Benefit-Sharing from Genetic Resources:

Challenges for the Intellectual Property System

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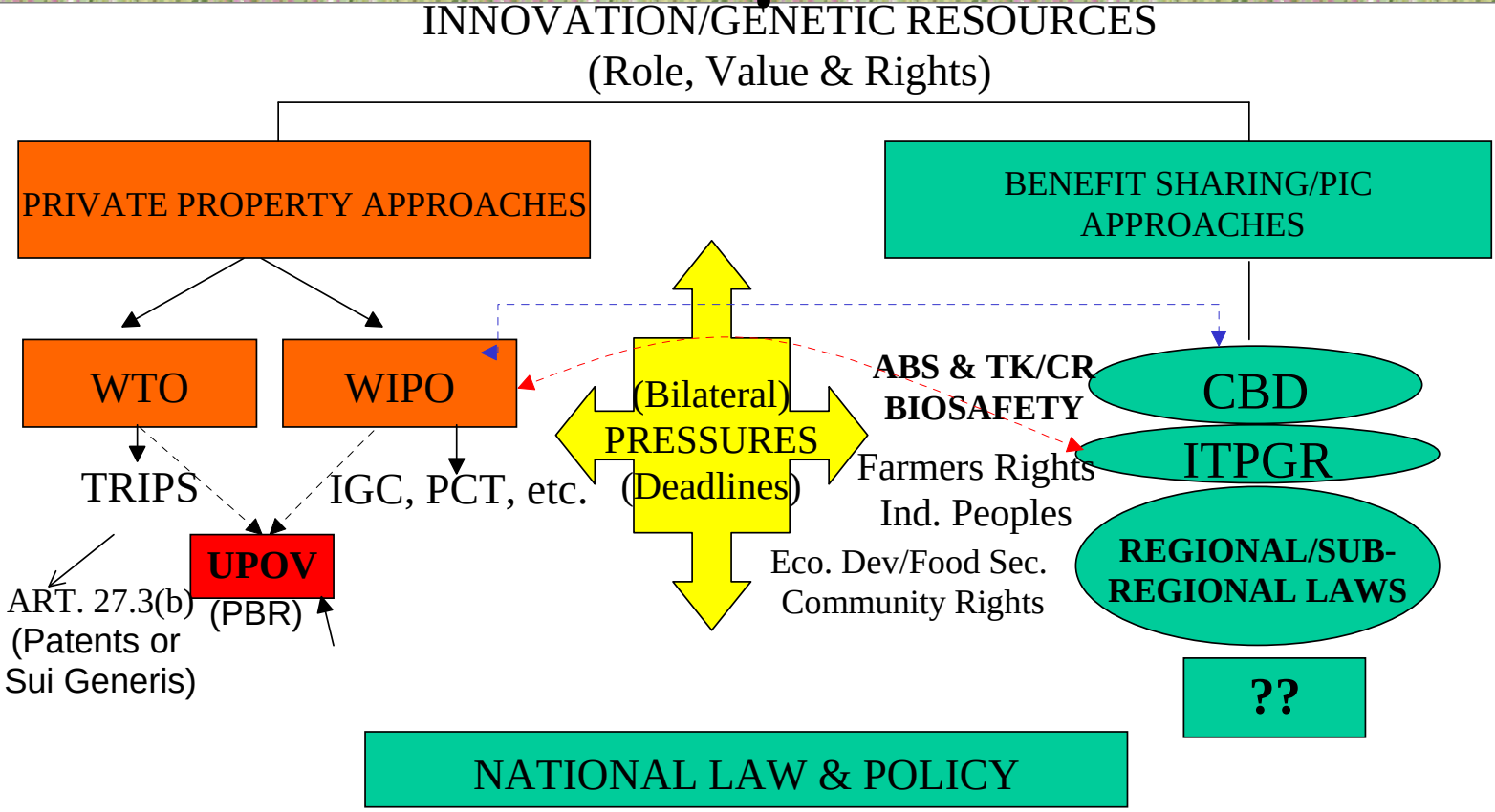
An Initiative of: icipe

THE GLOBAL IPR MAZE/MESS



TK/GR THROUGH THE IP GLASS

- Complexity and multiplicity of issues befuddling at best;
- Negotiations tend to polarise along north-south lines;
  ⇒ Stakeholder asymmetries
- Practical and Conceptual Gaps in Current IP Regimes;
  ⇒TK; Patents; Collective Rights; New Technologies, etc
- IPRs in the public sector affecting Research priorities.
- Strengthening of IPRs and the influence on the trend of innovation;
  ⇒From incentives to obstacles?

Major Challenges

- Influencing paradigms;
- Basic philosophies behind the elements of the agreements provide a background for why they are often perceived to conflict, or at least promote diverging approaches and mechanisms:
  - WIPO: significantly private sector-oriented;
  - CBD: environmental sector but with “market forces” twist;
  - IT: the private sector and market forces approaches don’t really function for agriculture – more “communal access” approach;

KEY POLICY ISSUES IN THE GR-IP INTERFACE

- IP Aspects of contractual arrangements;
- IP related provisions in ABS laws;
- Operation of multilateral aspects of ABS;

The linkage between genetic resources, TK and IPRs clearly recognised by the **CBD & IT**;

- CBD has already marked **disclosure requirements** in Patent applications for further discussion & consideration

COP-7 Request

8. Invites the WIPO to **examine, and where appropriate address**, … issues regarding the interrelation of access to GRs and disclosure requirements in IPRs applications, including, *inter alia*:

(a) Options for model provisions on proposed **disclosure requirements**;

(b) Practical options for IPR application procedures with regard to the triggers of **disclosure requirements**;

(c) Options for incentive measures for applicants;

(d) Identification of the implications for the functioning of **disclosure requirements** in various WIPO?administered treaties;

(e) IP-related issues raised by proposed international certificate of origin/source/legal provenance;

and regularly provide reports to the CBD on its work, …, in order for the CBD to provide additional information to the WIPO for its consideration in the spirit of mutual supportiveness;

KEY POLICY ISSUES IN THE GR-IP INTERFACE

3 functions of disclosure requirements:

- Disclose any GR used in the course of developing an invention (a descriptive or transparency function);
- Disclose the actual source of the GR (a disclosure of origin function);
- Provide an undertaking or evidence of PIC (a compliance function).

KEY POLICY ISSUES IN THE GR-IP INTERFACE

5 issues to be addressed under disclosure requirements:

- What link between the GR/TK and the claimed invention is needed to trigger the obligation?
- What legal principle/doctrine forms basis of the requirement?
- What is the nature of the obligation?
- What are consequences of non-compliance?
- Operational issues: implementation, verification & monitoring of the requirement.

IMPLICATIONS OF CBD Request & the New ICG Mandate

- New opportunities or bigger risks?
- Appropriate forum for the issues under discussion?
  - *How can disclosure requirements be consistent with other processes?*
- *Important steps toward developing internationally acceptable and equitable solutions for the protection of GR, and TK.*

Conclusions

- Parties must focus on the need to understand and respect the differences between sectors;
- Need to bring to WIPO's discussions the perspective and needs of other sectors in a spirit of mutual respect for the respective mandates of the different institutions – CBD, FAO, WTO, etc;
  - E.g. recognise that IT provisions are different from contractual systems; origin of materials from the IT's MLS;
- Dimensions are diverse at this stage – addressing them in one fora does not necessarily remove from the legitimacy of discussions in others.

Conclusions

- Capacity and coalition building at the institutional, local, national, regional and global levels;
- Dialogue of sectors and sustained engagement at national, regional and global levels;
- Transition from process to substance.

Thanks