

Rules on dealing with plagiarism disputes between participants of Buma and Stemra

Non-binding translation. For information purposes only

Last amended at the Members' meeting of Vereniging Buma and Meeting of Affiliates of Stichting Stemra held on May 14, 2007.

Inclusive: notes to the rules on dealing with plagiarism disputes between participants of Buma and Stemra.

Definitions

Article 1

In these rules the following definitions apply:

- a. **VCP:** Vaste Commissie Plagiaat (the Permanent Committee on Plagiarism);
- b. **Buma:** Vereniging Buma, with registered office in Amstelveen.
- c. **Stemra:** Stichting Stemra, with registered office in Amstelveen.
- d. **Publisher:** A one man business operated by a natural person or a business operated by and/or for the account of several natural persons or by a legal entity who/which perform(s) the commercial function of music publisher;
- e. **Participant:** the interested party with respect to the musical performing right and/or mechanical reproduction rights who has concluded an exploitation agreement with Buma and/or Stemra either in the capacity of author or his successor in title or in the capacity of publisher or publishing company.
- f. **Successor in title:** the successor in title mentioned in Article 2 t of the Articles of Association of Buma and Stemra.

The Permanent Committee on Plagiarism

Article 2

1. There is a permanent committee for dealing with disputes on plagiarism or similar disputes in which one or more participants are involved, called the Vaste Commissie Plagiaat (Permanent Committee on Plagiarism, VCP).
2. The VCP consists of at least five members: one member chairman and one member deputy chairman, both of whom must be law graduates (Master of Laws), and at least three other members who must be composers, lyricists and/or music publishers (or have a managerial function in a publishing company).
3. The members of the VCP are appointed and dismissed by the Boards of Buma and Stemra. Appointments are made for a period of five years after hearing the members of the VCP. Resigning members are eligible for reappointment immediately.
4. The members of the VCP must be resident in the Netherlands.
5. The composition of the VCP and any changes to it are published.

Article 3

1. The Boards of Buma and Stemra appoint the secretary of the VCP, who should be a law graduate (Master of Laws), in consultation with the chairman of the VCP.
2. The secretary attends all meetings and takes the minutes; he or she has an advisory role.

Complaints

Article 4

1. A participant of Buma or Stemra can lodge a complaint with the VCP as complainant:
 - a. if he is of the opinion that a work created or published by another participant is an infringement of the copyright of an earlier work of which the complainant is the creator or the creator's successor in title or publisher;
 - b. if he is the creator or the publisher of a work of which another participant claims to be the creator or the creator's successor in title or publisher;
 - c. if he is of the opinion that a work created or published by another participant contains a needless imitation of style of a work of which the complainant is the creator or the creator's successor in title or publisher, which could cause confusion.
2. The complainant should submit his complaint to the secretary of the VCP in writing accompanied by the necessary explanation and reasons and the required evidence.

3. Complaints as referred to in Paragraph 1 can also be submitted to the VCP by the Board of Buma or Stemra or by a foreign organization for or on behalf of composers, lyricists or publishers who are affiliated to this organization on condition that this organization has concluded a reciprocal contract with Buma or Stemra on the exploitation of the musical performing right or mechanical reproduction rights.

Article 5

1. The VCP will only deal with a complaint if the work concerned of the complainant has been registered with or otherwise notified to Buma and/or Stemra as the complainant's own work, regardless of whether the work against which the complaint is being lodged has been registered with or otherwise notified to Buma and/or Stemra.
2. If the respondent is not a participant but the publisher of the work is, the complaint can (also) be lodged against the publisher.
3. If the complaint concerns a work that is published by a participant and the complaint is only lodged against the composer or lyricist of the work, the VCP may consider the complaint as also having been lodged against the publisher.
4. The VCP is also authorised to deal with and settle a complaint lodged against a composer, lyricist and/or publisher who is not a participant if this party submits voluntarily to the jurisdiction of the VCP.

Deposit

Article 6

1. Before dealing with a complaint the VCP may ask the complainant to pay a deposit, the amount of which is determined by the chairman of the VCP.
2. A deposit may not exceed € 1,362 and is paid into the bank or giro account of Buma.

Handling the complaint

Article 7

1. Once the chairman has established that a complaint meets the requirements set out in Articles 4 and 5 and that the complainant has complied with the VCP's request to pay a deposit, the chairman calls a meeting of the VCP to deal with the complaint.
2. The secretary simultaneously notifies Buma and Stemra that a complaint as specified in Article 4, Paragraph 1 a or b has been received so that payments for the relevant works by the complainant and the respondent can be suspended.

Article 8

1. The VCP holds its meetings at Buma's offices unless the chairman decides otherwise.
2. It establishes the order of proceedings itself.
3. Before coming to a decision, it is obliged to hear both the complainant and the respondent(s), or at least offer them the opportunity to be heard.
4. Each of the parties to a complaint has the right to challenge a member of the VCP participating in dealing with this complaint on the grounds of one of the provisions of Article 29 of the Code of Civil Procedure relating to the challenging of judges. If the VCP accepts the reason(s) put forward for the challenge, the challenged member will no longer participate in dealing with the complaint concerned.
5. The VCP is entitled to access information relating to the work of the complainant and the work of the respondent(s) held in Buma's and Stemra's records.
6. The VCP can only make a decision on the basis of documents with which all parties have had the opportunity to become acquainted.
7. The VCP may consult one or more experts of its choice and pay them for their advice.
8. If desired, the parties may use the services of one or more advisers.

9. The VCP will only make a decision on a case if the chairman or the deputy chairman and at least two other members are present during the session. If it becomes apparent before the session that this quorum will not be reached, the session will be re-scheduled.

Article 9

1. The VCP will not pass judgement on the artistic content or value of the works by the complainant and the respondent.
2. It will satisfy itself as to whether the work by the complainant is original, i.e. an expression of their own personal ideas.
3. If the respondent is of the opinion that the work by the complainant is itself not new, the burden of proof in this regard lies with the respondent.

Article 10

1. The VCP decides by a simple majority vote. In the event of a tied vote, the complaint will be rejected.
2. All members and the secretary are subject to the rules of professional secrecy.
3. The VCP's decisions are duly substantiated and at the very least state the facts and the evidence considered.
4. The VCP presents its decisions in writing. The VCP sends copies of its decisions to all parties and to the Boards of Buma and Stemra.
5. The VCP is authorized to give a verbal, abridged decision during the session irrespective of the provisions of Paragraphs 3 and 4 above. A record of such a decision is taken during the session, a copy of which can be provided to the parties concerned. The record is signed by the chairman and must always contain the names and addresses of the complainant and the respondent, the names of the members of the VCP who participated in dealing with the complaint and whether or not the complaint is admissible and justified.
6. The VCP's decision serves as non binding advice to the parties.
7. A decision arrived at by the VCP will take effect retrospectively from the date of receipt of the complaint by the secretary of the VCP. The decision will not affect monies distributed before this date unless the civil judge in a final judgement rules otherwise. The date of receipt of the complaint is regarded as the date on which the complaint meets the requirements set out in Article 4 Paragraph 2 of these rules.
8. When the VCP rules on a dispute on plagiarism, Buma and Stemra are bound to adhere to the VCP's decision as far as distribution is concerned until such time as either party to the dispute informs them of a ruling by a civil judge in a final judgement that a different method of distribution is appropriate.
9. In the event that the copyright on a work is infringed, with regard to the monies to be distributed by Buma and Stemra, the VCP will indicate as accurately as possible the extent to which the portion of the work infringing the copyright is essential to the entire work against which the complaint is lodged.
10. If the VCP reaches a decision on a dispute concerning needless imitation of style which could cause confusion, Buma and Stemra can only allow the decision to have consequences for the distribution of monies once either party to the dispute has notified them of a final judgement by a civil judge which concurs with the decision reached by the VCP.
11. The VCP advises the Boards of Buma and Stemra on a case-by-case basis whether and in what form its decision will be published.
12. Buma and Stemra's rights and obligations as referred to in Paragraphs 8 and 10 above also apply where either party to the dispute notifies Buma and Stemra of a decision arrived at by way of an arbitration verdict within the meaning of Article 1020 ff. of the Code of Civil Procedure at the request of both parties.

Article 11

1. If the VCP rules that a complaint is valid, the complainant will be refunded any deposit paid in full.

2. In the case referred to in Paragraph 1, the VCP can choose whether or not to charge the costs of dealing with the complaint, or part thereof, to the respondent(s).
3. If the VCP rules that a complaint is unfounded, it can order the complainant to pay the costs of dealing with the complaint and/or declare the deposit forfeited.
4. If a complaint is withdrawn, the VCP can declare the deposit forfeited either in full or in part.
5. Unless the VCP declares the deposit forfeited, it will be offset against the amount the complainant has been ordered to pay in costs as specified in Paragraphs 3 and 4 above; if the deposit exceeds the amount he or she was ordered to pay in costs, the complainant will be refunded the balance.
6. The amount the complainant is ordered to pay in costs or the difference between the deposit paid and the amount they have been ordered to pay in costs should be paid to Buma within fourteen days after the announcement of the decision; otherwise Buma is entitled to collect the amount in its own name.

Article 12

1. The parties are entitled to ask the VCP to arrive at a binding decision on a complaint lodged with it.
2. The binding decision arrived at in accordance with Paragraph 1 above will then be regarded as an arbitration decision within the meaning of Article 10, Paragraph 12 of these rules.

Reimbursements

Article 13

1. Each member of the VCP is entitled to reimbursement of travel and accommodation expenses and an attendance fee per half-day of each meeting attended or part thereof, to be determined by the Boards of Buma and Stemra.
2. These amounts, as well as the fees referred to in Article 8, Paragraph 7, are charged to Buma's account and are settled as specified in Paragraph 3 below.
3. The negative difference between the amounts paid in costs to Buma and the deposits declared forfeited on the one hand and the costs of collection, reimbursements and fees as specified in Paragraphs 1 and 2 on the other hand is calculated once every calendar year and shared equally by Buma and Stemra.

Article 14

If the amount received by Buma due to orders to pay costs and deposits declared forfeited exceeds the amount payable under Article 13 and/or due to collection costs during the year, it will donate the surplus to the Stichting Sociaal Fonds Buma (Buma Foundation Social Fund).

Article 15

1. These rules were last amended by a resolution of the Board of Vereniging Buma and the Board of Stichting Stemra on April 4, 2007 and approved by the members' meeting of Vereniging Buma and the meeting of affiliates of Stichting Stemra on May 14, 2007.
2. The amendment mentioned in the previous paragraph comes into effect as of the date of approval by the members' meeting of Vereniging Buma and by the meeting of affiliates of Stichting Stemra.

NOTES TO THE RULES ON DEALING WITH PLAGIARISM DISPUTES BETWEEN PARTICIPANTS OF BUMA AND STEMRA

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Below are the notes to the amendments of 2007 as sent to the Buma members' meeting and the meeting of Stemra affiliates on May 14, 2007. The amendments were necessary in view of the introduction of the Author's NV or BV in the Articles of Association.

The rules of the VCP are based on the assumption that the complainant is also the creator. That is no longer the case if the creator has died or has sold his repertoire to an NV or BV (hereinafter called: BV). It is not reasonable to exclude these successors in title from appealing to the VCP. According to the Exploitation agreement, a complaint of a BV must be submitted on behalf of the BV by the author/creator.

Hence the introduction in 2007 of the term 'successor in title' (rechtverkrijgende) in Article 2, Paragraph 1 f and in Article 4, Paragraph 1, a – c.

The date of coming into effect is regulated in Article 15. The amendments as such can come into effect immediately. On the other hand, the timing and conditions of the transition from an author's exploitation agreement to a BV exploitation agreement requires consultation between the parties concerned (e.g. the author, publisher, bank, tax authority) and Buma/Stemra.