



Intellectual Property Rights and the Privatization of Life

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The U.S. government has made the rigorous enforcement of intellectual property rights (IPR) a top priority of its foreign policy, using international trade negotiations as the means of continually ratcheting up the terms. Washington has made it clear to other governments that the global agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)—one part of the 1994 Uruguay Round of the General Agreement on Tariffs and Trade (GATT)—is not sufficient. In every ongoing trade negotiation, the U.S. is seeking stronger “TRIPS-plus” terms.

Most developing countries find current TRIPS to be onerous enough—facilitating transnational corporations’ access to their internal markets and resources and limiting their own capacity to develop. These governments succeeded in writing into the final TRIPS agreement a “review” in 1999 of the most onerous terms and biennial reviews thereafter. Thus, the debate over what constitutes appropriate public policy governing IPR will continue to be of concern well into the next century.

Key Points

- Intellectual property rights (IPR) grant inventors monopolies in exchange for their socially valuable innovations, a privilege that the U.S. interprets as a corporate right to privatize plants, animals, and other forms of life.
- Agrochemical-pharmaceutical companies, calling themselves the “life industry,” successfully crafted global IPR through the Uruguay Round of GATT trade negotiations.
- Monopoly control of plants is contributing to the destruction of food security and public interest research, as well as to the loss of biological diversity and ecological health.

IPRs assign to inventors and artists (or more often, their corporate sponsors) the option to monopolize novel forms of commercially valuable knowledge—such as a new drug, software, graphic design, or musical recording—for extended periods of time, usually 20 years. They generally take the form of patents, trademarks, or copyrights and have traditionally fallen under the domain of national law. Over the years, different countries have produced different IPR laws, each one a balance between the desire of innovators to be rewarded for their efforts and the right of society to benefit from useful innova-

tions. India, for example, distinguishes between food and drug processing—the formulae and mechanics of which are patentable—and the final foods and drug products available to consumers, which are not.

With the advent of TRIPS, virtually all the world’s nations have lost their right to determine the balance of private and public benefits designed to meet national development goals. Instead, they must comply with a single international standard designed to open their

markets to transnational corporate interests. During the negotiations, a self-appointed Intellectual Property Committee consisting of Bristol Myers, DuPont, General Electric, General Motors, Hewlett Packard, IBM, Johnson and Johnson, Merck, Monsanto, Pfizer, Rockwell, and Time-Warner lobbied GATT negotiators extensively. Diplomats in Geneva concede that the pharmaceutical industry actually drafted much of the TRIPS text, and the industry’s lead advocate inside the negotiating room was the U.S. government.

The “life industry,” as Monsanto and other leading agrochemical-pharmaceutical conglomerates now call themselves, asserts that IPR are essential for research and development. Without royalties guaranteed through IPR, they say, they could not afford to invest in the search for plants whose active ingredients may be the source of new life-saving drugs. Nor could they conduct research in genetic engineering, with which they will “feed the world.” But public health advocates point out that patented drugs are far more expensive than their generic counterparts, generating windfall profits well beyond the actual costs of development. Public interest scientists worry that researchers are increasingly reluctant to publish early discoveries in order to increase the likelihood that they (or, more often, their companies or universities) will be the first to patent a commercial result. Critics point out that investments in genetic research to date have yielded little agronomic value but have instead resulted in crops that tolerate high doses of herbicides. The result is increased insect resistance to organic pesticides—in effect, creating superweeds and superbugs that in turn lead to new blights of damaging insects and the demand for ever more chemicals.

In conjunction with other trade and investment policies, the global marketing of expensive patented medicines and seeds limits many communities’ access to food and health. Furthermore, there are profound ethical and moral questions about trade policies that convert seeds, plants, and other forms of life into private property.

In 1999, members of the World Trade Organization (WTO) are scheduled to review the TRIPS clauses relating to the patenting of plants, animals, genetically engineered organisms, and other forms of life. In 2000, developing countries are scheduled to bring their national laws into conformity with TRIPS rules; least developed countries have until 2005 to do so. Every two years from 2000 on, the entire TRIPS agreement will be reviewed. Meanwhile, Washington is exercising intense diplomatic pressure to force developing countries to comply with or even to surpass TRIPS requirements ahead of schedule.

Every six months, the Office of the U.S. Trade Representative (USTR) releases an updated "Watch List" of a dozen or more countries against which the U.S. might impose trade sanctions in the future if they don't improve their IPR enforcement. The threats are issued under the infamous Super 301 clause within the Omnibus Trade and Competitiveness Act of 1974. According to the WTO, such unilateral exercise of trade sanctions is illegal but no country has as yet challenged the frequent U.S. application of this law.

Occasionally, threats of trade sanctions—which are almost always effective, due to their potential economic impact—are made on behalf of the auto, steel, or other manufacturing industries, but with the advent of the "information age," the protection of IPR is paramount. Though much of this effort is directed toward the computer and entertainment industries, the U.S. has also exercised considerable diplomatic pressure to bully other countries about the patenting of plants.

In 1997, the U.S. unilaterally reimposed import duties on \$260 million of Argentine exports in retaliation for Argentina's refusal to rewrite its patent legislation to the satisfaction of the USTR Office. In the past several years, Washington has repeatedly threatened Ecuador with the possible loss of \$80 million worth of income from its fish exports to the U.S. in order to force ratification of a bilateral agreement on IPR. India, Pakistan, Ethiopia, Brazil, and many other countries have similarly faced Super 301 threats about their patent laws.

In April 1997, the U.S. State Department sent a letter to the Royal Thai Government (RTG) regarding draft Thai legislation allowing Thai healers to register traditional medicines, thus keeping them within the public domain. The letter advised the RTG that "Washington believes that such a registration system could constitute a possible violation of TRIPS and hamper medical research into these compounds." The State Department requested official responses to 11 questions, beginning with: "What is the relationship of the proposal to the granting of patent protection in Thailand?" and ending with: "Does the RTG envision a contractual system to handle relationships between Thai healers and foreign researchers in the future?"

In response, more than 120 nongovernmental organizations (NGOs) from around the world—including farmers' organizations, advocates of social justice, environmental groups, consumer coalitions, and so on—wrote U.S. Secretary of State Madeleine Albright. They pointed out that the State Department's letter implies an interest on the part of the U.S. government to transfer traditional Thai knowledge to U.S. researchers for eventual patenting—ironically denying Thailand the right to protect that knowledge. The NGOs agreed that governments should conform with international agreements to which they subscribe, but they noted that it is neither "the United States' responsibility nor its right to interfere with their national democratic processes for doing so."

A number of nations have contested patents granted by the U.S. Patent and Trademarks Office (PTO) for biological materials, especially plants, taken from their peoples. In May 1998, Bolivians successfully defeated Colorado State University's application for a U.S. patent on *quinoa*, a valuable food grain native to villages throughout the Andes. The Indian government successfully overturned a U.S. patent awarded for turmeric, a common spice used for healing minor wounds in addition to cooking. India has objected to numerous U.S. patents on uses of *neem*, a tree growing in virtually every Indian village, which is used as a natural biocide for brushing teeth, washing clothes, shampooing, and other daily chores. India, Pakistan, and Thailand are currently mounting campaigns against U.S. patents awarded to a Texas company for Basmati and Jasmine rice strains perfected by peasant farmers over thousands of years. There are many such cases.

This biopiracy, as it is often called, yields new profits for U.S. companies, which take the raw material, alter it in the laboratory to claim an invention, and win the patent. For source countries, this represents double trouble for their economies. First, their natural resource has been appropriated by a foreign corporation, and they are prohibited from further developing the resource domestically. Second, there will be a net outflow of foreign exchange, as licensing fees and royalties are paid on any commercial products eventually exported back to their domestic markets. Indeed, the expressed goals of IPR—to encourage innovation and promote the transfer of technology—are turned on their heads.

A third major problem resulting from the patenting of plants is genetic pollution and the loss of biodiversity. Once a commercially viable product has been patented, companies invest in massive marketing campaigns and do not hesitate to enlist governments in promoting the product through the international financial institutions, rural extension services, and special loans and grants tied to designated seed-and-chemical packages.

As a result, vast monocultures are planted with genetically identical seed, which in turn leads to thriving blights and the disappearance of local plant varieties. Furthermore, bees and other pollinators transfer the genes of transgenic crops to wild relatives, affecting local ecosystems in significant, potentially catastrophic ways. This genetic pollution, as it is being called, becomes part of the gene pool and can never be remediated. Extinction is forever.

Key Problems

- The U.S. exercises aggressive diplomacy to persuade other governments to implement IPR that exceeds what is required by the World Trade Organization.
 - The immense commercial value of patented foods and new drugs is provoking biopiracy and hasty approvals of genetic engineering experiments.
 - U.S. officials say trade rules are the supreme international law, despite numerous international agreements establishing the rights of farmers, indigenous peoples, and local communities to their natural resources.
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Sources for More Information

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