

WG3.2 WG3.2: Intellectual Property issues in H2020 (including third parties) based on the Rules of Participation, Model Grant Agreements and model Consortium Agreement (DESCA) – Part 2

*a) Publications and open access – the H2020 novelty in
the context of the obligation to disseminate project
results vs. obligation to protect the project results*

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Overview

1. What is “open access”?
 - definition
 - “green access” vs. “gold access”
2. Misconceptions about open access
3. Open access in H2020
 - view European Commission
 - legal basis
 - modalities and requirements
4. Patenting vs. publishing
 - traditional approach
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5. The ‘ideal world?’ – group discussion



1. What is “open access”?

Open Access (OA) = practise of providing on-line access to scientific information*

- no legal definition of ‘open access’
- term is used in political declarations - idea:
 - free of charge to end user and re-useable
 - does not only includes the right to: read, download and print but also: right to copy, distribute, search, link, crawl, and mine

* Scientific information =?

- i) peer-reviewed scientific research articles / publications
- ii) research data

1. Open access? “green access” vs. “gold access”

“green open access”

- self-archiving in on-line repository either *before, at the same time of or after* publication
- “embargo period” to delay access
- publication costs covered by payments of readers (subscriptions)



“gold open access”

- *immediate* publication in open access mode at the same time of publication (no embargo)
- publication costs shifted to author (i.e. costs borne by university or RO to whom researcher is affiliated or by funding agency supporting the project)

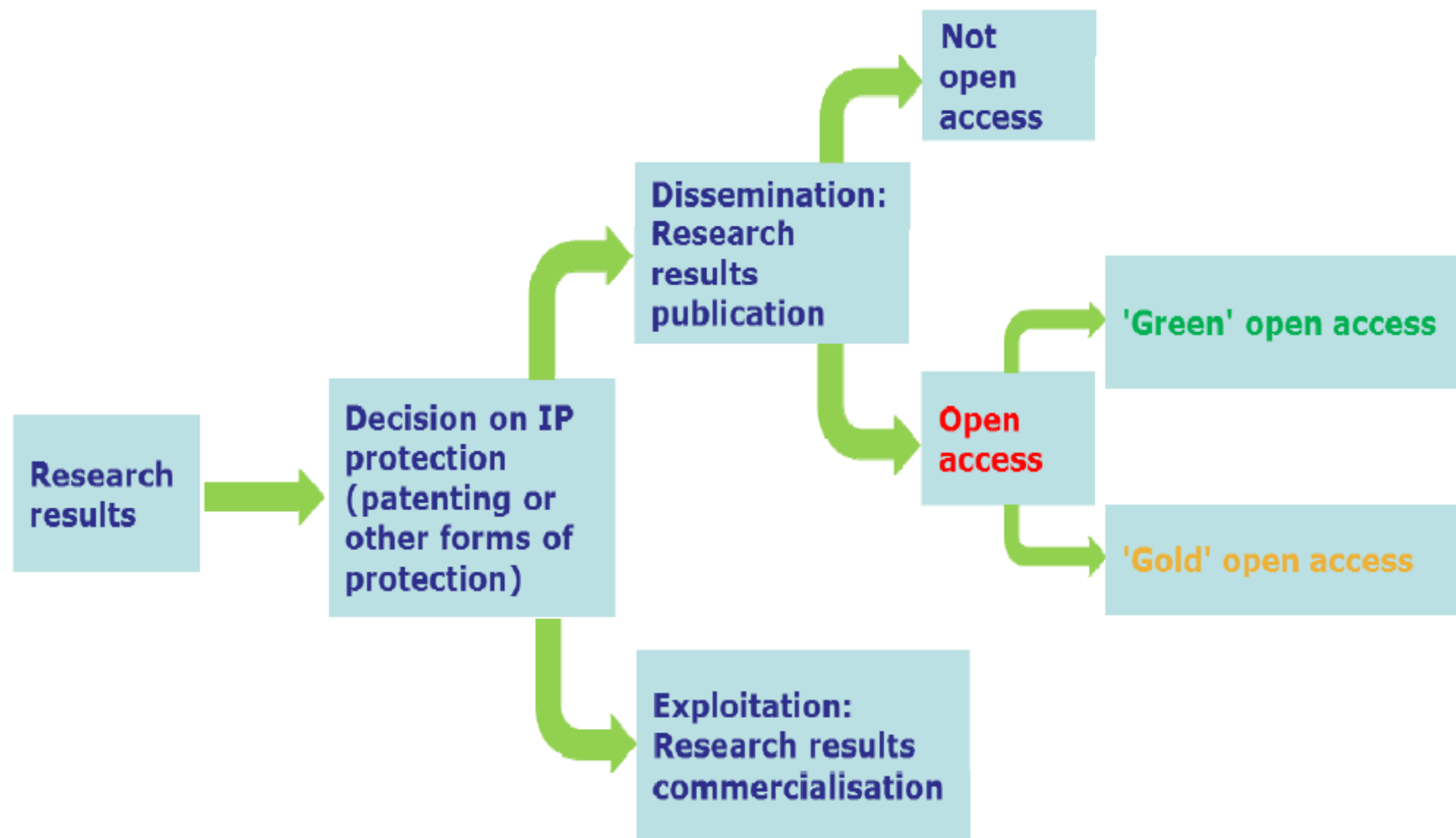
2. Misconceptions about open access

- *“Open access implies that you should at all times publish your research results”*

WRONG: open access is **not an obligation to publish** results but is a decision of fundees of the research; is only an issue if publication is chosen as means of dissemination

- *“Open access implies that I can not protect my research results”*

WRONG: open access does not necessarily interfere with IPR protection: the decision of open access publication comes **after** decision to seek IPR protection or to publish immediately



3. Open access in H2020

Underlying idea / view European Commission:

- Open access is **not a goal** in itself but a **tool** to facilitate and improve circulation of information in the European Research Area
- Information already paid for by ‘public purse’ (tax payer) should not be paid for again when accessed: should be freely accessible to researchers, industries and citizens
- Benefits? wider access to publications contributes to:
 - Building on previous research results (improved quality)
 - Fostering collaboration (greater efficiency)
 - Accelerating innovation (faster to market / faster growth)
 - Involving citizens and society (transparency)

3. Open access in H2020 (cont'd)

Legal basis: in Framework Programme and the Rules for Participation (Art. 43.2)

With regard to the dissemination of results through scientific publications, open access shall apply under the terms and conditions laid down in the grant agreement. Costs relating to open access to scientific publications that result from research funded under Horizon 2020, incurred within the duration of an action, shall be eligible for reimbursement under the conditions of the grant agreement. [...] the grant agreement shall not stipulate conditions regarding open access to publications which would result in additional publishing costs after the completion of an action.

=> Detailed legal requirements contained in Model Grant Agreement.

How to comply? Basic elements (read, download, print) + ensure as many additional rights as possible

3. Open access in H2020 (cont'd)

Modalities and requirements: Model Grant Agreement (Art. 29.2)

- **Step 1**: **deposit** machine-readable electronic copy in repository, at the latest upon publication
 - requirement to deposit at same time **underlying data** in order to validate results covered in the publication: in data repository (providing access to such data is not obligatory!)
 - avoid repositories claimings rights on publication or precluding access (<-> GA)
 - recommended entry point: Open Access Infrastructure for Research in Europe (OpenAIRE) to determine suitable repository

3. Open access in H2020 (cont'd)

Modalities and requirements: Model Grant Agreement (Art. 29.2)

- **Step 2**: ensure open **access** to the deposited publication
 - via green open access (max. delay of 6 months – 12 months in social science/humanities) or gold open access
 - additional requirement to deposit “**metadata**” in order to maximise discoverability of publications and ensure acknowledgement of EU funding
 - Terms (“EU” ...”Horizon2020”)
 - Name of the action, acronym and grant number
 - Publication date, length embargo
 - Retain copyright and license to publishers

3. Open access in H2020 (cont'd)

[Excerpt from Model Grant Agreement]

29.2 *Open access to scientific publications*

Each beneficiary must ensure open access (free of charge online access for any user) to all peer-reviewed scientific publications relating to its results. In particular, it must:

- (a) as soon as possible and at the latest on publication, deposit a machine-readable electronic copy of the published version or final peer-reviewed manuscript accepted for publication in a repository for scientific publications;

Moreover, the beneficiary must aim to deposit at the same time the research data needed to validate the results presented in the deposited scientific publications.

- (b) ensure open access to the deposited publication — via the repository — at the latest:
 - (i) on publication, if an electronic version is available for free via the publisher, or
 - (ii) within six months of publication (twelve months for publications in the social sciences and humanities) in any other case.
- (c) ensure open access — via the repository — to the bibliographic metadata that identify the deposited publication.



4. Patenting vs. publishing

Traditional view

	ROs	Industry
Type of research	Basic research	Applied research
Interest	Scientific application	Commercial application
Aim	Improve science	Improve company value
Outcome	Open	Protected
Dissemination	Publishing	Patenting

4. Patenting vs. publishing (cont'd)

Shift?

- RO's are encouraged to work with industry on research projects in different fields
- boundaries between basic and applied research become 'blurred'
- shift within RO's from 'traditional publishing' to an increased focus on patenting; caused by:
 - Accountability and cost reduction
 - Requirement of commercialisation of publicly funded research

4. Patenting vs. publishing (cont'd)

COMPARISON	PATENTING	PUBLISHING
APPLICABILITY	For commercially exploitable technology	For knowledge sharing purposes
RIGHTS GRANTED	Exclusive rights	Copyright
PROCEDURE	Yes	No
COSTS	High	Low to none
USE OF THE TECHNOLOGY	Only the patent owner, unless licensed	Everyone
TECHNOLOGY PROTECTION	Yes, on the patent claims	No, only the article text
FINANCIAL GAIN	Yes	Likely, but only on the paper publication
TECHNOLOGY DISCLOSURE	After 18 months	Immediately

5. The 'ideal world'? – group discussion

Alternatives?

- secrecy / confidentiality:
 - for inventions that do not qualify for patent protection; production processes
- combination of patent & secrecy:
 - technical details: kept secret vs. parts that are easier to work out: patent
- 'defensive publication':
 - if patent costs are not worth it or if patentability is questionable

The ultimate tool?

there is no such thing as the 'ultimate' tool as they all serve different purposes and depends on the company / RO's strategy

Group discussion



Sources

- Guidelines on Open Access in Scientific Publications and Research Data in Horizon 2020, Version 1.0, 11 December 2013
- Communication ‘ A reinforced European Research Area Partnership for Excellence and Growth’ [COM (2012) 392 final]
- Factsheet ‘Patenting vs. publishing’, IPR Helpdesk, July 2013
- Factsheet ‘Open Access in Horizon2020’ IPR Helpdesk, December 9, 2013
- New Horizons on university IP, A. Jolly, IPR Helpdesk Bulletin n°10, July 2013



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