

## IP-related issues for research organisations in FP7

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### **Introduction**

According to the FP7 grant agreement, a research organisation is a legal entity that: 1) is established as a non-profit organisation; and 2) carries out research and development activities as one of its main objectives<sup>1</sup>.

This document examines intellectual property (IP) issues from the point of view of research organisations, either financed by public (universities, public research institutes, etc.) or private money (research associations and foundations).

#### **a. Consortium Agreement**

FP7 project participants are often required to conclude a consortium agreement to implement the provisions of the grant agreement. The clauses related to IP are a major part of the consortium agreement negotiations and are crucial for the effective implementation of the project and the exploitation of its results.

Usually, consortia negotiate and draft their consortium agreement based on a model. Several models exist so far, but the most suitable for research organisations is the [DESCA model](#)<sup>2</sup>, drafted by a core group that brings together representatives mainly from the research and academic sectors. Many of the observations below are expressed in DESCAs clauses, especially when using “option 1” in its modular structure.

#### **b. Management of background**

Like any other participant, research organisations normally contribute certain background to a project (i.e. any knowledge, information or IP rights the research organisation as a whole possesses before entering the project and that is needed for the project’s proper execution and the exploitation of its results). Indeed, the other participants may require access rights to the research organisation’s background if they need it to carry out the project or use their own results.

Research organisations may, however, define the background that they will make available to the project and exclude background from their obligation to grant access rights.

This may be done in two ways: research organisations may positively define the background available to the project, also by designating a research department or team whose background will be made available (background originating from other departments will thus be excluded). This option may prove very useful to research organisations composed of many research departments.

They may also exclude specific background from their obligation to grant access rights.

The cumulative use of both options would enable a research organisation to define as available only the background originating from a research department and still exclude a specific element of that department’s background, if necessary<sup>3</sup>.

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### c. Joint ownership of foreground

Joint ownership is a situation where several participants share the ownership of certain results of the project<sup>4</sup>. When this occurs, participants need to reach agreements on how they will manage the joint ownership. One of the most crucial issues governed by such agreements is the economic exploitation of the common results.

Taking into account that in many cases research organisations do not have the capacity to commercially exploit the results or even license them to the industry through their own efforts, the only way to participate in the benefits of the economic exploitation is to be rewarded by other participants who are capable and do exploit the common results.

The FP7 rules provide for a default regime, under which each joint owner may grant a licence to the common results to a third party after previously informing the other joint owners and granting them fair and reasonable compensation<sup>5</sup>. If there is no agreement to the contrary, this default regime, which is rather favourable to many research organisations, shall apply.

Therefore, a successful negotiation with industrial partners will enable research organisations to generate some income that can be reinvested in future research activities, laboratory equipment, etc.

In any case, research organisations may always decide to discontinue the joint ownership regime and transfer their ownership shares to the industrial partners (possibly in exchange for remuneration) while retaining a licence to use the results in their own research activities.

### d. Scientific and academic publications

Traditionally, researchers and scientists are particularly interested in scientific and academic publications, which they see as a reward for their work. Therefore, research organisations are often called upon to protect this interest in the dissemination of knowledge for the sake of their researchers.

In FP7 projects, any dissemination activity needs the approval of all the consortium participants and shall always respect the protection of the results and the legitimate interests of the other participants (including economic interests).

It is therefore crucial for research organisations to ensure good cooperation with their industrial partners, which are not always keen on publication as they may endanger their commercial strategies.

'Good cooperation' basically means recognising the interest of research organisations in publication. Indeed, there are consortium agreement clauses that require participants to cooperate for the timely presentation of theses and other academic works. At the same time, it is important to ensure coordination at the practical level: inform the other participants of possible publications and keep a good contact with researchers to know when and where they think they will publish; present publication plans for approval sufficiently in advance; clearly indicate the data related to the results of the project that could be part of a publication; negotiate and make amendments, if necessary, to avoid harming the other parties' commercial interests.

### e. Access rights

A participant may require access rights from another participant if it needs them to carry out its own work or to exploit its own foreground. Thus, an industrial partner may require access rights to results generated by a research organisation in order to exploit its own results on the market.

If the research organisation does not have the option to do the same, i.e. exploit its own foreground (possibly requesting access rights to the other participants' foreground), it may wish to be remunerated for the successful commercial efforts of the industrial partners that are generated, in part, using the access rights it granted.

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The FP7 rules provide that access rights to background and foreground for use purposes are granted either on a royalty-free basis or under fair and reasonable conditions. The latter may imply royalties, i.e. an economic compensation for the participant that grants the access rights.

Consequently, it may be in the interest of research organisations to negotiate fair and reasonable conditions for the granting of access rights for use purposes in the sense of commercial exploitation. In practice, this should be the rule for access rights to background, while the negotiation about access rights to foreground is often more complex.

On the other hand, it should not be forgotten that “use”, in addition to commercial activities, also means utilisation in further research. Research organisations should always negotiate royalty-free access rights for further research activities since this will enable them to freely employ more research resources after the project.

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1. Cfr. article II.1.13 of the [Annex II](#) to the grant agreement.
  2. For more information on consortium agreement models, please check our [related document](#). More general information about consortium agreements in FP7 is provided in [another document](#).
  3. For further information on the exclusion of background, please refer to section 3 of our document [How IP rules work in FP7](#).
  4. For further information on the issue of joint ownership, you may consult the document [Joint Ownership in FP7](#).
  5. Cfr. article II.26.2 of the [Annex II](#).

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