

September 27, 2021

President Joe Biden
The White House
1600 Pennsylvania Avenue
Washington, D.C.

Dear President Biden:

The undersigned organizations strongly urge that the TRIPs-waiver relating to COVID-19 apply to all intellectual property rights, and not just patents.

We greatly appreciate the May 5, 2021, statement by U.S. Trade Representative Katherine Tai announcing the Biden-Harris Administration's support "for waiving intellectual property protections for COVID-19 vaccines." The statement correctly recognized that "the extraordinary circumstances of the COVID-19 pandemic call for extraordinary measures." To that end, Ambassador Tai committed to participate in text-based negotiations at the World Trade Organization to achieve a waiver of IP protections in connection to COVID-19 vaccines. We agree that such a waiver is essential to accomplish the Administration's aim "to get as many safe and effective vaccines to as many people as fast as possible."

As Ambassador Tai and others in the Administration work with our trading partners to craft the language of the waiver, it is essential that it apply to all intellectual property rights, and not just patents. The tools needed to make mRNA vaccines are subject to copyright, given that "several computational algorithms and tools are widely used" to create them.¹ Further, there is a long history of drug makers claiming copyright protection in the "expression" on their medicine labels, and using that protection to exclude the marketing of generics.²

Copyright also hinders the use of critical tools for manufacturing and repairing medical equipment to treat patients. Copyright covers software, and software is embedded in many treatment devices such as ventilators. For example, Medtronic ventilators require the use of a proprietary connecting dongle and copyrighted software to repair. In order to supply needed ventilators, hospitals and repair technicians risked copyright penalties to share software tools and build the necessary connector to restore equipment and treat patients.³ Additionally, some manufacturers attempt to apply copyright to repair documentation, and send take down notices to

¹ *Surveying computational algorithms for identification of miRNA–mRNA regulatory modules*, <https://link.springer.com/article/10.1007/s13237-017-0208-5>.

² See *SmithKline Beecham Consumer Healthcare, L.P. v. Watson Pharmaceuticals, Inc.*, 211 F.3d 21 (2d Cir. 2000); Zvi Rosen, *Product Labels and the Origins of Copyright Examination* <http://www.zvirosen.com/2017/05/23/product-label>.

³ <https://www.vice.com/en/article/3azv9b/why-repair-techs-are-hacking-ventilators-with-diy-dongles-from-poland>.

those who share critical service information.⁴ U.S. legislation has been proposed to temporarily suspend copyright to the extent needed to repair equipment for treating COVID. Sen. Ron Wyden, one of the bill’s sponsors, explained: “It is just common sense to say that qualified technicians should be allowed to make emergency repairs or do preventative maintenance, and not have their hands tied by overly restrictive contracts and copyright laws, until this crisis is over.”⁵

The Administration has displayed great leadership by announcing support for a TRIPs waiver and attempting to fashion an approach agreeable to all parties. As it continues these efforts, it should resist the temptation to narrow the scope of the waiver to exclude copyrights and other rights. Ambassador Tai’s May 5 announcement expressed support for waiving “intellectual property protections,” not just patent protections. We urge the Administration to remain steadfast in its advocacy for including all forms of intellectual property within the scope of the waiver.

Respectfully,

Electronic Frontier Foundation
iFixit
IP Justice
Library Copyright Alliance
Library Futures Institute
Niskanen Center
Program on Information Justice and Intellectual Property
Public Knowledge
Re:Create Coalition
Software Preservation Network
United States Public Interest Research Group (U.S. PIRG)
Wikimedia Foundation

cc: U.S. Trade Representative Katherine Tai

⁴ <https://www.eff.org/document/letter-eff-steris-behalf-ifixit-5-26-2020>.

⁵ <https://www.wyden.senate.gov/news/press-releases/wyden-and-clarke-introduce-bill-to-eliminate-barriers-to-fixing-critical-medical-equipment-during-the-pandemic>.