



# European IP Helpdesk

Stay ahead of the innovation  
game.

**IPR in EU-funded Projects / H2020**

Webinar  
26 August 2020

Dr. Christian Hackl



# Personal Background

## Dr. Christian Hackl

- Managing Director of TUM-Tech GmbH
- Assistant Professor at the Chair for Technology and Innovation Management (Technical University of Munich: TUM)
- Senior IP-Advisor for the European IP Helpdesk
- Regular lecturer for the European Patent Office (EPO) / European Patent Academy
- Author of several publications, e.g. case studies on usage of IPR\* by companies
- Co-Founder and Managing Director of a start-up (renewable energy)

\* IPR: Intellectual Property Rights



# TUM-Tech GmbH – The Transfer Company

## Technology-Transfer

- We are an independent and demand-oriented technology-broker
- We identify the most suited expert / know-how in the academic field for individual questions of companies
- We do have a large network, well beyond TUM\*

## Innovation-Management

- We are experts on innovation-management
- We offer individual support (e.g. market studies, commercialization, start-ups, public funding, IP)

## Market Entry

- We support companies to enter the European / foreign markets
- We organize business and delegation trips to / from Germany / Europe

\* TUM: Technical University of Munich



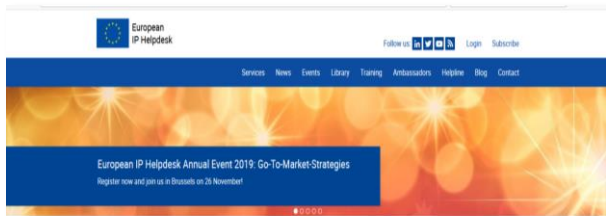
# European IP Helpdesk

- Service initiative of the European Commission
- Addressing current and potential beneficiaries of EU-funded projects, researchers and EU SMEs
- Free-of-charge first-line advice on intellectual property (IP)
- Hands-on IP and innovation management support
- International pool of IP experts from various thematic fields
- Unique cooperation scheme with the Enterprise Europe Network: 50 ambassadors from 28 EU countries





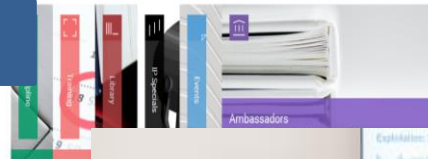
# Communication Formats & Outreach Tools



About the European IP Helpdesk

We believe that knowing how to manage your IP effectively can help you promote your business or maximise the impact of your research & innovation project - make sure you stay ahead of the innovation game!

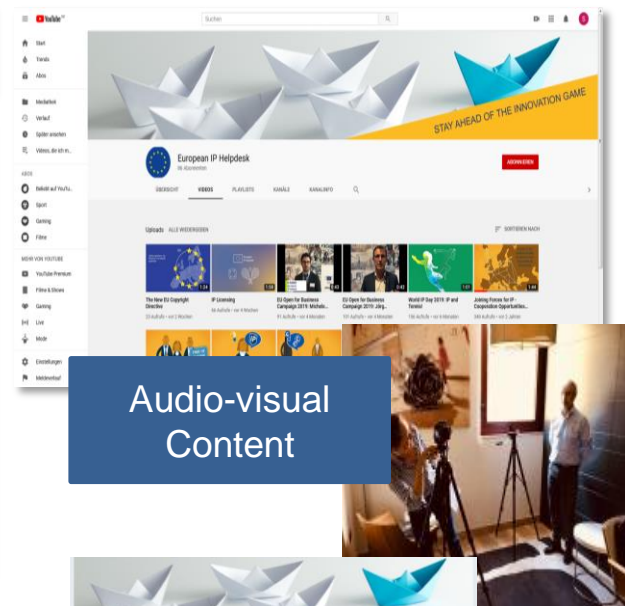
Website



Training



Publications



Audio-visual Content



Social Media





# Helpline



- Free of charge first-line IP support
- Personal and “to the point”
- Answer within 3 working days
- Email, phone and web
- In: English, Spanish, French, German, Italian and Polish
- Confidential





# Upcoming Webinars

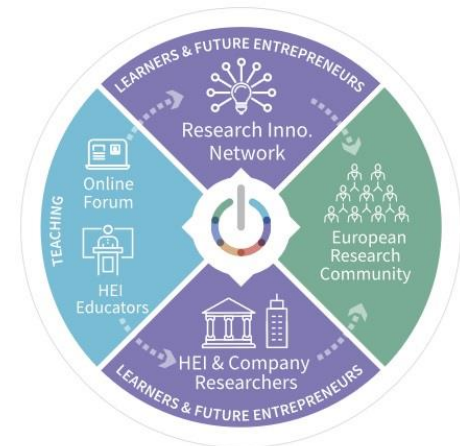
Date	Topic
Wednesday, 02.09.2020	<a href="#">IP in Biotechnology</a>
Wednesday, 09.09.2020	<a href="#">Introduction to IP</a>
Wednesday, 23.09.2020	<a href="#">Technology Transfer</a>
Wednesday, 30.09.2020	<a href="#">Geographical Indications</a>
Wednesday, 07.10.2020	<a href="#">IP Commercialisation and Licensing</a>
Wednesday, 14.10.2020	<a href="#">IP in EU-funded Projects/Horizon 2020</a>
Wednesday, 21.10.2020	<a href="#">Consortium Agreements</a>
Wednesday, 28.10.2020	<a href="#">The Importance of IP for SMEs</a>
Wednesday, 04.11.2020	<a href="#">IP Management in H2020 - with a special focus on MSCA</a>
Wednesday, 11.11.2020	<a href="#">Effective IP and Outreach Strategies Help Increase the Impact of Research and Innovation</a>
Wednesday, 18.11.2020	<a href="#">IP and Artificial Intelligence</a>
Wednesday, 25.11.2020	<a href="#">Impact and Innovation in Horizon 2020 – a Guide for Proposers</a>
Wednesday, 02.12.2020	<a href="#">Freedom to Operate</a>
Wednesday, 03.12.2020	<a href="#">IP in Biotechnology</a>





# Other innovation support initiatives

## International IPR SME Helpdesks



The STARTED Project

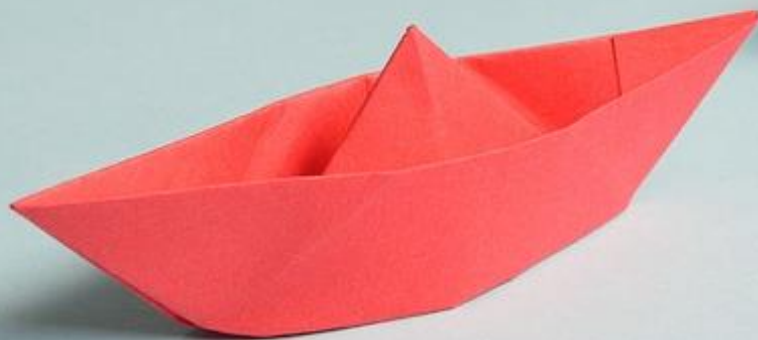






# Roadmap

- **Rules and Agreements**
- **Specific Vocabulary**
- **IP management in project life cycle**
- **Freedom to Operate**



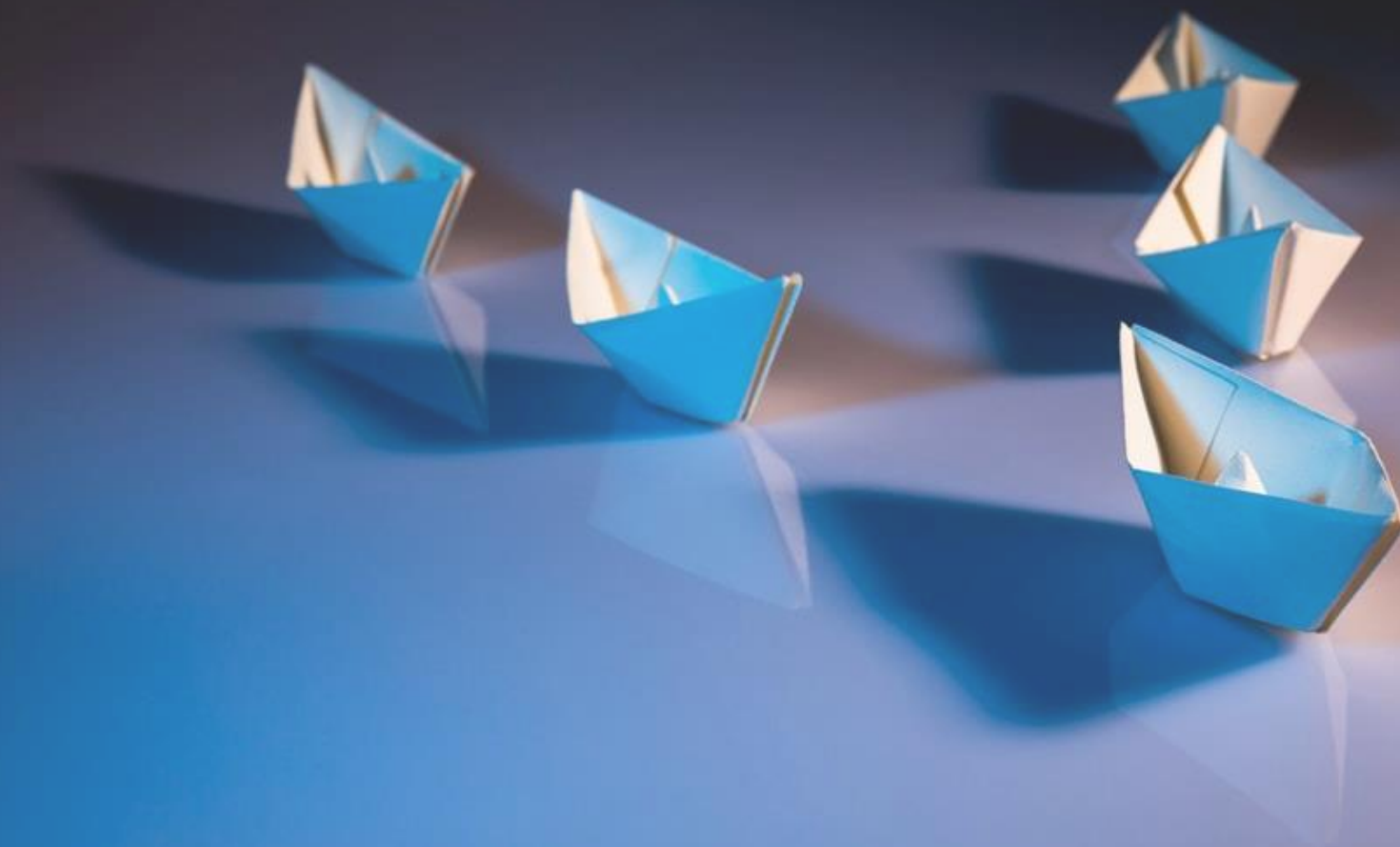


# Why is it important to consider IP in H2020?

- On the one hand, IP and exploitation issues are subject to **evaluation** regarding **impact and feasibility** of the proposal.
- On the other hand, the Rules for Participation establish **best efforts** commitments of participants to **exploit their own results**.
- **Therefore, a convincing outline of IP management and exploitation strategies at individual and consortium level within the proposal is a relevant matter.**
- Results of research and development activities require further and often substantial investments to take them to market, which is **appealing** if the results are well-protected through **intellectual property**.
- Properly managing IP in the projects helps participants **avoid future conflicts** among the consortium.

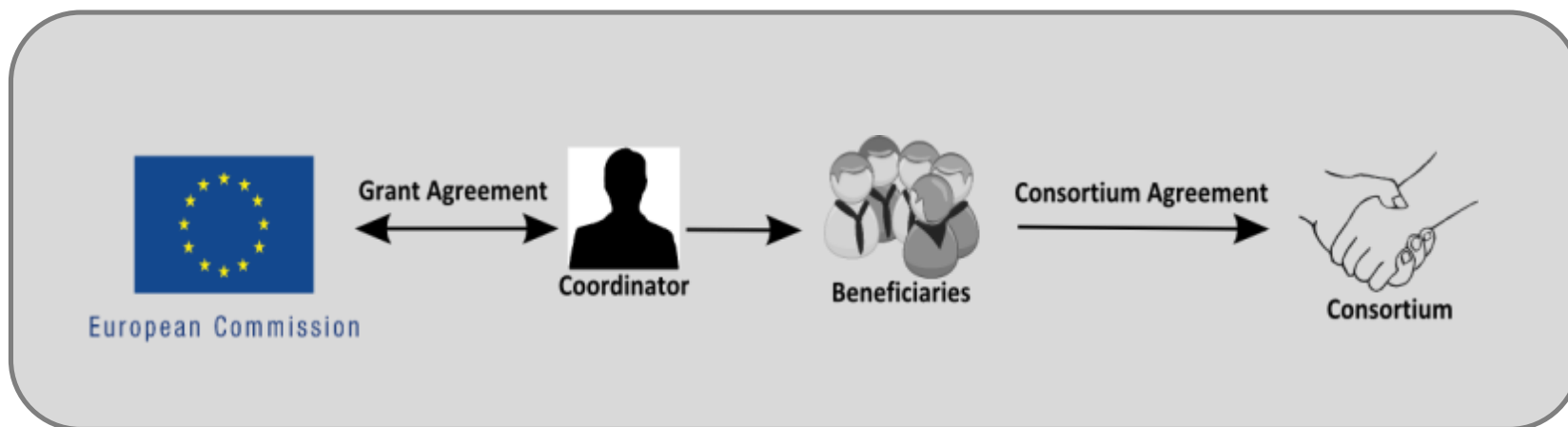


# Rules & Agreements



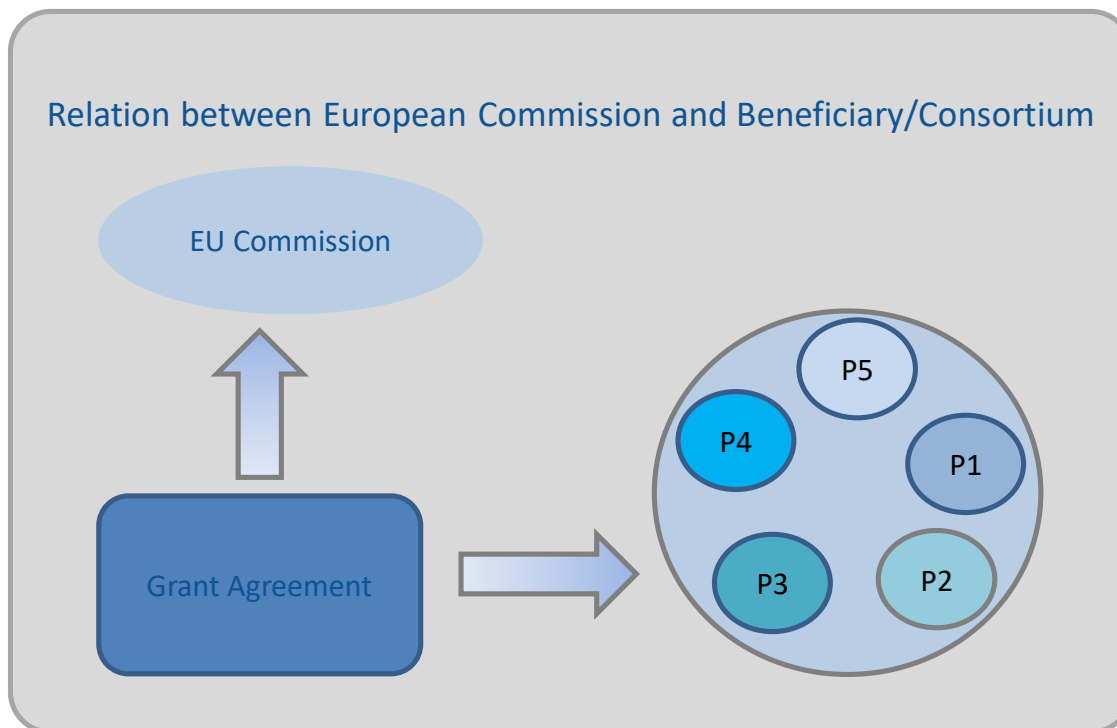


# Overview: Agreements



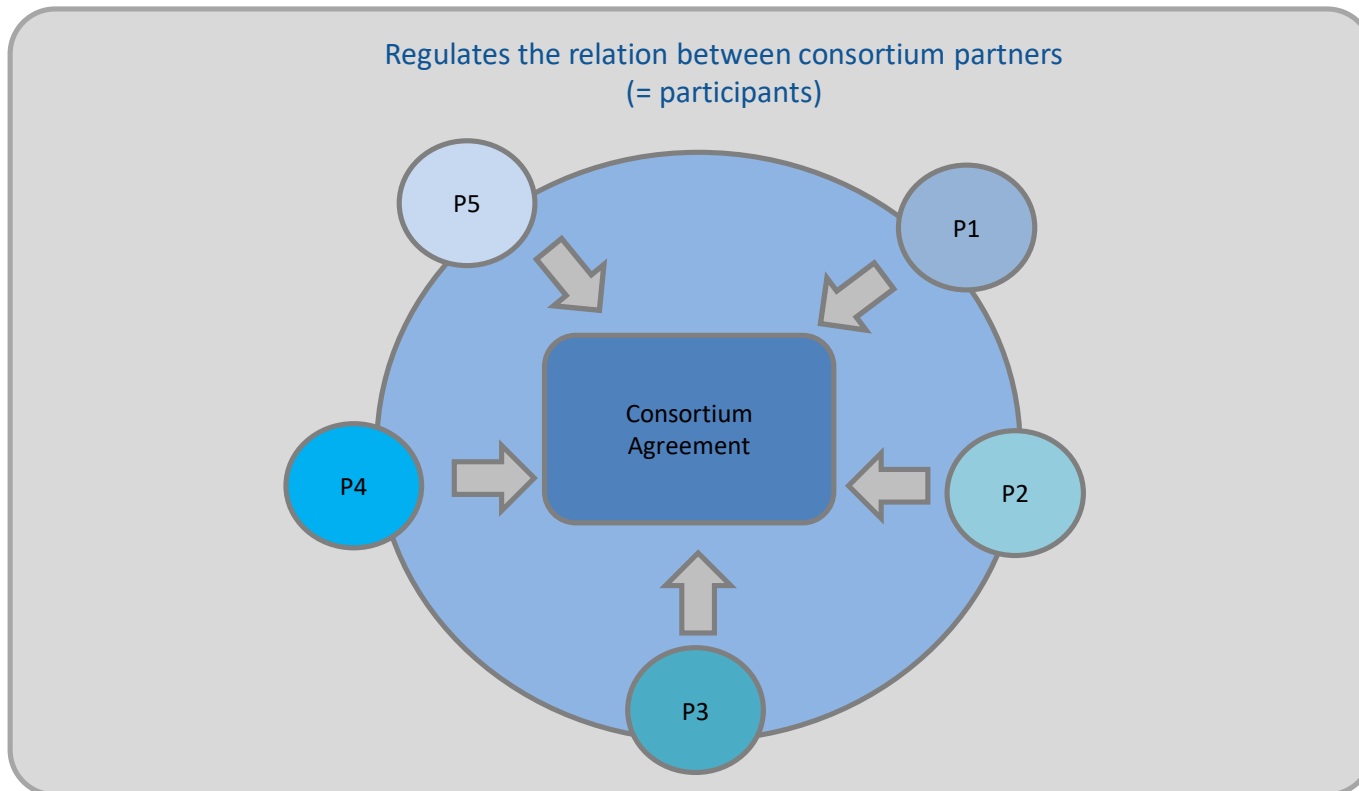


# Grant Agreement (GA)





# Consortium Agreement (CA)





# Intellectual Property rules

The IP rules in Horizon 2020 can be found in:

- (i) the **Rules for Participation**
- (ii) the (model) **Grant Agreement**
- (iii) the applicable **work programme**
- (iv) H2020 **Online Manual** (IP section is a work in progress)



How to find them: **Participant Portal**

<https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/how-to-participate/reference-documents>



# Intel

# H2020 Programme

## The IP r

## Proposal template 2018-2020

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Administrative forms (Part A)  
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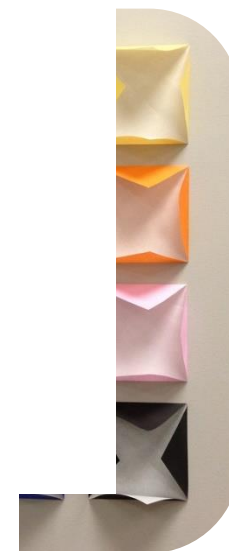
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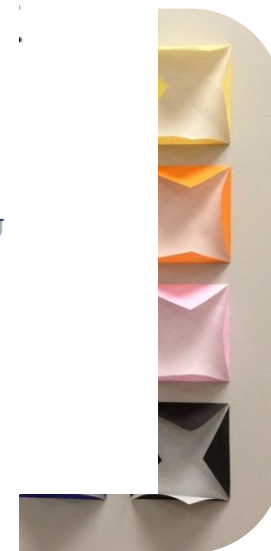
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# Specific Vocabulary





# Vocabulary

**Key terms in the context of Horizon 2020 projects are:**

- Background
- Results
- Dissemination
- Exploitation
- Access rights





# Definitions (I)

## Background

Tangible or intangible input (data, knowhow, information) which is held by the project partners prior to their accession to the GA. Includes IP such as copyright, software, patents/ patent applications (filed prior to access to GA).

Rule: taking part in Horizon 2020 does not have any influence upon the ownership of background = your background remains yours!

## Results

All results which are generated under the project – whether or not protectable. Such results may include copyright, software, design or patent rights, trademarks or others, and **belong to the partners who have generated them.**





# Definitions (II)

## **Access rights**

User rights (incl. licences) to results or background of project partners.

## **Dissemination**

Means through which research results are presented to the public: website, conferences, research papers... Official publications (e.g. patent applications) are not considered as dissemination.

## **Exploitation**

Utilisation (direct/indirect) of results in research activities, which are not part of the project, as well as utilisation for further development, creation and marketing of a product or process.





# Access Rights (I)

- Each project partner has the right to request access rights to the other project partners' background and results **as long as it needs them** in order to carry out its work under the project or to exploit its own results (these are minimum access rights: additional ones can always be negotiated!).
- Shall be **requested in writing**. Can be granted in any form.
- Are to be requested/granted throughout the duration and up to 1 year (or as otherwise agreed in the CA) after the end of the project for exploitation needs. Once requested, access rights may be exercised as long as they are needed for exploiting the results (e.g. until the background patent expires).

 *Access rights do not confer the right to grant sub-licences!*





## Access Rights (II)

Grant of minimum Access Rights (*note: additional Access Rights can always be agreed upon!*)

	Access to background	Access to results
Project implementation	Royalty-free (unless differently agreed before the signing of the GA)	Royalty-free
Exploitation of results	On fair and reasonable conditions	On fair and reasonable conditions





# IP in Project Life Cycle



# Expectations on IP management

## Expectations on sound IP management in H2020/ COSME differ depending on:

- Specific Programme (i.e. SME instrument, Joint Undertakings with strong industrial participation)
- Applicability of results/Technology Readiness Level (TRL)
- Participation of SMEs/Industry
- Financing Instrument (i.e. Innovation actions)
- Size of consortium/International partners
- Stage of proposal/maturity of project implementation
- Many others: **Check the work programme/topic description carefully!!!**



# Before Project Start

## Every project starts with an idea ...

- Define the state of the art: was this already done?
- Search in patent databases & documents
- Protect technical drawings (e.g. by copyright)
- Protect all information linked to the idea: make use of [Confidentiality Agreements](#)
- Beware of Third Parties' IPR infringement (check acronyms against registered Trade Marks)



***Contact your legal department as early as possible!***



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- Beware of Third Parties' IPR infringement (check acronyms against registered Trade Marks)
  - **FTO (Freedom to Operate)**

*Contact your legal department as early as possible!*





# Before Project Start

## Exploitation and dissemination planning

- Draw a convincing outline of **exploitation strategies** at individual/consortium level
- IP exploitation issues are subject to evaluation regarding **impact and implementation**. Identifying **relevant bodies/competences** within the consortium should demonstrate the potential of addressing IP management properly
- Include relevant activities/**deliverables**: PEDR, Innovation-related workshops, Market Analysis, Business Plans, Risk-Analysis, Freedom-to-Operate analysis, Specific contracts/agreements



PEDR: Plan for Exploitation and Dissemination of Results



# Exploitation and Dissemination Plan

Beneficiaries have an obligation to define the expected results and their strategy for exploitation and dissemination.

Hence the following information must be included:

- A list of expected results that might be exploited (i.e. with commercial or industrial applicability) including their:
  - description
  - ownership status
  - sector of application, and
  - protection measures
- A list of all the means through which they intend to bring the results to the public knowledge
- A potential/expected impact – quantifiable – in terms of marketability and research advancement

PEDR: Plan for Exploitation and Dissemination of Results

- See our [Fact Sheet on the PEDR in H2020](#) !



# Exploitation and Dissemination Plan



**European IPR Helpdesk**

**Fact Sheet**

***The Plan for the Exploitation and Dissemination of Results  
in Horizon 2020***

PEDR: Plan for Exploitation and Dissemination of Results

- See our [Fact Sheet on the PEDR in H2020!](#)



# During implementation

## Secure and manage (research) results:

- Have a **clear strategy** for securing and managing newly generated knowledge
- Continuously **update the plan for the exploitation and dissemination of results**
- **Monitor regularly relevant external factors** affecting your exploitation potential (other projects, publications, patents, markets, competing technologies, standards, norms, etc.)







## Reminder: Asserting the Ownership of Results

**Ownership rules can be found in the GA (default regime) and in the CA.**

Principle = results belong to the participant generating them.

**If results have been generated by several partners jointly** = joint ownership. The GA contains a default ownership regime, usually CA templates do too.

**Best practice:** agree on a tailored joint ownership agreement adapted to each jointly owned result. JO clauses included in the CA are usually too broad.

*It is always advisable to clarify the question of the ownership of results within the consortium once they have been created, in line with your CA, before the partners start setting up exploitation strategies!*



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***Also: Third party!!***



# Reminder: Asserting the Ownership of Results

## 26.3 Rights of third parties (including personnel)

If third parties (including personnel) may claim rights to the results, the beneficiary must ensure that it complies with its obligations under the Agreement.

If a third party generates results for a beneficiary, the beneficiary must obtain all necessary rights (transfer, licences or other) from the third party, in order to be able to respect its obligations as if those results were generated by the beneficiary itself and ensure its possibility to commercially exploit the results ('freedom to operate').

For this purpose, it must:

- in agreements with employees or third parties involved in the action (such as, for instance, subcontractors): retain the right to commercially exploit the results (at least

***Also: Third party!!***



# Joint ownership: set up some rules in the CA

General MGA: “unless otherwise agreed in the joint ownership agreement, each joint owner may grant non-exclusive licences to third parties to exploit jointly-owned results [...]”

In the CA (usually):

- Possibility to create a default joint ownership regime which differs from the default one set forth in the GA.
  - ✓ Define whether or not an authorisation from the co-owner is requested before exploiting the joint results.
  - ✓ Deal with profit-sharing.
  - ✓ Distinguish commercial and non-commercial exploitation (DESCA).
  - ✓ Set up procedures to handle joint ownership in practice (MCARD).
- Possibility to create specific joint ownership regimes for some of the joint results already foreseen.
  - ✓ This will be useful for results to be jointly owned by all partners.
  - ✓ For results to be jointly owned by only some of the partners, it is advisable to resort to a separate joint ownership agreement.



## Joint ownership: the JOA

General MGA: “The joint owners must agree (in writing) on the allocation and terms of exercise of their joint ownership (‘joint ownership agreement’), to ensure compliance with their obligations under this Agreement.

In your JOA:

- Allocation of shares
- Conditions of use of jointly owned IP
- Conditions of exploitation of jointly used IP
- IP protection and maintenance
- IP monitoring and enforcement
- Governing law and jurisdiction

More in our [fact sheet on IP Joint Ownership!](#)





# General obligation to protect

Each participant must **examine the possibility of protecting its results and must adequately protect them** — for an appropriate period and with appropriate territorial coverage — if:

- (a) the results can reasonably be expected to be commercially or industrially exploited and
- (b) protecting them is possible, reasonable and justified (given the circumstances).

When deciding on protection, the beneficiary must consider its own interests and the interests (especially commercial) of the other beneficiaries.

**Protection can be secured by IPR or other means (e.g. trade secret protection).**



# Protection by IPR

Type of IPR	What for?	Registration?
Patent	New inventions	Registration is required, examination!
Utility model	New inventions	Registration is required, but conditions are less stringent than for patentability
Trade Marks	Distinctive signs	Registration is required
Industrial Design	Appearance of products	Registration is usually required, but it is possible to acquire an unregistered design right
Copyright	Literary, artistic and scientific works	Not required, but it can be registered in some countries
Confidentiality	Confidential business information/trade secrets	Not required, but internal protection measures needed (i.e. NDAs)

Always use IPR symbols, such as © for copyright, ™ and ® for trademarks, or any other equivalent indicating that it is protected by one or more different IPR

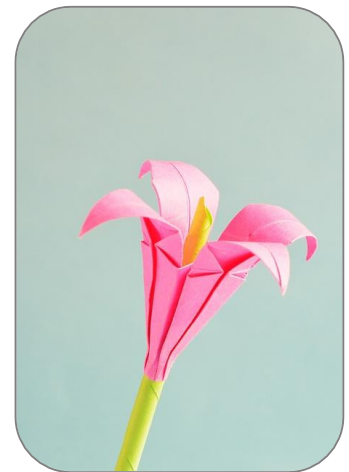


# Obligation to disseminate

Project partners are obliged to disseminate the results swiftly (i.e. to scientific community/broader public) by any appropriate means other than that resulting from the formalities for protecting it or exploiting the results, and including the publication of results in any medium.

*But:*

- *No dissemination of results may take place before decision is made regarding their possible protection, and*
- *All publications or any other type of dissemination (also in electronic form) shall include a statement that the action received financial support from the Union – the same applies to results incorporated in standardisation activities.*







# Dissemination checklist

- Take a decision about the **protection** of results and all required steps
- **Inform the other consortium partners** in writing 45 days before the planned dissemination activities and include enough information to allow them to analyse whether their interests are affected or not. Note that this time limit can be changed (for more or less days) in the CA. Wait 30 days for any objection to the dissemination (unless otherwise agreed in the CA).
- Beware not to infringe third parties' intellectual property rights
- Open access as a general principle of scientific dissemination
- List the dissemination activities in the Exploitation and Dissemination Plan



## Obligation to disseminate Vs. Obligation to protect

Make sure you comply with the obligation to protect...

**Sometime early disclosures (dissemination or communication of results) may undermine potential future exploitation activities.**

**THEN!**

...comply with the obligation to disseminate



# Questions about Open Access?

The European Commission has published a fact sheet and guidelines on Open Access to Scientific Publications and Research Data in Horizon 2020, that can be downloaded at:

- [https://ec.europa.eu/programmes/horizon2020/sites/horizon2020/files/FactSheet\\_Open\\_Access.pdf](https://ec.europa.eu/programmes/horizon2020/sites/horizon2020/files/FactSheet_Open_Access.pdf)
- [http://ec.europa.eu/research/participants/data/ref/h2020/grants\\_manual/hi/oa\\_pilot/h2020-hi-oa-pilot-guide\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/hi/oa_pilot/h2020-hi-oa-pilot-guide_en.pdf)

For more guidance and support on Open Access: the OpenAIRE initiative aims to support the implementation of the Open Access policies of the European Commission and the European Research Council. <https://www.openaire.eu/>



# Costs Reimbursement

- Costs of intellectual property rights (IPR), including protecting results (e.g. fees paid to the patent office for patent registration) and royalties on access rights are **eligible costs**
- Cost for open access publications are also considered eligible by the GA, e.g. Author Processing Charges (APCs)
- For more information on costs eligible for reimbursement in H2020: contact your Legal & Financial [National Contact Point!](#)



# General obligation to exploit

Each participant receiving EU funding must — **up to four years** after the project completion 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.



# Setting up an Exploitation Strategy

**Strategic plans for the future exploitation of results should include the following elements:**

- ✓ The purpose of the results;
- ✓ How they might be exploited, when and by whom;
- ✓ IPR exploitable measures taken or intended;
- ✓ Further research required, if any;
- ✓ Potential/expected impact (quantifiable)



# Routes for Exploitation

## Basic options

- Use for further research
- Developing and selling own products/services
- Spin-Off activities
- Cooperation agreement/Joint Ventures
- Selling IP rights/Selling the (IP based) business
- Licensing IP rights (out-licensing)
- Standardisation activities (new standards/on-going procedures)





# Routes for Exploitation



**European IPR Helpdesk**

**Fact Sheet**

***IP Management in Horizon 2020: proposal stage***





# R

## Further internal research

- These research activities must be beyond the project.
- Relevant for research organisations and research intensive companies.

## Collaborative Research

- The results used as background of future collaborative research projects.
- Relevant for research organisations and research intensive companies.

## Internal product development

- Results used in developing, creating and marketing a product/process.
- Relevant for companies.

## Internal service creation

- Results used in creating and providing a service.
- Relevant for companies.

## Licensing

- Results exploited by other organisations through out-licensing.
- Relevant for all participants, but care should be taken to comply with Horizon 2020 rules.

## Assignment

- Results exploited by other organisations by the transfer of ownership.
- Relevant for all participants, but care should be taken to comply with Horizon 2020 rules.

## Joint Venture

- Results used as background of a joint venture.
- Relevant for all participants, but care should be taken to comply with Horizon 2020 rules.

## Spin-off

- A separate company established in order to bring to the market results from the project.
- Relevant for all participants, but care should be taken to comply with Horizon 2020 rules.

## Standardisation activities

- Results used either to develop new standardisation activities, or to contribute to on-going standardisation work.
- Relevant for all participants, but care should be taken to comply with Horizon 2020 rules.



# FTO

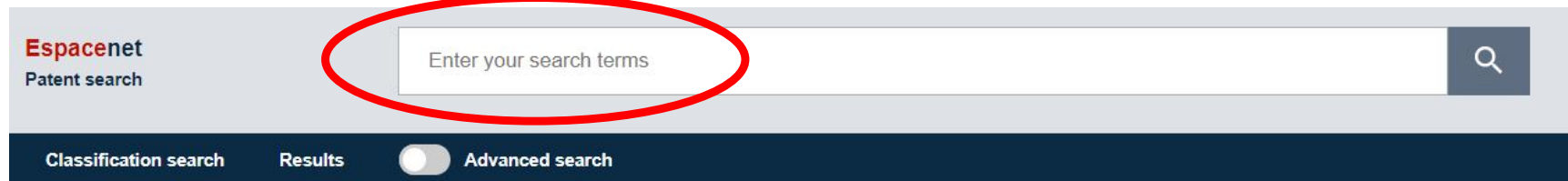
## Freedom to Operate

*“The ability to perform a commercial activity without infringing 3<sup>rd</sup> party’s IP rights.”*

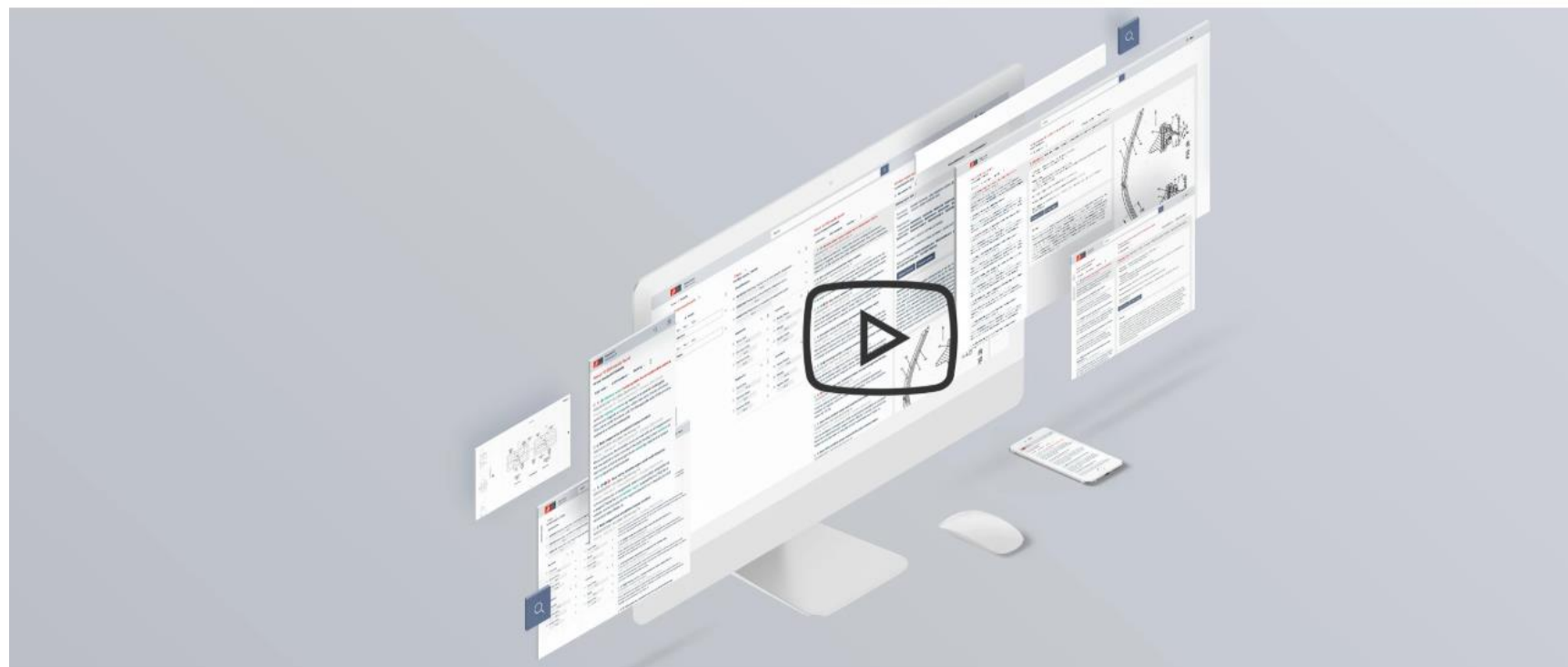


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Title or abstract All → Group

Title or abstract All → Group

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Description Proximity → Group

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Description Any → Group

[www.espacenet.com](http://www.espacenet.com)



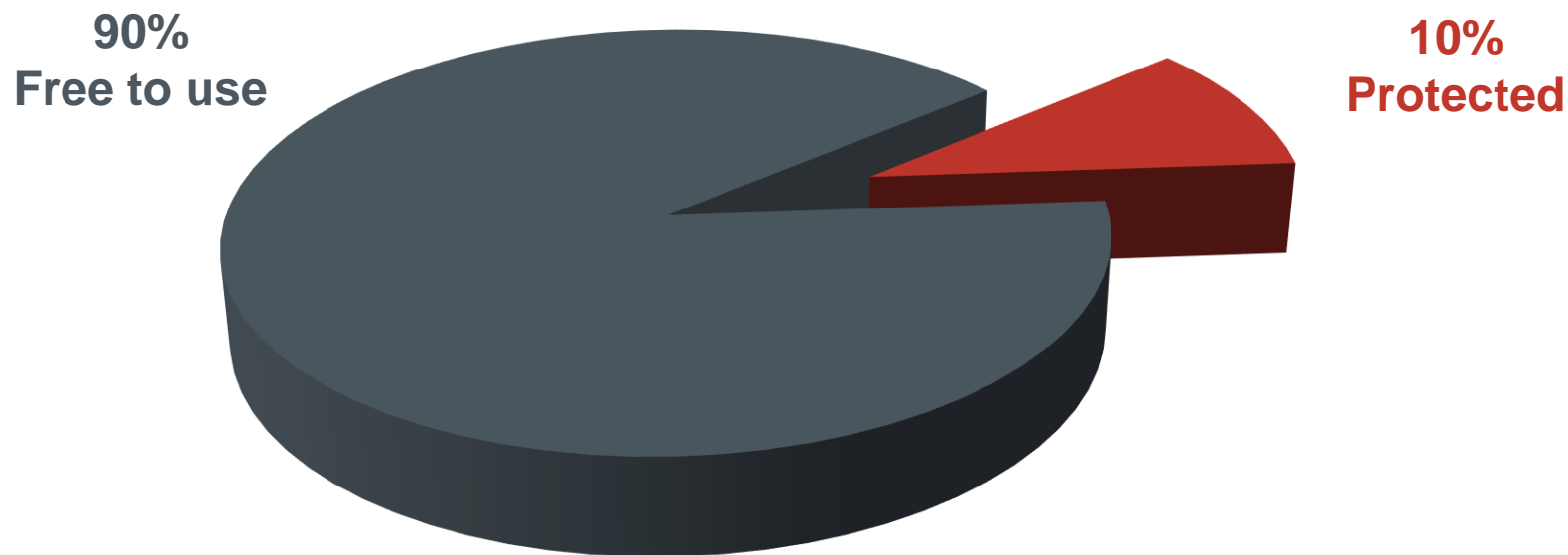
# A patent ....

- Has to be applied for
- Has to be granted
- Has to be valid (max. lifetime 20 years, renewal fees)
- Has to be valid in a certain territory

**18 months after filing, a patent (application) will be made public (appear in Espacenet) – regardless of the legal status (if not withdrawn before)**



# Off all solutions found in patent documents .....



**You can find many great solutions for free!**



# FTO-analysis

*Before:* search for any 3<sup>rd</sup> party IP-rights which can block your commercial activities

*More precisely:* search for any valid 3<sup>rd</sup> party IP-rights which can block your commercial activities in a certain geography

**Business Strategy!**





# When would you do a FTO-analysis?

- Eg. before the start of a R&D-project (investment)

**Remember: Patent protection for a new product**



# When can a patent be granted?

- **New**
- **Inventive**
- **Commercially applicable**



# FTO versus Patentability

Let's assume:

- You conducted a FTO-search before the start of a R&D-project
- You found a patent with very similar claims (valid in Japan only)
- Your business strategy: doing business in Europe

**FTO**



**Patentability**



**Strategic question: Would you start the R&D-project, already knowing that you cannot get IP protection?**



# FTO versus Patentability II

Let's assume:

- You have a new idea: computer mouse which needs no cable or battery – it generates its electricity by the movement of the mouse
- Search: let's assume: you found no (valid) patent on this specific idea

**Patentability**



**FTO**



Many existing patents on basic mouse – you build upon



# Find out more

## General

- [Horizon 2020 Programme: Annotated Model Grant Agreement](#)

## Communication Activities

- Brochure: [Making the Most of Your H2020 Project – Boosting the impact of your project through effective communication, dissemination & exploitation](#)
- Online Manual: [Horizon 2020 Participant Portal Online Manual “Communicating Your Project”](#)
- Guide: [Communicating EU Research & Innovation](#); [Social Media Guide for EU-funded R&I Projects](#)
- Videos: [The EU Guide to Science Communication](#)
- Webinar: [60-minute Communication Workout](#)
- [Social Media Guide: http://ec.europa.eu/research/participants/data/ref/h2020/other/grants\\_manual/amga/soc-med-guide\\_en.pdf](#)

## Dissemination & Exploitation

- Online Manual: [Horizon 2020 Participant Portal Online Manual “Dissemination & Exploitation of Results”](#)
- European IP Helpdesk Fact Sheet: [The Plan for the Exploitation and Dissemination of Results in Horizon 2020](#)

## IP Management

- European IPR Helpdesk Guide: [Your Guide to IP in Horizon 2020](#)

## Open Access & Data Management

- Online Manual: [Horizon 2020 Participant Portal Online Manual “Open Access & Data Management”](#)
- Guidelines: [Rules on Open Access to Scientific Publications & Open Access to Research Data in Horizon 2020](#); [Data Management in Horizon 2020](#)
- Infographic: [Open Access](#)
- European IP Helpdesk Fact Sheet: [Open Access to scientific publications and research data in Horizon 2020: Frequently Asked Questions](#)



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# Any questions?





# Thank you !

For further questions about this presentation: [training@iprhelppdesk.eu](mailto:training@iprhelppdesk.eu)  
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