

INTELLECTUAL PROPERTY THEFT AND ORGANIZED CRIME: THE CASE OF FILM PIRACY¹

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This article seeks to understand the processes by which the crime of intellectual property theft is organized, with specific attention given to film piracy. It seeks to identify the structure and function of the criminal enterprises engaged in this crime and assess the degree to which organized crime is involved with film piracy. An analysis of available sources reveals that general conclusions about the relationship of organized crime to film piracy results from a lack of useable and verifiable information in media, government, and industry sources. In the absence of independent, substantive analysis, anecdote and industry interests currently drive public policies and legal developments created to address the role of organized crime in film piracy. In the United States and across the globe, seizures, criminal indictments, civil actions, and public awareness are up considerably. Whether or not these advances can be maintained in the face of technological advances, the evolution of industry economic structures, and consumer indifference to the stigma of intellectual property theft and concern at industry response to such theft remains to be seen. Specific recommendations for future research are offered.

Intellectual Property Theft and Organized Crime

Over the past two decades, the industry associations charged with protecting intellectual property industries have aggressively campaigned against intellectual property theft. As part of this campaign, these associations routinely claim that organized crime is a main contributor to the theft of billions of dollars of intellectual property. Their campaigns have been quite successful. High profile investigations of criminal enterprises engaged in these illegal activities have occurred around the world at an ever-increasing rate, resulting in hundreds of thousands of counterfeit items being seized on an annual basis.

The motivation for the receptiveness of governments to take action against intellectual property theft is clearly seen in the United States. Deputy Attorney General Eric H. Holder, Jr. (1999) summarized this motivation. As the U.S. economy transitions from the Industrial Age to the Information Age, he argued, "The United States' economy is increasingly dependent on the production and distribution of intellectual property (IP)." The United States "which leads the world in the cre-

ation and export of intellectual property and IP-related products,” is finding a rapidly increasing portion of its Gross National Product based on intellectual property and its derivatives. Millions of Americans are employed in this sector of the economy, a sector that is experiencing the second greatest rate of job growth in the nation. Given the importance of this sector to the nation’s economy, the government, he argues, must protect its interests by making it a priority to enforce domestic laws and fulfill international treaty obligations concerning intellectual property theft.

When an economic sector grows as rapidly as this one, it comes as no surprise that professional criminals look to exploit the opportunities inherent in it. Since the 1990s, the intellectual property industry has reportedly lost billions of dollars due to the theft of copyrights, trademarks, and trade secrets. From street level vendors selling counterfeit items, to workers manufacturing counterfeit goods in sweatshops, to bankers and shippers who profit from the trade, an extensive intellectual property shadow economy has developed on a global scale that mirrors the rapid growth of the legitimate intellectual property economy. Developments in digital, communication, information, and transportation technologies have further catalyzed the growth of this shadow economy, creating even more opportunities for individuals and groups to enter what they correctly perceive to be a high profit, low risk criminal enterprise.

Despite this perceived problem, the relationship between organized crime and intellectual property theft is still virgin territory for criminological research. Indeed, if the databases of the National Institute of Justice and *Criminal Justice Abstracts* are representative, only one scholarly article has addressed the subject at all, and it focused on legal instruments used by the state to address the crime, not the crime itself (Hetzer, 2002). Recognizing this hole in the literature, this article seeks to understand the processes by which the crime of intellectual property theft is organized, with specific attention given to film piracy. It seeks to identify the structure and function of the criminal enterprises engaged in this crime and assess the degree to which organized crime is involved with film piracy. It does not seek to address the individual level theft of films, like a retiree burning a rented DVD for his grandchildren or a teenage student illegally downloading a movie from the Internet.

Definitions

The concept of intellectual property recognizes that individuals can be granted legal rights over intangible property stemming from one’s intellect and manifest in “novel and unique” ideas. (Task Force on Intellectual Property, 2004: 1). It manifests itself in four legal areas: copyrights, trademarks, trade secrets, and patents, each of which is protected to varying degrees by the criminal and civil laws of individual nations.²

Intellectual property theft, then, is a generalized term referring to the violation of one of these specific laws. Intellectual property theft is a crime that occurs in

both domestic and global contexts. It is also a crime that district, state, or national borders cannot contain. As such, there is a need for both domestic and international enforcement mechanisms to address these crimes. When it comes to the piracy of music, film and software in particular, these domestic and international mechanisms manifest themselves in the public (government) and private (industry associations) sectors.

National laws set forth the specific legal rights of authors, producers, performers, designers and other creators of intellectual property. However, the lack of standardization in these laws inspired the creation of a number of international treaties concerning intellectual property rights. The most recent of these is the Agreement on Trade-Related Aspects on Intellectual Property Rights (TRIPs). This treaty applies to the 146 World Trade Organization (WTO) countries. TRIPs took effect for developed countries in 1995 and developing countries in 2000. Least-developed countries must comply by 2005 (International Federation of Phonographic Industries, n.d.).³

How does one engage in intellectual property theft? The answer to this question provides a large number of possibilities. Consider a 13-year-old boy who illegally downloads his favorite video game from the Internet; a covert operative working for a rival nation who infiltrates a major financial institution and steals information on its communications software for the benefit of her country; or a factory owner in a lesser-developed part of the world who manufactures counterfeit brand name sunglasses. All of these individuals partake in intellectual property theft of one form or another.

For every type of intellectual theft there are different processes by which the theft occurs. These processes create a vast spectrum of criminal enterprise ranging from the simple to the extraordinarily complex. In some cases, an individual, who otherwise is a model, law-abiding citizen, can engage in it rather simply and with the expenditure of little or no capital (i.e., digitally copying a music CD and giving it to a friend). In other cases, using a substantial amount of investment capital, large transnational networks of professional and semi-professional criminals can work cooperatively to get a stolen product to market (i.e., a major organized crime group manufacturing bogus brand name cigarettes and distributing them to markets in a number of countries).

This study emphasizes the role of organized crime in intellectual property theft, especially film piracy. Since this report centers on the U.S. government's approach to organized crime and intellectual property theft, one must consider the Federal Bureau of Investigation's definition of organized crime:

[A]ny group having some manner of a formalized structure and whose primary objective is to obtain money through illegal activities. Such groups maintain their position through the use of actual or threatened violence, corrupt public officials, graft, or extortion, and generally have a significant impact on the people in their locales, region, or the country as a whole (Federal Bureau of Investigation, n.d.).

A statutory definition of organized crime does not exist in the United States. Rather, organized crime is legally referred to as "racketeering," with its many variants defined in the United States Code, Part 1, Chapter 95, § 1961. The most relevant of these definitions refers to that found in 18 U.S.C. 1961 1.b which defines racketeering to be "any act which is indictable under any of the following provisions of title 18, United States Code: . . . section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation, or packaging and copies of motion pictures or other audiovisual works)."⁴

For the purposes of this study, then, to assess the role of organized crime in the subset of intellectual property theft that is film piracy, one must examine cases where any group having some manner of a formalized structure and whose primary objective is to obtain money through violations of section 2318, and that these groups maintain their position through the use of actual or threatened violence, corrupt public officials, graft, or extortion, and generally have a significant impact on the people in their locales, region, or the country as a whole.

Of course film piracy has its various manifestations. According to the Motion Picture Association (MPA), which coordinates all national motion picture associations, there are eight forms of film piracy: optical disc piracy; Internet piracy; videocassette piracy; theatrical print theft; signal theft; broadcast piracy; public performance; and parallel imports. Over the past ten years, the focus of the MPA investigations has been on optical disc piracy [especially Video Compact Discs (VCDs) and Digital Versatile Discs (DVDs)] and, more recently, Internet piracy (Motion Picture Association of America, n.d.). Consequently, these two forms of film piracy form the focus of the ensuing analysis.

Film Piracy

The Motion Picture Association (MPA) has a very clear position on the relationship between traditional organized crime and film piracy: It exists and it is significant. It came to this conclusion in part due to their unique charge, under international treaties, to investigate intellectual property theft from the motion picture industry, collect data from these investigations, provide the results of their investigations to government officials for arrest and prosecution, and train government officials in how to investigate and prosecute intellectual property theft. The MPA operates field offices and investigations that cover all of the countries that are signatories of the requisite treaties. Since the MPA and its national subsidiaries represent private, not public, concerns, the intelligence they collect and the charges they prepare are considered proprietary information. Consequently, there is a gap between the claims the industry makes concerning the numerous cases of intellectual property theft that occur and the relatively low number of government arrests and prosecutions. The valuable data that composes this gap is therefore unavailable for analysis since the associations have no vested interest in making it public beyond very superficial press releases aimed at deterring others from committing similar crimes.

What some of the intellectual property industries do make public are a series of annual reports summarizing, in part or whole, the arrests and prosecutions for the theft of their respective form of intellectual property. Regrettably, when details are provided in these reports, they are anecdotal and of no substantive research value. Consider an example of film piracy found in the report of a U.K.-based intellectual property rights consortium entitled *Proving the Connection*:

INTERNATIONAL CRIMINAL NETWORK: TRIAD GANGS AND FILM PIRACY

In December 2002, a piece of investigative journalism by *The People* newspaper uncovered a Triad operation whereby well-known criminal gangs were flooding Britain with pirate DVDs of the latest Harry Potter and James Bond blockbusters, months before their legitimate release for home viewing. The paper's investigators found copies of the DVDs as far afield as London, the West Midlands, Manchester, and Nottingham. They reported that the recruits selling the DVDs included Chinese illegal immigrants smuggled in by the Snakeheads Triad group, which traffics people from mainland China (ALLIANCE against Counterfeiting and Piracy, 2002: 14).

Putting aside the facts that snakeheads are immigrant smugglers, not a Triad group per se, and the synopsis is based on a press report, not an indictment or other legal proceeding, we are left with a number of questions: How was the film copied from the original? How was it mass-produced? Who produced it and where was it produced? What capital was expended to fund the operation? How was it distributed to retail agents? How did the retail agents hire their employees? If illegal Chinese immigrants were used as employees, how were they contracted? How much did their services cost? What is the unit cost on the wholesale and retail level? How are customers located and how are they convinced to buy the product? How are the profits of these sales laundered? Are the profits invested in other criminal enterprises? Is participation in the enterprise based on ethnicity, kinship, friendship, or some mixture of these factors? Is violence, corruption and graft ever used to facilitate this enterprise?

In every example given in this report and others, one is left asking similar questions. In all fairness to the associations that produce these reports, they are not meant to serve as data sources for researchers. Indeed, they are actually produced by the public affairs arms of these associations, not the investigative arms. Published industry reports leave us with a number of claims about the relationship between organized crime and film piracy, but little supported fact to back up the assertion.

However, industry claims are buttressed with a tad more detail in government hearings. Testifying before the U.S. House of Representatives on September 23, 2004, John Malcolm, the senior vice-president and director of Worldwide Anti-Piracy Operations for the MPA and MPAA, made the following claims: "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," he

stated, “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,” a point he underscores by citing four cases where MPAA investigators were subjected to threats or acts of violence (Malcolm, 2004, September 23).

Speaking a year-and-a-half earlier in his capacity as the Deputy Assistant Attorney General responsible for overseeing the four sections in the Department of Justice’s Criminal Division, including the Computer Crime and Intellectual Property Section (CCIPS), Malcolm’s comments were more measured, but consistent: “[O]rganized crime groups are playing a more prominent—and dangerous—role in piracy around the globe,” he stated, and is “clearly a factor in global piracy today.” He pointed to the experience of one of his CCIPS attorneys who traveled to Malaysia to train Malaysian prosecutors and agents in anti-piracy techniques. These prosecutors and agents told the CCIPS attorney that the production facilities in Malaysia “are owned and operated by organized crime syndicates, specifically very wealthy and powerful criminal groups or Triads from Taiwan which control a significant number of facilities not just in Malaysia but across Asia generally.” The CCIPS attorney was then escorted to a large open-air market that offered a variety of pirated products. The attorney learned “that many vendors offer their goods on tables covered in brightly colored cloths which indicate that vendor’s affiliation with a specific criminal syndicate” (Malcolm, 2003).

In order to explore these claims further, and with publicly available data either non-existent or unreliable (McIllwain 2005),⁵ an interview of Malcolm was conducted in his office at MPA/MPAA headquarters in Encino, California (Malcolm, 2004, October 8). In a generous gesture, Malcolm also made two key members of his staff, Jim Spertus (2004) and Chad Tilburg (2004), available for interview. Together, they provided the following information about the role of organized crime with optical disc and Internet piracy. Their insight is particularly valuable in that before taking their positions at the MPA and MPAA, Malcolm and Spertus (who is vice-president and chief of the MPAA’s Domestic Piracy Operations) worked for the Department of Justice and prosecuted intellectual property theft cases. As mentioned previously, Malcolm was the Deputy Assistant Attorney General responsible for the CCIPS and Spertus was a Los Angeles-based Deputy U.S. Attorney. Tilburg is considered one of the foremost experts on warez groups and Internet piracy and he provided much needed clarification on the structure and operations of such groups. Unless otherwise noted, the following information comes from interviews with these three men (Malcolm, 2004, October 8; Spertus, 2004; Tilburg, 2004).

Before the interview began, Malcolm made it clear that specifics about the MPA and MPAA investigations were proprietary information. He specifically stated that to provide details could compromise investigations currently in progress and possibly endanger his investigators in the field. Despite this, he argued, one can easily draw the conclusion that organized crime was involved with film piracy based on the general nature and structure of the enterprise. He and Spertus then provided a step-by-step analysis of how the business of film piracy is conducted. Anecdotes, with key details omitted, were provided to illustrate points. They focused heavily on “hard goods” piracy (optical disc piracy) and “soft goods” piracy (Internet piracy). Both of these forms of piracy originated with individuals called “runners.”

Runners

The popularity of DVDs created a boom in hard goods piracy, which already had established networks in which pirated videocassettes, software, video games, and music CDs were sold. The flow of DVD piracy begins after the motion picture studio creates the finished product. Individuals with digital video cameras, working independently or in “camcorder rings” and commonly referred to as “runners,” attend the first public screenings of these films. These runners use various concealment measures to hide their video cameras with the goal of obtaining the best possible image of the film. Digital sound can be added to the digital image by using the video recorder's microphone or, for much higher sound quality, plugging a projector or equipment that assists the hearing impaired directly into the audio input jacks of the digital video camera. In some cases, movie theatre employees are paid to assist and/or protect the runner during the taping process.

The first public screening of a film usually occurs in the New York City area where advanced screenings in theatres with high-end projection and sound systems are common. According to Malcolm, roughly 80 percent of all pirated films originate from New York City area theaters. This claim is evidenced by the fact that every individual print of a film projected in every individual theater is secretly marked in such a manner that any pirated image can be traced back to the theater in which it was originally projected.

Some runners obtain copies of DVD screeners from motion picture industry sources. A DVD screener is a promotional copy of a film that is created by a movie studio. DVD screeners often contain visible markings to deter piracy, but are still easy to rip if one has the right software. A DVD screener is much preferred over a pirated copy made by a digital video camera because the quality of video and sound is much higher.

Hard Goods Piracy-Burners:

Once the film is illegally recorded, the runner immediately takes the image home and creates ten to 30 master copies. The master copies are then sold to lab opera-

tors for about \$100 each. Then the “burning” process begins. Each lab operator uses multiple high-speed DVD burners to make approximately 10,000 copies of a film (the actual number is determined by the anticipated demand for the film). Within 24 hours, anywhere from 100,000 to 300,000 pirated DVDs are available to distributors (in some cases, a lab operator may serve as a distributor). Often times working from warehouses, the distributor packages the DVDs then sells the discs to local or nationwide retail vendors. Retail vendors come in many forms. Some are otherwise legitimate merchants looking to make a profit by selling pirated goods in storefronts, at swap meets, or on Internet shopping and auction sites. Other retail vendors are street vendors who either go door-to-door to customers or sell them on the streets.

A street vendor interviewed for this study stated that he purchased new releases from a distributor who used his home as a warehouse. The distributor had a large selection of old and new releases. The street vendor then spent the day walking up-and-down a large section of Whittier Boulevard (a major street in east Los Angeles County), stopping at independently-owned restaurants, auto shops, clothing retailers, gas stations, music shops, mall and supermarket parking lots, parks and other high traffic locations where a large number of customers tended to congregate. In his case, he targeted customers who spoke his native language (Spanish) and culture (he was from the Mexican state of Michoacan) who were familiar with working with street vendors (not difficult to do given that the area in which he operated has a substantial Mexican immigrant population). He stated that his average profit is about six dollars per disc (“Juan,” 2004).⁶

The capital outlay for the lab operator depends on the number and quality of computers and DVD burners he or she purchases, as well as all necessary software and the bulk cost of DVR+Rs or DVD-Rs used. Additionally, if the wholesaler or distributor does not do it himself or herself, the lab operator will pay for the cover art and DVD cases. Spertus estimates that the average cost of a wholesale disc, not including packaging, is one dollar. The same disc can then be sold on the streets of New York City for anywhere from five to 10 dollars during the week of release. The cost of the disc will then go down as demand decreases in the coming weeks and months.

Success in the optical disc piracy market is based on the following criteria. First, one has to be the “first” in the market. Having the product available the morning or day of its release, if not before, is crucial to earning significant profits. Second, the quality of the packaging needs to be very high because the consumer will equate the quality of the artwork to the quality of the disc in the case. Third, the disc needs to meet certain minimum standards of audio and video clarity so that the customer will purchase future pirated releases.

The creation and distribution of packaging deserves particular attention since it is a very profitable sub-contracting business in its own right. Individual graphic artists make the cover art that slips into the DVD case. They create the cover art in bulk and sell it to the lab owners or distributors. Higher quality cover artwork costs

more than lesser quality cover artwork (on average each piece costs approximately ten cents). Since consumers gravitate to products with higher quality artwork, distributors, retailers and consumers are willing to pay more for the most visually enticing and professionally packaged product available.

Hard Goods Piracy-Pressers:

In addition to selling to domestic lab operators, the runner will also sell master copies to overseas clients. After producing a master copy, the runner will send it by overnight international mail. Once in the possession of the client, the disc is either burned, as discussed above, or pressed. The “pressing” process produces a higher quality DVD than the burning process. The pressing process uses the same DVD replicators that are used by the legitimate DVD production industry to create high quality DVDs. These replicators are either owned by the client (at a cost of approximately \$1,000,000) or are used with the paid-for cooperation of a legitimate DVD production company during off hours.

The idea of the pressed disc is to provide a higher quality alternative to the burned disc. Where it loses out on the profit generated by being the first product on the market, it gains profit by creating a product that, in some cases, nearly equates the quality a legitimately produced product. These clients rely on individuals with considerable video editing skills that “clean up” the original image and re-engineer the soundtrack to create surround sound. The higher quality DVDs used in this process contain more memory to allow for higher resolution and sound quality. The master is then fed to the replicator that can produce massive amounts of DVDs. In terms of labor, this requires individuals trained to operate the replicators and others who can package the DVDs, using the high quality artwork mentioned above. Because of the higher quality of the disc, the wholesale cost of pressed discs averages between one and two dollars before packaging.

Produced in countries like Russia, Pakistan, Mexico, Taiwan, Paraguay, Malaysia, Brazil, China, and Thailand, pressed discs are then sent to domestic retailers and exported to international markets. Discs are sent in bulk using standard international shipping methods or they are smuggled into other countries using established smuggling routes and techniques and the professional smugglers who know both.

Soft Goods Piracy

The runner does not just provide a master copy to burning and pressing operations. A master copy will also be sold to a member of a release group, otherwise referred to as a warez (pronounced “wears”) group. A warez group specializes in converting a pirated film so that it becomes available to the members of the group and other select clients via the Internet. In addition to pirated film, warez groups also convert pirated software and PC and console (PlayStation 2, Xbox, or Nintendo) video games. According to the Department of Justice,

Warez release groups are the first-providers—the original source for most of the pirated works traded or distributed online. Once a release group prepares a stolen work for distribution, the material is distributed in minutes to secure, top-level warez servers and made available to a select clientele. From there, within a matter of hours, the pirated works are further distributed throughout the world, ending up on public channels on IRC and peer-to-peer file sharing networks accessible to anyone with Internet access.

The top release groups are hierarchical, highly structured organizations with leadership positions that control day-to-day operations, recruit new members and manage the group's various computer archive sites. These groups exist solely to engage in piracy and compete with each other to be the first to place a newly pirated work onto the Internet—often before the work is legitimately available to the public. Highly sophisticated technological measures are employed by the groups to shield their illegal activity from victims and law enforcement (Department of Justice, 2004, April).

According to Tilburg (2004) and Spertus (2004), warez groups are not motivated by financial gain. Indeed, getting paid for engaging in piracy results in harsh formal and informal sanctions from the warez community. What motivates warez groups is an enhanced reputation and fame within their peer group, as well as the desire to be the first on the market. There are clear hierarchies in warez groups with distinct divisions of labor. Members of a warez group are almost always known to each other only by their screen names.

The group itself will typically consist of one or two leaders, a council composed of two or three high level members, 12 to 15 staff members, and a general membership comprising anywhere from 20 to 80 individuals. Leaders have the ultimate authority over their group members. The council members supervise day-to-day operations, “including preparation of new releases, recruitment, and security issues.” Staff members are actively engaged in preparing new releases for distribution and in maintaining Top Sites [File Transfer Protocol (FTP) sites] that serve as the point of distribution of pirated products. General warez group members spend a considerable amount of time providing the grunt work for the group, including securing hardware and software needed for group activities and hosting Top Sites (Malcolm, 2003; see also Department of Justice, n.d.).

Warez groups like to place their own particular stamp of quality on their work and they compete against other warez groups to produce the best product. Entire web pages are dedicated to criticizing and complimenting the work of fellow and rival warez groups and individual group members. Warez groups are extremely security conscious and they use state-of-the-art technology to attempt to prevent police and victim companies from identifying and exposing their illegal activity.

This is not to say that money is not made off of warez group piracy. Pressers have been known to download warez group edited pirated films, video games, and software and use these downloads as the master copies for pressed discs which are then sold for profit. Legitimate businesses also make substantial profits off the work of warez groups. Warez groups will allow certain individuals, referred to as couriers, to ferry content to tightly controlled Top Sites (FTP servers). Access to the Top Site is provided only to trusted parties via websites, newsgroups or peer-to-peer

networks. Individuals with access to these Top Sites make the pirated films available to others using Internet Relay Chat (IRC). From there it becomes available to the general public using a variety of mechanisms, including IRC networks like EFNEt, DALNet, IRCNEt and Liquid IRC; popular protocols like IRC, eDonkey, Gnutella, Fast Track, Overnet, BitTorrent, news groups, and the web; and peer-to-peer networks and File Swapping Utilities (FSUs) like KaZaA, Morpheus, eDonkey, Bearshare, eMule, and LimeWire. Money is made when advertisers pay banner providers to place banner ads and popup ads using the services of Top Site Indexers (VCD Quality, NForce), IRC Indexers (PacketNews, XDCC Spy), and BitTorrent Trackers (Voracity, SuprNova). Banner providers then pay the sites on which they advertise. These sites may also charge users for access to the pirated films on there servers (MediaSentry, Inc., 2003; Spertus, 2004).

As broadband capacity has increased and the cost of hard disc space has decreased, film piracy has boomed on the Internet. It is becoming easier and faster to download films of ever-increasing quality. Indeed, it is so much easier and faster that the motion picture industry is embracing the Internet as a means to deliver their products to legitimate buyers. Of course this same technology can be, and is, used by those engaged in film piracy as well.

Spertus (2004) stated that some optical disc pirates actually use the higher quality warez group produced pirated films as their master copies. Ironically, the proliferation of computers and ever-increasing broadband capacity may actually hurt the optical disc piracy sector, just as it hurts the legitimate motion picture industry. For almost 10 years now, Internet savvy consumers have recognized that they can use FSUs like KaZaA and Morpheus to obtain “free” copies of music. Now, movies are becoming ever more popular because the technology exists to make this process easier on the end user. As this technology improves (higher quality pirated films, higher bandwidth, cheaper storage capacity, and seamless connectivity to home entertainment systems), the number of pirated films reaching consumers will increase exponentially.

A recent police raid in Iceland underscores this point. With approximately 300,000 residents, Iceland is one of the most “connected” nations in the world, with about 79% of its population connected by broadband connections to the Internet. Police raided the homes of 12 people and seized computers and servers used for sharing movie files with the popular DC++ file sharing (P2P) application. According to SMAIS, Iceland’s association of film copyright holders that is equivalent to the MPAA in the United States, net traffic in Iceland dropped 40 percent after these raids were conducted. The implication is clear: 40 percent of Internet traffic in Iceland was dedicated to sharing pirated films. Extrapolate this to global Internet traffic and one can begin to appreciate the magnitude of the theft carried out by these groups (Leyden, 2004; MPAA raids. . . . Iceland?, 2004).

It should come as no surprise then the Department of Justice has focused some of its major intellectual property operations on investigating and prosecuting warez groups. Operation Buccaneer was one such operation. In December 2001, simulta-

neous searches were conducted at seventy locations scattered across the United States, United Kingdom, Australia, Finland, Sweden, and Norway. The investigation targeted multiple top-tier, highly organized, and sophisticated warez groups. A number of indictments and convictions resulted (Department of Justice, n.d.).

The Problem with Government Data

Placing such an investigation like Operation Buccaneer into a larger context is difficult to do since government data on film piracy does not exist in reliable or useable forms. According to the Bureau of Justice Statistics (B.J.S.), the broad category of intellectual property theft was the lead charge in less than one percent of all suspects referred to U.S. prosecutors for an intellectual property theft in the nine-year period between 1994 and 2002 (3,395 suspects total) (Motivans, 2002: 2). Some of these referrals were handled civilly and others criminally, though the exact proportion is not provided by the B.J.S. U.S. prosecutors did not take action on a substantial number of these referrals, but this portion is also not provided by the B.J.S.⁷ The B.J.S. does note that between 100–150 people were sentenced each year in U.S. district courts for intellectual property theft offenses between 1995–2002 (Motivans, 2002: 4). Such numbers are small given the claims made about the economic costs of intellectual property theft. The Department of Justice Task Force on Intellectual Property recognized this when it recently recommended that the Department needs to do more to generate an increased number of successes when it comes to the investigation and prosecution of intellectual property theft (Task Force on Intellectual Property, 2004: 19–20).

Nevertheless, the vast majority of intellectual property theft cases were addressed through civil remedies. In 2002 alone, 7,445 copyright, patent, and trademark suits were disposed of in U.S. district courts. Of these, however, 76 percent were dismissed. The government was plaintiff or defendant in only 32 intellectual property civil cases in 2002 (Motivans, 2002: 8).

Since the B.J.S. report also does not provide any information about the involvement of organized crime in intellectual property theft, one needs to sample the criminal cases to which it refers. The presumption here is that if organized crime was involved in a case, it would merit criminal prosecution, not civil action, and that evidence of such activity would appear in indictments and other relevant documents. This presumption is consistent with the Department of Justice's prosecuting guidelines for intellectual property theft (Goldstone, 2001). So the question emerges: What cases does one examine and how does one find them?

This study turned to those cases deemed high profile by the unit that prosecutes them, the Department of Justice's Computer Crime and Intellectual Property Section (CCIPS). This specialized unit was created as a response to industry demands that the government aggressively prosecute intellectual property theft, especially theft of the digital variety. When one looks at the criminal indictments CCIPS deems publicly significant (i.e., generating press releases, summarizing cases on

Table 1
Prosecution by Type of Violation, Total Significant Cases (N=105)

Copyright ¹⁰	68
Trademark ¹¹	13
DMCA ¹²	3
Unauthorized use of communications ¹³	11
Copyright and trademark	6
Copyright and DMCA	2
Unauthorized use of communications and DMCA	1
Money laundering ¹⁴	1

Table 2
Industry Affected by IP Crime, Total Significant Cases (N=105)

Film/music:	24
Soft/hardware:	52
Both film/music and soft/hardware:	15
Other/unspecified:	11

DOJ web sites, etc.), one finds a sample of 105 criminal indictments filed from January 2000 to August 2004 (Department of Justice, 2004, August).⁸ If organized crime contributes to intellectual property theft, surely, one would reason, these cases would provide us with examples for analysis. Thankfully the Department of Justice lists these cases on its websites dedicated to its efforts in this area (Department of Justice, 2004, August; 2005, April).⁹

Out of the 105 significant cases listed by the Department of Justice (Department of Justice, 2004, August), roughly 70 percent had some form of copyright violation as the leading cause for prosecution. Almost 70 percent of these cases were for violations against the software/hardware industries, 40 percent against the film and music industries (there was overlap between the two in about 15 percent of the prosecutions).

However, out of the 105 significant cases listed, less than 50 percent (*N*=49) were for perpetrator-charged cases. A perpetrator-charged case is when the defendant allegedly operates within a larger, organized framework. Accordingly, these cases deserve the most scrutiny when it comes to looking for connections to organized crime. In perpetrator-charged cases, copyright-related cases composed slightly over 80 percent of the violations charged. A little less than 20 percent were for trademark cases. Once again, prosecutions of intellectual property violations were focused largely on the software/hardware industry (~70 percent) and film and music industry (~35 percent), with some cases overlapping the two industries.

An analysis of the indictments and press released to these 49 perpetrator-charged cases found no overt references to professional organized crime groups.¹⁵ Instead, the cases were split equally between two broad categories. The first is the “warez”

Table 3
Prosecution by Type of Violation, Perpetrator Charged Cases

Copyright	35
Trademark	5
DMCA	1
Unauthorized use of communications	2
Copyright and trademark	4
Copyright and DMCA	1
Unauthorized use of communications and DMCA	1

Table 4
Industry Affected by IP Crime, Perpetrator Charged Cases

Film/music:	10
Soft/hardware:	26
Both film/music and soft/hardware:	8
Other/unspecified:	5

group. Twenty-one of the 49 cases involved prosecutions of individuals in warez groups. Not a single one of these cases, however, asserted the involvement of professional organized crime groups with warez groups.¹⁶

The second category is one that is composed of 23 cases representing a litany of offender types. These include, but are not limited to, companies that made illegal decoders for satellite television boxes, companies and individuals that sold counterfeit business software on eBay or some other forum, and, most interestingly for our purposes, groups of individuals who either produced, distributed, or sold bootleg DVDs, CDs, and/or software. As is the case with warez groups, overt references to connections with organized crime groups are non-existent in the CCIPS data. If one does not accept the proposition that warez groups constitute organized crime groups, one cannot find proof of organized crime's involvement with intellectual property theft in this data set.

Film Piracy and Organized Crime

Is organized crime involved with film piracy? The answer to this question is complicated and limited by the lack of reliable data.¹⁷ There are cases where direct links between traditional organized crime groups and optical disc piracy are apparent. The example of Malaysia provided earlier illustrates this point. However, the exact nature of these links needs to be explored further, since information available to the public is anecdotal at best. For example, questions like those that follow need to be answered by independent observers: What specific organized crime groups are involved with this trade? Who are the individuals involved with these groups and how are they connected? Are organized crime groups involved in the

entire operation (is the business vertically integrated), or does it focus on certain segments (production, distribution, retail, etc.) or does it just provide “protection” for criminal entrepreneurs? If profits earned from this enterprise aid organized crime groups in other areas, how is this done? For what purposes is this money actually used?

Of course organized crime groups can easily engage in film piracy. If a hypothetical college student can go to Best Buy or Circuit City and purchase a computer, server, software, and disc burners, he can set up a film piracy business rather easily. It stands to reason then that professional criminals, who are always looking to make a quick, easy dollar, can do the same. The opportunity certainly exists for organized crime groups to make considerable profits from film piracy. This opportunity is easily exploited by the fact that organized crime groups are already in the business of operating in the black market, selling products like cigarettes, gasoline, stolen goods, or drugs. Wholesale, distribution and retail channels, as well as transportation, security, and a client base, already exist. Adding pirated goods to the mix makes good financial sense given that the opportunity and motive are so clearly identified.

Given the limited amount of reliable data available, how can the relationship between film piracy and organized crime be assessed? We can begin by applying the criteria established earlier in this study to film piracy groups:

- 1) Does the group have some formalized structure?
- 2) Is the primary objective of the group to obtain money through violations of sections 2318 of the United States Code?
- 3) Does this group maintain their position through the use of actual or threatened violence, corrupt public officials, graft, or extortion?
- 4) Does this group generally have a significant impact on the people in their locales, region, or the country as a whole?

Film piracy violates specific racketeering statutes related to intellectual property theft. Consequently, criterion number two is met in every film piracy case. However, the other criteria are more problematic. The first criterion requires a formalized structure on the part of an organized crime group. With the limited amount of data available, we can see where this holds true for some cases of film piracy, especially warez groups, but not others. Indeed, informal structures and fluid (and—in some Internet cases—anonymous) networks regularly engage in film piracy. These informal structures and fluid networks can certainly equate criminal conspiracies, but are far from being formal organizations.

To what extent do violence, corruption, graft, and extortion occur in the world of film piracy? Without access to the records of investigators, criterion number three cannot be assessed with any semblance of thoroughness or certainty. There are surprisingly few public cases where violence, corruption, graft, and extortion are associated with film piracy, even in the literature produced by intellectual property associations themselves. Those that do exist are woefully lacking in analyzable

data. Indeed, in cases where these activities are evident, organized crime's role in this behavior is often inferred, not proven. In others, it appears that organized crime preyed on those engaged in film piracy, using classic extortion techniques used by professional criminals to "muscle in" on businesses and take a "piece of the action" for themselves.

Some interviews and direct observation of the retail side of film piracy illustrates this process. In June and November 2004 and April 2005 eight retail vendors of pirated DVDs were interviewed at their places of business in Mexico ("Aguilar," 2004; "Beltran," 2004; "Infante," 2004; "Fernandez," 2004; "Mejia," 2005; "Mendoza," 2005; "Negrete," 2004; "Solis," 2004).¹⁸ Six sold pirated DVDs in indoor marketplaces or outdoor markets in major cities ("Ciudad Seca," "Ciudad Alta," and "Ciudad del Norte") and two others sold them in an outdoor flea market in a medium-sized city, "Ciudad de las Tiendas."¹⁹ All of these retailers sold pirated DVDs, VCDs, tapes, software, and videogames from their stalls. All stated that they purchased these products from distributors. They did not produce the goods that they sold. Three of the six retailers in the indoor marketplaces and both of the retailers in the outdoor flea market stated that they pay a protection fee to the "gang" that controlled their respective marketplace (members of these gangs were easily identified as one walked around the marketplaces).

One can conclude that organized crime (if we can elevate the gangs to this status for current purposes) controlled the physical place of business for these retailers, collecting protection payments from not only these merchants but from those who sold legitimate goods as well. The extortion, and the implicit threat of violence this crime entails, that occurred in both places existed as a result of the control of the physical marketplace, not the criminal enterprise of piracy itself. Of course the price of this "protection" was simply passed on to the consumer and viewed by the merchants as a cost of doing business.

Meeting the fourth criterion is easy or difficult, depending on whom one asks. Certainly, in the eyes of the industry and government, piracy groups have a substantial negative impact on the people in their locales, region, or the country as a whole. The industry loses sales and profits and the government loses tax revenue. Additionally, the consumer can be ripped off due to poor audio or image quality. Others, however, would state the impact of piracy has a positive impact on the consumer, who now has inexpensive, if not free, access to films. This holds especially true for those with limited means who cannot afford 12-dollar movie theater tickets or 20-dollar DVDs and never could or would have purchased the ticket or DVD in the first place. Whether or not one views the impact of film piracy as positive or negative, however, the fact that there is a considerable impact is indisputable. The actions of a particular group engaged in film piracy needs to be assessed in this broader context.

Given the criteria, it would be inaccurate to label warez groups as organized crime. Yes they have a formal structure and yes they violate racketeering statutes. They certainly have a considerable impact. Yet they do not engage in violent be-

havior, extortion, graft, or corruption, cornerstones of any mainstream definition of organized crime. Additionally, they are not motivated by profit. As previously discussed, any warez group or member who does work for profit is shunned from the warez community. Indeed, on a certain level, warez groups should be considered a political or ideological action against corporate interests, government power, and globalization that results in criminal behavior. Because of these reasons, warez groups should not be labeled as organized crime groups. Terms like “criminal conspiracy” or “criminal enterprise” are more accurate labels.

Future Concerns

There is no doubt that linking film piracy to organized crime is an effective public relations tool that allows a widely perceived victimless crime to receive the attention and resources of government at a time when other crimes like drugs, money laundering and terrorism dominate the agenda. If the industry’s data were available, one could possibly determine the accuracy of such a claim. Whatever answer one would find is really irrelevant, however, to the main concern and motivation of the motion picture industry. What is really at issue is the future of the revenue patterns on which Hollywood’s substantial profits are based.

Until recently, the economics underpinnings of Hollywood were kept even more secret than the data gathered in film piracy investigations. That changed recently when Edward Jay Epstein (2005) published his treatise on the subject, *The Big Picture: The New Logic of Money and Power in Hollywood*. For the first time, a researcher was able to gain access to the Holy Grail of Hollywood: inside information about its accounting and business practices. What he was able to show, despite ardent studio protests to the contrary, was how extremely profitable the motion picture industry actually is. This includes direct claims made by the MPAA about how, even without factoring in the impact of piracy,

[M]oviemaking is an inherently risky business. Contrary to popular belief that moviemaking is always profitable, in actuality, only one in ten films ever retrieves its investment from domestic exhibition. In fact, four out of ten movies never recoup the original investment. In 2000, the average major studio film cost \$55 million to produce with an extra \$27 million to advertise and market, a total cost of over \$80 million per film. No other nation in the world risks such immense capital to make, finance, produce, and market their films (Motion Picture Association of America, n.d.).

Of course if movie studios only had “domestic exhibitions” to rely on for revenue, the industry as a whole would be in dire straights. Fortunately for the motion picture industry, that is not the case and profits are very high. Central to understanding why these profits are so high, argues Epstein, is to understand that the motion picture industry, as represented by the movie studios, serves the function of a “clearinghouse” for all revenues associated with a particular film. Unlike the

revenue system in the old studio system, “in which movies usually returned almost all their money in a year,” the revenue for a film “now flows in over the lifetime of licensable rights, which could last for many decades.” (Epstein, 2005: 110). Since studios do not have a monopoly on these rights (they must contractually share them with producers, directors, actors, writers, music publishers, equity partners, etc.), they must share the revenues with those that have a share in these rights.

As Epstein explains, “when revenue flows in, it is the studio that decides (initially at least) who is entitled to what part of it, and when, and under what conditions.” If one of its partners disagrees with the amount of their share, they are at a serious disadvantage. Since the studio is the clearinghouse, “it controls the information on which these payments are based.” Of course the studios do their utmost to conceal this information from its partners, concealing “the dimensions of these licensing rights by submerging them in broader, catchall categories in their financial reports.” The more effectively the studio conceals this information from outsiders, concludes Epstein,

the easier it is for the studio to conceal the allocations. Meanwhile, the money that remains in the black box, even temporarily, serves as part of a studio’s de facto working capital. The more money the clearinghouse manages to retain, and the longer it retains it, the greater its de facto profit (Epstein, 2005: 110–111).

In order to understand the MPA’s concern about film piracy, one has to recognize the importance of intellectual property rights as a central revenue inflow into the clearinghouse. The clearinghouse receives intellectual property payments from the following inflows (Epstein, 2005: 114–116):

- Toy manufacturers, game makers, etc. for rights to use the characters in films. In 2002 alone, entertainment-based characters accounted for over \$114 billion in retail sales of licensed products, of which an estimated \$1.7 billion went to the studios.
- The movie’s box office from the theaters via the studio’s distribution arms, with studios collecting on average 45–60 percent of the box office.
- Non-theatrical release of a film (airlines’ in-flight entertainment, hotel pay-per-view, U.S. military theaters). Airlines and hotels pay a flat fee. Studios collect approximately 50 percent of ticket sales from military theaters.
- Distribution of American films in foreign markets.
- Distribution of foreign films in American markets.
- Video and DVD sales, which accounts for a “tidal wave” of revenue compared to the “small stream” that is the box office. (This accounted for approximately \$17.9 billion in revenue in 2003, with \$3.9 billion coming from Blockbuster alone.)
- The licensing of a film’s television rights, either via pay-per-view or commercial/broadcast television.
- Royalties from record companies from the sale of soundtracks (CDs, cassettes, records) and the songs found on a soundtrack (individual songs purchased and digitally-downloaded from a soundtrack).
- Syndicated television shows also draw substantial licensing fees for studios. (In

2003 the six major Hollywood studios earned an estimated \$7.2 billion worldwide from the sale of television programs in their studio libraries.)

- Rebates from various nomenclatures such as film labs also provide a valuable inflow (with up to \$800,000 made from a single movie).

Given these inflows, it is inherently difficult to substantiate the value of intellectual property losses by the motion picture industry because stolen intellectual property only gains its value when sold. Indeed, there is no methodology that can prove that the money spent on stolen intellectual property would have been spent on the legitimate intellectual property had the stolen intellectual property not been available. Still, intellectual property theft can feasibly draw away profits from any of the above-mentioned inflows to the clearinghouse. As such, the industry is justified in its concern over the theft of its intellectual property rights as it threatens its revenue streams and profits, especially from DVD sales and rentals (Horn, 2005).²⁰

An authoritative, independent study validating the actual claims of losses by the motion picture industry to intellectual property theft, let alone the responsibility of organized crime in that theft, has yet to be published. Building on Epstein's study, the reason is obvious: in order for one to be published, a reliable methodology to determine loss needs to be developed. Once created, the methodology would need to analyze raw data, data that is currently not available to the public in a useable form. This means that the studios would have to make public what they so desperately attempt to conceal—their “clearinghouse” information. So, given current methodological and data constraints, the industry's claims that such losses are excessive, and largely caused by organized crime, are simultaneously unsubstantiated and irrefutable.

Whether or not these losses to intellectual property theft are excessive *right now* is really missing the larger point, however, for it is the *potential of future losses* in a rapidly evolving business and technological environments that concerns the motion picture industry most (Epstein, 2005: 338–352). This evolution is the result of the “digital revolution” in the motion picture industry and the evolution of the “home audience” via “home theater” technologies. Right now, a home entertainment system can be run from a PC that is connected to the Internet via broadband connections. Consumers can watch illegally streamed or downloaded warez group produced films on a high-definition big screen television or computer monitor with surround sound capabilities. Simultaneously, these films can be saved to a hard drive and then recorded to a DVD using a DVD burner and DVD burning software. By doing these things, the consumer can effectively cut the studio out of its income flows from box office sales, cable, broadcast, pay-per-view, DVD and video sales and rentals, etc.

The only things that prohibit this practice from being more commonplace is the cost of the hardware and software to engage in the activity and, to a lesser extent, bandwidth limitations which can adversely impact the image and sound quality of the film. However, both of these prohibitions are temporary. The cost of home

entertainment systems more computer hardware and computer software continue to decline, making them affordable to the middle and lower classes. Also, as the Internet continues to evolve (increasing exponentially the capacity and efficiency of data transfers), digital media will be available for almost instantaneous download at a much higher level of quality than is currently available. Complicating this situation further is the fact such technologies and practices have numerous legal, not just illegal applications. Add to this a generation's worth of consumers, especially youth, who have been educated on computers and the Internet and socialized to view illegal downloading as a victimless crime and one can see a formula for future financial turmoil in the motion picture industry.²¹ These prospects help us gain a better perspective as to why the motion picture industry and the Department of Justice are largely focusing on warez groups and why they both equate warez groups to organized crime. There is no doubt that these anti-piracy efforts and tactics are about the future, not just the present.

Conclusions

Organized crime is a politically powerful term. To label a person as an organized criminal is to equate them to a cast of real-life and fictitious characters drawn from the gangster tableaux that includes the likes of Al Capone, Meyer Lansky, Pablo Escobar, Vito Corleone, Tony Montana, and Tony Soprano. Linking organized crime to film piracy effectively elevates film piracy in the public's mind to the level of such enterprises as drug trafficking, immigrant smuggling, arms dealing, money laundering, and contract murder. Elevated to this status, it draws the public's attention to a crime that otherwise may be viewed, to the intellectual property industry's outrage, as a victimless crime. It certainly seems to have captured the attention of policymakers, who continue to hold hearings on the subject and use the perceived relationship between organized crime (and now terrorism) and film piracy and other forms of intellectual property theft as a basis for stronger legal remedies.

Undoubtedly there are numerous criminal entrepreneurs who produce, distribute, and sell stolen films for profit at swap meets, bazaars and market places around the globe. Yet these criminal entrepreneurs are not organized criminals just because they engage in film piracy. They are only organized criminals when they meet the long-held criteria established in the law and in the application of the law by police and prosecutorial organizations, criteria that encompass such actions as violence and corruption. Unless this occurs, they are more accurately labeled criminal entrepreneurs, criminal enterprises, or racketeers.

How many film pirates meet these criteria? This is an unanswerable question based on the available data. The role of organized crime in film piracy may be extensive. It may not. Organized crime may manifest itself in film piracy in a number of ways in a number of different locales around the world. However, it may be remarkably consistent in its manifestations wherever it is found. International crime syndicates may have vertically integrated control of film piracy in some markets.

Then again, a particular group may just be involved in a particular segment of film piracy (e.g., smuggling) at a given place during a given time. The inability to come to basic conclusions about the relationship of organized crime to film piracy results from a profuse lack of useable and reliable information in media, government and industry sources.

In the absence of independent, substantive analysis, anecdote, and industry interests currently drive public policies and legal developments created to address the role of organized crime in film piracy. Nonetheless, this is not to say that such policies and laws are misdirected, ineffective or unnecessary. Indeed, recent efforts to strengthen both have paid considerable dividends for the intellectual property industries as a whole. In the United States and across the globe, seizures, criminal indictments, civil actions, and public awareness are up considerably. Whether or not these advances can be maintained in the face of technological advances, the evolution of industry economic structures, and consumer indifference to the stigma of intellectual property theft and anger at perceived harsh industry responses to such theft remains to be seen.

In order to obtain an independent and substantive analysis of the relationship of organized crime to intellectual property theft in general and film piracy in particular, the National Institute of Justice and other grant agencies should consider funding the following paths of research:

- 1) The development of a methodology to provide an accurate assessment of industry claims of losses to intellectual property theft.
- 2) The development of a database with data (actors, activities, etc.) drawn from adjudicated criminal and civil cases. This database should collect information on the international level.
- 3) Ethnographic research of intellectual property theft.
- 4) Interviews and surveys of convicted intellectual property thieves.
- 5) Interviews and surveys of the consumers of stolen intellectual property.

Pursuing these paths of research would allow for the development of research models for situations in which there is a vague, suspected, or otherwise undocumented relationship between a criminal activity and the suspected perpetrators. These models would then, in turn, provide for a more efficient and effective allocation of government and public resources as they attempt to address these types of crime.

Notes

1. The author would like to thank the International Center of the National Institute of Justice for soliciting funding this research through a grant, Intellectual Property and Organized Crime. He also Thanks Jay S. Albanese and his the anonymous reviewers of this work for their helpful comments and criticisms. This article only reflects the findings of the author, not the National Institute of Justice, Dr. Albanese or the reviewers.
2. Specifically, the following crimes have been codified in the United States Criminal Code.
Copyright: Criminal Infringement of a Copyright; Trafficking in Counterfeit Labels of Phono-

graph Records, Copies of Computer Programs, and Similar Materials; Unauthorized Fixation of and Trafficking in Sound Recordings and Music Videos of Live Musical Performances; Unauthorized Reception of Cable Services; and Unauthorized Publication or Use of Communication. *Trademark*: Trafficking in Counterfeit Goods or Services. *Trade Secrets*: Economic Espionage and Theft of Trade Secrets.

3. The TRIPs agreement requires all members to comply with established treaties that establish a list of rights provided to authors, producers and composers, including the rights to authorize or prohibit reproduction, public communication, or adaptation of their works. TRIPs also provides a specific right to authorize or prohibit commercial rental of these works and a detailed set of requirements relating to the enforcement of rights which, in sum, requires remedies and procedures to effectively deter piracy. Soon after the TRIPs agreement, the international community adopted two treaties in 1996 under the auspices of the World Intellectual Property Organization (WIPO) of the United Nations. The WIPO Copyright Treaty is applicable to authors and the WIPO Performances and Phonograms Treaty (WPPT) is applicable to performers and phonogram producers. These treaties brought copyright protection to the digital age by granting rights with respect to distribution activities over computer programs; protecting against unauthorized Internet use; protecting technological measures used on copyright material and rights-management information against hacking, removal or alteration. A full-scale review of TRIPs is currently underway and it will reveal the shortcomings of TRIPs in the view of technological agreements.
4. The full text reads as follows: United States Code, Title 18, Part 1, Chapter 113, § 2318: Trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, and copies of motion pictures or other audio visual works, and trafficking in counterfeit computer program documentation or packaging.
 - (a) Whoever, in any of the circumstances described in subsection (c) of this section, knowingly traffics in a counterfeit label affixed or designed to be affixed to a phonorecord, or a copy of a computer program or documentation or packaging for a computer program, or a copy of a motion picture or other audiovisual work, and whoever, in any of the circumstances described in subsection (c) of this section, knowingly traffics in counterfeit documentation or packaging for a computer program, shall be fined under this title or imprisoned for not more than five years, or both.
 - (b) As used in this section—
 - (1) the term “counterfeit label” means an identifying label or container that appears to be genuine, but is not;
 - (2) the term “traffic” means to transport, transfer or otherwise dispose of, to another, as consideration for anything of value or to make or obtain control of with intent to so transport, transfer or dispose of; and
 - (3) the terms “copy,” “phonorecord,” “motion picture,” “computer program,” and “audiovisual work” have, respectively, the meanings given those terms in section 101 (relating to definitions) of title 17.
 - (c) The circumstances referred to in subsection (a) of this section are—
 - (1) the offense is committed within the special maritime and territorial jurisdiction of the United States; or within the special aircraft jurisdiction of the United States (as defined in section 46501 of title 49);
 - (2) the mail or a facility of interstate or foreign commerce is used or intended to be used in the commission of the offense;
 - (3) the counterfeit label is affixed to or encloses, or is designed to be affixed to or enclose, a copy of a copyrighted computer program or copyrighted documentation or packaging for a computer program, a copyrighted motion picture or other audiovisual work, or a phonorecord of a copyrighted sound recording; or
 - (4) the counterfeited documentation or packaging for a computer program is copyrighted.
 - (d) When any person is convicted of any violation of subsection (a), the court in its judgment of conviction shall in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all counterfeit labels and all articles to which counterfeit labels have been affixed or which were intended to have had such labels affixed.
 - (e) Except to the extent they are inconsistent with the provisions of this title, all provisions of section 509, title 17, United States Code, are applicable to violations of subsection (a).

5. Please contact the author for a copy of this unpublished report for the Department of Justice served as the basis for this article (mcillwai@mail.sdsu.edu).
6. "Juan" is a pseudonym used to protect the identity of the source.
7. "The most common reasons provided by U.S. attorneys for declining to prosecute in 2002 were weak/insufficient admissible evidence (20 percent), agency request (17 percent), lack of evidence of criminal intent (12 percent), and civil/administrative action/prosecution by other authorities (11 percent)" (Motivans 2002:4).
8. As stated on this CCIPS web site, this is a representative, not exhaustive, sample of prosecuted cases. This is the most comprehensive summary of such cases available to the public. Note that when translating the information found on "Computer Crime and Intellectual Property Section (CCIPS) Intellectual Property Cases" summary, one case was dropped. *U.S. v. Sama et al.* is listed twice, so it is only counted once throughout the summary found in this report.
9. This has even more merit for future cases since the Department of Justice Task Force on Intellectual Property recently recommended that DOJ "Target Large, Complex Criminal Organizations That Commit Intellectual Property Crimes" (Task Force on Intellectual Property, 2004:19-20).
10. Copyright: 18 U.S.C. § 2318 and 2319 prohibit, respectively, trafficking in counterfeit labels and documentation, and infringing a copyright.
11. Trademark: 18 U.S.C. § 2320 bans trafficking in counterfeit goods or services.
12. Digital Millennium Copyright Act: 17 U.S.C. § 1201 prohibits the circumvention of copyright protection systems.
13. Unauthorized use of communications: 47 U.S.C. § 605 bans the unauthorized use of telecommunications services (such as satellite television programming) as well as the distribution of devices that enable such unauthorized use.
14. The Department of Justice does not specify the statute violated when it refers to money laundering.
15. Professional organized crime groups as defined earlier in the paper. Connections, or lack thereof, to such groups were determined through indictments and press releases associated with the cases provided on DOJ's "Computer Crime and Intellectual Property Section (CCIPS) Intellectual Property Cases" summary (Department of Justice 2004 August) and a search of on-line search engines for information about each indictment.
16. There was also one case of a hacker being charged. It is not included in the warez classification provided here.
17. When one searches through media coverage of intellectual property theft (in this case using LexisNexis), a number of stories emerge. However, the coverage is very far from comprehensive, telling the reader an arrest, prosecution or sentencing of intellectual property thieves has occurred, but offering little to no information that would lend itself to a substantive analysis. The following story, "Annual Cost of Film Piracy Put at Pounds 400M and Rising as More Copies Are Seized" from *The Independent* (2003) is representative:

"Film piracy in Britain allegedly increased by 80 percent last year, costing the motion picture industry pounds 400m in lost sales. The pirates' stranglehold was demonstrated when fake DVDs of the second *Tomb Raider* movie *The Cradle of Life* were discovered on sale on British streets days before the film is premiered tomorrow. Officials from the UK Film Council found DVDs of *The Cradle of Life* for sale for pounds 5 each in Oxford Street, London. A spokesman said: 'They were shocking quality and there was no sound for at least the first five minutes.' Seizures in 2002 were double those of the previous year, with 659,000 illegal copies recovered worth a potential pounds 10m. Illegal copies are often sold by dealers at car boot fairs and street markets. They are packaged to look like the real thing but often suffer from poor sound, colour and clarity. UK successes such as *Bend it like Beckham*, *Gosford Park* and *28 Days Later* have all been copied by pirates while Hollywood hits *The Hulk*, *Terminator 3* and *Pirates of the Caribbean* have been on the streets before a cinema release. About one in three videos bought is believed to be an illegal copy. They can usually be spotted because they have no BBFC classification, and are said to often fund crime syndicates. The UK Film Council has set up a task force, which intends to map out the extent of the problem and find long-term solutions, such as toughening the law. Mr. Green said: 'More than 50,000 people work in the UK's

film and video sector and piracy is a direct attack on their jobs and our economy generally, inhibiting the growth of our own industry.' John Woodward, the chief executive of the UK Film Council, said: 'People need to remember that when they buy a pirate DVD or video they are not only likely to end up wasting their money on a poor quality product, they are often putting money straight into the hands of organised criminals. Cheap copies from markets and car boot fairs may seem a bargain, but in the long-run we all lose out.'"

The story's structure is quite formulaic, apparently based on the press release of a government agency or industry association. The structure of the story usually reads as follows: Pirated copies of recent releases are being found on the streets in ever-increasing quantities. It costs the motion picture industry millions of dollars in losses. Consumers are getting ripped-off by the inferior quality of the counterfeit product. This is how you identify a fake product. Proceeds from this crime fund organized crime that endangers society. This crime hurts the motion picture industry, thereby costing jobs.

The problem with such reports is that they are of little to no value to the researcher. They are full of unsubstantiated claims (i.e., "People need to remember that when you buy a pirate DVD or video they are . . . often putting money straight into the hands of organized criminals.") The claims may be true, but where is the hard evidence? Additionally, the stories have the central purpose of persuading the reader not to buy pirated products, providing a thorough analysis of how intellectual property theft actually equates or works with organized crime is not the goal.

18. All of these names are pseudonyms used to protect the identity of the sources.
19. All city names are pseudonyms used to protect the identity of the sources.
20. Based on this report, one can conclude that the motion picture industry generally guards DVD information as if it was the Holy Grail itself. With 2004 domestic DVD sales reaching approximately \$15.5 billion and DVD rentals grossing \$5.7 billion (compared to domestic theater ticket sales which totaled \$9.5 billion the same year), one can see why these numbers are withheld for the studios financial advantage. A number of lawsuits, including one from Peter Jackson, director of the *Lord of the Rings* trilogy, accuse movie studios of hiding the actual number and timing of DVD sales, thereby preventing accurate residual payments to film stakeholders.
21. Illustrating this point is the informal, unscientific survey the author took of 104 undergraduate and graduate students, most of whom were criminal justice majors. When asked if they have ever illegally downloaded music or film from the Internet, 99 responded yes. When asked why they illegally downloaded the music, the two overwhelming responses were "it's free" and "cds cost too much" (95 total responses).

References

- "Aguilar." (2004). Interview with Jeffrey McIllwain. "Ciudad Seca," Mexico.
- ALLIANCE against Counterfeiting and Piracy. (2002). *Proving the connection: Links between intellectual property theft and organised crime*. Retrieved May 1, 2005 from www.aacp.org.uk/Proving-the-Connection.pdf and <http://66.102.7.104/search?q=cache:IpM92QjC4IoJ:www.aacp.org.uk/Proving-the-Connection.pdf+proving+the+connection&hl=en&client=firefox-a>. : 14.
- "Annual Cost of Film Piracy Put at Pounds 400M and Rising as More Copies are Seized." (2003, August 18). *The Independent*. Retrieved May 1, 2005 from LexisNexis Academic.
- "Beltran." (2004). Interview with Jeffrey McIllwain. "Ciudad Alta," Mexico.
- Department of Justice. (2004, April 22). "Justice Department Announces International Internet Piracy Sweep." Retrieved May 1, 2005 from http://www.usdoj.gov/opa/pr/2004/April/04_crm_263.htm.
- Department of Justice. (2004, August). Computer Crime and Intellectual Property Section (CCIPS) intellectual property cases. Retrieved May 1, 2005 from <http://www.usdoj.gov/criminal/cybercrime/ipcases.htm>.
- Department of Justice. (2005, April 15). "Computer Crime and Intellectual Property Section (CCIPS) Protecting Intellectual Property Rights: Copyrights, Trademarks and Trade Secrets." Retrieved May 1, 2005 from <http://www.usdoj.gov/criminal/cybercrime/ip.html>.

- Department of Justice. (n.d.). "Operation Buccaneer." Retrieved May 1, 2005 from <http://www.usdoj.gov/criminal/cybercrime/ob/OBMain.htm>.
- Department of Justice. (n.d.). "Operation Buccaneer: Illegal Ware Operations and Internet Piracy." Retrieved May 1, 2005 from <http://www.usdoj.gov/criminal/cybercrime/ob/OBorg&pr.htm>.
- Epstein, E.J. (2005). *The Big Picture: The New Logic of Money and Power in Hollywood*. New York: Random House.
- Federal Bureau of Investigation. (n.d.). Organized crime glossary. Retrieved May 1, 2005 from <http://www.fbi.gov/hq/cid/orgcrime/glossary.htm>.
- "Fernandez." (2004). Interview with Jeffrey McIlwain. "Ciudad de las Tiendas," Mexico.
- Goldstone, D. (2001, March). "Deciding Whether to Prosecute an Intellectual Property Case." *USA Bulletin*. Retrieved May 1, 2005 from http://www.usdoj.gov/criminal/cybercrime/usamarch2001_1.htm.
- Hetzer, W. (2002). "Godfathers and Pirates: Counterfeiting and Organized Crime. *European Journal of Crime Criminal Law and Criminal Justice* 10(4): 303–320.
- Holder, E. (1999, July 23). "Remarks of Eric H. Holder, Jr., Deputy Attorney General, U.S. Department of Justice, at a Press Conference Announcing the Intellectual Property Rights Initiative, San Jose, California." Retrieved May 1, 2005 from www.usdoj.gov/criminal/cybercrime/dagipini.htm.
- Horn, J. (2005, April 17). "DVD Sales Figures Turn Every Film into a Mystery. *Los Angeles Times*.
- International Federation of Phonographic Industries. (n.d.). "Copyright and Related-Rights Treaties and Laws." Retrieved May 1, 2005 from <http://www.ifpi.org/site-content/legal/treaties.html>.
- "Infante." (2004). Interview with Jeffrey McIlwain. "Ciudad Alta," Mexico.
- "Juan." (2004, August 17). Interview with Jeffrey McIlwain. Whittier, California.
- Leyden, J. (2004, September 30). Iceland's net traffic plummets, following P2P raids. *The Register*. Retrieved May 1, 2005 from http://www.theregister.co.uk/2004/09/30/p2p_raids_iceland/.
- Malcolm, J.G. (2003, March 13). Statement of John G. Malcolm, Deputy Assistant Attorney General. Hearing on Copyright Piracy and Links to Crime and Terrorism, Subcommittee on the Courts, The Internet, and Intellectual Property, Committee on the Judiciary, U.S. House of Representatives. Retrieved May 1, 2005 from LexisNexis Academic.
- Malcolm, J.G. (2004, September 23). Statement of John G. Malcolm, Jr., Sr. V.P. & Director Worldwide Anti-Piracy Operations Motion Picture Association of America. Hearing on Protecting U.S. Innovations from Intellectual Property Piracy, Committee on Government Reform, U.S. House of Representatives. Retrieved May 1, 2005 from LexisNexis Academic.
- Malcolm, J.G. (2004, October 8). Interview with Jeffrey McIlwain. Encino, California.
- McIlwain, J.S. (2005). Organized Crime and Intellectual Property Theft. Unpublished report for the International Center, National Institute of Justice.
- MediaSentry, Inc. (2003). "Movie Piracy Flow." Unpublished document provided to the author by Jim Spertus (2004).
- "Mejia." (2005). Interview with Jeffrey McIlwain. Mexico. "Ciudad del Norte," Mexico.
- "Mendoza." (2005). Interview with Jeffrey McIlwain. Mexico. "Ciudad del Norte," Mexico.
- Motion Picture Association of America. (n.d.) "Anti-Piracy." Retrieved May 1, 2005 from <http://www.mpa.org/anti-piracy/>.
- Motivans, M. (2004, October). "Intellectual Property Theft, 2002." *Bureau of Justice Statistics Special Report*. Retrieved on May 1, 2005 from <http://www.ojp.usdoj.gov/bjs/abstract/ipt02.htm>.
- "MPAA raids. . . Iceland?" (2004, October 1). *BroadbandReports.com*. Retrieved May 1, 2005 from <http://www.broadbandreports.com/shownews/55034>.
- "Negrete." (2004). Interview with Jeffrey McIlwain. "Ciudad Seca," Mexico.
- "Solis." (2004). Interview with Jeffrey McIlwain. "Ciudad de las Tiendas," Mexico.
- Spertus, J. (2004, October 8). Interview with Jeffrey McIlwain. Encino, California.
- Task Force on Intellectual Property. (2004). *Report of the Department of Justice's Task Force on Intellectual Property*. Washington, D.C.: United States Department of Justice.
- Tilburg, C. (2004, October 8). Interview with Jeffrey McIlwain. Encino, California.