

# IP Rights in the 7th Framework Programme

Understanding your rights and  
obligations as a participant



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This handbook offers an overview and refers only to the Seventh RTD Framework Programme (FP7). It is not intended to be exhaustive, nor is it to be considered as a legally binding, or in any way to replace the regulatory documents and the Grant Agreement itself.

The information provided does not necessarily reflect the official position of the European Commission.

## 1. Introduction

Intellectual Property Rights, or IP rights, is a subject that most people associate with big business or multinationals which have sophisticated patenting/licensing strategies, or a brand name to protect. However, many other protection instruments exist and they are applicable in a wide variety of contexts.

The purpose of this booklet is to demonstrate how IP rights can be used in projects of the European RTD Framework Programmes as a tool to consolidate partners' rights and to protect results and outputs. Most consortia fail to elaborate this issue properly in all phases of the project; planning, execution and conclusion, leaving themselves and their outputs open to the risk of improper usage by external, and sometimes internal, parties.

IP rights can also be a source of future income if properly managed, as they promote commercialisation of results.

This handbook is aimed at current and potential contractors of the European Commission Framework Programme projects and is designed to be used as a first source of reference and information. Users should go on to consult the appropriate authorities and/or official references on the issues raised, where applicable.

### Why does IP matter in the RTD Framework Programme?

IP issues are a core part of a project success. Participants should be aware that they need to bring and share IP resources in their daily work in the project, and that this often has an impact on the results obtained and their use.

In order to make the most of the project and the results obtained, participants should pay due attention to the management of IP issues. The answer to questions such as: "Who will own the results?", "Do we need to share them and how?", or "How will we exploit the results?" can be found in the IP-related rules of the RTD Framework Programme. Participants should be aware of this from the very beginning.

### When does IP matter?

IP matters in all phases of a project. At the proposal stage, potential participants should know what they bring, what they may need from others, what the state of the art is in the field of the project, and should foresee what they may obtain from the project they want to be funded. During the implementation of the project, participants may need to give access to their knowledge, such as relevant IP, if necessary for other partners' project work. If there are any deviations from the project plan, all parties should know their options for negotiation and their obligations towards each other regarding own resources and their share of any revenues. They should think about the protection of first results too, to pave the way for the exploitation phase. Ideally, participants

should develop their strategy on protection and use of the results obtained well before the project finishes, and even as it is in the proposal drafting stage, wherever possible.

## 2. Explanation of key terminology

**Background** – is the information held by participants prior to their accession to the Grant Agreement, as well as copyright or other IP rights pertaining to such information, the application for which has been filed before their accession to the Grant Agreement, and which is needed for carrying out the project work or for using results.

**Foreground** – means the results (including information, inventions, databases, software, etc.) whether or not they can be protected, which are generated by the project. It also includes all related IP rights (copyright, designs, patents, plant variety rights or similar forms of protection).

**Protection** – refers to having the project results covered by IP rights. This sometimes implies for the partners to play an active role (by applying for the registration of certain IP rights, like patents, utility models, trade marks, etc., or by establishing necessary measures in case they wish to protect their results as trade secrets). Sometimes though protection would come automatically, from the mere fact of creation of certain works, as it happens with copyright, or from certain acts, such as the unregistered Community design right.

**Access rights** – refers to those licences or user rights to foreground or background given by the owners of this foreground or background to other parties (participants or third parties). The IPR rules define obligatory access rights, which the participants have to grant to each other in certain circumstances.

**Use** – means the direct or indirect utilisation of foreground (1) in further research activities other than those covered by the project, or (2) for developing, creating and marketing a product or process, or for creating and providing a service.

**Dissemination** – means the disclosure/spreading of foreground to a wider audience by any appropriate means other than that resulting from the formalities for protecting it, and including the publication of foreground. This may be by means of seminars, conferences, newsletters, press releases, web based activities, etc. It enables different organisations to learn from others' experience and good practices.

### 3. Definition of partner types and other entities

**Participant (Beneficiary)** – In FP7 this means a legal entity contributing to an indirect action and having rights and obligations with regard to the Community under the terms of the model Grant Agreement.

**Project Consortium** – Participants in the project make up the project consortium.

**Coordinator** – The legal entities wishing to participate in an indirect action shall appoint one of them to act as project coordinator to carry out the specific tasks foreseen for this role in accordance, in particular, with the Rules for Participation and the Grant Agreement. The project coordinator is responsible for contacts with the Commission and is in charge of the scientific, financial and administrative coordination of the project.

**SMEs** – Micro, small and medium-sized enterprises within the meaning of Recommendation 2003/361/EC of 6 May 2003.

This Recommendation defines:

The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

A small enterprise is an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.

A micro enterprise is an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

**Research organisation** – A legal entity established as a non-profit organisation which carries out research or technological development as one of its main objectives.

**RTD performer** – A legal entity carrying out research and technological development activities for the benefit of specific groups in research projects for the benefit of those groups.

**Specific groups** – Beneficiaries of “research for specific groups” identified in the specific programme and/or work programme.

**Subcontractors** – Third parties providing services of goods, who have entered into a subcontract agreement with one or more participants. Therefore, they are not project partners.

**The Joint Research Centre of the European Commission (JRC)** – May participate in indirect actions on the same footing and with the same rights and obligations as a legal entity established in a Member State.

**Affiliated entity** – Any legal entity that is under the direct or indirect control of a participant, or

under the same direct or indirect control as the participant. In FP7 Affiliates are recognised certain rights by the Rules.

**Legal entity** – Any natural person (e.g. Mr Smith) or legal person (e.g. universities, firms, research organisations, etc.), which has legal personality according to national law, Community law or international law and which may, therefore, be subject to rights and obligations.

### 4. Main types of agreement signed in Framework Programme projects

**EC Grant Agreement** – The EC Grant Agreement is a contract between the European Community and the project participants (beneficiaries). It is signed in all Community funded projects and is largely a standard contract (with a small number of optional clauses). It states all the conditions and clauses for the provision of funding, reporting and includes the technical description (Technical Annex/Annex I) of the work to be carried out. The Grant Agreement establishes the main rights and obligations of the participants amongst themselves and towards the Commission.

It is important to note that failure to comply with the terms of the Grant Agreement could result in partners being asked to refund payments.

**Consortium Agreements** – One of the most commonly signed agreements besides the EC Grant Agreement. The Consortium Agreement is an agreement between the project participants aiming at supplementing the standard grant agreement. The Consortium Agreement can cover management issues relating to the project, with particular reference to IP rights (further developing ownership, IP rights management, protection issues and access rights in accordance with the Framework Programme rules). There is no official model for Consortium Agreements issued by the European Commission. However, certain organisations do provide models, and a selection can be found on [www.ipr-helpdesk.org](http://www.ipr-helpdesk.org).

Note that the Commission is not a party to Consortium Agreements, and that they are obligatory for certain types of projects.

**Confidentiality Agreements/Non-Disclosure Agreements** – These agreements are designed to ensure a safe and secure exchange of information, materials and samples. Parties must be clearly identified in the agreement and the usage of material designated confidential clearly stipulated. This ensures that parties can only use material as far as their intended purpose.

**Material Transfer Agreements** – A Material Transfer Agreement (MTA) is a contract that governs the transfer of tangible research materials (e.g. biological materials, such as reagents, cell lines, plasmids and vectors, or other types of materials such as chemical compounds) between two organisations. MTAs define the rights of the provider and the recipient with respect to the materials

and any derivatives. Usually recipients do not have a right to use the information for commercial purposes, though this is determined by the contract. The agreement will define the parties, terms, IP issues, and confidentiality conditions, including the rights for publication.

**Joint Ownership Agreements** – Joint Ownership Agreements lay down the rules of ownership of foreground where this belongs to several/all participants in a project. This can be the case either because they have completed joint tasks or because they have decided that this will be the case. In these cases, participants should conclude appropriate agreements regarding the assignment and implementation of ownership, stating in particular how costs and revenues will be shared, under which conditions licences can be given to third parties, etc.

**Licensing Agreements** – A licence is a permit to do something. In the IP framework, it refers to a contract by which the owner of an IP right (licensor) authorises another party (licensee) to use the subject matter of it, during a certain period of time and, generally, including the payment of royalties. There is no transfer of ownership; only an authorisation to use the object of the IP right in question. In FP7 licences (together with user rights) receive the name of “access rights”.

A selection of model Agreements for all main types can be found on: [www.ipr-helpdesk.org](http://www.ipr-helpdesk.org).

## 5. IP-related rules in FP7

The following paragraphs provide a general overview of the IP regime of FP7. They concern the general regime applicable to most FP7 collaborative projects and also the provisions applicable to actions specific to small and medium-sized enterprises, where research organisations (RTD performers) carry out research work for the benefit of the SMEs or SME associations.

Detailed information on these and other related issues is available at: [www.ipr-helpdesk.org](http://www.ipr-helpdesk.org).

### Access rights, background and foreground

Collaborative RTD involves the sharing of knowledge. Participants need to exchange information, know-how, software, etc. and work together in order to execute a project or exploit its results. In FP7 projects, this exchange is implemented through the so called **access rights**.

**For example:**

- a participant grants access rights to software to another participant so that the latter can employ it in project work;
- a participant grants access rights to another participant's patent(s) for the manufacture of new products that the latter developed in the project.

Certain access rights are mandatory in a FP project, and additional ones can be freely negotiated by the participants.

The economic conditions for the granting of such access rights are established in the Grant Agreement and the participants may further define them in their Consortium Agreement. The table below summarises the economic conditions for the granting of (obligatory) access rights:

Access Rights	For project execution purposes	For use purposes
To background	Royalty free, unless otherwise agreed before signature of the Grant Agreement <sup>1</sup>	Royalty-free or
To foreground	Royalty free	on fair and reasonable conditions <sup>2</sup>

<sup>1</sup> In actions specific to SMEs, RTD performers have to grant access rights to background for execution purposes on a royalty-free basis.

<sup>2</sup> In actions specific to SMEs, RTD performers have to either grant access rights to background for use purposes on a royalty-free basis or on fair and reasonable conditions to be agreed before signature of the grant agreement. RTD performers may also be granted access rights to foreground for further research purposes on fair and reasonable conditions.

Note that different rules to those above may apply to European Research Council (ERC) projects.

### Which information is to be shared by participants?

**Background** – Project-relevant information and IP rights that participants hold before entering the project. Each participant is expected to bring the necessary background to the project and contribute with it to the consortium's work. For example, one participant may contribute with a database, another with specific equipment protected by patents, another with a trade secret, etc.

However, this does not mean that all the background of a participant should be made available to others. Participants have the possibility to define the background that they are going to share and how it is going to be shared; they can specify the background that each partner is expected to make available and can even exclude some parts of their respective background from the access rights granted. This allows participants to protect their top secret information, if applicable, but also to ensure that the background that is crucial for implementing the project or for using a participant's own results will be available.

**Foreground** – Information and IP rights that participants generate through their project work.

This newly generated information is also available for access by the other participants, as long as they need it.

### Ownership of foreground

According to the FP7 rules, the owner of foreground is the participant who has generated it. In this sense, each participant has to make sure that its relationship with its personnel or any third parties (such as subcontractors or affiliated companies) will not prevent it from being capable of complying with its obligations under the Grant Agreement (see below).

In actions specific to SMEs, foreground is owned by the SMEs or SME associations. However, they may agree to the contrary and decide, for instance, that the owners of (some of) the foreground will be (some of) the RTD performers which generated the results concerned. However, in either case, it should be ensured that the SMEs or SME associations have all the rights necessary to be able to use and disseminate the foreground.

When several participants produce common foreground, and it is impossible to distinguish their individual contribution, the participants will jointly own it. Normally, they should sign an agreement in order to decide how they will manage this joint ownership. If they do not, the default regime provided in the Grant Agreement will apply which states that each joint owner will be free to grant non-exclusive licences to the common foreground to third parties, following notification and financial compensation to the other joint owner(s).

### Protection, use and dissemination

Each participant has three basic obligations with regard to foreground:

- protecting it,
- using it,
- disseminating it.

Participants need to **protect** their foreground, when it has a potential industrial or commercial application, by means of IP rights such as patents, designs, trade secrets, etc. If it was agreed between all parties at the beginning of a project, alternative methods of protection, such as open source software are allowable under this rule.

If a participant is not interested in protecting its foreground it may transfer it to another participant. If no one is interested, the consortium shall inform the European Commission who may then protect the foreground in its own name. This acts as a safeguard to ensure that any valuable foreground will not be left unprotected.

Towards and after the end of the project, participants are expected to **use** the foreground that they have generated. Depending on the nature of the foreground and the applications it may have, the use can be made in further research activities (aiming at improving it, for example) and/or in commercial activities (e.g. by selling it in the market integrated into products or services). Participants may use their foreground on their own, but they may also transfer it or grant exploitation licences to other participants or third parties. Moreover, they may decide to launch a new company or other initiative, for instance a spin-off or a joint venture, to be responsible for the exploitation of (some of) the foreground.

Such operations are to be made in compliance with the obligations that each participant has, as a member of the consortium, bound by the Grant Agreement and the Consortium Agreement. Furthermore, a participant that wishes to transfer its foreground shall first inform the other participants, who may object if they consider that their access rights are not adequately preserved. However, there is a new option in FP7 that enables the participants to waive their right to be informed in relation to transfers made towards a specifically identified third party (e.g. from a participant to its mother company). Similarly, a participant that wishes to grant an exclusive licence with regard to its foreground (or background) must first obtain a written declaration from the other participants that they waive their access rights to the resource in question (foreground or background).

The European Commission may object to any transfer or granting of exclusive licences of foreground to a party established in a country other than the Member States and Associated States to FP7, if it considers that it is contrary to the interests of European economy, to ethical principles or to security considerations.

The foreground should be **disseminated** to the public too. This means that participants should inform the general public and/or the experts in the relevant area and/or policymakers, etc. of the results of their research work. All publications, websites, workshops or other methods of dissemination have to publicise that the results were achieved thanks to the Community financial support received under FP7.

In any case, the participants are obliged to inform each other of any dissemination intentions and they have the right to object if they consider that the dissemination activity as planned could jeopardise their legitimate interests.

## 6. IP usage in RTD projects case study

Any collaboration in which some kind of output is created makes it necessary to clarify what belongs to whom, and under which circumstances. The following hypothetical situations can help to outline where IP can be important throughout all stages of a European project.

### Project planning/proposal preparation phase

If we decide to invite external parties, perhaps belonging to other projects, as a source of ideas or reference, how do we prevent these people from effectively utilising the ideas exchanged and/or generated?

**Non-disclosure Agreements** mean that any party mentioned and therefore bound by this agreement (they can be external to the project) cannot utilise any confidential or technical information related to the project work. Confidential written documents should be identified as such (on each page); ideally, oral information should subsequently be confirmed in writing as being confidential as well.

**Point to note:** Make sure they understand fully what they can do with the information they receive, what they cannot do, and how long this restriction will last.

### Project execution phase

One of our project partners decides to leave the project halfway through. As they are privy to the information of the project and have contributed to results and outputs, what happens to their rights and ours?

**A participant's obligation** to respect the confidentiality of the project continues even after they are no longer part of the action. The obligation to grant access rights also persists for a one year limit unless partners have agreed differently.

One of the partners is using our technical annex and other materials in another project, such as our tables, calendars and other graphs. Is this allowed? What can we do to protect our proposal and other documents?

**Copyright** may protect graphs, diagrams and any other written work (including software), meaning that you would have to have given permission for their usage. They are presumably infringing on this right by using them without your express consent.

A **Confidentiality Agreement** should be signed at the beginning of the project (or even when the preparation of the proposal starts) to ensure that the information of the proposal and other

documents cannot be used by partners for their own purposes without the agreement of all parties involved.

### Project completion phase

Our project website is one of our main dissemination tools and it is publicly available for viewing. Our logo is also there. Can we do anything to retain control of the information/design?

**Copyright** will protect the written information and the graphical design respectively of both website and logos. In particular, with regard to written information, you could insert a copyright notice on your web stating the conditions of use by third parties. Additionally, a **trade mark** could be applied for (based on your project name, acronym, logo or domain name, for example) if you would like to distinguish the products or services of your project in the market.

## 7. Checklist of pre-reading and preparation for FP7

### 1) First basics - CORDIS website:

**Understand FP7 :** [http://cordis.europa.eu/fp7/understand\\_en.html](http://cordis.europa.eu/fp7/understand_en.html)  
**Participate in FP7:** [http://cordis.europa.eu/fp7/participate\\_en.html](http://cordis.europa.eu/fp7/participate_en.html)  
**Find a call:** <http://cordis.europa.eu/fp7/dc/index.cfm>  
**Get support:** [http://cordis.europa.eu/fp7/getsupport\\_en.html](http://cordis.europa.eu/fp7/getsupport_en.html)

### 2) EC, DG Research site: <http://ec.europa.eu/research/fp7>

**DG Research FP7 helpdesk:** <http://ec.europa.eu/research/index.cfm?pg=enquiries>  
The Commission will publish an "FP7 IPR Guide" similar to the one already available for FP6.

### 3) Documents worth reading:

**FP7 Fact Sheets booklet:** [http://ec.europa.eu/research/fp7/pdf/fp7-factsheets\\_en.pdf](http://ec.europa.eu/research/fp7/pdf/fp7-factsheets_en.pdf)  
**Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013):** <http://europa.eu.int/eur-lex/lex/JOhtml.do?uri=OJ:L:2006:391:SOM:EN:HTML>

### 4) Proposal specific documents to read before writing and submitting the proposal (to be found on CORDIS under Information Package of each published call):

**Call Fiche:** <http://cordis.europa.eu/fp7/dc/index.cfm>  
**Work Programme and its Annexes:** <http://cordis.europa.eu/fp7/dc/index.cfm>  
**Guide for Applicants:** <http://cordis.europa.eu/fp7/dc/index.cfm>

### 5) Intellectual Property Rights issues regarding FP7:

**IPR-HD Helpline:** [ipr-helpdesk@ua.es](mailto:ipr-helpdesk@ua.es)  
**IPR-HD Website:** <http://www.ipr-helpdesk.org>

### 6) FP7 Grant Agreement

[http://cordis.europa.eu/fp7/calls-grant-agreement\\_en.html](http://cordis.europa.eu/fp7/calls-grant-agreement_en.html)

# your Point of Reference

Find out about our services

• Helpline • Website • eNewsletter • IPR Bulletin

[www.ipr-helpdesk.org](http://www.ipr-helpdesk.org)

[ipr-helpdesk@ua.es](mailto:ipr-helpdesk@ua.es)

Intellectual Property Rights-Helpdesk is a multilingual, free-of-charge service offering basic legal guidance regarding IP issues for SMEs and participants in RTD EU-funded projects.

# Further Information & Answers to your personal IPR queries

If you have any questions, we will be happy to answer them.

The IPR-Helpdesk is coordinated by the University of Alicante, which is supported by the Intellectual Property Law Institute of Jagiellonian University in Cracow and European Research and Project Office GmbH in Saarbrücken.

We look forward to assisting you in all IPR matters and thank you for your interest in the IPR-Helpdesk Services.

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