



IPR Workshop

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DG Research

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Objectives

- to facilitate the **implementation** of the project and the **use** of its results
- to provide a minimum **self-sustainable** framework while allowing participants **flexibility** to determine additional rules specific for their cooperation
- to ensure **continuity** with the FP6 IPR provisions but **simplifying** and improving these where appropriate
- to ensure **uniformity** between (mainstream) indirect actions



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Basic concepts

Foreground = all results of the project (incl. inventions, software, databases, cell lines, ...) and attached rights

Background = information and attached rights

- which is held by participants prior to their accession to the grant agreement (no sideground)
- which is needed for carrying out the project or for using its results
- which may be defined by the participants (positively or negatively or in any other manner)

Access Rights = licences and user rights



Ownership

Ownership: each participant owns the foreground it generates

Joint ownership:

- 1) when foreground is generated jointly and it is impossible to determine the respective share of the work, in which case:
 - the joint owners must reach an agreement
 - however, in absence of a specific agreement, a default regime applies: “*any joint owner is entitled to grant non-exclusive licenses to third parties, without any right to sub-licence, subject to prior notification and fair and reasonable compensation to the other owner(s)”*”
- 2) in actions for the benefit of specific groups (e.g. SMEs, CSOs) unless otherwise agreed
- 3) when agreed by two or more participants



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Transfer of ownership

Transfer: Obligations regarding foreground must be passed on (esp. regarding the granting of access rights)

Notifications/objections: Prior notification of transfer in principle only to the other participants who may:

- object if it would adversely affect their access rights
- waive their rights to be notified in advance regarding specific third parties (e.g. mother companies)

The Commission may object to transfers to third parties established in non-associated third countries for ethical, competitiveness or security reasons (where appropriate, a requirement to notify the Commission will apply)



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Protection, use and dissemination

- Foreground capable of industrial or commercial application **must be protected** (taking into account legitimate interests)
- Foreground **must be used** (= in further research or commercially) **and disseminated** (= disclosure by appropriate means, including publications)
- **Prior notice of dissemination** must be given to other participants (not to the Commission, unless no protection, in which case the latter may request to protect on its own behalf)
- Any dissemination (publications, ...) and patent applications must indicate the Community financial assistance



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Access rights (1)

- Under certain conditions, a participant in a project **must grant** the other participants access rights to its foreground or background if this is needed for implementation of use
- However, participants **may define the background needed** in any manner, and may **exclude** specific background (not necessarily prior to signature of EC grant agreement)
- Unless agreed by the owner, access rights do **not include right to sub-license**



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Access rights (2)

	Access rights to background	Access rights to foreground
Needed for carrying out the project	Royalty-free unless otherwise agreed before accession to the grant agreement	Royalty-free
Needed for use of own foreground [*]	<u>Fair and reasonable conditions or royalty-free (to be agreed at any time)</u>	

[*] Unless otherwise foreseen, an affiliate entity established in a Member State or Associated country will also enjoy such access rights under the same conditions



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Access rights (3)

- Request for access rights (use): within **one year** of termination (or **another period** to be agreed)
- **Exclusive licences** to background and foreground possible if other participants waive their access rights
- The Commission may **object** to exclusive licences being granted to third parties established in non-associated third countries for ethical, competitiveness or security reasons (where appropriate, a requirement to notify the Commission will apply)
- Participants may agree to **additional or more favourable** access rights than those provided for in the grant agreement (e.g. in the consortium agreement)



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Other IPR issues

- IPR related evaluation criteria: “potential impact through the development, dissemination and use of project results” (Cooperation and Capacities)
- Participants must submit a plan for the use and dissemination of foreground (“PUDF”) forming part of Annex I
- Final report must include the final PUDF including:
 - Section A (publishable) → list of dissemination activities and IPR applications
 - Section B (confidential) → exploitation of foreground
- Audit or review relating to foreground and PUDF possible
- Eligibility of IPR related costs (e.g. dissemination, patenting) = up to 100%



Specific IPR rules

Research for the benefit of specific groups

- Main provisions in rules for participation: Joint ownership by members of specific group, unless otherwise agreed. If not owner, members must be provided with all the rights required for using and disseminating foreground. AR to background of an RTD performer for implementation royalty-free and AR needed for use royalty-free or on fair and reasonable conditions prior to signing GA.
- **SMEs/SME Associations** (Annex III) = **Transaction** (Section 2 of Annex I on ownership, access rights and remuneration of the RTD performer)
- **CSOs** (Annex III) = Foreground jointly owned by CSOs, unless otherwise agreed (consortium agreement must include arrangements regarding ownership, use and dissemination)



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Specific IPR rules (2)

- FP7 Euratom indirect actions
- Frontier research (ERC) – single/multi
- Marie Curie actions (People)
- Special clauses in specific fields (e.g. security, space and environment)
- Joint Technology Initiatives (JTIs - 171) / 169 initiatives



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Assistance

Further questions on IPR ?

- **Written guidance** (FP7 IPR Guide and Consortium agreement checklist)
- **IPR Helpdesk** = project funded by the Commission to provide free advice regarding IPR (<http://www.ipr-helpdesk.org>) + **FP7 Helpdesk** (<http://ec.europa.eu/research/enquiries>)