The Nagoya Protocol: Implementation

Considerations for Microbiologists & the ABS CHM

Nagoya Protocol Implementation

Setting the scene

- What's the Problem?
- How should Microbiology operationalise compliance, monitoring and tracking?

Lets step back a moment

Legal Certainty

Why have a Protocol?

- No substantive implementation of the agreed access regime (per the Bonn Guidelines) unless developed (user) countries agree to legally binding requirements to ensure that provider's PIC and MAT terms are honoured in user countries

NP = Legally binding obligations for Access and for Utilisation.

- Outcome: create legal certainty

Legal Certainty

- Permits = Certificates of Origin (CoO) ie is evidence of lawful collection, therefore each permit needs a unique identifier
- Electronic verification of permits:

Cheap, easy, secure, minimal transaction cost, defeats false papers – a good idea

- ABS CHM provides this verification facility – another good idea

ABS –CHM & Legal Certainty

To help, NP requires min data for IRCC (17(4)):

- Issuer
- Date
- Provider
- Unique identifier
- To whom issued
- **Subject matter or GRs covered by Cert**
- Confirm M.A.T. established and P.I.C. given
- Commercial and/or Non-commercial

ABS –CHM & Legal Certainty

So IRCC is good for establishing validity of lawful access and collection (Art 17(3))

BUT: it is the bridge between provider and user ie basis for compliance action by user countries to ensure GR are only used in accordance with PIC and MAT ie lawfully obtained and used.

Here is the question: how well does the IRCC connect the user's GR to the permit?

ABS–CHM & Legal Certainty

All is well **IF:**

a. the IRCC or permit describes the GRs held by the user and

b. the IRCC unique identifier travels with the collected material

- If not (a) or (b), then the compliance measures required by the NP fail.

ABS–CHM & Legal Certainty

Article 17(4)(f)

*…*Shall contain the following minimum information … *Subject matter or Genetic Resources covered by the Certificate*

Question: if the minimum data set provided to the ABS CHM does not enable collected material to be identified as material collected under the requisite Permit, does this mean that the data set is incomplete?

ABS–CHM & Legal Certainty

It is common in the microbial world to be unable to know what you have collected until you or your colleagues have later studied it.

If the IRCC cannot not identify what you have, how do you demonstrate you lawfully obtained it and are lawfully using it?

This is the underlying issue we confront today and tomorrow.

Identification

- We must consider what ways the ABS CHM IRCC information can be updated to give it it greater usefulness and reliability
- We know ABS Permits can be cancelled, suspended, or amended – in which case the NCA should cause that information to be sent to the ABS CHM and the IRCC can be retired and/or replaced.
- This action could be be cumbersome in the microbial research world where many organisms are unknown at time of collection

Why Microbial Science?

- Identification and tracing of microbial strains are central to the conduct of this science. There would be chaos within collections and between collections if there was no systematic approach to identification and management of material.
- The global IP system relies on MCC's to correctly identify and manage microbials lodged under patent approval obligations So MCCs have experience with reliable identification and management systems.

Microbial Science Initiatives

MOSAICC – ground breaking code of conduct

T.R.U.S.T. - stands for TRansparent User-friendly System of Transfer for Science & Technology.

It aims at organizing the scientific, technical and administrative activities of culture collections and microbiologists in light of the Nagoya Protocol.

Microbial Science Initiatives

With this expertise WFCC and its allies have much to offer.

Conditions for success:

- Must be low cost
- Not burdensome
- Quick
- Conform to NP and implementing legislation
- Solutions must combine - codes of conduct and structural processes

Microbial Science Initiatives

Two tasks-

1. Explore how ABS CHM supports the conduct of microbial science, and
2. Explore how the TRUST initiative and the Global Catalogue can support the implementation of the Protocol

Thank you