EU4ART

Deliverable 2.2: Summary of harmonized Intellectual Property Rules

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 101016460.

Grant Agreement (GA) No: 101016460
Acronym: EU4ART_differences
Title: DIFFERENCES – ARTISTIC RESEARCH IN THE EUROPEAN UNION (EU4ART_DIFFERENCES)
Call/Topic: Support for the Research and Innovation Dimension of European Universities (Part I)

Dresden University of Fine Arts
HUNGARIAN UNIVERSITY OF FINE ARTS
accademia di belle arti di roma
Art Academy of Latvia

Deliverable 2.2 : Summary of harmonized Intellectual Property Rules	
Related Work Package:	WP 2.2 “Summary of harmonized Intellectual Property Rules”
Lead Beneficiary:	MKE
Dissemination Level:	public
Delivery type:	Report
Author:	Adam Albert, Eszter Lázár, Dániel Máté, Edina Nagy,
Reviewers:	Content Management Team
Due submission date:	30/06/2022
Actual submission date:	30/06/2022
Description:	The first part of the report describes the intellectual property rules and practices of EU4ART institutes. The rules for the management and exploitation of the IP created and the rights and obligations of researchers involved in the creation of IP are presented. In the second part of the report, a recommendation is made to the EU4ART institutes on the possible harmonisation of IPR rights.

Versioning and Contribution History

Version	Date	Modified by	Modification reason
v.01	30/06/2022		First version
v.02	11/09/2023	Claudia Reichert	Dissemination level changed from „confidential” to “public” based on amendment
v.03			

Glossary

Abbreviation	Meaning
ABAROMA	Academy of Fine Arts of Rome
HfBK	Dresden Academy of Fine Arts
IP	Intellectual Property
LMA	Art Academy of Latvia
MKE	Hungarian University of Fine Arts
RC	Research Catalogue

Table of Contents

1. Introduction

The first part of the document describes the intellectual property rules and practices of the EU4ART partner universities. The rules for the management and exploitation of the IP created and the rights and obligations of researchers involved in the creation of IP are presented.

The document's second section includes a recommendation to the EU4ART institutions on prospective IPR rights harmonisation.

2. Summary of the IPR rules of the Accademia di Belle Arti di Roma in the context of Italian law

2.1. Introduction

This document summarizes the intellectual property rights rules applied by the Academia di Belle Arti di Roma (Academy of Fine Arts of Rome, hereinafter referred to as **ABAROMA**) based on the national intellectual property rules and the information provided by ABAROMA. In order to achieve this objective, the document examines the following materials.

i. Italian copyright act, namely the Law for the Protection of Copyright and Neighbouring Rights (Law No. 633 of April 22, 1941; hereinafter referred to as **Copyright Act**).
ii. An opinion was made by SIEDAS (Italian Society of Experts in Arts and Entertainment Law) on the legal status of works created by students and teachers of ABAROMA.
iii. Public information, and consultations with the representatives of ABAROMA.

The document will mainly address copyright related rules and issues having regard to the fact that in ABAROMA just as in other universities of fine arts the main intellectual property right concerned is copyright.

2.2. Intellectual Property Rights

Intellectual Property (hereinafter referred to as **IP**) protects the accomplishments of the human intellect. IP is a set of exclusive rights aimed at protecting the result of intellectual activity in the industrial, scientific, literary, and artistic fields.

IP rights are almost like any other property right and are outlined in Article 27 of the Universal Declaration of Human Rights. IP rights aim to reward those who create or innovate by conferring exclusive rights that allow them to exploit their works or inventions.

IP is divided into two main areas industrial property law and copyright and related rights. Industrial property law deals with design, trademarks and patents, while copyright and related rights aim to protect the creators' economic and moral interests in their works. There are several differences between industrial property law protection and copyright protection. However, one of the main differences is that copyright protection is automatically established by the creation of an original work, which is the result of its author's own intellectual creation. There is no other condition to be fulfilled, and thus it is not necessary to register a work or fulfil any further formality. At the same time, to gain industrial property protection, the work needs to be registered by an application, so the protection is not automatic.

Since the works generated by students, lecturers, and others in ABAROMA fall under copyright protection, this document will assess the copyright-related questions of these works, noting that it is

not impossible to gain several IP protections for one work, thus in some cases, design and trademark protection is highly relevant for the abovementioned works.

Copyright

As stated above, copyright protection is automatically generated by creating copyright-protected material. This means that when such material comes into existence, the author becomes the first rightsholder of the work. The first and foremost condition for copyright protection is that the work has to fall under the category of literary, scientific, and artistic works.[1] The other one is the work has to contain novelty and creative character.[2]

Copyright contains two types of rights moral rights and economic rights. The authors, as intellectual creators, are the original owners of these rights. The term of the copyright protection is, in general, 70 years after the death of the author. This means that after the term of protection expire, the works can be used freely, but the moral rights of the author need to be respected.

According to the moral rights,[3] the author has the right to be identified as the author of the work (recognition of authorship), this also contains, the right for the author using a pseudonym to reveal their identity to the public. The author has the right to object to derogatory treatment or modification of the work (except for architectural works, where the rightsholder cannot oppose amendments that are necessary during their creation or other amendments that are necessary for the work).

According to the economic rights (also called as exploitation rights),[4] it is exclusively the author who can give authorization for the use of the work in ways defined by the Act, i.e. for its publication, communication to the public, reproduction, elaboration, synchronization, public performance.

The Italian copyright system allows the transfer of economic rights. An assignment or license of economic rights must be in writing, signed by or on behalf of the copyright owner.[5]

The author is entitled to remuneration for the use of the work.

In the case of those authors who produce their works in employment or service the author's right of use is in principle automatically transferred to the employer, unless there is an agreement to the contrary.

In the following this document examines the main copyright rules which could be applied to the works made by students, lecturers, and other contracting parties of ABAROMA

2.3. Copyright rules applicable to ABAROMA

First of all, it is essential to clarify that ABAROMA does not have an IP Policy in which it could lay down the common rules applied to the works made by students, lecturers, and other contracting parties. This means that in order to gain right for the use of the works ABAROMA has to gain licenses individually.

It is highly recommended for ABAROMA to have an IP Policy in which it could lay down the general rules applied for the works made by students, lecturers, and other contracting parties. An IP Policy can provide certainty in individual and institutional rights associated with ownership and with the distribution of benefits that may be derived from the creation of works protected by intellectual property.

Scope

The personal scope of the copyright rules applicable to ABAROMA covers all of the students, lecturers, and any other contracting parties of ABAROMA.

The material scope of the copyright rules applicable to ABAROMA covers all kinds of works created by these persons.

Moral rights

The moral rights always stick to the author itself. As explained above, there are three main moral rights (i) the right to be identified as the author of a work, (ii) the right for the author to use a pseudonym to reveal their identity to the public, and (iii) the protection against any distortion of the work.
The artist may determine whether and which designation of authorship the work shall bear with the right of recognition. Authors, co-authors and publishers are entitled to the recognition right.

Economic rights (or exploitation rights)

In general, ABAROMA does not acquire the economic rights of the artworks made by the students and lecturers. This means that although ABAROMA has the opportunity to gain a license on these works, it doesn't have any legal claim in this direction.
However, there is no obstacle for ABAROMA to gain an exclusive, transferable, sub-licensable, worldwide license for the whole period of protection.

Works created by lecturers

Lecturers are always in some contractual relationship with the universities. It is essential to differentiate between works created under employment and works created under other contracts because it is easier for the employer to acquire rights in the first case.
If employment exists between the parties, the author's right of use if the work is a computer program, a database or an industrial design is in principle automatically transferred to the employer, insofar as this results from the content or the nature of the employment contract. This applies in particular, even if the employment contract does not provide for such a grant of rights. In principle, the employee has no separate claim to remuneration due to granting the right of use. The agreement on the salary already considers the remuneration.
In the case of other types of works, it is possible to arrange the transfer of rights for ABAROMA, but it is essential to have a written agreement on this topic. But it is essential to know that an assignment or license of economic rights can be arranged whenever the parties make an agreement. This means that it is possible to arrange the situation with a license in the absence of an explicit agreement between the parties.

Type of these works

There are two main types of works created by lecturers:

those works were created for educational or informational purposes, such as textbooks, notes, examination papers, slides, and any other work for the purposes above.

i. Those works were created as a result of scientific research or design activity.

Works created by students

The students could be in the following legal relationship with the university:

i. student status, which is not a similar legal relationship to employment;
ii. intern relationship, if the university is the agent of the student for the internship;
iii. PhD candidate status can be a similar legal relationship to employment.

Licensing

Suppose there is no employment or a contract between the student and ABAROMA. In this case, the parties can arrange the future of the work and the economic rights with a license agreement in which ABAROMA can get a license to use the economic rights or acquire the economic rights.
It is essential to differentiate between the licensing and the handover of the artwork itself, also called the copy of the work. Because with the handover of the copy of the work - which could be the only copy – ABAROMA will become the owner of the copy of the work and, depending on the legal relationship, could become the user.

Collection of works

By selection or arrangement, a collection of works constitute a personal intellectual creation that enjoys copyright protection as an independent work, irrespective of the copyright existing in the individual works included in the collective work.
Encyclopaedias, dictionaries, anthologies, magazines and newspapers are protected as original works if they fulfil the requirements laid down for the collection of works.

Joint authorship

Two or more persons can jointly own the copyright in a work. This can occur where more than one person creates a work or where there is an assignment of the whole or part of a work.
To qualify as joint authors, the contributions of each author mustn't be distinct. If they're distinct, then two works subsist, each with separate copyright.
The co-authors are entitled to the authorship in equal proportion if the parties do not agree otherwise. Joint owners have their rights concerning the work that can be assigned independently of the other or others, but the consent of all joint authors is required for licensing the use of the copyright-protected work.
In the case of ABAROMA, both the students and lecturers can make joint works and compound works.

Related rights

About photographs, in particular, the protection for this specific type of work can vary significantly, depending on its originality and creative value — if the picture is not particularly original and consists just of images of people or aspects, elements or facts of natural and social life (including photographs of figurative works of art and film frames), it will be protected by a special right, with a fixed duration of 20 years from the moment the photograph was taken.

2.4. Exceptions and limitations

Although copyright is an exclusive right, it has limits in favour of the public interest. These limits are either general in nature, pertaining to copyright as a whole (e.g. with the term of protection, copyright is limited in time, right), or specific in the form of exceptions and limitations to the economic rights.
This document only highlights those exceptions and limitations from the Italian copyright system connected to education; these are the following.

i.Quotation:

Summaries and quotations, if made for teaching purposes, are free but must always be accompanied by the title, author, publisher, and, if applicable, the translator. The goal must, of course, be educational and not commercial.

As for anthologies for educational use, it is provided that the extent of reproduction of excerpts of literary works may not exceed, for each of them and concerning the work from which these excerpts are taken, 12 000 letters for prose and 180 verses for poetry (with a margin of 30 more if necessary to understand the complete sense of the poem).

The "compilation" of materials could fall under the concept of databases; this is collections of works, data or other independent elements systematically or methodically arranged and individually accessible by electronic means or otherwise. In this case, the work would be protected – both in terms of its methodology and structure – according to the specific discipline, independently of the works that constitute it.

Under Italian law, teachers and students can reproduce extracts or quotations of works if carried out for teaching purposes as long as they are accompanied by the mention of the title, author, publisher and, possibly, the translator. It is, therefore, possible to recall elements of existing works (in video, audio or text format) but not to use the entire work.

ii.Performance for educational purposes and at school celebrations:

The screening of a work (i.e. film) inside the school is not considered a public screening, as long as it is not done for profit. This also means that students are allowed to perform musical or theatrical work within the classroom, provided free of charge.

If the school celebration (i.e. a concert) is for a wider audience, such as parents or school staff, certain conditions should be fulfilled to consider the use as an exception.

An agreement stipulated between the Ministry of Education and the SIAE provides for a specific exemption from the payment of copyright for all those events organised under the responsibility of scholastic institutions, as long as:

- the institutional bodies establish in advance the times and places where the performance will take place;
- access is free and reserved exclusively for family members, teachers, students and other authorities; the entire set-up and performances are the responsibility of the students (student associations or recreational-cultural associations are excluded);
- there is absolutely no profit motive.

iii.Educational and research use:

Works and materials may be freely excerpted and adapted by digital means when done exclusively for educational and non-commercial purposes by an educational institution, whether on its premises, in another place, or a secure electronic environment accessible only by the teaching staff or enrolled students.

Research institutions are authorized to extract text and data from works or other materials available in networks or databases to which they have lawful access, to reproduce them for the protection of cultural heritage and for scientific research, and to communicate the results of their research expressed in new original works to the public.

iv.Reproduction

The copyright law prohibits the paper and digital reproduction of copies of materials taken from textbooks, newspapers and magazines, either in their entirety or in part, unless the same is done by hand or with means of reproduction not suitable for distribution and exclusively personal use.

Photocopying is allowed, for personal use, within the limits of 15 % of the material protected by copyright unless the rightful owner (author or publisher) has given their consent.

v.Parody

The Italian copyright system recognizes the parody under another exception: the quotation.

3. Summary of the IPR rules of the Art Academy of Latvia in the context of Latvian law

3.1. Introduction

This document summarizes the intellectual property rights (IPR) rules applied by the Art Academy of Latvia (hereinafter referred to as **LMA**) based on the national intellectual property rules and the information provided by LMA. In order to achieve this objective, the document examines the following materials.

i. Latvian copyright act (hereinafter referred to as **Copyright Act**).
ii. Art Academy of Latvia Intellectual Property Management Rules (hereinafter referred to as **IP Management Rules**)
iii. Public information and consultations with the representatives of LMA.

The document will mainly address copyright-related rules and issues regarding the fact that in LMA, just as in other universities of fine arts, the main intellectual property right concerned is copyright.

3.2. Intellectual Property Rights

Intellectual Property (hereinafter referred to as **IP**) protects the accomplishments of the human intellect. IP is a set of exclusive rights to protect the result of intellectual activity in the industrial, scientific, literary, and artistic fields.

IP rights are almost like any other property right outlined in Article 27 of the Universal Declaration of Human Rights. IP rights aim to reward those who create or innovate by conferring exclusive rights that allow them to exploit their works or inventions.

IP is divided into two main areas industrial property law and copyright and related rights. Industrial property law deals with design, trademarks and patents, while copyright and related rights aim to protect the creators' economic and moral interests in their works. There are several differences between industrial property law protection and copyright protection. However, one of the main differences is that copyright protection is automatically established by creating an original work, which is the result of its author's intellectual creation. There is no other condition to be fulfilled, and thus it is not necessary to register a work or fulfil any further formality. At the same time, to gain industrial property protection, the work needs to be registered by an application, so the protection is not automatic.

Since the works generated by students, lecturers, and others in LMA fall under copyright protection, this document will assess the copyright-related questions of these works, noting that it is not impossible to gain several IP protections for one work; thus in some cases, design and trademark protection is highly relevant for the abovementioned works.

Copyright

As stated above, copyright protection is automatically generated by creating copyright-protected material. This means that when such material comes into existence, the author becomes the first rightsholder of the work. The first and foremost condition for copyright protection is that the work has

to fall under the category of literary, scientific, and artistic works.[1] The other one is that the artwork has to be a manifestation of creative activity and has an individual character.
In the Latvian legal system, there is a presumption that every manifestation of creativity is an artwork and is protected by copyright. This presumption may be overthrown, but the burden of proof shall rest with the party protesting the protection of the given product of creativity.
Copyright contains two types of rights, moral rights and economic rights. The authors, as intellectual creators, are the original owners of these rights. The term of copyright protection is, in general, 70 years after the author's death. This means that after the term of protection expires, the works can be used freely, but the author's moral rights need to be respected.
According to the moral rights,[2] it shall be the author's exclusive right to decide on the disclosure of the work, to be recognized as the author, the revocation of a work, the indication of the author's name on the work, the inviolability of a work and the right for legal actions against any distortion, modification, or other transformation of his or her work.
According to the economic rights (also called exploitation rights),[3] it is exclusively the author who can give authorization for the use of the work in ways defined by the Act, i.e. for its communication to the public, for its publication, for its public preformation, for its distribution, for its broadcasting, for its retransmission, for its lease, for its reproduction, for its translation, for its transformation.
It is possible to make adaptations and transformations of the work without the author's consent. Still, they can only be published or exploited with the author's permission of the adapted or transformed work. In the case of a film version of the work, the execution of plans and drafts of an artistic work, the reproduction of an architectural work or the adaptation or transformation of a database work, the production of the adaptation or modification shall already require the consent of the author.
It is essential to clarify that moral rights cannot be assigned or even licensed. The Latvian copyright system makes it possible to transfer the author's economic rights to other successors in the title.
A license agreement could perform the transfer of the rights partially or entirely. One can gain a license from the author or the rightsholder if it's not the same person. As a main rule of the Copyright Act, the licenses shall be in writing. There are only a few exceptions to this rule. Drawing up the contract in writing shall not be obligatory if the contract is a

i. publishing contract;
ii. contract for the communicating to the public of a work;
iii. contract for creating an audio-visual work;
iv. contract specifying such rights included in a compulsory licence or an exclusive licence.

The author is entitled to remuneration for the use of the work.
In the following this document examines the IP Management Rules of LMA and the main copyright rules which could be applied to the works made by students, lecturers, and other contracting parties of LMA.

3.3. Copyright rules applicable to LMA

First of all, it is essential to clarify that the purpose of the LMA's IP Management Rules is to determine the rights and obligations of the LMA and its personnel in relation to those works which are created by the LMA Staff and owned by the LMA.
The IP Management Rules document was adopted on the 25th of January 2008.

Scope of the IP Management Rules

The personal scope of the copyright (and in general IP) rules applicable to LMA covers all of the students and lecturers who are under an employment or study contract with LMA.

The material scope of the copyright rules applicable to LMA covers all kinds of works created by these persons.
The IP Management Rules' material scope covers all kinds of works created by the lecturers and students based on their contract with the LMA or created with the materials provided by the LMA.

Moral rights

The moral rights always stick to the author itself. As mentioned above, the Copyright Act mentions seven moral rights.
With the right of authorship, the artist has the right to be recognized as the author of the work, and with the right to indicate the authors name, the author may determine whether and which designation of authorship the work shall bear, which also covers the possibility to use a pseudonym or anonymity.
The disclosure of the work gives the author the right to determine whether and how his or her work will first be published. This means that in every situation the students and lecturers shall declare their consent to the publication of those works which are made under their studies and work at the university.
Also, with the right to the revocation of a work, the students and the lecturers as authors has the right to request that the use of a work be discontinued, with the provision that the author compensate the losses which have been incurred by the user due to the discontinuation.

Economic rights (or exploitation rights)

In general, LMA acquires the economic rights of the artworks made by the students and lecturers.
Based on the IP Management Rules LMA's aim is to become the rightsholder of almost every work made by the students and lecturers. The IP Management Rules assigned the decision on the exercise of the rights or the refusal to exercise the rights and became a rightsholder to the Intellectual Property Management Commission. This means that for every work made by the students or the lecturers, based on a contract with the LMA the Commission can decide whether the LMA would like to become the rightsholder of the work, or the rights can stay at the author.
If the Commission decides to gain the rights of the work for the LMA, there will be another agreement between the LMA and the author where the parties can agree in every necessary detail.

Works created by lecturers

Lecturers are always in some kind of contractual relationship with the universities. If the lecturer has created a work performing his or her duties in an employment relationship with the LMA, the moral and economic rights to the work shall belong to the author, except for the case of computer programs where the economic rights belong to the employer, in this case to the LMA. The economic rights of the author may be transferred, in accordance with a contract, to the employer.
Hence the IP Management Rules of the LMA covers both those lecturers who are in an employment relationship with the LMA and those who got a contractual relationship with the LMA the acquisition of economic rights can happen in both cases either with the transfer of the rights or with a license.

Type of these works

There are two main types of works created by lecturers:

- those works which were created with educational or informational purposes such as textbooks, notes, examination papers, slides, and any other work with the purposes mentioned above.

i. those works, which were created as a result of scientific research or design activity.

Works created by students

The students could be in the following legal relationship with the university:

i. student status,
ii. intern relationship,
iii. PhD candidate status.

Since the same rules apply to the students which apply to the lecturers if they are in a contractual relationship with LMA, there is no need to differentiate between these two statuses.

Sale of the original of a work

An original work of visual art is a work of graphic or plastic art if they are made by the author himself or herself, or also copies of the work, which are considered to be original works of visual art.

It is essential to differentiate between the licensing and the handover of the artwork itself, also called the original work of visual art. With the handover of the copy of the work - which could be the only copy – LMA will only become the owner of the copy of the work and, depending on the legal relationship (whether there is a license or not), could become the user. LMA could get a license to use the work by becoming the user of the work.

The owner of the original work – in our example the LMA - has a duty to give the author of the work a possibility to realise the right to reproduce the work, as well as to exhibit the work in a personal exhibition.

Composite work

In the case of a compilation of the composite work, the author will be the compiler whose creative activity is the selection or arrangement of materials.

An exhibition could be a composite work, in this case, the author of the exhibition as a composite work will be the person who selected the works or arranged the exhibition if the way of the selection or the arrangement contains intellectual creation. A database could also be a composite work if it fulfils the requirements.

Joint authorship

Where several persons have jointly created a work without it being possible to exploit their shares in the work separately, they are joint authors of the work. The exploitation and licensing of the work need the co-author's consent jointly.

If one of the authors refuses to finish or, for reasons independent of the author, cannot complete his or her part in creating the work, he or she may not prevent the use of his or her part of the work in the completion of the work. Such author shall have the copyright to his or her part of the work and remuneration for it unless specified otherwise by contract.

In the case of LMA, both the students and lecturers can make joint work.

3.4. Exceptions and limitations

Although copyright is an exclusive right, it has limits in favour of the public interest. These limits are either general in nature, pertaining to copyright as a whole (e.g. with the term of protection, copyright is limited in time, right), or specific in the form of exceptions and limitations to the economic rights.

This document only highlights those exceptions and limitations from the Latvian copyright system connected to education; these are the following.

i.Quotation:

Suppose the author of the material has not permitted its use for educational purposes. In that case, the law allows teachers and students to use extracts and quotations from online articles or images without requesting the author's permission for scientific, research, polemic and critical purposes in the scope that corresponds to the purpose of use. It means that the extracts or quotations will mostly be small. The author's name and the work's title must be indicated when using a quote or an extract.

ii.Exception for teaching and research

Teachers may use works of other authors without requesting the author's permission when preparing educational materials in line with educational standards to be used for direct learning in the educational establishment for non-commercial purposes. Also, in this case, the title of the work used and the name of its author must be indicated, and the size of the extract used must correspond to the purpose of the illustration. The purpose of illustration is achieved if the extract of another author's work is used as an example or if it explains the topic studied.

Teachers may compile copyrighted works without requesting the authors' permission if the above compilations align with educational standards and are used for direct teaching in educational establishments for non-commercial purposes. The scope of each work included in the compilation must correspond to the purpose of the illustration. The purpose of illustration is achieved if the extract of another author's work is used as an example or if it explains the topic studied.

iii.Public performance for purposes of teaching

Films can be shown freely in class because, commonly, the students in the class know each other. It is allowed because this does not constitute 'public performance' of the film for copyright purposes, which would require the permission of the film's authors or producers. The same occurs if the student performs a theatrical play in the class.

Films may be shown to larger audiences - where the students do not know each other - as part of a teaching process and for non-commercial purposes, provided that the following rules are observed:

- showing the work (in this case, the film) is necessary for delivering the study programme;
- the title and the authors of the film are indicated;
- the only viewers are teachers, pupils and other persons directly connected with providing the study programme.

Furthermore, the scope of film screening (duration) must correspond to that specified in the study programme in question and must not reduce pupils' interest in watching the entire film later.

If the film is shown in school to an audience that includes individuals who do not know each other and the showing does not meet any of the above rules, e.g. this is done for commercial purposes or is not necessary for delivering the study programme, the permission of the film's authors and producers is required to show the movie.

iv.Reprographic reproduction

It is possible to copy or scan extracts from books or newspapers (except musical scores) to be used in teaching for non-commercial purposes.

The state pays authors and publishers a fee for copying (reprographic reproduction) their works in educational establishments and libraries. As a result, educational establishments do not need to sign licensing agreements with authors or organisations that represent them to copy books or newspapers necessary for teaching.

The law does not specify the exact size of an extract from a book or a newspaper that may be scanned or copied and allows copying of an entire work (e.g. a photo or a verse) if necessary. However, such copying must not hinder the everyday use of books or newspapers or unjustifiably restrict authors' legitimate interests.

Guidelines of LATREPRO, the organisation responsible for reprographic reproduction payments to authors and publishers in Latvia, advise that a section of a published work (a quarter of a book, a newspaper or magazine article, etc.) may be copied. Still, it must not exceed 15% of the entire published work. The guidelines are available here:
https://latrepro.lv/dokumenti/pamatdokumenti/Kopesanas_Vadlinijas.pdf

v.Works in public spaces (freedom of panorama):

It is permitted to use images of works of architecture, photography, visual arts, design, and applied arts, permanently displayed in public places, for personal use and as information in news broadcasts or reports of current events, or include in works for non-commercial purposes.

4. Summary of the IPR rules of the Dresden University of Fine Arts in the context of German Law

4.1. Introduction

This document summarizes the intellectual property rights (IPR) rules applied by the Dresden University of Fine Arts (hereinafter referred to as **HfBK Dresden**) based on the national intellectual property rules and the information provided by HfBK Dresden. In order to achieve this objective, the document examines the following materials.

i. German copyright act, namely the Copyright Act of 9 September 1965 (Federal Law Gazette I, p. 1273), as last amended by Article 1 of the Act of 1 September 2017 (hereinafter referred to as **Copyright Act**).

ii. Public information, and consultations with the representatives of HfBK Dresden.

The document will mainly address copyright-related rules and issues regarding the fact that in HfBK Dresden, just as in other universities of fine arts, the main intellectual property right concerned is copyright.

4.2. Intellectual Property Rights

Intellectual Property (hereinafter referred to as IP) protects the accomplishments of the human intellect. IP is a set of exclusive rights to protect the result of intellectual activity in the industrial, scientific, literary, and artistic fields.

IP rights are almost like any other property right outlined in Article 27 of the Universal Declaration of Human Rights. IP rights aim to reward those who create or innovate by conferring exclusive rights that allow them to exploit their works or inventions.

IP is divided into two main areas industrial property right and copyright and related rights. Industrial property law deals with design, trademarks and patents, while copyright and related rights aim to protect the creators' economic and moral interests in their works. There are several differences between industrial property right protection and copyright protection. However, one of the main differences is that copyright protection is automatically established by creating an original work, which is the result of its author's intellectual creation. There is no other condition to be fulfilled, and thus it is not necessary to register a work or fulfil any further formality. At the same time, to gain industrial property protection, the work needs to be registered by an application, so the protection is not automatic.
Since the works generated by students, lecturers, and others in HfBK Dresden fall under copyright protection, this document will assess the copyright-related questions of these works, noting that it is not impossible to gain several IP protections for one work thus in some cases, design and trademark protection is highly relevant for the abovementioned works.

Copyright

As stated above, copyright protection is automatically generated by creating copyright-protected material. This means that when such material comes into existence, the author becomes the first rightsholder of the work. The first and foremost condition for copyright protection is that the work has to fall under the category of literary, scientific, and artistic works.[1] The other one is that the work has to be the author's intellectual creation.[2]
Copyright contains two types of rights moral rights and economic rights. The authors, as intellectual creators, are the original rightsholders of these rights. The term of copyright protection is, in general, 70 years after the author's death. This means that after the term of protection expires, the works can be used freely, but the author's moral rights need to be respected.
According to the moral rights,[3] it shall be the author's exclusive right to publish the work, to be identified as the author of the work (recognition of authorship), and to prevent any distortion of the work, which would be prejudicial to the author's legitimate intellectual or personal interest in the work.
According to the economic rights (also called exploitation rights),[4] it is exclusively the author who can give authorization for the use of the work in ways defined by the Act, i.e., for its reproduction, its distribution, its exhibition, its communication to the public.[5] It is possible to make adaptations and transformations of the work without the consent of the author. Still, they can only be published or exploited with the permission of the author of the adapted or transformed work. In the case of a film version of the work, the execution of plans and drafts of an artistic work, the reproduction of an architectural work or the adaptation or transformation of database work, the production of the adaptation or modification shall already require the consent of the author.
The German copyright system does not allow the transfer of copyright at all. It can be only transferred in execution of a testamentary disposition or to co-heirs as part of the partition of an estate. This means that copyright can only be licensed by the author. However, these licenses can grant an exclusive right to the user, which is almost similar to the transfer of the rights. An exclusive right of use shall entitle the rightsholder to use the work in the manner permitted to him, exclude all other persons, and grant rights of use. It may be agreed that utilization by the author is reserved.
The author is entitled to remuneration for the use of the work.
In the case of those authors who produce their works in employment or service, the author's right of use is, in principle, automatically transferred to the employer insofar as this results from the content or the nature of the employment or service contract.

In the following, this document examines the main copyright rules which could be applied to the works made by students, lecturers, and other contracting parties of HfBK Dresden.

4.3. Copyright rules applicable to HfBK Dresden

First of all, it is essential to clarify that HfBK Dresden does not have an IP Policy in which it could lay down the common rules applied to the works made by students, lecturers, and other contracting parties. This means that to gain the right to use the works, HfBK Dresden must acquire licenses individually.

It is highly recommended for HfBK Dresden to have an IP Policy in which it could lay down the general rules applied for the works made by students, lecturers, and other contracting parties. An IP Policy can provide certainty in individual and institutional rights associated with ownership and the distribution of rights derived from the creation of works protected by intellectual property.

Scope

The personal scope of the copyright rules applicable to HfBK Dresden covers all of the students and lecturers and any other contracting parties of HfBK Dresden.

The material scope of the copyright rules applicable to HfBK Dresden covers all kinds of works created by these persons.

Moral Rights

The moral rights always stick to the author itself. As explained above, there are three main moral rights (i) the right to publish works, (ii) the right to be identified as the author, and (iii) the protection against any distortion of the work.

The right of publication gives the author the right to determine whether and how his or her work will first be published. This means that in every situation, the students and lecturers shall declare their consent to the publication of those works which are made during their studies and work at the university.

The artist may determine whether and which designation of authorship the work shall bear with the right of recognition. Authors, co-authors and publishers are entitled to the recognition right.

Economic Rights (or exploitation rights)

In general, HfBK Dresden does not acquire the economic rights of the artworks made by the students and lecturers. This means that although HfBK Dresden has the opportunity to gain a license on these works, it doesn’t have any legal claim in this direction.

However, there is no obstacle for HfBK Dresden to gain an exclusive, transferable, sub-licensable, worldwide license for the whole period of protection.

Works created by lecturers

Lecturers are always in some contractual relationship with the universities. It is essential to differentiate between works created under employment or service relationship and works created under other contracts because it is easier for the employer to acquire rights in the first case.

If an employment or service relationship exists, the author's right of use is, in principle, automatically licensed to the employer insofar as this results from the content or the nature of the employment or service contract. In the case of works by lecturers, the license must nevertheless be checked in each

individual case. This is because a right cannot be derived from the employment contract without further clarification.
Those works will fall under this principle which has been created in fulfilment of an obligation arising from the employment or service relationship. Non-contractual or non-official works are therefore not covered by the provision. However, to decide the author's duty under his employment contract, the employer can clarify it in an employment agreement or an intellectual property policy.
In principle, the employee has no separate claim to remuneration due to granting the right of use. The agreement on the salary already considers the remuneration.

Type of these works

There are two main types of works created by lecturers:

i. those works were created for educational or informational purposes such as textbooks, notes, examination papers, slides, and any other work with the aforementioned purposes.
ii. those works were created as a result of scientific research or design activity.

Works created by students

The students could be in the following legal relationship with the university:

i. student status, which is not a similar legal relationship to employment;
ii. intern relationship, if the university is the agent of the student for the internship;
iii. PhD candidate status, which can be a similar legal relationship to employment.

Licensing

Suppose there is no employment or a similar legal relationship to employment between the student and the HfBK Dresden. In that case, the economic rights cannot be licensed automatically, there need to be an agreement between the parties

Sale of the original work

It is essential to differentiate between the licensing and the handover of the artwork itself, also called the copy of the work (sale of the original of a work). Because with the handover of the copy of the work - which could be the only copy – HfBK Dresden will only become the owner of the copy of the work and, depending on the legal relationship (whether there is a license or not), could become the user. HfBK Dresden could get a license to use the work by becoming the user of the work.
The owner of the original of an artistic work shall be authorized to exhibit the work in public even if it has not yet been published, unless the author has explicitly ruled this out at the time of the sale of the original.

Collection of works

A collection of works which, by selection or arrangement, constitute a personal intellectual creation enjoy copyright protection as an independent work, irrespective of the copyright existing in the individual works included in the collective work. An exhibition could be a collection of works, in this case, the author of the exhibition as a collection of works will be that person who selected the works or arranged the exhibition if the way of the selection or the arrangement represents intellectual creation. A database could also be a collection of works if it fulfills the requirements.

Joint authorship Where several persons have jointly created a work without it being possible to separately exploit their individual shares in the work, they are joint authors of the work. The exploitation

and licensing of the work needs the co-authors consent jointly. Each co-author shall be entitled to take action independently against copyright infringement. An interview could be a joint work, or a book written by two authors jointly.
A joint author may waive his share of the exploitation right. He shall make a declaration of waiver to the other joint authors.
There is another type of joint works, called compound works. In this case the authors combine their works for the purpose of joint exploitation. In this case, each co-author may independently exercise the copyright relating to his respective part. A collection of papers could be a compound work.
In the case of HfBK Dresden, both the students and lecturers can make joint works, and compound works.

Related Rights

Related rights are rights that in certain aspects resemble copyright, but that serve to protect a different involvement with works. The purpose of the related rights is to protect the legal interests of certain persons and legal entities that contribute to making works available to the public. For example, performers give life to the work they are performing, which gives performers a justifiable interest in the legal protection of their individual interpretations.
In the Copyright Act, there is two unique related right, which may be related to the exercises made in the university.
The related right for scientific editions covers those editions of works or texts which are not protected by copyright if they represent the result of scientifically organized activity and differ substantially from previously known editions of the works or texts. This right is similar to copyright, the author of the edition shall be entitled to exercise the right. The only difference is in the term of protection, which is 25 years after the edition's publication, but 25 years after its production if the edition was not released within that period.
The related right for photographs covers those photographs which are not considered photographic works. This right is similar to copyright; the photographer shall be entitled to exercise the right. The only difference is in the term of protection, which is 50 years after the photograph was released or, if its communication to the public occurred prior to that date, 50 years after that. The right shall already expire 50 years after production if the photograph was not released or legally communicated to the public within this period.

4.4. Exceptions and limitations

Although copyright is an exclusive right, it has limits in favour of the public interest. These limits are either general in nature, pertaining to copyright as a whole (e.g., with the term of protection, copyright is limited in time, right), or specific in the form of exceptions and limitations to the economic rights.
This document only highlights those exceptions and limitations from the German copyright system which are connected to education, these are the following.
In Germany, Paragraph 60a of the Copyright Act grants certain privileges to teaching as a special exception. This law sets out the conditions under which works protected by copyright may be used to illustrate lessons. In addition, other general exceptions – for example, the right to quote under Paragraph 51 of the Copyright Act– may also be applicable and allow teachers to use copyright without permission.

i.Quotation:

The use of published works for the purpose of quotations does not require permission and is free of charge. The quotation must serve a quotation purpose. This means that the quotation must be necessary to substantiate what the teacher is saying in their work. If the quotation can be dispensed with as substantiation, without making one's own statement less comprehensible, it is not a quotation, but a mere illustration, which is not covered by the right to quote. How long a quotation may be is not fixed. The decisive factor is whether the extent of use is justified by the specific purpose of the quotation.

The quotation must be marked as such, must not be altered, and the author and source must be indicated.

In principle, all works – not just texts – can be quoted. Even images or extracts from musical and cinematographic works can fall under the quotation exception. However, here too, the focus must be on one's engagement with the work cited. For example, an art teacher who analyses a painting in their teaching materials may substantiate their statements by citing an illustration of that painting. On the other hand, if they use images of an artist's paintings only to show what paintings the artist has made and do not engage further with them, there is no permitted image citation.

ii.School broadcasts:

Schools, teacher training and further training institutions may make individual copies of works to be used as part of a school broadcast by transferring the works to video or audio recording mediums.

The video or audio recording mediums may only be used for teaching purposes and they must be deleted at the latest at the end of the academic year following the transmission of the school broadcast unless the author has been paid equitable remuneration.

iii.Communication to the public:

The university can communicate to the public a published work if the communication serves a non-profit-making purpose for the organizer, if participants are admitted free of charge, and, in the case of a lecture or performance of a work, if none of the performers is paid a special remuneration. Equitable remuneration shall be paid for the communication. The obligation to pay compensation shall not apply to events organized by the youth welfare service, the social welfare service, geriatric and welfare service. They are only available to a specific, limited group of persons on their social or educational purpose.

iv.Advertising an exhibition and the public sale of works

The reproduction, distribution and making available to the public of works exhibited in public or intended for public exhibition or public sale shall be permitted to the organizer for advertising purposes to the extent necessary for the promotion of the event.

v.Works in public spaces (freedom of panorama):

The reproduction, distribution and making available to the public of works located permanently on public roads and ways or public open spaces. In the case of buildings, this authorization shall only extend to the façade.

vi.Reproduction:

Photocopying or scanning individual pages from books and articles from newspapers or magazines to illustrate lessons is generally permitted.

Paragraph 60a of the Copyright Act allows teachers and students to reproduce up to 15% of a published work to illustrate lessons. Such a work may be, for example, a book, an essay, an

illustration or a poem. The scanning or photocopying of individual pages of a book is generally permitted.

However, in certain cases, limiting the permitted reproduction to 15% does not serve its purpose, for example, if graphics or other illustrations, or poems or lyrics are to be reproduced for lessons. Therefore, the law also permits the reproduction of works in full in certain cases, namely images, individual contributions from the same specialist or scientific journal, and other small-scale works.

These materials may be used by pupils and teachers in a class or course. Sharing them with other teachers of the same school, for example, via the school's intranet, is also permitted. Where appropriate protective measures (e.g. password protection) are taken to ensure that only pupils of one class or course, and teachers in the same school, can use the copyright material, use in a digital learning environment is also permitted.

vii. Caricature, parody, pastiche

Published works may also be used and modified for the purposes of caricature, parody and pastiche. The prerequisite for this is that some engagement with the pre-existing work or other reference object must be discerned. In parody and caricature, the engagement is humorous or mocking. Pastiche, on the other hand, may also contain expressions of appreciation or reverence for the original, for instance as a tribute. It is generally understood as a work that openly imitates the work of another artist.

5. Summary of the IPR rules of the Hungarian University of Fine Arts in the context of Hungarian law

5.1. Introduction

This document summarizes the intellectual property rights (IPR) rules applied by the Hungarian University of Fine Arts (hereinafter referred to as **MKE**) based on the national intellectual property rules and the Intellectual Property Management Policy of the MKE. In order to achieve this objective, the document examines the following materials.

i. Intellectual Property Management Policy of the MKE (hereinafter referred to as **IP Policy**)
ii. A proposal from the 16th of September 2021 for the modification of the IP Policy (hereinafter referred to as **Proposal**)
iii. Hungarian intellectual property acts, namely the Act No. LXXVI of 1999 on copyrights (hereinafter referred to as **Copyright Act**), Act No. XLVIII of 2001 on the legal protection of designs (hereinafter referred to as **Design Act**), and Act No. XI of 1997 on the Protection of Trademarks and Geographical Indications (hereinafter referred to as **Trademark Act**).
iv. Public information and consultations with the representatives of MKE.

The document will mainly address copyright-related rules and issues regarding the fact that in MKE, just as in other fine arts universities, the primary intellectual property right concerned is copyright.

5.2. Intellectual Property Rights

Intellectual Property (hereinafter referred to as **IP**) protects the accomplishments of the human intellect. IP is a set of exclusive rights aimed at protecting the result of intellectual activity in the industrial, scientific, literary, and artistic fields.

IP rights are almost like any other property right and are outlined in Article 27 of the Universal Declaration of Human Rights. IP rights aim to reward those who create or innovate by conferring exclusive rights that allow them to exploit their works or inventions.

IP is divided into two main areas industrial property law and copyright and related rights. Industrial property law deals with design, trademarks and patents, while copyright and related rights aim to protect the creators' economic and moral interests in their works. There are several differences between industrial property law protection and copyright protection. However, one of the main differences is that copyright protection is automatically established by the creation of an original work, which is the result of its author's own intellectual creation. There is no other condition to be fulfilled, and thus it is not necessary to register a work or fulfil any further formality. At the same time, to gain industrial property protection, the work needs to be registered by an application, so the protection is not automatic.

Since the works generated by students, lecturers, and others in MKE fall under copyright protection, and the IP Policy of the MKE is mainly concentrates on copyright-related questions, this document will assess the copyright-related questions of these works, noting that it is not impossible to gain several IP protections for one work, thus in some cases, design and trademark protection is highly relevant for the abovementioned works. In connection with these forms of IP protection, the IP Policy of the MKE states that if the work could be protected by industrial property rights, the author of the work should keep the work a secret until the protection is obtained.

Copyright

As stated above, copyright protection is automatically generated by creating copyright-protected material. This means that when such material comes into existence, the author becomes the first rightsholder of the work. The first and foremost condition for copyright protection is that the work has to fall under the category of literary and artistic works.[1] The other one is the originality of the work, which means that it should be derived from the intellectual activity of the author, and it can't be a copy of another work.[2]

Copyright contains two types of rights moral rights and economic rights. The authors, as intellectual creators, are the original owners of these rights. The term of the copyright protection is, in general, 70 years after the death of the author. This means that after the term of protection expire, the works can be used freely, but the moral rights of the author need to be respected.

According to the moral rights,[3] it shall be the author's exclusive right to disclose the work, to withdraw it from the public, to have his name indicated on the work, and to prevent any distortion, mutilation, or any other modification of the work, which would be prejudicial to the author's honour or reputation.

According to the economic rights,[4] it is exclusively the author who can give authorization for the use of the work in ways defined by the Act, i.e. for its reproduction, its distribution, its public performance, its communication to the public by broadcasting or in any other manner, its retransmission, its alteration and, its exhibition. The author is entitled to remuneration for the use of the work, and he can waive it only by an express statement to that end. However, authors' economic rights are often transferred (licensed or even assigned if possible) to commercial users (e.g. employers).

It is essential to clarify that moral rights cannot be assigned or even licensed. Regarding economic rights, there are certain cases when the Copyright Act allows the transfer of these rights, and they are also licensable in all cases.

The economic right can be transferred in the following cases:

i. works created under employment or other similar legal relationships;
ii. computer program creations (software);
iii. databases;
iv. works commissioned for advertising purposes;
v. cinematographic creations and other audiovisual works (except the right for private copy levy, lending right, and retransmission right).

In every other case it is possible to gain a license from the author or the rightsholder if it's not the same person. As a main rule of the Copyright Act the licenses shall be in writing. There are only a few exceptions from this rule. Drawing up the contract in writing shall not be obligatory if the contract

i. concluded for publication in a press product, daily newspaper or periodical;
ii. concluded for non-exclusive, free license for the communication to the public right;
iii. concluded for licensing non-exclusive use rights for software and database recognized as collection of works; or
iv. concluded by accepting the author's offer for a non-exclusive, free license for an indefinite number of persons.

In the following this document examines the exact rules of the MKE's IP Policy in order to summarize the IP right acquisition procedures connecting to the works made by students, lecturers, and other contracting parties of the MKE.

5.3. Summary of the IP Policy

The existing IP Policy of the MKE was adopted on the 24th of May 2021. The Proposal, which is not yet adopted, aims to clarify the handover of the copy of the work, the transfer of the economic rights, and the waiver of the rights by the MKE.

The scope of the IP policy

The personal scope of the IP Policy covers all of the students and lecturers of the MKE but does not cover any other contracting parties. In the latter case, Article 25. of the IP Policy obliges the representatives of the MKE to take care of the IP-related questions in the contract.

The IP Policy's material scope covers all kinds of works created by the lecturers based on their contract or created with the materials provided by the MKE. It also covers those works which are made by the students of the MKE with the contribution of their lecturers during their studies. Based on Article 2, paragraph 3 of the IP Policy, the computer programs fall outside the scope of the IP Policy.

Moral rights

The IP Policy clarifies some questions regarding the moral rights of the author. As explained above, there are three main moral rights (i) the right to publish works, (ii) the right to indicate the name of the author, and (iii) the protection of the integrity of the work.

Publishing works

Article 9 of the IP Policy lays down the rules for the publishing of the work. With the establishment of their student status, the students shall declare their consent to the publication of those works which are made under their studies.
The lecturers all have some separate contracts with the MKE which is mainly an employment contract. In the latter case there are special rules for the works made for hire because in these cases, in the absence of any agreement to the contrary, the author only has the right to decide if he or she wants to hand over the work to the employer.[5] After the handover, the employer can decide whether it wants to publish the work. In this context, the IP Policy only clarifies that the MKE aims to grant its lecturers, students, and researchers the ability to report publicly on their projects.

Economic rights

Based on the IP Policy, MKE's aim is to become the rightsholder of almost every work made by the students and lecturers. If it's not possible then MKE's aim is to gain as much control as possible by a licensing agreement.
In this context, the IP Policy clarifies that MKE will gain an exclusive, transferable, sub-licensable, worldwide license for the whole period of protection.
Whit this license, the MKE will be entitled to carry out the following uses of the work:

i. reproduction,
ii. distribution,
iii. public performance,
iv. communication to the public by broadcasting or in any other manner,
v. retransmission of the broadcast work to the public with the involvement of an organization
vi. other than the original one,
vii. exhibition.

If the MKE earns revenue from the use of the work, it shares 50% of the revenue with the author.

Works created by lecturers

As mentioned before, the lecturers are always in some kind of contractual relationship with the universities. It is essential to differentiate between works created under employment or similar legal relationships and works created under other contracts because only some exceptional cases are listed in point II.1. when the economic rights of the work can be assigned. This means that MKE's acquisition of economic rights is only possible if the lecturers are under employment or other similar legal relationships. In any other case, the MKE can only get a license for the use of the works.
Hence the IP Policy of the MKE covers both those lecturers who are in a civil servant status with the MKE and those who got a contractual relationship with the MKE the acquisition of economic rights for the MKE depends on the status of the lecturer. In this context, the IP Policy itself differentiate between the two status.

Type of these works

There are two main types of works created by lecturers:

i. those works which were created with educational or informational purposes such as textbooks, notes, examination papers, slides, and any other work with the purposes mentioned above.
ii. those works, which were created as a result of scientific research or design activity.

Transfer of economic rights

As stated, several times above, the acquisition of rights by the MKE is limited mainly to those cases when the lecturers are under employment or other similar legal relationships. It also needs to be stated that even in these cases, the employer, in this case, the MKE, can only acquire the economic rights if the creation of the work is the author's duty under his contract of employment. The acquisition of the economic rights is fulfilled by delivering the work to the MKE.

To decide the author's duty under his employment contract, the employer can clarify it in the agreement of employment or an intellectual property policy.

In the case of the IP Policy of the MKE, all of these questions are clarified in the material scope of the IP Policy.

Works created by students

It is essential to clarify that the possibility for the transfer of economic rights in the case of works created by students depends on the legal relationship between the parties.

The students could be in the following legal relationship with the university:

i. student status, which is not a similar legal relationship to employment;
ii. intern relationship, if the university is the agent of the student for the internship;
iii. PhD candidate status, which can be a similar legal relationship to employment.

Transfer to economic rights

Suppose there is no employment or a similar legal relationship to employment between the student and the MKE. In that case, the economic rights cannot be transferred unless the special rules for the work make it possible (e.g. software, database etc.).

The IP Policy of the MKE states that once a work made by a student is handed over to the MKE will become the property of the MKE. This rule includes the transfer of economic rights.

The IP Policy contains the method of transmission for these kinds of works. First of all, at the end of every semester, the students' works that are considered successful by the lecturers need to be documented and categorized. These works will be part of the exhibition held at the end of the academic year.

It is essential to differentiate between the transfer of economic rights and the handover of the artwork itself, also called the copy of the work. Because with the handover of the copy of the work - which could be the only copy – the MKE will become the owner of the copy of the work and, depending on the legal relationship, could become the rightsholder or the user. MKE can become the rightsholder of a work if it acquires economic rights. Suppose it's not possible, then MKE could get a license to use the work by becoming the user of the work.

The right of exhibition

Based on the Copyright Act, there is a special right called the right of exhibition for works of fine art, photographic or applied art or industrial design creations. This is a bilateral right because it is a right of the author and the owner of the copy of the work.

On the one hand, the owner of the copy of the work shall be obliged to make the work available to the author temporarily to exercise his author's rights if doing so is without prejudice to the equitable interests of the owner.

On the other hand, the exhibition of the copy of the work shall be subject to the author's consent. However, if the exhibition of a work forms part of a public collection, there is no need for the author's permission.

Connecting to this right, the IP Policy of the MKE clarifies that with the handover of the artwork, it will become part of the collection of MKE. However, the student still has the right to take away the artwork temporarily.

Remuneration

Based on the list of the artworks made by students, the MKE can decide which artwork would it prefer to keep. Those artworks' economic rights, which the MKE chooses to keep, will be transferred to the MKE. In every other case, the artwork itself and the rights attached to the work will stay with the author (student). A scholarship will be granted to the students after every artwork kept by the MKE.

There is also an artwork rental system operated by the MKE called the Artothék system. Every artwork acquired by the MKE will be part of this system, and the MKE shares 50% of its revenue with the authors of those artworks which are considered as parts of the system.

Special rules for audiovisual works

Based on the IP Policy MKE will become the film producer for every audiovisual work which is made with the contribution of MKE. In this case the MKE cannot become the rightsholder of the work, but the consent of the MKE shall be required for the film to be reproduced, distributed, including lending to the public and made available to the public by cable or any other means or in any other mode in such a way that members of the public can individually choose the place and time of access.

If there is a contract on adaptation for screen between the MKE (producer) and the student (author), the author shall transfer the right to use the cinematographic creation and license its use to the producer. This transfer does not cover the abovementioned rights.

Collection of works

A collection shall enjoy copyright protection if the selection, arrangement or editing of its content is of an individual and original nature. The protection shall apply to a collection of works, even if the parts or elements thereof do or may not enjoy copyright protection.

An exhibition could be a collection of work, in this case the author of the exhibition as a collection of works will be that person who selected the works or arranged the exhibition if the way of the selection or the arrangement has an individual and original nature. The author of the collection of works called editor. A database could also be a collection of works if it fulfills the requirements.

Joint authorship and collectively created works

If there are multiple authors for a joint work the parts of which cannot be used independently, shall jointly enjoy copyright protection and, in case of doubt, in equal proportions; however, each co-author shall be entitled to act independently against copyright infringement. An interview could be a joint work, or a book written by two authors jointly.

There is another type of joint works, called connected works. In this case the parts of the joint work can also be used independently. Each co-author may independently exercise the copyright relating to his respective part. A collection of papers could be a connected work.

A work is collectively created if the contributions of the cooperating authors are combined in the resulting integrated work in a manner that makes it impossible to establish the rights of each individual co-author. Copyright relating to a collectively created work belongs to the natural or legal person qualifying as the authors' legal successor, upon whose initiative and under whose management the work was created and who published it in his or its own name.

If the joint works are created only by the students or lecturers of the MKE, the rules of the IP Policy applies to these works. If there is a third party in the making the IP Policy clarifies that the representatives of the MKE must ensure that the terms of the joint work are in a written form, and the IP related questions are taken care of.

5.4. Exceptions and limitations

Although copyright is an exclusive right it has limits in favour of the public interest. These limits are either general in nature, pertaining to copyright as a whole (e.g. with the term of protection copyright is limited in time, right), or specific in the form of exceptions and limitations to the economic rights.
This document only highlights those exceptions and limitations from the Hungarian copyright system which are connected to education, these are the following.

i. Quotation, borrowing:

As an exception, teachers and students can use any type of work by quotation and borrowing, by designating the source and the author specified therein and to the extent justified, on the condition that the resulting work is not utilized commercially.

The so-called borrowing can only exist as a free use if it is intended for educational or scientific research purposes. Only the following types of works can be used, with the exception of borrowing: parts of literary or musical works, films or small independent works of this nature, or pictures of works of fine art, architectural works, works of applied art, and designs, and photographic works. Any use of a work in another work to the degree that exceeds quotation or citation constitutes borrowing.

Regarding the extent of the quotation or borrowing, there is no exact measure determined by law or legal practice. In the case of borrowing, it is also required to only borrow to the extent justified and designate the source and the author specified therein.

The work that is the product of the borrowed work cannot be utilized commercially. It can be used freely, without the consent of the borrowed work's rightsholder, in the following two cases – provided that such uses are carried out non-commercially: first, the author's authorization is not required to reproduce and publish the recipient's work if the recipient's work is declared a textbook or reference book according to the relevant legislation and so long as the academic purpose is indicated on the title page; second, the author's authorization is not required to use the recipient's work for school education at the place of education, in digital form, by electronic means, or for making it available to the public through a secure electronic network.

ii. Reproduction and publication of the recipient's work (if it is declared a textbook).

iii. Use of the recipient's work for school education.

iv. Reproduction of the work for educational purposes with a number of copies corresponding to the number of students in a group or class and for examinations in public education.

v. Adaptation (for illustration for teaching):

Works may be adapted for illustration for teaching in schools both by teachers and students, including if performed through a secure electronic network. Further use of adaptations shall be subject to authorization by the author of the original work, except for lectures within the framework of school education. Those works also need to be presented through a secure electronic network.

vi. Private copying:

An educational establishment can make copies of works if such activity does not serve the purposes of gainful activities or to generate more income neither directly nor indirectly and:

a) if the copy is necessary for scientific research or archiving;
b) if the copy is made from a minor part of a work that has already been published or a newspaper or periodical article for internal purposes; or
c) if the copy is required for use for the purpose of education.

vii. Performance for educational purposes and at school celebrations:

All types of works can be displayed for educational purposes or at school festivities if the performance is not intended to either directly or indirectly generate or increase income and so long as the participants do not receive remuneration.

viii. Freedom of panorama:

Visual representations of fine art, architectural, and applied artworks that have been permanently erected in a public place outdoors can be made and used without remunerating the author or obtaining his consent.

6. Recommendation for the EU4ART Institutes on possible harmonization for the regulation of IP rights

6.1. Introduction

This document aims to give a recommendation on the possible harmonization of IP rules for the EU4ART institutes based on the summaries of the IPR rules for each institute, namely the Hungarian University of Fine Arts (hereinafter referred to as MKE), the Dresden University of Fine Arts (hereinafter referred to as HfBK Dresden), the Art Academy of Latvia (hereinafter referred to as LMA) and the Academia di Belle Arti di Roma (Academy of Fine Arts of Rome, hereinafter referred to as ABAROMA).

The document mainly focuses on the copyright-related solutions for the institutes regarding the fact that all EU4ART institutes are fine arts universities for which the primary intellectual property right concerned is copyright.

6.2. IP Policy

First of all, it is essential to highlight the importance of IP Policies. Of the four institutes, only MKE and LMA have an IP Policy. Thus, it is highly recommended for ABAROMA and HfBK Dresden to have their IP Policy in which they could lay down the general rules applied for the works made by students, lecturers, and other contracting parties.

Even if the IP Policy applied by the institute only highlights the main IPR rules, it could be beneficial for the persons concerned. Also, there are several situations where the law does not have an exact solution because of contractual freedom. The IP Policy could give a guideline on the rules applicable in several cases. For example, the IP Policy can clarify that the institute generally does not acquire the rights of the work made by the students/lecturers, but it can obtain a license if the parties agree.

In general, an IP Policy can provide certainty in individual and institutional rights associated with ownership and the distribution of benefits derived from the creation of works protected by intellectual property.

Joint IP Policy

As for the joint IP Policy for the EU4ART institutions, it is highly recommended for the institutes to make a joint IP Policy, separately from their IP Policy, in which they can lay down a general approach on how they can share and use the works made by their students and teachers, and any other work which is in possession of one of the institutes. The joint IP Policy should align with the institute's IP Policies.

The following topics should be concerned in the joint IP Policy:

i. Purposes of the joint IP Policy

It should encourage the students, researchers, educators, and others who create intellectual property work at the institutes to create these works. It should provide standard rules for the use of these works. Also, it should facilitate the effective registration and, if possible, the valuation of works.

It should promote the appropriate use of works. Lastly, it should lay down core principles for the transfer, exploitation and licensing of works.

ii. Principles

It should clarify the recognition and support of those creators who create works in the institutes.

iii. Scope of Application

In this section, the institutes can decide which will be the personal and material scope of the Policy. It is suggested to cover all of the students, teachers, researchers and any other person concerned and the works made by them if the creation of these works is connected to the institutes.

iv. General rule

Concerning the acquisition of rights by the institutes, the universities need to decide the extent to which they would like to acquire the rights of the works. Also, they should lay down the minimum rights that need to be accepted by all of them to be able to establish an inter-institutional system for the use of the works made by their students and lecturers.

v. Collaboration

The joint IP Policy should cover those cases when the students/lecturers/researchers collaborate on a joint project. In these cases, depending on the organization of the collaboration, the institutes need to decide whether they acquire the minimum rights or they would like to have a broader acquisition, especially when they have established the collaboration.

6.3. Acquisition of rights and licenses

As explained in the summaries of IPR rules of the EU4ART institutes, in general, the author and, therefore, the first rightsholder of the copyright is the person who invests the element of creativity necessary for the creation of the work. The author of a literary, artistic or scientific work is usually the natural person who created it.

It is only at a second stage, either because of contract or because of the operation of law, that copyright is transferred, for example, to the employer. The major exception here is the work-for-hire doctrine. Countries that have adopted it accept that works that are made for hire have as their authors not the natural persons creating them but the company employing them. In Europe, there are usually legal provisions providing the conditions under which a work belongs to the employer rather than the employee. In every case, the parties, of course, may agree otherwise.

Authorship should be distinguished from ownership. Third parties other than the author can obtain rights if these rights have been transferred or licensed to them by the author or any other subsequent rightsholder. The license or transfer is usually against the payment of a sum of money or royalties.

Summary of the national rules and the practices of the institutes

The following table summarises the national laws on the possible acquisition of rights by the EU4ART institutes

Country & Institute	Acquisition of economic rights	Rules applied by the institute
Hungary - MKE	The Hungarian copyright system allows the transfer of economic rights, but only in some instances. The economic right can be transferred in the following cases: i. works created under employment or other similar legal relationships; ii. computer program creations (software); iii. databases; iv. works commissioned for advertising purposes; v. cinematographic creations and other audiovisual works (except the right for private copy levy, lending right, and retransmission right).	The MKE's aim is to become the rightsholder of almost every work made by the students and lecturers. If it's not possible then MKE's aim is to gain as much control as possible by a licensing agreement.
Latvia - LMA	In the Latvian copyright system, it is possible to transfer the economic rights of the author to other successors in title. The transfer of the economic rights partially or completely could be performed by a license agreement.	In general, LMA acquire the economic rights of the artworks made by the students in the study process or made by lecturers within the framework of an employment contract. Based on the IP Management Rules LMA's aim is to become the rightsholder of almost every work made by the students and lecturers. However, there may be exceptions to this condition, as well as possible agreements between the author and the LMA on additional conditions regarding copyright.
Germany - HfBK Dresden	The German copyright system does not allow the transfer of copyright at all. It can be only transferred in execution of a testamentary disposition or to co-heirs as part of the partition of an estate. Copyright can only be licensed by the author. However, these licenses can grant exclusive right to the user which is almost similar to the transfer of the rights.	In general, HfBK Dresden does not acquire the economic rights of the artworks made by the students and lecturers. Although HfBK Dresden has the opportunity to gain a license on these works it doesn't have any legal claim in this direction.

Italy - ABAROMA	The Italian copyright system allows the transfer of economic rights.	In general, ABAROMA does not acquire the economic rights of the artworks made by the students and lecturers. Although ABAROMA has the opportunity to gain a license on these works it doesn't have any legal claim in this direction

Recommendations on the acquisition or licensing of copyright

As stated above, to be able to use the works made by the students/teachers of each EU4ART institute by the other institutes, the universities should lay down standard rules in a joint IP Policy. However, to be able to grant a license to the other institutes, each institute needs to hold at least a license for the use of the works.

The above table shows that MKE and LMA aim to acquire the rights of the works and become a rightsholder for these works, and in every other case, when the acquisition is not possible, they aim to uphold a license. Conversely, HfBK Dresden and ABAROMA do not acquire the economic rights of the works, not even in a license agreement.

To approach a common ground for the institutes, it is essential to decide what rights/uses are needed to use the works made by the students and lecturers.

For example, to be able to:

i. upload the work to a website, the institute needs to have permission to communicate the work to the public.
ii. exhibit the work, the institute needs to have permission to exhibit the work.
iii. reproduce the work, the institute needs to have approval for reproduction.

Minimum rights

It is also essential to agree on the minimum rights that the authors should grant to the universities to use the works concerned. These licenses should allow the institutes to apply sublicenses to give access to the use of the work for the other institutes.

In order to grant these minimum rights, the institutes should agree on minimum rules for the use of the works made by students, teachers and researchers in connection with their studies, work and research on the university. The universities have the responsibility to apply these rules to all parties concerned. This could be arranged in the IP Policies of each institute.

The institutes should arrange that those not in a contractual relationship, like employment, with the universities (i.e., students) may express their consent to be bound by the IP Policy.

With these minimum rules, the universities should have the right to use, free of charge and without limitation in time and space, and on a non-exclusive basis, all students'/lecturers'/researchers' every creation, work subject to their studies/work/research:

i. on the university's website, social media platforms, in the university's electronic and printed publications, brochures and any advertisements, as well as in any third party online and printed publications, platforms, programmes and in any other way for promotional, marketing, educational purposes,

ii. at exhibitions, conferences, trade shows, festivals, professional competitions, study competitions and any other similar events for promotional, marketing and educational purposes,
iii. in the academic activities of the university,
iv. in the university's register (this should also cover the database/catalogue established and maintained jointly by the institutes).

Since the rights mentioned above are minimum rights, the institutes should arrange that the students/lecturers/researchers shall grant the rights mentioned above of utilization provided for the institutes free of charge, without any claim for payment of consideration, and the students/lecturers/researchers should expressly waive their right to remuneration.

6.4. Research catalogue

During the consultations with the EU4ART institutes, it has been indicated by the institutes that they would like to establish a joint website which would function as a Research Catalogue for the works made by their students, lecturers and researchers.

They also referred to an existing catalogue called Research Catalogue (hereinafter referred to as **RC**), operating under the domain name https://www.researchcatalogue.net/. This catalogue works as a digital repository for individual researchers. It is a publishing platform for artistic research provided by the Society for Artistic Research. The RC is free to use for artists and researchers. Researchers can upload their works to this site with which they grant a license for the RC to display their works on the website.

The EU4ART institutes should and could establish a research catalogue similar to RC.

In order to do that, as a first step, they should decide the user scope of their online repository. Is it only for their students, lecturers and researchers, or is it open to every artist? Also, it should be decided whether the use of the catalogue by uploading the research procedures and results is mandatory for the students/lecturers/researchers or not.

The second step is to decide the aim of the catalogue. Will it be only a platform to share the research and their process, or will it be a more complex database that aims to serve the institute's teaching and research activities?

The institutes should lay down in terms of the use of the catalogue the rights to be granted by the users (students/lecturers/researchers) when they upload their research to the catalogue. These rights should cover at least the right to make the content available on the catalogue platform and the uses necessary for this display, such as the digital storage and reproduction of the works.

It is also recommended to encourage the users to apply Creative Common Licenses[1] on their research to facilitate the reuse of the research by others in a limited context.

6.5. Other issues to be addressed

In general, the universities have at least one registered trademark with a national or EU scope. To use each other's trademark, the institutes should have a license agreement to allow the use of each other's trademark and to lay down the exact terms of the use.