

Netherlands eScience Center policy towards publishing, licensing and Intellectual Property

1 Introduction

This document describes the policy of the Netherlands eScience Center towards Intellectual Property (IP) rights. It is based on the relevant policies set by the Dutch government, the Netherlands Organisation for Scientific Research (NWO), and SURF. As these existing policies do not currently cover scientific software specifically, we extend them to do so. Deviations in this policy are possible in specific cases, but must first be approved by the Netherlands eScience Center Management team.

The Netherlands eScience Center funds scientific research, using public funds, but is also involved in externally funded projects, including public-private partnerships. This document describes only our overall policy, with specific rules for each of these cases determined as follows.

- For Netherlands eScience Center calls for proposals, the "Intellectual Property rules for Netherlands eScience Center projects" (documented separately) apply, unless specified otherwise in the call text or unless other arrangements have been made before the start of a project.
- For externally funded projects (e.g., funded by NWO or the EC), the Netherlands eScience Center follows the IP policy set by the funder. Any remaining choices will be made together with the project partners, and will be clearly documented at the beginning of the project. The policy guidelines as outlined in this document form the starting point for IP discussions with project partners.
- As public-private partnerships (PPPs) vary widely with respect to the extent of private funding, the nature of the IP involved, etc., we make no attempt to standardise rules for these here. Instead, a consortium agreement that includes IP provisions will always be negotiated between the parties, in accordance with the "Spelregels voor privaat-publieke samenwerking bij programmering en uitvoering van fundamenteel en toegepast onderzoek" of June 2013, and the "NWO-beleid inzake intellectueel eigendom" of November 2014. While this document outlines the Netherlands eScience Center's position on IP issues in such a collaboration, it will not apply as such to the project partners, and the project-specific agreement may deviate substantially from the stipulations below.

2 General Considerations

The Netherlands eScience Center believes that science must be as open as possible. Results from publicly funded scientific research must be published Open Access, with all relevant data to be made available as Open Data, and software as Open Source. For all data and software, metadata must be made available according to the FAIR (Findable, Accessible, Interoperable, Reusable) principles. Exceptions can be made for e.g. a privacy-sensitive data set or the necessary use of proprietary data or software.

The Netherlands eScience Center in general does not engage in exclusive, commercial licensing of Intellectual Property rights for financial gain. We are publicly funded, and as such our work has already been paid for by the public. We therefore make it available for free if this is in the best interest of further research, with as few restrictions as possible, maximising potential public utility.

At the same time, the Netherlands eScience Center also recognises the value of commercialisation as a vehicle for making the results of scientific research available to the general public, and we welcome private partners into our projects. We recognise the commercial interests that such partners may have, and will work to accommodate these, provided that they do not restrict continued open scientific research.

3 Copyright and Scientific Software

A core activity of the Netherlands eScience Center is collaborative development of research software and software-based scientific instrumentation. Software is covered by copyright law, which is an IP right, and thus needs to be addressed by this policy.

The NWO IP policy is focused on addressing issues of know-how and inventions in public-private partnerships. It discusses patents and patent licenses, currently but ignores copyright and database rights. For licensing of scientific data, NWO refers to the guidelines set by SURF. The Netherlands eScience Center follows the same guidelines. For publications, NWO requires Open Access publishing, but offers no guidelines on copyright ownership and licensing of such. Neither NWO nor SURF have a policy on IP issues relating to scientific software.

In this document, we therefore describe the Netherlands eScience Center policy on ownership and licensing of copyright on scientific software. It parallels NWO policies on Open Access and public-private partnerships to the extent possible, but is based on copyright law and on widespread Free and Open Source Software (FOSS) licensing practices.

In scientific research, the software used is (part of) the research method. Methods are published with the results of scientific research, as they are required to interpret and reproduce those results. As the methods section in a paper cannot fully describe the complexity of typical software methods, the only way to make published research reproducible is to also publish the software. Following NWO's Open Access mandate, the research software used and/or produced must therefore be made publicly available at no cost.

Software-based scientific methods furthermore have the advantage that they can be executed fully automatically, and copied, repeated and extended. Part of the promise of eScience is the rapid advances in the state of the art enabled by this. However, this can only be done if the Intellectual Property covering the software is dealt with appropriately.

The Netherlands eScience Center is committed to make its work available in a way that enables collaborative Open Science, as well as enabling use by private parties. We do this by publicly releasing software under a permissive free and open source (FOSS) license, in particular the Apache License version 2.0. This license allows redistribution, modification, and distribution of modified versions, commercially and non-commercially, with or without source code. This choice is fully compatible with the NWO guidelines on Open Science, and it makes our software available for use by both public and private parties with minimal restrictions.

The Netherlands eScience Center also sometimes uses and/or contributes to existing software that is made available under a license that prohibits use of that software in non-FOSS products (a copyleft license), such as the well-known GNU GPL license. This does not restrict science in any way, but may make it more difficult for a private party wanting to make a commercial product with our software, depending on their choice of business model. If the part of the software that is made by the Netherlands eScience Center could reasonably be used on its own, then that part will still (also) be licensed under a permissive license where legally possible. If needed, a dual-license approach can be used, for example licensing the software under both the Apache 2.0 and the GNU GPL license.

For public-private partnerships, different arrangements may be made as described above. In all cases, EU regulations on state aid must be abided by. In particular, this means that any private parties receiving an exclusive copyright license to software developed in such a project must pay for this license at market rate, less their prior contributions.