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Headline: Intellectual Property: New Answers to New Problems

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For more than a century, our system for protecting intellectual property rights has fostered the creativity of artists and inventors. But now it is being challenged by two major global forces: the Internet, which can act as a gigantic international copying machine, and a global health crisis in which patented miracle drugs are too expensive for developing countries. It is time to reexamine how the intellectual property rights regime works.

To be sure, any suggestion for tampering with this fundamental institution of capitalism could be seen as heresy. For example, Bruce Lehman, U.S. Commissioner for Patents & Trademarks from 1993 to 1998, and now CEO of the International Intellectual Property Institute in Washington, says: "The system is not broken. Existing law can accommodate new pressures." He and other experts point to past technological challenges to intellectual property rights that have been overcome, such as fax machines or VCRs. But others are more sympathetic to a fresh look. As Massachusetts Institute of Technology economist Lester C. Thurow explained to me: "We need to design a new system to replace one made for a much simpler era. Our approach is no longer appropriate for the explosion of new industries and new technologies, nor for a world in which so many countries won't or cannot enforce the current [intellectual property] laws."

EXPLOSIVE. One challenge is illustrated by Napster Inc., the Internet search engine that made it free and easy for 60 million consumers to find and swap music files. It is now under court order to curb the exchange of copyrighted material. While most record companies are understandably worried about new variants of Napster, an equally serious problem for consumers and the broader public is that the enforcement of intellectual property rights may actually become too severe. After all, current copyright law recognizes the right of "fair use," allowing some copying for private use, teaching, research, criticism, and reporting. But new technologies will soon make it possible to block, filter, and track every bit of digital information, creating the potential to excessively limit how and when a work is viewed, listened to, and copied. Personal freedoms as well as the potential of the Internet to produce innovative business models could well be curtailed.

The explosive controversy over the price and distribution of patented AIDS medicines in Africa illustrates another problem. Embroiled in a public-relations nightmare, the pharmaceutical companies are in total disarray. Merck & Co. (MRK) has drastically slashed its prices for these particular vaccines, and Bristol-Myers Squibb Co. (BMY) seems to have yielded rights over its patent just for South Africa. But they and 37 other companies nevertheless have filed suit to prevent South Africa, where some 15% of adults are estimated to be carrying the HIV virus, from locally producing or importing cheap generic knockoffs.

Granted, vastly improved distribution systems for medicines are the prerequisite for alleviating health crises. But these companies are fighting a losing battle to retain their exclusive rights in the face of what is sure to be more acute health epidemics in developing countries. New companies will spring up to produce generic drugs. Cheap medicines will find their way back to the U.S. and Europe, undercutting lucrative markets. Ultimately, the pressure to try to save lives will trump all else.

To resolve these horrendously complex questions, well-financed business associations, such as the Recording Industry Association of America and various national pharmaceutical trade groups, are gearing up for worldwide legal battles. In addition, tough new World Trade Organization provisions protecting intellectual property rights could result in widespread sanctions against India, Brazil, China, and others. But as Lawrence Lessig, an IPR expert at Stanford University's law school, told me: "We have to get out of the context of knee-jerk litigation to deal with these broad problems."

Indeed, we need a 21st century framework for IPR that better balances the interests of artists and inventors--critical as their contributions to our lives have been--with those of users and the public. More thoughtful policy must be devised to guide judges and lawyers. While Congress should by all means conduct hearings, a global economy demands more. One possibility is for the Group of Seven to charge the respected World Intellectual Property Organization with forming a task force from government, business, the scientific community, academia, and public interest groups to explore the options.

There are many issues to be addressed. Is there a way to better codify the

space for private use and experimentation on the Internet? Should governments use their powers of eminent domain to buy up critical pharmaceutical patents and better distribute the underlying products? There may be much better approaches than these, but relying only on relentless enforcement of existing laws isn't one of them.

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