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Swiss Cooperative Society for Authors' Rights on Literature and Visual Arts

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

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Cooperative Society of Music Authors and Publishers

SUISSIMAGE

Swiss Cooperative Society for Authors' Rights on Audiovisual Works

SWISSPERFORM

Swiss Neighbouring Rights Administration Society

Common Tariff 4i 2019 – 20120

Levy for digital storage media integrated in devices

Approved by the Federal Arbitration Commission for the Administration of Copyrights and Neighbouring Rights on 12 November 2018 and published in Official Journal (FOSC) on 20 November 2018.

Society responsible for collection (collection centre)

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1. Scope of the Tariff

1.1 This Tariff shall govern 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 discs and similar digital storage media carriers (hereinafter referred to as “private copying” onto “blank media carriers”). This Tariff shall cover blank storage media which

- are integrated into devices whose main purpose it is to enable the storage and playback of protected works and performances of an auditive nature, namely mp3 walkmen, mp3 jukeboxes (and those with similar compression procedures), iPods or audio hard disc recorders,
- are integrated into devices whose main purpose it is to enable the storage and playback of protected works and performances of an audio-visual nature, namely satellite receivers with built-in hard disks, set top boxes with built-in hard disks, TV sets with built-in hard disks, DVD recorders with built-in hard disks, digital video recorders (DVRs) and personal video recorders (PVRs) with built-in hard disks or multimedia servers.
- are integrated into smartphones; the latter shall be deemed to be mobile phones which enable the storage of audio, audio-visual or visual contents via a connection to a PC or another device or directly via the internet, such as the playback of such contents;
- are integrated into tablets; the latter shall be deemed to be portable devices with a touch screen whose diagonal display size is at least 7”;

or which are made available to consumers together with such devices.

1.2 This Tariff shall also apply to recorded data storage media carriers as long as they are offered for the purpose of being used as a data storage medium for private copying.

1.3 This Tariff shall not cover usages of works for private purposes provided for in Article 20(2) of the Swiss Copyright Act, respectively Article 23(2) of the Liechtenstein Copyright Act.

1.4 This Tariff shall not cover private copying onto other blank storage media such as blank audio and video tapes, minidisks, DATs, audio CD-R/RWs, data CD-Rs and recordable DVDs (CT4), as well as digital storage media which is made available for usage by end consumers against a fee or free of charge (CT 12).

1.5 This Tariff shall not be applicable to storage media permanently built into personal computers, irrespective whether these devices are portable or not. Portable personal computers differ from tablets by having an integrated non-detachable keyboard with physical keys.

Furthermore, this Tariff shall not be applicable to external hard discs and USB sticks.

2. Manufacturers and Importers

- 2.1 this Tariff shall apply to manufacturers and importers of blank media.
- 2.2 Manufacturers are deemed to be parties who produce blank media in Switzerland or the Principality of Liechtenstein and offer them in their commercially available format to traders or directly to consumers.
- 2.3 Importers are deemed to be parties who import blank media from abroad into Switzerland or into the Principality of Liechtenstein, irrespective whether they use them themselves, or whether they offer them to traders or directly to consumers. Private persons importing just a few blank media carriers for their personal use when crossing the border shall, in order to keep the principle of proportionality not be deemed as importers in terms of this Tariff.
- 2.4 Importers are also deemed to be suppliers that are resident abroad, and that offer blank media via mail order in Switzerland or in the Principality of Liechtenstein and thus put consumers in a position as if they were acquiring the blank media from a domestic supplier.

3. Collective management organisations, Exemptions

- 3.1 SUISA is the representative for the following collecting societies in respect of this Tariff
- PROLITTERIS
SOCIETE SUISSE DES AUTEURS
SUISA
SUISSIMAGE
SWISSPERFORM
- 3.2 Provided manufacturers and importers pay the amounts due by them in accordance with this Tariff, they shall be exempt from the obligation to pay a levy for copyrights and neighbouring rights on blank media carriers marketed to retailers or to the public in Switzerland or the Principality of Liechtenstein.

4. Levy

The levy shall depend on the storage capacity and shall be:

- 4.1 for devices which mainly enable the storage and playback of protected works and performances of an auditive nature

<u>Storage capacity</u>	<u>Copyright</u>	<u>Neighbouring rights</u>	<u>Total</u>
- up to and including 4 GB	CHF 1.83	CHF 0.56	CHF 2.39
- up to and including 8 GB	CHF 3.32	CHF 1.03	CHF 4.35
- up to and including 16 GB	CHF 3.85	CHF 1.20	CHF 5.05
- up to and including 32 GB	CHF 5.92	CHF 1.84	CHF 7.76
more than 32 GB	CHF 9.24	CHF 2.87	CHF 12.11

4.2 for devices which mainly enable the storage and playback of protected works and performances of an audio-visual nature

<u>Storage capacity</u>	<u>Copyright</u>	<u>Neighbouring rights</u>	<u>Total</u>
- up to and including 250 GB	CHF 15.52	CHF 4.67	CHF 20.19
- up to and including 1 TB	CHF 36.52	CHF 10.98	CHF 47.50
- more than 1 TB	CHF 43.83	CHF 13.17	CHF 57.00

4.3 for smartphones

<u>Storage capacity</u>	<u>Copyright</u>	<u>Neighbouring rights</u>	<u>Total</u>
- up to and including 16 GB	CHF 0.75	CHF 0.23	CHF 0.98
- up to and including 32 GB	CHF 1.29	CHF 0.40	CHF 1.69
- up to and including 64 GB	CHF 2.14	CHF 0.66	CHF 2.80
- up to and including 128 GB	CHF 4.12	CHF 1.26	CHF 5.38
- more than 128 GB	CHF 8.04	CHF 2.46	CHF 10.50

4.4 for tablets

<u>Storage capacity</u>	<u>Copyright</u>	<u>Neighbouring rights</u>	<u>Total</u>
- up to and including 16 GB	CHF 1.55	CHF 0.47	CHF 2.02
- up to and including 32 GB	CHF 2.48	CHF 0.76	CHF 3.24

- up to and including 64 GB	CHF 4.06	CHF 1.24	CHF 5.30
- up to and including 128 GB	CHF 7.63	CHF 2.33	CHF 9.96
- up to and including 256 GB	CHF 14.47	CHF 4.42	CHF 18.89
- up to and including 512 GB	CHF 27.53	CHF 8.41	CHF 35.94
- more than 512 GB	CHF 43.67	CHF 13.33	CHF 57.00

- 4.5 Once the legally binding version of this Tariff has been authorised, the levy for blank media carriers which have not been reported to SUIISA in line with the provisions of this Tariff despite SUIISA issuing a one-off written reminder for payment shall be doubled.
- 4.6 Members of the relevant manufacturers' associations or importers which support their collecting societies in their duties, shall obtain a rebate of 5 % if they adhere to all of their tariff-related commitments.
- 4.7 The levies 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 manufacturer or the importer at the applicable rate in addition to the amount already invoiced.

5. Start of the Obligation to Pay the Levy

Except where stipulated otherwise by contract with SUIISA, the levy shall become due

- 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. Reimbursement

Paid fees shall be reimbursed to the manufacturer or importer:

- 6.1 in cases where blank media carriers have verifiably been exported from Switzerland.
- 6.2 Reimbursements shall be set off against levies due for payment.

7. Settlement

- 7.1 Manufacturers and importers are required to provide SUIISA with all information necessary for invoicing the due fees including, in particular, the following specifications broken down per category of blank media carrier subject to remuneration:

- the number of blank media carriers manufactured or imported, indicating their storage capacity
 - the number of exported blank media carriers, indicating their storage capacity (with a copy of the corresponding customs documents).
- 7.2 Unless otherwise agreed, these specifications and documents shall be communicated to SUIISA separately for each device category on a monthly basis, but no later than 20 days after the end of each month.
- 7.3 At SUIISA's request, manufacturers and importers shall grant SUIISA access to their warehouses and books for auditing purposes. SUIISA may request a corresponding confirmation from the manufacturer's or importer's auditors. Audits may be entrusted to an independent third party; if the examinations show that the manufacturer's or importer's declarations were false or incomplete, the latter shall bear the respective costs of the audit, otherwise the costs shall be borne by the party who requested a third-party intervention.
- 7.4 If the necessary specifications are still not forthcoming after an additional time limit has been imposed in writing, SUIISA may conduct the necessary audit, or entrust such examinations to a third party, at the manufacturer's or importer's cost; SUIISA may also carry out an estimate and base its invoice on it. Invoices based on estimates shall be deemed to be approved by the manufacturer or importer unless they supply complete and correct details to SUIISA within 30 days of the invoice date.

8. Payments

- 8.1 All invoices from SUIISA shall be payable within 30 days.
- 8.2 In cases where customers do not fulfil their obligations at all or only insufficiently, SUIISA may request monthly payments or other payments on account, and ask for additional securities.

9. Validity

- 9.1 This Tariff shall enter into effect as of 1st January 2019 and shall cover all blank media carriers sold by importers or manufacturers from that date onwards to retailers or directly to consumers. It shall be valid until 30 June 2020.
- 9.2 In the case of a significant change in circumstances, this Tariff may be amended ahead of time.
- 9.3 The term of this Tariff shall be automatically extended by one year until 30 June 2022 at the latest, 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 extension of the Tariff to the Federal Arbitration Commission for the Exploitation of Copyright and Related Rights.

- 9.4 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 on an interim basis until the expiry of the period within which an appeal can be lodged against the approval decision of the arbitration commission regarding the subsequent tariff.

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.