

## Apple Under Fire From E.U. In Wake Of France's iPod Bill

*Wednesday, March 22, 2006* --- Following France's move aimed at forcing Apple Computer Inc. to give rival companies access to exclusive file formats used by iPod and iTunes, the European Commission has initiated a probe into Apple's music pricing policies.

The Commission's investigation will focus only on the pricing of music sold by Apple's iTunes online store, not its interoperability with other online music software.

Lawmakers in the National Assembly, France's lower house, approved the legislation earlier this week in a move that threatens to force Apple out of France—the third-largest digital music market in Europe.

If passed, the bill would force companies to share all "information essential to the interoperability" of their copy-protection formats if requested to do so by rival companies.

It also proposes to make individual digital piracy no more serious than a parking ticket.

The law, which is by no means specific to Apple, would also affect companies like Microsoft Corp. and Sony Corp.

Although much has been made of Apple's current standing as the leader in the digital music industry, and therefore with the most at stake if the law passes, some practitioners say Apple doesn't necessarily stand to lose more.

"Everybody's in the same boat," says William Hart, partner at Proskauer Rose LLP. "Apple may be the focus right now, but ultimately, this legislation will require interoperability, which is something all of the players would be subject to. I'm not so worried about Apple, but it's the immediate concerns about system security that give me pause."

Beyond anticompetitive issues, the law, says Hart, touches on fundamental principles of copyright law.

"The historic notion has been that you pay to play," explains Hart. "Nobody gets a free ride. If this law suddenly cracks that system with a can opener, it will raise questions about content and recompense for authors' labors, all within the technological aspect of the product. I'm not sure what the driving force is, but France has historically had a high watermark for these types of issues."

Critics of France's proposed legislation say the move would disable technology that has so far been effective in offering copyright protection, thereby opening the floodgates to piracy.

The online copyright bill, which was introduced by the governing Union for a Popular Movement, will now be sent to the French Senate for a vote.

The iPod empire has sparked concerns over anticompetitive behavior in the digital music world.

The issue of interoperability presents a challenge because it requires negotiating a fine balance between consumers and the electronics industry, says Stanley Pierre-Louis, special counsel and co-chair of the entertainment and media law practice at Kaye Scholer.

"Many companies would like to have interoperability with Apple," says Pierre-Louis. "But so far, the U.S. at least has been reluctant to step in, with the goal of finding the right balance between individual determination and consumer accessibility."

In comparison to France, Pierre-Louis says the U.S. model has been to allow for a free market to establish consumer-friendly results.

"We've been reluctant to step in and propose similar legislation," he says. "Our laws tend to encourage private negotiations for this conduct. At this point, it's very difficult to tell how far this legislation will go, but if it passes, it will have ramifications everywhere."

France's move comes as the recording industry faces rifts over how to expand the digital market, which has been dominated by iTunes. Apple led the fight for 99-cent songs in 2003, and wants to keep download prices set that way.

The move won cheers from consumers, but Apple's use of proprietary formats shackled song buyers to the company.

Music labels have objected to Apple's stronghold, claiming they receive only a fraction of the 99-cent downloading fee.

To counter Apple's pricing, the companies have reportedly put together so-called flexible pricing to charge more for new, popular songs and less for old standbys.

While the industry debates the best way to profit off of online music, it continues to grow. Much of the growth is no doubt a result of recent litigation that has discouraged online piracy, the bane of the music industry's drive to protect copyrighted content.

The spat has put the industry at odds with Apple Chief Executive Steve Jobs,

whose ubiquitous iPod is driving much of the industry's interest in maximizing per-song revenue.

Even though the iPod accounts for two out of every three portable music players worldwide, it is specifically designed to not play songs from other commercial music services.

France's law, however, would allow French iPod users to download music from competing online music services other than iTunes. In addition, owners of other brands of portable music players would be allowed to buy songs from iTunes France.

Jobs has been accused of hoarding sales by keeping song prices down in order to protect sales of the iPod. At the same time, Jobs has accused the industry of being greedy for considering hiking digital download prices.

The battle rages on U.S. soil as well. Earlier this month, the world's top music labels came under fire from the U.S. Department of Justice over possible anticompetitive pricing schemes arranged by the increasingly busy online music industry.

The agency is looking into widespread allegations that Warner Music Group, EMI Group Plc, Vivendi Universal's Universal Music Group and Sony BMG colluded to ensure maximum revenue from downloaded songs.

The probe appears to mirror one already underway by New York State Attorney General Eliot Spitzer, who began sending subpoenas to major record labels in December 2005 as part of his investigation into the alleged collusion to set wholesale prices.

The DOJ's Antitrust Division confirmed the investigation was underway, but would not make any other comments. Some of the companies made the probe public through filings with the U.S. Securities and Exchange Commission, while others have tipped off media outlets.

It is unlikely the companies are surprised by the inquiry, since the DOJ has been eyeing the industry since at least 2001. At that time, DOJ investigators invited executives from small start-ups to meetings in Washington, D.C. to get their view on competing with the majors.

The group, sometimes called the Big Four, has been implicated in earlier cases. Last year, Warner Music agreed to pay \$5 million to settle a probe by New York State that it was involved in a "pay-for-play" scheme to steer radio exposure for its artists.

Sony paid \$10 million in the same case, while Universal and EMI have not settled.

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