

# UpFront

GLOBAL BY AYMERIC PICHEVIN

## Apple Sour As French Opt For Interoperability

PARIS—After weeks of heated debate, the French Parliament adopted its highly controversial copyright bill March 21. And while lawmakers at least temporarily sidestepped the legalization of file-trading, they stepped right into another hornet's nest—insisting that digital music services and devices play nice with each other.

The new legislation introduces the right to interoperability and challenges the notion that digital music retailers, like Apple's iTunes Music Store, have the right to limit their service to proprietary devices, such as the iPod.

French lawmakers voted 296-193 to force digitally sold music to work with any digital music player or software. The Parliament also mandated that digital rights management developers make public all information needed to reach interoperability. This would permit users to bypass DRM technologies in order to listen to digitalized music on any device. It would force Microsoft, Apple and Sony to disclose their DRM protocols—the WMA, FairPlay and Atrac systems, respectively.

Should users circumvent DRM for piracy reasons—a difficult motivation to define—they can face fines up to €3,750 (\$4,560).

The French government said the law is designed to ensure that no single company dominates the rapidly growing music download market.

It took Apple—currently the dominant digital music retailer with an estimated 75% worldwide market share—less than a day to respond. The Cupertino, Calif.-based company claimed the bill would "result in state-sponsored piracy." In a statement, Apple said, "If this happens, legal music sales will plummet just when legitimate alternatives to piracy are winning over customers. iPod sales will likely increase as users freely load their iPods with 'interoperable,' music which cannot be adequately protected."

Jonathan Arber, an analyst at London-based consulting company Ovum, calls the legislation "potentially a big blow for Apple," arguing that Apple's business model with iTunes and



the iPod "is built on its very lack of interoperability" with other devices and services. "This could force Apple to withdraw from France or certainly rethink its strategy in the country," he says.

But Apple might want to consider the upside of the law. Shaw Wu, an analyst with American Technology Research, feels the move could boost iPod sales. The ability to add music from other music services would make the iPod "more universal and versatile" and therefore more valuable.

"We do not believe Apple is that dependent on its iTunes Music Store, as we estimate that about two to three dozen songs are purchased from iTunes over the life of each iPod, meaning most consumers get their music another way," Wu said.

France's digital music market grew exponentially last year, selling 18.6 million units, up from 2 million in 2004. Such sales accounted for 4% of the French music industry's revenue, with a value of €15 million (\$18.2 million). According to research company GfK, there are about 20 online music retailers in France, including Apple's market-leading iTunes Music Store, FnacMusic, VirginMega, Universal Music's E-compile and Sony Connect.

Piper Jaffray analyst Gene Munster estimates that France represents only about 2% of Apple's iPod/iTunes business.

French minister of culture Re-

naud Donnedieu de Vabres, who sponsored the bill, told Billboard in February that he did not want technology to serve as an alibi for any kind of "compartmentalization." He added that companies, such as Apple or Microsoft, would eventually come to interoperability. "This will be a consumer requirement," he said.

The French industry has generally welcomed the bill, though with reservation. Hervé Rony, director general of labels trade body SNEP, says, "We certainly are in favor of interoperability, but we wouldn't want DRM to be its victim with anyone entitled to bypass them."

The bill addresses music industry concerns in other ways as well. It introduces a range of fines for copyright infringers, starting at €38 (\$46) for downloading protected files for free and €150 (\$182) for sharing them. "This puts an end to disproportionate penalties such as sending an Internet user to jail," Donnedieu de Vabres said during the debate.

The lack of rules on how to apply those fines is a source of concern for the industry. "If we are talking about €38 for each file, that is too much," Rony says. "But if it is for each 10,000 files, then it is just absurd."

The bill also includes a €30,000 (\$36,500) penalty for distributing technical means to crack DRM.

The Parliament finally did adopt a peer-to-peer amendment stating that distributors of a software "patently" geared toward the distribution of copyrighted works without authorization are liable to a €300,000 (\$365,000) penalty.

The March 22 vote ended debate that started last December. Two subsequent amendments that opened the door to the legalization of file-sharing—by way of a global license—were temporarily adopted, but ultimately excluded from the bill.

"The debate on global license will resume inevitably," says Patrick Bloche, a member of the Socialist party who sponsored the global license amendment.

The legislation—which requires Senate approval—would put France in agreement with the European Union's Copyright Directive, which was passed in 2001. ...



## Retail Track

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## New Life For CDs?

Study Says There Is Room For Physical Product Sales To Grow

Even as consumers switch to digital music and physical sales decline, a study finds that physical product is still important to shoppers. The study shows that even teenagers increased their purchases of physical music by 5%.

The study, conducted by the NPD Group for NARM, discovered that while practices like CD burning, peer-to-peer file-sharing and legitimate downloading have an impact on physical sales, "there is still opportunity" for the CD, NARM president Jim Donio says. "There are still pockets of heavy buyers out there that embrace the physical product, and the industry needs to market to them and provide them with a better in-store experience to boost sales," he says.

from 15% in 2002 and up from 16% last year. In total, the average respondent in that group spent \$57 last year on music, a number that also reflects digital sales.

On the other hand, the older demographics—people 36-50 and 50-plus—showed a drop in total physical sales. The 36-50 group went from accounting for 27% of physical sales in 2002 down to 25% in 2005, while the over-50 group accounted for 17% of physical album sales, down from 18% in 2004.

The study also broke out music sales by dollars for various age groups. Respondents older than 55 averaged \$46 in purchases, while the 44-54 age group averaged \$70. Those 35 to 44 years old averaged \$76 annually, while

demographic skews younger. Less than half, or 44%, of the 25-34 age group buy CDs, and only 19% of 18- to 24-year-olds purchase CDs. Curiously, a greater percentage, 27%, of the 13-17 group bought CDs. Almost two-thirds of 13- to 24-year-olds said they are likely to acquire music through burning a friend's CD, while 38% said they are likely to get music through unauthorized file-sharing.

The survey also broke out respondents by how much they spend on music. Slightly more than half of respondents were light buyers (spending up to \$30 per year on music), who, on average, spend \$18.45 and buy music 2.4 times per year, averaging 1.3 items on each trip. Those buyers generally shop at a discount department

"There are still pockets of heavy buyers out there that embrace the physical product."

—JIM DONIO, NARM



The study shows that the physical-goods world could still grow slightly over the next year or two, if merchants take the right steps, which include better display organization and improved shopping experiences for consumers.

As for the labels, the study found that traditional radio is on the downswing as a motivator to buy music, but "TV is really powerful" in driving sales. That finding was not quantified in the study, but was conveyed anecdotally, Donio says. Other tactics to increase sales include packaging music soundtracks with movies or videogames, he says.

The study—which had 3,700 respondents, 2,600 of whom bought physical music—found that the 13-17 age group accounted for 18% of all physical music sales last year; that is up

those 25-34 spent the most on music in 2005, averaging \$79. As for the 18- to 24-year-old group, the people most likely to get their music through unauthorized file-sharing, they also spent a healthy average of \$67 on CDs last year.

In looking at music acquisition in 2005, 43% of respondents said they bought CDs, 29% said they ripped CDs, 22% said they acquired music through P2P file-sharing and 6% said they bought legal downloads. In other words, 51% did not pay for music—a number that has risen from 2004, when 51% said they acquired music by buying CDs.

Breaking that out by age group, the study found that 81% of the over-55 group got music by buying CDs, a percentage that drops as the de-

store, but also shop for music at consumer electronics stores and online.

The survey said 39% of respondents are medium-level buyers (between \$31 and \$100), spending an average of \$62.77 per year on physical music. Those respondents make music purchases on almost five occasions (4.6), and average 1.8 units per occasion. Like the light buyers, they also tend to shop in mass merchants' music departments, but will also go to consumer electronics chains and online stores.

Finally, the heavy buyer (more than \$100) comprised 10% of respondents, spending \$234 annually on music, buying it seven times per year. On each occasion, they spend 22 minutes in the music section. Their preferred destination is the con- continued on >>p12

# UpFront

RETAIL BY BRIAN GARRITY

## Apple's Next iPod Push 'Vingles,' Video Bundles

Apple Computer is exploring new ways to market and sell music videos in bulk as interest in downloadable video grows.

In a first, iTunes is selling all the clips from Tori Amos' "Fade to Red"—a 21-song music video collection released on DVD via Rhino Entertainment—as individual downloads for \$1.99 each or as a complete package for \$24.99.

The iTunes Music Store has been steadily selling one-off music videos of current and catalog hits for \$1.99 apiece since late last year. But the company is just now moving into higher-margin packages.

The Tori Amos offer is part of Apple's larger video bundling push that includes iTunes-only "video albums" (offers of six to seven videos from an artist that have not been released as physical collections) and "vingles" (a bundled offer of a video and its corresponding single).

Apple officials expect video collections to be a growing trend.

"It's a natural fit," says Eddie Cue, VP of applications for Apple. "These are not replacements for people buying individual songs or albums. But they're great for well-established artists with a fan base behind them that wants more product."

John Whitherspoon, Amos' manager, says that the rising number of consumers who

have video iPods or other portable video players gives artists new opportunities to expose videos that were not available through cable music channels.

Cue says some of the most exciting opportunities are around products that have no equivalent in the physical world. "We are taking advantage of the medium," he says.

"This is the stuff that you can only do in digital music."

Indeed, Apple has worked with such bands as Green Day and Foo Fighters to sell special "video albums" that compile a number of their respective videos not available for sale in stores.

Another area of opportunity is vingles, which take advantage of demand for hit

songs by selling the video and a music download together for \$1.99. Currently, iTunes is selling vingles from such acts as Nelly, the Pussycat Dolls and Josh Turner.

"Over time there is no reason why we can't have a vingle for every video," Cue says. "Not every song has a video but every video has a song." ....



TORI AMOS' *Fade to Red* 21-song music video set is available to buyers as a bundled collection or by individual song through Apple's iTunes.

RETAIL BY BRIAN GARRITY

## Consumers Hot For 'Hee Haw'

New Twist On Direct Marketing

"Hee Haw" was Time Life's best-selling DVD collection of 2005—and that ain't hay.

Time Life says it has sold more than 1 million units of the multi-title series since it began marketing it via infomercials and TV ads in November 2003. The company has spent more than \$5 million promoting it over the last 28 months.

Time Life is no stranger to pushing sales of music and video series into the millions. But "Hee Haw"—the Gaylord Entertainment-controlled country music variety show, which ran on TV from 1969 to 1992—is an anomaly in the DVD business.

John Esposito, president/CEO of WEA, Time Life's retail distributor, says while blockbuster feature films often achieve this level of sales, it is rare for a TV-on-DVD product to show such strength.

Also notable in the case of "Hee Haw" is where and how the sales are made. Time Life executives say consumers purchased almost half of the "Hee Haw" titles in stores like Wal-Mart and Target rather than over the phone, as is typically the case with many direct-response campaigns.

In fact, Time Life executives report the success of "Hee Haw" validates an expanding strategy to supplement direct-response sales with traditional retail distribution.



sales can add legs to a direct-response campaign. Such sales can also offset TV advertising expenses Time Life incurs promoting more modest-selling collections. Time Life, which claims \$300 million in annual revenue, spends more than \$70 million a year on TV advertising in the United States alone.

"We don't want to be at the mercy of just licensing narrow direct-response rights," says Jeff Peisch, head of Time Life's video division. "In cases where we can acquire all rights, retail included, that's what we want to do." ....

Tori Amos Photo: Steve Jennings/WireImage.com

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sumer electronics chain, but they also buy everywhere, including local independent record stores.

Breaking out respondents by where they prefer to shop, less than one-third chose mass merchants, while record and consumer electronics stores each mustered just under a 20% share. About 15% of respondents chose online shopping, 7.1% said bookstores and 1.7% said record clubs.

While consumers frequently

complain about music prices, 54% of respondents said music is a good value, versus 48% for DVDs. Yet, when asked what would encourage them to go to the store specifically to buy music, more than two-thirds of respondents—the No. 1 answer by an overwhelming margin—said a sale. Meanwhile, 27% said a good selection helps, while 22% said a live performance or an in-store signing helps.

But when asked what would encourage them to

spend more money, movies bundled with music soundtracks got the highest ratings, with about 40% of buyers citing the idea. The DualDisc and custom CDs from kiosks were also touted by about one-third of respondents.

The survey also broke out shoppers in such categories as "impulse," those who see something and buy it; "wanderer," or browsers; and "determined," those who go to a store for a specific album. The "determined" category spent

an average of \$51 per year and accounted for about 19% of U.S. sales last year. If those shoppers were to buy one more unit on just one occasion, U.S. music sales would grow by 6%, the study reported.

"It takes a little bump to move the needle and have a huge impact on physical sales," says Russ Crupnick, VP/senior industry analyst for the NPD Group. "There is daylight here. If stores did a little better merchandising, there is plenty of reasonable upside." ....



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