

**Exploring the formal and informal distribution mechanisms  
for Colombian documentary films**

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Academically, this work is dedicated to those leaders who work on different organizations and who -while their governments are concerned on how to measure and increase the GDP of their countries- are focused on creating programs, think tanks, centers, movements and experiments that can contribute to the growth of their people, to their personal and professional fulfillment, their creativity, their knowledge, their talents and skills that can support the construction of a society with less inequality and with happier, more empathetic people.

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## Table of Contents

<b>Acknowledgements</b>	VI
<b>Abstract</b>	X
<b>Introduction</b>	1
Definition of terms	7
Statement of the problem	9
Significance of the study	17
Research questions	20
Research objectives	21
Methodology and methods	22
Overview of the chapters	26
<b>Chapter One</b>	
<b>Theoretical Framework</b>	34
1.1 Literature Review	34
1.1.1 The formal market versus the informal market	34
1.1.2 The relationship between informality and documentary film as social activism	39
1.1.3 The film distribution platforms of formal and informal markets	48
1.2 Theoretical framework	63
1.3 Background and context	67
1.3.1 The film distribution in non-traditional platforms in Colombia	80
<b>Chapter Two</b>	
<b>The structure of the formal film markets in Colombia</b>	91
2.1 Overview of the film industry in Colombia	91
2.1.1 Consejo Nacional de las Artes y la Cultura en Cinematografía (National Council of Arts and Culture in Cinematography)	89
2.1.2 Proimágenes Colombia, Ministerio de Cultura (Proimágenes Colombia, Ministry of Culture)	90
2.1.3 Dirección de Cinematografía, Ministerio de Cultura (Direction of Cinematography, Ministry of Culture)	91
2.1.4 Fondo Para el Desarrollo Cinematográfico -	

Ministerio de Cultura (Film Development Fund, Ministry of Culture)	92
2.2 The cultural and commercial duality of the film product	95
2.3 The film distribution chain in Colombia	98
2.3.1 The stage of film production	98
2.3.2 The stage of film distribution	99
2.3.3 The stage of film exhibition	101
2.4 Overview of the formal film distribution markets in traditional and Non-traditional platforms in Colombia	102
2.4.1 Film distribution on television channels in Colombia	102
2.4.2 Film theatrical distribution in Colombia	106
2.4.3 Film distribution via the Internet	119
2.5 The formal models and their apparent incompatibility with documentaries	124
<b>Chapter Three</b>	
<b>The structure of the informal film distribution markets in Colombia</b>	<b>132</b>
3.1 Structure of the informal markets in Colombia	132
3.2 Overview of the informal film distribution markets in Colombia	136
3.2.1 Informal film distribution on DVD in Colombia	143
3.3 Piracy and inequity in emerging countries	150
3.4 Statements about the complexity of the film distribution problem and the collective construction of a film distribution model	157
3.5 The different faces of copyright law	167
3.6 Debate on the informality and formalization of markets	173
3.7 ASECOPAC: The formalization of the informal film distribution market of films on DVD in Ecuador	183
3.8 General sustainable formalization models	194
3.8.1 Enterprise formalization through innovation in Colombia	194
3.8.2 The illegal mining industry and its formalization proposal in Peru	198
<b>Chapter Four</b>	
<b>Alternative Models for film distribution based on education and social activism</b>	<b>207</b>
4.1 Other alternative film distribution models for Latin America	207
4.1.1 Under the milky way: Online film distribution platform of VOD	208
4.1.2 LARED: Non-theatrical film distribution Network	211

4.1.3 Exodus Entertainment: new online and mobile distribution platform in Nigeria	212
4.1.4 Grupo Chasqui: National distribution Microcinemas Network in Perú	215
4.1.5 Efecto Cine: Mobile film distribution platform with inflatable screens in Uruguay	220
4.1.6. The Oral History Project through interviews	225
4.1.7 ‘Colegios al cine’, taking students to the cinema in Bogotá	227
 <b>Chapter Five</b>	
<b>Making a documentary film as a key experience for information research</b>	232
 5.1 The film distribution experience of a documentary filmmaker	232
5.2 Statements of people working in illegal film distribution market	239
5.3 Statement of a person who was in prison for film distribution issues	245
 <b>Conclusions</b>	253
<b>Appendices</b>	273
<b>Bibliography</b>	301

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## **Abstract**

Historically, documentary films have always encountered very serious problems of distribution and have struggled immensely to find reliable audiences, even though, ironically, documentaries are accepted by many as significant tools for the promotion of important historical, social and cultural values. There is a very serious lack of proper tools and strategies to allow documentaries to reach their potential audience in a manner that is consistent with the importance of these films as enablers of important discussion and analysis inside a society.

This is especially true in the case of most developing countries, where open discussion about social, economic or cultural issues that documentaries are perfectly suited to confront and explain is more than necessary. And among these countries, the case of Colombia will occupy this research as a remarkable case study, since it is a country that is producing a large number of documentaries about pressing matters but which unfortunately are not being seen, while at the same time it is a country whose ambivalent attitude towards film production and distribution embodies the contradictions between formal and informal economies as well as between legitimate and illegitimate ways to obtain access to films and other media.

Considering this situation, the main concern of this research is to review and analyse the different mechanisms that have been used to distribute and promote documentary films (although in some cases, such as the informal markets, the focus will be placed on issues pertaining both fiction and nonfiction films), with the intention to understand how these mechanisms have failed or succeeded in allowing these films to meet their primary objective: reaching their audiences. To provide this analysis, this study will resort to several different resources such as economic studies, surveys, reports, interviews with filmmakers, producers and film distributors –both legal and illegal– from different countries, along with other different sources that will provide what is hopefully a well-rounded account on the complex situation of film distribution in developing countries in general, and Colombia in particular,

and the challenges that result from such scenario. As a consequence of this analysis, this work also aims to propose new alternatives for the distribution of documentary films; alternatives that could ultimately be of use in improving the communication between documentary filmmakers, their work and their potential spectators.

## Introduction

Development must strive for the creation of a new culture and a different way to understand, build and own the desired world: cooperation.

*Anonymous*

Someone who learns to read and write can enrich and improve their quality of life in the same way a person who learns to see and interpret images can improve their non-verbal perceptual skills, their aesthetic sensitivity, educate their visual perception, receive different visual stimuli and valuable information from new modes of visualizing reality, create images of their own to forge individual viewpoints and contemplate their surroundings with a fresh outlook. Documentary films can play a substantial role in all of these activities because at their core they present a direct engagement with reality, and therefore they demand to be known by wide sectors inside a given society in order to promote alternate views and stimulate discussion and questioning.

The point has even been made recently that documentaries could take the place of the “extenuated” contemporary political art<sup>1</sup> and also that these films should be recognized as “among the remarkable, culturally innovative forms of our time” and thus appreciated as “a public good, comparable to [...] serious reporting” because they “have become one of the means by which we connect to the contemporary world, making sense of it.”<sup>2</sup> Nonetheless, despite of their recognized importance, and on their status as a ‘staple’ inside film genres, documentaries are often taken for granted and their distribution and production issues remain unaddressed; in fact, documentaries seem to be in crisis all over the world, as the 2012 *Why documentaries matter?* report of the Reuters Institute for the Study of Journalism (RISJ), recognizes:

Documentaries exist precariously, for the most part under-funded and often neglected by broadcasters. Worldwide the budgets for documentaries are falling. Their creators live a hand-to-mouth existence.<sup>3</sup>

But the ‘precarious existence’ of documentaries is contradictory because they are extremely necessary in contemporary culture and this necessity makes their makers go to extreme lengths to find the resources to produce them –regardless of the difficulties involved– at least in the part of the process that ends with having a completed film. For developing countries with histories of recent political and social turmoil like Colombia, which are still trying to come to terms with their often problematic realities, these claims are particularly relevant. As it has been stated by the local Film Development Fund:

In Colombia, as in the rest of the world, it is clear that the documentary genre has been regarded as a tool for social change, to construct memories, to bring important topics of discussion to the foreground, to inform about the lives of peoples, cities, communities, institutions, ultimately promoting a positive societal change. In Colombia this has been more evident because of the social conditions that have prevailed since the arrival of cinema to the country.<sup>4</sup>

Documentaries are, more often than not, recognized as very important tools for social representation and historical reflection: their value as such is rarely questioned or denied in contemporary culture, and even if it is, they remain controversial forms of documenting the ailments of modern societies and, at a minimum, are welcomed as the most essentially humanistic of all the forms of filmmaking: a fundamentally liberal –even if often also moralizing– form of representation that frequently serves contemporary individuals as a sort of compass for navigating the complexity and diversity of the globalized social order and question the way in which power institutions shape public opinion.<sup>5</sup> Documentaries are usually filled with a sense of urgency, denunciation and necessity: perhaps that is why they seem to have survived against all odds and “appear to thrive on contradictions, between the stubborn reality they purport to capture and their necessarily limited means, between the impositions of story-telling and the desire, periodically, to interpret or analyze.”<sup>6</sup> Documentaries are amphibious beings that have adapted to the often extenuating circumstances of postmodernism and have proven their worth in many different stances.

However, the enormous challenge that the documentary genre faces in a global context –and that will particularly involve the case of Colombia in this research– is that existing distribution models for audiovisual media have not provided people with a substantial access to these works. And this is a very serious problem not only because these films can indeed provide citizens with information that is as vital as that of serious news outlets for gaining awareness about their rights (and the violations inflicted upon them by structures of power) and acknowledging the (possibly overlooked) diversity of the societies they inhabit, but also because if documentaries have survived for decades with extremely modest revenue aspirations it is because what their makers are ultimately and mostly interested in obtaining is exposure for their works. Documentaries can survive while being underfunded, questioned and taken for granted, but definitely not while being *unseen*. It is vital that documentaries, which are already accustomed to a life in perpetual crisis, are allowed to find modes of distribution that can enhance their visibility, regardless of whether this forms of distribution are perceived as orthodox or not within the prevailing economic models.

In the case of Colombia, most traditional (and legal) distribution models, for films in general and documentaries in particular, have proved to be inefficient, even though the country –even at the deepest stages of its many economic, social and political crises– has steadily produced a large body of documentary films, especially since the 1960s and 1970s, when several filmmakers in the country adopted different strands of the socialist, artistic, post-colonialist and revolutionary ideas that were being widely discussed in several parts of the developing world and which saw documentary cinema as a socially committed art that could be of use for resisting imperialism and cultural domination. The case of the stubborn survival of a strong tradition of documentary filmmaking in Colombia –where the consolidation of a national film industry remains elusive in spite of some important accomplishments in the past decade and where support for the arts, education and culture has never been the priority of any public institution– is evidence of the resilience of the genre in terms of production. But the problem of distribution remains a more serious one and, to understand it, a description of what the local context offers in terms of film distribution becomes necessary, something which this research has set as one of its goals.

To exemplify the inequality in terms of film distribution in Colombia, it is very illustrative to simply look at the situation of the most traditional form of film exhibition: theatrical distribution. Colombia is an tremendously centralized State with a population of about 46 million where, in regions outside of the central area that surrounds the capital city of Bogotá –the city where the vast majority of the wealth of the country is disproportionately concentrated–, out of 1,122 officially recognized municipalities, only 46 have commercial cinemas. This means that around 96% of Colombian municipalities have no access to this formal distribution platform.<sup>7</sup> The issue, as this piece of data reveals, can be defined as a problem that does not implicate the legitimacy or usefulness of the films involved –because, as it has been established, documentaries are acknowledged as significant to the society that makes the effort to produce them– but rather a matter of inadequate distribution in which the importance of allowing audiences the access to the films seldom arises.

However, this situation mostly applies only to the traditional platforms. The interesting fact in the case of Colombia and other developing countries, is that even though commercial, official distribution remains indifferent towards documentaries, there is a lively illegal film distribution market which presents a challenging opposition. In Colombia, the vast illegal film market is based largely in the networks of salespeople who carry out their business at a series of commercial locales composed of informal shopping malls and street markets that are often grouped under the common designation of *San Andresito*.<sup>\*</sup> The films sold in these markets, which are mainly sold in DVD format (certain films are sold in other formats like VCD, which is useful for collections of short films that are downloaded from different sources), are effectively reaching the population and present a serious counterbalance to the official distribution practices carried out within the formal economy.

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<sup>\*</sup> *San Andresito* literally means ‘Small San Andrés’, in a reference to the Caribbean island of San Andrés which, in spite of officially being a part of the Colombian territory, for decades remained culturally and economically distinct from the Colombian mainland and used to be a bustling contraband hub where the visiting population could gain access to imported goods from all over the world –including, but not limited to, electric appliances, music recordings, liquor, confectioneries, musical instruments, clothing, hygiene products, beauty products or even pets. These products were not legitimately available in the continent until the early 1990s, with the signing of different trade agreements and changes to older protectionist trade policies that were at odds with the rampant Neoliberalism that became the fashionable ideology in the country during that time and whose influence can still be very strongly felt today.

While currently there are no major hindrances for the distribution of commercial\* and, to a lesser degree, foreign-language fiction films through the legitimate film distribution market in Colombia, “the existing gap in the market for non-commercial and independent films [including documentaries] is being filled by the illegal film distribution system,” basically because there is a demand for those films that is not being met by any other legitimate alternative.<sup>8</sup> In fact, in countries such as Mexico, Ecuador and Colombia eight or nine out of 10 films on DVD sold come from the ‘pirate’ market.<sup>9</sup> Granted, there is redundancy and overlapping in the products offered by both markets: the same films which are available in commercial cinemas and other legitimate outlets are eventually sold in the informal market as well, but this does not mean that the informal market is offering popular films by design or that it is more successful at doing so than at distributing other kinds of films. One of the assumptions of this thesis is that documentary films have very specific qualities and possess the social credibility and the importance to be able to demand their own, particular and tailored distribution process and that a model for what that process might look like can be found by taking into consideration the experiences of the informal market –along with other factors such as the long tradition of socially-conscious filmmaking present in Latin America–, which has been able to open a distribution space for films and other cultural products that are not being offered by the formal economy, especially in developing societies.

In the specific case of Colombia, piracy is thriving without any doubt. Figures of the *International Intellectual Property Alliance* show that in the legal market, only about 500,000 copies of DVD films are sold per year, while close to 90% of the total number of sold DVDs are illegal copies.<sup>10</sup> Colombia invested over US\$300,000 in film anti-piracy programs in 2012; nevertheless, only 15% of the films sold (in both the fiction and documentary genres) were original copies and the rest came from the pirate market.<sup>11</sup>

The film distribution of DVDs in the informal market is certainly working well, since around 85% of the total number of films sold in the country are being bought in this market. The problem is that the formal industry and the Colombian film authorities penalize these

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\* Certain documentary films such as those produced by Disney under the *Disneynature* label are regarded as commercial cinema as well for the purposes of this research, since they are backed by a vast advertisement and distribution apparatus that would make it absurd to consider them as something other than corporate products.



economic activities, mostly due to external pressure from the corporations that dominate the international film market. They consider it an illegal practice for two very clear reasons, namely: that the sellers of these films do not pay taxes and also are infringing the existing copyright laws (while the often draconian nature of these laws is often left out of any public debate.) But this is the case despite the government not being interested in guaranteeing access to culture to its citizens through any legitimate means.

Considering the fact that it is currently estimated that around 70 to 80% of the Colombian population is engaged in informal economic activities –which means underemployed and recurring to informal means to compensate for the lack of available, satisfactory occupations<sup>12</sup>, it seems plausible to think that the pirate economy should not be considered part of an informal and presumably ‘marginal’ market. A strategy for the formalization and legalization of this sector of the economy could be a step towards finding a more democratic form of distribution for films, which could benefit documentaries precisely because informality is designed to cater to the needs of those who could gain the most from accessing the information with which these films are usually identified: public critique, democratic and liberal values, the exposure of social issues and the revealing of underreported facts and circumstances.

As long as traditional and non-traditional film distribution platforms do not offer ideal access of documentaries to an audience, and until the existing tensions between the formal market, the informal market and piracy are resolved, it is crucial to find alternative cooperation models that could contribute to the solution of this complex problem. What this investigation proposes is that this can be achieved by constructing a collective documentary film distribution model that includes the important experiences of different people involved in both the formal and informal film distribution markets in Colombia under different roles. The content of this dissertation aims to explain several key factors that could lead to find possible answers to the question of what a more democratic distribution model for documentary films could look like and to examine several facets of the challenging issues raised by film distribution and its different layers.

## **Definition of terms**

First of all, it is important to note that the Spanish version of all the quotes that were given on the audiovisual recorded interviews or that were taken from books originally written in this language will be available in the **Appendix 7**. It must be clarified that their English versions are the author's translation.

It is appropriate to define and illustrate certain terms that will be constantly used during the course of the presentation of the results of this research: the following section will consider what the concepts of *Legal* and *illegal*; *formal* and *informal*; *legitimate* and *illegitimate*; *economic value chain* and *piracy* can signify within the context of this study.

### **▪ *Legal and illegal***

The term 'legal' is understood in the context of, or related with, activities-authorized by law. The term 'illegal' relates to activities prohibited by law. Many illegal acts are punished according to the law, which means under the judicial precepts of a given country or community. Therefore, the terms 'legal' and 'illegal' have been used in this thesis in the context of issues related to the rule of law.

### **▪ *Legitimate and illegitimate***

Legitimacy and illegitimacy are cultural values that vary from society to society and from culture to culture. Something is legitimate when a culture accepts it as a valid and acceptable behavior. Examples of that are the rights of kinship by consanguinity; marital and extramarital filiation, legitimate marriage, illegitimate offspring, etc. In this thesis, these terms are understood from a more theoretical point of view. Therefore, they have been used to refer to the moral values of a group of people. In the particular context of this research, an act is considered legitimate when it is morally and ethically accepted by certain groups or societies.

Sometimes, interesting tensions arise between legality and legitimacy, as it often happens when a certain group of people assume certain behaviors or activities to be morally acceptable in spite of these being against the law. In other words, a society may regard some actions as legitimate but at the same time the prevailing rule of law may see them as illegal, regardless of their cultural acceptance. To summarize: the terms ‘legitimate’ and ‘illegitimate’ have been used within the context of this thesis in relation to moral issues that pertain to a specific society.

#### ▪ *Formal and informal*

The formal sector refers to the economic activities which aim to meet all of the established government regulations for legal enterprises. In this context, the formal economy involves paying taxes, offering stable and well-paid jobs, providing health insurance coverage and other Social Security benefits, all as contemplated by the law. On the other end of the spectrum, and from the point of view of the state, the economic activities of the informal sector do not fit into a legitimately constituted economic structure. For example, jobs have no contracts, taxes are not paid, copyright is not respected, and the exchanges of goods that take place in informal transactions are not accepted as legal.

From other points of view, such as those held by certain experts on the economics of formality and informality in emerging countries, the people who work in the informal market are not necessarily involved in criminal or illegal activities. They are people who have been discriminated or excluded by the central economic circuits that are under the control of the state. In brief, the terms ‘formal’ and ‘informal’ have been used for issues of economic practice in this thesis.

#### ▪ *Value Chain*

The concept of *value chain analysis* was introduced by the economist Michael Porter in his 1985 book *The Competitive Advantage*. It looks at how primary activities, such as marketing and sales, and support activities, such as a stable infrastructure, can work together

to help an organization establish a superior competitive advantage. If a particular activity within the chain of production performs better than expected and its performance is reliable, it is assumed to be an added value.<sup>13</sup>

#### ▪ *Piracy*

Traditionally, the term ‘piracy’ was mainly used to refer to the practice of organized sea banditry, but because throughout its history the term has accumulated so many negative connotations, it is only natural that the entertainment industry decided to appropriate it and apply it indiscriminately to any individual who they perceive as presenting a threat to their business models by engaging in activities like copying, reproducing, sharing or selling any of its products without the explicit consent of the respective copyright holders.

Piracy is considered an illegal practice by the government, the private sector, all the major film studios and, in general terms, the whole entertainment industry. Nevertheless, for some groups within certain societies –mainly the popular classes of developing countries– piracy is assumed as a completely licit practice because it constitutes the main form of access to a wide variety of media –ranging from recorded music and films to video games, applications, books, magazines and other products of the cultural and technological industries– that could not be accessed otherwise.

#### **Statement of the problem**

*When it comes to documentary films, the issue of their viability lies not so much in the stories they tell, but rather in how to make them reach consumers.*

Colombian Film Development Fund, 2011

World feature film production has increased steadily during the past few years. There were 7,233 feature films produced all over the world in 2009 alone. To mention but one

example of this growth, the production levels in the European Union reached an impressive number of 1,285 feature films produced in 2011. This total production number can be divided into 915 fiction films (71% of total feature films), and 370 feature documentaries (29%). With over 200 national feature films produced in 2011, France and the UK were the countries with the highest production levels in the 27 member states of the European Union.<sup>14</sup>

As the global film output increases, so does the production of more films that belong to genres and modes of representation once neglected or considered entrenched inside different niches, as it has been the case with documentaries, which are being produced –albeit not necessarily viewed– more than ever before. According to Gilles Lipovetsky and Jean Serroy, documentary cinema is presently going through a “revitalization” period demonstrated by the emergence of film festivals dedicated exclusively to the genre, to the ‘crossover’ success of a handful of documentary films which have congregated incredible numbers of spectators (between 300,000 to almost 2 million in Europe for films such as *Darwin’s Nightmare* or *Fahrenheit 9/11*) at the box office –small but significant victories inside what has always been the undisputed territory of fiction– and in the renewed interest of citizens in finding films that can allow them to hear voices of dissent when the older institutions and modes of being are being questioned and everybody wants to anticipate the consequences that will be brought by “the end of collective dreams” that characterizes contemporary societies, especially in the West.<sup>15</sup> Lipovetsky and Serroy, on their analysis of media culture in what they dub the “hypermodern age”, argue that –at least ideologically, since they also concede that there is a long way to go in economic terms– the documentary film genre “is no longer in a marginal situation” or “belongs to a minority”, and that now it is officially “part of the marketplace of cinema.”<sup>16</sup> This means that documentaries, finding themselves demanded and wanted, are therefore being produced in larger numbers, something in which the accompanying role of technology cannot be ignored, if we remember that the recent surge in documentary production has been complemented by the lowering prices of digital filmmaking equipment and (very poignantly) the pirating of professional video editing software in developing countries.

And yet, documentaries remain unseen to a large extent and the increase in production has not been met with a comparable increase in exposure. According to Sánchez, “[...] it is

very fortunate that more and better documentary films are being produced every day. The problem is that [...] we cannot say that their film distribution model is optimal.”<sup>17</sup> Regarding the specific case of the Latin American documentary film distribution system, he adds: “[this system] is almost imperceptible and its choices for international film distribution have usually depended on the marketability of specific historical moments, or even tragic moments, as it was the case of the Cuban documentary genre during the first decade of the Cuban revolution.”<sup>18</sup>

Certainly, the choices for distribution available to the documentary genre are quite limited all over the world. This reality is particularly severe in some developing regions –and astonishingly ironic in Latin America, where there has been a consistent production of documentaries aimed at supporting movements for political resistance and social change (as well as movements that pursued filmmaking as a revolutionary activity in and on itself) since the second part of the last century, as exemplified in the ideas of Argentinian Filmmaker Fernando Birri, who

[...] called for a cinema that awakens/clarifies and strengthens a revolutionary consciousness; a cinema that disturbs, shocks and weakens reactionary ideas; a cinema that is anti-bourgeois at a national level and anti-imperialist at an international level; and a cinema that intervenes in the process of creating new people, new societies, new histories, new art and new cinemas.<sup>19</sup>

A cinema that, essentially, performs the tasks and responsibilities that today seem to have been almost entirely placed upon documentary film. A cinema –it is worth stressing– that has been produced in many different ways throughout the history of the region, but which nonetheless has rarely been seen by a consistent audience: it is this elemental assumption, the need for significant audiences who can match the ambitions that social and non-commercial Latin American documentary cinema has embraced since its roots in social activism, which reveals one of the most common problems of the genre, namely that “there seems to exist a great difficulty in the distribution and exhibition of documentaries in both traditional and non-traditional platforms.”<sup>20</sup>

For instance, Enghel<sup>21</sup> argues that in the case of Argentina, where documentary cinema has had a very interesting, fruitful and complex history, some obstacles with which

documentaries have to deal when trying to reach an audience are the absence of special cultural policies applicable to the film sector, a lack of real options for film exhibition and a serious deficiency of financial resources for film distribution.

In the case of Colombia, which is the specific instance that has occupied most of this research, an analysis of the situation of the documentary film has to begin by acknowledging the immense progress that has been made in the area of film production in the country. Since 2003, when the so-called ‘Cinema Law’ –which established a special taxation system for film distributors in order to create a fund to promote local film production– was approved, film production in the country has risen at a steady pace in a very dramatic contrast with the situation during the previous decades. In fact, “[...] between 1993 and 2003, the average number of released films per year in Colombia was 3.3; while between 2004 and 2012 feature film releases quadrupled.”<sup>22</sup> This means that production moved from 2 Colombian feature films released in 1993, to 23 in 2012.<sup>23</sup>

While some film critics in Colombia celebrate that during the previous decade there have been more Colombian films produced than ever before, the same critics also decry that Colombian cinema is going through a very difficult time in terms of independent film distribution, due to the fact that the ‘Cinema Law’ still does not have any concrete regulations or strong policies that are relevant or conclusive in respect to matters of film distribution.<sup>24</sup>

In countries such as Colombia and Mexico, there is a disparity between the financial resources allocated to support film production and those intended to support film distribution. The former Mexican head of *IMCINE* (*Mexican Film Institute*) had this to say about that situation: “[...] regrettably, 89% of our publicly allocated financial resources are meant to support film production and only 11% of that amount is meant to support film distribution policies.”<sup>25</sup> In a recent study, very tellingly titled *Distribution, the forgotten element in transnational cinema* (2014), Miller et al. claim that it is a general trend of regional filmmaking to assume production as the central part of the process of enforcing the development of a local film industry, while leaving distribution –and particularly distribution to foreign markets, which can make films far more visible and influential than if they stay in

their home market– in the background, assuming that simply finishing a film means that the work has been completed.<sup>26</sup>

This situation is very similar in Colombia. For instance, of the \$10,317,011,000 Colombian pesos (roughly 4 million USD) that were awarded by the FDC (*Fondo para el Desarrollo Cinematográfico*, or *Film Development Fund*) through their ‘Competition Stimuli’ program of grants obtained by competition, only \$40 million Colombian pesos (or around US\$ 14,000) were awarded with the purposes of supporting the promotion and distribution of documentaries. That means that only about 4% of the total amount of available funds were assigned to film distribution while the remaining 96% were awarded to film production.<sup>27</sup> As Miller et al., have concluded, this situation is more detrimental for national cinemas than usually thought, because the intentions of contributing to the strengthening and construction of cultural identity by means of *film production* but not of *film distribution* carry an intrinsic paradox:

Making movies is easily articulated to the idea of building local, national and regional culture through the work of art, and because small firms and large corporations like the idea of what they call ‘free money’ from the state to subsidize their productions. By contrast, other parts of the cycle – circulating, promoting and showing movies– lack glamour and artistry even as they are extremely profitable.<sup>28</sup>

Unsurprisingly, neglecting distribution and the other aspects of filmmaking perceived as ‘less glamorous’ only serves to transform filmmaking into an insular activity where films are made but not seen: a scenario that is particularly dangerous in the case of documentary films, as they –in many ways– depend on exposure to justify their existence. Even if we disregard the ‘profitability’ part that the quoted study connects to the so-called unglamorous parts of the film cycle and accept that documentary films are not made with the purpose of becoming revenue-generating machines, the problem remains that without performing these activities in one way or another, documentary films cannot accomplish their purposes of registering with the public, regardless of how modest these might be. For these reasons, documentary films, perhaps more than any other genre, are in dire need of finding a system of distribution that suits them and their specific aims.



These circumstances are the cause for a very complex debate among those working in the film sector in Colombia, since this reality reveals a determining factor in understanding why there is no effective film distribution system for documentaries in the country. The last diagnosis about the situation of the documentary genre that was provided by the relevant film authorities in Colombia, shows that 98% of the 346 documentary filmmakers who were surveyed for the study agreed that if there is one particular set of policies in need of urgent strengthening and renovation, it is that which is pertinent to the distribution of documentary films on alternative and digital platforms.<sup>29</sup>

What becomes the central issue of this research, then, is the question of distribution and the importance of giving the audiences access to the films whose production is being actively supported, even if –ironically– in detriment of their distribution. At this point it becomes apparent that the reason for the existence of an illegal film distribution market –the infamous network of *San Andresito* locales– is a result of the disregard for the problems of distribution, since there is no shortage of audiovisual content to sell: that it is sold unofficially becomes almost secondary in this case because what matters is that the films exist and there are people who want to see them. This situation makes it necessary to explore the conundrums of documentary distribution: the entire audiovisual sector might learn important lessons from strategies that are effectively working in the illegal market, a market that is the result of the inattention present inside the official channels of distribution.

The awareness of the absence of an organized film distribution system for documentaries in Latin America is an urgent call for “[...] devising some strategies to enforce documentary film distribution plans that could help diversify its distribution and exhibition in different alternative circuits.”<sup>30</sup> Several interviews, studies, researches and statistics available on the subject of film distribution reveal that Latin American audiences have a very low access to the formal distribution sector whether in traditional or non-traditional platforms such as television, cinemas, DVD or the internet. And, at the moment, the hope for the emergence of alternative platforms is not very encouraging.

The following figures and facts gathered from studying the access to the aforementioned distribution platforms reveal the urgency of finding alternative distribution models which could contribute in resolving this problem. Statistics of theatrical film

distribution in cinemas show, for example that of 38 million tickets sold in 2011 in Colombia, only 3 million of them were for the screening of Colombian films. Although 18 Colombian feature films were released in 2011 only one of them was a documentary production.<sup>31</sup>

To consider a different distribution platform, when it comes to documentary film broadcasting in Colombian television channels, it turns out that there is no mandatory law by the *National Television Authority (Autoridad Nacional de Televisión, or ANTV)*, the local government agency in charge of regulate the offering of television as a public service, which could compel any channel –whether private or public– to air documentaries, not even locally produced ones. Therefore, the two biggest local private television networks, called *Caracol* and *RCN*, and which are even less likely to be affected by certain government policies concerning programming, prefer producing and transmitting mainly telenovelas and other scripted content along with several reality TV productions, which have proven to be far more lucrative than documentaries or even children’s programming in the past because they are more likely to meet the expectations of those audiences who turn on their TV set looking for distraction and entertainment and also to leave potentially sensitive subjects such as economic inequality out of the stream of programming.

But the absence of documentaries in television is not only a matter of the well-established (and yet only apparent), lack of profitability of these films or the nonexistence of legislation that could determine the contents that should be broadcasted. The Colombian government, which should guarantee that public television remains as distanced as possible from the goal of being merely profitable instead of being useful to citizens as a democratic information service that encourages discussion and dissent, invests very few resources on the development of its public television, which is the most likely to be able to present films without aggressive commercial purposes, such as documentaries. On top of that, although there is a high incidence of solidarity in the country, there is also a well-documented (more recently by the United Nations report on *Citizen Activism and Public Services in Colombia* that was accompanied by a seminar on the same subject in 2010) and very significant lack of

citizen activism\* in Colombia that, when joined by the severe absence of audience training programs that could inform citizens of the rights they have on questioning what is being programmed on their local and regional public TV channels (which remain largely underused and underfunded in Colombia), creates a hopeless environment for the raise of public TV as a relevant platform for documentary exhibition.<sup>32</sup> The deficient public engagement from audiences with what they should perceive as their ‘own’ TV is a problem that comes from what can be labeled as a bilateral distrust: that of the Colombian citizenship on their government (and, by extension, in all the public institutions, including the media managed by government agencies) and that of the government on the willingness of the audiences of public television to be educated about their rights.

Another problem of television as an ideal distribution platform comes from its relationship with questionable and obvious economic interests that are contrary to the idea of documentary as a possible tool for social mobilization and political activism. Lipovetsky and Serroy make the case that a possible reason for the recent emergence of documentary filmmaking production as an important force in global cinema is a byproduct of a general mistrust of audiences in television as a media in which less and less people “feel inclined to believe” because it is widely known that it is unmistakably “subjected to the pressure of economic interests.”<sup>33</sup> As it becomes more difficult for the traditional media –and television remains the biggest of the traditional media in Colombia<sup>34</sup>– to hide their lack of respect for their consumers and retain the trust of audiences in matters of sociopolitical interest, less and less viewers are expecting to find valuable and thoughtful information about their social environment in them and have decided to turn to other sources, with the pirate market –where there is a vast availability of films of all kinds that can be cheaply bought and seen at any given time, without the constraints and inconvenience of TV scheduling– being one of them.

Moving to yet another platform, it is important to acknowledge that many experts consider nowadays that the Internet has become one of the most powerful tools for the distribution of films. In Colombia, however, not everyone has access to it. Although

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\* The Spanish term usually used to refer to the involvement of social groups into government matters is ‘participación ciudadana’, which literally translates as ‘participation of the citizenship’; I have decided to use the term ‘citizen activism’ because I think it reflects more properly the idea of *active* participation that the Spanish expression also implies.

approximately 42% of Colombian people have access to the internet, the recent document *Communication Colombia Survey 2012: New communication technologies* published by the Externado University of Colombia, reveals that while 89% of the affluent (middle-upper class) respondents have access to the internet, only 35% of the poor (low-income and unemployed) respondents have access to it.<sup>35</sup>

In addition to all of this, in Colombia there isn't any kind of governmental education policy to teach middle or high school students about the possibility to access audiovisual material –particularly documentaries- on libraries or through the internet as an educational aid or a means to develop critical thinking. Perhaps this could help us understand why 96% of the 42% Colombians with internet access, are using the internet mainly to check their personal email accounts and participate in different social networks, and not for watching films that often are even available for free through completely legitimate channels.<sup>36</sup> A recent study conducted by the FDC concluded that only 4% of Colombian internet users watch documentaries online.<sup>37</sup> Nonetheless, while these results might be conducing to dismiss this distribution platform at the moment, it is very likely that in the very near future the internet will be worth exploring in depth as one of the key distribution means for films in developing countries.

As it was mentioned in the first section of this introduction, documentary films are often recognized as potential catalyzers for social change and for that reason it is important to solve the documentary distribution problem in Colombia in order to allow it to become a force for cultural and social reflection. While traditional and non-traditional film distribution platforms do not offer at present an ideal access to documentaries to the majority of the population, and while there are serious tensions between formal and informal markets as well as piracy, it is crucial to take this situation –in spite of how convoluted it is– as a starting point, and make an effort to find alternative film distribution models that could play a role in solving this problem. The present research is certainly a committed attempt to make a contribution on this respect.

### **Significance of the Study**

The documentary film is not just a tool to interpret reality. Documentaries, through their images, content, ideas and arguments, have already contributed in teaching entire generations to reflect, to explore, to question, to discuss and to inform themselves about multiple subjects. Thoughtful documentaries can provide guidelines for the change of cultural and behavioral patterns of individuals and even entire communities. Documentaries also encourage learning from others, they allow people to awaken their own sensitivity and therefore facilitate empathy with the situation and problems of others and enable connecting with a person's own feelings to adopt or reinvent artistic, cultural, cognitive, sensory, brotherly and creative values. Perhaps all of these different factors can contribute to the formation of citizens who are more sensitive and compassionate with the needs and difficulties of others. While it would be naïve to think that documentaries could single-handedly engender deep change in a society, it is also undeniable that these films at least have the potential to bring important discussions to the forefront of a damaged society and promote discussion, dialogue and historical awareness. Endorsing the creation of a sensitive environment where the citizenry of a developing, war-torn country such as Colombia could find opportunities for reasoning, discussion and reconciliation is vital to the overall development of said country and this is undeniably reason enough to desire that documentaries reach as wide an audience as possible and become known, but, even more importantly, understood and analyzed by large sectors of society. And once again, the problem worldwide, and particularly in Colombia, remains is that until now, film distribution models have not provided audiences massive access to films belonging to this crucial audiovisual genre.

Studies, researches and available statistics on the subject have shown that in Colombia, the existing film laws, film regulations, film models and film prices do not guarantee at all that people have access to documentary films through either traditional or non-traditional platforms. As it has been shown, film distribution platforms in the formal distribution sector such as television, the Internet, film theaters and DVDs have demonstrated very low assertiveness.

In this sense, the creation and development of this thesis is of great importance for the situation of documentary filmmaking and distribution in Colombia, since its approach, methodological questions and research methodology distance themselves from other studies that have been done on the subject in Colombia and other Latin American countries. This research is unique, since no one has undertaken a study like this in Colombia before. For the first time in a study about this subject, this research presents an integration of the parallel analyses of the structure, characteristics and mechanisms of film distribution in the formal and informal markets in Colombia.

Unlike other studies carried out in Latin America that stigmatize the work of the salespeople involved in the informal film market, the question is posed here that there is a need not only to re-conceptualize the different processes that can be learned from the social dynamism of this entrepreneurial networking market, but also to rethink from a more anthropological perspective the role that the government can play in the formalization and legalization of this market.

It should be made clear, though, that although this research has undertaken a study of economic models, the main objective of the study of distribution is not to present an ideal through which documentary filmmakers and distributors could ultimately obtain large amounts of revenue and transform documentary production into a large and prosper commercial enterprise: this seems extremely difficult to be ever achieved precisely because of the essentially independent nature of documentary filmmaking. For the purposes of this study, revenue and profits have been regarded as secondary and the ultimate goal of pursuing an even distribution for documentaries has been considered to be a matter of bringing *exposure* to these films, most of which, as the results of different forms of public funding, do not necessarily require to return any investment or generate any kind of profit. In Colombia, just as it happens in many other countries, documentaries are mostly funded by grants provided by local governments, non-profit organizations, NGOs or research organizations (private and public).<sup>38</sup> These films, even if they are sometimes expensive to produce, are not always in the marketplace or even interested in being part of it, with the condition they find exposure and can at the very least bring recognition and awareness about its subject matter. Constant exposure to certain contents is a way of creating an audience and it is this process

of audience-training and audience-construction that has been placed as the central goal of documentary distribution in the context of this research process.

This study may have an impact inside the film sector in Colombia because of the contribution that it represents towards a reflection on some economic models that, although have a potential application in the production and distribution chains of other economic sectors, have served as the main instrument to identify what are the actual existent markets in Colombia that involve the production and film distribution chain and which present the challenge of involving underlying legal and illegal activities. Therefore, the present research suggests that one should think more open-mindedly about existing film copyright legislation, and bring to the ongoing debate about piracy and legitimacy considerations like the price system imposed by multinational corporations in developing countries such as Colombia, and other relevant matters of social awareness (or lack thereof).

A final consideration with reference to purpose and impact is that this work will be of great importance not only to academic audiences but also to a different type of public, who instead of reading the written results of this research would like to see the same results presented in audiovisual form through the short video piece that will accompany and complement this thesis.

### **Research questions**

This study addresses the already explained film distribution problem, placing the emphasis on formal and informal documentary film distribution markets in emerging countries, mainly in the case of Colombia. The obtained results are completely connected to the research tools and methodological devices that were selected for the research process of this study, which are described in detail in Chapter 2. The questions driving this study are as follows:

- Can practices in the existing formal and informal film distribution platforms in Colombia open up new possibilities and relevant assessments for the distribution of the documentary

film genre? Could they lead to some new understanding or approaches that challenge the existing understanding of film distribution?

- How can the formal film distribution sector learn from the tradition of activist and revolutionary cinema in Latin America and from the informal film distribution sector in relation to developing a healthy and sustainable documentary distribution model that will give Colombian audiences better access to Colombian documentaries?
- Can the economic activities of the illegal film distribution market in Colombia be legitimized in order to render them useful for the distribution of documentary films? Would it be necessary to initiate a formalization process that guarantees its incorporation in the Colombian economic circuit of the formal film distribution sector? How?<sup>39</sup>
- What role does copyright protection play in the relationship between documentary films and their audience's right to access?

### **Research objectives**

This thesis aims mainly to make a contribution to the growing necessity of the Colombian film sector to find alternative approaches to face the film distribution problems that involve the lack of efficient models for the formal distribution of documentary film across different platforms. Solutions and outcomes may be extrapolated from relevant experiences in the informal film distribution markets, particularly in other Latin American countries. The objectives of this thesis are as follows:

- To introduce a general overview of the film distribution industry in Colombia in order to understand its structure as well as its main achievements and unsolved issues, with the purpose of providing a general review of the current state of the existing production and distribution policies.
- To describe the traditional and non-traditional film distribution platforms available to filmmakers involved in the production of documentary films, with emphasis on two of the



most common commercial platforms: theatrical release and the sale of DVDs. The purpose in this case is to compare how these two platforms operate in developed countries and in emerging countries like Colombia.

- To provide an analysis of the emergence of informal labor markets in developing countries and the motivations behind it, accompanied by a survey of their relationship with activist filmmaking and certain grassroots film movements in the same regions, in order to understand why and how people involved with the informal sector in Colombia have created an informal film distribution market to make films widely available.
- To contrast the different points of view of experts and filmmakers about the role that informal film distribution plays in Colombia, in order to analyze the contradicting opinions which have led some to argue that it is in reality a market devoted to illegal practices, while others consider it as legitimized market, parallel to the formal market, but not necessarily illegal or harmful.
- To produce an audiovisual piece (documentary) to support this written thesis by using recorded testimonies of people who were interviewed during the research stage. Firstly, in order to catch a direct glimpse of the complexity of the film distribution problem in different parts of the world. Secondly, to use the collaborative ideas of the interviewees in order to elaborate collective strategies that could help to solve this problem in Colombia.
- To analyze controversial and non-conventional theoretical distribution frameworks in order to explore the possibility that the defiance of existing and dated distribution models could lead to the development of a healthy, sustainable and symbiotic model in which both the formal and the informal film distribution networks could coexist to benefit the access of Colombian audiences to documentary films.

## **Methodology and Methods**

Considering the nature of the problem addressed by this research, a Qualitative Methodology, “which is often concerned with inducing hypotheses from field research”<sup>40</sup>

has been selected as the main research tool to analyze and interpret the data collected during the research stages of this study.

The key facts to analyze and interpret the data collected, three of its essential qualitative methodologies, are as follows: “Key philosophical assumption - understanding how people make sense of their worlds and the experiences that people have; Key concern - knowing or understanding from the participant's perspective; Key focus - understanding social settings or social phenomena.”<sup>41</sup>

According to Silverman, the qualitative methodology has a variety of qualitative methods and specific research techniques such as observation, analyzing texts and documents, interviewing, recording and transcribing.<sup>42</sup>

Considering these definitions, the following three qualitative research techniques have been selected as the methodology of this study:

▪ ***Literature review***

First of all, a review of the present state of the critical debate about the problem is presented to understand the position of the Colombian government, who is actively combating the illegal market, and at the same time explore whether there is a possibility to use the arguments of those who defend this market as a counterbalance that could open the possibility to propose solutions to the complex documentary distribution problem at the core of this research.

The literature review and the theoretical framework of this research are grounded on official documents and academic studies published by researchers and the relevant authorities in charge of the film industry in Colombia, as well as by legal documents that deal with matters of copyright law and additional sociological studies about informal and formal markets. The summarization of these documents is accompanied by a serious critical analysis of the information contained in these official documents, and also by secondary research sources such as didactic textbooks published with the support of the Colombian government, such as *How to sensitize the audience against to the audio-visual piracy*”(Castillo and Rubio,

2010); *Film piracy: how to combat it* (Parra, 2010) and *The Anti-Piracy Agreement for Colombia* (Presidential Office of Colombia, 1995) , among others. Media analyses such as *Media Piracy in Emerging Countries* (Karaganis, 2011); *Value Chain of the Artistic Areas in Bogota* (Mayoral Office of Bogota, 2011) and *Diagnosis of the Colombian film documentary sector* (FDC, 2011) have been consulted as well.

According to Silverman, naturally occurring data which may appear on the internet, in chat rooms, in daily interactions all over the world, in talk shows, in selective interviews, in press conferences and so forth also should be explored as useful qualitative research material. Therefore, transcripts of opinions that were given during informal talks at the end of live media events by some filmmakers and people who attended them have also been included in the critical analysis that is part of the literature review.<sup>43</sup>

It has been very useful to look at other points of view too, through books written by authors who do not work in the film industry but who are experts in the study of legal and illegal sectors in emerging countries. Examples include *Kicking Away the Ladder: Development Strategy in Historical Perspective* (Chang, 2002) and *Economic Sociology: A Systematic Inquiry* (Portes, 2010.)

#### ▪ **Interviews**

Because this qualitative research method is particularly useful for getting the story behind a participant's experiences and thus obtain first-hand accounts of subjects of which available analytical information can be scarce, interviews have proven very useful in the context of our research due to the fact that at certain parts we are dealing with matters regarded as illegitimate, illegal or controversial that, in order to be properly discussed, often demand the inclusion of personal opinions derived from anecdotal experience. Also, since documentary filmmaking involves a vast array of subjective, creative aspects that cannot be categorized without being reductive, the knowledge of people with hands-on experience on

filmmaking is much better expressed by direct testimonials, anecdotes and reflection derived from the practice itself.

The interviews included in this research were conducted by using audiovisual recording methods of primary sources like documentary filmmakers, producers, directors, executive producers, distributors, exhibitors and cinema experts. They were mainly from Colombia, Latin America and a few from other countries including, for example, Juan Zapata (*Latinópolis Filmes*, a collective distribution company), Orlando Senna (*TAL, Latin American Television*) and Leila Formoso (*Angel Eye*, a distribution company), among others.

Additional structured interviews were considered as a part of the analysis within this study. They were conducted with the aim of looking at the diverging points of view of experts working on the subject, like for instance the vision held by lecturer Ivan Hernández, who studies the necessity-based entrepreneurship (informal market) and places it in opposition to the opportunity-based entrepreneurship (formal market). Other experts and people working inside the illegal and legal film distribution markets were also interviewed.

#### ▪ *Documentary Project*

In order to assume a practical point of view and illustrate the problem; another qualitative research method that has been explored for the purposes of this research is the production of an accompanying documentary film about the main subject. While the written report of the research remains as the main submission and the most thorough analysis of the problem, it will be supported and supplemented by a documentary film. The process of producing this film is certainly a part of the data collection for this thesis, but that same production has also been part of the process of reflection and analysis inside this study.

Creating this documentary film as a qualitative research method was a very fruitful choice for several reasons. Firstly, the selection of participants for in-depth interviews was based on an interactive process referred to as “full-purpose sampling” that seeks to maximize

the depth and richness of the data to address a multiplicity of research questions.<sup>44</sup> Another reason why making the documentary was an interesting choice was that it assisted the analysis of the research problem, as Silverman (2010) suggests, by studying how participants perceive the phenomenon, or respond to the phenomenon, instead of reflecting on what they actually do to engender the features of the phenomenon. Additionally, as a researcher, the process of transcribing the interviews as a part of the editing of the documentary film, was very convenient in order to become immersed in the data and provide better interpretations of multiple sides of the research question.<sup>45</sup>

Indeed, the experience of producing this documentary film demonstrated the potential of using audiovisual material as a research tool, and has also allowed this research to become the seed for the future production of a feature-length documentary about the film distribution problem in Latin America. In fact, at the time this dissertation was delivered, agreements to confirm this production were signed to work in partnership with other Colombian film producers with the main support of the Faculty of Arts of the National University of Colombia.

A total of approximately 60 interviews recorded in video forms the backbone of the documentary, which was structured around four audio visual testimonies as follows:

- The first series of testimonies are those about the experiences and opinions of filmmakers, producers, directors, executive producers, distributors and experts who are working mostly in the legal distribution system.

- The second category is composed of interviews with some of the people working in the illegal distribution networks and markets where they engage in informal methods of film distribution.

- The third is the individual testimony of a Colombian documentary filmmaker who wants to distribute his own documentary film and discusses the conditions and problems he has to deal with during the process.

- The fourth interview is that of a person who was in prison due to his involvement with illegal film distribution methods.

## **Overview of the chapters**

This thesis is composed by the Introduction, 5 chapters and a section for Conclusions.

### ***Chapter One***

Chapter One contains the main theoretical framework upon which the research is supported. First of all, it provides a reference framework, as well as general concepts and theories taken from conventional models such as those that mainly explore the research of legal and illegal markets, in order to place the study in the context of the Colombian film distribution industry. It also displays theoretical references and theoretical models designed by experts working in other academic areas, such as the ideas of the economist Alejandro Portes, who explores unconventional structures of production from a very particular point of view that separates the formal and informal from the criminal, and therefore can be compared to other more traditional models in order to understand the problem from different perspectives.

This chapter also provides preliminary background information on the Latin American tradition of documentary filmmaking, on the relationship that can be established between informal modes of film distribution and social activism in cinema as well as a historical, political, social and cultural context of Colombia in order to pinpoint the specific circumstances of the film distribution problem in this country. Chapter One attempts to describe and analyze the existing knowledge about film distribution problems in emerging countries. It explains the relationship between my own research and the work that has previously been done by other researchers and, finally, also refers to relevant literature by doing a critical and evaluative account of what has been published by important authors to address the documentary film distribution problem in Colombia. This literature review reveals the gaps, similarities and differences, consistencies and inconsistencies, and controversies existent in previous researches about the subject.

### ***Chapter Two***

Chapter Two is an overview of the structure and operation of the film industry in Colombia. It presents a general introduction about the idea of assuming the film distribution sector as an intermediary between film production and film exhibition. It explores the conception of the film-as-product from a cultural and commercial perspective. It describes the structure of the traditional and non-traditional film distribution platforms of the formal film market in the country, such as television, theatrical release and online streaming. This chapter also illustrates how there is a serious gap in the development of online film watching between developed and developing countries.

Chapter Two exposes the difficulty of approaching the problem of film distribution, and particularly for documentaries, given that people and filmmakers involved in the formal markets share the opinion that there is not a unique answer or one specific model to solve it, especially when it comes to emerging countries such as Colombia.

### *Chapter Three*

Chapter Three describes the structure of the informal markets in Colombia. It examines the informal film distribution industry in Colombia with the emphasis placed on DVD sales. This chapter exposes how problems of social and economic situations in emerging countries in Latin America have lead people who do not have formal jobs to find a means of income in the sale of illegitimate films. In this chapter the contradictory attitudes of people, filmmakers and experts who disagree or defend the existence of the informal film distribution markets, are discussed.

This chapter poses the question of whether the pirate economy should be regarded as part of the informal market: is it simply an illegal market whose members should be prosecuted by the relevant authorities? The literature reviewed and the recorded interviews made for this study are the key tools that have been used to discuss the contradicting answers found in this question and others which have arisen through the exposure of this complex film distribution market.

Finally, and more importantly, Chapter Three also attempts to answer the question of whether there is a chance of creating an alternative film distribution model which includes the cooperation of people involved in both informal and formal markets, taking as reference some formalization and legalization models applicable to the informal markets. The latter section of this Chapter mainly studies the challenge of the initiative of the *Ecuadorean Association of Sellers and Distributors of Audiovisual and Related Products (Asociación Ecuatoriana de Comerciantes y distribuidores de Productos Audiovisuales y Conexos [ASECOPAC])*, which is currently trying to legalize the sales of Ecuadorian films in its informal markets with the legitimate support of the Ecuadorian government.

#### ***Chapter Four***

This chapter explores other alternative film distribution models in Latin America such as the *Chasqui Group Microcinemas Network* in Perú and the *Inflatable Screens Efe X- Cine* in Uruguay, among others, with the purpose of presenting a multitude of different approaches to tackle the same issue, this time from the perspective not only of legitimization of informality, but by mixing lessons learned from informality with certain elements from the tradition of using films as a form of collective awareness and education in Latin America.

#### ***Chapter Five***

Chapter Six justifies the production of the documentary film as a means for data collection, as it describes how the process of making and editing the short minute documentary that support this written thesis is itself a significant research tool to understand the complexity of the film distribution problem all over the world.

This chapter explains how the process of making the documentary film ultimately became a potential preproduction process to incorporate this research about piracy in Colombia within a bigger feature documentary film about film piracy in Latin America. This chapter intends to select testimonies, proposals, ideas and collaborative work from all the people and experts interviewed for the documentary film to evaluate whether the possibilities



exist or not of constructing a collective documentary film distribution model which may help both people involved in the formal and informal film distribution markets in Colombia.

### *Chapter Six (Conclusions)*

More than conclusions per se, this last chapter actually contains recommendations and suggestions by the author of this thesis with the serious intention to contribute in solving the problem of film distribution in Colombia.

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## **Chapter One**

### **Theoretical Framework**

#### ***1.1 Literature Review***

The context and general outlook of the research problem at the center of this thesis will be divided into the following thematic sections:

- The formal market versus the informal market.
- The relationship between informality and documentary film as social activism.
- The film distribution platforms of formal and informal markets.

##### ***1.1.1 The formal market versus the informal market***

Inside any given economy, there are two primary types of market: the formal and the informal. Basically, from the point of view of the state, the formal market is, by definition, that part of the economy that abides to the existing economic and employment legislations in the form of different enterprises that are both taxpayers and legitimate job creators who obtain their profits through genuine, accepted and legal economic activities. The informal market, on the contrary, is a sector conformed by people who have businesses that do not meet the basic functioning standards required by law and who, in order to obtain their profits, rely partially or completely on not respecting copyright legislation or avoiding to pay their taxes.

In the case of the film distribution sector, theatrical distribution is considered a legal practice by the government: it is part of the formal market. Companies such as Cine Colombia, the largest film distributor in the country, are generally conglomerates that pay taxes and meet all the existing legal requirements. As for the informal market, the pirate

distribution of DVD films is considered an illegal practice by the state because it indicates tax evasion and copyright infringement.

Although the formal market has comparatively more resources, it “must continually face competition from the informal market since consumer preferences are often inclined towards the acquisition of cheaper goods and services offered by informality.”<sup>1</sup> Studies show that the informal economy is increasingly displacing the formal economy, and perhaps this means that “a greater effort is required to simplify certain legal procedures and therefore massively spread the benefits of formalization.”<sup>2</sup>

In big cities, the informal market can be confused with piracy or the illegal sale of products that do not respect copyright law, since both coexist in the same space. Therefore, many formal enterprises, as well as corporations, supply products and sell goods that are not taxed through this market.<sup>3</sup>

The informal market has its origin, among many other economic and social factors, in the low access to education of large parts of the population, rising unemployment, and the inefficiency of the government when it comes to provide the poor with accessibility options inside the formal market.<sup>4</sup> If the government considers that selling some products in certain contexts is an illegal practice, why are these sales simultaneously regarded as licit by other considerable sectors of society? In this regard, Durant argues that “the habits and practices acquired by the population in regard to the informal sales of films have come to a confrontation between society and legality”<sup>5</sup>. If there are two audiences that benefit from the informal market –the first, those who cannot afford a cinema ticket or do not have a film theatre nearby; and the second, those who want to see a film that has come out or has never reached the movie listings<sup>6</sup>– what exactly can be learned from this situation? Couldn’t it be said that it is at least worth understanding who the people who benefit from the informal market are?

The essence of the informal market is based on social networks, family networks and relations of trust and cooperation between these networks.<sup>7</sup> According to Martinez, the

advantage of buying a film on DVD in the informal or pirate market is that there, unlike in the formal market, the seller knows every one of his clients. There is a prevalence of human processes, social processes, instead of purely commercial practices. In this environment, it is easier to build up more personal relationships that allow the informal seller to talk with his client not only about what film to buy, but also about other everyday personal issues and collective concerns, and this ultimately contributes to strengthen the bonds and trust networks between each other. And, in addition to the advantage of accessible prices, these bonds and networks help to consolidate and to increase the sales in this type of market.<sup>8</sup> With this in mind, we can conclude that the people involved in the sale of illegal copies of films are simply filling a gap between the public and the distributors. And these allegedly illegal methods of distribution can help shape a new legal approach to movie distribution.

What if it were possible to legitimize, under certain conditions, the free use of digital technologies to copy and distribute artistic works, as it is suggested by Durant?<sup>9</sup> Or, instead, should Colombian authorities be trained to distinguish between a legal sale and an illegal sale to punish the criminals as the guidelines of the PRACI<sup>10</sup> (an anti-piracy program devised by the Colombian police department, specifically conceived to protect audiovisual works) recommend?

A great deal of research on these issues has focused on the study of *legal* and *illegal* markets, taking as a central assumption that the former is associated with those activities belonging to the formal market while the latter is allied with those activities which are part of the informal market.<sup>11</sup> Most studies about informality have been carried out from the viewpoint of government and state institutions such as the *Comisión Económica para América Latina y el Caribe* (*Economic Commission for Latin America and the Caribbean*), who say that the informal market is a submerged or underground economy; and also from other institutions such as the *Organización para la Cooperación y el Desarrollo Económicos* (*Organization for Economic Cooperation and Development*), who defines it as non-structured economy, or the European Union, who regards it as “obscure” economy.<sup>12</sup>

However, authors such as De Soto see the attitude or the informal market as “the popular response necessary to survive in the rigid ‘mercantilist’ dominant states in Peru and other Latin American countries, where economic privileges and legal participation have been granted exclusively to a small elite.”<sup>13</sup> Other empirical observations have emphasized the notable entrepreneurial dynamism and diversity of the informal sector, describing it as “people taking back in their own hands some of the economic power that centralized agents sought to deny them.”<sup>14</sup> These views have been surprisingly neglected: the majority of the literature published by different governments has focused on negative consequences of the informal sector such as “underemployment” or it being a hindrance or stigma that could deny workers “entry into the modern economy”<sup>15</sup>, along with negative characterizations of it as a disqualifying sector existing exclusively in less developed economies. The positive dynamic characterization of the informal sector has been “subsequently lost, as the concept became institutionalized within the International Labor Organization (*Organización Internacional del Trabajo*, or *ILO*) bureaucracy, which essentially redefined informality as synonymous with poverty.”<sup>16</sup>

Alejandro Portes therefore suggests a different framework or model for understanding the structure of the production and distribution value chain by reframing the classification of the markets through the recognition of the existence of three separate sectors: *formal*, *informal* and *criminal*. Portes claims that both legal and illegal activities can be found in any of the three sectors, regardless of how much it has been often stressed that legitimacy equals legality.<sup>17</sup> According to the expert in formality and informality of markets in developing countries, Ivan Hernández, people who work in the informal market are not necessarily involved in criminal or illegal activities, but nevertheless they have been discriminated against or excluded from the central economic circuits of the state.<sup>18</sup>

Traditionally, enterprises that have been created out of necessity (because of the high unemployment rate, for example) are perceived by the official economic institutions and structures as informal, marginal to any proper economic sector and their members as mere outcasts.<sup>19</sup> Such a narrow focus might explain why it is ingenuously believed by parts of the formal sector that if the informal enterprises “are ignored and not taken into account, time



and oblivion will eventually make them disappear.”<sup>20</sup> To avoid such misunderstandings, what is needed is a strategy that could enable the economy to use all the creative and productive forces of the informal market that have remained underestimated. It is important to admit that these enterprises are indeed constructive and productive, and that, even if they do engage in an illegality that they have the potential to cast off themselves through legitimation, they do not deserve to be disparaged or discriminated.<sup>21</sup> Instead of intentionally discriminating entrepreneurs excluded from the formal market and asking them to start paying taxes, their productive methods should be explored to initiate a process that could eventually guarantee their inclusion in the formal market.<sup>22</sup>

Additionally, studies about the informal market should not be performed only from an economic perspective; it may be advantageous also to investigate this subject considering that, when discussing salesmen of informal markets, “we are not talking merely about goods but about people.”<sup>23</sup> When discussing the enforcement of copyright: “We are not talking about creating policies and laws to objects but to human beings who have feelings, ideas and needs.”<sup>24</sup> And yet another limitation of the research that has been made on this subject by governmental institutions is that most of the studies have a macroeconomic perspective, ignoring other historical and observational research methods for approaching the informal economy such as that led by de Soto who has studied “the social circumstances of people who have been displaced to the cities motivated by unemployment in the countryside”<sup>25</sup>, or other anthropological studies such as that of Mendoza, who carried out qualitative research by doing interviews in the center of Mexico and destroying some myths about informal salesmen.<sup>26</sup>

These anthropological postures originate from a process of empathy with people and their basic needs to thrive, and therefore should be helpful to better understand the problem of informality. They may lead to determining whether there is a way or not, in countries such as Colombia, of formalizing the economic activities of those people involved with the informal market, who in fact are a vast majority of the population of the country: the government estimates that “about 80% of Colombians who are of working age do not pay social security”<sup>27</sup>, which means that they are not formally employed in any way. Among them

there are nonetheless creative and talented Colombians who cannot get access to advantages such as loans to buy property and “who do not provide any of the necessary contributions to guarantee a pension.” Basically, these are workers who “live from day to day.”<sup>28</sup> At this point, it becomes clear that this is ultimately a matter of social responsibility, whose possible answer could be a joint process of integration lead by the formal sectors. An analysis of possible strategies for this incorporation of the informal inside the formal will be further explained on subsequent sections of this research.

### ***1.1.2 The relationship between informality and documentary film as social activism***

It becomes important at this stage to examine the reasons why informal film distribution could be of any relevance for the spread of the results of documentary filmmaking efforts. This is a matter that stands at the center of the approach that this research has adopted to tackle the issue of film distribution for documentaries and which, upon having described the basic characteristics of the informal market in Colombia, can be explained in relation to the importance that documentary films (and their authors, of course) have had in Latin America as supporters of social activism.

This relationship must be described as a process of resistance to cultural imperialism, a method of identity construction and a production of political awareness that requires to make certain assumptions about what documentaries are and what is the idea of documentary film that this investigation is adopting more emphatically. Firstly, it must be stressed that the documentary film is generally understood as a form that is meant to 1) be independent from institutions of power and thus be able to criticize them, 2) be sober (understood as what Bill Nichols has defined as its relationship with the “discourses of sobriety”, i.e., its link to politics, education, natural science, social science and other discourses whose findings and policies can derive in the possibility to “effect action and entail consequences” in the real world<sup>29</sup>) and 3) serve other purposes different to sheer commercial exploitation. In second place, the documentary film has proved throughout its history to be a very malleable and unrestricted form of expression that can be at the service of a varying array of ideologies and produced under the most dire circumstances and without having access to the most advanced

imaging technologies: documentaries are a very resilient form –they seem thrive on the face of material limitations and to depend entirely on the resourcefulness of their makers– and the digital revolution of the past few decades has only made their means of production more accessible to those in developing countries who are interested in adopting the format for their own purposes. In third place, documentaries are especially apt for surveying long term processes because they are prone to have unconstrained structures and to be inquisitive: a documentary can take its time to deal with its subject, these films are –in general– not in a rush to reach a commercial theater because they are open to the unexpected features of the reality they are aiming at representing; aspects that could reveal new narrative or conceptual directions and thus make the structure of these films to be in a constant state of change (as well as having highly malleable release dates, if these are ever considered); documentaries even display an advantage that fiction rarely does, and it is the possibility of being shown in unpolished form or as works-in-progress that are meant to continue their development in time, especially when they are dealing with ongoing events. Documentaries are very particular films (it could be argued that, especially with the recent boom of personal essay films, each documentary has the potential to become its own genre and therefore unclassifiable) that require a very particular relationship with their audiences.

All of these traits of documentary films were properly acknowledged during the late 1950s through the 1970s by film directors from the developing world who were very enthusiastic at the prospect of using an unconstrained variety of filmmaking as a form of advocacy for democratic and postcolonial (or post-imperial) societies that seemed to be reachable for the first time after historical landmarks such as the Cuban Revolution or the Algerian Independence, which had emboldened their aims of fighting for new national identities and seeking out for their own aesthetics of resistance.<sup>30</sup> That historical momentum encouraged the emergence of several opposition organizations and artistic, literary and cinema movements that centered their efforts on creating different currents of revolutionary art. In Latin American cinema, the most prominent example remains the *Third Cinema* movement, whose manifesto was written in the 1960s by Argentine filmmakers Fernando Solanas and Octavio Getino, and in which they encouraged the production and appreciation of important, although imperfect, “guerrilla-style” films done “with the camera in one hand

and a rock in the other.”<sup>31</sup> Films that would not welcome bourgeois (and consequently “neocolonial”) standards of beauty, style and structure: an underground cinema that would serve political purposes, mainly to get rid of neocolonialism through the crafting of alternative models of production by means of two key strategies: “*making films that the System cannot assimilate and which are foreign to its needs, or making films that directly and explicitly set out to fight the System* [emphasis on the original.]”<sup>32</sup> They were essentially talking about documentary cinema; they held fiction cinema as a bourgeois and elitist practice and their film *La Hora de los Hornos* (*The Hour of the Furnaces*, 1968) has many distinctive features that only a documentary could allow: it is a 208 minute film, constructed as a pamphlet through many different visual resources, filled with textual quotations from revolutionary figures and using several different forms of archive footage to give its structure a grave tone and add historical weight, *La Hora de los Hornos* has been called “an act of courage” and “a theoretical essay” and “the origin of several contemporary image practices”<sup>33</sup>; an experiment in style and ideology that makes the most of the freedom that the documentary genre enables. This film, regardless of its apparent rawness and artlessness, remains as one of the most important and comprehensive documentary works of the 20<sup>th</sup> century. It is a film with a very clear revolutionary agenda and one which exemplifies the defining characteristics of documentaries.

Since the emergence of these revolutionary film movements, Latin America embraced documentary filmmaking as the quintessential form of filmmaking of the dispossessed, a form of resistance that personified the struggle of the weak against the strong and the defiance implicit in using the tools of the oppressor (cinema itself) to resist it. Besides the two fathers of *Third Cinema* (an expression that remains widely used to refer to several kinds of peripheral, artisanal or grassroots forms of film production) a number of other directors of the time wrote their own manifestos in which they called for the same kind of socially engaged cinema under different designations –an “imperfect cinema” or even a “hungry cinema”, for example–, hoping for films that could influence the masses because they would be “energized by the ‘low’ forms of popular culture, where the process of communication was more important than the product, where political values were more important than production values.”<sup>34</sup>

The crucial point of the quotation above is that these films would be “energized” by popular culture, which means made with the complicity and support of the masses, who were being manipulated with the shiny and apparently innocuous forms of entertainment and culture of the colonizing powers. This appears as quite relevant for the argument of this investigation if we remember that, as it was discussed in the previous section, the informal market is composed by members of the popular classes and that it depends on their social and family networks of cooperation to thrive. These networks are essentially alternative modes of distribution and the precedent set by *The Hour of the Furnaces* –a documentary designed so that the system could not *assimilate* it– could help to illustrate how this worked in the past and could work in the future. That particular film was shown through projections in private homes, worker’s associations, universities and several other “alternative” venues that made up for the fact that the film was never allowed into the traditional channels of distribution.<sup>35</sup> It was also smuggled out of Argentina to reach foreign audiences and it found spectators only through the social relationships built by its makers who made use of the informal distribution structures available at the time (it is worth remembering that the film was made and distributed during the Argentinian military dictatorship). Getino and Solanas also opposed the idea of fiction cinema and its distribution models because they felt it was a kind of film that from its inception to its exhibition was “imposed” upon the viewer, for them

[...] such a hermetic, self-enclosed structure [that of fiction cinema] would be an affront to the audience who were making a political statement by the very act of watching the film within a context of military rule. Solanas and Getino develop the notion of film as a ‘detonator’ of ideas, as a ‘pretext’ for gathering together in dangerous conditions.<sup>36</sup>

In order to have an impact, films should be distributed and shared while accompanied by socialization, discussion and participation. For these filmmakers, films should not be looking for *spectators* but rather for *participants*. They should involve the community that was producing them and seek to enlighten and educate the viewers, a position that was shared by one of their contemporaries, Bolivian filmmaker Jorge Sanjinés, who wrote that revolutionary films required an active viewer, someone “whose attitude towards this cinema

is consistent with his advanced thinking and who extracts information to be used in the formation of new ideas and concepts.”<sup>37</sup> Cinema –with documentary holding a central place among all the other genres– is perceived under this light essentially as a form of popular education in which the spectators were not only witnesses to film objects but also active participants who could see themselves reflected in this cinema and, very importantly, see it as *their own*.

The educative project of these filmmakers also performed a role as a form of resistance to one of the most recognized facets of neocolonialism: cultural imperialism, also known sometimes as *media* imperialism, and which can be roughly described as

a global situation in which powerful culture industries and actors located almost exclusively in the West, and particularly in the United States, dominate other local, national, and regional cultures and actors. In the process, the autonomy of receiving societies, as well as their cultural values and identities, would be weakened or destroyed. This domination is understood as being largely the outcome of fundamental historical inequalities that have resulted in most of political and economic power being concentrated in the West – and, again, especially in the United States.<sup>38</sup>

It might seem that the worst consequences of cultural domination would be the loss of important cultural values, to hinder autonomous creative processes and to cause very serious identity crises in every segment of the receiving society, but in fact, although this form of domination has serious implications for the entire spectrum of social classes (and Latin America has been a very class-conscious society throughout its history), it is important to underline that cultural domination is especially damaging to the underprivileged because:

Cultural imperialism emphasizes the segmentation of the working class: stable workers are encouraged to dissociate themselves from temporary workers, who in turn separate themselves from the unemployed, who are further segmented among themselves within the "underground economy." Cultural imperialism encourages working people to think of themselves as part of a hierarchy emphasizing minute differences in life style, in race and gender, with those below them rather than the vast inequalities that separate them from those above.<sup>39</sup>

Cultural imperialism aggressively stigmatizes the “underground economy.” It follows the principle of ‘divide and conquer’, for one of its goals is that those immersed in the dominated society start valuing themselves depending on how aligned their attitudes might be with those of the West and how much they can manage to become integrated into the structures of the hegemony, and accordingly they compete for spaces in the cited ‘imaginary’ hierarchies and, as it has happened with the informal market and film piracy, they start perceiving as negative certain grassroots aspects of the local culture that emerge as a defense against inequality as nothing but negative and even criminal. Cultural domination is also an ‘us vs. them’ position, based upon grotesque, fascist assumptions such as the standpoint exposed by David Rothkopf in the journal *Foreign Policy* in 1997, in which he argued that “the United States should not hesitate to promote its values”, and then proclaimed as an obvious, unquestionable supposition that “[i]n an effort to be polite or politic, Americans should not deny the fact that of all the nations in the history of the world, theirs is the most just, the most tolerant, the most willing to constantly reassess and improve itself, and the best model for the future”<sup>40</sup>, a severely delusional and yet not uncommon argument that tries to assume as natural that one culture should be ‘better’ while the other one is ‘inferior.’

Because they are so ingrained into the power structures, it becomes impossible to challenge such arguments from the top and it is in this area where the informal market becomes a central point of contention because of its underground character and its origins on the problems caused by economic marginalization. The informal market represents collective interests and is the product of the disenchantment of the promises of cultural imperialism: as James Petras explains, “the appeals of cultural imperialism are limited” and can be resisted through “the enduring ties of collectivities – local and regional– which have their own values and practices.” He continues: “Where class, racial, gender and ethnic bonds endure and practices of collective action are strong, the influence of the mass media are limited or rejected.”<sup>41</sup> Cultural Imperialism is not an unstoppable force and the movements and individuals who have recognized the power for social cohesion of documentary films have realized that community activism should be at the center of their projects of upheaval and education through filmmaking. If we consider that even the most skeptical arguments against the potential of documentary to produce social change –such as Jane M. Gaines text on

*Political Mimesis*— nevertheless concede that documentaries could be expected to make a contribution to social change “only in connection to moments or movements”<sup>42</sup>, we can conclude that the collective aspect of documentary filmmaking (and its historical timeliness) is vital for its survival and that if distribution is neglected, these films will ultimately not affect anyone beyond the sphere of the very personal and perhaps produce no effect whatsoever in any of the categories through which social change could be defined in relationship to documentaries, namely, that these films could “increase awareness of an issue that needs to be addressed”, “effect change in popular opinion over time”, produce “change in government or corporate policy” or motivate “movement building/advocating creation.”<sup>43</sup> None of these things can be achieved by underexposed, unwatched films and therefore documentaries—even if their power to cause any form of change is questioned, as it is often the case—at least need the opportunity to be seen in order to be appropriated by social groups and community initiatives as catalyzers for potential change and, very importantly, as a form of cultural resistance that needs to originate at the foundations of a society, since the top is already occupied by the cultural products of a foreign power.

The informal market for the distribution of films and the project of education through cinema can establish a relationship that can be very fruitful, given that the communities and networks that are the core of the informal market are comprised of those segments of the population more vulnerable to misinformation but also more likely to be part of strong social groups and willing to become social spectators. On his observations about the problems that revolutionary cinema is always meant to face, the above quoted Sanjinés stressed that two very important components are essential for the survival of this type of film: the first one, collective work, and the second one, distribution, which he called “a major problem” that required “urgent solving.”<sup>44</sup> According to his view, “revolutionary cinema cannot be anything but collective in its most complete phase”, it should rely on the “integration of the people”, a goal which he agreed could be more easily achieved than the difficult task of bringing the films to the people, because certain filmmakers felt that the job “was done” after completing the shooting and editing parts of the process and did not bother with tackling what he conceded was an enormous challenge immediately impossible to solve.<sup>45</sup> In this case, we have a different configuration of the production/distribution issue that has been



discussed: even revolutionary films are more easily done that shown, confirming once again the existence of a problem of distribution as a gap that could be filled by an acknowledgement of the distribution networks that already exist in the informal market and of which the different patterns of documentary independent practice could take advantage (examples of the ways through which these networks could be legitimized will be described in further chapters).

Today, many organizations for the promotion of non-fiction films such as the *HotDocs* Festival for documentary films or the nonfiction-centered *True/False Film Fest* have integrated into their agendas several education initiatives and have stressed the potential for social change of these films, even if they argue that their main interest when curating the films chosen for exhibition might be compelling storytelling or aesthetic value and not necessarily the didactic strategies or the persuasive skills of the documentaries involved. But, regardless of how much documentaries might want to become separated from social ideologies in our cynical contemporary world, evidence of the persistence of the idea of documentary as a force for change can be still found, and a recent example is the survey carried out by the *True/False Film Fest*, in which several documentary filmmakers –coming from all over the world– who were participating in the 2014 version of the festival were asked about the intentions behind their efforts in producing documentary films: 91% of them responded “yes” when asked whether they believed that nonfiction films can create social change, and 42% said that it was “very important” for them that their films could create social change (only 19% believed that it was unimportant); but perhaps more revealing was that when asked about the reasons why they made nonfiction films and given a set of choices among which they could select more than one, 74% said that they had the goal of “meeting and working with new people”, 91% agreed that they did it to “express [themselves] artistically” and only 17% agreed that “making money” was part of their goals.<sup>46</sup> These numbers are staggering and consistent with the perception that documentaries should value collectivism, empathy (meeting and working with others might imply sensitizing oneself about other people’s issues and concerns) and social awareness over other goals and motivations, including monetary rewards through distribution. An educational document

released by the *HotDocs* festival, similarly stresses the importance of these films in promoting change through collective work:

If documentary films generate empathy in audiences, illuminating new perspectives and activating powerful emotions, then what happens next? Audiences often walk out of documentaries saying, “I want to do something about the way I feel and what I just saw!” Empathy created by great storytelling can be great fuel for action. Coordinated, organized and strategic actions can facilitate major changes in a society’s viewpoint, lexicons, values and practices. Coherent actions can shift this post-viewing inspiration into action, which can drive societal and legislative change, truly altering societal practice.<sup>47</sup>

In subsequent sections we will explore how the informal film market is already a coordinated and organized social action in itself, and how it can even be perceived as a form of resistance able to carry out long term processes for change, particularly if documentaries are featured more prominently within it through the joint efforts of filmmakers and distributors. Through the case study of the consolidation of ASECOPAC (the *Ecuadorian Association of Sellers and Distributors of Audiovisual and Related Products*) –a coalition of informal salespeople which organized itself as a social movement not only to resist the stigmatization of the activities through which its members obtained their livelihood but also to create awareness about poverty and demand change in public policy– in Chapter Three, we will address ways in which the actual legalization and legitimation of informality in film distribution could stimulate social change, make films available to more people and promote national identity through the circulation of local films that are important to create a more diverse audiovisual sector and support local filmmaking efforts. The case of ASECOPAC could ultimately be recognized as particularly significant for documentaries and I have chosen to present it as an important precedent for the achievement of a distribution model that combines a reassessment of the informal economy with the social concerns of documentary filmmaking.

Other outlets such as film festivals and alternative distribution channels will also be explored in Chapter Six: these are modes that differ on several aspects from the most commonly adopted forms of distribution through television, theatrical distribution and online

streaming services. Film festivals, however, will receive less attention than other distribution models because although many of them, such as the two that have been mentioned above (as they are some of the most visible in a global level) can indeed achieve a lot in terms of finding exposure for documentary films, they are not exactly long term processes in search of promoting production and distribution of films, nor are they platforms for social change or outreach by themselves (in fact, 56% of the filmmakers who were surveyed by the *True/False Film Fest* also admitted that they had no intention of doing outreach to institutions or social groups in order for their films to have more impact because they didn't have the budget or time to do it, or even had the knowledge on how to achieve that.<sup>48</sup>) In reality, film festivals are occasionally the points of convergence of several other film education practices that are vital and which could be considered successors of the early movements for revolutionary documentary production and discussion that flourished during the second half of the 20<sup>th</sup> century. The scope of festivals is limited and their status as temporary showcases does not guarantee that they can be a definitive solution for the problem of distribution, considering that distribution is above all a matter of sustainability; this is one of the reasons why this research has chosen to explore channels which are more oriented towards education and achieving sustainability for local production under different forms. We will continue to see in later parts of this investigation how an answer to the film distribution problem for documentaries could perhaps be present in a more concrete and extensive fashion in the informal market and its possible legitimization strategies, as well as through other forms of film distribution that place education and participation at the forefront.

### ***1.1.3 The film distribution platforms of formal and informal markets***

The objective of this section is to do a review of platforms available to distribute documentaries in both formal and informal markets, such as television, theatrical, DVD, and, more recently, the Internet. It intends to describe and to analyze the knowledge that exists about film distribution effectiveness offered by these platforms in Colombia in comparison with the film distribution strategies used to reach audiences in other countries.

▪ *Film distribution on Television channels*

Television is an audiovisual content distribution platform that belongs to the formal market. It has been crucial in, at least partially, accomplishing the objective of making documentary films reach an audience in most countries. In Colombia there are two private television channels (*Caracol* and *RCN*), two public channels (*Canal Uno* and *Señal Colombia*) and one state-run channel (*Señal Institucional*) with nationwide coverage. There is also a wide range of regional TV channels, some of which are public, a few private, while others are small community channels.

Certainly, TV has been both a part of the problem and of the solution when it has come to the distribution of documentary films. On one hand, the two major private TV channels have dedicated most of their efforts and capital on the lucrative business of producing, broadcasting and selling telenovelas and other forms of scripted television – locally and internationally– for at least the last 20 years, completely neglecting documentary production; but on the other hand, it has been acknowledged that “private television channels are an important platform [for the distribution of documentaries] if we consider that 23% of documentary filmmakers who have managed to broadcast documentaries have done so through them.”<sup>49</sup> In addition to that, on the same survey conducted by the FDC, it is revealed that 44% of the documentary filmmakers surveyed have managed to distribute their documentaries on the public television channel *RTVC* and 37% on local channels, while another 10% has even accomplished to do so in international public television channels. But however encouraging these numbers could seem to be, it is also recognized that so far, private TV “has not become a sustainable platform with a continuous demand of [documentary films]”<sup>50</sup>, and that although television channels “[...] could become a privileged platform for certain types of documentaries” they “lack empathy and synergy towards Colombian documentary production.”<sup>51</sup> As an example of this, it is regrettable that, at present, there aren’t any permanent TV spots to broadcast documentaries on any public TV channel in Colombia, “because the policies of the National Television Authority of Colombia with respect to this subject are very poorly designed, and broadcasting documentaries is not encouraged through any means.”<sup>52</sup>

There is a total absence of any legal regulation or mandatory state policy that could promote the permanent broadcasting of documentaries through any television channel in Colombia, including the network of regional public channels whose programming is under the complete control of the National Television Authority. It is worth noting that in 1995, Colombia established a *Television Development Fund (FONTV)* whose policies were meant to improve the conditions of public television throughout the country, mainly with the aim of allowing for regional and public television programming (stressing that its contents should be cultural, informative –basically understood as news– and educative) to flourish as a strategy for the decentralization of the mass media, which are mostly concentrated in Bogotá.<sup>53</sup> But for 20 years, the FONTV has failed to involve the numerous communities of the regions served by the different local public channels through active programs of social action and content promotion that could allow for the citizens of these areas to assume the responsibility of participating in the construction of their local television and become spectators of what has the potential to be a television made *by* them and *for* them. The FONTV, in a move similar to that of the FDC, also devotes most of its funds to audiovisual production, in this case of newscasts, talk shows, cultural magazines and, occasionally, documentaries, but it does not engage in activities to promote these contents, oversee their quality and inform the citizenry of their availability. On top of that, only very small funds are allocated for the purchase of broadcasting rights for independently produced films and when this is accompanied by the lack of proper legislation for 1) establishing a minimum amount of hours for documentary/informative television to be broadcasted and 2) supervising the quality of the contents (both by the National Television Authority and by the community concerned), regional television then becomes the instrument of a few informed TV operators who are often the sole participants on public biddings for state contracts and who are glad to be able to receive funds from the government to produce mediocre or substandard programming that ‘nobody watches.’<sup>54</sup> The FONTV would need to demand accountability and to promote the contents that are created with its sponsorship, but unfortunately it does not and this only exacerbates the problem of distribution for documentaries, because even the ones that are being produced in order to be seen at a determined TV channel, are in fact

mediocre or simply not reaching their intended audiences, and those which are produced independently or through other forms of public funding are not purchased for broadcasting.

As for private television, the large networks of the country have argued that the local soap operas' high ratings prove that Colombians prefer watching these products over anything else and that it is therefore no point in bothering to offer other options, such as documentaries. However, diverging opinions hold that "without a doubt there is an audience for documentaries in Colombia", a statement supported by the fact that "the most watched cable TV channel in Colombia is *Discovery*, which broadcasts nothing but documentaries."<sup>55</sup> (Although these *Discovery*, *NatGeo* or *History* networks documentaries are often serialized and their formats resemble more those of *reality television* than that of social documentaries or other less 'marketable' forms of the genre.) Other figures revealed in the same study from which this conclusion was reached, indicate that 48% of respondents watch documentaries on cable TV channels and 44% watch them on local –albeit private– television channels: this brings a certain amount of confidence on the possibility of television eventually becoming an important distribution platform for Colombian documentaries, although for the time being, the most watched documentaries remain those belonging to serialized forms and fixed formats, particularly films devoted to science popularization, wildlife observation, extreme sports and survival stories.<sup>56</sup> The truth is that there is no space for the social or independent documentary film in private television yet, even if there is an audience for serialized forms, of which none are produced in Colombia at the moment. On top of this, an even bigger caveat remains to the perception of private television as an eventually suitable platform for the exhibition of documentary films, and it is that, as José Mauricio Domingues explains on his analysis of modernity in Latin America, audiences of private TV channels in the region are very aware of the denationalized and privatized nature of the large television networks (both local and foreign) which have channels available in their airwaves, of their close relationships and influence over politicians (not merely over politics in general: this means awareness of the direct links between TV networks and specific people or economic groups) and of the process of "worsening and denationalization of content"<sup>57</sup> that takes place in their non-public television. This basically means that Latin American audiences are not expecting to see

revolutionary content while tuning to large private networks on their TV sets anytime soon and they accordingly presume conservative programming as the norm.

As Domingues explains, “the power of television networks is even greater in Latin America than in other regions of the world; they are at the kernel of present power blocks and of neoliberal modernizing moves”<sup>58</sup>: private television in Latin America is deeply influential but its intentions and relationships with powerful economic factions are mostly transparent. An opinion survey aimed at measuring the political influence of the media which was carried out in several Latin American countries, titled *¿Quién confía en los medios masivos de Comunicación en América Latina? (Who trusts the media in Latin America?, 2012)*, concluded that even though it is certain that the different mass media (mainly press, radio and TV) retain a “moderate” amount of trust in the region, there are generalized signs “that not everyone [in Latin America] accepts the integrity of the media in a uncritical way” and that the results of the survey “demonstrate that there is an interesting tension between the factors that explain the relative support to the media in the region”<sup>59</sup>: on the one hand, audiences who are aware of the importance of changing and questioning the political opinions of their peers distrust them, particularly when they do not offer effective opportunities for the public to become informed on subjects of political and educative nature; on the other hand, the media are perceived as a completely positive influence and are enthusiastically trusted only by those who maintain very close relationships with them (that is, those with invested interests), and there is a wide range of opinions that are placed in the middle, where different audiences enjoy some of the products of television while being critical of their manipulative nature and others criticize private television in favor of public broadcasting. Since it has become a common place in Latin America to perceive private television, which is the biggest media platform in the region, as the tool for the manipulation of public opinion (what Noam Chomsky has famously called the “manufacture of consent”), the pushing of neoliberal agendas and private or very limited economic interests, Latin American audiences are very much accustomed to regard this medium with a sort of love-hate attitude that, according the aforementioned study, suggests that citizens from Latin America and the Caribbean are not “passive receptors”, “uncritical neophytes to every message” and not even—in spite of the authoritarian and traumatic past of several countries—“resigned cynics” when

it comes to their relationship with the different media.<sup>60</sup> Latin American audiences are in general no less critical (at least when it comes to the television they watch) than audiences from other parts of the world, and private television is the media towards which they direct most of their misgivings. It seems very difficult, then, that documentary films –which, as it has been stated before, should remain independent if they are to have any positive effect on social change– could actually be expected to thrive in this environment where audiences are not placing their trust or expecting to find challenging political ideas or at least new information about old problems. If documentaries are likely to ever find a sustainable platform for their distribution on TV, it will be on the public space –with the obstacles already discussed notwithstanding–, at least for the predictable future.

▪ *Film theatrical distribution*

Film distribution at movie theaters belongs to the formal market. Generally speaking, the scope of commercial and independent theatrical distribution in Colombia is very limited. As it has occurred in many other countries around the globe, the film market in Colombia is dominated by Hollywood films and, to a lesser extent, by the products of independent North American cinema (a handful of films made outside of Hollywood) and European art films which usually have tested their potential as –at a minimum– modest financial hits through their previous rounds in foreign screens before arriving to Colombia. This scenario has been one of the main motivations behind the development of a national film industry that, although has very little hope to ever surpass Hollywood’s influence, has the goal to at least present idiosyncratic modes of reflection to local audiences and assist the project of national identity construction.

What we have previously explained in terms of the social awareness of the domination of private TV, also applies for theatrical distribution of films: the economic and mediatic supremacy of Hollywood films does not mean that audiences are not aware of the process of cultural domination taking place and a very interesting instance of how it is possible to balance the relationship of power is the way in which the informal market also appropriates the products of the hegemonic culture and ‘equalizes’ them: in the pirate markets, the most



prestigious Hollywood films are placed next to music videos from popular local bands, pornography, documentaries of all kinds (foreign and local), educational or sports-training videos, etc., and, even if their origin still remains mostly foreign, the fact that all of these products are sold at the same price and under the same circumstances, levels the playfield to a certain degree, making everything available at the same time, regardless of the dictates of the copyright owners and their interests. This is a position of resistance that derives from the natural impulse of wanting to participate in an economic system that relies on exclusion to achieve many of its goals.

If we join these circumstances with Lipovetsky and Serroy's argument that documentary cinema is flourishing in a world that no longer has reliable and all-encompassing institutions that can project their totalizing views of reality without finding resistance or criticism (and proof of that is how ideas like the above quoted praise of US culture by David Rothkopf, which was presented in a reputable journal in a time as recent as 1997, seems so blatantly absurd and questionable today), a world of what Arjun Appadurai calls "dispersed hegemonies", institutions of power that are no longer clearly defined, it becomes clear that the hegemony of Hollywood is not undisputed but rather tolerated and assumed as the result of an overload of production with which it is impossible to compete at the same level. This domination, however, does not mean that, in the case of Colombia, audiences are not interested in seeing films made in their own country.

For Colombia, the process of constructing a national cinema has had very important developments in the past decade. The year 2012 –the last year for which there is a comprehensive report available on the state of Colombian cinema– was ostensibly very good for the country's hopes of constructing a strong national cinema. Twenty-three locally produced films were premiered and more than three and a half million viewers went to see them: the highest attendance in history for Colombian films. However, even though this was a success for the movie theaters, that number of spectators becomes very small when compared to the 40 million viewers (76.73% of the box office) that went to see Hollywood films on the same year. Only 7.25% of the box office of 2012 went to Colombian films.<sup>61</sup> This means that about 90% of the 224 films released in 2012 in Colombia were of foreign

origin, mainly coming from the Hollywood film industry. The 22 Colombian film premieres correspond to only 9.82% of the total of film releases.<sup>62</sup>

It is paradoxical that while between 2000 and 2009, the film box office in Colombia grew 141%, during the same period there was a very low annual cinema attendance per capita in Latin America. Statistics show that Latin Americans went to the cinema on average less than once a year.<sup>63</sup> It is very disquieting that in Colombia that figure is even lower, since the cinema attendance per person was only of 0.41% in this country.

Although there have been relatively successful documentary films in Colombia in recent years, such as the film *Apaporis: secretos de la selva (Apaporis: secrets of the jungle)*<sup>\*</sup>, which had 43,587 viewers and won the Audience Award of the Ministry of Culture for Best Colombian Film by popular votes in September 2012,<sup>64</sup> these have not been influential or numerous enough to prompt the establishment of film distribution companies for documentaries in the country and also, to put it more bluntly, “film theatres are simply not interested in this genre.”<sup>65</sup> Currently, commercial theatrical distribution is a viable film platform for documentaries in countries like France, England, Spain, Argentina or the United States; in contrast, “the commercial film theatrical platform is far from becoming a main distribution platform for the documentary genre in Colombia.”<sup>66†</sup>

The study *Diagnosis of the Colombian Film Documentary Sector*<sup>67</sup> shows that only 14% of respondents went to see a documentary film in film theaters in 2011. Besides, only 8.27% of cinema audiences saw a Colombian film in 2012.<sup>68</sup> Therefore, it is important to establish the reason why there is not an economic stimulus for film exhibitors to spur the release of Colombian fiction and documentary feature films. A first obstacle in this respect

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\* This film, directed by Antonio Dorado, shows some of the most significant places of the Amazon rainforest in Colombia, and also reflects on the loss of the languages and traditions of the region. Another documentary feature film released in Colombian cinemas that year (2012) was *ILLEGAL CO.* by Alessandro Angulo, and its main subject is the war on drugs and its ineffectiveness to end drug trafficking and consumption.

† FDC, 2011, p. 50. Nevertheless, the film distribution platform that has been more useful for Colombian documentary filmmakers is that of film festivals. According to the study of the FDC (2011) 43% of the surveyed film makers have participated in at least one of them and 31% of them have resorted to independent film distribution circuits linked to film festivals. Moreover, the Ministry of Culture supports the organization of at least 56 film festivals in 18 departments of Colombia.

is that most film marketing models that have been taken as a reference by the Colombian government to promote the theatrical release of Colombian films are based on marketing examples of Hollywood films screened mainly to North American audiences at cinemas in the United States. There is a considerable contrasting cultural background between North American people and the Colombian population, but these differences have been bridged both by cultural influence and through the local adoption of the products of American popular culture, both through a form of *reversed* cultural appropriation (since it is the people from the developing country who are profiting from the cultural products of the richer one) and by the informal market. While many of the criticisms of Cultural Imperialism assume the people of the dominated culture as passive recipients of foreign content, the truth is that the informal market demonstrates that there can be enjoyment without respect and skepticism without distaste (many informal salespeople, as we will see later, admit to feel guilty when they offer local films for sale and sometimes even decide not to offer them at all even though they don't feel any guilt whatsoever while offering American films) because the process of reception of foreign cultural products is incredibly complex. Orthodox views of imperialism will make the mistake of underestimating the “[i]ndividual capacity for psychological compartmentalization and rationalization” of those upon which a foreign culture is pushed “to an extraordinary degree” and this creates the need to give “[m]uch more attention” to “the processes by which individuals and groups interpret, translate and transform their experiences of foreign culture to relate to more familiar experiences.”<sup>69</sup> In Colombia there is no need to insist on copying marketing models that have worked for audiences in developed countries, because this country, even if also subjected to the domination of Hollywood films, has developed its own interpretation of what that process of domination means and also has a population with tastes, preferences, storytelling styles, cultural contexts, regional identities, political experiences, social collective meanings, expressions, cultural forms and many other traits which are diverse and distinct from those of other societies in the developing world.

Traditionally, it has been believed that a film distribution marketing model that has worked in one country could be successful in another, but the Colombian film authorities are missing important facts such as that if countries like France boast a large average market share for their local films, it is because this country has an established industrial tradition of

vertically integrated production/distribution/exhibition chains.<sup>70</sup> In fact, the studios *Gaumont* and *Pathé* historically pre-dated Hollywood studios in the development of this integration model.<sup>71</sup> This helps one to understand that if this vertical production model has worked in countries such as United States as well, it is because “[...] the major companies are principally in the business of distribution and possess the financial wherewithal to cover as much as 100% of the production risk, against prospects of recovering those costs through their efficient worldwide distribution machinery.”<sup>72</sup> In Colombia there are not many consulting studies either about the theatrical film distribution market nor about the film audiences market, “whereas America's Global filmed entertainment consortia have historically been able to secure growth from exploiting a vast U.S. consumer market.”<sup>73</sup>

#### ▪ *Film distribution on DVD*

Film distribution on DVD belongs to both the formal and informal markets. However, this dissertation emphasizes on the informal aspect of the platform since it works particularly well to reach audiences in emerging countries like Colombia. While in the formal market a film on DVD costs on average about US\$15, on the informal market a pirate copy of a film on the same format costs about US\$1, and sometimes even less. Piracy has become a very tempting way to acquire films, but the phenomenon is far more complex than just a cheaper alternative to the formal market.

The systems of film circulation, including pirate networks, have been called by Ramon Lobato “the shadow economies of cinema”<sup>74</sup> –i.e. an unmeasured, unregulated and extra-legal audiovisual commerce. On an attempt to understand this worldwide phenomenon, a study by an International Data Corporation released by the *Business Software Alliance* in 2010, revealed that one-half of the 116 economies studied had piracy rates of 62% or higher, and two-thirds had at least one software program pirated for every one installed legally.<sup>75</sup> Piracy is a pervading phenomenon that is becoming increasingly hard to control.

Although opposition to piracy is entirely understandable from the point of view of copyright holders and large corporations like the US film distributors (major studios) have

managed to promote a negative image of piracy by highlighting its nature as a criminal activity that gravely violates intellectual property rights, this kind of antagonism must continually face the fact that “the sale of pirate films is a current and an extended activity that I would say has a public image of legality.”<sup>76</sup> Most studies conducted by legal authorities consider piracy as an illegal practice; however, it has been seen as a licit practice by many authors and by large sectors of society that do not agree with the continuous penalization of the use of digital technologies to copy, share and/or modify a product of cultural nature such as a film or a TV series. Given the fact that piracy is “[...] a social practice through which a big part of the Latin American working class obtains access to a significant amount of cultural goods that they could not be able to reach otherwise.”<sup>77</sup>, it is important to determine why official institutions such as government agencies, the private sector, the major film studios and technocrats insist on “neglecting the social processes of networking that emerge around it.”<sup>78</sup> As it has been mentioned, in countries such as Mexico, nine out of 10 films sold on DVD come from the pirate market. This means that this illegal market is working on massive distribution of films. Is there anything to be learned from the collaborative work involved in the construction of informal networks?

Traditionally, public and private institutions, such as the Convenio Anti-piratería para Colombia (*Anti-piracy Agreement for Colombia*) and the aforementioned PRACI have supported the penalization of piracy in Colombia, demanding sentences from two to five years in prison for copyright violations. At the same time, radical studies about piracy arise continually, such as that of economist José G. Aguiar, who argues that once salesmen are involved with piracy, they should be seen as criminals because of the nature of their activities and goods.<sup>79</sup> This kind of view on piracy and their belief in sentencing and penalization can only provide a partial solution to the problem, considering that such a short-sighted answer cannot fully explain why other people, such as the authors mentioned above, are opposing incarceration for those involved in piracy and talking about “the right of free access to information and culture that our global society demands today.”<sup>80</sup> Instead of simply demanding more criminalization and harder sentences, reducing piracy to an exclusively legal issue, it should be studied as a powerful democratizing tool in terms of equal access to cultural content.

The penalization of piracy imposed by developed countries to developing ones also seems quite hypocritical if we remember that countries such as the United States relied to ‘pirate’ practices in the past as shortcuts towards industrialization. For instance:

Through the nineteenth century, America’s multi-generational effort to catch up with Britain began with the appropriation of British intellectual property: the first profitable American textile mills blatantly violated British patents. And ferociously entrepreneurial private enterprise was supported by a broad array of state investments, guarantees, and protective tariffs in accord with the ‘American System’ advocated by Alexander Hamilton and Henry Clay.’<sup>81</sup>

While the governments of developing countries, are pressured by richer economies to maintain the view that piracy is the illegal transaction with the largest presence in informal markets and that it should be stopped through legal means, Hernández says that books such as *Kicking Away the Ladder* can remind capitalist societies that all major developed countries used ‘piracy’ as a dominant economic policy in order to accumulate wealth and speed up their industrialization and, paradoxically, then have actively tried to forbid other countries from doing the same thing.<sup>82</sup> The author of this book, Ha-Joon Chang, argues that although developed countries used these ‘bad’ commercial and industrial policies to become wealthy, they are kicking the ladder on which they climbed to the top, thus keeping the same opportunities for economic advancement away from developing countries.<sup>83</sup> Why not instead resort to teach marginalized economies how “to climb the ladder” to develop and formalize their informal economies, as they did in the past?

Even though intellectual property laws have been promoted and imposed mainly by Hollywood major studios, claiming that illegal sales of DVDs have hurt their profits in recent years, other empirical observations have concluded that “the analysis of global figures of the film business, accompanied by some interpretations of how the informal market works and its interrelationship with the formal market, reveal that ‘piracy’ does not really harm the business of film producers.”<sup>84</sup> This poses the question of whether the copyright law is

currently defending the author's moral rights or the narrow commercial interests of the multinationals who own the property rights of film works:

If we understand the legal system of a country as the framework that we all accept to live together by respecting each other, regardless of the abuses and privileges, then how can we accept rules that serve only a few at the expense of many?<sup>85</sup>

Copyright laws, as they are being enforced at present, are indeed at the service of a very limited view of what cultural goods represent, since they are assumed to have only monetary value as 'copies' and are stripped of their worth as information, aesthetic experiences, instruments for social awareness (particularly in the case of documentaries, as we have seen) and many other traits. While some government studies provide valuable information about the motivations of copyright legislation and highlight the importance of copyright based on the truism that it is fundamentally "a way to stop somebody to steal someone else's work", a limitation of this simplifying approach is that most of the studies do not include considerations on how to assist the popular classes to gain access to the cultural goods subject to that same legislation. They have ignored that "to the extent that it is a system based on unfair prices, it could not be possible for it generates other dynamics different from exclusion and rejection."<sup>86</sup>

The FDC of Colombia invested over US \$300,000 in film anti-piracy campaigns focused on education and legislation in 2012, and yet piracy is still the way through which most Colombians access films.<sup>87</sup> If, as the study *Media Piracy in Emerging Economies* demonstrated, education against piracy does not work, legal measures do not change people's habits in respect to piracy and, additionally, that anti-piracy enforcement is not effective<sup>88</sup>, then what is the point of continuing to use these strategies? Instead, funds could be invested in audience education programs that would be indirectly anti-piracy, since their aim would be to instruct potential documentary film audiences in Colombia on how to approach and value these films, treating these potential spectators as intelligent and discerning citizens and not as copyright law infringers. Should we let future generations grow up with the stigma of being "pirate nations", when in fact "there is hunger and lack of opportunities, lack of money

and a desire to work”<sup>89</sup>, in addition to a desire to enjoy and receive the influence of cultural works?

#### ▪ *Film distribution via the Internet*

There is no questioning the opportunities offered by the Internet to distribute films and to reach countless spectators, especially in developed countries. The benefits of accessing this powerful distribution platform to watch films are not reached equally everywhere: generally, developing countries like Colombia are divided into two types of people: those who have access to the Internet and a very large number who do not. However, it has to be said that Colombian authorities are making a good effort through the program *Vive Digital (Live Digital)*<sup>\*</sup> aimed at giving more people access to Internet services. Although in the poorest regions basic human needs such as access to electricity or water supply are yet to be solved, it is not possible to deny that currently a significant number of Colombians, approximately 42%, have online access. But as the aforementioned document *Communication Colombia Survey 2012: New Communication Technologies*, revealed, while 89% of the high-income respondents have access to the Internet, only 35% of the low-income respondents do.

When it comes to the online streaming of films, the last study of the FDC showed that only 4% of people with Internet access in Colombia use it to watch documentaries; this results illustrate that “although it is important to start exploring [online] platforms, their viability as an economic model is still merely a promise and they have yet to show concrete results in Colombia.”<sup>90</sup> At the moment, the Ministry of Culture of Colombia is working on a promising project sponsored by the Inter-American Development Bank (*Banco Interamericano para el Desarrollo [BID]*), whose objective is to create a website to stream Colombian films, an effort considered necessary as a part of the creation of “state policies for training audiences capable of looking deeper into our reality through the mirror of cinema, a wonderful mirror

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<sup>\*</sup> *Vive Digital* is described on the website of the Colombian *Ministry of Information Technology and Communication* as “The technology plan for the next four years [2014-2018] in Colombia, which seeks for the country to take a great leap forward through the massive increase of the infrastructure for providing of internet access and the development of the national digital ecosystem.” (<http://www.mintic.gov.co/portal/vivedigital/612/w3-propertyvalue-6106.html>).



that allows us to reflect on our problems.”<sup>91</sup> It is possible that the creation of local platforms could increase the number of people watching documentaries online in Colombia and only time will tell if initiatives like this one will increase the number of people using the internet to access local documentary films.

Although more than 25 million Canadian and North American users of legal online streaming services like *Netflix* demonstrate that there are massive audiences interested in watching films on the Internet, the same legal companies continuously have to face the competition of illegal online services in Latin America, such as *Taringa* or *Cuevana*<sup>\*</sup>, that very conveniently allow millions of worldwide users to watch films and TV series online, free of charge. While workers’ incomes vary largely around the world, the prices for legal access to films are very similar on average anywhere, and it is this excess of value that has created a climate of social acceptance where people are inclined to “opt for the illegal free downloads in peer to peer sites”<sup>92</sup> of audiovisual content without considering that a transgression is being done.

The issue of penalizing people who violate copyright online is essential for the governments of developed countries while it is not for poorer economies, and thus they have come up with pieces of legislation aimed at stopping piracy such as ACTA, SOPA and PIPA<sup>†</sup>, that are pushed into the legal system of disadvantaged societies even though they are not coherent with the economic reality of developing countries; this coercion comes to expose how “on the discussion about what Internet model each country wants, some cases prove that, as it has happened with countries like Chile and Colombia, concessions are expected to be made to the commercial pressures of superpowers.”<sup>93</sup> What is incredibly ironic is that the support of these legal initiatives comes in the face of facts that richer economies conveniently

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<sup>\*</sup> *Taringa*, *Cuevana* and a myriad other similar websites popular in Latin America (with similar regional variants all over the world) are illegal websites that allow for the downloading and online streaming of films, TV shows, pornography and video games. In Latin America, most of the content distributed on these websites is of foreign origin, with North American shows and films being the most commonly watched and downloaded. It is not uncommon that some the content found on these websites is not available through any legal means in Latin America, particularly in the case of Asian or European films and TV series, which are never imported, lazily arguing a lack of interest or demand.

<sup>†</sup> ACTA is the *Anti-Counterfeiting Trade Agreement* signed by 22 developed economies in 2011. SOPA and PIPA are legislations brought forward by the United States Senate and the United States House of Representatives to help fight online piracy.

ignore, like for example that “file sharing has been going on for years now and yet the movie industry continues to see record profits and revenues. Clearly file sharing is not killing the movie industry: far from it.”<sup>94</sup>

Traditionally, the academics, lawyers, authors and users who criticize initiatives to reformulate the intellectual property scenario are labeled as ‘pirates’ or ‘criminals’ by the government, businessmen and industrialists representing the interests of the formal sector. However, such a Manichaeian perspective fails to consider that perhaps what they are trying to do is “to find a balance inside a business model so that it can take into account the need for expression, the educative necessities and the need for knowledge of all those who are connected to the Internet.”<sup>95</sup>

While experts such as Lawrence Lessig provide valuable suggestions regarding respecting copyright law, such as recurring to the alternative *Creative Commons* copyright license -that allows authors to copy, distribute and share their works on the Internet as long as they acknowledge its authorship and do not have commercial purposes. Researches made on this subject remain limited and initiatives like *Creative Commons* endure marginalization, once again simply because most official and formal institutions remain focused on simply finding ways of penalizing behaviors that involve the economic exploitation, copying, reproduction, or unauthorized use of artistic works protected by intellectual property laws. It is important to recognize that these institutions have completely failed in their approach to the problem and that their pressure on the informal market should not be accepted unless it is aimed at finding constructive solutions based on integration.

## ***1.2 Theoretical framework***

General speaking the terms ‘formal’ and ‘informal’ are commonly used to refer to issues of industry and industrial practices. Keith Hart, an economic anthropologist who was most active during the 70s, first proposed the distinction between formal and informal in a study conducted in Ghana, to study the income opportunities of the urban work force. Hart identified the first concept with wage employment and the second with self-employment.

Paradoxically, the definition of informal economy was born in the Third World.<sup>96</sup> Hart coined the term ‘informal’ as a way of giving expression to “the gap between my experience there and anything my English education had taught me before”<sup>97</sup>, and to show the dynamism of these activities that went well beyond “shoeshine boys and sellers of matches.”<sup>98</sup>

In his report to the International Labor Organization ILO (*Organización Internacional del Trabajo* [OIT]), based on his empirical observations, Hart emphasized the notable popular entrepreneurial dynamism and diversity of the in sector, described by him as “people taking back in their own hands some of the economic power that centralized agents sought to deny them.”<sup>99</sup> About this dynamic characterization of the informal sector, the economist Alejandro Portes, in his book *Economic Sociology, A Systematic Enquiry*, lamented that it was subsequently lost as the concept became institutionalized within the ILO bureaucracy, which essentially redefined *informality* as synonymous with *poverty*.

Portes argues that other negative definitions of the informal sector termed as “underemployment and assumed to affect workers who could not gain entry into the modern economy”<sup>100</sup> and its characterization as an excluded sector in less developed economies, has been enshrined in numerous later publications of the ILO, the ILO’s Regional Employment Program for Latin America [PREALC], and the World Bank studies of urban poverty and Labor Markets.

The academic circle has been discussing how to understand the term informality since 1972. The variety of definitions about it range from the analysis of the anthropological and social circumstances of people who work in the informal sector to the study of other areas that respond more to the western discourse on economic development. Since then, informality is related to other economic activities that do not match within the categories of what a perfect dependent capitalist urban economy should be.

In addition to the arguments already mentioned about the formal/informal dichotomy, with time there have emerged other visions, theoretical postures and models to study this complex issue, as follows:

The informal economy is known as *submerged* or *underground* economy by the Economics Commission for Latin America and the Caribbean (Comisión Económica para América Latina y el Caribe [CEPAL]); it is known as *parallel economy* by the International Monetary Fund; defined as the *informal sector*, *informal economy* or *underemployment* by the OIT; as *unstructured economy* by the Organization for Economic Co-operation and Development [OCDE]; as *parallel economy* by the World Bank; as *obscure economy* by both the EU and the Federal Reserve; as the *free economy* sector, *unrecognized* sector, *street sales* sector or *excluded* sector by the PREALC; and as *underground economy*, *hidden economic activity* or *disguised economic activity* by De Soto.

Meanwhile for the Neo-Marxist (from the political economy school), the informal sector is a structural problem that is not autonomous or complementary to the formal sector, but is manipulated and dominated by the formal capitalist sector to reduce production costs. In fact, the Neo-Marxist and the experts of the structuralist school see the informal sector as a vehicle to perpetual poverty.

Contrary to the structuralists and Neo-Marxists, 'Free Culture' advocates see informality as a bustling market full of economic activities and dynamism; uncontrolled and unregulated by the state; a market filled with independent people operating outside government interference who deserve to be glorified as worthy representatives of free capitalism. Neoliberals see the people involved in the formal sector as victims of excessive government control in terms of their businesses, property rights, and employment regulations. And although their approach does not have much influence in academic circles as the other two mentioned economic schools do, they argue that a free and unrestricted economy will provide goods adequately and fairly to all.

Meanwhile, Gómezjara proposes two schools for the study of informality. The first one is the Keynesian vision which defines the informal sector as the sum of activities done by organized companies according to a productive rationality that differs from existing and

visible parts of the economy and which aims is to ensure family subsistence, contrary to the formal sector whose motivation is the accumulation of wealth.<sup>101</sup>

The second one is the neoliberal school which considers the informal sector an underground segment of society and defines it as a set of illegal activities, in the sense that they do not meet the regulations established in the economic, fiscal and labor legislation, among others. Neoliberals propose a model that presupposes the existence of an underground economy in which there take place mostly illegal activities used to obtain profits that can be categorized as:

- Criminal activities such as kidnapping.
- Unlawful activities such as drug trafficking.
- The informal sector.

The latter includes economic activities that are not regulated but that have different goals that range from mere subsistence to of wealth accumulation. Neoliberalism equates informality with criminality in order to demonize any kind of unregulated economic activity and in Colombia there seems to be a consensus about *formal* and *informal* being the only two possible labels applicable to economic activities. There is a predominant tendency to believe that legal activities belong exclusively to the formal market and that illegal activities are by definition part of the informal market, without any middle ground.

There are other researchers, such as Mario Cimoli, Analiza Primi and Mauricio Pugno, who, as experts in the field of informal economy in Latin America, have proposed a model with a '2 x 2 structuralist approach' to study the phenomenon. According to their model, and contrary to the claims of the neoliberal perspective, there indeed only two sectors in the economy, the formal and the informal, but the informal sector is not seen as synonymous with criminal, but rather understood as a set of heterogeneous activities characterized by low productivity, ranging from street sales, self-employment and extralegal wage labor. And, in relationship with this point of view –and as it has been discussed earlier– Alejandro Portes presents an alternative model that welcomes three sectors instead of two:

formal, informal and criminal, with the warning that, without exception, legal and illegal activities take place within the three.<sup>102</sup>

Certainly, there is no unanimous consensus on how to approach this subject, hence the importance of exploring the complexity of the problem throughout this thesis from other points of view based on anthropological, cultural and social perspectives. On one hand, perhaps some aspects of these theories may not bring solutions but on the other hand, some of them could work particularly well in devising new models, such as Portes' implication that the conflict between informal and informal economies is not a matter of confronting the good guys that belong to one market with the bad guys who belong to another. If we can at least avoid this kind of excessive simplification, we would be taking steps in the right direction.

### ***1.3 Background and context***

An important statement of the present work is that in order to find a solution to the documentary film distribution problem in Colombia, the issue should not be addressed merely by recurring to the demonization of the informal salesmen who do not belong to the circuit of enterprises that the law regards as formal institutions and therefore also legal. In that sense, I consider that unlike other previous researches that are based, for example, on statistical figures or on the analysis of the film distribution models of developed countries, the conceptual gaps that this work seeks to fill are oriented towards the following considerations:

- First, to question whether copyright law, especially in Colombia, is defending the interests of content creators and their intellectual property, or instead the economic interests of corporations.
- Second, to inquire if the laws related to film production and distribution, along with the models for the same purpose implemented in Colombia, actually meet the needs of the potential audiences of documentary films: that is, if these policies meet the

social, labor, economic and cultural rights of the marginalized population of Colombia, who could benefit greatly from documentary films.

- Third, to question if there is the political will to create a democratic film distribution model that does not generate inequality and that includes the learning processes and experiences of those who work in formal as well as informal markets.

It has to be said that besides the precarious film distribution system that is offered to people in some developing countries like Colombia, they primarily face other more pressing difficulties that are part of their social and economic systems. In Colombia there are about 16.4 million poor people, of whom about 5.4 million live in extreme poverty with very limited access to any proper educational, cultural, or working opportunities.<sup>103</sup> In addition, the low quality of the education offered in most regions "is one of the main reasons to explain why this country has one of the worst distributions of income per capita in the world."<sup>104</sup> According to the most circulated local newspaper in Colombia, *El Tiempo*, the latest Human Development Report from the United Nations (2011), lists Colombia as the third most unequal society in the world after Haiti and Angola.<sup>105</sup> Moreover, six in every ten Colombians who are working do not have a legitimate job, meaning that most of them work in the informal sector, in which they do not have a recognized employer, a contract subject to regulation, or access to any form of social security.<sup>106</sup> The last report titled *Job outlook 2011* published by the International Labor Organization, revealed that Colombia has the second highest unemployment rate in Latin America and the Caribbean Region.<sup>107</sup> Colombia is, regrettably, a country where the population growth has not been matched by a corresponding growth in job opportunities or access to better education. It is a country in which people have no choice but to accept the social consequences of the corruption of their political class as well as endure with resignation a generalized climate of violence and inequality.

Colombia has a very long history of unresolved violence that has been virtually uninterrupted since the independence period: that basically means that Colombia has not known a consecutive period of peace and stability since its inception as an independent nation in the early 19<sup>th</sup> century. The issues of internal political violence became particularly acute during the second half of the 20<sup>th</sup> century, when the confrontation between political parties

gave origin to a period redundantly known as ‘The Violence’, that began in 1948 with the assassination of the progressive presidential candidate Jorge Eliécer Gaitán, whose murder had very serious consequences including some immediate, like a riot known as the *Bogotazo* in which 5.000 people were killed, and others more gradual such as the conformation of Marxist guerrillas and other armed groups with revolutionary, left-wing ideals, which would in turn be a catalyst in the eventual appearance of brutal paramilitary groups, urban criminal bands and other antagonizing agents of political violence who have often committed serious atrocities against the civil population.<sup>108</sup> In addition, the infamous drug cartels that appeared as a product of social inequality during the late 1970s and had their impunity-laden heyday in the 1980s while revealing the total incompetence and corruption of the government by influencing every aspect of the political and social life of the country, have guaranteed that to this day, people in Colombia have been continually involved in an intense armed conflict that has lasted more than 50 years. And even though there have been serious attempts at both military and political solutions to the conflict, all of them have failed completely or are still ongoing, so far without any tangible results.

The fighting between these different groups for increased political control and economic supremacy in the whole territory has left, in addition to poverty, an internal war with hundreds of innocent people kidnapped, thousands dead and thousands displaced by the violence. This is unfortunately accompanied by the adversity of many people being forced to abandon their countryside land and find refuge in different cities throughout the country, where many struggle to avoid utter misery by taking on any kind of informal occupation. And as if this were not enough, the parts of the population more deeply affected by the conflict have been neglected not only by the state –who provides no safety nets whatsoever in the form of organized and effective social programs, since the attempts at these are plagued by corruption– but also by the different Colombian media, who are easily manipulated by the economic and political interests of those who benefit from the conflict, and therefore lack any interest in providing serious, thoughtful and impartial coverage on the social consequences of the internal war (hence, once again, the importance of the documentary film as a counterweight).



Colombia, on the one hand, has many poor people living with the consequences of the violence and serious social problems while, on the other, it suffers from an absence of serious media analysis about this violence on the mass media such as press, radio or private television, that could make this situations visible and thus present them for debate and questioning. Nevertheless, this void has been filled to an extent with the presence of many socially conscious artists and documentary filmmakers who are using their talent to reflect on these critical circumstances by creating documentaries such as the seminal work *Chircales* (Marta Rodriguez and Jorge Silva, 1968) which was shot in a poor neighborhood of Bogota called Tunjuelito where wealthy landowners rented their lands to poverty-stricken workers, including children, for the artisanal production of bricks. This documentary, influenced by the *cinema verité* ideas of Jean Rouch –of whom Rodríguez was a student of visual anthropology during the 1960’s– revealed to the world “[...] the social problem of the exploitation of child labor, the unemployment, the survival, the violence.”<sup>109</sup> And it would not be the last one.

With people from many Colombian regions suffering from the many consequences of a long history of war and violence, it is important that the Colombian documentary film productions reach their audience, because in Latin America, according to Moreno, “the consciousness of a country which watches its past can help solve many problems. Not only by the reconstruction of its history in order not to repeat the same mistakes, but also for the recovery of its dignity. The dignity of the people, who are still blinded, deceived and permanently intimidated.”<sup>110</sup> Certainly, the recovery of dignity helps to live without fear, bitterness, or anxiety. It also helps to reconstruct life, to recover social networks and to reconsider fractured values such as hope and reconciliation. Having this enormous social responsibility of contributing to the recovery of the dignity of a nation, the production and exhibition of documentary films can be seen as a priority, and therefore it is important to ask: what alternative distribution platforms currently exist that could allow Colombian documentaries to reach an audience?

Several Colombian documentary filmmakers such as Francisco Nordem, Gabriela Samper, Diego Leon Giraldo, Carlos Alvarez, Luis Ospina, and Carlos Mayolo, also led a number of social attempts at marginal cinema. Known as the activist documentary, the

political documentary, and the critical documentary (in the late 60's and in the 70's), the anthropological documentary and the reflexive documentary (in the 80's), they enjoyed a modest success that was product of the interest of audiences in subjects like marginalization, poverty, violence and several others that were not being openly discussed in the press or other more traditional media: their documentaries such as *The guerrilla priest* (Francisco Nordem, 1974); *The salt man* (Gabriela Samper, 1967) *Camilo Torres* (Diego León Giraldo, 1967); *What democracy is?* (Carlos Alvarez, 1970); *Listen and watch* (Luis Ospina and Carlos Mayolo, 1971) were exhibited in theatres, alternative cinema rooms, cultural centers and universities throughout the country and were usually well-received, even celebrated.

Later on, during the early 1990's, there were new public regional television channels like *Telepacífico*, *Telecafé*, and *Telecaribe* which transmitted many cultural and ethnographic documentaries directed by filmmakers like Oscar Campo, Carlos Bernal, Diego Garcia, Victor Gaviria, and Pablo Mora. Alas, this situation did not enjoy any continuity because, generally speaking, in Colombia government policies are always short-term and narrow-sighted. This means there are no permanent laws to regulate most Colombian public institutions, with public TV channels being some of the weakest among them. As a consequence of this, projects or institutional policies that were previously approved under one administration can be ignored or changed anytime there is a new incoming government.

This reality certainly ruins the permanence and continuity of good initiatives for the public exhibition of documentary works. A remarkable and at the same sad example (because it lasted only for a few months in 1998) is that of a programming spot titled *La Franja*, which undoubtedly benefited the production and exhibition of Colombian documentaries in Colombia, because it presented 23 hours of documentary films per week, which were transmitted by the public television channel *Señal Colombia*. It was deplorable that this project was finished abruptly, precisely after a change of administration in the network brought in a new set of programming policies that decided that a project like *La Franja* did not adhere to their particular views and therefore had to be sacrificed for something else, which would be replaced as well after the management changed again, dissolving any possibility of continuity. Sadly, public television in Colombia has not managed to produce a

single long-term history of success in the field of documentary broadcasting in all of its history because of this vicious cycle.

The example of *La Franja* embodies the frustrating absence of any state policy to support the broadcasting of documentaries regularly through any Colombian film exhibitor or television channel. In this case, the resistance of private TV networks to broadcast documentaries is also exemplary, as it exposes that another side of the problem is the belief that only well-tested formulas like soap operas are profitable for them and therefore the risk of showing challenging works of non-fiction is too much of a risk. Perhaps, in order to have a more global sense of the social impact of television on audiences “another benchmark must be used to measure the importance of a documentary for the society and the community”<sup>111</sup>, something that can be accomplished, as a study by the Britdoc Foundation suggests, by studying “other criteria” to evaluate the relevance of a documentary for its potential audience, “such as the quality of the film, its capacity for creating greater public awareness and participation, the ways through which it can motivate strong social movements or even remarkable social changes; even the possibility of generating collective social actions.”<sup>112</sup>

The last study of the FDC reveals that documentaries have a huge difficulty with distribution through both traditional and non-traditional media channels.<sup>113</sup> Perhaps a few documentaries are broadcast by state media channels as “television is perhaps one of the main vehicles for transmission of models for a society [...] however, we have a public television with low ratings, and so, unluckily, the models are coming and being strengthened by private television.”<sup>114</sup> It is true that if on the one hand, “In recent years, we have produced more Colombian fiction films than ever before, thanks to economic incentives of the Colombian ‘Cinema Law.’”<sup>\*</sup>, then it is also true on the other, that “[...] it is a fact that film culture is going through a very difficult time in terms of criticism and non-commercial, independent exhibition; and these are issues of which some people blame the application of the Law itself.

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\* The FDC used to give more economic incentives to produce fiction films in Colombia through its annual contest in Colombia (11 of the 23 Colombian fiction films that had a theatrical release in 2012, were supported by the FDC) nevertheless; its financial support to produce documentary films also has increased in the past years. For instance, the results of the contest of the year 2012 shows that the FDC is supporting the production of 8 short documentaries, the production of 3 feature documentaries, the scriptwriting of 11 documentary films and the promotion and distribution of 2 feature-length documentaries.

There is also a lack of film distribution channels<sup>\*</sup>, perhaps because of the absence of distribution regulations in the ‘Cinema Law.’”<sup>115</sup>

As it has been mentioned before, around 96% of Colombian municipalities don’t have access to commercial movie theatres and there are only two major film distribution companies, *Cine Colombia* -who accounts by itself for 35% of the theaters in the country and 50% of the sales of tickets, even though it is present only in 12 cities in Colombia- and *United International Pictures*, which represents mainly US major studios. These two, along with other much smaller distributors like V.O. Cine or Cineplex are almost exclusively fiction films distributors, which means that from the start of the distribution chain, the vast majority of the films that arrive to Colombia are fiction. Additionally, there are five commercial film exhibitors (again *Cine Colombia* and also *Cinemark*, *Procinal*, *Cinopolis*, and *Royal Films*, who buy their exhibition rights from one of the major two distributors) and other independent film exhibitors, who are often non-profit or state supported and are located mainly in the capital, Bogotá (such as *Babilla Cine*, the *Cinemateca Distrital* of Bogotá, the Museum of Modern Art in Bogotá, and el Cine Club *El Muro*, among others). This could surely seem to be a healthy number of exhibitors, but a recent survey in which 376 Colombian documentary producers were interviewed, demonstrated that few people are even aware of their existence or how to approach them in order to obtain a distribution deal. Only 8% of the people surveyed have ever explored the possibility of theatrical film distribution for their films. About this situation, Alejandro Chaparro, an independent documentary filmmaker, said “I think that in terms of distribution I lack the essential training and information to know who the distributors of fiction and feature documentary films [in Colombia] are; where are they?”<sup>116</sup>

The lack of access to theaters and the deficient communication between exhibitors and local filmmakers is already a very serious symptom of the neglect of audiences who are located outside the major cities in Colombia: if the people who are already marginalized can’t even get legitimate access to the biggest blockbusters and other widely popular films, what

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<sup>\*</sup> This reality also applies for the documentary genre; the last study of the diagnosis of the documentary genre in Colombia done by the FDC revealed that, among other factors, there is an enormous necessity of creating distribution companies in Colombia that are exclusively dedicated to the documentary genre and other non-fiction forms of filmmaking.

hope is there that they could have the chance to see documentaries that could directly speak to them and their situation? When it comes to documentaries, in Colombia there is not even one distribution company exclusively dedicated to them.<sup>117</sup> Documentaries are often as marginalized as the audiences who should be seeing them. This absence of information and low utilization of the existing information by people who are involved in the chain of the audiovisual arts, denounced by Chaparro, is the second of the nine problematic lines found in a recent study of the distribution/exhibition chain of the area of Audiovisual Arts in Bogota.<sup>118</sup> The other problems in the area of Media Arts that were found are as follows:

- Poor training of audiences.
- Poor non-traditional film distribution options.
- Lack of integration between the financial institutions that are part of the value chain.
- Disarticulation of the research link from the other chain links.
- Lack of integration between training institutions and the rest of chain links.
- Very low competitive management orientation about the use of technologies.
- Low penetration in the national and international markets.
- Poor interaction between the links of creation, production, marketing, exhibition, promotion and distribution.<sup>119</sup>

And as if the many problems found by this study in the area of the audiovisual arts were not enough, almost simultaneously the media study of the FDC titled *Diagnosis of the Colombian Documentary Film Sector*<sup>120</sup>, revealed other problems such as the following:

- Lack of effective mechanisms for broadcasting and distributing documentaries in traditional and non-traditional channels.
- Lack of business markets for documentaries.
- Lack of training to find large audiences for documentaries.
- Lack of synchrony between film products and film buyers.
- Lack of training in film-related knowledge at different stages of the production chain.
- Lack of documentary film policies to compete with other audio visual genres in the digital environment.<sup>121</sup>

Considering all of these issues, which are mainly centered on a lack of access, it is no wonder why the informal film market is thriving in Colombia. Consisting largely in the large network of informal shopping malls and arcades collectively known as *San Andresitos*, this market is providing an effective way of reaching the population, while the traditional legal structures lag behind. This illegal film distribution “[...] is a bad thing for the film industry but, generally speaking, it is good for the appropriation of collective knowledge by the people.”<sup>122</sup> The study of this market provides a good starting point for considering some global figures that allow a better understanding of their structure, function and dynamics in emerging markets as well as in non-emerging markets.

According to the International Alliance of Intellectual Property [IIPA], the sales in the illegal markets focus on certain kinds of cultural goods, such as music, software, films and books. A study by the International Data Corporation [IDC], released by the Business Software Alliance, made public that one-half of the 116 national economies studied in 2010 had piracy rates of 62% or higher, and two-thirds had at least one software program pirated for every legally purchased copy.<sup>123</sup> Moreover, the study *The Cost of Movie Piracy* by the Motion Picture Association of America [MPAA], based on a survey conducted in 22 countries, concluded that the US industry lost US\$ 6,1 billion due to piracy in 2005 and US\$18,2 billion in the rest of the world.<sup>124</sup> According to their statistical analysis, 62% of those lost US\$6.1 billion resulted from piracy of hard copies such as DVDs. In addition, they stated that 80% of their losses resulted from piracy overseas and 20% from piracy in the Unites States.<sup>125</sup>

Based on data by the IIPA, countries such as China, followed by Indonesia, contributed to the highest rates of film piracy, such as 95% in China and 92% in Indonesia. Besides, in Latin America, a report by the Department of Commerce of the United States, presented in May 2007, divulged that countries such as Bolivia, Colombia, Ecuador and Peru are in the top 30 countries with the highest film piracy rates.<sup>126</sup> In countries such as Argentina, about 70% of sold DVDs are illegal copies.

Also the Peruvian National Institute for the Defense of Competition and the Protection of the Intellectual Property (*Instituto Nacional de Defensa de la Competencia y la Protección de la Propiedad Intelectual*, [Indecopi]) estimates that, on average, more than 70% or 80% of CDs and DVDs sold in Peru are contraband film products. With respect to Venezuela, according to the Integrated National Service of Customs and Tax Administration (*Servicio Nacional Integrado de Administración Aduanera y Tributaria, Venezuela – SENIAT*), 85% of the films that are sold are illegal. Similarly, in countries such as Mexico, the Protective Association of Film and Music (*Asociación Protectora de Cine y Música*, [APCM]) states that 187 millions of illegal DVD units were sold in comparison to the 21 millions of DVD units sold in the legal market in 2007. In reality, it is claimed that nine out of 10 DVD's sold in Mexico are of illicit origin.

Regarding Colombia, figures show that in the legal market only about 500,000 copies of DVD films per year are sold while about 90% of films sold on DVD are illegal copies.<sup>127</sup> According to PRACI, Colombian theatrical film distribution loses about one million viewers per year to piracy and the sales of original films on DVD have fallen by almost 50% since 2005. The number of illegal films on DVD that were confiscated by government authorities was more than five million copies in 2007.<sup>128</sup> Nevertheless, these numbers should be taken with some serious skepticism because they are product of the assumption that the relationship between piracy and formal means of distribution is a zero-sum game where any gain for piracy necessarily translates into a financial loss for the film industry. Many of the purchased pirate copies or films were never going to translate into effective sales in the legal market whether because the film in question was never made available through any legal means or because its price tag was absurd and this rendered it totally unaffordable for a person with an interest in culture and entertainment but with very low purchase power.

As the previous data illustrates, in most Latin American and other developing countries such as Colombia, there is available information about how piracy is perceived to be affecting the formal markets, but at the same time there aren't any specific statistical

studies about the actual functioning of the film piracy market or their concrete sales figures and profits. In order to obtain a wider vision about such informal sectors of the economy, it is necessary to use eclectic, self-reported and anecdotal data from interviews, surveys, information academic documents, independent journalism and quantitative information gathered by non-government organizations. In this sense, numerical estimates on the subject help to provide a better understanding of the structure of these markets through the collection of anecdotal and partial figures from Colombia and Central America, such as the following examples:

- In Colombia, there are two informal networks –a small one and what could be considered a medium-sized one– dedicated to the sale of illegal films on DVD in one of the largest universities in Bogotá. \* The first one is run mainly by two students, selling about 400 films per week, while the second is run by between five and ten students and sells about 1.500 films per week.<sup>129</sup> Each pirate film costs a little more than US\$1 in Colombia and buyers of both mentioned informal networks are mostly the thousands of students and professors from the university. The buyers usually are looking for fiction films and feature documentaries.<sup>130</sup>
- In the central district of Bogotá, Colombia, in an informal market known as *El Septimazo*, there are more than 30,000 pirated DVD titles available for sale at any given time, and about 30 stands and shops that sell commercial films, independent films, Colombian films and art films.<sup>131</sup> On what is reportedly a 'bad day' for them, a salesman from *El Septimazo* can sell between 20-30 films on DVD. On a 'good day' they can sell more than 70 DVDs. In that market, the bestselling Colombian films are: *La estrategia del caracol* (*The strategy of the snail*, 1993, a fiction feature film), *La Sociedad del Semáforo* (*Traffic light society*, 2010, another fiction feature film) and *Impunidad* (*Impunity*, 2010, a documentary feature film directed by one of Colombia's most popular and controversial journalists.)<sup>132</sup>

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\* The name of the University has been omitted to protect the identity of the people involved in the piracy network, who are interviewed in Chapter Four.



- One of the permanent sellers of Arce Street in central San Salvador, has reported that on average he sells 100 pirated films daily.<sup>133</sup>
- Regarding the average sales of pirated films on DVDs by genre, two journalists, Nelson Bocaranda and Italo Dupatrocinio, after a year of being involved in the illegal market *Plaza Diego Ibarra* in downtown Caracas (Venezuela), estimated that the average percentages of sold pirated DVDs by genre could be classified as follows: 55% fiction, 15% documentary and music; 5% TV series and 25% pornography.
- <sup>134</sup>
- Regarding the estimated number of people involved in illegal film distribution networks, the National Institute of Consumer Protection [INDEC] of Nicaragua, estimates that there are approximately 30,000 to 40,000 traders of illegal films on DVD in the country.<sup>135</sup> Similarly, in downtown San Salvador there is a group of illegal salespeople called El Movimiento de Vendedores de CD y DVD (*The Association of CD and DVD Vendors*) that has an estimated 35,000 members.<sup>136</sup>
- According to figures of the Ministry of Economy of El Salvador, more than 65,000 families nationwide are supported by the business of film piracy.<sup>137</sup> Besides, the Asociación Ecuatoriana de Comerciantes y Distribuidores de Productos Audiovisuales y Conexos (*Ecuadorian Association of Sellers and Distributors of Audiovisual and Related Products; ASECOFAC*) states that there are more than 60,000 formal and informal salesmen selling pirated films in Ecuador.<sup>138</sup>

As illegal film distribution networks are becoming more numerous in Latin America, different organizations and institutions have been created to prevent their growth. For instance, in Colombia there are two main institutions that are using public and private financial resources to combat the illegal markets. These are the aforementioned PRACI and the Anti-Piracy Agreement for Colombia. The latter was created in 1995 and is led by the Office of the Colombian President. It brings together 22 more government and non-government institutions that defend the copyrights of Colombian creators. These include the Departamento Administrativo de Seguridad (Security Administrative Department; DAS), the

Attorney General of the Nation, the National Police, the Ministry of Culture, the National Television Commission, among others.

One of the main concerns of these institutions is that “[...] in Colombia, only 15% of the films of the Colombian homes are original the rest come from the pirate market.”<sup>139</sup> Some local film producers like Paula Jaramillo think that buying an original DVD means to value the several years of work and millions of dollars invested in making a film,<sup>140</sup> and others like Alexandra Gonzalez think that if the illegal market exists it is because there must be something that is not working well in the legal film industry.<sup>141</sup> Contradictory views like these also emerge after comparing the conclusions of studies such as *Media Piracy in Emerging Economies*, which argue that there is no relationship between piracy and organized crime<sup>142</sup> and others such as that conducted by PRACI, which insist that piracy is only the base of a pyramidal structure that hints at the presence of a criminal mafia.<sup>143</sup>

It was precisely as a part of PRACI that the Colombian police performed the largest operation in the history of Colombia against piracy, where 400 policemen and soldiers were involved, in May of 2010. Around 330 illegal shops were raided in three reproduction and distribution centers for film piracy located at a *San Andresito* in the central district. According to the Technical Body of Investigation of the Attorney General’s Office of Colombia (Cuerpo Técnico de Investigación [CTI]), during this operation 10 people were captured and 11 million illegal DVDs, which were ready to be distributed, were confiscated.<sup>144</sup>

In response to the limited film distribution options in the legal circuits of distribution, the locally well-known documentary filmmaker Luis Ospina has often half-jokingly said that he is not against the piracy of his own films, as long as the pirate sellers are selling good-quality copies of them.<sup>145</sup> And, like him, many other filmmakers agree that piracy is at least allowing people to see their films, a consolation to the discouraging reality represented by the lack of distribution options. This perspective raises the question: are the people involved in the illegal film market simply filling a gap between public and distributors? Could illegal methods of distribution help shape a new legal approach?

A well-known expert in Colombian Cinema, who has worked as a film history professor in several universities in Bogotá and has been an advocate for the distribution of independent and rare foreign films in the country, Hernando Martinez, thinks that “we have

a serious problem with the official or legal commercial distribution channels because they do not make available a selection of film titles from all over the world.”<sup>146</sup> As a consequence of this gap, the market for non-commercial and independent films is being filled by the illegal system, as there is a demand not being met by the legitimate market and someone willing to meet that demand.

The executive producer Andrés Varela says that it is urgent to find some solutions and intermediate agreements between the two sectors of film distribution.<sup>147</sup> On one side, there is the issue of the illegality of the piracy system and the fact that it is allegedly depriving the film industry of a large potential income. On the other, there are the manifold problems that plague the legal distribution sector for DVDs where an inefficient commercial model that does not meet the demands of the local film industry or those of the spectators has been stubbornly implemented.

### ***1.3.1 Film distribution through non-traditional platforms in Colombia***

To continue addressing the difficulties that arise within this multifaceted opposition between illegal and legal film distribution systems, it is important to consider another extremely relevant factor: the Internet, which has been regarded as “the way through which a film can be seen by millions of people nowadays.”<sup>148</sup> Certainly, in a global context, there is no doubt that the digital shift oriented towards internet distribution has made the film industry wonder whether film audiences and their demands have changed and therefore new models have to be devised for the interaction with spectators.

When it comes to finding examples of legal film distribution models that involve the online streaming of audiovisual content of all kinds, the case of *Netflix* is by far the most interesting because it is undoubtedly the most successful online film distributor in the world at the moment. In 2010 they already had 25.5 million internet users in the US and Canada who, by paying around 10 dollars per month, were able to access a list of more than 15.000 fiction films, TV series and documentaries (on serialized, short and feature-length forms) to be watched over the Internet.<sup>149</sup> In harsh contrast, Spanish websites such as *Filmin*, *Wuaki*

*TV* or *Filmotech* despite having been active for several years, have online streaming numbers so low that they prefer not to disclose them: their estimated few thousands of viewings pale in comparison to the nearly 400 million illegal downloads of films per year in Spain.<sup>150</sup> But discouraging as this could be, the exceptional success of *Netflix* could be an indication that, even in developing countries, online distribution of films, as opposed to physical distribution, could become the norm.

In various events such as forums, debates, conferences, etc., there seems to be a vast majority of leaders, politicians, students, professors, filmmakers, researchers, etc., who strongly argue that the Internet is one of the most powerful tools of the present, and is likely to become the dominant distribution method for films in the future. There is no doubt about the benefits of the web to reach countless audiences but, nevertheless, is pertinent to think whether the time to take advantage of this phenomenon must be the same for developed as well as for developing countries. In considering the access to all the possibilities given by the online film distribution in developing countries like Colombia, it is very important to understand that potential audiences in these countries, as mentioned above, are divided into two types of people: those who have got access to the internet and those who have not.

A good starting point to understand this difficult situation is by first comparing first the figures of access to the Internet in developed and developing countries. The first report of the Broadband Commission of the United Nations, titled *The State of Broadband 2012: Achieving Digital Inclusion for All*, made it known that on the global level, only 32.4% of people have access to mobile internet. The countries with most online users in proportion to their population are Iceland, Norway, the Netherlands, Sweden, Luxembourg and Denmark, all with over 90% of its inhabitants having internet access. They were followed by New Zealand (86%), South Korea (83.8%), Germany (83%), the UK (82%), France (79.6%), Japan (79.5%) and the US (77.9 %.)<sup>151</sup>

In the case of Latin America, the highest percentage of Internet users in the region belongs to Chile with 53.9% of the population having internet access, followed by Uruguay

(51.4%), Argentina (47.7%), Brazil (45%), Panama (42.7%), Costa Rica (42.1%), Colombia (40.4%) and Venezuela (40.2%.)<sup>152</sup>

In the specific case of Colombia, the document *Communication Colombia Survey 2012: New communication technologies* of the Universidad Externado, very disappointingly reported that there is a difference of more than 50 percent between rich and poor people in regards to internet access. While 89% of high-income respondents have access to the internet, only 35% of respondents living in poverty do. And even though the implementation of the program of the Ministry of Communication and Information Technology (Ministerio de Tecnologías de la Información y las Comunicaciones [Mintic's]) called *Vive Digital* (*Live Digital*) across the country has made it possible for more Colombians to have access to the internet, the coverage is far from enough. Additionally, and to make matters more worrying in respect to film distribution, of the 42% of Colombian people who have access to the internet, 96% are accessing it mainly to check their personal email accounts or using social networks and very rarely for accessing films, TV series, conferences, or other culturally valuable audiovisual media.<sup>153</sup>

Perhaps future significant advances in distribution platforms both online and in the release of physical copies of films could come in the future. Nevertheless, it will be many years before we can have adequate reports that could reveal more accurately the real impact that the growth of internet users would have on creating new film audiences and if this model would displace the informal distribution market where nearly 90% of the Colombian population is still buying illegal films on DVD. In the end, the only clear conclusion resulting from these analyses is that the process of constructing a general, multi-purpose model that best suits the goals of the film distribution sector in Colombia would have to take into consideration the figures of both the formal and informal current markets of film distribution along with the potential of the internet. Distribution for films in Colombia remains problematic and inefficient even for the most commercially viable films and through the largest distribution platforms which, although large and profitable, are not even available in all the urban areas of the country. For documentaries, given their particularities, the situation is even worse and this can help us to understand why there is a need for a distribution model

that can specifically be at the service of documentaries and can have its origins on the informal market.

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## Chapter Two

### The structure of the formal film market in Colombia

#### *2.1 Overview of the film industry in Colombia*

As far as it pertains to the State, the Ministry of Culture of Colombia is the institution responsible of promoting a proper and stable film industry in the country. That task is undertaken firstly by the mutual support of certain entities such as the Consejo Nacional de las Artes y la Cultura en Cinematografía -CNACC- (*National Council for the Arts and Culture in Cinematography*), the Dirección de Cinematografía (*Direction of Cinematography*) and *Proimágenes Colombia* (which can be roughly translated as the *Image Promotion Fund* for Colombia). In second place, the government supports the local film industry by the management of certain financial funds, among which the most important remains the already mentioned *Fondo Para el Desarrollo Cinematográfico*, or FDC (*Film Development Fund*.)

The work of these entities is regulated by the 814 ‘Cinema Law.’ This legislation, enacted on July 2, 2003 by the Colombian government, established the rules for the promotion of cinematographic activities in Colombia. Its main objective is to enable the viability of film production in Colombia to gradually contribute to the development of a sustainable film industry. The mechanisms used by the Cinema Law to promote Colombian cinema have been mainly two: first, the offering of tax incentives to those willing to support film production by financing or donations; and second, the creation of the grants for film production obtained by competition through the FDC.

<sup>1</sup> Since the creation of this competition, the grants awarded to several filmmakers by the FDC have allowed the production of 79 feature films: 40 of them directed by filmmakers with previous experience of more than one feature film and 39 of them by first-time directors.<sup>2</sup>

On addition to the Cinema Law, another decree that intends to benefit the Colombian film sector was approved recently: it is the 1556 Law of 2012 known as ‘Filming in Colombia Law.’ Its purpose is to promote the image of Colombia as an attractive location to shoot and produce films by persuading foreign film companies not only to shoot their films in Colombia, but also to hire local film services of Colombian film companies and other local talent to work on their films. In fact, at the same time this law was approved, the Colombian government increased from 125% to 165% the tax deduction for companies and individuals who are investing in national or domestic films and created a new annual fund of about 25 billion Colombian pesos (approximately US\$12 million) to encourage the hiring of local film services by those international producers who come to shoot films in the country.<sup>3</sup>

The law also created the *Fondo Fílmico Colombia –FFC– (Colombia Film Fund)* in order to assist those film producers who are willing to shoot films fully or partially in Colombian territory. To ensure that films are consistently shot in Colombia, this Law provides a number of economic benefits to international film producers, such as the reimbursement of 40% of their expenses in hiring national film services of pre-production, production and post-production, and 20% of their expenditure in lodging, catering and transportation inside the country. Any film project intended to be shot in Colombia under the mentioned Law should be approved first by the *Comité Promoción Fílmica Colombia –CPFC– (Colombian Film Promotion Committee)* that will evaluate it according to the purposes of the law in regard to promoting the national territory, promoting tourism, promoting the country's positive image, and promoting the development of the local film industry.<sup>4</sup>

### ***2.1.1 Consejo Nacional de las Artes y la Cultura en Cinematografía – CNACC- (National Council of Arts and Culture in Cinematography).***

The CNACC is the *Consejo Nacional de las Artes y la Cultura en Cinematografía (National Council of Arts and Culture in Cinematography)*. This entity supports the Ministry of Culture in the definition of the film policies and directs the financial resources of the Film Development Fund (FDC). As the administrator of the FDC, the CNACC decides on the allocation of its resources and establishes the amounts and categories (for example, whether

endowments will be awarded for screenwriting, short-film production, animation production, etc.) of its annual competition for film production grants.

### ***2.1.2 Proimágenes Colombia***

Proimágenes Colombia is the legal representative of the FDC. Its mission is to promote Colombian cinema worldwide, assume the Technical Secretariat of the CNACC and manage the financial resources of the FDC. According to its present Director, Claudia Triana, this is a non-profit organization that was first envisaged during the conception of the new legal cultural guidelines implemented by the Ministry of Culture of Colombia in 1997.<sup>5</sup> It is a joint institution because it is constituted by 7 State entities, 3 private entities and 2 representatives of the film arts sector, such as a delegate of the film direction sector and other delegate of the film production sector.<sup>6</sup>

The State entities that are part of *Proimágenes Colombia* are as follows: *The Ministry of Culture of Colombia* that seats at the Board of Directors, *The Direction of Cinematography*, the *Ministry of Education*, the *Ministry of Communications, Colciencias*, the *School of Film and Television of the Universidad Nacional de Colombia* (National University of Colombia), the *Dirección De Impuestos y Aduanas Nacionales –DIAN-* (*Direction of Tax and National Customs*). Moreover, other private institutions that are part of it are as follows: *Cine Colombia*, who represents the film exhibitors sector, the *Colombian Association of Film Distributors* that represents the US major studios, and *Patrimonio Fílmico Colombiano* (*Colombian Film Heritage Foundation*) that is the entity that safeguards the national film archive.<sup>7</sup>

Through the FDC, and in partnership with the *Chamber of Commerce of Bogotá*, Proimágenes Colombia has been organizing the *Bogotá Audiovisual Market (BAM)* since 2010. This is an event organized in benefit of the audiovisual industry sector of the country, and its objectives include the promotion of local films, children's TV series, film technologies and film services with the aspiration of becoming a reliable platform for film promotion and film professional development. It offers an opportunity to the film sector to establish new business alliances and expand its contacts around international film networks. According to Claudia Triana (2012), *BAM* also has a video library of several short films, feature films,



documentary films and film projects that are at a rough-cut stage, able to be shown and exhibited as *works-in-progress*, but in need of financial support to be totally finished. It also focuses on bringing international film producers, film distributors, and film sales agents to do business with Colombian filmmakers and film producers.

Since the year 2005, Proimágenes Colombia and the Direction of Cinematography have also organized an event called *Encounters Cartagena*, which is part of the filmmaking workshops directed by these entities annually at the *International Cartagena Film Festival* which takes place in the Caribbean city of the same name. This event has contributed to the strengthening and promotion of national and Latin American cinema, by means of the International Meeting of Producers, the Documentary Workshop –aimed at improving strategies for development, distribution and marketing–, the Film Festivals Workshop and the Workshop of film Critics and Film Journalism.

### ***2.1.3 Dirección de Cinematografía (Direction of Cinematography)***

In 1997, the Colombian Congress approved the General Law of Culture which commanded that in the interior of the Ministry of Culture a Direction of Cinematography must be constituted in order to implement public policies for the film sector:

The Direction of Cinematography is set from the beginning to manage fundamental aspects such as: the training of people involved in the film industry, the training of film audiences, the acquisition and implementation of film technical infrastructure, the development of film projects, support for film production, the promotion of the country as a film location for shooting foreign films, the distribution of Colombian films in commercial as well as in cultural film theaters, and working in the conservation, preservation and restoration of the audiovisual and film heritage memory.<sup>8</sup>

Furthermore, the Direction of Cinematography provides high-quality and up-to-date information about Colombian cinema through the *Sistema de Información y Registro Cinematográfico –SIREC– (Information and Film Registry System)*. Moreover, this institution is in charge of publishing the *Colombian Cinema Statistical Yearbook*, to encourage the participation of people involved in the film sector in different processes through the *Consejos Departamentales y Distritales de Cine (Departmental and District Film*

*Councils*), to stimulate film production by supporting the training of new filmmakers and also to promote research projects about Colombian cinema through national and international competitions.

Certainly, the Direction of Cinematography aspires to a country with its own stable audiovisual culture. It seeks proposals that help to improve the quality of the audiovisual language and industrial feasibility to ensure its permanence in time. This institution is composed of a Director and a management group that oversees enforcement actions that should benefit the development of the film industry in the areas of film training, film production, film research, and film preservation, among others.

Scholarships and prizes created under the Colombian film public policy are awarded in different film competitions annually. In fact, the Ministry of Culture awarded 43 scholarships and grants through the Direction of Cinematography and the *Portfolio of Film Financial Stimuli* in the year 2012. These prizes were awarded in different categories, as follows: 1 grant to produce a documentary film with archive film material, 18 scholarships to manage the film archives and documentation of audiovisual centers, 9 grants to produce short films and carry out audiovisual workshops in different regions, 10 grants for training film audiences, 3 grants for film research and 2 grants to write children's film screenplays. The total amount of financial resources delivered in this national film competition was about US \$466.000.<sup>9</sup> However, it is imperative to remark that as satisfying as this might seem, most of the results of these research or creation projects are never socialized and they often become nothing but figures and statistics that feature in the accountability reports that the *Direction of Cinematography* has to publish each year. There is a very good keeping of quantitative records from the part of institutions such as these, but when it comes to performing qualitative assessments (for example to judge the quality of the projects awarded or to find methods for socializing the actual content of research results) or self-criticism, there is none to be found. These conditions affect the exposure that documentaries, as films often sponsored by public policies, are able to find.

#### ***2.1.4 Fondo para el Desarrollo Cinematográfico-FDC- (Film Development Fund)***

According to the regulations of the 814 Cinema Law, the direction of the FDC and the decisions about the allocation of its financial resources in different film modalities and categories must be assumed by the National Council of Arts and Culture in Film (CNACC), and the management of its financial resources must be in charge of Proimágenes Colombia.

The FDC raises its financial resources through a taxation system dedicated to the different agents of the Colombian film sector as follows:

- Film exhibitors must contribute with 8.5% of their net income from the screening of foreign films in Cinemas in Colombia. (They can obtain a reduction of this tax to 6.25% if they screen a locally produced short film before the actual screening of any commercial feature film in cinemas in Colombia.)
- Film distributors must contribute with 8.5% of their net income from the distribution of foreign films in cinemas in Colombia.
- National film producers must contribute with 5% of their net income from the exhibition of local films in cinemas in Colombia.
- Those who invest in film infrastructure, film production or film distribution get a 50% exemption over their total income tax.

About 70% of these funds raised by the FDC go to the conception, production, co-production and production of feature films, short films and documentaries. The remaining 30% goes to complementary film activities such as: promotion of the local film industry, preservation of film heritage, film anti-piracy programs, further training in filmmaking for professionals with experience in the field, international promotion of local films, film research dedicated to the local film industry, among others.<sup>10</sup>

The FDC distributes this money to the film sector mainly through film competitions, so-called ‘financial automatic stimuli’, that are meant to support the participation of local films in international film festivals and other sorts of financial support such as the economic incentive that is given to certain film producers according to the box office reached by their local films at Colombian cinemas. “This fund is supported by payments that come from the

earnings made by film exhibitors, film producers and film distributors at the box office. The other main tool is the tax incentives that were created to encourage investors and donors to support film projects. These investors and donors have a tax deduction of 165% on their income tax statement, according to the latest tax reform.”<sup>11</sup>

Another financial incentive system that has contributed to the increase of local film productions is the national competition to sponsor the production of short films, fiction feature films and documentary feature films supported by the resources of the FDC.<sup>12</sup> According to Castellanos, between 2003 and 2013, the FDC has delivered about US \$45 million for the production of national films, for the training of professionals in filmmaking (mostly through scholarships and student loans), screenwriting participation in film markets and film festivals, and film distribution –albeit very limited– on cinemas, television and new media.<sup>13</sup>

Thus far, the biggest accomplishment of the FDC has been to improve the access to commercial films: the number of movie theaters increased from nearly 300 in 2004 to 689 in 2012, and cinema attendance increased from nearly 20 to 40.8 million viewers.<sup>14</sup> According to Claudia Triana, the main concern of FDC and CNACC is to constantly think about strategies that could result in having more film theaters everywhere in the country, along with alternative film circuits that could show documentaries and art-house movies. Certainly, the resources of the FDC are limited and film distribution is expensive, so their main problem seems to be how to show all the films that are financially supported by its policies.<sup>15</sup>

To face this problem, the Ministry of Culture of Colombia, in partnership with the National Film Board of Bolivia, the National Film Board of Ecuador, the Mexican Film Institute, the Ministry of Culture of Peru, and the Institute of Film and Audiovisual Arts of Uruguay, and with financial support of the Banco Interamericano de Desarrollo –BID– (*Inter-American Development Bank*), has been working on the project *The Portal of Latin American Cinema*, in order to offer a new internet showcase to captivate new film audiences and to invite the existing ones to stay connected with Latin American films.<sup>16</sup> This portal for Latin American cinema has been conceived as a regional public asset, to offer free access to films to the citizens of several different countries with the hope that it will “persevere over time as a meeting ground for documentary films, fiction films and short films that have

endured film distribution problems in their home countries and even more obstacles to reach other countries of the region.”<sup>17</sup>

## ***2.2 The cultural and commercial duality of the film product***

Free commerce is not a principle, it is merely a resource.

*Benjamin Disraeli*

According to Medellín, an audiovisual creation is considered an artistic work by the filmmaker and a product by the producer. While a filmmaker will think how to express their ideological stance and the collective imagination of their team, the producer will think how to find the largest possible audience for the audiovisual product in order to recover their investment with the intention to sponsor future film projects. This artwork/product has different purposes, but it has the same goals on both sides of the equation: to express an artistic view and fulfil a social role.<sup>18</sup>

However, the duality of this cultural good becomes apparent when its turn comes to be marketed, because within the context of the market, any cultural product must be a *good* or a *service*: there is no middle ground, even in the case of a *social good*.<sup>19</sup> In that sense, when talking about the consumption of documentary film products, it should be understood that these are at the same time *symbolic* and *cultural* products. In the first case they are social goods that allow for cultural appropriation and in the second case they are commodities or entertainments that tolerate their appropriation as pieces of merchandise.<sup>20</sup> The consumption of audiovisual creations can simultaneously generate social and economic benefits. The question to ponder at this point should be in what kind of countries the population should have access to audiovisual works perceived as social goods, and in what kind of countries the population should access them as commodities.

According to Castillo, *The Second World* (2008), a book by Parag Khana, is a very interesting text on contemporary geopolitics that reveals that the *second world* is constituted

by countries that are not developed at all or where development is long overdue. It also explains how the relationship between the second world and the first world works.

The three big players of the first world –the United States, Europe and China–, are called empires by Khana: large political organizations that rule over a vast territory. One of the central theses of Khana is that, in practice, the United States, Europe and China already dominate the world completely and will not let other countries such as Russia, Japan or India, obtain the same level of influence outside their own territories. The world is a tri-polar, and it will remain so for decades or centuries.<sup>21</sup>

Concerning Latin America, Khana believes that the continent is composed of underdeveloped countries and others that are part of the second world, namely: Colombia, Brazil, Mexico, Venezuela, Argentina and Chile. He argues that Latin America has been the “United States’ backyard” for many years. Developed countries have always exploited Latin American resources, the continent has always been trapped within the constraints of an imperialist system, and it has not been able to formulate its own political structures.<sup>22</sup> Khana also concludes that a common malaise of second world countries –a problem that brings together countries as dissimilar, from a cultural and social point of view, such as Colombia, Uzbekistan, Egypt and Malaysia– is that in all of them, a small minority lives as comfortably as those in the first world, governments and businesses tolerate ridiculously high levels of corruption, there are poor education systems, low productivity, high pollution and large groups of people are currently living in a tight and precarious situation.<sup>23</sup>

Considering the precariousness of the average living conditions, the wage disparities between rich and poor, as well as the myriad financial difficulties faced by the citizens of underdeveloped countries and the second world, the following questions arise: should it be established that while the citizens of developed societies have access to films as commodities, the citizens of emerging economies should have access to them as cultural property? Would this help offset the high piracy rates that occur in these countries, where many residents work in informal markets?

Perhaps one of the possible answers to these questions is suggested by *Media Piracy in Emerging Economies*<sup>24</sup>, the first independent large-scale study about the piracy of music, films and software in emerging countries like Brazil, India, Russia, South Africa, Mexico and Bolivia. The study, which is distributed online, can be downloaded under a license that presents ‘the dilemma of the consumer’. This particular license warns that:

1. If the user lives in a rich country with high income (identified through their IP address), such as the U.S., Western Europe, Japan, Australia, etc., they must pay US\$ 8 for the download of the study on their computer.
2. If the user lives in a country that does not have high income like those that appear in the list above, then the study can be freely downloaded.
3. If the user wants to make commercial use of the work, they must pay US\$ 2,000 to download the study.

The authors have called these conditions the *Consumer's Dilemma* license. With this gesture, they try to illustrate precisely what the results of their study have shown. The dilemma for a consumer in a developed country is as follows: if you consider that US\$ 8 is expensive –particularly knowing that others can access the study free of charge– you can also acquire the document for free by other means. But this is a crime that is punishable with a fine (according to U.S. law) of USD\$ 250,000. If you want to use it commercially, you have the same options: pirate it, or pay USD\$ 8 and ignore the usage restrictions.<sup>25</sup>

The lawyer Carolina Botero believes that the experiment of this license reveals that the same dilemma arises in the case of other forms of piracy because “[...] this is proportional to the value that is charged for cultural goods in the third world”, which means that “if you are in a developed country, we have an average of how much you earn and then according to that we determine that a fair price for a film is US\$ 20; but then, if you ask an extremely poor person, say from India or Brazil, to pay the same US\$ 20 for a film, that is like asking you to pay USD \$ 2,000 for it: that is the actual economic equivalent.” She then adds that “if you

do not want to pay the USD\$ 2000 there is a support group on Facebook, with a list of the internet sites where you can download it for free, obviously pirated, and also find a list of names of people living in the Third World, with their respective e-mails, whom you can ask to download the study for you and then send it by e-mail: but if you do that, then you become a pirate as well.”<sup>26</sup>

For Castillo, this License is in fact a good example of how the cost that consumers in developing countries must face every time they want to access to a cultural work -as these are highly desired goods- is exorbitant compared to the average local income, and therefore it drives consumers to consider the option of its free (or considerably cheaper) availability through pirate channels. As a result of that, we have high rates of piracy and insignificant legal markets.<sup>27</sup>

### ***2.3 The film distribution chain in Colombia***

The film industry is defined as a set of processes and activities that result in the final product of a film that is the core around which the three main creation stages –production, distribution and exhibition– are organized.<sup>28</sup> In fact, according to the Colombian Cinema Law, all public and private activities that are part of any of these three phases of the film industry and are aimed at the development and reception of a finished film by the audiences, constitute the film industry in Colombia.<sup>29</sup>

#### ***2.3.1 The stage of film production***

This stage involves the creation of an artistic product, which ranges from the writing and development of a literary and shooting script, to obtain a tangible product that is the master copy of the film. This stage is composed of three steps led by the producer, which are: preproduction, production and postproduction.

“The pre-production includes pre-shooting activities that range from procuring the human, technical and financial resources for the project, to designing and managing the work



plan.”<sup>30</sup> During the production stage the shooting schedule of the film is executed, and at the post-production stage the final cut is assembled through the editing of images and sounds that compose the film. At this stage, the number of copies that have to be made of the finished film is also determined.

According to some media, in Colombia there are at least 135 companies producing audiovisual content (TV and film) that sell more than US\$ 1 billion a year.<sup>31</sup> According to the website of the Colombian Film Commission,<sup>32</sup> out of 150 companies that have been registered as audiovisual producers, 45 are companies engaged in the making of feature films. In the official website of Proimágenes Colombia, there appear only 17 film production companies officially listed in Colombia, but although only this very small number of companies are properly registered at the Ministry of Culture, many other independent production companies exist within the Colombian media market, most of which are dedicated to the production of short films and feature films (in both documentary and fiction formats) and have been very active in recent years thanks to benefits resultant from the legal structures already mentioned.

According to the study of Proimágenes Colombia titled *Diagnosis of the Documentary in the Film Industry* (2011), in addition to the previously mentioned production companies, there are 376 independent Colombian documentary producers working in the production of non-fiction films.

Finally, although there are not exact statistics available that could determine the value of the economic agreements between Colombian film producers, exhibitors and distributors, it has been widely recognized that, on average, a producer receives the (almost symbolic) profit of US\$ 1 for each viewer who goes to the film theatre to see a locally made film.\*

### ***2.3.2 The stage of film distribution***

According to Santesmases, commercial distribution can be defined as the marketing function that connects both production and consumption, and whose mission is to make the

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\* This conclusion was reached after several of the filmmakers and producers interviewed during this research agreed that the figure of US\$ 1 was close to their experience in film marketing.

product available to consumers in the demanded amount, when they need it and where they want to purchase it. At this stage, the task of distribution companies is very important, because these are dedicated to the intermediation between the producing and exhibiting companies bringing the films to the screens. These companies contribute financially in the production and marketing phase allowing them sometimes to influence production decisions. It is them who present the films to the representatives of exhibition spaces and are in charge of the film promotion and advertising.<sup>33</sup> In practice, the process of distribution has been described as:

[...] the stage of true audiovisual marketing; although we must understand that the negotiations for this process usually have been started even before the beginning of actual film production: distribution is about establishing the best chance for success by defining what type of circuits should be used and under what circumstances in order to deliver the audiovisual product to the audience.<sup>34</sup>

The distributor is responsible for marketing the titles of a studio and receives a percentage of the revenue obtained from the sales of the exhibition rights, so its job is to negotiate these rates of participation with exhibitors and coordinate marketing campaigns that could guarantee a box office success of the films.<sup>35</sup>

According to data revealed by Luzardo, the major Hollywood studios dominate the process of film distribution in Colombia through partnerships with some companies in the country. For example, the Colombian company *Cine Colombia*, besides occasionally distributing independent films acquired by them from small producers worldwide, is also the representative of *Fox* and *Warner Brothers*, and was responsible for 44.07% of the Colombian box office in 2013.<sup>36</sup> Additionally, the distributor *United International Pictures Columbia Tristar Ltd.* (UIP) is an U.S. company that represents three other large studios in Colombia: *Universal*, *Sony/Columbia Tristar* and *Paramount*, while distributing one or two Colombian films per year. This company has a share of 30.80% of the market in the country.<sup>37</sup> The Chilean company *Cinema Color Films* represents *Walt Disney Pictures* in Colombia, where it has a 20.55% of the market share. This Chilean company also offers processing services for film and digital post-production, and it is on its way to become the largest of the small distributors in the Colombian market. The remaining 3.03% of the national market is

held by a few distribution companies such as *Cineplex*, *Stifle Films*, *Procinal*, *VOCines*, *Venus Films* and others that independently cannot reach more than 1% of the total market share.<sup>38</sup>

### ***2.3.3 The stage of film exhibition***

This phase is the last stage of the film industry and involves the process of taking the film to its final destination, which is the audience or viewer. Exhibitors are responsible for projecting the films of the distributors in theatres to the audience and they generate income through box office and the sales of confectionery and other food products.<sup>39</sup> In this phase, negotiations are a little different, because while the distributor evaluates the success of a film in terms of profits, the exhibitor does it based on the number of viewers who watched the film. This means that, while with the distributor the negotiations are based on the marketability of the film, with the exhibitor they are considered depending on the potential number of spectators that a film can have.<sup>40</sup> In Colombia, depending on the individual negotiations for each film –in which blockbusters represent a larger share of profits for the screening companies– the average profit for the exhibitor can generally range from 50% to 65% of the price of each ticket.<sup>41</sup>

In Colombia, the business of film exhibition is divided between 5 major exhibitors, including 3 local companies (*Cine Colombia*, *Procinal* and *Royal Films*), 1 multinational company from the U.S.A. (*Cinemark*) and 1 Mexican company (*Cinépolis*). According to the statistics of *CadBox*, in 2013 these five film exhibition companies dominated 87.10% of the total number of screens, as they collectively own 689 of the 791 commercial screens in the whole country. These companies also collected 94.65% of the box office in the country, with 40,828,208 of the viewers in the country, which in 2013 consisted of a total of 43,279,547 spectators. Other small film exhibition companies collected 5.35% of the country's box office: *Cineland*, *Movieland*, *VOCines*, *Stifle Cinema* and *SAS*, among others.<sup>42</sup>

In Colombia there is another exhibitor, the *National Foundation for Alternative film Theatres –Red Kayman–*, that is a special case because it is a non-profit entity, properly registered as such since 2007. This foundation gathers 13 independent theatres and cultural

centers in 6 cities, with the goal of strengthening the distribution of independent cinema through audience education.

## ***2.4 Overview of the formal film distribution markets in traditional and non-traditional platforms in Colombia***

This section intends to explain the existent structures for the distribution of both documentary and fiction films in Colombia, with the goal of presenting a general idea of how the commodity status of a film is usually assumed by the available distribution options and how films are meant to be assimilated into the formal market.

### ***2.4.1 Film distribution on television channels in Colombia***

Television started operations in Colombia six decades ago, on June 13, 1954 under the government of the General Gustavo Rojas Pinilla. Also, on December 1<sup>st</sup>, 1979, color transmissions started, using the U.S. standard NTSC-M. In this country the television system operates in both open and closed systems. The open-air television broadcast\* consists in channels of national, regional and local origin. The closed television system<sup>†</sup> is composed of TV by subscription or cable and private community TV channels.

In accordance with the Law 1507 of 2012, the Commission for the Regulation of Communications is the entity responsible of defining the modalities of television in Colombia, based on the procedures previously established by the law 182 of 1995 and the provisions of the *National Television Commission CNTV* (now known as the *National*

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\* According to the National Television Authority [ANTV], in Colombia the public broadcast network television is the one in which the signal can be received freely by any person located in the service area of the station, subject to particular programs intended to a specific audience under certain regulations issued by the ANTV.

† The ANTV maintains that the service of closed television is the one whose signal, regardless of the technology and the means of transmission -and subject to the same legal regime-, is designed to be received only by those authorized by the operator or concessionaire.

*Television Authority* [ANTV]) prior to the issuance of the law in question, it can be said that the country at the national level had 3 public TV channels operated by Radio Televisión Nacional de Colombia [RTVC], they are: *Señal Colombia Educativa y Cultural*, *Señal Colombia Institucional* and *Canal Uno*<sup>\*</sup>, and also 2 private channels: Caracol Television y RCN Television. Locally, there is a for-profit TV channel called *CityTV*, which belongs to *Casa Editorial El Tiempo*, and 44 non-profit channels authorized to operate locally.

Currently services of television by subscription are provided by one company that acts as a supplier of public telecommunications networks and services (EPRST). There are 2 satellite dealerships and 60 cable dealerships, 18 of which were approved by the ANTV in 2012 and started operations in Colombia in 2013. Some of these cable TV operators are: *Telmex Hogar SA*, *UNE EPM*, *DirecTV*, *Telefónica Telecom*, *Global TV*, *Super Cable*, among others.<sup>43</sup>

There are another two national channels of closed broadcast, which must be broadcast across the Colombian territory through the subscription television system by cable. The first of these is *ZOOM TV*, a university channel that operates from the city of Barranquilla, and which broadcasts programs produced by more than 50 public and private universities in the country; the second one is the Congress Channel which operates from Bogotá and broadcasts the sessions conducted by the Colombian Congress. Finally, in Colombia there are many community non-profit television channels. According to the *Annual Report of the National Television Authority* (2012), 764 television systems were registered that year by organized communities, however there is a confusion growing in this sector because of the Resolution 0433 of 2013 of the ANTV, which reduces the number of partners to 6,000 down from 15,000, and also requires them to financially compensate the organization no longer by the number users, as it was the case before, but by income. This situation threatens the survival of these channels.<sup>44</sup>

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<sup>\*</sup> This TV Channel according to the Article no. 5 of the Law 182 of 1995 grants concessions for television spots to programmers such as *CM& Ltda*, *Union Temporal Colombiana de Televisión SA-NTC SA*, *Consortio Jorge Barón Television*, *Sportsat SA Unión Temporal* and *RTI-Programming* (Annual Report of Television 2012, ANTV).

In Colombia, as well as in the television structure of Latin America, “television has historically developed in the region primarily as a commercial project and the public media have, so far, failed to occupy a central place within the media spectrum.”<sup>45</sup> In this system there is also a high power concentration in the media which grants a great amount of economic and political power to TV networks; power that is sometimes concentrated in a single operator, as in the case of Brazil (*Globo Group*), or in duopolies as in the case of Mexico (*Televisa* and *TV Azteca*) and Colombia (*Caracol TV* and *RCN TV*).

In Colombia, the duopoly is owned by two large conglomerates, the Santo Domingo Group (Caracol) and the Ardila Lulle Organization (RCN). These groups have alliances with other international conglomerates and own open channels and cable TV as well as companies dedicated to press, radio, etc. According to IBOPE, the national audience measurement company, these two economic Colombian groups hold more than 50% of the television audience –26.9% for RCN and 25.2% for Caracol– while public TV channels do not exceed in any case a share of more than 1% of the audiences.<sup>46</sup>

Even though television consumption for the total population over 12 years old in the country was 95.6% in 2012<sup>47</sup>, the previously quoted number reveals that while commercial TV channels have captivated a considerable audience, public TV channels that broadcast mostly cultural and educational programs have a very small audience in Colombia.

Another truth about Colombian television is that, as it has been mentioned, there is not a state law or screen share, to compel public and private television channels to broadcast a certain amount of cultural programs, as it would be the case of programming slots devoted to the genre of nonfiction. As a consequence of this, the private channels in Colombia do not have definite spots to exhibit documentary films. Despite the fact that there are experiences of two or three documentary films that achieved high ratings, these channels do not show any interest in replicating these past good experiences. They are more interested in more profitable endeavours and the few documentary films that are exhibited through public television have small and sporadic TV slots, without any kind of continuity.

Faced with this lack of effective mechanisms to make television an attractive showcase for documentary films, the study of the FDC *Diagnosis of the Colombian Documentary Film Industry* (2011) makes two specific proposals for this sector. The first one invites to promote pre-purchase strategies for documentaries by Colombian public TV channels<sup>48</sup> (i.e., to purchase the broadcasting rights of a film that is about to be financed by the government and in that way assist on guaranteeing its production and a minimal amount of distribution) and the second one consists in establishing fixed spots for documentaries on public TV determined by high-quality programming criteria, according to the needs, interests and tastes of audiences.<sup>49</sup>

Considering that, as it can be easily inferred from the previous data, the presence of television throughout Colombia is substantially higher than that of commercial cinema, the need to implement these proposals for the health of documentary filmmaking in the country is beyond any doubt: at present, public television has the potential to be the ultimate showcase for documentary films. 56% of the documentary filmmakers interviewed for the quoted FDC report agreed that this has been the main distribution circuit for local documentary films. In fact, 44% of these filmmakers have sold their productions to the public TV channel *Señal Colombia* and the same percentage of members of the audience interviewed (44%) said to have occasionally tuned in to watch nonfiction productions on national television.<sup>50</sup>

Bearing in mind the difficulty of the documentary films to compete with projects from other audiovisual genres, the same study suggests that the annual competition for production grants of the FDC should provide separate financial incentives to filmmakers to compete in two different categories: one to produce cinematographic documentaries and another to produce documentaries for television.<sup>51</sup>

Another idea to consider would be to create mechanisms to support the Colombian documentary filmmakers so that they could be trained in the process of obtaining funding through co-production with international TV networks. Seeing that only 10% of the interviewed filmmakers have been able to sell their productions to international public TV channels<sup>52</sup> and also that there is a potential audience for this genre in subscription TV, which in 2012 reached an average of 4,130,894 users.<sup>53</sup> At least it was revealed the 48% of the

respondents to the study, those who expressed a preference of tuning this type of nonfiction productions in this kind of cable channels.<sup>54</sup>

With reference to this, *Mazdoc* (a Colombian production company devoted exclusively to documentaries) manager Mauricio Acosta –who has produced more than 50 documentaries for international TV channels like *History Channel*, *Infinito*, *BBC*, among many others– emphasizes the importance of teaching Colombian students of filmmaking that besides learning how to produce documentary films, they must learn how to submit them to film festivals and get a grasp of the functioning of the international market of cable television channels, in order to offer them a wider vision about international opportunities for distributing their films and reach an audience.<sup>55</sup>

Although many countries do not have a defined screen share allocated to streaming art-house films or locally produced television documentaries, there are clear laws that require them to commit a share of their broadcast schedule to local audiovisual works: these legal requirements can be a sort of inspirational model for the Colombian case. Such is the case of Spain, where the Law 7 of 2010, or *General Law on Audiovisual Communication*, which mandates a fixed quota of European works to be aired on television, a quota that must at minimum reach 51% of the annual broadcasting of each channel or group of channels from the same network. Similarly, in France there is the Law No.86-1067 (Art. 27 no. 2) about free communication, which establishes that the open television signals, cable or satellite that broadcast cinematographic works have the particular obligation to include in prime time at least 60% of European films and 40% of original French works.

#### ***2.4.2 Film Theatrical Distribution in Colombia***

The following section will be heavily focused on fiction films, as it is undeniable that fiction cinema, and mostly of foreign origin, has a *de facto* monopoly on this traditional form of distribution in Colombia, setting aside a handful of very rare exceptions which have been mentioned earlier as the most successful documentaries ever to be released in the country. This temporary focus on fiction, however, has the sole purpose of explaining how this facet



of the film market operates and will be helpful to understand in further sections why documentary films require alternative modes of distribution that can include theatres and projections to large audiences, but without several of the factors that make the traditional theatrical distribution a territory devoted exclusively to fiction films.

As it has been said before, the state of the film sector in Colombia has seen a very important improvement during the past decade. More fiction and documentary films are being made than ever before, but this has brought new issues to light:

The great drama of our cinema is no longer production because the law already secured a minimum of annual films to be made; the problem now is the distribution and exhibition. As long as cinema in Colombia remains the monopoly of a few companies, whose only goal is to exhibit American cinema, Colombian films will remain as nothing but cute anecdotes. We [the Colombian filmmakers] deserve to compete on equal terms and elude that our films leave the film theatres after a mere 15 days or less of having projected in theatres.<sup>56</sup>

Distribution remains the key issue and it becomes important to ask how a film is usually distributed in Colombia, although before answering this question, it should be clarified that this part of the research is mostly based and inspired on contributions made by the Colombian filmmaker and researcher Julio Luzardo, who, in my opinion, is the person who knows the most about the distribution and exhibition of Colombian cinema. This clarification is necessary not only because he deserves credit for his contributions as the author of several articles published on the subject on his website<sup>57</sup>, but also because some of these writings are no longer available, making it difficult to be precise about the date and year of publication of some of the information.\*

Many years ago, all the basic release costs, like advertising and copying a film that was intended to be distributed theatrically, were divided between the producer, distributor and exhibitor according to their percentage share of the final distribution profits. Nowadays this scenario has changed and these costs are accepted exclusively by the producer. A modest

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\* To overcome this impasse of not referencing a few of the publication dates of the quoted articles, in the bibliography of this thesis they will be referenced with the largest amount of information available.

release implies an investment of no less than \$100 to \$120 million pesos (around \$US50.000 to 60.000) and can easily exceed those numbers before having the first viewers access to the film theater.<sup>58</sup>

It must also be considered that most films in Colombia are made on digital video, which means that the producer should have a budget of between USD\$ 35,000 and USD\$ 50,000 for color correction and having the filmed transferred in order to obtain a final copy in 35mm filmstrip, which is still in many places the standard format required to exhibit in commercial cinemas and film festivals.

Besides assuming these costs, the producer has to share the value of the ticket with his two partners, the exhibitor and the distributor, and yield 5% of their profit to the FDC. If the producer also comes to a form of advertising arrangement with one of the private TV channels, they must reserve at least 15% or 20% of their income for the privilege of television coverage or having a commercial spot scheduled in the channel's programming.

Although there is not an exact value available of the amounts and shares that are negotiated between producers, exhibitors and distributors, it is estimated that the producer obtains a net profit of US\$ 1 for every viewer who comes to see the film. This means that hypothetically, deducting the percentage of the profits that would go to a TV channel that advertised the film, a net value of US\$ 0.80 would be left and said producer would need approximately 75,000 viewers just to cover the cost of the \$ 120 million pesos spent on the initial release of the film in Colombia.

About the producer profits, the personal experience of filmmaker Libia Stella Gómez with her film *La Historia del Baúl Rosado (The Story of the Pink Chest, 2005)* reveals that although there is not an official policy to regulate this matter, the film market in Colombia has somehow established that between the distributor and the exhibitor they keep 60% of the box office. In her opinion, this percentage should not be so inclined in favour of the distributor and the exhibitor, because there are other markets where the distribution is more evenly balanced and ultimately benefits the producer, something that ultimately becomes a motivation to continue production in a sustainable manner.

However, to relieve the producer from these worrying numbers, the FDC has a form of production support for those who meet the requirements to have their work recognized as a ‘national’ cinematographic work and receive a financial stimulus in the form of promotion for their films, according to two categories:

- The first category is for the reimbursement of invoices, which has a limit of about US\$ 40,000. The producer may apply for a refund of up to 100% of his advertisement and promotion expenses by presenting bills from costs authorized as part of this area, such as: advertising in different media, preparation of printed promotional materials, processing of 35mm prints, etc.<sup>59</sup>
- The second option of this modality is the reimbursement according to the number of spectators, which has a limit of approximately US\$ 110,000. The producer may request the reimbursement of US\$ 1.10 per film viewer, in the period between the release date and up to a maximum of three (3) months afterwards.<sup>60</sup>

The description of these requirements to distribute and exhibit a film theatrically in Colombia reveals a scenario of high risk and potential loss that any Colombian film producer must face. In fact, Luzardo says that theatrical distribution is an enormously risky and uncertain business, far more dangerous than anyone who does not know the business thoroughly can imagine, and where the odds for ending up with losses are much more secure than those of finishing the process having earned a small profit.

The figures listed above explain why almost all Colombian films lose money and do not reach enough earnings at the box office to at least cover the production costs and break even. So, why is the exhibiting risk so high in Colombia? First of all, because producing a medium-budget film in the country can cost approximately US\$ 700,000, and this investment would demand to bring approximately 560,000 viewers into the theatres, a virtually impossible demand considering the low number of frequent filmgoers in the country.

Despite the exceptional box office of Colombian films like *Soñar No Cuesta Nada* (*Dreams are Cheap*, Rodrigo Triana, 2006) with 1,198,172 viewers; *La Estrategia del*

*Caracol* (*The Snail's Strategy*, Sergio Cabrera, 1994) with 1,600,000 viewers and *Rosario Tijeras* (Emilio Maille, 2005) with 1,053,030 viewers; the truth is that these are exceptions and on average just a few local films have ever achieved between 350,000 and 450,000 viewers. The sad reality can be more accurately seen in the case of documentaries like *El Palenque de San Basilio* (Erwin Gogole, 2003) and *La Desazón Suprema* (Luis Ospina, 2003) which had just over 1,000 viewers during their respective theatrical runs. Evidently, in these cases the amount collected at the box office does not even cover the costs of copies or the small advertisement budgets.

According to Luzardo, 2013 was a difficult year for Colombian cinema when compared to the previous year, which was the most important year for local cinema in its history. It achieved the highest number of releases (22) and the best audience: 3'377,664 viewers. In 2013 Colombian film releases dropped to 17 and assistance was down 35.74%, meaning that 2'170.648 viewers were registered. In other words, the Colombian cinema box office decreased substantially, which means that over 90% of viewers decided to watch foreign films.

What genres or subjects are preferred by the audiences of Colombian films? According to Luzardo, on his analysis of the box office numbers obtained by 120 Colombian films released in the last decade, which he divided into 16 genres or themes, the preferences are as follows:

Without a doubt, the genre that the majority of Colombian films' spectators prefer is comedy, which had in the last decade (2003-2013) an attendance of 7'294.367 viewers, equivalent to 34.59% of the total. It is important to notice that, curiously, of the 20 films in this genre exhibited during these years, only two of them, *Mamá Tómate la Sopa* (*Mom, take your soup*, 2011) y *Nochebuena* (*Christmas Eve*, 2008), were made through the financial aid of the FDC, which reveals that although comedy is the favorite genre of the local audience, it is rare for the juries of the competition of the Ministry of Culture to allocate production grants to benefit these type of films.

The second genre to obtain relatively good box office results among Colombian audiences, according to Luzardo's research and supported by the statistical data from CadBox Colombia, is drama, including all kinds of subgenres within the category. With 40 drama films screened in the last decade, the genre reached a number of 3'955.365 viewers, equivalent to 19.28% of the total. The third most profitable genre could be defined as the 'violence/drug-trafficking' film, which obtained 1'978.973 viewers, equivalent to 9.23%. The fourth class is the comedy/drama with 7 films screened, and which had 1'809.026 viewers, equivalent to 9.22% of the total number of spectators.

The sixth subject rated by Luzardo was crime, which obtained 1'729.374 viewers, equivalent to 8.06%. The seventh is the armed conflict, with 5 screened films that obtained 1'696.825 viewers, or 7.56%. The eighth genre considered in this study is a mix of mystery/suspense/horror, which was seen by 1'553.097 people and is equivalent to 7.37% while the ninth category is the combination of action/suspense, which has been sparsely explored in Colombia and thus only obtained 531.677 viewers, equivalent to 2.60% of the spectators.

Based on the analysis of Luzardo, the following genres, which were represented by a total of 22 films during the studied decade, failed to individually reach at least 1% of the total audience attendance and, added together, represent just 2.10% of the entire sample: *auteur cinema* had only 93.065 viewers, equivalent to 0.46%; the documentary genre, reached barely 87.093 viewers, equivalent to 0.42%, and social dramas obtained 84.757 viewers, or just 0.39%. Finally, the remaining six films in this category belong to other genres like animation, fantasy, erotic film, musical and science fiction, and together they obtained 155.473 viewers which is equivalent to approximately 0.82% of the total sample.

The scenario described above, in one way or another exposes how Colombian films, in the way in which they are currently being produced, are somewhat disconnected from their potential audience. Apparently, they are addressing issues that are not well liked and do not tell the stories or portray the subjects that interest Colombian audiences.

But has the public always ignored Colombian cinema? Apparently not: the earliest Colombian films, like *María, Aura o las Violetas* (*Aura, or the violets*, a film based on a controversial novel by José María Vargas Vila) or *Bajo el cielo Antioqueño* (*Under the sky of Antioquia*, the most famous silent film ever made in the country), which were exhibited in 1920, 1922 and 1926 respectively, captured the sensitivities of the audience and therefore were eagerly supported. Those films were the first attempts at producing a local cinema that could portray how life was lived in Colombia during the early 20<sup>th</sup> century, and their naturalism was a reason for enthusiasm among audiences who really felt that their own lives were being captured on film and therefore these movies gave them the chance to see for the first time on the screen what being Colombian could mean, while showing the customs of the people, the characters seen every day: daily life.<sup>61</sup>

The problem of the disconnection with audiences arose when the productions insisted on repeating again and again that same themes, which led to an exhaustion that caused audiences to fail to attend theatres. Therefore, in 1928 the distributors began to block the exhibition of Colombian films and Colombian cinema died its first of many subsequent deaths due to lack of funding and lack of public interest.<sup>62</sup> From then on, according to Hernando Martínez, Colombian cinema has encountered all sorts of very serious problems on its path towards audiences: from distribution and marketing to production and financing. The sum of several factors that have emerged over the history of Colombian cinema has caused a crisis evidenced by the facts listed below:

1. During the earliest years of Colombian cinema, in the late 1920's, when the pioneers of Colombian cinema encountered distribution difficulties, their initial reaction was to ask the government for help and protection, not just for production but also for distribution. This was and has always been a mistake, because this attitude denies the opportunity for a natural mechanism –common to all industries– of supply and demand to arise: in the case of any commercial product, including films, if it is not sold, it is not produced. The difficulties of supply and demand promote competition and the realization for the need of structural changes that are ignored when the government steps in to aid with the production of a product that is not being sought.

2. Later, during the 40's and 50's, the box office did not respond well to Colombian filmmakers. This happened because the audience had access to Mexican and Argentinian cinema, which succeeded in meeting audiences' taste. In the imagination of the audience the idea that prevails is that cinema is entertainment and these two culturally close cinemas offered the audience an entertainment that included the songs they liked to hear and the melodramatic stories they liked to see. It was a cinema that did not have the dramatic or quality deficiencies of Colombian films.

Colombian filmmakers insisted on telling the same stories that had been made in the 20s, which were also badly narrated. They also made terrible imitations of Mexican cinema, and even though there were very important films made during those days, such as *Pasado el Meridiano* (*Past Meridian*, 1966) and *El Río de las Tumbas* (*The river runs through the graves*, 1964), these were liked by film critics but not by the audience, as they were not entertainment.

3. Colombian cinema was never integrated with the social and educative goals of left wing film projects like the *Tercer Cine* movement that was discussed in Chapter One. Due to censorship (Colombia was going through a very repressive military dictatorship during the 1950s, when many of these movements started), the excessive centralization of the media and a heavy influence from neoliberalism (and a demonization of all things 'communist' or 'liberal'), Colombia never embraced revolutionary cinema in the same way in which other countries like Chile and Argentina did. This means that cinema in Colombia has not been associated with social change until very recently and that a lot of effort needs to be made in order to promote documentary films and make them more visible in the country.
4. Colombian film continued falling on a downward spiral until the late 70s and early 80s, when there emerged some new financing and distribution opportunities that allowed for the production of populist comedies like *El Taxista Millonario* (*A Millionaire Taxi Driver*, 1979) or, on the polar opposite, a neorealist, documentary-

like kind of cinema, embodied by the seminal film *Rodrigo D. No Futuro* (*Rodrigo D. No Future*, 1990) a film which was a box office success with around 400,000 or 500,000 viewers, something that was an important record for a film that displayed the gruesome reality of the Colombian poorest classes without any kind of embellishment. However, a few years later Colombian cinema would return to the same situation of disconnection with the audience: “[...] when cinema moves away from entertainment, the audience becomes alienated and therefore seem to distrust local films; distributors become distrustful too and then everybody stops being interested in Colombian cinema.”<sup>63</sup>

In the recent film history of Colombia, there was a brief boom for local cinema, represented by a very good box office revenue between 2005 and 2008. “In the first quarter of 2011, the Colombian box office was resuscitated by three significant releases: *El Paseo* (*The trip*), by Dago Garcia and Harold Trompetero, *El Jefe* (*The boss*) by Jaime Escallón, and *Los Colores de la Montaña* (*The colors of the mountain*) by Carlos César Arbeláez. These films made it clear that the problem of poor box office in Colombia in the previous years had responded to issues like “not pleasing the audience or poor advertising.”<sup>64</sup>

These problems suggest that in the film production chain, as it is currently practiced in Colombia, it is perhaps necessary to:

[...] search for collaborative relationships between the different links, especially the directors, producers, distributors and exhibitors. Distributors and exhibitors have enough experience to guide filmmakers in search of aspects that appeal to audiences and therefore to increase the box office.<sup>65</sup>

According to Luzardo, in spite (or perhaps because) of the presence of “fancy foreign and domestic juries” at the selection process, the production grants awarded by the FDC both for fiction and documentary films have been usually slanted towards projects that satisfy the personal tastes of said juries and have not taken into account the tastes of the Colombian audience. They have almost completely ignored any kind of comedic project, as well as those that might have some commercial elements that are liked by the audience. Among the



projects selected, there is an overabundance of rural issues, farmers as protagonists, depiction of violence in the countryside and discussion about the displacement caused by the internal armed conflict of rural inhabitants into the major cities: all of these being very important subjects that nevertheless have already been proven not to please Colombian audiences, who, allegedly, from having to endure these conflicts year after year are not interested in learning about them from movies.

It is possible that, as Luzardo notes, to foreign juries these issues may seem exotic and interesting, but for an average Colombian spectator –as it is obviously evidenced by box office results– they are not. To overcome this difficulty, as recommended by Aragon, it is perhaps pertinent to “review the evaluation criteria of the projects submitted to the competition of the FDC and to select those projects with a high probability of success, that are cost-effective and could help to activate the supply chain of cinema in Colombia.”<sup>66</sup>

It is important, then, to start finding answers to questions like: what expectations do Colombian people have regarding their own cinema? Is Colombian cinema rewarding to its audience and gives it what it is seeking? <sup>67</sup> Mascarello notes that in Brazil, for example, these are also relevant questions that have never been answered by their local Film Council, for the simple reason that they have not incorporated them into their research agenda. It is urgent “[...] to answer questions as simple and fundamental as: what does a national audience think about "their" cinema? What do they expect of it? What is the place of cinema in the imagination of the audience? Does it constitute (and in what degree) their cultural identity? What is the opinion of the audience about the representations of domestic films in Brazil?”<sup>68</sup>

In summary, it is very likely that the problem lies more on the producers/directors and their choice of subject matter, than on the audience that pays to see what they like.<sup>69</sup> It means that “[...] even if it hurts a lot of our new filmmakers, the audience will ultimately see the films they like, those that meet their expectations and they will not choose a film by its nationality, its flawless technical execution or by sheer chauvinism.”<sup>70</sup>

Filmmaker Libia Stella Gómez, on the other hand, differs from Luzardo: in her opinion, subject matter is not the reason why *interesting* films made by Colombian filmmakers only achieved between 5,000 and 6,000 viewers, neither the reason why the *lighter* Colombian films (like comedies), received very positive feedback from audiences and reached at least a million viewers. She argues instead that the reasons why the filmmakers/producers in Colombia have not yet managed reach the audience in an effective way with culturally significant films in any genre (including documentaries, of course), is because the country's cultural authorities have failed to put into action state policies for the training of audiences and in order to train demanding audience that would stop conforming with films that are highly uncritical of the troubled Colombian society. In other words, for Gómez, the problem lies with a very unselective, untrained audience. In her view, if we keep shooting "low risk aesthetics" films, then

[...] we will never make films that speak of us as a nation, as a country, that delve into our issues, into what excites and what saddens Colombians; films that explore what happens to us every day. Because the audience is not a demanding audience, as it gets as bad news every day in the news, then fear spreads between filmmakers with another tragedy in the cinema and there is a real awareness building society, building discourse, see our reality in the mirror of cinema that is a wonderful mirror that allows us to reflect on the problems.<sup>71</sup>

From another point of view, Martínez provides what seems to be a middle ground solution between the opposite positions of Luzardo and Gómez. He has said that to overcome the major problem of Colombian cinema –which in his opinion has been to turn its back on audiences– it is necessary raise awareness about who the Colombian spectators are and what is it that they want to see in local movies. He suggests assuming the position of other film industries where directors often "experiment with what audiences want, so that through a dialogue between what the audience is seeking and what the filmmaker wants do produce, a point of agreement can be reached."<sup>72</sup>

But besides the problem of a lack of audience-training, which according to some filmmakers and film critics exists partly because local audiences are not used to being challenged by films and other cultural products, and partly because the filmmakers have not

found the right balance between producing crowd-pleasing films and expressing their personal concerns through filmmaking, there is the additional problem of the absence of cinemas to exhibit Colombian films. Although there are commercial film theatres in many major cities, only 4% of the total number of theatres in the country are located at the municipal level, that is, in the smaller urban areas where 96% of poor people live in vulnerable situations, unprotected and without their most basic needs covered by the Colombian government.

On this issue, Parra suggests that there should be a return to small or itinerant theatres as there once used to be in the most isolated cities, by creating a series of incentives to invest in cinemas in medium-sized to smaller towns. In his opinion, if there is a sustained government policy in Colombia to bring cinema to more municipalities, the industry could also be consistent with respect to prices and other commercial aspects. “For example”, he writes “in the U.S. they have a policy that lets a cinema goer get a lower ticket price after the first week of a film’s release has passed; so, for example, if the price for the first week is something like ten dollars, that same ticket will be worth eight on the second and six on the third, ending at around two dollars in places as different from each other as distant New York neighborhoods or suburban neighborhoods in small or medium-sized cities.”<sup>73</sup> So far, the only initiative that has tried to tackle this issue has been the *Colombian Film Week* organized by the Department of Cinematography of the Ministry of Culture of Colombia. This project has been carried out annually since 2010, and it consists of the free exhibition of 35 Colombian films in remote areas without access to cinema. In 2012, they reached more than 850 projections in over 27 municipalities in Colombia.<sup>74</sup> However, these projects, even though they are remarkable and well-intentioned, are not sustainable on the long term because in Colombia such public initiatives have a history of being neglected once there are changes in state-run institutions and priorities shift.

What kind of incentives and investment policies could be created in Colombia so that cinema can reach more cities and more remote and distant places around the country?

Jairo Carrillo, director of the documentary film *Pequeñas Voces (Small Voices, 2010)*, which was removed from cinema listings by the company Cine Colombia after only a week of its release, after reaching only 10,000 viewers, believes that what is needed in Colombia are laws protecting the distribution and exhibition, such as legislation to determine a fixed screen share that could determine that, for example, for every 20 or 50 screens managed by the same exhibitor, there should be the obligation to exhibit a Colombian film, regardless of its genre or subject matter.<sup>75</sup> Diana Bustamante, the producer of the Colombian film *La Sirga (Towrope, 2012)*, also supports the idea of creating some laws to reach a fair distribution and exhibition system, through the political will of the national government. She argues that “[...] in the same manner in which they put all that effort in approving the second film law [the aforementioned law to promote the shooting of foreign movies in Colombia], which favors primarily foreign interests, they should approve a law regulating local exhibition; establish a minimum of sales for local films and promote favorable conditions to give our films a chance at the box office.”<sup>76</sup>

It should also be noted that many Colombian filmmakers base their judgment about box office results and the situation of the distribution and exhibition system solely on predictions and speculation that are not backed by any evidence other than their intuition and experience. To avoid this situation, it should be the task of the government and the FDC to carry out further research on Colombian cinema, particularly on topics such as film market research, consumer behavior and film piracy.<sup>77</sup>

But while this research is carried out, an important conclusion to be gathered after this description of the most traditional and profitable form of film distribution in Colombia is that documentaries feature far from prominently and there currently aren't any policies in place that are meant to exclusively benefit these films: not a single piece of legislation exists that could demand that exhibitors display documentary films or that the films which are made with public funds should mandatorily reach commercial cinemas, which are taxpayers and direct contributors to the FDC: this makes the owners of commercial theaters direct financiers of the films sponsored by the competition that the FDC organizes on a yearly basis, but there is not an awareness of this fact and the films remain unseen and as statistic-filler. There is

currently not a single form of traditional and legitimate theatrical exhibition whose choices are not solely based on revenue and this means that, almost by definition, documentaries cannot expect to find a sustainable showcase here, as it is also the case with private television.

#### ***2.4.3 Film distribution via the Internet***

Mexican film producer Paco Arriagada believes that digital platforms have become one of the most viable options for distributing films, especially in the case of developing countries like Mexico and even more so for independent productions that have low budgets for promotion and distribution and can barely afford to have less than 100 copies released in film theatres. He explains that his film *Chalán* (2013) couldn't obtain a fair deal for theatrical distribution and therefore did not find its way into cinema theatres: it was released by being broadcast on the local Channel 22 and streamed online in a Mexican digital platform, and, surprisingly, within the first 48 hours of its release it had been seen by more than 30 thousand visitors on the website.<sup>78</sup> Spanish film director Paco León shares this view on online distribution because he risked changing the traditional Spanish system of distribution with his own film, the 'mockumentary' *Carmina o Revienta* (2012), which he released simultaneously in cinemas and on the film's official website, reaching 35.300 online viewers on the first weekend.<sup>79</sup>

Although Colombia has not seen such encouraging examples of a high number of spectators for local films distributed legally on the internet, there have been a few interesting experiences on this regard, as the one carried out successfully by the filmmaker William Vega, who, with the support of the film exhibitors of his film *La Sirga*, had the chance, for the first time in Colombia, to have the premiere of this film via the internet before having a theatrical release. The film was streamed through its official website ([peliculalasilrga.com](http://peliculalasilrga.com)) and a news portal ([elespectador.com](http://elespectador.com)), on August 23, 2012, one day before its nationwide commercial release in the theaters of the company Cine Colombia. It was free of charge for users to see, and it registered about 60,000 unique viewers.<sup>80</sup>

According to Machicado, films like *Lecciones para un Beso* (*Lessons for a kiss*, 2011), which have attempted their promotion through websites like Facebook with very low

costs, and other Colombian films that are available online on websites such as *Movie.com*, have been interesting cases of study for the proper use of the internet in the country as a useful platform for films, but despite these relative successes, there haven't been any effective experiments of film distribution through digital platforms that could provide some sort of profitability to film producers in Colombia. Certainly, there will be more attempts in the future, and they will be welcome and receive the attention of those eager to benefit from the internet.<sup>81</sup>

One could say that initiatives like these are of great impact for the country, and they are undoubtedly excellent film distribution experiments. However, the following question arises in regards to this kind of initiatives: what happens with those Colombians –in fact, a very big part of the population– who still do not have access to the internet or to any film theater in the villages, townships and municipalities where they live in Colombia?

A leading figure of the cultural sector in Colombia (who requested not to disclose his name in this document), when discussing the content of this dissertation in an interview, did not see much interest in doing a study that involved the work of the people immersed in the informal film distribution market of DVDs, due to the status quo in Colombia, where they are considered pirates and are perceived to have a strong relationship with illegality; a relationship that could probably never allow them to reach agreements with the Colombian producers of the formal film distribution market. The same person also wondered what could be the point of exploring a distribution format (DVD) that may eventually disappear if it isn't already going away in favor of what many experts and filmmakers\* believe is the future of the film distribution: i.e. the massive distribution power of the internet. This belief is held mainly for two reasons: first, because nowadays 'everyone' has a mobile phone and could watch a film on it, and second, because the Ministry of Culture of Colombia plans to invest huge efforts and financial resources in delivering Colombian films through online platforms.

The issues that were discussed with this person are shown are listed below because they will be relevant during the course of the discussion that will follow in the next chapters:

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\* Again, those interviewed during the research for this thesis generally agreed on the following remarks.

- What about those Colombians who own a mobile phone but cannot afford a data plan that allows them to connect to the internet?
- What about those Colombians who cannot even afford a personal computer?
- To what kind of cultural access are entitled those citizens that have been excluded from the globalization offered by digital media?

To find possible answers to these questions, it might be appropriate to look into some key concepts and considerations suggested by researchers in this area. To begin, the Australian film researcher Ramon Lobato says that “the hype around digital film distribution has reached a fever pitch, with promises of a brave new world of instant delivery, unfettered consumer choice and new revenue streams for filmmakers.”<sup>82</sup> However, he argues that people should be cautious about the power relations of circulatory models such as the commercial online video-on-demand (VOD) services and on issues of audience access and equity that while having a huge “democratizing potential” and “appeal”, ultimately might not yield the expected results because its consequences would be that “there would not be any real diversification of film culture, much of the Australian audience will be excluded from their reach and that the vast majority of digital film exchange will continue to take place in the extralegal realm.”<sup>83</sup>

In relation to access and equity, what are his arguments to talk about the exclusion of online film audiences? First of all, Lobato mentions that “many media commentators, film producers and industry boosters envisage a day when digital film distribution will replace all other forms of delivery, allowing a potentially infinite array of titles to be streamed into our lounge rooms via high-speed broadband”<sup>84</sup> and that

[...] according to this popular narrative, cinemas will eventually wither and die, video stores will close and the personal computer, TV, and DVD player will converge into a single device serving all our entertainment needs. Viewing opportunities will no longer be determined by the whims of multiplex programmers and broadcasters, and consumers will be able to watch what they want, when they want.<sup>85</sup>

However, he argues that while increasing amounts of cinema now circulate digitally, the fantasy of total online distribution has failed to materialize. “None of the commercial film

download services rolled out over the last decade have been popular with consumers and a large number of these –Cineclix, Movielink, Cinemanow, Pop, Spotflick, IFilm, Reeltime, Anytime, Mediatrip, Sightsound, Vongo, Vizumi, Clickstar and Jalipo, to name a few– have crashed and burned. In contrast, conventional distribution channels have proven to be surprisingly resilient.”<sup>86</sup>

In second place, it has to be said that:

More than just a sector of the film industry or a set of technical procedures, distribution is also about the regulation, provision and denial of audiovisual content – it is about cultural power and cultural control. Understanding distribution is the key to understanding the past, present and future of cinema as a ‘social practice’.<sup>87</sup>

This issue of control and cultural power that denies access to certain content is a very serious point to consider. In Colombia, for instance, despite the legal policies that aim to expand the use of Internet in the country through VAT exemption for low income households and through the elimination of tariffs on equipment used to access the internet, there is a tax reform that has been much less publicized and which provides a new tax to data transfer on mobile internet of 4% that has to be added to the previous VAT of 16%. This means that the internet tax would be 20%, similar to the taxes that are applied to the voice service in Colombia today.<sup>88</sup> In this regard, Rodrigo Lara, the president of *Asomóvil* (the Colombian union of mobile phone operators), believes that in the case of Colombia while on the one hand the State is trying out massively give internet access to the poorest areas of the country, it is implementing a preposterous tax reform that gives access to this service only to the wealthiest while categorizing mobile internet as a luxury service.<sup>89</sup>

Another fact that reduces the attractiveness of online distribution to consumers is the potential for technical compatibility issues. Many VOD services will only work on certain operating systems or may require for the user to have the latest version of a determinate browser or any other software. These services require a lot of bandwidth and therefore consumers are required to maintain expensive Internet subscriptions with high download limits.<sup>90</sup>



There are also obstacles that reduce the diversity of content available through online commercial channels. One of these is rights clearance, which costs on average between US \$30,000 to US \$50,000 and requires legal work in the case of those films of which a studio might not have all media distribution rights. There are also costs involved in the conversion and encoding of digital files, which can be considerable. Frequently, distributors will only go through all this effort for films that have had a theatrical release and have demonstrated the potential to return the investment.<sup>91</sup>

Next there is the issue of filtering: “Consider the case of iTunes, which, as noted earlier, currently controls most of the download-to-own market”, says Lobato, “iTunes does not deal with independent filmmakers – it does, however, deal with the major studios and with a new breed of content aggregators such as *Cinetic Rights Management* and *IODA (Independent Online Distribution Alliance)*.”<sup>92</sup> This reveals, at least partially, why it is not true at all that digital distribution would allow independent filmmakers to cut out the middle man and deal directly with their audiences.

Finally, there is a set of problems for audiences when it comes to online distribution due to social stratification. For a start, there are differential degrees of user access: in Australia, as in Colombia and most countries, a certain percentage of the population has never even been online to use a film streaming service: there is a large group of people who simply do not use these services. Also, there is the issue of the monthly subscription fee required needed to get a high-speed internet connection and the credit card required to pay for a Video on demand title. There are many practical hindrances involved when it comes to online film distribution, even for developed countries, and so the situation in developing ones remains quite discouraging, regardless of the enthusiasm with which the internet has been welcomed as the savior of film culture and the land of distribution and exhibition opportunities. Nobody disagrees with the democratic potential of the Internet to distribute films, but as Lobato has pointed out, this should not blind us about the previous problems of control and exclusion are in fact emerging inside innovative commercial structures that are introducing a new and different set of gatekeepers, blockages and bottlenecks, such as the high potential of oligopoly in the online VOD market.<sup>93</sup>

One could totally agree with Lobato on the fact that the piracy economy could be taken as an object of cultural policy since it could be a vehicle for cultural provision that may be less prone to the structural restrictions and inefficiencies of the online commercial system. Definitely, as he suggests “reshaping the film industry for a digital economy may mean forever abandoning the prospect of revenues from online channels and thinking creatively about other ways for filmmakers to keep money in their pockets.”<sup>94</sup>

In this scenario, the example of the website *Cinepata.com* emerges as an online model that democratizes access at least to those users who are not illiterate about using online digital media platforms and also have the financial means to access the network. This web site allows users free access to legal independent Latin American films and, in the opinion of Alejandro Martin this online model promoted by the Chilean writer and filmmaker Alberto Fuguet –of McOndo fame\*–, is a project that offers a good lesson on sharing since “all the available films have Creative Commons licenses which allow their distribution in all kinds of nonprofit film venues.”<sup>95</sup>

Another model similar to the example mentioned above is the emergence of online Film Festivals. The creators of such websites/venues understand that to combat piracy should use their own weapons: offering free and legal films to users. Some of these websites are the *Jameson Dublin International Film Festival* (Ireland), *Notodofilmfest* (Spain), *MyFrenchFilmFestival.com* (France), *Festivalcineonline* (Spain), among others.<sup>96</sup> The online *Notodofilmfest* film festival has had “more than 12 million viewers, 7,000 short films, thirty participating countries and fifty filmmakers acting as a film juries.”<sup>97</sup>

## ***2.5 The formal models and their apparent incompatibility with documentaries***

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\* McONdo, a word play between the corporate “Mc” and the fictional town of Macondo present in many of the books by Colombian writer Gabriel García Márquez, was the name of a short-lived literary movement that attempted to oppose the overwhelming influence of Magical Realism –and especially that of the works of García Márquez– in the literature of the region by describing the more cosmopolitan, neoliberal and pop-culture-influenced aspects of Latin American society, trying to show that the region was not an agrarian, patriarchal, backwards and exotic new world, as the members of the movement argued that Magical Realism had described it. Fuguet was the main advocate of this anti-Macondian literature and he often stressed the influence of cinema on his writing and worked as a film critic himself.

As the above Colombian context makes clear, documentary films are usually excluded from the most traditional circuits of distribution in this country mainly because of negligence from the official institutions that are sponsoring their production but forgetting their exposure in theaters or other means of public exhibition that could allow the public to see the large number of documentary films that are being made by local filmmakers with public funds and which often deal with subjects of civic interest. There is also the problematic situation of television, where we find an underfunded public TV that is also low in accountability coupled with a private sector that is not interested in documentaries for several reasons, including a perceived lack of cost-effectiveness and an underestimation of the necessities of the audience. Meanwhile, the internet, which appears to many as the most potentially democratic and far-reaching of all the platforms for film distribution, is not yet a viable option for Colombia because of the lack of proper infrastructure to allow the population to have access to a connection with the sufficient speed and stability to stream films.

There is also the problem of a public who mostly remains oblivious of the amount of film productions that are being made in their country, mainly because these films are not exposed enough through the mass media. As it was pointed out before, one of that advantages of the informal film sector is that, unlike in the formal film market, a North American film can be placed in the same status and offered at the same price as a Colombian documentary film (or any other form of audiovisual media) and therefore the products become equal if not in demand, at least in their possibilities to reach the same audience and become known. This simple fact explains why spectators who have the habit of finding their films in the informal sector are more likely to know about the recent local productions, even if many feel more ambivalent about piracy in the case of local films because these movies feel much closer culturally and the efforts made for their production feel less motivated by pure commerce, contrasting with the perception that is mostly held concerning Hollywood films.<sup>98</sup> If the formal film market is excluding films –again, especially documentaries– with which it simply does not know what to do because they do not accommodate to their rigid structures, perhaps it is fair that an opportunity is given to the social structures that make up the informal market to contribute with new ideas for the distribution of these films and allow this part of the

economy to offer an alternative to local audiences so that they can gradually become familiar with different modes of distribution and spectatorship and learn to value alternative modes of filmmaking by participating more directly in market that offers what the informal channels of distribution are not willing to present. Instead of assuming that the public does not want certain films, it would be interesting to let the audience decide by providing them with more choices, particularly when the formal platforms of distribution in Colombia remain so underdeveloped and shortsighted.

If we also can accept that documentaries –as we have assumed them for the purposes of this research (explained in Chapter One) – are practically incompatible with the exclusive search for economic gain and are not meant to serve the interests of economic groups and require to be independent in order to retain their identity as the kind of documentaries that a society like Colombia needs, then it is imperative that they remain separated from the most conservative of distribution channels and that a search for models of film distribution looks at other options outside the most traditional channels. This does not mean that documentary filmmakers should completely relinquish the formal market or to declare it totally irreconcilable under all circumstances with the interests of documentary film; to be more precise, this means that Colombian traditional media still lack the maturity to accept dissent and to provide spaces for challenging audiovisual forms, as documentaries usually are. This points toward the direction of the forms of distribution with which this research is mostly concerned and that will be described in their following sections: alternative models that are willing to place documentaries at the same level as any other film, regardless of its origin, purpose or genre, and that consider them as important sources of information and awareness.

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## Chapter Three

### The structure of the informal film distribution markets in Colombia

*However, most poor people do not live under the shelter of the law, but far from the law's protection and the opportunities it affords. Informal local norms and institutions govern their lives and livelihoods, and where they are not excluded from the legal system, they are often oppressed by it*

The Commission on Legal Empowerment of the Poor and the  
United Nations Development Program

#### 3.1 Structure of the informal markets in Colombia

*The economy is there to serve the needs of the people, it is not the other way around.*

Manfred Max-Neef

In a world in which, according to the UN general secretary Ban Ki-moon, for the most marginalized and vulnerable people in society exclusion and discrimination are some of the biggest obstacles for both collective and personal advancement; in which one in every five people are still living in extreme poverty and 58 million children do not attend school<sup>1</sup>; and where all of these people are forced to make a living in any possible way, ignoring legal barriers not by choice but out of need, it is hard not to ask oneself: Is it appropriate to exclude the marginalized and vulnerable workers –that is informal workers in emerging economies– of the possibility to formalize their work through establishing private and public entities which could be considered legal according to the laws of governments?

To try to answer this question throughout this chapter, I propose to begin by quoting some statistics that could allow us to understand in general terms what is meant by informality, which are the characteristics of the informal market and which is the structure of this market in emerging countries like Colombia.

According to information released by the *CUT* (the *Central Union of Colombian Workers*), in 2012 the unemployment rate in Colombia was 10.4%, while the average rate for Latin America was 6.5%. Colombia is ranked as the fourth largest economy in the continent after Brazil, Mexico and Argentina, who are all considered ‘emerging economies’; but if we consider this high unemployment rate and add to it an economic informality rate of 68%, it turns out that Colombia also has the fourth largest informal economic sector in the region after countries such as Peru, Bolivia and Paraguay. Moreover, Colombia is the largest economy in the continent with the lowest legal minimum wage.<sup>2</sup> This means that for a relatively large economy, Colombia has enormous levels of inequality, a very underdeveloped set of economic policies and a population that clearly depends on informality to overcome the government’s mismanagement of its economic legislation.

With such a high rate of informality, it would be pertinent to understand what informality means and what the characteristics that define informality in Colombia are. Regardless of whether informality is perceived as criminal or as a negative influence on the economy, a very appropriate definition –although not yet officially adopted by any government institution– for informal employment would be “the group of employees whose labor, in law or in fact, is not subject to national labor legislation, to income tax, to social protection or any other social security benefits related to employment.”<sup>3</sup> According to Castillo and Cubillos, based on information and data from the ILO (*International Labor Organization*) and DANE (*National Department of Statistics*) of Colombia, the following are some features that define the informal sector in Colombia:

- Informality exists basically because of the inability of the formal sector to generate enough jobs.
- Informality is not a real labor option but a possibility available against unemployment.

- The informal sector is comprised of a minimum of illiterate people and mostly by people who have a low level of schooling.
- The informal sector becomes an employment alternative for families who are displaced from rural places to cities due to violence against the civilian population.
- In the informal sector over 90% of people engage in sales and do not have a boss or superior to whom they could be held accountable.
- In the informal sector monthly incomes range between as little as \$300,000 Colombian pesos (around US\$ 150) and as high as \$500,000 pesos (around US\$ 250), but rarely higher than that.
- If the average monthly income and the number of hours worked by a member of the informal sector are interrelated, an hour of work is worth about \$ 1,250 pesos (US\$ 0.50) on average for a person involved in informality.
- In the informal sector people find a high degree of satisfaction with the activities they performed and with their working conditions, which should be interpreted as complacency with a set of activities that allow them to cover their basic needs.<sup>4</sup>

For Galvis, in Colombia –where, we must remember, six out of every ten workers are in the informal sector– there are several factors associated with informality such as:

- In terms of the regional distribution of informality, cities which are most affected by the phenomenon, are those smaller suburban areas which are located outside the central Andean region, nearby bigger cities like Bogotá, Cali, Medellin and Bucaramanga.
- Informal workers have generally lower incomes than those involved in formal economic activities, and therefore also have living standards which are much lower.

- In terms of gender, women are more susceptible to be in the informal sector than men and to occupy themselves as self-employed workers and family workers.
- Informal workers have low incomes; they are also young, poorly educated, work mostly in small establishments and live in suburban towns.
- Most informality corresponds to great amounts of poverty.

A response to the marginal effects of informality might be to improve the level of education of the population, to gradually increase the chances of workers to find formal employment. “This would indicate that improvements in the educational level of individuals can contribute to the reduction of informality, especially for that portion of the population comprised of young individuals, whose choices are in most cases to join the ranks of unemployment, or enter the informal sector, accepting jobs without social security.”<sup>5</sup>

Another issue that should be noted is that in Colombia a business or establishment is considered informal when it does not have a commercial registration issued by the Chamber of Commerce that must be renewed annually through a fee to avoid the risk of being sanctioned by the Superintendence of Industry and Commerce. The benefits of having a commercial registration, among others, are: to establish the existence, ownership and legal representation of the establishment; to have a source of commercial information available to potential customers about the business; to have referrals and financial solvency; to have access to the database of the Chamber of Commerce; to facilitate the acquisition of contracts with the public and private sectors, as well as obtaining credit from the financial sector.<sup>6</sup>

Apart from the lack of a commercial registration, an establishment is also considered Informal in Colombia when it does not keep account books, does not pay taxes and does not perform transactions for employee benefits. If, as mentioned above, 68% of the economically active working population –consisting of around 23 million people– in Colombia is informal,

then most businesses in Colombia are operating without a proper registration and many economic activities are being kept off the record. But, more specifically:

[...] since the organizations that belong to the informal economy are not registered with the authorities, they cannot access certain essential public benefits, such as justice and government training programs. Moreover, when problems of protection of property rights or similar conflicts arise, they must resort to alternative mechanisms that, in general, are on the fringes of the law. Thus, this situation undermines the institutional capacity of the country and is a fertile ground for corruption and the deterioration of institutions.<sup>7</sup>

Despite the fact that inflation is being lowered in Colombia, that the unemployment rate is falling and that a high proportion of the new available jobs are formal, in the first half of 2014, informal employment –measured as the economically active population who do not pay social security– is still close to 70%.<sup>8</sup>

At first sight, according to the research of Cárdenas and Mejia, Colombia seems to be in a trap of high levels of informality and low institutional capacity, which must be eradicated if it seeks to accelerate the rate of economic growth. The main reason for this, according to these researchers, is that, in most cases, informal sector enterprises do not have access to resources of the financial system, restricting its capacity expansion and investment in new technologies.<sup>9</sup>

What kind of economic, social and anthropological model could ensure that the informal market does not continue to be excluded from obtaining benefits such as financial resources, essential public assistance, training, investment and institutional protection?

### ***3.2 Overview of the informal film distribution markets in Colombia***

*Where formal laws and institutions do not serve the needs of  
the poor, politics gravitates towards informal channels.  
When governments are unable or unwilling to deliver*

*protection and opportunity for all, the formal system's  
legitimacy and relevance are eroded.*

The Commission on Legal Empowerment of the Poor and  
United Nations Development Programme.

First of all, it is important to make the term *informal* clear within this context:

In common use, informality has become synonymous with unstructured or unorganized systems of economic relations, and often connected to the idea of marginality and illegality. However, a closer analysis of the phenomena that are classified as informal reveals that, in most cases, informal economies and informal networks of circulation are highly organized, they often occupy a central position in the economy of a country (particularly in the African context but also in European regions like Southern Italy or the former Soviet republics) and they constantly fluctuate between regimes of legality and illegality, foregrounding the fact that spheres of lawfulness and illicitness are socially constructed.<sup>10</sup>

How do the informal networks of film circulation operate in Latin America?

The BBC World network, with the contribution of several Latin American journalists, portrayed on a series of specials for TV how these markets operate and found that, for example, in the Mexico Plaza Meave and other nearby shops found in the center of the federal district, a few blocks from the National Palace of the Mexican government, there lies the heart of the largest cyber piracy network in Mexico. Plaza Meave, a square in Mexico City, is a synonym with cheap software, the place to download free editing programs, movies and games, or find schemes to steal the internet service from your neighbors. In 2011 digital kiosks were installed to combat content piracy, but until now they have been useless against illegal internet downloads, perhaps because there is not any Mexican law to regulate web piracy. For those who sell pirate movies on the streets, the National Congress endorsed an initiative to sentence them to prison.<sup>11</sup> Nevertheless, norms like these, which are active since April 2010, and determine sentences of between 2 and 6 years of prison, are not fully implemented in Mexico, partly because of the opposition of members of congress who

consider that these laws violate the rights of poor and unemployed people and in are design to benefit monopolies and the concentration of wealth. Voices such as that of these congress members eventually take hold of the collective consciousness of the population and even of the authorities themselves who have largely ceased to prosecute pirate vendors.

In Brazil, *BBC World* found that the sale of pirate digital products is a crime according to the active legislation. Since 2004 the country has a *National Council to Combat Piracy and Crimes against Intellectual Property* that includes repressive measures, which is perhaps why, at least in Sao Paulo, it is no longer common to find proper stores openly displaying pirate DVDs and CDs as it used to be common practice. Now, pirate material is found in small displays that are placed in the street by hawkers. In 2011, The Brazilian authorities closed two workshops for manufacturing pirate digital products in Campo Grande and Sao Paulo; they also carried out several security operatives in shopping malls as *Pamplona Mare e Monti*.<sup>12</sup>

In Venezuela, according to Abraham Zamorano, stores with pirate materials can be found without effort in hundreds of street corners and subway exits, where a DVD is worth approximately \$10 Bolívares (about USD\$ 2.3). Moreover, you can find authentic video libraries of pirate copies of all kinds of films. In Zamorano's opinion, the inability of the authorities and the lack of awareness of the citizenry have been an obstacle to the fulfilment of the Special Law Against Computer Crimes Act and current copyright law, which includes penalties of six months to six years to whomever violates intellectual property. According to the latest report from *BSA (Business Software Alliance)*, 88% of software is illegal in Venezuela, a record in the region.<sup>13</sup>

In Argentina, the huge market of *La Salada*, in Buenos Aires, sells all kinds of pirate products and it is not only hugely successful in terms of sales, but it also counts with a sort of unofficial approval from the authorities, who greatly turn a blind eye on the activities that take place in there. Pirated DVDs are openly sold on newsstands and street stalls, and there are small shops dedicated to the field.<sup>14</sup> The success of piracy in the country can be exemplified by what happened to the video rental company Blockbuster, which could not



compete against piracy and closed its stores in Argentina. According to Fernando Tomeo, an expert in technology and intellectual property, piracy is a widespread practice in Argentina because there is a loophole on the subject, since the only law on copyright dates back to the 1930s and is outdated. However, this was no impediment for the owners of the famous websites *Cuevana* and *Taringa* –which offered texts, music, film and TV programs for free– to be brought to justice in Argentina for allegedly violating copyright law in 2011.<sup>15</sup>

In Paraguay, the illegal market of Ciudad Del Este is one of the most popular in the region. According to BBC World, the consulting company *Business Software Alliance* estimated in 2010 that 83% of the software sold in the country is illegal, generating losses for manufacturers for more than US\$ 55 million (although these estimates are always problematic). In 2011, the BSA placed Paraguay among the top 20 world nations with the most available pirate material on their technology markets. Although in 1998 this country endorsed a Copyright Act, a survey conducted by the Paraguayan Chamber of Commerce, revealed that half of Paraguayans believe that piracy, counterfeiting and smuggling are a valid means of survival for poor people.<sup>16</sup>

In Chile, the *BSA* study revealed that 62% of the existing software is pirated and that, on the other hand, 60% of Chileans believe that intellectual property should be protected. The State Department of the United States announced that they will provide USD \$ 100,000 to the Chilean government to train judges in intellectual property rights. The copyright law dates back to 1970, but in 2003 Chile adapted its legislation under agreements with the *World Trade Organization* (WTO). Allegedly, piracy makes Chile lose about US\$ 1 million per day in sales.<sup>17</sup>

Generally speaking, in Colombia there is not yet a regulation on internet copyright. The first two attempts known as the *Lleras Law 1.0* and *Lleras Law 2.0* (named after the Ministry of Economy of the time) failed. *Lleras Law 1.0* was stopped by millions of tweets and other forms of online protest from internet users and this reaction forced the National Congress to discard the first draft of the Law in November 2011. *Lleras Law 2.0*, attempted to adapt the Colombian legislation to comply with the terms relevant for copyright present in

the Free Trade Agreement with the United States that many members of the Colombian economic elites were very eager to sign. The urgency to sign the FTA spurred the government to submit the second draft of the *Lleras Law* for the approval of Congress in a record 20 days. Subsequently, a complaint from Senator Jorge Robledo about the terms of the Law pointed that it did not provide for exceptions and limitations to copyright that are customary in the USA and this served to declare the Act as unconstitutional, since it should have been previously approved by foreign affairs parliamentary committees and not to by those responsible for intellectual property matters.

According to César Rodríguez, the failure of these laws and other previous versions of internet copyright legislation, leave valuable lessons for the next government to propose new approaches in this regard. In his view, first, it is clear that there is no future for laws that protect only the rights of authors and conventional cultural industries. Second, it became clear that it is essential to seek citizen participation to achieve a balanced regulation, including the rights of the public to culture.<sup>18</sup>

According to Arturo Wallace, despite the approval of the FTA between Colombia and the United States, in the streets of downtown Bogotá pirate booksellers and fake DVD peddlers seem to continue operating as usual.<sup>19</sup> In fact, about the heterogeneity of the piracy economy, “Gómez-Mejía notes in his research on the pirate DVD market of Bogotá, that it cannot be understood as a ‘unified phenomenon’, inasmuch as it has been demonstrated by the variety of the selling venues: some of these DVDs are sold in the *San Andresitos*, others are sold in clandestine retail stores located in back lots at the city’s center, and others are even sold on public transportation.”<sup>20</sup>

Gómez-Mejía also explains that, in Bogotá, the catalogue and quality of pirated DVDs changes greatly from one pirate market to another. In the *San Andresitos*, products on offer concentrate on recent Hollywood blockbusters. The packaging is reworked and includes new Spanish text to better persuade the local customers. In the clandestine retail stores located in the back lots of the city center, the supply is much greater –“the great classics coexist with foreign and domestic commercial hits, and even with pornographic movies”<sup>21</sup>– but less

attention is given to the packaging of the products; they come in simple plastic sleeves.

*El Septimazo* is in the city center of Bogotá, at a midpoint between 17th and 18th Streets, on the east side of Seventh Avenue. These clandestine retail stores are open Monday to Sunday from 10am to dusk. According to Jorge Benavides a dark door leads to a narrow staircase leading to the second floor where there is a restaurant in the back and two aisles with 30 or so stands dedicated to the sale of non-original films. The public version of the place's origin agrees on concluding that around 2005, this place became populated with informal vendors as part of a community project of relocation of street vendors, which initially sold other products (snacks, magazines, stationery). However it wasn't long before it became the center of audio visual piracy, in which for each stand, a tenant pays around \$300,000 Colombian pesos (US\$ 140) per month to an administrator who then gives the money to the owner of the place, a person about whom nobody seems to know anything at all.<sup>22</sup>

According to Benavides' further research, each stand offers around 1,000 movies with a varied selection of commercial cinema, art house cinema, independent cinema, pornographic cinema and Colombian cinema, which is often considered a separate category among these sellers. They also sell TV series, Anime, documentaries, music, fitness training videos and concerts. There is a particular stand with a catalogue of about 10,000 movies. It is the biggest place at *El Septimazo*. It occupies the size of about 8 regular stands; their sellers claim it is the place that sells the most. They estimate that they sell roughly 100 pirated DVDs every two hours. These shops or stands are supplied with pirated films from *San Andresito de la 38* (perhaps the largest informal market in the country, where everything from audio systems for vehicles to confectioneries, smuggled electric appliances or counterfeit clothes can be easily found), other sellers copied the films by themselves and others obtain them from any large distribution network they can rely on. If the user does not find what they are looking for, they send a request and in less than a week they can go back to pick up what they were looking for.

To the Informal seller the net value of each DVD movie is about \$ 600 Colombian Pesos (US \$ 0.32) and for the buyer the cost of each pirate movie on DVD is about \$ 2.000 Colombian Pesos (US \$ 1.07). Also, the sellers offer the option to purchase 3 pirated movies on DVD for \$ 5.000 Colombian Pesos (US \$ 2.4). Generally on a bad sales day, an informal seller in this location can sell between 20 and 30 pirated movies on DVD and on a good day more than 70.<sup>23</sup>

Blockbuster and relatively recent releases are the most sold films in *El Septimazo*. Among the classic films, *A Clockwork Orange* has no rival. There is a place where they only sell what they call ‘caleto’ (Spanish slang for hidden, or hard to find) cinema, which is how independent, art house cinema is known around these markets. Their customers are usually teachers, college students and sometimes Colombian film and television personalities, who pay up to \$ 5,000 (US \$ 2.68) for copies of feature films that will undoubtedly never reach cinema theaters in Colombia. The higher price of these DVDs compared to the prices of other stands, is justified by the owner because he is responsible for importing and copying the films, as well as of making the covers and designing the box-sets he sells as special collections.<sup>24</sup>

The owner of this stand, who is aware that he offers an atypical product, says that he offers a service of something which people did not have access before. Therefore he believes that his operation is not piracy, but rather a work that can be called independent distribution. Another *El Septimazo* Informal seller says that this piracy business, like it or not, will always exist because not everyone has the money to buy the original film or for going to a movie theater. Maybe he is right: in Bogotá, a cinema ticket costs on average \$ 8,000 (US \$ 4.28) and an original DVD movie, from \$ 20,000 (US \$ 10.71) to \$ 40,000 (US \$ 21.41).<sup>25</sup>

On his investigation about these piracy markets in Bogotá, Gómez-Mejía focuses on the kind of “social interactions” that take place between the buyers and the sellers.

Far from being described as “thieves” –as they tend to be in the reports commissioned by the major copyright-based industries– some of these sellers are identified as cultural brokers: they are portrayed as being “cinéphile dealers”, smugglers of a heteroclite

cinematic culture, varying according to the potential customers.<sup>26</sup>

Gómez-Mejía's description of this type of seller perfectly matches a film salesman of *San Andresito de la 38* whom I met, known as *el Tigre (the Tiger)*. He has been working there for about 25 years. He has become a kind of film lecturer for his clients for the past 15 years, since he started to sell exclusively non-commercial cinema. He feels proud of his customers who are, on his own words, educated people, such as teachers, doctors, engineers, film students and so on. El Tigre also proudly says that it isn't uncommon for university professors to seek his advice on the films that their students should watch for certain courses. He also does not forget that, in an informal way, he was an advisor for a film teaching project that the Mayor of Bogotá, Antanas Mockus, wanted to carry out in some public schools in the capital of Colombia during 2003.<sup>27</sup>

Here, at least three contradictory realities converge: the ethics of copyright, the fact that rich and poor for different reasons buy pirate movies and the necessity of informal sellers to rely on pirate films as their means of survival.

### ***3.2.1 Informal film distribution on DVD in Colombia***

Usually, and particularly in Colombia, people who work at the informal distribution market of pirate DVD movies are called pirates, people living from piracy; so how can we define this term? What is usually meant by piracy?

As mentioned in the introduction of this thesis, the PRACI in Colombia is a program that is funded by public and private resources and basically has the goal of defending the interests and rights of the distributors and exhibitors of film and video in Colombia. Under this program, piracy is defined as the use of an audiovisual work without the express prior authorization of the owner: this represents both economic fraud and copyright violation.<sup>28</sup> According to the PRACI, the term piracy is a worldwide accepted idiomatic expression and refers to unauthorized copying. In the particular case of Colombia, when it comes to piracy

we talk about patrimonial fraud to copyright through a series of illegal conducts, as provided in Article 271 of the Colombian penal code.<sup>29</sup>

The PRACI has designed a few questions to help the buyer and the authorities to identify through certain indicators whether a movie is pirated or not. These questions are: 1) is the film still being shown in theaters? 2) Is the cover printed in a language other than Spanish? 2) Are the covers and disc printing of good quality? 3) Are all the identification logos present? 4) Does the back of the disc look purple or green? 5) Is the retail price very low while the film is of very recent release? While these questions and other basic rules that have been spread by the PRACI do not inquire into the depths of intellectual rights because they are many and complex, they are not as simplistic as it might seem since their goal is actually to make sure that fraud on Copyright becomes effortlessly visible and therefore it is perceived as an easy crime to prosecute, easy to process and easy to punish.

According to the research carried out by the PRACI, piracy is not simply a problem of a group of isolated people who sometimes show up to sell illegal DVDs at traffic lights in the streets of Colombia: it is a phenomenon that is carried out based on a pyramidal mafia-like structure. According to them, on the illegal market of piracy there is a criminal chain which is divided into two structures, which in turn are divided into other links that form the chain, as follows: first, there is the ‘mafia’ structure that is formed by the film online pirate, those who are in charge of copying films from their original sources and performing their large scale distribution. Second, there is the underlying structure of the socioeconomic reality that is formed by the medium-sized film copying operations, the medium film distributors and the film sellers working on the streets. When the Colombian authorities criminally prosecute these piracy chains, an opportunity is given to the smaller pirate sellers to cease and desist (this is called *principio de oportunidad*, or ‘opportunity principle’), and the strongest efforts are focused on the larger distributors and copiers, who usually are punished with complete forfeiture of the pirated materials and the respective penal charges according to copyright law.

### ***The online film pirate***

To the PRACI, the online film pirate is a person who captures, digitizes and reproduces an original audiovisual work, along with templates for promotional graphic materials (posters, DVD covers, etc.) that are meant to accompany the pirate copies of the work. What this person does through the internet is to download, compress if necessary, and then copy the films with the aid of equipment that, in some cases, allows them to have a pirate copy ready in less than three minutes. The high-quality initial copies of films are known as ‘masters’ copies, which are digitally stored on devices that not always resemble traditional hard drives. After this procedure, the film pirate reproduces as many copies of certain films as are requested, usually in small amounts of 30 to 50 copies, to be subsequently sold at a higher cost to smaller-scale film copiers in different cities, who in keep on multiplying the chain of illegal film copying.

According to the PRACI, the online film pirate “is not visible to anyone, this person is not in a *San Andresito* shopping center, nor in the street or at the traffic lights.” This is not a person exposing themselves to be seen, “[...] they are in clandestine places, but might also be in luxurious apartments, in places far away from the city.”<sup>30</sup>

### ***The big film copier***

The big film copier has several ways to obtain an illegal copy of a film. First, there is the option of buying a digitized film copy, which means a master copy of the film that has been downloaded by an Internet pirate. Second, he may have an original film on DVD that has been released in the film market of another country before being sold in Colombia. In the third place, he could procure a copy through the use of specialized software that could grant access to downloading the contents of legal online video streaming services.

This kind of film pirate uses as their main tool a CD/DVD burner, in which it takes between 6 and 10 minutes to copy a good quality film. This kind of pirate does not work alone. He is associated with several peers who provide their own computers to the business and each small group consist on average of around ten burners working for long periods of

time in a simultaneous operation; it is not rare that some of these groups manage to have 80, 100 or 500 burners available for massive film copying and thereby become the largest suppliers of pirated films on their city or region. They produce very significant quantities and thus become the distributors of their own product.<sup>31</sup>

### ***The big film distributor***

It is quite easy to spot this kind of film pirate. Usually they are located in informal shopping malls such as the mentioned *San Andresitos* and *El Septimazo* in Bogotá. Sometimes they are camouflaged within the trade of clothing and footwear to reach the customer. Sometimes they offer laminated catalogues that show the logo of a recognized brand of film theatres to advertise their film piracy premieres. So the client requests the film titles he wants to buy and, depending on the case, they might sell from to up to 300 copies to the same buyer. When selling wholesale, an individual copy of a film can be sold for as low as \$ 700 Colombian pesos (USD \$ 0.35) and for the final consumer it can be sold at about \$ 2,000 (\$ USD1.20).<sup>32</sup>

What has been described so far matches the description and operation of what PRACI labels the “mafia structure” of film piracy; it means one that is constituted by the online film pirates, the film big copiers and the big film distributors. What follows, based on an interview conducted by me to an informal film seller who we will call Pedro Pérez<sup>1</sup>, is the description of another informal film piracy operation, the one called the “structure of the socio-economic reality” of piracy by the PRACI, and which is comprised of mid-sized networks of film copiers, mid-sized networks of film distributors and, finally, the street vendors.

### ***The mid-sized networks of film copiers and distributors – A case study***

According to Pedro Pérez, a double-major student at a public university in Bogotá – and as has been evidenced by the research of PRACI– in his university there are several

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<sup>1</sup> The actual name of this person has been changed to keep his real identity private for security reasons and he will be mentioned as ‘Pedro Pérez’ (a Spanish name equivalent to ‘John Doe’) in this work.



informal networks that sell pirate films on DVD. These are mostly formed by students who are in a vulnerable economic situation and find in this business –considered illegal by the Colombian authorities– a monthly income to cover their own expenses and often even the studies or living expenses of their siblings.

The mid-size film piracy network of Pedro Pérez consists of him, one of his closest friends and other two reliable students who replace him and his friend when they are attending their academic duties. So there are four of them, although sometimes there are more regular contributors who occasionally sell pirate films at different places inside the University by request. There is one simple rule to be part of the network and it is that its members must share a love of cinema. Their philosophy is that this sentiment should prevail over mere economic necessity, and this means that although it is a business, they must keep all the love and respect for cinema above everything else.

For Pedro Pérez, it was his love for independent cinema which led him to seek distributors of pirate films in the first place. Consequently, he made several connections with people who worked in that environment, until he eventually became friends with one of them who then offered him a job in his business. His job and that of his partners is not to download films online in order to copy them later, what they do instead is to find master copies of movies with good image and audio quality, which have an approximate value of between \$ 5,000 to \$160,000 Colombian pesos (between US\$ 2.5 to US\$ 80), depending on the reported difficulty of obtaining that copy. To do this, they seek wholesale suppliers who know about independent film sales in Bogotá. Three of them work in *San Andresito de la 38* while others frequent the local flea markets and *El Septimazo*. On the same markets, in addition to the film's master copies, they also buy paper for printing the DVD covers, the blank compact discs to copy the films and the plastic bags where these are packed, all at very low prices.<sup>33</sup>

All of these business connections converge into a network in which mutual trust; business learning and good films of all genres are what usually prevail above everything else. Pedro Pérez says “I go there and I know exactly who I have to look for and who will give me a good copy of a film. I don't have any personal problems with them and if it turns out that

there's something wrong with the film, I can ask for a change. It's not always just about buying, but bartering often happens too and it's really interesting that here one can meet with people who have many years of experience down this road and learn from them, which is an extra benefit of this this business of selling films.'»<sup>34</sup>

Once they get the master copy of the film, the network proceeds to make the film copies in the four burners they have at their disposal. Each copy is done in about 15 minutes but, although the disc copying procedure is simple, every once in a while some master copies turn out to have safety measures on the disc or in the software, and then they have to rely on some software cracking tools to modify the behavior of the original software and therefore remove the safety mechanisms of the films that could stop them from making copies. One of the most commonly found security devices are security holes, punctures that are made in various parts of the DVD with a needle, without damaging it, but effectively preventing the possibility of copying the film. To solve this problem, after several months of searching, this network found a patch, which successfully allowed them to bypass this security measure.

After the film copies are made, they check that the film is complete, that the DVD menus and the sound work well and that the disc is not scratched because sometimes, errors during the burning process can do that. After this, the cover of the movie is printed and is packed in a plastic bag along with the DVD that now is ready to be distributed to customers, who are mostly students and teachers from two public universities in Bogotá. When the films are packed and ready for sale, they are marketed at the university where Pedro Pérez studies, with prices that are accessible to people –that means that they range from \$2.000 to \$6.000 Colombian pesos (US\$ 2 or 3)- in some makeshift stands. According to his version:

There are about 10-12 *chazas*, that is how we call the places where we sell films. We can have from 200 to 300 film titles, and several copies of each one. On a good day we could sell at least one copy of half of the available titles. Talking about money, it can be said that we sell from \$150,000 (US\$75) to \$300,000 (US\$150) pesos a day, but sometimes we sell nothing, or just \$ 50,000 (US \$25) a day.<sup>35</sup>

When there are special occasions in his public university, such as cultural events and graduation ceremonies, they can sell between \$ 500,000 (US\$250) and \$ 700,000 (US\$350). These days Pérez says that buyers ask for

[...] a lot of French cinema, or Spanish realist films, and also French New Wave cinema, which is the kind that sells the most. There is a select film audience for experimental cinema, stop motion and animation and therefore we constantly look for films for that audience. There is also a very select audience consisting of university lecturers who prefer to buy films that are difficult to find such as classic films of Colombian cinema from the early twentieth century until around the 70s.<sup>36</sup>

Although film buyers appreciate the work of this network for selling films that do not reach film theatres or the legal film markets in Colombia that is not the case with the Colombian authorities. In fact, on three occasions in 2012, the board of directors of the public university where Pedro Pérez studies, allowed the entry of the police, which forced them to leave their goods elsewhere and seek alternative solutions to avoid being prosecuted. The reality is that “in the first instance you cannot be legally prosecuted, but you can be the second time. After the first offense, you receive a kind of warning by the public force. They let you know that what you are doing is an illegal activity and they confiscate your entire merchandise. The second time they are allowed to actually prosecute you.”<sup>37</sup>

### ***The street vendor***

Based on the research of the PRACI, this type of film pirate is the last link in the chain of illegal replication and distribution of unauthorized copies of films. The excessive harassment to which this type of informal salesman is often subjected by the authorities is caused mostly because Colombian society in general gives the same treatment to a street vendor who sells licit products such as flowers, candies, cookies, bottled drinks, etc., as to one who sells illegal products. In Colombia, street vendors of all kinds are perceived by many as being involved in suspicious activities, and are frequently the objects of scorn.

This type of seller may have a monthly income of \$600,000 (US\$300) which is an amount very close to the legal minimum wage in Colombia. This person, as part of the piracy network, must have a minimum of film copying and film distribution infrastructure. They also have an agreement with other members of their network

[...] not to talk about the film piracy chain; not to mention the commercial mechanisms such as the people in charge of the different activities, the places where copying or distribution take place, the transportation used, the schedules, quantities, prices, etc. This vendor is committed to staying on the role of a 'beggar' or a 'street person' who ignores what takes place in the larger piracy network. This guarantees that any action taken by the competent authorities against them will end up being inoffensive for the bigger links of the chain.<sup>38</sup>

Although the subject of the previous case study, Pedro Pérez, has not been prosecuted by the authorities, he increasingly feels more fearful to see that the police can enter to the university where he offers the pirate films and confiscate his merchandise -if it is the first time they've seen see him-, or deprive him of freedom if they see his face for the second or third time. Another seller of piracy films of the same public university, whom I will call Carlos Sanchez, has not been as lucky as Pérez. The police have seized all his goods twice and on one occasion he was imprisoned for several months.

### ***3.3 Piracy and inequity in emerging countries***

*During the first century of this country's history, the United States did not recognize foreign copyright laws. In this sense, we were born as a nation of pirates. Consequently, it would seem very hypocritical to denounce developing countries as doing something wrong when for the first century of our history we did exactly the same, and to us it seemed right.*

Lawrence Lessig

According to Dr. Melba Calle, a professor of Public Law at the *Universidad Libre* in Bogotá, Colombia currently has, for the first time in its history, all the conditions necessary for the creation of a lasting peace agreement between the government and the illegal armed

groups. For more than 5 decades a culture of war has prevailed in the country with a weak constitutional experience of unquestionable respect for human rights.<sup>39</sup> Since the country has so far focused almost exclusively on war, one of the two conclusions of her book *Constitution and War* reveals that warmongering is directly correlated to some pernicious characteristics of the socio-political history of Colombia, such as the extreme social inequality and the selfishness and stubbornness of the ruling classes, among many other factors.

Would it be possible to prevent the incursion of new sectors of the Colombian population in the violence, (as suggested by Dr. Calle) by strengthening public education and employment opportunities and by demanding that the political leaders promote democratic, pacific and concrete policies associated to a strategy to reduce the outrageous concentration of land ownership and income among the elites? Could the legitimization of the informal distribution market, coupled with a project for encouraging the circulation of documentaries that discussed subjects of inequality and calls for social change, be a possible alternative? The case of the legalization of a certain practice of informal film distribution in Ecuador, which will be studied in the following chapter, could offer an important precedent in this direction, but it is important to focus firstly on the conditions that have made piracy such an important phenomenon, not only in economic terms, but also socially.

In Colombia it is urgent to advocate for the construction of a society with a lower excessive concentration of power among those few with political and economic advantages and which at the same time can empathize with the feelings of those people who have to endure rejection and exclusion on a daily basis. In the case of those working in the informal market of film distribution, a first step toward achieving a necessary level of empathy would be to question what kind of ways could lead to the construction, development or implementation of an alternative film model of inclusion that could benefit those Colombian workers of the informal film market of films on DVD, that have been excluded from the central economic circuit by the Colombian government and by the formal entrepreneurs who belong to the country's ruling class.

For a start, it is of vital importance to reconsider and redefine what piracy is. The usual and simplistic understanding of piracy, such as that held by the *Mexican Protective Association of Film and Music* [APCM], in which piracy is composed of a series of “apocryphal products” that “claim to be original without being so”, are “fake” in addition of lacking “a minimum set of quality standards” and by being sold “lacerate the authors economy and the constituted legally industry”<sup>40</sup>, can no longer aspire to explain or describe the whole picture. As it has been pointed before, if a difference is to be made in this regard, piracy has to be understood in more than dualities (formal/informal; legal/illegal; legitimate/illegitimate) and the perspective has to shift to the socioeconomic conditions that engender it.

According to Mattelart, the physical piracy of audio-visual products such as DVDs has received far less attention from scholars than other forms of piracy. Moreover, the subject seems to be tainted with illegitimacy. In fact, the field of piracy is mostly saturated with the expertise produced by the leading global, mainly American, copyright-based industries, or by the organizations defending their interests. In his view, in order to better convince public opinion, governments, or multilateral institutions of both the threat that piracy represents and the need to fight against it, these organizations go as far as emphasizing, in their reports, the links existing between piracy and organized crime, or worse, transnational terrorism, elevating piracy to the rank of an “international security” problem.<sup>41</sup>

In this sense, in rupture with the literature produced by the main copyright-based industries—which is, in many respects, more interested in the financial losses due to audio-visual piracy and the means to struggle against them than in piracy’s causes—the research project lead by Mattelart shows that in order to understand this phenomenon, we need to break with perspectives criminalizing piracy, and to consider, on the contrary, “the various possible social, economic and political reasons for its rise.”<sup>42</sup>

In other words, he suggests that audio visual piracy needs to be seen as a complex phenomenon, intimately interwoven into the social, economic, cultural, and political structures of the countries involved in this phenomenon. Meaning that these factors could

help to understand the development of Piracy practices particularly by taking in count its historical roots such as those largely inscribed in most countries in the history of consumer habits.<sup>43</sup>

To Karaganis, piracy is ubiquitous in most parts of the world, because the conditions for it to arise are equally ubiquitous. Also, he believes that media piracy is probably better described as the result of a global pricing problem, since high prices for media products, low incomes, and cheap digital technologies are the main ingredients of global media piracy. In his research it was found that, for example, relative to local incomes in Brazil, Russia, or South Africa, the price of a CD, DVD, or copy of Microsoft Office is five to ten times higher than in the United States or Europe.<sup>44</sup>

So, for other authors such as Londoño (2013), piracy is nothing but the revenge of the Third World against the century abuses of the first world. In his opinion, it might be that because of piracy a million formal jobs could be lost, but in exchange, hundreds of millions of people benefit from access to certain books, software or films and also from livelihood opportunities that are in the *real* economy, which actually means the *informal* economy, the one where those who have been excluded through inequality can actually participate and accomplish something.<sup>45</sup> In other words, piracy and informality can be seen, as noted by Ramon Lobato, “as the quintessential form of free enterprise”<sup>46</sup>, where the absence of regulation brings competition to levels that constantly threaten the survival of the entire system.<sup>47</sup> Piracy is unregulated because it is often desperate: it is part of a set of “survival tactics” deployed by people who have been left out, and it can be a form of “spiritual survival” for some and of “material survival” for others.<sup>48</sup>

What these studies illustrate, then, is the “strong social demand” existing in these countries for pirate products—a social demand which tends to be disregarded by the reports written by the organizations defending the interests of copyright-based industries.<sup>49</sup> According to the research made by Mattelart’s team it is clear that the strong social demand that exists for this type of product, it is assumed in different ways in some countries, as shown below:

- For example, Thévenet explains how the decades of military dictatorship in South Korea contributed to the rise of “underground consumption practices” of cultural products. In his opinion, the building of unofficial routes for pirated sounds and images in most of these countries is inseparable from the context of the authoritarian policies they have experienced or are still experiencing.<sup>50</sup>
- Studying the phenomenon in sub-Saharan Africa, Chéneau-Loquay explains that the “informal economy of communication,” which has “a strong presence in the urban environment,” far from being “a declining marginal or underground economy,” constitutes “a growing powerful sector with which the state and formal industries have to deal”.<sup>51</sup> In other contexts, on the contrary, the industrial character of piracy is underlined. Dimitrova has shown that the “biggest production site in Europe for pirated CDs in the 1990s,” located in Bulgaria, was owned by none other than *Multigroup*, “the most powerful industrial group of the country.”<sup>52</sup>
- In the case of Morocco, the way of facing the strong social demand existing for pirate products, as Bechenna notes, is by providing a quite similar profile from one country to another of the final link in the informal communication economy chain: the sellers of pirated products, who have mostly the same characteristics. Generally speaking, they are unemployed, qualified young men for whom not only one bag or a small table can be sufficient to sell these products but also for whom selling them “is not an end in itself but a way to make ends meet.”<sup>53</sup>
- In the case of Colombia, the way of facing this problem is by assuming the consequences that the existing unequal relationship between “transnational power spaces” and domestic authorities may have for local policies in the field of intellectual property rights. To clarify it, it has to be said that Mattelart uses Gómez-Mejía’s expression, “transnational power spaces” referring to the constellation of key players –the U.S. government, global communications companies, multilateral



organizations— with which, in a context of “economic, political, and cultural globalization,” domestic institutions have to cope to avoid commercial sanctions.<sup>54</sup>

It should be noted that the investigations carried out within the framework of Mattelart's research project show that one of the major factors explaining the success of the informal communication economy in the surveyed countries resides in this economy's “proximity” to its consumers.<sup>55</sup> “Thanks to this proximity, the merchants of the informal sector are able to adapt themselves more efficiently to the specific needs of their customers.”<sup>56</sup> Benchenna describes how the sellers of counterfeited DVDs in Marrakech or Casablanca adjust their offerings to meet their buyers' expectations: The most recent Hollywood blockbusters abound in touristic places, and auteur films or documentaries can be found near the main universities, while in the poorer districts, informal markets are filled with “American B movies, Egyptian or Indian films, and religious TV programs.”<sup>57</sup> As it is the case in Colombia, we see the informal market as a means for the equalization of all the cultural products to the same level.

The collective research project of Mattelart also breaks with the agenda set by the reports sponsored by the main copyright-based industries. These reports present these industries as being piracy's main victims. But,

[...] as a matter of fact, if piracy has caused the loss of potential revenues for Hollywood companies, it has also, to a large extent, enhanced the circulation of their contents in these markets—preparing, in a sense, the ground for future legal exports.

In other words, for these industries piracy is

[...] an invaluable source of dissemination of their products at a world scale. As such, piracy could paradoxically become, in the medium of long term, an increased source of power for Hollywood companies.<sup>58</sup>

In the words of the Colombian economist Ivan Hernández, what this research group led by Mattelart found was something that research in his field of study has called the

“positive externalities of extralegal activities”.<sup>59</sup> That is, that in the extralegal, understood as those activities not regulated or sanctioned by law, there could emerge externalities that have positive effects, unexpected, collateral or indirect. In this particular case,

[...] to make a product popular through film piracy is a positive externality of piracy because a network effect occurs that makes everyone want to have that product, it makes it popular. Those who have the financial resources to buy it on the legal market will do it, but those who do not, will do anything to get it, even if it is not original, because they do not want to be excluded from participating in something that is popular, from having something which is likely to be good or interesting because everyone already has it or wants to acquire it.<sup>60</sup>

As it was noted in the first chapter, the efforts of governments, the formal sector and large multinational entertainment companies have largely focused on how to stop piracy and how to prosecute those who work in this illegal market. It seems that the goals outlined in several studies on this subject by these sectors, have completely ignored essential contributions on this issues, such as the one made by the Chilean economist Manfred Max-Neef who has argued strongly that “the economy should be at the service of the people and not the other way around.”<sup>61</sup>

Hernández explains that the problem of informality in Colombia is huge because the actual policies to punish those who sell illegal or pirated products, were made without considering that the salesmen are not objects and that the sellers behind those objects, those products, those goods are people and not things. As a result, there is a total dehumanization, because economists create policies that do not consider what the sellers or workers of the informal markets feel or need. It is as if they ignored that they are legislating for human beings and not for objects and in the end do not have any empathy for their situation, their needs, their motivations, their hopes or their feelings.<sup>62</sup>

In that sense, the Uruguayan economist Luis Stolovich adds that instead of demonizing these ‘informal sellers’, these ‘tax evaders’ or instead of carrying out repressive campaigns against them, it would be better to go to the root of the economic problem. To Stolovich piracy is not really a criminal phenomenon, if so; the problem would be solved

with protective legislation, with enforcement and, in the long term, with education. But reality has shown that the figures of piracy are ever-growing. In his view, piracy is rather a structural imbalance in the economic performance of the industries affected, due to reasons such as the excessive size of government intervention and the huge tax burden on private economic activities. It is why he proposed to adjust this economic imbalance by implementing a policy of price differentiation that lowered their access to less developed countries.<sup>63</sup>

Peruvian writer and filmmaker Alberto Durant agrees with the previous perspective on piracy. He adds that without piracy, most people would not have access to culture, because the prices charged for original films on DVD are excessive and abusive. It is why instead of calling them ‘pirate film copies’ he proposes calling them “popular film copies.”<sup>64</sup>

### ***3.4 Statements about the complexity of the film distribution problem and the collective construction of a film distribution model***

*Distribution is something else; it is the complex territory where the struggle for power in the 21<sup>st</sup> century is taking place.*

Orlando Senna

A possible alternative that could lead to find answers to the film distribution problem in Colombia and to understand it from a new perspective is to listen to the opinions from different voices within the academic and industrial film sectors and, taking them as a starting point, attempt to build a collective, multidisciplinary model in which several different postures can coexist. To achieve this goal, below some excerpts are presented through a systematic selection from interviews, in order to represent some of these voices.

Firstly, to grasp the dimensions of the film distribution problem at a global scale, we can start by reflecting on the input of the famous Brazilian filmmaker Orlando Senna, who argues that

Our countries, in Latin America, Africa, and even some from the Northern hemisphere, were on the wrong track during the first century of cinema when they decided to hold and support barely what is one end of the production cycle, which is the production of the audiovisual work, and forgetting the other end of that chain, an end that is just as important –or perhaps even more important if considered from the point of view of the survival of the activity of film production–, which is distribution.<sup>65</sup>

Senna argues that it has been only thanks to the current technological revolution taking place in access to filmmaking tools, that governments are now realizing this century-old mistake and are starting to bring integral attention to distribution and production equally. He also optimistically forecasts that it is likely that during the following years, and even for some time after that, distribution will receive more attention than other activities in order to compensate a hundred years of neglect on that regard.<sup>66</sup>

In second place we can quote Christian Bitar, a filmmaker and researcher who was part of the team in charge of providing a diagnosis on the condition of the documentary filmmaking sector in Colombia. He says that this research allowed him and his colleagues to identify a series of issues, such as the need to offer access to training processes that could teach filmmakers fundamental matters like the following:

- How to finance a documentary film project.
- How to consolidate work teams and crews.
- How to legally constitute a film production company.
- How to design communication strategies for a production company.
- How to extend the distribution and exhibitions spaces of documentary films.<sup>67</sup>

Bitar is particularly concerned about this last problem, and he believes that the future of a viable film distribution in Colombia for documentaries is connected to the ability of local filmmakers and distributors to properly harness the benefits offered by the internet as the ideal tool to achieve massive distribution of audiovisual content. Additionally, he also considers that “the audience towards which we must focus our efforts is the one composed by those people who still don’t have internet access: we need to find the way to solve that problem.”

Zapata considers that Colombia has done a great job so far in adapting elements from foreign film-related legislations, like that of Brazil, into its own cultural laws. But, just like Bitar, he believes that integral training for filmmakers and producers should be an important contribution that could allow the discovery of a definitive answer to the problem. These training processes would have to include everyone involved in the process of creating and exhibiting a film, from producers, directors and distributors; being particularly important that the latter could become familiar with new film distribution methods, such as considering piracy an alternative approach instead of an illegitimate system. Zapata mentions that this last suggestion is not proposed lightly, but rather that it is the product of witnessing how organized piracy networks existing in countries like Colombia, Perú, Ecuador and Bolivia can massively produce high-quality copies of films. In these countries, he points out, the biggest pirate market distributors can easily produce between 10,000 and 20,000 copies in a film in just a few hours.

Documentary filmmaker Felipe Ávila thinks that one of the biggest obstacles for the informal sector to embrace propositions like that offered by Zapata of accepting piracy as an alternative distribution system, is that the part of the pirate sector that controls profits and watches for the activity's profitability is not interested in piracy becoming legal or legitimate, because then there would be a risk of losing control over the information and access to it. Because of this, Ávila insists in using the term 'information sharing' rather than 'piracy'.<sup>68</sup>

Perhaps a similar approach to considering piracy a form of 'information sharing' is that of lawyer Carolina Botero, the main enthusiast of Creative Commons licensing in Colombia, who describes it as

“[...] a set of licenses that were created in 2001 to facilitate the sharing of protected works created in digital environments. Because copyright is meant to control the use of works and the internet is the opposite, a catalyzer for copying, then there is a permanent conflict between these two poles that made it possible for these licenses to become appealing in order to share certain types of content online.”<sup>69</sup>

Botero also leads a think tank called *Derecho, Internet y Sociedad (Law, the Internet and Society)* that aims to study digital technology's impact on legal matters focusing on its inherent property –by defect or by omission– of enabling information sharing and by extension information copying. She considers that it is of utmost importance to study how appropriating digital technology also means to embrace an idea of 'free culture' that resembles the sharing philosophy that during the early 1990s gave rise to *freeware* communities and several similar ideas based on the sharing power granted by technology.

I think that these suggestions offered by Zapata and Ávila are pointing towards the same direction adopted by the online distribution network *TAL (Latin American Television.)* According to Senna, its director and president, this network has managed in the past 10 years to become a publicly available connection between audiences and more than 100 local television channels, cultural institutions and independent producers from 22 Latin American countries.<sup>70</sup> What is more interesting about this public network is that it is centered around a cooperation philosophy, which means that there aren't any financial transactions involved and, instead, the lifeblood of the project is content exchange and programming deals. And TAL also relies mostly on documentaries to compose its content. As an embodiment of the idea of free culture, TAL is a very interesting experiment.

Why would it be useful to return to the free culture philosophy? If we take a look at the past, we would realize that for most of recorded human history, works of creativity were for everyone's benefit and part of the public domain. When copyright became widely used after the 18<sup>th</sup> century after the watershed event that was the Statute of Anne<sup>2</sup>, a parliament act that even though was motivated by the good intention of offering incentives for creation, gradually lost its meaning and turned into benefit for a minority with enough financial resources to access the now legally protected content. For everyone else, access to works of human creativity became increasingly more limited.

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<sup>2</sup> Lessig explains that this Statute was approved by the British Parliament on 1710 and it declared that any published work would have a 14 years' timeframe during which copyright would be conceded and which could be renewed if the author were still alive at the time of expiration. It also stated that any work published previous to 1710 would receive an additional term of 21 years of copyright protection.

Are we simply worsening that situation at the present moment? Unfortunately, that appears to be the case. We only have to remember that in countries like Colombia an original DVD costs approximately US\$ 20, an extremely high cost for members of the working class, who for just about US\$ 1 can access the same product in the pirate market. Aren't the high prices being imposed by the neoliberal system a violation of the fundamental right to information access?

Inequality and its byproduct, the lack of fair opportunities to access to the same cultural works for everybody, is, from my point of view, what has allowed philosophies, movements and ideologies that are inclined towards promoting free culture to gain traction in the current cultural climate. They aim to be a choice, to promote teamwork in order to enable information and culture sharing with anyone interested in getting access to a work in order to study it or spread it. This is particularly important for documentary films: we must remember that documentaries, when practiced in an independent manner, are also a form of collective creation and information sharing; many nonfiction filmmakers themselves have mentioned seeking for collective work and raising awareness among communities as their central goals.

Experts on the subject such as Lawrence Lessig and James Boyle, agree that a 'free culture' model does not equate a culture without property or necessarily free. It is free in terms of *free speech*. It is a culture that concedes, but also limits, the reach of intellectual property rights to guarantee that creators and innovators can be in control of their works and innovations to avoid them falling only in the hands of the powerful. There are at least 4 categories of free culture, like for example Freeware (free software), the *Creative Commons* free licenses, presence in the public domain and *copyleft*.

Freeware must not be confused with the free downloading of computer programs. It is a philosophy that was led by Richard Stallman during the 1970s and indicates the free access to the source code of an informatics program. This concept encompasses four basic liberties that range from freedom 0 (zero) to freedom 3 (three). Freedom 0 offers the

possibility to use the program with or without the goal of profiting. Freedom 1 grants free access to the source code with the purpose of modifying or improving upon it according to specific needs. Freedom 2 offers the liberty to redistribute copies of the original program to benefit third-party users and Freedom 3 allows for the possibility to distribute modified and improved versions of the program so that these beneficial alterations can be enjoyed.

These four freeware liberties made it possible for at least 6 types of Creative Commons licensing to emerge, that far from attempting to eliminate copyright, appear as an alternative to supplement or enrich the creator's work. Since 2001, lawyer Lawrence Lessing has been the mentor and pioneer of the movement to establish a global legal framework within which these free licenses can function and allow for the fair use and sharing of different works according to specific needs. For example, the use of works for profit, editing and sharing (of the whole or of parts) is allowed if it will provide a cultural benefit for a community.

Public domain implies the existence of a work inside a post-copyright environment where knowledge and information can be freely exchanged. Public domain establishes that cultural contents can be used by others without restrictions once the legal framework that regulated its use expires or ceases to exist. Once copyright becomes effective, public domain depends on the lifespan of these rights and the country where the work was registered. Even though there are often altruistic creators who concede these rights during their lifetime for their work to be publicly shared, and claim for themselves only the ethical duty of having their authorship mentioned, the most common circumstance through which a work becomes part of the public domain is usually the passage of time (in Colombia, it has been established that the period should be 80 years after the death of the author).<sup>71</sup>

The concept of *copyleft* initially appeared with the objective of protecting freeware but it soon spread to other fields. This practice, which perfectly dovetails the goals and vision of communities, cooperatives and non-profit organizations, allows for an intellectual property to be modified in order to improve it, with the purpose of providing free accessibility to anyone interested. As it is being edited, the work must remain open to any subsequent



modifications, which means that it will never be finished and will remain open for its free exchange.

The 'free culture' philosophy is well-known among some of the people from the film sector that were interviewed for this research. There seems to be a general consensus on the importance of exploring these alternatives for information exchange and sharing and many even agree that at first it is not so important that distribution would have to be non-profit as long as a film can reach the goal of being seen and known by an audience. In addition to that, some conceded that even though they do not endorse piracy, some of their works have been distributed among students and academic circles and have become well-known thanks to the labor of pirate vendors.

On a divergent position, some executive producers like Mauricio Acosta and Adelaida Trujillo completely agree on the eradication and penalization of piracy and to defend the status quo of copyright law.<sup>72</sup> The problem, it seems, is that while the periods of time for copyright protection that were granted during the time when these types of legislation first appeared, were short terms of 14 to 21 years, and at the time that seemed like an appropriate solution to the problem. Nowadays, the same does not happen and in the case of Colombia, the established period of 80 years (or 100 years in the case of Mexico) after the author's death for his works to become available in the public domain, seems excessive. Could it be that the arbitrariness and harshness of these legislations is what is driving people towards illegal forms of acquiring cultural works?

Botero points out that in Colombia, existent copyright law are supposed to be very beneficial for those profiting from royalties, but that the truth is that most artists who should be making a living out of copyright have to find another activity to make a living; they receive only marginal profits from their work, or none at all. She adds that when it comes to analyzing copyright's success, the paradigm for comparison in the case of film production and distribution is usually Hollywood, because some believe that, as in the case of the North American model, the distribution and sale of copies is what covers production costs. If that were the case, it could be assumed that every sale of a pirate copy is preventing the film from

recovering its production budget and thus pirate copies are assumed to be among the culprits of the failure of a film.

But, as Botero informs, that is not the case for Colombia where the production system is completely different from that which prevails in North America. In Colombia, the film industry has never actually profited from copyright protection. What has occurred, instead, is that production costs for local films have been totally subsidized by the successful production arrangements enforced by the State through grants and competitions.<sup>73</sup> Nobody is really making a profit and pirate copies are not losses and, in some cases, they even are the only way to access films that would not be available otherwise. In this setting, the idea of allowing documentary filmmakers to find ways to –at the very least– make their films more visible, independently of any financial reward, would be a huge step forward.

Perhaps a successful model that could be interesting to consider in this respect, because it integrates the immediacy of piracy without being a ‘pirate’ system (because there is no real copyright infringement at least during the first stages of distribution), is that of Nollywood, or how the gigantic Nigerian film industry has been labeled. This industry was the product of very complex social and political circumstances, including several economic crises after decolonization, which created an uncertain environment where the people decided to assume the task of creating a local film industry from scratch and without any official government support because there was no other choice. Nollywood is comprised of small production companies who work with tiny budgets and operate as an almost “invisible” force in different Nigerian cities, because they don’t have studios, offices or other spaces associated with formal film industries: they are everywhere because they operate in the same fashion as an informal business (that is, they address the public directly in the places where the informal businesses thrive), but at the same time they are not exactly informal because they produce original content and what the audiences buy comes straight from the producers and benefits them directly in financial terms.<sup>74</sup> The construction of this system was very fast –perhaps because Nigeria had a huge informal economy in place before the arrival of local film production (apparently, Nigeria has an informal counterpart for almost any form of legitimate business: even pirate oil refineries are present all over the country) – and accelerated

particularly during the late 1980's; the last stages in the process of inception of Nollywood have been described in these terms:

By 1990, films made for the [commercial] theater had become too expensive to produce, which signaled the demise of television programming and financing in Nigeria. Moreover, during this period, there was a corresponding increase in crime and decrease in public security. Consequently, the necessity to make films economically and ambition to make them for Nigerian audiences occasioned Nollywood. The so-called birth of Nollywood is a film entitled *Living in Bondage*. Produced in 1992 and made with a VHS camera, this film sold over one million copies and launched a film revolution in Nigeria.<sup>75</sup>

Nollywood was a completely spontaneous movement and today it is the second largest film industry in the world in terms of the number of films produced: in 2013, the Nigerian film industry was only behind Bollywood in this regard and, as such, it is a paradigmatic case. According to Botero, what the Nigerian film industry has accomplished is to really take advantage of *pirate-minded* distribution channels and networks to offer local films on DVD at very low prices. Basically, what Nollywood producers do is to keep the cost of the films on DVD to a minimum to avoid selling them at inflated prices. Also, they are the producers and distributors of their own local films. These audiovisual works express the idiosyncrasies of their people, their myths, their legends, their family conflicts, their neighborhood problems, etc. Apparently, all these factors have immensely strengthened the film industry, as it has become a very profitable business since the early years of the past decade. And, very interestingly, Nigerian films are also hybrid products not only due to their home-grown status that mixes business with identity construction, but because they often rely on natural actors and their fast, direct methods of production enable the confrontation of immediate circumstances and ongoing situations, making them a combination of fact and fiction, of actuality and cultural tradition. Nigerian films have had a very lively and interesting history and they remain as a cultural force in the country:

Since independence, Nigerian filmmakers have made films that are thought-provoking. These films engage the viewer with a social message. One can view a Nollywood film that includes political issues, cultural heritage, and religious morals, all in a melodrama

about a woman losing her son to a witchdoctor. Even with a low budget, they contribute to popular culture, while educating and perhaps reviving a nation, as well as a continent in dire straits. There is a certain display of Nigerian and African pride intertwined into the films' plots and storylines. This is perhaps why Nigerians love them, becoming their primary source of entertainment. These films, too, play an important role in helping Nigeria grow an artistic and socially inspiring film industry. The Nollywood industry has the chance to use its popularity to help the country and people, while producing entertaining films for Nigerian viewers.<sup>76</sup>

These are not high-quality blockbusters, but they have very low production costs and a really large audience; this popularity added to the demand for the films has led the Nigerian government to consider several different ways to regulate and support this informal market (it remains mostly informal because there are no official institutions to oversee film production or collect taxes from community film theaters which are mostly unregistered and located in remote areas) because it simply cannot be ignored: recent studies of the Nigerian economy demonstrated that the film industry is contributing immensely to the GDP of the nation and it has become a priority of the government to support it, keeping in mind that Nigeria's influence in the media of its neighboring countries has also raised with the growth of Nollywood.<sup>77</sup> However, when the government investment finally came in the form of the creation of a US\$ 200 million *Entertain Industries Intervention Fund (EIIIF)* destined to support production of local films, several experienced producers complained that the money should have been invested in distribution infrastructure right away because "It's not as if [Nollywood filmmakers] are short of creativity or short of stories", producer Tunde Kelani has argued, "[Nollywood filmmakers] are short on the infrastructure to make the money back"; in Nigeria, many people cannot watch movies because they don't even have electricity to power a DVD player and commercial cinemas, where Nollywood films often find a second life after DVD sales, are scarce even in the largest cities like Lagos and Abuja: the films are made but, even with a population nearing 200 million, audiences are hard to find when infrastructure is not strong.<sup>78</sup>

But, even if it also has its distribution problems, Nollywood is a very remarkable case because its autochthonous development encouraged the appearance of small but significant spaces such as community cinemas, it has invigorated rural participation and brought an

incredible amount of films displaying Nigerian identity issues to the population –even to those living in the most underdeveloped parts of the country. A model like this could be very suitable for documentary films in different contexts like the Colombian one, where there is already a tradition of documentary filmmaking that is not ultimately seeking to become a business but could become more sustainable through a direct outreach to the most vulnerable layers of the population: precisely where Nollywood has succeeded.

Do models like Nollywood or the ‘free culture’ hint at the possibility of implementing something similar in Colombia and therefore finding an answer to the film distribution problem? Considering this question, Senna says:

I do indeed see a light at the end of the tunnel because technology has changed immensely and new media are influencing audiovisual production greatly. For the first time in human history, I think, technologies are being democratized; they are not made exclusively by the rich countries for other rich countries. Now technology can side with poorer and emerging countries and work on their favor. It is the first time something like this happens in the history of technological and scientific progress.<sup>79</sup>

There is a democratic and social philosophy behind this proposal suggested by Durant that perhaps could be the key issue of the successful film production and distribution mechanisms of Nollywood. Nigeria as well as Colombia is a developing country. However, unlike Colombia, this country has accomplished the impressive feat of having the sales of its local digital films exceed the sales of Hollywood films in both formal and informal markets, without strict legislation to protect local film production or the presence of powerful business groups. Perhaps it has happened by the sum of the mentioned factors and others: first, Nollywood films include amateur actors; second, the streets of Nigerian cities are used as natural film locations, and third –and probably the most successful key issue–, is that the price of each film on DVD does not exceed US \$2.

### ***3.5 The different faces of copyright law***

*The greatest challenge is to achieve a market economy that does not generate inequality and can include everyone.*

Howard Richards

Cirilo Otero a Nicaraguan sociologist says that piracy is an activity carried out by thousands of people as a necessary evil and even as a justified practice due to the social inequality that exists on the planet. Marvin Pomares, the director of the National Consumer Institute of Nicaragua, adds to the debate that although there are laws to protect the copyright, they are designed for rich countries and do not respond to the reality of developing countries like Nicaragua (and, I may add, Colombia).<sup>80</sup>

However, in developed countries like the United States the critical points of view of sociologists or philosophers like these, who support proposals that benefit access to information for most people, have not had any important impact on copyright government policies. There are other institutions that advise governments on the creation of such laws: for instance, copyright industry associations such as the *International Intellectual Property Alliance* (IIPA), which was founded in 1984, advocated for stronger global intellectual property policies, became a strong source of industry research and policy recommendations through the annual Special 301 report since the early 1990s and became the primary means of translating industry views into official US trade positions.<sup>81</sup>

About copyright institutions like this one, Majid Yar warns that they have

[The] ability to bring attention to the impact that multiple dominant economic and political interests can have on the ways in which cultural goods can be legitimately enjoyed. The expansion of proprietary copyrights, and the criminalization of their violation, is part of a larger 'Game' in which struggles to dominate the uses of information are being played out within the new 'knowledge economy'. Rather than taking industry or government claims about film 'piracy' (its scope, scale, location, perpetrators, costs or impact) at face value, we would do well to subject them to a critical scrutiny that asks in whose interests such claims are made.<sup>82</sup>

In this regard, Lobato argues that in most nations, and especially in the USA, the discussion about media piracy is heavily polarized, therefore instead of thinking of piracy as a singular practice, he suggests thinking in terms of *piracies*. In this sense he warns that piracy could be viewed not only with less negative connotations than the ones it currently has, but also that it could be accepted as another distribution system for media content. In order to understand this, he proposes to redefine piracy through six different ethical and philosophical positions on copyright infringement –what he calls the ‘six faces of piracy’, such as piracy as *theft, free enterprise, free speech, authorship, resistance* and, finally, *access*.<sup>83</sup>

In his first conceptual model of piracy as a form of theft, Lobato explains that while copyright is seen as something to be legislatively consolidated and pedagogically entrenched, piracy, on the other hand, is imagined as an act of social and economic deviance – that is, as theft. To prove it he mentions how MPAA referred to piracy, using the language of disease, as ‘a pandemic’ which robs industries based on intellectual property of what is rightfully theirs, and was also fond of making unsubstantiated connections between piracy operations and terrorist groups including the IRA, Al Qaeda and others.<sup>84</sup>

Considering the importance of this position, he proposes that

[...] while film producers and studios do have legitimate concerns about revenue ‘leakage’, the war on piracy also needs to be understood as a public relations exercise aimed at reinforcing a deferential relationship to copyright and showing the vulnerable side of a powerful industry.<sup>85</sup>

His second position on copyright infringement offers another reading of piracy, one which in his own words sees copying as a potential business model. It is Piracy as free enterprise. On his book *Shadow Economies of Cinema: Mapping Informal Film Distribution*, he points that

This perspective –what we might call the laissez-faire approach– reads piracy as the purest form of free enterprise. Unimpeded by restrictive legislation and monopolistic market

structures, piracy from this vantage point can be appreciated as a flourishing of commercial activity catering directly to market needs.<sup>86</sup>

He also adds that in the laissez-faire imaginary, piracy fills gaps in the market with maximum efficiency, catering to demand when and where legitimate industries are unwilling or unable to do so. In this sense, he warns that

While the industry's position views piracy as a mortal threat to film trade, a laissez-faire reading sees the informal networks that constitute piracy operations as the ultimate 'new economy' and as a potential model for other distribution circuits.<sup>87</sup>

In his third conceptual model, in which piracy is seen as free speech, Lobato suggests that it can also be a complex political issue. He mentions that commentators, thinkers and professors like Lawrence Lessig, Cory Doctorow, Michael Strangelove and many others from an older generation of culture-jamming activism, feel that the piracy issue is inextricably linked to the right of free expression and are attempting to make a copyright reform movement based on turning piracy into a mainstream political issue. According to Lobato, Lawrence Lessig a Stanford law professor, argues that finding an alternative copyright model

[Is] the most powerful figure in this movement and the driving force behind *Creative Commons*, an easy-to-use licensing system alternative to copyright. Creative Commons operates on a 'some rights reserved' principle: artists who license a work this way can still benefit financially from its use, but they may also give permission for the work to be used creatively by others (as samples, as source code and so on) or for non-profit purposes.<sup>88</sup>

Lobato also points out that Lessig's brand of copyright activism based on free Culture is grounded in the liberal values of informational freedom and personal liberty and has even spawned its own student movement, which is increasingly visible on US college campuses. Besides, Lobato draws attention to Professor Lessig's distinction between *appropriation* and *theft*, since a free culture for him is not a culture without property; it is not a culture in which artists don't get paid. It is a balance between anarchy and control. It is like a free market that is also filled with property.



Lobato's fourth position on copyright infringement is another reading of piracy, in his own words is a "poststructuralist critique of authorship and its implications for Piracy debates."<sup>89</sup> Piracy as authorship is the view that piracy can lead to legitimate forms of creativity and production. Piracy can give the public access to media, and then allow them to alter it, or interpret it in a different, innovative way.<sup>90</sup>

Since, according to Lobato, many forms of commercial piracy involve substantial modification and 'enhancement' of content which could be understood as forms of creativity, the current debate on piracy should relocate these discussions about originality and authorship in cultural production to the sphere of distribution:

If genre theory suggests that traditional 'auteurist' claims to authorship have as much or as little moral weight as other modes of cultural production, does this also weaken the implication that only one kind of creativity gives the moral right to control how a work is distributed? Destabilizing authorship necessarily calls into question our assumptions, formalized in IP law, about the role that originality plays in determining who controls access to the work.<sup>91</sup>

The fifth of Lobato's conceptual models, Piracy as resistance, refers to piracy's confrontation with the traditional economic order. Piracy does not allow for media to become a source of economic control that corporations benefit from. The idea is that piracy is resistant to the exploitative practices of the corporations.<sup>92</sup> Indeed, from the expansionary logic of capital and to issues on ownership, regulation and control, copyright is a hegemonic legal institution which converts information and labor into capital. As copyright's maligned 'other' the act of piracy assumes a certain political value.<sup>93</sup>

In the words of author and intellectual property expert Ronald V. Bettig,

[...] pirate circuits are spheres of commercial activity which have yet to be (re)colonized by transnational audiovisual empires. The conversion of pirate markets into legitimate markets effectively means handing them over Hollywood. The argument here is that piracy, in its obstruction of capitalist domination, represents a form of resistance.<sup>94</sup>

Finally, there is the sixth position on copyright infringement, which Lobato explains as the perception of piracy in the form of access. This is a model for the understanding of the ways in which piracy can spread information. It allows for materials to be spread instantly across the globe, providing access that strictly enforced copyright laws do not. In that way, different cultures can experience each other's creative works and become interconnected

In Lobato's words, this final reading of piracy "tackles the geopolitics of intellectual property head-on." In this regard, he explains that piracy takes place in contexts where accessing media legally is not an option. He is clear about the fact that many communities in the developing world are not included in the Marxist critiques because they may not belong to a working class per se, much less the creative class to whom liberal copyright reformers address their arguments. For him it is also true that for billions of people around the world, piracy is an access route to media that is not otherwise available. Certainly, for Lobato this kind of piracy is not usually a self-consciously political act but a banal, everyday activity practiced in a context where legal alternatives do not exist.

One of Lobato's inspirations for this last argument is the legal scholar Lawrence Liang:

In a series of essays, Liang makes the crucial point that legality itself is a relative concept. He notes that millions of Indians break the law every day, by bribing officials for essential services, or stealing electricity because no legal sources exist. These 'porous legalities', which characterize life in much of the developing world, may be the only routes through which contact with the technological modernity that the West takes for granted may be realized. From this perspective, piracy is not about morality, freedom or resistance; it's about 'ways through which people ordinarily left out of the imagination of modernity, technology and the global economy [find] ways of inserting themselves into these networks.'<sup>95</sup>

Many opinions were found throughout the completion of this thesis for and against piracy. After analyzing their contribution and content, these six proposals, or six faces of piracy, proposed by Lobato are to be highlighted as the most appropriate research

contributions to the debate on this issue, since their study is focused particularly in developing countries like Colombia, where legal access to information is restricted for the working classes. If the aforementioned six faces or models of piracy can be seen under a more positive light, as proposed by Lobato, one wonders if piracy could really be considered as an alternative distribution system for media content in emerging countries like Colombia.

### ***3.6 Debate on the informality and formalization of markets***

*It is necessary to create a more humane economy, more solidary, able to contribute to the development of the population's dignity.*

José Luis Sampedro.

Among those involved in the issues concerning informality and formalization there is a vast disparity when it comes to concepts and definitions, and even more so when there is a need for analyzing the challenges that are present in understanding, accessing and discussing the varied ways in which informal and formal markets intersect and interact with one another. A first step towards overcoming this disparity would be to unify the knowledge about both sectors through training courses which would be useful not only for those directly involved –salespeople, official distributors, copiers, lawyers and so on- but also for members of government agencies and institutions who, in spite of being responsible for policy enforcement, often hold one-sided assumptions and lack the necessary knowledge to properly tackle the central issues of the formality/informality debate. If real change within the economic sectors is to be achieved, training would be the only way to accomplish a basis upon which new methodologies, tools, policies and models that do not exclude informality could be adequately build.

The following questions and answers, gathered through interviews made to economist Iván Hernández during this research, are contributions made from evolutionary economics and recent ideas that have emerged by questioning what is it that concepts like formality,

legality and illegality really mean within the context of the informal markets and their possible formalization strategies. It is crucial to assure that everyone agrees on the meaning of such concepts before anyone can seriously attempt to propose alternatives for the legalization or formalization of marginal economic activities such as the sale of pirate DVDs.<sup>96</sup> And in the case of Colombia, how can we know what is legal or illegal in this country?

This matter has been understood from many different angles and using several different conceptual frameworks. The *National Statistics Department of Colombia* (DANE), for example, has its own definitions to approach the ideas of formality and informality, classifying companies, businesses and enterprises according to their size, number of employees, the economic sectors they occupy, their registration status, their tax records among many other factors. According to this point of view, informality is simply something that is not registered in the books and is unaccounted for: it is not invisible, of course, but it is not easy to visualize and therefore to grasp its actual size or its inner workings, and thus - under the statistical approach- it is impossible to perceive informality as anything else but a highly disorganized set of activities and reduce it to a chaotic phenomenon that does not adjust to expected models and economic predictions. This is undoubtedly a very narrow perspective and, inside other sectors, such as the academia, speaking of the opposition between the formal and the informal generates a far more diverse discussion.

When talking about formality and informality inside academic institutions in Colombia, not only limiting or defining factors are discussed, but also impacting social phenomena such as the extensive migration of rural inhabitants to urban areas that has taken place in the country. When discussing these issues, the interests of specific groups of people arise, such as that vast crowd of people who are new to the cities, waiting to be employed or to have the opportunity to create their own employment: they represent a social and economic factor that is not only impossible to ignore, but that also makes it very difficult to propose clear-cut definitions about what informality or formality represent. In the face of social issues that engender economic phenomena like piracy, informality cannot be simply defined as a fiscal matter or a tax evasion series of schemes. In this sense, what matters most in academic

discussions about the divisions within different economic activities is to analyze the attitude of the government toward the people who are in each sector. In regards to piracy and other forms of informality, what happens in Colombia is that those people who are outside formal economic activities are regarded by official institutions as *self-marginalized*, because, as the official narrative says, they actively *choose* not to pay taxes. But there is not enough awareness about the reality behind this position: that their exclusion was initially caused by government policies that are designed to encourage inequality in the first place.

Several government institutions have attempted to present the population involved in informal economic activities as socially or economically excluded with a certain degree of awareness about their real situation, i.e., that their exclusion is the product of external forces. Nevertheless, this definition is still not satisfactory from an academic perspective because behind such points of view there are merely postures and policies, but not wide visions that take into account the complexity of the informal sector and actively attempt to understand or study it in depth. From the perspective of the State, formality and informality are mutually exclusive, they are always clearly defined and pose a problem of fiscal policy or subjects for economic and statistical analysis; the truth is in fact far more complex than that.

Anything that does not embrace any type of normativity can be labeled as informal. Any economic activity that is not strongly articulated or linked with others and whose activities are not explicitly expressed but it is inferred that they are part of popular knowledge and therefore never fully explained or enunciated, could be regarded as informal. In this sense, informality could be anything that is vague or not completely understood, and this is one of the reasons why it is easy to oppose to formality. In Colombia, for instance, the formal market is –in theory– completely regulated and constituted by law-abiding enterprises, businesses and corporations which the State claims to fully understand. There is a presumption among governments of complete awareness and accountability which in the practice does not exist, and nonetheless, the State retains the division between formality and informality as unambiguous as possible because it supports the position that whatever is not graspable must be informal and consequently excluded or prosecuted. This division brings a sense of safety, of clear distinctions and limits that, even though not really existent in the

practice (the formal market in Colombia is plagued with corruption and avoidance of fiscal responsibilities, and nobody would claim otherwise unless they are part of a government institution), are useful at the moment of deciding who is worth excluding and who is not.

Social and economic relationships are governed by at least three forms of association which are networks, market contracts and working contracts. In the case of the formal sector, networks are notably unimportant. Relationships are always formalized, carefully articulated and explicated: contracts embody the idea of a legal support that is present in any economic relationship; an employee and a corporation, a supplier and a buyer, all of them are supposed to have the resource of using a contract as a legal weapon if the situation where it is needed arises. Trusting in networks where contracts are often inexplicit is perceived as something to be preferably avoided because in that case nobody holds a position of control over the other members of the sector.

In the global context, the informal sector is therefore that which is defined through several forms of negation: it is *not* controlled by the norms of the State (although often defined by them), it is *not* subject to the law and being able to participate in it does *not* require to possess forms of knowledge that are well established, written and approved within a community or a particular society. The informal market does not play by the rules and regulations of the prevailing economic system; it claims not to understand these rules, not to embrace them but this does not mean that it is going *against* them. It is not illegal, but not legal either. This ultimately means that the informal market does not have clear and obvious laws to govern the relationships among those inside of it, but it does have laws.

Since the informal market embraces a tacit form of knowledge that is not well articulated and which is not easily discussed or taught, one of its defining characteristics is that grasping and sharing this knowledge completely depends on the interactions among the individuals who are part of it. That is the reason why the informal market relies so much on the construction of networks inside which its members constantly interact. These networks are vital for the sustainability of the informal sector because the underlying knowledge of its

functioning is easily lost in the absence of people to share it. Social interaction is extremely important for the informal economy.

There is a concept in complexity theory called *emergence*: according to this idea, an atom, for example, does not have any temperature by itself, but from the interaction among the atomic and subatomic particles there emerges heat and temperature becomes measurable. Heat therefore cannot be explained in terms of the separate atomic or subatomic components that interact individually and the same happens inside a complex social phenomenon like informal markets: it is impossible to understand from an individual stance. It is only through the interaction among individuals that it can be understood. This comparison can explain why social networks are so important within the context of the informal economy.

But more than talking about *social* networks, when discussing the informal market we should refer to the result of interactions among individuals as *trust* networks. During the process of integration to the informal market, frequent social interactions strengthen deep bonds of trust that are the product of shared daily experiences (the constant need to evade the authorities in certain locations where pirate goods are sold, for example, depends on trusting in those who are looking out and in charge of warning their peers) that reveal personal conducts and actions that reinforce the need to empathize with one another. Once trust is established, these recurrent interactions facilitate processes of information sharing, exchanging of goods and even the occurrence of ‘chains of favors’ where people are constantly owing each other assistance in one way or another. Is it worth noticing, however, that social networks and even trust networks are not an exclusive property of the informal markets: social interaction is very important for all economic relationships and they are undoubtedly present in the formal economic sectors as well. What happens is that in the informal sector these networks are particularly important and valid because they are the only structure that shapes and provides a sense of order and regulation; they are more important than the rules that arise in the equivalent networks of the formal sector.

In the case of trust networks, social relationships are not reinforced or supported by contracts or court decisions. In the informal sector, written labor contracts are far from being

the norm: it is the case that some people can sign contracts in different forms, and they would be backed by the Colombian legal system, but it is very uncommon in the context of informality. Trust networks often imply that contracts are verbal and based on believing in each other's word. A person's word means everything and there is seldom any form of arbitration or government intervention. The most valuable asset is reputation built through word of mouth, references, what others say about a person's work ethics and personal behavior.

Entrepreneurs in formal and informal networks can be divided in two groups: those who are opportunity-driven entrepreneurs and those who are necessity-driven. Opportunity-driven entrepreneurs usually participate in formally constituted ventures and have a certain level of expertise in a determined economic sector. They are defined as the kind of person who takes advantage of a perceived business opportunity by establishing labor and market relationships with other companies, suppliers and customers.

On the contrary, necessity-driven entrepreneurs are those who do not choose to be businesspeople because they have encountered a business opportunity that suits their experience and knowledge, but because they need to find a way out of unemployment. These entrepreneurs are motivated solely by finding a livelihood and often decide to start a business project as the alternative to finding a precarious, unstable job. They constitute so-called informal enterprises that are funded on trust agreements and verbal contracts.

Vendors of pirate films on DVD are, of course, necessity-driven entrepreneurs. They do not have any form of contract with neither producers nor with suppliers. They are regarded as illegal because depending on the interpretation given to copyright law, they might be infringing certain norms. Even though from the outside there is often a total certainty that these salespeople are engaging in an illegal activity, some vendors are aware of this perception while others are not. From a certain point of view they can be labeled as illegal, but, at the same time, it can always be argued that they are not actively choosing to be so. There is an old saying often spoken in Colombia that goes 'he who unknowingly sins, unknowingly condemns himself': ignorance is barely an excuse for committing illegal



activities and it cannot be used as an excuse to defend informal vendors. Nevertheless, in order to understand the problem of piracy it cannot be presumed that those involved in it are always making the choice to be part of illegal activities. It is important to understand that piracy is not completely untied from other legitimate economic activities and that the lines that separate legal from illegal activities inside the informal market are often very blurry. For example, in the *San Andresito* shopping malls where most pirate films are sold, there are many legitimate and completely legal businesses coexisting with other more ambiguous activities.

Indeed, not everything is (or should be) regulated or subject to laws. A problem of excessive and arbitrary regulation –obvious as it might seem– is that it increases the chances of something being illegal. If there are few but clear fiscal laws and norms, the chances of a businessperson incurring in illegal conducts are small, but if norms start to progressively appear one after the other and to change all the time, the chances of someone infringing them are much bigger. In this sense, definitions of illegality according to the law cannot be unlinked from the context of the many practical aspects that surround what happens inside different sectors, because there remain many unregulated aspects and gray areas, particularly within informality: informal markets have often predated the laws that suddenly made them illegal and this signifies a huge disparity between theory and practice.

Because of this disparity, when approaching the informal sector its illegality cannot be implied. To regulate this market the phenomenon has to be understood in integral terms, and particularly from the understanding that when processes of formalization and integration are being discussed, the people involved in them are not pariahs or self-excluded individuals who have chosen to go against the law. The roots of informality are not in the conscious decision of some people to transgress the law; far from it. In countries like Colombia, the informal sector is a vicious cycle generated by the high intolerance to uncertainty present in Latin American societies. The zeal to control uncertainty, the unknown and the unpredictable, has created very distrustful societies that have accordingly created an excessive amount of laws and regulations that, as mentioned before, have increased the possibilities for informal

economic activities to emerge even if they are only enforced when it is convenient for the protection of the interests of the powerful.

Ironically, this has only increased the insecurity of economic relationships for businesses and the economic system in Colombia, since the growing gap between the demand for communal goods from the State according to a so-called *National Innovation System* and a decreasing tax base to finance the acquisition of these goods has only managed to create more informal economic activities as an alternative to satisfy the same demand and therefore produced even more uncertainty. If the informal markets in Colombia are in fact performing an important task that the state has not been able to solve, what would be the necessary steps to be taken to formalize them?

- ***A mindset change***

A first step in the right direction would be to change the perspective towards the problem. The belief that as the formal sector grows the informal sector will be absorbed by it or will simply disappear is completely unsustainable. At the same time, the ways through which the informal and formal sectors can integrate cannot be ignored. The informal market has to be incorporated in any future economic policymaking and in order to do so, it is important to understand it better through collective strategies that allow for a creative approach that is multidirectional and non-invasive.

- ***Other approaches***

In second place, a different approach is required to design a process of integration. The informal sector cannot be ignored on the basis that it is unknown and there are not any agreements, policies, plans or programs to include it inside the formal economic circuits.

- ***A change of vision***

Third, a change of vision is urgent to tackle the subject. Formalization will never be achieved if it is perceived as a single, all-or-nothing requirement, i.e., that if those involved in informality do not accept any possibility that is given to them to formalize on the terms of the government, then they will not receive any benefit at all. On the contrary, formalization should be an inclusive activity, beneficial for all the parties involved, performed with a sense of equanimity.

- *Appropriate conditions, spaces and methods*

Fourth, when designing the formalization process, its outcome cannot be expected to be completely predictable. This process has to be built from the bottom up through the participation of networks. It is not a process that can be fixed with decrees or theoretical solutions. Networks emerge from interactions among individuals and for that reason they require an adequate space. For example, in the case of the film sector, if the opportunity for informal distributors of pirate films on DVD to interact with large corporations like Cine Colombia is not granted, a network is never going to emerge. At the same time, the need for compromises is important because it is never possible to predict if one sector will benefit more than the other and yielding a certain amount of space is always necessary in discussions of this kind. But ultimately what matters is that equality is impossible to achieve unless the proper spaces and methods are used

- *A flexible attitude towards innovative methodologies*

Traditionally, government projects are assigned supervisory entities such as auditors to watch over their activities and approve them. The methodologies used in these projects are supposed to meet certain standards, do large amounts of paperwork and even use specific software tools. When innovative methods for policymaking in the informal sector are implemented, there often arise many unexpected situations and mistakes. It is in situations like these when the State should assume a flexible and creative attitude to embrace new practices.

Generally, the results of such methodologies do not adjust to the traditional requirements that are expected from government-sponsored initiatives, and so open-mindedness is needed to accept unpredicted factors and agree on changing certain conditions to adapt to an uncertain and changing environment.

- ***The will to find proactive solutions***

When the government hires experts in informality, they demand a change of attitude from the people assigned by the government to support and assess these processes. Researchers and consultants need for these supervising agents to believe in innovation, in social entrepreneurship and to be proactive when it comes to finding solutions for an unpredictable situation.

This, of course, is not easy, because nobody who is not a social entrepreneur would understand such situations as those presented by informality. Additionally, experts in these subjects require that the supervising parties do not demand to know, regulate and control all the information about the process, because the methods of formalization are not susceptible to be designed by gurus, they do not come from elsewhere, they are not to be found looking outside the sector itself and they cannot be designed according to previously existent models. Answers for the informality problem will only come from where the problem itself exists and only through direct interaction with the problem will solutions emerge. Answers cannot be preconceived and will not appear unless everyone involved is working under the right conditions.

Would it be possible to integrate the formal and informal markets? This problem is not as complex as it usually thought. As it's been explained, there are many assumptions about informality that are not true. It is also believed that there are endless conflicts of interest among the different sectors and the truth is that formal and informal markets are far more integrated than usually acknowledged. There are many different scenarios and diverse possibilities that could enable their integration. The informal and formal sectors can devise,

along with the state, instruments to grow together. For example, if codependence is found, both markets can grow in parallel. The central issue is that each sector can join the existent networks of the other and therefore the informal market can join the economic circuit usually occupied only by formal enterprises.

As it has been pointed out before, there is a possibility to create win-win situations. Formal enterprises can find suppliers in the informal markets or vice versa. Informal suppliers often serve as free advertising for brands or names (as in the case of the Colombian comedian Andrés López, whose work became incredibly popular because of piracy) and if they could legitimately offer renowned, high-quality products at competitive prices, they would win as well.

Issues like these have been tackled by Iván Hernández on his book *Empresa, Innovación y Desarrollo (Enterprise, Innovation and Development, 2008)*; for this economist, it is fundamental to identify the organizational risks, opportunities and shortcomings of social and monetary institutions that are present in Colombia, particularly those which are ignoring that the informal economic sector offers several opportunities and that it is perhaps the most important strategy adopted by those people desperately looking for a livelihood in a sector that is just as competitive, if not more so, than the formal one.

### ***3.7 ASECOPAC: The formalization of the informal film distribution market of films on DVD in Ecuador***

Throughout this research, the question has arisen many times of whether it would be possible to formalize or legalize the informal market of pirate films that exists in Colombia, and several attempts have been made to approach the problem behind the question from different angles and perspectives because the problem is far more complex than it seems at first sight, considering that it involves not just the problem of the lack of a sustainable film sector, but also the even more important issue of having a large part of the population being marginalized and working in informal markets out of necessity. Conciliating the antagonism between the formal and informal sectors in charge of film distribution in Colombia would

greatly contribute to the urgent need to provide solutions to the formalization of illegitimate economic activities in the country.

So far, the most concrete and convincing answer to the issue has been provided by the professor and film producer Omaira Moscoso, the current president of ASECOFAC (*Ecuadorean Association of Sellers and Distributors of Audiovisual and Related Products.*) She has been a pioneer in proving through her amazing work and management skills, that it is possible to swiftly move from theory to practice to speed up formalization processes, as evidenced by her work with informal vendors of pirate DVDs in her home country, Ecuador.

But before discussing her work, it is important to understand the background that allowed Ecuador to create the right environment for it to become a leader in formalization strategies. In 2006, the Ecuadorean congress approved a law for the promotion of the local cinema and the *National Council of Cinematography (Consejo Nacional de Cinematografía)* was created. It is estimated that the transparent and efficient work of this institution resulted in the production or co-production of over 150 films between 2007 and 2012, a number without precedent and astonishing if we realize that during the entire decade of the 1990s Ecuador produced only 5 local films.<sup>97</sup>

This ‘boom’ of local film production in the country was, apparently, the result of the cost reduction in acquiring filmmaking technology. For example, the film *Fuera de Juego (Offside, 2002)* had a budget of only US\$ 4.000 and was recorded on a MiniDV consumer camera, while the film *Sin Otoño, Sin Primavera (Without Fall, Without Spring, 2012)* of director Iván Mora was filmed using DSLR cameras. Another great leap forward for local film production arrived later in June, 2013, when the government decreed that the mandatory exhibition quota for native films would be of 40% for large television broadcasters, with the purpose of fostering the production of local audiovisual content.<sup>98</sup>

This government-led process also included the implementation of a “regularization” (or formalization) program for audiovisual content in 2010. Nevertheless, there previously had been a very serious confrontation between the *Ecuadorean Institute of Intellectual*

*Property* (IEPI) and the distributors of illegal copies of films during the end of 2009. Witnessing this sort of battle between both sides was the reason why Omaira Moscoso decided to found and become the head of ASECOPAC, with the intention of regulating the process of film distribution and to protect thousands of businesspeople who relied on the sale of pirate films to make a living.<sup>99</sup>

How did this woman suddenly become the leader of the informal film distributors in Ecuador? Moscoso began her work as a cultural advocate in the film sector in 1995, when she organized the first Ecuadorean Film Festival where, among many other achievements, 10.000 schoolchildren from low-income neighborhoods were given the chance to go to a movie theater to see Ecuadorean cinema for the first time. After this experience, Moscoso asked herself if it would be possible to provide a form of truly democratic access to cinema to those marginalized audiences: if these people eager to see themselves reflected in a cinema that they could perceive as their own could be reached.

The first answer came in the form of a distribution project she started: *Cine Sobre Ruedas* (*Cinema on Wheels*), an itinerant showcase of art-house cinema that Moscoso herself directed and took to several marginal neighborhoods in the Guayas and Santa Elena provinces. While taking her films everywhere –although mostly to schools and community centers– with this project, she realized that certain social and financial barriers, as well as some prejudices and arrogant behaviors –discrimination and exclusion, or the underestimation of the cultural needs of the inhabitants of marginal urban areas– could be broken.

With the support of the embassies of Cuba, Argentina, Korea, China and the ICAIC (the *Cuban Institute for the Film Arts and Industry*), Moscoso carried out several debates, encounters and meetings to accompany free screenings of world cinema. The Ministry of Culture recognized the importance of her work by awarding her grants in two occasions (2007 and 2008) and her project was praised by the World Association of Film Clubs. But despite these accomplishments, the IEPI often disparaged her arguing that her work was supported by illegitimate means and in several instances denounced her to judicial authorities

and even demanded that official support to her work should cease in a clear example of how the formal sector can often be seriously misguided on its efforts to combat actions perceived as informal or pirate, regardless of the benefits that they might have for large parts of the society.

Moscoso has worked as a film and TV producer for several years and also as a university lecturer at the Escuela Superior Politécnica del Litoral (ESPOL) in Guayaquil, Ecuador. It was while working in the latter of these activities that she noticed that, very often, her students could not do some of their assignments because the films that were required viewing for some courses were not available in the market and the film offering in Guayaquil was limited to some very popular commercial films. This problem led her to think of an alternative to offer independent cinema to accompany courses on Film History and Auteur Cinema and that is when she set up a small shop called *El Coleccionista (The Collector)* in the Miraflores neighborhood, “one of more than sixty thousand shops in Ecuador that sell copied films, but that nonetheless became a fashionable spot where the local intellectuals would go in search of films by Godard, Bresson, Jodorowsky and other wonders of cinema that Omaira copied from her personal collection, accumulated in over twenty years as a producer and passionate cinephile.”<sup>100</sup>

This experience –having her own store in the informal market– made her value, understand and empathize with the situation of thousands of other salespeople who have been supporting and educating their children by means of the business of selling pirate films and music.

After becoming familiar with the informal market, Moscoso took the presidency of ASECOFAC mainly for three reasons: first, learning through the figures of the INEC (National Institute of Statistics of Ecuador) and the Finance Ministry that a great number of pirate businesses belong to women who are lone householders: single mothers, migrant workers or elderly; second, understanding through her attendance to meetings organized within the informal sector, that many women were terribly afraid of the repressive measures



often taken by the authorities; and third, her belief in the legitimacy of the cause supported by informal vendors: the fight for their right as citizens to make a living.

As a film producer, Moscoso is aware of the importance of protecting intellectual property as a way to compensate individual or collective creativity; she knows that copyright and similar measures are vital for supporting cultural industries. She admits that most businesses in Ecuador do not compensate copyright holders. And yet, she has learned that the solution to that problem will not come from prosecuting salespeople or from extorting, humiliating or penalizing them. She believes that when an economic activity like piracy becomes the livelihood of more than 150.000 families, it ceases to be a legal issue and transforms into a social matter that has to be confronted by the State with coherence and responsibility.

This situation posed the problem of conceiving a different type of economy, social and solidary, capable on one hand, of rejecting the abusive measures that could transgress constitutional rights, and, on the other, of accepting transitional and adjusting frameworks (or ‘grace periods’) for the implementation of new laws that could modify the social and economic relationships of the Ecuadorian society. Ultimately, this meant an efficient economy, committed to the construction of production, exchange and cooperation relationships based on solidarity.

So, how did ASECOPAC come to become an important organization and later contribute some answers to the economic problems of informality? First of all, the motivation behind its foundation was the harassment that informal businesses had to endure for a long time in Ecuador, before anyone could empathize with the complexity of their situation:

“Some time after Omaira opened her business, the SRI [Internal Revenue Service of Ecuador] started closing shops without offering any explanations, and they basically closed down a large number of work places just so they could say for the news cameras that they were protecting intellectual property.”<sup>101</sup>

These constant human right abuses –often caused by the authorities’ lack of knowledge about the situation of the informal vendors and by the business owners’ misconceptions about copyright–, motivated Moscoso to seek a meeting with the local authorities to discuss a possible path towards formalization or regularization. She says that it was during that time that she “[...] realized that the real problem was unawareness of copyright issues and that none of the salespeople had opened their businesses with the purpose of stealing anything away from anyone; they were just trying to make a living.”<sup>102</sup>

In 2010, on the very same day when Moscoso’s shop was raided by 50 policemen, she decided, along with her husband David Grijalba, who is also a TV producer, and over one thousand other informal salespeople, to propose a project that could guide them towards answers about their problems; to know what were they supposed to do in order to stop being harassed and how they could compensate the copyright holders of the films they were selling. This is how the preliminary draft of a bill entitled “Legalization and regularization of the audiovisual market in Ecuador” –redacted by Moscoso and her husband– was born.

Confident about the importance of their business because in Ecuador the informal sector contributes one third of the GDP, and aware of the fact that any mid-range government staff member would listen to them, about 3.000 informal vendors, members of ASECOFAC, made the decision to march under the leadership of Moscoso from Guayaquil to Quito, the capital city, to personally present the draft of their bill directly to President Rafael Correa.<sup>103</sup> The President eventually had a meeting with the leaders of the Association and listened to them carefully. He was satisfied with the bill and the following day he sent a letter where he ordered the IEPI and the Ministry of Culture to comply with the content of what he called a “popular economy project” managed by the citizenry.<sup>104</sup>

After obtaining the necessary presidential permit, ASECOFAC’s methodology for accomplishing the formalization of the informal film market and become legitimate in the eyes of the Ecuadorian government was implemented according to a set of experimental measures that had not been attempted before in the country:

- 1) Moving from a prosecution model to a discussion model: through the opening of a space for negotiation and conversation between the representatives of the informal film market (the members of ASECOPAC) and the representatives of the government and the formal distribution networks (intellectual property authorities, collective management societies and the Ministry of Culture.)
- 2) The preparation of a joint agenda for debate and consensus: through the reaching of agreements for meetings where the different interests of those involved in the film sector (formal and informal) could be openly expressed and discussed, there was a chance to agree on the minimal requirements that could allow the formalization process to begin.
- 3) Implementation of the first stage of the formalization process:<sup>105</sup>
  - a. Formal registration and signing of contractual agreements by the informal salespeople interested in participating in the formalization process, to guarantee their resignation to engage in the sale of pirate copies of Ecuadorian films and a complete refusal to ever market illegal media such as child pornography.
  - b. The expedition of local permits after the business owner delivered their proper documentation according to the government guidelines. After a vendor received authorization, they were given a sticker that should be displayed at their store and that read “This shop is going through a process of regularization and legalization to sell Ecuadorean audiovisual products.”
  - c. Payment of taxes to the Ecuadorean government for the sale of audio CDs and video DVDs.
- 4) Implementation of the second stage of the formalization process: <sup>106</sup>

Regrettably, police raids and the failure of the authorities to grant permissions and licenses from copyright holders on due time because of the negligence of some

management agencies preceded the implementation of this phase that was carried out as follows:

a. The agreement between informal vendors and the cultural authorities of distributing and offering local cultural goods at affordable prices for the local population.

b. The joint purchase by the association of informal vendors of the distribution and marketing rights of national cultural goods (locally produced music and films) through direct negotiations with authors, composers, filmmakers and distributors.

c. A direct agreement signed between producers or copyright holders and vendors, declaring that the average revenue share to be collected after each legal sale of their films (at a price ranging from US\$ 3 and US\$ 5) would correspond to about US\$ 1 for each copy; a considerable number when compared to the 10 to 30 cents that major studios pay to the producers for each film sold on DVD.

d. The delivery of working gear for those vendors who signed up during the first stage of the process: elements like bags, vests, stickers, credentials and stands designed by ASECO-PAC for the promotion of legal Ecuadorean films.

e. Legal reforms to strengthen the administrative sanctions to be carried out by the IEPI in case of the non-compliance of the vendors with the norms established in the formalization agreement: this included raising the fines from US\$ 50 to US\$ 1840, to amounts ranging from US\$ 500 up to US\$ 100.000.

f. The signing of a mutual agreement where it is stated that control visits are to be carried out by the IEPI at the end of each year, granting them the power to close down any shop that does not comply with any of the guidelines established during the formalization and regularization process. (According to ASECO-PAC, the number of formalized stores is over 20.000, and each one of them is susceptible to be closed if their agreement with the government is breached.)

- 5) Implementation of the third stage of the formalization process: <sup>107</sup>

This phase is currently being carried out:

a. Registry of quantitative and qualitative information on figures, percentages, consequences and important accomplishments product of the work carried out by ASECOFAC during the stages 1 and 2 of the formalization and legalization process, such as the following:

- Record sales of over 40.000 copies on DVD of the film *A Tus Espaldas* (*Behind your back*, 2012), a Venezuelan-Ecuadorian coproduction directed by Tito Jara.

- Between 2011 and 2013, more than 80 Ecuadorian films became standardized for their legal offering in newly formalized stores, including documentaries and fiction films.

- Around 100.000 original Ecuadorian films were sold in newly formalized stores between 2010 and 2012.

- More than 60.000 informal stores selling audio and video discs were registered in the program with the intention of becoming formal. 2.000 of these stores are managed by members of ASECOFAC.

- The registration of over 2.000 people as members of ASECOFAC, in 26 cities in Ecuador.

- The consolidation of ASECOFAC as the largest film distribution network for films on DVD in the country.

- The recognition from the Ministry of Culture of the important labor carried out by ASECOPAC, of transforming 'pirate vendors' into 'cultural advocates.'

- The establishment of new intellectual property legislation that institute new penalties for copyright infringement, including fines and prison sentences of up to three years.

- The listing by the US chamber of Commerce of Guayaquil Bay (a shopping center that comprises a 4 block radius) in Ecuador as one of the 'pirate paradises' in Latin America.

b. Taking initial steps to being the regularization and formalization process of foreign films (non-Latin American). Even though it has not been easy to create trustful relationships that could allow the granting of distribution and marketing licenses for foreign films on DVD, ASECOPAC has nonetheless reached a few agreements with the foreign copyright holders of foreign audio and video products.

c. Seeking agreements with producers and distributors from other Latin American countries to obtain licenses for the legal sale of their films in Ecuador. Arrangements have so far been achieved only with distributors and producers from Argentina and Colombia.

d. Seeking licenses from the copyright holders of educational material to be sold legally at newly formalized shops. Some universities have so far agreed he sale of their self-published books at prices ranging from US\$ 2 to US\$ 3. Additionally, some local software developers are starting to offer educational game designed for the PlayStation console at these stores.

e. Moving from informal salespeople to investors. The large distributors and entrepreneurs of ASECOPAC, in addition of performing marketing tasks are also

working as executive producers in the production of low-budget Ecuadorian films. In the long-term, this could be a possibility for the self-support of the local film industry that so far has relied exclusively on the government to secure financial support.

f. The establishment of a fixed price system centered on affordability for the general public, with the market philosophy of relying on the sale of large numbers of copies at low prices and the belief that offering access is not merely to offer a product, but guaranteeing that it is a product that anyone can buy. The target of the system is to move from the average price of US\$ 6 to an ideal price of US\$ 3 for every film on DVD (a price close to that at which Nollywood films are sold.)

It is important to mention that the chronology and interpretation of the results and progress achieved by this formalization model have been inferred from the information gathered during this research and that was published by several media outlets from Ecuador and other Latin American countries, particularly by the newspapers and magazines *El Telégrafo*, *Expresiones*, *Hoy*, *Diariocorreo*, *Prensa La Verdad* and *Diario Opinión*, among others.

Some of the key facts about the formalization process do not have a bibliographic source because they were never formally published; instead, some of the information was obtained through the statements of Ecuadorian filmmakers that have witnessed the progress of this very innovative model and also through information shared by other researchers who are also part of the Latin American and Caribbean Documentary Network (DOCLAT.)

It is very encouraging to witness that a country as close as Colombia such as Ecuador could successfully undertake the task of establishing a model from which other informal film markets in Latin America can obtain inspiration and guidelines to perform their own processes towards the same goal. The three formalization stages mentioned above are a very important contribution to the staging of similar processes that can imitate and even improve what has been achieved in Ecuador, for the benefit of the film market in Colombia and the rest of Latin America, where similar problems still remain. For documentary films, the case

of ASECOPAC presents a particularly interesting set of possibilities because the collective and civic nature of the entire project is precisely the kind of context where documentary films can thrive and find audiences who are in need of a more democratic form of attaining access to cultural products. The experience of legitimizing informality is the kind of long-term process where documentary films can find a space to reach exposure and become valued as alternative media that can provide valuable information about the cultural context where they are produced.

### ***3.8 General sustainable formalization models***

The models that are going to be discussed here are not directly related to film distribution or to documentary film practice but are important precedents included to complement this chapter because they present a general background on how the complexity of formalization has been approached from different perspectives and could be adapted for the situation of documentary films and social activism.

#### ***3.8.1 Enterprise formalization through innovation in Colombia***

*This can no longer be a viable model: a model applied to the informal, devised by the formal, but without including the informal.*

Iván Hernández

The preceding discussion has already clarified certain concepts, comparisons, approaches and definitions about the regulation and legal status formality and informality, using as a basis the findings of the first stage of Iván Hernández's research about informality and the formalization of economic activities in Colombia, on his book *Empresa, Innovación y Desarrollo*. The goal of these clarifications was to organize the conceptual elements and foundations that are necessary to understand the practical aspect of the same research, which was developed during its second stage in the form of an attempt to devise a sustainable formalization model through innovation.



The development of this second phase (divided in Part I and Part II) was conducted at the *National University of Colombia* by Hernández himself in 2013, through a cooperation agreement (No. 282, signed in 2010) between two Colombian institutions: *Colciencias* (the National Administrative Department of Science, Technology and Innovation) and the Chamber of Commerce of Bucaramanga, Colombia.

The first part of the second phase included an exploration of qualitative methods: the research of participative actions where a methodology was designed and the main problem was identified with the aid of 23 institutions from the city of Bucaramanga. The second part included the implementation of a Pilot Test that consisted in sensitivity and strategy training regarding informal economic initiatives for the institutions that participated in the project. In this phase efforts were gathered to create an entrepreneurial and labor-oriented formalization strategy to create the conditions for innovation and productive development in the country. Because many previous research projects have evidenced that once tax benefits finish due to tax reform, those who were beneficiaries relapse into informality<sup>108</sup>, the Pilot Test designed a strategy for supply and demand equalization in sustainable formalization practices through innovation, known as ‘matching’ or market design, a subject that was recently awarded the Nobel Prize in Economics.<sup>109</sup>

Facing economic reforms in Colombia that have not confronted the roots of the problems of informality and the relapsing into it and instead have been exclusively promoting the dismantling of unregulated economic activities, strategies like these try to offer methods to allow informal activities to be transformed into growth-driving forces for the local economy.<sup>110</sup>

Among these strategies, the first is the *Sustainable Formalization Project*, constructed through community participation by a group of local public and private institutions that assembled under the name CAR (Regional Advising Committee) and, through several work sessions led by Hernández, identified several different levels of informality and concluded that the largest obstacle for sustainable formalization is the enormous gap between the very

limited offer of official entrepreneurial development services and the overwhelming demand of these services by informal businesspeople.

To eradicate this gap between the offer of certain institutions and the informal enterprises requesting them, a Pilot Test was implemented with the objective of connecting both ends: the demand and supply of entrepreneurial supporting services. For the Test, 23 informal entrepreneurs from different sectors such as food, footwear, clothing and other services were gathered with a matching number of mentors from the formal sector who assumed the challenge of advising and ‘adopting’ each one of the informal entrepreneurs. The methodology of the project included the following steps:

- A period of 17 days for contextualization and appropriation.
- A period of 15 days for adjustment.
- A period of 56 days for training and technical assistance.

In this way, for about two months, each mentor carried out a work plan to get to know and understand the workings of each one of the ‘adopted’ business models with the aim of providing a diagnosis of its needs and later on bring together the necessary means to achieve positive changes that could lead towards formalization. Of course, for the informal entrepreneurs this was not an easy task because they were not accustomed to being rigorous in their economic activities and lacked the most basic knowledge about matters such as accounting and marketing, among many others. Many of them believed that formality meant only to be registered at the local Chamber of Commerce, but as the Test went on and their training improved, they discovered that formality is involved in every aspect and process of the business.

For Fabiola Rojas, one of the mentors of the project, an apparent conclusion obtained from the Pilot Test was the understanding that, to achieve a connection with entrepreneurs, institutions have to offer not only access to information but also services that go beyond the theoretical. Evaluating how these services should be operating made it clear how extensive

the demand of informal entrepreneurs for this assistance is, and that the main obstacle for a proper contact between supply and demand is access to proper training.<sup>111</sup>

After several meetings, mentors learned that there are many needs which are common to all informal entrepreneurs such as, for example, shortcomings in matters of human resources, basic accountancy, appropriate interpretation of financial information, support and management processes, knowledge and technology management, and so on.<sup>112</sup> They also learned that even though small business owners in informal markets initially believed that there are many difficulties involved in becoming legitimate, because they would have to renew their licenses, pay taxes or operate within the framework of a legislation they don't understand, in the end they were open to admit that the benefits of accepting these limitations would outweigh the difficulties and earn them advantages such as the possibility of market expansion.

Once these fears and prejudices were left behind, along with the lack of planning, disorganization in certain areas and other bad habits that were products of informality, the informal entrepreneurs assumed new practices and new challenges, now with the certainty that their foundations were more solid after the mentoring process. The question arises then, of how to keep supporting these entrepreneurs in the long term and in a responsible way.

One of the outcomes of identifying and articulating new methodologies derived from the lessons learned through the Pilot Test resulted in the consolidation of the *Soy Formal (I am Formal)* online platform ([www.soyformal.com](http://www.soyformal.com)) whose aim is to provide a space where the institutional offer of entrepreneurial support can meet the demand of those who are part of the informal sector or who are beginning their formalization process. With the support of the CAR, informal businesspeople can find in this website counseling in different areas: financing, training, networking, regulation, innovation and quality standards.

This process has been proposed as a way to overcome several barriers between the demand and supply for official support services for entrepreneurs and has proven that if given the choice, many members of the informal sector are more than willing to formalize; they

just need access to information and serious, thorough assistance. The Pilot Test, carried out in the city of Bucaramanga, outlined a possible way for expanding and implementing the project in other parts of the country, once the needs of the informal sector are brought into focus and strategies and agreements with local institutions interested in providing support are reached. This experiment has also revealed that once members of the informal sector have integrated to the formal economy, one of their key interests is to maintain that legitimacy and gain access to forms of sustainable economic growth: that means innovation, and that innovation is the concrete answer that this project offers in the form of interaction between the supply and demand of training, support and access to information.

### ***3.8.2 The illegal mining industry and its formalization proposal in Peru***

This section summarizes certain key aspects of a process started in Peru that pushed the approval of a new legal framework to combat illegal mining in that country and, in a few particular cases, to promote its formalization.

Although the mining sector has no direct relationship to the cultural or film sector, the purpose of this summary is not to find affinities between these economic activities but to analyze which elements from those used in Peru for the formalization of the mining industry could be translated and implemented similarly in the pirate film distribution market in Colombia.

In June 2012, the SPDA (*Peruvian Society of Environmental Rights*) published a manual to explain the phenomena of *small-scale mining*, *artisanal mining* and the legislative decrees pertinent to illegal mining in Peru. The manual describes how the social environmental catastrophe caused by illegal mining forced the executive branch of the state to approve a series of decrees to regulate the activity and to establish policies for the beginning of its formalization process:

With these measures, the Peruvian State wants to guarantee the conservation of the cultural heritage, to develop sustainable economic activities and to promote formalization and social inclusion.<sup>113</sup>

A key aspect of the new legislation intended to formalize *small-scale mining* and *artisanal mining* was the political will to effect radical changes to the previous laws that regulated all mining activities in the country. It was with this purpose that the Decree No. 1105 completely replaced the previous definitions of illegal mining that had been defined by a previous Decree (No. 1100) years before. Additionally, this new decree determined the guidelines for the formalization process of the sector.

As it is to be expected, the new legislation establishes very clearly that illegal mining carried out by individuals, small enterprises or organized groups of people, without meeting the administrative, technical, social and environmental requirements that the activity demands, and that these people perform their activities in unauthorized zones. This decree, however, also distinguishes *informal* mining as a separate activity. While it does acknowledge that informal mining shares some characteristics with illegal mining, the novelty in this case is that the decree also clarifies that some informal mining is carried out in authorized areas and that those involved in it have started their formalization procedures within the established government deadlines according to established norms and categories.<sup>114</sup>

Another remarkable aspect of the No. 1105 Decree is that when it defines the formalization process of small-scale and artisanal miners, it also describes the methods to achieve a successful end for that process:

We must understand formalization as the process that allows a small miner or an artisanal miner to count with the necessary legal clearance to carry out their activities, from the request of a mining permission for an authorized zone and the attaining of an operating concession within the established legal framework that covers artisanal and small-scale mining, to the granting of an environmental license. Once these requirements are met, then operations can begin.<sup>115</sup>

How does the formalization process happen in the case of illegal mining? Initially, those interested are informed about the regulations of the formalization process (that can take

a maximum time of 24 months) and the law requirements, established by the *Ministry of Energy, Mining and Hydrocarbons* that are as follows:

- Statement of compromise. It is a form that corresponds to the legislative Decree No. 1105. It is a public document that confirms the acceptance of the contents of the decree and acts as an administrative registry of the person or organization involved in the mining activities.
- Training for mining operations. These are courses that prepare those interested to engage in mining activities about proper procedures. They are coordinated by regional governments and by the *Ministry of Energy, Mining and Hydrocarbons*.
- Expedition of a training certificate. This document, provided by the regional government, guarantees that the holder has approved the basic training required for the practice of mining activities and is an authorization to engage in (or resume) activities of exploration and extraction of minerals.

These methods determine who can be considered a formal miner by meeting the legal requirements and conditions mentioned above. The signed document also guarantees the acceptance of duties, rights and penal sanctions that are involved in the formalization process and that are enforced by the Peruvian State.

Although this process to legitimize illegal miners has not yet yielded definitive results, especially considering what Hernández mentions about the high rate of relapse present in informality after government incentives are exhausted or discontinued<sup>116</sup>, there is a lesson to learn from this model that can be applied in Colombia and it is not only that the miners themselves took the initiative in getting rid of their stigma of illegality, but that the Peruvian authorities decided to give a dignified treatment to the miners.

If we remember that, as it has been stated often throughout this document, one of the most noxious aspects of informality is that the laws applied to it are often dehumanizing and seem to be conceived for objects instead of people. In the case of the miners, the law was

modified by adopting a softer language (*informal* instead of *illegal*) and assuming a humane attitude. Granted, this might seem like nothing but a politically correct modification of terms, but the truth is that in a context like that of Latin America, where prejudices run deep and change comes rarely, thus subtle modification means a lot because it means that in the eyes of the law, the informal entrepreneur is no longer seen as a person who is breaking the law on purpose, knowingly and aggressively. On the contrary, the new legislation assumes that the informal miners are people capable of committing to the formalization processes, to follow it thoroughly and willing to abide to a set of principles, rules and regulations that have been approved by the Peruvian government.

This case demonstrates above all that changes in attitude are indispensable inside legitimization strategies and that it is possible to find long-term solutions through training and standardization for informal economic activities, instead of waiting for them to simply vanish through legislation.

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## Chapter Four

### Alternative Models for film distribution based on education and social activism

#### *4.1 Other alternative film distribution models for Latin America*

*Solidary economic practices can be seen in the experiences that demonstrate that it is possible to live in an environment of cooperation and respect for others.*

Anonymous.

Since this research aims at offering definitive proposals for the collective construction of the indispensable film distribution models for documentary films that a country like Colombia so desperately needs, the following section aims to highlight the importance of bringing the research methodology used for this work to practical terms through the description of a handful of film distribution models that are not directly linked to the legitimization of the informal market and its potential as a showcase for locally produced documentary films: these alternative models intend to bring films (fiction and nonfiction) to diverse audiences as part of collective education programs and collective action.

The first objective of this section is to briefly describe a handful of film distribution models that are currently in their initial operation stages throughout different countries, particularly in Latin America. In second place, this section also aims to present some models or examples of film distribution that, unlike others previously mentioned, have had more time for their development, have been functioning for more than short-term periods and even have managed to record quantitative results from their distribution experiences in assuming the challenge of reaching audiences through formal or informal platforms, or in markets that are in the process of formalization.

This, with the final purpose of providing a report on the methodologies that are needed to explore what models could work in Colombia to enable, through interdisciplinary teamwork in the different economic sectors, a sustainable solution to the film distribution problem. The previous chapter highlighted the great potential that lies in the collective networks that have been established by the vulnerable population who works on the informal market to become legitimate and vast distribution systems for locally produced films, including documentaries. The importance of that model of distribution-through-legitimization lies on the sustainable utilization of already existing value chains where audiovisual media can be distributed more freely because the informal market is willing to negotiate and build relationships with the independent filmmakers who are the copyright holders of their work and retain a fair share of the eventual profits that could be gained while also achieving the important goal of exposing their works to the large audience who purchases films on the popular market attracted by the low prices and the closer relationship with the vendors who offer alternative media.

The present section will try to explain other approaches that are less dependent on modifications to existing legislation or collective change and which rely on using film as an educational tool in alternative spaces like universities, student film clubs, cultural centers, libraries and other contexts that are alternative for the sole reason that they are mainly uninterested in revenue and place their efforts on creating awareness through active spectatorship. As we have previously stated, these models owe a great debt to the social movements, political projects and political struggles that emerged in the 60s and 70s in Latin America and in which documentary cinema played a great part as a denunciation and criticism device.

#### ***4.1.1 Under the Milky Way: The online film distribution platform of VOD***

Leading experts on film distribution issues such as Pascale Dillemann believe that the film theater model for accessing audiovisual content has steadily migrated to the online model and there is no way back. Considering that there are already several active online film

distribution platforms like *Netflix* or *YouTube* (which are legal) or *Cuevana* (which is illegal) and which have proved that advertising and subscription are both great sources of revenue, Pascale decided to bet on another legal model for offering audiovisual content and combat piracy: that of *Video On Demand* (VOD), through his distribution company *Under the Milky Way* (UMW.)<sup>1</sup>

This company, founded on June, 2010, is an aggregator of film content and an experienced distributor in the offering of films through digital platforms, with a great knowledge of the VOD model and several marketing strategies. UMW holds global agreements with the most relevant VOD platforms worldwide, such as *iTunes*, *Vudu*, *Netflix*, *Google Play*, *YouTube*, *Amazon*, *Dailymotion* and the *Sony Entertainment Network*. They also hold the status of ‘Preferred Aggregator’ on *iTunes*.

UMW has also created an international network of 13 local representatives that cover more than 100 countries. Their local distribution chain begins with an agreement between UMW and the copyright holder of a specific content; later UMW reaches another agreement with a global platform like *iTunes* and, finally, the user/spectator pays a certain value to be able to download the film on their computer, tablet or smartphone and to see it within a time limit of 48 hours. Their international distribution network follows the same steps but it includes agreements with more global distributors to secure simultaneous distribution throughout several different countries. They have also implemented a third distribution model called *Day&Date* through which they are able to release films at the same time on film theaters and VOD.

Pascale asserts that his company UMW is not just an intermediary that distributes films online but that his business also guarantees an interface for communication between the audience, the copyright holders and the different digital platforms. He also says that his work is to advise local distributors, to bring suggestions to the development teams of the different digital platforms and to devise marketing strategies suited for the distributions of each individual film. Through this financial, legal, technical, commercial, editorial and

market assessment, the company has managed to distribute more than 2.000 films in 100 countries between 2010 and 2014.<sup>2</sup>

In this kind of business model, according to Pascale, it is usually the producer of a film who contacts a sales agent who sells the product to a local distributor who is ultimately the one who guarantees that the film will be released in theaters and later in digital platforms like *UMW*. Since its inception, following the premise that culture should not be free and access to it should be paid, the company has obtained more than 250 contracts all over the world with the copyrights holders of several films. Even though every negotiation is different, the producer of a film must be willing to accept that, according to the rules of the distribution chain, profit sharing works in the following manner: from the price that a user/spectator pays to watch a film online (US\$ 5 on average), the company that offers a global online platform (such as *Netflix* or *Google Play*) usually takes 35% of that amount, then the aggregator (like *UMW*) can take about 20 or 22% of that fee, the local distributor, who is the copyright holder, takes 40% and the remaining percentage is distributed among the producer and other distributors.<sup>3</sup>

A company like *UMW* recommends those interested in following its footsteps in Colombia to always have the films available with multi-language subtitles or audio tracks to increase the distribution profits. Likewise, they advise to always reserve an around US\$ 600 for expenses of translation and coding, to always start any distribution endeavor exclusively with commercial, highly-marketable films and to secure copyright authorizations for all of Latin America to ensure a smooth online distribution and reduce regional restrictions that could alienate potential foreign customers.

Even though this kind of online distribution platforms is relatively new in Colombia and there is no available data on its impact on audience consumption behavior, it will undoubtedly be very important that film distributors prepare to experiment with the internet as a distribution tool sooner or later. Since there have already been very successful experiences with online distribution in the United States and Europe, Pascale warns that a key of that success has been patience because online distribution can move very slowly and



a long time can pass before any concrete results are perceived; before deals are secured or profits increase to a sustainable level, years might go by. He finally adds that online distribution might not be profitable for everyone and that as a young form of distribution, only time will tell how much competition it can manage while remaining lucrative for producers and distributors alike.

It must be added that even more patience would be required in a country like Colombia because, as it has been explained before, a large part of the population does not have internet access and even less people have training on how to access proper information about films to be aware of the quality of what is being offered to them through the internet. Also, it is worth noting that not everyone has a credit card, which is by far the most widely used form of payment for online transactions and that in Colombia there is a long way to go before online banking and alternative forms of payment through the internet become accessible, developed and widely available.

#### ***4.1.2 LARED: Non-theatrical film distribution Network***

LARED (roughly translated as ‘the network’) is a group of independent Latin American film distributors that have joined efforts to distribute independent cinema through a network of theaters because they are convinced that nothing rivals the film-going experience of being in a movie theater. Erick González, who is also the director of Australab (a Chilean film distributor which also organizes a yearly film festival), is the manager of LARED since 2010.

LARED is comprised by the following venues and distributions companies: *Lat-e* from Argentina; *Vitrine Filmes* from Brazil, *Malaparte* from Chile; *Pacífica Grey* from Costa Rica; *Ocho y Medio* from Ecuador and *Interior XIII* from México and Colombia. The latter is a partner of *Cine Tonalá*, a chain of independent theaters that distribute exclusively independent, non-commercial cinema, and also operates in both countries; their latest venue was opened in the La Macarena neighborhood in Bogotá in the second half of 2014.

Their business model is based on the joint purchase of films rights to be distributed only in the member territories of LARED. Their usual mode of operation consists in buying the films together, acting as an individual distributor to reduce costs and thus be able to work in more countries. The costs that are conjointly covered by all members of LARED are those of film rights acquisition, posters and other forms of graphic advertisement and the purchase of trailers. Local promotion and press coverage are separately covered by each member.<sup>4</sup>

During its first stage of operations, between 2010 and 2012, LARED managed to distribute films with a low commercial profile and without the intermediation of sales agents. The second stage, which began in 2013 and is still active, already has the support of sales agents and the financial sponsorship –used exclusively for the purchase of film rights- of *Australab* and the distribution company *Europa Cinemas* (a French-founded network for the exclusive distribution of European films), which for the first time offered its support to a small distribution network outside of Europe. Even though the members of LARED are aware of the difficulties of their business –a restricted market and a complicated model of distribution- they have decided to keep pursuing it for several reasons: firstly, because by working as a community they can reduce several expenses like distribution and acquisition of audiovisual materials; second, working as a network enables them to integrate their business into the global market and consequently train international audiences; and third, that training gives them the advantage to be pioneers and have an audience ready to follow them into an unexplored territory.<sup>5</sup>

#### ***4.1.3 Exodus Entertainment: new online and mobile distribution platforms in Nigeria***

This is a new distribution structure for the entertainment industry in Nigeria proposed by economics Professor Pat Utomi. He is keen on highlighting the importance of collaboration as a vehicle to drive effective content distribution, because without this the industry will not reach its potential. As part of his efforts to solve the distribution problem of the film industry, he has been promoting an innovative initiative with entrepreneur twin brothers Paul and Peter Ikhane. He believes that the structure of *Exodus Entertainment*, the

distribution company founded by the Ikhane brothers, “has the ability to solve Nollywood’s challenges including piracy, sub-standard packaging and the absence of data and records amongst others.”<sup>6</sup>

The professor, together with the entrepreneurs, unveiled their business model at a meeting with stakeholders involving key players in Nollywood such as representatives from the *Association of Movie Producers (AMP)*, the *Association of Nollywood Core Producers (ANCOP)*, the *Directors’ Guild of Nigeria (DGN)*, the *Actors’ Guild of Nigeria (AGN)*, the *Performing Musicians Association of Nigeria (PMAN)*, independent filmmakers and music producers amongst others, on February 23, 2013. In the speech delivered a by Utomi, he explained that their idea was to create an alternative distribution structure that will better serve the interest of both content owners and consumers. Then, they announced the set up of *Exodus Entertainment* with the sole aim of effectively distributing Nigerian entertainment products (CDs, DVDs and Magazines) throughout the entire territory of Nigeria. He also said that their business model is the product of extensive research carried out since late in 2012 and that, based on the demands of the average Nigerian consumer they decided that their platform had to be as simple as possible: anyone from anywhere in Nigeria can simply pre-order or order a CD, DVD or Magazine (and there is the possibility to pay using the *PayPhone* system, where a person can use their phone balance as a form of credit or as effectively as cash) and they will deliver it at their doorstep.<sup>7</sup> Regarding their payment models, besides from ordering online, a consumer can order by calling to their dedicated line or through a Bank deposit: after confirmation, they will deliver the order to the consumer. They also have a Payment-On-Delivery option available only in Lagos.

Paul Ikhane, who acts as chief executive officer of *Exodus Entertainment*, defines *Exodus Entertainment* as an online and mobile platform where a consumer orders all kinds of local audiovisual content, sometimes even films or audio recordings that have not been released. It also involves two sales periods; pre-release date sales and post-release date sales. The first one allows consumers to order content that is delivered by four of the biggest multi-national courier companies in the world and remains active for a period of three to five weeks, allowing content owners to sell to the same market that pirates target and as effectively as

they do. The second one becomes active after the release date and it is done mostly to ensure that the content remains always available and the structure of the system remains solid.<sup>8</sup>

About this distribution model, Professor Utomi adds that one huge challenge they faced was pricing: the fact that they have to deliver at a consumer's doorstep already means that products will come at a premium price, higher than those offered by pirates. Therefore what they did was to invest on logistics and pursue a deal with the alliance *FedEx/Red Star*, the largest delivery and logistics merger working in Africa. Through that agreement they obtained the capacity to deliver a product anywhere in Nigeria for as low as 200 Nigerian Naira (200 NGN, or around US\$ 1,2) for a CD or NGN 490 (US\$ 2,8) for a DVD; Magazines sell for the same retail price and have free shipping, also thanks to agreements with publishers and couriers. The company also has among its future plans to achieve a partnership that will put Nollywood on cable TV for a large number of subscribers based in North America, The Caribbean and parts of Europe: they want people to have the choice to see Nollywood and make it easy for audiences to find them.<sup>9</sup>

According to Utomi, what they are doing now is transforming *Exodus* into a trusted brand. He believes they have found the way to solve the distribution challenges in Nigeria once and for all, since they have simply combined what works in Nigeria and what the people want to set up this distribution model. In addition to that, *Exodus* has the potential of becoming the most trusted entertainment distributor in Nigeria for a very important reason. As Utomi explains: "One interesting thing [about the company] is that with the platform we use, there is data recollection from every activity: sales, delivery, costs and profit margins. So those days of short-changing contents owners are over."<sup>10</sup> Keeping track of all the information is something that the Nigerian entertainment industry had not worried about and for *Exodus*, having an organized structure where every transaction is carefully overseen and the relationships with content producers are seen as the priority, means a huge advantage over their competitors. What they have achieved is, above all, a great interconnection with their audience by listening to their needs: the example of *Exodus Entertainment* demonstrates that if a trusted company offers the right choices to their customers, at reasonable prices and

makes it easier for them to access and pay for the content in the way they want, according to their financial means, they will resort to using their services instead of recurring to piracy.

#### ***4.1.4 Grupo Chaski: National distribution Microcinema Network in Perú***

The content of this section is based on a lecture given by Swiss-born filmmaker Stefan Kaspar as a part of the *Cinescope* Latin American program for film training organized in Mérida, Venezuela, on May 6 to 10, 2013, under the direction of the Venezuelan documentary filmmaker Kaori Flórez.

The *Chaski*<sup>1</sup> filmmaking group was founded in Perú and managed by Kaspar for over 30 years, until October 12, 2013, when he suddenly died from a heart attack while visiting Bogotá, where he had arrived along with other members of the group to take part in the 6th version of the international alternative film and video festival *Ojo al Sancocho* (an expression that can be roughly translated as “look at this mess”) in Ciudad Bolívar, one of the most neglected parts of the country. Kaspar arrived from Switzerland to Peru in 1978 to carry out the research for a screenplay about rural migration to urban areas that he was preparing. He ultimately decided to stay in the country and founded his group in 1982 with other 5 members. The first feature film produced by the group was *Gregorio*, which was released in 1985 and reached a million spectators in commercial theaters. After that, they made the feature *Juliana*, released in 1989 with equal commercial success.

The *Chaski* group has focused its efforts on promoting community cinema, which aims to offer contents made from the point of view of the average citizen. The ideal of the group is to attain what they call an “audiovisual sovereignty”, which basically means sustainability through independence. Their distribution model is based on the systematic exhibition of films through a mechanism they have named “microfilms for the community”, where they make joint efforts with spectators, asking them about the kind of films they were interested in seeing. Unlike film clubs that exist in most parts of the world, the *Chaski* group

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<sup>1</sup> The Word ‘Chasqui’, from the Quechua language, means ‘messenger’ or ‘the person who gives and receives.’ It also refers to those wise men who were in charge of transmitting knowledge in the ancient oral tradition of the Incas.

does not engage in the common practice of bringing filmmakers to screenings of their works in order to discuss them and answer questions formulated by the audience; they invite them to have long conversations with the spectators about the relationship of cinema with life itself and to discuss mostly the subject matter of their films instead of other technical or anecdotal aspects.

As their community model of film distribution moved forward, the founder of the project realized that audiences were not paying enough attention to the new cultural offerings that were being promoted through the micro-cinemas (or any small venue where films could be screened); it was then when they decided to find a solution for this problem. As a result, they proposed a series of postulates that can be summarized in 8 “lessons” that are described next:

- 1) Exhibition and programming: the group assumed the leadership in creating an exhibition network in several communities and ultimately consolidated a coherent exhibition program divided in cycles. In that way there appeared a monthly exhibition schedule that contained 4 short films and 4 feature-length films unified by a single theme, chosen by the community itself. In the first stage, they achieved the construction of a network of 36 venues located in the isolated coastal, rainforest and mountainous areas of the country, with a model that divided the micro-cinemas in three categories: marginal/urban, provincial/urban and rural/urban.
- 2) Training: the cultural managers of the *Chaski* group, who usually are between 8 and 10 young people, have gradually discovered that the success of their work depends on their insistence on the importance of the hard labor of audience training. This practice has served to prove that the often assumed truism that marginalized people in developing countries are not interested in cinema (or other forms of culture) is completely false. This group has learned that cinema is something that needs to be taught in order for it to be understood and thus valued.

The themes that are usually chosen for the 4 short films and 4 feature-length films that are used in the screenings of the group every month include the following: mother and children relationships; film and social ecology; the natural wealth of the Peruvian coasts, rainforests and mountains; human rights; community cinema; cinema and disabilities, among many others selected by the communities.

- 3) Allies: arguing that the *Chaski* group works towards the construction of a different kind of cinema, this collective undertook the task of finding financial support to develop their community distribution model and they have in fact managed to find it in different local and international organizations. This financial aid has been vital to guarantee the continuity, development and sustainability of their labor. Some of their sponsors throughout the years have been the *Ministry of Culture of Peru*, *Dicine*, *Lima Ciudad Para Todos*, *TAL*, *Cultura Viva*, *Lima Cultura*, *Somos Cultura*, *Docu Perú*, *Nómadas*, *Calandria*, among others; some of them are cultural organizations, others are government agencies while others are filmmaking collectives, independent distributors or NGOs.
- 4) Community cinema: since 2006 the *Chaski* group has been delivering filmmaking tools to communities to allow them to record their own realities and posteriorly can exhibit them as finished, collectively created films in the micro-cinemas. In this way, a process of democratization and decentralization has emerged not only in terms of distribution and exhibition, but also in terms of actual film production among these communities.
- 5) Integrated audiovisual actions: the *Chaski* group realized the necessity of organizing the micro-cinemas by dividing their schedule in sessions that last four months in each community. The first two months are devoted to training and in the third month, film screening is integrated with other local cultural activities such as dancing performances that help their project to become more visible among community members. The fourth month is used to receive feedback from the

community and to plan future events and methods for obtaining financial support that can allow the project to move on.

- 6) Audiovisual productive Micro-chains: here the Chaski group identified the need to see the entire range of the audiovisual sector as a unified whole. The professionals in communication, film and TV producers, directors and cultural managers that comprise the Chaski group understood that there is a need to design a productivity and sustainable development model that can ensure that their system of micro-cinemas has enough resources to reach more communities as time goes by and that, eventually, these communities can produce their own local filmmaking initiatives and become self-sustainable and independent.
- 7) Integration of networks and circuits: in this case, the Chaski group discovered that a key factor to guarantee their future sustainability is working in networks with the people who continue the labor they have kick started inside the 36 places of Peru that have been chosen for them. This means that there is a network of people working in the 4 micro-cinemas they have set up in each of the 9 regions of Peru (for a total of 36 micro-cinemas in the country) where they have developed their distribution model: Amazonas, Pura, La Libertad, Ancash, Lima, Ayacucho, Apurimac, Cusco y Puno.

They also work in conjunction with other networks and circuits of film distribution that have been supportive of their work, to make possible for it to be viable and that, outside of the actions planned by Chaski, other activities such as workshops, community film discussions, or the offering of audiovisual products and high-quality technical services, continue to be carried out inside the communities. }

- 8) Sustainability: the group has learned throughout the years that guaranteeing the sustainability of its activities is not a matter of finding a unique, all-purpose formula. What could eventually support their 36 micro-cinemas is nothing but the sum of many diverse factors: allies, contributions, human and financial resources and the support



of several organizations, collectivities and entities that are interested in social responsibility and support culture as a form of development.

Considering the important understanding reached by the Chaski group on matters of autonomous filmmaking and audience training, it would be relevant to consider replicating their experience in other Latin American countries like Colombia. Perhaps a first step to accomplish this would be to embrace their strategy of promoting encounters between different alternative groups who are also looking for ‘audiovisual sovereignty’ to share experiences and continue the development of community cinema.

This is particularly relevant for documentary cinema and its development in Colombia, because the ‘micro cinemas’ model and the workshops that have the function of being seedbeds from where new audiovisual teams can grow, are ideal for the emergence of a local, autochthonous mode of filmmaking that can benefit a community and be used as a communication tool and a new alternative for memory keeping. ‘Micro cinemas’ have the potential of becoming the most adequate space to develop this kind of community documentary, that aside from providing devices for understanding reality, allows the genre to fulfill its social function of teaching, reflecting, and revealing social aspects that have been ignored or hidden in any given community.

While it was tremendously unfortunate that the founder of the group, Stefan Kaspar, passed away precisely while he was in Colombia searching for the possibility of replicating his strategy for community filmmaking in the marginal neighborhood of Ciudad Bolívar, the experience and knowledge gathered during his 30 years at the head of the group and the data he accumulated to share with others interested in replicating his model will undoubtedly be socialized and expanded by other members of the group and the micro-cinema network such as Joel Sánchez of Lima, Yessica Merino from Piura, Sharon Laines from Ayacucho or Edgar Flores, the manager of the community cinema project. Kaspar’s passing will inspire his former students to go on with his legacy by understanding the urgency of establishing community cinema networks in Latin America.

In Colombia, his ideas have been adopted by Young filmmakers like Felipe Ávila, who has found in the recently opened *Media Center for Ciudad Bolívar* and in documentary filmmaking a road to create, innovate and tell harsh stories like the one that occupies his documentary film *Corazón de Ciudad Bolívar (The Heart of Ciudad Bolívar 2005)*, in which he told the story of Sarita, a young migrant girl who works at the local market and cares for her ill mother while her dad is in prison. Ávila has also made the films *El mar y Ciudad Bolívar (The Sea and Ciudad Bolívar)*, *El Nevado del Cocuy (The Cocuy Snow Mountain)* y *Ciudad Bolívar y La Riña del Volante (Ciudad Bolívar and the Struggle Behind the Wheel)*, where he tells the story of a young female bus driver. And even though Ávila has not received any financial benefits from his films, he believes that he is a cultural leader and that satisfies him\_ to know that he is working for his community's sake because documentaries allow him to discuss social and political issues in an area as marginalized as that where he lives, where many are hopeless and where he wants to be an agent of change:

I want to be a good influence in our society, a positive force, to teach others that dreams can be built, that films are a way to reach many different places in a way that can break social paradigms and prejudices. <sup>11</sup>

Audiovisual teams left by the influence of the Chaski group, like the one to which Ávila belongs, can be an example of how filmmaking promotes participative actions and teamwork among communities to address urgent cultural and social matters and strengthen their identity.

#### ***4.1.5 Efecto Cine: mobile film distribution platform with inflatable screens in Uruguay***

Most of the content of this section was obtained through an interview made in October, 2010, to the producer, director, entrepreneur, artist and author Andrés Varela, leader of the itinerant distribution model *Efecto Cine* ('cinema effect') in Uruguay, since its inception in December of 2008. The project was born out of the need to distribute the film projects produced by his company *Coral Films*. To figure out the distribution problem in his local market, Varela and his partners decided to reboot classic models of itinerant film

screening and in that way claimed a share of the market that had been underground or neglected.

It was this neglect of a part of the film distribution market –limited public access– which motivated them to create what today is *Efecto Cine*, a project that claims to offer the possibility of appreciating what “movie going” really means; to go out and find spectators in plazas, streets, parks, education centers, sports centers and open spaces by transforming these places in movie theaters for a few hours. This model is the first professional platform for itinerant film exhibition that has appeared as the result of the particular needs of a community, in this case Uruguay, and that as a model is susceptible to be replicated in other parts of Latin America.

The platform itself uses High Definition video projection to move throughout the country, allowing for film productions (short films, feature-length fiction and documentary films as well as community cinema projects) to reach those parts of the local market that have been neglected by traditional forms of film distribution, using giant, inflatable screens to exhibit films in open spaces, with audio and video quality projections that rival those of traditional, commercial film theaters.

Autor Gonzalo Martín has praised this successful distribution model, highlighting how it has reached even the most remote places of Uruguay, offering an autonomous film programming, completely free of charge and offering a great audiovisual experience. Martín also comments that when discussing the situation of most of the places where the Efecto Cine experience has taken place, “we must say that we are obviously not talking about Europe, with their communications infrastructure (and therefore, their offering of internet access, that space where it is possible to be seen); we are talking about places where the arrival of technology is still pending.”<sup>12</sup>

The goals of the *Efecto Cine* model are to offer a new alternative for film distribution at a national level, but also to improve the access to films on DVD and to contribute to the training of audiences so that they pick up the habit of visiting the movie theater. Efecto Cine

is funded through several forms of sponsorship, mostly to private foundations but also through its participation in social awareness projects sponsored by the local government, such as social responsibility campaigns conducted by the Health and Transit Ministries of Uruguay, among others. They also participate in international forums where they have promoted their model as a potential solution for the film distribution issues present in the entire region of Latin America, particularly for locally produced films.

For the past 6 years, the distribution model chosen by *Efecto Cine* has allowed its promoters to understand that the ‘capture’ (or perhaps ‘captivation’) and training of audiences greatly depends on the amount of involvement that a community is allowed to have in the implementation of the screening, from the moment it is proposed and announced, to the moment the spectators are watching the film. As more involvement is permitted, the response of the community will be more enthusiastic and one of the best ways to obtain sustainability for projects like these is to have the kind of social impact that leads to trust and demands of reliability. If film screenings serve as tools for social cohesion, then more of them will be requested by the people who benefit from them.

To guarantee that these experiences can be of help in the consolidation of their model, *Efecto Cine* has designed a management methodology for each are involved in the distribution chain: communication, technical aspects, production and financing. The implementation of these management strategies has increased the number of potential spectators and has allowed the platform to maintain a steady level of quality in the choosing of the films screened, without forgetting that their finances rely greatly on the part of their business plan that involves doing projects for the government and that they will eventually have to find alternatives to these projects to achieve self-support.

Another outcome of the implementation of these management methods is the number of spectators that *Efecto Cine* has managed to reach, and which are even larger than those of commercial cinemas: according to the information on their website ([www.efectocine.com](http://www.efectocine.com)) since their first screening on December 2008, *Efecto Cine* has gathered more than 700.000 people and has completed a total of 15 national tours, performing 900 screenings in 130 cities

in Uruguay, including not only province capitals and touristic destinations, but also small towns and remote villages.

*Efecto Cine* also offers technical assistance for other cultural activities such as concerts, the screening of live football matches and, above all, several Festivals and Showcases for audiovisual works such as the *Children's Cinema Showcase*, the *Uruguay International Film Festival*, the *Montevideo Film Festival*, the *Punta del Este Film Festival*, the *Atlantidoc* documentary festival and the *Uruguay International Short Film Festival* among others. One of their biggest accomplishments so far in this area was the screening of the documentary film *Maracaná* (directed by Sebastián Bednarik and Andrés Varela, 2014), based on the novel *Maracaná: the Secret Story of Antonio Garrido*, and that was part of the Official Selection of the *Cannes Film Festival*. This film tells the story of the amazing feat achieved by the Uruguayan national football team of defeating Brazil at the World Cup final in the famous Maracaná stadium; a subject that could not be more popular and relevant to the local audience. This very special screening was performed in the Centenario stadium in Montevideo in front of more than 10.000 people, on a 21m by 14 m screen imported from Germany.

This distribution model has obtain several accolades such as being named “the best Latin American cultural project” in two occasions by the *Hubert Bals Fund* from the *Rotterdam Film Festival*, and also as the “Best display of cultural entrepreneurship in Latin America” for two consecutive years by the *Prince Claus Foundation*. In addition to this, they have also received official declarations of interest inside Uruguay from the National Presidency, the Education and Culture Ministry, the Tourism and Sports Ministry, the Economics and Finance Ministry, the local representation of UNESCO and the General Latin American Secretariat. It has also obtained grants inside the category of Showcases and Festivals from the Uruguayan Film and Audiovisual Institute each year since its establishment.<sup>13</sup>

Would it be possible for a model like that of *Efecto Cine* to also encourage the creation of a Latin American network for content aggregation and audience training? This, of course,

is another of their goals and with that purpose they have approached institutions and government agencies in Colombia, Argentina, Paraguay, Chile, Venezuela, Costa Rica and Cuba. Their experience so far, however, has made them understand that replicating their model is not simply a technical matter and secure the availability of certain equipment; nothing is farther from reality. Varela has learned, he says, that the development of their model implies above everything a quotidian relationship with the audience, to offer continuous training, to make them need and desire cinema. This kind of work can be partly achieved through social networks (*Facebook, Twitter, Orkut*) and websites, but direct interaction remains the central issue and they have approached it by building a network of support that not only enables the *Efecto Cine* model to be fostered by other countries, but also through the installing of a Latin American network that works with the goal of distributing local and regional contents to guarantee that Latin American cinema is locally seen and stops being a presence only in international -mostly European and North American- festivals, as it happens nowadays.

In countries like Costa Rica, or in the case of Colombia as well, to begin the construction of such a network, *Efecto Cine* conceived a business plan that includes very careful management and market strategies to predict how to call people to participate in the screenings and could be an expected response to the event. Varela holds that a Colombian spectator does not behave like and Uruguayan, Argentinian or Brazilian spectator. He considers that several very specific factors such as local culture, legislation, local insurance policies, the available technical equipment and even climate or geography have to be considered before performing an activity like the *Efecto Cine* screenings. The know-how that *Efecto Cine* has accumulated through trial and error has been useful to match the model to the needs of each country: it has been agreed, for example, that if screenings are done in Colombia, there should be mostly carried out indoors very often because the country has extensive rainy seasons and the outdoors screenings would probably have to be cancelled because of bad weather, unlike in other countries with dry weather.

Only time, the good will of the authorities in charge of regulating the film sector and the attitude of the formal sector will allow for the results of carrying out the *Efecto Cine* in

different countries to eventually come out and determine whether it can succeed or fail. Without a doubt it is a model worth imitating, as Pilar Colomé has said:

We can't help but to conclude that cinema screened in public places is the most democratic way to access the audiovisual arts that the Latin American public has at its disposal, when we look at the high prices charged by movie theaters and the lack of high-quality content in them. In some Central American countries efforts in this direction have begun to some extent, although not with the productive characteristics of *Efecto Cine*.”<sup>14</sup>

To which Gonzalo Martín adds: “it is not only democratic, legitimate and necessary: it is also commercially viable.”<sup>15</sup>

#### ***4.1.6 The Oral History Project through interviews***

Another distribution model centered on education and which could contribute with the preservation of local history and reveals the enormous potential that the distribution of documentary films has to impact in (and from) the academic sector, is the *Oral History Interview* initiative, named after an elective course that is taught by affiliate professor Frank Boring of the School of Communications at Grand Valley State University (GVSU) in Michigan, US. Professor Boring has extensive experience in documentary filmmaking and in producing works for different media; he has also produced several historical documentaries, including *Fei Hu: The Story of the Flying Tigers* (1999), which was produced by PBS in the US and televised both nationally and internationally.

The model that has been fashioned through many years of teaching said course is to make audiovisual interviews that allow students to capture the oral history of different situations and characters of the North American cultural life. Professor Boring has chosen this particular medium to guarantee that these interviews, made by his students working cooperatively, can be transformed into documentaries that, once edited, can be presented in schools, colleges, cultural centers, community cinemas and even local TV channels interested in broadcasting nonfiction works. In fact, two documentaries that have been made using the

audiovisual material collected by GSVU students in the context of that course will be presented in 14 alternative cinemas in the US in August and October, 2015, thanks to the promotion, marketing and distribution work that has been made by several students taking the course.

This project, which has been collectively constructed over time by the large number of students from all majors and backgrounds who take the class, has been developed mainly through the GSVU *Veteran's History Project*, another historical heritage initiative initiated by history professor Dr. James Smither, and which requires to combine academic experience and technical ability to preserve historical testimonies in a format that is accessible to the public. In other words, as video technology has made the preservation of oral history much easier and has also made outreach into communities and schools more possible (through social networking, for example), the teachers of both projects have decided that the documentary form can be a more accessible way to look at recent history than textbooks and other traditional approaches. By combining the preservation of memory with community outreach, the two professors who are involved in this project have managed to create a program that is very likely to produce “embodied memory” and therefore involve students with their own past and make them create deeper bonds with their local culture and heritage.

The joint efforts of both Professors have made it possible for the university and their respective projects to work in partnership with the Library of Congress and share their collected audiovisual oral history interviews with them so that it can be archived. These stories are mostly testimonies of those who have had wartime or military experience and their status as more ‘direct’ historical documents has become an invaluable resource for historians, teachers, students and other researchers working on the subject of war. Besides, they have brought together members of the faculty, staff and students from the Department of History, the School of Communications, the different University Libraries and other programs at GVSU in a wide-encompassing work that benefits area veterans, their families and the community.<sup>16</sup>



In order for this model to be able to guarantee that the oral history interviews can be later transformed into documentaries and that these can achieve an effective national distribution through academically-linked theaters and venues, Boring has stated that the most important steps are a well-coordinated work between professors and students of several university departments who must make sure to do their individual, specific tasks to make the project work. Firstly, history professors and students from that Department research and create questions for interviews. Secondly, Journalism, Broadcasting and/or Film and Video Departments conduct these interviews. Thirdly, Film and video students trained in lighting, sound, camera and editing analyze, transcribe and edit the interviews, often providing additional sections of text and archive material that can offer context. Thanks to this teamwork the transcribed content, interviews, photos, documents, etc. provide a searchable database and public access at libraries websites. Also, these collected data, materials from research and final edit of interviews provide the potential material to edit documentary films. Finally, to achieve the distribution of these documentaries in different academic networks, a fourth stage is required, which involves the efforts of students and teachers from the Public Relations/Advertising Departments at GVSU who then take the documentary film and create promotion campaigns according to their content.<sup>17</sup>

This is without a doubt a very interesting model that could be implemented at any public or private university in Colombia to contribute to the distribution for documentary films through the support of academia and the networks that are built among educative institutions and that are rarely ever considered as being suitable for the distribution of films and other cultural products.

#### ***4.1.7 'Colegios al cine', taking students to the cinema in Bogotá***

With the purpose of beginning audience training at a very early age, the Colombian film director Franco Lolli and Capucine Mahé, the producer of his debut feature, *Gente de Bien* (*Well-meaning People*, 2015), have started a program that intends to take middle school

and high school children to different movie theaters to see Colombian films, with the aim of expanding the number of young spectators who, in the future, could become an audience more inclined to watch local cinema and to see other options different to North American films in their theaters if they become used to the idea that their country is also producing interesting and relevant that can reflect on the issues and traits of the society where they live.

They have titled their project “Colegios al Cine” (which can be roughly translated as “the schools go to the movies”), and they started their first pilot projections in early 2015 with the leadership of Evidencia Films, a local independent production company and one of the co-producers of Lolli’s aforementioned first feature, with which the projections started in April of 2015 and are planned to continue for the long term: one of their goals is to follow children who today are 10 years old and maintain a film going schedule with them through the program until they are in their late teens, a time by which they would have seen and analyzed several classic and contemporary films and would have become more conscious spectators. This idea was inspired by a similar initiative that started in France in the 1980s and in which children from elementary, middle and high school participate, each age group with different films and with different work plans, but all with the same goal of teaching children to become more selective and critical of the cinema they see and to broaden their tastes in film, strengthen their vocabulary to discuss cinema and exchange their opinions while demanding more of their own cinema.

The project started as a way to create an audience for *Gente de Bien*, and Lolli admits that his intentions were originally not so altruistic, since he was mostly interested in students watching and understanding his own film, which deals with the subject of the deep class consciousness and class divisions that are present in Colombia. Nevertheless, by creating a partnership with the official Culture and Education departments, the National Film Library and the Embassy of France in Bogotá, the director realized that he could get hold of a much larger sponsorship for a bigger project that could transcend the search of spectators for his film and instead become a general audience training program. During the pilot sessions of the project, more than 5,000 children from public and private schools in Bogotá have attended different projections of *Gente de Bien* both in the different schools and in commercial

cinemas which have decided to support the project by providing the children of public schools free admittance through a partnership with the local Institute for the Development of the Arts (*Idartes*.)<sup>18</sup>

The sessions include the projection of the movie, a discussion in which the director (and sometimes the producer or some of the actors, depending on their availability) and the handing out of a “pedagogic notebook”, a small magazine that includes some key concepts about film production (brief definitions of terms like “shot”, “frame”, “close-up”, etc.), a background of the director and the actors as well as a description of the characters, themes, locations and other features included in the film. During these discussions, the children and teenagers get to ask different questions but they are also questioned by the director, who tries to make them think more deeply about issues other than the technical aspects of filmmaking (that seem to be the ones about which the younger students ask the most), thus enabling for a multisided conversation where the children are not treated with condescension. The director also makes sure that the children watch the entirety of the film’s credits and later stresses to the students the notion of cinema as a form of collective work that depends on a large group of people to be able to become a reality.

Sandra Ríos, a journalist who was present in some of the sessions with children of different ages, has said that the gullibility with which some of the children often approach the film, where they feel compelled to make judgments in terms like saying that some characters are “good” while others are “evil” is an evidence of the influence of the morally simplistic nature Hollywood cinema in children and proof of the importance of a project that makes these young spectators think more deeply about the films they see and the need to expose children to other more ambiguous and difficult forms of filmmaking. Ríos thinks that this project “has the potential to become a tool to take children think about, analyze and enjoy diverse audiovisual images, to get used to other forms of dialogue, to films that do not deliver all the answers and with characters that are not clearly defined as good or bad.”<sup>19</sup>

To continue the project, Lolli and his sponsors have planned to show a second Colombian film (the most likely to be chosen is the film *La Tierra y la Sombra*, which won

the Camera d'Or at the 2015 Cannes Film Festival, the first time a film from this country has receive such an honor) throughout the second half of 2015, including more schools and taking the projections to other parts of the country. Lolli says that he has fallen in love with the initiative and that, while being aware of the lack of support that can suddenly befall on enterprises like these, he “doesn’t want to let it die” and will continue to look for more sponsorships, even if that means having to start the search for support all over again every semester as if the project had not existed before. He also adds “further than getting [my] film to be seen, I don’t want to give up on this project because I believe that education is the only way to create an audience; there are distribution and marketing issues that can be improved, and you can surely create alternative circuits for films to circulate and therefore not have to compete head to head with furious 7 or Mad Max, because those are very different films, but all of these things ultimately mean nothing unless we have an audience who is ready to see different things.”<sup>20</sup>

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<sup>2</sup> BAM, 2014.

<sup>3</sup> Dillemann, 2014.

<sup>4</sup> BAM, 2014.

<sup>5</sup> BAM, 2014.

<sup>6</sup> Abodunrin, 2013.

<sup>7</sup> www.thenet.ng, 2014.

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<sup>10</sup> Utomi 2013.

<sup>11</sup> Ávila, 2011.

<sup>12</sup> Martín, 2010.

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<sup>16</sup> Boring Frank. 2015. Summer course: *Oral History Interview Project*. Seminar by Professor Boring and film director James Christie at the Universidad de Ibagué (Ibagué University, Colombia). Communication and Journalism program, Ibagué. July 6-17.

<sup>17</sup> Boring Frank. 2015. Ibid.

<sup>18</sup> Laboratorios Black Velvet. 2015. Gente de bien, un film de Franco Lolli. Boletín informativo en línea, Velvet Voice, Bogotá, junio 9. Accessed junio 11 2015.

<sup>19</sup> Ríos, Sandra. *Cinevista Blog*. June 5, 2015. Accessed on August 2, 2015.

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## Chapter Five

### **Making a documentary film as a key experience for information research**

This chapter has the goal to emphasize and support the claims made in previous sections about the importance of keeping in mind that, when informality is being discussed, it is not the situation of a marketplace filled with laws for objects and merchandise that is being debated: On the contrary, what is at stake at such discussions is the well-being and the livelihood of the group of people who make up that market and who have had to find strategies to survive in the face of the discriminating laws of capitalism. In order to adapt, these people have had to resort to several codes that go against usual market practices, such as having to trust in each other's word and offering low prices to allow others to have access to culture and thus pursue personal learning goals. These are mechanisms to strengthen and expand their social networks, which are the basis of the informal market.

#### ***5.1 The film distribution experience of a documentary filmmaker***

This section has as its protagonist a filmmaker named Juan Zapata, who was born in Medellín, Colombia, but has been based in Porto Alegre, Brazil, since 2004. I met him at the film market of the *Ventana Sur* and *Doc Buenos Aires* film festivals in December 2012. The interview he conceded me was quite impressive to me not only because of the very valuable issues he was knowledgeable about, but because I could completely relate to Zapata's different outlook on the problems of film distribution that I have pondered about during my doctoral research.

In this sense, I think that the results found during my experience as a researcher and his experience as a filmmaker have allowed us to share very similar approaches, thoughts and questions such as finding ways through which the pirate film market could become a key experimental tool to solve the film distribution problem in Latin America and particularly in Colombia. At this stage, the purpose of this section is to contribute to find answers to questions like this one and others that could come up about this issue.

Even though Zapata began his career as a reporter and TV producer in 1997, his connection to the audiovisual world had a complete turnaround when he travelled to study filmmaking at the *San Antonio de los Baños* film school in Cuba, first in 2001, and later in 2003. His filmography is comprised of the short films *Paranoia* (1999), *Ensueño* (*Reverie*, 2002), *El espíritu del jaguar* (*The jaguar spirit*, 2003), *Prato do dia* (*Menu of the day*, 2004), the documentaries *Fidelidad* (*Fidelity*, 2004), *Historia de una canción* (*A song's story*, 2005), *La danza de la vida* (*The dance of life*, 2007), *En blanco* (*Blank*, 2007) y *Acto de vida* (*Act of life*, 2009), as well as his first feature-length fiction film, *Simone* (2013), among other works.

After finishing his studies, in 2007 he travelled around Europe to meet with several professionals in the distribution of documentaries, and the experience brought him the realization that there is an extreme lack of a proper structure for the commercial release of films of this genre in Latin America. This fact, coupled with the personal need to distribute his films outside of Brazil –which was initially prompted by the aspiration to share his films with his family and friends- led him to create on that year a network of documentary films distribution, through his production company *Zapata Films*, with the support of 23 independent film theaters and cultural venues in Colombia, French Guyana, Brazil, Chile, Venezuela, Argentina and Ecuador. Simultaneously, in 2008, Zapata Films also joined a major local distribution network, the *Latin American Federation of Distributors and Exhibitors of Independent Cinema* (FELCINE), formed by different producers, distributors and exhibitors from Mexico, Brazil, Chile, Uruguay, Venezuela, Peru Argentina and the independent film distribution network *Kayman* as the sole member from Colombia. Zapata's goal when he created the first network and joined the second has been to make it visible that documentary films are part of a genre that is constantly evolving and growing, and therefore to demonstrate that there are viable modes to release documentaries and open up spaces for audience training.

Zapata has learned several valuable lessons from his experiences participating in these distribution networks. Between 2007 and 2011, for example, he learned that in the

independent theaters of Porto Alegre, Brazil, not even a single Colombian film had been released in the previous 40 years, which was suggestive of a generalized unfamiliarity with the cinema of neighboring countries that has been a problem of distributors –who often assume disinterest- more than of the audiences who ultimately receive what they are shown. He also witnessed how at the independent venues in Latin America where local documentaries were released this was welcomed as a novelty and audiences were left asking for more films of the genre to be shown with further frequency. With this experience as a starting point, Zapata could trace a map of the genres and subject matters that were more liked in each country.

Another conclusion reached by Zapata through his experience is that Latin American filmmakers are often much more concerned with merely *finishing* their films than with *releasing* them to be seen by an audience. By and large, he found that local documentary filmmakers have a sort of inferiority complex when it comes to comparing their films to fiction, and that a common symptom of this problem, for example, is that many documentary filmmakers fail to subtitle their films in order to increase its chances of getting international distribution. From this negative inclination, Zapata has also concluded that it is important not only to train audiences in watching documentaries but also to train filmmakers in valuing their own works and realize the potential they have to be shown at different markets not only in Latin America, but also in other countries.

During his 4 years of experience as a documentary distributor in independent theaters all over Latin America, Zapata also learned that during that time span it was possible to triple the number of spectators coming to the film theaters as long as distribution was steady and the distributor learned about the tastes in themes and subgenres of its audiences from the different screening experiences. For Zapata, the attitude of the distributor towards its audience and its ability to learn from them is the most important condition to really understand how distribution networks can successfully function in every country.

Gathering his acquired expertise through all of these distribution experiences, Zapata also concluded that there was not an actual distribution circuit for documentaries and fiction



films in Latin America, or at least not until an agreement was signed on July of 2012 to create *Latinópolis Filmes*, a distribution company exclusively devoted to Latin American cinema, in which the founding partners were the popular *Terra* internet portal and a few independent cultural institutions such as the *Mexican National Film Library*, the *Ochoymedio* film theater network in Ecuador, the *Colombian American Center* of Colombia, the *Cultural Center Mario Quintana* in Brazil, the distribution company *Butaca Uno* from Bolivia and the *Gran Cine* independent network in Venezuela, among others.

This initiative was accomplished as a result of the partnership between Zapata films, from Brazil; Marcelo Cordero, from the *Cultural Center Yaneramai* in Bolivia, and Arvin Avilés, a representative from the cultural organization *Circo 2.12* of Mexico. *Latinópolis Filmes* is headquartered in Montevideo, Uruguay, under the executive direction of Patricia Zavala and currently has a catalogue that, although includes some fiction films, has mostly privileged the distribution of independent documentaries through their 10 film theaters in 6 countries. For Zapata, one of the biggest accomplishments of *Latinópolis Filmes* is that it has managed to bring a considerable visibility to each of its films thanks to their simultaneous release system, with which there is a potential to reach more than 25.000 people at each premiere.

The *Latinópolis Filmes* experience has also been the source of many lessons for Zapata, and a particularly important one is that in Latin America the system of co-production has always been eagerly pursued and it has had a tendency to prioritize production over distribution. And while co-production funds are always welcome, filmmakers should keep in mind that when making a film it is important to consider that it has the potential to speak to other places, to communicate with different cultures and, accordingly, distribution is a key factor that cannot be overshadowed by the production itself.

Another valuable lesson is that if funding from the state is meant to be used for strengthening and promoting local cinema, the awarded funds or grants should offer the same amounts of money for production, distribution and exhibition. Likewise, if there is really a desire among filmmakers, producers and everyone else involved in the audiovisual sector, to

create a sustainable industry and have a serious conversation about distribution, depending entirely of state funding is not an option.

Materializing this Project for the distribution of Latin American cinema in alternative theaters and other venues also revealed the importance of theoretical research to be used as a key reference in order to understand the factors that evidence the need for alternative cinema networks in the region. In the particular case of *Latinópolis*, for instance, the involved partners also functioned as researchers in a series of studies that were carried out about distribution, motivated by the striking realization that even though in Latin America there are about 500 films produced each year, only 5% of them ever manage to be theatrically released. They also found worrying situations such as that in Brazil, film distribution circuits are centralized in the major cities and reach only 8% of the people, which means that 92% of the population is deprived of film theaters and outside these circuits.

In other countries they discovered that film distribution is just as centralized as in Brazil, usually reaching between only 6% and 10% of the population. This motivated them to seek other platforms besides theater screenings such as the ‘multiplatform release’ (simultaneous release in theaters, VOD and internet) and itinerant alternative circuits, like for example ‘micro cinemas’, where a film is projected at a public, open space, such as a park, in front of 500 to 1.000 members of a community that has been ignored by commercial film distribution companies. The partners of *Latinópolis Filmes* also discovered that there is a potential audience of more than 52 million people in Latin América comprised of disabled people who are currently being neglected and who could be allowed to have a limited access to cinema if the necessary structural changes were made to the film distribution chain in order to meet their specific requirements.

This experience has also been useful to demonstrate that partnerships like *Latinópolis Filmes* can be successful, since most of the films they have distributed have not produced any losses and, on the contrary, have allowed them to profit, expand their operations and balance their investments. Without a doubt, one of the biggest achievements of this alternative distribution project is that, as Zapata points out, the results that are obtained

through the long term study of audience behavior at these theaters will be very useful to support future research from which the whole cultural sector can actually benefit. This data will provide clear signals about what is happening with distribution in different platforms, about what audiences prefer, about possible issues to resolve, where there is room for improvement or reassessment of certain strategies, etc.

All of this learning about film distribution has also led Zapata to maintain that he is in favor of film piracy and he actually enjoys to debate around the issue wherever he goes. Through his inquiries on the subject, he has realized that piracy is a communicational element and a distribution alternative that is very well organized in countries like Bolivia, Ecuador, Colombia and Peru. He thinks that piracy is simply the acquisition method available to that person who only has US\$ 1 to spend on a film and that they are just a different buyer from that other person who could go to a legitimate shopping mall and is willing to buy a film on a prettier box for US\$ 20.

Zapata has also found that there is a kind of phobic feeling directed towards piracy and he considers that instead of having such negative reaction to it, piracy should be embraced and understood as a different method for distribution, just another platform as genuine as the internet or TV. He also believes that through piracy it is possible to reach people who are eager to see a film; he empathizes with those who want to buy the film at a low price because -he argues- cinema was born as a popular form of entertainment and, regrettably, has gradually become an elitist form of expression. Zapata then asks if it would be possible to reach out to popular audiences as a gesture to go back to cinema's roots and use piracy to find and try audiences.

According to him, this last endeavor would be feasible if it is understood that piracy is a platform that can be enhanced and adapted to distribute Latin American cinema. Even though he is aware that many filmmakers are uncomfortable with this idea, Zapata maintains that everyone involved in the filmmaking business should be more humble and reasonable in regards to sales and commercialization systems, with the aim of understanding that it is acceptable to offer two separate choices to a potential buyer, as it happens in certain parts of

Ecuador, where fancy stores for the sale of authentic film copies are located next door to the small shops of pirates.

Another argument that he often presents to support his claims that piracy, as a distribution system, can be improved and used to the filmmaker's advantage is that, frankly, piracy is just not going to end. Besides, the habit of experimentation that he acquired during his time at the film school has motivated him to keep trying uncertain distribution methods for his own films. So far he has released one of his films, the documentary *The dance of life*, through different platforms (alternative distribution circuits and the internet) in 4 countries and recently performed the experiment of making his own inexpensive copies of the same film to distribute among the pirate film vendors of the *El Septimazo* shopping mall in Bogotá.

Ever since he has been trying these distribution strategies, Zapata has turned the study of alternative circuits into his priority. His attitude has also been influenced by some personal experiences such as that of a pirate vendor who, many years ago, offered him a pirate film and with whom Zapata, as a filmmaker, had an argument where he protested that behavior, only to later understand that for that vendor, and for many others all over Latin America, selling these films is their livelihood. The sum of all these experiences has taken him to engage in negotiations with the representatives of some pirate markets from different countries in Latin America. In Bogotá, for example, he has had several conversations with the salespeople who control the business in underground markets like *San Andresito*, so that they can sell his own films. He claims that places like these can also be the ultimate test for the marketability of a film, since pirates always reject and refuse to sell a film that is not good for their customers. He has also offered the chance to some major copiers to obtain inexpensive copyrights so that smaller vendors can offer the film legitimately.

Zapata's most recent experimentation with distribution consisted on releasing one of his films simultaneously through itinerant film exhibitors, independent and commercial theaters and on pirate markets in different countries on May, 2013. He wouldn't disclose the title of the film because, according to him, this is still an ongoing experiment and he wants to include the outcome of this experience as the theoretical basis for the research that will be

included in the documentary film about piracy in Latin America that Zapata want to produce next.

There is no doubt that Zapata's research, mainly made up from experience, and the present theoretical research are totally connected. The results I have found seem to indicate that teamwork is needed to design joint projects that instead of rejecting the work with informal workers from the piracy film markets, could instead open the possibility to find a way of taking advantage of their useful knowledge and the experience they have gathered while constructing a successful pirate film distribution model in Colombia.

### ***5.2 Statements of people working in the illegal film distribution market***

What follows is a selection of statements obtained through the interviews granted by two informal salesmen of pirate films on DVD who were trustful enough to give me the opportunity to learn about their lives and work. Thanks to their kindness in sharing their experiences I could verify that if it weren't for their often altruistic and risky line of work (considered illegal by corporations and the Colombian government), Colombia would have a much bigger number of culturally-poor; that is, far more people illiterate in matters of culture, art and, of course, cinema.

#### ***'El Tigre' (The 'tiger'), or the unofficial film studies professor***

*El Tigre (the Tiger)*, has been working on a small salesroom in San Andresito for 25 years. His nickname was given to him by his peers because he had the habit of calling everyone a 'tiger'; he would go around saying "good morning, tiger", "how are you doing, tiger?", and so the name stuck and almost nobody knows what his real name is. For his first 10 years as a salesman, he sold exclusively commercial cinema, but it was enough for a colleague to let him watch an art-house film for him to transform his path as a salesman. For the past 15 years he has been devoted to selling nothing but non-commercial cinema: art-

house films, classic films, *auteur* cinema and independent cinema. Most of the films he sells on DVD are films that official distributors do not import into Colombia.

At first, *El Tigre* imported legitimate copies of the films, but because it turned out that people would not buy them at the high prices they would go for, he decided to sell pirate copies and legally import only those films specifically requested by a customer or the ones he knows beforehand that can be sold well because they come at reasonable prices. The first DVDs he ever sold were De Sica's *Bicycle Thieves* (1948), Chaplin's *The Kid* (1921) and Luis Buñuel's *Los Olvidados* (*The Young and the Damned*, 1950). He fell in love with this kind of cinema and ever since he has been selling art-house European cinema and independent films. He also owns a small coffee shop at the city center, which has a small projection room where people can go and have a cup of coffee while watching a film. This secondary business has been up and working since 2006 and it is his wife –converted into a movie buff now– who runs it. Sometimes, during the weekends, after closing their business, they watch up to 5 films in a row together so that later on they can recommend them to their customers.

The DVDs that *El Tigre* sells are not sold for US\$ 1, as it is usually the case with pirate copies of commercial films. Because they are difficult to import, he has to charge between US\$ 3 and US\$ 4 for them. He sells approximately 700 films per month, to a “cultured audience”, as he calls his customers. His regular buyers are mostly university students, film studies professors, as well as, according to him, lawyers, doctors and engineers. He often acts as an advisor and makes recommendations to his customers about what to see. Most people become his customers precisely because he recommends good films and he has an extensive knowledge of world cinema. Because of this, for most of *El Tigre*'s regular customers, meeting him at his shop is not a simple commercial exchange, but actually a high-level exchange among cinephiles that enjoy an interesting conversation about cinema.

Although his customers often ask for Colombian cinema, *El Tigre* sells only European cinema and films from other Latin American countries, because he says he wants to honor the immense effort that it means for producers and filmmakers to get a film done in Colombia.

Sometimes he offers Ecuadorian and Venezuelan films, but among Latin American films, those who sell the most are those from Chile and Argentina. He also offers Iranian cinema and claims to sell many films from Scandinavian countries like Sweden, Finland and Norway. Even though he sells films from all genres, the most requested ones are dramas, action films and thrillers.

This unofficial film studies professor thinks that he has lacked official support to carry out some of his entrepreneurial projects that have been often suggested to him by other cinephiles, like for example opening more coffee shop-cinemas in other neighborhoods of Bogotá, and expanding that business to offer not only the chance to see movies but also to present lectures and have discussions about films.

He also claims that another project that, very regrettably, he could not carry out at a large scale due to lack of proper support, was a training program he started with a teacher from a local public university. This project was aimed at high schools and universities and was designed to obtain the support of an institution like the Department of Education, although ultimately they were not interested. It consisted in screening for students the film adaptations of great literary works such as *The Iliad*, *The Odyssey*, *The Aeneid*, *The Little Prince*, and so on. Only in one high school, the *Calatrava School* in Bogotá, a first stage of the project could be completed and, according to the school's administrative staff, the experiment was successful and they accomplished improvements in the students' interest in cultural works.

According to El Tigre, this project has also been partially carried out by some public libraries in the Colombian regions of Huila, Caquetá and Santander and by some cultural centers and libraries sponsored by local family benefit funds. Nevertheless, in order to carry out the full scope of the project as designed by El Tigre, it requires financial support from the state, since its approximate cost would be around US\$ 20,000, as it includes around 700 films on DVD that besides being literary adaptations that would support literature courses, would include several other films that would accompany the contents of other courses in

different subjects. These films would have to be legally imported from Europe and then sold or borrowed to the schools and cultural institutions interested in them.

Because of the high budget that would be required for this and some of his other ambitious education projects, *The Tiger* is somewhat resigned to the fact that they will not materialize and therefore, in the meantime, he keeps enjoying the constant visits of university professors who trust his recommendations and ask him to find films for them to show their students. They know that he is the best seller and that his expertise has not come from a professional degree but rather from a deep love for the “good cinema”, as he calls the kind of movies he has been selling for the past 25 years at his now-famous store at *San Andresito de la 38*. At this place, in addition to being *El Tigre*, he is also often *El Profe (The Teacher)* for his colleagues, because he never stops recommending new films to watch and learn.

The Tiger also offered an interesting insight in regards to documentary films: he says that even though everyone buys fiction films regardless of their occupation and whether they are cinephiles or not, documentaries always seem to call the attention of what he considers the most specialized parts of his clientele: sociologists, anthropologists and teachers of different disciplines within the human sciences who tell him that they use these films not as entertainment but as actual educative ‘texts’ for their classes where they often discuss matters concerning politics, law and social conflict. In his opinion, documentaries are very important films that should be purchased by universities and libraries in large amounts in the same manner as essential textbooks are bought, but that the problem of licensing these films for exhibition in educational settings and finding them at accessible prices is often discouraging because they are not very visible in the formal market.

### ***Mauricio, the Rocker***

Mauricio is another informal vendor of DVD films at *San Andresito de la 38*, in Bogotá. His specialty are animation and Anime films on DVD, although his passion is music and for that reason he also sells audio CDs and promotes the music of Colombian rock bands.



About this interest of his, he says “I support rock bands a lot; there is a friend of mine named Sebastián, he’s a Colombian rocker and he brings me his works, often not even to sell them, instead he tells me ‘here, take my album, copy it and every time you have a customer you can give it away for free, what I want is to become well-known.’” Concerning piracy as an ideal method to distribute music and films, he adds “what artists need the most is to be known, not that their records sell a lot, because they make most of their money from concerts anyway.”<sup>1</sup>

Mauricio also reminds me of the ironic case of the famous Colombian comedian Andrés López, who often publicly denounces pirate vendors who sell his breakthrough production –the DVD of his wildly successful stand-up comedy act *La pelota de letras* (*The gumball*, the first stand-up comedy show to ever achieve large commercial success in the country, released in 2004) – even though, according to Mauricio, he is aware that it was because of the sale of pirate copies that his work was exponentially popularized at a time when most people didn’t even know his name.

Mauricio believes that piracy is never going to disappear, that it is impossible to stop because people will always be looking for classic films and other cultural works that the formal market will never be interested in offering. He says that people like him, specialists in obtaining hard-to-find material to sell it or share it, will always be necessary.

He also considers that his line of work is not a crime. He claims that his work became illegitimate only after 4 large record companies who controlled the music and audiovisual market in Colombia decided that it was not convenient for them to have any business competition and decided to convince the government that anybody standing outside of their inner circle had to be doing illegal business. Mauricio also adds that in spite of their unfair competition tactics, these companies eventually went bankrupt anyways. When Mauricio tells this story, his experience sounds very similar to what is described in the book *Kicking away the ladder*, where it is explained how developed countries once resorted to pirate tactics and then, after obtaining their wealth and legitimacy, denounced the developing ones for

doing the same and ‘kicked the ladder’ through legal means to keep them from catching up. In Mauricio’s particular case, he says

“[...] let me tell you something: those companies were ‘pirate’ as well during their time, and I know it because I used to work for one of them. They used to import 10,000 units of a specific record and then they only paid the taxes for 3,000 of them and sold the rest in underground markets, getting away with the tax evasion of 7,000 copies. They were huge, very skilled pirates.”<sup>2</sup>

Mauricio is very honest when it comes to discussing the sale of Colombian cinema, as he declares that he doesn’t like to sell these films because in the past he and other sellers have gotten in trouble because of that. He remembers the case of the film *María llena eres de gracia*<sup>1</sup> (*Maria Full of Grace*, 2004) that

“[...] was sold here shortly after its release and I remember it very well because I watched the film, *María llena eres de gracia*. It was confiscated by the police from everybody around here. So, ever since that happened, nobody here on our side wants to push around Colombian films anymore, and if we ever do, it’s only because the film has already been through all the legal circuits, after it’s been shown on TV, then you start offering it again, when it’s been seen everywhere. Anyway, I am one of those people who like to sell American stuff, I really love to pirate them, you know? But Colombian stuff, no. No way. That’s ours.”<sup>3</sup>

He is also completely against those informal vendors who are not offering cultural works and who are actually involved in serious crimes. He remembers that in 2010, because of a single vendor who was peddling child pornography, everyone else had their entire merchandise forfeited in the entire area of *San Andresito de la 38* (which occupies nearly 10 blocks full of stores which sell all kinds of products: some legitimate, some not) by the police

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<sup>1</sup> Although the film was not directed by a Colombian filmmaker (Joshua Marston, its director, is American), the fact that it was a co-production between Colombia and the US, that it was partially shot in Colombia, its stars were Colombian and told a controversial story that hit a nerve inside a society largely affected by drug-trafficking, created the perception that it was indeed a Colombian film and it is regarded as so by most people in the country. This is interesting because it demonstrates that the public is eager to appropriate stories that they perceive as belonging to their culture and echoing their concerns.

force. And in some cases they did not only take away their merchandise, but other work tools such as their TV sets and computers.

Mauricio is also annoyed by those who claim that there are mobsters or criminal groups behind piracy. About this he says:

There is no such thing as a mafia here; that is just something they say to fool the public. The mafia doesn't exist in here, we all have jobs here: I have my own store, you know? And I love to sell *anime* just like there are people who sell blockbusters and others who sell art-house films. I have a friend who is an expert in salsa music, another one sells rap and *reggaeton*: there's always someone who will like that stuff. But to say that there's only one person behind all that, or that drug trafficking is somehow sponsoring us; that's an outright lie. Whenever we don't sell anything, we can't take any money home for our families; would you call that a mafia? That's not fair."<sup>4</sup>

Finally, about the possibility to formalize his business and those of his colleagues at *San Andresito*, he optimistically says:

"[...] we are open to [become legitimate]. Our ideal would be for [the state] to just let us work, that they would determine -just to tell you an example- a fee, a monthly fee, or something that would legalize us and allow us to work; to somehow make us legitimate to distribute our merchandise. If we could sell Colombian films legally, that would be great, an excellent showcase for us, to let something like that happen. But our ideal is for them to let us work, we are not robbers, or kidnappers, we are not guerilla fighters. We are always being harassed; a pirate like us gets a sentence of 5 years in prison, while we've seen how a former guerrilla fighter, a murderer, only gets 3 years. This country is way too unfair in that sense."<sup>5</sup>

### ***5.3 Statement of a person who was imprisoned for illegal film distribution issues***

If there is someone who knows exactly what Mauricio is talking about when he mentions the unfairness of the Colombian legal system, it is Rubí Benavides, a housewife who now runs a billiard salon in the first level of her house. She claims that she was unfairly

incarcerated for helping a friend of hers who was a pirate vendor of audio CDs and films on DVD at the shanty town of Ciudad Bolívar, south of Bogotá.

Remembering the goal of raising awareness about the reality of the informal market, which is not only comprised of inanimate merchandise, but primarily of millions of people who have endured discrimination and the neglect of official institutions, who have serious financial needs and work in family networks that rely on each other to accomplish their modest goals, I have selected Rubí Benavides' statement to explain why it has become very important to believe –as I, among many others, personally do– that it is still possible for the government to change the existing and dehumanizing legislation that determines which economic activities can be considered legal in Colombia and which ones cannot.

Rubí Benavides was born in Armenia, Quindío, in western Colombia, more than 50 years ago. She and her family are current inhabitants of the marginal sector of southwest Ciudad Bolívar, one of the poorest sectors of Bogotá. Most of the area where Rubí lives with her husband and children is a rural zone full of small streams of water that have not been properly channeled and therefore make the humidity of the zone become quite high: the place is almost a marsh. Just as many other marginalized districts of southern Bogotá, large extensions of Ciudad Bolívar lack access to basic public utilities like sewage and running water, which turns them into disease outbreak sites. Social issues here are innumerable and there are also high levels of malnutrition, pollution and extremely low access to education.

Even though the local authorities regard this zone as a “red district” because of the presence of criminal gangs and other violent groups and in spite of being the area with the highest crime rate in Bogotá, these conditions have not been a deterrent for young people who love the arts to follow their interests. Such is the case of Rubí's daughter, Angélica, who is an actress and her best friend Felipe, who has been working as a self-taught and independent documentary filmmaker for a few years. He has tried his best to be a cultural promoter for the area and both he and Angélica haven't allowed their dire financial and social situation to keep them from being artists.

Rubí Benavides' life took an unexpected turn on October 22, 2007. At the time she owned a small lot where she had established a small 'tejo'<sup>2</sup> business, from which she and her family obtained all of their income. According to Rubí's version, a friend of hers was an informal vendor of audio CDs and film DVDs and, for about a year, they agreed to keep for him two very large boxes full of merchandise so that he would only have to take with him the few copies he could sell on a weekly basis. She and her family agreed on doing him that favor because they did not expect that keeping such merchandise in storage could be considered a crime in Colombia. At the time, they believed that only wholesale dealers of pirate products could be regarded as criminals by the existing law.

On October 22, members of the SIJIN (the Criminal Investigation Section) of the National Police arrived to the tejo field with a search warrant. When they requested to know about the location of the illegal merchandise, they were not afraid to show the police where they had been keeping their friend's boxes, because they assumed that it would be only their owner who could be accused of any crime. The police took Rubí and her family for interrogation and assured them that they would be released in the afternoon. Rubí's husband requested to be the only one taken, but they did not agree and she was arrested as well. Rubí adds that, for her and her husband, the situation that hurt the most about their arrest was that when the police found their three children hiding in the second level of their house, they tried to sexually assault their daughter, who was already of legal age (she was 23) and, after she resisted, decided to take her for interrogation as well using her age as a pretext, leaving their two sons, who were minors, behind.

Both parents and their daughter were taken on that day to the local office, or URI (which means Immediate Response Unit and is supposed to handle exclusively serious and urgent crimes), of the National Prosecution Authority at the Tunjuelito area, very near Ciudad Bolívar. The police had them spend the night there. The following day, they thought they

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<sup>2</sup> 'Tejo' is a popular Colombian game that requires a wide and open space to be played. It consists of throwing a heavy puck made of metal with the aim of hitting a small explosive charge that is partially interred inside a wooden structure filled with clay, from a distance of around 10-15 meters. The game is often played while drinking beer and eating fried foods and selling both things is how most businesses who offer the game make their profits. It is extremely popular among the inhabitants of rural areas.

would be released because they did not find a DVD burner or any other digital copying equipment at their home, but the opposite happened: after an audience with a prosecutor, the Colombian justice found them guilty of copyright violation for keeping more than 2,700 units of pirate CDs and DVDs at their home. The three of them were sentenced to prison; the father went to the *Modelo* prison, and both women to the *Buen Pastor* prison, both located in Bogotá.

Rubí says that the 4 months and 10 days they spent in prison were completely unfair and that even today, after a few years have passed, it remains enormously painful just to think about it. Her two younger sons had to live by themselves during that time with the occasional care of one of their aunts and she claims that when the aunt could not be present, the children were exposed to the pernicious influence of local teenage slackers who are often involved in criminal activities. To be able to afford their legal fees, Rubí and her family had to sell at a ridiculously low price the small piece of land where they had their home and business and start from scratch when they were released from prison.

Besides the pain that Rubí feels for the troubles that her sons had to endure during her time in prison with her daughter and husband, she says that currently her biggest cause of suffering is the situation of her daughter Angélica, because she was innocent and, in her own words, “they ruined her youth”, because even though she had nothing to do with keeping the pirate merchandise, Angélica is still today a victim of the consequences of a crime with which she had nothing to do. Rubí declares that her daughter still hasn’t been able to secure a formal job because every single time, at the moment of recruiting, they request a background check and, upon discovering that she has a criminal record, inform her that she cannot be hired. Any explanation offered by her about her innocence has been completely useless. Fortunately, her friend Felipe has always believed in her talent and has encouraged her to take part on his low-budget film works as an actress and also to follow his acting studies, which remain her main interest. Felipe and other friends and members of their family have been their sole incentive to move on.

In spite of the hard situation she had to endure, Rubí still thinks that “piracy is just a way for people to try to make a living, for their food, their rent, and I see that as a normal thing, even though I was imprisoned because of it, I think it’s normal, there are many people who do it as their livelihood.”<sup>6</sup>

It has been three decades since Rubí has been to a movie theater; she claims that the last time she went, she saw “a movie about the passion of Christ” (sic). Buying an original copy of a film on DVD is completely out of reach for her, but yet she adds: “if going to the movie theater had a price of around 2,000 pesos (something close to US\$ 1), then I would go with my entire family, but if it’s more than that, I simply can’t, I’d rather watch it at home with everybody, it’s more convenient.”<sup>7</sup>

Rubí’s children like to watch films and so do their friends. To treat themselves they often buy pirate films and, after seeing them, exchange them for other pirate films owned by their neighbors and friends. In the place where they live people are used to relying on family and neighbor networks to support each other and these networks only grow stronger as years go by. That is the only way to guarantee some form of entertainment inside the community. Rubí concedes that she doesn’t like cinema as much as her children do, but she also confided that after the Colombian film *Paraíso Travel* was released in 2008, she immediately asked somebody to lend her a copy so that she could, very proudly, watch again and again the few scenes of the film in which her daughter Angélica appeared as an extra, dancing in the background of a club.

Rubí cannot forget that she was imprisoned in the No.73 cell and her daughter in the No. 74. She cannot forget several really harsh episodes that took place during her incarceration that come to her mind every day along with the frustration she feels for the injustice that she believes has been done against her family by the Colombian government. In any case, she says she is very grateful for the support of her family although she still has not figured out the way to leave the episode completely behind. According to her

[...] my daughter went to the court to make some inquiries and a lawyer told her that we have yet to settle an account with the government because, supposedly, anyone

who has been to prison has to pay a certain amount of money as a fine depending on the seriousness of the offense, and so my husband and I are supposed to owe around 8 million pesos (roughly US\$ 4.000) to the State, and I don't know why the government is asking for that money, I have to check if it is true. We can't. ¿How are we supposed to afford that? Our financial situation is really, really bad.<sup>8</sup>

For Rubí, this debt to the government is the last bitter memory she has of an experience that began basically for trusting a friend and keeping the pirate audio and video material for him at her home.

Meanwhile, Felipe Ávila, Angélica's good friend, has been devoted to showing his documentaries wherever he goes, all of them inspired by life in Ciudad Bolívar. As a self-taught filmmaker, he is always reminding his audience that it is important to stop talking about 'piracy' but instead a new term should be used to refer to the phenomenon, such as 'information sharing', and that it could apply to any kind of information, regardless of whether it is a film, a TV series, a news program, etc.

All of Felipe Ávila's documentaries have been made by him with the sole purpose of reminding the audience of the existence of Ciudad Bolívar and to highlight the good aspects that make him feel proud of this place and to belong to its community. His first couple of documentaries, made in 2013, are called *El mar y Ciudad Bolívar (Ciudad Bolívar and the Sea)* and *El nevado del Cocuy y Ciudad Bolívar (The Cocuy Peak and Ciudad Bolívar)*; in the first one he went to the sea for the first time and swam to the bottom in order to stick a small flag that represents the district among the rocky seabed; after doing this, he thought that as he had been in the bottom, he should go to the highest part of the country and thus decided to plant a flag at the top of the Cocuy mountain, Colombia's highest peak. These two documentaries were travelogues where he wanted to represent his community through the interaction with people from other regions of the country and can also be read as pieces of performance art. On his third documentary, *La Riña del Volante (The Fight for the Wheel, 2013)*, he told the story of a young woman, a single mom of five children, who works driving a bus in a line that crosses a very complex area of Bogotá in which the working conditions are extremely poor and demanding.



To be able to distribute these films, Ávila has resorted to three different choices: first, he tries to create word of mouth by inviting neighbors to watch the films at the homes of different people who have different groups of family and friends; second, he “gives a copy away” with the condition that the next person should make a copy of the film and give it away to someone else who in turn should make a new copy creating a small chain of distribution completely dependent on trust and good will. Third, he shows the films by offering them to schools and cultural centers that are willing to give him the chance to present them accompanied by conferences where he shares his experiences creating the films and invites others to participate in his efforts. He has also been trying to get the films broadcasted in Señal Colombia, the largest public TV channel in the country, but so far he has not obtained the opportunity. He says that even though he has not “yet” received any financial benefits from his documentaries, he will continue to do it because he is “in love” with the idea of a work such as documentary filmmaking, where he can “combine social issues, politics and audiovisual media.” He adds that he believes that the greatest problem with other young filmmakers is that they only think about revenue and whether a project is financially viable or not, never considering that the simple joy of producing a film is enough of a reward because through this work a person “can influence the society where they live in a positive way, to build collective dreams and reach many different places in a way that can change social paradigms.” He believes that sharing is more important as a distribution mechanism than worrying about licensing and revenue.<sup>9</sup>

Sharing offers the possibility to exchange goods, as it often happens with the pirate DVDs that are borrowed again and again from each other among the neighbors of the place where Rubí and Angélica live. Such exchanges seem like a positive and even natural behavior to combat isolation and procure access to culture and entertainment, and that is why these two women never imagined that they could go to prison simply for keeping boxes filled with music and movies; those same movies in which Angélica dreams to star one day.

## *References*

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<sup>1</sup> Mauricio, 2013.

<sup>2</sup> Mauricio, 2013.

<sup>3</sup> Mauricio, 2013.

<sup>4</sup> Mauricio, 2013.

<sup>5</sup> Mauricio, 2013.

<sup>6</sup> Benavides, 2011.

<sup>7</sup> Benavides, 2011.

<sup>8</sup> Benavides, 2011.

<sup>9</sup> Ávila, 2011.

## Conclusions

Before entering into the proper suggestions and recommendations, as a part of the concluding remarks of this work, I allow myself to describe what I consider to be the key learning points that I discovered in each one of the proposed objectives for this research. Some new questions that have emerged are also exposed here; questions which are answered through the recommendations that are subsequently made regarding the film distribution issues that have been discussed.

Concerning the first objective of this thesis:

**“To introduce a general overview of the film distribution industry in Colombia in order to understand its structure as well as its main achievements and unsolved issues, with the purpose of providing a general review of the current state of the existing production and distribution policies.”**

I learned that of the annual resources that the Colombian Ministry of Culture awards to filmmakers through grants and competitions to produce fiction, documentary and animation films, around 96% of these financial incentives are granted for the purpose of production and only 4% for different tasks that can benefit the film distribution area.

A key piece of information I found regarding this issue, is that European countries like France taught the US how to develop a vertically integrated production and distribution model (in which it is not possible for the financing of the first stage to be separated from the second) that allows for the successful promotion, distribution, exhibition and selling of their films and that, in recent years, Latin American countries like Argentina, Chile and Mexico have started to allocate more resources for the distribution of their films through competitions and grants awarded annually by their film authorities. In this sense, and keeping full awareness of the immense importance of distribution, would it be possible to establish a new ‘cinema law’ in Colombia, or at least to modify the existing one, in order to allocate more funds for the distribution of locally

produced documentaries through different platforms such as commercial, alternative or itinerant film theaters, as well as through the internet?

On the second objective:

**“To describe the traditional and non-traditional film distribution platforms available for filmmakers involved in the formal documentary film sector, with emphasis on two of the most common commercial platforms: theatrical release and the sale of DVDs. The purpose in this case is to compare how these two platforms operate in developed countries and in emerging countries like Colombia.”**

I learned that there are still no commercial film theaters available for 96% of Colombians who live in remote towns and regions of the country and that of the roughly 38 million film tickets that are sold annually to the remaining 4% of the population who has access to film theaters, only 3 million are to see Colombian films.

Another key finding is that the taxes that apply to the operation of a film theater are extremely high and therefore those Colombians who would like to be frequent filmgoers and make of films a family activity cannot do so because their monthly income is too low to justify the purchase of tickets when the numbers are proportionally compared. As a result of the indifference of the commercial and government sectors to solve this issue, and as a strategy to fill an existing gap, the pirate markets emerge as a cheap and efficient solution to grant access to films to these marginalized audiences: 9 out of every 10 DVDs sold in Colombia are pirate. Would it be possible, in order to ameliorate this situation, to allow a tax exemption to those willing to open film theaters in ostracized areas of the country? Or to provide the same benefit to those who own existing theaters and would allow marginalized members of the population to freely enter the cinema through institutional or corporate sponsorships?

Now, in terms of the third objective:

**“To provide an analysis of the emergence of informal labor markets in developing countries and the motivations behind it, in order to understand why and**

**how people involved with the informal sector in Colombia have created an informal film distribution market to sell unauthorized copies of films.”**

It came to my attention that at least 70% of Colombians make a living from engaging in activities that are part of the informal market, such as the sale of pirate films on DVD, and that their income is rarely sufficient to cover their social security expenses.

Additionally, I understood that it is extremely presumptuous to demonize the informal markets for considering them to be the focus of illegal activities and that it is necessary to first take the opportunity to become familiar with them and understand that their strength relies on operating through trust networks and extended distribution mechanisms that work throughout the country: in fact, these markets could become an ideal marketing model for the distribution and promotion of a film.

Another key finding is that certain philosophies, processes and terms that hover around informality and illegality have emerged as citizenry-generated tools to defend those inhabitants of the third world who carry certain stigmas due to their links with activities that are illegitimate only according to legislation that has been imposed by developed countries like the US, who suffer from a convenient form of historical amnesia that allows them to forget the ‘pirate’ emergence of their own currently consolidated and advanced economies.

As for the fourth objective:

**“To contrast the different points of view of experts and filmmakers about the role that informal film distribution plays in Colombia, in order to analyze the contradicting opinions which have led some to argue that it is in reality a market devoted to illegal practices, while others consider it as legitimized market, parallel to the formal market, but not necessarily illegal or harmful.”**

I came to recognize that to understand the problem of film piracy; some comparisons can be made with other economic sectors and to similar issues that are also linked with illegality, such as the example of the legalization of marijuana for both medicinal and recreational uses. The resistance of many governments to support its

legalization is one of the chief reasons why those who traffic with it illegally continue to accumulate enormous wealth while several byproducts of the drug trade like the violence and the social degradation caused by marginalization remain unattended.

In this situation, the most affected are usually the consumers in developing economies who must pay exceedingly high prices or tolerate stigmas, prejudices and persecution in the name of something which developed countries have made legal and have even accepted as having certain therapeutic benefits. (The hypocrisy of the US government allowing for the legalization –and therefore taxation and revenue for the federal government- of marihuana in many of its states while insisting on continuing the war on drugs on countries like Colombia and Mexico is utterly disturbing.)

Another relevant example for understanding the demonization of piracy would be to analyze the production and distribution networks of international pharmaceutical corporations, who resort to deceptive forms of publicity to tarnish the reputation of generic medicines every time a government tries to stimulate their production through the importing of raw materials to manufacture them and providing financial support to local pharmaceutical companies. In this case, the fact that generics are legal and are worth only a fraction of the price of those produced by big pharmaceuticals, encourages large corporations to propagate misinformation and engage in intense scaremongering campaigns, even though this have rarely work on the sectors of the population who simply cannot afford their products and can only buy generic medications.

In regards to the fifth objective:

“To produce an audiovisual piece (documentary) to support this written thesis by using recorded testimonies of people who were interviewed during the research stage. Firstly, in order to catch a direct glimpse of the complexity of the film distribution problem in different parts of the world. Secondly, to use the collaborative ideas of the interviewees in order to elaborate collective strategies that could help to solve this problem in Colombia.”

I corroborated that producing a documentary film, with everything that is required during the stages of research and production for its completion, is the best investigation methodology that a researcher on issues that are connected to film practice could use to

gather the most relevant information to understand and find alternative solutions for issues like those addressed by this work.

This can be seen in most of the content included in the previous chapters, which was the product of the gathering of information through interviews that were done having in mind that they were destined to be included in a documentary film. A very important outcome of this experience is that I came to realize that the content of the information that was collected during the interview and research process really helped me as a researcher to guide the search for the right information in different sources such as texts, studies, previous researches in different media, websites, magazines, articles and so on that are useful for clarifying certain questions and deepening other considerations that came up during the research process.

And as for the sixth and final objective:

**“To analyze controversial and non-conventional theoretical distribution frameworks in order to explore the possibility that the defiance of existing and dated distribution models could lead to the development of a healthy, sustainable and symbiotic model in which both the formal and the informal film distribution networks could coexist to benefit the access of Colombian audiences to documentary films.”**

I learned that, according to the previously quoted studies, only between 3 and 4% of the people who have internet access in Colombia use it to watch films online, whether documentaries or fiction films, while 96% of them mainly use it for e-mail and social networking.

Something that became clear to me is that these data are key if we understand that the internet will undoubtedly become a crucial platform for film distribution in the next few years and therefore will play a central role in the devising of an alternative system for film distribution in developing countries like Colombia once a larger number of the population obtains access to it and learns to recognize it as a powerful educational and cultural tool. Would it be possible, for example, that the Colombian Ministry of Education could lead on the creation of a mandatory educative project that could teach, from early

childhood, about the existence –and importance– of websites where it is possible to watch locally produced films and other cultural products free of charge?

In addition to that, a very important conclusion that emerges is that it is because of situations of marginalization and exclusion like those described above that important civilian movements such as the *I'm a Pirate* political party have arisen in countries like Sweden and Germany, to support the right of free access to culture and information throughout the world. In order to implement a popular distribution model for documentaries, could it be possible to create laws that would make it apparent that piracy should be normalized instead of stigmatized? Is the Colombian government ready, as its Ecuadorian counterpart is at the moment, to lead a process for the formalization and legalization of the informal sector?

As it was indicated in the introduction to this work, more than conclusive remarks, this section offers recommendations and suggestions for what should be done in Colombia to solve the problem of film distribution, emphasizing the informal and informal markets for documentary films. I have divided these recommendations according to areas and markets, as follows:

**Suggestions and recommendations for distributions platforms in the formal market:**

- 1) More alternative and itinerant film exhibitors for more municipalities.

In intermediate cities in Colombia like Bucaramanga, Armenia, Pereira, Manizales, Neiva, and Ibagué, that for a long time lacked commercial, modern theaters (multiplexes), now some are available. Nevertheless, the high taxation imposed to them and the enormous costs of the recent conversion to digital projection -that has represented a huge investment for distributors- are the reason why these theaters are not a viable choice to the remaining 96% of Colombian cities that do not have them. It would be a very high investment to meet a low demand.



Considering this, the recommendation in this case would be to create a government policy of incentives to the investment in video theaters in small towns; to return to what used to be called ‘parochial theaters’ -itinerant projections that were performed in the central squares of small towns- so that the marginal population who live in remote places can have free access to films, particularly to those produced in Colombia.

Additionally, a different set of government policies should simultaneously allow for more Colombian and Latin American films to reach as many cities in the country as possible, through the granting of annual resources for the commissioning of alternative distribution models such as the ‘micro-cinemas’ network of the *Chaski* group in Peru or the itinerant, open-space screenings of the *Efecto Cine* organization in Uruguay (discussed in chapter 5). Both models are applicable to the Colombian situation: the similarities between work strategies and attitudes, the shared need for audience training and the common concern about bringing cinema to marginalized communities are enough evidence of that.

- 2) More price choices in commercial film theaters.

Viewer assistance to commercial cinemas in Latin American countries represents approximately 9% of the world total.<sup>1</sup> In the case of Colombia, those viewers are only from middle-income and high-income households. The underprivileged classes cannot afford to go to these theaters because the average entrance price of US\$ 4 is too much for them.

For the sake of the well-being of the Colombian film sector, exhibitors should be pursuing ways to motivate massive assistance to their theaters, regardless of the social condition of the potential spectators. In this case, a possible solution would be to offer the possibility (as it is the case in the US) to watch films at lower prices once a certain period of time has passed since a film’s initial release. A similar model implemented in Spain could be used, where, in the case of any non-fiction local production, the film gets a mandatory wide release but the price tickets are not fixed and can be chosen at will by the

exhibitors, offering a wide variety of prices and schedules across the country, encouraging competition and sometimes even offering free screenings.

- 3) Use of free licensing in non-commercial theaters and websites.

Chad Hurley, the co-founder of the world's most famous video platform – *YouTube* – did a great contribution by setting up a distribution system that democratized audiovisual information. In an interview that he gave to the Colombian newspaper *El Espectador*, he explained that, initially, the platform was designed for sharing unremarkable audiovisual content such as family videos, to offer the possibility of sharing a video without facing technical difficulties and to smooth the exchange of audiovisual information; later on, he and his colleagues realized the potential for sharing educational material and also to simplify editing and content-generation tasks.<sup>2</sup> Part of the *YouTube* philosophy is based on sharing, exchanging and educating, and are not these also the premises of the promoters of 'free culture' and of the Creative Commons licensing for information sharing?

Analyzing the set of values behind a project as successful as *YouTube*, it is possible to understand that sharing and educating are vital for any socially-conscious endeavor that includes audiovisual or other forms of creative content. In Colombia, these ideas could be applied in the film sector by adding exceptions in the contracts signed by the producers of local films when they receive financial assistance from the Colombian government (an assistance that is ultimately the Colombian taxpayers' money), to ensure that film clubs, cultural centers, schools, universities, public libraries, museums and independent venues that do not use the latest projection technology can exhibit their films for free once their release cycle through cinemas and other commercial platforms concludes.

Perhaps the new Bogotá Film Library, scheduled to be opened in 2017, will be able to occupy a leadership role with initiatives like these and become the core of the film industry in the country, as well as the major hub for the

distribution and circulation of audiovisual works through the cultural and educational institutions of the entire country.

In the same vein, it would be possible to create a Colombian and Latin American cinema with the aid of Creative Commons licenses to allow not only users/spectators to watch films online, but also to provide the opportunity for cultural and educational venues to download films and exhibit them for free. At the present moment, Proimágenes Colombia, the Ministry of Culture and the BID are planning to create a website with similar characteristics, but ideally, it should be a completely free to access and use and that has not been decided yet.

#### **Suggestions and recommendations for distributions platforms in the informal market:**

- 4) Reaching a minimal consensus on the definitions of the terms formal/informal, legal/illegal, licit/illicit.

As Alejandro Portes suggests, the conventional definitions adopted by governments about what these terms mean are wrongly divided into a dual, simplistic model that recognizes only two kinds of markets: the legal, comprised of *the good guys*, and the illegal, where *the bad guys* are to be found and which is also *criminal*.

As we have also seen, Portes modifies this division by separating the criminal sector from the formal and the informal and also by warning about the danger of believing that illicit activities are not present in the three sectors, since nothing is further from the truth: illicit behavior takes place in all economic sectors in one way or another and understanding this position is a starting point to avoid prejudices and discrimination against the people involved in the informal sector.

This perspective offers a wider vision of the problem of informality and opens a space to reconsider what formality, legality and legitimacy actually mean in the context of the film sector in Colombia. To start having serious conversations about

this matter, the only possible way to begin is by reaching a consensus on what these terms mean after looking at the social and economic reality in which they operate. Any proposal aimed at providing a new model for film distribution on Colombia should be accompanied by a clear idea of how the informal and formal film markets work in the country and what their needs are. And, on top of that, the needs and demands of the audience should be considered as well.

- 5) Informality and the search for equality.

According to the controversial Happy Planet Index, Colombia is one of the happiest countries in the world. Mario Chamorro, an expert in economics, thinks that this does not correspond at all with the reality of a country with extremely high levels of inequality and poverty and that also has struggled with an internal armed conflict for well over 50 years. He thinks that even though Colombians like to believe that they are joyful, amicable and have the capacity of facing situations with a creative and practical attitude, happiness has nothing to do with these things and a lot with social progress and access to healthcare, education and culture. He believes that Colombia urgently needs social equality before it can call itself a 'happy' nation.<sup>3</sup>

How can Colombia achieve social equality when 1) 90% of those facing vulnerable social conditions and 95% of those living in poverty are members of the informal sector; 2) 66% of the middle class also occupy informal jobs and 3) the wealthiest 1% of the population receives 21% of the national income and owns 40% of the total wealth of the country? <sup>4</sup> Joseph Stiglitz says that unemployment and the incapacity of the market to provide job opportunities for their citizens is one of the leading causes of inequality. For this reason, he says that maintaining an open, globalized market is not sustainable if it is impoverishing its members more and more each year. To guarantee that markets are working in favor of and not against the citizenry it is necessary to moderate them and nationalize them. In this situation, the attitude of Hernández is very valuable: a market model such as that implemented in Colombia, which acknowledges the existence of informality but nevertheless

leaves it outside of the decision and policymaking processes, is a complete failure.

Tal Ben Shahr, a scholar who became famous for teaching a “Positive Psychology” course in Harvard University where he explains to his students “how to be happy”, considers, unlike Chamorro, that Colombians are indeed happier people because the intense focus and attention they place on their social relationships, friends and family.<sup>5</sup> And while this assertion might be very questionable and simplistic, it does coincide with the fact that inside informal markets, 70% of those involved base their well-being on networks of trust established through friends, family, customers and suppliers. It is true that Colombians devote a lot of time to constructing trusting relationships with others, but this is probably the result of financial necessity because most Colombians live in informality and the only guarantees existent inside that sector are those based on verbal agreements whose efficacy greatly depends on coming from someone being perceived as friendly and trustworthy. Perhaps this form of Colombian “happiness” would not survive a process of economic reform that created a regulated, safe and efficient economic environment where people would no longer have to be forced to depend merely on somebody else’s word to achieve financial stability, but it would be a process worth undertaking for the sake of social equality.

- 6) Conceiving an inclusion model for the *illegal* or the *informal*.

As previously said, the informal sector of the economy continues to be the elephant in the room when it comes to discussions about economic policy in Colombia because many people in the formal sector believe that informality can be ignored and that it will simply vanish as the formal economy continues to grow.

What is most advisable in this situation is to treat informality as more than just a matter of tax evasion, whether it happens voluntarily (as if the informal businesspeople were choosing to be openly informal) or involuntarily (caused by exclusion and inattention coming from the State.) Informality cannot be

equated with illegality anymore and legislation that regulates the informal market should not ignore the social issues attached to this part of the economy or the reality and needs of the country.

An example of this is the bill approved by president of Bolivia, Evo Morales, in July 2014, which reduced the minimum age for child labor and turned Bolivia into the only country in the world where it is legal for children of 10 years of age to legally work. According to *Human Rights Watch*, this is outrageous but also reveals the problem of a country where the dire economic situation of most families forces children to work and where allowing them to legally do so was a way to avoid unnecessary prosecution and to let them have a legitimate choice in the matter. <sup>6</sup> This legislation considers 10 a legal age for engaging in economic activities in Bolivia, although the *International Labor Organization* considers that 14 should be the minimal age for working in developed countries. And what is legal in Bolivia might not be so for NGOs who consider this to be a short-sighted measure that will only increase the number of children who drop out of school and thus prolong the cycle of poverty and illiteracy. This legislation, misguided as it might be, is a perfect demonstration of what happens when the harsh and honest economic reality of a society collides with the good theoretical intentions and models presented by those who are watching from outside or have ignored the problem for too long and realize of its existence only after it has become legal or illegal. If anything, it might serve as a cautionary tale.

In the case of the film distribution market in Colombia, a pirate vendor can be regarded as an illegal worker because he is not registered at the Chamber of Commerce and does not pay taxes. But in Ecuador, the same vendor can be considered a legitimate businessperson because he has the choice of joining a legitimation program at any time. Legislation should do precisely this: provide choices instead of limitations.

- 7) The benefits of considering formalization models for the film sector in Colombia.

Colombia is the third most unequal country in the world. This inequality is mostly illustrated by the fact that most of the working force of the country (70%) belongs to the informal market and that the marginalized sector of the population has to necessarily resort to this market in order to acquire goods and services that are too expensive in the formal market. Both sellers and consumers are excluded from the formal market and, besides not offering them access to education, culture, healthcare and job opportunities, it adds insult to injury by promoting bills meant to stigmatize them and label them as illegal for carrying out alternative economic activities. This happens because, as Stiglitz says, “markets have an enormous power, but they do not possess an intrinsic moral character.”<sup>7</sup>

When left to run unbridled, Markets, as Stiglitz says, might reach stability but nonetheless propitiate high levels of inequality. That is why it is advisable to devise models that can provide people access to fundamental needs, with culture among them. To continue the approval of excluding legislation that affects a population that is already excluded will only engender more poverty and inequality, since “there is not only a lack of equality in terms of wealth, but also in terms of opportunities.”<sup>8</sup>

But the point is not either to offer work opportunities or formal jobs that would change the economic activities of pirate sellers to reduce the informal market; that would be a mistake. Chilean economist Manfred Max-Neef says that a good example of the failure of applying one-size-fits-all solutions in these cases “are the informal zones in which people survive because of the skills they possess; zones where the arrival of a conventional project that aims to implement a solution that is the same for everyone usually fail.” He then adds that “if poverty is to be overcome, then the skills of these people have to be understood and they must be the focus of any work directed towards finding solutions.”<sup>9</sup>

The goal then should be to borrow models -or at least parts of them- from different sectors that are relevant for the needs and characteristic of the film distribution market. An example could be the case of the Norma publishing group in Peru, who decided to print cheaper editions of their books with the

special purpose of giving them to informal sellers so that they could sell them at a price as low as US\$ 3 per copy.

Another case from which to learn some valuable lessons is that of the war against generic medicines that has been conducted by pharmaceutical corporations using both legitimate and illegitimate means to block access to them through lobbying and convincing local governments of approving bills that support their monopolies. In Colombia, *Afidro*, the association of representatives of international pharmaceutical corporations, rejects the sale of generic medication because they argue that it lowers the quality of healthcare and presents risks for patients. The reality is that generics cost on average one third of what original medications do and, in some cases, even 50 times less while having the exact same properties. According to Germán Holguín, the director of *Misión Salud*, an NGO that defends healthcare rights in Colombia, medicines are a public good and cannot be a monopoly for a few and a cause for suffering and death for others. To stop this war, he proposes to end patenting, to protect the data of essential medications and to regard the war against generics as a crime against humanity.<sup>10</sup>

Finally, another interesting proposal is that of Peruvian filmmaker Alberto Durant who says that to avoid the illegal connotation that pirate films carry with them; their name should be changed by spreading the term “popular editions” as an alternative for ‘pirate’, accompanied by a low price system, similar to that of generics.

- 8) The collective creation of a formalization model for the informal market of film distribution in Colombia.

The design of a formalization process suitable for Colombia has to emerge from collective work between the formal and informal sectors. An adequate space for interaction has to be opened where different methods, like that of ASECOPAC, can be studied and perhaps even improved upon. That space could be a public forum where representatives of the formal and informal markets, the film sector, and the cultural authorities of the country would assist



and engage in discussions about previously tested models of distribution –like the ones described before- and their possible application in Colombia.

This would have to be an academic event that could set the foundations for a permanent discussion roundtable that could at least devote an entire year to the development of an agenda for the collective creation and implementation of a new and sustainable distribution model for the formalization of the informal film distribution sector. It would also be important to have the presence on these roundtables of representatives from the training programs and distribution models previously explained so that they could function as guarantors and mediators between the government and the informal sector and also as advisors. From such an encounter, it is expected that agreements and strategies for regulation that could be transformed in actual bills to be submitted to government approval, guaranteeing access to both sellers and buyers of legitimate cultural products, particularly Colombian films.

### **Suggestions and recommendations for education and training in the audiovisual sector:**

- 9) Opening new postgraduate programs in Film Studies.

In Colombia, only 7 out of 33 universities that offer courses and contents related to the audiovisual sector, offer professional programs specifically labeled as ‘Film’ or ‘Film and TV’ studies. At the postgraduate level, there are 4 Master’s Degrees in Communication, 1 in Creative Writing (where screenwriting can be chosen as a specialty area) and 1 in Cinematography. In the Spanish-speaking world, 115 postgraduate courses related to the audiovisual arts are available in Spain, but if we include only Latin America, the countries with the most postgraduate courses directly or indirectly related to filmmaking arts available are Brazil with 30 and Mexico with 17. The problem with most of these study programs is that most of them are in journalism and publicity, which means that they are only loosely related to filmmaking, and there is also a deficit in courses that provide adequate training

for filmmakers in creative entrepreneurship, the legal aspects of the film business, copyright issues, management, marketing or distribution.<sup>11</sup>

A recently published study titled *Reflections on Audiovisual Distribution*, sponsored by the *Cine Sin Fronteras (Cinema Without Borders)* film support and distribution network, has revealed that Latin America is lacking in entrepreneurs willing to work for the benefit of the distribution sector; in other words, in the region everyone wants to be a filmmaker but nobody wants to be a film manager or executive and risk to tarnish their image of completely independent artistry. In Latin America -perhaps due to the many disappointments that almost every country has encountered in the past with experiments in industrial modes of film production and a general sense of fatigue and frustration with 'Hollywoodesque' styles and fashions- the idea of commercial cinema is widely rejected and terms like 'distribution' and 'marketing' are treated with great suspicion among the majority of those who are part of the film sector. And this is greatly a result of incomplete academic training in the arts. In the particular case of Colombia, the problem is caused by the lack of training to address these complex and very important matters without which a film industry cannot ever achieve self-sustainability: inside the academia too much emphasis is placed on completing production at all costs, but none in the 'what's next?' that should follow the completion of a film or any other artistic product if it is to reach an audience. And it is this approach which has influenced policymaking in the film sector and has created the problem of a cinema that is eagerly produced but rarely seen.

To fill this gap, it would be advisable to design and open specialization courses or Master's Degrees in areas like film marketing, executive production or distribution, even divided according to different genres or formats (TV and film distribution, for example, require very different approaches). In such a course, there could be a 'creative' phase where the participants would have to produce a film (a documentary would be the most suitable format, given its immense flexibility in terms of both production and aesthetic possibilities), and then a 'business' phase where the students would be challenged to design distribution and promotion strategies for their works and encouraged to

momentarily perceive it as a 'product' to sensitize them about the important of this often unseen side –at least in the academia- of most creative endeavors. Participants would also have to be urged to take part in film festivals and film markets as well as contacting TV networks and other platforms of distribution to gain experience and understanding of the audiovisual market.

To start a program like that, it would be necessary to firstly form alliances with film markets and festivals that would allow students to have a frequent participation in them. Correspondingly, it would be equally important to create agreements with foreign institutions from countries with successful film industries to enable students to learn from the experiences of vibrant film distribution markets and even establish co-production arrangements through film funds and grants from cultural institutions who provide support for developing countries.

For the design of this kind of programs it is also important to certain precedents set by educative institutions in Colombia that have attempted to fill the gap between the business and creative outlooks by devising continued education courses and short-term programs (with an average duration of 3 months) such as the Executive Production Course offered by the *National Film School of Colombia (ENACC)*; the Course on Executive Production and Film Legislation offered by the *Colombian Polytechnic School*; the Course on Executive Production for Film and Digital Media from the *Zona Cinco School of Film and Photography*; and the Marketing for Audiovisual Products Course of the *Uniminuto* university.

Other postgraduate programs that could be offered in the country are those aimed at teaching specific methods for producing television content, particularly documentaries. One of the reasons why documentary films are not popular among Colombian TV viewers, and why the genre is not seen as profitable, is the scarcity of people who are ready to assume documentary filmmaking not as a genre suitable only for authorship and individual expression that must rely exclusively on participation on film festivals to reach audiences, but as a genre for generating didactic, educational and informative

content (science popularization, historical analysis, visual anthropology, literary or artistic education, etc.) that can be as popular as other TV genres if given enough time to find an audience after persistent production and exhibition. Training professionals ready to operate as both researchers and filmmakers and who are also knowledgeable about the way in which television acquires produces and distributes its content, would be very beneficial for the documentary genre in Colombia because it would take advantage of what continues to be the ideal distribution platform in the country, at least for the near future.

- 9) Implementation of audience training programs

While there is indeed a gap in the education of film producers in Colombia, perhaps an even more serious problem is that of audience training, and particularly for documentary films, because local audiences are not familiar with the possibilities and forms of the genre and they do not yet perceive it as an art form or a potential tool for social change.

This problem could be approached through two different strategies, both based on addressing the ‘roots’ of the problem and working with children. First, to create a project for audiovisual education to be applied in elementary schools –or even kindergartens, since children nowadays are exposed to screen forms from a very early age- and subsequently on high schools, where children would be taught about basic subjects in film studies (topics like film genres, visual composition, the historical value of cinema, etc.), with a special emphasis on Latin American and Colombian cinema because, poignantly, this is the kind of cinema with which children are usually less familiar. A similar project –mentioned in chapter 4- that the informal film salesman known as *El Tigre* attempted to carry out in a school in Bogotá could serve as a precedent, even if only to examine the reasons that prevented the project to be implemented as planned. It is important to remember that good intentions and a love of cinema are not enough to qualify a person as an educator and that cinema should be regarded as a very serious matter when taught to children, teenagers or adults, acknowledging its potential not only as entertainment or a

source of narrative forms, but also –and this is particularly true in the case of documentary films- as a medium for raising awareness about social issues, for enabling self-reflection and for gaining historical insight.

While education projects in schools would be important, it would be just as important to use a second strategy, which would be that of creating film clubs for children and teenagers such as those carried out in the United Kingdom by filmmaker Beeban Kindron, who in 2006 founded the *FILMCLUB* organization along with journalist and literacy advocate Lindsay Mackie, to provide film access to children by offering screenings not only at their schools, but also at their local cultural centers and libraries. The *FILMCLUB* encourages the children to be active viewers by opening space for discussion and, more importantly, by asking them to write reviews which are submitted to the organization’s website and awarded on a weekly basis with the “best reviewer” prize. The *FILMCLUB* is one of the largest organizations of its kind in the world and currently attracts over 220.000 children in 7.000 film clubs in different parts of the country. And what is most interesting about this organization is not only that it “screens 100 years of film from all over the world to its members” but that it has served as a source of inspiration for children to discuss films after watching them and to debate about the subjects treated in them, such as culture, ethics, moral values, problems like racial violence and other subjects depending on their age.

## *References*

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<sup>1</sup> EGEDA, 2013.

<sup>2</sup> Quoted in El Espectador, 2014a.

<sup>3</sup> El Espectador, 2013a.

<sup>4</sup> Kalmanovitz, 2013.

<sup>5</sup> Shahar, quoted in Millán, 2014

<sup>6</sup> Otis, 2014.

<sup>7</sup> Stiglitz, 2013, p.5.

<sup>8</sup> Stiglitz, 2014, p.3.

<sup>9</sup> [www.max-neef.cl](http://www.max-neef.cl)

<sup>10</sup> Correa, 2014.

<sup>11</sup> EGEDA, 2013.

## Appendices

Appendix 1 – Open Letter from ASECOPAC to the Ecuadorean President.

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ASOCIACION ECUATORIANA DE COMERCIANTES Y DISTRIBUIDORES DE PRODUCTOS  
AUDIOVISUALES Y CONEXOS

PRESIDENCIA DE LA REPUBLICA  
DEPARTAMENTO DE CORRESPONDENCIA  
RECEPCION DE DOCUMENTOS

CARTA ABIERTA

FECHA: 14 FEB 2011 HORA: 14:30

AL PRESIDENTE CONSTITUCIONAL DE LA REPUBLICA DEL ECUADOR,  
ECON. RAFAEL CORREA DELGADO.

DE LA ASOCIACION DE COMERCIANTES DE PRODUCTOS AUDIOVISUALES.  
"ASECOPAC".

Señor Presidente:

La brecha que separa a los países ricos de los países pobres es cada vez más profunda, ya no solo es económica y tecnológica, ahora este inmenso abismo es también cultural. Son muchos los esfuerzos que países como el nuestro, tienen que realizar, en un proceso sostenido, para alcanzar los logros a los que aspira el nuevo milenio, y en nuestro caso, el Plan Nacional del Buen Vivir.

Somos un grupo de trabajadores ecuatorianos, dedicados a la comercialización de productos de entretenimiento y de difusión de la cultura audiovisual nacional y universal, que buscamos ser parte de ese proceso, donde la igualdad de oportunidades de trabajo, vaya de la mano del cumplimiento de los deberes ciudadanos, para ser dignos acreedores de los derechos laborales que nos corresponden. Sin embargo, nuestro trabajo, por las características informales de sus inicios, ha sido incomprendido y atacado con fuerza en estos días, justamente cuando -y esa es la ironía mayor, Señor Presidente- nos encontramos en un activo proceso de legalización de todos los órdenes que implican desarrollar este tipo de actividad.

En el Ecuador, la política de Derechos de Autor es aplicada a través del Instituto Ecuatoriano de Propiedad Intelectual "IEPI", institución que debería convertirse en una herramienta de civilidad, para que todos los ciudadanos involucrados en la cadena de valor de las industrias culturales confluyan en mesas de negociación manejadas con transparencia, promoviendo la participación de los actores del sector interesados en la regulación y legalización de la comercialización de productos audiovisuales, mediante procesos consensuados que permitan la plena vigencia de los derechos de autor, hasta convertirlos en política de estado, realizando estudios detallados sobre el impacto del derecho de autor y los derechos conexos en la economía nacional.

Los comerciantes y distribuidores de productos audiovisuales del Ecuador, que formamos parte de la ASECOPAC:

1. Consideramos que es necesario iniciar procesos de negociación en busca de la vigencia de las Leyes de Propiedad Intelectual y expresamos

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## Appendix 1 – Open Letter from ASECOPAC to the Ecuadorean President.



ASOCIACION ECUATORIANA DE COMERCIANTES Y DISTRIBUIDORES DE PRODUCTOS  
AUDIOVISUALES Y CONEXOS

nuestra voluntad de cumplir con el pago de los derechos de autor a sus legítimos propietarios, en función de las condiciones específicas de la economía nacional.

2. No pretendemos apadrinar ni justificar la tremenda inequidad e injusticia que ha caracterizado a la relación entre los sectores inmersos en la producción y comercialización de productos audiovisuales.

3. Consideramos que, en las actuales circunstancias, es pertinente remediar estos conflictos con soluciones reales, ajustando la aplicación de las leyes a las circunstancias de la dinámica social y no pretendiendo provocar que las circunstancias de lo social se adapten a una estructura jurídica, construida sin la participación ciudadana de los sectores inmersos en el proceso.

Es decir, la aplicación de las leyes de propiedad intelectual no puede ser unilateral, arbitraria e inconsulta, debe contemplar fases de transición que permitan la regularización sistemática del mercado, a través de negociaciones con los sectores involucrados, con el fin de disminuir el impacto de la aplicación de estas políticas, evitando que se conviertan en causales del desempleo de más de 60.000 familias inmersas en la comercialización de productos audiovisuales, en el territorio nacional.

No podemos compartir el criterio de funcionarios que todavía esgrimen los conceptos que Rockefeller enunciaba en los años 60, que sostenía que la mejor manera de eliminar la mendicidad era matando a los mendigos; la mejor manera de eliminar la pobreza era matando a los pobres, la mejor manera de acabar con las revoluciones era matando a los guerrilleros en los vientres maternos, esterilizando masivamente a los sectores pobres de la población. No se puede terminar con la Piratería o con el comercio informal de productos audiovisuales matando de hambre a las personas que ejercen esta actividad económica, este es un problema que rebasa el ámbito de lo estrictamente legal para convertirse en un problema con múltiples aristas de orden social.

Desde la perspectiva, del Buen Vivir (Sumak Kawsai) establecido como principio básico de nuestra Constitución, en lo referente al ejercicio de los derechos y garantías sociales, económicas y ambientales, está consagrado el derecho al trabajo plasmado en los principios orientadores del régimen económico, que se caracterizan por promover una relación armoniosa entre los seres humanos individual y colectivamente:

Art. 325.- El Estado garantizará el derecho al trabajo.

En esencia la construcción de una economía solidaria, al tiempo de recuperar varias soberanías como concepto central de la vida política del país.

El IEPI debe liderar los procesos de regularización y legalización de las actividades económicas que por ausencia de pago de derechos de autor se hallan inmersas en situaciones conflictivas y buscar una sistemática inserción de estos grupos informales en el estricto cumplimiento de las políticas de

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## Appendix 1 – Open Letter from ASECOPAC to the Ecuadorean President.



ASOCIACION ECUATORIANA DE COMERCIANTES Y DISTRIBUIDORES DE PRODUCTOS  
AUDIOVISUALES Y CONEXOS

derechos de autor, como ha ocurrido en otros países de América Latina, que después de establecer acuerdos sociales, han conseguido la plena vigencia de las leyes de protección de la propiedad intelectual, mediante negociaciones multilaterales que se sustenten en un estudio profundo, sobre la repercusión de la paulatina aplicación de las leyes de derechos de autor y sus efectos sobre la cultura, examinando las propuestas que buscan mantener, en el nuevo entorno, el equilibrio entre el ejercicio del derecho de autor y el derecho al acceso a la cultura de los grupos humanos contemplado en la Constitución.

Art. 380.- Serán responsabilidades del Estado:

7. Garantizar la diversidad en la oferta cultural y promover la producción nacional de bienes culturales, así como su difusión masiva.

La Constitución ecuatoriana percibe los derechos culturales, como aquellos derechos que garantizan el desarrollo libre, igualitario y fraterno de los seres humanos y en esa capacidad singular que tenemos de poder simbolizar y crear sentidos de vida que podemos comunicar a otros. Estas realidades se tienen que afrontar con tratamientos diferenciados dentro de los derechos culturales colectivos que se constituyen en bienes jurídicos que son protegidos por la Constitución.

Por tanto, la actual posición del IEPI -de allanar locales de venta de Cds y DVDs-, sin plantear una solución ni escuchar nuestro planteamiento, es atentatoria contra todas las convenciones de derechos humanos y contra la Constitución ecuatoriana, que establece la igualdad de todos los ciudadanos ante la Ley.

La actual Constitución Política del Ecuador: El principio de igualdad de todas las personas ante la ley.

En el art. 23 numeral 3; se indica en qué consiste la igualdad ante la Ley, donde se expresa "...todas las personas serán consideradas iguales y gozarán de los mismos derechos, libertades y oportunidades, sin discriminación en razón de nacimiento, edad, sexo, etnia, idioma, religión...".

¿Quién se erige en defensor de este concepto de legalidad? Las instituciones del Estado no pueden ser utilizadas para perseguir a los pequeños comerciantes de copias de DVD, que ahora son tratados como delincuentes, y que lo único que hacen es trabajar honestamente para mantener a sus familias con dignidad. Entonces, la cultura jamás será de todos, estará condicionada a la capacidad adquisitiva de las personas, se convertirá en privilegio de muy pocos ciudadanos.

Señor Presidente: en cada calle, barrio, pueblo, comunidad y ciudad del Ecuador, existen miles de familias que han encontrado en esta actividad su forma de sustento. En el Ecuador, hay más negocios pequeños de venta de DVDs que farmacias, y eso es muy bueno, porque habla de la buena salud de nuestra joven cultura. Si cierran una tienda de venta de Dvds, tendrán que

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## Appendix 1 – Open Letter from ASECO PAC to the Ecuadorean President.



ASOCIACION ECUATORIANA DE COMERCIANTES Y DISTRIBUIDORES DE PRODUCTOS  
AUDIOVISUALES Y CONEXOS

cerrar todas, porque constitucionalmente, todos los ciudadanos somos iguales ante la ley y nos merecemos el mismo trato. Si, como sostiene el IEP, van a proceder a encarcelar a los ciudadanos que ejercemos esta actividad, lo primero que tendrán que hacer es construir nuevas cárceles, porque somos más de 300.000 personas, y estamos dispuestas a luchar por nuestros derechos. Los grandes grupos multimillonarios protestan y nos discriminan llamándonos "piratas", y no les interesa que entremos en un proceso de regularización, pretenden destruirnos de un plumazo, utilizando a las instituciones del Estado y al Poder Judicial.

Señor Presidente, somos padres y madres de familia que trabajamos para llevar el pan a nuestros hogares, se ha distorsionado maliciosamente nuestra imagen haciéndonos ver como delincuentes, pero somos un sector importante de la economía popular, contamos con los permisos de funcionamiento exigidos por las autoridades seccionales respectivas, y cumplimos con el pago de los impuestos fiscales, tenemos la voluntad de cumplir con la ley y pagar los derechos de autor a sus legítimos propietarios. Por esta razón, y conscientes de su gran sensibilidad social, le solicitamos disponga el inicio de un proceso técnico, justo y definitivo de regularización y legalización de nuestra actividad comercial, en función de la realidad nacional, que nos permita pagar los derechos de autor a sus legítimos propietarios, mediante una negociación multilateral ajustada a las condiciones objetivas de la economía nacional.

Por esta razón, Señor Presidente, hemos constituido la Asociación de Comerciantes y Distribuidores de productos audiovisuales y conexos - ASECO PAC- cuyos objetivos fundamentales son:

1. La ASOCIACIÓN ECUATORIANA DE COMERCIANTES DE PRODUCTOS AUDIOVISUALES Y CONEXOS "ASECO PAC", es una organización de comerciantes autónomos, que busca preservar y salvaguardar los derechos constitucionales de todos sus afiliados, para que puedan ejercer el legítimo derecho al trabajo, contemplado en la Constitución y las Leyes de la República del Ecuador.

2. La ASOCIACIÓN ECUATORIANA DE COMERCIANTES DE PRODUCTOS AUDIOVISUALES. "ASECO PAC", tiene como principio fundamental la Iniciación de negociaciones con las autoridades pertinentes, para poner en marcha los procesos sistemáticos y paulatinos de regularización de las actividades económicas de todos sus miembros, a nivel nacional, con el objetivo de, en un lapso prudencial, cumplir a plenitud con los preceptos legales de Derechos de Autor de los productos fonográficos, videográficos, películas, juegos de video, software y productos conexos, que en la actualidad incumplen con estas obligaciones establecidas en la Ley.

3. La ASOCIACIÓN ECUATORIANA DE COMERCIANTES DE PRODUCTOS AUDIOVISUALES. "ASECO PAC", tiene como objetivo promover y defender los derechos de propiedad intelectual de los autores,

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## Appendix 1 – Open Letter from ASECOPAC to the Ecuadorean President.



ASOCIACION ECUATORIANA DE COMERCIANTES Y DISTRIBUIDORES DE PRODUCTOS  
AUDIOVISUALES Y CONEXOS

compositores y cineastas ecuatorianos, mediante el cumplimiento estricto de los mandatos establecidos en la ley.

4. La ASOCIACIÓN ECUATORIANA DE COMERCIANTES DE PRODUCTOS AUDIOVISUALES. "ASECOPAC", impulsará la creación de una estructura jurídica sólida, que busque mantener en el marco del equilibrio y de la más estricta justicia, las relaciones entre los actores sociales inmersos en la producción y realización de productos fonográficos, videográficos, películas, juegos de video, software, y los sectores involucrados en la distribución y comercialización de estos productos.

5. La ASOCIACIÓN ECUATORIANA DE COMERCIANTES DE PRODUCTOS AUDIOVISUALES. "ASECOPAC", a puesto a disposición de los cineastas, teleastas, realizadores y productores nacionales, la más completa red nacional de distribución y comercialización de productos audiovisuales, con estricto respeto de las normas vigentes de derechos de autor, convirtiéndose en un factor determinante de desarrollo, al abrir nuestro mercado y fuerza nacional de ventas -con cerca de 60.000 puntos de comercialización-, al Cine Nacional con el inicio de un plan piloto que comenzó en el mes de febrero del 2010 con 20 tiendas en la ciudad de Quito e iniciando en Guayaquil en el mes de enero del presente año previo acuerdo de solo vender películas originales del cine nacional.

Por esta razón, luego de reuniones que hemos venido realizando desde hace aproximadamente un año, decidimos constituimos en una organización social amparada en las leyes y reglamentos que rigen a las organizaciones sociales pertenecientes al Ministerio de Inclusión Económica y Social, MIES, en busca de preservar y salvaguardar los derechos constitucionales de los comerciantes de artículos audiovisuales, para que puedan ejercer el legítimo derecho al trabajo, contemplado en la Constitución y Leyes de la República del Ecuador. Nuestra Asociación tiene como objetivo fundamental la iniciación de negociaciones con las autoridades pertinentes para poner en marcha procesos sistemáticos y paulatinos de regularización de las actividades económicas de todos sus miembros a nivel nacional con el objetivo de, en un lapso prudencial y equilibrado, cumplir a plenitud con los preceptos legales de Propiedad Intelectual de los productos fonográficos, videográficos y películas que en la actualidad incumplen con estas obligaciones establecidas en la ley.

En el mes de noviembre del 2010, realizamos el primer foro de regularización de los Derechos de Autor en el Edificio del Ministerio del Litoral actividad en la que participó el experto norteamericano en Derechos de Autor y mediador con Brokers de Licencias Forest Young, evento del que se excluyó voluntariamente el IEPI, pese a la invitación a sus funcionarios. Desde esta fecha realizamos reuniones semanales para evaluar el avance del proceso de regularización, proceso histórico que como usted comprenderá se lo puede concretar después de un arduo proceso de negociaciones.

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Ecuador

Appendix 1 – Open Letter from ASECO PAC to the Ecuadorean President.




ASOCIACION ECUATORIANA DE COMERCIANTES Y DISTRIBUIDORES DE PRODUCTOS  
AUDIOVISUALES Y CONEXOS

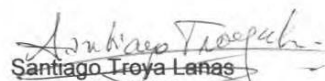
Cómo se explica Señor Presidente, que luego de iniciado este proceso, el IEPI emprenda acciones administrativas, causas penales y sanciones judiciales, contra los miembros de nuestra Asociación, empezando por nuestra Presidenta, madre de familia y trabajadora de la cultura, que ha sido víctima de presiones e intimidación. Aunque parezca paradójico y sospechoso, el principal enemigo del proceso de regularización y legalización de esta actividad económica ejercida por miles de ecuatorianos, son los funcionarios del IEPI, que a pesar de tener pleno conocimiento (público) de las acciones emprendidas por nuestra institución para legalizar esta actividad, han boicoteado abiertamente este proceso; sus directivos han realizado declaraciones ante los medios de comunicación afirmando de manera inconstitucional, ilegal, y discriminatoria, sin mediar ningún estudio técnico que justifique sus decisiones, que han iniciado arbitrarias acciones administrativas, judiciales y penales, en contra de 26 locales pertenecientes a nuestra Asociación, con el ánimo de dividirnos y crear incertidumbre entre nuestros compañeros, impidiendo la iniciación del proceso de regularización, afirmando paladinamente que los comerciantes de la Bahía y de la plaza Ipiales en Quito, pueden continuar comerciando productos ilegales, mientras sancionarán selectivamente a nuestros socios, que han emprendido el proceso de legalización y regularización.

En tal virtud, Señor Presidente, conocedores de su profunda sensibilidad, de su compromiso con los intereses de nuestro pueblo, nos dirigimos a usted muy respetuosamente, para solicitarle nos conceda unos minutos de su preciado tiempo, para exponerle nuestro proyecto de regularización y legalización del comercio de productos audiovisuales y conexos, con el fin de contar con su respaldo, para llevar adelante uno de los procesos históricos de legitimación de la economía popular, gracias a las condiciones creadas por la Revolución Ciudadana.

MUCHAS GRACIAS, SEÑOR PRESIDENTE.

Atentamente,

  
Omaira Moscoso Pezo  
CI#090903534-7  
PRESIDENTA-ASECOPAC  
GUAYAQUIL.

  
Santiago Troya Lanas  
CI#171686411-9  
PRESIDENTE-ASECOPAC  
QUITO.

Dirección (Dom):

Samanes 6.Mz. 959 Villa 4.  
Gye.

Mail: [asecopac@gmail.com](mailto:asecopac@gmail.com)

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Ecuador

## Translation and Summary of Appendix 1

**\*Note: The following is a summary of the open letter written by ASECO PAC to the Ecuadorian president Rafael Correa, delivered on January 14<sup>th</sup>, 2011.**

**ASECO PAC**

**OPEN LETTER  
TO THE CONSTITUTIONAL PRESIDENT OF THE REPUBLIC OF ECUADOR  
RAFAEL CORREA DELGADO**

**From the Ecuadorean Association of Sellers and Distributors of Audiovisual and Related Products**

**Mr. President,**

The gap that separates rich countries from poor ones is only becoming increasingly deeper; and it is no longer only an economic or technological gap, but also cultural. The efforts that countries like ours have to do in order to reach a higher standard of living are enormous, and they must remain constant if we want to achieve the goals that your government has proposed on its national development plan.

We are a group of Ecuadorean workers dedicated to the sale of entertainment products and to promote local and foreign culture. We want to be part of the development process proposed by your government where work opportunities are offered in equal measure to everybody: we want to fulfill our duties as citizens and in the same measure expect to acquire our legal rights to work. Nevertheless, our work has been prosecuted and harassed at the precise moment when we are offering our intentions of legitimizing and legalizing our work.

The Ecuadorean Institute of Intellectual Property, IEPI, should provide us with the opportunity for engaging in a civil conversation in order to agree on the possibilities that are available for allowing us to continue with our work while guaranteeing the protection of copyright.

Therefore, all the distributors and salespeople members of ASECO PAC:

1. Consider that it is necessary to start negotiation processes with the authorities for the protection of copyright and express our will to pay our respective obligations under current Ecuadorean laws for the protection of intellectual property.
2. We refuse to condone and justify the extreme inequality that has characterized the production and commercialization of audiovisual and other cultural goods in our country.
3. We want the current copyright legislation to adjust to the actual economic and social reality of our country and thus halt the dependence on arbitrary and unrealistic laws that are not socially aware and represent no benefit whatsoever for the Ecuadorean public.

Our Constitution guarantees the right to work as a responsibility of the State on the article no. 325 and on article 380 also establishes that the State must also guarantee access to a diverse cultural offer and their massive distribution. Therefore, the current position of the IEPI: to confiscate goods and shut down stores where films and other cultural goods are sold without offering any answers to the situation or listening to our propositions is a clear violation of these rights.

We consider the current copyright legislation and the enforcement of it by the IEPI to be anti-constitutional and discriminatory. We are nothing but salespeople trying to make a living, selling products that are popularly demanded, we are not delinquents and we strongly disagree with the manner in which the authorities are

handling our situation. Therefore, we have gathered by forming ASECOPAC and together as an organization we appeal to your political authority with the following objectives:

- 1- ASECOPAC wants to guarantee that the right to work of sellers of cultural products is respected.
- 2- ASECOPAC wants to start a negotiation process with the relevant authorities in order to launch a regularization process of the commercial activities of the salespeople and distributors who work in the commercialization of films, audio, video games software and other related products.
- 3- ASECOPAC is committed with respecting and defending the copyright of Ecuadorean authors, composers and filmmakers through following the proper conduct as sanctioned by the law.
- 4- ASECOPAC will seek for a solid judicial structure that can guarantee the proper balance between the needs and demands of the different social actors –producers, sellers, distributors, consumers and the authorities- involved in the process of legalization and regularization of commercial activities related to the trade of cultural products.
- 5- ASECOPAC puts its national network of distributors and salespeople at the disposal of all the local film and TV producers willing to sell their products through our association.

Aware of your commitment to the interests of our people, we respectfully address you to request a few minutes of your time to present you our project for the regularization and legalization of audiovisual and related products.

THANK YOU VERY MUCH MR. PRESIDENT

Signed:

OMAIRA MOSCOSO PEZO  
PRESIDENT – ASECOPAC  
GUAYAQUIL

SANTIAGO TROYA LLANAS  
PRESIDENT - ASECOPAC  
QUITO

*Followed by 7 folios with the signatures of the members of ASECOPAC.*

Appendix 2 – Letter offering a proposal from ASECO PAC to the Ecuadorean President.



PRESIDENCIA DE LA REPÚBLICA  
DEL ECUADOR  
2011 MAR 15 PM 12:39  
CORRESPONDENCIA

SV ✓

ASOCIACION ECUATORIANA DE COMERCIANTES Y DISTRIBUIDORES DE PRODUCTOS AUDIOVISUALES Y  
AUXILIOS MUTUOS  
ACUERDO MINISTERIAL Nº 10.332

Quito, 15 de marzo del 2011

Economista.  
Rafael Correa Delgado.

0000009623

**PRESIDENTE CONSTITUCIONAL DE LA REPUBLICA DEL ECUADOR**  
Quito.

Señor Presidente.

Reciba un cordial saludo de la Asociación Ecuatoriana de Comerciantes y Distribuidores de Productos Audiovisuales y Auxilios Mutuos. "ASECOPAC" Organización de Comerciantes Autónomos que viene desarrollando sus actividades desde el año 2009, organización reconocida por el Estado Ecuatoriano mediante acuerdo Ministerial Nº 10332 del Ministerio de Inclusión Económica y Social, como integrante de la Red Nacional de Organizaciones Sociales del Estado Ecuatoriano.

Nuestra Asociación busca preservar y salvaguardar los derechos constitucionales de todos sus afiliados, para que puedan ejercer el legítimo derecho al trabajo, contemplado en la Constitución y Leyes de la República del Ecuador y tiene como principio fundamental la iniciación de negociaciones con las autoridades del Estado ecuatoriano para poner en marcha procesos sistemáticos y paulatinos de legalización y regularización de las actividades económicas de todos sus miembros a nivel nacional con el objetivo de, cumplir a plenitud con los preceptos legales de Propiedad Intelectual de los productos fonográficos, videográficos, películas y productos conexos que en la actualidad incumplen con estas obligaciones establecidas en la ley.

Para el cumplimiento de estos preceptos hemos realizado algunas reuniones con autoridades del Gobierno Nacional, de la Presidencia de la República, del Ministerio de Cultura, del Ministerio de Inclusión Económica y Social y del Instituto Ecuatoriano de Propiedad Intelectual IEPI, con el fin de establecer los mecanismos idóneos para llevar adelante este complejo proceso que tiene una estrecha relación con el acceso a la cultura y la evolución de las industrias culturales en nuestro país.

El proceso de regularización y legalización busca cumplir con la tarea histórica de promover y defender los derechos de propiedad intelectual de los autores, compositores y cineastas ecuatorianos, así como de las obras internacionales que se comercian en nuestro país, impulsando la creación de una estructura jurídica sólida que busque mantener en el marco del equilibrio y de la más estricta justicia, las relaciones entre los actores sociales inmersos en las industrias culturales: la

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Guayaquil – Ecuador  
asecopac@gmail.com  
Blog: <http://asecopac.blogspot.com/>  
Telf: 093807935



Appendix 2 – Letter offering a proposal from ASECO PAC to the Ecuadorean President.



ASOCIACION ECUATORIANA DE COMERCIANTES Y DISTRIBUIDORES DE PRODUCTOS AUDIOVISUALES Y  
AUXILIOS MUTUOS  
ACUERDO MINISTERIAL Nº 10.332

producción y realización de productos fonográficos, videográficos, películas y los sectores involucrados en la distribución y comercialización de estos productos.

Como primera medida la ASECO PAC propone un proceso que se iniciará con la puesta a disposición de los cineastas, teleastas, realizadores y productores musicales ecuatorianos de la más completa red nacional de distribución y comercialización de productos audiovisuales, con estricto respeto de las normas vigentes de derechos de autor, abriendo nuestro mercado y fuerza nacional de ventas con cerca de 60.000 puntos de comercialización al Cine y a la producción musical ecuatoriana.

Tenemos el agrado de poner a su consideración nuestra propuesta de **PROYECTO DE LEGALIZACIÓN Y REGULARIZACIÓN DEL COMERCIO DE MUSICA Y PELICULAS A TRAVES DE MEDIOS DIGITALES** que esperamos sea analizado en mesas de negociación con la participación de los ciudadanos involucrados en las cadenas de valor de las industrias culturales, dichas ruedas de negociación serán manejadas con transparencia con la participación de importantes Instituciones del Estado, promoviendo la participación de los actores del sector interesados en la regulación y legalización de la comercialización de productos audiovisuales, quienes trabajarán en la búsqueda de procesos consensuados que permitan la plena vigencia de los derechos de autor, hasta convertirlos en política de estado, promoviendo la realización de estudios detallados sobre el impacto del derecho de autor y los derechos conexos en la economía nacional.

Conocedores de su profunda sensibilidad, de su alto compromiso con la vigencia de los Derechos de Propiedad Intelectual y con los intereses del desarrollo de las industrias culturales en nuestro país, nos dirigimos a usted muy respetuosamente para solicitarle su decisiva contribución en este proceso histórico que tiene como finalidad la plena vigencia de los Derechos de Propiedad Intelectual en el área Audiovisual en el Ecuador y la legitimación de un importante sector de la economía popular, gracias a las condiciones creadas por la Revolución ciudadana.

Por la atención a la presente le anticipo mis agradecimientos.

Atte.

  
Lic. Omaira Moscoso Pezo  
PRESIDENTA DE ASECO PAC.  
C.I. 090 903 53 4-7

  
Antonio Pomaquiza  
PRESIDENTE ASECO PAC- PICHINCHA.

  
Marcisa Chalá  
SECRETARIA DE ASECO PAC – PICHINCHA

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Anexo 37 Fojas

Translation and Summary of Appendix 2

**\*Note: The following is a summary of the letter with a proposal for the regularization of the informal audiovisual market in Ecuador, written by ASECO PAC to the Ecuadorian president Rafael Correa, delivered on March 15<sup>th</sup>, 2011.**

ASECOPAC

Quito, Ecuador, March 15<sup>th</sup>, 2011

**RAFAEL CORREA DELGADO  
CONSTITUTIONAL PRESIDENT OF THE REPUBLIC OF ECUADOR  
QUITO**

Mr. President,

Please accept a kind greeting from the Ecuadorean Association of Sellers and Distributors of Audiovisual and Related Products (ASECOPAC), an organization of autonomous traders that has been operating since 2009.

Our organization seeks to protect the constitutional rights of all our affiliates so that their right to work can be respected. For this reason, we have already started negotiations with the authorities of the Ecuadorean State to allow for a gradual process of legalization and regularization to materialize while abiding to the current Intellectual Property laws.

To allow for the accomplishment of these goals, we have already organized meetings with authorities from the National Government such as the Presidency of the Republic, the Ministry of Culture, the Ministry of Economic and Social Inclusion and the Ecuadorean Institute of Intellectual Property (IEPI).

The process of regularization and legalization seeks to achieve the historical goal of defending the intellectual property of both local and foreign cultural goods while maintaining a proper social balance that can benefit everyone involved.

The first step to begin this process has been to place our national network of distributors and salespeople at the disposal of all the local film and TV producers willing to sell their products through our association.

We also present for your consideration the **Project for the legalization and regularization of the trade of music and films on the digital formats of CD and DVD** which we expect will be analyzed during the negotiations already planned.

We are thankful for the attention you will devote to our proposal.  
Sincerely,

OMAIRA MOSCOSO PEZO  
PRESIDENT – ASECO PAC  
GUAYAQUIL

ANTONIO TOMAQUIZA  
PRESIDENT – ASECO PAC  
PICHINCHA

NARCISA SALÁ  
SECRETARY – ASECO PAC  
PICHINCHA

Appendix 3 – Letter from the Ecuadorean Presidency to ASECOPAC.



**PRESIDENCIA DE LA REPÚBLICA DEL ECUADOR**

Oficio No. SUBDPR-O-11-004903

Quito, 03 de febrero de 2011

Señor  
Elena Omaira Moscoso Pezo  
**Presidenta**  
**ASOCIACIÓN ECUATORIANA DE COMERCIANTES Y DISTRIBUIDORES DE**  
**PRODUCTOS AUDIOVISUALES Y CONEXOS, ASECOPAC**  
Quito

De mi consideración:

Acuso recibo la Carta Abierta dirigida al señor Presidente Constitucional de la República, mediante al cual insiste en su pedido de ayuda con el Proyecto de regularización y legalización del comercio de productos audiovisuales.

Al respecto, cúmpleme indicar que su documento se ha enviado para análisis y respuesta de la ingeniera Ximena Pnce, Ministra de Inclusión Económica y Social.

Con sentimientos de distinguida consideración.

Atentamente,  
**DIOS, PATRIA Y LIBERTAD**

A handwritten signature in black ink, appearing to read 'Jorge Oswaldo Troya Fuertes', with a horizontal line underneath.

Ing. Jorge Oswaldo Troya Fuertes  
**SUBSECRETARIO GENERAL DEL DESPACHO PRESIDENCIAL**

TV/mn/bs

Translation of Appendix 3

**PRESIDENCY OF THE REPUBLIC OF ECUADOR**

**Document SUBDPR-O-11-004903**  
**Quito, February 3<sup>rd</sup>, 2011**

Mrs.  
Omaira Moscoso  
President  
Ecuadorean Association of Sellers and Distributors of Audiovisual and Related Products, ASECOPAC  
Quito

For your consideration,

I confirm to you the reception of the letter addressed to the Constitutionally Elected President of the Republic, through which you request for aid with the Project for the legalization and regularization of the trade of audiovisual products.

Concerning this, allow me to inform you that your document has been sent to be analyzed and addressed by Mrs. Ximena Ponce, Minister of Social and Economic Inclusion.

With all due respect.

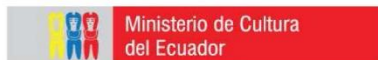
Sincerely,

Jorge Oswaldo Troya Fuertes  
GENERAL ASSISTANT SECRETARY OF THE PRESIDENTIAL OFFICE

GOD, NATION AND FREEDOM

Carondelet Palace - García Moreno 1043 y Chile. Phone: 3827000  
[www.presidencia.gob.ec](http://www.presidencia.gob.ec)

## Appendix 4 – Letter from the Ecuadorean Ministry of Culture to ASECOPAC.



Av. Colón E5-34 y Juan León Mera  
Edif. Ministerio de Cultura  
Telfs: 02 381-4550  
[www.ministeriodecultura.gov.ec](http://www.ministeriodecultura.gov.ec)

Oficio No. 0493-MC-DM-11

Quito, 23 de marzo de 2011

Señora Licenciada  
Elena Omaira Moscoso Pezo  
**Presidenta**  
**ASOCIACIÓN ECUATORIANA DE COMERCIANTES Y DISTRIBUIDORES DE PRODUCTOS AUDIOVISUALES Y CONEXOS, ASECOPAC**  
Presente.

De mis consideraciones:

Como alcance a la reunión mantenida con sus representantes el pasado 4 de febrero del 2011 y a los planteamientos expresados mediante nota escrita entregada en el marco de la referida reunión, me es grato manifestarles que se han desarrollado algunas reuniones de coordinación con las autoridades de la institución competente en materia de propiedad intelectual, a fin de establecer estrategias conjuntas para fortalecer los mecanismos para lograr el irrestricto respeto a los derechos de autor.

Para cumplir este propósito se ha formado un grupo de trabajo interinstitucional que ha desarrollado una intensa agenda de trabajo, estableciendo de forma prioritaria el desarrollo de una cadena de distribución de bienes culturales de producción nacional utilizando la experiencia y capacidades ya instaladas en la organización que usted preside.

Por lo expuesto, me es grato invitarle a Usted o su delegado a participar en una reunión de trabajo el próximo miércoles 30 de marzo, a las 10h00, en el despacho Viceministerial.

Con sentimiento de distinguida consideración.

Atentamente,

Mgs. Erika Sylva Charvet  
**MINISTRA**

C.C.: Señora  
Ivonne Marisela Rivera Yáñez  
**Viceministra**  
**MINISTERIO DE CULTURA**



Translation of Appendix 4

**Government of the Republic of Ecuador**

**Ministry of Culture of Ecuador  
Document No. 0493-MC-DM-11  
Quito, March 23<sup>rd</sup>, 2011**

Mrs.

Omaira Moscoso

President

Ecuadorean Association of Sellers and Distributors of Audiovisual and Related Products, ASECOPAC

For your consideration,

As a product of the meeting held with your representatives the past 4<sup>th</sup> of February of 2011, and answering the concerns expressed through a written memorandum that has handed on during said meeting, it is my pleasure to inform you that several coordination gatherings have taken place with the relevant authorities in matters of Intellectual Property, with the purpose of establishing joint strategies to strengthen the mechanisms to accomplish a total respect towards copyright.

To accomplish this goal, we have appointed a group for inter-institutional work that has determined an intense working schedule in which it the development of a distribution chain for national cultural works is going to be prioritized, using the experience and acquired skills of the organization you lead.

Consequently, I am pleased to invite you or a delegate to take place in a work meeting on Wednesday, May 30<sup>th</sup>, at 10:00 am in the vice-ministerial office.

With all due respect.

Sincerely,

Erika Sylva Charvet

MINISTER OF CULTURE

C.C.: Mrs. Ivonne Marisela – Vice Minister of Culture

Appendix 5 – Letter from the IEPI (Ecuadorian Institute for Intellectual Property) to ASECOPAC.

Instituto Ecuatoriano de la Propiedad Intelectual



Quito D.M. 14 de marzo del 2011  
Oficio No. 024 – 2011 DNDAyDC- IEPI

Señora  
**Lic. Omaira Moscoso Pezo**  
**PRESIDENTA ASECOPAC**  
Presente.

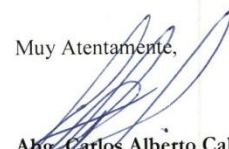
De mi consideración:

Con motivo de las mesas de diálogo que se va iniciar como consecuencia de la iniciativa presentada por su representada la ASECOPAC – Asociación Ecuatoriana de Comerciantes y Distribuidores de Productos Audiovisuales y Auxilios Mutuos; *“Proyecto de Legalización y Regularización del Comercio de Música y Películas a través de Medios Digitales CD’S y DVD’S”*, me complace hacerles llegar una cordial saludo, a la vez que le extendemos una invitación a usted y dos representados de su Entidad a participar en forma activa de la mesa de diálogo, por considerar muy necesaria su presencia para el día jueves 24 de marzo del 2011 a las 9h30 en las oficinas de la Institución.

Con el objeto de tomar medidas que beneficien a la comunidad y se dé claro cumplimiento de la Ley de Propiedad Intelectual y su Reglamento.

Seguros de contar con su valiosa presencia, y agradeciéndoles de antemano la atención a la presente, me suscribo de ustedes.

Muy Atentamente,

  
**Abg. Carlos Alberto Cabezas Delgado**  
**DIRECTOR NACIONAL DE DERECHOS DE AUTOR**  
**Y DERECHOS CONEXOS – IEPI**

PD. Favor confirmar su asistencia al correo [mmontenegro@iepi.gob.ec](mailto:mmontenegro@iepi.gob.ec)

c.c. Dr. Andrés Ycaza Mantilla, Presidente del IEPI.  
c.c. Lic. Noemí Castro, Directora de Comunicación del IEPI

Translation of Appendix 5

**Ecuadorean Institute for Intellectual Property (IEPI)**

Quito, March 14th, 2011

Document No. 024-2011  
Ecuadorean Institute for Intellectual Property  
Ecuadorean Direction for Copyright

Mrs.  
Omaira Moscoso Pezo  
President of ASECOPAC

For your consideration,

On the occasion of the meetings that will take place on account of the initiative presented by the institution ASECOPAC (*Ecuadorean Association of Sellers and Distributors of Audiovisual and Related Products*), represented by you, titled "**Project for the legalization and regularization of the trade of music and films on the digital formats of CD and DVD**", I am pleased to offer a kind welcome to you and two representatives of your organization to actively participate in the meeting, since we regard your presence as of the utmost importance on the assembly that will take place on Thursday, March 24<sup>th</sup>, 2011 at 9:30 am in the offices of our institution.

This, with the purpose of taking the necessary measures that will ultimately benefit our community and also allow for the proper compliance with Intellectual Property laws and regulations.

Certain that we will count with your important presence, and also thanking you beforehand for your attention to this communication, I present my best regards.

Sincerely,

Carlos Alberto Cabezas Delgado  
National Director of Copyright and Related Legislation  
IEPI

PD. Please confirm your attendance at the e-mail address: [mmontenegro@iepi.gov.ec](mailto:mmontenegro@iepi.gov.ec)

cc. Andrés Ycaza Mantilla, President of the IEPI  
cc. Noemí Castro, Communications Director, IEPI



OFICIO CIRCULAR.




Por medio de la presente el CONSEJO NACIONAL DE CINEMATOGRAFÍA DEL ECUADOR informa a los representantes de los locales de venta de DVDs que la COLECCIÓN DE CINE ECUATORIANO, también conocida como LAS CUATRO JOYAS DEL CINE NACIONAL, conformada por los títulos DOS PARA EL CAMINO, LA TIGRA, FUERA DE JUEGO y RATAS, RATONES, RATEROS, se encuentra en circulación a través de la organización **ASECOPAC** únicamente, la cual está debidamente autorizada mediante un convenio suscrito entre las partes para distribuir a nivel nacional la referida colección. El precio oficial de venta de cada película es 2,99 USD, ningún otro valor está autorizado.

**ASÍ MISMO, NINGUNA OTRA ASOCIACIÓN, PERSONA U ORGANIZACIÓN ESTÁ AUTORIZADA POR ESTA INSTITUCIÓN PARA REALIZAR LA DISTRIBUCIÓN DE LA REFERIDA COLECCIÓN.**

Información que se pone en conocimiento de la opinión pública para los fines pertinentes.

Dado en Quito, Distrito Metropolitano a los 15 días del mes de noviembre de 2011

  
Soc. Jorge Luis Serrano Salgado

DIRECTOR EJECUTIVO

CONSEJO NACIONAL DE CINEMATOGRAFÍA DEL ECUADOR



Av. Colón E5 34 y Juan León Mera Edif. Ministerio de Cultura, piso 1B  
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Translation of Appendix 6

## **MEMORANDUM**

Through the present document, the NATIONAL COUNCIL OF CINEMATOGRAPHY OF ECUADOR informs the representatives of DVD retail locations that the ECUADOREAN CINEMA COLLECTION, also known as the FOUR JEWELS OF NATIONAL CINEMA, composed of the titles DOS PARA EL CAMINO (Two for the Road), LA TIGRA (The Tigress), FUERA DE JUEGO (Offside) and RATAS, RATONES, RATEROS (Rats, mice and thieves), is available to be distributed exclusively by ASECOPAC, an organization that has been properly authorized through an agreement signed between the relevant parts to distribute the mentioned collection nationwide. The authorized retail price of the collection is of 2,99 USD, and no other price is allowed.

LIKewise, NO OTHER ASSOCIATION, PERSON OR ORGANIZATION IS ALLOWED BY OUR INSTITUTION TO DISTRIBUTE AND SELL THE MENTIONED COLLECTION.

This information is publicly and widely released.  
Quito, November 15<sup>th</sup>, 2011.

## Appendix 7 - Texts and quotations originally in Spanish

The following are the quotations that were originally found in Spanish printed or audiovisual media and were translated to English by the author in the content of the thesis. They are organized by the Reference number unless stated otherwise and these numbers can be found in the **List of References**.

Ref. 1 — “En Colombia, como en el resto del mundo, es claro que el documental ha sido considerado como una herramienta para producir cambios sociales, construir memoria, poner en la mesa discusiones importantes, contar la vida de personas, pueblos, comunidades, instituciones, logrando generar cambios positivos en la sociedad. En Colombia esto ha sido más evidente por las condiciones sociales que han reinado desde que el cine existe.” (FDC, 2011, 17.)

Ref. 3 — “El vacío del cine no comercial y de las películas independientes, ese vacío lo está llenando el cine pirata.” (Martínez, 2011.)

Ref. 10 - 11 — “Afortunadamente cada día se producen más y mejores documentales.” [...] “No podemos decir que su divulgación sea óptima.” [...] “Es casi imperceptible y su difusión internacional corresponde a momentos coyunturales a veces trágicos como son los casos del documental cubano durante la primera década de la revolución.” (Sánchez, 2010.)

Quotation under the heading *Statement of the Problem* — “El problema de la viabilidad de los a los documentales radica entonces no tanto en qué se cuenta sino en cómo hacérselo llegar a los consumidores.” (FDC, 2011, 72.)

Ref. 12 — “Parece haber una gran dificultad para la distribución y exhibición de los documentales en ventanas tradicionales y no tradicionales.” (FDC, 2011,5.)

Ref. 14 — “Entre 1993 y el 2003, el promedio de películas estrenadas fue de 3,3 películas al año, mientras que entre 2004 y 2012 se cuadruplicaron.” (Anuario Estadístico de Cine Colombiano, 2012,12.)

Ref. 17 — “Tristemente estamos en el 89% de los recursos públicos dedicados al fomento de la producción y solamente dejamos el 11% de políticas de apoyo a la distribución.” (Stavnhagen, 2010.)

Ref. 20 — “Generar estrategias de diversificación de la producción para su distribución, exhibición y difusión en diferentes circuitos alternativos.” (Doclat, 2008.)

Ref. 31 — “Tiene que competir con los productos que ofrece la informalidad y con las preferencias que tienen los consumidores con respecto a los productos que ofrecen los negocios informales.” (ITAM, 2008, 132.)

Ref. 32 — “Se requiere hacer un mayor esfuerzo en las implicación de trámites y difundir masivamente los beneficios de la formalización.” (ITAM, 2008, 76.)

Ref. 35 — “Los usos y costumbres desarrollados por la población en torno al comercio informal de películas han terminado alimentando una confrontación entre la sociedad y la legalidad.” (Durant, 2009,76.)

Ref. 50 — “Si se ignoran, si no se tienen en cuenta, el tiempo y el olvido las hará desaparecer” (Hernández, quoted in Patiño 2009, 403).

Ref. 53 — “Nosotros no estamos hablando acerca de objetos propiamente, sino de personas.” (Hernández, 2012.)

Ref. 54 — “Nosotros no estamos hablando acerca de crear leyes y políticas para objetos, sino para seres humanos que tienen sentimientos, sueños y necesidades.” (Hernández, 2012.)

Ref. 57 — “Alrededor de 80% de colombianos que están en edad de trabajar y que no cotizan a la seguridad social.” (Montenegro, 2013.)

Ref. 58 — “No cotizan para asegurar un ingreso en la vejez” [...] “viven del día a día.” (Montenegro, 2013.)

Ref. 59 — “Los canales privados se configuran como una ventana importante para el 23% de los Documentalistas que han logrado distribuirlos.” (FDC, 2011, 53.)

Ref. 60 — “Hasta ahora no se ha logrado que se vuelva una ventana sostenible y con una demanda continua.” (FDC, 2011, 53.)

Ref. 61 — “Carece de empatía y de sinergia con la producción documental colombiana.” (FDC, 2011, 5.)

Ref. 62 — “Porque la política en Colombia y las políticas de la Comisión Nacional de Televisión con respecto al tema son muy pobres y no hay obligatoriedad.” (Garay, quoted in FDC, 2011, 83.)

Ref. 63 — “El canal más visto en Colombia de cable es *Discovery*; *Discovery* no pasa sino documental.” (Garay, Quoted in FDC, 2011, 67.)

Ref. 69 — “Cuando se trata de documentales, las salas de cine realmente no están interesadas en este género.” (Triana, 2012.)

Ref. 70 — “[...] pero en Colombia [la distribución en salas de cine] todavía está lejos de ser una ventana de distribución principal [para el cine documental].” (FDC, 2011, 50.)

Ref. 79 — “La comercialización de las películas piratas es una actividad tan normal y extendida que me atrevería a decir que tiene imagen pública de legalidad.” (Durant, 2009a, 47.)

Ref. 80 — “Una práctica social por la cual buena parte de las clases populares latinoamericanas acceden a un consumo importante de bienes culturales que de otra manera no podrían alcanzar.” (Getino, 2012, 139.)

Ref. 81 — “[...] despreciando los procesos sociales que se tejen alrededor de ella.” (Getino, 2012, 139.)

Ref. 83 — “[...] el derecho de acceso libre a la información y cultura que hoy reclama la sociedad global.” (Durant, 2009a, 12.)

Ref. 87 — “El análisis de las cifras mundiales del negocio cinematográfico, acompañado de algunas interpretaciones sobre la manera en que funciona el negocio informal y su interrelación con el mercado formal, nos revela que la piratería realmente no perjudica las economías de los productores de películas.” (Durant 2009a, 14.)

Ref. 88 — “Si entendemos el aparato legal de un país como el marco que todos aceptamos para convivir en respeto de unos y otros, al margen de los abusos y privilegios, entonces ¿cómo aceptar normas que están al servicio de unos pocos en detrimento de muchos?” (Durant, 2009a, 76.)

Ref. 89 — “Partiendo de que este es un sistema basado en precios injustos, no es posible que esto genere unas dinámicas diferentes a la exclusión y el rechazo.” (Botero, 2012.)

Ref. 92 — “Lo que hay es hambre y falta de oportunidades, escasez de dinero y ganas de trabajar.” (Arrieta, Pablo, quoted in Sánchez, Alfonso, 2011.)

Ref. 93 — “Aunque es importante comenzar a explorar estas ventanas, sus economías y modelos de viabilidad en Colombia son todavía una promesa y están por mostrar resultados concretos.” (FDC, 2011, 46.)

Ref. 94 — “Faltan políticas estatales frente a esa formación de públicos para mirar nuestra realidad de una manera más profunda a través del espejo del cine que es un espejo maravilloso que nos permite reflexionar sobre nuestros problemas.” (Gómez, 2012.)

Ref. 95 — “Se opta por las descargas gratuitas e ilegales en sitios *peer to peer*.” (Pardo, quoted in Lisboa, 2012.)

Ref. 96 — “La discusión acerca de qué modelo de internet quiere cada país está amarrada en algunos casos a presiones comerciales de superpotencias como en el caso Chile y Colombia.” (La Rotta, 2011, 2.)

Ref. 98 — “Encontrar o equilibrar un modelo de negocio con las necesidades de expresión, educación y formación del conocimiento de todos los demás que se conectan al cable.” (La Rotta 2011, 2.)

Ref. 101 — “Paradójicamente el concepto de economía informal nació en el tercer mundo.” (Hernández, 2012.)

Ref. 107 — “Ésta es una de las mayores razones para explicar porque este país tiene una de las peores distribuciones de ingreso per cápita en el mundo.” (El Tiempo, 2012.)

Ref. 113 — “La conciencia de un país que mira su pasado puede ayudar a resolver muchos problemas. Pero no se trata de reconstruir la Historia para que no se vuelva a repetir sino para que la gente recupere su dignidad... la dignidad de un pueblo entero. Un pueblo que aún está dormido, engañado y permanentemente amedrentado.” (Moreno, quoted in Cruz, 2008.)

Ref. 114 — “Otra debe ser la medida que logre dimensionar la importancia de un documental para la sociedad y la comunidad.” (FDC, 2011, 16.)

Ref. 115 — “[...] tener en cuenta la calidad de la película, la generación de una mayor participación y conciencia pública, la generación de un fuerte movimiento social y algunas veces hasta un cambio social y como se ha convertido muchas veces en un precursor de acciones sociales colectivas.” (FDC, 2011, 17.)

Ref. 117 — “[...] la televisión es tal vez uno de los principales vehículos para transmisión de modelos de una sociedad [...] sin embargo si tenemos una televisión pública que no se ve, pues los modelos finalmente los está reforzando es la televisión privada.” (Avisambra, quoted in FDC, 2011, 15.)

Ref. 118 — “En los últimos años, se han producido más películas colombianas que nunca antes, gracias a la Ley de Cine.” [...] “Es un hecho que la cultura cinematográfica atraviesa por un momento muy difícil en términos de la actividad crítica y la exhibición independiente, no comercial, dificultades que algunos le atribuyen a la misma puesta en práctica de la Ley.” (Caicedo, 2011.)

Ref. 119 — “Me parece que en ese sentido si carezco de cierta formación cinematográfica esencial para saber quiénes son los que distribuyen películas y documentales aquí. ¿Quiénes son?” (Chaparro, 2011.)

Ref. 125 — “[...] la piratería es una cosa que para la industria es mala, pero para el conocimiento colectivo, en general funciona.” (Pérez, 2011.)

Ref. 142 — “En Colombia solo el 15% de las películas que hay en los hogares colombianos son originales, las demás provienen del mercado pirata.” (La República, 2009, 12.)

Ref. 164 — “La Dirección de Cinematografía se configura desde un principio alrededor de aspectos considerados fundamentales: la capacitación del sector, la formación de públicos, la infraestructura técnica, el desarrollo de proyectos, el apoyo a la producción, la promoción del territorio nacional como escenario de rodaje para películas extranjeras, la divulgación y exhibición del cine colombiano en circuitos comerciales y culturales, y la conservación, preservación y recuperación del patrimonio filmico y la memoria audiovisual.” (Ministerio de Cultura, 2010, 505.)

Ref. 167 — “Este fondo esta alimentado por los aportes sobre las ganancias de la taquilla que hacen exhibidores, productores y distribuidores. La otra herramienta fundamental son los estímulos tributarios que se crean para fomentar a inversionistas y a donantes que se vinculen con proyectos cinematográficos. Estos inversionistas y donantes tienen una deducción tributaria en su declaración de renta del 165% de acuerdo con la última reforma tributaria.” (Martínez, Adelfa, interviewed in *Congreso y Sociedad*, 2013.)

Ref. 173 — “[...] espera mantenerse en el tiempo como un espacio para la producción documental, de ficción, de largometraje y cortometraje que tiene problemas de circulación en sus países de origen y más aún, en los demás países de la región.” (Pantalla Colombia, 2013.)

Ref. 177 — “A los tres grandes jugadores del primer mundo —Estados Unidos, Europa y China— Khanna los llama directamente imperios: grandes organizaciones políticas que dominan sobre un vasto territorio. Una de las tesis centrales de Khana es que en la práctica Estados Unidos, Europa y China ya dominan el mundo completamente y no dejarán que otros países, como Rusia, Japón, o India obtengan el mismo nivel de influencia fuera de sus propios territorios. El mundo es tri-polar, y lo seguirá siendo durante varias décadas o siglos.” (Castillo, 2009.)

Ref. 182 — “Esa es la proporción de lo que le vale a una persona en el tercer mundo lo que usted pretende cobrarle. O sea, si usted está en un país desarrollado tenemos un promedio de cuánto gana y por eso una película le vale US\$20, entonces pedirle a un pobre, pero extremadamente pobre, indio o brasileño que pague US\$20 por una película es como pedirle a Ud. que pague US\$2000, ese es el equivalente económico. Entonces, si usted no quiere pagar los US\$ 2000, aquí está un grupo de apoyo en Facebook, usted puede ir allá y está la lista de los sitios donde se puede descargar gratis, eso sí, pirata; o una lista de nombres de personas con su correo que están dispuestas en el tercer mundo a descargarlas por usted y enviársela por correo, pero Usted es pirata.” (Botero, 2012.)

Ref. 186 — “La Pre-producción comprende las actividades previas al rodaje, desde la consecución de los recursos humanos, técnicos y financieros, para la realización del proyecto, hasta el diseño y administración del plan de trabajo.” (Rojas, 2010, 8.)

Ref. 190 — “Esta es la etapa de la verdadera comercialización del audiovisual, aunque ya debemos tener claro que esta se ha comenzado a preparar y negociar desde el comienzo, en ella se trata de establecer las mejores posibilidades para el éxito, definiendo: qué tipo de circuitos utilizar y en qué condiciones hacer llegar el audiovisual al público.” (Medellín, 2008, 103.)

Ref. 201 — “La televisión se ha desarrollado históricamente en la región como un proyecto fundamentalmente comercial y los medios públicos no han logrado ocupar, hasta ahora, un lugar central dentro del espectro mediático.” (d+i Llorente & Cuenca, 2013, 3.)

Ref. 211 — “El gran drama de nuestro cine ya no es la producción porque la Ley aseguró un mínimo de películas anuales, ahora el problema es la distribución y la exhibición. Mientras el cine en Colombia siga siendo un monopolio de pocas empresas, cuyo único objetivo es exhibir el cine norteamericano, seguirá siendo una linda anécdota. Merecemos competir en igualdad de condiciones y no salir en 15 días de la pantalla.” (Becerra, quoted in *El Espectador*, 2011.)

Ref. 218 — “Cuando el cine se aleja del espectáculo el público se aísla y por lo tanto la producción desconfía la distribución desconfía y deja de interesarse en el cine colombiano.” (Martínez, 2011.)

Ref. 219 — “En el primer trimestre del 2011 la taquilla volvió a renacer con tres estrenos significativos: *El Paseo* de Dago García/Harold Trompetero, *El Jefe* de Jaime Escallón y *Los Colores de la Montaña* de Carlos César Arbelaéz, que resaltaron que el problema de la mala taquilla colombiana de los últimos tres años se debe más a temas que no le gustan al público, a mala o pobre publicidad, que a un alejamiento del público.” (Luzardo, 2012.)

Ref. 220 — “Buscar relaciones colaborativas entre los eslabones de la cadena, en especial los directores, productores, distribuidores y exhibidores. Los distribuidores y exhibidores tienen la experiencia suficiente para

guiar a los realizadores en la búsqueda de aspectos que resulten atractivos para los espectadores y por consiguiente que incrementen la taquilla.” (Aragón, 2009, 99.)

Ref. 221 — “Revisión de los criterios de evaluación de los proyectos presentados a las convocatorias del Fondo para el desarrollo cinematográfico (FDC), para que sean escogidos proyectos con alta probabilidad de éxito y rentables para que activen la cadena de abastecimiento de cine en Colombia.” (Aragón 2009, 99.)

Ref. 223 — “[...] responder a preguntas tan sencillas y fundamentales como: ¿Qué piensa el público nacional de “su” cine? ¿Qué espera de éste? ¿Qué lugar ocupa en su imaginario? ¿Constituye (y ¿en qué medida?) su identidad cultural? ¿Qué opinión tiene el público sobre las representaciones de Brasil en las películas nacionales?” (Mascarello, Fernando 2003, p.16, quoted in Mascarello, 2006,149.)

Ref. 225 — “Aunque le duela a muchos de nuestros nuevos cinematografistas, el público va a ver películas que le gustan, que llenan sus expectativas y no por su nacionalidad, por factura técnica o por simple chauvinismo.” (Luzardo, 2012.)

Ref. 226 — “Nunca vamos a hacer las películas que hablen de nosotros como nación, como país, que profundicen en nuestros conflictos, en lo que emociona y en lo que entristece a los colombianos, que profundicen en lo que nos pasa todos los días, porque el público no es un público exigente y como recibe tan malas noticias todos los días en los noticieros, entonces cunde el miedo entre los realizadores con otra tragedia más en el cine y no hay una verdadera conciencia de construcción de sociedad, de construcción de discurso, de mirar nuestra realidad a través del espejo del cine que es un espejo maravilloso que nos permite reflexionar sobre los problemas.” (Gómez, 2012.)

Ref. 227 — “[...] jugar con lo que quiere el público. De tal manera que se llegue como a un punto de diálogo entre lo que quiere el público y lo que quiere el realizador.” (Martínez, 2011.)

Ref. 228 — “Por ejemplo en Estados Unidos existe la forma de llegar a la película, después a menor precio. Entonces la primera semana que es estreno, vale por decir alguna cosa, diez dólares; la segunda ya vale ocho y la tercera vale 6 y termina valiendo 2 dólares en los barrios lejanos de Nueva York o en las ciudades pequeñas o intermedias.” (Parra, 2011.)

Ref. 231 — “Así como pusieron todo el empeño en la segunda ley de cine, que favorece ante todo a los intereses extranjeros, deberían hacer lo mismo en una ley que regule a los exhibidores; una venta mínima de exhibición y unas condiciones favorables que les den chance a nuestras películas en la taquilla.” (Bustamante, Diana, quoted in El Tiempo, 2013.)

Ref. 250 — “Todas las películas tienen licencia de Creative Commons que permiten que se pasen y distribuyan en todo tipo de cine-clubes sin ánimo de lucro.” (Martín, 2011.)

Ref. 252 — “Más de doce millones de espectadores, 7.000 cortometrajes, treinta países participantes y medio centenar de cineastas implicados como jurado.” (EFE, quoted in cine latinoamericano.org)

Ref. 255 — “El grupo de asalariados cuya relación de trabajo, de derecho o de hecho, no está sujeta a la legislación laboral nacional, al impuesto sobre la renta, a la protección social o a determinadas prestaciones relacionadas con el empleo.” (OIT, 2004 quoted in Cárdenas y Mejía, 2007, 3.)

Ref. 257 — “Esto indicaría que mejoras en el nivel educativo de los individuos puede aportar en la reducción de la informalidad, especialmente para esa fracción e individuos jóvenes cuyas alternativas son en la mayoría de los casos engrosar las filas del desempleo o entrar al sector informal, aceptando trabajos sin seguridad social.” (Galvis, 2012.)

Ref. 259 — “Asimismo, como las empresas de la economía informal no están registradas ante las autoridades, no pueden hacer uso de ciertos bienes públicos esenciales, tales como la justicia y los programas gubernamentales de capacitación. Además, cuando surgen problemas de protección a los derechos de propiedad o conflictos similares, se deben utilizar mecanismos alternos que, en general, se encuentran al margen de la ley.

A su vez, esta situación mina la capacidad institucional del país y es un terreno fértil para la corrupción y el deterioro de las instituciones.” (Cárdenas y Mejía 2007, 3.)

Ref. 282 — “No está a la luz de nadie, no está en centros tipo San Andresito, no está en la calle ni en el semáforo”. “Esta en lugares clandestinos, en apartamentos generalmente lujosos; está en casas de campo.” (Parra, 2010, 21.)

Ref. 286 — “Yo voy y se a quién buscar y quien me va a dar una buena copia. No tengo problemas interpersonales y si pasa algo con la película puedo pedir que me la cambien, no siempre es de ir y comprar sino de hacer trueques que es realmente interesante y uno se topa con unas personas que le llevan muchos años de camino y así mismo se va aprendiendo que es el plus de este negocio que a uno le puede dar el cine.” (Pérez, 2013.)

Ref. 287 — “[...] hay aproximadamente 10 a 12 chazas. Así se llaman los lugares donde uno vende películas. Podemos tener de 200 a 300 títulos, y diferentes copias de cada título, en un buen día se podrían vender la mitad de los títulos, al menos una copia. En cifras de dinero se podría decir que de \$ 150.000 a \$300.000 diarios de venta es bueno pero en ocasiones no se vende o solo se venden \$50.000.” (Pérez, 2013.)

Ref. 288 — “[...] mucho cine francés, Nueva ola es lo que más se vende, realismo español, experimental hay un público muy selecto, de animación en stop-motion también entonces nosotros buscamos películas selectas para ese público. También tienen un público selecto de profesores que prefieren comprar películas difíciles de encontrar de cine clásico colombiano de principios del siglo XX, hasta más o menos los años 70.” (Pérez, 2013.)

Ref. 290 — “[...] a no hablar de esa cadena, se obliga a no contar de los mecanismos comerciales como personas, lugares, transportes, horarios, cantidades, precios, etc.; se compromete a ser un "callejero" un "pobrecito". Ello garantiza que cualquier acción de las autoridades competentes termine siendo inicua para las conexiones grandes de la cadena.” (PRACI, 2010, 27.)

Ref. 292 — “Los productos apócrifos, mejor conocidos como ‘piratería’, son aquellos que ostentan ser originales, sin serlo. Son productos falsificados que no cuentan con los estándares mínimos de calidad; objetos que son vendidos a precios por debajo del producto original y cuya venta lacera a la economía de los autores, la industria legalmente constituida [...]” (APCM, 2008.)

Ref. 311 — “Externalidades positivas de las actividades extralegales.” (Hernández, 2012.)

Ref. 312 — “Hacer popular un producto por medio de la distribución del mercado pirata, es una externalidad positiva de la piratería porque se produce un efecto red , que hace que todo el mundo quiera tener ese producto, lo populariza. Quien tiene los recursos lo compra en el mercado legal pero quien no, va hacer lo que sea para obtenerlo, así no sea original, porque no quiere estar excluido de tener algo que es popular, de algo que probablemente es bueno porque todo el mundo ya lo tiene o lo quiere adquirir.” (Hernández, 2012.)

Ref. 313 — “La economía está para servir a las personas y no las personas a la economía.” (Manfred Max-Neef.)

Ref. 334 — “Pero yo si le digo una cosa, ellos también fueron piratas en su momento, porque yo trabajé para una empresa de esas en su momento, ellos importaban 10.000 unidades de música y legalizaban 3.000: se pirateaban 7.000. Ellos eran piratas inmensos y de alto nivel.” (Mauricio, 2013.)

Ref. 335 — “[...] alguna vez se vendió y lo recuerdo mucho por la película, María llena eres de gracia, acá les allanaron a todos por esa película. Entonces por lo menos en este lado donde estamos nadie le tira a la película colombiana, y si se mueve ya es después cuando ya haya salido inclusive en televisión ahí uno si la toca, ya cuando se ha difundido. Igualmente pues, yo soy de los que me gusta vender todo lo norteamericano, a mí me fascina piratearlos a ellos, ¿sí? Pero lo colombiano no porque es lo de acá.” (Mauricio, 2013.)



Ref. 336 — “No, aquí la mafia no existe eso, es para engañar a la gente. Aquí la mafia no existe, todos tenemos un trabajo, digamos yo tengo mi almacén, si, y te digo que a mí me fascina vender animé, hay gente que está dedicada a la cartelera, como hay gente dedicada al cine arte, hay un amigo que es el súper de la salsa, otros venden rap y reggaetón, que eso siempre tiene personas. Pero eso de que sea una sólo persona o que lo mantenga el narcotráfico, eso es pura mentira. El día que uno no venda no tiene que llevar a la casa para el diario, eso es la mafia que nosotros manejamos, y no es justo.” (Mauricio, 2013.)

Ref. 337 — “Aquí se pueden hacer las cosas. El ideal para nosotros es que nos dejaran trabajar, que nos pusieran por decir algo una cuota, una mensualidad, de alguna manera que nos legalizaran pero que nos dejaran trabajar... de alguna manera legalizarnos para poder distribuir. Si uno pudiera vender las películas colombianas legalmente, sería excelente, una vitrina excelente para nosotros, hacer algo así. Pero lo ideal es que nos dejaran trabajar, nosotros no somos atracadores, ni secuestradores, no somos guerrilleros. A nosotros si nos atacan de una, a un pirata le dan 5 años y a un guerrillero, a un asesino le dan 3, porque este país es muy desigual en ese sentido.” (Mauricio, 2013.)

Ref. 338 — “[...] con la piratería yo veo que la gente se rebusca su plata para la comida, para el arriendo y yo veo eso normal, a pesar de que por eso yo estuve en la cárcel [...] yo veo eso normal, hay gente que vive de eso y tiene hartos hijos.” (Benavides, 2011.)

Ref. 339 — “[...] si ir a una sala de cine costara 2000 pesos yo iría con toda mi familia pero si es más cara no, más bien la veo en la casa y veo la película con todos, me queda más fácil.” (Benavides, 2011.)

Ref. 340 — “Mi hija fue y averiguó en el juzgado y una abogada le dijo que ella tenía que saldar esa cuenta con el Estado, porque toda persona que esta presa disque queda con una deuda del Estado según el motivo y entonces ella me dijo que mi esposo y yo tenemos que pagar de a ocho millones al estado, que eso es una multa. Yo no sé, el gobierno dizque cobra eso, yo voy a ir a investigar. No, ¿nosotros con que vamos a pagar? Nosotros estamos mal, mal económicamente.” (Benavides, 2011.)

Ref. 341 — “Nuestros países, latinoamericanos, africanos y algunos del hemisferio norte, se equivocaron durante el primer siglo del cine sosteniendo y apoyando apenas una punta del ciclo de producción del cine que era la realización de la obra y se olvidaron de la otra punta de esta cadena que tiene la misma importancia o que es más importante desde el punto de vista de la supervivencia de esta actividad que es la distribución.” (Senna, 2012.)

Ref. 345 — “Es un set de licencias que fueron creadas por un profesor norteamericano en el año 2001 para facilitar la divulgación de obras protegidas en entornos digitales en la medida en que el Derecho de Autor controla los usos de las obras y en cambio internet y las tecnologías digitales prevén o facilitan la copia, entonces ahí hay un roce permanente que hizo que aparecieran estas licencias permitiendo que se pueda compartir ciertos contenidos en la red.” (Botero, 2012.)

Ref. 351 — “Sí, yo veo una luz al final del túnel porque ha cambiado la tecnología y las nuevas tecnologías de la producción audiovisual. Por primera vez en la historia y creo que por primera vez en la historia de la humanidad, no son tecnologías reservadas, no son hechas ni por, ni para los países ricos. Ahora es una tecnología que puede actuar para favor de los países pobres y los países emergentes. Es la primera vez que eso pasa en la historia del progreso científico y tecnológico.” (Senna, 2012.)

Ref. 358 — “Con esta medida, el Estado peruano busca entre otros garantizar la conservación del patrimonio cultural, desarrollar actividades económicas sostenibles y promover la formalización con inclusión social.” (Ipenza, 2012,79.)

Ref. 360 — “Debemos entender la formalización como un proceso que permite a un minero pequeño o a un minero artesanal contar con todas las autorizaciones legales para llevar a cabo su actividad, desde la solicitud del petitorio minero en zonas permitidas y la obtención de la concesión dentro del marco legal permitido para la pequeña minería y la minería artesanal, hasta obtener posteriormente la certificación ambiental. Una vez cumplidos todos los requisitos, recién se puede operar.” (Ipenza, 2012, 60.)

Ref. 372 — “Quiero influir de una manera en la sociedad, quiero influir de una manera positiva de que si se pueden construir los sueños, de que el audiovisual es una forma de llegar a muchos sitios es una forma de que puede partir esquemas y paradigmas sociales.” (Ávila, 2011.)

Ref. 375 — “El cine de calle es la vía más democrática de acceso al arte audiovisual que tiene el público latinoamericano, en vista de los altos costos de ir a una sala de cine y de la poca oferta de las mismas. En los países de Centro América, en alguna medida, se han comenzado con estos esfuerzos, pero no con las características productivas de Efecto Cine.” (Colomé, 2010.)

Ref. 376 — “Y no sólo democrático, sino algo legítimo y necesario: comercialmente viable.” (Martín, 2010.)

Ref. 380 — “Uno más entre los 60 mil locales en el Ecuador que venden películas copiadas, pero que se convirtió en un lugar de moda donde iban los intelectuales de Guayaquil a buscar películas de Godard, Bresson, Jodorowski y otras tantas maravillas del cine que Omaira copiaba de su colección personal, creada a lo largo de 20 años como productora y cinéfila apasionada.” (Heidel y Acuña 2014.)

Ref. 381 — “Tiempo después de que Omaira abriera su negocio, el SRI comenzó a cerrar locales, sin proponer soluciones, sencillamente clausurando una gran cantidad de puestos de trabajo tan solo para poder decir frente a las cámaras que estaban protegiendo la propiedad intelectual.” (Heidel y Acuña, 2014.)

Ref. 382 — “Ahí me di cuenta de que lo que había era un gran desconocimiento del tema de derecho de autor, y que realmente ninguno de los comerciantes había abierto sus locales pensando en robarle nada a nadie, sino que simplemente estaban tratando llevar el pan a sus hogares.” (Heidel y Acuña, 2014.)

Ref. 394 — “El poder de los mercados es enorme, pero no poseen un carácter moral intrínseco.” (Stiglitz, 2013.)

Ref. 395 — “No sólo hay una falta de igualdad en términos de riqueza, sino en oportunidades.” (Stiglitz, 2014.)

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