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MEDIA PIRACY IN EMERGING ECONOMIES: PRICE, MARKET STRUCTURE
AND CONSUMER BEHAVIOR

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* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO

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I. INTRODUCTION

1. This paper presents elements of a forthcoming report on “Media Piracy in Emerging Economies,” conducted over the past 4 years by some 30 researchers in 10 countries. The report is an investigation of music, film, and software piracy in developing economies, and of the multinational, national, and local enforcement efforts to combat it. It is built around country studies of Brazil, India, Russia and South Africa — key ‘middle-income’ battlegrounds in the enforcement wars — and shorter studies of Mexico and Bolivia.
2. At its broadest level, the report provides a window on digital convergence in emerging economies — a process for which piracy has been, with cell phone use, arguably the lead application. It explores the 15-year arc of optical disk piracy, as disks replaced cassettes and, later, as small-scale cottage industries replaced large-scale industrial disk production. It traces the first real challenge to that distribution channel in the form of Internet-based services and other forms of large-scale personal sharing. It looks at the organization and practice of enforcement — from street raids to partnerships between industry and government, to industry reporting and international policy formation. And it explores consumer demand and changing consumer practices, including the consistent indifference or hostility to enforcement efforts by large majorities of local populations.¹

SHIFTING THE DEBATE

3. This paper tries to illuminate some of the issues shaping consumer behavior in pirate and licit media markets (1) in the context of enforcement efforts to shape that behavior; and (2) with respect to key factors like price and availability.
4. Media piracy has been called “a global scourge,” “an international plague,” and “nirvana for criminals,”² but it is probably better described as a global pricing problem. High prices for media goods, low incomes, and cheap digital technologies are the main ingredients of global media piracy. If piracy is ubiquitous in most parts of the world, it is because these conditions are ubiquitous. Relative to local incomes in Brazil, Russia, or South Africa, the average retail price of a CD, DVD, or copy of MS Office is five to ten times higher than in the United States of America or Europe. Licit media goods are luxury items in most parts of the world, and licit media markets are correspondingly tiny. The International Intellectual Property Alliance (IIPA) estimates of high rates of piracy in emerging markets — 68% for software in Russia, 82% for music in Mexico, 80% for movies in India — reflect this disparity and may even understate the prevalence of pirated goods.

¹ The country studies were organized around four general lines of inquiry rather than a uniform methodology: (1) the organization of piracy; (2) the organization of enforcement; (3) the costs and benefits of both; and (4) the organization of knowledge production. Within this framework, country teams developed their own approaches, appropriate to their expertise and local contexts. These included surveys and focus groups with consumers; interviews with pirates, enforcement agents, and policymakers; surveys of media coverage; and analyses of primary and secondary literature in the field. The main institutional partners in the project are the SSRC (USA); Sarai and the Alternative Law Forum (India); the Instituto Overmundo and the Center for Technology and Society at the Fundação Getulio Vargas (Brazil); and the Association for Progressive Communication (South Africa). The study will be released by early December 2010, and will be available here: <http://www.ssrc.org>

² Respectively, by the USTR (2005), Dan Glickman of the MPAA (Boliek 2004), and Jack Valenti of the MPAA (2004).

5. Acknowledging these pricing effects is to view piracy from the consumption side rather than the production side of the global media economy. Piracy imposes an array of costs on producers and distributors — both domestic and international. But it also provides the main form of access in developing countries to a wide range of media goods, from recorded music, to film, to software.
6. This last point is critical to understanding the trade-offs that define piracy and enforcement in emerging markets. The flood of media goods available in high-income countries in the past two decades is a trickle in most parts of the world. Film, music, and software markets are dominated by a handful of global companies who, with few exceptions, maintain prices at, near, or occasionally above American and European levels. Local producers and distributors have an obvious interest in serving larger publics at below-Western prices. But few local industries exercise enough control over production and distribution to do so. Most local cultural industries have proved fragile — vulnerable to the economic instability of emerging markets and, above all, to competition from the multinationals themselves.
7. The growth of digital piracy since the mid-1990s has undermined a wide range of media business models, but it has also created, in many cases for the first time, affordable access to software and recorded media. In our view, the most important question is not whether stronger enforcement can stem this tide and preserve the existing price and market structure — our studies offer no reassurance on this front — but rather whether stable cultural and business models can emerge at the low end of these media markets, capable of addressing the next several billion media consumers. The present paper provide glimpses of this reinvention as costs of production and distribution decline, and as producers and distributors compete and innovate.
8. The factor common to these new models, our work suggests, is neither strong enforcement nor the innovative use of digital distribution, but rather the presence of firms in national markets that actively compete on price and services for local audiences. Such competition is endemic in some media sectors in the United States of America and Europe, where digital distribution is reshaping media access around lower price points. It is widespread in India, where large domestic film and music industries dominate the domestic market, set prices to attract mass audiences, and in some cases compete directly with pirate distribution.
9. But with a few other exceptions, it is marginal everywhere else in the developing world, where multinational firms dominate domestic markets. Here our work suggests that local ownership matters. Local firms are much more likely to aggressively compete for audiences on price and services — the domestic market is their market. Multinational pricing and enforcement strategies in developing countries, in contrast, signals two rather different goals: (1) protecting the pricing structure of the high-value markets that generate most of their profits; and (2) maintaining dominant positions in developing markets as local incomes slowly grow. Despite short-lived experiments with lower pricing for DVDs and institutional licensing practices for software, this generalization holds true for all the countries documented in this report.
10. The chief defect of this strategy, in the past decade, is that technology prices have fallen much faster than incomes have risen, creating a broad-based infrastructure for digital media consumption that the dominant companies have made little effort to serve. Fast technological diffusion rather than slowly increasing incomes will, in our view, remain the relevant framework for thinking about the relationship between global media markets and global media piracy. Media businesses, in our view, will either learn to compete down market or continue to settle for radically uneven splits between large, low-priced pirated

markets and small, high-priced legal ones. This status quo, it is important to note, appears viable for most sectors of the multinational-driven media business. Software and box office revenues in most middle-income countries, notably, have risen in the past decade — in some cases dramatically.

11. The centrality of pricing and distribution problems in developing countries is obvious, yet strikingly absent from most policy discussions. The structure of the licit media economy is almost never discussed. Instead, policy conversations focus on enforcement — on strengthening police powers, streamlining judicial procedures, increasing criminal penalties, and extending surveillance and punitive measures to the Internet. Although green shoots of new thinking are visible in many corners of the media sector, as companies adapt to the realities of the digital media environment, it is hard to see much impact of these developments on IP policy — and most particularly on developed-country trade policy, which has been the main driver of the international dialogue on enforcement.
12. In our view, this narrowness is increasingly counterproductive for all parties, from developing country governments, to consumers, to the copyright interests that drive the global enforcement debate. The failure to ask wider questions about the structural determinants of piracy and the larger purposes of enforcement imposes intellectual, policy, and ultimately social costs. These are particularly high, we would argue, in the context of ambitious new proposals for national and international enforcement — notably the proposed Anti-Counterfeiting Trade Agreement (ACTA) agreement.
13. To be more explicit about these limitations, we have seen no evidence — *and indeed no claims* — that enforcement efforts to date have had *any* impact on the overall supply of pirated goods. Our work suggests, rather, that piracy has grown dramatically by most measures in the past decade, driven by the exogenous factors described above — high media prices, low local incomes, technological diffusion, and fast-changing consumer and cultural practices.
14. The debate is also notable for its lack of discussion of the endgame: of how expanded enforcement, whether Internet-based in the form of proposed “three-strikes” laws, or street-based in the form of stronger criminal sanctions, will significantly change this underlying dynamic. Much of what stands in for long term thinking in this context rests on hopes that education will build a stronger “culture of intellectual property” over time. We see no evidence of this in our own work or in the wide array of consumer opinion surveys conducted over the past decade. Nor have we seen any attempts by state or industry actors to articulate credible benchmarks for success or desirable limits on expanded enforcement powers or public investment. The strong moralization of the debate makes such compromises difficult.
15. Perhaps most importantly, we see little connection between these efforts and the larger problem of how to foster rich, accessible, legal cultural markets in developing countries — the problem that motivates much of our work. The key question for media access and the legalization of media markets, in our view, has less to do with enforcement than with fostering competition at the low end of media markets — in the mass market that has been created through and largely left to piracy. We take it as self-evident, at this point, that US\$15 DVDs, US\$12 CDs, and US\$150 copies of MS Office are not going to be part of broad-based legal solutions.
16. To us, these questions seem central to the spirit of the WIPO development agenda and, more immediately, to WIPO Member States’ effort to adopt positions on enforcement consistent with that agenda. The SSRIC Media Piracy Project was created to illuminate these issues.

II. EDUCATING CONSUMERS

17. Nearly all formal plans for IP protection, from the US Chamber of Commerce's "Campaign to Protect America" to the Brazilian government's "National Plan to Combat Piracy" to WIPO's Development Agenda stress that "repressive measures" to combat piracy are not enough — that enforcement also requires building a stronger "intellectual property culture" through education and public awareness campaigns. Educational efforts are accordingly widespread, ranging from antipiracy curricula in public schools, to public awareness campaigns, to narrow technical seminars designed to "sensitize" judges and law enforcement officers to the severity of IP crime. Because public awareness is an area where coordination between industry groups is relatively easy, local campaigns tend to look very similar from country to country and reinforce the same simple messages: 'respect' for intellectual property, fear of being caught, and anxiety about buying dangerous or socially harmful goods. Distinctions between piracy and counterfeiting are almost always lost in these contexts. Alarming associations with organized crime, immorality, and personal costs, in contrast, are almost always emphasized. As the teaching manual for the 'Projeto Escola Legal' curriculum used in Brazilian elementary schools puts it: "It is no exaggeration to say that by buying a pirated product, an individual is worsening his own chances of getting a job, or even provoking the unemployment of a relative or friend. (PEL 2010: 10). In another widely circulated Brazilian video spot, criminals address the pirate DVD consumer: "Thank you ma'am, for helping us to buy weapons!"
18. The effort to shape public discourse around piracy extends to management of the print and broadcast news. Several of our country studies document the extent to which copyright industry messaging dominates print and broadcast coverage of piracy. Our South Africa team documented some 800 print and broadcast stories over a 4-year period in a country with 3 major media markets. A similar examination in Brazil collected roughly 500 stories a three-year period. The vast majority of this coverage reproduces a few standard templates: the raid or big arrest, the new piracy report, the aggrieved artist. Many of them are quote verbatim from industry press releases or report on industry press events.
19. Despite the ubiquity of media piracy, contrasting or critical perspectives in this coverage are rare. Especially when the subject is enforcement action or research, there are few 'other points of view' to feed the journalistic reflex for balance. A variety of factors contribute to this discursive dominance, from the professional press management practiced by industry groups, to overstretched journalists in need of easily packaged stories, to the lack of civil society engagement with enforcement.³ This homogeneity stands in sharp contrast to the many online venues that harbor a wider range of positions on piracy and enforcement, and that collectively offer a much closer approximation, in our view, of the actual diversity of consumer attitudes.
20. What do these efforts to shape public discourse achieve? If dissuading consumers is the primary goal, the answer appears to be: very little. Our inquiries (mixing survey, focus group, and interview methods) found a remarkably consistent cluster of attitudes on piracy: (1) that it is often regarded with ambivalence by consumers; (2) that pragmatic issues of price and availability nearly always win out over moral considerations; and (3) that

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We heard ample support for all four views from print journalists. A plausible—though here undocumented—fifth factor would be the control of the print and broadcast media by many of the same media conglomerates involved in enforcement advocacy, and the associated anxiety within media organizations about the loss of control of their intellectual products.

consumers know what they are buying. The classic scene of developing-world piracy — the kiosk or street vendor selling DVDs — produces very little misunderstanding on the part of consumers about the nature of the transaction. Consumers weigh tradeoffs between price and expectations of quality, but within a context of explicit black market negotiation in which notions of fraud or deception — often borrowed from anti-counterfeiting discourse — generally don't apply. The price gap between licit and pirated media provides a clear signal of the origins of goods.

21. The legibility of this scene for consumers, in our view, provides a benchmark for other scenes of copying and infringement that are more commonly the subjects of uncertain or confused legal status — especially around digital practices of copying, sharing, uploading, and downloading copyrighted material. Clarifying for students that file sharing of copyrighted music is piracy seems entirely possible, for example, but we see no evidence that this knowledge will have any impact on practices. We see no real 'education' of the consumer to be done.
22. This finding is consistent, in our view, with the preponderance of consumer opinion surveys conducted in this area, including those by Pew in the United States of America, BPI in the UNITED KINGDOM, PROFECO in Mexico, IBOPE and Ipsos in Brazil, and many others. The most comprehensive comparative analysis of these issues to date is a 2009 Strategy One study commissioned by the International Chamber of Commerce. Strategy One examined some 176 consumer surveys and conducted new ones in Russia, India, Mexico, South Korea, and the UNITED KINGDOM. Like nearly all other surveys, Strategy One's work showed high levels of acceptance of physical and digital piracy, with digital media practices among young adults always at the top of the distribution. The group concluded that "hear no evil, see no evil, speak no evil" has become the norm" (ICC/BASCAP 2009). At this point, such findings should come as no surprise. In the contexts in which we have worked, we can say with some confidence that efforts to stigmatize piracy have failed.⁴
23. There is little room to maneuver here, we would argue, because consumer attitudes are, for the most part, not *unformed* — not awaiting definition by a clear antipiracy message. On the contrary, we consistently found strong views. The consumer surplus generated by piracy in middle-income countries is not just popular but also widely understood in economic justice terms, mapped to perceptions of greedy United States of America and multinational corporations and to the broader structural inequalities of globalization in which most developing-world consumers live. Enforcement efforts, in turn, are widely associated with the United States of America pressure on national governments, and are met with indifference or hostility by large majorities of respondents. The reluctance of many governments to adopt stronger enforcement measures needs to be understood in the context of these potentially high domestic political costs.

⁴ The ICC/BASCAP study is an important but very conflicted contribution to this literature. Consistently, it portrays the near total failure of industry messaging on piracy in developing countries. It finds that the main drivers of piracy are price and availability, and links these factors to widespread support for media piracy and general resentment of anti-piracy efforts, especially in developing countries. And it disaggregates findings for medicines and media products—in notable contrast to the usual industry practice of conflating health and safety risks associated with some categories of counterfeit goods to essentially harmless practices of media consumption. Yet, Strategy One appears compelled to find that these structural factors are actually communication problems, and that education efforts can (or more precisely, must) work given better messaging.

24. Although education is generally presented as a long-term investment in counteracting these attitudes, the lack of evidence for their effectiveness is striking. There have, after all, been a lot of them in the past decade — Strategy One counted some 333 in developed countries alone as of 2009. It would be reasonable to expect some benchmarks and tentative conclusions. But such follow-up appears to be almost universally avoided. We are unaware of any campaigns that have included subsequent evaluation (this also appears to be the conclusion reached by Strategy One in its examination of 202 separate campaigns).
25. The proliferation of campaigns and the avoidance of bad news, in this context, strongly suggests the presence of other motives at work. Much of the continuing investment in education and public awareness, in our view, is attributable to strongly felt but ultimately wishful thinking about the future, as when Strategy One describes the failure of education efforts, in spite of its evidence, as simply “unacceptable for us as individuals, for the companies and industries we work in and for society as a whole” (ICC/BASCAP 2010). In other contexts, it is clear that educational initiatives provide useful political cover for governments publicly committed to enforcement but wary of further “repressive measures,” and for industry groups looking to soften their agendas as they turn toward more direct ways of penalizing consumer behavior. As we discuss at some length in the Brazil chapter of our report, educational campaigns can provide a path of least resistance between these contending interests, and result in major commitments to the most naïve versions of these programs by public officials. Such compromises are why 22,000 Brazilian school children are now subject to the ‘Projeto Escola Legal’ — the flagship educational project of Brazil’s National Plan to Combat Piracy — which, in a typical passage, advises teachers to address student concerns about affordable access to culture goods with this logic: “The production of movies, music, books, etc. is vast, and therefore, if we cannot buy a ticket to watch a movie, we can’t say that we do not have access to culture, but only to that specific movie, in that specific place, and that specific moment.” We think it exceedingly unlikely that a culture of intellectual property will be built on such disconnects with consumer realities.

III. WHAT IS CONSUMPTION?

26. Traditionally, the high cost of media production and distribution dictated relatively sharp distinctions between producers, distributors, and consumers of media. The consumer sat at the end of a commodity chain that delivered finished goods and structured experiences — records played on stereos, movies shown in the theaters, and so on. Consumers’ perspectives were valuable and eagerly solicited, but the opportunities for creative engagement with or appropriation of the work were generally marginal. This model has, of course, come under pressure as falling costs of production and distribution democratize those core functions of the media economy, and as new technologies privilege forms of commentary, appropriation, and re-use. Such practices have arguably become the main tropes for thinking about digital media in general.
27. Our work generally validates and expands on this perspective. We see this clearly in the emergence of new production and distribution chains at the very low end of media markets — almost always illicit at the outset, but later evolving into mixed markets that include new, legalized competition. And we see it in a range of creative appropriations of goods that test the boundary between authorized and unauthorized use — routinely triggering charges of piracy in the process.
28. With regard to recorded media, however, our work highlights a more specific transformation in the organization of consumption: the decline of the *collector*, and of the intentional, managed acquisition that traditionally defined his or her relationship to media.

In our view, this notional consumer still organizes a large part of the cultural field and a significant share of the business models and supply chains for audiovisual media. But it is also clearly a shrinking cultural role, defined by income effects and legacy cultural practices.

29. The collector, our work suggests, is giving ground at both the high end and low end of the consumer income spectrum. Among privileged, technically-proficient consumers, the issue is one of manageable scale: the growing size of personal media libraries is disconnecting recorded media from traditional notions of the collection — and even from strong assumptions of intentionality in its acquisition. A 2009 survey of 1800 young people in the UNITED KINGDOM found that the average digital library contained 8000 songs, with 1800 on the average iPod (Bahanovich and Collopy 2009). Most of these songs — up to 2/3 in another recent study — have never been listened to (Lamer 2006). If IFPI's figures are to be trusted, up to 95% are pirated (IFPI 2006).
30. Such numbers describe music and, increasingly, video communities that share content by the tens or hundreds of gigabytes — sizes that diminish consumers' abilities to organize or even grasp the full extent of their collections. Community-based libraries, such as those constituted through invitation-only P2P sites, carry this reformulation of norms further, structured around still more diffuse principles of ownership and organization. On such scales, many of the classic functions of collecting become impersonal, no longer individually managed or manageable. A related effect is that personal ownership becomes harder to specify and measure: consumer surveys are poorly-adapted to mapping terrain where respondent knowledge is unreliable. Device or media service-based studies (such as the handful of studies that use iTunes data) may only capture a portion of the media resources that consumers engage. Increasingly, we live in an ocean of media that has no clear provenance or boundaries.
31. Several of our studies document the tension between the collecting model, which still has practical and affective connections to physical disks, and the 'native' digital model, which generally does not. Inevitably this tension maps onto income effects, broadband availability, and age, and consequently bears on relatively small portions of the populations of middle and low-income countries. Original goods continue to play a variety of high-status roles in these contexts, as signals of wealth or — as our Russia study suggests — as the polite form for gifts.⁵ But even in the short span of years covered by this study, the transformation of these practices is visible and striking. The relevant timeframe in middle-income countries is not the slow growth in average incomes, but the fast decline in the price of technology.
32. The second and, in many countries, more significant consumer shift is the growth of mass markets for recorded media among the very poor, and — in many cases — *mass production of recorded media by the very poor*. The contours of this revolution can be traced back to the profoundly democratizing and piracy-enabling recorded media technologies of the 1980s — the audiocassette and cassette player (Manuel 1993). The much larger current wave of digital media production is built on the proliferation of a cheap VCD and DVD infrastructure in the past decade, including multiformat players, computers, burners, and disks — both fueling and fueled by the availability of cheap pirated content. Consumer practices at this level are also organized differently, with less attachment to CDs or DVDs as elements of a private collection than as goods shared within extended families

⁵ See also Wang (2003) on these distinctions

and communities. Collective consumption — viewing and listening — is more common in this context, reflecting the lower numbers of TVs, computers, and DVD players in poor households.

33. Neither the high income nor low income versions of this shift has much currency in enforcement debates, which continue to be shaped, in our view, by a nostalgic view of the consumer as collector — of people making deliberate choices to purchase, or pirate, specific products for personal use. And despite the evidence of its diminishing purchase on digital cultural practices, we do not expect this to change: real or not, the collector is an important construct that anchors personal responsibility — and liability — in the copyright economy. As enforcement efforts shift from commercial intermediaries toward consumers, such anachronism takes on greater — not lesser — importance.

IV. PRICING

34. Price comparisons between pirated and licit goods in different countries offer a simple but powerful lens on the organization of media markets. To illustrate these differences, we compared the most common legal prices of a range of media goods to the most common pirate prices, and then translated those numbers into a ‘Comparative Purchasing Power’ (CPP) price, which reflects how expensive the item would be *for Americans if priced at an equivalent percentage of the United States of America per capita GDP*.⁶
35. Prices were collected in late 2008 and 2009 and should be treated as approximations. The prices of pirate and licit goods vary according to a wide range of factors, including the location of sale and perceptions of demand. Currency fluctuations also have a large impact on price comparisons. Above all, pirated goods are available in a variety of bundles and pricing tiers — reflecting differences in quality, packaging, the number of films or albums on a disk, and other differentiators within the marketplace. To facilitate comparison, however, we focused on single-title, high-quality CD and DVD equivalents of licit goods.

Coldplay: Viva la Vida (CD)

	Legal Price (US\$)	CPP Price	Pirate Price	Pirate CPP
United States of America	17	-----	NA	-----
Russia	11	59	5	26
Brazil	14	80	2.5	14
South Africa	20.5	164	2.7	22
India	8.5	385	1.2	54
Mexico	13.7	75	(.4) 1	5.75

⁶ IMF 2009 estimates for exchange rate (OER) GDP are used here, rather than the more common purchasing power parity (PPP) numbers. USA: US\$46,857; Russia: US\$8,694; Brazil: US\$8,200; Mexico: US\$8,135; South Africa: US\$5,824; India: US\$1,031

The Dark Knight (DVD)

	Legal Price (US\$)	CPP Price	Pirate Price	Pirate CPP
United States of America	24	-----	5	-----
Russia	15	79	5	26
Brazil	15	85	3.5	20
South Africa	14	129	(.4) 2.8	22
India	14	635	(.3) 1.2	54
Mexico	27	154	(.4) .75	4

Parentheses indicate lowest observed price

36. Coldplay's album *Viva la Vida* (2008) and Warner Brothers' movie *The Dark Knight* (2008) were blockbuster international hits. Coldplay has sold over 9 million *Viva la Vida* CDs since 2008 and the album leads the charts for digital downloads. *The Dark Knight* brought in over US\$1 billion in global box office receipts, and broke all records for DVD sales when it was released toward the end of 2008.
37. Although quintessential global goods in many respects, albums and films are licensed separately in each country in which they are sold. The license generally permits the reproduction of a specific number of copies, which are almost always produced locally. Parallel importation of copyrighted goods is tightly restricted in most countries, ensuring that differences in pricing cannot be easily arbitrated.
38. Licensing costs are controlled by the rights holder — nearly always the major labels, software publishers, or studios. In the case of music licensing, the final retail price is often the result of deals between the labels and other players in the distribution chain — distributors, retailers, and radio stations. This introduces variability in pricing. Prices for the same album can vary dramatically from one country to the next.
39. Film studios demonstrate stronger collusion around pricing. A DVD of a major recent release starts US\$14-US\$15 dollars in most markets, with higher prices the norm in some countries. With the exception of some brief experiments with cheap DVDs, notably in China and Eastern Europe, the major studios have made very few efforts to cater to differences in local incomes, or to price goods at levels that compete with the pirated goods. In neither the film nor the music market are goods priced at levels that serve more than a niche customer base. CDs and DVDs remain luxury goods in most middle and low-income countries. Price to income ratios roughly comparable to the United States of America and European media markets are found only in the pirate markets in these countries.
40. This dynamic extends to locally-produced music and film. Local record labels are not as constrained by the norms of major label return on investment and generally have a stronger interest in the promotion of local live performance. Local CD pricing, consequently, demonstrates more variability depending on perceptions of the market. This flexibility is not true of most domestically-produced films, however, which generally only range 'up' from the high floor set by distributors. Unlike local labels, local film studios are already tightly integrated into international networks of film production, distribution, and antipiracy enforcement, and follow their pricing conventions.

Domestically Produced Hit Albums

	Legal Price (US\$)	CPP Price
Krematorium: Amsterdam (Russia)	6.50	35
Thermal and a Quarter: First Album (India)	7	317
Victor and Leo: Borboletas (Brazil)	9.50	54
Thalia: Primera Fila (Mexico)	15	86

Domestically Produced Hit Films

	Legal Price (US\$)	CPP Price
Tropa de Elite (Brazil)	10	57
Obitaemiy Ostrov (Russia)	15	81
Mr. Bones 2 (South Africa)	18	144
Arrancame la Vida (Mexico)	17.6	100
Jaane Tu Ya Jaane Na (India)	3.8	172
Oye Lucky Lucky Oye (India – Moser)	2	90
Mission to Nowhere (Nigeria)	3	123

41. The most notable exceptions to this rule are India, Nigeria, and China — all of which host large, domestic film industries that cater to local audiences. In 2007, Moser Baer, the largest Indian DVD distributor, sharply broke with licensing conventions in the DVD market. The ensuing price war between the major distributors transformed pricing for domestic DVDs, creating a mass market that competes with the high end of the pirate market. The Nigerian home video market — built largely on the piracy of Bollywood videos and still very reliant on informal vendor networks for distribution and sales — also operates at price level that competes with pirated DVDs. Chinese studios, protected by import quotas, also dramatically cut prices in the mid 2000s in a bid to narrow the gap between the tiny licit and vast illicit markets. The major western studios followed in their wake.
42. The main lesson of this price comparison is relatively simple: in countries where domestic companies dominate production and distribution, those companies compete on price for local audiences. In countries where domestic production and distribution is controlled by the multinationals, they generally don't.
43. Pirate CD and DVD pricing also indirectly illustrates the different structures of pirate markets in these countries. In the early 2000s, the retail price of pirated DVD in *all* of these countries was in the vicinity of US\$5. By 2009, the price had dropped to US\$1 in many countries, with wholesale and lower-quality retail disks often available for significantly less. US\$1, our work suggests, is the current retail floor for decent-quality DVDs in competitive markets — including competition from other vendors and, increasingly, from the Internet. Anything above US\$1 reflects a constraint on trade, whether due to enforcement, higher-priced inputs, or collusion between vendors. The country studies in our larger report offer examples of all three.

44. The high price of pirated goods in Russia and the US stand out in this context. In the US, the pirate optical disk market has all but disappeared — displaced by P2P and other digital services. Pirated goods at the organized retail level are virtually non-existent. Street vendors can still be found in major US cities but fill only niche markets, such as the market for camcorder copies of new movie releases or specialty genres such as Reggae. High prices in the US reflect this niche market status and, more generally, the higher ability to pay.
45. High prices for Russian pirated goods, on the other hand, appear to reflect the successful consolidation of production in the hands of large-scale and — by many accounts — state-protected pirates, who have acquired enough market power to prop up prices. A key component of this consolidation was the crackdown against small-scale retail and local producers in 2006, which swept away the middle tier responsible, in other countries, for the strongest competition on price and volume production.

Microsoft Office 2007 (Home and Student Edition, 2009 prices)

	Legal Price (US\$)	CPP Price	Pirate Price	Pirate CPP
United States of America	149	-----	NA	-----
Russia	150	795	NA	--
Brazil	109	879	NA	--
South Africa	114	985	NA	--
Mexico	155	849	.75	4
India	100	5400	2	90

Halo 3 (Xbox 360)

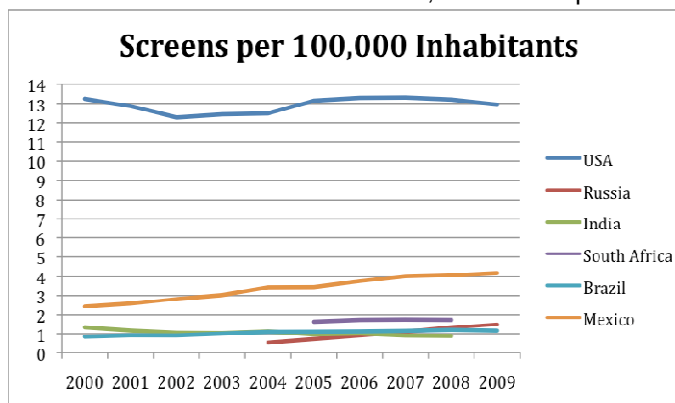
	Legal Price (US\$)	CPP Price	Pirate Price	Pirate CPP
United States of America	40	-----	NA	-----
Russia	101	545	NA	--
Brazil	60	342	NA	--
South Africa	53	424	30	240
Mexico	54	310	2	22
India	36	1634	NA	--

46. Software offers few surprises in this context. The retail prices for most productivity software in developing countries are at or near Western prices — with small discounts for local language versions that have less export value. Such prices demonstrate the irrelevance of retail to the software market in these countries, as there are numerous legal ways in which users pay much less. Microsoft, for example, offers sharp discounts to ‘original equipment manufacturers’ (OEMs) who install Windows, Office, and other Microsoft products on new machines. Lower-cost licensing to public institutions, large and

small businesses is also common. These numerous deals testify to the price discrimination practices that define the software market. For the vast majority of consumers without access to such deals, however, the pirate market is the inevitable alternative.

DISTRIBUTION

47. In middle and low-income countries, the counterpart to high prices is weak distribution.



Movie theaters, DVD and CD retailers, book stores, and software vendors are scarce and typically cluster in the capital cities, in proximity to wealthy elites. Smaller cities and the provinces are chronically underserved — sometimes entirely so. In Brazil, the cities of Sao Paolo and Rio di Janeiro contain roughly 9% of the population,

but have 41% of the movie screens (Funarte 2009). In Russia, Moscow and St. Petersburg represent about 11% of the population, but have a third of the screens (Berezin and Leontieva 2009). In South Africa, the first multiplex in a black township opened in 2007. The quality of copies and exhibition infrastructure also falls off with distance. Despite the move toward global simultaneous release as a strategy to deter piracy, new releases in the provinces are often weeks away as people wait for copies to rotate through their towns.

48. Much the same is true in the optical disk market, where the price of disks has generally ensured that they are carried only in a handful of retail chains. This has begun to change in several of the markets we examined as distributors try to combat the massive convenience advantage of pirate vendors, who simply sell where people congregate. In India, media producer T-Series pioneered this approach with cassettes in the 1980s, distributing to a much wider array of vendors and retail outlets than its competitors, including grocery stores. We document a variety of cases in South Africa, Brazil, India, Russia, and Bolivia where the superiority of the informal sector as a distribution channel has led legal distributors to try to wholesale goods through it — co-opting the pirate networks to distribute competitively priced legal goods. The Nigerian home video industry — the second largest film industry in the world — was built on such practices, and is extending them throughout Africa (Larkin 2004).

49. In areas where there is no meaningful legal distribution, the pirate market cannot be said to compete with legal sales, or generate losses for industry. At the low end of the socioeconomic ladder where such distribution gaps are common, piracy simply *is the market*, and the notion of the moral choice between pirated and licit goods that anchors antipiracy campaigns becomes an impractical narrative of self denial — wholly overwhelmed by industry marketing campaigns for the same goods.

VI. LOOKING AHEAD

50. Despite the rapid growth of broadband connectivity, the pirate optical disk market remains the main form of access to recorded music and film in emerging markets. Enforcement efforts in these markets, accordingly, continue to focus on the links in this commodity chain, from optical disk producers, to distributors, to retailers, to street vendors. Enforcement, in other words, is still directed at the commercial and institutional contexts of infringement, where policing and private settlements have relatively high returns.

51. As broadband connections and cheap digital storage become more common, however, the focus of enforcement is shifting toward non-commercial activity and the consumer space. The crowding out of the industrial-retail-disk pirate chain by non-commercial digital piracy is largely complete in high-income countries and underway in most of the middle-income countries we examined. The targeting of BitTorrent sites and other P2P services is part of this shift, and courts have generally been receptive to industry arguments about third-party liability in such contexts, even when these sites do little more than replicate the functionality of search engines. Stronger language on this subject has also been one of the consistent features of the ACTA drafts.
52. But developing countries are ill equipped and, so far, disinclined to bring enforcement — especially stronger criminal procedures — to bear against consumer behavior. Despite significant pressure from industry and some unsuccessful efforts to replicate the American / European models of mass-produced settlements, none of the governments in the countries examined here have tried. The push for ‘3-strikes’ laws will be a significant test of this position in the next years.
53. In general, however, we find that not all of the industry tendencies lead in the direction of stronger enforcement. Industry positions are evolving as conventional wisdom begins to assimilate the breakdown of the older commodity chains, and as businesses conceived as responses to that breakdown become incumbent players in their own right. The optics of piracy have begun to shift accordingly. Shifts in industry language over time provide a good benchmark. From the early 1980s through the early 2000s, Jack Valenti of the MPAA arguably set the industry tone regarding the control of new consumer media technologies — an uncompromising one expressed most famously in his 1983 comparison of the VCR to a serial killer. The same hard line was still visible twenty years later, when Jamie Kellner of Turner Broadcasting claimed that “any time you skip a commercial... you’re actually stealing the programming” (Kellner 2002).
54. In 2009, however, it was possible to find even MPA representatives with less Manichean views of unauthorized use and strikingly different accounts of piracy’s relationship to the licit market. In interviews, MPAA Director of Special Projects Robert Bauer sketched out a very different agenda for the industry group, noting that “Our job is to isolate the forms of piracy that compete with legitimate sales, treat those as a proxy for unmet consumer demand, and then find a way to meet that demand” (interview, 2009).
55. The conceptual distance traveled between Valenti’s attacks on consumer copying and Bauer’s view of piracy as a signal of unmet consumer demand is considerable and, in our view, describes a split in the current debate about piracy and intellectual property within the core copyright industries. For the past half-decade, industry conversations have had an increasingly schizophrenic quality, marked by an enforcement debate organized around the hard line of Valenti and others, and a business model debate organized around the soft line articulated by Bauer.
56. Our work generally validates the latter path as the only practical way forward for the media industries, and one already well underway in countries with competitive media sectors. But it is not the only short term path, and our studies raise concerns that it may be a long time before such accommodations to reality reach the international policy arena. Hard line enforcement positions may be futile at stemming the tide of piracy, but the US and other high-income countries bear few of the costs of such efforts, while the handful of multinational companies behind these efforts reap most of the modest benefits. This is a recipe for continued pressure on developing countries, especially, very possibly long after

the business models in the United States of America and other high-income countries have changed. This international policymaking landscape — and its drift toward stalemate — is the subject of Chapter 2 of our report.

57. Overall, our conclusion is a relatively simple one: the choice facing national governments is not between high rates of piracy and low rates of piracy. It is between high piracy-high price markets and high piracy-low price markets. The policy question, in our view, is how to move efficiently from one to the other. The enforcement question, in our view, is how to support legal markets for cultural goods without impeding that transition.

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