

ABS Challenges: An Australian Perspective



**Its All About Understanding
Risk**

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Scope of Presentation

- The central role of risk
- Risk from three perspectives
- Consequential challenges
- A way forward



ABS Challenges from the Perspective of Risk

- Corporations
- Developing countries
- Traditional biodiversity Knowledge holders
- Scientific researchers



Corporate Risks in Biodiscovery

- Definition of Risk = *Anything that threatens shareholder value:*
 - Regulation of the commons = a risk to corporate access to genetic and biological resources
 - Fair and equitable benefit-sharing = risk to corporate profit
 - Prospective Government regulation = risk to companies freedom-to-operate



Government Risks in Biodiscovery

- Definition of Risk = *anything that threatens the legitimacy of Government and its policies*
- Access = risk of resource expropriation
- = risk of environmental damage
- Benefit-sharing = risk of economic loss
- Government regulation = risk of failure



Indigenous Knowledge-holders' Risks

- Definition of Risk = *anything that damages the culture and social and economic interests of TK holders*
- Risks of TK use = possible expropriation of the knowledge
 - = loss of economic value
 - = damage to culture
 - = creation of conflict within, and between, Indigenous and local communities
 - = IP system providing advantages for the interests of written TK over those of oral TK holders
 - = commodification of traditional remedies rarely leads to economic gain e.g. Kava



Responses to Risk: Corporations

- Reduction in natural product discovery effort
- Reliance on alternatives e.g. synthetic recombinant chemistry
- Transfer discovery risk to public sector research and biotech start-ups
- Increased use of pre-CBD resources and those outside national jurisdiction



Response to Risk: Governments

Some developing countries:

- Discouraged natural product research
- Introduced restrictive ABS legislation and
- Seek to
 - transfer the burden of management and regulation of the commercialisation of genetic resources to developed countries via a new treaty
 - Amend the TRIPS agreement



Response to Risk: Australian Government

- Provide legal certainty to all parties
- Implement world's best practice (Bonn Guidelines)
- Work with all stakeholders – Especially the biotech industry
- Actively encourage investment in Biodiscovery
- Introduce safeguards for any use of TK



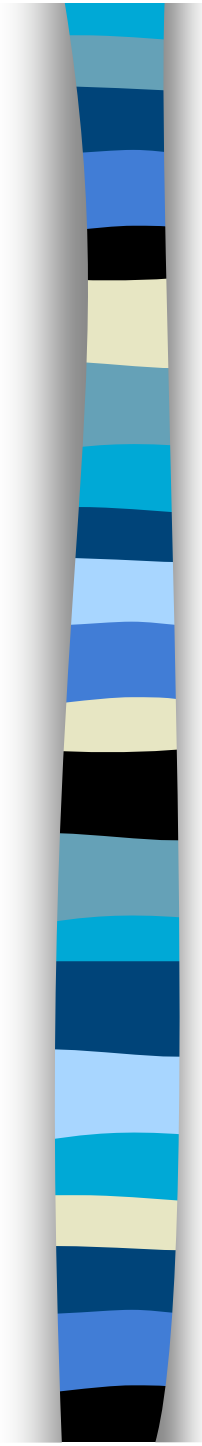
Australian ABS System Objective

- Harness genetic resources as a vital ecosystem service
- Safeguard the environment
- Raise the value of biodiversity and support biotechnology
- Support Indigenous communities to make TK available on their terms
- Create a new & potentially valuable resource for Australia



Responses to Risk: Indigenous Knowledge-holders

- Display great caution
- Demand legislative TK protection
- Seek multilateral TK protection
- Considerable debate generated
- Conflicting advice given to governments
- Instances of accusations of biopiracy generated by ANY perceived use of TK and associated genetic resources.



Challenges and the Way Forward: for developed and rapidly developing countries

- Realise opportunities in current situation
- Secure market advantages now
- Mature economies and those in rapid development can lead by example
- Change perceptions of risk and you influence the international debate and change outcomes



Analysis of the Current Situation

- Over reliance on synthetic recombinant chemistry has been a financial disaster for the development of new drugs
- The scale of investment and involvement of public funded research and the biotech industry in the discovery and development process requires legal certainty and secure access to natural resources
- Demand for bio-based products is growing dramatically
- Rapidly developing countries do good science and have nascent biotech Industries
- The time is right to encourage long-term biodiscovery research



Analysis of the Current Situation

- There are significant economic opportunities to be seized by developed and rapidly developing countries
- There is sufficient time to influence international negotiations through demonstrated reduction of risk drivers.
- The TK debate is protracted and is likely to be out of phase with the development of international trade in genetic resources.



Opportunities: 5 first steps

1. Developed countries with significant domestic biotech industries should identify countries with access and benefit-sharing systems and encourage industry collaboration and investment
2. Industry and natural resource providing governments should settle model, practical, benefit-sharing agreements as soon as possible



Opportunities: 5 first steps

3. Countries with open access and benefit-sharing systems should work with industry to ensure that their systems continue to meet needs of industry, the scientific community and resource managers.
4. National research organisations should be supported through bilateral agreements with resource providers - both domestic and foreign and
5. Successful examples of ABS partnerships should be given maximum public exposure



Practical considerations

- Industry and governments should collaborate on keeping access and benefit-sharing administrative arrangements:
 - Clear
 - Simple
 - Timely
 - With low transaction costs and
- Maximise regulatory and contractual certainty for all parties



Opportunities - Other Action

- Developed countries should support
 - international funding for ABS legislation
 - utilisation of practical tools for development of such legislation – eg the Swiss Management Tool
- Developing countries with governance constraints should be encouraged to make their protected areas, areas of scientific research
 - including for biodiscovery and
 - ensuring a share of any resulting scientific and commercial benefit flows back to protected area biodiversity managers



Conclusion

- The biodiversity in developed and in rapidly developing countries is sufficient to support a resurgence of biodiscovery
- Successful developed country and industry collaboration with selected resource providers can demonstrate that the perceived risks driving the current ABS debate are not well founded
- This demonstration can change that debate.