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**Session II: Traditional Knowledge, Genetic Resources
and Cultural Expressions: Communal or Property
Rights?**

**International, Regional and National Initiatives to
Provide a Nexus between Patent Law and the Convention
on Biological Diversity**

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Convention on Biological Biodiversity 1992

- Article 3 CBD : sovereign right to exploit their own resources
- Article 15.4 : 'access, where granted, shall be on mutually agreed terms and subject to the provisions of this Article'
- Article 15.5 : 'access to genetic resources shall be subject to prior informed consent
- Article 15.7 : fair and equitable sharing of benefits

Mandatory Obligations under TRIPS - 1

- Art 27(1) - ... patents shall be available for any inventions, whether products or process, in all field of technology, provided that they are new, involves an inventive step and are capable of industrial application. ...
- Art 29 – Conditions on Patent Applicants
- (1) Member shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.

Conflict in the International Arena?

- The World Trade Organisation's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) 1994
 - Obligates
 - Private rights
- Convention on Biodiversity (CBD) 1992
 - Empowers
 - Public rights (Community Property)

International Initiatives to Provide a Nexus

- Nexus or link CBD to TRIPS by means of an international regime on ABS in relation to the commercial exploitation of genetic resources and traditional knowledge, specifically relating to applications for patents based on the use of such resources.
- Incorporations of these rights into the TRIPS Agreement, through amendments to the TRIPS Agreement, which will incorporate elements of ABS into the patent application process.
- CBD COP, WTO-TRIPS Council

- National Initiatives in the Asian Region

National Initiatives in the Asian Regions

- India - Protection of Plant Varieties and Farmer's Rights Act 2001
- India - Biological Diversity Act 2002
- India - Patents Act 1970 (as amended in 2002, 2005)
- Malaysia - Protection of New Plant Varieties Act 2004
- Malaysian States:
 - 1. Sarawak Biodiversity Centre Ordinance 1997
 - 2. Sarawak Biodiversity Regulations 2004
 - 3. Sarawak Biodiversity Centre (Amendment) Ordinance 2003
 - 4. Biodiversity Ordinance Sabah 2000
- The Philippines - Executive Order No. 247, promulgated in 1995
- Thailand - Plant Varieties Protection Act 1999

Summary: National Initiatives in the Asian region

	Federal Laws							State
	Dedicated ABS Law	Other laws						Dedicated ABS Law
		Patent			Plant Variety			
		Disclosure Requirement	PIC and benefit sharing	Revocation	Disclosure requirement	PIC and benefit sharing	Revocation	
India	Yes	Yes	No	Yes	Yes	Yes	Yes	
Malaysia	No	No	No	No	Yes	Yes	Yes	Yes
Philippines	Yes	No	No	No	No	No	No	
Thailand	No	No	No	No	Yes	Yes	Yes	

Regional Initiatives

- The Andean Community of Nations (Bolivia, Colombia, Ecuador, Peru and Venezuela).)
- Decision 391, Cartagena Agreement - Common Regime on Access to Genetic Resources 2/7/1996
- Decision 486 - Common Provisions on Industrial Property 14/9/2000
- The OAU Model Law

Regional Initiatives – ASEAN Framework Agreement

- *The Key Principles of the Framework Agreement*
- Objectives:
 - Set minimum standards among the parties for regulating ABS arising from the utilisation of, biological and genetic resources, and to strengthen national initiatives towards this objectives
 - Accord recognition and protection to traditional knowledge of indigenous and local communities, and to facilitate the fair and equitable sharing of benefits with the said communities where traditional knowledge is utilised

Regional Initiatives – ASEAN Framework Agreement

- *The Key Principles of the Framework Agreement*
- Scope and Coverage:
- Covers all biological and genetic resources of the parties, including the traditional knowledge associated therein, with the exclusion of genetic resources of human origin.”
- Not applicable to the traditional uses of biological and genetic resources by indigenous and local communities in accordance with their customary practices and traditions.
- Access to biological and genetic resources shall not automatically mean access to the traditional knowledge associated with the resources. Access to such traditional knowledge shall be explicitly indicated in the application for access.

Regional Initiatives – ASEAN Framework Agreement

- *The Key Principles of the Framework Agreement*
- Obligations of the Parties:
 - Among other responsibilities, the Parties are obliged to:
 - (a) take legislative, administrative or policy measures to regulate ABS arising from the utilisation of biological and genetic resources in accordance with the Agreement, and
 - (b) establish procedures for the granting of prior informed consent at the national and local level with the direct involvement of resource providers.

Regional Initiatives – ASEAN Framework Agreement

- *The Key Principles of the Framework Agreement*
- Prior Informed Consent:
- Prior informed consent of the party providing the biological and genetic resources is necessary before the access can take place.
- All applications for prior informed consent shall be accompanied by a full disclosure of prescribed minimum information

Regional Initiatives – ASEAN Framework Agreement

- *The Key Principles of the Framework Agreement*
- Fair and Equitable Sharing of Benefits:
- All resource providers shall be actively included in the negotiation of benefits on the basis of a full disclosure of potential benefits and risks arising from the use of the biological and genetic resources.
- Where traditional knowledge and resources are involved, Parties are to establish processes to ensure the fair and equitable sharing of benefit arising from the use of such traditional knowledge and resources.

Regional Initiatives – ASEAN Framework Agreement

- *The Key Principles of the Framework Agreement*
- Cross Borders Endemic Species :
- Whenever biological or genetic resources are indigenous to two or more Parties and such resources are subject to bio prospecting, the Parties where such resources are found may collectively discuss, with the entity initiating the bio prospecting activity, the terms and conditions of access to and benefit sharing arising from the utilisation of such resources.
- This arrangement will be facilitated by the clearing house mechanism.

Regional Initiatives – ASEAN Framework Agreement

- *The Key Principles of the Framework Agreement*
- Regional Clearing House Mechanism :
- Responsibility for, inter alia:
 - a. providing relevant information subject to appropriate confidentiality provisions, and such terms and conditions that may be imposed by a Party which provided such information;
 - b. providing technical and legal support to the competent national authorities;
 - c. establishing a database of biological and genetic resources and their associated traditional knowledge of the Parties, subject to national arrangement;

Regional Initiatives – ASEAN Framework Agreement

- *The State of Play*
- So far only Lao PDR, the Philippines and Singapore have obtained national clearance to sign the Framework Agreement.

END

- Thank you for your kind attention