


DAY THREE

Session 7 Summary of Overheads

3.7.1

**Session 7:
IPRs II: How Intellectual Property
Rights Can Affect the Daily
Management of PGRFA**




Law and Policy of Relevance to the Management of Plant Genetic Resources - 3.7.1

3.7.2

Objective of Session 7

➤ To discuss how intellectual property laws can affect the development, improvement, benefit sharing for, access to, and distribution of genetic resources in genebanks




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3.7.3

Background

- Intellectual property issues may arise in the acquisition, characterization and distribution of germplasm
- IP issues may involve formal (statutory) intellectual property rights (IPRs) and/or IPRs arising from contractual obligations
- Genetic Resource Managers need to know whether there are formal IPRs associated with germplasm that is in their collection
- IP 'protection' essentially means that third parties can be prevented from producing or selling goods or services using such information without the title-holder's authorization
- Depending on national laws, patents—one of the most important forms of intellectual property—may be applied to genes, cells, microorganisms and different classifications of plants and animals



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3.7.4

IP 'Protection'

- Third parties can be prevented from producing or selling goods or services using such information without the title-holder's authorization
- Unlike physical property rights, intellectual property rights are temporary, except in cases of trade secrets and trademarks
- One of the most important forms of intellectual property may be applied to genes, cells, microorganisms and different classifications of plants and animals
- The availability of the product for further research differs between most patent systems and systems conferring plant breeders' rights
- Intellectual property rights are normally held by individuals and private entities



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3.7.5

Non-Statutory IP Protection

- Arises from an agreement or contract such as a material transfer agreement (MTA), covering the material to be transferred, given or distributed
- Germplasm does not need to be protected by PVP or a patent, or any other formal protection, for its distribution to be carried out under the terms of an MTA
- GR managers need to be aware of what is needed to implement institutional IP guidelines. This includes relevant treaties and laws



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3.7.6

Limitations to Access

- Another issue that has generated concern is the impact that the appropriation of genetic materials under IPRs, where admitted, may have on the access to such materials for further research and development
- The granting of plant breeders' rights (PBRs) does not limit the use of the protected material as a source for further research and breeding, because of the generally accepted 'breeders' exemption'
- In the area of patents, opinions diverge over whether a patent would prevent a third party from commercially using a protected gene in cases where its expression was not obtained through biotechnological means but as a result of conventional plant breeding methods



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3.7.7

Traditional Knowledge

- The need to develop some form of protection for communities' knowledge has gained some recognition since the 1990s
- Many approaches have been proposed to deal with communities' knowledge, ranging from the creation of new *sui generis* forms of IPRs to the simple option of legally excluding all forms of appropriation of such knowledge, whether under patents, breeders' rights or other modalities of IPRs
- Only a few countries have so far addressed the complex conceptual and operational problems involved in the recognition of indigenous and local communities' rights over their knowledge



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3.7.8

Acquisition and Use of Technology: Relevance to GR Access and Distribution

- Any acquisition of material characterized as a genetic resource implies that the material is coming from some identifiable source
- GR managers need to acquire new material in such a way that it can be distributed in accordance with institutional IP policy at some future date
- Sometimes, tracking down all of the technology, the IPR associated with the technology and the owners of the IPR can be very complex, involving the co-operation of many owners, and may require the use of legal assistance
- Remember that IPRs are granted under the authority of a sovereign state



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3.7.9

Lessons from the CGIAR

- The CGIAR has endorsed Guiding Principles on Intellectual Property Rights and Genetic Resources, recognizing that they may need to evolve in response to changing laws and technology
- Methods and technologies of critical importance to the research function of CGIAR centres are also increasingly protected by intellectual property rights, rendering access and use more problematic
- The underlying philosophy for the CG Guiding Principles is that the management of intellectual property by CG centres must be guided by the CGIAR mission to contribute to food security and the eradication of poverty in developing countries through research, partnerships, capacity building and policy support



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3.7.10

Links Focused on International Agreements and IP/IPR

- ⇒ www.ictsd.org/weekly/index.htm
- ⇒ www.iprsonline.org/
- ⇒ www.fao.org/ag/cgrfa/exsitu.htm
- ⇒ www.wipo.org/treaties/ip/paris/index.html
- ⇒ www.iisd.ca/
- ⇒ www.iisd.org/default.asp
- ⇒ dmoz.org/Society/Issues/Intellectual_Property/Genetic_Resources
- ⇒ europa.eu.int/comm/trade/issues/index_en.htm
- ⇒ www.american.edu/projects/mandala/TED/hpages/ipr/misa.htm

