



SUISA
Cooperative Society of Music Authors and Publishers

SWISSPERFORM
Swiss Neighbouring Rights Administration Society

Common Tariff S 2020 – 2025

Broadcasters

Approved by the Federal Arbitration Commission for the Administration of Copyrights and Neighbouring Rights on 30 September 2019 and published in Official Journal (FOSC) dated 10 October 2019.

Society responsible for collection (collection centre)

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A. Customers

- 1 This tariff is aimed at organisations which broadcast radio stations and/or TV channels or directly feed those channels and stations into cable networks.

They are hereinafter referred to as "broadcasters".

B. Scope of the Tariff

- 2 This tariff shall apply to the use of

- non-theatrical musical works - with or without lyrics - of the world repertoire administered by SUISA protected by copyright (hereinafter referred to as "music")
- commercially released audio or audiovisual recordings protected by neighbouring rights.

- 3 This tariff shall apply to the following usages:

- broadcasts (terrestrial, via direct feeds and diffusion into/via cable networks or via satellite)
- simultaneous and unchanged feeds and broadcasts of works and performances into/via the internet and other IP based networks by a broadcaster, parallel to the actual broadcast (simulcasts); slight time shifts due to technical circumstances do not prevent the application of this qualification
- direct feeds and broadcasts of works and performances via the internet and other IP based networks without parallel broadcast in the course of linear non-interactive channels and stations (webcasting)
- making available of works and performances via the internet and other IP based networks for on demand usage pursuant to Art. 22c Swiss Copyright Act (CopA)
- with regards to copyright: recording or re-recording onto audio or audiovisual media by the broadcaster; these media may only be used for broadcasting, diffusing and making available pursuant to this tariff and for the respective usage by other broadcasters with whom SUISA or one of its foreign sister societies has entered into an agreement; for all other usages a special licence by SUISA is required.
- with regards to neighbouring rights: reproduction of performances of non-theatrical musical works available on commercially released audio and audiovisual recordings pursuant to Art. 24b paragraphs 1 and 2 CopA for broadcasting purposes as well as for making available pursuant to Art. 22c para. 2 CopA, as long as the legal requirements of these provisions prevail.
- with regards to the broadcast and reproduction for the purpose of broadcasting as well as for making available pursuant to Art. 22c CopA only those usages of performances shall be governed by this tariff, as far as they are subject to the laws of Switzerland. SUISA and SWISSPERFORM do not grant any rights for broadcasting, diffusion and making available of works, performances and recordings outside the territory of Switzerland.

- 4 SUISA and SWISSPERFORM do not exercise the moral rights of the rights owners: The broadcaster shall respect those moral rights, in particular when dubbing audiovisual products.

SWISSPERFORM does not exercise the exclusive rights of the performing artists and the record companies.

Dubbing of feature films, TV series, commercial broadcasts and similar productions with promotional character shall always require a special licence from the rights administration societies or rights owners.

- 5 This tariff shall not include broadcasts and diffusions governed by other tariffs, in particular:
- broadcasts by the SBC (Swiss Broadcasting Corporation, SRG)
 - broadcasts and diffusions of so-called pay radio stations and pay TV channels
 - re-transmission of broadcasts in cable networks or via re-transmitters.

C. Collecting Societies, Remuneration Collecting Centres

- 6 SUIISA is the representative and collection centre for SWISSPERFORM in respect of this Tariff.

D. Remuneration

a) Basis for calculation

- 7 As a rule, remuneration shall be calculated as a percentage of the broadcaster's income (subject to the provisions in item 9).

Supplements shall apply for:

- 7.1 Reproductions of performances and recordings of non-theatrical music works for broadcast purposes pursuant to Art. 24b CopA:

For broadcasters in terms of Art. 2 d Federal Act on Radio and Television (RTVA), the remuneration calculated pursuant to items 12.2, 15.1 and 15.2 for the usage of neighbouring rights shall increase by 20 %.

- 7.2 Use of copyright and neighbouring rights pursuant to Art. 22c CopA:

For broadcasters which carry out usages pursuant to Art. 22c CopA, the remuneration calculated pursuant to item 12.1 and item 14 for the usage of copyright and the remuneration calculated pursuant to item 12.2 and item 15 in connection with item 7.1 for the usage of neighbouring rights shall increase by 0.5 %, respectively.

8 Income

8.1 Income in terms of the tariff shall be all performances with a cash value earned based on the broadcast activities (including simulcasts and webcasts) and the making available pursuant to Art. 22c CopA. Said kind of income shall include in particular:

- Advertising revenue
- Income from broadcasting announcements
- Income from the sale of broadcasting slots
- Sponsors' contributions
- Benefits obtained as a consequence of bartering (this shall be deemed to be the net value of the benefit provided by the broadcaster)
- Income from field work (e.g. broadcasts of fairs, exhibitions, village fêtes etc.)
- Income from radio/TV audience contributions and phone-ins (interactive kiosks/toll number call-ins e.g. televotes or SMS surveys). Income shall be deemed to be the amounts accrued by the broadcaster
- Income from fees pursuant to the RTVA (Art. 40 RTVA); temporary contributions earmarked for a special purpose pursuant to Art. 58 and 109a RTVA for the promotion of new distribution technologies (e.g. contributions in relation to the migration from VHF to DAB+) do not count as income relevant from a tariff perspective
- Subsidies, claimed shortfall warranties
- Allocations and income which serve the purpose of covering the shortfall arising from broadcasting activities (incl. simulcasts and webcasts) and from making available pursuant to Art. 22c CopA.

8.2 The broadcaster can generate income in terms of item 8.1 of this Tariff directly or via third parties (e.g. advertising acquisition firms). In both cases, the gross amounts, especially such amounts which have effectively been invoiced to the advertising principals, sponsors or other end customers of the broadcaster or the third party (subject to the applicable VAT). Acquisition costs may not be deducted from these gross amounts in particular. This shall not apply, not even where the third party has deducted such acquisition costs vis-à-vis the broadcaster

8.3 Deductions for services outside the Tariff which are passed on to the relevant advertising principal, sponsor or other end customer, shall exclusively be taken into account via a lump-sum deduction. The deduction shall be

- for broadcasters of radio stations, 5% of the advertising and sponsoring income calculated pursuant to items 8.1 and 8.2 (including bartering)
- for broadcasters of TV channels, 3% of the advertising and sponsoring income calculated pursuant to items 8.1 and 8.2 (including bartering)

9 The remuneration shall be calculated as a percentage of the operating costs (costs of all usages pursuant to item 3) of the broadcaster,

- if the income cannot be established or no income has been earned
- if the broadcaster assumes from the start that he will cover his costs entirely or partially from its own resources.

- 10 If the broadcaster organises several free-standing channels and stations, the income or costs shall be allocated, if possible, to those channels and stations for which they arose. The following provisions relating to percentages and/or the minimum fee shall be applicable to each channel and station individually. "Broadcaster" shall hereinafter apply also to those organisational divisions of a broadcaster which broadcast a free-standing billable channel and station pursuant to these provisions.
- 11 In cases where broadcasters receive a lump-sum payment for several channels and stations, this income shall be distributed across the individual channels and stations in the ratio of the costs confirmed by the auditor of the broadcaster.

b) Radio Stations

- 12 The percentage applicable for

12.1. Copyright in musical works

- 12.1.a Broadcasters with a gross advertising revenue of more than CHF 4m per annum.

For stations with a share of protected music of the broadcast time of

less than 20 %	1 %
20 % up to less than 30 %	2 %
30 % up to less than 40 %	3 %
40 % up to less than 50 %	4 %
50 % up to less than 60 %	5 %
60 % up to less than 70 %	6 %
70 % up to less than 80 %	7 %
80 % up to less than 90 %	8 %
90 % and more	9 %

- 12.1.b Broadcasters with a gross advertising revenue of less than CHF 4m per annum.

For stations with a share of protected music of the broadcast time of

less than 10 %	1 %
10 % up to less than 30 %	2 %
30 % up to less than 50 %	3 %
50 % up to less than 70 %	5 %
70 % up to less than 90 %	7 %
90 % and more	9 %

- 12.1.c Gross advertising revenue shall be considered to be advertising revenue, sponsors' contributions as well as income from announcements in the sense of items 8.1 and 8.2.

12.1.d The share of protected music shall mean the share of music of the SUIA repertoire of the total broadcast duration transmitted by the broadcaster including music contained in broadcasts and programmes taken over from internal or external sources. SUIA repertoire comprises all works for which SUIA is authorised to manage at least one of the rights granted under this Tariff (recording rights, re-recording rights, broadcasting rights or making available rights pursuant to Art. 22c CopA). Provided that the broadcasting rights in a work are managed directly via the authors of that work, only one third of the effectively broadcast duration of the work in question shall be used as the basis to determine the share of protected music.

12.2 Neighbouring Rights

The percentage applicable for neighbouring rights shall be 30% of the percentages applicable to copyright pursuant to items 12.1 a and 12.1 b. The share of protected music shall correspond to the broadcast music share of SWISSPERFORM repertoire of the total broadcast time including the music included in broadcasts and programmes taken over internally or externally. The SWISSPERFORM repertoire comprises all audio and audiovisual recordings for which SWISSPERFORM is authorised to manage at least one of the rights granted under this Tariff (the right to reproduce recordings on commercially available sound and audiovisual media (recordings) of non-theatrical music pursuant to Art. 24b CopA, broadcasting rights pursuant to Art. 35 CopA or making available rights pursuant to Art. 22c CopA).

13 Web radios

Radio broadcasters which carry out transmissions only via webcasts (pursuant to item 3, 3rd indent) shall be referred to as web radios.

In the case of web radios

- run by individuals in their spare time, not for business purposes, and
- which can be accessed simultaneously by a maximum of 6,000 users,

remuneration shall be calculated as a blanket amount based on the percentage of the income pursuant to item 8.

The percentage for the use of copyright shall be 6 %, the use of neighbouring rights 2 %, but the minimum fee per station and per month shall be:

- for copyright: CHF 60.00
- for neighbouring rights CHF 60.00

The minimum fee pursuant to item 23 shall not apply to those web radios.

Web radios which do not meet the two preceding criteria shall be subject to the ordinary fees pursuant to item 7 et seq. (in addition to the relevant increases to be applied pursuant to items 7.1 and 7.2) and item 23.

c) TV Channels

- 14 The percentage for music copyright shall be
- Channels with more than 2/3 of the broadcast time consisting of music films, filmed concerts or video clips 6.6 %
 - Channels with more than 1/3 of the broadcast time consisting of music films, filmed concerts or video clips 3.3 %
 - Channels whose contents are nearly exclusively featured films and TV films only 1.32 %
 - Channels where the duration of music contained is no higher than 10 % of the total broadcast duration, irrespective of whether it is foreground or background music 0.4 %
 - Channels with a music duration of more than 10 % but less than 20 % irrespective of whether it is foreground or background music 1 %
 - other channels 2 %
- 15 The percentage for neighbouring rights shall be
- 15.1 for the use of commercially released sound recordings:
- Channels whose contents are nearly exclusively featured films and TV films 0.06 %
 - Channels where the duration of music contained is no higher than 10 % of the total broadcast duration, irrespective of whether it is foreground or background music 0.12 %
 - Channels with a music duration of more than 10 % but less than 20 % irrespective of whether it is foreground or background music 0.18 %
 - other channels 0.36 %
- 15.2 for the use of music films, filmed concerts and video clips
- Channels with more than 2/3 of the broadcast time consisting of music films, filmed concerts or video clips 3 %
 - Channels with more than 1/3 of the broadcast time consisting of music films, filmed concerts or video clips 1.5 %
- 15.3 For broadcasters that do not fall under the provisions contained in item 15.2, the percentage for neighbouring rights and the use of commercially released audiovisual recordings shall be:
- For broadcasters transmitting feature films or other commercially released audiovisual recordings on more than 300 days per annum 0.100 %
 - For broadcasters transmitting feature films or other commercially released audiovisual recordings on more than 150 but less than 300 days per annum 0.050 %

- For broadcasters transmitting feature films or other commercially released audiovisual recordings on more than 75 but less than 150 days per annum 0.025 %
- For broadcasters transmitting feature films or other commercially released audiovisual recordings on more than 30 but less than 75 days per annum 0.010 %
- For broadcasters transmitting feature films or other commercially released audiovisual recordings on no more than 30 days per annum 0.005 %

- 16 A TV "programme" shall be the usual programme time transmitted, not including test pictures, screen text or still images.

In cases where the broadcaster receives income from the broadcast of the screen text or still pictures (e.g. from advertising, sponsoring etc.) and if there is music protected by copyright and/or from commercially released sound recordings in the background of those broadcasts, they shall be considered as a part of the programme and included in the calculation of the percentages pursuant to items 14.4 and 15.

d) Supplementary webcasting channels and stations

- 17 In the case of supplementary channels and/or stations that a broadcaster offers in addition to its main channel/station via webcasting (in the sense of item 3, 3rd indent) on the website allocated to its main channel/station, and if it is not possible for the broadcaster to show the income or costs pursuant to items 10 and 11, the following blanket fees shall apply on a per month/per supplementary channel/station basis, irrespective of its music share:

- for copyright: CHF 30.00
- for neighbouring rights CHF 30.00

For supplementary channels/stations that are broadcast via other means than via internet, the provisions pursuant to items 10 and 11 shall apply.

e) Reductions

- 18 Broadcasters that only transmit at local level and whose income pursuant to items 8.1 and 8.2 does not exceed CHF 700,000 in the respective year, shall be subject to a reduction of 10% regarding the remuneration calculated on the basis of items 12, 14 and 15:
- 19 Broadcasters with a concession which authorises them to receive a share of the fees pursuant to Art. 38 para 1 RTVA shall be subject to a reduction of 5% regarding the remuneration calculated on the basis of items 12, 14 and 15.
- 20 Broadcasters which adapt their systems to the reporting obligations pursuant to letter G and provide correct and timely reports pursuant to these reporting obligations shall be subject to a reduction of 5%.

- 21 Broadcasters that are members of a relevant association of broadcasters which supports SUISA and SWISSPERFORM with its duties shall be subject to an additional reduction of 10% provided that they commit in writing that they will respect this Tariff and actually adhere to the tariff provisions.
- 22 A broadcaster shall be entitled to receive all reductions pursuant to items 18 to 21 provided that it meets all the relevant criteria. Reductions pursuant to items 18 and 19 can be used cumulatively. Reductions pursuant to items 20 and 21 can also be accumulated. They shall, however, only be deducted after a possible reduction pursuant to items 18 and 19 has been applied.

f) Minimum fee

- 23 The monthly licence fee shall be
- for radio broadcasters, a minimum of CHF 100.00 for copyright CHF 100.00 for neighbouring rights
 - for TV broadcasters, a minimum of CHF 100.00 for copyright CHF 30.00 for neighbouring rights

If the broadcasting activity (including simulcasting and webcasting) and the making available pursuant to Art. 22c CopA is restricted to individual days or hours only, 1/30 of the minimum licence fee per 24 hours shall be applicable. Each time a 24-hour-block is entered, it shall be counted as a complete 24-hour block.

g) Supplement for cases of law infringement

- 24 All fees subject to this Tariff shall be doubled if
- music is used without a licence issued by SUISA
 - by wilfulness or gross negligence, a broadcaster either omits to provide any information or accounts, or provides incorrect or incomplete information or accounts.
- 25 The right to make claims for damages beyond the above shall be reserved.

h) Taxes

- 26 The fees in this tariff shall be exclusive of value-added tax. If, due to an obligatory objective tax liability or due to the exertion of opting in or out of tax, value-added tax is due after all, it shall be paid by the broadcaster at the applicable rate in addition to the amount already invoiced.

E. Accounting

- 27 The broadcasters shall, as a rule, provide SUISA with the following information on an annual basis:

- as soon as possible but before end of May at the latest: all details necessary for the calculation of the remuneration for the previous year; details pertaining to the income shall be provided separately in line with the various income sources. The relevant instructions and guidelines of the BAKOM for licensed broadcasters shall be applicable analogously.
- in the first two years of operation, after that upon request, by the end of January: the budgeted income and the projected music percentage for the current year as well as the projected share of commercially released sound and audiovisual recordings or the projected number of days per annum where feature films and other commercially released audiovisual recordings are broadcast.

28 In order to check the information provided, SUIISA may demand documents, in particular a copy of the report by the broadcaster to the BAKOM, of the profit and loss accounts and a confirmation of the auditors of the broadcaster as well as of the third parties as far as the details relating to the gross income of those companies is concerned pursuant to item 8.2 of this tariff.

SUIISA may also - during working hours and after announcing the visit in advance - inspect the broadcaster's accounts. The audit of the relevant information for accounting purposes provided by production and acquisition companies may be exercised by an independent expert.

F. Payment

29 Remuneration shall be payable within 30 days from the invoice or within the deadline mentioned in the licence.

30 SUIISA may ask for payments on account and/or other forms of payment guarantees.

In the first two years of operation, payments on account shall depend on the anticipated level of remuneration, after that on the statements relating to the previous year.

G. Broadcast logs

31 Broadcasters shall provide SUIISA with the information listed in section G of this Tariff. Said information is, however, only necessary if SUIISA and/or SWISSPERFORM require them for the distribution of the remuneration collected subject to this Tariff to the rights holders in line with the societies' respective distribution regulations. At the end of each year, SUIISA shall inform those broadcasters that are released from their obligation to provide reports in the following year.

32 Broadcasters shall report all channel/station details pursuant to letter G electronically in a standardised, importable format.

a) Radio

- 33 Broadcasters shall inform SUISA of the music/sound and audiovisual recordings, including background music and jingles broadcast in their channels/stations. Reports must be provided in line with Annex I to this Tariff.
- 34 The information shall include details such as
- Title of the musical work
 - Name of the composer
 - Name of the main artist(s)
 - Label
 - ISRC of the recording used (The obligation to report and document an ISRC shall arise at least in such cases where the ISRC has been provided or submitted by the supplier of the recording in any form, or where there is a later report with a reference to a specific recording. The broadcaster must immediately process subsequent reports and corrections of the ISRC and inform SUISA.)
 - ID number allocated to the recording by the broadcaster
 - Time of broadcast
 - Duration
- 35 On a quarterly basis, radio broadcasters shall report to SUISA the title of the commercial with music, how often and in which stations they were broadcast. In cases where a SUISA number exists for a commercial, this shall be used for the report.
- 36 If broadcasters are not in a position to list any cross-fades between two simultaneously played musical works or between music and spoken text (while the music is being played but it isn't audible to the listeners) in their logs, SUISA and SWISSPERFORM shall tolerate a deviation of 5% between the total duration of the protected music and/or the protected commercially released sound recordings reported by the broadcaster pursuant to item 34 and the broadcasters' reported music share and/or share of broadcast commercially released sound recordings in their stations' broadcast time.
- Said 5% margin shall only be allowable if the data provided by the broadcaster include complete information on the music and sound recording as well as on the relevant broadcast duration and only as long as no better method is available to determine the cross-fades.

b) Television

- 37 TV broadcasters shall report all broadcast productions, in particular featured films, TV, documentary films and series produced by third parties and not commissioned by the broadcaster itself, together with the following details:
- Original title of the production
 - Name of the producer and the main director
 - Country of origin of the production
 - Used language version(s)
 - ISAN (The obligation to report and document an ISAN shall arise at least in such cases where the ISAN has been provided or submitted by the supplier of the

recording in any form, or where there is a later report with a reference to a specific recording. The broadcaster must immediately process subsequent reports and corrections of the ISAN and inform SUIA.)

- ID number allocated to the recording by the broadcaster
 - Duration
 - Time of broadcast
 - Media (carriers) used for the broadcast
- 38 TV broadcasters shall ensure that SUIA is informed in advance of any advertising films which are planned for broadcast but do not have the respective permission (so-called SUIA number) from SUIA yet.
- 39 SUIA shall give the TV broadcasters the "good to go for a broadcast" (so-called SUIA number) and thus indemnifies the broadcaster against third party claims with respect to the music broadcast rights.
- 40 SUIA's permission shall be deemed as given unless notice is served within 10 days of receipt of the broadcaster's information. TV broadcasters shall not broadcast any advertising films for which no SUIA permission has been granted.
- 41 TV broadcasters shall inform SUIA monthly which advertising films were broadcast, how often and in which TV channels.
- 42 TV broadcasters shall also report music to SUIA which they or their clients used as a score for their broadcasts, as well as music in concert transmissions by providing the ISRC as long as it is known to them. Otherwise, the broadcaster shall provide enough data so that it is possible to identify the music.
- 43 Broadcasters active in regional languages or internationally active broadcasters shall provide SUIA with complete information on all broadcast music indicating the ISRC as long as it is known to them. Otherwise, the broadcaster shall provide enough data so that it is possible to identify the music.

c) Joint provisions

- 44 Programmes that are taken over from other broadcasters on a regular basis shall be reported to SUIA with the following details:
- Name of the broadcaster
 - Amount of hours of the "imported" programmes

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d) Deadlines

- 45 All information shall be sent to SUIA on a monthly basis, before the end of the following month unless otherwise specified previously. Information on the broadcast jingles can be submitted quarterly.
- 46 If SUIA and/or SWISSPERFORM recognise or suspect that there are errors or gaps in the broadcasters' reports, they will notify the broadcaster accordingly within three

months and shall grant it a period of grace of 45 days to rectify the shortcomings. During the reclamation process, SUISA and/or SWISSPERFORM can additionally request that the broadcaster submits a recording of the broadcasters' programme as well as additional information for the relevant reporting period for control purposes.

- 47 In cases where the broadcaster does not provide details within a given deadline of 45 days despite a written reminder or if errors that have been queried have not been remedied within the period of grace of 45 days, SUISA and/or SWISSPERFORM may estimate the vital details missing for the calculation of the remuneration. Invoices based on estimates shall be deemed to be accepted by the broadcasters unless - within 30 days of receipt of the invoice - complete and correct details are subsequently delivered by them to SUISA. SUISA and/or SWISSPERFORM may request an additional remuneration of CHF 100.00 per month. This remuneration shall be doubled in cases of recurrence. Procedures pursuant to provisions in item 24 shall remain reserved.
- 48 In cases where the broadcaster provides no logs at all or incomplete reports for two consecutive quarters pursuant to letter G, SUISA and/or SWISSPERFORM may instruct an independent expert to collect the data the broadcaster is obliged to report (e.g. via monitoring). The cost for such data collection shall be borne by the broadcasters if they have culpably omitted to provide the required data.

H. Term

- 49 This Tariff shall be valid from 1st January 2020 until 31st December 2022.
- In the case of substantial changes it can be reviewed before the end of the term. A substantial change to the circumstances shall be deemed to arise when the Beijing Treaty for the protection of audiovisual performances dated 24 June 2012 enters into force for Switzerland.
- 50 The term of this Tariff shall be automatically extended by one year but no longer than up to 31 December 2025, unless one of the negotiating parties gives the other party notice in writing one year before the expiry of this Tariff. Such a termination shall not exclude an application for renewal of the Tariff to the Federal Arbitration Commission for the Exploitation of Copyright and Related Rights.
- 51 If, after this Tariff has lapsed and despite an application for approval, no subsequent tariff has been put in place, the period of validity of this Tariff shall be extended by a transitional period until the period of appeal against the approval decision by the Federal Arbitration Commission has lapsed with regards to the subsequent tariff. Retroactive implementation shall remain unaffected thereof.

<p>This document is a free translation into English of the Tariff originally issued in the official French, German and Italian languages. The translation is provided solely for the convenience of English speakers. In the event of a discrepancy between the English translation and the French, German or Italian version, the version in the official language shall prevail.</p>
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