

HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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

vs.

Case No. 4:20-cv-05640

APPLE INC.

Defendant,
Counterclaimant.

IN RE APPLE IPHONE
ANTITRUST LITIGATION

Case No. 4:11-cv-06714

YGR

(caption cont'd)

Page 1

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.

6
7
8
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

15
16
17
18
19
20 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

25 PAGES 1 - 227

Page 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.

Page 14

1
2
3
4
5
6
7

8 EXAMINATION

9
10 Q. Good morning, Mr. Nikdel. Could you 09:10:25
11 state your full name for the record, please.
12 A. David Abbas Nikdel.

13
14
15
16
17
18
19
20
21
22
23
24
25

Page 15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

Page 164

HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

1 April 24, 2020; is that correct? 01:35:47

2 A. That is correct.

01:35:47

3 Q. Do you remember receiving this email at
4 the time?

5 A. Yes, I do.

01:35:56

6

7

8

9

10

1 / 1

—

10

19

Q. And what was the role that you had with

01:36:59

21 respect to Project Liberty?

22 A. I was brought in to assess technical
23 feasibility.

Q. And what do you mean by "technical feasibility"?

01:37:16

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

01:37:17

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 166

1
2
3
4
5
6
7
8
9
10

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

Page 167

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.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Page 169

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.

14

15

16

17

18

19

30

21

22

22

Page 172

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 182

1
2
3
4
5
6
7
8
9

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

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

13 A. The -- the 13.40 build did technically

14 contain the same code for supporting multiple

15 payment providers that was submitted to the 02:02:08

16 consoles, but we haven't hotfixed on more than one
17 payment provider on any other console other than

18 Apple and Google.

19
20
21
22
23
24
25

HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

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.

18

19

20

21

22

23

24

25

Page 191

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

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?
18
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

Page 193

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

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 194

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.

13
14
15
16
17
18
19
20
21
22
23
24
25

Page 208

HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

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.

8

9

10

11

12

13

14

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.

19

20

21

22

23

24

25

Page 209