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Australia's Submission to CBD Notification 2019-012

CONVENTION ON BIOLOGICAL DIVERSITY (CBD)

NOTIFICATION 2019-012

Digital Sequence Information on Genetic Resources: Submission of views and information and call for expression of interest to undertake studies

Submission by Australia



Australian Government

NOTE: Information provided in this response has been drawn from Australian Government agency input

CBD Notification 2019-012

Submission of views and information on Digital Sequence Information on Genetic Resources

Page 1 of 3

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Australia's Submission to CBD Notification 2019-012

Notification 2019-012: Submission of views and information on Digital Sequence Information on Genetic Resources

Australia thanks the Secretariat for the invitation to submit views and information on Digital Sequence Information on Genetic Resources, as communicated in Notification 2019-012

Ref: SCBD/NPU/DC/VN/KG/RKi/87804 of 5 February 2019.

Part One: Submission of views and information:

- a) To clarify the concept, including relevant terminology and scope, of digital sequence information on genetic resources and if and how domestic measures on access and benefit-sharing consider digital sequence information on genetic resources;

Australia notes more generally, there continues to be inconsistency in the terminology utilised for describing the 'electronically held sequence information which represents the biological composition of genetic material' across international fora – such as digital sequence information, genetic sequence data and *in silico*.

For the purposes of this submission, and in line with our submission to CBD Notification 2017-037, Australia defines "digital sequence information on genetic resources" as electronically held sequence information which represents the biological composition of "genetic material" as defined under the Convention.

Australia continues to consider digital sequence information on genetic resources (or any term used, including but not limited to genetic sequence data or *in silico*) and the physical genetic resources and material as distinct entities. Australia also considers digital sequence information on genetic resources (or any other such terminology) and 'derivatives' as defined under Article 2 of the Protocol as distinct entities.

This distinction is clearly articulated in the current definitions under both the Convention and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of the Benefits Arising from their Utilisation (Nagoya Protocol). Under the Convention and the Nagoya Protocol, 'genetic resources' are defined as 'genetic material of actual or potential value'. 'Genetic material' is defined as 'any material of plant, animal, microbial or other origin containing functional units of heredity'. Neither of these definitions align with the non-physical and electronic nature of digital sequence information. This distinction also aligns with the outcome of lengthy debate in the establishment of the Nagoya Protocol.

To consider digital sequence information a genetic resource under the Convention and the Nagoya Protocol would require a renegotiation of both the Convention and the Nagoya Protocol to redefine 'genetic material'. This is because 'information' does not contain 'functional units of heredity' or genes.

Do domestic measures on access and benefit-sharing consider DSI?

The Australian Government has domestic measures in place that provide for the access and benefit-sharing of biological resources and the usage of Traditional Knowledge. These measures do not consider or provide coverage of digital sequence information.

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Australia's access and benefit-sharing legislation is guided by the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the *Environment Protection and Biodiversity Conservation Regulations 2000* (EPBC Regulations).

The EPBC Act defines biological resources and genetic resources as having physical attributes:

Biological resources: includes genetic resources, organisms, parts of organisms, population and any other biotic component of an ecosystem with actual or potential use of value for humanity.

Genetic resources: means any material of plant, animal, microbial or other origin that contains functional units of heredity and that has actual or potential value for humanity.

In line with the EPBC Act and Regulations, ownership rights to, and access and benefit-sharing requirements of biological resources depend on whether they are found in Commonwealth, State or Territory government lands or waters, indigenous lands (of which there are different types with different associated rights), freehold or leasehold lands.

For biological or genetic resources to be accessed/sampled/utilised from Commonwealth lands or waters, those seeking access must apply to the Australian Department of the Environment and Energy for a permit. Permits for access to biological resources are available for either commercial, potentially commercial or non-commercial purposes. The regulations also require the prior informed consent of the indigenous owner or native title holder, where access is to genetic resources on indigenous peoples' land and the provision of a benefit-sharing agreement must provide for reasonable benefit-sharing arrangements, including protection for and valuing of any indigenous peoples' knowledge to be used.

b) On benefit-sharing arrangements from commercial and non-commercial use of digital sequence information on genetic resources.

Australia does not support the inclusion of digital sequence information on genetic resources (or any term used, including but not limited to genetic sequence data or *in silico*) in access and benefit sharing arrangements. Australia's position is that the current open access to digital data remains in place. The generation and open sharing of digital sequence information on genetic resources provides benefits through increased scientific information and discovery. The use of digital sequence information on genetic resources increases the value of biological diversity and enables scientific progress and innovation.

Part two: Submit views and information on capacity-building needs regarding the access, use, generation and analysis of digital sequence information on genetic resources, in particular for the three objectives of the Convention.

Australia has no submission on this component of the request.

CBD Notification 2019-012

Submission of views and information on Digital Sequence Information on Genetic Resources

Page 3 of 3

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