

Implications of the Intellectual Property System on Equitable Benefit Sharing from Biodiversity Conservation

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Key background and historical elements

Tensions between biodiversity rich (providing countries) and user countries, regarding:

- Control and rights over biodiversity components (seeds, genes, parts thereof)
- Extended use of patents to protect biodiversity derived inventions (based on components obtained in biodiversity rich countries and on associated traditional knowledge of indigenous people)
- Strengthening of the international/national patent regime(s)
- Biopiracy (as a policy and awareness raising concept)



Key conceptual elements

- Convention on Biological Diversity (1992 – legal foundation for and general principles on “benefit sharing” from access to and use of *genetic resources*)
- *Equitable* and *fair* benefit sharing
- Focus of debate on benefit sharing in the “Access and Benefit Sharing” context



The role/impact of IP on conservation of biodiversity

Key considerations:

- IP implies, indirect impacts (as tools apply to goods, research, data, services, etc. which may have a bearing on conservation and local livelihoods ...)
- Localized impacts (i.e. in specific countries or ecosystems, specific agroecosystems, livelihoods, research contexts, etc.) – no general assumptions nor conclusions
- Some IP tools *may* be useful to stimulate research, dissemination of knowledge, create commercial advantages, etc. (collective marks, copyright, geographical indications, even PBR in certain circumstances)
- Linkages are being made between ABS regimes and patents (through disclosure requirements, better patents searches, etc.)



How are these impacts reflected

- Erosion and displacement of native biodiversity (in agricultural systems) when improved, “modern”, IP protected varieties are introduced
- Rights over biodiversity related inventions and isolated components
- Misappropriation of genes (many wrongly/badly granted patents – not novel nor are inventive)
- Irregular/un-ethical use of traditional knowledge
- Linkages between patents and genetically modified organisms (a hotly disputed issue in many developing countries, generates strong reactions and opposition)
- Strict access (ABS) legislation (which affects R&D possibilities) as a reaction to IP strengthening or “harmonization” efforts



What may be needed

- A new look and assessment of the role of patents in a development context (WIPO Development Agenda)
- A new look at “benefit sharing” – in a broader “conservation” context (costs and benefits)
- Development of methodologies to address how patents (maybe IP in general) impact biodiversity conservation in particular
- A look into “equity and fairness” principles – there is an ethical/moral dimension often overlooked and downplayed but which is critically important and relevant for many countries and cultures



What may be needed



- Detailed fact and data based analysis regarding the social, cultural and economic impacts of IP on biodiversity conservation and use
- Development or review of national IP systems (patents especially) based on *national* contexts and needs
- Strong exemptions (in patents and PBR regimes) – to ensure continued research and access to materials
- Continued awareness and capacity building processes (which include clarifications regarding the exact operation and objectives of the IP system in general and patents in particular)

Thank you

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