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CIAT

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INFORMACION Y DOCUMENTACION

# Policy on Intellectual Property

11 May 2001



CIAT

Centro Internacional de Agricultura Tropical  
International Center for Tropical Agriculture



### **About CIAT**

The International Center for Tropical Agriculture (CIAT) is a nonprofit, nongovernment organization that conducts socially and environmentally progressive research aimed at reducing hunger and poverty and preserving natural resources in developing countries. CIAT is one of 16 food and environmental research centers working toward these goals around the world in partnership with farmers, scientists, and policy makers. Known as the Future Harvest centers, they are funded mainly by the 58 countries, private foundations, and international organizations that make up the Consultative Group on International Agricultural Research (CGIAR).

*[www.ciat.cgiar.org](http://www.ciat.cgiar.org)*

**FUTURE  
HARVEST**



# Policy on Intellectual Property

## I. Context

As a publicly funded international research institute, CIAT regards its research products as international public goods. The Center is committed to keeping these products in the public domain, free for use and development by both scientists and farmers. As a direct consequence of this commitment, CIAT has a responsibility to be alert to changes in the political, legal, and market environments and to adopt new strategies and tools as needed.

In recent years there have been dramatic developments in the field of intellectual property (IP) rights associated with biological materials, computer software, and information. Patent protection has been extended to crop varieties and/or their genetic components in a number of countries. In addition, the Convention on Biological Diversity (CBD) has come into force, addressing issues of sovereignty, ownership, conservation, access, and benefit sharing. The Food and Agriculture Organization (FAO) of the United Nations (UN) has been hosting negotiations on similar topics related specifically to plant genetic resources for food and agriculture. The legal and political environment for institutions such as CIAT has thus become more complicated. In that context the Center has developed and formally ratified this policy on intellectual property.

## II. Preamble

1. The International Center for Tropical Agriculture (CIAT) is an autonomous, not-for-profit, international scientific organization operating under the aegis of the Consultative Group on International Agricultural Research (CGIAR).

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CIAT's mission is:

*To reduce hunger and poverty in the tropics through collaborative research that improves agricultural productivity and natural resource management.*

2. CIAT's policy on intellectual property has been developed to help the Center achieve its objectives, in particular by providing:
  - i. Clear objectives and principles of conduct in the management of intellectual property and the creation and sharing of benefits therefrom;
  - ii. Guidelines on how and when intellectual property protection will be sought and exercised; and
  - iii. Mechanisms concerning the use of intellectual property and protected material by recipients to ensure that this use is consistent with CIAT's mission.
3. This policy will be appropriately applied to all relevant situations and relationships in a case-by-case manner.

### **III. General Principles, Objectives, and Operating Policies**

1. CIAT abides by relevant international laws and treaties concerning intellectual property rights and genetic resources. As a matter of principle and practice, the Center adheres to national laws in the states in which it operates as well as to the terms of contracts made with donors and partners.
2. CIAT reaffirms its continuing commitment to the principles of its 1994 agreement with FAO, under which the Center holds designated germplasm in trust for the benefit of the international community, particularly

developing countries. CIAT encourages germplasm donors to permit the designation of material pursuant to this 1994 agreement.

3. CIAT reaffirms its commitment to FAO resolution 5/89, which endorses the concept of farmers' rights. These embrace rights arising from past, present, and future contributions of farmers to conserving, improving, and making available plant genetic resources. CIAT recognizes that the intellectual property rights of indigenous and local communities may involve a series of forms, obligations, and privileges, which need to be understood and respected within their specific social contexts.
4. CIAT endorses the CGIAR's "Ethical Principles Relating to Genetic Resources."
5. CIAT will manage intellectual property issues with:
  - i. Integrity;
  - ii. Equity;
  - iii. Responsibility; and
  - iv. Accountability.
6. In the pursuit and management of intellectual property rights, CIAT will be guided by:
  - i. Its mission and
  - ii. Its special responsibilities to the resource poor arising from its role as a provider of germplasm, technologies, and information.
7. CIAT will consider whether to acquire, and how to manage, the intellectual property rights associated with all products of its research.

8. CIAT may enter into contracts that provide for the acquisition and management of confidential materials. The Center may also seek to protect products of its research by obtaining appropriate intellectual property protection (e.g., through patents, plant breeders' rights, copyrights, trademarks, statutory invention registrations or their equivalent, and/or trade secrets, etc.) to accomplish the following objectives in keeping with its mission:
  - i. Support partnerships that pursue mission-based research or develop and apply research results;
  - ii. Assure access by others to research products developed or funded by CIAT;
  - iii. Retain control over research products developed by CIAT; avoid possible restrictions arising from "blocking" patents; and ensure CIAT's ability to pursue its research without undue hindrance.
  - iv. Guarantee the transfer of technology, research products, and other benefits to the resource poor, including, where appropriate, public licensing, commercialization, or utilization of research products; and/or
  - v. Facilitate the negotiation and conclusion of agreements for access to proprietary technologies that are useful for CIAT's research and further its mission.
9. CIAT will adopt procedures and employ practices, such as DNA fingerprinting, the keeping of appropriate laboratory notebooks, and controls over the release of Center research products, to safeguard its intellectual property.
10. In matters related to intellectual property rights, CIAT will exercise its judgment in determining what action to take, if any, on a case-by-case basis in accordance with this policy and to further CIAT's mission.

11. In all intellectual property decisions, CIAT will act in a fair and equitable manner.
12. In seeking intellectual property rights, CIAT will be guided by its commitment to serve the resource poor rather than by opportunities to obtain recurring revenues. To the extent that financial returns are generated via intellectual property, the Center will use them to support its mission-related work.
13. All arrangements with third parties concerning the access, joint creation, use, or exploitation of intellectual property protected materials will be appropriately documented.

#### **IV. Access to and Use of Proprietary Technology**

1. Proprietary technology (technology owned and protected by others through intellectual property rights), when properly acquired, may be used by CIAT to achieve advances that are necessary for furthering its mission.
2. Prior to the use and application of such technology, CIAT will make its best effort to identify any restraints associated with the use of this technology or with the distribution of products or processes incorporating the proprietary technology. The Center will endeavor to produce and distribute research products that are "free and clear" of restrictions imposed by third-party intellectual property rights. If these products are not "free and clear," CIAT will make its best effort to disclose any outstanding restrictions that might apply to them.

#### **V. Designated Germplasm (in-Trust Germplasm)**

1. CIAT will manage designated germplasm for the benefit of the international community according to the terms of its agreement with FAO.

2. According to this agreement, CIAT "will not claim legal ownership over the designated germplasm, nor will it seek any intellectual property rights over that germplasm or related information."
3. CIAT adheres to the principle of ready access to designated germplasm and will honor reasonable requests for this material in accordance with the agreement between CIAT and FAO, as detailed in several joint interpretive statements agreed on by FAO and the CGIAR centers.
4. Designated germplasm is made available to recipients under conditions set forth in a material transfer agreement (MTA) developed in collaboration with FAO in 1995 and other CGIAR centers. As set forth in the MTA, all recipients must agree:
  - i. Not to claim legal ownership or seek intellectual property protection over the designated germplasm or related information and
  - ii. To make any subsequent transfer of the designated germplasm or related information subject to these conditions.

## **VI. Nondesignated Germplasm/Products of Center Research**

1. CIAT endeavors to facilitate access to and use of improved germplasm and research products for the public benefit. By tradition and preference, CIAT does this through publication and public disclosure. In specific cases CIAT may determine that publication or public disclosure might impair the ability of national agricultural research systems (NARS), or CIAT's own ability, to pursue research rationally and without restriction or facilitate access to or ensure delivery of research products. In such circumstances CIAT may pursue those objectives by:



- i. Taking, or allowing others to take, intellectual property rights on research products or material derived from research products and/or
  - ii. Granting exclusive or nonexclusive (public) licenses over research products.
2. Any of CIAT's material derived from pre-existing germplasm, breeding material, or research products must first qualify as a derivative before it will be eligible for intellectual property protection by CIAT. The Center will conform to the conclusions of the CGIAR Center Directors' Committee on Intellectual Property Rights on the definition of derivatives, once these conclusions have been reached.
3. CIAT reserves the right to retain research products for its own use and to enter into agreements to distribute research products in a targeted or selective manner to certain partners and/or in certain markets. It may do so either with or without a fee or in exchange for access to technologies needed by the Center. In licensing its research products, CIAT strongly prefers to use nonexclusive licenses. It recognizes, however, that this may not always advance the interests of the Center or its partners. CIAT will use its best judgment in making such decisions, guided by a commitment to its goals and objectives.
4. With regard to the protection of cells, organelles, genes, molecular constructs, plants, varieties, and traits as well as organisms (such as rhyzobium, mycorrhizae, endophytes, entomopathogens, and parasitoids), CIAT will consider the effects that patenting could have on access to, as well as the distribution and use of, the protected product before it proceeds with an application for intellectual property rights protection.

5. Where appropriate, recipients of nondesignated germplasm and products of Center research will be required to recognize CIAT publicly as the source of the original material or product.
6. In agreeing to allow recipients to apply for intellectual property protection, CIAT does not in any way waive its rights to challenge excessive protection by recourse to administrative and/or court proceedings.
7. Nondesignated germplasm/products of Center research will be made available to recipients under conditions set forth in a material transfer agreement (MTA) developed for this purpose.
8. CIAT may hold collections for others under secure "black box" conditions, for conservation purposes, under terms agreed with the owner.

## **VII. Publications (Printed and Electronic), Databases, Reports, Training Materials, Public Awareness Materials, Artwork, Software, and Audiovisual or Multimedia Materials**

1. CIAT encourages the wide dissemination of its publications (printed and electronic), including databases, maps, reports, training materials, public awareness materials, artwork, and audiovisual or multimedia materials and desires that such materials be used to maximum public benefit.
2. In creating such materials, CIAT will:
  - i. Only use the copyright material of others within "fair use" limitations or with the consent of the copyright owner and
  - ii. Will properly attribute the source of the material.

3. CIAT publications (printed and electronic) will normally carry standard copyright convention signs, indicating CIAT as the copyright owner of the compilation, published edition, and/or the material published (as appropriate), together with the year and location of publication. In keeping with these policies, CIAT may require those accessing materials or information through the Internet to indicate their agreement to specific terms contained in on-line contracts regarding access, distribution, and use.
4. CIAT will include in its publications (printed and electronic) standard copyright notification statements:
  - i. Permitting that others, but especially NARS, make copies of CIAT copyright material for noncommercial purposes;
  - ii. Requiring attribution where CIAT copyright material is reproduced in other publications;
  - iii. Prohibiting interference with or modification to the material without the express consent of CIAT; and
  - iv. Addressing any other issues relevant to the best use of the material, such as procedures for dissemination and recall of material subject to updating.
5. CIAT may enforce its copyright in CIAT publications (printed and electronic) and protect them from unfair competition to:
  - i. Respond to a breach of the above terms;
  - ii. Prevent misappropriation of such material for commercial purposes; and/or
  - iii. Protect the fidelity of such material.
6. CIAT may cooperate with others in the development of databases that assist the resource poor. In such

collaborative work, CIAT will give priority to securing these databases in the public domain.

### **VIII. Trademarks**

1. CIAT has registered the "CIAT" name and logo and may register other distinctive marks as trademarks to protect the goodwill and reputation associated with the exclusive use of these marks by CIAT and to ensure that the Center receives proper credit.

### **IX. Confidentiality and Ownership as it Relates to Staff and Others**

1. CIAT personnel (management and staff) and trustees are required to sign a confidentiality agreement. In addition, visiting scientists, researchers, students, staff of institutions hosted at CIAT facilities, and partners will also be required to sign appropriate agreements as a condition of their association with CIAT.
2. Any rights (intellectual or technical property) to research products, publications, and other works created or contributed to by CIAT personnel in the course of their normal and assigned professional duties will be vested in CIAT, and this will be reflected in all employment contracts.
3. Any rights (intellectual or technical property) to research products, publications, and other works commissioned by CIAT will be assigned to and vested in CIAT as a right holder.
4. CIAT will appropriately recognize the contributions of staff towards the creation of research products, including those protected by intellectual property. The form of this recognition shall typically be public

acknowledgement but may also include other forms of rewards or compensation at the discretion of the director general.

5. CIAT staff and others affiliated with the Center are required to disclose all innovations made during the course of their employment or affiliation with CIAT.
6. Collaborative research or research funded by CIAT will allow the Center to either:
  - i. Own or share ownership of any rights (intellectual or technical property) in the research products, including copyright in any research reports or papers or
  - ii. Have the discretion to control the publication of such research reports and papers and to require the collaborator to seek permission from CIAT before applying for any intellectual property protection in the research products.
7. Where collaborative research products or works are to be owned jointly, ownership and/or the use to which the product is put will be negotiated by the partners. In CIAT's view this will be done to further its mission and according to local law.

## **X. Implementation**

1. This policy will apply to all of CIAT's activities, programs, and offices, and accordingly all references to CIAT in this policy will be construed to include references to these entities.
2. Responsibility for implementing this policy rests with CIAT's director general. Only the director general is authorized to sign property rights agreements. He/she will be assisted in property rights matters by an

Intellectual Property Rights Committee, appointed by the director general.

3. CIAT staff are required to abide by this policy. If in doubt, a staff member must seek a decision from the director general.
4. All intellectual property rights agreements will be filed centrally in the office of CIAT's legal advisor.

## **XI. Effective Date**

1. This policy is effective from 11 May 2001 and will remain in force until superseded, canceled, or suspended in writing by the authority of the Board of Trustees.
2. In the context of an evolving legal and political environment, the CIAT Board of Trustees will regularly review this policy and its implementation to ensure that the Center is well positioned to carry out its mission.

