



Consortium

CGIAR Intellectual Assets (IA) Report for 2012

Annual Report from the CGIAR Consortium to the Fund
Council on the implementation of the CGIAR Principles
on the Management of Intellectual Assets

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CGIAR Intellectual Assets Report for the Year 2012

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CGIAR INTELLECTUAL ASSETS (IA) REPORT FOR THE YEAR 2012

Introduction

Article 10.3 of the CGIAR Principles on the Management of Intellectual Assets (“CGIAR IA Principles”) provides that *“the Consortium shall provide annually to the Fund Council a high level report, satisfactory to the Fund Council, regarding the implementation of these CGIAR IA Principles during the preceding year [...]. The CGIAR IA Report shall, in particular, contain general and aggregated information on the Limited Exclusivity Agreements, Restricted Use Agreements or IP Applications that were concluded/ made by the Consortium and the Centers, subject to any confidentiality obligations of the Consortium and/or the Centers. The CGIAR IA Report shall be developed by the Consortium after consultation with the Centers involved and the FC IP Group”*.

This CGIAR IA Report covers the year 2012 and is the first public report submitted by the Consortium to the Fund Council in accordance with Article 10.3 mentioned above. It was developed after consultation with the Centers involved and the FC IP Group.

This report is structured in accordance with the template contained in Annex 4 of the Implementation Guidelines for the CGIAR IA Principles approved by the Consortium Board on 14 June 2013.

Section 1. Legal/IP capacity in the Consortium Office and Centers

Consortium Office Legal/ IP Capacity for year 2012

The legal office of the CGIAR Consortium Office (CO) in 2012 consisted of **1 full time General Counsel**, supported by a number of **Legal/IP consultants and a communication consultant**.

In addition, the CO legal office was supported by the Australian Center for Intellectual Property in Agriculture (**ACIPA**) which had a grant from the Australian Research Council and ACIAR to work on intellectual Property (IP) and food security, as well as on IP in the CGIAR. Consisting of 8 IP specialists, ACIPA has worked closely with the CGIAR Consortium to help address some of the needs relating to IP with activities ranging from building resources such as IP fact sheets and IP checklists to assisting with the CGIAR open access strategy and developing case studies on how intellectual assets have been / are being managed at Centers.

In 2012, the Consortium Board approved the recruitment for one year of a legal officer to support the General Counsel in 2013.

Centers’ Legal/ IP Capacity for the year 2012

- All Centers have Legal/IP capacity. **7 Centers have full-time legal/ IP specialists** integrated within their corporate structures and **8 Centers rely primarily on external legal/ IP capacity, 4 of which are currently recruiting in-house expertise.**

- **All Centers also have an officially-designated IP Focal Point**, which is the single point of contact between the Consortium and the Centers for all matters related to the implementation of the CGIAR IA Principles.
- Centers have also reported steps being taken to build their legal/ IP capacity through a variety of actions such as **involving IP staff in IP seminars, recruitment of additional legal/ IP staff, workshops and training activities and resource mobilization for IP Management Units**. In addition, Centers’ IA Reports illustrate that those Centers with well-functioning IP Management Units¹ have been able to realize the benefit of these units with regard to an overall improved research management environment with pertinent project information readily available and accessible in one place.
- **Conclusion.** While improvements are necessary in order to build Center IA/ IP Capacity, Centers’ IA Reports for the year 2012 indicate that **Centers are making progress towards being able to meet and manage their in-house IA/IP needs** in compliance with Article 8.1 of the CGIAR IA Principles which requires Centers “*to have the capacity required for the proper implementation of [the] CGIAR IA Principles*”. See Table 1 below for more details.

Table 1: Center Legal/ IP capacity for year 2012

	<i>In-house expertise</i>	<i>In house Contact/focal point only</i>	<i>Recruiting in-house expertise</i>	<i>Primarily relies on External</i>
IWMI	1 (legal)			
CIP		X (CIP and CRP-RTB)	X	X
CIFOR		X		X
IRRI	2 (legal and IP)			
ICARDA		X	X	X
IITA		X		X
ICRISAT	2 (IP)			
WORLDFISH		X	X	X
ICRAF		X		X
AFRICARICE		X	X	X
CIMMYT ²	5 (3 legal; 2 IP) + External Legal/IP consultant			
ILRI	2 (IP)			
CIAT	1 (IP)			
IFPRI		X		X
BIOVERSITY	2 (legal)			
SUM	7 Centers	8 Centers	4 Centers	8 Centers

¹ “Well-functioning” as indicated by a high – level of internal expertise and emphasis on capacity-strengthening of Center staff.

² According to CIMMYT’s on-line staff information, there are eight people in CIMMYT’s IP and Legal Office.

Section 2. Brief description of Consortium Legal/IP Network activities

- The **Consortium Legal/IP Network (“CLIPNet”)** was formed to provide a mechanism to ensure more effective and consistent management of legal and IP issues in the CGIAR Research Programs (“CRPs”) through the sharing and leveraging of experiences and knowledge, collaborative work on common legal / IP issues, and the development of common Legal/IP tools. CLIPNet consists of two overlapping groups: **IP Focal Points**; one primary contact per Center and the Consortium primary focal point. This is the core of the network. **Wider network**; 70 contacts in the CGIAR Consortium and its members.



2.1 CLIPNet Training Sessions (Online Master Classes)

- A total of 10 interactive online master-class sessions were conducted in 2012 covering a broad range of IP subjects and designed to focus on the CGIAR IA Principles:
 - Sharing IP practices & procedures;
 - Patent application for hybrid seed potato breeding;
 - Considering best practice in handling IP in Centers;
 - Strategic considerations in taking out patents or plant variety rights;
 - Short IP clauses in non-commercial grant transactions;
 - Reviewing Centre IP Policies in the light of the IA Principles;
 - Planning of IP training for scientific staff;
 - Dealing with Justifications in the CGIAR IA Principles;
 - Arranging for your Center Board's Assurance of Compliance;
 - IP issues in engaging with the private sector.
- Attendance by Center IP Focal points in the training sessions was consistent (ranging from 5 to 13 participants) and the sessions were well balanced covering both substantive as well as procedural IP issues. The sessions were practical and relevant for better understanding of specific aspects of the CGIAR IA Principles in addition to being strategic given that they were conducted in the year when the CGIAR IA Principles had been adopted earlier in the year in March 2012, and also because the CGIAR Consortium and its members were involved in the process of finalizing the CGIAR IA Implementation Guidelines.
- After each session participants were requested to provide feedback via online surveys. The overwhelming majority of the feedback was positive with most participants saying the sessions were well organized, well presented, useful to their Center, and improved their knowledge. All respondents also indicated they were likely to attend sessions in the future.

2.2 Development of Tools

- The CO provided **communication tools and services** to strengthen, facilitate and encourage information sharing and collaboration within the CLIPNet network, including a central mailing list using Google Groups, used to contact all network members (legal-ip-network-group@cgxchange.org), monthly email updates, online workspace (intranet), regular opportunities to meet online including monthly telephone calls, annual meeting for IP Focal Points and working group activities.



- In addition, CLIPNet’s intranet contains a number of valuable tools and resources developed by the CO and CLIPNet:
 - **Templates** for various legal/ IP agreements;
 - **IP Training materials** for CLIPNet members to adapt and use in their own in-house presentations (including general induction materials for new staff or as continual training on issues that relate to legal/ IP, as well as detailed presentations covering a broad range of specific topics such as copyright, plant variety rights, confidentiality, the SMTA, etc.).

2.3 CLIPNet Annual Meeting

- The 2012 Annual CLIPNet Meeting took place at ICRISAT, 17-19 July 2012. The meeting was attended by 20 participants representing 10 CGIAR Consortium members, 1 Challenge Program, the CGIAR Consortium and 4 representatives from the Australian Centre for Intellectual Property in Agriculture (ACIPA) who are collaborating with the CGIAR Consortium to work on system-wide IP issues.

Section 3. General aggregated information on Limited Exclusivity Agreements and Restricted Use Agreements concluded by the Consortium and Centers in 2012

- To secure and harness the advantages achieved through partnerships, Article 6 of the CGIAR IA Principles makes it possible, under certain conditions, for the Consortium and Centers to enter into two types of agreements that restrict access to intellectual assets:
 - **Limited Exclusivity Agreements;** i.e. agreements in which the Consortium and/or Centers grant limited exclusivity for commercialization of intellectual assets they produce; and
 - **Restricted Use Agreements;** i.e. agreements for the acquisition and use of third party Intellectual Assets which restrict the global accessibility of the products/services resulting from the use of such third party Intellectual Assets for commercialization, research and development.
- As a legal entity in its own right, **the CGIAR Consortium did not conclude any Limited Exclusivity Agreements or Restricted Use Agreements.**
- **Centers entered into a total of 14 Limited Exclusivity Agreements and 11 Restricted Use Agreements** (see Table 2 below for details). Centers deemed all information regarding these agreements as confidential.

Table 2: Data on Limited Exclusivity Agreements and Restricted Use Agreements in 2012

	<i>Limited Exclusivity Agreements</i>	<i>Restricted Use Agreements</i>
Consortium	-	-
IWMI	-	2
CIP	-	2
CIFOR	-	-
IRRI	-	-
ICARDA	-	-

	<i>Limited Exclusivity Agreements</i>	<i>Restricted Use Agreements</i>
IITA	1	-
ICRISAT	7	-
WORLD FISH	-	-
ICRAF	-	-
AFRICARICE	-	4
CIMMYT	4	3
ILRI	1	-
CIAT	1	-
IFPRI	-	-
BIOVERSITY	-	-
SUM	14	11
Nature of Agreements/ Applications	<i>Research Collaboration and Technology Transfer Agreements (i.e. Licenses & MTAs)</i>	<i>Research Collaboration and Technology Transfer Agreements (i.e. Licenses & MTAs)</i>
Type of Intellectual Assets involved	<i>Biopesticides, Sorghum, Pearl millet & Pigeon pea parental lines & cultivars, Maize germplasm, Thermostable Live Livestock Vaccines and Cassava varieties</i>	<i>Research/ project data, Software source code, disease resistant potato, Rice & Maize germplasm, Research methods & know-how.</i>
Duration of Exclusivity	<i>from 3 - 10 years</i>	<i>3 months - 5 years</i>

- Observations and justifications for Limited Exclusivity Agreements:** The exclusivity in these agreements was limited to varying degrees in duration, scope, field of use and territory. Of the 14 total Limited Exclusivity Agreements reported, 12 contained non-commercial research exemptions although there were variations in the nature of those exemptions. 2 agreements did not provide for research exemptions. Of those agreements that had research exemptions, in some instances only the Center was vested with the right to access and conduct non-commercial research while in other instances the Center had the right to grant authorization to third parties for such non-commercial research. 12 Agreements did not contain emergency exemptions as required under Article 6.2 (a)(ii) of the CGIAR IA Principles. In 2012 the Consortium neither received any request for approval of deviations from the research and emergency exemptions as required under Article 6.2.2 of the CGIAR IA Principles, nor did the Consortium receive explanations or any justifications from the concerned Centers regarding any of the deviations. The Consortium will address this particular issue in the upcoming annual CLIPNet Primary IP Focal Points meeting in early October 2013 placing emphasis on the need for strict compliance with Article 6.2 of the CGIAR IA Principles. Centers determined these agreements to be important to enable them carry out their research activities and engage third party partners. Possible advantages and benefits of Limited Exclusivity Agreements were highlighted by Centers among them; (i) through Limited Exclusivity Agreements, Centers' intellectual assets could be improved through quick and prioritized access by research partners; (ii) Limited Exclusivity Agreements were seen as important tools to enhance the scale or scope of impact on target beneficiaries by making it possible to engage with local partners with more in depth knowledge and expertise in areas where Centers might not operate in, such as local distribution and local markets. Lastly, based on information contained in Center IA Reports, Centers did not conclude Limited Exclusivity Agreements containing confidentiality obligations



which would prevent them from complying with the disclosure requirements as per Article 10.1.2 of the CGIAR IA Principles.

- **Observations and justifications for Restricted Use Agreements:** The 11 Restricted Use Agreements disclosed by Centers had varying degrees of compliance with Article 6.3 of the CGIAR IA Principles. All centers reported that the third party intellectual assets subject of these agreements could not, to the best of their knowledge, have been obtained from other sources at no or less restrictive conditions. However some Centers did not provide sufficient information to demonstrate how the use of these assets furthered the CGIAR vision. Furthermore some Centers did not elaborate which measures had been taken to ensure that third party assets were used only in relation to, or incorporated into, such intended products/services. However all Centers with Restricted Use Agreements deemed these agreements necessary for research purposes. Centers did not conclude Restricted Use Agreements containing confidentiality obligations preventing them from complying with the disclosure requirements as per Article 10.1.2 of the CGIAR IA Principles.
- Looking forward it is expected that Centers will further mainstream the requirements of the CGIAR IA Principles into these agreements and seek assistance from the Consortium Office when needed.

Section 4. General aggregated information on IP applications made by the Consortium and Centers in 2012

- With regard to Intellectual Property Rights (“IPRs”), Article 6.4.2 of the CGIAR IA Principles provides that Centers should “*carefully consider whether to register/ apply for (or allow third parties to register/apply for) patents and/or plant variety protection (“IP Applications”) over the Centers’ respective Intellectual Assets.*” As a general rule, IP Applications should not be made unless “*they are necessary for the further improvement of such Intellectual Assets or to enhance the scale or scope of impact on target beneficiaries, in furtherance of the CGIAR Vision.*”
- **Patents/ Plant Variety Rights:** No patents or plant variety rights were applied for by, or granted to, the CGIAR Consortium or Centers in 2012. One Center allowed 2 pending patent applications made pre-2012 to lapse.
- **Other IP applications:** 2 trademark applications for 2012 were reported by one Center. These covered the Center’s name and logo as well as the name for a group of new rice varieties. The latter application designates 30 African countries.

Section 5. Relevant highlights, trends and comments regarding the implementation of the CGIAR IA Principles

Intellectual Assets Management

- Overall, Centers have demonstrated a high level of awareness of the importance of building and maintaining internal Center IP capacity as well as integrating policies and practices to achieve responsible management of intellectual assets. A comparison of historical data with the current situation reveals that Centers increasingly understand the positive relationship between good IA management practice and the increased availability of public goods, which is an essential component of the CGIAR Vision. 10 Centers reviewed their existing IA/ IP related policies to

make them compliant with the CGIAR IA Principles or concluded new IA/ IP related policies in 2012 or indicated ongoing processes of either reviewing existing or making new IA/ IP related policies in 2013. The Consortium legal counsel is currently reviewing existing Center IP policies for compliance with the CGIAR IA Principles and shall report on this to the FC IP Group before the end of 2013. All Centers reported having taken specific actions to comply with the requirement for sound IA management (see Table 3 below).

Table 3. Actions taken by Centers in 2012 for sound IA management

IWMI	All contracts from 2012 forward have provisions for sharing IA. Established open data sharing and management practices
CIP	Several examples were listed particularly with regard to experiences with Traditional Knowledge, access and benefit sharing, and Farmers' Rights
CIFOR	Revision of language in template agreements and policies, bilateral donor agreements, partnership agreements and letters of agreement to conform with the CGIAR IA Principles
IRRI	Standard clauses to ensure compliance; working to facilitate implementation of CGIAR IA Principles. Publications licensing under creative commons model
ICARDA	Several examples –Agreement and contract procedures; IP ownership clauses for employees, visitors, students; Open Archive practices established; active participation in ITPGRFA discussions; etc.
IITA	Commitment to sound management of intellectual assets in the management of its germplasm under ITPGRFA
ICRISAT	Several examples – strengthening the IP Office resources, procedures for formalization and execution of agreements, IP Office webpage (internal and external). Center publications part of European Patent Office's (EPO) prior art search database
WORLDFISH	Commitment to managing IP/IA; stakeholder consultations
ICRAF	Commitment to Art. 5
AFRICARICE	Established procedure for review of IP/IA in any new agreements
CIMMYT	Several examples –Standard clauses for agreements and contracts available on-line; training of CIMMYT staff regarding compliance; lab notebook policy, invention disclosure requirements, dialog with USPTO re: prior art database, etc.
ILRI	Several examples –agreements and contract review and language, compliance with 3 rd party obligations, lab notebook policy, invention disclosure requirements, etc.
CIAT	Several examples, merging of IP and Legal Offices for efficiency and effectiveness of both. Established internal review process for legal documents
IFPRI	Examples of Contract language re IP/IPRs ensuring compliance with IA Principles.
BIOVERSITY	Example of Data sharing agreement in data management
SUM	All Centers reported activity in this category

- Substantive gains have been made across the CGIAR Consortium resulting from the CGIAR IA Principles. Most notably, there has been an increasing realization across Centers of the need for continued sound internal management of intellectual assets/ IP as a priority for all Centers, including developing appropriate internal IP policies, building IP capacity and internal procedures. Discussions held with most Center IP Focal Points also indicated a continued demand among scientists and managers for continued training, recruitment of full time IP Managers within Centers and their involvement in the communities of practice offered by CLIPNet and the CGIAR



Consortium. Moreover, some Centers have indicated that they will in coming years undertake comprehensive IA management initiatives through activities such as due diligence reviews and IA/IP audits for both Center as well as third party intellectual assets in addition to setting up requisite internal procedures necessary for carrying out these tasks.

Implementation Guidelines

- In 2012, the CO legal office, in close collaboration with CLIPNet members, undertook the task of developing the Implementation Guidelines for the CGIAR IA Principles in order to bridge the gap between the general principles and their concrete implementation on the ground. Such guidelines set out concrete measures which need to be undertaken by Centers in order to implement the CGIAR IA Principles, and contain many examples. The document was developed by a working group facilitated by the CO legal team and made up of Center IP managers, taking into account comments received from CLIPNet, Centers, the Fund Council Intellectual Property Group (“FC IP Group”), the Treaty Secretariat and GFAR. It was subsequently approved by the CGIAR Consortium Board at CB 12 on 14 July 2013.

Section 6. Conclusion and recommendations

- 1) Continued collaboration by IP focal points across the CGIAR Consortium is a vital step towards harmonizing Consortium-wide IP practices and culture. Increased participation in CLIPNet activities is encouraged as it is through CLIPNet that Consortium/ Center IP Focal Points have the opportunity to build on collective/ corporate IA Management knowledge and also share experiences on practical applications of IA management principles and practices.
- 2) Donors have a significant role to play in assisting the Consortium and Centers build their IP/ IA management capabilities and capacity particularly through resource mobilization. At the CO level, a combination of adequate full time IA staffing and resources are needed for proper IA/ IP management oversight capacity development. The CGIAR funders are expected to provide adequate resources to support capacity building and also to support IA management efforts as provided under Article 8.3 CGIAR IA Principles. Funders should engage with the CGIAR Consortium and its members to identify how this may be practically achieved perhaps through full cost recovery arrangements within CRPs.
- 3) The Consortium and its members need to collaborate closely and in-sync to identify emerging areas where the CGIAR Consortium and its members can cooperate consultatively to develop initiatives particularly with regard to standardizing and institutionalizing IP, streamlining IA management and technology transfer practices and to provide strategic help that results in an increase in the production and delivery of public goods.

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