

# Copyright principles in teaching and research

## RE-R21-E

### CUAS

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## **I Purpose and scope of application**

Purpose of the guideline: The guideline serves as an orientation aid regarding questions relating to Austrian copyright law and its correct application in teaching and research activities

Scope of application: all employees and students of CUAS.

## **II Applicable documents and general conditions**

Copyright Act, Federal Law Gazette 111/1936

DZ\_eL-Ro2\_Open [Educational Resources Policy of CUAS](#)

## **III Responsible body / function**

Center for Teaching and Learning and Legal Department

## **IV Terms and abbreviations**

Collection and explanation of the terms and abbreviations used.

## **V Publication**

Intranet: QM-Library

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## 1 Introduction

"Intellectual property" (IP) enjoys legal protection under certain conditions. The following laws, among others, regulate the protection of intellectual property:

### 1.1 Copyright Act

The intellectual creations of natural persons are divided into works of literature, sound art (music), visual arts (graphics, photography) and cinematographic art. In order to be protected by copyright, works of art must have a minimum degree of individuality and originality and be distinguishable from other works of art. The creator of a copyrighted work is the author. The author decides on the use of their work and determines whether and to what extent the work may be used or exploited by other persons. The legal framework in Austria is provided by the Federal Act on Copyright in Literary and Artistic Works and Related Rights (Copyright Act - UrhG).

### 1.2 Patent Act and Utility Model Protection Act

New inventions in the field of technology can be protected for a limited period of time in accordance with the Patent Act 1970 (Patent Act - PatG). According to the Federal Act on the Protection of Utility Models (Utility Model Act - GMG), new inventions in the field of technology can also be protected ("small patent"), whereby a reduced protection period and simplifications compared to the patent apply.

### 1.3 Trademark Protection Act

Under the Trademark Protection Act 1970 (Markenschutzgesetz - MarkenSchG), the owner of a commercial sign for goods or services (e.g. logo) has the right to have it entered in the trademark register, provided that it is suitable for distinguishing the goods and services from those of other companies.

The main **copyright** provisions applicable to teaching and research at universities are described below.

## 2 General principles of copyright law

### 2.1 When is a service subject to copyright?

Copyright protects an intellectual creation of a natural person (i.e., a work). The question of whether a work is an intellectual creation in its own right and thus enjoys protection under copyright law must be assessed on a case-by-case basis, whereby the creative and intellectual aspect as well as the uniqueness as a result of the author's personal characteristics are decisive. The author is always the person who created the work.

Copyright law recognizes several **categories of works**:

- **Works of literature**
  - Linguistic works of all kinds including computer programs
  - Stage works (choreographic and pantomime works)

- Works of a scientific or instructive nature consisting of pictorial representations on the surface or in space
- **Works of fine art**
  - Works of photographic art (photographic works)
  - Works of architecture
  - Works of applied art (arts and crafts)
- **Works of cinematic art**
- **Editing of works** (e.g. translations, updates, further developments)
- **Collected works** (e.g. journals, yearbooks)

Works are **automatically** subject to copyright and do not have to be registered separately.

## 2.2 Who may use and/or exploit the work?

The **author** automatically has all rights and copyright authorizations. For example, authors have the sole right to exploit, reproduce, process, rent, broadcast and perform, but also the right to be named as the author of the work.

The author also has the right to transfer all or individual rights of use and exploitation to third parties. This may also apply to future works (e.g., a publisher of a book). The copyright itself is only transferred by inheritance.

Copyrights are often transferred to the employer as part of an **employment relationship**. At CUAS, copyright transferal regulations can be found in the respective employment contracts.

**Rights of use and exploitation** can be transferred exclusively (right to use the work) or non-exclusively (permission to use the work) to third parties (natural or legal persons) by means of license agreements. An exclusive transfer means that no one else - not even the author themselves - may use and/or exploit the work.

### Conclusion:

**Third parties** therefore have the right to use and/or exploit a "third-party" work if

- the author has **consented** to this or
- there is a **free right to use the work** in accordance with copyright law or
- a right to use the work or a license to use the work has been transferred by means of a **license agreement** or
- a **free work** (e.g. law) exists or
- a **license (e.g. CC license) for free use** is given. (see point 8)

## 3 Free use of works

### 3.1 What does free use of a work mean?

The free use of a work is the permission enshrined in copyright law to use **another person's work without the author's consent**. In other words, these are legal restrictions on the author's rights of use under

copyright law. Under certain conditions, they allow the use of a work free of charge without the author's consent.

When interpreting the free use of works, the case law pursues a strict examination of the purpose of the specific regulation on the one hand and the preservation of the balance of interests on the other.

It should be noted that even in the case of free use of a work, the protection of the intellectual interests of the author must be observed, i.e. the source (including the author's name) must be indicated, and the work must not be distorted.

### 3.2 free use of the work for teaching purposes

**Section 42 (6) (excerpt): Universities and other educational institutions may produce and distribute reproductions in the number required for a course (i.e. for the students of a course/module) for the purposes of teaching to the extent justified thereby. However, this is only permitted on media other than those mentioned in para. 1 (= digital media) for non-commercial purposes. The authorization to reproduce for personal school use does not apply to works which, by their nature and designation, are intended for school or teaching use.**

Due to the free use of works for teaching purposes, teachers and students are permitted to use third-party works for professional or educational purposes in analog and digital form. **The scope of reproduction must be limited to the specific teaching purpose in terms of quantity and quality.** Accordingly, the number of copies is limited to the number of students participating in the course or module. A restrictive approach should be taken in connection with the reproduction of entire books or journals. These should only be used for the lecturer's own course preparation and should not be handed out to students.

The source of reproduction may be printed works as well as materials from the Internet or digital media, whereby obviously unlawfully produced or illegally placed templates on the Internet may not be used. Computer programs may not be reproduced.

This authorization does not apply to works which, by their nature and designation, are intended for school or educational use (see point 4 Textbook exception).

**Section 42g (1) (excerpt): Universities and other educational institutions may reproduce, distribute, broadcast, use for communication to the public in accordance with Section 18 (3) and make available to the public, as well as publicly reproduce a database work (Section 40g) for the purpose of illustrating teaching or instruction, in particular to support, enrich or supplement it, if**

**1. this takes place under the responsibility of the educational institution on its premises or at other locations, or**

**2. takes place in a secure electronic environment,**

**to which only the pupils, students and teaching staff of the educational institution have access and insofar as this is justified for non-commercial purposes ("Moodle paragraph").**

Since the 2015 amendment, the digital provision (password-protected platforms such as an internal Intranet and/or learning platforms) of works for the purposes of teaching and learning (eLearning) to a restricted group of users, for example, students of a course (= school community), is also possible. The works may only be made available on the corresponding platform if the need for this arises directly from the course/module.

It must be assumed that this right does not include the provision of entire books or magazines. Also excluded are textbooks (textbook exception) and film works that were first shown in Austria, in German or in a language of the national minority recognized in Austria, less than two years ago.

It must always be ensured that the work is made available in the scope required for the respective purpose (only excerpts from works), not commercially and correctly quoted.

**Conclusion:**

- In the context of teaching, **analog and digital copies** of works may be distributed to the students of the respective module/course to the extent justified by the teaching. Excluded from this are textbook works.
- This also includes the **online provision on password-protected learning platforms** such as Moodle by the teacher. Students do not have this right. A printout of the works made available on a learning platform (reproduction on analog media) is permitted for personal use.
- The provision of **links** to published works does not constitute a type of exploitation under copyright law, which is why this approach is to be preferred in cases of doubt as to whether a third-party work may be made available for educational use within the scope of free use of the work.

**Section 56c (1): Schools and universities may publicly perform works of cinematographic art and related works of sound art for the purposes of teaching or instruction to the extent justified.**

**Section 56c (3): Paragraphs 1 and 2 do not apply**

- 1. for film works which by their nature and designation are intended for school or educational use;**
- 2. if an image or sound carrier is used which has been produced or distributed in violation of an exclusive right to reproduce or distribute the work recorded on it.**

Universities of Applied Sciences (UAS) may

- for teaching purposes (i.e., not for mere entertainment and also not at UAS public events, such as balls, information events, public presentations, etc.)
- to the extent justified by this
- works of cinematographic art (this includes in particular **television programs in general, feature films, documentaries, video clips (short graphic animations), advertising trailers, films from the www** - but not film works which by their nature and designation are intended for school and educational use)

perform/present in public.

### 3.3 Free use of work for research purposes

**Section 42a (2) UrhG (reproduction by public institutions for (higher) educational use and research on all data carriers - also applies to use pursuant to Section 42 (6) UrhG ('school copies')):**  
Institutions open to the public which collect works may, on request, produce copies on any medium free of charge or for a fee not exceeding the costs incurred, for their own educational use or for their own or private use for research purposes.

Individual analog and digital copies may be made for research use, provided this is justified for **non-commercial purposes**. The copies must be closely related to the research objective. In addition, the right of quotation according to point 3.3 also applies to research.

### 3.4 Citational rights

**Section 42f (1): A published work may be reproduced, distributed, broadcast by radio, made available to the public and used for public lectures, performances and presentations for the purpose of quotation, provided that the extent of the use is justified by the specific purpose. This is permitted in particular if**

- 1. individual works are included in a scientific work forming the main subject matter after their publication; a work of the kind described in § 2 no. 3 or a work of fine arts may only be included to explain the content;**
- 2. published works of the fine arts are presented to the public for the sole purpose of explaining the content of a scientific or instructive lecture and the necessary copies are made;**
- 3. individual passages of a published linguistic work are cited in an independent new work;**
- 4. individual passages of a published work of musical art are cited in a literary work;**
- 5. individual passages of a published work are cited in an independent new work.**

Citation means that the person citing a work is reproducing another person's work in some way in order to engage with it intellectually. The citation must serve as evidence for the author's own statements (**supporting evidence function**).

A distinction is made between the following forms of citations:

- **Academic citation:** individual works are included in an academic work forming the main subject matter after their publication ("major academic citation"). This is possible for all types of works that can serve as a source. Graphics, images and photographs may only be included to explain the content (art citation). The work to be included must therefore be a scientific work (e.g., dissertations, master's theses). Bachelor theses are not considered scientific works under copyright law.

- **Academic art citation:** Published works of fine art may be publicly cited in an academic lecture or teaching presentation to explain the content. In this case, the source citation may be omitted if this proves impossible.
- **Small literary citation:** Individual passages of a published linguistic work may be cited in an independent new work, whereby the work to be included must be a copyrightable work.
- **Small work-independent quotation:** Individual passages of a published work may be quoted in an independent new work, whereby the work to be quoted must be a copyrightable work.

In general, attention must be paid to the ratio of cited and directly quoted material and self-developed content (in Germany and Austria, for example, max. 10% of the content can be directly quoted). Only works that have already been published may be cited. Above all, the quotation must not be a substitute for or competition to the direct exploitation of the quoted work. The citation is only permitted to the extent necessary for the work developed by the author and by indicating the source (author, reference, date).

The right to cite also applies to textbooks and lecture slides.

The exact form of the citation is described in the **citation regulations specific to the study area or study program** and must be adhered to by lecturers and students accordingly.

For citing **Open Educational Resources (OER)**, see **point 8**.

**Content generated by AI tools** must be labeled at CUAS. Information on this can be found in the recommendation on dealing with generative AI systems ([RE-So1](#)) and under point 10.

#### Conclusion:

- **Master's theses** are scientific works, which is why they can contain not only individual parts, but also comprehensive parts of a work (= **scientific quotation**). The prerequisite for this is that the cited work was published with the consent of the author\*. Works of fine art may only be included to explain the content.
- **Bachelor theses** are not considered scientific works within the meaning of copyright law. The scientific quotation is therefore not available, **but only individual passages of a published linguistic work and a work of visual arts** (photographs, graphics, etc.) may be cited, provided that these have been published or have appeared with the consent of the author. The quotations may not go beyond individual passages of another work.
- In the context of **academic lectures or teaching presentations** (e.g. in the PowerPoint presentation), previously published or published works of fine art (photographs, graphics, drawings, etc.) may be publicly presented and reproduced for explanatory purposes.
- The source must always be clearly and comprehensibly indicated, whereby at least the title and copyright designation of the work used as well as the information that makes the work easy to find must be included. For online sources, the URL and the date of retrieval/use of the work are suitable. The exact regulations can be found in the **citation regulations specific to the field of study or course of study**.

#### 4 "Textbook exception"

"School books/Textbooks" are excluded from the free use of works for educational and teaching purposes (see point 3.2.). This applies to works that are intended for school and teaching use in terms of their nature (content, pedagogical principles) and designation. According to the "Textbook Decree for 2017/18 of the Austrian Ministry of ... (BMBWF), textbooks aim to prepare the curriculum requirements for practical teaching use and are approved as such following a state approval procedure and entered in the textbook list. In addition, pedagogical works for self-teaching, for example, are also subsumed. Whether a book qualifies as a textbook must be assessed on a case-by-case basis. The background to the textbook exception is the protection of authors and publishers who specialize in textbooks.

In case of doubt, it must be assumed that reproductions from textbooks are covered by the textbook exception. It is recommended that one or more copies of the book in question be made available in the library. Students can then make a legally unobjectionable private copy for themselves as required. Free use is limited to the explanation of the content.

#### 5 (Audio or video) recordings as part of a course/module

After agreeing to a training contract with CUAS, students of CUAS undertake to refrain from filming, photographing, making tape recordings or other recordings of the teaching events without the prior consent of the lecturer.

If lecturers wish to make recordings, the consent of the students must be obtained if they are visible and/or audible. It is recommended to obtain consent in writing and to clarify the general conditions (e.g., for an unlimited period, free of charge, intended use). If one or more students do not give their consent, they must still be allowed to complete the course/module without any disadvantages for the student. In addition, even if all students have given their consent, consideration should be given to taking recording breaks to allow students to ask questions or have discussions without being recorded.

In particular, this also applies to the provision of such recordings, on which other persons are recognizable, on the Internet or in social networks. In this case, the consent of all acoustically and/or visually identifiable persons must be obtained in advance.

Conversely, CUAS is entitled to a non-exclusive, free and unlimited right of use to image and/or video recordings, including audio recordings, if these were made in the course of training at CUAS with the prior consent of all persons who can be seen and/or heard on the recordings.

**The Legal Department is available to answer any questions in this regard.**

#### 6 Image protection, photographs, CT/X-ray images

##### 6.1 Image protection (section 78 UrhG)

Image protection refers to regulations that restrict the taking and publication of images of people in the interests of the person depicted. Accordingly, portraits of persons may not be publicly exhibited or distributed in any other way that makes them accessible to the public if this would violate the legitimate interests of the person depicted.

Despite the impairment of the legitimate interests of the person depicted, the publication (distribution) of an image is permitted if there is an overriding interest in publication ("news value", "interest in information", "public interest") or the person depicted has consented (also possible by implication, e.g., "standing as a model", "presenting oneself", consent must always be checked on a case-by-case basis). Accordingly, care must always be taken in all photographs to ensure that the portrayal and approach are in accordance with common decency and preserve the honor and dignity of the person. The type of publication should also not be degrading or otherwise distorting in any way. In the case of photos of people who are in the public eye ("celebrities") and whose appearance is therefore generally known (politicians, artists, actors, musicians, etc.), the standard for interference with legitimate interests or the highly personal sphere of life can be set lower. Their interests are therefore more severely impaired by the publication of their portrait than those of people who are not in the public eye.

As a result, decisions are always made on a case-by-case basis - in the event that a legitimate interest cannot be argued. In addition, data protection law must also be taken into account, which is why **consent** in accordance with the stricter data protection regulations takes precedence and is recommended in most to all cases.

**If you have any questions about data protection, please contact the "Betriebliche Datenschutzkommission/Institutional Data Protection Committee" at [datenschutz@fh-kaernten.at](mailto:datenschutz@fh-kaernten.at) at any time.**

## 6.2 Rights of the photographer

Each image or video is also protected by copyright in relation to the producer (photographer). The photographer has copyrights to the recording produced by them and the right to be named as the author. This means that the rights to the recording must be transferred from the photographer to CUAS. This is usually done for a fee (photographer's fee). It is important to note which rights have been transferred in detail (rights of use for a specific purpose or in general).

Due to these copyrights, images or videos may not simply be copied (even if they are publicly available on the Internet). The author's consent must always be obtained in advance or otherwise the rights must be transferred from the author to the current user (contract for a fee/consent). Even with free online portals such as Pixabay, the legal information (terms of use) must be observed in detail. Alternatives to these portals are free educational resources (OER) or open content (see point 8).

## 6.3 Images from imaging procedures (CT/X-ray) and images or films of patients

The right to one's own image pursuant to Section 87 UrhG also applies to recordings from imaging procedures.

In this context in particular, data protection aspects must also be taken into account. If the person can be identified from the image, this is personal data (usually health data) that may only be used under special circumstances (e.g., patient consent). Anonymized images/films should be used as a matter of priority. If this is not possible, it must be clearly defined with the persons concerned whether and to what extent the images/films may be used. When using for example in a course, case presentations of an accident/causes

of injury, facts should be changed when possible (e.g., gender) in order to protect the privacy of the person concerned.

The corresponding **consent** for use must comply with the stricter requirements under data protection law. **For further information on data protection, please contact the "Betriebliche Datenschutzkommission/Institutional Data Protection Committee" at [datenschutz@fh-kaernten.at](mailto:datenschutz@fh-kaernten.at).**

## 7 Providing copyrighted works (parts of works)

The easiest and safest way to provide copyrighted works or parts of these works to students is to **make them available as a link** to another website (e.g., in Moodle by creating the material as a link/URL). Instead of copying content from a page and making it available to students, the original source where the information can be found should be disclosed.

To a justified extent, third-party works may also be provided to students in the context of teaching under the conditions of free use for teaching purposes (see point 3.2.).

Parts of freely accessible works in the library may be reproduced on analog media **for personal use** (private use for students). Digital copies are permitted for personal research purposes.

## 8 Free educational resources - Open Educational Resources (OER)

Open Educational Resources are teaching/learning materials that are made freely accessible with the help of appropriate licenses. Depending on the license used, OER can be reproduced, used, modified, combined and distributed without having to obtain permission from the author. OER can take many different forms and are not limited to digital formats. Possible forms include images, texts, presentations, worksheets, test tasks, scripts, books, videos, music or entire online courses (see "Open Educational Resources Policy of CUAS, [DZ\\_eL-Ro2](#)).

OER are available under a free license, usually a Creative Commons license. The six Creative Commons licenses (CC licenses) regulate whether and how materials may be used. Depending on the CC license, the rights associated with it must be taken into account. "Free licenses" in the sense of OER are Creative Commons Attribution (CC BY) and Creative Commons Attribution-ShareAlike (CC BY-SA). For example, the CC BY license allows others to distribute, modify and build on the work, even commercially, as long as the author of the original is named. With CC BY-SA, on the other hand, the work may only be distributed under the same license as the original. There are also materials that are licensed as Creative Commons Zero (CCo) and are therefore in the public domain.

OER are generally cited according to the "TULLU rule" (title, author, license, link to license, place of origin). The guidelines for citing third-party works in students' theses are set out in the citation regulations specific to the department or degree program (available in the [QM library](#) on the intranet).

**For further information on Open Educational Resources (OER), please contact the Center for Teaching and Learning at [didaktikzentrum@fh-kaernten.at](mailto:didaktikzentrum@fh-kaernten.at).**

## 9 Copyright protection of the course/ examination

Courses (lectures, concepts, etc.) and examinations are protected by copyright provided they have a certain minimum degree of individuality and creativity and can therefore be classified as an original intellectual creation. Transcripts by teachers and students are also subject to copyright and are permitted for personal use. Recordings with images and/or sound are only permitted with the consent of the lecturer and all persons to be heard and/or seen. Consent must comply with the stricter data protection regulations.

**If you have any questions about data protection, please contact the "Betriebliche Datenschutzkommission/Institutional Data Protection Committee" at [datenschutz@fh-kaernten.at](mailto:datenschutz@fh-kaernten.at).**

## 10 Artificial Intelligence (AI) and copyright

When using generative AI, the applicable copyright law must be taken into account in addition to the regulations under study law and data protection law. Details on the legal aspects of using generative AI can be found in the recommendation on dealing with generative AI systems ([RE-S01](#)).

In principle, it can be stated that results "generated" exclusively by AI do not generally enjoy copyright protection. So far, there are hardly any indications that copies of copyrighted works are generated as AI output and that these are reproduced without authorization. Should there be an exception to the case, it is recommended that a text generated by the AI is not only checked for correctness of content with the help of other sources, but also with regard to compliance to copyright regulations.

The input that a person makes into the AI tool (so-called "prompts") may, however, enjoy copyright protection in individual cases, provided that these are intellectual creations within the meaning of copyright law. When entering third-party works protected by copyright (e.g., course materials from lecturers, seminar papers or final theses from students), the consent of the author or rights holder must be obtained in advance if the entry constitutes a publication within the meaning of the Copyright Act. The current terms of use of the AI tool used must always be taken into account.

With regard to the obligation to cite AI-generated texts in works of literature (e.g. students' theses), reference should also be made to the citation regulations specific to the field of study or degree program.

**If you have any questions about the use/application of generative AI tools at CUAS, please contact the AI working group at [ai@fh-kaernten.at](mailto:ai@fh-kaernten.at).**

## 11 Consequences of copyright infringement

A breach of copyright provisions may have consequences under civil and criminal law. **Criminal prosecution** is possible in the case of intentional behavior. Under civil law, claims can also be enforced in some cases regardless of fault.

**Copyright claims** are:

- Cease and desist from further infringement
- Elimination of the existing infringement
- Publication of judgment
- Payment of an appropriate fee
- Compensation for damages

- Accounting and audit by an accounting expert
- Information

In addition, **consequences under employment law** must be taken into account.

Students must expect **consequences under study law**. Accordingly, in the event of plagiarism, the written work must be assessed as "insufficient" (see point VIII of the [study and examination regulations](#)). Repeated violations may result in exclusion from the degree program through termination of the educational contract.

## 12 Further links<sup>1</sup> and information, recommended reading

### Copyright

- All legal regulations for Austrian copyright law can be found at <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001848>
- **Burgstaller, Peter**, Urheberrecht für Lehrende, Ein Leitfaden für die Praxis mit 80 Fragen und Antworten, Verlag Medien und Recht, Vienna.
- The iMooX lecture by Mag. Lanzinger on the subject of "Copyright" on YouTube at <https://www.youtube.com/watch?v=6aqCHgRMk5I>
- The lecture by Mag. Lanzinger on the topic "But it was free on the net!!!" at CUAS can be found on YouTube at <https://www.youtube.com/playlist?list=PLIIRHhaY9G6Sdognf73QkwXdiJaJqz8yi>

### Open Educational Resources (OER)

- A collection of frequently asked questions about OER (Open Educational Resources) by copyright expert Žiga Škorjanc can be found at <https://www.openeducation.at/oer-faqs/>
- Further information on the Creative Commons licenses can be found at <https://creativecommons.org/licenses/?lang=de>
- A collection of frequently asked questions about Creative Commons can be found at <https://de.creativecommons.net/faqs/#h.dblc6od6lm7t>

### E-Learning & Law

- The iMooX lecture series by Mag. Lanzinger on the topic of "E-Learning & Law" can be found on Youtube at [https://www.youtube.com/playlist?list=PLhy2nHJciTEB1\\_Vhk6A-GR-jaoo-qEYsI](https://www.youtube.com/playlist?list=PLhy2nHJciTEB1_Vhk6A-GR-jaoo-qEYsI)

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<sup>1</sup> retrieved on 18.04.2024.