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**THE SOCIO-ECONOMIC IMPLICATIONS OF PIRACY TO THE INDIAN
ENTERTAINMENT INDUSTRY, AS WELL AS CURRENT TRENDS RELATED TO THE
CRIMINAL ENFORCEMENT AGAINST THAT KIND OF PIRACY**

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* The views expressed in the Study are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

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“Selling dreams but living nightmares”

PREAMBLE

As a producer, I am passionate about my work. I started in this profession twenty years ago – hoping to sell dreams. More often than not, I ended up buying nightmares.

I was scared that my films would be pirated. I would be petrified if they were not – because today, to be pirated is a symbol of success. Every successful film or piece of music is a victim of IP theft.

That piracy is a curse – we all know. How much of a curse – is debatable and extensively debated. It's tough to tell an audience, especially an informed audience, anything about piracy that they don't already know so I am focusing mainly on India specific numbers and globally specific emotions. At the end of the day, the creative space is an emotional space and if ever there is a solution to the piracy issue it will be emerge out of emotion and passion, not technology and logic.

To start off, let's see the scale and extent:

ECONOMIC IMPACT

The Indian film industry loses close to USD 950 million to piracy in the domestic market.

Its losses in the International market are not accounted for but we do know that a film in the US makes over 50% of its revenues from home video, yet for Indian films the figure is lower than 5%.

Late last year/early this year two Indian language films were released in the US, one by an Indian Producer and the other by a Studio. The two films had very similar releases and the Studio film had a much higher promotional spend. The box office takings of the studio film were only slightly higher. The home video market told a different story. The studio film did \$1.6m and the Indian Producer's film did \$30,000. \$1.3m was clearly stolen from under our noses. While Goliath was a match for the pirate, David wasn't.

This year Sony Pictures releases its first ever mainstream Hindi film. Its release in North America will carry the Motion Picture Association “MPA” protection. The result will be worth waiting for.

Apart from the Americas and UK, Indian films have captive markets in countries like Pakistan, Nepal, Bangladesh, Sri Lanka and Afghanistan where little or no legal content is sold.

Close to 90% of the revenue that could have been earned from home entertainment is lost to piracy.

In 2005 MPA studios lost USD 7 million to piracy i.e. 34% of the potential market share in India was lost to piracy.

14% of MPA's revenue losses were due to internet piracy.

There is presently no estimate of the revenue that the Indian film industry loses due to internet piracy but it is true that generally within 24 hours of release of a movie it is available on the internet and that any one time over 500 Indian Films are available for free downloads on just four file sharing sites. To the best of my knowledge, India has taken no action against these sites. This will only increase exponentially with the very high increase in Internet penetration.

Additionally on streaming sites and auction Indian movies are readily available where as Hollywood movies are not available on these sites.

Recently a company in India set out to acquire rights for a mass of films. They succeeded in getting over 30% of all films made and brought them out at an "under \$1" price per DVD. Initially they were heralded for the new "breakthrough" messiahs. Their profits soared and the balance sheet glowed. While they succeeded in making a dent in piracy which is in any case limited for library product, they also succeeded in bringing the value of the market down. Not an ideal solution for new products – which cannot afford to under recover on IP.

SOCIAL IMPACT

A serious long-term social impact of IP piracy is that it makes thieves out of otherwise upright and honest people, it changes the perception of theft and the overall attitude people have over theft. What's more, it does it to kids, the largest users of stolen IP, at an impressionable age, impacting their ethical standards throughout life.

The root of the problem lies in "perception".

There is a "Robin Hood" in all of us that believes that it is less of a crime to steal from the rich than it is to steal from the poor. We think we are stealing from limo driving, red carpet walking stars, not the two hundred people who helped create the IP and still struggle to make ends meet.

Stealing via the internet is like stealing a kiss. "There's plenty more there, isn't it?".

Loss of money apart, there are two other major fallouts of piracy. It generates large volumes of unaccountable cash. This makes it attractive to the groups that have a desperate need for cash – organized criminals with possible hands in drugs and weapons.

So it's not just "stealing a kiss", it's getting a kid his "fix", the petty criminal his cheap gun and organized criminals the cash they need to go about their business.

ANALYSIS OF THE SITUATION

Before suggesting solutions, I just want to briefly look at the current state of play vis-à-vis law, its enforcement, and the segments that we are dealing with and trying to change:

THE LAW

The Indian Copyright Act and the about to be legislated Optical Disc Act are both comprehensive and severe. Most of us know and believe that the law exists. Its enforcement however is severely lacking. There is no real effort to improve the skills of the law enforcers to prevent what is going to be the “next generation of crime”.

LAW ENFORCEMENT – THE GROUND REALITY

In India, as they do in the US and elsewhere, the MPA protects its own product. While they have made some inroads, there is little impact on piracy as enforcement issues continue to plague the industry.

The MPA till date has done 3005 enforcement actions since 1995 of which 1631 cases have come up for hearing but only 6 people have been sentenced as on date. Cases take nearly 2-5 years to come up for hearing.

The problems are:

- Lack of governmental will and resources to curb the menace;
- Lack of cooperation from law enforcement agencies and possible nexus between some lower police officials and pirates;
- Near-total lack of understanding the technology behind piracy.

Also, while several attempts have been to forge an alliance, no relationship exists between the “Big Four” who are protected by the MPA and the Indian Film Industry, either in India or in the US and Europe. The attempts so far have been directed towards getting financial contributions from the industry towards their effort and to include the contributing producers’ product in their “anti piracy” activity.

THE SO-CALLED “PIRATES”

I am consciously including all users of pirated product in this class though many of them believe they are not really pirates. This class includes:

- People who use pirated product because it is there on the World Wide Web, and it is free. It’s like a self-service shop with no price tags and no staff;
- People who find that it’s too much of a hassle to go to a store any longer;
- People who buy physical product and are happy that they are paying for it – albeit at a much lower price. They genuinely believe that the fact that it is available cheaper is a clear proof that companies are overcharging;

THE “PROVIDERS” ARE AGAIN OF THREE TYPES:

- Conscience keepers who believe that all creative product is free and should be kept that way, and I have met some of them even here in Geneva.
- Owners who believe that “I paid for it, it’s mine, so why shouldn’t I share it with my friends, or anyone for that matter”.
- Businesses, who exploit the psyche of the earlier two groups and create distribution channels, physical and virtual, to make illegal profits.
- There is also a “not so little” group of businesses who believe that tax is to be avoided like the plague, and if in avoiding paying the state it’s dues you can even avoid paying the creator his or her dues, all the better.

SOME SIMPLE SUGGESTIONS

The *carrot*, the *stick* and *good housekeeping*.

Since the user and the middleman are so varied, it is natural that the solutions will also be varied.

For the businessmen we should wield the stick:

- Strong laws (which India has).
- Educating the law enforcers (they don’t usually understand IP theft and we often hear “how can I arrest him for stealing, the computer and flash drive belong to him.”)
- Upgrading the offence such that the enforcers treat it more seriously. Today in Mumbai you can spend a night in jail if you are talking on the cell phone while driving but you can’t get arrested for piracy that easily.
- Specially research the links of organized piracy with drugs and terrorism. The more “established” these links are, the more seriously the state will take them.
- Continuously research and highlight the loss to the state. Loss of revenue is sometimes perceived as a more serious matter than curing the ethics of petty criminals.

For the user, the carrot:

- Improve distribution.
- Make the product available at the right price. (iTunes is a huge success isn’t it?)
- Soft campaigns to highlight the people that are affected economically.

- Campaigns to make the user aware about the people who are the real pirates and their links with organized crime.
- Occasionally use the carrot (if it is large enough) as a stick and go for punishing offenders.

Good housekeeping:

- Manufacturers and developers are continuously doing research to physically and virtually protect property. Pirates keep working to penetrate this protection but this effort must continue.
- Form that alliance between MPA and producers worldwide. Their enemy is common and pooled resources will definitely work better. Even the enforcers and the legal systems will be pressurized to perform better.
- Interact extensively with governments. They must understand that it is not about petty theft, it is about huge revenue losses, with proven links to organized crime.

Lastly – Pray that my nightmares become dreams.

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