NIH 'should help sharing of research tools'

[WASHINGTON] The US National Institutes of Health (NIH) has been urged to use its full moral and legal authority to promote the freer sharing of research tools between scientists.

The call has come from an expert panel set up last year by Harold Varmus, the director of NIH, to study the problems faced by NIH-funded scientists in obtaining access to research tools — from monoclonal antibodies to cloning tools — from other researchers in universities and industry.

Among the panel's recommendations are that NIH should aggressively assert its right, at the time of making a grant, to take title to a grant recipient's inventions in 'exceptional circumstances'. The panel says that NIH could use this provision of a 1980 technology transfer law, the Bayh–Dole Act, to lay claim to research tools produced for broad use.

The panel also says that NIH could assert its legal 'march-in' rights to allow the agency to force grant recipients who are sitting on patentable inventions to license them on reasonable terms.

In its report, issued last week at a meeting of Varmus's advisory committee, the seven-member Working Group on Research Tools warns that current trends "pose a serious threat to the best interests of biomedical research".

Such problems are familiar to scientists who have tried to obtain research tools from colleagues at other institutions or in industry, and found that their requests frequently elicit long and unfruitful negotiations over terms.

These terms can include a right of approval by the donating institution or company before the recipient submits a manuscript for publication, and delays in publication. Particularly contentious are attempts by the provider to assert rights to ownership or licensing of future discoveries made with the tool.

There are also ubiquitous prohibitions on the requesting scientist's sharing of materials with other researchers or institutions, and restrictions on the tools' use to a particular experiment, among others.

The delays incurred while university technology-transfer offices negotiate terms for their scientists are likely to grow as such agreements proliferate. The University of Pennsylvania, for example, reviewed 425 materials transfer agreements in the last year — an increase of 115 per cent over the preceding year.

The working group is chaired by Rebecca Eisenberg, a professor of law at the University of Michigan in Ann Arbor. She admitted that "there are limits to NIH's authority" to influence current practices, particularly in industry. "But so far NIH hasn't come close to exercising the full extent of its power under current law," she says.

For example, NIH has a legal right to use without charge or permission any patented research tool arising from research that it funds. But in practice some grant recipients have refused to provide the tools. The working group suggests that NIH rewrite its policies to require grant recipients to provide the agency with unique research tools that they develop.

The working group interviewed representatives of biotechnology and pharmaceutical firms, university technology-transfer professionals and some NIH-funded scientists. It found that all three groups agree that there is a problem, but disagree strongly on its nature and on solutions.

The report recommends that NIH set up a Research Tools Forum to bring together representatives from each group to develop a common set of guiding principles for the sharing of tools.

Varmus said that, in line with another recommendation from the working group, he has asked the NIH's Office of Technology Transfer to develop guidelines for institutions that receive NIH funds, explaining what are considered 'reasonable' terms in the licences and materials-transfer agreements that they negotiate.

These guidelines are to be submitted for discussion to a forum of stakeholders from university technology-transfer offices, industry and laboratories within six months.

Eisenberg said that non-binding guidelines are needed in the light of the "considerable confusion" her group found among university officials about the kinds of terms they should be negotiating.

Universities that have refused to agree to terms they consider unreasonable have felt undermined when competing universities have agreed to the same terms. And many industry representatives said they felt universities were unsure of the nature of their mission with respect to sharing research tools.

The working group also urged NIH to use its moral influence to steer towards practices that are, in legal fact, beyond its control. "NIH can certainly set an example," said Eisenberg.

Eric Lander, director of the Whitehead Institute/Massachusetts Institute of Technology Center for Genome Research, and a member of Varmus's advisory committee, suggested that a university 'cartel' approach to the use of strictly defined research tools might encourage institutions and grant recipients to agree to looser terms for making tools available.

But Eisenberg responded that a cartel would meet practical obstacles, although it was "a great idea in theory". She said that cartels work best with homogeneous products and owners, whereas the tools and owners under discussion vary widely. And universities and industry alike are averse to non-exclusive licensing.

"Nobody is going to be willing to enter into some sort of cross-licensing arrangement that undermines the value of exclusivity for... whatever it is they are selling," she said.

Meredith Wadman

France smooths the way for foreigners

[PARIS] **The notorious bureaucratic obstacles facing foreign scientists wishing to work in France may soon be a thing of the past. Under new measures announced by the government, foreign scientists will in future be considered as a special category, and be able to obtain visas without having first to obtain a work permit — a formal invitation from a recognized research body will suffice.**

The measures are intended to encourage greater scientific immigration, which has suffered under France's increasingly strict immigration laws, deterring many prospective visitors (see *Nature* 368, 6; 1994). Under the new rules, employers wishing to invite scientists will also benefit from simplified procedures, freeing them, for example, from laws requiring that all jobs be advertised nationally to establish that suitable French candidates are unavailable.

Similarly, researchers' families will be awarded visas — and work permits — simultaneously with the approval of the invited scientist's dossier. At present, strict administrative rules often prevent researchers from being joined by their families for up to two years.

The circular setting out the new rules says that an influx of overseas scientists is in the "higher interests of our country", and that applications can only be blocked for national security reasons.

Declan Butler