

WTO-ESCAP-IIUM Regional Workshop on Intellectual Property, Public Health and Environment Policy for Asian and Pacific Economies

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Intellectual Property Protection of Traditional Knowledge: The Malaysian Experience

Professor Dr Lim Heng Gee
Faculty of Administration and Law
Universiti Teknologi MARA,
40450 Shah Alam, Selangor, Malaysia

Genetic Resources as a Source of Wealth

- Biotechnology – the New Wealth Creator
- “An ethical battle rages as prospectors scour the globe to find - and profit from - organisms that could cure some of the world’s worst diseases”. (Dealing in DNA , Tim McGirk, TIME, November 30, 1998, p 58)
- “... Organisms that are of no apparent use may be tomorrow’s saviours.” (The Value of Biodiversity, Rick Cannell, Financial Times, July 21, 1998)
- “Scientists ... realise that forests and oceans hold a bounty of useful chemicals - " (Nature's Drug, William Underhill, Newsweek, November 7, 2005, p 50)

The Relevance and Value of Traditional Knowledge

- The three strategies for collecting plants for screening programs:
 - random,
 - taxonomic and
 - ethnobotanical.
- In relation to the ethnobotanical strategy, TK associated to biological or genetic resources, or traditional medicines are relied upon by bioprospectors as valuable leads to identify plants or animals that can be used as raw materials to obtain beneficial effects

The Relevance and Value of Traditional Knowledge

- Therefore, TK has economic value.
- But TK is easily copied – eg, a member of an indigenous tribe shows a bioprospector a plant that he uses on patients who complain of headache.
- The bioprospector does not need further instruction to understand that plant contains a potentially useful active ingredient.

FAO International Undertaking 1983

- Article 1 of the FAO International Undertaking on Plant Genetic Resources declares:
- The objective of this Undertaking is to ensure that plant genetic resources of economic and/or social interests, particularly for agriculture will be explored, preserved, evaluated and made available for plant breeding and scientific purposes. This Undertaking is based on the universally accepted principle *that plant genetic resources are the heritage of mankind and consequentially should be available without restriction.* (emphasis mine)

Convention on Biological Diversity 1992

- Article 3 of the United Nations Convention on Biological Diversity (CBD) states :
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- "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."

Paradigm Shift

- From Common Heritage
 - unrestricted access
- To National Sovereignty
 - controlled access (CBD 1993)
 - Prior informed consent
 - Benefit sharing
- In relation to traditional knowledge:
 - “equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices”

Patent Obligations under TRIPS - 1

... patents shall be available for any
... whether products or process, in all
... technology, provided that they are new,
... an inventive step and are capable of
... application. Subject to paragraph 4 of
... paragraph 8 of Article 70 and
... 3 of this Article, patents shall be
... and patent rights enjoyable without
... tion as to the place of invention, the
... technology ...

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