

COMMENTS ON CROP AND USER CATEGORIES (NCP GB7-004) IN THE REVISED MULTILATERAL SYSTEM

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The Bane of Complexity

Third World Network (TWN) has participated in many access and benefit sharing (ABS) discussions, including the development and implementation of the thus-far successful multilateral ABS system for potentially pandemic influenza viruses (the WHO PIP Framework).

TWN is strongly of the opinion that in order to work, the benefit sharing system in the revised ITPGRFA MLS should be as simple as possible, such that its terms are unmistakably fair and equitable, and readily comprehensible to those inside and outside the system.

Proposals to develop multilayered, complicated systems with many rates for different crops, compounded by the potential for a multiplicity of user types may result in dozens, hundreds, or conceivably even thousands of different payment level permutations. This result must be avoided as such complexity is far more likely to harm than help the MLS and BSF.

For example, an obtuse payment system could give rise to uncertainty and disagreements about applicable payment rate(s), create incentives to avoid or game the system and, particularly when viewed from small farms and developing countries, create situations where the system's equity appears questionable. These potential problems would reduce adoption and participation in the system, and could raise mistrust.

Indeed, there is a strong argument that complexity on both the access and benefit sharing sides of the original MLS is a significant factor driving avoidance and contributing to the anemic development of the BSF to date. It would be a failure if the revised MLS did not reduce the debilitating complexity of the existing system.

In contrast, a simple system of a scale of payments based on commercial benefit (typically seed sales), with appropriate safeguards to ensure equitability, can be transparent and encourage confidence.

Accordingly, the goal of discussion on crop and user categories should be how to minimize them, consistent with maintaining fairness and equity in the allocation of mandatory user payments into the BSF.

A Simple Differentiation based on Commercial Use

Differentiation between user types will be required in a revised multilateral system, though it needn't be complicated provided that commercial use is made the primary differentiator.

All entities in the subscription system that *obtain commercial benefit* (including via licensing) from use of MLS germplasm and genetic sequence data must be required to make payment on a

revenue-based scale (see next section), irrespective of entity type - private for-profit, public, private non-profit, etc. This scale, at its low end, may include a waiver or a token payment for the smallest entities, with no payment due from entities that do not commercially benefit from use of MLS germplasm.

Making Commercial Users, Especially Industry, Responsible

While some form of rate differentiation by crop might be a component of the revised MLS, e.g. to account for crops for which little commercial planting material market exists, the payment structure should be a scale (or set of payment “bands”) that allocates the total BSF user payment obligation across all MLS commercial users.

The task of developing a payment scale proposal should be assigned to industry. The payment scale may be put together with government oversight, with payments expressed as percentages of the total obligation and bearing in mind the necessity of reaching the total annual user payment obligation fixed by the Treaty (e.g. \$100 million).

With industry and other commercial entities having developed a formula to divide the BSF obligation amongst themselves, that formula would then be submitted for review and approval by the Treaty’s Parties, who would ensure that what is ultimately adopted is both fair (e.g. to small seed companies) and equitable (e.g. to developing countries).

If the Treaty fixes an annual MLS user payment level of US \$100 million, the question of allocating those payments among users may be handed off to industry (and other users deriving commercial benefit) to address collectively, for example, through trade associations. Commercial users might together propose a system that includes crop-based differentiation, or they may create an assessment scale (or payment bands) based solely on company income. Or they may take a third approach.

The important point isn’t whether or not the system that is ultimately adopted includes crop-based differentiation, but rather that the payment scale will result in the required amount paid into the BSF, with those payments distributed fairly and equitably among commercial users.