France vs. Apple: When the State Does Not Know the Market

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On March 21, the French government approved the DADVSI (a law on copyrights and related rights of the information society). One of its sections makes reference to the interoperability of formats, such that MP3 music files can be played in any MP3 player available on the market. If the law is ultimately passed in the French Senate, online music shops will have to protect their files with a compatible digital rights management system (DRM).

One of the consequences of the French law is the breaking up of a potential monopoly on the music market by Apple, favored due to the fact that the company headed by Steve Jobs refuses to license its DRM technology, which just happens to be called FairPlay. If the law goes into effect and its measures are complied with, songs downloaded from the highly successful Apple iTunes Music Store would have to be listenable for French users with MP3 players made by Creative, for example. Inversely, songs purchased on VirginMega would be playable on the iPod, another hugely successful product.

Nevertheless, it seems that the French Senate members have failed to grasp that the issue is not about whether Apple shares its format with the competition. The real commodity, this being the songs sold on iTunes, are not owned by Apple. Users can purchase them through other online shops and in no case are they obligated to use the FairPlay technology.

While the law on the interoperability of formats waits to be debated in the French Senate—presumably to happen sometime in May—many question marks remain. For instance, should rival MP3 makers have to pay licensing fees in order to use Apple’s DRM file protection system? If so, who will set the price? If Apple itself were to do so, it could establish whatever licensing fee it desired. After all, it is the market leader in France as well, although its 40% market share is lower than in other countries, where it holds up to 70%. Another possibility would be that the government determine the licensing fee, although the terms of its use are still unknown. However, without state regulation on licensing fees, requiring Apple to allow interoperability would be a moot point.

The same organization regulating competition in France already ruled in 2004 that having access to the iPod was not crucial to the development of the digital music market. This was its response to the charges brought against Apple by VirginMega after songs purchased

Highlights

1 In France, iTunes controls 40% of the market for online music sales, while Virgin Mega controls 30% and FNAC 20%. In some countries, Apple has market shares of up to 70%.

2 In February of this year, Apple sold its 1 billionth song through its iTunes online store. In the last financial quarter of 2005, the company sold 14 million iPod players worldwide and 387,000 Macintosh computers in Europe.

3 Last year, a French consumers’ association sued Apple for not disclosing that songs purchased on iTunes could not be played on the competitors’ MP3 players.

4 Telecom operators and consumer electronics companies joined forces several years ago to develop an open DRM standard called Open Mobile Alliance (OMA).
on their site could not be played on the iPod. So why is there now a push to require the music sector to respect interoperability? Despite the fact that in other software and hardware sectors interoperability is not exactly 100%, the administration has made very few political decisions in order to make this a reality.

The global nature of the Internet prevents Apple from sharing its DRM technology with other manufacturers in the French market as long as it continues with its current model in other countries. Thus, it does not seem that the enactment of the DADVSI will actually favor the development of the digital music market in France. Furthermore, if the leader in legal music sales is forced out, it would most likely be substituted by piracy—precisely the opposite of what the law aims to achieve.