



Principles of socially responsible licensing

VLIR.doc 02



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Introduction

Flanders is one of the most prosperous regions in the world. However, this position remains precarious. In a globalised world, market opportunity is growing, but so is competition. Social prosperity provides the opportunity to invest in education and training. Our economy was built upon this strength and is increasingly knowledge-driven. Education and training are necessary conditions for the development of a knowledge-based economy, but they are not sufficient in themselves. The real engine of the knowledge economy is research and innovation. This means that education and training must be embedded in research and development (R&D).

The social basis for our knowledge institutions is internationally validated knowledge development and sharing, through education (more than 250,000 students in higher education annually) and research (more than 10,000 publications per year). Funding and growth of knowledge institutions are positively linked to knowledge development and sharing (through parameters such as student numbers and publications), thus incentivising knowledge development and sharing.

Knowledge institutions are increasingly being asked whether they can steer or adjust innovation in line with general social interest. Economic interest is recognised as a dimension of social interest here. See also the shared value concept from Porter and Kramer (2011, Harvard Business Review). Public and non-profit research financiers are also being asked the same question. Whereas for research financiers this may be linked to the granting of funding, for knowledge institutions the leverage may lie in the granting of licences for the intellectual property they have developed. The pursuit of the general public interest in licensing is described as 'socially responsible licensing (SRL)'. Serving economic interests correctly is one part of this, but public health, quality of life, climate and the environment are at least as important.

This VLIR memorandum explains the policy of the Flemish universities concerning SRL. The licensing policy of Flemish universities is of course in line with the general social interest, including its economic dimension. The Sustainable Development Goals from the United Nations are the frame of reference. This memorandum examines in more detail how the licensing policy of Flemish universities is in line with this interest. It also examines the possibilities and limitations of SRL as a lever in the service of social (including economic) objectives. This explanation is built on five principles that guide the SRL policy of Flemish universities.

1. Knowledge institutions' proprietary results always remain available for further research and education by these knowledge institutions.

It is entirely in the public interest that Flemish universities wish to carry out further research in complete freedom, as also recognised in patent legislation. The research exemption, as it is known, stipulates that research activities that are not carried out specifically for commercial purposes cannot constitute patent infringement.

In addition, contractual restrictions that might impede freedom of research at a university level are not accepted. Furthermore, universities generally retain the right to publish the results of the research and use them for educational purposes.

The licensing policy of Flemish universities is thus aligned with a broader principle of free knowledge creation and knowledge sharing.

2. Knowledge institutions strive to generate a positive social impact with their research results

It is the mission of universities to conduct research that, in addition to exploratory fundamental research, also focuses on activities that allow certain research results to develop into products or services that can be marketed by private players. The university cannot commercialise products itself and, as a result, the university must always look for partners that will take on the research results owned by the university and develop them further into marketable products. Here, it is up to the university, and more specifically the responsibility of their technology transfer offices (TTOs), to select suitable partners. These partners may be existing companies or a team of entrepreneurs who start up a new company for further technology development and/or commercialisation (spin-off). One important criterion is the commitment (e.g. through a best-effort commitment) and the capacity of this partner to genuinely further develop and market university technology. University technology usually has a long and risky road ahead of it. This process requires substantial private investment, highly specific expertise (technical, regulatory, etc.), knowledge and access to the market, and often combinations with other technologies to lead to a product that could have a real impact on society. Potential partners are screened based on all these elements.

The objective of creating the greatest possible social impact will also partly determine whether non-exclusive or exclusive licensing takes place. By granting non-exclusive licenses to multiple parties, under the right circumstances, the likelihood of implementation in society may increase in proportion to the number of licensing partners. However, this will not always be the case; if the development costs and risks are very high, often no buyer will be found at all for non-exclusive licences, as the return on investment in this case is negative or at least not sufficiently positive to justify the investment risk. For technologies with relatively short and cheap development paths and a large number of interested parties, non-exclusive licences may be an attractive option, but where product development is risky and capital-intensive, exclusive licences are often more appropriate. For technologies that could be applied in many fields, the exploitation rights may also be divided up per application. For example, it is perfectly possible to grant one party an exclusive licence for a patent in one specific domain and, in addition, grant another party an exclusive licence for the same patent, but for a different application. This enables the university to enter into several partnerships in parallel, whereby the most suitable partner for each field of application can be selected on the basis of expertise and market access in order to, once again, maximise the chances of implementation in society.

3. Partnerships are tested against ethical values

Flemish universities have ethical values. Indeed, they seek to promote the observance of human rights in their actions. This also applies to partnerships aimed at valorising university research; entities involved in human rights violations are not eligible for partnerships or licenses.

These ethical values include the right to preventive healthcare and medical treatment, as provided for in the Charter of Fundamental Rights of the European Union (18 December 2000). Flemish universities therefore have consideration for the accessibility of products developed on the basis of university research results.

Special attention is also paid to research with military applications. Flemish universities do not collaborate in research on weapons of mass destruction, nor do they enter into collaborations with partners who produce or trade in these weapons. Research into technology with potential dual use (both civilian and military) is only possible if it contributes to the civilian development of the technology.

4. Licences are checked against legislation, regulations, agreements and contracts

Licences are always checked against current legislation, regulations, agreements and contracts. Without wanting to be exhaustive, some examples are given here:

- Where there may be export restrictions on dual-use technology, export licences are requested from the competent authorities (European Regulation No. 428/2009).
- Licences for data files containing personal data must be in accordance with the privacy laws for the country of origin as well as the country of destination (European Regulation No. 2016/679).
- Licences for technology, research results and materials that make use of the genetic resources of a country (or the traditional knowledge thereof) should provide for a fair and equitable distribution of the income and/or other benefits arising from this licence, in accordance with the Convention on Biological Diversity (CBD), the Nagoya Protocol and European Regulation No. 511/214.
- Contractual obligations entered into by the knowledge institution that may restrict the licence.
- State aid and competition rules for publicly funded research (see also section 5).

Although several of these topics are quite complex, the Flemish universities believe they have the necessary expertise and governing bodies to smoothly assess licences against the relevant legislation, regulations, agreements and contracts, and they have also introduced the necessary working processes to this end.

5. Knowledge institutions are aware of potential undesirable market-distorting effects and include this aspect in licensing discussions

Knowledge institutions are often the precursor to disruptive technologies. Disruptive innovation can certainly be market-disruptive at the level of individual companies or entire industrial sectors, but this does not make such innovation socially undesirable: it can bring about positive breakthroughs for consumers, the environment, the climate, etc.

Academic research is often largely financed from public funds, so the results of this research should not lead to an unbalanced advantage for one specific commercial party; all transactions will have to pass the market conformity test.

In this context, it is important to note that the annual number of publications from Flemish universities is about two orders of magnitude higher than the number of patent applications. In other words, the vast majority of academic research is published without prior protection for the results and is therefore freely accessible and available to all. Moreover, patents are publicly accessible and consultable and new knowledge can be developed on the basis of this knowledge.

Nonetheless, it is essential to create a level playing field in the area of licensing, particularly if exclusive licences are involved (see second principle; sometimes exclusivity is the only way to bring a technology to the benefit of society). In order to allow for equal treatment of equal partners, strategic partnerships are always well delineated and limited in time. For example, these partnerships are not university-wide but are limited to specific research groups and subjects, and a market-based licence fee is always provided for.

Flemish universities apply the principles for socially responsible licensing discussed above in a uniform manner. For the practical implementation, there is frequent consultation between the various TTOs within the VLIR TTO Working Group. All of this has a common goal, namely achieving a positive social impact. The large number of innovations already being used in society on a daily basis and the many companies that have arisen from university research, not least in Flanders, are a testament to this.