



DIGITAL SEQUENCE INFORMATION: ICC VIEWS AND PERSPECTIVES ON INTERNATIONAL DISCUSSIONS AND DEVELOPMENTS

JBA ABS Symposium on Digital Sequence Information

28 February 2018 | Tokyo



WHAT IS ICC?

The world's largest business organisation - network of over 6 million members in over 100 countries: companies, business associations, firms, chambers of commerce.



Promotes international trade, responsible business conduct and a global approach to regulation

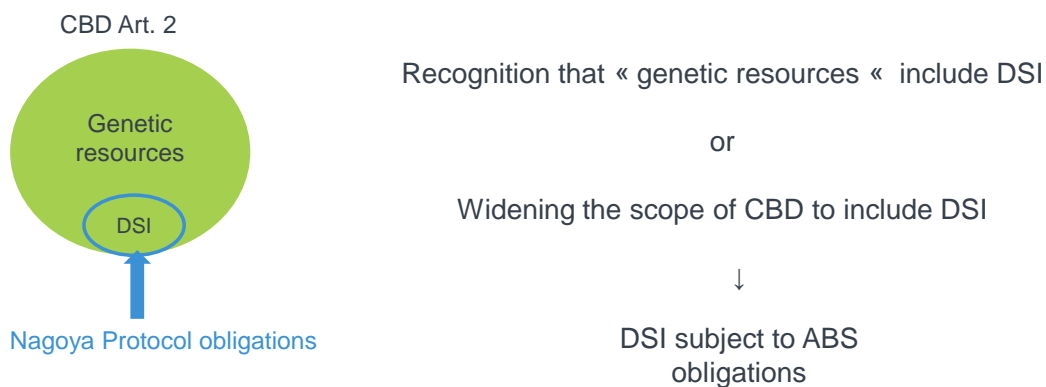


ICC AND ACCESS AND BENEFIT SHARING

- **Actively contributing to ABS discussions** in CBD as observer organization since 2008
- Act as **focal point for businesses**
- Represent **cross-sectoral and global businesses views** to government delegations



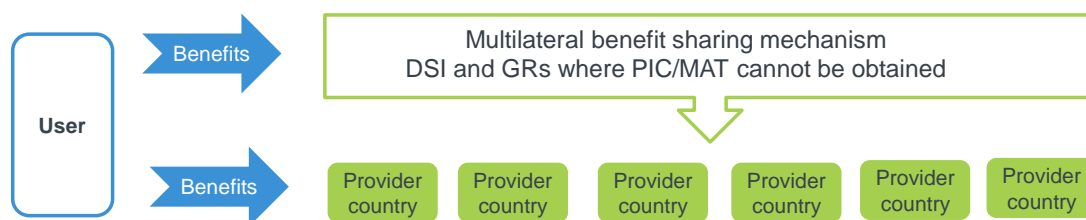
PROPOSALS IN THE CBD BY SOME COUNTRIES (1)





PROPOSALS IN THE CBD BY SOME COUNTRIES (2)

Creation of a **multilateral benefit sharing mechanism** for DSI and other situations → benefit sharing with individual countries + additional level of international benefit sharing



ICC POSITION ON DSI

DSI currently not within scope of NP and CBD

- CBD (Art. 2) definition cannot be interpreted to include DSI
 - Genetic resource = genetic material [of actual or potential value]
 - Genetic material = any material of plant, animal, microbial or other origin containing functional units of heredity
- If GR= material physically containing genes → DSI cannot constitute genetic resources

Scope should not be expanded to include DSI

- Would constitute renegotiation of Protocol.

Public domain info must remain freely accessible

- Otherwise would constitute retroactive application of Nagoya provisions



CBD OBJECTIVES

CBD objectives

- Conservation and sustainable use of biodiversity
- Promoting / encouraging research that contributes to conservation and sustainable use of biological diversity (Article 12)
- Exchanging information, including scientific research (Article 17)
- Technical and scientific cooperation (Article 18)
- Promoting and advancing the benefits of biotechnology (Article 19).

DSI increasingly used to advance the conservation and sustainable use of biodiversity (e.g. taxonomy, conservation management, invasive species, wildlife trafficking)

New rules relating to access and use of DSI will seriously impede R&D including for conservation and sustainable use



NAGOYA PROTOCOL OBJECTIVES

Nagoya Protocol objectives (Art.1)

- Fair and equitable sharing of the benefits arising from the utilization of genetic resources
- Thereby contributing to the conservation of biological diversity and the sustainable use of its components.

• **Open exchange of scientific information should be recognised as benefit sharing**
Significant non- monetary benefits delivered to developing countries could be diminished in process of extracting monetary benefits from DSI

• **Intention of Nagoya to provide legal certainty for users and provider countries**
Including DSI will create legal uncertainty around use / ABS obligations on DSI



IMPACT ON CBD AND NAGOYA PROTOCOL OBJECTIVES

Including DSI will hinder – not help -
achieve CBD and NP objectives



IMPACT ON R&D

Sharing of public domain information - essential for science and open innovation

Legal uncertainty & practical difficulties → undermine R&D process and collaboration
→ chilling effect on research, education and scientific innovation

Practical difficulties

- How to establish from which species genetic sequence originates - genetic sequence can be common to several species
- Impossible to determine relative value of individual input sequences - real value created by experimentation and computation
- Complexity of ABS obligations multiplied in DSI context - large no of sequences used in development of one product



IMPLICATIONS FOR BUSINESS IF DSI INCLUDED

- **Compliance with national ABS obligations in all Nagoya countries** for use of DSI in R&D – check origin, obtain authorisation, negotiate agreements.
- *Some national legislation e.g. Brazil already includes DSI*
- **User compliance measures** will include monitoring and tracking of use and transfer of DSI.
- Obligations could apply to genetic information on **GRs accessed pre-NP and CBD**.
- **DSI in external databases but also DSI already in possession of companies** potentially subject to ABS
- May create **new additional layer of international benefit sharing** (Article 10).

More **legal uncertainty** and **administrative burden** → negative impact on innovation with GRs



ICC PROPOSAL FOR WAY FORWARD

Countries should use **Mutually Agreed Terms** to cover DSI if they wish

Give **priority to implementation**

- Improve national rules and infrastructure to promote sustainable use and legal certainty for access.
- Changing rules now will undermine significant efforts being made by users and providers to implement based on principles and standards in Protocol

Evaluate impact of NP on access, benefit creation and benefit sharing, conservation and sustainable use

- Chilling effect on sourcing and use of GRs for innovation?



IMPLICATIONS FOR CBD AND OTHER PROCESSES

- **Impact on other non-ABS provisions of the CBD** as inclusion of DSI will extend to CBD as a whole



- If DSI included in scope of CBD/Nagoya, will **affect other discussions** in FAO-IT (Food and Agriculture Organisation International Treaty), WHO PIP (Pandemic Influenza Preparedness) Framework, UNCLOS negotiations on Marine BBNJ (Biodiversity Beyond National Jurisdictions)



- Some countries (eg African Union) want to **broaden concept of digital sequence** → « **natural information** »



WHAT WILL HAPPEN NEXT

Countries have different views:

- Some supportive of putting ABS obligations on DSI
- Some against putting ABS obligations on DSI
- Some want to maintain national sovereignty for controlling use and benefits from DSI
- Some pushing for a multilateral system



Report from Technical Expert Group (12-16 February)

SBBSTA meeting 2-7 July 2018, Montreal

Next formal decision making meeting: COP-14 – November 2018, Egypt



ARIGATO!

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