

Moving Beyond "Pre-Competitive" in Public-Private Partnerships

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Public-private partnerships form the backbone of current U.S. strategies to accelerate biomedical innovation in areas where traditional modes of pharmaceutical innovation have failed repeatedly. Current strategies have focused primarily on "pre-competitive" public-private partnerships, collaborative arrangements between public and private actors designed to share resources, human capital and data freely and openly in areas that do not impinge on the competitive interests of commercial private parties. I suggest that this emphasis on "pre-competitive" partnerships is misguided because it ignores the inevitable tensions within these partnerships between cooperative and competitive mechanisms for intellectual production. Moreover, it limits the reach of these strategies into areas of drug discovery and development where they are badly needed, jeopardizing efforts to reach public health goals. I show how patents may exacerbate the tensions between cooperative and competitive mechanisms in ways that undermine the scope and effectiveness of public-private partnership strategies. In response to this problem, I suggest that greater use of exemptions to infringement, such as a limited patent fair use or research use exemption, may reduce the negative effects of patents on partnerships in areas where they are most needed without substantially impacting patents in areas where private markets are working well. I draw examples from the partnership that have emerged to accelerate development effective treatments for Alzheimer's disease to illustrate the potential and the limits of current partnership strategies. I conclude that the concerted public-private efforts to cure Alzheimer's disease provide a natural area to experiment with a modest statutory patent fair use as a complement to existing partnership strategies in this area. Moreover, if we fail to try experiments such as this, we may find that the protective policy wall against the looming Alzheimer's "tsunami" is just not high enough.

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