

Dr. Kalyan B. Goswami
Executive Director



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Prof. Ramesh Chand
Member of NITI Aayog
Govt. of India
New Delhi

*Recd.
Dr. 12/9/2016*

Dear Sir

Subject: NSAI stand on GM trait Licensing Guidelines, Government of India

Greetings from NSAI!!

We are very much thankful to you for giving us the opportunity to discuss with you on this subject earlier. As per the views of our members, we would like to further apprise you about NSAI stand on Draft GM Trait Licensing Guidelines issued by Ministry of Agriculture & Farmers Welfare, Government of India.

We would like to reiterate that as per the Indian IPR laws which are TRIPS compliant, the seeds and plants cannot be patented. Monsanto obtained patents in India for cotton transformation and event identification based on their patents of the US under PCT. However, it can be noted that the claims granted to them by the Indian patent office does not cover any IP rights to Monsanto on seeds and plant varieties as specifically prohibited under Section 3(j) of the Indian Patents Act, 1970. The IPR for seeds and plant varieties are covered by a sui generis enactment known as Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001 in India. Therefore, the subject of Bt cotton seeds is entirely covered only under this enactment.

As per the provisions under Section 30 of PPV&FR Act, all the breeders in public, private seed companies or research institutes have a right to use any protected variety including a transgenic variety carrying a transgenic trait for developing new varieties which are registerable for IP protection under Section 18 of the Act and can enjoy IP protection under Sections 24 and 28 which includes rights to exclusive commercialization. The developer of a trait like Monsanto is also provided rights under Section 26 to claim benefit share which has to be determined only by the PPV&FR Authority. All the breeders who used such a trait are liable to pay a trait value as determined by the Authority under the benefit sharing arrangement. The Authority is also empowered to facilitate recovery of the benefit share amount in case the breeders fail to pay to the trait developer.

