

Using Contract Law to Reopen Academic Science

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This Article examines the interaction between patent law, contract law, and academic science. Emerging literature suggests that academic science is at an all-time high but that barriers remain in place preventing the full realization of the increased innovation. This Article will address two specific barriers negatively affecting academic science: the deterioration of the sharing ethos among academic institutions, teaching hospitals, and research laboratories, and the increase in complexity and volume of material transfer agreements (MTAs). My thesis is that these are interrelated: as the sharing ethos decreases, the need for complex and formal MTAs increases. And, conversely, if MTAs become less demanding, then the former culture of "open science" in academic science will have the space to reemerge. Accordingly, this Article seeks to reinvigorate shared innovative activity in academic science. It does so by deconstructing the current MTA process to better understand the sticky and non-collaborative terms, both in academic-to-academic transfer and academic-to-industry or industry-to-academic transfer. Through careful analysis of different risk levels of transfers depending on the material and parties involved in the transfer, and then a proposed corresponding standardized clause for the parties to utilize to minimize such risk, a more streamlined and collaborative transfer space is built. This common "sandbox" that focuses on upstream research for one-shot deals is then ready to be implemented. It will allow parties to quickly and efficiently transfer research tools, materials, and data with the aim towards moving back to open, academic science.

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