

## **Exploitation Regulations of Vereniging Buma**

as referred to in article 30, paragraph 2, of the Articles of Association of Vereniging Buma, as adopted by the Board of Directors on 22 April 2024. Approved by the Copyright and Neighbouring Rights Collective Management Organizations Control Board on 1 August 2024.

Including explanatory notes to the Exploitation Regulations of Vereniging Buma

## Definitions

### Article 1

In these regulations, the following terms have the following meanings:

- a. **Buma**: Vereniging Buma, with its registered office in Amstelveen;
- b. **Stemra**: Stichting Stemra, with its registered office in Amstelveen;
- c. **music copyrights**: the rights and/or entitlements pursuant to law, treaty or statutory provision, anywhere in the world, vested in the author or their successors in title in relation to all communication to the public - with the exception of the reproduction of the distribution of reproductions - of musical works, with or without words, protected by copyright, and equivalent performances of dramatic musical works when they are played without being shown;
- d. **repertoire**: the totality of the works with respect to which, at the time of the conclusion of the exploitation contract, a natural person or a legal entity had either the music copyrights, or an entitlement to a distribution pursuant to the music copyrights, as well as all musical works that they shall make during the term of the aforementioned contract, or with respect to which during the term of the aforementioned contract they shall acquire either the music copyrights, or an entitlement to a payment pursuant to the music copyrights;
- e. **publisher**: a sole proprietor business run by a natural person that fulfils the economic function of a music publisher;
- f. **publishing company**: a business run by and/or for the account of several natural persons, or by a legal entity, that fulfils the economic function of a music publisher;
- g. **participant**: the beneficiary of music copyrights, who either in the capacity of author or their successors in title, or in the capacity of publisher or publishing company, has concluded an exploitation contract with Buma;
- h. **author**: composer, lyricist or any other natural person who is the maker of a work of literature, science or art;
- i. **company**: a Dutch private limited company or public limited company, or foreign company with share capital, that is the successor in title referred to in article 2(u), of the Articles of Association of Vereniging Buma, in which an author or their successor in title holds at least ninety per cent (90%) of the issued registered shares. The articles of association of the abovementioned company must stipulate that the company is the successor in title of the entire repertoire of the author.

## Exploitation and enforcement

### Article 2

1. The exploitation and enforcement of the music copyrights shall be carried out by Buma for participants in accordance with the statutory regulations that apply in the country where the exploitation and enforcement takes place.
2. In order to safeguard the exploitation and enforcement of the music copyrights in foreign countries, Buma can conclude agreements with foreign organisations that have similar or related objectives.

### Article 3

Buma has the right, at the request of the participant or otherwise, not to undertake or arrange the exploitation and enforcement in certain countries and in certain cases.

Buma shall give timely notification, with reasons, to the relevant participant about this, after which the participant shall acquire the right to undertake or arrange the exploitation and enforcement of the music copyrights themselves in the relevant cases.

## Penalty clause

### Article 4

1. If a participant, in the binding opinion of the Board of Directors, repeatedly or egregiously acts in contravention of the Articles of Association, regulations, or the contracts concluded with them, or

otherwise performs acts that could harm Buma or participants, the Board of Directors can impose a fine on them of no more than € 2,268.00 payable to Buma, without prejudice to any other right of claim of Buma, and without prejudice to the special penalty provisions as stipulated elsewhere in the Articles of Association, regulations, and contracts.

2. The participant shall be obligated to pay a fine imposed on them pursuant to the Articles of Association, regulations or contracts to Buma within fourteen days after Buma has issued a demand to that effect to them by registered letter.

## **Annual contributions**

### **Article 5**

The participant shall be obligated to pay the fees, annual contributions, or other charges that are set pursuant to article 22, paragraph 3, of the Articles of Association. Notwithstanding that provided for in the Articles of Association, regulations or contracts concluded with the participant, the Board of Directors has the right to take appropriate measures if the participant does not satisfy this obligation. These appropriate measures can include amongst other things means: the freezing of the money to be paid out to the participant and the termination of the exploitation contract concluded with the participant.

## **Royalty distributions**

### **Article 6**

1. Buma obligates itself to pay out to the rightsholder participants all the monies received by Buma in accordance with the provisions of the Distribution Rules as referred to in article 30, paragraph 4, of the Articles of Association. The Board of Directors has the right to set minimum amounts, below which no payments shall be made. The participants will be given timely notification of these decisions.
2. All payments by Buma shall be made in Dutch currency.
3. The cost of payments to participants shall at no time be at the expense of Buma.

## **The exploitation contract**

### **Article 7**

1. An exploitation contract, as referred to in article 2(m) of Articles of Association, between Buma and separate authors or their successors in title, publishers or publishing companies, shall consist of a model contract to be adopted by the Board of Directors, which shall be subject to the Indexation Regulations, Exploitation Regulations, and the Distribution Rules.
2. The Board of Directors has the right to stipulate in the model contract concluded with separate authors or their successors in title, publishers or publishing companies, that the contract shall not apply to certain countries that are named in that contract.
3. The Board of Directors, in consultation with the Supervisory Board, has the right to conclude with an author or their successor in title, a publisher or a publishing company, an agreement that is different than the model contract referred to in paragraph 1, this in the sense of article 28, paragraph 2, of the Articles of Association.

## **Moral rights**

### **Article 8**

In relation to works in its repertoire, Buma shall only grant permission for communication to the public under the express condition that the moral rights of the author, as laid down in Article 25 of the Dutch Copyright Act 1912, are respected.

## Plagiarism

### Article 9

1. If a dispute about plagiarism arises between participants, this dispute shall be settled in accordance with the provisions of the Regulations on the handling of plagiarism disputes between participants of Buma and Stemra.
2. That provided for in paragraph 1 is without prejudice to the right of all participants to apply for injunctive relief in preliminary relief proceedings or to institute a civil claim in the ordinary courts in the event of plagiarism.
3. The Board of Directors has the right to publish adjudications of the Permanent Committee on Plagiarism, as referred to in the Regulations on the handling of plagiarism disputes between participants of Buma and Stemra, in a way to be determined by the Board of Directors. In addition, the Board of Directors can publicly reprimand the party found to be in the wrong.
4. Furthermore, the Board of Directors can impose a fine on the party found to be in the wrong, as referred to in the previous paragraph, of no more than € 2,268.00 payable to Buma, without prejudice to the obligation of the party found to be in the wrong to pay compensation for costs, damages and interest.

## Death of the participant

### Article 10

1. If the exploitation contract ends due to the death of the participant or one of their principals, or of the author of the company that has acquired the right, and Buma exercises the right to extend the contract as described in the termination clause of the relevant exploitation contract, the provisions of the exploitation contract shall continue to remain in force between Buma and the principals, heirs, beneficiaries of the participant, and the company if the company is a participant.
2. In the event that due to the death of the participant or a principal or of the author of the company that has acquired the right, more persons shall be entitled to the repertoire of the deceased participant or principal, or to the shares in the company that has acquired the right, in respect of whom or of which Buma exploits and enforces the music copyrights, a new exploitation contract can only be concluded after all the relevant persons, as well as, in case of a company, the authorised representative of the company that has acquired the right, have jointly appointed an authorised representative to act on their behalf, or on behalf of the company, to handle the affairs with Buma; as long as this has not happened, Buma shall not be obligated to make any payments.

## Assignment of claims

### Article 11

Except with the express written permission of Buma, a participant shall not have the right to assign existing or future claims against Buma to third parties.

## Regulations

### Article 12

1. The following regulations are applicable to, and form an integral part of, the legal relationship between Buma and the participant:
  - a. the Distribution Rules referred to in the Articles of Association;
  - b. the Indexation Regulations referred to in the Articles of Association;
  - c. the Regulations on the handling of plagiarism disputes referred to in article 9 of these Exploitation Regulations.
2. Any amendments of the regulations referred to in paragraph 1, enacted in the future pursuant to a legally valid association decision of Buma, shall apply to, and be deemed to form a part of, all ongoing exploitation contracts.
3. Future regulations that pertain to participants, and which have been enacted pursuant to a legally valid association decision of Buma, shall apply to, and be deemed to form a part of, all ongoing exploitation contracts.

4. Buma obligates itself to inform the participant in writing about amendments of the regulations referred to in paragraph 2, of the new regulations referred to in paragraph 3, and about amendments of the Articles of Association.

## Special provisions

### Article 13

1. Buma has the right to set off any monies that it owes to a participant, whether or not due and payable, against all monies that the relevant participant owes to Buma, whether or not due and payable, in the event:
  - a. the relevant participant fails to comply with the provisions of the exploitation contract in any way whatsoever;
  - b. the exploitation contract is terminated for any reason whatsoever;
  - c. the relevant participant is declared bankrupt or applies for their own bankruptcy;
  - d. the relevant participant applies for a suspension of payments;
  - e. an attachment is imposed on the goods or the assets of the relevant participant.
2. In the event of an attachment on a claim of a participant against Buma, the costs that arise out of the imposition of the attachment and the subsequent legal proceedings, such to include the judicial and extrajudicial costs of the lawyer of Buma, must be paid by the participant to Buma.

### Article 14

If amounts are owed to a (former) participant<sup>1</sup> by Buma for exploitation activities that took place before the exploitation contract had been terminated, or pursuant to a licence that was granted before the termination became effective, the (former) participant shall retain their rights pursuant to Articles 2(h), 2(i), 2(m), 2(o), 5(f) and 22 of the Collective Management Organizations for Copyrights and Neighbouring Rights and Dispute Settlement (Supervision) Act.

## Entry into force

### Article 15

1. These regulations enter into force on 1 January 1987. Thus adopted by the Board of Directors of Vereniging Buma on 6 November 1986 and approved by the Members' Meeting of Vereniging Buma on 15 December 1986.
2. These regulations were amended by the Board of Directors of Vereniging Buma on 4 April 2007 and approved by the Members' Meeting of Vereniging Buma on 14 June 2007, which amendment (discontinuation of graphic reproduction rights) entered into force as of the date of approval by the Members' Meeting of Vereniging Buma.
3. These regulations were amended (article 14 former participant and alignment with Supervisory Board model) by the Board of Directors of Vereniging Buma on 24 January 2018 and approved by the Members' Meeting of Vereniging Buma on 22 May 2018, and approved by the Copyright and Neighbouring Rights Collective Management Organizations Control Board on 1 May 2018.
4. These regulations were last amended (addition of foreign companies with share capital) by the Board of Directors of Vereniging Buma on 22 April 2024 and approved by the Members' Meeting of Vereniging Buma on 15 May 2024, and approved by the Copyright and Neighbouring Rights Collective Management Organizations Control Board on 1 August 2024.
5. The amendments referred to in paragraph 4 enter into force as of the date of approval by the Members' Meeting and the Copyright and Neighbouring Rights Collective Management Organizations Control Board.

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<sup>1</sup> a former participant is defined in article 1(c) of the dispute settlement regulations of BumaStemra.

### **Article 25 of the Dutch Copyright Act**

1. The author of a work has, even after they have transferred their copyrights, the following rights:
  - a. the right to object to the publication of the work without the crediting of their name or some other designation as the maker, unless the objection is contrary to the principle of reasonableness and fairness;
  - b. the right to object to the public release of the work under some other name than their own, as well as the making of any changes in the title of the work, or in the designation of the maker, this insofar as such appears on or in the work and/or is communicated to the public in connection with such;
  - c. the right to object to the making of any other changes to the work, unless the changes are of such a nature that the objection would be contrary to the principle of reasonableness and fairness;
  - d. the right to object to any distortion, mutilation, or other corruption of the work, which would be detrimental to the name and reputation of the maker, or to their value in this capacity.
2. After the death of the maker and up to the expiry of the copyrights, the rights referred to in paragraph 1 shall be conferred on those persons named by the maker in their last will and testament.
3. The right referred to in paragraph 1(a) can be relinquished. The rights referred to in (b) and (c) can be relinquished insofar as it concerns changes to the work or the title of the work.
4. If the author of the work has transferred the copyrights, then they will still have the right to make such changes to the work that are permissible in good faith in accordance with generally accepted standards. As long as the copyrights are in effect, an identical right will be conferred on those persons designated by the maker in their last will and testament, if it is reasonably plausible that the maker would have also approved of such changes.



## **Explanatory notes to the Exploitation Regulations of Vereniging Buma**

The Exploitation Regulations contain provisions on the exploitation and enforcement of the music copyrights and on the legal relationship between participants and Buma.

The Exploitation Regulations lay down rules for a number of specific subjects, such as exploitation in foreign countries (articles 2 and 3), the respecting of moral rights (article 8), and what to do in the event of plagiarism (article 9) or the death of a rightsholder (article 10).

The discretionary freedom of Buma in connection with the exploitation of the copyrights is related amongst other things to the cost of exploitation and enforcement, whereby a balance has to be found between the cost of exploitation and enforcement of the copyrights of all members on the one hand, and the withholding percentage agreed with the members on the other.

BumaStemra strives to conclude a licence with every music user in the Netherlands who needs to have permission for the use of music. BumaStemra has concluded continuous agreements with a large number of music users. New music users are identified and approached in various ways. Employees of BumaStemra visit new businesses and BumaStemra uses smart technologies to detect music use. One example is the webcrawler for the detection of music use online and music during events. How the money that is collected by BumaStemra is then paid out is regulated in the Distribution Rules of Buma and Stemra.

Works of participants of BumaStemra are often exploited in the territories of our sister societies. These sister societies do everything that can reasonably be expected of them to collect the royalties for this music use in foreign countries. This arrangement ensues amongst other things from the reciprocal contracts that BumaStemra has concluded with sister societies. In addition, sister societies have agreed with each other to treat foreign rightsholders in the same way as their own rightsholders. This is moreover laid down in the 'Professional Rules for Musical Societies', Cisac article 9b.

However, sister societies are independent organisations and work in accordance with local laws and regulations (articles of association and regulations). This means the legal situation and the exploitation policy varies in each country. BumaStemra does not have the power to influence the royalty collection and distribution policy of its sister societies. There can be differences in the way representation takes place, or in the percentages charged, as well as the way in which music users are detected. Furthermore, sister societies might have a different policy concerning the use of certain (coercive) measures, such as the collection of evidence and the taking legal action. BumaStemra provides information about the sister societies it has concluded a reciprocal agreement with via its regular channels (website and portal) so that users and participants know about this.

This best efforts obligation was adopted at the meeting of the Board of Directors on 1 May 2013.

### **Company (Dutch private limited company (BV)/public limited company (NV) of authors + foreign company with share capital)**

The private limited company (BV)/public limited company (NV) of authors was introduced at the General Members' Meeting (AVL) on 14 May 2007, which made it possible (under certain conditions) to become a member of Buma via a legal entity. On 15 May 2024, the General Members' Meeting agreed to the proposal to expand the author's BV/NV regulation to include foreign companies with share capital.

The reason why the designation "company with share capital" was chosen is because this designation clarifies that it has to concern an entity with capital divided into shares. On the one hand this can help with the commercial objective of attracting foreign authors, and on the other hand, from a legal perspective, BumaStemra cannot arbitrarily exclude the participation of parties that want to have their repertoire exploited by BumaStemra. As a result of the amendment in 2024, foreign companies with

share capital are no longer excluded from participation. The same conditions apply for the participation of foreign companies with share capital as those that apply for author's BVs and NVs.

### **Description in article 1(i) ((foreign companies with share capital))**

According to the Articles of Association, in the case of a company it concerns an exploitation contract with a Dutch BV/NV, or a foreign company with share capital, that is the successor in title of the repertoire of the author or their successor in title who holds at least 90% of the shares in that company.

Below are a number of examples that were written to explain eligibility criteria for the author's BV/NV. These examples are equally applicable to a foreign company with share capital.

- *A private limited company (BV) with the repertoire of two authors does not satisfy the definition of a participant and will not get an exploitation contract: 2 x 90% shares in the same BV is not possible.*
- *Similarly, author-A cannot acquire the repertoire of author-B, and then transfer their own A-repertoire and that of author-B to the BV, and then have that BV conclude an exploitation contract with Buma. This is not allowed because the BV – with respect to author-B – is not a successor in title of a maker/author; in this situation the BV is only the successor in title of a buyer of another author's repertoire. The BV does not satisfy the definition of a participant in the Articles of Association and will not get an exploitation contract.*
- *Furthermore, the exploitation contract with an author applies for the entire repertoire of the author. An author cannot divide up their repertoire in such a way that they can conclude an exploitation contract with Buma both as an author and as a BV, or divide up their repertoire between two Bvs and then with one of them, or both of them, conclude an exploitation contract with Buma. An author cannot conclude two different exploitation contracts with Buma, and thus cannot divide up their repertoire between two contracts. Similarly, a BV cannot spread out the repertoire over several contracts.*

The legal systems are different in each country. It is not feasible to map out the legal systems of every single country in advance. If a legal system with a corporate structure that BumaStemra is not familiar with, or which cannot be verified or traced, then BumaStemra can ask for a signed declaration from a civil-law notary or lawyer in that country. In this declaration, the lawyer or civil-law notary has to certify that the company with share capital satisfies the conditions stipulated by BumaStemra.

### **Article 10 (death of the participant)**

The old article 10 already included a provision regulating what would happen in the event of the death of the author-participant. The current article 10 has been supplemented to include a provision regulating what will happen in the event of the death of an author-non-participant, whose company has concluded an exploitation contract with Buma. In article 11 of the exploitation contract (author) it states:

*The agreement shall end:*

*A. as a result of the death of the author: with immediate effect;*

*B. by the issuing of a notice of termination of this agreement by the one party to the other. The termination shall be effective as of 31 December of any year.*

*Notice of termination must be given in writing with the observance of a period of notice of at least three months.*

In the event of the death of the author/maker, the company must appoint one of the heirs in the place of the author/maker as the holder of a mandate and power of attorney so that they can handle the affairs with Buma. In the event of the death of the author who holds 90% of the shares, the company can only conclude an heir contract if the heirs also (continue to) hold at least 90% of the shares. In the same way as with the ordinary heir contract, the heirs have to appoint a single representative who can handle the affairs with Buma. Why was an heir-company contract chosen? Vereniging Buma does not want to be a representative of, for example, large music users that buy up the shares of repertoire BVs of deceased authors. Buma is only allowed to conclude exploitation contracts with companies of which at least 90% of the shares are held by the author or their heirs (article 2(z), Articles of Association Vereniging Buma).



**Article 14**

As such, the amendment can enter into force immediately. However, in order to determine the moment when a transition from an author's contract to a company contract will take effect, and the conditions that will apply to such, detailed consultations will still have to take place between all the parties involved (e.g., the author, publisher, bank, tax department) and BumaStemra.