Valorisation of research in the arts conducted by PhD students at ARIA

Proposed guide for ARIA PhD students

Question

Who gets to valorise the work that is produced within the scope of PhD research: the researcher or the institution? The researcher is both a PhD student at UAntwerp and an employee of an institution in the Antwerp University Association.

Answer

In order to determine who can valorise the work, it should be assessed whether the result of the research carried out at ARIA is covered by copyright or considered an 'invention'. This distinction is important, because the researcher is entitled to the copyright, whereas the institution is entitled to the right to inventions.[1] In the former case, it is the researcher who can exploit the work; in the latter case, it is the institution.

It is therefore important that PhD students and their supervisors discuss which category the research results fall into. For support, supervisors can turn to UAntwerp's Valorisation Office, which is also the Valorisation Office of the Antwerp University Association as a whole.

I. Copyright

What is copyright?

Copyright[2] is an intellectual property right that provides legal protection for creations or products of the mind that transcend the ordinary or banal, such as sculptures, literary and scientific texts, scenarios and scripts, paintings, photographs, film works, lectures, choreography, etc.

Copyright confers property rights and moral rights on the creator of the work:

- Moral rights are the so-called personality rights: right to recognition, right to respect for the work, right to make the work known.
- Property rights ensure that the author will be able to exploit the work and consequently obtain income from its exploitation. Property rights are exclusive: permission must be obtained from the author for all reproductions or communications of the work.

Copyright thus allows the author to decide what happens to the work and how it is valorised/exploited. The author is entitled to any proceeds from the exploitation.

An exception to this is the copyright on 'inventions'[1], such as drawings and models, topographies of semiconductor products, computer programs and databases which can be used for commercial purposes in industrial or agricultural applications (see below).

[1] As laid down in the Flemish 'Higher Education Codex'.

[2] On 1 January 2015, the provisions on intellectual property, including copyright and related rights, were incorporated into the Code of Economic Law under the Belgian Judicial Code (Book XI: 'Intellectual Property').

When is a work protected by copyright?

To be protected by copyright, a work must meet two criteria: the work must be a concrete form of expression (not an idea, for instance), and it must be original. This means there must be a clear connection between the author and the work, and it must be a human creation. Works produced by software, i.e. by a machine and not by the human mind, are not protected by copyright unless the author adds a personal touch. Originality infers that the author has left their personal mark on the work.

The originality of a work is not determined by its artistic or aesthetic value, nor does it have to be new. A creation can be based on something that already exists. Ultimately, the assessment of originality is made by a judge in a court of law.

Which works are protected by copyright?

The legislation on this does not include an exhaustive list. Whether or not a work is protected by copyright will depend on the extent to which it meets the criteria (as set out above). Examples of copyrighted works include sculptures, literary and scientific texts, scripts and scenarios, paintings, photographs, film works, lectures, choreography, etc. Other types of works, however, are specifically considered to be 'inventions'.

II. Inventions

Which types of works are inventions?

Inventions, as defined in the Higher Education Codex, are 'potentially patentable creations, plant varieties, drawings and models, topographies of semiconductor products, computer programs and databases which can be used for commercial purposes in industrial or agricultural applications'.[3]

Note: what are drawings and models?

- A model (three-dimensional) or a drawing (two-dimensional) represents the appearance of a product or part of a product.
    - In this definition, the term 'product' refers to an object manufactured by industrial or artisanal methods. The term 'appearance' refers to 'the characteristics of the lines, outline, colours, shape, texture or materials of either the object itself or its decorations'.
    - In order to qualify for protection under the drawing and model right, the drawing or model must:
        - be new and have its own character;
        - not be necessary to achieve a certain technical effect (the ridges in a beer glass, for instance, are not protected under the drawing and model right as they serve to keep the glass cool when you hold it in your hand);
        - not be contrary to public order or morality.

Examples:

- Design objects: can either be regarded as drawings and models or as copyrighted works (see the criteria above).
- Software: a computer program is considered an invention if it can be used for commercial purposes in industrial or agricultural applications.

[3] Higher Education Codex, Article IV.48.

    - Note: the software may contain aspects that are protected by copyright (e.g. graphics). Software is often regarded as copyrighted work (if the criteria are met), but in this case, the property rights are also transferred to the employer. It is therefore best to consider the valorisation of software on an ad-hoc basis with the supervisor and the Valorisation Office.
- Video games/apps: are regarded as software.
- Design objects: can either be regarded as drawings and models or as copyrighted works (see the criteria above).

Who owns an invention?

If PhD research leads to inventions as defined in the Higher Education Codex, the institution is entitled to the property rights if the research was conducted by a staff member or scholarship student.

III. ARIA

Agreements at ARIA

- Students and their supervisors should agree on the category that the research results belong to. They can request support from UAntwerp's Valorisation Office, which is also the Valorisation Office of the Antwerp University Association as a whole.
- If the research results are subject to copyright, the researcher is entitled to the moral rights and the property rights.
    - For PhD students who are employed by Karel de Grote University College (KdG), a separate agreement must be concluded, because the work regulations at KdG stipulate that the property rights of the copyright shall be transferred to KdG. The PhD student should contact the Human Resources Department at KdG for this. Please note: this only applies to KdG, and not to the other institutions.
- If the research results are regarded as 'inventions', the institution is entitled to the property rights.
    - An ad-hoc division can then be agreed between UAntwerp and AP/KdG, for instance depending on the contribution of the supervisors.
    - An arrangement can also be made with the researcher. After all, in some cases, the researcher may be entitled to a fair share of the monetary revenues that the institution derives from the exploitation of the invention. This should also be agreed on an ad-hoc basis.
- This arrangement is independent of the source of funding of the research, except in rare cases where the grant provisions stipulate otherwise.

In the event that results of research conducted at ARIA are commercialised, should the institution's logo be shown?

There is no legal obligation to do this, but the institution is likely to ask for its logo to be displayed. Researchers are advised to consult the institution in order to maintain good relationships. After all, the research was funded by the institution. Please note that in order to use the institution's logo, permission must first be obtained from the institution (via its Communications Department).