

- 1. Introduction.....	1
- 2. Ownership of foreground.....	1
- 3. Transfer of ownership.....	2
- 4. Conclusive remarks.....	2
- 5. Further information.....	2

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### **1. Introduction**

This document presents the general principles of ownership in the context of the Seventh Framework Programme of the European Community (hereinafter FP7). These principles are embodied in the [rules for participation](#) and the [general conditions of the model grant agreement](#) (hereinafter the grant agreement) which determine the ownership of foreground<sup>1</sup> resulting from an FP7 project among participants<sup>2</sup>.

### **2. Ownership of foreground**

#### *Principles*

Pursuant to article 39.1 of the FP7 rules for participation and article II.26 of the Annex II to the grant agreement, the foreground is the property of the participant that carries out the work that generates that foreground. In that respect, it might be useful to be in a position to prove ownership. Therefore, it is important to keep track of who generated the results and when they were generated, for example through documentary evidence such as [laboratory notebooks](#).

When several participants have produced common foreground and their respective parts of the work cannot be determined, the participants will jointly own this foreground<sup>3</sup>.

#### *Personnel rights*

Furthermore, the fact that a participant is a legal entity must be taken into account. Neither the FP7 rules for participation nor the grant agreement contain detailed rules on personnel rights. Therefore, it cannot be presumed, on this basis, that the legal entity is the owner of the results of its personnel work. It is important that the participants, as legal entities, organise the potential issue of ownership of results with their employees or other personnel working for them<sup>4</sup>.

Different factual situations may have to be taken into account. The ownership of an employee's creation will vary according to the type of creation and its related protection (copyright, patent etc.) In the absence of provisions at the EU level, in general, and in the FP7 rules, the issue is mainly governed by the national laws of each Member State and is dealt with in the contractual clauses set up in individual employee contracts.

For example, in principle, a researcher is the owner of his invention. Nevertheless, under most European laws, the patent for an invention, for example, resulting from work that is part of an employee's responsibilities as defined in the employment contract will belong to the employer. However, the mechanisms that allow for the transfer of ownership are often different from one country to another<sup>5</sup>. Therefore, they should be duly taken into account and checked before the start of the research project.

In that respect, it is indeed advisable that the participants ensure, if need be, that the regime of ownership with their personnel is compatible with their obligations resulting from the grant agreement. In particular, participants should always be in a position to grant access rights to foreground to other participants if the latter need it to carry out their work in the project or to use their own foreground.

### **3. Transfer of ownership**

The participants have the possibility to transfer their ownership of foreground to another participant or third party. Obligations regarding this foreground must be passed on to the new owner. Furthermore, when a participant wants to transfer its ownership of foreground it should first inform the other participants (at least 45 days prior to the intended transfer, or within another time limit commonly agreed). The delay gives them the opportunity to verify that their access rights are not prejudiced and, if need be, to object to the transfer<sup>6</sup>. On the other hand, there is no obligation to notify the European Commission of the transfer<sup>7</sup>.

In the case of a transfer to a specifically identified third party, the participants may agree in advance by written agreement to suppress the prior notification among them. This prior agreement should be carefully assessed as it might prevent them from objecting to the transfer of rights later.

In addition, in the case of transfer of ownership to a third party not established in a Member State or country associated to FP7, the Commission may object to the intended transfer to preserve European competitiveness and security or ethical principles. In these cases, the deal will not proceed unless the Commission is satisfied that appropriate safeguards will apply and has authorised the transfer in writing<sup>8</sup>.

When the foreground can be industrially or commercially applied, it should be protected by its owner. If the owner does not protect it and does not transfer it to another legal entity, ownership may be transferred to the Community<sup>9</sup>, which will take the necessary measures for its protection.

### **4. Conclusive remarks**

To summarise, from the point of view of ownership under FP7 rules, the following four key principles should be kept in mind:

- Ownership of background is in no way affected by participation in a FP7 project<sup>10</sup>;
- The owner of foreground is the participant(s) that has (have) generated it;
- In case of jointly carried out work and where respective shares of the work cannot be ascertained, a joint ownership regime applies;
- Transfer of ownership of foreground is allowed, subject to the obligation to pass obligations resulting from the grant agreement.

### **5. Further information**

[The IPR Regime under FP7: Overview and Comparison with FP6 \(IPR-Helpdesk\)](#)  
[European Commission Guide to IP Rules for FP7 Projects \(28/06/2007\)](#)

1. 'Foreground' means the results of the project, including information, as well as any intellectual property rights related to these results (see article II.1.7 of the Annex II to the grant agreement). It is distinguishable from 'background' which means the information and intellectual property rights that participants hold before the signature of the grant agreement and which is needed to carry out the project or use the foreground (see article II.1.4 of the Annex II).
2. Note that specific clauses, for example on SMEs or for Marie Curie actions, may also apply.
3. See article II.26.2 of the Annex II and, for further details, our [document on the joint ownership regime](#).
4. See Article II.26.3; other personnel working for them can be for example personnel of an affiliate.
5. For further details see IPR-Helpdesk [Guide on employees' creations](#).

## Ownership of Foreground in FP7

6. A participant may block the transfer, within 30 days or another commonly agreed upon time limit, if it can demonstrate that the transfer of ownership is made under conditions that affect its access rights. Participants should then negotiate to reach an agreement (see article II.27.3).
7. However, specific clauses to be negotiated and inserted in the grant agreement may provide so (cf. clause 11 of the [list of special clauses](#)).
8. See article II.27.4.
9. The participant that owns the foreground can oppose this transfer of ownership if it can prove it would harm its interests (see article II.28.3).
10. Nevertheless, in certain cases they have to grant access rights to this background if they are free to do so.

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**Project Management Office**  
IPR-Helpdesk  
Edificio Germán Bernácer  
Universidad de Alicante  
P.O. Box 99  
03080 Alicante  
España

e-mail: [ipr-helpdesk@ua.es](mailto:ipr-helpdesk@ua.es)  
Tel.: +34 965 90 97 18  
Fax: +34 965 90 97 15

**Representative Office**  
IPR-Helpdesk  
98, Rue du Trône  
B-1050 Brussels

e-mail: [ipr-helpdesk@ua.es](mailto:ipr-helpdesk@ua.es)  
Tel.: +32 (0) 2 213 41 63  
Fax: +32 (0) 2 213 41 69