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Editorial

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PROFESSIONAL RESPONSIBILITIES TO CUSTODIANS OF TRADITIONAL KNOWLEDGE*

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In the past the rights of custodians of traditional knowledge (TK) were often disregarded when data were collected and worth derived. It was common place for those conducting academic pursuits or finding new therapeutic leads to conduct their activities irrespective of the rights of those that were contributing the information. This traditional approach enabled all to utilize and/or exploit the information in whatever way they chose. The same could be said for the protection of genetic resources, since many countries with rich biodiversities had yet to address issues related to protecting and conserving these valuable assets. Not only was advocacy lacking for those providing the information, but laws and policies had yet to evolve to protect the richness of unique floras that were being utilized. It was not until the latter part of the 20th century that sensitivity to these issues began to evolve and approaches to ethical behavior were delineated. In spite of the progress that has been made, it is evident that many colleagues are still unaware how changing world policies and laws, as well as professional guidelines are impacting on the way traditional knowledge should be acquired, managed, protected and disseminated so that maximum benefits accrue to its custodians. The objective still remains to make compliance a professional standard and prevent ways for any abuse of these mandates to take place.

Within the context of this editorial I have attempted to present the current status of these evolving concepts in terms defining how traditional knowledge, claims of ownership, its utilization and protection are viewed in the global perspective. Included are reviews of current and evolving mechanisms of TK protection including types of patent laws, and the challenges that are involved in protecting commercially viable TK. Within this context are explanations of how full disclosure of TK-associated genetic resources, referred to as "The Requirement" might be applied in various parts of the World, and how the generation of types of defensive data bases can be involved in this process. Hopefully this information will be useful to those investigators that collect or utilize these valuable assets so that they can address these issues ethically and fairly on behalf of those providing the information.

The complexity of these issues are immense, and depends upon where the work is being conducted, how ownership issues are delineated, and what type of information is disseminated to whom and when. Many national, international laws and policies as well as professional guidelines are now in place, which dictate the conduct of such endeavors. It is no longer acceptable to disregard these and it is imperative for investigators to make every effort to comply with those relevant to their research. The core issues pertain to respecting the rights of the custodians of TK through eliciting prior informed consent, and ensuring that these data linked to the use of genetic resources are protected appropriately so that potential optimal benefits are assured. Disclosure should be made with the acquiescence of those providing it and with their understanding of the consequences of this action. Moreover, those collecting this information have the legal and ethical duty to honor all fiduciary obligations elicited during this process and to comply with all national laws governing the extraction of genetic resources.

Oversight and management of these data remain challenging particularly in academia where professional survival is linked to the requirement of "publishing or perishing". Within this context there is a need to understand the management of disclosing useful secondary information and primary data which must be considered differently. For example, simply citing all taxa with their uses in a presentation,

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publication or grant etc., is no longer acceptable unless care has been taken to dereplicate the information first. This task, while imperfect, can be done by referring to appropriate reference material and on line data bases so that any novelty can be identified and inadvertent disclosure of potentially valuable information, considered "know how" prevented. These sources should be duly referred to. An attempt not to consider this aspect in the context of current patent laws and other protective mechanisms is inexcusable. Most importantly, the onus of either advertent or inadvertent disclosure should fall on the investigator rather than the convener of a meeting or publisher of a journal. To protect these latter individuals as well as their organizations, clear guidelines regarding ethical and acceptable disclosure should be available to all presenters and authors, and means of indemnification required to verify that all guidelines, both legal and professional, have been followed in the collection and presentation of data. Similar procedures should be in place regarding the presentation of information in a dissertation or thesis, and when necessary certain proprietary data should be excluded or only presented in coded form. Doing otherwise would put these data into the public domain, and thereby compromise their worth. This is especially true of traditional knowledge which might lead to the potential commercial development of a product or products. University officials should affect suitable policies to protect this information so that academicians and/or their students are not obliged or coerced into revealing data that they feel compromise their commitment to individuals that have shared this knowledge with them, and who might benefit from keeping the information proprietorial. Understanding how to apply patent laws or other protective mechanisms can differ, and can be used to accommodate this need.

Disclosure of TK-linked proprietary information within the context of grant review remains a thorny issue. In spite of the presumed integrity of the reviewers this potentially "leaky" process, particularly within large review panels, could cause the unwarranted dissemination of this type of information thus nullifying its value. Granting agencies should not accept proposals associated with proprietorial TK-linked information unless they are willing to accommodate the need for protecting this information in more secure ways than is their normal policy. For example, they can expect to receive preliminary data related to the identity of plants or compounds in coded form because fiduciary agreements may prevent releasing this information until patent protection has evolved. In order to clarify any issues related to this type of data presentation additional information may be required from the principal investigator during the review process. Resolution could be easily achieved if the query was general in nature such as determining if these data represent more than one taxa or related compounds. However, should explicit information be required than clearly the number of individuals involved would have to be very restrictive such as assigning one representative within the granting agency and only the primary reviewer to be privy to these types of information. These individuals would be legally bound to comply with additional strictures accompanying this limited disclosure and be obliged not to reveal to the entire review board, or others, the explicit nature of the proprietary information. This additional information would not be retained by the granting agency in its portfolio but returned once the review had been accomplished.

There are still parts of the world where laws have yet to be instituted to protect TK and genetic resources. During the period where these countries and/or communities of nations struggle to address these issues appropriately it is important to emphasize what aspects must be prioritized over others. Recognizing that traditional knowledge is rapidly disappearing as globalization increases, it is imperative that this information be recorded and safeguarded as soon as possible. Ideally this should be done by those that are custodians of this information or alternately by professionals willing to aid in this endeavor. When a local, national or regional data base does not as yet exist detailed records should be formatted using guidelines set up by the WHO/WIPO or other types considered suitable. Consideration should be given to all proprietorial aspects with the idea that these will eventually be incorporated into some form of defensive data base. Should professional help be elicited, or conducted independently, investigators should be willing to elicit prior informed consent as well as honoring national policies regarding the collection of genetic resources and other international policies of engagement, and disclosure. Moreover to protect any rare or endangered species, geopositioning data and TK information should be kept separate from that which appears on any herbarium voucher specimens. When commercial development is envisioned or is being conducted, the circumvention of potential benefit sharing with custodians of this knowledge should be avoided. Investigators ignoring these guidelines, evoke the risk of retrospective retribution should their activities become apparent to outside sources.