

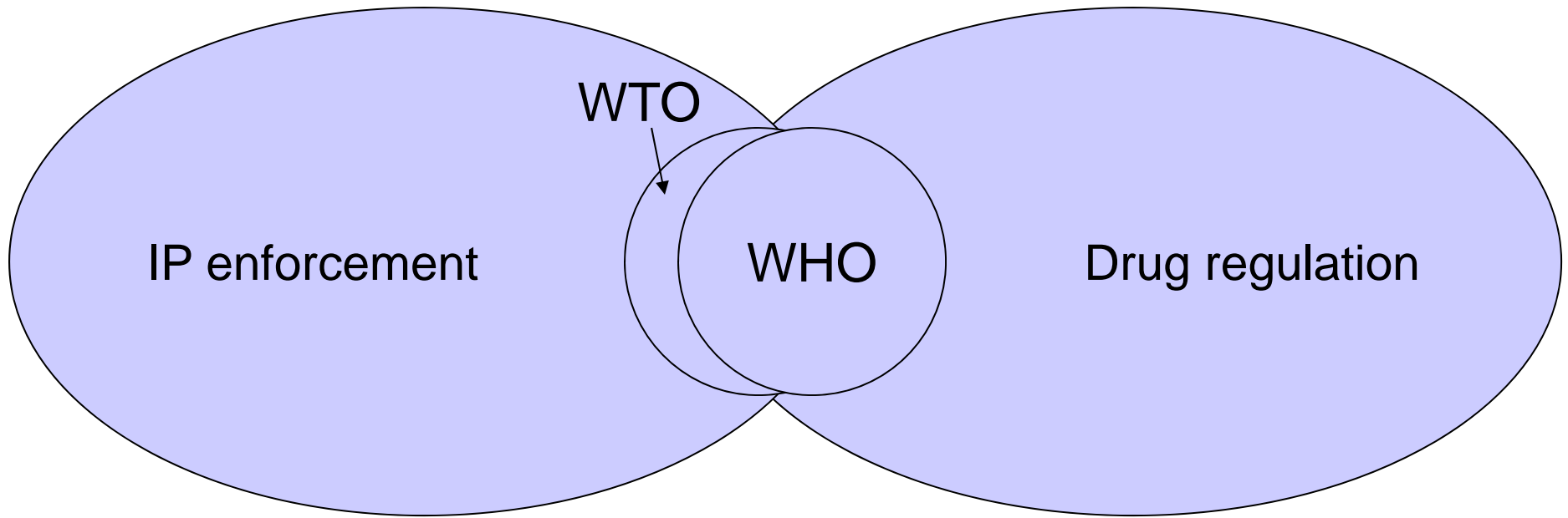
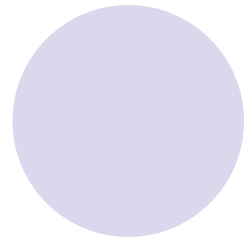
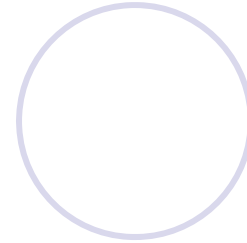
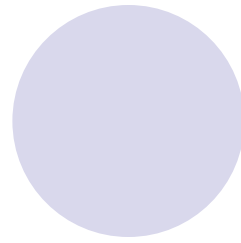
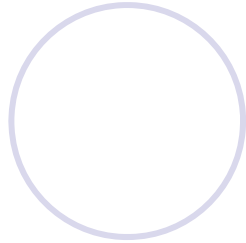
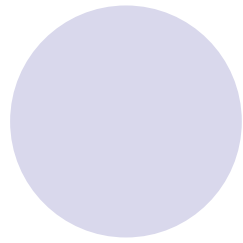


ACTA & Public Health: **Counterfeit Agreement**

Peter Maybarduk
Public Citizen

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June 2010



ACTA's risks for access to medicines

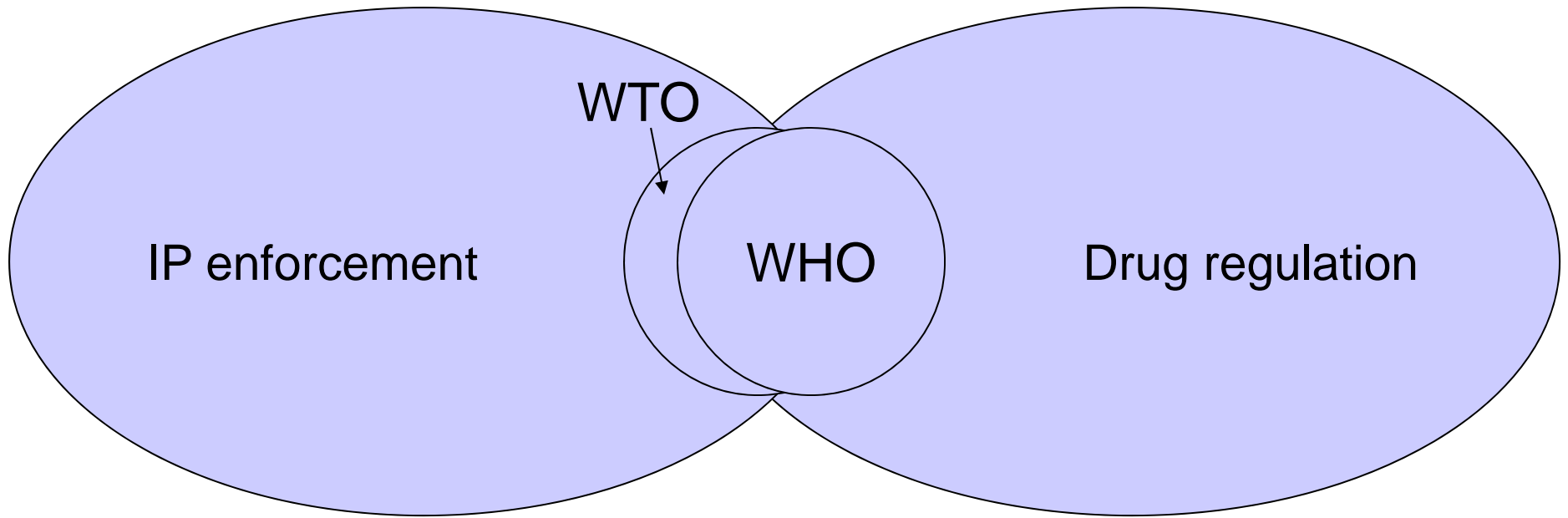
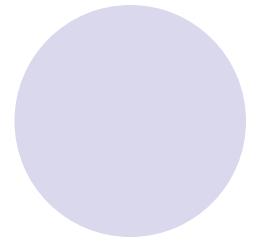
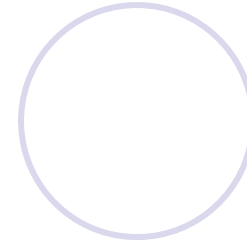
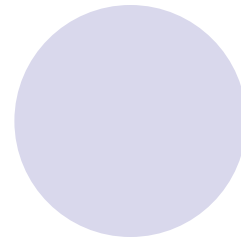
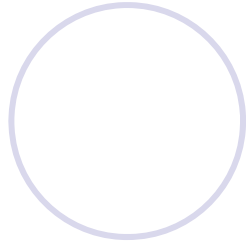
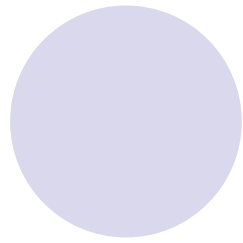
- Impeding the free transit of generics
- Imposing chilling effects on generics trade
- Limiting flexibilities in IP rules
- (Plus institutional issues: norm setting)

Minimum improvements needed

- Scale back to willful commercial scale trademark counterfeiting (w/precise definitions)
 - ACTA applies *ex officio* and extraordinary IP enforcement measures appropriate only to criminal activity to the contexts of market competition and civil infringements
- Remove restraints on flexibilities
 - injunctions, damages rules
- Institute stronger safeguards for competition
 - anti-abuse & liability provisions still needed if scaled back

Applying ACTA to civil infringements does not expand benefits to consumers

- Appropriate enforcement procedures differ considerably for civil infringements and criminal activity
- Among infringements, only willful trademark counterfeiting of certain potentially dangerous classes of products poses a categorical public safety risk
- Opportunity costs of extraordinary IP enforcement models for medicine quality, safety and efficacy



Resource allocation

- TM : Consumers better protected by direct regulatory and consumer protection frameworks (coupled appropriately with law enforcement)

Pushing back & playing offense

- Enforcing flexibilities & TRIPS ceilings
- Statutory disclosure requirements
- Supply and demand for counterfeits driven by high medicine prices
 - So, access and de-linkage
- Pharmaceutical fraud
- A positive agenda on medicine quality, safety, and efficacy

