Disclosure of Origin

Disclosure of origin is a collective term that refers to a variety of requirements that have or may be adopted in intellectual property applications, product approval and at other appropriate checkpoints, for the purpose of monitoring access to and utilisation of genetic resources and traditional knowledge. Disclosure requirements may also serve as a tool for ensuring compliance with relevant national and international law and policy on access to and use of genetic resources and traditional knowledge.

Disclosure requirements can serve a number of different and potentially interrelated ends. These include, but are not limited to:

- Identifying scientific or commercial use;
- Identifying rightsholders;
- Identifying the existence of prior art;
- Facilitating the monitoring and enforcement of rights;
- Preventing illegal and/or unauthorised use;
- Preventing the grant of ‘bad’ patents or plant variety rights; and
- Promoting equitable benefit sharing.

Obligations to disclose the origin of genetic resources and traditional knowledge may in the future also be applied by seed laws, laws regulating the development and dissemination or sale of genetically modified organisms, development of synthetic copies of naturally occurring chemical compounds, etc.

National and Regional Disclosure Measures

A range of voluntary and mandatory law and policy measures on disclosure requirements have been adopted by the Andean Community of Nations, the Organization of African Unity; The African Regional Intellectual Property Organization; the European Community; and the South Pacific Forum. At least 20 countries have adopted disclosure requirements in national law. These are Belgium, Bolivia, Brazil, China, Colombia, Costa Rica, Denmark, Ecuador, Egypt, Germany, India, Italy, New Zealand, Norway, Panama, Peru, Romania, South Africa, Sweden and Switzerland. In more than half of these countries legislation applies to both genetic resources and traditional knowledge. A similar percentage of countries require evidence of both prior informed consent and mutually agreed terms. Failure to comply with relevant national legislation may result in refusal to process applications, revocation of patents, placing of intellectual property rights in joint ownership or criminal sanctions.

Nature of Disclosure Requirements

Disclosure requirements can be mandatory or voluntary, and may be either substantive or procedural in nature. Substantive requirements are those, which must be met in order to obtain a grant of a patent or plant breeders’ right, or other IPR. Member States of the World Trade Organization and/or the International Union for the Protection of New Varieties of Plants are limited in their ability to make disclosure of origin requirements a substantive requirement for patent or plant variety rights respectively. They have more freedom in establishing procedural disclosure requirements. Failure to comply with procedural requirements may have severe consequences including the cancellation of intellectual property rights, and criminal sanctions.

Regularising Current Practice

A study carried out for the Spanish Patent and Trademark Office concluded that a requirement for disclosure of origin would simply regularize current practice relating to the filing of patent applications. Disclosure of the origin of traditional knowledge, as
opposed to disclosure of the relevant traditional knowledge itself, may not necessarily be required to carry out an invention. However, obligations in existing intellectual property regimes to identify the inventor may require disclosure of sources of traditional knowledge where that knowledge amounts to what the WIPO Initial Report has identified as ‘inventive contributions’. Where traditional knowledge (known to the applicant) is so close to the claimed invention that it is in fact intrinsic to it under the legal doctrine that determines ‘inventive contribution’ in the jurisdiction concerned, then it may be necessary to declare the provider of the traditional knowledge as a joint inventor. Existing requirements to disclose prior art would in many cases require disclosure of relevant traditional knowledge in a patent application.

Certificates of Compliance
The Nagoya Protocol, which entered into force on October 12, 2014, established a binding access and benefit-sharing regime incorporating a standardised global certification of compliance system. This system anticipates the adoption of checkpoints, which may include intellectual property regimes, at which certificates of compliance would be reviewed to ensure compliance with relevant national and international law. This certification system may facilitate adoption of a binding international disclosure system.

Further information

This fact sheet was produced as part of a collaboration between the CGIAR Consortium and the Australian Centre for Intellectual Property in Agriculture (ACIPA) to research international intellectual property issues relating to agriculture.

This fact sheet is for information purposes only. It is designed to assist in general understanding of legal rights and obligations: It is not tailored to any particular fact, situation or requirements and should not be relied upon for legal advice.

Further Fact Sheets are available on the ACIPA website http://acipa.edu.au/fact-sheets.html.

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1 Sukhwani, A. Patents Using Biological Source Material, Spanish Patent and Trademark Office, Madrid UNEP/CBD/COP/3/22, para 51
2 WIPO/GRTKF/IC/4/11, para 52

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