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*Current Issues in International Intellectual Property Law*

**Access and Benefit Sharing of Genetic Resources in the Pacific  
Pacific Science Association Conference  
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## *Current Issues in International Intellectual Property Law*

**Intellectual property laws are important for stimulating creativity and protecting the inventor's or author's rights, but these rights also must be balanced with the broader social benefits.**

**In recent decades IP laws have become longer, broader, stronger:**

- **Longer: Patents-20 years; Copyright-life +70 years; Database protection-potentially perpetual.**
- **Broader: Patents applied to life forms, business methods, algorithms (many subjects previously unprotectable); Database protection applies new *sui generis* exclusive property rights on top on copyright to collections of information, including factual compilations.**
- **Stronger: greatly increased civil penalties for infringement; new criminal penalties; more aggressive enforcement**

**Strong statutory IP laws strengthened further by even more restrictive license terms, plus technological protection measures**

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The high-protectionist IP agenda has been promoted internationally and nationally by dominant technology and copyright industries seeking to strengthen existing market power. The IP terms used in bilateral trade agreements are even more protectionist than in WIPO or WTO.

These trends have led to some negative outcomes and a backlash from developing countries.

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**Negative implications from excessive legal and economic restrictions on access to and reuse of research data, information, and materials, particularly in the public or non-profit sectors:**

- 1) Higher research costs.**
  - 2) Significant lost opportunity costs.**
  - 3) Barriers to innovation.**
  - 4) Less effective cooperation, education, and training.**
  - 5) Developing countries especially disadvantaged.**
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**In biodiversity, developing countries seek to assert control over their resources and prevent economic exploitation by industries in a situation with unequal bargaining power and capacities. In many cases, this has resulted in overprotection of biological resources, limiting non-profit, public-interest research as well as the development of commercially useful applications for the benefit of the countries with those resources. The situation has thus gone for developing countries from a lose-win to a lose-lose conundrum.**

**Need solutions that will lead to win-win outcomes.**

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### **Proposal for a compensatory liability regime—“take & pay”**

- **For biological materials with no known or unlikely derivative commercialization prospects**
  - **Standard contractual MTA model with pre-set royalty structure in the event of commercial success**
  - **No distinction between “non-profit” and “for-profit” users**
  - **Royalties AND research rights preserved, unlike ITPGRFA**
  - **Non-exclusive access**
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### **Benefits of a compensatory liability regime:**

- **Much lower transaction costs**
  - **Similar to the ITPGRFA**
  - **Counters spread of ever-more restrictive MTAs to basic research materials**
  - **No upstream exclusive rights**
  - **Promotes research**
  - **Does not prevent exclusive deals for materials with known or likely commercial value**
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## *Current Issues in International Intellectual Property Law*

**Issues that need to be addressed:**

- **Registration**
  - **Tracking Mechanisms and the Limits of Contractual Privity**
  - **Valuation of Compensatory Shares**
  - **Mediation of Disputes**
  - **Governance and Administration**
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