



# SSRC

## Does Crime Pay? MPEE's Findings on Piracy, Organized Crime, and Terrorism

Joe Karaganis, Pedro Mizukami, Lawrence Liang, John Cross and Olga Sezneva

Claims of connections between media piracy and narcotrafficking, arms smuggling, and other “hard” forms of organized crime have been part of enforcement discourse since the late 1990s, when the IFPI began to raise concerns about the transborder smuggling of pirated CDs (IFPI 2001). Claimed connections between piracy and terrorism are a more recent addition. In 2003, the secretary general of Interpol, Ronald Noble, “sound[ed] the alarm that Intellectual Property Crime is becoming the preferred method of funding for a number of terrorist groups” (Noble 2003). In 2008, the US attorney general, Michael Mukasey, declared that “criminal syndicates, and in some cases even terrorist groups, view IP crime as a lucrative business, and see it as a low-risk way to fund other activities” (Mukasey 2008). In 2009, the RAND Corporation published what is to date the most exhaustive statement on this subject: a 150-page, MPAA-funded report on film piracy’s links to organized crime and terrorism (Treverton et al. 2009).

Commercial-scale piracy is illegal, and its clandestine production and supply chains invariably require organization. It meets, in this respect, a minimal definition of organized crime. Pirated CD and DVD vending, moreover, is often concentrated in poor neighborhoods and informal markets where other types of illegal activity are common. Such contexts create points of intersection between the pirate economy and wider illegal and quasi-legal arrangements of the informal economy. It would be remarkable if they did not. But we found no evidence of systematic links between media piracy and more serious forms of organized crime, much less terrorism, in any of our country studies. What explains this result?

Invariably, the rationale offered for criminal-syndicate and terrorist involvement is that piracy is a highly profitable business. The RAND report, for example, states (without explanation) that “DVD piracy . . . has a higher profit margin than narcotics” (Treverton et al.

2009:xii)—an implausible claim that has circulated in industry literature since at least 2004.<sup>1</sup> We think the record is clear that piracy was a highly profitable business through the early 2000s, when optical disk production facilities were expensive, industrial in scale, and relatively scarce. The concentration of production capacity in a few countries created an international pirate economy in which some countries emerged as exporters of optical disks (for example, Malaysia, Bulgaria, and the Ukraine), while others became primarily importers or transshipment points. International distribution, in these circumstances, involved the smuggling of physical goods and consequently mirrored—and sometimes shared—the distribution infrastructure for other counterfeit and contraband products. In our India and South Africa studies, in particular, we see evidence that this structure of piracy persists in regional trade networks connecting South Asia, the Middle East, South Africa, and parts of East Asia. But it is also clear that such networks are marginal to the larger pirate economy and rapidly waning—driven into unprofitability by expanded local production and free digital distribution. We see no evidence that piracy, outside a few niche markets, is still a high-margin business.

These trends have dominated pirate production since the early 2000s. Production costs and profit margins on optical disks have plummeted, leading to a collapse in prices. In 2001, quality DVDs typically cost five dollars or more on the street. In 2010, they are under a dollar at retail in many parts of the world. Burners and blank disks are now commodity items, and their greater availability has led to a massive expansion of local production, the displacement of smuggling, and—in many countries—a reorganization of production around small-scale, often family-based, cottage industry. Pressure on profit margins has increased, too, due to the rise of the massive non-commercial sphere of copying and distribution on the Internet, which has all but eliminated commercial optical disk piracy in high-income countries and appears poised to do so further down the GDP ladder. Increasingly, commercial pirates face the same dilemma as the legal industry: how to compete with free.

This decline in costs is, in our view, the primary factor shaping pirate markets and a growing disincentive for traditional organized-criminal involvement. Yet, to the best of our knowledge,

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1 The initial version of this claim appears to come from a 2001 story in the French newsweekly *Marianne*, which stated that a kilogram of pirated CDs was worth more than a kilogram of hashish. The claim was picked up by Interpol in its 2003 report to the US Congress on “The Links Between Intellectual Property Crime and Terrorist Financing” and from there began a long life of circular citation in industry reports. This claim has been challenged before (*Piracy Is Not A Crime.com* 2006), but to update and reiterate the point: according to US customs authorities, a kilogram of hashish in New York sells for around \$30,000. A kilogram of pirated DVDs (amounting to 60–65 disks averaging 16 grams each) has a street value of about \$300 in New York, at the going rate of \$5 per DVD. The IIPA repeats a version of this claim in its 2010 submission to the USTR.

no industry or law enforcement statements about alleged criminal connections have thought this worth mention. As in other contexts, the issue is avoided by conflating piracy and counterfeiting under the rubric of what Interpol calls “IP crimes.” IP crimes include the counterfeiting of cigarettes, medicines, machine parts, and a variety of other industrial goods. Nearly all are high-margin goods distributed through transnational smuggling networks—indeed they are smuggled because they are high margin. Smuggling, in turn, creates opportunities for criminal groups to organize or tax the transit of these goods. Terrorist connections are possible in such scenarios, and there is evidence that tobacco smuggling in particular—incentivized by high European and US taxes on cigarettes and abetted by major tobacco companies—is a significant revenue source for the Taliban, the Columbian FARC, and the PKK (Willson 2009).

Arguing that piracy is integral to such networks means ignoring the dramatic changes in the technology and organizational structure of the pirate market over the past decade. By necessity, evidentiary standards become very loose. Decades-old stories are recycled as proof of contemporary terrorist connections, anecdotes stand in as evidence of wider systemic linkages, and the threshold for what counts as organized crime is set very low. The RAND study, which reprises and builds on earlier IFPI and Interpol reporting, is constructed almost entirely around such practices. Prominent stories about IRA involvement in movie piracy and Hezbollah involvement in DVD and software piracy date, respectively, to the 1980s and 1990s. Street vendor networks in Mexico City—a subject we treat at length in the Mexico chapter—are mischaracterized as criminal gangs connected with the drug trade. Piracy in Russia is attributed to criminal mafias rather than to the

## Thugs and Criminals

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“With rare exceptions, the people procuring, producing, and distributing this pirated material are affiliated with large and dangerous international criminal syndicates.” Film piracy is not being operated by “mom-and-pop operations.” . . . “It is being done by business-minded thugs who fund this activity through money raised from other illicit activity such as drug dealing, gun running, and human trafficking (utilizing the same distribution networks), and who, in turn, fund these other activities through the money they raise through piracy.” Consequently, “the odds are high that every dollar, pound, peso, euro or rupee spent on them is put into the pockets of bad people who will spend it in a way which is not consonant with our safety and security.” Most alarmingly, these groups “have no qualms whatsoever about resorting to violence or bribery to conduct their operations, and they play for keeps.”

John Malcolm, senior vice-president and director of worldwide anti-piracy operations for the MPAA (McIllwain 2005)

chronically porous boundary between licit and illicit enterprise. The Pakistani criminal gang D-Company, far from “forging a clear pirate monopoly” in Bollywood, in RAND’s words, plays a small and diminishing part in Indian DVD piracy—its smuggling networks dwarfed by local production.

The US record isn’t more convincing in this regard. Jeffrey McIllwain examined the Department of Justice’s IP-related prosecutions between 2000 and 2004 and found that only 49 out of the 105 cases alleged that the defendant operated within larger, organized networks. Nearly all of these were “warez” distribution groups for pirated software—hacker communities that are explicitly and often fiercely non-commercial in orientation. McIllwain found “no overt references to professional organized crime groups” in any of the DOJ’s criminal charges (McIllwain 2005:27). If organized crime is a serious problem in these contexts, it should not be difficult to produce a stronger evidentiary record.

## Brazil

As in other countries, Brazilian industry groups make claims of connections between piracy, international organized crime, and occasionally terrorism. As elsewhere, such charges tend to trickle down from international reports into the discourse of local enforcement agents. Claims linking piracy and organized crime emerged in the late 1990s, driven initially by music-industry-group reporting on the illicit global CD trade (IFPI 2001). By the early 2000s, the IIPA was inveighing against the role of criminal organizations in the Brazilian trade, arguing that “organized crime elements, from within and outside Brazil, exercise control over the production and distribution of infringing copyrighted products” (IIPA 2001:52). In 2010, the argument was much the same: “Organized crime is deeply involved in piracy in Brazil. Not only are Chinese and Middle East groups operating in the border with Paraguay, but they also control the distribution of pirate DVDs in the black markets at the end of a complex chain of command” (IIPA 2010:144).

Statements by public officials regarding organized-crime linkages have become more common since the Parliamentary Commission of Inquiry on Piracy (2003–4), which began the process of public adoption of industry discourse. Key Brazilian authorities have provided support for these accusations. The current Minister of Justice, formerly the first president of the CNCP, Luiz Paulo Barreto, has argued that the main target of the government’s anti-piracy efforts are the “big mafias that have been established in Brazil, China and Korea” (Agência Brasil 2009), not the street vendors who are, in actuality, the most common targets of police

action. The current CNCP president, Rafael Thomaz Favetti, is even more forceful in stressing connections between piracy and organized crime.<sup>2</sup>

The TBA figures centrally in such accounts and especially in recent industry efforts to link piracy and terrorism. Alleged connections between Arab immigrants in the TBA and terrorist organizations have appeared periodically in the news since 1992, when unknown actors bombed the Israeli embassy in Buenos Aires. The bombing of the Argentine-Israeli Mutual Association in 1994 triggered another round of free association on the subject, even though evidence for viewing the TBA as a terrorist haven, as Costa and Schulmeister (2007:28) put it, is “meagre and imperfect.” In contrast to claims of organized-criminal involvement, piracy-terrorism linkages in the TBA have been strongly contested by Brazilian authorities. No direct links between terrorist groups and criminal activity in the region have been established. Instead, accusations rely on purported remittances by Arab immigrants to groups such as Hezbollah (Amaral 2010).

### Proving the Connection

In interviews, informants in both the public and private sectors generally argued that there is some sort of connection between piracy and organized crime. But the lack of evidence offered for such assertions was consistently striking. In many cases, informants simply repeated charges found in industry advocacy materials, to an extent that made it clear that industry literature provides the

2 Favetti has argued that piracy has “no social causes” and that “this idea that people who work in piracy are unemployed or doing odd jobs [to make ends meet] is no longer true. The confidential data we have from the police of Brazil [confirm] that piracy is controlled by organized crime” (Agência Brasil 2010).

## Brazilian Views on Piracy and Organized Crime

“It’s a mob thing. The business of piracy [is] to sell corruption logistics: ‘I can guarantee that your container will arrive there.’ And then I sell [container space] to the toys guy, to the weapons guy, to the drugs guy, to the CD guy, to the DVD guy, to the software guy, to the clothing guy, to everyone. Because even [São Paulo luxury boutique] Daslu had to find a way to get its underpriced clothes to Brazil. How does one do that? How can we get [clothes] through ports, airports, escape routes, and not be searched? To profit as much as they did, what did they do? They brought stuff from abroad. Everybody pays ‘X’; they pay ‘X divided by 10’ and get taxed over that value. [Goods] arrive here cheap as hell. While if I am to manufacture [the goods] at the Manaus Free Zone, I need to hire staff, pay labor dues, pay taxes, all that. Or import legally.” (Private sector, consultant)

“You have large-scale, international piracy; big criminal organizations, like in China. Lots of pirate goods come from China, as they manufacture them on a large scale. . . . And then

you have domestic piracy, don't you, with small salesmen who practice this kind [of piracy] both in manufacture and in commerce." (Public sector, enforcement) who practice this kind [of piracy] both in manufacture and in commerce." (Public sector, enforcement)

"Well . . . people insist on that a lot, don't they? They say there's a link between piracy and organized crime. I think the link exists, but it's not the rule. I've done fieldwork in piracy. There are lots of small fish doing counterfeiting. Guy has his computer, records a CD, a DVD, and then goes peddling on the streets, without the backing of any criminal organization. Of course, there are [also] powerful people behind [piracy]. The relation occurs more frequently in frontier regions. We often seize cargo and find cigarettes, drugs, pirated goods, CDs; so that shows that the same people doing [drug] traffic are bringing guns to the country, bringing pirated goods. This is the relationship I see with organized criminality." (Public sector, enforcement)

"It's not like what many people say, 'You guys are stretching it, there's no connection.' If we follow the

main source of information on the subject. In these cases, links were presented as self-evident, often following "tip of the iceberg" reasoning in which street vendors are cast as the endpoints of vast distribution networks controlled by international criminal organizations. Some informants did try to build stronger cases, generally by describing piracy as part of the wider global traffic in illegal goods, from counterfeit clothing to cocaine, tobacco, and firearms.

The latter argument fits well within the "dark side of globalization" narrative advanced by books such as Moisés Naím's *Illicit* (2005). Naím, a prominent journalist and the editor of the American journal *Foreign Policy*, was mentioned explicitly by two informants with ties to the Federal Revenue Service, whose views had clearly been influenced by the book. Naím has been embraced by IP industry groups and has testified on their behalf before the US Senate. In 2008, the US Chamber of Commerce funded a National Geographic documentary based on *Illicit*. A wide variety of other industry-produced reporting also circulates in this space, including the Alliance Against IP Theft's *Proving the Connection* (n.d.), the IFPI's *Music Piracy: Serious, Violent and Organized Crime* (2003), and the voluminous MPAA-sponsored RAND report on *Film Piracy, Organized Crime, and Terrorism* (Treverton et al. 2009).<sup>3</sup>

Much is at stake in "proving the connection." Domestically, linking IP enforcement to organized crime

3 Pirating the American Dream: Intellectual Property Theft's Impact on America's Place in the Global Economy and Strategies for Improving Enforcement: Hearing Before the US Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Security and International Trade and Finance, 110th Congress, April 12, 2007 (testimony of Moises Naím, Editor in Chief, *Foreign Policy*), [http://banking.senate.gov/public/index.cfm?Fuseaction=Hearings.Hearing&Hearing\\_ID=cd1f3746-1926-4da0-a8b7-6bfd6435e583](http://banking.senate.gov/public/index.cfm?Fuseaction=Hearings.Hearing&Hearing_ID=cd1f3746-1926-4da0-a8b7-6bfd6435e583).

is a powerful way to elevate the issue in the eyes of government and public opinion. It is also a strategy for drawing the attention of law enforcement authorities to offenses that police and prosecutors normally consider less serious. Alleged links between piracy and organized crime were crucial for the inclusion of the IP enforcement agenda in certain law enforcement circles. The Civil Police unit in charge of investigating piracy in São Paulo, for instance, is hosted by a department specialized in organized crime, the DEIC; the national public-prosecutor workgroup the GNCOOC was created to act against criminal organizations but eventually included piracy in its list of concerns.

Internationally, organized-crime and—still more significantly—terrorist linkages introduce piracy into the circuit of policy communities and fora dealing with bilateral and multilateral security. Pressure for stronger enforcement agreements at the World Customs Organization, and now in the recent Anti-Counterfeiting Trade Agreement (ACTA), reflect this new fusion of security and IP discourse. Tying online piracy to digital threats—identity theft, child pornography, bullying, cyberwarfare, and so on—is an application of the same strategy to fight file sharing. Industry’s involvement in the Azeredo Bill debate is a clear example of this shift.

### **Organized Crime and Brazilian Law**

There is little consensus about the definition of organized crime—“an ever-changing, contradictory and diffuse construct,” in the words of one of its scholars (von Lampe 2008:7). But in law, the concept exists primarily to set boundaries for the use of exceptional legal regimes to target criminal activities that the regular instruments of law enforcement have difficulty addressing. The application of organized-crime statutes generally requires less concern for

activity. All the money, the resources that are moved informally, the government has no knowledge, no idea of the money that runs through these channels. We can’t, initially, discard the possibility that this connection exists. Both drug trafficking and piracy are activities that run through informal channels. . . . So there is a connection. Resources run through channels that government has no knowledge of. We can’t affirm that all piracy is connected with the drug trade, but a big part of it is, and we’ve been noticing that everyday.” (Private sector, enforcement support)

“Every crime of piracy is, at the end of the chain, linked to more active, broader criminal organizations with all sorts of businesses, involving, among others, drug dealing, arms contraband, and organized crime, terrorism. It’s something that’s very serious. So piracy is a very powerful business all over the world; it moves five hundred billion dollars all over the world, more than drug traffic. Therefore, piracy is absolutely connected to other types of crimes and is a branch of broader criminal organizations.” (Private sector, film industry)

“This connection is not well proven. Since both [drug] traffic and black market deal with illegal goods, it’s natural for piracy to fit within this activity. However, this connection is mostly stressed by media and rights holders in order to capture public attention, [to imply] that if you buy a pirate good, you’re contributing to your son’s access to drugs. Actually, this connection is very, very weak. It’s, as I say, sensationalism, a sort of publicity to call attention to piracy’s negative effects, when in reality [links to the drug trade] are not well established.” (Private sector, consultant).

the rights of the accused than in less serious offenses and allows for more invasive procedures, such as wiretapping.

Copyright infringement has not traditionally fallen under the umbrella of organized-criminal activity, either in terms of the application of the law or—equally important—in terms of the administrative organization of policing and enforcement. As a consequence, industry groups have worked to expand definitions of organized crime to encompass copyright infringement and to produce accounts of piracy that emphasize alleged connections with more conventional forms of criminal activity. The two processes are linked: the broader the definition, the easier it is to prove the connection.

The *Proving the Connection* report, for example, concludes that “the imperative is not to over-elaborate the term, rather to emphasize that it describes ‘a group or network focused on illegally obtaining profits in a systematic way, involving serious crimes with societal consequences’” (Alliance Against IP Theft n.d.:4). The RAND study, for its part, recommends “expanding the definition of organized-crime statutes to include commercial-scale piracy and counterfeiting tied with other criminal activity” (Treverton et al. 2009:145). The IIPA demanded, in its April 6, 2001, post-GSP-hearing brief on Brazil, that the Inter-Ministerial Committee on Combating Piracy draft and propose legislation supporting “the principle that medium- and large-scale piracy falls within the definition of an organized crime scheme” (IIPA 2001).

Brazilian law has no definition of “organized crime” or “criminal organization” (see, generally, Pitombo 2009), despite the existence of legislation authorizing special means of evidence gathering and investigation for acts practiced by “quadrilha or bando” or “organizations and criminal associations of any kind” (Law 9.031/95, Article

1). There is no definition of what count as “organizations and criminal associations of any kind.” A “quadrilha or bando” is any lasting association between three or more people with the intent of committing crimes—a criterion broad enough to encompass virtually all aspects of the pirate economy, from large-scale smuggling operations to small-scale vending. Membership in such groups is a crime in and of itself (Penal Code, Article 288).<sup>4</sup>

We are more sympathetic to narrower definitions that emphasize provable links to larger criminal organizations, such as the Camorra, the Yakuza, local or international drug cartels, Brazil’s Comando Vermelho, and so on. We see little systematic evidence of these connections to date. Advocacy pieces, for the most part, rely on cherry-picked examples to make the broader case and offer grossly simplified accounts of the dynamics of street markets, street vendors’ relations with local authorities, and other features of the informal economy. Industry public awareness campaigns are often the most flagrant in this regard. A recent UBV anti-piracy video, for example, portrays a closed economy tying together drug dealers, street vendors, and consumers of pirated media. Such allegations are important because they associate copyright infringement with “crimes that the public are really scared of” (Drahos and Braithwaite 2002:27), as distinct from the mundane acts of copying and informal commerce in which they routinely engage.

Street vendors involved in media piracy, for their part, tend to view organized crime through a similar lens and often take offense when accused of such associations. None, in our interviews, viewed the simple fact of the organization of the supply chain as significant, and several characterized piracy as an alternative to activities such as drug trafficking. Our interviews in the Uruguaiana market in Rio strongly confirmed earlier ethnographic work on this front (Mafra 2005:94; Gomes 2006:229; Braz 2002) and echo the views of Mexican vendors presented in the next chapter in this report.

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4 Beyond the primary criminal statute, Law 9.031/95, the Brazilian law on drug trafficking (Law 11.343/06) refers to the concept of “organized crime” (Article 33, §4) for the purpose of authorizing judges to reduce the penalties of informers who testify against former associates. The law establishes stronger penalties and a looser threshold for criminal association, now defined as involving two or more people. No more substantive definition is provided. Brazil is also a signatory to the United Nations Convention against Transnational Organized Crime (the Palermo Convention), but the convention’s definition of “organized criminal group” applies only to criminal activity that occurs in a transnational context and focuses on the practice of crimes defined as “serious” (meaning, according to Article 2(b), “an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty”). It is thus significantly narrower than the crime of criminal association contained in Article 288 of the Brazilian Penal Code.

### Law Kim (Kin) Chong

The arrest of smuggler/businessman Law Kim (or Kin) Chong during the initial parliamentary inquiry in 2003–4 became a touchstone in the Brazilian conversation about piracy and organized crime. A naturalized Brazilian citizen of Chinese origin and the owner of several stores in popular shopping centers in São Paulo (O Estado de São Paulo 2009b), Chong came to public attention in 2004 when he was arrested while attempting to bribe Deputy Medeiros, the president of the Parliamentary Commission of Inquiry on Piracy, in an effort to buy protection for his businesses (Rizek and Gaspar 2004). Since 2004, he has had continuous problems with law enforcement and São Paulo municipal authorities. He was arrested again in 2007 and 2008 under accusations of smuggling, tax evasion, and money laundering (G1 2008a, 2008b). Chong served a brief jail term in 2004; the 2008 case was dropped by prosecutors for lack of evidence.

Called a “notorious piracy kingpin” by the IIPA (2006:208), Chong has become the emblematic figure of the Brazilian anti-piracy effort. He has been frequently used as an example of the connections between piracy, counterfeiting, and organized crime and is featured regularly in news articles on these issues. Constant reliance on the Chong case, however, also tends to highlight the lack of a wider case for linkages between organized crime and piracy.<sup>5</sup>

There are many reasons to doubt the broader account of connections, chief among them the rapidly diminishing role of transnational smuggling in the piracy of media goods—in distinction from other kinds of hard goods. The IIPA began to notice this shift as early as 2002, observing that, in Brazil, “piracy has changed from an international industrial profile to a domestic semiprofessional effort.” While looking for other ways to invoke organized-crime discourse, they noted that “the distribution of product, however, remains highly organized” (IIPA 2001:76). The conflation of piracy and counterfeiting in most anti-piracy discourse is also very unhelpful in this context. Of the major figures raised into the media spotlight by enforcement efforts in the past decade, including Roberto Eleutério da Silva and, more recently, Paulo Li, only Chong has been accused of media piracy. Da Silva is best known as a cigarette smuggler (Castanheira 2003). Li is associated with cell phones and electronics (Rangel 2010). In our view, the most compelling case for connections between street piracy

5 Chong has also served as a convenient personification of Brazilian anxiety toward Chinese immigration and China’s rise as an economic power. Usually implicit in the coverage of the case, such anxiety sometimes shades into xenophobic stereotypes, as in Deputy Medeiros’s book about the Parliamentary Commission of Inquiry on Piracy, *A CPI da Pirataria*. In the book, Chong is described as a “cold little Chinese man” and a “moral monster” with “painfully slanted eyes,” but also a “predictable” man due to his “millennial obedience” (Medeiros 2005:96–97).

and transnational groups involves the trade in blank disks, which most accounts describe as originating largely in China. But we see little evidence of more systematic connections beyond the blank disk trade, and the Chong case alone does not provide evidence of wider linkages between the pirate economy and organized crime.

## India

In India, the role of the criminal gang D-Company is often used as proof of connections between piracy, organized crime, and terrorism. The most recent examination of D-Company's role comes from an MPAA-funded RAND Corporation report on criminal and terrorist linkages to movie piracy, published in 2009. According to RAND, D-Company controls all aspects of the Indian film industry and pirate marketplace: "Since the 1980s, [D-Company's founders] have been able to vertically integrate D-Company throughout the Indian film and pirate industry, forging a clear pirate monopoly over competitors and launching a racket to control the master copies of pirated Bollywood and Hollywood films" (Treverton et al. 2009). Upon its release, the RAND report was cited extensively in the Indian media, and its claims about D-Company were quickly integrated into MPAA and Indian film industry anti-piracy campaigns.

Much of the attention focuses on Dawood Ibrahim, D-Company's founder and Mumbai's leading mafia chief during the 1980s. Ibrahim allegedly sponsored the 1993 bombing attacks in Mumbai that left over 250 people dead (as a reprisal for Hindu-led violence against Muslims in the previous year). Under police pressure, he departed India for Dubai and later for Pakistan. Ibrahim now operates from Karachi, where he reportedly manages narcotics-smuggling operations across large parts of South Asia, Africa, and Southeast Asia. There are widespread allegations of connections to Pakistani intelligence and to Al Qaeda, the latter of which has earned him a place on the US terrorist watch list.

Ibrahim's role in film piracy is usually attributed to his alleged acquisition of Sadaf Video, a major Karachi-based DVD producer and distributor that grew to prominence by circumventing the Pakistani ban on Indian films. Until 2008, when the ban was finally rescinded, pirated copies manufactured by Sadaf were the primary form of access in Pakistan to wildly popular Bollywood movies. Large VCD and DVD factories in and around Karachi met most of this demand. Sadaf's merchandise was then often smuggled back into India and shipped to other regional markets for sale (such as South Africa—see chapter 3).

Reliable information on the activities of these criminal networks is scarce, but our work in Mumbai and Karachi suggests that the RAND account is an exaggeration: D-Company

controls long-standing regional smuggling routes between Dubai, Karachi, and Mumbai. But we see no evidence that this supply chain plays a major role in contemporary Indian piracy, or that it extends to other parts of India. We see no evidence of a D-Company monopoly on the pirate market, even in Mumbai. Quite the contrary, the Mumbai market for pirated DVDs appears highly contested among a range of local suppliers—and increasingly so as falling production costs and prices have opened the door to smaller-scale production. Ernst & Young, in its study of Indian piracy, put the presence of foreign-produced DVDs from all sources at 10% of the Indian market in 2008, with the remainder split between local factories and cottage production (USIBC/Ernst & Young 2008).<sup>6</sup> D-Company’s film piracy activities also suffered from a US-instigated crackdown in Pakistan in 2005, which allegedly broke up the major Karachi factory networks.

Furthermore, we see no evidence of the wider control of the Mumbai film industry by D-Company or other mafia actors described by the RAND report. Mafia financing undoubtedly played a role in film production in the 1980s and early 1990s—the Ibrahim era—though by no means the dominant role asserted in the RAND report. These connections were highlighted by the arrest (and later acquittal) of film financier Bharat Shah in 2001, who was charged with running an extortion racket on behalf of Mumbai gangsters and with using slush money to finance his own productions. Rumors of mafia financing of particular films have circulated in the past two decades, but none have been confirmed. Nor have mafia links been demonstrated in regard to any of the large regional film industries, such as the Tamil and Telegu industries. The film financing problems described by RAND as a point of entry for mafia money have dissipated in the past decade as the Indian film industry has grown and diversified. Today, financing comes from a continuum of Indian and foreign sources, including Hollywood studios. Although connections to the Mumbai underworld almost certainly exist, we see no evidence that they are systematic, much less dominant.

## Mexico

The political power of street vendors remains unsettling to many in the Mexican establishment. Elite Mexican opinion in the press and in official statements often attributes these arrangements to “mafias” and “gangs.” Statements by the IIPA and by Mexican branches of the international industry organizations have adopted this line of argument—and indeed have gone further in

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6 This fact did not stop Ernst & Young from describing the “strong organized crime nexus backing the piracy industry,” without further comment, as a major challenge to law enforcement.

trying to conflate media piracy with the drug trade and other forms of violent criminal activity. A 2009 report authored by the RAND Corporation and sponsored by the Motion Picture Association of America (MPAA)—ambitiously called *Film Piracy, Organized Crime, and Terrorism*—adopts this template of guilt by (spatial) association:

Tepito's resistance to law enforcement makes it terrain for fencing and piracy and provides a haven for the more dangerous criminal enterprises of narcotics and arms trafficking. Drive-by shootings have become commonplace. The Tijuana drug cartel once was said to be ensconced in the neighborhood, using local children to distribute cocaine throughout the capital. The Federal Investigation Agency (AFI) led an early morning anti-piracy raid of warehouses in Tepito in October 2006, confiscating tons of discs and 300 burners capable of producing 43,200 pirated DVDs per day. To illustrate what a cesspool of crime Tepito became, according to authoritative press accounts, six raids were made between April and July 2008, one of which resulted in the seizure of 150 tons of counterfeit material. By late 2006, when Mexican President Felipe Calderon moved to evict residents and street vendors from Tepito, it had become Mexico's premier "narco-neighborhood." (Treverton et al. 2009:108–9)

While it is undeniable that crime in Tepito is common, there is little in this study—or in our own findings—to warrant the conclusion that these activities are organizationally linked. To date, the combination of strong vendor organizations and low profit margins has been a powerful force for ensuring vendor autonomy—from the police on one side and the drug cartels on the other.

The RAND study's section on Mexico appears to rely exclusively on newspaper stories and interviews

## The Total Checkup

The director of the St. Petersburg branch of a Moscow-based insurance company described an MVD-directed police raid in summer 2008, triggered by a complaint by a frustrated client who had had an insurance claim denied. The complaint led to what in Russia is called a "total checkup," in which police investigate all aspects of a business's activity. When a review of the company's accounting practices turned up no inconsistencies, police asked company representatives to produce evidence that software on the office computers was licensed. Because the office's equipment was purchased and serviced from Moscow, no such documentation was available onsite. The police confiscated the computers until proof of the licensing status of their copies of Microsoft Windows could be acquired from their Moscow headquarters. No charges were filed during the investigation; nor—according to the office director—was the seizure of the equipment accompanied by proper paperwork. These procedural problems eventually led to the closure of the investigation without charges. But for two weeks the company was paralyzed and could not provide services to its clients. Beyond the initial disruption, the experience has also affected the firm's business practices: the company is now much more careful to avoid conflicts with clients.

with representatives of the copyright industry. There is no indication of any attempt to speak with the parties involved in any of their primary examples. The weakness of this approach is clear in the discussion of a struggle between two street vendor leaders, which resulted in the death of a family member. This tragic ending to a conflict over street space and membership in the two organizations becomes, in the RAND report, part of a misleading litany of piracy-inspired violence. (The author has been in touch with both groups involved in this incident for twenty years; neither has a significant number of vendors selling pirated products.) The complexity of the optical disk production and distribution chain is taken as *prima facie* evidence of “organized criminal syndicates.” Los Ambulantes/Tepito (Street Vendors/Tepito) is listed as a criminal organization on par with the Yakuza and Chinese Triad (xiii). In effect, the RAND authors have classified the community as a criminal gang. It is worth noting, too, that studies of narcotrafficking in Mexico fail to mention any connections to media piracy—though connections between narcotrafficking and human and arms trafficking, kidnapping, and other serious crimes are well documented (Cook 2008; UNODC 2007).

The conflation of narcotrafficking and media piracy in the RAND piece underscores a basic constraint on IP enforcement in Mexico: the violent, destabilizing, and corrupting effects of narcotrafficking dwarf the harms attributed to media piracy and so are very unlikely to be comparably viewed by most politicians and law enforcement officials. Estimates of drug cartel profits in Mexico range from \$8 billion to \$24 billion, derived primarily from marijuana sales in the United States (Cook 2008). Drug violence has claimed more than 28,000 lives in Mexico since 2006 (BBC News 2010). Twenty thousand Mexican troops occupy major drug-transit cities near the US border (Booth 2008). In this context, with law enforcement fighting a battle that threatens the Mexican state, media industry efforts to tie the two “wars” together do a disservice to both countries.

## Russia

Piracy in Russia is passes through variety of complex supply chains, many of which involve substantial organization. The fragmentation of production seen in other countries, as burners and raw materials become cheap, has been partly forestalled in Russia through extensive police action—particularly during the crackdown of 2006-2007. Despite the persistence of these more organized supply chains, however, we see no evidence of ties between pirate networks and broader “organized-crime syndicates” or the so-called ethnic mafia often alleged to dominate Russian black markets. Such allegations are relatively common in online forums and it would be surprising, in our view, if opportunistic connections between piracy and other forms of

criminal activity were absent from the Russian market. But we believe such activity to be, at most, peripheral to the larger dynamics of Russian piracy.

The much more common circumstance is the gaming of the boundary between legal and illegal throughout the media economy—by pirates, legal producers, and the state. Many pirate businesses also operate licitly—either in parallel to pirate production or distribution or through the creative use of loopholes in Russian law, as in the case of the infamous download site, AllofMP3. Perhaps the most striking feature of Russian pirate markets, however, is the evidence of state protection of pirate optical disk production. A number of industry and government sources have directed attention to the role of Restricted Access Regime Enterprise (RARE) sites—such as military industrial facilities and nuclear power plants under the protection of state security forces—as hosts of pirate production lines.

Factories on such sites also are among the major “legal” suppliers of disks in Russia and contribute, in particular, to a DVD pirate market saturated by the “above-quota” production of high-quality disks. While the RARE sites have been targeted for closure in recent years by the Russian government—with some success according to industry sources—the larger web of police and security-service protection for the major factories appears to be mostly intact.

Enforcement is another side of this dynamic in Russia. Rather than serving (or failing) all parts of the copyright sector equally, enforcement is a scarce resource that confers competitive advantages in the marketplace. Some of these advantages are relatively subtle, as when large firms enjoy more influence with police or prosecutors than small firms. One company’s protection, in such contexts, is often another’s exposure. But others are cruder and run the gamut from commissioned prosecutions and harassment of competitors to more elaborate forms of extortion and corporate raiding (*reiderstvo*). Such problems are by no means limited to IP rights in Russia, but the mix of corruptible institutions, near-universal legal jeopardy under revised criminal law, and scarce actual enforcement creates fertile ground for them.<sup>7</sup>

The ramp up of investigations and raids during 2006–7 amplified these problems and produced a powerful reaction in the Russian business community. As a growing number of businesses were disrupted by police raids, software-licensing investigations, and other forms of pressure, IP enforcement began to be identified with police corruption and business takeovers rather than the protection of rights. Shakedowns were common in these contexts, and even under the best of circumstances, police raids could paralyze businesses for days before a case

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7 Firestone (2010) describes the wide variety of abuses that have become common in such contexts, including the practice of “intellectual property squatting” or fraudulent registering of trademarks and patents in order to set up a civil suit or criminal charges against the rights holder. Astafiev (2009) notes that the MVD initiated 350 investigations of corporate raiding in 2005. See also Rigi (2010).

was cleared up or dropped. Pressure to turn in “adequate” statistics on enforcement led to spikes of activity during enforcement reporting periods, with licensed goods—according to enforcement sources—representing up to 30% of seizures. By 2007, police overreach had become a regular focus of local and federal-level economic summits and soon produced a revised approach to enforcement. Now president, Dmitri Medvedev took the side of harassed business owners, stating, in December 2008, that businesses should not be “terrorized” by the police. In 2009, Vladimir Putin, now prime minister, claimed that most police inspections of businesses were commercially motivated and had “no obvious justification” (Firestone 2010; Beroev 2009). Pushback had become the government position: in early 2009, the Duma passed a new law limiting police inspections of businesses to once every three years.