

## **How can we unblock rights to access the benefits of science? A rights-based approach to IP and technology transfer in the Covid-19 era**

This paper proposes a rights-based approach to interpreting what an obligation of technology transfer might mean for WTO members. Until recently, limited attention has been given to human rights to access the benefits of science enshrined in the International Covenant on Economic, Social and Cultural Rights. In 2020, the Committee on Economic, Social and Cultural Rights (CESCR) provided new guidance in General Comment 25 on science and economic, social and cultural rights. In particular, General Comment 25 sets out core obligations including the requirement on states to ‘ensure access to those applications of scientific progress that are critical to the enjoyment of the right to health and other economic, social and cultural rights.’ This requires the ‘wide dissemination’ of those applications.

The Covid-19 pandemic reminds us of the important role that technology transfer plays in ensuring that flexibilities embedded in TRIPS are effective in maintaining a balanced intellectual property system. This is not limited to core technology to make vaccines, treatments and personal protective equipment but includes infrastructure technology that enables storage, transport and distribution of these essential supplies. Blockchain technology provides opportunities for addressing increasing concerns that existing trade mark-focused mechanisms are insufficient to stop the spread of counterfeit vaccines during a pandemic but this also requires technological infrastructure.

Recognising the valuable incentive role that IP plays in scientific innovation but adopting CESCR’s approach that IP is largely a social product rather than a human right, this paper uses the vaccine blockchain protection example to explore how an obligation to technology transfer could enable a more balanced IP system that also permits states to realise their human rights. The slow vaccine roll out in poorer economies highlights the inadequacy of relying on existing mechanisms that TRIPS provides in the absence of technology transfer. Importantly, technology transfer is not only a TRIPS obligation for developed countries, it is consistent with human rights obligations to provide international cooperation and assistance to other states to realise individual human rights.

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