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In the past ten years the issue of intellectual property rights has come to the forefront of discussions about ethics because of the Internet and all its capabilities. For this paper I will not discuss the implications of intellectual property rights, or “biopiracy,” in relevance to the Internet, but specifically to genetic patenting. The practice of biopiracy has been occurring for likely thousands of years, but with the technological advances in the last 150 years, exploitation of smaller, weaker or poorer societies has exploded. Biopiracy is defined as “appropriation of the knowledge and genetic resources of framing and indigenous communities by individual or institutions seeking exclusive monopoly control over resources/knowledge” ([www.rafi.org/main.asp](http://www.rafi.org/main.asp)) by the Action Group on Erosion, Technology and Conservation. When intellectual property rights become a moral issue, there are actually several smaller questions that arise to help answer the following larger question: “Is using intellectual property rights to obtain genetic patents ethical?”

Taking this question, as is, at face value, I have found no substantial arguments against the use of intellectual property rights to get genetic patents, other than those arguments which are against genetic patents themselves. Using intellectual property rights is how many inventions come about, the objections come when the questions are asked, who is patenting intellectual property rights, and to who do these rights belong and is genetic patenting ethical? I now will explore these questions as I find that they, combined sever to answer my original question.

Who is patenting intellectual property rights? This is a question of relativeness, is it the people who are considered to “own” the information who are trying to patent it, or outsiders, pirating information? Unfortunately, it is typically outsiders from large private corporations that have somehow caught wind of a special cure from plant “x,” and want to turn a huge profit on it. This is reminiscent of Wes Jackson’s argument of objectification. Just taking a plant for its benefit is akin to being sexist or racist, those who are patenting the plant really do not understand it (Curtin, 367). Back to who is trying to patent, Abdul Popal, Café Press Inc.’s “Intellectual Property Rights Agent,” uses the following analogy to describe the moral injustice that is caused by biopiracy; “A person does not walk into your house, and into your kitchen and take the bread you made from your mouth, it is not done” (CafePress.com). Yet, there are organizations like The Intellectual Property Committee, who helped form the “Trade-Related Aspects of Intellectual Property Rights agreement for the World Trade Organization, that was to help remove “free trade” barriers between members of the WTO (Anderson, 83-84). This organization holds that the patenting of property rights is necessary for the greater good of all humanity (Perelman, 21). In a utilitarian effort, this Committee claims that there will be more benefit from allowing a company to produce remedies for things such as the flu or malaria. While that may be the case, it is too bad that all that collective “good” that is being done is typically *not* in the area from which the cure was extracted.

Typically it is small or indigenous cultures that are interrupted, and occasionally destroyed, by efforts to find remedies (Evans-Pritchard, 26). The movie *Medicine Man*, based on a true story, illustrates this point. Though there may be more cumulative physical help than harm, a culture can have been destroyed and lost forever. On the other

hand, if it is the local groups themselves harvesting their own intellectual property patenting is less frequently opposed on moral grounds. Yes, it is likely that the group is attempting to make a profit, but as Abdul Popal says, “when a man sells an heirloom that has been in his family for generations, and now his property, no one makes serious attacks of his morality” (cafepress.com), it stands to reason that intellectual property should fall under this same concept. Though, there are specific cases where individuals have tried to patent an ancient family remedy, the *tumeric* plant from India, and been denied as the whole society that had been using this cure did not stand to benefit (www.copyright.gov). This seems to be more ethical than allowing one person who comes along, generations down the line, to benefit. All of those people, who can be said to “own” the intellectual property should, in a completely ethical situation, benefit if it were patented.

This raises the next question; to who do these intellectual rights belong? In the United States this question is more easily answered than in other places, as here, we can rely on legal precedent. The US Patent Agency, since 1930, has been granting patents on plants (www.usinfo.state.gov), and over the years objections have been made and explored by the department. Several benchmark cases have arisen in the US to limit people or organizations, which are not the genuine intellectual property owners from obtaining a patent. The cases really began with a Supreme Court case, *Diamond vs. Chakarbarty*, officially ruled that a life form could be patented (Anderson, 69), and thus giving base to genetic engineering claims. The *tumeric* case raised the initial question of to who do these rights belong. Following this cases was were the *neem* case, asking for demonstration of an “inventive step” not a discovery, and the *ayahuasca* case, asking for

documentation of “new and distinct” genetic makeup and/or uses (Grim, 28). There are certain to be more limiting factors to come. The problem with this system is that it is of an exclusive nature, saying only who cannot patent, not who can. Groups who do not want these potentially lucrative genetic codes or forms to be left unpatented often argue the case “who can own knowledge” (Perelman, 17), but this is a self defeating argument, as this is what they hope to accomplish.

An issue unto itself is the question: is genetic engineering ethical? For Don Ihde, the potential harm of genetic engineering is that it will help construct an obscurity of nature. This obscurity may guide human civilization into a direction where technology has totally transformed nature and “nature itself [will be] taken into culture” (Ihde, 11-20). Ihde presents a technological society in which, we are involved are headed towards, “advancements,” like genetic engineering, add to the degradation of the physical world (Ihde, 19-21) much of the food we eat is technologically mediated (class notes, 11/4), by pesticides, genetic engineering, etc. By rejecting these forms of genetically engineered foods and medical remedies we can help retard (perhaps reverse) the progression towards the complete transformation of nature and assimilation of nature into culture (Ihde 21-23). If we detach from the natural world, we do that is by condoning the genetic engineering and patenting, it will “seem a bazaar request to take care or respect it” (class notes Phi 232, 11/5). If we do not take care of nature, sometime down the road it will stop taking care of us.

While this view, that genetic engineering promotes the degradation of the environment, can find support from Holmes Rolston III, who would like to restore the natural environment, or Paul Taylor who attacks the whole notion of human moral

superiority based on biocentrism, there is also opposition (VanDeVeer, 476 and 201). Julian Simon's argument that basically, our resources are not finite, because all we really need is the service of the resource, can be applied to the previous question: is genetic engineering ethical? (VanDeVeer, 408-413). Simon would likely agree that it is, as we do not have to worry about the concerns of Rolston and Taylor because either by necessity facilitating invention or substitution we will basically always have the services we need. This is a weak argument for several reasons. First, it is a very optimistic outlook on humans and our abilities, and perhaps optimism is not the best way to approach a situation like this, what about erring on the side of caution? Other objections include, "what if we are late with developing the invention we need, what will the cost be?" or, "what if we do not see a shortage coming soon enough to find a substitute or even attempt to invent something?" Simon does not answer the possibility of these questions and thus fails to be a strong argument for genetic engineering.

Now that the three most revealing questions associated with my main question have been discussed, I will again take up the question: "Is using intellectual property rights to obtain genetic patents ethical?" When applied to those people who are responsible for the invention, creation or first use of an intellectual property this question is best considered, as I have shown, ethically they should be the main if not only profiteers (if any are going to profit) from their intellectual property. Taking into consideration Ihde's concerns that genetic engineering lends to environmental degradation, I still find that genetic patenting itself, for remedies or cures that already exist, may cause significantly less damage. Allowing for patenting of current intellectual property may facilitate an increase in finding more remedies and cures, but the current

intellectual property should be used to help benefit the marginal societies that have typically been targeted by the technological societies. These small societies that hold much of the intellectual property rights that companies are concerned about have been shuffled and shifted to the margins of livable lands (Evans-Pritchard, 9), and should be allowed to take some benefit from that, in order to help restore their way of life as they see fit.

There have been organizations that support patenting of intellectual property, with a focus on the special considerations of marginal societies. The “2000-2001 Commission on Intellectual Property Rights” established by the British government, and in 1981 UNESCO and World Intellectual Property Organization adopted model laws to protect the “property art” (general knowledge) of smaller societies and countries (Grim, 26). Many corporations that specialize in acquisition and publication of knowledge, like Café Press Inc., have adopted official liaison positions to help deal with complaints and research the information that has been submitted to them. Many of these new positions seem to stem from a genuine concern for people’s intellectual property rights, but it goes without doubt that there are also many organizations that use these positions as a front, or a buy off person to help avoid any real or legal confrontation.

The intellectual property that societies, or people, own regardless of size is “an important part of their cultural identity” (Perelman, 36), and “traditional knowledge plays a vital role in the daily lives of the vast majority of people” (Perelman, 10). For example, in developing countries, up to 80% of the populations depend on traditional medicines (Perelman, 10); if these were patented by small percentages of the local population or a foreign interest, access to the medicines could, in theory, become completely inaccessible

to those who most depend on it. There must be conservation and equity considerations taken into account.

Before I make conclusions I would like to offer a brief look at a typical case of intellectual property rights being violated. The San, or “!Kung,” people of eastern Africa have used the “Hoodia” plant for hundreds of years in their long travels from one water hole or well to the next during the change of seasons, wet to dry (Marshall, 136). This plant is known to the indigenous people to help ward off hunger and thirst on their long trips. An anthropologist in 1940 wrote alluded to this in his ethnography of the tribe and some 35 years later someone within the English company Physpharm happened across this information (Marshall, 138). One thing led to another and the American company Pfiser bought out Physpharm (who still receives royalties.) Since the United States’ genetic patenting laws do not account for property art outside the US, unless it is in written documentation, the patent cannot be over turned. Unfortunately for the San, it is the nature of traditional knowledge (property art) to be transmitted orally and not written down (Marshall, 140). This case is typical of current trends in all but the ultimate result; Pfiser has given a percentage of the six billion dollars earned to date to the San (Marshall, 145), this is not a normal course of events, but it kept this case out of the courts.

Although I find no unethical implications on the face of the question, “Is using intellectual property rights to obtain genetic patents ethical?” I feel the need to look past this question to the several others which I have discussed as well; who is patenting intellectual property rights, and to who do these rights belong and is genetic patenting ethical? With the current state of how intellectual property rights are managed and used to make genetic patents I agree with Sir Hugh Laddie, a UK High Courts Patent Judge,

that “ For too long intellectual property rights have been regarded as food for rich countries and poison for poor countries” (Perelman, 3). Until current legal and business practices a remedy is found for Sir Laddie’s concerns, and commonly accepted and actively applied, I find that using intellectual property rights to obtain genetic patents is unethical. Perhaps much more “world traveling” would help, as presented by Maria Lugones (Curtin, 85-99).

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