Intellectual Property Rights and scientific Partnership in ARD

Niels Louwaars

Biopolies specialist

Centre for Genetic Resources, the Netherlands
Agricultural Research for Development

ARD traditionally a component of public concern for food security, rural development and equity:
- International research towards Global Public Goods
- National public sector Agricultural Research Systems
- Public seed production and extension systems

Currently, ARD finds itself in a more diverse environment
- Privately owned (e.g., Bio) technologies
- (mainly) public research
- Increasingly private seed production

Centre for Genetic Resources, the Netherlands
Patent: Provides a **territorial, temporary exclusive right** on the **commercialisation** of the invention in return for public disclosure, granted for the benefit of society.

Plant Breeder’s Rights but this is rooted in agriculture:
- Exemptions for farmers to reuse saved seed (subject to national law) and for breeders to use any protected variety for further breeding
- Rights limited to one variety, not a whole range of claims
Objectives of PR

- PRs are meant to provide a commercial stimulus for innovation
  - Through the promise of revenue, investments in research are stimulated
  - Through the exclusivity, partners in the innovation chain may be triggered to transfer technology into a product
Balancing the interests of the inventor and society requires a careful consideration of options.

Breeder’s Rights have to be balanced with Farmers’ Rights.

Patents on biotechnological products can block innovation down the line! ¹ balancing Patents and Breeder’s Rights (e.g. in EU)
Matching three types of rights

- Sovereign rights
  - Access to PGR
- Private rights
  - IPRs
  - Contract law
- Communal rights
  - Farmers' Rights
  - Rights on Traditional Knowledge

Centre for Genetic Resources, the Netherlands
PRs institutional policy

- Institutional policy should reflect the mission and vision of the organisation

- Private sector: royalties and creating strategic market positions

- Public research for commercial agriculture: sharing technologies with partners (public/private research partners + breeders/seed producers)

- Public ARD: complex considerations . . . . . . !
IPRs for revenue creation in ARD is dangerous!

- Promotes research on commercial (seed) crops bypassing important food security crops
- Promotes research for commercial farmers bypassing the interests of smallholders
Research managers:

caught between a rock and a hard place

Centre for Genetic Resources, the Netherlands
The rock . . . .

- Government policies to patent
- Scientists want to access proprietary technologies
- Managers wish to complement dwindling public investments and pay good scientists a fair salary
- Need to generate interest with seed producers
the hard place

- Government policies to patent
- Scientists want to access proprietary technologies
- Managers wish to complement dwindling public investments and pay good scientists a fair salary
- Need to generate interest with seed producers

- Government and donor objectives to do research for non-commercial objectives, e.g., the poor
- Scientists want to use technologies whether or not they are protected

Centre for Genetic Resources, the Netherlands
PRs are considered complex

Awareness with African research managers is low
Awareness with European policy makers is low
Many stress the complexity of the legal issues

- There is a need to demystify PRs. They are primarily a policy tool that is too important to be left to the PR lawyers.
- Breeder's Rights have much less repercussions in agricultural research than patents
- Policy objectives always need to prevail; and partners need to act responsibly

Centre for Genetic Resources, the Netherlands
Partnerships

- Technology owners need to realise that ARD is a different business: humanitarian licenses.
- Public sector research managers need to give priority to their mission and should use IPRs carefully and only where they serve the transfer of technology to their target groups.
- Governments should avoid making public research dependent on royalty income.

Centre for Genetic Resources, the Netherlands
Always make sure to have the right point of view