

## **MU Directive No. 10/2013**

# ***Intellectual Property at Masaryk University***

*(in the version effective from 1/9/2013)*

*In accordance with Section 10, paragraph 1 of Act No. 111/1998 Coll., on Higher Education Institutions and on Modification and Amendment of Other Acts (Higher Education Act), I issue this Directive:*

## **Part One Introductory Provisions**

### **Article 1**

#### **Subject Matter**

- (1) This Directive regulates the protection and use of intellectual property at Masaryk University (MU) and lays down the rights and obligations relating to the creation, notification, registration, protection and use of intellectual property.
- (2) This Directive is also an internal regulation which, in accordance with Section 16, paragraph 3 of Act No. 130/2002 Coll., on the Support of Research and Development from Public Funds and on the Amendment to Some Related Acts (Act on the Support of Research and Development) as later amended (hereinafter referred to as "Act No. 130/2002 Coll."), regulates the manner and use of the results of activities in research, development and innovation.
- (3) Obligations relating to accounting records and valuation of intangible assets at MU are comprehensively regulated in the Bursar's Instruction for the Valuation and Registration of Intellectual Property at MU (hereinafter the "Instruction for the Valuation of Intellectual Property").
- (4) The provisions of this Directive shall be without prejudice to specific rights and obligations relating to the protection and use of intellectual property established by the grant provider vis-à-vis the grant recipient or the partner. Where the grant provider requires something other than that provided for in this Directive, the regulations of the grant provider shall have priority. In the event that special rights and obligations relating to the protection and use of intellectual property are stipulated in a contract between MU and a third party (e.g. a contract for agreed research, a contract for work or a contract for cooperation), the provisions of this paragraph shall apply accordingly.

### **Article 2**

#### **Specialised Workplaces, Competences of the Economic Unit and Contact Persons**

- (1) The MU Technology Transfer Office (TTO) is a specialised workplace for the management, protection and use of intellectual property and related technology and knowledge transfer, cooperation with the application sphere and the establishment of spin-off companies<sup>1</sup>. The TTO provides support to MU economic units (abbreviated to HS in Czech) in the field of the exploitation of intellectual property and, within the scope of this Directive, ensures the external exploitation of intellectual property.
- (2) The Masaryk University Publishing House (MUPH) is a specialised workplace for publishing and publishing results in the form of book and magazine publications in

---

<sup>1</sup> Art. 7, paragraph 2 of the Masaryk University Organisational Regulations.

both printed and electronic form, which provides support to other economic units as part of its activities.

- (3) Competence in the case of exploitation of copyrighted works (Articles 20 and 21), databases (Article 23) and the external exploitation of know-how not related to industrial property (Article 15, paragraph 4) is exercised by the relevant economic unit.
- (4) The head of the economic unit is obliged to designate a person who will be the contact person for the identification and use of intellectual property on behalf of the relevant economic unit (hereinafter referred to as the "IP contact person").
- (5) In performing their tasks, specialised workplaces are entitled to request the cooperation of originators or authors of intellectual property or other persons at the relevant economic unit.

### Article 3

#### Definitions

For the purposes of this Directive:

- (1) **Author**<sup>2</sup>: the natural person who created the work; in the case of a collective work as a whole, also a natural person who has chosen or arranged it in a creative way.
- (2) **Author's work(s)**<sup>3</sup> : a literary work, other work of art or a scientific work that is the unique result of an author's creative activity and is expressed in any objectively perceivable form, including electronic, permanent or temporary, regardless of its scope, purpose or meaning. Authors' works include, for example, literary, musical, dramatic and musical dramatic, choreographic and pantomime, photographic, audio-visual, art, architectural, applied art and cartographic works, but also a computer programme, a work created by the creative processing of another work, language, proceedings or databases.
- (3) **Copyright**<sup>4</sup>: property and personal author's rights to works.
- (4) **Biotechnological invention**<sup>5</sup>: an invention relating to (1) biological material which is isolated from its natural environment or produced by a technical process, even if it has already occurred in nature, (2) plants or animals, unless the technical feasibility of the invention is limited to a particular plant variety; an animal breed, or (3) a microbiological or other technical process and a product other than a plant variety or an animal breed obtained in this way.
- (5) **Databases**<sup>6</sup> : a set of independent works, data or other elements systematically or methodically arranged and individually accessible by electronic or other means, irrespective of the form of their expression or whether the database is protected by copyright or by the special rights of the maker of the database.

---

<sup>2</sup> Section 5, paragraphs 1 and 2 of Act No. 121/2000 Coll., on Copyright, on Rights Related to Copyright and on Amendments to Certain Acts (the Copyright Act), as later amended (hereinafter referred to as the "Copyright Act").

<sup>3</sup> Section 2, paragraph 1 of the Copyright Act.

<sup>4</sup> Sections 11 and 12 of the Copyright Act.

<sup>5</sup> Section 2 of Act No. 206/2000 Coll., on the Protection of Biotechnological Inventions and Amending Act No. 132/1989 Coll., on the Protection of Rights to New Plant Varieties and Animal Breeds, as amended by Act No. 93/1996 Coll.

<sup>6</sup> Section 88 of the Copyright Act.

- (6) **Grants:** public funds provided to MU for the specified purpose from the state budget of the Czech Republic and the National Fund<sup>7</sup>, the budget of the local authority, the budget of the EU or other states.
- (7) **Intellectual property:** rights to the results created by the author in the performance of tasks arising from his/her employment or another employment-law relationship with MU, in the fulfilment of study obligations, or results to which MU has acquired rights under the contract. Intellectual property is (1) industrial property rights, (2) intellectual property protected by other legislation, (3) copyright or (4) database rights.
- (8) **Intellectual property protected by other legislation:** intellectual property rights which cannot be protected by registration in a particular register and are also not copyrighted; this includes (1) the rights to unregistered marks, unless protected by industrial property rights, (2) trade secret rights, (3) confidential information rights or (4) know-how rights.
- (9) **Protected plant variety**<sup>8</sup>: a variety on which, pursuant to Act No 408/2000 Coll. protected rights are granted.
- (10) **Know-how:** a summary of organisational, managerial, economic, entrepreneurial, technical, commercial, marketing, scientific, research and other knowledge and experience (1) related to MU activities, (2) is suitable for commercialisation, (3) is expressed in any objectively perceivable form; and (4) is not generally known or generally available.
- (11) **License:** the consent under which MU grants other subjects the right to use the subject of intellectual property in the framework of external use of intellectual property or under which MU acquires the right to use the subject of intellectual property.
- (12) **Acquisition of intellectual property rights:** the acquisition of rights where MU acquires intellectual property rights from a third party on the basis of a transfer agreement (transfer of rights) against payment or free of charge or acquires the right to use the subject of intellectual property under a license or other agreement.
- (13) **Acquirer:** an entity (natural person or legal entity) that acquires an intellectual property right under a remuneration or a free transfer contract (rights transfer) or acquires the right to use intellectual property under a license or other contract concluded with MU.
- (14) **Costs associated with the external commercial exploitation of intellectual property:** in particular costs related to the evaluation of the market potential of intellectual property (e.g. market research or remuneration of external experts), costs related to the protection of intellectual property (administration and maintenance fees or fees of patent attorneys), costs associated with licensing, transfer of rights, transfer of the share of MU in a spin-off or costs associated with the provision of services using MU intellectual property for remuneration.
- (15) **Trademark**<sup>9</sup>: any sign capable of being represented graphically, in particular words, including personal names, colours, drawings, letters, numbers, the shape

<sup>7</sup> Act No. 218/2000 Coll., on Budgetary Rules, as later amended.

<sup>8</sup> Section 2 of Act No. 408/2000 Coll., on the Protection of Plant Variety Rights and on Amendment to Act No. 92/1996 Coll., on Varieties, Seeds and Seedlings of Cultivated Plants, as later amended (Act on Variety Rights), hereinafter referred to as "Act No. 408/2000 Coll.".

<sup>9</sup> Section 1 of Act No. 441/2003 Coll., on Trademarks (Trademark Act), as later amended (hereinafter referred to as "Act No. 441/2003 Coll.").

of the product or its packaging, provided that such designation is capable of distinguishing the goods or services of one entity from those of another.

- (16) **Announcement of the originator of the object of industrial property:** notification of the originator of a business invention or other object of industrial property, on the basis of which MU decides on the application of industrial property rights.
- (17) **Partner:** an entity that participates in a defined part of a grant project based on a contractual relationship with the grant beneficiary, where from the conditions of the grant there is an obligation on the beneficiary to transfer to them part of the grant in an amount approved by the provider.
- (18) **Patent**<sup>10</sup>: a basic industrial-legal form of protection of the invention.
- (19) **Business invention**<sup>11</sup>: an invention created by the originator in performing tasks arising from his/her employment or another employment-law relationship with MU.
- (20) **Subsidy provider**<sup>12</sup>: central government body or other entity authorised to provide a subsidy.
- (21) **Assigning the exercise of copyright**<sup>13</sup>: contractual assignment to another person of the exercise of copyright in an employee work; the assignment is subject to the consent of the author of the work, unless the assignment is for the sale of the business.
- (22) **Industrial property:** rights to the results of intellectual activities that are industrially exploitable; in particular, the rights to inventions, technical solutions eligible for protection of a utilisable model, industrial design, topography of semiconductor products, improvement of design, plant variety, a patent for a biotechnological invention or a trademark.
- (23) **Industrial pattern**<sup>14</sup>: the appearance of the product or part thereof consisting in particular of the lines, contours, colours, shape, texture or materials of the product itself, or its decoration.
- (24) **Subsidy recipient**<sup>15</sup>: the entity which directly acquires a subsidy from a provider and is indicated in the decision or in the subsidy contract.
- (25) **Originator**<sup>16</sup>: any natural person in employment or another employment-law relationship with MU who has created or co-created a subject of intellectual property that is not a copyrighted work.
- (26) **Spin-off (or spin-out ):** a business company established by (1) MU directly or (2) another entity controlled by MU or (3) a person who was an employee of MU at the date of establishment of this business company or (4) another entity

---

<sup>10</sup> Sections 1 and 34, paragraph 3 of Act No. 527/1990 Coll., on Inventions and Rationalisation Proposals, as later amended (hereinafter "Act No. 527/1990 Coll.").

<sup>11</sup> Sections 9 and 10 of Act No. 527/1990 Coll.

<sup>12</sup> Section 2 paragraph 2, letter a) of Act No. 130/2002 Coll.

<sup>13</sup> Section 58, paragraph 1 of the Copyright Act.

<sup>14</sup> Section 2, letter a) of Act No. 207/2000 Coll. on Protection of Industrial Designs and on Amendment to Act No. 527/1990 Coll., on Inventions and Rationalisation Proposals, as later amended (hereinafter referred to as "Act No. 207/2000 Coll.")

<sup>15</sup> Section 2, paragraph 2, letter c) of Act No. 130/2002 Coll.

<sup>16</sup> Sections 8, paragraph 2 and 9, paragraph 1 of Act No. 527/1990 Coll., and Section 2, letter d) of Act No. 207/2000 Coll.

- controlled by an employee of MU in connection with the use of MU intellectual property.
- (27) **School work**<sup>17</sup>: author's work created by a MU student to fulfil his/her study obligations towards MU. Similarly, a work created by a participant in lifelong learning is considered a school work.
- (28) **Topography of semiconductor products**<sup>18</sup>: a series of fixed or encoded interrelated images depicting a three-dimensional permanent arrangement of the layers of which the semiconductor product consists, each showing a pattern of a single layer of a semiconductor product or a portion thereof, or the surface of a semiconductor product in individual stages of production or part thereof which is not normally produced in the semiconductor product industry. This term also refers to parts of the topography that are usable separately, as well as images used to produce this topography.
- (29) **Utility model**<sup>19</sup>: a form of protection for technical solutions that are new, go beyond mere professional skills and are industrially applicable. A utility model represents a simpler form of protection than a patent.
- (30) **An invention**<sup>20</sup>: the result of an inventive activity which is new and industrially applicable, and eligible for patent protection.
- (31) **A result**: the result of human activity (especially creative, economic, entrepreneurial, technical, commercial, marketing, scientific, research or organisational) that may be subject to intellectual property protection and is eligible for use by MU itself or by another entity.
- (32) **Use of intellectual property**: the use of the intellectual property of MU itself or an entity other than MU. For the purposes of this Directive, use shall mean in particular the use of intellectual property within the meaning of the relevant legislation<sup>21</sup>. For the purposes of this Directive, the use of intellectual property shall be subdivided into:
- (a) **Internal use**: general use of intellectual property for MU requirements.
  - (b) **External use**: use of intellectual property by an entity other than MU, which may be:
    - i. **External commercial exploitation** (commercialisation): remunerated use of intellectual property by an entity other than MU on the basis of (1) transfer agreement (rights transfer), (2) license or (3) other agreement, (4) transfer of MU's share in a spin-off or (5) providing services using the intellectual property of MU. Commercialisation means external commercial exploitation.
    - ii. **External Free Use**: Free use of intellectual property by an entity other than MU based on a free (1) transfer agreement (transfer of rights), (2) license or (3) other agreement, (4) transfer of MU's share in a spin-off or (5) providing services using the intellectual property of MU.

---

<sup>17</sup> Section 35, paragraph 3 of the Copyright Act.

<sup>18</sup> Section 2, paragraph 1 of Act No. 529/1991 Coll., on the Protection of Topographies of Semiconductor Products, as later amended

<sup>19</sup> Section 1 of Act No. 478/1992 Coll., on Utility Models, as later amended

<sup>20</sup> Section 3 of Act No. 527/1990 Coll.

<sup>21</sup> Section 46, paragraph 1 of Act No. 121/2000 Coll.; Section 18, paragraph 1 of Act No. 441/2003 Coll.; Section 32, paragraph 1 of Act No. 207/2000 Coll.; Section 11, paragraph 1 of Act No. 527/1990 Coll.; Section 12, paragraph 2 of Act No. 478/1992 Coll. and Section 2358, paragraph 1 of Act No. 89/2012 Coll.

- (33) **Employee work**<sup>22</sup>: individual or collective author's work created by the author to fulfil his/her duties resulting from employment or another employment-law relationship with MU.

## Part Two Industrial Property

### Article 4

#### Industrial Property Right

- (1) If the subject of industrial property was created by an originator in an employment relationship or other employment-law relationship with MU, and MU has asserted the right to the subject of industrial property, this right shall pass to MU, unless otherwise agreed<sup>23</sup>. This is without prejudice to the right of authorship.
- (2) If the industrial property was created by the originator as part of an employment relationship or other employment-law relationship with MU and at the same time the industrial property was contributed to by an originator outside employment or other relationship to MU this right is transferred to MU, unless otherwise agreed<sup>24</sup>. This is without prejudice to the right of authorship.

### Article 5

#### Notification of Industrial Property

- (1) The originator is obliged to notify MU in writing of the occurrence of any result created by him/her which may be industrial property.
- (2) The notification of the origin of the industrial property (hereinafter referred to as the "notification") within MU is submitted by the originator to the TTO, to whom he also submits the documents necessary for a proper assessment of the possibility of exercising the industrial property right<sup>25</sup>.
- (3) The notification shall be submitted on the form "Announcement of the Originator of Industrial Property" (Appendix No. 1).
- (4) If there is more than one originator, the notification shall contain the signatures of all originators and statements of the line managers<sup>26</sup> of those who created the industrial property as part of their employment or another employment-law relationship with MU.
- (5) The TTO shall assist the originators in the preparation of the notification.
- (6) A copy of the notification shall be sent by the TTO to the head of the economic unit where the result which may be industrial property originated.

---

<sup>22</sup> Section 58, paragraph 1 of the Copyright Act.

<sup>23</sup> Section 9, paragraph 1 of Act No. 527/1990 Coll. Section 13, paragraph 1 of Act No. 207/2000 Coll.

<sup>24</sup> Section 9, paragraph 1 of Act No. 527/1990 Coll. Section 13, paragraph 1 of Act No. 207/2000 Coll.

<sup>25</sup> Section 9, paragraph 2 of Act No. 527/1990 Coll.; Section 13, paragraph 2 of Act No. 207/2000 Coll.

<sup>26</sup> Section 11 of the Labour Code.

#### Article 6

##### **Assessment of the Notified Industrial Property**

- (1) Upon receipt of the notification, the TTO verifies whether it is indeed industrial property, what are MU's shares in the creation of an industrial property in the case of co-patents with agents outside employment or another employment-law relationship with MU, whether the industrial property is related to research projects, or other decisive factors in assessing the application of an industrial property right
- (2) The TTO will then produce an "Opinion on the Application of MU Industrial Property Rights" (hereinafter the "opinion"). The formulation of the opinion shall take into account in particular the nature of the subject of industrial property, its eligibility for possible external commercial use, as well as the rights and obligations to the subject of industrial property arising from Act No. 130/2002 Coll., the conditions of the subsidy provider or a contract between MU and a third party.

#### Article 7

##### **Enforcement of Industrial Property Rights**

- (1) The TTO submits the opinion to the Rector, who decides whether or not MU will exercise the right to industrial property.
- (2) The Rector may entrust the director of the TTO in whole or in part with the decision on the assertion or non-assertion of an industrial property right.
- (3) MU asserts the right to industrial property items especially when the industrial property item is beneficial to MU, i.e. especially if the industrial property item is eligible for external commercial use.
- (4) When exercising the right to industrial property, MU also takes into account cases where, in accordance with the provisions of Section 16, paragraph 3 of Act No. 130/2002 Coll. rights to the results of activities in research, development and innovation belong to the beneficiary of the subsidy.
- (5) The TTO shall inform the originator and the head of the economic unit where the industrial property originated.
- (6) The exercise of the right to industrial property leaves the right to authorship unaffected<sup>27</sup>.
- (7) In the case that MU within the statutory period<sup>28</sup> does not enforce the right to industrial property, this right passes back to the originator.

#### Article 8

##### **Internal Use of Industrial Property**

- (1) The date of the decision on the exercise of the right to industrial property is the day on which the industrial property is determined for internal use.

#### Article 9

##### **External Use of Industrial Property**

- (1) On the basis of the decision on the application of the right of MU to the industrial property, the TTO will commence work related to the protection of industrial property (searches and filing of the application for protection), if protection is

---

<sup>27</sup> Section 9, paragraph 1 of Act No. 527/1990 Coll.; Section 13, paragraph 1 of Act No. 207/2000 Coll.

<sup>28</sup> Section 9, paragraph 3 of Act No. 527/1990 Coll.; Section 13, paragraph 3 of Act No. 207/2000 Coll.

desirable, and possibly with its external use (activities linked to commercialisation including the preparation and conclusion of transfer, license or other agreements). Costs related to the industrial-legal protection of industrial property items shall be borne by the TTO, unless agreed otherwise.

- (2) Where a right to industrial property has been decided, the industrial property concerned shall be subject to the regime of business secrecy and its use shall be governed by this Directive (in particular Articles 12 to 15) until such time as it is formally protected by law. In this context, the TTO informs the originator and the head of the economic unit of the obligations arising from the protection of business secrets, as well as the prohibition of pre-publication of the industrial property in the context of publishing activities.
- (3) The procedure for introducing industrial property into the accounting records of intangible assets and their valuation, including the determination of the moment when the industrial property is intended for external commercial use, is specified in detail in the Instruction on IP Valuation.

#### Article 10

##### **Cancellation of Industrial-legal Protection**

- (1) If MU does not find a satisfactory use within 36 months of filing an industrial property application for protection, the Rector may decide to withdraw from industrial property protection (termination of protection or waiver of rights) after discussion with the TTO director and the head of the economic unit.
- (2) Prior to the eventual termination of industrial-legal protection, the originators must be allowed to acquire industrial property rights on the basis of a contract with MU.
- (3) The Rector may entrust the director of the TTO in whole or in part with the decision to withdraw from industrial property protection.
- (4) The TTO informs the originator and the head of the economic unit where the subject of industrial property originated of the cancellation of industrial-legal protection.

#### Article 11

##### **Trademark Protection and Use**

- (1) Activity related to the protection of signs capable of forming a trade mark<sup>29</sup> (in particular, conducting searches, filing applications for protection or acting on behalf of MU in the relevant enrolment proceedings), and externally using trademarks (concluding license, transfer or other contracts) fall within the scope of the TTO. The TTO shall bear the costs relating to the industrial property protection of the trade mark, unless otherwise agreed.
- (2) The date of registration of the trade mark in the trade mark register is the date of the decision that the trade mark is intended for internal use.
- (3) The procedure for the introduction of trademarks into the accounting records of intangible assets and their valuation, including the determination of the moment when the trademark is intended for external commercial use, is further specified in the Instruction on IP Valuation.
- (4) Articles 4 to 8 and 9, paragraph 2 of this Directive do not apply to trademarks.

---

<sup>29</sup> Section 1 of Act No. 441/2003 Coll., on Trade Marks and on Amendment to Act No. 6/2002 Coll., On Courts, Judges, Lay Judges and the State Administration of Courts and on Amendment to Certain Other Acts (Courts and Judges Act), as later amended and the Trademark Law, as later amended.



## Part Three

### Intellectual Property Protected by Other Legislation<sup>30</sup>

#### Article 12

- (1) If the intellectual property right, which is protected by other legal regulations, was created by the originator in the framework of employment or another employment-law relationship with MU, the right to this intellectual property belongs to MU, unless agreed otherwise.

#### Article 13

##### **Business Secret**

- (1) Where results, industrial property or other facts are subject to trade secrets<sup>31</sup>, executives<sup>32</sup> in whose workplace business secrets are used, are obliged
- (a) to determine the extent of facts which MU considers to be a trade secret,
  - (b) to grant specific employees access rights to business secrets,
  - (c) to acquaint the relevant employees with the determination of facts which MU considers to be a trade secret, with their duties in their protection, including the consequences of breaching these obligations,
  - (d) and to ensure the confidentiality of business secrets accordingly.
- (2) Agreements on the protection of business secrets with entities other than MU (especially in cases where it is necessary to acquaint third parties with MU's business secrets) are concluded on behalf of MU by the head of the economic unit concerned with the protection of the business secrets.
- (3) The TTO cooperates with the relevant economic unit in relation to the protection of trade secrets.
- (4) In the case of violation of business secrets, the relevant legal regulations shall be followed<sup>33</sup>.
- (5) The use of business secrets is similarly governed by Articles 14 and 15 of this Directive governing the internal and external use of know-how.
- (6) Information constituting business secrets is confidential information under the Labour Code<sup>34</sup>.
- (7) The use of results subject to a certain level of confidentiality shall be governed by the relevant legislation<sup>35</sup>.

---

<sup>30</sup> Definition contained in Article 3, paragraph 8 of this Directive.

<sup>31</sup> Section 17 of Act No. 513/1991 Coll., The Commercial Code, as amended (hereinafter referred to as the "Commercial Code"); Section 504 of Act No. 89/2012 Coll., The Civil Code (hereinafter referred to as "Act No. 89/2012 Coll.") and

<sup>32</sup> Section 11 of the Labour Code.

<sup>33</sup> Sections 20 and 53 of the Commercial Code; Sections 2985, 2988 and 2989 of Act No. 89/2012 Coll.

<sup>34</sup> Section 276, paragraph 5 of the Labour Code.

<sup>35</sup> Act No. 412/2005 Coll. on the Protection of Classified Information and on Security Eligibility, as later amended.

#### Article 14

##### **Internal Use of Know-how**

The day on which the know-how is captured in an objectively perceivable form (text, graphical record, tables, etc.) is the day on which the know-how is intended for internal use.

#### Article 15

##### **External Use of Know-how**

- (1) The external exploitation of know-how is carried out on the basis of transfer contracts, license contracts, work contracts, mandate contracts or unnamed contracts.
- (2) Prior to the conclusion of a contract for the external use of know-how, the know-how must be recorded in an objectively perceivable form, and the recording of such know-how forms an annex to the contract.
- (3) The external use of know-how related to industrial property is decided by the TTO director on behalf of MU and the contract for the external use of such know-how is concluded on behalf of MU by the director of the TTO.
- (4) The external use of know-how not related to industrial property is decided and contracts for external use of such know-how are concluded on behalf of MU by the head of the economic unit where the know-how originated.
- (5) Subject to prior agreement between the head of the economic unit and the TTO director, the TTO director may decide on the external use of non-industrial know-how and conclude a contract on the external use of such know-how on behalf of MU.
- (6) Before concluding a contract on the external commercial use of know-how, the person concluding the relevant contract shall ensure that a "Know-how Register" is drawn up (Appendix No. 2).
- (7) The procedure for recording know-how in the intangible assets and their valuation, including the determination of the moment when the know-how is intended for external commercial use, is further specified in the Instruction on IP Valuation.

## Part Four

### **Author's works**

#### Article 16

##### **Author's Property Rights to Employees' Works**

- (1) MU exercises, in its own name and on its own behalf, the proprietary rights to copyright works that are employees' works<sup>36</sup>, unless otherwise specified in this Directive.
- (2) The head of the economic unit is obliged to take measures to ensure that MU is entitled to exercise copyright (for employees' works) or to provide third parties with sub-licenses (for employees' works or works created by authors outside employment or another employment-law relationship with MU) in all cases where Act No. 130/2002 Coll.<sup>37</sup>, the subsidy provider or contract between MU and a third party stipulates that the copyright for the results (copyrighted works) is to be owned by MU.

---

<sup>36</sup> Section 58, paragraph 1 of the Copyright Act.

<sup>37</sup> Article 16, paragraph 3 of Act No. 130/2002 Coll.

#### Article 17

##### **Exercise of Property Rights to Employees' Works by MU Employees**

- (1) MU retains the right to exercise of copyright for its employees in respect of employees' works created for publication in professional journals or conference proceedings (hereinafter referred to as "employees' works retained in the exercise of property rights")<sup>38</sup>.
- (2) Authors of employees' works are obliged to observe the restrictions set by the subsidy provider or a contract between MU and an external entity (e.g. a contract for contracted research, contract for work or cooperation contract) when exercising copyright property rights for works with retained property rights, in particular copyright in terms of the extent of material, territory, time or quantity, in terms of exclusivity or the possibility of providing sub-licenses.
- (3) The provisions of paragraph 1 of this article do not apply if the work retained in the exercise of property rights is to be used for the needs of MU, in particular for publication in journals and conference proceedings published by MU.
- (4) The internal standards of MU or the economic unit<sup>39</sup> may provide that for certain copyright works employees may not exercise copyright at all, may exercise limited property rights over copyright, or may provide that, in specified cases, employees may exercise copyright in full or limited scope to other works than employee works while retaining the exercise of property rights.

#### Article 18

##### **Granting of Copyright License upon Request of the Author of the Employee's Work**

- (1) If the author considers that MU is not sufficiently exercising property rights to his/her work or is not exercising them at all, he has the right to apply for a license for such work<sup>40</sup>.
- (2) In this case, the head of the economic unit where the work was created decides on the granting of the license.

#### Article 19

##### **Assignment of the Right to Exercise Property Rights for Copyright**

- (1) MU may assign the right to exercise property rights to an employee's work to a third party only with the prior written consent of the author. Before entering into a contract on the assignment of the exercise of property rights to an employee's work, the economic unit's head is obliged to ensure that the author's consent (assignment) has been given to the assignment of the property rights to the employee work to a third party<sup>41</sup>.
- (2) The written consent of the author pursuant to the previous paragraph is not required if MU concludes a license agreement granting the right to exercise the right to use the employee's work, as in this case the assignment of the right to exercise property rights does not take place.

#### Article 20

##### **Internal Use of Copyrighted Works**

The day on which the employee's work is captured in an objectively perceivable form is the day that the work is intended for internal use.

---

<sup>38</sup> Section 58, paragraph 1 of the Copyright Act.

<sup>39</sup> Art. 2, paragraphs 1 and 2 of the Principles for the Creation and Publication of Internal Norms of Masaryk University.

<sup>40</sup> Section 58, paragraph 3 of the Copyright Act.

<sup>41</sup> Section 58, paragraph 1 of the Copyright Act.

## Article 21

### External Use of Copyrighted Works

- (1) The external use of employees' works, with the exceptions provided for in Article 17, paragraphs 1 and 4 of this Directive, shall be decided and concluded by the head of the economic unit on behalf of MU where the author of the employee's work is in employment or another employment-law relationship.
- (2) In the case of a co-authored work in which individual co-authors are in employment or another employment-law relationship with differing economic units, the external use of employee works is decided and the license agreement concluded on behalf of MU jointly by the heads of the relevant economic units.
- (3) In the case of a co-authored work in which a co-author is a person who is not in employment or another employment-law relationship with MU (student or external author), a written statement of the will of such persons is necessary for a decision on the external use of the co-authored work and the conclusion of a license agreement.
- (4) Subject to prior agreement between the head of the economic unit and the director of the TTO, the director of the TTO may decide on the external use of the work and the license agreement may be concluded on behalf of MU.
- (5) Upon prior agreement between the head of the economic unit and the director of the MUPH, the director of the MUPH may decide on the external use of an employee's literary work and conclude the license agreement on behalf of MU.
- (6) The procedure for the introduction of employees' works into the accounting records of intangible assets and their valuation, including the determination of the moment when the employee work is intended for external commercial use, is further specified in the Instruction on IP Valuation.

## Article 22

### School Works

- (1) In the case of school works that are final works within the meaning of Act No. 111/1998 Coll., On Universities and on the Amendment and Supplementation of Other Acts (Higher Education Act), as later amended<sup>42</sup>, MU uses these works not for profit and in a manner determined by the MU Study and Examination Regulations.
- (2) For other school works, except for computer programmes<sup>43</sup>, MU is entitled to use them for teaching purposes or for its internal needs<sup>44</sup>. In other cases, MU is entitled to use the school work on the basis of a license agreement concluded with the author on behalf of MU by the head of the economic unit that needs to use the school work.
- (3) MU enters into a license agreement with authors of school works with the possibility of providing a sub-licence whenever stipulated by Act No. 130/2002 Coll.<sup>45</sup>, a subsidy provider or, if necessary, to fulfil the purpose of a contract between MU and an external entity (for example, for the purpose of a contract for contracted research, a work contract or a cooperation contract).

---

<sup>42</sup> Section 47b, paragraph 1 of the Higher Education Act.

<sup>43</sup> Section 66, paragraph 7 of the Copyright Act.

<sup>44</sup> Section 35, paragraph 3 of the Copyright Act.

<sup>45</sup> Section 16, paragraph 3 of Act No. 130/2002 Coll.

## Part Five Databases

### Article 23

- (1) MU has the special rights of the maker of the database in all cases where the acquisition, verification or presentation of the contents of the database constitutes a substantial or qualitatively substantial contribution<sup>46</sup>.
- (2) MU is the maker of the database if a natural person (employee, student or other natural person) or a legal entity makes a database for it or when a natural person or legal entity does so at the instigation of MU<sup>47</sup>.
- (3) Articles 20 and 21 of this Directive apply mutatis mutandis to the internal and external use of the database (whether under transfer, license or other contracts).

## Part six Remuneration

### Article 24

#### Motivational Reward

- (1) The head of the economic unit may grant a motivational reward to the originators of industrial property for its creation.
- (2) The head of the economic unit where the subject of industrial property originated shall award a motivational reward if MU exercises the right to the subject of industrial property pursuant to Article 7, paragraph 1 of this Directive and the TTO informs the head of the economic unit of the assertion of MU rights under Article 7, paragraph 4.
- (3) The amount of the motivational reward is at least 10 thousand CZK. The technical and economic importance of the subject of industrial property is decisive for the amount of the motivational reward.
- (4) The originators are provided with the motivational reward by the economic unit where the industrial property originated.
- (5) A motivational reward is understood to be reasonable remuneration in accordance with the applicable legislation<sup>48</sup>.

### Article 25

- (1) The motivational reward in accordance with Article 24 is the income of the originator from dependent activity<sup>49</sup>.

### Article 26

#### Reward from Commercialisation of Industrial Property

- (1) In the event that the motivational reward paid pursuant to Article 24 becomes manifestly disproportionate to the benefits accruing from the exploitation or other exercise of industrial property, depending on external commercial exploitation, the originator shall, under the conditions set out in this article, have a right to reward

---

<sup>46</sup> Section 88a, paragraph 1 of the Copyright Act.

<sup>47</sup> Section 89 of the Copyright Act.

<sup>48</sup> Section 9, paragraph 4 of Act No. 527/1990 Coll.; Section 13, paragraph 4 of Act No. 207/2000 Coll.

<sup>49</sup> Section 6 of Act No. 586/1992 Coll., on Income Tax, as later amended.

from commercialisation of industrial property, hereinafter referred to as a 'commercialisation reward').

- (2) Additional settlement according to the relevant legal regulations<sup>50</sup> is understood to mean the commercialisation reward.
- (3) In determining whether there is an apparent disproportion in accordance with paragraph 1 of this article of the Directive, account shall be taken of the employer's material contribution to the creation of the industrial property, the extent of the originator's work and the revenues generated by the external commercial exploitation of the industrial property.
- (4) It is for the TTO to determine whether there has been an apparent disproportion in relation to the generation of revenue from the external commercial exploitation of industrial property under paragraph 1 of this article. To this end the head of the economic unit shall, upon request of the TTO, provide information on whether the motivational reward and its amount have been paid to the originator.
- (5) The manner in which the external commercial exploitation of industrial property has been carried out (license agreement, contract on the transfer of rights, provision of industrial property services, etc.) in order for there to be a right to a commercialisation reward.
- (6) MU, the originator and the acquirer may agree that all or part of the commercialisation reward will be paid to the originator, not through MU, but directly by the acquirer. In this case, the price for the external commercial exploitation of industrial property must be divided into the price received by MU and the commercialisation reward received by the originator in the contract under which the external commercial exploitation of industrial property is carried out.
- (7) The commercialisation reward referred to in the previous paragraph is income of the originator from other self-employment<sup>51</sup>.

#### Article 27

##### **Determining the Amount of the Commercialisation Reward**

- (1) The amount of the commercialisation reward is determined as the share of the originator in the net proceeds from external commercial exploitation of industrial property (commercialisation).
- (2) The net commercialisation proceeds are determined by deducting from the commercialisation earnings credited to MU the costs related to the external commercial exploitation of industrial property, the amount of the motivational reward paid pursuant to Article 24, paragraph 3 of this Directive, the relative amount for the economic unit and, as the case may be, the relative amount of MU income tax (hereinafter referred to as the "net commercial income").
- (3) In the event that the amount of net commercial income amounts to CZK 3,000 to 2 million CZK, the originator has a 70% share of the net commercialisation proceeds. A 30% share belongs to MU, while TTO manages these funds as funds intended for the purpose of financing the protection and other external commercial exploitation of intellectual property. If there is more than one originator of a given industrial property, the net proceeds from commercialisation must be at least CZK 3,000 for each co-author.
- (4) If the amount of net commercialisation income exceeds 2 mil. CZK, the originators are due from proceeds from commercialisation of an amount

---

<sup>50</sup> Section 9, paragraph 4 of Act No. 527/1990 Coll.; Section 13, paragraph 4 of Act No. 207/2000 Coll.

<sup>51</sup> Section 7 of Act No. 586/1992 Coll., on Income Tax, as later amended.

exceeding CZK 2 mil. CZK a 35% share. A 65% share belongs to MU. The provisions of the preceding paragraph of this article shall apply mutatis mutandis, with the exception of the last sentence.

- (5) In the event that the economic unit where the subject of industrial property originated contributed to the external commercial exploitation of industrial property, TTO will conclude an agreement with the economic unit on the distribution of MU's share of net commercialisation income, taking into account economic unit's contribution to the external commercial exploitation of industrial property.

#### Article 28

- (1) The originator's share of the net commercialisation proceeds referred to in Article 27 of this Directive shall be the income of the originator for employment<sup>52</sup>.
- (2) If the originator is not in employment or another employment-law relationship with MU on the date of payment of his share of the net proceeds from commercialisation<sup>53</sup>, the originator's share of the net commercialisation income paid is the originator's income from other self-employment<sup>54</sup>.

#### Article 29

##### **Remuneration of the Originators of Know-how and the Authors of Employees' Works**

- (1) Articles 24 to 28 of this Directive shall apply mutatis mutandis to the remuneration of originators of know-how and authors of employees' works, aside from the exceptions below.
- (2) Originators of know-how and authors of employees' works may be granted a motivational reward in accordance with Article 24 of this Directive.
- (3) Net commercial proceeds are determined by deducting from the commercial proceeds of the know-how or employees' works credited to MU the costs associated with the external commercial exploitation of intellectual property, the relative amount of MU administrative overheads and, where applicable, the relative amount of MU income tax.
- (4) Determining whether there is an apparent disproportion, determining the amount of the commercialisation reward and paying the originator's share of the net proceeds from commercialisation are within the competence of the relevant economic unit where the know-how or work was generated.
- (5) In cases where the commercial management of intellectual property in accordance with Articles 15, paragraph 5 and 21, paragraph 4 of this Directive is carried out by the TTO, the determination of the amount of the commercialisation reward and the payment of a share of the net commercial income is within the competence of the TTO. Article 27, paragraph 5 of this Directive shall apply mutatis mutandis.

## Part Seven

### **Acquisition of Intellectual Property Rights**

#### Article 30

- (1) The TTO director decides on the acquisition of industrial property rights and concludes the relevant transfer, license or other contracts on behalf of MU.

---

<sup>52</sup> Section 6 of Act No. 586/1992 Coll., on Income Tax, as later amended.

<sup>53</sup> Section 10 of Act No. 527/1990 Coll.

<sup>54</sup> Section 7 of Act No. 586/1992 Coll., on Income Tax, as later amended.

- (2) The TTO director decides on the acquisition of know-how rights related to industrial property and the relevant agreement on the acquisition of know-how rights is concluded on behalf of MU.
- (3) The acquisition of rights to know-how not related to industrial property is decided and the relevant agreement on acquisition of rights to know is concluded on behalf of MU by the head of the economic unit which needs the know-how for its activities. Subject to prior agreement between the head of the HS and the TTO director, the TTO director may conclude an agreement on the acquisition of rights to such know-how.
- (4) The TTO director decides on the acquisition of trademark rights and concludes the relevant transfer, license or other contract on behalf of MU.
- (5) The head of the economic unit which needs to use the copyrighted work, acting in the name of MU, decides on the acquisition of the right to use the copyrighted work or on the acquisition of the right to exercise property rights and concludes the relevant license or other agreement. Subject to prior agreement between the head of the economic unit and the TTO director, such a license or other agreement may be concluded by the TTO director on behalf of MU. Subject to prior agreement between the head of the economic unit and the NUPH director, such a license or other agreement may be concluded by the NUPH director on behalf of MU.
- (6) The head of the economic unit may stipulate by internal rule that MU staff are free to decide and to conclude the relevant license or other contract on behalf of MU for the right to use the computer programme or database (freeware or open-source software) for research or teaching purposes.
- (7) The head of the economic unit that needs to use the database decides on the acquisition of the right to use the database and concludes the relevant license or other agreement on behalf of MU. Subject to prior agreement between the head of the economic unit and the TTO director, such a license or other agreement may be concluded by the TTO director on behalf of MU.
- (8) When deciding on the acquisition of intellectual property rights, the MU management rules for the relevant calendar year shall be followed. When deciding on the acquisition of industrial property rights, the expected revenues from the external commercial exploitation of the industrial property shall always be taken into account in relation to the costs of industrial property protection of the industrial property.
- (9) The procedure for introducing acquired intellectual property into the accounting records of intangible assets and their valuation is specified in the internal regulations of MU<sup>55</sup>.

## Part Eight

### Special and Final Provisions

#### Article 31

#### Special Provisions

- (1) The method and possibilities of financing the creation, protection and use of intellectual property are set out in the Instruction on IP Valuation.
- (2) The director of the TTO and the head of the relevant economic unit are responsible for the use of intellectual property in accordance with the conditions

---

<sup>55</sup> MU Directive No. 12/2012 Registration of Tangible and Intangible assets.



stipulated by legal regulations, internal regulations of MU and contractual obligations of MU, especially if its creation was financed from public sources.

- (3) The director of the TTO may set up a Technology Transfer and Commercial Cooperation Council in accordance with internal standards, the tasks of which will include, in particular, the assessment of strategic technology transfer projects and major commercialisation projects at MU.

Article 32

**Final Provisions**

- (1) This Directive shall come into effect on 1/9/2013.
- (2) This Directive repeals and replaces Rector's Directive No. 8/2009 "Intellectual Property at Masaryk University".
- (3) The following appendices are included in the Directive:
  - (a) Appendix No. 1: Form "Notification of the Originator of the Industrial Property"
  - (b) Appendix No. 2: Form "Know-how Record Sheet"
- (4) Compliance, interpretation and updating of the Directive are the responsibility of the TTO Director.
- (5) Verification of the correctness of accounting and registration of intellectual property is the responsibility of the director of the TTO and the head of the Accounting Office of RMU.

Brno, 30 August 2013

*Mikuláš Bek*  
Rector