

Intermediary **Liability** Blog

The Evidence Hub for Policymakers

Regulation and Consumer Behaviour: Lessons from HADOPI

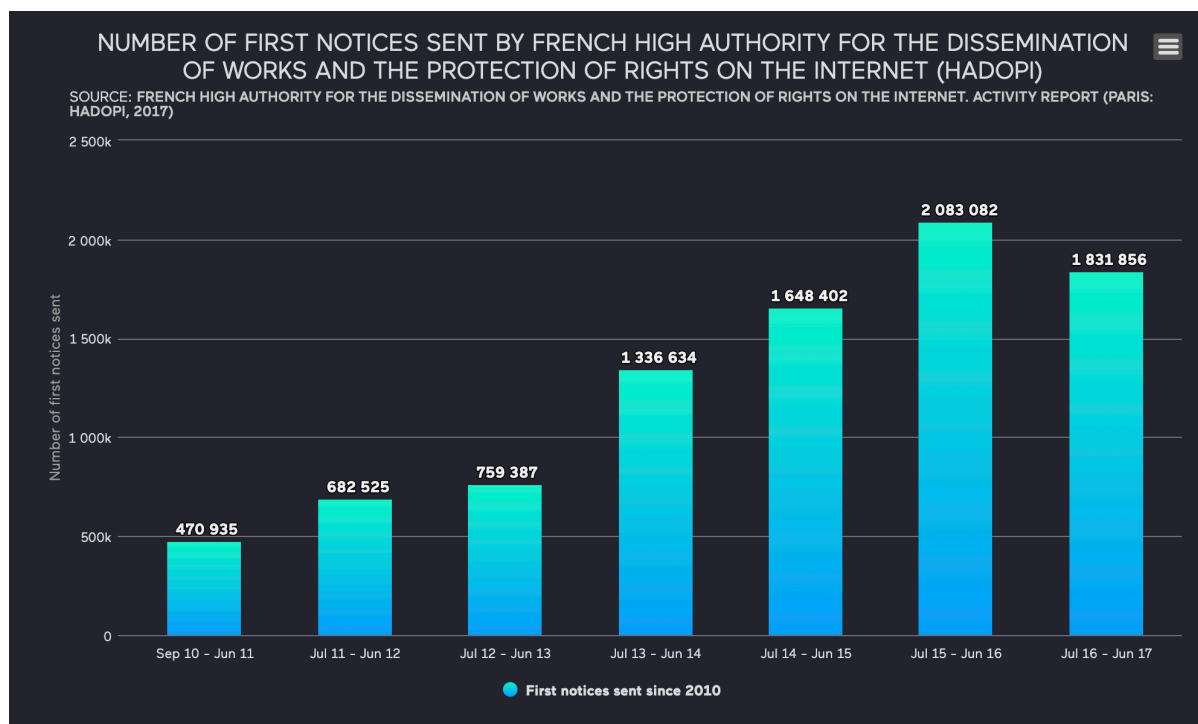
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The tough French enforcement rules on copyright infringement, dubbed the HADOPI laws, named for the [High Authority for the Dissemination of Works and the Protection of Rights on the Internet](#) agency set up to enforce them, can be considered the posterchildren of the so-called “graduated response” policy, an effort to fight illegal file sharing with the heavy arm of the law.

Under the rules, consumers are directly contacted if they are found to be sharing content illegally – and eventually given three warnings, first via e-mail, then via registered mail. The ultimate sanction, though, was a fine of up to €2000 and, most controversially, the temporary suspension of Internet access. To enforce this, HADOPI needed the full collaboration of Internet service providers – which they were given by law – to provide the authority with the personal contact information of the user and to invite the user to install a navigation filter.

Did this 2009 law work? As it is often the case with public policy and technology, it is not easy to give a clear answer but luckily the law has been widely studied by scholars and legal analysts.

First, the law certainly had an impact on public perception. By 2017, more than nine million first warnings had been sent; 846,018 second warnings; and 7,886 third warnings, of which 2,146 cases were sent to prosecutors. Even more than the actual numbers, the law was widely publicised, attacked and debated, so that it also affected even those users who did not receive the notification.

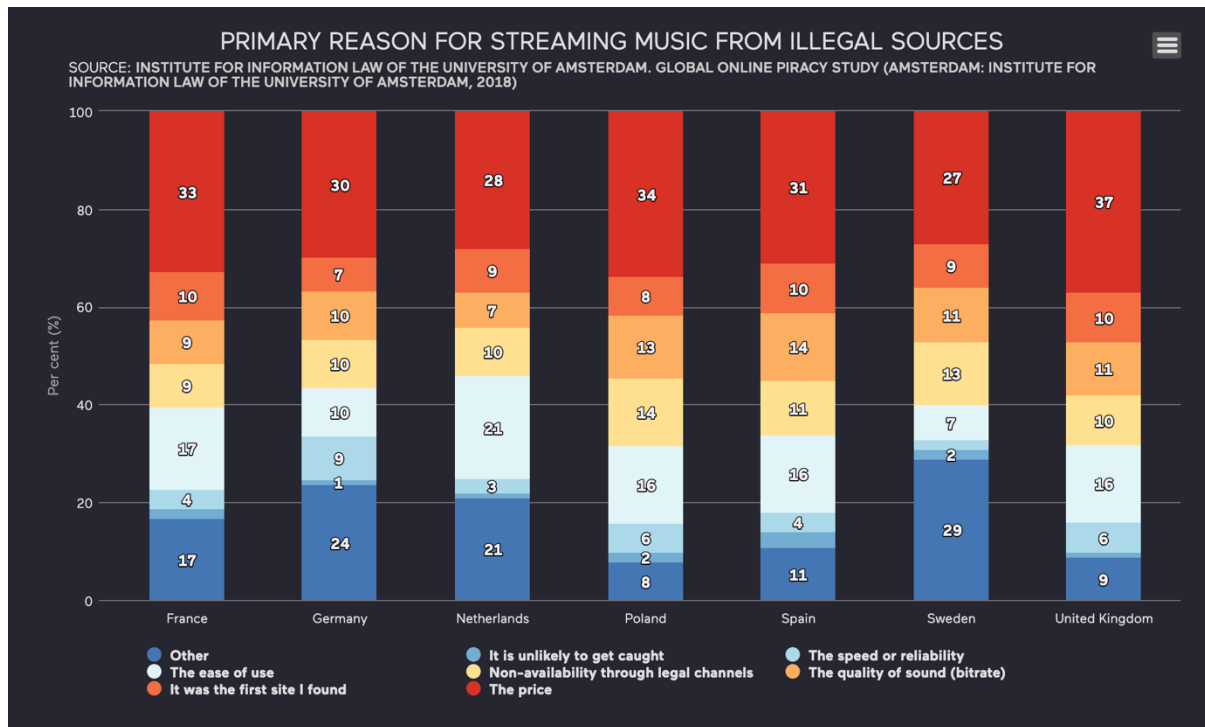


When it comes to actual results, the evidence is more contradictory. In particular, an article in the [Journal of Industrial Economics](#), provides evidence that HADOPI caused an increase of 22.5% in legal music file sales in France as compared to a control group of countries which did not implement a similar legislative measure, and that this increase was concentrated in the genre with a higher piracy rate (notably rap). The study has been criticized, but it is a robust, peer reviewed study published in a prestigious journal and based on real market data. Things don't get much better than that on policy evaluation.

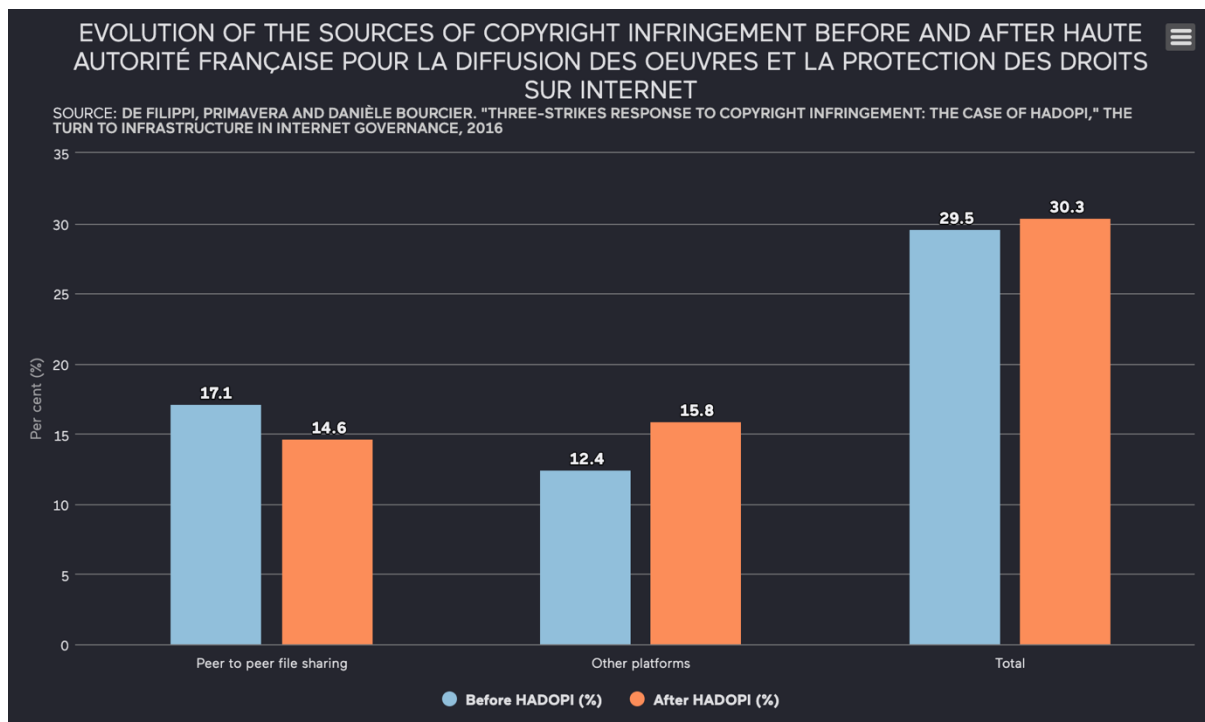
The data suggests that HADOPI was, at least partially, successful in changing the behaviour of consumers. Yet at the same time, if we look at long-term trends in revenues, it is clear that it was not HADOPI which solved the problem of the music industry – its positive impact was too small to change a major declining trend. Legal downloads of music, such as those impacted by the law, were only able to slow the decline. As my Lisbon Council colleague Paul Hofheinz argued in [a previous Intermediary Liability Blog post](#), the return to growth in the music industry came mostly from the emergence of the subscription based business model – underpinned by innovations such as affordable mobile broadband rates and the rise of smartphones. Interestingly, the same business model is being successfully replicated [across different industries](#), from information technology (software as a service) to e-commerce (Blue Apron meals) to manufacturing (John Deere agriculture technology), leading to the emergence of what some call the “[subscription economy](#).” Online subscriptions is already hailed as the secret behind the return to profitability for newspapers such as [The New York Times](#). And it is also providing an opportunity for a new [fairer model](#) on personal data, as correct data processing is clearly linked to benefits in terms of quality of service.

On a similar note, [research from the University of Amsterdam](#) points out that “the risk of getting caught” is not a primary factor working against accessing illegal content. It

is actually the least important reason across all countries, including France, well behind ease of use and findability – not to mention price.



One of the effect of HADOPI was not to reduce overall piracy rates, but simply to encourage users to move from peer-to-peer to other platforms when accessing copyrighted content.



All this is not an argument against government intervention *per se*. For one, it could be that policies such as HADOPI helped to change customers behaviour towards

paying for content in a way that ultimately also boosted paid alternatives, such as the flourishing subscription-based business model. It could be that the failure of similar coercive measures to reverse the decline helped to convince the music industry to accept the subscription-based model.

In any case, it is a healthy reminder that public policies, even when ambitious and highly restrictive, seldom manage to achieve an impact comparable to the introduction and scaling up of new services that meet customer needs. And that when facing new threats, forward looking experimentation is a more effective approach than repression.

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This blog post appeared on the Intermediary Liability Evidence Hub, an interactive website managed by [The Lisbon Council](#), a Brussels-based think tank, to gather available evidence and data points on the issue of intermediary liability. Its website is <https://evidencehub.net/>.