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Grappling with Biofraud: Decision 16/2 Disenfranchises UNCBD Parties of Justifiable Rents for Genetic Resources

By Joseph Henry Vogel and Pallavi Mishra

A multilateral benefit-sharing mechanism for digital sequence information on genetic resources (DSI) is under development by the Conference of the Parties (COP) to the United Nations Convention on Biological Diversity (UNCBD). Benefits are slated to be negligible. Biopiracy will continue to thrive in the digital realm unless an effective mechanism is established. The global South should place on record at COP17, scheduled for October 2026, that DSI-distinct-from-genetic-resources is not only [wrong](#) but fraudulent. Like-minded mega-diverse Parties should propose that a “fair and equitable” benefit be interpreted as analogous to the [economic rent](#) that inheres in intellectual property. Rent is the difference in profits that industry enjoys before a patent expires. For a Global Multilateral Benefit-sharing Mechanism to be efficient, the use of de-materialized genetic resources, *inter alia* “DSI”, must be disclosed in patent applications (Yes/No), with tracing for successful commercialisations.

Un mécanisme multilatéral de partage des avantages liés aux informations sur le séquençage numérique (ISN) des ressources génétiques est en cours d'élaboration par la Conférence des Parties (COP) à la Convention des Nations unies sur la diversité biologique. Les avantages qui en découleront devraient être négligeables. La biopiraterie continuera de prospérer dans l'univers numérique à moins qu'un mécanisme efficace ne soit mis en place. Les pays du Sud devraient faire savoir officiellement, lors de la COP17 prévue en octobre 2026, que la distinction entre les informations sur le séquençage numérique (ISN) des ressources génétiques et les ressources génétiques elles-mêmes est non seulement [erronée](#), mais frauduleuse. Les Parties à la biodiversité exceptionnelle partageant cette position devraient proposer que le concept de « partage juste et équitable » des avantages soit interprété comme analogue à la [rente économique](#) inhérente à la propriété intellectuelle. La rente correspond à la différence de bénéfices dont profite l'industrie avant l'expiration d'un brevet. Pour qu'un mécanisme multilatéral mondial de partage des avantages soit efficace, l'utilisation de ressources génétiques dématérialisées, notamment les ISN, doit être déclarée dans les demandes de brevet (Oui/Non), avec un suivi des commercialisations réussies.

La Conferencia de las Partes (COP) del Convenio de las Naciones Unidas sobre la Diversidad Biológica (CDB) está desarrollando un mecanismo multilateral de reparto de beneficios para la información digital sobre secuencias de recursos genéticos (DSI). Se prevé que los beneficios sean insignificantes. La biopiratería seguirá prosperando en el ámbito digital a menos que se establezca un mecanismo eficaz. El Sur global debería dejar constancia en la COP17, prevista para octubre de 2026, que la distinción entre la DSI y los recursos genéticos no solo es errónea, sino fraudulenta. Las Partes megadiversas que compartan esta opinión deberían proponer que un beneficio «justo y equitativo» se interprete como análogo a la renta económica inherente a la propiedad intelectual. La renta es la diferencia en los beneficios que obtiene la industria antes de que expire una patente. Para que un mecanismo multilateral global de reparto de beneficios sea eficaz, el uso de recursos genéticos desmaterializados, entre otros la «DSI», debe declararse en las solicitudes de patente (Sí/No), con un seguimiento de las comercializaciones exitosas.

《联合国生物多样性公约》(UNCBD) 缔约方大会 (COP) 目前正在制定一项关于遗传资源数字序列信息 (DSI) 的多边惠益分享机制。预计该机制带来的惠益微乎其微。除非建立起有效的机制, 否则生物盗采将在数字领域继续猖獗。全球南方国家应在定于2026年10月举行的第17届缔约方大会 (COP17) 上正式声明: 将DSI与遗传资源相区分, 不仅是错误的, 而且是具有欺诈性的。具有丰富生物多样性且持这一共识的公约缔约方应提议, 将“公平和公正”的惠益解释为类似于知识产权中固有的经济租金。租金是指专利到期前行业所享有的利润差额。为了使全球多边惠益分享机制高效运作, 专利申请中必须披露非物质化遗传资源 (包括“DSI”) 的使用情况 (是/否), 并对其成功商业化的情况进行追踪。

The placeholder “Digital Sequence Information on Genetic Resources” (DSI) beleaguers the United Nations Convention on Biological Diversity (UNCBD), some ten years after being launched at the thirteenth Conference of the Parties (COP). Since ratification of the UNCBD in 1993, bilateralism has been the modality for “access to genetic resources” and “the fair and equitable sharing of benefits arising from utilization” (ABS). This was the “great bargain” between the global North, wanting facilitated access to genetic resources, and the global South, wanting a share in the benefits that may arise. The ABS framework is simple in theory: a scientist intending to collect a leaf, a seed or a smidgeon of soil, would obtain consent from the national authority before collection. The two parties would also agree on the benefits to be shared. Many Parties drafted legislation making the bilateral modality explicit. India did so with The Biological Diversity Act, 2002.

Now industry may no longer need the leaf, the seed or the smidgeon. A researcher can sequence samples and upload the data to a server. Within minutes a scientist can download the sequence — free of charge. No physical sample will have crossed any border. Yet the genetic resource has departed.

The introduction of the placeholder DSI at COP13 implies that the digital transmission of de-materialized genetic resources is something distinct from “genetic resources”. As such, DSI obviates ABS! Fearful that out-of-scope status would indeed be the interpretation, India affirmed sovereignty over de-materialized genetic resources in The Biological Diversity Regulations, 2025. The multilateral benefit-sharing mechanism for DSI will not, however, be determined by India. An intent to subordinate national legislation to the COP can be gleaned from the “Report and Reflection on the Informal Global Dialogue on DSI and the Cali Fund”, issued on 21 May 2026.

Benefits from a multilateral mechanism are slated to be negligible. In 2020, the influential WiLDSI Project of Germany contemplated “membership fees”---whatever that means---as low as 0.01 percent for DSI, which invites the neologism “biofraud”. COP16 ultimately settled on benefits of 0.1 % of revenue through the Cali Fund of Decision 16/2. A tenfold increase of a risible percentage is, nonetheless, still risible.

Classification of the Cali Fund as biofraud is provocative but not hyperbolic. Fraud has [five elements](#) in the law: false representation, knowledge of falsity, intention that another will act, reliance and harm. Each is evident.

False representation is the insistence, from COP13 to COP16, that DSI is not the genetic resource itself — a distinction which would belie Francis Crick's recognition of genes as information in "The Central Dogma of Molecular Biology" (1957).

Knowledge of falsity is the [acknowledgment](#) of withering views submitted to the Secretariat of the UNCBD and the 2018 [Report](#) by the Ad Hoc Technical Expert Group on DSI, which found the placeholder not appropriate.

Intention is revealed by the voluntary contributions of users.

Reliance is recorded with the assent of Parties to the adoption of Decision 16/2.

Harm is measured by the [plethora](#) of databases which feed genetic resources into a biotech sector with global sales exceeding [one trillion dollars](#) annually.

The Indian Biological Diversity Regulations, 2025 is an earnest attempt to grapple with biofraud. "Access" includes "collecting, procuring or possessing any biological resource occurring in or obtained from India". Alas, no officer in Chennai can verify a server whirring at midnight in another hemisphere. Biopiracy will continue to thrive in the digital realm unless an effective multilateral benefit-sharing mechanism is established.

Note well: India interacted proactively with global governance. The rub is that no country alone can overhaul an international system designed to disenfranchise Provider Parties of fair and equitable benefits. Any given country can only alert like-minded countries to pursue common cause through the COP.

The fifteen mega-diverse countries of the global South should do three things. First, place on record at COP17, scheduled for October 2026, that DSI-distinct-from-genetic-resources is not only [wrong](#) but fraudulent. Second, propose that a "fair and equitable" benefit be interpreted as analogous to the [economic rent](#) that inheres in intellectual property. Rent is the difference in profits that industry enjoys before a patent expires. Third, propose that disclosure of the use of dematerialized genetic resources, *inter alia* DSI, be embedded in patent applications (Yes/No), with tracing for successful commercialisations. This simplifies without contradicting the disclosure requirement of the [World Intellectual Property Organization \(WIPO\) Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge \(2024\)](#). Rent from any one patent will be distributed to the countries of origin, as the diffusion of natural information across species and the geographic range of those species across jurisdictions, are empirical questions.

Albeit possibly unwelcome by some, none of this is unorthodox. All of this has antecedents in an academic literature [spanning thirty years](#). India is the canary in the coal mine. Should Decision 16/2 of the UNCBD ever become an amendment or protocol, the biofraud underway will morph into legalized dispossession.

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