



INTELLECTUAL PROPERTY (IP) AND DATA GUIDE



Figure 1, below, is a high-level illustration of the Project development and contracting process. Project Participants are required to complete an **IP Rationale and Data Plan** as part of their Project Proposal submission. When completed, the Project Proposal is submitted to the OSC for a comprehensive evaluation. Approved Project Proposals are then formalized by a Project Agreement between the OSC and Project Participants.

The IP Rationale is formalized in the Project Agreement as an **IP Schedule**. Project Participants negotiate the terms and conditions for ownership and use of Background IP and expected Foreground IP and include these provisions in the IP Schedule of the Project Agreement. The Project Agreement will generally reflect the commitments made by Project Participants in the Project Proposal, including those within the IP Rationale section, but may be updated to reflect the outcomes of any negotiation process.

Similarly, if applicable, the Data Plan is formalized in the Project Agreement as a **Data Schedule**. Project Participants negotiate the terms and conditions for ownership and use of expected Project Data and include these provisions in the Data Schedule of the Project Agreement. The Data Schedule will generally reflect the commitments made by Project Participants within the Data Plan section of the Project Proposal.

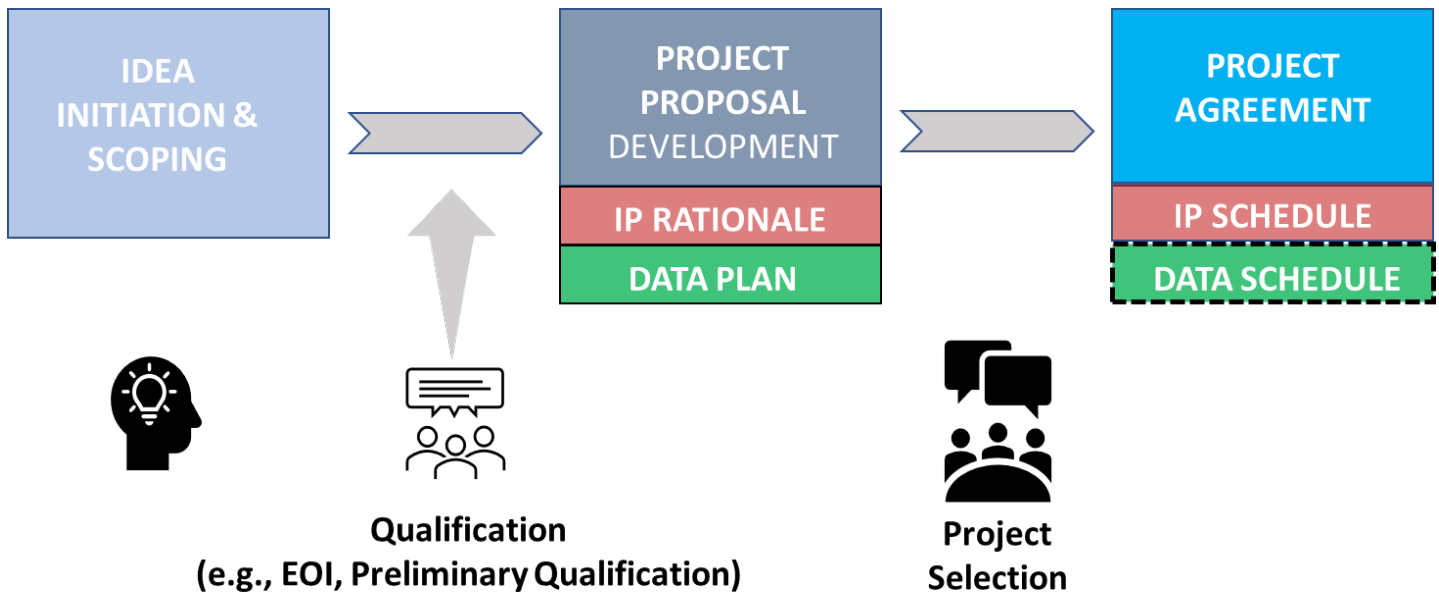


Figure 1: Project Development and Selection Process

How are Background and Foreground IP considered in an OSC Project?

Each rights-holder of Background IP will:

- Exclusively own and control the use of its Background IP;
- Negotiate in good faith with Project Participants for access to Background IP where such access is required for the completion of the Project;

- Make other Project Participants aware of any limitations on the use of Background IP that would impact the fulfillment of the Project; and,
- Ensure appropriate licenses are in place based on fair, reasonable and non-discriminatory (FRAND) terms, subject to relevant competitive issues.

Each Project Participant will have the right to access, on fair, reasonable and non-discriminatory terms and, subject to relevant competitive issues, all Foreground IP arising from the Project, at least for internal R&D purposes.

How are existing Data assets and expected Project Data considered in an OSC Project?

Each rights-holder of existing Data assets will:

- Exclusively own and control the use of its existing Data assets;
- Negotiate in good faith with Project Participants for access to its existing Data assets where such access is required for the completion of the Project;
- Make other Project Participants aware of any limitations on the use of its existing Data assets that would impact the fulfillment of the Project; and,
- Ensure appropriate licenses are in place based on fair, reasonable and non-discriminatory (FRAND) terms, subject to relevant competitive issues.

Each Project Participant will have the right to access, on fair, reasonable and non-discriminatory terms and, subject to relevant competitive issues, all expected Project Data assets arising from the Project, at least for internal R&D purposes.

What IP-related information does a TL Project Proposal need to contain?

All Project Proposals are required to include an **IP Rationale**. The IP Rationale seeks to address the following questions:

- What Background IP is necessary for the completion of this Project? Who will have authorization to use it, and on what terms?
- What are the expected Foreground IP assets to be created through Project activities? Focus on the key principles that have been agreed upon between Project Participants;
- What are Project Participants agreed ownership and licensing terms governing access to the expected Foreground Intellectual Property assets? Describe any uncertainties that remain to be resolved at the time of Project Proposal submission;
- List the OSC Members that applicants believe would have a technological or business interest in the expected Foreground Intellectual Property, and a description of that potential interest; and,
- List the OSC Members with whom the applicants would be willing to enter into negotiations with regarding access to the expected Foreground IP and any applicable limitations related to granting such access.

Project Participants may also decide to provide access to Foreground IP to Members that are not listed in the Project Proposal or to other non-Members.

Note: Costs associated with IP protection (e.g., patent drafting and filing) are an eligible funded project cost.

What Data-related information does a TL Project Proposal need to contain?

All Project Proposals are required to include a **Data Plan**. The Data Plan seeks to address the following questions:

- What, if any, existing Data asset(s) is necessary for the completion of this Project? Who will have authorization to use it, and on what terms?
- What, if any, are the expected Project Data assets to be generated through Project activities?
- What are Project Participants agreed ownership and licensing terms governing access to the expected Project Data assets? Describe any uncertainties that remain to be resolved at the time of Project Proposal submission.
- List the OSC Members that applicants believe would have a technological or business interest in the expected Project Data, and a description of that potential interest; and,
- List the OSC Members with whom the applicants would be willing to enter into negotiations with regarding access to the expected Project Data and any applicable limitations related to granting such access.

Project Participants may also decide to provide access to Project Data to Members that are not listed in the Project Proposal or to other non-Members.

Why do the IP Rationale and Data Plan request a list of Members with whom the applicants would be willing to enter into negotiations?

A key premise of the OSC IP framework and Data Strategy is to encourage and facilitate Members in exploring opportunities to share IP and Project Data and potentially benefit from that sharing beyond Project activities, while preserving Members' rights to protect and control the use of their Background and Foreground IP, and Project Data. To protect their commercial interests, Project Participants may decide to refuse to share or license Foreground IP, or certain aspects of Foreground IP, and/or Project Data to Members not participating in a Project.

A Project Participant is not obligated to license their IP to any party that is on or not on the IP Rationale list. Similarly, a Project Participant is not obligated to license their Project Data to any party that is listed on or not listed on the Data Plan. The IP Rationale and Data Plan merely identify the parties, if any, that Project Participants would be willing to enter into negotiations with for access to Foreground IP and/or Project Data (see Figure 2 and below for more details).

How are the IP Rationale and Data Plan considered in the evaluation of a Project Proposal?

The OSC TL Project Guide outlines the selection criteria for TL Projects and how a Project Proposal is evaluated. The IP Rationale and Data Plan are only two required components of the Project Proposal; other important elements include: mandatory growth criteria, elective ecosystem building criteria, and a project plan. Strong Project Proposals that meet all selection criteria and requirements AND provide an IP rationale and/or Data Plan that makes commitments to exploring opportunities to share or exploit Foreground IP and/or Project Data beyond Project activities will be given preference over those that do not make such commitments.

How does the OSC manage IP and Project Data that is generated by projects?

The OSC has established a Member-accessible IP Registry as well as a Member-accessible Data Registry that contains non-confidential descriptions of material Foreground IP and Project Data arising from Projects. Members can browse the IP Registry and Data Registry to look for opportunities to create further economic benefit from listed Foreground IP or Project Data. The OSC IP framework and Data Strategy encourages Members to explore all opportunities to benefit from Foreground IP listed in the IP Registry and/or Project Data listed in the Data Registry and maximize its potential to create value and drive economic benefit for Canadian companies.

Members provide a “non-confidential” written abstract or summary and where applicable, an application or registration number, of all Foreground IP and/or Project Data generated as part of their Project, subject to confidentiality and trade secret considerations (e.g., only submit for publishing to IP Registry once patent application is filed). The submission of information for publishing to the IP Registry and/or Data Registry should also reflect any conditions, restrictions or exceptions to the inclusion of Foreground IP and/or Project Data in the IP Registry and Data Registry, respectively.

How can I access and benefit from the IP assets that are in the IP Registry?

Members who are not Project Participants that are seeking access to Foreground IP listed in the IP Registry can make a request for an Outside License by providing an Expression Of Interest (EOI) to the OSC, which the OSC will then deliver to the appropriate rights-holder of the Foreground IP, or by making a direct request to the identified IP rights-holder. Negotiations can then proceed with the aim of reaching an agreement.

How can I access and benefit from the Data assets that are in the Data Registry?

Members who are not Project Participants that are seeking access to Project Data assets listed in the Data Registry can make a request for an Outside License by providing an Expression of Interest (EOI) to the OSC, which the OSC will then deliver to the appropriate rights-holder of the Data, or by making a direct request to the identified Data rights-holder. Negotiations can then proceed with the aim of reaching an agreement.

The below Figure illustrates at a high-level the IP Registry and Data Registry EOI (access request) process.

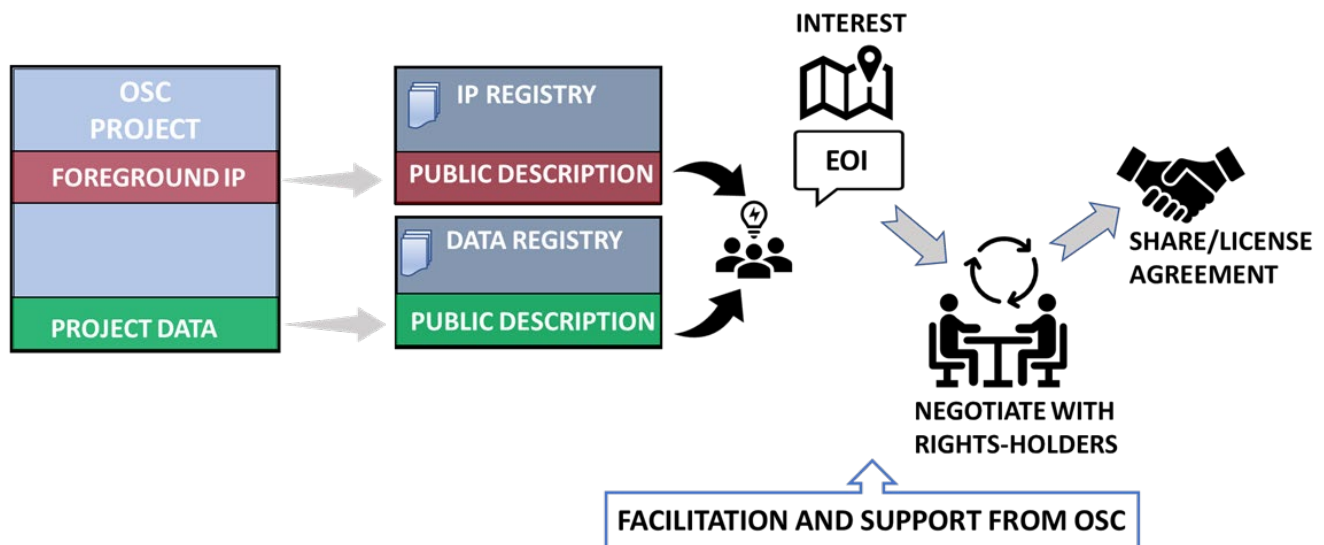


Figure 2: IP and Data Registry and EOI process (i.e., access request to Foreground IP or Project Data)

The OSC is not capable of granting access to Foreground IP which is listed in the IP Registry; access to Foreground IP can only be granted by the Project Participants.

Am I required to share Project Data that is listed in the OSC Data Registry?

For the avoidance of doubt, a Project Data rights-holder is not obligated to grant any interest (whether a license, ownership interest, or otherwise) in its Project Data to another party other than on terms which such rights-holder is prepared to accept in its sole discretion.

The OSC is not capable of granting access to Project Data which is listed in the Data Registry; access to Project Data can only be granted by the Project Participants.

Definitions

Background IP means such IP, along with all improvements to such IP, developed prior to the beginning of a Project or otherwise developed independently of a Project, which is required by Project Participants in order to facilitate completion of a Project.

Data Registry means the Member accessible registry developed and maintained by the OSC which will include descriptions of material Project Data arising from Projects or other activities undertaken by the OSC.

Expression of Interest means a written request delivered by a Member that is not a Project Participant, concerning an Outside License with respect to Foreground IP.

Foreground IP means all Intellectual Property conceived, produced, developed or reduced to practice in carrying out a Project by the Project Participants, and all rights therein, but expressly excluding Background IP.

IP means all inventions, whether or not patented or patentable, all commercial and technical information, whether or not constituting trade secrets, and all copyrightable works, industrial designs, integrated circuit topographies, and distinguishing marks or guises, whether or not registered or registrable.

IP Registry means the Member accessible registry developed by the OSC which will include descriptions of material Foreground IP arising from Projects or other activities undertaken by the OSC.

IP Rationale is a document that is part of the Project Proposal that demonstrates how the proposed project would create opportunities for Members to access expected Foreground IP arising from the Project.

Members has the meaning given to that term in the Members' Agreement of the OSC.

Outside License means a license to Foreground IP or Project Data granted by Project Participants to an Outside Member pursuant to a written agreement on mutually satisfactory terms.

Outside Member means a Member who is not a Project Participant.

Project means a project undertaken by two or more Members that is approved for funding by the OSC. **Project Agreement** means a written funding agreement entered into between the OSC and Project Participants with respect to a Project.

Project Data means data assets collected in relation to or arising from Project activities.

Project Participant means a Member that is participating in a Project pursuant to a Project Agreement. **Project Proposal** means a proposal submitted to the OSC by Members in accordance with the Project Selection Guidance Document.

OSC means Canada's Ocean Supercluster.

Outside Member means a Member, other than a Project Participant, that is seeking access to Foreground IP. **A right-holder** means a legal entity or person, including without limitation Project Participants, with a proprietary

Who can I contact if I have more questions about what is contained in this Guide?

The contact information for the OSC Director of Intellectual Property and Data Management is below:

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