

RULES OF THE BUMA/STEMRA DISPUTES COMMITTEE

Non binding translation. For information purposes only.

DEFINITIONS

Article 1

In these rules the following definitions apply:

- a. *Buma*: Vereniging Buma, with registered office in Amstelveen;
 - b. *Stemra*: Stichting Stemra, with registered office in Amstelveen;
 - c. *Participant*: the participant as referred to in Article 2 of the Articles of Association of Buma and Stemra, or a past participant where it concerns an account for which the complaint deadline mentioned in Article 5, Paragraph 2 of the Exploitation agreement of Buma or Stemra has not yet expired;
 - d. *Chairman*: the chairman of the Disputes Committee appointed in accordance with Article 3 Paragraph 1 of these rules;
 - e. *Secretary*: the secretary of the Disputes Committee appointed in accordance with Article 4 Paragraph 1 of these Rules;
 - f. *Rules*: The Rules of the Buma/Stemra Disputes Committee with the associated Notes to the Rules of the Buma/Stemra Disputes Committee.
2. These Rules do not apply to decisions of the Buma members' meeting or the meeting of Stemra affiliates, except in the case referred to in Paragraph 9.
 3. Disputes concerning decisions in which, by virtue of the Articles of Association, rules or exploitation agreements, the management and/or the Board has power to interpret the policy of Buma and/or Stemra, or in which it has freedom to decide policy, are excluded, except in the case referred to in Paragraph 9.
 4. Disputes which have already been referred to or are pending before another body, such as the ordinary civil court, are excluded.
 5. The Disputes Committee shall resolve to declare any case involving a sum that in its opinion exceeds € 100,000 to be inadmissible and refer the parties to the ordinary civil court.
 6. Disputes to which the rules on dealing with plagiarism disputes of Buma/Stemra are applicable shall not be heard by the Disputes Committee.
 7. Disputes concerning a particular account will only be heard once the usual complaints procedure of Buma and/or Stemra has been fully gone through, unless the Disputes Committee is of the opinion that the handling period is unreasonably long.
 8. A dispute can only be brought before concerning decisions of Buma and/or Stemra which individually and directly affect the interests of the Participant concerned and which are taken pursuant to Articles of Association, rules or exploitation agreements.

SCOPE

Article 2

1. These Rules apply to disputes between a Participant on the one hand and Buma and/or Stemra on the other hand

the Disputes Committee once.

9. These regulations will apply, or a complaint will be respectively admissible if the complaint on which the dispute is based is against a decision of the members' meeting or the affiliates' meeting or the Board, or against the general policy of Buma/Stemra, but, in this case, the Disputes Committee can only marginally assess whether the individual interests of the individual participant in question have been sufficiently taken into account. If the Disputes Committee believes that this has been insufficiently done, the Disputes Committee will request a review of the case by the members' meeting, the affiliates' meeting or the Board.

COMPOSITION AND APPOINTMENT OF THE COMMITTEE

Article 3

1. The Disputes Committee consists of at least seven members, namely:
 - a. an independent chairman (who must be a lawyer with expertise in the field of intellectual property rights);
 - b. a deputy independent chairman (who must be a lawyer with expertise in the field of intellectual property rights);
 - c. five ordinary committee members who are members of Buma and/or Stemra, of whom three are authors and two are publishers.
 - d. members of the Disputes Committee must not be employees of Buma or Stemra.
2. A dispute is handled by three members of the Disputes Committee, namely:
 - a. the chairman (or their deputy) and
 - b. two ordinary members of the Disputes

Committee, appointed by the chairman (or their deputy)

3. The Chairman, members and deputy members of the Disputes Committee are appointed and dismissed by the members' meeting of Buma and the meeting of Stemra affiliates, on the recommendation of the Boards of Buma and Stemra, having heard the Chairman of the Disputes Committee.
4. The appointment is always for a period of three years.
5. A member or deputy member who stands down may be reappointed immediately for one period.

SECRETARIAT

Article 4

1. The Boards of Buma and Stemra appoint a secretary and deputy secretary jointly in consultation with the chairman.
2. The Secretary attends all meetings and takes the minutes; he or she has an advisory role.
3. The address of the secretariat is at the offices of Buma/Stemra.

SUBMISSION OF DISPUTES

Article 5

1. A dispute is initiated by submitting it in writing to the secretariat.
2. The submission contains the following information:
 - a. the name, address and place of domicile or establishment or actual place of abode of the applicant and his or her telephone and/ r fax number;
 - b. the name, address and place of domicile or

establishment or actual place of abode of the opposing party and his or her telephone and/or fax number;

- c. a clear explanation of the dispute and, where applicable, of that which the applicant is claiming, with copies of relevant documents where applicable.
3. The Secretary provides the applicant with written confirmation of receipt of the submission, indicating the date of receipt.
4. The Secretary simultaneously notifies Buma and/or Stemra of the submission.
5. The secretary invites Buma and/or Stemra to respond to the submission in writing within six weeks after the secretary receives the dispute handling fee.

REPRESENTATION

Article 6

1. The parties can be represented in the proceedings of the dispute by a person authorised to that end or by a lawyer.
2. The parties shall notify the Secretary and Buma and/or Stemra of the appointment of a representative as soon as possible, unless the appointment is already evident from the submission or from the written response of Buma and/or Stemra.

MEETING OF THE DISPUTES COMMITTEE

Article 7

1. The Disputes Committee itself determines the order of proceedings. The dates for submission of documents and the date of the meeting (hearing) will be chosen in such a way that the dispute

process should in principle be completed within six months.

2. During the meeting the Disputes Committee gives the parties the opportunity to explain their positions verbally.
3. The failure of a party to appear at the meeting without putting forward good reasons, despite having been properly called upon by the Secretary to attend, shall not prevent the Disputes Committee from hearing the other party(ies) and pronouncing its verdict.
4. The Disputes Committee can be advised by one or more experts of its choice and pay fees to them, and/or hear Buma and/or Stemra or witnesses.
5. If a settlement is reached, this will be set down in writing in an agreement between the parties and signed by the parties, whereupon the dispute resolution comes to an end.

WRITTEN PROCESS

Article 8

1. Depending on the nature and scale of the dispute, the Disputes Committee may also decide to resolve the dispute through a written process.
2. If the Disputes Committee decides on a written process, the applicant will be given the opportunity to provide a further written explanation, after which Buma and/or Stemra will be given the opportunity to give a further written response.
3. The Chairman decides the deadlines for submission of the documents, in such a way that the dispute process should in principle be completed within six months.

PRESENTATION OF DOCUMENTS

Article 9

1. The Disputes Committee is at all times authorised to demand that the parties and/or Buma and/or Stemra present certain documents that it considers to be of significance for the dispute.
2. All the documents submitted by a party, including the notification of the dispute, are submitted in six copies to the Secretary, who immediately sends the documents concerned to the other party indicating the date of receipt.

VERDICT OF THE DISPUTES COMMITTEE

Article 10

1. Once the dispute process is completed, the Chairman determines the date on which the Disputes Committee will deliver its verdict.
2. The Disputes Committee decides by a majority vote.
3. In reaching its verdict the Disputes Committee considers only those documents which have been brought to the attention of all parties.
4. The verdict of the Disputes Committee must be backed by reasons, indicating at least the facts, the evidence that has been put forward, the grounds on which the Disputes Committee arrived at its opinion and – in so far as applicable – the ruling on payment of the costs mentioned in Article 14.
5. The verdict of the Disputes Committee is given in writing. The Secretary sends a copy of the verdict to all the parties.

6. The verdict of the Disputes Committee is binding on the parties.
7. Buma and/or Stemra is obliged to comply with the verdict, except in the case referred to in Paragraph 8.
8. Implementation of the verdict of the Disputes Committee shall be suspended if any one of the parties wishes to refer the ruling to the civil courts and has filed the case to that effect with the civil court by no later than 6 (six) weeks after the date of the verdict. The suspension shall remain in effect until the court gives an irrevocable ruling, which shall then supersede the verdict of the Disputes Committee.

COSTS OF THE PROCEDURE

Article 11

1. Each party bears its own costs, including the costs of legal assistance mentioned in Article 6.
2. The costs and expenses of the Disputes Committee, of the secretariat and of the experts mentioned in Article 7, Paragraph 4 are borne by Buma and/or Stemra.

FEES AND EXPENSES OF MEMBERS OF THE DISPUTES COMMITTEE AND SECRETARY

Article 12

1. The fees of the members of the Disputes Committee and the Secretary are defined jointly by the Boards of Buma and Stemra.
2. The expenses of the members and Secretary include reasonable travel and accommodation costs as well as postage, telephone and fax costs.

DISPUTE HANDLING DEPOSIT

Article 13

1. For each notification of disputes (one notification may cover several disputes), a dispute handling deposit shall be payable by the notifying party:
 - a. author: € 150 per notification
 - b. publisher: € 300 per notification
2. The dispute handling deposit must be paid into the Buma/Stemra account by no later than 14 days after the day on which the secretary confirms receipt of the notification.
3. If the notifying party has not paid the dispute handling deposit demanded of them within the term specified by the secretary, they shall be deemed to have withdrawn their complaint.
4. If the Disputes Committee finds in favour of the notifying party, they will receive their dispute handling deposit back without interest.

FINAL PROVISIONS

Article 14

1. All proposals and counterproposals for a settlement put forward by any person are deemed to be made with due reservation of rights.
2. The members of the Disputes Committee and the Secretary shall act neither as referee, nor as advocate or adviser in any legal or arbitration procedure concerning disputes occurring in relation to disputes that have been dealt with wholly or partially within the framework of this dispute procedure.

DATE OF TAKING EFFECT AND AMENDMENT OF RULES

Article 15

1. These rules were last modified by a resolution of the boards of Vereniging Buma and Stichting Stemra on 3 April 2013 affecting Articles 3, 4, 5, 9 and 13.
2. These rules are established and amended jointly by the Boards of Buma and Stemra. Save as otherwise specified, the applicable rules are those in force on the date when the dispute was lodged.

NOTES TO THE RULES OF THE BUMA/STEMRA DISPUTES COMMITTEE

Non binding translation. For information purposes only.

As sent to the Buma members' meeting and the meeting of Stemra affiliates in 2006

A. INTRODUCTION

The introduction of rules for dealing with disputes was prompted by the statements made in the 'Echerer resolution' of the European Parliament [1] and the requirements of the Collective Management Supervision Act (Wet Toezicht Collectief Beheer) [2]. In a letter of 8 February 2005 the Control Board (College van Toezicht) requested that it be sent the dispute rules adopted by Buma. Buma thereupon submitted the rules of the VCP (Vaste Commissie Plagiaat – Permanent Committee on Plagiarism) and indicated that it was working on more general rules for dealing with complaints of rightholders concerning matters such as distribution.

B. STATUS OF THESE NOTES

These notes reflect the intention of the Rules and are an integral part of the Rules. The notes also serve as instructions for applying the Rules.

C. SCOPE

These Rules relate to disputes between a

Participant and Buma and/or Stemra concerning certain decisions of Buma and/or Stemra. Therefore not all decisions are covered by the Rules. It must concern a decision whereby the interests of the Participant are individually and directly affected (see point 4 below). Furthermore, the decision must be taken for the purpose of execution and application of Articles of Association, rules or exploitation agreements. Such is the purport of Article 2, Paragraph 1 of the Rules. This is the main rule.

The intention of this main rule is described on the one hand via an interpretation of the main rule, and on the other hand via a number of exceptions to the main rule, and also by a number of examples of what is and what is not covered by the rules.

With regard to execution and application, the Disputes Committee may for example decide in respect of a dispute concerning a complaint of a Participant that the management has applied the Articles of Association, rules or exploitation agreements incorrectly in this specific case. But where it concerns subjects on which, under the Articles of Association, rules or exploitation agreements, the management has discretionary policy, the dispute resolution procedure is not applicable, even if the complaint itself concerns a specific case. Nor is it the role of the Disputes Committee to rule on (the content of) the Articles of Association, rules or exploitation agreements them-

selves. These rules are laid down by the members' meeting or the meeting of affiliates. For example, the dispute resolution procedure is not intended to apply to a complaint such as that which was brought by a tunes composer concerning a lower valuation of jingles, bridges, links, etc. due to a change in the Distribution Rules. The complaint concerned not so much a specific application of a regulation, but rather a matter of policy, in this case an amendment to the Distribution Rules by the Board and the members' meeting. It is not the role of the Disputes Committee to make any pronouncement on policy. If a Participant does not agree with the policy, under the rules of the association and/or the foundation they can try to get the policy changed, or they can apply to the courts.

D. INDIVIDUAL AND DIRECT EFFECT ON INTERESTS

This terminology used in Article 2, Paragraph 1 is derived from the General Administrative Law Act (*Algemene Wet Bestuursrecht*) and European law.

Under Article 1:2, first paragraph, of the General Administrative Law Act, interested party means a person whose interests are directly affected by a decision. According to the practice of the administrative court, for a person to be regarded as such they must satisfy five criteria:

- a. the party concerned must have their own interest in the case;
- b. this must concern a personal interest which adequately distinguishes the interested party

from others;

- c. *this interest must be objectively definable (purely imagined or instinctive complaints are therefore not sufficient);*
- d. *the interest must be sufficiently current (i.e. not an uncertain future interest);*
- e. *the interest must be directly affected by the decision.*

The addition of the word 'individual' is based on European law, which mentions an interested party whose interests are individually and directly affected. A Participant can only complain about a decision that concerns them individually. For example, author A cannot complain about a decision affecting author B.

E. EXCEPTIONS TO THE SCOPE

In addition to the interpretation and exceptions as mentioned in point 3 above, the following specific exceptions are mentioned

- a. *Decisions of the meeting of members and/or affiliates.*
A decision of the highest body, for example of the members' meeting, must not be submitted to the Disputes Committee for appraisal (Article 2, paragraph 2). If a Participant does not agree with the policy, under the rules of the association and/or the foundation they can try to get the policy changed, or they can apply to the courts
- b. *Discretionary policy, further interpretation.*
As mentioned above, these Rules are not concerned with disputes about the policy of the annual general meeting, the Board or the management, but rather with complaints of

a person who is individually disadvantaged in connection with the specific execution/ application of policy as limited to their case. Nor is the dispute resolution procedure intended to enable the Disputes Committee to deliberate on cases where the Articles of Association, rules or exploitation agreements allow the management and/or the Board discretionary policy. After all it is not intended that the Disputes Committee should review policy, i.e. sit in the place of the policy-makers. Where a policy-making body, such as the members' meeting, grants the management freedom to decide policy – for example in order to allow exceptions to a regulation – the Disputes Committee may not provide any further interpretation or pass judgment on the matter. If a Participant objects to the application of a regulation by the management in their specific case, they should appeal not to the Disputes Committee, but rather to the Board or the members' meeting in order to have the regulation amended. As long as the Board or the members' meeting does not consider it necessary to formulate a regulation or decision concerning the matter in hand, there is no question of a decision reviewable by the Disputes Committee ' ... taken for the purpose of execution of Articles of Association, rules or exploitation agreements' as referred to in Article 2, Paragraph 1. The Disputes Committee assesses whether or not the existing policy has been executed/ applied correctly, but not whether the policy itself is wrong.

c. Other rules

The VCP (Vaste Commissie Plagiaat – Permanent Committee on Plagiarism) is an independent committee consisting of experts

on the subject matter. In the area where the VCP is expert, it is not necessary for the new Disputes Committee also to be active. In case of doubt, the VCP will decide. This exception concerns Article 2, Paragraph 6

d. Complaints about accounts

This concerns Article 2, Paragraph 7. The usual procedure is as follows. Complaints concerning accounts are subject to Article 15 of the Distribution Rules (complaints about accounts up to a maximum of 2 years after the account, and the corresponding Article 5 of the Exploitation agreement). A complaint is handled by the management, via staff. Thereafter it was – until now – possible to appeal to the Board.

Where it concerns a complaint about the distribution, it is only possible to lodge a claim under the dispute resolution procedure once a decision has been made about the complaint. This depends on the acceptance or rejection of a complaint being carried out formally, stating reasons. That does however mean that if a decision on a complaint is not forthcoming – bearing in mind the complexity, scale and clarity of the complaint – the 'failure to come forth' must be regarded as a rejection of the complaint. The current usual procedure outlined above in relation to the Board ceases to apply on these Rules coming into force.

e. Dispute already referred to the ordinary court

Article 2, Paragraph 7 states that if the dispute in question is already being dealt with by the court, an appeal cannot also be lodged with the Disputes Committee. Therefore a Participant may decide not to approach the Disputes Committee (for a binding advice, see Art. 10, Para. 6), but to approach a different body, such as the court.

- f. Other exceptions in Article 2
This concerns exceptions as mentioned in Paragraphs 5 and 8 of Article 2. These exceptions are self-explanatory.

F. FURTHER EXAMPLES: RULES DO APPLY

- a. A dispute over the execution of the Distribution Rules based on e.g. a decision of the management, in relation to which the management does not have discretionary policy.
- b. For complaints about incorrect application of copyright distribution keys, it was formerly possible to appeal (against a management decision) to an Appeal Committee established by the Board (Art. 13, Appendix 5 Buma Distribution Rules). This rule is replaced by these new Rules. A complaint can now be submitted to the Disputes Committee if all criteria are met (e.g. dispute not already pending at court, etc.).
- c. A dispute about the non-admission of a Participant as a member or affiliate, or about the deprivation of such status (e.g. because in the opinion of the management the revenue requirement, which is strictly set – i.e. no freedom to decide policy – in the Articles of Association, is no longer met).
- d. A complaint about failure to notify a decision in good time in accordance with Article 3 of the Exploitation Rules not to exploit a work in a particular country (the complaint cannot relate to the actual decision itself not to exploit the work in that country: discretionary policy).
- e. A complaint about failure to notify a decision in good time in accordance with Article 6 of the Exploitation Rules to set the minimum amount

below which no payment will be made (not the actual decision itself to apply such limit, nor the level of such limit: freedom to decide policy).

- f. A complaint about the penalty referred to in Article 4 of the Exploitation Rules.
- g. For complaints about classification according to duration, it was formerly possible to appeal (against a management decision) to an Appeal Committee established by the Board (Art. 6, Appendix 1, Buma Distribution Rules). This rule is replaced by these new Rules. A complaint can now be submitted to the Disputes Committee if all criteria are met (e.g. dispute not already pending at court, etc.).
- h. Incorrect application by management of the procedure for extra-judicial dissolution, see G.c below.

G. FURTHER EXAMPLES: RULES DO NOT APPLY

- a. Hille complaint about non-collection from crematoria
The Participant is individually and directly affected by the management's decision, but it is based on a (published) policy. Hille therefore has to approach the policy-makers, the Board or the annual general meeting. As is well known, the court rejected Hille's complaint.
- b. Management decision to suspend due to double claim
Such a decision is based on Article 8, Paragraph 2, Buma Distribution Rules (Stemra Article 7, Paragraph 2).
The management 'is entitled' to suspend. In this respect the management has been granted freedom to decide policy under the Rules. This is the exception mentioned in Article 2, Paragraph

3. *Buma/Stemra* recognises different types of blocking. The management is entitled to suspend in the case of e.g. :

1. Contradictory “CTB” applications (CTB stands for *Componist, Tekstdichter, Bewerker* [Composer, Lyricist, Arranger], work is registered by the author).
2. Double claim between publishers concerning foreign work with Dutch sub-publisher. *Buma/Stemra* suspends + demands response. If the party complained against does not respond within 2 months, the claim will be awarded to the complainant.
3. Double claim of publishers of originally Dutch work. Since the end of 2004, equivalent to point 2.
4. Request of a sister organisation where a *Buma/Stemra* Participant is involved.
5. Extra-judicial dissolution according to the procedure published in the Newsletter of January 2003.
6. A complaint to the VCP (Article 7, Paragraph 2 VCP).
7. Other cases of contradictory claims to a share in a musical work as mentioned in Art. 8 of the *Buma* Distribution Rules (*Stemra* Art. 7).

- c. Extra-judicial dissolution procedure
This concerns rules for a dispute between rightholders. The dispute resolution procedure is not applicable (exception mentioned in Article 2, Paragraph 6). A different situation is where the management applies the procedure wrongly (incorrectly, incompletely, unreasonably), in which case the dispute resolution procedure can be applied to such a management decision.
- d. Dispute about minimum limit / basic amount
The rules do not apply to a possible complaint

about a decision pursuant to Article 11 of the Exploitation Rules to set a minimum amount below which no payment will be made. Since it concerns the Board’s discretionary policy, the complaint would have to be directed against the general decision itself to apply that limit and/or against the amount of that limit.

Therefore such a complaint is not possible.

A complaint can however be made about the failure to notify a decision in good time (see point e of ‘Dispute resolution procedure does apply’). The foregoing also applies to a Board decision concerning the level of the basic amount in Article 13 of the *Buma* Distribution Rules.

- e. Reservation and withdrawal of repertoire
Subject to Article 3 of the Exploitation Rules and Article 27, Paragraph 2 of the Articles of Association, the management is authorised to refrain from exploiting an individual Participant in a certain country or in certain cases or for certain forms of exploitation. This concerns the management’s freedom to decide policy: the dispute resolution procedure is not applicable.
- f. Excluding doubtful lists of performed works from distribution
This concerns the authority of the management to exclude doubtful lists of performed works from distribution and take additional measures (Article 5, Paragraph 5 *Buma* Distribution Rules). Concerns discretionary policy, therefore the dispute resolution procedure is not applicable.
- g. Supplementary payment due to unreported performances
This concerns the authority of the Board to introduce or not introduce a supplementary payment due to unreported performances (Art. 9 and 10 *Buma* Distribution Rules). Concerns

freedom to decide policy, therefore the dispute resolution procedure is not applicable.

h. Extension of exploitation agreement by up to 3 years

Where the Exploitation agreement is terminated by a Participant, the management shall have the right to extend the agreement by a period of not more than 3 years, on grounds based on the management's tasks regarding exploitation. This is stated in Article 11, Paragraph 2 of the Exploitation agreement established by the Board by virtue of the Articles of Association. This concerns the management's discretionary policy.

i. Payments that are disputed on grounds that fall within the competency of the VCP. This is the exception mentioned in Article 2, Paragraph 6.

H. APPOINTMENT (ART. 3)

Because the complaint will often be directed against the management or Board of Buma or Stemra, the Disputes Committee should not be appointed by the Board. Therefore the members are appointed for and by the members and affiliates, but on the recommendation of the Board, having heard the Committee.

I. SUBMISSION OF DISPUTE (ART. 5)

A complaint must be submitted in good time to a special, carefully composed committee (Disputes Committee). The complaint must be clear and backed up by reasons. The Committee informs the management of the complaint immediately. After all, it may concern a

conflict that affects the distribution. For that reason, the management should be able to decide to suspend the distribution in question. The Committee must be (placed in a position such that it is) able to reach a decision quickly. The verdict is binding on the parties.

J. BINDING ADVICE (ART. 10)

A court can only carry out a minimal assessment of a binding advice. The dispute resolution procedure is relatively cheap for rightholders and for Buma/Stemra. This committee has the necessary know-how. A Participant may also choose to go to court instead of to the Disputes Committee.

K. NOTES

¹ European Parliament resolution adopted at the initiative of Ms. Raina A. Mercedes Echerer on a Community framework for collective management societies in the field of copyright and neighbouring rights (2002/2274(INI) of 15 January 2004). Points 29, 39 and 49 of the resolution call for a dispute settlement procedure that is affordable for authors for resolving disputes between rightholders and the society.

² Collective Management Supervision Act (Wet Toezicht Collectief Beheer) of 6 March 2003. Article 2, Paragraph 2 stipulates that the Control Board (College van Toezicht) shall take care to ensure 'that a collective management organisation ... e. has a satisfactory dispute resolution procedure for rightholders'.