

# Publication Industrial Ownership

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Ageneae (Analyse du GENome des Animeax d'Elevage) part of INRA (Institut National de la Recherche Agronomique) is acknowledged for making available this research contract example.

The articles published in this chapter are only part of the Publication Industrial Ownership.

*This document will function as a first set up document. In the course of time it will be expanded and improvements will be carried through. The latest updated version will be available at the website [www.eadgene.org](http://www.eadgene.org).*

## **1.1 Article 1 – Confidentiality and publications**

### **1.1.1 Confidentiality**

Subject to the provisions of article 1.2., each member undertakes, both for himself and for his staff, unless there is prior agreement in writing from the other members to:

- Consider as strictly confidential the information indicated as such, hereafter called the “information”, constituted by all the elements of confidential information received orally or in writing from another member or persons authorised by this other member with a view to carrying out the research, or about which he might have had knowledge during visits to the laboratories of the other members:
- Not to use the information for other purposes than successfully to complete the research and the use of the results;
- Not to divulge information to third parties. By third party is meant any person, company or body that does not participate in add name of project, with the exception of members of add name of project and their affiliated companies and bodies as defined in article 20<sup>1</sup> below;
- To pass on the information for which he is responsible only to those members of his staff who are directly concerned in the add name of project programme.

Will not be considered as confidential any information about which the member receiving it can prove:

- That it was part of the public domain at the time of its communication by one or more members, or that it subsequently came into the public domain other than by a failure to observe the present obligation of secrecy, or
- That he already had this information before its communication by one or more members or by any person authorised by these members, or
- That he received it freely from a third party authorised to divulge it,
- That he is legally required to communicate it.

It is moreover agreed that fundamental knowledge of universal import and information with a bearing on materials with a generic purpose acquired during generic research programmes, will not be considered as confidential.

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<sup>1</sup> Not available

## 1.1.2 Publications

Publications or oral and written communications from members on the results obtained will be subject to the following conditions:

Before any publication or communication, written or oral, relative to the work of “add name of project”, the laboratories participating in this work must obtain authorisation from the Operational Directorate. For this purpose, the laboratory concerned will submit a written draft of the publication or communication to the Operational Directorate, with a copy to the CPIV (Comité de Propriété Intellectuelle et Valorisation - Committee on Intellectual Property and Valorisation). Nevertheless, this obligation should not be an obstacle either to taking the patent in compliance with the provisions of this contract, or to any possible commercial use.

- The Operational Directorate will have a time limit of six weeks from its submission by the laboratory to give a ruling. Beyond this time limit, this agreement will be supposed to have been granted.

Consequently:

### 1.1.2.1 *Content*

Before any viva, the content of theses must be submitted to the Operational Directorate who will check that it does not contain any information of a confidential nature and /or likely to be the subject of a certificate of industrial ownership. If need be, a patent will be applied for before the viva, or else, in the case of confidential know-how, the viva of the theses will be held in camera.

### 1.1.2.2 *Application for a patent*

In the event of the results being likely to lead to the application for a patent, the confidentiality will be kept by the parties involved until the date of the patent application, or at the latest, until its publication date.

### 1.1.2.3 *Confidential technical file*

In the event of the results being the subject of industrial use on a Confidential Technical File (know-how), the Industrial Ownership Committee in liaison with the Operational Directorate will determine within a maximum time limit of 6 months which part of the results will constitute the aforesaid Confidential Technical File and which can in no circumstances be published during the time the corresponding know-how is being used.

### 1.1.2.4 *Publication or communication*

The results that do not come under a Confidential Technical File and/or a patent application may be the subject of a publication or communication to third parties. This publication or communication can be carried out in any case within a maximum time limit of one year after the decision of the Operational Directorate.

### 1.1.2.5 *Mention the help*

Publications and communications must mention the help contributed by the different parties to the results and make reference to add name of project.

### 1.1.2.6 *Provisions*

The provisions of the present article cannot obstruct the obligation which is incumbent on researchers or teacher-researchers of public bodies to produce an activity report for their evaluation

authorities, insofar as this communication does not constitute disclosure in the meaning of the laws on industrial ownership and where confidentiality is guaranteed.

#### *1.1.2.7 Publication scientific knowledge*

The publication of basic scientific knowledge and international scientific discussions will be favoured to the maximum in respect for the above provisions.

The results which have spin-offs in terms of public health and environmental protection are in principle intended to be published freely, after information and investigation by the **CPIV**.

#### *1.1.2.8 Implementation present article*

For the implementation of the present article, the **Operational Directorate** will be supported – as indicated in article 7<sup>2</sup> – by the **CPIV**. In the event of disagreement between the two committees, it will be referred to the Strategic Committee – if need be in writing – who must make a ruling within a maximum time limit of 2 months.

### **1.1.3 Transfer of materials agreements**

In the case of transfer of materials, notably biological, without any particular contract, between two or more members of the Group, a “transfer of materials agreement INTRA” aimed at ensuring the traceability of the results must be signed between the members concerned.

In the same way, all transfer of material to a third party outside the Group, in the scientific field of the group, must also be the subject of a “transfer of materials agreement OUT”.

In the same logic, very special attention must be paid to the “materials transfer INTRA” agreements, which may be signed by the members in the field of the programme.

It is moreover agreed that any “transfer agreement” as mentioned in the paragraphs above must be subject, before its signature, to the agreement of the **Operational Directorate**. The **Operational Directorate** will have a deadline of six weeks from its submission by the laboratory to make a ruling. Beyond this time limit, this agreement will be considered to have been given.

The model for this “INTRA and OUT” agreement is appended.

### **1.1.4 Duration of commitments**

The commitments of the present article are valid for the 10 (ten) years that follow the reception of the information or the obtaining of the results concerned.

## **1.2 Article 2 – Ownership of results**

### **1.2.1 Content**

Previous results or results obtained and acquired outside the **add name of project** programmes. A review of the results previously acquired, as well as research data and materials available from the members of **add name of project**, will be carried out for each research programme. The **Operational Directorate** will draw up the corresponding inventories.

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<sup>2</sup> Not available

The members of add name of project, remain the owners of their genetic resources and previous results placed at the disposal of the add name of project programmes.

The add name of project members undertake to place at the disposal of the add name of project programme concerned all technology, know-how or genetic resource (hereafter called “Enabling Technology” and in abbreviation E.T.) of which they have free possession of the rights and which will be necessary for the creation of add name of project programmes.

As far as the genetic resources are concerned, this availability will concern the add name of project programmes in which the member concerned is participating. Subject to their being freely available, the resources will be made available in the form of a research license and a commercial license.

The research license will be non exclusive and free; on the other hand, the commercial use of the products including the licensed E.T. will entail the payment of royalties. The license will be granted in a non exclusive manner to the interested partner and will not permit the E.T. to be out-sourced as such.

Moreover, the add name of project members undertake to use their best efforts to make available to add name of project any E.T. belonging to a third party and necessary for carrying out the work of add name of project. It will be made available in the same way as above. Nevertheless, in the event of the E.T. being acquired by one of the members on behalf of add name of project, and only for implementing the add name of project programmes, any possible rights of access will be taken into account according to modalities to be defined by the Strategic Committee in the framework of the programmes concerned.

## 1.2.2 Application of documents

For the application of the present documents, “industrial ownership” of the “Results” means all the rights of ownership whatever their legal nature (patents, software, databases, know-how...).

## 1.2.3 Industrial ownership

Industrial ownership of results obtained in the framework of the add name of project programme: The Strategic Committee will be informed of the results by the CPIV and/or the Operational Directorate as they are obtained, at the level of both the generic research programmes and the finalised research programmes.

### 1.2.3.1 *Ownership results generic research programmes*

Industrial ownership of the results of the generic research programmes. The public research bodies will be the owners of the results of the generic research programmes and therefore holders or co-holders, at the level of their respective intellectual and financial inputs, of the rights of industrial ownership relating to the inventions they have obtained or contributed to obtaining.

The basic knowledge of universal application and the generic materials acquired during the generic research programmes, as well as their characterisation elements, as specified by the Strategic Committee, are intended to be placed in the public domain and will therefore be freely available to be disseminated and used.

The results that may need protection by patent will be subject to the following provisions:

a) Results obtained by a single public member of the Group

The results are the property of the public party who obtains them. It is he who will make the decision to submit an application for patent. Nevertheless, before any submission, he must inform the **CPIV** and the **Operational Directorate** of his decision.

If he decides not to patent, he will warn the **CPIV** in good time. The **CPIV** will inform the **Operational Directorate** which can invite the other public members to substitute for him if they so wish.

In this hypothesis, the party abandoning the claim undertakes to provide the interested member(s) with all the necessary technical or administrative items they might need to obtain the patents. The costs ensuing from the patent applications will in this case be the sole responsibility of the applicant(s), as indicated below.

b) Results obtained by several public members of the Group.

The results obtained in common will be a co-ownership of the members who have obtained them, pro rata of their respective inputs, both intellectual and financial. It will be up to them to take any decision about the submission of patents.

It is understood that in the event of a submission of patent, regulations of co-ownership will be established between the members concerned, prior to the submission of this application, as in the case of the use of a Confidential Technical File, in particular to determine the shares and conditions for managing their rights and obligations.

It is here and now agreed that the rights of industrial ownership will be managed by the **add name of company** on behalf of all the co-holder public research bodies, then possibly by the “simplified shares Company” which will be set up in conformity with the provisions of article 10<sup>3</sup> above.

c) The expenses of industrial ownership (deposit, maintenance, defence, procedures...), unless there are stipulations to the contrary from the Strategic Committee, will be the sole responsibility of the applicant(s).

Any member who refuses or ceases to participate in the costs of application and maintenance relating to a patent in a country, will lose all right over this patent in the country under consideration, unless there is a different agreement from the scientific committee.

d) Submission of patent applications outside France.

At the latest nine (9) months after the submission of the priority application, the **CPIV**, which will have discussed it with the applicant or applicants, will make proposals to the **Operational Directorate** which will decide about the submission of the patent requests abroad.

In the event of the public partners not wishing to extend a patent application into a given country, the private partners will have the possibility of proceeding to this extension in the name(s) of the public partners and at the expense of the private partners wishing to participate in this extension.

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<sup>3</sup> Not available

### *1.2.3.2 Ownership results finalised research programmes*

Industrial ownership of results from finalised research programmes. Unless there are contractual provisions to the contrary decided in the framework of a given programme and figuring in the particular corresponding contract (cf. article 11.2<sup>4</sup>), the results from a specific programme executed in a finalised research programme will be the property of the one who obtains them.

Nevertheless, if several partners have contributed to obtaining the results, they will be co-holders of the corresponding rights of industrial ownership, according to their respective inputs, both intellectual and financial.

In conformity with the previous provisions (article 2.3.1.b), co-ownership regulations will be established in particular to determine the co-ownership shares and designate the party who will manage their rights and obligations. A model of a co-ownership contract is appended.

It is here and now agreed that there is one exception to this rule:

If the results of a finalised research programme were to apply to other species than that of the programme, the programme manager will delegate to the **add name of company** the management of the rights for the applications concerned.

## **1.2.4 Results**

The results from subsequent work by each of the **add name of project** members from **add name of project** results will be the property of the member who has worked on them and obtained them. This provision applies in particular to subsequent work of genetic improvement.

If the commercial use of these subsequent results requires an exploitation licence of the **add name of project** “Results”, the provisions of article 3 below are applicable.

## **1.2.5 Provisions**

The provisions, the subject of the present article 2, can if required be developed in the special agreements provided for in article 11.2<sup>5</sup>.

## **1.3 Article 3 – Management of industrial ownership and licences**

### **1.3.1 Ownership rights**

As long as a joint company for using **add name of project** results has not been created, the industrial ownership rights and the corresponding licences will be managed by the holder of the rights (or his representative), as defined in article 2 in respect for the provisions provided for in the present document.

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<sup>4,5</sup> Not available

### 1.3.2 Results framework generic programmes

As far as the results obtained in the framework of generic programmes are concerned, the management mission of industrial ownership rights conferred on the **add name of company** by the public members will include in particular:

- Decision and management of industrial ownership with a view to ensuring the protection of the results in association with the **CPIV** and in agreement with the other authorities of the group (implementation of procedures necessary for the submission and obtaining of industrial ownership certificates: preparation of texts for patent applications, procedures with the Patent Office, inventors and representative councils, follow-up of procedures);
- Negotiation and signature of exploitation licences or agreements with the members of **add name of project** and possibly with third parties, according to the rules defined in article 5.
- Tax collection and payment of fees and various receipts to the co-ownership public members of **add name of project** and of corresponding royalties according to the provisions mentioned in article 5 below.
- It is clearly understood that any proposal, decision or agreement in the matter, will be subject to the prior approval of members who are co-holders of the rights of industrial ownership.
- Nevertheless, concerning the defence of the rights of industrial ownership (objection procedures started or undergone, actions for counterfeiting,...), the decisions will be taken by the Strategic Committee and the costs entailed by these decisions will be shared among the public and private members according to a share to be defined by the aforesaid committee.

### 1.3.3 Results framework finalised research

As far as the results obtained in the framework of finalised research are concerned, the management methods of industrial ownership and use of the said results will be determined in the terms of the special agreements as mentioned in article 11.2<sup>6</sup> and/or in the terms of the co-ownership regulations as provided for in article 2.4.

## 1.4 Article 4 – Use of the results for the exclusive requirements of research and animal selection

The **add name of project** results will be placed at the disposal of the members for purposes of research, in respect for articles 1 to 3.

Each of the members can freely and at no cost use them for their own research requirements, to the exclusion of all commercial use subject to the provisions of article 5 below.

## 1.5 Article 5 – Commercial use of the results

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<sup>6</sup> Not available

### 1.5.1 Members

The members of **add name of project** will benefit from a non exclusive option of commercial use of results from generic programmes, as well as a co-exclusive option of use of results from finalised research programmes in which they have participated. The list of members concerned by this co-exclusive option as well as the time limit during which this co-exclusivity will be applicable will be established for each species or group of species either by the special agreement provided in article 11.2<sup>7</sup>, or failing that, by the Strategic Committee at the proposal of the **Operational Directorate**.

**add name of project** members who have not participated in a finalised research programme can nevertheless benefit from this co-exclusive exploitation licence of results from this programme, in return for the payment of a right of access which will be determined either by special contract or failing that by the Strategic Committee, at the proposal of the **Operational Directorate**.

Access of third parties to the results of the finalised programmes for commercial ends, will be subject either to the provisions of the special contract as stated in article 11.2<sup>8</sup>, or failing that to the Strategic Committee, taking particular account of the following:

- The current uses in the activity concerned, the size of the market and the competition;
- The priority of use consented to the members as defined above;
- The relevance and the state of protection of the results considered;
- The fields of application and geographical area where the members concerned invest in the development and commercialisation of the results;
- The economic situation of the destination country and the legal personality of the third party beneficiary.

To take account of the specific cooperation research mandate for development assigned to the CIRAD, the holder(s) of rights of industrial ownership, or the joint development Company, as provided for in article 3, will concede to the local producers of animal species, the subject of the present documents, licences for use in very privileged conditions, which can go as far as granting free use, thus ensuring that the least favoured farmers, whose gross annual income is less than € **xxxxx**, have sufficient food resources. The right to any sub-licence will be subject to the same conditions.

### 1.5.2 Licence contract

If the option of use stated in article 5.1 is lifted, each professional member or affiliated company concerned must take out a licence contract or commercial exploitation agreement with the holder(s) of the rights (or their representative).

This contract will in particular specify the technical and geographical extents of the rights of use, their duration, and the sub-licence methods and the provisions concerning improvements, the settling of differences, etc... This contract will guarantee the holders of rights a fair payment that will be determined by common agreement:

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<sup>7,8</sup> Not available

- At a reasonable level compared with the process or product of the same type existing on the market,
- Taking account of the intellectual and financial inputs of the **add name of project** members and of third parties in obtaining the results considered, their development, their industrialisation, their launch and their commercialisation,
- Taking account of the existence or not of a certificate of industrial ownership or confidential know-how and corresponding costs, as well as of the period of exclusivity stated in article 5.1.

### **1.5.3 Results**

As far as the results mentioned in article 2.3.1. are concerned, the **add name of company** will act on behalf of all the public bodies who are co-holders of the aforesaid results, for the implementation of the present article 5.

### **1.5.4 Implementation articles 4 and 5**

For the implementation of articles 4 and 5, it is specified that in the case of results patented or not, that can be implemented for purposes of animal selection, access to the patented results will be free for the duration of the selection work, whoever is the holder of the aforesaid patents by virtue of article 2. On the other hand, the commercial use of blood lines or breeding animals that come from this selection work, but implementing protected results or being the subject of confidential know-how, will have to be the subject of a licence of the patent(s) considered and /or of the confidential know-how, in compliance with the provisions of the present article5.