

# Transnational Piracy Research in Practice: A Roundtable Interview with Joe Karaganis, John Cross, Olga Sezneva, and Ravi Sundaram

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# **Abstract**

The following is an edited transcript of an interview with lead investigators on the *Media Piracy in Emerging Economies* project. The discussion took place online in June 2011.

# **Keywords**

Piracy, enforcement, media pricing, epistemology, research ethics

The past few years have seen the release of a number of new studies on informal media circulation. Of these, the most far-reaching is the Social Science Research Council report *Media Piracy in Emerging Economies*, a 426-page analysis of pirate circuits in South Africa, Russia, Brazil, Mexico, Bolivia, and India. The product of a team of researchers led by Joe Karaganis, this study sheds new light on how movies, music, and software circulate both inside and outside legal media markets. Its most compelling conclusion is that global piracy is, above all, a price problem: "High prices for media goods, low incomes, and cheap digital technologies are the main ingredients of global media piracy. If piracy is ubiquitous in most parts of the world, it is because these conditions are ubiquitous" (2011, i).

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Media Piracy in Emerging Economies shifts the focus of the piracy debate away from a "revenue leakage" argument and toward a different set of questions about access and equity. The authors show how pirate networks provide a basic cultural infrastructure for consumers priced out of legal media markets. One of the ways they do this is by comparing the average cost of DVDs and other commodities with their price in pirate markets, and then adjusting for wage levels to find out what this represents in local incomes. (We learn, for example, that a legit copy of The Dark Knight would cost an Indian consumer the equivalent of \$641.) The report's account of the interactions between formal and informal media systems also reveals how pirate and legal media circuits are intertwined, and how developments in one sphere impact the other.

We chatted with Karaganis and three key members of his team—Ravi Sundaram, Olga Sezneva, and John Cross—about this remarkable project, the practical challenges they faced, and future directions for research on pirate media.

Thomas: Tell us a little about the origins of the project. What did you initially set out to achieve, and why?

Karaganis: I'm sure there will be different stories here. Mine goes back to 2002 when I was developing Social Science Research Council [SSRC] projects on emerging research issues in digital culture. It was already obvious that intellectual property rights were a fundamental, cross-cutting issue in this area and only going to become more so. It was equally clear that the conversation about IP, at both the research and policy levels, was built around a few specialist communities of lawyers and economists. This made for a very narrow debate in some respects—especially on issues where the law provided a weak account of what was happening. It was this divide between law and practice, from my perspective, that offered a wide-open door to more traditional social scientific approaches (and by extension, to the SSRC). The piracy project was sketched out by 2005, but it took over two years to find funders who were interested: the Ford Foundation and Canada's International Development Research Centre.

In the early days, I had the opportunity to convene some of the people who were making interesting contributions on IP regulation and practices of media consumption and appropriation outside the high-income countries that got most of the attention. This list included Brian Larkin on Nigeria, Shujen Wang on China, Ravi Sundaram and Peter Manuel on India, Peter Drahos and Susan Sell on governance issues, Toby Miller on movie industry globalization, among others. Later, this loose group included Lawrence Liang, Ronaldo Lemos, and the wider political economy of culture work coming from the Center for Technology and Society at the Getulio Vargas Foundation in Brazil. In 2005-2006, India and Brazil had literally the only clusters of multidisciplinary research on these issues, and the project was initially conceived as a sort of extension and synthesis of the work they were doing. We were later

able to build Russia and South Africa components, and were lucky to pull in John Cross and Henry Stobart when we encountered their very compatible work on Mexico and Bolivia, respectively.

Sundaram: My own trajectory in this area began in the late 1990s. India presents a curious vantage point as media piracy has been strong since cassette culture in the 1980s, leading to a complex cultural infrastructural constellation that cuts across many languages and regions. The domestic media industry has also been historically strong in India; the antipiracy discourse, while shrill and overwhelming, by no means reproduced the MPAA version. Media piracy was a foci of a project at Sarai, an organization in Delhi with which I am associated, and we soon began collaborating with the Alternative Law Forum in Bangalore and Lawrence Liang. In 2005 we jointly organized a conference in Delhi called "Trespassing Publics/Contested Commons" that brought various conversations in this debate together, including some of the main voices in North America and Asia. Simultaneously, we were initiating a dialogue with the SSRC initiative that blossomed in a full-scale research project.

The challenge for us, albeit an interesting one, was to set this up in a larger global comparative prism.

Cross: The Mexican project came late to this project but it was based on work I was doing in Mexico over the previous decade. I had been studying the political strategies of street vendors in Mexico City since my doctoral dissertation work in 1990. This led me into ethnographic fieldwork in a number of Mexico City's shadier neighborhoods such as Tepito, which used to specialize in smuggled goods such as TVs and so on. After NAFTA passed, I started to notice a shift in the neighborhood from the sale of electronic goods to the sale of copied CDs. I started to document this process in interviews on a preliminary scale.

Lobato: The copyright wars are to some degree also wars of discourse and metaphor. You decided in the report to interrogate the discourse of "piracy" from within, engaging explicitly with that vocabulary, rather than attempting to redeem extralegal circulation as "sharing," or via some other rubric. What are the pros and cons of describing the everyday consumption practices of the majority world as "pirate"? To what degree is the term *piracy* understood or recognized by consumers themselves in emerging economies?

Karaganis: We talked a lot about this at the outset of the project and decided that what we were doing represented enough of a challenge to the existing framework of the debate without also trying to introduce various neologisms for the same behavior—whether *sharing* or more technical terms like *copyright infringement* or *unauthorized use* or *extralegal circulation*. All had drawbacks. None really encompassed the whole phenomenon. None would have helped us broaden the audience beyond the academic community. And of course these terms are constructed through their use, which isn't easily controlled. Some

industry groups (e.g., the Recording Industry Association of America) are already complaining that piracy isn't a sufficiently stigmatizing term.

Sezneva: There were two other advantages to using the term *piracy;* it allowed us to link and compare the unauthorized copying of music and film to that of its historical predecessor—the unauthorized copying of books. It also better captured the ambiguous relationship of media piracy to the state as a form of power. Actual pirates in the seventeenth and eighteenth centuries were simultaneously a threat to the emerging state and its useful instrument. Pirates challenged the state monopoly of violence, in the classical definition of Weber, but European sovereigns in wars and conflicts also employed them. They were useful in situations in which sovereigns could not publicly meddle. Media piracy is implicated in a complex way in state politics today, playing simultaneously negative and positive, productive roles. For me, this is a crucial reason for keeping the word *piracy* in the research vocabulary.

Sundaram: Good question. Lawrence Liang and I began to feel uncomfortable with the excessive representationalism of "sharing" or even the "commons" and the word *pirate* was deployed as a pragmatic conceptual category. In India, pirate is part of popular vocabulary along with "local" commodities—an allusion to goods outside the brand economy. A new term in the last few years is "Chinese" for all low-cost commodities.

Cross: Metaphors are fun. A report on "piracy" sounds a lot more interesting than a report on "extra-legal sharers." Indeed, such metaphors, originally used by the industry to ostracise this type of activity, actually get turned around by the practitioners, as witnessed by the T-shirts sold by one organization in Tepito (and rapidly "extra-legally shared" by others) saying proudly "Soy Pirata y Qué?" (I'm a Pirate, so what?). The discourse of piracy paradoxically created a romanticism of the activity that the practitioners themselves appropriated and used as a source of pride and a basis for common identification and organization. As Joe mentions, the reaction to this has been to attempt to find even worse metaphors for these people, by associating them with organized crime, terrorism, and so on. The metaphor is a part of the framing of the issue, and the ways in which they are used by one group to stigmatize others and then turned around to be used as an organizational tool is in itself a fascinating area of research.

Thomas: You worked closely with content industry representatives and analysts during this project, even though the findings—and indeed the basic premise of the project—run counter to the standard industry line. How receptive were your contacts to the research?

Karaganis: Overall our experiences were pretty mixed. In my case, I spent quite a bit of time talking to industry researchers, who were generally quite eager to talk about what they were doing and, in many cases, acknowledge its limitations. We talk in the report about a professionalization of industry research over the past twenty years that has led most groups to formalize their methods

(compared to the early "best guess" days) and, in some cases, show some responsiveness to criticism. Nearly all the researchers I spoke to also supported the idea of more transparency. On the other hand, these projects feed into an advocacy machine that has less concern for these niceties and has adopted a somewhat schizophrenic approach to criticism—sometimes relatively open but more often besieged. I've thought about whether we benefited from a more or less unspoiled terrain in this regard. We've cast doubt on a lot of the industry research record. I would like to think this leads toward more openness, but it may just lead more suspicion of academics and a lock down of sources.

Sezneva: Joe [Karganis] talked with international research offices, while I focused on the practices of collecting and reporting the data that took place in St. Petersburg and Moscow. We found a few published studies on the Russian-language Internet, some of them directly contesting the IIPA data. My overall impression was that these people had enormous curiosity about the wider practices and impact of piracy. Reliable information was so scarce that even those who knew that our perspective was going to be critical were willing to talk and even collaborate with us.

Sundaram: We had reasonably unhindered access to mid- and lower-level industry representatives. This was partly due to the fact that India has no unified "industry," nor any official researchers. Mid- and lower-level access provided us with a wealth of detail, allowing us to track cross-linkages between pirate—legal spheres.

Lobato: What do you see as the purpose of academic research on piracy in the context of the wider industry research agenda? What can scholars contribute that others cannot?

Karaganis: I'd argue that there's a loose disciplinary story to map onto the last decade of work in this area. The late 1990s and early 2000s were a period of rapid discovery and exploration of the wider significance of IP issues within the legal field, epitomized by the work of Lawrence Lessig, Yochai Benkler, Pamela Samuelson, James Boyle, Peter Jaszi and many others. The lawyers were the first to appreciate the regulatory challenges of digitization and the Internet. But this engagement was primarily U.S.-centered, synthetic or casestudy driven with regard to methods, and grounded in a positivist legal project that prioritized the task of refining law and legal categories. Creative Commons is the best example of this perspective or disciplinary project. The practices that made up piracy, when they were explored at all, tended to be treated as a negative byproduct of bad copyright law rather than as something productive or deserving of treatment in its own right. There was no discussion of piracy as, say, the dominant form of access to recorded media and software in most parts of the world. No discussion of pirate networks as arguably the most massive and successful examples of user-centered culture. This was understandable, but it relied on a (legal) reification of the difference between

creation and consumption, didn't map well to conditions of economic (and technological) inequality, and meant that there was no clear engagement with the other big shift of the past decade: the rise of enforcement.

At roughly the same time, though, anthropologists, ethnomusicologists, and sociologists were beginning to observe what people were actually doing with the new technologies, and what they were doing involved a lot of informal appropriation of copyrighted media—some of it filtered back into artistic production, some of it just about participating in wider national or global cultural phenonema. What those fields have difficulty doing, in turn, is scaling up, aggregating, and exporting their findings into wider conversations. I think part of the motivation for our project was to leverage this accumulating body of evidence and insight about informal media networks and practices. Tying those types of research back into accounts of regulation and policymaking and changing accounts of industry structure seemed like the right way to approach this. And in some respects, this is what the industry was already doing, year after year, in documents like the IIPA Special 301 recommendations: aggregating local stories into a larger story about the need for stronger global enforcement.

Sezneva: A distinct contribution of academic research, and of sociology and anthropology in particular, is the critical take on the production of knowledge itself: how do we know? And we are not talking here about simply re-checking the numbers. What we initially wanted to do is to reflect on the assumptions that shape research questions and research methods of the industry experts (there is an entire section "How Good Is Industry Research?" in the report).

Sundaram: It seems to me that scholarship in this area has been often part of campaign formats (Creative Commons, WIPO, etc), sometimes in helping national legislation, and sometimes indifferent to policy and campaign models. The merit of this report is that it allows for a new type of public transaction by scholars. Here scholarship and a kind of policy address come together very fruitfully.

Cross: True scholarship uses our knowledge of the world to understand basic principles. One of the best ways of doing this is to take the counterintuitive approach, or at least to approach things in a different direction from the bulk of existing research. This is what this research does in various different ways. First, by approaching the research from the standpoint of the pirates as opposed to the standpoint of the industry. This is not done, at least as I see it, merely to be obstreperous or to rail against the evils of greedy industry executives but rather because this approach had been understudied and because this allows us to look at the process of policy formation as a social process in which neither the state nor "industry" are seen as omnipotent. On the contrary, we show among other things that there is a substantial social capacity for resistance to formal norms that does not need to show itself in organized social movements, but shows itself in the everyday behavior of people struggling

to survive. This is one reason why it was particularly important to me to challenge the "bogeyman" image of "organized crime" as being yet another omnipotent actor (except on the "evil" side) that the industry has attempted to promote. It is not that I am saying that organized crime is never involved, but that it is not the root cause of the issue and not the most interesting aspect of it. Thus, rather than seeing piracy in terms of "good" versus "evil," I see it as an expression of contentious politics that takes place not primarily in street protests but in household economies and informal social dynamics.

Lobato: The *Media Piracy in Emerging Economies* project took years to complete and spanned several continents. Along the way you must have learned a great deal about effective practices and methodologies in this rather difficult area of inquiry. What advice would you offer other researchers?

Sezneva: The rapidly changing landscape of piracy was undoubtedly our major challenge. Another was getting access to the "pirates" themselves. This was distinct for Russia, as compared to, say, Mexico, where "piracy" operated in a relatively decentralized fashion, organized at the level of individuals or small businesses. In Russia, we encountered a much more centralized system which could not be so easily pinned down to a geographic location. Plus, since we started our research during the heyday of street-level antipiracy enforcement, people were particularly wary about talking to us. The era of ordinary people burning CDs on home computers was largely past. Additionally, we faced time and resource limitations, so the option of staying longer in the field and building trust in the hope of getting an opening into a "pirate" network was crossed out. Short of such immersion, we used proxies—interviews with music and video retailers who often retailed pirated goods; antipiracy activists who "knew" how pirates work; and online forums where occasional "diaries" of pirates (along with hackers) appeared. Without relying on a single type of source, we triangulated the information from these different fields in an attempt to reconstruct how distribution works, or what changes occurred in the production of unlicensed digital contents since the crackdown in 2006. That said, piracy and pirates turned out to be much less dangerous and much more normal than we first imagined. Pirated disks and channels of delivery were ubiquitous in media markets, to the point of being mundane. Often it was difficult to distinguish licit and illicit, much less separate them into distinct objects of study. So, this fuzziness of illegal commodity production and distribution needed to be taken into consideration.

Cross: From a practical standpoint I would say the most obvious example that our research gives is that policy research cannot limit itself to what happens in the "policy" sphere. Policies may be written in government offices (largely assisted by powerful corporate lobbies) but the real test of any policy is "can it be enforced?" and this is where it is essential to look at the social and economic sphere. This means that real policy analysis has to engage people where they live. One thing I think our research shows, and which I hope the

copyright industry takes seriously, is that the old policy model of seeing the social world as simply a set of problems to be overcome has to be set aside. The copyright industry should not use the failed model of the so-called war on drugs of simply more and more draconian (and less and less effective) enforcement. Instead, the social/informal sphere should be seen as an arena of potential solutions. The question should be not "how do we destroy this energy?" but perhaps "how do we harness it?"

Lobato: A transnational research project such as yours inevitably faces the problem of how to document and analyze very diverse media consumption/ distribution practices, with their own microhistories, while working within an international horizon of comparison and making a case for a global politics of intellectual property. Can you speak a bit about the politics of comparison in multisited research?

Sezneva: This question deserves a journal article to answer! And it is a tough one. There is burgeoning literature on how to do multisited ethnography (see, for instance, George E. Marcus, Michael Burawoy, Anna Tsing, and others). We tried to pursue something along these lines by approaching every geographic site we studied—a city market, a video shop, or a country region—as something simultaneously global and local, individual and connected; and as something constituted, at least in part, by the same legal, institutional, and discursive gravitational field known as the intellectual property regime. There were surprises. Having read earlier works on piracy, we were prepared to discover transnational networks of production and distribution. These turned out to be, in most cases, national or even local. Although some media flows that we discovered were indeed global in the sense that they were happening everywhere and often moved the same digital content across the globe (same movies, same international hits), their infrastructures proved to be much more geographically delineated. Many media markets appeared to be "local." This was especially the case with music: in the countries we studied, CDs by local artists or artists from the same nation typically made up most of the material on sale. Still, to answer your question, I do not conceive of our work as a conventional comparison but rather as the work of connecting various sites through which we passed during the research, and only in a few instances did we turn to horizontal analogies.

Sundaram: My advice would be intellectual patience and an ability to deal with new surprises and sudden shifts. We faced this in India particularly in the last decade given the topsy-turvy world of media piracy, in the quick move from cassette culture, to DVD piracy to neighborhood and online peer-topeer networks. We had to think with our feet often, and at the same time place the events in long historical time. After reading Jane Gaines' work on early cinema or Adrian Johns on seventeenth-century print piracy, we were drawn to historical comparisons. From Brian Larkin's work on Nigeria, we drew the links between media infrastructures and pirate media.

Lobato: Detailed primary research on piracy runs the risk of rendering pirate networks—and the individuals who keep them running—more vulnerable to enforcement efforts, and more visible as a policy problem generally. How did you negotiate this balance?

Sezneva: Generally, yes. In the case of Russia segment, however, this danger was minimal. We ended up relying heavily on expert knowledge for the parts of the inquiry that went beyond street- and retail-level organization. In a way, policy advisors and law enforcement in Russia already knew a lot about how piracy "works" at these other levels and so we did not end up with new information, strictly speaking, that risked exposing pirate networks.

Sundaram: We thought about this a lot in the beginning, and took all the necessary steps to get consent from our interviewees. Very soon we realized that enforcers did not have the remotest idea of our academic work. In almost all cases where pirate networks were shut down, it was due to enforcement or economic mobility. Some former pirates became enforcers; some enforcers became disillusioned and provided us with a wealth of materials and insights.

Cross: In part I would agree with Ravi: in fact we don't really make that much difference in the environment we are researching in any immediate sense, since it is unlikely we are going to discover any broad patterns that are not already known by the enforcement community. However, in a broader sense is it possible that our research will be used by the copyright industry, to promote their interests in an unfair way? In my research on street vendors, I was very concerned with this issue, since it is much more likely that city authorities would read and be able to use the results of my research than, for example, the street vendors themselves. Even my attempts to publicize my research in the local language is unlikely to change this since academic norms require a language of its own that is quite difficult for the lay public to understand. In the case of the piracy debate I am maybe a bit less concerned, since there are plenty of people on both sides of the issue with the academic background to understand and use a report such as this one. Are they fully representative? Does this include the itinerant vendors of CDs on the side of the road in downtown Mexico City or Delhi? Unfortunately, no. However, if there are two things I have learned from my research it is that such people are not entirely as defenseless as they may seem, and my research is not nearly as powerful as I might have once believed.

Thomas: It is worth noting that Google—a major U.S. software industry player, a leading provider of free-to-use software globally, and a larger company than any Hollywood transnational—publicly argues for greater balance in U.S. IP policy. Has the SSRC report made any impact on policy debate in the United States? There seems little sign of an evolution in the U.S. position on IP enforcement in new trade negotiations such as the Trans Pacific Partnership, but is there a more sophisticated debate occurring now within government or policy circles?

Karaganis: I'd say the short-term impact of the report in the U.S. has been zero, but that's not unexpected. The U.S. just doesn't have a political culture these days in which evidence-based critique is going to carry much weight against lobbying interests, which have very successfully locked up both parties on most IP and enforcement issues. But I'd add several caveats.

You mention Google. Google, like most of the web service companies, supports a variety of policy positions that have come to be identified with consumer and user rights, and the "open" Internet more generally. In regard to the IP enforcement debates, this commitment is first and foremost about *secondary liability*. None of the web service companies want to be liable for infringement (or other illegal behavior) carried out by their users or, relatedly, compelled to extensively monitor their users' behavior to prevent infringement. I will wager that Google's politics will stay pretty firm on that issue, since it directly impacts them. On other issues, I think their politics (and that of the sector) may prove much more negotiable. We've already seen this in the U.S. with regard to Google's formerly strong positions on net neutrality and in China with regard to search filtering.

Second, I wouldn't totally discount the importance of the delegitimation of industry research in the last year or two, in which our work plays a part. Between our study, the UK Hargreaves report, the Government Accountability Office report in the U.S., WIPO statements, and tireless work by online technology bloggers/websites—*Ars Technica*, Mike Masnick (*Techdirt*), and others—the evidentiary basis for existing policy has been pretty comprehensively undermined. The various calls for more research by official bodies are really just a symptom of this hollowing out of the existing evidentiary discourse, which no one in authority thought was overly problematic five or six years ago. It may take years for this process to change the top-level policy discourse in the U.S., but I think that it will, eventually.

Third, I think we all assumed that our main target was IP policymaking in developing countries, where there has been a complete dearth of evidence to ground alternative perspectives on IP and development. This is where we've been focusing our efforts. Results are pretty scarce so far, but the report is new and still finding its audiences.

Lastly, the major protagonists in the enforcement fight are all being forced to reorganize in ways that prioritize other, non–enforcement-dependent revenue channels, or facing growing legal competition that has moved away from such models. Google's office tools, video and music streaming services, the end of the CD as the reference point for music prices . . . all of this seems likely to let some of the air out of the piracy/enforcement debate over the next few years. Relatedly, I think this is why the current paralysis on these issues in the major policy venues like WIPO and the WTO is okay—and in fact, a viable strategy for proconsumer and development advocates.

Lobato: What remains to be done in piracy-related research, and in critical scholarship on IP more broadly?

Karaganis: Well, we began by looking at piracy but ended up with a broader framing question about how access to media goods is regulated and structured variously by law, technology, markets, and evolving social and cultural practices. Piracy plays a huge role in many contexts, as does the wider effort to define and enforce the boundaries between licit and illicit access. Large parts of that ecology remain very underexamined. Picking up where the last question left off, I'd propose enforcement, which is a huge and growing public-private enterprise now; the organization of software markets; evolving practices of collecting and archiving audiovisual materials; more robust approaches to the economic "impact" questions that are so dear to policymakers. . . . The list could go on. Our next collaborative project will be looking at the ecology of access to educational materials in the university, in which piracy clearly plays a large part. This is in anticipation of what we're calling the great publishers' panic of 2013, as digital reading takes off and digital piracy of texts explodes. More generally, I'd put a premium on the things that academic research almost never does well: that is, collaborative or coordinated work on a scale sufficient to encompass both the richness of local contexts and the need for robust generalization.

A longer version of this interview can be accessed at http://ssrn.com/abstract=1950482

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### Bios

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**Joe Karaganis** is vice president at the American Assembly at Columbia University. His work focuses on digital convergence and cultural production, and has included research on broadband adoption, data policy, and intellectual property law. Most recently, he is the editor of *Media Piracy in Emerging Economies* (2011) and lead author of *Copy Culture in the US and Germany* (forthcoming). From 2000 to 2010, he was a program director at the Social Science Research Council.

**John Cross** is the author of *Informal Politics: Street Vendors and the State in Mexico City* (Stanford University Press, 1998) and coeditor of *Street Entrepreneurs: People, Place and Politics in Local and Global Perspective* (Routledge, 2007).

**Ravi Sundaram** is Senior Fellow at the Centre for the Study of Developing Societies (Delhi), cofounder of CSDS's Sarai program, and author of *Pirate Modernity: Delhi's Media Urbanism* (Routledge, 2009). His work rests at the intersection of the postcolonial city and contemporary media experiences.

**Olga Sezneva** is Assistant Professor of Urban Sociology at the University of Amsterdam, where she codirects the Institute for Migration and Ethnic Studies. Her various projects explore issues of migration, memory, and urban landscape; dispossession and affect; and the global circulation of music and film.