

Non-Commercial Research and an International Regime for Access and Benefit Sharing

A Prospectus for an International Workshop
Convened by the Consortium for the Barcode of Life

The Consortium for the Barcode of Life (CBOL; www.barcoding.si.edu), proposes to convene a workshop in the Fall of 2008 that will focus on basic biodiversity research and its relation to the development of an international regime for Access and Benefit Sharing (ABS). The workshop will engage basic researchers and policy-makers from both industrialized and developing countries, and representatives of the legal, economic, and political dimensions of ABS. In proposing this international, cross-sector workshop, CBOL seeks to rationalize the importance of commercial research and the protection of property rights, with the benefits both developing and developed countries can obtain from non-commercial academic research. CBOL invites expressions of interest* from other organizations and individuals wishing to be workshop co-sponsors and co-conveners.

Goals of the Workshop. The debate over ABS has focused on the monetary benefits of commercially-driven research, even though this is a small component of all biodiversity research. This workshop will attempt to redress this imbalance by exploring and assessing the risks and benefits associated with curiosity-driven research. The workshop will produce a report that will be provided to the Secretariat of the Convention on Biological Diversity (CBD) and the CBD Working Group on ABS as an information resource. The report will also be circulated to relevant stakeholders and submitted for publication in a biological research journal. The report will attempt to:

- Clarify the various forms of benefit, other than proprietary monetary benefits, that can be derived from research on biodiversity, including:
 - non-proprietary non-monetary benefits such as increased knowledge or research capacity; and
 - non-proprietary economic benefits, such as increased national productivity or improved public health;
- Explore the trade-offs among these and other types of monetary and non-monetary benefits that can result from different ABS regulations;
- Articulate the distinction between research initiated with the goal of creating new knowledge, as opposed to obtaining commercial return on investment,
- Create ways to operationalize this distinction so that it can be used in developing the International Regime for ABS;
- Assess the impact of a potential ‘one-size-fits-all’ approach to the ABS International Regime;
- Assess the advantages and disadvantages of a ‘multi-tiered’ approach to the ABS International Regime that reflects distinct kinds of research and related benefits;
- Outline a Code of Conduct for non-commercial researchers, with the goal of building trusting relationships among participants in ABS agreements; and

Develop sample ABS documents that address the concerns of all participants who are working in diverse research, legal and political contexts.

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The proposed workshop. CBOL envisions a 4- to 5-day workshop of no more than 50 participants, including:

- Biodiversity researchers from academic institutions in industrialized and developing countries, especially those with high biodiversity;
- Government officials involved in ABS regulation from developing and industrialized countries;
- Participants in and observers to the CBD ABS Working Group, including lawyers, economists, and representatives of NGOs.

Co-sponsors of the workshop will form a Steering Committee to solicit nominations and expressions of interest from potential workshop participants. The Committee will issue invitations with the goal of creating balance among disciplines, geographic regions, sectors, and interests. All travel expenses of the workshop participants will be provided.

Background. Article 15 of the CBD calls on Parties to the Convention to “facilitate access to genetic resources” and to create “fair and equitable” sharing of the resulting benefits. The Convention entered into force in 1993 and an ABS Working Group was established in 2000. In 2004 the Working Group was given a mandate to create an International ABS Regime.

Considerable attention has been given to protecting the property rights of countries which own genetic resources that may have commercial value, especially resources that could be developed into highly profitable pharmaceuticals and other biomedical and agricultural applications. Some countries have enacted strong regulations that limit access to samples of their biodiversity in order to maintain strong positions as they negotiate benefit sharing agreements. Research on biological diversity varies across a wide spectrum. Commercial research leading to drug development represents only one end of this spectrum. This type of research is extremely high risk, involving large expenditures over a decade or more; a very high proportion of these projects end in failure. On very rare occasions, the research leads to an enormously profitable product and countries of origin rightly seek a fair portion of the monetary benefits. However, access restrictions has hampered a large proportion of non-commercial research done by academic scientists, including in-country researchers.

At the other end of the spectrum, basic research on biological diversity is being done by academic scientists in universities, museums, herbaria, and other research institutions. Their goal is to document species and to broaden and deepen our understanding of nature. They produce academic publications that make this knowledge available to others. In almost all cases, academic researchers publish their results with no intention of holding proprietary ownership of specimens, data, or genetic resources and no expectation of personal gain from commercial development. Their results are published and become part of the public domain, reducing the ability to patent and profit from the research. Nevertheless, the public knowledge can produce important societal and economic benefits, and can help countries of origin identify more easily their genetic resources, thereby facilitating the implementation of Article 15 of the CBD in cases where commercial use is developed from them..

There are uncommon but important examples of research projects between these end-points of the spectrum. Countries of origin may establish new infrastructures for basic biodiversity research, knowing that non-commercial knowledge can become the starting point from which farther research and innovation, commercial or not, may develop. In rare cases, non-commercial research can lead to discoveries of substances and properties with commercial potential. The goals of the original researcher may change from publications to patenting and licensing. A private company may use the research publication and specimens as a starting point for commercial development.