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| Project                 | STRENGTHENING THE KNOWLEDGE BASE FOR PUBLIC INTEREST INTELLECTUAL PROPERTY POLICY  |
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## Executive Summary

With a handful of exceptions in the past decade, public interest concerns have been marginalized in international policy debates about intellectual property norms. As industry attention shifts from the pursuit of higher IP norms to the pursuit of stronger enforcement of them, this problem has grown more acute. Until recently, enforcement activism flew under the radar of the public interest communities working in this area, leading to a very limited debate about the responsibilities and compromises inherent in IP regulation. In the past two years, the partners in this proposal have catalyzed both new research and wider policy attention to this emerging ‘IP enforcement agenda’—both in the form of major new studies (the IDRC-funded Media Piracy in Emerging Economies [MPEE] project) and new international research and knowledge-sharing networks. The present proposal is an extension and merger of those two lines of work. The proposed project consists of (1) a series of empirical and legal research projects on access to knowledge (a2k) and related issues of law and enforcement, with a focus on book piracy and access to educational materials in South Africa, Brazil, and India and (2) a set of capacity-building initiatives designed to mobilize different expert and stakeholder communities on behalf of public interest goals in this area. The work will focus on the knowledge needs and capacities of the global south, and on integrating those needs and capacities into the broader global policy dialogue around IP law and enforcement.

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## I. Research Problem and Justification - The Enforcement Agenda: Participation and Knowledge Deficits

Intellectual property law, once the domain of legal specialists and obscure international agreements, has become a profound and encompassing global regime over the past quarter century, governing a wide array of forms of expression, innovation, and commerce—and, consequently, pathways of social and economic development. After a decade of technological diffusion, industry activism, and public interest research and advocacy, the importance of these developments has become much more widely understood.

Although this regime has been embedded in multilateral institutions to provide it legitimacy, it has been constructed primarily through a series of maneuvers by developed nations and industry stakeholders to maximize the leverage of rightsholders and limit input from developing countries. The locus of policy activism has been shifted repeatedly over the years toward whichever unilateral, bilateral, plurilateral or multilateral forum provided the most leverage

and the least public visibility.<sup>1</sup> This strategy has resulted in the strengthening and upward harmonization of international IP norms over time and, increasingly, in pressure for stronger public sector commitments to the enforcement of those norms.

For developing countries, this participation deficit is also, in key respects, a knowledge deficit. Debates about IP norms and enforcement take place within a discursive sphere defined almost entirely by industry research and communications strategies. The virtues of high IP norms and strong enforcement have been largely taken for granted and integrated into public-sector rhetoric in most developing countries. The likelihood and capacity of political actors to articulate alternatives has been sharply constrained by the absence of strong counter narratives about the importance of access to knowledge goods, or alternative analyses of the costs and benefits of different policy choices. Our proposal is, first and foremost, an intervention at this level.

A more balanced debate is critical because these evolving sets of IP and enforcement obligations have profound implications for access to knowledge goods, and broader impact on developing countries' abilities to promote innovation and economic development and to diffuse the educational, informational and health related resources needed for social development.<sup>2</sup> All too frequently, the globalization of IP norms has reinforced a pattern of tiny, high-priced legal markets, massive illicit trade, and marginal experiments in open (or other non-commercial) platforms for learning, innovation, and production of knowledge goods.<sup>3</sup> This bad equilibrium, the role of piracy within it, and the impact of the regime on social and economic development has only begun to be analyzed and understood. This distorted equilibrium and its policy components are the primary subject of our last round of IDRC-funded work, *Media Piracy in Emerging Economies*, and—accordingly—the starting point of our new proposed inquiry into access to educational materials.

In the past decade, alternative visions of how to regulate the knowledge economy have coalesced around the “Access to Knowledge” (A2K) movement. The A2K movement is a diverse coalition of advocates, government officials, businesses, artists, scientists, and other practitioners from developed and developing nations. Part of the A2K agenda involves a set of technical interventions in copyright and other IP law, primarily around expanding limitations and exceptions to copyright as a means of facilitating access to educational materials,

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<sup>1</sup> Laurence Helfer, [Regime Shifting: The TRIPs Agreement and New Dynamics of International Intellectual Property Lawmaking](#), 29 *Yale Journal of International Law* 1-83 (2004).

<sup>2</sup> Susan Sell, *The Global IP Upward Ratchet, Anti-Counterfeiting and Piracy Enforcement Efforts: The State of Play*, PIJIP Working Paper No. 15, available at <http://digitalcommons.wcl.american.edu/research/>; COMMISSION ON INTELLECTUAL PROPERTY RIGHTS, INTEGRATING INTELLECTUAL PROPERTY RIGHTS AND DEVELOPMENT POLICY, 2 (2002). This trend is part of a larger shift in international law identified by Third World scholars which “deliberately ignore[s] the phenomena of uneven development in favor of prescribing uniform global standards,” “more or less cast[s] to flames the principal of special and differential treatment,” and is reconstituting the relationship between the state and international law in a way that limits state sovereignty to define and regulate property rights to promote social purposes. Chimni, *Third World Approaches to International Law: A Manifesto*

<sup>3</sup> See generally, Commission on Intellectual Property Rights, Integrating Intellectual Property Rights and Development Policy (2002).

medicines, and other critical knowledge goods. Other aspects prioritize alternative policy fora and models of practice, including “open source” software and other collaborative modes of production of knowledge goods, “open access” models of scholarly communication, and the expansion of rights discourse to encompass access to information and communications technologies. Increasingly, the spread of both access and the capacity to utilize knowledge goods is understood as a condition of economic development and cultural flourishing.<sup>4</sup>

As developing countries have mobilized, the ability of rightsholder groups to push new law through representative international bodies has diminished.<sup>5</sup> New IP and enforcement initiatives are largely stalled at WIPO, the WTO, the WCO, and other bodies. The IP-maximalist agenda has shifted accordingly, seeking both new fora with less problematic country representation and more aggressive enforcement of existing obligations. Collectively, these actions describe what we call the “enforcement agenda”—an increasingly punitive response to counterfeiting and piracy now taking hold in many national and international institutions. The enforcement agenda includes a wide range of measures but, at the most general level, involves the criminalization of a fuller spectrum of infringing activities and, accordingly, the shift of responsibility for enforcement from private actors (and civil courts) to the state (and criminal courts). Secondly, the enforcement agenda involves a shift in focus from the relatively narrow application of enforcement at national borders against large-scale commercial infringers to a ubiquitous enforcement regime, covering the Internet, internal markets, and a wide array of traditionally private activities. Each of the major industries has its version of expanded enforcement, whether in the form of stronger trademark-based barriers to the circulation of generic medicines, the curtailment of copying of educational textbooks, or the mobilization of Internet Service Providers to cut off service to users identified as possessing or sharing infringing goods. At present, these norms are being developed primarily in bilateral and plurilateral negotiations not bound by the transparency and participation rules of WIPO, the WTO or other representative multinational organizations. The problem, in each of the cases, is not enforcement per se, but the pursuit of enforcement without affordable alternatives.

The Anti-Counterfeiting Trade Agreement (ACTA), formally launched in 2008 as a “country club” negotiation among a group of predominantly wealthy countries, has been the centerpiece of this agenda for the last 3-4 years. This latest forum shift has been a serious challenge to the A2K community and for democratic decision-making more generally. ACTA was negotiated in secret with minimal formal process for soliciting public input and critique. Although the final text reflects many positive changes advocated by A2K interests, it is still a flawed agreement that goes far beyond the original focus on willful large scale trade in counterfeit goods and significantly raises enforcement obligations in a number of fields. As in earlier forum shifts, the new agreement consolidates a wide array of measures developed in regional, bilateral, and

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<sup>4</sup> See Amy Kapczynski, *The Access to Knowledge Mobilization and the New Politics of Intellectual Property*, Yale Law Journal, 117 Yale L. J. 804 (2008)

<sup>5</sup> Graeme B. Dinwoodie, *Some Remarks on the Limits of Harmonization*, 5 J. Marshall Rev. Intell. Prop. L. 596, 603 (2006).

national settings, and establishes them as a new global minimum standard. As with previous agreements, it will almost certainly be a baseline for the development of stronger measures.

The activities outlined in this proposal reflect a synthetic understanding of this environment, in which positive development outcomes require stronger participation by developing-country public-interest stakeholders in policy fora, and in which stronger participation requires a deeper and wider feeder system for research and analysis. This much-needed feeder system—the subject of our proposal—would combine both the production of relevant policy and empirical research and the capacity to disseminate it effectively to relevant stakeholders. Such capacities have improved in the past decade—albeit sporadically. Several networks and initiatives have operated effectively in this area in recent years, including the Rockefeller-funded networks that underpinned early Development Agenda and access to medicines work, OSI and Ford-funded networks that intervened in the IP and media policy space, and IDRC’s several signature initiatives around access to knowledge and IP policy. Efforts to scale beyond these institutions into both other countries and other fields has consistently relied on donor support. Strong empirical work, building on scholarship outside the law, has been especially under provisioned—and consequently the subject of repeated calls for action, most recently from WIPO. The audience for such work has clearly grown in the media, among digitally-literate consumers, among developing country negotiators, and in the Internet service sector, where business model and policy interests have diverged from those of the content industries. Skepticism about content industry positions is now widespread in these communities. The opportunity to find an audience for a positive agenda on access to knowledge has never been greater. Nor has the need to put that agenda to work.

Two such efforts form the basis of this proposal: the IDRC and Ford-funded MPEE project and the Google-funded public-interest ACTA research network. These were unique, productive, and somewhat fortuitously linked projects. The current proposal is an attempt to extend them, apply them to new problems, and more systematically coordinate them to provide the knowledge infrastructure and networks that can advance public interest goals in this area.

## **II. Objectives and research questions**

The primary objectives of this project are to:

- (1) Expand what we know about the actual organization of access to knowledge goods, as distinct from the notional organization of access signaled in most law and policymaking conversations. Here, the focus will be on access to educational materials in South African, Brazilian, and Indian universities, extending to encompass access to audiovisual goods more generally and the emergence of new informal archival practices (shadow libraries) online and within student communities.
- (2) Expand existing networks and build new policy dialogues to articulate and pursue a positive agenda on intellectual property norms and enforcement, variously by providing a dissemination vehicle for research (ours and that of others), by undertaking policy mapping exercises in key countries to identify opportunities, and by finding ways to

instantiate a more permanent, recurring forum for knowledge sharing and coordination, potentially in the form of a large “Global Congress” on public interest intellectual property (pending the participation of other funders).

The first set of objectives will be implemented by an international network of researchers including Fundação Getulio Vargas (FGV, Brazil), the Alternative Law Forum (India), American Assembly at Columbia University and South African partners still TBD. The American Assembly will provide overarching coordination assistance.

The second set of activities will be implemented through the International IP-Enforcement Network, a loose network of 185 international academics and public interest advocates mobilized to analyze and respond to ACTA (see Part VI below). PIJIP and FGV will provide overarching coordination assistance.

Assuming the Global Congress evolves into a recurring enterprise, the leadership and hosting responsibilities will be shifted to southern partners in the network beginning next year (2012).

### **III. Methodologies**

#### **A. *What We Know About Access to Knowledge Goods and IP Enforcement***

Even prior to its final publication, the *Media Piracy in Emerging Economies* (MPEE) report has emerged as a major catalyst for rethinking the enforcement agenda in terms of development, business models, and competition policy. Broadly speaking, MPEE documents the many ways in which developing markets for media goods remain ‘stuck’ in a bad equilibrium, marked by high prices, low sales, and massive illicit access. In the absence of efforts to address legal price and distribution issues, the escalating commitments to enforcement that we document throughout the developing world simply reinforce this dynamic. In the absence of adequate capacities for due process, expanded enforcement tilts toward arbitrary, extrajudicial punishment, primarily in the form of raids and confiscations. Little of this, we argue, has any impact on the actual prevalence of pirated goods, or on consumer practices, which have continued to evolve in ways that ignore both copyright and enforcement threats.

This is, in many respects, a recipe for trouble. The current stakeholder politics ensure that enforcement measures fail up, leading to more pervasive, intrusive, and occasionally draconian approaches to enforcing copyright. The falling costs of technology ensure that copying will grow more prolific. And police and judges will remain caught in the middle. The central question, looking forward, is what an eventual realignment will look like. The smaller question, which we propose to take on through this project, is what the evidentiary basis for that realignment will look like.

In our view, charting a more productive path on this front means understanding more about the concrete, practical side of copyright, media access, and enforcement. Although policy can influence behavior, successful policy will be adapted to reality and not struggle against it at all

costs. The rapid democratization of ICTs and, consequently, of copy culture is the unavoidable basis of that adaptation.

The present proposal is intended to address key gaps in our understanding of the creative economy—some illuminated by the MPEE report, and some looking ahead to the next round of access and enforcement battles—and thereby to contribute to a reality-based conversation about copyright and enforcement policy. The present proposal has a primary and a secondary research focus: First, it is intended to explore changing ecology of access to educational and scholarly materials at the university level, particularly in the context of the emergence of large ‘shadow libraries’ of pirated materials and cheap means of distributing and reading them. Second, it will explore the wider changes in access to digital media and cultural goods in which these transformations are situated. For brevity’s sake, we will call these two parts of the project ‘Shadow Libraries’ and ‘Mapping Media Access,’ respectively.

Like the MPEE project, the new project will be multi-modal, combining legal and policy research, political-economic approaches to the affected institutional and industrial sectors, and a mix of interview and focus group methods engaging students, institutional and industry leaders, law enforcement and policymakers. Distinct from the MPEE project, it will be built around a narrower research template that will permit stronger qualitative and quantitative comparison across countries and income levels.

Pending further discussion with Google and other potential funders, it may also include a consumer survey component designed to provide a comparative baseline for understanding media access and media practices. We are planning such a project in the US (with funding from Google), and may be able to extend this survey template internationally.

The study will be comparative across several countries and include teams in, at least, Brazil, India, and South Africa. Because we expect the development and use of shadow libraries and related practices to be unevenly distributed within the global south, we will have to wait on further scoping work and investigation before committing to additional targets. The benefits of conducting at least one comparative study in a high-income country are clear, and may also be facilitated by funding from Google or other funders.

### **1. The Growth of Shadow Libraries**

The longstanding crisis of the developing-world library is coming to an end, but not in the way most observers anticipated. Resource scarcity, limited holdings, and poor infrastructure remain the norm. Debates over access to materials continue to revolve around decades-long fights over Xeroxing. But the combination of cheap computers (and soon, readers) and growing ‘shadow libraries’ of pirated scholarly material is flanking these battles, and transforming access to scholarly materials in the process. As in other fields, the expansion of legal access to materials—including by Google Books, JSTOR, and open access initiatives—will operate in a context shaped by broad de facto access through piracy.

We have anecdotal accounts of these developments in a number of developing-world universities, but no systematic analysis of them. We have no forward-looking analysis on the possible impact on developing-country publishing industries, existing library infrastructure, or legal strategies for addressing access to educational materials. Building on the MPEE network, we propose to conduct a study of these developments, grounded in a mixed method approach to the larger ecology of scholarly communication and publishing around major universities. This will include survey and interview methods with students, analysis of publishing markets, discussion with online resource providers (including the operators of several major curated pirate archives), and analysis of university and library strategies around access to materials. It will combine the high level policy and political economic analysis of industry sectors with ground level analysis of what students, faculty, and other participants in the educational sector are actually doing to access the materials they need, and how these practices are evolving in function of expanding access to computers and broadband. In this respect it will intersect, but not overlap, IDRC funded projects on access to knowledge and copyright law. Indeed we expect the projects to be strongly complementary. As in the broader debate around copyright and enforcement, this ground-level, empirical perspective is largely absent from policy debates at the state and institutional levels. Yet an understanding of these practices must be the basis for any durable, scalable solutions.

We believe the time to map this ecology of access is now, as the digital book phenomenon is shifting into overdrive with the emergence of ubiquitous internet connections and cheap readers. It is almost certain to become an important policy battle in the next years—ending the relative passivity of publishers in the enforcement wars. And it will be of paramount important to students and universities, whose educational trajectories and decisions about the allocation of scarce resources will be most directly affected.

## **2. Mapping Media Access**

Although the primary focus of this work will be access to educational materials, the survey and interview method will also permit a much better window on patterns of media consumption and digital media practices than is currently available. Comprehensive empirical data on media consumption in the era of digital convergence is remarkably scarce. Traditional consumption models have broken down as forms of digital access have proliferated. The speed of change also ensures that studies grow stale quickly. Most longitudinal studies address only very broad categories of activity, such as TV, radio, and the Internet (e.g., the Pew Biennial Surveys of Media Consumption in the US). There are a number of consumer surveys of piracy and counterfeiting (notably, BASCAP's 2009 comparative survey), but these tilt strongly toward broader categories of illicit goods and toward determining motives for participation in illicit economies (and by extension, toward determining effective messaging for industry groups). There are a number of surveys of particular media types (e.g., music) or distribution channels (p2p) but nothing that puts the larger picture together.

Today, a reasonably comprehensive study of access to audio-visual media would have to accommodate a very complex ecology, encompassing broadcast and direct-to home services, the purchase and rental of disks, legal downloads, p2p and file-locker piracy, legal and illegal

streaming services, large scale sneaker nets trading in portable hard drives, and a variety of other means of distribution. For texts, the vectors would include book purchases, library use, subscription-based access (e.g., through universities), open access content, and the similarly wide variety of pirate channels. We are aware of no studies that shed light on this digital media ecology or its differential structure in high, medium, and low-income populations. At present, there are no good comprehensive studies of what 'access' means for consumers faced with a spectrum of options—some physical, some digital; some legal, some not.

Among high-income consumers, the sheer breadth of access has become an obstacle to understanding how copyright, piracy, and enforcement function in practice. Moreover, there is growing reason to doubt that consumers themselves can reliably distinguish these channels, as they swim through a sea of media with various (and increasingly irrelevant) provenances. Recorded media, in particular, has become dissociated from the modes of ownership and use that once defined them, such as collecting, and its associations with intentional, managed, legal acquisition. Consumption is changing at a fundamental level, and we have few benchmarks to either describe it or guide policy.

Our survey and interview-based inquiry into how these issues affect access to educational materials will provide a basis for exploring broader questions of access to movies, music, and software—the core categories employed by the stakeholders in the copyright area—and to more general categories of fiction and non-fiction. It will also include questions about what consumers know about the law and enforcement regime that has grown up around them in the past decade—putting the significant industry and government investment in building a “culture of respect” for intellectual property to an all-too-infrequent test.

In the end, the study will be a powerful contribution to debates over IP policy, to conversations about the future of media markets, and to our ongoing efforts to empower developing countries to design policies and programs that enhance access to media. Because much of the enforcement debate, in particular, focuses on comparisons between developed and developing countries, we will be strongly advocating for a still-wider comparative approach to these issues with other funders, including at least one European market.

### **3. Empirical Research Methodology**

The present proposal builds on the rich multidisciplinary approach to media practices and legal regimes developed in MPEE. We expect to reproduce the mix of legal, political-economic, survey-based, and ethnographic inquiry that guided that project, but with a narrower focus on the ecology of access to educational materials and a stronger research protocol. This inquiry will range from qualitative, small-group and guided interview based inquiry into individual practices of access, to interviews and policy analysis at the institutional level, such as universities, publishers, and (legal and illicit) access providers, to higher level analysis of policymaking—with the precise mix to be refined through discussion with partners and operationalized in function of the strengths of the different teams.

Pending further discussion with funders, we also plan to conduct a major phone survey of individual practices around these issues, hopefully building on and extending a survey we will conduct on these issues in the US with support from Google. We expect this work to provide a much more robust, comparative, quantitative dimension to the work than was possible in the MPEE project, and plan to closely integrate the survey and qualitative analysis.

As described above, the primary users of the research will be policy advocates and policymakers, reached through our own efforts and those of our partner institutions. As in the MPEE project, this will include the resources and networks of the country teams and of the legal research and networking superstructure provided through the other phase of the project.

A model outline of the report is included below in the Results and Dissemination section. Much of the report will rely on an approach comparable to what we've done in the overview sections of MPEE. There are, however, some notable exceptions:

- Although we explored relationships with the top P2P sites in the course of our MPEE work, we never succeeded in gaining sufficient access to data anchor a substantial account. In this case, our India and Brazil partners have access to a number of the administrators of these sites who can assist with such an account. The launch of our piracy report will also give us significant credibility in this space, hopefully in ways that can translate into access. At a minimum, this section is conceived as a history of these services and their communities. More ambitiously, we believe we can secure access to traffic logs that will shed light on user activities and demographics. Relatedly, we do not see a strong rationale for data mining of P2P sites in this project. This proved to be a relatively low-value direction of work for us in the MPEE project and we have not, at present, identified a set of questions that would be profitably engaged with such methods. We will be consulting in the early stages of this work with a number of researchers with expertise in this area and are open to revising plans.
- We will have at least some involvement on the part of the Brazilian GPOPAI research group, which has done work on course syllabi and the funding/revenue structure of the academic book market in Brazil. This will provide a solid jumping-off point for the work.
- We have decided to focus on the history of access in specific fields as a way of narrowing the research and providing a better basis for comparison. Methodologically, this will be a departure from earlier work because it will involve the creation of a relatively strict survey/interview protocol that we can (1) deploy cross-country; (2) cross discipline; and (3) in parallel the larger phone survey project that we hope to conduct. Creating this protocol at the outset of the work will be a high priority, as will identifying the sites for its application. This protocol will be deployed in focus groups, interviews, and surveys conducted in schools and departments by the teams and/or by individual researchers commissioned by the teams. As with the piracy work, we expect the initial exploratory phase to discover a number of people already working this terrain whose work and expertise can be incorporated (2E). Because the question of access is strongly

shaped by income and technological infrastructure, team members agree that comparative work in the US or other high-income countries would be very valuable. The American Assembly will seek funding to extend the qualitative work to the US. Regardless of success on this front, we will implement the disciplinary and media access surveys in a few local settings (likely Columbia University and American University) to provide some basis for comparison. This will be done independent of the IDRC budget.

There are pros and cons to retaining the ‘Country Study’ as the main unit of analysis. We suspect—indeed, we will ensure—that the research findings will prove less diverse than in the piracy study, making the repetition of findings in each country potentially less interesting. However, the points of policy application for the work remain highly localized by country, as most of the important limitations and exceptions to copyright are present in national, not international law.

#### **4. Other Considerations**

The choice of countries for the core studies reflects several factors, including the value of continuity with the MPEE study and the importance of South Africa, Brazil, and India as counterweights to US dominance of international policymaking in this area. As in the MPEE report, we will also opportunistically include work on other countries as we identify researchers already working in and around these issues. This was a key feature of the MPEE project, where we were able to include shorter chapters on Mexico and Bolivia and integrate a P2P research component facilitated by partners in Hungary. Because there are important aspects of the research design and exploration that will continue through the early months of the project, we believe that it will be important to retain this margin of maneuver.

Gender considerations do not play a large a priori role in this project, though it is possible that the inquiry will reveal significant gendered dimensions to issues of access, which we will explore in more detail. This is largely uncharted territory.

Ethical considerations were a fundamental concern throughout the MPEE project and took a variety of forms, from preserving the anonymity of our sources (and more specifically, avoiding their incrimination in illegal activity), to fairly representing the project to industry sources, many of whom were unusually candid with the interviewers. These issues will almost certainly recur in the context of the new research. Systematic anonymization of sources is the gold standard here, and relatively easy to implement in the case of individuals. It is somewhat more difficult in the context of institutions, which are clearly among the key protagonists in our work which may be as easily subject to generic description. We will make every effort to preserve anonymity at this level when disclosure would implicate institutions (such as university departments or student associations) in illegal activities.

Large parts of the MPEE project involved a process of learning by doing—less with respect to general application of methods than in regard to understanding the complex interactions of groups, practices, and policies on this terrain. We expect the second phase of work described here to be significantly easier in this regard, due not only to learning from the first round but to

the reputational effects and networks built through that work. The integration of new members into the project will also be much easier on this basis.

Organization: The project replicates and improves on the MPEE model, primarily in ensuring tighter coordination of the research. The overall project will be coordinated by Joe Karaganis and support staff at the American Assembly, who will have responsibility for the final integration and write up of the work. Detailed project design will be conducted in close collaboration with the lead researchers at the partnering institutions. Country teams in India, Brazil, and South Africa will have responsibility for the localized research projects, and for contributing to the cross-cutting work as opportunities and needs dictate.

## **B. *Building a Global Policy Dialogue for a Positive Agenda***

The second component of this project seeks to promote the translation of research into public discourse and policy-making forums in support of efforts to generate a “positive agenda” for international intellectual property law norm setting. This goal will be pursued through the building of an international intellectual property “resource center” to provide dissemination vehicles for information and research, by undertaking policy mapping exercises in key countries to identify opportunities, and by supporting the translation of research into policy proposals, including through finding ways to instantiate a more permanent, recurring forum for knowledge sharing and coordination, potentially in the form of a large “Global Congress.” Each of these activities is described in turn below.

### **1. *Public Interest Intellectual Property Resource Center***

FGV and PIJIP will collaborate on the creation of a new and expanded resource center on public interest intellectual property policy. The ultimate goal of this part of the project is to build infrastructure for information sharing to help disseminate information and research to, and promote analysis by, a broader network of academic and policy communities.

The initial base of the project will be the existing IP Enforcement Network of 185 international academics and advocates that have been engaging in ACTA debates over the last year. This project will broaden the network through specific outreach to academics and academics in developing countries. And it will build the capacity and engagement of the network through several research promotion and dissemination activities including a revamped website, a new newsletter and an expanded working paper series.

#### **a) *Website & Newsletter.***

FGV and PIJIP will collaboratively build a new website on public interest intellectual property that will serve will be an umbrella for the project.

The home page of the site will feature a public blog, the core of which will be a WEEKLY NEWSLETTER produced by PIJIP and FGV rounding up top stories in the international IP enforcement / positive agenda fields. Each newsletter edition will consist of three to five short articles, each with a short paragraph annotation and related links. The blog will be open for

posting by any member of the network and will serve as the main entry point for posting material to the site.

*Research libraries.* The home page of the site will contain links to a series of public research libraries. One existing research library that will be connected to the site will be the current IP-Enforcement Database created by PIJIP (<https://sites.google.com/site/iipenforcement/>). Other libraries may include collections of legislative proposals on limitations and exceptions, safeguards against enforcement abuse, proposals in WIPO or other forums, etc. The libraries would be created by members of the network and would be available for searching by the general public.

These libraries will hopefully be of ultimate importance in building a positive agenda for WIPO. The Development Agenda empowers countries to tailor national IP laws to their development needs, but there is a general lack of knowledge about how to take advantage of flexibilities in international law and translate them into policy that would foster access to knowledge and technology. Developing countries rely heavily on WIPO for guidance, but unilaterally biased views on IP foster the understanding that higher IP protection is always in developing countries' best interest. WIPO has not successfully implemented a development-oriented technical assistance (Development Agenda, chapter A), that takes into account the priorities and special needs of developing countries. A database of pro-A2K legal material would help countries to introduce similar these points in their national laws. Tools enabling the simple and efficient comparative study of texts (e.g. different versions of ACTA, the comparison between ACTA and TRIPS etc.) will also be made available to the site's users.

*Collaboration tool.* The site will include a section for collaborative public discussions on policy proposals. The tool would be developed by FGV and have elements of the site for the discussion of the Civil Rights Framework for the Internet in Brazil (<http://culturadigital.br/marcocivil/>) and the site for the copyright reform draft bill, <http://www.cultura.gov.br/consultadireitoautoral/consulta/>. This section would be focused on specific policy proposals, and could be based on research commissioned by the project.

*Rapid response analysis.* As described above, part of the current flow of content to the IP-Enforcement Listserv will be transformed into a weekly newsletter. The other major use of the listserv over the last year has been for the sharing of rapid response analysis to news items that appear on the list. The project will continue to promote such analysis, both by contributing its own content to the list and providing the forum for others to share their analysis with the network.

## **b) Working Paper Series**

As an effort to promote scholarship and analysis by the broad network of academics and activists described above, the project will support an expansion of the IP Enforcement Working Paper Series (<http://digitalcommons.wcl.american.edu/research/>) with a call for papers on issues related to the construction of a positive agenda.

Last year's working paper series attracted 16 submissions from analysts from six continents. We will seek a similar diversity of inputs from scholars and analysts from around the world in the coming year. The final topics for the calls for papers will be determined at the March 4 project planning meeting. Examples of topics include calls for work examining "new thinking on intellectual property enforcement," for example by critiquing shifts to statutory damages in global policy. Papers may also be invited that respond to the empirical research in the first phase of the Media Piracy in Emerging Economies project and begin to use that research to suggest policy proposals.

Following the successful model implemented last year, each part of the series will include a planning workshop with a core group of academics and policy advocates in the winter, a working paper conference in June, an online working paper series publication in the fall, and a hard copy publication in the winter.

## **2. Policy Mapping studies**

The second activity that will be undertaken to promote a robust global policy dialogue will be to commission a series of short (approx 8 page) mapping studies documenting from various regions of the world. The mapping studies will survey the range of positive proposals that have been adopted or proposed in various developing countries that attempt to respond to the developmental challenges associated with the globalization of intellectual property. Initial contact will be established with organizations based in Argentina, Chile, Colombia, Peru, Angola, Egypt, Nigeria, South Africa, China and India. Some initial areas of inquiry that may be the focus of the studies include:

(1) **existing or proposed positive proposals on IP and access to knowledge**, including, e.g. safeguards from abuse of enforcement procedures, statutory limitations and exceptions from enforcement, mandatory licensing models, excessive pricing remedies, access triggers for enforcement or policy responses, working requirements (including market "redlining" prohibitions), and alternative schemes to incentivize local production and access to innovation and cultural products;

(2) **interviews with government officials** on (a) limitations and exceptions and willful exercise of discretion in IP enforcement, and (2) views on the opportunities and obstacles to a positive agenda, including positive policies they favor;

(3) **mapping regional actors and stakeholders** who are not yet part of the existing A2K network for possible inclusion in the Congress activities.

A well-rounded set of specific questions for the research will be one of the outcomes of the meeting that will take place March 4. The mapping process will have the goal of both providing research for policy dialogues and also as a measure to strengthen the network of participating entities and individuals in the network.

### 3. Dissemination into Policy Forums

The final activity in the public dialogue component of the project will be to host a series of public events, meetings and submissions designed to disseminate research and analysis to policy makers. This aspect of the project will include hosting dissemination meetings in Geneva during WIPO meetings (e.g. at the June meeting of the SCCR on limitations and exceptions). Submissions will be filed in public processes, such as in the USTR's Special 301 review (due February 15 of each year). And the apex of the year's activities will be the hosting of a plenary meeting of the network, tentatively titled a Global Congress on Informational Justice.

The Global Congress will serve as a site for the sharing of research, ideas and policy proposals similar to the function of the industry-led Global Congress Combating Piracy and Counterfeiting that was a key incubating forum for ACTA. But this Global Congress will be composed of different stakeholder communities – targeting advocates, academics, researchers and developing country officials allied with the A2K movement.

The Congress will have four elements.

**Day 1: State of knowledge on international IP and development policy.** The first day will contain two main parts. One part will present research from the project's mapping studies, from the Media Piracy in Emerging Economies project (2010) and from the new empirical research project being coordinated by the American Assembly in 2011. The second part of the day will present academic research on New Thinking on International IP Enforcement produced for the PIJIP working paper series.

**Day 2: Break-out sessions on positive proposals.** The second day will be devoted to small deliberative break-out sessions on specific topics. The topics will be generated by a steering committee based on the mapping research, the empirical research by American Assembly., the scholarship produced for the New Thinking series and in response to submissions to a public call for proposals that will be disseminated through the project's communications infrastructure. Each break out session will have a reporter and chair that will report back to the plenary the next day, including with any proposed language to include in the Congress's public platform.

**Day 3: Plenary deliberation and decision making.** The penultimate event will take place on the third day in which the entire Congress will be invited to ratify and amend proposals for inclusion in a final statement of the Congress. Proposals will be made by the chairs of the break out committee meetings as discussed above. The final document could be published for comments and endorsements for a period of time after the Congress meets.

**Day 4: Steering committee meeting.** Most delegates would depart after the second day. A smaller group would be invited to remain on the last day to act as a steering committee to deal with institutional issues such as how future Congresses should be structured and where they should take place.

The project will host a series of preparatory meetings and dissemination workshops before and after the Congress. To the maximum extent possible, these meetings will be planned to coincide with events in multilateral intellectual property policy forums, especially those occurring over the next year in WIPO.

The key meetings of WIPO that the project will attempt to build around will take place in June (SCCR meeting on limitations and exceptions in the digital environment), late September (WIPO General Assembly), and November/December (CDIP and ACE). The project will seek to plan public events and closed strategy meetings in Geneva around these periods to prepare for and roll out the products of the Congress. ICTSD will assist the hosting of meetings in Geneva, including arranging venues and managing some of the transportation and event planning logistics.

The planned meeting and event schedule follows, and is also incorporated into the more detailed project timeline attached. Both timelines include some events and meetings that may occur outside of the project period or otherwise requiring funding support that has not been secured to date.

## **IV. Results and dissemination**

### **A. *Final Report***

The primary output of the empirical research described above will be an 80,000-100,000 word report, similar to but more compact than the gigantic MPEE report, organized along the following lines:

- 1) Intro/overview sections:
  - (a) An account of the global political economy of books and access.
    - i. Relevant regulation and policy fights
    - ii. The copyright battles of the 1960s-1970s.
    - iii. The prior history of the informal library: Institutional and library photocopying practices.
    - iv. Processes of technological diffusion (computers, broadband, readers) and market growth/income issues.
    - v. Publishers in the lobbying and enforcement landscape
  - (b) History and analysis of top-level online pirate libraries – Aarg (social sciences), Gigapedia (general library), Karagarga (film), etc.
    - i. Analysis of usage patterns and user geography based on traffic data (very likely Aarg; possibly Karagarga).
    - ii. Analysis of the emergence of cloud-based curation and curatorial communities, massive personal libraries, and the transformation of the collection.
    - iii. Fate in
  - (c) Examination of existing research on book markets and piracy.

- (d) Synthesis of the disciplinary studies (below)
- (e) Synthesis of the media mapping

2) Three Primary Country Studies: BR, IN, SA; Limited comparison in the US

- (a) The local history of university-publisher battles, fair use, copying, enforcement, legal reform.
  - i. the life of the university library; financing and future plans
- (b) Political economic and pricing analysis of the publishing business
  - i. analysis of shifting business models; politics/economics of shift to open models.
- (c) Histories of access to materials in 3 fields: law, engineering, and media/comm studies.
  - i. Primary investigation to include 2-3 focus groups with students, a student survey, and interviews with faculty, librarians, and other relevant actors.
  - ii. Secondary investigation to include a breakdown of curricula from one or more core classes, including determination of pricing, faculty strategies for selection of materials (open/not open), and actual practices of access among students.
- (d) Use of those interviews and surveys to conduct a broader mapping of media practices beyond books (software and audio-visual media).
- (e) Narrower analysis of the more organized informal libraries or interesting local ecologies that are emerging in schools and departments. This will be depend on initial surveying of the terrain.
  - i. Opportunistic mobilization of other research

3) Conclusion and recommendations.

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4) Possible larger-scale phone survey component (Google as primary funder)

In addition to the web and print-on-demand publication of the report itself, we plan a variety other strategies for dissemination, derivative products, and strategies of influence. As in the MPEE work, we will make derivative versions of the new study for use in comments to the Special 301 process, the WIPO Development Agenda Process, EU consultations, and other policy windows as opportunities permit.

**B.      *Resource Building***

The second aspect of the project will create several resource building and research products. These include:

**Web-based resource center** on International Intellectual Property Law and the Public Interest.

**International IP newsletter** distributed to the IP-Enforcement listserv and on the Resource Center Blog. The project anticipates producing approximately 50 such messages over the course of a year.

**Rapid response analysis** memos circulated to the IP-Enforcement list and on the Resource Center blog. The project anticipates producing approximately 25 such messages over the course of a year (including those by partners and network members).

**Mapping study template.** This is the research template we will send our partners to guide the writing of the mapping studies. The document will have three parts, each with a number of questions and orientation, in order to provide a comparative basis among the studies. The template would be ready in a draft format to receive feedback at the Study Design Workshop and be sent to the researchers immediately thereafter.

**Public submissions** in Special 301. The project will produce or facilitate (through technical assistance) public submissions to the Special 301 process.

**Call for proposals for Global Congress (May-June):** The team will circulate a call for proposals for break-out sessions at the Global Congress.

**Working paper series.** PIJIP will publish new papers on enforcement policy and the positive agenda on its international intellectual property paper series.

### **C. *Convenings***

The project will host several international convenings, including:

**Meeting of Global Congress (August).** In August 2011, the project will host a global meeting of international intellectual property advocates and academics geared toward the creation of a platform statement.

**Geneva meetings.** The project will host at least one meeting in Geneva to disseminate research to WIPO delegates and international NGOs.

#### D. *The Research Network*

The global policy dialogue and its supporting resource center is designed as a research dissemination strategy—including but not limited to dissemination of the empirical studies conducted through this grant. In this first year, it is particularly aimed to disseminate ideas to WIPO delegates and Geneva organizations and for that reason proposes a series of events to be held in Geneva.

The ultimate outcome the project hopes to influence is the development and adoption of public interest policies. This is the first year of what we envision as a multi-year, multi-partner research and dissemination project. It begins to set in place research infrastructure connected to communication and collaboration forums to support the formulation of positive policy proposals. It intends to impact policy development and implementation by norm setting bodies; but it will do so indirectly (through information production and dissemination) and therefore must have a reasonable time horizon. As an example, the Global Congress Combating Piracy and Counterfeiting convened first in 2003 and endorsed a proposal for ACTA in 2004 that was ultimately drafted in 2010.

It is expected that the project will have numerous shorter term outcomes that reflect its influence in global policy debates. For example, we expect that the project will produce submissions in the USTR Special 301 process, particularly in February 2012, that will impact the report and force the U.S. administration to respond to its arguments. We expect that the research and dissemination activities will help document policy options that are better tailored to developing country realities and needs than the current global dominant discourse, and that key countries, including India, Brazil and South Africa, will begin using these proposals to improve flexibility in bilateral agreements and to shape agendas in multilateral forums. In later stages of the project, it is expected that some key countries, including Brazil, will introduce proposals to WIPO that reflect the research and policy proposals developed through the project.

## V. Project Schedules

| Date         | Activity                               | Participants                                 | Description   |
|--------------|--|--|---|
| All periods  | Communications                         |  | <p><b><u>Rapid response analysis</u></b></p> <ul style="list-style-type: none"> <li>-Monitor IP enforcement news in Congress, USTR and internationally, particularly as related to TPP, Special 301, ACTA, free trade agreements, and WIPO norm setting.</li> <li>-Produce weekly newsletter to blog and IP-Enforcement List</li> <li>-Produce approximately (per year): <ul style="list-style-type: none"> <li>• 50 short analytical blogs or emails</li> <li>• 10 press advisories or briefings</li> </ul> </li> <li>-Attend meetings, speaking engagements and provide technical assistance to decision makers.</li> </ul> |
| Jan 12, 2011 | Project planning meeting               | PIJIP, Am. Assembly, FGV                     | <p>Finalize project timeline; brainstorm on project steering committee representatives.</p> <p>Begin to elaborate the research model for Shadow Libraries and Mapping Media Access components</p>   |
| Jan-Feb      | Web Development                        | PIJIP, FGV                                   | <p>Construct basic structure for Congress web page.</p> <p><a href="http://www.infojustice.org">www.infojustice.org</a></p>   |
| Feb 2-3      | Global Congress on Anti-Counterfeiting | One PIJIP attendee (as press representative) | <p>Mike Palmedo attended and published blogs on meetings to infojustice.org</p>   |
| Feb 15       | 301 Submissions Due                    | NA   | <p>Written submissions due to USTR. Library of public interest submissions hosted at <a href="http://infojustice.org/special-301/2011-special301comments">http://infojustice.org/special-301/2011-special301comments</a></p>  |

|                   |                 |   |   |  |
|-------------------|-----------------|---|---|--|
| Research Planning | Mar 4           | Study Design Workshop                                     | PIJIP, American Assembly, FGV<br>U.S. & International NGOs<br>Academic partners<br>Experts<br>Tech Industry | <p><u>Objectives:</u> Obtain broader input on project planning and timeline with potential partners and advisors.</p> <p><u>DAY 1</u></p> <p>(1) <b>Media access survey:</b> Workshop proposed questions and study design for household media access surveys;</p> <p>(2) <b>Shadow libraries:</b> workshop study design to further elaborate quantitative and qualitative components of the research model.</p> <p><u>DAY 2</u></p> <p>(3) <b>Positive agenda mapping study:</b> Workshop proposed RFP for reports on regional positive proposals.</p> <p>(4) <b>Positive agenda forums:</b> Discuss potential policy forums for research dissemination, e.g. WIPO meetings (SCCR, ACE, General Assembly), south-south agreements, blue sky scenarios.</p> |
|                   | March           | Web design  | FGV, PIJIP  | Build out web page libraries and collaborative forum   |
|                   | (Start of IDRC) |   |   |  |
|                   | March           | Call for papers   | PIJIP   | Issue call for papers on New Thinking on IP enforcement<br>Possible window for Google-funded US media access consumer survey   |
|                   | March 2         | Special 301 Hearing                                       | FGV<br>PIJIP<br>International presentations (travel or call in)   | <b>301 Testimony:</b> Present testimony in Special 301 notice and comment hearing.   |
|                   | Jun 13-14       | New Thinking on IP Enforcement, Works in Progress Meeting | Academic partners (some self funded travel)<br>Mapping study researchers                                    | Experts and authors meeting to discuss working papers.<br><b>Washington D.C. or Geneva</b><br><b>Timing note:</b> Ideally this would be in Geneva before the SCCR meeting to permit self funded extensions to meet with WIPO   |
| Jun 15-24         | WIPO SCCR       | FGV, PIJIP (portion)                                      | WIPO to discuss limitations and exceptions to copyright in the  |  |

|          |                     |   |   |  |
|----------|---------------------|---|---|--|
| Research | Aug 24-28           | Global Congress on Int'l IP and the Public Interest | 25-30 Academics<br>30-40 NGOs<br><br>U.S., EU, Latin America (Brazil, Argentina, Columbia, Chile), Asia (Korea, Malaysia, China, Indonesia), Russia, Africa (South Africa, Kenya, Uganda) | digital environment, including for persons with disabilities<br><br><u>Day 1: State of knowledge</u> on global media (pricing, media access strategies, ACTA implantation, etc.);<br><br><u>Day 2: Break out sessions</u> on positive proposals for expanding media access;<br><br><u>Day 3: Plenary deliberation</u> to adopt plan for way forward and draft joint statement;<br><br><u>Day 4:</u> (Steering committee only) meeting to plan future activities. |
|          | Sept 1              | Working paper series                                | PIJIP   | Begin publishing online working paper series on New Thinking on IP enforcement & Policy mapping studies  |
|          | Sep 28-29<br>Wed-Th | WIPO General Assembly (Sept. 26-Oct 5)              | FGV (for entire WIPO meeting);<br><br>PIJIP/AA + international NGOs (e.g. KEI, TWN, South Centre, etc.)   | <b>Dissemination meeting:</b> 1-day meeting on Global Conference declaration;<br><br><b>Visits to country delegations/</b> attend WIPO meetings.   |
|          | Nov/Dec             | WIPO Advisory Meeting on Enforcement                | PIJIP, FGV, (AA?)   | <b>Possible activities:</b><br><br><b>Attend and report</b> on WIPO ACE meeting<br><b>Hold satellite meetings</b> with country representatives and civil society   |
|          | Jan 2012            | End of year planning meeting                        | PIJIP, FGV, AA  | Final meeting of the project to plan further stages and finalize products. Mid-stream meeting for the empirical research. AA covers research team travel.  |
|          | July 2012           | Complete primary research                           | PIJIP, FGV, AA, SA, ALF   | Main research complete   |
|          | Write up            | July-Dec 2012                                       | Write up  | PIJIP, FGV, AA, SA, ALF  |

|               |                                      |                              |                         |                               |
|---------------|--------------------------------------|------------------------------|-------------------------|-------------------------------|
| Production    | Jan-<br>March<br>2013                | Report Production            | AA                      | AA has primary responsibility |
| Dissemination | End of grant<br>March -<br>June 2013 | Press Outreach, Follow<br>up | PIJIP, FGV, AA, SA, ALF | Talks, press accounts         |

## VI. Global Congress Participant Map

### Global Congress 2011



