

Formation sur le droit d'auteur : Questions - réponses

QUESTION 1: In the report/file notes that we publish and that have been drafted by a contractor, we are sometimes confronted with the problem of crediting authors and contributors while at the same time having to limit to the maximum the text inserted in the disclaimer. What constitutes in your view a good balance? Should only authors be mentioned? Should contributors be given some credits? Does this enter at any point in conflict with the fact that the work is a possession of the EU?

ANSWER: Pay attention to moral right vs economic rights + see presentation. Moral rights should always be respected if 'real' author wishes it. If contributors are "authors" of parts of the Work, they have a right of paternity, except if they contractually waived their rights.

QUESTION 2: Studies and PhD thesis competition - possible conflicts with the authors or the institutions as authors

ANSWER: See moral rights vs economic rights + EU contracts (economic rights are transferred, but moral rights remain!)

QUESTION 3: Publications - droits d'auteur - dissémination, copie, citations, etc...

ANSWER: See concepts of presentation as a whole + copyright policy of the Institution/body + national legislation

QUESTION 4: Newspapers and news - internal and external dissemination of news, reproduction of articles, newsletters

ANSWER:

Preliminary remark: Always check terms of the contracts between CoR and newspaper supplier (f.i. is there a contract with Reprobel¹, the Belgian copyright collection society that collects and distributes the entitlements to remunerations for reprography and public lending?— also see <http://www.reprobel.be/>). If no contract: the national legislation will determine the particular COP rules /restrictions.

F.I.: According to Belgian Law (Law 30 April 1994 and law 22 May 2005): to benefit from copyright exceptions to the exclusive reproduction right of an author (if author is a third party), a clear distinction is made between the reproduction on paper and the reproduction on other supports (electronic, DVD...)

F.I.:

¹ The Commission has concluded a contract with Reprobel¹ (valid until June 2012). This contract covers the reproduction of **paper** press cuttings from foreign and Belgian newspapers in order to prepare **paper** press reviews. Pursuant to this contract, digitalisation and scanning of paper press cuttings is only allowed for the exclusive purpose of producing **paper** copies. Digital files have to be deleted immediately after the completion of the reproduction process, i.e. no electronic storage is permitted. Thus the digitisation and scanning is of "temporary", "transient or incidental" nature and forms an integral and essential part of the technological processing of the paper press cuttings. This contract does not cover scanning the newspaper article on CD-Roms, nor does it cover copying digital documents. More details about the scope of the Reprobel contract can be obtained from OIB.OS.1.

- What you may copy **on paper supports** without the authorisation of the author:

Full articles (from newspaper or from reviews but not short stories f.i.) or short fragments of certain works for strictly private purposes or for teaching illustration or scientific research purposes

- What you may copy **on electronic supports (or audiovisual)** without the authorisation of the author (ATTENTION: verify if already into effect!!)

for a private use only: every Work, in full

for teaching illustration or scientific research purposes: full articles and short fragments of Works

What is private? Case law will decide: normally family circle but sometimes also professional working environment if interests of the author are not harmed (number of staff). Also check terms of the contract which may determine a particular number of restrictions for the reproduction and the distribution.

Then if you send the Work, there is a communication (making available). We will have to determine whether there is a communication to the public or a private communication. If you send the work to an external client via internet, it may be considered as *individual communication to the public*, requiring the authorisation of the author. Sending the work to the staff of a company might be considered as "private" communication and thus be allowed w/o authorisation, but it will depend on different factors (relationship of the staff, number,...).

QUESTION 5: The "re-use" policy of the CoR and EU institutions publications by private subjects. Licences for "re-use" policy

ANSWER: See "re-use" in presentation + policy of CoR

QUESTION 6: Nous demandons à un de nos contractants de recenser des études réalisées par les autorités locales et régionales européennes en termes de prospective territoriale. Ce contractant a élaboré des fiches détaillant le contenu de chaque étude recensée, et a aussi collecté le texte intégral de ces études (qui sont en fait rarement publiées, ou alors simplement sous format électronique).

En théorie, notre contrat nous attribue la propriété intellectuelle du rapport produit par ce contractant, qui inclut, en annexe, le texte de ces études. Cependant, il semble que ce dernier n'ait pas explicitement demandé l'autorisation des producteurs de ces études de les utiliser. Nous nous demandons donc quelles seront les conditions à réunir si nous désirons utiliser ces études, et en particulier les mettre en ligne sur le site du CdR, dans le cadre de la mise en place d'une éventuelle "plateforme" de prospective territoriale.

=> Quelles sont les autorisations à demander? A qui (les textes ont souvent été élaborés par un groupe d'auteurs) ? Y a-t-il un texte standard à utiliser? A quoi devons-nous faire particulièrement attention? etc.

Par contre, il nous semble que les tableaux d'analyse des différentes études recensées, élaborés par le contractant, nous appartiennent en plein, et peuvent être publiés tels quels.

=>est-il possible de confirmer cette interprétation?

QUESTION 7: Marchés publics - la clause relative à la protection des droits d'auteur

QUESTION 8: Études - publications des études sur papier et sur l'internet que le Comité a fait élaborer aux institutions académiques ou de recherche scientifique moyennant un contrat-cadre

QUESTION 9: Under our framework service contracts, the following clause defines the protection and treatment of intellectual property rights:

ARTICLE II.8 - OWNERSHIP of THE RESULTS - Intellectual and Industrial Property

"Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by the Union, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into."

Other institutions (EC, EP) do also make reference to the fact that contractors shall prove that they have acquired the necessary rights to quote a paragraph/picture/graph from other works. To which extent does this obligation need to be spelled out (particularly as most of the requests we submit to contractors are for short file notes to be delivered under tight deadlines)? Can't it be considered an implicit obligation on the part of the contractor to respect the legislation in place?

With reference to the abovementioned article of our framework service contracts, can it be understood as giving the CoR the right to modify, shorten, and revise the file note/report before publication? Or should this rather be spelled out as it is sometimes the case in EC service contracts?

QUESTION 10: From one institution to the other, we see a significant difference in the length of the clauses on intellectual property rights included in service contracts. What are in your view the principles that should always be spelled out? What can instead be considered as an implicit provision of the contract? (see example next page)

European Commission (source: Model Framework Service Contract Contract Number – TRADE11/A1/A21) ARTICLE II. 10 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY II.10.1 A result shall be any outcome of the implementation of the Contract and provided as such by the Contractor. A creator shall be any person who contributed to production of the result. Pre-existing intellectual property rights, sometimes referred to as background technology, are any industrial and intellectual property rights which exist prior to the contract being entered into and include rights of ownership and use of the Contractor, the Commission and any third parties ("pre-existing rights"). It shall be a material term of the Contract and of the essence of the Contract that Contractors shall be under a duty to provide a list of pre-existing rights at the date of delivery of the final result the latest. II.10.2 The ownership of all the results or rights thereon as listed in the tender specification and the tender attached to the contract, including copyright and other intellectual or industrial property rights, and all technological solutions and information embodied therein, obtained in performance of the Contract, shall be irrevocably and fully vested to the Union, which may use them as described in the Contract. All the rights shall be vested on the Union from the moment the results were delivered and accepted by the Commission. For the avoidance of doubt and where applicable, any such vesting of rights is also deemed to constitute an effective transfer of the rights from the Contractor to the Union. The payment of the fee under Article I.3 is deemed to include all forms of use by the Union of the results as set out in Article I.9. The above vesting of rights in the Union under this Contract covers all territories worldwide and is valid for the whole duration	European Parliament (source: Call for expressions of interest IP/B/AGRI/CEI/2011-097) 8. COPYRIGHT The Contractor shall be required to divulge to the European Parliament all the results of his research, in compliance with copyright rules as set out in article 17 to 19 of the Specific Terms and Conditions of the draft Order Form (Annex II). The Contractor shall undertake to cede to the European Parliament, in full, the copyright on the expertise, in accordance with the provisions of copyright legislation, and in particular full or partial publication and distribution rights in whatever form. 17. Any intellectual and industrial property rights associated with the services obtained in connection with performance of this order form shall belong to the European Parliament, which may use them as it sees fit, without limitation. Should performance of the order form involve the use of intellectual or industrial property rights belonging to a third party, the contractor shall indicate such rights and shall hereby warrant that he has obtained a licence to use those rights from the holder(s) thereof or from his or their legal representatives. 19. Save where prior written authorisation	CoR (source: model framework service contract) ARTICLE II.8 - OWNERSHIP of THE RESULTS - Intellectual and Industrial Property Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by the Union, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into.
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of intellectual property rights protection. II.10.3 Any intermediary sub-result, raw data, intermediary analysis made available to the Commission by the Contractor cannot be used by the Union without written consent of the Contractor, unless the tender specification explicitly provides for it to be treated as self-contained result. II.10.4 The Contractor retains all right, title and interest in pre-existing rights not fully vested into the Union in line with Article I.9.2, and hereby grants the Union for the requested period a licence to use the pre-existing rights to the extent necessary to use the delivered results. II.10.5 The Contractor shall ensure that delivered results are free of rights or claims from third parties including in relation to pre-existing rights, for any use envisaged by the Commission. This does not concern the moral rights of natural persons and rights referred to in Article II.10.4. II.10.6 The Contractor shall clearly point out all quotations of existing textual works made by the Contractor. The complete reference should include as appropriate: name of the author, title of the work, date of publishing, date of creation, place of publication, address of publication on internet, number, volume and other information allowing to identify the origin easily. II.10.7 The Contractor shall clearly indicate all parts to which there are pre-existing rights and all parts of the result originating from external sources: parts of other documents, images, graphs, tables, data, software, technical inventions, knowhow etc. (delivered in paper, electronic or other form). For non-textual results or results provided in electronic form only, the description, instruction or information document shall list all parts coming from external sources: IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin. II.10.8 If the Commission so requires, the Contractor shall provide	has been obtained from the European Parliament, the contractor shall be required not to disclose to any unauthorised person any facts, information, knowledge, documents or other matters which the European Parliament may have communicated to him as confidential. Any distribution or publication of information relating to this order form by the contractor shall require prior written authorisation from the European Parliament.
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proof of ownership or rights to use all necessary rights to the materials referred to in Article II.10.7. II.10.9. By delivering the results the Contractor confirms that the creators undertake not to oppose their names being recalled when the results are presented to the public and confirms that the results can be divulged. The Contractor shall possess all relevant agreements of the creator and provide proof by way of documentary evidence. II.10.10. By delivering the results the Contractor warrants that the above transfer of rights does not violate any law or infringe any rights of others and that he possesses the relevant rights or powers to execute the transfer. He also warrants that he has paid or has verified payment of all fees including fees to collecting societies, related to the final results. II.10.11. The Contractor shall indemnify and hold the Union harmless for all damages and cost incurred due to any claim brought by any third party including creators and intermediaries for any alleged breach of any intellectual, industrial or other property right based on the Union's use of the works and in relation to which the Contractor has granted the Union user rights.		
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REPOSE

Les contrats standards utilisés avant octobre 2011 n'étaient pas conformes à la législation belge (cfr transfert complet du copyright sans préciser les modes d'exploitation et, pour chaque mode d'exploitation, l'étendue géographique, le prix, la durée, etc...).

De plus, ils n'étaient pas assez précis pour le contractant qui devait être conscient qu'il devait obtenir tous les droits / autorisations nécessaires sur son matériel avant de le transférer à l'UE et spécifier les conditions spécifiques qui s'appliquent à la l'UE si pas possible d'obtenir tous les droits.

Dans cette situation, il convient de s'assurer que l'UE a bien tous les droits sur le matériel avant de procéder aux différents modes d'exploitation. En cas de doute, demander confirmation aux contractants. Il existe aussi des formulaires standards mis au point par l'OP (voir exemples de formulaires en annexe).

Les nouveaux contrats DG BUDG remédient à cette situation:

<http://www.cc.cec/budg/imp/procurement/doc/pdf/ipr-explanation-en.pdf> (voir copie papier)

http://www.cc.cec/budg/imp/procurement/imp-080-030-010_contracts_en.html

Ex.: Contrat de service direct DG BUDG

ARTICLE I.9 – EXPLOITATION DES RÉSULTATS²

I.9.1 Modes d'exploitation

Tous les [compléter] études/analyses/projets/essais/documents/rapports, les œuvres dramatiques, musicales, architecturales, cinématographiques ou autres œuvres artistiques,

² Selon l'homogénéité des résultats et leur utilisation, cette clause peut être maintenue dans les conditions particulières, déplacée vers le contrat spécifique ou complétée par celui-ci (article III.4). Les bons de commande ne doivent pas être utilisés pour acquérir des droits de propriété intellectuelle ou industrielle.

À adapter en fonction de la nature du projet; il y a toutefois lieu, au minimum, de supprimer tout élément non pertinent, notamment les éléments figurant en italiques au point (v), et d'ajouter au besoin tout élément manquant.

Pour tout renseignement complémentaire, voir la note explicative sur les droits de propriété intellectuelle ou industrielle à l'adresse: <http://intracomm.cec.eu-admin.net/budg/imp/procurement/doc/pdf/ipr-explanation-en.pdf>

toutes les prestations artistiques, tous les travaux scientifiques, émissions, plans, dessins, maquettes ou contenus de site web, calculs, données attestées, formats ou données de base de données, méthodes de création, dessins industriels et découvertes, produits dans le cadre du contrat, dont les droits sont acquis à la Commission et dont celle-ci a ainsi acquis la propriété conformément à l'article II.10, peuvent être exploités comme suit:

i) diffusion:

- publication sous la forme d'exemplaires imprimés
- publication sur un support électronique sous la forme de fichiers, téléchargeables ou non
- mise à disposition sur l'internet
- radiodiffusion ou télédiffusion
- présentation ou affichage public
- communication par l'intermédiaire d'un service de presse
- intégration dans une base de données ou un catalogue aisément accessible
- sous toute forme et par tout moyen existant ou venant à exister à l'avenir
- divulgation faisant suite à des demandes individuelles d'accès, ne valant pas droit de reproduction ou d'utilisation, conformément au règlement (CE) n° 1049/2001 relatif à l'accès du public aux documents du Parlement européen, du Conseil et de la Commission

ii) stockage

- sur un support papier
- sur un support électronique
- sur un support original (sculpture, maquette, etc.)

iii) archivage en ligne dans le respect des règles applicables en matière de gestion des documents³

iv) modifications apportées par la Commission ou par un tiers⁴:

- réalisation d'une version raccourcie ou abrégée
- résumé
- modification du contenu
- modification technique du contenu⁵:
 - correction nécessaire d'erreurs techniques
 - ajout de nouvelles parties ou fonctionnalités
 - modification des fonctionnalités
 - fourniture aux tiers d'informations supplémentaires sur le résultat (ex.: code source)
- ajout de nouveaux éléments, paragraphes, titres, chapeaux, caractères gras, légende, table des matières, sommaire, graphiques, sous-titres, éléments sonores etc.

³ Voir décision 2002/47/CE sur la gestion des documents, la décision 2004/563/CE concernant les documents électroniques et numérisés et les modalités d'exécutions SEC(2009) 1643: http://ec.europa.eu/transparency/archival_policy/legal_basis_en.htm Si le pouvoir adjudicateur n'est pas la Commission européenne, la base juridique peut être différente.

⁴ Dans certains cas, le consentement de l'auteur peut être requis.

⁵ Il est fortement recommandé d'être plus précis, surtout si l'ampleur et la nature des éventuelles modifications peuvent facilement être devinées (attention: l'exhaustivité est recommandée car l'énumération précise de quelques modifications éventuelles peut être interprétée comme une exclusion de toutes autres.

- adaptation sous forme sonore, adaptation sous forme de présentation, d'animation, de série de pictogrammes, de diaporama, de présentation publique etc.
 - sélection d'extraits ou division en parties
 - utilisation d'un concept ou préparation d'une œuvre dérivée
 - numérisation ou conversion de format aux fins de stockage ou d'utilisation
 - traduction, sous-titrage, doublage
- v) versions linguistiques:
- langues de travail de la Commission européenne
 - langues officielles de l'Union européenne
 - langues en usage dans l'Union européenne
 - langues des pays candidats
 - [autres langues]
- vi) exploitation à des fins internes
- divulgation auprès du personnel de la Commission
 - divulgation auprès des personnes et des organismes qui travaillent pour la Commission ou collaborent avec elle, dont les contractants et sous-traitants (personnes morales ou physiques), les institutions, agences et organes de l'Union, les institutions des États membres
 - installation, chargement, traitement
 - arrangement, compilation, assemblage, extraction
 - copie, reproduction
- vii) autorisation de l'exploitation des résultats par des tiers⁶:
- à des fins commerciales ou non commerciales
 - à titre onéreux ou gratuit, ou sous d'autres conditions
 - cession totale ou partielle
 - octroi d'une licence
 - pour une durée déterminée ou indéterminée]

[Cette liste peut être encore précisée dans le contrat spécifique.]

Si la Commission constate que l'ampleur des modifications dépasse celle prévue dans le contrat, elle consulte l'auteur. Celui-ci est tenu de répondre dans un délai de [deux semaines]. Il donne son accord, assorti de suggestions ou de modifications, à titre gracieux. L'auteur ne peut refuser les modifications envisagées que si elles portent atteinte à son honneur, à sa réputation ou à l'intégrité de son travail⁷.

I.9.2 Droits préexistants, intermédiaires, droits d'auteur⁸

⁶ En principe, tous les résultats produits dans le cadre du projet doivent être publiés (voir la décision de la Commission du 7 avril 2006 relative à la réutilisation des informations de la Commission

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:107:0038:0041:FR:PDF>). Néanmoins, avant d'insérer et d'utiliser cette option, s'assurer que le résultat sera finalement l'entière propriété de la Commission).

⁷ Si des modifications sont susceptibles d'être apportées aux résultats envisagés, elles doivent être clairement décrites dans le cahier des charges (sinon, elles devront être convenues avec l'auteur au titre du présent article).

⁸ S'il ressort d'une évaluation que la cession intégrale des droits préexistants serait trop onéreuse, voire pratiquement impossible, cet article peut être modifié et prévoir la conclusion d'un contrat de licence pour les droits préexistants (voir article II.10.4) ou la portée de la cession peut être décrite dans l'offre et évaluée. Si l'article II.10.4 est utilisé, préciser la durée pour laquelle la licence sera demandée.

Lorsqu'il existe des droits de propriété industrielle ou intellectuelle, notamment des droits de propriété et d'exploitation appartenant au contractant ou à des tiers, antérieurs à la conclusion du contrat (droits préexistants), le contractant établit une liste qui précise tous ces droits préexistants et la communique à la Commission au plus tard à la livraison du résultat final.

Tous les droits préexistants attachés aux résultats livrés sont acquis à l'Union et, aux termes du contrat, lui sont effectivement cédés, comme le prévoit l'article I.9.1

Le contractant présente des preuves pertinentes et exhaustives de l'acquisition de tous les droits nécessaires [lors de la remise du rapport final au plus tard] [lors de la présentation du résultat concerné] [autre étape antérieure]. À cet effet, il présente [des déclarations des contractants, des sous-traitants faisant office d'intermédiaire dans la cession de droits, et des auteurs, rédigées conformément [à l'annexe 1] [aux annexes A1 et A2] [et] [les informations et documents suivants:

- nom et numéro de version du logiciel
- titre de l'œuvre, date de publication, date de création, lieu de publication, adresse de publication sur internet, numéro, volume et autres informations permettant de déterminer aisément l'origine
- identité complète de l'auteur, du développeur, du créateur, du traducteur, de la personne saisissant les données, du graphiste, de l'éditeur, du réviseur, du photographe
- copie de la licence d'exploitation du produit, ou référence à celle-ci
- contrat de cession du droit sur le produit au contractant
- texte de l'avis d'exclusion de responsabilité⁹

Si certaines parties des résultats ont été créées par des employés du contractant, celui-ci fournit des justificatifs établissant les modalités de cession des droits des auteurs au contractant, par exemple, une copie du contrat de cession des droits ou un extrait du contrat de travail¹⁰.

I.9.3 Acquisition partielle de droits (préexistants ou non)¹¹

Si le cahier des charges et l'offre prévoient la possibilité d'une acquisition partielle de droits spéciaux attachés aux résultats, le contractant dresse, à la livraison du rapport final au plus tard, une liste précise de tous les documents, informations, outils informatiques, méthodes et autres résultats ou partie de résultat sur lesquels des tiers ont des droits, même s'ils étaient détenus par le contractant à l'origine, ou pour lesquels les droits ne peuvent être cédés sans conditions à l'Union. Pour tout élément de la liste, le contractant précise l'étendue des droits, préexistants ou non, ainsi que l'étendue et les modalités de l'acquisition partielle, directe ou indirecte, et, par conséquent, de la cession effective des droits à l'Union.

⁹ À adapter en fonction de la nature du contrat.

¹⁰ Tous les prestataires freelance et travailleurs indépendants doivent être traités comme des sous-traitants et remplir l'annexe 2 individuellement, tandis que pour les salariés, un extrait du contrat de travail standard peut être présenté.

¹¹ Voir l'option 2 à l'annexe A1.

La même obligation d'information vaut pour l'intention d'exploiter tout élément de la liste mentionnée au premier alinéa dont les droits sont entièrement ou partiellement détenus par l'Union¹². Elle complète l'obligation de communiquer la liste des droits préexistants mentionnée à l'article I.9.2.

I.9.4 Personnes représentées sur des photographies ou dans des films [clause facultative]

Si des personnes physiques reconnaissables sont représentées sur une photographie ou dans un film, le contractant présente une déclaration de ces personnes autorisant l'exploitation prévue de leur image. Le présent article ne s'applique pas aux photographies prises et aux films tournés dans des lieux publics où les personnes présentes ne sont que difficilement identifiables, ni aux personnalités publiques agissant dans le cadre de leurs activités publiques.

¹² Il peut s'agir de bases de données (pour leurs structure, logiciels ou données), de citations importantes d'autres textes, de données à utiliser dans une analyse, de tableaux, de graphiques, de photographies, de son ou de musique, de méthodes de travail, de logiciels (programmes modulaires, plateformes d'exploitation, langages de programmation, architectures de système, pages Web, graphismes de pages Web, systèmes de portail).

Si la cession partielle de droits est autorisée, le cahier des charges doit également mentionner l'utilisation minimale des résultats pour laquelle l'acquisition de droits est souhaitée (utilisation du logiciel/droit d'y apporter des modifications, possibilité de consultation de la base de données par toute personne travaillant dans xx unités sélectionnées, possibilité de transférer le logiciel à d'autres institutions, agences ou organes, tels que les initiatives technologiques communes, par exemple, etc.).

QUESTION 11: How to deal with requests from companies or associations to use the pictures of the CoR buildings, events

ANSWER: See presentation + CoR building: copyright on the photograph but also copyright on the building by the architect: see what has been agreed upon with architect. If people: image right! Seek authorisation from architects and people in writing

QUESTION 12: Music - music played in events, music used in the video materials

ANSWER: Always make sure the copyright and related rights are respected/

Is the musical song downloaded from Internet? Check the terms and conditions of the website. Is the musical song played in public or in private? But pay attention to 'private'! What is a private environment? Playing a song during a CoR event (EOY party, f.i.) a private environment? Normally yes, except if open to public (cfr SABAM). The Belgian legislation will determine these concepts.

QUESTION 13: Copyright notices on the web page and in the publications

ANSWER: See presentation

QUESTION 14: Dealing with the press - use of the pictures and documents of the CoR by journalists

ANSWER: Depends on the general policy of your Institution / Body + on the rights attached to the documents and pictures

QUESTION 15: I have one question concerning the copyrights to images and photos used on the EU institutions' (external and internal) websites. What is the process for obtaining authorization, where to find copyright-free pictures etc.

ANSWER: See presentation + Terms and conditions of source website. "Copyright-free"= public domain: pictures: only 70 years after author's death. Otherwise, there are rights attached. Written authorisation needed. Also see OP form.

QUESTION 16: use of EU symbols - flag, anthem, EU sign

ANSWER: It depends on the object you want to reproduce:

Ex. European anthem: see training and verify rights of use.

Ex.: Institution logo: ask author service first!

Ex. European flag: http://europa.eu/about-eu/basic-information/symbols/flag/index_en.htm

The European emblem may be used only if:

- there is no likelihood of the user of the emblem being confused with the European Union or the Council of Europe;
- the emblem is not used in connection with objectives or activities that are incompatible with the aims and principles of the European Union or of the Council of Europe.

Permission to use the European emblem does not confer on those to whom it is granted any right of exclusive use, nor does it allow them to appropriate the emblem or any similar trademark or logo, either by registration or any other means. Each case will be examined individually to ascertain whether it satisfies the criteria set out above. Permission will be

unlikely in a commercial context if the European emblem is used in conjunction with a company's own logo, name or trademark.

Requests from EU Member States:

European Commission
Secretariat-General
Directorate E-1 — Institutional Matters
Rue de la Loi/Wetstraat 200
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
Tel. +32 22962626
Fax +32 22966140
E-mail: embl@ec.europa.eu

Requests from non-member countries:

Council of Europe
Directorate of Legal Advice and Public International Law (Dlapil)
67075 Strasbourg Cedex
FRANCE
Tel. +33 388412000
Fax +33 388412052
E-mail: legal.advice@coe.int

QUESTION 17: Images and photos_- namely personality rights of the people appearing on the photos from events, use of pictures of the buildings, commercial use of the picture of the buildings, use of pictures in the publications, gadgets, etc...

ANSWER: See presentation + DPO + national legislation.

QUESTIONS 18-19-20:

Ma question concerne la possibilité de filmer des réunions organisées dans le cadre d'un contrat de services. En effet, le contractant que nous avons recruté pour la réalisation d'une étude et de son site internet dédié se propose de filmer le contenu de différentes réunions (réunions internes organisées entre le contractant et des fonctionnaires du CdR ; séminaires et groupes de travail organisés avec une participation plus large et plus ouverte) et de mettre en ligne des extraits de présentations et d'exercices de simulation.

Trois questions à ce sujet:

=> Ne devons-nous pas faire signer une déclaration à tous les participants à ces réunions visant à leur faire accepter l'utilisation possible de leur image pour la production de vidéos à destination du site web en question? Si oui, comment nous assurer que tous les participants ont bien signé avant d'utiliser les images (s'il s'agit d'une réunion rassemblant un public important)? Le formateur pourrait-il nous fournir un modèle de déclaration et nous donner quelques conseils pratiques?

ANSWER: Il y a des questions de droits d'auteur et de traitement de données personnelles à examiner. Examiner d'abord les termes du contrat existant à ce sujet concernant la création de vidéos. Les vidéos font-elle partie des "résultats" du contrat de service? Appartiendront-elles à l'UE? Ou au contractant? Si le contrat existe mais qu'il ne prévoit pas ces dispositions, rédaction d'un nouveau contrat? Ou d'un avenant? (se renseigner auprès du SJ du CoR). En règle générale, il faut toujours obtenir les autorisations des participants quant à l'utilisation de leurs images: prise+diffusion. Il est également essentiel également obtenir l'aval du DPO (data.protection@cor.europa.eu) concernant la conformité avec le Règlement (CE) n° 45/2001 du Parlement européen et du Conseil du 18 décembre 2000 relatif à la protection des personnes physiques à l'égard du traitement des données à caractère personnel par les institutions et organes de la Communauté et la libre circulation de ces données. Il y aura sans doute une notification DPO à prévoir. Si le public est important et entraîne une difficulté pour obtenir les autorisations, prévoir une affiche devant la salle expliquant les usages de la vidéo avec une option "opt out" (participant peut décider de ne pas apparaître) + une indication que le participant pourra éventuellement renoncer ultérieurement à figurer / être diffusé (rendre flou?). Formulaire: demander au DPO. (Pour la Commission, voir <http://www.cc.cec/dataprotectionofficer/index.cfm?TargetURL=meetings>). Voir aussi comme exemple le modèle de l'OP. Ne pas oublier de prévoir les droits finaux des vidéos faites par le contractant. Quid de la réutilisation éventuelle des vidéos, etc... Prévoir tout cela dans le contrat, le cas échéant (voir modèles de contrats DG BUDG).

=> Devons-nous inclure un "disclaimer" au début de chaque vidéo indiquant que les opinions avancées par les participants à ces réunions ne reflètent pas nécessairement la position du Comité des régions, et devons-nous attacher un soin particulier à préciser que les fonctionnaires filmés s'expriment également en leur nom propre? (et où pourrait-on trouver un modèle de disclaimer "audiovisuel"?)

ANSWER: C'est le CdR qui décidera. Des modèles de disclaimers peuvent être trouvés ici: http://ec.europa.eu/ipg/basics/legal/notice_copyright/notices_disclaimers/index_en.htm Ils pourront être adaptés. Ces disclaimers devront être de préférence soumis au SJ du CdR pour approbation.

=> Le contractant va également participer en tant que modérateur ou orateur à un certain nombre d'événements organisés par le CdR en son nom propre. Le droit qu'il aura de filmer ces événements et de publier les vidéos produites sera-t-il différent de celui qu'il possède pour les événements qu'il organise lui-même? Un accord formel doit-il être signé avec le

CdR autorisant explicitement le fait de filmer et d'exploiter ces images? Si oui, quelle forme juridique cet accord doit-il adopter, et quel est le signataire autorisé au niveau du CdR? Peut-on supposer qu'un tel accord est implicite dans le cas d'événements organisés par le contractant lui-même, dans le cadre de son contrat mais dans les locaux du CdR?

ANSWER: Cela ne relève pas directement du copyright à proprement parler. Il faudra sans doute un contrat prévoyant les droits des différentes parties concernant la production de vidéos, les usages qui seront faits des vidéos,... Il faudra veiller à appliquer les termes du règlement 45/2001 si des fonctionnaires sont présents et des données personnelles sont en jeu. Les participants devront de toute façon être prévenus des utilisations de leurs images et ils devront éventuellement pouvoir bénéficier d'un opt-out (voir avec DPO). Il n'y a pas d'autorisation tacite générale, il faut généralement des autorisations expresses. Qu'advient-il des vidéos? A qui appartiendront-elles? Le CdR voudra-t-il les publier? Le contractant sera-t-il invité en tant qu'expert? Les résultats de l'événement appartiendront-ils à l'UE? Prévoir alors un transfert des droits de l'orateur à l'UE. Se faire conseiller par le SJ, le DPO et l'unité contrats. A tout le moins, obtenir toutes les autorisations des participants !



EUROPEAN COMMISSION

Budget

Procurement, contracts and grants

Explanatory note on Intellectual Property Rights and clauses in the tender documents (model contracts and tender specifications)

Intellectual property (IP) is a term commonly used to describe those creations of the mind which are entitled to receive legal protection in the form of exclusive rights, that is to say exclusive control or possession of protected works conferred to the creator or creators. Through a system of Intellectual Property Rights (IPR), it is possible not only to ensure that a creation is attributed to its creator but also to secure the ownership of that creation and to obtain benefits (e.g. commercial, strategic, political, etc.) from it. IPR cover a variety of creative works such as scientific, literary and artistic works, drawings, photos, symbols, logos, names, broadcasts, audiovisual productions, software, databases and inventions and include copyright, trademarks, patents, moral rights, etc.

IPR is a complex issue that gets increasing attention from contractors and thus needs to be addressed in contracts. It can be part of every contract which includes elements of creativity and it is obviously included in most typical Commissions service contracts for studies, analysis, evaluations, etc. It is essential for the contracting authority to effectively obtain the necessary IPR related to the outcome or "result" of the contract. The mere fact that the result of a contract, e.g. a study, drawing or photograph was delivered and paid for does not necessarily mean that the contracting authority can freely use it during a conference, publish it on the Europa website or as a book, or translate it, unless this was expressly agreed with the contractor.

For legal and budgetary reasons, considering the costs inherent in acquiring these rights, the IPR contract provisions should always be tailored to the envisaged results, thus the clauses proposed in the model contracts should be adapted to the specific needs of the purchase and they should not be used directly as they are. Indeed, if these clauses are copied mechanically and not adapted, they may be successfully challenged in court. Apart from increased legal certainty, an additional benefit of a detailed description of IPR for the acquisition of a particular result is that the tenderer will be better informed about the needs of the contracting authority.

Beside the use of the result, the issues relating to its storage, potential modification and further transfer to another party should be dealt with in the tender documents. In addition, if any result or parts thereof predates the contract, i.e. previously existed, the contractor or a third person may have rights to that part of the result. Any such **pre-existing rights** may not be transferred solely by virtue of the contract between the contractor and the contracting authority because contracts between intermediaries are also necessary. Indeed, as pre-existing rights tend to be particularly contentious, they should be identified at the outset before the contract is concluded. Potential contractors should provide proof of the right to own or at least use any such result. Finally, the issue of the **effective transfer of rights** between the contractor and the contracting authority should be specifically dealt with. This includes the

transfer of rights between any other intermediary (regardless of the number of intermediaries) and the contractor, i.e. making sure that suitable agreements and payments have been made at each intermediary step.

The contracting authority should therefore identify at the outset whether IPR is likely to be a major factor in terms of the result of the contract. If so, it should also identify all the potential uses it intends to make of the result. Effort should thus be devoted to the IPR issue especially where the results of the contract are to be published, made available on internet or publicly used in any other way, modified or made available to third parties. Attention should be paid to the elaboration of this issue in the tender documents, so as to make sure that what is purchased can effectively be used and also to prevent later litigation that would be much more time and resource consuming and affect the liability of the contracting authority and its reputation.

The model clauses were drafted for the most frequent type of services in the Commission which are studies. Nevertheless, other types of services were taken into account, like photographs, graphics, IT services, databases, artistic works, etc. Obviously, the more specific and bigger the project is, the more effort should be put into adapting the models to its particular needs. In particular specific uses that can be made of the results in the future must be taken into account as well as possible developments of the situation in a longer time perspective, especially in the case of long-life products e.g. tailor made software.

For further information on IPR issues please see the copyright Intracomm website including the *Practical guidelines for EC staff dealing with IP, copyright and trademark protected works*:

<http://myintracomm.ec.europa.eu/serv/en/copyright/Pages/WhatIs.aspx>

and for specific questions please contact JRC DGA.2 or DG Communication, Unit D3, Support Copyright Task Force.

Model IPR clauses for tender documents

The issue of IPR appears in several places in the tender documents:

- I. Article I.9 of the special conditions of service contracts (with Annexes [A1] and [A2] at the end) or Article III.5 of specific contracts linked to a framework contract (FWC)
- II. Article II.10 of the general conditions
- III. Clauses for technical specifications

I. Clause in the special conditions of direct service contracts or specific contracts of the service FWC

- to be adapted according to the specific purchase while preparing tender documents

This clause should be treated more as an example than a model clause for the transfer of IPR. In principle it should not just be used extensively. If the contract includes elements that may lead to acquisition of some IPR of any kind, the proposed examples should be used to prepare an adapted version of the article and to describe particular requirements. Irrelevant parts should simply be deleted and the issues to be specified more precisely should be elaborated on.

The more valuable and important the result to be purchased, the more detailed the description to be provided and the more care should be taken not to omit anything.

Specific explanations:

Article I.9.1. first paragraph

Name clearly the result(s) of the contract that will bear IPR and delete all unnecessary items in the sentence.

Article I.9.1.i) distribution

As a principle all results acquired by the contracting authority should be available to the public. Thus, unless it would significantly increase the price, the possibility of making the result available on internet (third bullet) and the possibility to give access on individual request (last bullet) should be kept.

Article I.9.1.ii) storage

This provision should be kept as it allows the contracting authority to keep the result (e.g. even if a study was produced for a conference, all copies will not be destroyed after the conference).

Article I.9.1.iii) archiving

This provision should be kept as the use of public money must be documented, including the object of the purchase.

Article I.9.1.iv) modifications

All possible modifications that may need to be introduced into the result after completion of the contract should be envisaged from the outset. This issue is especially important in case of IT systems that are normally used far beyond the duration of the contract and should evolve together with changes in the contracting authority and technological development of the IT environment.
(see also last paragraph of the article)

Article I.9.1.v) language versions

The contract should envisage the possibility to translate and use the results in other language versions than those in which they were provided. In some cases an open list of languages may increase the value of the contract; therefore the list of envisaged languages should remain realistic.

Article I.9.1.vi) use for own purposes

Even with no open distribution of the results, an extensive internal use may be envisaged. Such a possibility should be explicitly described in the contract (it is the same logic as in case of IT licenses envisaging many client's computers on which the software can be installed).

Article I.9.1.vii) use of results by third parties

If the contracting authority intends to give right to the result to a third party, then this should be explicitly stated in the contract (e.g. order of a set of promotion materials for everybody to use in their presentations, events, etc). On the other hand, when the result is made available on internet, a person who downloads it does not get any right except reading and referring to it, but this should be accompanied by a disclaimer (otherwise the contracting authority can be accused of illegal use of the result).

Article I.9.1. (bottom of the list) possible reference to Specific Contract

As a principle the list provided in the framework contract shall not be changed (neither expanded nor narrowed) unless the FWC is with reopening of competition.

Article I.9.1. (last paragraph) scope of modifications

Normally, all possible developments of the situation and possible modifications of the results that may be needed in the future should be foreseen under article I.9.1(iv). As a last resort, the contracting authority may consult the contractor and obtain his agreement to modify the result in a manner not foreseen in the contract, but he may refuse.

Article I.9.2 Pre-existing rights, intermediaries, creators' rights

The issue of ownership of delivered results is complex but needs to be clarified at the delivery acceptance stage at the latest, but it may be asked at tender stage if necessary (see part III).

Firstly, it should be clarified which parts of the results, if any, existed before entering into the contract. It is strongly recommended to require an **inventory of pre-existing rights** that will be used for contract delivery (either already possessed

by the contractor, or to be purchased) to be presented with the final result at the latest (first paragraphs of the clause).

Secondly, it is quite normal that parts of the results may be **prepared by third parties**, e.g. subcontractors, who may be legal persons (companies) of free-lance experts. These third parties may possess the rights as creators themselves, or have acquired these rights from other creators.

For both cases, the contracting authority should obtain evidence that the contractor has properly acquired the necessary rights to deliver the contract, for both the pre-existing rights and the rights of third parties.

This transfer of rights may be direct (from the contractor to the contracting authority) or indirect (e.g. from a creator, to a subcontractor, to the contractor, to the contracting authority). If there are intermediaries in the process of transferring the rights, this need for evidence applies to all steps in the chain of transfer of rights.

There are three options as to how the contractor will provide the proof of having obtained all rights which are relevant to the result, namely the elements that have been created earlier or by third party and used to produce the result. Depending on the value and importance of the results the following may be chosen:

- (a) a simple statement of the contractor concerning the right to the results (Option 1 of Annex A1)
- (b) the full control mode: requirement to provide statements as proofs of obtaining the rights to the results at every step of the chain of transfer of rights, before payment is actually made. This may be necessary, e.g. in the case of results to be published in numerous copies (Option 2 of Annex A1 and Annex A2).
- (c) in case it is known that an established licensed product can be used to produce the result (e.g. in case of IT projects) the list of requirements can be made on the basis of example requirements provided in bullets in art. I.9.2 and be used instead or as an equivalent to Annex A2 statement (e.g. for IT project: software name and version, copy of licence agreement, text of disclaimer notice)

Another method may also be used e.g. requirement to list all intermediaries but without providing their statements or copies of agreements between them (balance between the above examples).

When using the full control option, please be aware of the impact of the value of the creators' fee on the cash flow of the contractor i.e. if obliged to pay subcontractors/creators up-front the contractor may face liquidity problem in case the value of this creation is high. Thus, it should be taken into account when deciding about the payment schedule of the contract.

As a principle article I.9.2 assumes that the whole rights will be fully transferred to the contracting authority. Nevertheless it may be decided that licensing for a specific use and period is sufficient and the clause may be modified or redrafted accordingly.

Even if the whole result was produced by the contractors' employees, the latter should explicitly accept that their employer will owe and manage their creation.

Thus, the contracting authority should receive also appropriate information about this mechanism (last paragraph).

Article I.9.3 Partial vesting of rights

This article introduces a derogation to article II.10 of the General Conditions (full vesting of rights) to be used in specific situations.

In some cases it could be highly desirable to limit the transfer of right to the contracting authority to parts of results (e.g. attempt to acquire full rights to some software including basic building blocks could multiply price of the software without any benefit for the contracting authority or make the purchase impossible).

This article requires providing comprehensive information about the rights that are not to be transferred to the contracting authority. Otherwise, the text of the article shall be replaced with "Not applicable".

In case a partial transfer is allowed, the minimum scope of transfer of rights should be defined in the tender specification.

Framework contracts (FWC)

There are two ways of handling the IPR issue in FWC:

(a) in the Special Conditions (article I.9) of the FWC only:

To be used when the results are of one type and with standard use (e.g. FWC with cascade for audits with reports that are going to be used internally, or evaluation contracts with reports that are all published once approved).

(b) in the Special Conditions (article I.9) of the FWC with information that a particular aspect is to be further specified in the Specific Contract where appropriate (article III.5).

In general, when conditions are fixed in details and results are precisely described in the FWC itself (i.e. single contract and contracts with cascade) option (a) shall be used but it could be formulated in several versions for different types of results.

Option (b) is recommended for FWC with re-opening of competition because the Contractor should be informed about the general frame of the IPR that will be purchased within the FWC, but the details should be provided when known on a case by case basis, in the specific contracts, depending on each request for service.

II. Clause in the general conditions (article II.10)

- not to be modified

This clause should be kept as it is. Nevertheless, the property rights mentioned in point II.10.2 require registration and these requirements should be fulfilled in order to effectively protect acquired rights. For example, in addition to purchasing a design of a trademark (e.g. title, logo or jingle for information campaign), it should also be registered in the national registration office(s) or OHIM (Office for Harmonisation in the Internal Market, Trade Marks and Designs).

<http://oami.europa.eu/ows/rw/pages/index.en.do>

III. Clauses for technical specifications

Clauses proposed for the technical specifications:

1. Parts of results pre-existing the contract

It may be more secure to require the list of pre-existing rights (see article I.9.2) already at tender stage when contracts have valuable IPR aspects. The following clause can be used:

If the result is not to be fully created for the purpose of the contract it is to be clearly pointed out in the tender. There should be information provided about the scope of pre-existing materials, their source and when and how rights to them have been acquired.

2. Plagiarism in the tender

The technical specifications may include a safeguard against plagiarism in the offer:

In the tender all quotations or information originating from other sources and to which third parties may claim rights have to be clearly marked (source publication including date and place, creator, number, full title etc.) in a way allowing easy identification.

In principle this phrase is not necessary as the contracting authority is not going to use the tender for anything but for its purpose (i.e. reading it for the purpose of evaluation and attaching it to the contract for the winner) thus the contracting authority suffers no damage even if the tender was prepared committing plagiarism. Nevertheless, such a practice could be an indicator of bad will and bad prognostic for the quality of result. In consequence it may be assumed that this clause may to some extent decrease the threat and this phrase may be used e.g. in case of complicated studies or when a sample of text is requested.

3. A specific situation where IPR are to be only partially transferred to the contracting authority shall be also describe in details in the tender specification but there is no model clause proposed for this situation.

4. In the tender specifications, it is advised to draw the attention of the tenderers to the IPR provisions provided in the draft contract since some tenderers may limit their reading to the tender specifications and not consult the draft contract.

Publication/Translation Rights Agreement

Between Mr/Ms
author of the work/article entitled

.....
(hereinafter called "the author")

and the EUROPEAN UNION
represented by the EUROPEAN COMMISSION

itself represented for the purpose of the signature of this Agreement by

[name], [position]

[DG]

whereby it is agreed as follows:

1. The purpose of this Agreement is to authorise the European Commission to publish/copublish without limitation throughout the world, for the full legal term of copyright, the work/article in whole or in part, in all editions, forms and media, and in any language, on terms that the copyright in any compilation vests in the European Union, as well as itself further to license reproduction/translation and redissemination thereof by third-parties.
2. With a view to exercising the right granted to the European Commission as set out in Article 1 of this Agreement, the author hereby agrees to cede to the European Commission the non-exclusive publication/translation and dissemination rights in the abovementioned work/article.
3. The author warrants to the European Commission that the work/article is original to himself and is not a violation or infringement of any existing copyright or licence or of any other right of any other person or party whatsoever.
4. The author formally declares renouncing to any form of remuneration from the European Commission as compensation for the rights set out in Article 2 of this Agreement.
5. Articles 1 and 2 of this Agreement do not prevent the author from granting similar rights to other publishers provided the above conditions are taken into consideration.
6. The rights and liabilities of the parties in so far as they are not expressly covered by this Agreement shall be established according to the law of [Luxembourg] [Belgium] and any dispute, whether as to the express terms of this Agreement or otherwise shall be determined by the courts of [Luxembourg] [Belgium].

Done in two originals,

in

in

on.....

on.....

The author

For the [DG].....

.....
[name]

.....
[name]

Publication/Translation Rights Agreement
with Third-Party Co-Author

Between [Mr/Ms/name of the authority/organisation/institution]

co-author of the work/article entitled

represented by
(hereinafter called 'the co-author')

and the EUROPEAN UNION
represented by the EUROPEAN COMMISSION

itself represented for the purpose of the signature of this Agreement by

[name], [position]

[DG]

whereby it is agreed as follows:

1. The purpose of this Agreement is to authorise the European Commission to publish without limitation throughout the world, for the full legal term of copyright, the work/article in whole or in part in all editions, forms and media, and in any language, on terms that the copyright therein vests in the European Union, as well as itself further to license reproduction/translation and dissemination thereof.
2. With a view to exercising the right granted to the European Commission as set out in Article 1 of this Agreement, the co-author hereby agrees to cede to the European Commission the non-exclusive publication/translation and dissemination rights in the abovementioned work/article, and accepts that the European Union claim in their name the copyright therein, and administer it on behalf of all co-authors.
3. The co-author warrants to the European Commission that the work/article is not a violation or infringement of any existing copyright or licence or of any other right of any other person or party whatsoever.
4. The co-author formally declares renouncing to any form of remuneration from the European Commission as compensation for the rights set out in Article 2 of this Agreement.
5. Articles 1 and 2 of this Agreement do not prevent the co-author from granting similar rights to other publishers subject to the condition that he informs the European Commission of his intention and that appropriate acknowledgement is given to the European Union and to the co-author(s), and provided that the above conditions are taken into consideration.
6. The rights and liabilities of the parties in so far as they are not expressly covered by this Agreement shall be established according to the law of [Luxembourg] [Belgium] and any dispute, whether as to the express terms of this Agreement or otherwise shall be determined by the courts of [Luxembourg] [Belgium].

Done in two originals,

in

in

on

on

The co-author

For the [DG]



EUROPEAN COMMISSION
DIRECTORATE-GENERAL COMMUNICATION
MULTIMEDIA COMMUNICATION
Audiovisual Service

...../...../2008
COMM/C-1 D(2008)

ATTESTATION

Subject of the photograph/take:

Date and location of the photograph/take:

I the undersigned:

Position (where appropriate):

Resident at:

hereby declare that I have posed willingly and agreed to be photographed or filmed by

.....

(*name of photographer, cameraman or producer*) working on behalf of the European Commission.

I authorise the European Commission:

- to make free use of the photographs and films bearing my image in all types of publications, television broadcasts or communications via the Internet;
- to include and archive these photographs and films in the European Union's online database, accessible to the public free of charge online. Third parties with access to the European Union's database may use these photographs and films for information or education purposes only.

This authorisation shall apply worldwide for as long as my image is subject to legal protection.

(*Signature preceded by "read and approved"*)

European Commission, B-1049 Brussels - Belgium. Tel.: (32-2)299.11.11 Office: BERL 04/350.
Tel.: direct line (32-2)299 90 05. Fax: (32-2)299.90.12

<http://ec.europa.eu/avservices>

e-mail: mediatheque@ec.europa.eu

Publication Rights Agreement

Between Mr/Ms
author/copyright holder of the following illustration(s)/photo(s)
.....

(hereinafter called "the author")

and the EUROPEAN UNION
represented by the EUROPEAN COMMISSION

itself represented for the purpose of the signature of this Agreement by

[name], [position]

[DG]

whereby it is agreed as follows:

1. The purpose of this Agreement is to authorise the European Commission to publish/copublish, without limitation, for the full legal term of copyright, the illustration(s)/photo(s) in its publication entitled [.....], for dissemination throughout the world in all editions, forms and media, on terms that the copyright in any compilation vests in the European Union, as well as itself further to license reproduction and redissemination thereof by third parties within the sole context of the publication.
2. With a view to exercising the right granted to the European Commission as set out in Article 1 of this Agreement, the author hereby agrees to cede to the European Commission the non-exclusive publication and dissemination rights in the abovementioned illustration(s)/photo(s).
3. The author warrants to the European Commission that the illustration(s)/photo(s) is (are) original to himself and is (are) not a violation or infringement of any existing copyright or licence or of any other right of any other person or party whatsoever.
4. [The author formally declares renouncing to any form of remuneration from the European Commission as compensation for the rights set out in Article 2 of this Agreement.]
[The European Commission undertakes to pay the fee of EUR [...] required as compensation for the rights granted in Articles 1 and 2 above.]
5. Articles 1 and 2 of this Agreement do not prevent the author from granting similar rights to other publishers provided the above conditions are taken into consideration.
6. The rights and liabilities of the parties in so far as they are not expressly covered by this Agreement shall be established according to the law of [Luxembourg] [Belgium] and any dispute, whether as to the express terms of this Agreement or otherwise shall be determined by the courts of [Luxembourg] [Belgium].

Done in two originals,

in

on.....

The author

in

on.....

For the [DG].....

[name]

[name]

Rules to be followed when using or publishing images (photographs, drawings, videos) on which persons appear:

Data protection requirements:

1., General background

Staff handling images must be aware that the Publications Office is committed to respect the privacy of the individuals who entrust their data to it.

The attention of those taking photographs or videos on events is called to preserve the dignity and integrity of persons.

Data protection requirements are contained in the Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000.

2., Permission

All persons have the right to define who can see their images and for what purpose these images can be used. This permission can be different in the case of different images. The rules are stricter in case of leisure events (like the Christmas cocktail) than official events (like a meeting) but the dignity of the person has to be guarded in any case.

3., The main points to follow are:

- The persons who are on the images should be informed that their images are shown, about the "recipients", i.e. to whom the images are shown and how they can exercise their rights (see point 4).
- All personal data must be kept confidential and secure. Images are to be seen by persons or groups to whom the person on the image has endorsed that they see it.
- Any images should be accessed only by authorized persons and these are not permitted to provide access to anybody else apart from the purpose the person in the image is informed about and has given his/her consent except when law enables the use of the image for another purpose. In this latter case, the person on the image should still be informed.
This does not apply if the giving the information is of excessive difficulty.
- Persons using images for their personal purpose are not subject to the data protection rules but other legal stipulations (protection of the dignity of persons etc.) apply.
- The photographer cannot be hidden. This does not mean that he/she has to warn everybody of taking a photo (but see the rule for group photos in point 4).

4., Rights of the persons

If any person whose images are treated (the data subject) requests access to or rectification or deletion of his/her image, this has to be done following the procedures unless erasure of the data impedes the fulfillment of the obligations of the Publications Office towards that person or towards authorities. In these cases, the data subject has to be informed.

If there are several persons on a photo, one single person on the photo has the right to forbid its publication unless at the time of taking the photo he was aware of that it is being taken for publication and would have had the opportunity to protest or leave the place where the photo was taken (typically group photos taken with a fair amount of preparation).

5., Information and procedure before publication

With the invitation the invitees should receive the information that photos shall be taken and a reference to (or a copy of) the privacy notice describing also how they can object before and after publication (see below).

The persons should have the opportunity to object before the photos are published. This can be done by putting the photos for a couple of days on a common folder like the P:\drive for office-wide events or the common drive of the directorate or unit in case of events of a unit or directorate - this folder should be visible only for the members of the directorate or unit (it is unavoidable that those who want to check the photos should see photos of others but as this is just a folder and not a page where the photos are visible together this is proportional) and everybody who wants can object and then the photo has to be removed (also immediately from the folder).

The procedure in case of a request for access to, correction or erasure of personal data is the following:

The official receiving the request has to forward this request to the data controller, i.e. the head of the Marketing unit. The data controller takes the necessary measures to inform the data subject about the obstacles to fulfill the request or to give the information/allow access or correct/erase the data. This has to be executed within three working days and the data subject should be informed about the measure taken without delay.

The following text should be on the invitations:

Les photos et vidéos faites pendant cet événement vont être mises sur YourOP. Vous avez la possibilité de vous opposer à priori à la publication de vos images. Si vous désirez vérifier les photos ou vidéos sur lesquelles vous apparaissez, ils sont disponibles dans le répertoire Pour que certaines photos ou vidéos sur lesquelles vous apparaissez, ne soient pas publiées, envoyez un courriel à la boîte fonctionnelle avant fin de la journée Vous pouvez également demander l'élimination d'une photo ou vidéo même après publication, en vous adressant à.....

Si vous prenez des photos ou vidéos vous-même, vous êtes tenus de respecter l'intégrité et dignité des personnes. Si vous souhaitez que vos photos ou vidéos soient publiées, vous devez les envoyer à la boîte fonctionnelle jusqu'à ... le plus tard. Ils seront disponibles pendant une période de ... jours sur le répertoire pour que les personnes sur les photos ou vidéos puissent contester leur publication, ensuite ils seront publiées. Toute personne a le droit de demander l'enlèvement d'une photo ou vidéo sur laquelle elle apparaît.

The photos and videos made during this event will be put on YourOP. Before doing this, we give the opportunity for you to decide whether you want that your pictures appear or not. If you would like to check the photos on which you appear before the publications, they are available in the folder:

You can communicate to the mailbox till end of the day if you don't want that certain photos or videos on which you are seen are published.

You can always ask your photos to be removed even after publications by communicating your request to

If you take photos or videos on the event, you should respect the integrity and dignity of the individuals. If you want to have your photos or videos published, you have to send them to the functional mailbox ... till ... the latest. They will be available in the folder ... during ... so that the persons on them could object to their publication, and then they will be published.

Everybody has the right to ask for removal of a photo or video on which he/she appears.