




Session 4: Understanding IP in the Horizon 2020 Grant agreement
Ch 4 **Sub-Section 3**: Rights and obligations related to results




Addressing the main IP issues in the GA

- 1. Access Rights**
 - **back-ground and foreground**
 - **For the project and the future**
 - **For partners and affiliates;**
- 2. Ownership** of results
- 3. Dissemination** -Right to publish/ confidentiality
- 4. Benefits** -Share in commercial profits (**Exploitation**)



Background (art 24)

- Background means: any data, know-how or information – what ever its form or nature (tangible or intangible), including any rights such as intellectual property rights – that:
 - Is held by the beneficiaries before they accede to the Agreement, and
 - Is needed to implement the action or exploit their results.
- The beneficiaries must identify and agree (in writing) on the background for the action.
 - (Consortium agreement: Positive lists? Negative lists?)

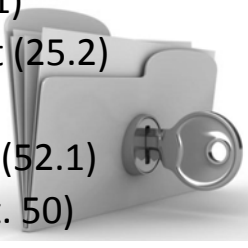


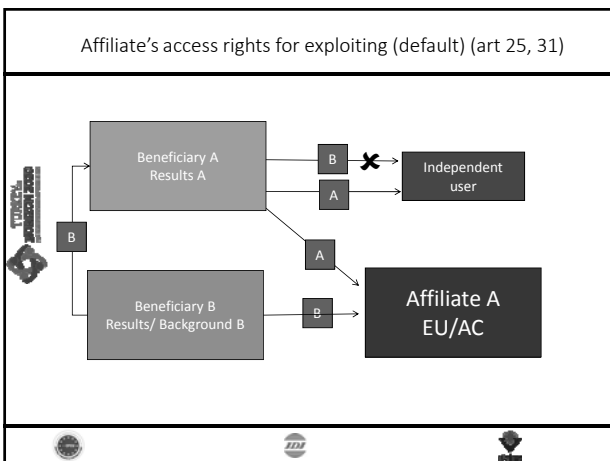
Summary: Background IP access rights (art 25, 31)

Art 25.2	Art 25.3
The beneficiaries must give each other access	
- on a royalty free basis -	- under fair and reasonable conditions -
To background <u>needed</u>	
to implement their own tasks under the action,	for exploiting their own results
Unless the beneficiary that holds the background has – before acceding to the agreement – informed the other beneficiaries that access to its background is subject to legal restriction or limits, including those imposed by the rights of third parties (including personnel)	

Access conditions (art 25 + 31, 50)

- Needed (Article 25.2)
- Sub-license (25.1)
- Prior Agreement (25.2)
- Timing (25.3)
- Written request (52.1)
- Termination (Art. 50)





GA IPR summary: Access Rights

For implementation


- To background / results (royalty free) if needed

For exploitation

- To background / results (under fair and reasonable conditions) if needed to exploit own results
- Also applicable to affiliates established in MS/AC



For EU/MS

- Non-commercial use and policy related purpose (under "Secure societies")
- On a royalty-free basis
- For third parties
- Specific provisions for complementary beneficiaries, access to research infrastructures, interoperability



‘Results’ (at. 26-29)



- Ownership (Art. 26)
- Protection (Art. 27)
 - If ‘possible, reasonable and justified’
 - Or offer to EC
- Dissemination (Art. 29)
 - ‘legitimate’ interests of other beneficiaries
 - Open Access
- Exploitation (Art. 28)
 - Up to 4 years after the project

2. Ownership of Results
IP Management (art 23a, 26.3)

Issues addressed:


- Management of Intellectual Property
 - Universities and PROs
 - Internal ‘IP Policy’/ ‘Knowledge Transfer Policy’
- Employees and non-employees
 - Professors Privilege
 - PhD students
 - Seconded staff

Code of practice

PRINCIPLES FOR AN INTERNAL INTELLECTUAL PROPERTY POLICY

1. Develop an IP policy as part of the long-term strategy and mission of the public research organisation, and publicise it internally and externally, while establishing a single responsible contact point.
2. That policy should provide clear rules for staff and students regarding in particular the disclosure of new ideas with potential commercial interest, the ownership of research results, record keeping, the management of conflicts of interest and engagement with third parties.



Joint Ownership (art. 26.2)


The joint owners must agree (in writing) on the allocation and terms of exercise of their joint ownership

Unless otherwise agreed in the joint ownership agreement, each joint owner may grant non-exclusive licenses to third parties to exploit, jointly-owned results (without any right to sub-license), if the other joint owners are given

At least 45 days advanced notice (time to object)

‘Fair and reasonable’ compensation

Once the results have been generated, joint owners may agree (in writing) to apply another regime than joint ownership (such as, for example, transfer to a single owner with access rights for the others).




3. Dissemination / Confidentiality (art 36)

During implementation of the action and for four years after the period set out in Article 3, the parties must keep confidential any data, documents or other material (in any form) that is identified as confidential at the time it is disclosed (**‘confidential information’**).

If information has been identified as confidential only orally, it will be considered to be confidential only if this is confirmed in writing within 15 days of the oral disclosure.

Unless otherwise agreed between the parties, they may use confidential information only to implement the Agreement.




3. Dissemination
Open Science: Open Publication (Art 29.2) Open Data 29.3)

Open Access (“Gold Standard” Publishing)

- *an article is immediately provided in open access mode by the scientific publisher.*
- *associated costs are usually shifted away from readers, and instead (for example) to the university or research institute to which the researcher is affiliated, or to the funding agency supporting the research.*

Green Standard Publication:
Self-archiving (“Green” Open Access)


- *the published article or the final peer reviewed manuscript is archived by the researcher /representative - in an online repository before, after or alongside its publication.*
- *Access to this article is often delayed (‘embargo period’), as some scientific publishers may wish to recoup their investment by selling subscriptions and charging pay-per-download/view fees during an exclusivity period.*



4. Exploitation (article 28.1)
Obligation to exploit the results


Each beneficiary must — for up to four years after the period set out in Article 3 — take measures aiming to ensure ‘**exploitation**’ of its results (**either directly or indirectly, in particular through transfer or licensing**) by:


- (a) using them in further research activities (outside the action);
- (b) developing, creating or marketing a product or process;
- (c) creating and providing a service, or
- (d) using them in standardisation activities.



Transfer (art 30)

- Rights and obligations
- Third party specifically identified
- Notification
- Other beneficiary objection
- EC objection






GA IPR summary: Management, ownership and Exploitation of Results

- Ownership**
 - Beneficiary generating the results
 - Joint-ownership in specific circumstances
- Protection**
 - If results capable of commercial/industrial exploitation
 - If no protected, EU may assume ownership
- Exploitation**
 - Best efforts obligation; WP may foresee additional obligations
- Transfer and exclusive licences to a third country**
 - EC may object (competitiveness, ethical principles, security)
- Dissemination**
 - Open access to scientific publications and under certain conditions to research data




Useful resources



European IPR Helpdesk Fact Sheets
1. How to manage IP in Horizon 2020: grant preparation stage

<https://www.iprhelpdesk.eu>



Rights and obligations related to Background and Results