

ESA's Latest IPR Policy

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ESA's former policy on Intellectual Property Rights (IPR), adopted in 1989, outlined in broad terms the general objectives of the Agency with respect to rules on information and data emanating from the work of its staff and contractors, and obtained from experiments carried out with payloads flown within the framework of the Agency's programmes. In addition, it covered issues associated with the transfer of technologies outside ESA's Member States and the protection of information.

The main emphasis was on:

- the public interest, by providing free access to ESA-funded information and data to Member States and their nationals, and
- the dissemination of scientific data.

The former rules were designed to encourage the development of industrial entities by widening the circulation of information and data. The objectives of the 1989 policy did not, however, tackle the full spectrum of intellectual property, nor

Access Rights for Fully Funded Contracts

	Information, Data and Intellectual Property resulting directly from a contract	Background Information and Data
Beneficiaries	Access and Use	Access and Use
ESA	<ul style="list-style-type: none"> • Free of charge for the execution of an ESA programme 	<ul style="list-style-type: none"> • In the framework of an ESA programme, to achieve contract purpose or for reproduction rights. No dissemination without a prior agreement
Participating States	<ul style="list-style-type: none"> • Free of charge when participating in an ESA programme • Favourable conditions for their own public requirements 	<ul style="list-style-type: none"> • In the framework of an ESA programme, to achieve contract purpose. No access for other purposes.
Persons and Bodies under Jurisdiction	<ul style="list-style-type: none"> • Free of charge when participating in an ESA programme • Market conditions for any other use 	<ul style="list-style-type: none"> • In the framework of an ESA programme, to achieve contract purpose. No access for other purposes.
Scientific Research Institutions	<ul style="list-style-type: none"> • Free of charge for scientific use only 	<ul style="list-style-type: none"> • In the framework of an ESA programme, to achieve contract purpose. No access for other purposes.

did it reflect the evolution in intellectual property rights at international level. Moreover, many of the goals of the 1989 policy were not realized, because the industrial entities were not encouraged by the free-access approach to exchange the technologies being developed.

Consequently, in May 2000 the Member States asked ESA's Executive, with the support of a group of experts nominated by the Agency's Administrative and Finance Committee (AFC), to rethink the Agency's overall policy on Information, Data and Intellectual Property.

The revision of the rules carried out in 2001 was based on the following fundamentals:

- worldwide recognition of the need to adequately protect the technology so as to enhance the competitiveness and economic and social growth of industrial entities;
- the need to accompany the allocation of public funds to R&D by proper measures to protect the results and attract additional public or private investments; and
- awareness of the increased value of space technology because space-related

activities had moved from the purely scientific domain to include applications in several strategic fields.

ESA's Council adopted this new 'Resolution on the Rules concerning Information, Data and Intellectual Property' in December 2001.

Main Principles

ESA's role in the management of its Information and Data Policy, as foreseen by Article III of the Convention, is to strike the appropriate balance between the public interest and the interests of European space industry. The drivers for the new policy were therefore based on:

- the awareness that in the new environment for conducting space activities, the principles contained in the former policy
- mainly the free access to ESA-funded information and data by Member States and their nationals - were no longer appropriate;
- the wish to make ESA an attractive and reliable partner for industry without putting an additional burden on the Contractors;

- the willingness to encourage Contractors to use and exploit the technology that has been developed under ESA contract.

To achieve these objectives - and without deviating from the principle that ownership of the results should be vested with the Contractor - the new policy has identified the different types of Agency intervention in the development of new technologies and has introduced a significant modulation of rights of access to Information and Data and Use of Intellectual Property for results developed under an ESA contract.

With respect to the previous policy, which in most cases provided for free access to Information, Data and Use of Intellectual Property developed by Contractors, the proposed new policy foresees the following:

- (i) For contracts fully funded by ESA, the Contractor should grant access to Information and Data and use of Intellectual Property developed under an ESA contract to:
 - ESA, Participating States and their nationals under free-access conditions

Access Rights for Partially Funded Contracts

	Information, Data and Intellectual Property resulting directly from a contract	Background Information and Data
Beneficiaries	Access and Use	Access and Use
ESA	<ul style="list-style-type: none"> • Free of charge for Agency's own requirements 	Only for a given project with written agreement and non-dissemination obligation
Participating States	<ul style="list-style-type: none"> • Under conditions reflecting the contractor's financial participation when participating in an ESA programme • Market conditions for any other use 	Favourable conditions for a given ESA project in which it is participating
Persons and Bodies under Jurisdiction	<ul style="list-style-type: none"> • Under conditions reflecting the contractor's financial participation when participating in an ESA programme • Market conditions for any other use 	Favourable conditions for a given ESA project in which it is participating

for the Agency's own requirements (i.e. for ESA's own programmes);

- Participating States under favorable conditions for their own public requirements;
- any other third party under market conditions.

(ii) For contracts partially funded by ESA, the Contractor should grant access to Information and Data and use of Intellectual Property developed under an ESA contract to:

- ESA under free-access conditions for the Agency's own requirements;
- Participating States under conditions reflecting the Contractor's financial participation;
- any other third party under market conditions.

As far as ESA's staff are concerned, the main principles of the former policy relating to ownership, access and use remain unchanged. However, since the scope of the new policy is wider in terms of the form of IPR legal protection (targeting protection not only by patents but also by trademarks, industrial design copyright, etc.), the work of ESA's own staff also benefits from this enlargement in scope.

Finally, the main principles concerning

ownership, access and use of results relating to payloads flown within the Agency's programmes remain unchanged. Nevertheless, since the rules apply to programmes that differ in nature and scope, in the kind of data produced, and in the kind of users of the said data, the new policy distinguishes three main situations:

- when a payload is financed and flown within the framework of an Agency programme or activity, it is for the Agency to define the access policy in accordance with the Council's principles;
- when a payload is financed by a provider and benefits from an Agency flight opportunity, it is again for the Agency to define the access policy in accordance with the Council's principles;
- in cases other than the two described above, the ownership, access and use of the data should be assessed having regard to the Agency's and other Parties' technical, scientific and economic interests in the flight of the payload.

As with the former version, two distinct Chapters of the new policy are dedicated to: (a) the transfer of results outside the territories of Member States by Contractors or by ESA; (b) the protection of the information held by the Agency. The main principles applicable to the above remain unchanged.

Main Characteristics

The adoption of the new policy didn't entail amending Article III of the ESA Convention. It did, however, lead to a necessary identification of the conditions of access, use and disclosure of the R&D results with respect to the financial participation and interests of ESA, its Member States, and third parties.

As we have seen, the main changes with respect to the former policy concern Contractor-developed Intellectual Property and are designed to encourage Contractors to protect their research and technology results by Intellectual Property titles and to develop an active licensing policy in order to promote effective exploitation.

The Council Resolution requested that the Director General submit for its approval the amended provisions of the legal instruments necessary to implement these Rules. The new policy's main changes with respect to Contractor-developed Intellectual Property also require modification of the General Clauses and Conditions of ESA Contracts. This exercise is currently being carried out.

