# Introduction: Piracy and Enforcement in Global Perspective

Media piracy has been called "a global scourge," "an international plague," and "nirvana for criminals,"[1] 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 price of a CD, DVD, or copy of Microsoft Office is five to ten times higher than in the United States or Europe. Licit media goods are luxury items in most parts of the world, and licit media markets are correspondingly tiny. Industry estimates of high rates of piracy in emerging markets—68% for software in Russia, 82% for music in Mexico, 90% for movies in India—reflect this disparity and may even understate the prevalence of pirated goods.

Acknowledging these price 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. This last point is critical to understanding the tradeoffs that define piracy and enforcement in emerging markets. The enormously successful globalization of media culture has not been accompanied by a comparable democratization of media access—at least in its legal forms. The flood of legal media goods available in high-income countries over the past two decades has been a trickle in most parts of the world.

The growth of digital piracy since the mid-1990s has undermined a wide range of media business models, but it has also disrupted this bad market equilibrium and created opportunities in emerging economies for price and service innovations that leverage the new technologies. In our view, the most important question is not whether stronger enforcement can reduce piracy and preserve the existing market structure—our research offers no reassurance on this front—but whether stable cultural and business models can emerge at the low end of these media markets that are capable of addressing the next several billion media consumers. Our country studies provide glimpses of this reinvention as costs of production and distribution decline and as producers and distributors compete and innovate.

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1 Respectively, by the USTR (2003), Dan Glickman of the MPAA (Boliek 2004), and Jack Valenti (2004) of the MPAA.

Invariably, industry groups invoke similar arguments on behalf of stronger enforcement: lower piracy will lead to greater investment in legal markets, and greater investment will lead to economic growth, jobs, innovation, and expanded access. This is the logic that has made intellectual property a central subject of trade negotiations since the 1980s. But while we see this mechanism operating in some contexts in emerging markets, we think that other forces play a far larger role.

The factor common to successful low-cost models, our work suggests, is neither strong enforcement against pirates nor the creative use of digital distribution, but rather the presence of firms that actively compete on price and services for local customers. Such competition is endemic in some media sectors in the United States 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 national market, set prices to attract mass audiences, and in some cases compete directly with pirate distribution. And it is a small but persistent factor in the business software sector, where open-source software alternatives (and increasingly, Google and other free online services) limit the market power of commercial vendors.[2]

But with a handful of exceptions, it is marginal everywhere else in the developing world, where multinational firms dominate domestic markets. Here, our work suggests that local ownership matters. Domestic firms are more likely to leverage the fall in production and distribution costs to expand markets beyond high-income segments of the population. The domestic market is their primary market, and they will compete for it. Multinational pricing in emerging economies, in contrast, signals two rather different goals: (1) to protect the pricing structure in the high-income countries that generate most of their profits and (2) to maintain dominant positions in developing markets as local incomes slowly rise. Such strategies are profit maximizing across a global market rather than a domestic one, and this difference has precluded real price competition in middle- and low-income countries. Outside some very narrow contexts, multinationals have not challenged the high-price/small-market dynamic common to emerging markets. They haven't had to.

The chief defect of this approach 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 rising 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 downmarket or continue to settle for the very unequal splits between low-priced pirated goods and high-priced legal sales. This status quo, it is worth noting, appears viable for most sectors of the multinational-driven media business.

2 Industry and trade representatives would characterize many of the same forces as "market access barriers" to foreign firms—generally ignoring the monopolization of markets that rapidly follows such access. Such issues have been central to international debates over cultural policy for some time, with much of the attention currently focused on China, where strict controls on cultural imports ensure that domestic, state-controlled companies control the market.

Software, DVD, and box office revenues in most middle-income countries have risen in the past decade—in some cases dramatically. Sales of CDs have fallen, but the overall music business, including performance, has grown.

The centrality of pricing problems to this dynamic is obvious, yet strikingly absent from policy discussions. When it comes to piracy, the boundaries of domestic and international policy conversation are exceedingly narrow. 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 new thinking is 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 US trade policy, which has been the main channel for the international dialogue on enforcement.

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 broader 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 ACTA, the Anti-Counterfeiting Trade Agreement recently finalized by the United States, the European Commission, and a handful of other countries.

To be more concrete about these limitations, we have seen little evidence—and indeed few claims—that enforcement efforts to date have had any impact whatsoever 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.

The debate is also notable for its lack of discussion of the endgame: of how expanded enforcement, whether directed against Internet-based piracy in the form of proposed “three-strikes” laws or physical piracy in the form of stronger policing, will significantly change this underlying dynamic. Much of what counts as long-term thinking in this debate involves hopes that education will build a stronger “culture of intellectual property” over time. We see no evidence of the emergence of this culture in our work or in the numerous consumer-opinion surveys conducted on the subject. Nor have we seen any attempts by industry actors to articulate credible benchmarks for success or desirable limits on expanded criminal liability, enforcement powers, and public investment. The strong moralization of the debate makes such compromises difficult.

Perhaps most important, we see little connection between these enforcement discussions 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, as we see it, has less to do with enforcement than with fostering competition at the low end of media markets—in the mass market that has been largely ceded to piracy. We take it as self-evident, at this point, that $15 DVDs, $12 CDs, and $150 copies of Microsoft Office are not going to be part of broad-based legal solutions—and in fact, we find this view commonplace in the industry itself. The choice we face is not, in the end, between high rates of piracy and low rates of piracy for media goods. It is between high-piracy/high-price markets and high-piracy/low-price markets. The public-policy question, in our view, is how to move efficiently from one to the other. The enforcement question, then, is how to support legal markets for media goods without impeding that transition.

The Media Piracy Project was created in 2007 to open up the conversation about these issues. Fundamentally, the project is an investigation of music, film, and software piracy in emerging economies and of the multinational and local enforcement efforts to combat it.[3] The primary contributions to this report are country studies of Brazil, India, Russia, and South Africa—key battlegrounds in the anti-piracy wars and frequent counterweights to US and EU dominance of international policymaking. The report also includes shorter studies of Mexico and Bolivia, drawing on the work of individual scholars whose interests aligned with the larger project.

At its broadest level, this 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 fifteen-year arc of optical disc piracy, as discs replaced cassettes and, later, as small-scale cottage industries replaced large-scale industrial 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 policy lobbying. And it explores consumer demand and changing consumer practices, including the consistent indifference or hostility to enforcement efforts of large majorities of developing-country populations.

The report consists of nine chapters: a broad introduction to piracy and enforcement; an introduction to the international politics of IP governance; country studies of South Africa, Russia, Brazil, Mexico, Bolivia, and India; and a concluding chapter that looks back to the history of the international book market for lessons about the relationship between present-day pirates and incumbent cultural producers.

Some thirty-five researchers and nine institutions were centrally involved in this project over its three-year arc, though a full accounting would include dozens of sources, readers, and reviewers who contributed generously, and sometimes anonymously. A lengthy, but inevitably partial, list of credits appears in the back matter of this report.

3 Because of our primary interest in the digital transition in the markets we studied, this report offers only brief treatments of contemporary book piracy. Modern book piracy in most countries is concentrated in the textbook market and is not yet an area in which digital distribution and digital consumer practices have played a large role. As global markets for laptops and e-readers grow, that will change quickly, and book piracy will assume a very important place in these discussions.

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