

FINANCIAL REPORT ON THE TARIFF FOR THE USE OF WORKS, PHONOGRAMS AND/OR
AUDIOVISUAL RECORDINGS AND PERFORMANCES CONTAINED THEREIN FROM THE EKKI
REPERTOIRE BY PROVIDERS OF VOD AND STREAMING SERVICES ON THE INTERNET

Euskal Kulturgileen Kidego EKKI Elkartea (EKKI) is a collective management entity for intellectual property rights. It was set up under Royal Legislative Decree 1/1996, of 12 April 1996, approving the revised text of the Intellectual Property Law (hereinafter IPL) and Decree 141/2011, of 28 June 2011, approving the Agreement of the Joint Committee on Transfers of 22 June 2011, on the extension of services of the General State Administration transferred to the Autonomous Community of the Basque Country by Royal Decree 3069/1980, of 28 September 1980, in the field of enforcement of intellectual property legislation.

Euskal Kulturgileen Kidegoa (EKKI) obtained, by Resolution of 20 October 2014, from the Director of Cultural Heritage, authorisation to act, exclusively or for the most part, within the Autonomous Community of the Basque Country, as a management entity for the rights recognised in the Intellectual Property Law.

In accordance with its statutes, its goal is to manage the economic rights of authors and other rights holders. Among others, it manages the tariffs referred to in this report, which are those for the use of the repertoire of Euskal Kulturgileen Kidegoa EKKI Jabetza Intelektualeko Eskubideen Kudeaketarako Entitatea (hereinafter EKKI) by audiovisual *streaming* service providers on the Internet:

- a) Exclusive rights arising from reproduction and communication to the public, including making available, as regards authorship or ownership of other related rights (including the rights of performers and producers, as set out in Book II of the IPL) in literary, audiovisual, graphic, performative and musical works.
- b) The rights of simple remuneration that correspond to these same right holders, in particular those specified in Articles 20, 90, 108, 116 and 122 of the IPL, as regards the reproduction and communication to the public of the aforementioned works, and the reproduction and communication to the public of phonograms and/or audiovisual recordings that include performances by performers.

All uses not corresponding to this type of user, as well as all those which have their own specific tariff in EKKI's catalogue of general tariffs, are not included in the tariffs covered in this report.

I. USER IDENTIFICATION AND MODE OF USE

The tariff subject of this report corresponds to the use of works from EKKI's repertoire by VOD and streaming service providers over the internet. Specifically, it refers to platforms for audiovisual works in particular or video in general. These may offer the services by enabling access to the works through an internet address, application, or similar use, and may or may not offer temporary or permanent downloading of the works.

II. BREAKDOWN AND EXPLANATION OF THE TARIFF COMPONENTS

These tariffs replace those previously established in the corresponding sections of EKKI's General Tariffs for users providing VOD and streaming services on the Internet. They are also in line with the principles established in Order CUD/330/2023, of 28 March, approving the methodology for determining the general tariffs of intellectual property rights management societies for the use of their repertoire and the content of the financial report that must accompany the general tariffs.

a. TAXABLE BASE

In the calculation of the tax base, different variables are established, in terms of determining the amount of income linked to the exploitation of the repertoire (IVER) within the total operating income or other income, in relation to the relevance of the use of the repertoire in the activity.

- Among the expenses considered chargeable, and therefore related to the use of the repertoire, we take into account, by way of example, income that makes up the bulk of most of these types of users, whether public or private: income from subscriber fees, income from advertising, and subsidies received for the development of the usual activity and its parallel in the private sector, capital contributions made to cover the operating deficit.
- For specifically non-chargeable expenses, the general definitions set out in the previous section are limited.

b. PRICE FOR THE USE OF RIGHTS

In accordance with the content of article 5 of Order CUD/330/2023, **actual use** is considered to be the use of EKKI's repertoire by the user, in the whole of their activity, which can be identified individually. EKKI applies a tariff based solely on the identification of effective use, ruling out any other type of comparative or extrapolated consumption measurement.

Actual use is derived from the **intensity of use (Quantitative Importance)** of the repertoire in the user's activity as a whole, regardless of the specific works used, expressed as a percentage of time. For the purposes of applying this criterion, each repeated use of a work is equivalent to the additional use of a work for the first time. The intensity of use is determined by the calculation of actual use, which is the basis for these tariffs.

The **relevance of use (qualitative importance)** is the criterion for determining to what extent the use of the repertoire qualitatively affects the user's activity. The use of EKKI's repertoire

which is the subject of this report (mainly musical and audiovisual works) is, as in the case of the rest of the entities which manage musical and audiovisual works, of a principal nature, and therefore of maximum relevance, insofar as its use is, as established in the aforementioned Order, essential for carrying out the activity of the providers of VOD and streaming services over the internet.

The criterion of the **scope of the repertoire** is reflected in the calculation of effective use, given that, by identifying the effective use of the works, the proportion of protected works and benefits managed by EKKI out of the total number of works exploited by each user will necessarily be obtained. Thus, EKKI's tariffs, whose repertoire is smaller than that of other collecting societies by design due to the limited scope of the society itself, provide rightsholders with the same benefits without generating a higher financial cost for users. The narrower scope of the repertoire, however, is reflected in a substantial difference in minimum tariffs compared to the other collecting societies competing with EKKI.

c. PRICE FOR THE SERVICE PROVIDED

In accordance with the provisions of Order CUD/330/2023, the Price of the Service Provided (PSP) has been calculated in accordance with the principles of efficiency and good management, including the following costs:

- Membership and repertoire acquisition costs
- Costs of setting up and using systems for the aggregation of the repertoire and the inclusion of the necessary metadata.
- Costs of monitoring the effective use of the repertoire, identification and matching
- Costs related to the development and negotiation of tariffs

The costs are included in the effective usage charge, and represent 25% of the price for the use of rights, both in the case of the tariff rate indicated in section V of the tariffs and the minimum tariffs indicated in section VI.

III. COMPARISON WITH TARIFFS SET WITH OTHER USERS FOR THE SAME MODALITY

There are no other comparable rates and the use of EKKI's repertoire in this modality will be governed by these rates. However, in accordance with the provisions of article 3 of Order CUD/330/2023, EKKI will be able to negotiate tariffs with users, always based on this tariff.

IV. COMPARISON WITH THE TARIFFS ESTABLISHED BY OTHER COLLECTING SOCIETIES IN OTHER MEMBER STATES OF THE EUROPEAN UNION FOR THE SAME TYPE OF USE

Comparison has been made with the following CMOs:

ENTITY	TARIFF RATE %	MINIMUM subsc.	MINIMUM acc.
AUTHORS' RIGHTS			
EKKI	4,1%	0,02€ s/m	0,005€ x stream
SGAE (EN)	4,375%	0,209€ s/m	0,052€ x stream
SABAM (BE)	6,25%	0,5477€ s/m	0,1337€ x stream
NEIGHBOURING RIGHTS			
EKKI MUS	4%	0,02€ s/m	0,005€ x stream
AIE (ES)	5,6%	X	X
EKKI AV	1,9%	0,02€ s/m	0,005€ x stream
AISGE (ES)	1,89%	X	X