



SUISA
Cooperative Society of Music Authors and Publishers

Tariff VN 2019 - 2021

Recording music on audiovisual carriers for screening, broadcasting or online use

Approved by the Federal Arbitration Commission for Copyrights and Neighbouring Rights on 20 September 2018 and published in Official Journal (FOSC) of 2 October 2018.

Provisions that are not within the competence of the Federal Arbitration Commission are in *italics*.

SUISA

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A. Scope of the Tariff

I. Music usage

- 1 This Tariff shall apply to the below-listed music usages of audiovisual recordings not intended for the public:
 - **recording** of music on audiovisual carriers and **reproduction** of such recordings;
 - **screening** of these audiovisual recordings in Switzerland and Liechtenstein in accordance with point 21 and, especially,
 - screening without entrance fee, and
 - screening by the producer himself or his principal;
 - **making available** these audiovisual recordings on the internet or on other IP-based networks subject to point 23, especially
 - making available free of charge
 - making available by the producer himself, his principal or other parties involved in the production.
- 2 For the purpose of this Tariff, audiovisual recordings shall also include audiovisual shows and similar productions where pictures and music recorded on different carriers are presented simultaneously.
- 3 Unless otherwise specified, “**music**” shall mean the non-theatrical music protected by copyright in SUISA’s repertoire.
- 4 The Tariff shall apply to audiovisual recordings reproduced **for broadcasting, screening and similar purposes** which are not intended for distribution to the public for private use.

The Tariff shall also apply to individual copies (up to 200 units) given free of charge to selected recipients (e.g. persons involved in the production process) for their own internal use.

If any copies of the same audiovisual recording are distributed to the public for private use, those copies must be licensed in accordance with the terms and conditions of the relevant tariff.
- 5 As a rule, in the case of commissioned audiovisual recordings, the principal and the producer shall be jointly and severally liable. SUISA is primarily concerned with domestic principals.

II. Exceptions and reserves

- 6 Other relevant tariffs and SUIA's Licensing Terms and Conditions, are reserved in respect of the following in particular
- Production for distribution to the public (Tariffs VI and PI)
 - Rental (Common Tariff 5)
 - Screening (Common Tariff E)
 - Broadcast reception (Common Tariffs 3a, 3b and 3c)
 - Broadcasts (Tariff A, Common Tariffs S and Y)
 - *Making available of online campaigns (Licensing Terms and Conditions)*
 - *Making available of audiovisual productions (Licensing Terms and Conditions)*
- 7 This Tariff shall apply mutatis mutandis to the production or storage of audiovisual recordings with music on data carriers such as web-servers, for example.
- 8 SUIA disposes only of authors' music copyrights and not of the neighbouring rights of performers, producers or broadcasting corporations. SUIA's licences are subject to the consent of all rightholders. SUIA may demand proof of such consent.

B. Licensing procedure

- 9 As a rule, licences may only be granted with the rightholders' (authors and publishers) consent. *For rights that are not managed by SUIA (e.g. synchronisation rights or producers' rights) consent must be obtained before production. SUIA's licences shall only cover the rights managed by SUIA; all other rights are reserved.*
- 10 Licence applications must be sent in good time. Audiovisual recordings may not be produced before explicit consent has been received from the rightholders.
- 11 In the case of music specially composed for an audiovisual recording, SUIA shall assume that the rightholders have given their explicit consent.
- In the case of music catalogues published especially for the purpose of adding sound to films and recordings (mood music, library music, archive music), consent shall in any event be deemed granted.*
- 12 Licence applications shall contain the following indications:
- Title of the musical works
 - Full name of the composer, and IPI number, if known.
 - For each recorded work, the duration of its content in the production
 - In the case of music recorded from commercially available audio or audiovisual recordings: the label and catalogue number
 - Type of audiovisual recording
 - Planned usage of the recording
 - Number of copies (may be communicated subsequently)
 - Handwritten or electronic signature

For applications under points 15.2 and 15.3, the relevant budget indications shall be additionally required.

C. Remuneration*)

I. Recording and reproduction

- 13 Remuneration shall be due as soon as the recording is produced.
- 14 The remuneration shall depend on the usage of the audiovisual recording and shall be set per time unit of protected music, subject to point 15.3.1
- 15 The remuneration shall be equal to:
- 15.1 **Commercial audiovisual recordings for television broadcasts, movie theatre screening and/or for use on the Internet**

15.1.1 Commercials

| <u>Usage of audiovisual recording</u> | <u>Time units in seconds</u> | <u>Mechanical rights</u> | |
|---|------------------------------|--------------------------|-------|
| a) international or domestic (incl. foreign TV broadcaster advertising windows) | | | |
| - up to 60 seconds | 1 | CHF | 60.00 |
| - for each additional 60 seconds, or fraction thereof | 10 | CHF | 15.00 |
| b) in one language region only | | | |
| - up to 60 seconds | 1 | CHF | 30.00 |
| - for each additional 10 seconds, or fraction thereof | 10 | CHF | 7.50 |
| c) local | | | |
| - up to 60 seconds | 1 | CHF | 7.00 |
| - for each additional 10 secs, or fraction thereof | 10 | CHF | 7.50 |

The rates include copies for usage in other media (e.g. ad-screens, eboards and internet).

*) In addition to the fees payable in accordance with this Tariff, the following remuneration may also be due:

- a) For **synchronisation rights** (the right to combine music with other works); if the rightholders (authors and publishers) do not use the synchronisation rights themselves and give no other instructions, the additional fee for synchronisation rights shall equal:

- 50 % of the amounts indicated in point 15.

- b) for recording from sound recordings;
SUISA licenses the recording from sound recordings of mood music catalogues on behalf of the producer for an **additional fee**.

The fee shall equal:

- 50% of the royalty (including synchronisation rights) charged by SUISA if the audiovisual recording is to be used exclusively in Switzerland and Liechtenstein.
- 100% of that fee if the audiovisual recording is (also) to be used abroad.

For recording from other sound recordings, the producer's consent is required; in such cases, the producer sets the fee on a case-by-case basis. SUISA collects the agreed fee on the producer's behalf.

For commercials used on the internet, the rates under a) above shall apply unless the principal's business is only local or regional. In that case, the rates under c) above shall apply. An audiovisual recording shall be deemed a commercial for use on the internet if the advertising campaign it is part of has a media budget.

Series of at least ten consecutive commercials for the same principal, advertising different products but using identical music, duration, visual concept and sequence shall be deemed serial commercials. Serial commercials shall be licensed in advance in individual packages of up to ten commercials each. Each package shall be deemed a complete commercial, i.e. the duration of the music in all the commercials making up the package shall be added together for licensing purposes in accordance with point 15.1.1.

The above provision shall not apply to serial commercials which were shown before 1 January 2019.

15.1.2 Advertorials and sales shows

| <u>Usage of audiovisual recording</u> | <u>Time units in secs</u> | <u>Mechanical rights</u> |
|--|---------------------------|--------------------------|
| a) international, domestic, or language region (incl. foreign TV broadcaster advertising windows) | 10 | CHF 15.00 |
| b) local | 10 | CHF 7.50 |

The rates include copies for usage in other media (e.g. ad-screens, eboards).

For advertorials and sales shows used on the internet, the rates under a) above shall apply unless the principal's business is only local or regional. In that case, the rates under b) above shall apply

15.1.3 Billboards (sponsoring)

| <u>Usage of audiovisual recording</u> | <u>Time units in secs</u> | <u>Mechanical rights</u> |
|---|---------------------------|--------------------------|
| a) international, domestic or language region | 10 | CHF 200.00 |
| b) local, regional or special interest channels | 10 | CHF 100.00 |

For billboards used on the internet, the rates under a) above shall apply unless the principal's business is only local or regional. In that case, the rates under b) above shall apply.

15.1.4 The rates in point 15.1.1. to 15.1.3 shall apply to commercials produced in Switzerland. If the audiovisual recording is produced abroad and it can be shown that the production and mechanical rights for Switzerland were also acquired in the foreign country, no additional fee shall be payable.

15.1.5 For the Swiss version of an existing foreign commercial (post-production), the remuneration for the first 60 seconds is CHF 20 per second of music. As of the 61st second, fees shall be in accordance with point 15.1.1 a) or b). Application of point 15.1.1. c) is excluded.

15.2 Non-commercial audiovisual recordings for television broadcasts, screening in movie theatres and/or festivals, and productions for first use on video on demand platforms

| <u>Usage of audiovisual recording</u> | <u>Time units in seconds</u> | <u>Mechanical rights</u> | |
|---|------------------------------|--------------------------|--------|
| a) Feature films and serials | | | |
| Production budget up to CHF 0.5m | 60 | CHF | 30.00 |
| Production budget up to CHF 1m | 60 | CHF | 70.00 |
| Production budget up to CHF 1.5m | 60 | CHF | 110.00 |
| Production budget over CHF 1.5m | 60 | CHF | 150.00 |
| b) Other (e.g. short films, documentaries,) | | | |
| Production budget up to CHF 0.2m | 60 | CHF | 30.00 |
| Production budget up to CHF 0.4m | 60 | CHF | 45.00 |
| Production budget over CHF 0.4m | 60 | CHF | 60.00 |

15.3 Other audiovisual recordings

15.3.1 Audiovisual recordings with production budgets up to maximum CHF 5,000

| | <u>Mechanical rights</u> |
|--------------------------------------|--------------------------|
| a) Production budget up to CHF 2,500 | CHF 50.00 |
| b) Production budget up to CHF 5,000 | CHF 100.00 |

These rates apply regardless of the duration of protected music in the audiovisual production.

15.3.2 Audiovisual recordings with production budgets over CHF 5,000

| | <u>Time units in seconds</u> | <u>Mechanical rights</u> | |
|--|------------------------------|--------------------------|--------|
| a) Production budget up to CHF 30,000 | 60 | CHF | 50.00 |
| b) Production budget up to CHF 100,000 | 60 | CHF | 100.00 |
| c) Production budget up to CHF 200,000 | 60 | CHF | 150.00 |
| d) Production budget over CHF 200,000 | 60 | CHF | 200.00 |

The above rates are subject to a minimum fee of CHF 100.

15.4 The production budget within the meaning of point 15.2 and 15.3 shall be the total budget for the film production at the end of the shooting.

16 For concert films and music video clips, the rates in point 15 shall be doubled.

17 The playing time of all the music on the audiovisual recording shall be added together. Fractions of time units shall be invoiced as a full time unit.

18 The fee covers the production of 200 copies of the same audiovisual recording (including a copy for internal use in accordance with point 4). The fee for each additional copy shall be 1/100 of the fee calculated in accordance with point 15.

- 19 When only the spoken or written text of an audiovisual recording produced for use in Switzerland is translated and/or individual pictures (e.g. such as pack shots) are changed without the music being altered, the translated version shall not be deemed a new audiovisual recording of music but simply a copy.

If different versions of an audiovisual recording produced for use in Switzerland are cut, the longest version shall be decisive for licensing purposes; all other versions shall qualify as reproductions.

If a trailer is extracted from a work for the purpose of announcing the release of an audiovisual work, the trailer shall not be deemed a new audiovisual recording but a copy. This rule shall not apply if not all the music and not most of the pictures come from the announced audiovisual work.

- 20 The licence shall be granted under the condition that the audiovisual recording will only be used as stipulated in the licence.

In case of multiple usages, the highest fee shall apply.

II. Screening

- 21 In the following cases, the producer may acquire on production, for himself and his principal, on an all-in basis and for an indefinite duration:

the screening rights in his and his principal's screenings (including the screenings of any subsidiaries or clients entrusted by the principal with the screening) if they are

- screened without admission fee in places other than cinemas or similar facilities
- screened in Switzerland and Liechtenstein.

- 22 The flat fee shall be CHF 200.00.

III. Making available

- 23 Moreover, the producer may acquire, on an all-in basis, for himself, the principal and other persons involved in the production, the right to make the audiovisual recording available on his own website or that of his principal and other parties involved in the production, with or without the possibility of downloading, provided no fee is charged. This licence applies to usages in Switzerland and Liechtenstein and shall only be delivered together with the production licence. This licence shall not apply to audiovisual recordings made available in the framework of an advertising campaign.

- 24 The flat fee shall apply once for each website on which the recording is made available

- Streaming CHF 100.00
- Downloading CHF 200.00

Websites with different language versions of the same content shall count as a single website.

The producer or the principal must notify SUISA in advance indicating the primary URL addresses of the websites on which the audiovisual recording is to be made available.

- 25 The flat fees for performance and making available referred to in points 22 and 24 are not deductible from the fees for performance and making available outside the framework of point 21 or 23.

IV. Minimum fee

- 26 The minimum fee of CHF 50 per invoice shall apply in all cases except for productions in accordance with point 15.3.2.

V. Rebates

- 27 Producers who are members of a professional association of producers or a trade association of principals which support SUI SA in its duties shall be granted a reduction of 10% on the fees calculated in accordance with points 15, 22 and 24 if they regularly produce audiovisual recordings and provided they undertake in writing to comply with the terms and conditions of this Tariff.

VI. Value-added tax

- 28 The fees and royalties in this Tariff do not include value-added tax. If, pursuant to a mandatory provision of fiscal law or as a result of a public vote, value-added tax has to be added, it shall be additionally payable by the client at the legal rate.

VII. Surcharge in case of infringement

- 29 The fees foreseen in this Tariff will be doubled in the following cases:
- if music is used without the necessary licence from SUI SA,
 - if the producer, deliberately or as a result of gross negligence, fails to provide SUI SA with information or provides incomplete or inaccurate information.
- 30 SUI SA reserves the right to claim higher damages.

VIII. Supporting documents

- 31 On request, the producer shall provide SUI SA temporarily a copy of each audiovisual recording for verification.
- 32 SUI SA may also request supporting documents (e.g. copies of invoices) to verify the indications provided by the producer or the principal.
- 33 If the necessary indications or the requested supporting documents are not forthcoming within an additional time-limit set in writing, SUI SA may estimate the data and base its remuneration calculations on its own estimate. Invoices prepared on the basis of estimates will be deemed to have been accepted by the client unless the latter provides SUI SA with complete and accurate data within 30 days of the invoice date.

D. Payments

- 34 SUISA may ask for payments on account and/or for securities.
- 35 SUISA's invoices and any settlement balances shall be payable within 30 days.

E. Marking

- 36 Each audiovisual recording licensed by SUISA pursuant to this Tariff will be assigned a number for inspection purposes. This number must be marked on the recording.
- For audiovisual recordings licensed under point 15.2 or 15.3, only the International Standard Audiovisual Number (ISAN) must be indicated.
- 37 The number serves to identify the audiovisual recording production. When using the audiovisual recording (e.g. for TV commercials), the principal shall indicate the number to the company in charge of the screening or broadcasting.

F. Validity

- 38 This Tariff is valid from 1 January 2019 to 31 December 2021.
- 39 In case of a significant change in circumstances, the Tariff may be amended sooner.
- 40 The validity of this Tariff shall be automatically extended no more than twice and for three years at a time, (i.e. to the end of 2024 and to the end of 2027), unless it is terminated by one party by written notice to the other
- on or before 31.12.2020, or
 - on or before 31.12.2023
- Such termination shall not preclude the submission of an application for extension to the Federal Arbitration Commission for Copyright and Neighbouring Rights.
- 41 If, despite the filing of an application for approval, no subsequent tariff is in force when this Tariff expires, the validity of this Tariff shall be provisionally extended until the expiry of the time limit for appealing the decision of the Arbitration Commission approving the subsequent Tariff.

Disclaimer

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 and Italian version, the version in the official language shall prevail.