

Filesharing

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- Empirical research
- Role of internet service providers
- Regulatory/policy context
- Towards more balance



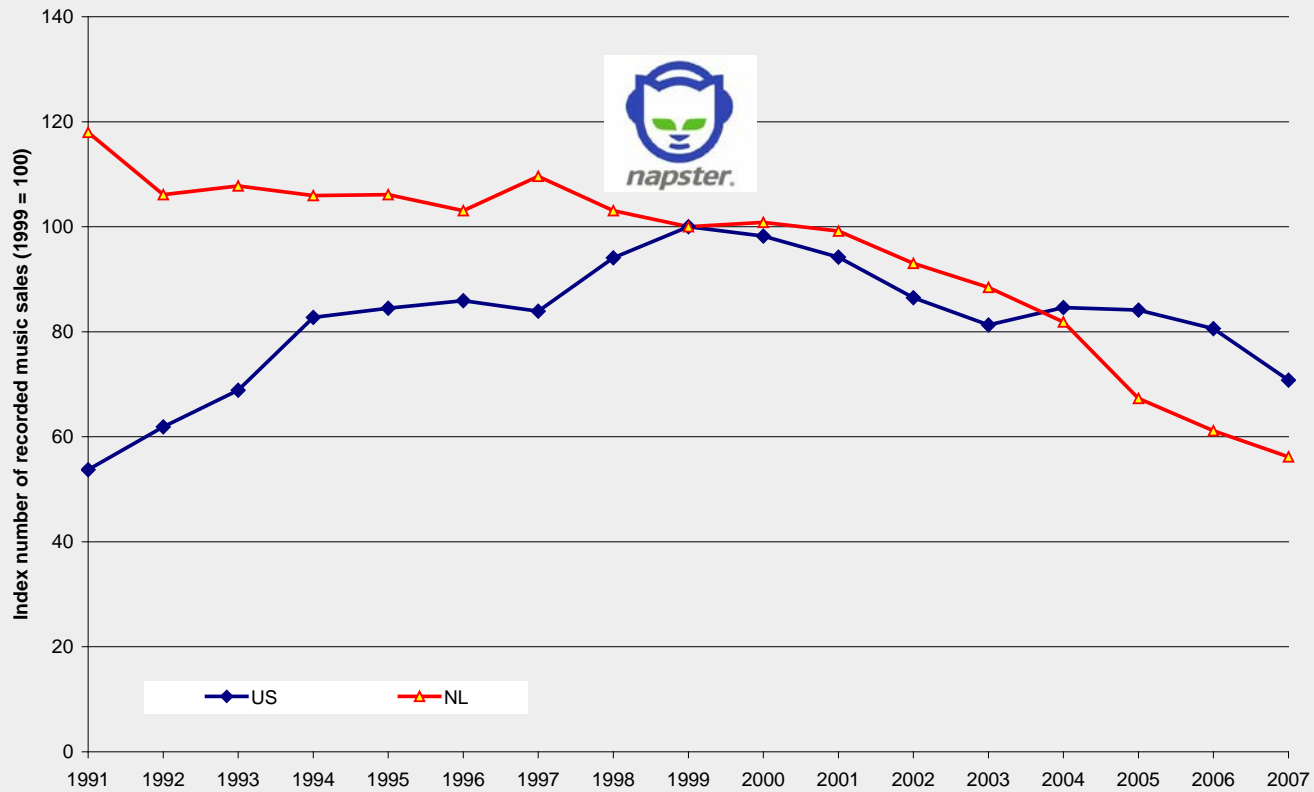
Empirical Research

Economic and Cultural Aspects of File Sharing (2008)

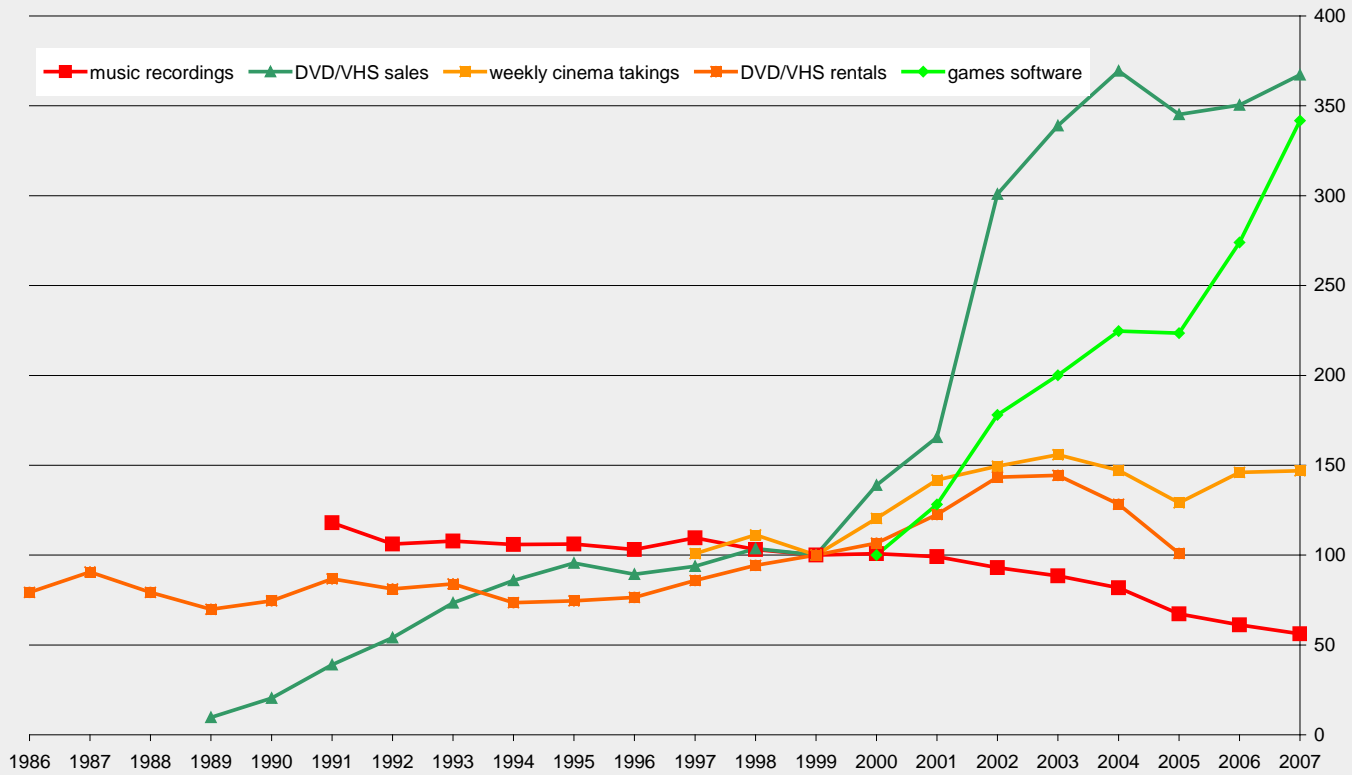
- Multidisciplinary study by TNO/University of Leiden, SEO economic research and the Institute for Information Law (IViR)
- Commissioned by three Dutch ministries
- Assist development of new government policy

- ‘Identify the economic and cultural effects of file sharing on music, films and games’

Music Sales



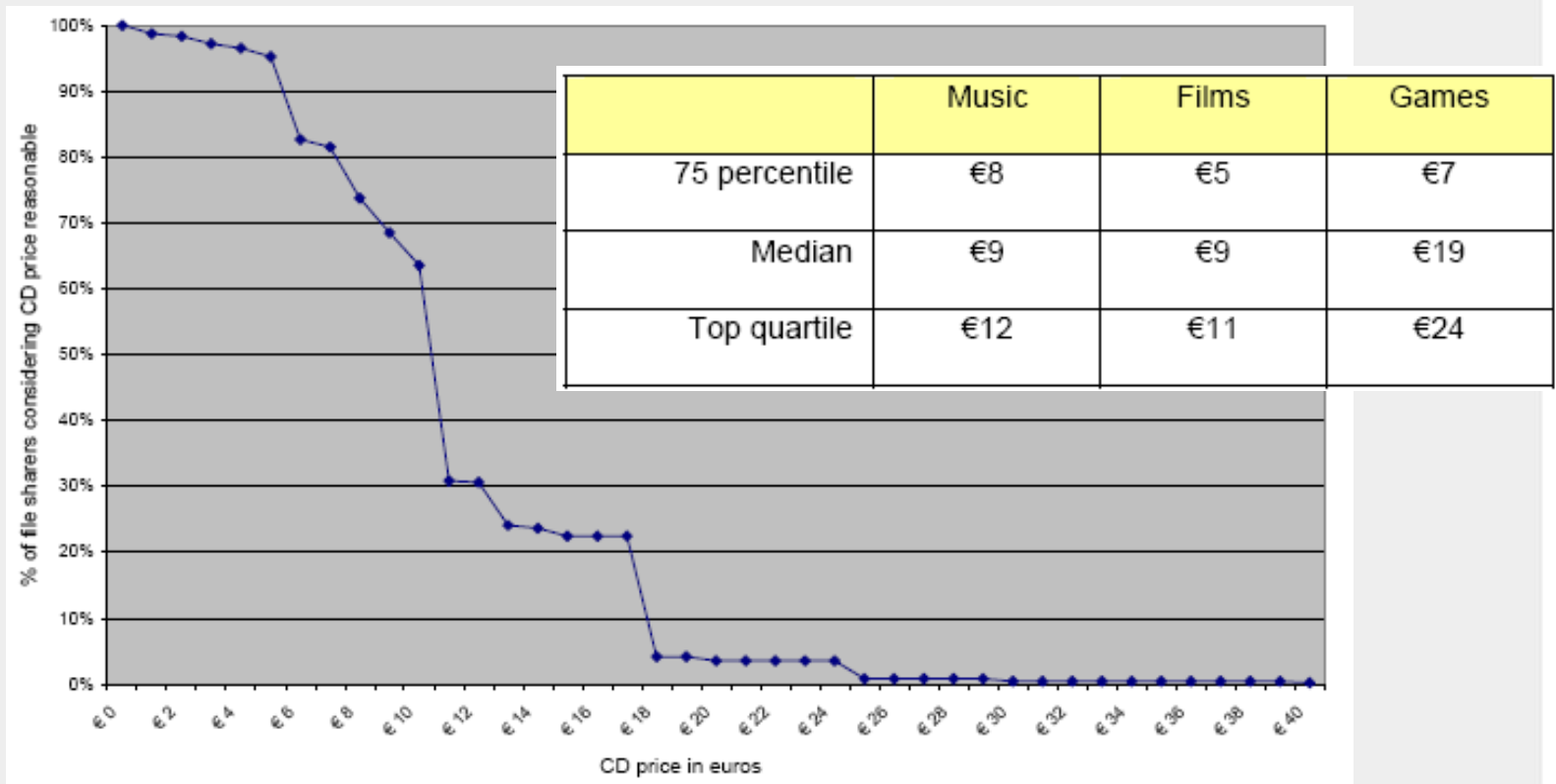
But also...



Customer survey

- File sharing is part of Dutch society (44%):
 - 40% of internet population downloaded music in past year
 - 13% downloaded films
 - 9% downloaded games
- Consumers are often not aware:
 - of the the legal status of their activities
 - of the techniques they use
 - of the number of CDs or DVDs they downloaded
- File sharers are the largest customers of the entertainment industry
 - They buy as much music and even more DVDs and games
 - They go to concerts more often and buy more music merchandise
- If downloading would not be possible, a majority states that they would not buy more...

Reasonable Price



Possible Effects on Purchasing of CDs, DVD's and Games

- + Introducing new artists and genres (sampling effect)
- + Enhances demand for related products (concerts, merchandise)
- = Meets demand of consumers with insufficient willingness to pay
- = Meets demand for products not on offer
- Substitutes demand for purchases (substitution effect)

Positive net welfare effects on audio (however record industry loss of approx € 100), film and games

Conclusions: context

- File sharing is ‘here to stay’, but also willingness to pay
- Cultural diversity:
 - no cause for specific policy, more available then ever
- New models for talent development and exploitation emerging:
 - New payment methods: iTunes, streaming, flat-fee
 - New value chains: 360-degree deals, sponsorship deals, tv-commercial appearances, live is kicking!
 - New platforms: YouTube, Facebook, Spotify

Conclusions: enforcement

- Substantial civil law remedies have been put into place
 - Notice and take down, Injunctions,
 - Damages/Surrender of profits, etc
- Application of criminal law is ‘ultimum remedium’
 - Penal sanctions in copyright legislation
 - Priorities (public interest, manpower)
 - Focus on large scale activities and economic impact
- Administrative law enforcement
 - Warnings, administrative sanctions

Recommendations

- Promote innovation
- We need to know more
 - Limited research on various sectors
 - Realistic data on “damage”
 - Shifts in consumer preferences
- Make consumers conscious about their activities, without disinformation

Recommendations

■ Legal:

- No immediate regulatory action needed, avoid symbolic regulation
- No legal actions against individual users
- Enforcement (only) against commercial/large scale copyright infringements

Study 2012

Downloading from illegal source		
	2008	2012
Music	32%	22%
Film/Series	10%*	18%
Games	7%	6%
Books	n/a	6%
Total	35%**	27%

*excluding serie';** excluding series and books



Downloading, Streaming, Purchasing

Past year	Purchased (1)	Download & streaming legal source		illegal source (4)	All Channels (1 to 4)	Total Legal (1 to 3)
		Paid for (2)	Free (3)			
Music	40%	17.1%	36.5%	21.7%	63%	60.8%
Film/series	44.8%	11.8%	25.3%	18.3%	59.4%	57.2%
Games	19.7%	8.8%	14.6%	6.3%	28.7%	27.7%
Books	69%	7.8%	9.2%	6.3%	70.9%	70.5%
Total	82.6%	27.8%	47.3%	27.2%	98.2%	98.1%

Conclusions

- Downloading from illegal source is not dominant and declining
- Downloaders are also buyers
- Willingness to pay



Internet Service Providers

Moving Towards Balance: A study into duties of care on the Internet (2010)

- Two/Three strike approach. Research indicates substantial obstacles:
 - No social acceptance
 - Limited resources
 - Risk of going underground
 - Lack of proportionality
- Legal or illegal not relevant: no significant differences between countries.
- Enforcement effects only temporarily ?



The Pirate Bay blockade

Reaction or Expected Reaction		
	Ziggo/Xs4all	UPC/KPN/etc.
Didn't (no longer) download	76.3%	77.9%
Stopped/will stop	1.9%	1.5%
Less	3.6%	4.8%
Just as much	17.1%	12.6%
More	1.1%	3.2%



Legal/Policy

Existing Legal Framework

- Uploading forbidden
- Downloading falls under the private copy-exception (nature of the source irrelevant)
- Compensation via a levy system

New government policy

- Promotion and protection of new business models
- Focus enforcement on civil law (websites/services)
- No two/three strikes models (open internet)
- Only access to subscriber data in case of large scale infringements
- Parliament:
 - no download-restriction or limitations on private copy
 - (pending) no 'policing' by internet service providers



More balance

Framework Directive

- European framework for the communications sector (article 13a of the Framework Directive):
 - Measures taken need to respect fundamental rights
 - Appropriate, proportionate and necessary
 - Effective judicial protection and due process

Jurisprudence

- European Court of Justice
 - Promusicae-case
 - Scarlet/Sabam
 - Netlog/Sabam
- European Court of Human Rights
 - Yildirim
 - Ashby

Policy/Regulation

- More critical approach
 - European Parliament
 - National Parliaments and governments
- Hesitations about two/three strikes
 - Netherlands, Germany, France, etc.

In general: Leading Principles

- Better understanding of the facts
- Awareness of fundamental rights
- Proportionality
- Value chain approach

Yogi Berra



'You've got to be very careful if you don't know where you're going, because you might not get there'

References

Ups and downs. Economic and cultural effects of file sharing on music, film and games, 2009

http://www.ivir.nl/publicaties/vaneijk/Ups_And_Downs_authorized_translation.pdf

Moving Towards Balance: A study into duties of care on the Internet, 2010

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File sharing 2@12: Downloading from illegal sources in the Netherlands

http://www.ivir.nl/publications/poort/Filesharing_2012.pdf