iTunes and Lawsuits

The labels still don’t get it

WEB EXCLUSIVE

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May 3 - Last Wednesday brought two pieces of news in the ever evolving digital music wars. On the positive side, Apple CEO Steve Jobs was singing "The Anniversary Song" in celebration of the first birthday of his iTunes store, by far the biggest emporium of legal song downloads. On the other coast, the Recording Industry Association of America, the lobbying arm of the major labels, crooned its old favorite, "You're in the Jailhouse Now." It sued 477 more music lovers for copyright infringement, this time focusing on college students.

Even the RIAA admits that the lawsuits are a short-term measure to discourage otherwise law-abiding folk from sharing tunes with a few million people on Kazaa. Long-term, the strategy is supposedly moving the wired masses to legal services like iTunes, where the industry gets its cut. But while Jobs and other purveyors of online music are working hard to lure customers, the music industry's actions betray a persistent mistrust of the technology that will ultimately be the pillar of its business— or the end of it.

First some good news from Jobs. In its first year, the iTunes store sold 70 million
"Zero to seventy in five seconds is pretty strong," he says.

He's delighted that the combination of the iTunes store with the insanely popular iPod have given Apple well over half of the downloading market, and hopes to keep his lead by adding more features and boosting the catalog to 700,000 songs. And he was relieved to announce that the industry's one-year licensing agreement with iTunes has been extended for several more years.

The not-so-good news is that legal downloads only represent 2 percent or so of total music sales. This sounds reasonable when you consider that the practice is in its infancy, but not so impressive when you compare it to hundreds of millions of songs downloaded illegally on file-sharing services. Those are the real competition for iTunes, WalMart, Real Networks, and other online stores (Sony is expected to join these this month.) All of those vendors believe that they can indeed "compete with free," by a diverting online experience, cool features, fair pricing, and high-quality files. They need a music industry passionately committed to the fight. Instead, says Rob Glaser, CEO of Real, "there's a fear the music industry will declare victory prematurely."

Case in point: pricing. In his renegotiations with the labels, Apple's Jobs kept the per-song price at ninety nine cents a song. Generally, entire albums are available for $9.99.

But some popular albums are inexplicably higher. Buying all 14 tracks on Jessica Simpson's "In the Skin" on iTunes cost 13.86. The physical album, including a bonus DVD with scenes from her wedding, is $13.39 from Amazon. Sheryl Crow is perhaps the artist who has most aggressively promoting legal downloading. Her 2003 greatest hits album has a song missing on iTunes; buying the 16 others will cost you $15.84. The physical CD with all 17 songs cost $9.99 on Amazon.

This is crazy. Online prices should always be much lower than physical CDs. The economics of downloading favor high volume. CDs have to be pressed, warehoused and shipped, but in the online world, you transmit a file to the vendor and just collect money. When a super popular artist like Norah Jones emerges, forget about convincing a hundred thousand people to download it at $13-get a million people to make the mouse-buy for five bucks. It's nice to sell 100,000 Norah Jones albums online at $13, but even better to sell 2 million at five bucks a pop.

Then there's the situation with digital rights management, or DRM, these are the protections built into legally sold digital tunes to prevent infringement. But one problem of DRM has nothing to do with piracy. Because different online stores use different DRM schemes, sometimes legally downloaded songs won't work on all playback devices. For instance, the songs you buy from the iTunes store work on only one music player, the iPod, because Jobs refuses to license Apple's protection schemes to others. Can you imagine if the CD you bought from Tower Records only worked on your living-room stereo but not in your car? You'd think that the music labels would want to fix this, but according to Jobs, during the renegotiation the issue of compatibility never came up. Who's looking out for the consumer?

Isn't it obvious by now that by accelerating the momentum of online stores like iTunes (and also promoting subscription services like Rhapsody, which can potentially deliver huge royalties to the industry) the industry will move quicker to a
model from which it could launch hundreds of new ways to make money? (Jobs himself suggested one: sell out-of-catalog music now rotting in storage rooms for low prices.) Isn't this a better way to move towards the future than suing college students? How many times does the same chorus have to play before music execs can hum along?

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