

Illegal File Sharing – Lessons From France?

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In Apr. 2011, the High Court rejected a challenge by the UK's two largest Internet Service Providers BT and Talk Talk, of the Digital Economy Act 2010 (DEA). After the ruling, Justice Parker was quoted in the [Guardian](#) saying that 'although it is difficult to predict the effect of measures such as those contemplated by the DEA, there are reasons for believing that such measures may well have a positive effect' [on reducing illegal filesharing].

Two years on, and direct evidence from the UK regarding the [impact of the DEA](#) is [lacking](#). The evidence from other regimes such as the French [HADOPI Law](#), which uses the same 'graduated response' (warning letters) in tackling online file sharing does not point to the effect that Justice Parker had hoped for. There are two main reasons. The linkage between IP address and personal identity is not straightforward, which means the 'three strikes' measure could bring risk to a much larger number of Internet users than those actually infringing on copyright. In Sept 2012, after sending out 1.15 million first warnings, 102,854 second notices, and 340 "third strikes", the HADOPI authority made the first conviction of a man who allegedly ignored all three rounds of warnings. Although the man told the court it was his wife who downloaded some Rihanna songs, he was convicted for not securing his home Internet access and asked to pay a fine of €150. This shows exactly the problem with detecting copyright infringement solely on the basis of IP address, as we have pointed out in our earlier [policy paper](#).

In many households, Internet access is shared by several users, hence the warning messages from ISPs could very well be targeting innocent individuals. In this case the French authority had to come up with a new offence (not securing one's Internet access) in order to avoid the burden of investigating who actually was involved in file sharing activities. The cost of monitoring users' behavior and sending out warning messages is high, while the benefit is low. The newly appointed French Minister of Culture, Aurélie Filippetti, said [last August](#), 'In financial terms, [spending] €12 million euros (\$14.86 million) and 60 agents—that's expensive [just] to send a million e-mails'.

Although the latest [HADOPI report](#) claims significant decrease both in visits to 'pirate' sites and in file sharing traffic, the revenue of both music and film industries in France are still declining. Creative industries in favor of the 'three-strikes' law have been arguing that illegal file sharing is the main cause of revenue loss but heavy policing of such activity does not appear to have led to higher level of media consumption via legal channels? Could this be the evidence that file sharing is not necessarily the substitute for legally acquired content?

In the meantime, in the UK where the repressive measure against file sharing has not been implemented, the music industry is [reporting 'strong growth'](#) in the sale of digital music despite the perceived threat from copyright infringement. While the decline in CD sales continues, legal album and single downloads are growing steadily, which is the clear signal of a changing consumption pattern.

On the other hand, the two waves of large-scale [consumer tracking study](#) commissioned by Ofcom suggest that while consumers are becoming more aware of lawful online content services, 41% of them are still confused about the legality of online activity. It is also telling that when being asked what would encourage them to stop the infringing activities, the top three reasons consumers chose are availability of cheap legal service (30%), clarity of what is legal and what is not (25%), and desired content being available through legal service (24%). In contrast, [only 12%](#) of all infringers said they would stop if the ISP send them a letter saying they would restrict their

Internet access. Putting together the evidence from the two countries, one cannot help wondering why the repressive measure of ‘graduated response’ is still deemed as the most effective way to tackle online file sharing.

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