

## Institutional analysis of Public Policies against piracy

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### **Abstract**

This paper discusses the case when an organizational field is challenged by the institutionalization of practices by illegal competitors such as pirates. It aims to assess the effectiveness of public policies meant to counter these unfair practices, based on an enhanced Institutional model. The model is conceived based on two parts, both meant to assault the pirate challenge, where one is turned to deinstitutionalize its operational practices, while the other aims at its legitimization support. We have conducted a case study with interviews with executives of different governmental agencies that have established their perception of the situation and the actions undertaken in response. The analysis was performed based on a model prepared to respond to exogenous challenges dropping the isomorphic-passive institutional perspective. This analysis shows that activities have repeated much of the usual procedures the state had already undertaken previously, such as repression and judicial suits, which by themselves are incapable of performing the task of effacing or dismantling piracy. This in a way confirms organizations' tendency to repeat confirmed practices in most situations. The paper also shows that society is prepared to absorb paradoxical practices living side by side.

### **Introduction**

This paper discusses the case when an organizational field is challenged by the institutionalization of illicit practices by pirates that compete against the products manufactured by firms in the field.

Piracy resembles regular competition, but this activity breaks the law by copying established brands and products without authorization, selling them as functional equivalents to the original ones. It has grown fast and steadily in the last years in Brazil without meeting much resistance either on the part of companies harmed by it or by the government. A great number of products are copied, imitated, falsified and brought to the market nowadays. From medicines, cleaning products, apparel and clothing, cigarettes and soft drinks, cds, dvds, software, books, eye glasses, automotive parts, etc. The majority of these products is brought from abroad, mainly China. But, there is also some inland production, mainly of products that carry less technology to replicate.

The specific characteristics of pirate competition and its institutionalization challenges the organizational field composed by the government, the legal companies, industry associations, and others. Organizational fields become centers of debates in which competing interests negotiate over issue interpretation. In this specific situation the organizational field revolves around the legal versus illegal competition issue, where studies, propositions, and decisions are made between the diverse actors from government and society to fight pirates.

Institutionalism focuses primarily stability instead of change. It stresses in fact the tendency of organizations to repeat established routines. In this case, change has to be brought upon external challengers, which means fighting the institutionalization of illegal practices on the market, because, here, it is clearly not enough to solely compete against firms that adopt this kind of practice. We propose a model that, apart from sticking with accepted and successful practices, tries from a certain point onwards to break away with institutionalized practices to move on to try to dismantle the institutions established by undesired external activities, such as pirate competition.

The actors taking part in a specific field are interested in avoiding such threats and will each try to enforce strategies to combat them. In this study we concentrate on the role assumed by the government, supposed to act against illicit practices. However, we follow the theory's indications to consider at the same time all other actors taking part in the situation.

We have used a qualitative method to explore the effectiveness of public policies meant to counter these unfair practices, and especially to deinstitutionalize them. This involves discriminating government's policies meant to counter pirates' initiatives and procedures. These actions were obtained through interviews with executives of different governmental agencies, involved with the problem, who have established their perception of the situation and the actions undertaken in response to how pirates act; which reinforce and which weaken piracy's functioning.

The propositions taken from Oliver (1991) that the attack strategy is better suited to analyze the policies adopted by the government show that the derived activities have repeated much of the usual procedures the state had already undertaken previously, such as repression and judicial suits, which by themselves are incapable of performing the task of effacing piracy. This in a way confirms the tendency perceived by institutional authors that organizations tend to repeat confirmed practices.

In the final section, the paper examines the implications of this tendency for theory and practice, together with the conditions that allow deinstitutionalization to occur, specifically of external practices.

### **Theoretical Perspective**

In this part we draw contributions from Institutionalism to analyze and explain a situation when an external industry threatens a field under study. We explore the conditions and capacity to pursue its deinstitutionalization. This situation is exemplified with the case of piracy that defies the quality and content of public policies designed against it.

The organizational field concept allows the simultaneous treatment of the diverse actors that participate in a specific problem, such as the public, firms, industry associations, government agencies, media, etc. Organizational fields are considered to form around issues, rather than around a collection of organizations in a same market or around a central technology (HOFFMAN, 1999) and become the centers of debates in which competing interests negotiate over issue interpretation. Then, it is here that the different actors debate and negotiate how to act, which measures to perform against pirates.

Institutionalism believes organizations tend chiefly to repeat accepted practices, like those by firms in the same industry. However, each of the different areas of government would have difficulty in doing that, because they would have difficulty in repeating the practices of other governmental organizations that are of different kinds in relation to one another, like between the executive and the judiciary. The isomorphic tendency in this case is related to repeating previous practices, especially those that have met at least some degree of success (DIMAGGIO and POWELL, 1991). This way, while government tends to repeat its previous practices, it suffers the pressure from the other actors to do what they consider more relevant in this case. Different authors have recognized that, and though pressures for conformity and isomorphism are high, there are also conditions in which institutionalized practices are put to question (OLIVER, 1992).

Product piracy constitutes an environmental pressure on organizations which can provoke changes in the way they operate, bringing about change or deinstitutionalization of current practices inside those organizations and their fields, because of the growing challenges represented by these actors on present performance and future possibilities. External actors can episodically destabilize the reconfirmation of institutionalized practices by opposing usual practices (FLIGSTEIN, 1991; POWELL, 1991), which does not mean that the organizations suffering from it respond looking for the deinstitutionalization of the source of these pressures.

However, the main concern here is exactly this issue. It is connected to trying to avoid the establishment of an undesirable external institution to the organizational field, as is the case of

piracy, or at least, develop means to fight and reduce its influence. Three kinds of actors mainly can become more involved in this endeavor – firms that have their products copied, their industry's associations, and the state, because the latter is supposed to regulate unfair practices in society and on the market.

Authors that have broken away from the traditional perspective in Institutionalism, about organizations' tendency to repeat and copy accepted practices, and have more specifically directed their attention towards studying the influences of the external institutional environment, have proposed the concept of institutional strategy (LAWRENCE, 1999). They assume the point of view of organizations and propose actions in order to achieve a better stance in relation to other actors, generally by acting to alter previously regulated matters. However, this does not apply to the case under study, as pirates don't care for regulation.

Oliver (1991) has expressed that organizations' responses to institutional pressures could not be assumed to be invariably passive, and suggested that they could assume five types of strategies, in an increasingly active resistance scale: acquiescence, compromise, avoidance, defiance, and manipulation. Depending on the factors constituting the institutional pressures in a specific case there is a tendency for adopting one of the previous strategies. These factors include the cause of the pressures; who is exerting them; their content; how they are exerted; and where are they exerted.

Specifically against piracy, *acquiescence* and *compromise* strategies are ruled out. The *avoidance* strategy is equally ruled out, once it is defined as the organizational attempt to preclude the necessity of conformity to institutions, which is not the case against pirates since they themselves are the first not to conform at all.

The *defiance* strategy presupposes three options: the tactics of "dismissing" or ignoring institutional rules or values, that cannot also be considered, as is the case of the "challenge" tactics, a "more active departure from rules, norms, or expectations than dismissal" (Oliver, 1991:12). Escaping the rules, against pirates, does not help much since it would mean for the government to drop legality and for firms to compete under the practices of the illegal market.

"Attack", on the other hand, is a tactic consistent with the present case because it considers "assaulting, belittling, or denouncing" external constituents that express undesired values: "...when these values and expectations are particularly negative and discrediting, or when the organization believes that its rights, privileges, or autonomy are in serious jeopardy." (OLIVER, 1991:15)

The last and supposedly more active strategy, *manipulation*, can not be taken in consideration against piracy, because it presupposes the purposeful and opportunistic attempt to co-opt, influence, or control these illicit actors, which is assumedly not an option against counterfeiters and not a practice government and firms want to engage.

Given that the *defiance-attack* strategy seems to be the only viable to deal with this matter, Oliver's hypothesis when this strategy has a higher probability of adoption should be evaluated: When there are multiple constituent demands, including the state, interest groups, the general public, because of lack of coherence among them. It is true that as this condition describes, multiple constituents tend to affect each other because they do not have similar and coherent objectives and values among themselves.

Oliver (1991) talks about assaulting the sources of institutional pressure, but it is not clear what kind of actions do effectively bring about deinstitutionalization and how to identify them. Assaulting actions may not dismantle an established practice if this practice is capable of reorganizing itself with remaining resources and with the legitimizing support that accepts its functioning. Such is the case when police apprehends merchandise and makes arrests. If pirates are capable of re-supplying again and hiring new workers, this kind of action will not suffice.

If piracy were to be considered a competition practice as any other, then it should according to Scott (2001) conform to normative, regulatory, and cultural-cognitive orientations in a field. However, piracy is in principle contested by society's and market's values and norms. It is not fair to copy others' ideas and products without paying for it. As it happens, however, not all of society and the market are against it. These counterfeit products meet an ever-increasing demand on the part of consumers and receive support from several interested parties. It is certainly not in line with existing laws, it however enjoys a limited cultural-cognitive legitimacy, being understood and recognized by many and perceived as wrong by others. Thus, one has to conclude that different perspectives coexist in society, legitimating the functioning of both markets, and although not granting the pirate one a legal status, maintaining the possibility of judicial action against its actors.

When it is possible to say that a practice is contested by the legalistic segment of the society and economy, while another one supports it, this means that one has to consider strategies' recommendations different from previous analyses. Acceptance of Oliver's attack strategy to deal with piracy, "assaulting the sources of institutional pressure" (OLIVER, 1991:152), will mean to work to delegitimize it in those segments that support it at present, while, at the same time, proceeding with actions to make impracticable its functioning.

Finally, if we accept the notion that organizations do take the initiative against environmental pressures, altering previously settled practices, instead of mimicking or repeating previous behavior, then it must be considered at what point and/or timing this bending in favor of new perspectives takes place. The theory understands that prioritarily an organization does not innovate if circumstances are normal. There must be a certain instance when actors will see the urge or the chance to introduce a new understanding on the situations the organization is involved with.

As new domains, areas ill-defined in the past and unexpected pressures inside and outside the organization show up because of their independent dynamic, different organizational actors can propose new approaches to deal with the situations. "...symbolic order is never perfectly shared...Thus conversation is not automatically sustained but is a practical organizational accomplishment. People enter into conversation with an attitude of trust and a willingness to overlook a great deal, doing "accommodative work" to "normalize" interactions that appear to be going awry. Rules and norms possess large penumbral areas; an "et cetera clause" implicit in every rule leaves room for negotiation and innovation." (DIMAGGIO, 1991:20).

### **Research Method: Policies against Piracy**

Our objective in this research has been to investigate public policies effectiveness potential against pirate activities. In this sense we have conducted a case study, due to the presence of a large number of variables and the need to understand how they interacted (YIN, 2001:32). The research followed a structured script as orientation for the in-depth interviews that were conducted with government officials responsible for the planning and implementation of their agencies actions against counterfeiting (see Table 1). Interviews were recorded, except for that of the port of Santos, and have lasted more than one and half hour each.

Public policies and governmental action against piracy are evaluated in this article based on interviews with officials from a range of the main agencies and departments involved with the problem: 1 - the CNCP, National Council against Piracy [Conselho Nacional de Combate à Pirataria], under the Justice ministry, which is responsible for the development of global orientations to the various other agencies and departments nationally. The agency's first secretary (2005-2006) was interviewed; 2 - the federal and state internal revenue departments that fight tax evasion and smuggling, and are responsible for the auditing and repression at the

borders and inside the state of São Paulo. Two officials of the port of Santos customs have been interviewed. Also, a director of the DEAT, Tax Imposition Department [Departamento de Atuação Tributária], subordinate to the São Paulo Secretary for Economic Affairs. The researchers also took part in a training event for agents of DIREP, Repression Agency of the Federal Internal Revenue [Receita Federal] on how to recognize pirate products, especially of dolls and other toys; 3 – the Federal Police bureau in São Paulo, where the chief of the operations group against state property and rights crimes [núcleo de operações da delegacia de repressão a crimes fazendários] responded the questions; 4 – two journalists from the Folha de São Paulo and another from the Estado de São Paulo newspapers, specialized in subjects related to piracy and police activities in this domain have taken part in the research; 5 – besides these interviews, the report prepared by the Congressional committee on Piracy [CPI da Pirataria] was also taken in account, because it contains the statements of several individuals in governmental positions directly involved with the fight against piracy in the country (CPI DA PIRATARIA, 2004).

Other government agencies and officials in several departments were equally contacted in order to obtain the amplest picture from the public administration point of view. Unfortunately, several of these agencies did not respond in spite of several trials to contact them. Such are the cases of the Federal Prosecutors Office [Ministério Público]; DEIC, the specialized department of the Police in São Paulo [Polícia Civil]; the Secretary of Justice of the São Paulo State; and, officials at the Justice and Economy Ministries of the federal government.

The declared public policies were classified according to technical, economic and institutional actions, as defined by institutional theory. Classification as to what is considered either technical, economic, and institutional followed the theory's indications. Institutional procedures are "concerned with the formation and transformation of institutions, fields and the rules and standards that control those structures" (LAWRENCE, 1999); technical procedures are related to obtaining products or performing states activities; and, the economic have to do with marketing and conditions to market the products: "a product or service... exchanged in a market such that organizations are rewarded for effective and efficient control of the work process" (SCOTT and MEYER, 1983: 140).

The declarations make it possible to analyze the actions' content, to draw inferences, and allows for the interpretation of results, making use of the theoretical background. The analysis strategy is based on the model's propositions (YIN, 2001:136) about the appropriate policy to conduct, according to the attack model (OLIVER, 1991). Thus, the policies declared were contrasted against pirates' activities and procedures, and also in relation to other interested actors, such as companies and industry associations, to evaluate their complementarity. The delegitimization task in the segments that support piracy, on the other hand, was judged by the content of the officials' discourses of values and beliefs expressed, and the norms and rules described.

### **Results: Interviewees' Perceptions and Inferences**

The results from the interviews offer a multiple-angled vision of the piracy problem as it is perceived and acted upon by the government, according to the respondents. It examines which practices got institutionalized by the pirate structure and, thus, which processes and structures the organizational field constituted by the interested parties in eliminating pirate production and distribution have to consider acting against, especially government departments. The interview results are presented together with the identification of values, beliefs, norms, and rules which make up the legitimizing issues in the model, together with institutional, technical, and economic actions and its resources which make up the operational issues in the model.

It should be noted, though, that the qualitative methodology employed does not allow the generalization of the results and conclusions arrived. Still, the data and inferences allow the formulation of new hypothesis to orient other researches.

#### *Piracy Causes*

▪ Several respondents have mentioned the consumption demand on the part of the population, that has apparently changed its habits of lately and started asking for brands. This has implied an increase in piracy due to consumers low income level that stimulates this consumption pattern and desire to acquire the coveted goods. The demand for brands is a policy stimulated by established companies, however when consumers evaluate that they are unable to pay the requested price or should not spend it, they tend to resort to alternative versions, among which are pirate options.

Consumers eager to acquire, otherwise unreachable goods in their buying power, are ready to support the development of such a market, if there are no big moral issues involved from their point of view, i.e., there is a common acceptance that the illicitness may be overlooked. Consequently, it is possible to understand that both the legal and the illicit goods market can coexist. Consumer surveys (ROLLI, 2006) show that the local consumer considers the high prices of the products to be a much more serious objection than the fact of consuming illicit products (GOIS, 2006). Powell (1991:198) commented that when there is a heterogeneous demand on the market and organizations have become very homogeneous, thus limiting their outputs, this demand tends to have its wishes unfulfilled, favoring the emergence of new actors.

The *values/beliefs* expressed here are consumers' taste for brands; companies' brand stimuli; consumers' willingness to relinquish buying legal products.

▪ There were also several mentions to firms' "greed", that is their unwillingness to bring prices down, which are in general positioned much higher than their illicit competitors.

It is possible to infer from this statements that some officials *believe* that firms will rather keep extraordinary earnings than experiment the possibility of increasing sales with margins decrease.

However, it is also known that legal firms find it easier to deal with contingencies that can be foreseen as to their effects on their organizations. Companies try to understand which strategy pirate producers employ. It is possible to know or imagine at least part of the pirate business logic. Guess, for instance, which products can be counterfeited and in which conditions. The product must be almost identical or very similar to the object of the copy, otherwise it wouldn't be demanded. The price must clearly be lower. Other aspects, meanwhile, are not equally foreseeable. For instance, the number of "competitors", distribution, quality, volume availability, among the main. It is also hard to foresee the behavior of other actors involved. In what measure could consumers prefer the counterfeit products, what is the willingness and capacity of the agents of the law to enforce it, which events could attract media coverage, among others.

Reacting under normal market conditions means competing on a fair range pricing, distributing to a similar point of sale and client base, competing with similar cost structures as that of other competitors and so on. All this is suddenly changed when the competition is of pirate products and usual strategy manuals will indicate instruments that do not seem fit in this case. For example, pricing seems unmanageable. The same is good for quality standards, distribution, and so forth.

Companies will only consider acting in a new pattern under very specific conditions: when there are no previous parameters or directions, as in a new market, involving new product or market concepts; or, when actors disagree as to the present status in a certain field, are two such situations. Even so, one cannot expect an actor to change radically his perception of the reality and scrap completely his memory. New solutions will build on previous

experiences and knowledge and will try to innovate in respect to the issue to be faced (DIMAGGIO and POWELL, 1991).

Meanwhile, companies also talk to each other inside their industry associations on how to organize against the illegal competition. The mobilization by the associations requesting police intervention and judicial suits against pirates is already the result of such agreements. The advantage in joining in an association on such terms has been obtaining legitimacy in relation to the authorities, besides pressure strength, and still gaining from joint efforts that respond to all companies affected, leaving the bulk of the work to specialists, and sharing at least an amount of the costs (RYNGELBLUM, 2005).

- There were mentions to the unemployment issue, whose meaning is that pirates are able to offer employment where the state does little. There were also mentions to organized crime, which suggests a powerful backing to the illegal activity, much stronger than the government is capable of handling.

These suggest the government's lack of specific *resources and capacity* to deal with the situation.

- Judges are not supposedly aware of the dangers brought about by specific counterfeit products, like medicine and toys, and in most situations penalize infractors mildly.

The judiciary lacks *cognition* of the complex picture involved.

- The congress's committee on piracy has explicitly stated that actions meant to deceive the federal revenue and intellectual property rights controls are perceived by perpetrators and by society as acts of "astuteness", who accepts piracy believing it to be a minor misbehavior.

Society, according to these statements, *legitimizes* cheating governmental controls.

- High taxation burden together with the fact that taxes are not socially legitimated; tolerance by the government of money laundering; disseminated corruption; lack of inspection by the government of the illegal activities were also pointed out as possible causes.

These can be classified as *norms/rules*, once these practices are being regularly accepted. The state is responsible for avoiding certain habits and practices of setting foot. The lack or inefficient inspection at the borders, at points of sale, and others stimulate the expansion of activities. The same is true in terms of the agility and continuity of apprehensions of illicit merchandise, criminal imputation and punishment of those involved.

The different levels of the Brazilian state (federal, state, and municipal executives, the federal and state legislatures and judiciary) often claim that there are not enough resources to fulfill these duties (ROLLI and FERNANDES, 2006a; b). It is also admitted that many officials are liable to bribery and corruption ("Police chief", 2003).

#### *Previous practices against piracy*

- Development of organized crime is recent and that is why scale piracy is also so. During the period of the military regime, the country was not interested in protecting intellectual property, with the objective of letting the indigenous companies develop themselves. Efforts to counter it used to be quite sparse until recently, during the 90s, when it was created an inter-ministerial committee during the government of president F. H. Cardoso, which did not however produce concrete results.

Interviews point to historical institutionalization of *leniency* by the state in this issue.

- It was the investigation by the Congress Committee (CPI da Pirataria) that has attracted the society's attention to the illegal product volumes that were marketed and its association with organized crime.

This committee has denounced and publicized the *damage* brought about by piracy.

- The difficulty to trace the illegal money that flowed out to foreign banks was another factor that made it hard to fight the problem. This has greatly changed after the 9/11 attacks in the USA.

### *Options for piracy to spread*

Almost every one of the respondents has presented a different understanding to what facilitates the most the spread of piracy, as follows:

- The sentencing to prison of someone is generally avoided by the Judiciary that thinks there are more serious felonies than manufacturing or selling pirate. When it happens, it results in the immediate substitution for another *laranja* or “front” and also the replacement of apprehended merchandise.

The judiciary lacks *cognition* of the complex picture. The state lacks *conditions* to detain the effectual business owner that deals with pirate commerce.

- A continual inspection of points of sale and deposits is consuming for the government because it needs to keep a small army permanently available (something like the double of illegal/informal individuals operating), where the results are in general of little interest and repercussion.

There is a government lack of specific *resources and capacity* to deal with the situation.

- Other mechanisms mentioned: the possibility of importing free of inspection most of what used to come through customs at the Paraguayan border until very recently; to “legally” import tax free through the internet; to undervalue the declaration of imported goods; need for the brand owner to denounce the imported counterfeit product in order to start verification and apprehension; random verification of containers (only 10% of everything imported); longer inspections due to tricky merchandise organization of containers, with a reduced number of the declared items up front and the rest filled with smuggled items.

In general, it is the lack of human and material *resources* that force this kind of procedures that are not able to cover a more meaningful amount of merchandise.

### *Piracy's Structuration*

Here, again, as before, the pirate capacity amounts to the *absence* of government action:

- The majority of the illegal products is imported/smuggled, but there is some internal production, mainly of clothing and shoes, which gets exported too.
- Merchandise apprehensions have revealed in many cases the presence of drugs, guns and ammunition, which show the association of this kind of crime with organized crime.

As previously commented, the state seems to lack conditions to deal thoroughly with the situation.

- Another important element is the arrival of illegal immigrants in impressive numbers, mainly chinese and corean that feed the labor market for this kind of work.
- Street vendors, *camelôs*, are in the majority of the cases unemployed individuals that will not give away their suppliers/employers and related logistic.
- Pirates and their networks exchange information but with the exception of two big names currently under arrest there is no certainty as to their hierarchical configurations, work routines, decision processes, etc.

Piracy, like formal business, also performs technical and economic tasks in order to market its products. It has to purchase supplies, manufacture, and distribute its products. It resembles traditional competition because the products are after practically the same consumers as their legal counterparts, being similar or identical copies of them. Still, they are not limited by legal restrictions, like the payment of author's dues, of patents, the payment of taxes, and so on.

The following are examples of actions performed by pirates: Technical activities - Purchase of smuggled inputs (like blank or printed CDs); homemade reproduction (CDs and software); job contracting (seamstresses); reproduction of renowned brand names (clothing), titles (CDs, software, books); pay prizes for copies of about to launch films. Economic activities - Pricing substantially lower than original; no questioning about changing an unsatisfactory product; distribution thru *camelôs*, popular malls, regular shops, etc.

Institutional activities - corruption of agents in inspection, police, judiciary; employment of 'laranjas' (fronts) - *camelôs* or salesmen (RYNGELBLUM, 2005).

These businesses, though they refute the logic of legal competition, risking closure and penalties, they are constrained by the procedures previously developed on the illicit market. This way, they have to rely on obtaining illicit support or evade inspection by authorities, which constitute institutional activities necessary to make their business viable. This is possible through corruption, but also due to the belief by different societal sectors (politicians and society) that it is a viable momentary solution for the unemployment problem ("Piracy congressional", 2004), an understanding that strengthens piracy's institutionalization. Pirates differently from traditional market competitors, suppliers, distributors are not as concerned with optimization because it is already taken for granted that there will be losses in the process due to bribery and merchandise apprehension.

#### *State's Preparedness for the Enterprise*

- There is a general shortage of resources, especially human resources to work at the borders and customs, and also in the inspection of commerce operations. Due to this reason, actions undertaken by the Revenue, the Police or Customs are limited to a few number of targets.
- The majority of what comes in the country does it "legally", through the *green channel* (customs random verification), in spite that it may not be licit in fact.
- Probably, an important volume figure comes in through the border farms, although the total figures involved are not known nor there is a narrowed estimate of it, in spite of new equipment and vehicles acquired to help this task.

Several examples of the lack of preparation and resources to act properly.

- On the other hand, the state is much better prepared to trace suspects by wiretapping telephones, examining bank accounts, and fiscal conditions of individuals and firms with judicial permission. These procedures however do not avoid the access of the illegal products to the market and take up a long time to do.

#### *Public Administration's Involvement*

- The agencies and departments involved more directly in combating piracy are limited to the Federal Police, the Federal Highway Police, the Federal Revenue, the S. Paulo state's Economics Office, the Central Bank, and several of their departments.
- The actions performed are not frequent, as these organizations have several other duties to attend, which are motivated in many cases by denunciations by firms, associations, or the media. There has been the creation of a few specialized police offices against piracy in the last years.
- Combined action between the agencies is also rare, however it has been implemented a few times as a result of a new mentality of integrating forces and information. Some firms harmed by counterfeiting have at the same time carried independent investigations and forwarded the government with data and training.

Lack of conditions is revealed in these cases.

#### *Anti-piracy legislation and the Judiciary's performance capacity*

- The Intellectual Property law was assessed as one of the most modern in the world, containing the updated notions approved by the WTO, expressed in the TRIPS agreement.
- Imprisonment period imposed on infractors has been convincingly increased, at least for intellectual right crimes, which prevents offenders of avoiding going to prison, because below a period of two years, judges generally concede other forms of penalization.
- The biggest problem seems to be the total period of judicial proceedings: it can take months, and even years, since a petition is presented to the Judiciary, followed by a judicial order for merchandise apprehension, expert inspection, appeals, and interpretations. There were citations of release of indicted individuals because of procedure mistakes on the part of

prosecutors. In another example, the Congress Committee on Piracy (CPI) regretted the difficulty in obtaining approvals for search and apprehension warrants on the part of some judges.

- Complementarily, piracy is perceived by judges as an inoffensive deed, not knowing that medicines, replacement parts, toys, and other products liable of counterfeiting can be very dangerous for consumption. This is besides the links of the activity with organized crime.
- The state of São Paulo has succeeded in passing a law, at the beginning 2006, that cancels the registration of stores that are caught selling pirate products. This measure deprives businessmen of the possibility of opening up new firms. State government officials are hopeful about the efficacy of this measure.

Biggest problem is not any lack of legislation but its implementation.

#### *Preparedness by the Anti-Piracy Plan*

- The plan's intention is to make it more expensive for pirates to sell their products and, thus, lessen the price differences between originals and the copies. This is planned to be achieved basically by adopting repressive measures.

Some very good results have already been noticed in different industries with impressive reductions of the total volume of counterfeit products and, also, the main big names in the illicit business have been arrested. On the other hand, this cannot be considered very effective unless the state had the conditions for *continued* operation.

- The main economic measure of the plan consists in putting pressure on firms to reduce their prices and to motivate them to launch popular products in order to compete more closely with pirates; however it has not been successful so far.

This is something out of the reach of governmental action, something it can only *advise*.

- Educational measures in the plan are directed to consumers and expected to produce results in the long run. In an example mentioned from the USA, the private sector invested US\$30 million as against US\$1 million by the government in an educational campaign, while in Brazil firms are incapable of coming to an agreement on a R\$10,000 (US\$5,000 approx.) campaign.

Statements suggest industry's little valuing of such an effort.

- All activities planned to be executed outside the federal executive's scope, especially in the state and municipal levels, experience a political negotiation and cannot be expected to be realized as planned. Not one of the departments/agencies interviewed had up to that moment been contacted as to their duties in the Plan (almost a year after it had been approved).

Lack of *involvement* by important sections of the state.

#### *Suggestions on how to perfect the Plan*

- No new proposals were suggested, but certain actions were stressed, for instance an effective participation by the states and municipalities; and, lowering the price of original products.

#### *Legitimacy Issues*

- A feeling that can be read between the lines and in some cases is expressed informally: "piracy is a problem to half-dozen companies that want us (government officers) to work as their employees" and, "moreover, these companies keep sending money to their headquarters (in spite their complaints)".

Suggesting disbelief in regard to complaints about piracy and lack of motivation to act.

- In reference to the unemployment question, it is possible to identify two distinct positions: one that suggests, shyly, that the pirate employment individuals serves to lessen this kind of crisis, while another is offended by the appropriation of an immoral practice instead of facing unemployment.

There is no agreement on how to behave in this issue.

▪ Apart from the previous CNCP's, the Council subordinate to the Justice ministry, secretary view the Plan that it developed is "only a well intentioned set of orientations, like parties' programs".

Meaning that no one pays attention to it and that it won't probably get implemented.

### **Discussion : Chances of Success by the Public Policies designed against Piracy**

The analysis about the chances of success of the public policies declared by the respondents is done here in two steps: search of the delegitimization efforts against piracy's acceptance by certain segments in society present in the officials' discourses, such as values and beliefs expressed, and norms and rules revealed by them; next, it looked for technical, economic, and institutional actions described, to evaluate in what measure pirates actions are countered by the government's.

#### *Delegitimization efforts*

We contrast here the values and norms perceived by officers that play different roles in the pirate activity and what public policies have been devised against them.

Interviewees perceive consumers' increased wish for brands that is enhanced by firms' stimuli and also their willingness to relinquish legal brands for cheaper pirate products, without great conscience inhibitions. At the same time, government officers believe that firms are unhelpful in the effort to fight their illicit imitators, once they are unwilling to near prices to compete more closely. Some argue that companies think the government has to do the whole job against pirates, with which they do not agree.

The values and beliefs expressed by the respondents also show a clash between the consumers and companies' behavior, compared to how officials in government think they should effectively behave: consumers' taste for renowned brands and consumers' willingness to acquire pirate versions in order to be able to own a brand product is seen as a "weakness"; "excessive" publicity; "greed" by companies; and the Judiciary which is "too soft" on pirates all these help confirm piracy's institutionalization.

These officers perceive, although not unanimously, that piracy plays an important role in providing jobs that are not created by public policies. On the other hand, there are strong indications that a great part of these illegal activities are linked with a much more dangerous one, that of organized crime.

Another indication of society's values, which act to institutionalize counterfeiting, is the conclusion, by the congressional committee, that cheating government by not paying taxes is acceptable.

From what was reported by the declarations, the main activities developed by the government have been repressive and punitive. Policies against the legitimization of piracy have included the development of educational plans to elicit awareness among students and also among officials, like judges, involved in the fight against piracy. This constitutes evidently a long range goal, once it does not produce immediate effects. Also, the fact that the private sector does not contribute to enhance the effort, nor have the local governments joined in the campaign, does not help in the final outcome.

#### *Technical, Economic, and Institutional Policies and Actions*

Respondents have clearly pointed out several weaknesses by the government proper, generally about other agencies and departments than the respondent's own, and other actors in this endeavor. As already noted above, pirate capacity corresponds to an equivalent absence of government action and resources. On the hand, the answer to the question about pirate structuration has never touched functions, processes, channels, participant figures and other information, probably because information is scattered and conditions change dynamically.

Government's involvement is deemed insufficient mainly because of lack of resources, generally human. There is a complaint mood in the statements here. The Judiciary, in special, is seen by the executive as slowing and hindering all the processes.

It is possible to sum up these declarations as explanations for the insufficient results, recognized by the own agents, despite a couple of interesting innovations. And, here and there, it is also possible to perceive an unwillingness to do more, because of some of the values and beliefs pointed out against foreign companies, which constitute a significant part of the harmed parties.

Misbehavior on the part of sectors of the government reinforce this grim perspective. Many operational procedures at various departments were criticized for not being able to protect against the dangers incurred by the country. And, institutional efforts to change the current picture do not seem strong. In fact, only minor improvements seem to have passed so far.

It is known that the inter-ministerial committee that was assigned by the federal government in the 90s did not produce convincing results; the Congress committee (CPI) came up with interesting information and suggestions on a few measures, among them the creation of a specialized federal agency, which was finally done; the tracing of money flow, the sentencing and imprisoning, the tracing of suspects, the creation of specialized police offices, the sporadic collaboration among federal departments and with firms are actions that show positive returns but have not succeeded in effectively countering pirate actions like smuggling, homemade reproduction and manufacturing, distributing and selling on the streets; intellectual property and registry cancellation laws are examples of improvements, which have taken a long time to get approved; other actions mentioned have revealed to be operational problems, which should be corrected in order to obtain better results. This is the case, for example, of insufficient inspection or judiciary mistakes.

Finally, the picture is more grim than bright, with deficiencies being perceived within the government's own ranks procedures, but also because of consumers and firms. At the same time, the evaluation of actions against pirates does not point a consistent set that could effectively counter the present situation.

How does then an illicit market get established when there are strict laws against it? Piracy activities have become institutionalized because importing, supplying, producing, distributing, selling, exchanging counterfeit products have been operating unchecked, with volumes growing higher year after year.

Although it is considered illegal and infringes the laws and values of the legal market, it has been able not only to develop its procedures and structures, but to continue operating for a long period now, which suggests that opposing organizational fields can be more or less able to resist the institutionalization of external threats.

The establishment of an institution cannot be considered an instantaneous creation (BERGER and LUCKMAN, 1967). Institutionalization is not automatic, but it is constituted and reconfirmed in the course of everyday interaction when intersubjectivity between actors is able to establish some sort of symbolic understanding, even if never perfectly shared and understood (DIMAGGIO and POWELL, 1991).

Accepted practices may emerge inside a contained group that perceives and accepts meanings in relation to such activities, and may remain restricted inside this group for long periods. These can later on expand, little by little, into the rest of society, depending on its progressive acceptance by other sectors. This has been the case of the introduction of the bills of exchange in Venice, Pisa, Florence and other towns in the 14<sup>th</sup> and 15<sup>th</sup> century, which has been accepted and spread all over the world (WEATHERFORD, 1997:78). Tolbert and Zucker (1983) reported on civil service reforms that were initially implemented based on

rational self-interest logic, and which were later spread through a set of municipal governments directives.

At the same time, a society may absorb seemingly paradoxical practices because of the divergent interests and points of view of its members. Polanyi (1944:56) tells about the possibility of different economic principles functioning at the same time in one given society: "In the same manner in which either reciprocity, redistribution, or householding may occur in a society without being prevalent in it, the principle of barter also may take a subordinate place in a society in which other principles are in the ascendant." In a market economy, with more reason, actors will prioritize economic relations and gain at the expense of other kinds of relations in society, which tends to incite them to look for all possible means of achieving it. Thus, it makes economic sense to look for gains and profit even in the illegal market if results are paying, which implicitly means existing demand.

### **Conclusion**

This paper has examined why piracy, although illegal, is an activity that is clearly increasing its penetration of the market. Our basic analysis turns to assess how has the government in its different branches performed to hinder this type of practice. To do so, we have turned to Institutionalism because of its capacity in integrating actors from the economy together with other actors that can play a role in a picture of a different order than the economic. This is the case here where, besides economic organizations, different other organizations, be them governmental agencies, industry associations, media, and others play a part that is not always of an economic rationality.

However, our contention is that the theory still has not paid sufficient attention to challenges originating outside an organizational field, which is precisely the case of piracy. This way, we have examined several institutional authors to stress that although that theory's basic tenets relates to the idea that organizations tend to repeat accepted practices of their own and of others, there are also situations that elicit the need of change or the deinstitutionalization of accepted previous practices. We observed, nonetheless, that most of the models occupy themselves with trying to impose or bring changes to actors inside the organizational field, whereas the need here is to deinstitutionalize the accepted practices of the exogenous challenger.

Based on the examination of Oliver's proposal of strategies to respond to institutional pressures, we were able to encounter a condition that matches that of pirates selling their products on the market. This consists in the attack tactic that is recommended against external constituents, that express undesired values, by assaulting, belittling, or denouncing them. We have contributed enhancing the model to make it capable of reacting to a situation of this type and have thus combined the recommendation for assaulting the exogenous challengers with the employment of both operational (technical, economic, and institutional) and delegitimizing actions to disrupt them.

In order to analyze and assess government policies and actions against piracy we have contrasted pirate actions, structure, resources, and legitimizing support in its favor against those by the government and their associates in this specific endeavor, as they had been reported in the interviews with officials.

The examination has shown an unsatisfactory situation when we consider either the different kinds of actions attempted, or when we assess the values and norms that orient them. Public policies meant to deligitimize support for piracy are of long range reach, while present policies focus repression and punitive measures, which repeats traditional practice. The state does not have a unified public policy in this domain and acts in different stages and timing, according to the knowledge, resources, decisions of its different levels, powers, departments, and agencies, thus tending to react more slowly, less consciously and discerningly than

counterfeiters. At the same time, associated parties like firms and industry associations do not contribute effectively to the effort, leaving the bulk of the action to the government.

The conclusions about the present situation, though not bright, still show the different moves and attempts being made by the different actors involved with fighting piracy and their conflicts. It underlines the basic tenet of Institutionalism about isomorphic attitudes, but also that new tentatives are being tried and it gives us hope that in time they will prevail over the older practices.

This study could gain in substance if more areas/branches of government involved with piracy could be interviewed. This includes the federal, state, and municipal levels, and also the executive, legislative, and judiciary. The access difficulty to several actors obviously leaves out certain topics that can enrich the discussion. Another possibility of enhancing the knowledge about illegal activities is developing studies more focused on specific industries or products.

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Table 1 - Model's concepts set and corresponding issues

<b>Model's Content</b>	<b>Issues</b>	<b>Interview items</b>
Legitimation: socio-cultural values and beliefs; norms and rules	Piracy causes Piracy's structuration Options for piracy to spread Legitimacy issues	Explanation of the piracy phenomenon Mechanisms that allow the functioning of piracy  Reactions to other actors involvement Inclination for repressive actions; Other relevant actions
Technical, Economic, and Institutional Actions: designed by the actors	State's present preparedness Anti-piracy legislation and the Judiciary's performance capacity Public Administration's involvement Previous practices against piracy Preparedness by the Anti-Piracy Plan Suggestions to perfect the Plan	Consumer's awareness of campaigns Firms/associations participation in the effort against piracy; International agencies/ media Integration by different departments and agencies Different governmental levels involvement Measures against piracy in the past Actions implemented so far and their results Priority perceived by agency in relation to allocated tasks Perception about the success of Plan against Piracy Proposal to better the fight against piracy