

Session 2: IP and IPR in collaborative partnerships key issues for H2020.



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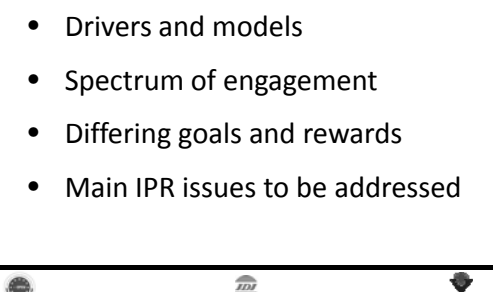
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Outline of session

- Public Private Partnerships (PPPs)
- Drivers and models
- Spectrum of engagement
- Differing goals and rewards
- Main IPR issues to be addressed



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Working with industry: Why?



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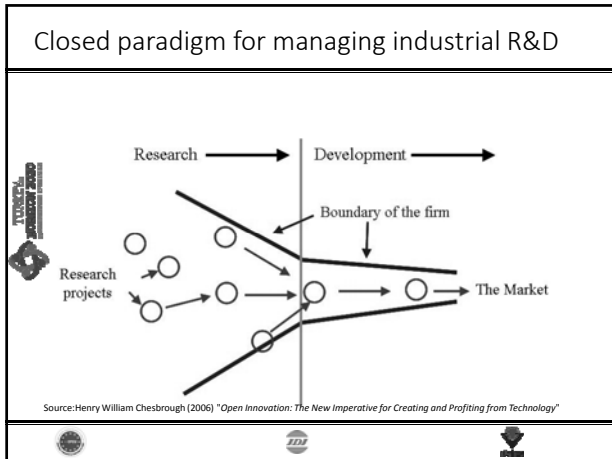
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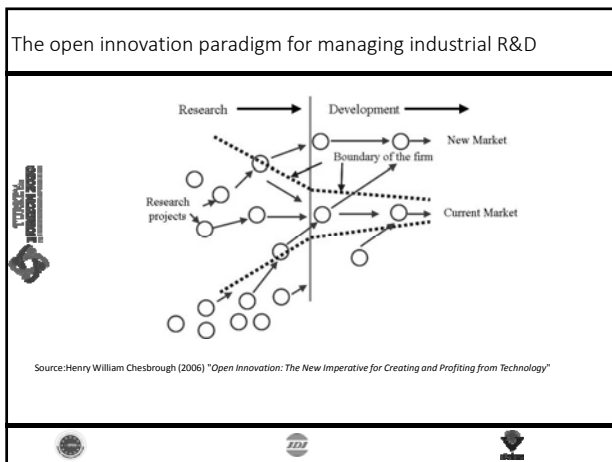
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### EUROPE 2020 (Lisbon Agenda)

*EU Strategic Goal: to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion."*

A European strategy for smart, sustainable and inclusive growth

**EUROPE 2020**

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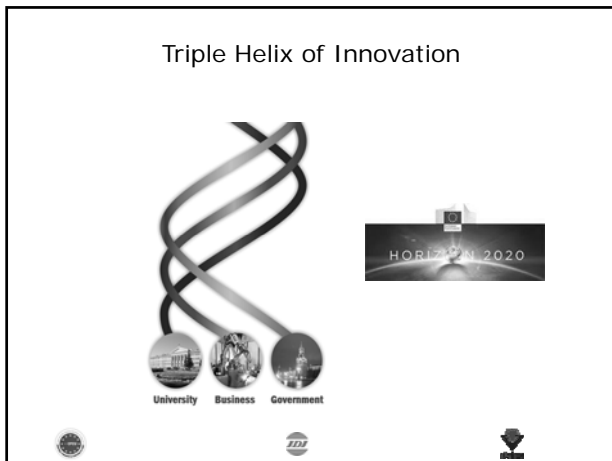
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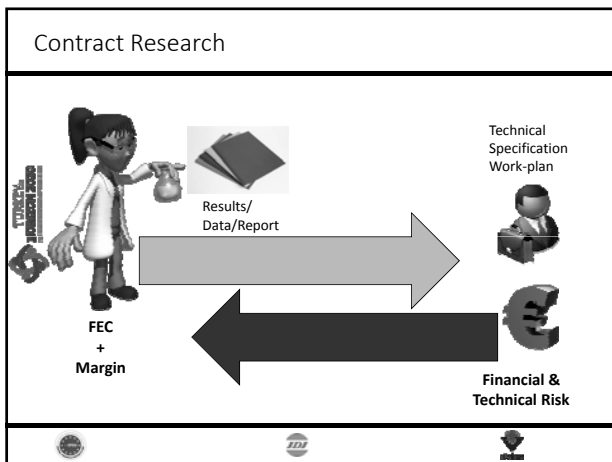
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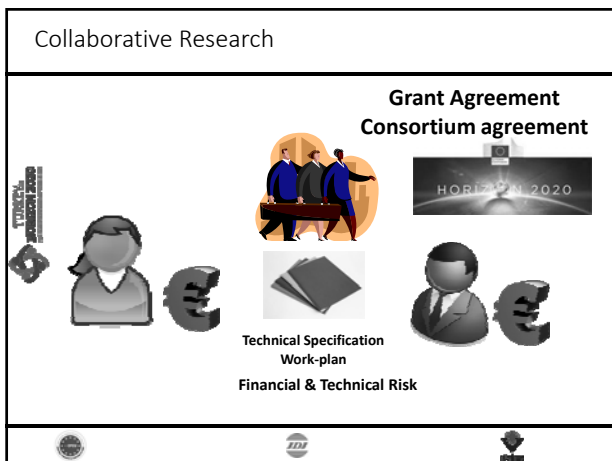
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Traditionally....

Publicly funded R&D Sector:	Commercial Sector
<ul style="list-style-type: none"> <li>• Publish</li> <li>• Papers</li> <li>• Academic freedom</li> <li>• Shared information (conferences)</li> <li>• Increased knowledge</li> </ul>	<ul style="list-style-type: none"> <li>• Protect</li> <li>• Patents</li> <li>• Non Disclosure</li> <li>• Trade Secrets/ know-how</li> <li>• Increased profits</li> </ul>

Lack of alignment between commercial and educational drivers and goals.

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Improving partnerships with industry: anticipating issues

What are the possible issues?

- 1. Access Rights** -access to and control of existing and new ‘information’ including the right to publish and continue to use information for research;
- 2. Ownership** (and exploitation) of any new intellectual property
- 3. Dissemination** -Right to publish/ confidentiality
- 4. Benefits** -Share in commercial profits

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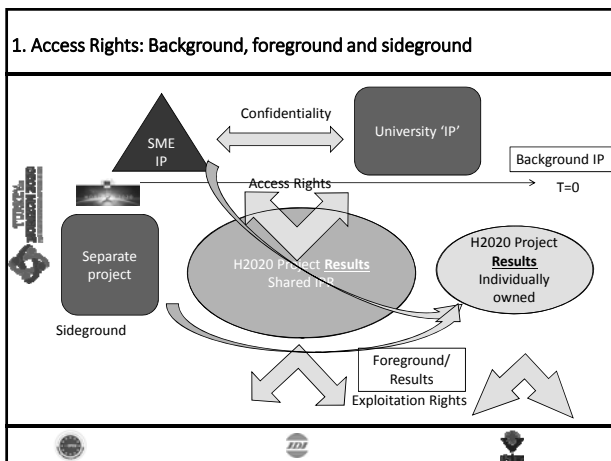
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Background and Foreground



**Background IP** is IP (including know-how) that is needed to undertake a project or to exploit the Results and that is individually owned by the partners at the start of the project.

**Foreground IP** is all the new Results (whether or not they can be protected) produced within the collaborative project during the life-time of the project.

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Sideground and post-ground

- **Sideground** knowledge/IP is knowledge/IP that is relevant to a collaborative venture or open innovation project, but produced outside the project by any of the partners during the project’s tenure.
- No longer specifically mentioned in H2020
- **Postground** knowledge/IP is knowledge/IP that is relevant to a collaborative venture or open innovation project that is produced by any of the partners after the project ends.

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2. IP Ownership – Grant agreement (EC)


**Background IP**

- Ownership does not change
  - what a partner owned before the collaboration they own after the collaboration.

**Foreground (new IP)**

- Individual ownership (Partner owns the foreground they create)
- Joint ownership (Partners jointly share foreground created in the consortium)

➤ Ownership of foreground created in the project must be under the control of the partner named in the grant agreement.



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2. Ownership of foreground (an issue for PROS/ HEIs?)

A university or R&D institution would ‘normally’ own any intellectual property that is:

“made, designed, discovered or created by a member of staff, students, guest researchers etc., in the course of their employment and responsibilities or which makes significant use of the institution’s resources (including institution-administered funds or R&D institution-funded time, facilities, or equipment) in connection with its development”.



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Standard exceptions to core IP Policy

**However:**

Provision should be made in the **grant agreement** to determine the ownership of IP that is “made, discovered or created in the course of research that has been **funded by a sponsor under a grant or research agreement**”.

**Co/ Joint ownership and pre-assigned rights**



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Specific national issues in ownership

Professors Privilege

- UK : owned by the PRO.
- Croatia: Faculties own IPR but University signs H2020 grant agreement.
- Italy and Sweden: academics own their inventions;
- Germany : abolished in 2002 (Employee Invention Act§42 ArbEG )
- Poland – 3 months for a PRO to claim rights then automatic Professors privilege
- Turkey?



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Why is ownership of IP from PROs an issue?

Under H2020 (Article 23 a) it is required that the consortium can control access to, and exploitation of, results.

How can this be done?



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ARTICLE 23a Grant Agreement— MANAGEMENT OF INTELLECTUAL PROPERTY



Commission Recommendation on the Management of intellectual property in knowledge transfer activities and  
Code of Practice for universities and other public research organisations



Presentation title



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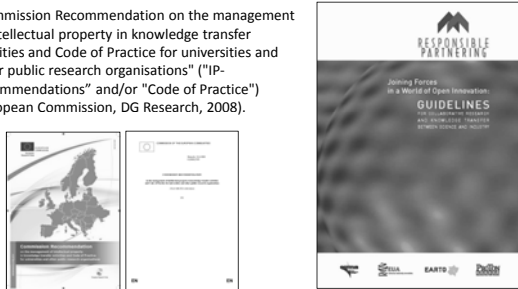
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### Codifying Good Practice

“Commission Recommendation on the management of intellectual property in knowledge transfer activities and Code of Practice for universities and other public research organisations” (“IP-Recommendations” and/or “Code of Practice”) (European Commission, DG Research, 2008).



RESPONSIBLE PARTNERING  
Joining Forces in a World of Open Innovation  
GUIDELINES  
FOR UNIVERSITY RESEARCHERS AND SOME OTHER RESEARCHERS  
BETWEEN SCIENCE AND BUSINESS

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### Improving partnerships with industry: anticipating issues

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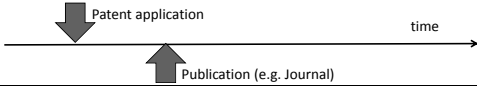
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### 3. ‘Dissemination’ and requirements for patentability

1. Novelty (absolute = the entire world)
2. Inventive step (‘non-obvious).
3. Use in industry
  - Publishing a description of an invention *before* you apply for a patent may make it impossible to meet the requirements for novelty.
  - Publication (dissemination) is a requirement for Horizon 2020.



Patent application

time

Publication (e.g. Journal)

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Open Science: Open Data, Open Publication

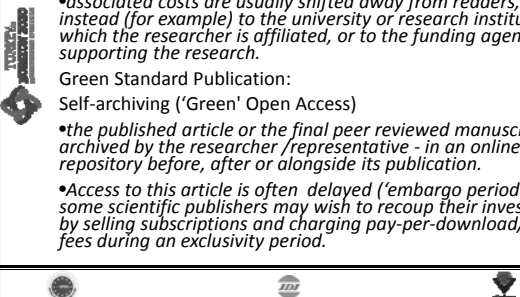
Open Access (“Gold Standard” Publishing)

- 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.




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Open Access: Want to know more?


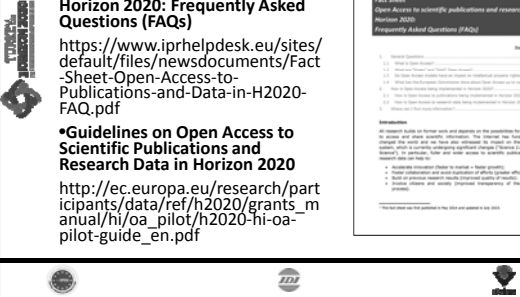
Useful resources

- Open Access to scientific publications and research data in Horizon 2020: Frequently Asked Questions (FAQs)

<https://www.iprhelpdesk.eu/sites/default/files/newsdocuments/Fact-Sheet-Open-Access-to-Publications-and-Data-in-H2020-FAQ.pdf>

- Guidelines on Open Access to Scientific Publications and Research Data in Horizon 2020

[http://ec.europa.eu/research/participants/data/ref/h2020/grants\\_maual/hi/oa\\_pilot/h2020-hi-oa-pilot-guide\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/h2020/grants_maual/hi/oa_pilot/h2020-hi-oa-pilot-guide_en.pdf)


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4. Benefits and ‘Exploitation rights’.

Free vs. ‘Fair and reasonable remuneration’



Business



Public Research Organisations

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Dealing with the issues: Grant Agreement/ Consortium agreement

1. **Access Rights** -access to and control of existing and new ‘information’ including the right to publish and continue to use information for research;
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Default conditions.  
“Unless otherwise stated”



Must not contradict GA



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Why have a formal agreement?

- Agreements allow parties to unambiguously assign the ownership and exploitation rights of IP generated by the collaboration.
- Agreements come in to play when things go wrong and partners fall out!

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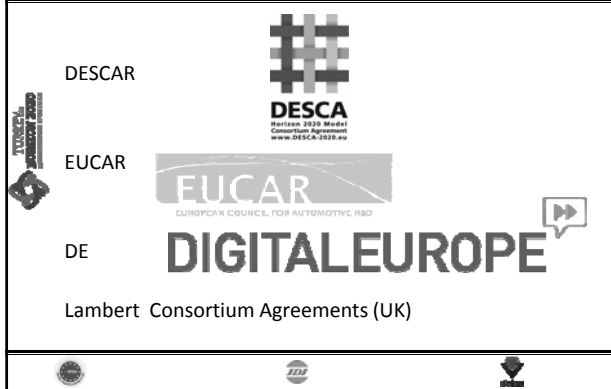
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H2020 Model Agreements



DESCAR

EUCAR

DE

Lambert Consortium Agreements (UK)

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Summary

EUROPE 2020 => increased collaboration between public & private research

Successful and durable cooperative research activities depend on the appropriate management of intellectual property issues

Different scenarios require different solutions

Specific consideration of national provisions =Laws on IP ownership and state aid.

Model Agreements can help you to find the best solution for your own circumstances.

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PPPs : Quick quiz



QUIZ

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