

THE NAGOYA PROTOCOL AND ITS EFFECT ON THE PROTECTION
OF TRADITIONAL KNOWLEDGE

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Traditional Knowledge (TK)

- ▣ Possessed by indigenous groups concerning the medicinal value of natural products
 - Developed over large periods of time
- ▣ Developing Countries contain more TK than Developed Countries
 - Developing countries contain more indigenous people
- ▣ Developing Countries contain more biodiversity than Developed countries.

BioPiracy

- ▣ Use of genetic resources based on TK without sharing benefits with the holders of TK
 - ▣ Shuar tribes
 - ▣ NCI harvesting of *Maytenus buchananni* in Kenya
 - ▣ Rosy Periwinkle by Eli Lilly from Madagascar.
- ▣ Companies in developed countries obtain patents

International Response

- ▣ The Convention on Biological Diversity (1992)
 - One of its primary goals is to ensure fair and equitable benefit sharing
 - ▣ Prior Informed Consent for access to Genetic Resources
 - ▣ Establishes Trust
- ▣ Bonn Guidelines (2002)
 - Voluntary
 - Set Guidelines to strengthen Prior Informed Consent

PIC debate- Nagoya Protocol

- ▣ After Bonn Guidelines debate over PIC
 - Developed countries = market based approach
 - Developing Countries = more recognition of rights in TK
- ▣ Market based won out
 - Capacity and lack of funding were probably the reason why.

Nagoya Protocol

- ▣ Adopted 2010- takes affect after 50 countries ratify
- ▣ Strengthens PIC
- ▣ Creates obligations to set up administrative mechanisms for obtaining PIC
- ▣ Allows access to the CBD financial mechanism

Incompatibility of TRIPS & Nagoya

▣ TRIPS

- Allows the patenting of any novel invention
- Does not recognize rights in TK
- Creates imbalance between developed and developing countries

▣ Nagoya

- Strengthens PIC, but still not different from the status quo in terms of property rights for TK

Will the Protocol Have Any Effect?

- ▣ Past PIC agreements have been successful
 - Merck/InBio
 - US National Park agreement
- ▣ Took large amounts of initial funding
- ▣ Had nothing to do with Traditional Knowledge

Alternatives to Nagoya

- ▣ Requiring PIC as a part of disclosure in TRIPS
 - Not likely to occur
- ▣ Joint Inventorship
- ▣ Litigation
 - Peru
- ▣ Database construction
 - India and China

Conclusions

- ▣ Nagoya Protocol will not be effective due to remaining incompatibility with TRIPS and funding problems.
- ▣ Developing Countries/Indigenous groups will have to make their own investment in protecting TK.