



COLLECTION OF DECISIONS AND ORDINANCES OF THE UNIVERSITY OF SOUTH BOHEMIA IN ČESKÉ BUDĚJOVICE

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Rector's Ordinance R 493 issuing methodological guidelines for Rector's Ordinance R 493 on the handling of intellectual property and the protection of confidential information at the University of South Bohemia in České Budějovice

Article 1 Introductory provisions

1. This ordinance issues methodological guidelines for USB Rector's Ordinance No. R 493 on the handling of intellectual property and the protection of confidential information at the University of South Bohemia in České Budějovice dated 13 January 2022 (hereinafter also referred to as '**Ordinance R 493**' and 'USB'), the purpose of which is to interpret the question of whether the rights of authors consisting of a one-off remuneration and a proportionate share of the proceeds from the commercialisation of the results after their death pass to their heirs.
2. Given that neither the applicable legislation (with the exception of copyright law) nor Ordinance R 493 clearly addresses this issue, this methodological guideline is issued in order to establish a binding interpretation of this issue at USB until Ordinance R 493 is amended.

Article 2 Relevant legislation

1. This methodological guideline is based in particular on the following applicable legislation:
 - a) Section 1475 et seq. of Act No. 89/2012, the Civil Code, as amended (hereinafter also referred to as the 'CC'), in particular the provisions of Section 1475(2), which reads: '*A decedent's estate consists of the entire assets and liabilities of a decedent except for the rights and duties exclusively bound to him personally, unless they have been acknowledged or enforced as a debt before a public body.*' A certain doubt may arise here as to whether the



originator's right to additional settlement within the meaning of this provision of the CC is or is not a right exclusively linked to the originator's person.

- b) Section 328(1) of Act No. 262/2006 Coll., the Labour Code, as amended (hereinafter also referred to as the 'LC'), which reads: *'Monetary rights of an employee shall not expire on his death. Wage or salary rights which arise from the employee's labour relationship [section 3 (second sentence)] of up to triple his average monthly earnings shall pass, in sequence, directly to his spouse or partner 51a)¹, children and parents if they lived with the employee in common household at the time of his death; if there are no such persons, the amount shall become part of his estate.'* This provision establishes the general principle of inheritance of an employee's monetary claims and a special inheritance regime for an employee's monetary rights up to a certain amount in favour of specific persons. **However, in relation to this provision of the Labour Code, it may be debatable whether the remuneration under Section 8.2.3 of Ordinance R 493 constitutes a monetary claim of the employee even after his or her death.**
- c) Section 26(2) of Act No. 121/2000 Coll., the Copyright Act, as amended (hereinafter also referred to as the 'CA'), which stipulates that: *'Economic rights are inheritable. (...)'* This provision is further elaborated in Section 27(1) CA as follows: *'Unless stipulated otherwise, economic rights shall run for the life of the author and 70 years after his/her death.'* **Copyright law thus clearly states that property rights are inheritable and that their duration is limited to the author's lifetime and 70 years after his death.**
- d) Act No. 527/1990, on Inventions and Rationalisation Proposals, as amended (hereinafter also referred to as 'IRP'), Act No. 478/1992 Coll., on Utility Models, as amended (hereinafter also referred to as 'UM') and other legal regulations in the field of industrial law. **These regulations do not regulate the issue of inheritance. The UM does not regulate the rights of the originator to remuneration.**
2. This methodological guideline is also based on the current practice of paying remuneration to inventors, where, according to the findings, there are cases where the remuneration of inventors was paid to their heirs even after their death.
3. Although the issue of inheritance of inventors' remuneration has not been specifically addressed in court decisions or major professional publications since the new legislation came into force, findings indicate that the prevailing opinion among experts is that (i) the inheritance of property rights concerning copyrighted works is unambiguous; (ii) in principle, the rights of originators of registered inventions to which the employer has exercised property rights are also inherited, and the same applies to other similar instruments of industrial law if a claim for subsequent financial

¹ Act No. 115/2006, on registered partnerships and on amendments to certain related acts, as amended. Section 655(2) of the Civil Code.



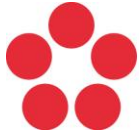
settlement has arisen under these regulations; even in cases where these inventions and other items were reported and the rights to them were exercised by the employer at a stage when they were not yet eligible for patent or other industrial legal protection, or where such protection was postponed or not exercised for various reasons, and all for the duration of such protection; (iii) this issue is unclear in the case of know-how, which is not subject to legal regulation.

4. This methodological guideline ultimately reflects the wording of paragraph 8.2. of Ordinance R 493, which, in accordance with common practice in the CR, does not distinguish between different arrangements for the regulation of intellectual property rights, depending on the basis of their legal regulation.

Article 3

Binding interpretation of paragraph 8.2 of Ordinance R 493

1. In view of the above, the following interpretation of paragraph 8.2. (Remuneration of originators and distribution of net proceeds from commercialisation) of Ordinance R 493 is established.
2. For individual intellectual property rights reported under Article 3 of Ordinance R 493 and reported similarly under this provision, it is necessary to distinguish whether the subject of the report is (i) a copyright work, (ii) an invention or other similar result protected by industrial property rights, where the relevant legislation regulates the right to remuneration of the originator, or (iii) another subject of industrial law, such as a utility model, where this issue is not regulated, or (iv) intellectual property protected by secrecy, such as trade secrets or know-how, where the law also does not regulate the originator's right to remuneration.
3. For results reported as copyrighted works under the Copyright Act, the originator's remuneration is inherited in accordance with Section 8.2 of Ordinance R 493, and the duration of property rights is limited to 70 years after the author's death.
4. For results reported as inventions under the IRP or other industrial law regulations governing the originator's remuneration, the originator's remuneration is similarly inherited in accordance with Section 8.2 of Ordinance R 493, and the duration of the right to remuneration is limited to the duration of the relevant legal protection.
5. For results reported as utility models and others where industrial law regulations do not regulate the rights to remuneration of the originator, as well as for results reported as intellectual property protected by secrecy pursuant to Article 5 of Ordinance R 493, the remuneration of the originator



shall not be inherited pursuant to paragraph 8.2. of Ordinance R 493, with the exception of claims that fall within the lifetime of the originator (e.g. one-off remuneration of the originator pursuant to paragraph 8.2.2 of Ordinance R 493 if the rights to the result were exercised during the originator's lifetime, or the distribution of proceeds from the commercialisation of results if the relevant income was credited to the USB's account during the originator's lifetime).

Article 4

Final provisions

1. This USB Rector's ordinance shall come into force and take effect on the date of its publication in the public section of the USB website. Proceedings concerning intellectual property rights initiated before the effective date of this ordinance but not yet concluded shall continue in accordance with this ordinance, unless expressly provided otherwise.
2. This USB Rector's ordinance applies to the interpretation of Ordinance R 493 as of the original date of its issuance, i.e. *ex tunc*. In exceptional and justified cases, the USB Rector may, after consultation with the Head of the Technology Transfer Office and the Vice-Rector for Research, decide that this ordinance shall not apply to procedures commenced before it took effect.
3. The Technology Transfer Office shall classify the results announced to date at USB in accordance with paragraphs 3.3. to 3.5. of USB Rector's ordinance (in the case of mixed announcements, the proportion of the remuneration attributable to each part of the announced intellectual property shall be determined) and shall take other necessary measures to strengthen legal certainty.

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