



## European IPR Helpdesk

# Fact Sheet

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

**July 2015<sup>1</sup>**

Introduction.....	1
1. Why is it important to consider intellectual property at the proposal stage? .....	2
2. The call for proposal: check all documents and be familiar with the IP rules.....	4
3. Tackling confidentiality issues and potential contractual arrangements .....	5
4. Identifying intellectual property and taking steps for its protection .....	6
5. Assessing the state-of-the-art.....	7
6. Considering third parties' rights.....	7
7. Eligible costs.....	8
8. Project's name and acronym.....	8
9. Strategy for the dissemination and exploitation of project results .....	9
Useful Resources .....	12

### **Introduction**

Horizon 2020 is the European Union's (EU) new framework programme for research and innovation for the period 2014-2020. As the successor to the Seventh Framework Programme (FP7), Horizon 2020 implements the Innovation Union<sup>2</sup> and therefore is one of the driving forces to create growth and jobs in the EU.

With the clear goal of simplifying the access to EU funding, Horizon 2020 merges all research and innovation funding previously provided through FP7, plus the innovation-related activities of the Competitiveness and Innovation Framework Programme (CIP) and the European Institute of Innovation and Technology

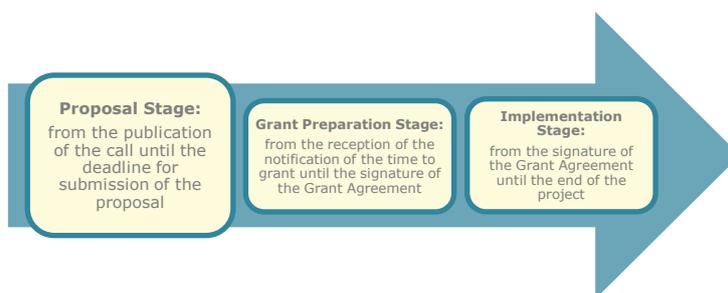
<sup>1</sup> This fact sheet was first published in February 2014, revised in April 2014 and updated in July 2015.

<sup>2</sup> The Innovation Union initiative is an integral part of the Europe 2020 strategy, aiming at creating smart, sustainable and inclusive growth in the European Union. The Innovation Union, in particular by strengthening the access to finance for research and innovation, will guarantee that innovative ideas will become products and services that create growth and jobs.

(EIT). Hence in Horizon 2020 participants work with a single programme with a single set of rules including those related to [intellectual property](#).

With Horizon 2020, the European Union aims at strengthening the European scientific and technological base and fostering benefits for society as well as better exploitation of the economic and industrial potential of policies of innovation, research and technological development. In fact, it is essential that the public resources and efforts used in research are converted into socio-economic benefits to the EU. For this reason Horizon 2020 establishes commitments from the participants in terms of [dissemination](#) and [exploitation](#) of the projects' [results](#), including their protection through intellectual property.

This fact sheet therefore intends to assist applicants in Horizon 2020 with the management of intellectual property in the proposal stage of their project. Even though Horizon 2020 research and innovation activities are implemented through different forms of funding, particularly grants, prizes, procurement and financial instruments, this fact sheet deals solely with grants. This fact sheet is the first of a series of three fact sheets dealing with the management of intellectual property in the different stages of a Horizon 2020 project.



## 1. Why is it important to consider intellectual property?

### 1.1 In Horizon 2020

Effectively exploiting research results depends on the proper management of intellectual property, which should be part of the overall management of knowledge in the project. Indeed, it is generally the case that the 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. Intellectual property is in this way a cornerstone for an effective impact of research results in society, due to its capacity to give its holders a competitive advantage in the market.

Even though intellectual property protection requires time and resources, it has nevertheless clear advantages both for research organisations and companies. On the one hand it facilitates technology transfer, while on the other hand it enhances the chances of companies for growth, as shown in the joint study of

the Office for Harmonization in the Internal Market and the European Patent Office on European intellectual property rights intensive industries<sup>3</sup>.

It comes therefore with no surprise that participants in Horizon 2020 are expected to effectively manage intellectual property within their project, which in collaborative projects gains a higher importance. Indeed, even though research collaborations lead to lower R&D expenses and risks, which are distributed among all the partners, it can lead to disagreements in terms of results ownership, use and even misappropriations if no steps are taken to protect the interests of partners.

## 1.2 At the proposal stage

Intellectual property takes an essential role in the entire life-cycle of R&D projects funded through Horizon 2020. Indeed, as a proper management of intellectual property enhances the chances of an effective exploitation of the research results, it is best practice to consider intellectual property when describing the measures for exploiting the results. This helps participants in showing the effectiveness of such measures, while maximising the impact of the proposed project.

Thus, intellectual property takes a specific role in the outline of the partners' strategy for knowledge management and protection, which is determinant in the evaluation of the impact of the project<sup>4</sup>. Indeed, in order to ensure that only the proposals with the highest quality are selected for Horizon 2020 grants, the European Commission relies on independent experts for the evaluation of proposals. These individuals evaluate the proposals against three award criteria:

1. Excellence;
2. Impact, and
3. Quality and efficiency of implementation<sup>5</sup>.

The aspects to be considered in each case depend on the type of action, unless stated otherwise in the call conditions. Nevertheless, intellectual property is central to the evaluation of the impact of the proposed projects in all the different types of actions in Horizon 2020, even though the level of the details may depend on the circumstances of the project.

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<sup>3</sup> See "Intellectual Property Rights intensive industries: Contribution to economic performance and employment in Europe", available at: [http://ec.europa.eu/internal\\_market/intellectual-property/docs/joint-report-epo-ohim-final-version\\_en.pdf](http://ec.europa.eu/internal_market/intellectual-property/docs/joint-report-epo-ohim-final-version_en.pdf).

<sup>4</sup> See *Horizon 2020 Work Programme 2016-2017, Annex H*, available in the Participant Portal: [http://ec.europa.eu/research/participants/data/ref/h2020/other/wp/2016-2017/annexes/h2020-wp1617-annex-ga\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/h2020/other/wp/2016-2017/annexes/h2020-wp1617-annex-ga_en.pdf)

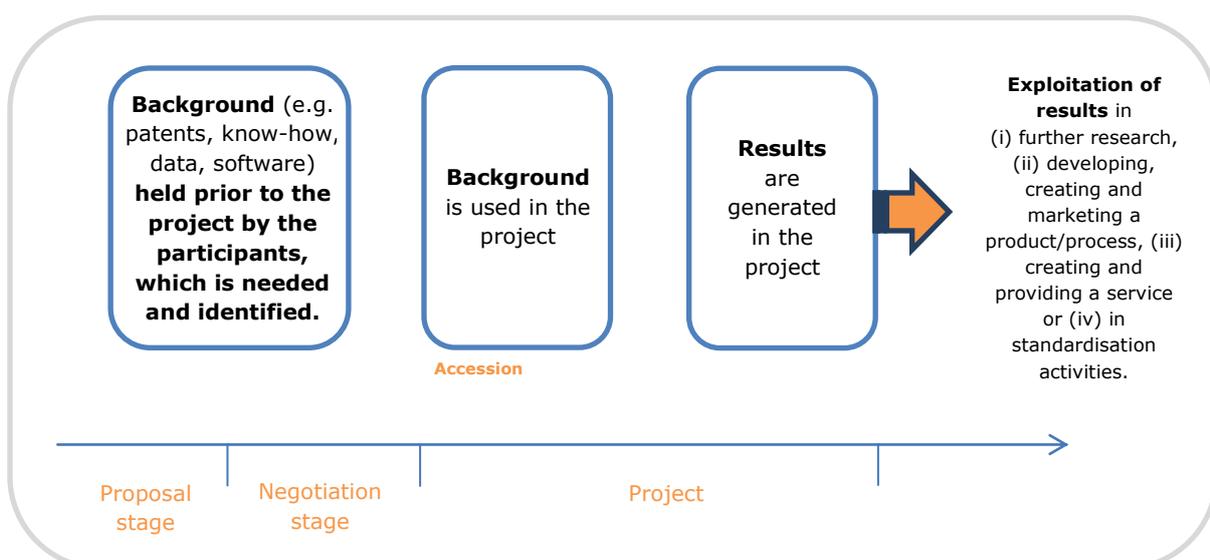
<sup>5</sup> See *Grants Manual – Section on: proposal submission and evaluation*, available in the Participant Portal: [http://ec.europa.eu/research/participants/data/ref/h2020/grants\\_manual/pse/h2020-guide-pse\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/pse/h2020-guide-pse_en.pdf)

Moreover, intellectual property should also be considered at different levels of the project to make sure that a suitable strategy and management is implemented. At the proposal stage in particular, it has special importance for instance regarding the use of patent databases for assessing the state-of-the-art, in the context of the award criterion “excellence”. Furthermore, when describing the consortium as a whole and how each partner will complement each other, including information on the skills of each partner in dealing with intellectual property (for example by having in-house personnel with experience in the field) could be seen positively to show that protection and exploitation of assets is already taken seriously in the partners' business. These and further issues to be considered in terms of intellectual property management at the proposal stage will be explained below.

## 2. The call for proposal: check all documents and be familiar with the IP rules

To encourage participants to properly protect and exploit the results of projects and in this way help research in bridging the gap into the market, the Horizon 2020 programme establishes rules on the exploitation and dissemination of the projects' results. These rules can be found in several documents, which we will see in more detail below.

Since those rules have an impact in the use that participants intend to make of the results of the project, it is therefore best practice to be familiar with them from the outset. In this way, potential participants can analyse over time the legal commitments they are expected to comply with in case the funding is granted, but also can properly construct a strategy for the exploitation and protection of the expected results.



Hence, before starting to draft the proposal, applicants should take the time to read the call for proposals conditions and be familiar with the specific intellectual property-related rules applicable to their particular call<sup>6</sup>. It is therefore important to consider the following documents:

- the Rules for Participation<sup>7</sup>, for the general legal framework applicable for the Horizon 2020 grants;
- the model [grant agreement](#)<sup>8</sup> applicable in the concrete call;
- the applicable work programme, which may establish further commitments expected by the European Commission in the name of a European strategic interest.

In Horizon 2020, the grant agreement that participants sign with the European Commission is based on models, which are available on the Participant Portal for public information. These models are based on the Rules for participation.

However, additional rules on intellectual property, namely in terms of access rights, exploitation and dissemination of results, can be established in the grant agreement, depending on the type of grant and work programme.

### 3. Tackling confidentiality issues and potential contractual arrangements

Horizon 2020 grants, as with most research collaborations, require partners to exchange information with the purpose of defining the research idea. Their concept and approach for the project must be explained in detail within the proposal, as well as the ambition of the work proposed. Within this definition it is therefore natural that partners share among them and in the proposal details on their background, since they will be pooling their skills, knowledge and intellectual property in the project. Some of this information may even be shared unintentionally during the discussions for the preparation of the proposal.

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<sup>6</sup> For detailed information on the intellectual property rules in Horizon 2020, we suggest that you follow our training on this topic, which is free-of-charge and can be provided through the internet. Consult [our webpage on training](#) for more information.

<sup>7</sup> Particularly title III of Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)" and repealing Regulation (EC) No 1906/2006, which is available at: [http://ec.europa.eu/research/participants/data/ref/h2020/legal\\_basis/rules\\_participation/h2020-rules-participation\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/h2020/legal_basis/rules_participation/h2020-rules-participation_en.pdf).

<sup>8</sup> The models of grant agreements are available on the Participant Portal, under [reference documents](#).

Hence, there is a risk that confidential information, such as inventions not yet protected by patents, is disclosed to the other partners, which could be misappropriated by them and, in the case of inventions, affect their patentability.

To avoid any eventual misappropriation and use of such information, it is therefore best practice to conclude a non-disclosure agreement (NDA-also known as confidentiality agreement)<sup>9</sup> with the other partners before entering into negotiations for the submission of the proposal. This agreement establishes the conditions under which partners disclose information in confidence.

Instead of taking the form of a stand-alone agreement, confidentiality obligations may also be included in a Memorandum of Understanding (MoU), should the partners prefer to define further aspects of their collaboration already at the proposal stage.

Models of a non-disclosure agreement and memorandum of understanding are available in the European IPR Helpdesk library. Tailored assistance can be provided through our Helpline for free and in confidence.

#### 4. Identifying intellectual property and taking steps for its protection

One of the benefits of Horizon 2020 grants is the collaborative character of the projects, which means that participants will be sharing their experience, innovation and intellectual property rights for the purpose of creating results that they would not be able to develop alone and in the same timeframe. All the partners are therefore bringing some assets to the project, of either tangible (such as materials) or intangible nature (such as data, know-how or patents) - in other words, their [background](#).

To avoid that this use (or re-use) of background leads to any breach of obligations or possibly an infringement of intellectual property rights belonging to others, applicants should identify the background needed for the project.

##### How can I identify my own background?

- list the components you are likely to bring to the project (e.g. scientific study, method, material...) and the potential rights attached to them (e.g. patent, copyright...);
- verify who owns them;
- ask for authorisation to use them if there are third parties' rights;
- if there is something that may affect the other partners' use, they should be informed (e.g. the use of open source software).

<sup>9</sup> For detailed information on non-disclosure agreements, consult the fact sheet "Non-disclosure agreement: a business tool" available in our [library](#).

At this point, participants can therefore consider the possibility of protecting any component not yet protected, particular inventions of high importance or designs. In fact, even with a confidentiality agreement in place, the risks of disclosure or misuse of the information are real, and consequently additional measures should be considered, particularly by seeking the registration of intellectual property rights when possible.

## 5. Assessing the state-of-the-art

According to the Rules for Participation, the projects selected for funding must demonstrate a high scientific and/or technical quality, that is, excellence. The details on this award criterion are established in the work programme applicable to the call and further specified in the project proposal template.

In research and innovation actions as well as innovation actions, for instance, it is essential to describe to what extent the proposed work is ambitious, has innovation potential and is beyond the [state-of-the-art](#)<sup>10</sup>. Generally, a state-of-the-art search should include not only an examination of scientific literature, but also of patent databases since according to studies most information in patent databases is not available anywhere else<sup>11</sup>. The results of the patent search should then be mentioned in the proposal when describing its innovation potential.

Patent searches may be performed for free using Espacenet<sup>12</sup>, but it is advisable to seek assistance for example from national patent offices, PATLIB centres or private patent attorneys, should this be a cost that applicants can afford.

## 6. Considering third parties' rights

Applicants should also consider the intellectual property rights belonging to others. In particular, it is important to analyse whether the exploitation of the potential results would infringe third parties' rights, namely patents. Indeed, patents are rights that only provide its owner with the right to exclude others from using the patented invention, but not with the right to commercially exploit it. Thus, testing or commercialisation of a product incorporating a patent of a prior third party's patent may result in an intellectual property infringement. Not considering third parties' right may therefore hamper the future plans for the exploitation of results and/or increase the costs of the project, since it would be

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<sup>10</sup> *Horizon 2020 – work Programme 2014-2015*, Annex H. Evaluation, available in the [Participant Portal](#).

<sup>11</sup> For further information on prior-art-searches, we suggest that you consult the European Patent Office website:

<http://www.epo.org/learning-events/materials/inventors-handbook/novelty/searching.html>.

<sup>12</sup> For details on how to search for patent information, we suggest that you consult our fact sheet *How to search for patent information*, available in the [library](#). For further information and training on Espacenet, please consult the European Patent Office website:

<http://www.epo.org/searching/free/espacenet.html>.

necessary to conclude licensing agreements with third parties for using their patented technology or move away from the initial research plans.

Thus, applicants should consider performing [freedom to operate searches](#), which allow them to identify potential relevant patents for their results and assess whether their plans for testing and commercialisation would infringe patents belonging to others. Freedom to operate searches are of particular importance when a plan for exploitation of results is required in innovation actions and in the SME instrument (phase 1)<sup>13</sup>, as a step to show the impact of the proposed project.

## 7. Eligible costs

The estimated budget of a project in Horizon 2020 is calculated on the basis of the estimated eligible costs submitted by the partners in their proposal. These estimated eligible costs are used to determine the 'maximum grant amount' and only these costs can be reimbursed by the European Commission.

Costs regarding intellectual property rights, including those related to protection of results (e.g. fees paid to the patent office for patent registration) and royalties on access rights, are among the types of costs that can be eligible for reimbursement as costs of other goods and services<sup>14</sup>. It is therefore advisable to consider costs related to intellectual property at the proposal stage and to include them in the budget<sup>15</sup>. Even though Horizon 2020 may not cover all the associated costs associated with intellectual property, for instance any licensing, in fees or patent fees to be paid after the end of the project, these grants are certainly a great opportunity to gain leverage from intellectual property protection and exploitation during the implementation of the project with less expenses.

## 8. Project's name and acronym

Refraining from using an acronym identical or similar to a registered trade mark for goods and/or services in the same area of business is important specifically when consortium partners intend to commercially exploit a result or provide a service in the market under the acronym of the project. Indeed, such use in the market could lead to trade mark [infringement](#) actions, and even during the project the consortium could be the target of allegations of infringement.

To avoid wasting time and money with such actions and allegations, it is therefore best practice to perform trade mark searches. Preliminary searches can be performed in-house by applicants, using the internet and the free search tools

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<sup>13</sup> Information on the SME Instrument is available at:

[http://ec.europa.eu/research/participants/portal/desktop/en/funding/sme\\_participation.html](http://ec.europa.eu/research/participants/portal/desktop/en/funding/sme_participation.html).

<sup>14</sup> *Annotated Model Grant Agreement*, available in the [Participant Portal](#).

<sup>15</sup> For further details, please consult the European IPR Helpdesk Bulletin (12), which is available in our [library](#). Tailored assistance can be sought from National Contact Points.

provided by the OHIM (such as TMview<sup>16</sup>) or the World Intellectual Property Organization (ROMARIN<sup>17</sup>)<sup>18</sup>. Comprehensive searches can be performed by certain national Intellectual Property Offices or IP professionals, if time and financial resources of applicants allow it.

## 9. Strategy for the exploitation of project results

Successful applicants in Horizon 2020 receiving European Union funding commit in the grant agreement to use their best efforts to exploit the results of the project, either directly or through other organisations (for instance by out-licensing the results). Hence, in the technical annex of proposals it is advisable to clearly outline the plans for the exploitation of results<sup>19</sup> (unless the work programme topic explicitly states that such a plan is not required), by establishing the proposed exploitation routes for the project partners. In addition, how results will be managed and protected, namely through intellectual property rights, should be clearly addressed<sup>20</sup>.

Beneficiaries that are universities or other public research organisations must ensure that they consider the principles set out in Point 1 (Principles for an internal intellectual property policy) and Point 2 (Principles for a knowledge transfer policy) of the Code of Practice (annexed to the [Commission Recommendation on the management of intellectual property in knowledge transfer activities](#)) in the design and implementation of their IP management and knowledge transfer policies, which impacts their strategy in the proposal<sup>21</sup>.

To ensure an efficient and high level implementation of the measures proposed in terms of exploitation and intellectual property management, it is then essential to support them with a detailed description of the work implementation<sup>22</sup>. Particular care should be taken in the definition of the management structure, since it should support an efficient implementation of the measures proposed in terms of intellectual property.

### 9.1 Checklist:

Thus, to help applicants developing the exploitation plans, the outline of the knowledge management and the implementation of the work in their technical annex of the proposal, we suggest the following checklist for the major issues to be considered in terms of intellectual property:

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<sup>16</sup> TMview is available at: <http://www.tmdn.org/tmview/welcome>.

<sup>17</sup> ROMARIN is available at: <http://www.wipo.int/madrid/en/romarin/>.

<sup>18</sup> A fact sheet on *How to search for trade marks* is available in our online [library](#).

<sup>19</sup> You can read more on the Plan for the Exploitation and Dissemination of results in Horizon 2020 in a fact sheet available in our online [library](#).

<sup>20</sup> See part 2 of the [Proposal templates](#) Technical Annex.

<sup>21</sup> For further information, please consult the fact sheet *Exploitation channels for public research results* available in the [library](#).

<sup>22</sup> See part 3 of the [Proposal templates](#) Technical Annex.

- **How will results be protected?** Applicants should describe how they will organise the protection of results that are reasonably expected to be capable of commercial or industrial exploitation. In this context, they may outline how results will be identified (perhaps by allocating some staff member to be an intellectual property rights manager, through the use of laboratory notebooks...), reported and protected from early disclosure. Possible intellectual property rights arising within the project should be indicated, as well as how the partners intend to protect them (perhaps by making use of internal and/or external intellectual property specialists, for instance). Reference to the consortium agreement to be established should be made.
- **How will background and results be organised and managed?** It is relevant to include a clear and adequate description of how applicants will organise ownership and access rights between them, including any economic conditions. Background must be identified and agreed on by participants, which can be done through a separate agreement or the consortium agreement (in the form of positive or negative lists), to be preferably concluded during the negotiation stage. Reference to these plans should be also considered.
- **How will joint ownership be treated?** Joint ownership should be considered. Applicants may mention that in a case of jointly owned results, they have the intention to reach an agreement for the effective management of such results with details, for example, on shares, exploitation and licensing to third parties.
- **How will the results be exploited?** Potential participants have several routes for exploitation. The most appropriate one will depend on type of results and the technology readiness level, as well on the partners' circumstances in terms of financial conditions and business plans. Examples of the forms that exploitation can take are given below:

Further internal research	<ul style="list-style-type: none"> <li>• These research activities must be beyond the project.</li> <li>• Relevant for research organisations and research intensive companies.</li> </ul>
Collaborative Research	<ul style="list-style-type: none"> <li>• The results used as background of future collaborative research projects.</li> <li>• Relevant for research organisations and research intensive companies.</li> </ul>
Internal product development	<ul style="list-style-type: none"> <li>• Results used in developing, creating and marketing a product/process.</li> <li>• Relevant for companies.</li> </ul>
Internal service creation	<ul style="list-style-type: none"> <li>• Results used in creating and providing a service.</li> <li>• Relevant for companies.</li> </ul>
Licensing	<ul style="list-style-type: none"> <li>• Results exploited by other organisations through out-licensing.</li> <li>• Relevant for all participants, but care should be taken to comply with Horizon 2020 rules.</li> </ul>
Assignment	<ul style="list-style-type: none"> <li>• Results exploited by other organisations by the transfer of ownership.</li> <li>• Relevant for all participants, but care should be taken to comply with Horizon 2020 rules.</li> </ul>
Joint Venture	<ul style="list-style-type: none"> <li>• Results used as background of a joint venture.</li> <li>• Relevant for all participants, but care should be taken to comply with Horizon 2020 rules.</li> </ul>
Spin-off	<ul style="list-style-type: none"> <li>• A separate company established in order to bring to the market results from the project.</li> <li>• Relevant for all participants, but care should be taken to comply with Horizon 2020 rules.</li> </ul>
Standardisation activities	<ul style="list-style-type: none"> <li>• Results used either to develop new standardisation activities, or to contribute to on-going standardisation work.</li> <li>• Relevant for all participants, but care should be taken to comply with Horizon 2020 rules.</li> </ul>

- **Which confidentiality measures have been and will be put in place?** Clear and adequate description of confidentiality issues and third parties' rights (considering the measures already taken at the proposal stage and the ones intended for the next stages of the project), as outlined above, could be mentioned.
- **How appropriate is the management structure for the measures proposed in terms of exploitation and protection of results?** It is advisable to give due visibility in the work plan to the exploitation of results and if necessary to introduce a distinct work package. When defining the management structure, applicants should consider the management of intellectual property rights. A committee for exploitation and intellectual property or a manager could be considered and even a consulting body of external experts from industry. The proper structure will depend on the measures foreseen in each project.

The Helpline can analyse the IP part of your plans on exploitation and dissemination of results. Contact the Helpline for further information!

## Useful Resources

For further information on the topic, please also see:

- "Non-Disclosure Agreement: a business tool":  
<http://www.iprhelphelpdesk.eu/Fact-Sheet-Non-Disclosure-Agreement>
- "Commercialising Intellectual Property: knowledge transfer tools":  
<http://www.iprhelphelpdesk.eu/Fact-Sheet-Commercialising-IP-Knowledge-Transfer-Tools>
- "Commercialising Intellectual Property: internal product development":  
<http://www.iprhelphelpdesk.eu/Fact-Sheet-Commercialising-IP-Internal-Product-Development>
- "Commercialising Intellectual Property: license agreements":  
<http://www.iprhelphelpdesk.eu/Fact-Sheet-Commercialising-IP-Licence-Agreements>
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- "Commercialising Intellectual Property: spin-offs":  
<http://www.iprhelphelpdesk.eu/Fact-Sheet-Commercialising-IP-Spin-offs>
- "How to reap the benefit of standardisation in R&D":  
<http://www.iprhelphelpdesk.eu/Fact-Sheet-Standardisation-in-RD>
- "Exploitation channels for public research results":  
<http://www.iprhelphelpdesk.eu/Fact-Sheet-Exploitation-Channels-for-Public-Research-Results>

## GET IN TOUCH

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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. 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.iprhelphdesk.eu](http://www.iprhelphdesk.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 and 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 at [training@iprhelphdesk.eu](mailto:training@iprhelphdesk.eu).

## DISCLAIMER

This Fact Sheet has been initially developed under a previous edition of the European IPR Helpdesk (2011-2014). At that time the European IPR Helpdesk operated under a service contract with the European Commission.

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