



**SUISA**

Swiss Cooperative Society for Authors and Publishers of Music

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## **Tariff VI 2016 – 2021**

### ***Recording music on audiovisual carriers intended for the public***

Approved by the Federal Arbitration Commission for Copyrights and Neighbouring Rights on 7 September 2015 - with the exception of points 13 to 15, the footnote to Section 0 and lines of points 31 and 33 which are not within its competence - and published in Official Journal (FOSC) No 200 of 15 October 2015.

## **SUISA**

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

## **A. Scope of Application**

- 1 This Tariff shall apply to persons who record music on audiovisual carriers or who produce audiovisual recordings with music which are intended for the public and in which the music plays a secondary role, or who have such audiovisual recordings made or manufactured.
- 2 Intended for the public means offering or transferring such recordings to recipients for their personal use.
- 3 This Tariff shall also apply to persons who import audiovisual recordings in Switzerland or Liechtenstein before the rightholders of the music have authorised the distribution of such recordings on the market.
- 4 The Tariff shall apply to principals (producers) and contractors. A principal is the person who has the right to dispose of the audiovisual recording. SUISA deals primarily with principals.
- 5 Principals, producers, contractors and importers are hereafter collectively referred to as "clients". If several clients produce and distribute an audiovisual recording, they shall be jointly and severally liable to SUISA for the obligations under this Tariff.

## **B. Use of Music**

- 6 For the purpose of this Tariff, "music" shall mean non-theatrical music, with or without lyrics, which is protected by copyright and belongs to the worldwide repertoire managed by SUISA.
- 7 This Tariff shall apply to the recording of music on audiovisual carriers intended for the public and their distribution.
- 8 This Tariff shall not apply to the rental of audiovisual recordings.
- 9 SUISA does not dispose of any rights other than authors' musical rights; nor does it dispose of the neighbouring rights of performers, producers or broadcasting corporations. Each licence delivered by SUISA shall be subject to the express condition that production shall have been authorised by all the rightholders concerned.
- 10 This Tariff shall not apply to audiovisual recordings which mainly contain music, i.e. recordings whose theme and contents are music-focused (music films, video clips), and are offered to the public for their music content. Tariff PI regulates such audiovisual recordings.

## C. Licensing procedure

- 11 Licences from SUISA must be obtained in advance.
- 12 SUISA shall grant its licences under the condition that any necessary consent has been obtained from the holders of the musical rights. SUISA may demand proof of such consent.
- 13 *The right to combine music with works of other genres (films, texts, pictures, etc.) is subject to a licence for synchronisation rights which shall as a rule only be granted after consulting the rightholders (authors, publishers) and with their consent.*
- 14 *The application for a licence shall be filed in good time. Audiovisual recordings may not be produced without the explicit consent of SUISA or the rightholder.*
- 15 *SUISA may assume that the rightholder's consent has been obtained if:*
- *the music was composed especially for the audiovisual recording, or*
  - *the music comes from catalogues published for the purpose of adding sound to films and recordings (mood music, library music and archives music),*
  - *the music is not combined with other works in a contextual meaning, except in the case of audiovisual recordings*
    - *where music is an essential and significant component, or*
    - *which could compete with the distribution of sound and audiovisual recordings,*
    - or*
    - *which serve for advertising certain products, services or companies.*

## D. Remuneration \*

### I. Audiovisual recordings intended for the public in Switzerland and Liechtenstein

#### a) Calculation basis, percentage rates

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*\* In addition to the remuneration regulated in this Tariff, the following additional fees may apply:*

- a) *for synchronisation rights (the right to combine music with other works), to the extent that the music is combined in a contextual meaning (the music follows the sequence of images) 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 equals:*
- *50% of the fee for the production of the audiovisual recording under point 16 et seq. and point 22 et seq. .*
- b) *SUISA shall license the recording from sound recordings of mood music catalogues on behalf of the producer for an additional fee of:*
- *50% of the royalty (including synchronisation rights) invoiced by SUISA if the audiovisual recording is distributed exclusively in Switzerland and Liechtenstein.*
  - *100% if the audiovisual recording is also for foreign distribution.*

*For recording from other sound recordings, the producer's consent shall be required against a fee set by the producer on a case-by-case basis.*

*The additional fees for synchronisation rights and re-recording rights shall apply to all printings produced by the client.*

16 Fees shall be calculated as a percentage of the following amounts:

- the actual invoiced price (AIP) if the client has concluded a multiannual contract with SUISA covering royalty settlements and can furnish SUISA the breakdown of his sales with the number of units and sales price per audiovisual recording per accounting period. The AIP is the price invoiced by the client to the retailer or, if the client does not distribute the recordings himself, the actual wholesale price invoiced by the client's official distributor. The price includes any reductions granted to the retailer. The price does not, however, take into account any discounts, bonuses, sales premiums or similar credits
- if all the copies are distributed to the public for free, the audiovisual recording production costs
- the retail sales price, if the client delivers the audiovisual recording directly to the private consumer and the latter pays the client's recommended sales price, or if there is no AIP and the client does not apply the preceding accounting rates. The retail sales price is the price paid by the consumer for the audiovisual recording.

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

17 The rate shall be

- 4.4% of the actual invoiced price (AIP)
- 3.3% of the costs
- 3.3% of the retail sales price.

18 For audiovisual recordings containing music which is only partially protected, the percentage shall be reduced pro rata temporis according to the following ratio:

playing time of the protected music	:	entire playing time of the audiovisual recording without breaks
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if the client furnishes SUISA a detailed breakdown of the music in the recording.

19 In the case of CD-Roms and other audiovisual carriers suitable for interactive use, the relationship between

the storage space of the protected music	:	the total storage capacity
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or, if known, the ratio of

playing time of the protect- ed music to	:	the duration of the video recording
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will be used as the calculation basis if the client furnishes SUISA a detailed breakdown of the music contained in the recording.

**b) Reductions**

- 20 Clients who conclude multiannual agreements with SUISA for all audiovisual recordings and respect the relevant terms and conditions shall be granted a reduction of 10% to allow for possible rebates and returns that cannot be offset in accordance with point 28.
- 21 In addition, contract clients will be granted a reduction as of a given number of units of the same audiovisual recording containing the same music in a single settlement. This reduction shall equal
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|---|-----|
| - for over 2,500 units of the same audiovisual recording  | 3%  |
| - for over 5,000 units of the same audiovisual recording  | 5%  |
| - for over 7,500 units of the same audiovisual recording  | 7%  |
| - for over 10,000 units of the same audiovisual recording | 9%  |
| - for over 12,500 units of the same audiovisual recording | 10% |

**c) Minimum fee**

- 22 The following minimum fees apply:
- for CD-Roms and other interactive audiovisual recordings
    - 29 centimes per audiovisual recording with music, regardless of its duration,
    - 2.2 centimes per audiovisual recording and per minute of music, subject to a maximum of 29 centimes per recording if the client furnishes SUISA an accurate breakdown of the music contained in the recording,
  - for other audiovisual recordings
    - 29 centimes per audiovisual recording with music, regardless of its playing time,
    - 1.1 centimes per audiovisual recording and minute of music, subject to a maximum of 29 centimes per recording if the client furnishes SUISA an accurate breakdown of the music contained in the recording.
- 23 For give-away audiovisual recordings, the minimum fee under point 22 shall be reduced for large volumes as follows
- |                     |         |
|---------------------|---------|
| over 25,000 units,  | by 10%, |
| over 50,000 units,  | by 15%, |
| over 100,000 units, | by 20%, |
| over 150,000 units, | by 25%, |
| over 200,000 units, | by 30%, |
| over 250,000 units, | by 35%. |
- 24 Fractions of minutes in a single recording shall be added together. Fractions of time units shall be invoiced as a full time unit. For each licence, at least CHF 50 will be invoiced altogether.
- For clients who conclude contracts with SUISA, the minimum fee of CHF 50 shall apply per settlement (not per title).

**d) Taxes**

- 25 The fees set forth 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 (2016: ordinary rate 8% / reduced rate 2.5%).

**e) Surcharge for infringement**

- 26 In the following cases, all fees referred to in this Tariff shall be payable at twice the applicable rate:
- if music is used without the necessary licence from SUISA,
  - if a client reports false or incomplete data and accounts with a view to gaining undue advantage.

- 27 Moreover, SUISA reserves the right to claim additional damages.

**f) Start of entitlement to fees**

- 28 The entitlement to fees shall start as soon as an audiovisual recording is manufactured. If the client's settlements are based on the AIP, the entitlement to fees shall start when the recordings leave the depot for sale. In the case of settlements based on AIP, no reductions for returns shall apply. Returns are audiovisual recordings taken back into the client's depot and for which the client receives no payment.

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

**E. Settlement****a) Declaration of recordings, music lists**

- 29 Clients shall declare to SUISA on an ongoing basis - *for music used in combination with other works in accordance with points 13 and 14 of this Tariff, at least 6 weeks before the scheduled production or else 10 days before public release* - the audiovisual recordings with music which they intend to produce, indicating
- original title
  - subtitles in Switzerland, if any
  - original producer
  - country of origin
  - type of recording (documentary, television film, educational film)
  - format (videotape, CD-Rom, DVD, etc.)
  - playing time
  - 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 be attached.

**b) Production and sales declarations**

- 30 Within 10 days of production, the client shall deliver to SUIISA a statement of all the audiovisual recordings covered by SUIISA's licence.
- 31 Clients who have concluded multiannual contracts with SUIISA for all their audiovisual recordings shall deliver quarterly, six-monthly or annual statements in electronic form covering all the audiovisual recordings produced or sold at the AIP on the statement date. *The time limits under points 14 and 29 for music used in combination with other works must in any event be observed.*
- 32 For mass-produced audiovisual recordings, which are as a rule sold mainly abroad, an extract from the inventory management system showing how many audiovisual recordings with music were produced, how many left the main depot and how many were returned may be supplied instead of the accounting statement.
- 33 On request, clients shall provide SUIISA free of charge with a copy of all audiovisual recordings with music at no charge.

**c) Verification of declarations and breaches of the duty to declare**

- 34 To verify the client's declarations, SUIISA may request supporting documents or, subject to advance notice, it may inspect the client's books during business hours.
- 35 Verifications may 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.
- 36 If the necessary information or the requested supporting documents are not forthcoming within an additional time-limit set in a written reminder, or if the client does not permit SUIISA to inspect its books or depot, SUIISA may estimate the relevant data and base its fee calculations on its own estimate.
- 37 If the information on the music used is not forthcoming within an additional time limit set in writing, SUIISA may demand payment of an additional CHF 100. Moreover, SUIISA may procure the missing information at the client's cost.
- 38 Invoices prepared on the basis of estimates will be deemed accepted by the client unless the latter provides SUIISA with complete and accurate data within 30 days of the invoice date.

**F. Payments**

- 39 Unless otherwise provided in the licence or contractual agreements, SUIISA's invoices shall be payable within 30 days. Audiovisual recording licences shall not be valid until the relevant invoice is fully paid. Otherwise, SUIISA will cancel the licence already issued for the production and distribution of the audiovisual recording.
- 40 SUIISA may request down payments up to the anticipated fee amounts and/or request other collateral.

- 41 If the music use intended by the client did not take place, SUISA shall refund the fees paid for that use.

## **G. Labelling audiovisual recordings**

- 42 Audiovisual recordings shall be labelled in the customary commercial form.
- 43 The labels of mass-produced audiovisual recordings shall bear:
- the mark **SUISA®**; SUISA shall make available the necessary clichés free of charge
  - the notice “All rights of the producer and the owner of the work are reserved, especially in respect of public performance, broadcasting and recording”;

## **H. Validity**

- 44 This Tariff shall be valid from 1 January 2016 to 31 December 2016.
- 45 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 one year prior to the expiry date. Such termination shall not preclude the submission of an application for extension to the Federal Arbitration Commission for Copyright and Neighbouring Rights.
- 46 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 next tariff comes into force.

### 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 versions, the version in the official language shall prevail.*