

BIOPIRACY THREATENS GLOBAL BIRD FLU SAFETY NET

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- [Biopiracy](#) [1]

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THIRD WORLD NETWORK & THE SUNSHINE PROJECT

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The global safety net to create vaccines against pandemic influenza is facing an uncertain future because of patent claims by companies seeking to profit from a pandemic disaster. For 50 years, the World Health Organization's Global Influenza Surveillance Network (WHO GISN) has collected flu viruses and produced vaccine seed strains; but confidence in the system has been undermined because the viruses it collects are being turned into proprietary and expensive products that developing countries cannot access or afford.

Governments are meeting this week in Singapore to try and hammer out a deal to fix the WHO GISN. A key part of that deal must be stopping biopiracy by companies such as MedImmune, which has filed international patent applications on genes from at least 29 different bird flu (H5N1) and other influenza viruses. MedImmune (recently bought by AstraZeneca) is trying to control the flu strains - putting profits before public health and safety.

The patent claims have shattered confidence in the WHO GISN system. Developing countries are asked to provide viruses to the WHO network; but see proprietary claims and products that are way too expensive for them to use in return. Particularly galling is the fact that a WHO Collaborating Center for influenza research, St. Jude's Children's Hospital in Memphis, Tennessee, has itself filed for patent on a Vietnamese bird flu virus gene. Thus, not only are companies and institutions that obtain viruses from the WHO Collaborating Centers filing for patents; but the wave of proprietary claims extends even to laboratories that are part of the WHO GISN.

Developing countries raised these issues at the last World Health Assembly meeting in Geneva in May of this year. Some have slowed their sharing of new bird flu viruses with the WHO GISN, encouraging talks to rectify the system's problems.

In fact, developing country sovereignty over the viruses can be used to stop the wave of proprietary claims exerted on flu viruses, sequences, and vaccines and to restructure the WHO GISN so that it is patent-free and so developing countries have more equitable access to vaccine technologies and treatments for bird flu.

In fact, bird flu vaccines are already being made using patented technology including "reverse genetics", a technique that is used to create vaccine seed viruses. The WHO GISN and developed countries are defending the exclusive rights of the patent owners of reverse genetics (meaning that users of WHO-produced vaccine seed viruses may need to pay

royalties). But those same countries, especially the US and Japan, refuse to recognize that developing countries have a say over how the viruses they provide are used (for example, through a Material Transfer Agreement), and they refuse to prevent the viruses and their sequences from being patented.

The US is one country whose position will be closely watched. It is expected to strongly defend corporate patents. The US government has conflicting interests in the WHO GISN. On the one hand, the US WHO Collaborating Center at the Centers for Disease Control in Atlanta serves, along with laboratories in other countries, important public health functions. On the other hand, the US Department of Health is funding corporate and academic influenza research that US law (the Bayh-Dole Act) and policy effectively require to be patented.

The US government needs to find a way to continue participating in the WHO GISN but prevent its companies and other labs from rushing to file patent applications on viruses and their parts. Developed countries also need to put the means to produce pandemic vaccines into hands of developing countries if they are seriously interested in increasing global production of vaccines to combat bird flu.

According to data from the World Intellectual Property Organization (WIPO) PatentScope database, a dramatic surge in patent claims related to bird flu has occurred in the past 18 months. In 2004 there were no claims on H5N1-specific vaccines, sequences, diagnostics, and related items. However in 2006, 14 such patent applications were filed while in the first half of 2007, already 20 such applications have been filed. Half of these patent claims originate from the United States, while most of the rest are from Europe.

Pandemic preparedness is a multifaceted and serious global problem. Many countries, both developed and developing, currently cannot meet the needs of their own citizens. Among other reasons, global vaccine production capacity falls far short of what is needed, in large part because of over reliance on the private sector to solve public health problems.

Measures to improve the system and to improve global pandemic preparedness should include restructuring the WHO GISN to recognize the sovereign rights of the country contributing the virus and to prohibit patents on the viruses contributed, their parts, and vaccines created with them. The restructured GISN should also ensure fair and equitable sharing of benefits with developing countries.

A limited number of governments (24) have been invited by the WHO to the meeting in Singapore from 31 July through 4 August to discuss terms and conditions for sharing influenza viruses. This will be followed by an intergovernmental meeting scheduled for November. If those meetings are successful, then after discussions at a January 2008 meeting of the WHO Executive Board, the restructuring of the WHO GISN can be approved by the 61st World Health Assembly in May 2008.

A report providing more information about patent claims on H5N1 viruses, Some Intellectual Property Issues Related to H5N1 Influenza Viruses, Research and Vaccines is available at:

http://www.sunshine-project.org/flu/patent_report.pdf [2]

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