New Law on Access to Genetic Resources of Brazilian biodiversity (Lei 13.123/2015)

Tiago Luz Farani
Department of Genetic Resources
Brazilian Ministry of Environment – MMA

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Why do we need ABS law?

• Natural resources are limited.

• Promote:
  • Conservation of biological diversity;
  • The sustainable use of its components;
  • The fair and equitable sharing of the benefits arising out of the utilization of genetic resources (GR).

• Recognize the value of traditional knowledge (TK) for nature conservancy and for R&D conducted by the industry.

• Reward indigenous and traditional communities for their TK, in a fair and equitable way.
MP 2.186-16/2001

1. Focused on preventing biopiracy.

2. Obtaining an ABS permit was proved to be too Bureaucratic.

3. R&D could only begin after obtaining an ABS permit.

4. Criminalizes and inhibits research and development.
1. **Brazilian Company** obtains PIC and MAT:
   - Contractual clauses established on a *case by case basis*;
   - Benefit Sharing payment can occur before the company perceives any economic benefit;
   - The provider of the GR, and the beneficiary of the ABS Agreement, could be one big farmer.

2. **Brazilian Company** applies at CGEN (National Authority) for an ABS Permit.

3. **ABS Permit Granted by CGEN.**
MP 2.186-16/2001

Processing time for obtaining an ABS permit in 2014

- Average
- Minimum
- Maximum

Year

CGEN

8.88

3.22

0.46

0.0
1. **Brazilian Company** obtains PIC and MAT:
   - Contractual clauses established on a **case by case basis**;
   - Benefit Sharing payment can occur before the company perceives any economic benefit;
   - The beneficiary of the Benefit Sharing could be one big farmer.

2. **Brazilian Company** applies for an ABS Permit.

3. **ABS Permit** Granted by CGEN.

4. **Brazilian Company** sends sample to a **Foreign Company**.

5. **Brazilian/Foreign Company** starts R&D.

ABS PERMITS GRANTED - 2002 TO 2014

NUMBER OF ABS PERMITS

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<tr>
<th></th>
<th>GR</th>
<th>TK</th>
<th>TOTAL</th>
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<tr>
<td></td>
<td>1547</td>
<td>120</td>
<td>1967</td>
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MP 2.186-16/2001

Benefit Sharing Agreement Approved by CGEN - 2002 to 2014

- Cumulative
- Non-Cumulative
New ABS Law (Lei 13.123/2015)

- Main Objectives:
  1. Legal certainty;
  2. Low transaction costs;
  3. Focus on promoting Access to GR and TK;
  4. Fair and equitable sharing of benefits;
  5. Benefits channeled to conservation;
  6. Foster innovation;
  7. Sectorial flexibility.
New ABS Law (Lei 13.123/2015)

1. **Brazilian company** fills ABS Electronic Registry before:
   2.1. Sending sample to Foreign Company;
   2.2. Claiming any Intellectual Property Right;
   2.3. Publication of research data.

3. **Brazilian/Foreign Company** starts R&D.

4. **Brazilian Company** reports the development of a **finished good** or **reproductive material** as a result of access to GR/TK (Electronic System).

5. **Economic Benefits.**

6. **Benefit Sharing Payment.**
Benefit Sharing

- **Clear scope:**
  - **Access to GR/TK:** Research and Development using Brazilian GR or TK.

- **Clear Taxable Event:** Any economic benefit arising from R&D of **finished goods** or **reproductive material** that uses GR/TK.
  - Avoids **Cascade Tax**.

- **Clear Tax basis:** **Annual Net Revenue** obtained from sales of finished goods or reproductive materials that uses GR/TK.

- **Well defined Tax aliquot (GR):** ABS Fund.
  - **By Default:** 1% of the Annual Net Revenue;
  - **Sectorial Agreement:** 0.1% to 1% of the Annual Net Revenue.
Benefit Sharing

- Tax aliquot (TK):
  - **TK of Known Origin:**
    - **ABS Agreement** with the indigenous or local communities that provides the TK, on a **Case by Case basis**;
    - **+ 0,5% of the Annual Net Revenue** paid to ABS Fund to distribute among other indigenous or local communities that hold the same TK.
  - **TK of Unknown Origin:**
    - **By Default**: 1% of the Annual Net Revenue;
    - **Sectorial Agreement**: 0,1% to 1% of the Annual Net Revenue.
Benefit Sharing Exemptions

- Intermediary products (Art. 17, § 2º; Art. 18, § 1º);
  - Academic research.

- Licensing or transferring intellectual property rights (Art. 17, § 2º);

- Small companies (Art. 17, § 5º);
  - Gross Annual Revenue < R$ 3.6 M / U$ 0.92 M.

- Traditional farmers (Art. 17, § 5º).
R&D based on Brazilian biological diversity: Current Scenario

- Biological Diversity
- R&D
- Benefit Sharing
R&D based on Brazilian biological diversity: Future Perspectives

- Benefit Sharing
  - Biological Diversity Conservancy
  - Products based on Brazilian Biological Diversity
- New uses on Brazilian Biological Diversity
- Facilitated ABS procedures
- Incentives (Subsidy, Public funding)
- R&D