



NATIONAL INSTITUTE OF
RESEARCH AND DEVELOPMENT
FOR OPTOELECTRONICS
INOE 2000



Intellectual Property Rights Policy INOE 2000

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Purpose of the document

The purpose of this policy document is to give guidelines and describe the general principles for protecting the Intellectual Property Rights (IPR) related to scientific and technological results, data and software produced at INOE 2000. The purpose of defining an IPR policy is to encourage the generation of intellectual property by staff and collaborators. This Policy is intended to provide support and guidance regarding commercial exploitation, ownership and income from IPR and the use of INOE 2000 facilities and resources to ensure that the development of IP is mutually beneficial for staff, partners and INOE 2000.

Abbreviations

Abbreviations	Expansion
Background	Refers to IP owned by INOE 2000 or a Partner, which is already in existence and held prior to a starting contract or activity.
Creative Commons (CC)	A not-for-profit organisation which makes a number of open licenses available for copyright (or database rights) protected works. The structure of the CC licenses is based on a number of building blocks, which may be combined in a number of different ways.
CC 0 license	The Creative Commons No Rights Reserved license, which means that the rightsholder(s) waives its copyrights in the work so it is left in the public domain.
CC BY license	The CC BY open license which allows everyone to re-use, distribute and modify the licensed materials. The license requires users to give credit (attribution) to the creator.
CC BY-NC license	The CC BY-NC license is the same as the CC BY with the added restriction that any derivative work must be for non-commercial use only.
CC BY-SA license	The CC BY-SA license is the same as the CC BY with the added restriction that anyone who adapts the work can redistribute a modified version under the same terms of as of the original license.
Copyright	One of the intellectual property rights, which is characterized by the fact that it confers on its holder rights upon a literary and artistic work.
Data Owner	The person or legal entity possessing the Copyright or any other relevant intellectual property rights of the data (e.g., the one creating the data). The Data Owner may or may not be identical to the Data Provider.

Database	A collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means. ¹
Data Provider	The person or legal entity making the data available through INOE 2000 (e.g. the Principal Investigator, or the Partner, etc.).
Embargo Period	Is a period of time where an access restriction is applied to a piece of data and/or other research output, whereby the item will not be made available as Open Access until a predetermined time.
EOSC	European Open Science Cloud, a European Commission initiative that is being developed as a globally accessible, multidisciplinary data infrastructure. The EOSC will federate the existing scientific data and digital infrastructures for data exploitation that are now spread across disciplines and EU Member States.
FAIR Principles	A set of guiding principles that seek to increase the reusability of data and digital objects (including data-related algorithms, tools, workflows, protocols, services and other kinds of digital and research objects). FAIR stands for Findable, Accessible, Interoperable, and Reusable.
Foreground	Refers to IP generated in the course of a project by INOE 2000 itself, or by a Partner alone or together with INOE 2000, arising out of an INOE 2000 project.
GDPR	The General Data Protection Regulation European Regulation (EU) 2016/679 on data protection and privacy.
Intellectual Policy Rights (IPR)	Rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time. It is further defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of 14 July 1967.
Interoperability	The ability of two or more systems or components to exchange information and to use the information that has been exchanged.
Metadata	Data that contains descriptive, contextual and provenance assertions about the properties of research data or a digital object. It provides systematic descriptions and attributes of data relevant to interpret what the data concerns.

¹ Directive 96/9/EC (the “Database Directive”).

Open Access	A set of principles and practices through which research outputs are distributed online, free of cost or other access barriers. Copying or reuse are also reduced or removed by applying an open license for copyright.
Open License	A license which allows others to reuse another creator's work as they wish.
Open Science	A movement that encourages the research community to be open, not only with their results, but also as they conduct their research, i.e., extending the principles of openness to the whole research cycle.
Partner or INOE 2000 Partner	Partner institution connected to the INOE 2000 through contracts, projects, or any other collaborative frameworks.
Users or INOE 2000	Individuals and institutions from academia, business, industry and public services that are granted access to INOE 2000 resources and services.
Waiver	The owner of the copyright waives their rights to be identified as the author or owner of the work in question and/or their right to object to derogatory treatment of the work. The work is then released to the public domain without copyrights.

Introduction

One of the main objectives of INOE 2000 is to provide its Users with common access to instruments and scientific data, products and services. Recent data policies recommended by funding bodies require scientists to make available the data which underpin their research results.² Collaboration is essential to avoid duplication of investments and fragmentation of research efforts and for this purpose INOE 2000 should aim at fostering a culture of interdisciplinarity, exchange and cooperation associating researchers from the required disciplines on equal level.

The Institute recognises and encourages the principle that Intellectual Property (IP) developed at INOE 2000 should be used for the greatest public benefit. INOE 2000 supports the European Commission's approach: "As open as possible, as closed as necessary". It is expected that access to INOE 2000 data is free-of-charge with as few restrictions as possible.

At the same time, in specific cases INOE 2000 and/or its Partners may explore the possibility whether the activities they carry out under their work programmes or otherwise may generate Foreground (i.e., intellectual property rights) with a potential for commercial exploitation. There may be legitimate reasons to protect IP assets to allow for technology transfer and commercialisation of the service so specific measures should be taken to protect the IP asset (be it a trade secret, know-how, copyright or filing for a patent). Similarly, embargo periods may be applied in specific cases, for example, when researchers wish to protect their research by applying a reasonable amount of time to work-up their data sets and publish their findings.

This policy provides the basic principles to make research data available for use and reuse by others through a system involving the use of open access and/or open licensing (unless legal or legitimate reasons apply) but also creating exceptions to support protection of IP in justified cases.

Basic concepts

Copyright

Copyright is an intellectual property right that grants authors or creators of an original work the exclusive right to reproduce or otherwise communicate the work and also to make adaptations and modifications to the work. Copyright protection is obtained automatically: it arises from the moment the work is created, and no registration or other formality is required. This means that if such automatic rights are not waived, or if there is no clarity regarding the legal conditions under which a work may be used (i.e., a license), the ability of researchers to access and reuse the work is restricted.

Intangible assets connected to INOE's research may be copyright-protected assets if they contain a creative element. These may include photographic images of artifacts and artworks,

² See for example "Guidelines on Implementation of Open Access to Scientific Publications and Research Data in projects supported by the European Research Council under Horizon 2020" available at https://ec.europa.eu/research/participants/data/ref/h2020/other/hi/oa-pilot/h2020-hi-erc-oa-guide_en.pdf. See also section 1.3 on Open Science in the "Strategic Research and Innovation Agenda (SRIA) of the European Open Science Cloud (EOSC)", version 1.1 – November 2022, available at: <https://eosc.eu/sites/default/files/SRIA%201.1%20final.pdf>

audio recordings, audio-visual works, multimedia productions, publications and educational material, databases of information about collections, etc. Therefore, before reusing data, it is important that repositories, disseminators and users of data ascertain whether the data, parts of it, or other embedded elements in the data (e.g., pictures or flowcharts) are subject to copyright protection. If the data or parts of it contain an element which falls under copyright protection, then that protected element(s) of the data require a license or a waiver of rights before the data or dataset may be reused by third parties.

Open Access

The Open Access principle is based on the premise that publicly funded research outputs such as publications, data, software, models, algorithms, workflows, virtual research environments or any other type of research products, should be freely available for use and reuse by others, unless specific restrictions apply (e.g., for protection of personal data, confidentiality, security, applicable law and regulations, secrecy, etc.).³ Further, the Open Access principle also covers the use of open research infrastructures for knowledge and data sharing, measures to ensure reproducibility of results and open collaboration within science and with other knowledge actors.

INOE 2000 shall promote Open Source and Open Access principles.

FAIR principles

The FAIR Data Principles seek to increase the reusability of data and digital objects (including data-related algorithms, tools, workflows, protocols, services and other kinds of digital and research objects). They put specific emphasis on enhancing the ability of machines to automatically find and use data, in addition to supporting its reuse by individuals. FAIR is discussed within the context of Open Science – a movement that encourages researchers and the research community to be open, not only with their results, but also as they conduct their research. The FAIR Principles apply to data regardless of whether access to the data is publicly available, i.e., whether the data is open. FAIR data may or may not be (fully or immediately) open and an access level to data may be set at “FAIR but not open”, so that the FAIR Principles do not restrict the recognition of legitimate and necessary reasons for shielding data and restricting access in justified cases. The FAIR Principles merely require that data should be findable and the conditions of access and reuse are clearly set out, with the availability of contextual and supporting information (metadata), ideally through an automatic authentication and authorisation process.

INOE 2000 shall promote FAIR (findability, Accessibility, Interoperability and Reusability) principles.

³ See in this regard Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information; Commission Recommendation (EU) 2023/499 of 1 March 2023 on a Code of Practice on the management of intellectual assets for knowledge valorisation in the European Research Area.

Metadata

Metadata is data that contains descriptive, contextual and provenance assertions about the properties of the research data. It provides systematic descriptions and attributes of data relevant to interpret what the data concerns. More broadly, it refers to all data about data, such as: structure and internal coherence, source references and licenses, time-stamped changes to the data, quality, context, methods and techniques used as well as provenance and context relevant to the proper interpretation and reusability of the data.

Metadata and data are two separate things and should be treated as such. In particular, the FAIR principles requires that metadata standards are articulated, and that metadata is made publicly available to the greatest extent possible, even if the data itself is not fully open or where the data is no longer available or even destroyed.

Finally, for metadata to be useful, it must be standardised and both machine and human readable to enable advanced research techniques. Where access to data is subject to restrictions or certain conditions, this should be stated clearly and consistently in the metadata.

Database

Data as such is not considered to be covered by the term ‘database’, but only the “collections” of such data (or other materials), with the exclusion of independent works such as a recording, audio-visual, cinematographic, literary or musical work.

Databases can be protected by:

- Copyright: if the selection or arrangement of the contents are the author’s own intellectual creation, in which case copyright protection applies to the structure of the database (separately and in addition to any copyrightable content of the database).
- *Sui generis* right:⁴ protecting the “investment” in obtaining, verifying or presenting the contents of a database (as a compilation of data). This database right offers protection in circumstances where copyright protection is not available based on the resources that database makers invest at the moment of creating, updating and presenting the content of database.

Licensing

In order to ensure the use and re-use of research data and resources by Users, data shared by INOE 2000 should carry a license which allows it. The more the license is open and permissive (i.e., the data is open), the less impediments to usage and interoperability will occur. In the case of copyright (or *sui generis* rights), the easiest and most effective way to achieve openness is to waive all rights and make the data part of the public domain, using the CC 0 license for example, or alternatively, by using one of the least restrictive licenses available. A license such as the CC BY is a permissive license that only requires that credit is given to the author of the original work and are preferable over licenses that introduce additional conditions or restrictions.

⁴ A special IP right “sui generis database right (SGDR)”

Open access and permissive licensing forms relevant to INOE 2000 include, but are not limited to, Creative Commons license (for journal publications, graphics and media as well as *sui generis* database rights) and open source licenses for software⁵, which should facilitate interoperability.

When the intention is to make data (and metadata) available for reuse without restrictions, it is often conducted by way of dedicating the work to the public domain or waiving all rights to the data, to the extent permissible under law. The two most common forms for this purpose are:

- The Creative Commons No Rights Reserved (CC 0), commonly used for both databases and other copyrightable objects, and means that the Data Owner waives its copyrights in the data; or
- The Open Data Commons Public Domain Dedication and Licence (PDDL), which is primarily used for databases, and places the data in the public domain.

Important to note however that in many jurisdictions the moral right to a copyrightable object cannot be waived.

Access policy

Given the structure and distribution of the INOE 2000, the resources, including data available is diverse. The conditions of access by users to INOE 2000 infrastructure facilities and resources, is governed by separate Access Policies.

Embargo period

Embargo period is a period during which access to data is not available on the basis of Open Access unless a specific arrangement is made. What this means in practice is that if a User wishes to access certain datasets during the embargo period, he or she may have to wait until the embargo period has expired before they can access the data or alternatively, try to negotiate an earlier release with the Data Owner on a case-by-case basis.

Other restrictions on access to and use of data

FAIR data is not equivalent to Open Access. The “A” in FAIR stands for “Accessible under well-defined conditions”, implying that there may be legal or other legitimate reasons to retain access and re-use of data or parts of it restricted. In the case of copyright, the easiest and most effective way to maximise sharing of data is to waive all rights and make the data part of the public domain, using the CC 0 license for example. If the data needs to be licensed, it would be best to use one of the least restrictive licenses available. Licences such as the CC BY is a permissive license that only requires that credit (attribution) is given to the author of the original work and are preferable in terms of interoperability over licenses that introduce additional conditions or restrictions.

The CC BY-NC license, limiting re-use to non-commercial purposes is sometimes preferred by institutions as a more appropriate alternative to the CC BY. It aims at preventing commercial initiatives that try to monetize Open Access and make economic gain from what could be

⁵ <https://opensource.org/licenses/>

legitimately considered as work of others. This is something that could be considered by INOE 2000 but it also must be measured against the limitations that the CC BY-NC may have. For example, the CC BY-NC could potentially become a barrier to non-commercial reuse due to ambiguities about what constitutes ‘commercial’ and ‘non-commercial’ reuse in research activities. Another problem with the CC BY-NC license is that in certain cases, it may compromise legal interoperability, i.e., the ability to combine datasets from multiple sources without conflicts among the restrictions that each dataset carries. For example, the licenses CC BY-NC and CC BY-SA are not interoperable, that is, they cannot be combined and carried forward to new work (while the CC BY is interoperable with any license, including CC BY-SA).

In practice, there will be cases where, for legitimate or regulatory reasons such as privacy, national security, sensitive information, etc., data needs to be shielded or restricted for certain uses. The degree to which any such data is made available is at the discretion of INOE 2000 and according to applicable policies. In such cases, different methods may be used, such as generalisation of data, redaction of specific information, anonymisation, embargo periods, etc. However, there will be cases where no such methods would be sufficient and a standard open license may not be suitable, so INOE 2000 will need a customised license or a specific contract regulating access to the data. This may impair interoperability and ability to share the data but may be necessary.

Principles for IPR management

The manner in which inventions (including certain substantive results of research such as technology, prototypes, data and software products), patents and copyright are treated is governed by the following principles:

Open Access as a general rule

As a general rule, the impact of copyrights and other forms of IPR should be minimised to the extent possible, by using appropriate open licenses. Copyright shall not become an obstacle to the use, reuse and sharing of data by Users of INOE 2000, unless legal restrictions, legitimate reasons or other justified considerations apply. For this purpose, intellectual property rights should be clearly defined in order to make the results openly accessible while preventing others from imposing restrictions on them.

FAIR Data

New data made available through INOE 2000 shall be FAIR by design and in line with the INOE 2000 Data Policy.

Metadata

Collection, storage and curation of data should be done with accurate metadata so as to fulfil the FAIR principles and facilitate uninterrupted access to data, to the extent possible and where relevant, subject to additional conditions.

Metadata provided by INOE 2000 should include an applicable license, legal restrictions, and any additional conditions of use of copyrightable data that they are assigned to.

Where the Creative Commons tools and licenses are not appropriate or cannot be used the metadata shall include a rights statements provided by RightsStatements.org⁶ which communicates the copyright and re-use status of digital objects.

Metadata should be free from any restrictions and assigned a public domain waiver (for example, the CC O license).

Attribution

INOE 2000 should require Users to recognise its contribution in producing and/or contributing to the results (data, software, publications, methods and methodologies, technologies and prototypes, etc.) even if the relevant license or waiver does not require so (for example, the CC BY license).

Embargo Period

INOE 2000 shall have the right to apply an embargo period, not exceeding 5 years. The use of such right should be exercised with diligence while minimised to the extent possible necessary, following the principle “as open as possible and as closed as necessary”.

Proprietary use and protection of IPR

If certain IPR generated by INOE 2000 in collaboration with Partners is capable of industrial or commercial exploitation, INOE 2000 and the concerned Partners may consider how such Foreground could be exploited and how the allocation of rights among Partners should be done.

In such cases, INOE 2000 and the concerned Partner should ensure that the IP is protected and exploited in a manner that recognises the contributions of individuals, their organisations and those of any other parties. The principles for shared IPR shall be listed in the Consortium Agreement / contract. If there is a potential for such commercial exploitation, an investigation whether there is an interest by private entities in creating marketable products should be carried out.

Relevant considerations for protecting Foreground may include (but are not limited to):

- Where the intellectual property has substantial potential for commercial exploitation, supported by business case analysis, for example, the creation of new services, technology transfer etc. that may justify protection of the IP or strict confidentiality obligations.
- Where it is deemed that for cross-licensing, technology transfer or for other legitimate reasons the intellectual property should be protected.
- In cases of particularly important inventions or creation where it is deemed that the impact and visibility in the scientific community will be maximised by such measures (i.e., patent protection).

⁶ <https://rightsstatements.org/en/>

Implementation of the IPR principles

Non-patented material

Reporting requirements

An employee who, solely or with others, has produced non-patented material⁷ during his/her work at INOE 2000 or using the infrastructure of INOE 2000, is obliged to report it to INOE 2000 through the reporting database: <https://db.inoe.ro/>. The report should include all necessary information (e.g. co-authors, short description, date of achievement, journal, website, etc.).

Attribution

Proper attribution to INOE 2000 shall be embedded in all non-patented materials. In case the financial support was granted by a funding agency, proper acknowledgement and visuals shall be used, as requested in the specific contract.

Software, databases and data products

The following implementation measures and licenses are recommended for use by INOE 2000 on the basis of open licensing:

Type	Recommended license	Comments
Metadata	CC 0 CC-BY / CC-BY SA	Or equivalent, unless legal restrictions, legitimate reasons or other justified considerations apply.
Data	CC 0 CC-BY / CC-BY SA	Or equivalent, unless legal restrictions, legitimate reasons or other justified considerations apply.
Database	CC 0 PDDL CC-BY / CC-BY SA ODC-By	Or equivalent, unless legal restrictions, legitimate reasons or other justified considerations apply.
Software	An Open-Source Initiative (OSI) approved license ⁸ , e.g. AGPL or equivalent	Unless legal restrictions, legitimate reasons or other justified considerations apply.

If the software, data and/or database was created by an employee in the course of his/her duties or on the instructions of his/her employer, or using the institute's infrastructure, INOE 2000 is exclusively entitled to decide on the license and to exercise all economic rights in consultation with the authors.

⁷ Non-patented material includes data, software, scientific papers, website, text, visual or audio materials for outreach, training and teaching, and any other material for which no patent has been applied for or granted

⁸ <https://opensource.org/licenses/>

Inventions and patents

Reporting requirements

An employee who, solely or with others, has made an invention⁹ during his/her work at INOE 2000 or using the infrastructure of INOE 2000, is obliged to report it to the Scientific Council through the reporting database: <https://db.inoe.ro/>. The report should include all necessary information (e.g. co-authors, potential for patenting or commercialisation, short description, date of achievement, etc.)

Patent applications

INOE 2000, with the participation of the inventor, will decide whether an invention should be registered as a patent. This decision is based on various parameters such as, for example, novelty, inventive step, commercial potential, obligations towards third parties, third-party rights and other factors of possible relevance. Inventors of inventions for which patent applications are going to be filed must cooperate in the application procedure as required by INOE 2000. INOE 2000 will cover the patenting costs depending on the available resources. In case the IPR is shared with Partners, the costs are also shared as agreed between institutions.

Commercial exploitation

With regard to the commercial exploitation of an invention, while decision-making authority lies solely with INOE 2000, the public interest will be considered. In cases in which the invention is integral to an agreement with third parties (for example with public or private sponsors or other funding providers), INOE 2000 will take account of the terms of this agreement. Decisions on commercial exploitation are made by INOE 2000 at its own discretion; however, a reasonable effort will be made to ensure that the inventors concerned are integrated into the proposed exploitation. INOE 2000 may transfer tasks relating to the evaluation and/or exploitation of inventions to CENTI.

Profit sharing

INOE 2000 will share the income deriving from the exploitation of an invention with the inventor(s) concerned as described in the internal procedures of the Innovation Management System.

Release of inventions

In the event that INOE 2000 does not patent an invention or withdraws a patent application or does not uphold or sustain a patent application, the invention will be released to the inventor who will be offered the opportunity to take it over. Having confirmed that no terms of any agreements with third parties will be breached by releasing the invention to the inventor and that it is in the best interest of INOE 2000 and the public at large to do so, the Institute may approve such release and will in such case transfer all rights to the invention.

⁹ Invention means all patentable or potentially patentable ideas, developments and/or corresponding know-how, as well as the underlying or associated technology needed for the development or application of ideas or know-how

Where appropriate for an invention to be released, the inventor(s) may be required to consent to the following conditions:

- To fulfill any obligations towards funding providers who financed the research project that gave rise to the invention;
- To grant INOE 2000 a non-exclusive, irrevocable license free of charge, and unlimited in time or place for purposes of research, including in collaboration with third parties;
- Provisions to limit or exclude liability on the part of INOE 2000.

Relevant references

Aarhus Convention <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

Commission working group on FAIR principles

<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3464>.

Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31996L0009>

Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information and amendments to it <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32003L0098>, <http://eur-lex.europa.eu/eli/dir/2013/37/oj>.

Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32007L0002>.

Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009L0024>.

European Charter for Access to Research Infrastructures

https://ec.europa.eu/research/infrastructures/pdf/2016_charterforaccessto-ris.pdf.

Force 11 The Fair Data Principles <https://www.force11.org/group/fairgroup/fairprinciples>.

Guidelines on Fair Data Management in H2020

http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/hi/oa_pilot/h2020-hi-oa-data-mgt_en.pdf.

OECD Principles and Guidelines for Access to Research Data from Public Funding

<https://www.oecd.org/sti/sci-tech/38500813.pdf>.

The Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities of 22 October 2003 <https://openaccess.mpg.de/Berlin-Declaration>.

The FAIR Guiding Principles for scientific data management and stewardship

<https://www.nature.com/articles/sdata201618>.

Recommendation on a Code of practice on the management of intellectual asset for knowledge valorisation <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023H0499&qid=1678171231088>

Recommendation on a Code of practice on Standardisation <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023H0498&qid=1678171117168>

Guiding Principles for Knowledge Valorisation implementing Codes of Practice
https://research-and-innovation.ec.europa.eu/research-area/industrial-research-and-innovation/eu-valorisation-policy/knowledge-valorisation-platform/guiding-principles-knowledge-valorisation-implementing-codes-practice_en