

Introduction to IP rules in FP7 Projects

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Introduction

This document provides a practical overview of the Intellectual Property (IP) rules applicable in the *Seventh Framework Programme (FP7) of the European Union for research, technological and demonstration activities (2007 – 2013)*. It further explains where these rules may be found and the terminology commonly used.

IP plays an important role in FP7 projects, since the substantial EU funding for these projects is ultimately aimed at strengthening the competitiveness of the European industry. Indeed, IPRs issues can affect both the way a project is conducted, and any exploitation of final results.

1. Grant Agreement & Consortium Agreement

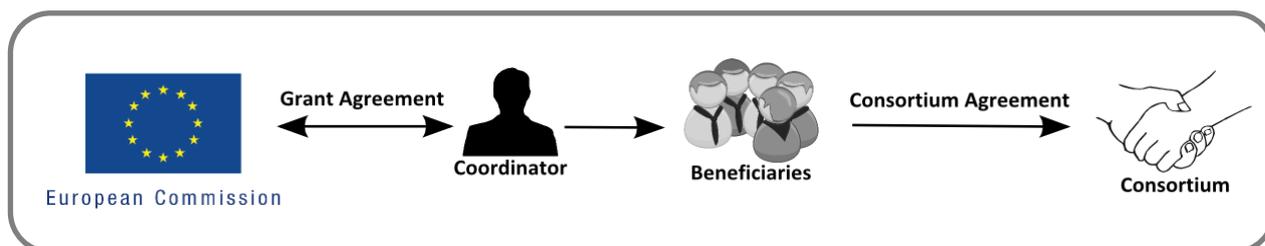
Anyone willing to participate in a FP7 project shall in most cases sign two agreements: an EC Grant Agreement (GA) (always) and a Consortium Agreement (in many cases).

All of the project beneficiaries (i.e. the legal person, other than the European Commission, who is a party in the Grant Agreement) together form the **Consortium**, whether or not they enter into a separate written **Consortium Agreement (CA)**. **Beneficiaries** are represented by the **Coordinator**, who shall be the intermediary for any communication between the **European Commission (EC)** and any beneficiary.

The **Grant Agreement** is a contract between the EC, which represents the European Union, and the beneficiaries of a given funded project establishing the rights and obligations of the beneficiaries with

regard to the EC. This agreement is based on standard models available in Cordis, which were adopted by the EC in accordance with the Rules for Participation.

The **Consortium Agreement (CA)** is a contract that beneficiaries conclude amongst themselves in order to implement the project. The agreement allows the beneficiaries to determine with detail the administrative and management provisions necessary to carry out their project. Within this agreement, parties also outline the rights and responsibilities of each member of the consortium. This agreement cannot contradict or negate the rules established by the GA or the **Rules for Participation**.

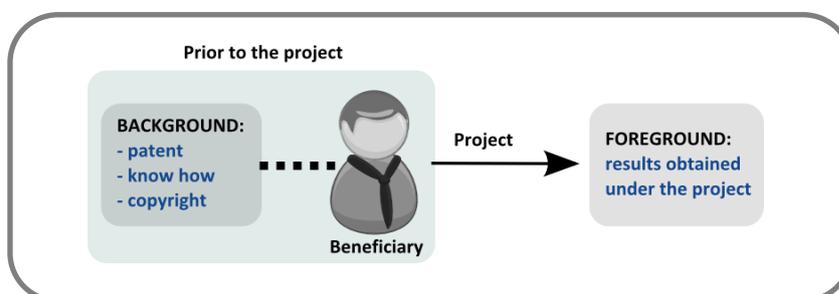


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In FP7 projects, the IPRs provisions for the implementation and the execution of the project are contained in both aforementioned agreements in addition to those which are contained within the Rules for Participation. In order to assist the participants, the EC has prepared a „*Guide to Intellectual Property Rules for FP7 projects*“. Even though this guide is non-binding and may not address all the concrete issues that beneficiaries encounter when participating in FP7, it is recommended that beneficiaries have it in consideration in conjunction with the contractual and legal framework already mentioned.

2. Background & Foreground

The GA distinguishes between information, knowledge and IPRs which have been generated previously and/or independently of the project (“background”) and ones generated during the execution of the project (“foreground”). IPRs provisions related to background and foreground are detailed in the GA and the CA. Participants (beneficiaries) shall deal with these provisions at all stages of the project.



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Background means the information and knowledge which is held by the beneficiaries prior to their accession to the GA, as well as copyrights or other IPRs pertaining to such information, including any



applications which have been filed before their accession to the aforementioned agreement, and which is needed for carrying out the project or for using foreground.

Foreground means the – tangible and intangible – results, including for example information and knowledge, whether or not it can be protected, which is generated under the project. Such results include rights related to copyright, design rights, patent rights, plant variety rights, and similar forms of protection.

In order for the beneficiaries to be able to achieve better cooperation and execution of the project, they shall (in many cases) exchange some background and foreground (in the form of patents, know how, etc.) through the system of access rights.

3. Access Rights

Access rights mean licenses and user rights granted to another participant’s foreground or background. Thus, they allow beneficiaries to benefit from each other’s resources, taking full advantage of the collaboration.

It should be taken into account that as established in the GA, access rights to another beneficiaries foreground and/or background are only to be granted if the requesting beneficiary needs such access in order to carry out the project or to use its own foreground. The request must be done in writing and may be conditional on the acceptance on specific conditions (confidentiality obligations, for instance).

For the purposes of transparency, it is extremely important that the beneficiaries define (preferably in the CA) what IP is considered necessary with respect to the obligation to grant access rights. It is in this context, that participants may include or exclude specific background or elements of their background to be contributed to the project, in this way limiting their obligation to grant access rights to other participants. This is to be done in the form of an annex to the CA.

The conditions established in the GA, under which beneficiaries are obliged to confer access rights, constitute minimal provisions.

	Access to background	Access to foreground
Project implementation	Royalty-free , unless otherwise agreed before acceding to the Grant Agreement.	Royalty-free
Use of results (exploitation or further research)	Royalty-free, or on fair and reasonable conditions	Royalty-free, or on fair and reasonable conditions

The request for access rights may be made up to one year after either the end of the project, or the termination of the participation of the owner of the foreground or background concerned.

Additional access rights may be granted on more favourable conditions by beneficiaries. They may be included in the CA, but also in separate agreements (e.g. bilateral agreements).

The granting of access as established before may be refused either by:

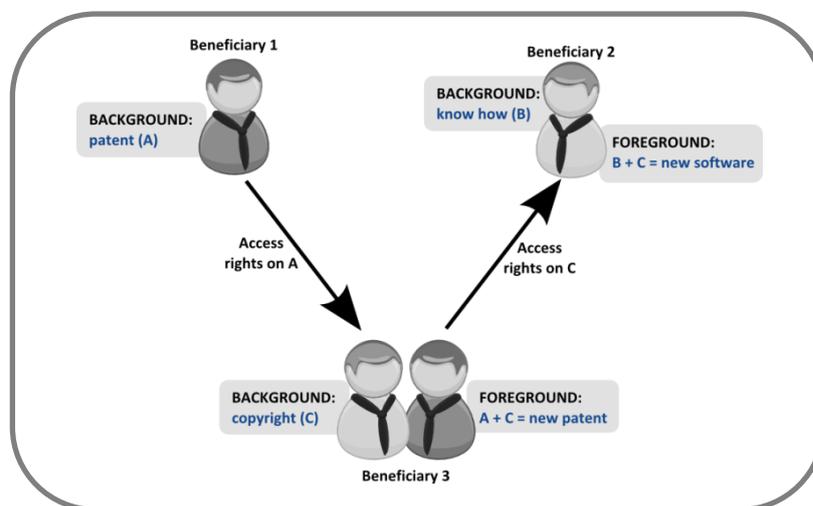


- The owner of the foreground or background, if such access to its rights is not considered to be necessary for the other beneficiary; or
- The EC in case the requesting party is established in a third country (not associated to FP7), and the granting of access is considered to be detrimental to the interest of the EU.

Let us take a look at a practical example:

As outlined in the graphic below, Beneficiary 1 enters into the project owning a patent. During the execution thereof, he is required to grant access rights (a license, for example) on its patented procedure to Beneficiary 3 who needs the given technology to carry out his part of the project. As a consequence, and thanks to those access rights granted, Beneficiary 3 develops a new patentable invention (A+C = foreground).

On the other hand, Beneficiary 2 requires access rights to Beneficiary 3's background (C), in order to use his newly developed software (foreground).



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4. Foreground: Ownership, Protection, Use and Dissemination

4.1 Ownership

The foreground resulting from the project belongs to the beneficiary generating it.

When it is generated jointly by several beneficiaries, and it is not possible to distinguish their individual contributions, the foreground generated will be jointly owned, unless the beneficiaries concerned agree on a different solution. In that case, the beneficiaries shall agree on the terms and conditions to better manage the joint ownership, either by incorporating the necessary provisions in the CA or by signing a joint ownership agreement. In the case where there are no provisions in the CA and any joint ownership agreement has been concluded, the default joint ownership regime as established in the GA will apply (meaning that each of the joint owners shall be entitled to grant non-exclusive licenses to third parties, after giving prior notice and fair compensation to the other joint parties).

Beneficiaries must ensure that, where necessary, they reach an agreement with their employees (if entitled to claim IPRs on foreground) in order to comply with their contractual obligations.

Should a beneficiary wish to **transfer ownership of foreground**, it shall also pass on its obligations therewith (regarding access rights or confidentiality, for instance) to the assignee. In principle, notification must be given to the other beneficiaries, who may object in case such a transfer would adversely affect their access rights, within a specific period (generally 45 days before the foreseen transfer). However, they may agree in advance to waive their right to be notified, with regard to a specifically identified third party.

The EC must only be notified in very limited cases: Either if the intended transfer of ownership of IPRs is considered not to be in accordance with the EC's interests, or if it is inconsistent with ethical principles and/or security considerations.

4.2 Protection

Valuable foreground must be protected (in case it is capable of industrial or commercial application). Protection is not mandatory in all cases, though the decision not to protect foreground should be made in consultation with the other beneficiaries, which may wish to take the ownership and protect the results of a given project (a new patent, software, trade secrets, etc).

In the case where nobody takes ownership and valuable foreground is unprotected, the commission should be informed (at least 45 days prior any dissemination act) and may assume ownership (prior notice and consent of the beneficiary concerned). However, the aforementioned beneficiary may refuse consent, but only if it would suffer disproportionately great harm.

4.3 Use

Beneficiaries shall use the foreground which they own or ensure that it is used, essentially through two routes:

- for use in **commercial activities**, such as marketing a product;
- for use in **further research activities**.

This use of foreground can be direct (by the owner itself), or carried out by other parties (through licensing, for example).

4.4 Dissemination

Where dissemination of foreground does not adversely affect its protection and use, there is an obligation to disseminate as swiftly as possible, always in a way that is compatible with the protection of the IPRs, confidentiality obligations and legitimate interests of the owners (any disclosure, prior to filing for protection, may invalidate a subsequent or potential valuable protection). Therefore, before any foreground is made available to the public, a decision on its possible protection should be made.

The other beneficiaries should be informed (at least 45 days prior notice), and may object to the dissemination activity if their legitimate interests in relation to their foreground could suffer great harm. The EC, on the contrary, only needs to be notified when the foreground to be disseminated is capable of industrial application and has not been protected.

Should the participants fail to disseminate without any justification, the EC may do so, without seeking permission.

Beneficiaries shall always highlight the financial support obtained by the EU to carry out the project by adding a specific statement of financial support, when the foreground is protected, used and/or disseminated, mentioning the following text:

'The research/work leading to these results has received funding from the European Union's Seventh Framework Programme (FP7/2007-2013) under Grant Agreement no xxxxxx'

Useful Resources

For further information on the topic please also see:

- Rules for the Participation in FP7 projects:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:391:0001:0018:EN:PDF>
- Annex II of the Grant Agreement: ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-ga-annex2-v6_en.pdf
- Consortium Agreements models:
 - (i) Desca Model for FP7 projects: <http://www.desca-fp7.eu/>
 - (ii) IPCA Model: http://www.digitaleurope.org/index.php?id=32&id_article=163
 - (iii) IMG4 Model: <http://www.aerosme.com/news/article.asp?article=250>
 - (iv) EUCAR Model: <http://www.eucar.be/publications/EUCAR%20Model%20of%20Projects%20Consortium%20Agreement>
- Guide to IP Rules for FP7: ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr_en.pdf
- Cordis webpage: http://cordis.europa.eu/fp7/home_en.html

GET IN TOUCH



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ABOUT THE EUROPEAN IPR HELPDESK

The European IPR Helpdesk aims at raising awareness of Intellectual Property (IP) and Intellectual Property Rights (IPR) by providing information, direct advice and training on IP and IPR matters to current and potential participants of EU funded projects focusing on RTD and CIP. In addition, the European IPR Helpdesk provides IP support to EU SMEs negotiating or concluding transnational partnership agreements, especially through the Enterprise Europe Network. All services provided are free of charge.

Helpline: The Helpline service answers your IP queries within three working days. Please contact us via registration on our website (www.iprhelpdesk.eu), phone or fax.

Website: On our website you can find extensive information and helpful documents on different aspects of IPR and IP management, especially with regard to specific IP questions in the context of EU funded programmes.

Newsletter & Bulletin: Keep track of the latest news on IP and read expert articles and case studies by subscribing to our email newsletter and Bulletin.

Training: We have designed a training catalogue consisting of nine different modules. If you are interested in planning a session with us, simply send us an email.

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