Introduction

Publicly funded research institutions should build up their capacity to manage intellectual properties that they procure and those that they generate. Knowledge of IPRs will help developing country scientists determine if information about a particular technology is already part of the public domain and therefore freely available. Moreover, IPRs generated by the public sector can be considered assets that can be exchanged for private sector-owned IPRs or used as bargaining chips in technology transfer negotiations. Partnership between the private and public sectors in technology development through sharing of knowhow and IP can hasten technology transfer and acquisition on both sides.

Conclusion

Suggested Readings

NOLO: Law for All http://www.nolo.com

Pocket Ks are Pockets of Knowledge, packaged information on crop biotechnology products and related issues available at your fingertips. They are produced by the Global Knowledge Center on Crop Biotechnology (http://www.isaaa.org/ks). For more information, please contact the International Service for the Acquisition of Agri-biotech Applications (ISAAA) SEAsiaCenter c/o IRRI, DAPO Box 7777, Metro Manila, Philippines Tel: +63-2-845 0563 Fax: +63-2-845 0606 E-mail: knowledge.center@isaaa.org

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Patents, plant breeder’s rights and trademarks are awarded by national governments, and the protection is valid only in countries in which they are issued. Thus, to obtain protection in several countries, rights must be applied for and awarded in each. On the other hand, copyright and trade secrets are not country specific.

At present, many key technologies used in the development of agri-biotech products appear to be unprotected in developing countries. For example, patents for the most widely used promoter, the CaMV 35S promoter, have been granted only in the United States and Europe (and the only pending application is in Japan) (Binenbaum et al., 2000). Thus, there are no IP restrictions in developing countries on the use of this tool in research and development at present.

Furthermore, anyone is free to use technologies in crops that are developed, produced, and consumed in countries where the technology is not subject to local IP protection. IP problems, however, may arise when these crops are subsequently exported to countries in which the technologies are protected by IPRs. The development time should also be taken into consideration since patents might be issued in the country by the time the product is developed. It is therefore necessary for scientists in developing countries to be aware of the IP issues and develop strategic plans in handling these IP concerns.

How do you protect your rights?

The main ways to protect your intellectual property rights include copyrights, trade secret, trademarks, plant breeder’s rights, and patents (Binenbaum et al., 2000). Of the five, the last two are the most relevant forms of IP protection in plant breeding.

Plant Breeder’s Rights

Plant breeder’s rights (PBRs) are used to protect new varieties of plants by giving exclusive commercial rights for about 20-25 years to market a new variety or its reproductive material. The variety must be novel, distinct, uniform, and stable. This protection prevents anyone from growing or selling the variety without the owner’s permission. Exceptions may be made, however, for both research and use of seed saved by a farmer for replanting.

Promoting transfer of agri-biotech to developing countries

Crops grown for subsistence use in developing countries and the technologies that are used to develop such crops are clearly of little commercial interest to the private sector. Thus, donating proprietary technologies to develop such crops is a realistic possibility, and in fact is already happening. However, developing country scientists must remember that technology transfer involves a lot more than simply signing a license or a material transfer agreement for a product. Both technology donor and recipient must be aware of the IPR issues involved in the technology and there will often be a need for partnerships in which there is mutual trust among all parties (Kratigger, 2002).

Developing countries frequently lack the required IP management capacity and resources to perform product clearance analyses and evaluations that facilitate the legitimate import, use and/or export of technologically advanced products (Kowalski, et al., 2002). Thus, to help transfer of appropriate agri-biotech to developing countries, capacity building in IPR management is of vital importance from both the donor and the recipient side. This can involve the following:

- Educate research staff and research administrators on the basic principles of IPR management.
- Use different patent databases as well as scientific databases as information sources.
- Remain aware of the complexity of germplasm issues.
- Stress the importance of good laboratory records.
- Document what comes in and goes out of the lab.
- Establish clear lines of responsibility for negotiating, reviewing and signing Material Transfer Agreements (MTAs) and licenses.
- Manage and organize licenses and MTAs and the various documents and correspondence associated with them.