

tributing electronic keys that would access encrypted work.¹¹⁸ This would likely satisfy most contributors to the database.

10. *Is the Database Project Viable?*

A TK database could be a powerful tool for a patent office and an effective research tool for unauthorized users. Assuming the latter issue can be resolved (a complicated assumption), a fundamental issue arises in control. Local indigenous communities are not likely to have the skills required to manage a database by themselves. They would require the control and coordination of central authorities who may or may not understand their particular culture. All things considered, the project appears to be both controversial and expensive.

VI. *DISCLOSURE OF ORIGIN*

There is considerable debate about disclosure of origin (DO) requirements.¹¹⁹ DO, making patent applications open to the public, is a central tenant of India's proposal to harmonize TRIPS and the CBD.¹²⁰ Both DO and public access to patent applications focus on the same goal, to prevent the misappropriation of genetic material. International agreements provide for the protection of geographical terms but do not consider DO. TRIPS article 27.1 stipulates what is patentable subject matter; it makes no mention of the origin of resources. A patent could be obtained using 'bio-pirated' genetic material. While criminal or civil law may or may not provide a remedy, the patent would still be valid. Article 27(3)(b) of TRIPS states that members may exclude plants and animals from patentability, although protection for plant varieties must be provided either by patents or a *sui generis* system or by a combination of both. Disclosure of origin was clearly not a major issue facing the framers of TRIPS, but it is an increasing interest as the norms of bio-piracy are established.

Bio-piracy is a term used to describe the practice – often by western companies – of patenting products based on TK or genetic resources without providing compensation or recognition. It is a complicated issue.¹²¹ There are problems associated with the term itself:

... an examination of specific cases in which traditional knowledge is commercialized reveals that it is not always easy to determine exactly the nature and extent of the inequity. Imprecise references to the technical language and concepts of intellectual property law

118 See Dan L. Burk and Julie E. Cohen, *Fair Use Infrastructure for Copyright Management Systems*, Georgetown University Law Center 2000 Working Paper Series http://papers.ssrn.com/paper.taf?abstract_id=239731 (last visited Sept. 5, 2006).

119 See Dominic Keating, *Access to Genetic Resources and Equitable Benefit Sharing Through a New Disclosure Requirement in the Patent System: An Issue in Search of a Forum*, 87 J. PAT. & TRADE-MARK OFF. SOC'Y 525 (2005).

120 See Kruger, *supra* note 40.

121 See David Conforto, *Traditional and Modern Biopiracy: Redefining the Biopiracy Debate*, 19 ENVTL. L. & LITIG. 357-358 (2004).