

Consortium Agreements

and how we can learn to love them...

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Why have a consortium agreement?

- A Consortium Agreement (CA) is a legally binding document between the project partners.
- Adopting an effective CA is a key part of good practice in multi-partner project management, and can reduce operational/legal difficulties.
- Constructing a CA makes parties think about implications and consequences
 - What are project partners expected to put into the project, and what do they expect to get out of it?
 - Who is responsible for particular operational, technical and financial issues?
 - What risks might arise?

Why have a consortium agreement?

- Clear set of rules for
 - managing the project by project partners/project team
 - regulating operational issues between project partners
 - determining ownership (and exploitation) of IPRs
- If things go wrong, a good CA can limit the cost of settling disputes between project partners
 - indicates agreed process for settling disputes, including where disputes are to be taken (mediation, arbitration, courts), which country's law applies etc.
 - provides explicit evidence to 3rd parties (e.g. arbitrators or judges) as to project partners' intent, in particular towards ownership of IP.

Possible consequences of no CA

- Poor internal organisation/management
- Inadequate assessment of risk/liability
- Lack of processes for handling changes of project partners
- Inability to settle internal disputes in a clearly understood, efficient and cost-effective manner
- Inadequate attention paid to IPRs
 - Usefulness/exploitability of project deliverables can be reduced, further academic research/dissemination prevented
- Difficulties in continuing the work of the project after the initial funding period has ended

Why projects don't have CAs

- “Didn’t know about CAs, or that we needed one.”
- “Didn’t think we needed a CA, as we all knew what we wanted to do.”
- “Didn’t know who to ask about CAs.”
- “Didn’t want to involve University admin. people - would take too long and they might say ‘No’.”
- “Didn’t want to involve University lawyers - would take too long and cost too much.”
- “Thought partner X was dealing with that.”

CAs and IPRs



- A key element of a CA will be its IPR clauses.
 - ‘Background’ and ‘Foreground’ IPRs
- These will address these types of issue:
 - Specification & descriptions of background IP and arrangements for its use during the project
 - Allocation and exercise of ownership in foreground IP, including joint ownership; and agreement on its use during the project, and afterwards.
 - For joint ownership of foreground IP, designation of a lead institution to deal with it on behalf of the other parties.
 - Exploitation of IP produced by the consortium for the benefit of all parties.

Some CA Dos and Don'ts

- DO start thinking about your CA as early as possible in the project development process.
- DON'T simply copy someone else's CA
 - Your CA should address your project's issues
- DO consult with appropriate institutional officers – contracts managers, DP officers etc.
- DO ensure that project partners are aware of their respective rights/obligations under the CA.
- DON'T make assumptions about other project partners' capabilities, attitudes, and understandings - consult.

Some CA Dos and Don'ts

- DO ensure project operational elements are covered, but DON'T forget strategic elements.
- DO seek professional legal help as appropriate, and DON'T be afraid to seek clarification of professional advice or legal drafting.
- DO ensure that the project team all understand the purpose and implications of the CA.
- DO pay very careful attention to the IPR issues.
- DO be wary of entering into side agreements or special arrangements not envisaged in the CA.