



RESEARCH
PROGRAM ON
Roots, Tubers
and Bananas

Intellectual Property Management under the CGIAR IA Principles

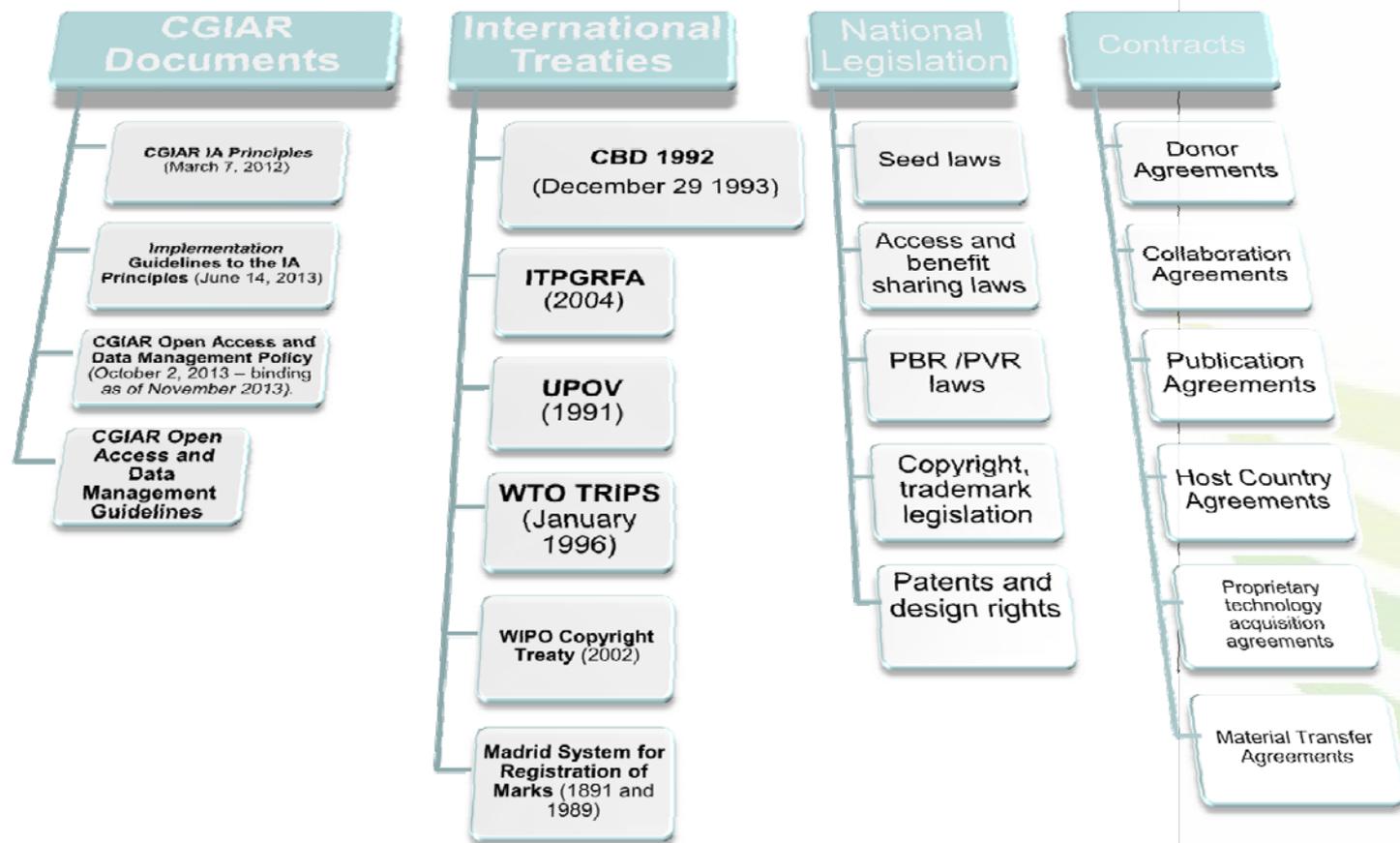
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Outline

- I. Legal Framework**
- II. Typology of Intellectual Assets**
- III. Compliance Requirements**
- IV. Management of Intellectual Assets**
- V. Resources**



I. Legal Framework applicable to CIP and CGIAR



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- II. Typology of Intellectual Assets**
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II. Typology of Intellectual Assets

- Definition in CGIAR IA Principles:

*“Any result or product of research and development activities of any nature whatsoever (including but not limited to, knowledge, publications and other information products, databases, improved germplasm, technologies, inventions, know-how, processes, software, and distinctive signs), **whether or not they are protected by IP Rights**”.*

➤ This is an all inclusive definition of everything CIP produces.



II. Typology of Intellectual Assets (2)



Genetic Material

- Plant Genetic Resources
- Viruses
- Pests



Knowledge

- Publications
- Data and databases
- Methodologies
- Know-how



Products

- Tangible products (IPM)
- Software
- Models and modelling software
- Diagnostic tools
- Markers



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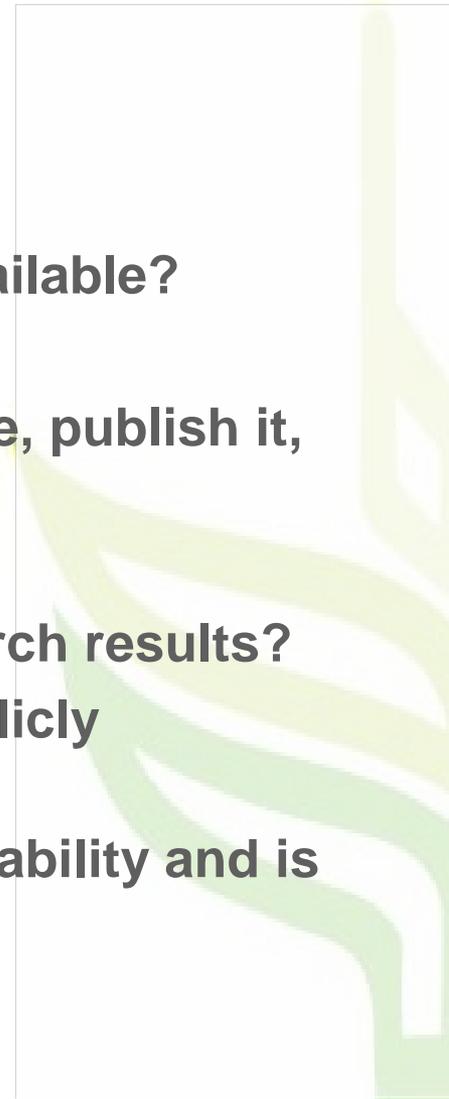


III. Compliance Requirements

One goal: Generating useful knowledge

Two main questions:

- **1. Can you make your research results publicly available?**
 - **Third party rights in the results?**
 - **Did you obtain the right to use it for the purpose, publish it, distribute it?**
- **2. Can you restrict public availability of your research results?**
 - **Can you do this working with public funds, publicly available resources? If yes,**
 - **Is there any benefit from restricting public availability and is this restriction justifiable?**



III. Compliance with the CGIAR IA Principles

Principle 1: International Public Goods

- **Still the norm but not the rule.**
- Creation of IPG's is seen as mechanism for achieving our mission and not the finality of our research and development.
- If other methodologies serve our mission better we can adopt these.

Principle 2: Partnerships

- Are necessary for:
- accessing knowledge and innovation of others
- Joining efforts for developing products
- increasing impact through effective delivery and deployment.
- May require incentives (designed, managed and monitored)

Principle 3: Farmers Rights

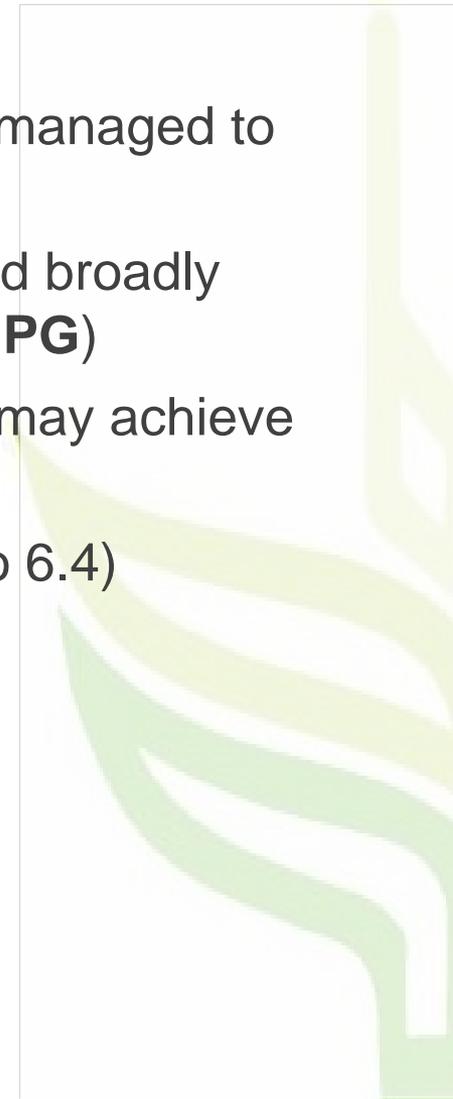
- be respectful of national and international efforts to promote farmer's rights.
- support the development of appropriate policies and procedures for the recognition and promotion of farmer's rights.

Principle 4: Genetic Resources for food and agriculture

- Commitment to conservation and **widespread use** of all genetic resources for food and agriculture.
- PGRFA under the International Treaty will be distributed with SMTA
- All access and distribution should be in **compliance** with the IA Principles and applicable legislation (see ABS presentation)

PRINCIPLE 6: MAXIMIZING GLOBAL ACCESSIBILITY AND IMPACT

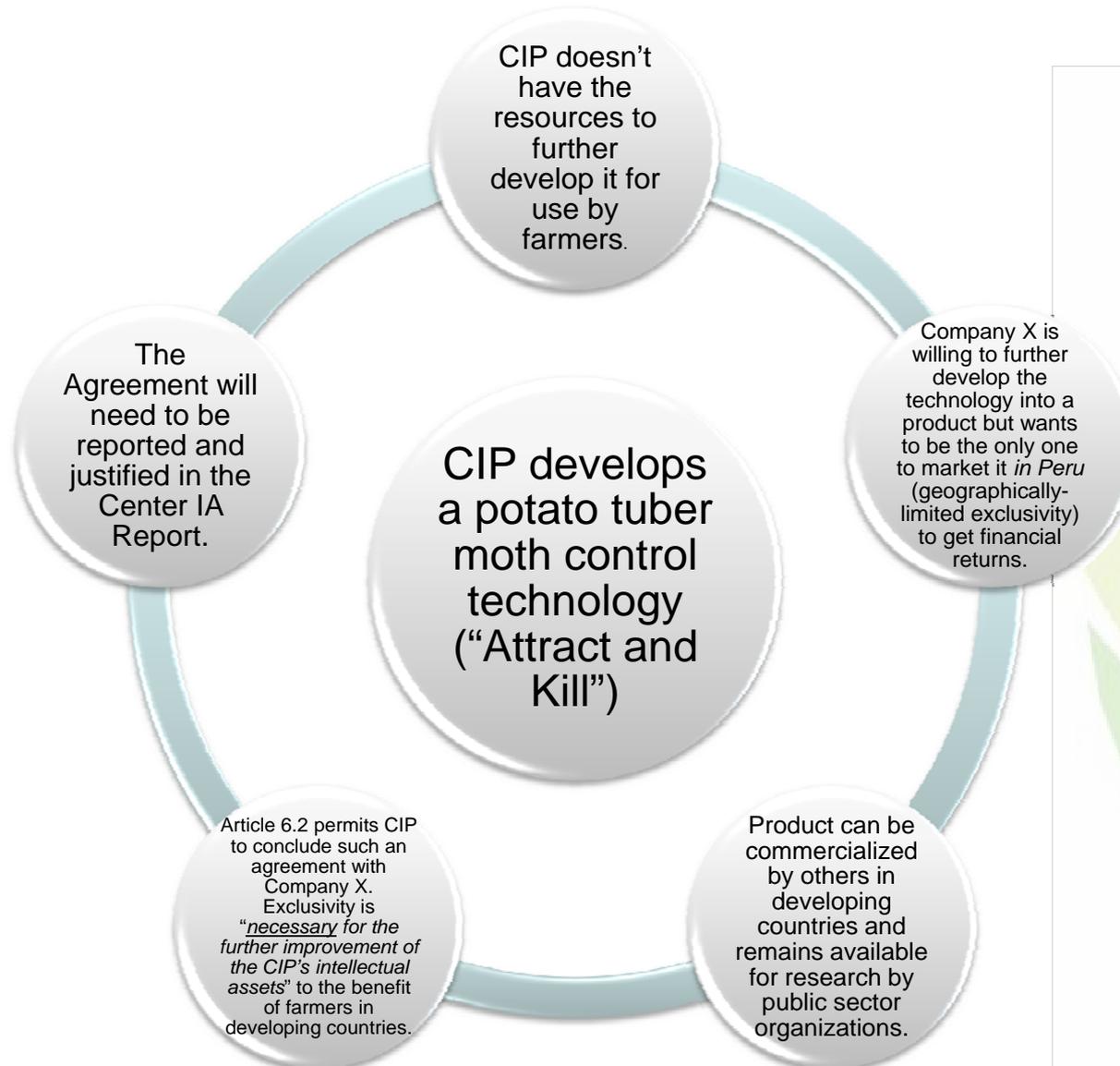
- ▶ Guiding principle: IA produced or acquired must be managed to maximize global accessibility and impact.
- ▶ 6.1: The usual way to achieve this is by promptly and broadly disseminating the research results (**Open Access, IPG**)
- ▶ However, sometimes restricting global accessibility may achieve better impact in furtherance of CIP's mission.
- ▶ Only certain restrictions are allowed (Principle 6.2 to 6.4)



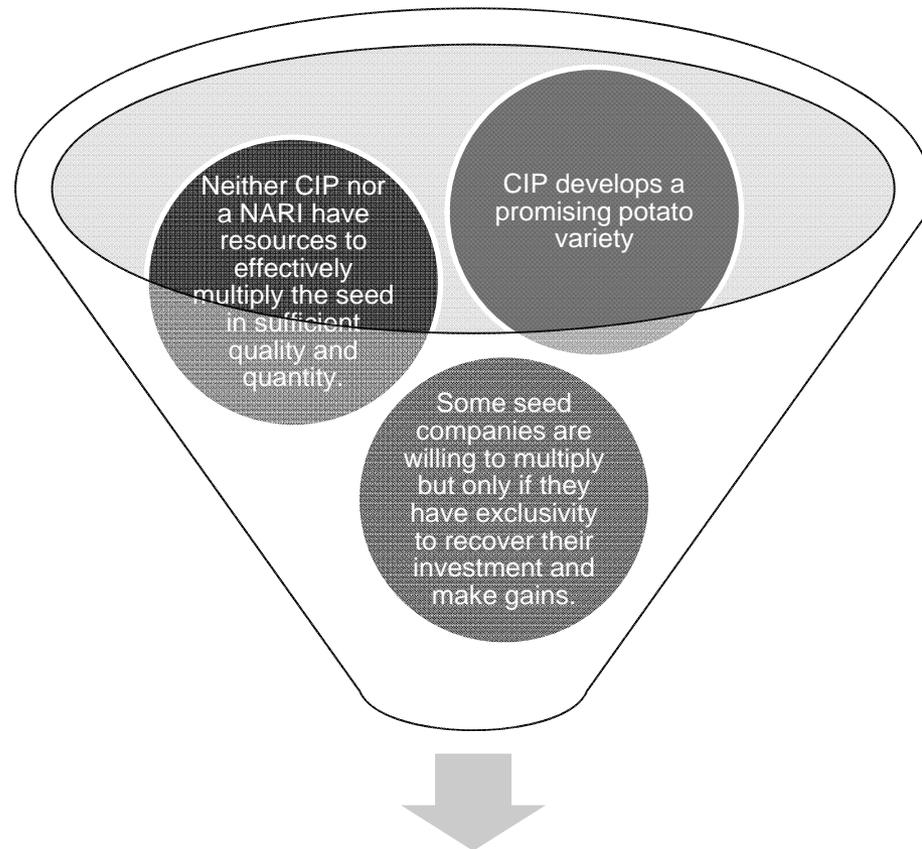
PRINCIPLE 6.2: LIMITED EXCLUSIVITY AGREEMENTS

- ▶ Granting exclusive rights to use or commercialise an IA developed solely or jointly by CIP if:
 - ▶ necessary for improvement of the IA or enhancing scale and scope of impact, and
 - ▶ the exclusivity is as limited as possible in duration, territory and /or field of use, and
 - ▶ the IA remains available for non-commercial research by public sector (Research Exemption), and
 - ▶ the IA will remain available in case of a Food Security Emergency (Emergency Exemption)
 - ▶ In order to remove any of the two exemptions, CIP needs to get prior approval from the Consortium (30 days period).
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EXAMPLE OF A LIMITED EXCLUSIVITY AGREEMENT BY TERRITORY



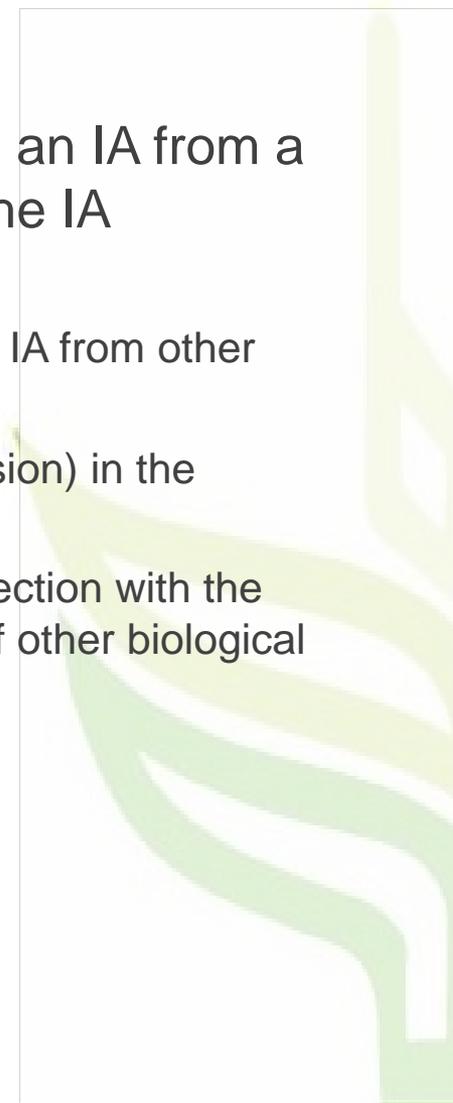
EXAMPLE: LIMITED EXCLUSIVITY BY TIME



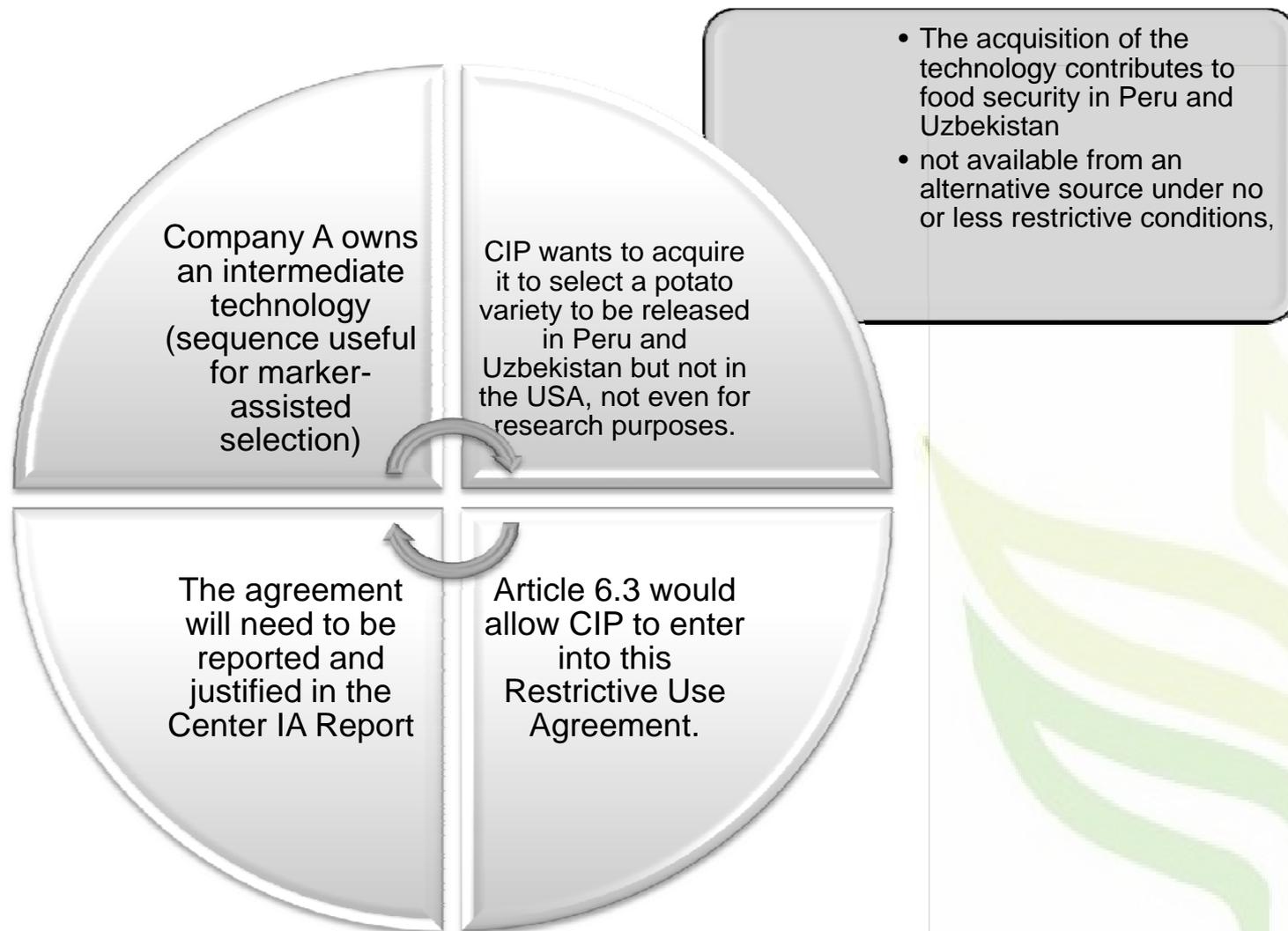
CIP can grant an **exclusive license** to some companies to commercially market the variety in for (5-10) years. After expiration of the exclusivity time anyone can multiply and distribute the variety.

PRINCIPLE 6.3: INCORPORATION OF THIRD PARTY INTELLECTUAL ASSETS

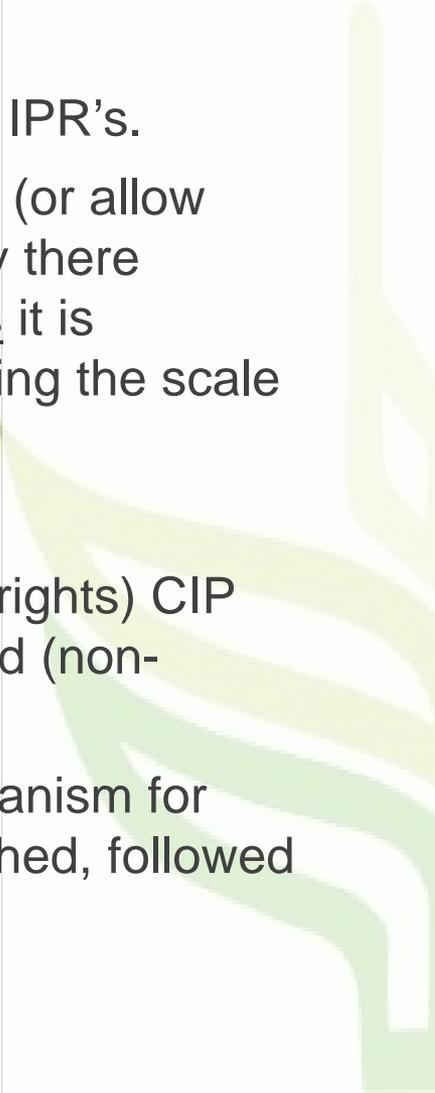
- ▶ CIP may enter into an agreement to acquire and use an IA from a 3rd party that may restrict the global accessibility of the IA developed by CIP if:
 - ▶ To the best of its knowledge it is unable to acquire equivalent IA from other sources under no or less restrictive terms, and
 - ▶ The resulting IA will further the CGIAR Vision (and CIP's mission) in the countries where it can be made available, and
 - ▶ CIP can ensure that the 3rd party IA will be used only in connection with the intended product/project/IA. (for example no contamination of other biological materials).



EXAMPLE OF A RESTRICTED USE AGREEMENT



PRINCIPLE 6.4: INTELLECTUAL PROPERTY RIGHTS

- ▶ 6.4.1: Commitment to the strategic and prudent use of IPR's.
 - ▶ 6.4.2: CIP must carefully consider whether to apply for (or allow others to register/apply for) patents or PVR's. Normally there shouldn't be an IPR on CIP's intellectual assets unless it is necessary for further improvement of the IA or enhancing the scale of impact.
 - ▶ Where IPR's vest automatically (copyrights, database rights) CIP should generate a license for allowing reproduction and (non-commercial) use with proper attribution.
 - ▶ Where IPR's vest by application (patent, PVR) a mechanism for evaluating the necessity and benefits must be established, followed and documented for justification.
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EXAMPLE FOR IPR – PVR APPLICATION

Continuing from the promising potato variety example,

CIP could file for a PVR protection for the variety *in Kenya* to grant an limited exclusive license to Company X for multiplication of seed. Or,

Company X could obtain a PVR over the variety to prevent competitors from undermining its exclusive market position.

Company X may also need to demonstrate to investors that it owns a patent to obtain start-up financing.

The PVR must be necessary for the further improvement or increasing impact over target beneficiaries.

This needs to be reported and justified in the Center IA Report.



Remaining Principles

Principle 7: Fees

- Reasonable fees may be charged in return for access to IA's.
- Any revenue generated must be used to further CIP's mission and the CGIAR Vision.
- But fee generation is not in itself a justification for providing exclusivity

Principle 8: Capacity for implementation of the IA Principles

- Centers need to develop capacity for proper implementation of the IA principles.

Principle 9: Implementation

- Effective as of 7th of March 2012 and full compliance must be demonstrated.

Principle 10: Reporting

- Annual Center IA Report and Board Assurance of Compliance
- CGIAR Annual IA Report and FC IP Group Annual Report

Principle 11: Audit right of the Consortium

- This was an exceptional mechanism, but there are signs that the Consortium is required to use it by the Fund Council.

Principle 12: Review and amendment of the IA Principles.

- In April 2014 (currently ongoing but revision doubtful)

IV. Management of IA in RTB

- **Currently the responsibility of each Program Participant (as per PPA)**
- **Regulated in the COF (IA Principles)**
- **In CRP Second Call each CRP to articulate a “partnerships and dissemination strategy for maximizing impact” which integrates partnership, IP and OA issues. Core elements:**
 - sound management of IA/IPR across the CRP
 - open accessibility of information and data
 - International Public Goods (IPGs)
 - strategic use of IA/IPR
 - management of PGRFA pursuant to the ITPGRFA
 - budgeting for management of IA/IPR across the CRP
 - indicators for IAM and OA
- **Recommend that CRP implementation plan(s) for the partnerships and dissemination strategy (or component’s thereof) be developed, evaluated and revised on an ongoing basis for CRP internal use.**



V. Resources where do I find guidance

- <http://cipotato.org/about-cip/policies/>
 - IA Principles
 - Framework IPR Policy
 - Code of Conduct Policy
- <http://www.cgiar.org/resources/cgiar-intellectual-asset-management/>
- <http://www.cgiar.org/resources/open/>
 - CGIAR Open Access and Data Management Policy
 - OADM Implementation Guidelines
 - All discussion papers and useful resources



Thank you for your attention.

