Despite Accord With Apple, Music Labels Still Fret

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Last month the music industry and Apple, long uneasy partners, seemed a picture of harmony when they agreed on new terms for pricing on iTunes, Apple’s online music store.

Behind the scenes, however, the relationship remains as tense and antagonistic as ever.

The announcement on Jan. 6 seemed to signal a rapprochement between the music industry and its biggest distributor: record companies gave up their demand for copyright protection (called digital rights management) and Apple allowed flexible pricing, so the labels could charge more for new or popular tracks.

But according to one music industry executive involved in the negotiations, Apple’s primary goal was securing distribution of music over its iPhone, as mobile phones are expected to become an increasingly important outlet for music.

Disagreements over the timing of the changes also resulted in a particularly tense conversation on Christmas Eve between Steven P. Jobs, the chairman and chief executive of Apple, and Rolf Schmidt-Holtz, the chairman of Sony Music.

A spokesman for Apple declined to comment, as did a representative for Sony Music. But chatter about Mr. Jobs’s combative tone on the call ricocheted around the music industry, and it was regarded as another display of his tough bargaining tactics, made possible by Apple’s position as the dominant seller of music.

Mr. Jobs recently announced that he would step away from his day-to-day duties because of an illness. While Mr. Jobs’s health problems have raised questions about Apple’s operations, music executives expect their tense relationship with the company to continue.

In interviews, several high-level music executives, who spoke on the condition that they not be named to avoid angering Apple, said they operated in fear of Apple’s removing a label’s products from the iTunes store over a disagreement, even though that has never happened. The labels do not have much leverage in negotiating with Apple.

http://www.nytimes.com/2009/02/02/business/media/02apple.html?_r=1&ref=technology
“I think Steve has been smart, and he knows he has the upper hand,” said Dave Goldberg, the former general manager of Yahoo Music who is now an entrepreneur in residence at Benchmark Capital, a Silicon Valley venture capital firm. “They can’t afford to pull their music.”

One result of the dicey relationship is the increasing search by the music industry for a future in which Apple is not so dominant. Many executives say they believe the future of music buying is over the mobile phone, not from buying individual songs but by paying a monthly subscription fee to hear vast database of music.

But right now that is a tiny business in the United States. Forrester Research estimates that downloading music from Web stores like iTunes generated $1.5 billion in 2008, compared with just $70 million in wireless sales. Apple could win in this arena as well with its iPhone, but the music industry is looking to others, like Nokia, which offers its Comes With Music service, to become viable players.

“They’re still the biggest game in town,” said David Card, a digital music analyst at Forrester Research. “It’s really Apple and everyone else. I think the industry would rather have multiple outlets.”

Apple, according to a music industry official involved in the negotiations, offered to negotiate variable pricing about a year ago. Most songs cost 99 cents, of which the label receives about 70 cents and Apple receives the remainder, although the breakdown varies slightly among the labels.

Apple indicated it was willing to make the switch to variable pricing provided that the music companies — which negotiate individually with Apple to avoid colluding — would agree to license songs for wireless downloads on the iPhone, as well as drop copyright protections using digital rights management, or D.R.M., software.

All the labels agreed except Sony Music. Its chairman, Mr. Schmidt-Holtz, wanted the pricing to go into effect right after the announcement, while Mr. Jobs wanted a longer time horizon. According to a person briefed on the telephone call, Mr. Schmidt-Holtz and Mr. Jobs had a heated exchange by phone on Christmas Eve. Eventually, Sony gave in and agreed to a longer waiting period.

Even if Mr. Jobs does not get personally involved in future negotiations, music executives still fear dealing with Apple. One chit the company holds is the power of the iTunes home page, where it promotes music. They also say that the entire Apple staff, including Eddie Cue, the vice president in charge of iTunes who handles the relationships with the record labels, do their best to follow Mr. Jobs’s style in their own negotiating.

Offline, the industry has long contended with dominant retailers like Wal-Mart, which is the biggest seller of CDs but has not been the cultural tastemaker that iTunes has become.

“Whether the industry likes it or not, the iTunes chart showing the most popular songs in America is a major influencer of how kids today discover and communicate with their friends what kind of music they like,” said Charlie Walk, the former president of Epic Records, a unit of Sony Music. “It’s a very powerful thing right now in American pop culture and immediately validates a hit song.”

In some ways, the tension stems from Apple’s power over the industry, but it also echoes the traditional divide between suppliers and distributors. Several years ago, some labels withdrew their videos from the Yahoo Music service over a dispute about compensation. Before that, when MTV began in the early 1980s, the music industry eagerly provided videos in the belief that they would help sell records, though they later regretted having provided free content for the cable channel.
“They believe they created MTV, and will say they revived Apple,” said Mr. Goldberg, speaking about the music industry in general.

Mr. Card of Forrester, however, has a different take. “If it weren’t for Apple, God knows how bad the music industry would be,” he said.

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