

GOVERNANCE ISSUES IN INTELLECTUAL PROPERTY: the Jean Chretien Pledge to Africa Act

The History of Ann (Alleged) Success

Every year, millions of people die as a result of not having access to much needed medicines. This problem is particularly serious in developing countries where diseases such as AIDS, tuberculosis, cancer and diabetes give rise to tremendous economic and social costs. While forms of treatment exist for these diseases, most people in the world cannot access them.

In the late 1990's, Médecins Sans Frontières, Oxfam and other non-governmental organizations (NGOs) commenced a public awareness campaign in which they identified patents as a principal barrier to access to medicines. The campaign was in support of developing countries who called for a relaxation in the intellectual property rules enacted as part of the World Trade Organization (WTO) agreements. Pharmaceutical companies and many developed countries opposed this campaign. In their view, access to medicine problems were largely created by corruption and inefficient infrastructure, not patents. This disagreement resulted in a long and polarized debate.

A landmark in the history of the WTO came in Doha in November 2001, when members of the world body unanimously recognized patents as being an important obstacle for developing countries wanting to access essential medicines. Less than two years later, the WTO adopted what was called an "historic agreement" intended to permit developed countries to export generic versions of patented medications to developing countries.

Shortly after, Canada became the first country to announce that it would amend its patent law to authorize the export of generic versions of patented medicines to developing countries. In a remarkable legislative feat, officials from five ministries speedily pulled together a complex bill addressing this issue. In May 2004, the Parliament of Canada unanimously adopted bill C-9, known as The Jean Chrétien Pledge to Africa Act.

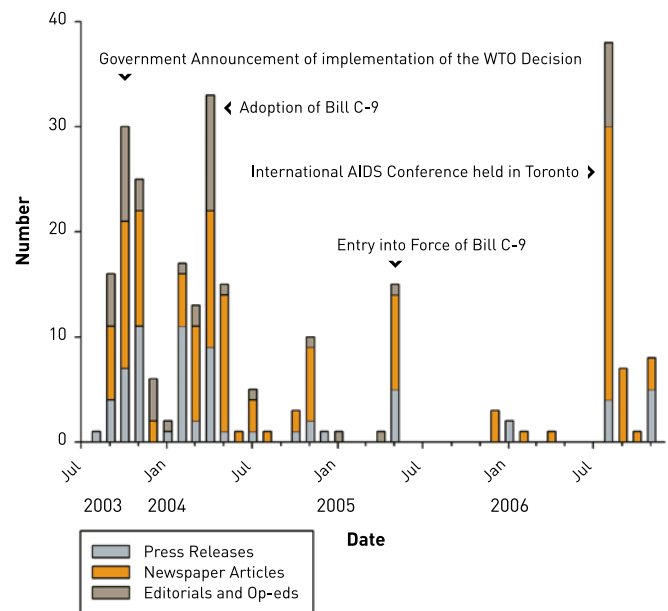
The bill was unanimously supported by NGOs, pharmaceutical companies and producers of generic medicines. Diverse international voices praised the Canadian government. Accolades came in from Irish rock star Bono, UNICEF, the United States Trade Representative, Pfizer, and others.

A Special Case

The International Expert Group on Biotechnology, Innovation and Intellectual Property studied the process of passing Bill C-9 in order to gain a better understanding of the process of developing patent policies. The International Expert Group's principal interest was the process by which the different

stakeholders reconciled conflicting health and innovation priorities to arrive at a common position. Contrary to what was expected at the time, this consensus quickly emerged. A better understanding of the reasons for this (alleged) success is crucial to improving the decision-making process, not only in respect of access to medicines, but also in respect of larger issues related to patents.

Chronology of the Canadian Public Debate



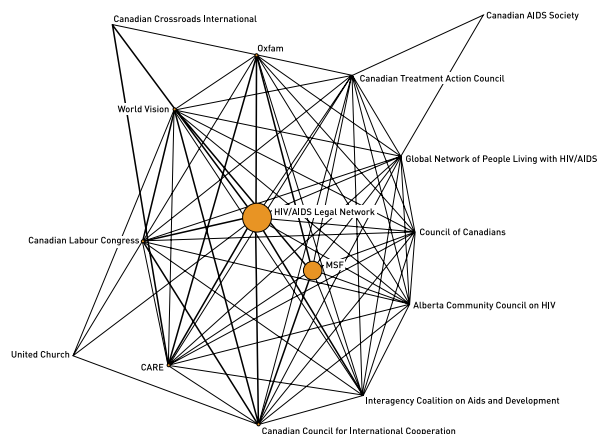
The International Expert Group employed three different analytical tools to better understand the process that brought about the adoption of bill C-9. First, they interviewed 54 key actors, including politicians, bureaucrats, lobbyists, and activists as well as business people. Second, they performed a computer-based analysis on the vocabulary used in press communications and newspaper articles published in Canada on Bill C-9. Third, they closely examined a series of unpublished documents, some of which were obtained through an access to information request to the government of Canada.

As a result of this three-part analysis, the International Expert Group arrived at a number of conclusions that provided new insight on the process.

Conclusions

1. The actors implicated in this debate were all integrated within one or more networks that shared a common group identity (i.e. NGOs, officials, etc.). Every network was implicitly led by two or three leaders that interacted with the leaders from the other networks. The debate therefore revolved around a small number of people.

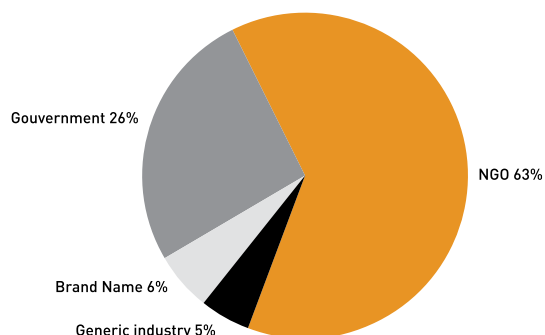
Graphical Representation of NGO Networks Linked by Joint Press Releases



2. There was a high degree of mistrust between actors from different networks. In particular, those in each network attributed hidden intentions to their counterparts and all actors considered direct dialogue to be futile. Any communication that took place was indirect and was effected through the media.

3. The network that exercised the most influence with the media and public decision-makers was that composed of NGOs. This group succeeded in both defining problems and advancing solutions. Its success was the result of presenting its case in a technical (rather than emotional) fashion, and of working within institutions rather than outside of them. The NGO network also drew on the fact that its structure was horizontal and not vertical, which allowed its positions to be appealing to a broad audience.

Reproductions in Newspapers of Commentaries and Press Releases



4. Leaders of the four principal networks were uniformly skeptical of the bill's potential to actually deliver essential medicines. In fact, few believed it would have more than political or symbolic value. It was anticipated at the outset that the bill's medical provisions would be employed minimally or not at all.

5. The evolution of objectives within the NGO and the pharmaceutical company networks led to the formulation of a consensus driven by political imperatives rather than substantive ones. NGOs decided to advance a short-term goal of obtaining legislative reform rather than a long-term goal of ensuring access to medicines. Pharmaceutical companies favoured their long-term goal of preserving their reputation rather than their short term objective of protecting their patents. While NGOs may have achieved a tactical success, pharmaceutical firms emerged in a better public relations position than they had been in for years.

Identification of Discursive Specificities in Publications of the Four Key Actors

STAKEHOLDER	TERMS	Z VALUE
Brand Name	Innovation (investment, science, invention, new, Ph.D., research, ...)	14.3
	Diversion (corruption, diversion, transparency, ...)	3.0
	Health infrastructure (facilities, clinic, doctor, hospital, nurse, ...)	4.6
	Aid (help, humanitarian, and assistance, ...)	5.8
Government	Epidemics (Malaria, Tuberculosis, ...)	13.0
	People (Child, Kids, Women, ...)	3.4
Generic	Legal dispute (court, litigation, sued, contentious, tribunal, violations,...)	8.0
	Price (cost, affordable, dollars, money, prices, expensive, cheap, ...)	4.4
	Canada (Canada, Canadian, Canadians, ...)	9.0
NGO	Law (amendment, legislation, act, provision, rules, treaty, regulation, ...)	9.3
	Honor (legacy, commitment, betrayal, honoring, pledge, promise, ...)	3.0
	International reputation (leadership, first, precedent, model, proud, ...)	5.6
Newspapers	Government (government, Health Canada, Martin, Cabinet, CIDA, ...)	8.5
	AID (HIV, AIDS, antiretroviral, ...)	8.3
	African countries (Africa, Sub-Saharan, Ghana, ...)	7.0
	Politics (political, politics, politicization, politicians, ...)	2.8

Recommendations

1. The mistrust between the different actors in the debate prevented a rational discourse and favored opportunistic behavior. Public decision-makers should encourage the establishment of relationships of trust through an organization that sits impartially outside of the existing networks.

2. The majority of the actors with a deep knowledge of the problem knew that the mechanism would not deliver the hoped for increase in access to medicines. Despite this, none expressed this opinion in public, instead concentrating on political and symbolic objectives. To ensure transparency and a workable solution, decision-makers should manage debates so that they are based on real evidence and empirical research.

3. The high degree of collaboration between the five Canadian departments significantly enriched the debate. Governments should institute a form of interdepartmental cooperation on intellectual property issues.

This project, a component of the work of the International Expert Group on Biotechnology, Innovation and Intellectual Property, was financed by the Canadian Institutes of Health Research. The research team was composed of Richard Gold (principal investigator), Jean-Frederic Morin, Tania Bubela and Cecile Bensimon.