

DISCUSSION PAPER

IPRs and the International Regime on Access to Genetic Resources and Benefit-sharing.

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International action to protect genetic resources, access to such resources, and the benefits obtained from their use, must take into account that most countries already have in place distinct treaties and agreements related to commerce, IPRs and genetic resources, but that the vast majority of these still lack a specific national law on access to genetic resources and benefit-sharing (ABS).

As such, it would be reasonable to assume that countries with different IPRs, international treaties and regimes will face serious problems if they want to achieve the goals of the Convention on Biological Diversity (CBD) and may not be part of (or at least comply with) an international legally-binding ABS regime.

In light of this, it is important for all CBD contracted Parties to understand, and be fully aware of, all the relevant intellectual property treaties and agreements, in order to meet the general provisions of any mandatory, legally-binding regime. This should be independent of their international IPR obligations and compromises, and take into consideration special and differential treatments for countries depending on their development and their own national legislation.

To comply with such an objective, it is necessary to first consider that many different countries are members of different treaties and agreements that have a considerable impact on the intellectual property protection of genetics resources and associated benefit-sharing. For example, it is important to consider the following: 148 countries comply with the TRIPS agreement, 181 comply with the WIPO treaties, 124 countries are signatories to the Patent Cooperation Treaty (PCT), 59 are part of the Budapest Treaty on the International Recognition of Deposit of Microorganisms for the Purposes of Patent Procedure, 57 are members of the International Union for the Protection of New Varieties of Plants (UPOV), and 22 are part of the Lisbon Agreement (for the Protection of the Appellations of Origin).

In issues related to biological diversity, we must consider the following facts: there are 188 Parties to the CBD (although only 168 are signatures - the CBD has not been ratified, for example, by the United States of America), 109 Parties make up the Cartagena protocol of Biosafety (103 signatures), the FAO has 188 members, although only 55 countries have ratified the International Treaty on Plant Genetic Resources for Food and Agriculture (Mexico is not a ratified country).

From this data, it is clear that any International Regime on Access to Genetic Resources and Benefit-sharing (IR-ABS) will depend on the knowledge of both National and International

¹ The views expressed are solely those of the author.

III. Specific Issues for consideration in the elaboration of the IR:
Interface with Existing IP Systems & Limits and Opportunities for Existing IP Rights

bodies and agreements, and that it is not possible to achieve the goals of the CBD if negotiations are solely linked or biased towards a specific treaty, agreement or organization. A very significant fact is that a considerable number of countries are not part of the most important legally-binding IPR treaties and agreements (i.e. PCT and UPOV) - which will have to be modified in order to comply with the CBD and, in particular, with the concerns of Article 8(j).

In conclusion, any proposal for an International Regime must consider the differences in the international obligations of those countries that are Party to the CBD. A initial approach to help solve this problem could be based around an attempt to get missing CBD members to sign or ratify specific IPRs agreements or treaties (for example PCT and UPOV), and to get the Conference of the Parties to invite the different Organizations to negotiate or consider, within their specific contexts, all the assets necessary to achieve an effective International legally-binding Regime on access and benefit-sharing.