

The CGIAR Principles on the Management of Intellectual Assets

Background

CGIAR is a global agriculture research partnership for a food secure future. Its science is carried out by the 15 research centers who are members of the CGIAR Consortium in collaboration with hundreds of partner organizations. CGIAR was established in 1971 as a strategic alliance of a small number of agricultural research centers and donors who had a shared vision to produce research that improved food security and reduced poverty and hunger. This vision was underpinned by the idea that all of the research results and products created by Centers should be freely available without restriction to as many people as possible. While the overarching goals have largely remained the same, over the last 50 years the scope and size of CGIAR has expanded considerably. Over the last decade or so, there have been a series of additional changes that have further transformed the scope and operation of CGIAR.

- The realization that it was not possible for individual Centers to respond to all of the issues that need to be addressed in dealing with global climate change, food security, and rural poverty prompted a reform of the way that research is funded, organized, and managed within CGIAR. One of the features of the reformed CGIAR was a greater emphasis on research projects conducted in partnerships between Centers (including a lead Center), national public research institutions, non-governmental organizations, and private sector partners.
- There has been greater emphasis within CGIAR on the impact of research to advantage the resource-poor, especially smallholder farmers in developing countries (rather than a focus on research results as ends in their own right). The focus on maximizing the impact of research was reinforced by the realization that to improve food security it is necessary to engage all actors in the value chain from the delivery of upstream research through to the adoption of research results by end-users (an area where private sector experience and expertise may prove to be valuable).
- Growing acceptance of the view that exclusivity is not necessarily antithetical to the goals of poverty reduction and food security has also played a key role in changing how Centers operate. This realization has seen Centers grant private sector organizations the exclusive right to use research products in order to improve the product or ensure that they are put into use. In some cases, Centers themselves have made strategic use of intellectual property in order to improve food security. There is also the realization that the private sector has proprietary technologies that are necessary to make the best uses of the Centers' resources and expertise.

One of the consequences of these changes is that intellectual property and the private sector have come to take on a much more prominent role within CGIAR than had hitherto been the case. Given that CGIAR was formed around the idea that funding would be given to public sector organizations to produce research results that would be freely available for use, it is not surprising that the increased use of intellectual property and the growing involvement of the private sector gave rise to a series of concerns. Specifically, there were concerns that the use of intellectual property rights might be counterproductive to the goals of CGIAR. The fact that Centers were entering into more and more partnerships with external bodies increased the pressure for greater clarity of rights, responsibilities, and accountability. The involvement of the private sector also intensified the calls for greater transparency in relation to the uses of publically funded research. In March 2012, CGIAR adopted a set of principles – the [*CGIAR Principles on the Management of Intellectual Assets*](#) -- that aim to respond to challenges of this nature.

Aim of the Principles

The *CGIAR Principles on the Management of Intellectual Assets* apply to the CGIAR Consortium, its 15 member Centers, and to all their activities and programs. The focus of the Principles are the ‘intellectual assets’ that are produced or acquired by Centers; that is, the results and/or products of research and development activities that are produced or acquired by Centers. This includes but is not limited to knowledge, publications, and other information products, databases, improved germplasm, technologies, inventions, know-how, processes, software and distinctive signs, whether or not they are protected by intellectual property rights.

The Principles aim to provide:

Clarity, certainty, and consistency: While the Principles confirm that the ultimate goal of *all* CGIAR activities is the optimal impact on global poverty and food security, they also recognize that in some cases the method that is used to achieve this goal has changed. The Principles aim to provide guidance about how research results and products should be managed by Centers in this new situation. Specifically, they provide guidance as to when access to research results can be restricted (either by intellectual property, contract or other means). The Principles also aim to ensure that the management of intellectual assets is clear, consistent and concise.

Transparency and accountability: To allay fears that CGIAR’s engagement with intellectual property specifically, and the private sector more generally, threatened to undermine the goals of food security and poverty reduction, the Principles aim to ensure that the management of intellectual assets should be as transparent and open as possible. They also aim to establish a scheme in which Centers are accountable for the way that they spend public funds and other resources made available to them.

Flexibility and autonomy: The Principles aim to accommodate differences between Centers, respect Center autonomy and, at the same time, allow CGIAR to develop and exploit the benefits of system-wide approaches to related issues with one voice.

How do the Principles meet these goals?

General Obligations

Centers are under a general obligation to manage their research results and products with integrity, fairness, equity, responsibility, and accountability. They are also under an obligation to comply with the FAO's *International Treaty on Plant Genetic Resources for Food and Agriculture*, the UN's *Convention on Biological Diversity* and relevant human rights conventions.

Maximizing accessibility

One of the features of the Principles is that they confirm that the ultimate goal of CGIAR is the optimal impact on food security and global poverty. To this end, the Principles provide that Centers are under an obligation to manage the intellectual assets that they produce or acquire so as to maximize their accessibility and ensure that they have the broadest possible impact on target beneficiaries.

Limiting access to promote food security

At the same time, however, the Principles recognize that in certain exceptional situations, the goals of food security and poverty reduction can only be achieved by limiting access to CGIAR research results. To this end, the Principles set out a number of exceptional situations where Centers are able to limit or restrict access to research results and other resources and materials. Specifically, Centers are able to:

- (1) restrict access in order to improve research results or to assist with uptake and adoption;
- (2) limit access to obtain third party products and services;
- (3) register or allow third parties to register patent or plant variety rights protection on Center intellectual assets; and,
- (4) charge fees for providing access to intellectual assets.

Exception 1: Exclusivity in order to improve research results or to assist with uptake and adoption

In order to enable critical public-private partnerships that benefit smallholder farmers, the Principles recognize that it may be necessary to grant limited exclusive rights to develop and improve a product. The Principles also recognize that it may be necessary to grant exclusive rights to ensure that research is taken up and adopted by end users. These are exceptional circumstances, and even in these exceptional cases the output would still be available for emergency use and public research in all countries.

Example (a): Exclusivity with geographic segmentation

A Center identifies a biopesticide but does not have the resources to develop it. No other organization will take over development on a non-exclusive basis. Company A is willing to develop the biopesticide into a product suitable for use by farmers if it has exclusive rights to market it in developed countries. Company A is content that the product can be commercialized by others in developing countries and that the research results remain available for research by public organizations in support of the CGIAR Vision.

Example (b): Time-limited exclusivity

A Center develops a promising crop variety but does not have the resources to disseminate it to farmers in developing Country A. Country A's national public research and extension agencies inform the Center that they too lack the means to get the variety out to farmers. A few small seed companies are interested in marketing the variety in Country A if they are granted an exclusive license for a limited period of time. In this situation, the Principles would allow the Center to grant exclusive access to the crop variety to the seed companies for a limited period of time.

Exception 2: Limiting downstream access in order to obtain third party products and services

It is common practice for Centers to make use of products and processes that are protected by intellectual property. In some situations the owner of the intellectual property may only allow the Center to use the product on the condition that the Center restricts access to the resulting product. The Principles recognize this and in exceptional circumstances allow Centers to enter into agreements for the acquisition and use of third party products or services that restrict global accessibility to CGIAR products or services. This is on the condition that the restrictions are as limited as possible and the resulting product or service improves food security.

Example (c): Using a proprietary technology

A Center obtained a license from Company A to use an intermediate technology (a sequence useful for marker-assisted selection) to select a crop variety to be released by the Center in smaller, poorer, developing countries in a region, but not the larger developing countries in the same region, not even for research purposes. In this example, the Center is in the best position to breed the new variety as it has many germplasm options available to test different crosses. In this case, if the technology both (a) contributes to food security ('furthers the CGIAR Vision') in the limited number of developing countries where it can be made available by the Center, and (b) is not available from an alternative source under no or less restrictive conditions, the Principles would allow the Center to enter into such an arrangement.

Example (d): Using proprietary germplasm

A Center has received a donation of elite germplasm from a private sector partner under a license that restricts global access. The Center carries out a cost/benefit analysis and determines that it will accept the donation, subject to a humanitarian use license that allows the Center to use the materials for research, breeding and dissemination in markets where the Center can reach target beneficiaries. The Center could also grant a sub-license to a seed company to disseminate the products under the same conditions (humanitarian use license).

Exception 3: Patent and plant variety rights protection

The Principles permit Centers to take out patent and plant variety rights protection over their intellectual assets. A Center is also permitted to allow a third party to take out patent and plant variety rights protection over research that is undertaken by the third party either in partnership with, or behalf of, the Center. This is on the condition that the patent or plant variety rights protection is needed either to improve the intellectual assets, or to enhance the scale or scope of the impact on target beneficiaries.

One of the defining characteristics of patent and plant variety rights protection is that they enable the owner to limit access to the things that are protected. Centers do not usually seek plant variety protection or patent protection on the products of their research. They do however sometimes allow others to do so with regards to products derived from Center's lines (i.e. not the Center's lines themselves). This would be subject to the terms of the stand material transfer agreement under the *International Treaty on Plant Genetic Resources for Food and Agriculture* that requires payment into a fund in the event the products that are commercialized are restricted for further research, breeding and training. Centers view the registration by partners of varieties derived from their lines as an important means of promoting the access and benefit sharing principles of the International Treaty.

Example (e): Allowing patent protection in order to develop a product

A Center identifies a drought tolerate high yield trait but does not have the resources to develop it. No other organization will take over development on a non-exclusive basis. Company A is willing to further develop a variety with the traits into a product suitable for use by farmers if it has exclusive rights to market it in developed countries. The Center could file for patent protection over the invented variety in developing countries so the Center would be in position to grant licenses to commercialize the product under relevant terms (e.g. preferential terms). Company A could also file for patent protection in developed countries to prevent competitors from undermining their exclusive market position in those countries. If Company A's product would not be available but for the patent, then the Centre might accept Company A's decision to seek a patent.

Example (f):

Company X has intellectual assets that take the form of a computer program that manages the collection and storage of grain in such a way that it greatly improves its longevity. To secure the investment start-up funds needed to get the business going, the business owners must demonstrate to financial investors that they have obtained secure rights over their intellectual assets (such as patent protection.) In dealing with Company X the Centre might have to accept the secured rights (such as a patent) and comply with any business information and know-how obligations that arise in using the intellectual assets.

Exception 4: Charging fees for providing access to intellectual assets

In most cases, Centers will provide access to their intellectual assets free of charge. In certain limited situations, the Principles allow Centers to charge reasonable financial fees, beyond actual costs and reasonable processing fees, in return for providing access to their respective intellectual assets. This does not apply to the genetic resources held in-trust by Centers that fall under the *International Treaty on Plant Genetic Resources for Food and Agriculture*.

Governance and accountability

As well as outlining how intellectual assets should be managed, the Principles also aim to ensure that the management of intellectual assets is transparent and accountable with respect to the use of public sector funds and activities financed by public sector funds. To promote transparency, Centers must ensure that all policies, guidelines and practices adopted by them are consistent with the Principles and that they are made publically available.

Centers must also provide an annual report to the CGIAR Consortium that sets out whether or not and, if so, why they provide limited access to intellectual assets. This confidential report will be reviewed by the CGIAR Fund Council IP Group and followed up on if necessary. This process is designed to ensure that Centers are complying with the Principles, and in so doing, that the goals of CGIAR are not being distorted either by their involvement with intellectual property or their partnerships with private sector organizations. The CGIAR Consortium will aggregate and make public a summary of the Reports from the Centers. The shared experiences in dealing with intellectual assets will over time provide increased understanding of the challenges and opportunities associated with the application of intellectual property strategies in the pursuit of CGIAR's objectives. Comparative analysis and evaluation of such experiences will help in the identification of best practices and models for securing optimal exploitation and maximization of the Centers' resources in the quest for global food security and the reduction of poverty and hunger.

About this paper

This paper was authored by Brad Sherman, Professor of Law at Griffith University and Director of the Australian Centre for IP in Agriculture (ACIPA). The paper was written as part of collaboration between the CGIAR Consortium and ACIPA to research international intellectual property issues relating to agriculture, and was written with the support of the Australian Center for International Agricultural Research (ACIAR) and the Australian Research Council.