

## Speciale voorwaarden

*Aangaande de toestemming, ingevolge artikel 8, lid 3, van het (standaard) Exploitatiecontract A (Auteur), voor gebruik van niet-commerciële Creative Commons Modelovereenkomsten door Auteurs, voor promotionele doeleinden*

### Overwegingen

In aanmerking nemende dat

- Vereniging Buma als enige organisatie in Nederland toestemming heeft verkregen, als bedoeld in artikel 30a Auteurswet 1912, van de Minister van Justitie tot het als bedrijf, zonder winstoogmerk, bemiddelen inzake muzikauteursrecht. Onder bemiddelen inzake het muzikauteursrecht wordt verstaan het sluiten of ten uitvoerleggen van overeenkomsten betreffende de uitvoering in het openbaar van muziekwerken. Daartoe zijn door Buma (standaard) Exploitatiecontracten gesloten met rechthebbenden;
- Stichting Stemra als organisatie in Nederland mechanische reproductierechten exploiteert, zonder winstoogmerk, op basis van overeenkomsten daartoe gesloten met auteurs, auteursrechthebbenden en aan Stemra gelijksoortige organisaties in het buitenland.
- Creative Commons Nederland (hierna te noemen: Creative Commons) een samenwerkingsproject is van Waag Society, Kennisland en het Instituut voor Informatierecht (IVIIR). Creative Commons streeft naar de ontwikkeling en promotie van, en de voorlichting over de Creative Commons-licenties in Nederland.
- Creative Commons, stelt daartoe modelovereenkomsten beschikbaar, waarvan bij Buma Stemra aangesloten Auteurs gebruik kunnen maken bij het licenseren van het niet-commercieel gebruik van hun Werken, zonder dat de bescherming die het auteursrecht hen biedt, wordt opgegeven;
- tegen de achtergrond van technologische ontwikkelingen Buma Stemra aan haar individuele aangesloten auteurs de mogelijkheid biedt, om onder Speciale Voorwaarden structureel gebruik te maken van de mogelijkheid om zelf niet-commercieel gebruik van hun eigen Werken voor promotionele doeleinden te licenseren, door gebruik te maken van de licentievoorwaarden zoals gesteld in de Creative Commons Modelovereenkomsten, zoals deze zijn weergegeven in de bijlage en zonder dat daar enige vorm van betaling tegenover staat;
- Buma Stemra het pilot-project met Creative Commons, onder Speciale Voorwaarden, omzet in een structurele voorziening voor rechthebbenden.

**Artikel 1 Definities**

In deze speciale voorwaarden wordt verstaan onder:

- A. **“Auteur”**: de componist en/of de tekstdichter die een Exploitatiecontract A (auteur) met Buma Stemra heeft gesloten.
- B. **“Buma Stemra-rechten”**: muzikauteursrechten en mechanische reproductierechten als bedoeld in het Exploitatiecontract.
- C. **“Commercieel Gebruik”**: elk gebruik van het Werk door ‘for-profit’ instellingen wordt als commercieel gebruik aangemerkt. Tevens wordt in aanvulling hierop, in het kader van de Creative Commons voorziening voor rechthebbenden, het verspreiden, in het openbaar tonen, op- of uitvoeren of online beschikbaar stellen van Werken tegen betaling of andersoortige financiële vergoeding (inclusief gebruik van een werk in combinatie met advertenties, reclameacties of andere soortgelijke activiteiten die ten doel hebben inkomsten te genereren voor de gebruiker of derden) als commercieel gebruik aangemerkt. Verder wordt, in het kader van de Creative Commons voorziening voor rechthebbenden, als commercieel gebruik in elk geval aangemerkt:
  - het verspreiden, in het openbaar tonen, op- of uitvoeren of online beschikbaar stellen van Werken door omroeporganisaties;
  - het gebruik van Werken in horeca-aangelegenheden, werkruimtes, verkoopruimtes en winkelruimtes;
  - hetzelfde geldt voor organisaties, zowel in de ‘profit’ als ‘not-for-profit’ sector, die muziek gebruiken bij of naast de uitoefening van hun taken, zoals bijvoorbeeld kerken, (dans-)scholen, instellingen voor welzijnswerk, en dergelijke.

Voor deze commerciële vormen van gebruik zijn bij Buma Stemra afzonderlijke licenties verkrijgbaar.

- D. **“Niet Commercieel Gebruik”**: elk gebruik van het Werk dat niet valt onder de definitie van Commercieel Gebruik, zoals gedefinieerd onder Artikel 1, sub C van de Speciale Voorwaarden.
- E. **“Creative Commons Modelovereenkomsten”**: de door Creative Commons Nederland, op haar website <http://www.creativecommons.nl>, ter beschikking gestelde niet-commerciële standaardlicenties, 4.0, waarvan, onder de Speciale Voorwaarden, de tekst geldt, zoals die is bijgesloten in de bijlage bij de Speciale Voorwaarden. Op basis van de voorwaarden van deze standaardlicenties kunnen Auteurs zelf het niet-Commercieel Gebruik van hun Werken, ten behoeve van promotionele doeleinden licenseren. Het gaat in de Speciale Voorwaarden uitsluitend om de navolgende 3 niet-commerciële Creative Commons standaardlicenties:
  - De Creative Commons Naamsvermelding-Niet Commercieel 4.0 Nederland Licentie.

- De Creative Commons Naamsvermelding-Niet Commercieel-Gelijk Delen 4.0 Nederland Licentie.
- De Creative Commons Naamsvermelding-Niet Commercieel-Geen Afgeleide Werken 4.0 Nederland Licentie.

Ten tijde van het opstellen van de Speciale Voorwaarden zijn uitsluitend de Engelse teksten van de Creative Commons Modelovereenkomsten beschikbaar. Indien de Nederlandse vertaling daarvan beschikbaar wordt gesteld zal deze na beoordeling en expliciete acceptatie daarvan door Buma Stemra de Engelse tekst vervangen en in de bijlage toegevoegd worden aan de Speciale Voorwaarden.

- F. **“Exploitatiecontract”**: (standaard) Exploitatiecontract A (auteur) tussen Auteur en Buma Stemra als bedoeld in artikel 27 van de Statuten van de Vereniging Buma en de Stichting Stemra.
- G. **“Gebruiksperiode”**: de periode van muziekgebruik waarvoor de Auteur toestemming heeft verleend aan de muziek gebruiker.
- H. **“Speciale Voorwaarden”**: de voorwaarden vastgelegd in dit document welke Buma Stemra stelt bij de toestemming aan haar Auteurs om gebruik te maken van de Creative Commons Modelovereenkomsten, als bedoeld in artikel 2, lid 1, van de Speciale Voorwaarden.
- I. **“Toestemmingsperiode”**: de periode gedurende welke Buma Stemra aan de Auteur de toestemming verleent, ingevolge artikel 2, lid 1, van deze overeenkomst, om niet commerciële licenties, met toepassing van de Creative Commons Modelovereenkomsten te sluiten, welke periode loopt voor de duur van één jaar en welke steeds stilziggend met 1 jaar wordt verlengd, tenzij Buma Stemra de voorziening beëindigd.
- J. **“Werken”**: alle auteursrechtelijk beschermde werken waarvan de Auteur de enige auteursrechthebbende is en ten aanzien waarvan de Auteur de Buma Stemra-rechten krachtens het exploitatiecontract met Buma Stemra aan Buma Stemra heeft overgedragen.

## Artikel 2 Toestemming en voorwaarden

1. Overeenkomstig het tussen Auteur en Buma Stemra in artikel 8, lid 3, van het Exploitatiecontract bepaalde, verleent Buma Stemra onder de Speciale Voorwaarden, niet-exclusieve, toestemming aan de Auteur om gedurende de Toestemmingsperiode gebruik te maken van een of meer van de Creative Commons Modelovereenkomsten, als bedoeld in artikel 1, onderdeel E, van de Speciale Voorwaarden opdat de Auteur zelf het niet-Commercieel Gebruik, voor promotionele doeleinden, van een of meer Werken van de Auteur, gedurende de Gebruiksperiode kan licenseren.

2. De Auteur geeft op de website van Buma Stemra aan dat het niet-Commerciële Gebruik voor promotionele doeleinden van bepaalde Werken, met toepassing van de Creative Commons Modelovereenkomsten, door hem/haar zelf zal worden gelicenseerd.
3. Door gebruikmaking van een of meerdere van de in artikel 1, onderdeel E, van de Speciale Voorwaarden genoemde Creative Commons Modelovereenkomsten aanvaardt de Auteur automatisch en expliciet de Speciale Voorwaarden van Buma Stemra.

**Artikel 3 Niet overdraagbare toestemming**

De door Buma Stemra aan Auteur verleende toestemming is persoonlijk en niet-overdraagbaar en zonder recht van substitutie. Desalniettemin is de Auteur bevoegd aan derden bevoegdheid te verlenen om niet-commerciële licenties te verlenen, als bedoeld in artikel 1, onderdeel D, van de Speciale Voorwaarden.

**Artikel 4 Omvang en inhoud Werken**

Voor wat betreft de omvang en inhoud van de Werken van de Auteur zijn de administratieve gegevens waarover Buma Stemra beschikt voor de Auteur en diens licentienemers bindend, behoudens het recht van de Auteur tegenbewijs te leveren.

**Artikel 5 Geen licenties voor Commercieel Gebruik**

Het is de Auteur niet toegestaan licenties voor Commercieel Gebruik, als bedoeld in artikel 1, onderdeel C, van de Speciale Voorwaarden, aan te bieden of te verlenen.

**Artikel 6 Aansprakelijkheid en vrijwaring**

1. De Auteur staat er voor in dat hij geen ruimere licentie(s) verleent dan hem onder de Speciale Voorwaarden is toegestaan.
2. De Auteur vrijwaart Buma Stemra tegen eventuele aanspraken van derden uit dien hoofde en tegen de gevolgen van dergelijke aanspraken van derden voor Buma Stemra.
3. Indien de Auteur niet de enige rechthebbende ten aanzien van de Werken is, moet de Auteur de schriftelijke toestemming om niet van de overige rechthebbenden hebben verkregen, voorafgaand aan de licensering van de Werken onder de Speciale Voorwaarden. Op eerste verzoek van Buma Stemra zal de Auteur voornoemde schriftelijk toestemming aan Buma Stemra overleggen.

**Artikel 7 Duur, tussentijdse beëindiging en opschorting toestemming**

1. De duur van de in artikel 2, lid 1, van de Speciale Voorwaarden bedoelde toestemming is 1 jaar, welke steeds stilzwijgend met 1 jaar wordt verlengd, tenzij de toestemming,

zoals bedoeld in artikel 2, lid 1 van de Speciale Voorwaarden, ingevolge het derde en/of vierde lid van dit artikel, wordt ingetrokken, en/of Buma Stemra de voorziening voor haar Auteurs, gebruik te kunnen maken van de Creative Commons Modelovereenkomsten, heeft beëindigd.

2. De in artikel 2, lid 1, van de Speciale Voorwaarden, verleende toestemming aan de Auteur om licenties te verlenen, treedt in werking met ingang van de datum waarop de Auteur ingevolge artikel 2, lid 2, via de website van Buma Stemra aangeeft dat het niet-Commerciële Gebruik voor promotionele doeleinden van bepaalde Werken, met toepassing van de Creative Commons Modelovereenkomsten, door hem/haar zelf zal worden gelicenseerd.
3. Buma Stemra is gerechtigd, om de toepassing van de Speciale Voorwaarden met onmiddellijke ingang en zonder rechterlijke tussenkomst tussentijds te beëindigen, indien de Auteur:
  - Zijn/haar verplichtingen uit hoofde van de Speciale Voorwaarden niet of niet behoorlijk nakomt;
  - in staat van faillissement is verklaard;
  - surseance van betaling aanvraagt;Of indien van Buma Stemra naar redelijkheid en billijkheid alle omstandigheden in aanmerking nemende niet kan worden verlangd, dat de Speciale Voorwaarden ongewijzigd worden voortgezet.
4. Bij een wijziging van de Creative Commons Modelovereenkomsten, in welke vorm dan ook, kan Buma Stemra op ieder moment, eenzijdig, zonder rechterlijke tussenkomst, de in artikel 2, lid 1, van de Speciale Voorwaarden verleende toestemming intrekken.
5. Buma Stemra kan op ieder moment, en met onmiddellijke ingang, eenzijdig, zonder rechterlijke tussenkomst, de mogelijkheid voor haar Auteurs, om onder de Speciale Voorwaarden gebruik te kunnen maken van de Creative Commons Modelovereenkomsten, beëindigen.
6. In alle gevallen van beëindiging van de Speciale Voorwaarden, zal de Auteur vanaf het moment van beëindiging van de Speciale Voorwaarden, stoppen met het verlenen van niet-commerciële licenties voor het gebruik van zijn Werken.
7. Onverminderd andere rechtsmiddelen die Buma Stemra ten dienste staan, kan Buma Stemra bij gebreke van nakoming door Auteur van (een deel van de) verplichtingen uit hoofde van de Speciale Voorwaarden, de toestemming uit hoofde van de Speciale Voorwaarden met onmiddellijke ingang opschorten zolang de Auteur in verzuim is.
8. Buma Stemra kan op ieder gewenst moment zonder voorafgaande kennisgeving en opgaaf van redenen en met onmiddellijke ingang de Speciale Voorwaarden wijzigen en/of aanvullen.

**Artikel 8 Overige bepalingen**

1. Niets in de Speciale Voorwaarden zal Buma Stemra ervan weerhouden om te profiteren van wet- en/of regelgeving met betrekking tot de zogenoemde Thuis kopieheffingen, en hier inkomsten uit te verkrijgen.
2. Buma Stemra behoudt zich het recht voor de toestemming met betrekking tot bepaalde Werken niet te verlenen, indien ten aanzien van de Werken een gerechtelijke procedure is gestart of het recht van Buma Stemra ten aanzien van deze Werken wordt betwist.
3. Aan de Speciale Voorwaarden kunnen door partijen na beëindiging van de Speciale Voorwaarden geen rechten voor de toekomst worden ontleend, noch wat betreft de hoogte van de vergoeding, noch wat betreft de auteursrechtelijk relevante handelingen die in het geding zijn.

**Artikel 9 Verhouding tussen de Speciale Voorwaarden en de Creative Commons Modelovereenkomsten**

Bij strijdigheid tussen één of meer bepalingen in de Speciale Voorwaarden en één of meer bepalingen in de Creative Commons Modelovereenkomsten prevaleert het bepaalde in de Speciale Voorwaarden.

Bijlage, als bedoeld in artikel 1, onderdeel E.



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