

Volume 11, Issue 1, April 2014

LAUNCHING A REPORT ON UNLAWFUL FILE SHARING

Abstract

A launch event for a scoping review of a decade of file sharing research was held by the CREATE group on 11 April 2014. Panellists were invited from stakeholder groups including industry, civil rights and technological intermediaries. The review addressed five key determinants of unlawful file sharing which were repeatedly found in the 206 reviewed studies: legal and financial, technical, experiential, social and moral. It also covered issues of social welfare and the costs and benefits to producers and consumers. The unequal coverage of different media sectors and research types, and the insufficient actual causal behavioural data, were highlighted. A subsequent discussion covered technological change, harm and issues of production. There is need for more and better evidence to support policy.

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DOI: 10.2966/scrip.110114.128



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* The research was conducted while Steven Watson was at the University of East Anglia. Funding for this project was from the RCUK via the Centre for Copyright and New Business Models in the Creative Economy (CREATE), AHRC Grant Number AH/K000179/1, and from the University of East Anglia.

1. Introduction – File Sharing Review Launch Event

A launch event was held for a major report: ‘A review of the causes and impacts of unlawful file sharing’. It was hosted by CREATE - the Centre for Copyright and New Business Models in the Creative Economy, in London, Stationers’ Hall, on 11 April 2014. The CREATE group is a large multi-centre project hosted by the University of Glasgow and funded by Research Councils UK. The event included a presentation of the report by the authors: Daniel Zizzo, Steven Watson and Piers Fleming and a Panel discussion including representatives from Performing Right Society (PRS) for Music (Robert Ashcroft), Google (Theo Bertram), the Open Rights Group (Jim Killock) and the Copyright Hub (Dominic Young). The panel was chaired by Alison Brimelow. The review considered the evidence surrounding issues of sales and unlawful file sharing (UFS), the potential determinants of file sharing behaviour, the potential welfare generated by file sharing and the distribution of evidence.

2. The Scoping Review Method

This report used a scoping review methodology – in which all stages of the review are transparent and documented (similar to a systematic review in medicine) and are as rigorous as possible but allow a broad topic to be examined – in this case the topic under investigation was the empirical evidence about the causes and consequences of UFS in digital media. The full list of inclusion and exclusion criteria and search terms used are available from the working paper¹. The aim of this type of review is to avoid biases which might come from a less methodical approach to gathering literature (e.g. by selection of articles to be included). In all, 54,441 potentially relevant articles were identified from academic databases and from stakeholder organisations (e.g. Ofcom). This initial search was refined to 206 articles that contained empirical data and so were included in this review. Supplementary material is also available online and will enable future researchers to analyse in detail and update the review.

3. Sales and Unlawful File Sharing

The report identified that sales and unlawful file sharing appear to be related but there are a number of potential impacts of this. The classic argument is that unlawful file sharing (UFS) replaces sales, for example, the emergence of Napster and increased popularity of UFS coincided with a decline in music sales.² Most of the evidence suggests sales of music and movies are decreased by UFS. However, an alternative argument is that sales are boosted by UFS because exposure to media (via UFS) increases the likelihood of a subsequent purchase. This could explain why individuals who purchase more music/films also engage in more UFS. Both explanations are likely to be partly true which means it is unlikely that every file shared is a sale lost.

¹ This is available at <http://www.create.ac.uk/publications/determinants-and-welfare-implications-of-unlawful-file-sharing-a-scoping-review/>

² S J Liebowitz "File sharing: Creative Destruction or Just Plain Destruction?" (2006) 49 *Journal of Law and Economics* 1-28.

4. Determinants of Unlawful File Sharing

It is clear that understanding why people file share would help to understand the uncertainty regarding the link between sales and UFS and might provide insight to encourage sales and/or discourage UFS. In the report, we provide a model that identifies the possible factors (or ‘utilities’) that may influence UFS behaviour. These utilities were identified by thematically coding the proposed determinants of UFS presented in the accumulated literature. Then utilities were: legal and financial utility, experiential utility, technical utility, moral utility, and social utility. We map studies based on three dimensions: the determinants of UFS behaviour (the identified utilities), the market medium (music, software, music, software, movies, videogames, books, TV and generic) and the measure of UFS behaviour, the quality of which depends on how closely it measures actual behaviour. These three dimensions provide a cubic representation of studies on UFS behaviour.

Clearly understanding the *why* of UFS behaviour is crucial for identifying good evidence-based policy – the *how* of UFS behaviour, but the evidence is skewed both in terms of medium (primarily music, followed by movies and software, with very little on the others) and in a lack of studies looking at observed behaviour that causally identifies the crucial *whys* of UFS behaviour.

That said, the report does consider preliminary findings based on the existing evidence. For example, an interesting finding from the report is that some effects are temporary. New laws or the announcement of new laws reduced UFS but only temporarily, 6 months in one case.³ Another study found high profile lawsuits reduced the availability of files on torrent sites but only temporarily.⁴ The evidence points in the direction that legal barriers do not offer a long-term solution and making the legal framework more severe may have unintended consequences in terms of access while being not as effective as one would think in terms of reducing UFS behaviour.

5. Welfare

Welfare has been measured using two approaches: a focus on sales (and benefit to the producers) or a focus on the willingness to pay of consumers. What evidence there is is mainly about music, followed by movies, and with very little on other mediums.

We cannot accurately determine the effect of UFS on sales because UFS has to be estimated and because of a reliance on stated (even hypothetical) behaviour. These measures appear to be subject to methodological artefacts, with results sometimes

³ See A Adermon and C-Y Llang, "Piracy, Music, and Movies: A Natural Experiment" (2011) IFN Working Paper No. 854 Uppsala Center for Labor Studies; B Danaher et al. "The Effect of Graduated Response Anti-Piracy Laws on Music Sales: Evidence from an Event Study in France" 2012 January: Wellesley College available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1989240.

⁴ D Blackburn "Essays on the economics of copying with an application to the recorded music industry" (2005) Doctoral Dissertation, Harvard University.

dependent on type of analysis.⁵ These findings link to the original distinction between replaced sales and promoted sales. More generally, studies on the effects of UFS on sales ignore the welfare implications for consumers.

Research on the willingness to pay has the opposite problem of ignoring producers, which may be problematic if one believes in dynamic effects on creation if creators are not sufficiently rewarded. It is limited in volume and all based on hypothetical data (mainly with students), this in turn is likely to lead to an upward bias in favour of UFS.

6. Panel and Discussion

Several themes emerged from the panel discussion. There was a lively debate about the extent of harm identified by existing research. The issue of technological change was also raised. On the one hand it was pointed out that while the exact means of UFS might change the underlying principles remain. However, it was also pointed out that the availability of different media changes with technological changes which provides a challenge to stakeholders in the area. A third theme was the need to consider producers as well as consumers and the impact on creativity. In general there was a consensus that it was important that research in this area be led by ‘evidence, evidence, evidence’.

⁵ R Hammond "Profit Leak? Pre-Release File Sharing and the Music Industry" 2012 March Working Paper Series North Carolina State University available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2059356