

**ashish kothari**

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Cc: R.V. Anuradha <panuj@vsnl.com>

Subject: Concept note on Access/Benefit-sharing/IPRs

Date: Wednesday, February 16, 2000 12:46 PM

Dear members,

Pl. see below my draft of the concept note on Access/Benefit-sharing and Intellectual Property Rights. I would appreciate comments.

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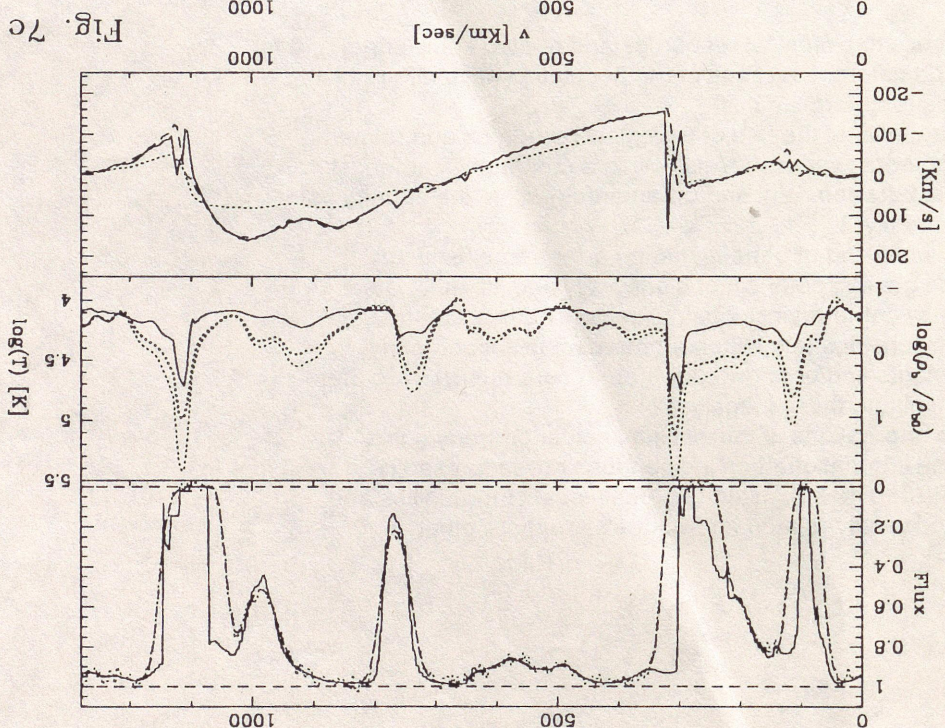
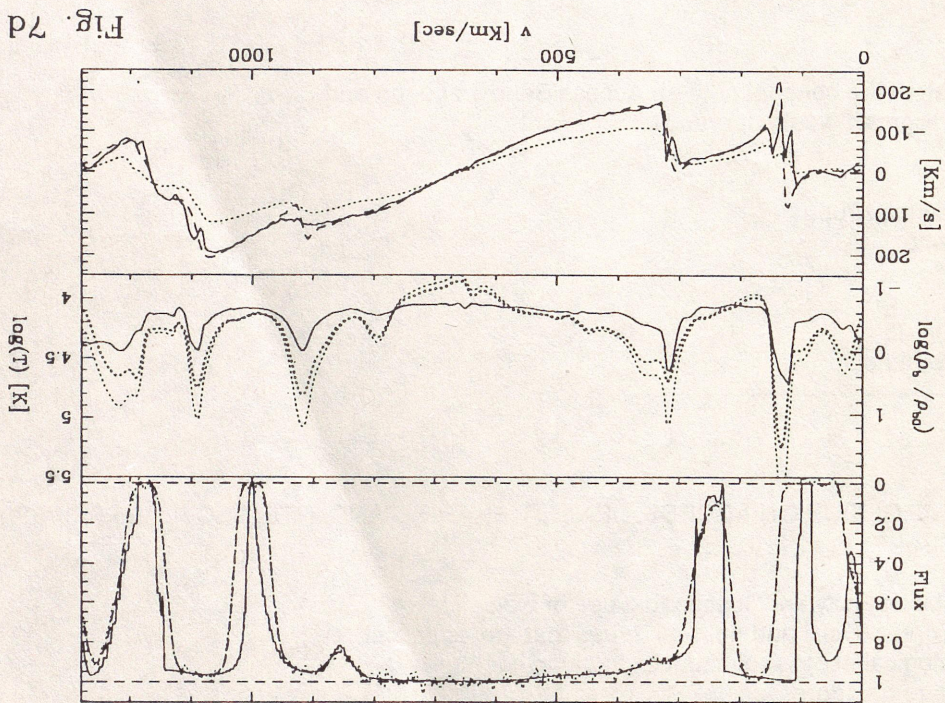
Concept Note

#### THEMATIC WORKING GROUP ON ACCESS, BENEFIT-SHARING AND INTELLECTUAL PROPERTY RIGHTS

The conservation of biodiversity and sustainable use of biological resources entails complex social and political issues that are as critical to address as the biological/ecological aspects. In particular, the following issues need to be addressed:

1. Who has access to biological resources and related knowledge, and for what purpose? How do different sections of the population have differential access, and what factors determine this?
2. How do the benefits of the use of biological resources and related knowledge get distributed, at various levels (within a community, amongst different communities, between rural and urban areas, within the country as a whole, and internationally)?
3. In particular, what kind of benefit-sharing arrangements, if any, already exist when the genetic potential of biodiversity and its associated knowledge, are used by commercial/industrial sectors? What are the inequities in these relationships (e.g. when a pharmaceutical company accesses medicinal plants and/or knowledge from a community)? Are there attempts to reduce/eliminate these inequities?
4. What are the implications of current intellectual property rights regimes (domestic and international) on indigenous knowledge and its holders? Can such IPR regimes be used to benefit local communities and individuals holding biodiversity-related knowledge? Are there other

Fig. 7: Middle panel in each figure shows the gas density along a row, in units of average gas density (thick dotted line; left vertical axis), the gas temperature (solid line; right vertical axis), and the gas pressure (thin dotted line; the same scale as density but arbitrary units). Spatial coordinate in horizontal axis is  $x = v/H$ . Rows shown in Figs. 7(a,b,c,d) are marked as dashed lines in slice in Fig. 5. Calculated Ly $\alpha$  absorption spectrum is in top panel, without thermal broadening (solid line), and including it (dashed line). Peculiar velocity is shown as dotted line in bottom panel, together with gravitational acceleration (dashed line) and total acceleration (solid line) divided by the Hubble constant.



existing laws/policies/programmes that help in such benefit-sharing and in protecting indigenous knowledge?

5. What modifications in existing laws and policies, including IPR systems, are needed to:

(i) Ensure that access and benefit-sharing in the use of biological diversity and related knowledge is equitable?

(ii) Ensure that indigenous knowledge (community and individual) is respected and protected, in particular in relation to IPR regimes. Are alternative IPR regimes needed, and if so, what would be their features?

6. Are there developments in other countries that India can learn from?

7. What would next steps for local communities, state governments, and the country as a whole?

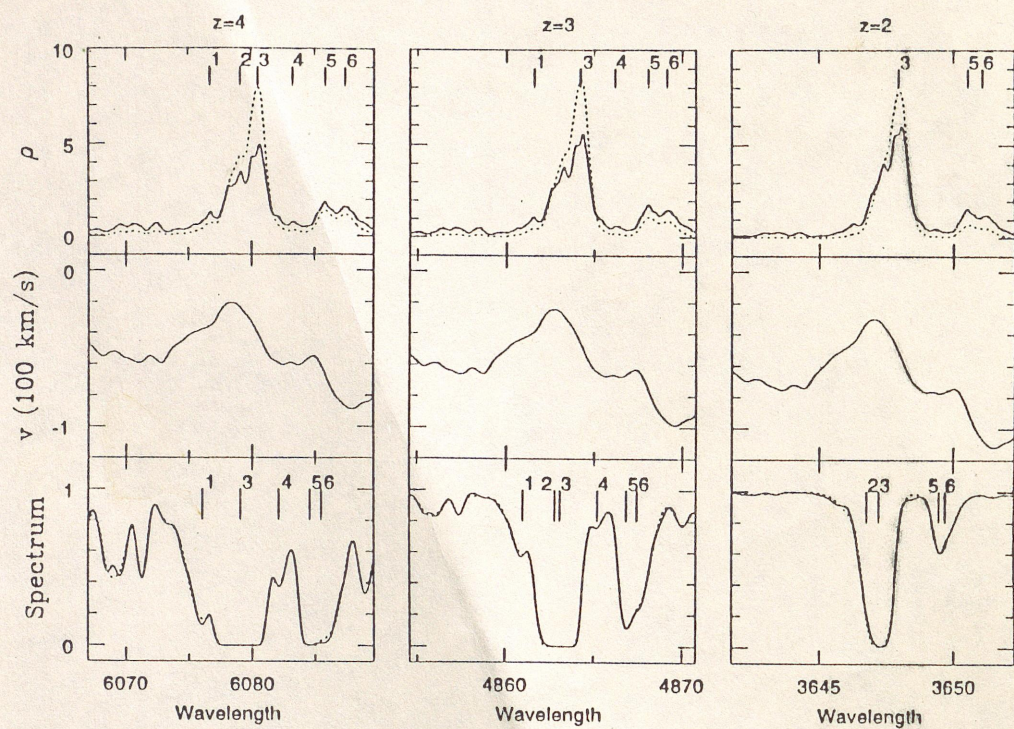


Fig. 14.— Evolution of the IGM in the comoving box  $5h^{-1}$  Mpc around  $4133\text{\AA}$  at  $z = 2.4$  in Fig. 12 at three different redshifts,  $z = 4$ ,  $z = 3$  and  $z = 2$ . The upper panels show the density distribution (solid lines) and the “maximal smoothed” reference field (dashed lines) where six intrinsic absorbers are marked and discussed in the paper. The middle panels show the peculiar velocity. The lower panels are the absorption spectra. The marked numbers are lines from the Voigt-fit and the dashed curves are the restored spectra from these lines.

Final draft  
21/2/2000

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2. Similarly, different sections of society have varying levels of access to information and knowledge relevant to the use of biological resources. For instance, knowledge on medicinal plants differs greatly within and between communities. This has implications for benefit-sharing and intellectual property rights concerns. A brief assessment of this would be necessary.
3. Given the above conditions, benefits from the use of biological and genetic resources, and of related knowledge, are differentially distributed in society. This differential distribution occurs within a community, amongst different communities, between rural and urban areas, within the country as a whole, and internationally. This situation needs to be assessed, with concrete examples. E.g. what kind of inequities exist in the relationship between the collectors of medicinal plants and a pharmaceutical company that makes use of these plants to make a drug?
4. Are there any kind of explicit benefit-sharing arrangements already existing in India, which attempt to break away from the conventional inequitous relationships (e.g. the TBGRI-Kani arrangement in Kerala)? An assessment of these would be necessary.
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were superscript  $t = -\infty$  tells us that we assumed this form of Wigner function in a distant past. Note that due to the self-coupling term this state is no longer stable (in general) and will undergo some evolution even for  $t < t_0$  i.e., in absence of the external potential  $-M^2\theta(t - t_0)$ . This means that the self-interaction tries to rearrange the free vacuum which was imposed as an initial state. It is possible to prevent this rearrangement if we choose constant  $C$  to be:

$$C = -\lambda \int \frac{d^3p}{(2\pi)^3} \frac{m}{E_p}. \quad (109)$$

This constant cancels exactly the self-interaction term and the initial free vacuum becomes a stationary solution to (103-106) and stays unchanged as long as  $t < t_0$ . Note that  $C$  is defined by the initial vacuum and stays fixed even when we switch on an external potential.

The only problem is that the integrals defining  $C$  and self-interaction diverge and one has to introduce a finite cutoff  $\Lambda$  to make the subtraction meaningful. We work with an isotropic system so the angular integration is not a problem:

$$\int d^3p \rightarrow 4\pi \int_0^\infty d|p| p^2 \rightarrow 4\pi \int_0^\Lambda d|p| p^2. \quad (110)$$

The last substitution is just the desired regularization. The presence of divergences is not a strange here. In fact the constant  $C$  may be traced back to the "mass renormalization" counterterm in the Lagrangian. (There may be some confusion related to the fact that "mass" appears not only in  $U$  but also in other parts of our expressions. This is due to Feshbach-Villars transformation. The mass term plays an important role in this transformation but we are free to use only a part of it - the rest may be attached to a scalar potential. Note, however, that our wave functions and subsequently the Wigner function are normalized with respect to the mass  $m$  i.e., the one that participates in the Feshbach-Villars transformation. This must be kept in mind when interpreting the results.)

We solved evolution equations (104)-(106) numerically for a finite volume of phase space  $0 \leq |p| < \Lambda$ . This automatically introduces the cutoff. We have chosen it to be rather large so that we did not observe its effects.

The non-trivial evolution starts at  $t = t_0$  when we switch on the  $-M^2$  term. It was chosen large enough to override the initial positive  $m^2$  and the system rolls down towards the new ground state. The results are shown

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*Hero, Chinese-American Nobel prizewinner Sam Ting, whose recent bids to mount ambitious new particle accelerator experiments have been turned down. Turning his back on particle accelerators, the disappointed but still ambitious Ting looks to outer space to provide the first physics revelations of the 21st century.*

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therefore, no one can fault TBGRI if tomorrow it passes another resolution revoking the earlier ones. Essentially, the Kanis do not have a recourse under law as of today, apart from the broad notions of equity and fairness enshrined in our Constitution).

Soon after TBGRI passed the resolution fears and concerns were expressed by some members of the Legislative Assembly at Kerala.<sup>28</sup> The leader of the opposition at the

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National Environment Action Plan 1993: Shruti Devi  
National Conservation Strategy: PC Bhattacharjee  
India's National Report to the Convention on Biological Diversity: Bansuri Taneja  
Macro-policy on Biodiversity: Seema Bhatt  
WRI/UNEP/other guidelines for NBSAP processes: Kalpavriksh Pune  
National Forestry Action Plan: Ashish Kothari  
National Wildlife Action Plan: Ashish Kothari

Other relevant documents that were identified could be reviewed by other members.

*Follow-up:* Kothari to circulate tips on how to review these documents.

#### **16. Next meeting dates**

Since several members were not present, the dates of the next meeting could only be tentatively decided. Alternatives were 11 March, 23/24<sup>th</sup> March, and 3/4<sup>th</sup> April.

*Follow-up:* Kothari to ask missing members for preferences, and fix the most appropriate date.

#### **17. Other matters**

##### **17.1 Status Report on Biodiversity**

Some members requested that the draft Status Report on biodiversity that was prepared by the Indian Institute of Public Administration, some years back, at the instance of the MoEF, should be circulated to the members as a reference document. Kothari agreed to make it available to BCIL for printing out and distribution, though he warned that it was somewhat outdated now.

*Follow-up:* Kothari to give floppy to BCIL for printing and distribution to members.

##### **17.2 Study on ongoing processes and 'piggybacking'**

Following up on the suggestion made by several SC members, members discussed the need to identify the existing and proposed processes/projects at central and state level that the NBSAP process could plug onto or 'piggyback' on. These included both domestically and foreign-funded processes. Such identification and linking up would help to get over the resource constraints faced by the NBSAP, as also build synergies with existing efforts and avoid duplication. A number of specific suggestions had come up at the SC meeting, and TPCG members came up with more. However, rather than this ad hoc approach, members felt that this required a quick, systematic review. Taneja offered to do such a review within the next month or so, taking help from UNDP, MoEF, Planning Commission, and selected SC members. Members agreed, however, that she should get an additional honorarium for this, as it was beyond the duties identified for TPCG members and would take greater than the one week per month that members were committed to.

*Follow-up:* Kothari to ask MoEF to sanction a honorarium for Taneja for this purpose. Taneja to explore contours of study with Sudarshan Rodriguez, Sarat Babu, and others.

##### **17.3 Process documentation of TPCG**

Members expressed the need to keep a full documentation of the TPCG's own process. This would entail a sophisticated level of physical and electronic filing at both the BCIL and Kalpavriksh (Delhi and Pune). A detailed filing system would need to be developed.

*Follow-up:* Kothari to suggest a filing system to be followed in both Delhi and Pune.

MY CONCERNS ON BENEFIT SHARING

There are very strong arguments that EVEN IF DONE WITH THE BEST OF INTENTIONS THE BENEFIT SHARING MECHANISM CAN DIVIDE AND DESTROY COMMUNITIES, A DISASTER WE MAY NOT HAVE NEGOTIATED AND BE PREPARED FOR ? HOW DO WE PREPARE FOR SUCH IMPLICATIONS ?

HOW DO WE INCORPORATE STRONGLY AND WIDELY HELD VIEWS ACROSS THE COUNTRY THAT THERE SHOULD BE NO PATENT ON LIFE FORM ? AND CONCERNS SUCH AS THE CONCERN OF THE SOUTH ASIA NETWORK FOR FOOD, ECOLOGY AND CULTURE [SANFEC] AS EXPRESSED IN THE FOLLOWING WORDS ?

South Asian communities are historically premised on the deep sense of moral, religious and cultural values. The region is populated by multi ethnic, multi-religious and large indigenous communities. For them, all trees, crops, animals, birds, organisms, soil -- in fact all the diversities of our material and spiritual lives, are gifts from divinity, no matter how we name or personify this power in our different religions. Nature with her all living manifestations are, in this sense, sacred to us. They are inalienable part of our worships, our rituals, our celebrations, our joys, our culture of sharing and our loving affinity to each other through the mediation of this divinity. Our region is replete with hundreds of thousands of sacred groves where trees and plants are worshipped by people. Our regions are replete with spiritual and political movements where Sufis, Saints and various bhakti traditions have fought to preserve the integrity of Nature in her multiple expressions, including the beauty of the lifeforms.

Such gifts must be cared and respected and only then we gain moral rights to use them for our livelihood needs. The human as omnipotent consumer, that owns, controls, mutate, displace and destroy the environment, through privatizations, colonizations and now through intellectual property rights (IPRs) in lifeforms, is totally against our cultures, and we are strongly opposed to non recognition of the rights of other cultures to live on their own historical premise and principles.

The egocentric notion of Arights≡ that privatise and colonise natural resources is very alien to the deep sense of moral, spiritual and cultural values of our communities. Similarly, knowledge as an intellectual property of an individual or a corporation is totally absurd proposition to our people. The Trade Related Aspects of Intellectual Property Rights (TRIPs) agreement of the World Trade Organisation (WTO) that have inscribed such alien values are based on long colonial and racist histories of the world, and must be seen as a cultural and political issue, and not merely as elements of emerging legal discourse of new global order. We are not surprised to see that the old history of colonisation and privatisation are now being conducted openly and in bizarre legal rhetorics that are hardly understandable by the people. WTO and other trade regimes eliminate all possibilities of the people of our countries to resolve issues of national concerns within their own localities and within the boundaries of nation states. People all over the world have been depoliticised and transnationals have concentrated political powers in their hands and enforcing it through the establishment of World Trade Organization. Raw greed and the logic of profit dictates their morality, law, cultural values and politics. This is not acceptable to us.

Patenting of life through the introduction and expansion of Intellectual Property Rights is creating a great upheaval in our societies, amidst the precarious conditions precipitated by the new global order. As history reminds us the Great Indian Uprising of 1857 in the subcontinent was triggered by a culturally inappropriate technology (Lard was introduced by the British for gun grease which offended the sensibilities of Muslim soldiers). Today a similar outrage is being perpetrated by transnational corporations through introduction of new genetic technologies that are a direct threat to our cultures and religions and has all the potential to trigger off greater turmoil. Worse still, they are demanding that we recognise patents on these technologies. This is a serious issue of public morality, and not a trade or legal issue.

Given this historical social, cultural and religious context, we do not see any options, but to say NO to any form of intellectual property rights on life forms.

No IPRs on Life means no IPRs on micro-organisms, as well as on plant and animal varieties. Micro-organisms need to be excluded from TRIPS through an exclusion for "biodiversity" at large. TRIPS impedes the implementation of Convention of Biological Diversity, specifically the CBD objectives such as conservation of biodiversity, sustainable use and rights for local communities

#### *Biodiversity is not for sale*

Many of our megadiversity sites are heritage sites with ecological, religious and cultural connotations. We cannot allow this sacred heritage of ours to be destroyed by a IPR regime.

Security of our nations is directly linked to biodiversity and therefore non negotiable. Moreover millions of our people are dependent on the biodiversity for their livelihoods. If we destroy it through IPRs we are directly affecting their livelihoods.

All our countries in this region are signatories to the Convention on Biological Diversity. By implementing 27.3(b) of TRIPS agreement we will be undermining certain clauses of CBD like article 8j on community rights. Since our governments have both signed and ratified the CBD in their respective parliaments, we must not allow a trade treaty to violate the solemn agreement we have made for the sake of humankind.

#### *Rights for whom and rights for what*

Right to Livelihood which is a basic human right will be violated by IPRs on life which have the potential to threaten food security. By destroying biodiversity it will create special problems to millions of our rural women who are the traditional conservers and controllers of seed, who depend for their livelihood on plants, crops and other life forms. This will be particularly so at times of great environmental stress such as floods and droughts. Therefore IPRs are patently gender unjust and should be rejected.

The indigenous people have traditionally developed and conserved the megadiversity in their areas. The IPR regime applied to biodiversity will threaten the inalienable rights of these indigenous peoples, recognised in several international covenants and enshrined in some constitutions. This stands seriously compromised by the IPR regime.

Our position: biodiversity out of TRIPS

In the light of the above arguments, we the members of the SANFEC demand the exclusion of biodiversity from TRIPs. Article 27.3(b) should be reworded to provide a full and unconditional option for countries to exclude all forms of biodiversity -- be they microorganisms, plants, animals, cells, genes or plant varieties etc. -- from their IPR regimes.

We recognise that many countries and peoples have been looking at the *Sui generis* option under TRIPS Art 27.3(b) as a least worst option or a damage control mechanism. However, we feel this is a trap. *Sui generis* rights under TRIPS would have to provide some kind of IPR over seeds and plant varieties which we are against. Further, it would have to be effective which means determined by industrialised countries and their corporations, and subject to trade sanctions.

We want to be unequivocal: we are very much in favour of innovation. Innovation is an ongoing and highly valued process in our societies and should be supported by appropriate incentives and rewards. In our view, the kind of rights we really need are not IPR, would not be governed by WTO but should support farmers, indigenous and local communities in their livelihood struggles and be controlled by them.

CAN WE DWELL A BIT ON THIS PLEASE ?