PIRACY AND INNOVATION IN THE MEDIA INDUSTRIES

AN INSTITUTIONAL PERSPECTIVE

Esther van Kalken

S4126521

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Dr. M. Stevens

Radboud University Nijmegen

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INTRODUCTION

Entering the Information Age, the creative industries are becoming a bigger and more important part of our economy. In this economy intellectual property rights are paramount. It's the control over using, reproducing and distributing cultural and information goods that allows actors in the creative industries to generate revenue (Hartley *et al.* 2013). For this reason, digital piracy has become a much-discussed subject in both research and society. Because of piracy, consumers are not dependent on the authorized distributors of products. Piracy provides an alternative source for the products they want. It takes away some of the control over cultural and information goods from the industry. For this reason, industry representatives like the MPAA (Motion Picture Association of America), RIAA (Recording Industry Association of America) and BSA (Business Software Alliance), have stressed the harm that copyright infringement does to the affected industries in terms of revenues, wages, taxes, and jobs (Kariithi 2011). By them, piracy is perceived as a criminal act. On the other hand, as Easley (2005) and Brown (2014) discuss, piracy has become neutralised and justified by others for various reasons depending on the type of piracy. As Choi and Perez (2007) argue, for the first pirates sharing was the accepted convention. This shows how perceptions of piracy can vary among different actors. Brown (2014) calls to attention that these different interpretations of piracy are dependent on cultural dimensions. Most piracy research however focuses on the more economic side of piracy (Kariithi 2011).

Research on piracy focuses mainly on three types of piracy: music piracy, video (film) piracy, and software piracy. Kariithi (2011), in his literature review of piracy research, discerns three types of conceptual frames in piracy scholarship: end-user piracy, network externalities, and commercial piracy. End-user piracy entails non-commercial but unauthorized copying of information goods for personal use. Network externalities research focuses on the infrastructure and technology of piracy, for example MP3 format downloading or peer-to-peer file sharing. Commercial piracy, or bootlegging, is the illegal or unlawful use of information goods for profit (Kariithi 2011). As stated above, most research is done from an economic perspective, using mainly quantitative research methods, especially modelling. Kariithi points out that it is remarkable that many of these

studies use data on piracy from industry watchdog BSA. He calls to attention that, seeing as this organisation has a profound stake in the debate surrounding piracy, using its data can hardly result in unbiased research. As Kariithi states, it is no surprise then that the majority of this research is aimed at proving the negative effects of piracy, presenting it as a threat to industries. Yar (2008) argues that these statistics are used as discursive strategies to construct an image of piracy as immoral.

Research using qualitative methodologies is outnumbered, but offers a critical note to this tendency. These methodologies include ethnographic and critical text analysis methodologies, such as discourse analysis. Yar (2005) for example, argues for a social constructivist perspective on piracy, because it allows us to see the dominant economic and political interests that shape the ways in which cultural goods can be legitimately consumed. An isolated amount of studies examines the existence of positive effects of piracy (Choi & Perez 2007; Jaisingh 2009; Cremer & Pestieau 2009; De Castro *et al.* 2008). A chief argument for the positive side of piracy is its effect on innovation (Givon *et al.* 1995; Easley 2005; Choi & Perez 2007; Mason 2008; Jaisingh 2009; Banerjee & Chatterjee 2010). The general consensus in this type of research is that piracy forces industries to revaluate their traditional business models and strategies and that in this way piracy inspires innovation.

In one of the earliest studies on piracy and innovation, Givon *et al.* (1995) apply the innovation diffusion model to software piracy. They found that although six out of seven software users utilized pirated copies, these pirates were responsible for generating more than 80% of new software buyers. This implicates that piracy plays a dominant role in creating a market for software. Using a totally different approach, Easley (2005) discusses the ethical issues related to the response of the music industry to innovation and piracy. He employs Christensen's (1997) theory of disruptive technologies to examine this response in order to discuss the ethical considerations of this case. He concludes that in order to resolve the conflicts that arise from the clash between pirates and the music industry, it is ill advised to try to suppress the innovations that may lead to new business models best suited for this task.

Choi and Perez (2007) argue that piracy should be seen as a source of innovation that has been lacking in the traditional media sector. They identify a four-step-process in which piracy has affected innovation and legitimate business creation. First, according to

Choi and Perez, online piracy has pioneered the use of new technologies. Second, pirate communities have been a source of valuable market insight. Third, pirates have contributed to new market creation. And lastly, piracy has directly and indirectly spurred the creation of legitimate and innovative business models. They argue that this process repeats itself with every generation of new pirate technology and put this hypothesis to the test by comparing the case study of Napster to BitTorrent; both revolutionary technologies created and used by pirates.

Mason (2008) develops a theory of marketplace changes caused by piracy. Following his model, pirates first create a gap outside of the market. If these pirates create value for society, society supports them, which causes them to grow and take a larger chunk out of the traditional market space. This creates the Pirate's Dilemma: do the other players in the market space try to fight piracy with the law or do they compete with the pirates? This dilemma can have several outcomes. Once any player decides to compete, the market space the pirates inhabit becomes legitimized, resulting in a greater market space. Eventually every player will then have to compete. In this case, it is best to be the first to compete in order to gain the advantage on the other players. Mason attributes the importance of the value for society to a new worldview that he calls Punk Capitalism: "a new kind of decentralized democracy made possible by changes in technology" (Mason 2008: p. 240).

Jaisingh (2009) studies the relation between software piracy and innovation in the light of piracy policy. Specifically, he looks at the policy choice alliances such as the Business Software Alliance (BSA). He finds that in some cases a stricter piracy policy, that increases the perceived cost to using pirated software for end-users, leads to an increase in piracy, and a decrease in product quality. The effect on innovation differs between a monopoly market and a competitive market. In a monopoly market, an increase in the policy variable can act as a disincentive for innovation, while in a competitive market an increase in the policy variable provides an incentive for innovation.

Also using economic modelling, Banerjee and Chatterjee (2010) examine the relation between piracy, R&D investment, and innovation. They find that piracy can enhance the overall probability of successful innovation. They explore this dynamic in a situation where there are two competing innovative firms. Important in their findings is the difference between the two firms regarding the efficiency in R&D investment. If the

difference is big enough, the less efficient firm's R&D investment rises and that of the more efficient firm falls. They argue that thus an increase in piracy may result in an increase in overall R&D investment, thereby increasing the probability of having a new product in the market.

Brown (2014) discusses the limitations and problems of piracy research. Brown begins by stating that research on digital piracy has yielded conflicting results, so there is no consensus about what is known about it. The two most common methodologies used in piracy research are (economic) modelling and self-report methodology. The shortcoming of modelling, according to Brown, is that it can't take into account the differences in individual behaviour across different piracy practices. With self-reported surveys Brown identifies several issues. Firstly, there's the overreliance of student samples; adults are virtually ignored as possible respondents. On top of that, the word "piracy" is also a problem according to Brown. It is biased and doesn't acknowledge the fact that individuals actively seek out different types of digital piracy for different reasons. He argues that it is better to speak of multiple piracies.

Brown suggests that more qualitative research should be done on piracy. He states that qualitative research can serve to inform practical matters on how to understand and address digital piracy. The aforementioned inconsistent results suggest that there is a gap in research methodology that could be filled with mixed-method approaches. Further, Brown argues that research has focused too much on the economic aspects of piracy, ignoring the underlying cultural dimensions. According to Brown, these underlying cultural dimensions "may prove most revealing and more productive in helping facilitate policymaking" (Brown 2014: p. 134). A more cultural approach could also draw attention to the lack of cross-cultural research. He speaks of research that "suggests that different norms of *cultural* behaviour will play a role in determining *piracy* behaviours" (Brown 2014: p. 134). Finally, there is also a lack of longitudinal research. He concludes by stating that scholars should be more aware that piracy is a social activity and so the research would benefit from more attention for the social aspects of piracy.

In light of Brown's considerations, this study attempts to fill in a hiatus in digital piracy and innovation research by using a cultural studies approach. This thesis takes piracy research further in the sense that it examines what the effect of piracy is on innovation in the media industries with emphasis on the sociocultural construction of the

environment that piracy exists in. As Kariithi (2011) summarizes, it is important to view piracy in all its economic, cultural, technological, and institutional complexity. Choi and Perez (2007) discuss the creation of legitimate and innovative business models. They argue that from piracy, other organizations create new business models. The pirates in their case study Napster are unsuccessful, because they are shutdown through legal action, but other businesses, in this case Apple, build on the consumer base and its preferences to create an innovative and legitimate business model. Yar (2005) too, recognizes that legitimacy is of importance when it comes to piracy. On top of that, he draws attention to the way dominant economic and political interests shape what is viewed as legitimate and what is not. Here they touch upon an aspect of this process that is paramount in the relation between piracy and innovation in the media industries. However, they don't fully recognize the importance of legitimacy with regard to innovation.

Recalling the before mentioned statement by Brown (2014) that interpretations of piracy depend on cultural dimensions rather than economic ones, the importance of the notion of legitimacy and the cultural perspective in piracy research become clear. Legitimacy is a socially constructed status that is bestowed upon organizations or individuals because of the way they are perceived (Suchman 1995). Interpretations of piracy and legitimacy are determined by sociocultural dimensions. As Choi and Perez (2005) show, an innovative business or business model has to be legitimate in order to be successful. But how is this legitimacy determined? What forces are at work in determining legitimacy and how does this influence the ability of an organization or individual to be successfully innovative? Bringing these aspects together leads to the research question of this thesis: how do regulative, normative, and cultural-cognitive forces influence the legitimacy of piracy in the media industries and how does this, in turn, affect innovation in those industries? The terms regulative, normative, and cultural-cognitive are derived from Scott (2008) and are part of the institutional perspective that forms the main theoretical framework of this thesis. Institutional theory studies organizations in the context in which they operate and it emphasizes the interrelation between organizational and societal structures and processes. This approach offers a way to take into account sociocultural processes that are often left out in piracy research and will thus gain new insights in piracy and innovation in the media industries.

The relation between piracy and innovation will be examined through two case studies: the file hosting services RapidShare and Megaupload. The technology these services pioneered forms an alternative to peer-to-peer file sharing, the most common method of illegal file sharing, or digital piracy. RapidShare (founded in 2002) and Megaupload (founded in 2005) used to be among the 100 most visited websites in the world (Mahanti *et al.* 2011). Supporting millions of users everyday these services were immensely popular. Although according to the terms of service, the websites didn't endorse piracy and removed content if and when requested by copyright holders, according to industry representatives RapidShare and Megaupload did not pursue pirates actively enough. They were accused of facilitating and even encouraging piracy. This resulted in the prosecution of Megaupload by the United States Department of Justice and its' shutdown in 2012. RapidShare too faced several lawsuits. It tried to avoid suffering the same fate as Megaupload by changing its business model, thereby dramatically restricting the possible uses of the service. This way it conformed to the industry's standards, but couldn't meet its customers' expectations anymore, causing it to go out of business. Later, services based on the same technology emerged, like Dropbox and GoogleDrive, among others. This raises questions about legitimacy and innovation. In order to acquire legitimacy an organization must adhere to the expectations and demands of stakeholders, but these are sometimes at odds with each other. What do stakeholders do that causes organizations to gain or lose legitimacy? Which circumstances influence this process? What factors determine whether it is beneficial to be innovative?

Institutional theory offers several aspects on which the case studies can be examined in order to understand what pressures were exerted upon these services, by whom, and in what conditions. It also enables us to determine what strategies were chosen in response to those pressures and why these did not result in the legitimization of these organizations within the media industries field. This results in identifying the underlying logics of these processes, which combined with theory on innovation makes it possible to draw some general conclusions about the role of piracy in innovation in the media industries. In this thesis I will show how regulations around copyright and piracy leave room for interpretation. Because of this, the discussion about piracy and copyright violations becomes much more based in normative systems and cultural-cognitive

frameworks. In this process legitimacy, identity, and framing play a key role with regard to institutional change and innovation. This thesis explains how piracy can be a driving force of innovation, because of the institutional complexity it's surrounded with. This complexity leads to exposing taken-for-granted beliefs and practices. Piracy increases the salience of changing consumers' preferences. Catalyzing in enterprises like Megaupload and RapidShare this initiates institutional change.

To paint a complete picture of the situation of the two cases and understand how they connect to the wider environment, an elaborate theoretical framework is needed. This framework is explained in the first chapter. After the theoretical framework and methodology, I will analyze the two cases. In the final chapter I will then bring together the findings from the case studies with the theory to examine how regulative, normative, and cultural-cognitive systems influence the legitimacy of piracy in the media industries and how this, in turn, affects innovation in those industries.

CHAPTER 1: THEORETICAL FRAMEWORK & METHODOLOGY

In order to understand the field in which RapidShare and Megaupload operated a theoretical framework is needed that allows us to map the several forces that are at work in this field and the actions and responses RapidShare, Megaupload, and other actors displayed during the rise and fall of those services. Several theories are used in order to do this: institutional complexity theory – which has significant overlap with Bourdieu's field theory, and innovation theory. Besides the explanation of the theoretical background of this thesis, a definition of piracy, legitimacy, and the way these concepts relate to each other, is given. First innovation, the creative industries, piracy, and legitimacy will be discussed. The second segment of this chapter is devoted to Bourdieu and institutional theory.

Innovation, piracy, and legitimacy

As we've discussed above, there are several discourses at play when it comes to piracy in the media industries. These discourses are sometimes conflicting. The logic of piracy is rooted in a different set of values and norms than the logic of intellectual property. The interactions that those logics spur form a complex process that causes the field of the media industries to take shape and transform. In order to understand the role of piracy and innovation in this process, the concepts of innovation, the creative industries, innovation, and legitimacy need to be defined.

Because there is so much research on piracy, it is a tricky term to use without proper definition. As discussed in the first chapter, piracy research mainly focuses on three types of piracy: video, music, and software piracy. But next to these types, there are even more, less well-known types of piracy, such as book and videogame piracy. As Kariithi (2011) asserts, the literature lacks a universally acceptable definition of piracy. A general definition of piracy that is given is violations of copyrighted material in general and software in particular (Kariithi 2011). A more specific definition is the unauthorized replication of intellectual assets. Sometimes, the words "digital" or "online" are added to make clear that the concept that is intended is piracy related to technology or the Internet. Digital or online piracy mostly happens through peer-to-peer file sharing or, as argued by Antionades *et al.* (2009), Sanjuàs-Cuxart *et al.* (2012), and Mahanti *et al.* (2011), through one-click file hosting. Brown (2014) argues for the acknowledgement of "multiple piracies". He states that "individuals actively seek out different types of digital media for different reasons" (p. 132). The motivations for piracy can include access (a specific product is not available to someone through authorized canals, so they decide to pirate it) (see Rahim *et al.* 1999; Kini et al. 2003; Rawlinson & Lupton 2007), means (consumers do not have the financial means to acquire authorized copies of the product) (see Moores & Dahliwal 2004; Cosovanu 2006; Mishra *et al.* 2006; Rawlinson & Lupton 2007), or beliefs (piracy is rooted in the idea that everything should be freely available to anyone) (see Lunney 2001; Choi & Perez 2007). If research doesn't make a distinction between these multiple piracies, it might lead to inaccurate conclusions, according to Brown. Hartley *et al.* (2013) define piracy as "direct product copying", as opposed to "idea copying, which includes copying themes, styles, characters and plots, sometimes referred to negatively as plagiarism and appropriation or positively as homage or tribute" (p. 210). Because this thesis focuses on services that facilitate multiple forms of piracy,

arguably any form of digital piracy, I will not make a distinction between video, music, software, book, or videogame piracy. However, I will add to Hartley *et al.*'s definition the aspects of copyright and the digital. So, the definition of piracy used in this thesis is: the direct product copying of copyrighted content using digital technologies.

Kariithi (2011) discusses several views on the relation between the creative industries and piracy. He quotes Coombe and Herman (2004) in their argument that the production of value is increasingly expressed in intangible, symbolic, or informational capital that is protected as intellectual property. So, intellectual property is a kind of intangible asset that is embodied by information goods. These information goods are characterised by large fixed (high development) costs and small variable costs of reproduction. Kariithi (2011) states that combined with technological development that has reduced the costs of copying and also made the technologies widely available, this makes information goods attractive for pirates. Intellectual property rights and copyright legislation support the intent of suppliers of information goods to recoup the development costs they have made in developing, creating, and distributing them. Piracy is often seen as a threat because it is perceived to undermine this intent.

As we've seen in the explanation of piracy by Harley *et al.* (2013), the interpretation of a concept is dependent on the underlying logic. They state that idea copying can be defined positively or negatively. The interests that are served by the used definition explains the way this interpretation is given form. Regarding piracy this is exceedingly relevant. The social norms and values that endorse piracy are different from those that uphold intellectual property rights. These different social norms and values define what actions and practices are legitimate and which are not. This means that piracy has a lot to do with legitimacy. Although legislation to prevent piracy still hasn't caught up to its practices and its global character, and the laws that are in place differ between different regions in the world, in general it is clear that it is a violation of copyright laws and therefore not legitimate (Hartley *et al.* 2013). But legitimacy can also be explained as "a generalized perception or assumption that the actions of an entity are desirable, proper, appropriate within some socially constructed system of norms, values, beliefs, and definitions" (Suchman 1995: p. 574). This definition by Mark Suchman (1995) is commonly used in institutional theory, to which we will come back in more detail in the second part of the theoretical framework. Institutional theory states that "the social

values that support and legitimate some organizational forms and not others, some social activities and not others, are cultural values" (Finnemore 1996: p. 329). The sociocultural values that support piracy are not the same as the legal norms that condemn it. This means that what is legitimate is not decided by one person or institution. Multiple judgements of what is legitimate can coexist. These judgements result from the underlying logics, or discourses, that serve the interests of the individual, group, or institution that makes them.

Research on piracy and innovation is an attempt to offer an alternative discourse to the logics of the BSA, who, as discussed before, have supplied most of the data used for empirical research into the effects of piracy on the media industries. As an intellectual property rights advocate, the BSA might produce data that are in accordance with their social values and norms, strengthening their claim and belief that piracy is immoral and harmful to the industries, and therefore not legitimate. Research on the positive effects of piracy provides an alternative voice to their logics. Piracy as a force that stimulates innovation is one of the discourses that has emerged from this research (Givon *et al.* 1995; Easley 2005; Choi & Perez 2007; Mason 2008; Jaisingh 2009; Banerjee & Chatterjee 2010). Following this logic, piracy is legitimized through its influence on innovation.

In the literature on piracy and innovation, innovation is not explicitly defined. Jaisingh (2009) gives some examples of innovation in software development: "producing more types of software, improving the quality of their existing software, R&D investment etc" (p. 763). Easley (2005) discusses two theories on the source of innovation. The first theory is by Von Hippel (1988) and it emphasizes examining the source of innovation, which can be part of one of three categories: manufacturer, supplier, or user. Easley (2005) explains that Von Hippel makes a key distinction between innovation by firms and suppliers and innovation by users. Unlike users, firms and suppliers must market the innovation to profit from it. The other theory Easley (2005) discusses is Christensen's (1997) theory of disruptive technologies. Easley mainly focuses on the effects and responses to disruptive technologies, but doesn't define it beyond one specific form of innovation.

Hartley *et al.* (2013) offer an elaborate account of innovation and its relation to the creative industries based on an array of scholars. They define innovation as: "the process of economic change through the origination, adoption, and retention of new ideas into

the economic order" (p. 194). Hartley *et al.* (2013) state that the theory of innovation is defined by two overarching analytic concepts: 1) the notion of an innovation process or trajectory, and 2) the concept of an innovation system. This process of innovation happens in three phases. It starts with the invention or origination of a novel idea, followed by the adoption or diffusion of that idea through the economic system. The final phase is the retention, normalisation or embedding of the idea in the economic system. The innovation system is the set of interconnected institutions that support the innovation process. A more specific definition of innovation offered by Hartley *et al.* (2013) is "the process by which an economic and socio-cultural order transforms from within as an ongoing evolutionary process that is without overarching design or planning" (p. 195). So, we can conclude from this definition that innovation too is related to social norms and values. The innovation system is rooted in institutions that support the innovation process. The discourses of these institutions influence the definition and outcome of innovation. However, innovation is an evolutionary process without overarching design or planning, which means that there is not an individual, group, or institution that has control over innovation. Innovation is a dispersed process. And most importantly when related to piracy, innovation is the transformation of an economic and sociocultural order. So, if piracy can spur innovation, then piracy has the potential power to change the economic and sociocultural order that constitutes the field of the media industries.

But to better understand this potential, we need to understand why innovation is so important in the media industries. Hartley *et al.* (2013) give two reasons why innovation is a central concept in the creative industries, of which the media industries are a part. The creative industries can be highly innovative, but the creative industries are also a key driver of the innovation process. On the one hand the creative industries are innovative because it is a creative sector and their target is to generate novel entertainment and meaning-making. On the other hand, they are highly competitive and this competition often happens on a global scale. In this sense the creative industries use innovation as an effective competitive strategy. Hartley *et al.* (2013) assert that the second reason for the connection between innovation and the creative industries lies in their role in social communication and meaning-making. This makes them significant contributors to the broader innovation system. They particularly contribute to "the

consumer and demand side in shaping preferences and facilitating adoption and ongoing retention of new ideas and technologies from the rest of the economy" (p. 195). The creative industries are involved in all three stages – origination, adoption, and retention – of innovation.

The idea that creative industries are engaged in meaning-making again calls into mind the previous discussion of the social norms and values that form the underlying logics of different actors in the media industries. Arguably, legitimacy is more contested in the creative industries, because they constantly reflect on meaning and shape it. This reflecting, shaping, and transforming character of the creative industries might be seen as being at odds with the importance of intellectual property rights in them. Intellectual property and copyright are important legal constructs for the creative industries. Intellectual property is divided into industrial property rights, such as patents, designs, and trademarks, and rights in artistic and literary works: copyright (Hartley *et al.* 2013). It is a product of the mind that has commercial value. International treaties such as Trade Related Aspects of Intellectual Property Rights (TRIPS) protect the interests of large copyright holders and their representatives, such as the Hollywood majors and the Motion Picture Association of America (MPAA) (Hartley *et al.* 2013). However, there are many countries that don't have intellectual property regulations. Montgomery (2010) even argues that in these countries there is more innovation.

Many traditional business models depend on intellectual property laws to generate revenue (Hartley *et al.* 2013). However, some have argued that the system of copyright mainly benefits the industry side of the creative industries rather than the creative labourers whose work they exploit (Towse 2005). On top of that, scholars like Lessig (2001) and Benkler (2006) have pointed out that the exclusivity that intellectual property creates is adverse to the development of a commons, a metaphor used to describe collective intelligence. Harley *et al.* (2013) assert that in order to harness the potential of Web 2.0 new ways to manage copyright are needed. One of those ways is the Creative Commons license, that allows others to re-use content. Additionally, Hartley *et al.* (2013) name culture jamming, the emergence of the DIY society, and "cut and paste" culture as representations of a global groundswell against strong intellectual property laws. This indicates that the logic of piracy and the logic of intellectual property that are

so important in the creative industries are at odds. But it also indicates that within the creative industries several logics are at play, whether it be coexisting or in conflict.

In summary, piracy, defined as the direct product copying of copyrighted content using digital technologies, is problematic in the creative industries. This is because piracy causes different norms and values to come into conflict. Intellectual property rights allow suppliers of information goods to recoup the costs they have made. However, because the reproduction of information goods is low in cost and technological development has made this even easier, intellectual property is attractive to pirates. Motivations to pirate can vary from access to means and beliefs. The sociocultural standards that endorse piracy are different from the legal norms that condemn it. The existence of these varying logics set in motion a dynamic relation between the individuals, groups, and institutions that are involved. Depending on the interests of those actors, they will voice and embody their own specific frame on piracy. These frames serve to judge what is legitimate and what is not. The immorality of piracy is one of those frames employed by the BSA, one of the biggest opponents of piracy. An alternative frame is that of piracy as a driving force of innovation. Innovation is important in this context, because piracy is mostly aimed at information goods and information goods are mostly produced by the creative industries, in which innovation is of paramount importance. The creative industries are involved in all three steps of the innovation process: origination, adoption, and retention. These intertwining processes and logics complicate the relations between the involved actors. What those logics are, how these are enacted, how actors respond to each other and with what consequences is what institutional theory studies. But in order to understand institutional theory and its relevance for cultural studies, we must first discuss the theoretical framework from which it has emerged: Bourdieu's field theory.
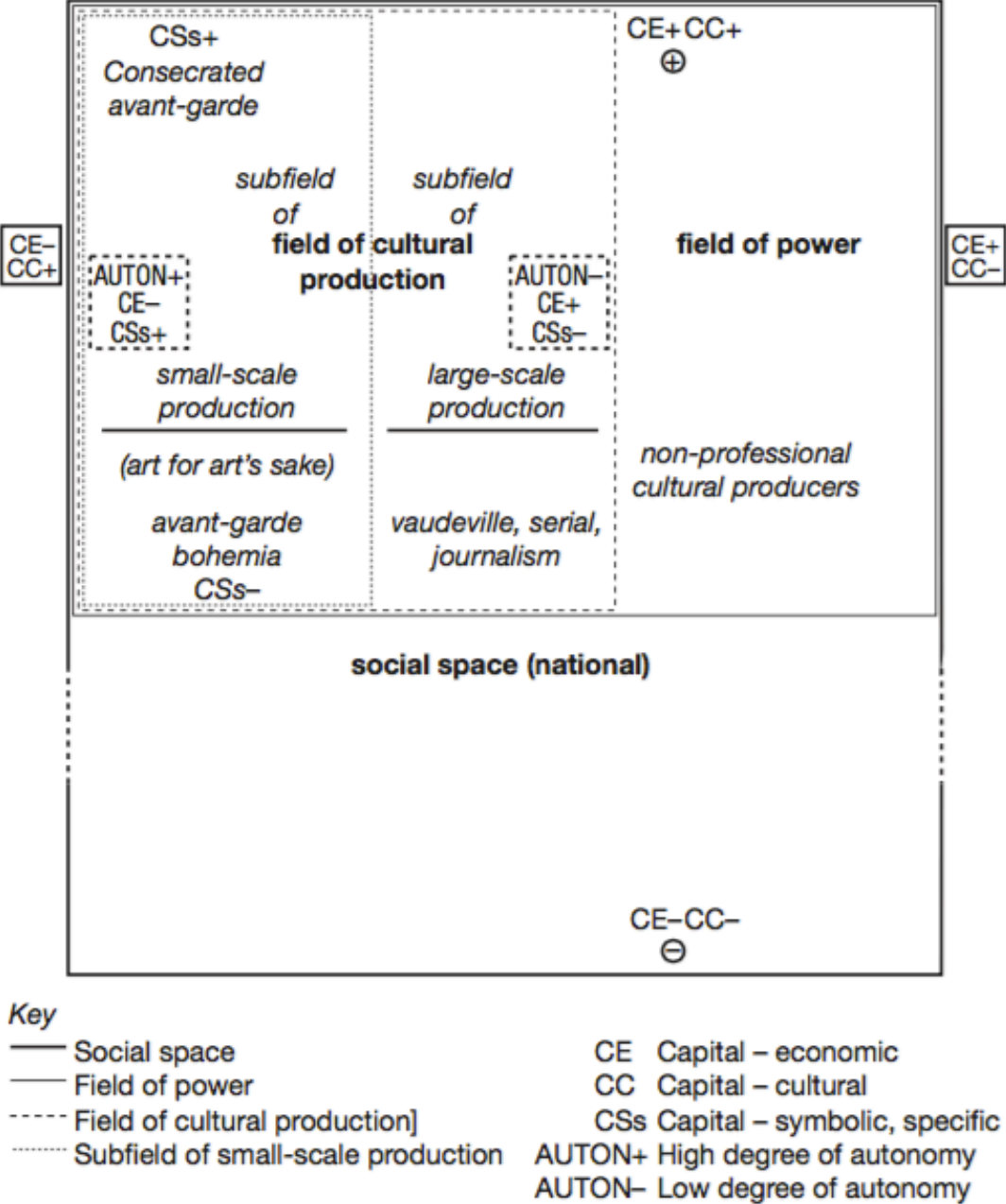
Bourdieu's field theory

One of the most important aspects discussed above, are the several sets of sociocultural values and norms that are at play when it comes to piracy. Most of these values and norms are taken for granted; their justness and propriety are presupposed. It is the taken-

for-granted social practices resulting from these standards that can be examined with Bourdieu's field theory. Many of the concepts and underlying assumptions used in institutional theory are taken from this framework. Field theory explains the network of individuals, groups, and institutions that forms a particular environment, for example the field of the creative industries. Bourdieu calls these individuals, groups, and institutions social agents and they occupy and manipulate positions in the field (Bourdieu 1983). Thompson (1991) defines field as "a structured space of positions in which the positions and their interrelations are determined by the distribution of different kinds of resources or "capital"." Which position a particular agent occupies is dependent on the capital that this agent possesses. Bourdieu explains capital as followed:

> "capital can present itself in three fundamental guises: as *economic capital*, which is immediately and directly convertible into money and may be institutionalized in the forms of property rights; as *cultural capital*, which is convertible, on certain conditions, into economic capital and may be institutionalized in the forms of educational qualifications; and as *social capital*, made up of social obligations ('connections'), which is convertible, in certain conditions, into economic capital and may be institutionalized in the forms of a title of nobility." (Bourdieu 1986)

The structure of the field is determined by the unequal distribution of capital. The amount of capital an agent possesses enables them to appropriate profits and impose the laws of functioning of the field (Bourdieu 1986). Figure 1 shows a diagram that illustrates Bourdieu's field theory applied to the field of cultural production.

Figure 1. The field of cultural production in the field of power and in social space

Key
— Social space   CE   Capital – economic
— Field of power   CC   Capital – cultural
- - - - Field of cultural production]   CSs Capital – symbolic, specific
········ Subfield of small-scale production   AUTON+ High degree of autonomy
                                                   AUTON– Low degree of autonomy

Source: Hesmondhalgh (2006)

The diagram consists of three segments: the field of cultural production, the field of power, and the social space. The field of power is a composite of several other fields: the

educational field; the intellectual field; and various cultural fields, including the literary field, the artistic field, the scientific field and the religious field (Hesmondhalgh 2006). In the field of cultural production Bourdieu distinguishes two subfields: the subfield of small-scale production, or restricted production, and the subfield of large-scale production, or as Hesmondhalgh suggests, mass production. The difference between these is the degree to which they are autonomous of the field of power, with restricted production being more autonomous than mass production, according to Bourdieu (1983). Autonomy (being independent of the field of power) and heteronomy (being dependent on the field of power) are two poles in the field of cultural production. Economic capital increases as one moves from the autonomous pole to the heteronomous pole, whereas cultural capital increases in the opposite direction. The third segment, the social space in which both the field of power and the cultural field are located, dictates class relations, defined by the amount of cultural and economic capital (Bourdieu 1983). Following this thought, the field of cultural production is a field of forces, but also a field of struggles tending to transform or conserve this field.

Bourdieu (1983) offers a comprehensive social theory of cultural production that draws attention to the structured nature of making symbolic goods. What is valuable about field theory is that it allows for unpacking taken-for-granted social practices that often benefit the dominant class. This effectiveness is a product of Bourdieu's stress on the interconnectedness of the cultural field with other fields (Hesmondhalgh 2006). Hesmondhalgh (2006) discusses the usefulness of Bourdieu's field theory for understanding contemporary media production. His main point of criticism is that Bourdieu mainly focuses on restricted production and almost completely neglects large-scale, heteronomous, commercial cultural production. He also states that other research, by for example Todd Gitlin, shows that large-scale production is more differentiated than Bourdieu's theory suggests and "the relations of heteronomy and autonomy might sometimes be more fluid and complex than he implies" (Hesmondhalgh 2006: p. 221). So, to fully understand piracy in relation to contemporary media production, additional theory is needed. Institutional theory examines the complex and dynamic character of fields. As stated before, field theory serves to unpack taken-for-granted social practices. This taken-for-grantedness of the structure of the field and its underlying sociocultural

norms and values sometimes clash with alternative logics. When and why this happens can be understood through the theoretical construct of institutional complexity.

Institutional theory and institutional complexity

To better understand the complexity and fluidity of the field the notion of institutional complexity can be a useful addition. This concept stems from institutional theory, which is part of organization studies. Institutional theory offers an approach to the study of social, economic, and political phenomena. More specifically, it studies organizations in the context in which they operate. As Scott (2008) asserts, institutionalism emphasizes the environment of organizations and the interrelation between organizational and societal structures and processes. In institutional theory, the notion of institution functions as a sort of synonym to discourse. Institutions are the normative and cultural environments that shape the behaviour of organizations. It is a particular logic that dictates what is possible and desirable and what is not. Scott (2008) offers some examples of the questions that institutional theory studies: what types of institutions are associated with the rise of organizations, how behaviour in organizational settings is motivated, why actors decide to conform to or resist institutions, what shapes the interests of actors, and how institutions can be altered. Powel and DiMaggio (1991) stress the role of culture in shaping organizational reality. This means that cultural frames establish the approved means and desired outcomes of organizations, and thus institutions shape interests and politics of organizations. They state that institutionalization is a process that makes organisations less instrumentally rational by limiting the options they can pursue. Institutionalized arrangements are reproduced because individuals often cannot even conceive of appropriate alternatives. Moreover, according to Powel and DiMaggio (1991), institutions do not just constrain options: they establish the criteria by which people discover their preferences. As Finnemore (1996) states, institutional theory strives to denaturalize features of social life that appear natural and inevitable to most of us because this is our culture. Powel and DiMaggio (1991) explain that institutionalists vary in their relative emphasis on macro and micro features, in their weightings of cognitive and normative aspects of institutions, and in the

importance they attribute to interests and relational networks in the creation and diffusion of networks.

Scott (2008) identifies three vital ingredients of institutions in the literature, which he calls the three pillars of institutions: regulative, normative, and cultural-cognitive systems. Scott explains these elements as a continuum moving "from the conscious to the unconscious, from the legally enforced to the taken for granted" (quoting Hoffman (1997)). Each of these components has their own underlying assumptions, mechanisms, and indicators. Regulative systems are institutions that are able to regulate the behaviour of agents. Rules are formal and compelling and are often connected to a form of enforcement and sanctions. Vermeulen *et al.* (2007) state that regulative forces are concerned "with obtaining compliance with the field in which they are embedded and the pursuit of self-interest" (p. 1525). Normative institutions are a reflection of the norms and values of a particular society, industry, or organization. As Vermeulen *et al.* (2007) assert, "normative forces introduce a prescriptive, evaluative and obligatory dimension into social life, reflecting the values (what is preferred) and norms (how things should be done) of the social system" (p. 1526). Different stakeholders have different norms and values. Cultural-cognitive systems entail the shared frameworks that emerge from interaction processes between organizational actors. Individuals and groups in organizations eventually accept these as self-evident. Vermeulen *et al.* (2007) emphasize that frames serve as a way to make sense of one's environment. They argue that the frame that appeals to one group, or individual, does not necessarily appeal to another group if it has a different system of meaning. Scott (2008) does not apply an integrated conception of these three systems, but he does acknowledge that they can reinforce each other. Vermeulen *et al.* (2007) see it as a characteristic of the systems that they are tightly interwoven, but argue that for the sake of research they should be described separately.

Scott (2008) then relates these three pillars to legitimacy. He too uses the definition of legitimacy by Suchman that was stated above: "a generalized perception or assumption that the actions of an entity are desirable, proper, appropriate within some socially constructed system of norms, values, beliefs, and definitions." Scott argues that the "socially constructed systems" to which Suchman refers, are institutional frameworks. From this perspective, Scott argues that legitimacy is not a commodity that

an individual or group can possess or exchange, but rather "a condition reflecting perceived consonance with relevant rules and laws, normative support, or alignment with cultural-cognitive frameworks" (p. 60). Scott quotes Stinchcombe (1968) in stating that whose values define legitimacy is a matter of concerted social power: "A power is legitimate to the degree that, by virtue of the doctrines and norms by which it is justified, the power-holder can call upon sufficient other centers of power, as reserves in case of need, to make his power effective" (p. 60). This definition of power is closer to Foucault's definition of domination, where power relations are relatively stable and hierarchical. In the Foucauldian sense, power is inherently relational, contingent, unstable, and reversible. It is dispersed rather than concentrated. Resistance is an a necessary and inevitable part of power (Hartley *et al.* 2013). This means that power is not just a top-down process, but also bottom-up. Like power, legitimacy can come from different points in the field. As it is a condition reflecting *perceived* consonance, it can differ depending on who is perceiving. So, a different cultural-cognitive framework may result in a different perception of legitimacy. Scott (2008) states that there are various types of authorities that are empowered to confer legitimacy. These authorities might be political as well as cultural. Sometimes actors are confronted with competing authorities and "legitimate" structures may, at the same time, be contested structures. Scott (2008) argues that conforming to one might undermine the support of others in such cases.

According to Scott (2008), each of the three pillars provides a different basis for legitimacy. Regulatory legitimacy entails that organizations established by and operating in accordance with relevant legal or quasilegal requirements are legitimate. A normative conception of legitimacy is grounded in a deeper, moral base for assessing legitimacy. Scott states that normative controls are much more likely to be internalized by actors and organizations than regulative controls. The incentives for conformity are in this case likely to include intrinsic as well as extrinsic rewards. Lastly, Scott explains that cultural-cognitive legitimacy comes from conforming to a common defintion of the situation, frame of reference, or a recognizable role or structural template. He states that "to adopt an orthodox structure or identity in order to relate to a specific situation is to seek the legitimacy that comes from cognitive consistency" (p. 62). Scott further argues that the cultural-cognitive mode is the "deepest" level because it rests on preconscious, taken-for-granted understandings. Scott emphasizes that what is taken as evidence of

legitimacy varies by which elements of institutions are privileged as well as which audiences or authorities are consulted.

Legitimacy is so important in this context, because it drives organizations to conform to institutional standards. Vermeulen (2012) explains this relation by emphasizing that organizations are first and foremost led by norms, values, and beliefs that are firmly embedded in the institutional environment, rather than for example efficiency. Organizations do this in order to gain legitimacy, which is necessary in order to ensure long-term survival. Vermeulen (2012) relates this to innovation, in line with Powel and DiMaggio (1983) and Tolbert and Zucker (1983). Innovation is first accepted by organizations for economic reasons. If this innovation is then institutionalised, other organizations will embrace it as well because of the legitimacy that it instills.

Scott (2008) states that in some situations one or another pillar will operate virtually alone in supporting the social order, and in many situations, a given pillar will assume primacy. Furthermore, he argues that the pillars may also be misaligned: they may support and motivate divergent choices and behaviors. Such situations cause ambiguity, confusion and conflict. According to Scott, this results in conditions that are highly likely to give rise to institutional change. Institutional complexity theory addresses those ambiguous, confusing, and conflicting situations and the responses that organizations display to it. In this framework the term institutional logics is used to describe the discourses that are at work in specific fields. Vermeulen (2012) defines institutional logics as a set of material practices and symbolic constructions that direct and enable the actions of organizations and individuals. As Greenwood *et al.* (2011) point out, it is possible and also common for a certain field or organization to be governed by several logics without this being a problem. Sometimes however, various logics of a field are in conflict. Institutional complexity ensues when organizations are confronted with contradictory and irreconcilable demands of various stakeholders. When organizations face several conflicting institutions, they must make strategic choices in order to satisfy their stakeholders. Institutional complexity theory allows us to examine and understand this complexity and the strategic responses of organizations to it.

Greenwood *et al.* (2011) summarize that there are two levels of analysis in institutional logics research: the societal level and the field level. Despite this distinction, societal-level logics are always at least implicit in field-level studies. Another characteristic

that distinguishes fields is whether it is emerging or mature. In an emerging field the salience of logics ebbs and flows, while in mature fields there are more stable priorities between logics. This means that legitimacy is more contested in emerging fields, because the salience of the logics that determine legitimacy is more fluid.

According to Greenwood *et al.* (2011), institutional logics are filtered through attributes of organizations that determine what the influence of these logics is. These attributes are the field position, its structure, its ownership and governance, and its identity. Concerning the *position* of the organization in the field there are four options. Organizations can be central or peripheral. According to Greenwood *et al.* (2011) peripheral organizations are less likely to experience the same intensity of institutional complexity as central organizations, because on the one hand, they are less close to central organizations that teach and convey appropriate behaviours. On the other hand, they are often disadvantaged by the existing arrangements and may therefore be less inclined to uphold them. The third position is at the fissures between multiple institutional logics. Organizations in this position have an enhanced ability to see and reflect upon the logics at play in the field. Greenwood *et al.* (2011) assert that this might make them less susceptible to institutional complexity, because this reflexivity is liberating, but it might also put them in a very difficult position because the demands of different logics and their implied punishments for nonconformity might be experienced more vividly. The final position is an organization that operates across several fields and thus holds a network position that increases their awareness of alternatives.

The second filter that determines the influence of institutional logics is *structure*. Institutional pressures are not just imposed on organizations, but are interpreted, given meaning, and represented by occupants of structural positions: actors that give voice to institutional logics. This means that the experience of institutional complexity is moderated by the differentiation and complexity of an organization. The *ownership and governance* filter is about power. Greenwood *et al.* (2011) indicate that those in power determine organizational responses to multiple institutional logics. They do so in a way that reflects their interests. Greenwood *et al.*'s (2011) conception of power is more in line with Foucault's before mentioned definition of domination, where there is a stable hierarchy. Power, in this thesis, is understood as a dispersed and unstable process.

The last filter Greenwood *et al.* (2011) establish, is the *identity* of an organization. This can be interpreted in two ways: on an institutional level and on an organizational level. On an institutional level identity is about membership of a social category or collective identity in the organizational field. In determining responses to institutional complexity, certain options are precluded because they do not fit with this social category. On an organizational level identity is about the characteristics that define the organization in relation to other organizations. At this level, it influences how expectations and pressures are prioritized and how possible responses are assessed and selected. Greenwood *et al.* (2011) emphasize that two circumstances have to be kept in mind when discussing identity: whether organizational agents perceive the identity as positive or negative; and the strength of the identity. The strength will influence an organisation's confidence in deciding whether to ignore or comply with external demands.

Greenwood *et al.* (2011) stress the importance of acknowledging that organizations are not passive recipients of institutional prescriptions but interpret, translate, and sometimes transform them. They derive four different types of responses to institutional complexity from the literature. First, they could *resist* or *eliminate* the pressures of complexity by removing or marginalizing one or more institutionally-derived identities. Second, by increasing the cooperativeness among identities and forging links among them, they could *balance* the various institutional demands. Third, an organization can *detach* itself from its institutional setting by building durable identities that immunize it to external and multiple pressures for compliance. Lastly, an organization can *compartmentalize* its identities to fit various institutional constituencies. Greenwood *et al.* (2011) state that this is often considered as a form of decoupling. In this response an organization gives only ceremonial and symbolic commitment to certain logics while preserving a core identity. This allows them to use noncompliant structures by rhetorically framing them, which enables them to avoid social penalties.

Greenwood *et al.* (2011) stress that there can be multiple strategies or responses to institutional complexity at the same time and these might change over time. They point out that the key issue is "that field creation and change must not be understood as an exogenous event, but as something that is socially constructed by organizations via

their decision-making and their ongoing and cumulative responses to institutional complexity" (p. 359).

Strategic responses to institutional complexity

Oliver (1991) provides a more specific framework for discussing responses to institutional complexity, or institutional processes, by applying institutional and resource dependency perspectives. She proposes five types of strategic responses that vary in active agency by the organization. These five types are acquiescence, compromise, avoidance, defiance, and manipulation. Each strategy contains three tactics. She summarizes these strategies and tactics in table 1.

Table 1. Strategic responses to institutional processes

Strategies	Tactics	Examples
Acquiesce	Habit	Following invisible, taken-for-granted norms
	Imitate	Mimicking institutional models
	Comply	Obeying rules and accepting norms
Compromise	Balance	Balancing the expectations of multiple constituents
	Pacify	Placating and accommodating institutional elements
	Bargain	Negotiating with institutional stakeholders
Avoid	Conceal	Disguising nonconformity
	Buffer	Loosening institutional attachments
	Escape	Changing goals, activities, or domains
Defy	Dismiss	Ignoring explicit norms and values
	Challenge	Contesting rules and requirements
	Attack	Assaulting the sources of institutional pressure
Manipulate	Co-opt	Importing influential constituents
	Influence	Shaping values and criteria
	Control	Dominating institutional constituents and processes

Source: Oliver (1991)

Acquiescence entails acceding to institutional pressures. This can take several forms: habit, imitate, and comply. *Habit* refers to "the unconscious or blind adherence to preconscious or taken-for-granted rules or values" (Oliver 1991: p. 152). *Imitation* is the conscious or unconscious mimicry of institutional models. *Compliance* is conscious obedience to or incorporation of values, norms, or institutional requirements.

Compromising tactics are balancing, pacifying, and bargaining. *Balance* is "the organizational attempt to achieve parity among or between multiple stakeholders and internal interests" (Oliver 1991: p. 153). Organizations that pacify conform to the minimum standards of their field and display a minor amount of resistance to institutional pressures, but devote most of their resources to appeasing or placating the institutional source(s) that it has resisted. By *bargaining* the organization tries to exact some concessions from an external constituent in its demands or expectations.

Oliver (1991) defines avoidance as "the organizational attempt to preclude the necessity of conformity" (p. 154). Organizations can *conceal* nonconformity by apparent acquiescence. By *buffering* an organizations tries to reduce the extent to which it is externally inspected, scrutinized, or evaluated by decoupling its technical activities from external contact. The final avoidance tactic is *escape*. Escape tactics are aimed at avoiding the necessity of conformity altogether by exiting the domain in which pressure is exerted, or by altering its own goals, activities, or domain.

Oliver (1991) states that defiance is a more active form of resistance. *Dismissal* entails ignoring institutional values and rules. By *challenging* institutional pressures organizations go in the offensive and they pose this defiance even as a virtue of the organization. The third defiance tactic is *attack*. According to Oliver (1991) "attacking organizations strive to assault, belittle, or vehemently denounce institutionalized values and the external constituents that express them" (p. 157).

Manipulation is the most active response strategy and it involves the purposeful and opportunistic attempt to co-opt, influence, or control institutional pressures and evaluations. By *co-opting* the source of pressure an organization attempts to neutralize institutional opposition and enhance legitimacy. *Influence* tactics are used to alter institutional values and beliefs or definitions and criteria of acceptable practices and performances. *Control* tactics are "specific efforts to establish power and dominance over the external constituents that are applying pressure on the organization" (Oliver, 1991: p. 159).

Important to acknowledge is that conformity or resistance to institutional pressures, or institutional complexity as Greenwood *et al.* (2011) call it, is dependent on both the willingness and ability of organizations to exert either of these behaviors. Oliver (1991) points out several aspects that influence willingness and ability to conform. For

willingness these are organizational skepticism, political self-interest, and organizational control. For ability these are organizational capacity, conflict, and awareness.

Oliver (1991) asserts that organizational responses to institutional pressures depend on why these pressures are being exerted, who is exerting them, what these pressures are, how or by what means they are exerted, and where they occur. Oliver (1991) ascribes these questions to five institutional factors: cause, constituents, content, control, and context. The *cause* of institutional pressures refers to "the rationale, set of expectations, or intended objectives that underlie external pressures for conformity" (Oliver 1991: p. 161). *Constituents* that exert institutional pressure are the state, professions, interest groups, and the general public. These impose a variety of laws, regulations, and expectations on the organization that are not always coherent. Regarding the *content* of the pressures, two factors determine the response strategy: the consistency of the pressure with organizational goals, and the loss of decision-making discretion that the pressures impose on the organization. *Control* is about the means by which pressures are imposed. There are two processes through which this happens: legal coercion and voluntary diffusion. Finally the *context*, or environment, within which the institutional pressures are exerted, also has an influence on the response strategy used by organizations.

So, in summary, Bourdieu laid the foundation for thinking about organizations in relation to their field in his field theory. The field consists of several social agents that occupy and manipulate positions in this field and their relations. These positions and relations are determined by the distribution of capital. The interconnectedness of the cultural field with other fields is of paramount importance. Forces of autonomy, heteronomy, and cultural and economic capital define fields, but just as important are the struggles that tend to transform or conserve the field. However, Bourdieu mainly focuses on restricted production and field theory doesn't enable us to fully explore the fluidity and complexity of the relations in the field. For this purpose, the concept of institutional complexity is introduced. In every field, there are several pressures, or forces in Bourdieu's terms, that influence organizations. Greenwood *et al.* (2011) call these pressures institutional logics. A field may be governed by several logics that might be contradictory. Organizations have to decide how to cope with this complexity.

Greenwood *et al.* (2011) derives four types of responses from the literature: *resist* the pressures of complexity, *balance* the various institutional demands, *detach* itself from its institutional setting, and *compartmentalize* its identities to fit various institutional constituencies. Oliver (1991) offers a more specific terminology for speaking about strategic responses to institutional pressures. She proposes five types of responses that vary in the organization's active agency: acquiescence, compromise, avoidance, defiance, and manipulation. Organizational responses are dependent on several questions and its corresponding institutional factors: cause (why these pressures are being exerted), constituents (who is exerting them), content (what these pressures are), control (how or by what means they are exerted), and context (where they occur). Conformity or resistance is also dependent on both the willingness and ability of organizations to exercise any of these responses.

So, the main points of this segment are the following. Piracy is problematic in the creative industries because it creates a conflict between contradicting sociocultural norms and values. The beliefs and motivations that support piracy differ from the legislation that denounces it. The discourses of intellectual property and piracy as innovation are examples of the logics surrounding piracy that are at odds with each other. Individuals, groups, and institutions are social actors that embody and voice their respective logics. Those logics are used to determine what is legitimate and what is not. The complexity that follows from seemingly incompatible logics and the responses that different actors have to it can be studied using insights from institutional theory.

Methodology

What has become clear from the introduction and theoretical framework is that a comprehensive research approach is necessary to capture the complexity of this research subject. For this reason this thesis uses the critical media industry studies framework proposed by Havens *et al.* (2009). They bring together the two research approaches of political economy and critical cultural media studies. Their perspective focuses on the complex interactions among economic and cultural forces. It studies "the business

culture of the media industries; how knowledge about texts, audiences, and the industry form, circulate, and change; and how they influence textual and industrial practices" (Havens *et al.* 2009: p. 237). Critical media industry studies is characterised by a helicopter view of industry operations and a focus on agency within industry operations. Havens *et al.* (2009) envision that critical media industry research is done through grounded institutional case studies. These case studies must examine the relationships between strategies (what Havens *et al.* (2009) define as the larger economic goals and logics of large-scale cultural industries) and tactics (defined as "the ways in which cultural workers seek to negotiate, and at times perhaps subvert, the constraints imposed by institutional interests to their own purposes" (p. 247)). Havens *et al.* (2009) argue that the analysis of discourse has to be recuperated as the formation of knowledge, and thus power. This means that critical media industry studies has to examine "how institutions organize ways of knowing into seemingly irrefutable logics of how systems should operate" (p. 247). In this view power and resistance are mutually constitutive. Havens *et al.* (2009) conclude by stating that this type of research is "integral to analyzing an industry in flux and the struggles among competing social actors and institutions to stabilize new discourses to their own specific interests and advantages" (p. 250).

Much of the terminology of the theoretical framework can be recognized in Havens *et al.*'s critical media industry studies approach. It offers some key points that allows for bringing together cultural studies and the media industries. In order to examine the relation between piracy, legitimacy, and innovation in the media industries we need to be aware of all the regulatory, normative, and cultural-cognitive forces that are involved in this process. Something that rings through Havens *et al.*'s explanation of critical media industry studies is the importance of discourse as a form of organising knowledge and the taken-for-granted form that this organization takes. This relates back to the theoretical framework of this study, which is intended to unpack and understand those taken-for-granted sociocultural norms and values. Of equal importance is that this perspective is aimed at examining struggles between competing social actors to stabilize new discourses that serve their own interests. This is done by analysing case studies with attention to the strategies and tactics actors employ in those struggles. In this thesis the research approach of critical media industry studies is brought together with the key points of institutional complexity theory and innovation theory in order to study the

relation between piracy, legitimacy, and innovation in the media industries. To be able to gain some understanding of the more macro level tendencies of this issue, the abstract discourses and business culture that are at play in the field of the media industries will be made more concrete by analysing actors and their behaviours. This is because the actors in the field enact and embody the various discourses that govern the field. They constantly make choices based on their own interpretations of these discourses.

In line with the research approach of Havens *et al.* (2009), the method that is used to answer the research question of this thesis is the case study method. Gromm *et al.* (2009) explain the characteristics of the case study research method and contrast it to the experimental and survey research methods. Case study research examines only a few cases, often just one, in considerable depth. A case can be an individual, an event, an institution, or even a whole national society. Frequently, the data collected is unstructured and the analysis is qualitative. Because only a small amount of cases is studied, case study research doesn't allow for generalizations like statistical analysis does. However, as Gromm *et al.* (2009) point out, sometimes it is possible to make different kinds of generalizations. These generalizations are not statistical but "logical", "theoretical", or "analytical" in character, or facilitate the "transfer" of findings from one setting to another on the basis of "fit". Because the case(s) are studied in depth and over time, it is possible to identify causal processes.

Patton (2002) points out the importance of purposefully selecting cases in qualitative research. He states that what would be bias in statistical sampling, and therefore a weakness, becomes the strength of qualitative sampling, because it is an intended focus on specific samples. Patton (2002) asserts that "purposeful sampling focuses on selecting information-rich cases whose study will illuminate the questions under study" (p. 230). This thesis attempts to understand the relation between piracy and innovation in the media industries, and the role of legitimacy in this dynamic. Because of this, two file hosting services, RapidShare and Megaupload, are chosen as the cases that are studied. The reason for chosing these cases is that they are exemplary for the way piracy overlaps with the media industries and in the sense that they were innovative organizations whose legitimacy was constantly contested. RapidShare (founded in 2002) and Megaupload (founded in 2005) were pioneers in offering the one-click file hosting service and were immensely popular (Mahanti *et al.* 2011). Because RapidShare and

Megaupload were mainly used to store and share video and audio files (Mahanti *et al*. 2011; Sanjuàs-Cuxart *et al*. 2012), they should be viewed as part of or at least having an effect on the media industries. This is because they enabled the distribution of cultural goods produced by the media industries. Although RapidShare and Megaupload both didn't allow piracy according to their terms of service, and removed copyrighted content when requested, it was still possible and convenient to use their services for piracy practices. In this sense, RapidShare and Megaupload operated in a grey area. Despite their popularity and the fact that after their launch, similar services using the same technology emerged, RapidShare and Megaupload failed to acquire legitimacy within the field of media industries. They both faced institutional pressures and employed different strategies in coping with these pressures. A more detailed description of the cases will follow in the next chapter.

Through the lens of field theory and institutional theory I will map the field that RapidShare and Megaupload operated in, indicate the forces or pressures that were imposed on them and the responses they had to these forces. This will then be related to legitimacy and innovation using the theories discussed in the first chapter. Finally, the interconnection between institutions, innovation, legitimacy, and piracy will be examined. In order to make sense of some of these rather abstract processes, I will examine the concrete behaviours and the actors that display them.

The material that I study in order to examine the two cases are online news articles from several websites. These websites can be divided into two categories: mainstream news websites, such as The Guardian, The New York Times, BBC, and CNN, and technology websites, such as Torrent Freak and Ars Technica. These technology websites aim at specific topics related to technology. By analyzing articles from these two categories, this thesis balances mainstream media with media that are meant for a niche market, thus increasing the validity of the research by taking into account possible bias of the used sources and minimizing the effect of that bias on the study. To find relevant articles I use the online search engine DuckDuckGo. This search engine does not record search terms, unlike for example Google. By choosing this engine I tried to avoid the so called information bubble that might occur when using Google. The bubble metaphor refers to the phenomenon of missing information because the algorithm of the search engine decides what results I get to see. I will start with search terms like

"Megaupload" and "RapidShare" and then adding terms like "shut down" or "lawsuit". I will limit the amount of articles by restricting the amount of websites. For each category I will use articles of five websites at maximum. Additionally, the hyperlinksystem allows me to find more relevant articles. Many online news articles use this system to refer to other relevant news articles on the same or other websites. First, I will use these articles to reconstruct the chronological development of both cases. Then, I will list what institutional pressures were exerted on the two organizations.

To do this I use Scott's (2008) dimensions of the three pillars of institutions. Table 2 gives an overview of those dimensions. The first dimension is the basis of compliance; the reason for actors to conform to institutional pressures. Regulative systems inspire compliance through expedience. This means it is in the actor's own interest to conform. Scott (2008) designates social obligation as the basis of compliance for the normative pillar. Seeing as normative systems deal with expectations, actors are held to certain social requirements. For cultural-cognitive systems Scott's (2008) basis of compliance is taken-for-grantedness and shared understanding. This entails that some practices and beliefs are internalized by actors and thus conformity to those practices happens automaticcally.

The second dimension is the basis of order; on which ground conformity is expected. For regulative systems Scott (2008) indicates that regulative rules are the basis of order. For normative systems the basis of order are binding expectations and for cultural-cognitive systems the basis of order is constitutive schema. Constitutive schema are mental structures that represent aspects of the world and determine how we interpret it. The third dimension Scott (2008) names is the mechanism of the systems. The mechanism of regulative systems is coercive. For normative systems it is normative and for cultural-cognitive systems it is mimetic. Scott's (2008) next dimension is logic. Regulative systems' logic is instrumentality: the constructions in place to enforce regulations. The logic of normative systems is appropriateness. Cultural-cognitive systems' logic is orthodoxy: a belief or way of thinking that is accepted as true or correct.

The indicators of regulative systems are rules, laws, and sanctions. For normative systems these are certification and accreditation: when an organization is recognized as conforming to the standard. Cultural-cognitive indicators are common beliefs, shared logics of action, and isomorphism: the increasing homogeneity of the field. The sixth

dimension of the three pillars is affect. According to Scott (2008), systems comprehend not only substance but affect and, hence, stimulate not only interpretive but also emotional reactions. The affect of regulative systems is fear of guilt or innocence. The affect of normative systems is honor or shame. The affect of cultural-cognitive systems is certainty or confusion. The final dimension Scott (2008) designates is the basis of legitimacy. Regulative legitimacy is legally sanctioned; normative legitimacy is morally governed; and cultural-cognitive legitimacy is comprehensible, recognizable, or culturally supported.

Table 2. The three pillars of institutions

	Regulative	Normative	Cultural-Cognitive
Basis of compliance	Expedience	Social obligation	Taken-for-grantedness Shared understanding
Basis of order	Regulative rules	Binding expectations	Constitutive schema
Mechanisms	Coercive	Normative	Mimetic
Logic	Instrumentality	Appropriateness	Orthodoxy
Indicators	Rules Laws Sanctions	Certification Accreditation	Common beliefs Shared logics of action Isomorphism
Affect	Fear Guilt/ Innocence	Shame/Honor	Certainty/ Confusion
Basis of legitimacy	Legally sanctioned	Morally governed	Comprehensible Recognizable Culturally supported

Source: Scott (2008)

Scott's (2008) dimensions will allow me to determine which institutional pressures were exerted on Megaupload and RapidShare. I will start by scanning headlines of articles for indicators of regulative, normative, and cultural-cognitive systems. For example, if I use the search term "RapidShare lawsuit" and find an article with the headline "US COURT: RAPIDSHARE NOT GUILTY OF COPYRIGHT INFRINGEMENT" the terms "court" and "guilty of copyright infringement" function as indicators of regulative systems. Through inductive reasoning and close reading of the article I will then build from those indicators to map all institutional pressures. Close reading will allow me to cluster the indicators that I find. I will analyze the patterns that I find in these clusters through inductive reasoning, thus creating a complete overview of the regulative, normative, and cultural-cognitive forces that Megaupload and RapidShare dealt with.

After determining the pressures that Megaupload and RapidShare faced, I will examine what strategic responses they displayed to those pressures. For this part of the

analysis I will rely on Oliver's (1991) framework of strategic responses to institutional processes as discussed in the theoretical framework (see table 1). I will scan articles in the same way for indicators of strategic responses. On top of that, the reconstruction of the cases will also serve to designate Megaupload's and RapidShare's responses to institutional pressures. Again inductive reasoning and close reading tactics will allow me to paint a complete picture of those responses. Mapping the pressures and responses will allow me to establish whether or not Megaupload and RapidShare faced institutional complexity. To understand this complexity and the intensity with which both organizations felt it will be examined using Greenwood *et al.*'s (2011) filters of institutional logics. In the final chapter the findings from the two case studies will be connected to the theory discussed in the first chapter. As Gromm *et al.* (2009) state, logical, theoretical, or analytical generalizations can be made using the case study method. By connecting the case studies to the theory I hope to shed some light on the relation between piracy, legitimacy, and innovation in the media industries.

CHAPTER 2: CASE STUDY ANALYSIS

My hypothesis is that Megaupload and RapidShare faced institutional complexity. In this chapter I will examine both cases in order to understand whether this is the case and how this complexity came about. I will first reconstruct the cases and how they developed from the used sources. This is a merely descriptive section that helps us put the case into context. Then I will indicate what regulative, normative, and cultural-cognitive pressures were exerted on the two companies. To do this, I will look for indicators of the three pillars that Scott (2008) identifies. For regulative systems the indicators are rules, laws, and sanctions. For normative systems the indicators are certification and accreditation. For cultural-cognitive systems indicators are common beliefs, shared logics of action, and isomorphism. From these indicators I will derive the other dimensions that Scott describes. After identifying the pressures, I will analyse what the strategic responses of Megaupload and RapidShare were on those pressures, using Oliver's framework of those responses. In the final section of both case studies I will discuss to what degree Megaupload and RapidShare faced institutional complexity. Greenwood *et al.*'s explanation of the filters that determine how intensely institutional complexity is experienced, and Oliver's emphasis on the ability and willingness of organizations to conform will allow me to analyse the complexity and the companies' responses to it.

The Megaupload case

Megaupload Ltd was a Hong Kong based company founded in 2005 by Kim Dotcom. Dotcom was born as Kim Schmitz but changed his name to Dotcom in 2005 (Cadwalladr Aug 2014). Megaupload Ltd ran several online file storing and viewing services. These services included: Megapix.com, an image hosting service; Megavideo.com and Megalive.com, video hosting services; and Megabox.com, a music hosting service. This kind of services is known as one-click file hosting services. File hosting services provide users with an online interface that allows them to upload, manage, and share files in a data storage cloud (Mahanti *et al.* 2011). Any file can be uploaded, no matter the format. When a user has uploaded a file to such a service, they receive a unique URL that can be used to download the uploaded content. This link can be made public if a user wants to share their content. This might for example entail sharing my holiday pictures with a family member, but it can also be used for online piracy. As the studies by Mahanti *et al.* (2011) and Sanjuàs-Cuxart *et al.* (2012) show, these services are growing in popularity and have become an alternative to peer-to-peer file sharing, the most popular tool for piracy. Pirates post the Megaupload URL with a description of the file on a blog or forum. This allows other pirates to find the download link through search engines like Google, even though the file hosting services themselves do not provide a way to search their websites (Stross 2009). The competitive advantage that these services offer over peer-to-peer is that download speeds are not constrained by the availability of the content and the upstream bandwidth of the peering nodes. Many one-click file-hosting services offer premium accounts that can be purchased to increase download speeds (Sanjuàs-Cuxart *et al.* 2012). Other services by Megaupload Ltd included Megaclick, Megafund, Megakey and Megapay, all of which were advertisement and financial services.

    In January 2011 MarkMonitor, a company that develops software intended to protect corporate brands from Internet counterfeiting, fraud, piracy and cybersquatting, published a report in response to requests from the US Chamber of Commerce to identify trends and rogue sites. The report claimed that Megaupload and Megavideo along with RapidShare were the top three websites classified as "digital piracy" with more than 21

billion visits per year (S.n. 2011). In response to this report, it was noted by Mark Mulligan, an analyst at another research company, that the number of visits did not necessarily indicate the number of downloads of illegal material. After the appearance of the report in January 2011 by MarkMonitor, the RIAA (Recording Industry Association of America) and other content owners put pressure on RapidShare to install filters to police illegal content sharing on the website. However, the Higher Regional Court of Dusseldorf ruled that RapidShare already took sufficient measures to fight piracy, to which I will come back in the RapidShare case study (S.n. 2011).

On 19 January 2012, Megaupload was shut down by the United States Department of Justice. Two corporations – Megaupload Limited and its investor Vestor Limited – were indicted by a grand jury in the Eastern District of Virginia on January 5th, 2012, and charged with "engaging in a racketeering conspiracy, conspiring to commit copyright infringement, conspiring to commit money laundering and two substantive counts of criminal copyright infringement" (Ernesto 2012). A month later, a superseding indictment expanded the counts to 13, adding charges of racketeering, wire fraud, more counts of copyright infringement, and aiding and abetting copyright infringement (Farivar 2015). The case involved international cooperation between the US, Hong Kong, the Netherlands, the UK, Germany, Canada, and the Philippines. Authorities used 20 search warrants in the United States and eight other countries. Data centres in the Netherlands, Canada and Washington housing Megaupload's equipment were raided. This coincided with the announcement of indictments against seven people connected to the site, among which was Kim Dotcom, the site's founder. Dotcom and his colleagues were accused of operating as an "international organized criminal enterprise responsible for massive worldwide online piracy of copyrighted works" (Pearson 2012). After a raid of Dotcom's New Zealand mansion by US and New Zealand authorities Dotcom was arrested.

In the same week that Megaupload was shutdown and the raid on Dotcom's mansion took place, other important events related to online piracy unfolded. The US government was preparing to put two new laws to vote: the Stop Online Piracy Act (SOPA) and the Protect Intellectual property Act (PIPA). Both bills were aimed at fighting copyright infringement by restricting access to sites that host or facilitate the trading of pirated content. In the week that Megaupload was shutdown, a widespread protest

against SOPA and PIPA took place. Opponents of the legislation were (among others) Google, Facebook, Wikipedia, and Twitter. Proponents of the bills were large media companies and its representatives, like Time Warner, the Motion Picture Association of America (MPAA), and the Recording Industry Association of America (RIAA). The main criticism on the bills was that the language was too broad, which made them a threat to freedom of speech and could result in censorship. The protest caused legislators to pull their support for the laws and the bills were indefinitely postponed (Pearson Jan 2012; Schatz Jan 2012).

On top of the criminal lawsuit against Megaupload by the US Department of Justice, two civil lawsuits were filed in 2014: one by the RIAA and one by the MPAA. The lawsuits are similar and accuse Dotcom, colleagues Mathias Ortmann and Bram van der Kolk, and investor Vestor Limited of "willfully engaging in, actively encouraging, and handsomely profiting from massive copyright infringement of music" (Dregde 2014). The criminal case of Megaupload has developed in a complex legal issue, where the actions of the authorities are questioned as well as the actions of Dotcom. A New Zealand law enforcement agency was judged to have illegally spied on Dotcom prior to the raids, which resulted in an apology by the New Zealand president (S.n. 2012). Dotcom's lawyers also questioned the validity of the search warrants that were used, but it was ruled that they were valid despite flaws in their drafting. Together with going in appeal for every decision, this has allowed Dotcom's lawyers to stall extradition until present day.

Institutional pressures on Megaupload

Regulative pressures

As stated above, the regulative indicators are rules, laws, and sanctions. The basis of compliance of regulative systems is expedience. This means that agents conform to regulative systems because it serves their self-interest. It is advantageous to comply because of political reasons, rather than because of what is right or just. Its mechanism is coercive. The regulative pressures on Megaupload are mainly the existing copyright laws. The most pressing of these laws is the Digital Millennium Copyright Act (DMCA). This is a US law that implements two treaties of the World Intellectual property Organisation. The

DMCA amended Title 17 of the United States Code to extend the reach of copyright, while limiting the liability of the providers of online services for copyright infringement by their users. This exemption was adopted by the European Union in the Electronic Commerce Directive 2000. The Copyright Directive 2001 implemented the 1996 WIPO Copyright Treaty in the EU.

The DMCA protects copyright holders by allowing them to send a takedown notice to a website owner when they see their copyrighted content on that website. But it also protects the website owner. If the website owner takes down the content, he or she cannot be sued for having the content there in the first place. If the uploader of that content is confident that the content does not break any copyright laws, they can send a counter-notice. The (alleged) copyright holder then has around ten workdays to take legal action so a judge can decide whether the content does or does not break copyright laws. If the copyright holder does not take legal action within that time, the uploader or website owner can put the content back online without being held accountable by the same party again. This quote in which CEO Kim Dotcom talks about the legally sanctioned legitimacy of Megaupload shows how existing legislation protected Megaupload and also kept it in check.

> "Mega has nothing to fear. Our business is legitimate and protected by the DMCA and similar laws around the world. We work with the best lawyers and play by the rules. We take our legal obligations seriously. Mega's war chest is full and we have strong supporters backing us." (Ernesto Jan 2012)

Another regulative pressure that was felt by Megaupload was the PIPA and SOPA propositions. These bills were never passed, but if they had been, they could be used to deny consumers access to the Megaupload services. This created a very threatening regulative environment for Megaupload. It is threatening because it could take away Megaupload's legally sanctioned legitimacy. Under the DMCA, Megaupload had legally sanctioned legitimacy as long as they followed up on the takedown notices they received. Under PIPA and SOPA they could be denied this legally sanctioned legitimacy if it was decided that their services facilitated the trading of pirated content.

Despite the fact that PIPA and SOPA were never passed because of the protest against it, US authorities decided to start a criminal case against Megaupload. This criminal case put Megaupload's legally sanctioned legitimacy into question. However, the DMCA and Copyright Directive 2001 both restricted and protected Megaupload's activities, so it can be argued that this criminal case and the civil cases that followed belong more to the normative pillar than the regulative. I will explain this statement in the next section.

Normative pressures

For normative systems indicators are certification and accreditation. This entails that an organization is recognized as conforming to the standard. As Scott (2008) indicates the basis of legitimacy for this certification is morally governed. The basis of order of the normative pillar is binding expectations and the basis of compliance is social obligation. It is striking that when researching the lawsuits against Megaupload, many normative mechanisms can be discerned. As Scott (2008) states, "many laws are sufficiently controversial or ambiguous that they do not provide clear prescriptions for conduct" (p. 54). This means that sometimes laws leave room for interpretation. As the normative pillar introduces a prescriptive and evaluative dimension into social life, this is a point were the regulative and normative, or sometimes cultural-cognitive pillar overlap. In such cases, normative or cultural-cognitive elements support the regulative pillar. In the case of Megaupload there's a normative discussion about Megaupload's means, ends, and values. The normative discussion starts with the accusation of Megaupload being an organization dedicated to piracy. If this is true, then regulative rules can be used to sanction Megaupload, but whether or not it is, is for a great part a normative discussion rather than regulative.

The statement by the prosecutors that "Megaupload illegally cheated copyright holders out of $500m in revenue as part of a criminal enterprise" (Williams 2012) does not only refer to regulative rules, but also to a normative understanding of the practices of the organization of Megaupload. Here, Megaupload is held to its social obligation to pay the creators of copyrighted material. The word "cheated" indicates the immorality of Megaupload's actions. Another phrase that indicates how Megaupload was attacked on a moral ground is that the indictment said that the seven Megaupload seniors were

members of a criminal group it called "Mega Conspiracy". By using the word "conspiracy" a moral judgement is made on the actions of the Megaupload seniors. Not only has conspiracy the connotation of something that is unlawful, but also that it is evil and premeditated. If it is a conspiracy, the members of that group are wilfully breaking the law. This is the affect of this normative system: the Megaupload seniors should be ashamed. Their actions were not appropriate. The following quote in which Steven Fabrizio, the MPAA's senior executive vice president and global general counsel, talks about Megaupload's business model, illustrates the normative way that opponents of Megaupload speak of the company.

> "That's not a storage facility; that's a business model designed to encourage theft – and make its owners very rich in the process. There's nothing new or innovative about that. That's just a profiteer using existing technology to try to get rich off of someone else's hard work." (Dredge Apr 2014)

Another normative pressure that was exerted on Megaupload is by its consumers. This is an important stakeholder group, because without them an organization does not have a right to exist. They expect almost unlimited access to cultural products and information goods. An important moral for this group is that Megaupload, or rather piracy in general, has found a niche in the marketplace and created a new industry that caters to this niche. They see this as innovation rather than theft. In a free market economy, it is appropriate to let this happen, and inappropriate for the government to interfere in this process (Smith 2012). The following quote shows the argumentation for those beliefs.

> There is no strong practical or moral argument to justify the tremendous money and resources that go into preventing innovative companies from settling their own business conflicts with the established industry in a civil (not criminal) court of law. […] It is a great time to take a look at the solutions and benefits that lie in wait for us all. This type of progress is inevitable and the rest of the world has a moral duty to see it meet our common needs instead of waiting around for the industry to keep up. (Smith Jan 2012)

Legitimacy in the normative sense is both denied and granted here by different stakeholders. The supporters of the lawsuit (the FBI, DOJ, MPAA, and RIAA) deny Megaupload legitimacy on a moral ground. They interpret Megaupload's activities as intentionally harmful. Megaupload's consumers and piracy advocates however grant Megaupload legitimacy by using its services and defending it in terms of free market economy and innovation.

Cultural-cognitive

Indicators of cultural-cognitive systems are common beliefs, shared logics of action, and isomorphism. Isomorphism entails the increasing homogeneity of the field because organizations conform to the institutional environment. The basis of compliance is taken-for-grantedness or a shared understanding. The basis of legitimacy is that it is comprehensible, recognizable, or culturally supported. On a societal level the cultural-cognitive framework of the Megaupload case is neoliberalism. This term is used by academics to indicate the capitalistic economic policies that became dominant in the West from the eighties onward. It is characterised by economic liberalization policies such as privatization, fiscal austerity, deregulation, free trade, and reductions in government spending in order to enhance the role of the private sector in the economy. Zooming in on a more field level cultural-cognitive framework this translates to common beliefs like the idea that a cultural product is the property of someone. A shared logic of action is that from this product profits can be made.

Intellectual property and copyright do not only exist in the form of laws and patents, but also as a cultural-cognitive framework. These notions are part of the common framework of capitalism and follow from the common belief and logic of action that a cultural product is someone's property and that from this product profits can be made. Part of this framework is the belief that it is not right to make money off of a cultural product that one doesn't own. The following quote about the way the RIAA perceives Megaupload demonstrates how these beliefs form a cultural-cognitive pressure in the Megaupload case.

The RIAA has long said the site operators "thumb their noses at international laws, all while pocketing significant advertising revenues from trafficking in free, unlicensed copyrighted materials." (Anderson Jan 2012)

In this statement the RIAA claims that Megaupload creates profit from products that do not belong to them. Following the logic of capitalism, Megaupload is not allowed to make money from these products.

At the same time, the idea of free trade and deregulation are also part of the neoliberal framework. These common beliefs give cultural support to the practices of Megaupload. One of the arguments used to defend Megaupload is that its opponents stifle innovation by trying to regulate the market too much. In the following quote Torrent Freak founder and main contributor writes about an interview with Harvard professor Yochai Benkler discussing the Megaupload shutdown.

According to the Prof. the shutdown of MegaUpload is yet another example of the copyright industry hampering technological innovation. "When a new technology comes along […] and destabilizes the way the industries have always made money, the first gut response throughout the 20th century has been; let's shut down this technology." As has been demonstrated many times in the past, these lawsuits can kill technologies and companies, the prof adds. (Ernesto Jan 2012)

In the neoliberal framework it is a common belief that the market flourishes most when there is free trade and minimum government interference. This quote illustrates that belief by arguing that it is disadvantageous for society to shut down new technologies that disrupt the field.

Another important cultural-cognitive framework in the Megaupload case is freedom of speech and expression. This right is enclosed in the Universal Declaration of Human Rights and recognized in internal human rights law. Article 19 of the ICCPR (International Covenant on Civil and Political Rights states that "everyone shall have the right to hold opinions without interference" and "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in

print, in the form of art, or through any other media of his choice". However, ancient Athens's democratic ideology already included free speech from the early 5th century BC. It is a common belief that is deeply embedded in Western society and it forms another part of the basis for the cultural support that Megaupload has. An example of this support is the attacks of hacktivist collective Anonymous on US authorities' websites after Megaupload's shutdown:

> "It's a violation of freedom of speech," one Anonymous member told CNN of the Megaupload shutdown. "It's part of a bigger picture that's taking place ... which is a very big slide toward Internet censorship on a gigantic scale." (Pearson Jan 2012)

Megaupload's strategic responses to institutional pressures

Megaupload employed a range of strategic responses and tactics to the institutional pressures they faced. These responses increased over time to more and more resistance. The five strategies Oliver (1991) identifies are acquiescence, compromise, avoidance, defiance, and manipulation. They increase in active agency by the organization from conformance to active resistance.

Acquiesce and compromise

The initial response of Megaupload to the regulative pressures was to comply and pacify. Megaupload spent considerable amounts of money on lawyers to find the legal line and stay "just on the right side of it" (Cadwalladr 2014). The pacifying tactic entails conforming to the minimum standards of the field and displaying a minor amount of resistance to institutional pressures. The DMCA creates a legal loophole where Megaupload was able to use copyright laws to their advantage. As long as they took down copyrighted content when asked to do so, they could not be sued for it. On top of that, by using the counter-notice construction, they might have bypassed many of these takedown notices when the copyright holder neglected to take legal action in time. As Dotcom has stated himself, Megaupload also has an extensive law team to ensure they

"play by the rules" (Enigmax 2011). Vermeulen uses this same terminology to explain that every institutional environment has its own set of rules, like the rules of a game. By using the DMCA as a sort of shield Megaupload could compromise with regulative pressures. Megaupload even build a takedown tool that people could use to report copyrighted content and thus complied with institutional requirements by consciously obeying to the rules. On top of that users were obliged to agree to terms of service that expressly prohibited uploading copyright material, and 180 partners, "including every major movie studio, including Microsoft", had been given special access to the Megaupload system to allow the direct removal of links to illegitimate material (Manhire 2012). These actions are further expressions of the compliance tactics that Megaupload used to acquiesce institutional pressures.

On the other hand, Megaupload was also accused of merely feigning conformity. This might have been an avoidance tactic used by Megaupload to conceal its nonconformity by apparent acquiescence. The following quote shows this suspicion.

But the government asserts that Megaupload merely wanted the veneer of legitimacy, while its employees knew full well that the site's main use was to distribute infringing content. [...] In addition, the government contends that everything about the site has been doctored to make it look more legitimate than it is. The "Top 100" download list does not "actually portray the most popular downloads," say prosecutors, and they claim that Megaupload purposely offers no site-wide search engine as a way of concealing what people are storing and sharing through the site. (Anderson Jan 2012)

Defiance and manipulation

After the shutdown, Megaupload's tactic was to undermine the legitimacy of the actions of the DOJ. They used several arguments to point out the inappropriateness of what happened. First, Megaupload's lawyers painted the US authorities as acting on a "copyright extremist mentality", pointing out that the company's domain names, servers, and $50 million in assets were seized without a court hearing (Pearson 2012). Second, they emphasized that Megaupload users that had legitimately acquired materials on the website could no longer access them. According to Ira Rothken (Megaupload's US

attorney), this discouraged consumers to use cloud-storing services in the future. This fits in with the defiance strategy and attack tactic: "attacking organizations strive to assault, belittle, or vehemently denounce institutionalized values and the external constituents that express them" (Oliver 1991: p.157). By pointing out the invalidity of the actions of the DOJ, Megaupload attempts to denounce the institutionalized values that are expressed by the DOJ. These values are normative interpretations of regulations and concepts such as copyright infringement.

As Kim Dotcom remains fighting extradition from New Zealand to the US, the case keeps on developing further and further. Dotcom has gone from denouncing the actions of his prosecutors to influence and control tactics. New Zealand authorities illegally spied on Dotcom and his employees to collect evidence proving the "Mega Conspiracy". This eventually resulted in an apology by the Prime Minister of New Zealand to Dotcom in September 2012, while in June it was ruled that the search warrant used in the raids of Dotcom's mansion was also illegal. These events led to Dotcom starting his own political party in New Zealand, called the Internet Party, aiming to "abolish mass surveillance and rejuvenate politics by giving the Internet generation a voice" (Parkinson 2014). These responses can be understood as influence and control tactics. Influence tactics are used to alter institutional values and beliefs or definitions and criteria of acceptable practices and performances. Control tactics are "specific efforts to establish power and dominance over the external constituents that are applying pressure on the organization" (Oliver 1991: p.159). Dotcom attempts to change the general view on Megaupload, by framing it as innovative, as "the future" (Greive 2014) and by denouncing the actions of the DOJ. By founding a political party and framing the institutional values that oppose him in a way that makes them look outdated he tries to alter institutional values and beliefs and the definitions of acceptable practices and to establish power over his prosecutors.

Institutional complexity

Now we have seen what regulative, normative, and cultural-cognitive pressures are exerted on Megaupload and what their responses to the institutional complexity that arises from them were, we can start putting this into context. As Greenwood *et al.* (2011)

state, institutional logics are filtered through several attributes of an organization. These filters determine the influence of those logics on that organization. One of the reasons that Megaupload experienced institutional complexity so intensely is because of their field position. As a sort of disruptive force in the field, Megaupload's position was at the fissures between multiple institutional logics. On the one hand, they are supported by their consumers and piracy advocates, but on the other hand they have to conform to the pressures of the industry. This position allowed them to see and reflect on the logics at play in the field, but caused them to have difficulty in gaining legitimacy in the legal, moral, and cultural sense.

The most important actor that gives voice to the institutional pressures that counteracted Megaupload is the FBI, who led the investigation into Megaupload. Because this is a very powerful actor, it became impossible for Megaupload to evade their influence. Other important actors in this case are the RIAA (the US music industry body) and the MPAA (the US film industry body), because they claim to have a great stake in the case. All three of these have a lot of economic capital, but also social capital, defined by Bourdieu as "the sum of the resources, actual or virtual, that accrue to an individual or a group by virtue of possessing a durable network of more or less institutionalized relationships of mutual acquaintance and recognition" (Bourdieu 1992: p.119). The FBI, RIAA, and MPAA have a network of institutionalized relationships of mutual acquaintance and recognition that ensure that they have cultural support and political power. Megaupload lacks this kind of capital and thus first tries to subdue the institutional complexity they face by conforming to and compromising between the several institutional pressures they feel. When this does not suffice they decide to resist those pressures. This response can be explained by Greenwood *et al.*'s (2011) filter of identity. They state that a strong identity and whether it is perceived as positive or negative by organizational members determines the organization's confidence in deciding whether to comply with or ignore institutional demands. On the one hand, there is the image of Megaupload as a criminal organization dedicated to piracy that we have discussed extensively. On the other hand, there is Megaupload's identity that is rooted in the cultural-cognitive common belief of freedom of speech and the neoliberal shared logic of action of free trade and deregulation. This identity is embodied by Megaupload's

founder and CEO Kim Dotcom. It is the identity of innovation, of freedom of speech, and of the Internet community. The following quote shows the duality of Dotcom's identity.

> […] in the last two years, the founder of the file-sharing website Megaupload has become, for many, an internet folk hero. The US government alleges he is a pirate, a career criminal who swindled the Hollywood studios out of their rightful copyright earnings, and they are desperately trying to extradite him from his adopted home in New Zealand to stand trial in the US, where he faces up to 88 years in jail. To others, younger people predominantly, he's up there with Assange and Snowden: a web freedom fighter unwilling to kowtow to the US government's bullying ways. (Greive Jan 2014)

As CEO, Dotcom had a strong influence on the direction and identity of Megaupload. As the fight against the authorities grew harder, Dotcom's identity became increasingly more outspoken.

> Dotcom is as visionary as Hastings or Ek. But he never had the temperament to bow and scrape to the "dinosaurs", as he calls them, running the music and movie businesses. […] "I'm not a pirate," he says, unbidden. "I'm an innovator." (Greive Jan 2014)

On an institutional level, Megaupload never tried to position itself as part of the same social category as the entertainment industry, but marketed itself as different from those companies by denouncing them for threatening freedom of speech, privacy, innovation, and due process. The following quote shows how Ira Rothken, Megaupload's main lawyer, condemns the actions of the authorities that shut down Megaupload.

> Rothken said the case demonstrates a "copyright extremist mentality" on the part of U.S. authorities and raises significant due process and consumer protection issues. […] He also said the seizure means consumers who had stored legitimately acquired materials on sites owned by Megaupload can no longer access them. The

seizure "has essentially created a chilling effect on consumers using Internet cloud storage going forward," Rothken said. (Pearson Jan 2012)

Because the values that formed the identity of Megaupload were so important to the company, it has resisted institutional pressures that were not compatible with that identity so vigorously. The strength of Megaupload's identity has given it the confidence to resist the institutional pressures that they face.

However, as Oliver (1991) stresses, conformity or resistance to institutional pressures is not only dependent on willingness, but also on ability. At first, Megaupload showed willingness to conform to the field's standards, but as their efforts were judged insufficient, they lost this willingness and started to resist the pressures exerted on them. Their ability to do so can be questioned. Seeing as the process is still ongoing, it is difficult to make any certain statements about the success of Megaupload's resistance. It still needs to be seen whether or not Megaupload's influence and control tactics will bear fruit. For now, we can say that they have at the very least opened up the debate about copyright infringement, intellectual property laws, and piracy. Because of the way Megaupload has resisted institutional pressures, the logics of the field have been put into question. Megaupload's resistance to regulative and normative pressures has drawn attention to institutions and practices that were taken for granted in the field. By drawing attention to them, Megaupload has created the ability for other actors in the field to reflect upon those institutions and practices. Kim Dotcom is even trying to offer alternatives to these taken-for-granted institutions, logics, and practices. This ties in with Greenwood *et al.*'s (2011) statement that field creation and change isn't an exogenous event, but something socially constructed by organizations through the decisions they make and their ongoing and cumulative responses to institutional complexity. The Megaupload case has shaken up the field by exposing taken for granted institutions and bringing to light alternatives to it.

The RapidShare case

RapidShare was founded in 2002 and was one of the first and most popular file-hosting services. The company was first based in Germany and moved to Switzerland in 2006. It claimed to host more than 10 petabytes of files and could handle more than three million users simultaneously (Stross Oct 2009). Like Megaupload, they offered free and premium accounts and like Megaupload, RapidShare's services were widely used for piracy (Ernesto Feb 2015). RapidShare faced several lawsuits. The first lawsuit against RapidShare in June 2009 was by GEMA, the Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (in English: Society for musical performing and mechanical reproduction rights), a state-authorized collecting society and performance rights organization based in Germany. In the ruling RapidShare was forbidden from making any of the 5,000 music tracks from GEMA's collection available online and they were ordered to delete all of these tracks from its servers and ensure that they were not uploaded again by users. The court ruled that RapidShare's previous efforts using file hashes to recognize tracks that were already removed after requests from GEMA, was ineffective (Enigmax Jun 2009).

In February 2010 six book publishers filed a lawsuit against RapidShare that resulted in the obligation of RapidShare to monitor user uploads to ensure that 148 titles named in the lawsuit were never uploaded on their website. If RapidShare did not comply with these demands they could be fined up to $339,000 or it could even result in jail time for the company's seniors (Enigmax Feb 2010). Another lawsuit was filed by the movie rental company Capelight Pictures and disputed whether RapidShare had undertaken all reasonable measures to counter the illegal distribution of one of the films owned by the movie outfit in Germany (Ernesto Jul 2010). In this case RapidShare was deemed guilty by a local district court, but in May 2010 the Dusseldorf Court of Appeals overturned the verdict, stating that the file-hoster was not responsible for any copyright infringements committed by its users (Ernesto May 2010). In the same month, the United States District Court of California ruled that RapidShare was not guilty of copyright infringement (Ernesto Jul 2010). A lawsuit by Atari, about illegal downloads of the game *Alone in the Dark*, unfolded in the same way; with the eventual result that RapidShare was not held accountable for its users (Anderson Jan 2011).

In contrast to the California court and Dusseldorf Court of Appeal rulings, the RIAA named RapidShare in a list of "rogue sites" compiled in response to a request by the US

Trade Representative (USTR). This list designates "notorious markets" that promote and facilitate copyright infringement (Ernesto Nov 2010). In October 2011 RapidShare hired lobbying firm Dutko to represent their interests in the US and improve the company's image. In an article on these lobbying efforts, RapidShare's general counsel Daniel Raimer stated that

> "RapidShare's goal in Washington is the same goal it has in the marketplace: to reassure potential customers that it is doing everything in its power to eradicate abuse." (Ernesto Oct 2011)

These efforts ensured that RapidShare wasn't included in the 2011 RIAA list. In April 2012, shortly after the shutdown of Megaupload, RapidShare released an anti-piracy manifesto called "Responsible Practices for Cloud Storage Services". This document outlines the steps RapidShare takes to fight copyright infringement on its website and urges similar services to do the same. These steps included "termination upon substantial body of accusations without proof of infringement", which means that if a user gets multiple complaints without offering a convincing explanation their account will be deleted (Lee Apr 2012). It also became mandatory to use a valid e-mail address and RapidShare was allowed to inspect personal files of those who are accused of copyright infringement. On top of that RapidShare started monitoring third-party websites and forums that posted links to infringing material on RapidShare and it decreased the download speeds of free users to drive pirates away (Ernesto Apr 2012).

Despite these efforts, RapidShare still faced pressure to fight piracy harder. In response to the manifesto, a spokesman for the RIAA stated the following:

> "Unfortunately the new measures announced fall short if the goal is indeed to meaningfully and effectively reduce the massive amount of copyright theft occurring on [RapidShare's] service." (Enigmax Apr 2012)

To address this issue, at the end of 2012 RapidShare also introduced a bandwidth limit of 1 gigabyte per day for free users and 30 GB for paid users, stopping the unlimited distribution of files amongst anonymous users overnight (Enigmax Jan 2013). This led to a

reduction in copyrights infringement, but also to a reduction in traffic. At first, RapidShare viewed this reduction as a natural consequence of the traffic limits as this statement by a RapidShare spokesman demonstrates:

> "It is in the nature of things that a traffic limit leads to a reduction of traffic. We can also confirm a reduction of copyright infringements since we launched the new business model." (Enigmax Jan 2013)

However, RapidShare's popularity sank dramatically from place 150 on the Alexa Rank to rank 860 in only six months. In May 2013 RapidShare laid off 45 of its 60 employees to cut down costs (Andy May 2013).

By the end of 2013 RapidShare had spend more than a million dollars on its lobbying efforts. RapidShare decided that its image had improved significantly, so it ended the lobby. However, a few months after RapidShare's lobbyists left Washington, the website was reinstated as a notorious market by the US Trade Representative, even though RapidShare wasn't mentioned by any of the rightsholders who submitted their input for the 2014 list (Ernesto Feb 2014). A year later, in May 2014, RapidShare shut down their free services. Users were forced to either pay at least 50 euros a month or move their files to different hosting providers. The price for paid accounts increased dramatically from the year before when accounts were available for €8.21 and €16.43 per month (Brinkmann May 2014). Another year later, February 2015, RapidShare announced that they would shutdown their services completely on 31 March (Ernesto Feb 2015).

Institutional pressures on RapidShare

The pressures that RapidShare faced were very similar to the pressures exerted on Megaupload. However, there were also some significant differences that are mostly expressed in the way RapidShare responded to those pressures. In this segment I will outline what those pressures and responses are.

Regulative pressures

RapidShare was confronted with many of the same regulative pressures as Megaupload. The most important laws were the DMCA and the EU's Electric Commerce Directive 2000 and Copyright Directive 2001. An important difference between the two cases is that RapidShare was confronted time and again with lawsuits during its existence, while Megaupload was shutdown and then sued by multiple parties. RapidShare's legally sanctioned legitimacy was a constant point of debate, sometimes followed by sanctions and sometimes followed by legal recognition. The following quotes illustrate the dynamic between these two standpoints. The first quote is from an article on the lawsuit that RapidShare lost against the six book publishers, the second quote is from an article about the appeal in the Capelight Pictures case.

> "This ruling is an important step forward. Not only does it affirm that file-sharing copyrighted content without permission is against the law, but it attaches a hefty financial punishment to the host, in this case Rapidshare, for noncompliance," said Tom Allen, CEO of the Association of American Publishers. "Consider this a shot across the bow for others who attempt to profit from the theft of copyrighted works online," he added. (Enigmax Feb 2010)

> Together with the positive outcomes from the other court cases this year, RapidShare has less to worry about on the legal front in the future. The verdicts are undoubtedly a major victory for RapidShare, and they will also reflect positively on other file-hosters and even torrent sites. (Ernesto Jul 2010)

Note that in both cases one of the parties sees the legal victory as an indicator for the future of the legally sanctioned legitimacy of file-hosting services. In the first quote Allen states that this case proves that file-hosting services are engaging in illegal activities and that it should be a warning for other organizations and individuals who engage in similar practices. In the second quote Ernesto sees the Capelight Pictures ruling as a sign that in the future not only RapidShare's legally sanctioned legitimacy will be questioned less, but also the legally sanctioned legitimacy of other file-hosters. So, in the case of RapidShare, the regulative pressures work both ways: alternatingly confirming and denouncing RapidShare's legitimacy. From May 2010 on, all lawsuits against RapidShare were won by

the file-hosting service. Nonetheless, pressure on the organization increased. This increased pressure was of a more informal regulative kind. Informal regulative pressures are backed by surveillance and accompanied by feelings of fear and guilt, rather than being directly backed by sanctioning power as formal regulative systems (Scott 2008).

This informal form of regulative pressure that was exerted on RapidShare was the RIAA's list of "notorious markets" that promote and facilitate copyright infringement, the Special 301 Report by the US Trade Representative, and the MarkMonitor report mentioned before in the Megaupload case description. These are not laws, but as the following quote illustrates, they are closely linked to policy making.

> Although it is unlikely that the submission will result in any direct action from the US Trade Representative, they will probably be taken into consideration when future policies and governmental actions are discussed (Ernesto Nov 2010)

The reports by the RIAA, USTR, and MarkMonitor are part of a more informal rule system that is backed by surveillance and accompanied by feelings of fear and guilt. Because it is not directly backed by sanctioning power, this pressure should not be seen as solely regulative. The reports of the RIAA, USTR, and MarkMonitor are for a large part supported by normative pressures. What those normative pressures are will be discussed next.

Normative pressures

Normative pressures are based on binding expectations. As Scott (2008) explains, these expectations are held by other salient actors in the field and therefore experienced as external pressures by the focal actor, in this case RapidShare. The other part of the reports by the RIAA, USTR, and MarkMonitor is that they deny RapidShare accreditation or certification. By marking RapidShare as a "rogue site" and a "notorious market" the website is condemned on moral grounds. The business model of RapidShare is compared to the normative standard of the RIAA, USTR and MarkMonitor and judged as undesirable and inappropriate. By painting RapidShare as an organization that promotes and

facilitates copyright infringement it is made clear that RapidShare's ends are not valued. By denouncing their means and ends on moral grounds, RapidShare is denied morally based legitimacy by these actors.

Just as in the Megaupload case, many normative mechanisms are at work in the lawsuits against RapidShare. The rhetoric that is used shows that RapidShare's opponents interpret the regulative rules in such a way that makes RapidShare a criminal organization that is wilfully breaking the law. In the following quote Torrent Freak contributor Enigmax calls attention to this rhetoric.

> While there is little doubt that copyright material is indeed available via RapidShare, a press release by the book publishers oversteps the mark a little by stating that the company "encourages the unauthorized uploading of content with a variety of reward programs." While RapidShare could be accused of many things, openly encouraging its customers to upload pirate material is not one of them. (Enigmax Feb 2010)

By saying that RapidShare rewards users for uploading copyrighted material their means are assessed as not appropriate. Words like "promoting illegal downloads" and "encouraging unauthorized uploading" hold a normative understanding of the practices of RapidShare, not merely a regulative one.

RapidShare also felt the normative pressure of its consumers. Just like Megaupload's consumers, RapidShare's users expect easy access to the files they want. When RapidShare reduced download speeds for free users to deter pirates, many users complained about it.

> Then a little over a week ago reports started coming in that users of RapidShare's free service had experienced dramatic speed drops down to around 30/kbs. Speculation was rife that the company was exploiting the Megaupload closure fallout to drive users to their premium, non-limited products. (Enigmax Feb 2012)

From the following quotes it becomes clear that RapidShare's users did not appreciate the changes that RapidShare made in its business model.

Embedded below are Alexa stats for RapidShare. Note the large increase in traffic corresponding with the influx of users following the shutdown of Megaupload in January 2012. Note the steady decrease in traffic as the bandwidth throttling measures of RapidShare took their toll. Then notice what happened at the end of November as RapidShare eliminated large-scale third-party sharing.

Daily Traffic Rank Trend
rapidshare.com

(Enigmax, Jan 2013, Torrent Freak)

"It's clear that Rapidshare lost the vast majority of its users in recent years, after it implemented a series of anti-piracy measures. This visitor exodus has led to a sharp decline in revenues," said the editor of the file-sharing news site TorrentFreak, Ernesto van der Sar. (S.n. Feb 2015)

The changed business model did not meet the users' expectations anymore. The continuing loss of users was a very significant pressure for RapidShare, because its users gave it a right of existence. RapidShare lost legitimacy with its consumers because they judged the anti-piracy measures as undesirable and inappropriate and migrated to other file-hosters.

Cultural-cognitive pressures

Like in the Megaupload case, the cultural-cognitive framework of the RapidShare case on a societal level is neoliberalism. As stated before neoliberalism is characterised by economic liberalization policies such as privatization, fiscal austerity, deregulation, free trade, and reductions in government spending in order to enhance the role of the private sector in the economy. On field level this cultural-cognitive framework translates to common beliefs like the idea that a cultural product is the property of someone and the shared logic of action that from this product profits can be made.

Intellectual property and copyright are also an expression of the cultural-cognitive framework of capitalism. They follow from the common belief and logic of action that a cultural product is someone's property and that from this product profits can be made. Part of this framework, as mentioned before, is the belief that it is not right to make money off of a cultural product that one doesn't own. The following quote from an article on a report from the RIAA, designating RapidShare as a notorious market, illustrates those beliefs.

> According to the RIAA, "these rogue websites line the pockets of their operators without paying a cent to creators behind the content." (Ernesto Nov 2010)

From the choice of words "line the pockets" and "without paying a cent" it can be deduced that this statement is not a merely legal condemnation, but also a normative one. The Cambridge Dictionary defines "to line your pockets" as "to earn money using dishonest or illegal methods" or in American English "to make money esp. by using dishonest, immoral, or illegal methods". This choice of words connotes injustice and immorality.

Like in the Megaupload case, the idea of free trade and deregulation are also part of the neoliberal framework. These common beliefs give cultural support to the practices of RapidShare, and form the basis for its cultural-cognitive legitimacy. The following quote shows how RapidShare attempts to ascertain the legitimacy of their business model through a statement by RapidShare's lawyer Daniel Raimer.

> "The ruling is a further step in the right direction," sad RapidShare lawyer Daniel Raimer. "The previously common practice of copyright holders [suing] RapidShare on the off-chance there might be something to be gained from it, misunderstanding the realities it is operating within and showing contempt for its business model, will no longer bear fruit. The newest court rulings in Germany and the USA indicate this very clearly." (Ernesto Jul 2010)

RapidShare lawyer Raimer calls on a shared understanding of the field that is lacking on the side of the copyright holders who sued RapidShare. At the same time he questions another common practice, or in Scott's terms, a shared logic of action, namely that of suing RapidShare for copyright infringement. So, we see here that some of the cultural beliefs at play in this case study are contested. Copyright holders suing RapidShare do not recognize the common beliefs that constitute the social reality of RapidShare's situation, while RapidShare does not accept the logic of action that the copyright holders take for granted.

RapidShare's strategic responses to institutional pressures

Avoidance & compromise

RapidShare applied a range of strategies in reaction to the institutional pressures outlined above. When the first lawsuits started, RapidShare used similar tactics to Megaupload. They used avoidance tactics to disguise their nonconformity. In many of the used sources for this research it is stated that there is no doubt that RapidShare is widely used for piracy, so RapidShare must have been aware of this. Just like Megaupload, RapidShare was operating in a grey area under the DMCA, the copyright law that limited as well as protected them through the takedown notice arrangement. Statements like the one in the following quote illustrate this attitude.

> But RapidShare, which is appealing the latest ruling, says that it removes copyrighted material at the owner's request, and its chief executive, Bobby Chang, say it is "only an infrastructure provider, not a publisher." (Pfanner Apr 2009)

This quote shows that RapidShare disguises its' nonconformity by denying that they are doing anything illegal, putting the blame elsewhere. This tactic goes hand in hand with the pacifying tactic of conforming to the minimum standards of the field and displaying a minor amount of resistance to these pressures, which entails adhering to the DMCA: removing copyrighted content when asked to do so.

Another tactic used by RapidShare is the bargaining tactic. By appealing court decisions RapidShare tried to exact some concessions from the copyright holders and their representatives in their demands and expectations. This tactic is closely linked to the pacifying tactic. When RapidShare was ordered to proactively filter content, they tried to force their opponents to acknowledge the legitimacy of their business model by appealing the court decisions. What is interesting is that despite the fact that RapidShare won those appeals, the acknowledgement of RapidShare's legitimacy didn't follow.

Acquiescence, compromise & manipulation

When pressure to do more against piracy increased, despite RapidShare winning more and more lawsuits, it became clear that these strategies and tactics were not sufficient to cope with those pressures. At this point RapidShare changed its tactics to comply with the pressure to proactively police piracy. Complying is an acquiescence tactic and entails conscious obedience to the institutional requirements. In the following quote Raimer, RapidShare's lawyer, responds to the Megaupload shutdown, emphasizing RapidShare's conformity to industry standards.

> Raimer said the company has not made any changes or improvements to its anti-abuse policies in the wake of the Megaupload scandal. He said it wasn't necessary because RapidShare was already among the toughest in the industry. [...] However despite the increased difficulty, he said RapidShare's commitment to legitimate file-hosting remains the same. Raimer said RapidShare wants to ensure its new customers understand its business model. "We don't provide any incentive to upload illegal content," he said. "We are determined to show them we don't tolerate that." (Stoner Feb 2012)

In this quote RapidShare emphasizes the efforts the company takes to obey the rules. By using phrases like "toughest in the industry", "commitment to legitimate file-hosting", and "we don't tolerate that" RapidShare wants to show their obedience to the institutional requirements. On top of that, it is also part of the compromising tactic balance. This quote shows that RapidShare is not just complying, but also emphasizing this publicly. The file-hoster does this to create some goodwill on the side of copyright holders and their representatives and stakeholders. The anti-piracy manifesto RapidShare released is another example of trying to placate copyright holders and its representatives.

On the other hand, RapidShared also wanted to keep their users satisfied. An example of the way RapidShare tried to balance the pressures from copyright holders and users is when they reduced download speeds for free users (installed to deter pirates), they still offered them another way to access faster download speeds without paying. This quote from a RapidShare spokesman shows how RapidShare tries to achieve parity between the expectations of multiple stakeholders and their own interests.

> "We knew that through the action taken we would even affect some RapidPro customers, especially those who offer their own files via websites or blogs and heavily depend on a possibility for free users to download their files. Therefore, we have decided to offer those customers a kind of deregulation that allows free users to download their files with the fastest possible speed again," the company says. (Enigmax Feb 2012)

At the same time RapidShare was lobbying in Washington to fight RapidShare's labelling as a piracy haven and rogue site by the entertainment industry. These lobbying efforts were part of an influence tactic. Influence tactics are used to alter institutional values and beliefs or definitions and criteria of acceptable practices and performances. In the following quote RapidShare lawyer Raimer talks about the company's lobbying efforts.

> "These discussions should be about consumer interests, about privacy concerns, about the content industry's wish for the implementation of content recognition and filter technologies and the way providers are expected to deal with illegal

content." […] By sharing their concerns RapidShare is trying to convince lawmakers that the picture is not as black and white as the RIAA and MPAA often paint it. A good discussion is needed to carefully determine what the rights and obligations of cloud hosting services are. (Ernesto Oct 2011)

This quote shows that RapidShare tried to change the dominant image of file-hosters as piracy havens and call attention to other issues than just copyright infringement, such as privacy and consumer interests. By pressing for a part in the determination of the rights and obligations of cloud hosting services, they are trying to influence the definitions and criteria of acceptable practices and performances in this field.

Avoidance

It could also be argued that the acquiescence and compromise tactics RapidShare employed eventually let to the avoidance tactic of escape. Escape tactics are aimed at avoiding the necessity of conformity altogether by exiting the domain in which pressure is exerted, or by altering its own goals, activities, or domain. RapidShare altered its own goals and activities when they chose to change their business model. By focussing on rebranding the company as a cloud storage service, RapidShare attempted to extract themselves from the institutional pressures it faced.

A tactic that could be interpreted as a conceal tactic is trying to deny nonconformity by putting blame on another actor. This is not something that Oliver explicitly mentioned in her categorisation, but it is definitely a tactic that RapidShare used. RapidShare launched an assault on linking sites to counter the accusations of being a piracy haven.

Raimer joins a panel on Copyright and Piracy and informs TorrentFreak that he plans to counter the image that file-hosting sites are a problem. Raimer believes it's important to stress that "legitimate" file-hosting services are merely offering a technology, and are not the ones facilitating piracy. This is also the point the company made in its advice to the U.S. Government earlier last week. Responding to a public consultation on the future of U.S. IP enforcement, the company emphasized that linking sites are the real problem. (Ernesto Aug 2012)

By laying the blame with these sites, RapidShare tried to reassert its own legitimacy. By even monitoring these websites, RapidShare added to its compliance efforts and its efforts to show this compliance as discussed above.

Institutional complexity

RapidShare was pressured heavily from two sides: on the one side their users, who expected easy access to the files they wanted. A big part of these users were pirates whose motivations are explained under the guise of freedom of information. In the following quote Tim Kuik, director of Brein, a Dutch antipiracy organization, states there is a paradox in the way the public views copyright online and offline.

> "If you put 200 VCRs in your garage and start making and selling copies of films, you will get a visit from the police," he said. "If you do it from a Web site, everybody says, 'Hey, freedom of information'." (Pfanner Apr 2009)

This group uses whatever technology or service provides the easiest and most anonymous way of sharing files and left RapidShare when it wasn't the number one service that provided this anymore. According to RapidShare, this group also doesn't want to pay for such a service.

> RapidShare says that there is a direct link between free users of file-hosting services and copyright infringement. Those who like to pirate prefer not to pay, the company believes, not least because they want to avoid connecting their personal payment details to a copyright-infringing cyberlocker account. (Enigmax Feb 2012)

Then there are also the users who used RapidShare for legitimate purposes, storing and sharing their own files, whose interests differ in part from the pirates' interests. This group also wants easy access to the files they want, but they are less keen on anonymity.

This doesn't mean however that they don't value privacy or costs. This remained an important factor for RapidShare to keep in mind to be able to compete with other file-hosting services.

> There are of course limits to what RapidShare is willing to do to protect the interests of copyright holders. Not to hinder the entertainment industries, but to secure the privacy of its customers. "We have always highly respected our users' privacy. We don't analyze and filter files. By our terms of service we are strictly forbidden to access and open our users' files – and we strictly abide by that," Raimer said. (Ernesto Oct 2011)

These two groups endow RapidShare with legitimacy from a normative and cultural-cognitive perspective and by the economic mechanism of supply and demand. Without users, RapidShare cannot survive.

On the other side, there are the entertainment industry incumbents who hold the copyrights to many of the works that are illegally downloaded from RapidShare. Representative organs from the industry claim that illegal downloading of copyrighted works costs the industry tremendous amounts of revenue.

> The United States Congress held hearings last week on the growing problem of piracy, which the American entertainment industry says accounts for the loss of $20 billion a year in sales. (Pfanner Apr 2009)

Even though other actors contested these claims[1], the lobbying efforts of the RIAA and MPAA, their reports, and the lawsuits that RapidShare faced put enormous pressure on the file-hosting service to proactively fight piracy.

The expectations of RapidShare's users and the demands of the entertainment industry became incompatible for RapidShare. This means it faced institutional

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[1] "The music industry is performing better than is being claimed and declining sales can be explained by other factors in addition to illegal filesharing," say Bart Cammaerts and Bingchun Meng of LSE's Department of Media Studies. "The negative framing of the debate about file-sharing and copyright protection threatens to stifle the very same creative industry the Act aims to stimulate." (Lasar Mar 2011)

complexity. To better understand the context of this complexity I will now discuss it in light of Greenwood *et al.*'s filters, mentioned before in the theoretical framework and the Megaupload case study. RapidShare occupied a similar position to Megaupload, at the fissures between multiple logics. This allowed them to see alternatives that they tried to implement industry wide by lobbying in the US. However, this also caused them to feel the pressures of those multiple logics very intensely. With regard to structure, RapidShare wasn't a very complex or differentiated organization. It focused on one service and the company had 60 employees at most. So, the structure of the organization didn't increase the institutional complexity it faced. It might even be argued that this made them more capable to cope with complexity, because the entire company had generally the same goal and values. The fact that RapidShare was an autonomous company also contributed to their ability to resist institutional complexity. It wasn't, for example, owned by a big media corporation that might have imposed divergent interests on it. However, toward the end, RapidShare changed CEO's frequently.

> However, the mass layoffs weren't the first sign that these plans may not be going as expected: Sidler, who joined the company just two weeks ago, is RapidShare's fourth CEO since 2010. (Roettgers May 2013)

In terms of ownership and governance, this created and reflected an unstable organizational climate within RapidShare. This might have made it more difficult for RapidShare to cope with the institutional complexity it faced.

Arguably the most important filter for RapidShare was Greenwood *et al.*'s filter of identity. RapidShare struggled with its identity on both the organizational and institutional level. On the institutional level RapidShare tried to gain membership of the social category of the entertainment industry. Membership of this category precluded the possibility of tolerating piracy. This pushed RapidShare's policy to harsher piracy measures. However, it never really gained this membership, because eventually RapidShare was reinstated as a notorious market. It tried to adjust its organizational identity to this social category by branding itself as an industry leader in the fight against piracy.

> "RapidShare would like to be a constructive participant in these discussions as a 'best practices' leader. We have more knowledge on how to crack down against copyright abuse than any other company in the industry," Raimer said. (Ernesto Oct 2011)

Despite this attitude, RapidShare remained a company that wanted to provide consumers with an easy way to store and share files. Many saw the company as a pioneer and "file-sharing icon" (Ernesto Feb 2015). These two identities were incompatible. The following quote illustrates the struggle that RapidShare faced concerning its identity.

> With RapidShare having publicly turned its back on the very community that made it rich over the years, never again will the site be able to return to the business model that once elevated it to elite status on the Internet. (Andy May 2013)

RapidShare had to make a choice: pursue membership of the social category of the entertainment industry or remain true to the values that enabled it to rise to fame in the Internet community.

In the formal regulatory sense, RapidShare was endowed with legally sanctioned legitimacy through winning most lawsuits. However, the informal regulatory pressures combined with normative pressures from the entertainment industry threatened the legitimacy that RapidShare got from the formal regulatory pillar and from the norms and values of its users. By choosing to focus on gaining legitimacy from the entertainment industry, RapidShare lost its users' approval and thus the legitimacy that they bestowed on the company. By pushing RapidShare further and further in its anti-piracy measures, it eventually became obsolete to its users and thus unsustainable.

CHAPTER 3: INTERPRETATION & CONCLUSION

In the previous chapter I have described and analysed the cases of Megaupload and RapidShare. In this chapter I will bring this analysis together with the theory in order to understand how regulative, normative, and cultural-cognitive systems influence the legitimacy of piracy in the media industries and how this, in turn, affects innovation in those industries.

The first hurdle of answering the research question of this thesis is the fact that Megaupload and RapidShare cannot be put in the same category as pirates without debate. It is a fact that both services were widely used for piracy, but it's still a question whether this makes them pirates too. This is also the question that is debated in the civil lawsuits against Megaupload and RapidShare. In the criminal case against Megaupload, this is different. Here the question is not only if Megaupload has committed copyright infringement, but also whether or not it's a criminal organization. Many received the news of this criminal case against Megaupload with surprise, as this quote from an article on the shutdown of Megaupload shows.

> Given that the site was already using US courts to file actions; given that the government had Megaupload e-mails talking about using US lawyers to file cases against other "pirate" sites; given that the site did at least take down content and built an abuse tool; and given that big-name artists support the site, the severity of the government's reaction is surprising (Nate 2012).

A reason for this measure might be that from the RapidShare case it became clear that it was not possible to remove these services from the field through civil lawsuits. Some of the civil lawsuits against RapidShare were won and forced RapidShare to take measures against piracy, but eventually higher courts ruled that RapidShare did not infringe

copyrighted material and did not have to take measure to proactively fight piracy. If we, when keeping these events in mind, look at the events around the SOPA and PIPA bills, it seems that this criminal case against Megaupload was a strategy to crush services like Megaupload and RapidShare. SOPA and PIPA were meant to crack down on piracy by restricting access to websites if those website were suspected to facilitate piracy. The bills would allow authorities to put services like Megaupload and RapidShare out of the game. However, the widespread protest that rose against those bills prevented this from happening. Megaupload and RapidShare were still protected by the law, as long as they responded to takedown notices from copyright holders. Shutting down Megaupload through a criminal case was a last resort for its opponents. This not only took out one of the most popular file hosting services, but also functioned as a way of showing others what happens when organizations resist the pressures to conform. RapidShare's graduate changes in its business model and its anti-piracy attitude show the results of the strong-arm tactics of the entertainment industry.

So, what both case studies have shown is that the regulative systems at work in the cases caused ambiguity. As mentioned before, Scott (2008) asserts that when regulative systems do not provide sufficient direction for appropriate conduct, there is room for interpretation. At this point normative and cultural-cognitive systems come into play. Both Megaupload and RapidShare faced tremendous amounts of normative and cultural-cognitive pressure. They had to fight the image of piracy havens, conspirators, and thieves. One of the most crucial aspects in these two case studies is framing. Vermeulen *et al.* (2007) define framing as the "political and self-conscious process in which meaning is negotiated between groups of individuals" (p. 1526). They state that a particular frame might appeal to one group, but not to another group. Painting Megaupload and RapidShare as those piracy havens, conspirators, and thieves is a framing strategy. It is a political process that attempts to establish Megaupload and RapidShare as criminals, as harmful to the entertainment industry, as something that has no legitimate place in society. All of these tactics and strategies contribute to the undermining of Megaupload's and RapidShare's legitimacy. Scott (2008) quotes Stinchcombe in stating that whose values define legitimacy is a matter of concerted social power:

"A power is legitimate to the degree that, by virtue of the doctrines and norms by which it is justified, the power-holder can call upon sufficient other centers of power, as reserves in case of need, to make his power effective." (Scott 2008: p. 60)

This can be related to Bourdieu's definition of social capital:

"the sum of the resources, actual or virtual, that accrue to an individual or a group by virtue of possessing a durable network of more or less institutionalized relationships of mutual acquaintance and recognition" (Bourdieu 1992: p. 119)

Stinchcombe's social power and Bourdieu's social capital can be connected. An individual or a group with social power can call upon other centres of power to make his power effective. An individual or a group with a lot of social capital has substantial resources because they have access to a network of institutionalized relationships of mutual acquaintance and recognition. This means that this network gives the holder of social capital legitimacy by recognizing that they conform to institutional demands. This network gives the holder of social capital social power. The values of the individual or group with this power determine legitimacy. The entertainment industry, with its representational organs like the MPAA and RIAA and its lobbyists, the US government, and the FBI form such a network in which the legitimacy of the different actors is reinforced by mutual acquaintance and recognition. This network and the positions they hold in the field allow them to enforce laws and rules and to voice their opinions, norms, and values. The ability to voice those opinions, norms, and values is crucial in being able to successfully frame Megaupload and RapidShare as criminals.

However, Scott (2008) stresses that from an institutional perspective, legitimacy is not a commodity to be possessed or exchanged, but rather a condition. This condition reflects perceived consonance with relevant rules and laws, normative support, or alignment with cultural-cognitive frameworks. So despite the fact that there are more and less influential actors, legitimacy is not something one individual or group can control. As we have seen in the previous chapter, these regulative, normative, and cultural-cognitive systems are not one-dimensional. As Scott states, "legitimate"

structures may, at the same time, be contested structures. One individual or group might perceive an organization as consonant with relevant rules and laws, norms and values, or cultural-cognitive frameworks, while the other may not. Scott (2008) asserts that there are various types of authorities that are empowered to confer legitimacy, which might be political as well as cultural and sometimes these authorities compete with each other. Scott argues that conforming to one might undermine the support of others in such cases. Megaupload and RapidShare were confronted with those competing authorities and because of that their legitimacy was constantly contested.

Another network that formed an authoritarian force is the network of Megaupload's and RapidShare's proponents. This network is compiled of their users, hacktivist groups like Anonymous, and other Internet users that defend Megaupload and RapidShare in terms of freedom of speech. This last group disseminates the ideas and values of a group of Internet users referred to as Netizens. This term is a contraction of the words Internet and citizen, in the sense of citizen of the Internet, and was first coined by Michael Hauben (Hauben 1998). Hauben (1998) defines Netizen as

"people who care about Usenet and the bigger Net and work towards building the cooperative and collective nature which benefits the larger world. These are people who work towards developing the Net." (Hauben 1998)

It is the responsibility of Netizens to ensure that the Internet is used constructively. With the spread of the Netizen ideals, it also came to include fostering free speech, net neutrality, and open access. According to Hauben (1998), it is rooted in the vision of the pioneers of the Internet, for whom, as we have discussed in the introduction, sharing was the accepted convention. Defenders of Megaupload and RapidShare often use arguments based in the values of Netizens to fight their opponents. Hauben (1998) states that these ideals are challenged by the increasing commercialization and privatization of the Internet. It is striking that Hauben (1998) describes his research subject as "a new social institution in development". The debate over the legitimacy of Megaupload and RapidShare essentially boils down to these two groups: a group of Internet users that advocate freedom of speech, net neutrality, and open access and a group of entertainment industry incumbents that feel threatened by the first group.

As discussed in the first chapter, research based on BSA data condemns piracy as something harmful to existing entertainment industries. However, there is also research that emphasizes the positive effects of piracy, for both the existing industry as well as for the development of the market in general. Some scholars, like Easley (2005), also point out that the opposition online piracy now faces reminds us of earlier, similar, incidents. In the Sony Betamax case the movie industry tried to prevent the sale of videocassette recorders due to their potential use for copyright violation. Easley (2005) points out that their failure to do so eventually resulted in the development of a highly profitable video rental market. Choi and Perez' (2005) research into the story of music sharing software program Napster also shows how piracy has the potential to create new profitable business models that eventually benefit the industry.

Nonetheless, the entertainment industry maintains that piracy needs to be terminated because according to their own figures, the industry loses tremendous amounts of revenue to pirates. Whether or not this is actually the case is still debated, as the following quote indicates.

> Now comes a thesis from the London School of Economics that tries to do more than just challenge the DEA. It argues that everything Big Content says about file sharing is wrong. In fact, it suggests that file sharing is the future, and that revenue downturns can largely be explained by other forces (Lasar 2011).

How can then the vigour with which entertainment incumbents fight piracy be explained? Hartley *et al*. (2013) explain that sometimes institutions can become locked in.

> While institutions reduce costs of action by relegating much behaviour to auto-pilot, they can also produce substantial inertia and conservatism, in the sense of seeking to conserve what already exists because change requires not only effort and enthusiasm, but also involves un-learning and then re-learning new institutions (Hartley *et al.* 2013 "Institution": p. 10).

So, when institutions become locked in, they can lead to unwillingness to change. Hartley *et al.* (2013) assert that this is the reason some institutions still exist despite the fact that

they can no longer be functionally or rationally justified. They call such institutions ceremonial. Piracy and services like Megaupload and RapidShare signal to the entertainment industry that change is required, but the entertainment industry holds on to existing institutions, unwilling to unlearn them and relearn new institutions. This can further be explained by Vermeulen's (2012) statement that organizations are first and foremost led by norms, values, and beliefs that are firmly embedded in the institutional environment, rather than by efficiency. The reason for this is that conforming to institutional standards is necessary in order to gain legitimacy, and thus long-term survival. So, even though there are indicators that it might be more economically advantageous and more suited to consumers' preferences to see what piracy has to offer the entertainment industry, deeply embedded institutions cause the opponents of Megaupload and RapidShare to stick to their guns.

Hartley *et al.* (2013) emphasize that even though there are many of these ceremonial institutions in the creative industries, the creative industries also play a key role in removing dysfunctional institutions and facilitating the origination and adoption of new institutions. They state that the creative industries are institutionally complex, because they are not only built on institutions, but they also produce them. The example of the Netizens illustrates this complexity. The Internet is built on existing institutions, but because it offered so many new possibilities, it needed new institutions; institutions that still haven't been defined completely, as the Megaupload and RapidShare cases show. The services that Megaupload and RapidShare provided are part of what Greenwood *et al.* (2011) call an emerging field. These services introduced new technologies and new ways of consuming. In an emerging field the salience of logics ebbs and flows. Consequently, in emerging fields legitimacy is more contested, because the salience of the logics that determine legitimacy is more fluid. However, the services of Megaupload and RapidShare partly overlap with the more mature field of the entertainment industry, in which there are more stable priorities between logics. This instability and the overlap with the field of the entertainment industry created a situation in which Megaupload and RapidShare were confronted with competing logics and the question which logics were most salient. The fact that in the field of the entertainment industry those priorities were much more distinct imposed strong pressures from that

field on Megaupload and RapidShare. Together, this created the institutional complexity that Megaupload and RapidShare faced.

However, according to Hartley *et al.* (2013) there is another factor that contributes to the institutional complexity of the creative industries in general. This factor relates to the creative industries, institutional change, and innovation. Hartley *et al.* (2013) emphasize the importance that creating the right institutions has gained in recent economic growth and development policy. Hartley *et al.* (2013) state that for economic historians, "good institutions" are the most important factor in explaining the rise or success of nations, corporations, and societies. They too refer to those instituions as "the rules of the game". Hartley *et al.* (2013) explain that this connection between "good institutions" and economic growth has also bled over into creative industries analysis and policy design. According to them, the pursuit of economic growth is closely tied to innovation. As argued in the theoretical framework, the creative industries play an important role in the innovation process. As explained before, Hartley *et al.* (2013) define innovation as "the process by which an economic and socio-cultural order transforms from within as an ongoing evolutionary process that is without overarching design or planning" (p. 195). They state that creative industries are part of the entire process of innovation. Not only are they highly innovative, they are also a key driver of innovation. Hartley *et al.* (2013) attribute this role to the creative industries' engagement in social communication and meaning-making. The creative industries shape consumers' preferences and facilitate adoption and ongoing retention of new ideas and technologies. As Hartley *et al.* (2013) assert, new business models require significant change in existing institutions. They argue that institutional entrepreneurship can be an important driving factor in this change. Institutional entrepreneurship entails actors actively setting out to lead institutional change by nudging behaviour in partical directions. Hartley *et al.* (2013) state that because the creative industries are concerned with social consumption, they have to be particularly resourceful. They argue that because of this, in the creative industries entrepreneurship and innovation are much more bound up with institutional change than in most other industries. The connection of the creative industries and innovation, and the connection between innovation and institutions (the right institutions need to be created to facilitate economic growth, and an important part in creating economic growth is innovation) make the creative industries institutionally

complex. This is reflected by the two case studies of this thesis. Megaupload and RapidShare introduced a new business model that was well adjusted to consumers' preferences. However, this new business model required considerable change in existing institutions, mainly in existing institutions that were highly prioritised by the entertainment industry, such as intellectual property and copyright. Megupload and RapidShare even more so, acted as institutional entrepreneurs, because they attempted to change the institutional environment through for example lobbying efforts.

The relation between the creative industries, innovation, and institutional change for a large part created the conditions in which the events of Megaupload and RapidShare unfolded. As Greenwood *et al.* (2011) state, institutional creation and change is not an exogenous process, but it is "socially constructed by organizations via their decision-making and their ongoing and cumulative responses to institutional complexity" (p. 359). Powell and DiMaggio (1991) stress that institutions determine what is desirable and appropriate and thus not only limit the options that organizations have in making choices, but also establish the criteria for discovering the organizations' preferences. Institutional arrangements are thus not only reproduced because of conservatism, but also because of the inability to conceive of alternatives (Powell & DiMaggio 1991). The position that Megaupload and RapidShare occupied in the field enabled them to see beyond the taken-for-granted beliefs and practices that governed the choices of most organizations in the entertainment industry. Their services worked as a kind of disruptive force, laying bare those taken-for-granted structures and offering an alternative. If we follow the theory on institutional change and innovation, this should then be seen as something beneficial to the industry and economic growth. Why is it then that Megaupload and RapidShare were both shut down? The answer to this question lays in the importance of legitimacy in this process.

As explained in the first chapter, legitimacy drives organizations to conform to institutional standards. Legitimacy is crucial in ensuring long-term survival of an organization. This is illustrated by the two cases. Megaupload and RapidShare struggled immensely with gaining legitimacy, and as a result were not able to safeguard their long-term survival. Several scholars relate legitimacy and the need to conform to institutional standards to innovation by stating that innovation is first accepted by organizations for economic reasons (Vermeulen 2012; Powell & DiMaggio 1991; Tolbert & Zucker 1983).

They state that after a certain innovation is institutionalised it is embraced by other organizations because then it provides legitimacy itself. This is the struggle that Megaupload and RapidShare faced: the services that they provided were innovative and economically beneficial for both Megaupload and RapidShare and for their users. However, they didn't conform to several institutional standards and were therefore denied legitimacy by influential actors. From this point on, the identity of both organizations started to play a major role. Megaupload had a very strong identity that was embodied by its CEO Kim Dotcom. This identity was strongly connected to the Netizen ideals: wanting to use the Internet constructively, while fostering net neutrality, open access, and freedom of speech. It connected well with Megaupload's users and advocates. The strength of this identity and the support it received gave Megaupload the confidence to withstand institutional pressures. RapidShare on the other hand, chose to position its identity as part of the social category of the entertainment industry. It set itself apart from other file hosting services, as an industry leader in fighting piracy. All of this was meant to access the legitimacy of its opponents, and while it did dodge their disapproval for a time, eventually RapidShare didn't succeed in becoming a member of that social category. At this point, its identity had drifted too far from the recognition of its users, leading to its demise. The legitimacy that Megaupload and RapidShare had by virtue of their users and proponents was for Megaupload not enough to withstand other pressures (at least for now, perhaps the future development of the lawsuit will change this) and for RapidShare it was not enough to make the choice to stick with its users' demands and expectations.

However, looking back at social power, social capital, and authority as discussed before in this chapter, it is important to recognize the fact that Megaupload and RapidShare have been paramount in giving a voice to a group that didn't have a salient voice before. The network Megaupload and RapidShare are a part of gives them social capital and legitimacy, but Megaupload and RapidShare have also given this back to the other actors in this network. As Bourdieu states social capital is about mutual recognition. Megaupload and RapidShare became influential actors by virtue of this social capital, and were able to use this influence to give the opinions, values, preferences, and expectations of their network salience. By giving this voice a platform, Megaupload and RapidShare were able to counter the frame that industry representatives like the MPAA

and RIAA tried to transfer. This process can be explained by the concept of "agency" and its relation to structure. Hartley *et al.* (2013) state that structure is the "system of embedded or systematically patterned human arrangements (e.g. class, gender, ethnicity), social institutions (e.g. marriage customs, religion, culture) and historically developed forms (e.g. the laws, markets, infrastructure) that determine the scope of action that is open to any individual human being" (Agenct/Agency: p. 3). Agency then means "the capacity of those individuals to act independently or autonomously according to their own choices" (Hartley *et al.* "Agent/Agency" 2013: p. 3). So, Hartley *et al.*'s (2013) defintion of structure can be translated to a "system of institutions". Agency then means the capacity to act independently or autonomously of those institutions. Hartley *et al.* (2013) explain the relation between structure and agency through Giddens' notion of "structuration" that entails that human action is shaped by and in turn shapes social structures. This relates to Greenwood *et al.*'s (2011) emphasis on the social-constructedness of the institutional environment through organizations' decision-making and responses to institutional complexity. Organizations make decisions and the actions resulting from those decisions shape the institutional environment. At the same time, the institutional environment shapes the decisions organizations make.

Hartley *et al.* (2013) emphasize the recent focus on the impact of choices of others on agents' choices and behaviour. This means, according to Hartley *et al.* (2013), that agents operate in social networks. They state that these networks invite collaboration and crowd-sourced choices, involving both copying and innovation. So, in these kinds of networks, not only producers have agency, but all the actors, including consumers. All of these actors are determining and determined by the choices they make in the networked system. As Hartley *et al.* (2013) state, this model requires a bottom-up understanding of social organisation that recognizes what would have been a given structure as a self-organising system.

Hartley *et al.* (2013) also connect agency to innovation. They assert that in the Schumpeterian tradition entrepreneurs are "individuals who catalyse change in structural arrangements through their own energetic agency" (Hartley *et al.* "Agent/Agency" 2013: p. 9). Hartley *et al.* (2013) argue that entrepreneurs can turn structural constraints into innovation, and the reproduction of structures into transformation. This process starts with the entrepreneur seeing an opportunity that arises within the structure-agency

relationship. The entrepreneur creates new values and finds new ways of appropriating those values. They then exploit their ideas in a pratical venture, to which others will also have to be committed. Hartley *et al*. (2013) assert that in this way entrepreneurial agency can be transformational of inherited structures. They relate this to the notion of creative destruction, which was also a significant part of Schumpeter's work. Schumpeter states that capitalism grows the seeds of its own downfall, not from its failure (like in Marxist theory), but from its success. Over time, the culture that capitalism has created becomes unfavorable to it. Hartley *et al*. (2013) assert that in the creative industries, because extraordinary levels of change are occuring, the notion of creative destruction can explain why business models in those industries can become obsolete.

When we bring these concepts together, they can help us understand the process of change in the wake of Megaupload's and RapidShare's downfall. The agency of the users of Megaupload and RapidShare allows them to influence the way society is organised, or in other words, allows them to influence institutions. Christian Schmid, the founder of RapidShare, and Kim Dotcom, the founder of Megaupload, fulfil the Schumpeterian role of entrepreneur in this process: individuals who catalyse change in structural arrangements through their own energetic agency. The opportunity they saw lay in the preferences and expectations of consumers. By translating consumers' values into practical ventures, they put pressures on inherited structures. In creative destruction, the adoption of the new is at the expense of regularities and patterns – the institutions – inherited from past structures (Hartley *et al.* 2013). This is where the friction that resulted in the institutional complexity Megaupload and RapidShare faced originated. But by catalyzing the change that was at hand, Megaupload and RapidShare became a part of this process of creative destruction in which existing institutions have to make way for new ones.

Conclusion

Piracy is one of the most important issues for the media industries at this moment. The media industries' products have high development costs and are cheap and easy to reproduce. Piracy is perceived as undermining the intent of suppliers of these products to

recoup the costs they have made in developing, creating, and distributing them. However, in research as well as in society, there is no consensus about the role of piracy and the effects it has on the media industries. Research showing the detrimental effects of piracy are criticised for only using BSA data, and thus being biased. At the same time other research shows that piracy also has positive effects, mainly regarding innovation. In this thesis I have tried to shed some light on this contested subject by analysing what institutions are at play when it comes to piracy, how they direct the choices of organizations, and what effects this has on innovation in the media industries. Institutional theory offers a framework to analyse the pressures that are exerted on organizations. Following Scott (2008), these pressures can be divided into three pillars: the regulative, normative, and cultural-cognitive pillar, each with its own indicators, affects, mechanisms, basis of legitimacy, basis of compliance, basis of order, and logic. I have mapped those pressures for two case studies: the file hosting services Megaupload and RapidShare. Both of these companies were pioneers in offering these services and both were immensely popular. However, both Megaupload and RapidShare were sued multiple times by organizations in the media industries that accused them of facilitating and even encouraging piracy. In time, the characterisation of Megaupload and RapidShare by their opponents deteriorated into the image of piracy havens, thieves, and criminals.

The popularity with their users and the discontent of the entertainment industry created a situation of institutional complexity for Megaupload and RapidShare. The analysis of the institutional pressures that were exerted on the file hosting services showed this complexity and that the contested status of the companies was mainly caused by the denial or recognition of legitimacy by influential actors. Formal regulative pressures both protected and restricted the actions of Megaupload and RapidShare. Laws like the DMCA prohibited copyright infringement on their websites, but also functioned as a safety net through the takedown notice system. Although most lawsuits against RapidShare eventually affirmed the legally sanctioned legitimacy of both organizations, the result of the many lawsuits was that this legitimacy was constantly questioned. On top of that, informal regulative pressures, like the MarkMonitor and US Trade Representative reports, contributed to this contested legally sanctioned legitimacy by naming Megaupload and RapidShare as notorious markets and rogue sites.

These cases show that sometimes rules and laws do not provide sufficient direction for appropriate conduct. As Scott (2008) states, this then leaves room for interpretation and what is judged as appropriate is based more in the normative and cultural-cognitive pillar. The analysis of the case studies shows that there are essentially two camps: proponents and opponents of Megaupload and RapidShare. Both have a different way of framing the organizations' activities and both exert different normative and cultural-cognitive pressures. In the normative sense, opponents of Megaupload and RapidShare condemn the organizations on moral grounds, judging their means and ends as inappropriate. These norms and values are rooted in the cultural-cognitive framework of capitalism, Intellectual property, and copyright. The proponents of Megaupload and RapidShare support the file hosters based on the cultural-cognitive framework of freedom of speech, open access, and the neoliberal ideal of free trade and innovation. The pressures from these two groups are unquestionably incompatible. This incompatibility means that Megauoload and RapidShare faced institutional complexity.

Using Oliver's (1991) framework of strategic responses to institutional processes I have mapped the responses that both organizations had to these pressures and the complexity that they caused. In many ways Megaupload and RapidShare responded very similar: at first conforming to the minimum standards of the field by taking down content when requested to do so and denying any wrongdoing. Later both organizations made some efforts to show their acquiescence, however RapidShare did this in a much more industrious way than Megaupload. Megaupload installed a takedown button and granted major rightsholders special access to remove content, while RapidShare took extensive measures to proactively fight copyright infringement. After these tactics failed to solve the problems that the institutional complexity they faced caused, RapidShare and Megaupload had their own way of adjusting their tactics. RapidShare chose to try and change their image by publicly displaying their conformity. At the same time, they still tried to balance this with the expectations of its users. These tactics went hand in hand with influence tactic that were aimed at creating a say for RapidShare in determining the rights and obligations of file hosting services. Because RapidShare was insufficiently successful in changing its image, while also catering to its users' demands, it eventually turned to avoidance tactics by changing its business model. Unfortunately, this didn't set well with its users who left RapidShare for its competitors.

Megaupload took a different path, which is also partly determined by the fact that they were very suddenly shut down completely by the US Department of Justice. Because of this, there was no time for Megaupload to gradually change their tactics or business model. After the shutdown, they took a much more defiant stance than RapidShare. They rhetorically attacked the authorities that prosecuted them, denouncing their values and actions. This was part of a framing tactic that not only criticised their opponents, but also tried to change their image from criminals and thieves to web freedom fighters and innovators. On top of that Megaupload's CEO Kim Dotcom tried to influence the institutional values and beliefs and definitions and criteria of acceptable practices and performances by founding his own political party that advocated the same ideals that support Megaupload's practices.

So, essentially, RapidShare and Megaupload used the same tactics, but with a different angle. Both tried to change their image through framing and both tried to influence the institutional standards that they needed to conform to. However, the image RapidShare aspired to was different from Megaupload's image. RapidShare tried to market itself as an file hosting industry leader fighting copyright infringement, while Megaupload positioned itself as a defiant of a copyright extremist mentality, fighting for freedom of speech, open access, and innovation. These choices were made on the basis of the identities of both organizations and these identities were again linked to the perception of each company of which authority could provide them legitimacy. This thesis shows that as Scott (2008) states there are different types of authorities that can bestow legitimacy upon organizations. These authorities may or may not perceive an organization as being in consonance with relevant rules and laws, normative support, or alignment with cultural-cognitive frameworks. Which of those is judged relevant is dependent on the authorizing actor's perception of what is most important of those three pillars. This is where legitimacy connects to identity, because the identity of authorizing actors is paramount in the attribution of that importance. So, when an organization's identity is in alignment with the identity of the authorizing actor, this actor perceives that organization as legitimate. Consequently, if the identity of the organizations conflicts with the identity of the authorizing actor, it perceives that organization as illegitimate. Thus, by identifying with the social category of the

entertainment industry that fought it, RapidShare tried to gain legitimacy from this authorizing actor. Megaupload chose to find its legitimacy with its users and advocates.

Legitimacy is also the link between the regulative, normative, and cultural-cognitive pressures that organizations connected to piracy face, and their success or failure to inspire innovation in the media industries. This thesis has connected Hartley *et al.*'s (2013) and Vermeulen *et al.*'s (2007) theories on innovation, the creative industries and institutional change, Greenwood *et al.*'s (2011) and Oliver's (1991) theories on institutional complexity, and Scott's (2008) theory on the three pillars of institutions to create a better understanding of the relation between the institutional environment of piracy and innovation and it has shown the profound part legitimacy plays in that relation. The creative industries are institutionally complex and the creative industries are also highly innovative. This creates a situation in which institutions are constantly under stress. Inherent in the creative industries is the goal to find new solutions, new ways of thinking, and new business models. This means that existing institutions become obsolete faster than in other industries. The creative industries are, because of their innovative character, paramount in identifying dysfunctional institutions and laying bare taken-for-granted beliefs and practices. However, not all actors in the field of the creative industries always want change. Change requires unlearning existing institutions and relearning new ones, which in turn requires a lot of investment, in time, effort, and money. Sometimes it might seem easier to try and fight to maintain what already exists.

So, how do regulative, normative, and cultural-cognitive forces influence the legitimacy of piracy in the media industries and how does this, in turn, affect innovation in those industries? As the motivation to stick to dysfunctional institutions is rooted in the need of legitimacy for long-term survival, this means that sometimes, institutional change can be set back by conservatism. In order to be innovative and legitimate at the same time, institutional change needs to occur. If regulative, normative, and cultural-cognitive systems do not support an organizations' legitimacy sufficiently for it to endure in the long-term, the innovation that this organization furthers cannot blossom and thrive. This means that the innovation process is not completed and thus the innovation fails. However, despite the fact that organizations need to be perceived as legitimate in order to be able to survive, this doesn't necessarily mean that the innovation they boost can't have an effect on media industries. In creative industries the consumer has become more

than just a passive recipient of products and services. Their agency has to be taken into account in understanding the social organisation of the field. Piracy offers entrepreneurs an opportunity that arises in the agency-structure relationship. Entrepreneurs that take this opportunity can inspire innovation and change the institutional environment. But as Hartley *et al.* (2013) point out, every actor is affected by the choices of others. These choices are part of and form the regulative, normative, and cultural-cognitive pressures that the venture that such an entrepreneur starts then has to face. These pressures and the legitimacy that they deny or bestow on the entrepreneur's organization determine whether or not the organization is able to survive in the long run. In the case of Megaupload and RapidShare, the organizations failed to find a way to cope successfully with the institutional complexity they faced. But still they worked as a disruptive force in the media industries. Taken-for-granted practices and beliefs have been shaken up by the institutional complexity that they faced. The decisions that they have made in responding to this complexity have led to awareness of alternatives to existing institutions and of consumers' preferences that may not be aligned anymore with the offer of the entertainment industry. Through Megaupload's and RapidShare's decisions, these preferences and alternative institutions have gotten a voice. They have set in motion a process of institutional change. As Hartley *et al.* (2013) define innovation as a change in the economic and socio-cultural order, which is collection of existing institutions, this means that in this way piracy can be a driving force of innovation. It goes beyond the scope of this research to predict what this change might eventually lead to, but popular and thriving companies like Spotify and Netflix might indicate in which way the media industries will evolve.

From this thesis the recommendation might follow that policy makers need to be more aware of the way organizations like Megaupload and RapidShare, and arguably piracy in general, represent expectations and preferences of consumers that are not met by the media industries in their current form. Piracy shows that consumers want immediate and unlimited access to media products. Although this might be too demanding, it does indicate that there is a demand for more than what the media industries currently offer. Influential actors have succeeded in repressing Megaupload and RapidShare, but a quick Google search shows that similar file hosting services are still in existence; even Megaupload got its successor Mega. Attacking and suppressing

individual organizations is pointless. Organizations like Megaupload and RapidShare have extensive knowhow on consumers' preferences and how to cater to them. It would be beneficial for the media industries and consumers alike if organizations and policymakers would try to learn from this expertise. The creative industries play an important role in the adoption and ongoing retention of new ideas in society. By learning from pirates they could embrace this role even more.

Limitations and further research

One of the most important limitations of this research is that it uses news articles as data. News articles mediate the events that have happened and thus affect the findings of this thesis. I have tried to neutralize this effect as much as possible by choosing news articles from mainstream news websites as well as websites that cater to a niche audience interested in copyright, privacy, technology, and file sharing. By using different websites I tried to incorporate as many angles as possible to create a complete image. In the RapidShare case study this has been even more difficult than for the Megaupload case, because mainstream news websites hardly covered the events surrounding RapidShare. Here I had to rely much more on the technology websites. However, this research method allowed me to examine two cases in depth over the course of fourteen years. Research based on interviews might provide insights that can't be extracted from news articles. It would for example be interesting to see how organizational members of one organization experience institutional pressures and if institutional standards differ among organizational members. As I have argued in my thesis, RapidShare struggled a lot with their identity; research focussed on this instability might uncover the effect of institutions within organizations on an organization's ability to successfully innovate. Vermeulen *et al.* (2007)'s thesis on incremental product innovation could be a starting point for this kind of research.

Another interesting angle for further research would be radical versus incremental innovation. The form that RapidShare took after changing its business model was very similar to nowadays-popular services like Dropbox and Google Drive. It could also be argued that services like WeTransfer, an online platform to send large files via e-mail,

might have its roots in services like RapidShare and Megaupload. This indicates that although Megaupload and RapidShare were unable to ensure their long-term survival, the process of innovation that they set in motion has born some fruit. This is supported by the only recent discovery that contrary to the popular belief that a first mover (someone with a radical innovation) has a persistent advantage, research really shows that first movers had a 47% failure rate and that "companies that took control of a product's market share after the first movers pioneered them – had only an 8% failure rate" (Seave 2014). This means that some innovations are too radical to be successful, while incremental innovation has a higher chance of taking hold. This might again be connected to the notion of legitimacy and institutional change. It would be interesting to see research on the possible effect Megaupload and RapidShare have had on the emergence of services like Dropbox, Google Drive, and WeTransfer and to answer the question if those last three were successful because they were able to gain legitimacy easier as they were improvers rather than innovators.

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