

Intellectual Property Regime Undermines Equity, Progress

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Developing countries must reject the intellectual property rights regime imposed on them by powerful foreign monopolies in recent decades.

Over the last few decades, people in the developing world have been rejecting the intellectual property (IP) regime as it has been increasingly imposed on them following the establishment of the World Trade Organization (WTO) including its trade-related intellectual property rights (TRIPs) regime. IP rights (IPRs) have been further enforced through ostensible free trade agreements (FTAs) and investment treaties among two (bilateral) or more (plurilateral) partners.

Despite their ostensible rationale, the IP standards rich country governments insist on have never been intended to maximize scientific progress and technological innovation. Rather, the IPR regime serves to maximize the profits of influential pharmaceutical and other companies by conferring them with exclusive monopoly rights.

In the pushback, initially led by Nelson Mandela soon after he became South African President under the new dispensation in 1994, developing countries have targeted access to essential medicines. Thus, the 2005 Indian law to conform to the WTO's TRIPs safeguarded access to generic equivalents, as allowed for by the public health exception to TRIPs.

However, the WTO rules disallow Indian generic manufacturers from exporting their medicines to Africa and other poor countries lacking the necessary pharmaceutical manufacturing capacities and capabilities. Even if the African countries could produce the drugs domestically, they would be more expensive as they would lack the economies of scale required to lower costs in their relatively small economies.

Privatizing knowledge

In *Innovation, Intellectual Property and Development*, Joseph Stiglitz, Dean Baker and Arjun Jayadev have shown that the economic institutions and laws protecting knowledge in OECD economies not only poorly govern economic activity, but are also especially ill-suited to developing countries' needs, especially the global commitment to achieving universal health care of Agenda 2030, the Sustainable Development Goals.

Ironically, while the case for more openness in sharing knowledge is compelling, 'neo-liberals' — who typically claim the moral high ground in opposing monopolies and related market distortions — have effectively served to extend and strengthen property rights and attendant monopolies. From an economic perspective, knowledge is considered a global public good, as the marginal cost of anyone using it is zero. Growth of knowledge can presumably improve wellbeing.

Despite lack of evidence, the IP advocacy argument has been that market forces 'undersupply' knowledge owing to the poor incentives for research and innovation. The usual claim is that this

'market failure' is best corrected by providing a private monopoly through property rights for new knowledge, e.g., through enforceable patent rights. Private IP protection is presumed to be the only one way to reward, and thus encourage research and innovation.

The trio argue that the IP regime has been much more problematic than expected, even in rich countries. They show how the 2013 US Supreme Court decision that naturally occurring genes cannot be patented has shown that the IP regime impedes, rather than stimulates research by limiting access to knowledge. Following the ruling, innovation accelerated, leading to better diagnostic tests (e.g., for genes related to breast cancer) at much lower cost.

Alternatives

Stiglitz, Baker and Jayadev focus on three alternatives to motivate and finance research in the US context. First, through centralized mechanisms to directly support research. Second, by decentralizing direct funding, e.g., via tax credits; government bodies or research foundations or institutions can reward successful innovations or findings.

The patent system rewards legal ownership of innovation, but effectively impedes the use of that knowledge by others, thus reducing its potential benefits. Having a creative commons, e.g., open-source software, would maximize the flow of knowledge.

The trio recommend that developing economies use all these approaches to promote learning and innovation. They view the gap between developing and developed countries as involving a gap in knowledge comparable to the gap in resources.

Hence, to improve economic welfare in the world, they urge diffusion of knowledge from developed to developing countries, as conventional social scientists have urged as part of modernization theory for more than half a century.

Often dense 'patent thickets', requiring many patents, are increasingly stifling innovation. Payments to lawyers and patent investigators typically exceed those to scientific researchers in such cases, with research often oriented to extend, broaden and leverage monopoly rights due to patents.

One perverse consequence has been patent 'trolling' by speculators who buy up patents which they think has a chance of being necessary for any product or process innovation. Thus becoming gatekeepers like the mythical trolls, they effectively block innovation unless their price is met.

Neo-liberal monopolies

Powerful corporate and developed economy government lobbies have influenced the IP regime, e.g., by opposing competing rights associated with nature, biodiversity or even traditional knowledge.

Hence, recent ostensible FTAs have extended IPRs to cover 'biologics', i.e., naturally occurring substances, such as insulin for those suffering from diabetes, which is derived from mammals.

Thus, over the last few decades, the evolving IP regime has erected more and more barriers to widespread use of new knowledge. The current IP regime serves to maximize profits for a few monopolies, e.g., 'Big Pharma', rather than the progress and welfare of the many.

Widespread strictly enforced IP protection is historically new. IP protections came very late to the early industrializing economies, typically delayed to enable rapid 'catch-up' industrialization and technological change.

The 'weightless economy' of data, information and knowledge is accounting for a growing share of economic value in the world. Stiglitz, Baker and Jayadev argue that existing rules governing global knowledge serve as fetters that must be broken to reflect these realities.

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