

Harming Competition and Consumers Under the Guise of Protecting Privacy: An Analysis of Apple's iOS 14 Policy Updates

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Apple's iOS 14 update represents an anti-competitive strategy disguised as a privacy-protecting measure. Apple now prohibits non-Apple apps from using information essential to providing relevant, personalized advertising, without explicit user opt-in. And users may opt-in only after they are shown an ominous and misleading prompt about "tracking," one that Apple's own apps and services need not display, because consumers are automatically "opted in" to Apple's own tracking. Apple's policy will have the pernicious effects of enhancing the dominance of iOS among mobile operating systems ("OSs") and the dominance of its own apps and services within the iOS ecosystem, while reducing consumer choice and devastating the free-app ecosystem.

Entrenching Dominance in the Mobile OS Market

Apple's conduct will entrench its dominance in the mobile OS market and over the iOS ecosystem; and it will reduce the availability of the ad-supported (i.e. free) business model in favor of fee-supported models that uniquely benefit Apple in several ways.

iOS 14 Policy Changes

Apple will prohibit third-party apps from engaging in broad categories of data use — unilaterally defined by Apple as "tracking" — unless users explicitly "opt in." Notably, this requirement does not apply to Apple's own apps and services. As a result:

- Ad publishers' and advertisers' ability to match consumers with relevant ads and to measure consumers' responses to ads will be substantially diminished, fundamentally

undermining the ad-supported business model.

- Apple's own advertising service will play by an entirely different set of rules, giving Apple a significant advantage over competitors, whom Apple requires to adhere to the new policy.

Apple Wins. Everyone Else Loses.

Apple's iOS 14 policy changes will benefit Apple — and only Apple — by:

- Substantially weakening the ads ecosystem, and shifting previously "free" (ad-supported) apps to the paid model, i.e. charging consumers fees subject to Apple's 15–30 percent surcharge;
- Favoring Apple's own apps by making third-party apps that migrate to the paid model more expensive relative to Apple's own apps, which are not subject to Apple's 15–30 percent surcharge, and making it difficult for third-party apps that will be unable to migrate to the paid model to sustain their businesses;
- Decreasing competition for Apple's own advertising service; and
- Increasing the costs to consumers of switching from iOS to another mobile OS (such as Android).

Apple's conduct will harm app developers, advertisers, consumers, and the entire ads ecosystem. Notably:

- The ominous and misleading prompt that Apple requires apps to display is expected to result in low opt-in rates, which will in turn severely diminish developers' ability to

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monetize their apps through personalized ads. (Businesses don't want to pay to show ads that consumers are likely to deem irrelevant.) The impact of this action on small and medium-sized businesses — which rely heavily on personalized advertising — will be severe;

- Rival ad platforms' ability to compete against Apple's advertising service will be reduced;
- Consumers will lose many valued free services they get from ad-supported apps; and
- Consumers will be left with less relevant (but not necessarily fewer) ads; fewer (free) apps from which to choose; and degraded experiences for the apps that remain.

Personalized Advertising and the Free and Open Internet

A free and open internet is the backbone of the U.S. economy and society. Over 4 billion people globally use the internet on a daily basis, and 85 percent of Americans go online daily.¹ Businesses and consumers alike rely on the internet, and more specifically, on mobile devices, to communicate with one another, to keep themselves informed about news and current events, and to engage in commerce in a quick and effective way. The past year underscored the importance of the open internet, which allowed businesses and individuals to maintain and create connections in the midst of the global pandemic. Many local brick-and-mortar businesses, for instance, opened online storefronts in order to connect with consumers who were unable to shop in person.

Keeping intact the internet's ability to connect people and businesses is therefore of paramount importance. Advertising —

especially personalized advertising — is a key part of that dynamic. Personalized advertising delivers value to consumers and businesses by connecting them to the right products and services. Additionally, personalized advertising brings value to consumers in the form of free (or significantly lower cost) products, apps, and services.

A new update to Apple's mobile operating system, iOS 14, threatens to diminish the value that the free internet, subsidized by personalized advertising, provides. Under the mantle of privacy, Apple's update imposes excessive restrictions on alternative business models and distorts competition. At a high level, Apple's iOS 14 update prohibits apps from engaging in broad categories of data use unless users opt-in — often not only once but twice — to prompts requesting “permission to track you across apps and websites owned by other companies.” The categories of data use that Apple prohibits encompass many uses that would not qualify as “tracking” as the term is commonly understood (i.e. following a user around the internet). Apple does not apply these changes evenhandedly. Apple's iOS 14 update does not apply to Apple's own services, including its own apps and proprietary ads product.

Moreover, Apple's update goes beyond any legitimate protection of users' privacy interests. Through its so-called “privacy” update, Apple uses its market power for mobile OSs in a way that reduces consumer choice. To take but one example, if Apple can reduce the number of free news apps available to end users, that forces readers to use either paid news apps or Apple's competing news aggregation service (Apple News). That puts Apple, rather than consumers, in charge of curating the news content they see. The update creates significant competitive distortions that, while favoring Apple, will decimate the ad-based

¹ *Global digital population as of January 2021*, STATISTA, <https://www.statista.com/statistics/617136/digital-population-worldwide/> (last visited May 3, 2021); Andrew Perrin & Sara Atske, *About three-in-ten U.S. adults say they are 'almost constantly' online*, PEW RESEARCH CENTER (Mar. 26, 2021), <https://www.pewresearch.org/fact-tank/2021/03/26/about-three-in-ten-u-s-adults-say-they-are-almost-constantly-online/>.

business model that enables developers to provide apps at no cost to consumers and simultaneously allows advertisers to reach consumers that would be most interested in their offerings.

Apple's update also has profound consequences for competition among mobile OSs. By degrading the ad-supported app ecosystem, Apple's update will steer consumers toward paid apps and Apple's own apps and services, and developers toward fee-based monetization and distribution through Apple's aggregation services (e.g. Apple News+ for news and Apple Arcade for games). Unlike third-party ad-supported apps, which can seamlessly transition between mobile operating systems, Apple's proprietary apps and services are generally unavailable on operating systems other than iOS. As such, Apple's update — which steers iOS users toward its proprietary apps and services — raises iOS users' costs of switching to non-Apple devices and entrenches Apple's iOS monopoly.

[Our full-length white paper](#) identifies how Apple's iOS 14 strategy serves to reinforce Apple's dominance over the mobile ecosystem by significantly reducing — if not effectively precluding — the ability of third-party apps to create value through personalized advertising. This move to stifle competition is consistent with Apple's established track record of engaging in conduct that protects and extends the dominance of iOS at the expense of developers, small businesses, and consumers.²

This paper explains: (i) Apple's dominance in mobile OSs and the competitive dynamics in the industry, including the critical role that personalized advertising plays in today's mobile app ecosystem; (ii) how Apple's iOS 14 updates dramatically alter today's mobile OS ecosystem, wrongfully preference Apple's own products and services, and help Apple protect and augment its dominance over iOS and more broadly over mobile OSs; and (iii) why such actions harm competition, and by extension, iOS users and consumers more broadly.³

Conclusion

While thinly veiled as a privacy-protecting measure, Apple's iOS 14 policy changes harm the entire ad-supported ecosystem — from developers to advertisers to end consumers. By sharply limiting the ability of third-party apps to create value through personalized advertising, Apple's policy changes undermine competition: They threaten to enhance the dominance of Apple's apps and services within iOS, to weaken independent advertising services to the benefit of Apple's own advertising service, and to entrench iOS's dominance among mobile operating systems by raising the costs to iOS users of switching to another mobile OS. Apple's policy changes will have an outsized impact on particularly vulnerable businesses: small- and medium-sized businesses, which rely heavily on personalized advertising, and developers of newer apps that may be unable to transition from ad-supported to paid business models.

² For instance, Apple faces charges from the European Commission stemming from Spotify's 2019 complaint about Apple's unfair treatment of Spotify's streaming service on the App Store and large commissions, which led Spotify to "artificially" increase monthly subscriptions for its premium service to cover the extra costs." Aoife White, *Apple May Face Antitrust Complaint as EU Steps Up Spotify Probe*, BLOOMBERG (Mar. 4, 2021), <https://www.bloomberg.com/news/articles/2021-03-04/apple-may-face-antitrust-complaint-as-eu-steps-up-spotify-probe>. See https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1073. Apple has also received criticism for its app store policies that have prevented users from using cloud gaming services on iOS. Tom Warren, *Facebook slams Apple's App Store policies, launches Facebook Gaming on iOS without Games*, THE VERGE (Aug. 7, 2020), <https://www.theverge.com/2020/8/7/21358355/facebook-apple-app-store-policies-comments-facebook-gaming-ios>. There are also reports that the DOJ is investigating Apple's "Sign in With Apple" button, which Apple requires for all developers who have other "sign in with" options. Josh Sisco, *Apple's App Sign-in Button Becomes Hot-Button Issue in U.S. Antitrust Probe*, THE INFORMATION (Feb. 23, 2021), <https://www.theinformation.com/articles/apples-app-sign-in-button-becomes-hot-button-issue-in-u-s-antitrust-probe>.

³ For the full white paper, see <https://ssrn.com/abstract=3852744>.

Apple's conduct will leave consumers with fewer choices for apps and services and, by framing choices about personalized advertising in stark, biased, and misleading terms, diminish consumers' abilities to make meaningful and informed choices about data use. Without convincing explanations of how its policy

changes represent the least competition-restrictive means of enhancing consumer privacy and why those changes do not apply to Apple's own apps and services, Apple may have a hard time justifying its exclusionary conduct.