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May 25, 2010

Apple Is Said to Face Inquiry About Online Music

By **BRAD STONE**

SAN FRANCISCO — The Justice Department is examining [Apple's](#) tactics in the market for digital music, and its staff members have talked to major music labels and Internet music companies, according to several people briefed on the conversations.

The antitrust inquiry is in the early stages, these people say, and the conversations have revolved broadly around the dynamics of selling music online.

But people briefed on the inquiries also said investigators had asked in particular about recent allegations that Apple used its dominant market position to persuade music labels to refuse to give the online retailer [Amazon.com](#) exclusive access to music about to be released.

All these people spoke on condition of anonymity, citing the delicacy of the matter. Representatives from Apple and [Amazon](#) declined to comment. Gina Talamona, a deputy director at the Justice Department, also declined to comment.

In March, [Billboard magazine](#) reported that Amazon was asking music labels to give it the exclusive right to sell certain forthcoming songs for one day before they went on sale more widely. In exchange, Amazon promised to include those songs in a promotion called the "MP3 Daily Deal" on its Web site.

The magazine reported that representatives of Apple's iTunes music service were asking the labels not to participate in Amazon's promotion, adding that Apple punished those that did by withdrawing marketing support for those songs on iTunes.

Apple is by far the largest seller of online music in the United States, with 69 percent of the market, according to data from the NPD Group, a marketing consultancy. Amazon's MP3 store was in second place, with an 8 percent share. Apple is also the largest seller of music, with 26.7 percent of the overall market, up from 12 percent in 2007.

Though the Justice Department's inquiry is preliminary, it represents additional evidence that Apple, once the perennial underdog in high tech, is now viewed by government regulators as a dominant company with considerable market power.

Through its iTunes store, Apple sells TV shows, films and applications for its **iPhone**, **iPod Touch** and **iPad** hand-held computing devices. Apple has also begun to sell electronic books.

"Certainly if the Justice Department is getting involved, it raises the possibility of potential serious problems down the road for Apple," said Daniel L. Brown, an antitrust lawyer at Sheppard Mullin Richter & Hampton.

"Without knowing what acts or practices they are targeting, it's difficult to say exactly how big a problem this is," Mr. Brown added. "But it's probably something Apple is already concerned about."

The inquiry is one of several by the federal government involving Apple. The Federal Trade Commission is moving ahead with a separate investigation of Apple's rules for developers who create applications for the iPhone operating system, according to a person familiar with that discussion.

That inquiry, initiated by complaint from **Adobe Systems**, the maker of the Flash format for Internet video, is said to be in its early stages as well.

The Justice Department has also reportedly been investigating the hiring practices at Apple and other top technology companies, including **Intel**, **I.B.M.** and **Google**, asking whether the companies have improperly agreed to avoid hiring each other's employees.

The music investigation signals the elevated scrutiny of technology companies under the antitrust agencies of the Obama administration.

The Federal Trade Commission recently spent six months reviewing Google's proposed acquisition of Admob, a mobile advertising start-up. Although the commission said the combination created "serious antitrust concerns," it approved the deal, noting Apple's own entry into the market for mobile advertising.

Apple first released its iTunes software in early 2001, giving people an easy way to organize their music collections on a Mac computer, and later, a PC. It opened the iTunes store in 2003 and has since sold more than 10 billion songs, providing a significant source of revenue for the music industry.

While iTunes persuaded many people to pay for music, rather than download pirated copies of songs free, the music industry has chafed because Apple sets prices and controls the relationship to the music buyers.

More recently, Apple has encouraged new kinds of competition in the online music marketplace by allowing streaming music applications from companies like Pandora and Rhapsody onto Apple devices.