

Delicate balance of
intellectual property
and access
economics essay



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Health is a human right and intellectual property must not become overemphasized at the expense of human life. There is a delicate balance between the human rights of HIV/AIDS sufferers and the economic, political, and human rights of corporate citizens to protect intellectual property within the pharmaceutical industry. This essay intends to answer the six questions related to the In-Depth Integrative Case 1. 2 and highlight the global rights conflict of between a developing country's fight to confront the AIDS epidemic and intellectual property protection.

Delicate Balance Of Intellectual Property And Access To Medication

Introduction

When the South African Medicines Act was introduced it quickly resulted in battle lines being drawn between patent rights and public health. While all parties acknowledged the scope of the AIDS crisis, how to go about solving the problem became the subject of significant moral and legal debate (Halbert, 2012).

Case Study Review

In the case study Pharmaceutical companies, intellectual property, and the global AIDS epidemic, there are a number of questions to review. First, do pharmaceutical companies have responsibility to distribute drugs for free or at low cost in developing countries? What are the arguments for and against such an approach? There are socio-economic responsibilities of businesses and pharmaceutical companies have responsibility to distribute drugs for free or at low cost to developing countries. The products pharmaceutical companies make help save people lives. For that, they should be helping to save lives in developing countries that cannot afford medication. In contrast, pharmaceutical companies need to balance goodwill and profit in order to satisfy investors and used for more research for better medications.

AIDS activists around the world are not only trying to provide necessary medication, but are also trying to make it possible to evaluate access to medication as a human right instead of a property right. Halbert argues, that within patent law, compulsory licenses and parallel importation allow for the protection of patent rights while also providing easier access to medication. It is necessary to include health care as a human right with the language of property rights. Instead of seeing the only alternatives as absolute patent protection or no protection at all, it is possible to develop a middle path that would promote the use of compulsory licenses and parallel importation to overcome the drug pricing problems (Halbert, 2012).

Pharmaceutical companies tend to fund research and development to address problems of the developed world, not the developing one. This is because the developed world has the means to finance the research and pay <https://assignbuster.com/delicate-balance-of-intellectual-property-and-access-economics-essay/>

for the completed product. Around 90% of the money spent on health research and development focuses on medical conditions responsible for only 10% of the world's burden of disease (Benatar, 2000).

2.

The pharmaceutical industries traditionally resist Intellectual Property Rights agreements because they are concerned that the ambiguity in the language could allow countries to abuse patent exemptions. Without the incentive of patents, it is doubtful the private sector would have invested so much in the discovery and development of medicines, many of which benefit both developed and developing countries (Call to improve intellectual property rights of developing countries, 2010, 10). Some pharmaceutical companies will not patent the product because the markets are small and there is limited technological capacity. Many companies take the view that it is not worth the expense of obtaining and maintaining protection when the potential market is small, and the risk of infringement low. Another reason is that the pharmaceutical companies would lose contributions from competing generic medications. This could cause a domino effect hurting profits in multiple markets. Plus, the pharmaceutical companies fear that the unregulated and unreliable environments could risk creating new strains of drug resistant HIV or other infections. Non-governmental Organizations feel that developing countries should have the right to produce or import generics. Developing countries like South Africa are involved with global health crisis and should be able to have access to the existing sets of treatments that allow people to live with the disease. Without the intellectual property rights, developing countries doctors are telling patients about the <https://assignbuster.com/delicate-balance-of-intellectual-property-and-access-economics-essay/>

cheapest method of burial, since most patients cannot even pay for the daily bed charge (Luthans, 2012).

The Intellectual Property Rights enables developing countries to import a generic drug if they can provide evidence of the public health concern, demonstrate the inability of the domestic pharmaceutical industry to produce the drug itself, and prove that it will only use the drug for public, non-commercial purposes. Developing countries are satisfied that the agreement does not limit them to emergency situations or designate only a short list of diseases for which generic drugs can be produced. Instead, it permits them to produce or import drugs to address the particular diseases that affect their countries (Intellectual Property Summary, 2004, 01).

3.

Non-governmental Organizations are recommending the use of differential pricing, which would allow prices for drugs to be lower in developing countries, while higher prices are maintained in developed countries. In order for this to work, it will be necessary to stop low priced drugs leaking back to developed countries. The main reason to levy duties on drug import is to provide medicine to the poor who cannot afford them . But this may result to illegal drug business which may be harmful to many young people. In addition, if South Africa decided to levy duties on drugs imported from Western nations it would cause a shortage on those drugs. The prices for the drugs would go up and the population already has issues affording them. Another problem with charging duties on the drugs is the time and quantity based limitations and a continuing dependence of developing country's

health care planning on the amount of drugs from the Western nations commercial organizations. The Western pharmaceutical companies might also cease shipping the medications (Schüklenk, 2002).

4. In June 2002, the WTO extended the transition period during which least developed countries (LDCs) had to provide patent protection for pharmaceuticals. In your opinion, do you think this is an appropriate change in policy, or a dangerous precedent? What could be some of the negative ramifications of this resolution? What about the effects for other industries?

In 2002 the World Trade Organization (WTO) extended the transition period for the least developed countries to provide patent protection for pharmaceuticals. The idea behind this was to try and ensure that intellectual property protection supports poorer countries need in public health care not to obstruct the countries health care systems. Countries making use of the extended time still have to allow inventors to submit patent applications during the period. Sykes (2002) tells us this would give developing countries without sufficient manufacturing capacities in the pharmaceutical sector additional time to find solutions. However, the funds deployed for fighting AIDS were modest and the actions and statements of officials did not go as far as critics wanted.

The internationally-mandated expansion of intellectual property rights is unlikely to generate significant benefits for most developing countries and likely to impose costs, such as the overall cost of medicines. This makes poverty reduction more difficult in many areas of importance to development, such as health, agriculture, education and information

technologies. The expansion of the intellectual property rights can also cause increases to the cost of accessibility to many products and technologies that developing countries need. The extension of intellectual property rights globally will diminish the degree of competition worldwide for many products and services. For example, the degree of competition in developing country markets for patented pharmaceutical products will diminish when major suppliers of generic versions of such medicines will have to apply patent protection under Trade-Related Aspects of Intellectual Property Rights (Call to improve intellectual property rights of developing countries, 2010, 10).

Other ramifications are the dependence on the intellectual property's charity morally degrades the individual by fostering dependence, promoting an attitude of humility toward the giver, and relieving the recipient of the ability to set terms and negotiate the terms of receipt. This argument is difficult to use, because it risks proving that aid is wrong, rather than the specific form of aid which is supererogatory, discretionary, conditional charity (Rodney, 1972). Intellectual property's argument is that the donation of drugs is a partial fulfillment of a duty to the disaster-struck. The donation of drugs provides immediate assistance but stifles the country's ability to provide for them. If they can get the medication for free or drastically lower from developed countries they won't invest in improving their countries pharmaceuticals to compete, leaving the country stagnant in improvements and reliant on other countries to provide for them (Unger, 1996).

5. Given the initiatives announced by global development and aid organizations and among pharmaceutical companies themselves, was it

necessary to relax IPR rules in order to ensure that adequate supplies of AIDS medications would be available for distribution in the developing world?

Ans: In August 2003, the USA and other WTO members announced that they had finalized a solution to streamline the supply of disease fighting medications to poor countries. As part of compromise deal, the USA agreed to language that would allow to compulsory licensing only for genuine health reasons.

The obligation of developed nations to address the AIDS epidemic in the developing world can be justified on several grounds. First, compassion may motivate developed nations to help alleviate the suffering caused by the AIDS epidemic. Second, to the extent that good health and healthcare are basic human rights, nations who are able to help are obligated to contribute resources to guarantee these rights. Third, because the wealth, and health, disparities between the developed and developing world are largely a legacy of colonialism, the developed nations have an obligation to address those problems to which they contributed. Finally, it is in the self-interest of developed nations to assist the developing world. If the AIDS epidemic is not controlled in the developing world, the resulting economic and political instability will threaten the security of all nations (Pharmaceutical Companies, 2011, 07).

Since the vast majority of the people infected with HIV and has AIDS do not live in developed countries and do not have an access to the health care needed, the countries with the biggest AIDS problems are essentially forced to pay whatever the drug companies demand for their products.

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Developing nations feel justified in using the threat of using generic drugs to force the companies to lower their prices. Because of the absence of wealth and the poor state of health in developing nations a lot of people feel they deserve discounted medicines no matter how they receive them. Local governments cannot afford vast reimbursements of health care products to dispense to their citizens the lifesaving medications. The issue is complicated by the fact that developing countries have poor infrastructure, poor health care systems and poverty that prevent the distribution of anti-AIDS drugs. Generic drugs have little or no research and development cost to create, they can be sold for a far reduced price from what the pharmaceutical companies are charging, which makes it an acceptable idea for developing companies. For pharmaceutical companies to be competitive, they should reduce the price for the AIDS drugs, it can be recouped from the fact that the drugs will suddenly become affordable to a market of millions of sufferers, many of whom will be using the drugs for the duration of the disease, so it would make little profit per customer but the amount of customers could make up the difference (Treating Aids: a Global Ethical Dilemma, 2006, 12).

6.) What role do MNCs have in providing funding or other assistance to international organizations such as the Global Fund?

All major pharmaceutical firms have an obligation to offer assistance when social, political, and economic conditions make it impossible for patients to receive life-saving medicines. Multinational corporations that participate in the Global Funding show that they have the capacity to act morally by aiding those affected by disaster. The positive features of such donations are that they are not coerced and they represent an assumption of moral

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responsibility by corporations (Shah, 2010). Multinational corporations can expand their reach into local host country communities, building relationships with families and networks of local leaders, and in some cases, offering business opportunities to vulnerable populations. These large multilateral organizations such as the World Bank, are able to make their decisions fairly independently of the countries that provide their funds. This means they can allocate money to countries and projects that might have otherwise been ignored by other funding organizations (Funding for HIV and AIDS, 2008, 01). The Global Fund has been suffering from poor funding, slow distribution, and other political obstacles from some of the richest countries such as the United States that would prefer their own initiatives (Shah, 2010).

As a bilateral donor the United States President's Emergency Plan For AIDS Relief is able to decide where the donated money should be spent. On initial thought, this sounds reasonable; a nation such as the United States has the resources and ability to determine where that money should be spent. However, the concern is that the decisions become political, rather than need driven. The Global Fund is supposed to be a fund where countries donate without any strings attached (Shah, 2010). Multinational corporations argue that donating this way allows the United States to avoid the wrong perception because where the funds end up.

Conclusion

Chung (2003) tells us, that prior to the South African crisis, international norms favored access to life-saving drugs, but the patent rights of

pharmaceuticals, and the receptiveness of the U. S. government to these concerns, greatly limited the influence these norms had on actual outcomes.

A holistic approach to the AIDS crisis should include consideration of the importance of the pharmaceutical patents the demand of lower priced drugs should be balanced, so that the pharmaceutical industry could maintain its incentives to continue to develop new medicines. Companies have the need to maintain primary and differential pricing in order to cover the cost of research and development to discover and develop innovative methods of treatment. In order this crisis to be overcome; compromises must be made by the pharmaceutical companies in cooperation with local governments and international health care funds. Patent enforcement should be required, so that pharmaceutical companies obtain economic value of their products and hold an incentive to expand their technologies. Meanwhile, the world health care community is obliged to provide more sources to developing countries massive financial support, as well as promotion of pharmaceutical research and development of new cures and vaccines that will benefit the whole humanity.