

Rector's Measure No. 9/2013

Ensuring the Sustainability of Outcomes in the Field of Intellectual Property

(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 Measure:

Article 1

Introductory Provisions

- (1) This Measure is issued for the purpose of adjusting and stabilising the duties of Masaryk University (MU) employees in dealing with the intellectual property of MU, especially in relation to the sustainability of outputs related to intellectual property.
- (2) The purpose of this Measure is not to impose new obligations on MU employees, but only to acquaint employees with the most important obligations arising from MU legal regulations and internal standards governing intellectual property, in particular MU Directive No. 10/2013 Intellectual Property at Masaryk University and MU Instruction 8/2013 Rules for Terminating Projects in the Operational Programme Education for Competitiveness Implemented at MU.
- (3) In the event of a conflict with the Act or MU internal regulations and standards, the law or the relevant MU internal regulations and standards shall prevail.

Article 2

Definition of Terms

According to MU internal standards ¹ the terms below are understood to mean:

- a) **Author's work(s)**: 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, audiovisual, 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.
- b) **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.

¹ Art. 3 of MU Directive No. 10/2013 Intellectual Property at Masaryk University.

- c) **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.
- d) **The 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.
- e) **Employee's work:** 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.

Article 3

General Obligations to Protect Intellectual Property

- (1) With reference to the law² the employee is obliged in particular
- a) to protect and guard the intellectual property of the employer and the rights attached thereto, and not to act contrary to the legitimate interests of the employer,
 - b) to ensure that intellectual property of the employer or to which the employer has a license, lien or other right is used only for the employer and in their legitimate interest. It may be used for another entity only if so stipulated by the employer or if it results from a contract concluded by the employer.
- (2) The provisions of the preceding paragraph shall also apply mutatis mutandis to intellectual property which the employer uses under a license agreement or for which he only exercises rights without being the owner; regardless of the legal reason for exercising these rights.
- (3) Referring to MU internal standards³ the project investigator of the Education for Competitiveness Operational Programme (ECOP) is obliged to arrange for the provider an unrestricted non-exclusive license for the use of all reported outputs having the nature of intellectual property. For this purpose, the investigator is obliged, if necessary, to provide written consent of any co-authors who are not employees of MU to the granting of authorisation to exercise the right to use the work to an unlimited extent and for the duration of the property rights to the work.
- (4) Referring to MU internal standards⁴ in the case of ECOP outputs in the form of published employee works, the investigator is obliged to ensure their inclusion in the Repository of Employees' Works.⁵

Article 4

Industrial Property

- (1) With reference to the law⁶ and internal standards of MU⁷ the employee is obliged to notify MU in writing of any result created by him/her as part of his/her

² Sections 1a and 301 of Act No. 262/2006 Coll., the Labour Code, as later amended

³ Art. 2 of MU Instruction No. 8/2013 Rules for Terminating Projects in the Operational Programme Education for Competitiveness Implemented at MU.

⁴ Art. 5 of MU Instruction No. 8/2013 Rules for Terminating Projects in the Operational Programme Education for Competitiveness Implemented at MU.

⁵ Art. 3 of MU Directive No. 4/2013 Repository of Employees' Works.

employment or another employment-law relationship with MU, which may be the subject of industrial property, including the documents necessary to properly assess the possibility if the employee doubts whether it is the subject of industrial property. The particulars of the notification according to the previous sentence are set out in the internal MU standard.⁸

- (2) With reference to the law⁹ the employee is obliged to maintain the confidentiality of any result created by him/her as part of employment or another employment-law relationship with MU, which may be the subject of industrial property.

Article 5

Business Secret

- (1) Information that constitutes a business secret is confidential information with reference to MU internal standards.¹⁰
- (2) Where results, industrial property or other facts are business secrets,¹¹ executives,¹² in whose workplace business secrets are used, are obliged
- a) to determine the extent of facts which MU considers to be a business 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 business secret, with their duties in their protection, including the consequences of breaching these obligations,
 - d) and to ensure the confidentiality of business secrets accordingly.
- (3) The use of results subject to a certain level of confidentiality shall be governed by the relevant legislation.¹³

Article 6

Author's Works

- (1) The authors of employees' works are obliged to observe the restrictions set by the subsidy provider or the 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.

⁶ Section 9 of Act No. 527/1990 Coll., on Utility Models, as later amended.

⁷ Art. 5 of MU Directive No. 10/2013, Intellectual Property at Masaryk University.

⁸ Appendix No. 1 to MU Directive No. 10/2013, Intellectual Property at Masaryk University.

⁹ Section 9, paragraph 3 of Act No. 527/1990 Coll., on the Protection of Topographies of Semiconductor Products, as later amended

¹⁰ Art. 13 MU Directive No. 10/2013, Intellectual Property at Masaryk University; Section 276 of Act No. 262/2006 Coll., The Labour Code, as later amended.

¹¹ 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

¹² Section 11 of Act No. 262/2006 Coll., on Utility Models, as later amended

¹³ Act No. 412/2005 Coll. on the Protection of Classified Information and on Security Eligibility, as later amended.

- (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.,¹⁴ the subsidy provider or a contract between MU and a third party stipulates that the copyright for the results (copyrighted works) is to be owned by MU.

Article 7

Final Provisions

- (1) The provisions of the internal standards referred to in this measure are without prejudice to the obligations of executives to control the work of subordinate employees and to ensure that measures are taken to protect the employer's property,¹⁵ nor to the duty to report executives in breach of the respective duties towards the MU Office of the Rector's Inspectorate.
- (2) In the event of a breach of obligations stipulated by legal regulations or internal regulations and standards of MU, employees may be liable according to the relevant legal regulations.¹⁶
- (3) The following text shall be inserted into all employment contracts or contracts for work in which MU acts as an employer, concluded, amended or renegotiated after the date of entry into force of this measure: *"The employee declares that he/she is aware of his/her rights and obligations arising from the legal regulations and internal standards of MU governing intellectual property. The employee undertakes to observe these internal MU standards as well as the valid legal regulations"*.
- (4) The head of the economic unit shall consider for which other employees they propose to conclude the amendment in accordance with the preceding paragraph. In doing so, they shall take into account in particular whether employees participate in the implementation of the sustainability commitment in the performance of their duties.
- (5) This Measure comes into force upon publication.

Brno, 30 August 2013

Mikuláš Bek
Rector

¹⁴ Art. 16 of MU Directive No. 10/2013 Intellectual Property at Masaryk University.

¹⁵ Section 302 of Act No. 262/2006 Coll., on Utility Models, as later amended.

¹⁶ Sections 55 and 250 of Act No. 262/2006 Coll., The Labour Code, as later amended; § 420 et seq. Act No. 40/1964 Coll., Civil Code, as later amended; Section 2894 et seq. of Act No. 89/2012 Coll., the Civil Code.