

# JONES DAY

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## VIA EMAIL AND U.S. MAIL

Alexandra S. Bernay  
Robbins Geller Rudman & Dowd LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101-3301

Re: The Apple iPod iTunes Anti-Trust Litigation No. C-05-00037-JW (N.D. Cal.)

Dear Xan:

This letter continues our meet and confer process regarding plaintiffs' requested deposition of Steve Jobs. To allow us sufficient time to meet and confer and brief the issue, which may be unnecessary, we ask that the deposition be taken off calendar for November 30, 2010.

As discussed during our discovery calls on November 5 and November 9, the requested deposition is unnecessary given the limited issues left in this case and the availability of relevant discovery through less burdensome means. The only conduct challenged in the amended complaint is Apple's updates to its FairPlay DRM technology. Dkt. 322, ¶¶ 91, 97 ("[t]hrough the anticompetitive use of software updates described herein"); *see also id.* at ¶¶ 101, 108 (same conduct is attempt to monopolize). Plaintiffs are already getting everything they need with respect those updates from other sources.

Apple has produced documents relating to the updates and is in the process of producing the source code and other technical documents. In addition, Apple has agreed to produce 30(b)(6) witnesses who will testify on behalf of Apple regarding the challenged updates. As we've discussed, Apple has designated Mr. Robbin, Mr. Heller, and Mr. Farrugia, who have the most knowledge with respect to the updates, including any purported effects such updates had on RealNetworks' Harmony. Mr. Robbin and Mr. Heller have first hand knowledge of the updates to FairPlay included in iTunes 6.0 and previous versions of iTunes, including iTunes 4.7, that are the central focus of the amended complaint. Mr. Farrugia, Senior Director of DRM Technologies at Apple, has first hand knowledge of the updates to FairPlay issued after iTunes 6.0. Indeed, he is the head of Apple's DRM group. Mr. Jobs is the wrong witness to testify regarding the updates.

Nevertheless, you mentioned that plaintiffs want the deposition because Mr. Jobs is "an active CEO" who purportedly made decisions whether to license FairPlay to other companies and appears on documents related to competitors and market share of iPod and iTS. Mr. Jobs'

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deposition is unnecessary for these topics. First, the amended complaint does not challenge any decision by Apple not to license FairPlay. Instead, it challenges only Apple's updates to FairPlay. Even if it were at issue, Apple did not license FairPlay. Plaintiffs don't need Mr. Jobs to confirm that to be true. Second, with respect to competitors and market share, Apple is in the process of producing documents relating to both. In addition, plaintiffs have noticed the depositions of Art Rangel, Director of Marketing Research & Analysis, and Eddy Cue, Vice President of Internet Services, the people who are in the best position to testify with respect to both topics.

Based on the foregoing, we ask that you reconsider insisting on Mr. Jobs' deposition. It will save us all time and money on briefing that will be better spent completing discovery. If you still believe that a deposition is necessary, please explain with specificity so that we can respond. During our calls, you made some vague references to documents that you would like to ask him about. Please provide the bates numbers, as I am confident that there are more knowledgeable witnesses to explore the issues in this case.

Very truly yours,

David C. Kiernan

