



How to manage

Intellectual Property under FP7?

A practical guide for SMEs



WHAT IS INTELLECTUAL PROPERTY (IP)?



IP refers to **creations of the human mind which may be legally protected.**



**IP rights do not protect
“mere ideas”**

Two main areas



INDUSTRIAL PROPERTY RIGHTS

- Protect e.g.
- inventions
(**patents** and **utility models**)
 - the appearance of a product
(**industrial designs**)
 - distinctive signs for goods/services
(**trade marks**)
 - ...

COPYRIGHT AND RELATED RIGHTS

- Protect e.g.
- written works
 - computer programs
 - databases
 - audio-visual works
 - ...

Objective of the protection

-  exercise of a certain control over a strategic sector
-  compensation for creative, inventive or economic effort made

Scope of the protection obtained

-  varies according to the type of the protection tool employed

WHY IS IP IMPORTANT FOR YOUR COMPANY?



It is a strategic asset:

- IP rights facilitate **transfers of technology** and **market opportunities**
- IP rights improve your **competitiveness** and consolidate the **value** of your company

WHEN DOES IP MATTER IN FP7 PROJECTS?



IP management is important for a research project funded under the EU Seventh Framework Programme (FP7), **from the proposal stage to implementing the project and using its results.**

PROPOSAL PHASE

Potential participants should know what knowledge they each bring, what they may need from others, what the state of the art is in the field of the project, and should develop a strategy on protection, use and dissemination of the results

IMPLEMENTATION PHASE

Participants shall implement the project taking into account the applicable rules and their IP strategy, as well as anticipating any deviation from the original plan

COMPLETION PHASE

Participants shall focus on the use (direct/indirect) and dissemination of the results

HOW CAN SMEs PARTICIPATE?



Research-performing SMEs can participate in all research actions (*see collaborative projects in the second phase of this guide*).

SMEs can also participate in specific actions which are designed for their benefit. These 'SME actions' aim to promote the innovative capacity of SMEs through the research technological participants carry out for them (*see actions for SMEs/SME associations in the second phase of this guide*).

For general information related to these actions, please visit:

<http://tinyurl.com/SMEtechweb>

IDENTIFYING YOUR IP & IP NEEDED FOR THE PROJECT

- Why** To identify which know-how and knowledge will be needed to carry out the project
- How** Negotiating necessary participants' background under appropriate confidentiality agreements
For necessary know-how or knowledge owned by a third party, negotiating appropriate licences / material transfer agreements
- Who** All proposers

PROTECTING YOUR PRIOR IP

NON-DISCLOSURE / CONFIDENTIALITY AGREEMENTS

- Why** To protect relevant information (e.g. sensitive background) during an agreed period of time
- How** Written confidential information should be identified as such on each page. Information transmitted orally should be confirmed as confidential in writing
- When** Before information considered confidential is disclosed to the other proposers

VERIFYING RIGHTS & PROTECTING PROPOSAL ELEMENTS

VERIFYING RIGHTS

- What** All relevant IP rights to avoid infringements of third parties' rights
- How** Conducting any necessary search (e.g. on trade marks, patents)
- Who** All proposers (e.g. coordinated by the eventual project coordinator)
- When** While negotiating and preparing the proposal

PROTECTING ELEMENTS OF YOUR PROPOSAL

- What** Technical content of the proposal, name of the project, acronym, logo, etc
- How** Confidentiality agreements / relevant IP rights
- Who** All proposers (e.g. coordinated by the eventual project coordinator)
- When** In due time during the preparation of the proposal

NEGOTIATING THE CONSORTIUM AGREEMENT

- Why** To supplement the grant agreement and adapt it to the specific project
- Who** All proposers / participants
- When** Generally speaking, before signature of the grant agreement

OWNERSHIP - GENERAL RULE

	COLLABORATIVE PROJECTS	ACTIONS FOR SMEs / SME ASSOCIATIONS
BACKGROUND	the participant who owns it, remains the owner	
FOREGROUND	the participant who has generated it	the SME participants/SME associations, unless otherwise agreed

JOINT OWNERSHIP

	COLLABORATIVE PROJECTS	ACTIONS FOR SMEs / SME ASSOCIATIONS
FOREGROUND	<p>when several participants have produced common foreground + it is impossible to distinguish their individual contributions</p> <p>these participants will have joint ownership</p>	<p>when foreground is generated</p> <p>all the SME participants/SME associations will have joint ownership unless otherwise agreed</p>
	<p><u>Default regime:</u> each joint owner is free to grant non-exclusive licences to third parties + prior notification (45 days) to the other joint owners + fair and reasonable compensation to the other joint owners</p>	

ACCESS RIGHTS - MAIN PRINCIPLES

BACKGROUND	FOREGROUND
Access rights shall be granted if needed for the implementation of the project or for use of foreground	
Access rights are granted on written request	
Additional access rights may be agreed upon (e.g. to sideground)	
More favourable conditions than those required by the grant agreement may be agreed upon	
The granting of access rights does not include the right to sublicense (not even to parent/affiliated entities of consortium members), unless otherwise agreed In actions for SME associations though, the SME associations may sublicense their members the access rights granted to them	
Participants can waive their access rights to allow the owner to grant an exclusive licence	
	There exists a right of the European Commission to object to the granting of exclusive licences to third parties established in a country not associated to FP7 if European interests are at stake
Affiliated entities (established in a Member State or associated country) of a beneficiary may enjoy access rights if needed by that affiliated entity to use its own foreground	
Access rights are granted if the beneficiary is entitled to grant them	
Specific background may be excluded from the obligation to grant access rights	

SECTORAL PRINCIPLES IMPLEMENTATION

ACCESS RIGHTS - ECONOMIC CONDITIONS

	COLLABORATIVE PROJECTS		ACTIONS FOR SMEs / SME ASSOCIATIONS	
	FOR PROJECT IMPLEMENTATION	FOR USE	FOR PROJECT IMPLEMENTATION	FOR USE
BACKGROUND	Royalty free, unless otherwise agreed before signature of the grant agreement	Royalty free	Royalty free, unless otherwise agreed before signature of the grant agreement	Royalty free
FOREGROUND	Royalty free	or fair and reasonable conditions	Royalty free from RTD performers	or fair and reasonable conditions *

* If RTD performers want to apply conditions for access rights to their background for use purposes, this has to be agreed before acceding to the grant agreement.

ACCESS RIGHTS - TERM FOR REQUEST

	FOR PROJECT IMPLEMENTATION	FOR USE
BACKGROUND	During the execution of the project	Up to 1 year after the end of the project
FOREGROUND		or the termination of participation by the owner of the background or foreground concerned unless otherwise agreed

PLAN FOR USING AND DISSEMINATING FOREGROUND

- Why** The participants are required to submit a draft plan in their proposal
- What** Information about the expected use of the project results should be sufficiently detailed to permit the European Commission to carry out any related audit
- Who** All participants
- When** A draft plan is included in the proposal and it is later part of the grant agreement (technical annex). A report on the plan shall be provided at the end of the project

PROTECTING YOUR PROJECT RESULTS

- What** The results generated in the project
- How** Particularly, by means of the appropriate IP rights
- Who** All participants for their respective foreground
- When** After assessment of the results in view of their planned use and dissemination

USING YOUR PROJECT RESULTS

- How** By means of commercial activities or application of the results in further research
- Who** The owner (one of the participants), another participant or a third party (e.g. licensees)

DISSEMINATING YOUR PROJECT RESULTS

- Why** To disclose the EU funded results for the benefit of the European society
- How** Conferences, websites, scientific articles, etc. Prior notification to the other participants is required
- Who** All participants
- When** As swiftly as possible but taking care of IP protection issues



IPeuropAware is a project funded by DG Enterprise and Industry under the Competitiveness and Innovation Framework Programme (CIP), with the objective of helping SMEs in the IP field. It gathers the experience of IPR-Helpdesk with IP related issues in EU funded projects and the national information on IP provided by InnovAccess.

The IPeuropAware consortium is made up of partners from the countries highlighted in the following map.



<http://www.tinyurl.com/iprhd-FP7>



<http://www.tinyurl.com/iprhd-IA>

Many organisations offer IP related information and services specifically addressed to SMEs. Please find below a selection of resources. All links on this page are provided in a short version to facilitate access.

- <http://www.tinyurl.com/iprhd-WIPO>
- <http://www.tinyurl.com/iprhd-EPO>
- <http://www.tinyurl.com/iprhd-OHIM>



FP7 KEY TERMINOLOGY



ACCESS RIGHTS refer to those **licences or user rights** to foreground or background granted by their owners to other participants or third parties.

AFFILIATED ENTITY refers to a legal entity that is **under the direct or indirect control** of a participant, or **under the same direct or indirect control** as the participant.

BACKGROUND is the **information** and **IP rights** (granted or applied) **held** by the participants **before the project starts** and which are **needed to carry out the project or to use the results**.



SIDEGROUND (information and IP rights acquired in parallel to the project) **is not covered by the FP7 rules**

BENEFICIARY (participant) is a legal entity contributing to an FP7 project and having rights and obligations with regard to the Community under the terms of the grant agreement.

CONSORTIUM AGREEMENT is the private agreement concluded between the beneficiaries to supplement the grant agreement on management issues and IP, amongst others. There is no official consortium agreement model. However, certain organisations do provide templates (see <http://tinyurl.com/iprhd-fp7camodel>).

DISSEMINATION means the **disclosure/spreading of foreground to a wide audience** by any appropriate means other than those resulting from the formalities for protecting it. This may be made by means of publications, seminars, conferences, press releases, web-based activities, etc.

FAIR AND REASONABLE CONDITIONS means **appropriate conditions** including possible financial terms, agreed upon by the participants taking into account, among other things, the objective of the request for access.

FOREGROUND means the **results generated in the project**, as well as any related IP rights.

GRANT AGREEMENT is the agreement concluded between the beneficiaries and the European Commission, based on the grant agreement model adopted by the Commission.

RTD PERFORMER refers to a **legal entity that does research and technological development activities for the benefit of specific groups**, such as SMEs.

SMEs are micro, small and medium-sized enterprises (within the meaning of Recommendation 2003/361/EC), 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** (to know if you meet criteria see <http://tinyurl.com/iprhd-smetechweb>).

SUBCONTRACTOR is a **third party** providing services or goods, who has entered into a subcontract with one or more participants. Therefore, the subcontractor is not a participant.

THE TRANSACTION is a specific part of the grant agreement under the scheme “Research for the benefit of SMEs” where the participants shall agree on issues relating to the ownership of the project results and the remuneration paid to the RTD performers.

USE means the **direct or indirect utilisation** of foreground:

- in **research activities** other than those covered by the project, or
- to **develop, create and market** a product or process, or to create and provide a service.

FP7 KEY DOCUMENTS



REGULATION (EC) No. 1906/2006 (OJ L391/1 of 31.12.2006) establishing the **Rules for participation** in FP7, at: <http://tinyurl.com/iprhd-fp7regulation>

Grant agreement models, at: <http://tinyurl.com/iprhd-fp7gamodel>

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For further

Information & Answers

to your **IP** queries

please do not hesitate to contact us:

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