## 1

#### Interp: The aff must define which medicines they reduce intellectual property protections for with a delineated text in the 1ac.

#### Medicines is a vague and broad term - no normal means. Antonanzas and Postma 16

**Antoñanzas**, F., Terkola, R. **& Postma**, M. The Value of Medicines: A Crucial but Vague Concept. PharmacoEconomics 34, 1227–1239 (**2016**). <https://doi.org/10.1007/s40273-016-0434-8> //SR

Key Points for Decision Makers Although the value of healthcare products is commonly understood as a mix of effectiveness, safety and efficiency, there is no clear and shared definition of this abstract and multi-perspective concept, potentially leading to inconsistent decisions across jurisdictions regarding price, reimbursement, and access to those products. Decision makers and health technology assessment bodies should make efforts to explicitly specify the criteria used when appraising health technologies so that their value can be unambiguously conceptualized and measured. Several approaches are used to incorporate the concept of value without explicitly defining it, but adaptations to specific situations (through the weighting of assessment results according to various criteria) are frequently found in real-world practice. Table 2 Cost-effectiveness thresholds in selected European countries Country Affordability threshold (cost/QALY) Austria No [35] France No [23, 35, 43] Germany No [23, 35] Likely to range between €20,000 and €40,000, not formal [43] Hungary Technologies are considered cost effective below the threshold of 2 9 GDP per capita/QALY; technologies are not cost effective above the threshold of 3 9 GDP per capita/QALY [47] Italy No [35] The Netherlands Approximately €20,000, not fixed [47] Absolute maximum of €80,000 for severe diseases; however, orphan medicines have been adopted above this threshold [12] Between €10,000 and €80,000 depending on the burden of disease [37] Spain No [35] Evidence suggests that technologies less than €30,000 are considered efficient and greater than €120,000 as inefficient [51] Sweden Approximately SEK500,000, not fixed [23] €45,000 used as guide, not fixed [35] Approximately €100,000 has been accepted for severe diseases between 2002 and 2007 [12] Likely range is between £25,000 and £40,000, not formal [43] Not explicit, but based on individuals’ willingness to pay [48] UK Yes, approximately £20,000–£30,000 [12, 23, 31, 35] Medicines meeting end-of-life criteria accepted beyond this threshold [12] Evidence suggests between £20,000 and £30,000, not fixed [43, 52]

#### Standards:

#### Strat Skew and Clash - 1ar’s can skirt clash and moot neg ground by no linking medicine specific disads or pics and making the normal means debate late breaking e.g. no vaccine diplomacy since vaccines being medicines is ambiguous or ayurveda pic if you don’t defend the field of medicine.

#### Resolvability - judges can’t know who to vote for if they don’t understand what each side is defending which also denies negs to make rigorous and nuanced strategies. Outweighs - all arguments presume you can resolve them

#### Worst case neg on presumption - policies inevitably fail if policymakers can’t hash out the specifics - our ev empirically proves

#### Cx doesn’t check - a] prep skew - we were forced to prep a 1NC that hedges around the potential of you not speccing and had to prep multiple case negs b] incentivizes infinite abuse and hope you don’t get called out since its no risk if we ask you and you can strategically not meet then get extra time in cx to prep the shell since we asked c] non verifiable since judges don’t flow it d] no brightline to what constitutes a check

#### Voters: Fairness is a voter because unfair arguments arbitrarily skew round evaluation. Education is a voter because schools have an a priori commitment to teaching students. Drop the debater a) to set a precedent for the best norms of debate b) to deter future abuse. Use competing interps because 1] what is reasonably fair is arbitrary 2] reasonability encourages debaters to get away with increasingly unfair strategies through defense on theory. No RVIs 1] it encourages debaters to bait theory 2] illogical – no one should win for being fair 3] develops a chilling effect against checking actual abuse

## 2

#### We’ll concede the framework of the K but we disagree with their methodology.

#### Under capitalism, some bodies are deemed vulnerable and disposed to sustain a “healthy body and society.” The system of biomedicine across the globe is premised on the binary on which violence can be enacted. Service economies and systems of control means certain bodies will always be used in cycles of exploitation, regardless of whether we do “positive things.” Puar 17

**Puar 17** (Jasbir K., associate professor in the Department of Women's and Gender Studies at Rutgers University. “Preface: Hands Up, Don’t Shoot.” *The Right to Maim: Debility, Capacity, Disability.* pages 78-82) spaldwin

Mitchell and Snyder further vacillate between the figures of the resistant non-productive unfit non/worker and that very same worker as incorporated into capitalist sites of profit. They argue that “we are increasingly approaching a time when all that formerly passed as the undesirability of life in a disabled body proves increasingly ‘advantageous’ from the standpoint of an immaterial labor market.”55 The immaterial labor market is a reference to technologies that allow for productivity to be redefined against the grain of the “laboring body”— for example, fostering virtual participation in workplaces for mobility- impaired individuals. However, these very same technologies, driven by the conventional laboring body, produce vastly debilitated populations across the globe, from Chinese laborers in Apple factories who commit suicide, to wheelchair technology that enhances mobility developed in Israel 48 on the backs of Palestinian oppression and immobility, to the mountains of e-waste hand-sanded by the working poor in India, to the neo-colonial extraction of minerals and natural substances from resource-rich areas for the purposes of manufacturing hardware. Is it possible that the figure of the non- productive disabled body becomes something of a fetish in Mitchell and Snyder’s text, recoding resistance as a form of automatic capacitation, an onto- crypto- capacity? This body occludes, to some extent, populations that are neither positioned as resistant to capitalism nor promoted as objects of care. Rather these populations are constructed as objects of imminent disposability, continually subjected to paternalistic austerity regimes, violent institutionalization, and debilitation that is not in any way redeemable through cultural rehabilitation. (Cultural rehabilitation as an avenue to normalization can be eschewed only if in fact it is an available possibility to turn away from.) Their debilitation functions as a form of value extraction for otherwise disposable bodies. Lauding the inherent resistance to capitalism of disabled bodies as well as the advantages of the immaterial labor market for people with disabilities both depend on three factors: first, the assumption or invocation of the identity or grouping of disabled people as an a priori given; which then, secondly, entails the substantial occlusion of the manufacturing of disability, that is, capitalist exploitation as an ongoing process of debilitation; which then, thirdly, submerges the supplemental relation between objects of care and social pariahs or objects of disposability— disability as a potential site of cultural incorporation and debilitation of populations made available and/or targeted for injury—in a neoliberal economy that profits from both. The burden-to-care periodization is one that therefore racializes as well as temporospatializes: between eugenics as it has been and the biopolitics of inclusion of the now (described as “post- imperialist”), a split that largely speaks to liberal spaces of privilege; and between the progress of the West/developed nations and the disarray of the rest/developing nations. “Objects of care” thus function as alibis for deeper entrenchment of in equality. The transformations in the valuation and incorporation of disabled bodies are indebted to uneven development (pace David Harvey), the craggy geopolitical terrain of biopolitical control that has hardly abandoned disciplinary structures of containment. In other words, disciplinary apparatuses of containment and incorporative forms of biopolitical control are more accurately produced through and in relation to each other, rather than as a wholesale transition, thus requiring careful attention to the economic material conditions of uneven development. Service economies, for example, are impelled into the production of these objects of care; new social pariahs and forms of “economic burden” emerge from these service economies. These economies include (but are hardly limited to) care workers, diagnostic testing industries, surrogates, organ donors, and clinical trial workers/subjects. How do workers in service economies produce toward objects of care when they are often left without the resources to care for themselves and fall into the categorization of objects of disposability?56 How do such objects of care resonate with patterns of accumulation of wealth from the global north to the global south, reproducing the standardization of what disability is in human rights regimes, the distribution of disabilities and abilities in biomedical circuits, and the debilitating mechanisms of war machines?57 These burden-to-care relations do not only grip the international division of labor or an increasingly fuzzy global north/south divide. In the United States, the most salient example of the failure to achieve such a totalizing transition is the “onset of deinstitutionalization and the nearly simultaneous rise of ‘law and order’ politics.”58 An estimated 70 percent of incarcerated populations in the United States have a developmental or physical disability.59 The growth of the prison-industrial complex depends on the school- to-prison pipeline that fuels it.60 The disciplinary containment and isolation of prison and the supposed economic burden of prisoners are sustained by the profitability of the regulation of bodies modulated as “objects of care”— potential criminals— from school to prison. The historical downsizing of welfare provisions and disability provisions coincides with the rise of the prison- industrial complex and the expansion of populations deemed criminal.61 The prison-industrial complex is thus a proliferating site of the institutionalization of disability, albeit not just any body with disabilities.62 Critical prison studies amply evidences that the institutionalization of disability intensifies at points where incarceration and race (as criminality), specifically blackness, meet.63 Black bodies have carried the mark of the institutionalization of disability from slavery to Jim Crow to the prison- industrial complex, with incarceration, as Michelle Alexander argues, forming a “racial caste system.”64 Nirmala Erevelles writes of the enclosure of blackness in the circuitry of signification and production of disability.65 Extending the discussion of flesh in Hortense Spillers’s seminal essay “Mama’s Baby, Papa’s Maybe,” she argues that the inferiority of black flesh is literally inscribed by the master’s whip, thus suturing the constructed association of blackness with defect to the physical attribution of disability: “It is precisely the historical moment when one class of human beings was transformed into cargo that black bodies become disabled and disabled bodies become black.”66 Racialization here is a form of impairment unto itself (black flesh as disabled flesh), as well as an invitation and solicitation to visibilize debilitation as a marking of this symbolic relationship (disabled flesh as black flesh). Erevelles’s analysis not only emphasizes the necessity of an intersectional frame. (An intersectional approach need not mobilize the term “disability” itself, rather exposes the term for the racial elisions it relies upon.) She demonstrates the constitutive facets of racialization to the functioning of the identity positioning of disability itself, rendering the intersections between disability and race to be already a reduction of the multiplicity inherent to the social construction of the black body as inferior.67 Disability is for Erevelles the “ideological lynchpin utilized to (re)constitute social difference” along identity axes.68 Disability thus coheres a long- standing avenue for policing, surveilling, and securitizing deviant bodies from slavery through the prison- industrial complex. These differing yet contiguous forms of enclosure are processes of debilitation in the most literal and stark terms.69 Debilitation is therefore not just an unfortunate by- product of the exploitative workings of capitalism; it is required for and constitutive of the expansion of profit. Certain bodies are employed in production processes precisely because they are deemed available for injury— they are, in other words, objects of disposability, bodies whose debilitation is required in order to sustain capitalist narratives of progress.70 Participation in the labor market may also entail extraction of biological information as a source of value.71 Bioinformatic economies— dna encoding and species preservation, stem cell research, digitization, biometrics, surveillance technologies, regenerative medical sciences— increase the contact zones and points of interface between subindividual bodily capacities while facilitating the constant amassing of information. They rely on and reassert extractive economies. Kaushik Sunder Rajan details the life trajectory of the “experimental subject,” one increasingly displaced from conventional forms of agricultural and manual labor (often from the global south) to biocapital regimes where information is extracted from bodily material.72 In another example, Raewyn Connell writes, “Both the tissue economy and the redefinition of bodies have effects on disability: the former by literally manufacturing impaired bodies in the global periphery (the ‘donors’), the latter by circulating fantasies of the perfect body and inciting desire among the global rich to buy perfection. Both produce, as the dark side of the pursuit of health and desirability, a category of rubbish people (to use an Australian indigenous expression) who can be seen as contemptible and expendable.”73 It is the “rubbish people”— literally described as objects of disposability— whose exclusion from the imaginaries and practices of biopolitical incorporation are necessary, whose debilitation upholds the terms of cultural rehabilitation. The curation of objects of care is linked to the purchasing of prognostic power: in other words, the capacity to attempt to outpace the variables of calculated risk attached to biopo liti cal populations through the mobilization of biomedical, economic, and social resources. The purchase of prognostic power is tethered to what Sunder Rajan calls the patient- in- waiting.74 This patient is inevitably hailed as a consumer- in- waiting, enabled, literally and conceptually, by the experimental subject. The neoliberal consumer subject of health—an object of care— assumes the right not to be injured in the usage of products, even as accidents that derive from product design can be predicted with statistical precision, mapping the bodies that are likely to be implicated in these dynamics. As Catherine Waldby and Robert Mitchell write, “The wealthy can purchase the fantasy of a regenerative body at the expense of the health of other, less valuable bodies.”75 Snyder and Mitchell offer the figure of Oscar Pistorius as an indication of “a new era of disabled athleticism— buffed, muscular, yet technologically supplemented bodies— promising all of the transcendent capacity a hyper- medicalized culture could offer.”76 These bodies Snyder and Mitchell demarcate the “able- disabled.”

#### The alternative is a refusal of the aff’s centering of health care within capitalism in favor of the ballroom. Turning the debate into the ballroom produces care entrenched in non-market values that creates a different version of health centered in local alternatives for workers and patients who cannot rely on the state for liberation. Our ethic aligns itself with transnational resistance movements against capitalism to produce a social revolution.

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First, I highlight the ways in which ballroom members construct a social epistemology as a critical aspect of the overall work of creating an alternative social sphere. This alternative social sphere is a crucial source of value for ballroom members. I emphasize key characteristics of ballroom culture/spaces that are strategies for addressing HIV/AIDS that reflect its members’ desire for recuperative forms of self and collective representations.51 I contend that ballroom practices and their potentialities unveil the difference between prevention approaches and the on-the-ground practices of cultural intravention. In his study of the milieu, a homosocial underground scene in Abidjan, Côte d’ Ivoire, Vinh-Kim Nguyen suggests that social knowledge informs the “social relations and the tactics used to navigate them for individual and collective benefit.”52 This social knowledge is usually contained within dispossessed communities and subaltern spaces and allows its members to comment on their conditions as well as to develop strategies to alter them. For example, social knowledge in the ballroom community views gender and sexuality as fluid and mutable, kinship/ family as not necessarily biological, and performance as integral to community affirmation and preservation. Hence the creation of a social knowledge is how ballroom members reconstitute themselves in the midst of the HIV/AIDS crisis in an attempt to change the social consequences of it. All of my informants agree that doing HIV/AIDS prevention work within the ballroom scene is difficult; however, some believe that it is a cultural space of hope. One such possibility is the notion of self-renewal, a way of reconstituting the self within ballroom to contend with the negative representations in the outside world. For instance, ballroom is what Diva D from the House of Bvlgari calls a “fictitious existence.” When I asked him whether “low self-worth” was a motivating factor for black queer people to join the ballroom scene, he responded, “Yes, it gives them a brand new identity; it gives them a brand new slate. If your family don’t care about you because you are gay and what not or if you can’t get a job, the Ballroom scene helps you start a-new. It creates a brand new identity that you can feel comfortable with.” The social knowledge of ballroom links the balls to the community-fashioned kinship system that both sustains the community and facilitates HIV/AIDS prevention. Therefore, ballroom social knowledge enables effective HIV/AIDS prevention that is based on the values and norms established by its community members as opposed to those imposed on it from the outside. KINSHIP AND SOCIAL SUPPORT As the house mother of the Detroit chapter of the House of Prestige and former HIV/AIDS prevention worker at the time of the interview, Duchess suggests that ballroom is built on social relations that redefine prevention work. He stated further that “[t]he structure of the [Ballroom] community already allows for familial prevention work, you know, just in the fact that someone can say to you, ‘now you know you need to wear a condom’ and it be from someone that you have built that trust factor with. People in the community do prevention work all of the time.” Within these houses, members consult with their house parents and their siblings on issues that, either by choice or by necessity, they do not discuss with their biological kin. House mothers and fathers, in particular, provide daily parental guidance for ballroom kids on issues such as intimate/romantic relationships, sex, gender and sexual identities, health, hormonal therapy, and body presentation, just to name a few. Siblings in houses provide support for HIV prevention among those not infected, but they also play an integral role by supporting those already infected with HIV as well. For instance, a very thin and increasingly frail looking Noir Prestige began one our many interviews by excusing himself to go to the bathroom, apparently to throw up. “Excuse me,” said Noir in the living room of his small, tidy apartment that he shares with his boyfriend of eight years. “I just started new meds; this shit is horrible but I shall survive.” Noir went on to describe how his very close relationship with Tino Prestige has helped him cope with his condition.53 Noir remarked that he and Tino Prestige have very similar life experiences. They were both infected with the virus in their teens. They are both in long- term relationships (eight years) with partners who are not infected, partners who struggle with the difficulties of loving someone who is HIV positive and/or living with AIDS. They are both treatment advocates at the Horizon’s Project. At the balls, they walk in butch realness categories, thug realness, and schoolboy realness.54 Most importantly, they provide treatment for each other. It is worth mentioning here that in ballroom life, one’s age is not based on necessarily one’s years on earth; rather, it is based on how long one has been in the ballroom scene and/or been out in the gay world. Hence the “big” brother reminded his “little” brother to take his meds, and he often drove him to his appointments with his doctor. They cared for one another especially in moments when each of their partners did not rise to the occasion. In a separate interview I conducted with Tino Prestige, he said, “We are truly brothers.” Clearly, these siblings help each other endure the psychic trauma that comes along with HIV/AIDS in ways that their partners could not. In many cases, house members express love for one another; serve each other when needed, and undoubtedly they add overall value to each other’s lives, especially when facing desperate situations. In general, houses provide what Cornel West describes as nonmarket values: love, care, and service.55 Not only do these values constitute a labor of care that becomes intensified when the community decides to deal with HIV/AIDS collectively, but they also exist in the quotidian aspect of ballroom life. BLACK QUEER PERFORMANCE AND HIV/AIDS PREVENTION BALLS **Despite the inability of some public health departments to devise and sustain effective HIV/AIDS prevention strategies for so-called high risk communities, some ballroom houses have joined forces with a few CBOs to create “prevention houses” and “prevention balls.**” As I argue previously, ballroom houses, in general, are spaces of social support that often reinforce messages of HIV/AIDS prevention either directly or indirectly. But prevention houses usually have formal funding from and/or programmatic ties with CBOs, and they engage in HIV/ AIDS prevention activities and coordinate balls based on HIV/AIDS prevention themes. Again, since there are no houses without balls and there are no balls without houses, part of the important discursive work of prevention houses occurs at prevention balls. On the one hand, the importance placed on image and status in ballroom makes HIV/AIDS prevention work difficult because members distance themselves from the topic of HIV/AIDS for fear that it will tarnish them. But on the other hand, competitive performance, image, and status are used to disseminate and promote messages about HIV risk reduction among ballroom members. Out of the numerous balls that I attended and/or participated in, most of them were packed with hundreds of black queer people from all over the country. As Francisco Roque from The Gay Men’s Health Crisis, Inc., said, “The Ballroom community is a captive ‘at-risk’ population and modeling behavior is built in the community.” Albeit imperfect, it is a necessary strategy to use competition and image within a ballroom cultural context to disseminate information and simultaneously reduce stigma. A hallmark of ballroom culture, competition is another means through which image and status are formed and repaired. Since individual members and houses can gain recognition and status only by “snatching trophies,”56 competition is an integral aspect of the social world of ballroom that offers possibilities for effective HIV/AIDS prevention. Former father of the House of Infiniti and the executive director of Empowerment Detroit, an HIV prevention agency targeting black gay youth, Jonathon Davis confirmed this when he said, “In terms of the Ballroom community in Detroit, if it ain’t got nothing to do with a trophy, these girls don’t care.” And when I asked Pootaman, a twenty-year-old member of the House of Ninja and an HIV/AIDS prevention worker at MOC at the time of the interview, why he became interested in walking balls, he said, “I enjoy the competition, the feeling of sitting someone down to prove a point, that I could take home a trophy.” Father Infiniti and Pootaman speak to the centrality of the trophy, the accoutrements that come along with it and how both represent the attainment of value and affirmation that ballroom members are usually otherwise denied in the outside world.

## 3

#### CP: The member nations of the World Trade Organization ought to reduce intellectual property protections for all medicines except for medicines created by indigenous folks, for which all ownership ought to be transferred to the indigenous communities that originally developed the medicine. Tang 20

Ngoc **Tang**, 3-24-**2020**, *Finance Major, CSULB 2021,* "The Importance of Native American Intellectual Property," California State University, Long Beach, <https://www.csulb.edu/college-of-business/legal-resource-center/article/the-importance-of-native-american-intellectual> //SR \*brackets in text\*

Native Americans are known for their distinctive cultures and special symbols. Protecting these cultures from being abused is difficult. In the article "Intellectual Property, Traditional Knowledge, and Traditional Cultural Expressions in Native American Tribal Codes,” author Dalindyebo Bafana Shabalala explains what is considered as Native American intellectual property and why it needs protection. According to Shabalala, Native American intellectual property includes traditional knowledge, traditional cultural expressions, and genetic resources (Shabalala par. 4). Traditional knowledge is skills, practices, and innovation concerning biodiversity, agriculture or health (par. 8). Various forms of art such as symbols, designs, painting, dance, music, literature, and performance are considered as cultural expressions (par. 10). Genetic resources include plants, seeds, and medicine formulas. There have been many cases where the Native American intellectual property has been used without first obtaining permission and authorization from the Native Americans. As mentioned in Shabalala’s article, Allergan, a pharmaceutical company, was using the Saint Regis Mohawk tribe’s formula to make their eye drop drug. However, that is not their original formula, so “on Friday, September 8, 2017, the pharmaceutical company” had to “[transfer] ownership of all federal U.S. patents for its Restasis drug to the Saint Regis Mohawk tribe; the tribe then licensed them back to the company” (par. 1). Another interesting case mentioned in the article is about the series Twilight ​​by author Stephanie Myers. The author of this book used the Quileute tribe’s origin story and incorporated it with the fictitious werewolf story without the permission of the tribe. Shabalala says that although the book or the movie “may have a valid copyright in the realm of federal property, the unauthorized use of the Quileute origin story may cause harm when outsiders begin viewing the unauthorized use of the cultural property as a true reflection of the source culture” (par. 11). These actions not only abuse the use of Native American intellectual property, but they also affect the images, the stories, and the cultures of the native people. With these cases of the property being misused, Shabalala raises a question of how the Native Americans protect their cultural properties and how the current federal law acts in protecting these properties. Each Native American tribe has its own laws and rules; these laws and rules are called tribal codes. In his study of a hundred tribal codes, Shabalala shows that there are only nine codes mentioned about intellectual property or something related to intellectual property. This study demonstrates that the native people are unaware in protecting their cultural property. The native people are unaware because they do not know or think that other people would use these properties for their own purposes. However, the current federal laws are not providing enough protection for Native American intellectual property. Shabalala mentions the Trademark Law Treaty Implementation Act (TLTIA) and the Indian Arts and Crafts Act (IACA). The purpose of the TLTIA is “to provide international uniformity of trademark registration’ (par. 77); however, “the Congressional Record regarding TLTIA is absent of any authority or mention of providing protection to Native American tribes” (par. 83). The purpose of the IACA is to prevent fraud in the Indian arts and crafts market. However, according to Shabalala’s research, “the IACA trademark system does not provide sufficiently, and arguably any, protection for Native American tribes' cultural property, nor was it ever intended to” (par. 46). Another act is the Native American Graves Protection and Repatriation Act (NAGPRA), an act with the purpose to provide “protection, return, and repatriation of Native American remains and artifacts found on federal or tribal lands” (par. 66). However, according to the article “An Analysis of the Lack of Protection for Intangible Tribal Cultural Property in the Digital Age,” author Chante Westmoreland states that the NAGPRA did “offer some protection for the tangible cultural property but omit protection for the sacred traditional knowledge the object conveys” (Westmoreland par. 10). There are many acts that try to provide protection concerning intellectual property, but they do not provide enough protection for the Native American intellectual property including traditional property, traditional cultural expressions, and genetic resources. According to the article called “Group Right to Cultural Survival: Intellectual Property Rights in Native American Cultural Symbols,” Terence Dougherty states that, “Intellectual property law in the context of cultural appropriation is particularly relevant to many Native Americans” (Dougherty par. 44). Dougherty also explains that with the significant misuse of the native symbols, cultural appropriation can greatly affect the cultural survival of the native people. Furthermore, in Westmoreland’s article, he states that “sacred traditional knowledge is not merely information, it is essential to the tribal way of life” (par. 9). This demonstrates that the intellectual property of the Native Americans is extremely important to them in their living and their culture. Therefore, to avoid the misuse that can cause a negative impact on the native people, anyone who wants to use the property must have authorization from the native people. Moreover, the federal government needs to provide a law that specifically protects Native American traditional knowledge, traditional cultural expressions, and genetic resources.

#### The CP gives indigenous nations resources for self sovereignty and centers discussions around native demands, which better allows for the accessibility of those medicines. Brascoupe and Endemann 1999

Simon **Brascoupé and** Karin **Endemann**, Fall **1999**, INTELLECTUAL PROPERTY AND ABORIGINAL PEOPLE: A WORKING PAPER <https://www.wipo.int/export/sites/www/tk/en/databases/creative_heritage/docs/ip_aboriginal_people.pdf> //SR

Traditional Knowledge and Intellectual Property The Aboriginal legacy of traditional knowledge comes in two distinct forms. On one hand, an Aboriginal community is the custodian of a store of sacred knowledge, including ceremonies, symbols, and masks that is increasingly open to unauthorized commercial exploitation by individuals, companies or institutions. Some Aboriginal people contend it is not appropriate to use IP law to protect sacred traditional knowledge. On the other hand, many products and services associated with traditional lifestyles of Aboriginal people may have commercial value that could help to support the continuation of these lifestyles and the Aboriginal goal of self-sufficiency. The limited Aboriginal use of Canada’s current IP laws suggests that these laws may not be particularly well suited to protecting either of these forms of traditional knowledge. A distinction must be made between traditional knowledge held by an Aboriginal community and the innovations or new creations of an individual or an Aboriginal company. New products and works of art by Aboriginal inventors and artists qualify for protection under existing IP laws. Music, songs, dance, stories, designs and symbols are passed on in many Aboriginal communities from memory and by word of mouth. Each community is both a conveyer and a user of traditional knowledge. This knowledge is dynamic and evolves with the culture, so it is the product of a continuing creative process. Many Aboriginal artists and artisans create works inspired by the traditional knowledge of their community, and use copyright law extensively. Issues that are not addressed widely are: how Aboriginal people relate to their community in the context of the traditional and dynamic aspects of traditional knowledge; and how traditional knowledge itself can be effectively protected. Protecting Traditional Knowledge Within an Aboriginal Community Few legal mechanisms exist to help indigenous communities protect and preserve traditional knowledge. It is urgent that such mechanisms be developed, because of the increasing pace at which control of traditional knowledge is being lost due to misappropriation and pressures from the non-indigenous world. In the meantime, the use of existing legal tools can be part of a “web” of strategies to help Aboriginal communities better protect and control their traditional knowledge, and ensure benefits are shared in a way that meets community needs. These strategies could include: ! developing local mechanisms within communities to control and protect traditional knowledge; ! more effective use of contractual arrangements to recognize traditional customs and knowledge; ! developing guidelines to ensure that third parties secure proper and informed consent before an Aboriginal community shares traditional knowledge; and ! using existing IP laws. Many Aboriginal people have said that they need to consider how they share and protect traditional knowledge within their communities before deciding whether and how they will share this knowledge with others. Once a community identifies its traditional knowledge and adopts community-based measures governing the use of this knowledge, then the community will be more secure in its ownership and more effective in any negotiations to share its knowledge. It is important that Aboriginal communities develop a strategy to protect traditional knowledge. This will help them avoid losing control over this knowledge to third parties seeking academic advancement or commercial gain. Public disclosure of traditional knowledge has the potential to jeopardize an Aboriginal community’s ability to obtain protection under Canada’s IP laws. This is because knowledge that is disclosed may no longer qualify for IP protection because it is in the public domain. Aboriginal communities considering these issues should identify the scope and nature of traditional knowledge in their community. Part of this process is to identify what knowledge is most important to the community, and how the preservation of traditional knowledge and practices is at risk. Is traditional knowledge being lost because elders have been unable to pass their wisdom to the next generation? Is knowledge being lost because Aboriginal people are being displaced from their traditional environment or because they are influenced by outside media and culture? Has traditional knowledge been allowed into the public domain or been misappropriated by commercial or scientific interests from outside the Aboriginal community? Some Aboriginal people have identified a need for dialogue about traditional ways of sharing and preserving traditional knowledge. What are the obligations of individuals to their community when they use or share traditional knowledge? These issues are just beginning to be discussed within Aboriginal communities and First Nations, at the federal level in Canada, and internationally among indigenous peoples and within international organizations. It is also important for Aboriginal communities to consider what traditional knowledge is sacred and what knowledge may be shared with others or used commercially. Only after a full dialogue will these communities be in a position to determine the best mechanisms to control access to their traditional knowledge, and what knowledge they want to share with others. A number of approaches will be needed to reflect the varied nature and use of the community’s traditional knowledge. One option may be for Aboriginal communities to develop guidelines to prevent unwanted disclosure, and to ensure that traditional knowledge remains within the community. The process of developing guidelines will help ensure that the entire community is consulted in decisions concerning the protection of traditional knowledge and control over its commercialization. These guidelines would need to be enforced by the community, since an Aboriginal community may not have any recourse to the courts if one of its members violates the guidelines. Community guidelines might include policies on the publication of traditional knowledge, its use by others or the use of the community’s symbols. Aboriginal communities may also want to ensure that sharing traditional knowledge within the community continues, and is not restricted more than it was traditionally.

#### Net benefit weighs under their framework too--

#### CP resists the commodification of indigenous people in the squo – pharma companies steal indigenous knowledge and this is bad and alienating under capitalism

## 4

#### CP: The member nations of the World Trade Organization ought to engage in a prior and binding consultation with the World Intellectual Property Organization to reduce intellectual property protections for medicines. Zarocostas 17

John **Zarocostas**, [freelance journalist] December **2017**, "Perspectives on access to medicines and IP rights," No Publication, <https://www.wipo.int/wipo_magazine/en/2017/06/article_0002.html> //SR

Could multilateral agencies like WIPO be more creative in addressing patents and medicines? Ellen ’t Hoen: WIPO remains focused on NTDs, where there is a strong consensus that progress can be made. But WIPO could do more to help countries operationalize TRIPS flexibilities, for example by providing model legislation and more detailed practical advice on how to implement legislation relating to patent law and public health. We have seen the marvelous things that WIPO can achieve for the public good with the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. The public interest really is at the heart of that agreement. One could imagine something similar in the area of patents and health and further exploration of a variety of ways to support R&D such as open source innovation and prize fund models – see, for example, Alternatives to the Patent System that are used to support R&D Efforts (CDIP/14/INF/12). WIPO is the UN agency dealing with IP, and yet discussions about IP and some of the most complex issues from a public policy perspective often happen outside the Organization. A more substantive and evidence-based debate should be held at WIPO that moves away from ideological postures and political positions. Only then can a sound policy debate take place.

#### WIPO says yes. Pooley 21

James **Pooley, 5-25**-2021, "The Big Secret Behind the Proposed TRIPS Waiver," IPWatchdog, <https://www.ipwatchdog.com/2021/05/25/big-secret-behind-proposed-trips-waiver/id=133905/> //SR

Here’s the thing to remember about TRIPS: it only creates obligations of governments to pass laws supporting intellectual property rights of various kinds: patents, copyrights, designs, trademarks, and trade secrets. It doesn’t affect the private ownership of those rights. That’s an important distinction, especially for trade secrets (or “undisclosed information” as it’s called in TRIPS), because unlike the other “registered” rights, it doesn’t depend on a government grant. It just requires a legal system that enforces confidentiality. The provisions of TRIPS were not new for industrialized countries. But for the developing world the agreement represented a tradeoff: adopt our framework for protecting IP (including our own, like drug patents), and you’ll get the benefit of increased wealth and productivity that comes with joining the club we’re going to call the World Trade Organization. What seemed to sell this deal was the expectation that “technology transfer” from industrial north to agricultural, extractive south would happen as a result. Remember that phrase “technology transfer,” because it’s at the hidden heart of the current waiver proposal. You see, published patents are available for anyone to read and learn from, and developing countries still have the option to compel licenses from patent owners if needed to address serious domestic needs, including pandemics. But patents are only a part of most stories of technology transfer, because in order to actually build the factory and produce the goods, you need to know more than what’s in the patents. When I managed the PCT in Geneva, I heard a lot about this from developing country delegates to WIPO. They expressed great disappointment in how TRIPS seemed to be a “bait and switch” scam, in which the promised benefit never materialized. Patents are fine, but that doesn’t tell you how to adjust the dials on the machines to get the best outcomes. They thought they would be getting all that “know-how,” too. For some traditional pharmaceuticals, this lack of know-how may not be a showstopper. The patent claims may describe a particular small molecule that provides a certain therapeutic effect. If you already know how to make pills, then manufacturing it can sometimes be relatively straightforward. Sometimes, but not always. Moreover, biopharma generally, and mRNA vaccine technology in particular, are quite different from traditional drugs. Developing a process to reliably produce these medications at scale is astonishingly difficult and depends on years of experimentation involving cell growth times, temperatures, and other variables. That body of knowledge represents the trade secrets of the developers. It is enormously valuable, and not just for making COVID-19 vaccines. Creating other therapeutics based on the mRNA platform would be much easier and quicker with the benefit of knowing what tends to work and what doesn’t.

#### Net benefit weighs under their framework too--

#### Care - WIPO has empirically had strong values on human rights and people rather than money and profits - that ensures that the plan is done for the people and doesn’t commodify them

#### Feasibility - easier to implement with WIPO advice in a more feasible manner with more voices heard - key to respect everyone’s voice equally and solves the aff better

#### It competes - a] timeframe - we do the aff AFTER the consultation b] certainty - always a chance they say no or make reforms to the aff c] normal means - our evidence indicates WIPO is not being given the credibility it deserves - they haven’t read evidence that they DO consult