

Public health, innovation and intellectual property rights: unfinished business

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The context for this theme collection is the publication of the report of the Commission on Intellectual Property Rights, Innovation and Public Health.¹

The report of the Commission — instigated by WHO's World Health Assembly in 2003 — was an attempt to gather all the stakeholders involved to analyse the relationship between intellectual property rights, innovation and public health, with a particular focus on the question of funding and incentive mechanisms for the creation of new medicines, vaccines and diagnostic tests, to tackle diseases disproportionately affecting developing countries.

In reality, generating a common analysis in the face of the divergent perspectives of stakeholders, and indeed of the Commission, presented a challenge. As in many fields — not least in public health — the evidence base is insufficient and contested. Even when the evidence is reasonably clear, its significance, or the appropriate conclusions to be drawn from it, may be interpreted very differently according to the viewpoint of the observer. As a result the outcome was inevitably a compromise, a compromise which some of the Commissioners felt obliged to supplement by providing their own perspective in commentaries on the report.

Now the report is finally published, what will be the outcome? Will the carefully worded text and recommendations, the product of tortuous negotiation, be plucked out of context and caricatured in the hands of one set of stakeholders or another? Will straw men be erected, and knocked down effortlessly, to demonstrate the absurd and extreme positions in the report? Will debate still rage as to how important, or how unimportant, intellectual property rights are to the promotion of innovation and access? Will evidence still be

used to promote one set of preconceived opinions or another?

The report will succeed to the extent it makes a difference where it really matters — to the lives of poor and sick people in developing countries. The test will not be the initial flurry of stereotypical instant reaction. Rather the report, which is strong on detail and analysis, should repay careful study and mature reflection. If it makes a contribution it will be through incrementally changing the terms of the debate, and by legitimizing and making explicit certain lines of thought or policy which had been previously poorly articulated, or dismissed as beyond the bounds of political possibility.

The report provides a resource for the public health community by clarifying the impact of institutions, systems and policies outside the health sector on intellectual property rights and innovation policies.

A key message of the report is that because the market demand for diagnostics, vaccines and medicines needed to address health problems mainly affecting developing countries is small and uncertain, the incentive effect of intellectual property rights may be limited or non-existent. Because intellectual property rights may not be an effective incentive in this area, there is a need for other incentives and financial mechanisms to be put in place and for collaborative efforts between different stakeholders.

Without access to the products of innovation, there can be no public health benefits. Defining the conditions by which products can be accessed is therefore an important aspect of the report. There has been significant progress in recent years, such as the launch of new public-private partnerships for product development, increased funding by foundations and new institutions

to promote access such as the Global Fund to Fight AIDS, Malaria and TB.

This momentum for change is welcome but is insufficient. Much more needs to be done. There remain unsettled and debated issues in intellectual property e.g. the effectiveness of the recent amendment to TRIPS in increasing access to medicines in countries without manufacturing capacity, the impact of data exclusivity laws and the impact of intellectual property provisions in bilateral trade agreements.

There is a need to ensure enhanced financing on a sustainable basis of innovation and access and promote synergy between the different partners. Ultimately it is a responsibility that governments must accept if these objectives are to be achieved.

It is appropriate that WHO should now take the lead in promoting a more sustainable and better-funded effort and addressing unresolved issues. WHO should accordingly develop a global plan of action to secure enhanced and sustainable funding for developing and making accessible products to address diseases that disproportionately affect developing countries.

As the former Secretariat of the Commission it is our hope that the report will stimulate governments, and other stakeholders, to promote innovation relevant to the health of poor people in developing countries, and their access to diagnostics, vaccines and treatments.

It is now up to WHO and its Member States to take up the task of transforming the report into a workable set of policies and actions that will really make a difference. ■

1. *Public health, innovation and intellectual property rights*. Geneva: Commission on Intellectual Property Rights, Innovation and Public Health; 2006.

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