



To transmission companies,
distribution companies,
generators, suppliers, shippers,
offshore transmission owners,
independent network operators,
customer groups and other
interested parties.

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Addendum to the informal consultation on the Network Innovation Competition (NIC) and Network Innovation Allowance (NIA) Governance Documents

In our 10 October 2012 consultation letter¹ "October consultation letter", we set out the key principles we consider the Intellectual Property Rights (IPR) section of both the NIC and NIA Governance documents should meet. We also set out our intention to discuss these principles at an Innovation Working Group (IWG) meeting on 12 October alongside the specific drafting proposed for the Governance Documents. Following this working group, we have updated the draft IPR arrangements for the NIC and NIA and published both versions as an addendum to the informal consultation on the NIC and NIA Governance Documents. We welcome stakeholders' views on the proposed IPR drafting (in addition to comments on the proposed drafting of the NIC and NIA Governance Documents) by 21 November 2012.

IPR principles

Facilitating knowledge transfer is one of the key principles of the NIC and NIA. Consumers are funding the work and we want the knowledge generated to be disseminated as effectively as possible to ensure that all licensees, and therefore all consumers, are able to benefit from projects. As part of the governance arrangements for both the NIC and NIA we will introduce default IPR arrangements². These are intended to support knowledge transfer amongst licensees and deliver value for money to consumers without inhibiting third parties from collaborating on projects. In addition, we want to ensure that consumers do not pay excessively for innovations which they have funded.

We set out the key policy principles we are trying to achieve with the IPR arrangements in our October consultation letter. We then discussed these principles with stakeholders at the 12 October IWG³.

Following these discussions we have drafted versions of the IPR chapter for the NIC and NIA. Below we have summarised the high level policy principles for each.

¹ More information can be found [here](#).

² We already have default IPR arrangements under the LCN fund and we have used these as the basis for NIC and NIA IPR arrangements

³ The minutes and slides from this meeting can be found [here](#).

	Background IPR principles⁴	Foreground IPR principles⁵
General principle	<ul style="list-style-type: none"> The owner of background IPR should retain all rights to it both during and following the project, but we do not want customers to pay an unreasonable rate for this IPR if another network licensee wishes to replicate a NIC or NIA project on their network. 	<ul style="list-style-type: none"> Each project participant will own IPR that it independently creates or where jointly created, it should own a share equal to its contribution. All network licensees have the right to use relevant foreground IPR⁶ for use within their network royalty free.
NIC specific principles	<ul style="list-style-type: none"> A network licensee will need to confirm that they are conforming to the default IPR conditions as part of their full submission (or propose alternative arrangements to Ofgem). In addition, the licensee will be required to set out how they have negotiated future use of IPR for network licensees who wish to replicate the project. This will form part of the full submission evaluation criteria under “generates knowledge that can be shared amongst all relevant network licensees”. 	
NIA specific principles	<ul style="list-style-type: none"> The network licensee is required to consider and enter into contractual arrangements which will provide best long term value to all consumers during, and following the completion of, the project. These arrangements must provide value with regard to the level of funding provided by other project partners, the IPR terms agreed between the licensee and project partners as well as future pricing commitments (e.g. firm pricing for post project products, discounts arrangement, etc) offered by project partners. A network licensee must commit to this in their registration pro-forma and summarise the IPR arrangements. 	

We already have default IPR arrangements under the LCN Fund and we have used these as the basis for drafting the NIC and NIA IPR arrangements. The NIA condition has been made light touch and more flexible to reflect the volume and diversity of projects that may be funded through that scheme. The NIC condition remains broadly similar to the LCN Fund arrangements. Although, we have made some changes following discussions at the IWG:

- We are proposing to allow participants to charge for the use of Background IPR following the completion of the project.
- We are proposing to introduce a definition of commercial products which sets those products that are excluded from the concept of Relevant Foreground IPR.

In addition to the proposed IPR condition, we also intend to make a change within the NIC Governance Document to reflect the principles above. We will amend the sub bullet v, paragraph 5.58⁷/5.53⁸ in chapter 5, Full Submission Process to say the following:

⁴ Background IPR is IPR that has been formed prior to the NIC or NIA project

⁵ Foreground IPR is the IPR that has been generated as a result of the NIC or NIA project

⁶ Relevant foreground IPR is IPR that is necessary for another network licensee to replicate the NIC or NIA project

⁷ In the draft electricity NIC governance document

'The treatment of IPR: A Network Licensee must outline how if it intends to conform to the default arrangements for IPR set out in chapter 9. Where the network licensee wishes to deviate from the default arrangements it must demonstrate how the learning from the project can be effectively and efficiently disseminated. This must take into account any potential constraints or costs caused by the imposed arrangements. The Network Licensee must justify how these alternative arrangements will be able to deliver value for money for consumers.

In addition the licensee must also demonstrate that it has negotiated future use of any Background IPR or Foreground IPR generated through the project for other network licensees who wish to replicate the project. This should demonstrate how the arrangements deliver value for money for consumers'.

The purpose of the default IPR arrangements is to facilitate knowledge transfer and ensure value for money for consumers who have funded the NIC and NIA projects. To facilitate these objectives, the arrangements need to ensure network licensees have access to the relevant knowledge generated from the projects and ensure there are adequate protections so that consumers are not charged a second time for projects they have already funded. Funding for the NIC is awarded on a discretionary basis. Where the Authority considers a project does not deliver value for money for consumers, it will not be awarded funding.

Responding to the informal consultation

The draft IPR chapter now forms part of the informal consultation for both the NIC and NIA Governance Documents. We have published versions of the draft IPR chapter, that following this consultation will be incorporated into chapter 9 of the NIC Governance Document and chapter 7 of the NIA Governance Document. We invite stakeholders to comment on the proposed drafting of the IPR chapters alongside the draft NIC and NIA Governance Documents.

We welcome responses on these clauses and the rest of the informal consultation on the NIC and NIA Governance Documents by **Wednesday 21 November 2012**. A template for responses to our proposed drafting is provided as a subsidiary document to this letter. Responses should be sent, preferably by email, to networks.innovation@ofgem.gov.uk or in writing to:

Neil Copeland
9 Millbank,
London,
SW1P 3GE

Respondents who wish to have their responses remain confidential should clearly mark the documents to that effect. Unless marked confidential, all responses will be published by placing them on our website.

Next Steps

We recently consulted on the RIIO-T1 and GD1 draft licence conditions for the first time⁹. We intend to publish a second consultation on the licences on 30 October 2012. These consultations will be followed by the requisite 28 day statutory consultation in December 2012¹⁰ on both the licence conditions and the NIC and NIA governance documents.

⁸ In the draft gas NIC governance document

⁹ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?file=RIIOT1>

¹⁰ Following implementation of the Third Package Regulations the procedure for making licence modifications has been amended. Under the revised procedures, any proposed licence changes no longer require Licensee consent, but can only come into effect at least 56 days after we have published our decision to make those licence changes.

Should you wish to discuss the issues raised in this letter, please contact Nicola Meheran on 020 7901 0515 or email networks.innovation@ofgem.gov.uk

Yours faithfully.

Dora Guzeleva,
Head of Networks Policy: Local Grids