



May 14, 2021

Dear Chairwoman Klobuchar, Ranking Member Lee and Members of the Subcommittee:

I am writing in response to Apple's May 13, 2021 letter to the Subcommittee. We respectfully ask that this letter be made a part of the record. In its letter, Apple attempts to distract and deflect attention away from its own anticompetitive conduct by casting inaccurate aspersions against the companies who have pointed out Apple's abuses. This is yet another example of a dominant company attempting to intimidate outspoken complainants (and future complainants).

To help the Subcommittee see through Apple's obfuscation, we will address each of the myths raised in Apple's letter. We will also highlight the numerous objections to Apple's anticompetitive abuses that were raised at the hearing which Apple failed to deny.

Apple Myths Debunked

Apple Myth: Customers have many choices for accessing digital content, including the open Internet.

Fact: Apple spent more than a decade training its mobile phone users to access digital content and services through mobile apps and encouraging developers to build and promote apps as a superior experience. That is the reason why today, over 97% of all Tinder users access Tinder *exclusively* through apps. Apple cannot now turn around and claim that mobile websites are a viable distribution option for developers. That ignores the reality of consumer behavior—behavior that Apple itself encourages and from which it benefits.

Apple Myth: Only about 15% of apps pay a fee, and that fee is typically only 15%.

Fact: For Match's apps, the overwhelming majority of subscriptions are subject to the 30% Apple Tax due to the fact that subscriptions for dating services rarely last for a year. Given that the goal of Match's apps is to get people off of the app by successfully helping them find a relationship -- the vast majority of our subscriptions are subject to the 30% fee. In any event, 15% is still roughly five to seven times the market rate for payment processing.

Apple Myth: The fee is not a transaction fee, but a fee for accessing Apple's technology, tools, marketplace, intellectual property, and distribution platform.

Fact: If the Apple Tax is a fee for access to iOS and the App Store more broadly, then why do only 15% of apps have to pay it, while tech giants such as Facebook, Uber, Google, Twitter, and many others do not?



By Apple's own admission, 85% of apps pay no commission, yet they receive the exact same benefits as Match from "the value of [Apple's] powerful technology platform, tools, software, curated marketplace, and intellectual property that allows developers to create and distribute apps." That 85% includes enormous companies like Facebook, Amazon, Google, Uber, and many others. Each of them only pays \$99/year to Apple for the same services that Match receives, yet Match pays Apple hundreds of millions of dollars per year in commissions in addition to the \$99 annual fee. Apple forces a minority of apps to pay this extraordinary tax to run the App Store with monopolistic margins, margins Apple makes every effort to avoid disclosing.

The only relevant difference between Match and the tech giants who pay no commission to Apple is that Apple requires Match to use Apple's payment processor for in-app payments. The clear implication then is that the Apple Tax is a fee for payment processing, not for the services that every developer receives for \$99/year. If Apple's in app payment system provides "important consumer protections" (Match has been in the digital subscription business longer than Apple and has never had payment data seriously compromised), then that raises serious consumer protection questions about the majority of apps in the App Store (such as Amazon and Uber) who do not use Apple's IAP system.

Apple Myth: Apple approved the Tinder update with its LGBTQ+ safety feature, and that approval demonstrates Apple's responsiveness.

Fact: The Tinder paywall Apple refers to in its letter not only complied with Apple's Guidelines on Auto-renewable Subscriptions and all applicable legal standards and requirements, but it was approved by Apple on *eight* separate occasions between March 6, 2019 and the end of April 2019. Then, on May 1, 2019, Apple changed its mind and suddenly rejected the Tinder app alleging that its previously approved paywall now violated its App Store rules.

Apple unfairly claims that its rejection was spurred by concerns about Tinder's auto-renewal disclosure not being clear and conspicuous, when it was Apple that chose to streamline its in-app payment flow (which Tinder was required to use) by removing helpful pop-ups that solicited users' explicit consent to the auto-renewal terms in favor of Apple's new "one-click" process. This required developers like Tinder to reconfigure payment flows and accompanying disclosure that they had previously used for years with little guidance from Apple.

Throughout May and June, Tinder representatives held multiple conversations with Apple representatives to try to understand what changes should be made on the paywall to make it acceptable to Apple. Following those discussions, Tinder submitted a new update on June 20, 2019, that incorporated the changes Apple demanded. But Apple rejected the update the next day. Tinder then submitted another update on June 24, 2020 with additional changes which Apple rejected yet again. Apple's representative then stopped responding to communications until the beginning of July.



Over the next twelve days, Tinder continued to propose new paywalls and highlighted the fact that other apps had similar paywalls but had not been rejected. Despite all of Tinder’s continued outreach Apple continued to block the release of the new update. Tinder ultimately escalated the issue to the highest level because the update included important new safety features aimed at protecting the LGBTQ community.

On 12 July 2019, Match’s Chairman of the Board, Joey Levin met with Eddie Cue, Apple’s senior vice president of Internet Software and Services. Mr. Levin raised the issue of the rejection. When shown screenshots of the rejected paywall, Mr. Cue—who has the App Store within his responsibilities—was surprised as he could not see any issue with the design. Ultimately, after several additional conversations and two additional weeks of back and forth, Apple finally approved the latest Tinder update on July 24, 2019, nearly **three months** after the initial rejection of the Tinder app update.

This was not an isolated or unusual incident. The reality is, as early as 2018, Match had been educating Apple about the laws and regulations around auto-renewal subscriptions, not the other way around,¹ and it remains undisputed that the changes in Tinder’s paywall were dictated by Apple’s desire to roll out its “one-click” payment feature. Apple’s false claims that the paywall did not comply with FTC requirements is not only irresponsible, but could be seen as a retaliatory attempt to spur a governmental investigation into Match Group in an effort to silence us for daring to speak out about the App Store publicly. This is a dangerous precedent that Apple has set.

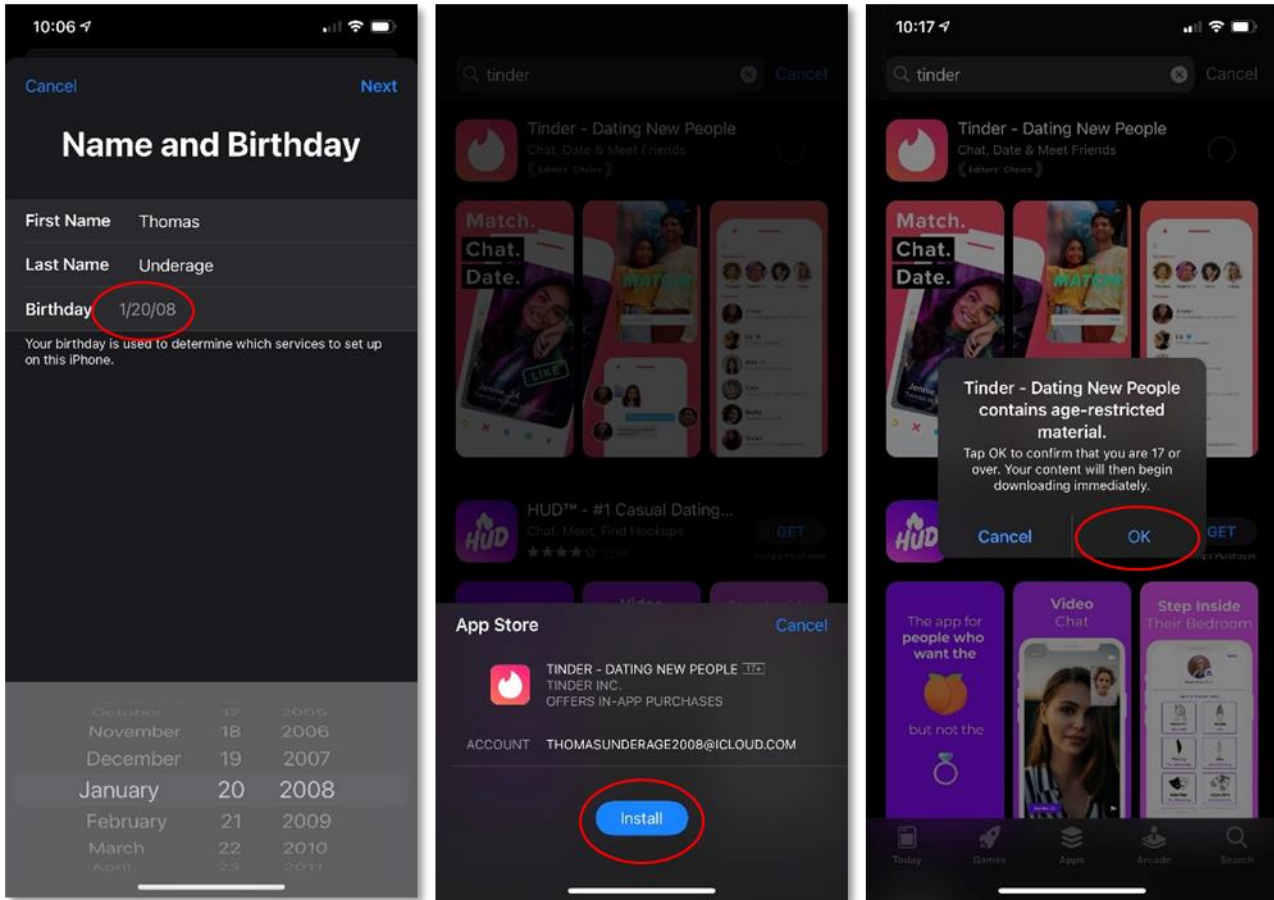
This is yet another example of Apple arbitrarily and capriciously enforcing its rules in ways that hurt developers, and then being unresponsive and unreasonable in resolving the problems Apple itself creates. This pattern of behavior continues to this day.

Apple Myth: Apple strives to make the App Store a safe and trusted marketplace by empowering parents with parental controls.

Fact: Match Group has voluntarily chosen to prohibit users under the age of 18 from using its dating apps, including Tinder. Over the years, Match Group has repeatedly asked Apple to help enforce this policy. However, to date, Apple still allows users **it knows** are under 18 to download Tinder’s app. While Apple hides behind privacy concerns around data sharing to explain why it has not taken any steps to help keep underage users off of Tinder, it is nothing more than an excuse. Sharing data is **completely unnecessary** to prevent users who Apple knows are under 18 from downloading Tinder. Where Apple knows a user is under 18, Apple should simply block them from downloading Tinder.

¹ Match has email documentation of its 2018 conversations with Apple regarding the legal rules surrounding auto-renewal subscriptions, as well as the subsequent exchanges relating to the rejected Tinder update. We are happy to share that documentation with the Subcommittee.

Instead, though Match makes significant efforts to prevent underage usage of Tinder, Apple makes it easy for underage users to download and use the iOS app, as the screenshots below demonstrate:



Apple collects users' age information when they set up an Apple account, but Apple lets underage users download the Tinder app by simply clicking a button to dismiss a pop-up notification.

Again, solving this problem does **not** require sharing any information or data with Tinder. Yet Apple has not taken even the simplest step to protect underage users, despite Tinder repeatedly asking it to do so.

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Apple’s Additional Anticompetitive Conduct

In its response to the Committee, Apple never even tried to rebut numerous other examples Match provided of Apple’s anticompetitive conduct. For example, Apple never denied that it intentionally interfered with Match’s deal to offer discounts to T-Mobile users through the “T-Mobile Tuesdays” app.

Nor did Apple deny that it arbitrarily rejected Match Group apps with ID verification features designed to boost the safety of its users.



And Apple never explained its arbitrary classification framework for the Apple Tax, including how an in-real life date differs from an in-real life car ride. During the hearing, Apple seemed to suggest that the dates facilitated through Tinder and other dating apps are somehow digital. If that's the case, how do you explain the millions of meaningful relationships that have been created as a direct result of Match's apps. Apple's decision to apply its restrictions to apps like Match but not those like Uber is not based on any legitimate distinction. It is a naked exercise of market power.

Ultimately, Apple's obfuscation and fabrications show that Apple knows its conduct cannot withstand scrutiny. The reality is Apple has distorted reality in a number of forums, including most recently in its witness testimony in its ongoing litigation against Epic Games, where Matt Fischer testified that no developer has ever questioned the mandatory requirement to use Apple's in app payment system. Once again, we can provide emails that directly refute this contention.

We urge the Subcommittee to see through Apple's smokescreen, and we thank it for giving Match the opportunity to shed some light on Apple's conduct.

Respectfully,

Mark Buse
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