

HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

5 EPIC GAMES, INC.,  
6 Plaintiff,  
Counter-defendant,

vs. Case No. 4:20-cv-05640

8

APPLE INC.,

Defendant,  
Counterclaimant.

2 IN RE APPLE IPHONE Case No. 4:11-cv-06714  
ANTITRUST LITIGATION YGR

25 (caption cont'd)

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## HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

1 DONALD R. CAMERON, et al.,

2 Plaintiffs,

3 vs.

Case No. 4:19-cv-03074

YGR

4 APPLE INC.,

5 Defendant.

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9 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

10 ZOOM DEPOSITION OF DAVID NIKDEL

11 (Reported Remotely via Video & Web Videoconference)

12 Raleigh, North Carolina (Deponent's location)

13 Monday, February 8, 2021

14 Volume I

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STENOGRAPHICALLY REPORTED BY:

21 REBECCA L. ROMANO, RPR, CSR, CCR

California CSR No. 12546

22 Nevada CCR No. 827

Oregon CSR No. 20-0466

23 Washington CCR No. 3491

24 JOB NO. 4435328

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THE COURT REPORTER: If you could raise  
your right hand for me, please.

THE DEPONENT: (Complies.)

THE COURT REPORTER: You do solemnly  
state, under penalty of perjury, that the testimony 09:10:02  
you are about to give in this deposition shall be  
the truth, the whole truth and nothing but the  
truth?

THE DEPONENT: I do.

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EXAMINATION

Q. Good morning, Mr. Nikdel. Could you state your full name for the record, please.

09:10:25

A. David Abbas Nikdel.

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Q. All right. Tell me what your current  
position is at Epic.

09:12:25

A. My current position at Epic is as senior  
online and game play programmer. That means that I  
work on the back-end services for Fortnite  
currently.

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Q. (By Ms. Yang) Okay. Mr. Nikdel, I

01:35:27

direct your attention to the document that we've

marked as Exhibit 161, which is Bates-numbered

Epic\_00420862.

A. Okay.

Q. And this is an email from Ed Zobrist on

01:35:43

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## HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

1 A. Would it technically be possible to 01:37:17  
2 provide Epic payments on these platforms and  
3 whether or not -- and how much time it would take  
4 to do so.

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11           And so part of your role in Project  
12           Liberty was to make sure that Epic would be able to  
13           implement a payment mechanism that would function  
14           properly?

15           A.    That's correct. Well, specifically, we  
16           already had a payment mechanism that functioned  
17           properly. The intention was to expose it on that  
18           particular platform.

19           Q.    And another objective you had in  
20           designing -- in evaluating technical feasibility of  
21           Project Liberty was whether it could be done in a  
22           way that would not be obvious to Apple?

23           A.    That was something that we had  
24           investigated to see if it would make sense to put  
25           effort towards as a means of contingency planning.

01:39:24

01:39:39

01:39:55

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## HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

1 Q. And what was the result of that 01:40:01  
2 investigation?  
3 A. So the -- the end conclusion was that we  
4 decided not to do anything out of the ordinary with  
5 our implementations with respect to, like, 01:40:09  
6 obfuscating the code other than having it not  
7 enabled at the time that we submitted.  
8 Q. What were the obfuscation tactics that  
9 Epic considered?  
10  
11 THE DEPONENT: Well -- sorry. We  
12 generally looked at -- so we do encrypt some pieces  
13 of -- of the build for preventing users from  
14 investigating them until we're ready to go live  
15 with them. We looked at maybe doing that. We 01:40:42  
16 decided not to do that.  
17 The -- there was generally just sort of,  
18 like, a question of how obvious would it be from  
19 anybody who was to dump strings on the app, for  
20 instance, which was a mechanism that users would 01:40:55  
21 often use to look at a build.  
22 We also didn't want anybody -- Apple  
23 notwithstanding, anybody, users included, to -- to  
24 understand that we were thinking about doing this  
25 until we decided to actually pull the trigger and 01:41:12

## HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

1 enable it. But I don't think that decision was

01:41:14

2 made until pretty late in the process.

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## HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

1           And so -- so what Epic wanted to not be           01:44:44

2           obvious to Apple was the ability of Version 13.40

3           to add the interface for the web payment process?

4           A.     The -- yeah, the -- the ability to turn

5           on multiple payment processors was not enabled in

6           13.40. So we did not want to be -- we did not want

7           that to be part of the evaluation.

8           Q.     And if it was part of the evaluation,

9           would Epic have expected Apple to reject that app,

10          the update?   01:45:27

11          A.     If we had enabled multiple payment

12          providers and then submitted it, I believe Apple

13          would have rejected it, yes.

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Q. (By Ms. Yang) If you could open Exhibit

162, which is the document bearing Bates Number

EPIC\_04040995. And just let me know when you are

there.

A. Okay.

HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

1 Q. All right. Do you recognize this 02:00:19  
2 document?  
3 A. Yes, I do.

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Q. And Epic didn't implement its payment -- 02:01:51

it's Epic direct payment hotfix into any of the  
consoles; is that correct?

A. The -- the 13.40 build did technically  
contain the same code for supporting multiple  
payment providers that was submitted to the  
consoles, but we haven't hotfixed on more than one  
payment provider on any other console other than  
Apple and Google.

02:02:08

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1 Q. Is it consistent with your understanding 02:13:18

2 that iOS is a relatively small market for Fortnite?

3 A. I mean, the iOS is a very large market in

4 general. Compared to the other consoles in

5 Fortnite in particular, yes, it's -- it's 02:13:29

6 comparative small.

7 Q. Right. So looking at this chart, PS4,

8 that platform has almost 40 percent of all

9 projected revenue for Fortnite in 2020; is that

10 correct? 02:13:43

11 A. That's correct.

12 Q. Compared to 5.8 percent for iOS?

13 A. Correct.

14 Q. And, similarly, Xbox One is 24.0 percent?

15 A. Yes. That's correct. 02:13:58

16 Q. And that's multiples higher than iOS?

17 A. That is four times higher than iOS.

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14 Q. What was Epic's expectation as to whether 02:15:02  
15 or not iOS and Google Play players would migrate to  
16 other platforms if Fortnite become unavailable in  
17 iOS and Google Play?

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19 THE DEPONENT: So I think it's an 02:15:17  
20 important distinction -- I think it's an important  
21 distinction to look at the fact that what's  
22 actually being said here is that 44 percent of  
23 players already played on multiple platforms. So  
24 the expectation we had was that anyone who was  
25 already on more than one platform would be able to 02:15:29

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1 continue to play on the other platforms that they 02:15:32  
2 already played on. There's no statement as to  
3 expectations for users to migrate.

4 Q. (By Ms. Yang) And that's because  
5 Fortnite is a game that enables cross-play and 02:15:46  
6 cross-progression; is that correct?

7 A. If you're lucky enough to have more than  
8 one device to play on, yes.

9 Q. And it seems like 44 percent of the  
10 revenue in April 2020 came from people who had more 02:15:59  
11 than one device?

12 A. 44 percent of the iOS revenue came from  
13 people who also had another device, yes.

14 Q. And for those people it would have been a  
15 fairly seamless experience to transfer from playing 02:16:13  
16 Fortnite on iOS to transfer to play on whatever  
17 other platform they had?

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19 THE DEPONENT: Yeah. I think it's  
20 reasonable to assume that they started playing on 02:16:23  
21 one of the other platforms since -- since iOS is  
22 a -- was a later release target for us. The fact  
23 that there -- it's possible to make purchases using  
24 mobile is somewhat attractive to people who play  
25 console primarily. But I don't think that, for 02:16:42

## HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

1 mobile-centric players, it would be particularly  
2 easy for them to move over, especially given the  
3 way in which you play tends to be different when  
4 you're playing mobile.

02:16:47

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## HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

1 Q. Was the Project Liberty team given 02:35:13  
2 specific instructions not to reveal Epic direct  
3 payment plans to Apple before it launched?

4 A. Our general instructions for -- for all 02:35:25  
5 of Fortnite are not to talk about anything until  
6 it's launched outside of the company. That's just  
7 general policy.

8 Q. Were there any specific instructions 02:35:45  
9 given about sensitivity of Project Liberty in  
10 particular?

11 A. There were -- it was on a need-to-know  
12 basis. That's true.

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1 MS. YANG: All right. If you could turn 02:36:50

2 to the document that we've marked as Exhibit 164 --

3 (Exhibit 0164 was marked for

4 identification by the court reporter and is

5 attached hereto.) 02:36:58

6 MS. YANG: -- which is Bates Number

7 EPIC\_00181306.

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15 Q. (By Ms. Yang) Okay. Do you recognize 02:37:32

16 this document?

17 A. Let's see.

18 Yes, I believe I recall this one.

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