



Ecorys Analysis on the Impact of Copyright Infringement: A Study of Displaced Logic

In a study commissioned by the European Commission entitled “Estimating Displacement Rates of Copyrighted Content in the EU” (May 2015), the Ecorys research firm quizzically concluded that copyright infringement – that is, the unauthorised use of, or access to, copyrighted content – does little to displace legitimate sales of copyrighted works (except in the case of “recent top films”). This is in spite of the fact that the study’s authors themselves note (on page 139) that “not too much significance should be attached” to their estimates of sales displacement rates on account of the insignificance of the displacement-related coefficients. With respect to the video games industry, the study concluded that the online infringement of games positively generates sales at a ratio of 24 legal transactions for every 100 illegal ones. This highly questionable conclusion is not only counterintuitive, but demonstrates a deeply flawed understanding of games industry sales and economics. The study’s attempts to apply a one-size-fits-all methodology (in terms of analysing consumer behaviour) to the different content industries simply ignores the obvious differences in business models and patterns of consumption.

Video game publishers make their content available today via personal computers, games consoles, handheld devices, tablets and smart phones, providing consumers with highly dynamic and varied models and price points for engagement. Yet, the Ecorys study seems to assume a monolithic, binary marketplace for video games – one in which consumers show a “willingness to pay” €6-10 before resorting to infringing behaviour. The games industry has, on the contrary, long ago embraced the digital delivery of content and experimentation with consumer-friendly payment models. Digital sales have now grown to account for over half of all game sales in many markets worldwide. Digital distribution today includes a wide variety of pricing models, including: subscription services, downloadable content (“DLC”) that updates games post-release (new levels, new playable characters, etc.), paid apps, and apps that either require a small fee or that are free to download and play (though some may be ad-supported or allow for in-game purchases). Despite the industry’s efforts to give consumers access to digital content on a variety of devices at multiple price points, online infringement nevertheless persists in the form of infringing copies of games, DLC, and even apps.

This infringement continues to constitute a threat to the future of the industry and costs it countless lost sales every year. Piracy in the games industry is a complex issue, with different companies impacted to varying degrees, depending on the types of game they publish and for which platforms they publish them, etc. This is why the industry does not publish piracy loss estimates, although piracy continues to cause serious economic damage to developers, publishers, distributors and retailers.

The Ecorys study's efforts to explain how gamers are converted into paying customers (via the offer of extra levels/bonuses) demonstrate how the authors failed to consider obvious additional factors, such as the industry's effective use of minimally invasive technological protection measures (TPMs) to protect proprietary code, server-side authentication, and the allure of immersive online multiplayer environments, which have combined to make legal gameplay far more appealing than the use of illegal copies. It is common knowledge today that the use of unauthorised software in online multiplayer environments can be detected, and can result in a permanent ban of a player's account.

The study suffers from other methodological flaws, such as the authors' unexplained use of the terms "VPN, P2P and Warez" to evaluate the veracity of self-reported statements about piracy, and their failure to properly engage with games publishers or their representatives when preparing the study. The study takes no account either of the new forms of piracy designed to exploit cloud-based content services, such as the operation of unauthorised, third-party, private servers and unauthorised secondary marketplaces.

We can only conclude with a reminder that there is a consensus among economists who study piracy that it does negatively impact sales. A recent literature survey by Danaher et. al. (2016) showed that out of 25 studies reviewed, 22 found that piracy reduced the revenue that producers make from legal sales.¹

Despite the games industry's best efforts, by both providing consumers with access to games on a variety of devices and at multiple price points and by taking various technological self-help measures, it is a fact that piracy persists and causes serious economic damage. A methodologically-flawed study that demonstrates a complete lack of understanding of industry sales and economics does not change that fact, and should not be relied on by policy makers.

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¹ Danaher, Brett, Smith, Michael D. and Telang, Rahul: The Truth About Piracy, Technology Policy Institute. February 2016. Available at: <https://techpolicyinstitute.org/2016/02/02/the-truth-about-piracy/>