2025 Research report summary

Legal hindrances to collaboration? Issues of law and leadership in collaboration around PhD students

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Summary

University–industry collaboration is central to the joint development of knowledge, and to competence development in the public as well as the private sector. Collaboration in third cycle education is of particular importance, where industry and university actors collaborate on research projects involving PhD students. However, such collaborations comes with high demands on the partnership to safeguard the position of the PhD student as the economic interests and basic principles for the partners may clash. From a societal perspective, hindrances to such collaborations endanger the development of knowledge and human expertise.

In this report, we analyze contracts and model contracts signed by university and industry actors regarding PhD students, to understand which issues are the most problematic in these collaborations and what could potentially be done to facilitate collaborations in the future. The purpose of the study is to increase our understanding of the issues at stake in discussions and what principles underlie the approaches adopted by universities and colleges as they negotiate collaboration agreements. The analysis shows that three subject areas are in focus, including:

1. The financing and employment of the PhD student, and under what circumstances the contract may be terminated prematurely.
2. The allocation of commercially-relevant intellectual property rights among the collaborators.
3. Issues pertaining to trade secrets, confidentiality, and the possibility to publish research results.

The first focus area concerns the situation for PhD students who are dividing their time between the industry partner and the university. The university's main interest will be to protect the right of the student to complete their education, and to minimize the economic risk for the university that pertains to its potential duty to take on funding responsibility in case the business partner cannot fulfil its duties. Our analysis shows that almost all of the PhD students subject to these contracts are employed by the industry partner, who therefore functions as the employer and holds the responsibilities attached to that role. In the event that the employment is terminated, the contracts offer differing solutions. In spite of differences, it does not appear difficult to reach an agreement on these issues. Further, some contracts specify the amount of working time to be allocated to studies, which can provide some safety for the student. Other issues in employment, such as work insurance and work sites, are sometimes stipulated in the contracts.

The second focus area concerns the rights to intellectual property created by the PhD student, developed individually or in collaboration with others, such as the supervisor. In this regard, contracts are very different in scope as well as in the chosen solutions. The main principle is that employers, by reason of their employment relationship with the student, have far-reaching possibilities to acquire the intellectual property rights for creations made by the student. With regard to university faculty, the so-called teachers' exception under Swedish law takes the opposite view, giving individual researchers exclusive rights to the results of their research. However, exceptions can be made through contracting. These issues depend on who can be considered a co-contractor and who, for example supervisors or other project members, have taken part in creating the results. Further, in almost all contracts, universities are reserving the right to use research results from the collaboration in research and teaching.

A particular issue in intellectual property is whether inventions and other results can be protected prior to their publication. In this context, the interests of industry partners may clash with those of the PhD student, who has a right and need to publish research results. This is usually resolved by offering partners a time frame before submission to publish, during which they can apply for patents or take other steps to safeguard their interests. The time frames stipulated in the contracts vary from one to four months.

The third focus area is confidentiality, trade secrets, and the right to publish. Here there is also some variety on how to contract, as well as on how long confidentiality should pertain to sensitive information. For the PhD student, it will mainly be the employment contract that governs such issues, and in employment there is always a duty not to divulge trade secrets. The situation is rendered more complicated by the Swedish principle of public access to official records, which applies to public universities and under which most documentation is public and should be archived and accessible. Universities seem to be uncertain on how to reconcile these aspects, and the contracts we scrutinized can be quite different in this respect.

In this context too, the right to publish is of particular importance. In addition to the aforementioned time frame, some contracts include terms or restrictions to publication for reasons of secrecy or the sensitive nature of commercial information. Sometimes industry partners have a right to review and to remove information that they regard as confidential or sensitive from draft versions of student publications. The time frame for doing this is usually one month. There is, however, considerable variation in what is regarded as confidential, and what will happen when there is confidential information. In one contract, this issue is very clearly addressed, including how to engage in litigation if need be. Such clauses can contribute to foreseeability for the university.

Three recommendations

On the basis of our findings, we offer three specific recommendations that may facilitate university-industry collaboration in Sweden.

MANAGEMENT ENGAGEMENT

University top management should stimulate and actively engage in comprehensive discussions on responsibilities, roles, and ambitions in relation to collaborations with industry partners, and make their ambitions and priorities regarding this clear in the organization.

Collaboration processes around PhD students, including contracting, are mainly driven by individual departments together with individual researchers, often with support from legal experts. Top management is rarely involved in these processes. However, in our discussions, it has become clear that a comprehensive and wide discussion

on collaboration, across departments and faculties, and encompassing responsibilities, roles, and ambitions, would be welcomed and could help provide guidance and support in decision processes. Clear priorities and roles can have a positive impact on negotiations, and facilitate contracting with industry partners.

FORUMS FOR COOPERATION

University lawyers should be instructed to draft common forums for cooperation and exchange of experiences, including the drafting of common model clauses that can be used by universities and colleges in negotiations on collaboration contracts.

The contracts scrutinized here showed differences and inconsistencies that should be easy to address by instructing university lawyers to exchange model clauses and to discuss best designs. Admittedly, every negotiation has its unique aspects, making it impossible to have one single best design for all collaborations. Nonetheless, a few alternative model clauses should be drafted for commonly occurring issues. These include clauses on (1) the principle of public access to official records in relation to statutory secrecy for collaborations, and the marking of confidential information and any exceptions from confidentiality, (2) the longevity of trade secrets, and (3) the trade-off between confidentiality and publishing rights for researchers, including which faculty members that will have access to confidential information and the time frame for scrutinizing draft publications.

LEGISLATION ON CO-OWNERSHIP

The legislator should draft non-compulsory legislation on co-ownership of intellectual property in order to create a clear point of departure for contractual discussions.

It is difficult for the parties to manage the allocation of intellectual property rights for results that are created in collaboration. From the universities' perspective, it is crucial to safeguard the teachers' exception, giving researchers the rights to the results of their research. This exception does not usually apply to PhD students employed by an industry partner, but their supervisors and other project members may be covered by it. We do not recommend any changes to the teachers' exception or the fact that it does not apply to PhD students employed by an industry partner. From the perspective of the partner, which

is usually a commercial perspective, it is important to clarify who is a part owner of intellectual property and how the various owners should manage their interrelated claims. This can be done through a contract, and our first recommendation in this context is for the issue to be covered by model clauses commissioned by the universities. However, in light of the complexities of the issue, we also recommend that the legislator step in and draft non-compulsory legislation on co-ownership of intellectual property. Such non-compulsory legislation would serve as a clear point of departure for contractual discussions and thereby facilitate collaboration in Sweden.

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