

## **Netherlands eScience Center (NLeSC) policy towards publishing, licensing and intellectual property**

The NLeSC intellectual property (IP) strategy is based on the STW strategy on intellectual property version of 1 March 2014.

Deviations from this document require discussion with the NLeSC Management Team before a grant agreement is signed. It is also required to contact the NLeSC MT before submitting a project proposal to NLeSC in case deviations to this policy are required or expected. An alternative IP strategy then also should be outlined briefly in the proposal text.

Although NLeSC does not have the ambition to develop its own intellectual property (IP) portfolio, NLeSC attaches considerable importance to knowledge protection to realize knowledge transfer. NLeSC's aim is firstly to exploit and publish the results of research as widely as possible, whilst retaining the possibility to establish IP rights and to subsequently transfer these rights to partner(s) or grant a license to partner(s) for these and, secondly, to stimulate collaboration between researchers and various external companies. NLeSC adheres to a set of rules concerning Intellectual Property (IP) that support this policy, and the policy is in line with the IP policy adopted by the Netherlands Organisation for Scientific Research [Nederlandse Organisatie voor Wetenschappelijk Onderzoek, NWO] and with the 'Rules of Play for public-private collaboration' as presented to the Lower House of the Dutch Parliament on 25 June 2013.

The main principles of NLeSC's IP policy are as follows:

### **Ownership of the results of research**

As a rule ownership of results that emerge from a research project is the shared property of the project partners (including NLeSC), with no prior exclusive or non-exclusive right to appropriate the knowledge (IP). The researcher is obliged to report any inventions to NLeSC immediately.

- Ownership of the results of research that are generated exclusively by partner(s) in the context of an NLeSC project is vested in the partner(s) in question. The partner(s) will allow NLeSC and the other partner(s) 'freedom to operate'.
- The results of research that are generated jointly by the partner(s) in the context of an NLeSC project are owned jointly by the participating partner(s) and by NLeSC. If the co-inventing partner has itself provided more than 10% of the total (i.e., including both in cash and in kind) project funding in the form of personnel, that partner will be granted a non-exclusive, royalty-free and non-transferable license for the use of the invention, patent or patent application.
- Existing IP rights continue to be vested in the holder(s) of such right who contribute these rights to the project. Insofar as it is possible under the law, and insofar as it is not detrimental

to the reasonable commercial interests of the right holder, this/these right holder(s) will facilitate, at their own discretion and in all reasonableness, a freedom to operate.

- 'Freedom to operate' means that the holder of the intellectual property right grants licenses to others within the project:

- insofar as legally possible;
- insofar as necessary for the project (without charge);
- insofar as necessary for the exploitation of the results of the research and possible concomitant results (at a fair market price);
- insofar as such freedom to operate is not detrimental to the reasonable commercial interests of the right holder.

### **Protection of research results, confidentiality and publications**

NLeSC attaches considerable importance to the protection of knowledge in the process of knowledge transfer. Partners undertake to maintain confidentiality with regard to the research results. Research results that are not susceptible to IP protection, and not subject to a written know-how license, can be used freely by all parties. The researcher is obliged to report any invention to NLeSC immediately.

Project partners submit draft publications to the project partners (including NLeSC) asking whether, in their opinion, the publication contains a patentable discovery and/or whether there are utilization opportunities. The partners concerned will reply, in writing, within four weeks of a request for publication. If the partners fail to respond in writing during this period, they will be deemed to have given their permission. The partners may, within two months of the request for publication, demand changes to safeguard their interests in terms of the patentability of the results without, however, jeopardizing the scientific integrity of the publishing partner. If knowledge protection measures are required, such as the submission of a patent application, NLeSC may decide to suspend the publication for up to 9 months.

### **Commercial usage rights to results that accrue in part or in whole to NLeSC and the partners(s)**

- Contribution 0-10%

A partner who contributes less than 10 percent to the costs of the research project by way of in-kind or in-cash resources will be the first party to receive information about the results of the research. Companies are at liberty to use the results generated by the research for internal, non-commercial purposes.

- Contribution between 10% and 30%: Right of option

A partner who contributes more than 10 percent to the costs of the research project by way of in-kind or in-cash resources is also entitled to a right of option on a license to, or the transfer of the results of the research when full or joint rights are held by NLeSC and the partner(s). If a partner exercises this option, the transfer of an exclusive or non-exclusive license will be effected against payment of a fair market price (see below). If multiple

partners are eligible for an option, an agreement will be made as to the scope of their usage. If this is not possible, the contributing partners will be granted a joint option on a semi-exclusive license.

- Contribution more than 30%: Right of option on a commercial NERF right

A partner who contributes more than 30 percent to the costs of the research project by way of in-kind or in-cash resources will also have the same rights as a partner who contributes more than 10 percent. If the partner exercises his right of option, that partner is entitled to a non-exclusive, royalty-free (NERF) and non-transferable commercial right of use.

If one or more partners within the project are eligible for an option, an agreement will be made as to the scope of the option on an exclusive license. If this is not possible, the contributing partners will be granted a joint option on a semi-exclusive license.

- The percentage is calculated by comparing the entire contribution made by the private party (in-kind plus in-cash) against the contribution from NLeSC plus all other in-kind and in-cash contributions.

## Patent costs

The following provisions apply if the partner deems it desirable that a patent application be submitted:

The patent application is submitted in the name of NLeSC and the partner(s) where the invention or discovery takes place.

The partner bears the costs of the patent. The patent costs are not offset in the calculation of a fair market price.

If there are multiple licensees, the patent costs will be shared among them.

## Licensing

The right to use or apply research results is acquired through a license, transfer agreement or know how agreement.

In all cases, a license agreement or transfer agreement will contain provisions concerning:

- Exclusivity or non-exclusivity.
- Royalty-free research and education license for NLeSC and the partners(s) concerned.
- Determination of a fair market price (with the exception of a NERF license when contributions exceed 30%).
- Reporting obligations.
- Indemnification against liability on the part of NLeSC and the partner(s). This can be a contractual transfer of risk to prevent loss or a compensation for a loss which may occur as a result of a specified event;
- Market price + discount arrangements.

The market price will be determined by negotiation between the parties; a record will be kept of these negotiations. In determining the fee to be paid, use can be made of the 'market-based approach' (i.e. market comparison), the 'income-based approach' (i.e. what income is expected), and the 'cost-based approach' (i.e. what has it cost to achieve the research results). The services of an impartial expert can also be called upon, or a combination of the above methods can be chosen. The partner will be entitled to a discount on the fair market price fee which is related to the level of the contribution provided towards the costs of the research project.

- Income received from transfer or licensing will be disbursed to the partner(s) including NLeSC for further research.

NLeSC should receive prior warning about any obstacles to the free use or exploitation of results. Should any obstacles to the implementation of NLeSC's IP policy emerge, NLeSC will impose additional conditions. If it emerges during the course of the project that the project leader has failed to notify NLeSC about such relevant information, NLeSC may suspend the project until the obstacles concerned have been removed. NLeSC may request access to contracts and/or patents in this respect. Contracts must not be in conflict with NLeSC's IP policy. If it emerges that NLeSC cannot have free access to the results of the NLeSC research, NLeSC may decide not to award or to discontinue the project.

## Background information

Prior to the start of the project the partners will agree whether and what relevant background knowledge they wish to contribute to the project. This agreed background information needs to be documented in (an appendix to) a project agreement. Additional background knowledge may be contributed during the project. The partner providing the background knowledge must declare that it is not the subject of claims by third parties or, if such claims exist, what restrictions they impose on the use and possible further exploitation of the knowledge. Background knowledge contributed to the project will remain the property of the partner providing it and may be used by the recipient partner(s) solely and exclusively in the project, in connection with the objectives of the research. The partner providing the knowledge will make the knowledge required available to the requesting partner free of charge in response to a written request, by means of a non-transferable non-exclusive license for the duration of the project. If a project partner wishes to gain access to the background knowledge of another project partner for the purposes of commercially exploiting the results, the partner providing the information will sell that partner a license on market terms and conditions.

## Open source / open access

The NLeSC is a publicly funded organization and the results of its research projects must be made publicly available. NLeSC contributions to the e-Infrastructure (part of the eScience technology platform eStep) are minimally available as open access via e.g. web services but ideally as open source projects that are made available to the community via source code repositories (for example <https://github.com/>).

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Appendix A: Apache 2.0 License.

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