

# **Implementatioin of ABS and the protection of traditional knowledge in the Andes - Amazon**

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# ABS and protection of TK in Latin America

- Various legal frameworks and tools in place since the late 1990s:
  - Brazil, Costa Rica, Panama, Peru, Andean Community
    - Registers for TK in Peru: public domain and secret TK (Law 27811)
    - Trade secret principles to protect confidential TK (Law 27811)
    - Registers in Panama (Law 21)
    - Collective marks (for “biodiversity products”) in various countries including Guatemala, Ecuador, Peru
    - Registers of cultural patrimony or heritage under UNESCO convention

Most ABS frameworks include references to TK protection ...

# Results to date ...

- Big investments by international agencies, bodies and initiatives
- Often isolated cases regarding Benefit sharing (where “success” criteria for ABS and TK may be quite loose)
- Limited benefits being shared in ABS and TK
- TK continues to be eroded or misused
- Genetic resources R&D continues ...
- Limited attention to fairness and equity ... and facilitating access provision in the CBD

# Why isn't benefit sharing being realized?

## Various reasons ...

- Limited national capacities do not explain this problem or gap
- Intangibles (information) are hard to legally protect: mostly under monopoly IP tools
- R&D in genetic resources has changed: DSI (“natural information”) is the key input to biotechnology and related disciplines
- In the case of TK extremely diverse subjects (groups of people, collectives, communities) and interests
- TK is an essential part of culture - hard to “separate” or “isolate”
- TK is widely disseminated and shared, very often already in the public domain (competition among communities drives “price” of TK down)

# What needs to change ?

- Acknowledge that genetic resources and TK are, essentially, informational goods
- Economics provides with solid conceptual/practical examples of how to protect informational goods
- CBD notions and principles (sovereignty, PIC, MAT) need to be revised with equity and fairness in mind as they apply to TK and ABS (is a 0.01 or 1.5 royalty equitable in a multi billion dollar industry?)
- TK protection may require much more flexible approaches which borrow from classic IP (including defensive protection), competition law, cultural protection principles, site protection, data base protection – and some form of international recognition of these solutions

# Recommendations

- Reinsert economic analysis into TK and ABS and review seminal works from the 1990's, by Swanson, Stone, May, Vogel which has been relegated and overlooked in the analysis
- Need for a shift in discussion – the CBD is a framework Convention (so change/adjustments are possible)
- Need to re assess meaning and effects of sovereignty, PIC, MAT on benefit sharing vs. a multilateral approach, particularly for monetary benefits
- Actors in the CBS process need to understand why ABS and TK protection in their current form has been of limited success (at best). *Just calculate investments over 25 years against benefit sharing and its linkages to conservation and sustainability!*
- A GMBSM is required – “bounded openness” (apertura delimitada), a proposal in place for over 20 years, offers a solid conceptual foundation for an international regime: See recent article (2018) by Anna Deplazes-Zemp <https://www.sciencedirect.com/science/article/pii/S0006320717314155>

**Merci**  
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