

Can Your Company Be Sued Over a Software Update?

When your company releases its next software update, you may want to consider the potential legal implications of the release. There seems to be a new trend in class action litigation: suits over software updates.

As **Reuters** first reported, an owner of a Tesla vehicle has filed a lawsuit against Tesla, Inc. claiming that a software update fraudulently limited the battery range of older vehicles, which reduced the distance that they can travel without recharging the vehicles. **Reuters** reported that the lawsuit was filed in a Northern California federal court and seeks class action status for owners of Model S and X vehicles around the world.

According to **Reuters**, the lawsuit claims that the software update was released with the intention of avoiding liability for defective batteries.

CNET reports that the affected owners claim to have lost some eight kilowatt hours of capacity after the software update, which occurred back in May, 2019, and that the affected cars are older model S and X vehicles, which have batteries that should still be covered under the eight (8) year warranty on the batteries. **InsideEvs** explained the argument as Tesla “enter[ing] [owners’] garages and replac[ing] a 40-gallon tank for a 20-gallon tank.”

Tesla is not the first company to be sued for a software update and how the update affected the performance of a device. Apple has also been the subject of numerous suits in the past few years on a similar issue. This Business Insider article reports on the legal controversy involving Apple regarding **an update** affecting battery performance. Class

action suits were also filed against Microsoft over its Windows 10 upgrade strategy. See this [Consumeraffairs.com](https://www.consumeraffairs.com) article.

While these cases all pertain to software that controlled performance of a device, whether batteries or computers, it seems clear that with the increasing reliance on software functionality across so many industries, lawsuits over software updates are likely to continue.

So, the next time your company contemplates a software update or upgrade, it may be prudent to to contemplate the legal implications of the release and whether or not it is likely to result in litigation. You also may want to reconsider the sufficiency of your legal agreements in place with the parties to whom you are sharing the updates or upgrades before making available the new software. Software companies are clearly on notice that they may be sued for updates or upgrades, if they are alleged to have a negative impact on customers or users after the release.

Developers File Suit Against Apple for App Store Practices Following Recent Decision by U.S. Supreme Court

Two app developers have filed suit against Apple, Inc. over its App Store practices, following the recent decision by the U.S. Supreme Court in favor of consumers allowing a class action suit on similar issues to proceed. The case was filed in the U.S. District Court for the Northern District of

California (San Jose).

According to **Bloomberg**, the developers' suit is also a class action suit on behalf of developers nationwide whose products are sold through the App Store. **Bloomberg** reports that the developers claims are on antitrust grounds and also allege violations of California's Unfair Competition Law, and that they are represented by a law firm based in Seattle, Hagens Berman, which previously won a \$650 million settlement against Apple and other e-book publishing companies on similar claims in 2016.

The U.S. Supreme Court case which just ruled in favor of consumers, presented a legal question as to whether consumers had standing to sue Apple, since developers, rather than consumers, have the direct, contractual relationship with Apple. However, the U.S. Supreme Court decision did not decide on the merits of the case and only decided whether the class action suit could proceed. Clearly, the developers would be presumed to have standing to bring a class action suit and the same legal question would not be relevant.

The timing of these suits coincides with increasing calls in Washington for greater regulation at the federal level of Apple as well as its fellow tech giants Amazon, Facebook, and Google, particularly with respect to federal antitrust law and the handling of consumer data. **The New York Times** is reporting that the four companies are in the process of assembling an "army of lobbyists" to defend them in Washington, spending a combined total of \$55 million in lobbying last year.

Needless to say, the tech industry is under fire for many of its business practices, and it seems likely that some changes are on the horizon, regardless of its best efforts to maintain the status quo.

Microsoft Launches New Constitutional Challenge Against Alleged Federal Government Searches of Customer Data in Cloud

Microsoft has just launched a constitutional challenge against the federal government over its use of indefinite gag orders when the government subpoenas information from customer cloud account. The action was clearly timed to capitalize on public sentiment against the government for its perceived intrusion on privacy rights in the recent action against Apple regarding the encryption of the San Bernardino terrorist smartphone. The Silicon Valley Software Law Blog further explores this development in the blogpost linked below:

<http://www.siliconvalleysoftwarelaw.com/microsoft-launches-new-constitutional-challenge-against-government-over-secret-data-requests>

Third Party Successfully Unlocks Terrorist iPhone,

ending Government Encryption Case Against Apple

The U.S. Justice Department has announced that the third party who came forward and convinced the FBI that it could unlock the San Bernardino terrorist's encrypted iPhone successfully unlocked the encrypted iPhone, ending the standoff between Apple and the FBI. The Silicon Valley Software Law Blog addressed the developments in this fight between the U.S. Government and Apple in the following blogpost:

<http://www.siliconvalleysoftwarelaw.com/third-party-hacks-san-bernardino-terrorist-iphone-ending-standoff-between-apple-and-fbi>.

Government Signals Possible Reversal of Course on Apple Litigation

The Department of Justice signaled today that it may be rethinking moving forward with the Apple litigation over the iPhone encryption issue, canceling a hearing scheduled for tomorrow in order to explore a possible new method that had come to light for unlocking the terrorist iPhone that has sparked the dispute. The Silicon Valley Software Law Blog further explored today's developments in the following blogpost:

<http://www.siliconvalleysoftwarelaw.com/government-backtracks-in-dispute-against-apple-over-unlocking-terrorist-iphone>.

The Encryption Debate: Will Government or Industry Win?

When the Justice Department decided to wage a legal battle against Apple over encryption on the iPhone of one of San Bernardino terrorists, the government moved the encryption debate into the public arena and triggered a public debate over the issue. Now, it is reported that the government is considering launching a second case over the encryption issue against yet another company. Who will be the ultimate winner in this debate? The Silicon Valley Software Law Blog explores the issues in the following blogpost:

<http://www.siliconvalleysoftwarelaw.com/who-will-ultimately-win-in-the-fbis-standoff-with-the-software-industry>

Apple Trademark Dispute With Proview Becomes Global Fight

Apple's trademark dispute with Proview has become a two-front fight on both the local and international levels, as The Silicon Valley IP Licensing Law Blog explored in the following blog post:

<http://www.siliconvalleyiplicensinglaw.com/apple-trademark-dis>

Lessons for Silicon Valley Companies from Apple Trademark Dispute

What are the lessons Silicon Valley companies should take away from Apple's trademark dispute over the use of the mark "iPad" in China? The Silicon Valley IP Licensing Law Blog looks at the dispute and the lessons to be learned from the dispute in the following blog post:

<http://www.siliconvalleyiplicensinglaw.com/lessons-for-silicon-valley-companies-in-apple-trademark-dispute/>

Apple to Begin Enforcing Royalty on Direct Sales of Applications Sold on App Store

Apple has signaled its intention to step up its enforcement of its royalty on direct sales of apps being sold on the App Store, as the Silicon Valley Software Law Blog explained in its blog post linked below:

<http://www.siliconvalleysoftwarelaw.com/apple-signals-new-enforcement-strategy-to-companies-distributing-applications-at-the-app-store>

Apple Signals New Approach to Enforcing Royalty Policies on App Store

Amazon, Google, and the Wall Street Journal have all now modified their applications on the Apple App Store in response to signals by Apple that it will be stepping up enforcement of its royalty policies, as was discussed by the Silicon Valley IP Licensing Law Blog in its recent blog post:

<http://www.siliconvalleyiplicensinglaw.com/amazon-google-wall-street-journal-move-to-modify-applications-on-apple-app-store/>