



# Access and Benefit Sharing

A public service collection perspective

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**KNOWLEDGE FOR LIFE**

## Summary

**The issues**

**Ownership**

**Aims of an MTA**

**Types of MTA used by  
collections**

**The ECCO MTA**

# Microorganisms preserved in collections for use

- Algae, bacteria, archaea, cyanobacteria, fungi – including yeasts, protozoa, phages and viruses and their replicable parts e.g. genomes, plasmids, cDNAs
- Often considered ubiquitous but properties depend upon the environment in which they evolved



## CBD implementation debate

What is the collection's role and responsibilities within the CBD?  
Should the ultimate responsibility not rest with the depositor and end user?

How can collections comply without damaging accessions and sales or income streams?

National responsibility to implement but CC's have a role

- Need minimum acceptable policies
- MOSAICS project established to deliver uniformity
- Certificates of origin – tracking possible via WDCM registered collections – unique identifiers
- How is it to be monitored?

## *The problem*

- Bonn Guidelines: a voluntary code to facilitate access and benefit sharing – **therefore implementation not compulsory**
- Lack of conformity on implementing the CBD - **Few collections have implemented policy to comply and there is no single common approach**
- Lack of information e.g., Country authorities granting Prior Informed Consent (PIC) – **deposits in collections without PIC**
- A tracking system necessary for biological resources
- Willingness in collections to address issues but most exchanges of material are between individuals not collections and implementation of control reduces collection use

## Solutions

**Micro-Organism Sustainable use and Access management Integrated Conveyance System (MOSAICS)** setting the benchmark and a system for operation

European Culture Collection designing a common MTA

WFCC and the WDCM can provide a system that links the culture collections of microorganisms and cell lines system of strain numbering to a global unique identifier system

# WDCM - Registration of living collections

- Use system of unique acronyms for each member collection
- Strains recognised by individual and unique numbers within the collection
- Therefore can identify the origin of every strain held
- The WFCC encourages all microbial and cell culture collections to join the WFCC or register with the WDCM
- The unique strain number links to deposits in other collections, publications and strain information



# The Issues

## “Ownership of the material”

**Art. 15** replaces the principle of ‘**common heritage**’ and accepts **sovereign rights** of states to their natural resources

Who owns the culture?

- isolator or depositor
- collection(s)
- user, do they buy it if owned by the country?
- all or none of these

## Ownership of IP

The discoverer/inventor



## CABI unique position

- Intergovernmental organization, most of whose member governments are signatories to the CBD
- CABI considers that all the deposits are held on behalf of the country of origin
- CABI adds value to biological material
- CABI assumes the right to benefit from generated IP
- Member/owner countries (45) agreed CABI can utilise income generated to deliver its mission
- 1996 CABI MTA reduced usage of the collection (1000 plus regular customers down to 250 and culture supply from open collection 4-5000 down to 364 in 2006)

# Issues

Rights of a recipient over use of a culture

Accessions of type or reference materials

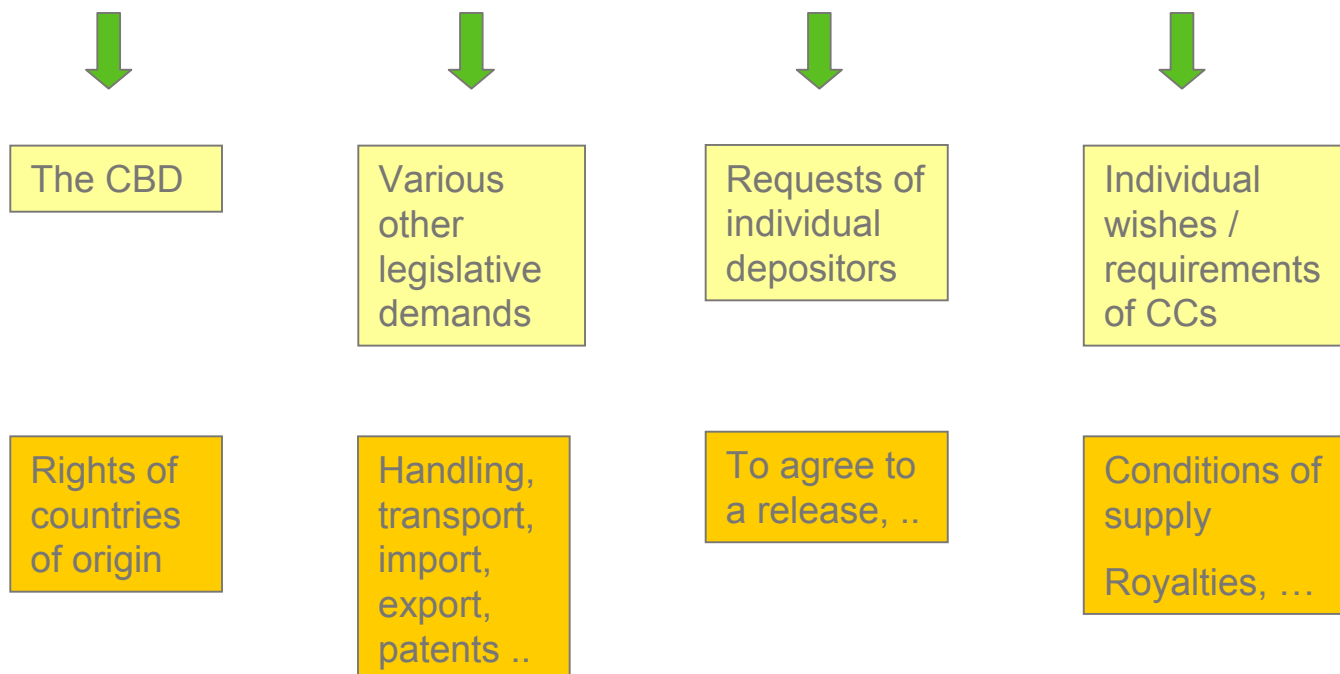
- deposit of type cultures: role of IJSEM
- exchange of materials between collections: ATCC MTA

In view of recent legal action by the ATCC in violation of third party usage of cultures supplied in breach of its MTA, are we entering a new era of litigation where both collections and their users face the potential of financial ruin?

## Ownership debate

- No one person or entity “owns” the culture
- The vial bought by the client is his to use within permissible limits, he “owns” the contents of the vial subject to certain restrictions. In other words he has no copyright
- Neither does an individual collection “own” a culture – it may be deposited in several different collections – they cannot all lay claim to “ownership.”
- Collections are “custodians” of the strain with a right or “license” to reproduce copies for supply
- Transfer of rights

## MTAs have been developed to serve differing purposes:



## The MTA required by the CBD

- prior informed consent/ mutually agreed terms
- transfer agreements
- restrictions of use (if any) as detailed in PIC
- obligations of end user to benefit sharing
- responsibilities of various parties

# Conditions of sale (supply)

- acceptance of terms of supply
- prices
- delivery/loss in transit
- banking details
- terms of payment
- general responsibilities

# Transfer of materials

- purchasers rights and responsibilities
- collections rights and responsibilities
- restrictions of transfer
- intellectual property
- limit to uses
- safety and handling data
- limitation of liabilities

Commercial vs. academic usage



## Compound MTA

Overarching catch all covering:  
general conditions of sale, safety,  
CDB , IP, transfer of material,  
warranties, responsibilities and  
limitation of liabilities - **mainly geared  
towards protecting the collections  
legal position in a number of areas**

## Aims of the ECCO MTA

An MTA:

- with commonalities between collections
- that does not unduly restrict the flow of accessions, sales, legitimate scientific exchange, or bona fide research
- which pays due attention to benefit sharing and illegitimate or unlicensed duplication or commercialisation by third parties

## Summary

- CBD implemented to different extent in each nation
- Collections still receiving microorganisms without PIC
- MTA's being implemented to achieve different goals
- No common culture collection approach
- Need clarification on rights and obligations of collections and recipients
- Certificates of origin difficult to apply in microbiology
- Need for unique identifiers for tracking but must acknowledge the WDCM system