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DECOLONIZING IP: PROTECTING CULTURE AND LIFE

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ABSTRACT

In this paper, we examine the convergence of intellectual property (IP) rights and ethical obligations in two areas: cultural appropriation and drug patenting. There is an inherent conflict between the protection of individual IP rights as they relate to public interest and whether indigenous peoples are to be protected from commercialization of their cultural heritage or whether countries are to protect against restrictive patent regimes that prevent them from accessing necessary drugs during emergencies.

This study will analyze current legislation as it relates to IP, specifically the TRIPS agreement, which demonstrates how historically marginalized peoples have been intentionally left out of IP protections. The exclusion of these peoples from IP protections has enabled cultural misappropriation and restricted peoples' access to life saving medications. These issues are illustrated through case studies of fashion companies using Maasai cultural symbols without authorization and the inequalities of global access to COVID-19 vaccines.

There are three research questions guiding this analysis: the evaluation of legal tools available to protect cultural heritage; the assessment of the effects of patent laws on access to medication; and the development of balanced approaches to reconcile innovation incentives with social justice. We suggest several reform proposals, such as increased documentation of traditional cultural expressions (TCEs); expanded compulsory licensing for pharmaceutical products; and new "decolonized" IP frameworks.

This paper advocates for a transformation in the way that IP law considers ethics and business viability, so that IP law can provide greater inclusivity across the world by providing a more equitable international IP regime for both the stewardship of cultures and the health needs of people.

Keywords: Cultural Appropriation, Intellectual Property Rights, Pharmaceutical Patents, Traditional Knowledge, Ethical Imperatives

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INTRODUCTION

Contextual Framework

Globalization and increased cultural exchange have created an ethical challenge for Intellectual Property (IP) law as it is now entwined in a multitude of conflicts between the rights of individuals to protect their creative work, versus the need to protect the collective interests of society as well as social justice, and the history of inequity in the treatment of all of these areas of interest.

When Western-based intellectual property (IP) models conflict with the rights of Indigenous peoples, especially when it relates to cultural appropriation and the commercialization of their traditional cultural expressions, a number of conflicts arise. Fashion companies have used the cultural expressions of Indigenous peoples in their commercial products (clothing), without giving the Indigenous designers fair compensation for the use of their cultural expressions or obtaining permission from the Indigenous peoples from whom they originated. Therefore, these models present significant ethical problems with respect to the questions of who owns the IP and who has control over the IP, and also the question of how diverse cultures should be respected.

Moreover, the ethical implications of IP go far beyond the area of cultural appropriation and include the patenting of pharmaceuticals. The COVID-19 pandemic has dramatically demonstrated how patent laws restrict access to life saving medicine in low and middle income countries. Although the TRIPS Agreement was intended to create uniformity around the world in terms of intellectual property protections, the reality is that it is frequently used to further the profits of corporations at the expense of the public health needs of the citizens of those countries. As a result, there are many examples of how patent restrictions have blocked access to essential medicines for people who desperately needed them during pandemics.

Problem statement

Two major issues are not adequately addressed by current IP frameworks:

1. Protection of Cultural Heritage: IP Law gives individual property rights greater legal precedence than collectively owned cultural heritage, making TCEs highly susceptible to unauthorized use for commercial gain. The failure to protect TCEs has created a continuing situation of unequal treatment with respect to access to the creative economy for Indigenous peoples.
2. Access to Medicine: Pharmaceutical patents act as large barriers to access to medicines that people need during health crises. Patent restrictions on the production and distribution of essential drugs create significant barriers to access for vulnerable populations through high drug prices, thus forcing countries to make a decision as to whether they will honor patent rights or protect their public health.

The above failures illustrate the basic conflict between IP's role in protecting private property rights and the broader public interest in preserving cultural heritage and providing access to healthcare.

Research objectives

In this study we will analyze the legal systems and ethical concerns of intellectual property (IP) law for solutions to these pressing issues. The three study objectives guide our analysis:

1. Study Current Legislation: We evaluate current legislation and policy that protect Traditional Cultural Expressions (TCEs) and examine whether current protection of TCEs protects indigenous peoples' rights from misappropriation.
2. Examine the Impact on Public Health Access of Patents: We will examine how patent law impacts the availability of medicines in times of crisis and identify the gaps in reforming patent law.

3. Find a Balance between Innovation Incentives and Social Justice: We propose solutions that provide an innovative incentive for companies while providing social justice through preserving culture and meeting public health needs.

Ultimately, by implementing an IP system which is balanced between social justice and cultural stewardship as well as public health accessibility, this study will redirect the current IP system from being focused on corporate interests to being based on grassroots, international community-based perspectives.

CULTURALAPPROPRIATION & IP RIGHTS

Legal frameworks for cultural protection

Legal frameworks currently available to protect traditional cultural expressions (TCE) are largely unsuitable for indigenous cultures since they were created from a western viewpoint of personal property and creative expression. Indigenous peoples view their cultural heritage as communal knowledge and expressions passed down through generations and therefore do not see TCE's as individual creations. The distinction between western views of TCE and indigenous views of TCE results in significant gaps in protection provided by current legal regimes.

1. Trademark Law: The trademark law is not effective in safeguarding the local cultural symbols and signs since it only ensures that crops that have similar brands do not cause confusion among consumers.[2] We had seen a case of a fashion company trying to register as a trademark Yoruba, a prominent representation of the culture and traditions of the Yoruba people. Certification marks, like the Māori toi iho seal, which is used to verify Māori goods, offer some protection but will continue to be ineffectual without appropriate enforcement and public awareness. Additionally, trademark law typically favors commercial use over religious or spiritual use, allowing for the exploitation of sacred symbols for financial gain.
2. Copyright Law: The process of obtaining legal protection of Copyright is greatly complicated as it requires an element of fixity on a physical/ tangible medium. As such many of the Indigenous cultural expressions — such as songs, stories and rituals — are primarily in the oral format and do not fit into the Copyright framework. Similarly, many Indigenous oral histories that have a great deal of cultural value are also un-protected under the law, making them open to commercial use without consequence to the creator(s).
3. The lack of protection afforded to the emergence of new forms of cultural expression is not limited to print and/ or radio/ television but now includes the internet/digital space. The use of a well-known TikTok application for example provides Black TikTok creators with the ability to create and develop their own unique dance moves. However, when these creators' dances are used by larger TikTok accounts (i.e., those that have a large number of followers) they are not credited or compensated for their creative work, which illustrates the inability of current Copyright laws to provide adequate protection for emerging forms of cultural expression.
4. International Initiatives: Organizations such as WIPO recognize that there is a need to expand protections for TCE's. Cultural expressions among the indigenous people can be controlled by the use of such tools like the Traditional Knowledge Toolkit. However, the Traditional Knowledge Toolkit, a project that has been taking this initiative, has issues such as bureaucracy which is worsened by the lack of finances

2. Rosemary J. Coombe, The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law (1998)

or effective communication with the communities. Many native people are not aware of such tools and even being aware of this it may be impossible to start any meaningful outcomes with its usage.

Case studies in cultural misappropriation

1. Milpurrurru vs. Indofurn Pty Ltd (1994): This landmark case in Australia was where Indigenous artists found that their sacred artwork had been reproduced onto foreign-made rugs without their consent.[3] The Court ruled that the copyrights to these traditional clan designs as they were created by the artists would be protected; it established an important precedent for protecting the work of Indigenous artists and at the same time revealed how far copyright law can go in protecting the knowledge and the artistic products of Indigenous people who have orally transferred their traditions.
2. Examples of Abuses in the Fashion Industry: Many Indigenous designs are taken by the fashion industry in a systematic manner to use them for profit without permission from the designers themselves; however, this does include luxury brands using Maasai designs that incorporate traditional Maasai beadwork (without the input of the Maasai community) and/or the compensation of the community members whose work is being used. Designer Bethany Yellowtail, who is Native American, has written extensively about many major retail fashion companies misusing sacred Native American cultural iconography to strip their designs of the original spiritual and cultural significance they were intended to have and ultimately to profit from their visual appeal.
3. Navajo Nation v. Urban Outfitters (2012): In 2012, the Navajo Nation sued Urban Outfitters claiming that they had used Navajo name and design on their commercial-based products without their permission.[4] Despite signing the settlement in 2016, the case demonstrated that the trademark law is possibly one of the avenues through which an individual can retaliate against the cultural appropriation of his tribe name and design, but it also revealed the necessity of having stronger legal guarantees to protect the intellectual property rights of tribes.

Ethical Considerations

The moral aspect of cultural appropriation is a complex set of issues related to the aspect of power of justice.

1. Commodification vs. Preservation: Sacred traditions are commodified when they are changed into commodities (e.g. fashion items or souvenirs) out of their traditional practices. The traditions when they are changed into a product lose their initial meaning and significance and the cultural identity of those whose cultures have turned into products.
2. Power Imbalance in Systemic Inequality: The inequitable distribution of resources among indigenous peoples and corporations which have greater resources to pursue legal remedies, demonstrate that the IP laws in place do not provide a fair mechanism to address systemic inequality. Consequently, the silence of the indigenous voices remains even now, and exploitation of the indigenous cultural heritage persists.
3. Moral Rights: The scholars pursue the idea of giving TCEs moral rights that will enable the indigenous people have the right to regulate the commercialization of their culture and also have a say in derogations or inappropriate representations of their cultural expression and, therefore, shield their dignity and integrity.
4. Community Consent & Recognition: Commercial use of TCEs must be guided by the principle of community engagement

3. Milpurrurru v. Indofurn Pty Ltd, 30 IPR 209 (Fed. Ct. Austl. 1994)
4. Navajo Nation v. Urban Outfitters, Inc., No. 12-0195 BB/LAM, 2016 WL 3475349 (D.N.M. May 19, 2016)

and consent. The benefit sharing agreements will be community-based and they will establish a fair relationship between indigenous peoples and the company where endowment of cultural heritage as given by the indigenous peoples and rewarding them with compensation.

5. Decolonizing IP Laws: To decolonize the IP laws it is necessary to make indigenous voices visible in the existing IP laws that govern TCEs, put the interests of the indigenous custodians, the indigenous communal rights to the intellectual property which it had before the models of the individual ownership materialized in the history of IP.

PHARMACEUTICAL PATENTS & HEALTH EQUITY

Legal Mechanisms Analysis

The pharmaceutical industry patent rights highly influence the world supply and price of relevant or even crucial medicines. Patent rights provide an exclusive right to use inventions within a certain period of time, and this leads to innovation in the production of medicines. Nevertheless, the monopoly rights that are to be the outcomes of the patent rights are what impedes access among the neediest individuals in low- and middle-income countries.

1. TRIPS Flexibilities: TRIPS is an international convention on intellectual property rights as far as trade is concerned, which grants nations with the autonomy to enhance access to medicines through the exploitation of flexibilities.[5] Particularly, among the flexibilities of TRIPS, there is compulsory licensing and parallel importation. Compulsory licensing enables governments to permit third parties to produce generic products based on patented medicines without the permission of the patent holder under special circumstances including health crisis in the society. An example would be the South Africa issue of compulsory licenses on antiretroviral medicine at the time of the HIV/AIDS epidemic and the reverse provision of life-saving treatment therapies to a large number of people.
2. Evergreening Strategies: Pharmaceutical companies engage in "evergreening," i.e., make minor modifications to existing medicines and obtain additional patents for these modified products.[6] This extends the protection afforded to the original product, thereby limiting generic entry into the market and maintaining high prices. Critics of evergreening argue that it prevents essential medications from being made available to individuals living in low-resource settings with severely limited healthcare resources and budgets.
3. The Impact of Patents on Generic Drug Competition: While patents provide incentives for innovation, they can also be used to protect new medicines and limit generic competition in the marketplace. In this regard, India has provided evidence of the positive public health impacts of limitations on patent rights through its historical approach to the permitting of generic medicines at relatively affordable prices.

Crisis Case Studies

1. Pricing of antiretroviral drug to people with HIV/AIDS in South Africa was a great challenge during the end of 1990s and the 2000s period because of patent protection that gave high costs. This is due to the activism and campaigns of the civil societies that led to landmark court cases that led to compulsory licenses by the government on generic versions of drugs.

5. Robin Feldman & Evan Frondorf, Drug Wars: How Big Pharma Raises Prices and Keeps Generics Off the Market (2017)
6. Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299

These mandatory licenses substantially improved access to treatment and proved that legal processes could be applied to satisfy the needs of people to health before the rights over patents.

2. COVID-19 showed how much less developed countries, especially when compared to high-income countries, have inequalities in access to vaccines. First, pharmaceutical corporations were very restrictive of access to their patents on Covid-19 vaccines and this led to what can be called vaccine nationalism with rich countries buying large quantities of vaccines leaving their poor countries with none to buy the first batches of the vaccine. Waiver of intellectual property right during the pandemic has been suggested as one of the potential solutions to allow equal distribution of the COVID-19 vaccines. The global health organization named WHO together with advocacy groups have been encouraging technology transfer agreements to enable even greater production of vaccines in low-income nations.
3. Patent law reforms in India have provided insight into the complex relationships between the use of intellectual property (IP) rights and the promotion of public health equity.[7] Following the accession to TRIPS in 2005, India amended its patent laws to improve scrutiny of pharmaceutical patents allowing for increased generic drug production and providing access to affordable lifesaving medicines such as antiretrovirals and cancer treatments for individuals in India and around the world.
4. High medication prices caused by patent related restrictions to access to medications create barriers to access to healthcare in many developing countries.[8] An example is that some patented anti-cancer drugs are several thousands of dollars per round of therapy and many patients in need cannot afford to take such measures. Expensive cancer drugs are patent and add to the social unemployment in developing nations especially in rural and economically underprivileged regions.

Ethical Dilemmas

1. Patents and Profitability: Patents are also a way to promote and compensate innovation in medicine, but on the other hand, it is one of the ethical dilemmas because it prevents the availability of affordable medications that will save the lives of humans. Whether profit should be placed above human life is one of the many questions created by the commercialization of health care.
2. Inequality between North and South: Patenting of pharmaceuticals clearly demonstrates inequality throughout the world. The fact that developed countries have better access to their healthcare systems and/or are able to purchase subsidized medications is an extreme contrast to developing countries who cannot afford these expensive medications because they are protected by patents.
3. Government vs. Corporations: When a government has to decide if it wants to uphold the patent rights of pharmaceutical corporations or protect its citizens from unaffordable medicines to sustain their lives, this creates tension. What determines life or death for people in times of crisis such as public health emergencies is whether they have access to necessary treatments.
4. Advocating for Reform: Reform Proposal Reform advocates suggest that drugs be

7. Shubha Ghosh, TRIPS and the Public Health Crisis in India, 15 J. Intell. Prop. L. 1 (2007); Frederick M. Abbott, The Doha Declaration on the TRIPS Agreement and Public Health: Lighting a Dark Corner at the WTO, 5 J. Int'l Econ. L. 469 (2002)
8. World Health Org., Global Spending on Medicines: A Summary, https://www.who.int/news-room/fact- sheets/detail/essential-medicine (last visited Apr. 4, 2025); Amy Kapczynski, Access to Knowledge: A Conceptual Genealogy, 11 Yale J. L. & Tech. 1 (2009) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1754686

priced in accordance with the economic situation of the country where they are marketed and that in the event of a national health crisis occasion necessitate compulsory licensing of drugs so that they offer affordable prices to drugs without harming innovation and the accessibility of all to pharmaceutical products.

COMPARATIVE ANALYSIS

Pharmaceutical patenting as well as cultural appropriation can serve as the examples of numerous similar issues and several important distinctions related to the comparisons between the cultural heritage, the popularity of health, and the Intellectual Property rights.

Commonalities

The Conflict of Rights to Individuals and Collective Rights in both of these cases is also a conflict of the rights of the Western Intellectual Property (IP) model that emphasizes an individual's right to own property verses the collective rights model of many societies. Corporations have taken Traditional Cultural Expressions (TCEs) and used them as their own by appropriating them; but, they do not recognize the collective ownership of Indigenous peoples who created them. Corporations have also privatized the knowledge that was gained by taking indigenous medicinal knowledge, which took centuries for each community to develop and create.

Both areas are also marked by significant resource disparities in enforcing the respective legal rights of corporations and Indigenous communities. While corporations are able to support enforcement of their rights to intellectual property, Indigenous communities and other developing countries have a lack of resources to challenge the use of their cultural heritage, or the restrictive nature of patents to limit the exploitation of that heritage; as well as the misrepresentation of Indigenous peoples in media and consumer product advertising through the continued stereotype and distortion of the identity of Indigenous peoples. Pharmaceutical companies also fail to recognize the contributions of Indigenous knowledge systems to the development of medicines which is further contributing to the erasure of the history of the medicinal innovations developed by Indigenous peoples.

Divergences

1. Time dimensions: The cultural heritage of a particular culture may be considered to be timeless; TCEs continue to be passed down from generation to generation and evolve while still maintaining their value to the community. The Pharmaceutical patents are however provided with a certain time span usually 20 years where the owner gets exclusive rights to produce and sell the product. Once this duration elapses the generic versions of the product may be produced and sold. The differing time frames of the two concepts result in different legal considerations: TCEs require ongoing protection measures that take into account their communal nature, whereas patents are concerned with granting the holder time-limited exclusive rights to manufacture and sell the product.
2. Power dynamics: The stakeholders involved in cultural appropriation and pharmaceutical patent disputes have different levels of power. In cultural appropriation cases, the power dynamic exists between the Indigenous community and a powerful fashion brand or media company that is appropriating the community's cultural elements. In pharmaceutical patent disputes, the battle typically takes place between multinational pharmaceutical companies located in high-income countries and developing nations or global public health advocates. The level of power of the parties involved determines how each issue will be seen and dealt with legally.
3. Legal frameworks: Both issues concern the IP law, albeit in different fields of the law. Cultural appropriation lawsuits belong to the copyright (artistic works), trademark (brand identities) or sui generis systems

(TCEs). Pharmaceutical patent disputes cases are captured by the law of patents and international agreements such as TRIPS that govern the protection of inventions of countries in the global context. Therefore, there are different legal frameworks at play and therefore different approaches need to be taken in addressing the two issues.

4. Economic impact: Cultural appropriation can deprive Indigenous artisans of their opportunity to preserve their heritage and can lead to misrepresentation of their community in the consumer market, ultimately leading to further economic disparity within their community. Pharmaceutical patent issues can literally mean the difference between life and death for millions of people around the world who are denied access to life saving medications because of the high cost of patented drugs, particularly in countries with limited healthcare budgets.

5. Role of innovation: Both cases involve innovation but in different ways - innovation in cultural expressions in the form of TCEs and technological innovation in the form of pharmaceuticals. Cultural expressions evolve through communal practices relating to shared ideas, histories and values. Pharmaceutical innovations through the efforts of private companies can place profit ahead of public health needs.

REFORM PROPOSALS

Reform ideas are being introduced to address many of the most critical concerns that exist today in terms of the intellectual property system's ability to promote cultural preservation and medicine availability; these ideas will create a fair balance between the two.

Cultural Protection Mechanisms

1. The sui generis legal systems for TCEs

Legal frameworks that recognize the communal aspect of TCE's will be developed such as,

a. Official Government registries documenting TCE ownership and TCE usage rights;

b. Cultural protocols related to commercial usage of TCE;

c. Community based decision making authority which will ensure that decisions align with Indigenous values and priorities.

2. Improvement of WIPO Toolkit Implementation

Increased access to WIPO resources by Indigenous communities will be achieved through,

a. Capacity building workshops to increase awareness about WIPO resources and their availability;

b. NGO led outreach programs to assist in providing access to WIPO resources;

c. Grants to support the creation of documentation and preservation initiatives related to TCE.

3. Modified Trademark Opposition Systems

The ability of Indigenous communities to oppose exploitive trademark applications will be enabled through a process of,

a. Mandatory prior consultation with communities who may be impacted by trademark application;

b. Simplified objection procedures which will remove barriers to Indigenous communities participating in the objection process.

4. Legally Binding Community-Based Benefit-Sharing Agreements

Legally binding agreements will be established to ensure fair and equitable compensation when

TCE are used commercially. These agreements will include,

a. Revenue sharing models;

b. Contractual obligations for the preservation of the cultural significance of TCE;

c. Accessible and reasonable methods of resolving disputes arising from the agreement.

Pharmaceutical Patent Reforms

The reforms on pharmaceutical patent law are planned into short-, medium- and long-term priorities to help in systematic execution of the reforms.

1. Short-Term Reforms (0-2 years)

a. Improved Compulsory Licensing: Cut down bureaucracy involved in the authorisation of generic drugs production by facilitating the compulsory licensing route at times of emergency of the health of the population.

b. Tiered Pricing Enforcement: Enforce Tiered pricing models by setting the price of drugs to reflect the income level of the country so that in low- income countries lifesaving drugs are affordable using:

   i. Price caps established on the basis of GDP per capita criteria

   ii. Strategies Study prices structure transparency requirements in pharmaceuticals.

2. Medium-Term Reforms (2-5 years)

a. Technology Transfer Provisions in Pandemic Treaty: International agreements must also contain technology transfer provisions whereby the low- and middle-income nations can produce generic essential medicines in times of emergency through the use of:

   i. Covenants of the cost-free or low-cost licensing of technologies in the event of pandemic by mandatory patentors and manufacturers.

   ii. Make pharmaceutical companies and manufacturers in low- and middle-income countries collaborative in manufacturing.

b. Pay-for-Delay Agreements Addressed: Make illegal a priori pay-for-delay settlement that is a subject of antitrust scrutiny. Pay-for-delay deals are also known as the situation where brand-name drug manufacturers compensate generic pharmaceutical firms to postpone market availability of cheaper analogs of the UN branded products. Elements of the measures to be taken include:

   i. Harsh penalties on non-compliance.

   ii. Disclosure of settlement agreements on patents, so that regulators and consumers can see how they are being adhered to.

c. Patent Assertion Caps: Introduce a law whereby drug manufacturers are not allowed to patent many patents against their competitors, particularly in biosimilar cases, which will minimize the financial strain harmed on the generic manufacturers wishing to venture into the market.

3. Long-Term Reforms (5+ years)

a. Better Interagency Patent Coordination: Enhance coordination by the USPTO and FDA to enhance the quality of patents and eliminate abuse of the system by:

   i. The review panels were assembled and made up of the representatives of both the agencies, when the pharmaceutical patent applications were being assessed.

   ii. Streamlined approval processes to connect approval of drugs and approval of patents.

b. Improved Public Engagement: Boost public participation in patent law debates by making sure that dissenting voices of patients especially the marginalized groups are heard by the law by:

i. Conducting open discussion and consultations on the issue of patent policy's effects on medicine availability.

ii. Making alliances with advocacy agencies to advocate the interests of patients to engage in a discussion on patent policy.

Institutional Innovations

1. **Role of the Cultural IP Ombudsman:** Create an office of the Cultural IP Ombudsman as a mediator to assist in resolving disputes related to cultural appropriateness that also assist in ensuring benefit-sharing agreements are being met by organizations using Traditional Cultural Expressions (TCE). Responsibilities will be:

   i. Provide mediation services for the resolution of disputes arising out of unauthorized uses of TCE or non-compliance with benefit-sharing agreements.

   ii. Provide advisory services to firms on the ways to approach Indigenous cultures in a respectable way when using TCE.

2. **Increasing the Medicines Patent Pool:** It would facilitate greater use of the Medicines Patient Pool; whereby generic drug companies will generate less expensive versions of patented medicine at bargained rates through:

   i. Phased expansion into additional disease areas beyond current therapeutic areas.

   ii. Programs offering incentives to pharmaceutical companies that contribute their own patents or technology without the expectation of financial gain.

3. **Development of Ethical Licensing Practices:** Support the development of ethical licensing practices that place the emphasis on social responsibility rather than profit maximization and ensure that pharmaceutical innovations provide benefits to those who require them the most through:

   i. Engagement with local communities to develop treatments based on traditional knowledge; Companies shall be required to engage with affected communities prior to initiating treatment development based upon traditional knowledge.

   ii. The terms of licensing agreement between companies and the Indigenous people will be publicly disclosed with the fact concerning revenue sharing.

4. **Research Funding Incentives:** Provide accelerated research funding opportunities to the development of new treatments to meet unmet medical needs where income levels are low in particular to promote innovation other than profit-based models by:

   i. Community based research grants to assist the Indigenous communities to conduct research about traditional healing practices and/or the challenge affecting the health of the Indigenous population.

   ii. Tax subsidies to companies that are active in the production of global health solutions; Tax subsidy on pharmaceutical companies that do research on diseases that are common in low-income countries.

CONCLUSION

Current IP systems are designed to benefit large corporations at the expense of Indigenous peoples' cultural rights and the availability of essential medicines in developing countries. There remain two major inequalities within the current system; the first being the unauthorized commercial use of Indigenous cultural expressions and the second is the patents and other restrictions that limit

the availability and affordability of medicine in many developing countries. Both the inequality examples show the lasting effects of colonialism in current IP legal frameworks.

Both short- and long-term reform strategies will be necessary to address these systemic inequalities. Short-term strategies should include robust compulsory licensing and tiered pharmaceutical pricing. In addition to short-term strategies, medium-term strategies would include, among others, provisions related to technology transfer contained in pandemic treaties, prohibition of pay-for-delay agreements and caps on the assertion of patents. Long-term strategies must also improve the ability of agencies to coordinate with each other, as well as provide for greater public input in the making of IP policy.

Additional institutional innovations can help promote equity by creating alternative paths through which communities may achieve their goals: such as the creation of a Cultural IP Ombudsman who could assist in resolving disputes between parties, expanding the Medicines Patent Pool, promoting ethical licensing practices and increasing funding for research that includes the development of pharmaceuticals based upon traditional knowledge.

The further research that this study calls for should be focused on researching Indigenous controlled systems for managing cultural heritage, as well as models for collaborative pharmaceutical development based upon traditional knowledge.

Achieving IP equity will also depend on a multifaceted approach including multilateral collaboration and the creation of new systems. The global community must now prioritize human dignity, cultural integrity and equitable access to medicine and make a change in how we perceive IP law – no longer solely as corporate protection but as a means of creating greater social justice and equity.

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