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**ABS NEGOTIATING PRINCIPLES****INTRODUCTION:**

At the sixth meeting of the Convention on Biological Diversity (CBD) Ad hoc Open-Ended Working Group (WG) on Access and Benefit Sharing (ABS), stakeholders should primarily focus on the identification of a broad number of practical ABS approaches that have been demonstrated to provide real-world benefits and the communication of those options to Ministers at the upcoming Ninth CBD Conference of the Parties (COP) in Bonn, Germany. In this practical approach, the ABS WG should acknowledge the failure of those ABS approaches that have not delivered promised benefits, including the mandatory disclosure of source, origin and proof of benefit sharing. Finally, the ABS WG should identify organizational principles to ensure a transparent, equitable, consistent and predictable ABS process.

In that spirit, ABIA Members provide the following principles.

**PREAMBLE:**

ABIA Members:

- Reaffirm their commitment to respect the sovereign rights of CBD members over their *in situ* genetic resources (GR) and to the equitable sharing of the commercialization of GR and any related relevant traditional knowledge (TK) derived from indigenous and local communities, assuming a clear definition of TK.
- Underscore their established track record of compliance with the Bonn Guidelines, including Prior Informed Consent (PIC), Mutually Agreed Terms (MAT) and equitable benefit sharing.
- Support development of comprehensive digital libraries or registries to help identify holders of GR; capacity building to promote best practices for IP management including trade marks, trade secrets and patents, and the use of model Material Transfer Agreements (MTAs) to ensure effective compliance with PIC and MAT and to provide front-loaded benefits and clarity and fairness in the disposition or sharing of intellectual property rights.
- Believe that there is an increasing recognition among the parties, indigenous communities and NGOs of industry's critical role as a key stakeholder and generator of commercial benefits from biological diversity.

**PRINCIPLES:**

- The regime should include measures that ensure equitable and non-discriminatory terms for access to GR, demonstrably generate benefits, and provide positive incentives to encourage mutually beneficial and environmentally sustainable commercialization of genetic resources.
- The regime should be based on reality and the actual experiences of stakeholders either at the local, regional or state level, including the actual experiences of countries, indigenous communities, NGOs, and industry.
- The regime should recognize the ground realities by which businesses operate so that appropriate incentives are balanced against necessary enforcement provisions for the benefit of all stakeholders.
- To ensure a workable system, all stakeholders (countries, indigenous communities, NGOs and industry) should participate broadly in the elaboration of an Access and Benefit Sharing International Regime (ABS IR). NGO and industry groups should be encouraged to participate in the elaboration of an ABS IR, regardless of whether their national governments are currently CBD Members.
- Development of ABS elements should reflect the individual needs and experiences of CBD Members at various stages of economic development, which suggests a bottom-up, “cafeteria-style” approach rather than a “top down” one-size-fits-all regime based on a single legally binding instrument.
- An ABS IR should be amenable to simple and expeditious implementation, taking into account the individual needs and experiences of CBD Members.
- An ABS IR should include national regulation and enforcement mechanisms. The Parties, with the participation of stakeholders, should also consider issues of extra-territorial enforcement.
- An ABS IR should ensure transparency, predictability, consistency, durability and non-discriminatory treatment with respect to both access and compliance through the inclusion of clear definitions consistent with the terms and jurisdictional limitations of the CBD itself.
- The CBD ABS WG should continue to rely on such other international organizations as the FAO, WIPO, WTO, as appropriate, for technical input during the 2007-2010 period.
- Supporting work by other international organizations, while essential to the work of the ABS WG, should respect the CBD’s unique mandate and remit for comprehensive ABS negotiations and not prejudge the outcomes of the deliberations of the ABS WG. In this respect, the CBD should continue to rely upon the unique expertise and mandate of WIPO with regard to the harmonization of intellectual property standards.

### AREAS OF CONTINUING DISAGREEMENT

- **New Additional Mandatory Disclosure Obligations**

Patent disclosure obligations enacted by CBD Members have had a documented chilling effect on bioprospecting and GR commercialization. By making patent protection for GR commercialization contingent on an *ex post* examination of the sufficiency of the disclosure, mandatory patent disclosure regimes place at risk the very basis for the recoupment of investment. [Patent disclosure obligations do not create ABS benefits, are polarizing and drive stakeholders further apart].

- **Certificates of Source, Origin and Legal Provenance**

ABIA Members do not support the development of a certificate system that would create an additional formality or condition of patentability for biotechnology inventions. They also do not view the CBD Experts Group on Certificates as fully representing the broad spectrum of views found in the biotechnology sector. The group should be broadened to reflect the diverse needs and experiences of industry. The CBD Experts Group on Technology Transfer may provide a model for inclusion of more than one industry representative allowing representation of different segments of the biotechnology sector.

- **Areas Beyond the Jurisdiction of the Convention**

Difficult issues for the ABIA include suggested coverage of both *in situ* and *ex situ* resources; pre-CBD vs. post 1994 GR bioprospecting; human vs. plant and animal GR; and products vs. derivatives of GR. Boundary lines should be drawn consistent with the obligations and explicit legal boundaries of the CBD Treaty.

All stakeholders require clear boundaries to commit resources to participation in an ABS regime. Without a precise understanding of important terms such as "genetic resources, products and/or derivatives," it is impossible for any private company to enter into an agreement with indigenous communities or other holders of traditional knowledge.

- **Lack of Clarity Over the Definition of Traditional Knowledge (TK)**

A precise understanding of this important term is also needed before private companies are able to enter into agreements with indigenous communities or other holders of TK. Moreover, if more than one indigenous community (either within a country or otherwise) states a claim to the same TK, there needs to be a clear approach to TK rights that does not threaten a private company that has acted in good faith and is working on the basis of PIC and MAT with one of these communities (or with a focal point of a CBD Member that has entered into good faith PIC and MAT with a community).