

# Innovation towards the Access to Essential Therapeutic Products

Guidance Notes  
April 2020 | No. 2

## Insights from commons for conceiving intellectual property

- ▶ Almost a billion people (one person out of nine) suffer from malnutrition and almost two billion people do not have access to essential medical products.
- ▶ In light of this urgency, some initiatives divert the classical uses of intellectual property. Without frontally countering them, they modulate these uses in order to enhance access to medical and therapeutic food products.
- ▶ It is crucial to support these multiple, often civil society-led, initiatives. They pave the way towards highly needed innovations in the sectors of health and nutrition. However, they are generally sustainable only with the help of States.

### **An Increasing Use of Intellectual Property**

The mobilization of intellectual property is on the rise: the exclusive rights it defines are usually considered efficient innovation levers. However, along with the rights associated to free-exchange treaties, intellectual property contributes to sustaining capitalistic and unified markets of patented products. These markets and their mechanisms obstruct access to essential goods in certain low-income countries. This application of intellectual property tends to treat medical and therapeutic nutritional products as any standard items on the market.

### **Making Intellectual Property Inclusive: Possible Ways Forward**

Certain experiences counter this reality. Without necessarily claiming it, they operate in ways that recall a “commons” approach. Such commons, in the lineage of the seminal social science work by 2009 Nobel laureate Elinor Ostrom, refer to the ways by which communities of users or interest organize themselves around material or immaterial resources, setting up rules to assure a shared use of these resources while preserving the (eco)system to which they pertain.

# Policy Brief

“ Intellectual property may be conceived and utilized in order to facilitate the access to essential therapeutic products. ”

These approaches pave the way towards the elaboration of differentiated legal tools outside the field of exclusive property (whether private or public), or divert the strictly mercantile purpose of intellectual property.

The success of such experiences invites this *Policy Brief* to consider two ways by which intellectual property may be mobilized to serve the access to essential goods.

A first option may be to apprehend property and its regimes, not as a unified block, but in a diversified manner. Works on commons have highlighted the existence of a legal spectrum wherein rights to, *inter alia*, accede, withdraw or manage a resource may be allocated to different types of beneficiaries. Intellectual property may be conceived similarly with the aim to enhance access to essential resources, as illustrated by the action of the foundation Drugs for Neglected Diseases initiative (DNDi).

A second option may consist in diverting the traditional use of brands or labels. These may be utilized, not in order to assure exploitation or commercialization monopolies, but on the contrary to grant concessions to third parties under certain conditions that contribute to opening up access to these products. Granted for free, a brand may be used to facilitate a local production that guarantees a certain level of quality: this trend is illustrated by the Misola project.

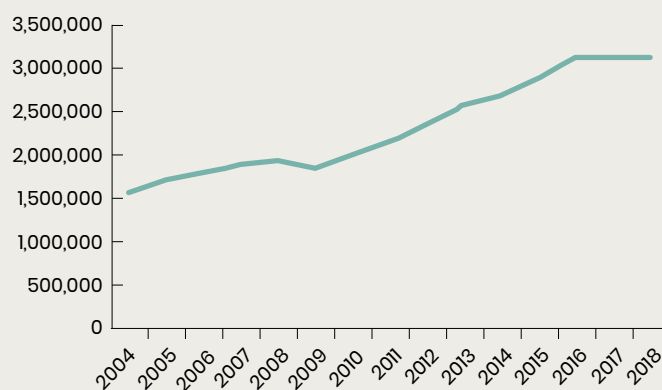
### ► A first insight: negotiating the concession of certain attributes of intellectual properties with companies

Tropical diseases described as “neglected” essentially affect poor populations and are largely disregarded by the pharmaceutical industry. Reasons for this include the economic absence of demand on the market and lack of potential returns on investment. Since 2003, DNDi<sup>[1]</sup> sets up collaborative research platforms in countries affected by these diseases in order to develop medical solutions accessible for vulnerable populations. To do so, it negotiates with pharmaceutical companies the right of access to some of their resources, including molecules that may serve as a basis for the development of new treatments.

Different scenarios may emerge according to the preliminary existence of a patent on a molecule of interest, or to the company’s interest in future product development based on this molecule. The laboratory owning the rights may, for example, grant them on all applications resulting from DNDi’s research, or conserve certain rights. Its motivations to concede part of its rights may vary, from the benefits of such a corporate social strategy to the displacement towards DNDi of the investment risks on the development of products based on some of its resources.

DNDi thus offers an original and creative conception of intellectual property. Its differentiated allocation paves the way towards a range of legal solutions based on a “bundle of rights”, aiming to produce new treatments for which a large and open access is maintained for those in need.

### ANNUAL EVOLUTION OF THE NUMBER OF APPLICATIONS FOR PATENTS WORLDWIDE



Source: World Intellectual Property Organization database.

### ► A second insight: using branding to facilitate local production

In the field of prevention against malnutrition in West Africa, the French association Misola<sup>[2]</sup> has filed a brand on a formula of enriched baby flour. This product, conceived for young children, is made and commercialized in artisanal production units (APU). Usually led by women cooperative within villages, APUs do not make profit from their activities nor engage in the distribution of dividends.

The association freely concedes its brand (Misola<sup>®</sup>) to APUs that in exchange engage themselves (by signing a chart) and must thus follow a number of specifications and accept regular controls on their practice. This guarantees the nutritional quality of the products that are then commercialized at low costs. This branding sparks the creation of an open APU network and facilitates the distribution of the products close to the communities most in need.

Misola has succeeded in mobilizing intellectual property in an innovating way, as a tool to share its knowledge and as a guarantee for the quality of the products made within the villages themselves, thus favoring local food autonomy. This policy has been facilitated by Misola’s status as an association, whose economic equilibrium however strongly rests on subsidies.

### ► Supporting actors who develop innovating approaches to Intellectual Property

In order to attain a greater efficiency, we must let go of the illusion that the realization of fundamental rights such as the right to food and the right to health may only or mainly rely on States. This objective already rests, in addition, on the creation of innovating entities, legally and economically conceived to respond to a social mission and guarantee access to essential goods. DNDi and Misola are illustrations of such dynamics. Public actors may play a key role in facilitating the emergence and sustainability of such initiatives through financial and regulatory support.

[1] Abecassis, P., Alesandrini J.-F., Coriat B., Coutinet N. and S. Leyronas (2019), “DNDi, a Distinctive Illustration of Commons in the Area of Public Health”, AFD Research Papers Series, No. 2019-93, February [online].

[2] Coriat B., Legroux N., Le Guen N., Leyronas S. and M. Toro (2019), “Making Food a “Common Good”: Lessons From Three Experiences to Fight Malnutrition”, AFD Research Papers Series, No. 2020-114, February [online].

Area: multi-country  
 Keywords: commons, intellectual property, malnutrition, neglected tropical diseases  
 Topics: health, hunger and nutrition

Agence française de développement (AFD) 5, rue Roland Barthes, 75012 Paris.  
 Publishing Director Rémy Rioux  
 Editor-in-Chief Thomas Mélonio  
 Graphic creation MeMo, Juliegilles, D. Cazeils  
 Design and production Coquelicot  
 Legal deposit 2<sup>nd</sup> quarter 2020 | ISSN in process | © AFD  
 Printed by AFD’s reprography service  
 To browse our publications: <https://www.afd.fr/en/ressources-accueil>