

HIGHLY CONFIDENTIAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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

United States District Court
Northern District of California

Case No. 4:20-cv-05640-YGR
Case Title *Epic Games, Inc. v. Apple, Inc.*
Exhibit No. DX-3032
Date Entered _____
Susan Y. Soong, Clerk
By: _____, Deputy Clerk

VS.

Case No. 4:20-cv-05640

YGR

APPLE INC.,

Defendant,
Counterclaimant.

IN RE APPLE iPhone
ANTITRUST LITIGATION

Case No. 4:11-cv-06714

YGR

(caption cont'd)

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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**

10 ZOOM DEPOSITION OF JOE KREINER & EPIC GAMES, INC'S

11 30(b) (6) CORPORATE REPRESENTATIVE

12 (Reported Remotely via Video & Web Videoconference)

13 Raleigh, North Carolina (Deponent's location)

14 Friday, February 5, 2021

15 Volume I

16
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19
20 STENOGRAPHICALLY REPORTED BY:

21 REBECCA L. ROMANO, RPR, CSR, CCR

22 California CSR No. 12546

23 Nevada CCR No. 827

24 Oregon CSR No. 20-0466

25 Washington CCR No. 3491

JOB NO. 4450721

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

19 THE DEPONENT: (Complies.)

20 THE COURT REPORTER: You do solemnly 12:22:22
21 state, under penalty of perjury, that the testimony
22 you are about to give in this deposition shall be
23 the truth, the whole truth and nothing but the
24 truth?

25 THE DEPONENT: I do. 12:22:22

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8 EXAMINATION

9 BY MR. SRINIVASAN:

10 Q. Good morning, Mr. Kreiner. For the 09:21:26
11 record, can you state your full name and spell --
12 spell it for us, please.

13 A. Sure. It's Joseph Kreiner. My last name
14 is spelled K-R-E-I-N-E-R.

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Did you join Epic in 2011?

A. Yes.

Q. Okay. And can you kind of briefly give

09:25:40

Page 23

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1 us an overview of what you did when you started at 09:25:43

2 Epic, what roles you had, and building up to the
3 role you currently have?

4 A. Sure. I joined Epic in 2011 as business

5 development for Unreal Engine. Over time my 09:25:55

6 current role is vice president of business develop.

7 That includes business development for the

8 Epic Games Store, business development for Epic

9 Online Services, and managing first-party relations

10 with Sony, Microsoft, and Nintendo. 09:26:15

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(Exhibit 0068 was marked for
identification by the court reporter and is
attached hereto.)

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8 Q. Okay. And, Mr. Kreiner, we can -- I'm
9 just going to ask you a question. And if you need
10 to look at it more -- the document more, you can do 09:31:58
11 that.

12 Have you seen this document before?

13 A. I don't believe so.

14 Q. Okay. So this is a notice that Apple
15 served on your company, Epic, asking for testimony 09:32:09
16 on behalf of the company on several topics. So I'm
17 just going to ask you about a subset of these.
18 There are 40 topics -- 43 topics, actually. And
19 you're -- through your counsel, we understood that
20 there are about a half dozen that you are -- have 09:32:32
21 been designated for.

22 So maybe -- let me just direct you to the
23 ones that are relevant to you, and you can let me
24 know that you're ready -- hopefully, that you are
25 prepared to testify about them. 09:32:46

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1 So if you can turn to page 6, the first 09:32:48

2 number on page 6 is 8. And I'll just read that.

3 "Distribution (whether online, through

4 brick-and-mortar stores, or through online stores

5 such as Amazon.com) of each of your apps, web apps, 09:33:05

6 in-app products, and software, the commissions,

7 fees, costs, and expenses paid in connection with

8 each such distribution channel, and the margins and

9 net profits received by you relative to prices

10 charged." 09:33:22

11 We understood, Mr. Kreiner, that you

12 would be testifying on this topic with respect to

13 consoles and gift cards. Are you prepared to do

14 that?

15 A. Yes. 09:33:33

16 Q. Okay. And then No. 10 -- I'm just going

17 to cover all of them so we can take care of this at

18 once.

19 Topic No. 10 -- rather than read it out

20 loud, maybe for the sake of efficiency here, if you 09:33:43

21 take a look at No. 10, are you prepared to testify

22 about No. 10?

23 A. Yes.

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9 Q. (By Mr. Srinivasan) So is that -- so
10 with that clarification in mind, Mr. Kreiner, are 09:34:18
11 you ready to testify about 10 through 13?
12 A. Yes.
13 Q. Okay. And if you can flip to or scroll
14 down to -- the next topic is on page 9, which is
15 Topic 28, which is "Agreements or contracts 09:34:36
16 relating to providing or directing your apps, web
17 apps, in-app products, software, or app
18 marketplace, including any relating to distribution
19 on an exclusive basis."
20 And, again, I understand that you were 09:34:53
21 designated for this topic with respect to consoles?
22 A. Yes.
23 Q. And then if you can scroll to the next
24 one, No. 32, Topic 32, again restricted to
25 consoles. Is that something you're ready to 09:35:10

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1 testify about? 09:35:12

2 A. Yes.

3 Q. And one last one on the next page,

4 Topic 40, Epic's "effort to bundle its digital

5 products, app, web apps, software, in-app products

09:35:26

6 with any hardware devices," is that something that

7 you are ready to -- to testify about today?

8 A. Yes. That's correct.

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7 Q. (By Mr. Srinivasan) So, Mr. Kreiner,
8 take a look at Exhibit 71 if you would. And let me
9 know when you've had a chance to skim it.

10 For the record, Exhibit 71 was produced 09:38:35

11 by Epic bearing Bates number 1983020 through
12 1983026. It is a document dated May 31st, 2017,

13 [REDACTED]

[REDACTED]

15 Mr. Kreiner, this is a letter agreement 09:39:05
16 addressed to you.

17 Do you recall this agreement?

18 A. Yes.

19 MR. CLARKE: Jay, can I just clarify. I
20 think this is Exhibit 69. You might have misspoken 09:39:13
21 and said 71.

22 MR. SRINIVASAN: Okay. Thank you for
23 that. Yes, it is Exhibit 69. And thanks for that
24 clarification.

25 [REDACTED] 09:39:23

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Q. (By Mr. Srinivasan) Okay. And in

09:45:25

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1 looking at Section 2.3 here, though, when they do 09:45:27
2 say -- you know, it's in -- it's in the page with
3 the number that ends in 22. The provision says,
4 [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
9 And so I guess I'll just ask you just
10 about that quote I just read specifically. What 09:46:05
11 did that mean in terms of Epic's obligation?
12 A. The intent there was to have the cost of
13 digital goods and Fortnite to be equivalent across
14 [REDACTED]
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(Exhibit 0070 was marked for

identification by the court reporter and is

attached hereto.)

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9 Q. Terrific. And for the record, while you
10 review it, Exhibit 70 is a letter agreement dated 09:49:49

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Mr. Kreiner, do you recall this
15 agreement? 09:50:10

16 A. Yes.

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24 Q. Okay. And I want to take you to 2.3.3,
25 which is the one that says "Reporting." And is it 09:50:44

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1 your understanding that this provision requires

09:50:54

2 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

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[REDACTED] [REDACTED]

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THE DEPONENT: It was my general

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understanding that, yes, those players would spend

09:52:29

16

more money.

17

Q. (By Mr. Srinivasan) Okay. And if you

18

can -- and turning back to Exhibit 70 here. If --

19

if you look at 2.3.2, is -- is 2.3.2 -- what is

20

your understanding of provision 2.3.2, which is

09:52:50

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1 [REDACTED] [REDACTED]
2 [REDACTED]
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4 [REDACTED]
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7 [REDACTED]
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13 (Exhibit 0071 was marked for
14 identification by the court reporter and is
15 attached hereto.) 09:53:47
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19 So Exhibit 71 for the record is another
20 letter agreement, this one dated September 18th, 09:54:13
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 Mr. Kreiner, again, this is a letter
25 agreement dated -- sorry -- addressed to you. 09:54:27

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Do you recall this agreement?

09:54:31

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A. Yes.

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	[REDACTED]	[REDACTED]
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DX-3032.028

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2 (Exhibit 0072 was marked for
3 identification by the court reporter and is
4 attached hereto.)

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Q. (By Mr. Srinivasan) So, for the record,

14 Exhibit 72 is a PowerPoint deck titled

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17 represent that this came from your files.

18 And so, first of all, do you -- do you

19 recognize this deck?

20 A. I remember receiving it, yeah.

10:10:02

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7 (Exhibit 0073 was marked for
8 identification by the court reporter and is
9 attached hereto.)

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17 signed by Joe Babcock for Epic and Phillip
18 Rosenberg for Sony.

19 Q. (By Mr. Srinivasan) Mr. Kreiner, do you
20 recall this agreement? 10:14:07

21 A. Yes.

22 Q. Okay. And what is your understanding of
23 what this agreement -- the -- what is your
24 understanding of the purpose of this agreement?

25 A. Yeah, this agreement is Sony PlayStation 10:14:19

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1 refining the requirements around supporting 10:14:23
2 cross-play. And, you know, cross-play was a new --
3 a new feature. And those previous letters were
4 kind of the first of its kind for Sony. This is a
5 more formal agreement that's meant to go out to a 10:14:40
6 wider developer base than just Epic.
7 Q. Got it.
8 And do you recall when this agreement was
9 executed?
10 A. Offhand, no. 10:15:08
11 Q. I'm sorry. I'll just direct you to it.
12 It says in the third line there that it's effective
13 as of September 2019.
14 Does that roughly comport with your
15 understanding? 10:15:18
16 A. Yes.
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3 Q. Okay. And do you know why Xbox wasn't
4 included in the original agreement that authorized
5 cross-platform play with a PC?

10:19:54

6 A. Sony was very concerned about giving Xbox

7 a competitive edge by allowing it.

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Q. (By Mr. Srinivasan) Okay. Great. Let's
look at the next exhibit, which will be 74. 10:22:07
(Exhibit 0074 was marked for
identification by the court reporter and is
attached hereto.)
Q. (By Mr. Srinivasan) I don't think it's
up yet. Okay. 74 should be up. 10:22:26

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1 And while you're taking a look at that, 10:22:33

2 Mr. Kreiner, for the record, Exhibit 74 is an

3 [REDACTED]

4 [REDACTED] [REDACTED]

5 that starts with Bates number ending in 810 and 10:22:56

6 going through Bates number ending in 856.

7 And, Mr. Kreiner, do you recall seeing

8 this agreement before?

9 A. Yes, I've seen this before.

10 [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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24 Do these agreements cover just Fortnite,
25 or do they cover all digital products distributed

10:48:55

Page 74

1 by Epic on the PlayStation?

10:48:59

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3 THE DEPONENT: The GDPA is a generic
4 document that would cover all submitted games by
5 Epic. The letters that we've been looking at were
6 specific to Fortnite.

10:49:11

7 Q. (By Mr. Srinivasan) Okay. Thank you.

8 And let's focus on -- let's focus on

9 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 A. That would be accurate, yes.

14 Q. Okay. And that Epic is subject to

15 [REDACTED]

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13 [REDACTED]
14 [REDACTED]
15 [REDACTED] 10:53:32
16 [REDACTED]
17 [REDACTED] MR. SRINIVASAN: And while you take a
18 [REDACTED] look at that, for the record Exhibit 77 is an
19 [REDACTED] assignment and assumption agreement dated
20 [REDACTED] June 28th, 2018. It is -- has the first page as 10:54:06
21 [REDACTED] the Bates number ending in 632 and goes all the way
22 [REDACTED] to the page with Bates number ending in 662.
23 Q. (By Mr. Srinivasan) Mr. Kreiner, do you
24 [REDACTED] recognize this agreement?
25 A. I recognize the agreement that's attached 10:54:34

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1 to Exhibit A.

10:54:36

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21 Q. (By Mr. Srinivasan) Okay. As you noted,

22 Mr. Kreiner, let's go to -- I guess it's the

23 Exhibit A to this agreement, which starts on page

24 number ending in 637. And this part of the

25 agreement, which is -- well, I'll say it for the

10:56:16

Page 79

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[REDACTED]

[REDACTED]

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[REDACTED]

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Do you recognize this agreement?

4

A. Yes.

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[REDACTED]

[REDACTED]

[REDACTED]

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4 (Exhibit 0078 was marked for
5 identification by the court reporter and is 11:07:43
6 attached hereto.)

10 Q. (By Mr. Srinivasan) So Exhibit 78 is up, 11:08:20

11 Mr. Kreiner, if you want to take a look at that.

12 A. Okay.

13 Q. Exhibit 78, for the record, is a document

14 [REDACTED] 11:08:35

16

And it looks to be dated in May of 2017

17 between Microsoft and Epic Games, and it starts

18 with page -- Bates number ending in 372 and goes to

19 page with the Bates number ending in 383.

20 And, Mr. Kreiner, do you recognize this 11:09:00
21 document?

22 A. Yes.

23 Q. Okay

this document?

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The image consists of a grid of horizontal black bars of varying lengths and vertical positions. Each bar has a small yellow square at its left end. The bars are arranged in approximately 15 rows. Some rows contain a single long bar, while others contain shorter bars or small clusters of bars. The overall pattern is abstract and lacks a clear, organized structure.

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HIGHLY CONFIDENTIAL

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HIGHLY CONFIDENTIAL

1 (Exhibit 0079 was marked for 11:18:05

2 identification by the court reporter and is
3 attached hereto.)

4 MR. SRINIVASAN: Okay. Sorry. It's
5 loading a little slower. 11:18:29

6 Q. (By Mr. Srinivasan) Exhibit 79 is a

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7 (Exhibit 0081 was marked for
8 identification by the court reporter and is
9 attached hereto.)

10 Q. (By Mr. Srinivasan) Okay. 81 is there. 11:23:27

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Q. Yeah. So you mentioned -- before we get to GeForce Now, I'm just going to ask about one other service, which is Microsoft's xCloud. Do you know if -- if Fortnite is available through that service?

A. It is not.

Q. Okay. And was that a decision -- a

11:33:22

11:33:32

HIGHLY CONFIDENTIAL

1 deliberate decision made by Epic not to offer it on 11:33:34

2 that service?

3 A. Yes.

4 Q. And what was the basis for that decision?

5 A. We viewed Microsoft's efforts with 11:33:44

6 xCloud to be competitive with our PC offerings.

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10 [REDACTED] [REDACTED]
11 [REDACTED] [REDACTED]
12 [REDACTED] [REDACTED]
13 Q. Okay. Now, you mentioned GeForce Now.
14 Can you describe what GeForce Now is?
15 A. Yes. It -- it operates as a cloud gaming
16 PC rental service. So a player subscribes to
17 GeForce Now. They get access to a high-end gaming
18 PC that exists in -- in a cloud environment, and
19 then can log into their existing digital
20 storefronts like -- like Steam or the Epic Games
21 Store.

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Q. And what GeForce Now -- by the way, do

you know who -- what company distributes GeForce

11:36:31

Now?

A. It's Nvidia.

Q. So Nvidia -- essentially, you would --

you would log in with your low-performance machine;

but, through the cloud, you would essentially be --

11:36:43

you would have access to a high-performance machine

to play your games. Is that the idea?

A. Yes. That's my understanding.

Q. Okay. And I think you mentioned that

Fortnite is available on GeForce Now. Is that --

11:36:56

did I get that right?

A. That's correct in that a user using that

service has access to their library of games on

multiple storefronts.

Page 109

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2 Q. Okay. And did -- did you partner with
3 somebody to do the actual physical distribution?

4 A. Yes. We partnered with multiple
5 companies to do physical distribution.

11:43:02

6 Q. And what were the names of those
7 companies?

8 A. It would have been Gearbox for physical
9 Fortnite, and Warner Bros. for the more recent
10 physical offerings that are code in a box.

11:43:15

11 Q. Got it. And we'll break those apart. So
12 Gearbox was the only company that actually
13 distributed the game on disk for you?

14 A. That's correct.

A horizontal bar chart showing the distribution of 15 items across 10 categories. The x-axis represents categories 1 through 10. The y-axis represents items 1 through 15. Item 15 is present in categories 1, 2, 3, 5, 6, 7, 8, 9, and 10. Item 1 is present in categories 4, 5, 6, 7, 8, 9, and 10. Item 2 is present in categories 4, 5, 6, 7, 8, 9, and 10. Item 3 is present in categories 4, 5, 6, 7, 8, 9, and 10. Item 4 is present in categories 4, 5, 6, 7, 8, 9, and 10. Item 5 is present in categories 4, 5, 6, 7, 8, 9, and 10. Item 6 is present in categories 4, 5, 6, 7, 8, 9, and 10. Item 7 is present in categories 4, 5, 6, 7, 8, 9, and 10. Item 8 is present in categories 4, 5, 6, 7, 8, 9, and 10. Item 9 is present in categories 4, 5, 6, 7, 8, 9, and 10. Item 10 is present in categories 4, 5, 6, 7, 8, 9, and 10. Item 11 is present in categories 4, 5, 6, 7, 8, 9, and 10. Item 12 is present in categories 4, 5, 6, 7, 8, 9, and 10. Item 13 is present in categories 4, 5, 6, 7, 8, 9, and 10. Item 14 is present in categories 4, 5, 6, 7, 8, 9, and 10. Item 16 is present in categories 4, 5, 6, 7, 8, 9, and 10.

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12 Can you explain the process of physical
13 distribution and what the various parties in the
14 chain are?
15 A. Sure. So and -- and this is minorly -- 11:44:35
16 well, it's different per platform. But, in
17 general, the way this works is, for a physical
18 disk, the first party -- or in the case of the
19 Nintendo Switch, the cartridge -- the first party
20 requires those to be created at one of their 11:44:54
21 locations. And they typically take a fixed
22 per-disk fee that -- that is charged and collects,
23 at which then gearbox pays that fee in -- in this
24 particular case in -- on behalf of Epic and passes
25 the cost through to us. 11:45:18

1 And then Gearbox arranges with the -- the 11:45:20
2 retailers to purchase the disks at a wholesale
3 price. The retailers mark it up and make a profit
4 off of that.

5 Q. Okay. And is the way Epic is 11:45:33
6 compensated, is it related to the retail price
7 that's ultimately set by the retailer? Is there --
8 how does Epic get compensated for a physical
9 product?

10 A. It would be the wholesale price minus the 11:45:51
11 platform fee minus the Gearbox fee.

12 Q. Okay. And do you have a sense of what --
13 like an estimate of what the percentage would be
14 that Epic would receive compared to what the retail
15 price would be? 11:46:09

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[REDACTED]
[REDACTED]
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Q. Okay. And flipping back, then, to the
digital side of it, have you ever attempted to

12:04:25

A. No.

Q. So that's never been anything you've
engaged in at all?

12:04:40

A. I might have, you know, joked in passing
to -- to a member of -- of, you know, Sony,
Microsoft, or Nintendo that we would like it to be
less, but it was never pursued at any length.

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HIGHLY CONFIDENTIAL

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2 Q. Okay. And what is it that they do for
3 you that you feel like 30 percent is a fair number?

4 A. In particular those three platforms, we
5 have weekly marketing meetings with them to discuss 12:05:38
6 merchandising Fortnite in the best way possible.

7 We are a significant revenue generator
8 for all three of those platforms, probably in the
9 top five, you know, revenue sources for them. So
10 they have a vested interest in promoting Fortnite. 12:05:56

11 We receive significant store placement
12 that we do not have to pay for. We do pay for
13 some, but we receive significant free placement.

14 The marketing teams between Epic and the
15 first parties coordinates events and social media. 12:06:14

16 So we see that as an ongoing relationship
17 that is driving value for Epic.

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14 Q. Have you ever succeeded in negotiating an
15 exception to any of the -- of the requirement that 12:10:08
16 you have to go through the Microsoft commerce
17 engine?
18 A. No.
19 Q. Have you tried to do that?
20 A. No. 12:10:17
21 Q. Okay. Have you tried to negotiate around
22 the requirement that you have to go through
23 Microsoft to make your products available on the
24 Xbox?
25 A. No. But let me go back to the previous 12:10:27

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THE DEPONENT: It's not my understanding

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that we have made.

12:14:02

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Q. (By Mr. Srinivasan) Okay. What about

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for Microsoft?

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A. No.

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HIGHLY CONFIDENTIAL

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9 So I want to go to Exhibit 80, and that
10 was the one that was too small to read. So I think 01:07:28
11 the -- there we go. It's going -- it's going to
12 get shared on the screen. And so hopefully you can
13 see it. It's still pretty small.

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24 And, Mr. Kreiner, have -- this relates to
25 the issue of the -- the terms of the various 01:08:37

HIGHLY CONFIDENTIAL

1 agreements that Apple -- excuse me -- that Epic 01:08:40
2 has. And I know you're here just for the consoles.
3 So my question to you, sir, is, first of all, have
4 you seen this chart before?
5 A. Not at any length, no. 01:08:56
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10 Q. And right next to it there's a next 01:09:07
11 column right over that says "Platform Fee
12 Percentage."
13 Do you see that?
14 A. Yes.
15 [REDACTED] [REDACTED]
[REDACTED]
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[REDACTED]
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[REDACTED]
[REDACTED]
20 Q. And that's consistent with what your 01:09:28
21 testimony was earlier this morning, correct?
22 A. That's correct.
23 Q. Okay. And, by the way, it goes on -- and
24 I should scroll down because there's a few more
25 games for -- listed also. That first three entries 01:09:42

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1 were for Fortnite? 01:09:46

2 A. Uh-huh.

3 Q. There's then a separate entry for Rocket

4 League and "Third Party Publishing - Dauntless" and

5 [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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8 MR. SRINIVASAN: And Exhibit 81, for the
9 record, while the technical folks blow this up, is
10 from the same document we just discussed, which is 01:11:46
11 Epic Bates Number 03848271, but it is a PDF of the
12 second tab on this Excel sheet which is financials.

13 Q. (By Mr. Srinivasan) And in -- and,
14 Mr. Kreiner, if you can see on Exhibit 81, there --
15 first of all, it's titled "Epic Games Non-GAAP 01:12:12
16 Consolidated Financials."

17 Do you see that?

18 A. Yes.

19 Q. And, again, this is something we
20 received. It's the same file that we just looked 01:12:20
21 at from Epic. You can see -- I just want to direct
22 you to the -- the -- the part that says "Fortnite."

23 And under it, it lists the three
24 consoles -- PS4, Xbox One, Switch -- then PC, and
25 then the two mobile platforms, iOS and Android. 01:12:37

HIGHLY CONFIDENTIAL

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Do you see that?

01:12:43

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A. Yes.

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HIGHLY CONFIDENTIAL

1 I think we -- you testified that the 01:19:32
2 revenue numbers for Apple in terms of 2018 in terms
3 of its relative share of overall revenue coming in
4 for Fortnite was about 6 to 7 percent.
5 Would you agree with that? 01:19:48
6 A. Yes, that's what you said, and I agreed
7 to it.
8 Q. And would you -- would you agree that
9 that percentage seems to carry forward for 2019 as
10 well? 01:20:00
11 A. I'm not doing the math in my head, but it
12 does appear that's the case.
13 Q. And same for 2020?
14 A. Yeah.
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But, on the other hand, you know, is

01:25:14

there any other way in which Epic has distributed

its products on the internet, you know, separate

and apart from a store like the Steam store or the

Epic Games Store?

A. Yes. We would sell our retail products

01:25:32

HIGHLY CONFIDENTIAL

on retailer websites; so, you know, BestBuy.com, 01:25:34

01:25:34

2 Walmart.com, GameStop.com, Amazon.com.

3 Q. Okay. And so in those cases you're

4 talking about either the physical disk back when

5 you were selling physical disks or the -- the

01:25:48

6 code-in-a-box-type concept; is that right?

A. You're correct.

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HIGHLY CONFIDENTIAL

(Exhibit 0083 was marked for 01:38:05

2 identification by the court reporter and is
3 attached hereto.)

4 MR. SRINIVASAN: So, Mr. Kreiner, I think
5 it's Exhibit 83 in the folder, when you get a
6 chance.

7 And while you're taking a look at that,

8 I'll just say for the record Exhibit 83 is an ema

9 chain involving Mr. Kreiner, Danny Block, and

10 others at Epic from July of 2019, with the subject

11 line "Fortnite Card Economics." And the Bates

12 number ends on the first page 567, and it carries

13 over into a second page ending in 568.

14 Q. (By Mr. Srinivasan) So, Mr. Kreiner, I
15 don't know if -- have you had a chance to look at
16 this email?

17 A. Yes.

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Q. And the economics, then, are described here, right, where he goes through the different layers that take their various pieces of the cut.

And I think, if you roll it up to the top of the email, you know, it's -- it's somewhere about -- looks like -- as you -- as Danny says there, looks closer to 36.5 percent.

01:40:00

And -- and, again, is that sort of consistent with the interrogatory response where

01:40:15

HIGHLY CONFIDENTIAL

1 you talked about Epic receiving 70 to -- 60 to 01:40:18

2 70 percent?

3 A. Yes.

4 Q. Okay. Okay. And so would you -- is it

5 fair to say that this email reflects sort of the 01:40:27

6 broad economics of how the gift card/POSA card

7 process works at Epic?

8 A. Yes.

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2 Q. Okay. And then how do you account for
3 those bundles? In other words, is it just the same
4 as the card that we just described, or is there a
5 different set of economics for that?

01:43:03

6 A. It's a different set of economics. So in

7 [REDACTED]

8 charge Epic for generating those codes. Typically,
9 these bundles are done as a marketing exercise and
10 Epic's not compensated. There have been a few

01:43:20

11 [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED] [REDACTED]

21 Q. Can you get into why that's the case? In
22 other words, why were you getting compensated early
23 on and then aren't getting compensated anymore?
24 You know, one might think it would intuitively go
25 the other way. Is there -- is there a reason for

01:44:07

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1 that? 01:44:10

2 A. I think our initial discussions with
3 Microsoft and Nintendo and Sony, all of those
4 parties are just used to paying for these kind of
5 bundles. They're coming from the more traditional 01:44:21
6 game development world where you're bundling the
7 game that someone pays up front for. And, you
8 know, even early on in Fortnite, you were buying
9 Save the World.

10 As the game progressed, it became more 01:44:36
11 about Battle Royale. It's a free-to-play game. So
12 we were more interested in being distributed to new
13 users. Someone's buying a console; they're a new
14 user in that ecosystem. You'd rather them get
15 exposed to Fortnite immediately. 01:44:54

16 So we just declined to pursue financial
17 gain, and the first parties were happy to oblige
18 us.

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10 Do you think Epic should pay less than 01:48:28
11 30 percent to the consoles as far as the
12 commission?
13 A. No. I feel like they generate
14 significant user acquisition and revenue for us,
15 that they're a primary venue for us to generate 01:48:43
16 revenue, and that they earn their 30 percent.
17 Q. And -- and so you're -- if I understand
18 it, you don't think it's -- you don't think they
19 should pay less because they are generating a big
20 volume. Is that -- you're sort of tying it to the 01:48:57
21 amount of the volume of revenue they bring in?
22 A. Certainly that. But also we have a very
23 good working relationship with those platforms.
24 They do a lot of networking and marketing on Epic's
25 behalf. 01:49:13

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11 Q. (By Mr. Srinivasan) Okay. And do you
12 understand that the 30 percent commission that
13 you're paying is actually just for payment
14 processing alone?

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16 THE DEPONENT: No, it's not. They do
17 quite a bit more than just process payments.

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22 Q. Okay. I think you mentioned earlier this
23 morning, you know, the -- the additional things
24 that they do. And I'm going to read some. I'm
25 just -- if I got this right, I try to write --

01:52:24

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HIGHLY CONFIDENTIAL

1 write this down -- they had weekly meetings that 01:52:27
2 they were a significant revenue generator, that
3 they gave you store placement, that -- free store
4 placement in addition to what you were advertising,
5 marketing terms of -- around events and social 01:52:43
6 media. And -- and I think that's all I got.
7 First of all, was that an accurate list
8 of what you had said earlier?
9 A. Yes. They do more than that.
10 Q. Okay. And, please, what else do they do, 01:52:56
11 in your mind, to merit the 30 percent commission?
12 A. They have marketed Fortnite at physical
13 events, like PAX or, you know, trade shows. They
14 take out retail ads for -- for Fortnite on
15 occasion. Social media posts, focused blog posts 01:53:20
16 on Fortnite content. They retweet many of Epic's
17 social media posts surrounding content in Fortnite.
18 And we also get -- have done things like
19 dash callouts inside of PlayStation. When a user
20 logs in, they get notified Fortnite's got a new 01:53:45
21 content drop.
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9 Q. Okay. And you had testified earlier that
10 all three consoles do not allow Epic to set up its
11 own payment mechanism, correct?

12

13 THE DEPONENT: Correct.

14 Q. (By Mr. Srinivasan) I'm sorry. I
15 didn't -- correct. Yeah.

01:54:40

16 So do you view that as being unfair in
17 any way that they won't let you process your own
18 payment -- they won't let Epic process its own
19 payment?

20 A. No, I don't think that's unfair.

01:54:54

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25 Q. So it's -- it's typically -- would you

01:55:08

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1 agree that it's typically something that users 01:55:11
2 prefer, that they're able to deal with the console
3 on a global basis rather than having to enter their
4 information for every vendor?

5 A. I don't know about preferred, but it's 01:55:22
6 the standard practice.

7 Q. Okay. And do you -- do you agree that it
8 makes it easier for users to handle it that way?

9 A. Yes.

10 Q. Okay. What about the idea of having your 01:55:34
11 own direct distribution option on these platforms.
12 You testified earlier that the consoles won't allow
13 you, for instance, to distribute directly on them,
14 correct?

15 A. Correct. 01:55:55

16 Q. Do you -- do you view that as unfair that
17 they won't let you do that?

18 A. No.

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HIGHLY CONFIDENTIAL

1 said you can't price elsewhere lower than what you 01:56:29
2 price on -- on my platform, correct?
3 A. Yes. They impose significant
4 restrictions on us.
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19 Q. Sure. Do you -- you had said earlier
20 that each one of the three consoles mandates that 01:57:10
21 Epic provide, you know, basically best pricing
22 on -- on their respective consoles, correct?
23 A. Uh-huh. Yes.
24 Q. And, in other words, you're not -- Epic
25 is not free to price Fortnite differently on Xbox 01:57:22

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1 versus the PlayStation, correct? 01:57:27

2 A. That's correct.

3 Q. And do you view that restriction as
4 anticompetitive?

5 A. My personal opinion is it can be a little 01:57:36

6 anticompetitive; but given the way we operate
7 Fortnite on all seven platforms, it's a way to
8 prevent players from jumping around on platforms
9 and having a bad experience.

10 Q. How would they -- how would they have a 01:57:59

11 bad experience -- how would a player have a bad
12 experience if a certain platform, you know, priced
13 the digital products differently?

14 A. Well, you would see lots of arbitrage
15 between platforms. You'd have users, you know, 01:58:14

16 buying one to use on another. It causes a lot of
17 users logging in and logging out. It's the --
18 while -- while they would look like they're, you
19 know, potentially saving money, it's just a bad
20 experience. You would feel bad for somebody that 01:58:33

21 had purchased something on PlayStation and then see
22 that it's available for less money on Xbox.

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(Exhibit 0084 was marked for

identification by the court reporter and is

attached hereto.)

THE DEPONENT: Is that Exhibit 84?

02:09:54

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1 Q. (By Mr. Srinivasan) Yeah, it'll be 02:09:55

2 Exhibit 84.

3 And so while you look at this,

4 Mr. Kreiner, Exhibit 84 is an email chain involving

5 Mr. Kreiner and others, including a Phil Rosenberg 02:10:16

6 at Sony. It is dated February -- the top email is

7 dated February 20th, 2018. It has the subject line

8 "Fortnite cross-play." And it's a Bates number

9 ending in 199.

10 So, Mr. Kreiner, do you recall this email 02:10:35

11 exchange?

12 A. Vaguely, sure.

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HIGHLY CONFIDENTIAL

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6 (Exhibit 0088 was marked for
7 identification by the court reporter and is
8 attached hereto.)

9 Q. (By Mr. Srinivasan) So, Mr. Kreiner,
10 we'll get a new document up. While it's coming 02:42:37
11 up -- I don't know if it's up yet. It will be
12 Exhibit 88. But I don't know if it's populated
13 yet. I guess it has.

14 A. Yes, it has.

15 Q. Okay. Great. Let me introduce the 02:42:52
16 exhibit, and I'll ask you some questions about it.

17 Exhibit 88 is a one-page email chain with
18 the top email being from Mr. Kreiner to Danny Block
19 sent on September 12th, 2018, with the subject line
20 "Cross-wallet." 02:43:08

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Emu Servais wrote to you with -- with a
summary, it looks like, of a table that, at least
as of September 2018, gives the state of play for
cross-wallet and cross-play for the various
platforms.

02:44:53

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HIGHLY CONFIDENTIAL

1 Would you agree with that? 02:44:53

2 A. Yes.

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Veritext Legal Solutions
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(Exhibit 0090 was marked for
identification by the court reporter and is
attached hereto.)

HIGHLY CONFIDENTIAL

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6 (Exhibit 0091 was marked for
7 identification by the court reporter and is
8 attached hereto.)
9 Q. (By Mr. Srinivasan) So, Mr. Kreiner, I
10 think we have available now Exhibit 91. Exhibit 91 03:03:14
11 is a -- again, I think it's maybe a text exchange
12 between a Devin Winterbottom and yourself on
13 September 25th, 2018. And it's -- it's a single
14 page, and it's Bates number ending in 676.
15 So, Mr. Kreiner, first of all, is this a 03:03:41
16 text exchange, if you recognize this format?
17 A. I don't recognize this format; so I don't
18 know.
19 Q. Okay. Have you -- do you text as part of
20 your work functions ever? 03:03:53
21 A. On occasion.
22 Q. Okay. And is -- is Mr. Winterbottom
23 somebody who you work with?
24 A. Yes.
25 Q. Would it surprise you if you had texted 03:04:03

HIGHLY CONFIDENTIAL

1 him in the September 2018 time frame?

03:04:06

2 A. No, it would not.

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(Exhibit 0092 was marked for

identification by the court reporter and is

attached hereto.)

MR. SRINIVASAN: Okay. So the next

exhibit is Exhibit 92. And 92 is a two-page email

03:10:38

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1 chain, again mostly -- almost all the substances is 03:10:41
2 on page 1. The top email is from Joe Kreiner to
3 Ed Zobrist and some others at Epic Games sent on
4 April 24th, 2020, with the subject line "Your POV
5 on possible payment options." And the first page 03:11:01
6 ends with Bates number -- or ends with the Bates
7 number ending in 047.
8 Q. (By Mr. Srinivasan) Mr. Kreiner, do you
9 recall this email exchange?
10 A. Yes. 03:11:16

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12 Did -- is this a discussion of what
13 ultimately happened on mobile, where the direct
14 payment option dropped the price of V-Bucks
15 compared to what it used -- what it was before? 03:12:53
16 A. No. This is proposing charging -- or
17 providing 18 percent more V-Bucks if someone used
18 Epic payment services versus a lower price.
19 Q. Got it. So here the price would be the
20 same, but you would get 18 percent more V-Bucks for 03:13:13
21 that same dollar value; is that right?
22 A. Correct.
23 Q. Okay. And that's what was being
24 considered here. And you respond and say, "We did
25 agree to keep identical pricing across all 03:13:26

HIGHLY CONFIDENTIAL

1 platforms with Microsoft, Sony, and Nintendo." 03:13:31
2 And then -- but you say, "That being
3 said, all they care about is that we are not using
4 arbitrage to direct sales away from their
5 platform." And then you say, "They are entirely 03:13:41
6 self-serving; so making mobile less attractive
7 would likely work for them."
8 Do you know what you meant by that?
9 A. Yeah. I was giving Ed my interpretation
10 of what Sony, Microsoft, and Nintendo would -- 03:13:54
11 would say to us if we decided to implement this
12 strategy.
13 Q. And you're saying, though, initially that
14 they would be okay with something like this,
15 correct? 03:14:06
16 A. That's my supposition here. I'm not sure
17 if that actually would have been correct.
18 Q. Well, I mean, he then -- he then says, "I
19 think the idea is for the exact same purchase price
20 a mobile player would get 18 percent more V-Bucks 03:14:18
21 if they chose our payment system versus the Apple
22 or Google payment system." And to which you
23 respond, "Making it more advantageous to buy on
24 mobile than on console is not an option."
25 Do you see that? 03:14:32

HIGHLY CONFIDENTIAL

1 A. Yes. 03:14:33

2 Q. Is that your final sort of opinion on
3 this, that once you understood that this was -- a
4 way in which mobile pricing might give you more
5 value would not be okay with the consoles? 03:14:43

6 A. Yes, that was my opinion.

A horizontal bar chart illustrating the distribution of 7 items across 10 categories. The y-axis is labeled with the number 7. The x-axis consists of 10 categories, each represented by a black bar with a yellow end. Category 1 has a short bar. Categories 2, 4, 6, 8, and 10 have medium-length bars. Categories 3, 5, and 7 have long bars. Category 9 has a very long bar.

Category	Length of Bar
1	Short
2	Medium
3	Long
4	Medium
5	Very Long
6	Medium
7	Very Long
8	Medium
9	Extremely Long
10	Medium

18 MR. CLARKE: Objection.

A horizontal bar chart with five bars. The first bar is yellow and labeled '19'. The other four bars are black. The second bar from the left is the longest, extending to the right edge of the chart area. The third bar is shorter than the second. The fourth bar is slightly longer than the third. The fifth bar is the shortest of all.

Q. (By Mr. Srinivasan) You had -- did you ever have a discussion with any of these console

HIGHLY CONFIDENTIAL

1 folks about this idea, or this was just your --
2 your supposition?
3 A. This was just my supposition.

03:15:46

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Q. And, now, is that 12 percent commission
for payment processing alone?
A. No. That is for using the Epic Games
payment flow.

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9 Q. Well, I'm saying, you know, somebody
10 might ask you, you know, "Joe, you're charging me 03:32:28
11 12 percent on -- on every sale on your store.
12 What -- what are you charging me for? My payment
13 processing doesn't cost 12 percent. What are you
14 charging me for?"
15 A. Sure. The services we provide game 03:32:41
16 developers are CDN hosting, player support,
17 marketing of their games, and handling of refunds.
18 Q. Anything else?
19 A. I'm -- I mean, there's lots of technical
20 support. We also waive on Unreal Engine royalties 03:33:02
21 if the game is using Unreal Engine, which are
22 typically 5 percent. So there's a benefit to game
23 developers for shipping the games if they're using
24 Unreal Engine on the Epic Games Store.
25 Q. What else do you provide for developers? 03:33:25

HIGHLY CONFIDENTIAL

1 Or is that a pretty compressive list? 03:33:27

03:33:27

2 A. No. We also have a supporter/creator

3 marketing program where currently Epic pays

4 influencers a 5 percent-of-sales fee if they

5 successfully refer a paying customer into our

6 ecosystem to go buy a game or in-app transactions.

03:33:39

7 And then we also do social -- you know

8 social media for game launches, video promotions.

9 We've done featuring at physical events, such as

E3. And we do sponsorships of the video games --

the video games awards as well as other events

where we feature games that are available on the

13 Epic Games Store.

14 Q. So --

Digitized by srujanika@gmail.com

see your developers.

A. That's correct.

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HIGHLY CONFIDENTIAL

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2 Q. Okay. Is -- is the Epic Games Store
3 profitable at a 12 percent commission?

4 A. It's not profitable today because we're
5 in growth mode and focused on acquiring users. So 03:35:07
6 we're spending significant amounts of money
7 acquiring exclusive content and giving free games
8 away. So those -- those investment costs are
9 significant. I would expect, eventually, for us to
10 be able to turn a profit. 03:35:28

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24 (Exhibit 0095 was marked for
25 identification by the court reporter and is 04:02:37

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HIGHLY CONFIDENTIAL

1 attached hereto.) 04:02:37

2 MR. SRINIVASAN: This will be Exhibit 95.

3 THE DEPONENT: Okay.

4 MR. SRINIVASAN: Okay. Sorry. My

5 computer is little slower than yours. Go ahead and 04:03:06

6 take a look at Exhibit 95, Mr. Kreiner, and I'll

7 read it into the record, and then we can talk about

8 it.

9 Exhibit 95 is a PowerPoint deck titled

10 "Epic Games Store, Review of Performance and 04:03:24

11 Strategy, October 25th, 2019." It starts with

12 Bates number ending in 277 and goes through Bates

13 number ending in 297.

14 Q. (By Mr. Srinivasan) And the -- the --

15 the page that I'd like to direct your attention to, 04:03:48

16 Mr. Kreiner, it's numbered 17; it's Slide 17. And

17 the Bates number, the control number there at the

18 bottom, ends in 293.

19 A. Okay.

20 Q. And the title is "5 Year P&L and User 04:04:02

21 Forecast."

22 And, you know, I -- first of all, do you

23 recall this deck in particular?

24 A. Not in particular. This is a -- a common

25 format that we use on a recurring basis. 04:04:17

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HIGHLY CONFIDENTIAL

1 Q. Okay. So this is the type of deck that 04:04:20

2 you would commonly receive?

3 A. Yeah.

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3 So current -- let's take a look at this
4 model -- first of all, the document we're looking
5 at from October of 2019 indicates that at the 04:06:57
6 current business model at a 12 percent commission
7 the -- the Epic Games Store was not projecting to
8 make any money five years out under either model,
9 correct?

10 A. Yes, although that's based on a 04:07:12

11 pessimistic model of recouping minimum guarantees.

12 Q. Okay. And, currently, I think you
13 testified already that the game -- that the game
14 store, as it stands today in early 2021, is still
15 not making money, correct? 04:07:29

16 A. That's my understanding.

17 Q. Okay. And in -- and if -- and is it your
18 testimony, then, that there will be more current
19 versions of this document at Epic that would show
20 a -- a different story? 04:07:41

21 A. Yes.

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HIGHLY CONFIDENTIAL

1 Q. Okay. What has changed about the 04:07:56
2 projections, to the extent that you know, to
3 suggest that, you know, that the picture is not
4 as -- is not what's portrayed here on this slide?

5 A. We have been more successful at 04:08:12
6 recovering our minimum guarantees with more recent
7 launches. We're much farther ahead in user
8 acquisition than these models assumed.

9 You know, in 2020 we had a very
10 significant user acquisition event in giving away 04:08:29
11 Grand Theft Auto V, and that reset a lot of the
12 expectations because we have many more people
13 coming to the store purchasing games.

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10 (Exhibit 0096 was marked for 04:12:02

11 identification by the court reporter and is
12 attached hereto.)

13 MR. SRINIVASAN: 96 is a email chain of
14 several pages. The top chain is from Scott Adams
15 at Epic Games to a number of folks, including 04:12:30
16 Mr. Kreiner. The top email is dated May 1st, 2019.

17 [REDACTED]
18 [REDACTED]

19 The first page has a Bates number ending
20 in 569, and it goes through -- the final page has a 04:12:46
21 Bates number ending in 577.

22 Q. (By Mr. Srinivasan) Mr. Kreiner, do
23 you -- first of all, have you had a chance to look
24 at this email?

25 A. Yes. 04:13:00

HIGHLY CONFIDENTIAL

1 Q. And do you recall this email chain from 04:13:07

2 when you received it?

3 A. Yes, I do.

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9 Q. And what was the issue here? Do you

10 recall? 04:13:37

11 A. Yes. In particular, this is related to

12 Ubisoft. And what was occurring -- yeah. What was

13 occurring was hackers had identified that, if you

14 purchased an Ubisoft game via the Epic Games Store,

15 The Division 2 and Anno 17 -- or 1800, in this

04:14:04

16 particular case, if you refunded it via our

17 automated refund system, Ubisoft was not

18 recognizing the refund.

19 So you could create a bunch of Epic

20 accounts, purchase the Ubisoft games, refund them,

04:14:23

21 and then hackers were selling the accounts in the

22 gray market as containing those games because

23 Ubisoft was not -- not removing the games from the

24 user's account in a timely fashion.

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24 (Exhibit 0097 was marked for
25 identification by the court reporter and is 04:17:27

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HIGHLY CONFIDENTIAL

1 attached hereto.) 04:17:27

2 MR. SRINIVASAN: This will be
3 Exhibit 99 -- or 97.

4 THE DEPONENT: I'm sorry. Are you
5 skipping exhibits or -- 04:17:51

6 Q. (By Mr. Srinivasan) No. I think I
7 just -- I screwed up the number. Yes, it's 97.

8 A. Okay.

9 Yes. I remember this email.

10 Q. Yeah. Okay. 04:18:01

11 MR. SRINIVASAN: So just for the record,
12 Exhibit 97 is a, you know, single-page email chain.
13 The top email is from Tim Sweeney to Joe Kreiner
14 and Steve Allison dated May 11th, 2019. Subject
15 "Apology - Epic Games Store woes." 04:18:17

16 Q. (By Mr. Srinivasan) And so, Mr. Kreiner,
17 you've anticipated my question. You do recall this
18 email, correct?

19 A. Yes.

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Q. (By Mr. Srinivasan) Do you recall that

the rate of fraud was surpassing 70 percent and

approaching 90 percent, first of all?

04:19:36

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1 A. Specifically, I don't remember the
2 numbers. But this email states it; so I would
3 imagine that's correct.

04:19:40

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(Exhibit 0098 was marked for
identification by the court reporter and is 04:23:10
attached hereto.)
MR. SRINIVASAN: And Exhibit 98 is a
two-page email chain. The originating email is
from Hector Sanchez to various people, including
Mr. Kreiner. It was sent on September 9th, 2019, 04:23:42

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HIGHLY CONFIDENTIAL

1 with the subject line "Epic Key sales." 04:23:46

04:23:46

2 Q. (By Mr. Srinivasan) Mr. Kreiner, do you
3 remember this email chain?

4 A. Not really, but it was definitely sent to
5 me.

04:24:02

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