

H2020 Launch of the DIGITALEUROPE Model Consortium Agreement

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DIGITALEUROPE



Ownership of results

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Horizon 2020 Model Consortium Agreement from DIGITALEUROPE

Joint Ownership:

The following principles reflected in the proposed text:

1. Joint Ownership is a challenge for all Contributors and should be avoided if possible.
2. An individual solution between the Contributors taking into account the specific situation of the Contributors is preferable.
3. However, if no agreement can be reached, the solution should be that all Contributors are free to use Jointly Owned Results and to grant non-exclusive licenses without the consent of or any financial compensation to the other Contributor(s).

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Joint Ownership:

Characteristics of digital technology industry

- licenses are not only stand alone licenses in exchange for license fees but are mainly parts of complex agreements
- a small product can be based on a huge number of patents who do not contribute to the success of the product in the same degree.
- the size and speed of business does not allow complicated and time-consuming processes (i.e. notifications and negotiations in any single case)
- Results cannot be exploited, when the basis for calculation is open
- licensing in M&A transactions leads to additional challenges with regard to confidentiality

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Joint Ownership:

Consequence for Academic Contributors

- With regard to standard inventions lack of User and Licensing rights will result in a situation that the respective Jointly Owned Result will not be exploited at all.
 - waste of tax payer's money
 - damage for the Industrial Contributor whose share of the Jointly Owned Result becomes worthless
 - no income for the Academic Contributor either
- With regard to outstanding inventions the current proposal is very attractive for Academic Contributors because they can earn money from third party licensees.

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Joint Ownership:

Option 1

- A Contributor who does not want to participate in costs
- should not be allowed to block a patent application and exploitation of the Jointly Owned Results by the other Contributor
- should not have equal rights regarding the patent based on Jointly Owned Results
- however, should have user rights taking into account its contributions

Option 2

- Leaves all details open for individual decisions.

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Transfer of Ownership:

The following principles are reflected in the proposed text:

- own Results may be transferred without restriction to Affiliates and identified third parties
- transfer of ownership in M&A transactions are excluded from the general rules
- other Parties have the right to know who is the owner of certain results which does not automatically mean that prior notification is a general requirement
- other parties should not have the right to object the transfer of another party's Results (issues of industrial policy are a matter of the GA not of the CA)
- all rights the other Parties under the CA must be maintained

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