Apple to France: Drop Dead?

Lawmakers are tinkering with legislation that threatens iTunes' proprietary technology. Don't bet on their efforts striking a chord with Jobs & Co.

French lawmakers are softening the language of a proposed law that would force Apple Computer (AAPL) and other companies that sell digital music to make their songs compatible with all the music players on the market. But the move is unlikely to quell concerns at Apple, making it very possible that the company will close its iTunes music store in France.

In a process that only an avocat could love, the French Senate introduced dozens of amendments to a controversial copyright-reform package passed by the National Assembly last month (see BW Online, 3/21/06, "Apple vs. France"). As initially passed, the law requires that online music retailers doing business in France, including Apple, Microsoft (MSFT), Sony (SNE), Vivendi (V), Audible.com (ADBL), and others, allow access to proprietary information about the software technology that they use to protect their songs and thus allow greater compatibility between formats. The technology is known as digital rights management, or DRM.

If enacted, such a law would fly directly in the face of Apple's approach to the digital-music business. Apple's iPod music player can play music files encoded to the widely used MP3 and WAV formats and the lesser-used AAC format. However, the iPod is the only portable player that can play songs sold at the iTunes Music Store.

FOCUS ON FAIRPLAY. The initial passage of the law in the National Assembly sparked speculation that Apple would sooner shut down the French version of the iTunes store rather than comply with the law, a scenario that Apple insiders have confirmed is likely if the law passes. Previously the company has attacked the law saying it would lead to "state-sponsored piracy."

The Senate's new version of the law is an effort at compromise. It offers extra government protections if digital-music companies are willing to share their technologies. Specifically, it calls for Apple and other companies to submit their DRM technologies -- Apple's is called Fairplay -- to a government agency that will oversee digital copyright issues. In exchange, Apple and others would receive licensing fees and guarantees that their cooperation wouldn't weaken copyright protection.

There's also a provision in the Senate version that may allow Apple not to share its DRM at all. It could go to the digital copyright agency and make the case that its technology is not designed to protect Apple, but rather the musicians whose music it sells. The French are extremely protective of the "droit d'auteur." If the agency agrees that Apple is simply protecting the Rolling Stones, Britney Spears, and other artists, it may not need to turn over the Fairplay software code.

FRENCH EXPOSÉ. The next step in the legislative process involves a conference committee, wherein seven senators and seven assembly members will align the language on the two versions of the bill into one. It's not clear exactly how long that process could take.

Both the Assembly and the Senate versions of the bill weaken penalties for outright piracy, and establish the government agency to oversee digital copyright issues. That agency would also be responsible for negotiating the particulars of requests to open up DRM technology.

Apple had no comment on the latest round of legislative maneuvering on the matter. But Francisco Mingorance, the Director of Public Policy Europe with the Business Software Alliance, said even with the new language, the bill will have serious effects on technology and media concerns doing business in France. "No matter the final consolation text, the legislation will have serious consequences."
says. "Technology companies will have to consider the French market, weighing the profit potential with the possibility of having their technology exposed to competitors."

LEFT WITH THE CORE. The spectre of Apple shutting down the French outpost of its iTunes Music Store is very real. Apple hasn't said as much publicly, but France's portion of Apple's music-download business accounts for less than 1% of the business unit's worldwide revenue. A contentious new legal and regulatory environment would make it hardly worth the effort -- let alone the increased cost -- of keeping the French store open.

Shutting down the French unit of the iTunes operation wouldn't affect sales of iPods, however, nor of other Apple products. French consumers also would be able to continue downloading the iTunes software and using it with their iPods. They simply would not be able to buy music from the iTunes store.

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