



Fund

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FCIP Group Report

(ADOPTED)

*Document presented for Agenda Item 6:
Implementation of CGIAR Principles on
Management of Intellectual Assets*

Submitted by:
Fund Office



Fund

Fund Council Intellectual Property Group

Report on the Centers' Implementation of the CGIAR Principles
on the Management of Intellectual Assets in 2012

1. Introduction

The CGIAR Principles on the Management of Intellectual Assets (IA Principles) provides for the creation of an Intellectual Property Fund Council Group (FC IP Group) to facilitate coordination between the Fund Council and the Consortium and play an advisory role on the implementation of and compliance with the Principles. The members of the FC IP Group are Paul Figueroa (Legal Adviser/Bureau for Food Security, USAID, Washington DC) Bram de Jonge (Researcher, Wageningen University, the Netherlands) and Maria Jose Amstalden M. Sampaio (Senior Researcher, International Affairs, EMBRAPA, Brazil) (collectively referred to as “Members”), who were appointed by the Fund Council to serve for a period of two years. This Report presents the FC IP Group’s findings of the first review of the Centers’ implementation of the IA Principles approved on March 7, 2012. Its findings are based on information made available to the FC Group by the Consortium as well as documentation reviewed and gathered during meetings with the Consortium’s legal counsel in Montpellier on July 31-August 2, 2013. The reporting window was limited to calendar year 2012, and the information reviewed included the Consortium’s Consolidated IA Report, the Centers’ IA Reports as well as discussions with Moses Muchiri (the Consortium’s Legal Officer). The FC IP Group did not review the actual contracts and did not interact directly with the Centers. During the meetings in Montpellier, the FC IP Group identified certain issues and sent follow-up questions to the Consortium to be forwarded to the relevant Centers. Responses to those follow-up questions have further informed the conclusions in this Report. The findings, opinions and recommendations represent the Members’ professional views in their advisory role and do not reflect the views of the organizations or entities with which the Members are affiliated. While some Centers did not fully comply with certain requirements, there was overall progress in terms of implementation and compliance with the IP Principles and willingness to continue to improve. These findings are discussed in more detail below.

2. Comments on the CGIAR Implementation Guidelines, the Consolidated IA Report, and the CGIAR IA Report

The FC IP Group provided comments on the CGIAR IA Implementation Guidelines. A final version of the Guidelines was approved on June 14, 2013 and incorporated some of the IP FC Group’s comments.

The Consolidated IA Report did not include the information required by the CGIAR Principles under the Terms of Reference for the FC IP Group, which required a general description of the IA, the name and addresses of any contracting parties, target beneficiaries, etc. However, the Centers’ IA reports annexed to the Consolidated IA Report included much of this information. In addition, the FC IP Group was provided such information during the meeting in Montpellier or in response to follow-up questions to individual Centers.

Also, the FC IP Group reviewed and commented on the CGIAR IA Report, which was prepared by the Consortium Office (CO). The IP FC Group agrees with the Report’s conclusion that overall substantive gains have been made across the CGIAR Consortium resulting from the CGIAR IA Principles in terms of increased awareness, improved capacity and adoption of best practices. Given that this is the IA Principles’ first year of implementation and review, the Centers still have areas of improvement and growth. Specifically, the FC IP Group notes the following:

- As of September 2013, 10 Centers have reviewed their policies to make them compliant with the CGIAR Principles or indicated on-going processes of either reviewing existing or making new IA/IP related policies in 2013. The Consortium is currently reviewing existing Center IP policies for compliance with CGIAR IA Principles and has committed to reporting on this before the end of 2013 to the FC IP Group.
- In terms of capacity, most Centers have recruited in-house IP experts and have designated in-house focal points. Some Centers have also taken steps to build their legal IP capacity through training and workshops. We agree with the finding in the CGIAR IA report that the Centers' IP management capacity (including staff with in-house expertise) has improved and varies widely from Center to Center. Nevertheless, while some Centers' IP capacity appears to be commensurate with their needs, other Centers appear to lack the adequate capacity to appropriately manage their IP demands as well as implementation of the IA Principles.
- The CGIAR IA Report noted that some Centers did not comply with the requirements that provisions for research and emergency be included in the Limited Exclusivity Agreements (LEAs), or request a deviation approval from the Consortium. The CGIAR IA Report failed to provide a satisfactory explanation as to why the Centers did not include the provisions in the agreements and why the Centers did not request the required deviations from the CO. Furthermore, in the CGIAR IA Report, the Consortium committed to emphasizing the need for strict compliance with Article 6.2 (Limited Exclusivity Agreement) of the CGIAR IA Principles during the upcoming Consortium Legal/IP Network (CLIPNet) meeting.
- The CGIAR IA Report stated that the RUAs disclosed by Centers had varying degrees of compliance with Article 6.3 of the CGIAR IA Principles which provides the requirements for agreements for the acquisition and use of third party Intellectual Assets. As noted below, the FC IP Group agrees that some Centers did not provide sufficient explanation of how the use of third party IA furthers the CG vision. The CGIAR IA Report did not include a plan for remedial action in the future.

3. General Comments on the Centers' IA Reports

- a. Overall, the FC IP Group observes an encouraging trend with Centers' dissemination of IA. Some examples include:
 - i. Open access initiatives: Some Centers have established cutting edge open data sharing and management practices.
 - ii. Compliance with the International Treaty on Plant Genetic Resources for Food and Agriculture: According to information in their reports, Centers use of SMTA in germplasm transfers complies with their obligations under the Treaty.
 - iii. IP Management: Some Centers are using IP management to further the scope and impact of Centers' IA on target beneficiaries, e.g., CIMMYT and CIAT.
- b. Not all Centers had initially included enough information in their Center IA Reports for the FC IP Group to make a proper and full assessment of compliance with the IA Principles. For this reason, the FC IP Group sent follow-up questions to 10 of the 15 Centers, which all Centers responded to adequately. Also, the Center IA Reports did not follow a standardized template, probably because the Implementation Guidelines for the CGIAR IA Principles on the Management of Intellectual Assets had only been approved on June 14, 2013.

- c. Some Centers failed to comply with required flow down provisions for research and emergency in LEA's, and failed to request necessary approval for deviation from these exemptions. Of the 14 total LEAs reported, 12 contained non-commercial research exemptions. However, the research exemption provisions included by some of the Centers did not fully comply with the text under Article 6.2.1.b(1). Also, only two of the 14 LEAs included the emergency exemption provision required by the IA Principles. The Consortium reported that it neither received any request for approval of deviations nor did it receive explanations or justifications from the concerned Centers. The Consortium will address this particular issue with the Centers in early October 2013 in the upcoming annual CLIPNet Primary IP Focal Points meetings. This remedial action is not strong enough.
- d. A total of 11 RUAs were signed by four different Centers. The FC IP Group found that not all Centers provided clear and substantive information on how the intended use of the third party IA will further the CGIAR vision, or under what conditions the third party IA or the products derived therefrom can eventually be made available (Article 6.3.b). The FC IP Group requested additional information from three Centers. After reviewing the additional information provided by the Centers, the FC IP Group is still of the opinion that two Centers did not fully comply with article 6.3.b. for two reasons:
 - i. The Centers did not clearly establish how the products/ services that are intended to result from the use of the third party Intellectual Assets will further the CGIAR vision,
 - ii. The Centers did not clearly explain whether, and/or, under what conditions, the products/ services that are intended to result from the use of the third party Intellectual Assets can eventually be made available in target countries.

4. Recommendations

- a. Centers' reporting should improve.
 - i. In future reviews, the Centers' IA Reports should include:
 - 1) Agreement text on research and emergency exemptions in LEAs;
 - 2) More information on the technologies concerned in LEAs and RUAs and their relative position along the line from basic research to product development;
 - 3) More information on current IP portfolio, policies and management with respect to Centers' overall activities and especially with respect to the CRPs;
 - 4) More information explaining why a Center used a given third party IP asset and how its use would further the CG's vision.
 - ii. Centers should follow a standardized template for reporting to the Consortium.
 - iii. Centers should provide information not only on agreements taking place during the reporting window, but also on on-going agreements and partnerships.
- b. Capacity building and evaluation should be strengthened
 - i. Internal capacity at Centers. The Consortium and some Centers need to strengthen their IP capacity to appropriately deal with the demands and needs. While the IA Principles aim to strengthen the sound management of Centers' IAs and IPRs to further the CGIAR vision, and the FC IP Group provides oversight, the actual effect the IA Principles will have on the ground is yet unclear. In order to draw lessons, to identify best practices, and to learn from mistakes, it is essential to assess the effect

- of different IP management tools (in particular those promoted under Article 6.2 and 6.3) on the dissemination of Centers' IAs and their impact on target beneficiaries.
- ii. Sharing knowledge and information among Centers and beyond. The FC IP Group welcomes the Consortium Legal/IP Network ("CLIPNet") that has been established to share information and leverage experiences on the implementation of the IA Principles amongst Centers and CO. We would like to recommend the CO to continue to invest and improve this digital network and its activities on capacity building and knowledge sharing. Since many (public) research organisations in the world find themselves in a similar position as the CGIAR (i.e. navigating between both public and private interests and objectives), the FC IP Group would like to recommend the CO to consider opening-up its digital network for members outside the CGIAR in the future. In this way, a global learning community that fosters sound IP management for the public good can be established and continue to grow.
 - c. The FC IP Group has communicated their specific concerns to the Consortium Office and has recommended that the Centers (1) evaluate their use of third party Intellectual Assets in light of the CGIAR vision, and (2) include IP clauses in contracts with third parties in order to secure that the products/ services resulting from the use of third party Intellectual Assets can be made available to target beneficiaries.
 - d. Finally, we welcome the Consortium's ideas on how to strengthen its oversight role to ensure accountability when the Centers fail to comply with the IA Principles. In our view, the Consortium's remedial actions to address the Centers' compliance failures are not strong enough in light of the fact that the Centers were aware of the requirements and approved the IA Principles after arduous and lengthy negotiations.