Pricing of Music Downloads Is Probed

Warner Music discloses a subpoena by New York's Spitzer in an industrywide inquiry.

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Eliot Spitzer is taking on the music industry again, this time over the pricing of digital downloads.

Warner Music Group disclosed Friday that it had received subpoenas from the New York attorney general as part of an industrywide probe into how much record companies charge for digital downloads.

According to industry sources, who declined to be identified because the probe was continuing, Spitzer is reviewing whether the companies conspired to set wholesale prices.

Wholesale digital music prices can range from 60 cents to nearly 90 cents a song, according to industry executives. Operations such as Apple Computer Inc.'s iTunes, the most popular digital music source, then sell songs to users for 99 cents per download.

Warner made the disclosure Friday in a filing with the Securities and Exchange Commission that said it had received the subpoena Tuesday.

"As part of an industrywide investigation concerning pricing of digital music downloads, we received a subpoena from Atty. Gen. Spitzer's office as disclosed in our public filings. We are cooperating fully with the inquiry," according to a statement released by Warner spokesman Will Tanous.

A source at Sony BMG said the company also received a subpoena and said it was cooperating as well.

Sources said the two other major music companies — EMI Group and Universal Music — either had received or soon would receive subpoenas.

It is unclear whether the investigation is related to a recent push by music companies for variable pricing in digital downloads.

Companies want songs from popular artists such as Green Day to fetch more than those of lesser acts.

Sources say that proving price fixing is difficult because it requires not only showing that the music companies charge similar prices, but that they secretly agreed to do so.

The music industry has been relatively successful in fending off past price investigations. In 2003, companies settled a price-fixing suit involving CD sales spearheaded by a group of state attorneys general.

The companies paid $67.4 million in cash to consumers and donated $75.7 million worth of CDs to libraries and schools. Critics said the settlement allowed companies to dump CDs they couldn't sell anyway, rather than donate quality music.

Spitzer already has been investigating music company for allegedly lavishing gifts on radio station employees to influence playlists. Warner Music agreed to pay $5 million to settle charges; Sony BMG agreed to pay $10 million. EMI and Universal are still being investigated.

A spokesman for Spitzer's office declined to comment.

Times staff writer Thomas S. Mulligan contributed to this report.