



INTELLECTUAL PROPERTY RIGHTS (IPR) IN FP7

**FP7 ICT Coordinators' Day on
Project Management and
Reporting**

12.03.2014

Disclaimer: legally not binding

Basic Concepts – Article II.1

- **Foreground:** all results generated under the project (incl. information) - protectable or not - and attached rights (copyright, design, patents,...)
- **Background:** information and attached rights
 - Which is held by participants prior to their accession to the grant agreement
 - Which is needed for carrying out the project or for using its results
 - It may be defined by the participants
- **Access Rights:** licences and user rights

Ownership – Article II.26

- **Ownership of Foreground** resides with the beneficiary carrying out the work generating that Foreground
- **Joint ownership** if generated by several beneficiaries and not possible to ascertain the share of the work:
 - Terms and conditions to be defined in separate agreements
 - If no joint agreement is reached the « default regime » applies:
 - Each joint owner may grant non-exclusive licences to third parties with payment of a fair and reasonable compensation to the other joint owners + at least 45 days prior notice
- **Employees' and subcontractors' rights** have to be compatible with GA obligations

Protection – Article II.28 (1)

- Where Foreground capable of industrial or commercial application, owner **must provide adequate and effective protection**

Subject matter	Patent	Utility Model	Industrial Design	Copyright	Trade Mark	Confidential Information
Invention	X	X				X
Software	X	X		X		
Scientific article				X		
Design of a technology			X	X	X	
Name of a technology					X	
Know-how	X	X				X
Website			X	X	X	X

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Protection – Article II.28 (2)

- **If owner does not protect**
 - The Foreground may be transferred to another beneficiary or to a third party in MS/AC
 - If no protection undertaken by one of these entities, obligation to inform the Commission before dissemination
 - The European Union may assume ownership
- **Patent applications**
 - Must indicate the European Union financial assistance
 - Must be reported in the plan for the use and dissemination of Foreground

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Use – Article II.29

- Foreground **must be used**
 - In further research (other than the one covered by the project) or commercially (developing, creating and/or marketing a product or process / creating and providing a service)
 - Directly or indirectly ("ensure that it is used")
- Expected use must be **reported in the plan for the use and dissemination** of Foreground
 - Enough information to permit the Commission to carry out any related audit

Dissemination – Article II.30 (1)

- Foreground **must be disseminated** (disclosure by appropriate means, including publications)
 - If beneficiaries fail, the Commission may disseminate
 - Compatible with IPR protection, confidentiality and legitimate interests
- **Prior notice** of any dissemination activity at least 45 days to other beneficiaries
 - Possible objection within 30 days if legitimate interests could be affected
 - The Commission will be informed only when Foreground has not been formally protected

Dissemination – Article II.30 (2)

- Any dissemination must **indicate the Union financial assistance**
- Must be **reported in the plan for the use and dissemination** of Foreground
 - With sufficient details/references to permit the Commission to trace the activity
 - For scientific publications
 - Also an abstract of the publication at least 2 months following publication and an electronic copy of the published version
- The **Commission is authorised to publish**
 - List of dissemination activities
 - Details/references and abstracts of scientific publications
 - Publishable reports

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Dissemination – SC 39

- **Special clause 39 (“Open access”)**
 - Beneficiaries shall deposit an **electronic copy of the published version** or the final manuscript accepted for publication of a scientific publication relating to Foreground published before or after the final report in an institutional or subject-based repository at the moment of publication



Access Rights – Articles II.31 to II.34 (1)

- Background may be freely defined by written agreement by beneficiaries (specific Background may be excluded)
- All requests for access rights in writing
- Normally no sub-licensing
- Granting of access rights **may be conditioned**
 - Ensure used only for intended purpose and confidentiality
- Termination of the participation of a beneficiary does not affect its **obligation to grant access rights to remaining beneficiaries**
- **Exclusive licences**
 - Possible if all beneficiaries waive access rights explicitly
 - Commission can object to the grant of an exclusive licence to a third party established in a third country on competitiveness or ethical ground, until it is satisfied

Access Rights – Articles II.31 to II.34 (2)

	Access rights to Background	Access rights to Foreground
For implementation (carrying out the project)	Yes, if a beneficiary needs them for carrying out its own work under the project	
	Royalty-free, unless otherwise agreed before signing the GA	Royalty-free
For use (exploitation / further research)	Yes, if a beneficiary needs them for using its own Foreground	
	Fair and reasonable conditions or royalty-free basis	

Access Rights – Articles II.31 to II.34 (3)

- **Affiliated entities** established in MS or AC can enjoy access rights if needed to use Foreground transferred to them by beneficiary to which they are affiliated
 - **Except if SC 12** or agreed in the CA: no access rights for affiliated entities in MS or AC
- **Timing** to request access rights:
 - For implementing the project: until the end of the project
 - For use purposes: until 1 year after the end of the project or the termination of the participant

Transfer of ownership – Article II.27 (1)

- In case of **transfer of ownership**, the obligations regarding Foreground must be passed on
- **Prior notice** of at least 45 days **to other beneficiaries**, who may
 - Object if it would adversely affect their access rights (within 30 days)
 - Waive their rights to be notified in advance regarding specific third parties (e.g. mother companies)

Transfer of ownership – Article II.27 (2)

- The Commission may object to **transfers to third parties established in third countries**
 - In case of transfer of ownership or exclusive licence
 - For ethical, competitiveness or security reasons
 - **Appropriate safeguards** to be put in place before transfer
 - Where appropriate, a requirement to notify the Commission will apply (**SC 11**)
- **Special clause 36**
 - **No objection** from the Commission, in case of transfer of Foreground or grant of exclusive licensing to third party not established in MS or AC, in case no EU financial contribution (SC limited to the beneficiary's own Foreground!)

Complementary GAs - Special clause 41

- List of complementary GAs
 - Agreements concluded with the Union in respect of work complementary to the project
- **Used for the Future Internet PPP**
- **Complementary beneficiaries enjoy same access rights to Foreground** (not to Background) as consortium members

Other IPR issues (1)

- Final report must include the **final plan for use and dissemination of Foreground** including:
 - Section A (publishable): list of **dissemination activities**
 - A1: List of all scientific (peer reviewed) publications
 - A2: List of all dissemination activities (publications, conferences, workshops, web sites, etc.)
 - Section B (confidential): **exploitation of Foreground**
 - Applications for patents, trademarks, registered designs, etc.
 - What is not marked as confidential will be made available in the public domain thus demonstrating the added-value and positive impact of the project

Other IPR issues (2)

- **Audit or review** relating to Foreground and plan for use and dissemination of Foreground possible
- Eligibility of **IPR related costs** (e.g. dissemination, patenting)
 - Up to 100% if incurred during the project duration

Where to get first assistance on IPR issues ?

- FP7 IPR Guide:
http://ec.europa.eu/research/participants/data/ref/fp7/89593/ipr_en.pdf
- IPR Helpdesk: <https://www.iprhelphdesk.eu/>
- FP7 Helpdesk:
<http://ec.europa.eu/research/enquiries>