

Open access information sheet

Open access – the meaning according to the EU Commission and the Research Councils

Open access, as understood by the European Commission, or the Research Councils, is the free and open access to the outputs of publicly-funded research, usually in the form of academic publications. Open access is required by the funders to promote social and economic benefits as well as aiding the development of new research.

Open access in the context of academic publications

Open access to scientific publications, and academic publications generally, is also a general principle of Horizon 2020. There are two general open access highways:

- (i) the ‘Gold’ open access (upfront publication and costs reimbursed by the Commission where applicable); and
- (ii) ‘Green’ open access - via a repository (making research publications available 6 months after publication (for science) or 12 months after publication (for social science and humanities))

The Research Councils’ general policy is that research and data should also be available to potential users in business, charitable and public sectors, and to the general tax-paying public, on the basis that research funded by the tax payer should be available and accessible to the tax payer.

What areas of work and outputs does the Open access policy cover?

The policy covers all relevant publications and includes research funded by commercial parties. The Commission guidance indicates that there is no limitation to making the text available on the basis of open access due to ‘commercial sensitivity’.

This implies that commercial sensitivity does not amount to a sufficient reason in general to prevent open access to publications. However, as set out below, there are still acceptable methods to ensure protection of commercially exploitable intellectual property and data, whilst ensuring compliance with open access.

Concerns from commercial parties about Open access

Commercial parties have expressed concern about open access possibly because they see it as operating in three distinct areas:

- (i) in relation to data
- (ii) commercially sensitive or otherwise confidential information (and intellectual property)
- (iii) in the area of freedom of information and Environmental Information Regulations

The concern seems to be that there is a broad brush approach that open access is a social good, and should take place in all three areas without protecting parties' legitimate interests.

However, the policy does not, as an inevitable consequence, require that the 'data' must be made 'open'. It appears that where there are compelling reasons to protect access to the data, for example commercial confidentiality or legitimate sensitivities around data derived from potentially identifiable human participants (usually personal data as defined by data protection legislation), these should be included in the statement and agreements protecting commercial or proprietary interests can be entered into.

What about 'data'? Should businesses and private commercial funders be concerned?

The Commission has indicated that it wishes to promote access to research data (experimental Results, observations, and computer-generated information) and is working on a pilot framework for Horizon 2020. The Commission further recognises that account should be taken of 'legitimate concerns in relation to privacy, commercial interests and questions related to large data volumes'.

It therefore appears that the concerns of business, private commercial participants and funders are recognised within the commitment to open access, and that the usual methods of protecting commercially sensitive data, inventive concepts, confidences and other protectable intellectual property can be adopted – by confidentiality and non-disclosure agreements, and contractual arrangements agreeing ownership and exploitation of the intellectual property created under projects.

It is recommended that parties identify as early as possible likely intellectual property, and circumstances in which the parties will be discussing commercially sensitive data and put suitable non-disclosure and other agreements into place.

Commercial and other parties can still agree to protect intellectual and other proprietary rights in publications, data and inventive concepts

There is an inevitable tension where the Commission and the Research Councils and other public funders wish to encourage publication of results and research data. However, on general projects and Horizon 2020, the policy has included the taking into account of legitimate concerns in relation to privacy, commercial interests and rights of access to large data volumes. There appears to be an attempt to encourage a culture of sharing scientific and other publications, and permit adequate protection of rights of parties in research and research data.