

SABAM SECTOR RATE FOR COMMERCIAL TELEVISION BROADCASTS AIMED AT THE BELGIAN PUBLIC

I. Subject matter and scope of the sector rate

A. The sector rate covers linear and non-linear programmes (networks) broadcast by the broadcaster free of charge whereby works from the Sabam repertoire are communicated or made available to the public.

In so far as such communication is made free of charge by the broadcaster itself, the sector rate shall include both linear and non-linear communication to the public of works of the Sabam repertoire used in programmes. This means the broadcasting of programmes or parts thereof via a network or making them available free of charge via websites operated by the broadcaster itself.

Catch-up services and VOD offers (Video on Demand) fall within the scope of the sector rate when the public is not charged in any way, the programmes are the broadcaster's own¹ and are organised by the broadcaster itself. Any use of the Sabam repertoire that differs from the above provisions is expressly excluded.

B. The sector rate applies to all television programmes (networks) of all commercial broadcasters operating in Belgium or aimed at the Belgian public with an annual turnover per network of at least € 1,196,555.

This rate applies to all television programmes that generate a net annual turnover of € 1,196,555 or more with revenues generated from the operation of the network.

The sector rate does not apply if this condition is not met, nor does it apply to pay broadcasters and pay broadcasting activities and television programmes (networks) that are only available in paying packages.

If a broadcaster operates several television programmes (networks), only those that meet the above condition will be taken into account.

C. The sector rate does not under any circumstances include the possible distribution by third parties of the original television programmes (networks) subject to the rate

The application of the rate includes the operations as described under point A, namely those which fall under the direct and unique responsibility of the broadcaster. Further communication to the public through third parties does not fall under this application, such as distribution by cable or similar techniques.

II. Fee per network for the broadcaster's use of musical works from the Sabam repertoire

A. Principle: proportional remuneration of authors through participation in the turnover (after flat-rate deduction of directing costs) per network generated by the broadcaster

The remuneration for the use of musical works in linear and non-linear applications is calculated as a percentage of the turnover generated by the broadcast of the network and by making it available via the associated websites operated by the broadcaster itself. However, the total duration of the musical works used on those websites shall be limited to a maximum of 5% of the duration of those of the linear broadcasts.

¹Own programmes are understood to mean:

- programmes and productions made by the broadcaster itself
- programmes and productions commissioned by the broadcaster and made by a third party for the exclusive use of the broadcaster
- co-productions of programmes and productions of the broadcaster with another broadcaster licensed by Sabam or by an authors' association with which Sabam has concluded a reciprocal agreement
- programmes and productions which the broadcaster co-produces with third parties and in which the broadcaster is therefore involved in the production process of those programmes and productions for the purposes of exploitation via electronic communications networks.

To determine the percentage, the duration of the actual number of hours used on an annual basis in the linear application, corrected by the effective share of the Sabam repertoire in these hours and weighted by a coefficient by genre, shall be taken into account.

A first duration adjustment concerns the share that the Sabam repertoire represents in this duration. For example, this duration will be adjusted by excluding works from the public domain from the calculation, as well as works that are not represented by Sabam.

A second adjustment, the 'weighting', concerns the valuation of the broadcast time.	
The specified broadcast time is "valued" according to the following percentages:	
Foreground music jazz, serious music, etc. (F)	167%
Foreground music popular genre (F)	100%
Credits (G or H)	40%
Background music (B)	25%
Game programmes (S)	20%
Test card (T)	10%

For music used in audiovisual productions, the type of production is taken into account, with the following adjustments:	
Animation	167%
Documentary	167%
Drama	167%
Dramatic, Musical drama and Choreographic works	167%
Fiction	167%
Literary works	167%
Sitcom	167%
Advertising	100%
Report	100%
Sketch	100%
Soap	100%
Video clip	100%
Credits	33%

Applying both adjustments will result in the effective duration of the music repertoire being converted into a weighted broadcast time which will sometimes be higher, sometimes lower. These weighted hours are used in the calculation.

Pricing method: a remuneration percentage depending on the degree of occupation of the total broadcast time per network by the communication of musical works from the Sabam repertoire

The obtained number of hours is compared to the total number of hours in a calendar year, namely 24 hours multiplied by 365 days = 8,760 hours.

For the sake of simplification, 40 tranches of 2.5% or 219 hours each are used.

Each of these tranches gives rise to the application of a remuneration percentage, even when a tranche has only been started.

Thus, a programme (network) that plays between 8,541 and 8,760 weighted hours of musical works on an annual basis will be subject to a collection percentage of six percent. For a network that plays no more than 219 weighted hours of music on an annual basis, this percentage will be 0.15%. For all other programmes (networks), the percentage will be between these two extremes.

The table, in which the number of weighted hours is stated in the first line and the applicable percentage in the second line, is as follows:

8,760	8,541	8,322	8,103	7,884	7,665	7,446	7,227	7,008	6,789
6.00%	5.85%	5.70%	5.55%	5.40%	5.25%	5.10%	4.95%	4.80%	4.65%

6,570	6,351	6,132	5,913	5,694	5,475	5,256	5,037	4,818	4,599
4.50%	4.35%	4.20%	4.05%	3.90%	3.75%	3.60%	3.45%	3.30%	3.15%

4,380	4,161	3,942	3,723	3,504	3,285	3,066	2,847	2,628	2,409
3.00%	2.85%	2.70%	2.55%	2.40%	2.25%	2.10%	1.95%	1.80%	1.65%

2,190	1,971	1,752	1,533	1,314	1,095	876	657	438	219
1.50%	1.35%	1.20%	1.05%	0.90%	0.75%	0.60%	0.45%	0.30%	0.15%

The royalties are to be increased by the VAT.

C. Definition of turnover and deduction for the application of the remuneration percentage

Turnover is defined as the income generated by broadcasting advertising, promotional and sponsorship announcements (of productions and co productions of programmes or other events) on the network; sponsorship income from events organised by the network that are subject to a programme on the network; the income generated by teleshopping and teleshopping advertisements, in particular programmes or advertisements broadcast on the network in which the products and services are offered for sale directly to the viewer; the revenue generated by product placement, all telecommunications revenues generated by the network through broadcasts from the network, including ringing games and revenues generated by organising contests; the revenues generated by the websites if works from the repertoire can be consulted on these websites and the advertising or sponsorship revenues resulting from the free offer of programmes or parts of programmes on demand.

Commission fees, discounts and premiums as well as the actual costs of an internal or external advertising direction are taken into account by applying a flat-rate deduction of thirty percent on the basis, composed of the turnover defined above.

However, this flat-rate deduction does not apply to the aforementioned income generated by teleshopping and income generated by telecommunications applications.

D. Optional: possibility of extending the scope of the sector rate

The scope, as described under Section A., may be extended at the request of the commercial broadcaster to include its paying online offers and the sale of its own programmes to foreign broadcasters, under the conditions provided for under Chapter VIII., Section B., last paragraph.

III. Fee per network for the broadcaster's use of audiovisual works from the Sabam repertoire

A. Principle: remuneration on an hourly basis taking into account the broadcaster's market share per network

The remuneration for the use of audiovisual works in linear and non-linear applications shall be calculated in the form of an hourly remuneration taking into account the market share achieved by the network during the year to which the remuneration relates to determine the value of this remuneration.

This concerns the figures established by CIM (*Centrum voor Informatie over de Media* - www.cim.be), which indicate the market share 4+ (four years and older) on the entire viewing population realised in the part of the country in which the target audience of the network is located.

B. Pricing method: a reference hourly rate to be modulated according to a logarithmic market share coefficient per network

The remuneration is set at a reference hourly rate of € 2,632.42 for a network achieving a market share of 30%. This reference viewing figure represents the benchmark by which the market share of each network is converted into a coefficient which, in turn, will modulate the reference price. This conversion into market share coefficients is done according to the logarithmic method with base 10, the market share corresponding to 1. A given programme may be assigned a coefficient higher than 1 or lower than 1 to minimum 0.1.

To calculate the remuneration for the year in question, the modulated reference rate is multiplied by the number of started and corrected hours in which Sabam's audiovisual repertoire is used, whereby the number of linearly broadcast hours is added to the number of non-linear hours made available.

The reference hourly rate of € 2,632.42 concerns an amount without VAT and applies to the calculation of the fee for the year 2020. It is linked to the consumer price index 109.04 of December 2019 (base 100 = 2013). It will be adjusted annually according to the following formula:

New remuneration = remuneration for the year N-1 x (index of December N-1 / index of December N-2).

C. Adjustment and weighting, per hour, in accordance with the nature and use of the communicated works of the Sabam repertoire by the broadcaster

In the case of an audiovisual work in which only part of the audiovisual rights are represented by Sabam, the duration will be adjusted in proportion to this share.

A weighting will then be applied to the works of the repertoire word & image (direction, screenplay, etc.), taking into account the type of production.	
Animation	167%
Documentary	167%
Drama	167%
Dramatic, Musical drama and Choreographic works	167%
Fiction	167%
Literary works	167%
Sitcom	167%
Advertising	100%
Reportage	100%
Sketch	100%
Soap	100%
Video clip	100%
Credits	33%

Applying both adjustments will result in the effective duration being converted into a weighted broadcast time which will sometimes be higher, sometimes lower. These weighted hours are used in the calculation.

IV. Fee per network for the broadcaster's use of works of visual art from the Sabam repertoire

A. Principle: annual lump sum modulated according to market share to remunerate a maximum number of sequences set by Sabam

The remuneration for the use of the graphic, visual and photographic arts repertoire in linear and non-linear applications is calculated in the form of a remuneration per sequence, taking into account the market share achieved by the network during the year to which the remuneration relates to determine the value of this remuneration. This concerns the figures established by CIM, which indicate the market share 4+ on the entire viewing population realised in the part of the country in which the target audience of the network is located.

A sequence is defined as a reproduction and display of a work of graphic, visual or photographic art per started tranche of 10 seconds.

B. Pricing method: a fixed coverage, based on a reference rate per sequence, modulated according to a logarithmic market share coefficient, for a given maximum number of sequences per year and, if this number is exceeded, a remuneration on the same modulated hourly basis for the additional sequences

The remuneration is set at a reference rate of € 81.37 per sequence for a network achieving a market share of 30%. This reference viewing figure represents the benchmark by which the market share of each network is converted into a coefficient which, in turn, will modulate the reference price.

This conversion into market share coefficients is done according to the logarithmic method with base 10, the market share corresponding to 1. A given programme may be assigned a coefficient higher than 1 or lower than 1 to minimum 0.1.

If a network uses more than 365 sequences per year in its linear and non-linear applications taken together, the remuneration for each additional sequence shall be added to the modulated sequence remuneration.

The reference rate of € 81.37 per sequence concerns an amount without VAT and applies to the calculation of the fee for the year 2020. It is linked to the consumer price index 109.04 of December 2019 (base 100 = 2013). It will be adjusted annually according to the following formula:

New remuneration = remuneration for the year N-1 x (index of December N-1 / index of December N-2).

C. Minimum fee

A number of sequences of 365 per year will be taken into account as a minimum fee. To this end, the modulated reference rate is multiplied by 365.

V. Upper limit of the global annual fee payable to Sabam by the broadcaster for all the networks it operates, subject to the sector rate, taken together

A. Height and calculation of the upper limit (without distinction between musical works, audiovisual works and works of visual art)

If a broadcaster operates several networks which are subject to this rate, a comparison will be made annually, at the final settlement, between the sum of the revenues - as defined above - of the various networks on the one hand and the sum of the fees which are charged to the networks together for the use of the three different repertoires on the other hand.

In the event that the total fees combined, expressed as a percentage of the total turnover of the networks concerned, should exceed 5% of the total turnover thus obtained, the amount represented by this excess shall not be due. In that case, a credit note will be issued for this amount.

B. Prior flat-rate deduction of directing costs

Commission fees, discounts and premiums as well as the actual costs of an internal or external advertising direction are taken into account by applying a flat-rate deduction of thirty percent on the basis, composed of the turnover defined above. However, this flat-rate deduction does not apply to the aforementioned income generated by teleshopping and income generated by telecommunications applications.

VI. Delivery of programmes per network to Sabam by the broadcaster

A. Imperative and cumulative delivery requirements of timely, complete and correct playlists provided on the electronic medium prescribed by Sabam

In order to be able to correctly calculate the royalties due by the broadcaster and to then distribute the collected royalties among the proper right holders, the broadcaster undertakes to provide Sabam, per network, with complete and correct data of the works used in each of the three repertoire domains.

The description of the requirements to be met by these data is annexed to this rate.

These data, grouped by month and by network, will be provided on an electronic medium or in an electronic file no later than two months after the last day of the month to which the data relate.

These detailed data will indicate, day by day, which works are used for each programme, as well as, for each work, the title, the name of the author or authors, the duration and possibly the brand and the number of the material or electronic medium used. For the works of the visual arts repertoire, the name of the author and, if applicable, the name of the photographer will be indicated next to the title of the work.

If works are offered on the affiliated websites, a list of these works will also be provided, with the same data per work offered.

B. The sanction provided by Sabam in the event of inadequate delivery (in terms of timeliness, completeness, correctness and format): by means of extrapolation by way of the hours that are adequately documented, non-disputable application by Sabam (after a reminder) of the rate to the hours that are not adequately documented

In the absence of complete playlists for a given month or for several months as described under A., Sabam will automatically determine the fee, based on the programme data in its possession. To this end, the programme information provided by the broadcaster will be extrapolated over the entire programming of that month or those months.

However, the broadcaster will be allowed a period of one month after a written reminder has been sent to remedy this situation. Once the fee has been determined, it can no longer be disputed.

If, as a result of an incompleteness, lack of clarity or inaccuracy in the information provided by the broadcaster, Sabam did not pay or paid too little to one or more right holder(s), Sabam reserves the right to rectify this situation at the broadcaster's expense. The broadcaster will also compensate the damage and costs that Sabam would have suffered in the meantime due to a claim against Sabam by one of its associates originating from the incorrect observance of the information obligation by the broadcaster.

VII. Administrative provisions

A. Method of payment of copyright fees to Sabam: quarterly advances, annual regularisation and penalties for late payments

At the end of each calendar year to which this rate applies and no later than 31 March of each subsequent year, the broadcaster will state the revenues generated as defined in Chapter II. Section C. per network and the related websites. For each network, this statement shall contain the sections 1. Advertising, 2. Sponsoring, 3. Teleshopping, 4. Product placement and 5. Telecommunications.

This statement is followed by a certificate from the broadcaster's external auditor, in which the statement by the broadcaster of the above details is explicitly declared as conforming, verified and true. This certificate shall be submitted for each year concerned at the latest 10 days following the general meeting of the broadcaster and in any case no later than 30 June.

With reference to the revenue statement described in the first paragraph, Sabam will collect quarterly advances per network and the related websites and per repertoire from the broadcaster the following year, pursuant to invoices issued in the course of March, June, September and December. The amount of these invoices will be based on the amount due for the previous year divided by four.

After analysing the list of performed works per repertoire communicated by the broadcaster and after receiving the aforementioned revenues, Sabam will draw up a final invoice, also per network and the related websites and per repertoire. Depending on this final invoice, either the balance will be invoiced or a credit note will be drawn up per network and the related websites and per repertoire, or as far as the latter is concerned, in general if the upper limit of 5% would have been exceeded.

All invoices issued by Sabam to the broadcaster will be paid, under the payment methods stated on the invoice, by bank transfer to account number 310-0729500-49 of Sabam at KBC - IBAN number: BE 97 3100 7295 0049.

B. Supervision by Sabam, through audits, of the accuracy of the data provided by the broadcaster to the authors' association

With regard to the broadcaster's compliance with its obligation to provide information concerning the composition of the revenues generated and the repertoire used, Sabam is entitled to demand inspection and copying of all accounting documents as well as of the production and broadcasting schedules that are necessary or useful for the verification of this information.

This right of inspection also includes documents of third parties which are in the possession of the broadcaster or which it can reasonably obtain.

The inspection may be carried out by Sabam, or by an auditor appointed by it, at the broadcaster's registered office and/or place of business.

Regardless of the amount of any difference found as a result of an audit, an adjustment will be made.

If, after an audit by Sabam, it appears that the result exceeds 5% of the fee charged by Sabam to the broadcaster on the basis of the data submitted by the broadcaster to Sabam for the exploitation in question, the cost of this audit will be entirely borne by the broadcaster.

The audit may be organised once a year, within six months of receipt of the data approved by the general meeting. Sabam will send a request to the broadcaster at least four weeks in advance.

C. Monitoring by the broadcaster, by means of random checks (“batch control”), of Sabam’s calculation of copyright fees

The broadcaster has the right to verify the use of repertoire per network by means of targeted random checks. To this end, it may consult the list of works performed, which includes the weighted duration of each work and the shares represented by Sabam.

This check can take place once a year after processing of the programmes provided by the broadcaster and in consultation with Sabam. The broadcaster will inform Sabam at least four weeks in advance.

VIII. Method of imposing the rate and duration

A. Explicit, formalized request by the broadcaster to apply the rate

The broadcaster is given the opportunity to request application of the sector rate, by registered letter with acknowledgement of receipt to be sent to Sabam within one month of notification of this rate.

As a result of its request to apply this rate, the broadcaster will then provide Sabam with the necessary programme, turnover and other information, as far as necessary as from 1 January 2010 and, of course, in the future, and this within the periods imposed under Chapters VI. and VII. in order to enable Sabam to issue the invoices required under this sector rate. With regard to initial invoicing, Sabam will take into account previously invoiced advances.

B. In the event of a request by the broadcaster to apply the rate: possibility of adjusting the sector rate

The application provided for in A. implies that the requesting broadcaster may request Sabam to make ancillary adjustments to the sector rate in question only where necessary and proportional to objective peculiarities demonstrated by the broadcaster to Sabam and verifiable by the authors’ association.

The acceptance by Sabam of such an adjustment request may not be refused without reason, but any rejection by the authors’ association, in whole or in part, will not undo the broadcaster’s previous request to apply the sector rate.

On the occasion of the request to apply the rate provided for under A., the requesting broadcaster is offered the opportunity, as indicated under Chapter I., Section D., to also include paying online offers and the sale of its own programmes to foreign broadcasters in this sector rate. To this end, Sabam and the requesting broadcaster, taking into account the nature of the paid online services operated by the latter, will lay down the conditions of this extension of the scope of the sector rate.

C. If the broadcaster does not request application of the sector rate, Sabam will impose this rate

If the application of the rate is not requested, as provided for in the circumstances set out in A. and B., the sector rate will be imposed unilaterally by Sabam on the broadcaster without delay, by means of advance invoices in regard to each network separately sent to the broadcaster.

This unilateral imposition covers the totality of this sector rate, including the provisions under Chapters VI. and VII. concerning programme delivery and other administrative obligations. All the data to be transferred by the broadcaster to the authors’ association will be delivered by the broadcaster within the periods provided for under Chapters VI. and VII. under penalty of application of the sanction provided for under Chapter VI. concerning programme data and, as far as revenue data is concerned, of application of the sector rate in accordance with the publicly available annual accounts.

D. Application over time of the sector rate

If the broadcaster requests application of the sector rate, this rate will have a duration of six years, retroactively as per 1 January 2010.

If the sector rate is unilaterally imposed (i.e. without a request), the broadcaster shall comply with this rate, in full and legally, for six years, retroactively as per 1 January 2010.

E. Suspension or withdrawal of the authorisation obtained under the sector rate

Non-compliance with this rate, for whatever reason, will, depending on the case, result in the suspension or withdrawal of the broadcasting authorisation obtained by the broadcaster. Such suspension or withdrawal will be notified and motivated to the broadcaster by Sabam, by registered letter with acknowledgement of receipt.

Unilateral termination of the application of this rate is not possible, neither if the broadcaster requests application, nor if the rate is unilaterally imposed (i.e. without a request) on the broadcaster.

Unilaterally terminating this rate is only possible for Sabam if serious infringements are found by the authors' association, committed by the broadcaster, regarding a provision of this sector rate, and after the broadcaster will have been declared to be in default by Sabam and the necessary regularisation by the broadcaster would not have taken place within the time allowed by Sabam for this purpose.