

Exec at NY trial: Apple didn't fix e-book prices

TOM HAYS - Associated Press - Associated Press

A top Apple Inc. executive described as Steve Jobs' right-hand man took the witness stand at a Manhattan price-fixing trial and denied scheming with major book publishers to drive up the cost of electronic books.

Eddy Cue was questioned about meetings he had in 2009 with chief executives of publishing houses about what they called their "Amazon problem" — the discounted \$9.99 price that Amazon.com set for e-books on its Kindle.

"They expressed to us that they wanted higher prices," he said under questioning by a government lawyer.

Cue was the chief negotiator in deals with the publishers that allowed them to set prices as high as \$14.99 for sales in Apple's then-new iBookstore. But he denied that the deals were calculated to force Amazon into similar agreements that would raise its prices as well.

Jobs closely monitored the negotiations but was "indifferent" about the outcome for Amazon, Cue testified. However, when asked if Jobs knew that there was a chance that once the iBookstore launched, publishers would withhold best sellers and new releases from Amazon if it didn't adjust its prices, he responded, "I believe so, sure. Smart guy."

Cue also claimed he had no knowledge that the publishers were colluding with each other as he negotiated with them, despite phone records showing their chief executives were in constant communication.

"I don't believe they were working together to do the deal I was working on," Cue said.

Cue, a senior vice president of Internet and Software Services at Apple, oversees the iTunes Store, App Store, iBookstore and iCloud services.

He testified at a trial stemming from an antitrust lawsuit brought last year by the Justice Department accusing Apple and the publishers of harming consumers by devising a plan that allowed publishers to convert retailers into "agents" who were restricted from lowering the publisher-set retail price. The arrangement guaranteed Apple a 30 percent commission on each e-book it sold.

The five publishers — Hachette, HarperCollins, Simon & Schuster, Holtzbrinck Publishers, doing business as Macmillan, and The Penguin Publishing Co. Ltd., doing business as the Penguin Group — settled with the government before the nonjury trial. Apple chose to go to trial, denying claims that its agreements required publishers to force Amazon to charge more for e-books.

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Lawyers for the Cupertino, Calif.-based company have accused the government of basing its case "on mere allegations, faulty assumptions and unfounded conclusions."

Evidence in the case includes emails written by Jobs before he died in 2011. During questioning of Cue on Wednesday, government lawyers cited an unsolicited email a college student sent to Jobs in 2010 complaining that the higher prices in the iBookstore were a burden.

"You have so much," he wrote. "Wouldn't it be OK for us little guys to have something?"

Jobs responded: "It's the publisher who are raising prices, not Apple."

In an email exchange between Jobs and Cue about news that McMillan and Amazon were in a dispute over McMillan's demand for higher prices, Jobs wrote, "Wow. We have really lit the fuse on a powderkeg."

At the time, Jobs was losing his battle with cancer — a situation that made Cue push even harder to get the publisher deals done so the Apple founder could demonstrate the iPad's book capabilities on stage at the January 2010 launch of the device.

"He was near the end. ... This had tremendous meaning for me," Cue said during questioning by an Apple lawyer.

He added: "If I was awake, I was negotiating."

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