

# **Streamlining Negotiation and Contracting in Collaborative Research Environments**

**Review of the National Innovation System - Submission  
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**To: Review of the National Innovation System – Submission  
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Review of the National Innovation System  
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Legal Framework for  
e-Research Project

[e-research.law.qut.edu.au](http://e-research.law.qut.edu.au)



## Declaration of Interests and Affiliations

Professor Brian Fitzgerald:

- Employed at QUT as Professor of Intellectual Property Law and Innovation [www.qut.edu.au](http://www.qut.edu.au) [www.ip.qut.edu.au](http://www.ip.qut.edu.au);
- Non Remunerated Elected Director – representing university sector members – Internet Industry Association of Australia (IIA) [www.iaa.net.au](http://www.iaa.net.au);
- Project Leader Creative Commons Australia [www.creativecommons.org.au](http://www.creativecommons.org.au);
- Chief Investigator ARC Centre of Excellence for Creative Industries and Innovation [www.cci.edu.au](http://www.cci.edu.au);
- Project Leader Open Access to Knowledge (OAK) Law Project [www.oaklaw.edu.au](http://www.oaklaw.edu.au);
- Project Leader Legal Framework for e-Research Project [www.e-research.law.qut.edu.au](http://www.e-research.law.qut.edu.au);
- Co-Project Leader Enabling Real Time Access to Government Data - Cooperative Research Centre (CRC) for Spatial Information [www.crcsi.com.au](http://www.crcsi.com.au);
- I have had professional connections with a number of members of the Review Panel and my sister and close colleague Professor Anne Fitzgerald is a member of a broader reference group Dr Cutler has convened as part of the Review process.

Mr. Anthony Austin:

- Employed at the Queensland University of Technology as a Research Officer for the OAK Law Project (<http://www.oaklaw.qut.edu.au/>) and the Legal Framework for e-Research Project (<http://www.e-research.law.qut.edu.au/>);
- I work with Professor Anne Fitzgerald who also works for the OAK Law project and the Legal Framework for e-Research project. She is a member of the broader reference group which the Review Panel has convened as part of the review process.

## PART 1: INTRODUCTION

This submission is complementary to the submission *Innovate Australia*, submitted by Professor Brian Fitzgerald to the Secretariat to the Expert Panel Review of the Innovation System.

This submission addresses the need to improve the efficiency of current practices of negotiation and contracting in relation to collaborative research projects.

### STARTING PREMISE

The law should be an enabler to the innovation environment, not an inhibitor. As Paul A. David and Michael Spence explain in their report, *Towards institutional infrastructures for e-Science: the scope of the challenge*<sup>1</sup>:

“It is important that institutional arrangements are made so as to minimize the extent to which the law becomes an impediment to cooperation among researchers, whether directly, or indirectly by undermining informal mechanisms of trust and dispute resolution<sup>2</sup>”

## PART 2: COLLABORATIVE RESEARCH AGREEMENTS

In 2007, the Legal Frameworks for e-Research Project conducted a survey entitled:

*Legal and project agreement issues in collaboration and e-Research: Survey Results* (<http://eprints.qut.edu.au/archive/00009112/01/9112.pdf> ).

The survey obtained evidence form Australian researchers, research mangers and legal advisors from universities, industry and government about legal and project agreement issues in collaboration and e-Research<sup>3</sup>.

The survey examined issues regarding collaborative e-Research agreements, in particular:

- Legal procedures and norms for formalising such agreements<sup>4</sup>;
- How these legal procedures and norms affect researchers, research mangers and the success of collaborative innovation projects<sup>5</sup>;
- Problems encountered in negotiating issues of IP ownership, licensing, data access and other complications and delays arising from formalising these agreements<sup>6</sup>;

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<sup>1</sup> Professor Paul A. David, and Dr. Michael Spence, *Towards institutional infrastructures for e-Science: the scope of the challenge* , at <http://www.oii.ox.ac.uk/research/publications.cfm>

<sup>2</sup> Ibid 7

<sup>3</sup> The e-Research project’s Report, *Legal and Project Agreement Issues in Collaboration and e-Research: Survey Results* See <http://eprints.qut.edu.au/archive/00009112/01/9112.pdf>

<sup>4</sup> Ibid 25-31, 37-42

<sup>5</sup> Ibid

- How negotiations, complications and delays subsequently undermine feelings of trust and endanger the willingness of parties to participate in collaborative innovation<sup>7</sup>; and
- The participants understanding and views on simplified legal and communication processes designed to aid collaborative e-research<sup>8</sup>.

From the survey results, it can be concluded that:

- Established legal procedures and norms for formalising such agreements can unduly delay and even terminate collaborative research projects between industry, universities and government;
- Issues that impede projects include the negotiation of intellectual property ownership rights, licensing arrangements and parties access to project data;
- Prolonged negotiations, complications and delays have the effect of undermining feelings of trust and endanger the willingness of parties to participate in collaborative innovation projects.

In short, we need to make it easier for universities/higher education, business/industry and researchers to formalise collaborative agreements and to commence work on innovative projects.

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<sup>6</sup> Ibid 43-46

<sup>7</sup> Ibid 46-54

<sup>8</sup> Ibid 55-62

### PART 3: STREAMLINING COLLABORATIVE RESEARCH AGREEMENTS

The survey results suggested ways to counter these problems and to streamline the processes for formalising collaborative research agreements:

- Master agreements that allow descriptions of new projects to simply be added on<sup>9</sup>;
- Template agreements for different types of collaborations. with options to align them to the parties' needs and circumstances<sup>10</sup>;
- A database of standard clauses for assembly into formal agreements<sup>11</sup>;
- Increased educational materials and guidelines and skills training for knowledge engagement practitioners<sup>12</sup>.

In addition to our survey, various Australian and overseas studies have also examined legal procedures for the formalisation of collaborative research agreements and the impediments which arise during those processes.

Common themes emerge from these studies:

- Links or partnerships between business/industry, universities and research institutions are necessary for increasing collaborative research<sup>13</sup>, however issues regarding IP ownership and access are viewed as impediments to collaboration<sup>14</sup>;
- There is a need for uniform national approaches to IP ownership and licensing and establishing a set of best practice principles for business/industry and university collaboration with publicly funded research agencies<sup>15</sup>; and

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<sup>9</sup> Ibid 59-62

<sup>10</sup> Ibid

<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> The Prime Ministers Science, Engineering and Innovation Council (PMSEIC) Report *Australia's Science and Technology Priorities for Global Engagement*, December 2006, 61. See at [http://www.dest.gov.au/sectors/science\\_innovation/publications\\_resources/profiles/Presentation\\_Global\\_Engagement.htm](http://www.dest.gov.au/sectors/science_innovation/publications_resources/profiles/Presentation_Global_Engagement.htm)

<sup>14</sup> Ibid 36

<sup>15</sup> Recommendation 11, Dr J Howard 2005, *Knowledge Exchange Networks in Australia's Innovation System: Overview and Strategic Analysis*, Howard Partners Pty Ltd, commissioned for The Business, Industry and Higher Education Collaboration Council (BIHECC). See at <http://www.dest.gov.au/NR/rdonlyres/D60AE27E-1BF3-4305-ACCC-3027FE0A43FF/8488/KENReportFinal.rtf>

- The final value of an output should be shared equitably, based on the direct proportional value of the inputs to a project<sup>16</sup>.

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<sup>16</sup> Department of Education, Science and Training, *Review of Closer Collaboration Between Universities and Major Publicly Funded Research Agencies*, 2004, 37 at <http://www.dest.gov.au/NR/rdonlyres/327F4C1D-99CC-4F93-91FB-1A2DEA8F299E/3623/pub.pdf>

These studies have also produced recommendations, documents, guidelines or interactive tools which fall into four categories:

## **1 Creation of a Government Agency:**

### **David and Spence - *Towards institutional infrastructures for e-Science: the scope of the challenge*<sup>17</sup>:**

This report proposes that standard template contracts are not suited for governing collaborative research projects and recommends the establishment of a “coordinating and facilitating mechanism in the shape of a novel public agency”<sup>18</sup>.

This independent public agency will:

- “Guide, oversee and disseminate the work of producing, maintaining, evaluating and updating standard contractual clauses”<sup>19</sup>. The clauses will be designed to apply to various types of problems or situations that arise in collaborative research projects<sup>20</sup> and can be selected by parties to a project to resolve specific problems in their collaboration project agreement<sup>21</sup>; and
- “Play a leading role in enunciating a set of fundamental principles to guide the formation of these contractual clauses and ensure that the effects of the agreements into which they are introduced will not be inconsistent with the intent underlying those principles”<sup>22</sup>.

## **2 Constructing Clauses:**

### **UIDP - TurboNegotiator:**

The University-Industry Demonstration Partnership<sup>23</sup> has established the TurboNegotiator project<sup>24</sup>, an online software tool that constructs collaborative research agreements from recommended clauses, and not from established template agreements.

TurboNegotiator consists of:

- A ‘project space’ for parties to obtain consensus about each others perceptions and ideas for the collaboration project, before selecting appropriate clauses for the research agreement. It includes ‘consensus statements’ which makes a statement on the issue at hand, explains

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<sup>17</sup> Professor Paul A. David, and Dr. Michael Spence, *Towards institutional infrastructures for e-Science: the scope of the challenge* at <http://www.oii.ox.ac.uk/research/publications.cfm>

<sup>18</sup> Ibid 11

<sup>19</sup> Ibid 11

<sup>20</sup> Ibid 51

<sup>21</sup> Ibid 28

<sup>22</sup> Ibid 52

<sup>23</sup> See <http://uidp.org/>

<sup>24</sup> See [http://uidp.org/UIDP\\_PROJECT\\_STATUS.html](http://uidp.org/UIDP_PROJECT_STATUS.html)

the reasoning behind the statement, sets out 'principles' which the parties must adhere to and lists other factors or comments that should be considered<sup>25</sup>;

- The TurboNegotiator interview tool, which asks a series of questions of each party to the project. The questions are organised into specific sections relating to project issues and the answers provided by the parties suggests clauses to go into the agreement<sup>26</sup>. Each of the suggested clauses hyperlinks to further information about its suitability in relation to each party's interests and its overall effect on the agreement and the project.

### **3 Template Agreements:**

#### **The B-HERT Partnering Initiative:**

The Business/Higher Education Roundtable ("B-HERT"<sup>27</sup>) issued a report, *Partners in Intellectual Property*<sup>28</sup>, which proposes the use of a:

- Template 'Proposed Partnering Concept' which addresses issues such as users' rights and IP ownership as a starting point for negotiations for collaborative projects (the report is unclear whether it is intended to be a voluntary protocol or a binding agreement); and
- A 'Grant of Intellectual Property Rights' contractual template which contains set clauses that address IP licensing and assignment, consideration and warranties<sup>29</sup>, but does not address issues of IP publication, management issues and contractual flexibility.

#### **The Lambert Review and Model Agreements:**

The *Lambert Review of Business-University Collaboration*<sup>30</sup> established a Working Group which developed five model research collaboration agreements for use as a starting point for negotiations by business/industry and universities in collaborative research projects:

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<sup>25</sup> There are draft consensus statements for how to produce a 'statement of work' of aims and activities for the project, how to determine issues of indemnification in the project, how to balance issues regarding the publication of project IP, dealing with copyrightable and other research results and dealing with background IP. See the drafts from the UIDP meeting April 9 to 10, 2008 at

[http://www.osp.gatech.edu/TN/documents/ConsensusStmnt04\\_09\\_08.doc](http://www.osp.gatech.edu/TN/documents/ConsensusStmnt04_09_08.doc) and see presentation by Julia Garton, *TurboNegotiator, Milestones and Pathways, 23 July 2007*, Third Meeting of the University-Industry (Demonstration) Partnership, July 23-24, 2007. The National Academies Washington at [http://www.uidp.org/UIDP\\_ARCHIVED\\_MEETINGS.html](http://www.uidp.org/UIDP_ARCHIVED_MEETINGS.html)

<sup>26</sup> Presentation by Julia Garton, *TurboNegotiator, Milestones and Pathways, 23 July 2007*, Third Meeting of the University-Industry (Demonstration) Partnership, July 23-24, 2007, The National Academies Washington at [http://www.uidp.org/UIDP\\_ARCHIVED\\_MEETINGS.html](http://www.uidp.org/UIDP_ARCHIVED_MEETINGS.html)

<sup>27</sup> [http://www.bhert.com/aboutBHERT\\_Mission.htm](http://www.bhert.com/aboutBHERT_Mission.htm)

<sup>28</sup> See the Report at [http://www.bhert.com/publications\\_Reports.htm](http://www.bhert.com/publications_Reports.htm)

<sup>29</sup> Ibid 40-48

<sup>30</sup> See The Lambert Review of Business-University Collaboration – Final Report at [http://www.hm-treasury.gov.uk/media/9/0/lambert\\_review\\_final\\_450.pdf](http://www.hm-treasury.gov.uk/media/9/0/lambert_review_final_450.pdf)

- Model Agreements 1, 2 and 3 begin from the position that the university owns the IP resulting from the project<sup>31</sup>. The university is free to publish about the IP or have its staff and students discuss the project in tutorials or lectures<sup>32</sup> (unless business/industry has issued a 'confidentiality notice' to prevent publication/discussion until patent or other protection for the IP has first been obtained<sup>33</sup>);
- Model Agreements 4 and 5 begin from the position that business/industry owns the IP resulting from the project<sup>34</sup>. Universities may either disseminate the IP for teaching and research<sup>35</sup> subject to terms of any 'confidentiality notice' issued by business/industry<sup>36</sup> or have no publication or dissemination rights at all<sup>37</sup>.

Agreements are used in concert with:

- An 'Outline' an issues designed to prompt the parties to think about and discuss with each-other before they select of one of the model agreements<sup>38</sup>;
- A 'Decision Guide', being a series of questions designed to determine which of the five agreements is best suited for the project at hand;<sup>39</sup> and
- 'Guidance Notes' which provide definitions of the terms used in the five agreements and explanations about the effect and intention of certain clauses<sup>40</sup>.

### **CRC Inc and Model Participants Agreement**

CRC Inc<sup>41</sup> has produced two template instruments to establish Cooperative Research Centres:

- The CRC Model Constitution Document is a company constitution and details standard procedures for company organisation<sup>42</sup>;
- The CRC Model Participants Agreement is a template contractual

<sup>31</sup> Clause 4.3. Model Collaborative Research Agreement No1. See

<http://www.innovation.gov.uk/lambertagreements/index.asp?lv1=4&lv2=0&lv3=0&lv4=0>

<sup>32</sup> Ibid Clause 5.1.

<sup>33</sup> Ibid Clause 5.2.

<sup>34</sup> Clause 4.3. Model Collaborative Research Agreements No.4 and No.5. See

[http://www.innovation.gov.uk/lambertagreements/files/Lambert\\_Agreement\\_4\\_Ink.doc](http://www.innovation.gov.uk/lambertagreements/files/Lambert_Agreement_4_Ink.doc) and

[http://www.innovation.gov.uk/lambertagreements/files/Lambert\\_Agreement\\_5\\_Ink.doc](http://www.innovation.gov.uk/lambertagreements/files/Lambert_Agreement_5_Ink.doc)

<sup>35</sup> Clause 5.1. Model Collaborative Research Agreements No.4. See

[http://www.innovation.gov.uk/lambertagreements/files/Lambert\\_Agreement\\_4\\_Ink.doc](http://www.innovation.gov.uk/lambertagreements/files/Lambert_Agreement_4_Ink.doc)

<sup>36</sup> Ibid Clause 5.2.

<sup>37</sup> <http://www.innovation.gov.uk/lambertagreements/index.asp?lv1=4&lv2=0&lv3=0&lv4=0>

<sup>38</sup> See <http://www.innovation.gov.uk/lambertagreements/index.asp?lv1=4&lv2=0&lv3=0&lv4=0> and

[http://www.innovation.gov.uk/lambertagreements/files/Lambert\\_Agreement\\_Outline.doc](http://www.innovation.gov.uk/lambertagreements/files/Lambert_Agreement_Outline.doc)

<sup>39</sup> See <http://www.innovation.gov.uk/lambertagreements/index.asp?lv1=2&lv2=1&lv3=1&lv4=0>

<sup>40</sup> Ibid

<sup>41</sup> See <http://www.ausicom.com>

<sup>42</sup> See [http://www.crca.asn.au/about\\_cracs/CRCIncTemplates2006.htm](http://www.crca.asn.au/about_cracs/CRCIncTemplates2006.htm)

agreement with set provisions and is focussed on the commercialisation of project IP<sup>43</sup>. Project IP can either be jointly owned by the parties, owned by business/industry or through a trust arrangement where the CRC owns the beneficial interest and business/industry holds the legal interest on trust.

#### 4 Guidelines and Compliance Rules:

##### European Commission Seventh Framework Programme- FP7

FP7<sup>44</sup> does not provide a template document, but provides a set of guidelines in the form of a checklist<sup>45</sup> with an accompanying guide to intellectual property rules<sup>46</sup>.

In order to obtain funding for a collaborative project<sup>47</sup>, parties must draft their own:

- Model Grant Agreement<sup>48</sup>; and
- Model Consortium Agreement<sup>49</sup>;

in compliance with regulations of the European Parliament<sup>50</sup>. The terms of the consortium agreement cannot contradict terms of the grant agreement and must be signed before the grant agreement becomes operative<sup>51</sup>.

DESCA<sup>52</sup> has provided a template version of a consortium agreement<sup>53</sup> in a comparative table format with the suggested clause in the left hand column and an explanation of definitions and the effect of the clause in the right hand column so that parties can assess clause suitability.

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<sup>43</sup> Ibid

<sup>44</sup> See [http://cordis.europa.eu/fp7/home\\_en.html](http://cordis.europa.eu/fp7/home_en.html)

<sup>45</sup> See 'Checklist for a Consortium Agreement for FP7 projects' at [ftp://ftp.cordis.europa.eu/pub/fp7/docs/checklist\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/checklist_en.pdf)

<sup>46</sup> See 'Guide for Intellectual Property Rules for FP7 projects' at [ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr_en.pdf)

<sup>47</sup> See Article 1. *Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013)*, Official Journal of the European Union L 391/1, 30.12.2006 at <http://cordis.europa.eu/documents/documentlibrary/90798681EN6.pdf>

<sup>48</sup> See Articles 18 and 19. Ibid

<sup>49</sup> See Article 24. Ibid

<sup>50</sup> Ibid

<sup>51</sup> Guide to Intellectual Property Rules for FP7 Projects Version 28/06/2007, page 30 at [ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr_en.pdf)

<sup>52</sup> See <http://www.desca-fp7.eu/the-desca-core-group/>

<sup>53</sup> DESCA The Simplified FP7 Model Consortium Agreement Version 1 May 2007 at [http://www.desca-fp7.eu/fileadmin/content/Documents/DESCA\\_version\\_1\\_webversion\\_May\\_2007.doc](http://www.desca-fp7.eu/fileadmin/content/Documents/DESCA_version_1_webversion_May_2007.doc)

## **The Commission of the European Communities – Voluntary Guidelines for Universities:**

The Commission of the European Communities has produced guidelines<sup>54</sup> for the management and transfer of IP arising from publically funded collaborative projects.

The guidelines are meant to establish ‘good practices’ for publically funded collaborative research contracts and contain general advice on non-exclusive licensing or assignments and advocates that universities/research institutions should reserve the right to publish IP results in collaborative agreements<sup>55</sup>.

## **The Crest OMC Expert Group Report and the Crest Cross-Border Collaboration Toolkit:**

The Crest OMC 2<sup>nd</sup> Cycle Expert Group on Intellectual Property<sup>56</sup> has developed a cross-border toolkit which provides explanation and commentary on IP ownership and rights issues on a comparative basis between European Union member states. The toolkit originated in their report *Cross-Border Collaboration Between Publically Funded Research Organisations and Industry and Technology Transfer Training*<sup>57</sup>.

The Toolkit<sup>58</sup> consists of:

- A ‘First Step’ which is an online interactive checklist of questions for deciding a suitable position for ownership of the IP rights, looking at issues such as the importance of results for future activity, exploitation of the results, who conceived the project, the purpose of the project and why the respective business/industry and university parties want to fund or carry out the project<sup>59</sup>;
- A ‘Second Step’ which provides guidance on cross-border issues regarding IP rights and ownership, negotiations, funding, confidentiality, publication and the protection and enforcement of IP rights<sup>60</sup>;
- Fact Sheets which explain each member states position on IP rights that can be obtained from universities/research institutes<sup>61</sup> in another

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<sup>54</sup> See Commission of the European Communities, *Commission Staff Working Document Voluntary Guidelines for universities and other research institutions to improve their links with industry across Europe*, page 2 at [http://ec.europa.eu/invest-in-research/pdf/sec2007449\\_en.pdf](http://ec.europa.eu/invest-in-research/pdf/sec2007449_en.pdf)

<sup>55</sup> Ibid

<sup>56</sup> See Report of the CREST OMC Expert Group on Intellectual Property 92<sup>nd</sup> Cycle) *Cross-Border Collaboration Between Publically Funded Research Organisations and Industry and Technology Transfer Training*, 1 September 2006 pages 1 and 9 at [http://ec.europa.eu/invest-in-research/pdf/download\\_en/crestreport.pdf](http://ec.europa.eu/invest-in-research/pdf/download_en/crestreport.pdf)

<sup>57</sup> Ibid

<sup>58</sup> See [http://ec.europa.eu/invest-in-research/policy/rd\\_collab\\_en.htm](http://ec.europa.eu/invest-in-research/policy/rd_collab_en.htm)

<sup>59</sup> See the First Step Interactive Tool at [http://ec.europa.eu/invest-in-research/policy/rd\\_collab\\_en.htm](http://ec.europa.eu/invest-in-research/policy/rd_collab_en.htm)

<sup>60</sup> See the Second Step Interactive Tool at [http://ec.europa.eu/invest-in-research/pdf/download\\_en/secnd\\_step.pdf](http://ec.europa.eu/invest-in-research/pdf/download_en/secnd_step.pdf)

<sup>61</sup> See Report of the CREST OMC Expert Group on Intellectual Property 92<sup>nd</sup> Cycle) *Cross-Border Collaboration Between Publically Funded Research Organisations and Industry and Technology Transfer Training*, 1 September 2006 page 16 at [http://ec.europa.eu/invest-in-research/pdf/download\\_en/crestreport.pdf](http://ec.europa.eu/invest-in-research/pdf/download_en/crestreport.pdf)

country<sup>62</sup> and differences between the member states that impact on the ownership of IP rights;

- Five proposed IP ownership positions between business/industry and university/higher education parties<sup>63</sup>; and
- The 'Intellectual Property Right Interactive Visualisation Tool' enabling users to select two member state countries and obtain a comparison of legislative and legal positions in relation to IP ownership rights, the negotiation of IP rights contracts; the effect of funding on IP rights contracts; confidentiality and publication and the protection and enforcement of IP rights<sup>64</sup>.

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<sup>62</sup> Such as patents copyrights, trademarks or designs

<sup>63</sup> See Crest Cross-Border Collaboration Decision Guide page 7 at [http://ec.europa.eu/invest-in-research/pdf/download\\_en/introd.pdf](http://ec.europa.eu/invest-in-research/pdf/download_en/introd.pdf)

<sup>64</sup> See the Country Comparative Questionnaire Program at <http://ec.europa.eu/invest-in-research/policy/tool.htm>

## Recommendations

Negotiating legal agreements for collaborative innovation projects is a complex and challenging task.

Our survey and study of Australian and overseas projects show that collaborative innovation and the transfer of ideas are often impeded and curtailed by problems and delays arising out of the negotiation and formalisation of agreements for collaborative research. Finalising agreements for collaboration can take longer than the actual project and frustrated parties may take steps to avoid the formalisation of collaborative research agreements<sup>65</sup>.

The various template documents, constructed clauses or explanatory guidelines discussed in this submission are all useful in resolving these problems and more work should be done on these.

However, for the law to be a true enabler of innovation, merely relying on a particular drafting methodology or an online construction tool will not be enough. Used in isolation, they only ever provide a piecemeal and incomplete approach to streamlining the agreement process.

The seeds of our submission were raised in Paul A David's and Michael Spence's recommendation to create a government agency ("live public actors")<sup>66</sup>.

It is submitted that such a government agency could be restructured out of IP Australia, re-named as 'Innovate Australia' and would be able to exercise powers beyond that envisaged by David and Spence, including but not limited to:

- The provision of government appointed 'innovation officers' who will manage and finalise research agreements for collaborative projects. These officers will be trained to facilitate the completion of collaborative research contracts, to balance and resolve issues between parties, to engage with the private sector and to implement collaborative research ideas into innovative outcomes. They will operate from a position focussed on achieving innovative development and unhindered by party bias;
- Managing and coordinating a national legal and policy framework of templates, clauses and guidelines to support collaborative innovation; and

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<sup>65</sup> Lane, B. 2007, "Hi-tech research outpaces law", *The Australian*, Higher Education, 22 August 2007, p. 19. [online] available at <http://www.theaustralian.news.com.au/story/0,25197,22285146-12332,00.html>

<sup>66</sup> Professor Paul A. David, and Dr. Michael Spence, *Towards institutional infrastructures for e-Science: the scope of the challenge* at 11 at <http://www.oii.ox.ac.uk/research/publications.cfm>

- The agency should be supported by a national cross-sectoral Innovation Law Expert Group that links closely with DIISR and other relevant Departments, universities and business/industry groups. This Expert Group will design the legal and policy frameworks and align appropriate methodologies for the streamlining of collaborative research agreements.

The DEST funded Legal Framework for e-Research Project (<http://www.e-research.law.qut.edu.au>) at the Queensland University of Technology (to which we belong) is currently working on solutions to these issues.

## Biographies

### MR. ANTHONY AUSTIN

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Anthony Austin is a research officer for the OAK Law Project and the Legal Framework for e-Research Project at the Queensland University of Technology, Brisbane, Australia.

Anthony worked as a solicitor for 10 years in private practice before joining the OAK Law Project. He worked primarily in intellectual property and commercial law and has advised on:

- University level research, licensing and technology-transfer agreements and intellectual property policies;
- Copyright, patents, designs, trademarks, confidential information, intellectual property negotiations and licensing;
- Manufacturing and distribution licenses; and
- Franchising systems.

He has also worked with community legal services and is involved in a manufacturing business.

Anthony completed his Masters of Law degree at the Queensland University of Technology in 2007, focussing primarily on copyright and trademark law, patent law and commercialisation, international commercial transactions and media law.

Since joining OAK Law, Anthony has worked and advised on numerous OAK Law projects, including

- The Oak Law Project and Legal Framework for e-Research Project Report, *Building the Infrastructure for Data Access and Reuse in Collaborative Research: An Analysis of the Legal Context* (June 2007 - <http://www.oaklaw.qut.edu.au/reports> );
- The Queensland University of Technology and ARC Centre of Excellence for Creative Industries and Innovation Report, *Legal Aspects of Web 2.0 Activities: Management of Legal Risks Associated*

*with Use of YouTube, MySpace and Second Life* (July 2007 – See the Queensland University of Technology Faculty of Law: Intellectual Property Knowledge, Culture and Economy Project at <http://www.ip.qut.edu.au/> );

- The Oak Law Project Guide, *Copyright Guide for Research Students: what you need to know about copyright before depositing your electronic thesis in an online repository* (August 2007 - <http://www.oaklaw.qut.edu.au/publications> );
- The OakLaw Project and Legal Framework for e-Research Project Guide, *Legal Considerations for Data Management: A Guide* (September 2007 – not yet available for public consultation);
- The OAK Law Project Guide, *A Guide to Developing Open Access through your Digital Repository* and sample repository deposit licence for publications (September 2007 - <http://www.oaklaw.qut.edu.au/publications> );
- The OAK Law Project's *OAKList*; a web-enabled database containing information about publishing agreements and publishers' open access policies ( Launched 7 February 2008 - <http://www.oaklist.qut.edu.au/> );
- The OAK Law Project Report, *Academic Authorship, Publishing Agreements & Open Access: Survey Results* (Soon to be released);
- The Queensland University of Technology and ARC Centre of Excellence for Creative Industries and Innovation Guide, *CCI Blog, Podcast, Vodcast and Wiki Legal Guide for Australia* (Soon to be released);
- The OAK Law Project and Legal Framework for e-Research Project *Streamlining Legal Frameworks for Collaborative Innovation in e-Research* to the Australian Federal Government's Review of the National Innovation System.

Anthony was also one of the recipients of the Queensland University of Technology Vice-Chancellor's Award for Excellence which was awarded to the OAK Law Project team in recognition of exceptional sustained performance and outstanding achievement in research; partnership and engagement; innovative and creative practice and leadership (31 October 2007).

## PROFESSOR BRIAN FITZGERALD

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Brian Fitzgerald studied law at the Queensland University of Technology graduating as University Medallist in Law and holds postgraduate degrees in law from Oxford University and Harvard University.

He is a well-known Intellectual Property and Information Technology/Internet lawyer who has pioneered the teaching of Internet/Cyber Law in Australia. He has published articles on Intellectual Property and Internet Law in Australia, the United States, Europe, Nepal, India, Canada and Japan and his latest (co-authored) books are *Cyberlaw: Cases and Materials on the Internet, Digital Intellectual Property and E Commerce* (2002); *Jurisdiction and the Internet* (2004); *Intellectual Property in Principle* (2004) and *Internet and Ecommerce Law* (2007). Over the past seven years Brian has delivered seminars on Information Technology, Internet and Intellectual Property law in Australia, Canada, China, Brazil, New Zealand, USA, Nepal, India, Japan, Malaysia, Singapore, Norway, Croatia and the Netherlands. In October 1999 Brian delivered the Seventh Annual Tenzer Lecture - Software as Discourse: The Power of Intellectual Property in Digital Architecture - at Cardozo Law School in New York. Through the first half of 2001 Brian was a Visiting Professor at Santa Clara University Law School in Silicon Valley in the USA. In January 2003 Brian delivered lectures in India and Nepal and in February 2003 was invited as part of a distinguished panel of three to debate the Theoretical Underpinning of Intellectual Property Law at University of Western Ontario in London, Canada. During 2005 Brian presented talks in Germany, India and China and was a Visiting Professor in the Oxford University Internet Institute's Summer Doctoral Program in Beijing in July 2005. In 2006 he was nominated by DEST to attend and present as an Australian expert an OECD Workshop on Research Use of Patents held in May 2006 in Spain and in February 2006 was invited as international expert to present at an OECD Workshop on Open Educational Resources in Sweden. In April 2006 Brian was also invited to speak at the Fordham University International Intellectual Property Conference in New York and the Access to Knowledge (A2K) Conference at Yale University Law School. In April 2007 Brian organised the Knowledge Policy for the 21<sup>st</sup> Century Conference with the University of Western Ontario Law School in Canada and presented at the Fordham University International Intellectual Property Conference in New York. In May 2007 he organised the Legal and Policy Framework for the Digital Content Industry Conference in Shanghai China and in June presented at the Creative Commons iSummit in Dubrovnik Croatia. In July he organised an International Conference on the Legal Framework for e-Research held on the Gold Coast Australia and also

taught in the Oxford Internet Institute Summer School at Harvard University Law School.

Brian is a Chief Investigator and Program Leader for Law in the ARC Centre of Excellence on Creative Industries and Innovation and Project Leader for the DEST funded Open Access to Knowledge Law Project (OAK Law) Project looking at legal protocols for open access to the Australian research sector and the DEST funded Legal Framework for e-Research examining the legal framework needed to enhance e-Research. He is also a Program Leader for CRC Spatial Information. His current projects include work on intellectual property issues across the areas of Copyright, Digital Content and the Internet, Copyright and the Creative Industries in China, Open Content Licensing and the Creative Commons, Free and Open Source Software, Research Use of Patents, Science Commons, e-Research, Licensing of Digital Entertainment and Anti-Circumvention Law. Brian is a Project Leader for Creative Commons in Australia. He has organised numerous conferences on Intellectual Property and Internet Law in Australia, is a regular speaker at international and national conferences and has made a number of significant submissions to government in the area of Internet and IP Law.

From 1998-2002 Brian was Head of the School of Law and Justice at Southern Cross University in New South Wales, Australia and from January 2002 – January 2007 was Head of the School of Law at QUT in Brisbane. He is currently a specialist Research Professor in Intellectual Property and Innovation at QUT.