

***FICCI INTERNATIONAL CONFERENCE ON
TRADITIONAL KNOWLEDGE***

***Perspectives on the WIPO
Intergovernmental Committee
Of the United States***



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Overview

- We all provide and use genetic resources and traditional knowledge
- Shared objectives
 - Access and equitable benefit sharing
 - Eliminate misappropriation
 - Eliminate Invalid patents
- How can we best achieve objectives?
- Need to preserve, maintain and respect
- Conclusion



We all Provide and Use Genetic Resources and TK



W all Provide Genetic Resources and Traditional Knowledge

- The United States Provides for Access to Genetic Resources by a variety of national, state, local and private entities.
- Two National entities:
 - U.S. National Plant Germplasm System
 - U.S. National Park System Access Regime



U. S. National Plant Germplasm System (NPGS)

- **One of the largest national genebank systems.**
- **More than 460,000 samples of more than 11,300 plant species.**
- **Large collections of the major staples important to U. S. and world agriculture.**
- **Large holdings of crops without major collections at international agricultural research centers, e.g., cotton, soybean, various horticultural and “specialty” crops.**



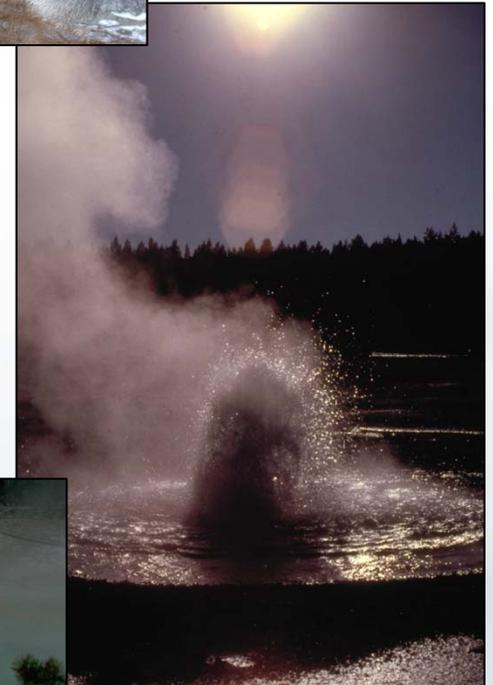
NPGS

- **Distribution: NPGS annually distributes an average of about 120,000 samples to researchers worldwide.**
- **An average of about 25% are distributed internationally.**
- **Current 6:1 ratio of NPGS accessions annually distributed internationally vs. annually collected internationally.**
- **Samples are distributed free-of-charge and without restriction.**



National Park Service (NPS)

The NPS has significant biodiversity: 10,000 hot springs, geysers, mud pots & fumaroles





Greatest
concentration
and diversity
of terrestrial
thermal habitats
on Earth . . .





The Research Community . . .

Approximately 50-75 research permits issued annually at Yellowstone for microbial research projects . . .





IGC: Shared Objectives



Shared Objectives

- Objectives shared among all Members:
 - Provide Authorized Access While Assuring Conservation of Biodiversity
 - Equitable benefit sharing for use of traditional knowledge and/or genetic resources (TK/GR)
 - Eliminate Erroneously Issued Patents
 - Eliminate Misappropriation of TK/GR



But to have a Common Understanding of Objectives, a Definition of Terms is Needed

- Definitions are needed for:
 - “traditional cultural expressions”
 - “traditional knowledge”
 - “genetic resources”
 - “misappropriation”
 - Meaning of Misappropriation is being addressed at WTO



How Can we Best Address Shared Objectives?



How can we best achieve objectives?

Objective: Authorized Access

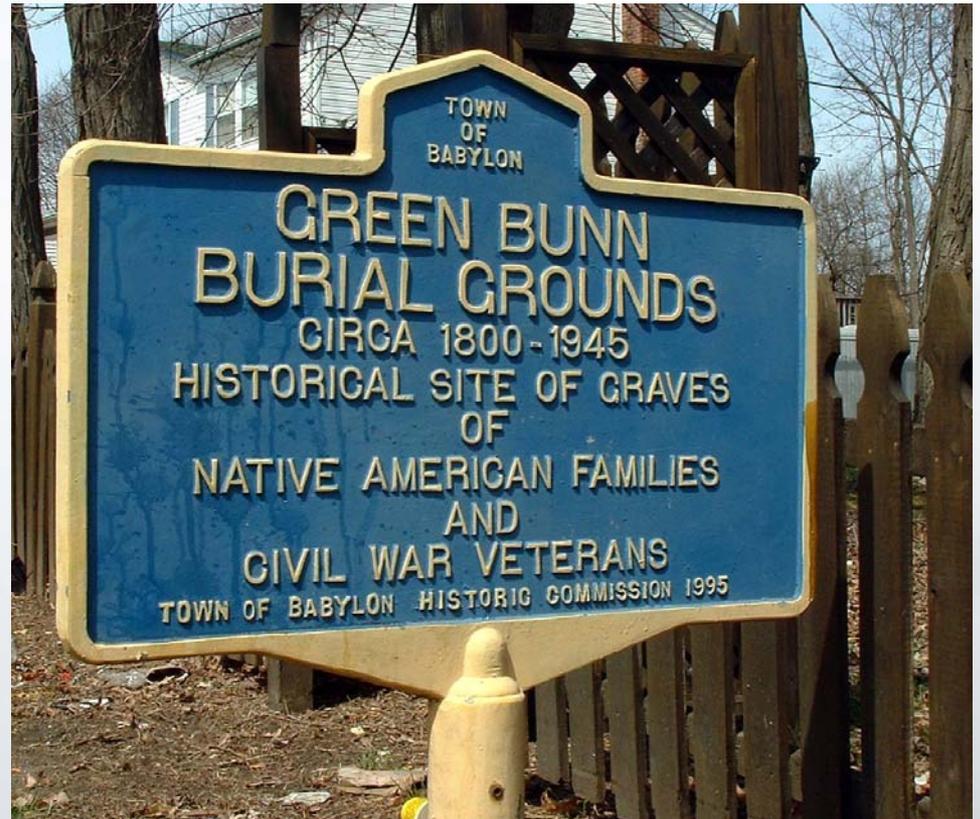
- Establish effective national systems separate from patent laws
 - National laws
 - Permits/Visas for collections
 - Contracts
 - IP Laws (e.g. trade secret, copyright, trademark system)
 - Unfair Competition Laws



How can we best achieve objectives?

Objective: Authorized Access (continued)

- National Laws:
 - Provide point of contact (e.g. government and indigenous reps., when appropriate)
 - May provide conditions for research
- May require use of contracts for collecting
- May provide civil and/or criminal penalties for misappropriation
- Role of IGC- Share Best Practices, Draft Model Laws, Support Other Capacity Building





How can we best achieve objectives?

Objective: Equitable Benefit Sharing

- Contracts may provide for benefit sharing
 - Monetary or nonmonetary benefits
- May contain regular reporting requirements
 - At regular intervals, as to uses
 - Reporting of any inventions derived from the GR or TK
 - Reporting any filed patent applications derived from the GR or TK
- May include “choice of law” provisions



How can we best achieve objectives?

Objective: Eliminate misappropriation and/or improper collection and use of TK and GR

- Need enforcement of national laws
- Cannot undo earlier misappropriation
- The United States has tools to enforce laws of other jurisdictions
 - For example, under the Lacey Act, foreign laws protecting wildlife, fish, and plants can be enforced by making it a separate offense to take, possess, transport, or sell wildlife, fish and plants that have been taken in violation of those laws.



How can we best achieve objectives?

Objective: Eliminate misappropriation and/or improper collection and use of TK and GR (continued)

- The IGC should consider how enforcement of foreign laws could help eliminate misappropriation.
- The solution should be outside of the Patent System



How can we best achieve objectives?

Objective: Eliminate Invalid Patents

- **The IGC has an important role to play in providing encouraging WIPO to provide resources, and in providing guidance, to IP Offices to eliminate invalid patents.**
 - **Advocate Use of databases**
 - **Better classification of prior art related to TK-GR (IPC)**
 - **Encourage Submission of information material to patentability**
 - **By applicants**
 - **By third parties**
 - **Encourage Post-grant correction or opposition, such as re-examination procedures**
 - **Encourage Use of Supplemental International Search in Patent Cooperation Treaty Applications**



Need to Preserve, Promote and Respect







Conclusion

- More work is needed to define misappropriation, traditional cultural expressions, genetic resources and traditional knowledge
- Shared objectives include access and benefit sharing, as well as reducing misappropriation and invalid patents, need to have a meaningful discussion as to what they mean
- We can achieve these objectives