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Pandemic Solidarity – Increasing Responsiveness to Public Interest Considerations in Intellectual Property Law

Over the past few years the WTO Council for Trade-Related Aspects of Intellectual Property Rights recognized that there is a need for discussion to broaden the understanding of how the IP system can be more responsive to public interest considerations. Moreover, recently the SARS-CoV-2 pandemic has exposed further significant weaknesses in terms of preparedness to deal with a completely new type of public health threat, in particular in relation to the measures that determine access to medicines. Some of these measures include the possibility of limiting the scope and criteria for patent protection. Others, involve compulsory licences, exceptions for national security emergencies or parallel importation.

Although the TRIPS Agreement provides for a number of such measures and flexibilities, available policies involve complicated bureaucracy and would need to be employed on a drug-by-drug basis to provide access to each vaccine or treatment. The practice so far indicates that this would be a very time-consuming and inefficient process with regard to circumstances of extreme urgency, such as the current pandemic. Furthermore, there is concern that a country allowing the manufacture of vaccines on the basis of compulsory licences may face pressure not only from pharmaceutical companies but also from countries where the pharmaceutical industry plays a significant role.

In such a spectacular plane of collision between the protection of property interests and the protection of health, and therefore life, we are faced with the need to formulate new ethical and legal standards. In line with the concept of pandemic solidarity, the international community has the obligation to ensure the widest possible access to medicines for the inhabitants of less developed countries. It should be emphasised that, while states are the key addressees of such obligations, the activities involving the development, marketing and distribution of medicines are carried out not by a country, but primarily by private entrepreneurs. Therefore, the responsibility in this respect rests not only on the governments of individual countries, but also on transnational corporations as members of the international community.