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

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

Intellectual Property Theft and Organized Crime

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

The motivation for the receptiveness of governments to take action against intellectual property theft is clearly seen in the United States. Deputy Attorney General Eric H. Holder, Jr. (1999) summarized this motivation. As the U.S. economy transitions from the Industrial Age to the Information Age, he argued, “The United States’ economy is increasingly dependent on the production and distribution of intellectual property (IP).” The United States “which leads the world in the cre-
ation and export of intellectual property and IP-related products, is finding a rapidly increasing portion of its Gross National Product based on intellectual property and its derivatives. Millions of Americans are employed in this sector of the economy, a sector that is experiencing the second greatest rate of job growth in the nation. Given the importance of this sector to the nation’s economy, the government, he argues, must protect its interests by making it a priority to enforce domestic laws and fulfill international treaty obligations concerning intellectual property theft.

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

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

Definitions

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

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