

Genetic Resources and Intellectual Property: Recent developments under the Convention on Biological Diversity



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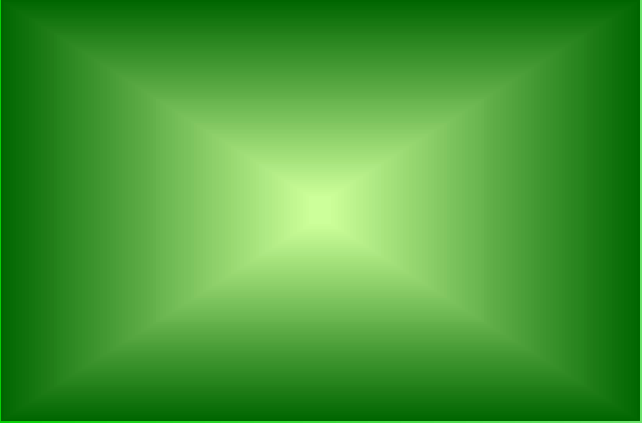
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I. Introduction

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COP has also addressed the role of IPRs in the implementation of ABS arrangements.

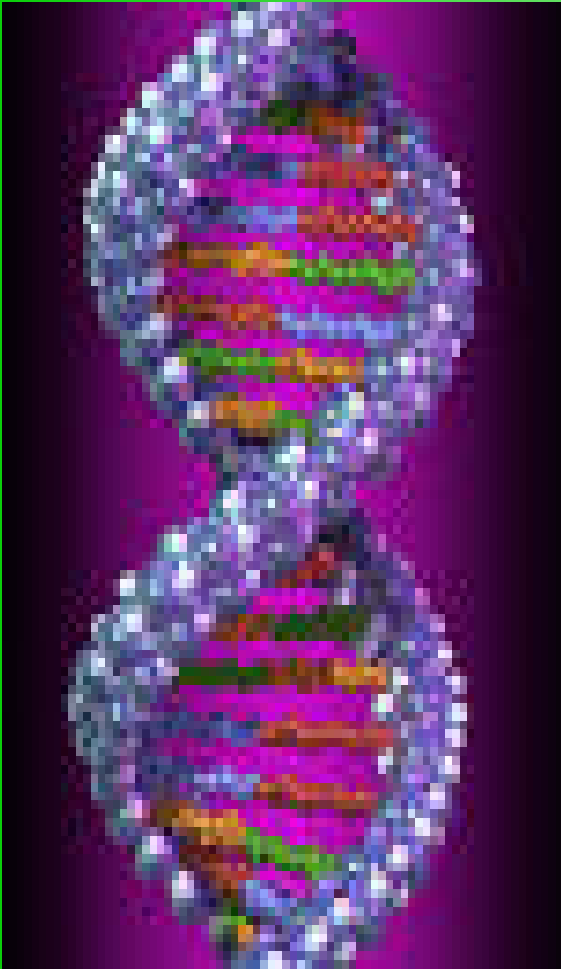


II. Overview of relevant Provisions

2.1 Access and benefit-sharing:

Article 15 of the CBD:

- 4 **Sovereign rights** of States over natural resources;
- 4 Parties to **facilitate access** to genetic resources;
- 4 Access subject to **prior informed consent** and granted on **mutually agreed terms**;
- 4 Parties to take measures to **share benefits from the utilization of genetic resources, on MAT**





II. Overview of relevant Provisions



2.2 Traditional Knowledge:

Article 8(j) of the CBD:

- 4 Parties to respect, maintain, preserve traditional knowledge of ILCs;
- 4 Promote wider application of TK with approval, involvement of holders;
- 4 Encourage equitable sharing of benefits;

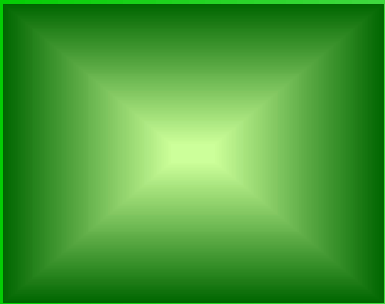


II. Overview of relevant Provisions

2.3 Access to and transfer of technology:

Articles 16 and 19 of the CBD:

- 4 Parties to provide and/or facilitate access and transfer of technologies: **(i) for conservation and sustainable use of biodiversity, and (ii) that make use of genetic resources [Article 16(1)];**
- 4 Parties to take measures to provide for the effective participation in biotechnological research activities by Parties providing GR [Article 19(1)];
- 4 Parties to take measures to promote priority access by Parties providing GR, to the results and benefits from biotechnologies based upon GR provided [Article 19(2)].



III. Recent developments in the CBD process:

3.1. Access and benefit-sharing

3.2. Traditional Knowledge

3.3. Access to and transfer of technology



3.1 Access and benefit-sharing

3.1.1 The Bonn Guidelines on ABS

OBJECTIVES:



- Provide a transparent framework to facilitate access to GR and ensure benefit-sharing;



- Provide guidance to Parties in the development of ABS regimes;



- Inform the practices and approaches of stakeholders;

- Provide capacity-building for effective negotiation and implementation;

- Promote technology transfer to Parties providing GR.



3.1. Access and benefit-sharing

3.1.1 The Bonn Guidelines on ABS

KEY FEATURES:



- Roles and responsibilities of national authorities, users and providers of GR;

- Participation of stakeholders in the development and implementation of ABS arrangements;

- Steps in the ABS process;

- Basic requirements for and elements of MAT and benefit-sharing; and

- Measures for the implementation of the guidelines and ABS arrangements.

3.1.2 Intellectual Property Rights and ABS

IPRs in the Bonn Guidelines:



- Parties with users of GR are required to:
 - Encourage disclosure of the country of origin of GR and of associated TK in applications for IPRs; and
 - (ii) Prevent the use of GR obtained without PIC of the Party providing such resources [para.16(d)].



- Basic requirements for MAT include:
 - The use of IPRs, including joint research; and
 - (ii) Joint ownership of IPRs [para.43].



- National monitoring of compliance with MAT may include applications for IPRs relating to the material supplied [para. 55].

- Suggested elements of MTAs (Appendix 1).

- List of possible monetary and non-monetary benefits (Appendix 2).

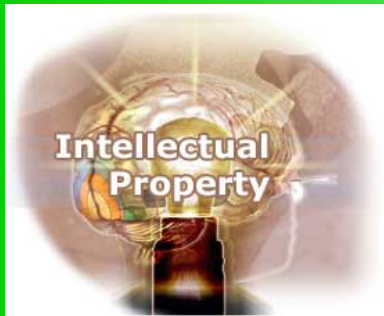
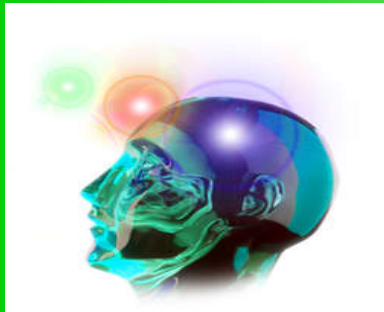
3.1.2 Intellectual Property Rights and ABS

COP-6 and disclosure requirements:
(DECISION VI/24C)

- 4 Parties and Governments to encourage the disclosure of country of origin of GR and the origin of relevant TK in IPR applications.
- 4 WIPO to prepare a technical study on a number of disclosure issues, in particular methods consistent with obligations in WIPO treaties for requiring the disclosure within patent applications of:
 - GR utilized in the development of claimed inventions;
 - The country of origin of GR utilized in inventions;
 - Associated TK, innovations and practices;
 - Evidence of PIC.

Technical study
submitted to COP7.

3.1.2 Intellectual Property Rights and ABS



Relevant outcomes of COP-7: (DECISION VII/19)

The COP invited WIPO to examine:

- 4 Options for model provisions on proposed disclosure requirements;
- 4 Practical options for IPR application procedures with regard to triggers of disclosure requirements;
- 4 Options for incentive measures for applicants;
- 4 Identification of the implications for the functioning of disclosure requirements in various WIPO administered treaties;
- 4 IPRs related issues raised by the proposed international certificate of origin/source/legal provenance; and to provide regular reports to the CBD on its work.



3.1.3 The International Regime

4 WSSD Plan of Implementation [paragraph 44(o)].

4 WG mandate to negotiate international regime (decision VII/19).

4 Terms of reference:

- Process: nature, scope and elements based on analysis of existing instruments;
- Nature: one or more instruments, legally binding or non-binding;
- Scope: to cover ABS and TK
- Elements: Include disclosure of origin of GR and TK in IPR applications; protection of TK associated with GR; measures to ensure compliance with MAT; relevant provisions of RIPs, WIPO instruments and UPOV.



3.2. Traditional Knowledge

3.2.1 Implementation of Article 8(j):



- COP-5 adopted a POW on Article 8(j) and related provisions (decision V/16);



- Relevant tasks:

- Development of guidelines for mechanism and legislation on benefit-sharing with ILC
- Assessment of national and international instruments, especially IPRs instruments that have implications for TK;
- Development of guidelines, including *sui generis* systems for the protection of TK.





3.2. Traditional Knowledge

3.2.2 Relevant outcomes of COP-7: (DECISION VII/16)

I. Development of elements of *sui generis* systems for the protection of TK:

- 4 ABS arrangements important for the preservation and maintenance of TK;
- 4 Defensive and positive measures may be necessary for the protection of TK;
- 4 *Sui generis* systems at international level may enable ILCs to protect TK.

COP noted:

II. Future Actions:

- 4 Information gathering on *sui generis* systems.





By the Working Group

3.2 Traditional Knowledge

3.2.2 Relevant outcomes of COP-7:

(DECISION VII/16)

III. Future Actions:

- 4 Develop elements for *sui generis* systems on the basis of potential elements contained in annex;
- 4 Examine whether the international regime on ABS could include *sui generis* systems and measures for the protection of TK;
- 4 Explore taking into account *inter alia* the work of WIPO, the potential of and conditions under which the use of existing and new forms of IPRs can contribute to achieving the objectives of Article 8(j);
- 4 Invites WIPO to make available to the WG the results of its work relevant for the implementation of Article 8(j).



3.3. Technology Transfer

3.3.1 POW on Technology Transfer:

4 COP-7 adopted POW (VII/29).

I. Purpose:

4 To develop action to enhance implementation of Articles 16 to 19 of CBD.

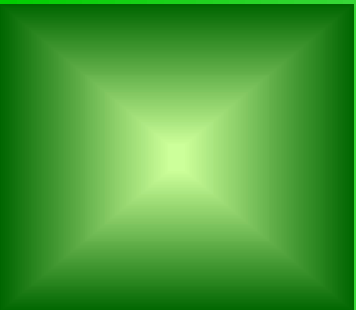
II. Scope:

4 Technology assessments

4 Information systems

4 Enabling Environment

4 Capacity-building and enhancement.





3.3. Technology Transfer

3.3.2 GR, IPRs and Technology Transfer:

- 4 Expert Group on technology transfer established.

I. Mandate:

- 4 Preparation of proposals on measures and mechanisms for priority access by Parties providing GR to results and benefits arising from technologies;

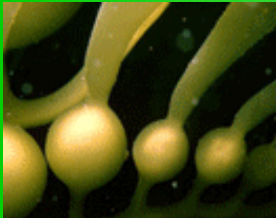
II. Activities under PoW:

- 4 Technical study on the role of IPRs in technology transfer (CBD, WIPO and UNCTAD);
- 4 Compilation of information on mechanisms and measures to promote and advance priority access to biotechnologies by Parties providing GR.





CALENDAR



**Third *Ad Hoc* Open-ended Working Group on
Access and Benefit-Sharing**

21 - 25 February 2005, Thailand



**Fourth *Ad Hoc* Open-ended Working Group on
Access and Benefit-sharing**

13 - 17 March 2006, Spain



**Fourth *Ad Hoc* Open-ended Working Group on
Article 8(j)**

March 2006, Montreal, Canada



**Eighth meeting of the Conference of the Parties
to the Convention on Biological Diversity (COP-8)**

8 - 19 May 2006, Brazil