

## **Cover Note to the Meeting Report**

GBIF Experts Meeting on Biodiversity Data, Databases and Property Rights Issues.

Dear GBIF Governing Board Members,

As approved by the Governing Board, GBIF has started to address the very challenging and complex issues related to Intellectual Property Rights (IPR).

As a first step, and based on the foundation laid by Paragraph 8 of the GBIF MoU, we organized an Experts Meeting. We asked the Governing Board delegations to nominate experts who could participate in the meeting in their personal capacities, and then selected a balanced set of attendees. To assist in the discussions of the experts, GBIF also commissioned a white paper on IPR.

We hereby include the report of this meeting for your information. We do not propose to discuss the outcome of the meeting in any great detail at GB8. That discussion will be postponed until GB9, when we will have more time available for a more in-depth discussion. Rather, at GB8 we wish to only give you some of the highlights of the meeting.

Throughout the report, you will see that the experts often had differing—sometimes opposing—approaches and expectations on a wide spectrum of issues. At the end of the meeting we asked them to provide us with their written suggestions and recommendations. Section 14 of the enclosed report therefore reflects the individual suggestions presented to us, rather than the result of a broad discussion or a consensus on any given area or issue.

I especially wish to call your attention to the last four pages of the report. In addition to seeking the experts' advice on general IPR questions, we also asked them to provide their inputs and suggestions on the draft agreements on Data Use and Data Sharing for the GBIF data portal. The versions of these documents at the very end of the enclosed report have taken their recommendations into account. We think that these agreements are now in close-to-final shape.

Finally, we are very thankful to all experts for their active involvement and the discussions held during those two days in Madrid. We are also thankful to the Spanish Node, Francisco Pando and the Royal Botanical Garden for their excellent support in the organization of this meeting.

Sincerely,

Beatriz Torres  
Senior Programme Officer  
Outreach and Capacity Building



# Global Biodiversity Information Facility

**GBIF Experts' Meeting on biodiversity data, databases and property rights issues.  
Royal Botanic Garden, Madrid, Spain,  
1-2 March 2004**

## Meeting Report

1. The GBIF Experts' meeting on biodiversity data, databases and intellectual property issues was held 1-2 March 2004, in Madrid, Spain. The meeting was graciously hosted by the Spanish Node of GBIF and the Royal Botanic Garden, Madrid.
2. A total of 16 experts attending in their personal capacities together with 5 GBIF staff members participated at the meeting. The full list of participants is contained in Annex 1. The agenda, background paper on IPRs and complementary materials and documents are available on the CIRCA network at:  
([http://circa.gbif.net/Public/irc/gbif/ocb/library?l=/meetings/biodiversity\\_databases&vm=detailed&sb=Title](http://circa.gbif.net/Public/irc/gbif/ocb/library?l=/meetings/biodiversity_databases&vm=detailed&sb=Title)).
3. The GBIF Secretariat made a presentation on intellectual property right (IPR) issues as contained in the study of experiences on data sharing with countries of origin ([www.gbif.org/prog/ocb/sdco](http://www.gbif.org/prog/ocb/sdco)). Experience to date shows that in the majority of cases “non-formal” contracts were established in the sharing of data with countries of origin. In fact the institutions involved did not engage in formal agreements. Rather they favoured “soft approaches” namely verbal agreements or letters / MoUs. This study also shows that the institutions involved in data sharing with countries of origin stressed the need to ensure free flow of scientific data and information, together with acknowledgement of the data provider(s), disclaimers and data access policies.
4. Ms. Beatriz Torres also introduced paragraph 8 of the GBIF MoU because it lays the foundation for intellectual property issues within the GBIF context. As stated in the MoU, GBIF was established to promote, co-ordinate, design and implement the compilation, linking, standardization, digitisation and global dissemination of the world's biodiversity data, within an appropriate framework for property rights and due attribution ([www.gbif.org/GBIF\\_org/documents/mou\\_html#head](http://www.gbif.org/GBIF_org/documents/mou_html#head)). Paragraph 8 of the MoU underscores that GBIF does not assert any IPRs with regard to the data in databases developed by other organizations that become associated with GBIF, that it should respect conditions set by data providers that affiliate their databases to GBIF and when linking with other databases, should ensure that data is in the public domain and not subject to limitations on its further non-commercial use and dissemination, apart from due attribution ([www.gbif.org/GBIF\\_org/documents/mou\\_html#8](http://www.gbif.org/GBIF_org/documents/mou_html#8)).
5. Mr. Manuel Ruíz (consultant) made a presentation on the commissioned document on IPRs and GBIF which provided the overall background for the discussions by the experts to come later in the meeting. In his presentation he highlighted that:

- IPR was defined as a mechanism to support and stimulate progress in the arts and sciences by giving an artist, an author, an inventor a monopoly right that allows him to exclude others from using his creation without his consent
  - Scientific research is based on the free flow and exchange (public domain) of data and information (knowledge) and it is however, becoming influenced by a political/legal context in which IPRs are being expanded and strengthened. It was also mentioned that IPRs are being seen as a means to protect works, recuperate investments and ensure a degree of control on how data and information are used and by whom.
  - Legal protection for databases: Traditionally through **Copyright Law** (originality criteria – an intellectual effort which implies more than accumulating data). **The European Directive 96/9** protects original databases and offers a *sui generis* right to protect *non original* databases that required an investment in its making, such that extraction and re utilisation of database content may be restricted. Fair use exceptions do apply: teaching, private purposes, and research.
  - GBIF is dealing with a quite complex scenario. IPRs may become relevant under one or more potential situations:
    - rights are vested in data and information provided to GBIF (limitations or conditions of use by providers to users);
    - GBIF (at some point) generates its own value added information;
    - non-information products are generated from the data and information provided by GBIF;
    - whether sources of data are public or private, and;
    - type of data and information (i.e. commercially proprietary, locality-sensitive, because of endangered status of a species, etc., or confidential for reasons of personal privacy).
  - It was stressed that GBIF (MoU Paragraph 8) respects IPRs in the recognition of equal access, respects the conditions set by providers, confidentiality, and facilitates the access of data put in public domain.
6. At the opening of the meeting the participants were asked about their expectations regarding the meeting. We found that their expectations were high and very diverse, among the individual expectations were:
- At the educational level:
- GBIF should make a set of simple guidelines on how to solve IPR issues
  - The importance of providing educational tools on these issues
- At the legal level:
- Appropriate statement on a “license to use” for database content.
  - Legal framework that GBIF will adopt and the resolution of disputes and how to deal with legal conflicts (i.e. lawsuits) regarding infringement of data providers’ rights.
  - How to deal with important biodiversity data that are not (and will not) be in the public domain
  - Guidelines for negotiating (MoUs) with countries of origin for “permission” to place data in GBIF
- Other:
- How to address commercial uses of GBIF data and reconcile these with GBIF principles.

7. The experts at the meeting addressed the discussions in 2 working groups. They covered the following 4 themes:

Theme 1. Providers of Data

Theme 2. Users of data

Theme 3. Data sharing with countries of origin (DSCO)

Theme 4. Data Sharing and Data Use Agreements

In this report we provide a summary account of the main highlights of the discussions held for each theme.

## **8. Theme 1: Providers of Data**

### ***8.1 What are the legal implications for organizations that share primary species-occurrence data?***

- Data providers must be able to determine: Who owns the specimens? Who owns the data? Also, sub-parts of the specimen (genetic extracts, molecular information, etc.)
  - Accession policies should be put in place that make this clear
    - Many institutions only have unwritten traditions
    - Standards have been developed (i.e, ENHSIN, NSCA)
- Only data from legally obtained specimens should be provided
- Data providers required to obtain prior informed consent (PIC) of the owner before making available under mutually agreed terms (MAT)
  - There may be issues of confidentiality
  - Are the data from public or private sources?
- Jurisdiction (i.e., under what legal system are the data provided?)
  - The law varies greatly in different parts of the world (Common law, Napoleonic law, IP law, Contract law)
  - Various roles may incur liability: data provider, service provide (e.g. GBIF), anyone who “processes” data
  - Some portions of a database are copyright-able; in Europe, the Database Directive protects the parts that are not.
  - As the data move from point of origin through data portals to users, there is a chain of ownership generated.
  - There are both normative and legal constraints on use of data
- Data providers must provide metadata concerning accuracy of the data
  - Affected by sensitivity of the data: is the species listed in CITES or other listing of endangered and threatened taxa?
  - Openness of locality data (fineness of grain) should depend on sensitivity.
  - Openness of collectors’ names may be affected by confidentiality issues
- Data may have commercial value; how can the providing organization claim recompense?
  - Example: Observational data useful to developers
  - Hurdles: Lack of capacity to enforce rights; financial incentives to withhold information

### **8.2 How should a data provider deal with the regime (public domain vs. copyright) of images of specimens, recordings of sounds, satellite images, maps, etc.?**

- Must be able to determine: Who owns the image/recording/etc.?
- Provider required to obtain prior informed consent (PIC) of the owner before making available
- Must be willing to “take it down” in case of infringement (can this be done by GBIF? Should GBIF only send comments to the data provider?)
- Jurisdiction (i.e., under what legal system is the image/recording/etc. provided?)
- Use Digital Rights Management (DRM)?

### **8.3 Should GBIF propose a “Code of Conduct” for data providers?**

- Group divided on the issue; one of the breakout groups (and half of the other) concluded that Codes of Conduct were not relevant
- If a Code were to be produced:
  - What form should it take?
    - Stronger: Code of Conduct, contracts
    - Weaker: Statement of Principles, FAQ
  - What elements should be included?
    - Rights vs. obligations
    - Technical
    - Quality/Reliability
    - Restrictions
  - Focus should be on long-term needs
    - Normative principles
    - Legal needs
    - Trust-building processes
    - Education/capacity building

### **8.4 How should data providers handle confidential or sensitive data?**

- Responsibility of data provider to understand the sensitivity
  - Restrict access if necessary
    - “sensitivity” – protects various types of vulnerable biodiversity
    - “confidentiality” – required by contractual obligations (as with pharmaceutical companies)

### **8.5 What are current policies and experiences with the use of disclaimers?**

- It is OK to use disclaimers to raise awareness of the user
- Data may have flaws and should be put to an appropriate use (need good metadata)
- Disclaimers make the user at least think about the issue
- Disclaimers do not absolve from guilt / negate negligence

## **9. Theme 2: Users of data**

### **9.1 What are the responsibilities of “harvesters” of web-based data (commercial vs. non-commercial users)?**

- Must respect concerns of data providers (“liability” issue?) --- unlicensed, un-permitted commercial use of data is a fundamental concern to providers
  - One means of doing this is to register users and require authentication
    - Authentication can have a negative influence on access; places too many restrictions on the potential of the Web
    - On other hand, would help GBIF report to data providers on the impact and use of their data
- Due attribution (and recompense?) to source of data (GBIF requires due attribution)
- Refrain from “derogatory treatment” of the data, e.g.
  - Assignment of unwarranted confidence
  - Unnecessary invocation of quarantine
- Consider both Normative and Legal constraints on use
- GBIF draft agreements permit expression by providers of intended restrictions on use

### ***9.2 How can providers and/or GBIF deal with misuse of data by third parties?***

- “Misuse” a poor term; “misinterpretation” or “abuse” would be better
  - “Misinterpretation” could be nothing more than the adoption of a scientifically controversial position
  - Therefore beyond the reasonable scope of provider responsibility
- Use agreements could specify what “violation” or “abuse” would be
  - Available mechanisms for discovery of mis-use (e.g., use without consent, or extra-contractual use)?
    - Authentication via registration (but see objections above)
- Jurisdiction in this case would be in the courts of the provider’s region

### ***9.3 How can acknowledgement of sources of data be ensured, even if it has been copied and redistributed many times?***

- Digital Object Identifiers (DOI) could help here
- Current GBIF agreements don’t require tertiary or subsequent attribution, do force download of attribution data

### ***9.4 When data are modified by users, what are the rights of the originators and providers versus the rights of the users who have corrected or added to the original data?***

- Should return to originator of “correction” be obligatory?
- Code of best practice suggests that an audit trail should be required, i.e. for example retention of original data with corrections identified as such
  - Perhaps it should be written into a contract
- Can GBIF support “feedback” (currently does) – either publicly or privately “qualified”?
- Copyleft could play a role here: Data may be corrected or added to, but such modifications must be as publicly available as were the originals

## **10. Theme 3: Data sharing with countries of origin (DSCO)**

### ***10.1 What are the major hurdles for institutions that hold collections from other countries to making the collection data available to the countries of origin?***

- Data claims by the countries of origin
  - Non-disclosure requirements and desire for control over “their” data (protectionism)
  - North-South concerns
  - Fear of giving away their rights to benefits to be derived from biodiversity
- Non-performance by the country of origin in holding up its side of the data-sharing bargain

***10.2 What are the main ongoing experiences in this area?***

- African, Brazilian and Indian reticence to share for one or more of the reasons listed above
- Eastern European traditions of non-transparency
- (N.B. The recent study on international experiences of sharing data with countries of origin shows that these concerns are much smaller than expressed by the experts attending this meeting). The full report is available from <http://www.gbif.org/prog/ocb/sdco>

***10.3 What are the main trends?***

- There is a trend toward improvement and openness

***10.4 What are the benefits of engaging in data sharing with countries of origin?***

- Contribution to improvement of North-South relations
- Access to data and/or collecting sites

**11. Theme 4: Data Sharing and Data Use Agreements**

***11.1 What are the main benefits and lessons learned from data use/data sharing agreements (MoUs, letters of agreement, letters of intent, verbal agreements, etc.)?***

- Having a written document, in whatever form, is better than a “handshake”
- What are agreements? They are contracts, whether they are:
  - Formal bilateral or multilateral documents,
  - Web-click “agreements”, or
  - Verbal
- Benefits of the agreements
  - Trust- and confidence-building
  - Quality management
    - Data cleansing and augmentation
    - Tools development
  - Risk assessment
  - Defines the playing field for everyone
  - Capacity building

***11.2 Lessons learned from existing terms of the use agreement with the repositories of natural history collections***

- Agreements should be thought through carefully for long-term use. Characteristics needed for success (the group in strong consensus on these):
  - Simple
  - Flexible
  - Clear and transparent rules
  - Good faith, reasonability, confidence and fairness

- Proactive, innovative approach
- One size does not fit all

### *11.3 Experiences in the settling of disputes*

- Anticipate conflicts
- Use mediation and avoid the courts

### *11.4 Can the agreements effectively take care of all our concerns? What are the grey areas?*

- No
- Grey areas:
  - There are some problems with transparency
  - The differences in legal systems in different regions of the globe will present difficulties

12. The participants also discussed the draft GBIF Data Use Agreement and Data Sharing Agreements and provided important suggestions and contributions towards their improvement. The latest versions of draft data use and sharing agreements are contained in Annex 2 and 3.

13. At the end of the deliberations, the Secretariat (Dr. Hannu Saarenmaa) made an additional presentation on the recently launched GBIF data portal. Dr. James Munford also made a brief presentation on the on-going work of the National Biodiversity Network (UK) on geo-spatial visualization.

14. In concluding the meeting, the participants were asked to provide written suggestions on future directions and recommendations to GBIF. This report presents a summary of these individual suggestions:

#### **Educational Level:**

- Create a Frequently Asked Questions (FAQ) section in the GBIF web portal.
- Distribute a 1 pager on what is meant by IPR within the GBIF context.
- Work on other educational activities
- Document best practices and disseminate them widely.

#### **Legal Level:**

- Prepare a paper to identify the main legal/practical/issues/challenges related to IPRs and biodiversity data.
- Create a small group of legal experts on IPR matters related to GBIF work
- Ensure the legal robustness of the IPR framework now established
- Identify cases/situations where IPRs may be impacting GBIF activities
- Check compatibility between the MoU, Data Use Agreement and Data Sharing Agreements
- Provide a clear and transparent legal framework

#### **Capacity building and other technical issues:**

- Consider the possibility of providing capacity building related to IPR issues
- Provide data providers with “data sharing agreements” models or recommendations
- Discuss viability of “registration system” for users
- Further explore the notions of “public domain” and that of “biodiversity commons” and consider adopting an IPR regime for both in complement.

Annex 1

**GBIF Experts' Meeting on biodiversity data, databases and property rights issues.  
Royal Botanic Garden, Madrid, Spain,  
1-2 March 2004**

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## Annex 2

Draft 0.11. 2004-4-12

# Global Biodiversity Information Facility (GBIF)

## Data Use Agreement

The goals and principles of making biodiversity *data*<sup>1</sup> freely and universally available have been defined in the GBIF [Memorandum of Understanding](#). This Data Use Agreement provides the framework under which *data* use through GBIF takes place.

GBIF *data sharing* should take place within a framework of due attribution to the source of the *data*.

*Users* of the *GBIF network* agree to the following:

1. GBIF as a service provider does not take responsibility for the accuracy, reliability or sensitivity of the data, or for the suitability of its application for any particular purpose. *Users* employ these *data* at their own risk.
2. GBIF is not liable or responsible, nor are its employees or contractors, for any loss, damage, claim, cost or expense from the use of or the inability to use the *GBIF network*.
3. *Users* shall respect *data providers'* restrictions of access to *sensitive data*.
4. In order to make attribution of use possible, the identifier of the source(s) of *data* must be retained with every *data* record.
5. *Users* must publicly acknowledge, in conjunction with use, the source(s) of the *biodiversity data* they have used.
6. *Users* must comply with additional terms and conditions of use set by the data provider. Where these exist they will be in the provider *metadata*.

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<sup>1</sup> Italicised words used in this Data Use Agreement have the meanings given in the Definitions, which are specific to this document.

## Definitions

- *Biodiversity Data*: Primary scientific data on specimens, observations, sites, names, taxonomic concepts, and other data on biological diversity.
- *Data*: *Biodiversity data* and *metadata*.
- *Data provider*: A custodian of *data* that makes it electronically available. It may or may not be the data owner. If not, the custodian will have declared to GBIF that it has the owner's permission to make the data available.
- *Data sharing*: The process of and agreements for making *data* freely and universally available on the Internet.
- *GBIF Participant*: Signatory of the GBIF Memorandum of Understanding (MoU).
- *GBIF Network*: The infrastructure consisting of the central services of the GBIF Secretariat, and those of the *Participants* and *data providers*, based on the Internet.
- *Metadata*: Data describing the attributes and combinations of *biodiversity data*.
- *Owner of data*: The legal entity that owns digital records by virtue of creating them. The records may be a product derived from another, possibly non-digital product, which may affect the rights of the owner of the digital records.
- *Sensitive data*: Any *data*, that because of its nature, the *data provider* does not want to make available, e.g. precise localities of endangered species.
- *User*: Anyone who uses the Internet to access *data* through the GBIF network.

## Annex 3

Draft 0.11. 2004-4-12

# Global Biodiversity Information Facility (GBIF)

## Data Sharing Agreement

The goals and principles of making biodiversity *data*<sup>1</sup> freely and universally available have been defined in the GBIF [Memorandum of Understanding](#) (MoU). This Data Sharing Agreement provides the framework under which *data sharing* through GBIF takes place.

*Participants* who sign the MoU express their willingness to make *biodiversity data* available through their *nodes* to foster scientific research development internationally and to support the public use of these *data*.

*Data providers* may participate in several *data sharing* arrangements at different levels (thematic, community, national, global).

GBIF *data sharing* takes place within a framework of due attribution.

When registering their services with GBIF, *data providers* agree<sup>2</sup> to the following:

1. *Biodiversity data* accessible via the *GBIF network* are freely and universally available to all *users* within the framework of the GBIF Data Use Agreement and with the terms and conditions that the *data provider* has identified in its *metadata*.
2. The *data provider* warrants that it has made the necessary agreements with *owners of the data* that it can make the data available through the GBIF network.
3. Responsibility for information about the accuracy and reliability of the data, and restrictions of access to *sensitive data*, resides with the *data provider*.
4. The *data provider* shall include a stable and unique identifier in their *data* so that the *owner of the data* is known to the user and for other purposes.

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<sup>1</sup> Italicised words used in this Data Sharing Agreement have the meanings given in the Definitions, which are specific to this document.

<sup>2</sup> GBIF Secretariat requires acceptance of these agreements before it accepts registrations of *data providers*.

5. *Data providers* shall be endorsed by a *GBIF Participant* before their *data* are made available by the *GBIF Secretariat*.
6. GBIF does not assert any intellectual property rights in the *data* that is made available through its *network*.
7. GBIF as a service provider does not take responsibility for the accuracy, reliability or sensitivity of the data, or for the suitability of its application for any particular purpose, nor does it intentionally modify in any way the data that its network makes available.
8. GBIF is not liable or responsible, nor are its employees or contractors, for any loss, damage, claim, cost or expense from the use of or the inability to use the *GBIF network*.
9. *GBIF Secretariat* for technical reasons will cache a copy of the indexed data fields. Queries of such *data* through the *GBIF Secretariat* are reported to the *data provider*.
10. *GBIF Secretariat* may serve full or partial *data* to *users* together with the terms and conditions for use set by the *data provider*.
11. *GBIF Secretariat's* service provision includes software components and updates, interfaces, indexing and registry services, helpdesk, and training to assist Participants and data providers to maintain Internet portals.

## **Definitions**

- *Biodiversity Data*: Primary scientific data on specimens, observations, sites, names, taxonomic concepts, and other data on biological diversity.
- *Data*: *Biodiversity data* and *metadata*.
- *Data provider*: A custodian of *data* that makes it electronically available. It may or may not be the data owner. If not, the custodian will have declared to GBIF that it has the owner's permission to make the data available.
- *Data sharing*: The process of and agreements for making *data* freely and universally available on the Internet.
- *GBIF Network*: The infrastructure consisting of the central services of the *GBIF Secretariat*, and those of the *Participants* and *data providers*, based on the Internet.
- *GBIF Participant*: Signatory of the GBIF Memorandum of Understanding (MoU).
- *GBIF Secretariat*: Legal entity empowered by the *GBIF Participants* to enter into contracts, execute the Work Programme, and maintains the central services for the *GBIF network*.
- *Metadata*: Data describing the attributes and combinations of *biodiversity data*.
- *Node*: A *data provider* designated by a *GBIF Participant*, which maintains a stable computing gateway that makes *data* available through the *GBIF network*.

- *Owner of data*: The legal entity that owns digital records by virtue of creating them. The records may be a product derived from another, possibly non-digital product, which may affect the rights of the owner of the digital records.
- *Sensitive data*: Any *data*, that because of its nature, the *data provider* does not want to make available, e.g. precise localities of endangered species.
- *User*: Anyone who uses the Internet to access *data* through the GBIF network.