

## IP management in Marie Curie Actions

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## Introduction

Intellectual property (IP) management is a very important part of any successful project within the 7<sup>th</sup> Framework Programme for Research, Technological Development and Demonstration activities (FP7). Marie Curie Actions are not an exception and participants should take the time to understand the IP rules and establish an effective and tailored plan for the protection of research results and exploitation of intellectual property rights (IPR) arising within their projects.

The aim of this fact sheet is to outline the main IP-related issues that participants in Marie Curie Actions should consider in the different stages of their projects. The specific rules of the grant agreement related to IP are explained in this document, as well as the content of other agreements commonly used in Marie Curie Actions. Yet, potential participants in these projects should be aware that Marie Curie Actions

follow, with a few exceptions, the main FP7 IP-related rules. Thus, we strongly encourage you to read our fact sheets on IP management in FP7 projects<sup>1</sup> before continuing to read this fact sheet.

## 1. Marie Curie Actions – understanding how it works

### 1.1 Opportunities for researchers and SMEs

FP7 is the main EU funding instrument supporting research and development projects. This instrument is structured in five Specific Programmes: Cooperation, Ideas, People, Capacities and Euratom.

The People Programme specifically supports international and intersectorial projects for the **development of research skills**. Within this programme, researchers have the opportunity to go abroad and collaborate with private companies with the chance to acquire competences for the development of their careers. This programme is implemented through a set of actions which are managed by the Research Executive Agency (REA) of the European Commission, the so-called Marie Curie Actions:

- **Initial Training Networks (ITN)** - an action providing training opportunities for Early Stage Researchers usually provided by a network of universities, businesses and research institutes;
- **Intra-European Fellowships for Career Development (IEF)** – an individual grant allowing an Experienced Researcher to move within Europe to pursue his/her research project;
- **Career Integration Grants (CIG)** – a lump sum to encourage Experienced Researchers to settle in or return to Europe;
- **Co-funding of Regional, National, and International Programmes (COFUND)** – a co-funding mechanism providing an extra financial support to national, regional research mobility programmes;
- **Industry Academia Partnerships and Pathways (IAPP)** – an action promoting partnership and collaboration between business and academia. Early Stage Researchers, Experienced Researchers, or technical research staff can participate;
- **International Outgoing Fellowships (IOF)** – an individual grant for Experienced Researchers willing to receive research training in a host institution in a third country (outside Europe);
- **International Incoming Fellowships (IIF)** - an individual grant for Experienced Researchers based in third countries (non-Europeans) willing to receive research training in a host institution based in Europe;
- **International Research Staff Exchange Scheme (IRSES)** – a staff exchange scheme fostering collaboration between research institutions based in Europe and in third countries.

In particular, ITN and IAPP foster collaboration with the private sector. This is an opportunity for many **SMEs** to integrate some of the best researchers of the scientific community into their research projects and gain access to the resources of academic organisations.

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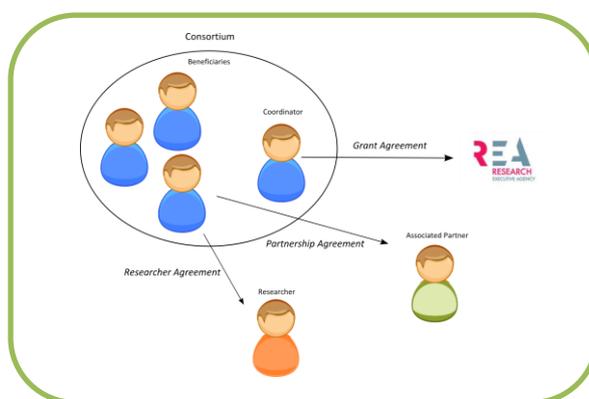
<sup>1</sup> You can find three fact sheets dedicated to IP management in FP7 projects: “How to manage IP in FP7 during the proposal stage”, “How to manage IP in FP7 during the negotiations stage” and “How to manage IP in FP7 during and after the project”, in the European IPR Helpdesk online [library](#).

## 1.2 How to apply

In Marie Curie actions, as with other FP7 programmes, the decision to fund projects is made through the publication of calls for proposals, which are published in the Participant Portal<sup>2</sup>. Independent experts carry out the evaluation of all eligible proposals. The coordinators of the proposals who have successfully passed the evaluation stage are then invited to negotiate a grant agreement with REA.

## 1.3 Entities involved

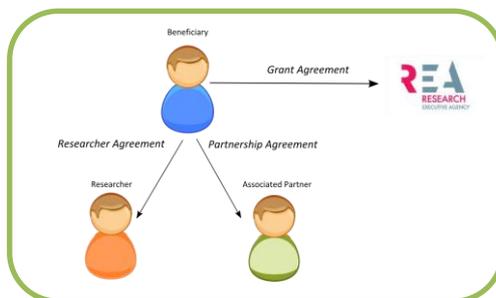
In Marie Curie projects there are different entities involved, all with different roles, as well as rights and obligations. In order to understand the IP rules in Marie Curie projects and to whom they apply, it is therefore important to know who are those different entities.



**Beneficiary** (also known as **participant**) is the legal person, other than REA, which concludes the grant agreement. These can be universities, public or private research centres, SMEs, large enterprises, etc. All project beneficiaries together form the consortium.

Beneficiaries are represented by the coordinator in the communications with REA. In IEF, IOF, IIF and CIG the researcher can act as the proposal coordinator with the purpose of submitting the proposal. In fact, in these projects, researchers together with an organisation (i.e. the beneficiary) apply for the grant and not the organisation by itself. However, after the call deadline the beneficiary will be the single contact point.

Not all programmes in Marie Curie Actions include several beneficiaries. IEF, IOF, IIF and CIG are **mono-beneficiary** projects and therefore only one organisation concludes the grant agreement with REA. The projects where more than one organisation signs the grant agreement are designated as **multi-beneficiary** projects.



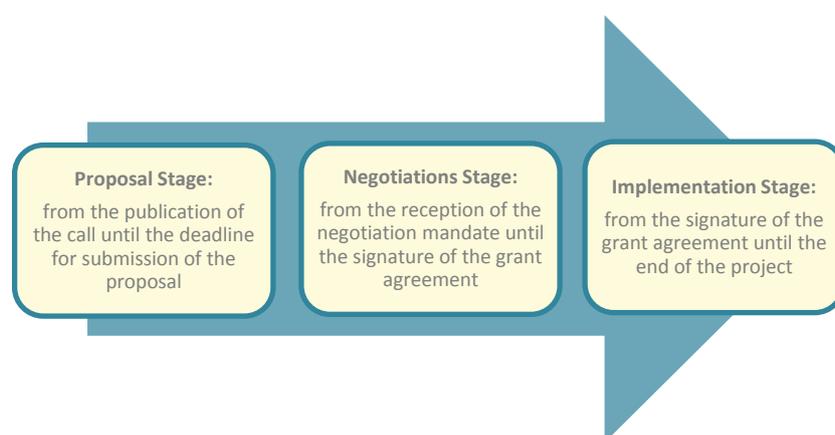
<sup>2</sup> The Participant Portal can be found at: <http://ec.europa.eu/research/participants/portal/page/people>

Often, organisations other than beneficiaries also participate in Marie Curie projects. These entities are commonly designated as *partner organisations* or **associated partners**, depending on the concrete Marie Curie Action. These organisations are generally responsible for allowing the mobility of the Marie Curie Fellows during the project.

**Researchers** or Marie Curie Fellows are central to any Marie Curie Action. Beneficiaries are generally requested in these projects to sign contracts with the Fellows (i.e. researcher agreement), establishing the rights and obligation of both parties in accordance with the rules of the grant agreement.

## 2. Intellectual Property: essential at all stages of the project

IP is essential at all stages of a Marie Curie project as in any other FP7 project. Understanding the different IP-related issues that require consideration during these different stages is therefore essential for an easier and effective management of these projects.



## 3. The proposal

Before starting to draft the proposal, applicants should take the time to **read all the documents** concerning the call for proposal and be familiar with the specific IP rules related to Marie Curie Actions. In terms of Intellectual Property (IP), it is of particular importance to consider the following documents:

- the Rules for Participation<sup>3</sup>, for the general legal framework;
- the specific model grant agreement applicable to this programme<sup>4</sup> (by reading this document, in particular annexes II and III, applicants can anticipate the specific IP rules with which they will have to comply if the proposal is accepted);
- the call fiche (to verify whether there is any special clause to be included in the Model Grant Agreement related to IP);
- the Guides for Applicants applicable to the specific call which may help to identify the concrete evaluation criteria that may take IP issues into consideration<sup>5</sup>;

<sup>3</sup>See <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2006:391:SOM:EN:HTML>

<sup>4</sup>See [http://cordis.europa.eu/fp7/calls-grant-agreement\\_en.html#rea\\_ga](http://cordis.europa.eu/fp7/calls-grant-agreement_en.html#rea_ga)

<sup>5</sup> Applicants should consult the applicable guide to their call.

- the *Guide to Intellectual Property Rules for FP7 Projects*<sup>6</sup>, which explains important aspects that participants may encounter when they are preparing and participating in FP7 projects.

Moreover, for a successful project it is as well important to consider the following IP-related issues at this stage.<sup>7</sup>

### 3.1. Assessing the state of the art

Based on the criteria set out in the Rules for Participation, the excellence of the project is one of the principles under which the rules for the submission, evaluation and selection of proposals in relation to FP7 rest.<sup>8</sup>

The proposals in the People programme must therefore demonstrate a high scientific and technological quality of the project. In most actions (e.g IOF or IIF), in order to show this quality, applicants must explain in the proposal the originality and innovative nature of their project, as well as how the project is expected to go beyond the state of the art. Hence, it is advisable to perform a bibliographic search with the purpose of assessing and showing the current state of the art within the project field. In this regard, **searches in patent databases** take an essential role and should be performed.<sup>9</sup>

### 3.2 Project name and acronym

Applicants should select a project name and acronym already at the proposal stage. To **avoid any trade mark infringement** it is generally advisable to be careful not to choose a word which is similar to a registered trade mark owned by a third party for goods and services in the same area of business.

Performing searches in trade mark databases is therefore essential as well as highly recommended.<sup>10</sup>

### 3.3 Strategy for the dissemination and exploitation of the project results

Already at the proposal stage, in some Marie Curie Actions (for example, in ITN) applicants should outline the practical measures that they intend to take with the purpose of **ensuring an effective dissemination and exploitation of the project results**. Given the relevance of this part of the proposal in the evaluation, it is highly advisable to start drafting it in advance and with care.

Moreover, a good description of the plan for the protection and exploitation of IP may also be essential to demonstrate not only the credibility of the project idea but also that the project's results are likely to contribute to European competitiveness in the research field at stake.

## 4. Negotiation stage

### 4.1 The Grant Agreement

The overall purpose of the negotiations is to agree on the scientific-technical details of the project and to collect financial and legal information needed for drafting the grant agreement. Before beginning the

<sup>6</sup> See [ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr_en.pdf)

<sup>7</sup> For further details, please consult the fact sheet "How to manage IP in FP7 during the proposal", which is available in our library.

<sup>8</sup> Commission decision of 28 February 2011 amending Decision C(2008) 4617 related to the rules for proposals submission, evaluation, selection and award procedures for indirect actions under FP7.

<sup>9</sup> For further information on patent searches, we suggest that you consult the fact sheet "How to search for patent information", which is available in our [library](#).

<sup>10</sup> For further information on trade mark searches, we suggest that you consult the fact sheet "How to search for trademarks", available in our online [library](#).

negotiations, applicants are invited to read again the model grant agreement and its annexes, particularly Annexes II and III. Indeed this is of help to understand the different IP-related issues that are going to be negotiated. This is important because, prior to the first negotiation contact, the consortium must have completed the first draft of the *Annex I* and any appendices.

**Annex II** is also relevant in terms of IP, since it **includes most of the obligations concerning IP**, in particular the rules related to ownership, transfer, protection, use and dissemination of intellectual property rights (IPR) which are generated previous to the project ("*background*") and those generated during the execution of the project ("*foreground*").

More **specific IP-related provisions may be found in Annex III**. Yet, what needs to be highlighted is that both **Annexes II and III are non-negotiable** since they specify the rules for use and dissemination of the IPR applicable to *any* FP7 project.<sup>11</sup>

#### 4.1.1 The IP rules in detail

The IP provisions in the Marie Curie model grant agreement (Annex II) are **identical to the provisions applicable to any FP7 project**. Yet, there are some special provisions mainly deriving from Annex III that will be highlighted below. It is therefore important that the coordinator takes the time to inform the other project participants and researchers about their rights and duties as laid down in the grant agreement, including the IP rules for a smooth project negotiation and implementation.

A copy of the grant agreement or an explanatory document should also be provided to researchers.

##### a) Access Rights

Access rights mean licences and user rights granted to another participant's foreground or background. Thus, they allow participants in multi-beneficiary projects to benefit from each other's knowledge, taking full advantage of their collaboration.

Following the general rule in FP7, in multi-beneficiary projects, access rights to another participant's foreground and/or background are only to be granted if the requesting participant needs such access in order to carry out the project or to use its own foreground.

Unlike other FP7 projects, **the Marie Curie Fellows are entitled to access rights** to the participant's background and foreground for the purpose of allowing them to undertake the research activities under the project.<sup>12</sup> These access rights are granted on a royalty-free basis.

<sup>11</sup> There are different versions of the model GA. Hence, please ensure that you use the version applicable to your call.

<sup>12</sup> This obligation is established in the different Annex III of the model GAs.

ACCESS RIGHTS TO BACKGROUND AND FOREGROUND

		Background	Foreground
Between participants (in multi-beneficiary projects)	Project implementation	Royalty-free, unless otherwise agreed before acceding to the grant agreement.	Royalty-free
	Use of its own results (exploitation or further research)	Royalty-free, or on fair and reasonable conditions	
To researchers (in multi and mono beneficiary projects)	If needed for his/her researcher activities under the project.	Royalty-free	

**b) Foreground ownership**

Foreground resulting from the project remains the property of the beneficiary or participant that has generated it, as it is the general rule in FP7 projects.

This principle should also apply to the foreground generated by the researcher during the **secondment period**, i.e., the period spent by the researcher at an associated partner institution or a participant's premises (other than those of the participant which has appointed him/her). Thus, the participant which has appointed the researcher is generally the owner of such foreground.

Nevertheless, participants may decide to establish a different ownership system and agree to transfer the ownership of the foreground created during secondment to the organisation hosting the researcher. Granting a license is another option that participants may consider.

When considering a transfer, participants of Marie Curie Actions must comply with the general obligations concerning the **transfer of foreground**.

- (i) The transfer should be done through an **agreement** where the owner should ensure that its contractual obligations with respect to dissemination, use, and the granting of access rights are passed on to the new owner (the "assignee"), as well as by the latter to any subsequent assignee.
- (ii) The owner must give **prior notice to the other consortium partners**, with sufficient information about the new owner.
- (iii) In the case where the intended transfer is done to an associated partner **with establishment in a third country not associated to FP7**, the EC may object to such transfer

## 4.2 The Consortium Agreement

The consortium agreement is a **private contract between participants** concerning internal arrangements on work organisation, IP management, liability and further matters of their interest. This agreement should embrace all of the beneficiaries' rights and obligations related to these issues that are necessary for the execution of the project. **REA is not party to this agreement** and does not verify its content.

The IP provisions within this contract are complementary to those in the grant agreement, in the sense that the consortium agreement regulates aspects particular to each project (e.g. the concrete background beneficiaries intend to grant access) and supplements others not entirely defined in the grant agreement (e.g. joint ownership rules). Furthermore it **finds its boundaries in the grant agreement** since it is not allowed to contradict or negate the provisions enclosed therein. *The basic principle to follow when drafting a consortium agreement is to provide flexible and efficient mechanisms to support the co-operation between the parties, to encourage protection and maximum use of foreground as well as to ensure swift dissemination thereof.*

In mono-beneficiary projects it is not necessary to conclude a consortium agreement. On the contrary, in multi-beneficiary projects, it is best practice to conclude one (even if not mandatory in a concrete call) in order to regulate the relationship between participants and avoid potential future conflicts.

The Commission or REA do not provide any binding model for the consortium agreement, but only a general checklist with the main issues that participants in FP7 projects should consider when negotiating this contract.<sup>13</sup> Yet, several organisations have developed different models for consortium agreements with the intention to create a contractual framework that help participants draft their own agreement. Such models are nevertheless **mere samples** and not a one-size-fits-all contract. Therefore, a thorough analysis is required in order to ascertain which one is the most suitable for your project specificities. Afterwards, the consortium **must adapt** and **reshape** the chosen model to its specific needs.

### Examples of issues that may be included in the consortium agreement:

- (i) When the secondment period is spent at another participant premises, the rights and obligations of the host (for example in terms of foreground's ownership) can be regulated within the CA.
- (ii) In the case where each participant is responsible for signing the partnership agreements with the associated partner responsible for co-hosting the corresponding researcher, the parties may agree on the general principles that these agreements should follow.
- (iii) Potential access rights to be granted to associated partners.

The models currently available are the following:

<sup>13</sup> The checklist is available in CORDIS at: [ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-consortium-agreement-checklist-2011v2\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-consortium-agreement-checklist-2011v2_en.pdf)

- **DESCA<sup>14</sup>**: sets a contractual framework seeking to balance the interests of all of the main participant categories in FP research projects: large and small firms, universities, public research institutes and Research and Technology Organisations (RTOs).
- **IMG4<sup>15</sup>**: is based on the DESCAs Model CA but adapted so as to make it compliant with the industrial objectives achievable through the participation in FP7 programmes.
- **EUCAR<sup>16</sup>**: contains provisions encouraging exploitation and dissemination of the project results. It is less detailed than the other models but proposes alternatives for the access rights regime and the background management.

### 4.3 The Partnership Agreement

In some Marie Curie Actions, there are associated partner organisations involved in the project. This is the case, for example, in IRSEE, IOF and ITN. These organisations are not signatories to the grant agreement and do not receive EU funding, but take an essential role in the project, which may include:

- providing research and transferable skills training (ITN);
- providing secondment opportunities (IRSES, IOF and ITN);
- participating in the supervisory board (ITN).

Partnership agreements should be concluded with the purpose to **regulate the relationship between participants and these associated partners** as well as the secondment period framework. Participants must be careful to conclude these agreements in compliance with their obligations laid down in the grant agreement and, depending on the project, the consortium agreement as well.

The partnership agreement should be concluded **before the signature of the grant agreement** and should be made available to REA (depending on the project, either upon request or 45 days after the starting date of the project<sup>17</sup>).

#### What to include in Partnership Agreements?

- The commitment of associated partners to implement the project in accordance with the provisions of the grant agreement and the description of work;
- The obligations of associated partners towards the researcher during the secondment period;
- Costs;
- Audit rights of REA;
- Confidentiality;
- Ownership of foreground;
- Information and reporting obligations of associated partners towards participants;
- EU financial support and other communication obligations.

<sup>14</sup> See <http://www.desca-fp7.eu/>

<sup>15</sup> See <http://www.aerosme.com/>

<sup>16</sup> See <http://www.eucar.be/>

<sup>17</sup> Participants should consult the applicable Annex III of the grant agreement in order to verify when the partnership agreement in their project should be made available to REA.

No official model for the partnership agreement is available. Some organisations have however created their own models for some Marie Curie Actions<sup>18</sup>. As any other model, participants are highly encouraged to seek legal advice when using these documents and to adapt them to their own needs and applicable law.

#### 4.4 The Researcher Agreement

The conclusion of an **agreement between the appointing participant and the researcher** is foreseen in Marie Curie Actions as a tool to regulate the relationship between these two parties. This agreement must be compatible with the participant's obligations stemming from the grant agreement and the consortium agreement. Moreover, it should include provisions on the rights and obligations of researchers, in accordance with Annex III of the grant agreement.

No official model for this agreement is available.

##### 4.4.1 Confidentiality

Participants in Marie Curie projects are bound by confidentiality obligations stemming from the grant agreement and the consortium agreement. The researcher agreement should therefore establish the **confidentiality obligations of researchers** in detail.

An information session or explanatory document regarding these confidentiality obligations (and consequences of its breach) could be considered as a management measure to ensure a full commitment and understanding by researchers.

##### 4.4.2 Ownership of foreground

As explained before, foreground generated in **Marie Curie Actions should belong to participants**. Since, in practice, foreground is created by the researchers, the latter may be entitled to the ownership of their creations pursuant to national laws.

Should this be the case in a determined project, participants should ensure that the agreement with the researcher clearly defines that the ownership of foreground is the property of the participant (or at least that it has sufficient user rights).

##### 4.4.3 Access Rights

In accordance with annex III of the grant agreement, participants should grant access rights in the researcher agreement to their background and foreground to the Marie Curie Fellow with the purpose of allowing him/her to undertake the research activities under the project.<sup>19</sup>

These access rights must be granted on a royalty-free basis.

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<sup>18</sup> Kowi, a joint service platform of the German research organisations financed by the German Research Foundation (Deutsche Forschungsgemeinschaft, DFG), is one of those organisations. On their website participants have free access to a model for a partnership agreement used for IOF projects, which is available at: <http://www.kowi.de/en/Portaldata/2/Resources/fp7/marie-curie/FP7-MC-IOF-PartnershipAgreement-FINAL.pdf>

<sup>19</sup> This obligation is established in the different Annex III of the model GA.

<b>Grant Agreement</b>	<ul style="list-style-type: none"> <li>•concluded between REA and participants/beneficiaries</li> <li>•model available at CORDIS</li> </ul>
<b>Consortium Agreement</b>	<ul style="list-style-type: none"> <li>•concluded between participants/beneficiaries</li> <li>•no official model is available, but the Commission prepared a checklist</li> </ul>
<b>Partnership Agreement</b>	<ul style="list-style-type: none"> <li>•concluded between participants/beneficiaries and associated partners (not signatories of the grant agreement)</li> <li>•no official model is available</li> </ul>
<b>Researcher Agreement</b>	<ul style="list-style-type: none"> <li>•concluded between participants/beneficiaries and researchers</li> <li>•no official model is available</li> </ul>

## 5. Implementation stage

In terms of IP, the implementation stage is of particular importance, as the **use** and **dissemination** of foreground are **key objectives** of any FP7 project.

In FP7 there is an **obligation to disseminate** the foreground swiftly. In this context, dissemination refers to the disclosure of project results by any appropriate means. Scientific publications, general information on websites or conferences are some examples of potential dissemination activities<sup>20</sup>. To assist coordinators and team leaders to create an effective dissemination strategy, the Commission has prepared a *Guide to Successful Communication*<sup>21</sup> where many best practices are outlined.

However, no dissemination activity (including publication of scientific articles) should be performed until a decision on the foreground’s protection has been taken in order to avoid early disclosures that would hinder effective protection, in particular through patents. Researchers, in particular, should therefore be aware of the procedure in case they intend to publish a scientific article, give a lecture or present the project in a conference.

<sup>20</sup> For further information, please see “Strategic Guide to Successful Use and Dissemination of the Results of Research and Development Projects”, available at [http://ec.europa.eu/research/sme-techweb/pdf/use\\_diffuse.pdf](http://ec.europa.eu/research/sme-techweb/pdf/use_diffuse.pdf)

<sup>21</sup> The guide is available at: [http://ec.europa.eu/research/science-society/science-communication/index\\_en.htm](http://ec.europa.eu/research/science-society/science-communication/index_en.htm)

## Useful Resources

Sources of model consortium agreement:

- **DESCA** (*The Simplified FP7 Model Consortium Agreement*): <http://www.desca-fp7.eu>
- **EUCAR** (*European Council for Automotive R&D*): <http://www.eucar.be>
- **IMG4** (*Aerospace and Defence Industries Association of Europe*): <http://www.aerosme.com>

For further information on the topic please also see:

- *Guide to Intellectual Property Rules for FP7 Projects*: [ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr_en.pdf)
- *Introduction to IP Rules in FP7 Projects*: <http://www.iprhelpdesk.eu/node/420>
- *How to manage IP in FP7 during the proposal stage*: <http://www.iprhelpdesk.eu/node/587>
- *How to manage IP in FP7 during the negotiation stage*: <http://www.iprhelpdesk.eu/node/788>
- *How to manage IP in FP7 during and after the project*: <http://www.iprhelpdesk.eu/node/607>

### GET IN TOUCH



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**For comments, suggestions or further information, please contact**

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### ABOUT THE EUROPEAN IPR HELPDESK

The European IPR Helpdesk aims at raising awareness of Intellectual Property (IP) and Intellectual Property Rights (IPR) by providing information, direct advice and training on IP and IPR matters to current and potential participants of EU funded projects focusing on RTD and CIP. In addition, the European IPR Helpdesk provides IP support to EU SMEs negotiating or concluding transnational partnership agreements, especially through the Enterprise Europe Network. All services provided are free of charge.

**Helpline:** The Helpline service answers your IP queries within three working days. Please contact us via registration on our website ([www.iprhelpdesk.eu](http://www.iprhelpdesk.eu)), phone or fax.

**Website:** On our website you can find extensive information and helpful documents on different aspects of IPR and IP management, especially with regard to specific IP questions in the context of EU funded programmes.

**Newsletter & Bulletin:** Keep track of the latest news on IP and read expert articles and case studies by subscribing to our email newsletter and Bulletin.

**Training:** We have designed a training catalogue consisting of nine different modules. If you are interested in planning a session with us, simply send us an email.

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