



## Guidelines for publication for employees at the University of Copenhagen

Dissemination of research results in the form of journal articles, monographs and the provision of research-based teaching materials in the form of textbooks, etc., constitutes an important part of the university employees' working obligation and a central part of the UCPH's social commitment. Therefore, it is important to make sure that employees have good and free conditions to drive and disseminate their research. The Danish researchers must also be able to compete in the fierce international competition for access to the best journals. The copyright rules are of great importance for researchers employed at the UCPH. It is copyright law, which ensures the basis for the dissemination of knowledge in form of articles and books. The copyright rules are based on a fundamental respect for the creative author, who is assured legal control of the use of his works. As employer, the UCPH has a legitimate interest in obtaining a right of use of the employees' works in certain cases. This balance is contained in copyright legislation. The copyright rules and principles are, however, not very clear. Hence, it is necessary to get a clear idea regarding copyright rules' impact on the UCPH's employees.

On that basis, the following guidelines are issued for publications made by employees at the UCPH.

The guidelines is based on applicable law.

1. The copyright to copyrighted material ("works"), which is produced by a university employed researcher, belongs to the researcher.
2. The decision to publish a work, to which the right belongs to the employee shall be taken by the employee who also defines the conditions for publication.
3. The employee and the UCPH shares the right of use in accordance with the following description. This entails that works, which are produced in an administrative contexts (and which is protected by copyright),

teaching plans, exam papers etc., can be utilised in the usual manner within the institution, including photocopying, publishing in materials and compendiums, publication on the Internet, etc. for internal use. The right to use administrative works in a manner that does not fall within the realm of the UCPH's ordinary activities, shall be vested in the employees.

4. The UCPH's right of use does not prevent the employee from maintaining the copyright to the work. Access to commercial exploitation and the right to receive remuneration for the direct and other exploitation shall be vested in the author.

### **What is copyright?**

Scholarly articles, textbooks, academic dissertations and monographs enjoys copyright protection. The same applies to manuscripts, PowerPoint presentations and notes for lectures and presentations; and the lectures and the presentations themselves. Photographs and other images are also covered like editorials, chronicles, etc. Also term papers, grading instructions and assignments will normally be protected along with ratings, notes, responses to complaints and other administrative material such as teaching plans, information for lesson catalogues and other study information.

As such, a university employee's working day is to produce material that is protected by copyright. Copyright law affords an exclusive right to the work by making copies of it. This includes both the preparation of physical (paper) copies and digital copies including storage (upload) on a database. The exclusive right means that it is the author, which decides how, when, by whom and on what terms the utilisation must take place. In addition to these "economic" rights, the Danish copyright law entails that the author has a number of moral rights ("le droit moral"). These rules means that the author is entitled to be credited as the author and the publisher or other does not change the work in an infringing way.

Copyright protection will automatically take effect when the requirement for originality is fulfilled. Also draft articles, preprints, etc. enjoys copyright protection. There are no formal requirements in the form of registration of copyright, deposit or the like.

Certain categories of work are not subject to copyright. This applies to, among other things laws, regulations and "similar public instruments", including internal memos, administrative guidelines and correspondence. For works included as independent contributions to the stated records

copyright is possible, but the work may be reproduced in connection with the document.

### **Who holds the copyright?**

Copyright is a personal and individual right. The right is vested in the person who has made the effort, which led to the fact that the work is original, i.e. the "author". Copyright is a property law, which the author may transfer by agreement. The effect of such an agreement is that it is the acquiring party - the publisher or employer- that can enforce copyright instead of the author. Copyright may be transferred both completely or partially. In a complete (exclusive) transfer of "all" rights to a publisher the author will not be able to utilise the work further without infringing the publisher's (copyright and agreement) right. The ideal rights (for example on naming) do however exist after an agreement.

### **Employed researchers' copyright**

The principle that copyright is a personal and individual right also applies to works that are produced during working hours and for use in the performance of the author's services. The law contains no specific rules concerning this fact - with the exception of a provision on computer programs (§ 59) - but in judicial decisions the rule of thumb developed is that copyright for works that are produced as part of a permanent employment are transferred to the employer to the extent that this is "necessary" for its "ordinary activities", without having to be entered into a special agreement.

There must thus always be based on a specific assessment, where the character of the employment, the nature of the work and the employer's aspects are included. The copyright rules and principles leads to that the assessment is fairly restrictive, so that the employer generally must be able to demonstrate that the use of the work in question really is necessary and falls within his usual work. If this is not the case, the employer may only use the work, if the author's consent, and an agreement is reached.

There is no judicial decision regarding the rights of the university employee, but some can be said with a certain clarity in relation to the workcategories, as mentioned above.

**Administrative works** - eg. letters, assessments, notes, course plans and other study information - are often not copyrighted. To the extent that they are protected, the right to the ordinary use belongs to the UCPH, which freely and without obtaining permission or the like may dispose of such material by copying it, make it available on the Internet, etc. The right

hereto prevails, also after the employee has left the institution. For material of this character copyright will not normally imply an obligation to provide information about the identity of the author.

The copyright protection of the **exam papers** may give rise to doubt about the identification of the true originator (s). In any case, it must be presumed to be involved in the UCPH's ordinary activities to provide such exam papers available to the students within a way in which the UCPH considers best, including online or by printing of collections, etc. The UCPH only acquires a right of use, which includes the use, which is necessary for the ordinary course of business. The UCPH's right of use does not prevent the authors of tasks, etc. publishes collections of these commercially. The UCPH is not restricted in its possession of such agreements. The copyright law assessment of the grading instructions is somewhat uncertain, as you can argue that such shall be deemed "documents" (which is not subject to copyright). Assuming that they enjoy protection as copyright works, the UCPH must obtain a right of use to exploit such, corresponding to the right to make use of the exam papers.

For the research material in the form of **journal articles, monographs**, etc. the general starting point leads to that the right to research material remains with the employees. The contract of employment cannot be assumed to entail any transfer of rights. The institution will therefore normally only be able to control if there is a special agreement, which includes the employees. The employee may dispose of his works in relation to the institution without copyright tied up and hereunder decide 1) whether a work must be made public, 2) way of publication and 3) terms. The UCPH may, by virtue of its usual managerial rights lay down certain conditions for utilisation of the work, but cannot unilaterally arrogate the right. For this requires a (collective or individual) agreement or a specific statutory basis. Examples of conditions which must be assumed to be fixed in such an agreement, include a recommendation to try to achieve that agreements with publishers are made non-exclusive and thus giving the employed author the opportunity to submit articles and the like on a non-commercial website, etc. in the form of an "institutional repository. The employee has the right to receive remuneration. This remuneration applies to both direct utilisation (publishing agreement) and for other kinds of utilisation, for example photocopying (via COPY-DAN).

The right to **textbooks** are treated as (other) research material, and thus the UCPH may not predispose such works without an agreement. The employee has the right to receive remuneration, cf. above paragraph.

The right to **teaching materials** hereunder lecture notes, handouts, PowerPoint presentations is held by the employee, and the employment may not in itself be assumed to imply a transfer of rights. If the material is produced in preparation for a more general use, eg. constitute as a part of an e-learning project, the employee's participation in this project is normally assumed to have entailed a transfer of the right to use the work in this context. This right of the UCPH must be assumed to prevail also after the employee has left the institution. If the project changes character, or if the utilisation is another-the project is being commercialized or access is granted for a whole new group of students- a permission til utilisation is required.

/Accepted by the General Collaboration Committee (HSU) 24 June 2005