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lawtech

The Law and Technology Research Group



AISA

Associazione italiana per la promozione della scienza aperta

Vaccines Intellectual Property vs Commons and Open Science

«Global Technology Law and Policy»

University of Ottawa, University of Haifa, and Bocconi University
the 5th of May 2021

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University of Trento - AISA

IP is only a piece of a complex puzzle

- IP is only a piece of a complex puzzle
- An Italian perspective on a global disaster
- Italy is paying a very high price in terms of deaths and economic losses

Italy (worldometers)



Law and Technology Policy: upstream vs downstream

- Upstream policy: role of the public sector, universities and not-for-profit research centres, IPRs and trade secret as boundaries
- Downstream policy: IPRs waivers, compulsory licenses, etc.
- When you try to solve issues with downstream policy, it means it is already too late

Relevant issues

- (Economic and geopolitical) competition vs cooperation
- Private sector (profit) vs public sector (healthcare)
- Intellectual Property vs Commons & Open science

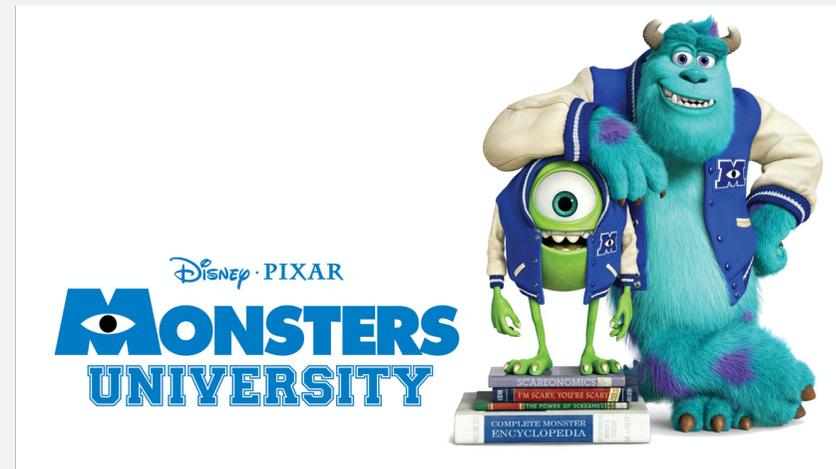
IP logic: the (private) winner takes it all

- Competition
- The winner takes it all - and takes all the decisions
- Monopolistic power is not just about price, it is about decisional power



Commodification of science, academic capitalism, «governance by numbers»

- Central Public Agency for the Evaluation of Research (ANVUR) in Italy
- Patents and scientific publications as equivalents
- Patents help advancing in the public research assessment ranking



University patents in the pandemic time?

E.g. Douglass (2021)

«But the success of the **Bayh-Dole Act**, and the discoveries it helped generate, also contributed to an increasingly complicated world of IP ownership. The act and similar legislation, as well as federal funding, contributed to the foundational science that led to the variety of COVID-19 vaccines. Its provisions also raise **questions about the role, and ownership, of federally funded research that made the vaccine possible**».

University patents in the pandemic time?

E.g. Douglass (2021)

- “In the aftermath of the COVID pandemic, the strengths and weaknesses of the IP world set out by the Bayh-Dole Act will be debated and focused on **two questions: who profited from the pandemic and at what global public expense?**”

No IP and cooperation (e.g. Salk)

- Salk Interviewed by Ed Murrow:
«Who owns this patent?»
- «The people, I would say. There is no patent. Could you patent the sun?»



IP and Vaccines in the past: a collective enterprise

- Smallpox
- Polio
- See e.g. Blume and Mezza (2021): «Though still interwoven with public research networks, **neoliberalism has redesigned the pharmaceutical-health sector. Barriers and fences limit the circulation of knowledge and reduce the public health system's capacity to react to real emergencies. The western state and its political class no longer see the provision of essential tools for public health such as vaccines as their direct responsibility**».

Open Science and Flue Vaccines before pandemic → e.g. GISRS → FluNet

ORDER WITHOUT INTELLECTUAL PROPERTY LAW: OPEN SCIENCE IN INFLUENZA

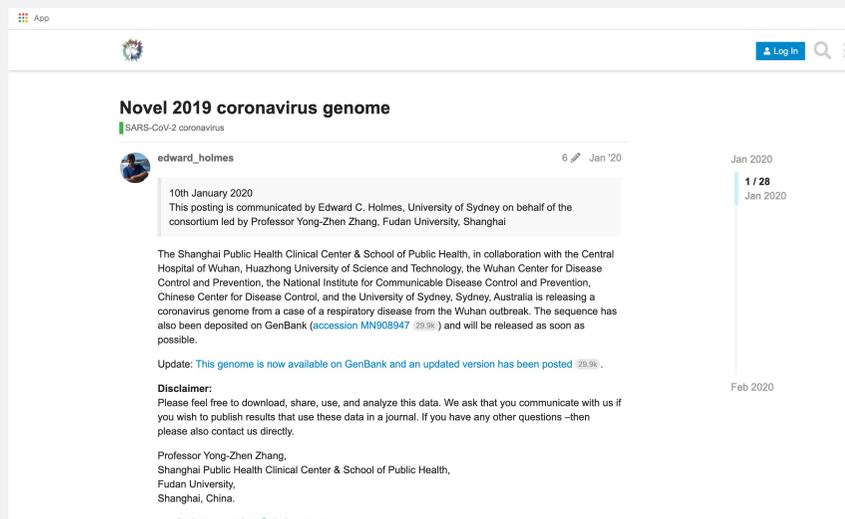
Amy Kapczynski†

Today, intellectual property (IP) scholars accept that IP as an approach to information production has serious limits. But what lies beyond IP? A new literature on “intellectual production without IP” (or “IP without IP”) has emerged to explore this question, but its examples and explanations have yet to convince skeptics. This Article reorients this new literature via a study of a hard case: a global influenza virus-sharing network that has for decades produced critically important information goods, at significant expense, and in a loose-knit group—all without recourse to IP. I analyze the Network as an example of “open science,” a mode of information production that differs strikingly from conventional IP, and yet that successfully produces important scientific goods in response to social need.

The screenshot shows the WHO FluNet website. At the top is the WHO logo and navigation menu (Health Topics, Countries, Newsroom, Emergencies, Data, About Us). The main heading is 'Influenza' and 'FluNet'. A central text block describes FluNet as a global web-based tool for influenza virological surveillance, first launched in 1997. It mentions that data is critical for tracking virus movement and is publicly available. A 'FluNet 20' anniversary badge is visible. To the right, there are sections for 'Situation updates' (Latest global influenza epidemiological and virological update as of 29 March 2021) and 'Regional' links for various WHO regions. Below, there are 'Quick reports' and 'FluNet functions' sections with icons for viewing charts and downloading data.

A new hope. 10-01-2020: deposit of the SARS-CoV-2 genome sequence in OA repositories

- «Please, feel free to download, share, use and analyse this data»



Karen Walsh, Andrea Wallace, Mathilde Pavis, Natalie Olszowy, James Griffin, Naomi Hawkins (Feb. 2021)

- «Open Movements – A Panacea?»
- «**Open movements provide limited remedies** because they are not designed to, nor can adequately address the wide range of access barriers necessary to promote the public interest. **Existing legislative mechanisms designed to remove access barriers similarly fail to effectively remedy access needs**».

Karen Walsh, Andrea Wallace, Mathilde Pavis, Natalie Olszowy, James Griffin, Naomi Hawkins (Feb. 2021)

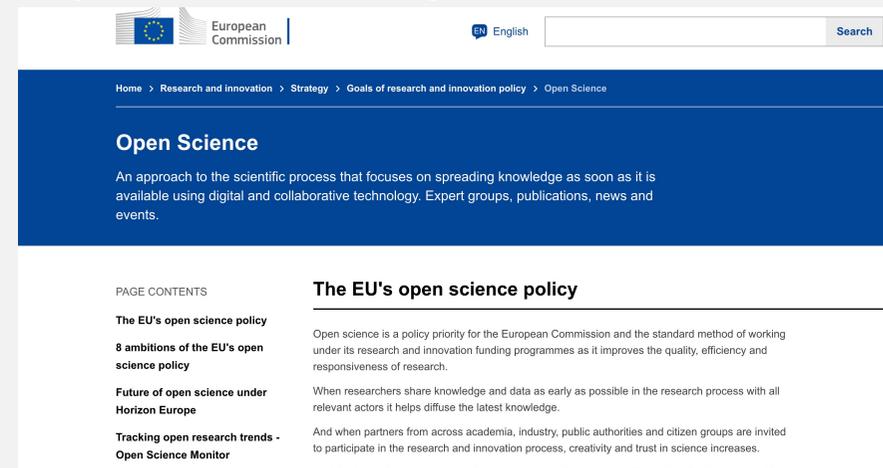
- «We propose that **a systemic re-evaluation of IPR and access mechanisms is required** to ensure public interest goals are (re)centred and shape both private and public responses to future crises».
- «**At present, IPR reform is a low priority for national governments and international organisations**, even though access to IPR subject-matter is crucial to resolving the current pandemic and future public health crises».

EU contradictions: IP vs Open Science

An Intellectual Property Plan



Open Science Policy



«IPR reform is a low priority for national governments»
→ e.g. Italy (Public consultation is open)

- Ministry for the Economic Development
- Industrial Property
- «New» policy on Industrial Property policy
- On the wake of EU Intellectual Property policy
- Logic: more IP = more innovation
- E.g. more university patents



The screenshot shows the official website of the Italian Ministry of Economic Development. The header is blue with the ministry's logo and name. Below the header, there are navigation links for 'PER IL CITTADINO' and 'PER LE AZIENDE'. The main content area features a white background with a blue border. The headline reads 'Proprietà industriale, aperta la consultazione' in bold black text. Below the headline, the date 'Giovedì, 29 Aprile 2021' is displayed. A sub-headline states 'Fino al 31 maggio è possibile inviare osservazioni e commenti sulle linee guida'. At the bottom of the page, there is a decorative graphic with a blue background and white lines representing a network or molecular structure.

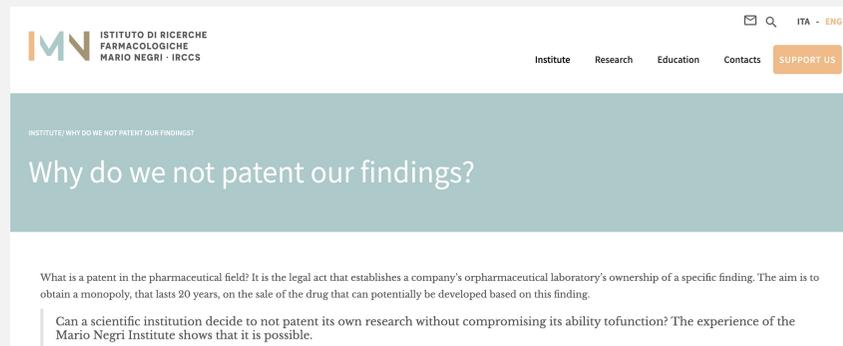
Italian Association for the Promotion of Open Science (AISA) - Mission

- To disseminate a culture of Open Science;
- To publish studies on the implementation of Open Science principles;
- To provide staff training programs to promote Open Science practices in research performing organizations (universities and research centres) which embrace the OA principles;
- To engage international cooperation through networking with legal entities involved in the promotion of Open Science;
- To promote participation in international research projects and grant applications linked to the association's mission;
- **To raise awareness among decision makers, and in particular Italian and European legislators, to further the promotion of Open Science in research assessment and intellectual property policies.**

AISA open letter to Italian Government

- a) Open Vaccine: Universities and public research centres do not patent technology and apply Open Access, destroying patent novelty
- b) It is necessary to change Italian legislation adding a provision on compulsory licence for public health
- c) Enhance contractual transparency → “No profit on pandemic” initiative and other initiatives

Silvio Garattini and Istituto Mario Negri: Why do we not patent our findings?



- Why, then, do we continue to opt out of the patenting system?
- **«Because we want to be free.** Free to choose which direction to go in and which research topics to select. If our aim were to acquire patents and use them, that would inevitably move our focus towards the most financially rewarding research».

Essential references

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<https://www.eurozine.com/how-the-sun-was-privatized/>
- R. Caso, [The Darkest Hour: Private Information Control and the End of Democratic Science](#), Trento LawTech Research Papers, nr. 35, Trento, Università degli studi di Trento, 2018
- J.A. Douglas, Federally Funded Research, the Bayh-Dole Act, and the COVID Vaccine, Feb. 2021,
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- A. Kapczynski, [Order Without Intellectual Property Law: Open Science in Influenza](https://ssrn.com/abstract=3066162), *Cornell Law Review*, Vol. 102, No. 6, 2017, SSRN: <https://ssrn.com/abstract=3066162>
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- K. Walsh, A. Wallace, M. Pavis, N. Olszowy, J. Griffin, N. Hawkins, Intellectual Property Rights and Access in Crisis, IIC (2021) 52:379–416 <https://doi.org/10.1007/s40319-021-01041-1>

References in Italian language

- R. Caso, [La scienza non sarà più la stessa. Più condivisione, cooperazione e solidarietà dopo il Covid-19?](#), Trento LawTech Research Papers, [nr. 39](#), Trento, Università degli studi di Trento, 2020, BioLaw Journal, v. 2020, no. 1s (2020), p. [617-622](#)

Italian Association for the Promotion of Open Science

- Associazione Italiana per la promozione della Scienza Aperta (AISA):

<https://aisa.sp.unipi.it/chi-siamo/>

- AISA Open Letter to Italian Government:

<https://aisa.sp.unipi.it/lettera-aperta-su-vaccini-liberi-e-licenze-obbligatorie-le-prime-firme/>

- AISA statement:

<https://aisa.sp.unipi.it/why-dying-for-a-patent-compulsory-licenses-contract-transparency-public-health/>

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