

Use of images by service providers for the sharing of online content

Tariff for compensation of use of still images by service providers for the sharing of online content pursuant to Sections 1 and 2, 4, 5 (2), 6 (1) and 12 (1) UrhDaG

Net amounts exclusive of VAT at the prevailing rate.

I. Scope of application

This tariff applies for the communication to the public of depictions of works of visual art, photography, illustration, design and other image works including photographs pursuant to Section 2 (1) nos. 4 and 5, 72 of the German Copyright Act (UrhG) (together: still image(s)), including the use of still images in motion-picture content (e.g. audiovisual content, GIFs and Reels) through service providers within the meaning of Section 2 of the German Copyright Liability of Online Content Sharing Service Providers Act (UrhDaG).

It regulates the authorisation of the service provider to communicate to the public still images which have been uploaded by users of the Service (hereinafter users) who are not acting commercially or not realising considerable income and which have not been created by the users themselves.

This tariff also sets out the compensation for all statutory claims to (direct) remuneration under Section 4 (3), 5 (2) and 12 (1) UrhDaG.

II. Royalty Fee

1. Regular Royalty Fee

The Regular Royalty Fee is comprised of a percentage share of the assessment basis under Section II. 3.

a. Tariff rates:

The tariff rates of the standard remuneration distinguish between the following service categories:

i.	Image Platforms	52.50%
ii.	Visual Social Media Services	19.50%
iii.	Short-Message Services	11.50%
iv.	General Social Media Services	10.50%
v.	Career Networks	6.00%
vi.	Music and Video Services	1.75%

b. Uses not relevant for the Regular Royalty Fee:

The Regular Royalty Fee Rates according to point a. already considers that

- between 0.06 and 13.5 percent of the image uses are attributable to users who act commercially or generate substantial income,

- for services according to lit. a. i. up to 23 percent, according to lit. a. ii. up to 30 percent, according to lit. a. iii. and v. up to 33 percent, according to lit. a. iv. up to 32 percent and according to lit. a. vi. up to 25 percent of the image uses are attributable to users who are entitled to use them;
- for services according to lit. a. i., ii. and iv. to vi. one percent and according to lit. a. iii. five percent of the image uses are permitted by law and do not establish a remuneration claim pursuant to Section IV. 1. c.

These standard remuneration rates compensate for the granting of rights and the remuneration claims pursuant to Section IV. 1. a. to c.

c. Direct remuneration claim:

To settle the direct remuneration claim pursuant to Section IV. 1. d., the following surcharge in percentage points shall be added to the Regular Royalty Rate set forth above:

i.	Image Platforms	0.750 percentage points
ii.	Visual Social Media Services	0.075 percentage points
iii.	Short-Message Services	2.000 percentage points
iv.	General Social Media Services	0.020 percentage points
v.	Career Networks	1.000 percentage points
vi.	Music and Video Services	0.001 percentage points

2. Minimum Fee

The following annual Minimum Fee applies per 100,000 unique visitors on a monthly average:

a.	Image Platforms	85,000.00 EUR
b.	Visual Social Media Services	30,000.00 EUR
c.	Short-Message Services	20,000.00 EUR
d.	General Social Media Services	15,000.00 EUR
e.	Career Networks	10,000.00 EUR
f.	Music and Video Services	5,000.00 EUR

The calculation is based on the average number of unique visitors to the website(s) of the Service (specific to the territory of the Federal Republic of Germany). For the respective service categories, the annual minimum compensation cannot be below the amount for up to 100,000 unique visitors on a monthly average (absolute minimum compensation).

These Minimum Fee shall cover the grant of rights and the settlement for the statutory remuneration claims as set forth in Section IV. 1. a. to d.

3. Assessment basis

- a. The assessment is based on the Net Revenue of the Service (gross revenue less the applicable value-added tax) attributable to the advertising of uses taking place on the Service in the territory of the Federal Republic of Germany (total revenue). This includes all pecuniary benefits and considerations, in particular revenues from advertising, from the exploitation of collected and evaluated data, from sponsoring, from bartering, compensation or gift transactions; this also

includes foreign revenues to the extent that these relate to the operation of the Service in the Federal Republic of Germany. Also included are revenues from media-for-equity transactions, in which the service provider provides advertising time and receives a shareholding under corporate law from the advertising company instead of pecuniary compensation.

- b. Service providers that can demonstrate specifically, for each of the uses subject to this tariff, the revenue share generated hereby pursuant to Section II. 3. a., this share of the total revenue shall be used as the basis for calculating the Regular Royalty Fee. In this case, the Regular Royalty Fee according to Section II. 1. a. i. shall be applied and adjusted with regard to the uses not relevant to the Regular Royalty Fee according to Section II. 1. b. To compensate and settle the direct remuneration claim the surcharge according to Section II. 1. c. shall be applied.

III. Definition of the service categories

1. Image Platforms:

Image Platforms focus on communicating still images.

2. Visual Social Media Services:

Visual Social Media Services focus on communicating still images and moving images.

3. Short-Message Services:

Messaging Services focus on communicating text, normally also linked with still or moving images.

4. General Social Media Services:

General Social Media Services are those services which cannot be assigned to any other service category.

5. Career Networks:

Career Networks communicate text, still images and moving images relating to the world of work.

6. Music and Video Services:

Music and Video Services focus on communicating musical works or moving images.

IV. General provisions

1. Extent of the granting of rights / Compensation for statutory remuneration claims

a. Grant of rights:

The non-exclusive grant of rights under this tariff comprises the communication to the public of still images of the repertoire of VG Bild-Kunst which users upload to their own account/profile, post to their own stories/newsfeeds/pinboard or share from other user's newsfeed.

b. Collective licence with extended effect:

The non-exclusive grant of rights under this tariff also comprises the communication to the public of still images of External Rightsholders within the meaning of Section 7a of the German Collecting Societies Act (VGG) and in accordance with Sections 51, 51a VGG provided that and subject to the condition that the External Rightsholder did not and/or will not object to the grant of rights.

c. Compensation for statutory remuneration claims:

This tariff sets out the compensation for the following statutory remuneration claims owed by the service provider for the repertoire of the still image:

- Remuneration claims for uses authorized by law pursuant to Section 5 (1) no. 2, (2) UrhDaG;
- Remuneration claims for uses presumably authorized by law pursuant to Sections 9 to 11, 12 (1) UrhDaG.

d. Statutory direct remuneration claim:

This tariff sets out the compensation for the statutory direct remuneration claim in the case of contractually authorized rights of use by third parties pursuant to section 4 (3) UrhDaG for the repertoire of the still image.

2. Territorial scope

The grant of rights and the compensation for statutory remuneration claims according to Section IV. 1. shall be limited to the territory of the Federal Republic of Germany.

3. Transferability

The rights of use shall be non-transferable to third parties.

4. Adaptation, modification and distortion

The grant of rights does not extend to other rights, in particular the right to adapt the still image or combine it with other works. Modifications must satisfy the requirements of Sections 14 and 39 UrhG. This is without prejudice to Section 13 (3) UrhDaG.

5. Rights of third parties

The moral rights of the author shall not be infringed. Rights of third parties, such as rights of natural persons on photographs/photographic works, and other intellectual property rights such as trademarks, shall not be affected.

6. Temporal validity

The tariff is valid for the period from 1 August 2021.