

Agreement GEMA & YouTube: Q&A

On 01 November 2016, GEMA and the online platform YouTube signed a licensing agreement. 70,000 music authors and publishers represented by GEMA thus receive a fair remuneration for the exploitation of their musical works protected by copyright for the first time. The agreement was made possible after both parties were able to consent to adequate conditions for the first time after seven years of negotiations. GEMA has an obligation to enter into licensing agreements providing for adequate remuneration. With the agreement now in place, the past as well as the future term of the contract will be exhaustively governed. This is why GEMA has signed the contract in the interest of its members.

I. General & Contract

1. What has led to the agreement between YouTube and GEMA after more than 7 years?

The agreement was made possible because both parties were able to consent to adequate conditions for the first time after years of fruitless negotiations and legal proceedings. GEMA has thus always observed its statutory obligation to ensure its members adequate remuneration for the music exploitation via YouTube. It has only been possible to implement an adequate remuneration with the agreement that has now been reached.

2. Does the contract also cover the past?

The contract also covers the contractual gap since April 2009.

3. Does this mean that the so-called “GEMA blocked content notices” on YouTube are now a thing of the past?

Yes. The blocked content notices used by YouTube for the repertoire represented by GEMA will no longer be used during the contract term. It is, of course, basically possible that YouTube continues to show blocked content notices, if rights holders that are not represented by GEMA, such as record labels, have prohibited the exploitation of their musical works.

4. Are users now allowed to upload musical works onto YouTube or use music as a background for their uploads?

As far as the usage rights managed by GEMA are concerned, this is correct. The GEMA agreement includes the repertoire, i.e. compositions and song lyrics, by its represented members from Germany or abroad.

II. Fees

5. What is the level of the contractually agreed licence fees?

Details on the level of remuneration are subject to confidentiality.

6. Does YouTube disclose the proceeds it generates arising from music exploitation to GEMA?

YouTube is going to disclose to GEMA the proceeds it generates by exploiting music. Many other details on the exploitation and remuneration will be available to GEMA and its members. All the information is subject to the contractually agreed confidentiality, especially vis-a-vis the public.

7. What does the contract provide for the past 7 years where YouTube did not pay any licence fees?

The past is completely covered by the contract. GEMA had made it a condition for the conclusion of the contract that it will receive remuneration which it can pay out to its members as a compensation for the past. Irrespective of the aforementioned, YouTube and GEMA continue to hold different legal viewpoints regarding the licensing liability of the online platform YouTube. YouTube continues to argue that it holds no licensing liability and refers to the sole responsibility of the uploaders.

8. Is the contract subject to confidentiality?

YouTube only enters into contracts subject to the condition that non-disclosure agreement is signed. During the contractual negotiations, GEMA has been urging to exclude major parts of the agreement from being governed by confidentiality. This is why GEMA is allowed to communicate significant parameters of the contract vis-a-vis its members.

9. How are the licence fee collections distributed to the authors?

YouTube will, with immediate effect, submit usage reports to GEMA on a regular basis, subject to contractually agreed quality standards. The proceeds generated from music exploitation shall then be distributed to GEMA members based on the GEMA distribution plan.

III. Legal

10. What are the consequences of the contract regarding the proceeding legal dispute?

The proceedings have been settled by mutual agreement. This applies to the injunction proceedings (appeal against the decision of the Higher Regional Court Hamburg and the civil proceedings for damages (appeal against the decision of the Higher Regional Court Munich). The decisions that had already been issued will not become legally binding. The decision on the GEMA “blocked content notices” is, however, already legally binding. Its validity will remain unaffected by the agreement. Based on the agreement entered into by GEMA and YouTube, the blocked content notices will be dropped for the repertoire managed by GEMA.

11. Does YouTube admit to being liable as a licence debtor by signing this contract?

Both parties continue to hold different legal views regarding the licensing liability. YouTube is of the opinion that there is no liability to enter into a licensing agreement, and that it is the uploaders alone that are liable. GEMA continues to hold its position that YouTube has a liability to pay licence fees. Online platforms can still refer to an unclear legal situation and are generating a high turnover by disseminating works protected by copyright without paying authors an adequate remuneration. Politicians are more than ever called for to create a fair legal framework.