Discursive Practices around Film and Music Piracy in Selected Newspaper Articles and Radio Broadcasts in South Africa

by

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Abstract

This thesis analyses South African news media discourses on piracy to consider whether corporate interests or those of civil society are served by stories about copyright infringement and piracy awareness campaigns. This thesis employs critical discourse analysis to show that hegemonic interests are ultimately served by news coverage, made up of selected newspaper articles and radio broadcast over a ten year period, that frames a range of commercial and non-commercial copying activities as criminal acts. Two dominant frames are identified: piracy as an economic issue and piracy as a crime. The thesis shows how the harms of copyright infringement are conflated by ideologies of the 'pirate' as a violent criminal and 'piracy' as an activity against commerce. The thesis finds a fracturing boundary between the orders of discourse of corporate and civil interests and those of news media. Entertainment media, as one block, garners a way to construct and sustain alliances with news and information media (such as newspapers and news and talk radio), taking on an ideological form. When this type of consent is won, and thus elite interests served, the ability to ensure a richly sourced and diverse public domain and public sphere is compromised.

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Introduction

This thesis analyses selected newspaper articles and a radio broadcast on 'piracy' in order to consider whether corporate interests or those of civil society are served by stories about copyright infringement and 'piracy' awareness campaigns. The thesis employs discourse analysis to suggest that hegemonic interests are ultimately served by news coverage that frames a range of commercial and non-commercial copying activities as criminal acts.

Copyright contains principles serving the public interest, both from a societal point of view and user viewpoint. User rights are present in provisions such as fair dealing, in South Africa. Copyright seeks to balance incentives to spur innovation and make these innovations available to the public. The Constitution protects freedom of expression and speech. There is a risk in the public thinking, and assuming as fact, that copyright protects ideas as opposed to the expression of ideas. The legislative treatment of two is different. Also, a property rights heavy environment creates an expectation of the ownership of and exclusive control over tangible and intangible items (Benkler, 1999). In South Africa, property rights in information have been highlighted in the past few years because of the Protection of State Information Bill, or Secrecy Bill (Reid, 2014). This bill flags an important concern: freedom of speech becomes a negative liberty when there are property rights in information. This prevents people from speaking and favours concentrated and commercial information production (Benkler, 1999). Journalistic practices of the media are also affected (Reid, 2014). The consequences are then ultimately felt in spaces that are supposed to foster public deliberation, pertaining to a public sphere. These are spaces where analysis, critique and debate are supposed to take place. One consequence is the use of these spaces as a way to serve the interests of a select few, and large commercial gains.

Thesis Statement

This thesis employs discourse analysis in order to suggest that hegemonic interests are served by news media discourses framing 'piracy' as criminal in stories about copyright infringement and 'piracy' awareness campaigns. This thesis addresses the processes that influence the creation and changes of frames applied by news and information producers. This thesis also addresses the types of organisational and structural factors of the media

system that can impact the framing of news content. Scheufele (1999) identifies both these factors as a requirement in an analysis involving frame-building. This thesis hypothesises that the over-arching media frame is that commercial and non-commercial copying practices are criminal. The frame-building process consists of three parts. The first part is organisational pressures of media companies, copyright industries and civil society. The second part is ideologies and attitudes. The third part is when organisational structures and ideologies and attitudes interact with each other. The thesis adopts critical discourse analysis because of its ability to concentrate on power, dominance and institutional relationships as well as how ideology is used in discourse formation. The thesis also considers theories of the public sphere and public domain as well as the political economy of the media environment.

Research Questions

What specific hegemonic discursive practices are found in representations of commercial and non-commercial copying practices as 'piracy'? Can these practices be identified as serving the needs of specific groups? What implications do these practices have for a democracy such as South Africa?

Beyond this point 'piracy' will no longer be referred to using the single quotation marks unless when drawing attention to the use of the term. The inverted commas were used to challenge the assumption, from the outset, that the terms correctly identify and refer to commercial and non-commercial copying practices.

Methodology

This thesis employs discourse analysis to suggest that hegemonic interests are ultimately served by news coverage that frames a range of commercial and non-commercial copying activities as criminal acts. Framing is a concept that is situated in the broader context of media effects research (Scheufele, 1999). The effects of mass media are usually informed by agenda-setting, priming and framing models (Scheufele and Tewksbury, 2007). Scheufele (2000), and Scheufele and Tewksbury (2007) argue that the three models are ultimately based on different assumptions even though they are related. Agenda-setting and priming are based on attitude accessibility and memory-based models of information

processing (Scheufele, 2000). Framing is based on the idea that how an issue is characterised in news reports can influence how it is understood by audiences (Scheufele and Tewksbury, 2007). Scheufele and Tewksbury (2007) find the difference between the three models when considering how news messaging is created, how news messages are processed and how the effects are produced. This thesis focusses on news production and the process involved in this news production. Both frame building and agenda-building address message construction, including the activities of groups interested in shaping media agendas and frames (Scheufele and Tewksbury, 2007). The framing perspective is interested in how forces and groups in society attempt to shape discourse about an issue by creating dominant labels (Scheufele and Tewksbury, 2007:13). Media frames and individual, or audience, frames are the two concepts of framing that can be specified (Scheufele, 1999). This study focusses on media frames as the research question lends itself to the examination of media frames as the outcome variable. The outcome is thus the media frame, the process is frame-building and the inputs are factors such as organisational pressures, ideologies and attitudes, and elite interests (Scheufele, 1999).

This thesis employs Norman Fairclough's three-dimensional analytical framework in order to analyse discourses on piracy in South Africa. This framework identifies that each discursive event has three dimensions. The first dimension is spoken or written language text, which will be expanded here to include recorded audio content. The other dimensions are discourse practice and social practice. Discourse practice involves the production and interpretation of text. Social practice focusses on relations of power and dominance, based on the concept of hegemony. For the text component, the thesis focusses on ideational, interpersonal and textual meanings. The main focus in the analysis of discourse practice is to determine the discursive practices used and the combinations they are used in. This is similar to what Fairclough does with his marketisation of public discourse investigation. The concepts of interdiscursivity (the constitution of a text from diverse discourse and genres) are very important for this part of the analysis (Fairclough, 1993: 134). Social-institutional aspects are dealt with in the analysis of discursive events as social practice. These involve different levels of social organisation including the context of situation, the institutional context and the societal context.

There are two primary sources of content for this thesis: 1) Newspaper clippings from the past decade (a period including technology shifts from cassette to optic discs, optic discs

to MP3 and other digital video formats as well as international treaties and trade agreements); and 2) One radio interview which took place on SAfm on the 26 September 2013 focussing on music piracy in South Africa. The radio interview was recorded during its live broadcast on the 09:00 to 12:00 (Morning Talk) show, and later transcribed. The transcription can be found in Appendix A. The interview is a consequence of non-probability sampling, as subjective measures were used in its selection as opposed to the random selection procedures used in probability sampling (Battalion, 2008). This thesis finds this is reasonable as the objective is not to draw inferences from the sample to the population. Instead, the objective is to find some evidence of hegemonic discursive practices around the topic of piracy in South Africa. Convenience sampling is the exact method used. The primary selection criterion is the ease of obtaining a sample (Battaglia, 2008). The SAfm radio station was unsystematically observed during the month of the Moshito Music Conference and Exhibition. The observations were predominantly during the morning shows on both weekdays and weekends. The discussion on piracy was eventually recorded live on the 26 September 2013. The entire thirty-minute segment was recorded, including advertisements. There is one recording error in the interview, where ten to fifteen seconds were not recorded due to a connection failure. The newspaper clippings were found using a keyword search for “music OR film OR entertainment” and “pirate OR piracy” on a database cataloguing South Africa's newspaper content, called SA Media. This database is powered by Sabinet. Chapters Three and Four provide more detail about the newspaper selection and radio interview, respectively.

Mirghani's (2011) discourse analysis focusses on the corporate and government-sponsored anti-piracy media campaigns for its content selection. Yar (2008) looks at five different anti-piracy campaigns focussing specifically on the rhetorics of piracy. In South Africa, Kariithi (2008) analyses anti-piracy campaigns run by an alliance representing major global software companies. Similarly, this study analyses anti-piracy campaign content. The newspaper content is seen as an opportunity to capture the dual nature of language use as a social practice (Fairclough, 1993). The use of the newspapers and radio interviews recognises Fairclough's stance that:

> It is vital that critical discourse analysis explore the tension between these two sides of language use, the socially shaped and socially constitutive, rather than opting one-sidedly for a structuralist or 'actionalist' position. (Fairclough, 1993: 131)

Language use is simultaneously constitutive of social identities, social relations and systems of knowledge, in both conventional, socially reproductive ways and creative, socially transformative ways (Fairclough, 1993). For language use as socially shaped, societies and institutions maintain a variety of coexisting, contrasting and sometimes competing discourse, along with a complex relationship between particular discursive events and underlying conventions and norms (Fairclough, 1993).

A social theory of discourses

Norman Fairclough contends that 'discourse' primarily refers to written or spoken language use but can also be expanded to other semiotic practices. Furthermore, referring to language use as discourse indicates intentions to view it from a social perspective, or as a social practice. Pierre Bourdieu (1991), in an analysis of the rarity of language to function as a pure instrument of communication in everyday life, finds that linguistic exchange is also an economic exchange. According to Bourdieu, there are symbolic relations of power between producers and consumers. Utterances are then 'signs of wealth', to be evaluated and appreciated, and 'signs of authority', to be obeyed and believed, and not simply signs to be understood or decoded (Bourdieu, 1991).

Adam Jaworski and Nikolas Coupland (1999) argue that many of the texts produced in the process of discourse as a set of social practices are multi-modal. They have meaning and make use of more than one semiotic system. Like Teun Van Dijk (1993), they acknowledge that critical discourse analysts are politically engaged, working alongside disenfranchised social groups (Jaworski and Coupland, 1999). Ideological critique is often characterised by some form of intervention (Jaworski and Coupland, 1999). Van Dijk highlights the importance of identifying the nature of social power and dominance. Van Dijk describes dominance as the exercise of social power by elites, institutions or groups and results in social inequality. Critical discourse analysis is then a way to “examine the style, rhetoric or meaning of texts for strategies that aim at the concealment of social power relations” (van Dijk, 1993: 250). Van Dijk's approach to discourse analysis hinges on the belief that power and dominance of groups is measured by their control over or access to discourse.

Language, ideology and critical discourse analysis

Fairclough finds ideology is located both in structures which constitute the outcome of past events and the conditions for current events, as well as the events themselves as they reproduce and transform their conditioning structures (1989: 72). Hegemony is a framework for theorising and analysing ideology and/or discourse because it matches with the dialectical conception of structure while avoiding both "economism and idealism":

> Hegemony is leadership as well as domination across the economic, political, cultural and ideological domains of society...Hegemony is about constructing alliances, and integrating rather than simply dominating subordinate classes, through concessions or through ideological means, to win their consent. (Fairclough, 1989: 76)

In the context of a language and ideology problem, Fairclough claims that the emphasis should be on “discoursal” change and its relationship to ideological change, social struggle, and change on a broader level (Fairclough, 1989: 78). Furthermore, change leaves traces in text, as mixtures of contradictory or inconsistent elements. These texts are put together in a way that may give a sense of a struggle between different ways of signifying a particular area of experience (Fairclough, 1989).

Critical discourse analysis is an analysis of the dialectical relationships between discourse and other elements of social practices (Fairclough, 2001). It figures broadly as part of a social activity within a practice, in representations and in the constitution of identities. The order of discourse is the way various genres, discourses and styles are networked together (Fairclough, 2001). Fairclough defines the dialectics of discourse as the process through which discourse becomes operationalised in economies and societies (2001). Another important principle in the dialectical process of discourse is the reflexivity of social life (Fairclough, 2001). People’s activities are constantly interpreted and represented by others (Fairclough, 2001). Fairclough (1999) argues that systematic analyses of spoken or written texts must be mapped onto systematic analyses of social contexts when doing a discourse analysis in order to strengthen the analysis. This is because the analysis of texts can give firmer grounding to conclusions arrived at without the texts. The textual analysis differs from other ways of dealing with texts in that it involves the analysis of both the form or organisation of texts, and the analysis of content or meaning, as well as how they interact with each other. Intertextual analysis considers how texts selectively draw upon

configurations of conventional practices (genres, discourses, narratives), or orders of discourse, and can be extended to what is absent or omitted from texts (Fairclough, 1999). Textual analysis can be a good indicator of social change, providing evidence of ongoing processes such as the social relationships between professionals and the public being redefined (Fairclough, 1999). Fairclough (1999: 205) also finds that textual analysis can be an important political resource in critical discourse analysis: “It is increasingly through texts (notably but by no means only those of the media) that social control and social domination are exercised (and indeed negotiated and resisted).”

However, Fairclough has a few cautionary notes. Firstly, Fairclough cautions against the use of translated data: He is concerned with the extent to which a translation can capture the nuance of a language and discursive event. Other limitations in the use of textual analysis in the discourse analysis are how the interpretation of genres and discourses depend on the experience of the analyst and their sensitivity to relevant orders of discourse. The analyst's interpretative and strategic biases as well as "the slipperiness of constructs such as genre and discourse" themselves (Fairclough, 1999: 208) can be a liability in a discourse analysis. Jaworski and Coupland identify some limitations as well. Regarding the use of data, it is difficult to justify why a particular piece of text has been chosen from a work of texts and why certain of its characteristics are tended to and not others. The other limitation is discourse data not lending themselves to distributional surveying. The emphasis on the local context of language and shared construction of meaning means that recurring instances of the same discourse phenomenon cannot be confidently identified (Jaworski and Coupland, 1999).

Significance

There are constitutional and developmental implications in a democratic country such as South Africa for restrictions to access and use of knowledge and creative works. Citizens rely on news media to make informed and educated decisions about the common good, using the public sphere to engage in rational and critical debate (Fraser, 1990; Habermas, Lennox and Lennox, 1974). At its inception, copyright was intended to strike a balance between incentives for creators to spur innovation and the public need and benefit in having access to these innovations. There is an impact on the public's perception about the control of and the circulation of ideas and processes from how issues pertaining to

copyright and its infringement are represented in media, making use of certain discursive practices (Benkler, 1999; Bennett, 1982). Similarly to Benkler (1999), this thesis argues that a public domain cannot exist without information from diverse and antagonistic sources. These sources become undermined when there are too many property rights pertaining to information (Benkler, 1999). They also become undermined in a concentrated and commercial media environment (Gillwald, 1993). Also, legislation can be used against news providers attempting to stimulate and enrich public debate (Benkler, 1999), journalistic practices of the media may be affected (Wasserman, 2004) and the political economy of the media can be leveraged (Durham and Kellner, 2006). If consent is won, and thus elite interests served, the ability to ensure a richly sourced and diverse public domain and public sphere is compromised.

Chapter Outline

The first objective of Chapter One is to map out what is at stake when considering language use around an issue that deals with access to knowledge and cultural works, and the relationship with access to information. The literature aims to reinforce Fairclough's (1993) finding that a critical awareness of language and discursive practices is a prerequisite for democratic citizenship. The other objective is to show that there is room and a need for an investigation into the power relations associated with language use around the topic of piracy. This includes attitudes to piracy, especially where the dominant discourse has been a negative one. The existing body of literature (both in South Africa and abroad) on discourses of piracy is unable to critically analyse the socially shaped and socially constitutive nature of language use as a social practice because they do not analyse discourse and power relations directly. This study thus aims to fill some of the gaps that will be shown in the second part of Chapter One while also highlighting that critical analysis of discourse is an interesting area of study when it comes to piracy in South Africa.

Chapter Two analyses the newspaper articles and specific radio show discourses on piracy in order to consider how the news coverage frames a range of commercial (and non-commercial) copying practices and activities as criminal acts. The chapter begins with an introduction to the newspaper sample texts. The media frames identified from the full sample are then identified. One of two dominant frames found across the sample of texts,

from 2001 to 2011, is the frame of these copying practices as criminal. The other dominant frame is piracy as an economic issue. This thesis employs a critical discourse analysis to suggest that ideologies of the intellectual property pirate as a seafaring criminal frame copying practices as criminal. The remainder of the chapter unpacks how ideology is something that takes place in discursive events – the text of the newspaper articles and radio interview.

Chapter Three argues that the media's frame of piracy as an economic issue is in line with neoliberal economic logic. This is done through a critical discourse analysis of the radio interview and newspaper text discourse on commercial and non-commercial copying practices. The first section of the chapter provides some background into the second part of the sample texts: the radio interview. The second part of the chapter differentiates between the legal restrictions for the expression of ideas and those for physical property. The section then uncovers how these differences are blurred in discourse, drawing on the analysed sample texts. The final section unpacks how the media frame of piracy as an economic issue is informed by ideologies of neoliberal economics and the implications this has for the public.

Chapter Four investigates whether the media frames created around commercial and non-commercial copying practices serve elite interests. This is something that can be identified within the frame-building process. Herman and Chomsky's 'propaganda model' is used to inform the identification relations of dominance at the structural and organisational level. Ideologies and attitudes, the main focus of the previous two chapters, are revisited here with focus on the conclusions drawn about the criminality and commodification frames. Herman and Chomsky's model and Fairclough's three-dimensional framework are then used to see how both organisational pressures and ideology interact in the frame-building process. It is at this level that news coverage of commercial and non-commercial copying practices can be identified as hegemonic. The limitations in the findings are also discussed in this chapter.

The concluding chapter revisits the thesis' objective: to analyse South African news media discourses on piracy in order to consider whether corporate interests or those of civil society are served by stories about copyright infringement and piracy awareness campaigns. For the media frame of piracy as a crime, the primary relationship that arose

from the analysis is that of pirates as the social group with agency and thus the violent antagonist. Generally, there is an oppositional relationship between those engaging in the copying practices and the enforcement figures engaged in practices to curtail their efforts. For the frame of piracy as an economic issue, the totality of semantic discourse structures reinforce a neoliberal economic ideology. Given the plurality of cultural and information works, the public domain is what is at stake when this plurality is masked by neoliberal-economic ideologies. Also, this thesis finds some support for the hypothesis that there is a fracturing of the boundary between the orders of discourse of news media and entertainment media. Entertainment media as one block has garnered a way to construct and sustain alliances with news and information media taking on an ideological form. The current political economic environment, dominated by powerful and self-interested institutions, is discussed along with the implications for democracy. Mainly, news media is unable to behave in a watchdog function and the public sphere (and thus democracy) is undermined.

Chapter 1 – Theory and literature

Language use regarding the consumption of entertainment media is widely covered in media and cultural studies. This is unsurprising as there is rich analytical potential in the unauthorised consumption of media practices, or what has become known and understood as piracy. An objective of this study is to further explore some of this analytical potential paying close attention to power relations and the implications of language use, particularly as a social practice. Thinking about language use as a social practice entails that it is both shaped by society while also shaping society, or being socially constitutive (Fairclough, 1993). It is within this social realm that language use around the, a priori, illicit copying of media items is particularly interesting. This is due to the criminal and other negative associations that have become attached to it and continue to be attached to these copying practices. One objective of this chapter is to map out what is at stake when considering language use around an issue which deals with access to knowledge and cultural works, and the relationship with access to information. The literature aims to reinforce Fairclough's (1993) finding that a critical awareness of language and discursive practices is becoming a prerequisite for democratic citizenship. The other objective is to show that there is room and a need for an investigation into the power relations associated with language use around the topic of piracy. This includes attitudes to piracy, especially where the dominant discourse has been a negative one. Literature that critically examines language use and discourses of piracy is scarce in South African scholarship. Outside of South Africa, there are several studies with outcomes that suggest the presence of hegemonic discursive practices around media copying practices. Studies by Joe Karaganis (2011), Lawrence Lessig (2004), Jack Bishop (2002, 2004, 2005) and Debora Halbert (1997) are amongst those discussed further in this chapter. These studies are, however, unable to critically analyse the socially shaped and socially constitutive nature of language use as a social practice because they do not analyse discourse and power relations directly. In South Africa, the literature on piracy is thin. It is even thinner when looking at studies using critical discourse analysis. This study thus aims to fill some of the gaps that will be shown in the second part of this chapter while also highlighting that critical analysis of discourse is an interesting area of study when it comes to piracy in South Africa.

The public interest

This section discusses six elements to determine what is at stake for the public when considering language use around an issue which deals with access to knowledge and cultural works, and the relationship with access to information. Firstly, there is the public domain. An essay by Yochai Benkler, “Free as the Air to Common Use: First Amendment Constraints on Enclosure of the Public Domain”, shows that copyright and similar laws actually concentrate information production. They require the state to prevent people from speaking in order to increase the production of information in society. These types of intellectual property also favour increased production of information by a relatively small number of large commercial organisations. Benkler uses the First Amendment of the U.S. Constitution's requirement for a robust public domain to show that when there are property rights in information freedom of speech becomes a negative liberty. That is, people are under a legal and enforceable obligation not to speak unless they have been given permission (Benkler, 1999). This is in conflict with a component central to democracy which is the dissemination of information from diverse and antagonistic sources. However, there is an expectation of things to be owned and exclusively controlled by someone in a property rights ridden environment. Benkler argues that this is considered and accepted as good policy in spite of the imposition on the public's freedom to speak. Benkler finds the ability to affect people's baseline assumptions about their permissions around information important in copyright and related property rights analyses. In general, the public has more rights under the law than record labels, publishers and others in the information environment would admit to (Vaidhyanathan, 2001), despite what those who advocate for stronger enforcement, such as Tom Giovanetti and Merrill Matthews, would have the public believe. Giovanetti and Matthews (2005) find that there is little tension between the information environment and intellectual property, and expropriating the property of others not only undermines creation and invention but also undermines economies and societies. Giovanetti and Matthews argue that there is little conflict between intellectual property and the information environment because the different types of legislation (including the U.S. Constitution) contain clear language regarding information dissemination and the benefits of innovation to the public. Their discussion fails to consider how this clear language may be jeopardised by some of the intellectual property laws that govern freedoms discussed in items such as constitutional and human rights related documents. Also, Benkler finds that the ability to affect the public's

assumptions regarding their freedoms means that government policy can lead to a concentrated information environment, sacrificing diversity, accessibility and inclusion. In, *Wealth of Networks*, Benkler (2005) requires that the nature of how resources are regulated in society be considered along with systematic limitations that may be placed on people and the potential for manipulation by others. However, before considering autonomy, the laws impacting it or even how concentrated information environments impact democracy, it is important to begin with the premise that all these arguments build on. This is the second element in determining the stakes for the public: Jürgen Habermas' "the public sphere". It is embedded with ideals of democracy, access to knowledge and information, and other individual liberties.

Habermas, Lennox and Lennox (1974) describe the public sphere as a space in society where public opinion can be formed and where access is guaranteed to all citizens. The public sphere is also found every time a body of private individuals assemble with the purpose of discussing matters of public concern or common interest (Fraser, 1990; Habermas et al, 1974). Freedom of assembly is also guaranteed in this realm along with the guarantee to express and publish their opinions about these matters of public concern and common interest (Habermas et al, 1974). Expressions take the form of criticisms and control practised both formally and informally by the public body (Habermas et al, 1974). Newspapers, magazines, radio and television are cited as the media of the public sphere. Mass media, such as newspapers, magazines, radio and television, serve as a system for communicating messages and symbols to the general populace – to inform, entertain and amuse (Herman and Chomsky, 1988: 1). This model of the public sphere also requires a separation between society and the state. The public sphere mediates the relationship between the state and society (Habermas et al, 1974), and is distinct from the official economy (Fraser, 1999). Another important input of this model is accessibility to state information, or what Habermas et al (1974: 50) call "the principle of public information". This subjects state activities to critical scrutiny and public opinion – rendering the state accountable to its citizenry (Fraser, 1999). Habermas' (1974) historical account of European society traces society to the point where it became a private realm, in opposition and clear contrast to the state. Habermas et al (1974) describe their observations as follows:

> The bourgeois public sphere could be understood as the sphere of private individuals assembled into a public body, which almost immediately laid claim to the officially regulated "intellectual newspapers" for use against the public authority itself. In those newspapers, and in moralistic and critical journals, they debated that public authority on the general rules of social intercourse in their fundamentally privatized yet publically relevant sphere of labor and commodity exchange. (Habermas et al, 1974: 52)

Nancy Fraser argues against some of the assumptions that are central to Habermas' conception of the public sphere and finds that not even the premise of the bourgeois conception holds up when non-bourgeois strata gained access to the public sphere. Fraser states outright, though, that her critique of the assumptions does not form an argument against the existence of a public sphere but rather serves as a contribution to the critique of an actually existing democracy. Fraser wants to point toward an alternative post-bourgeois conception of the public sphere. This is because Fraser finds Habermas' conception as inadequate for critiquing the limits of actually existing democracy in late capitalist society. This is what is needed in contemporary discussions such as this one. Instead, critical theory aiming at doing this must, for one, show how social inequality taints deliberation within publics (Fraser, 1999). Lack of attention to social inequality is critiqued in other conceptions of the public realm. Hannah Arendt's notion of the public realm is a durable common world that provides the physical context where political action can take place along with the sharing of power (Gillwald, 1993: 69). Alison Gillwald criticises this, in “The Public Sphere, the Media and Democracy”. Gillwald finds that the effects of social inequality are overlooked although it accounts for political agency and the education of citizens about citizenship. Another way, Arendt does not deal with the barriers to equal participation posed by social inequality that would lead to fully realised citizenship, as is the case in Habermas' bourgeois public sphere. In addition to social inequality, Fraser identifies that critical theory (that aims to critique the limits of actually existing democracy in late capitalist society) must show: how publics are segmented, whether involuntarily enclaved or subordinated to others (1990: 77); the limitations in the use of “private” to label issues and interests, which is used often in the Habermasian conception; as well as how a weak charactered public sphere strips public opinion of any force. Fraser (1999) also highlights some of the exclusions in this account of the public sphere: For example, Joan Landes notes gender as an exclusion in the new republican sphere in France; and Mary P. Ryan notes that there were competing counterpublics and Habermas' public sphere is a class- and gender-biased notion of publicity. James Curran (2002) corroborates the

latter and finds that Habermas idealised public reason, marginalising women and the working class. Curran also finds that the Habermasian conception pays too little attention to “low politics, clientelist power relations and debased journalism” (2002:45). More broadly, Anne Phillips highlights that most contemporary public spheres neglect two fundamental inputs of liberal democracy: Participation (there are gender, race and class barriers to participating in formal politics or the media); and consent, or the lack of it for the excluded (Gillwald, 1993). Like Fraser, this study accepts – or rather does not dispute – the existence of a public sphere as an ideal in an already existing democracy but does so cautiously. The study acknowledges that Habermas' version neglects social inequality, counterpublics and the limitations imposed by a weak public sphere; and thus opts for a version of the public sphere that takes these into account.

The third thing to consider in determining what is at stake for the public is how realms of public deliberation, critique and thought can be influenced, and even undermined, by dominant political-economic systems. In classical Marxism, the ruling class employs an intellectual force that produces ideas and promotes the dominant institutions, and propagates them in cultural forms such as literature, press, film and television (Durham and Kellner, 2006). Thus, in presenting its interest as society's common interest, the ideas of the ruling class become the ruling ideas (Durham and Kellner, 2006). In the 1930s, critical theorists as part of the Frankfurt school found that cultural industries had the single function of providing ideological legitimisation of the existing capitalist societies, and integrating individuals into the framework of the capitalist system (Durham and Kellner, 2006). This was an era the theorists referred to as “state-monopoly capitalism”, finding that media culture reproduced the existing society and manipulated the mass audience into obedience (Durham and Kellner, 2006). Habermas is himself second generation Frankfurt School, investigating the public sphere within this context. Tony Bennett (1982) finds that under a system of production of advanced capitalism the result is a social system which is immune to criticism. Bennett finds this by considering different theories of the media and society, particularly in the context of the Frankfurt School and the work of Herbert Marcuse. In this system, the terms in which political issues are publicly discussed are limited to techniques that aim to commodify and manage the social system (Bennett, 1982: 43). Marcuse extends this conception of language use in the media and Bennett (1982:44) concludes: “The threat they [the media] embody is that they inhibit thought itself by inducing us to live, mentally, in a world of hypnotic definitions and automatic ideological

equations which rule out any effective cognitive mediation on our part." Thus, through the media, public thought about the unchallenged and uncriticised commodification of production processes and outputs can be limited through ideologies, and a capitalist lens. David Harvey (2007) argues that neoliberalism has become hegemonic as a mode of discourse, affecting public thought and political-economic practices. Neoliberalism presumes that the market and its signals can best determine all allocative decisions, and thus everything can be treated as a commodity. Commodification, however, presumes the existence of property rights over processes, social relation (Harvey, 2005) and even information production. These commodities are then priced and traded subject to legal contract in neoliberalism (Harvey, 2005).

The fourth element looks at the factors that undermine the public sphere specifically. This thesis already showed, through Benkler (1999), that public policy can affect the public's baseline assumptions about what legislation governing information production, like copyright, does or does not protect, resulting in a concentrated information environment. This includes both commercial and non-governmental actors, and ultimately has negative effects on free flowing and diversely sourced information in society (Benkler, 1999). Furthermore, concentrated and commercial systems of information production "tend to translate unequal distribution of economic power in society into unequal distribution of power to express ideas and exchange public discourse" (Benkler, 1999: 378), supported by classical Marxism. Chapter Four unpacks this idea further. Benkler's finding resembles the undermining effect of the concentration of media in Habermas' bourgeois public sphere. Namely, Habermas argues that it is undermined by the concentration of media, advertising and public relations (Gillwald, 1993). It is also undermined by the involvement of state anti-monopoly interventions and state sponsored media, aimed at curtailing the effect of dominant capital (Gillwald, 1993). However, this type of demise in the public sphere is not unilaterally accepted. Alison Gillwald (1993:67) discusses Peter Dahlgren's (1991) rejection of Habermas' pessimistic view about the media's public role under advanced capitalism. Dahlgren argues that there have been other fora which contributed to shaping people's consciousness by drawing attention to alternative popular, informal or even oppositional public spheres (Gillwald, 1993). However, Dahlgren still finds use for the bourgeois public sphere. Mainly, it is useful because of citizens' access and participation in the political process (Gillwald, 1993). For this study it is important to observe whether there is some evidence of a demise in a working version of the public sphere facilitated by

the concentration of media relations, as suggested by Habermas and Benkler.

The fifth part in analysing the publics' interest in this debate is to highlight Edward S. Herman and Noam Chomsky's 'propaganda model', which uncovers systematic bias and manipulation by the media. The ownership structures, such as advertising and concentration of media identified by Habermas, are also a key feature in Herman and Chomsky's 'propaganda model'. Systematic propaganda is the means through which elite consensus is mobilised in this model, giving the appearance of democratic consent, and creating enough confusion, misunderstanding and apathy in the general population, allowing elite programs to go forward (Herman, 2000: 103). The 'propaganda model' firmly embeds dominant media in the market system, which is a structural factor (Herman, 2000). This mass media model focusses on inequality in the command of resources, such as wealth and power, and the multi-level effects this has on mass media interests and choices (Herman and Chomsky, 1988). The model proposes five filters to unveil any systematic bias and manipulation by mass media, namely: ownership, advertising, sourcing, flak and anti-communist ideology (Herman and Chomsky, 1988; Herman, 2000). Propaganda campaigns occur when they are consistent with the unified and elite interests of those controlling and managing the five filters and there is an immobilised or unaware citizenry (Herman, 2000). The outcome is the media serving elite interests uncompromisingly (Herman, 2000). While the 'propaganda model' is based on an empirical account of the U.S. media, Curran (2002) has a normative idealisation of the media based on an account of the British media: The media should redress imbalances of power by broadening access to the public domain. This requires a media system that is neither controlled by the market nor the state (Curran, 2002). Curran (2002) finds that this is best realized through the establishment of a core public service broadcasting system, encircled by a private, social market, professional and civic media sectors.

When information is in the public domain no person can exclude another from making use of it in a particular way (Benkler, 1999). Gillwald argues that the same quality and variety of information and debate needs to be available to all citizens, with media policy realising public sphere ideals such as accessibility, diversity and debate. In the Habermasian conception of the public sphere this role is fulfilled by mass media – newspapers, magazines, radio and television. Benkler (2006) identifies that these media play a fundamental constitutive role in the construction of the public sphere in liberal

democracies throughout the twentieth century. Benkler (2006: 185) also highlights how they have been praised as 'the Fourth Estate': “Here, the media are seen as a critical watchdog over government processes, and as a major platform for translating the mobilization of social movements into salient, and ultimately actionable, political statements.” This is the final element in determining what is at stake for the public in this information production debate. This notion of the press as the 'Fourth Estate' draws reference to the three estates which made up the pre-revolutionary French Estates-General. They are the clergy, nobility and townsmen (Benkler, 2006). In modern political and media theory the three estates are the legislature, executive and judiciary; all acting individually without intervening with the other. Journalists are thus supposed to be the fourth estate, acting independently for actually existing democracy to be functional (Berger, 1999). Benkler (2006) finds that, conventionally, this watchdog function is best fulfilled by commercial mass media. They are large in scale, sophisticated and well-funded from government and corporate market actors and are thus enabled with the resources to act freely, avoiding scrutiny and democratic control (Benkler, 2006). Wasserman (2004) finds a tension between the watchdog function and the commercialisation of the media, and/or the concentration of the media market in South Africa. The media is amidst a triangulation of politics, economics and information (Wasserman, 2004). When the media is treated as a business there is a decrease in the barrier between marketing and editing; an increase in tabloid journalism; and an increase in the commodification of information, symbolic and cultural goods (Wasserman, 2004). This mass-media dominated public sphere is challenged by Benkler, in “Wealth of Networks”, suggesting there may be room for a networked public sphere, even if it is not well-funded or economically and politically powerful in this conventional sense. This study, however, does not require further debate on the nature of the 'Fourth Estate' – in other words whether it is a mass media public sphere or a networked one. Instead, what is required is the recognition of media as a space where expressions of criticisms (over government processes) by the public, as required of the public sphere, can take place freely. This study also keeps in mind the normative ideals of the media and public domain portrayed by Curran (2002), Benkler (1999) and Gillwald (1993).

At the beginning of this section Benkler (1999) was used to highlight that it is the laws that govern the information environment that put it and the public domain at risk. This then requires careful scrutiny of whether such laws “will create systematic limitations on

the capacity of individuals to control their own lives, and in their susceptibility to manipulation and control by others" (Benkler, 2006: 142), and thus their autonomy. Systems of regulation, concentrated commercial enterprise and even social inequalities are suggested as potential gatekeepers in the information environment, threatening the type of information environment required of a public sphere in a democratic society. The next section concentrates on the law that regulates the aspect of the information environment that is the focus of this study (film and music consumption goods) in more detail, tracing its inception and more recently the discourse around it.

Copyright

This study identifies one moment of influence in the modern copyright debate as when a guild monopoly was held by the Stationers' Company of London, which controlled almost exclusively the publication of written works, in England between 1556 and 1694 (Davies, 2002; Lunney, 2001). The Statute of Anne followed, in 1709, putting forth a new purpose of protecting creative works so as to encourage learning thus advancing general social welfare (Liang, 2005; Lunney, 2001). The U.S. followed suit in 1790, extending protection to new works, limiting protection terms and making the judiciary (instead of the publishers) the arbiters of copyright's proper scope (Lunney, 2001). Again, the purpose was to encourage learning amongst the public. This sentiment resonates in the argument by James Madison favouring copyright in terms of progress, learning and other virtues such as literacy and informed citizenry. Madison's sentiment is based on the belief that ideas needed to stand the tests of discourse and experience (Vaidhyanathan, 2001). Similarly, George Washington also favoured copyright's ability to encourage learning; public access to information has an overall benefit on the U.S. (Vaidhyanathan, 2001). Thomas Jefferson was against the monopolies afforded by copyright – concerned with the concentration of power (Vaidhyanathan, 2001). Madison wanted to limit copyright terms and was open to government intervention to end monopolies where necessary (Boyle, 2008). Also, Adam Smith stressed that monopolies exceeding the necessary term acted as a tax on citizens (Boyle, 2008). Britain's Thomas Babington Macaulay also believed that authors needed to be rewarded for their literary work but was also disturbed by the monopolistic quality of copyright. This is because it had the effect of making articles scarce (Boyle, 2008). This undermines a central feature of the public sphere – information from diverse and antagonistic sources. Monopolies thus limit the number of information

providers, outputs and consequently knowledge creation. Jefferson also feared the possibility of copyright expanding to encompass the protection of ideas, instead of only the expression of ideas (Vaidhyanathan, 2001). Jefferson argued for the distinction between ideas and expressions, and property. Property is a tangible good while ideas and expressions are not. Intellectual property, according to Jefferson, cannot be seen as a natural right based on expended labour (Boyle, 2008; Vaidhyanathan, 2001). This differs from John Locke's approach to (intellectual) property. The principle is that applying labour to something and transforming it into something useful should result in a natural right in the form of a property right (Merges, 2008; Boyle, 2008). Although Locke had a clear stance on property rights, the stance taken on copyright is not as clear. Similarly to a utilitarian argument, Locke opposes the monopolistic printing privileges held by publishers (Boyle, 2008). Intellectual property is an incentive mechanism, encouraging the production and distribution of innovation (Boyle, 2008). Denis Diderot differs slightly from Locke, but still falls under the natural rights school of thought. Diderot proposes that author rights should be stronger than property rights because they stem from the essence of the author, adding onto existing wealth instead of simply taking from it (Boyle, 2008). In a different way, Fishman (2010) argues that copyright is a means to encourage the progress of human knowledge by drawing on existing knowledge and public domain works. These different perspectives and arguments, including the anti-monopolistic, utilitarian and natural rights, make explicit the need for a balance between them. A balance is needed between the public interest (general social welfare) and provision of sufficient incentives to authors for their works. This includes works stemming from the essence of the author, or original works, and those building on works already available.

In the U.S. the attempt at that balance, specifically the protection of authored works against infringement while limiting monopoly consequences, is seen in some of copyright's doctrines. Notably, these are the fair use doctrine and the originality and idea-expression dichotomy (Lunney, 2001). In South Africa the copyright provision targeting the balance is fair dealing. Under fair dealing the unauthorised use of protected works can be considered fair depending on the underlying purpose(s) and character, such as: research, private study, critiques and reviews, and teaching. Fair dealing is also less broad than fair use, being narrowed further by some permitted uses only applying to certain kinds of protected works (Schonwetter and Ncube, 2011). Increasingly, these exceptions and provisions are framed and referred to as user rights. This better captures the fact that

users actually have rightful interests in using copyright protected materials in specific circumstances (Schonwetter and Ncube, 2011). It is in large part from these provisions and limitations (or user rights) to the Copyright Act of 1978 in South Africa and the Copyright Act of 1976 in the U.S. that legal scholarship is concerned about a threat to the balance. After all, "the public generally has more rights under the law than networks, publishers, and record companies want to concede" (Vaidhyanathan, 2001: 18). It is also important to be aware that discourse on copyright has not only been limited to matters of the public domain, utilitarianism and incentives, monopolistic threats and natural rights. For example, questions of individual authorship and the favouring of written knowledge are some notable critiques. Michel Foucault, in the 1977 essay "What is an author", once again put forward the challenge against authorship. When considering or criticising a work it should be the structure and not the relationship to a particular individual that should be weighted in the studying of it (Foucault, 1977). In fact this attachment to an individual (author) is one of the ways that discourse is able to position and locate participating individuals, as well as being able to exclude them. Foucault (1977) also finds that the author function is tied to the legal and institutional systems that circumscribe, determine and articulate the realm of transdiscursive texts. Discourses were thus not originally a thing, product or possession until systems of ownership and strict copyright rules were established (Foucault, 1977). This study takes note of Foucault's findings, particularly for the analysis of the legal and institutional systems in Chapters Three and Four. Overall, the range of arguments about copyright still serve as a reminder of that copyright, and more broadly intellectual property, is a complex and heavily disputed aspect of society in ideals, theory and practice.

Lawrence Lessig (2004:10) outlines that the intentions of copyright law, if properly balanced, are to protect creators against private control. These creators look after "our" culture and public domain. This public domain is supposed to be a "lawyer-free zone", allowing for, amongst other things, the creation of new works from already existing works and knowledge (Lessig, 2004: 14). Lessig uses a technologically determinist argument to chart out different media progressions in the U.S. and how piracy has been a part of this development. Technological determinism presumes that social structure and its cultural values are driven by that society's technology. In this context media technology is presumed to drive social structure and cultural values, including use of media. Lessig argues that private interest should not be allowed to prevail when there is an obvious

public gain. Relating this to the law, laws adjust to technologies of the time, except perhaps in cases where there is a powerful opposition on the other side of the change (Lessig, 2004). Lessig presents some examples of the role that has been played by "piracy"[1]. One example is that Disney stories are an amalgamation of literature and narratives from other cultural works. This appropriation took place during the 1920s when the average copyright term was thirty years. Using these examples, Lessig manages to include the public domain aspect into the discussion of piracy and pirates. Lessig (2004) shows how copying practices have been exploited, in various media and technological advancements, when copyright terms were shorter and international copyright agreements not ubiquitous. Unfortunately, Lessig's discussion does not lend itself to the analysis of discourse and rhetoric of piracy although it highlights some of the inconsistencies and double standards of copying practices being a priori wrong. There are many kinds of piracy that are useful and productive, producing either new content or new ways of doing business (Lessig, 2004). This adds to the scholarship about the accessibility of knowledge and cultural works, so they can be built upon. There are also certain conventions and discourses that construe even legitimate copying practices as wrong. The key interest for this study is the ways that this discourse formation takes place in society as well as the role players that foster that environment.

'Piracy'

An aside on the use of the word 'piracy' (and 'pirate'): Suzannah Mirghani (2011) identifies the term as the preferred word used by law enforcement agencies and rights holder organisations to describe acts of (copyright) infringement. Mirghani finds that these words are absent from regulatory documents such as: the previously mentioned 1709 Statute of Anne; the 1886 Berne Convention for the Protection of Literary and Artistic Works; current U.S. Copyright law; and current U.K. Copyright, Design and Patents Act 1988. In South Africa, the Copyright Act of 1978 also does not use the term. This study then assumes, like Mirghani, that it is a discourse formation that has taken place outside of official copyright law. Those with vested interests make the association between copyright infringement and counterfeiting natural, through the use of 'piracy'. This is done through the media reiteration and habitual repetition found in anti-piracy campaigns (Mirghani, 2011). Joe Karaganis finds that the term is "often used intentionally to blur", representing

1 Here, this thesis uses the convention adopted by Lessig (2004) when referring to 'piracy'.

a broad range of uncompensated use of intellectual property including commercial-scale unauthorised copying for resale and copying of (digital) goods permissible under fair use (2011b: 2). Karaganis argues that the conflation of copyright infringement and counterfeiting, through 'piracy', is a strategy to “level up” the harms attributed to copyright infringement. There are clear differences between the two, though. Copyright protects the reproduction of an expression of a work and is what is usually referred to when items are 'pirated', or the associated 'piracy' is used. Counterfeit goods are usually covered under trademark law regimes and find their value in the extent to which they resemble their more expensive and branded counterparts. The danger, as is remembered from Vaidhyanathan (2001), is that the public is privy to more uses than what certain information industry bodies want the public to believe. The use of piracy, pirated and the like to apply to both violations of copyright and trademark law, and the resultant conflation in meaning is one such mechanism.

The work in Karaganis' *Media Piracy in Emerging Economies* argues that the enforcement efforts against piracy have had little effect. The book investigates music, film and software piracy in emerging economies and the enforcement efforts combating it. Growth in piracy driven by “high media prices, low local incomes, technological diffusion, and fast-changing consumer and cultural practices” is seen instead (Karaganis, 2011a: iii). One of the reasons the cross country research project was undertaken is because of the lack in evidence of a connection between enforcement discussions and the larger issue of fostering rich, accessible, legal cultural markets in developing countries. The project also shows that much of what is known about piracy is shaped from the extensive research efforts on global piracy funded by the U.S. Copyright industry associations. Karaganis highlights several points about this type of industry research, including: Industry research used to be dominated by the idea that one illegally copied CD or DVD, for example, was the equivalent of a CD or DVD sale lost. This 1:1 assumption was recently dropped by the Motion Picture Association of America (MPAA) (Karaganis, 2011a). Secondly, transparency and credibility is an issue, because industry associations tend to publish general descriptions about their methodology, but provide little about the assumptions, practices and data underlying their work. Lastly, major losses quoted (usually millions and billions of dollars) still enjoy some uncontested discursive authority although industry researchers increasingly speak in general terms. Karaganis (2011b) finds that some studies even went as far as translating some of the losses to the U.S. Copyright industries into job

losses. Karaganis challenges the wrongful use of statistics and economic losses by the copyright industries but leaves some room for further study. Particularly, what might a discourse analysis of piracy's representation in the media be able to reveal about the relationship between the negatively depicted piracy and hegemony?

Nixon Kariithi's (2010) critical discourse analysis of advertising campaigns against software companies actually picks up on this potential association between anti-piracy discourse and hegemony. The campaign was run by Business Software Alliance (BSA) in South Africa in 2008. Kariithi (2010) finds evidence of a new capitalism discourse in the two radio advertisements and four newspaper advertisements analysed. New capitalism is the term that is used to define the variations and modern modifications of capitalism, while retaining its central features such as: wage labour, competition, private property, orientation to capital accumulation, technical progress and the rampant commodification of all social activities (Chiapello and Fairclough, 2002:187). Capitalism is itself a socio-economic system geared towards the production of goods based on considerations of cost and price, as well as the consistent accumulation of capital such that it can be used for reinvestment (Bell, 1978: xvi). Kariithi's (2010) analysis finds little discursive support for the campaigns hard-line of motivating employees to report the illegal use of software against their employers. The Kariithi study falls short due to the exclusion of hegemony in the analysis and discussion of the advertisement content. The study instead focusses on language use substantiating the new capitalism outcome without engaging critically with ideology's role in the hegemony framework set up in the paper. There is then room for more critique of this kind, especially in the South African context. Majid Yar has a slightly different approach to the analysis of anti-piracy campaigns. Yar (2008) studies how criminal and deviant behaviour are rhetorically redefined in anti-piracy campaigns aimed at children. The Yar (2008) study seeks alternative understandings to portraying copying practices for intellectual property works as illegitimate, focussing on those in film, music and computer software. Yar (2008) identifies the following themes in the anti-piracy campaigns: Property is a natural right, the myth of individual authorship or creativity, and unauthorised copying being harmful – for example, to artists and even employees in companies producing copyright content. Yar's (2008) first finding is that there is an absence of the concept of intellectual property in the campaigns. Secondly, there is a limited display of alternatives to how access to cultural goods can be organised. Finally, there is little display of how tighter intellectual property regulations or extensions may

decrease access to knowledge or even threaten cultural creativity. Yar's analysis is useful because it highlights how discourse on copyright infringement limits the discussion around access, and knowledge and information dissemination. Karaganis (2011b) also finds a lack of contrasting or critical perspectives on access and use of cultural goods. This is shown in the education efforts including anti-piracy curricula in public schools, print and video campaigns, as well as technical seminars for judges and law enforcement officers (Karaganis, 2011b). Karaganis finds these to look similar across countries and contain simple messaging. This also includes equating intellectual property and physical property as well as instilling fear and anxiety of being caught about buying dangerous and socially harmful goods (Karaganis, 2011b). Links to personal and societal unemployment are also present in the campaigns. An example is the mention of aggrieved artists and struggling employees found in Yar's study. They appeal to a sense of morality and even emotional coercion. The emotion and morality appeals are not something the Yar (2008), Mirghani (2011) and Karaganis (2011) studies focus on in depth but are delved into in the critical discourse analysis undertaken in this thesis.

Global discourse on piracy

Roya Ghafele (2010) finds that the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement is a marker of the cornerstone of current discourse of intellectual property. TRIPS establishes minimum standards for intellectual property rights protection in each of the member states (World Trade Organisation members, including South Africa). When it comes to copyright the focus of TRIPS is on harmonising national law around the Berne Convention for the Protection of Literary and Artistic Works[2] although much of TRIPS deals with industrial property, such as trademarks and patents (Karaganis and Flynn, 2011:77). Between 2010 and 2012 another international trade agreement, Anti-Counterfeiting Trade Agreement (ACTA) was signed by the U.S., Japan, Canada, Mexico and some others (Ekstrand, Famiglietti and Nicole, 2013). Middle income countries are largely absent from the agreement, with ACTA designed to expand intellectual property protections internationally (Ekstrand et al, 2013). The middle income countries are also obstacles to stronger enforcement at World Intellectual Property Organisation (WIPO) and

2 The 1886 Berne Convention is an agreement that established international recognition for minimum copyright terms, author's and performance rights, the "automatic" establishment of copyright upon the creation of a work (rather than via formal registration), and a variety of other features of modern copyright law. (Karaganis and Flynn, 2011:77)

the World Trade Organisation (WTO) (Karaganis, 2011v). In 2012, U.S. legislation known as SOPA (Stop Online Piracy Act) and PIPA (Protect Intellectual Property Act) was proposed for a vote. The legislation would strengthen copyright protections and enforcement efforts against copyright infringement (Ekstrand et al, 2013). International legislation and lobbying by major U.S. knowledge industry corporations help to export U.S. and other developed country intellectual property legislation along with its intellectual property (Halbert, 1997). ACTA was, itself, heavily criticised for supposedly secret negotiations and ignoring existing institutions negotiating intellectual property agreements (Ekstrand et al, 2013). Another way that this exportation of developed world intellectual property has been facilitated is through the narrative construction of the intellectual property pirate as an international threat. Debora Halbert explores how this version of the pirate is used in informing the way that international agreements are written and the implications this has on countries labelled as pirates. Halbert (1997: 76-77) finds a role reversal in the narrative of piracy put forward by the U.S.:

> The U.S. is a victim and the developing countries are the hostile aggressors which threaten American creativity and ideas. This switch represents a significant departure from what traditionally goes as international trade negotiations where Most Favoured Nation status provides protection for developing countries in order to facilitate development.

The narrative described by Halbert provides an application of 'piracy' and 'pirates' beyond the scope of the individual to countries, and thus the global context. It also allows for the observation of how much (negative) meaning can be packed into one term, assigning it not only to individual consumers but also to developing countries, in order to drive certain outcomes. It is impressive to assign the same amount of weight to the infringing practices of an individual university student, for example, to a developing country: A developing country that has limited resources to adequately tend to the interests of the developed nation and multinational copyright industries (as is required by the TRIPS agreement).

Mirghani's (2011) discourse analysis finds something similar to Halbert's reversed narrative and terms it the “Othering” of all acts of infringement. This makes it an outside or foreign threat to American consumers. Jack Bishop (2002) argues that the requirements in international agreements, such as the WIPO Treaties Act of 1996, put developing countries in situations where they are bullied into using scarce resources to address the interests of multinational corporations and the U.S. This is instead of allocating the

resources to address the countries' social and political needs. This is the result of a well-constructed narrative such as that identified by Halbert. Bishop's (2002) main proposition, though, is that music piracy – just like any other aspects of informal economies – can only exist and sustain itself if there remains a proven need for the products and services. Bishop (2002), similarly to Karaganis (2011a), argues this using the price strategies for official goods[3] and the persuasive marketing strategies employed by the U.S. cultural industries. Bishop (2002) shows how difficult it is for ordinary Brazilians to resist purchases of goods that better suit their budgetary constraints. However, the role played by price and market strategies is hidden by discourse that "others" all acts of infringement, as suggested by Mirghani. Mirghani's (2011: 118) discourse analysis also finds that: "Framing debates through the strategic use of language shows how certain discourses can propose and coerce a particular perspective and thus help to normalize the terms of an argument: such as labelling people 'pirates'". Mirghani notices that in order for the campaigns to be successful the messages need to strongly express the possibilities of imminent danger and harm of copyright infringement and fair use violations. These violations are associated, according to the discourse created, with organised crime, terrorism and words linked to maritime theft and violence (Karaganis, 2011b; Mirghani, 2011). Karaganis (2011b) finds no evidence of systematic links between media piracy and more serious forms of organised crime, and even terrorism. So, while Yar (2008) was able to detect the use of imagery of harm against artists and employees, the campaigns analysed by Mirghani were using a stronger threat to gain the public's attention. They drew on the political environment in the U.S., including the war on terror. Campaigns thus leverage the possibility of imminent harm and danger to further their agenda, even if at the expenses of user rights and public freedoms such as access to information.

Lessig (2004), a proponent of domestic copyright law and its extensions internationally, in one vein acknowledges that for the first one hundred years as a republic the U.S. did not honour foreign copyrights – thus being a "pirate nation" – but rigidly cries foul against the Asian copy shops. The explanation is that Asian law is in agreement with the protection of foreign copyrights. Big media in the U.S. and the rest of the world use their power and property to influence both national and international laws in order to limit and control culture and creativity (Bishop, 2005). In the music industry, Bishop (2005) dubs these

3 Goods are priced similar in the U.S. and Brazil, but not according to purchasing power (Bishop, 2002)

media giants the “empires of sound” and shows how they use of market concentration, through integrated distribution channels and mergers, and power to influence legislation. This legislation includes the Sonny Bono Copyright Term Extensions Act of 1998 and the Digital Millennium Copyright Act (DMCA), associated with the WIPO Treaties Act. Litigation is another way that these empires fight against unauthorised copying. Bishop (2004) challenges industry organisations, who plea about and against piracy, to consider some of their own tactics. Historically, these tactics have been against the interests of musicians. First, the major labels are cited for using pressure tactics against music retailers to keep the cost of CDs higher than necessary (Bishop, 2004: 101). The practice of payola is another such tactic. Payola is an unethical tactic that has been used by music labels to control radio airplay. There are also the price fixing and unilateral policies imposed on (developing) countries (Bishop, 2004; Karaganis, 2011a). These practices, and those others involving further lobbying for stricter legislation raise some interesting issues of power structures, ethics and the relationship to greed and poverty (Bishop, 2004:102). Bishop also highlights that record companies and the International Federation of the Phonographic Industry (IFPI) do not mention the surcharges received for CD burners sold when complaining about the increased sales of these blank compact discs. It becomes reasonable to agree with Bishop (2004: 106) that the mind washing society received while growing up, to believe that a small fraction of the population needs to be protected to maintain control over the majority of resources, needs to be abandoned.

Conclusion

Systems of regulation, concentrated commercial enterprise and even social inequalities are outlined as potential inhibitors in the information environment. They threaten the type of information environment characteristic of a public sphere in a democratic society. This study acknowledges that Habermas' version neglects social inequality, counterpublics and the limitations imposed by a weak public sphere and rather accepts a version of the public sphere that takes these into account. The study identifies that the public sphere is undermined by the concentration of media, advertising and public relations, as well involvement of state anti-monopoly interventions and state sponsored media (Gillwald, 1993). The media can end up serving elite interests in such an environment, even though often hailed as 'the Fourth Estate'. Also, through the media, the unchallenged and uncriticised commodification of production processes and outputs can be limited through

ideologies to only be thought of in the mind of the public through capitalist (Bennett, 1982) and other frames. This combination of factors is in conflict with the dissemination of information from diverse and antagonistic sources, which is a component central to democracy.

Laws governing the information environment have implications for the public domain. Each of the different perspectives and arguments presented around copyright – including the anti-monopolistic, utilitarian and natural rights arguments – make explicit the need for a balance between them, as well the centrality of the public interest. In legislation, it is the fair use doctrine, the originality and idea-expression dichotomy and fair dealing provision that make attempts at this balance. Lessig (2004) argues that private interest should not be allowed to prevail when there is an obvious public gain. Karaganis (2011b; 2) argues that the term 'piracy' is “often used intentionally to blur”, representing a broad range of, distinct, uncompensated uses of intellectual property. The use of 'piracy', 'pirated' and the like to apply to both violations of copyright and trademark law, and the resultant conflation in meaning is a mechanism to increase the harms attributed to copyright infringement, affecting people's baseline assumptions about the information environment.

Dominance and power relationships are the focus in some studies but there is a need to study the power relations associated with language use as a social practice. Karaganis' study of enforcement efforts against piracy leaves room for more work on the relationship between piracy and hegemony in this context. While Kariithi's (2010) critical discourse analysis of advertising campaigns by software companies in South Africa studies the potential association between anti-piracy discourse and hegemony, it does not engage critically with ideology's role in the hegemony context. The analysis by Yar (2008) studies how discourse on copyright infringement limits the discussion around access, and thus knowledge and information dissemination. Both Yar and Karaganis find a lack of contrasting or critical perspectives on access and use of cultural goods in the education efforts and campaigns they studied. Mirghani (2011) finds that in order for the campaigns to be successful the messages need to strongly express the possibilities of imminent danger and harm, akin to war, of copyright infringement and fair use violations. Emotion and morality appeals are found in the Yar (2008), Mirghani (2011) and Karaganis (2011) studies but not focussed on in depth and will thus be delved into in the critical discourse analysis to follow. Campaigns leverage emotional appeals and the possibility of imminent

harm and danger to further their agenda, even if at the expenses of user rights and public freedoms such as access to information.

From a global perspective, international legislation and lobbying by major U.S. knowledge industry corporations, as well as the narrative construction of the intellectual property pirate as an international threat, are revealed as a way help to export U.S. and other developed country intellectual property legislation along with its intellectual property (Halbert, 1997). Bishop (2002) and Karaganis (2011) argue that piracy exists because of price strategies for official goods and the persuasive marketing strategies employed by the U.S. cultural industries. Bishop (2005) finds that big media in the U.S. and the rest of the world use their power and property to influence both national and international laws in order to limit and control culture and creativity. These empires will not outright say that the public should use media in a way that they can sustain their position, nor will they admit that this is what they want. Instead, it is shown through the work of Karaganis (2011), Halbert (1997), Mirghani (2011), Bishop (2001, 2005) and others that there are numerous tactics employed to convey this message both to individuals and countries. Just as the legislation that governs the information environment is important for democratic citizenry, so are the discursive practices around actions supposedly violating the legislation. The power relations found in the Karaganis, Bishop and Halbert studies, as well as the impact of a concentrated media environment as discussed in the theory, are the focus of the final chapter. More specifically, are elite interests served by stories about copyright infringement cases and piracy awareness campaigns? First, the next chapter analyses the newspaper articles and specific radio show discourses on piracy in order to consider how news coverage frames a range of commercial (and non-commercial) copying practices as criminal acts, and the ideologies used in these discursive events.

Chapter 2 – Who are the pirates?

This chapter analyses the newspaper articles and specific radio show discourses on piracy in order to consider how the news coverage frames a range of commercial (and non-commercial) copying practices and activities as criminal acts. The chapter begins with an introduction to the newspaper sample texts. The media frames identified from the full sample (newspaper and radio texts) are then identified. One of two dominant frames found across the sample of texts is the frame of these copying practices as criminal. The other dominant frame is piracy as an economic issue, and will be the focus in the next chapter. This study employs a critical discourse analysis, using Fairclough's (1993) three-dimensional framework, to suggest that ideologies of the intellectual property pirate as a seafaring criminal frames copying practices as criminal. A brief etymology of the terms 'pirate' and 'piracy' is used to support this hypothesis. The remainder of the chapter unpacks how ideology is something that takes place in discursive events – the text of the newspaper articles and radio interview.

The sample texts

This chapter begins with an explanation of why the newspaper text time period was chosen, relative to the type of analysis this thesis undertakes. A description of the population, sample and analysed newspaper text selection is then provided. This is followed by overview of the frames identified from the texts. The observed ten-year period is chosen because it allows for the observation of copying practices in the space of technological developments. Media consumption went through a transition during this period. For music, consumption formats changed from audio tapes, to compact discs or CDs, followed by the MP3 format. For film, what the study observes is not so much the change from VCR consumption to digital versatile discs (DVDs), but rather the relationship between consumption of films at cinemas versus home consumption (of DVDs). Fairclough (1989b) finds that social struggle and change figure broadly in the study of hegemony as it is the local processes of constituting and reconstituting social relations through discourse that are the focus. Capturing historical and technological changes then contributes to the analysis of the societal and institutional orders of discourse as is required of Fairclough's (1993) three-dimensional framework for a critical

discourse analysis.

The 1187 newspaper clippings published between 2001 and 2011 is the population which the sample of analysed newspaper texts is drawn. The clippings were found using a keyword search for "music/film/entertainment" and "pirate/piracy", all in the same query statement. The sample population consists of a combination of articles and features or publicity material (by entertainment industry lobby groups). The SA Media database, a digital archive, was used and is powered by Sabinet Reference. The database of newspaper clippings is maintained by the University of the Free State. Sabinet is based in South Africa and offers online products and services which can be used by libraries, legal practitioners, students and researchers, as well as publishers (Sabinet, 2013). The 1187 search results were first sorted by relevance to the keyword search. The second filter applied was the restriction to the ten-year period. The most recent result is from 2011, leading to the 2001 to 2011 observed period. The resultant sample consists of seventy-seven newspaper clippings. Individual items (headlines, article text and accompanying colour pieces) were cut out from the respective newspapers and isolated from the original newspapers. This cut-out characteristic implies that inferences about graphic design – including layout, placement, advertisements featured and issues related to multimodality – cannot be made. Publication, date and page number are included as part of the metadata on each individual article clipping. Unfortunately this means a rigorous analysis of news design, and inferences about the different kinds of modality, is not possible in this analysis. Jaworski and Coupland (1999) identify that texts produced in the process of discourse as a social practice are multi-modal, making use of more than one semiotic system. Text and ideology are then relied upon instead to determine how discourse is socially shaped and constituted.

This thesis chooses four texts as references for the analysis of the frame-building process and, by implication, the critical discourse analysis. This is based on their representivity of the identified dominant frames. These four texts consist of one headline and three full-text articles and can be found in Appendix A. The headline (Sample One) represents the sea piracy frame found across nine of the seventy-seven clippings. The other headlines use frames captured in the other three sample texts. Samples Three and Four indicate how the economic and crime frames are used together in varying contexts. Sample Two

represents an instance where there is a single dominant frame found in one newspaper clipping.

Finally, this section turns to the two dominant frames identified from these texts. All headlines and texts in the resultant sample of seventy-seven clippings and the radio interview (described in the next chapter) were analysed to identify how commercial and non-commercial practices – and those performing them – are framed. The first is piracy as an economic issue. This includes piracy being seen as a factor in job and revenue losses, diminished profits, competitiveness of (local) firms, and tax implications. The second frame is that of piracy as a crime. There are sub-frames under the crime frame: the illegality of piracy (including theft and counterfeiting); organised crime and international crime syndicates; and victims. The other, less dominant, frames are those of piracy as an international relations issue; piracy as a pricing issue (as argued by Karaganis); and piracy as a technology issue. These frames are used in varying combinations in the sample texts. The next section briefly discusses the origins and uses of 'pirate' and 'piracy', as an introduction to the argument that ideologies of the intellectual property pirate as a seafaring criminal frame copying practices as criminal.

The charge of piracy

The words 'piracy' and 'pirate' are of Greek origin. The latter comes from *peirân* which means “to assault” (Mulligan and Quinn, 2010; Grassmuck, 2009). In the thirteenth century, 'pirate' was used to refer to a ship (Grassmuck, 2009) and Raoul Genet (1938) identifies this as the general application and in some instances the term was used to refer to the commander of a ship. By the seventeenth century the word was firmly used to refer to a robber at sea (Grassmuck, 2009) and also made its way into the discourse of literary works. It was used to apply to copiers and/or plagiarists of literary works in the seventeenth century, pre-dating what is known as copyright protection today (Mulligan and Quinn, 2010). Mulligan and Quinn also identify that literary piracy was at that time concerned with breaking custom as opposed to breaking the law.

Reverting to the relationship with maritime activities, Genet describes a pirate as either a ship or its commander whose profession is to engage in attacks against property and

persons (1938). Genet claims that piracy requires the presence of three elements: criminal violence, attempts against goods or persons, and the threat directed at general commerce. In this depiction it is also a requirement that the activity take place at sea. These are usually high seas where no state has jurisdiction. Genet's position stems from International Law, specifically the Spanish War and the attention it garnered. While the Spanish War may be a topic very distinct from that handled here, the commonality is the interest in the misunderstanding and distortion of the term 'piracy' and the ramifications thereof. Mulligan and Quinn find that 'piracy' codes an activity as violent and unjust as well as supporting the analogy between physical property and intellectual property. Mirghani (2011) identifies theft as a central component in the reference to open-sea piracy concerned about the effects of any conceptual links between open-sea piracy and copyright infringement. This is corroborated by Eckstein & Schwarz (2014) who find that maritime piracy is used as a metaphor of media piracy, drawing on different cultural imaginaries including the violence and illegality, or pirates as figures of resistance.

This brief etymology is used as a way to propose that representations of 'piracy' and 'pirates', drawing on open sea piracy and violence, are now part of the attitudes and social representations of groups, and even the public at large. There are ideologies of piracy and pirates. On ideology Fairclough (1989: 72) finds that: “Ideology, is located, then, both in structures which constitute the outcome of past events and the conditions for current events, and in events themselves as they reproduce and transform their conditioning structures.” This thesis assumes that the origin and use of piracy is the structure (norms, conventions and histories) constituting the outcome of past events. Within this structure 'pirates' and 'piracy' are associated with criminal violence; attempts against goods or persons; and threats against commerce – both at sea and otherwise. The rest of Fairclough's finding - the discursive event itself - is investigated in the remainder of this chapter. Perhaps Genet's argument against the misuse of the term 'piracy' and how it increases judicial outcomes (in the context of the Spanish War) can find support in using the ideology framework. This is because ideology has material effects, constantly creating and recreating many aspects of the social world (Fairclough, 1989) and can thus not be ignored in any attempts to reverse a discourse, as was attempted by Genet. This thesis recognises that it is not possible to capture the full extent to which the piracy ideology has been constituted since its initial use, in this chapter. Rather, it proposes this

as an area of study that can be pursued by others, preferably in the context of commercial and non-commercial copying practices. The following section considers the second component in Fairclough's location of ideology: ideology as something that takes place in events, discursive events.

The violent antagonist

The first thing to note is how pirates, themselves, appear in the discourse and text of the newspaper articles and radio interview. These texts do not distinguish between a copying practices' pirate and an open-sea pirate. Rather, they refer to the former under the blanket terms of 'pirate' and 'piracy'. Sample Two, titled "Pirates and Profits", makes use of an analysis genre, predominantly using market economics and formal discourse. There are some instances, however, where informal or colloquial discourse is used. The use of 'pirates' in the headline is one such instance. This use is out of place when compared to the rest of the article. Actually, it is the only informal discourse used in the article. It is worth considering whether a formal description, such as 'copyright infringement', would not have been a more appropriate use of language. It is also possible that the choice to represent copying practices as 'piracy' in this article is a consequence of copy-editing. This is even more likely with Sample Two's headline ("Pirates and profits"). It makes use of the discourse of economics and/or neoliberalism alongside the lexicalisation of copying practices. This contrast is also more discernible because of the analytical genre. Making use of the term 'piracy', which is a representation of the activity, would retain the analytical discourse of the article instead of making use of 'pirates', which represents the actors. By using 'pirates' the author or copy editor create a persona that can be made responsible for the further representations in the text, even if doing so creates a break in discourse. Then, even though these 'pirates' are not referred to in any manner in the actual article, a propositional structure is created. This social group is also given agency, alongside the negative frame, as the cause behind lower profits. Another reason to believe that the use of 'pirates' in the headline is a consequence of copy-editing is because it is found in each of the headlines of the samples. Although dealing with the same broad subject matter, these articles differ greatly on the dimensions of text, social practice, and discourse practice. This is not necessarily too surprising as one purpose of the headline is to attract the attention of the reader, activating certain semantically related concepts in the reader's mind (Pan and Kosicki, 1993).

The second thing to note from the text is that evidence of topicalisation is found. At the beginning of the article in Sample Four ("Music pirates are scoring big on CDs by new South African sensation Zahara and others"), and even its headline ("Music pirates rip off artists big time"), pirates are featured in the topic part of the sentence while artists, such as Zahara, are featured in the comment. The pirates are identified as the antagonists. All other participants in the text are usually introduced relative to them in the comment part of sentences. With the artists, 'pirates' is usually in the main clause and hence occupies the initial position. This frames the relationship as one where the pirates have the agency and the artists are the social and crime victims. In the headline of Sample Four, the pun "rip off" adds to the topicalisation. "Rip off" is used to refer to a fraud or swindle, especially something grossly overpriced (Oxford Dictionary, 2014). In computing 'rip' means to use a program to copy (material from a CD or DVD) on to a computer's hard drive (Oxford Dictionary, 2014). Here, the pirate is identified as someone who steals or exploits, while also capturing how this is done. The pirate is the agent and the artists the victims. When artists act, however, their actions are always portrayed in reaction to how they are treated by the pirates: "The pirates attack them when they fight for their bread". The topicalisations this thesis identifies all rely on the ideology of the pirate as a thief or criminal ("score" and "rip off"), and a violent one at that ("attack"). This is consistent throughout the whole of Sample Four. In the following sentence local coherence further facilitates this relationship between pirates and artists: "When she confronted the shop owner, she was physically attacked". She was then only attacked because she confronted the shop owner – the pirate. Her reaction to the pirates' activities had her attacked, preserving the position of the violent antagonist.

Thirdly, direct references and metaphors of open sea piracy contribute to the ideology of the intellectual property pirate as a violent antagonist. Sample One ("Challenge in putting pirates to the sword") uses an open sea piracy metaphor. This associates all lexicalisations of piracy with violent and dangerous crime. The use of words like "challenge" and "sword", and the narrative genre employed, conflates the meaning and vilifies those performing the commercial copying practices. This is similar to what Mirghani (2011) finds where metaphors of war are used alongside the association to open-sea piracy to appeal to the U.S. public's background knowledge of their "war on

terror". Knowledge implies facts to be known, facts coded in propositions which are simply and visibly related to them (Fairclough, 1985). Individuals constitute ideologies because of this knowledge, using their own knowledge bases to manage and make sense of discourse. This is how knowledge can then be seen to interact with the ideological effect. It is to see the actions of those engaging in commercial and non-commercial copying practices as the same as those of open-sea pirates. This reproduces this ideology as an object of knowledge, and thus another reality. This is then the case for all other headlines and in-text references that rely on this ideology in open-sea piracy metaphors.

Enforcement

The fourth item this thesis uncovers in tracing ideology through texts is how actual information about those engaging in commercial copying practices often features as background information and sometimes not at all. This is particularly the case in Samples Three and Four, as well as the radio interview. The pirates are only foregrounded when information about syndicate work, enforcement efforts or operations around the distribution of pirated material is discussed. Local coherence is also used to foreground information about enforcement efforts: "Schoeman said that when music piracy was reported, it was first investigated to determine the extent of it, then evidence was obtained of the offences being committed and only then was a complaint filed against the suspect with the police" (Donaldson, 2005). "It" is anaphoric, referring back to "music piracy", and along with "then" relies on ideologies and norms about procedural and investigative police work. Sample Four is actually the only newspaper article that uses 'pirates' in the body of the text. It also uses it in a blanket manner, capturing both those who sell copyright infringed material and counterfeit goods. Samples Two and Three only feature 'pirates' in their headlines. The headline of Sample Three is ideological. In the headline, "Pirates of the 21st century", implicature is used to suggest that there were pirates prior to the twenty-first century. This is shown to be true in the etymology at the beginning of the chapter. More importantly, readers hold similar knowledge with the writer and editor acknowledging this through implicature. Sample Two also only uses 'pirates' in the headline, and it was shown that this frames the article relative to this now responsible party. The pirates become the agents responsible for the information discussed and analysed in the article.

Finally, there are many different ideational and interpersonal meanings associated with each individual sample. The metaphor headline in Sample One signifies and represents the world as one in the midst of a violent conflict. It includes criminals that need to be held accountable, like in open-sea piracy. The pirates are thus identified as the bad guys and those wanting to challenge them the good guys in their oppositional relationship. The ideational meanings in Sample Three are those of a criminal activity and a monetary loss-ridden society. There are identities for counterfeiters, piraters, and file-sharers (and thus a broad range of commercial and non-commercial copying practices). These are also identities for the enforcement figures engaged in practices to curtail the aforementioned parties' efforts. This thesis identifies three enforcement figures in the text: industry bodies with anti-piracy campaigns or interests (SAFACT, RISA, IFPI); legislation; and law enforcement and customs. Similar to Sample One, an oppositional relationship exists between the two groups – the pirates and the enforcement figures. Enforcement is something that is needed to curtail some kind of wrongdoing. The identified enforcers here represent law enforcement (national and international). This frames the issue as one whereby police and customs investigations are the recourse required for the copying practices. This effectively criminalises the copying practices. This is supported by Liang (2014) who finds that when the pirate enters contemporary discourse about intellectual property the pirate is predominantly demonised or portrayed as a criminal. In Sample Three, the law enforcement efforts in particular reinforce the frame of piracy as organised crime consisting of international syndicates. In the radio interview the law enforcement identities are contained within national borders, focusing on policing, legislation and the judiciary. Sample Four includes identities not focussed on in the other articles – the artist and record label. On the ideational meanings this adds a dimension to Sample Four – victims – to go with the criminals and enforcement. This study also identifies artists as the social and crime victims through other semantic structures of discourse. The implied relationship between illegitimate copiers and artists is causal; those engaging in commercial and non-commercial copying practices lead to the situation where an "artist dies a pauper" (Mashaba, 2011). There is also a personal relationship between industry groups and the counterfeiters and piraters. The latter pose a threat to the interests of the former, represented in the text as million and billions of Rands. These commercial interests are the focus of the final chapter in this thesis, with

the next chapter focusing on the framing of piracy as an economic one, hence these millions and billions of Rands.

Conclusion

This thesis identifies two dominant frames from the 2001 to 2011 sample of newspaper texts and the radio interview text. These are the framing of piracy as an economic issue, and the framing of piracy as a crime. The criminality frame was the focus of the chapter, particularly of how the ideology of the seafaring pirate was paramount in the frame-building process. By the seventeenth century the term 'pirate' was used to describe both a robber at sea as well as plagiarists. Subsequent to that 'piracy' has become associated with criminal violence (Genet, 1938; Mulligan and Quinn, 2010), attempts against goods (theft) or persons (Genet, 1938; Mirghani, 2011), and threats against commerce (Genet, 1938). This thesis proposes that these representations are part of the attitudes and social representations of groups and the public at large, and thus the ideologies of piracy. Etymology reveals how this ideology is located in the structures of past events. The findings from the sample texts show how ideologies are located and constituted in current discursive events, and thus the framing of copying practices as criminal. Topic, local coherence, and propositional structure are used in the text to provide agency to those engaging in commercial copying practices. This thesis shows how an open-sea piracy metaphor can reproduce the ideology of piracy as a violent and dangerous crime, as an object of knowledge and hence another reality. These semantic structures of discourse found in the text are monitored by the underlying ideology of the pirate as a violent thief and criminal. The primary relationship that arises is that of pirates as the social group with agency, the antagonist, and artists (and the economy) as the social and crime victims.

Those engaging in commercial and non-commercial copying practices are only foregrounded in the newspaper and radio text in the context of enforcement against them. Ideational and interpersonal meanings are used to show that the world represented in the texts and interview is a conflict-ridden one, with oppositional relationships between those engaging in the copying practices and the enforcement figures engaged in practices to curtail their efforts. The presence of enforcement figures further frames the issue as

one of criminality. Where criminality of piracy was the second dominant frame identified in the text, the next chapter focusses on the most dominant frame – piracy as an economic issue. These two frames will then contribute to the final chapter in showing how ideology is used, along with organisational structures, in frame-building to serve corporate and civic interests.

Chapter 3 – It is an industry

This chapter argues that the media's frame of piracy as an economic issue is in line with neoliberal economic logic. Neoliberalism sees intellectual property rights in terms of market value and processes of commodification (Harvey, 2005). This is done through a critical discourse analysis of the radio interview and newspaper text discourse on commercial and non-commercial copying practices. The first section of the chapter provides some background into the second part of the sample texts: the radio interview. The section describes the radio station; the programme and interviewed party; the context, time and selection of the interview; as well as the limitations of this particular sample text. The second part of the chapter differentiates between the legal restrictions for the expression of ideas and those for physical property. The section then uncovers how these differences are blurred in discourse, drawing on the analysed sample texts (both newspaper and radio). The final section unpacks how the media frame of piracy as an economic issue is informed by ideologies of neoliberal economics. The section concludes by applying the findings to what is at stake for the public.

The radio interview

This section provides some background into the radio interview. The interview took place on SAfm, a national English language news and information radio station falling under the public wing of the South African Broadcasting Corporation (SABC). The radio station's listeners are mainly between the ages of thirty and forty-nine, with sixty-one percent of approximately 500,000 listeners being black and the remaining thirty-nine percent white (South African Broadcasting Corporation, 2013). The interview selected took place on a programme called “Morning Talk”, hosted by Rowena Baird between 9am and 12pm on the 26 September 2013. It was a thirty-minute interview, from 10am, with Zodwa Ntuli, the Deputy Director General of the Department of Trade and Industry (DTI). This particular interview on SAfm was one of the methods used to introduce the DTI's anti-piracy campaign to the public. The Morning Talk programme is described by the SABC as a platform for listeners, news-makers and guest experts to offer insights and

perspectives on national and global discourse relevant to the public interest. The issues discussed can range from politics and economics; to cultural diversity; and unemployment and health related issues (SABC, 2013). The programme has a strong audience engagement component. The audience is both able to call into the programme and/or send through short messages using their mobile phones. The interview took place a week after the tenth Moshito Music Conference and Exhibition[4]. The conference is considered to be a space for participants in the music industry (performing artists, media, industry bodies and government representatives) to network and share information on topical issues (Moshito, 2013). SAfm devoted some of its weekend lifestyle programming to reporting on the conference. This included interviews with panellists and other attendees as well as audio clips from some of the proceedings.

Similarly to the newspaper texts the radio interview is not used to draw inferences to the population (that is, all news radio coverage) regarding the results found. At the most this thesis suggests that the discourse found in the interview is similar to that produced by the DTI in other arenas (such as TV interviews and press releases with anti-piracy messaging) as well. This thesis does not analyse the discourses from these other arenas, acknowledging this absence as a limitation and thus an area for further research. The analysis undertaken will, however, lend insight into how the DTI's discursive practices contribute to the structure and formation of the order of discourse on film and music piracy in South Africa. The focus on the DTI provides an opportunity to uncover how the public is understanding piracy. Furthermore, there is the opportunity to both observe and analyse the audience discourse, and thus any tensions and alliances that occur with the DTI. The next two analysis sections refer to the full sample, newspaper and radio texts, highlighting findings from specific individual texts.

Expressions and imitations

This section begins by differentiating between the legal restrictions for the expression of ideas and those of physical property. Copyright infringement and counterfeiting appear

4 The 2013 Moshito Music Conference and Exhibition took place on 21 to 22 September.

frequently in the discursive events analysed in this study. For example, from the beginning of the radio interview, the DTI establishes its position on the intellectual property of artists with its choice of “private right”. The DTI offers the view that an artists' intellectual property right is the same as one's right to their property – or rather, the right to protect that property. This means that citizens are to enjoy the same protection over their intellectual property which they enjoy for their physical property (John Locke's natural right argument). This is not practically the case in the legislation governing both of these.

Turning to the legislation, in South Africa, copyright infringement is a violation under the Copyright Act 98 of 1978 and counterfeiting is a violation under the Counterfeit Goods Act 37 of 1997. Copyright grants the author of works – including broadcasts, computer programmes, literary works and musical works – exclusive rights in their further use and distribution for a limited time. Copyright is then a time-restricted monopoly applicable to the expression of an idea or information, and hence an intangible asset. These intangible expressions are not limited or finite in their number of uses, reproduction, and distribution. This intangibility characteristic is what distinguishes copyright from the other categories of intellectual property. One of these other categories is counterfeiting which is governed by the Trademarks Act in South Africa. The Trademarks Act governs marks and thus any sign capable of graphical representation such as a device, name, signature, word, letter, numeral, shape, configuration, pattern, ornamentation, colour or container for goods or any combination thereof (Trademarks Act, No. 194 of 1993, 1993). This renders trademarks as quite distinct from their alleged cousin, copyright.

Counterfeiting is concerned with the imitation of goods under any intellectual property right to the extent that the goods are substantially identical copies of the restricted goods, infringing on the intellectual property right in question (Counterfeit Goods Act, No. 37 of 1997, 1997). Therefore, copyright infringement is the unauthorised use of an expression of an idea, while counterfeiting is the imitation of a good restricted under any intellectual property to the extent that it can cause confusion. In a market setting, the value of a copyright-infringing item simply lies in its reproduction, which does not require a resemblance capable of confusing the public (as is the case with counterfeiting). Counterfeit goods' value usually lies in the extent that they resemble the more expensive branded goods

(Karaganis, 2011b) governed by trademark law. Copyright also governs the restriction of uses for works that do not seek value in the commercial realm, such as works of intrinsic value. Copyright infringement and counterfeiting are thus two very distinct concepts, governed by distinct acts, and prompting different responses. Their application in the commercial marketplace is also very distinct. The analysis of the text below shows that the distinction is not upheld in discursive practice.

The non-headline text of the newspaper samples (Two, Three and Four) and the radio interview shows that the use of 'piracy', 'pirated' and 'pirates' is an example of lexicalisation. They are used to refer to commercial and non-commercial copying practices, as the terms have become understood in contemporary society. The use of these terms in the newspaper articles and interview also precede any independent meaning or clarification on part of the writers and speakers. Sample Two does not make an attempt to provide an independent meaning. These lexicalisations are also ideological as they are derived from attitudes, knowledge, and beliefs about what piracy and pirates are commonly known as today, as was shown in the previous chapter. Samples Three and Four attempt to be informative and descriptive about certain elements which readers may not be informed about. Sample Three does this with an explanation of the difference between pirating and counterfeiting. Sample Four does this in its colour piece which begins:

> Piracy, as referred to by the International Federation of the Phonographic Industry, is music which has been pirated, meaning that it has been copied from a legitimate or pirated copy, usually by computer, without the consent of the rights holder and for commercial gain. (Mashaba, 2011)

This colour piece does not succeed in familiarising the reader with what the author understands as piracy. It would have been more effective to use other formal language, such as “copyright infringement” or “reproduction without consent of the owner” instead of repeating the word being defined. The outcome is blurred meanings and concepts. The concept of user rights is also left out of this explanation. While “commercial gain” applies to the goods counterfeiting and trademark legislation, it does not generally apply to the copyright case. Instead, copyright provides a limited monopoly to authors in order

to advance society's knowledge base; a balancing act. Copyright terms specifically manage the timing of when works are required to enter the public domain, adding to the existing wealth of knowledge. Also, there are exceptions such as fair use and fair dealing that govern expressions of greater public interest than compensation to author(s). Such nuance becomes null in definitions akin to those of Sample Four. Instead, property and commercial gain are all that is communicated under the umbrella terms: piracy and pirated. The next section shows how the use of the term "industry" and other terms that fall within the industrial and/or commercial field of meaning create the impression that all intellectual property is commercial, and thus perpetuates neoliberal economic logic.

The industry is really big

This section begins with an introduction to the neoliberalism ideology and the use of "industry". This is followed by an analysis of how references to and processes in enterprise draw upon this ideology. The third part looks at how the plurality of cultural and information items is reduced through semiotic structures of discourse and their appeal to neoliberal ideologies. Finally, the section considers what is at stake given this context. In the radio interview, the media frame of piracy as an economic issue is very dependent on the use of the term "industry". A formal economic ideology is used to control the meaning of "industry". This can be seen in phrases such as: "look at the *size* of the industry", "it is a *big* industry", "the other *value chains* in the industry", "look at the normal *distribution channels*". It is also seen in the use of words such as "consumers", "business" and "outlets". These all inform a neoliberal economic ideology that is tied to the "industry". Harvey (2007) finds that the media has become hegemonic as a mode of discourse, affecting public thought and political economic factors. By presuming that markets and market signals can best determine all allocative decisions presumes that everything can be treated as a commodity (Harvey, 2005). The corporatization, commodification and privatisation of public assets is a clear signal of neoliberalism, with intellectual property rights such as TRIPS defining a vast range of products as private property (Harvey, 2007). Tradability is also a required characteristic of products in neoliberalism, where no item can be so unique or special as to be outside the monetary calculus (Harvey, 2009).

In 1998, the Oxford Dictionary meaning for “industry” was: “branch of trade or manufacture; commercial enterprise; trade or manufacture collectively; concerted activity; diligence” In 2014, the Oxford Online Dictionary offers the following meanings for “industry”:

> Economic activity concerned with the processing of raw materials and manufacture of goods in factories; a particular form or branch of economic or commercial activity; an activity or domain in which a great deal of effort is expended; hard work.

Although there has been a slight shift away from the reference to trade and manufacture, this is still implied in the 2014 meaning. The common theme of commercial activity still remains, along with concerted effort. The uses of “industry” are thus centred around this idea of a commercial enterprise, having goods as an output, and thus commodities. The other phrases and terms used by the DTI in the radio interview (mentioned above) align with this use, further perpetuating the understanding of “industry” within neoliberal economics. These phrases make this lexicalisation ideological. Without them, it is not possible to show that the discourse meaning is controlled by ideologies and knowledge about neoliberalism. A very discrete meaning and context is created here, with commerce at its centre. There is no room for other factors such as the social, political, or even the anthropological.

In Sample Three, Donaldson highlights that piracy affects not only recording artists and record companies but also owners of record stores; CD and tape plant workers; and marketing, promotion, and distribution people. The breaking down of activities into these units is akin to the technical economic realm that was identified by Bell (1976) and Boyle's (2008) modularity of inventions. The unit breakdown is a reminder that the objects are commodities. There is also substantiation in the text for the three dimensions that describe an order of discourse as 'the spirit of capitalism', identified by Chiapello and Fairclough (2002). Sample Two of the newspapers provides broad, or industry-level, liberation through the interpersonal meanings. Specifically, South African films can be liberated from the position where their main conflict (piracy) “tends to undercut profits made within the legitimate stream and decrease margins” (*Business Day*, 2006). The

discourse is largely economic for Sample Two, focusing on issues of profit, competition, and investment. These also draw on a neoliberal ideology. The reference to the good performance of the South African advertising industry hints at the second dimension of security offered by a capitalist system, referring to both international competition and performance at the margins. The following points to Chiapello and Fairclough's third dimension: “Piracy tends to dissipate profits that might otherwise be channelled back into the industry and which might allow it to develop further” (*Business Day*, 2006). This interpersonal representation points to a state of harmony, or justice and common good (for the economy), where without the conflict of piracy the film industry makes profits (which are not dissipated), which can be used for reinvestment back into the industry, furthering development. To a large extent, then, the ideology of the film industry created in Sample Two legitimises neoliberalism.

“Industry” is also one of the most repeated terms by the DTI in the radio interview. Sometimes, the “music industry” is just referred to as “the industry”. This dissociation with “music” strips away the multifaceted and plural element of the subject matter – the expression of ideas and reproduction of knowledge: that element that is not only informed by the essence of the author(s), which Diderot argues for; but also the social, political, anthropological and other non-economic aspects of public life, which public domain scholars like Boyle and Benkler explored. This plurality falls away in every iteration of “the industry”, leaving only ideological commercial enterprise. This section now turns to some of the other terms and concepts used prominently in the text and given prominence through repetition: 'artist', 'piracy', 'pirated', 'CDs' and 'DVDs'.

> Every time when an *artist* is in trouble or when an *artist* has passed away and you hear things about an *artist* dying as a pauper and so forth and so forth. So at a basic level people are always concerned: Why are we always saying *artists* are dying of paupers? (Ntuli, 2013)

This extract shows some of this repetition of “artist”. This is part of the opening statement by the DTI. It sets a tone and develops a point of reference for the rest of the interview. This extract also shows the use of the ideology-based implication by the DTI in its discourse. The DTI presupposes that there is shared knowledge amongst the

listening public about financially troubled authors of musical works through the use of "when" and "pauper". Here, the DTI is informed by the same general social knowledge structures that inform the listeners. It is "when an artist is in trouble" - not "if..." - because this is known to happen. The use of "pauper" also relies on shared knowledge structures. One such knowledge structure could be other news media. Sample Four uses a very similar implication technique with "When an artist dies a pauper, fans think..." The discussion of the pauper artist is also informed by ideologies of neoliberal economics and speaks to some dimensions required by Chiapello and Fairclough (2002) for an ideology to legitimise capitalism. First, it speaks to the liberation dimension in that if the rights held by these authors are respected by the public, there will be fewer authors (or "artists") in dire financial straits. That is, they will be liberated from a life of pauperism as has been characteristic of many others preceding them (suggested ideologically). Finally, the second dimension– security – is fulfilled by the rights of artists, which the DTI outline at the onset as wanting to protect ("government must offer some form of protection and some form of intervention").

What, then, is at stake for the public when cultural and information works are commodified as shown in the text? Bennett's (1982: 43) conclusion aptly sums up some of the findings from this study so far: "The threat they [the media] embody is that they inhibit thought itself by inducing us to live, mentally, in a world of hypnotic definitions and automatic ideological equations which rule out any effective cognitive mediation on our part." This chapter shows that one ideology that the public has been induced to live in is that of neoliberalism. Neoliberalism not only presumes that everything can be treated as a commodity (Harvey, 2007) but also presumes that there are property rights over processes, social relations and information production (Harvey, 2005). This is not actually the case, given the plurality of cultural and information works. The public domain is then what is at stake when the plurality of these works is masked by hypnotic definitions and automatic neoliberal-economic ideological equations. Information perceived as an owned commodity removes uses of information from the public domain and places them in an enclosed domain (Benkler, 1999). The current and previous chapter show that this enclosure takes place in the mind of the public because of particular semantic structures of discourse. The public thus does not get to realise or be

informed about the cultural and information works they have access to through the public domain because their baseline assumptions have been influenced to immediately commodify and criminalise everything. Particularly, the public domain is richer than what the public understands it to be. Or to put it similarly to Vaidhyanathan (2001), the public has more rights under the law than those with vested interests in the information environment, such as record labels and publishers, would have them believe. Unfortunately, the discourse formation does not allow the public to realise this.

Conclusion

This chapter argued that the media's frame of piracy as an economic issue is in line with neoliberal economic logic. This is done through a critical discourse analysis of the sample texts' discourse on commercial and non-commercial copying practices. The first section of the chapter provided background into the radio interview. The interview took place on the weekday late morning show, called "Morning Talk" on SAfm, a news and talk station. Similar to the newspaper texts, the radio interview is not used to draw inferences to the population (all news radio coverage) regarding the results found. Instead, this thesis suggests that the discourse found in the interview is similar to that produced by the DTI in other arenas (such as TV interviews and press releases with anti-piracy messaging) as well.

The second part of the chapter differentiated between the legal restrictions for the expression of ideas and those for physical property. Copyright infringement is the unauthorised use of an expression of an idea, while counterfeiting is the imitation of a good restricted under any intellectual property to the extent that it can cause confusion. It was shown how these differences are blurred and misunderstood in discourse. The analysis finds that property and commercial gain are all that is communicated under the umbrella terms such as piracy and pirated. Furthermore, nuances in the legal restrictions of the expression of ideas, namely copyright, are also blurred and even left out in the discourse. Thus, concepts of user rights and the public domain are not present in the discourse.

The final section unpacks how the media frame of piracy as an economic issue is

informed by ideologies of neoliberal economics. It is found that the uses of the term "industry" and other terms and phrases in the commercial realm of activity centre around the idea of a commercial enterprise, having goods as an output, and thus commodities. The use of these terms also removes the multifaceted and plural element of the subject matter – the expression of ideas and reproduction of knowledge. These findings are applied to what is at stake for the public when cultural and information works are commodified and represented as in the text. Ultimately, the public does not get to realise or be informed about the cultural and information works they have access to through the public domain because their baseline assumptions have been influenced to immediately commodify and criminalise everything.

Where Chapter Two and Three uncovered the media frames used in news discourse, along with the associated ideologies, the next chapter investigates whether the media frame created around commercial and non-commercial copying practices serves elite interests. The investigation will allow this thesis to complete the analysis of frame-building, tackling organisational pressures and how they interact with the already identified ideologies and attitudes.

Chapter 4 – The empires of entertainment

This chapter investigates whether elite interests, corporate or civil, are being served by stories about copyright infringement, goods counterfeiting, and piracy awareness campaigns. Do the media frames created around commercial and non-commercial copying practices serve elite interests? This is something that can be identified within the frame-building process. The frame-building process was identified as consisting of organisational pressures as well as ideologies and attitudes. Herman and Chomsky's 'propaganda model' is used to inform the identification of dominance relations at the structural and organisational level. Ownership, sourcing and ideology align with Benkler's three critiques of commercial mass media and are thus the main filters focused on. Ideologies and attitudes, the main focus of the previous two chapters, are revisited here with focus on the conclusions drawn about the criminality and commodification frames. Herman and Chomsky's model and Fairclough's three-dimensional framework are then used to see how both organisational pressures and ideology interact in the frame-building process. It is at this level that news coverage of commercial and non-commercial copying practices can be identified as hegemonic. The extent to which this can be shown will determine the degree to which, if at all, consent has been won over these “subordinate classes”. The limitations in the findings are also discussed in this chapter.

Corporate and civil interests

This section introduces the corporate and civil interests identifiable from the analysed texts. This section also speaks to the ownership filter in the 'propaganda model'. These interests are the organisations linked to the newspapers and the radio station and interview. The newspaper articles sampled appear in the *Sunday Tribune*, *Business Day* and *Sowetan* newspapers. The *Sunday Tribune* is one of the Independent Newspapers Group's Sunday publications (MDDA, 2009: 40). In 2009 The Independent Newspapers Group was calculated as wholly owning 28 titles and co-owning 22 titles. The Independent Newspapers Group was recently acquired by Sekunjalo, whose chairperson

is the politically-connected Iqbal Survé (Reid, 2014). The *Business Day* and *Sowetan* fall under the Times Media Group. The group is also recognisable as Avusa Limited, a company listed on the Johannesburg Stock Exchange. The group's primary activity is in media, retail books, and entertainment. In 2009, the media division of Times Media Group consisted of more than twenty-three national, regional, and community newspapers and over thirty-two magazines across different specialist fields (MDDA, 2009). The group also consists of some digital and broadcast enterprises. The group's entertainment division operates cinema multiplexes in South Africa (NuMetro Cinemas) and holds distribution licenses for 20th Century Fox, Disney, Warner, the BBC, Universal, and various independent studios (MDDA, 2009). In its trends of ownership and control of the media in South Africa investigation, the Media Development and Diversity Agency (MDDA) identifies Independent Newspapers and Times Media Group as some of the major players in the South African Media industry. Amongst them is Kagiso Media, Primedia, Caxton/CTP, Naspers, and the SABC (MDDA, 2009).

The radio interview takes place on SAfm, which falls under the public radio division of the SABC. The SABC is the public service broadcaster in South Africa, in terms of the Broadcasting Act of 1999 (MDDA, 2009). The SABC is owned by the state but is dependent on advertising for the bulk of its revenue (Cowling and Hamilton, 2010). Income from advertising and license fees are split at a ratio of four to one (MDDA, 2009). There is also an organisation represented within the interview itself: The Department of Trade and Industry (DTI). The DTI is represented by Zodwa Ntuli, the Deputy Director General of the Consumer and Corporate Regulations Division. The DTI, itself, has core themes of industrial development: trade, export and investment; broadening participation of previously marginalised groups in the mainstream economy; regulation; and administration and coordination of the Department and its specialised agencies (Department of Trade and Industry, 2013). The DTI focusses on intellectual property and its role in economic development and industrialisation, even recently. This is evident in platforms such as the Africa Intellectual Property Forum which took place in February 2013 to discuss intellectual property and its role in economic development. The DTI also developed the draft National Intellectual Property Policy, using the aforementioned forum as a space to review legislation relevant to intellectual property.

The DTI has been involved in several workshop and campaign events around the music, film, and other entertainment sectors. Workshops predominantly focus on assisting members of the creative industry, such as musicians, actors, producers and poets in formalising their business while also addressing issues of mismanagement of distribution of copyright royalties.

Sourcing ideology

Sourcing is one of the filters used by Herman and Chomsky (1988) to identify dominance relations at the structural and organisational level. The mass media is sometimes drawn into a symbiotic relationship with powerful sources of information due to economic necessity and reciprocity of interests (Herman and Chomsky, 1988). Herman and Chomsky (1988) find that government and corporate sources are the dominant sources of information and content for the mass media not only because they provide a steady flow of the raw material of news but also because their status and prestige gives them merit through recognisability and credibility. An official from a government department, such as the DTI, is thus able to carry such status and prestige, along with the de facto credibility required for the discussion. The DTI, and the platform it is given on the Morning Talk interview, is itself also put forward as a dominant source in the piracy discourse. Another sourcing example to consider is the organisations that lobby for the interests of entertainment media practitioners. The repetitive use of these organisations hints at the symbiotic relationship represented in Table 1. In Sample Three and Four, SAFACT, RISA, the IFPI and police sources are the dominant sources of interview and featured texts in the article. SAFACT and RISA were also found to be largely mentioned in the greater sample of seventy-seven newspaper articles. These lobby groups and government departments are thus supposed to garner the weight of objectivity since they are largely considered as official sources. SAFACT is the main body representing the film, home entertainment, and interactive gaming industries, and RISA those of the recording industry. Furthermore, the DTI has the trade and industry interests of the whole country in mind. Although carrying prestige and “official” status, and by virtue ideologies of objectivity, their deliberate accessibility as well as political and economic interests largely facilitate the media being inundated with stories pushing a

particular line and frame (Herman and Chomsky, 1988). Herman and Chomsky (1988) also find that government and corporate sources of information take advantage of the media's routines and dependency in order to manage and manipulate them into following a special agenda and framework. The next two sections of the chapter show how this is done and to what extent it is successful.

Before delving into the analysis it is worthwhile to review the media frames and ideologies identified from the sample texts. First, the representation of piracy as an action associated with criminal violence, attempts against goods (theft) or persons, and threats against commerce is part of the attitudes and social representations of groups and thus the ideologies of piracy. This is facilitated through various semantic structures of discourse. Some of these assign agency to the so-called pirates while the ideational and interpersonal meanings in the discourse revealed how an oppositional relationship is created between pirates and enforcement figures, strengthening the criminality frame. For the economic issue frame, ideologies of neoliberalism are largely used. Framing piracy in an economic context steers the ambiguous 'piracy' terminology to being understood as goods counterfeiting. This reinforces the commodification of film and music items, as per neoliberalism. The use of “industry”, the focus on sales and the sale environment, as well as the focus on the economic state of film and music authors and businesses also reinforce a neoliberal ideology. This frame is particularly interesting when considered alongside the findings from the previous section. The news providers of the newspaper sample texts have large stakes in the media environment, falling under two of the dominant media groups in South Africa. They thus have a large interest in the economic performance of not only their newspaper product but also other media including film, music, and other entertainment items. They then resemble Bishop's “empires of sound”, except they more transparently dominate across different media – news and entertainment media. Similarly, the DTI has large stakes in the economic development and industrialisation of the entertainment sector, fostering a trade-, export-, and investment-friendly environment.

A fracturing boundary

This section analyses the orders of discourse of corporate and civil interests and news media to see whether the boundary between them holds up. This is supported by an analysis of the elements of language use as a social practice. That is, how do discourses around commercial and non-commercial copying practices fit within a societal context, institutional context and situational context? The relationship between the orders of discourse of news media and the entertainment media industries is imperative in showing that the relationship between discourse and extra-discoursal structures (such as the political, economic, market and gender relations and civil society) is not only representational but also constitutive (Fairclough, 1989). Halbert (1997), Bishop (2004, 2005) and Lessig (2004) show that content owners will use several means to protect their intellectual and economic interests, sometimes at the expense of the public and public domain. One of these means is to leverage the efforts of organisations and groups that lobby for the interests of entertainment media practitioners. In South Africa, SAFACT (with interests in film, home entertainment, and games) and RISA (a recording industry body) predominantly represent these interests. Table 1 captures the roles of these two industry bodies as well as some of their partners and members. RISA is a member of the IFPI, which is an organisation that represents the recording industry worldwide with members including major record companies such as EMI, Sony Music, Universal and Warner Music Group. Bishop (2005) identifies these companies as not only the "Big Four" but the "empires of sound"[5]. Bishop finds that they use power and property to influence national and international laws, limiting the content available for the public domain. RISA is a member of the IFPI, along with these other majors. The affiliation suggests that RISA may embrace the same ideologies around copyright protection and enforcement as some of these bigger multi-nationals. RISA is also one of SAFACT's partners. SAFACT has numerous members (see Table B3) including subsidiaries of the Times Media Group, Primedia, and affiliated companies of Bishop's (2005) "empires of sound". South Africa's own Department of Trade and Industry (DTI) is also listed as a partner of SAFACT. The partnership between the DTI and SAFACT speaks to the DTI's position towards piracy: A threat towards formalising business activity and creating a trade-friendly environment (including the trade of film and music culture).

5 These companies have changed in composition due to mergers subsequent to 2005.

Table 1: Entertainment media lobby groups

Organisation or Group	Partners and/or memberships	Role
SAFACT	Sony Playstation, FPB, RISA, MPAA, Ster Kinekor, NuMetro, DTI, BSA, BASCAP, Swiss Anti-Piracy Campaign	Protect IP rights of members in SA film, home entertainment and interactive games industries
RISA	IFPI, Childnet International, RISA Audio Visual, SAMPRA, SAFACT, RISA Anti-piracy Unit, SAMA	Main body representing the SA recording industry

Referring now to the text, the orders of discourse associated with talk radio are immediately observable from the radio interview. Primarily, there is the presence of a topical issue. Piracy is topical to both the music industry in South Africa and the DTI's agenda in 2013. The talk radio format also usually features interviews, listener participation, advertising and/or promotions, Public Service Announcements (PSAs), and news broadcasts. All of these, except the PSA, are present in the recording. This is a talk show on a news and information public radio station so there is an expectation of critical, analytical, and even investigative genres. From newspapers there is the expectation of a totality of discursive practices embodying principles such as objectivity, ethics, values, attribution, editorial independence, and information. This is not an exhaustive list as it also possible to find subjective commentary, satire and promotion in newspapers, depending on the type of article and publication. However, Cowling and Hamilton (2010), and Bauer (2009) do show that newsrooms embed some kind of journalistic ideologies aligned with liberal democracy and the public interest. Entertainment media, on the other hand, is more likely to include discursive practices of promotion, advertising, public relations, narratives, subjectivity, and performance. This study explicitly suggests that there is a fracturing of the boundary between the orders of discourse of news media and entertainment media.

Sample Two interacts with this boundary differently than the other three newspaper texts.

The title is one of its main weaknesses. The subjective nature of the headline would not be so problematic if appeared in another news publication which is not renowned for being informative, analytical and business-orientated. Brand (2010) finds that financial and business media, which the *Business Day* falls under, fulfils an institutional role in the business and economic sphere. Chapter Two discussed that this particular headline ("Pirates and profits") frames the article relative to the pirates, who have been given agency. This short but efficient headline makes them the subjects and gives them an object in just three words. So, although not fitting in with the genres and discourses of this type of publication, it serves another purpose: creating a figure to hold responsible. This occurs even though the pirates are not referred to at all in the text of the article – only the activity of piracy. This chapter identifies the *Business Day* as part of the Times Media Group, which has large interests in entertainment media itself. For instance, the film whose profits and competitiveness are largely discussed in Sample Two (Mama Jack) has distributors and production including Videovision Entertainment and UIP (see Table B2 in Appendix B), which are members of SAFACT. Videovision boasts a production record of more than seventy-five films in the past thirty years and also has interests in telecommunications, cellular networks, retail and other sectors (Videovision, 2014). These affiliations add a layer to the blurring boundary between the supposed watchdogs and what this study dubs the "empires of entertainment". The claim of a systematic bias in favour of elite interests now seems possible if you add the affiliations to the 'propaganda model' filters identified earlier for this newspaper title. Sample Four is privy to these same relations found in Sample Two, as the *Sowetan* also falls under the Times Media Group. Also, in Sample Four, personal qualities and subjectivity are present. The plight of artists and their efforts ("The pirates attack them when they fight for their bread") is repeated along with major economic losses ("Loss of jobs the main casualty"). Karaganis (2011) shows that cited economic losses like these are not credible because of the lack of transparency and full information about research methodologies. The previous chapter identifies the plight of artists as an ideological use of topicalisation to make "pirates" the agents and "artists" their victims. The job losses is a compelling appeal to emotions and morality, much like what Yar (2008) found in the youth-orientated anti-piracy campaigns. The contribution that could be made to the public is jeopardised by these ideological representations, along with the discursive practices

adopted and the inability of the newspapers to maintain their orders of discourse. By adopting discursive practices characteristic to entertainment media the public is being fed performative and narrative content.

Finally moving to the radio interview, the talk show host largely uses a discourse which reinforces what the DTI advocates. The radio host only offers a contrasting perspective when she responds to an audience member. The discourses present in the radio interview, then, predominantly stem from the DTI. This reveals that there is no boundary between this information medium and this government department. The discourses are usually prescriptive, regulatory, enforcing or reprimanding, and conventional. The DTI uses rhetoric that vilifies consumers purchasing infringed material, referring to this as theft and a criminal offence.

To close off this section, the study turns to how these observations of news media responding to commercial and non-commercial copying practices take place within a wider social practice. The societal context represented in all these samples is that there has been a deviation from the "context of culture" (Fairclough, 1993) of paying for entertainment media. Samples Two and Four add the layer that citizens support their local industries. At the institutional level, there exists the entertainment media industries; the music industry (or "empires of sound"); and the film industry. While the societal and institutional context is common across the newspaper and radio samples, differences occur at the situational level. Also, all these contexts refer to consumption and thus the commodification of culture, which is supported by the ideology of neoliberalism found in the economic media frame. Sample One, for example, suggests that there are either intermediaries facilitating non-payment for consumption media or consumers engaging in alternative pay structures. The latter is also true for Sample Two. There is also another context present where consumers alter their consumption habits, limiting realised revenues for local film. Box office sales and the competitiveness of local films are reduced if consumers are perfectly content to bypass cinema viewing to enjoy the convenience of home viewing. Sample Three attributes profit losses of entertainment media bodies to the large counterfeit goods operations and copyright infringement practices (including copying media onto CDs, Internet downloads and file-sharing) that

are taking place. Finally, Sample Four presents the situation of artists and record labels not reaping the rewards of their labour, as well as a proposition of the broader impacts of this (including job losses). The samples reduce the representation of commercial and non-commercial copying practices to these contexts, in the dimension of language use as a social practice. This steers public understanding further away from the relationship that news media is supposed to have with the public sphere.

Winning Consent

So, do the media frames created around commercial and commercial copying practices serve elite interests? And if they do, what is at stake? Durham and Kellner (2006) find that the more cultural forms and their representations are studied the more it can be seen how they are constructed, biased and contestable. Furthermore, it is seen how they support the interests of the reigning economic, gender, race or social groups (Durham and Kellner, 2006). In this chapter the reigning interests are identified as those of the empires of entertainment and the civil interests of the DTI. Classical Marxism informs that any new class needs to give its ideas the form of universality in order to rule and put forward its aim (Durham and Kellner, 2006). This is done by presenting its own interest as society's common interest, presenting its ideas as the only rational and universally valid ones (Durham and Kellner, 2006). The concept of hegemony is chosen by this study as the means to analyse these relationships between the ruling class and ruling ideas because of its approach to ideology and discourse in society. In order to achieve hegemony at the societal level there must be a degree of integration of local and semi-autonomous and power relations, so that the latter are partially shaped by hegemonic relations (Fairclough, 1989). The processes that achieve this are then the focus, particularly: the local process that constitute and reconstitute social relations through discourse; global processes of integration and disintegration that transcend particular contributions; and local orders of discourse (Fairclough, 1989). Referring back to the analysis, the evidence of a fracturing boundary between news and entertainment media suggest that there could be hegemony at play here. It appears that entertainment media as one block has garnered a way to construct (and perhaps sustain) alliances with news and information media (such as newspapers and a talk radio show) taking on an ideological

form. This entertainment media hegemony also exists in the economic (e.g. Bishop's "empires of sound") and political (e.g. groups such as MPAA lobbying for stronger intellectual property protection) forms, but only manifests in these samples in the ideological. Hegemony as a process at the societal level thus directs attention to links across institutions and those between their orders of discourse. It is then proposed that there is some achievement of hegemony here. These newspapers and/or more broadly news media are being shaped by hegemonic relations. The persistent presence and/or mention of SAFACT, the IFPI and anti-piracy units from RISA in the samples speaks to this opportunity of being shaped by hegemonic relations.

Those fractured boundaries and the alliances between and integration across institutions has implications for the normative ideal of news media in modern political and media theory. In South Africa, the media was set free to act in this idealistic role after apartheid with the adoption of the Constitution, and freedom of speech and expression guaranteed as part of the Bill of Rights (Wasserman, 2004). Currently, news media operate within a concentrated commercial environment, falling under media groups with interests in not only journalism but entertainment production and distribution. When news media operates in this type of environment it is exposed to pressures of the market such as advertising and/or advertorials disguised as journalism, reduced barriers between marketing and editing, and competitive media markets leading to tabloidisation (Wasserman, 2004). Furthermore, Berger (1998) finds that the media is in the global South is constrained in its contribution to democracy by its reach, content and state control. This is evident in the fractured boundaries analysed, ideologies identified from the analysed texts and the political economic situation they operate within. The normative ideal of the media serving democracy thus breaks down in a market-inclined and state-influenced environment. This resembles a finding by Berger (1998) that there are implications for democracy when the media, which is at the nexus of the public sphere, is dominated by powerful and self-interested institutions. This study thus finds that the public sphere is undermined by those factors identified by Gillwald. (1993): A lack of separation between the state and society as well as a concentrated media environment. Therefore, given the current media environment news media is unable to behave in a watchdog function and the public sphere (and thus democracy) is

undermined.

There are some few limitations to the analysis in this chapter. The type of analysis done is unable to inform whether consent has been won at individual and/or public level, as the focus was at the institutional level. Another limitation is that due to the nature of the newspaper clippings' source, the relationship between the orders of discourse of the two institutions (entertainment media and news media) and Herman and Chomsky's advertising filter cannot be determined in this study. Even though it is not the objective of this study to give a rigorous account of the 'propaganda model', it seems more than likely that this filter can add a useful perspective with regards to the political economy dealt with in this particular context. This is at a detriment to the analysis as this market system aspect of (commercial) mass media has been shown – for example by Herman and Chomsky – to have a considerable impact on content policy. This is especially the case when advertisers' choices influence media success and survival (Herman and Chomsky, 1988). This is also suggested by the income source ratio of the SABC. There is thus a great deal of scope available into an investigation of this nature in the realm of piracy language use as a social practice in South Africa.

Conclusion

This chapter investigated whether elite interests, corporate or civil, are being served by stories about copyright infringement, goods counterfeiting, and piracy awareness campaigns. This is identified within the frame-building process. Three filters from Herman and Chomsky's 'propaganda model' were used to inform the identification of dominance relations at the structural and organisational level, namely: ownership, sourcing and ideology. For ownership, the newspaper articles sampled appear in newspapers which fall under the Independent Newspapers Group and Times Media Group. In its trends of ownership and control of the media in South Africa investigation, the MDDA identifies Independent Newspapers and Times Media Group as some of the major players in the South African Media industry. The radio interview takes place on SAfm, which falls under the public radio division of the public service broadcaster in South Africa – the SABC. The DTI is also identified in the text as a prominent

institution, drawing attention to its focus on intellectual property and its role in economic development and industrialisation

The sourcing investigation followed, showing how government and corporate sources are the dominant sources of information and content for the mass media, including those from the analysed sample texts. This occurs because they provide a steady flow of the raw material of news and their status and prestige gives them merit through recognisability and credibility (Herman and Chomsky, 1988). Organisations that lobby for the interests of entertainment media practitioners were identified as another dominant source of information. These relationships facilitate the media's inundation with stories pushing a particular line and frame (Herman and Chomsky, 1988). The third filter, ideologies and attitudes were revisited in this chapter focussing on the conclusions drawn about the criminality and commodification frames.

Herman and Chomsky's model and Fairclough's three-dimensional framework were then used to see how both organisational pressures and ideology interact in the frame-building process to determine whether there is hegemony at play. The focus was on the relationship between the orders of discourse of news media and the entertainment media sectors. Evidence was found to support the hypothesis that there is a fracturing boundary between news media and entertainment media orders of discourse. This differed across the newspaper and radio samples, and even within the newspaper samples themselves. Finally, there was a discussion about what the stakes are when consent is won, or hegemony is achieved. In order to achieve hegemony at the societal level there must be a degree of integration of local and semi-autonomous and power relations. Here, entertainment media as one block has garnered a way to construct alliances with news and information media taking on an ideological form. This entertainment media hegemony also exists in the economic and political forms, but only manifests in these samples in the ideological. The fractured boundaries and the alliances between and integration across institutions have negative implications for the normative ideal of news media in modern political and media theory. The normative ideal of the media serving democracy breaks down in a market-inclined and state-influenced environment. Overall, the public sphere is undermined because of those factors identified by Gillwald (1993): A

lack of separation between the state and society as well as a concentrated media environment.

The limitations in the findings were also discussed. Mainly, the type of analysis done is unable to inform whether consent has been won at individual and/or public level, as the focus was at the institutional level. Also, due to the nature of the newspaper clippings' source, the relationship between the orders of discourse of the two institutions (entertainment media and news media) and Herman and Chomsky's advertising filter cannot be determined in this study.

Conclusion

This thesis analysed South African news media discourses on piracy in order to consider whether corporate interests or those of civil society are served by stories about copyright infringement and piracy awareness campaigns. A critical discourse analysis was employed in order to suggest that hegemonic interests are ultimately served by news coverage that frames a range of commercial and non-commercial copying activities as criminal acts. The frame-building process was hypothesised as comprising three parts: organisational pressures; ideologies and attitudes; and the interaction between the two. Critical discourse analysis was adopted particularly because of its ability to concentrate on power, dominance and institutional relationships as well as how ideology is used in discourse formation.

Ideologies and attitudes

What specific (hegemonic) discursive practices are found in representations of commercial and non-commercial copying practices as 'piracy'? Chapters Two and Three identified the ideologies and attitudes involved in the frame-building process. Two dominant frames were identified from the 2001 to 2011 sample of newspaper texts and the 2013 radio interview. These are the framing of piracy as an economic issue, and the framing of piracy as a crime. For the latter, the primary relationship that arose from analysing the semantic structure of discourse is that of pirates as the social group with agency and thus the violent antagonist. The artists and the economy are then the social and crime victims. Generally, there is an oppositional relationship between those engaging in the copying practices and the enforcement figures engaged in practices to curtail their efforts. Mirghani (2011: 129) contends that the term 'pirate' is a politically charged concept that is used for specific reasons to combat very specific threats. It was important to uncover these threats, both in the text as well as at the social level before tackling the politics behind the identities. For the frame of piracy as an economic issue, nuances found in the differentiation between copyright infringement and counterfeiting get lost in the conflation of the two under the umbrella term 'piracy'. Furthermore, in a

sales-driven and neoliberal economic context it steers 'piracy' to be understood as goods counterfeiting. This contributes to commodified film and music works and perpetuated ideologies of neoliberalism. It is then the totality of semantic discourse structures - including the use of 'industry', the focus on sales and the sale environment as well as the focus on the economic state of film and music authors and businesses - that reinforce a neoliberal economic ideology for this particular media frame. Also, Chiapello and Fairclough's (2002) “spirit of capitalism” was stronger in some instances than others. The radio interview and Sample Two largely reinforce the ideology, while Samples Three and Four only have some specific in text examples supporting this hypothesis.

What is at stake for the public when cultural and information works are commodified as shown in the text? This study shows that one ideology that the public has been induced to live in is that of neoliberalism. Neoliberalism not only presumes that everything can be treated as a commodity (Harvey, 2007) but also presumes that there are property rights over processes, social relations and information production (Harvey, 2005). Given the plurality of cultural and information works, the public domain is what is at stake when this plurality is masked by hypnotic definitions and automatic neoliberal-economic ideological equations. Information perceived as an owned commodity removes uses of information from the public domain and places them in an enclosed domain (Benkler, 1999). Chapters Two and Three showed that this enclosure takes place in the mind of the public because of particular semantic structures of discourse. The public thus does not get to realise or be informed about the cultural and information works they have access to through the public domain because their baseline assumptions have been influenced to immediately commodify and criminalise everything.

Organisational structures and hegemony

Can these hegemonic discursive practices be identified as serving the needs of specific groups? Consent is won, and thus hegemony achieved, when subordinate classes are dominated – constructing alliances and integrating with these subordinate classes through concessions and ideological means (Fairclough, 1989). The extent to which this is achieved was shown in Chapter Four, at the interaction of organisational structures and

ideology. Chapter Four first set out to outline the organisational structures of media companies, copyright industries and civil society. It was shown that the newspaper market was dominated by few major players, with interests beyond news media. The holding companies of the newspaper houses hold entertainment media interests, including media products which have been these “victims” of the piracy. The DTI (which featured in the radio interview) was also shown to have interests in the economic performance of media products. Sourcing and intake was also considered. Based on Herman and Chomsky's sourcing filter, it was found that an official from a government department is able to carry status and prestige, and the de facto credibility required for the discussion. The DTI is one such government department. Entertainment media protection agencies and police sources are other dominant sources of interview and featured texts in the article. Although carrying prestige and this “official” status, and ideologies of objectivity, their deliberate accessibility as well as political and economic interests largely facilitate the media being inundated with stories pushing a particular line and frame (Herman and Chomsky, 1988).

There was further support for the hypothesis that there is a fracturing of the boundary between the orders of discourse of news media and entertainment media. News media was shown to adopt discursive practices characteristic to entertainment media, such as public relations, narratives, subjectivity, and performance. News media has limited the role it plays in creating a knowledge and information rich citizenry because entertainment media actually has a vested interest in public's ideologies regarding consumption. Entertainment media as one block has garnered a way to construct and sustain alliances with news and information media taking on an ideological form. Or, to draw on Marxism, entertainment media as one block or class has managed to present its own interest as society's common interest, presenting its ideas as the only rational and universally valid ones (Durham and Kellner, 2006). This entertainment media hegemony also exists in the economic and political forms but only manifests in these samples in the ideological. The persistent presence of copyright industry protection agencies in the samples speaks to this opportunity of being shaped by hegemonic relations. These fractured boundaries and the alliances between and integration across institutions has implications for the normative ideal of news media in modern political and media theory.

Currently, news media operate within a concentrated commercial environment, falling under media groups with interests in not only journalism but entertainment production and distribution. When news media operates in this type of environment it is exposed to pressures of the market such as advertising and/or advertorials disguised as journalism, reduced barriers between marketing and editing, and competitive media markets leading to tabloidization (Wasserman, 2004). Furthermore, Berger (1998) finds that the media in the global South is constrained in its contribution to democracy by its reach, content and state control. This is evident in the fractured boundaries analysed and ideologies identified from the analysed texts. The political economic situation they operate within indicates the extent to which the media is constrained or limited in fulfilling its normative independent watchdog function role. Thus, there are implications for democracy when the media, which is at the nexus of the public sphere, is dominated by powerful and self-interested institutions (Berger, 1998). This study thus finds that the public sphere is undermined by those factors identified by Gillwald. (1993): a lack of separation between the state and society as well as a concentrated media environment. Therefore, given the current media environment news media are unable to behave in a watchdog function and the public sphere (and thus democracy) is undermined. There is not a realm where information from diverse and antagonistic sources circulates.

Limitations and further research

This thesis identifies the limitations of sample size, text selection and discourse analyst bias and experience and puts forth some suggestions for further research. In terms of the sample of texts, this thesis acknowledges that it was not sufficient to merely mention that the DTI undertook other interviews as part of its anti-piracy campaign. It is necessary to include these in the sample so that they too could be analysed. The assumption that the discourse of the radio interview can be generalised to the discourse of the DTI during this period is thus limited. Analysis of other DTI discourse (beyond SAfm) during the publicity period of the anti-piracy campaign would contribute to a description of the DTI's order of discourse. These limitations are a consequence of the convenience sampling method used. Thus, it would have been useful to make use of more systematic data collection methods, increasing the sampling base and sampling units. Also, it would

have been useful to broaden the scope of the sample beyond the four texts for the application of the ownership and sourcing filters in the model. In terms of the newspaper sample, this study is unable to analyse the impact of editorial practices on final, published versions of newspaper tests. These have important implications on frames and discourses. This is thus suggested as an area for further study. Another limitation is the inability to analyse the different modalities due to the nature of the newspaper cut-outs. This is because graphic and news design are not observed. Having access to the full texts including graphic and news design, would enable an analysis of the advertising filter from Herman and Chomsky's 'propaganda model', including the placement of advertisements. This is especially important because advertisers' choices can influence media prosperity and survival (Herman and Chomsky, 1988) as is suggested by the income ratio of the SABC. There is thus a great deal of scope for an investigation of this nature in the realm of piracy language use as a social practice in South Africa.

Other limitations in the use of textual analysis in the discourse analysis are the interpretation of genres and discourses depending on the experience of the analyst and their sensitivity to relevant orders of discourse (Fairclough, 1999). It is also difficult to justify why a particular piece of text has been chosen from a work of texts and why certain of its characteristics are tended to and not others (Jaworski and Coupland, 1999). These limitations are acknowledged as relevant for this study and cautioned for those undertaking further research of a critical discourse analysis nature in the realm of commercial and non-commercial copying practices discourse in news media.

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Appendix A1: Newspaper Clippings

Sample 1


Challenge in putting pirates to the sword

Sample 2

BUSINESS DAY

Monday, January 16 2006

Pirates and profits

THE possibility that the comedy Mama Jack might have become SA's highest-grossing locally made film but for film piracy is sad news indeed. It is one of those weird aspects of modern psychology that people who would never dream of entering a CNA, for example, and stealing a film, think nothing of buying a stolen DVD at a robot, or even worse, downloading the movie off the internet.

It is not that the film has been a financial failure, by any means. Made by well-known movie makers Anant Singh and Leon Schuster, it has grossed more than R27m since it opened in November, about a third less than the highest-grossing movie in SA, Titanic.

Of course, there is no knowing how many copies of Titanic were pirated. Nor is it possible to know whether buyers of pirated copies of Mama Jack would have bought the film if they could not buy a cheaper, pirated copy.

Still, piracy tends to undercut profits made within the legitimate stream and decrease margins. In SA, where the viewing public is small, and therefore economies of scale are small too, the problem is exponentially more severe. Piracy tends to dissipate profits that might otherwise be channelled back into the industry and which might allow it to develop further.

SA's natural advantages as a sunny country with flexible settings, striking geography and English language fluency, mean the film industry in SA ought to be an arena were we can compete internationally — at least on the margins.

But this has not transpired in the same way for feature films as it has for the advertising industry. Mama Jack is the exception, and is consequently a bit of a trailblazer, both in terms of where movies should be pitched, and also showing the problems locally made films face.

Film piracy in SA is taking place against a larger international backdrop and massive technological changes. Most often mentioned is the move away from watching movies in theatres to watching them at home instead. Large-format televisions have closed the gap between watching at home and on the big screen. The smaller size of the television screen is compensated for by the convenience of home watching, and the uniqueness of seeing it on the "big screen" is diminished by the smaller size differential.

Big changes in reproduction quality are also helping to boost the trend. Until very recently, recorded film quality tended to be distinctly poorer than ordinary television. With DVDs now ubiquitous, this is no longer the case.

While some pirated movies are made from filmgoers recording the film on a video camera, many are indistinguishable in quality from the legally purchased version. The ability to record, save and replay videos on ordinary computers has massively lowered the cost of entry for would-be film pirates.

The increasing use and availability of broadband internet is also increasing piracy. One study shows South Korea, with its massive push towards broadband, has the highest rate of illegal film downloads.

Hollywood is obviously frantic that the same fate that befell the music industry does not threaten it too. The music industry has been in substantial decline over the past decade, with its profits dropping year by year, in part due to pirated music. The smaller size and relative ease of downloading music compared with downloading movies suggests the music industry might be a leading indicator, and this is already partly proving the case.

Yet there is a flip side, too.

While the music industry might have suffered financially from internet downloading, it has been reinvigorated by the phenomenon at the same time. In one sense, internet downloading acts as a kind of sampling process, providing the cognoscenti with an inside track.

The lower barriers to entry have also tended to lessen bands' dependence on industry backing, and broadened the range and variety of music. The whole arena now has more appeal, and new commercial applications — most obviously iPods — have generated a whole new type of music appreciation. Music is cool again.

This is not to endorse piracy, but the industry does need to look at its own failings before blaming piracy for poor returns.

A constricted industry with poor product is more of a threat to the movie and music industries than a few freeloaders.

Sample 3

Pirates of the 21st century

HOWARD DONALDSON

PIRATING of music and films is costing South African companies more than R700 million a year.

Braam Schoeman, Manager of the Anti-Piracy Enforcement Unit at the Recording Industry of South Africa (Risa), estimated that, each year, more than R308 million is lost to the music industry through piracy.

"It's difficult to ascertain the exact amount, but we are sure that the figure is considerably higher than R308 million," Schoeman told the *Sunday Tribune* this week.

And James Lennox, a spokesman for the South African Federation Against Copyright Theft (Safact), said that pirating of movies was costing the country more than R400 million annually.

Schoeman said that Risa, which established a new anti-piracy enforcement unit in January 2004, has unit officers in all of the major cities of South Africa.

"Cassette piracy is still one of our main headaches," he said, "although the CD-R market is slowly taking over with the price of CD-Rs decreasing drastically. We not only look at individuals copying and selling music, but investigate syndicates as well."

Schoeman said that the main problems experienced in KwaZulu-Natal are that of "cassette piracy and counterfeit or pirated works in the Indian repertoire".

"The difference between pirated and original music," he said, "is not the music on the pirated disc, but the cover and inlays which are different. When dealing with counterfeit music, however, everything is copied to look exactly the same as the original, thereby deceiving the public, who wants to buy original music."

Schoeman said that when music piracy was reported, it was first investigated to determine the extent of it, then evidence was obtained of the offences being committed and only then was a criminal complaint filed against the suspect with the police.

Complaints are usually filed in terms of either the Copyright Act or the Counterfeit Goods Act. People found guilty face a fine of a maximum of R5 000 a cassette or CD or three years imprisonment, or both.

During two raids at the container depot in Durban harbour in August, a total of 505 500 discs were seized by a team headed by Risa investigator Norman Letcher. This

haul, the biggest ever made in Africa, was made from containers en route from Singapore to Nigeria.

The estimated value of the product on the street would be in the region of about R50 million. After the inspection of the discs by the International Federation of Phonographic Industries' (IFPI) Anti-Piracy Enforcement Co-ordinator, it was apparent that, although the discs were counterfeit, many still carried IFPI source codes.

Through these codes, one is able to identify the plant which manufactured the product. The lack of these codes indicates that discs are counterfeits.

The IFPI is working with international investigators in London and Hong Kong on the issue.

Piracy affects both recording artists and record companies, and some of the hardest-hit victims of this growing problem are owners of record stores; CD and tape plant workers; and marketing, promotion and distribution people. The government also loses revenue, because distributors of pirated music do not pay tax. The proceeds of piracy are often used to fund other criminal activities, such as drugs and weapons.

Meanwhile, the pirating of movies on to DVDs and, increasingly, through downloaded file sharing on the internet, is high and on a steady increase in South Africa.

Lennox told the *Tribune* that "globally, the film industry is losing close on $4 billion (R26 billion) annually to pirating while counterfeiting and piracy is costing business in general in excess of $500 billion (R3 250 billion) every year".

Lennox said most pirated DVDs were imported into South Africa primarily from the East.

Ripping movies on to DVD and web-based piracy in South Africa were also on the increase, he said.

Lennox said that, in addition to its national network of investigators, "Safact is in the process of establishing a specialised capacity to deal with web-based piracy of content through downloads and web-based sales of DVDs. "A worrying trend is the abuse of corporate and university intranets and internet bandwidth to download illegal content without the permission or knowledge of the institution or company," Lennox said.

Safact works closely with law enforcement agencies and customs at a local, provincial, national and international level to assist in the prevention and detection of importation, distribution and sale of pirated movies in any format, but primarily on DVD.

Lennox said that "Safact is engaged in ongoing national consumer awareness and education programmes and seeks to persuade the government to improve the legislative and legal framework to provide appropriate protection of intellectual property rights.

"The courts are increasing the severity of sentences handed down to those found guilty of contravening the law in respect to counterfeit goods, and there is an increasing awareness and understanding of the seriousness of this type of crime."

He said that greater emphasis was being placed on crimes relating to counterfeit goods by the police, Department of Trade and Industry and revenue services.

This, he said, was welcomed by Safact and the credibility of South Africa as a country.

"It is hoped that, as the impact of counterfeiting and pirating of products can be brought under control and reduced, the contribution to sustainable socio-economic growth provided by a fair competitive environment for the rightful owners of content and products can be realised," said Lennox.

donaldson@sundaytribune.co.za

Sample 4

MUSIC PIRATES RIP OFF ARTISTS BIG TIME

'The sad thing is that even police buy these fake CDs'

Sibongile Mashaba

MUSIC pirates are scoring big on CDs by new South African sensation Zahara and others.

Sowetan has discovered at least three different fake CDs of Zahara's new album, *Loliwe,* in the streets of Johannesburg.

The CDs are selling for R10 and the sound is of good quality. The CD sells for between R70 and R90 at music stores. Two of the fake CDs have pictures of two different women passed off as the real artist.

Zahara's producer Robbie Malinga said: "Yesterday we went to the Vaal where we found 1 000 fake CDs. This is destroying our game. We work so hard to produce quality but at the end of the day we do not get anything.

"When an artist dies a pauper, fans think that the musician was abusing money, while the pirate is the one who is taking revenue from them."

He appealed to government to take piracy seriously because it is killing the industry. He also urged citizens to declare war on piracy.

This comes as Johannesburg metropolitan police department (JMPD spokesman Chief Superintendent Wayne Minnaar revealed that police were involved in a massive campaign to seize fake CDs and DVDs and arrest sellers and manufacturers.

Just this week, pirates have upped the ante. They are now hacking the system of the entertainment companies to reproduce music, movies and games.

A joint operation between JMPD and SAPS led to the arrested of a 29-year-old man in Bruma, Johannesburg, this week.

"The man had a Sony (Music Entertainment) password and would log onto their system and download games and manufacture them in his house. Police confiscated three computers and other electronic equipment, CDs, games on discs and DVDs. "The goods are estimated at R400 000," said Minnaar.

He said in a separate incident, seven men and a woman were arrested in Bruma on Sunday.

Police arrested one of the men in the Johannesburg CBD for selling fake CDs and DVDs. He led police to the Bruma house where counterfeit goods were being manufactured. Police confiscated equipment to the value of R400 000.

Anti-piracy campaign chairman, poet Mzwakhe Mbuli, said piracy had gone out of hand. "We will now fight violence with violence. Artists get injured when they are out campaigning against this crime. The pirates attack them when they fight for their bread. We say no more. Enough is enough," Mbuli said.

Lusanda Mcinga of Lusanda Spiritual Group was attacked in Willowvale, Eastern Cape.

She discovered her CDs and DVDs selling for only R35 at a shop in the area. When she confronted the shop owner, she was physically attacked.

"We are now planning to launch operation shoot the pirate. A meeting to finalise the launch would be held next week," Mbuli said.

According to the Recording Industry of South Africa (Risa), artists and the record companies who support them lose an estimated R500-million each year to piracy.

The late Lucky Dube, Yvonne Chaka Chaka, Steve Hofmeyr, Chicco, Arno Carstens, Rebecca Malope, Mandoza, Joyous Celebration, Shwi noMtekhala and the late Brenda Fassie are some of the most pirated artists in South Africa.

Music business consultant from Huge Entertainment Vusi Leeuw said the economy was hugely affected because pirates did not pay tax.

"Piracy is crippling the country. The sad thing is that even police buy these fake CDs.

"People are losing jobs because of piracy. Music companies are shrinking. This adds to the high rate of unemployment and will lead to people turning to crime to get money," he said.

Artists and the record companies lose an estimated R500-million each year to piracy.

The Risa anti-piracy unit is tasked with tackling the issue in the country.

CDs copied without rights holder's consent

PIRACY, as referred to by the International Federation of the Phonographic Industry, is music which has been pirated, meaning that it has been copied from a legitimate or pirated copy, usually by computer, without the consent of the rights holder and for commercial gain.

There are several elements common to most pirated products of this kind.

For one, the packaging of a pirated product differs from the original.

Pirated copies are often compilations, for example, purporting to be the "greatest hits" of a specific artist or a collection of tracks drawn from a specific genre, such as dance music.

Frequently (although not always), these kinds of albums were never published or released by the rights holders.

The main feature of pirated music is the fact that on face value it does not look the same as the original, although all sound recordings on the pirated cassette or disc are usually from a previously released legitimate album.

● ***http://www.stoppiracy.org.za/risa/***

Loss of jobs the main casualty

THE reproduction of music, movies and games does not only affect artists and producers but ordinary people as well.

What these people put in as an investment, pirates duplicate to reap undeserved rewards.

"Artists put in a lot of hard work into their work. The long hours of creativity, the equipment to the final product yet they end up not making money. Record companies are forced to cut expenditure from what they suffer because of piracy. They end up not recording artists, leading to loss of jobs," said music business consultant of Huge Entertainment Vusi Leeuw.

To manufacture 1 000 CDs costs about R16 000, excluding VAT.

"This affects the lives of people who have to feed their families and pay school fees. Where does the money go to? Pirates don't pay for any royalties or anything else. People need to start thinking about what they are buying and supporting," Leeuw said.

He said people should be discouraged from sharing music via blue tooth because that was also piracy.

"Depending on the genre, it can cost between R100 000 and R1-million to produce an album. That includes costs for backing vocalists, photographers, videographer, graphic designer, marketing and distribution," Leeuw added. – *Sibongile Mashaba*

Appendix A2: Radio Interview

Date: 26 September 2013
Time: 10:00to 10:30
Interviewer: Rowena Baird (RB)
Interviewee: Zodwa Ntuli (ZN)
C1: Caller one
C2: Caller 2
Ad: Advert

Key:
[inaudible] inaudible or indecipherable speech
— em-dash for interruption
{BR} speaker takes an audible breath
italics false start

Start

RB You're listening to Morning Talk on SAfm, South Africa's news and information leader. My name is Rowena Baird and well last year President Jacob Zuma convened a sectual meeting to address South African artists [inaudible] artists rather and government departments and to give the mandate to address challenges facing artists. And among issues raised in that particular meeting [inaudible] piracy I remember was very high on the list. And joining us now to talk about the Department of Trade and Industry's anti-piracy campaign is Zodwa Ntuli, Deputy DG Consumer and Corporate Regulations Division for the DTI. Good morning to you Ms Ntuli, thank you very much for joining us.

ZN Good morning Rowena and good morning to your listeners as well thank you very much.

RB We'd also like to hear from you on 089 110 4207, you can also SMS at 34701 to share your thoughts with us. Perhaps you could, to start off, Ms Ntuli to put this into context for us: Why […] government is getting involved at this level? I mean how does the issue of piracy of music affect the economy How much revenue is lost to pirates?

ZN [inaudible] Rowena I think the issue of piracy has shown, you know, to be a significant issue to be concerned about as government because I think on at basic level we can see it from [the] where people every time when an artist is in trouble or when an artist has passed away and you hear things about an artist dying as a pauper and so forth and so forth. So at a basic level people are always concerned: Why are we always saying artists are dying of paupers?

RB mm

ZN But the answer to that is really not a simple thing like for instance they are not responsible, they don't save, they don't do this. It's not that. The issue is that, if you look at the industry, the creative industry in general, the number of things that are illegal that are illegitimate that are happening, and they continue to happen like that because the rights of individuals to their work is their private right which they ordinarily should be protecting themselves, you understand—

RB Mm –

ZN If you have your own house [inaudible] the level of protection around your house is your own responsibility. But there is still a level at which government must offer some form of protection and some form of intervention where your rights is... isn't being upset with—

RB Yes, yes—

ZN So I think the challenge with the industry that we are dealing with is that a lot of things have been happening. Piracy has been happening as if it is actually legal and is actually normal. You see CDs being sold on the street, CDs of people that should be generating income for themselves, and sustaining themselves. But other people are stealing that work and selling it as their own, and benefiting from it. So I think there is something fundamentally wrong with that where a society ends up seeing something that is illegal as normal and find nothing wrong with buying a CD which is counterfeited or which is pirated on the street. So the impact of this on the economy, if you look at the size of the industry. The industry is really big except that obviously it operates largely in an informal way. It's not easy to collect the statistics to really see [inaudible] the size of it. But it is a big industry [inaudible] and contributes a lot to the other value chains in the industry. So I would say that the loss to the economy is huge because the estimates that we have by various researchers in this space is that, [you know], about 500 million is lost—

RB Hm—

ZN just to piracy [you know] every year. So this figures are growing and growing and because it's illegal it's not possible to really have the figures accurately. So we are really appealing to the public through these campaigns to say let us look at the [inaudible] work of people, the creative work is actually a business. And if you are abusing it you are abusing somebody's business.

RB Absolutely. But then Ms Ntuli if [inaudible] apart from buying a CD on the street, on the pavement, how else would you know that it's pirated?

ZN [inaudible] Look the normal distribution channels [recording lost] are not sold in the right space. I think, I think, if you see medication for instance on the pavements of the streets and you are being sold medication you should be worried as a consumer. That because there are certain conditions under which medication should be stored and so forth and so forth. So you should be concerned. So I think consumers should be vigilant in knowing that the distribution channels for music are likely in various outlets that are known, that are advertised all the time. So if we can make a known effort and use the appropriate channels, because it's like buying a TV set from the street. Somewhere somebody sells you a TV set and you buy it. I think that the morality of it is exactly that—

RB OK—

ZN Why would you buy something behind a door when actually you know where the channels are?—

RB *the actual*— I think my question is that the actual CD does not look pirated, it looks like an authentic CD.

ZN Yes, I think that is why I am starting from that point to say first we must know where are the legitimate places to buy things, the [inaudible] channels—

RB {BR}

ZN But secondly, a person that pirates a CD will try as much as possible to make it look original. So it is very difficult for you, as a consumer, to see whether it is the pirated one or the counterfeited one. But it is important that you become cautious about buying things on the street—

RB OK, it is 13 minutes after 10, we're talking to Zodwa Ntuli, Deputy DG Consumer and Corporate Regulations Division at DTI and we're talking about music piracy. We will also take you calls on 089 110 4207 and SMSes 34701 when we return.

Ad ...

RB It's 14 minutes after 10 , you're listening to Morning Talk on SAfm – South Africa's news and information leader. My name is Rowena Baird and we're talking to Zodwa Ntuli, Deputy Director General Consumer and Corporate regulations division at DTI. Ms Ntuli, what role does your department, the department of trade and industry play, in actually fighting piracy [inaudible] what's the legislation currently around this?

ZN [inaudible] Rowena, we've got a number of intellectual property laws that talk to copyright, trademarks, design and patents. And all this laws are

laws that are intended to protect the intellectual property of people and these are administered in the department of trade and industry through our companies and IP commission. [inaudible] So for instance if we look at the music piracy, that's a violation of the copyright act. But I think there are things I must do [inaudible] I must highlight so that we bring this whole thing to context. Our copyright law, although it does make protection, it has some areas which are gaps and which are being used to actually even violate the rights of people even more. [inaudible] When we launched the campaign in 2009 there were three elements to it: The first one when the industry was engaged the industry complained lightly about piracy. That government must intervene somehow—

RB Yes—

ZN The industry is also making some effort in doing these. There are a number of associations that are fighting this, your SAFACT and all of that. They are having programs to fight this. But they appealed for government intervention to at least enhance their efforts in fighting piracy—

RB Yes, let's talk to—

ZN The third one—

RB Before we actually get to that I'd like us to talk to Thami. Hello Thami welcome.

C1 Hello Rowena

RB Welcome.

C1 Are you there Rowena?

RB Re teng papa (We are here sir). You can make your comment

C1 Ok, thank you [inaudible] It's my first time on SAfm Rowena I've listened to the *minst*—, the Deputy Director General. However there is one thing that I would like to highlight when it comes to music piracy it is one of the biggest problems we have in the country. However, as much as it is one of the biggest problems we have in this country, when it comes to solving the problem it is top-down not bottom up, you know—

RB Explain

C1 One of the problems that we're having, we all remember operations director of illegal jukebox companies, who are the same companies in South Africa that applied in conjunction with RISA [inaudible] and with RISA we pay hundreds of thousands a month to [inaudible] for our license

to be renewed. We provide music to [inaudible] taverns and to [inaudible] entertainment. However the problem is to monitor it. Because all of a sudden there are thousands and thousands of other illegal (juke)boxes that continue to play music. They aren't paying their royalties there to RISA, so that RISA could give the money back to the artists. It's a complex one and the police will tell you we do not have the capacity – to (what) - to implement and monitor the piracy in the country. For example, I'll give an example: We have the police, the [inaudible] police, and when they do their [inaudible] they do go around and confiscate illegal CDs. They take those CDs, go home with them and again sell those CDs back to those boys and they sell them on the street.

RB And they're back on the market. Ok—

C1 They're back on the market. However, once they go to places, to taverns, that have our boxes, our boxes that are legal that play music legally, who are paying – they go there, harass people but at the same time confiscate alcohol of the people [inaudible]It's like, the police, they work against the very main objective that the department stands for, fighting piracy. Because we do believe that between us - as independent license owners, the police, the department – there has to be a point of synergy. Now and then operations so that [inaudible] I say that we are going to target—

RB Yes—

C1 KZN, OK we are gonna target Gauteng, Eastern Cape or Western Cape in terms of fighting piracy, confiscating [inaudible]. But there isn't enough synergy—

RB OK—.

C1 And I'm not saying this because I'm trying to [inaudible] the deputy general, no, I'm raising this issue that are on a daily basis—

RB Thanks Thami—

C1 As I'm talking to you right now I'm trying to arrange a meeting with one of the mayors of the province because we are trying to address the recent issue of in terms of how can the police understand—

RB Ok. Yes, you've made your point Thami. You've made your point thank you very much. [inaudible] Ms Ntuli to what extent is [inaudible], just in response to, I'd like a response to Thami's call. Because also just answer to what extent the South African police services is involved in, to what extent have you synergised with them in fighting this. Do they confiscate counterfeit goods and pirated products?

ZN Yes. [inaudible] look Rowena I think I must say that (1) Thami is right

about coordination – that is one issue that was raised also by the industry to say even where government does intervene we do intervene in a manner that is not coordinated. And that is something that we highlighted and we then took forward. So in terms of the campaign that we're running the police are involved, the department of arts and culture, the communications department because we're also dealing with these [inaudible] issues. Which, [inaudible] the solutions to these things is not going to come from one department because if the department has got a particular mandate in terms of its own legislation the police can only do a, for instance, raid. It's their job, they can do it at any time. But where we've got, for instance, campaigns that are coordinated that we are now going to target KZN, we are now going to target the Free State. When those campaigns we do coordinate them but we should not therefore say that the police should only confiscate only when they are with the department of trade and industry or when they are with the department of arts and culture. The police must at any time when they see spots where these things are happening, they should do that. But I think the main thing for us is also to look at the supply of these because these things are manufactured by people—

RB Yes, and we'll get to that in a bit. Rodney let's take your call quickly before we go for a short commercial break. Welcome. Hello Rodney

C2 Hey, I've just got a quick comment to make. You know as long as DVDs and CDs are overpriced people are going to go for what seems like a cheaper option. The point is that in the past record companies made these huge profits off records, and also off CDs. I know it's expensive to - in the studios - you have to hire a studio, you've got to do marketing and all that. I know there's a cost involved but these CDs are overpriced. If these people, the record companies, are going to bring down their prices so that they have a smaller margin there's not going to be this problem—

RB Ok

C2 It's just that at the end of the day the musicians, the artists are getting a very small amount. The record companies are making a killing and as long as that happens people are going to buy the fake—

RB The pirated goods. Ok, thank you very much Rodney. 22 minutes after 10 we'll allow Ms Ntuli to respond [inaudible]

Ad2 …
Ad3 …

RB It's 23 minutes after 10. Morning Talk on SAfm, South Africa's news and information leader with me Rowena Baird and our guest Zodwa Ntuli, deputy director general consumer and corporate regulation division at DTI. Ms Ntuli just

before the break Rodney said that the problem is overpriced CDs and DVDs and that's why piracy will continue. Your thoughts?

ZN I must say that upfront, that I think that the fact that something is expensive does not mean that you must steal or that you must make a crime to justify it. That's the first thing. But I think the point that is being brought across by Rodney is that the higher the prices the more people cannot afford therefore the cheaper version on the street become an option, alright.

RB Mhm

ZN I think then we need to look at a number of issues. For instance if we look at the that industry, let's take a look at the music industry, the record labels and all that. There is a need to grow it, alright, because right now it is a few players, there isn't much competition. You know that when you have a got a few players it is not easy to make the prices competitive, OK So obviously then, it's for that reason the department says: We looking at a music strategy for instance to see what kind of support we can give the industry such that we can have a South African industry. Because also that counts a lot. Do we even have our own record labels on the ground? [inaudible] what is the interest of the independent music labels are they making any dent in this particular industry in terms of market share and all of that? So if we are not also assisting in terms of capital our own companies in South Africa as well to be in a position to build the industry and offer competition, then the prices obviously will remain growing higher and higher. But I don't want us to then look at it from a perspective of price and say not because the prices are high then [inaudible]—

RB It's OK to pirate, to buy pirated goods.

ZN Yes. If you look at the CDs for instance, if you go to a music shop right now you'll see that the South African, the local music CDs, are cheaper than the international ones. And if we look at the reality, we do go inside the other CDs, of the ones that we want—

RB Absolutely. You are quite right.

ZN And we have a collection in the house but we don't want to collect locally. Just look at it, you'll see that it's all local music that has been pirated, if you look at it. And the impact is one our own artists, business people because they cannot benefit from their work.

RB Ok—

ZN I think, yes. I do appreciate the point that has been made but I think we should not put the point across and nullify the problem that we are facing.

RB I'd like us to take some SMSes and here is one that alludes to the point that you were making Ms Ntuli.
"Manufacturers and retailers of empty discs, CDs, USBs, memory cards and other devices must not sell these devices to anyone. Buyers must produce proof on how they want to use these devices because these are the chief weapons for pirates. Your comments on that SMS?"

ZN I think that there should be a number of other things, other interventions that are done and I know that the department of communication is also working hard on looking at interventions. For instance in other countries it is less difficult to reproduce a CD of somebody, alright, but the problem that we are facing is not individuals that are sitting around on, in a small - a bedroom - producing these CDs. It is actually big corporates that are actually running [inaudible] a particular system and they then on the side they will produce those things. So the allegations have been made specifically that this is not the work. If you look at the amount of those CDs in the market you will see that it is not the work that is just somewhere in the bedroom. So I think also the police in terms of their strategy, they are looking into that, and hence they are targeting certain areas to raid and confiscate. And we think that will improve from time to time. And the intelligence from the industry itself will also assist to alert the police where such incidents are happening.

RB Ok, I'd like to go through the rest of the SMSs:
"Artists themselves should learn to encrypt their work rather than cutting corners to enrich themselves. Technology is here to stay and advance. I want to know what about illegal downloading of South African music and movies from the internet and how they're going to stop that." That's from Terence in Kimberley. Another SMS says: "I sympathise with artists but this government doesn't respond to logic. Perhaps they should go out on a rampage and trash the streets or two. Ask AMCU." "At the workshop mall in Durban foreigners sell thousands of fake CDs and DVDs daily from 4-6 pm. Sadly there's a cop[inaudible] shop in the mall but nobody gets arrested. It's a free for all." Your comments on those?

ZN Rowena I think that is the point we are making about the involvement of the police. We think that the police obviously are looking at this seriously because one of the things is that it's businesses that contribute to all the illicit trade which does not only interest the legislature of fake CDs and videos and DVDs. But it actually extends to a number of things. Your child pornography and all of that so it is syndicate work that the police need to look at. Because when you see these things at the stalls where [inaudible] they are talking about the taxi ranks or whatever. Um, I think as much as we have a problem with those people but the bigger problem is also with where these things are coming from... and also the police strategy should talk to that.

RB And...And also I think you [inaudible] ought to, and maybe you can talk to that, if your anti-piracy campaign includes and involved the public. Where the public can also report cases of piracy.

ZN Yes, that's what we actually the message that we are sending right now with this version of the campaign. It will actually talk to the public. Remember that for as long as there is demand for this thing they would be there on the street. So if you do make a decision that you will not buy it, yourself, then certainly there will not be a demand. So we're also talking to those issues but we want people to also report these things so that the police can when they go [inaudible] enforce the law then they would be working on something that they can also have evidence, they can have witnesses. The problem is that it becomes so difficult and those are the things that in terms of. Some of the things are caused my the challenges in the law in the sense that even when they confiscate, when they've got to go to court, remember that [inaudible] it is your CD, it is your right, you are the one that is supposed to be making a statement, appearing, [inaudible] supporting that. That there also exceeds. So we also want to tighten that to make the enforcement even that much more tighter but easier for the prosecutors to deal with these matters. And that's a, it's a coordinated effort that we are taking in terms of these efforts

RB Ok, thank you Zodwa Ntuli for your time. Deputy director general, consumer and corporate regulations division at the department of trade and industry, talking to us about piracy in the music industry

End

Appendix B

Times Media Group Holdings

Table 2: Times Media Group Holdings

Source: http://www.timesmedia.co.za/about-us/structure/

Independent Newspapers Holdings

Table 3: Independent Newspapers Holdings

Source: http://www.iol.co.za/newspapers

Individual media and performers mentioned in the text

Media and/or performers	Affiliated organisation or company[6]	Mentioned in...
Mama Jack	Videovision Entertainment Distant Horizon Delta Film (Pty) Ltd UIP (SA Distributor)	Sample 2
CNA	Edcon (PTY) Ltd	Sample 2
Titanic	Twentieth Century Fox Film Corporation Paramount Pictures Lighstorm Entertainment	Sample 2
Zahara	TS Records	Sample 4
Robbie Malinga	Sheer Music	Sample 4
Sony Music Entertainment	Columbia Records RCA Records Epic Records Arista Records Arista Nashville, RCA Nashville, Columbia Nashville Legacy Recordings Sony Music Latin Masterworks Vested in Culture RCA Inspiration Provident Label Group	Sample 4
Lusanda Mcinga	Lusanda Spiritual Group Virgin Media	Sample 4
Lucky Dube	Gallo Record Company Teal Record Company Rykodisc	Sample 4
Yvonne Chaka Chaka	Yvonne Chaka Chaka Music?	Sample 4
Steve Hofmeyr	EMI Music	Sample 4
Arno Carstens	Springbok Nude Girls Arno Carstens Music	Sample 4
Rebecca Malope	EMI Music The CCP Record Company	Sample 4
Mandoza	Eaton Inc	Sample 4
Joyous Celebration	Sony Music Entertainment Joyous Records	Sample 4

6 Record companies, production companies, distributors, groups and/or subsidiaries, etc. The list may not be exhaustive, as sometimes the film distributors vary by country.

Media and/or performers	Affiliated organisation or company[6]	Mentioned in...
Brenda Fassie	EMI South Africa CCP Records	Sample 4
Vusi Leeuw and Huge Entertainment	Huge Entertainment	Sample 4
www.stoppiracy.org.za/risa	RiSA	Sample 4

Table 4: Individual media and performers mentioned in the text

SAFACT Members

SAFACT Membership Currently Includes:	
Disney	Ster Kinekor
Warner Brothers	Nu Metro
Sony Pictures	UIP South Africa
Sony Computer Entertainment Europe (PlayStation)	Videovision Entertainment
Universal Pictures	Next Entertainment
Paramount Pictures	MNet
Twentieth Century Fox	MultiChoice
Motion Picture Association	

Table 5: SAFACT Members