



Perspectives on IP and Technology Transfer in the United States

The National Institutes of Health (NIH) recently held a [workshop](#), on July 31, 2023, with the intent of delving into the policies and methods that guide biomedical innovation and ensure public access to discoveries supported by the agency. The forum aimed to address the NIH's approach to patenting and licensing biomedical inventions. Additional topics included the agency's contribution to the expansive biomedical research domain, with an emphasis on utilizing knowledge to bolster public health outcomes.

Those within the broader intellectual property community shared their own perspectives on these issues with the NIH via written comments.

Below are highlights from these submissions:

"The partnerships forged between the NIH and the private sector transform valuable research findings into new medical treatments and commercial products. These partnerships are prime examples of the power of intellectual property to advance public health and encourage commercialization that benefits all Americans... NIH should not leave the door open to ongoing uncertainty through further consideration of 'fair pricing' or other measures that would undermine intellectual property protection."

– **Frank Cullen;**
Executive Director,
Council for Innovation Promotion



"There is a small but vocal and influential group of people who have increasingly pushed the narrative that most research and development funding for prescription drugs in the United States comes from the government...It is true the government funds some initial work in identifying new molecules and therapies. But that funding pales in comparison to the cost, time and effort it takes to bring a new drug to market."

– **Merrill Matthews;**
Resident Scholar, Institute
for Policy Innovation (IPI)



"A fully functional innovation ecosystem requires an array of funding and market-based incentives to transform experiments into commercial products... The choice is simple: either protect patent rights and associated licenses that promote technology transfer and product development, or resurrect failed practices that will stunt U.S. biomedical innovation for years to come."

– **Brian O'Shaughnessy;**
Senior V.P., Public Policy, Licensing
Executives Society (USA & Canada)



"Perhaps an even greater threat to investors today comes from the demands by some people in Congress and the Biden Administration that they can make drugs cost less by exercising so-called 'march-in rights' or by controlling the prices that private companies can charge for therapies. These ideas emanate largely from people with little or no knowledge of the return needed to justify the risk of new drug development. Such arguments are damaging the investing climate, which will only get worse unless NIH and other agencies firmly reject them."

– **Robert D. Pavey;**
Partner, Morgenthaler Ventures;
Manager, Pavey Family Investments;
President & Chairman, National
Venture Capital Association,
1990-1992



“Our current R&D pipeline is flourishing thanks to the technology transfer process facilitated and protected by the Bayh-Dole Act. Those who wish to twist the law’s intent to unilaterally determine drug prices would be responsible for the demise of U.S. biomedical innovation as we know it.”

– **Peter Pitts;**
President, Center for Medicine
in the Public Interest



“More importantly, the unpredictability, complexity, cost, and risk involved in developing usable applications of science-based technologies poses a far greater deterrent to investment in such endeavors than do patents on government-funded, basic research. Even for government-funded research that is more directly translatable into products usable by the public, in biopharmaceuticals in particular, the typically privately-born cost of modifying and testing those products for safe and effective use greatly outweighs the government’s contribution toward inventing those products. As a result, making such investments in commercializing technologies still in such early and risky stages of development is well beyond the comfort zone of most private investors. Because of the difficulties inherent in science-based technologies, development in these fields is especially prone to underdevelopment.”

– **Emily Michiko Morris;**
Senior Fellow for Life Sciences and a Scholar
and Edison Fellow, Center for Intellectual Property
and Innovation Policy (C-IP2)



Center for Intellectual
Property x Innovation Policy

“So, if the NIH is asking to speed more innovation in order to spur competition, then the answer is simple — give the inventors, the investors, the businesses even more rights. Make technology transfer easier, give the developers more rights, and focus on the things that bring more people to the table instead of less.”

– **Charles Sauer;**
Founder & President,
Market Institute



“The NIH should continue to engage in evidence-based policymaking in considering whether to revise its licensing and tech transfer policies... Scientists, entrepreneurs, and venture capital investors will not discover and develop breakthrough technologies in therapeutics, diagnostics, or vaccines if they are not secure in the same promise of reliable and effective patents made available to innovators since the early twentieth century that were the progenitor of the biopharmaceutical and biotech revolutions.”

– **Adam Mossoff;**
Senior Fellow & Chair of the
Forum for Intellectual Property,
Hudson Institute



“NIH is facing significant pressure to sacrifice innovation and investment in favor of short-term wins for price controls. However, NIH must not forget its core mission to seek ‘the application of... knowledge to enhance health, lengthen life, and reduce illness and disability.’ PFCDC urges the agency to reject calls to misuse Bayh-Dole and NIH policies for ill-advised and undefined price restrictions that subvert legislative intent and hamper innovation.”

– **Kenneth E. Thorpe;**
Chair, Partnership to Fight Chronic Disease



PARTNERSHIP TO FIGHT
CHRONIC DISEASE

“In fact, patents are one of the greatest anti-monopoly devices ever created. They allow an inventor... to disrupt an entire industry... with a property right in a new innovation.

Patents and other forms of intellectual property are frequently described as incentives to innovate, but this disruptive effect is often overlooked. Of course, this effect is only plausible with a strong system of intellectual property rights that treats patents and copyrights as property rights under the Constitution.”

– **Ashley Baker;**
Director of Public Policy,
The Committee for Justice;
and Curt Levey,
President, The Committee for Justice



“Since its enactment in 1980, Bayh-Dole has catalyzed the development of over two hundred drugs and vaccines... Given this track record of success, proposals for the NIH to increase its oversight over the private sector and insert price control mechanisms in NIH research licenses are misguided. Doing so would risk upsetting the finely-tuned public-private partnerships developed over the last several decades.”

– **Drew Johnson;**
Candidate for Congress,
NV-3



“We should keep in mind the critical factor in our success — finding private sector companies, primarily small businesses, which are willing to assume the risk and expense of turning NIH-supported inventions into useful therapies... Finding effective means to lessen the risk of developing new therapies would be the most significant improvement we could make to increase the impact of NIH-funded R&D.”

– **Joseph P. Allen;**
Executive Director,
Bayh-Dole Coalition (BDC)

