

Facilitated access and benefit sharing under the new FAO Treaty: The interface of open-source and proprietary agricultural innovation

Charles McManis

The new Food & Agricultural Organization (FAO) International Treaty on Plant Genetic Resources for Food & Agriculture (PGRFA), which was adopted in 2001 and entered into force in 2004, with 112 signatories, including the U.S.A., mandates both 1) "facilitated access" to genetic resources specified as part of the FAO "Multilateral System" (Article 12; and 2) sharing of benefits, including financial benefits arising from the commercial use of genetic resources derived from the Multilateral System (Article 13). One requirement of facilitated access is that recipients of specified PGRFA "not claim any intellectual property or other rights that limit facilitated access to [PGRFA], or their genetic parts, or components, in the form received from the Multilateral System" (Article 12.3(d)). However, the FAO International Treaty also clearly envisions that commercial use will be made of those PGRFA, which presumably includes patented and/or PVP-protected uses, suggesting that the FAO Multilateral System for PGRFA is to operate somewhat analogously to the current interface between open-source and proprietary software innovation, though subject to an obligation on the part of users of the Multilateral System to share financial benefits growing out of commercial uses of PGRFA. This paper will explore that analogy, identify points of disanalogy, and draw conclusions about what lessons the interface of open-source and proprietary software development holds for the FAO Multilateral System for PGRFA.