

# EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

) C-05-00037-JW  
 )  
 "THE APPLE IPOD ITUNES ) NOVEMBER 23, 2009  
 ANTITRUST LITIGATION." )  
 )  
 )  
 ) PAGES 1 - 58  
 )

THE PROCEEDINGS WERE HELD BEFORE  
THE HONORABLE UNITED STATES DISTRICT  
JUDGE JAMES WARE

A P P E A R A N C E S:

FOR THE PLAINTIFFS: COUGHLIN, STOIA, GELLER, RUDMAN  
& ROBBINS  
BY: BONNY SWEENEY  
THOMAS R. MERRICK  
655 WEST BROADWAY  
SUITE 1900  
SAN DIEGO, CALIFORNIA 92101

ZELDES & HAEGGQUIST  
BY: HELEN ZELDES  
625 BROADWAY, SUITE 906  
SAN DIEGO, CALIFORNIA 92102

FOR THE DEFENDANTS: JONES DAY  
BY: ROBERT A. MITTELSTAEDT  
MICHAEL SCOTT  
555 CALIFORNIA STREET  
26TH FLOOR  
SAN FRANCISCO, CALIFORNIA 94104

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR  
CERTIFICATE NUMBER 8074

1  
2 SAN JOSE, CALIFORNIA

NOVEMBER 23, 2009

3 P R O C E E D I N G S

4 (WHEREUPON, COURT CONVENED AND THE  
5 FOLLOWING PROCEEDINGS WERE HELD:)

6 THE CLERK: CALLING CASE NUMBER 05-00037,  
7 THE APPLE IPOD ITUNES ANTITRUST LITIGATION.

8 ON FOR VARIOUS MOTIONS. FIFTEEN MINUTES  
9 EACH SIDE FOR ALL MOTIONS.

10 THE COURT: I'M SURE THAT'S NOT GOING TO  
11 BE SUFFICIENT BUT --

12 MS. ZELDES: THAT'S OUR FIRST MOTION.

13 THE COURT: YOUR FIRST MOTION IS FOR MORE  
14 TIME?

15 FIRST INTRODUCE YOURSELVES TO ME.

16 MS. SWEENEY: GOOD MORNING, YOUR HONOR.  
17 BONNIE SWEENEY FOR THE DIRECT PURCHASER PLAINTIFFS.

18 MR. MERRICK: GOOD MORNING, YOUR HONOR.  
19 THOMAS MERRICK ALSO FOR THE DIRECT PURCHASER  
20 PLAINTIFFS.

21 MS. ZELDES: GOOD MORNING, YOUR HONOR.  
22 HELEN ZELDES ON BEHALF OF STACY SOMERS THE INDIRECT  
23 PURCHASER PLAINTIFFS.

24 MS. ROACH: GOOD MORNING, YOUR HONOR.  
25 PAULA ROACH ON BEHALF OF DIRECT PURCHASER

1 LITIGATION WHERE THAT EVEN THOUGH IT HAD DEVELOPED  
2 ITS OWN VERSION OF DRM, WHEN A COMPETITIVE PRODUCT  
3 THAT CAME ALONG THAT COULD USE IT, APPLE DID  
4 SOMETHING TO CHANGE ITS VERSION OF DRM TO MAINTAIN  
5 THE RELATIONSHIP BETWEEN THE MUSIC AND THE DIRECT  
6 DOWNLOAD TO THE IPOD. I AGREE WITH YOU THERE ARE  
7 INDIRECT WAYS TO DO IT.

8 AND SO SHOULDN'T THE COURT AT LEAST ALLOW  
9 THIS TO PROCEED TO THE POINT WHERE I CAN LEARN MORE  
10 ABOUT THAT THROUGH DISCOVERY? I DON'T KNOW IF  
11 CHANGING THE CLASS DEFINITION IS THE WAY -- THE  
12 ROUTE TO THAT BUT WHY SHOULDN'T I PAY ATTENTION TO  
13 THAT?

14 MR. MITTELSTAEDT: THE ALLEGATION IS THAT  
15 A YEAR AND A HALF AFTER THE ITUNES MUSIC STORE WAS  
16 LAUNCHED, SO NOW WE'RE UP TO OCTOBER OF 2004, REAL  
17 NETWORKS DEVELOPED SOME TYPE OF DRM THAT MIMICKED  
18 FAIR PLAY.

19 AND SO WHEN REAL NETWORKS SOLD MUSIC ON  
20 THEIR MUSIC STORE, IT WAS INTERPRETED BY THE IPOD  
21 AS APPLE'S FAIR PLAY DRM PROTECTED MUSIC.

22 THE WAY THEY DID THAT, AND THIS IS  
23 ALLEGED IN THE COMPLAINT, IS REAL NETWORKS WAS ABLE  
24 TO, IN THE WORDS OF THE COMPLAINT, DISCERN PART OF  
25 APPLE'S SOFTWARE CODE, PART OF THEIR CODE FOR THE

1        DRM.

2                APPLE IS UNDER A STRICT CONTRACT WITH THE  
3        LABELS, WAS AT THE TIME, TO MAINTAIN THE SECURITY  
4        OF ITS DRM FOR OBVIOUS REASONS.

5                AND SO THIS WAS AN INSTANCE WHERE THE  
6        COMPETITOR HAD BEEN ABLE TO, WHETHER BY HACKING,  
7        REVERSE ENGINEERING, OR OTHERWISE, FIGURE OUT PART  
8        OF THE SOFTWARE CODE.

9                APPLE, LIKE ALL SOFTWARE MANUFACTURERS,  
10       PERIODICALLY UPDATES ITS SOFTWARE FOR A VARIETY OF  
11       REASONS, FIXING BUGS, STAYING A STEP OR TWO AHEAD  
12       OF HACKERS OR WHATEVER.

13               AND AS THE EVIDENCE WILL SHOW THAT APPLE  
14       WAS PLANNING A SOFTWARE UPGRADE AND WENT AHEAD AND  
15       INSTITUTED THAT. THE EFFECT OF THAT SOFTWARE  
16       UPDATE WAS TO BLOCK THIS HACK.

17               REAL COULD COME BACK AND TRY TO REHACK  
18       AROUND THE SOFTWARE UPDATE.

19               WE ARE PROVIDING DISCOVERY TO THE  
20       PLAINTIFFS ON THAT INCIDENT. THE PLAINTIFFS HAVE  
21       ASKED FOR A 30(B)(6) DEPOSITION, AND WE'RE WORKING  
22       OUT THE DETAILS WITH THEM.

23               AND I'M CONFIDENT THAT AFTER THAT  
24       DEPOSITION IS TAKEN AND WHEN WE FINISH COMPLETING  
25       PRODUCING DOCUMENTS ON THAT, THAT ISSUE SHOULD GO

1       AWAY JUST LIKE THE ISSUE OF CHIP DISABLING AS I  
2       THINK HAS GONE AWAY.

3               THERE'S ANOTHER ALLEGATION IN THE  
4       COMPLAINT THAT APPLE DISABLES THE PROCESSOR CHIP IN  
5       THE IPOD SO THAT IT WON'T PLAY MICROSOFT'S DRM.  
6       THAT'S SIMPLY UNTRUE.

7               THE PLAINTIFF'S EXPERTS HAVE SAID THAT  
8       THEY KNOW NOTHING ABOUT THAT, AND I THINK THAT WILL  
9       GO AWAY.

10              IF IT DOESN'T GO AWAY VOLUNTARILY, WE'LL  
11       DISPROVE THAT AS WELL.

12              FOR PURPOSES OF THE CLASS DISCUSSION  
13       THOUGH, YOUR HONOR, IF THE PLAINTIFFS EVENTUALLY  
14       END UP FOCUSSED ON THIS REAL NETWORK HACK IN LATE  
15       2004, THAT HAS IMPLICATIONS, I THINK VERY SERIOUS  
16       IMPLICATIONS ON WHETHER THEY GET A CLASS AND WHAT  
17       KIND OF SCOPE OF THE CLASS WOULD BE IF ANY.

18              BECAUSE THE ISSUE OF WHO, IF ANYONE WAS  
19       HARMED BY APPLE ISSUING A REGULARLY PERIODIC  
20       SOFTWARE UPDATE IS SOMETHING THAT HASN'T BEEN  
21       ADDRESSED BY THE PLAINTIFFS AND IT IS COMPLICATED  
22       AND IT WOULDN'T GO BACK, YOU KNOW, TO THE START OF  
23       THE MUSIC STORE.

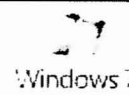
24              THE COURT:   YOU DO NOT HAVE CURRENTLY  
25       BEFORE THE COURT A MOTION TO DISMISS THE SECTION 2

# EXHIBIT 2

BUSINESS



## WINDOWS® 7 PROFESSIONAL WITH XP MODE PRE-INSTALLED.



### Apple Unveils Photo iPod

New device sports a color screen, is available in 40 and 60GB versions.

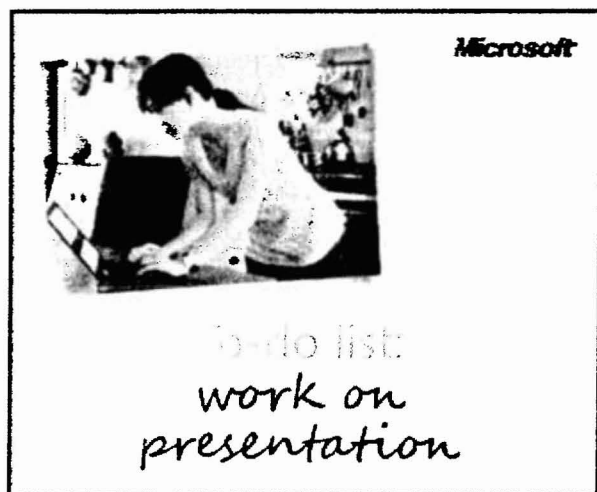
Peter Cohen, MacCentral.com

Tuesday, October 26, 2004 02:00 PM PDT

SAN FRANCISCO -- At a special music event featuring Bono and The Edge from rock group U2 held here this week, Apple Computer took the wraps off the iPod Photo, a color iPod available in 40GB or 60GB storage capacities.

The company also introduced the iPod U2 Special Edition, Apple's 20GB player clad in black, equipped with a red Click Wheel and featuring engraved U2 band member signatures. The iPod Photo is available immediately, and Apple expects the iPod U2 Special Edition to ship in mid-November.

### In Living Color



The iPod Photo looks identical to its music playing-only cousin, but it uses a 220x176-pixel resolution color screen capable of displaying 65,536 colors.

Apple's Auto-Sync technology, built into iTunes, makes sure that the iPod is playing the same music as iTunes, but it has been extended also to support the IPhoto software included as part of Apple's iLife application suite--included on all shipping Macs and available for purchase separately. For Windows users, Auto-Sync supports Adobe Photoshop Elements, Photoshop Album, or the user's "My Pictures" folder. The new photo syncing capability is supported by a new release of iTunes, version 4.7.

The iPod Photo can display 25 color photo thumbnails at a time, and lets users scroll through their photos the same way they scroll through their music playlists. An included AV cable enables the iPod to connect directly to a TV or video projector as well--the iPod will even format the photos depending on whether your set uses the conventional 4:3 aspect ratio or the 16:9 format preferred by newer widescreen sets.



Apple also claims the iPod Photo sports longer battery life than previous models--the company says iPod Photo can play music for up to 15 hours continuously, or up to 5 hours while showing photo slideshows.

Available now in 40GB and 60GB capacities, the iPod Photo costs \$499 and \$599 respectively.

## iTunes Updated

In addition to the ability to copy and synchronize photos, iTunes 4.7 sports a few other changes of interest to users who don't have an iPod Photo. The new release of iTunes, available for download from Apple's Web site, now sports the ability to show duplicate songs in your library. Other performance improvements have been made as well.

Apple also took the wraps off the iPod U2 Special Edition, to celebrate the company's promotional partnership with the legendary rock band. The 20GB iPod U2 will ship in mid-November for \$349, and sports a black case equipped with a red Click wheel. On the back are custom engravings of U2 band member signatures.

It's the latest promotional effort between Apple and U2; earlier this month Apple began televising spots featuring U2 in one of Apple's signature silhouette ads, playing "Vertigo," the first single off U2's forthcoming album "How to Dismantle an Atomic Bomb," which will be released in late November.

Apple also announced plans to offer a "Digital Box Set," which the company claims is a first in the online music industry. "The Complete U2" will feature more than 400 tracks from U2, including all of the band's albums and more than 25 rare and unreleased tracks. It will be released on the iTunes Music Store in the US and Europe beginning in late November for \$149. What's more, the iPod U2 Special Edition includes an iTunes Music Store coupon that users can redeem for \$50 off the "The Complete U2."