" Catch me if you can ": Illegal downloading in France since 2009

Alix Poels

HAL Id: hal-01385121
https://hal.science/hal-01385121

Submitted on 20 Oct 2016

"CATCH ME IF YOU CAN": ILLEGAL DOWNLOADING IN FRANCE SINCE 2009

Research in progress

Abstract

How are some illegal practices sustained? Although prior research has been focusing on the domestication or integration of illegal practices by the market, little attention has been paid to their sustainability. We propose to study, through the case of illegal downloading in France since 2009, 1° How consumers get organized after the enactment of a new regulation 2° How these practices could form a parallel system of supply and demand chain. The main results show that consumers pay for illegal content and to be "protected". Moreover, downloaders are certain that even their favorite platform shut down they will be able to find alternatives. This research's intended contribution to the literature on illegal practices as well as market system dynamics will be discussed.

Keywords: Illegal downloading; illegal practices; market system

1   Introduction

"You can make it illegal, but you can't make it unpopular" Martin Behrman

Why are some practices easily regulated and others not? In 2008, in France, smoking in shared spaces (cafes, restaurants, stations) was made illegal. This new regulation has been quickly integrated[1] and is today widely respected. In contrast, although downloading has been considered an illegal practice since 2009[2], 49% of the French population is consuming through this way[3]. The French legal apparatus appears to be inefficient to reduce these behaviors, even in providing a discourse on consumer's morality[4] or in punishing the downloaders.

Illegal behavior, illicit practices and deviant forms of consumption (Robertson and al, 2012; Moschis and Cox, 1989; Fullerton and Punj, 1997; Rose and al, 1992), to quote some examples, have been widely studied in consumer research from a consumer-centric analytical mode. Prior research has also been focusing on the domestication or integration (Goulding and al, 2009) by the market of illegal practices. Some studies not directly addressing illegal practices suggest that the status of a practice could change through market co-optation (Bengtsson and al., 2005; Kozinets 2001; Schouten and McAlexander 1995; Thompson and Coskuner-Balli 2007). A marginal practice can become popular when the market appropriates and commercializes it (Sandicki et Ger 2010). In a similar way, Humphrey (2010a) in her paper dedicated to the creation and sustainability of a new industry shows how a practice historically associated with crime may become legitimate under the influence of multiple stakeholders. "*The author finds that frames such as crime, business, and regulation change over time and that these frames are used by multiple stakeholders to structure normative conceptions about the practice of casino gambling*"(p.1).

But what about uncontained / undomesticated practices? Literature remains scarce on the particular networks in which these practices are embedded, allowing their existence. Our goal in this research is to question the processes through which illegal practices could be sustained. Specifically we explore two key questions:

➔How do consumers get organized after a law enforcement prohibiting downloading?

➔How could these practices form a parallel set of supply-demand relations?

2   Illegality and market systems

Market systems, a pretty much recent body of research (Press and Arnould 2011; Thompson and Coskuner-Balli 2007; Giesler 2008, 2012; Humphreys 2010a, 2010b; Karababa and Ger 2011) explores the creation, emergence, and dynamics of markets: "*This (stream of) research places markets as social systems at the center of their analysis and examines how they are created and/or change through the discursive negotiations and the practices of various market stakeholders*"(Siebert and Thyroff 2012, p.1). For instance, Karababa and Ger (2011) portray the construction of coffee house culture and an active consumer subject in the early modern Ottoman Age through the struggles between religious morality and pursuit of pleasure.

---

1 http://www.lexpress.fr/actualite/societe/sante/les-francais-veulent-de-plus-en-plus-arreter-de-fumer_997988.html

2 The HADOPI law or Creation and Internet law was introduced during 2009, providing what is known as a graduated response as a means to encourage compliance with copyright

3 Hadopi 2011. http://www.hadopi.fr/sites/default/files/page/download/hadopiT0.pdf

4 http://www.dailymotion.com/video/xj6h6s_campagne-de-pub-de-l-hadopi_tech

However, little attention has been paid to illegal markets' dynamics, despite their importance in terms of diversity (illegal markets cover a wide range of consumption fields from prostitution to drugs to media piracy) and economy (world illegal market value represents $1,810,052.83 Million)[5].

Goulding et al. (2009) in their study on illicit pleasure are paving the way, depicting the processes of regulation of the rave phenomenon[6] and take into account some actors like the club promoters, the State Authorities and the police. They show how clubbing could appear as the "marketization" of rave, supporting an illegality that is easier to control and manage and confined to permanent spaces. Clubbing is a form of containment of illicit practices with the complicit knowing wink of the police and state authorities. The authors suggest that *"an effect of this marketization process has been the subsequent reemergence of rave"*(p.769), interpreted as a resistance and reject of the clubbing culture.

However, is resistance (Penaloza and Price 1993; Roux 2007) the "sine qua none" condition to the resurgence of such practices? Most of the studies focusing on the key role of consumers in market evolution *"conceptualize consumers role as some form of rebellion or resistance to prevailing market logics or market-induced stigma"* (Schouten and Martin, 2013, p.855). Giesler (2008), in his study based on anthropology of performance (Turner 1988), characterizes four steps of drama in marketplace evolution: breach, crisis, redress, and reintegration through the historical analysis of the war on music downloading. He concludes that the downloaders are reintegrated over a consensus. If downloaders' narratives are exposed, less attention is paid to their practices. Is the reintegration implying a disappearance of the illicit downloading phenomena? Giesler (2008, p.749) notes nevertheless that *« the music market seems likely to be pushed into another cycle of discord and conflict »*. However, this analysis of discord and conflict cycle does not say much about consumers' practices and their evolution.

3   Downloading illegally

Downloading has been regulated in many countries (Bishop 2005; Easley 2005; Lessig 2004). *"But despite the attempts to encourage consumers in countries including the United Kingdom, France and United States to download music from legal sources, many not only continue to download from unauthorized sources but reject the very idea that what they are doing is wrong"* (Cluley 2013, p.263).
Why are these practices persisting? Literature, even not addressing directly the sustainability of these practices, brings some answers. For some, the practices of illegal downloading are anchored in consumers' behaviors (Proulx and Goldenberg, 2010). It could also be explained by the difficulty to normalize consumers' behaviors on the web. Denegry-knott (2006) suggests that the balance of power on the Internet is likely to shift from producers to consumers. The architecture of the Internet allows that power be exercised by the individuals: *« the industrial revolution was to manufacturers what the digital revolution is to consumers »* (Kucuk et Krishnamurthy, 2007, p.47).
Literature has also been conceptualizing the war on downloading as a quest for legitimacy (Denegry-Knott, 2004, 2006; Giesler, 2008; Cluley, 2013). Illegal downloading appears as an illustration of power struggles on the web, a battle over a discourse determining what the norm is and what a deviance is through the processes of labeling the downloaders (Denegri-Knott, 2004; 2006). However, in this battle, some of the actors, like the cultural industries, can suffer from a lack of legitimacy. Cluley (2013) suggests that proponents and opponents to downloading are following the same

---

5 http://www.havocscope.com/market-value/

6 A rave is a large party, or festival illegally organized featuring performances by DJs and occasionally live performers playing electronic music

economic imperative (e.g. creators should be rewarded), and *"are locked in a battle over who can define behavioural standards for consuming music"* (p.263).

The cultural industries' resistance is also invoked, and could be understood as a cause of the sustainability of the illegal downloading. Garcia-Bardidia et al. (2012) show how the cultural industries have been reacting to the downloading phenomenon: they tried to "re-moralize" the consumers (e.g. Hadopi Law in France), to "re-materialize cultural goods" (e.g. Vinyls) and to "re-intermediate" in the market (creation of distribution platforms e.g. Spotify). Defending their position through discourse, the cultural industries are trying to reproduce the existing order (Blanc and Huault, 2012). This static state is a key enabling a better comprehension of the sustainability of the downloading practices. Indeed, Garcia-Bardidia et al., (2011) suggest that downloaders are resisting to the labelization game, adopting other consumption alternatives. The coercive approaches of the downloading phenomena (e.g. Hadopi law) are susceptible to reinforce the position of the downloaders, pushing them from a mainstream position to an activist position (Garcia-Bardidia and al, 2011).

Studies paying attention to consumers' discourses regarding their practices of illegal downloading are likely to bring some answers too. Indeed, downloaders are mobilizing neutralization techniques (Sykes and Matza 1957) to manage their moral conflict (Odou and Bonnin 2010; Divard and Gabriel 2013; Garcia-Bardidia and al, 2011;). These strategies are defensive and imply 1) a responsibility neutralization (transfer, dilution and victimization), 2) a pragmatic neutralization (euphemization, retrospective compensation and ethical re-appropriation) and 3) an ideological neutralization (claim, stigmatization) (Odou and Bonnin, 2010).

Finally, practices of illegal downloading, even condemned by the law, seem stimulated by the liberty and the absence of price (Divard and Gabriel, 2013). However, this consumption is also implying other forms of alienation and constraints (addiction phenomenon). The downloader is a free agent, experiencing the torments of freedom (Garcia-Bardidia and al., 2006).

4 Research method

Although research has focused on **why** are some illegal practices sustained, literature remains scarce on **how** these practices are sustained. Our main goal in this research is to understand how the consumers have been dealing with law enforcement and how a parallel system of supply and demand chain have emerged.

We focus our research on the case of illegal downloading in France since the enactment of the law (2009). According to Yin (2003) a case study design should be considered when: (a) the focus of the study is to answer "how" and "why" questions; (b) you cannot manipulate the behavior of those involved in the study; and (c) you want to cover contextual conditions because you believe they are relevant to the phenomenon under study (Baxter and Jack, 2008).

4.1 Data collection

We conducted nineteen in-depth interviews (McCracken, 1988) with informants involved in illegal downloading. Our respondents varied in terms of age (16-51), family status, education and occupation. The consumers' interviews approximately added up to 350 pages of single-spaced text. Interviews were conducted in private homes and, in selected few cases, in cafes and by Skype. Participants were informed that the interview pertained to « a study about illegal downloading » and were insured that their identity would remain confidential. The interviews were structured as follows: 1) Story of the practice of illegal downloading 2) Perception and experience of the practice (illegal downloading) 3)

Perception of the Hadopi law. The duration varied between 35-minute length to 270-minute. Six other in-depth interviews were conducted with some of our informants after a year and a half (selected for several reasons: some have been "caught" by the Hadopi Law, some are "followers" and needed to be informed by others downloaders, some are skillful downloaders having fall back solutions), to dig on the topic " How was it to download before 2009?" These interviews were conducted to understand if a shift (in terms of practices) really happened between a fuzzy period and a period of prohibition. Consumers' interviews were entirely transcribed and coded. A content analysis was done to allow the emergence of the categories (Strauss and Corbin, 2004).

5   Results

5.1   A constant adaptation to the imposed constraints

5.1.1.   Illegal downloading or l'Hydra of Lerna

Respondents evoke the phenomenon of the resurgence of platforms. A lot of them have been confronted to the shutdown of their favourite platforms (as Megaupload, for example), but they are certain to find alternatives: *"The day this website will shutdown, we will find some others. 15 000 will appear, so, we can't stop the downloading phenomena or you have to stop the entire Internet!!!"*(Sam, 24-year-old, graduate student).

The downloaders that we qualify as amateurs (in the sense that they are experiencing a dependence to the others to *"be furnished"* in cultural contents and *"tip-off"* (Maxime, 25-year-old, manager) are convinced and have the assurance that they will find solutions as Fred: *"There must be individuals who are aware of others websites where I will be able to continue to download"* (Fred, 21-year-old, undergraduate student).

5.1.2.   " Catch me if you can "

It seems that the respondents are not afraid by being detected in their practices by the Hadopi Law. Thus, the *"repressive"* law (Caro, 51-year-old, accountant) seems to be obsolete for them: *" It was easy to be caught on Emule, Hadopi just came when the torrent technology was already used…Hadopi was tracking on Emule…(laughs), we were already having largely a step ahead"* (Raphaël, 41-year-old, psychologist).

Consumers are adapting theirs practices to continue to download. For example, Clemence (28-year-old, nurse) has been *"caught"*: she has received a second warning from Hadopi. This warning just slowed down her practice for several months. She decided after this period to 1) get some information from more experienced downloaders and 2) to equip herself to continue to download: *"I'am actually installing a VPN software to protect my laptop, to have a secured connection, which makes my IP address invisible. When I will have find self-confidence again, I will download again and be proud of myself. This software is installed since a while, I just have to re-install my downloading software and I will continue to download on T411"*.

Finally, consumers are using alternative forms of consumption as streaming, which is not punished by the law: *"Hadopi...it was not positive because I just go back to streaming"*(Lola, 25-year-old, without employment).

5.2   Constitution of a parallel system of supply-demand chain

5.2.1.   Paying for illegal content

Our respondents evoked the fact to pay for illegal contents. This type of solution seems easier for a vast majority of our respondents: *"In fact, I was thinking that when you want to see movies, it's fragmented in different parts and after, when you unzip, your file could not be entirely read, I was thinking that I have to read 20 min per 20 min, so I just subscribe a month ago, for the first time to Rapidshare. And now I have a Rapidshare account, I'm paying 10 euros per month and I have everything, and its gooood!!"* (Léo, 24-year-old, undergraduate student). These platforms, as Rapishare, are declined in free versions (more restrictive in terms of access) and paying versions. They answer to consumers needs in terms of facility and variety of contents, but they are not getting the *"battle-hardened"* downloaders: *"I don't want to pay for something that is illegal…"* (Romain, 21 years old, undergraduate student) or: *«I don't think it's right, most of the time if you don't know internet, you have to pay"* (Léandre, 16-year-old, waiter).

5.2.2.   Paying to be protected

Some services allow the consumers to protect their connections: *"And even if I'm caught by the Hadopi law, some solutions exist, paying solutions but…you have Pirate bay, who created a service, IPredator which allows you to…You have to pay 5 Swedish krona per month, and they provide you a VPN, after you can also take your neighbor connection…but it's more risky…"* (Sam, 24-year-old, graduate student).

The results show that downloaders are mobilizing some adaptation strategies to the legislative constraints (as protecting theirs connections, going to others types of illegal consumption). It seems interesting to be aware that consumers are ready to pay to continue to download illegally.

5.2.3   On the influence of non-state actors

Downloaders evolve in an illegal ecosystem. This ecosystem, far from being constructed on the notions of gift and sharing, is a *"business"* (Caro, 51-year-old, accountant). Individuals are conscious regarding the model they are nourishing as Sam, 24-year-old, graduate student: *"I think that the business owner of Emule was earning 600 000 Euros per year (…), he was driving a Porsche"*.

However these businessmen seem legitimate for the downloaders: *"He was doing a lot of money (…) but maybe he will be the leader of a certain progress. Even he doesn't care about network neutrality"* (Jules, 24-year-old, informatician)

Some of the respondents describe this ecosystem as a market, an illegal market:

-Respondent: *"The day after the shutdown of Megaupload, you had… it's like drug traffic, one is caught, five are appearing. They are taking back the market"*. (Sam, 24-year-old, graduate student).

6   DISCUSSION

Our main goal is to bring a comprehension of the sustainability of illegal practices. We chose the context of illegal downloading for several reasons: these practices are mainstream (Hadopi, in a recent study, shows that a half of respondents are consuming cultural goods on the internet through illegal ways), and despite the regulation, in France, these practices are still enduring. Another point retains our attention: contrary to the findings of other scholars (Denegri-Knott, 2004; Giesler, 2006, 2008), downloading in France does not seem to put in evidence a subculture founded on a libertarian ethos (Odou and Bonnin, 2010). This phenomenon of subculture could be a reason for the sustainability of such practices, but it does not seem that, in France, downloading illegally is fed by such a subculture (Divard and Gabriel, 2013).

Our research has resonances with the works of Garcia-Bardidia et al. (2011, 2012), showing that these repressive measures are pushing the downloaders to alternatives forms of consumption.

7   Contributions

As it is a work in progress, we envision several contributions to the ongoing marketing debate by bringing a critical perspective on:

The sustainability of illegality -Market systems have been studied so far in terms of changes, ruptures, creation, innovation, emergence-. Giesler (2008) in his study on downloading conceptualizes markets' dynamics in the cultural domain as characterized by four phases: breach, crisis, rupture and reintegration. Reintegration of the downloaders on the one hand, and adaptation of the offer on the other hand. Our research completes this model, showing that: 1) Downloaders have not been reintegrated 2) a parallel market has been constituted, embedded in the legal market and centered on the distribution of contents.

Our research also contributes to the literature on illicit practices. Goulding and al. (2009) show how illegal practices are contained (in terms of space and time) with the complicit knowing wink of the authorities. This approach helps us to understand the processes of domestication of illicit practices but say not much about the resurgence of such practices. Finally, we will contribute to the notion of legitimacy, and more particularly on the sources of legitimacy and on how the very presence of an illicit market can erode the belief that certain illegal activities are illegitimate.

Overall, those possibilities represent an attempt to shed light on illegality as part of market dynamics, which we believe, is being under-accounted by extant literature so far.

References

Askegaard, Søren, and Jeppe Trolle Linnet (2011). Towards an Epistemology of Consumer Culture Theory: Phenomenology and the Context of Context, Marketing Theory, 11 (4), 381– 404.

Baxter, Pamela and Susan, Jack. (2008) "Qualitative Case Study Methodology: Study design and implementation for novice researchers", in The Qualitative Report, 13(4): 544-559.

Blanc Antoine et Isabelle Huault (2010). Reproduction de l'ordre institutionnel face à l'incertitude: le rôle du discours des majors dans l'industrie musicale, Revue Française de Gestion, 36, 203, 85-89.

Bengtsson, Anders, Jacob Ostberg, and Dannie Kjeldgaard (2005). Prisoners in Paradise: Subcultural Resistance to the Marketization of Tattooing, Consumption, Markets and Culture, 8 (3), 261–74.

Bishop, Jack (2005). Building International Empires of Sound: Concentrations of Power and Property in the ''Global'' Music Market, Popular Music and Society, 28(4), 443–71.

Cluley, Robert (2013). Downloading deviance: Symbolic interactionism and unauthorised file-sharing, Marketing Theory, 13(3), 263-274.

Denegri-Knott, Janice (2006). Consumers behaving badly: deviation or innovation? Power struggles on the web, Journal Of Consumer Behaviour, 5(1), 82-94.

Denegri-Knott, Janice (2004). Sinking the Online "Music Pirates:" Foucault, Power and Deviance on the Web, Journal of Computer-Mediated Communication, 9, 4.

Divard, Ronan et Patrick Gabriel (2013). Les comportements volontairement déviants en termes de paiement, Revue française de gestion, 230(1), 101-117.

Easley, Robert. F. (2005). Ethical Issues in the Music Industry, Response to Innovation and Piracy, Journal of Business Ethics, 62(2), 163–68.

Fullerton, Ronald. A., and Girish, Punj. (1997). What is Consumer Misbehavior?, Advances In Consumer Research, 24 (1), 336-339.

Garcia-Bardidia Renaud et Eric Rémy (2006), "Consommer sans limites ou les affres de la liberté: le téléchargement de produits culturels", Actes des 11e Journées de Recherche en Marketing de Bourgogne, Dijon.

Garcia-Bardidia, Renaud, Jean-Philippe Nau, and Eric Rémy (2011). Consumer resistance and anti-consumption: Insights from the deviant careers of French illegal downloaders, European Journal of Marketing, 45, 11-12, 1789–98.

Garcia-Bardidia, Renaud, Jean-Philippe Nau, and Eric Rémy (2012). La consommation illégale de musique numérique : y résister ou se l'approprier ?, Décision Marketing, 68, 89-94.

Giesler, Markus (2006). Consumer Gift System, Journal of Consumer Research, 33, (2) 283-290.

_____ (2008). Conflict and Compromise: Drama in Marketplace Evolution, Journal of Consumer Research, 34 (6), 739–754.

_____ (2012). How Doppelganger Brand Images Influence the Market Creation Process: Longitudinal Insights from the Rise of Botox Cosmetic, Journal of Marketing, 76 (6), 55-68.

Goulding, Christina, Avi Shankar, Richard Elliot and Robin Canniford, (2009). The Marketplace Management of Illicit Pleasure, Journal Of Consumer Research, 35(5), 759-771.

Humphreys, Ashlee (2010a), Megamarketing: "The Creation of Markets as a Social Process, Journal of Marketing, 74 (2), 1–19.

_____ (2010b), Semiotic Structure and the Legitimation of Consumption Practices: The Case of Casino Gambling, Journal of Consumer Research, 37 (3), 490–510.

Karababa, Eminegul and Guliz Ger (2011). Early Modern Ottoman Coffeehouse Culture and the Formation of the Consumer Subject, Journal of Consumer Research, 37(5), 737–60.

Kozinets, Robert V. (2001). Utopian Enterprise: Articulating the Meaning of Star Trek's Culture of Consumption, Journal of Consumer Research, 28 (1), 67–89.

Kucuk, S. Umit and Krishnamurthy, Sandeep. (2007). An analysis of consumer power on the Internet, Technovation, 27,1-2, 47–56.

Lessig, Lawrence. (2004). *Free Culture: The Nature and Future of Creativity*, London, UK: Penguin Books.

McCracken, Grant. (1988). *The long interview*, Newbury Park, CA: Sage

Moschis, George. P., and Cox, Dena. (1989). Deviant Consumer Behavior, Advances In Consumer Research, 16(1), 732-737.

Odou, Philippe et Gaël Bonnin, (2010). Téléchargement illégal, déviance et gestion individuelle du conflit moral: l'apport de la théorie de la neutralisation, in JRMB, Dijon.

Penaloza, Lisa. and Price, Linda. (1993). Consumer resistance: a conceptual overview, Advances in Consumer Research, 20, 123-8.

Press, Melea and Eric J. Arnould (2011). Legitimating community supported agriculture through American pastoralist ideology, Journal of Consumer Culture, 11(2), 168–94.

Proulx, Serge et Anne Goldenberg (2010). Internet et la culture de la gratuité, Revue du MAUSS, 35(1) : 503-517.

Robertson, Kirsten., McNeill, Lisa., Green, James., and Roberts, Claire. (2012). Illegal Downloading, Ethical Concern, and Illegal Behavior, Journal Of Business Ethics, 108(2): 215-227.

Rose, Randall. L., Bearden, William. O., and Teel, Jesse. E. (1992). An Attributional Analysis of Resistance to Group Pressure Regarding Illicit Drug and Alcohol Consumption, Journal Of Consumer Research, 19(1), 1-13.

Roux Dominique. (2007). Consumer resistance: proposal for an integrative framework, Recherche et Applications en Marketing, 22, 4, 59-79.

Sandikci, Ozlem and Guliz Ger (2010).Veiling in Style: How Does a Stigmatized Practice Become Fashionable? Journal of Consumer Research, 37 (1), 15-36.

Schouten, John and Diane Martin. (2013). Consumption-Driven Market Emergence, Journal of consumer Research, 40 (5), 855-870.

Schouten, John and James H. McAlexander (1995). Subcultures of Consumption: An Ethnography of the New Bikers, Journal of Consumer Research, 22 (June), 43–61.

Siebert, Anton and Anastasia Thyroff (2013). Market System Dynamics: The value of, and the open questions associated with, studying markets in consumer culture theory, Proceedings of the 2012 Association for Consumer Research Conference (Vancouver, BC, October 4-7).

Sykes, Gresham and Matza David. 1957. Techniques of neutralization: a theory of delinquency. American Sociological Review, 22, 6, 664-670

Thompson, Craig J. and Gokcen Coskuner-Balli (2007), Countervailing Market Responses to Corporate Co-optation and the Ideological Recruitment of Consumption Communities. Journal of Consumer Research, 34 (2), 135–51.

Turner, Victor Witter (1988), The Anthropology of Performance, New York: PAJ.

Yin, Robert. K. (2003). Case study research: Design and methods (3rd ed.). Thousand Oaks, CA: Sage.