

Get your ticket to innovation!



The European IPR Helpdesk

Guide for SMEs: Managing Intellectual Property in FP7



Does your organisation qualify as a small or medium-sized enterprise (SME)?

Is your organisation a company?

Does your organisation have less than 250 employees?

Does it have an annual turnover of
EUR 50 million or less?

OR

Does it have a balance sheet of
EUR 43 million or less?

If you can answer all these questions positively
YOUR ORGANISATION IS AN SME!

If you need to perform a thorough test to confirm whether you are an SME, check the SMEs Test found at SMEs [Techweb](#).

What are the main funding initiatives for SMEs in FP7?



Capacities programme (“Research for the benefit of SMEs”).

In this programme SMEs are the direct beneficiaries, since they outsource (subcontract) most of the R&D to RTD performers (e.g. universities) and receive in return the technological know-how they need to develop new or improve existing products, systems, processes or services. The main goals of this programme are therefore to enhance the research and innovation capacities of European SMEs that have little or no research capacity, as well as to turn innovative ideas into products and services with clear future market potential



Cooperation and People programmes.

For those SMEs with the capacity to perform research, all other research actions are open to participation. Cooperation and People programmes are the most common.

SMEs represented more than 16% of participants under the Cooperation programme in the Grant Agreements signed before the 1st of April 2011, having received a total of EUR 1.797.279.864 according to the Seventh Progress Report on SMEs participation in the 7th R&D Framework Programme.

Importance of IPR in FP7 projects

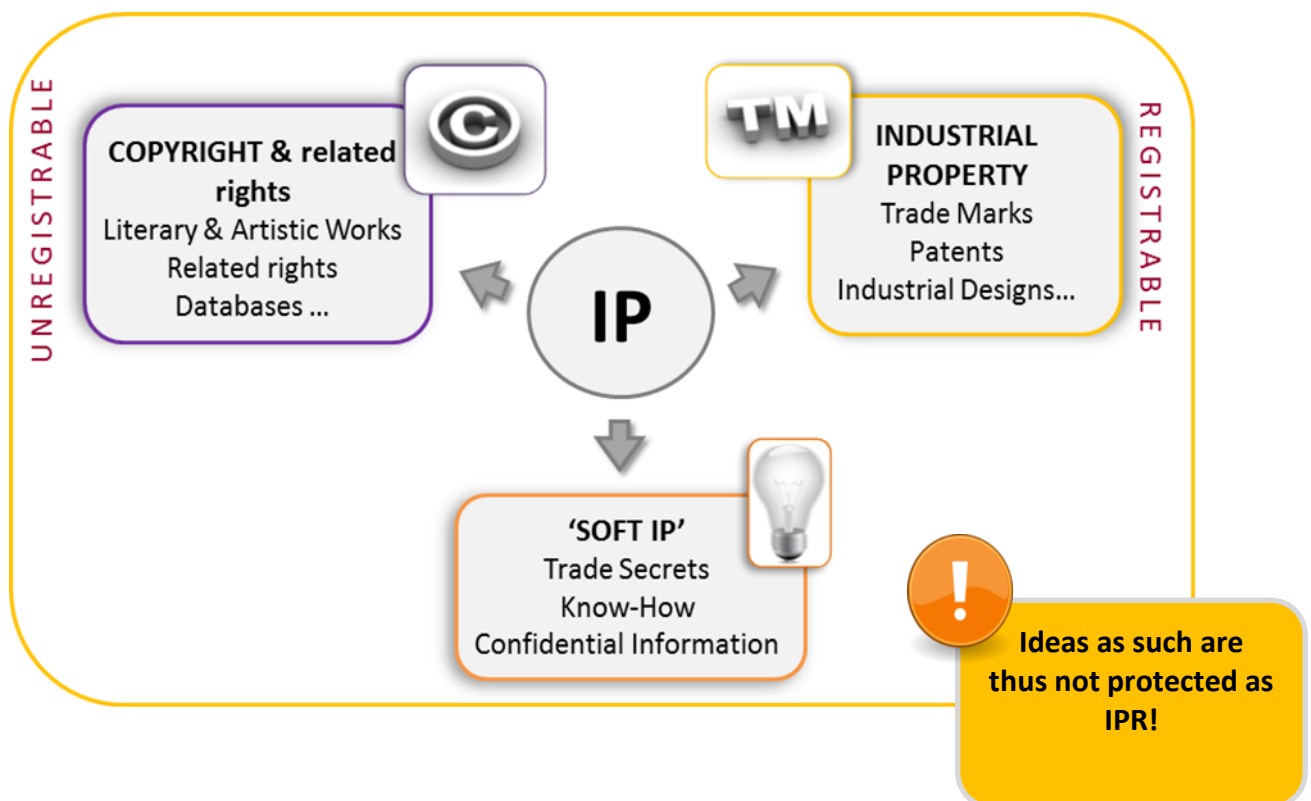
Properly dealing with IPR issues is very important in the entire life cycle of any FP7 project.

The European Commission (EC) and the Research Executive Agency (REA), therefore strongly encourage all participants to tackle IPR-related matters from the very beginning of an RTD project, i.e. already during the preparation of the proposal. Moreover, in “Research for the benefit of SMEs” actions, there is a default regime concerning foreground’s ownership that applies to a consortium, unless partners agree to another regime more appropriate to their strategy.

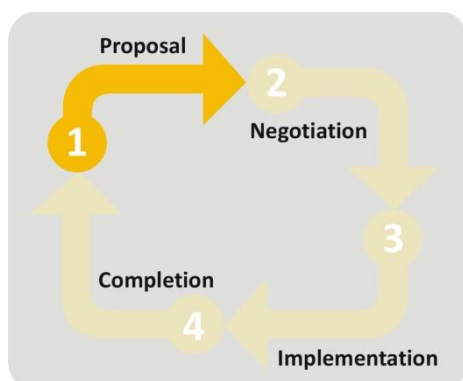
What are Intellectual Property Rights (IPR)?

These rights relate in particular to the following:

- ✓ “literary, artistic and scientific works;
- ✓ performances of performing artists, phonograms and broadcasts;
- ✓ inventions in all fields of human endeavour;
- ✓ industrial designs;
- ✓ trade marks, services marks and commercial names and designations”.



Key issues at the proposal stage



Considering IP matters at the proposal stage is essential not only for a successful proposal, but also for making the most of the project's results. Generally one of the mandatory parts to be included in the proposal text (usually in "Part B"), is the description of the measures proposed for the dissemination and/or exploitation of the project's results. This will also include a plan for the management of IP acquired in the course of the project.

To be well prepared when writing a proposal you should keep the following aspects in mind:

Checking all documents of the call for proposal and be aware of the IP rules

Be familiar with the specific IP rules related to the programme where you intend to participate and don't forget to read the *Guide to Intellectual Property Rules for FP7 Projects*!

Considering third parties' rights

Identify third parties IP rights.
In case you and your partners conclude to be necessary to use IPR from others, be prepared to demonstrate in the proposal your strategy for obtaining the necessary licenses.

Identifying the IP that each applicant is potentially bringing to the project

Identify what intangible assets you and your partners will bring to the project: information, knowledge, methods and IPR necessary for its implementation and for the use of the expected results.
IPR intended to be excluded from the project should also be identified.

Assessing the state of the art


Excellence of the project is essential. A good way of showing in the proposal a high quality of your project is to specify the current state of the art and explain how the expected outcomes of the project go beyond it. Perform a bibliographic search to do so.

Checking Project's name and acronym

To avoid any trade mark infringement, do not choose a word which is similar to a registered trade mark in the same area of business.
Consider performing a trade mark search.

Tackling confidentiality issues

Conclude a non-disclosure agreement before entering in negotiations with your partners for the preparation and submission of the proposal to avoid any eventual misappropriation and use of valuable information.



Keep in mind:

- ✓ Check all documents of the call for proposal and be aware of the IP rules
- ✓ Consider third parties' rights
- ✓ Assess the state of the art
- ✓ Check project's name and acronym
- ✓ Tackle confidentiality issues

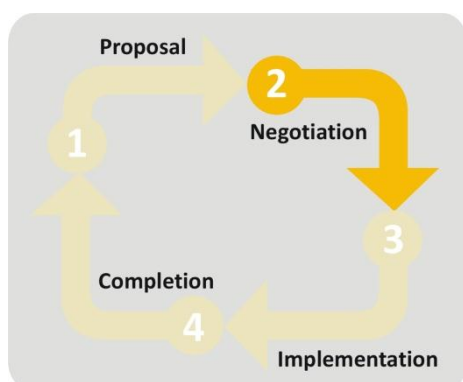
Strategy for the dissemination and exploitation of project's results

Proposals are evaluated in terms of the potential project's impact through the development, dissemination and use of the results. It is therefore essential to show the appropriateness of the measures envisaged for the dissemination and/or exploitation of project's foreground and management of IP (generally included in "Part B" of the proposal).

Five questions should be asked:

How will foreground be protected?	Describe how the consortium will organise the protection of foreground. Outline how results will be identified (allocate some staff member as IPR manager, use of laboratory notebooks...), reported and protected from early disclosure; describe IPR that may arise within the project and how to better protect it.
How will background and foreground be organised and managed?	Include a clear and adequate description of how the consortium will organise ownership of and access rights to IPR between themselves (in terms of background and foreground), including the economic conditions.
How will joint ownership be treated?	Mention that in a case of jointly owned results, the consortium has the intention to reach an agreement for the effective management of such results with details, for example, on shares, exploitation and licensing to third parties.
How will the use and dissemination of foreground be implemented?	Depending on the project, address who is the intended target for dissemination, the routes for communications (websites, scientific articles...) and how these routes will help obtain the maximum possible impact. The plans for use of foreground should also be described.
Which confidentiality measures have been and will be taken?	Describe confidentiality issues, considering the measures already taken at the proposal stage and the ones intended for the next stages of the project. Reflect on the internal management of confidentiality.

Key issues at the negotiation stage



In terms of IP issues, the negotiation stage is extremely important since it gives you the last opportunity to fine-tune the details outlined in part B of your project proposal. It is important to bear in mind that the well planned management of IP issues is essential to succeed in the negotiation with the EC and REA.

The FP7 Agreements at a Glance

Document	Signature	Parties	Content	IP relevant issues
Grant Agreement	End of negotiations phase	Beneficiaries & the European Commission	Establishes the rights and obligations of beneficiaries with regard to the EU <i>IP rules are not negotiable</i>	Annex I - DoW and PUDF Annex II - General conditions applying to FP7 projects, including the management of IPR Annex III - Conditions specific to each FP7 programme
Consortium Agreement	During negotiations phase	Project Coordinator & other Beneficiaries	Sets out the legal basis for the internal relationship and responsibilities among beneficiaries <i>IP rules need to be agreed upon by partners</i>	All IP aspects related to the specific project (without contradicting the Grant Agreement provisions on IP)

1. The Grant Agreement

The Grant Agreement establishes various conditions specific for the project, such as the list of participants, its starting date and duration, and the maximum funding contribution.

At this stage it must be agreed with the EC or REA upon the final DoW including the PUDF, which constitutes annex I to the Grant Agreement. In the specific case of actions “for the benefit of SMEs”, the agreement on the ownership of foreground, access rights and remuneration to RTD performers will also be part of annex I.

Annex II establishes obligations with regard to ownership, transfer, protection, use and dissemination of results. However, for certain types of FP7 projects, such as those within actions “for the benefit of SMEs”, more specific IPR provisions may be found in Annex III. Yet, what needs to be highlighted is that Annex II and III are non-negotiable since they give account to the rules on use and dissemination of the IPR applicable to any FP7 project.

IPR Rules under the GA

OWNERSHIP	Background	Foreground	
		Single Ownership	Joint Ownership
Collaborative Projects	Remains property of its owner	Belongs to that participant which generated it.	When: (i) two or more participants have jointly generated foreground; and (ii) the share of the work of each participant cannot be determined
Actions for the Benefit of SMEs		Jointly owned by SMEs, unless otherwise agreed.	

Default regime as the desired option

FOREGROUND	Transfer	<p>Pass on to the assignee your obligations, regarding access rights or confidentiality, for instance.</p> <p>45 days before the foreseen transfer, prior notice must be given to other partners in the project, who have the right to object in case such a transfer would adversely affect their access rights.</p>
	Protection	<p>Protect valuable foreground.</p> <p>Protection is not mandatory in all cases (decision should be made in consultation with other partners).</p>
	Use	<p>Use the foreground you own or ensure that it is used, essentially through two routes:</p> <ul style="list-style-type: none"> (i) in commercial activities, such as marketing a product; (ii) in further research activities. <p>This use of foreground can be direct (by the owner itself), or carried out by other parties (through licensing, for example).</p>
	Dissemination	<p>Disseminate as swiftly as possible.</p> <p>In a way that is compatible with the protection of IPRs, confidentiality obligations and legitimate interests of the owners.</p> <p>Mandatory where it does not adversely affect protection and use of foreground.</p> <p>Therefore, before any foreground is made available to the public, a decision on its possible protection should be made. Partners should be informed (at least 45 days before), and may object to the dissemination activity if their legitimate interests in relation to their foreground could suffer great harm.</p>

ACCESS RIGHTS

IF NEEDED	Background		Foreground	
	For implementing the project	For use of foreground	For implementing the project	For use of foreground
Collaborative Project	Royalty-free, unless otherwise agreed before acceding to the Grant Agreement	Royalty-free or on fair and reasonable conditions	Royalty-free	Royalty-free or on fair and reasonable conditions
Actions for the Benefit of SMEs	Royalty-free, unless otherwise agreed before acceding to the Grant Agreement but Access to RTD Performers' background is royalty free	Royalty-free or on fair and reasonable conditions but RTD Performers must grant access rights on a royalty-free basis, unless fair and reasonable conditions have been agreed	Royalty-free	Royalty-free or on fair and reasonable conditions but Access may be granted to RTD Performers on fair and reasonable conditions for further R&D purposes

NOTIFICATIONS

	Dissemination	Transfers of Ownership of foreground	License Agreements to third parties
To the European Commission	No , except when foreground is capable of industrial or commercial application and has not been protected	No , except if a special clause in the Grant Agreement requires the participants to notify of any intended transfer of ownership of foreground to a third party established in a third country. The Commission must be always informed of any agreement affecting the implementation of the project or the interests of the European Union.	
To other Partners	Yes	Yes , participants must be given at least 45 days prior notice in writing of any planned dissemination activity. This obligation does not apply in the following cases: (i) authorised transfers to identified third parties; (ii) overriding confidentiality obligations	No , except if it affects the grant of access rights or is concluded under the default joint ownership regime

2. The Consortium Agreement

The Consortium Agreement (CA) is envisaged as the instrument to regulate internal issues between project partners and, in particular, issues related to the future use and dissemination of the foreground by all the project partners. Indeed, whereas the GA defines the rights and obligations related to the project, between beneficiaries and the EC or REA, the CA deals with the rights and obligations **between the beneficiaries themselves** with regard to the execution of the project - specifically those related to the **internal management of IP**.

Project partners can make use of the CA to tailor the GA IP-related provisions according to the consortium's needs. The CA is thus *complementary* to the IP provisions contained in the GA and *preliminary* to its final signature, and IP provisions that are not included therein will fall back to the common regime provided in the GA. This is the reason why **it is important that your consortium gives the highest possible priority to completing the internal CA, which cannot contradict the GA**.

As far as IPR are concerned, a comprehensive and well-drafted CA will cover the management of all main IP issues, taking into consideration the specifics of the project and participants in question.

The checklist below outlines the essential points to be discussed with regard to IP.



Do you know there are several models of Consortium Agreements specifically prepared to be used in FP7 projects?

Check our website for more information!



Keep in mind:

- ✓ Confidentiality
- ✓ Pre-existing IP
- ✓ Use of IP generated parallel to the project
- ✓ Ownership/joint ownership of results
- ✓ Legal protection of results
- ✓ Commercial exploitation of results and any necessary access rights

Key issues at the implementation stage



Considering IP, the implementation stage assumes particular importance as the use and dissemination of the project results (i.e. foreground) is a key objective of any FP7 project. Therefore you should plan the management, use and dissemination of foreground as early as possible. In this context questions of ownership of foreground and the granting of access rights will naturally arise.

Disseminate your results

Inform your partners before any dissemination activity. An accurate dissemination plan is preparatory for future commercial exploitation and marketing of products and services resulting from the project.

Monitor IP landscape

In the time between the approval of the proposal and the project's implementation, technology may have changed, so realignment of the project might be needed.

Deal with access rights

If needed, make a written request of access rights. You will generally need to negotiate the conditions of such user rights.

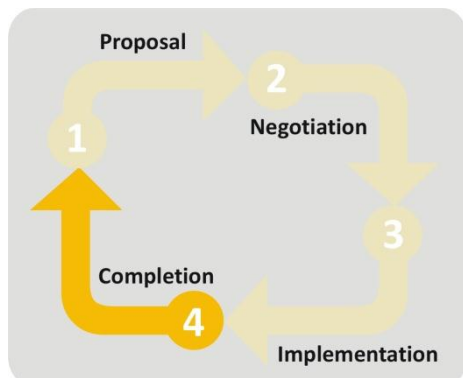
Deal with joint ownership

If not foreseen in the Consortium Agreement, conclude a joint ownership agreement as soon as jointly owned foreground is created.

Protect your results

Use the most adequate and effective protection tool, and in accordance with all partners' interests. Do not hesitate to engage an IP attorney as specific technical skills and detailed knowledge of rules and procedures may be necessary.

Key issues at the completion stage



At the end of the project a conclusive PUDF has to be submitted in order for the EC or REA to evaluate the use the consortium intends to make of its project's results, as well as to evaluate the success of the projects. Now is the time to reap the benefits of the results either by using them in further research or in commercial activities.

Use your results

Use the results, either in research or in commercial activities. Consider licensing agreements with third parties. Seek legal advice before entering in such partnerships.

PUDF

Must be included in the final report of the project. Describe the activities already carried out and those still to be developed. Envisage the strategy for the management of IPR to be exploited after the project's end.

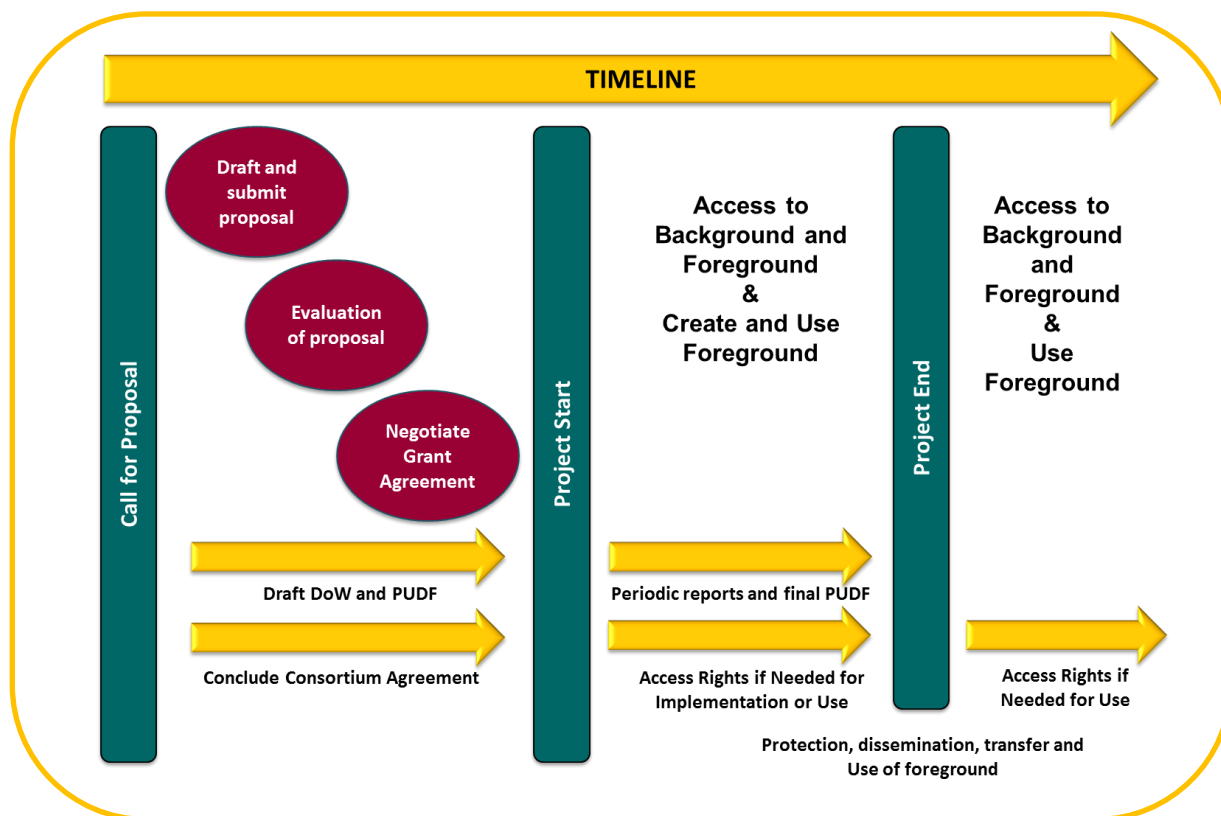
Post-project obligations

Even after the end of the project, you should be careful not to forget to comply with a few IP related provisions of the GA that remain in force. The use and dissemination rules, as well the need to keep confidentiality are obligations you must not forget.

Advanced IPR strategies

Depending on the project, you may decide to exploit the foreground by setting up a "start-up" with other partners or by creating one or more "patent pools".

Summary



Glossary

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.

Background means the information and knowledge which is held by the beneficiaries prior to their accession to the Grant Agreement, 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.

Consortium Agreement 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 Grant Agreement or the Rules for Participation.

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.

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.

PUDF (Plan for the Use and Dissemination of Foreground) details the strategy and concrete actions for the protection, exploitation and dissemination of the project results.

DoW (Description of Work): is annex I to the Grant Agreement. It contains information on the work packages, deliverables, milestones, resources and costs of the beneficiaries, as well as a text with a detailed description of the work.

Useful Resources

- **Introduction to IP Rules in FP7 Projects**
<http://www.iprhelpdesk.eu/sites/default/files/relateddocuments/Factsheet%20IP%20rules%20FP7%20June%202011.pdf>
- **How to manage IP in FP7 during the proposal stage**
http://www.iprhelpdesk.eu/sites/default/files/newsdocuments/IP%20management%20in%20FP7%20during%20the%20proposal%20stage_final.pdf
- **How to manage IP in FP7 during the negotiations phase**
http://www.iprhelpdesk.eu/sites/default/files/newsdocuments/20110905_IP%20management%20in%20FP7%20during%20the%20negotiation_final%20version.pdf
- **How to manage IP in FP7 during and after the project**
<http://www.iprhelpdesk.eu/sites/default/files/newsdocuments/How%20to%20manage%20IP%20in%20FP7%20during%20and%20after%20the%20project.pdf>
- **Guide to Intellectual Property Rules for FP7 Projects**
ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr_en.pdf
- **Strategic Guide to Successful Use and Dissemination of the Results of Research and Development Projects**
http://ec.europa.eu/research/sme-techweb/pdf/use_diffuse.pdf#view=fit&pagemode=non
- **Example project proposal**
<http://www.ncp-sme.net/publications/model-proposal/>

GET IN TOUCH



For comments, suggestions or further information, please contact

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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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