary indications for each country of export.

Clients who entrust their exports to a distributor shall indicate such exports in their statements.

68 Clients shall declare to SUIISA all Music Recording imports which are not expressly licensed by a copyright society for export to Switzerland or Liechtenstein. SUIISA may request any necessary additional information.

**c) Specimen copies**

- 69 On request, clients shall provide SUISA with a copy of all Music Recordings free of charge.

**d) Verification**

- 70 To verify the client's declarations, SUISA may request supporting documents (e.g. copies of inventory accounting statements, export documents) or, with advance notice, request to inspect the client's books and depots during business hours.
- 71 Verifications can be made by an independent expert; if the findings show that the client's declarations were incomplete, the cost of the expert shall be borne by the client; otherwise the cost of the expert shall be borne by the instructing party.
- 72 If the necessary declarations or the requested supporting documents are not forthcoming within an additional time-limit set in writing, or if the client does not permit SUISA to check its books or depot, SUISA may estimate the data and base its remuneration calculations on its own estimate.

If the client still fails to provide a statement or list of works after a written reminder, SUISA may apply a supplementary charge of CHF 100.00. Moreover, SUISA may procure the missing information at the client's cost.

Invoices prepared on the basis of estimates will be deemed accepted by the client unless the latter provides SUISA with complete and accurate data within 30 days of the invoice date.

**F. Payments****a) Payments on account**

- 73 The client shall make payments on account to SUISA, generally on a monthly basis, in an amount commensurate with the anticipated remuneration for the forthcoming settlement period.

**b) Invoices**

- 74 SUISA's invoices for an accounting period or for individual licences are payable within 30 days. Music recording licences are not valid until the relevant invoice is fully paid. Production and distribution licences issued by SUISA will be cancelled unless the invoice is paid within the due date.

**c) Securities**

75 SUIZA may demand that securities be deposited against the fees.

**G. Labels for Music Recordings**

76 All labels on large-scale Music Recording productions must bear:

- the symbol **S U I S A**® . SUIZA shall make a graphic file available free of charge for this purpose;
- the comment "all author's and producer's rights reserved, especially public performance, broadcasting and re-recording rights".
- the titles of all protected musical works reproduced on the Music Recording and the names of their composers, lyricists and arrangers.

77 If the label is too small for these indications, they may be printed on the label in abridged form; in that case, the complete indications must be visible on the cover or on an accompanying leaflet.

78 The names of the publishers and artists should be indicated if they are known to the producer and provided there is enough space on the label or cover.

79 For Music Recordings that are not manufactured in large-scale production, the label may be replaced by an accompanying leaflet.

**H. Validity**

80 This Tariff is valid from 1 January 2015 to 31 December 2015.

81 The validity of the Tariff shall be automatically extended from year to year unless it is terminated by one party by written notice to the other prior to the expiry date.

Such termination does not preclude an application to the Federal Arbitration Commission for Copyright and Neighbouring Rights.

82 If, after expiry of this Tariff and despite the filing of an application for approval, no successive tariff is placed in force, the validity of this Tariff shall be provisionally extended until the new tariff comes into force.