

The Coalition Against Biopiracy presents The Captain Hook Awards–2004

Worst Betrayal

Winner: Luis Inacio Lula da Silva (President of Brazil)

For his government's December 2003 proposal in Montreal to allow field tests of Terminator/GURT technologies through the CBD.¹ In September 2003 Brazil's president overruled popular opposition to GM crops and legalized the planting of transgenic soybeans. The decision threatens biodiversity in the unique *cerrado* ecosystem and the Amazonas because it opens up the region to the planting of GM soya.²

Most Outrageous

Soil & Crop Improvement (The Netherlands)

For seeking to negotiate joint ownership of Ethiopian teff varieties with the Ethiopian government, and for falsely claiming that Soil & Crop "has acquired intellectual property for growing the teff crop as well as for the production of all products containing teff or teff-flour."³

Teff (*Eragrostis teff*) is a small cereal grain, closely resembling millet, that is widely grown in Ethiopia and Eritrea to make *injera*, a fermented, flat bread that is the most popular staple in the local diet. Teff is known for its superior nutritional qualities; it is a major contributor to nutrition in the Ethiopian diet.⁴

Soil & Crop (S&C) Improvement B.V. is a small company based in the Netherlands that cooperates with business partners worldwide in the development of teff and teff products. The company not only breeds teff varieties, it also grows teff and processes low-gluten teff flour. Despite its claim that the company holds intellectual property on teff varieties and teff flour products, the Chief Financial Officer of S&C, Mr. Hans Turkensteen, admits that the company currently holds no intellectual property, but is in the process of applying for both patents and plant breeders' rights on teff and teff products.⁵ The company now seeks plant breeders' rights on ten teff varieties, and will apply for two patents on teff. S&C indicates that it will apply for patents or plant breeders' rights on the teff varieties "depending on the fastest and most secure way to do things."⁶

According to Mr. Turkensteen, S&C currently has a memorandum of understanding (MOU) with the Ethiopian government (through the Ethiopian Agricultural Research Organization – EARO), which offers the Ethiopian government joint ownership of teff varieties developed by S&C. The company developed these varieties using germplasm it obtained from Ethiopia and from US-based universities. The MOU also provides that 5% of S&C's net profits would be directed into a fund to support Ethiopian agriculture. When asked how the funds might be used in Ethiopia, Mr. Turkensteen indicated that the funds might be used to help Ethiopians register their own varieties. (In other words, to promote intellectual property regimes.) Under the terms of the MOU, the jointly-held teff varieties could be freely used in Ethiopia, "but not for the purpose of competing against S&C business case in defined markets."⁷

According to S&C, the Ethiopian government has indicated interest in renegotiating the current MOU – although the company declined to provide further details of the existing MOU or the subject of future negotiations. Turkensteen told ETC Group that he is frustrated by the slow process of negotiations with the Ethiopian government, and he indicated that S&C plans to seek intellectual property "with or without them."⁸

Like the other Captain Hook Award winners, S&C has done nothing illegal. Many would say that the company is well-intentioned, and has negotiated a generous benefit-sharing agreement with the Ethiopian government. But the company appears to be oblivious to the fact that they are seeking to monopolize teff varieties that were developed over millennia by Ethiopian farmers and community plant breeders. Ignorance of diversity is no excuse for monopoly! Offering joint ownership of Ethiopian teff to the Ethiopian government is like asking Ethiopia to betray its farmers and become “equal partners” in a shameful and offensive act of biopiracy.

Greediest

Winner: Genetic Technologies, Limited (Australia)

For having patented the non-coded DNA (so-called “junk DNA”) of all living creatures, including humans. When the early sequences of the human genome were released in 2000, non-coded DNA was believed to be unimportant biologically; since then, scientists have realized that “junk-DNA” plays a crucial role in switching particular genes on and off. So far, Genetic Technologies has sued three biotech companies researching genetic-related diseases for allegedly infringing patents on junk DNA.⁹

Worst National (and international) Disgrace

The United States of America

For promoting the commercial exploitation of biodiversity in its National Parks and for championing the patenting of all biological products and processes (related to plants, animals, microorganisms, and human DNA).¹⁰ Special recognition goes to the US Trade Representative for tirelessly promoting and globalizing intellectual property regimes through the WTO and bilateral agreements, and to the US Patent & Trademark Office, which has taken more than three years to re-examine and issue a final ruling on US Patent No. 5,894,079 on a yellow bean of Mexican origin.

Worst Threat to Human Diversity

The HapMap Project

For resurrecting the discredited Human Genome Diversity Project under a new name. The \$100 million, three-year International HapMap Project is intended to identify blocks of variation in the human genome that are unique to distinct populations (the variant blocks are called haplotypes). These genetic variations are believed to determine how people differ in their risk of disease or their response to drugs. The Project is funded by both the public and private sector and, at present, involves DNA samples from the Yoruba people in Ibadan, Nigeria, Japanese in Tokyo, Han Chinese in Beijing and US residents with ancestry from northern and western Europe and Mexico. Mexico recently agreed to become a partner in the HapMap project. If the HapMap Project succeeds in mapping the world’s genetic variance by population, it will be a major boon to the pharmaceutical industry. Drugs previously shelved due to risk of allergic reactions could be resuscitated. “Personalized medicine” - for those affluent enough to pay for it, of course - will bring tremendous profits to drug and genomics companies. Even though the born-again HapMap Project pledges to get it right this time, serious ethical issues remain concerning intellectual property, genetic discrimination, informed consent, the threat to privacy, and even the possibility of genetically-targeted bioterrorism.

Worst Corporate Offender Monsanto

For its European patent on soft-milling, low-gluten wheat that is derived from a traditional Indian wheat variety. Monsanto's patent (European Patent No. EP0445929B1) claims not only the low-gluten wheat, but also the flour, dough and edible products (biscuits, cake, etc.) produced from it!¹¹ Greenpeace, the Research Foundation for Science, Technology and Ecology and the Indian farmers' organization, Bharat Krishak Samaj (BKS), are opposing Monsanto's patent at the European Patent Office.¹²

Worst International Convention World Intellectual Property Organization (WIPO)

The World Intellectual Property Office (WIPO), based in Geneva, was established in 1974 and is responsible for the promotion and protection of intellectual property throughout the world. WIPO takes the prize for "Worst International Convention" for two initiatives. First, for proposing a new global patent system under the "Substantive Patent Law Treaty," which would override national patent laws and development strategies, in order to pave the way for a "world patent" granted directly by WIPO, facilitating one-stop shopping for exclusive monopolies.¹³ And for promoting the idea that traditional knowledge can be "protected" in the context of intellectual property. WIPO has been promoting intellectual property as a solution to protecting indigenous peoples and their heritage, of which traditional knowledge is an indivisible part. WIPO has failed to acknowledge that intellectual property rights are incompatible with the protection of traditional knowledge, being the source of the problem, not the solution.¹⁴

Worst Smokescreen – Joint Winners: AMMA Corporation, Calgary, Canada

For seeking to patent a treatment for Hepatitis C based on traditional plant medicines of the Peruvian Amazon and the traditional knowledge of the Suni-Mirano people. Although the company website boasts of a benefit-sharing agreement with a Peruvian consultant and the establishment of a biosphere preserve to preserve the rainforest and its inhabitants, the Suni-Mirano people have not been acknowledged and consulted, nor are they direct beneficiaries.¹⁵

Worst Smokescreen CBD's Bonn Guidelines on Access and Benefit-Sharing

For creating the illusion that equitable benefit-sharing is being addressed while facilitating biopiracy and promoting intellectual property. "Capacity building" proposals for indigenous peoples would enable them to become partners in the piracy of their own resources.¹⁶

Worst Smokescreen - Runner-Up: The Like-Minded Megadiverse Countries Initiative

For establishing a "biodiversity cartel" among 15 countries in the South to facilitate the sale of biological resources to the highest bidder and thus legitimize biopiracy. The "Cancún Declaration of Like-Minded Megadiverse Countries" is an initiative of the same ilk as the CBD's Bonn Guidelines. It is often misinterpreted as a pro-South initiative that will conserve and utilize biodiversity and stop biopiracy.

Unfortunately, the Mexican-led initiative – which covers 70% of the world's biodiversity, according to the Declaration – does not defend the interests of the participating countries' own populations or indigenous peoples or local communities. Instead of recognizing the interdependency of cultural and biological diversity and seeking to protect them, the Group of Like-Minded Megadiverse Countries aims to sell off biological resources to the highest bidder. According to the Cancún Declaration, the participating nations seek to introduce and/or harmonize intellectual property systems and increase the use of biotechnology as a means of conserving diversity, which works to facilitate (legalize) biopiracy rather than to stop it.¹⁷

Worst Nanopiracy **Yang Mengjun (China)**

For securing 466 patents on nanoscale versions of traditional Chinese medicinal herbs by simply turning traditional plants into fine powders with particles under 100 nanometres (one nanometre = one-billionth of a metre) and claiming a new invention with increased solubility and bioavailability.¹⁸ Mr. Yang has secured monopoly patents on barks, roots, fruit, and leaves that have been used in Chinese medicine since ancient times. Mr. Yang has secured monopoly patents on barks, roots, fruit, and leaves that have been used in Chinese medicine since ancient times. Mr. Yang appears to be the largest single holder of nanopatents in the world.¹⁹ A new way to monopolize traditional knowledge!

Nanotechnology refers to the manipulation of matter at the level of atoms and molecules, the building blocks of the entire natural world, offering new opportunities for monopoly control – not just over life forms – but over nature itself. With the rise of nanoscale technology we are seeing far-reaching patent claims not just on DNA, but on the atoms and molecules that make up DNA.²⁰

Worst Nanopiracy – Runner-Up: **Pacific Corporation (Korea)**

For securing European, US and Japanese patents on Red Ginseng in nanoscale form for use in cosmetic products.²¹ Pacific corporation has reduced Red Ginseng to a nano-emulsion of small particles between 50-500nm that can pass across the skin and exert an anti-aging effect. Pacific corporation is now claiming intellectual molecular monopoly over an herb that has been cultivated and used medicinally since ancient times.

Most Offensive Act of Cultural Piracy **Winner: IMPI, Mexican Institute of Industrial Property**

For allowing a trademark on the image of the Virgin of Guadalupe in 2002. For 2,400 Mexican pesos, IMPI granted the exclusive right to use the image of the Virgin on a Chinese company's products (toys, games, and Christmas tree ornaments) for 10 years, along with licensing rights and an option to renew the trademark.²² The Virgin of Guadalupe is Mexico's most beloved patron saint, and for many indigenous cultures in Mexico she is equated with Tonantzin – the goddess of fertility and Mother Earth.

Earlier this year, the Basilica of Guadalupe drafted a much more lucrative deal that would have given Viotran, LLC a trademark on the image of the Virgin. Viotran was willing to pay \$12.5 million dollars for exclusive rights to the Virgin's image, but the deal fell through amidst an uproar by Mexican Catholics.²³

Cog Awards-2004

Best Advocate

Percy Schmeiser, Canadian farmer

For defending Farmers' Rights, for courageously speaking out against bioserfdom and for refusing to yield to Monsanto's strong-arm tactics in the field and in the courts. Monsanto argues that, under Canadian patent law, as in the US and many other industrialized countries, it is illegal for farmers to re-use patented seed, or to grow Monsanto's genetically modified (GM) seed without signing a licensing agreement. In 1998 Monsanto initiated a lawsuit against Percy Schmeiser, accusing him of illegally using the company's patented GM canola seed. Schmeiser, who has been farming for over 50 years, maintains his innocence. Schmeiser claims he did not buy Monsanto's patented seed, nor did he obtain the seed illegally. Pollen from genetically engineered canola seeds blew onto his land from neighboring farms or passing trucks. (Percy Schmeiser's neighbors and an estimated 40% of farmers in Western Canada were growing GM canola at the time). Refusing to be intimidated or silenced by mighty Monsanto, Schmeiser has spent the past five years eloquently defending the rights of farmers worldwide.

The Federal Court of Canada ruled against Percy Schmeiser in 2001, concluding that he was guilty of infringing Monsanto's patent.²⁴ The Federal Court of Appeal upheld that ruling in 2002. Schmeiser has appealed the case to the Canadian Supreme Court. Oral arguments were heard in January 2004 and a court ruling is expected later this year.

No matter what the outcome, the Canadian Supreme Court ruling will have far-reaching implications for farming communities and democracy around the world.²⁵ Will farmers be forced to pay royalties on GM seeds found on their land, even if they didn't buy the seeds, or seek to benefit from them by using proprietary companion chemicals? Will farm communities, rather than the Gene Giants, be forced to accept liability for contamination from genetically modified crops?

Best Peoples' Defense – Joint Winners: Peruvian Coalition Against Biopiracy in the Andes

For organizing a coalition of indigenous peoples' and farmers' organizations in 2002 to oppose patent claims by US-based PureWorld, Inc. on maca (*Lepidium meyenii*), a traditional Andean food and medicinal crop cultivated by Quechua peoples for millennia.²⁶ The Coalition is demanding that the company abandon its predatory patents,²⁷ and has requested that the Lima-based International Potato Center develop a clear policy to prohibit intellectual property claims – not just on seeds and genetic material held in its gene bank, but also on traditional knowledge of indigenous communities. Members of the Coalition have also formally requested that the World Intellectual Property Organization investigate the patents as an assault on traditional knowledge:

“Our communities are deeply offended by the use of monopoly patents that are predatory on the innovation and traditional knowledge of our people. We do not believe in the use of patents to claim ownership and monopoly control of maca, maca-based products, or traditional knowledge related to these products. The PureWorld patent, US Patent No. 6,267,995, is morally offensive to our communities, and to our way of thinking.”²⁸

In response to the coalition's demands, the Peruvian government has established a “national working group” on biopiracy. However, the working group fails to include membership from relevant indigenous peoples' organizations or the Peruvian Coalition Against Biopiracy, and, so far, the egregious patent on maca has not been formally challenged.

**Best Peoples' Defense – Joint Winners:
Mexican indigenous communities and peasant farmers**

For protesting the Mexican government's and the CGIAR's failure to act on the contamination of farmers' traditional maize by genetically modified DNA. It has been over two years since the first scientific evidence became public, showing that traditional maize grown by farmers in Mexico is contaminated with DNA from genetically modified maize – despite a prohibition on the planting of GM seeds in Mexico. In October 2003 peasant farmers and indigenous communities along with civil society organizations in Mexico publicly released the initial results of genetic tests on maize grown by traditional farmers in 138 communities.²⁹ Tests are ongoing, but the initial results show that contamination has spread to farmers' field in nine Mexican states.

Although GM contamination has been known to exist for more than two years in Mexico, neither governments nor international institutions have taken action to stop GM contamination and to protect farmers' and indigenous peoples' livelihoods.

In November 2003 an open letter signed by 302 organizations from 56 countries was sent to Mexican government authorities and intergovernmental bodies, demanding that actions be taken to stop contamination of farmers' maize with DNA from genetically modified (GM) maize, and to prevent any further contamination in the world's centers of crop diversity and origin.³⁰ The Convention on Biological Diversity, in cooperation with other international organizations, is asked to publicly acknowledge that GM maize contamination has taken place in Mesoamerica and that genetic pollution poses a potentially serious threat to biological diversity, particularly in crop centers of origin and/or diversity. The letter asks that the CBD call for an immediate moratorium on the release of genetically modified seed or grain in those countries or regions that form part of the crop centres of origin and/or diversity. In cooperation with other international organizations, the CBD must also develop and adopt comprehensive strategies to stop contamination and protect the integrity of farmers' crop genetic diversity.

**“Lone Voice in the Belly-of-the-Beast” Award
Michael Meacher, former UK Environment Minister (sacked in 2003)**

For having fought against biopiracy and in support of Farmers' Rights, while advocating from within one of the most pro-biotech administrations in the world. In a speech given to the UK Food Group on World Food Day, 2003 Meacher called for food sovereignty, Farmers' Rights, and reform of corporate governance.³¹

**Best Legal Defense – Joint Winners:
The Institut Curie, Institut Gustave-Roussy, and the Assistance Publique–Hôpitaux de Paris (France) with
the support of many European research organizations and Ministers of Health**

For opposing US-based Myriad Genetics' European patents on breast and ovarian cancer susceptibility genes, which cover all diagnostic and therapeutic treatments based on their proprietary gene sequences, BRCA1 and BRCA2.³² Because exclusive monopolies on breast and ovarian cancer genes will jeopardize public health and stifle research, European medical organizations are challenging three of Myriad's patents at the European Patent Office. Opposition is led by French medical organizations (the Institute Curie, Institut Gustave Roussy and Assistance Publique–Hôpitaux de Paris) with support from the Dutch and Austrian health ministries as well as research organizations throughout Europe.³³

Best Legal Defense
Greenpeace International, Misereor, the Mexican government
and other concerned parties

For challenging, in May 2001, Dupont's patent on all maize varieties with higher oil and oleic acid content – including traditional maize varieties. Granted by the European Patent Office in August 2000, EP 0744888 B1 covered "Corn grains and products with improved oil composition," the result of plant breeding done at Iowa State University and the University of Illinois (USA). After a challenge made by Greenpeace and Misereor, and letters from the Mexican Government, the European Patent Office reviewed the opposition in February 2003 and announced the revocation of the patent on February 12, 2003.³⁴

According to Alejandro Nadal, Mexican economist at Colegio de México and expert witness who attended the opposition hearing at the EPO in Munich on February 12, 2003, "The case was a victory against biopiracy and demonstrates that many companies are monopolizing farmers' varieties through patents. However, it's important to note that Dupont has applied for the same patent in more than 30 countries. In Europe alone Dupont has over 200 pending patent applications on varieties based on farmers' resources and collective knowledge."³⁵

¹ Unpublished proposal entitled, "Brazilian Proposal on Recommendations to Cop VII, Regarding the Potential Impacts of GURTs On Smallholder Farmers, Indigenous and Local Communities and Farmers' Rights." The proposal, which was not accepted, was made in Montreal during a CBD meeting of the Working Group on 8j, December, 2003. See also, "Terminator Technology Debate Hijacked in Montreal," ETC Group, *News Release*, Nov 14, 2003, <http://www.etcgroup.org/article.asp?newsid=415>

² Information provided by members of the Campaign for Brazil Free of Transgenics (Campanha por um Brasil Livre de Transgenicos), livredetransgenicos@aspta.org.br

³ <http://www.soilandcrop.com> (as of 30 January 2004)

⁴ <http://www.clima.uwa.edu.au/lathyrus/volume21/Yigzaw.pdf>

⁵ Hans Turkensteen, Chief Financial Officer, Soil & Crop, in telephone conversation with Hope Shand, ETC Group, 16 January 2004, and by email, 21 January 2004. Mr. Turkensteen indicated that they will be changing the website to reflect the true situation. As of 29 January 2004, the web site had not been changed.

⁶ Hans Turkensteen, Chief Financial Officer, Soil & Crop, in email correspondence to Hope Shand, ETC Group, 21 January 2004.

⁷ Hans Turkensteen, Chief Financial Officer, Soil & Crop, in email correspondence to Hope Shand, ETC Group, 21 January 2004.

⁸ Hans Turkensteen, Chief Financial Office, Soil & Crop, telephone conversation with Hope Shand, 16 January 2004.

⁹ Eli Greenblat, "Biotech wins battle for junk justice," *The Age*, November 18, 2003
<http://www.theage.com.au/articles/2003/11/17/1069027047154.html?from=storyrhs>

¹⁰ For more information on biopiracy in US National Parks and efforts to challenge it, please visit the website of the Edmonds Institute: <http://www.edmonds-institute.org/>

¹¹ Greenpeace Press Release, "Patent Granted on biscuits, dough and wheat," 23 June 2003.

¹² For additional information, see: European Patent No. EP0445929B1; Vandana Shiva, *The Ecologist Asia*, Vol. 11 No. 4," on the Internet:
<http://www.oneworld.net/external/?url=http%3A%2F%2Fwww.sanctuaryasia.com%2Ffeatures%2Fdetailfeatures.php%3Fid%3D492>

¹³ GRAIN, "One global patent system? WIPO's Substantive Patent Law Treaty, October 2003. Available on the Internet: <http://www.grain.org/publications/wipo-splt-2003-en.cfm>. See also, James Love, Consumer Project on Technology, and WIPO, "Options for Future Development of International Search & Examination: Making Greater Use of International Reports," September 19, 2003.

¹⁴ GRAIN, "The Great Protection Racket: Imposing IPRs on Traditional Knowledge," *Seedling*, January, 2004.

¹⁵ Kate Mooney, Simon Fraser University, "Bioprospecting in the Peruvian Amazon: Sustainable Development or Biopiracy? A Case Study of Calgary's AMMA Corporation." Unpublished paper dated 1 December 2003. Also see company website: <http://www.ammacorp.com>.

¹⁶ ETC Group, "From Global Enclosure to Self-Enclosure," *ETC Communique*, Issue # 83, January/February, 2004.

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- ¹⁷ The text of the Cancun Declaration, where the Initiative was first announced, is available on the Internet at <http://www.embamexcan.com/ENVIRONMENT/CancunDeclaration.shtml>
- ¹⁸ 466 different Chinese patents such as CN1368295A, “Nano Medicine 'Xiangdan' and its Preparing Process.”
- ¹⁹ This from a world survey of Nano-patents between 1990 and 2002 provided to the Royal Society/ Royal Academy of Engineering Study into Nanotechnology issues by Nick Fox-Male, UK Patent Lawyer – online at <http://www.nanotec.org.uk/evidence/28NickFox-MaleGraphCommentary.htm>
- ²⁰ ETC Group, “Size Matters! The Case for a Global Moratorium,” April 14, 2003. Available on the Internet: <http://www.etcgroup.org/article.asp?newsid=392>
- ²¹ EP1327434A1: Nanoemulsion comprising metabolites of ginseng saponin and a skin-care composition for anti-aging containing the same.
- ²² Xóchitl Zepeda León, “El registro de la marca de la Virgen de Guadalupe navideña ‘Falta de sentido común y de respeto a la fe del pueblo católico,’” *Seminario*, 24/08/2003, <http://www.semanario.com.mx/2003/342-24082003/Actualidades.html>
- ²³ Silvia Ribeiro, “Virgen de Guadalupe S A,” *La Jornada*, Aug. 19, 2003, <http://www.jornada.unam.mx/2003/ago03/030819/indexfla.php>
- ²⁴ The Federal Court Ruling by Judge MacKay is available on the Internet: <http://decisions.fct-cf.gc.ca/fct/2001/2001fct256.html>
- ²⁵ For up-to-date information, please visit: <http://www.percyschmeiser.com>
- ²⁶ ETC Group, “Peruvian Farmers and Indigenous People Denounce Maca Patents,” 3 July 2002. <http://www.etcgroup.org/article.asp?newsid=353>
- Ed Silverman, “Nature vs. Nurture,” *The Star-Ledger*, August 22, 2002.
- ²⁷ US Patent No.6,267,995, ‘Extract of *Lepidium meyenii* roots for pharmaceutical applications’ (which has also been submitted as a patent application in Australia, the European Union and through WIPO’s Patent Cooperation Treaty) and US Patent Application No.878,141, ‘Compositions and methods for their preparation from *Lepidium.*’
- ²⁸ Alejandro Argumedo, Director, Quechua Aymara Association for Sustainable Livelihoods “ANDES.” Open Letter to the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organisation, 30 June 2002.
- ²⁹ ETC Group, “Nine Mexican States found to be GM contaminated,” News Release, October 11, 2003, available on the Internet: <http://www.etcgroup.org/article.asp?newsid=410>
- ³⁰ <http://www.etcgroup.org/article.asp?newsid=418>
- ³¹ Michael Meacher MP, former UK Environment Minister, “Governance of food and agriculture: a challenge for the UN?” UK Food Group Seminar, World Food Day, 16 October 2003. The transcript of Meacher’s speech is available on the Internet: <http://www.ukabc.org/ukfg/index.htm>
- ³² “Patenting Genes - Stifling Research and Jeopardising Healthcare” Briefing (including the BRCA1 and 2 case) printed and published by EcoNexus and GeneWatch UK, April 2001. For more background and key dates, see also: www.curie.fr/upload/presse/keydates.pdf
- ³³ Aude Lecrubier, "Patents and Public Health," *EMBO Reports*, Vol. 3, No. 12, European Molecular Biology Organization, 2002, p. 1120-1121.
- ³⁴ European Patent Office press release, <http://www.presseportal.de/story.htx?nr=420348>.
- ³⁵ Greenpeace Mexico News Release # 308, Feb 12, 2003 “Histórico fallo: revoca de manera definitiva la Oficina Europea de Patentes, la patente de maíz a Dupont.” <http://www.greenpeace.org.mx/php/gp.php>