The Multilateral System of Access and Benefit Sharing

and the

Standard Material Transfer Agreement

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Outline

• The MLS and the SMTA – what are they?
• What PGRFA are available with SMTA?
• What are the rights and obligations of the provider?
• What are the rights and obligations of the recipient?
The Multilateral System

• A standard system for the fair sharing of germplasm, data and benefits
  o Simpler than bilateral negotiations for each transfer of germplasm

• Agreed by all countries that are members of the International Treaty on Plant Genetic Resources

• Coverage restricted
  o Germplasm of 64 crops
  o Use for only for research, breeding and training for food and agriculture
The Standard Material Transfer Agreement

• A contract to be used for every transfer of material under the Multilateral System

• Defines the *rights* and *obligations* of *Provider* and *Recipient*

• Legally binding under international law
  - Irrespective of whether provider and/or recipient are in countries that are Party to the Treaty

• Text of the SMTA must not be changed

• Available in 6 languages at
  [www.planttreaty.org/smta_en.htm](http://www.planttreaty.org/smta_en.htm)
What must be made available with SMTA?

- Public domain PGRFA managed by governmental organizations in countries that are members of the Treaty, both *ex situ* and *in situ*;
- PGRFA conserved in international genebanks that have signed agreements with the Treaty;
- PGRFA held by anyone anywhere if it was acquired with SMTA
What may be available with SMTA?

• Everyone who holds PGRFA of the 64 crops is invited to share them with SMTA
  o Private sector, NGOs, farmers, individuals …
  o Public sector in non-member countries
  o Holders in member countries are encouraged to share
    • If they do not share, they may be denied future access

• Breeding lines bred from PGRFA obtained with SMTA
  o Available at discretion of breeder
  o If available, must share with SMTA
    • With possibility to add more conditions

• Commercialised varieties bred from PGRFA obtained with SMTA
  o Not available with SMTA → must pay
What is not available with SMTA?

- PGRFA not included in the 64 crops listed in annex 1 of the Treaty
- PGRFA intended for non-food/feed purposes, e.g. biofuels, pharmaceuticals
- PGRFA subject to legal, contractual or technical restrictions on use
Parties to the Treaty and CBD
(1 Sept 2009)

- Treaty: www.fao.org/Legal/TREATIES/033s-e.htm
- CBD not Treaty: www.cbd.int/convention/parties/list

RDA Training course on PGRFA. Sept 2009
Rights and obligations of a Provider under the SMTA
Provider’s rights

• Provide access to lines that you are developing is at your own discretion

• If you provide access to your PGRFA under development, you may add ancillary conditions to SMTA
  o Provided no change to or conflict with existing terms and conditions
  o e.g. you can
    • Charge fees / royalties for access
    • Can restrict access
    • Can require recipient to track and report use of the material
Provider’s obligations

• Must facilitate access to PGRFA under the MLS
  o For as long as it is conserved
• Don’t charge more than basic cost
• Grant access to all data
  o Passport + other associated available non-confidential descriptive information
• Periodically inform the Governing Body about what germplasm has been provided
• Inform FAO on request of all requested details
• If providing germplasm protected by intellectual or other property rights, ensure compliance with relevant international agreements and national laws
Rights and obligations of a Recipient under the SMTA
Recipient’s rights:

Subject to certain conditions you may:

- Conserve the germplasm
- Use it for breeding, research and training for food & agriculture
- Develop and commercialise products derived from it
- Claim intellectual property rights over the product(s) developed from it
- Distribute it to others
- Distribute derived breeding and research materials
  - With additional conditions if required
Recipient’s obligations (1)

• **Must not use the germplasm for**
  “chemical, pharmaceutical and/or other non-food/feed industrial uses”,
  or any other purpose except research, breeding and training for food and agriculture

• **Must not claim**
  “intellectual property or other rights that limit the facilitated access to the material …, or its genetic parts or components, in the form received …”
Recipient’s obligations (2)

- **Must** make available all non-confidential information resulting from the your own R&D on the germplasm.
- If recipient keeps a sample or copy of the germplasm, **must** make it available to others.
- If recipient provides the original germplasm or derived breeding lines or research materials to 3rd parties, you **must** do so under a new SMTA:
  - as provider in the new SMTA,
  - complying with provider’s obligations.
Recipient’s obligations (3)

- If commercialise a Product (e.g. improved variety) developed using germplasm received with an SMTA, and that product is not available without restriction to others for further breeding and research, **must**
  - Pay a percentage of sales of the Product to the Governing Body
    - 0.77% of gross sales annually
    - Same percentage irrespective of number of MLS ancestors in pedigree
  - Submit annual reports to the GB on the liability to payment
Conclusion

- The MLS introduces new rules for germplasm exchange, linked to commercialization
- Standard, potentially simple, efficient, effective to administer
- Need care understanding rights and obligations
- Providers often need to explain recipient’s rights and obligations!