



Intellectual Property (IP) and Data Guide

September 2024

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FAQ

What do Canada's Ocean Supercluster Intellectual Property and Data Strategies aim to achieve?

The Ocean Supercluster (OSC) Intellectual Property (IP) and Data Strategy, strives to:

- Catalyze and facilitate high-impact collaborations, provide a foundation for the development of flexible and predictable IP policies, and ensure Members can secure rights that are in line with their commercial interests;
- Support Members, particularly SMEs, in accessing advice about IP as Projects are developed and in increasing their understanding about how IP can improve their competitive position;
- Protect IP and Data rights-holders. There is no obligation for an IP or Data rights-holder to grant any interest in its Foreground IP, Background IP, or Data assets, to another party other than on terms which the parties are prepared to accept in their sole discretion; and,
- Encourage Members to explore opportunities to share or exploit IP and/or Data assets with other partners and maximize their potential to create value for Canada without compromising competitive interests.

How can I protect my IP before having discussions with other potential collaborators?

Every company should be concerned about protecting its IP. Filing for patents and ensuring you have a non-disclosure agreement (NDA) or an IP ownership agreement in place before entering into any discussions are important ways to protect your IP. Never discuss or disclose trade secrets, and do not discuss sensitive or proprietary information (e.g., data) without having robust protection measures in place.

How can the OSC help me develop projects that create valuable IP?

The OSC's Director for Intellectual Property and Data Management and the Technology Leadership Team are available to help Members with IP-related matters. When a Member is knowledgeable about IP, they may choose to not involve the OSC as they develop and/or negotiate IP arrangements with Project partners. The OSC is, however, available to support any Member that would like guidance on IP-related matters and we encourage you to reach out to us.

How are the IP and Data arrangements between the Project Participants considered at key points in the Project development and contracting process?

Figure 1, below, is a high-level illustration of the Technology Leadership (TL) 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 into a Project Agreement between the OSC and Project Participants.

The IP Rationale is formalized in the Project Agreement as an IP Schedule. Project Participants are responsible for negotiating the terms and conditions for ownership and use of Background IP and expected Foreground IP and these provisions are included 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 updates may be made to reflect the outcomes of any negotiation process.

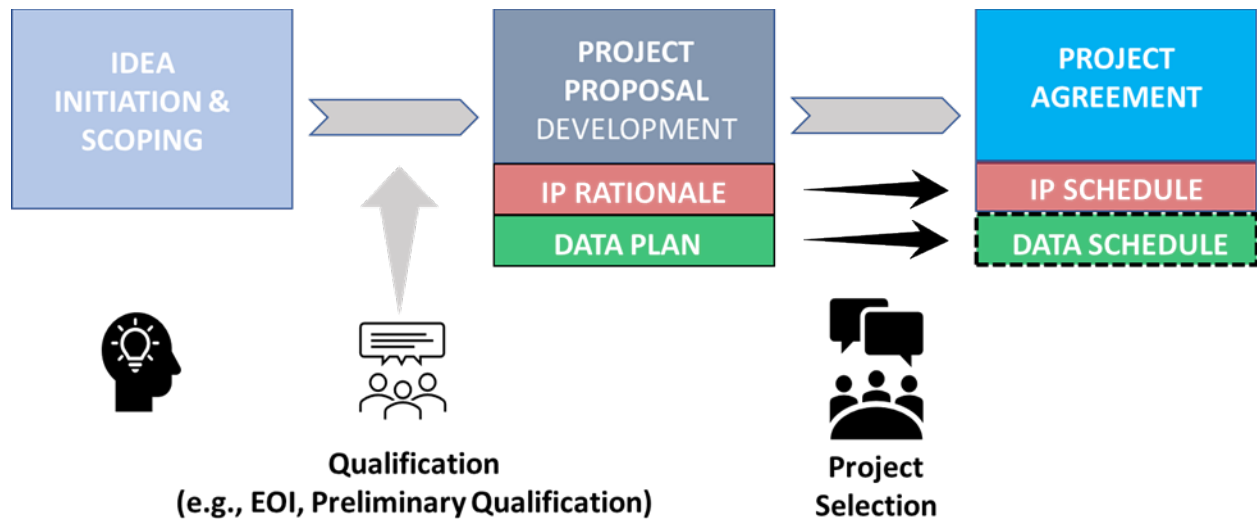


Figure 1: Project Development and Selection Process

Similarly, if applicable, the Data Plan is formalized in the Project Agreement as a Data Schedule. Project Participants are responsible for negotiating the terms and conditions for ownership and use of all 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.

Project Data includes Existing Data Assets required for the Project as well as Expected Data Assets that are to be collected or generated as a direct result of Project activities.

How are Background IP 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 Data Assets 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 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 contain 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 Participant's agreed ownership and licensing terms governing access to the expected Foreground IP 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 IP and, where possible, 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 in the future to grant access to Foreground IP to Members that are not listed in the Project Proposal or to other non-Members.

Note: Costs directly 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 contain a *Data Plan*. The Data Plan seeks to address the following questions:

- What, if any, Existing Data Asset(s) are necessary for the completion of this Project? Who will have authorization to use them, and on what terms?
- What, if any, are the Expected Data Assets to be generated through Project activities?
- What are Project Participant's agreed ownership and licensing terms governing access to the Expected 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 Data Assets, 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 Data Assets and any applicable limitations related to granting such access.

Project Participants may also decide in the future to grant 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 Intellectual Property Strategy 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 IP, 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 or not listed in 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 Project Selection Guidance Document 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 assets 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. The Data Registry may also house descriptions of Data assets that are not related to any Project. Members can browse the IP Registry and Data Registry to look for opportunities to create further economic benefit from listed Foreground IP or Data assets. The OSC Intellectual Property Strategy and Data Strategy encourage Members to explore all opportunities to benefit and maximize potential from Foreground IP listed in the IP Registry and/or Data assets listed in the Data Registry to create value and drive economic benefit for Canadian companies.

Members provide a “non-confidential” written description 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., for Foreground IP to be protected by patent, only submit a description for publishing to the IP Registry after a 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.

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

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

Members seeking access to any 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 OSC is not capable of granting access to Data assets listed in the Data Registry; access can only be granted by the Data rights-holder.

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

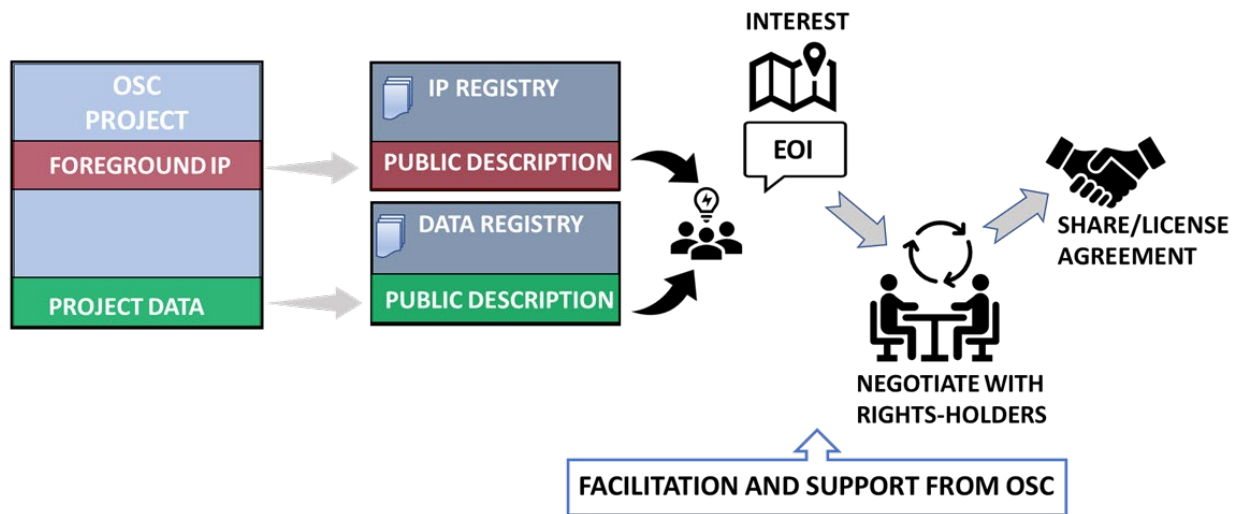


Figure 2: IP and Data Registry and EOI process (i.e., access request to Foreground IP or Project Data)

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 Project Data rights-holder is prepared to accept in its sole discretion.

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 assets includes Project Data as well as data assets not related to any specific OSC Project.

Data Plan is part of the Project Proposal and serves to demonstrate how the Project will create opportunities for Members to access Project Data.

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. The Data Registry may also include data assets that are not related to any specific OSC Project.

Data Schedule is the formalized Data Plan and is included as part of the Project Agreement.

Existing Data Assets refers to pre-existing data assets required for Project completion.

Expected Data Assets refers to data assets collected or generated through Project activities.

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 or Project Data.

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.

IP Schedule is the formalized IP Rationale and is included as part of the Project Agreement

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 Data includes Existing Data Assets required for Project completion as well as Expected Data Assets collected/generated through 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 OSC 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 or Project Data.

A right-holders means a legal entity or person, including without limitation Project Participants, with a proprietary interest in an intellectual property (IP) or Data asset.

Contact

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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