



Apple iPod Antitrust Case Could Impact Future Of Digital Liberty

Arguments began December 2 in a class action lawsuit that claims Apple violated antitrust laws in the way it updated software to iPod devices. The lawsuit claims that the updates were not really updates at all, but attempts to keep music purchased from competing music services from playing on the iPod. Apple claims the updates were necessary for security reasons. If the court finds that Apple violated antitrust laws, the \$350 million the plaintiffs are seeking could be tripled. The case is being heard in United States District Court for the Northern District of California.



The crux of the case is two software updates for iTunes, the software used to manage music on the iPod. The software updates — versions 7.0 and 7.4 — blocked competing services that had previously worked with the iPod from working after the updates. This meant that consumers who had purchased music from services such as RealPlayer and MusicMatch could no longer play those songs on their devices, essentially guaranteeing they would have to buy their music from the iTunes store, even though the same songs are available elsewhere for less money.

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Music purchased from the iTunes store would not play on competing devices, creating a situation where consumers opting to switch to another music player could do so only by abandoning their mobile music library. The suit claims that this allowed Apple to charge more for newer iPod devices when consumers replaced aging or damaged devices. One filing in the suit claims that Apple made it cost prohibitive to switch “from iPods to competing portable digital media players by eliminating the ability of consumers to collect a library of downloads that could be played on all players.”

The court is hearing evidence as to whether Apple acted improperly and damaged consumers by unfairly limiting consumer choice. Bonny Sweeney, attorney for the lead plaintiff, claims that is exactly what happened. “We will present evidence that Apple took action to block its competitors and in the process harmed competition and harmed consumers.” The class action suit includes anyone who purchased iPod music players directly from Apple between September 12, 2006 and March 31, 2009 unless they chose to opt out.

Apple co-founder and former CEO Steve Jobs testified Tuesday from beyond the grave via a video-recorded deposition. His testimony, recorded in 2011, was not entirely helpful to Apple’s case. He evaded questions by employing answers such as “I don’t know,” “I don’t remember,” and “I don’t recall” a total of 74 times according to a CNN report. Several of the answers he did offer were sarcastic and snarky. For instance, when asked about Real Networks, the company behind RealPlayer, he answered by asking the question, “Do they still exist?” This could be bad for Apple since the company is accused



Written by [C. Mitchell Shaw](#) on December 13, 2014

of unfair trade practices in regards to Real Player's ability to work with iTunes.

In 2004, Real Networks introduced the Harmony software designed to allow music purchased from its service to play on iPods, despite the ironically named FairPlay Digital Rights Management (DRM) software used by Apple to block music purchased outside of iTunes. Jobs orchestrated a campaign accusing Real Networks of "adopting the tactics and ethics of a hacker and breaking into the iPod" and threatened to take steps to prevent Harmony from working with future updates. Apple is now saying the purpose of the update was to boost security, not to disable that functionality.

Internal e-mails also show that Jobs took steps to prevent music purchased from MusicMatch from working on the iPod. One e-mail from Jobs stated, "We need to make sure that when Music Match launches their download music store they cannot use iPod. Is this going to be an issue?"

The case dates back more than 10 years. DRM is a thing of the past for iTunes, and music purchased outside the iTunes store can be played on iPods. Even if the court decides that Apple did violate antitrust laws, the possible verdict of over \$1 billion is not going to make much of a financial impact on a company that had \$182.8 billion in sales in fiscal year 2014. With revenues of nearly a half billion dollars per day and assuming even a small margin for profit, it will take them all of about a week to make up the loss. Many are asking what the fuss is all about. The answer lies in future decisions that Apple and other companies make as to how much freedom consumers have over devices they purchase.

The Electronic Frontier Foundation, an organization dedicated to defending civil liberties in the digital world, put it best. "This case deals with events that happened over ten years ago, but the issue is still very important today. Apple used digital locks to keep iPod owners from buying their music from competing stores. A win for the plaintiffs in this case could help discourage Apple and other companies from interfering with people's use and enjoyment of the devices they buy," EFF staff attorney Mitch Stoltz told *The New American*.

Of course companies always seek to protect their products and services from being pushed aside by newer products and services offered by competitors, but the best way to do that is to make a product or offer a service that is more attractive to consumers. A free-market approach would benefit consumers by driving innovation, something Apple claims to take pride in. Limiting consumer choice stifles innovation and hurts the market, even if it helps a company's immediate profit margins.

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