

Apple iPod antitrust trial: Consumers say iTunes was monopoly

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It's been shuffling through the courts for a decade, a class-action suit that challenges Apple's iPod and iTunes grip on the digital song market. Now, it's time to face the music.

In a federal court trial beginning Nov. 19 with jury selection, Apple will try to fend off allegations that it violated antitrust laws through tech maneuvers that once restricted music downloads for iPods to its iTunes store.

While Apple abandoned the restrictions in question years ago, the stakes are still high - damages could exceed \$1 billion if antitrust violations are proven, and an adverse verdict would amount to a black eye for the company's past [business practices](#).

Indeed, the ghost of late Apple CEO Steve Jobs will hover over the trial, as his videotaped deposition - taken not long before his 2011 death - will give the jury his view of the iTunes software updates at the heart of the case.

U.S. District Judge Yvonne Gonzalez Rogers, who is presiding over the trial in Oakland, Calif., determined earlier this year there is enough evidence for the class-action case to go to a jury, despite Apple's vehement arguments that there is no proof of harm to consumers or that it exerted monopoly power over the digital music market.

Apple is certainly taking the trial seriously, identifying the outcome as

significant to shareholders in a recent SEC filing.

"I think it's going to be hard to prove damages," said Herbert Hovenkamp, a University of Iowa law professor. "But it's possible. It's gotten this far, and the judge has a lot of tools for getting rid of an antitrust case."

The trial amounts to a glimpse into Apple history, exploring its dramatic expansion into online music downloading through iTunes when the idea of the iPhone and iPad was still a glimmer in Jobs' eye.

The [antitrust case](#) was first filed in 2005, alleging Apple created a monopoly by blocking iPod owners from going to competitors for their music. The central issue involved Apple's "FairPlay," a so-called digital rights management system, or DRM, that ensured iPod owners could only download songs from the iTunes store.

RealNetworks had established a rival program called Harmony that mimicked Apple's FairPlay so iPod owners could get their music elsewhere, but Apple kept tweaking its iTunes software with updates that disabled Harmony. Consumers and retailers such as Best Buy are the plaintiffs in the case, but the competition between Apple and RealNetworks at the time is central to the antitrust claims.

Following numerous court rulings, the trial involves millions of iPods sold between 2006 and 2009, the last year Apple installed an iTunes update that consumer advocates say was designed to stifle competition. The higher cost for consumers, plaintiffs lawyers argue, does not center on higher charges for an iTunes song - they instead will urge the jury to punish Apple because they say the software updates restricting music libraries held the public hostage to higher priced iPods when they could have bought cheaper MP3 players.

As a result of changes, Apple does not face the prospect of an injunction that would affect current iPod and iTunes practices. But the case delves into an unsettled area of antitrust law, according to legal experts.

Similar cases have popped up against other businesses accused of tethering products together at the expense of competition, including one involving Lexmark and its printer cartridges and Keurig coffee makers and single coffee pods.

Bonny Sweeney, lead attorney for consumers in the Apple case, said the case is an important challenge to a tech monopoly.

"Any time a company tries to enhance or maintain monopoly power by ... anticompetitive conduct it increases costs for consumers," she said.

Apple declined to comment. But in court papers, Apple calls the suggestion that iTunes upgrades affected consumers "implausible," given that RealNetworks had just a fraction of the music download market. And the company argues that the software upgrades were designed for security protections and other improvements such as enabling video on iPods, not to counteract Harmony.

Industry observers say that despite the sky-high damages sought, Apple is not particularly vulnerable, given that iPod owners can now get their music from other sources such as Amazon and that the streaming [music](#) market is booming through rival sources such as Pandora.

"Could it be a hit? It would be an indictment of Apple's business practices at the time," said Michael McGuire, an analyst with the Gartner Group. "But then again, that's history."

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