

# Apple, Epic in heated US court clash over app market

May 3 2021, by Glenn Chapman



Epic CEO Tim Sweeney arrives at federal court in Oakland, California for a trial pitting the maker of the popular video game Fortnite against Apple in a case with big implications for the future of the online App Store

Fortnite maker Epic Games and Apple clashed in court Monday at the

opening of a blockbuster trial on the iPhone maker's App Store with big implications for the world of mobile tech, trading barbs over alleged monopolistic actions and what is best for consumers.

Epic attorney Katherine Forrest began the case, accusing Apple of turning its online marketplace into a monopoly "walled garden" that lures in developers and users and then squeezes money out of them.

Apple essentially planted a "flower in the walled garden (that) was turned into a Venus fly trap," the lawyer said during opening statements in California federal court, claiming the technology titan gets profits of as much as 78 percent from apps.

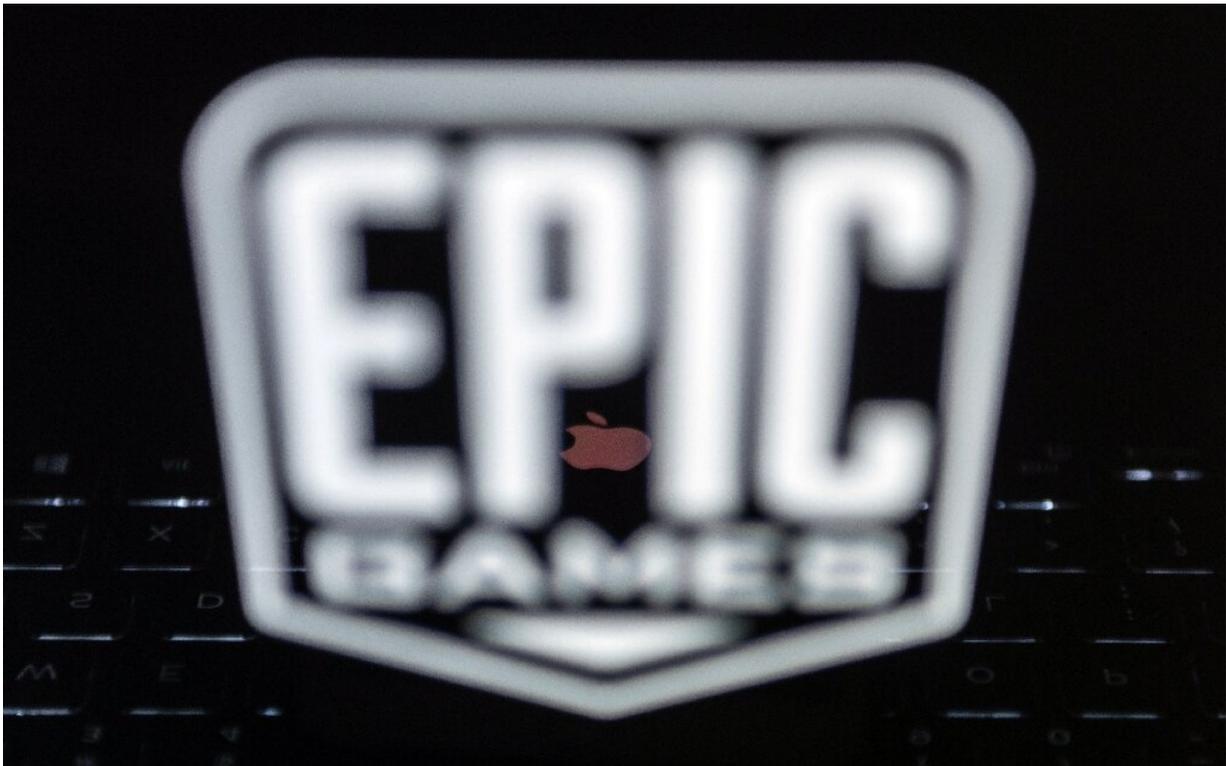
"The evidence will show unambiguously that Apple is a monopoly," she claimed.

Apple lawyer Karen Dunn fired back, telling the judge that Epic's suit is part of a "self-proclaimed war against mobile platform fees" that defies the law and the facts.

Apple is no more a monopoly than is a grocery market that sells a broad array of goods, competing with other shops, Dunn maintained, pointing out that people can play Epic games on platforms including consoles, personal computers and smartphones made by Apple rivals.

"Apple did not create a secure and integrated ecosystem to keep people out, it did that so it could invite developers in—without compromising the privacy, reliability and quality consumers wanted," Dunn said.

If Epic prevails, Dunn said, "The result for consumers and developers will be: Less security. Less privacy. Less reliability. Lower quality. Less choice. All of the things the antitrust laws seek to protect."



Fortnite maker Epic Games takes on Apple aiming to break the grip of the iPhone maker on its online marketplace

### **Access to iPhone base**

Epic, maker of the popular "battle royal" game Fortnite, is aiming to break the iPhone maker's grip on its App Store.

Epic's chief executive Tim Sweeney, the first witness, said Apple's actions forced his company to either accept unfavorable terms or lose the massive base of iPhone users.

"As Fortnite scales beyond gaming... it is essential to include the more

than one billion iPhone users," Sweeney said in his testimony.

Asked why he waited until now to file suit, he said, "It took me a very long time to come to the realization of all the negative impacts of Apple policies."

The trial resuming on Tuesday before District Court Judge Yvonne Gonzalez Rogers comes with Apple feeling pressure from a wide range of app makers over its control of the App Store, which critics say represents monopolistic behavior.

The two firms are debating whether Apple has the right to set ground rules, control payment systems and kick out apps from its marketplace that fail to comply. Also at stake is Apple's slice of revenue from iPhone apps of as much as 30 percent.

Sweeney testified that Epic provoked a public confrontation with Apple by hiding a "Hot Fix" in a Fortnite app to bypass the iPhone maker's payment system in violation of a contract.

"I wanted the world to see that Apple exercises total control over availability of all software on iOS," Sweeney said.



Apple, whose CEO Tim Cook is seen in 2019, argues that its commission for its App Store is fair compensation for providing a secure storefront, as critics say the marketplace is "monopolistic"

### **Business model at risk**

A key element of Apple's business model is at stake in the case, said Tejas Narechania, a University of California law professor.

"It's going to tell us a lot about how we structure industries and the technology industry going forward," he said.

"Which is how tightly can companies like Apple and Amazon and Google, how tightly can they vertically integrate their products?"

Analyst Dan Ives at Wedbush Securities called the case a "Game of Thrones court battle," with Epic looking to bypass the app platforms of both Apple and Google "while trying to gain support from other developers/app makers in a 'groundswell movement'" against Apple.

But Ives said Apple has a strong defense.

"Apple has successfully defended its App Store moat again and again, with this time being no different in our opinion," Ives said in a research note.

Epic, which is seeking to return to the App Store without being forced to use Apple's payment scheme, is not alone in its criticism.



Fortnite was kicked of the App Store after its maker Epic Games released an update that dodges revenue sharing with iPhone maker Apple

The European Union has formally accused Apple of unfairly squeezing out music streaming rivals based on a complaint brought by Sweden-based Spotify and others, which claim the California group sets rules that favor its own Apple Music.

A recently formed Coalition for App Fairness, which includes both Spotify and Epic, have called for Apple to open up its marketplace, claiming its commission is a "tax" on rivals.

Apple booted Fortnite from its online mobile marketplace last year after Epic dodged revenue sharing with the iPhone maker.

Apple does not allow users of its popular devices to download apps from anywhere but its App Store, and developers have to use Apple's payment system, which takes its cut.

Due to the legal row, Fortnite fans using iPhones or other Apple devices no longer have access to the latest game updates.

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