

Exploring new policy options

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



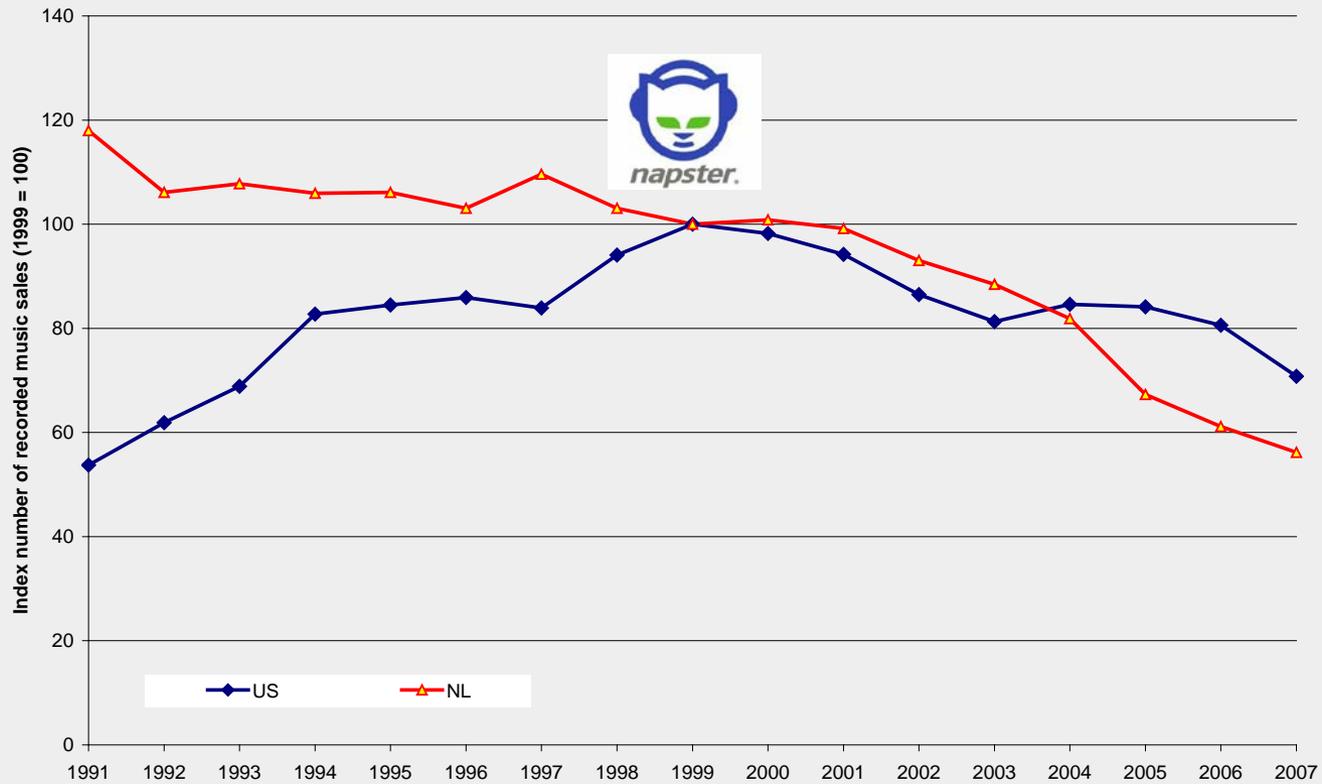
Empirical Research

Economic and Cultural Aspects of File Sharing (2008)

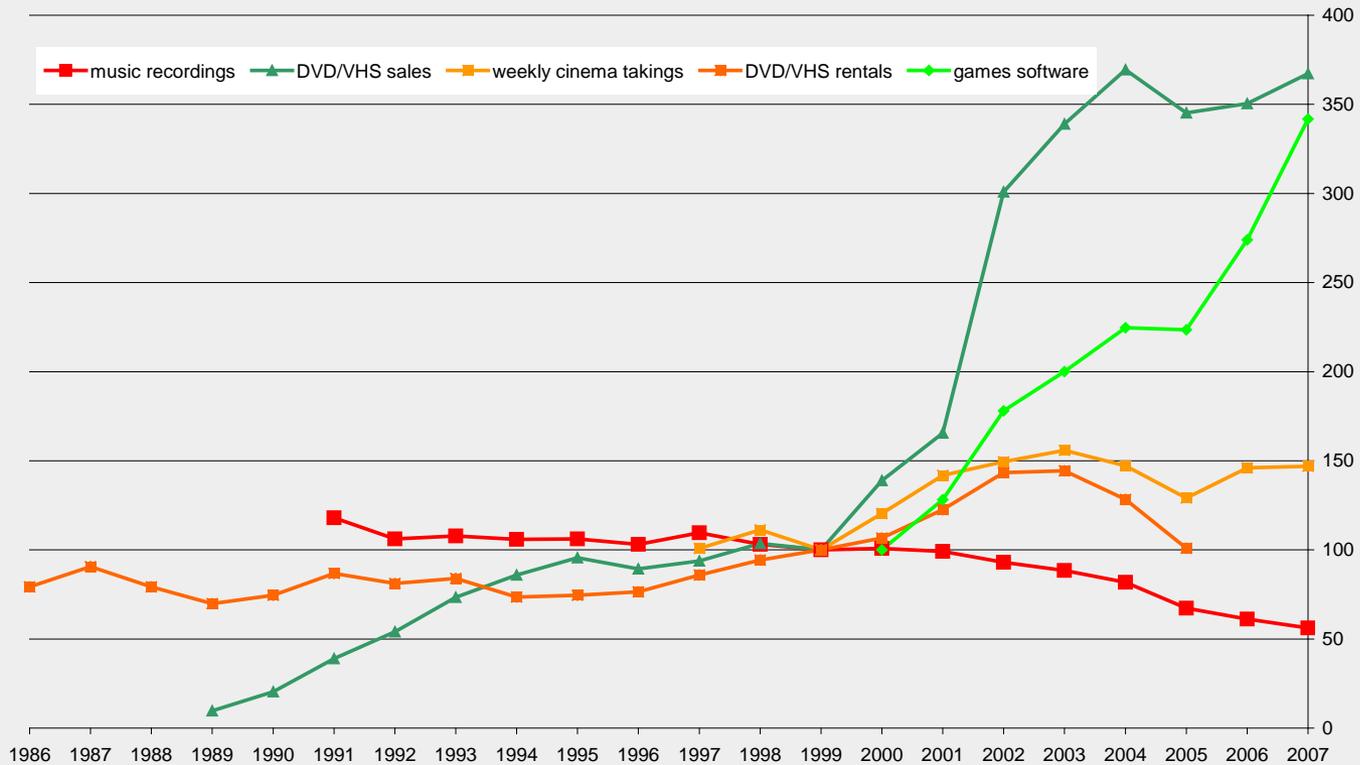
- Multidisciplinary study by TNO/University of Leiden, SEO economic research and the Institute for Information Law (IViR)
- Commissioned by three Dutch ministries
- Assist development of new government policy

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

Music Sales



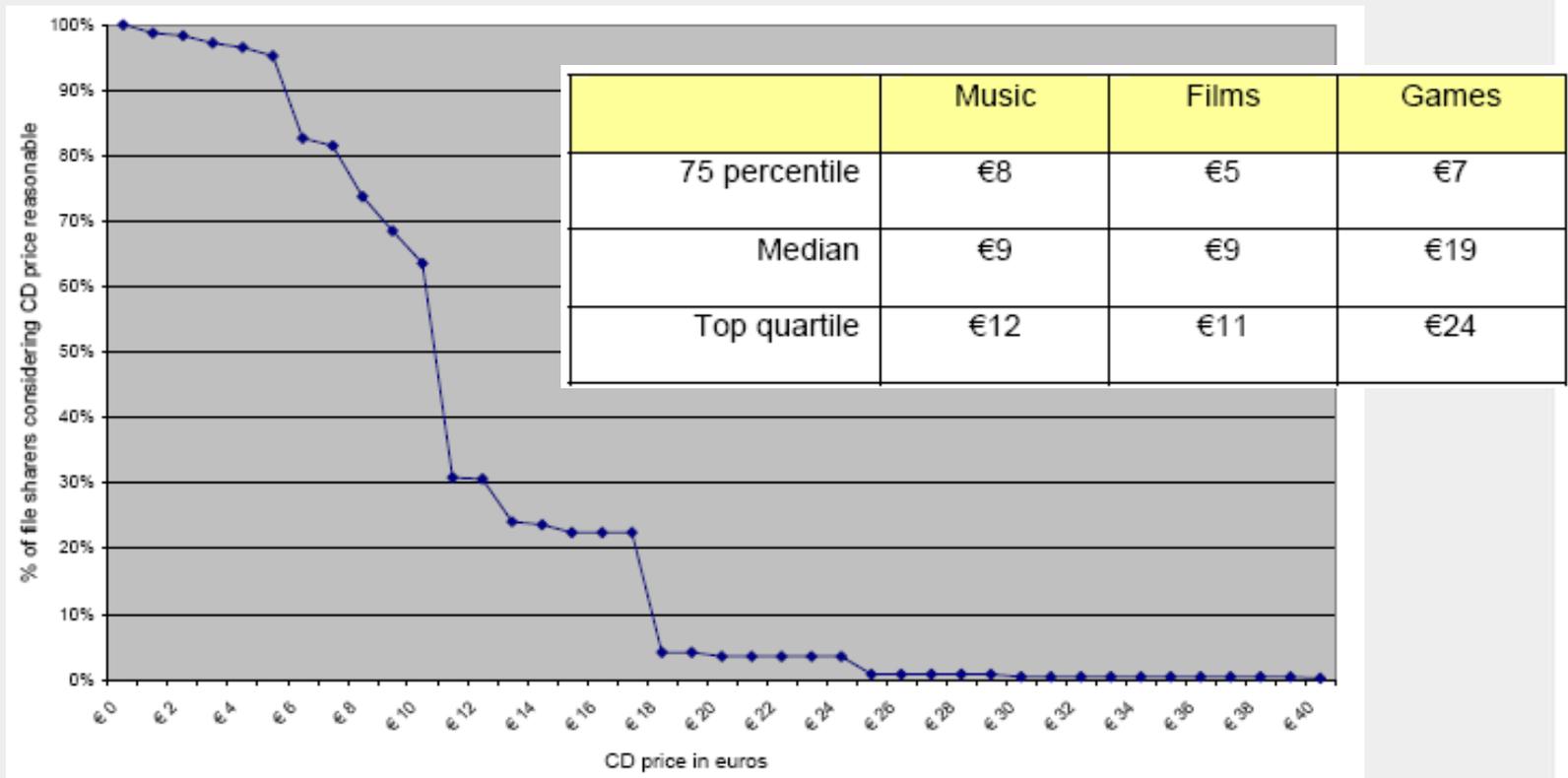
But also...



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

Recommendations

- Non-legal:
 - 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. Substantial obstacles:
 - Limited social acceptance
 - Limited resources enforcement
 - Risk of going underground
 - Lack of proportionality
- Legal or illegal hardly relevant: no significant differences between countries.
- Enforcement effects only temporarily ?

The Pirate Bay blockade (2012)

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: fundamental rights

- 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 (ACTA, IPRED)
- 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

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

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