

Based on the new University Law from 2009 two privately governed Universities that are Foundations by their legal status were created. They are the Aalto University and the Tampere University of Technology. In the media, private foundation as a form of organization of a University has been praised claiming that it enables new flexible forms of running things. At the same time media has missed that according to the 12a§ of the law on Foundations: "A member of a body of the foundation, as well as an officer and auditor of the foundation shall be liable to compensate all damage caused to the foundation either willfully or through negligence."

This implies that members of the board and officers who sign bad contracts for the Foundation may have to cover damages to the University to the full value of their personal property.

What comes to the responsibility for liability a Foundation differs significantly for example from a Limited Company where the liability is always capped to the value of the own capital of the company. If the decision makers in a limited company are not acting as guarantors of loans to the company, even in the case of a bankruptcy, all they loose is their jobs.

In Finland almost all University research is done using competitive external funding. For example in technical research about 10% of the external funding comes from the Academy of Finland and is exempt from risks that may hit the personal property of the members of the board or the officers of the Foundation. A more significant portion of technical research is funded by TEKES and EU. Both strategic research, aiming at usage is products in 10 years time and applied research are executed in a jungle of consortia, liability and IPR agreements and contracts. Often industrial partners demand unlimited liability of partners for example for keeping confidential information in secret.

Sometimes technical or consumer research requires publishing a mobile application that is used for crowds sourcing or for collecting consumer data. Such applications have to be published on official sites for all widely used mobile device operating systems. All the sites require that the publisher accepts unlimited liability for the application. From the research point of view, a mobile application is like a measurement device that can not be used by a researcher in a Foundation university.

An officer of a Foundation can try to cover his or her liability by taking an insurance. If the insurance is to cover unlimited liability, it may be difficult to find a company willing to give the insurance and at least handling such an insurance is a significant legal hazzle. Finally, no insurance can overwrite the liability clause in the Foundation law.

Due to the liability clause in the Foundation law, the only sensible contract policy of a Foundation is that no contracts with unlimited liability shall be accepted. As a result, a Foundation University can not for example publish mobile applications

nor can it participate for example in strategic research towards the next generation mobile communication system led by an international alliance.

Generalizing, a Foundation University is in danger of becoming a small scale shop in an ivory tower focusing on basic research and having little if anything to do with research that aims at useful innovations. In my opinion the situation is intolerable in the long run.

How to solve the problem? We can imagine both point solutions and generic ones. An example of a point solution would be a software publishing company possibly in partnership with some non-profit actors. Because a university does not have a need to publish a lot of software, the solution would likely be rather expensive. Another point solution is to encourage students to create their own companies that would take care of liability entangled activity. None of these solutions helps with strategic nor with applied research that is typically done in partnership with big companies.

A generic solution would be to outsource all or at least all liability entangled research into a limited company owned by the Foundation. For example in Aalto this would imply that 70...100% of research and thus the consequent share of personnel would be moved to "Aalto Research Corporation Ltd". A difficulty is that both TEKES and EU may treat this company as any other limited company and thus apply lower levels of funding to projects than what a university is entitled to. Also the question of the status of VTT arises making the issue difficult on a political level.

Even this limited discussion shows that there is a deep casting flaw in the University law and the significant corrective action is needed. In the worst case changes in the law are needed. It is also worthwhile to develop point solutions to some aspects of the problem within the existing legal structure. In any case, it is clear that the problem will not go away by denying its existence.