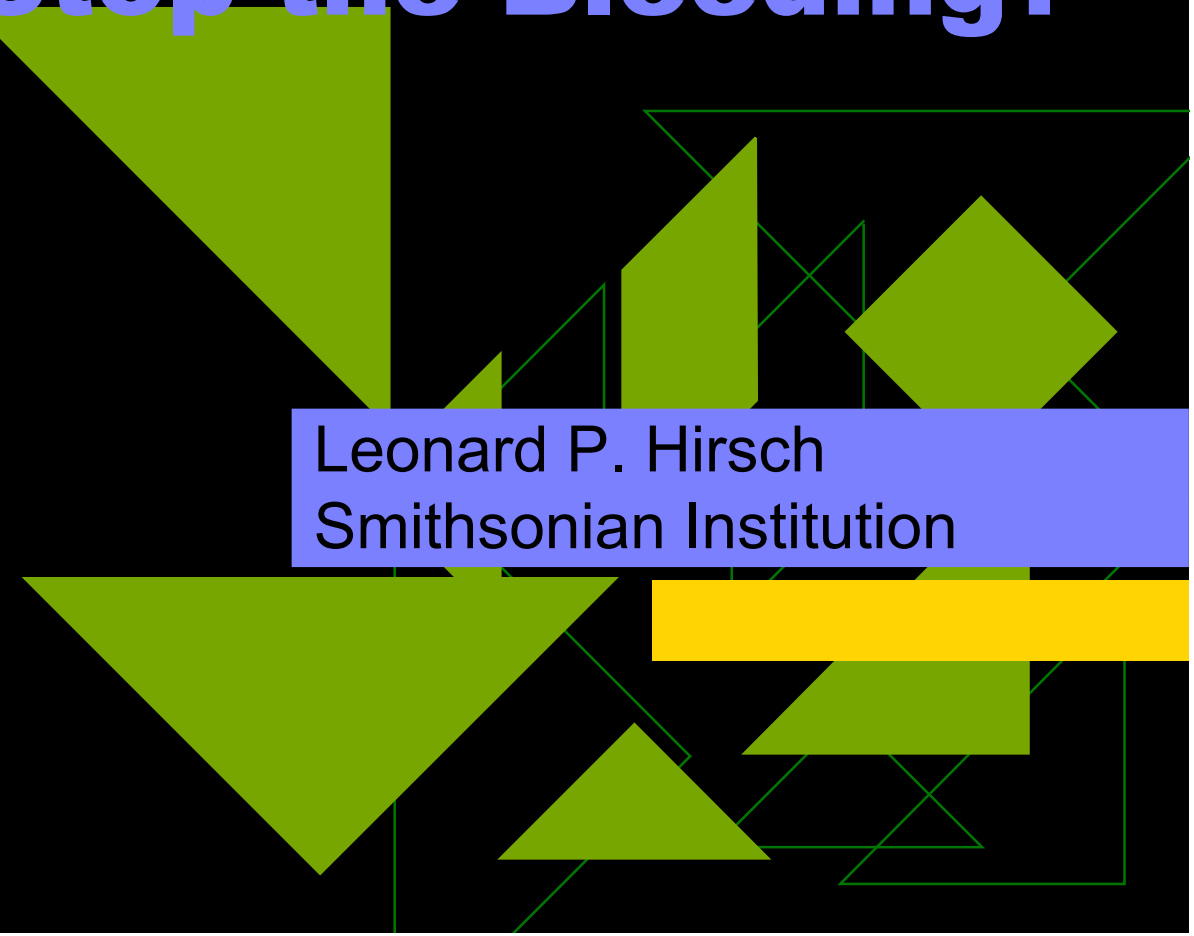
Claims without Boundaries: Can We Define Genetic Resources and Stop the Bleeding?



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ABS and Research Institutions

- The lack of definition to “the utilization of genetic resources” has:
  - Created barriers to research.
  - Created increased transaction costs
  - Created increased uncertainty
  - Created increased fears
  - Created increased hostility

Impact of Bio-paranoia

- It is creating an anticommons in raw genetic material—where material is used less than it otherwise would be used
- It reduces opportunities for collaborative research, capacity building and technology transfer
- Increases the transaction costs for research and development
- Decreases benefits that can be shared

ABS Politics

- Rhetorical
  - Biodiverse vs others (Like minded Megadiverse)
  - Users vs providers
  - Biopiracy, misappropriation, unequal exchange
- Substantive
  - (Over)use vs Conservation
  - Value to be gained from its use and conservation
  - Sovereignty, ownership and control
    - Uses beyond permits (misappropriation redux)
    - Capturing royalties from products and processes created from the original genetic resource
    - Future values

Can we bound the concept of “genetic resources”

- We know it is different (a subset?) of biological resource
- Are all living things by definition GR?
  - Impacting the pet, horticulture, agriculture, IPM industries
- When GRs become information, how can it be traced and controlled?
- When GRs become modified, what claims can be made?
- Is it also on processes using GRs rather than the GR themselves?

Should we first define the Property Rights to GR before going to the IPRs?

- Intellectual property rights are developed to support innovation, providing a temporary monopoly
- Property rights involve a bundle of rights and responsibilities which may be of longer duration and apply in different conditions
  - Which would allow transfer of use-rights

Would Property Rights definitions help the utilization question?

- Time
  - Pre-CBD materials
  - Post-CBD, pre-ABS IR
  - New commercialization
  - Post IP claims
- Biological-genetic-modified (derivatives)-analogy
  - Immediately based on, substantially based on, used in discovery, informatics vs material based
- Competing claims
  - Genes and chemicals are not unique to a specific sample

Can we learn from Software IP systems for GR systems?

- What is the difference between computer code and genetic code?
- Is there a difference between “based on” and “utilizing”
- Traceability and fair use
- Accounting systems

It's time for action

- Can a nexus based system actually work (where the specific benefit is linked to the specific genetic resource)?
- If so, can it be effectively bounded to reduce transaction costs and litigation?
- If not, is there a fair and equitable way of providing benefits?

Thanks

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