

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE THOMAS S. HIXSON, MAGISTRATE JUDGE

IN RE APPLE IPHONE ANTITRUST )  
LITIGATION. )

**No. 11-cv-06714-YGR (TSH)**

\_\_\_\_\_  
DONALD R. CAMERON, et al., )  
Plaintiffs, )

VS. )

**No. 19-cv-03074-YGR (TSH)**

APPLE INC., )  
Defendant. )

\_\_\_\_\_  
EPIC GAMES, INC., )  
Plaintiff/  
Counter-defendant, )

VS. )

**No. 20-cv-05640-YGR (TSH)**

APPLE INC., )  
Defendant/  
Counterclaimant. )

San Francisco, California  
Wednesday, December 30, 2020

**TRANSCRIPT OF REMOTE ZOOM WEBINAR PROCEEDINGS**

(Appearances on next page)

Reported Remotely By: Ana Dub, CSR 7445, RMR RDR CRR CCRR CRG  
Official Reporter - U.S. District Court

1 **APPEARANCES:** (via Zoom Webinar)

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1 Wednesday - December 30, 2020

10:01 a.m.

2 P R O C E E D I N G S

3 ---o0o---

4 **THE CLERK:** So we're here in Civil Action 11-6714, In  
5 Re Apple iPhone Antitrust Litigation; and in Civil  
6 Action 19-3074, Cameron, et al. versus Apple Inc.; and Civil  
7 Action 20-5640, Epic Games Inc. versus Apple Inc.

8 Counsel, please state your appearances. The Honorable  
9 Thomas S. Hixson presiding. Let's start with the plaintiffs,  
10 starting with the first case and go on down, and then the  
11 defendants can chime in after.

12 **MS. BYRD:** Good morning, Your Honor. This is Rachele  
13 Byrd with Wolf Haldenstein on behalf of the consumer  
14 plaintiffs.

15 **THE COURT:** Good morning.

16 **MR. LOPEZ:** Good morning, Your Honor. This is  
17 Rob Lopez of Hagens Berman for the developer plaintiffs.

18 **THE COURT:** Good morning.

19 **MS. MOSKOWITZ:** Good morning, Your Honor. Lauren  
20 Moskowitz from Cravath Swaine & Moore on behalf of Epic Games.

21 **THE COURT:** Good morning.

22 **MR. SRINIVASAN:** Good morning, Your Honor. Jay  
23 Srinivasan from Gibson Dunn for Apple Inc.

24 **THE COURT:** Good morning.

25 And I see two other individuals. Are they just listening,

1 or do they plan to participate?

2 **THE CLERK:** They're listening, Judge.

3 **THE COURT:** Okay. Great. Then we can go ahead. We  
4 can just take the issues in order.

5 First, I have a question for Epic. Turning to the  
6 non-U.S. documents, the letter brief attached as Exhibit 1,  
7 Epic's first set of RFPs which had 70 RFPs, so I interpreted  
8 you to be moving as to the non-U.S. documents for the first set  
9 of RFPs, I guess all 70, Apple, in its portion of the letter  
10 brief, says that, in fact, there are 83 letter briefs, which  
11 would mean that there are -- sorry -- 83 RFPs. Not 83 letter  
12 briefs, 83 RFPs -- which would mean that there are 13 others at  
13 issue, but I don't have them in front of me.

14 So let me ask Epic to clarify which RFPs are at issue for  
15 the non-U.S. documents.

16 **MS. MOSKOWITZ:** Your Honor, we do have another set of  
17 RFPs, a set second that were not the subject of this motion,  
18 but I think Your Honor's ruling would likely impact those as  
19 well. But the general objection that Apple lodged to our first  
20 set of RFPs was broadly applicable and would extend beyond just  
21 those RFPs.

22 **THE COURT:** I see. Okay.

23 So let me just give you my tentative ruling, and then I'll  
24 allow Epic to respond to it.

25 As a legal matter, I've read the cases that Epic cites,

1 and you've persuaded me that foreign conduct can sometimes be  
2 relevant to a domestic antitrust lawsuit. It just depends on  
3 the legal theories at issue and the types of documents that are  
4 being sought.

5 You cited a case, the *Aspartame* case, that dealt with an  
6 international price-fixing conspiracy; and that's an example of  
7 where you would need to know what happened outside the  
8 United States to really understanding what is happening inside  
9 the United States.

10 So I get that general principle that sometimes foreign  
11 conduct can be relevant.

12 At the same time, I don't think it's true that there's a  
13 principle that foreign conduct is always or automatically  
14 relevant. I think it just depends on what the documents being  
15 requested are about and the legal theories in the case.

16 So what I got from Epic was a four-paragraph argument that  
17 established that, that foreign conduct can sometimes be  
18 relevant; and then the argument ended and you said: Look, over  
19 there is a big pile of RFPs.

20 So I went through the RFPs and I started reading them.  
21 And for some of them, I couldn't figure out why foreign conduct  
22 would be relevant. For example, RFP 59 asks about customer  
23 awareness or familiarity or lack of awareness with the fact  
24 that Apple does not permit a software store other than the iOS  
25 App Store and certain other practices, and I'm not sure I

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