



ACIAR POLICY ON INTELLECTUAL PROPERTY

The following outlines the basic elements of ACIAR's policy on intellectual property rights as they relate to ACIAR's mandate for international agricultural research.

In accordance with ACIAR's practice of facilitating and supporting research projects that involve collaboration between researchers in developing countries and Australia, the rights to any intellectual property that may result from the research will be shared on a mutually agreed and equitable basis between participating organisations.

All collaborators in an ACIAR project must have regard to the provisions of, and fulfil all relevant obligations under, international arrangements relating to intellectual property rights and biological resources to which Australia is a signatory.

What are intellectual property rights?

Intellectual property rights (IPR) are the legal rights resulting from the product of original work and research in the industrial, scientific, literary or artistic fields.

The main types of intellectual property are:

1. Copyrights which refer to the legal protection given to original literary, artistic, dramatic or musical works, films, multimedia and computer programs;
2. Industrial property which refers to patents, plant breeder's rights, industrial designs and trademarks;
3. Trade secrets, confidential information, and legal rights to the protection of business reputation and goodwill in unregistered trademarks or trade names.

Intellectual property is protected in Australia by legislation such as the *Copyright Act 1968*, *Plant Breeder's Rights Act 1994* as amended and the *Patents Act 1990* and, in the case of confidential information and some aspects of business reputation, under the common law.

ACIAR's corporate policy on IPR

ACIAR's broad policy approach to IPR is based on the principles of mutual respect, honesty, transparency, equity and reasonableness between parties. This approach recognises the need to protect the interests of both Australia and its overseas partners, while maintaining the co-operative nature of ACIAR's program of work. It also recognises the need to balance the free flow of scientific information throughout the world with the desire to protect intellectual property, and to allow commercial exploitation by Australia and other countries to occur on a mutually agreed basis.

IPR and your project

Before a project commences, the participating overseas and Australian organisations must inform ACIAR in writing of all existing intellectual property (including any limitations on use) owned by themselves or by third parties, which may be used in the project.

ACIAR is to be notified, in confidence where appropriate, of any IPR that may arise from the project.

For commercialisation, licensing and other related purposes, collaborators on an ACIAR project can agree to share information with non-project parties on any intellectual property which has arisen from the project.

Any IPR resulting from the project that are rights protected in Australia shall be owned by the Australian commissioned organisation. ACIAR encourages the Australian commissioned organisations to negotiate agreements on the ownership or sharing arrangements of IP with any relevant Australian partner institutions. Under the project arrangements ACIAR also retains certain rights to such IP.

Any IPR resulting from the project that are rights protected in the country of the overseas partner institution shall be owned either by that institution or another designated government authority.

Equitable allocation of intellectual property

Where intellectual property arising from an ACIAR project is likely to be of substantial commercial value the organisations collaborating on ACIAR projects must negotiate an agreement as to ownership.

To ensure that these organisations follow the principles of fair and equitable allocation of intellectual property, ACIAR retains the right and responsibility to oversee negotiations between the parties as it sees fit.

When negotiating IPR, the Australian commissioned organisation and all participating partner institutions (Australian and overseas) must ensure that ownership of all intellectual property arising directly or indirectly from the project is equitably allocated.

Equitable allocation takes account of:

- the intellectual contribution of each country;
- the financial contribution of each country;
- the contribution of intellectual property, materials, research effort and preparatory work of each country brought to the project;
- the facilities provided by each country; and
- such other relevant considerations as the partners may determine.

All costs relating to the application for registration and maintenance of IPR are borne by the owners of the IPR.

Free flow of information

Under ACIAR projects, all participating partner institutions grant ACIAR an unrestricted, royalty-free, non-exclusive license to utilise anywhere in the world the intellectual property resulting from projects. This is to ensure that the principle of the free flow of scientific information is maintained, and that countries wishing to participate in joint research projects are not disadvantaged by constraints to accessing IPR generated in ACIAR projects.

Prior written consent must be obtained from ACIAR before an Australian commissioned organisation can sub-license or assign its IPR and ACIAR may impose any conditions it sees fit.

Transfer and exchange of germplasm

Transfer and exchange of germplasm between Australia and overseas partner countries shall be subject to the appropriate Materials Transfer and Acquisition Agreements and in accordance with the Convention on Biological Diversity.

Publications

ACIAR encourages the publication of technical and scientific papers. Australian publications must be in accordance with confidentiality requirements and the Australian *Copyright Act 1968*.

Subject to the provisions in existing relevant agreements the collaborating organisations may report details of the project in the non-specialist media provided that they:

- acknowledge funding and support provided by ACIAR,
- inform ACIAR prior to the publication of the article and,
- provide ACIAR with a copy of the published material.

ACIAR and commercialisation of IPR

ACIAR recognises that there is an increasing trend by governments worldwide to promote the commercial exploitation of technology. ACIAR does not itself engage in the commercialisation of IPR but does provide a legal and organisational framework that encourages the development and commercial exploitation of technologies emerging from its research projects.

Within this framework, ACIAR's primary objectives are to ensure that any benefits from commercialisation of project outcomes are shared equitably between all project partners and to guide commercial exploitation within the countries concerned, although the parties must agree on how the rights will be exploited in a third country.

Further information:

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