

Announcement by Society ARTISJUS Hungarian Bureau for the Protection of Authors' Rights on the tariffs charged and on the terms and conditions of licensing for the communication of works of literature and music to the public by broadcasting, by cable or in any other manner, for the first act of communication to the public in an encrypted form, and on the other terms of authorising use (R-TV 13)

Based on the provisions in Sections 16 (1), 26 (1)-(7), the first sentence of Section 26 (8), Sections 27, 92/H(1) and 88 (3) of Act LXXVI of 1999 on Copyright (hereinafter referred to as the Copyright Act), for the benefit of authors, composers and lyricists, ARTISJUS hereby determines the tariffs payable for and the terms of licensing, broadcasting and communication to the public by cable or in any other manner (primary communication to the public) of already published works (excluding the use of literary works for stage, musical dramas or their scenes or sections, non-fiction literary works and longer works of polite literature not written for stage, e.g. novels):

Chapter I

Tariffs payable for broadcasting and other primary communication of works to the public

[excluding making works available on demand as regulated in the second sentence of Section 26 (8)] in accordance with Section 27 of the Copyright Act

1. Terrestrial and satellite broadcasting

Radio and television broadcasting organisations are required to pay the following tariffs for recording for the purpose of repeated broadcasting [Section 26 (6) of the Copyright Act] and broadcasting [the second sentence of Section 26 (1) and sections 26 (2), (3) and (4) of the Copyright Act] of already published works (the so-called "smaller rights works") (excluding the use of literary works for stage, musical dramas, or scenes or sections thereof, technical works and longer works of literature not written for stage, e.g. novels):

- 1% of their budgetary subsidy and
- 2% of their revenues from subscription fees and
- 4% of their other revenues related to the broadcasting activity (e.g. revenues from advertising and sponsorship) but at least HUF 12,000 in total every month.

2. Cablecasting, webcasting

Pursuant to Section 26 (7) and the first sentence of Section 26 (8) of the Copyright Act, the organisation which edits the works determined in section 1 into a piece of programming or a programme, or edits the programme-carrying signals into a single stream which can be perceived by members of the public, or which communicates the works to the public:

2.1. shall pay the tariff determined in Section 1 if it makes the programme available to the public not by means of broadcasting [Section 26 (1)-(6) of the Copyright Act] but by cable (cablecasting); 2.2.1 shall pay the tariff determined in section 1, but at least the tariff below if it makes the programme available to the public by means other than by broadcasting [Section 26 (1)-(6) of the Copyright Act] or by cable, but by any other similar device or in any other similar manner, including the use of an IT or electronic telecommunications network (e.g. independent webcasting):

Number of programmes (channels)	Minimum tariff payable
1-5	HUF 8,000/month
6-12	HUF 10,000/month
13-25	HUF 12,000/month

An additional HUF 500 per month is to be paid as a tariff in cases where there are more than 25 programmes (channels).

2.2.2. Radio and television broadcasting organisations must pay the tariff determined in Section 2.2.1 if their usage described in Section 2.2.1 is done in such a manner that members of the public can have an influence on the programme, maintaining the perceptibility of the programme as a stream (members of the public can

influence the programme for example by being able to stop it, fast forward or rewind it, or determine the content of the programme by choosing the genre or the performer, rating the works that make up the programme or in any other manner: known as interactive or premium webcasting). The tariff provision in this section is not applicable to cases where the works are made available to the public on demand [use according to the second sentence of Section 26 (8) of the Copyright Act], i.e. when members of the public may choose the works individually or may compile a programme by choosing the works individually.

3. Tariff payment pro rata temporis (in proportion to musical airtime)

For licensing the uses described in sections 1 and 2, as an alternative to paying the tariffs expressed as a certain percentage of their revenues, radio and television broadcasting organisations may choose to pay tariffs based on the proportion of total daily musical airtime to the total daily airtime, calculated as follows.

3.1. If the daily musical airtime is not more than 15% of the total daily airtime, the tariffs payable are 1% of the budgetary subsidy, 1.5% of the revenue from subscription fees and 2% of other revenues related to the broadcasting activity (e.g. revenues from advertising and sponsorship).

3.2. If the daily musical airtime is more than 15% but not more than 50% of the total daily airtime, the tariffs payable are 1% of the budgetary subsidy, 2% of the revenue from subscription fees and 4% of other revenues related to the broadcasting activity (e.g. revenues from advertising and sponsorship).

3.3. If the daily musical airtime is more than 50% but not more than 75% of the total daily airtime, the tariffs payable are 1% of the budgetary subsidy, 3% of the revenue from subscription fees and 6% of other revenues related to the broadcasting activity (e.g. revenues from advertising and sponsorship).

3.4. If the daily musical airtime is more than 75% of the total daily airtime, the tariffs payable are 1% of the budgetary subsidy, 4% of the revenue from subscription fees and 8% of other revenues related to the broadcasting activity (e.g. revenues from advertising and sponsorship).

3.5. For the purposes of Section 3, musical airtime means the total time of communication to the public, within the scope of this tariff announcement, of musical works determined in Section 1.1 or certain parts thereof which are audible in a piece of programming or in another piece of information not regarded as programming, broadcasted in a programme, during the total daily airtime of a calendar day of a radio or television broadcasting organisation.

3.6. The radio or television broadcasting organisation may only select this option if it notifies ARTISJUS of its choice within 30 days of the publication of this tariff announcement in the Official Gazette. The notice regarding the exercise of this right must contain the planned total daily airtime and the planned daily musical airtime of the radio or television broadcasting organisation. If the radio or television broadcasting organisation selects the option in this section, it will still be required to pay at least the minimum tariff determined in Section 1 or 2.

3.7. Unless a more frequent control is agreed upon by the parties in the licensing agreement, ARTISJUS will check the data provided in the notice in the first quarter following the entry into force of this tariff announcement. Thereafter, it will perform random checks by analysing the programme of the radio or television broadcasting organisation recorded for this purpose on a weekday, a weekend and on a public holiday. ARTISJUS will keep the recording prepared for the purpose of such checks for five years from the end of the given calendar year.

3.8. ARTISJUS shall use these checks to determine the proportion of the daily musical airtime and the total daily airtime as the arithmetic mean average resulting from the analysis of the observed days.

3.9. If the broadcasting organisation so requests, ARTISJUS will grant it access to the result of the check as well as the calculation method of the proportion of the daily musical airtime and the total daily airtime. If the proportion of the daily musical airtime and the total daily airtime determined by the check differs from the proportion calculated on the basis of the data provided in the notice of the broadcasting organisation, the proportion of the daily musical airtime and the total daily airtime determined by the verification shall prevail when applying this tariff announcement.

3.10.1. If the radio or television broadcasting organisation has fully complied with its obligation to supply programming data for the entire calendar year and the proportion of the daily musical airtime and the total daily airtime determined using the data provided, checked and processed differs from the proportion established by the verification performed by ARTISJUS to such an extent that it affects the amount of the tariff payable, the parties will settle accounts with each other.

3.10.2. ARTISJUS may set off any overpayment of the broadcasting organisation against the tariff payable for the last quarter of the calendar year or for the following calendar year according to the agreement of the parties or, if there is no such agreement, on a pro rata basis. If the broadcasting organisation ceases its broadcasting activity (its activity using works) in the following calendar year, ARTISJUS will reimburse amounts overpaid.

3.10.3. The radio or television broadcasting organisation must pay its outstanding tariffs owed, if any. Unless otherwise agreed by the parties, such payment is due together with the tariff payable for the last quarter of the calendar year.

4. Simulcasting

4.1. Pursuant to Section 26 (7) of the Copyright Act, for communicating the works determined in Section 1 to the public using an IT network or an electronic telecommunications network simultaneously with broadcasting ("simulcasting"), in addition to the tariff payable according to Section 1, 2.1 or 3, the radio or television broadcasting organisation must also pay 5% of the same if the communication to the public is performed by the broadcasting organisation, under a name which is determined by it and which is the same as the name of the broadcasted programme, or under a name (designation) used for the communication to the public described in this section, provided that members of the public pay no consideration for this service.

4.2. If the broadcasting organisation pays a tariff according to the ARTISJUS Tariff Announcement with a sign "I", valid at the given time, for the use of its own programme items according to the second sentence of Section 26 (8) of the Copyright Act, and, at the same time, also performs simulcasting use, it shall also pay 4% of such tariff for the simulcasting use in addition to the tariff payable based on Section 1, 2.1 or 3.

4.3. This section is not applicable to retransmission performed by another organisation.

Chapter II

General terms and conditions of the Tariff Announcement

1.1. Based on Section 26 of the Copyright Act, in this tariff announcement, radio or television broadcasting organisations shall mean organisations which communicate their own programmes to the public by means of terrestrial or satellite broadcasting, by cable or in any other manner.

1.2. For the purpose of the application of this tariff announcement, the following are regarded as radio or television broadcasting organisations: the Media Service Promotion and Asset Management Fund (Section 136 of Act CLXXXV of 2010 on media services and mass media) and, according to point 35 of Section 5 (1) of Act LXXIV of 2007 on the rules of broadcasting and digital switchover, the broadcaster and the contributor of the broadcaster who concludes a contract with the subscriber on its own behalf in respect of an independent broadcasting service provided for a special consideration or in respect of its service sold in an electronic telecommunications service package which also includes the broadcasting service, or who is otherwise entitled to the revenue determined in Section 1 of Chapter I or to a certain part of the same.

2.1. On the basis of this tariff announcement, the granting of the license for use is subject to the payment of the tariff. The user obtains the license once it pays the tariff. For the tariff or an instalment paid prior to the start of use, the user will be granted a license for use proportionate to the tariff already paid (instalment).

2.2. The tariffs in Chapter I have been established in consideration of the fact that the licensing of the communication of works of literature and music to the public according to this tariff announcement does not extend to the licensing of the communication to the public of literary works for the stage, musical dramas, scenes or sections thereof, non-fiction literary works and longer works of polite literature not written for stage (e.g. novels), nor to the licensing of broadcasting or other communication to the public of other works of music and literature which fall under the definition of literary and musical grand rights, and to the licensing of the reproduction (audio reproduction) of a musical work for advertisement purposes or the modification or adaptation of a musical work, on which the users must agree directly with each author or with the other certified rightholders.

2.3. The license granted subject to the payment of the tariff according to Chapter I does not extend to use by a member of the public that involves making a permanent copy on a storage unit built in a digital receiver decoder (set top box) or on a storage unit provided to the member of the public by an organisation which edits the programme or edits the programme-carrying signals into a single stream which can be perceived by members of the public or by an organisation which communicates the works to the public (or any agent of such organisation).

3. Other revenues mentioned in this tariff announcement which are related to the broadcasting activity (e.g. revenues from advertising and sponsorship) shall mean all payments and services carried out in the form of transfer of tangible property or performing activities that are covered by the organisation's reporting and

bookkeeping obligations according to the effective accountancy regulations and that are related to the broadcasting activity, irrespective of their source.

4.1. If the organisation participating in the process of use specified in Chapter I (an organisation carrying out communication to the public or broadcasting) or its agent (e.g. a technical service provider, an organisation that edits the programme-carrying signals into a single stream which can be perceived by members of the public) concludes a separate contract with members of the public (subscribers), or a contract which also includes other services for the purpose of providing the programme, and if the organisation or its agent receives any revenue from this as determined in Section I.1, the organisation or its agent must pay a tariff on its revenue, in accordance with the relevant section of Chapter I.

4.2. If more than one person or entity qualifying as users under Sections 1 and 2 of Chapter I are involved in the process of use that falls within the scope of this tariff announcement, they may assume one another's tariff debt payable in accordance with this tariff announcement on condition that ARTISJUS agrees thereto in writing. The terms of ARTISJUS's agreement include but are not limited to the following:

- the user assuming the debt must notify ARTISJUS of all the contributors involved in the entire process of use of broadcasting (primary communication to the public) and all acts of use they carry out as contributors by the commencement of the broadcasting (primary communication to the public) at the latest, and
- the user must undertake the obligation of ensuring that Artisjus or its agents may check the manner, circumstance and extent of use regarding all the contributors of the entire process of use.

5. Data supply for the calculation of tariffs ("settlement"), due date

5.1. Unless a contract concluded with the user or the organisation performing the collective management of users' rights, containing a flat-rate tariff provides otherwise, the settlement necessary for the calculation of the tariff (instalment) must be done every quarter and the tariff is due not later than the last day of the month following the quarter.

5.2. The user must pay the minimum itemised tariff payable in the case of uses determined in Section 2.2 of Chapter I quarterly before the use or, if the duration of use is shorter than that based on the user's report, it shall be payable in advance, before the period of the use, by the 30th day of the month preceding the quarter or the given period, and for the first time by the 15th day following the conclusion of the contract. The obligation to pay the minimum tariff according to this section does not affect the user's settlement obligation under Section 4.1 and the supplementary tariff payment obligation based on that.

5.3. If the tariff is paid late, the user shall pay interest for late payment in accordance with Section 301/A of the Civil Code. If the user does not apply for a license for use or uses the work(s) beyond the scope of the license, the first date of the period for which interest for late payment is payable shall be the commencement date of the use.

6. Data supply for the distribution of tariffs

6.1. The organisations mentioned in section 1 and 2 of Chapter I must provide data about the programme items actually broadcasted or communicated to the public in any other manner as well as about the musical and literary works used in such programming pieces [Section 88(3) of the Copyright Act].

6.2. Unless the parties agree on a shorter deadline, data must be reported quarterly, by the 30th day of the month following the calendar month.

6.3. Data reporting is carried out using a form introduced by ARTISJUS or in another manner (format) determined in the contract of broadcasting (communication to the public) concluded by the parties (in the case of organisations mentioned in section I.2.2, in an electronic format).

6.4. If the user is late in complying with the data reporting, the user will be required to pay a penalty for the period of delay if it fails to report the data in spite of a written warning sent by ARTISJUS, within the extended time limit of at least an additional 10 days set in the warning for the performance of data reporting. The daily rate of the penalty for the delay is 0.5% of the tariff payable by the user for the given quarter, but at least HUF 500 per day. The penalty shall not exceed 30% of the tariff payable by the user.

6.5. If the user fails to comply with the data reporting obligation, or if its performance of this obligation is defective, the user will be required to pay a penalty for defective performance for the period between the deadline for data supply and the date of the proper performance of data reporting, insofar as it fails to correct the deficiency in spite of a written warning sent by ARTISJUS, within the extended time limit of at least an additional 10 days set in the warning for the performance of data reporting. The rate of the penalty for defective performance corresponds to the rate of the penalty for delay determined in section 6.4.

7. ARTISJUS may check the data communicated for the purposes of tariff calculation, as well as the manner and extent of the use of works. If, in the course of an audit as described in this section, ARTISJUS ascertains that a calculation was incorrect and that the difference between the reported information and the information verified by the audit of ARTISJUS and used for accounting with the tariffs is greater than 5%, the service provider will be required to pay at least double the tariff difference that the user is required to pay, as penalty for defective performance.

8. In the first year counted from the first day of their operation, the tariffs of the organisations determined in this tariff announcement which are commencing their activities can only be reduced by the amount of their budgetary subsidies for investment purposes (and not those intended to cover their continuous operating costs) and other investment costs and/or acquisition costs of tangible assets certified by appropriate accounting documents. The reduction shall not exceed 50% of the tariff payable. No other tariff discount can be granted together with this tariff discount.

9. Instead of the itemised tariffs or tariffs expressed in percentage as determined in the relevant provisions of the Tariff Announcement, ARTISJUS may conclude a licensing agreement containing a flat-rate tariff with significant users or with the national organisations performing the collective management of the affected users' rights acting on behalf of the users. Flat-rate licensing agreements may only be concluded if

- a) the affected user does not owe any tariffs and has fulfilled its data reporting obligation (e.g. programmes) regarding the extent of use in accordance with Section 88 (3) of the Copyright Act;
- b) it is possible and justifiable to conclude a flat-fee licensing agreement given the circumstances of use, a significant difference from the typical composition of the works as regulated by the current tariff announcement, or the significant extent of the use and as a result of the tariff to be paid by the user, or the voluntary membership of a significant part of the users in the same organisation performing the collective management of users' rights, and the authorisation in compliance with the law and the statutes of such organisation to conclude a licensing agreement. When concluding flat-fee licensing agreements, no discrimination between service providers may occur in violation of the requirement of equal treatment; i.e., the same discount must be offered if the circumstances are the same.

A flat-fee licensing agreement may only be concluded with national representative organisations if the organisation provides appropriate guarantees for the remuneration payment obligations of its members (i.e. the users concerned) and/or if the organisation collects the data required for the assessment/payment of the remuneration payable by the users concerned, pertaining to the extent of the use and the works used (performances), and forwards such data to ARTISJUS and/or if the organisation assumes the remuneration payment obligation in whole or in part.

10. In the setting of the tariffs, due consideration shall be given to the fact that in the course of the uses specified in the present Tariff Announcement, both protected and non-protected works have been used.

11. If on the basis of this tariff announcement, ARTISJUS concludes a license agreement with a radio-television organisation (a user) whose habitual place of residence is in another member state of the European Economic Area,

- a) the competent courts of Hungary will have jurisdiction to decide any legal dispute that arises under or in connection with a license agreement made under this tariff announcement or in connection with the existence, termination, validity or interpretation of this agreement; the governing law of the dispute will be Hungarian law except for the case specified in (b) below (the applicable laws within Hungary will be primarily the Copyright Act and the Civil Code in civil law issues not governed by the Copyright Act);
- b) if the subject matter of the dispute between the parties of the license agreement is a copyright infringement by the radio-television organisation or its contributor, the governing law will be the law of the state where the use resulting in infringement took place.

For the purposes of this section, the habitual place of residence of legal persons or other organizations without legal personality is the location of their head office.

12. The remuneration rates specified in this tariff announcement do not include VAT. Remunerations must be paid inclusive VAT at the effective rate.

13. Effective period of the Tariff Announcement

This tariff announcement shall be in force from 1 January 2013 to 31 December 2013.

*Society ARTISJUS Hungarian Bureau for
the Protection of Authors' Rights
(ARTISJUS Magyar Szerzői Jogvédő Iroda
Egyesület)*

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I hereby approve of the tariff schedule in accordance with Section 92/H(3) of the Copyright Act.

Budapest, 7 December 2012

Dr Tibor Navracsics m.p.
Minister of Public Administration and Justice