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## Antitrust Lawsuit Charges Apple With Monopolizing Online Music

The complaint takes issue with Apple's refusal to support the Windows Media Audio format.

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An antitrust lawsuit filed against Apple on Dec. 31 charges the company with maintaining an illegal monopoly on the digital music market.

Plaintiff Stacie Somers, represented by attorneys Craig Briskin and Steven Skalet of Mehri & Skalet PLLC, Alreen Haeggquist of Haeggquist Law Group, and Helen Zeldes, alleges that Apple dominates the market for online video, online music, and digital music players and that its dominance constitutes a violation of the Sherman Antitrust Act. The attorneys are seeking to have their lawsuit certified as a class action.

"Apple has engaged in tying and monopolizing behavior, placing unneeded and unjustifiable technological restrictions on its most popular products in an effort to restrict consumer choice, and to restrain what little remains of its competition in the digital music markets," the complaint states. "Apple's CEO Steve Jobs had himself compared Apple's digital music dominance to Microsoft's personal computer operating system dominance, calling Apple's Music Store 'the Microsoft of music stores' in a meeting with financial analysts."

After years of government scrutiny, Microsoft was found to be exercising illegal monopoly power in late 1999. Some of its obligations under the settlement the company reached with the Department of Justice have expired; others remain.

The complaint against Apple claims that the company controls 75% of the online video market, 83% of the online music market, more than 90% of the hard-drive based music player market, and 70% of the Flash-based music player market.

A spokesperson for Apple said the company does not comment on pending litigation.

The complaint takes issue with Apple's refusal to support the Windows Media Audio format. "Apple's iPod is alone among mass-market Digital Music Players in not supporting the WMA format," it states, noting that America Online, Wal-Mart, Napster, MusicMatch, Best Buy, Yahoo Music, FYE Download Zone, and Virgin Digital all support protected WMA files.

This is based on the proposition that music companies "are generally unwilling to license their music for online sale except in protected formats." Such assertions look increasingly tenuous as unprotected music becomes more widely available through legitimate channels. Amazon.com, for example, claims to offer "Earth's biggest selection of a la carte DRM-free MP3 music downloads with more than 2.9 million songs from over 33,000 record labels." A week ago, Amazon said that Warner Music Group would make its artists' songs available in the unprotected MP3 format. EMI last year also began offering unprotected music online. And that's to say nothing of Web sites like Amie Street that have been offering unprotected music from independent artists for even longer.

Apple, for its part, might reasonably claim it doesn't want to license WMA from Microsoft, a cost the complaint speculates is unlikely to exceed \$800,000, or 3 cents per iPod sold in 2005.

But the complaint goes beyond software licensing politics and charges Apple with deliberately designing its iPod hardware to be incompatible with WMA. One of the third-party components in iPods, the Portal Player System-On-A-Chip, supports WMA, according to the complaint. "Apple, however, deliberately designed the iPod's software so that it would only play a single protected digital format, Apple's FairPlay-modified AAC format," the complaint states. "Deliberately disabling a desirable feature of a computer product is known as 'crippling' a product, and software that does this is known as 'crippleware.' "

Attorneys for the plaintiff did not immediately respond to a request for comment.

The filing claims that the SigmaTel STMP3550 chip in Apple's iPod Shuffles also supports WMA but that "Apple's crippleware operating system software prevents the iPod Shuffle from playing WMA files."

As for the injury to consumers, the complaint says that Apple's pricing is "monopolistic, excessive, and arbitrary," citing how a wholesale \$5.52 price difference between 1-Gbyte (\$4.15) and 4-Gbyte (\$9.67) NAND flash memory modules results in a \$100 retail price difference between 1-Gbyte iPod Nano and a 4-Gbyte Nano.

To buttress its antitrust claims under U.S. law, the complaint points to the fact that European antitrust authorities have taken issue with the way Apple operates its iPod and iTunes Music Store ecosystem.