

Decision of the Executive Director

No R-ED-2017-62

on the Frontex Copyright Policy

of 17/08/2017

THE EXECUTIVE DIRECTOR,

Having regard to the European Border and Coast Guard Regulation¹, and in particular Article 68(3)(b) thereof,

Whereas:

- (1) Frontex respects copyrights and has made it a priority to ensure all its staff respect the copyrights of others. Every Frontex staff is required to comply with copyright law and to adhere to Frontex copyright policy.
- (2) Copyright infringement through inappropriate copying or distribution of copyrighted content is a personal as well as a Frontex liability and may result, respectively, in disciplinary action or civil liability.

HAS DECIDED AS FOLLOWS:

Article 1 *Purpose*

The Frontex Copyright Policy as annexed to this Decision is hereby adopted.

Article 2 *Objectives*

The objectives of the Frontex Copyright Policy are to:

- ensure that Frontex copyright is protected;
- ensure that copyrights of others are not infringed;

¹ Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1).

- raise awareness among Heads of Unit and staff so that they know their responsibilities;
- provide concrete guidance and procedures, including a specialised helpdesk.

Article 3

Roles and responsibilities

1. The Heads of Unit (or equivalent) are primarily responsible for raising the awareness with the staff about this policy and for enforcing the principles and guidelines enshrined within this policy.
2. In particular, the Heads of Unit of Return Support, Research and Innovation, Training, Risk Analysis and Legal and Procurement have a special duty of care regarding the signature of the Assignment Declaration on Copyright and on contractual clauses, respectively.
3. The Media and Public Relations team is the owner of this policy.

Article 4

Entry into force

This Decision enters into force on the day following its signature.

Done in Warsaw, on 17/08/2017

Fabrice Leggeri
Executive Director

Annex - Frontex Copyright Policy

Annex

FRONTEX COPYRIGHT POLICY

Executive summary: Commitment, objectives, roles and responsibilities

Frontex commitment

Frontex respects copyrights and has made it a priority to ensure its staff respects the copyrights of others. Every Frontex staff member is required to comply with copyright law and to adhere to Frontex copyright policy.

Copyright infringement through inappropriate copying or distribution of copyrighted content is a personal liability and a Frontex liability and can result in disciplinary action.

The objectives of the Frontex Copyright Policy are to:

- ensure that Frontex copyright is protected;
- ensure that copyrights of others are not infringed;
- raise awareness among Heads of Unit and staff so that they know their responsibilities;
- provide concrete guidance and procedures, including a specialised helpdesk.

Roles and responsibilities in the implementation of the Frontex Copyright Policy

The Heads of Unit (or equivalent) are primarily responsible for raising the awareness of their staff about this policy and for enforcing the principles and guidelines enshrined in this policy.

In particular, the Heads of Unit of Unit of Return Support, Research and Innovation, Training, Risk Analysis and Legal and Procurement have a special duty of care regarding the signature of the Assignment Declaration on Copyright and on contractual clauses, respectively.

The Frontex entity in charge of relation with the Media and Public Relations has expertise in numerous aspects of publications and is the owner of this Frontex Copyright Policy.

Helpdesk function

Queries about copyrights should be directed to the EU intellectual property rights helpdesk: <https://www.iprhelpdesk.eu> ; service@iprhelpdesk.eu ; +352 252233 333.

Outline

- I. Intellectual Property, Industrial Property and Copyright**
- II. Copyright law (summary)**
- III. Acquisition and protection of copyrights by Frontex**
- IV. How to avoid copyright infringement. Third-party copyright and “Fair use”**

Appendix 1 - The copyright legal framework

Appendix 2 - Model Assignment Declaration on Copyright

Appendix 3 - Consent document for taking and using a natural person's image

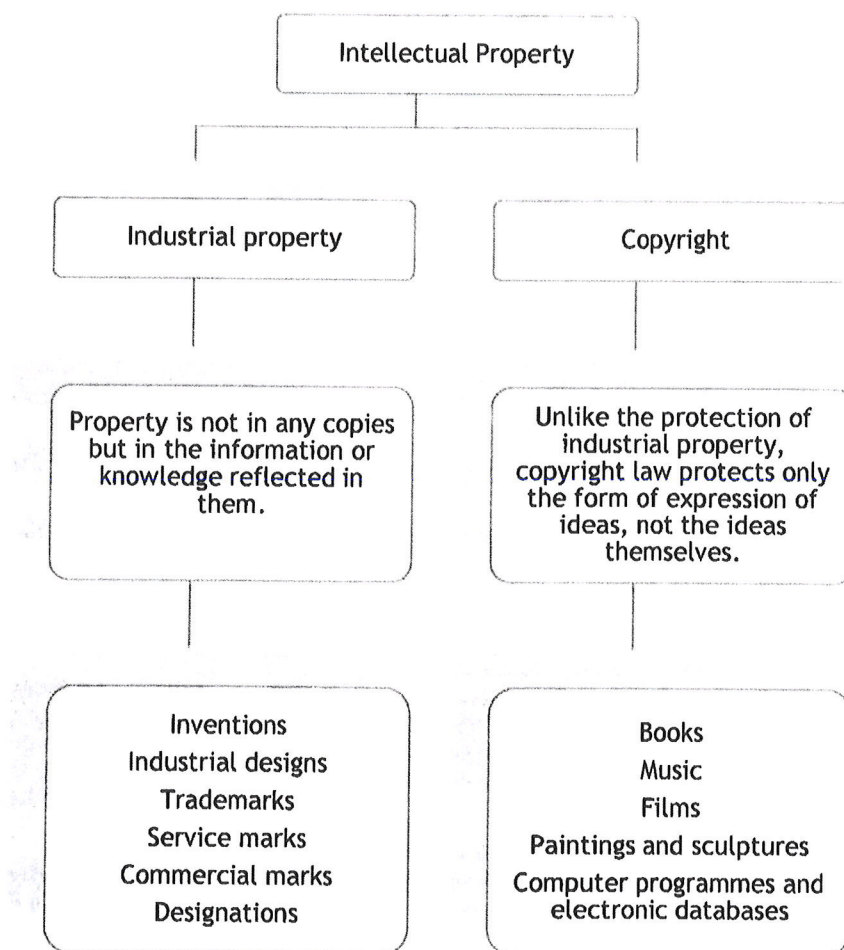
I. Intellectual Property, Industrial Property and Copyright

Intellectual property means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields.

Intellectual property includes rights relating to¹:

- *literary, artistic and scientific works ("Titles", "Slogans", "Logos")*
- *performances of performing artists and broadcasts*
- *inventions*
- *scientific discoveries*
- *industrial designs*
- *trademarks, service marks and commercial names and designations*
- *software*
- *databases*
- *maps, satellite data*

Intellectual Property, industrial property and copyright



This policy focuses on copyright.

¹ Convention Establishing the World Intellectual Property Organization (WIPO), concluded in Stockholm on July 14, 1967 (Article 2(viii)).

II. Copyright law (summary)

Main features

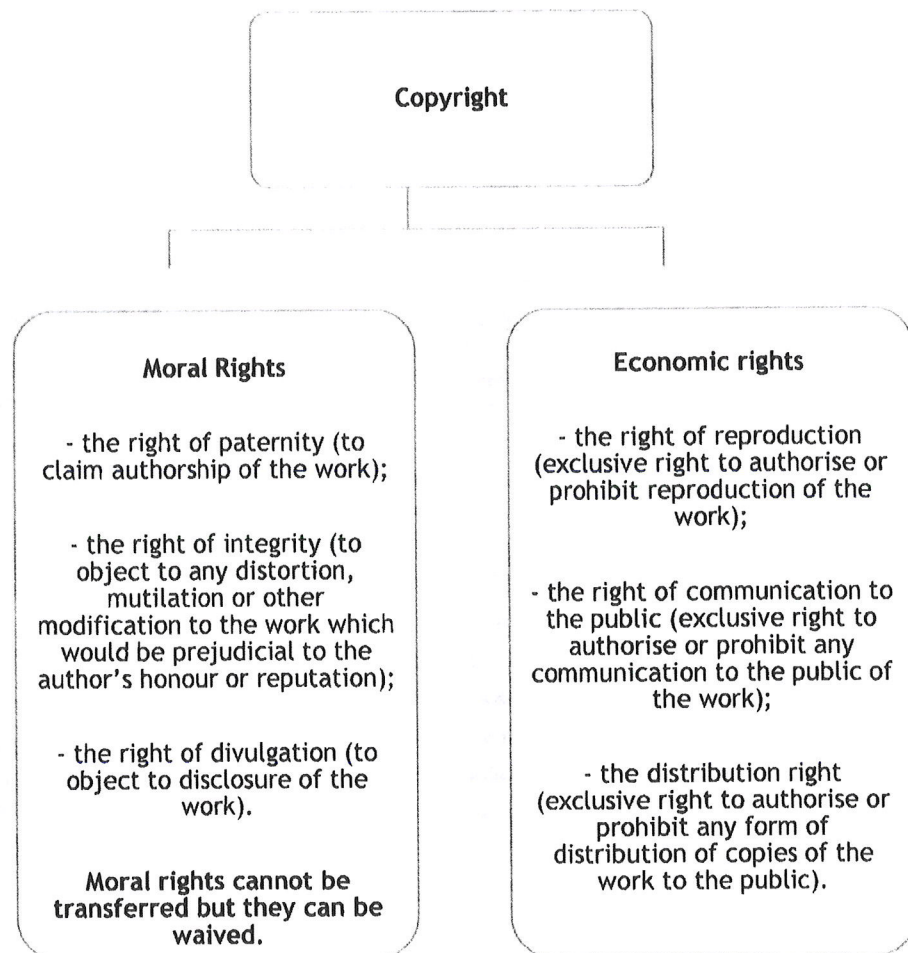
The protection of literary and artistic works under copyright:

- does not require registration
- is free of charge
- provides automatic and worldwide protection
- prevents only unauthorised use of the expressions of ideas not the ideas themselves
- is long in duration (general rule - 70 years)
- applies as soon as the work exists

Copyright law protects the owner of rights against illegitimate “copying”, that is, by those who take and use the form in which the original work was expressed by the author.

No EU harmonising legislation has been adopted on this issue.

Which rights does copyright comprise?



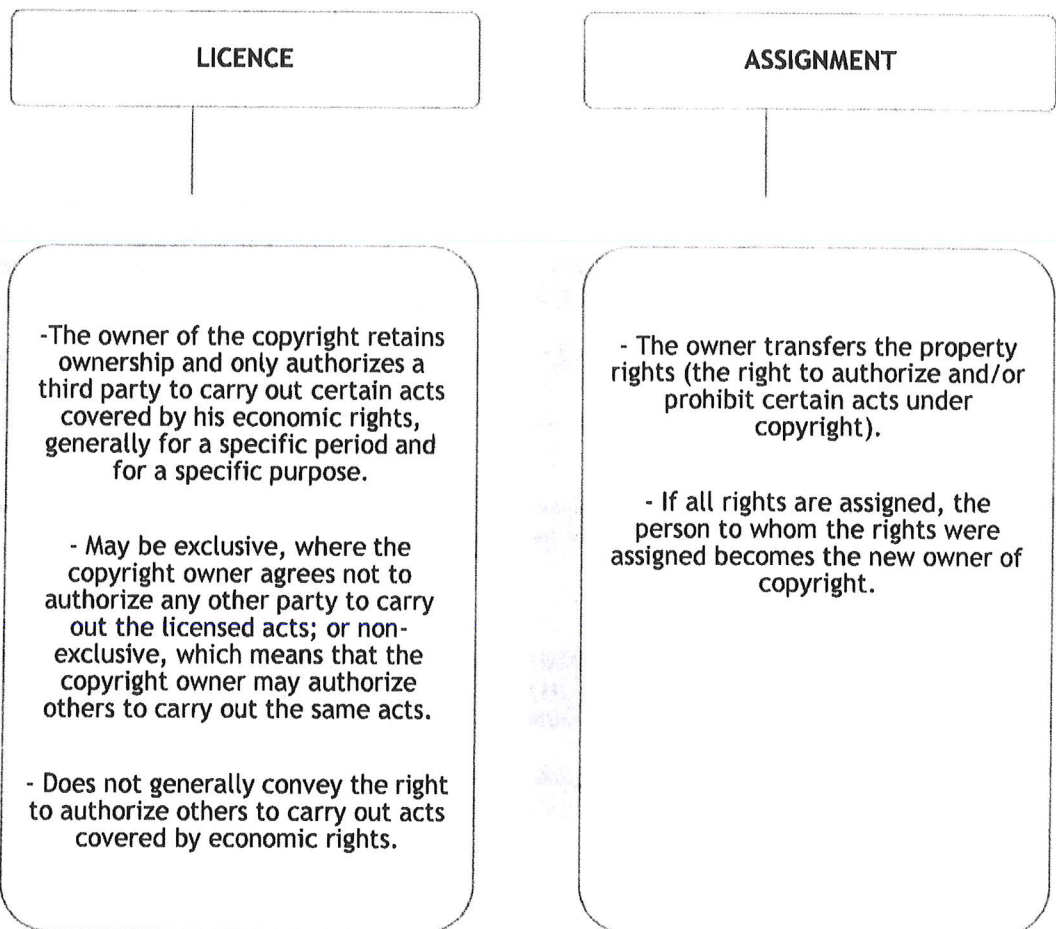
Who owns the copyright?

The owner of copyright in a work is generally the person who created the work, i.e. the author.

However, for works created by an author who is employed for the purpose of creating that work, it is the employer, not the author, who is the owner of the (economic rights) of the copyright. Nevertheless, moral rights always belong to the individual author of the work, whoever the owner of the economic rights may be.

Transfer/acquisition of economic rights

Copyrights may be transferred/acquired via licences or assignments.



While assignments should preferably involve all rights, licenses must list the specific rights and modes of exploitation (right to reproduce, communicate to the public, distribute, in print, and in electronic format etc.).

III. Acquisition and protection of copyrights by Frontex

Acquisition of copyrights

Frontex may acquire copyrights through, *inter alia*, one of the following ways:

a) Works created by Frontex staff

In accordance with Article 18 of the Staff Regulations these works are property of Frontex:

Article 18 Staff Regulations²

'All rights in any writings or other work done by any official in the performance of his duties shall be the property of the Community [Union] to whose activities such writings or work relate. The Communities shall have the right to acquire compulsorily the copyright in such works.'

Although works produced by Staff belong to Frontex, the authors are considered to retain moral rights.

Examples of moral rights: the right to be named as the authors and the right to object to any distortion prejudicial to their honour or reputation.

b) Works produced by persons other than Frontex staff (seconded national experts - SNEs, trainees and interim staff)

Rights on works produced by SNEs during their secondment are also vested in Frontex³.

Rights on works produced by trainees and interim staff created during their traineeship or employment, respectively, are vested in the respective authors.

Frontex may/shall protect its interests by acquiring ownership of the works via assignment. The HRS Unit will implement the declaration (**Appendix I**) to be signed by the trainee or interim upon entry into service.

c) Works (e.g. photos, videos) produced by any type of technical equipment and/or team member deployed in an operational activity resulting from the performance of the tasks assigned in the Operational Plan

Pursuant to the Framework Partnership Agreements⁴ concluded between Frontex and the national authorities deploying such equipment or officers, these works are property of Frontex.

d) Works (e.g. photos, videos) produced by staff deployed in an operational activity, on his private capacity when authorised by Frontex to perform such works

² Applicable to Frontex Staff pursuant to Article 11 of the Conditions of Employment of Other Servants of the EU.

³ Management Board decision 12/2017 of 30 March 2017, Article 7(2)(g), "All rights in any work done by the SNE in the performance of his duties are deemed to be the property of Frontex".

⁴ Article II.4, "... ownership of the results of an activity under a Frontex framework agreement, including intellectual property rights, and of the reports and other documents relating to it shall be vested in Frontex (...) Frontex grants the Partner the right to make free use of the results of an operational activity as it deems fit, provided it does not thereby breach its confidentiality obligations or existing industrial and intellectual property rights."

These works are property of their author or his employer (unless the authorisation contains, simultaneously, an assignment of property to Frontex). To use them, before they become public, Frontex must acquire copyrights over them via assignment.

Otherwise, Frontex may use the works, provided that such use falls under the parameters of “fair use” as long as the owner is acknowledged. This can be done by using the formula: © Frontex, 2017 - [name of the author of the work].

e) Works resulting from the participation of experts in an activity organised by Frontex (e.g. training materials)

To ensure that the work of experts participating in training materials, incorporated in the final product, belongs to Frontex, the model of Assignment Declaration on Copyright, attached (Appendix 2) to this Policy is proposed.

f) Works resulting from the performance of a contract

Although the “General Conditions” of contracts signed by Frontex follow the template developed by the Commission, there is always the possibility to adapt the text of special conditions to the envisaged exploitation. The copyright clauses should:

- define or add modes of exploitation
- list certain modes of exploitation
- list certain rights;

During the preparation of procurement documents, the following actions must be taken into consideration:

(a) acquire ownership of the newly created element included in the results and produced during the contract and ownership of all copyrights to these elements

(b) as a rule, obtain a license on any pre-existing rights included in the results

(c) specify how Frontex intends to use the ownership rights and the licenses it has acquired

Best practices

(1) Frontex must take measures to ensure that the contractor has really acquired the pre-existing rights that it transfers / licenses through the contract, otherwise there is a risk of liability for using a pre-existing result with no right to do so;

(2) The contract or other type of agreement must also provide details as to how the right will be used in the future. This is referred to as ‘modes of exploitation’ in the model contracts.

(3) The transfer of copyrights to the Union is the preferred option, even if the rights of use only concern Frontex.

Protection of Frontex copyright

The most common way to protect copyright is to use a “copyright notice”.

A copyright notice traditionally has three parts: the word “Copyright,” or the letter C in a circle (©), the year of the first publication; and the name of the copyright owner. This copyright notice will ordinarily protect the work for a specified period of time.

For works covered by copyright, Frontex could choose between granting free re-use of its works, impose one or more conditions for the re-use or reserve all rights to itself.

By establishing the present Policy, Frontex adopts the option allowing the use of works protected by copyright imposing conditions for such use. The following copyright notice is hereby adopted and should be used.

©Frontex, [year]

Re-use is authorised provided the source is acknowledged. When reusing this publication, it is forbidden to distort its original meaning or its message.

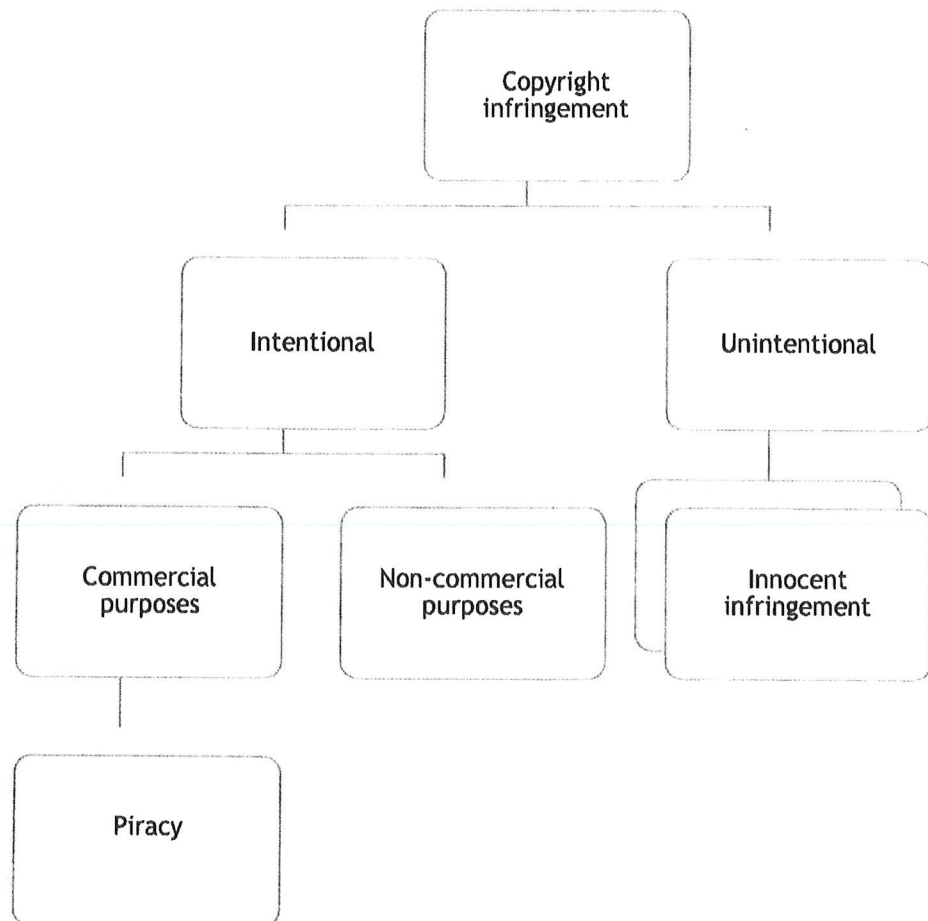
Use of Frontex corporate identity in an external event

It is possible to use the Frontex corporate identity in an external event (e.g. industry expositions), provided however that the Head of the Media and Public Relations team has given explicit authorisation in writing.

Care shall be taken that Frontex corporate identity is not compromised, e.g. misused by a third party.

IV. How to avoid copyright infringement. Third-party copyright and “Fair use”

Copyright infringement involves any violation of the exclusive rights of the copyright owner.



To avoid violating a copyright the following must be observed:

- Obtain prior permission from the author or the copyright holder to reproduce and disseminate the material
- Pay any fees required
- Acknowledge the copyright holder and/or the name of the author and the year
- Ensure that permission is granted to further authorise reproduction by third parties, or insert a restrictive notice

However, not every unauthorised use of a copyrighted work is a copyright infringement. Some limited uses are considered to be “fair uses”.

Fair use

Certain acts normally restricted by copyright may, in circumstances specified in the law, be carried out without the authorisation of the copyright owner. Such exceptions are described as “fair use.”

Normally “fair use” includes:

- reproduction of a work exclusively for the personal and private use of the person who makes the reproduction (non-commercial purposes)
- quoting from a protected work, provided that the source of the quotation, including the name of the author, is mentioned and that the extent of the quotation is compatible with fair practice;
- use of works by way of illustration for teaching purposes; and
- use of works for the purpose of news reporting.

See also consent document (**Appendix 3**) for the use of a natural person’s image.

Fair use by Frontex

The concept of fair use to be observed is the one adopted by Polish Law on Copyright. “Fair use” is allowed by Polish law, under the following conditions:

“It shall be permitted to use free of charge the work, which has been already disseminated for purposes of private use without the permission of the author. (...) The scope of the private use shall cover the use of single copies of the work by a group of persons staying in a personal interrelation with each other, including in particular blood relation, kinship or a social relationship”.

With or without (fair use) authorisation from the author, use of third party’s “copyright” no consent of the author shall be required for a temporary or incidental reproduction of works, in cases when it has no independent economic meaning and constitutes an integral and essential part of the technological process, and is only aimed at allowing (...) the lawful use of the work”.

Best practices about “fair use” of the work done by third party copyright material must be subject to a notice, as follows:

© [name of copyright holder], [year]

Followed by:

Reproduction, communication to the public, dissemination ... [(of photos, illustrations ...)] not authorised

or:

For any use or reproduction of the [photos, illustrations ...], permission must be sought directly from the copyright holder

or:

The photos [illustrations] included in this publication may not be reproduced out of context

Helpdesk

In case of doubt, queries about the intellectual property rights should be directed to the EU intellectual property rights helpdesk. <https://www.iprhelpdesk.eu> ; service@iprhelpdesk.eu ; +352 252233 333.

Appendix 1 - The copyright legal framework

1. International law (BC, WIPO treaties, TRIPS)
 - Berne Convention of 9 September 1886
 - The obligations of the EU and its Member States under the World Trade Organisation 'TRIPS' Agreement
 - Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI.1950
 - Charter of Fundamental Rights of the European Union, in particular Article 17
2. European secondary law (currently under review). The EU's regulatory framework for copyright and neighbouring rights (acquis) is a set of ten directives, addressed to the EU Member States
 - Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society ("InfoSoc Directive").
 - Directive 2006/115/ of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property ("Rental and Lending Directive").
 - Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art ("Resale Right Directive").
 - Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission
 - Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights
3. National law
 - Polish Law 4 February 1994 on copyright and related rights (available here http://www.mkidn.gov.pl/media/docs/20110512_Act_on_Copyright_and_Related_Rights.pdf)

Appendix 2 - Model Assignment Declaration on copyright

ASSIGNMENT DECLARATION ON COPYRIGHT⁵ (Trainees and Interim Staff)

This declaration (hereinafter "Declaration") is made by me to Frontex, and it pertains to my obligation to assign to or otherwise vest ownership in the Frontex all rights, title and interest in any copyrightable works, technical data, or other intellectual properties (hereinafter "Intellectual Property") arising in the course of my secondment/traineeship or employment by Frontex.

I acknowledge that for the purpose of this declaration the expression "Work" includes, but is not limited to, studies, reports, computer software, technical drawings and audio-visual works conceived, developed or reduced to practice, either alone or in conjunction with others, during the secondment, traineeship or employment.

I hereby declare that all copyrights, including copyright related rights are, by assignment through this Agreement, exclusively vested with Frontex.

I warrant:

- a. that the Work does not infringe any valid copyright or other proprietary right of any other person;
- b. that I have the power to convey all rights assigned in this declaration;
- c. that the Work contains no libellous, defamatory or other unlawful material and Author (jointly and severally) agrees to hold Frontex harmless from any claim, suit or proceeding based on the grounds that the Work contains such harmful matter, and agrees to indemnify Frontex for reasonable expenses incurred in defending, settling, or otherwise responding to such claims; and
- d. that the copyright has not been assigned previously nor the Work published.
- e. that I will not, without written consent from Frontex, publish any abridged or other version of the Work, any derivative work, or any Work of a similar character tending to interfere with the Work covered by this Declaration. Such consent will not be unreasonably withheld.

Warsaw, _____

Signature of the declarant

⁵ To be used by HRS Unit

Appendix 3 - Consent document for taking and using a natural person's image

ATTESTATION

Consent document for taking and using a natural person's image

I, undersigned, hereby authorise that my image be taken at the request of Frontex, whose headquarters are located in pl. Europejski 6, 00-844 Warsaw (Poland), in the situation/background described hereafter:

The picture, name, and nationality would be posted in an article on the Frontex website describing the different officer profiles and also on Twitter.

Hereafter named "*the image*"

With respect to this image, I grant Frontex (including its services, representatives and agents, as well as contractors acting on behalf of Frontex), the worldwide rights (hereafter "the Rights") to reproduce, copy, modify, archive, create derivatives (adaptions) using the whole image or part thereof, or otherwise use the image either on its own or with or as a component of other elements, in any form whatsoever, including text, data, images, photographs, illustrations, animations, graphics, video segments, paper documents, websites, and any other material, electronic or otherwise.

The purpose of the use of the image is to illustrate or promote the activities or projects, past, present or future, of Frontex for educational or information purposes. The material in which the image will be used may be accessible to the public, or published on a public network (e.g. the Internet). Should a legend or caption be written on or near the image by Frontex, it will preserve my reputation. However, I understand that Frontex cannot be held responsible for the use of the Image by third parties not being covered by this authorisation.

I understand that the taking of the Image and the granting of the Rights on the Image will not give me any right to a financial compensation.

Please write down the mention "*read and approved*" (handwriting):

I have read and understood the conditions of this consent form.

First name, surname:

Address:

Location, Date:

Signature:

