

Vereniging Buma is the performing rights organisation for composers, lyricists and music publishers

Exploitation Agreement U (publisher)

Agreement concerning the exploitation and enforcement of musical performing right, as laid down by the Vereniging Buma board on 14 October 1992, last amended by the board on 2 April 2014.

The undersigned:

Registered name, as registered by the Dutch Chamber of Commerce:

Postal address:

Postal code:

Town/city:

Country:

E-mail address:

Dutch Chamber of Commerce Registration number:

Represented by:

Surname:

First names:

Date of birth:

Nationality:

Customer number:

hereinafter to be called the publisher
on the one hand
and

The Vereniging Buma, with registered office in
Amstelveen, and actual offices in Hoofddorp,
hereinafter called Buma
on the other hand
have agreed as follows:

Definitions

Article 1

For the purposes of this agreement:

- A.** musical performing right: the rights and/or claims under the law, a convention or a statutory regulation to which the author or his successors in title are entitled, anywhere in the world, with regard to every publication - with the exception of reproductions or the distribution of reproductions - of copyright-protected musical works with or without lyrics, including the performance of dramatic-musical works if rendered without being shown, including the rights specified under points B to F;
- B.** Making available right for non-interactive use: online performing right for non-interactive online use of musical works (excluding simulcasting);
- C.** Making available right for interactive use: online making available right for interactive use of musical works (excluding simulcasting), also including on-demand use (excluding simulcasting);
- D.** Events: the category of rights used by Buma/Stemra, as described in the 'Specification of exploitation rights' form and the 'Amendment to exploitation rights' form. This category includes performing rights;
- E.** RTV and Simulcasting: the bundled group of rights used by Buma/Stemra, as described in the 'Specification of exploitation of rights' form and the 'Amendment to exploitation rights' form. This bundle covers the radio broadcasting right, the television broadcasting right, retransmission right and secondary transmission right of performances;
- F.** Background music: the bundled group of rights used by Buma/ Stemra, as described in the 'Specification of exploitation rights' form and the 'Amendment to exploitation rights' form. This bundle comprises the right of public performance of radio broadcast, the right of public performance of television broadcast and the right of public performance of a recording;
- G.** Repertoire: the total number of musical works with regard to which a natural person or legal entity holds either the musical performing right, or a right to payment by virtue of the musical performing right at the moment

this agreement is entered into, and all musical works he will create during the term of this agreement or with regard to which he will acquire either the musical performing right, or the right to payment by virtue of the musical performing right for the duration of this agreement;

H. Participant: the participant within the meaning of Buma's Exploitation regulations.

Assignment

Article 2

1. The publisher hereby assigns and transfers to Buma the musical performing right in his repertoire within the meaning of article under A to G and in the scope as defined in Articles 1 and 20 of this agreement, with the exception of those rights that the publisher wishes to exclude from being transferred to Buma/Stemra, as indicated by the publisher in the 'Specification of exploitation rights' form. This assignment concerns both the existing and the future repertoire of the publisher. Buma accepts the assignment of the musical performing rights as specified in paragraph 1.
2. The musical performing right in the publisher's existing repertoire is therefore hereby assigned and transferred to Buma. With regard to the publisher's future repertoire, the musical performing right shall each time be assigned and transferred by operation of law the moment the musical performing right to a musical work with or without lyrics has been assigned and transferred, whether or not in advance, to the publisher.
3. As a result of the assignment and transfer as described in paragraphs 1 and 2, the assigned and transferred musical performing right in any musical work belonging to the repertoire shall become part of Buma's assets. Buma has thus acquired the exclusive right, to the exclusion of all other parties, including the publisher, to exercise or cause the exercise anywhere in the world of the musical performing right assigned and transferred to it.

Mandate and power of attorney

Article 3

If and insofar as the future repertoire as referred to in article 2 might not be assignable or transferable in advance, the publisher hereby grants Buma, to the exclusion of any other party including himself, the irrevocable mandate and power of attorney subject to the right of substitution, to exercise the musical performing right in such future repertoire anywhere in the world in its own name. Buma accepts this irrevocable mandate and power of attorney with regard to the future repertoire.

Exploitation and enforcement

Article 4

1. Buma shall exploit and enforce the musical performing right in the repertoire, either under its own name or not, anywhere in the world and shall perform or cause the performance of any and all legal acts relating thereto.¹
2. Buma shall therefore license or refuse to license the public performance of musical works of the repertoire as well as the public performance of reproductions of those works, determine the conditions for granting such license, be entitled to take legal action against any infringement of the musical performing right, and perform or cause the performance of any and all acts, both judicially and extrajudicially, which the publisher would be entitled to perform in the absence of this agreement.

Distribution

Article 5

1. Buma undertakes with due observance of the relevant articles, regulations and decisions lawfully taken by Buma to distribute the revenues it receives to the participants entitled to a share thereof.
2. Buma's obligation as referred to in paragraph 1 remains valid for as long as the publisher, by virtue of publishing agreements with regard to the repertoire, is entitled to the publisher's share of the available revenues on account of the musical performing right in the repertoire.
3. Complaints concerning distributions made in any year will be accepted at the latest on 31 December of the second year following the calendar year in which the relevant distribution was made. After this period, the publisher's right to complain with regard to the relevant distribution shall have expired.
4. If Buma has established that a complaint is well-founded, it will only be obliged to pay back the deficit; interest will be paid if notice is given, from the date of notification and no earlier, at the 12-month Euribor rate plus 1.5%. The interest notified shall run from the moment that a claim is substantiated by the rightholder in the manner indicated by Buma, and only from the moment at which, and for the extent to which, Buma has actually received the general or specific licence fee in question. The Board determines annually what information has to be provided and informs the participants of this. The interest rate clause is not applicable to distributions made by sister organisations.
5. Except in the event of wilful intent or gross negligence on the part of Buma itself, it shall never be liable for any form of damage or loss, under any name whatsoever, or for payment of interest other than provided for in paragraph 4.

¹ Commitment to make a reasonable effort: specified in the Notes to the Exploitation rules of Vereniging Buma.

Notification of repertoire

Article 6

1. Upon entering into this agreement, the publisher undertakes to notify Buma in the manner to be indicated by Buma, of the existing repertoire and always immediately after creating a musical work in the repertoire subsequently to be created during the term of this agreement. He shall furthermore send Buma, at Buma's first request, all documents relating to the aforesaid musical works that Buma requires.
2. Such notification shall entitle the publisher to distributions with regard to the aforesaid musical works. By means of such notification the publisher furthermore confirms the assignment and transfer of the musical performing right in the future musical work as described in article 2.
3. If the publisher fails to notify Buma of a musical work, he may not claim any payment with regard to the relevant musical work, notwithstanding his obligation yet to notify Buma of the musical work in the manner indicated by Buma, after which he shall become entitled to claim payment.
4. Buma shall be entitled to charge the publisher any costs to be incurred by Buma as a result of incorrect or incomplete notification of musical works by the publisher.
5. If the publisher fails to notify Buma of a musical work or to do so in good time, Buma shall have the right to charge the publisher any costs it has incurred in obtaining the respective notification after all.

Warranty obligation

Article 7

1. The publisher warrants and guarantees to Buma that he holds the full and unencumbered musical performing right in the repertoire and that he is exclusively authorised to enter into this agreement and to effect the assignment and transfer of the musical performing right in the existing and future repertoire referred to in this agreement. He in particular warrants and guarantees to Buma that the musical performing right in the future repertoire has never previously been assigned, transferred, licensed or otherwise unencumbered to a third party.
2. The publisher warrants and guarantees that he has not acquired musical performing right from an author, which the author has assigned and transferred to Buma or is obliged to assign and transfer to Buma.
3. The publisher furthermore warrants and guarantees that no part of his repertoire in respect of which Buma exercises or causes the exercise of the musical performing right under this agreement infringes the copyright or any other absolute right of a third party, or involves anything that is otherwise unlawful towards a third party. He agrees to indemnify Buma against any third-party claims in this respect and against the consequences that such claims may have for Buma.
4. The publisher shall have no right to payment of revenues with regard to musical works that in any way infringe the copyright or any other (absolute) right of a third party.

Other obligations of the publisher

Article 8

1. As a result of the assignment and transfer of the musical performing right as described in article 2, and in relation to the warranty and guarantee obligation of the publisher as described in article 7, the publisher shall not be allowed during the term of this agreement to undertake any actions that create the appearance or give the impression that he himself or any party other than Buma exploits and/or enforces the musical performing right in the repertoire covered by the transfer.
2. The publisher realises in particular that, as a result of the assignment and transfer as described in article 2, he is not allowed to assign or transfer the musical performing rights covered by the said transfer to any third party during the term of this agreement.
3. Notwithstanding the provisions of paragraph 1, Buma may in exceptional cases – which are made known by Buma in writing or in a publication issued periodically or by circular letter or by advertisement in a popular national newspaper or by electronic mail or by making available by means of the internet site of Buma or pursuant to a written agreement with the publisher – give its consent for the publisher himself to exploit and enforce the musical performing right assigned and transferred to Buma, without prejudice to what is stipulated in article 17.
4. For each infringement of a prohibition set forth in paragraph 1, or 2, the board may impose a penalty on the publisher of not more than € 4,500 payable to Buma, without prejudice to any other right of claim of Buma, in particular its right to claim full damages.

Cooperation

Article 9

1. The publisher undertakes, if and insofar Buma considers his personal assistance necessary for the implementation of this agreement, to provide such assistance within reason at Buma's first request. To the extent that the publisher incurs unavoidable costs in providing such assistance, such costs may be compensated by Buma in accordance with reasonable standards.
2. In the event that the publisher fails to provide assistance, the board may impose a penalty on him of not more than € 4,500 payable to Buma, without prejudice to any other right of claim of Buma, in particular its right to claim full damages.

Commencement and termination of the agreement

Article 10

This agreement shall enter into force on the day of signature, unless expressly agreed otherwise. The agreement shall be entered into for an indefinite period of time.

Article 11

The agreement shall terminate:

- A.** upon the publisher's death or the dissolution of the legal entity in which he practices his business: with immediate effect;
- B.** upon notice of termination of this agreement given by one party to the other. Notice of termination may be given only effective from 31 December of any year. Notice of termination must be given in writing, with due observance of a notice period of at least three months.

Article 12

- 1.** Any failure of a party in the performance of this agreement shall entitle the other party to dissolve this agreement in full or in part by means of a written statement, without any judicial intervention being required, unless the failure does not justify such dissolution, considering its special nature or limited significance.
- 2.** Buma shall furthermore be entitled to give notice of termination of the agreement with immediate effect in writing, stating the reasons of such termination, if Buma cannot reasonably be required to continue its relationship with the publisher.

Article 13

- 1.** Buma shall be required, as soon as the exploitation and enforcement of its rights with regard to the repertoire have terminated, to transfer the musical performing right back to the publisher or his successor(s) in title by means of a legally valid assignment and transfer.
- 2.** If this agreement terminates, in any way whatsoever, the licenses with regard to the repertoire already granted by or on behalf of Buma shall remain effective.

Change of (e-mail)address

Article 14

- 1.** The publisher shall immediately inform Buma in writing of any change of his (e-mail)address or in the legal form in which he practices his profession.
- 2.** For any notification to be given by Buma to the publisher, Buma shall be entitled to consider the address indicated by the publisher as the actual address until the publisher gives Buma notice of a change of address.

Articles of association and rules

Article 15

- 1.** The following rules shall in any event apply and shall be considered part of this agreement:
 - A.** the Distribution rules (Repartitiereglement) as referred to in the articles of association
 - B.** the Exploitation rules (Exploitatierglement) as referred to in the articles of association
 - C.** the Indexation rules (Indexeringsreglement) as referred to in the articles of association

- D.** the Rules on dealing with disputes on plagiarism between participants of Buma and Stemra referred to in the Exploitation rules
- 2.** The publisher declares to have received the articles of association applicable at the time of signature of this agreement and to have taken note of their contents.
 - 3.** Any future amendments to the rules referred to in paragraph 1 that have been adopted by legally valid decision of Buma shall be applicable to and shall be deemed to form an integral part of this agreement.
 - 4.** Any future rules that relate to participants and that have been adopted by legally valid decision of Buma shall be applicable to and shall be deemed to form an integral part of this agreement.
 - 5.** Buma undertakes to inform the publisher of any amendments to the rules referred to in paragraph 3, of any new rules referred to in paragraph 4 and of any amendments to the articles of association in the manner as stipulated in article 15a.
 - 6.** By signing this agreement, the publisher explicitly declares to accept in advance the future rules as referred to in paragraph 4 and the future amendments to the rules as referred to in paragraph 3.

Article 15a

Buma undertakes to inform the participants of amendments to the articles of association, the rules and this agreement, and of any new rules, by publication issued periodically by Buma or by circular letter or by advertisement in a popular national newspaper or by electronic mail or by making available by means of the internet site of Buma.

Amendment to the agreement

Article 16

- 1.** Buma shall furthermore be entitled to amend this agreement unilaterally by legally valid board resolution.
- 2.** Buma undertakes to inform the publisher of any amendments referred to in paragraph 1 in the manner as stipulated in article 15a.
- 3.** By signing this agreement, the publisher explicitly declares that he accepts in advance the amendments referred to in paragraph 1.

Partial withdrawal of rights

Article 17

By means of the 'Amendment to exploitation rights' form, the publisher may partially withdraw rights as defined in Article sub B, C, D, E and/or F that have been transferred to Buma. Amendments are possible as of 31 December of any given year, taking a period of notice of at least three months into account.

Assignment

Article 18

Subject to Buma's explicit written consent, the publisher shall not be entitled to assign to third parties or to pledge existing or future claims against Buma or to grant third parties any other right with regard to the respective claims.

Choice of law and competent Court

Article 19

This agreement shall be governed by Dutch law. Any disputes arising from this agreement or its implementation shall be settled by the competent Court of Amsterdam to the exclusion of all other courts.

Special provisions

Article 20

The following territories are excluded from the transfer of performing rights as defined in Article 1:

Signed in twofold in Hoofddorp:

On: - - (dd-mm-yyyy)

Publisher:

Vereniging Buma:
