MODEL
purchase agreements for video artworks 2011

A model agreement for the purchase of video artworks was drawn up under the auspices of *Project Conservering Videokunst (Project for the Preservation of Video Art)*. This agreement made provision for the use of copies, for the preservation/ digitisation and restoration of archive exemplars, and for digitisation as a new form of exploitation. None of these issues had been formally addressed to date, even though it is prudent – if not essential – for artists and owners to agree on them when finalising a purchase.

In 2011 a study group consisting of Christiane Berndes (Van Abbe Museum), Gaby Wijers (Netherlands Media Art Institute), Bart Rutten (Stedelijk Museum Amsterdam) and Willemien Diekman (lawyer) tested the model agreement from 2001 against cases drawn from practical experience and legal amendments that had taken place in the meantime. This resulted in a revised version: *Model Purchase Agreements for Video Art 2011*. There are no fundamental differences between the new version and its predecessor. The main purpose of the revision was to clarify and update the contents.

The model agreements set out the terms and conditions for the purchase of video artworks [video work and video installations] by museums and similar institutions. These are standard agreements which reflect the most common situations. They have been produced in several variants. The contents are largely the same in each case but the contracting partner (the signatory) is different. The most common purchases are those which are concluded between a buyer and an artist (with or without an agent). One of the variants is in the past tense to deal with situations in which a work has already been delivered and paid for. One essential part of the model agreements is the appendix, which sets out the technical requirements and deals with replaceability. Models and appendices are available in Dutch and English.
There are also explanatory notes (on copyright).

The study group performed its tasks with a view to the responsibility of the institution. In the model agreements the institution is responsible for the condition of the technical equipment, the preservation copy and the exhibition copies.
Taking account of the wishes of both parties, the purchase agreements accord the institution the powers that it needs to show the video artwork to the public and to preserve it and present it online (Article 3). Subject to the agreement, the institution may reproduce the work in any way it wishes for preservation purposes and the production of exhibition copies. Any inapplicable subparagraphs of Article 3 in the agreement can be crossed out.
The appendix explains the technical aspects, including the minimum and maximum system requirements and the required projection surface, and states whether any components are irreplaceable with regard to the proper presentation of the work. The appendix also anticipates technical issues that may arise in the future. It is advisable to fill in the appendix together with the artist in fairly abstract terms based on ‘timeless’ output indicators rather than in concrete terms based on current technology.

EXPLANATORY NOTES
accompanying the model agreements for the purchase of Video Art

1. These model agreements relate to the purchase of video artworks by museums and other institutions that exhibit works of this nature. They reflect the most common situations and, as such, are not suitable for every purchase. The most common purchases are those concluded between a buyer and an artist (with or without an agent). The terms and conditions of such purchases are set out in the model agreements.

2. There are four model agreements. The contents are largely the same in each case, but the contracting partner (signatory) may differ:
   – purchase from an artist;
   – purchase from an artist (concluded deal). This variant can be used when the parties wish to formalise a concluded deal in writing;
   – purchase from a producer;
   – purchase from an artist, via an agent. This variant can be used when the artist is represented by a third party who signs the agreement on his/her behalf. It includes an extra article (Article 5) which makes the agent responsible if it emerges that he/she has not received proper authorisation from the artist.

3. The models are based on the assumption that each agreement is accompanied by an appendix (technical manual) which specifies the technical requirements (equipment etc.) for the presentation of the work. It is advisable to fill in these requirements in abstract terms, without explicit reference to current technology, as it will then no longer be necessary to consult the artist in the event of new technological advances. The models are also based on the assumption that there is an installation plan, either drawn up or approved by the artist, and a certificate of authenticity. If, however, the artist has not provided an installation plan, the museum may draw up its own plan to the best of its knowledge and ability.

THE DIFFERENCE BETWEEN PHYSICAL OWNERSHIP AND COPYRIGHT

1. The purchase of a work does not automatically imply the transfer of copyright. The models do not contain a transfer of copyright. The institution merely buys the physical work. The institution does, however, need to be able to exercise certain copyright powers, such as the power to publish via an internal show or the internet and the power to make copies and reproductions of stills on posters, in catalogues etc. All these activities require the permission of the copyright holder, who may not necessarily be the owner. It is assumed in the models, however, that the agreement is concluded between the institution and the owner -copyright holder (normally: the artist).

2. Under the Dutch Copyright Act a video artwork is a film work. The Dutch Copyright Act defines a film work as “a work consisting of a series of images with or without sound, irrespective of the recording technique (…)”. There are two areas in which the copyright for a film work differs significantly from the copyright for other works of visual art: what the owner of the work may do without the permission of the copyright holder and the identity of the copyright holder.

WHAT CAN THE OWNER DO WITH THE WORK?

1. As far as museums are concerned, the Dutch Copyright Act makes a fairly crucial distinction between film works and other forms of visual art. The primary task of every museum is, after all, to exhibit objects and artefacts.
   Amongst other things, Section 23 of the Dutch Copyright Act empowers the owner to exhibit an artwork in public without the permission of the copyright holder. This empowerment does not, however, extend to moving images. Hence, the owner of a film work needs the permission of the copyright holder before he can show it in public. The model agreements make provision for such permission.

2. The model agreements also address the issue of permission for other uses. Article 3.2 accords extensive powers to the purchasing institution to enable it to perform the tasks normally expected of such institutions. This is followed by some specific examples. These examples do not delimit what is essentially a broad spectrum of powers.

3. The examples speak for themselves. Only one requires further elucidation, viz. 2f, which states that the purchasing institution may develop all activities that are permitted within the limitations of the intellectual property legislation. This legislation allows some activities to take place without the permission of the copyright holder. For example, a work may be quoted in an announcement or a review, parts of a work may be used for educational purposes, a work may be made available to members of the public via an internal terminal, and copies may be made for restoration purposes. All these activities must take place within the confines of the law. Example 2f is included to show that the purchasing institution may develop activities which are permitted within the limitations of the copyright laws without further payment.

THE COPYRIGHT HOLDER

1. The Dutch Copyright Act (Section 45d) states that all authors engaged in the making of a film (with the exception of musicians and lyricists, see below) are deemed to have transferred their copyright to the producer. The same applies to contributions by actors. This phenomenon is known as the 'fiction of transfer'.
   The producer is understood as the person who puts up the money, bears the (financial) risk and commissions the makers. In video art the artist and the producer are usually the same person – but not necessarily. The producer may be a third party.

2. If the artist is also the producer and the owner, use 'Agreement with the Artist'. If the artist is also the producer and the owner but is represented by an agent (such as a gallery), use 'Agreement with the Agent'. If someone else is the producer and the owner, use 'Agreement with the Producer'.

MUSIC

1. Although the Dutch Copyright Act states that the makers of films are deemed to have transferred their copyright to the producer (which may be the artist or a third party), certain contributors are exempt. The fiction of transfer does not apply to:
   - musical composers and lyricists. They retain their rights in full. These rights are asserted by Buma/Stemra. If Buma/Stemra were to approach a museum about using a piece of music, it would be useful to know whose music has been used.
   - Recording companies and musicians whose performances have been recorded by a recording company also retain their full rights. The rights to play this music are asserted by Sena (Section 7, Neighbouring Rights Act). The royalties are shared between the recording company and the musician(s). The situation for Sena is the same as for Buma/Stemra. So, for 'music by' in Article 1 remember to state the titles, the names of the composers and lyricists, the recording company and the performing musician(s).

2. The fiction of transfer does, however, apply to musicians who have performed music specifically for the video work (Section 4, Neighbouring Rights Act).

This explanatory notes on the Video Artwork purchase agreement is compiled by and on behalf of the SBMK (Foundation for the Conservation of Contemporary Art) and the NIMk (Netherlands Media Art Institute)