

1 **APPEARANCES CONT:**

2 **For Plaintiff**
3 **State of Colorado:**

STEVEN KAUFMANN
 JONATHAN SALLET
 Colorado Department of Law
 CPS/Antitrust Section
 1300 Broadway, 7th Floor
 Denver, CO 80203

6 **For Plaintiff**
7 **State of Nebraska:**

JOSEPH CONRAD
 OAG-Nebraska
 Consumer Protection Division
 2115 State Capitol Building
 Lincoln, NE 68509

9 **For Defendant Google:**

GRAHAM SAFTY
 JOHN SCHMIDTLEIN
 EDWARD BENNETT
 Williams & Connolly, LLP
 680 Maine Avenue, SW
 Washington, DC 20024

23 **Court Reporter:**

JEFF HOOK
 Official Court Reporter
 U.S. District & Bankruptcy Courts
 333 Constitution Avenue, NW
 Washington, DC 20001

24
25

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

I N D E X

WITNESS

PAGE

GABRIEL WEINBERG

Continued Direct Examination by Mr. Hoffman	2027
Direct Examination by Mr. Conrad	2051
Cross-Examination by Mr. Safty	2056

E X H I B I T S

EXHIBIT

PAGE

Exhibit UPX666	.....Admitted into evidence.....	2029
Exhibit UPX1012	.....Admitted into evidence.....	2036
Exhibit UPX667	.....Admitted into evidence.....	2043
Exhibit UPX1112	.....Admitted into evidence.....	2107
Exhibit DX624	.....Admitted into evidence.....	2076
Exhibit DX621	.....Admitted into evidence.....	2077
Exhibit DX629	.....Admitted into evidence.....	2080
Exhibit DX633	.....Admitted into evidence.....	2085
Exhibit *	.....Admitted into evidence.....	2110

**Document with Bates label DuckDuckGo-00335255*

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

SEALED PROCEEDINGS

THE COURT: Before we proceed -- and I hate to do this, I should have asked earlier, Mr. Weinberg, I'm going to actually ask you to step outside the courtroom, because I want to have a discussion with counsel about one of these exhibits. Counsel for Mr. Weinberg can remain in the courtroom if they'd like.

(Witness not present)

THE COURT: So let's just talk quickly about the parties' positions with respect to UPX666. The government has indicated it wishes to -- plaintiffs wish to introduce some of the evidence that's in -- I think in some of the various paragraphs that are on the first two pages.

MR. HOFFMAN: Correct, Your Honor.

THE COURT: Let me just give you my thoughts, and then if you all want to be heard further, I'm happy to hear from you. The first is that I've looked at the document, and first of all, not the entirety of the contents of each of these paragraphs is hearsay. There's certainly plenty of statements in here, such as what the next steps are and the like, that wouldn't present a hearsay issue. There are, however, statements from representatives of Apple who were at the meeting in which they are expressing views about the proposed integration, and asking for additional information and the like.

The next observation is there's actually case law in this

1 circuit that sort of the asking of a question is not -- asking
2 of the question is not hearsay, because it's not asserting a
3 fact, and it depends on what way the question's formed. But
4 anyway, there's that.

5 But the third issue, it seems to me, is there is clear
6 circuit case law on the issue -- or I shouldn't say clear, but
7 there are some principles set forth by the circuit -- and maybe
8 you all have found these over lunch as well. But the most
9 recent case we found from the circuit is United States vs.
10 Gurr, 471 F.3d 144, 152, and it's citing an older circuit
11 indication called United States vs. Baker, 693 F.2d 183. And
12 the basic principles of these: "Double hearsay exists when a
13 business record is prepared by one employee from information
14 supplied by another employee. It is excepted from the hearsay
15 rule provided both the source and the recorder of the
16 information, as well as every other participant in the chain
17 producing the record, are acting in the regular course of
18 business. Because the regularity of making the record is
19 evidence of its accuracy, statements by outsiders" -- quote
20 unquote, "outsiders are not admissible for their truth under
21 federal rule of evidence 803(6) in the absence of a showing
22 that the outsider had a duty to report the information, or that
23 it was standard practice for the preparer to verify information
24 from outside sources." So that's the general rule when it
25 comes to sort of hearsay within hearsay as to business records.

1 And so what I would say to the parties is this: I don't
2 need to make an admissibility determination today, but it is --
3 let me put it this way: It is the plaintiffs' burden to
4 establish the requisite facts to satisfy the exception. I will
5 note that among other things that would be helpful in
6 understanding whether the exception is met is sort of how this
7 was prepared. I did note in the record, for example, that
8 there are creation times that are relative to the date of the
9 meeting. It does look like there's more than one participant
10 who may have actually contributed to the ultimate product
11 itself. That would be helpful to know. Presumably this
12 defendant -- excuse me, this witness was present for the
13 meeting. In theory, he could at least look at the document and
14 verify or say he can't remember whether the statements are
15 accurately recorded. I think those kind of facts would be
16 relevant to the ultimate determination, so I'll leave it to you
17 whether that foundation is something you want lay. I don't
18 know, ultimately maybe you'll bring in one of these witnesses
19 in to testify, which I think reduces the problem.

20 I will say this, I'll just make one last observation,
21 which is that I think the hearsay within hearsay problem is at
22 its sort of apex when the non -- the outside reporter is
23 actually reporting something that is an observable fact, and
24 questions about the observability of the fact that's being
25 conveyed are in doubt. You know, the light was red; I mean,

1 that person is reporting to someone that the light was red.
2 Well, you don't really know whether the person was able to see
3 it, what the circumstances were, et cetera.

4 This is sort of not like that. You know, this is an Apple
5 employee expressing sentiments, if you will, about where things
6 are in discussions. I think arguably it is being offered for
7 the truth. But I'd just make that last observation as a way
8 of, I think, putting all of this in some framework to think
9 about what the ultimate resolution should be, okay?

10 **MR. HOFFMAN:** Okay.

11 **MR. SCHMIDTLEIN:** Thank you, Your Honor.

12 **THE COURT:** Anything anybody else would like to add on
13 that topic?

14 **MR. SCHMIDTLEIN:** Obviously this is going to be a
15 recurring issue as we get to various third parties and sort of
16 their documents. We've got people at this meeting who are not
17 going to be testifying, were not deposed in the case. And so
18 we appreciate the Court's guidance as we're all trying to
19 navigate --

20 **THE COURT:** And you all are at a advantage over me in the
21 sense that I don't know who's coming later on, and so maybe
22 there will be witnesses who are called that can provide further
23 foundation. I appreciate you flagging this as an issue that
24 could come up -- is likely to come up again. I guess what my
25 observations have been are sort of prospective observations of

1 similar documents. I do think for records like this, the
2 laying of a foundation beyond just what's in the business
3 records certification would be important to meet and satisfy
4 the rule. This may apply to both parties, so I think you all
5 should just be left on notice. And at the end of the day --
6 either quite literally the end of the day or at some point in
7 the future, depending upon what foundation's been laid, the
8 opposing party can either continue to note their objection, in
9 which case we can resolve it down the road if it's an important
10 enough document; or if it's something significant, I can
11 resolve it with maybe some brief submissions from the parties,
12 if necessary, or just rule if needed, okay?

13 **MR. HOFFMAN:** Okay. I guess if I may add one thing, Your
14 Honor. It's important for the context of this set of
15 negotiations with Apple to understand what DuckDuckGo and
16 Mr. Weinberg proposed next. And so we don't feel like we're
17 offering it for the truth of the matter, but to show the effect
18 on a listener and what he offered next.

19 **THE COURT:** Fair enough. I mean, I've thought about that
20 as well, and certainly I think that's fair. I mean, you could
21 sort of call it what they did next, what it is for context.
22 All I'm saying is if you want to establish it for the truth --
23 again, I don't know who you've got coming down the road who can
24 testify about what Apple thought of all of this -- you know,
25 and this may all sort of become moot. But if, at the end of

1 the day, you're going to rely heavily on sort of hearsay within
2 hearsay business records, I'm just putting you on notice you
3 better have the requisite facts to convince me that it meets
4 the exception.

5 **MR. HOFFMAN:** Okay, we're not offering it for the truth of
6 the matter.

7 **THE COURT:** Okay. I mean, if that's not what you're using
8 it for, then I think that takes care of it.

9 **MR. SCHMIDTLEIN:** That resolves the issue. Thank you.

10 **THE COURT:** Okay.

11 **MR. HOFFMAN:** Can we call the witness back in, Your Honor?

12 **THE COURT:** He's being brought in right now.

13 **MR. HOFFMAN:** Oh, thank you.

14 (Witness present)

15 **THE COURT:** Mr. Weinberg, thank you for your patience, and
16 we are ready to continue.

17 **CONTINUED DIRECT EXAMINATION OF GABRIEL WEINBERG**

18 **BY MR. HOFFMAN:**

19 **Q.** So Mr. Weinberg, when we last left off, we were
20 talking about meeting notes from a September 2018, the meeting
21 you had with -- you and others from DuckDuckGo had with Apple
22 at Apple's headquarters. Do you remember that conversation?

23 **A.** Yes.

24 **Q.** Did this September 2018 meeting -- I should say, after
25 this September 2018 meeting, did you have any notable

1 one-on-one conversations with anyone at Apple regarding the
2 role that DuckDuckGo could play in Safari's private browsing
3 mode?

4 **THE COURT:** Sorry to interrupt, are we moving past the
5 exhibit we were on before lunch?

6 **MR. HOFFMAN:** I think we are, Your Honor.

7 **THE COURT:** And has it been -- I can't remember whether
8 it's in evidence, subject to the objections or not.

9 **MR. SAFTY:** Your Honor, the government has I believe
10 stipulated that they're not introducing it -- this is
11 Exhibit 666, for the purpose of the truth of the matter as to
12 what anyone from Apple said to Mr. Weinberg or anyone else from
13 DuckDuckGo.

14 **THE COURT:** Again, I wasn't sure whether this was
15 stipulated to be admitted, subject to the objection. But if
16 the objection --

17 **MR. SAFTY:** I believe there is a business records
18 declaration as to this record, subject to that objection.

19 **THE COURT:** Right, okay. So --

20 **MR. HOFFMAN:** I'm sorry, Your Honor, if we could -- you
21 offered us the chance to lay the foundation and offer it for
22 the truth of the matter at a later date. If we could do that,
23 that's what we would prefer. My apologies. Okay, I apologize.

24 **THE COURT:** So, in any event, we will admit Exhibit UPX666
25 based upon the business certification. Insofar as it reflects

1 the hearsay within hearsay issue, I'll allow you to lay the
2 foundation, and then we can discuss its admissibility and
3 whether it meets the exceptions.

4 **MR. HOFFMAN:** Sure, okay. I very much appreciate that,
5 Your Honor.

6 (Exhibit UPX666 admitted into evidence)

7 **BY MR. HOFFMAN:**

8 **Q.** So I'll ask Mr. Barkey to call UPX666 on the screen,
9 and highlight the very top of this document where it says
10 creation time and completed.

11 I'll ask Mr. Weinberg: Do you see on this document where
12 it says creation time?

13 **A.** Yes.

14 **Q.** And can you tell the Court what that reflects?

15 **A.** That reflects when somebody would have created this
16 task or post within Asana, our project management system I
17 mentioned earlier.

18 **Q.** And the creation time is 9/20/2018?

19 **A.** That is correct.

20 **Q.** Okay. And when was the date of this actual meeting?

21 **A.** I remember it taking place in September 2018, so it
22 was probably on that date or very shortly after.

23 **Q.** And --

24 **A.** It's typical for somebody to write down the meeting
25 notes pretty much immediately.

1 Q. And who would have created this task in Asana?

2 A. The person who was probably closest to taking down the
3 notes from the meeting usually is somebody from our
4 partnerships team. In this case, it looks like it was Diana
5 which is someone who works for Prakash. She was -- it was
6 Prakash, and then she took over kind of managing the Opera
7 relationship day-to-day at some point in this time period.

8 Q. Did you have a role in creating this document?

9 A. Only if I commented on it. I wouldn't have created --
10 been the initial drafter of it. And I see there's like a list
11 of comments here. So I don't remember commenting on it, but it
12 would be in this list. Oh, yeah, I wrote at the end: "Nothing
13 to add," so there you go.

14 Q. Did that mean you would have reviewed the document?

15 A. Yeah, it's typical for someone to write up their notes
16 and then ask all the other attendees to see if it meshed with
17 what they thought occurred, and offer any notes or suggestions.
18 Yeah, I believe that's what happened.

19 Q. And if something had been incorrect in this document,
20 would you have noted that?

21 A. Yeah, I'm particularly pedantic, so yes.

22 **THE COURT:** You're particularly, I'm sorry, what's that?

23 **THE WITNESS:** Pedantic.

24 **BY MR. HOFFMAN:**

25 Q. And was there anything in this document that you found

1 to be incorrect when you reviewed it?

2 A. I don't think so, according to these comments. I
3 didn't remember any, and my comment is: "Nothing to add."

4 Q. Would you have reviewed the content within this Asana
5 write up about concerns about a Google contract?

6 A. Yes. Are you referring to the -- it's kind of two
7 different places. Are you saying have I reviewed it, yeah,
8 I've just reviewed it.

9 Q. And the question is when you wrote that you had
10 nothing to add, would you have reviewed these two --

11 A. Oh, yes, absolutely. I mean, that was our main
12 takeaway from the meeting.

13 Q. What was the main takeaway from the meeting?

14 A. That there was -- the primary obstacle in this, our
15 primary thing we were asking for, was related to Apple's
16 contract with Google about search integrations.

17 Q. All right, thank you. Moving on from this
18 September 2018 meeting. Did that meeting lead to any notable
19 one-on-one conversations from anyone at Apple regarding the
20 role that DuckDuckGo could play in Safari's private browsing
21 mode?

22 A. Yeah, right, so as I mentioned, that was kind of our
23 main takeaway, so we got into a mode of thinking of how could
24 we influence the decision or move it forward if they're
25 thinking about it. Our main executive contact was Brian Croll,

1 so he was our go-to person to talk to about that kind of thing.
2 He's also the person who facilitated the Craig meeting. So if
3 there was another meeting we could get with another executive,
4 he would be the person. So sometime after, I set up a call
5 with him to ask him what was going on and could we do anything
6 basically.

7 Q. Okay. And do you recall the substance of this phone
8 call with Mr. Croll?

9 A. Yeah, I mean, so I asked about it pretty directly. He
10 said -- my takeaway was that it was going to happen, so like
11 all this was somewhat irrelevant, all of our frustration.
12 There was an indication --

13 Q. I'm sorry, but when you said it's going to happen,
14 what did you mean by that?

15 A. Our private browsing integration with private search.

16 Q. Okay.

17 A. There was an indication that it was on the road map,
18 so to speak, that it's a planned event for the next cycle.

19 Q. And this phone call, did you say it took place in
20 November of 2018?

21 A. I didn't say, but that's when it took place, yes.

22 Q. So this November 2018 conversation, did it affect your
23 expectations regarding whether DuckDuckGo would play a role in
24 Safari's private browsing mode?

25 A. Yeah, I mean, it kind of moved from is this going to

1 happen to we thought this was going to happen, and that's -- we
2 kind of got even more excited after that. But it was -- this
3 was the peak of excitement to date.

4 Q. After this November 2018 phone call with Mr. Croll,
5 did anyone from Apple visit DuckDuckGo's headquarters to
6 further discuss DuckDuckGo and Safari's private browsing mode?

7 A. Yeah, the next thing that happened -- so that was in
8 November, then the holidays happened. Then Rhonda Stratton,
9 who was our partner manager we talked about before, came to our
10 office in Paoli. The agenda was about our contracts in
11 general. So you recall I talked about how our first search
12 contact was in 2014, so it was a five-year contract and so it
13 was up for renewal in 2019. So we were going to talk about
14 that renewal.

15 Also, in the September meeting -- I had mentioned that we
16 talked about other privacy technology, so some of that privacy
17 technology they actually wanted to integrate into Safari, or
18 think about it at least. So they wanted an evaluation
19 agreement where they could do that legally from their
20 perspective. So that was the kind of agenda. She came, and
21 that's what we talked about. We were -- our original contract
22 was a [REDACTED]

23 Q. And can you explain further what that means?

24 A. Yeah, so when searches are done in Safari through the
25 default option selection -- not the default, but the list of

1 things that you can choose, and then revenue's generated from
2 that on DuckDuckGo, we give them [REDACTED] percent of it -- [REDACTED]
3 [REDACTED] and then we keep [REDACTED] percent.

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 Q. And after Ms. Stratton's visit to Philadelphia in
19 January 2019, did she send you anything to move this issue
20 forward?

21 A. Yeah, so we left that meeting with her having the
22 action item to send us an amendment to our contract as well as
23 send us this evaluation agreement. [REDACTED]

24 [REDACTED]
25 [REDACTED]

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

[REDACTED]

Q. When you say it listed the default right there, what do you mean?

A. I mean they sent us a version of a search contract that specifically said if we're the default, then the revenue share would be [REDACTED]

Q. When you said if we are the default, when you say we, you refer to whom?

A. DuckDuckGo.

Q. And why was DuckDuckGo prepared to [REDACTED] [REDACTED] if they were to become the default in Safari?

A. Well, we were already paying it up to that point, but [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] But if we were the default in private browsing mode, our market share, by our calculations at the time, would increase multiple times over. We would be getting exposure for our brand every time someone opened up private browsing mode. So that's -- you know, most Americans over time would start to be aware of kind of who we are, and so for those reasons, it seemed worth it.

1 Q. Okay. And now I'll ask you to turn UPX1012 in your
2 binder, and I'll also ask Mr. Barkey to display it on the
3 screen so you can look at it there. And I'll ask you if you
4 recognize this e-mail, even though I know that your name is not
5 on it?

6 A. Yeah, this is when Rhonda was sending over this
7 contract.

8 Q. And how is it that you recognize this document, this
9 e-mail, even though your name is not on it?

10 A. Prakash -- or just generally, since we don't use a lot
11 of e-mail, we'll copy and paste e-mails and their attachments
12 into Asana.

13 Q. So you would have seen this document in Asana; is that
14 correct?

15 A. Yeah, we had very lengthy discussions over this
16 contract amendment in Asana that I was part of.

17 **MR. HOFFMAN:** Your Honor, we have DuckDuckGo's 902(11)
18 declaration for this document, but Google has raised foundation
19 and hearsay objections.

20 **MR. SAFTY:** No objection, Your Honor.

21 **THE COURT:** So UPX1012 will be admitted.

22 (Exhibit UPX1012 admitted into evidence)

23 **BY MR. HOFFMAN:**

24 Q. Okay, thank you, Your Honor. Mr. Weinberg, was there
25 an attachment to this e-mail?

1 A. Yes.

2 Q. And I'll ask Mr. Barkey to display page five of this
3 exhibit, which is page four of the draft amendment, ending in
4 949.

5 Do you see paragraphs 7 and 8.1?

6 A. Yes, I do.

7 Q. Can you explain to the Court what paragraphs 7 and 8.1
8 are?

9 A. Yes. This is the contract language specifically that
10 I was referring to earlier. This is an amendment to our
11 agreement. So you have the original agreement, and then the
12 amendment is changing the original agreement. So this is
13 saying the original revenue share terms would be replaced by
14 these terms. And the terms are as I described, that if it
15 becomes the default search engine, then we'll receive
16 [REDACTED] but otherwise, at the beginning of
17 the paragraph it says it would be [REDACTED]

18 Q. And when you say if "it" becomes the default search
19 engine, what does "it" refer to?

20 A. If DuckDuckGo becomes the default search engine.

21 Q. And the default search engine where?

22 A. The contract doesn't specify, but our understanding
23 was the only place they would be making us the default would be
24 in private browsing mode.

25 Q. In?

1 A. In Safari.

2 Q. Thank you. Now, was this language language that
3 DuckDuckGo sent to Apple or that Apple sent to DuckDuckGo?

4 A. No, this is Apple sending us this.

5 Q. Okay, thank you. You can put that document aside.
6 After this March 5th e-mail you received from Ms. Stratton, did
7 you -- do you recall any significant phone calls you had with
8 anyone at Apple, again, regarding this issue?

9 A. Yeah, so later that month, we rechecked in with Brian
10 Croll to kind of get a sense of what was going on while we were
11 negotiating this contract, make sure everything was still going
12 to happen. And our takeaway from that meeting -- you recall it
13 was both Prakash and I on that call, was that they had found a
14 design. So as part of this going on, as I mentioned earlier,
15 there were questions about the design and then they go off and
16 they determine the design. Usually that's at the beginning of
17 the year, because they're leading up to their big announcement
18 and showcasing everything they're going to do in June.

19 So Brian Croll indicated that a design -- they've come to
20 a conclusion that a design could work. And in particular, we
21 took away that the design that they would use would be a list
22 of search engines. And our takeaway was this is a way to get
23 around being called an explicit default. And he said that
24 Apple would validate the list to only be private search
25 engines, and that they had particularly wanted our help to

1 define the requirements for who could make that list. And it
2 would be okay if we were the only ones on that list for some
3 period of time, which we subsequently did. We essentially
4 defined the requirement to not being able to tie searches back
5 to any individual as a definition for what a private search
6 engine would be to be on a list like that. And we actually
7 made a requirements doc, and we came back to Apple the
8 following month and walked through it with them.

9 Q. And at the end of this phone call with Mr. Croll, did
10 you have an expectation of whether DuckDuckGo would play a role
11 in Safari's private mode?

12 A. Yeah, our expectation was, I would say, even more
13 solidified, because this design had been a question floating
14 around. So he was putting forth from Apple a design that had
15 been discussed and had seemed to -- they approved.

16 Q. And also at the end of this e-mail, did you have the
17 impression that Apple still had concerns about implementing
18 DuckDuckGo as part of Safari's private browsing mode?

19 A. Just to correct that, it was a phone call. But
20 they -- I mean, there was talk around concern around their
21 Google contract again. But the thought was that this design
22 would be okay with all parties involved.

23 Q. And so we're clear, the design being discussed in this
24 phone call was what?

25 A. The design was -- so we never saw the exact design

1 that they were contemplating, but what was described was a
2 list. So it may be similar to what we had proposed in the
3 meeting from September -- from the previous year where you
4 click activate. But instead of going to a toggle, it would go
5 to another setting for private browsing search engines. So
6 you'd say you want to activate private search, you can choose
7 one of these private search engines.

8 It wasn't clear to me yet -- and this was some of our back
9 and forth with them about the contract, whether they intended
10 to just make that the default right away without anyone having
11 to click activate -- to your question earlier, or whether there
12 was going to be some other interaction, that was unclear to me.
13 But what was made clear was there was going to be a list, and
14 they wanted our help defining who should go on that list.

15 Q. Now I'll ask Mr. Barkey to put Exhibit UPX667 on the
16 screen. And you can look at the screen or you can look at your
17 binder. I'll ask you if you recognize this document?

18 A. Yes, these are similar to the other one you asked me
19 about. These are notes that were written up from the phone
20 call that Prakash and I had with Brian Croll.

21 Q. And who would have written up these notes?

22 A. Prakash. I mean, as is typical in a meeting -- which
23 is probably the reason he wanted to join, which was to make
24 sure we captured everything that was said.

25 Q. Okay. And do you see the creation time on this

1 document?

2 A. Yes, March 15th, 2019.

3 Q. And is that the same date that this phone call took
4 place?

5 A. Well, the first line says yesterday, so it probably is
6 the day after.

7 Q. Okay. Did you have a chance to -- is this another
8 Asana document?

9 A. Yes.

10 Q. And did you have a chance to review this Asana
11 document?

12 A. Yes.

13 Q. And did you make any comments to this Asana document?

14 A. Yes.

15 Q. And what did you comment?

16 A. I first commented that -- I'm not sure I understand
17 what my first comment says. It says I think the framing is
18 slightly off, and then I go on to say something that I don't
19 understand. Then later I go on to say that -- I'm clarifying
20 that something Prakash wrote doesn't make sense. I said: "I
21 don't remember him mentioning that. He mentioned contractual
22 issues, but that's a different thing, not necessarily revenue
23 related." We go back and forth as to what we like took away
24 from this meeting.

25 Q. Okay. And your recollection is that there was

1 discussion of contractual issues?

2 A. Yes. As I was mentioning, he put forth this design,
3 and had referenced that the design got around contractual
4 issues.

5 Q. When you say contractual issues, what was your
6 understanding of those contractual issues?

7 A. In my understanding, that had to do with their Google
8 contract and being the default and not the default, because now
9 it's a list and so there was a choice. Ultimately, you could
10 choose to be -- to have a different search engine.

11 Q. And did that reference to contractual issues make it
12 into the summary of the phone call that Prakash prepared? I'll
13 refer you to the first partial paragraph on the second page.

14 A. Yes, I see that now, and the answer is yes. It says:
15 "Brian also touched upon their contractual issues."

16 Q. And did you ultimately have to approve this post?

17 A. I mean, not -- people post things without my approval,
18 and that's fine. But oftentimes Prakash would check, and we
19 would come to an agreement before posting something.

20 Q. Okay. And did you approve the content of this post as
21 an accurate summary of the meeting?

22 A. Yes.

23 **MR. HOFFMAN:** Your Honor, again, this Exhibit UPX0667 is
24 one where we have DuckDuckGo's 902(11) declaration, but I
25 understand that Apple -- or excuse me, Google has an objection.

1 **THE COURT:** Okay.

2 **MR. SAFTY:** Your Honor, I think it's the same objection as
3 to UPX666 that we discussed right after lunch, which is to the
4 extent they're trying to introduce statements that Apple made
5 for the truth of the matter, it's embedded hearsay.

6 **THE COURT:** So I'll admit 667 to the extent it doesn't
7 implicate the objection, and then we can reserve on the rest of
8 it.

9 (Exhibit UPX667 admitted into evidence)

10 **BY MR. HOFFMAN:**

11 **Q.** Okay, thank you, Your Honor. That was a March 15th,
12 2019 phone call we were just discussing; is that correct?

13 **A.** Yeah, I mean, I think it might have been on the 14th,
14 if this thing was written -- no, on the 16th if this was on the
15 17th -- no, on the 14th, because this was created on the 15th,
16 right around there.

17 **Q.** Okay. For the record, March 14th phone call.
18 Thinking back on this negotiation process with Apple, in total,
19 how many meetings and phone calls did DuckDuckGo have with
20 Apple executives to discuss some form of relationship between
21 DuckDuckGo's search engine and Safari's private browsing mode?

22 **A.** A lot. I mean, I would say on the order of 20.

23 **Q.** Okay. And over the course of those 20 meetings, was
24 there any consistent concern that Apple raised about moving
25 forward with this project?

1 **A.** Yeah, the thread was definitely the contract with
2 Google, which was often the elephant in the room of these
3 meetings.

4 **Q.** Okay. And despite that concern, over the course of
5 these 20 meetings and phone calls, did you believe that
6 DuckDuckGo would play a role ultimately in Safari's private
7 browsing mode?

8 **A.** Yeah, at this point -- I mean, when we were talking
9 about it, I thought they would launch it.

10 **Q.** And along those lines, had Apple integrated any of the
11 other privacy tools that DuckDuckGo had developed into their
12 Safari browser?

13 **A.** Yeah, they've integrated our tracker blocking, and
14 we're publicly attributed in the product to it. They've
15 integrated our encryption technology. Similarly, they've used
16 our app tracking technology for their app privacy labels. So
17 multiple times we've gotten integrations all the way through
18 the finish line. Really, almost everything we've pitched
19 except for search.

20 **Q.** Okay. And with that understanding, was there a
21 particular time or event that you thought DuckDuckGo's new
22 status in private browsing mode might be announced?

23 **A.** Yeah, so they typically announce things at their --
24 they call it their Worldwide Developer Conference, which is --
25 people refer to as Dub-Dub DC, WWDC, which takes place in June.

1 And then they --

2 Q. I'm sorry, but June of what month -- or June of what
3 year?

4 A. This would have been in June of 2019. It happens
5 every June. And then they come out with the beta software at
6 that point, too -- or right around then, which you can then
7 preview, developers can use. So you usually get to see what
8 they're going to release. And then sometimes they don't
9 release everything then because they still do versions. And
10 then the final version comes out in September, right after the
11 iPhone event. People get the iPhone, they get the new
12 operating system with it.

13 Q. Okay. And so with your expectation that DuckDuckGo's
14 status in private browsing mode with Safari would be announced
15 at Dub-Dub DC June 2019, were you able to attend or watch that
16 meeting?

17 A. I did watch it, and yes, that was our expectation that
18 something would be announced. But nothing -- we were
19 disappointed that nothing was announced, but not totally
20 surprised. I mean, we've had other times on some of those
21 other integrations you mentioned that weren't announced. They
22 don't announce everything, first of all, all the time because
23 they have so many different changes. And sometimes they're
24 still working on it where it will come out in September.

25 Q. And was there a point after the June 2019 Dub-Dub DC

1 that you realized that discussions between DuckDuckGo and Apple
2 regarding private browsing mode had come to an end?

3 **A.** Yeah, I mean, it was a bit of a slower downhill. So
4 there was the Dub-Dub DC we didn't get mentioned. Then we had
5 a meeting with them in July of that year to -- I had mentioned
6 we came to them to talk about the requirements. They had some
7 more questions about how to frame those requirements to users,
8 and so we prepared some more materials for that to come back in
9 July to talk to them. Right before the meeting, we got this
10 e-mail that said they're not prepared to talk about anything
11 about private browsing, which had never happened before. So I
12 took that as a -- at least a weird sign. I mean, it could have
13 been some other legal reason, I didn't know. So I did the
14 presentation anyway -- this was back to the awkward silence
15 thing, just didn't really get much response.

16 And then September came and nothing was announced or
17 released, so then I figured it wasn't going to happen, at least
18 that year. It was possible it could still be the next year.
19 So we came back again in that October, and I had a lunch with
20 Brian Croll -- this was in-person, and my takeaway from that
21 meeting was that it was dead.

22 **Q.** And that was what year and what month?

23 **A.** October of 2019.

24 **Q.** What level of company resources did DuckDuckGo devote
25 to the Safari private browsing mode negotiations and project?

1 **A.** A lot. I mean, it was part of a larger effort to do
2 private browsing modes across major browsers in general. And
3 so we had a -- we were probably pitching this over a five-year
4 time period. There were three years where it was -- or maybe
5 two and a half years where it was really I would call in high
6 gear, including we had a company objective which we -- which is
7 our term for like one of the primary things we were working on
8 in the company. And so that involved all this research we're
9 talking about, making all these presentations, all the travel
10 involved, generally many meetings with each partner. I was
11 involved in most all of it in some capacity, so a pretty high
12 effort I would say.

13 **Q.** And can you estimate the effect that becoming the
14 default search engine in Safari's private browsing mode would
15 have had on the number of searches run through DuckDuckGo?

16 **A.** Yeah, as I mentioned earlier, I think it would have
17 been multiple times our market share at the time. A bit
18 depends on exactly how they designed it, you know, whether it
19 ended up being an opt-in or just the exact default. But either
20 way, probably multiple times our market share at the time.

21 **Q.** And would additional searches have allowed DuckDuckGo
22 to better compete with Google in the search market?

23 **A.** Yeah, I mean, so as I mentioned to the question on
24 experimentation, we lack the scale to do as much
25 experimentation as we want, especially for all these different

1 search modules which are only a small portion of the query
2 space, is what we would call it. So more searches always
3 yields better relevancy over time.

4 Additionally, though, I would say like there are some kind
5 of critical mass points that as a company we would have to
6 increase leverage with other companies. And if we had
7 gotten -- certainly in Safari private browsing, I think it
8 would have helped our leverage with other partners.

9 Q. In addition to proposing to Apple that DuckDuckGo
10 become the default option in Safari's private browsing mode,
11 did DuckDuckGo make similar proposals to other browsers?

12 A. Yes.

13 Q. And specifically, did DuckDuckGo propose being the
14 default in Samsung's browser's privacy mode?

15 A. Yes.

16 Q. And did DuckDuckGo propose being the default in
17 Mozilla's Firefox browser's privacy mode?

18 A. Yes.

19 Q. And did DuckDuckGo propose being the default in the
20 Opera browser's private mode?

21 A. Yes.

22 Q. And was DuckDuckGo able to reach a privacy mode deal
23 with Samsung, Mozilla or Opera?

24 A. No.

25 Q. Was there any common concern that Samsung, Mozilla and

1 Opera each raised about involving DuckDuckGo in their
2 individual browser's privacy modes?

3 **MR. SAFTY:** Objection, Your Honor. I think that question
4 is intended to elicit hearsay.

5 **THE COURT:** I don't think it does. He's asking him
6 generally what a common concern was, so I don't think that's a
7 hearsay -- at least it's not eliciting a hearsay response.
8 It's overruled, go ahead.

9 **THE WITNESS:** Yeah, as I mentioned earlier, we had like a
10 company objective for this at this point in time, which means
11 we would do assessments every so many months as to like how is
12 it going, here's the rundown of what happened, here's our
13 general takeaway. So we did that for private browsing in all
14 these different partners you mentioned, and we concluded that
15 the common theme was the Google contract that each one of these
16 companies had. That's ultimately why we stopped the objective
17 as well.

18 **BY MR. HOFFMAN:**

19 **Q.** I'm sorry, what was your conclusion about the Google
20 contract?

21 **A.** That each of these companies' Google contract was the
22 key thing preventing us from getting a deal done with them.
23 And just collectively, therefore this objective had hit a dead
24 end and wasn't worth pursuing.

25 **Q.** Okay, thank you.

1 **A.** And then we stopped it.

2 **MR. HOFFMAN:** Okay, thank you. Your Honor, I have no
3 further questions for the witness. I'd pass him to the states.

4 **THE COURT:** Can I ask another question. Under what was
5 contemplated, if you had gotten a greater exposure on the
6 privacy mode -- whether default or not, the search results that
7 would have come back to you -- well, let me ask you this: What
8 data would you have collected from that position that would
9 have, in your opinion, improved your search engine?

10 **THE WITNESS:** So we run experiments on the site all the
11 time. Like we'll say a question of should a map go on this
12 search or not, as one example. It would enable us to run many,
13 many more experiments, because those are limited by the volume
14 of search queries we have.

15 **THE COURT:** I see. So am I understanding correctly that
16 the primary way in which DuckDuckGo attempts to improve its
17 user's experience is through experimentation because you're not
18 collecting user data?

19 **THE WITNESS:** So I'd say we developed methodologies that
20 enable us to experiment on the site anonymously. We can still
21 survey users outside of the site, but it's so less effective
22 because it's not a great proxy for what actually happens on the
23 site.

24 **THE COURT:** And maybe I should be more specific. Does
25 DuckDuckGo collect sort of click data, for example?

1 **THE WITNESS:** Yes, just anonymous.

2 **THE COURT:** It's anonymous?

3 **THE WITNESS:** Yes. So we have no way -- we don't have any
4 user sessions so that we can't say it's the same user doing
5 different actions. But we can say -- on average, say you had
6 two layouts, we could say this one is getting interacted more
7 and better than this one just anonymously.

8 **THE COURT:** I see, okay. Thank you, I appreciate that
9 clarification. Counsel.

10 **DIRECT EXAMINATION OF GABRIEL WEINBERG**

11 **BY MR. CONRAD:**

12 **Q.** Mr. Weinberg, I just want to follow up from my
13 colleague and continue on the theme of DuckDuckGo and Apple's
14 business dealings. So I think you testified earlier that
15 DuckDuckGo integrates the Apple Maps into the search results
16 that DuckDuckGo provides; is that right?

17 **A.** That's correct.

18 **Q.** And can you just generally explain how this works,
19 what would appear in response to a local query?

20 **A.** Yeah, so local's a pretty big category, so it actually
21 is a bunch of different search modules. When you think about
22 local, there's maps, directions, it's kind of different.
23 There's business listings of like if you want to search for
24 hotels near me or a particular hotel and get the -- get like
25 the phone number, all those are going to have different

1 layouts. Some of the local have maps, some don't.

2 When we do local, we're actually now an amalgamation of a
3 few different things. We are using Apple for the actual map
4 tiles, so like that. And they also help us what is called
5 geocode sometimes, which is determined from a place name where
6 it is on a map. But they're not giving us the points of
7 interest on the map, so like the business listings and the
8 phone numbers and stuff. So we're also working with
9 TripAdvisor with that as well as we do some of our own crawling
10 for that as well as work with another company called Factual.
11 So it comes all together, but when we actually display a map,
12 that will be from Apple Maps.

13 Q. Understood, thank you. So just to try to codify this,
14 if I did a search: pizza Washington, D.C., can you just explain
15 what you would see on the screen if you were a user?

16 A. Yes, you would probably see at the top a search module
17 with a map that looks like Apple Maps with a bunch of points
18 marked for different pizza restaurants around D.C.

19 Q. Got it, thank you. And when did negotiations to use
20 the Apple Maps at DuckDuckGo begin?

21 A. We definitely made the biggest initial pitch I think
22 at that Craig Federighi meeting in 2017. It's possible we
23 brought it up before then that I'm not remembering, but that's
24 when we really kind of kicked it off.

25 Q. So were the negotiations over Apple Maps, did those

1 coincide with the private browsing?

2 **A.** Yes, because part of my original pitch -- our original
3 pitch was we could be the default in private browsing, but we
4 could also make the search engine great for Apple users and
5 integrate Apple Maps in a number of their other verticals.

6 **Q.** Got it. And then just staying on the topic of the
7 other content. Can you just again describe the other content
8 that you were suggesting could be integrated into DuckDuckGo
9 from Apple?

10 **A.** Sure. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] [REDACTED]
14 [REDACTED]

15 **THE COURT:** What did you say after News, did you say apps?

16 **THE WITNESS:** Yeah, apps. If you're searching for apps --
17 like a new app, you could get results from the App Store as if
18 you had searched for apps within the App Store app.

19 **THE COURT:** You mean you can get results for apps through
20 a search engine as opposed to searching it through the App
21 Store?

22 **THE WITNESS:** Yes. In part of our original presentation
23 with them, we went and looked at our queries, and we showed
24 them that we have a decent amount of queries for all these
25 categories that their content would -- we think relevancy wise

1 would display at the top. So we actually get a lot of people
2 searching for apps, for example.

3 **THE COURT:** For example, if I wanted to download the Mine
4 Craft app like my son has done, that would come up on a search
5 page as opposed to only being able to find it in the App Store?

6 **THE WITNESS:** Yes, and you'd be able to click directly to
7 open it. Or if you did a more general search, kind of like the
8 pizza one, or you were like kids game apps or something, you
9 were just like looking for new ones, you would get the -- as if
10 you had searched in the App Store, we could get via carousel of
11 all the apps that would normally appear. And then you could
12 click directly to that app in the App Store.

13 **THE COURT:** And that would link to the Apple App Store?

14 **THE WITNESS:** Yes, it would give a seamless experience.

15 **THE COURT:** Gotcha.

16 **BY MR. CONRAD:**

17 **Q.** And what value did you feel like DuckDuckGo could
18 provide to Apple by integrating their content into the results
19 page?

20 **A.** We thought it could do a number of things. It depends
21 a little bit on the vertical. But in general, the broad pitch
22 was we thought we could make the search experience better for
23 Apple users. For each of the verticals, I think there's
24 additional benefits. Like for the apps, as an example, when
25 you talk to the app team, many times they have a problem where

1 people download a bunch of apps and then never use them again.
2 And people don't go back to the App Store, but they do appear
3 in search engines. And so there was a possibility to reengage
4 them in apps that they have already downloaded.

5 So like in the Mine Craft example, if you -- you might
6 already have it installed. And when you look on the App Store,
7 it sometimes says get, it sometimes says open. If you search
8 kids games, you might see that you already have it and then be
9 more likely to click it and open it again and reengage. This
10 also is important for ads. So they have a lot of supply, a lot
11 of people wanting to buy App Store ads, but they have a limited
12 amount of inventory on their App Store app. We thought we
13 could show their ads on DuckDuckGo which would give them more
14 inventory and also help solve this re-engagement problem.

15 Apple Maps is another example. Like they were competing
16 with Google Maps at this time -- and maybe still are, but it
17 was more heated I guess. And so it would be -- give them more
18 exposure to more users using Apple Maps. And we could give
19 them feedback as to what and what was not working, which we
20 have over the last few years.

21 Q. Got it. And when did DuckDuckGo -- staying on the
22 maps, when did DuckDuckGo first start integrating Apple Maps
23 into its results page?

24 A. 2019.

25 Q. And DuckDuckGo is not the default on private browsing

1 for Apple today?

2 A. No.

3 MR. CONRAD: Thank you. Those are my questions, we'll
4 pass the witness.

5 THE COURT: One more question. So other than maps, were
6 any of the other verticals integrated into DuckDuckGo?

7 THE WITNESS: No.

8 THE COURT: Only maps?

9 THE WITNESS: Only maps.

10 THE COURT: Okay, we'll start with Google's examination.

11 MR. SAFTY: Good afternoon, Your Honor. Graham Safty from
12 Williams & Connolly on behalf of Google.

13 THE COURT: I'm sorry, could you say your last name one
14 more time?

15 MR. SAFTY: It's Safty, S-A-F-T-Y.

16 THE COURT: Thank you.

17 **CROSS-EXAMINATION OF GABRIEL WEINBERG**

18 BY MR. SAFTY:

19 Q. Good afternoon, Mr. Weinberg. I'm going to start with
20 a few topics that DuckDuckGo's counsel has indicated should be
21 in closed session due to confidentiality, positions taken on
22 documents, as well as some of the topics that plaintiffs took
23 up in closed session, and then we'll move to open.

24 THE COURT: Perfect. Thank you, counsel.

25 BY MR. SAFTY:

1 Q. So Mr. Weinberg, Mr. Hoffman asked you a series of
2 questions about your perceptions of DuckDuckGo's ability to
3 complete with Google in the marketplace, sort of dating back to
4 when you founded the company in 2008.

5 Do you generally recall that?

6 A. Yes.

7 Q. And when you founded DuckDuckGo in 2008, you owned a
8 hundred percent of the stock of the company?

9 A. Yes, I believe so. I gave some shares to my sister at
10 some point.

11 Q. It was a family operation?

12 A. Yes.

13 Q. You invested a total of about [REDACTED]
14 [REDACTED] of your own money into DuckDuckGo to get the company
15 off the ground?

16 A. That sounds about right.

17 Q. The first time DuckDuckGo raised capital from anyone
18 other than yourself was in 2011; is that right?

19 A. That's correct.

20 Q. In 2011, DuckDuckGo raised about \$3,000,000 from
21 outside investors?

22 A. Yes.

23 Q. And DuckDuckGo did not raise any additional capital
24 from 2011 to 2018, correct?

25 A. We became profitable in 2014, so yes.

1 Q. And I believe this was implicit or explicit in your
2 answer, but starting in 2014, DuckDuckGo was profitable on a
3 cash flow basis?

4 A. Yes.

5 Q. In 2018, DuckDuckGo raised about \$10,000,000 from
6 outside investors, right?

7 A. Yeah.

8 Q. And the majority of that \$10,000,000 did not remain in
9 the company's working capital, but rather was distributed to
10 the company's shareholders, right?

11 A. That's correct.

12 Q. In 2018, DuckDuckGo had on the order of 50 employees?

13 A. That sounds about right.

14 Q. And you'd estimate maybe roughly a third of those 50
15 employees were working on improving DuckDuckGo's search engine
16 at the time?

17 A. We had decided to make a browser, and so -- because of
18 the reasons we talked about earlier about search defaults, and
19 so a large percentage were working on the browser and browser
20 extensions related to that.

21 Q. So on the order of a third of DuckDuckGo's 50
22 employees as of 2018 were working on improving the search
23 engine; is that right?

24 A. That sounds about right.

25 Q. In 2020, DuckDuckGo raised about a hundred million

1 dollars from a consortium of venture capital firms, right?

2 A. Yes.

3 Q. And about [REDACTED] percent of that amount remained in the
4 company as working capital?

5 A. Yes.

6 Q. The other [REDACTED] percent was distributed to DuckDuckGo's
7 shareholders, right?

8 A. Yes.

9 Q. The valuation of DuckDuckGo implied in that 2020
10 investment was about [REDACTED], does that sound right?

11 A. Yes.

12 Q. In 2021, DuckDuckGo raised about [REDACTED] from
13 another consortium of venture capital firms, right?

14 A. Yes.

15 Q. And that [REDACTED] did not remain in the company's
16 working capital, but rather was distributed to DuckDuckGo's
17 shareholders, right?

18 A. Not really, that was kind of a different deal where
19 they were buying common shares directly from other people
20 primarily.

21 Q. So a secondary offering, as it were?

22 A. You could say that. I mean, the other ones were kind
23 of secondary too, but they kind of different. Buying shares
24 directly is kind of different than distributing through to
25 shareholders.

1 Q. But none of the [REDACTED] raised in 2021 stayed in
2 the company's working capital, right?

3 A. I believe so.

4 Q. Following that series of transactions in 2021, you
5 still owned about [REDACTED] percent of DuckDuckGo's shares,
6 either directly or through trusts you control?

7 A. Not exactly. The trusts are mainly irrevocable, so I
8 actually do not control them. But ones associated with family
9 members, that kind of thing.

10 Q. Fair enough. And apart from interest on its
11 investments, all of DuckDuckGo's revenue comes from ads and
12 affiliate links on its search results page; is that accurate?

13 A. Could you say that again?

14 Q. Apart from interest on investments --

15 A. Oh, interest you said, yeah.

16 Q. -- and other investment opportunities, DuckDuckGo's
17 revenue comes from search ads on its search results page and
18 affiliate links on that page, right?

19 A. As of right now, I don't think we have any affiliate
20 links anymore.

21 Q. So a hundred percent of the sort of non-investment
22 revenue that DuckDuckGo earns is from search ads?

23 A. Yes.

24 Q. You recall that Mr. Hoffman asked you a series of
25 questions about syndicating search results from Microsoft and

1 Yahoo over the years?

2 **THE COURT:** I'm sorry, can I interrupt and ask: Does the
3 company not earn revenue from what I assume is a licensing of
4 some of its privacy technology to Apple?

5 **THE WITNESS:** We do not.

6 **THE COURT:** Okay.

7 **BY MR. SAFTY:**

8 Q. So my question, Mr. Weinberg, was -- unless there's
9 anything further from Your Honor, Mr. Hoffman asked you about
10 syndicating search results from Microsoft and Yahoo over the
11 years. Do you recall that line of questioning?

12 A. Yes.

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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: I'm sorry, what year was that?

MR. SAFTY: 2019.

THE COURT: Thank you.

BY MR. SAFTY:

■ [REDACTED]

[REDACTED]

[REDACTED]

■ ■

■ [REDACTED]

[REDACTED]

[REDACTED]

■ ■ [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

Q. And that arrangement that has been placed with Microsoft since early 2020 has been profitable for DuckDuckGo with respect to search users in the United States?

A. Yes.

Q. You recall that Mr. Hoffman and Mr. Conrad asked you a series of questions about how DuckDuckGo scales in relation to Google's impact to DuckDuckGo?

A. Yes.

Q. Are you familiar with the term click and query data?

A. Yes, although I don't particularly like the term.

1 Q. Is there a term that you prefer?

2 A. No, I just think it's mixing lots of things.

3 Q. What if we used a more general term like user
4 interaction data or user data, would that be familiar to you?

5 A. Sure.

6 Q. Now, what do you have in mind if I use a term like
7 user data in the context of a search engine?

8 A. So the distinction I would make for ourselves is we
9 don't have any user data that can tie back to a particular
10 user. If you're talking about interaction data on the website,
11 to me it means what people are clicking on or engaging with on
12 the search engine or otherwise how they're coming back to the
13 search engine or anything -- any interaction that happens on
14 the search engine page.

15 Q. So what interactions with the search engine page does
16 DuckDuckGo retain?

17 A. We are generally running experiments all over the
18 place. And for each of those experiments, they're generally
19 somewhat bespoke to whatever that thing is. So there will be
20 data associated with that experiment that then gets analyzed
21 and essentially thrown away. We have a running anonymous
22 database, I would say, of user interaction data that runs I
23 think for the last 28 days.

24 Q. So if I submit a query to DuckDuckGo today, that query
25 is logged, correct?

1 A. That query would go in this database, yes.

2 Q. And it would be retained for 28 days?

3 A. Yes, without any user identifiable information that
4 could tie it back to a user.

5 Q. And would any clicks on organic results or other
6 search features be logged along with that query?

7 A. I don't think all clicks are logged. At that point,
8 it's becoming a matter of what exactly is being clicked on, is
9 that part of an experiment right now. Like, a lot of clicks
10 would be put into this database.

11 Q. And would the user's location be logged in this
12 database?

13 A. For some experiments, some amount of location data,
14 like their city, for example, or country.

15 Q. And I think you indicated earlier that these queries
16 and clicks are not stitched together into sessions, they're
17 each individualized; is that accurate?

18 A. Yes.

19 Q. Is it fair to say that you've never studied the
20 feasibility of using only this data that DuckDuckGo chooses to
21 retain for the purpose of developing algorithms or technologies
22 for ranking a full set of search results the way that Microsoft
23 presently does for you?

24 A. I mean, in the very early days before our license from
25 Yahoo, I started doing that myself. Subsequent to that, we did

1 the same for auto complete data. So when you type in something
2 at the top, before you enter the search you get those lists of
3 suggestions. So we also thought about doing it for that, and
4 actually did at some point, before we could license it from
5 somebody.

6 Q. If we focus specifically on ranking search results,
7 though, you don't know whether it's feasible to take the data
8 that DuckDuckGo chooses to retain and use that to develop
9 algorithms and technologies for ranking the full set of search
10 results?

11 A. We do use that to rank search results in terms of
12 placing the search modules in the right places on the page.
13 That's a primary thing that we use this data for.

14 Q. I'm speaking specifically, though, about ranking
15 organic search results, the 10 blue links so to speak.

16 A. Yes.

17 Q. Do you have in mind what I'm describing?

18 A. Yes.

19 Q. Has DuckDuckGo ever studied the feasibility of using
20 the data that it retains from its users to rank those organic
21 search results, say, in order of relevance to present them to
22 users?

23 A. Probably not in the general sense you're talking
24 about. In specific instances, yes, because we do some ranking
25 of those organic links as well.

1 Q. To your knowledge, does DuckDuckGo provide any of its
2 click and query data to Microsoft?

3 A. Not directly.

4 Q. And what do you mean by directly?

5 A. I mean that if you're a browser and you own a browser,
6 you could collect data on your own browser independent of other
7 companies. So I don't know what they're doing throughout all
8 of their properties, like Edge.

9 Q. Understood. So as far as you know, user interaction
10 data on DuckDuckGo does not affect the quality of Microsoft's
11 search results; is that fair?

12 A. Yes, as far as I know.

13 Q. And so as far as you know, user interaction data on
14 DuckDuckGo does not affect the quality of what Microsoft
15 ultimately delivers to DuckDuckGo pursuant to your syndication
16 agreement?

17 A. That's not entirely true, because we are constantly in
18 communication with them about improving the search results
19 based on our own experiments, user feedback, et cetera. So
20 we're having regular meetings with them explaining issues and
21 trying to get them to improve certain things that we're seeing.
22 And that's based on user interaction data on our side, we're
23 just not sending anything directly to them.

24 Q. Do you know whether the search results that Microsoft
25 delivers to DuckDuckGo are based on ranking models trained

1 using user interaction data from Bing users?

2 A. I can't speak to exactly how they work, their
3 algorithms. I mean, I don't know.

4 Q. So you don't --

5 A. They generally don't tell us that kind of thing.

6 Q. So you're not familiar with the extent to which
7 Microsoft uses user interaction data generated by Bing users to
8 develop search results?

9 A. No.

10 Q. And you're not really familiar with Bing's privacy
11 policies, as a general matter?

12 A. I mean, as a general matter, roughly maybe, but not in
13 any detailed way, no.

14 Q. And you don't know the extent to which the quality of
15 the search results that Microsoft delivers to DuckDuckGo
16 depends upon using the types of user interaction data that
17 DuckDuckGo says it doesn't retain, correct?

18 A. I don't know how they're developing their algorithms
19 exactly, no.

20 Q. Are you familiar with the types of user and advertiser
21 data that Microsoft has used to develop its search ads
22 products?

23 A. Only to the extent that they've discussed it with us,
24 so I'd say pretty limited. But in our interactions, we've
25 developed jointly privacy search ad technology, and so I'm

1 familiar with a lot of that.

2 Q. On the sort of Microsoft ads side of the house, do you
3 know which kinds of user and advertiser data Microsoft uses to
4 sort of optimize its ads auction infrastructure?

5 A. I mean, generally I know that they're looking at
6 conversion data and things like that, but I don't know
7 specifically exactly how their algorithm works or what they're
8 using.

9 Q. Have you ever studied the feasibility of using only
10 the data that DuckDuckGo chooses to retain to operate an
11 independent search ads network of the kind operated by
12 Microsoft?

13 A. You mean have we contemplated doing our own ad
14 network?

15 Q. I mean have you ever studied or analyzed whether it's
16 feasible to replicate the search ads network that Microsoft
17 runs and syndicates to you using only the data that DuckDuckGo
18 collects?

19 A. I mean, a bit. I mean, we've thought about before
20 making our own ad feed, and kind of given up at a different
21 point before that, which is just the sales effort required was
22 going to be too distracting for us.

23 Q. Okay, understood, understood. You're familiar with
24 the term click fraud as it relates to search advertising?

25 A. Yes.

1 Q. What do you have in mind when you use that term?

2 A. I mean, similar to click and query, it's a bit of a
3 broad term, but I have in mind a regular user clicking on an ad
4 and meaning to click on ad. Every other clicks on ads would be
5 click fraud, like not real people clicking on ads.

6 Q. There have been points in time where you understood
7 Microsoft to be concerned about the way that click fraud on
8 DuckDuckGo was affecting Microsoft's advertising customers; is
9 that fair?

10 A. We never believed there was an issue, because we had
11 developed our own click fraud systems. But because we didn't
12 share it with them and they wouldn't share theirs with us,
13 there was I think skepticism on both sides until we started
14 developing this joint privacy technology. And then now I think
15 that's been resolved.

16 Q. If we go back to say 2017, it was your understanding
17 that Microsoft's position was that click fraud was occurring on
18 DuckDuckGo due to DuckDuckGo not sharing its user's IP address
19 with Microsoft; is that fair?

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 Q. You have that binder in front of you, sir. Could we
19 turn to page -- sorry, tab DX621.

20 A. Yeah.

21 Q. And DX621 is an e-mail thread that you're on, correct,
22 sir?

23 A. Yes.

24 Q. If we focus at the bottom of page one, there's an
25 e-mail from a Microsoft employee named Peter McDonald addressed

1 to you and others at DuckDuckGo; is that right?

2 A. Yep.

3 Q. And at the bottom of the first page, there's a
4 sentence that begins: "We understand the commitment you make
5 to your end users and concerns about government subpoenas."
6 And it continues onto the next page: "At the same time, we
7 need to ensure Bing collects the signals we need to protect our
8 advertiser customers."

9 Do you see that?

10 A. Yep.

11 Q. And you recall that being Microsoft's position as of
12 February 2017?

13 A. Yeah.

14 Q. And if you look at the response -- which is from your
15 colleague Mr. Swaminathan who you referenced earlier, do you
16 see that?

17 A. Yep.

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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

[REDACTED]

Q. Well, today when a DuckDuckGo user in the U.S. clicks an ad on DuckDuckGo's SERP, the user's IP address is sent to Microsoft, right?

A. In other browsers, we have -- and in general, we have no control over how that works, to be clear. So we don't send anything directly. When you go to any website, your IP address is sent to that website.

Q. So it's accurate that if today I click on a Microsoft provided ad on the DuckDuckGo SERP, my IP address will be sent to Microsoft advertising, right?

A. Yes. And to be clear, we have a disclosure page next to every ad. If you click on that, it explains this in full, how this information works.

Q. And the DuckDuckGo user who then lands on the advertiser's landing page is subject to whatever data collection policies are implemented by that site, correct?

A. Yes.

1 Q. Mr. Hoffman and Mr. Conrad both asked you a series of
2 questions about search features or modules that DuckDuckGo
3 introduced over the years. Do you recall those questions?

4 A. Yes.

5 Q. And DuckDuckGo does not have an overall measure of
6 search quality that it uses in its ordinary course of business,
7 right?

8 A. As I was saying to the Judge earlier, I don't really
9 think one is possible.

10 Q. Perhaps for that reason, there is no measure of search
11 quality at DuckDuckGo, correct?

12 A. I wouldn't say that. You said overall measure. So
13 for any particular feature -- like you're saying search
14 modules, we think we can improve them by running experiments,
15 looking at the end points we want to improve in that experiment
16 and then improve them.

17 Q. I see. But there's no metric that's used to measure
18 the quality of the search results page or the ranking of the
19 results on that page overall; is that accurate?

20 A. If you mean by like one metric that would apply to all
21 queries where you could be like this page has a five and this
22 page has a six, then no.

23 Q. Could you turn to DX624 in the binder in front of you.
24 This is an Asana task that you created on July 25th, 2017; is
25 that right?

1 A. Yes, it looks to be that case, yeah.

2 Q. At the bottom of page four of the document, there's a
3 comment by someone with the e-mail address
4 ██████████@DuckDuckGo.com. Do you see that?

5 A. Hold on one second, I'm trying to figure out what this
6 was all about.

7 Q. Sure.

8 (Witness reviews document)

9 A. Is the name of the task on any of these? Oh, it just
10 says at the top OB sync up agenda.

11 Q. My understanding is that it's OB sync up agenda at the
12 top of the first page.

13 A. Yep, thank you, I didn't see that at first. Sorry,
14 where you were you drawing my attention to?

15 Q. The bottom of page four.

16 A. I was just seeing what the context was before that.
17 So this is a marketing objective meeting, and talking about
18 what search features are marketable to get people to switch to
19 DuckDuckGo.

20 Q. And at the bottom of page four, there's a comment from
21 ██████████@DuckDuckGo.com that reads in the second paragraph: "The
22 idea is to tell the story head on that we're better than Google
23 in X, Y and Z ways, and that we are the leaders in privacy."

24 Do you see that?

25 A. Yes, I see that.

1 Q. And then you responded directly to Blake's comments at
2 the bottom of page four, and continuing onto page five, right?

3 A. Yes.

4 Q. And I'd like to draw your attention to the third
5 paragraph of your response beginning "The second issue." Do
6 you see that?

7 A. Yes.

8 Q. And you wrote: "The second issue is that it isn't
9 true we're better on X, Y or Z feature."

10 Do you see that?

11 A. Yeah, in the deposition I told you that I went on to
12 name that I think we're better in a few. But it's not -- in
13 this marketing context, I don't think they're workable in terms
14 of telling users right when they install they should stay
15 because of these features, because they're too niche. In fact,
16 we tried it for years before this, and it didn't work.

17 Q. And that's why you wrote in the next paragraph: "That
18 is, can anyone here name X, Y or Z? I cannot. If there was a
19 compelling story, it should be easy to spell out the basics of
20 that narrative and test it right now without much effort."

21 Do you see that?

22 A. Yeah, and like I'm saying, I do think some features
23 exist, but they're just not easily explainable in like a when
24 you install the app kind of way, which is why we focus on
25 privacy.

1 Q. This was your post on August 1st, 2017, correct?

2 A. Yes.

3 MR. SAFTY: Your Honor, move to admit DX624, which I
4 believe is subject to an objection from plaintiffs.

5 THE COURT: Is or is not?

6 MR. SAFTY: I believe it is subject to an objection from
7 plaintiffs.

8 MR. HOFFMAN: We have no objection to 624, Your Honor.

9 THE COURT: Okay, it will be admitted.

10 (Exhibit DX624 admitted into evidence)

11 BY MR. SAFTY:

12 Q. Can you turn to DX629, Mr. Weinberg.

13 THE COURT: Mr. Safty, if I could interrupt you. It's
14 3:00 o'clock, so let's take our afternoon break. We will
15 resume at 3:15. See you all shortly.

16 (Recess taken at 2:59 p.m.)

17 (Back on the record at 3:16 p.m.)

18 THE COURT: Mr. Safty, whenever you're ready.

19 MR. SAFTY: Thank you, Your Honor. One quick housekeeping
20 item on my end. I showed the witness before the break DX621,
21 which I understand has an objection from plaintiffs. I'd like
22 to formally move to admit DX621 at this time.

23 THE COURT: Okay. I'm sorry, there was or was not an
24 objection?

25 MR. SAFTY: I believe there was.

1 **MR. HOFFMAN:** Are we talking about 621?

2 **THE COURT:** Right.

3 **MR. HOFFMAN:** Yeah, I hadn't heard that it had been moved
4 into admission yet. There is an objection, yes, embedded
5 hearsay.

6 **THE COURT:** Well, we're past the document, and I take it
7 the hearsay wasn't shown, so the portion that he was -- did you
8 intend to go back to it?

9 **MR. SAFTY:** I do not intend to go back to it, Your Honor.

10 **THE COURT:** And did we cover something that you have an
11 objection to?

12 **MR. HOFFMAN:** There was embedded hearsay in the statements
13 from Microsoft, Your Honor. I'm sorry, since he -- since
14 Mr. Safty never moved to admit, I didn't object.

15 **THE COURT:** Well, this is the communication from Microsoft
16 to the company. That will be overruled, go ahead. So 621 will
17 be admitted.

18 (Exhibit DX621 admitted into evidence)

19 **BY MR. SAFTY:**

20 **Q.** Mr. Weinberg --

21 **A.** Wait, which one are we on now?

22 **Q.** Sorry, I was going to reorient you. Before the break,
23 I think I asked you to turn to tab 629. Do you have that up?

24 **A.** Yes.

25 **Q.** Exhibit 629 is an Asana task created in October 2019

1 titled Rough Draft: Culture Amp Results Communication. Do you
2 see that?

3 A. Yes.

4 Q. And attached to this Asana task is this a
5 September 2018 Culture Amp engagement survey; is that right?

6 A. I believe so.

7 Q. And you commented several times on this Asana task,
8 right?

9 A. I need to look. Yes.

10 Q. And your understanding is that DuckDuckGo periodically
11 conducts an employee engagement survey through a company called
12 Culture Amp; is that accurate?

13 A. Yes.

14 Q. And the survey allows DuckDuckGo employees to
15 anonymously comment on their views on working for the company?

16 A. Yes.

17 Q. Can you turn to page 14 of the exhibit.

18 A. Sorry, is this 14 at the bottom?

19 Q. Yep, in the bottom center, there are little pages
20 629.014. That's what I'm referring to as the page number.

21 A. Yes.

22 Q. Reviewing this slide, is it your understanding that
23 overall DuckDuckGo employees delivered an 83 percent favorable
24 rating in October 2018, which was 11 points above the benchmark
25 for small new tech companies; is that right?

1 A. That's what it looks like, yes.

2 Q. Could you turn to page 16, please. Your understanding
3 here is that there are 16 individual categories addressed as
4 part of this employee survey --

5 A. Yes.

6 Q. -- in October 2018? And the category in which
7 DuckDuckGo received the lowest score from its employees was
8 innovation where DuckDuckGo was 24 points below the benchmark
9 for small new tech companies, right?

10 A. This is what I think we were talking about in the
11 task, in my view, was that people were misreading this question
12 and indicating things that is not what it appears to be here.
13 Subsequently, we did a bunch of work on this and found that to
14 be the case, and so we've done subsequent surveys like this
15 that doesn't have this same finding.

16 Q. If you turn to page 19, there's a more specific prompt
17 at the top. It says: "At DuckDuckGo, we act on promising new
18 or innovative ideas." Do you see that?

19 A. Yes.

20 Q. And DuckDuckGo employees scored that at 39 percent,
21 which was 29 points below the benchmark for small new tech
22 companies as of October 2018, correct?

23 A. Yes. And then subsequent to this, we've done a bunch
24 of things that make this have a different result.

25 **MR. SAFTY:** Your Honor, I'd move to admit Defendant's

1 Exhibit 629.

2 **MR. HOFFMAN:** No objection.

3 **THE COURT:** Okay, 629 will be admitted.

4 (Exhibit DX629 admitted into evidence)

5 **MR. SAFTY:** I'm sorry, did Your Honor have a question?

6 **THE COURT:** No, I said it was admitted.

7 **BY MR. SAFTY:**

8 **Q.** Okay. Mr. Hoffman asked you a series of questions
9 about why DuckDuckGo purportedly finds it difficult to attract
10 and retain users, right?

11 **A.** I'm not sure which specific questions you're talking
12 about, but I think generally, yes.

13 **Q.** I'm referring specifically to your testimony about
14 what you described as the process of changing defaults on
15 devices. Do you recall that line of testimony?

16 **A.** Yes.

17 **Q.** According to your estimates, as of October 2021,
18 DuckDuckGo had on the order of a hundred million people around
19 the world using its search engine; is that right?

20 **A.** Yeah, I mean, we have a very rough ability to figure
21 that out. But yes, that's why it's a round number, yeah.

22 **Q.** And that was your best estimate as of, say,
23 October 2021?

24 **A.** There are different methodologies I would say. That's
25 one that we generally have done where we have an average of I

1 think it's 30 searches a month, and it follows from that, the
2 number.

3 Q. That's a number you've disclosed publicly, right, a
4 hundred million as of 2021?

5 A. Yes.

6 Q. You estimate that as of around the same time, late
7 2021, on the order of 10 percent of people in the U.S.
8 identified as DuckDuckGo users; is that right?

9 A. Yes. I'm not sure on the specific timeframe of the
10 surveys, but that's around what it is today, yeah.

11 Q. So based on your estimates, is it your belief that
12 there's a significant number of people who use DuckDuckGo for
13 some, but not all of their searches?

14 A. Yes, that's what I testified earlier today.

15 Q. And DuckDuckGo has occasionally conducted surveys to
16 understand how and why people use its search engine, right?

17 A. Yes.

18 Q. Turn to tab 633 of your binder, please. This is a
19 document with the heading in the top right corner Adoption
20 Funnel Quantification Study Results - November 2019. Do you
21 see that?

22 A. I do.

23 Q. I'd like you to turn to page six of the document,
24 please. There's a question in the middle of page six that
25 reads: "What would motivate you to use DuckDuckGo for nearly

1 all of your searches?"

2 Do you see that?

3 **A.** Yes.

4 **Q.** And of the eight options listed here, your
5 understanding is that the response that received the most
6 responses at 43.3 percent was: "If the search results were
7 better," right?

8 **A.** Yes, that's what this says.

9 **Q.** And your interpretation is that 28.7 percent of those
10 surveyed here responded: "If the additional features (maps,
11 weather, Wikipedia, detail, etc) were better"?

12 **A.** I'm not exactly -- yeah, that's what it says. I'm not
13 sure what the sample was for this, like who answered this.

14 **Q.** I think it says here it's a sample size of 171, right?

15 **A.** No, I mean like the sample population.

16 **Q.** Of all the options listed in this survey here in
17 Exhibit 633, the one that received the fewest responses was:
18 "If I knew how to change the default search option in my
19 browser," right?

20 **A.** There's a severe sample bias question here, because
21 these are only people who have managed to get through doing any
22 of this. And so if you were to, say, be the default, you would
23 get a much different set of answers.

24 **Q.** To answer my question, though, Mr. Weinberg, as it
25 relates to what we'll call sort of part-time DuckDuckGo users

1 who are being surveyed here --

2 A. Is that -- where does it say that? That's why I was
3 asking what the sample is.

4 Q. Well, the prompt here is: "For current DuckDuckGo
5 users, the main reasons holding them back..." Do you see that
6 at the top of the screen?

7 A. I do, but I didn't write this, and I don't know what
8 data it's based off of.

9 Q. And the question that we were discussing that was
10 prompted here is: "What would motivate you to use DuckDuckGo
11 for nearly all of your searches?"

12 Do you see that question there?

13 A. I do, but the answers and interpreting them relate to
14 who the sample population is.

15 Q. Understood. And you agree that the sample population
16 here is folks who use DuckDuckGo sometimes already, right?

17 A. Yeah, in some context. But as an example, like we
18 also do surveys of our extension users routinely, because we
19 can pull up a survey to them. That's like a niche of a niche
20 group, because those are people who install extensions which is
21 already a niche, and then it's people who uninstall the
22 extension which is another niche. So we're talking a weird
23 sample population where you wouldn't say the results reflect
24 the American population or our whole user base. And so for any
25 given survey, it really depends what the population is. I'm

1 not saying this isn't, I just don't know because it's not
2 listed here.

3 Q. And I appreciate that clarification. I was
4 specifically trying to find out, as I previewed with you, why
5 it is that 10 percent of the American people call themselves
6 DuckDuckGo users in your view. But you say that the number of
7 queries DuckDuckGo receives is far less than that, right?

8 A. Oh, well, that number is coming from a different
9 survey -- again, I'm not sure exactly where this is coming
10 from, what we call our pulse survey, where we send about a
11 thousand respondents to the American population every month,
12 and that 10 percent number is coming from the pulse survey.
13 And so my earlier testimony -- that pulse survey is what I
14 believe in the most in terms of data, because we do it every
15 month, we've triangulated it with multiple providers. So that
16 data is self-reporting 10 percent of Americans use us, and
17 that's where I'm getting a lot of our part-time numbers,
18 because we asked that population do they use us as primary on
19 different devices and different browsers.

20 Q. And to close the loop on the survey I'm asking you
21 about here where the prompt was: "What would motivate you to
22 use DuckDuckGo for nearly all of your searches," the least
23 common response was: "If I knew how to change the default
24 search option in my browser," correct?

25 A. That's what it says. But, again, I think the

1 population is weird. But also, people don't think about with
2 defaults, that's the whole issue with defaults. So it would be
3 weird to answer something that you don't ever think about.

4 **MR. SAFTY:** Your Honor, I'd move to admit Defendant's
5 Exhibit 633.

6 **MR. HOFFMAN:** No objection, Your Honor.

7 **THE COURT:** It will be admitted.

8 (Exhibit DX633 admitted into evidence)

9 **BY MR. SAFTY:**

10 **Q.** If you could turn to Defendant's Exhibit 627 in your
11 binder, please, Mr. Weinberg. You indicated earlier, I
12 believe, that in some instances, the ranking of web results
13 that you'd see on Bing versus DuckDuckGo might differ a bit; is
14 that correct?

15 **A.** Yes.

16 **Q.** Is one reason why that might differ because of the
17 perceived location of the user who's submitting the query?

18 **A.** It could be.

19 **Q.** And compared with Google, is it your understanding
20 that DuckDuckGo's default settings entail the use of less
21 precise information about where the device submitting the query
22 is located?

23 **A.** Oh, I see what you're saying. So we don't get any
24 local results from Bing, that's -- we do all those search
25 modules ourself. And we use the location that we get via the

1 IP address, and then we throw it away after the search is done.
2 And we also have a feature that we developed called precise
3 user location where you can opt-in to your browser sending us
4 the more precise user location which we will then throw away
5 after it's sent to us. In fact, we engineered it further where
6 the browser only -- it fuzzes it before it sends it to us a
7 little bit.

8 Q. And so when you say local, in terms of DuckDuckGo
9 search, you're referring to the content from, say, Apple Maps
10 and TripAdvisor that Mr. Conrad was asking you about, not the
11 Bing-delivered content; is that accurate?

12 A. When I say local, I'm referring to all of the
13 different search modules that may appear on the page that
14 relate to local -- content about -- location-specific content.

15 Q. Gotcha, okay. Thank you for that context. And with
16 that in mind, let's turn to page three of Exhibit 627. There's
17 a comment from you about midway down the page, July 26th, 2008.
18 Do you see that? It begins: "I do think extension retention."

19 A. Yes.

20 Q. And I want to focus on the last paragraph of your
21 comment there which says: "In that context, I think it makes
22 sense to diversify away from local if there are signals that
23 doing so could impact retention as much as local. Even though
24 we haven't moved it, I still see signals that local is a
25 problem in terms of retention."

1 Do you see that?

2 A. I do. This was before we integrated Apple Maps and
3 TripAdvisor and all those things we just talked about. And so
4 at the time, our local search results could be improved if we
5 would do those integrations -- which we then subsequently did.

6 Q. So as of July 2018 when this was written, your
7 understanding, based on the materials you received as CEO of
8 the company, was that local results were a problem in terms of
9 retaining users; is that right?

10 A. Yes.

11 Q. And that was confirmed by your own anecdotal
12 interactions, including with investors in DuckDuckGo, right?

13 A. As it relates to retention, as I'm sure I said in some
14 of these threads, we don't have a great overall measure for it
15 because it has its own sample bias problems. So a lot of that
16 is anecdotal evidence to some degree. But yeah, anecdotally at
17 the time, and user feedback and stuff like that, indicated that
18 we could improve on local, which we then subsequently did.
19 Like the Apple Maps integration was in 2019.

20 **THE COURT:** Counsel, can I just interrupt here. I'm
21 curious, some of these topics are sort of beyond the scope of
22 what was covered in the closed session by plaintiffs. I'm not
23 suggesting that you may not be trying to get into things that
24 are otherwise confidential, but I really would like to try and
25 open up the courtroom.

1 **MR. SAFTY:** I appreciate that, Your Honor.

2 **THE COURT:** It's been closed for a fair amount today.

3 **MR. SAFTY:** We did seek DuckDuckGo's input on the
4 confidentiality of these materials, and were told that they
5 should all be sealed in full. So that's why it has to be done
6 in a closed session. I will say, though, I am sort of changing
7 topics to things that plaintiffs expressly did in closed
8 session right now, and will address all of the topics that
9 plaintiffs addressed in open session in open session. I am
10 just trying to be respectful of the third-party's
11 confidentiality designations in this respect.

12 **THE COURT:** I understand.

13 **BY MR. SAFTY:**

14 **Q.** So pivoting topics, Mr. Weinberg, do you recall that
15 part of the closed session, Mr. Conrad in particular, and to
16 some extent Mr. Hoffman, asked you about DuckDuckGo's ability
17 to conduct experiments using the queries available to it?

18 **A.** Yes.

19 **Q.** And you mentioned that DuckDuckGo periodically
20 receives user feedback from diary studies or external research
21 or surveys or those sorts of things?

22 **A.** Yeah, I'm not sure I mentioned diary studies earlier,
23 but we do those, too.

24 **Q.** And the number of queries that DuckDuckGo receives
25 does not affect how many of those kinds of offline experiments

1 DuckDuckGo can conduct, right?

2 A. We do those in part because we can't get enough of the
3 online data, so we try to use those as a proxy for what we
4 might expect from experiments online -- which isn't always a
5 great proxy which is part of the problem with it.

6 Q. Having fewer or more queries in any given day or week
7 or month wouldn't affect the number of offline experiments
8 DuckDuckGo can conduct, right?

9 A. It would affect the number we would do, because if we
10 had a lot more queries, we would just run online experiments
11 and not bother with all this proxy stuff.

12 Q. So if you had more queries, you would do fewer offline
13 experiments?

14 A. Probably.

15 Q. When it comes to these online experiments like A/B
16 testing, sort of live traffic experiments, do you recall
17 Mr. Conrad asking you about those?

18 A. Yes.

19 Q. You estimate that DuckDuckGo conducts around 50 to a
20 hundred of those live traffic experiments per year?

21 A. That sounds about right.

22 Q. And you don't know how many queries DuckDuckGo
23 purportedly would need in order to conduct what it would
24 consider to be a suitable number of live traffic experiments,
25 right?

1 A. We've done sample size calculations repeatedly over
2 time and decided not to do certain experiments because they're
3 going to take too long. Like right now, for instance, we have
4 I think like a four-month backlog on experiments we can run on
5 our Android app. And so we know that if it like doubled, we
6 could increase the throughput of our experiments there as a
7 rough proxy.

8 Q. But you can't give me a number of queries or a percent
9 increase that would allow DuckDuckGo to do what it would
10 consider to be a suitable number of experiments, right?

11 A. Well, Google says they run thousands; I've heard many
12 tens of thousands. So to get that level, I mean, I'm not sure,
13 but certainly 10x, probably more.

14 Q. Mr. Hoffman asked you a lot of questions about
15 DuckDuckGo's availability in Apple's Safari browser. You
16 probably remember that line of questioning?

17 A. Yes.

18 Q. If you could turn to Exhibit 946 in your binder, which
19 I believe has already been alluded to, but let's just take a
20 look at it.

21 A. Yes.

22 Q. This is a service integration agreement between
23 DuckDuckGo and Apple from 2014 that you signed, correct?

24 **THE COURT:** Counsel, can I get the number again? I missed
25 it.

1 BY MR. SAFTY:

2 Q. This is Exhibit 946, and I believe this is already in
3 evidence.

4 A. That's what it looks like, yes.

5 Q. And since this agreement was signed in 2014,
6 DuckDuckGo has been one of the built in options that a user can
7 select as their search engine in Safari, right?

8 A. Yes.

9 Q. DuckDuckGo agreed, through this service integration
10 agreement, to pay Apple a share of the revenue that DuckDuckGo
11 receives from certain search traffic originating from Safari,
12 right?

13 A. Yes.

14 Q. The revenue share percentage, I believe you indicated
15 earlier, was ■ percent, subject to certain calculations?

16 A. Yes.

17 Q. If we can take a look at Defendant's Exhibit 950 in
18 your binder, which should also be in evidence.

19 A. Yes.

20 Q. This is the first amendment to the service integration
21 agreement that we looked at just a moment ago, right?

22 A. This is the one that was eventually signed or --

23 Q. If you look at the page ending --

24 A. There were lots of different versions going back and
25 forth.

1 Q. And I want to make sure I get your understanding of
2 that. If you look at page six, it looks like it has your
3 signature on it from June 5th, 2019, right?

4 A. Okay, then I assume this is the one -- the final
5 version.

6 Q. And DuckDuckGo agreed, through this agreement, to pay
7 Apple ■ percent of net revenue as defined in the agreement on
8 search traffic originating from Safari, right?

9 A. Yes.

10 Q. And that was ■ in the 2014
11 agreement we looked at earlier?

12 A. Yeah, I mean, it's tied up -- that's something the
13 Judge asked me earlier, of why aren't we getting money for
14 other privacy integrations. It's all wrapped up in the same
15 contract, so some of the understanding was that was one of the
16 justifications that Apple was making to reduce our revenue
17 share.

18 Q. And DuckDuckGo has agreed to share a percentage of its
19 search ad revenue with other developers besides Apple, right?

20 A. Yes.

21 Q. DuckDuckGo shares revenue with Mozilla stemming from
22 certain queries in the Firefox browser, right?

23 A. Yes.

24 Q. And DuckDuckGo shares revenue with Samsung for certain
25 queries originating from Samsung's browser?

1 A. Yes.

2 Q. And over the years, DuckDuckGo has agreed to more than
3 a dozen revenue share agreements with browser and operating
4 system developers, right?

5 A. Yes.

6 Q. And in your experience dealing with Apple and Mozilla
7 and Samsung and others, these browser and operating system
8 developers seek to be compensated by DuckDuckGo for the
9 integration or promotion of DuckDuckGo in their products,
10 right?

11 A. We've done free deals. I don't think we pay the Tor
12 browser anything, as an example that I mentioned earlier, who
13 are the default.

14 Q. If we focus on what we'll call the bigger players like
15 Apple or Mozilla or Samsung that have millions upon millions of
16 users, in your experience, do they generally seek to be
17 compensated in the form of a revenue share from DuckDuckGo?

18 A. Yeah, I'd say that generally.

19 Q. And the amount of revenue that DuckDuckGo shares is
20 determined by negotiations with the browser or operating system
21 developer, right?

22 A. It depends on the company how much negotiation
23 leverage we actually have, but yes.

24 Q. It's a commercial deal and numbers get thrown around
25 and you agree to one, right?

1 A. Yes.

2 Q. And there's no real science behind how DuckDuckGo
3 determines the amount it's willing to pay a browser or
4 operating system developer for the integration or promotion of
5 DuckDuckGo, right?

6 A. I'm not sure what you mean by science.

7 Q. Well, there is no formula or systematic method that
8 DuckDuckGo uses to determine what revenue share percentage it's
9 willing to agree to in a particular deal with a browser or
10 operating system developer; is that fair?

11 A. I mean, generally we've been using semi-round numbers
12 because there's no actual science behind it. Generally, we've
13 been trying to do [REDACTED] that kind of thing.

14 Q. Now, Mr. Hoffman specifically asked you about a
15 proposed implementation where DuckDuckGo would be the default
16 search engine in private browsing mode in Safari even though
17 Google or some other search engine is the default in regular
18 browsing mode.

19 Do you recall that line of questioning?

20 A. Yes.

21 Q. Until you prepared to testify on behalf of the
22 government today, you didn't know whether DuckDuckGo had ever
23 proposed to Apple that DuckDuckGo should be the default search
24 engine in private browsing mode in Safari, right?

25 A. I don't recall that. I recall in our deposition me

1 characterizing the relationship over time, and you asking me
2 how would I find out more information of exactly what happened,
3 because there were so many meetings and they were merging
4 together in my mind. And I told you that I would probably
5 review Asana documents, the presentations, the notes to refresh
6 my memory.

7 Q. And you sat for deposition in this case in the spring
8 of 2022, correct?

9 A. Yes.

10 Q. And so that's approximately three to four years after
11 the events of 2018 and '19 that you've testified about at
12 length today in response to Mr. Hoffman's questions, right?

13 A. Yes.

14 Q. And in your deposition, you couldn't recall off the
15 top of your head whether DuckDuckGo had ever even proposed to
16 Apple that DuckDuckGo should be the default search engine in
17 private browsing mode in Safari, right?

18 A. No. I mean, if you're referring to the actual
19 default -- this is like the Judge's questions earlier -- versus
20 an opt-in, we early on -- we actually asked Google in 2014 --
21 this didn't come up in the deposition -- when they were
22 renewing their Apple -- their Google contract, would they
23 consider making a carve out for private browsing mode where we
24 could be the default -- this is way earlier, and we got shut
25 down pretty hard. And then we also asked them a similar thing

1 in 2017, similarly got shut down. And so generally we weren't
2 proposing them to be the default, we were always offering like
3 an activation or an opt-in or trying to give some kind of other
4 reason.

5 Q. I just want to be a hundred percent clear on what your
6 testimony is, Mr. Weinberg. If you could turn to page 365 of
7 the deposition transcript, which is at the back of your binder.

8 A. Yep.

9 Q. You understand that this is the transcript of your
10 deposition in this case on March 23rd, 2022, right?

11 A. Yep.

12 Q. You understand that you were testifying under oath
13 that day, just as you're testifying under oath today?

14 A. Yes.

15 Q. If you start on page 365 at line 20, you see I asked
16 you the question: "Do you have any understanding of how many
17 users might keep DuckDuckGo as the default option in private
18 browsing mode in Safari rather than switching the default to
19 another search engine?" And you answered: "Not really. I
20 mean, but to be clear, we're not -- and I don't know if we ever
21 pitched that implementation, and I don't think that's what
22 Apple would do in any case. I think we are -- at this point,
23 we've been pitching choice screens for a long time, and we
24 think that is more of a correct approach."

25 That was your testimony, right, sir?

1 A. Yes. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 [REDACTED] So you're asking me if we were made the
6 default completely without any opt-in or without any list that
7 you could change, what would happen. And so that wasn't
8 generally what we were pitching, so we didn't contemplate that.

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 But this is saying what we pitched.

13 Q. Turn to page 246 of your deposition, please. I'd like
14 to begin at line 10. Do you have that up?

15 A. No, I do not. What page?

16 Q. 246, please.

17 A. Yes.

18 Q. Beginning at line 10, I asked you the question:
19 "Let's focus for now on the proposal where DuckDuckGo would be
20 the default search engine without any further action on the
21 user's part in private browsing tabs."

22 A. Yes.

23 Q. "Do you have in mind what I'm referring to here?" And
24 you answered: "Yes. To be completely honest, I'm not -- I
25 don't recall our different proposals, and so I don't even know

1 if we 100 percent pitched that or we pitched like a -- when you
2 land on that screen, like a toggle that you can opt into, you
3 know, versus it just being there if you do nothing. And so I'm
4 not recalling all the different proposals at the moment."

5 That was your testimony during your deposition in March of
6 2022, right?

7 A. Yes.

8 Q. And with respect to setting DuckDuckGo as the default
9 search engine in private browsing mode in Safari, you don't
10 think that's what Apple would do in any case, right?

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 Q. You don't have any understanding of how many users
15 might keep DuckDuckGo as the default in private browsing mode
16 in Safari rather than switching the default to another search
17 engine, right?

18 A. No, I have no idea.

19 Q. Take a look at Plaintiffs' Exhibit 666, which is going
20 to be back in the binder that you were given earlier.

21 A. Yes.

22 Q. And this is the Asana task titled September 20th Apple
23 Meeting Notes with a creation time of September 20th, 2018,
24 right?

25 A. Yes.

1 Q. And your testimony was that this meeting, from
2 DuckDuckGo's perspective, related to sort of private browsing
3 opt-in integration where there would be a toggle or an
4 activation switch in the private browsing window that the user
5 could select in order to set DuckDuckGo as the default; is that
6 right?

7 A. Yes, I mean, the -- each implementation is slightly
8 different, and there were different ones over time, and so I
9 think this was an activate to a toggle.

10 Q. And your testimony is that DuckDuckGo first approached
11 Apple about this sort of activate to toggle implementation as
12 opposed to the other way around?

13 A. Yes. I mean, we didn't know what they would
14 ultimately do, that was just a guess on our part. We often
15 guessed wrong of what they'd actually do. We'd just try to
16 present something that we think they might do.

17 Q. You pitched a lot of ideas to Apple and to other
18 browser developers over the years for promotion or integration
19 of DuckDuckGo in different ways, right?

20 A. Yes.

21 Q. And this was one such pitch, right?

22 A. Yes.

23 Q. And your testimony is that following this
24 September 2018 meeting, the Apple employees take it back and
25 caucus on appropriate next steps; is that an accurate

1 characterization?

2 **A.** I think so. I don't know exactly what they do in
3 their road map meetings.

4 **Q.** There was no agreement emerging from the
5 September 2018 meeting, it was a let's reconnect shortly
6 conversation, correct?

7 **A.** Yes. I mean, let me put it a different way: No
8 agreements happened in those meetings exactly.

9 **Q.** You can't recall having prepared or reviewed any
10 particular estimate of how many Safari users would actually
11 opt-in to DuckDuckGo through this activation switch or toggle
12 instead of using Google or another search engine, right?

13 **A.** No.

14 **Q.** Let's turn to tab 667 -- Plaintiffs' Exhibit 667 in
15 the same binder.

16 **A.** Yes.

17 **Q.** This is another document that Mr. Hoffman asked you
18 about, correct?

19 **A.** Hold on, I'm in the wrong one here. Yes.

20 **Q.** And just to make sure I understand, you characterized
21 this as describing a somewhat different implementation where a
22 Safari user would encounter a kind of choice screen with a list
23 of private search engines when entering private browsing mode;
24 is that accurate?

25 **A.** Well, as I testified, we never saw what this looks

1 like exactly, so I wasn't sure exactly what the interaction
2 would be except that there would be a list of some kind at some
3 point in the interaction.

4 Q. Got you. And this -- you testified in response to
5 Mr. Hoffman's questions, this Asana task is a summary, as
6 you've characterized it, of this call with Brian Croll of
7 Apple?

8 A. Yeah, it's titled Brian Croll Call Summary.

9 Q. To make sure I understand how Asana works, this
10 description field can be edited over time, right?

11 A. Yes.

12 Q. And in this instance -- and I think Mr. Hoffman went
13 through some of these with you, you asked Mr. Swaminathan to
14 edit the description four times in the comments, right?

15 A. I didn't count them, but -- I mean, I could, but I
16 wouldn't be surprised.

17 Q. If you take a look at, say, like the middle of page
18 ending 506, you said in response to some earlier version of
19 Mr. Swaminathan's summary that we can't see: "I think the
20 framing is slightly off. It makes it seem like we came up with
21 the solution on the phone, whereas this is where their
22 discussion left off. These are vastly different things."

23 That's what that says?

24 A. Yes, that's what it says.

25 Q. If we turn to the top of the page ending 507, there's

1 another comment from you, right?

2 A. Yes.

3 Q. And that says: "It still isn't right, because it
4 starts out with concerns and not that they floated a new
5 proposal that addressed their concerns," correct?

6 A. That's what it says.

7 Q. And then after further revisions, you commented at the
8 bottom of page ending 507: "Honestly not great. I tried
9 rearranging it, though it still needs work." Do you see that?

10 A. Yes, I do.

11 Q. And you also said: "I don't understand how the
12 revenue pieces relate here at all. I don't remember him
13 mentioning that. He mentioned contractual issues, but that is
14 a different thing and not necessarily revenue related."

15 Do you see that?

16 A. I do.

17 Q. And then there's a fourth comment from you over here
18 on the page ending 508, right?

19 A. Yes.

20 Q. And so what we see here in the description is the
21 product of this sort of iterative process of you asking or
22 instructing Mr. Swaminathan to revise his summary of the call,
23 right?

24 A. Based on my understanding of what happened because I
25 was there, yes.

1 Q. His understanding was different, right?

2 A. I don't necessarily think so, he just needs help with
3 writing a lot of times.

4 Q. With respect to this implementation that we're talking
5 about of sort of presenting a Safari user with a list of search
6 engines when opening a private browsing tab, you can't recall
7 having prepared or seen any particular estimate of how many
8 Safari users would select DuckDuckGo from that list instead of
9 selecting a different search engine, right?

10 A. I would say generally what people do is very highly
11 determinant by what the actual UX looks like at the end. So
12 any valid estimate would probably would have to be run through
13 whatever the design actually looks like.

14 Q. And you don't have an estimate based on any particular
15 UX that you may have contemplated, right?

16 A. No.

17 Q. Now, Mr. Hoffman also asked you about this contract
18 proposal at UPX1012, which is at the back of the binder that
19 Mr. Hoffman gave you.

20 Do you have that?

21 A. Yes.

22 Q. And this is dated March 5th, 2019, right?

23 A. Yes.

24 Q. And I want to draw your attention to the provision
25 that Mr. Hoffman discussed with you, which is section 8.1 on

1 the page ending 949.

2 A. Yes.

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Q. And right below that, in what would be section 13.1

12 titled Term, do you see that the proposed term of this

13 agreement is [REDACTED]

14 A. Yes, I see that.

15 Q. So this proposal that Mr. Hoffman discussed with you

16 marked UPX1012 contemplated that if at any time over a [REDACTED]

17 period DuckDuckGo were to become the default search engine in

18 any Apple product or any feature of an Apple product, then

19 DuckDuckGo would be obligated to pay [REDACTED]

20 [REDACTED]

21 A. Yes.

22 Q. The proposal didn't say that Apple will make

23 DuckDuckGo the default in any Apple product or feature,

24 correct?

25 A. They generally don't make any promises. So like when

1 we even got our contract -- first contract for the search
2 option, they never said they would make us a search option.
3 That's just how they do their contracts. My understanding is
4 that they don't waste time sending a contract for something
5 that they don't really contemplate doing.

6 Q. But the agreement, as proposed here, does not say that
7 Apple shall make DuckDuckGo the default in any product or
8 feature, correct?

9 A. Right, but they -- it's just not something they would
10 do from our experience.

11 Q. It doesn't even say that Apple desires or intends to
12 make DuckDuckGo the default in any Apple product or feature,
13 does it?

14 A. No.

15 Q. And it doesn't even specify a particular Apple product
16 or feature of an Apple product, right?

17 A. No, it does not.

18 MR. SAFTY: Your Honor, may I approach?

19 THE COURT: Sure.

20 BY MR. SAFTY:

21 Q. I'm going to hand the witness United States
22 Plaintiffs' Exhibit 1112. Mr. Weinberg, do you recognize
23 United States Plaintiffs' Exhibit 1112?

24 A. Yes, I do.

25 Q. And what is it?

1 A. It's part of the -- they had originally sent us this
2 contract, and then we're sending back red lines. It's part of
3 the discussions for finalizing the contract that you showed me
4 the final form of.

5 Q. Got it. So this is DuckDuckGo's counter-proposal to
6 the document that we were looking at a moment ago, which was
7 U.S. Plaintiffs' Exhibit 1012, right?

8 A. Yes.

9 Q. And if you'd turn to the page ending 768.

10 A. Yes.

11 Q. DuckDuckGo was proposing, at bullet point number four,
12 a new section 1.21, private browsing default, correct?

13 A. Yes.

14 Q. And so DuckDuckGo's counter was trying to specify that
15 there would be this defined term private browsing default to
16 make clear the difference in scenarios when a user is prompted
17 to select from a list versus having DuckDuckGo set as the
18 default, right?

19 A. Yes, as noted in the e-mail at the beginning of this,
20 we hadn't seen the implementation yet. And there were edge
21 cases in the way that things could happen, and we were unclear
22 as to which scenarios we'd be paying ██████████

23 ██████████ So like if someone opted into private browsing or
24 we default in private browsing, would then we have to pay the
25 ██████████. That

1 was ambiguous in the original contract, so one of the main
2 things we were trying to clarify was define the terms and try
3 to be clear as to -- clearer, at least, as to which scenarios
4 we would pay which revenue share.

5 Q. And DuckDuckGo wanted to pay [REDACTED] percent only if it was
6 going to be set as the default in private browsing, not if it
7 was included in a list, right?

8 A. Yes.

9 MR. SAFTY: Your Honor, may I approach?

10 THE COURT: Yes.

11 MR. SAFTY: Before moving on to this next document, can we
12 move UPX1112 into evidence, please?

13 MR. HOFFMAN: No objection to that.

14 THE COURT: It will be admitted.

15 (Exhibit UPX1112 admitted into evidence)

16 BY MR. SAFTY:

17 Q. The document I've just handed you, Mr. Weinberg, does
18 not have an exhibit number yet.

19 A. Okay.

20 Q. But I'd also like to move this into evidence first.
21 But let me go ahead and ask my questions first, and then I'll
22 try to remember to do that. This document has Bates label
23 DuckDuckGo-00335255.

24 Do you see that, Mr. Weinberg?

25 A. Sorry -- oh, in the --

1 Q. It's in the bottom right corner.

2 A. Yes, I do.

3 Q. And this is an e-mail from Rhonda Stratton of Apple.

4 You testified that she was your sort of primary relationship
5 point of contact at the company?

6 A. Partner manager.

7 Q. Partner manager?

8 A. Yeah.

9 Q. You understand this to be Apple's response to
10 DuckDuckGo's red line that we looked at a moment ago as
11 UPX1112?

12 A. This is subsequent to a face-to-face meeting where
13 this was discussed a bit.

14 Q. If you'd turn to the page ending 261, looking here at
15 the Bates numbers in the right hand corner.

16 A. Yes.

17 Q. It looks like the section that DuckDuckGo had added
18 titled Private Browsing Default was stricken from the
19 agreement, right?

20 A. Yes.

21 Q. And the text here reads: "Safari doesn't use separate
22 default search engines for private and regular browsing modes."
23 Do you see that?

24 A. I do see that. It's not a comment by Rhonda, it's a
25 comment by someone in legal.

1 Q. Your understanding is that's a comment by Apple,
2 correct?

3 A. My understanding is it's a comment by this guy
4 Nicholas.

5 Q. Who's an Apple employee?

6 A. Yeah.

7 Q. And the first amendment to the service integration
8 agreement that you ultimately signed didn't have any private
9 browsing default provision, correct?

10 A. That's correct. In the face-to-face meeting that this
11 e-mail references that Prakash attended and his notes reflect,
12 our understanding was that they wanted to simplify this
13 agreement, get rid of all of the provisions that we had added,
14 and then say we would get ██████ in whatever implementation they
15 did regardless of the default or not. And they were okay with
16 ██████, and so therefore no distinction was needed in any
17 contract.

18 Q. But in the first amendment to the service integration
19 agreement you ultimately signed, there's no provision for any
20 sort of private browsing implementation at all, correct?

21 A. That's correct, it's not implementation-specific, it
22 would be ██████ for any implementation in Apple.

23 **MR. SAFTY:** Your Honor, I'd like to formally move into
24 evidence the document Bates labeled DuckDuckGo-00335255. We'll
25 get that an exhibit number.

1 **MR. HOFFMAN:** No objection, Your Honor.

2 **THE COURT:** It will be admitted.

3 (Exhibit Bates labeled DuckDuckGo-00335255 admitted into
4 evidence)

5 **BY MR. SAFTY:**

6 **Q.** Now, you've testified today, Mr. Weinberg, that on
7 approximately 20 instances, DuckDuckGo has sort of pitched some
8 sort of private browsing implementation to Apple; is that
9 right?

10 **A.** Yeah, specifically that we've had on the order of 20
11 meetings about that where that topic was part of the meeting.

12 **Q.** I believe you indicated in response to Mr. Hoffman's
13 questions that in some instances, those proposals have been
14 elevated to various levels of management within Apple, correct?

15 **A.** Yes.

16 **Q.** And you feel like the Apple employees you've dealt
17 with have considered all of the proposals that DuckDuckGo has
18 made in good faith, right?

19 **A.** Say that again.

20 **Q.** Do you feel like the Apple employees that you and
21 others at DuckDuckGo have dealt with have considered all of the
22 private browsing implementation proposals that DuckDuckGo has
23 made in good faith?

24 **A.** Yes.

25 **Q.** And you believe that Apple has asked appropriate

1 questions and requested reasonable information relating to
2 DuckDuckGo's proposals?

3 A. I'm not sure what kind of information you're referring
4 to.

5 Q. Well, you testified in response to Mr. Hoffman's
6 questions that at certain periods of time, Apple may have
7 requested additional information from DuckDuckGo about, for
8 instance, what private search means in DuckDuckGo?

9 A. Oh, yes. Yes.

10 Q. And in your experience, Apple has generally asked
11 appropriate questions and requested reasonable follow up
12 information where necessary about DuckDuckGo's private browsing
13 implementation proposals, right?

14 A. Yes, I think so, if I understand your question.

15 Q. You continue to have periodic meetings with Apple
16 employees today, correct?

17 A. We do.

18 Q. You're aware, obviously as you indicated earlier, that
19 Google has an agreement with Apple that relates to the default
20 search engine in Safari?

21 A. Yes.

22 Q. You've never seen that agreement, correct?

23 A. I've seen other Google agreements that I perceived to
24 be similar.

25 Q. Which ones do you have in mind?

1 A. The Opera-Google agreement, which was part of their
2 IPO filing in 2018.

3 Q. But it's just your speculation that Google's agreement
4 with Opera might be similar to its agreement with Apple; is
5 that fair?

6 A. Yes.

7 Q. You've never personally laid eyes on any agreements
8 between Google and Apple relating to search, correct?

9 A. No.

10 Q. You don't know how many times Google and Apple have
11 renegotiated or extended any agreement they have relating to
12 search since DuckDuckGo first proposed its private browsing
13 implementation back in 2014, right?

14 A. There have been different speculations in the press
15 about when their renewal might come up, which has prompted us
16 to ask them certain questions about it. But I don't know
17 specifically what the terms are and when they were renewed, if
18 those were accurate or not.

19 **MR. SAFTY:** Your Honor, if I may have just one moment, I
20 think we may be ready to go back into open session.

21 (Discussion off the record)

22 **BY MR. SAFTY:**

23 Q. Just a couple more questions for you, Mr. Weinberg,
24 and then we'll reopen the courtroom. I just wanted to make
25 sure I got out all of the closed questions so we didn't have to

1 do that again, so my apologies for the delay.

2 You're familiar with Microsoft's web browsers, formerly
3 Internet Explorer and now Edge, correct?

4 A. I am.

5 Q. And you testified earlier that DuckDuckGo uses
6 Microsoft's search results in search ads, right?

7 A. Yes.

8 Q. And Microsoft has never made DuckDuckGo the default
9 search engine in private browsing mode in Internet Explorer or
10 in Edge, correct?

11 A. That's correct.

12 Q. Microsoft has never included any kind of prompt in a
13 private browsing window in Internet Explorer or Edge that would
14 encourage the user to set DuckDuckGo as their default search
15 engine, correct?

16 A. Correct.

17 Q. And you don't have any view as to whether Microsoft
18 would be better off if it set DuckDuckGo as the default search
19 engine in private browsing mode in Edge, do you?

20 A. I mean, I generally think that using a private search
21 engine in private browsing mode is just better all around, more
22 consistent with the mode.

23 Q. But you don't have any view as to whether Microsoft
24 would be better off if it set DuckDuckGo as the default search
25 engine in private browsing mode in Edge, right?

1 **A.** I think it's an ambiguous question what better off
2 means. I think their users would be better off.

3 **Q.** Turn to page 91 of your deposition transcript; page
4 91, line 18.

5 **A.** Yes.

6 **Q.** I asked you the question: "Do you think Microsoft
7 would be better off if DuckDuckGo were the default search
8 engine when the user opened the window or tab in private
9 browsing mode in Edge?" And then there were two form
10 objections, and you answered: "Microsoft -- I can't speak to
11 what Microsoft would want."

12 Did I read that correctly?

13 **A.** Yes.

14 **MR. HOFFMAN:** I object. This is improper impeachment,
15 because this is exactly what the witness said on the stand.

16 **THE COURT:** Okay, move on.

17 **MR. SAFTY:** No further questions in the closed session,
18 Your Honor.

19 **THE COURT:** Any redirect on closed topics?

20 **MR. HOFFMAN:** Nothing from the United States, Your Honor.

21 **MR. CONRAD:** Nothing from the states, Your Honor.

22 **THE COURT:** Let's go ahead and reopen the courtroom, also
23 take a minute or two to reconnect the media line.

24 (Sealed proceedings adjourned at 4:09 p.m.)

25

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

C E R T I F I C A T E

I, Jeff M. Hook, Official Court Reporter,
certify that the foregoing is a true and correct transcript of
the record of proceedings in the above-entitled matter.

September 21, 2023

DATE



Jeff M. Hook