



ABIA Members have established a track record of compliance with the Bonn Guidelines, including PIC, MAT and benefit sharing. Private companies need clear boundaries to commit resources to participation in an ABS regime.

We have four specific concerns on proposed compliance measures for an ABS IR to share at this time:

1. New, additional mandatory disclosure obligations: Private companies have had numerous negative experiences with patent disclosure and related obligations enacted at the national level in CBD Members. ABIA Members are not able to invest in biological resource commercialization if the very validity of the patent (the basis for the investments) hangs on the issue of disclosure or assertions by outside organizations, competitor, or other third party outside the control of the government. We support the comments of our Japanese colleague on this point.

We have seen a number of cases where companies were tried in the media over this issue and it has proven extremely damaging - - not on the facts but on the basis of rumor and innuendo. Patent disclosure obligations are a false promise of benefit sharing, and have not been shown in real world contexts to provide meaningful benefits to CBD Member or indigenous and local communities.

2. Lack of clarity over boundaries of compliance, eg definitions like “genetic resources, products, derivatives,” and/or of “Traditional Knowledge” or TK - - without a precise understanding of these important terms, it is impossible for any private company to enter into an agreement with indigenous communities or other holders of traditional knowledge. Businesses can only make rational decisions about any commitment if they can understand the nature and scope of their obligations.
3. Resolution of conflicting claims over GR/TK -- In addition, if more than one CBD Member or indigenous community (either within a country or otherwise) states a claim to the same GR and/or associated TK, there needs to be a clear approach to these rights that does not threaten a private company that has acted in good faith and is working on the basis of prior informed consent (PIC) and mutually agreed terms (MAT) with one of these communities (or with a focal point in a CBD Member that has entered into good faith PIC and MAT from a community).
4. Non-Discrimination: We support the implementation of terms that are available on an equal basis regardless of nationality, both in terms of access, and on the compliance side, as noted in Australian and EU interventions.

ABIA members believe that Model MTAs, as described by Australia and the EU, and discussed at the ABI/BIO side event, provide one effective mechanism for ensuring compliance with PIC and MAT, including provisions on disposition or sharing of IP Rights, and related limitations.