



Exploring Hybrid Intellectual Property Options for Agricultural Research
July 31, 2006 Washington, DC
Meeting Summary

This note provides a synopsis of the brainstorming meeting on intellectual property (IP) organized by the CGIAR Secretariat in Washington DC on July 31, 2006. The meeting drew together 21 participants with diverse backgrounds, each contributing in their personal capacity (a participants list is attached). The purpose of this summary is to highlight some of the issues discussed rather than specific areas of agreement, and focus in particular on possible avenues of action for the CGIAR.

Drawing lessons from the health sector

The meeting started off with a presentation on Brazil's experience in IP for pharmaceuticals, which highlighted the relationship between IPRs and a country's evolving industrial structure. Participants acknowledged that the experience of countries like Brazil and India should be considered as the exception rather than the rule, as most developing countries start from a much lower capacity base. Yet some general lessons could be drawn on key needs, which for most countries include i) national legal systems tailored to local needs; ii) maximum use of permitted flexibilities - such as compulsory and humanitarian licenses, freedom to operate and research exemptions, farmers' rights; and c) enhanced technical capacity within public sector research institutions. A presentation on the evolution of the international debate on IP and drugs showed the need to identify actors at various levels (civil society; national IP institutes, Ministries of Agriculture) willing to move the agenda forward, and act in a longer term perspective rather than relying on "crisis events". Advocacy campaigns should convey that the impact of dysfunctional IP regimes is both economic and social, as they ultimately affect both the pace of innovation and the public benefits of research.

Issues for agricultural research

The current IP landscape and its effects on agriculture research covered the bulk of the discussion. Participants tended to agree on several problematic aspects of the current expansion of IPRs. The criteria for granting patents are becoming less stringent, thus lowering the standards of novelty and non-obviousness. The proliferation of overlapping patent rights creates an environment of uncertainty and doubt concerning the feasibility and boundaries of R&D endeavors. The patenting landscape remains blurred by the multiplicity of access points, opaque language and increasingly complex rules. Participants agreed that transparency, simplification and enhanced scrutiny of the IPR process are key, and in this light intermediary institutions, information brokers and a peer review system for patent applications were cited as worthy of additional support.

The debate highlighted the CGIAR's potentially unique position to move the agricultural IP agenda forward, but also the challenges posed by its rapidly changing external environment. Some participants warned that a passive stance risks not only hampering CGIAR's comparative advantage but also its very role in public research. If current trends persist, and as the Enola bean case has shown, the CGIAR public domain strategy might come under pressure, with possible repercussions on centers' performance. The same holds true for NARS, which in parallel to moving towards high value crop research are also looking increasingly favorably to acquiring protection to secure royalties.

Innovative IP approaches

The meeting provided an opportunity to discuss novel proprietary models to agricultural research. Two specific approaches were discussed. A presentation on public private partnerships based on protected common IP showed ways to stimulate R&D in plant breeding for orphan and minor crops. A second contribution looked at the potential value of separating 'IP for products' from 'IP for research tools, process and methods'. It was argued that allowing researchers and investors to share core enabling technologies – through for instance open source licensing - could help enhance the pace and diversity of technology development, by raising the number of innovators, without preventing protection on new products.

While most participants agreed on the need for locally tailored approaches and innovative proprietary solutions, some expressed the concern that more diversity could bring increased confusion and transaction costs. The existence of a clear dichotomy between public and private interests was also contested. Based on the fact that patenting remains one of the main tools to ensure that technological innovations are made public - it was argued - the expansion of IP should be embraced rather than fought. The debate made clear that IP cannot be considered either the main hindrance to - or a silver bullet for - innovation and access, as other regulatory constraints are equally important.

Possible steps for the CGIAR

The discussion highlighted three potential avenues of action for the CGIAR. These included:

- *Analysis.* The CGIAR can contribute to the agricultural IP agenda through specific studies. These could involve:
 - Further clarifying the CGIAR's own position in the shifting IP environment through assessments of internal practices and specific needs at center and system level;
 - Exploring ways to increase the transparency of the agricultural IPRs landscape, e.g. through studies on evaluating the potential for the CGIAR to play an information brokerage role;
 - Undertaking country-specific studies on the costs and benefits of establishing and enforcing an IP system;
 - Analyzing innovative approaches to IP management;
 - Examining the consequences for developing countries of specific IP models, including those adopted by Jordan, Malaysia and India;
- *Capacity building.* The CGIAR could explore ways to support capacity strengthening internally as well as in developing countries, including by enhancing transparency and access to information. This could involve the creation of knowledge sharing platforms/networks on agricultural IP between centers and NARS through various mechanisms –e.g. a website;
- *Awareness raising.* Based on the results of solid analysis, awareness raising and advocacy activities should be aimed at disseminating evidence-based policy messages to diverse partners. This would help provide firmer groundings to a debate which so far has largely remained ideologically polarized.



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