

Supplementary Annex - Examples of existing laws regarding access to the intellectual property of technologies needed by society

Related to Commentary: A Pandemic Treaty for equitable global access to medical countermeasures: Seven recommendations for sharing intellectual property, know-how and technology

United Nations Montreal Protocol on Substances that Deplete the Ozone Layer¹

This Protocol was adopted to assist in phasing out ozone-depleting substances, including by deploying replacement substances that may be protected by intellectual property.² An amendment to the Montreal Protocol established a 'Multilateral Fund' to provide financial and technical assistance, to transfer substitute technologies to developing countries that may otherwise be unable to comply with these phase-out rules. Under the Protocol, technology transfer requires states to take steps to ensure the 'best available' technologies are 'expeditiously transferred' to developing countries and that those transfers happen under 'fair and most favourable conditions'.³ This is an example of a mandate for technology transfer and the creation of a global fund supporting developing countries to obtain and use technologies in the global public interest.

WIPO Marrakesh Treaty for the Blind⁴

This Treaty requires its members (currently 84 governments and the European Union are contracting parties) to include exceptions and limitations in their national copyright law in order to reproduce, distribute, and make available accessible copies of copyrighted works for blind or visually-impaired people. The exceptions are consistent with existing copyright treaties and the World Trade Organization's TRIPS agreement, and remedies two problems. First, before the treaty, many countries had inadequate or no exceptions for blind persons in their national copyright laws. Second, treaty members are required to allow the export and import of accessible works, making the exceptions work cross-border, which has led to much greater efficiency in using the exceptions, and a massive increase in the availability of accessible works worldwide.

German Epidemic Protection Act⁵

In March 2020 the German government passed a law that provides for the non-enforcement of patents on medicinal products, active ingredients, medical devices, personal protective equipment, and other

¹ 1987 Montreal Protocol on Substances that Deplete the Ozone Layer.

² Garrison C. Lessons for a pandemic preparedness treaty from previous successes and failures with treaty-based technology transfer. *Medicines Law & Policy Briefing Paper*. 2021. <https://medicineslawandpolicy.org/wp-content/uploads/2021/10/Lessons-for-a-pandemic-preparedness-treaty-from-previous-successes-and-failures-with-treaty-based-technology-transfer.pdf>

³ 1987 Montreal Protocol on Substances that Deplete the Ozone Layer.

⁴ Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled. WIPO. 2013

⁵ Act for protecting the Population in the Event of an Epidemic Situation of National Importance, (*Gesetz zum Schutz der Bevölkerung bei einer epidemischen Lage von nationaler Tragweite*) <https://www.twobirds.com/en/news/articles/2020/germany/covid-19-new-german-legislation-to-fight-pandemic-may-affect-granted-patents>

technologies during a pandemic where these products are important for public welfare or security.⁶ This is an example of how measures allowing access to the intellectual property of medical countermeasures can be included in pandemic preparedness legislation, which is triggered by a public health emergency.

⁶ <https://www.twobirds.com/en/news/articles/2020/germany/covid-19-new-german-legislation-to-fight-pandemic-may-affect-granted-patents>