

Lawyer sues Microsoft over Surface tablet storage (Update)

November 14 2012, by Ryan Nakashima

A California lawyer is suing Microsoft Corp., claiming the Surface tablet he bought doesn't have all the storage space the company advertised.

Andrew Sokolowski, a lawyer in Los Angeles, claims that he bought a Surface with 32 gigabytes of storage last week. But he quickly ran out of space after loading it with music and Microsoft Word documents.

He discovered that a significant portion of the 32 GB storage space was being used by the operating system and pre-installed apps such as Word and Excel. Only 16 GB was available for him to use.

Sokolowski's lawyers filed the suit alleging false advertising and unfair business practices on Tuesday at the Superior Court in Los Angeles. They are seeking class action status.

The suit aims to change how Microsoft advertises its device and hopes to force the company to give back revenue and profits that resulted from its alleged wrongful conduct.

Microsoft said in a statement that it believes the suit is without merit.

"Customers understand the operating system and pre-installed applications reside on the device's internal storage thereby reducing the total free space," the company said. It noted that people can add storage via the microSD slot and USB port.

Microsoft confirmed on Nov. 5 exactly how much usable storage space its Surface tablets come with out of the box. It says on its website that the 32 GB Surface has 16 GB of free space while the 64 GB version has 45 GB free. The Surface started selling Oct. 26 and Sokolowski bought his device on Nov. 7.

Sokolowski's lawyer, Rhett Francisco, said Wednesday that his client never saw Microsoft's responses and said the details on its website are "buried."

"They make you search and dig for it specifically, or you would never find it," he said.

It's common for mobile devices to have less usable storage space than advertised.

Flash drives and regular hard drives provide less usable memory than their labels say, mainly because there are two definitions of the word "gigabyte." That means that, right off the bat, consumers get about 7 percent less space than advertised. A 16 GB drive, for example, has about 15 GB available for use.

On flash drives, the kind used in tablets, another factor reduces the available storage further. A portion of the memory space is set aside to replace "cells" that wear out over time. For this reason, Apple's 16 GB iPad has an actual storage capacity that's 11 percent lower than the one advertised: 14.3 GB. The 64 GB model stores 57.2 GB.

On the iPad, all the storage space after the 11 percent "discount" is available for the user's photos, movies and apps. The operating system and Apple's pre-installed apps have their own, separate memory space. Microsoft's operating system and apps, in contrast, share an equal amount of memory space with the user.

Michael Gartenberg, research director for technology research firm Gartner Inc., said Microsoft has consistently said there would be less memory available than is advertised. He said it is "unsurprising" that its new operating system and near full-blown version of Office take up a big chunk of the memory.

"I think they made it pretty clear to consumers what they're getting," he said.

And even if Microsoft's base-model Surface only has 16 GB of memory available, that's still slightly more than the 14.3 GB you'll get from the latest Wi-Fi only iPad for the same price of \$499.

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Citation: Lawyer sues Microsoft over Surface tablet storage (Update) (2012, November 14) retrieved 26 June 2024 from <https://phys.org/news/2012-11-lawyer-sues-microsoft-surface-tablet.html>

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