

## Submission of CPTech to IGWG

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The IGWG has a very broad mission, and a limited time to respond. It must on the one hand address many issues raised in the CIPIH Report, including the dozens of specific recommendations, many involving policies and practices relating to controversial topics such as drug prices and intellectual property. The IGWG is also charged with addressing issues that were first raised by Kenya and Brazil, regarding the creation of a new global framework for essential R&D. Taken together, these recommendations cover a wide range of topics, and will require further research, proposals for concrete implementation, determination of the resources needed for essential R&D, identification of who should bear the costs of such R&D, and the mechanisms to stimulate both public and private sector R&D, while promoting access. This is a difficult charge.

The CIPIH recommendations were the result of a compromise. The commission members came from diverse backgrounds and interests, and could not resolve many important issues. That said, it is impressive that the CIPIH was able to put forth as many recommendations as it did. The IGWG has an opportunity to move forward in these areas where consensus was reached.

The Swiss government has proposed that the IGWG seek to create process to that asks WHO member countries to implement **all** CIPIH recommendations. We agree. Such a process might begin with a request that every WHO member provide a report to the IGWG, outlining its intentions regarding a review and implementation of the CIPIH recommendations, and perhaps also, an ongoing system to monitoring implementation, and providing technical assistance to countries.

Addressing the issues in the Kenya/Brazil proposal will require a different approach. The IGWG is asked to create:

"an enhanced and sustainable basis for needs-driven, essential health research and development relevant to diseases that disproportionately affect developing countries, proposing clear objectives and priorities for research and development, and estimating funding needs in this area."

While this is consistent with the CIPIH recommendations, it demands considerable new consultation and analysis, and the creation of new policy initiatives. It requires the IGWG to address issues the CIPIH could not resolve.

In order to address these issues, the IGWG needs to create a process to identify the resources needed to address unmet needs for essential medical R&D. It needs to identify the types of mechanisms that could stimulate such R&D efforts, and it needs to develop practical ways to ensure that these mechanisms are undertaken.

Almost by definition, R&D incentives based upon existing intellectual property rules can only play a limited role. As commonly implemented, patents and other mechanisms are primarily designed to create marketing monopolies, and high drug prices. These incentives have failed to do anything for areas where consumers have no purchasing power, and when high prices are possible, they interfere with affordability and access, points that are explained in great detail in the CIPIH Report.

More promising are proposals for greater global cooperation in supporting public sector research, or new incentive systems that are not tied directly to high drug prices. This includes work by a growing number of economists and others who propose new rewards for R&D that are tied to health care outcomes.

Steven Shavell, Michael Kremer, James Love, Tim Hubbard, Burton Weisbrod, Aidan Hollis, Owen Barder, Thomas Pogge, Joseph Stiglitz and others are among those calling for greater attention to new incentives that reward innovations that successfully change health care outcomes. (See <http://www.cptech.org/ip/health/prizefund/> for cites to articles on these topics).

Some academics and NGOs have suggested these ideas be combined with other aspects of the CIPIH work. For example, by combining the patent pool and prize fund mechanism.

The CIPIH recommends that patent owners voluntarily license inventions to generic producers, or that governments issue compulsory licenses to facilitate generic production of medicines. This could be done most efficiently through the creation of patent pools or other methods of collective management of intellectual property rights.

Governments could contribute money to global "prize" funds to reward inventions that provide positive impacts on health care inventions, perhaps tied to measures such as QALYS. These prizes could be limited to inventions that were voluntarily licensed to patent pools, creating an incentive to make inventions available at low costs to patients in developing countries.

The IGWG could set norms for WHO member countries to contribute to such a prize fund mechanism. Countries that met or exceeded these norms could be given greater flexibility in implementing TRIPS or TRIPS plus measures, as an incentive to fund such prizes. Taken together, this could provide a powerful new model to reconcile the global interest in promoting both innovation and access in resource poor settings.

## **SELECTED ARTICLES ON USE OF PRIZES TO STIMULATE INNOVATION**

2006. Joseph Stiglitz. Patents, Profits, and People. In Making Globalization Work. New York: W.W. Norton & Company. 103-132. See also: 2006. Joseph Stiglitz. Give Prizes not Patents. New Scientist.

- Proposes a global prize fund paid for by industrialized nations that would reward new drug and vaccine developments on the basis of their health impact. Argues that using such a prize system in lieu of patent monopolies would be 'more efficient and more equitable.'
2006. James Love. Drug development incentives to improve access to essential medicines. Bulletin of the World Health Organization.
2006. James Love, "A new initiative at the WHO, Prizes rather than prices." *Le Monde diplomatique*.
2006. James Love. "Measures to Enhance Access to Medical Technologies, and New Methods of Stimulating Medical R&D." Paper for the WIPO Open Forum on the draft Substantive Patent Law Treaty (SPLT).
2005. Thomas Pogge. Human Rights and Global Health: A Research Program. *Metaphilosophy*. 1/2(36) See also: 2005. Thomas Pogge on Online Opinion. A New Approach to Pharmaceutical Innovations.  
Proposes a global reward fund of \$45-90 billion per year from which pharmaceutical innovators could choose to apply for payment in lieu of a patent monopoly. Emphasizes the moral as well as prudential rationale for such a system.
2005. Aidan Hollis. An Optional Reward System for Neglected Disease Drugs.  
Proposes that pharmaceutical innovators be eligible for a share of an approximately \$1 billion global reward fund if they chose to open license the patent for their innovation in all developing countries. Proposes a mechanism for determining reward shares for a given drug based on relative social value.
2005. Aidan Hollis. An Efficient Reward System for Pharmaceutical Innovation.  
Discusses benefits of a pharmaceutical reward system over current patent system. Explains features of the pharmaceutical market that make profits poor indicators of a drug's social value.
2005. James Love. Medical Innovation Prize Fund System of Remuneration. In *Remuneration Guidelines for Non-Voluntary Use of a Patent on Medical Technologies*. James Love. WHO UNDP. 77-80 and 101-104.
2005. James Love. Two Ideas Regarding Innovation and Access. Presentation for the WHO Commission on Intellectual Property Rights, Innovation and Public Health Open Forum.
2005. James Love and Tim Hubbard. Paying for Public Goods. In *Code: Collaborative Ownership and the Digital Economy*. Edited by Rishab Aiyer Ghosh. MIT Press, Cambridge. 207-229.

2004. Tim Hubbard and James Love. We're patently going mad: Lifesaving drugs must be developed differently - for all our sakes. The Guardian.

2004. James Love and Tim Hubbard. A New Trade Framework for Global Healthcare R&D. PLOS Biology.

2003. Tim Hubbard and James Love. Medicines Without Barriers. The New Scientist.

August 22, 2003. Burton Weisbrod. Solving The Drug Dilemma. Washington Post.  
Proposes a prize system for pharmaceutical innovation with an emphasis on increasing efficiency in the American health care system.

2001. Steven Shavell and Tanguy van Ypersele. Rewards versus Rights. Journal of Law and Economics. 44: 525-547. Previously published as Rewards versus Intellectual Property Rights. 1998 Harvard Law School, Olin Center for Law, Economics & Business, Discussion Paper No. 246.

Argues that the better system between standard patents and a mandatory prize system, and between a mandatory prize system and an optional prize system depends upon factors like information asymmetry. Concludes, however, that an optional reward system where the size of rewards is based upon sales would be superior to standard patents.

2001. Nancy Gallini and Suzanne Scotchmer. Intellectual Property: When is it the Best Incentive System? University of California, Berkeley Working Paper E01-303.

Comparison of intellectual property, procurement contracts, and prizes with emphasis on the implications of (a)symmetry of information about cost and value. Argues that when sponsors know the value of innovations, a system with prizes linked to the social value of innovations is optimal.

2000. Gerard Llobet, Hugo Hopenhayn, and Matthew Mitchell. Rewarding Sequential Innovators: Prizes, Patents and Buyouts. Federal Reserve Bank of Minneapolis Research Department Staff Report 273.

Considers cumulative innovation with multiple innovators and innovations of unknown value. In such cases, the authors argue that a revised patent system that permits compulsory licensing by competitors would be preferable to prizes and traditional patents.

1998. Michael Kremer. Patent Buyouts: A Mechanism for Encouraging Innovation. Quarterly Journal of Economics 113: 1137-67.

Proposes that government offer to buy out pharmaceutical patents using a described auction system to determine price. Patent holders could choose whether or to sell or to retain patent monopolies.

1999. Gabriella Chiesa and Vincenzo Denicolo. Patents Prizes and Optimal Innovation Policy. Mimeo. University of Bologna.

1998. Steve Calandrillo. An Economic Analysis of Intellectual Property Rights. Fordham Intellectual Property, Media & Entertainment Law Journal. 9: 301-360.

Argues for the superiority of a government run prize system over traditional patents and includes responses to common criticisms of prize systems.

1998. Suzanne Scotchmer. On the Optimality of the Patent Renewal System. Mimeo, University of California, Berkeley.

1996. Eric De Laat. Patents or Prizes: Monopolistic R&D and Asymmetrical Information. International Journal of Industrial Organization. 15: 369-390.

1983. Brian Wright. The Economics of Investment Incentives: Patents, Prizes, and Research Contracts. American Economic Review. 73: 691-707.