



MARCH 15, 2006

Technology

By Arik Hesseldahl

Apple's French Dis-Connection?

Politicians are debating easing the penalties for illegal downloading. If passed, music fans' gain could be the entire country's loss

Take a complicated issue such as copyrights in the Digital Age. Throw in a generous helping of French politics and stir it with a dash of socialist ideology. The resulting concoction might not taste very good to executives of Apple Computer, and indeed could force the computer maker to change the way it does business in the Fifth Republic.

On Mar. 16, France's National Assembly is expected to vote on legislation known as the author's rights law. Among its many provisions, the bill calls for lightening the punishment on unauthorized downloads of copyrighted music. Currently digital pirates can be fined more than \$300,000 and see jail time. Under the new legislation, offenders would get a relative slap on the wrist -- a miniscule 38 euro fine -- or less than \$50, if the downloading is intended for personal consumption. Illegal sharing would cost offenders 150 euros, or about \$180.

END RUN. If passed -- which some say is unlikely -- the legislation would also require digital music vendors like Apple (AAPL), Vivendi Universal (V), and Virgin Megastores, which all operate music-download services in France, to sell music that is compatible with all media players. This provision would hit Apple particularly hard because the computer maker sells music that is compatible only with its own iPod player.

In so doing, the proposed legislation would also legalize the creation of software that circumvents so-called digital-rights management technology, such as Apple's Fairplay and Microsoft's (MSFT) Plays For Sure, which is aimed at protecting copyrights and restricts the use of the downloaded music.

For its part, Apple hasn't yet commented on the pending legislation or any changes that may result from its passage. But this isn't the first time Apple has been hassled for the way it does business in France. Last year, Apple's French unit was sued by the Union Federale des Consommateurs -- Que Choisir (UFC-Que-Choisir). The consumer group accused Apple of violating consumer law by not mentioning that iTunes songs don't work with other brands of players, and thereby tying sales of the two products. Apple is fighting the suit.

And in 2004, VirginMega tried to force Apple to open up the iPod so that French customers of other services could play their music on the player. That complaint was rejected by the French Competition Council, which said access to the iPod wasn't indispensable to the development of the digital-music marketplace.

ANGRY ARTISTS. Apple has hit legal roadblocks elsewhere in Europe, too. The European Commission is investigating Apple's iTunes business, stemming from a British consumer group's complaint that Apple overcharges for its iTunes songs, vs. other online music retailers.

What's behind the proposed French law, ostensibly, is an attempt to fight piracy, and encourage the development of the online-music business in France. UFC-Que-Choisir, which supports the bill, is urging lawmakers to include provisions that would legalize peer-to-peer sharing technologies.

French musical performers are, not surprisingly, against the law. Johnny Hallyday, the storied French rock singer, has come out against the plan. So has composer Jean-Michel Jarre, who teamed up with singer Charles Aznavour to say in a joint statement that the legislation is "unfair for creators and catastrophic for the funding and creation of new talent, as well as dangerous for the diversity and renewal of French music."

In the Assembly, the center-right party and the most of the center-left party are against the measure. But the proposal has come to a vote because of a small coalition of Socialists and a few pro-free market legislators.

A GALLIC SOLUTION? Center-right Interior Minister Nicolas Sarkozy, the conservative head of the party Union pour un Mouvement Populaire or UMP, has been out of the debate due to travel. Now, he is organizing "roundtable discussions" on the issue, attempting to stay above the fray. Sarkozy is seen as the front-runner to be elected the next president of France in 2007.

Michel Bejot, an attorney in Paris who represents several clients connected with the music industry, says the law has a good chance of passing. "The majority is pushing it," he says.

Whatever the vote on the law, it's reflective of a larger debate over how to manage music distribution in the digital age. France is considering a plan for a global license for all digital music. Under such a scheme, French consumers would be allowed to download and share music over the Internet with almost no restrictions, provided they pay a small fee. That fee would go into a pool that would be divided proportionally among the artists who created the content.

This is similar to how royalty schemes work today on sales of blank cassettes and video tapes, as well as most "virgin" digital media such as recordable CDs. In theory, those with the most popular work would receive the biggest payouts.

PARIAH NATION? Consumer groups support the idea. Culture Minister Redaud Donnedieu de Vabres opposes it, but reignited debate over the concept as a political gambit recently in order to stiffen resistance to it, and thus take it off the table for the remainder of the debate on the author's rights law. Prime Minister Dominique de Villepin supports the idea of a global license.

Apple doesn't give a geographic breakdown of the results of its iTunes or iPod operations. Its overall European division reported a \$174 million operating profit on sales of a little more than \$1.2 billion in the most recent quarter. Apple sold more than 14 million iPod players around the world and 387,000 of its Macintosh computers in Europe in the same period. In February, Apple said it had sold 1 billion songs via its iTunes store over the course of its three-year history, though it hasn't said how many of those were in France, home to 62 million people.

If passed, the author's rights law would be a hazard of doing business in the land of liberte, egalite, and fraternite -- or in the case of Apple, a good reason not to.