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# Rector's Directive No. 17/2018

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## Directive of the Rector of Charles University on the Provisions for Work for Hire at Charles University

Date of effect: 1 May 2018

### Preamble

This directive aims to set out the basic statutory requirements for the work for hire in accordance with section 58 of Act No. 121/2000 Sb., on Copyright, Rights Related to Copyright, and on Amendment to Certain Acts (the Copyright Act), as amended (see appendix), as well as to ensure proper application thereof by Charles University, individual faculties, and other units of Charles University, having regard to specific conditions, practices, and custom, as well as the type and specialisation of individual faculties and other units of Charles University, while exercising author's economic rights to the works for hire, with due consideration to the principles of quality publishing in connection with the role of Charles University in society and the Open Access principle.

### Article 1 – Basic Statutory Attributes of a Work for Hire

1. The provisions for works for hire apply in accordance with section 58 (1) of the Copyright Act if the following statutory requirements are met:
  - the work of authorship was created while discharging the duties arising from an employment relationship (based on employment or an agreement to complete a job or an agreement to perform work); and
  - before the work of authorship was created, no arrangements derogating from section 58 of the Copyright Act were agreed upon between the author and the employer.
2. Works for hire also include commissioned works, if the work concerned is a computer programme, a database, or a cartographic work that is not a collective work (section 58 (7) of the Copyright Act). A work for hire is also a work created while discharging the duties arising from a relationship between the members of a legal entity's bodies and the legal entity itself (section 58 (10) of the Copyright Act).
3. If the requirements under section 58 of the Copyright Act have been satisfied, the employer (Charles University) exercises all author's economic rights to the work for hire from the time the author created the work for hire and copyright arose with respect to such work. Specifically, the right to exercise author's economic rights implies that only the employer may use the work for hire and grant licences to third parties to use the work, and collect licence fees or fees for using the work for hire, etc. The author may neither use the work for hire, nor grant licences, in his or her own name, to third parties, unless otherwise provided before the creation of the work for hire. The employer may assign the right to exercise author's economic rights to a work for hire to a third party only with the author's consent (section 58 (1) of the Copyright Act).
4. Where the employer does not at all exercise author's economic rights to a work for hire, or exercises them inadequately, the author may ask the employer to grant him the licence under the usual conditions, unless there is a serious reason on the part of the employer to refuse it (section 58 (3) of the Copyright Act).
5. The author's moral rights to a work for hire remain unaffected in accordance with section 58 (4) of the Copyright Act; however, if the employer exercises author's economic rights to a work for hire, the author is presumed to have consented to the publication, modification, adaptation (including translation), merger with another work, inclusion into a collection of works, and also to the presenting of the work for hire to the public under the employer's name. The employer's name is indicated in particular in the copyright reservation (©, the employer's name, year of publication). At the same time, the author's name is provided, where relevant: such as where academic staff members are authors of academic and scientific publications. Authorship is usually not stated in the case of works for hire created in particular by non-academic staff, such as Charles University annual activity and management reports, strategic plans, evaluations, and promotion materials. Furthermore, under section 58 (5) of the Copyright Act, unless otherwise agreed, the author is presumed to have consented to the completion of his or her unfinished work for hire if the employment relationship ends before the completion of the work and if there is a reasonable concern that the employee will not complete the work for hire in a timely and due manner as needed by the employer.
6. At Charles University, such employer's entitlements must be taken into consideration, for example, in the case of derivative works, modifications, and other interventions in the content of a work for hire, but always with due respect to the moral rights (in particular, using the work without detracting from the value of the work in accordance with section 11 (3) of the Copyright Act). The employer is required to ask first the employee as the author of the work to

carry out any adaptation, modifications, and other changes to a work for hire, merger of the work for hire with other works or elements, inclusion of the work in a collection of works, etc.; only if the employee refuses to carry out such tasks can the employer ask other persons to carry them out. The author of a modification (adaptation) is always a natural person; if the author is an employee and the modification amounts to a work for hire (adaptation) carried out while discharging the duties arising from an employment relationship with the employer, then the provisions under section 58 of the Copyright Act apply to the adaptation (work for hire).

7. Before the work of authorship is created, the author and employer can agree to derogate from section 58 of the Copyright Act, for example to the effect that the author's economic rights to the work of authorship will be exercised by the author, and that the author will enter into a licence agreement with the employer. Likewise, it is possible to agree to derogate from the statutory regulation regarding the payment of fees.
8. At Charles University, the issue of whether the provisions for work for hire apply must be determined on a case-by-case basis, bearing in mind all circumstances surrounding the creation of the work of authorship. In particular, it will be determined whether or not such work of authorship resulted and followed from the discharge of specific employment duties for the employer which must be clearly identifiable from the type of work, or the specific job description, and which arose under specific circumstances (e.g., the creation of the work was a task assigned by the manager).
9. If the requirements described above have been met, and depending on the specific circumstances surrounding the creation of the work of authorship, the works for hire can, in certain faculties, include for example course materials prepared for teaching purposes for lectures or seminars (texts, images for illustration purposes) or textbooks (workbooks).

## **Article 2 – Ensuring the Right to Exercise Author's Economic Rights to a Work for Hire**

1. Depending on the conditions, practices, and custom at the respective faculties and other units of Charles University, such as employment conditions, payment conditions, or conditions for the creative activity and publications, the employer's right to exercise author's economic rights to a work for hire is ensured by the following entities:
  - the publications unit of Charles University;
  - the competent publications unit of a faculty;
  - another competent body of a faculty;
  - the competent body of another unit of Charles University;
  - Karolinum – Charles University Press;
  - another publications department of Charles University;
  - the Knowledge and Technology Transfer Centre of Charles University;
  - directly the author, based on a special authorisation granted by the employer; such an authorisation can be a licence granted to the author with the right to grant sub-licences, or an agency authorisation in accordance with this directive, or another authorisation (e.g., power of attorney); in this case, the competent faculty stipulates the conditions under which this right can be exercised, including the possibility for the author to grant licences and enter into licence agreements on behalf of the faculty (the employer).
2. An employee who is the author, or who acts on behalf of a group of authors, of a literary work of authorship (a work for hire), such as a scientific or academic article (paper), for which the employer exercises author's economic rights, represents the employer when granting gratuitous licences for non-commercial use of such work for hire which is, for the purposes of this directive, use in a periodical or non-periodical publication.
3. When acting on behalf of the employer under paragraphs 1 and 2 of this article, the author is required to heed the interests of Charles University and his or her duties arising from other internal regulations of Charles University or a competent faculty or a unit of the University, in particular the regulations governing the registration of the RDI outcomes and other intellectual achievements (including a publication platform of the highest possible standard, proper recording of publications for the employer [OBD], use of Open Access tools, accessibility of a publication of Charles University [repository of Charles University]), as well as other obligations of Charles University established in particular through funding contracts or similar agreements.
4. When acting on behalf of the employer under paragraphs 1 and 2 of this article, the author must not abuse his or her position to acquire personal benefits.

## **Article 3 – Consultations and Assistance during Implementation**

1. Consultations and assistance during the implementation of this directive are provided by the Rector's Office, via Karolinum – Charles University Press; legal issues are dealt with by the Institute of Copyright, Industrial Property, and Competition Law of the Faculty of Law, Charles University; and the legal issues concerning commercialisation transfers are resolved by the Knowledge and Technology Transfer Centre of Charles University.

## **Article 4 – Final Provision**

1. This directive becomes effective on 1 May 2018.

In Prague on 27 April 2018

Rector

Prof. MUDr. Tomáš Zima, DrSc., MBA

## \*\*\*\*\* Appendix \*\*\*\*\*

The provision of section 58 of Act No. 121/2000 Sb., on Copyright, Rights Related to Copyright, and on Amendment to Certain Acts (the Copyright Act), as amended (text as on 20 April 2017)

### Section 58 – Work for Hire

1. Unless otherwise agreed, the author's economic rights to a work created by the author while discharging his or her duties arising from the employment or civil service relationship are exercised by the employer in his own name and on his own account. Such work is a work for hire. The employer may only assign the exercise of the right pursuant to the first sentence to a third party with the author's consent, unless this occurs when an enterprise is being transferred. Such consent is presumed to be irrevocable and applying to any further assignment. The third party to whom the right has been assigned is, for the purposes of this act, presumed to be the employer.
2. In the event of the death or dissolution of the employer who was entitled to exercise the economic rights to a work for hire and who has no successor in title, the entitlement to exercise these rights is acquired by the author.
3. Where the employer does not at all exercise the economic rights to a work for hire, or exercises them inadequately, the author may ask the employer to grant him the licence under the usual conditions, unless there is a serious reason on the part of the employer to refuse it.
4. The author's moral rights to a work for hire remain unaffected. Where the employer exercises the economic rights to a work for hire, the author is presumed to have given his or her consent to the publication, modification, adaptation (including translation), merger with another work, inclusion into a collection of works, and also to the presenting of the work for hire to the public under the employer's name, unless otherwise agreed.
5. Unless otherwise agreed, the author is presumed to have consented to the completion of his or her unfinished work for hire if the legal relationship ends before the completion of the work and if there is a reasonable concern that the employee will not complete the work for hire in a timely and due manner as needed by the employer.
6. Unless otherwise agreed, the author of a work for hire is entitled to a reasonable additional remuneration from the employer if the wage or any other compensation paid to the author by the employer is clearly disproportionate to the profit from the utilisation of the rights to the work for hire and to the significance of such work for the achievement of this profit; this provision does not apply to the works referred to in paragraph 7, irrespective of whether they are actual works for hire or are just considered as such, unless otherwise agreed.
7. Computer programmes and databases, as well as cartographic works that are not collective works, are presumed to be works for hire even if they have been commissioned; the person who commissioned them is presumed to be an employer. The provisions of section 61 do not apply to such works.
8. The rights and duties under paragraphs 1 to 6 remain unaffected upon the termination of the legal relationship referred to in paragraph 1 or, where appropriate, paragraph 7.
9. In the case of agency employment<sup>4d)</sup>, the employer for whom the agency employee temporarily works under employment contract or agreement to perform work is presumed to be the employer for the purposes of this provision, unless otherwise agreed between the recruitment agency and such an employer.
10. Provisions of paragraphs 1 to 6 and paragraph 8 apply by analogy to the works created to discharge the duties arising from the relationship between a legal entity and the author who is a member of its governing body or another elected or appointed body; in this case, such a legal entity is presumed to be the employer. The provision of section 61 does not apply to the works thus created.

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4d) the Labour Code.