

30 September 2021

**Views of Japan Bioindustry Association (JBA)
on the new information on policy approaches, options or modalities for digital sequence
information on genetic resources**

Dear Madam Elizabeth Maruma Mrema
Executive Secretary of the Convention of Biological Diversity

Concerning the notification 2021-063 (SCBD/NPU/TS/CGA/AC/8986) of 3 September 2021, Japan Bioindustry Association (JBA) greatly appreciates the opportunity for submission of our views on the new information on policy approaches, options or modalities for digital sequence information on genetic resources.

We would be most grateful if the Executive Secretary would take into consideration our views and relevant information given below, in the process of preparing documentation on the Open-ended Working Group of the second part of its third meeting, planned to take place in January 2022 in Geneva (Switzerland).

1. Background

In accordance with decision 14/20 (<https://www.cbd.int/doc/decisions/cop-14/cop-14-dec-20-en.pdf>) of the Conference of the Parties, the Open-ended Working Group on the Post-2020 Global Biodiversity Framework considered digital sequence information on genetic resources at the first part of its third meeting, held virtually from 23 August to 3 September 2021. The outcomes of that meeting, Executive Secretary invited Parties, other Governments, indigenous peoples and local communities, relevant stakeholders and organizations to submit views and new or additional approaches, options or modalities on how to address digital sequence information on genetic resources under the Convention and the Nagoya Protocol, based on but not limited to the information and elements contained in document CBD/WG2020/3/4 "Digital sequence information on genetic resources" (<https://www.cbd.int/doc/c/707f/6565/1b79a3df3aea669e19078615/wg2020-03-04-en.pdf>).

2. JBA's General Views on Digital Sequence Information on Genetic Resources under the CBD and the Nagoya Protocol

JBA supports the three objectives of the CBD and the objective of the Nagoya Protocol and has been actively engaged in contributing to the proper implementation of these objectives. And we believe that the legal certainty is essential for the implementation of those objectives of the CBD and the Nagoya Protocol.

In September 28, 2021 submission to you, we presented our views (which have not changed since then) on the relationship between digital sequence information on genetic resources and the CBD/ the Nagoya Protocol. They are reproduced here again for the present discussion:

“First of all, the definition of “genetic resources” is “genetic material of actual or potential value” with “genetic material” being defined as “any material of plant, animal, microbial or other origin containing functional units of heredity” (see Article 2 of the CBD). Furthermore, these definitions are also applied to the Nagoya Protocol (see Article 2 of the Protocol). Intangible digital sequence information on genetic resources does not fall within the definition of “genetic resources” under the CBD and the Nagoya Protocol, because “genetic resources” are tangible materials.

However, benefit-sharing relating to digital sequence information on genetic resources obtained by utilizing accessed genetic resources is not excluded from the CBD and the Nagoya Protocol. The conditions, including those for benefit-sharing, for dealing with such digital sequence information could be covered by the mutually agreed terms (MAT) between the provider and the user of the genetic resources.”

Furthermore, public database like INSDC maintained at the expense of the three host governments, is freely accessible to researchers in all countries. We should keep in mind this huge contribution for all.

Please note that Decision 14/20, paragraph 6, mentions that “ (COP) Further notes that, as there is a divergence of views among Parties regarding benefit-sharing from the use of digital sequence information on genetic resources, Parties commit to working towards resolving this divergence through the process established in the present decision, with the aim of strengthening the fulfillment of the third objective of the Convention and Article 15, paragraph 7, without prejudice to the circumstances to which this article applies;”.

The discussion of DSI on genetic resources should be proceed based on the mandate of CBD/COP/DEC/14/20. According to the mandate, the approach to DSI is 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” (see CBD/COP/DEC/14/20 paragraph 9). Then political options and modalities can be discussed on the same understandings.

3. “Political options” (CBD/WG2020/3/4)

The DSI issue should not be addressed under the CBD framework because DSI is out of the scope of CBD and NP. Some political options in the document CBD/WG2020/3/4 are out of the scope of CBD obviously, however, if we address these options, appropriate criteria like a cost effectiveness should be discussed and identified. Then baselines of criteria should be clarified. Finally the political options could be evaluated with the baseline of criteria.

Regarding the DSI database, free and unrestricted access in public domain are the platform of the development of science and innovation. JBA strongly supports that free and unrestricted access to digital sequence information on genetic resources from databases should be preserved and any restriction on database which hinders scientific research and innovation are not acceptable.

JBA fully recognizes the needs for and value of capacity building/development for developing countries in order to fill a gap.