



## What are the basics of the Common Tariff 14 (CT 14)?

Articles 13a and 35a URG [Swiss Copyright Act], which entered into force on 1 April 2020, grant unrenounceable remuneration rights [right to remuneration] in favour of the authors of audiovisual works and the performers in such works for uses in the video-on-demand sector.

“**Uses** addressed by this tariff consist of the legitimate making available of audiovisual works on online platforms so that persons in Switzerland (**Swiss End Users**) may access them from places and at times of their choosing. **User** means the person who makes such uses” [CT 14, marginal ref. 1].

The purpose of CT 14 is to implement this remuneration right. The tariff is based on an agreement between the collective management organisations and the relevant user associations. On 8 November 2021, CT 14 was approved by the Federal Arbitration Commission for the Exploitation of Copyrights and Related Rights - it entered into force on 1 January 2022.

## Which works and offers are covered?

“Uses are made in the context of *offers* that can be assigned to one of the following business models (each a *form of offer*)” [CT 14, marginal ref. 2]:

<b>TVOD</b>	Transactional Video on Demand
<b>EST</b>	Electronic sell through
<b>SVOD</b>	Subscription Video on Demand
<b>AVOD</b>	Advertising-based Video on Demand
<b>FVOD</b>	Free Video on Demand

“If a user operates several independent offers relevant under this tariff of the same or different forms of offer, the [...] remuneration for each offer shall be calculated separately” [CT 14, marginal ref. 4].

“Payment of the [...] remuneration shall not result in the user being permitted to carry out the uses or in the retroactive authorisation of uses already made. Rather, the remuneration rights covered by the tariff presuppose that the user exploits the audiovisual works as permitted [by law]” [CT 14, marginal ref. 6]. The user must therefore acquire the necessary licenses in advance (e.g. from the distributor, the producer or an aggregator).

The remuneration rights do not exist for all audiovisual works; rather, the law provides for the right only if certain conditions are met [see CT 14, marginal ref. 22, 23, 24]. For example, only works that were produced in a relevant country of production are covered. Whether a country is a relevant production country depends on the legislation there and can therefore change over time. According to the collective management organisations, the countries concerned at present are as follows:

Relevant production countries for copyright (CR)	Relevant production countries for neighbouring rights (NR)
Argentina; Belgium; Bulgaria; Canada (French-speaking); Chile; Colombia; Estonia; France; Italy; Latvia; Luxembourg; Monaco; Poland; Spain; Switzerland; Uruguay	Brazil; Colombia; France; Italy; Spain; Switzerland



## What must be reported and when?

The user shall provide SSA with all information required for determining, calculating and distributing the remuneration.

- **Notifications from 2022 onwards: Determination of exception quotients [CT 14, marginal ref. 25].**

Within 90 days of a corresponding request by SSA, users providing services relating to EST offers (calculation model Alpha), TVOD offers (calculation model Alpha), SVOD or AVOD offers shall submit information on all audiovisual works (i.e. all made accessible works) used by them on the respective cut-off date [see CT 14, marginal ref. 49]. Excluded from this are offers relating to FVOD, as well as TVOD and EST, which are calculated according to the calculation model Beta upon the timely expressed request of the user.

- **Notifications from 2023 onwards: Uses in the previous year [CT 14, marginal ref. 51 et seq.]**

Depending on the form of offering, the user shall report the following information to SSA no later than 30 April of each calendar year with respect to the previous calendar year:

AVOD	<ul style="list-style-type: none"> <li>• <b>Revenue [marginal ref. 51]:</b> <ul style="list-style-type: none"> <li>▪ Broken down into categories as per marginal ref. 14.</li> <li>▪ Income determination of bundles/freebies [marginal ref. 18 et seq.];</li> </ul> </li> <li>• List of <b>used<sup>1</sup> [marginal ref. 53] or covered<sup>2</sup> [marginal ref. 54] works</b> with information according to <b>marginal ref. 49</b>, with date of removal from offer, if applicable [marginal ref. 53]; and</li> <li>• <b>Number of retrievals per used [marginal ref. 53]/covered work [marginal ref. 54].</b></li> </ul>
SVOD	<ul style="list-style-type: none"> <li>• <b>Revenue [marginal ref. 51]:</b> <ul style="list-style-type: none"> <li>▪ Broken down into categories as per marginal ref. 14.</li> <li>▪ Income determination of bundles/freebies [marginal ref. 18 et seq.];</li> </ul> </li> <li>• List of <b>used works [marginal ref. 53]</b> with information according to <b>marginal ref. 49</b>, with date of removal from offer, if applicable [marginal ref. 53];</li> <li>• <b>Number of retrievals per used work [marginal ref. 53];</b> and</li> <li>• <b>Number of subscribers</b> in each calendar month [marginal ref. 51].</li> </ul>
TVOD, EST	<ul style="list-style-type: none"> <li>• <b>Revenue [marginal ref. 51]:</b> <ul style="list-style-type: none"> <li>▪ Broken down into categories as per marginal ref. 14.</li> <li>▪ Income determination of bundles/freebies [marginal ref. 18 et seq.];</li> </ul> </li> <li>• List of <b>used works [marginal ref. 53]</b> with information according to <b>marginal ref. 49</b>, with date of removal from offer, if applicable [marginal ref. 53];</li> <li>• <b>Number of retrievals per used work [marginal ref. 53];</b> and</li> <li>• in case of calculation according to <b>Model Beta [marginal ref. 32]</b>, additionally the income from transactions with a Swiss end user [marginal ref. 53].</li> </ul>
FVOD	<ul style="list-style-type: none"> <li>• <b>Aggregated playing time of covered works</b> per month [marginal ref. 52];</li> <li>• List of <b>used [marginal ref. 53] or covered [marginal ref. 54] works</b> with information according to <b>marginal ref. 49</b>, with date of removal from offer, if applicable [marginal ref. 53]; and</li> <li>• <b>Number of retrievals per used [marginal ref. 53]/covered work [marginal ref. 54].</b></li> </ul>

<sup>1</sup> **Used works** are all works made accessible by the user that are retrievable in Switzerland.

<sup>2</sup> **“Covered [audiovisual] works** are all those [audiovisual] works included in the offer for which the Act provides for remuneration rights, [...]” [CT 14, marginal ref. 22].



## How is the remuneration calculated?

"Remuneration according to Art. 13a URG (Copyright) and those according to Art. 35a URG (Neighbouring Rights) is calculated separately [CT 14, marginal ref. 12].

Special rules apply to the calculation of the fee for bundles and "freebies" [cf. CT 14, marginal ref. 18 et seq.], these are not included in the tabular overview below.

Offer	Calculation of remuneration [fees]
AVOD	<ul style="list-style-type: none"><li>• [Remuneration CR] = [Revenue] x [Remuneration rate: 5%] x [exception quotient<sup>3</sup>]</li><li>• [Remuneration NR] = [Revenue] x [Remuneration rate: 1.9%] x [exception quotient]</li></ul>
SVOD	<ul style="list-style-type: none"><li>• [Remuneration CR] = [Revenue] x [Remuneration rate: 5%] x [exception quotient]</li><li>• [Remuneration NR] = [Revenue] x [Remuneration rate: 1.9%] x [exception quotient]</li></ul>
TVOD, EST	<p><i>Calculation Model Alpha [marginal ref. 33]:</i></p> <ul style="list-style-type: none"><li>• [Remuneration CR] = [Revenue] x [Remuneration rate: 5%] x [exception quotient]</li><li>• [Remuneration NR] = [Revenue] x [Remuneration rate: 1.9%] x [exception quotient]</li></ul> <p><i>Calculation Model Beta [marginal ref. 34]:</i></p> <ul style="list-style-type: none"><li>• [Remuneration CR] = [Revenue generated in connection with covered audiovisual works] x [Remuneration rate: 5%]</li><li>• [Remuneration NR] = [Revenue generated in connection with covered audiovisual works] x [Remuneration rate: 1.9%]</li></ul>
FVOD	<p><i>Calculation by the minute [marginal ref. 36,37]:</i></p> <ul style="list-style-type: none"><li>• [Remuneration CR] = [Minute base: CHF 0.00238.-] x [aggregated playing time of the total of covered audiovisual works included in the offer in minutes] for FVOD offers from memory institutions &amp; from local and regional broadcasting companies from Switzerland.</li><li>• [Remuneration RR] = [Minute base: CHF 0.00107.-] x [aggregated playing time of the total of covered audiovisual works included in the offer in minutes] for FVOD offers from memory institutions &amp; from local and regional broadcasting companies from Switzerland.</li></ul> <p><i>Calculation based on annual flat rates [marginal ref. 38,39]:</i></p> <ul style="list-style-type: none"><li>• Flat rates as negotiated with user associations (listed separately by CR and NR).</li></ul>

<sup>3</sup> "The exception quotients correspond to the ratio between the number of covered audiovisual works included in the offer (defined in marginal ref. 22) and the total number of audiovisual works included in the offer" [CT 14, marginal ref. 25].

## Contact

If you have any questions about the new CT 14, please do not hesitate to contact us.

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