IPR in the CA and in the GA

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Content

✓ Legal Framework
✓ Importance of IPR issues
✓ IPR provisions (GA & CA)
  ✓ Background /Results
  ✓ Access Rights
  ✓ Ownership
  ✓ General Obligations: Protection, Exploitation (transfer & Licenses), Dissemination
Legal Framework

- National Regulations
- Financial Regulation
- Participation Rules
- Grant Agreement
- Consortium Agreement
- Previous Agreements
- Other EU regulations
- TFU
- H2020 Project

NCP Academy - Training National Contact Points
Legal Framework

H2020 Project

Grantee Agreement

CE & Beneficiaries: establishes rights and obligations

Consortium Agreement

Private Agreement between Participants. Supplements the GA (Standard document) Must be in line with the GA.
**IPR & Collaborative Projects**

- **Collaboration**: “the act of working with another person or group of people to create or produce something”

- Participating in a collaborative project implies **sharing knowledge**. Not only the results to be produced within the project but also the IP that as participants we bring to the project to achieve a common goal.
IPR. Is it important?

✓ As far as we are opening our IP to other beneficiaries, it is necessary to establish the **appropriate measures** in order to be protected from a non-performance or abuse from other beneficiaries.

✓ Protection measures shall be in force during the **whole project cycle**, even once finished.
When?

✓ IP provisions regulate ownership, protection, transfer, dissemination and exploitation of research project results. They shall be taken into account:

✓ Before the Project starts (Memorandum of Understanding, letter of intent, confidentiality agreement)

✓ During the Project (Consortium Agreement)

✓ After the Project (License Agreements)
**IPR Definitions I**

**Art. 2 Rules for Participation**

**Access Rights**: rights to use results or background under the terms and conditions laid down in the RfP/GA

**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, or that is directly or indirectly controlling a participant. Control: art.8(2);

**Background**: *any data, know-how or information* whatever its form or nature, tangible or intangible, *including any rights such as IP rights*, which is: (i) *held by participants prior to their accession to the action*; (ii) *needed* for carrying out the action or for exploiting the results of the action; and (iii) *identified* by the participants in accordance with art. 45;

**Results**: *any (tangible or intangible) output of the action* such as data, knowledge or information — whatever its form or nature, whether it can be protected or not — that is generated in the action, *as well as any rights attached to it, incl. IP rights*;
Exploitation: *use of results* in further research activities, or in developing, creating and marketing a product or process, or in creating and providing a service, or in standardisation activities;

**Fair & reasonable conditions:** *appropriate conditions*, including *possible financial terms or royalty-free conditions*, taking into account the specific circumstances of the request for access, for example the actual or potential value of the results or background to which access is requested and/or the scope, duration or other characteristics of the exploitation envisaged;

**Dissemination:** *public disclosure of the results by any appropriate means* (other than resulting from protecting or exploiting the results), including by scientific publications in any medium.
Background

Data, information, know-how (protected or not) owned by the Beneficiary before the project and that is needed to carry it out

- **Legal entity** as a whole (not a department, research group)
- IP **owned** but also IP **held**
- Includes IP **filed** before acceding the Grant Agreement (i.e. filed patents)
Background Basics

✓ **Only** Information needed for the project

✓ Remains the property of the partner that brings it into the project.

✓ Highly recommended to **identify Background** in a written agreement (CA)
  ✓ Positive list
  ✓ Negative list

✓ If **restrictions**: inform the other Beneficiaries of any legal limitations
Results

Knowledge (outputs) generated during the project

Ownership

✓ Results are property of the Beneficiary generating them (general rule)

✓ Participants may agree otherwise (in the CA)

✓ Personnel rights have to be taken into consideration
Results - Joint Ownership

✓ Results **generated in common** by several Beneficiaries while respective parts can not be determined.
✓ **Joint owners** of the results
✓ **Default regime:** joint owners may grant non exclusive licences:
  ✓ Prior notice and under fair and reasonable conditions

**Best Practice:** include in the CA the obligation to conclude a **Joint Ownership Agreement:**

Establishing terms and conditions needed to manage the joint ownership. (quotas, transfer of quotas, etc...)
Access Rights: WHAT??

Licences, rights to use *background* and *results* from other participant in the project. Background and results are shared through access rights.

- Requested in written
- Do not confer the right to grant sub-licenses
- Requested/granted throughout the duration of the project and up to 1 year after the end
Access Rights: WHEN??

Are Beneficiaries obliged to grant access rights to their Background/Results? **NO Only** in case a Participant **needs** it for:

- Carrying out its tasks in the project (**implementation**);
- To use its own results (**exploitation**)

*Best practice*: to avoid conflicts it is advisable that Beneficiaries agree on the CA on what is “needed”
## Access Rights: HOW??

<table>
<thead>
<tr>
<th></th>
<th>Implementation</th>
<th>Exploitation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Background</strong></td>
<td>Royalty free, unless otherwise agreed before signature GA</td>
<td>Fair and reasonable conditions</td>
</tr>
<tr>
<td><strong>Results</strong></td>
<td>Royalty free</td>
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Access Rights – Affiliated Entities

✓ Are Beneficiaries obliged to grant access rights to their Background/Results? **NO Only** in case a Participant **needs** it:

✓ Carry out its tasks in the project (**implementation**);

✓ To use its own results (**exploitation**)

  to exploit the result of the Beneficiary to whom they are affiliated: AR to background/results on fair and reasonable conditions

✓ To use
Protection, Exploitation and Dissemination

- GA general obligations
- To be taken into account simultaneously during the project cycle.
- Protection of results: confidentiality and IP Rights
- Exploitation of results: industrial use, commercial, research activities, standardisation
- Dissemination of results: Publications, open access
Protection of results

✓ Obligation to protect results with a commercial/industrial potential, if possible, reasonable and justified.

✓ If no protection is foreseen CE/Agency may assume ownership to ensure its protection

✓ Take into consideration own interests and other Beneficiaries interests

✓ Freedom to choose the form of protection

✓ Protection on the basis of the project nature and the result generated.
Exploitation of results

✓ Participants must ensure the **exploitation of the research results**
  ✓ New research activities
  ✓ Commercial, industrial exploitation
  ✓ Use in standardisation activities

✓ “Best effort obligation”

✓ **Direct Exploitation (by the Beneficiary):** further research activities (outside the action), own commercial activities

✓ **Indirect Exploitation (by others):** Licenses on results, transfer of ownership of the results
Transfer & Licenses of results

Indirect Exploitation: transfer of ownership/licensing

Transfer

- **Obligations** from the GA regarding results shall be transferred to the new owner.
- Prior notification to rest of participants, objection possible.
- Ensure Access Rights to the rest of participants.

Licenses

- **Permitted if**, access rights to the other participants are ensured.
- Exclusive licenses only if the rest of participants waive their access rights.

**Objection CE/Agency** transfer/exclusive license to third parties established outside the EU/AC or contrary to EU interests (competitiveness interests, security considerations, ethical principles...).
Dissemination of results

✓ Foreground should be disseminated to the public
✓ Freedom to choose dissemination means
✓ Dissemination vs Protection
✓ Information to Beneficiaries (right to object)

✓ Therefore:
  ✓ No dissemination before a decision about its \textit{protection} is made

✓ If dissemination does not affect protection it is a \textit{must} to disseminate as broad as possible
Open Access

Open Access (OA) is the immediate, online, free availability of research outputs without restrictions on use commonly imposed by publisher copyright agreements.

- **Mandatory** for H2020
- **Two routes**: “Green” open access / “Gold” open access
- **Eligible cost if during the project**
- Open access to research data in H2020
Key Messages to take home!!!

- IPR issues shall be taken into account at all stages
- Identification of Background is crucial
- Property of Background remains unchanged
- Consortium Agreement: the key document to IPR issues
- Protection, Exploitation and Dissemination, participants obligations concerning Project results
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