



***INTELLECTUAL PROPERTY RIGHTS
ACCESS, AND
CORPORATE
MORAL RESPONSIBILITIES***

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Three Questions:

1. **Do [Western based] intellectual property rights protections prevent access and distribution of life-saving drugs to/in LDCs?**
2. **What are the MORAL responsibilities of companies in this regard?**
3. **Practically speaking, can companies protect IP and address access issues?**



..A Western view of IP

- › **Patents and copyrights are the legal implementation of the base of all property rights: man's right to the product of his mind....**
- › **Patents are the heart and core of property rights, and once they are destroyed, the destruction of all other rights will follow automatically, as a brief postscript.**

(Rand, 1966, 125, 128)



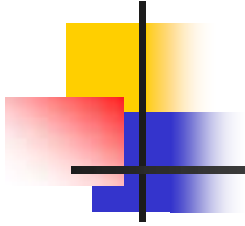
21st Century Challenges

- › **Challenges of indigenous populations to ownership of traditional products v. patenting**
- › **Copying patented products, e.g., drugs**
- › **Copying products by reengineering the processes**



Western challenges

- › **Linex**
- › **The “Napster” problem**
- › **Gene patenting questions**
- › **NYT headlines:**
 - › **“In the Age of the Internet, Whatever Will Be Will be Free”**



- › **Mind Sets:---these are challenges to the traditionally Western way of thinking about intellectual property as a form of exclusively owned property.**
- › **Two other sets of arguments that qualify our notion of IPR**

1. Prioritization of Basic Rights: Life, Liberty and Property Rights



- › **Are property rights inexorably linked to liberty? [the Ayn Rand view]**
- › **Liberty v. life v. community—which overrides?**
- › **What *about* the right to life (or the right not to die needlessly?)**
- › **When does that right override property rights?**
 - › **E.g., Cipro crisis**



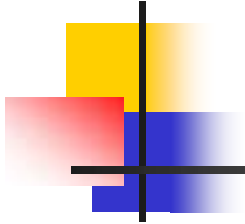
2. The Distinctive Character of Intellectual Property: NOT like ordinary private property

- › **Whose idea is it?**
 - › **I created it? I discovered it?**
 - › **I developed it? Source of “aha?”**
 - › **I paid for the development?**
 - › **I marketed it? I control it?**
- › **The scientific tradition of sharing**
- › **Cultural traditions of the commons**
- › **The network/relationships development of IP: innovation not creation *ex nihilo***
 - › **Do inventors owe something back?**



Why Protect Intellectual Property?

- **Reward for the innovation.**
- **Costs & incentives of research & development**
- › **Napsterizing drugs problem**
 - › **Product protection & control**
- › **Investment disincentives in countries without patent protection**
 - › **Black markets [AZT]**
 - › **Misuse of products**



- **“Without strong and effective global intellectual property rules, the gap between developed and developing countries will only grow in the future.”**

■■■■■■■■■■ Dr. Harvey Bale, *Pfizer Forum*, 2002



Have I confused IPR with the issue of access?

- › **IP is not protected in most less developed countries with no money for drugs.**
- › **Most LDCs have no money even for generics or manufacturing**
- › **Institutional barriers to distribution**

What *Are* the Social Responsibilities of Pharmas?



- › **Mission: [unlike Honda] to cure disease (or reduce pain)—the moral dilemma!**
- › **Unique character of HIV/Aids & TB**
 - › **TB and Aids are fatal**
 - › **BUT we have life-prolonging/life-enhancing drugs**
- › **Primary stakeholders: customers, employees, shareholders, community...**
 - › **Just paying customers?**



So—what should a company do?

HIV:

- › **Cannot just give away HIV drugs**
 - › **Few proper distribution channels**
 - › **Few clinics or monitoring mechanisms**
 - › **Black Markets**
 - › **Product misuse**



Some Other Alternatives

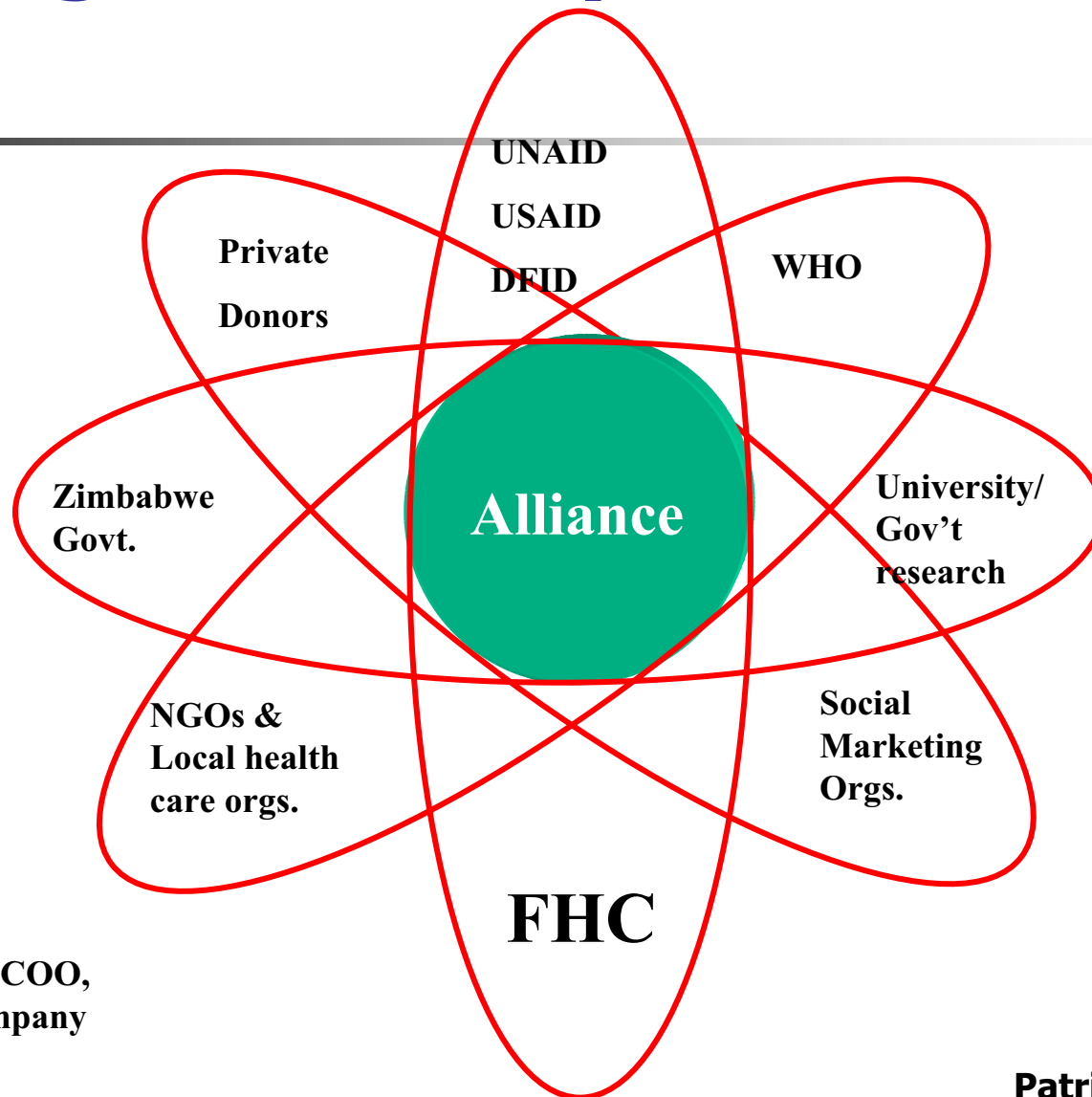
- › **Do nothing. [It is not our problem.....]**
- › **Focus on prevention [condoms, abstinence, education" --a mosquito netting problem]**
- › **Focus on pregnant women & new-borns**
- › **Licensing**
- › **Licensing generics**
- › **Joint ventures**



An Alliance Model

- › **Accelerating Access Alliance**
 - › **2000: WHO, UNAIDS, 5 Pharmas, World Bank, UNICEF, & others**
 - › **Give away HIV/AIDS drugs to gov'ts.**
 - › **Gov'ts. guarantee protection of IP**
 - › **Functioning health care system in place**
- › **Merck/Gates PPP in Botswana**
- › **Female Health Company Alliance model**

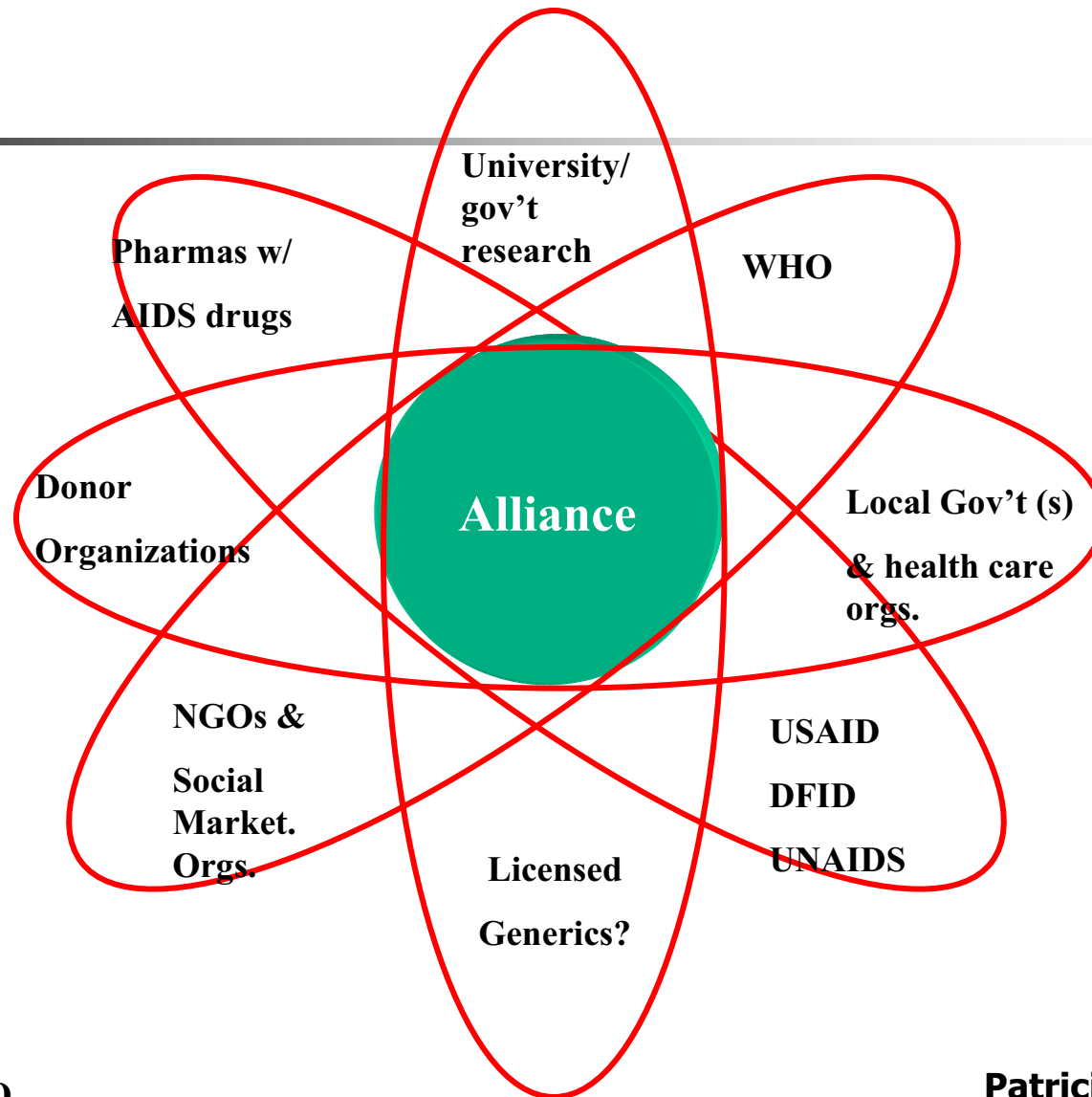
The FHC Alliance Model: A program not a product



Model Courtesy of
Mary Ann Leeper, COO,
Female Health Company

Patricia H. Werhane

Alliance Model for Pharmas



Model Courtesy of
Mary Ann Leeper, COO,
Female Health Company

Patricia H. Werhane



The Model Requires...

- › **Proactive corporate initiatives**
- › **Interactive responsibilities**
- › **A program not merely products**
 - › **Distribution is as important as product**
- › **Local foci**
- › **Work, work, work**

An Alliance Model Protects Patents, BUT... Is it unfair?



- › **Unfair to those of us who:**
 - › **pay "full market price?"**
 - › **Pay through pricing of other drugs?**
 - › **Free Rider problem**
- › **Unfair only in an egalitarian society**

BUT: why should companies do this?



Some “Whys...”

- › **Prioritization of Rights**
“It is the Right Thing To Do.”
- › **Safeguard patent protections**
- › **New markets if we can preserve the African middle class**
- › **Threat of larger world-wide epidemics**
- › **The Mission of Pharmas...**



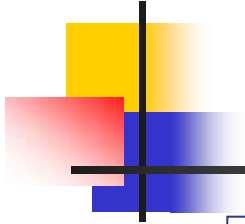
Summary

- › **IP: not the same as physical property**
 - › **Developed through networks and relationships**
 - › **Property rights should not preempt rights to life, community and freedom**
- › **Alliance model in LDCs for access and IP protection**



Challenges for IIPi, WIPO, USPTO and Georgetown

- › **IPR are being threatened.**
 - › **“..the Internet would eventually force a radical rethinking of intellectual property rights....”** [Lohr, *New York Times*, 9/14/03: 4:1]
- › **A form of “creative destruction?”**
- › **The wave of the future?**



As every surfer knows, to be successful you have to stay ahead of the wave.