

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** 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.