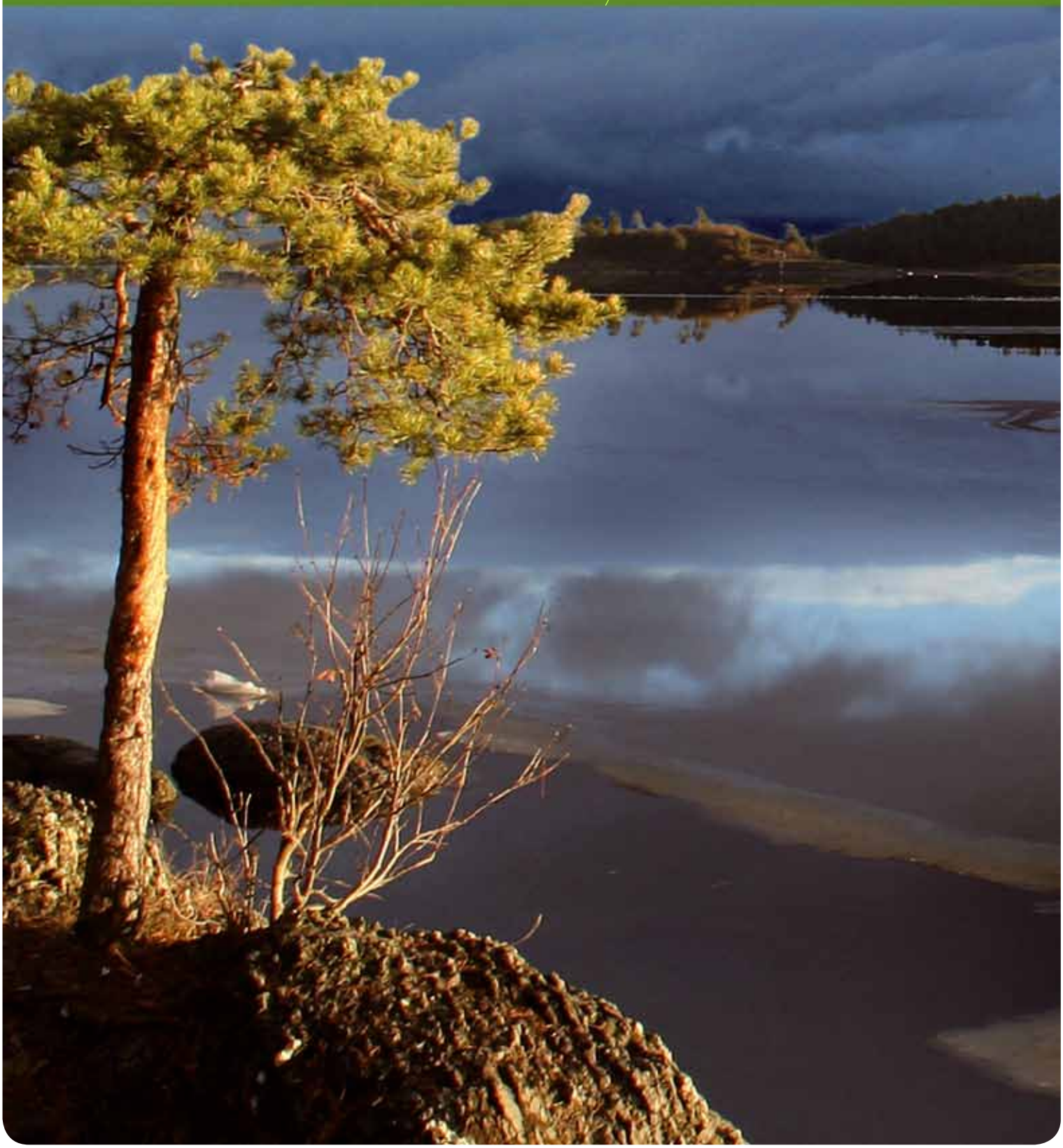
INNOVASJON NORGE

Intellectual Property Rights for clusters

NCE and Arena



Project report

Intellectual Property Rights for clusters

NCE and Arena

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1. Introduction and Background

The 'Innovativ Fjellturisme' and 'Innovative Opplevelser' clusters led a session entitled 'Who owns what's created' at the Arena conference in 2009. The discussion focused on ownership and commercial exploitation of intellectual assets in clusters and it became clear that there was a need to address these issues in a proper manner. This led to the creation of the project 'Intellectual Property Rights for Clusters'.

Innovation Norway took the responsibility to lead the project which addressed two key areas, namely:

- Climate for cooperation: How IP can help to build trust within the cluster.
- Commercial exploitation of IP: Provide tools and knowledge on the use of IP

Intellectual Property's (IP) role in clusters is often extremely important - however it is regularly overlooked. This project endeavoured to highlight the importance of IP for clusters and provide guidance and tools to assist them with their IP issues. As figure 1 below shows, IP has a role in value creation and value extraction for clusters and is a natural progression, once the clusters vision and strategy are clearly established.

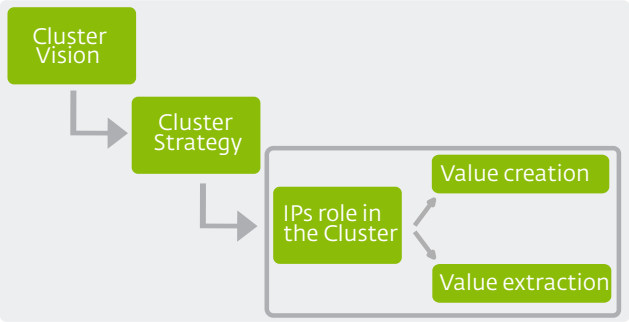

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Figure 1

One of the most important strategic areas for NCE/Arena clusters is to facilitate the development of research and innovation projects, based upon ideas and needs identified within the cluster. Such activities are often based upon and indeed generate many intellectual assets - which the cluster should handle professionally. This both ensures that

- there is an environment of trust, so that members feel their ideas will be respected and held confidentially within the group
- that commercial exploitation opportunities are maximised.

The key challenge within the limited resources of the project was to identify how we could address such a wide array of sectors and IP competence levels and still deliver something meaningful and useful to all.

The project began by getting input from cluster managers. The initial step being a survey, followed by a kick-off meeting in Oslo. The key issues which emerged were

- Building trust is central for all clusters. Therefore highlighting how IPR can be used as a tool for trust building was vital.
- There is a wide array of sectors
- Highly varied IP competence levels, both within and between the clusters.
- The majority of clusters had not considered and/or addressed important IP issues
- Project level IP is rarely considered in clusters.
- Formal Intellectual Property does not cover all the needs of the clusters, we must cater for Intellectual capital within the project, to ensure that all Intellectual Assets are catered for. Figure 2 (on next page) gives an overview of what constitutes Intellectual Capital

Based upon this input, the project proceeded to identify its core functions which are listed below:

Policy Guidelines

The major work of the project focussed upon developing and testing policy guidelines for Cluster Managers. Some managers are confused about where to start and what they should consider for their cluster, in relation to IP. The extent to which IP should be considered and how it should be addressed is highly sector dependent, with different issues depending upon the sector. For example, engineering is largely patent focussed, whereas culture and experience would rarely if ever need a patent, instead relying more upon copyright, trademarks and intellectual assets.

Although sectoral needs are different, the process which clusters should go through to address their IP can be very similar. We therefore set about creating a tool which defines a process, from which it can be identified what is relevant/irrelevant for their particular circumstances. These guidelines also include recommendations for competence raising, indeed even reading these guidelines will raise the competence levels of many clusters. There has been feedback already from some cluster managers, that these guidelines have inspired them to deal with the issue and look at IP with 'fresh eyes'.

We hope that the guidelines will help clusters to realise the importance of IP and place the issue high on their agenda.

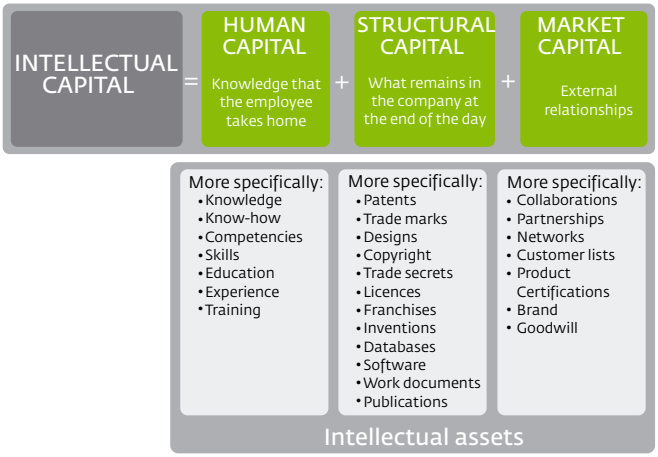


Figure 2

The policy guidelines have purposely been designed as a clear and concise document. Earlier versions were tested through interviews with the reference group and feedback incorporated in the new version. Following this a pilot was performed with Helseinnovasjon, to test it in a real cluster environment. Coupled with this Lillehammer Kunnskapspark has prepared input from the culture and experience perspective - based on their experience with the Konvekst cluster.

Innovation Norway IPR staff will be available to assist cluster Managers as they embark on and go through the process.

Project agreements

IP on the project level is rarely considered and often mis-handled. The major output to assist here is a model consortium agreement to be used at project level. This will ensure that projects address the issue of IP for their project from the very early stages. It is our recommendation that all projects sign a consortium agreement.

Knowledge building

It was clear that there is a need to have IPR knowledge building activities within many clusters. However, it was outside the scope of the project to have a competence raising round. This has however emerged as a clear recommendation from the project. Nevertheless it was necessary to address the issue in some way within the project. An information section was created, so that all can search the terminology. This is available on the project's website.

International activity

There are some international initiatives working on the issue of IP in clusters, however we were unable to identify anyone addressing the exact question which we were addressing. The information section and the model consortium agreement were built upon best practice examples which we identified. However, almost all of the work done on the policy guidelines needed to be done from scratch.

IP and IPR

The term Intellectual Property (IP) refers to creations of the mind, while the term Intellectual Property Rights (IPR) refers to the rights covering IP. In this document, the terms IP and IPR are used as synonyms in a broad sense, including all aspects of a company's intellectual capital.

Foto: Pål Hermansen/Innovation Norway

2. Project Description

Goals

The goal of the project was to provide IPR-related processes, information and tools that incentivise and facilitate collaboration in innovation projects. To be achieved by identifying, collecting and disseminating practical and relevant IPR knowledge and tools, which NCE/Arena networks can access to assist them in handling IPR issues.

It is almost impossible and in fact undesirable to provide generic IPR management solutions for all the clusters. This is partly due to sectoral considerations i.e. a medtech cluster has very different considerations to a tourism cluster. However, it also depends on other factors, such as whether it is a business or a knowledge cluster.

It was far beyond the remit of the project to deal with intricate legal questions or specific issues relevant to single clusters.

Challenges

Types of protection

As can be seen from figure 3 below, there are many types of protection methods available - both formal and informal. How these methods are utilised within the clusters, is largely dependent on the type of cluster and which sector it is operating in. Being in a position to know what type of protection should be used and when, is vital for clusters.

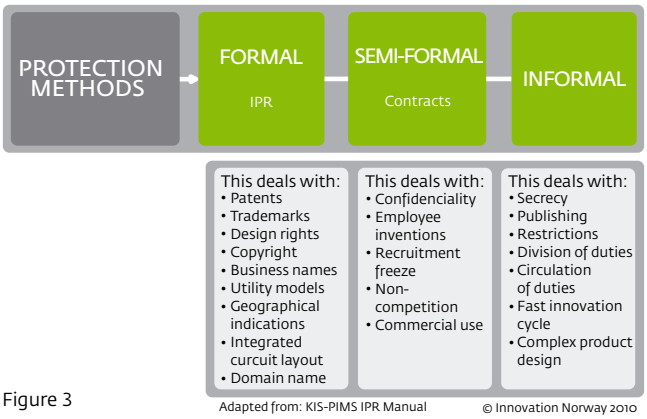


Figure 3

Adapted from: KIS-PIMS IPR Manual

Different approaches to IP

Another challenge is that different sectors have different needs for IP management. Fig. 4 above shows some examples of the different approaches by different sectors and some of the relevant clusters.

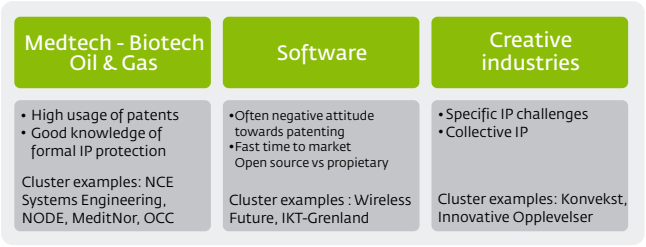


Figure 4

Results

The results from the project are grouped into knowledge section and tools, as shown in figure 5 below. The knowledge basis allowed for the creation of tools:

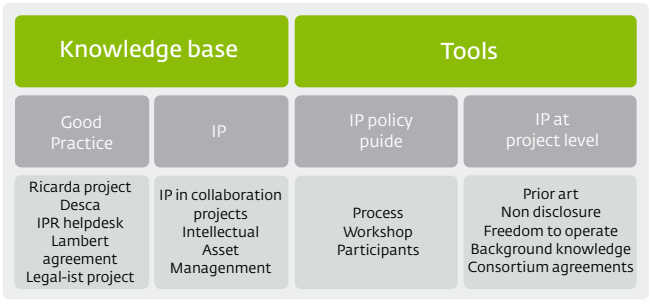


Figure 5

Team

Project Owner

- Per Stensland, Innovation Norway Arena and Olav Bardalen, Innovation Norway NCE

Project Leaders

- Heather Broomfield, Innovation Norway and Felipe Aguilera-Børresen, Innovation Norway

Project group

- Lars-Erik Solvang, Innovation Norway, Sven Egil Nilsen, Innovation Norway in San Francisco, Micheal Brune, Innovation Norway in Rogaland

Reference group

- Odd Reitevold, The Research Council of Norway
- Otto Scharff, Norwegian Industrial Property Office
- Torkil Bjørnson, cluster manager NCE Systems Engineering Kongsberg
- Bård Jervan, cluster manager Arena Innovative Opplevelser
- Kjell Hulløen, cluster manager NCE NODE
- Peter Thornér, cluster manager Wireless Future/Arena Trådløs Framtid

Milestones

The project was divided into the following phases:

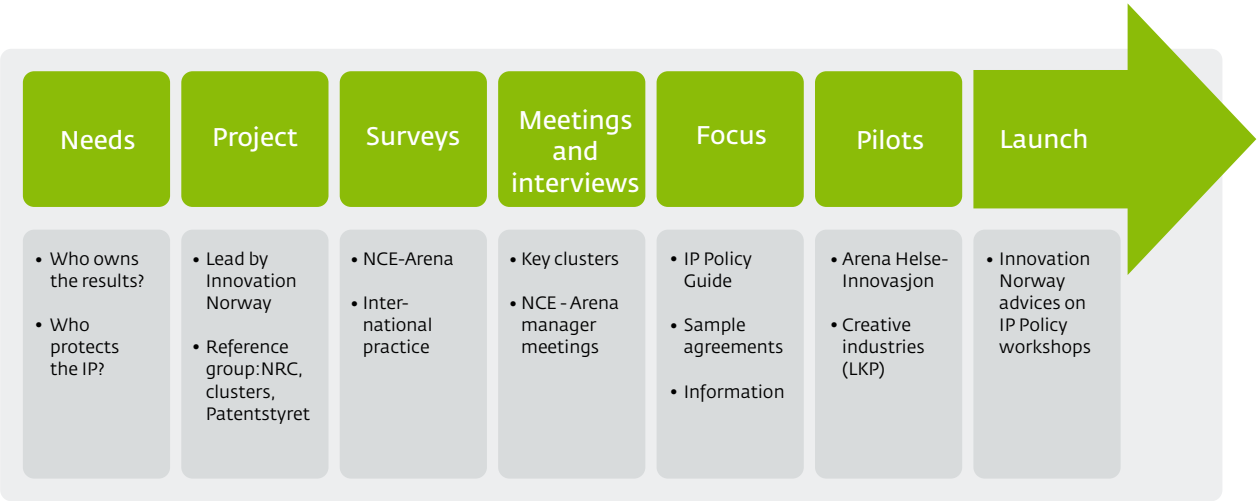


Figure 6

Foto: Jens Henrik Nybo/Innovation Norway

3. Survey and interviews among project managers in the NCE and Arena clusters

Survey

In preparation for the kick off meeting, a survey was distributed to all NCE/ARENA cluster managers. Thirteen out of twenty eight responded and the results were shared at the kick off meeting. The survey reinforced the position that we concentrate on two main areas, namely, 'climate for cooperation' and 'commercial exploitation of IPR'.

Some highlights from the survey are:

- IPR is considered a relevant theme for clusters, with 84,6% of respondees deeming it to be of very high importance.

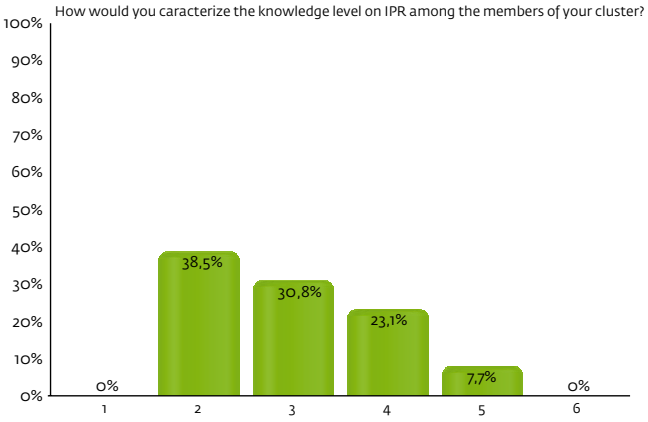


Figure 7

69,2% considered IPR to be extremely important in international projects.

- There is generally a low level of IPR knowledge within the smaller companies.
- Both formal and informal methods of protection were considered important for the clusters (see fig,8). This reinforced the position that the project concentrate on both methods of protection.

Interviews

Six cluster managers were interviewed in the frame of this project. They were

- Kathrine Myhre form **Oslo MedTech**,
- Per Wangen from **Konvekst**,
- Tor-Arne Bellika from **IKT Grenland**,
- Trude Olafsen from **Akvarena**,
- Torkil Bjørnson from **NCE Systems Engineering** and
- Martin Sigmunstad from **Arena IO**.

A synopsis of the feedback is given below:

Tools and agreements

- Consortium agreements should be widely used in R&D collaboration projects.
- The access to a toolbox with templates, agreements, examples and resources is deemed important.
- As IPR awareness is a challenge among the members of some clusters, there should be an introduction to the project with a clear explanation of IPR terminology.

Varying competence

- There is a need for specific services to increase the competence within the cluster & prepare for cooperation with international partners.
- The level of IP competence tends to be low in small companies and higher with the larger companies.
- Definitions were welcomed to raise the competence level.
- Some clusters will need more dedicated awareness raising activities before embarking on the development of a policy.
- The participation of universities and research institutions can be especially challenging due to their academic focus (as opposed to commercial) and the lower level of awareness of IPR.

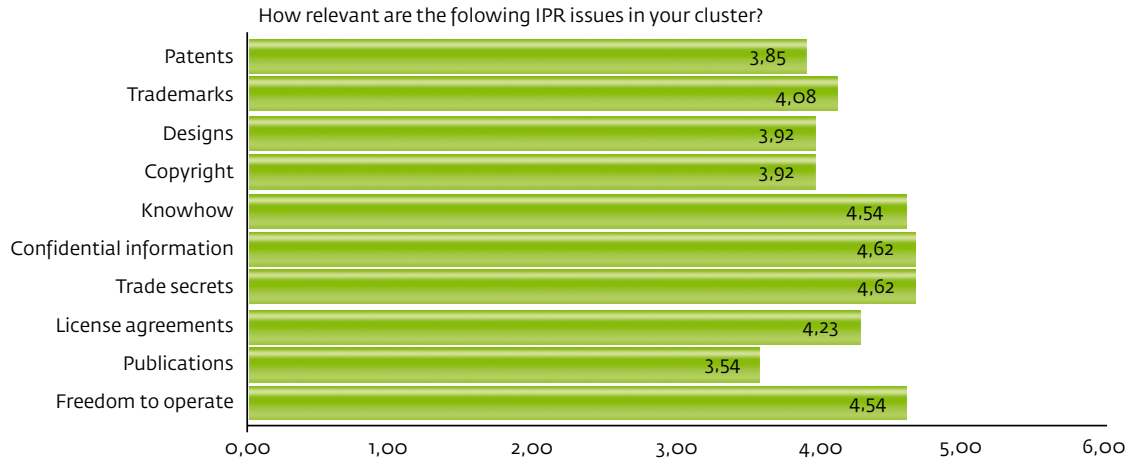


Figure 8

Encouragement of sharing

- Clusters should be encouraged to share more with each other
- Clusters should use the big companies to help the small by sharing their IP experience – dos & don'ts
- Ownership issues are particularly demanding in horizontal projects with participants from the same sector.
- The big players are less willing to share sensitive information than the smaller ones.

Focus on IP as tool for commercialization

- The cluster should encourage incorporation of IP strategy into business plans
- FTO (Freedom to Operate) is extremely important and should be addressed from an early stage.
- Sectoral differences in the use of IP should be underlined and taken into account in the project

Cluster role on IP

- Building trust should be a key role for the cluster. Lack of trust is one of the main impediments to succesful cooperation.
- The cluster should have a clear guideline that all documentation is properly marked at a cluster and project level. E.g. © ®
- Some cluster managers could have an advisory role for IPR, although not all clusters find this desirable
- Collective IP should be explored by all clusters regardless of sector.

Policy tool

- The development of an IP-policy should be mandatory when establishing a new cluster
- Some clusters see the immediate need for a policy guidelines tool
- Ideally the policy should be developed early in the creation af a cluster
- Prior to the IPR workshop and survey circulation there should be a general introduction to IP.
- Checklists and questions such as those posed in the policy development tool are very important in order to stimulate awareness

4. Good practice

Although there is international activity regarding IPR issues for clusters, we did not identify a tool for developing the IPR-policy of a cluster. However, some of the projects which were used as input and inspiration are briefly described below. Links to all of these can be found on the website.

RICARDA: RICARDA was a project in the Sixth Framework Programme which aimed to transfer the method of Intellectual Capital Reporting, to the level of regional innovation networks or clusters. RICARDA aimed to support cluster managers and policy makers by developing tools for Intellectual Capital Reporting.

DESCA: DESCA is a comprehensive, modular consortium agreement developed for the Seventh Framework Programme (FP7) that seeks to balance the interests of all of the main participant categories in FP research projects: large and small firms, universities, public research institutes and RTOs.

EU IPR Helpdesk: The IPR Helpdesk offers the information and resources necessary to help with one of the key parts of an EU-funded project, the management of Intellectual Property (IP). The guided Web site directs navigation to executive summaries, documents with comprehensive information regarding the different aspects of IP management within an EU-funded project. From the proposal stage to the exploitation of the research results, all documents are intended to explain the most complicated concepts in easy-to-understand terms.

Lambert Agreements: The Lambert toolkit is for universities and companies that wish to undertake collaborative research projects with each other. The toolkit consists of a set of five Model Research Collaboration (one to one) Agreements numbered 1-5 and four Consortium (multi-party) Agreements lettered A-D and documents that should assist in using and understanding those agreements. The toolkit was prepared by the Lambert Working Group on Intellectual Property.

Legal-Ist project: Report on legal issues in SME-clusters that considers the legal barriers which can prevent or impede the establishment and successful growth of SME clusters across Europe.

Foto: Erik Jørgensen/Innovation Norway

5. IP Policy Guide

The IP policy guide, coupled with the pilots from Helseinnovasjon and Lillehammer Kunnskapspark, are key outputs for the project. It became apparent from an early stage that the clusters needed particular assistance in defining and dealing with their IP issues.

Despite extensive searches we were unable to find a specific tool for the development of a clusters IP policy, which we could adapt for our use here in Norway. Therefore it was deemed necessary that we develop our own guidelines for use by the clusters.

An IP policy can contribute to building trust among cluster members, prevent possible conflicts regarding ownership of results, facilitate the exchange of ideas and speed up the commercialisation process of R&D.

There are two facets to be considered which are very specific for clusters and which needed to be addressed when developing an IP Policy for clusters.

1. Ensuring a professional approach to cluster IP management as a cornerstone for building trust within the cluster, thus creating a environment for the development of collaborative projects that ensure a successful cluster strategy
2. The distinction between collective IP; individually owned and jointly owned IP.

This has resulted in the Policy guidelines document which can be found at annex 1 in English and annex 2 in Norwegian. In order to create an IP policy for a cluster, we recommend going through four phases, which are outlined in fig. 9 below and are explained in greater detail in the policy guide.

Figure 9

The original guideline draft was circulated to all members of the reference group for feedback. This feedback has been incorporated. It has also benefitted from the accurate input from Alexander Bjørnå from Biotech Pharmacon ASA who was the external expert for the Helse Innovasjon pilot. The comments and feedback from Hilde Holm from Helseinnovasjon have been most valuable, as has been the chapter on the creative industries from Lillehammer Kunnskapspark.

Pilots

In order to test our approach and given the different sectoral needs regarding IP, it was deemed important that a pilot was done for at least two of the sectors, to test and refine our guide. This had the added advantage that other cluster managers would have a relevant example of how IP is important and relevant for clusters. It would also highlight the different approaches and strategies needed for different clusters.

Pilot Helseinnovasjon

Helseinnovasjon was identified as a good example for a pilot, given that; they are in an early phase, their make up of members, their need for IP and not least a highly engaged Cluster Manager.

It has been a very positive experience, both for the project members and the cluster. The external expert for this pilot was Alexander Bjørnå from Biotech Pharmacon ASA.

As recommended in our policy guidelines we developed a survey for all members to respond to. The questionnaire can be found at the project website and can be used for inspiration for other clusters going through the process. While many of the results are confidential to the cluster, below is the graph showing the reponses as to how IP is used within the members of the cluster.

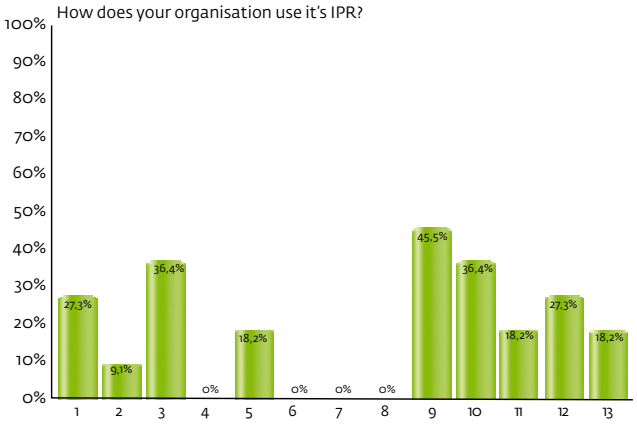


Figure 10

1. As protection against competitors
2. As reserve for future needs
3. To improve products and services
4. To block competitors
5. To attract investment
6. To sell or license IPR
7. To confuse competitors
8. To scare away competitors
9. For branding

10. To motivate employees
11. Don't know
12. Not relevant
13. Other

A lot of the feedback from this process was used in the final version of the guide.

The report from the IP policy guide and workshop applied for the Helseinnovasjon cluster can be found at annex 3.

Pilot Lillehammer Kunnskapspark

The Konvekst cluster has been one of the most active regarding IP. Given the different IP demands which exist between the different sectors, it was considered important to have a report based on their experience which could be shared with other clusters in the 'kultur & opplevelser' sectors.

Lillehammer Kunnskapspark was asked to adopt an 'in hindsight' perspective. To this end they delivered the following:

- An introduction to specific issues concerning the Creative Industries and IP. See annex 4
- A survey adapted for the Creative Industries in order to assess and measure each cluster members use, insight and knowledge of IP and Brand related issues. See project website.
- A short case presentation of Knerten: Specific challenges and approaches in order to administer, claim and exploit artistic contributions (trademarks, copyright, neighboring rights and design etc.) and to create the overall venture; from book, to film, to industry. See annex 5

Foto: Anders Gjengedal/Innovation Norway

6. Consortium Agreement

The need for tools to assist the clusters with their IP has been confirmed throughout this project. Given the limited resources in the project, the development of many tools was clearly not possible, therefore it was necessary to prioritise.

The main output at the project IP level is the model Consortium Agreement, which can be adapted to the needs of the cluster. Find the Norwegian version at annex 6. Some important issues and tools to consider have been detailed. They can be found at the project web

Tools which can be used and issues to consider at project level

The project website will provide explanations and links for the following non-exhaustive list of issues:

- Background knowledge
- Prior Art
- Freedom to operate
- Confidentiality
- Joint ownership
- Protection of the results
- Consortium/Collaboration Agreements
- Third party rights
- Consortium Agreement – Examples
- Foreground
- Freedom to operate
- Assignment of rights agreements
- IP Strategy for the project
- Licensing to third parties and benefit-sharing
- Access rights
- User rights
- Transfer of ownership

7. Website

All outputs from the project are available on the NCE/ARENA website for ease of access by clusters. These include the IP Policy Guidelines, the Consortuim Agreements and other tools and explanations.

8. Conclusions & recommendations

The project has resulted in a number of conclusions and recommendations for IPR management within clusters.

- The IP issue should be addressed by the candidate clusters at application stage, to ensure that clusters consider this issue from the very start. This also has an education effect - even those clusters which do not get funding will have considered the question.
- The IP Policy guide should be a standard element in the "start package" for new clusters provided by the NCE and Arena programs
- The lack of commercial focus among Universities and research institutions is a key factor and often a hurdle that delays the introduction of R&D to the market.
- IPR is an important tool for building a climate for cooperation.
- An IP policy should be mandatory for all new clusters.
- Existing clusters which have not developed an IP policy or considered the IP question should consider doing so.
- Consortium agreements should be mandatory when launching an R&D project.
- Members of Innovation Norway's IPR Network are available to assist cluster managers in planning the implementation of the IP-policy tool in the cluster.
- The survey results show an acute need for IPR-awareness sessions courses for cluster members to establish a minimum level of competence within the cluster. Innovation Norway, Forskningsrådet and Siva (the NCE-Arena trio) should take responsibility for making this a reality.
- There should be regular awareness-raising on IP and developments in the area.
- There are several aspects which went beyond the scope of the project but should be further developed. Particularly tools and sample agreements.
- A structure comprising three IP-cornerstones of the organization should be established, particularly within clusters which have complex IP challenges:
  - The Cluster Management itself (one or more individuals being responsible for the general cluster IP-processes)
  - A Working Group supporting the Cluster Management with specific tasks/projects – it would comprise of management and a representative group of cluster members. This should include members from different fields if this is the make up of the cluster (i.e. companies, R&D, public sector)
  - A Cluster IP-Committee consisting of internal and external IP-experts having the function of an internal advisory board.

Copyright

Disclaimer

This document and the attachments resutling from the project are not intended to be legal advice. Anyone interested in using the tools or applying the information in this report should seek legal advice before doing so.

Foto: www.runemolnes.com/Innovation Norway

Annex 1

IPR Policy Development Guidelines for Clusters

Introduction

The goal of these guidelines is to assist the cluster in establishing its IP-Policy. This hands-on process is intended to help the cluster manager to identify the common needs and different views of the cluster members, and to elaborate them into key aspects to be included in the Intellectual Property policy for the cluster. It is not meant to be an all encompassing, nor indeed an extensive process to create an IP policy. Instead it is a guideline with a step by step process to be followed and issues to address within the Cluster.

What is an IP Policy?

An IP policy is a statement of how the cluster plans to deal with IP issues regarding membership, cooperation, secrecy, idea sharing, result exploitation and ownership of individual and collective IP, among other aspects.

Why should clusters create an IP Policy

It is recommended that all clusters go through the process of creating an IP policy. It can contribute to build trust among cluster members, prevent difficult discussions in the future around issues of ownership and reduce the risks in the commercialisation processes.

There are two facets to be considered

1. Ensuring a professional approach to cluster IP management as a cornerstone for building trust within the cluster, thus creating an environment for the development of collaborative projects. Clusters in their ideal sense are innovation environments based on teamwork and trust. A Professional approach to IP fosters trust within the group. When members are within a group which respects their individual IP, this should contribute to greater levels of sharing within the cluster.
2. Identifying what falls into collective IP; jointly owned IP and individually owned IP and planning for how the cluster will handle these rights.

Definition of terms used in this document:

Intellectual Property: Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. IP is divided into two categories: Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs. (Definition by the World Intellectual Property Organization)

Intellectual property can be defined as the company's intellectual capital that can be documented and protected in some way. See figure 1.

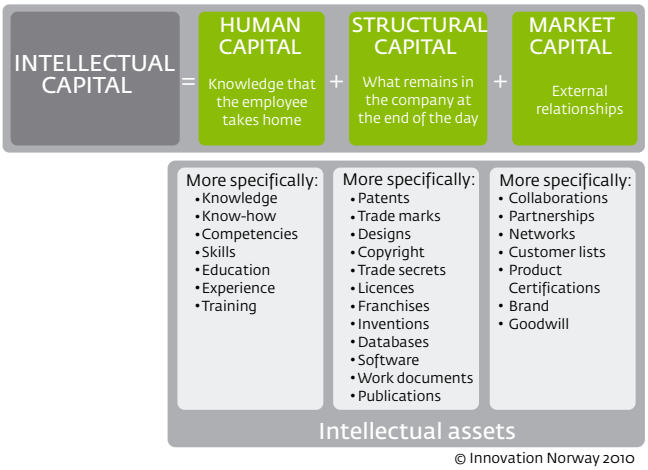


Figure 1

Collective IP: IP generated and owned by the Cluster Organization and applied for the good of the cluster.

Individual IP: IP generated and owned by an individual member of the cluster

Shared IP: IP generated and owned by two or more members of the cluster or members of the cluster and the cluster itself.

Recommended pre-conditions

We recommend that before embarking on the preparation of an IP Policy the following preconditions should be satisfied:

- The decision to prepare an IP policy should be taken formally and communicated to all members, with common and realistic expectations about the concept and use of the IP Policy. It is not envisaged that all members of the Cluster (particularly in very big clusters) contribute to the process, however they should be kept well informed of the progress.
- Ensuring Commitment – vital that individual members support and implement the policy. As members are individually extremely busy, the strategy of the cluster may not be their top priority, therefore mgt. will need to ensure that involvement is as convenient as possible. A number of possibilities which could be considered are, such as combining workshops

with other events and communicating the benefits to single members.

- The Clusters overall strategy should be in place.
- Members should have a certain basic common knowledge and competence in IP and an understanding of its importance as well as costs related to IP. It is advisable that some knowledge building activities take place. If this is deemed necessary Innovasjon Norge can assist with this.
- Ideally all members should have an IP strategy for their own organisations in place, At the very least IP issues should have been discussed at a management/board level in each organisation.
- Time should be allocated for Cluster managers and (some) members to paripate in the process.
- Motivated cluster managers
- The Cluster Managers IP role should be ascertained. The manager can be an active cooperation partner giving advice and support regarding their IP questions; they can solely use external competence, or maybe a combination of the two approaches. If the cluster manager will be used as an adviser for IP, it should be ascertained as to which particular areas of IP they will be used for.
- Involvement of external experts in the policy development process is highly recommended. The expert can support and advise the cluster manager throughout all the phases. Such as preparing inputs, moderating workshops, documenting results.

Policy Development Process

We envisage four stages for the policy development process. We highly recommend using external experts and they should be identified and involved in the process from day 1. See figure 2.

1. Preparation - An introduction to the process at a gathering.
2. Survey - A survey to all members regarding their IP and their wishes regarding the policy
3. Workshop – A possible agenda is attached
4. Recommendations - Drafting and adoption/implementation of the Policy

Figure 2

Phase 1 - Preparation

An introduction to the process at a gathering. This can be tied into an already planned gathering, it is not necessary to have a specific meeting solely for this. To ensure that all members understand the process and why it is being done for their cluster, as a part of the total value creation for the cluster members, it is wise to have an introduction to the process for all members. Part of this will also outline what the survey targets and encourage all members to complete the survey. The external expert may be used to give this introduction.

Phase 2 - Survey

All cluster members are incouraged to answer a survey about IPR related issues (see project website for a sample survey). The purpose of theis survey is to map the level of IPR awareness of the members, and to shed light on the expectations regarding the managenment of IPR within the cluster. The external expert should be used to specify the exact content of the survey.

Phase 3 - Workshop

Cluster management along with the board of directors and some key members of the cluster, should have a workshop which will target both facets of the IP issues, the IP-strategy discussion, the IP-Policy discussion and further challenges for the cluster. During the work shop, all or some of the cluster members should receive an initial introduction to general IP-Principals and specific examples that show the effects of IP in clusters, to enable a common ground for further discussion. The results from the survey will be key input here. A possible agenda for the workshop is included hereafter. Where external experts are used, they should facilitate the workshop.

Introduction

- Policy workshop: process and output

IP management overview

- How to manage IP (Partners, tools and activities)
- IP Strategy (costs, choices, where and what to protect)

IP management continues

- Collaboration with other parties (Joint ownership, laws, markets, acadamia vs.private companies, tools to use.
- Law suits (risks, costs)

The survey

- Questionnaire
- Results
- Main issues to consider

IP in The Clusters R&D projects

- Consortium agreement
- External consultant contracts.
- Protection of confidential proprietary information
- Employee contracts
- Patent Pooling
- Joint Licensing

Collective IP in the cluster

- Collective trademarks and Geographic Indications, domain names and copyright
- Exploitation and user policies for the collective rights
- Proper markings ®, ™, ©, ℗

Phase 4 - Recommendations

A document drawing together the key results and inputs in the form of a draft strategy document should be put together and circulated to all members of the cluster. Comments/changes should be incorporated. In fact, the cluster IP-Policy must be a "moving target" based on the needs of the cluster members.

A new version for final clearance by the workshop members

Issues and Tools for Consideration

Here we give some suggestions for issues amongst others which could be considered by the cluster. This is in no way an exhaustive list and what is needs to be considered is highly dependent on specific issues for the cluster. However it can be a starting point for your cluster.

Contracts & Agreements

The IP Policy for the Cluster should display a professional approach to IP management at the cluster level. Procedures and contracts to be respected to allow for sharing of ideas within the cluster.

- Employee contracts – How do these consider IP issues
- External consultants contracts - Ensure that the cluster has rights to all relevant work performed by external consultants to the cluster.
- Protection of confidential/sensitive information.

Are there proper procedures in place to ensure confidentiality with members? Where all members consider they are in an environment where they can safely share information within the group.

A cluster can decide that confidentiality agreements be signed by members of the cluster.

Collective Intellectual Property

Here we look at some examples of collective IP and the issues which clusters could consider in relation to these.

Collective Trademarks and Geographic Indications

Collective marks and geographical indications can be powerful legal instruments for groups of producers, business associations and cooperatives in any sector. They enable small businesses to benefit from the collective reputation of a product and from economies of scale. Collective marks are often used to promote products characteristic of a particular region. At a Cluster level,

Foto: Rune Werner Molnes/Innovation Norway

collective trademarks can help to establish identity for the cluster. Therefore, clusters should consider if they would like their own trademark/s. This may be particularly relevant for tourism and experience clusters. However, maybe each cluster would like it's own trademark which each member can use to show that they are indeed a member of the cluster.

Clusters should consider if Geographical Indications are relevant for them. This may be particularly relevant for food clusters.

The clusters' policy regarding adoption and use of names & logos on publications and in connection with new projects, products, services, spin-offs etc. should be documented.

Cluster management should be aware of NCE trademark policy and use guidelines to be found in the project website.

Patent Pooling

A "patent pool" is an agreement between two or more patent owners to license or cross-license one or more of their patents to one another or to third parties. In its 2001 White Paper on Patent Pools, the USPTO said, "A patent pool allows interested parties to gather all the necessary tools to practice a certain technology in one place, e.g, 'one-stop shopping,' rather than obtaining licenses from each patent owner individually." . The purposes for patent pools is to avoid transaction costs, ensure Freedom to operate and strengthen a technology field by creating a legal monopoly. With regard to the latter, competition law/ antitrust considerations must be evaluated in advance of any such agreement/activity.

Domain Names

Domain names are web addresses. At a Cluster level, it should be considered wether the addresses will be registered and the ownership of the domain names.

Is it natural that if there is a common website be this for the cluster itself or promotions run by the cluster that this is held at cluster level? Who will maintain the domains post Cluster funding?

Copyright

Copyright will be an automatic right on all brochures, websites, audio/video. At a Cluster level, issues regarding approvals, photo credits, copyright notices etc. on works which it publishes should be considered. Does cluster management get written permission from members from the authors of articles, images, videos, music videos and software to publish them?

Does the cluster management get approval from people whose images are published or otherwise used?

Exploitation and user policies for the collective rights.

The cluster should have a policy for how the users within the cluster can use the collective rights.

Similarly there should be a policy on how these rights can be exploited over time. For example proposals for licensing policies, could be outlined in the policy. i.e. maybe photos which appear on the websites could be covered with creative commons licences.

Proper markings

Proper markings for the various collective rights should be displayed. E.g. ® for registered trademarks, ™ for unregistered trademarks, © for copyright, for creative commons etc.

Annex 2

Retningslinjer for utvikling av IPR-policyer for klynger

Innledning

Målet med disse retningslinjene er å hjelpe klyngen med å etablere en policy for immaterielle rettigheter (IPR). Denne praktiske prosessen er ment å hjelpe klyngelederen med å identifisere de generelle behovene og ulike synspunktene til klyngemedlemmene, samt videreutvikle disse til hovedaspekter som skal tas med i IPR-policyen for klyngen. Prosessen er ikke en universell eller komplett metode for utarbeidelse av en IPR-policy. Den er i stedet en veiledning med en trinnvis prosess som skal følges, og med beskrivelse av temaer som må tas opp i klyngen.

Hva er en IPR-policy?

En IPR-policy er en erklæring om hvordan klyngen har til hensikt å håndtere IPR-spørsmål knyttet til blant annet medlemskap, samarbeid, hemmeligholdelse, utveksling av ideer, resultatutnyttelse og eierskap til individuelle og felles immaterielle rettigheter.

Hvorfor bør klynger utarbeide en IPR-policy?

Alle klynger bør utarbeide en IPR-policy. Dette kan bidra til å bygge tillit blant klyngemedlemmene, forhindre vanskelige diskusjoner i framtiden angående eierskap og redusere risiko i kommersialiseringsprosessene.

Det er to aspekter som må vurderes:

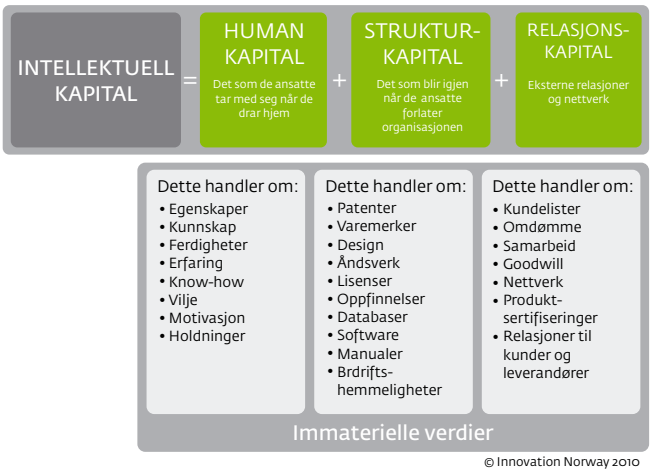
1. Sikring av en profesjonell tilnærming til IPR-håndtering for klynger som en hjørnestein for å bygge opp tillit innad i klyngen, slik at det skapes et miljø for utvikling av samarbeidsprosjekter. Klynger er ideelt sett innovasjonsmiljøer som er basert på samarbeid og tillit. En profesjonell tilnærming til immaterielle rettigheter bidrar til økt tillit i gruppen. Når medlemmene tilhører en gruppe som respekterer hvert enkelt medlems immaterielle rettigheter, bør dette bidra til høyere nivåer av deling innad i klyngen.

2. Identifisering av hva som faller under felles, delte og individuelle immaterielle rettigheter, og planlegging av hvordan klyngen skal håndtere disse rettighetene.

Definisjoner av begreper i dette dokumentet:

Immaterielle rettigheter: Immaterielle rettigheter (IPR) viser til åndsverk: oppfinnelser, litterære og kunstneriske verk samt symboler, navn, bilder og design som brukes i en kommersiell sammenheng. IPR deles inn i to kategorier: industrielle rettigheter, som omfatter oppfinnelser (patenter), varemerker, industridesign og geografiske indikasjoner, og opphavsrett, som omfatter litterære og kunstneriske verk, for eksempel romaner, dikt og skuespill, filmer, musikalske verk, kunstverk som tegninger, malerier, fotografier og skulpturer, samt arkitektonisk design. Rettigheter som er relatert til opphavsrett, omfatter utførende kunstneres rettigheter til egne fremførelser, fonogramprodusenters rettigheter til egne innspillinger, og kringkasteres rettigheter til egne radio- og tv-programmer. (Definisjon fra World Intellectual Property Organization)

Immaterielle rettigheter kan defineres som bedriftens intellektuelle kapital som kan dokumenteres og beskyttes. Se figur 1.



Figur 1

Felles IPR: IPR generert og eid av klyngeorganisasjonen, og som anvendes til beste for klyngen.

Individuell IPR: IPR generert og eid av et enkelt medlem i klyngen

Delt IPR: IPR generert og eid av to eller flere medlemmer i klyngen, eller av medlemmer i klyngen pluss selve klyngen.

Anbefalte forutsetninger

Vi anbefaler at følgende forutsetninger er til stede før du begynner å utarbeide en IPR-policy:

- Avgjørelsen om å utarbeide en IPR-policy skal fattes formelt og formidles til alle medlemmene, med felles og realistiske forventninger om bruken av IPR-policyen. Det er ingen forutsetning at alle klyngemedlemmene (spesielt i svært store klynger) skal bidra i prosessen, men alle skal holdes godt informert om fremdriften.
- Engasjement – det er avgjørende at hvert enkelt medlem støtter og implementerer policyen. Siden medlemmer ofte er

svært opptatt med sitt, kan det hende at klyngens strategi ikke står øverst på prioritetslisten. Derfor må ledelsen sikre at det blir så enkelt som mulig å involvere seg. En rekke muligheter kan vurderes, for eksempel en kombinasjon av workshoper og andre arrangementer samt formidling av fordelene til enkeltmedlemmer.

- Klyngen må ha på plass en overordnet strategi.
- Medlemmene må ha en viss grunnleggende kunnskap og kompetanse innen IPR samt en forståelse av viktigheten av og kostnadene forbundet med IPR. Det anbefales at enkelte kunnskapsbyggende aktiviteter finner sted. Innovasjon Norge kan om nødvendig være behjelpelig med dette.
- Ideelt sett bør alle medlemmene ha på plass en IPR-strategi for sine egne organisasjoner. Et minstekrav må være at IPR-spørsmål er blitt diskutert på ledelses-/styrenivå i hver organisasjon.
- Det bør avsettes tid for klyngeledere og (noen) medlemmer til å delta i prosessen.
- Motiverte klyngeledere
- Klyngelederens rolle mht. IPR må klarlegges. Lederen kan være en aktiv samarbeidspartner som gir råd og støtte i IPR-spørsmål. Klyngen kan også velge å bare bruke ekstern kompetanse, eller en kombinasjon av de to tilnærmingene. Hvis klyngelederen skal brukes som rådgiver i IPR-spørsmål, må det klarlegges hvilke områder på feltet han eller hun skal dekke.
- Det anbefales på det sterkeste å bruke eksterne eksperter i prosessen med å utvikle policyer. Eksperten kan gi støtte og råd til klyngelederen i alle fasene av prosessen, for eksempel ved å gi innspill, moderere under workshoper og dokumente resultater.

Policyutviklingsprosessen

Vi ser for oss at policyutviklingsprosessen består av fire faser. Vi anbefaler på det sterkeste at du bruker eksterne eksperter, og de bør velges ut og involveres i prosessen fra dag én. Se figur 2.

1. Forberedelse – prosessen presenteres på en samling.
2. Undersøkelse – en undersøkelse om medlemmenes immaterielle rettigheter og ønsker ifm. policyen
3. Workshop – et eksempel på program er vedlagt
4. Anbefalinger – utkast til og vedtak/implementering av policyen

Figur 2

Fase 1 – forberedelse

Forberedelse – prosessen presenteres på en samling. Denne kan legges til et allerede planlagt møte – det er ikke nødvendig å kalle inn til et eget møte kun for dette formålet. For å sikre at alle medlemmene forstår prosessen og hvorfor den iverksettes, som et ledd i den samlede verdiskapingen for medlemmene i klyngen, er det lurt å gi en presentasjon av prosessen for alle medlemmene. Her skisseres også formålet med undersøkelsen, og alle medlemmene oppfordres til å fylle ut spørreskjemaet. Presentasjonen kan holdes av den eksterne eksperten.

Fase 2 – undersøkelse

Alle klyngemedlemmene oppfordres til å besvare et spørreskjema om IPR-relaterte forhold (se prosjektets webside for et eksempel). Formålet med denne undersøkelsen er å kartlegge medlemmenes kunnskapsnivå når det gjelder IPR, samt å få informasjon om forventningene knyttet til håndteringen av IPR i klyngen. Den eksterne eksperten bør benyttes til å fastsette det nøyaktige innholdet i undersøkelsen.

Fase 3 - workshop

Klyngeledelsen bør, sammen med styret og sentrale medlemmer i klyngen, holde en workshop der begge IPR-aspektene, diskusjonen om IPR-strategi, diskusjonen om IPR-policy og andre utfordringer for klyngen tas opp. I løpet av workshopen skal alle eller noen av klyngemedlemmene få en innføring i generelle IPR-prinsipper og spesifikke eksempler som viser betydningen av IPR i klynger. Dette skal gi et felles grunnlag for videre diskusjoner. Resultatene fra undersøkelsen vil være sentrale her. Et eksempel på program for en slik workshop er tatt med under. Hvis eksterne eksperter benyttes, bør disse lede workshopen.

Innledning

- Policy-workshop: prosess og resultater

Håndtering av IPR

- Hvordan håndtere IPR (partnere, verktøy og aktiviteter)
- IPR-strategi (kostnader, valg, hvilke områder og hva som skal beskyttes)

Håndtering av IPR (forts.)

- Samarbeid med andre parter (felles eierskap, lover, markeder, akademia vs. private selskaper, verktøy som skal brukes)
- Søksmål (risikoer, kostnader)

Undersøkelsen

- Spørreskjema
- Resultater
- Hovedpunkter som må vurderes

IPR i klyngens FoU-prosjekter

- Konsortiumavtale
- Kontrakter med eksterne konsulenter
- Beskyttelse av konfidensiell, proprietær informasjon
- Ansettelsesavtaler
- Patentsamarbeid
- Felles lisensiering

Felles IPR i klyngen

- Felles varemerker og geografiske indikasjoner, domenenavn og opphavsrett
- Utnyttelses- og brukerpolicyer for felles rettigheter
- Korrekt merking – ®, ™, ©, ℠

Fase 4 – anbefalinger

Et dokument med et sammendrag av de viktigste resultatene og innspillene i form av et strategiutkast bør utarbeides og sendes til alle medlemmene i klyngen. Kommentarer og endringer bør innarbeides. Faktisk bør klyngens IPR-policy kunne endres i takt med klyngemedlemmenes behov.

Ny versjon for endelig godkjenning av workshopdeltakerne

Punkter og verktøy som bør vurderes

Her gir vi noen forslag til punkter som kan vurderes av klyngen. Denne listen er på ingen måte uttømmende, og hvilke punkter som bør vurderes, avhenger helt og holdent av hva som er viktigst for den aktuelle klyngen. Den kan imidlertid brukes som et utgangspunkt.

Kontrakter og avtaler

IPR-policyen til klyngen bør gjenspeile en profesjonell tilnærming til håndtering av IPR i klyngen. Prosedyrer og kontrakter skal følges for å muliggjøre utveksling av ideer innenfor klyngen.

- **Ansettelsesavtaler –** på hvilken måte tar disse hensyn til IPR-spørsmål?

- **Kontrakter med eksterne konsulenter –** Sørg for at klyngen har rettigheter til alt relevant arbeid som utføres for klyngen av eksterne konsulenter.

- **Beskyttelse av konfidensiell/sensitiv informasjon** - Finnes det gode prosedyrer som sikrer konfidensialitet blant medlemmene, og som gjør at alle føler at de er i et miljø der de trygt kan dele informasjon med gruppen?

En klynge kan bestemme at medlemmene må underskrive konfidensialitetsavtaler.

Felles IPR

Her ser vi på noen eksempler på felles IPR og spørsmål som klyngen kan vurdere i forhold til disse.

Felles varemerker og geografiske indikasjoner

Felles merker og geografiske indikasjoner kan være effektive verktøy for grupper av produsenter, bedriftsforeninger og kooperativer i alle sektorer. De gjør det mulig for små bedrifter å dra nytte av et produkts kollektive omdømme og av stordriftsfordeler. Felles merker brukes ofte til å markedsføre produkter som er karakteristiske for et bestemt geografisk område. **På klyngenivå** kan kollektive varemerker bidra til å etablere en identitet for klyngen. Derfor bør klyngene vurdere om de ønsker sine egne varemerker. Dette kan særlig være relevant for reiselivs- og opplevelsesklynger. Det kan imidlertid også hende at hver klynge ønsker sitt eget varemerke som enkeltmedlemmene kan bruke til å fremheve at de er medlemmer av klyngen.

Klynger bør vurdere om geografiske indikasjoner er relevante for dem. Dette kan særlig være aktuelt for matklynger.

Klyngenes policy for innføring og bruk av navn og logoer i publikasjoner samt i forbindelse med nye prosjekter, produkter, tjenester, spinoff-produkter og lignende bør dokumenteres.

Klyngeledelsen bør være oppmerksom på NCEs varemerkepolicy og bruke retningslinjene som finnes i prosjektets webside.

Patentsamarbeid

Et patentsamarbeid ('patent pool') er en avtale mellom to eller flere patenteiere om å lisensiere eller krysslisensiere et eller flere patenter til hverandre eller til tredjeparter. I en rapport om patentsamarbeid fra 2001 skriver USPTO at "[et] patentsamarbeid gjør det mulig for interesserte parter å samle alle verktøyene som kreves for å praktisere en teknologi, på ett sted i stedet for å måtte anskaffe lisenser individuelt fra de enkelte patenteierne".[1] Formålet med patentsamarbeid er å unngå transaksjonskostnader, sikre driftsfrihet og styrke et teknologisk felt ved å skape et juridisk monopol. Hva angår det siste punktet, må konkurranse-/antitrustlovgivning vurderes i forkant av en slik avtale eller aktivitet.

Domenenavn

Domenenavn er nettadresser. På **klyngenivå** bør det vurderes om adressene skal registreres samt hvem som skal eie domenenavnene.

1 KEI-forskningsnotat 2007:6, David Serafino[1] Knowledge Ecology International, 4. juni 2007

Er det naturlig at et eventuelt felles nettsted, enten det er for selve klyngen eller for kampanjer som kjøres av klyngen, eies på klyngenivå? Hvem skal ha domenene når klyngefinansieringen tar slutt?

Opphavsrett

Opphavsrett vil være en automatisk rettighet tilknyttet alt av brosjyrer, nettsteder, lyd og video. På **klyngenivå** bør spørsmål angående godkjenninger, fotorettigheter, opphavsrettsmerknader og lignende på arbeider som klyngen publiserer, vurderes. Får klyngeledelsen skriftlig tillatelse til publisering fra forfatterne av artikler, bilder, videoer, musikkvideoer og programvare?

Får klyngeledelsen godkjenning fra personer som er avbildet og får bildet sitt publisert, osv.?

Utnyttelses- og brukerpolicyer for felles rettigheter

Klyngen bør ha en policy for hvordan brukerne i klyngen kan bruke de felles rettighetene.

Det bør også lages en policy for hvordan disse rettighetene kan utnyttes over tid. For eksempel kan forslag til lisensieringspolicyer presenteres i policyen, og bilder som vises på nettsteder, kan omfattes av Creative Commons-lisenser.

Korrekt merking

Det må brukes korrekt merking av de ulike kollektive rettighetene, for eksempel ® for registrerte varemerker, ™ for uregistrerte varemerker, © for opphavsrett, ⊗ for Creative Commons-lisenser osv.

Foto: Anders Gjengedal/Innovation Norway

Annex 3

Rapport

IPR- policy prosess
Arena Helseinnovasjon

03.2010

1. BAKGRUNN

Et av de viktigste strategiområdene for NCE og Arena prosjektene er å fasilitere utviklingen av FoU- og innovasjonsprosjekter, basert på ideer og behov i klyngen, og på partnerskap som kan være med å gi prosjektene tyngde og kvalitet. Slike aktiviteter genererer en betydelig mengde immaterielle verdier som klyngen og medlemmene er nødt til å håndtere på en måte som skaper tillit blant medlemmene, som styrker den kommersielle utnytelsen av resultatene og som reduserer risiko.

Ut fra behovet for å håndtere immaterielle verdier i klyngen på en profesjonell og tillitskapende måte ble det igangsatt et prosjekt i regi av Innovasjon Norge. Hensikten er både å kartlegge beste praksis blant norske klynger og internasjonalt, og tilgjengeliggjøre prosesser og verktøy for håndtering av IPR.

Prosjektet sikter på å styrke klyngene i to hovedområder:

- **Klima for samarbeid**: Bygge tillitt blant medlemsbedriftene, utvikle en tydelig IPR-policy for håndtering av felles immaterielle verdier
- **Kommersiell utnytelse av IPR**: Verktøy, IPR i forretningsmodellen, prosessbeskrivelse.

En viktig del av prosjektet er prosessen for utvikling av en IPR-policy for klyngen. Dette verktøyet består av følgende tre underprosesser:

a. Undersøkelse blant for å kartlegge håndteringen av IPR blant bedriftene/institusjonene i klyngen
b. Workshop med nøkkelaktørene i klyngen (styringsgruppen) og en IPR-ekspert
c. Rapport med viktige elementer som styringsgruppen tar med seg i utformingen av klyngens strategi

Helseinnovasjon ble valgt som første pilot for policyverktøyet. To elementer spilte inn for dette valget: En bevist prosjektleder som prioriterer IPR høyt på agendaen og klyngemedlemmenes ønske om å igangsette konkrete FoU prosjekter på kort sikt.

2. UNDERSØKELSEN

Som første trinn i IPR-policy prosessen ble det sendt ut en undersøkelse til alle medlemmene i klyngen. Undersøkelsen hadde som hensikt å kartlegge holdninger, kunnskap og behov i forbindelse med håndteringen av immaterielle verdier innad i bedriften og i klyngesammenheng. Det var også hensikten å tiltrekke medlemmenes oppmerksomhet mot IPR-problemstillinger i forkant av workshopen.

Undersøkelse ble sendt til alle medlemmene i klyngen. Elleve valgte å respondere.

Noen punkter fra undersøkelsen å fremheve:

- Helseinnovasjon-klyngen er sammensatt av bedrifter og institusjoner fra ulike sektorer. For enkelte er helsesektoren ny, og dermed har disse deltakerne ekstrautfordringer med å bevege seg inn i en ny sektor. Mange i tjenester (softwaretjenester, omsorgstjenester, ingeniørtjenester, undervisning)
- De fleste peker på Norden som hovedmarked. Samtidig anser klyngemedlemmene at konkurrentene finnes i Norden, men ikke minst i Europa, USA og Asia
- På spørsmålet om hvor viktig IPR er for organisasjonen svarte 50 % at det var viktig/svært viktig (over 80 % ligger mellom 3, 4 og 5 på en skala fra 1 til fem hvor fem er svært viktig). Dette viser at IPR har en anses å spille en viktig rolle medlemsorganisasjonene. Samtidig ble respondentene spurt om organisasjonen har en IP strategi som støtter organisasjonens forretningsstrategi. I dette tilfelle svarte kun 3 av 11 ja til dette spørsmålet. 3 svarte Nei mens 5 svarte "vet ikke"
- Salg av produkter og felles forskningsprosjekter blir nevnt som de situasjonene hvor IP har vært viktigst fra en strategisk perspektiv. En stor andel (37 %) svarte vet ikke på dette spørsmålet.
- Når det gjelder type beskyttelse organisasjonene benytter seg av ble avtaler nevnt som den mest utbredt, men bedriftshemmeligheter, domenenavn og andre type beskyttelse som patenter, varemerke, design og åndsverk
- På spørsmålet om hvor mye tid, hvor stor budsjett og hvilke verktøy organisasjonen bruker på IP var de en forholdsvis stor andel (opptil 45 %) som ikke kunne svare på disse spørsmålene. Av de som kunne svare på spørsmålet om IP-verktøy, kom det frem at organisasjonene bruker retningslinjer og avtaler ofte, og i noe mindre grad IP-databaser og eksterne ressurser.
- Når deltakerne blir bedt om å spesifisere måten de bruker sin IPR på blir det påpekt at både beskyttelse mot konkurrenter, forbedring av produkter og tjenester, bygging av omdømme og motivasjon av ansatte som hovedelementer.
- Kunnskapsnivået blant klyngemedlemmene hva gjelder IPR varierer fra rimelig bra med solid erfaring, helt til de som har lite erfaring og begrenset kunnskap om IP. Dette kan være en utfordring når medlemmene i klyngen skal enes om håndteringen av felles IP .
- Det er behov for at forholdet mellom de store aktørene i klyngen og de små bedriftene ledes gjennom prosesser som skaper tillit og bidrar til Informasjonsdeling, åpenhet og deling av kompetanse.

(resultatet av undersøkelsen i vedlegg 1)

3. Hovedpunkter fra workshopen

Deltakerne i workshopen bestod av fem nøkkelmedlemmer i klyngen, klyngelederen i Helseinnovasjon, en representant fra Innovasjon Norge og en ekstern ekspert.

Helseinnovasjon skal bestemme klyngens endelig strategi. Det ansees derfor som viktig at IPR-elementene blir drøftet i forkant av strategimøtet blant medlemmene. Det ble påpekt behovet for en tydeliggjøring av fordelene med å være med i klyngen. Det siste henger sammen med hvilken rolle klyngen har og hvordan den kan påvirke medlemmene.

Igangsettelse av FoU-prosjekter er et sentralt element i Helseinnovasjon. Medlemmene tilhører ulike bransjer og har ulik erfaring og kunnskap med innovasjon og IPR. Klyngen uttrykker et behov for en arena for deling av kunnskap hvor tillit er et nøkkelord. Disse elementene gjør håndtering av IPR og tydeliggjøring av rollen for klyngen til kritiske suksess faktorer for initieringen og gjennomføringen av fruktbare FoU-prosjekter.

Det er en utfordring i klyngen at medlemmene har ulik kunnskapsnivå på IPR. Det er en fordel at bedriften har en egen IPR-strategi før de tar stilling til klyngens strategi.

Det anses derfor som viktig å skape en felles kunnskapsplattform i forkant av strategidiskusjonene, hvor det defineres et minimum av kunnskap som alle medlemmene bør ha. Det kom frem blant annet at høyskolene mangler kunnskap om kommersiell utnyttelse av IPR. Det pekes på to områder som klyngen kan tilby kompetansehevende tiltak på:

- IPR
- Innovasjonsprosesser

Klyngens rolle: det ble drøftet spørsmål om mulige oppgaver som klyngen kunne påta seg på vegne av medlemmene. Skal klyngen ta en aktiv rolle i forvaltingen av medlemmenes IPR? Skal klyngen ha en mer beskjeden rolle? Hvordan skal aktivitetene finansieres? Arbeidsdeling? Skal klyngens rolle dreie rundt igangsettelse av FoU-prosjekter? Skal klynge drive prosjektene? Skal rollen gå utover det å initiere?

Det ble ansett som viktig å definere på en tydelig måte de oppgavene og rollen som klyngen skal ha. Følgende er noen mulige oppgaver som deltakerne mener at klyngen bør kunne påta seg:

- Tilrettelegge for en trygg arena for kompetansedeling og ideutveksling,
- Kartlegging av konkurrenter og teknikkens stand i FoU prosjektets område
- Verifisering og kvalitetssikring av ideer for FoU prosjekter
- Håndtere eventuelle felles varemerker
- Sette regler for deling av informasjon og håndtering av IP
- Etablering av internasjonalt nettverk av potensielle FoU partnere
- Igangsetting av FoU prosjekter
- Øke kompetansen på IPR og andre områder blant medlemmene
- Tilby avtalemaler (konsortium avtaler, NDA, osv)
- Politisk påvirkning

Etter innspill fra deltakerne ble det valgt tre hovedområder for klyngens rolle, som omfavner de viktigste oppgavene:

- Avtaleverk (konsortium avtaler, NDA, intensjonsavtaler og andre standard avtaler)
- Utdanning (IPR og Innovasjon)
- Infrastruktur (trygg arena for utveksling og testing av ideer)

Når det gjelder bruk av standardavtaler ble det påpekt som utfordring at klyngen består av forskjellige bedrifter med ulike policyer som kan være vanskelige å harmonisere.

Hvordan lage avtaler som er bindende og som forplikter til FoU-samarbeid, samtidig som det tas høyde for ulikhetene blant bedriftene?

Hva med standarder? Kunne det være en rolle for klyngelederen vurdere påvirkningen av standarder som kan styrke medlemmenes markedsposisjon.

Konsortiumavtalene må ikke binde bedriftene til en eksklusiv aktør til ulempe for muligheten til å velge partnere/kunder utenfor klyngen.

--------- som deltok i Workshopen svarte ikke på forundersøkelsen. Hadde de gjort det ville resultatene vært noe høyere hva gjelder bruk av IPR i en forretningsmessig sammenheng.

De formelle avtalene som er grunnlaget for deltakelsen i klyngen deles i to nivåer:

- Klynge: Elementer i en klyngeavtale som deltakerne må slutte seg til skal de bli medlemmer
- FoU-prosjekt: Avtaler i konkrete FoU prosjekter som styrer alt fra IP, ressursbruk og tidsperspektiv til roller og ansvar

4. Anbefalinger

Klyngen bør lage en IPR-policy på overordnet nivå for klyngen som fasiliteter informasjonsutveksling og kompetanseheving på en trygg og tillitskapende måte.

I tillegg bør klyngen tilgjengeliggjøre avtaler for FoU prosjekter som tar høyde for alle relevante elementer, IPR inkludert.

Klyngen bør tilrettelegge for en kompetanseheving blant medlemmene, spesielt på IPR og innovasjonsprosesser. (eks. IPR-kurs fra ulike tilbydere, Innovasjonsduken-Innovasjon Norge, osv)

Bedrifter som ikke har en IPR-strategi bør oppmuntres til å etablere en, gjerne i forkant av strategimøtet i april.

Følgende milepælsbasert ideutviklingsprosess anbefales iverksatt i klyngen. Rollen til klyngen bør begrenses til punktene 1, 2 og 3 (eller deler av disse):

1. Ide genereres (trygg arena for diskusjon og brainstorming)
   Seleksjon av de man går videre med
2. Vurdering:
   Kartlegge unikhet og konkurrenter (egne søk, forundersøkelser, andre kilder, osv)
   Undersøke markedspotensial (egne vurderinger, panel interne og eksterne eksperter)
3. Tre veier
   a. ideen forkastes
   b. ideen utvikles av en bedrift
   c. ideen utvikles i klyngen - Konsortium avtale, finansiering (bedriften, offentlig, såkorn, EU), eksterne aktører kobles inn (andre klynger, relevante bedrifter og institusjoner), IPR-strategi
4. kommersialisering (lisens, salg, etablering, joint venture, osv)

Tre vedlegg: Agenda for workshopen, IPR-undersøkelsen blant medlemmene i Helseinnovasjon, IP-presentasjonen fra workshopen.

Foto: Anders Gjengedal/Innovation Norway

Annex 4

Introduction IP & Clusters

A short introduction to IP in the Creative Industries with emphasis on clusters within the experience and tourism industry.

Case prepared for Innovation Norway by Lillehammer Kunnskapspark AS

IP for the creative industries

This document is written for actors within the creative industries, an industry which to a large extent is based upon intellectual assets and properties. When we in this context are talking about the creative industries we are using the broad definition which includes e.g. the tourism industry. For actors within the creative industries it is of uttermost importance to be able to understand and strategically manage the assets and properties the venture is using as its foundation for value creation and we have tried to capture the most important facts about IP management for the creative industries. This document does not have as its purpose to be a source of the law and to explain all different IPRs in detail but rather to give an understanding of strategic implications for a venture in the creative industries. This is a complex field that requires a lot of skills but for someone that develops or otherwise have access to these skills it is rewarding.

The intellectual property constructs are tools that can be used to construct the bricks that build up the platform from which value can be created. It doesn't matter if the venture is for profit or non-profit – we still need to be able to manage the IP. Business models like open source wouldn't be in existence without a very good understanding (and the bare existence) of copyright. *Spotify* wouldn't be where it is today without a very good understanding of the limitations of copyright. *Knerten's* product portfolio wouldn't be what it is today without a very good understanding of the different building blocks that together create *Knerten* and how e.g. copyright in combination with a well developed contract structure enables us to create a broad platform for value extraction.

Intellectual asset and IP assessment

This document is focusing on the intellectual phenomena that to a large extent are the value creators in the creative industries. This doesn't mean that physical property cannot be very important in some cases but we have chosen not to discuss that kind of property here as most of us are quite good at managing physical property – while the opposite is often the truth for intellectual property!

Intellectual Assets & Properties

Intellectual assets can be seen as the most important part of the "raw material" which a knowledge-based business in any industry is built upon and for ventures within the creative industries all the assets are often of intellectual character. Intellectual assets are the building blocks for the venture and in order for these building blocks to be tradable objects they need to be propertized. Everything that a venture has access to, and that is valuable for the venture, is defined as assets. For e.g. a traditional cheese maker in Gudbrandsdalen the nature is an asset. Some of the nature (i.e. the land) might belong to the cheese maker but the whole history and experience of Gudbrandsdalen is an important asset that as a starting point does not belong to, or is in any way is controlled by, the cheese maker.

Before successful value extraction can be initiated intellectual assets must be communicated and packaged in the relation to other business actors, i.e. the assets need to be conceptualized into something which in the mind is more tangible and also accepted by others as something actually owned and/or controlled by the venture. One important step in this process is to claim the asset to be a property, and a property owned (or at least controlled) by the venture. What type of communication will be most successfully is dependent on what structures we want to achieve and what business model we will rely upon. It is essential that the asset is experienced by other actors as a property. In the case of the cheese maker in Gudbrandsdalen this could mean to create a geographic indication for traditional cheese from this part of Norway.

This propertizing process is sometimes easy and straight forward (e.g. registering a trademark), sometimes it is a little bit more complex (e.g. claiming property over a movie character through trademarks and copyright), and sometimes it requires lot of communicative and strategic skills (e.g. claiming property over a TV game show concept). The already accepted norms in society regarding how to deal with certain intellectual assets as properties should of course be used whenever possible and that is one reason why reading this rest of this document is important as we in the following we will discuss these accepted norms. However, where there yet are no norms regarding propertizing the kind of intellectual assets a venture is planning to prosper from the entrepreneurs have to use their creativity to convince the unconvinced regarding the property aspect of an asset. In the following we will discuss also these more difficult cases and the impact it has on possible and suitable business models and other strategic measures.

The main reason why it is important to turn assets into properties is that an asset that is seen as a property will be easier to communicate and engage in transactions since the perception will be that the transaction's object can be owned and that the ownership can be enforced through legal protection. It is a matter of control where the owner must make other actors believe that he has enough control over the asset to use it in a business transaction. With a propertized asset we can e.g. decide who should have access to it and under what conditions but it does also mean that the asset can be bought and sold. By claiming copyright to a piece of software we (the licensor) can e.g. decide that everyone should be allowed to use it but only under the condition that any improvement made by a user (licensee) is also shared with all other users (licensees).

Claiming on three arenas

To better cope with, and understand, the complexity of the strategic management of a venture's intellectual assets and properties it could be described as a communicative game on three arenas; the administrative, the judicial, and the business arena. These arenas interrelate in a complex way and they can be seen as structural platforms in the construction of intellectual properties and for the process of managing intellectual property rights. Regardless of what industry a company is part of actors in that industry will all be subject to activities on the three arenas and therefore it is vital to understand the arenas' correlations to be able to build appropriate structures and make strong claims on all three arenas.

The administrative Arena

The processes and activities in the administrative arena are governed to a large extent by a formalistic procedure. Included in the concept if the administrative arena is e.g. the trademark office where a trademark is registered once the application is approved. Some intellectual properties e.g. copyright, does not – depending on the jurisdiction - have an administrative arena to claim property on. E.g. a trademark can be propertized both through registration on an administrative arena (in Norway Patentstyret) and usage – which requires no action on the administrative arena. One of the benefits with no administrative arena is the absence of (the sometimes quite high) costs which are associated with the administrative procedures. Another benefit is that it enables us to claim property also in those cases where we have not been aware of the value of an asset at an early stage. On the other hand the absence of an administrative arena in most cases means greater uncertainty of the claimed IP and a greater uncertainty if we should end up in a court procedure. In these cases it is more a matter of postponing the cost to a later stage.

The administrative arena is primarily national but there are regional institutions, e.g. the Office for the Harmonization of the Internal Market (OHIM) which is the trademark and design right office for the European Union.

The judicial Arena

The judicial arena is the "court", and other means for dispute resolution, to which an actor turns in order to file a lawsuit for a claimed infringement on an IPR. As property claims to intellectual phenomena often are complex a venture's position is strengthened if the court upholds a property claim. On the judicial arena we do not only find disputes regarding whether something should be regarded as property, e.g. the design of a chair, but frequently also disputes regarding who is the rightful owner of the design.

At the end of the day however very few cases end up in the judicial arena and many conflicts are solved directly between the involved parties – often because you don't want to have the strength of your claimed properties discussed in a public court room as that discussion can have a big impact also on your relation with other parties. It is also costly and time consuming to utilize the judicial arena.

Business Arena

The business arena is the most important arena of the three arenas and it is where most of the action takes place. To ensure that other actors respect your IP, the previous two arenas play an important role in an actor's attempts to communicate the value of an IP. However, the business arena is where the property and its value are accepted. Without acceptance on the business arena it will be difficult to create and sustain value since much money and resources will have to be spent on litigation and administration. When acting on the legal arena, the business arena should be kept in mind since the arenas are extensively interacting. By making claims based on agreements (explicit or implicit), market power and other business means, IP is can be constructed and validated on the business arena. The administrative and judicial arenas are to be seen as supportive platforms for the business arena since it is each actor's communication skills on the business arena that determine the extraction value the IP has from a business perspective.

Interaction on all three arenas

A successful entrepreneur in the creative industry is probably also in most cases very good at understanding the communicative game that takes place on all three arenas. E.g. a claim on the business arena can be based on a property registered on the administrative arena and an argument in court claiming property can be based on a market acceptance of the property claim.

With an understanding about the strengths and weaknesses of a property claim on all three arenas an entrepreneur can make better strategic decisions and extract more value from an intellectual asset.

Notable is that both the administrative and the judicial arena are linked into national structures whilst the business arena is more of an international playground with international networks, markets and systems. For companies that have the intention to create value internationally it becomes even more important to communicate the status cleared in the other two arenas.

The interaction between the three arenas.

Summing up: To be successful in strategically claiming IP we have to understand that IP could be claimed on three different arenas[2] having different impact on the strength of our claims. Using the concept of the three arenas can help the venture assess its current position and an understanding of the interactive game on the arenas can be used to build a stronger platform and to enable further value creation. This is however a complex matter which requires not only legal skills but also a good understanding of the intellectual assets and the market. For someone who doesn't have the legal skills it is advisable to work closely with someone who has, but it will always be up to the entrepreneur to make sure that the skills of the legally trained is used to the benefit of the venture. The best support you will most likely get from someone who understands both IP and your ideas and the potential market.

Assessing IA & IP

To be able to assess the IA and IP of a venture we need to first focus on the vision of the venture. The first question is often what the venture wants to achieve (the vision) and what the chosen business model is. If this is the first question the next question should be if the venture has access to the necessary intellectual assets and to what extent those assets are propertized. The answer to the second question should tell us whether it is possible to achieve the vision.

Sometimes we start in the other end, having identified some assets, and looking at what we can do with those assets. Also here we need to assess the IP position regarding the assets.

IP in the creative industries

It is important to master the tools we have at our disposal when it comes to propertizing intellectual phenomena. We have to know the possibilities and we have to understand and manage the weaknesses. As a starting point all ideas are considered to be free and thereby not property of anyone and it is only if we can claim it to be property under one of the property regimes we will discuss below that we can stop others from using, and benefiting from, our ideas.

Copyright

Understanding copyright is central for everyone involved in the creative industry since it is the most common and complex legal means to protect intellectual phenomena occurring within this industry. Copyright is an effective mechanism to generate wealth in the industry and it enables value creation and value extraction of artistic work. Through the control created by copyright the rights holder obtains a position where she can commercialize and capitalize on the creations made through sale or licensing of the rights to the work. The construction of copyright ensures that investments made can be returned and the length of the copyright protection aid in creating long term agreements where the commercial value is enhanced.

Copyright is a right to exclude others from copying your work and gives an exclusive right to exploit the work by producing copies and making it available to the public. The copyright relates to the work be it in original or altered manner, including adaptations and translations. Copyright protection, the exclusive right to a work, is acquired automatically as soon as the work is created and the general time for protection is during the creator's lifetime and 70 years after the creator's death. Neighboring rights (e.g. producer rights) last between 15 to 50 years.

There is (in most countries including Norway) no formal application or registration, i.e. there is now administrative arena to deal with. There are three requirements for copyright:

- that it is a work,
- that it has been created by a human, and
- that it has achieved a certain distinction and originality, also referred to as artistic height.

2 The concept of the three arenas emanates from Professor Ulf Petrusson at Gothenburg University and is a model that can be used to manage the process of claiming IP.

The term work includes literary texts, film, music, paintings, photos, architecture, software, logotypes, useful arts etc. Copyright protection arises at the moment something can be considered to be a work, which can create difficulties in determining the time of emergence of copyright if something is created in stages – especially as there is no requirement of making it publically available.

If a work is based on an original copyright protected work it is called derivative work. A typical example of a derivative work is a translation or a transformation into another art – e.g. from a book to a movie. The creator of the derivative work obtains copyright protection for the derivative work, but will need permission from the original creator to use his work commercially. The difficulty concerning the issue is to determine whether something is derivative or a new independent work. It's allowed to be inspired by other's work but there is sometimes a fine line between being inspired and "translating".

To achieve copyright protection the work has to have a level of originality. The requirement of originality is rather low in the Nordic countries entailing that it is easy to obtain copyright protection. The issue with copyright is more concentrated to how broad the scope of protection should be. The scope of protection can be said to be determined by the level of originality - the more original the broader scope of protection. The originality requirement does not imply a requirement of novelty, as is the case with patent protection. As long as the work is a result of independent creativity, even if the work is identical to something already existing, provided they are created independently, copyright arises. Copyright only protects from copying. On the other hand a work would probably not be considered to have originality if there is a big risk that someone else independently would make exactly the same work.

Copyright protects only work made by a human being which means that a legal entity cannot be considered creator of a work. As a starting point the copyright belongs to the creator of the work. It is not unusual that there are several creators and if the contributions cannot be separated they will share the copyright to the work. This means that the creators may not dispose the work solely, but must mutually agree on the use of the work. The copyright is often transferred through contract (including employment agreements) but if there is no contract the copyright would be considered to remain with the creator. It is a strong recommendation to make any contract transferring copyright as clear as possible.

There are two aspects of copyright protection; the moral and the economic. The moral right is a personal right which in principle is not transferable. The moral right consists of the right to be named, a right for the author to be stated in relation to her work and the right to be respected. If a work is reproduced or published there is an obligation to state the creator in a proper manner. There is also an obligation to not alter a work or make it public in a form or context that may damage or disrespect the reputation of the creator. The economic right regulates the right to commercially use the copyright protected work. This right includes the right to use, make changes in the work, multiply it and publish it. In contrast to the moral right's transferability, the economic rights are fully transferable.

The Copyright Act also regulates the so called neighboring rights. These rights apply to practicing artists, producers of sound and motion pictures, producers of catalogues and photographers. The neighboring rights are created to give protection for representations that may not reach the level of being a work and therefore not achieving copyright protection in the regular way. The important aspect when it comes to neighboring rights is that these creators' copyright protection is not as extensive as the ordinary one and has shorter time span.

The most important exception copyright protection is the right to make copies for private purposes. This requires that the work has been made public with the consent of the creator and that the copies are not used for purposes other than private. There are however limitations to this exception as well. It is e.g. forbidden to copy computer software, even for private purposes.

Trademarks

Trademark is probably the most important and most widely used intellectual property for any venture and for some ventures this might be the only property in their possession that could be successfully claimed on the administrative and judicial arenas. There are two ways of protecting a trademark; through registration and through establishment. A registration of a trademark can be done either nationally or internationally. Generally there is no difference between trademarks that have arisen through registration or through establishment which means that an established trademark's protection is just as strong a registered one. There are benefits though with registering a trademark, mostly from a proof perspective. A registration can also be useful if someone have registered a domain name in bad faith. Notable is that a trademark that is registered must be taken in use within 5 years from registration or else someone can ask for it to be revoked due to passivity.

There is a widespread usage of the mark ™ in connection to use of trademarks. The mark has, contrary to the ®, no formal meaning. The ® means that the trademark is registered while the ™ is nothing but communicative means to third parties to indicate that the trademark is claimed as property by the user. However the use of the ™ can also be a conscious strategy. The

mark is also a good illustration to exemplify the interaction on the different arenas. The ™ is a mark used on the business arena, while the ® is a mark stemming from the administrative arena.

Registering trademarks cost money and if there is uncertainty whether it will be worth the resources to register a trademark there is a possibility to use the ™ mark to initially deter other actors from using the same trademark until the trademark is tried at the market. It thereby allows for a prioritizing of resources and at the same time shows awareness from the actor's side of future usage and intention to protect the trademark. The ™ communicates to competitors that there is a consciousness regarding the brand. This hopefully creates an acceptance on the business arena and helps build a control position for the company.

Words, names, figures, letters, numbers, shapes, ornamentals, packages, sounds, scents and colors are elements that can obtain trademark protection. The most important requirement is that the mark should be distinctive, i.e. not in any way describe the goods or services. The second requirement is that the mark must be able to be represented graphically.

Before registering a trademark the trademark holder should have envisioned how the usage of the trademark will be. There are 45 different classes to choose from and there are several usages within the same classes. Deciding in which classes to register could be tricky and it may seem appealing to register in as many as possible to avoid limitation for future business expansions. There are two limiting elements though. First, it is required that the trademark is, within five years from the registration, being used in all classes it is registered in. Without usage the registration can be cancelled due to passivity if a third party wants to register the same/similar trademark in the same class and revokes the registration. Second, it is costly to register in many classes as well as to renew the registrations – especially for a global brand.

"Collective", certification and similar marks

With a collective trade mark or collective mark we mean a trademark owned by an organization where all members can use the trademark to identify themselves with e.g. a level of quality or accuracy, geographical origin, or other characteristics set by the organization. This means that from a formal legal perspective collective trademarks is an exception to the underlying principle of trademarks serving as an "indicator of origin" –i.e. they should indicate the individual source of the goods or services. A collective trade mark, however, can be used by a variety of traders, rather than just one individual concern, provided that the trader belongs to the association. The collective trademark can be a valuable tool for e.g. a tourism organization. In some countries we find specific legislation regarding this kind of collective marks.

Certification marks are similar to collective trademarks and the main difference is that collective trademarks may be used by the members of the organization, while certification marks are the only evidence of the existence of follow-up agreements between manufacturers and e.g. nationally accredited testing and certification organizations. Certification organizations normally charge for the use of the certification mark. Some countries have specific legislation regarding certification marks.

With a broad perspective on collective marks, and by taking a look at e.g. franchising we should realize that there is great potential in creating these kinds of trademarks as private regimes for e.g. quality, geographic origin etc. A strategy could be to register a trademark for e.g. a traditional cheese from Gudbrandsdalen and then let people use it under a license agreement as long as they follow the rules, i.e. the recipe, kind of milk etc. Whether the use should be combined with a fee or not is up to the owner of the trademark, who could be e.g. the original inventor of the cheese. So while the recipe of the cheese is not possible to protect through IP the trademark can create a licensing position through which the cheese maker can leverage her knowledge in cheese making while still controlling the market. Through this we create a local "franchise" concept based on origin and not sales location. This is one of the beauties of combining good intellectual property management with a contract strategy.

Geographical Indications

One specific tool that has a relation to trademarks, and especially collective marks is geographic indications. Today many countries, including Norway, offer a specific legal framework for geographic indications. It is a quite heavy administrative burden to claim and create a new geographic indication and in many cases it is advisable to instead register a collective trademark or an ordinary trademark and work with license agreements. Through this we get a much more flexible tool even if it under certain circumstances will be a slightly weaker control position.

Domains

For many businesses the domain name might the most valuable asset, a challenge with domain name compared to the trademark is that we cannot have the same name registered for e.g. different classes. When it comes to domain names there can be only one owner of a domain name. Often the domain name is not considered as an IP but we acre including it in this document as it has intellectual character and as it is something than you can own. It often serves a similar function to the trademark and the domain name is also often the same as the trademark.

Design rights

In many countries, including Norway, we find special legislation giving protection to designs and patterns. The design as such can sometimes also be claimed property under trademark law (as long as the design constitutes a trademark) and under copyright law (as long as the design constitutes a work) – there is nothing saying that the same design object cannot be property under all these regimes at the same time. If the rights to these properties are not carefully managed it could create a situation where the same design is property of different people claimed under different intellectual property regimes.

The design protection is to a large extent based on a patent logic even if changes during recent years have tried to alter this. This means that the design has to be essentially new and that it needs to differ enough from existing designs. The design right requires registration but there is not a granting process similar to that of a patent which means that a claim on the administrative arena is not as strong as for a patent.

To register a design it needs to be new "to the informed user" and it needs to have individual character. The law allows a 12 months grace period during which the design can be made available to the public without harming the novelty criteria. There are also some important exceptions and, as is the case for copyright and trademarks as well, the design right cannot in principal be used to propertize something that has a technical function. It can be worthwhile to note that for designs that are made available to the public in EU the creator can claim 3 years protection without any action on the administrative arena.

Trade secrets

Trade secrets are generally not considered being an intellectual property but it is nevertheless an important tool to protect ideas – especially at early stages. For most ventures it is however often a challenge to keep trade secrets over time. For something to be considered a legally protected trade secret it must have a financial value and it needs to be managed as a secret, i.e. something that anyone can access can never be a trade secret. One of the most valuable trade secrets through history is probably the Coca-Cola recipe. Today the main value is probably in the trademark and even if a potential competitor got access to the exact recipe people would most likely still by the original. Other examples of trade secrets are e.g. customer databases and business models. Long term it is often difficult to base a venture on a trade secret and if your sole property to start with is a secret it is advisable to develop a supplementing property portfolio. You should also develop a strong contract structure to protect your trade secret as long as possible.

Non disclosure agreements (NDA)

An important tool to be able to claim that something should be considered a trade secret is the NDA. If you tell someone your secret without them entering into some kind of confidentiality agreement (oral or written) it will no longer be considered a legally protected trade secret. The non-disclosure agreement is also o way to create what could be called a "private property regime" implying that the other party to the agreement accepts that what you are telling him is your property, i.e. he will not use it without your permission. I weakness with this property is that it is only valid in relation to those that have signed the agreement. It can however prove to be a valuable tool in collaborative efforts where people supposed to share ideas. If everyone signs a well designed NDA it means that the participants have to respect each other's ideas as if the where property even if they from an IP perspective would not be able to propertize in themselves.

Foto: Erik Jørgensen/Innovation Norway

Restrictive covenants

A tool that sometimes is used, especially within companies (both between owners and in relation to employees), is restrictive covenants or non competition clauses. Also, with a clause like this in e.g. a collaboration agreement the other part promises not to involve themselves in (directly) competing activities during a certain period of time. This is also a very common clause when someone acquires a business, especially if the property rights are weak, to protect the buyer from the seller starting up a competing business.

Marketing law & unfair competition

While not being an intellectual property marketing law, including fair competition regulation, can have the same effect as a property and they are therefore important tools for an actor in the creative industries. It is however difficult to base transactions on the fact that not entering into e.g. the licensing agreement and still using the idea could (or even would) constitute a breach against marketing law or would be considered unfair competition. Marketing legislation can despite this play an important role if we want to stop someone else from encroaching on what we consider to be our idea.

An illustrative example

As was stated already above the creative industry is a very diverse industry and the possible value creation is to a large extent dependent on the ability to claim IP and to create viable business models. The following example illustrates some of the challenges and opportunities. One of the main points that are demonstrated is the basic starting point that ideas are free for anyone to use and it also illustrates the need for understanding the different intellectual property regimes as they have a substantial impact on our ability to create a platform for value creation.

The cooking show

Starting point: You are working for a small TV production company and your company has so far been focused on making documentaries. The business is, to say the least, slow and you are all constantly supposed to come up with new ideas. One evening in front of the TV, while eating another one of those unhealthy pizzas and watching yet another celebrity chef making delicious dishes, you get an idea for a new concept. This idea is further developed with your family. The main ingredients in the concept should be ordinary people and everyday food as well as celebrity chefs and classy food. The idea is that ordinary people can submit their recipes for everyday food to a web page, where they are made available so that we can all go in and get tips on good everyday cooking. Each week a team of professional chefs select one of the submitted recipes, which should take a maximum of 45 minutes to finalize, and then the idea is that the recipe creator should compete against celebrity chefs. The mission of the celebrity is to make classy food of everyday food. The conditions are that celebrity chef should use the same ingredients, but she can cook them in any way she wants. In addition the celebrity chef can get access to more ingredients by answering food related questions. A correct answer means that she can pick an extra ingredient from 30 different ingredients. If the answer is wrong her competitor – the creator of the original recipe - gets to pick an ingredient that the celebrity has to use. Amongst the 30 ingredients we find everything from ordinary vegetables and spices to oysters and intestines. Through these questions the celebrity chef gets an additional 5 ingredients. An important part of the show is the stand-up comedian who should work much like a sports commentator and explain and comment on the "game" between the competitors. The result is judged by a team of professional chefs and celebrities.

The challenge now is to package this concept into a licensable TV format and to identify the assets that can be used as a foundation when this concept is licensed to other TV production companies around the world.

If we now try to assess the intellectual assets that are building up the concept the following can identified:

The overall idea

Ideas in themselves are not possible to protect. Copyright only protects the expressed idea in its concrete form. Patent can to some extent be seen as protecting ideas but this idea does not fulfill the patentability criteria. The good thing about the fact that the concept is not possible to claim by copyright is that we avoid the potentially gunky ownership discussion with the idea being claimed by other members of your family. NDAs could be signed with your family members to make sure that they don't use the idea. The challenge is that anyone else that watches the show is free to use the idea as such so it's important to see what elements can be propertized.

Manual/Script

There is no doubt that a manual would be protected by copyright but the primary consequence of this is primarily that we can stop others from copying the manual as such. The more the manual look s like a script (and the more details), the more we can claim that the result of using it is an adaption to another format, a translation etc. This will give a narrow scope of protection but is still a very important part of the licensing package.

Design of the set

The design of the set/scene can be protected by copyright and design protection. Distinctive elements might also be possible to claim by trademark.

Recipes

Recipes are potentially protected by copyright but as it is a "technical" description the scope is VERY narrow. If the instructions are written in e.g. a poetic way they will probably be considered to have copyright – but again very narrow. The potential copyright does not protect the result of following the recipe so you cannot stop someone from cooking according to the recipe. If someone using their own words, writes down the recipe it is not an infringement. The challenge here is that the potential copyright (if any) belongs to the author so the licensee needs to secure the right by having the potential copyright transferred through some kind of contract when the recipes are uploaded.

Recipe database

The database structure can have copyright as well as the content of it – both as "real" copyright, for the database as such and for the software code, and as a neighboring right. This is important as the licensee in another market will fill the database with its own content.

The web page

The web page can be protected with copyright (the code behind it, and maybe the overall design and specific objects and designs), with design right (should register as unregistered only gives 3 years and a registered right is a much stronger foundation for a license). Parts of the webpage can also be protected through a trademark registration if it serves a purpose as a trademark and is distinctive.

The questions:

The question can be protected by copyright but it will be very narrow. Compare the discussion under recipes.

The comments

To the extent that there is a script for the comments they can be protected by copyright. Specific phrases and slogans can be protected through trademarks.

The name of the concept

The name of the concept will be a very important part of the licensing package. It is therefore important to register the trademark in all potential markets and as the Internet plays an important role it would probably also be a good idea to register the domain names.

Special issues for clusters

Clusters are collaborative environments, and the purpose is to share ideas. From a legal perspective only ideas and other intellectual phenomena that can be claimed as property can be owned by someone, i.e. the concept of "my idea" only means that the idea emanates from you but it doesn't mean that it automatically is your property. Signing a NDA with others when you discuss an idea will only create a "private property regime", meaning that the property claim only has to be accepted by the parties to the agreement – anyone else is free to use the idea. The NDA can still be an important tool to open up the discussions and to incentivize people to share their ideas.

As have been discussed above it is also important to keep track of contributions to e.g. a work that would be protected by copyright. It is always advisable to solve any issue as early as possible in the process as a lot might be at stake if we start arguing at a late stage. To have a clear arrangement between the parties in a luster regarding these issues is therefore of uttermost importance and remember:

"Creativity and innovation might spire in chaos but commercialization normally spires in order!"

Even if this document hopefully should strengthen your abilities to create value from your intellectual assets it is obviously so that this is a complex matter. It is not only so that a bad strategy will hamper your venture, through one bad decision a lot a value can be instantly destroyed. It is therefore always advisable to seek support from someone who can help you develop your IP strategy. Every case is different but to work with someone who has experience from many different cases and markets will benefit your venture. To go through the kind of process the team behind *Knerten* did is something that most likely will help you understand your assets better and it will also extend your platform for value creation through developing the strength of your IP portfolio and your ability to strategically manage it.

Annex 5

CASESTUDY on film

A short casestudy on film and the importance of IP in creating a strong venture.

Case prepared for Innovation Norway by Lillehammer Kunnskapspark AS

Film as vehicle for business venture.

From book, to film to industry

There are few industries that are as complex, regarding the use and exploitation of IP, as the film industry. Film production, in its nature, is a collaborative effort with a large number of creative competences and people involved, from pitch to final product. During a relatively short time span a simple idea, a story or a character usually developes into large venture through creative development, production, marketing and distribution, and thereby involving a vast number of people. And ,at the end of the day if success is granted, grossing millions of dollars and kroner.

No one would enter into such ventures if there was no procedures on how to manage IP and how to create a value proposition from intellectual assets and properties. As we stated in the introduction" The intellectual property constructs are tools that can be used to construct the bricks that build up the platform from which value can be created...".

When KONVEKST (ARENA 2005-2010) ,the first cluster initiative for the creative industries in Norway , worked on developing business models for the creative industries , it soon became clear that IP played vital and important part of any venture.

There is however a huge difference between being able to identify intellectual phenomena, knowing the legal constructs of trademarks, copyrights and design and then having to deal with it and make a healthy and mutual business proposition that benefits all parties involved. The downfall of the record industry is one great example where the industry has failed to build a loyal relationship with their customers. Instead of utilizing the new emerging technologies, the industry insisted on the CD as the sole legitimate carrier of intellectual content and maintained an excessive control of the physical distribution. The industry believed they were selling a physical product, whilst the consumers in most cases were buying an experience. This shows that the relationship between the provider and the consumer is not based on whatever happens on the judicial arena, but most importantly on the business and the relationship towards the consumer. Understanding the consumers current needs and attitudes has not been paid much attention to within the record- and music industry in the last decade.

Through KONVEKST, we were able to work on one specific project and with one of the top film production companies in Norway, Paradox . **Knerten** is a character , or more specific , a twig in a series of childrens books written by the late Anne Cath Vestly. The books, and the characters, were ideal vehicles when Paradox initiated the ambition to turn books into films aimed at the younger audience. The books , written in the sixties, were known to the parent and grand parent generation, but not to the younger generation.

The basic idea was therefore to create a universe that reached beyond the book and film. A new context had to be created so that the characters and the story had relevance to a new and younger audience. New content, physical and virtual, had to be created. Such as digital games and boardgames, toys, events and experiences in order create as many touchpoints between the story / character and the modern consumer over an extended time as possible. Thereby creating awareness, loyalty and sustained relationship with the audience.

In order to map out a strategic plan for this venture we divided the process into phases and addressed the various occurring issues during the course of the process. This was done in workshops with the stakeholders, discussions on special issues with producers and copyrightholders and seminars with the KONVEKST cluster initiative.

Beneath is a short breakdown of the various stages in the process.

The Vision

To be able to assess the IA and IP of a venture we needed to first focus on the vision of the venture. Our vision was first of all to create a series of three films based on the book that re-introduced and re-invented the universe of Anne Cath Vestly to a whole new generation of children , through high quality entertainment. Secondly to attract outside investors to the overall venture by engaging them in a business proposition with the sole purpose to launch products and services connected to the film.

The Mission

In order to attract investors and involve the various stakeholders a strategic plan was outlined in order to utilize every aspect of the story, it's characters, moods and previous connection with the older audience. A workshop was held to create a vast range of possible products and services that could have relevance to the Knerten-universe, and to identify strategic partners that could bring the products and services into realization. The products should engage all the senses such as taste, feel, see, hear, touch, smell and in addition ; promote the edutainment aspect.

The film and it's universe as vehicle for product placement was also thoroughly investigated. As the story is set in the sixties, the temptation to update the film in order to give room for current products, was obvious. The team however, insisted that the films quality and the ability to connect with a wide audience, depended on being true to the original work (books).

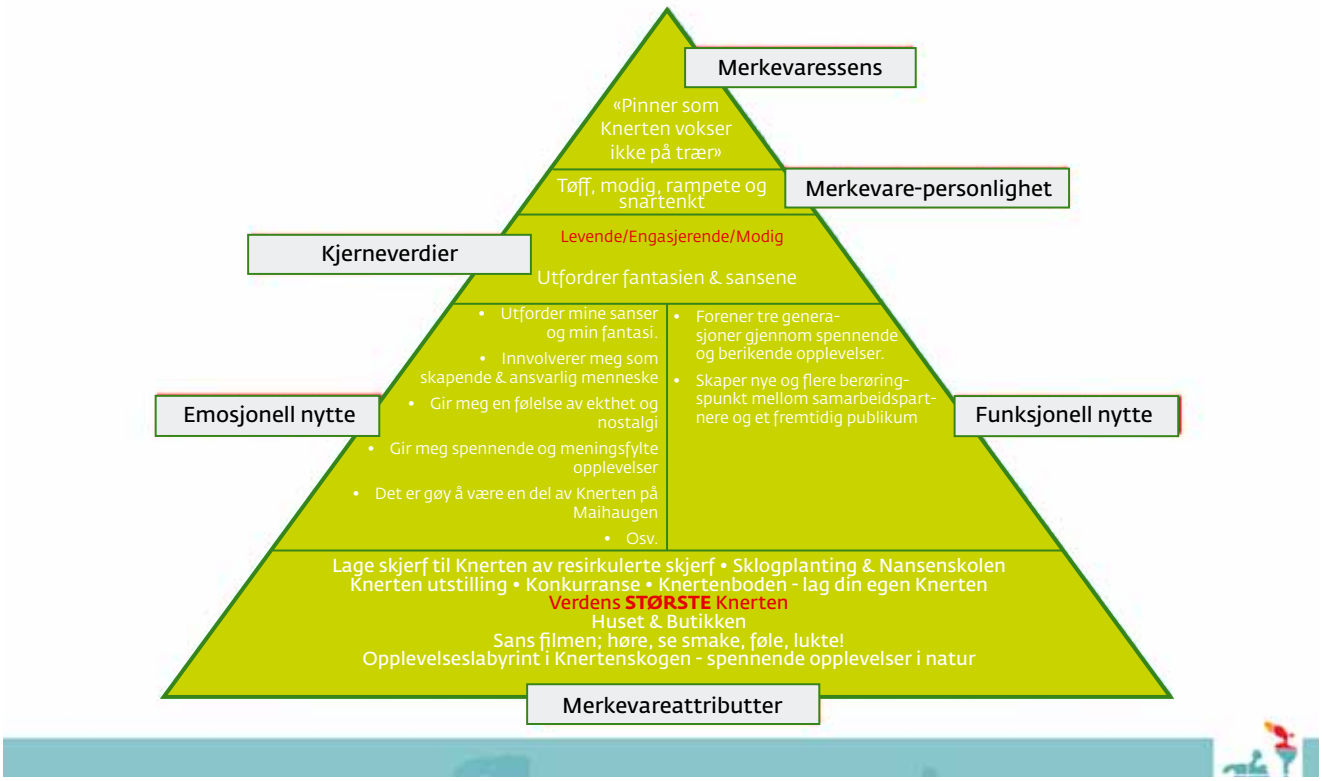
The Brand

The stakeholders set time aside in order to create a strong foundation for the Knerten Brand.

A Brand Lab was organized, involving producers, copyrightholders, partners, stakeholders and process managers. A brand PYRAMIDE was created in order to define BRAND ATTRIBUTES, EMOTIONAL AND FUNCTIONAL BENEFITS, BRAND PERSONALITY and BRAND ESSENCE. The BRAND PYRAMIDE has been of utmost importance in the course of venture to assess BRAND RELEVANCE connected to all initiatives. The pyramide is an important guide and a way to measure what initiatives to engage in , and what not to engage in. The example beneath is from the session with one of the stakeholders. Maihaugen is currently planning and outlining the principles for a theme park based on Knerten.

The Anchor / Vertical and horizontal scope

A book, a novel, a story etc. provides many angles and opportunities and it is a challenge to define what we should build the property around (in other words ; create the anchor) . This is an essential discussion because it defines what is the most agile business concept and above all, the best opportunity to control and exploit the various IP and assets. Many film ventures, based on novels or known characters, choose a variety of approaches. Some define the DIRECTOR as the anchor (such as Fellini, Tarkovskij, Tarrantino) , some choose the TITLE (Lord of The Rings, The Godfather), some the CHARACTER (Harry Potter, Pippi Langstrømpe) , the AUTHOR (Jane Austen), the ACTOR/STAR (A Jim Carrey – film or a Meryl Streep movie) the PRODUCER (Walt Disney, Pixar) or a combination of them all (James Bond) .



How important this discussion is can be illustrated by a recent conflict that occurred in june 2010 when New Line Cinema, the producers of the Lord of The Ring Triology , based on J.R.R. Tolkiens books were about to put his first book "The Hobbit" onto the screen. Due to the financial crisis, that also hit the film industry hard, New Line Cinema wanted to put forward contracts to the director of the first three films ,Peter Jackson, and one of the actors who portrayed one of the key characters, Ian McKellan, that were unacceptable (unreasonable according to the Directors and Screen Actors Guild). New Line Cinema decided to change both director and actor which resulted in an enormous outcry of protests from the loyal and dedicated audience of these cult movies. The consumer / audience demanded both back in the forthcoming production and New Line had to give in. To omit the audience from the equation would probably be disastrous for the upcoming film. The DIRECTOR and CHARACTER / ACTOR were in this case such vital assets to the future success of the film but not apparent to the business people in Hollywood who merely focused on the contractual side. The lesson to be learned: obtain all rights and sign all contracts BEFORE the success is apparent. In this case, in the year 2000, prior to the launch of the triology. Bear in mind that the"Hobbit" was scheduled for shooting soon after finishing LOTR.

In the KNERTEN case, we chose to build the concept around the KNERTEN CHARACTER. Being a wooden twig, and an animated character, this allowed us full control to exploit him in any way possible. KNERTEN, as created for the film, is not represented by any union, he does not age, he does not get drunk (unless we want him to) , he does not engage himself in questionable moral behavior (like Mel Gibson and Tiger Woods) and live his life only within the framework of the film and the various complimentary products and services. The rights for the digital design that make him come alive on screen, were of course secured long before the film entered the screen. The other rights were cleared as the venture moved along and of course before the film hit the screen. The model beneath shows in principle which properties and assets that must be secured from the creation of the "idea" to the" end consumer"

The Timeline

Like all project driven ventures, The Knerten venture has a beginning and end. Few films have the ability to stay in the audience awareness over many years unless they become classics, like the LOTR or The Godfather. After obtaining the rights for the book, Paradox very early outlined a timeline where all activities were plotted over a period of 6 years. From obtaining the rights of the book, developing of synopsis and screenplay, engaging director and creative contributors, to pre.production, production , post-production , marketing, distribution and premiere of the first, second and third film, there is a time span of 6 years. With the three films as main pivoting points, activities such as marketing events, launching of games, PC games, DVD's , re-issue of books, picturebooks, toys, ice creams etc. were carefully placed along the timeline to boost the effect of the films and to create a sustained relationship with the audience over time. The product experience becomes advertisement,and vice versa. In essence; We don't perform marketing – we **merchandize.**

Time – not money, seem to be scarce commodity. To be in the mind of the audience over an extended time by creating as many

Illustration – IP interplay

PRODUCT REGISTRATION

Under the Trademark Act you can register a number of products and services in classes, such as; clothing, food, beverages, games, toys, and more, through patent offices (Patentstyret) domestically or internationally (WIPO)

TRADEMARKS

The title of the movie/The Character/The Game atc. can be established or registered as a tradenmark through patent offices (Patentstyret) domestically or internationally (WIPO)

LICENCING AGREEMENTS

Licencing agreements connected to complimentary products and services

DOMAINS

TOP LEVEL DOMAINS are an important asset to the property.

EXCLUSIVE or NOT EXCLUSIVE RIGHTS

Through agreements, exclusive and non-exclusive, rights can be obtaines or distributed in such a manner that it will bring revenue into the overall venture.

COPYRIGHT©

A film usually contains a whole range of copyrights and the neighbouring rights; The Book, the adaption of the book, the screenplay, the storyboard, the music, the set design, the costume design, the choreography, digital design, stills and frames and more.

TRADESECRETS/NDA/NON COMPETE

Within the creative and experience industry tradesecrets, NDAs and non-compete agreements can play an important role (i.e. food and culinary products and services).

touchpoints as possible is therefore a vital part of the ventures strategy to succeed and to create a market and an audience.

Concepts and Interplay IP

As was stated already above, the creative industry is a very diverse industry and the possible value creation is to a large extent dependent on the ability to claim IP and to create viable business models. As concepts in general are not liable for protection as such, it's the way we manage and organize the various IPs and assets that will define to which degree the outside world will perceive it as something that is protected. By using all the tools available there are many ways to "claim" concepts as properties.

The model beneath can be used on a large variety of concepts and will enable you to create a strong and competitive IP environment. This, in essence, will exclude others from infringing or freeloading on your "property".

The Relationship

As stated in the "Introduction to IP ..." any venture are collaborative efforts and environments, and the purpose is to share ideas and be "on the same page". From a legal perspective only ideas and other intellectual phenomena that can be claimed as property can be owned by someone, i.e. the concept of "my idea" only means that the idea emanates from you but it doesn't mean that it automatically is your property.

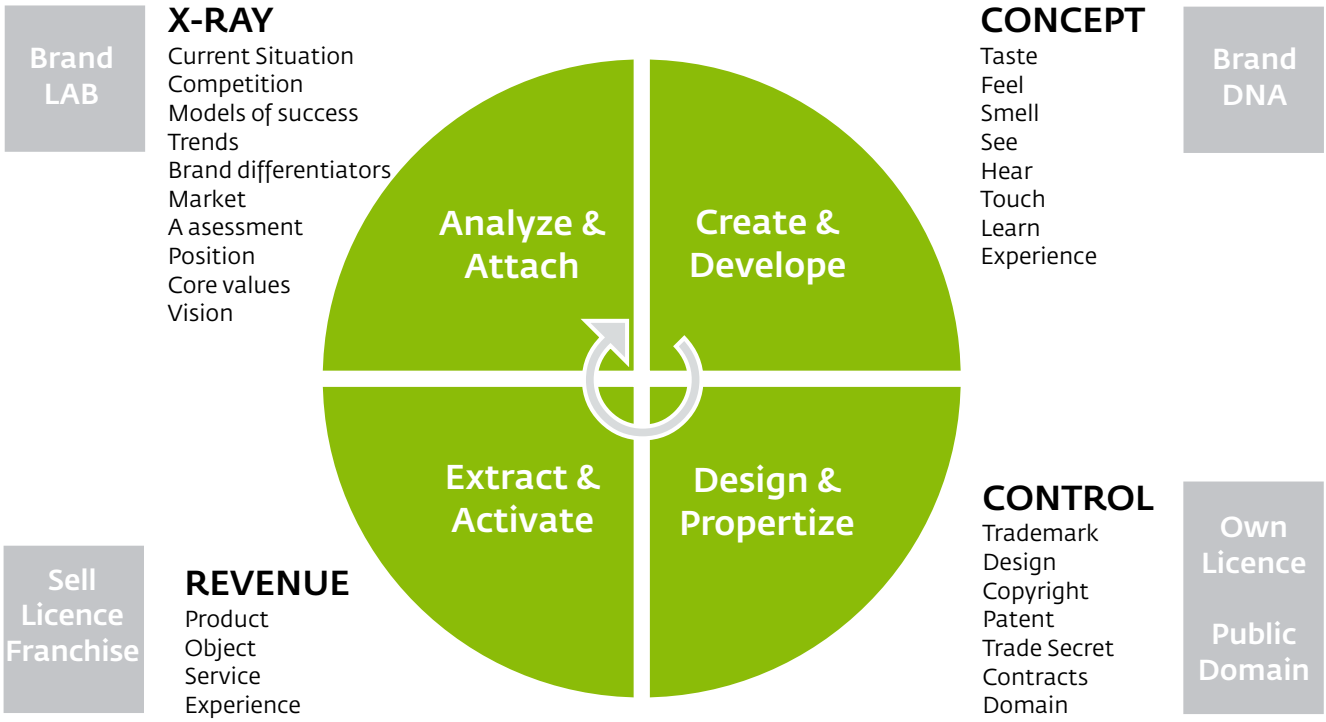
In the Knerten case, ownership to the original idea and the book was unquestionable. In order to exploit someones copyrighted material there is always a chance to end up in conflicting ideas and how to exploit the property. Copyrights and work of art is closely related and attached to the heart and soul of the creator, and should therefore be treated as such.

There is no prescription, rules or models on how to enter such a relationship, but key issues are RESPECT , TRUST and ability to LISTEN and seek COMMON GROUND. Without it no venture will succeed for neither parties.

The Process Wheel

The process wheel, created by Lars Anderson and Jørgen Damskau at Lillehammer Kunnskapspark AS , is a visualization of the Knerten process. The model outlines a continuous process in which consumer and brand are connected and which properties and assets are important in order to reach your vision. The model can be used on all products or services within the experience industry , but also within the traditional industries.

Working with IP in the creative industries can be fun and challenging. It will open up concepts to new opportunities and boost creativity. With that in mind, emphasize on making any collaboration succeed by creating a good relationship based on the above mentioned principles.



Annex 6

Malen nedenfor er forslag til kontrakt eller momenter fra Innovasjon Norge som vi gjerne ser at Konsortiedeltakerne benytter seg av eller bygger videre på ved inngåelse av konsortieavtaler for utviklingsprosjekter i næringsklynger (NCE/Arena). Innovasjon Norge understreker at malen kun er ment som et mulig utgangspunkt for Konsortiedeltakernes inngåelse av konsortieavtale, at malen ikke nødvendigvis er uttømmende, at det kan tenkes flere alternativer til bestemmelsene enn det som fremgår av malen og at malen derfor ikke bør benyttes ukritisk.

Konsortiumavtale

VEILEDENDE KONTRAKTSFORMULAR FOR NCE og ARENA-NÆRINGSKLYNGER

0. Formål

Denne utviklingskontrakten har til formål å regulere Konsortiedeltakernes samarbeid, forpliktelser, samt etterfølgende eiendomsrett og utnyttelse av resultater i forbindelse med Utviklingsprosjektet i næringsklynge [sett inn navn på utviklingsprosjektet/næringsklyngen]. Utviklingsprosjektet er et langsiktig og målrettet prosjekt i næringsklynger hvor Innovasjon Norge har bevilget penger og/eller yte annen bistand etter nærmere betingelser. Utviklingsprosjektet er nærmere beskrevet i vedlagte søknad datert .....[vedlegg 1].

Innovasjon Norges bevilgninger og/eller bistand til utviklingsprosjekter skjer i henhold til Innovasjon Norges standardvilkår og tilsagnsbrev. I tillegg kan Innovasjon Norge sette særvilkår knyttet til spesielle forhold i hvert enkelt prosjekt. Det er viktig at konsortiedeltakerne er kjent med de vilkår som gjelder for å få tilskuddet og/eller bistand fra Innovasjon Norge. Innovasjon Norges tilsagnsbrev, standardvilkår og særvilkår for det gjeldende utviklingsprosjektet skal derfor følge som vedlegg ..... til denne kontrakt.

Prosjektansvarlig vil være Innovasjon Norges [tilskuddsmottaker og] avtalepartner og som overfor Innovasjon Norge er ansvarlig for at Utviklingsprosjektet gjennomføres i henhold til denne kontrakten, herunder at de betingelser som er stillet fra Innovasjon Norge etterkommes. Innovasjon Norge forutsetter at Prosjektleder for Prosjektet utpekes av Prosjektansvarlig og at Styringsgruppen settes sammen av èn person fra hver Konsortiedeltager. Prosjektleder skal lede gjennomføringen av utviklingsprosjektet og ivareta den faglige fremdriften.

Med mindre annet avtales, starter Utviklingsprosjektet straks foreliggende kontrakt og vedlegg er signert av samtlige Konsortiedeltakere. Utviklingsprosjektet skal i utgangspunktet være sluttført innen [sett inn dato].

1. Definisjoner

I kontrakten gjelder følgende definisjoner:

Prosjektansvarlig: En bedrift som gjennom samarbeid i konsortiet står for utviklingen av prosjektet og som overfor Innovasjon Norge er ansvarlig for at prosjektet gjennomføres i henhold til kontrakt. Prosjektansvarlig er [tilskuddsmottaker og] Innovasjon Norges avtalepartner.

Eget arbeid: Det antall arbeidstimer Konsortiedeltakerne selv nedlegger i Prosjektet.

Egeninnsats: Summen av eget arbeid (personalkostander) og direkte kostnader i form av kostnader til materiale, instrumenter, utstyr, mv., konsulentbistand, administrative utgifter og andre driftsutgifter

IPR: Forkortelse for Intellectual Property Rights eller immaterielle rettigheter. IPR kan i korthet benevnes som alt det som er i en virksomhet og som ikke er materielt. I denne kontrakt er begrepet begrenset til den IPR som utvikles i Prosjektet.

Konsortiedeltaker: De bedrifter i en klynge som i henhold til konsortieavtale deltar i utviklingsprosjektet. Konsortiedeltakerne bidrar med faglige og/eller økonomiske ressurser.

Utviklingsprosjekt: Et forpliktende, langsiktig og målrettet utviklingssamarbeid mellom konsortiedeltakere i en næringsklynge som er utarbeidet i henhold til Innovasjon Norges NCE-program og hvor Innovasjon Norge har innvilget tilskudd. Utviklingsprosjektet utgjør den samlede aktiviteten som omfattes av kontrakten.

Prosjekt: Forkortelse for Utviklingsprosjekt

NCE-programmet: NCE-programmet tilbyr finansiell og faglig støtte til gjennomføring av langsiktige og målrettede utviklingsprosesser i næringsklynger. Programmet har et langsiktig perspektiv (10 år) på sin støtte til disse initiativene.

Arena-programmet: Arena-programmet tilbyr finansiell og faglig støtte til langsiktig utvikling av regionale næringsmiljøer. Programmet støtter ordinært hovedprosjekter i en 3-års periode.

Styringsgruppe: Styringsgruppen representerer konsortiedeltakerne og skal sørge for utviklingsprosjektets overordnede styring og fremdrift. Styringsgruppen skal være sammensatt av èn person fra hver konsortiedeltaker. Innovasjon Norge kan kreve observatørstatus i Styringsgruppen. Styringsgruppen velger selv sin leder blant representanter for Konsortiedeltakerne med mindre Innovasjon Norge stiller andre vilkår.

Prosjektleder: Den person som på vegne av konsortiedeltakerne, og under Styringsgruppens ledelse, utøver den løpende prosjektledelse og ivaretar den faglige fremdriften av prosjektet. [Prosjektleder har fullmakt til å representere og forplikte prosjektansvarlig overfor Innovasjon Norge].

Prosjektbakgrunn: Eventuelle immaterielle verdier/rettigheter konsortiedeltakerne bringer inn i utviklingsprosjektet.

Prosjektresultater: Alle resultater som er skapt eller nådd frem til i forbindelse med utviklingsprosjektet.

Prosjektplan: Faglig og administrativ plan for utviklingsprosjektet

2. Kontraktsdokumenter

Med mindre annet er avtalt, inngår følgende dokumenter som del av denne kontrakt:

1. Søknad om tilskudd fra Innovasjon Norge med beskrivelse av Prosjektet.
2. Eventuelle referater fra kontraktsforhandlinger eller møter om kontrakten, som er godkjent av Konsortiedeltakerne.
3. Spesifikasjoner/endringer og spesielle tilleggsbeskrivelser/ tilleggsdokumenter.
4. Innovasjon Norges standardvilkår og eventuelle særvilkår for tilskudd til Utviklingsprosjektet.
5. Liste med eventuelle nøkkelmedarbeidere som skal delta i Utviklingsprosjektet.
6. Prosjektplan
7. Liste som viser Partenes prosjektbakgrunn.
8. Eventuelle andre nummererte vedlegg som er knyttet til ovennevnte dokumenter.

De dokumentene som utgjør kontrakten, utfyller hverandre, men de bestemmelser og vilkår som er satt av Innovasjon Norge har forrang. Inneholder kontraktsdokumentene for øvrig bestemmelser som strider mot hverandre, gjelder yngre bestemmelser foran eldre, spesielle foran generelle og bestemmelser utarbeidet særskilt for denne kontrakten, foran, fravikelige, standardiserte eller sedvanemessige bestemmelser.

3. Konsortiets sammensetning

Konsortiet skal ha en Styringsgruppe, Prosjektleder og Prosjektansvarlig som har ulike oppgaver i forhold til ledelse av konsortiet og fremdrift i Utviklingsprosjektet.

Ved inngåelse av denne kontrakt er Konsortiedeltakerne og deres representanter som følger:

[sett inn navn og orgnr. på KD'ene] [sett inn navn på den som representerer KD'ene]

De nevnte representantene utgjør konsortiets Styringsgruppe. Styringsgruppen velger selv sin leder blant representanter for Konsortiedeltakerne, med mindre Innovasjon Norge stiller andre vilkår.

Prosjektansvarlig er: [sett inn navn og orgnr. på den bedriften som er prosjektansvarlig]

Prosjektansvarlig utpeker Prosjektleder.

Prosjektleder er: [sett inn navn på den personen som er prosjektleder]

Den enkelte Konsortiedeltaker kan endre sin representant i Styringsgruppen og må holde Prosjektleder underrettet om hvem som til enhver tid er deres representant i Styringsgruppen. Representanten skal ha fullmakt til å opptre på vedkommende Konsortiedeltakers vegne slik at Utviklingsprosjektet kan gjennomføres uten unødvendig opphold.

Med tilslutning fra samtlige Konsortiedeltakere kan Styringsgruppen fatte vedtak om deltakelse av nye Konsortiedeltakere. Det er en forutsetning for opptak at den nye Konsortiedeltakeren tiltrer konsortieavtalen og driver aktivitet av relevans for utviklingsprosjektet, samt stiller til rådighet bidrag (faglig eller økonomiske) som fastsettes av Styringsgruppen. Den nye Konsortiedeltakeren vil tilsvarende ha rett til å være representert i Styringsgruppen. Innovasjon Norge skal godkjenne opptak av ny Konsortiedeltaker før Konsortiedeltakeren kan tiltre Styringsgruppen. Godkjennelse kan bare nektes hvis det foreligger saklig grunn.

Dersom en Konsortiedeltaker ønsker å tre ut av konsortiet, kan Konsortiedeltakeren fremme skriftlig anmodning om fratreden med seks måneders varsel til Styringsgruppen. Slik fratreden må godkjennes av Innovasjon Norge. En Konsortiedeltaker som etter dette trer ut av konsortiet, har ved det frasagt seg sine rettigheter og blir samtidig fritatt fra sine forpliktelser etter konsortieavtalen, med mindre forpliktelser etter konsortieavtalen etter sinn innhold er ment å vedvare etter opphør av konsortieavtalen, f.eks konfidensialitetsforpliktelsen etter punkt 11 nedenfor.

4. Ledelsens oppgaver

Styringsgruppen skal sørge for at Utviklingsprosjektet blir gjennomført i henhold til den beskrivelse og tidsplan som er gitt i denne kontrakt og innenfor vedtatte økonomiske rammer. Styringsgruppen er ansvarlige for å utarbeide en omforent gjennomførings- og fremdriftsplan for Utviklingsprosjektet.

Prosjektleder har det daglige ansvaret for Utviklingsprosjektet og rapporterer til Styringsgruppen. Prosjektleder skal videre legge til rette for at Styringsgruppens vedtak iverksettes.

Styringsgruppen skal holde løpende møter for gjennomgåelse av kontraktens innhold, planene for utførelsen og fremdriften i Prosjektet. Det skal minimum avholdes slike møter 1 gang hver(t) måned/kvartal *[stryk det som ikke passer]* eller så ofte som avtalt i fremdriftsplanene.

Prosjektleder skal innkalle Styringsgruppen til møter med rimelig varsel. Sammen med innkallingen skal følge sakslite og de underlag som er nødvendige for behandling av sakene, med mindre ekstraordinære forhold forhindrer dette.

Skriftlig rapportering av arbeidsmessig fremdrift i hht gjennomføringsplanen skal legges frem av Prosjektleder til hvert ordinære styringsgruppemøte. Konsortiedeltakerne plikter således å gi Prosjektleder løpende og skriftlig orientering om prosjektresultater i rimelig tid før hvert styringsgruppemøte.

Styringsgruppen er beslutningsdyktig når minst halvparten av medlemmene er til stede eller deltar i styringsgruppebehandlingen. Styringsgruppens vedtak skal normalt fattes ved enstemmighet blant de medlemmer som er til stede eller deltar i styrebehandlingen. Unntak gjelder for saker som ikke endrer den enkelte konsortiedeltakers rettigheter under konsortieavtalen. Slike vedtak kan fattes med 2/3 flertall.

Prosjektansvarlig er [tilskuddsmottaker og] Innovasjon Norges avtalepartner. Prosjektansvarlig er overfor Innovasjon Norge ansvarlig for at prosjektet gjennomføres i henhold til kontrakt. Konsortiedeltakerne plikter således uten ugrunnet opphold å levere til Prosjektansvarlig alle Prosjektresultater, prosjektrapporter og annet prosjektmateriale som Prosjektansvarlig til enhver tid trenger for å ivareta sitt ansvar overfor Innovasjon Norge som grunnlag for bl.a sluttrapport og delutbetalinger.

Eventuelle endringer og forsinkelser i Prosjektet må Prosjektansvarlig avklare med Innovasjon Norge.

5. Konsortiedeltakernes forpliktelser og ansvar

Hver konsortiedeltaker skal utføre det arbeid og/eller bidra med det finansielle beløp vedkommende har påtatt seg i henhold til Prosjektplanen, jfr vedlegg ……. For å konkretisere den enkelte konsortiedeltakers forpliktelser, skal det utarbeides en årlig arbeidsplan. Den årlige arbeidsplanen skal vedtas av Styringsgruppen og danner utgangspunkt for Prosjektansvarlig rapportering til Innovasjon Norge.

Konsortiedeltakerens utførelse og medvirkning skal skje i overensstemmelse med avtalte tidsfrister. Frister for ferdigstillelse av hele eller deler av kontraktsarbeidet regnes som avtalte når tidsfristene er angitt i kontrakten. Med mindre annet er avtalt eller fremstår som rimelig, kan forsinket medvirkning kunne få slike konsekvenser som følger av alminnelig kontraktsrett, jfr også punkt 10 nedenfor om mislighold. Med Styringsgruppens forhåndsgodkjennelse kan en Konsortiedeltaker overlate deler av de oppgaver vedkommende har ansvar for til egnet underleverandør. Konsortiedeltakeren fritas ikke med dette for vedkommendes forpliktelser under denne kontrakt overfor de øvrige Konsortiedeltakerne.

Dersom en konsortiedeltaker ikke utfører de oppgaver som vedkommende har påtatt seg på en tilfredsstillende måte og/eller innenfor avtalte frister, kan Styringsgruppen beslutte at oppgavene helt eller delvis skal overføres til en annen konsortiedeltaker. Slik overføring fritar ikke den aktuelle konsortiedeltaker for dennes øvrige forpliktelser under denne kontrakt.

Konsortiedeltakernes forplikter seg til å inngå de avtaler med eiere, ansatte, samarbeidspartnere, underleverandører, konsulenter og andre som er nødvendig for å oppfylle vedkommende deltakers forpliktelser etter denne kontrakt, herunder å sikre seg overføring av og ubegrensede rettigheter til kommersiell utnyttelse av Prosjektresultater/immaterielle rettigheter.

Konsortiedeltakerne har selv arbeidsgiveransvar for egne arbeidstakere som deltar i utviklingsprosjektet uavhengig av lokalisering. Konsortiedeltakerne er hver for seg ansvarlige for at eventuelle særskilte avtaler med egne arbeidstakere, konsulenter, underleverandører eller andre ikke på noen måte forhindrer fullstendig gjennomføring av bestemmelsene i denne kontrakt.

Dersom det er særskilte nøkkelmedarbeidere som er utpekt for å være med i Prosjektet, skal Konsortiedeltakerne påse at disse medarbeiderne virkelig deltar i prosjektet i den utstrekning dette er nødvendig og forutsatt. Liste over nøkkelmedarbeidere er inntatt som vedlegg .....til denne kontrakt. Utskiftning av særskilt utpekte nøkkelmedarbeidere kan finne sted om nødvendig og under forutsetning av at det ikke forringer Prosjektets faglige kvalitet, fremdrift eller resultater.

Prosjektleder skal uten ugrunnet opphold varsle Styringsgruppen om endringer i sammensetningen av nøkkelmedarbeidere.

Konsortiedeltakerne er ansvarlig for tap eller skade som oppstår som følge av egne handlinger. Konsortiedeltakerne er ikke ansvarlig for indirekte tap/skade med mindre dette skyldes grov uaktsomhet eller forsett. Konsortiedeltakerne er ikke ansvarlig for forhold utenfor deltakernes kontroll f.eks streik, lockout, brann og andre force majeure forhold.

6. Finansiering

Prosjektet er kostnadsberegnet til totalt kr [ ], ekskl. mva. Finansieringen er basert på kostnadsoverslaget gitt i "Søknaden om tilskudd fra Innovasjon Norge, jfr vedlegg .....til prosjekt: [sett inn navn på prosjektet]

Prosjektet skal finansieres som følger:

Konsortiedeltakernes finansiering

kr .....

Eget arbeid fra Konsortiedeltakerne

kr .....

Egeninnsats fra Konsortiedeltakerne

kr .....

Tilskudd fra Innovasjon Norge

kr .....

Eventuell annen offentlig finansiering

kr _____

Sum finansiering

kr _____

Den nærmere fordeling av finansieringen på de ulike postene hos Konsortiedeltakerne er spesifisert i vedlegg ..... til denne kontrakt. For eget arbeid gjelder at denne godkjennes med en timesats tilsvarende 1 promille av årslønn oppgitt per person eller gruppe av personer, med mindre Innovasjon Norge vedtar en annen sats. Tilskuddet fra Innovasjon Norge er beregnet i hht gjeldende EØS-regelverk for statsstøtte.

Dersom det viser seg at Prosjektet ikke kan gjennomføres innenfor den øvre totalrammen på kr [ ] ekskl. mva som er satt for Prosjektet, må Konsortiedeltakerne i Styringsgruppen bli enige om hvor stor andel av midlene utover totalrammen som skal skaffes til veie av de respektive deltakerne og eventuelle andre bidragsytere. Dersom deltakerne ikke blir enige om en fordeling, påhviler det deltakerne forholdsmessig å fremskaffe (ut fra forholdstallet i finansieringsplanen) det ekstra beløp som trengs for å ferdigstille Utviklingsprosjektet. Prosjektansvarlig skal straks underrette Innovasjon Norge om at totalrammen vil bli overskredet og hvorledes Konsortiedeltakerne har tenkt å tilveiebringe de ekstra beløp. Innovasjon Norge kan, i det aktuelle tilfellet, velge å stille andre krav til Konsortiedeltakerne enn det Konsortiedeltakerne seg i mellom har blitt enige om.

Dersom de støtteberettigede kostnadene i Prosjektets sluttregnskap blir lavere enn Prosjektet er kostnadsberegnet til, vil Innovasjon Norge redusere sitt tilskudd forholdsmessig.

7. Prosjektbakgrunn, prosjektresultater og bruksrettigheter

7.1 Prosjektbakgrunn

Den Prosjektbakgrunn som anses relevant ved inngåelse av konsortieavtalen er spesifisert i vedlegg .....Dersom en konsortiedeltaker ønsker å bidra med prosjektbakgrunn utover det som er spesifisert i vedlegg .... skal deltakeren gjøre dette kjent for Styringsgruppen. Styringsgruppen avgjør om dette vil være relevante bidrag til Prosjektet og om det skal brukes i Prosjektet.

Rettighetene til Prosjektbakgrunn tilhører eksklusivt den Konsortiedeltaker som brakte denne inn i Prosjektet. Hver konsortiedeltaker gir imidlertid de øvrige Konsortiedeltakerne en vederlagsfri, ikke-eksklusiv bruksrett til å benytte Prosjektbakgrunnen utelukkende for det formål å gjennomføre eget arbeid i Prosjektet.

Alle Prosjektresultater skapt før en ny konsortiedeltakers tiltredelse anses som prosjektbakgrunn i forhold til den nye deltakeren.

7.2 Prosjektresultat

Ethvert resultat av Prosjektet som etter dette ikke er prosjektbakgrunn, har automatisk status som prosjektresultat.

Hver Konsortiedeltaker får eiendomsrett til prosjektresultat som er frembrakt av vedkommende deltaker, dennes ansatte eller leverandører.

Når flere har frembrakt et resultat i fellesskap skal eierskapet til prosjektresultatet reguleres etter følgende prinsipper, med mindre Innovasjon Norge har satt andre vilkår for prosjektresultatene :

Eierskapet til et prosjektresultat tilfaller den konsortiedeltaker som er innehaver av immaterielle rettigheter som utnyttelsen av prosjektresultatene er avhengig av.

- Dersom utnyttelsen ikke er avhengig av noen av konsortiedeltakernes immaterielle rettigheter, eller dersom utnyttelsen er avhengig av immaterielle rettigheter som tilkommer to eller flere konsortiedeltakere, tilfaller eierskapet den konsortiedeltaker hvis forretningsmessige interesseområde omfatter utnyttelsen av prosjektresultatet.
- Dersom prosjektresultatet omfattes av to eller flere konsortiedeltakeres forretningsmessige interesseområde, tilfaller eierskapet den konsortiedeltaker som selv, eller ved sine ansatte eller leverandører, har ytt det største bidraget til prosjektresultatet.
- Dersom eierskapet ikke kan avgjøres etter en av de foregående regler, tilfaller eierskapet de konsortiedeltakere som har bidratt til prosjektresultatet i fellesskap. Partene må i så fall inngå en avtale vedrørende utøvelsen av felles eierskap.

Konsortiedeltakerne har rett til fri utnyttelse av Prosjektresultater som er nødvendige for gjennomføringen av eget arbeid i Prosjektet. Ved kommersiell utnyttelse, forutsettes at det inngås egen lisensavtale mellom de aktuelle konsortiedeltakerne som nærmere regulerer om lisensrettighetene skal være eksklusive eller ikke-eksklusive, begrenset i tid og/eller geografisk område, retten til bearbeiding, videreutvikling og endring, rett til videreoverdragelse, vederlagsfri lisensrett eller betaling av eventuell royalty m.m. Innovasjon Norge kan stille krav om å godkjenne lisensavtaler eller stille andre vilkår om bruksrettigheter og utnyttelse av Prosjektresultater før utbetaling av tilskudd.

Bruksrettigheter til og fra tidligere konsortiedeltakere

Bruksrettigheter for kommersiell bruk av resultatene for konsortiedeltakerne oppnås ikke uten videre, men ved inngåelse av lisensavtale med den/de øvrige berørte konsortiedeltakerne. Bruksrettigheter gir rett til å utnytte resultatene innenfor Prosjektet, til forskning og kommersiell utnyttelse, med mindre annet fremgår av den enkelte lisensavtale.

Bruksrettigheter som nevnt ovenfor til en misligholdende konsortiedeltaker opphører straks den misligholdende deltaker mottar styrets formelle oppsigelse av deltakelse i konsortiet.

En konsortiedeltaker som frivillig forlater konsortiet, skal beholde bruksrettigheter til prosjektresultater utviklet frem til oppsigelsesdatoen.

Alle parter som forlater konsortiet skal fortsette å avgi bruksrettigheter i henhold til konsortieavtalen, som om vedkommende hadde fortsatt å være deltaker i hele prosjektets varighet.

8. Ferdigstillelse, rapportering og endringer

Med mindre annet avtales og godkjennes av Innovasjon Norge, skal Prosjektet avsluttes formelt innen den _____ gjennom ferdigstillelse og oversendelse av sluttrapport til Innovasjon Norge.

Hver konsortiedeltaker kan for Styringsgruppen foreslå at Prosjektets mål, milepæls- og fremdriftsplan, omfang og retningslinjer endres dersom fremkomne resultater, den tekniske utvikling, kostnadskalkyler eller andre forhold endrer forutsetningene for Prosjektet. Vesentlige endringer skal føre til at grunnlaget for beregning av varighet, bemanning og samlet pris for Prosjektet tas opp til forhandling i eksisterende kontrakt, eller skal resultere i en ny kontrakt. Eventuelle endringer må også godkjennes av Innovasjon Norge selv om finansieringsplanen ikke overskrides. Prosjektansvarlig er forpliktet til straks å varsle Innovasjon Norge om endringer.

Prosjektansvarlig skal sørge for at det utarbeides delrapporter og sluttrapport for Prosjektet som oversendes Innovasjon Norge etter godkjennelse i Styringsgruppen. Innovasjon Norge kan også kreve annen dokumentasjon fremlagt i den grad dette anses nødvendig for kontroll.

Konsortiedeltakerne er forpliktet til å levere til Prosjektansvarlig den informasjon som er nødvendig for utarbeidelse av delrapporter, sluttrapport og eventuell annen dokumentasjon Innovasjon Norge krever. Delrapportene og sluttrapporten skal beskrive resultater som er oppnådd på bakgrunn av søknad og tilhørende oppdragsspesifikasjon og ha et detaljeringsnivå som er avtalt i vedleggene til denne kontrakt.

9. Utnyttelse og offentliggjøring av prosjektresultater

Prosjektresultater som kan utnyttes kommersielt, skal utnyttes innen rimelig tid. Dersom rettighetshaver(e) til prosjektresultatene ikke selv ønsker å utnytte resultatene kommersielt skal vedkommende gi de andre konsortiedeltakerne rett til å forhandle om kommersiell utnyttelse.

Med mindre annet blir bestemt av Innovasjon Norge, skal prosjektresultatene i utgangspunktet kunne publiseres eller gjøres offentlig kjent. Den Konsortiedeltaker som ønsker å publisere eller offentliggjøre prosjektresultater, skal skriftlig gjennom Prosjektleder varsle Styringsgruppen om dette minst 30 dager før planlagt publisering eller offentliggjøring. Styringsgruppen kan,

etter begjæring fra den Konsortiedeltaker som eier Prosjektresultatene og Prosjektbakgrunnen, med 2/3 flertall beslutte at publisering eller offentliggjøring skal utsettes i den grad dette er nødvendig for å sikre den kommersielle utnyttelsen av prosjektbakgrunn og prosjektresultater.

10. Mislighold, eksklusjon, fratreden og opphør

Det foreligger mislighold dersom kontraktsarbeidet ikke er utført i tide eller er i den stand det skal være etter kontrakten.

Den konsortiedeltaker som vil påberope seg at kontrakten er misligholdt, må reklamere skriftlig umiddelbart/innen rimelig tid *[stryk det som ikke velges]* til Styringsgruppen etter at vedkommende fikk eller burde ha fått kjennskap til misligholdet. Den/de ansvarlige konsortiedeltaker skal rette misligholdet uten ugrunnet opphold. De øvrige konsortiedeltakerne må medvirke til utbedring i den grad det er nødvendig og rimelig. En konsortiedeltaker er ikke under noen omstendighet forpliktet til å foreta utbedring som ikke kan skje uten vesentlige problemer og/eller uten urimelig høye kostnader.

Styringsgruppen har rett til med 2/3 flertall å ekskludere en konsortiedeltaker som vesentlig misligholder sine kontraktsforpliktelser, eller det er klart at vesentlig mislighold vil inntre og forholdet ikke er blitt rettet opp innen en rimelig frist fastsatt av Styringsgruppen og skriftlig varsel som spesifiserer misligholdet og hvilke tiltak som må iverksettes er sendt Konsortiedeltakeren av Styringsgruppen. En frist på 30 dager regnet fra mottagelsen av varselet skal normalt anses som rimelig.

Som vesentlig mislighold regnes blant annet:

1. Konsortiedeltakeren åpner gjeldsforhandling, akkord, går konkurs eller tas under likvidasjon.
2. Mangelfull aktivitet over lengre tid fra Konsortiedeltakeren [bør spesifiseres nærmere og knyttes opp mot fremdriftsplanen].
3. Mangelfull betaling etter gjentatte purringer [bør spesifiseres].

Innovasjon Norge skal av Styringsgruppen straks varsels om ekskludering av konsortiedeltakere og hvorledes de oppgaver konsortiedeltakeren skal utføre og/eller konsortiedeltakerens finansielle bidrag skal løses. Innovasjon Norge kan stille krav til de gjenværende konsortiedeltakerne i forbindelse med slik eksklusjon, herunder kreve hele eller deler av utbetalt tilskuddsbeløp tilbake.

Dersom en Konsortiedeltaker ekskluderes eller fratrer frivillig overføres samtlige Prosjektresultater og der tilhørende immaterielle rettigheter som er skapt av Konsortiedeltakeren frem til tidspunktet for eksklusjon/frivillig fratreden, automatisk og vederlagsfritt til konsortiet. Styringsgruppen beslutter hvordan slike Prosjektresultater skal benyttes videre i Prosjektet.

Dersom Prosjektet ikke oppfylles som avtalt innen Prosjektperiodens utløp, står hver av Konsortiedeltakerne fritt til å utnytte sine egne Prosjektresultater, og kan herunder for egen regning inngå avtale med tredjepart om videre utvikling på grunnlag av egne Prosjektresultater, sikre Immaterielle Rettigheter til egne Prosjektresultater ved patentering eller liknende, eller Kommersielt Utnytte egne Prosjektresultater. Konsortiedeltakernes begrensede bruksrett til Prosjektbakgrunn opphører automatisk ved opphør etter dette avsnitt.

11. Konfidensialitet, lojalitet og karens

Med unntak av den informasjon som må/skal gis til Innovasjon Norge for å få utbetalt Innovasjon Norges tilskudd eller for øvrig etterkomme vilkår fra Innovasjon Norge, forplikter Konsortiedeltakerne seg til å bevare taushet om alle forhold omkring Prosjektet og om hverandres forretningsforhold såfremt ikke slike forhold er offentlig kjent/tilgjengelig, med mindre annet avtales skriftlig. Konsortiedeltakerne forplikter seg videre til å oppbevare alt materiell tilhørende den andre på en forsvarlig måte og returnere alt mottatt materiell etter Prosjektets avslutning.

Konsortiedeltakerne skal holde hverandre orientert om hvilke rutiner og øvrige forholdsregler som praktiseres for å sikre at fortrolig informasjon ikke blir tilgjengelig for tredjemann. Styringsgruppen er berettiget til å kontrollere om Konsortiedeltakerens opplysninger om sikkerhetstiltak er korrekte.

De samme krav som konsortiedeltakerne her stiller til hverandre, skal de også stille til de eventuelle tredjemenn som de av ulike grunner har behov for å samarbeide med i tilknytning til gjennomføringen av denne kontrakt.

Taushetsplikten gjelder også etter avslutning av Prosjektet.

Konsortiedeltakerne skal for øvrig opptre lojalt mot hverandre og ikke gjøre noe som kan skade eller ha negativ virkning for øvrige konsortiedeltakere – verken under eller etter avslutning av Prosjektet.

Konsortiedeltakerne skal ikke uten skriftlig samtykke fra Styringsgruppen og Innovasjon Norge ta oppdrag for konkurrerende bedrifter innenfor Utviklingsprosjektets formål så lenge kontrakten løper. Styringsgruppen og Innovasjon Norge skal ikke kunne nekte samtykke uten saklig grunn.

12. Tvister

Dersom det oppstår tvist om tolkningen eller rettsvirkningen av denne kontrakt, skal saken først søkes løst ved forhandlinger eller frivillig mekling. Dersom det ikke lykkes Konsortiedeltakerne å komme til enighet innen to måneder etter at forhandlinger er begjært, kan tvisten bringes inn for .....tingrett, med mindre Konsortiedeltakerne i stedet ønsker voldgift.

13. Signatur

Kontrakten er undertegnet i .....eksemplarer. Hver av Konsortiedeltakerne beholder ett eksemplar, og en kopi sendes Innovasjon Norge til orientering.

Sted, dato

....

....

www.blankeark.no | 11/2010 | forsidefoto: Erik Jørgensen/Innovation Norway

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