

INTELLECTUAL PROPERTY*

Jesus Culis knows that lower-priced generic drugs save lives.

If you looked at him, you never would guess that Jesus has spent the last eight years living with HIV. He is an energetic young man with a healthy appearance. He works long hours at PROSA, a Peruvian non-profit agency supporting HIV patients.

But Jesus' condition has not always been so stable. Less than three months ago, his immune system was dangling by a thread, leaving him susceptible to a host of deadly illnesses. Then he began taking anti-retroviral drugs, often called "the AIDS cocktail." The results have been dramatic.

However, the medication has nasty side effects including nausea and rashes. He complains that he can't eat chocolates, ever. But he adds, "It is the only medication that works for me, and I have tried everything out there."

In the U.S. and Canada antiretroviral drugs have reduced deaths among people with AIDS by about 70% and improved the quality and length of their lives. The Peruvian government has a program for the distribution of free antiretroviral drugs to Jesus and other HIV patients. The program works because inexpensive generic drugs are available from India, and funding is provided by the Global Fund, a United Nations foundation program established to fight AIDS, malaria and tuberculosis. Jesus worries that the Free Trade Agreement of the Americas, a proposed "free trade" agreement among most of the countries in the western hemisphere, would prevent importation of the Indian generic drug during the years while the brand-name drug was still under patent. This could be a life or death issue for the 76,000 Peruvians battling HIV-AIDS because once patients begin taking antiretroviral drugs they must continue with the treatment. Missing just one day could send Jesus into a crisis.

Currently, generic antiretroviral drugs in Peru cost about \$408 a year per person, compared to \$4,300 for the same brand-name drug. This means that the government can treat ten times as many HIV patients by purchasing generic medication. In a country like Peru where over 50% of the population lives below the poverty line, generic medication really is a matter of life and death.

Unfortunately, international law and transnational drug companies are more focused on protecting patents than making drugs available to those living in poverty. Pharmaceutical companies and other firms concerned with protecting intellectual property are pushing their governments and developing nations to sign trade treaties that further their corporate interests at the expense of people like Jesus.

BACKGROUND

The term "intellectual property" refers to new technologies, discoveries, or artistic works that benefit society. For example, new medicines and computer technologies, and original music and literature are intellectual properties that are commonly "protected" by patents or copyrights.

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Patents restrict others from producing a new process or product. For example, access to a new technology is controlled and restricted to those who can pay the price charged by the firm owning the patent.

Regulations governing intellectual property are intended to balance the interests of inventors, scientists, artists and other creators with those of society at large. But today, the holder of a patent frequently is not a scientist or inventor but a corporation. Regulations governing intellectual property operate through a complex web of economic, political and social networks and legal agreements (usually involving transnational firms and governments) that are often tilted against the interests of society in favor of corporations.

In legal terms, a patent is granted by a government to officially recognize a new innovation. The patent gives the person or corporation who made the discovery a legal monopoly on the innovation for twenty years (or possibly longer). In exchange, the corporation provides its new innovation to the public. During this period no one can produce or utilize the innovation without the authorization of the patent's holder and without paying the price charged by the patent holder.

Firms argue that patents, restricted access, and high prices are necessary to recover the costs of research and development that lead to scientific breakthroughs. But access to intellectual property can be a matter of life and death for millions of people in developing countries.

In recent years, the numbers of items for which patent protection is sought has risen dramatically. During 1990, the income from products sold under patent was \$15 billion dollars. By 1998, patents generated some \$100 billion. The income for 2005 is estimated at a half billion dollars.

Since the 1980s, patents have even been granted, with few restrictions, for living matter (virus, bacteria and microorganisms) and for the processes and products obtain through genetic engineering. Thus, there exists a mechanism for the private ownership and control of genetic resources, and a legal framework for the merchandising of life itself.

The patenting of live matter is causing severe social tension. On one side is the pressure to privatize knowledge (patents). On the other side is the desire of millions of people in the world for the free use and exchange of knowledge and wisdom.

Since 1994, through the Uruguay Round of trade negotiations and under the norms of the World Trade Organization, all countries with membership in the WTO have been forced to follow common standards for protecting intellectual property that were established by major industrialized countries. This has restricted countries' ability to define public policies for health and food matters.

Consider the example of medications. Many drugs covered by patents are too expensive for countries in the global South to purchase. Buying the medication is not an option. So the corporation makes no money and the sick people who need the drug go without it. Alternative, more humane, ways to provide needed medications are needed.

Before 1986, the majority of the Latin American countries did not recognize any patents for medications. This meant that countries such as Brazil, Mexico and Argentina produced generic drugs equivalent to those still under patent in other nations. But after 1994, these same

countries were forced to establish a system of patents on drugs based on U.S. law that prohibited the production of generic versions of drugs that were under patent elsewhere. While the 2001 Doha Declaration stated that property rights should not be enforced in ways that restrict countries' ability to protect public health and provide access to needed medications, it is often ignored or violated.

Every year, the U.S. government makes an exhaustive compilation of the content and application of laws governing intellectual property around the world for the purpose in order to determine their impact on U.S. interests. Section 301 of the Special Report identifies countries that are out of compliance with intellectual property laws. In many countries in Latin America, this is seen as a form of imperialism, a modern version of the Monroe doctrine.

How can the problems with intellectual property be addressed? Upcoming trade agreements should allow greater access to new technologies such as medications. At a minimum, these agreements must support, not weaken, existing Doha provisions. But the problems with trade agreements are more fundamental than the treatment of intellectual property. Consider the Free Trade Agreement for the Americas (FTAA) scheduled for ratification in the U.S. in 2005. The message that we are receiving from our brothers and sisters in Central America, the Andean Nations and South America is this: "Many of us are in disagreement with the way the treaty was ratified. Our protests are intended to send a message to the unions, people and businesses of the United States so you will realize we are opposed to it. We ask that you not ratify it."

WORSHIP

A prayer by Oscar Romero, Martyr and former Archbishop of El Salvador

It helps, now and then, to step back and take the long view.
The kingdom is not only beyond our efforts, it is even beyond our vision.

We accomplish in our lifetime only a tiny fraction of the magnificent enterprise that is the Lord's work. Nothing we do is complete, which is another way of saying that the kingdom always lies beyond us.

No statement says all that should be said. No prayer fully expresses our faith. No confession brings perfection, no pastoral visit brings wholeness. No program accomplishes the church's mission. No set of goals and objectives includes everything.

This is what we are about. We plant the seeds that one day will grow. We water seeds already planted, knowing that they hold future promise. We lay foundations that will need further development. We provide yeast that produces effects far beyond our capabilities.

We cannot do everything and there is a sense of liberation in realizing that. This enables us to do something and to do it very well. It may be incomplete, but it is the difference between the master builder and the worker.

We are workers, not master builders, ministers, not messiahs.
We are prophets of a future that is not our own.