

La France v. Apple: who's the dadvsi in DRMs?

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Abstract

On August 1, 2006 the French Parliament passed the law on copyright and related rights, known as DADVSI (loi relative au Droit d'Auteur et aux Droits Voisins dans la Société de l'Information), which implements the European Copyright Directive of 2001. The main feature of the law is the legalisation of technical protection measures for copyrighted works (also known as TPMs or DRMs) and the introduction of legal mechanisms to protect and enforce these technical measures. Such steps, aimed at combating digital piracy, should have been welcomed unreservedly by all involved in the media industry, from artists and producers to distributors, especially online content distributors such as Apple and Sony.

However, the legalisation and protection of technical measures came with a few twists from French lawmakers. These twists have unnerved Apple, the market leader in music media players and online content distribution with its iPod player and iTunes distribution platform respectively. The DADVSI law introduces the requirement of interoperability for technical measures meaning that all DRM-protected music file must be playable on any device, irrespective of its brand or of the software used to read it. Such requirement of compatibility between competing DRMs threatens Apple's exclusive DRM technology. In doing so, the law threatens the umbilical cord between the iPod player and the music sold on iTunes, and thus Apple's dominance in both markets. This paper will describe how French lawmakers have managed to put in place an original and, so far, unique legal framework based around a new independent body in charge of implementing DRM interoperability and of ensuring that technical measures do not upset the balance between the interests of the rightholders and those of the consumers.