



Legal issues in promoting FOSS in R+D
projects –
Policy, Organisation and Management

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- **Structural**
 - Legal framework, University policy framework
 - Contractual framework - Partnerships/consortiums
- **Licenses/licensing**
 - Licenses challenge: compliance
 - Licensing challenge: correct/optimal strategy?
- **Exploitation strategy**
 - Models
 - Tradeoffs? (copyleft/permissive, contributions/monetisation?)
- **Community creation/management**
 - Joining/engaging for a new project
 - Creating a new community
- **FOSS-friendly in general:**
 - Legal – licensing
 - Technology architecture
 - Community infrastructure, engagement

- Legal framework
 - Monetisation of R+D
 - Latest changes in Spain: *Ley de Ciencia, Tecnología e Innovación* and *Ley de Economía Sostenible*
- University policies
 - Ownership of results
 - Exploitation strategies
- Contractual framework
 - Partnerships/consortiums: Conditions re. use of “Controlled License Terms”
 - Exploitation and transfer of rights to industrial partners
 - Confidentiality provisions

- LCTI: Art 33 (Medidas)
 - 1.cse impulsarán medidas de transferencia del conocimiento **no orientadas a la comercialización o a la explotación mercantilizada, como la creación de espacios públicos comunes**
- LCTI: Art. 34 (Convenios colaboración)
 - 2... La transmisión de los derechos sobre estos resultados se deberá **realizar con una contraprestación que corresponda a su valor de mercado**
- LES: Art 55 (Aplicación del derecho privado a las transmisiones a terceros ...)
 5. En todo caso, la transmisión de los derechos sobre estos resultados se **hará con una contraprestación que corresponda a su valor de mercado**
 6. Cuando se transfiera la titularidad del derecho a una entidad privada deberá preverse, en la forma que reglamentariamente se determine, la inclusión en el contrato de **cláusulas de mejor fortuna que permitan a las entidades públicas recuperar parte de las plusvalías que se obtengan en caso de sucesivas transmisiones de los derechos**

DESCA consortium agreement (2007- 2011)

- **Controlled Licence Terms** means terms in any licence that require that the **use, copying, modification and/or distribution of Software** or another copyright work ("Work") and/or of any copyright work that is a modified version of or is a derivative work of such Work (in each case, "Derivative Work") **be subject**, in whole or in part, **to one or more of the following**:
 - (a) (where the Work or Derivative Work is Software) that the **Source Code be made available as of right to any third party on request**, whether royalty-free or not;
 - (b) that **permission to create modified versions** or derivative works of the Work or Derivative Work **be granted to any third party**;
 - (c) that a **royalty-free licence** relating to the Work or Derivative Work **be granted to any third party**.

- Licenses challenge: Compliance in academic environment
 - Knowledge and Understanding re. licenses
 - License management processes
 - External participants – binding obligations/guarantees
- Licensing challenge: correct/optimal?
 - Looking for “optimal” licensing model
 - Understanding of FOSS licensing impacts
 - Copyleft/permissive - Contributions/monetisation
 - Prior knowledge - external dependencies
 - Variety of factors: type of project, software, user

“*Obligation*” to exploit under grant contracts

- Models: Wide variety
 - Pure R+D - academic
 - Dual license, Open core, Distributions
 - Services, Stacks, SaaS
- Tradeoffs
 - Copyleft/permissive, contributions/monetisation?
 - Are they really tradeoffs?

- Joining/engaging for a new project
 - Legal aspects:
 - Licensing, contracting, contributions
 - Contribution agreement?
 - As part of the project (not after)
 - Ref – Patrice
- Creating a new community
 - Governance, structure, roles
 - Processes (contributions, releases, etc.)
 - Due diligence in the above

- Legal
 - Well known license
 - Enables contribution, reuse,
- Non-legal
 - Technology architecture
 - Community infrastructure
 - “Engagement”

- Project policy factors
 - University policy
 - Project policy definition
 - FLOSS results/outcomes
 - Licensing and transfer of copyright policies
 - Previous assets (“Background”): FLOSS / non-FLOSS status
 - External dependencies: FLOSS / non-FLOSS status
 - Relationship with external parties (users, contributors)

- Consortium agreement
- Project documentation and notifications
- License list?
- Code checking (tools)
- Documentation license (CC, GFDL, ...)
- Training



Thanks!

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