Apple in a Fight for Rights to TV Shows

Producers Resist iTunes Price Policy

By Frank Ahrens
Washington Post Staff Writer
Thursday, October 25, 2007; D01

Apple's Steve Jobs helped save a sinking music industry, with his iPod and iTunes digital music store. Struggling record labels swallowed hard and accepted his 99-cents-per-song pricing because they had little choice.

When it comes to video content, however -- hit television shows such as "Heroes" and "The Office," and movies -- Jobs's bargaining position isn't as strong. For the second time in a year, he is getting significant resistance from a content creator that would rather turn its back on the mighty iPod than capitulate to Jobs's pricing demands.

And now, some music companies are starting to reexamine their relationships with Apple.

The turbulence on the content side comes as Apple is enjoying smooth sailing on its hardware side. On Monday, the company reported strong fourth-quarter earnings, with computer sales up 34 percent and iPod sales up 17 percent over the comparable quarter last year.

But fans of such hit shows as "The Office" are angry because Apple, feuding with NBC Universal over pricing, pulled all current NBC shows from the popular iTunes music store.

And after Dec. 1, when Apple's contract with NBC expires, all shows that NBC Universal owns, past and present, will disappear from the site. That includes shows from Sci Fi, USA and Bravo cable channels.

NBC Universal confirmed that it sent a letter on Oct. 9 asserting that Apple is in breach of contract, though it is unlikely to pursue legal action. The two sides have stopped negotiating and there appears to be no resolution in sight.

On the iTunes comment board for "The Office," there is plenty of fan enmity to go around.

"Apple wake up and work it out with NBC," wrote one poster.

Another simply wrote: "I hate NBC."

NBC said that before the breakup, its shows accounted for 40 percent of all the television programs purchased on iTunes; Apple said the number was closer to 30 percent.

For Apple, the feud with NBC is the most recent ding in the company's sleek, it-just-works image. A year ago, Apple added feature-length movies to its iTunes online music store, most for $9.99 each. But the only
major studio that let its movies be sold on iTunes was the Walt Disney Co. -- and Jobs sits on Disney's board. Since then, only two of the six other major studios -- Paramount and Sony -- have made some of their movies available for sale on iTunes. Movie studios fear damaging sales of their movies on DVD by undercutting their price on the online music store.

Which means that sales of the Apple TV box -- the $299 device that allows users to play downloaded movies on their television sets in addition to their computers -- have stalled, said analyst Tim Bajarin of Creative Strategies.

Apple declined to comment.

Now, the fight turns to television shows, and potential trouble is on the horizon with music companies. Compared with music companies four years ago when iTunes was launched, television networks and studios have more leverage.

First, there is the revenue issue. Music companies depend on digital sales -- most of it on iTunes -- for 15 to 20 percent of their revenue. By comparison, NBC Universal's take from selling its shows on iTunes last year was far less than 1 percent of the company's total revenue -- only about $15 million, according to a source close to the situation who spoke on the condition of anonymity because the number has not been made public.

Perhaps more important is the issue of distribution. Television companies don't need Apple as much as music companies did.

Networks such as NBC own dozens of stations and are affiliated with hundreds more. Also, companies such as NBC Universal own cable channels that rerun network shows; for example, NBC's "Heroes" is rerun on the Sci Fi Channel. Networks resell their shows on DVD and syndicate them on local stations.

Also, all major networks have begun rerunning entire shows on their Web sites.

NBC's big power play against Apple is due later this month, with a new Web site called Hulu. NBC has partnered with Fox to create Hulu, which will allow users to see shows from the two networks free on the Internet. Hulu has the potential to be in front of nearly every Internet eyeball, as NBC and Fox have distribution deals with AOL, MSN, Yahoo and MySpace.

Meanwhile, music companies also have expanded distribution options.

Before iTunes came along, music companies had only two ways to distribute their songs-- for sale in stores and for play on radio. But that is no longer the case.

Earlier this year, Universal Music Group, the world's largest collection of record labels, told Apple that it would not renew its yearly exclusive contract and instead would go month-to-month so it could be free to deal with other distributors. Over the past year, sales of Universal songs for cellphones around the world have soared. Universal, which has 35 percent of the U.S. music market, is discussing deals with U.S. mobile-phone companies, said a source close to the talks who spoke on the condition of anonymity because no deal has been announced. Warner Music Group, whose contract with Apple expires at year-end, is considering switching to a month-to-month deal with Apple, said a source with knowledge of the discussions who spoke on the condition of anonymity because no decision has been made. Universal also
Apple's iTunes has succeeded because it is easy for consumers: Pay one price, get one song (or album). As such, iTunes accounts for about 70 percent of all digital music sales. But by setting the retail price of songs, Apple also put a ceiling on what record companies can charge Apple for songs to be resold on iTunes. Record companies have yielded to Jobs's pricing to get distribution.

NBC Universal is the first television company to say it will not let Apple put a price on its shows.

NBC proposed a range of prices and packaging of shows on iTunes from 99 cents to $2.99, said a source close to the talks who spoke on the condition of anonymity because the proposal was confidential. Apple refused. In a press release, Apple said NBC proposed selling some shows for as high as $4.99, which NBC denies.

Who has more to lose in the fight?

"I don't see video as the driving force behind iPod sales," Adam C. Engst, publisher of Apple news Web site Tidbits.com, wrote in an e-mail. "Music is why people buy iPods, and that won't be changing any time soon -- you can't watch TV while jogging or driving."

Bajarin called NBC's move "a mistake."

But NBC Universal spokesman Cory Shields said his company's programs help drive the sales of iPods. "The iPod is only as good as the content on it," he said.