

## Copyright applicable to teacher-researchers for the publication of works (co-authored and single-authored works)

### 1) Definition/introduction of the subject (1/4)

As "*authors of works the disclosure of which is not subject, by virtue of their status or the rules governing their duties, to any prior control by the hierarchical authority*", teacher-researchers benefit from their own system of ownership, from the moment of their creation, of works, the products of their research, likely to be protected by copyright<sup>i</sup> (excluding software). This system is based on the principle of great independence and freedom of expression in the research activities of teacher-researchers<sup>ii</sup>.

In doing so, lecturers enjoy the moral right of disclosure and the economic right of reproduction of these works, enabling them to publish their works without authorisation from the administration<sup>iii</sup>, whatever the medium of publication, even with a private publisher.

### 2) Development with 2 or 3 concrete examples or supporting flowcharts (2/4)

In terms of intellectual property, the teacher-researcher's copyright must be reconciled with any third-party rights. For example

- The teacher-researcher must take care not to be an infringer by reproducing an existing work in his or her work and distributing it in full or in part without the author's permission (negotiation with the author or copyright holder / short quotation). <sup>iv</sup>
- When the work is written with the participation of other contributors, the teacher-researcher must check and take into account the nature of his/her relationship with the other contributors<sup>v</sup> in order to classify the work (collaborative, composite, collective)<sup>vi</sup> and the resulting devolution of copyright.
- In the case of a collaborative work (in which each author's actual personal contribution to the creation of the work is clearly identified), each of the authors, including the teacher-researcher, has a right to his or her personal contribution; but for the work as a whole, the

co-authors must exercise their rights by mutual agreement<sup>vii</sup> . Consequently, the publication or republication of a work requires the agreement of all, on pain of infringement.

- Authorisation from the teacher-researcher is required to translate the work without infringing<sup>viii</sup> . While respecting the moral rights of the teacher-researcher, the author of the original work on which the derivative work depends, the translation must not distort the original work. Conversely, the teacher-researcher/author must ensure that he/she acquires the rights to the translation, which may be protected by copyright provided it is original<sup>ix</sup> .
- Notwithstanding the independence that teacher-researchers can claim, they are obliged to declare any invention resulting from inventive work or research immediately to the university that employs them for these purposes<sup>x</sup> . This obligation is accompanied by a non-disclosure obligation, the aim of which is to ensure that the invention remains patentable (the university retains ownership of the industrial property rights). This non-disclosure obligation needs to be emphasised because it runs counter to the general mission of disseminating the knowledge of teacher-researchers.

The university may only dispose of the works of its teacher-researchers after concluding a voluntary assignment in writing with each of them, within the limits of the stipulations of this assignment, which must be defined<sup>xi</sup> . The legality of contracts for the assignment of authors' economic rights (including publishing contracts) is subject to the inclusion of certain public policy provisions<sup>xii</sup> . The contract must be interpreted strictly, and in favour of the author when the contract is ambiguous<sup>xiii</sup> . The publisher "may not, without the author's written authorisation, make any modification to the work"<sup>xiv</sup> (right to respect for the work).

The publishing contract includes the right to manufacture or have manufactured a number of copies of the work or to produce it or have it produced in digital form, subject to the publisher's responsibility for publication and distribution<sup>xv</sup> .

Where the author has transferred all or part of his rights on an exclusive basis, he may, in the absence of any exploitation of his work, terminate the transfer of all or part of these rights by operation of law<sup>xvi</sup> , regardless of the author's remuneration arrangements.

Authors are free to make their works available to the public free of charge, subject to the rights of third parties (any co-authors; exclusive rights previously granted by contract, etc.)<sup>xvii</sup> .

With regard to publishing contracts, they may provide for remuneration that is proportional to the revenue generated, or, in the case of bookshop publishing and first editions of scientific or technical works, a flat-rate remuneration, with the express agreement of the author<sup>xviii</sup> . Proportional remuneration is calculated on the basis of revenues (the price paid for sales to the public and not the intermediate basis between this sales price and the amount received by the publisher)<sup>xix</sup> . The rate of proportional remuneration is freely fixed (but may not be derisory)<sup>xx</sup> .

### 3) Bibliography and web links/contacts (1/4)

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- <sup>i</sup> Article L. 111-1 of the French Intellectual Property Code.
- <sup>ii</sup> Article L. 952-2 of the Education Code
- <sup>iii</sup> Article 411-3-1 of the Research Code
- <sup>iv</sup> Article L. 122-5 of the French Intellectual Property Code
- <sup>v</sup> Court of Appeal, Paris, Chamber 4 section A, 25 February 2004
- <sup>vi</sup> Article L. 113-2, paragraph 1, of the French Intellectual Property Code
- <sup>vii</sup> Article L. 113-3, paragraphs 1 and 2 of the French Intellectual Property Code
- <sup>viii</sup> Article L. 122-4 of the French Intellectual Property Code
- <sup>ix</sup> Article L. 112-3 of the French Intellectual Property Code.
- <sup>x</sup> Article L. 611-7 of the French Intellectual Property Code; Article R. 611-11 of the French Intellectual Property Code; Article L. 533-1 of the French Research Code
- <sup>xi</sup> Articles L. 131-1 et seq. of the French Intellectual Property Code
- <sup>xii</sup> Article L. 131-3, paragraph 1 of the Intellectual Property Code
- <sup>xiii</sup> Court of Appeal, Paris, Division 5-2, 19 June 2020, no. 19/02523
- <sup>xiv</sup> Article L. 132-11, paragraph 2 of the French Intellectual Property Code
- <sup>xv</sup> Article L. 132-1 of the French Intellectual Property Code
- <sup>xvi</sup> Article L. 131-5-2 of the French Intellectual Property Code
- <sup>xvii</sup> Article L. 122-7, paragraph 1<sup>er</sup> of the French Intellectual Property Code
- <sup>xviii</sup> Articles L. 131-4 and L. 132-5 et seq. of the Intellectual Property Code
- <sup>xix</sup> Court of Cassation, 1st Civil Division, 7 June 1995, No. 93-15.485
- <sup>xx</sup> Paris Court of Appeal, Division 5-1, 6 June 2012, No. 09/20877