Project Title: Towards Détente in Media Piracy

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Research Institution: Association for Progressive Communications
Country: South Africa

Project Team:

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1. Synthesis

‘Towards Détente in Media Piracy’ is a multi-country research project aimed at reaching a better understanding of the nature and extent of media piracy in a diverse set of countries across the global South, namely Brazil, India, and South Africa. The South African research team, led by researchers from the Association for Progressive Communications (APC), will produce a qualitative and quantitative analysis of the media piracy situation in South Africa in an attempt to counter the misleading data produced by local representatives of the international copyright industries. This data, which is often based on methodologically questionable research, is used to paint a picture of mass violation of US copyright with no attempt to provide context or examine the economic and social factors driving the consumption of pirated goods. By evaluating the benefits and costs of media piracy as an informal economic sector in South Africa, the research team aims to construct a fuller picture of media consumption in a country characterized by extremely high levels of social and economic inequality.

Results of the research will be disseminated in multiple formats, including press releases and policy briefs, in order to provide South Africa policymakers with a development-oriented perspective on copyright issues as they embark upon a new phase of copyright reform over the next five years. Results will also be disseminated in the South African media, in an attempt to counter the dominant press narratives on piracy, which are designed by the anti-piracy lobby groups to stifle debate over alternatives to rigid copyright legislation and enforcement.

This report covers the second six months of the grant period, from July to December 2008. Over this time, the research team has

- completed its analysis of piracy data produced by the International Intellectual Property Alliance (IIPA), a US lobby group which provides the US Trade Representative (USTR) with the bulk of its global data on piracy,
- identified key figures within the South African anti-piracy and media industries for interviews,
- assembled additional research specialists from South African academia to complete the quantitative components of the analysis,
- interview templates have been completed in preparation for a set of fact-finding interviews with representatives of the media industries, as well as pirates and consumers of pirated goods (to take place in January and February of 2009); and
- researchers in Johannesburg have begun preliminary ethnographic research of the pirate infrastructure of distribution and sales which exists in large markets around the city.

These activities have been timed to result in research outputs for the drafting of our country report, due in March of 2009. Country studies from all research teams will be compiled into a complete report in mid-2009, in preparation for the advocacy and dissemination activities that will build on the research.

2. Research Problem

Our research seeks to weigh the costs versus the potential benefits of the war on
piracy in South Africa, and to paint a multi-faceted portrait of the ways in which piracy can be beneficial, necessary, or neutral, contrary to the dominant rhetoric of the copyright industries, in which piracy is simply a crime. By reframing the question of piracy to shift the focus away from illegality, we hope to open up public debate in a way that addresses questions of greater and more equitable access to knowledge, culture and technology.

In order to be able to question the legitimacy of the dominant narratives produced by the copyright industries, we seek to determine the nature of the institutional mechanisms used to produce notions of piracy, by media companies and their lobby groups. Another aspect of cultural consumption which complicates their narrative is the way in which circulation of non-legal or pirate media can transform culture in important ways. Thus - if possible – we will seek to undertake ethnographic research of pirate networks in order to gain a fuller understanding of how such media is produced and circulated.

The research problem has evolved slightly due to our increased understanding of the IIPA and USTR’s historical relationship with South Africa. Although research on IIPA data collection methods has largely confirmed our hypotheses, one area which is difficult to explore in terms of the USTR’s relationship with South Africa is the impact of the late 90s / early 2000s trade dispute over parallel importation and compulsory licensing of antiretroviral medications for HIV/AIDS treatment. We suspect that the USTR has been unwilling to single out South Africa for ‘watch list’ status - a form of trade listing which is meant to warn countries that they must strengthen protection and enforcement of US copyright, despite pressure from the IIPA to do so - partly because of the vocal public backlash which accompanied that dispute. This finding had necessitated a more nuanced approach in terms of analyzing the motives and methods behind anti-piracy lobbying efforts in South Africa, as industry groups do not have the benefit of a watch list status to demonstrate the supposed seriousness of the piracy situation. As such, they are reliant on circulating their own data to the media and policymakers.

3. Research findings:

3. Research findings over the reporting period

Our research thus far has focused on the production of piracy statistics by the IIPA. We have determined that despite South Africa’s continued absence on the USTR watch lists for intellectual property rights violations, the continued publication and ‘updating’ of IIPA piracy data on South Africa lays the groundwork for any possible future actions by the USTR by providing a manufactured ‘history’ of growth in South African piracy levels and of the South African government’s failure to respond appropriately. It also provides local partners with the statistics and examples necessary to push for more stringent copyright legislation and enforcement at the national level. This has enormous implications for the direction of copyright reform in South Africa over the next few years, as local partners of the IIPA typically have a significant amount of influence within government.

In preliminary research on pirate networks of production and distribution in Johannesburg, researchers have noted findings that mirror the research of Brian Larkin on pirate infrastructure in the Nigerian film industry, ‘Nollywood.’

1 Brian Larkin, “Degraded Images, Distorted Sounds: Nigerian Video and the
the Nollywood filmmakers, South African musicians have begun exploring alternative methods of distributing their products through, for example, such as the use of ‘spaza shops’ as well as pirate networks. Although price points are set much lower than in the legitimate markets, such strategies enable artists to reach a much wider audience, thus turning a profit based on the sheer number of sales. Such examples complicate the strict dichotomy of ‘pirate versus legitimate’ advanced by the copyright industries, a distinction which will be further eroded as access to broadband internet access, and all of the diverse forms of media consumption which this access provides, expands across South Africa over the next few years.

b. Progress towards meeting objectives

- To produce a detailed study of enforcement infrastructure and the anti piracy industry, including government structures, industry lobbies, corporate legal firms, and links to judicial and police strategies.

We have worked towards meeting this objective by producing a detailed map of the anti-piracy industry in South Africa, including industry links to government and to parent companies and lobbying organizations in the United States. In order to fill out the details of this map, we will be undertaking a series of interviews with industry and government representatives in early 2009.

- To analyze methodologies for gathering statistics in enforcement literature published by media industry lobby groups in order to test widely held presumptions of their faultiness and exaggeration.

We have undertaken this analysis over the past six months. The result is a chapter for the research report which analyzes data production and circulation by the IIPA and its local partner organizations.

- To gain an understanding of the nature and extent of piracy amongst different communities in South Africa – and the reasons for piracy.

Ethnographic and other qualitative forms of research, including interviews, will help in meeting this object over the next six month report period. In addition, a quantitative study of purchasing power for media goods in South Africa, relative to other countries in the global South, will be undertaken in order to identify some of the reasons for the popularity of low-priced pirated goods. This study will identify how vendors of pirated good structure their pricing for different markets and consumers, as well as as analysis of the depth/breadth of choice of pirated media goods at South African – in our case, Johannesburg - markets.

A number of different options are under discussion with respect to case studies of 'media piracy' in South Africa. These include the following:

- a network of pirate movie consumers in a working class neighborhood in Cape Town;
- a network of marginal musicians and aspirant music producers from across South Africa who use illegal music production/mixing software;
- “thick descriptions” of three Johannesburg markets known for the distribution

Infrastructure of Piracy,” Public Culture vol. 16, no. 2 (2004.)
of pirated media goods:
(a) inner-city Johannesburg for consumption of illegal copies of local music, a lot of it available on tape and targeting a rural and peri-urban market,
(b) Bruma World Market known for its distribution of illegal copies of Hollywood "blockbusters"; and
(c) Fordsburg market for distribution of Bollywood movies

Also included in the South African analysis is an extensive critical discourse analysis (CDA) of media coverage of piracy over 4 years, from 2005 to 2008. The CDA will cover print and radio and television coverage as well as the Business Software Alliance's concerted advertising campaigns in 2008.

Work towards achieving the following objectives will take place in mid-2009, following the production of the research report:

- To generate a public debate using new and traditional forms of media to disseminate the research report, its findings and recommendations with the aim of influencing the policy debate;
- To open up a different debate on piracy other than the standard ones of enforcement and criminality. This debate can lead to wider discussions of cultural needs and community practices of sharing and circulation, in societies characterized by conditions of high social inequality;
- To disseminate the results to the South African Department of Trade and Industry and the Parliamentary Committee on Trade and Industry through the hosting of a seminar for policymakers and civil servants;
- To disseminate the results to the India Brazil South Africa (IBSA) civil society forum to engage with the existing government IBSA forum on the information society and intellectual property rights implications of the research.

4. Project implementation and management:

a. List of activities
   • South African Academics workshop, October 21 2008.
   • Researchers assembled several South African academics working in areas of copyright and access to knowledge, to brief them on the project and discuss their possible involvement in the research. Details of their involvement are currently being finalized with Natasha Primo, but are loosely outlined below in section 4.e.
   • Research visit to Fordsburg Market, September 2008.
   • Researchers visited the Fordsburg market in downtown Johannesburg to conduct an informal study of the range and quantity of pirated goods available.

b. List of research methods and analytical techniques used
   • Content analysis of reports and press releases produced by the IIPA and its local partners.
   • Qualitative research in the form of interviews with
   • A literature review of pre-existing work on piracy, access to knowledge, and intellectual property enforcement via trade mechanisms.
   • Qualitative research using Mapping exercise for anti-piracy sector.
   • Media monitoring for mentions of piracy statistics and enforcement in South Africa.
• Ethnographic research in the Johannesburg markets and Orange Farm.
• Quantitative data analysis on purchasing power parity for media goods in South Africa, relative to other countries in the global South.

c. Problems with the research that have been encountered
We are currently having difficulty at the moment in interviewing government figures, due to the political turmoil within the ruling African National Congress (ANC.) Politicians and civil servants are very unsure of their position within the government, particularly in light of the presidential election due in early 2009. We hope that this challenge will also provide us with increased opportunities during the advocacy phase of the project, as we are likely to be approaching a fresh group of civil servants and policymakers in 2009, who will be in need of information on copyright reform and thus possibly more receptive to new ideas.

It has also been difficult to trace the sources of IIPA data, which is part of the larger problem regarding the opacity of their data collection methods that we are investigating. In short, we intend to continue collecting information on IIPA and its member organizations’ South Africa or Africa-specific data, or to identify concretely that such data does not exist. Better access to pirates is also essential, an issue that we are addressing through increased research and networking, including working with individuals who have well-established relationships with pirates rather than approaching them ourselves.

d. Financial variances:
For this period, the main variance in the budget relates to the research budgets. Researchers were identified in this second semester of the project and the case studies were agreed upon. The research itself will only be completed in early 2009, at which point the researchers will receive their fees.

e. Disciplinary orientation of the project;
Our research is rooted in the public domain / commons approach to intellectual property, articulated by Lawrence Lessig, Yochai Benkler, and James Boyle, among others. Our analysis of the anti-piracy activities of the copyright industries is grounded in a political economy approach, similar to the research done by Peter Drahos and John Braithwaite on the IIPA and USTR.\(^2\) In order to provide the necessary cultural and social context for the development and evolution of piracy activities in South Africa, we will also be undertaking ethnographic research, including producing an ethnographic history of a pirated media good, from production to consumption. We hope to combine a cross-disciplinary approach with the methodological rigour necessary to provide research outputs which function as a valuable counterpoint to the data produced by the IIPA and its local partners in South Africa.

f. Project administration
An academic at the University of the Witswatersrand in Johannesburg, Nixon Karitthi, has been commissioned to assist with quantitative aspects of the research on South African purchasing power for media goods. A former CIDA intern at APC, Natalie Brown, was hired on as a research assistant for the six-month period from July 2008 to December 2008. Collaboration has also been discussed with two other South African academics, Tanja Bosch of the University of Cape Town and Adam Haupt, but

the details have yet to be finalized.

g. **Forecasted expenditures for the next reporting period and until the end of the project** (comment on the financial forecast included in the interim financial report, with respect to the activities planned for the next reporting period)

Natasha Primo has managed to secure a discounted rate for media monitoring data (print and broadcast data from 2005 to 2008) of ZAR60,000. This will be allocated to the field work budget. In addition, the researchers fees will be allocated against the fieldwork and the research budget line items.

Also upcoming in the 3rd semester will be expenditures towards the Brazil workshop, planned for April 2009, where all the research teams will report on their progress and submit the first draft of their chapter.

i. **Project schedule for the following six months**

<table>
<thead>
<tr>
<th>Date</th>
<th>Task</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 30th</td>
<td>Rough version of report finished</td>
<td>all components of the report assembled in rough form, in order to identify a workable report structure, in collaboration with other research teams.</td>
</tr>
<tr>
<td>January</td>
<td>2nd phase of interviews</td>
<td>Second phase of interviews completed (industry, musicians, pirates), with resulting data ready for inclusion in March report.</td>
</tr>
<tr>
<td>January interviews (1)</td>
<td>a. Pirate interviews</td>
<td>Subjects: Vendors, distributors, producers, users of pirated material, organizations representing informal traders/vendors.</td>
</tr>
<tr>
<td>January interviews (3)</td>
<td>c. Public Bodies interviews</td>
<td>Subjects: NFVF (Eddie Mbalo) and others to be identified.</td>
</tr>
<tr>
<td>March 15th</td>
<td>Edit and proofread report</td>
<td>draft report ready for editing and proofreading.</td>
</tr>
<tr>
<td>Early April</td>
<td>Designing</td>
<td>Building on the research and writing</td>
</tr>
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5. Project outputs and dissemination:

- Research chapter on IIPA data analysis and circulation. This chapter has been disseminated to the other country research teams for additional comments.
- An October 2008 research workshop with South African academics working the fields of intellectual property and cultural production helped to extend our research network and recruit individuals for assistance with research methodologies.
- Researcher Natasha Primo attended the 2008 iCommons summit in Sapporo, Japan, successfully networking with individuals and groups involved in the Commons movement.
- The South Africa country report, due to be finished in March 2009 (as per the project schedule outlined above), will be produced in multiple formats, including summaries and press releases, and widely circulated throughout South African media and policy circles.

6. Capacity-building:

*Increased research or administrative skills of the researchers involved;*

The research undertaken as part of this project ties into a larger goal for APC: to increase the research capacity of its members through an enhanced focus on use of proper research methods. During the 2008 APC staff meeting in February 2008, several of the researchers working on ‘Towards Détente in Media Piracy’ took part in a research methods workshop led by Ran Greenstein, an academic at the University of the Witswatersrand in Johannesburg, South Africa. We hope that the additional research capacity-building provided by the work involved in this project will inform
future research at APC.

**Capacity-building of women or marginalized social groups.**

The research team is collaborating with members of the NGO Women'sNet, who are currently undertaking a project in Orange Farm, the largest informal settlement in South Africa (located outside Johannesburg.) Ethnographic research within Orange Farm will inform our understanding of the piracy sector as a means of employment in marginalized communities with high rates of unemployment. Such factors should inform policymaking on media piracy, but there are very few people publicly making the link between the informal sector and unemployment.

7. **Impact:**

Our study comes at a time of political transition for South Africa. We consider this both a challenge and an opportunity. In a logistical sense, it will be difficult to interview current legislators and bureaucrats regarding copyright reform as we are uncertain what those individuals’ status will be under the likely Zuma presidency of 2009. On the other hand, we see this as an opportunity to formulate our policy recommendations in time to put together a strong plan for dissemination for an incoming parliament and team of civil servants. We could be well placed to influence legislators who are fresh to the table and looking for more information, particularly as there is very little in the way of existing data, either qualitative or quantitative, on South African media piracy, other than the data produced by the anti-piracy industry. The research outputs of this project will thus provide an important source of well-researched data on piracy and cultural consumption for local activists and policymakers.

8. **Recommendations:**

The current scope and duration of the project are fine. We anticipate meeting all research targets set for 2009.

We do anticipate some delay with the advocacy component and would like to request a 3 month no-cost extension of the deadlines, to complete the advocacy component by end June 2010.