

Intellectual property



Zagreb
May 16, 2013



Intellectual Property Rights:

- ✓ Terminology
- ✓ Why?
- ✓ For whom?
- √ How?
- √ Hints for Horizon 2020



Terminology

Pre-existing know-how (FP6) **background**

Knowledge (FP6)



foreground



Terminology

Background (Art. II 1.4 GA) - information and attached rights

- held by participants prior to their accession to the Grant Agreement
- needed for carrying out the project or for using the foreground
- may be defined by the participants

Application for protection must be filed before accession to the Grant Agreement!

Ownership is not affected by participation in an FP7 project!



Terminology

Foreground (Art. II 1.7 GA)

- the results, including information, materials and knowledge generated in a given project, whether or not they can be protected
 - Tangible (e.g. prototypes, micro-organisms, etc)
 - Intangible (IPR) results of the project

Belongs to the participant(s) generating the result!



Protection, use, dissemination and publication

- Valuable foreground of industrial or commercial application should be protected, although it is not mandatory
- If the consortium leaves the foreground unprotected, the Commission (JRC) may take ownership
- Ownership of foreground may be <u>transferred from one to</u> <u>another partner or to a third party</u> (or to the Commission)
- Commission may exercise their right of objection to the planned transfer of rights



Protection, use, dissemination and publication

- Foreground should be used by the owner(s) in further research or product, process and service related activities
- Foreground must be disseminated (but not before protection has been granted if it is an issue)
- Notice of dissemination (including publication) must be given to other partners, unless agreed otherwise
- Community financial assistance must be clearly indicated on publications and <u>patent applications</u>



Access rights

- Access rights = licences and user rights to foreground or background owned by another participant in the project
- Access rights are never automatically granted
- Access rights must be requested in writing
- Access right must be granted to another partner only if it is needed to carry out the project activities
- The owner may exclude some specific elements of the background or impose some conditions in the access agreement
- > Sublicensing must be agreed separately



Conditions for access rights

Royalty-free – no money or other compensation is requested.

Access rights to foreground for implementing the project must be granted royalty free

- Fair and reasonable conditions for compensation—
 - financial (lump sum of royalty-percentage on sales, net income, turnover etc)

or

 non-financial (access to other partner's technology or know-how, agreement for further cooperation)



Issues to bear in mind

- National rules and regulations
- Institutional rules and regulations
- Possibility of third party's rights
- Proof of ownership (both background and foreground)
- Time limits and deadlines
- (Written) agreements
- Interests of a partner/person
- Competitiveness
- Relations with publishers
- Post-contract phase



Eligible costs

- Patent search during the project (but not before signing the Grant Agreement)
- IPR protection, dissemination and management
- Licencing royalties paid to a third party (not a project partner)
- Royalties paid for access rights granted by other partners (in exceptional cases)

Summary of notification requirements and the possibilities to reject

	Notifications to	Objections by	Notifications to	Objections by
l -	the Com	mission	other par	rticipants
Dissemination of foreground (incl. publications)	(except where foregroun or commercial application	lo id is capable of industrial on and is not protected – irticle II.28.3 of GA)		es Article II.30.3 of GA)
Transfer of ownership of foreground	No (except for transfers or exclusive licences if a special clause is inserted in GA but this may exclude transfers or licences intended by	No in most cases Yes, for transfers to third parties in "non- associated" third countries (Article 43 RfP / Article II.27.4 of GA) but this may exclude transfers or licences intended by beneficiaries not receiving EU funding if a special clause to this effect is inserted	Yes – prior notice (except in case of : - "authorised" transfers to a specifically identified third party under Article 42.3 RfP / Article II.27.2 of GA, or - overriding confidentiality obligations such as in M&A (Article 42.3 RfP / Article II.27.2 of GA))	Yes, if the access rights of other participants are affected (Article 42.4 RfP)
Granting of licences to third parties	beneficiaries not receiving EU funding – Article 42.5 RfP – but remember Article 18.6 RfP ⁵³ -)	No in most cases Yes, for granting exclusive licences to third parties in "non- associated" third countries (Article 43 RfP / Article II.32.8 of GA) but this may	No (except where access rights are affected (Article 48.5 RfP / Article II.32.3 of GA) or under the default ioint	No

Summary of the access rights



	Projects	Access rights to background	Access rights to foreground			
	_	Yes, if a participant needs them for carrying out its own work under the project (Article 49.1-2 RfP; Article II.33.1-2 of GA)				
For implementing	General	Royalty-free, unless otherwise agreed before acceding to the grant agreement (Article 49.2 RfP; Article II.33.2 of GA)	Royalty-free (Article 49.1 RfP ; Article II.33.1 of GA)			
the project	FRAs	Royalty-free (Article 51.1 RfP)				
	ABSGs	Access to the background of RTD Performers is always royalty-free (Article 49.2 RfP, last sentence)				
	General	Yes, if a participant needs them for using its own foreground (Article 50.1-2 RfP; Article II.34.1-2 of GA)				
	General	Either royalty-free, or on fair and reasonable conditions to be agreed (Article 50.1-2 RfP; Article II.34.1-2 of GA)				
For use purposes (exploitation + further research)	FRAs	For further R&D : royalty-free For other use purposes (exploitation) : Royalty-free, unless otherwise agreed in the grant agreement (Article 51.1 RfP)				
	ABSGs	RTD Performers shall grant access on a royalty-free basis, or on fair and reasonable conditions to be agreed prior to signing of the grant agreement (Article 50.6 RfP)	ARs may be granted to RTD Performers on fair and reasonable conditions for further R&D purposes (see Article 50.5 RfP)			



Type of deliverable and levels of dissemination and access

Deliverables:

R = Report,

P = Prototype,

D = **Demonstrator**,

O = Other

Dissemination level

PU = Public

PP = Restricted to other program participants (including the Commission Services)

RE = Restricted to a group specified by the consortium (including the Commission Services)

CO = Confidential, only for members of the consortium (including the Commission Services)



Restreint UE = EU Restricted:

Classified with the classification level "Restreint UE" according to Commission Decision 2001/844 and amendments

Confidential UE = EU Confidential

Classified with the mention of the classification level "Confidentiel UE" according to Commission Decision 2001/844 and amendments

Secret UE = EU Secret

Classified with the mention of the classification level "Secret UE" according to Commission Decision 2001/844 and amendments

WT3: Work package description

Person-Months per Participant

Participant number 10	Participant short name ¹¹	Person-months per participant
11	ETAG	4.00
12	FCT	3.00
13	UNEW	1.00
15	ARC FUND	2.50
16	HIT	1.00
	Total	51.60

List of deliverab				

Delive- rable Number	Deliverable Title	Lead benefi- ciary number	Estimated indicative personmonths	Nature	Dissemi- nation level ⁶³	Delivery date ⁶⁴
D4.1	D4.1a Report on recommendation activities on CORDIS PS	1	10.00	R	со	15
D4.2	D4.1b Report on recommendation activities on CORDIS PS	1	9.05	R	со	30
D4.3	D4.2a Report on Brokerage Events	6	4.94	R	PP	7
D4.4	D4.2b Report on Brokerage Events	6	4.94	R	PU	15
D4.5	D4.2c Report on Brokerage Events	6	4.94	R	PU	22
D4.6	D4.2d Report on Brokerage Events	6	4.93	R	PP	30
D4.7	D4.3a Report on ETNA Plus partnering measures' effectiveness	8	6.40	R	PP	15
D4.8	D4.3b Report on ETNA Plus partnering measures' effectiveness	8	6.40	R	PP	30
		Total	51.60		V	

Description of deliverables

- D4.1) D4.1a Report on recommendation activities on CORDIS PS: [month 15]
- D4.2) D4.1b Report on recommendation activities on CORDIS PS: [month 30]
- D4.3) D4.2a Report on Brokerage Events: [month 7]
- D4.4) D4.2b Report on Brokerage Events: [month 15]
- D4.5) D4.2c Report on Brokerage Events: [month 22]
- D4.6) D4.2d Report on Brokerage Events: [month 30]
- D4.7) D4.3a Report on ETNA Plus partnering measures' effectiveness: [month 15]
- D4.8) D4.3b Report on ETNA Plus partnering measures' effectiveness: [month 30]



ENV-NCP-TOGETHER

CONSORTIUM AGREEMENT

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Version 6, 24/1/2011

SEVENTH FRAMEWORK PROGRAMME

GRANT AGREEMENT No

PROJECT TITLE [ACRONYM]

(indicate FUNDING SCHEME)

The [European Union ("the Union")], [European Atomic Energy Comprepresented by the European Commission (the "Commission"),

of the one part,

and (name of the coordinator and legal form) (national registration number (full address city/state/province/country), represented by (name of legal repr [and/or (name of legal representative), (function)], or her/his/their authoris beneficiary acting as coordinator of the consortium (the "coordinator")¹, ("beneficiary acting as coordinator")

of the other part

HAVE AGREED to the following terms and conditions including those in t which form an integral part of this grant agreement (the "grant agreement").

Annex I	- Description of Work [Joint Programme of Activities Excellence)]
Annex II	- General conditions (Ref to English version OJ)
Annex III	 [Specific provisions related to [this funding scheme or in (Reference to English version of OJ)][Non applicable
[Annex IV	- Form A - Accession of beneficiaries to the grant agr
22 22	(Reference to English version of OJ)]
[Annex V	 Form B - Request for accession of a new beneficiary t as published in (Reference to English version of OJ)]
[Annex VI	 Form C - Financial statement per funding sch (Reference to English version of OJ)]
[Annex VII	 Form D - Terms of reference for the certificate on the and Form E - Terms of reference for the certificate of published in (Reference to English version of OJ)

Article 1 - Accession to the grant agreement of the other beneficiaries

- The coordinator shall endeavour to ensure that each legal entity ident
 this grant agreement as a beneficiary, assuming the rights and obligations es
 agreement with effect from the date on which the grant agreement enters into t
 A in three originals, countersigned by the coordinator.
 - (full name and legal form of the beneficiary) (national registra established in (full address city/state/province/country), represented representative) (function), [and/or (name of legal representative), (func authorised representative ("beneficiary no. 2"),
 - (full name and legal form of the beneficiary) (national registra established in (full address city/state/province/country), represented

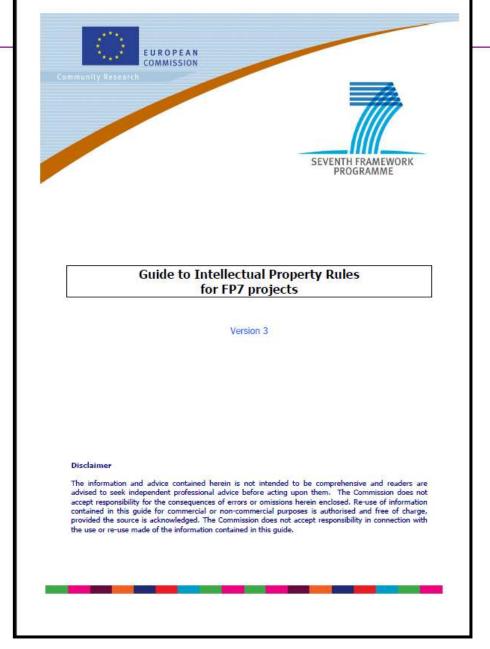
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¹ NOTE: For Research actions for the benefit of specific groups (including Cooperative resear the nature of the participant must be identified in the grant agreement: RTD Performer/SME/Em

TEMPLATE B1: LIST OF APPLICATIONS FOR PATENTS, TRADEMARKS, REGISTERED DESIGNS, ETC.							
Type of IP Rights ⁷ :	Confidential Click on YES/NO	Foreseen embargo date dd/mm/yyyy	Application reference(s) (e.g. EP123456)	Subject or title of application	Applicant (s) (as on the application)		





ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr_en.pdf















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- New fact sheet on "Confidential business information"
- From ideas to growth: Helping SMEs get value from their intellectual property
- New fact sheet on "How to search for trademarks"
- 'Guide to R&D in China for European SMEs'
- New fact sheet on "IP issues in brokerage events"
- New guide for SMEs on the management of Intellectual Property in FP7



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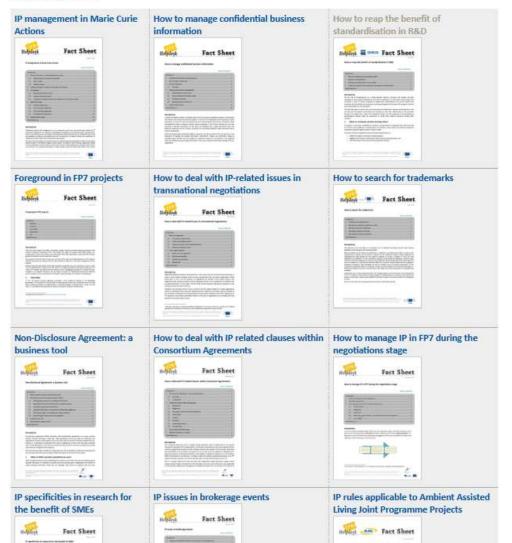




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fact sheets





The Commission proposal for

HORIZON 2020

on IPR, exploitation and dissemination



DISSEMINATION

- General rule: each participant must disseminate its results as soon as possible, subject to restrictions due to the protection of results, security rules or legitimate commercial interests.
- Additional dissemination obligations: more specific dissemination obligations may be laid down in the grant agreement.
- Open access:
 - mandatory open access to research publications;
 - > opening to experiment with open access to other results in appropriate areas.
- Prior notice: before dissemination, a participant must notify the other participants who may object if their legitimate interests would suffer significant harm.
- EU support: any dissemination (also patent applications, standards) must indicate EU support (for visibility and traceability reasons).



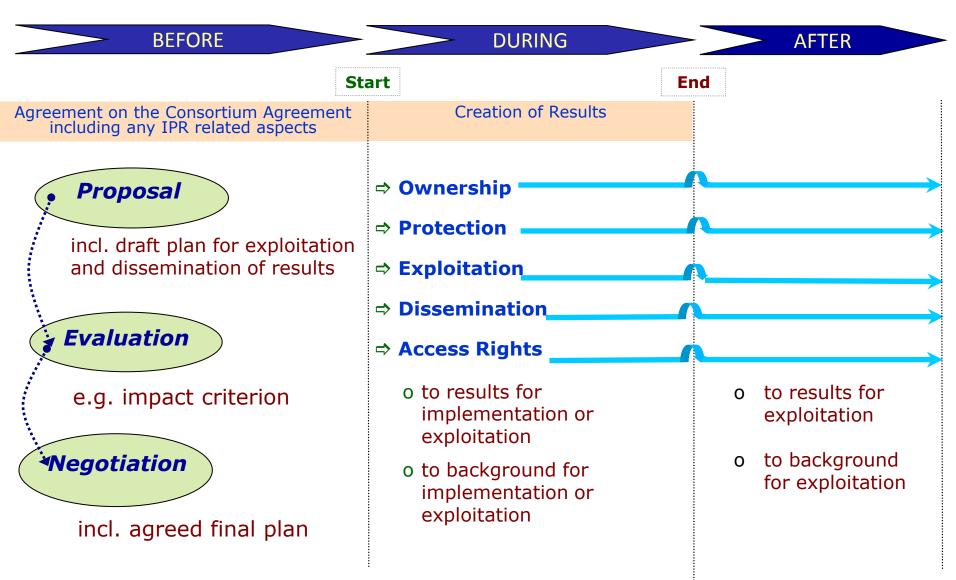
ACCESS RIGHTS

Within a project	a participant must grant access to its background	a participant must grant access to its results		
if needed by another participant to carry out own work	Royalty-free unless otherwise agreed by participants before accession to the grant agreement	Royalty-free		
if needed by another participant to exploit own results [*]	Fair and reasona (to be agreed by participants			

[*] Unless otherwise agreed in consortium agreement, an affiliate entity established in a MS or AC has access rights if needed to exploit results generated by the participant to which it is affiliated.

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PROJECT CYCLE





SPECIFIC CASES AND NEW FORMS OF FUNDING

* Tailor-made provisions may be laid down in grant agreement regarding security-related activities, ERC frontier research, training and mobility actions, CSAs, KICs, etc.

Flexible provisions for:

- pre-commercial procurement: a contractor will own at least the generated IPR and contracting authorities will enjoy at least royalty-free access rights and the right to grant non-exclusive licences to third parties under fair and reasonable conditions.
- procurement of innovative solutions: specific provisions may be laid down in grant agreement, if needed to ensure maximum uptake of the results and to avoid any unfair advantage.
- prizes: award may be subject to dissemination or exploitation conditions.



Practical exercise – group work

- 1. Think about a possible project idea in your field
- 2. Please fill in at least two examples of exploitable foreground
- 3. Present the result to the other groups