Project Title: Towards Détente in Media Piracy

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Research Institution: Association for Progressive Communications
Country: South Africa

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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 interrogate 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, and to engage with policy-makers in an attempt to shift the debate from one of criminality to one of more equitable access to content, knowledge and technology.

This report covers the third six months of the grant period, from January 1 to 30 June 2009. Over this time, the research team:

- 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,
- conducted interviews with select figures in the anti-piracy industry though we were unable to get responses from individuals within government; and the Department of Trade and Industry specifically. ,
- concluded an empirical investigation into attitudes to piracy and the underlying social piracy network in a low income township in Cape Town, as well as a survey or attitudes to piracy among young marginal music producers;
- conducted discourse analysis of how South African media treats “piracy,” using 800+ print and broadcast media pieces as well as an analysis of the legal environment in South Africa;
- made several visits to 3 large flea-markets around Johannesburg that are known for activity by vendors of copyright infringing goods, and recorded prices of pirated goods for a global comparative pricing study of pirated versus licit media goods;
- investigated the possibility of making a study of the p2p environment and file-sharing behaviour on local torrent sites – like Bitfarm - with a view to deepening our understanding of online piracy among South Africans;
- integrated the different components of the research project into a draft
document for discussion at the global media piracy research workshop in Rio de Janeiro during 22-23 April 2009, where we also agreed to a July deadline for the first draft of the national research reports.

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. South Africa has not been on a USTR list since 1999 despite pressure from the IIPA to do so. This finding necessitates 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
Optical disk piracy – of films, music and games - is the major concern of antipiracy lobbyists in South Africa. Internet piracy is of lesser concern because high broadband costs, low bandwidth capacity and bandwidth capping has limited the incidences of internet downloading. Related to this is the fact that physical sales of CDs in South Africa increased by 70 percent between 2001 and 2007.

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 could potentially lay the groundwork for future actions by the USTR. Local partners produce piracy statistics of lost revenue - using the potential licit sales value of good confiscated during anti-piracy raids - and use these to lobby locally and internationally – through the IIPA - for more stringent copyright legislation and enforcement at the national level. The role of the private sector in building enforcement capacity in South Africa is noteworthy. For example, their sponsorship of the first special court for commercial crimes – which include trademark and copyright infringements – can be linked to the higher levels of enforcement successes by the police and the courts. They have had enormous implications for the direction of copyright reform and enforcement in South Africa over the last few years. As local partners of the IIPA, they typically have a significant amount of influence within government, using data that are largely uncontested.

In spite of continued IIPA calls to place South Africa on the watch lists - and of late, on the special mention list – the USTR has not placed South Africa on any lists since the 1999 dispute around the parallel importation of HIV/Aids medication. This raises some questions about the content of “written understanding” the two parties came to in 1999 after South African was subject to an “out-of-cycle” review by the USTR. Unfortunately our requests for interviews with DTI officials - and attempts to find some answers to this questions – have yet to pay of.

The research shows a decline in street level piracy, most likely due to successful raids by police and industry bodies raids together with public education anti-piracy campaigns. In some markets, vendors still sell pirated media – films, music and games – though market managers are under increased pressure to revoke their stall leases. Market vendors of pirated goods have become more wary of what they put on open display as they contemplate the increasing propensity of the South African public to lodge complaints where pirated versions of locally produced media goods are displayed. In response to the perceived hostility towards so-called pirates, “piracy” has become a “cottage industry” where small-scale pirates download copyrighted content off the internet and supply a small and trusted network of buyers.
The issue of copyright infringement or “piracy” has received higher levels of news coverage in the last 6 months – especially – as many developed countries grapple with illegal internet downloads and implement punitive legal measures to hopefully halt sharing of copyrighted materials on the internet. These debates and legal measures will undoubtedly find their way to developing countries – South Africa included - as bandwidth access improves. In the meantime, a wider debate on the issue of maximalist IP regimes and the possibility of TRIPs+ conditions being imposed on developing countries looms large and need an informed response from civil society actors.

### 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 produced 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 sought interviews with a cross section of key players in this sector. While we managed to have some interviews with industry-based players, government representatives have not made themselves available for meetings. We will continue to seek interviews until we close the project formally.

- **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 produced a critical review of how the IIPA and its local partners shape the discourse through the continuous release of data – including estimates of lost sales and state revenue, in spite of wide-spread critique of the methodology and underlying methodological assumptions.

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

This study will identify how vendors of pirated good structure their pricing for different markets and consumers, as well as analysis of the depth/breadth of choice of pirated media goods at South African – in our case, Johannesburg - markets.

We settled on 3 different approaches to studying incidents and attitudes towards of 'media piracy' in South Africa. The case studies 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 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 covers print and radio and television coverage as well as the Business Software Alliance's concerted advertising campaigns in 2008.

These elements of the research projects have all been implemented, to a degree. However, the intent to record “thick descriptions” of the 3 markets was compromised by the wariness of pirate vendors and their fear for raids. Too many questions by members of the research team generally aroused vendors' suspicion and - depending on the market – either unwelcome attention or vendors reverted to speaking to each other in their mother tongue (which they knew was not shared by the researchers).

The progress of the research was slowed down by the lack of response from government officials to requests for interviews, and pushed back plans for the dissemination and advocacy work. Thus we will only be working towards achieving the following objectives during mid to late-2009, following the completion of the integrated 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

- Researchers were contracted to deliver;
  - Qualitative case study with pirate and clientele operating in the Western Cape township of Hanover Park
  - Email based survey and reports on attitudes to software piracy as held by marginal musicians and producers working across South Africa;
  - Overview of the legal environment and implications for copyright infringers;
  - Critical discourse analyses (CDA) of media treatment of piracy, based on 800+ incidences of broadcast and print media
- Research visits to Fordsburg, Bruma and Noord/Plein markets to investigate the prevalence of pirated media as well as collect pricing data for an international purchasing power parity study
- Investigated the possibility of an study into the p2p environment through an approach to the coordinators/managers of the Bitfarm torrent site.

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 the network of consumers of pirated movies in Hanover Park
- A literature review of pre-existing work on piracy, access to knowledge, and intellectual property enforcement via trade mechanisms.
- Desktop research to map the anti-piracy sector in South Africa
- Media monitoring for mentions of piracy statistics and enforcement in South Africa.
- Participant observation in the Johannesburg markets.
- 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 continue to experience difficulty getting positive responses to request for interviews with government figures. Following the elections in April 2009, we anticipate that we will interact with a fresh group of civil servants and
policymakers in 2009, many of whom will need information on copyright reform and could thus be 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 travel budgets. In the first year, the India workshop we budgeted for did not materialise as the India team was not ready to host a workshop. In April 2009, the research workshop was held in Rio de Janeiro. It appears that the meeting hosts budgeted fully for the workshop including funds to pay for the travel and accommodation of research teams members from the other countries. The travel funds in our budget was thus not touched except for a travel stipend and allowance for incidental expenses incurred by the 3 person team of Natasha Primo, Libby Lloyd and Natalie Brown.

We would like to request that the travel funds be shifted and allocated for use in the advocacy phase, starting in the second semester of 2009.

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.¹

In order to provide the necessary cultural and social context for the development and evolution of piracy activities in South Africa, we sought to undertake ethnographic research - including producing an ethnographic history of a pirated media good from its production to consumption. We hoped 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. However, the success of anti-piracy enforcement actions in South Africa have made it near impossible to develop the necessary relationships and access to pirates. Thus it has proved very difficult to pursue an

ethnographic approach or to trace the history of a pirated media goods as initially envisioned. Those involved in the global and national distribution of CDs with copyright infringing content operate “below the radar” and were not accessible to the researchers. The experience of “piracy” researchers in India suggests that it takes several years to build the necessary trust that would make the activities and networks accessible to a researcher.

Instead of the ethnographic research – or tracing the history of pirated CD in order to gain insight into the layers of (global) networks that handle the goods, the researchers have had to engage in participant observation techniques, posing as consumers to purchase pirated goods at the respective markets in Johannesburg and in Cape Town, and buying pirated films from a “cottage businesses” in Hanover Park.

**f. Project administration**

Natasha Primo served as the project coordinator and a researcher. Libby Lloyd was contracted as the second researcher to the project team. A former intern at APC, Natalie Brown, was hired on as a research assistant for the six-month period from July 2008 to December 2008.

Aspects of the research – specifically the case studies and the critical discourse analysis – were contracted out. An academic at the University of the Witswatersrand in Johannesburg, Nixon Karitthi, was commissioned to conduct the CDA. In addition, Tanja Bosch and Adam Haupt - both at the University of Cape Town - were respectively contracted to do case studies in the Hanover Park community and with marginal musicians/producers across South Africa.

**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)

The two main activities for the 4th semester will be (i) to complete two reports targeted at the international and national audiences respectively, and (ii) to host the dissemination seminar together with the South African researchers. The workshop will bring together NGOs working in the area and will endeavour to bring both private sector and government representatives to the discussion. From the workshop we will seek to develop a statement around which to build awareness about maximalist IP regimes and the value of more flexible IP regimes and an open content agenda for development.

For the 4th semester we will also escalate our engagement with the IBSA partners as part of CS advocacy for a more concerted push for an IP and development agenda within the relevant international forums. APC will also investigate the potential for engaging in the WIPO spaces, specifically the
WIPO committee on IP and Development.

i. Project schedule for the following six months

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<th>Period</th>
<th>Activities</th>
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<tr>
<td>July/August</td>
<td>Complete version of integrated report, integrating the case studies and legal analysis. For inclusion in SSRC publication.</td>
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| August - September| * Engage in a round of editing with the SSRC coordinator of the global report;  
* Prepare a draft of the paper for South African audience and the national dissemination seminar. |
| October           | * Host the South African dissemination seminar with local NGOs, private sector, government and media representatives; 
* Write and distribute press releases on research results, targeted to tech media, mainstream media, blogs, industry, etc. 
* Approach WIPO committee with respect to APC representation at the meetings of the Committee on IP and Development;  
* Develop a web site that will be at the centre of a national advocacy strategy and collect endorsements from individuals and organisations |
| November – December| * Approach IBSA coordinators with formal proposal to establish IBSA Civil Society Forum on Communications (and IP) for Development;  
* Collaborate with other research teams on developing and implementing an international advocacy strategy. |
| December/January 2010 | Disseminate results of research to IBSA Civil Society Forum and collaborate with other research teams on designing and implementing an international advocacy strategy. |
| January to March 2010 \(^2\) | * Host a seminar for targeted officials within the DTI, DAC and Parliament to disseminate the results of our research to them;  
* Track progress of copyright reform within DTI and Parliament, as well as coverage in the press and pursue any necessary follow-up |

\(^2\) We are requesting a 3 month no-cost extension for the advocacy phase, for the project to end 30 June 2010.
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 research team participated in the research workshop in Rio de Janeiro in April 2009.
- The first draft of the South Africa country report, is now due to be finished in October 2009. Another version of the report will be produced for a local audience, to be disseminated to participants of the national dissemination seminar.

6. Capacity-building:

*Increased research or administrative skills of the researchers involved;*
No additional research or administrative capacity was acquired in the reporting period.

*Capacity-building of women or marginalized social groups.*
The research team had planned to collaborate with the Girls'Net project at the Johannesburg-based APC member, Women'sNet to expand on an existing project in Orange Farm, the largest informal settlement in South Africa (located outside Johannesburg.) However, the unexpected resignation of the Girls'Net coordinator and the diminished capacity within Women'sNet/Girls'Net led us to reconsider this approach. In its stead, a Women'sNet staff members visited the inner-city market at Noord/Plein to observe what was on sale, who the target audience was, who the vendors were, and generally to obtain whatever relevant information could be observed.

7. Impact:

Our study comes at a time of political transition for South Africa. We consider this both a challenge and an opportunity. This as an opportunity to formulate our policy recommendations with a view to influencing a new team of parliamentarians and 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. The project is scheduled for completion at end March 2010.

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.