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# INTELLECTUAL PROPERTY RIGHTS IN FP7

Disclaimer : Legally not binding





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# Basic Concepts

**Foreground** = all results of the project (incl. inventions, software, databases, ...)- 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 (no sideground)
- 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





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# 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**: terms and conditions to be defined in separate agreements. If no joint agreement is reached the « **default regime** » applies (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 rights have to be compatible with GA obligations





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# Transfer of ownership

## Article II.27

- In case of **transfer of ownership**, the obligations regarding foreground must be passed on.
- **Notifications/objections:** prior notice of at least 45 days to other participants 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)
- 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 (Special clause 11)





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# PROTECTION

## Article II.28

- Foreground capable of industrial or commercial application **must be protected**
- If a participant does not protect, the foreground may be transferred to another participant or to a third party in MS or associated country.
- If no protection undertaken by one of these entities, obligation to inform the Commission before dissemination. Commission may protect on behalf of the Union.





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# USE and DISSEMINATION

## Articles II.29 & II.30

- Foreground **must be used** (= in further research or commercially) **and disseminated** (= disclosure by appropriate means, including publications)
- Prior notice of any dissemination activity at least 45 days **only to other participants** (possible objection within 30 days if legitimate interests could be affected).  
**(Commission will be informed only when foreground has not been formally protected)**
- Any dissemination and **patent applications** must indicate the Union financial assistance





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# Access Rights

## Articles II.31→II.34

- Background may be freely defined by written agreement by participants
- All requests for access rights in writing; normally no sub-licensing
- Exclusive licences possible if all participants waive access rights (explicit)
- 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







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# Access Rights

	Access rights to background	Access rights to foreground resulting from the project
For carrying out the project	Yes, if a participant needs them for carrying out his own work under the project	
	Royalty-free, unless otherwise agreed before signing the Grant Agreement	Royalty-free
For use purposes (exploitation + further research)	Yes, if a participant needs them for using his own foreground	
	On fair and reasonable conditions or on a royalty-free basis	On fair and reasonable conditions or on a royalty-free basis
	Possibility for participants to agree on <b>exclusion</b> of specific background of a participant from this obligation before this participant signs the Grant Agreement (or before entry of a new participant)	

• **Affiliated entities** established in MS or AC can enjoy access rights if needed to use their own foreground (except if SC 12 or CA)

• **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







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# Special clauses (I)

- Special clause 11
  - Obligation to notify the EC in case of intention to transfer of ownership of foreground or to grant an exclusive licence to entity not established in MS or AC
  - EC may object for competitiveness, ethical or security considerations (also applicable without SC11)
  - Appropriate safeguards to be put in place before transfer or licence takes place( also applicable without SC11)
- Special clause 12
  - No access rights for affiliated entities in MS or AC





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# Special clauses (II)

- Special clause 36
  - No objection from EC in case of transfer of foreground or grant of exclusive licensing to third party not established in MS or AC if no EU financial contribution (only if own foreground!)
- 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





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# Special clauses (III)

- Special Clause 41 (“complementary GAs”)
  - List of complementary GAs (i.e agreements concluded with the Union in respect of work complementary to the project)
  - Complementary beneficiaries enjoy same access rights to foreground (not to background) as consortium members
  - Used for the Future Internet PPP





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## Other IPR issues

- IPR related evaluation criteria: “potential impact through the development, dissemination and use of project results”.
- 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
  - 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% if incurred during the project duration





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# Where to get first assistance on IPR issues ?

- FP7 IPR Guide

[ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr_en.pdf)

- IPR Helpdesk <http://www.ipr-helpdesk.org/>

- FP7 Helpdesk

<http://ec.europa.eu/research/enquiries>





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# THANK YOU FOR YOUR ATTENTION

