

Politics of Music Piracy: A Comparative Look at Brazil and the United States¹

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UCLA 10/2002

*Presented at the 47th Annual Meeting of the Society for
Ethnomusicology, Estes Park, Colorado, October 24, 2002*

Introduction

For the past several years I have been engaged in research on the issue of music piracy as a by-product of a globalized music market, advancing technology and economic conditions worldwide. The study concentrates on the socio-economic factors surrounding the causes and/or reasons for the expansion of music piracy in the digital age. The confusion created by the record industry's media campaigns, which silence the voice of opposition, makes it difficult for the average citizen to fully understand the multi-layered issues. From this study's perspective, piracy is more than an unwanted economic by-product of globalization, it is an thriving industry that survives through serving a demonstrated need in society. Like other aspects of the informal economies of the world, music piracy can only exist and flourish if there remains a proven and sustained need for the products or services. The efforts of the trans-national media conglomerates to eliminate piracy on a global level have raised some rather interesting ethical and legal concerns. Here, I will present some aspects of the politics of music piracy and the unique relationship between the United States and Brazil.

¹ The research for this paper was funded by the Graduate Division of UCLA through the Summer Research Mentorship Program.

The Politics of Protection

The International Federation of the Phonograph Industry (IFPI) *estimated* that in 2001 twenty-eight percent of all CDs purchased throughout the world were pirate (IFPI 2002a: 3). Although this estimated figure lacks empirical evidence and is highly disputed, that adds up to over 1.9 billion units, or 4.3 billion dollars. Based on speculation, such estimates are driving the record industry's "war on piracy." So, waving the flag of intellectual property rights, the Big 5 labels (BMG, Warner, Universal/Vivendi, Sony, and EMI), along with the IFPI, and the Recording Industry Association of America (RIAA), have become more organized in their worldwide campaign against piracy and have made record number of arrests in Brazil and the United States. Recently the industry has extended the campaign into cyberspace turning to Congress for greater control over peer-to-peer Internet file sharing applications, yielding the creation of several laws that have drawn criticism for their violation of other constitutionally guaranteed rights. However, in such a war meant to preserve *private* incomes, *public* casualties seem inevitable. Across cultural borders the International Intellectual Property Alliance (IIPA) has pressed the United States government, through unilateral trade agreements, to apply political pressures and threaten economic sanctions against nations, which, in their judgment, are not doing enough to combat piracy in all its forms.

IIPA and Pressures from the USTR

The IIPA, claiming that Brazilian officials are not meeting their requirements, has placed Brazil on its "black list" and continues to monitor the effectiveness of Brazilian agencies (IIPA 2002). On the other hand, Brazilian officials feel they are in compliance

and are making positive strides in the war on piracy. In March 2001, through threats of economic sanctions, the IIPA was successful in forcing the Brazilian government to create the Inter-Ministerial Committee to Combat Piracy (IMC) as a federal agency meant to coordinate anti-piracy efforts nationwide. One month later, with the ink still drying on that decree, the IIPA complained to the United States Trade Representative (USTR), that the Brazilian government had shown “no tangible progress in fighting and reducing piracy” and outlined enforcement standards that *they* want to see implemented in Brazil (IIPA 2001). By February 2002, the IIPA was successful in convincing the USTR to place Brazil on the Priority Watch List citing the “Inter-Ministerial Committee has failed to produce and implement any coordinated national anti-piracy plan” (IIPA 2002: 71). In a remarkable display of self-exuberance the IIPA, unsatisfied with the progress made in Brazil, insisted on *its* standards being applied throughout the country. Here, the powerful trans-nationals are working to dictate Brazilian law and policy through threats of global economic sanctions. This action begs for an answer to the question, (one which I am not prepared to give here), which is: with the vast diversity of races, cultures, beliefs, ideals, societies and economies in the world, is it feasible to expect every nation to conform to the same copyright standards and methods of enforcement espoused by the United States?

In Brazil, however, such aggressive actions on the part of the U.S. have left many local officials puzzled. The main agency responsible for combating piracy in Brazil, among others, is the APDIF, Associação Protetora dos Direitos Intelectuais Fonográficos, (Association for the Protection of Phonographic Intellectual Rights). According to the APDIF attorney Dra. Tais Miranda since the enactment of the Inter-

Ministerial Committee the agency has shut down over 2,800 websites illegally trading MP3s and has made 1,000s of arrests resulting in the apprehension and destruction of over 4 million pirated products (Sana 2001). With such successful efforts being discounted by officials in the U.S., Brazilian enforcement agencies are left with a feeling of frustration.

In response to criticisms from the United States, Brazilian internal revenue secretary Everado Maciel said, “the U.S. should pay more attention to its own backyard” (Maciel 2002). Citing that the majority of pirated products sold in Brazil have origins in foreign countries, he feels that more attention should be directed toward countries in which the actual fabrication of the CDs takes place. In the opinion of attorney Erica Aoki, “The Brazilian government may not be able to do more than guarantee that the law provides the necessary tools for protection. The enforcement must come through the actions of the intellectual property owners” (Aoki 2001). However, the intellectual property owners do not want to invest in such actions believing that they will not be able to recover their costs. Instead, they press the Brazilian government through the IIPA to fund the entire cost of protecting *their* private property as part of the annual budget of the Ministry of Justice. In the real world, however, it simply may not be financially feasible for Brazil to expend huge public revenues to protect the private profits of the trans-national corporations. Aoki also contends that such assessment of Brazil’s efforts are unfounded since Brazil has amended its copyright laws bringing them into compliance with the World Trade Organization’s Trade Related Aspects of Intellectual Property Rights, or TRIPS, which went into full effect on January 1, 2000. The TRIPS agreement sets the minimum standards of intellectual property protection to be provided by each member

nation. According to TRIPS it is not enough to have laws on the books, these nations must also prosecute criminal offenses under the agreement. It is here that Aoki's statement that the "Brazilian government may not be able to do more than guarantee that the law provides the necessary *tools* for protection..." demonstrates Brazil's financial concerns in meeting the some of the basic requirements of the imposed TRIPS agreement. Through unilateral global agreements such as TRIPS, the more powerful nations of the WTO use economic threats as the mechanism to insure the compliance of the less powerful.

Greed versus Poverty

According to the International Federation of the Phonograph Industry, piracy accounts for 55% of all sales in Brazil, but less than 10% in the United States (IFPI 2002: 1). This statement raises two interesting and interrelated questions: If we are to believe the accuracy of these estimates, can the correlation between the GNP¹ and the per capita personal incomes of Brazil and the United States explain the difference in the percentage of piracy of each? And, in what ways has the recording industry's pricing structure responded to the different economic realities of each nation?

While the world is directed through media messages to focus on the issue of piracy as one of theft, copyright infringement and massive revenue losses for the media conglomerates, few articles appear which address the very real problem of global poverty as perhaps one reason for music piracy. According to the Almanac of Global Inequality most of the world's population are poor with the bottom 75% sharing 25% of all resources (Crow 2002). Under the strain of burdensome economic situations many of the

world's poor have turned to the informal economies to improve their lives. The informal economies of the world operate on a hidden, often ignored, plane running parallel to the formal economy, and are frequently viewed as adaptations to *social* rather than *economic* needs (Ferman, et. al. 1987: 13). Although the majority of those participating in the informal economy are marginalized workers, this behavior is not exclusive to the under classes and is found throughout Brazil and the United States. In Brazil, however, estimates claim that one in four Brazilians, or 25% of the country, is employed in the informal sector of the economy (Neves 1999). Piracy, in general, as part of the informal sectors in Brazil and the U.S., serves a very real social role for its consumers seeking relief from the oppressive pricing of the industry. In the case of music piracy the social need for the music has been created by massive media marketing campaigns, which, to paraphrase communications professor James Lull, promote an anxiety in consumers, that perceivably can only be relieved through the purchase of the product (Lull 1995: 98). Lacking the funds necessary to obtain this relief through formal markets one turns to the informal sector. With 75% of the world's population lacking sufficient funds, it becomes easy to see how quickly the informal economies can grow to meet this need. The need served by the informal economies has spawned an entire industry of counterfeit production through which anything from Barbie dolls and Nike shoes, to computer software and CDs are readily available at a fraction of the retail costs. When one considers the vastness of the counterfeit product line the size of the informal industry comes quickly into focus. It is necessary to point out that not all activities in the informal sector are illegal. It is common for people to exchange favors or small amounts of money for services rendered without breaking any laws. However, piracy, along with drug

trafficking, prostitution, etc., is an illegal aspect of informal activity. While the processes of piracy belong to the informal domain, its products reach across barriers into the formal economy often affecting “legitimate” market conditions. In this sense, piracy can also be used to fulfill political agendas, to deliberately affect market conditions, as acts of resistance to corporate controls over music distribution, or for the mere disruption of the status quo. According to Bourdieu, however, all activities in the informal sector are acts of resistance to the formal structures we have created and in which we now live (Bourdieu 1998).

As the conglomerates press for more governmental assistance in their profiteering, they turn a blind eye to the economic realities of their consumer base. Instead, they appeal to governments worldwide to enact laws that preserve their pricing structures. A brief comparison of economic conditions in Brazil and the United States illustrates this problem. The minimum wage worker in Brazil earns around two hundred Brazilian Reais per month, currently the equivalent of \$52.63. Conversely, the minimum wage in the U.S. yields approximately nine hundred dollars per month (\$892.66), or R\$3,400. These figures indicate these working class Brazilians earn approximately seventeen times less per month than their North American counterparts. The annual GNP per capita in Brazil is US\$3,437 compared to the US\$33,496 of the average U.S. citizen (IFPI 2001). Comparing the Brazilian gross national product per capita with that of the United States illuminates in dollars and *sense* the disparity between the social classes of each country. The difference of US\$30,496 makes selling the same product for a similar price in both societies an absurdity. However, CDs bear a similar sticker price in both economies. To illuminate this comparison, I made some CD purchases in July during which the currency

exchange rate was two and a half Reais to the dollar (R\$2.50 = US\$1.00). The average price on the Brazilian shelves for new releases was R\$24.90, or US \$9.96. For a worker earning a monthly income of 200 Reais, this represents over 12% of their monthly income. In the U.S. the average price was \$17.99, or less than 2% of a minimum wage earner's monthly salary. If the same 12% scale that exists in Brazil were applied to the United States, one CD would bear a price of over \$90. If such were the case, it seems safe to assume that the percentage of piracy in Brazil and the United States would exist on a more even plane. With the current exchange rate for one Real at \$3.91, the continuing devaluation of the currency has driven the cost of products even higher in recent months. According to Felix Soibelman, an attorney in Rio de Janeiro, this economic condition is the stimulus for piracy (Soibelman 2002).

In the Land of Sun and Music

In the article, "In the Land of Sun and Music, CD Pirates Play Robin Hood" appearing in the *New York Times* May 20, 2001, Larry Rother also addressed this situation, "The latest releases of Britney Spears, Madonna, U2 or the Back Street Boys can cost up to R\$36.25 (Reais) (US\$14.50) in record shops here, but that doesn't stop anyone from hearing them. Street vendors, operating from simple metal stands, offer the same titles for R\$6.80 (\$2.75)" (Rother 3). This phenomenon is not restricted to imported music. The latest releases by the national artists sell for the same price averaging R\$30. In a nation where the monthly minimum wage is R\$140-200 (US\$70-100), paying R\$36 for a CD is absolutely out of the question. According to Nehemias Gueiros Jr., an intellectual property rights attorney, "It is the avarice, the unyielding rapaciousness of the

record companies that foments the violation of recording copyrights in Brazil. When you have a predatory price policy incompatible with the economic reality of a country, then you are simply paving the way for piracy.”



Figure 1
“Generic” CDs on a pull cart in northeast Brazil

In regard to the high prices, Antônio Carlos Manfredini, an economist at the Getúlio Vargas Foundation said, “The higher price for recordings here [Brazil] is maintained not so much with Brazil itself in mind, but to avoid sales to the United States and Western Europe, it’s simply not worth it to them to threaten their markets in the North by means of aggressive pricing in Brazil” (Rother 3).

This statement reveals Brazil’s reality of trying to deal with the globalized price-fixing structure imposed on the world by the U.S./European/Japanese music industry. As a result of these high prices, record company profit margins in Brazil may be even higher than they are in the United States. Mr. Gueiros calculates that the average producer’s cost of a CD in Brazil, which includes royalties, is kept lower than in the United States at less

than \$3 per CD (Rother 3). It is commonly accepted by Brazilian economists and industry forecasters, that profits in Brazil would soar, and piracy would wane, if record companies would trade profit per unit for volume sales. In rebuttal to the industry's accusation that local officials are not doing enough, Manfredini states, "In a low-income country, the regulatory authorities have difficulty protecting the rights of both producers and consumers, and so there is not an institutional structure to control price fixing and other abuses perpetrated by the same companies that complain that their rights are not being protected when piracy results" (Rother 3).



Figure 2
CD stand in São Paulo

This is an interesting statement that demonstrates the greed of an industry that wants protection for its price fixing *and* protection from opposition to those prices. So, in other words, what the industry wants is for the government to oppress the masses in order to preserve their profiteering at the expense of the working classes. The painfully obvious truth that seems difficult for the industry to grasp is that in "low-income" societies

throughout the world, music pirates are not seen as the bandits the industry claim them to be. They are, in many cases, Robin Hoods, freeing music from its economic raptors and returning it to the people. Brazil is, after all, a country that defines and expresses itself through song as much as any other in the world, which means that Brazilians view any attempt to economically limit access to music as an attack on their culture and national identity. In the case of Brazil, any so-called lack of commitment seems to evidence an unwillingness on the part of many local officials to be coerced by multinational corporations into creating and enforcing policies that are designed as mechanisms to economically pillage the under classes of their country.

Final Thoughts: Who are the Pirates?

I have presented evidence here of the effects of music piracy on the political and economic relationships between Brazil and the United States. I have also discussed how piracy as part of the informal economy serves necessary social needs that are largely ignored by the record industry and the formal economy. Despite global economic data indicating that the top 25% of the world's population share 75% of all resources while the majority live in poverty, the record executives and artists continue to expect high prices for their products. Through powerful lobbying, otherwise known as bribery, in Washington, they are convincing the governments of the world to help preserve their opulent lifestyles at the expense of the world's working classes. The industry uses the power of its wealth to refashion the laws of the world in order to continue its profiteering. However, the important fact to realize is that such an aggressive campaign is designed to offset a *mere* 5% loss in revenues (IFPI 2002). Despite the 5%, the industry still posts

huge annual profits that, in recent years, have consistently surpassed those of the previous fiscal year. As greed-driven salary requirements drive product prices through the roof, the cost is borne on the backs of the lower classes. The same dollar that once barely covered family expenses is no longer sufficient. At the same time the cultural industries parade their products before the eyes of the world through the powerfully persuasive media of television and film causing an anxiety in consumers that perceivable can only be relieved through buying the products they are selling. Such campaigns train the mass population to feel left out, or somewhat deficient, if they do not consume the product or understand the inside joke from the latest film. Playing upon the human need of grouping and “fitting in,” these messages are enforced at the consumer level through peer pressure. Therefore, if the concept of piracy existed in a vacuum devoid of influence from its surrounding cultural contexts it would be easy for all to see where it is wrong. At least according to the laws we as humans have devised to govern our own behavior. However, when piracy is viewed in culture, it is seen amid eroding personal incomes and sagging global economies, disparity of wealth, and class struggles. Therefore, if we acknowledge that recording industry personnel are members of an exploitative industry that parlays the intellectual properties of others into their own riches, *and* we can consider the social issues of global poverty on a plane even with economic and property issues of the dominant class, we can begin to unravel the definitive answer to the question – *Who Are the Pirates?*

Notes

1. Gross National Product (GNP) - An estimate of the total money value of all the final goods and services produced in a given one-year period by the factors of production owned by a particular country's residents.
Gross Domestic Product (GDP) - An estimate of the total money value of all the final goods and services produced in a given one-year period using the factors of production located within a particular country's borders.

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