

DISONANCIAS. 2009/09 Edition

Options for the exploitation of the results of the collaborations between artists and companies, research centres or public bodies.

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1. Introduction

The intangibility of intellectual creations permits their owners to approach their exploitation with a great deal of flexibility and to adjust the instrument –the licence or contract granting exploitation rights- to the purpose decided by the parties concerned in order to satisfy the interests at stake.

The distribution models presented below are not a closed catalogue, but simply a concrete example of options that the creator and the company can adopt with the aim of establishing the rules for granting exploitation rights.

In this context we will employ the terms “creator” and “artist” without drawing any distinction, since for the purposes of this document emphasis is placed on the creation of intangibles, of whatever kind they might be. Similarly, the term “Host body” encompasses both private companies (of a profit-making kind), and Research centres (which are generally Foundations) and public bodies, because the three types of organisation participate within the DISONANCIAS framework.

2. Classification of intangible goods and of exploitation rights

There are two broad categories of intangible goods:

- those associated with Intellectual Property: Artistic, scientific or literary work (including software).

- goods associated with Industrial Property: Industrial design, Trademark, Patents and utility models.

While the content of the exploitation rights of each of these goods is determined by the respective laws governing each area, they can be classified, in a general sense and for explanatory purposes, as follows:

- reproduction rights: the right to set the work within a medium that enables it to be communicated and permits the obtaining of copies;

- distribution rights: making the original and copies of it available to the public;

- public communication rights: making the work accessible to a plurality of people without copies being distributed beforehand to each individual (*for example* the broadcasting of a film on television);

- transformation rights: modification of the original work to create a new product (*for example* turning a successful book into a film).

This general catalogue of exploitation rights must be concretised, in each contract that is signed for the development of the project, in accordance with the interests of the contracting parties and using the models set out below, and also in line with the particular rules that are contemplated for each type of result (artistic work, industrial design, patents and utility models) within the specific regulations (Industrial Property Act, Industrial Design Protection Act, Act Governing Patents for Invention and Utility Models).

3. Contractual options within the DISONANCIAS framework

The freedom of contract between the Creator and the Host Body is enormous precisely because of the intangible nature of creation and, consequently, the models we offer here are not the only ones possible, but rather those that are in most common use.

However, given the illustrative function of this document, it must be noted that these general models must be specified in accordance with the interests of the contracting parties.

As a starting point, all the artists receive fees from DISONANCIAS for participating in the joint research. The intellectual authorship of the result belongs, in all circumstances, either to the artist or artists, or, depending on the particular project, is shared between the artist/artists and the researcher/s.

The options presented below concern any eventual remuneration the artists may receive in the event that the results of the research are marketed, used or exploited in any way by the host body, independently of whether the industrial property rights of the prototypes from the research belong to it.

We ask the participating bodies to choose one of the following options, so that the artists who answer the call may know the framework of conditions within which the results of the investigation would be used, although the precise categories must be subject to later negotiation between the artist and the host body.

*If it is a project of general interest (non-profit making): it is understood that neither artist nor host body intend to obtain economic benefit from the exploitation of the result, which will be communicated publicly in accordance with mechanisms associated with copyleft and creative commons, ruling out the possibility that any other person, physical or juridical, may exploit this result for commercial interest. This is **OPTION A**.

*If it is a project of a mercantile nature (profit-making) whose result has a commercial exploitation:

OPTION B: the exploitation rights (production and marketing) fall to the host body; nevertheless, the latter pays the artist at a fixed rate, in line with amounts to be negotiated by the two parties.

OPTION C: the exploitation rights (production and marketing) fall to the host body; nevertheless, the latter pays the artist the benefits linked to the exploitation proportionally, in line with categories to be negotiated by the two parties.

OPTION D: the exploitation rights fall to the host body, without added remuneration for the artist in the event that the result is marketed.

In all cases the artist/s may use the results of the investigation for artistic purposes, that is to say, within the context of the production of works in limited edition or, if digital reproduction media are used, for diffusion in such a way that it does not imply any competition with their commercial use by the host body.

Our recommendation is that, in the agreement, the parties provide for the establishment of a time limit for the host body to initiate exploitation of the results so that, if this entity does not utilise the results, the artist/s be authorised to seek other avenues of applicability in commercial ambits. By virtue of the legislation applicable to intellectual property, authorship is inalienable and, therefore, any mention of it must include the different authors.

Table specifying options:

Options	Authorship	Exploitation of results	Remuneration of the artist (*)
A	Sole Agency for Creator or Shared Agency for Creator – Company	Copyleft exploitation model (**): Creative Commons Licence <ul style="list-style-type: none"> • Non-Commercial • Share Alike 	Without additional remuneration
B	Sole Agency for Creator or Shared Agency for Creator – Company	Granting the Host Body: Sole Agency Entire duration of the Rights The entire world All exploitation rights	At a fixed price
C	Sole Agency for Creator or Shared Agency for Creator – Company	Granting the Host Body: Sole Agency Entire duration of the Rights The entire world All exploitation rights	Proportional to the benefits from the exploitation
D	Sole Agency for Creator or Shared Agency for Creator – Company	Granting the Host Body: Sole Agency Entire duration of the Rights The entire world All exploitation rights except transformation	Without additional remuneration

(*). Starting out from the premise that the artists are remunerated for their participation in the joint research, this column only refers to remuneration for the granting of exploitation rights.

(**). For more information, you can download the Copyleft Use Manual from the web www.manualcopyleft.net (published by Traficantes de sueños).

Other references:

Intellectual Property Act <http://civil.udg.edu/normacivil/estatal/real/Lpi.html>

Industrial Design Legal Protection Act <http://civil.udg.edu/normacivil/estatal/real/L20-03.htm>

Trademark Act

http://www.oepm.es/cs/Satellite?c=Normativa_C&cid=1150364394719&classIdioma=es_es&pagename=OEPMSite%2FNormativa_C%2FtplContenidoHTML

Act for the Legal Governance of Invention and Utility Models

http://www.oepm.es/cs/Satellite?c=Normativa_C&cid=1150304955034&classIdioma=es_es&pagename=OEPMSite%2FNormativa_C%2FtplContenidoHTML