

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, ET AL.,	)	██████████
	)	
Plaintiffs,	)	
	)	
vs.	)	CV No. 20-3010
	)	Washington, D.C.
	)	September 26, 2023
GOOGLE LLC,	)	9:29 a.m.
	)	
Defendant.	)	Day 10
_____	)	Morning Session

TRANSCRIPT OF BENCH TRIAL PROCEEDINGS  
BEFORE THE HONORABLE AMIT P. MEHTA  
UNITED STATES DISTRICT JUDGE

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(Open court)

10

THE COURT: All right.

11

Just so there's no confusion about the reason

12

we're starting at a little bit later than we usually do, we

13

did have a closed session this morning to discuss the

14

parties' filings last night and then aspects of Mr. Cue's

15

testimony that may raise confidentiality issues. We have

16

reached some agreement as to what the parameters of his

17

testimony will be and as to what terms can be discussed in

18

open court, all in an effort to promote, to the extent that

19

is reasonable, ensuring that Mr. Cue's testimony will be

20

done in open court, all right?

21

MS. BELLSHAW: Thank you, Your Honor. Meagan

22

Bellshaw for the United States, and we call Mr. Eduardo Cue

23

as our next witness.

24

COURTROOM DEPUTY: Before you have a seat, can you

25

please raise your right hand.

1 (Witness is placed under oath.)

2 COURTROOM DEPUTY: Thank you.

3 THE COURT: Hi, Mr. Cue.

4 THE WITNESS: Hello, Your Honor.

5 THE COURT: Nice to meet you, and welcome.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Ms. Bellshaw, whenever you're ready to  
8 go.

9 MS. BELLSHAW: Thank you, Your Honor.

10 - - -

11 EDDY CUE, WITNESS FOR THE PLAINTIFF, SWORN

12 DIRECT EXAMINATION

13 - - -

14 BY MS. BELLSHAW:

15 Q Good morning, Mr. Cue.

16 Would you please state and spell your name for the  
17 record.

18 A Eddy Cue. It's spelled E-d-d-y. Last name is  
19 spelled C-u-e.

20 Q Mr. Cue, my name is Meagan Bellshaw, and I  
21 represent the United States in this matter. We met once  
22 before at your deposition.

23 We have some binders that I'm going to pass up to  
24 you.

25 MS. BELLSHAW: Your Honor, may we approach?

1 THE COURT: Sure.

2 BY MS. BELLSHAW:

3 Q Mr. Cue, what is your current position?

4 A I'm the senior vice president of services at  
5 Apple.

6 Q And what are your responsibilities as the senior  
7 vice president of services at Apple?

8 A I run a lot of the applications and services that  
9 are provided on our Apple hardware, things from iCloud to  
10 Apple TV to music to maps, to applications like Notes,  
11 Reminders, iMovie, a variety of things like that.

12 Q And how long have you been in that role?

13 A Well, the role has expanded, but I've been running  
14 services at Apple for, oh, I don't know, probably 15 years,  
15 something like that.

16 Q And who do you report to?

17 A I report to Tim Cook, the CEO of Apple.

18 Q And how long have you worked at Apple?

19 A Just over -- well, almost 35 years. It will be  
20 35 years at the end of the year.

21 Q Mr. Cue, you're familiar -- are you familiar with  
22 the information services agreement between Google and Apple?

23 A I am.

24 Q Is that also known as the ISA?

25 A That's correct.

1 Q When did Apple and Google sign the first ISA?

2 A I believe it was back in 2002.

3 Q Did you play any role in negotiating the first ISA  
4 in 2002?

5 A I did not.

6 Q Did you have any role approving the first ISA in  
7 2002?

8 A I did not.

9 Q Have Apple and Google ever amended or extended the  
10 original ISA?

11 A We have several times.

12 Q And before 2015, did you play any role in  
13 negotiating or approving those ISA amendments?

14 A I did not.

15 Q Did Google and Apple amend the ISA in 2016?

16 A We did.

17 Q And were you the lead negotiator for Apple in  
18 connection with that amendment?

19 A That's correct.

20 Q Who was your Google counterpart in those  
21 negotiations?

22 A The CEO of Google, Sundar.

23 Q Is that Sundar Pichai?

24 A That's correct.

25 Q How long did your negotiations over the 2016 ISA



1 take place?

2 A I think it was roughly a year.

3 Q And then the amendment was finalized and signed in  
4 2016?

5 A That's correct.

6 Q Under the ISA, does Apple agree to set Google as  
7 Safari's default search engine?

8 A That's correct, we do.

9 Q Which Apple devices does the ISA apply to?

10 A All Apple devices where we have a browser or  
11 browser-like technology for searching.

12 Q Without getting into any specific figures, does  
13 Google earn ad revenue from searches generated on Apple  
14 devices?

15 A They do.

16 Q And under the ISA, does Google split with Apple a  
17 percentage of that revenue?

18 A That's correct, after they recover their costs.  
19 So it's a net revenue, not a gross revenue.

20 Q Thank you.

21 So when Google makes more money in ad revenue on  
22 Apple devices, Apple also makes more money?

23 A That's fair.

24 Q Mr. Cue, we're not going to put anything on the  
25 screen right now, I understand that we're having some

1 difficulty with the screens, but I would just like you to  
2 look in your binder at the tab JX33.

3 And, Your Honor, JX33 is in evidence.

4 Mr. Cue, are you there?

5 A I am.

6 Just looking through to make sure I see which one  
7 it is, but yes.

8 Q Is JX33 the 2016 amendment to the ISA?

9 A It is.

10 Q And did you sign JX33 for Apple?

11 A I did.

12 Q Apple and Google extended the ISA in JX33 after  
13 the 2016 amendment; is that right?

14 A You mean we extended it another time after?

15 Q Yes.

16 A That's correct.

17 Q When was that extension?

18 A I believe it was 2020. I don't remember the exact  
19 date but --

20 Q Was it 2021?

21 A It might have been, yeah.

22 Q And without telling me any of the exact dates, is  
23 it fair to say that the 2021 amendment extended the  
24 termination dates that are set out in the 2016 amendment?

25 A That's correct, the amendment was just an

1 extension of the dates, nothing else.

2 Q So other than some dates, the terms reflected in  
3 JX33 are still the operative terms of the agreement between  
4 Google and Apple?

5 A That's correct.

6 Q Mr. Cue, I'd like to direct your attention to  
7 Section 1A of JX33, and, again, it's just in your binder.

8 Is this the provision that requires Apple to set  
9 Google as the Safari default search provider?

10 A That's correct.

11 Q Is Apple's web browser software the Safari  
12 browser?

13 A It is.

14 Q Does Apple preload Safari on its mobile devices  
15 and personal computers?

16 A We do.

17 Q Does Apple have any web browsers other than  
18 Safari?

19 A We do not.

20 Q Assuming for a moment that Apple chose to develop  
21 a second browser, if Apple loaded a second browser onto its  
22 devices, is it your understanding that the ISA would apply  
23 to Apple's second browser?

24 A I think so, but it's not something we've ever  
25 thought about or considered.

1           Q     Do you know what a third-party browser is, like  
2 Firefox?

3           A     Yes, I do.

4           Q     Other than Safari, does Apple preload any  
5 third-party browsers on its devices?

6           A     We don't preload any third-party apps, including  
7 browsers. We made a decision very early on from the  
8 beginning of the iPhone that we were not going to preload  
9 third-party software for two reasons. One, it's extremely  
10 easy to download new browsers or new applications of any  
11 kind from our app store, so we have an app store that comes  
12 preloaded with the iPhone so customers can very easily  
13 download anything.

14                     And, secondly, we wanted to make sure that any  
15 software that came on our phone was something we wrote so we  
16 knew the source code, we knew what the software exactly did,  
17 and we didn't want to create any kind of bloatware, which is  
18 a term that's very common with other manufacturers where  
19 they put a bunch of software in there that customers don't  
20 really want.

21                     And so we don't preload any third-party software,  
22 including browsers.

23           Q     And this is probably implicit in your answer, but  
24 Apple doesn't preinstall Chrome on its devices, the Google  
25 browser?

1           A     That's correct.  It's available on The App Store.

2           Q     And Apple doesn't preinstall the Google Search  
3 application on its devices?

4           A     Again, we don't preload any third-party  
5 application on our devices.

6           Q     And does Apple plan to preload any third-party  
7 applications on its devices?

8           A     No.

9                     As I've said, from the very beginning, we haven't  
10 done it, and I don't see any scenario in which we would.

11          Q     So Google --

12          A     And I'm speaking specifically to the iPhone.

13                     Early on we did this on the Mac before the iPhone  
14 and we learned it wasn't the best experience, and we don't  
15 do it on the Mac either anymore.

16          Q     So is Google the only preset default search engine  
17 on Apple devices?

18          A     Well, you can only have one default so, yes,  
19 Google is the default search engine on Safari.

20          Q     You mentioned bloatware earlier.  What did you  
21 mean by bloatware?

22          A     On most other devices from other manufacturers,  
23 they tend to get paid to put software on their devices, and  
24 they load them up with a bunch of applications, generally  
25 because of money, not because of any other reason.  So when

1 a customer buys a new device, it comes with a bunch of stuff  
2 they don't even really know what the heck is it is and  
3 customers don't really like that at.

4 And so one of the things that we love about Apple  
5 products is they're very clean, very simple to use. When  
6 they come right out of the box, they work. And there's  
7 nothing like that. It's worked very effectively. Our  
8 customers really like that.

9 Q Turning to your negotiations with Mr. Pichai over  
10 the 2016 amendment, going into those negotiations, and  
11 without saying any specific numbers, was one of Apple's  
12 goals to increase the percentage of revenue share that it  
13 received?

14 A Yes.

15 We had a lot of different goals going into it, but  
16 that was one of them, yes.

17 Q One of Apple's goals is to be paid more money,  
18 right?

19 A Well, one of our goals was to increase the  
20 rev share back to what it was originally with the agreement.  
21 We felt we deserved to get a higher rate than we were  
22 getting, and so that was certainly one of my goals.

23 Q And you wanted to be -- you were asking for a  
24 higher revenue share because you wanted Apple to be paid  
25 more money; is that fair?

1           A     Well, ultimately, yes, we would make more money.  
2     But, again, as I said, it was a -- I thought it was the  
3     right thing and the fair thing for us. We had negotiated  
4     and built this technology and had done all this early work  
5     that Google was getting the benefits of, and we deserved a  
6     higher rev share.

7           Q     Mr. Cue, I'm going to direct your attention to  
8     UPX594, which is a tab in your binder, and then, if I may  
9     approach, Your Honor, I'm going to pass out some Rosetta  
10    Stones that we can use to facilitate this discussion.

11          A     And I apologize, what was the number again?

12          Q     594.

13                   We are not going to put this on the screen because  
14    we don't have the capability to add the redaction that we  
15    discussed.

16          A     I see it. Thank you.

17                   THE COURT: So do you want to admit it subject to  
18    what we discussed earlier?

19                   MS. BELLSHAW: Your Honor, 594 has already been  
20    admitted into evidence.

21                   THE COURT: It's already been admitted. Okay.  
22    Thank you.

23                   MS. BELLSHAW: May I approach?

24                   THE COURT: Counsel, feel free to just, you can  
25    explain to Mr. Cue precisely what it is that you've handed

1 it out and the reason why we're doing it this way.

2 MS. BELLSHAW: Yes, Your Honor.

3 BY MS. BELLSHAW:

4 Q So, Mr. Cue, you've been handed a Rosetta Stone  
5 that we have marked as UPX4001.

6 Apple and Google have asked to maintain the  
7 confidentiality of certain percentages that you'll see in  
8 your binder; they have a red square around them. I'd ask  
9 you not to say any of those percentages aloud.

10 If you look over to the Rosetta Stone that I've  
11 handed you, you'll see that they correspond to the certain  
12 letter. I will use the letter in my questions, and I would  
13 ask that you use the letter in your answer.

14 A I understand. Thank you.

15 Q Thank you.

16 MS. BELLSHAW: And, Your Honor, we would move to  
17 admit UPX4001 as the Rosetta Stone.

18 THE COURT: Okay. It will be admitted.

19 It's a demonstrative.

20 MR. SCHMIDTLEIN: Yeah, I mean, the only thing --  
21 well, I'll -- regarding my questioning, there is a  
22 percentage on this document that does not appear in this  
23 document.

24 MS. BELLSHAW: Yes, it appears in the next  
25 document that we plan to ask him about.



1 MR. SCHMIDTLEIN: Okay.

2 (Plaintiffs' Exhibit UPX4001  
3 received into evidence.)

4 BY MS. BELLSHAW:

5 Q Mr. Cue, do you have UPX594 in front of you?

6 A I do.

7 Q Thank you.

8 Is UPX594 an email from you to Mr. Cook, dated  
9 January 22nd, 2016?

10 A It is.

11 Q And, Mr. Cue, I just want to -- I'm not going to  
12 ask you questions about this sentence, but there is one  
13 sentence that has been redacted as a result of our  
14 discussion with your counsel and the Court this morning.  
15 It's the second-to-last sentence in your email to Mr. Cook.  
16 I'm not going to ask you about it but I --

17 A The one with the square?

18 Q It doesn't have a square on it.

19 A Okay. Underlined?

20 Fine. Let's -- ask me the question and then I'll  
21 figure it out.

22 Q If you have any questions, we can take this step  
23 by step.

24 A Okay. I got it.

25 Q Okay.

1           Do you see at the bottom of the email that  
2 Mr. Cook asks how your meeting went?

3           A     I do.

4           Q     Is it your understanding that was a meeting with  
5 Mr. Pichai?

6           A     That's correct.

7           Q     And was that meeting regarding the Google Search  
8 contract?

9           A     That's correct.

10          Q     And the next email in the chain, is that your  
11 response to Mr. Cook?

12          A     That's correct.

13          Q     And in your response, do you describe your meeting  
14 with Mr. Pichai?

15          A     That's also correct.

16          Q     You write, "Good, except for the rev share. Did  
17 not come back with a specific number but said there was no  
18 way he could make C percentage work."

19                 Does "he" in that sentence refer to Mr. Pichai?

20          A     That's correct.

21          Q     Is the revenue share percentage, C, in that line,  
22 the split that you sought in the negotiation?

23          A     That is correct.

24          Q     In the next sentence you write that Mr. Pichai  
25 said, "I will pay you for everything so we should keep it at

1 A percentage."

2 Do you see that?

3 A I do.

4 Q What did you understand Mr. Pichai to mean by  
5 this?

6 MR. SCHMIDTLEIN: Your Honor, this is where  
7 I think --

8 MS. BELLSHAW: I'll rephrase to avoid the issue.

9 MR. SCHMIDTLEIN: Thank you.

10 BY MS. BELLSHAW:

11 Q Did you understand Mr. Pichai's position to be  
12 that Google should pay Apple A percentage in the 2016  
13 amendment?

14 A Yes.

15 At this time, Sundar and myself were just starting  
16 to get to know each other, we were just starting to discuss  
17 this. Neither of us had been responsible for these  
18 agreements in the past. And so I came into this wanting the  
19 rev share to increase to C.

20 Not surprisingly, he came back saying he would  
21 like to maintain it at A. And so that's -- that was the  
22 start of our negotiations and our positions.

23 Q In the last sentence of your email you write,  
24 "I told him that him and I," and "him" there is Mr. Pichai?

25 A That's correct.

1           Q     So you told Mr. Pichai that you and he "need to  
2 sit down alone next week and agree to the economic terms or  
3 we shouldn't move forward."

4                     By "economic terms," you were referring to the  
5 revenue share percentage split between Apple and Google?

6           A     That's correct.

7           Q     And did you tell Mr. Pichai that if you and he  
8 could not agree on a revenue share percentage split, Apple  
9 and Google shouldn't move forward with the ISA?

10          A     I don't know the exact words that I told him at  
11 the time, but basically my point was if we're trying to  
12 re-negotiate the deal, which we were, him and I had to come  
13 to an agreement. And if we didn't, yeah, we wouldn't have  
14 an agreement.

15          Q     The economics of the Google deal were important to  
16 Apple; is that fair?

17          A     Yes, they were -- that was important, among other  
18 things, that's correct.

19          Q     And the economics of the deal were important  
20 enough that Apple was willing to walk away from the ISA if  
21 Google wouldn't commit to certain economic terms?

22          A     You know, look, that never was tested.

23                     My view, as I got into this agreement with Sundar,  
24 was I always felt like it was in Google's best interest and  
25 our best interest to get a deal done. I thought we were a

1 great -- we provided great customers to Google, they did an  
2 amazing job on the search engine side, and I always felt we  
3 would come to an agreement.

4           So I didn't contemplate or spend a lot of time  
5 worrying about not getting a deal done because I felt very  
6 confident that I would be able to get a deal done with  
7 Sundar.

8           Q     And if you weren't able to reach a deal on the  
9 economic terms, you were willing to walk away from the ISA,  
10 right?

11          A     I think -- again, you make this all about  
12 economics.

13           The deal has a lot more to it than economics.  
14 I think ultimately, you have to get a deal across  
15 everything, not just economics. Economics was an important  
16 part, of course.

17           And so the question of what would have happened if  
18 we hadn't gotten a deal; I don't know. Like I said,  
19 I didn't spend a lot of time thinking about it.

20           You know, I've been fairly clear that I didn't  
21 think at the time, nor today, that there's anybody out there  
22 who's anywhere near as good as Google at searching. And so  
23 certainly there wasn't a valid alternative that we could  
24 have gone to at that time.

25           But what would we have done? Would we have gone

1 off and -- I don't know. I don't know what we would have  
2 done in that case. We could have built our own. I don't  
3 know what we would have done.

4 It's not something that we ever really truly  
5 considered, investigated, or did. My objective at this time  
6 was to get a deal done, and I felt confident that I would be  
7 able to do that.

8 Q And, Mr. Cue, I'm going to ask you to focus just  
9 on the question that I'm asking you.

10 You told Mr. -- you reported to Mr. Cook that you  
11 had told Mr. Pichai that if you couldn't agree on the  
12 economic terms of the deal, that Apple should walk away from  
13 the ISA, correct?

14 A Again, if we couldn't agree on the deal, economic  
15 terms or something else, then ultimately, you have -- it's  
16 not a walk away, there's no deal. So, yes.

17 Q Apple wanted to get paid its fair share under  
18 the ISA?

19 A Yeah, I agree with that.

20 Q Again, without saying specific percentages,  
21 ultimately were Google and Apple able to agree on the amount  
22 of revenue share that Apple would receive under the ISA?

23 A We were.

24 Q And then if you look at your Rosetta Stone again,  
25 did Google agree to pay Apple the percentage that is

1 reflected in Row B of the net revenue that Google earned  
2 from the Safari default on Apple devices?

3 A That's correct.

4 Q Has Apple paid -- or has Google paid Apple the  
5 percentage reflected in line B since this agreement was  
6 signed in 2016?

7 A That's correct.

8 Q And that's the same percentage split that Google  
9 pays Apple today?

10 A That's correct.

11 Q Does the ISA place any limitations on how Apple  
12 uses its split of the Google revenue share?

13 A No. I mean, the money comes to Apple, and we can  
14 do -- the money is just Apple's to decide how to use it.

15 Q Are those payments designated for any specific use  
16 within Apple?

17 A No, they're not.

18 Q Mr. Cue, is it your understanding that under the  
19 ISA, Apple has agreed to use Google Search in Safari in a  
20 manner that remains substantially similar to the way that it  
21 was used at the time the -- JX33 was executed in 2016?

22 A Sorry, repeat the question again.

23 Q Sure.

24 Is it your understanding that Apple has agreed,  
25 under the ISA, to continue to use Google's search services

1 in Safari in a manner that remains substantially similar to  
2 its use as of the execution date of the 2016 amendment?

3 A Yes, I think we've been doing this since 2002. It  
4 hasn't changed at all. So, yes, it's substantially the same  
5 since 2002.

6 Q Mr. Cue, as you sit here today, is it your  
7 understanding that you have a contractual obligation to  
8 support and defend the ISA agreement in connection with  
9 government actions?

10 A There's a statement in the agreement that I know  
11 is in there, it was put there by our legal counsel and their  
12 legal counsel. I don't know a whole lot about that. I know  
13 the requests came from Google at the time. They were under  
14 some level of investigation by the EU, and they mentioned  
15 that and said that they would like that in there. Our legal  
16 counsel said it was fine, so I didn't have a problem with  
17 it.

18 Q And, Mr. Cue, as you sit here today, Apple has a  
19 corporate obligation to support and defend the ISA agreement  
20 in connection with government actions?

21 A That's a question from a lawyer to answer.  
22 I don't know the answer to that. I'm not here because of  
23 that, I can say that. I'm here to defend it based on my  
24 knowledge of it.

25 Q And, Mr. Cue, I'm not asking for conversations



1 you've had with your lawyers, just your understanding of the  
2 ISA.

3           Is it your understanding, as you sit here today,  
4 that Apple has a corporate obligation to support and defend  
5 the ISA agreement in connection with government actions?

6           A     Again, I don't have the agreement in front of me.  
7 If you put the words, I would say whatever the words are are  
8 accurate, I don't have a problem with it, but I don't know  
9 exactly what that means from a legal point of view.

10          Q     At the time you entered into the 2016 amendment,  
11 the parties were aware that this agreement could be the  
12 subject of an action by government regulators?

13          A     Again, the only discussion that I was aware of was  
14 related to this EU thing and I don't know anything more  
15 about it.

16          Q     Is it your understanding that the parties can  
17 choose to terminate the agreement if it is the subject of a  
18 lawsuit or enforcement proceeding by a regulatory authority?

19               MR. SUNSHINE: Your Honor, objection. We are  
20 going beyond what we talked about this morning and getting  
21 into privileged areas. And if perhaps DOJ couches the  
22 questions in terms of, you have a knowledge or understanding  
23 beyond what the lawyers told him, maybe. But I think we've  
24 seen the limits of this witness's knowledge.

25               THE COURT: Well, I think where we left it was

1 that you would ask Mr. Cue generally whether he had an  
2 understanding that the parties had certain options in the  
3 event of government action and see where it went from there.

4 MS. BELLSHAW: Okay.

5 BY MS. BELLSHAW:

6 Q Mr. Cue, is it your understanding sitting here  
7 today that Google and Apple have certain options as set  
8 forth in the ISA as to steps they can take if the ISA is  
9 challenged or held unenforceable by a government authority  
10 or a court?

11 A As I said earlier -- and you can show me the  
12 language, I'm sure -- whatever language is in there related  
13 to that, there was something there, I don't recall exactly  
14 what it is, I didn't negotiate that language, that was done  
15 by our counsel -- our General Counsel and Google's, so I  
16 would let them answer what exactly it means.

17 MS. BELLSHAW: If I have more specific questions  
18 for Mr. Cue about the provisions, should I ask them in --

19 THE COURT: You can show him the document and see  
20 if it refreshes his memory about his understanding about  
21 what the provision is. And then if there are specifics that  
22 we talked about earlier, then we can do that in a closed  
23 session.

24 MS. BELLSHAW: Okay.

25

1 BY MS. BELLSHAW:

2 Q Mr. Cue, would you please turn to JX33 again in  
3 your binder.

4 Section 9 of the agreement, which is on page 9,  
5 ending in 6801.

6 If you would like to take a moment to look at it.

7 A I've looked at it.

8 Q Does this refresh your recollection that under the  
9 ISA, Google and Apple have agreed that the parties can take  
10 certain steps should the ISA be challenged or held  
11 unenforceable by a regulatory authority or a court?

12 A Again, what I recall about this is the same thing  
13 I said before. Google had stated some level of  
14 investigation of some kind in the EU. I didn't understand  
15 what that was.

16 And then this language and these areas that were  
17 put in here were done by both counsels related to that.  
18 I did not care one way or the other, wasn't my thing, our  
19 General Counsel said it was fine, and so I was fine with it  
20 from that viewpoint.

21 I assumed that always related to the EU  
22 investigation that they talked about.

23 Q You can set that aside, Mr. Cue.

24 What is a choice screen in the context of a  
25 smartphone?

1           A     I don't -- I mean, there's --

2           THE COURT:  Be more specific, Counsel.

3           THE WITNESS:  Yeah.

4  BY MS. BELLSHAW:

5           Q     Does Apple make -- do Apple users make some  
6  choices to set up their phones right out of the box?

7           A     Oh, they do.

8           MS. BELLSHAW:  I'd like to pass out a  
9  demonstrative.

10           May we approach, Your Honor?

11           THE WITNESS:  Thank you.

12  BY MS. BELLSHAW:

13           Q     I think it should also be on your screen, Mr. Cue.

14           A     It is now.

15           Q     I've handed you what has been marked as UPXD009.  
16  This is the United States Demonstrative 9.

17           A     It's very bad resolution on the screen.  We need a  
18  Mac.

19           THE COURT:  If Apple would like to make  
20  contributions to the judiciary, we'd welcome it.

21  BY MS. BELLSHAW:

22           Q     Mr. Cue, I will represent that we took these  
23  images from various support pages on Apple's website.

24                    When you start at the left looking at the image on  
25  UPXD009, when setting up a new iPhone out of the box, are

1 users presented with a choice about the appearance of their  
2 iPhone?

3 A Yeah, that's correct.

4 When you take a device out of the box, if you  
5 think about it, our customers are very excited about getting  
6 their phone and getting it up and running and working fast,  
7 right. You just spent a significant amount of money, it's a  
8 device you use every day. And so we try to get them up and  
9 running as quickly as possible. And so the more choices or  
10 the more options that you get, it frustrates customers. So  
11 we've spent a great deal of time and effort to minimize the  
12 number of questions that we ask. And we look at those by  
13 what do we think are the most critical things that a  
14 customer really needs to know at that point in time.

15 And we thought appearance being whether you want  
16 to be in a -- what we call the size of the text in the  
17 phone, because obviously some people wear glasses, others  
18 don't, it's something that we get a lot of requests for  
19 people when they're setting up their phones, they want their  
20 fonts to be bigger. And so we provide this capability when  
21 you're setting up your phone.

22 Q So Apple presents users with options and then asks  
23 them to select the text size and appearance of the icons on  
24 their phones; is that fair?

25 A That's correct.

1           Q     And then if you would look at the middle image on  
2 UPXD009, the first time a user opens the maps app, are they  
3 given a choice about whether to allow maps to use their  
4 location?

5           A     Yes, but I don't think what you're seeing in the  
6 second one is a choice screen around it. We provide choices  
7 at the beginning. What I see here in the middle, and  
8 certainly the next one, are all about privacy decisions that  
9 a customer has to make. And so they're appropriate to ask  
10 at the time that they're using those applications. They're  
11 not appropriate to ask at another time.

12          Q     The first time that a user opens up the maps app,  
13 Apple presents them with a screen that has three choices on  
14 it, right?

15          A     Yes. Again, I -- you started this by the word  
16 "choice," and I just want to make clear, yes, we provide the  
17 option for the customer to pick what level of privacy they  
18 want in maps, that is correct.

19          Q     Right.

20                 The user is offered, they can allow maps to use  
21 their location once, they can use it while -- maps can use  
22 their location while using the app, or they can choose not  
23 to allow location tracking in apps -- maps; is that correct?

24          A     That's correct.

25          Q     And then if you look at the image all the way on

1 the right in UPXD009, do you recognize that image?

2 A I do.

3 Q Is this the -- are you familiar with app tracking  
4 transparency?

5 A I am.

6 Q And what is app tracking transparency?

7 A We wanted to make sure that if an application was  
8 using the customer's data to be tracked across multiple  
9 applications or websites, that the customer was made aware  
10 of them and the customer had a choice of whether to allow  
11 that or not allow that.

12 Q Do you believe that the privacy control afforded  
13 by the app tracking transparency is in an Apple user's best  
14 interests?

15 A I do.

16 Q And am I correct the way that it works is that  
17 some applications ask to track users?

18 A Well, it's, again, the app -- any application that  
19 does this is required to prompt the user for this. If the  
20 application doesn't do that, then they're not required to  
21 prompt.

22 Q Can so if a user downloads a new app that is asked  
23 to track them, they're presented with this screen on the  
24 right in UPXD009 asking -- giving them the choice of whether  
25 or not they'd like the app to track them; is that correct?

1           A     Yeah, I think that's fair.

2           Q     And this screen appears for every new app the user  
3 downloads that has asked to track the user the first time  
4 they -- the user opens up the application; is that right?

5           A     That's not the only time. It can be anytime that  
6 an application makes a change, for example. So it could be  
7 an existing application that you already have on your phone.

8           Q     So when it's important, Apple does offer users  
9 choices, not just right out of the box but as they use their  
10 iPhone?

11          A     Look, if you're comparing this with picking search  
12 engines for browsers, I think these are two very different  
13 things, completely different things. I think the appearance  
14 one is how to set up a phone, the other one is around  
15 privacy, which is a really important component to customers,  
16 and we want customers to be aware of what those applications  
17 are doing.

18                    When we're picking search engines, we pick the  
19 best one and we let the customer easily change them. So  
20 I have no problem with that. I think we're doing the right  
21 thing by customers.

22          Q     And, Mr. Cue, I'm simply asking that when Apple  
23 thinks it's important, it does allow the user a choice, such  
24 as the choice screens that we see in UPXD009?

25          A     We certainly make decisions on when to show these



1 options that you show here.

2 Q And the ISA does not permit a choice screen for  
3 Apple users to set their default search engine out of the  
4 box, correct?

5 A That's correct, it's not something we've ever  
6 wanted. We didn't ask for it in 2002, and it's not  
7 something we wanted. We think it's a mistake to ask the  
8 customer something like that.

9 In both of these cases that you show here, it's  
10 very clear to the customer what the choice is. Do you want  
11 maps to know your location? Every customer in the world  
12 understands that.

13 Being tracked, every customer pretty much in the  
14 world understands that.

15 When you're picking a search engine, we have  
16 choices in there that customers have never heard of.  
17 DuckDuckGo is a very small one.

18 We have another one called Sconcierge, or  
19 something like that.

20 They are -- and so you present a user with a  
21 choice for something they don't even know. We know what  
22 happens. Customers, they don't understand, they're afraid  
23 of making the wrong choice.

24 So what we do is we make Google be the default  
25 search engine because we've always thought it was the best

1 engine. And then we make it really easy for customers to  
2 switch if they'd like to switch. And so that's worked  
3 extremely well for our customers and we certainly believe  
4 we've done the right thing for our customers.

5 Q And, Mr. Cue, would you agree that the choice of a  
6 search engine can affect a user's privacy?

7 A Yes, to some level, it could, yes.

8 Q Is the ISA limited to the United States or is it a  
9 global agreement?

10 A It's a global agreement.

11 Q Under the ISA, can Apple set Google as the default  
12 search engine internationally while using a different  
13 default search provider in the United States?

14 A Again, we -- in the agreements, over time, there  
15 were certain countries where we found that either Google  
16 wasn't the best one or there was another one that we thought  
17 was very competitive, and so we carved those out in the  
18 agreement. I believe China was one of those, for example,  
19 where we thought the Google search engine was not the best  
20 one, and so we carved out the ability of us setting the  
21 default there.

22 In the other countries, we felt very comfortable  
23 that Google was by far the best one. So there's no  
24 carve-out for any other country other than, I think it's  
25 the -- I believe it's China, Russia, and South Korea, if I'm

1 correct.

2 Q And there's no carve-out for the United States?

3 A There was no need to.

4 Q So under the ISA, Apple can't set Google as the  
5 search provider internationally and a different search  
6 provider in the United States, right?

7 A Again, yes, but it's not something we thought  
8 about or needed.

9 Q You mentioned earlier some of the different device  
10 types that Apple sells, including Mac computers. Under the  
11 ISA, could Apple decide to send search queries from a Mac  
12 computer to one search engine that is not Google, while  
13 sending, you know, all search queries from iPhone to Google?

14 A Again, just to be very clear, when we were doing  
15 the deal with Google, we wanted the capabilities to provide  
16 the best -- the best service, the best application, the best  
17 thing for customers. Google was the best one. So when we  
18 chose and did the deal, we picked it around the world.

19 We don't treat our customers differently around  
20 the world. We want them all to have the best experience.  
21 And so in the countries where Google was providing the best  
22 experience, we did that. In the countries where they were  
23 not, we did not do that.

24 Q And it also applies to all devices, right?

25 A Sure, because, I mean, from an Apple perspective,

1 why would we give an inferior experience on a Mac versus a  
2 phone. So we want to provide the best experience across all  
3 of our devices.

4 Q Mr. Cue, I'd like to direct your attention to  
5 UPX790 in your binder.

6 Is UPX790 an email that you sent to Apple's CEO,  
7 Tim Cook, on January 10th, 2013?

8 A It is.

9 MS. BELLSHAW: And, Your Honor, we would move to  
10 admit UPX790.

11 THE COURT: All right. 790 will be admitted.

12 MR. SCHMIDTLEIN: No objection.

13 THE COURT: No objection? All right. Thank you.  
14 790 is admitted.

15 MS. BELLSHAW: Thank you, Your Honor.

16 (Plaintiffs' Exhibit UPX790  
17 received into evidence.)

18 BY MS. BELLSHAW:

19 Q The attachment to UPX790 is a slide deck on  
20 privacy that you sent to Mr. Cook.

21 Do you see that?

22 A I do.

23 Q If you would please turn to page 2 of UPX790, it  
24 ends in Bates number 3668.

25 There's a presentation titled "Competing on  
Privacy."

1 Do you see that?

2 A That's correct.

3 Q Why did you send this deck to Mr. Cook?

4 A I think Apple, back then in 2013 and ever since  
5 Apple was started, was a company that led on privacy across  
6 the board, and we thought we could compete based on the fact  
7 that our devices were -- we respected users' privacy and we  
8 did a lot to -- and continue to do a lot -- to make our  
9 devices as private and secure as possible.

10 Q If you would please turn to page 5 of UPX790,  
11 ending in Bates number 3671.

12 Do you see a slide entitled "Privacy Timeline"?

13 A I do.

14 Q The last event on the top right is, "Google tracks  
15 users in Safari against their permission, fined 22.5 million  
16 by the FTC."

17 Do you see that?

18 A I do.

19 Q What do you understand that to refer to?

20 A Again, I think it's -- they were tracking users  
21 without asking or getting the permission from the users to  
22 do that.

23 But I -- I don't know the exact thing, I did not  
24 look through or see the exact details of it, that I can  
25 recall.

1 Q And were you aware of Google's 2012 settlement  
2 with the FTC for tracking Apple users in Safari without  
3 their permission when you were negotiating the amendments to  
4 the ISA?

5 A Yes, I was.

6 Again, I -- we've always thought that we've had  
7 better privacy than Google, so that's not a -- I knew that,  
8 but we'll talk about it as it relates to the ISA, I'm sure.

9 Q If you would please turn to page 10 of UPX790,  
10 it's the one ending in Bates number 3676.

11 It's a slide entitled "Our Competitors' Approach  
12 to Privacy."

13 Do you see that?

14 A I do.

15 Q At a high level, does this section of the  
16 presentation summarize Apple's view of its competitors'  
17 approaches to privacy?

18 A I think it has, yes, a lot of that, but I don't  
19 know if it's -- certainly not comprehensive, but it has a  
20 lot of it.

21 Q And then just looking through, are pages 11  
22 through 16 generally about Google?

23 A They are.

24 Q If you would please turn to the next page, page 11  
25 of UPX790, ending in Bates number 3677.

1           There's a quote from Eric Schmidt, "Google's  
2 policy is to get right up to the creepy line but not  
3 cross it."

4           Do you see that?

5           A     I do.

6           Q     And who is Eric Schmidt?

7           A     I believe at the time, he was the CEO of Google.

8           Q     If you would turn to page 15. It's the slide with  
9 the heading, "Search Ads," ending in 3681 at the bottom.  
10           What is this slide?

11          A     This is comparing what we do versus what Google  
12 does for search and for ads.

13          Q     Does Apple believe that its approach to privacy  
14 with respect to search and advertising is better than  
15 Google's?

16          A     Yes, we do.

17                But, again, when we're comparing it here, let's be  
18 clear about something.

19                When we did the deal with Google for search from  
20 the very beginning, Google is not allowed to require the  
21 user to log in, for example, which it says here, "Searchers  
22 are tied to Google accounts," for example. That's what they  
23 do on other platforms.

24                On our platform, they weren't allowed to do that.

25                In addition to that, over time we've added things

1 to Safari to make it harder to track. You gave some  
2 examples earlier. There's also -- ITP is another one.

3 So we're constantly doing things to protect our  
4 customers and make sure that the agreements and the things  
5 that we have with Google respect our customers' privacy.

6 Q If you would please turn to the next page, page 16  
7 of UPX790.

8 Apple's view of Android is that it's a massive  
9 tracking device?

10 A That's correct.

11 As I stated earlier, we think the iPhone is a much  
12 more private device than Android.

13 Q You can set that one side, Mr. Cue.

14 Do Apple's customers care about online privacy?

15 THE COURT: Ms. Bellshaw, I'm going to actually  
16 interrupt you before Mr. Cue answers that question.

17 Let's take our morning break. It's about 5 after  
18 11:00. Our clock finally works, so we will resume at 11:20.  
19 See everyone shortly.

20 MS. BELLSHAW: Thank you, Your Honor.

21 THE COURT: Mr. Cue, I'll ask you not to discuss  
22 your testimony with anybody during the break.

23 COURTROOM DEPUTY: All rise. This Court stands in  
24 recess.

25 (Recess from 11:05 a.m. to 11:21 a.m.)



1 THE COURT: Ms. Bellshaw, whenever you're ready.

2 MS. BELLSHAW: Thank you, Your Honor.

3 BY MS. BELLSHAW:

4 Q Mr. Cue, I just have a couple more questions on  
5 privacy.

6 Would you agree that users of technology have a  
7 significant interest in privacy?

8 A We think so, yes.

9 Q And is protecting its users' privacy important to  
10 Apple?

11 A Absolutely.

12 Q And that includes when Apple's users conduct  
13 searches on their Apple devices?

14 A That's correct.

15 Q Mr. Cue, I'd like to direct your attention to  
16 UPX8105.

17 Are you there?

18 A I am.

19 Q Is 8105 Apple's 10-K for the year 2022?

20 A I assume it is. This is not something I typically  
21 read, but, yes.

22 MS. BELLSHAW: Your Honor, we would move to admit  
23 UPX8105 into evidence.

24 MR. SCHMIDTLEIN: No objection.

25 THE COURT: All right. It will be admitted.

(Plaintiffs' Exhibit UPX8105  
received into evidence.)

1  
2  
3 BY MS. BELLSHAW:

4 Q Mr. Cue, if you would turn to page 32 of UPX8015  
5 [sic]. It's the one ending in Bates number 0203.

6 And it is page 29 of the 10-K. The page numbers  
7 don't quite line up.

8 It's also on your screen.

9 Am I correct that Apple's 2020 fiscal year ran  
10 from September 27th, 2019, to September 26th of 2020?

11 A That's correct.

12 Q And if you look on page 32 of UPX8015, do you see  
13 that Apple's operating income for 2020 was \$66.28 billion?

14 A I do.

15 Q And then Apple's worldwide operating income for  
16 fiscal year 2021 was \$108.949 billion; is that right?

17 A That's correct.

18 Q And the ISA accounts for a significant portion of  
19 Apple's profits for fiscal year 2020 and fiscal year 2021;  
20 is that right?

21 A I would disagree with that.

22 I don't -- that is not the way we reported or look  
23 at it.

24 The ISA itself that comes in is one piece of it.  
25 But, for example, all of the engineering that we do on iOS

1 and Safari and all of those things that make the ISA  
2 successful are not incorporated into the dollars that come  
3 in from Google. So it's not something we calculate.

4 MS. BELLSHAW: And, Your Honor, I apologize, we  
5 streamlined a little bit on the break, but that is actually  
6 the completion of the questions that we have for Mr. Cue in  
7 the open session.

8 THE COURT: Okay.

9 Do the Plaintiff States have any questions of  
10 Mr. Cue?

11 MR. CAVANAUGH: No, Your Honor.

12 THE COURT: Okay.

13 All right, folks. So we are going to go into a  
14 closed session now, so I'll ask anyone who is not associated  
15 with the parties to exit the courtroom, and then we will  
16 re-open it when we are able to. Thank you, everyone.

17 THE COURT: We just need a few minutes, everyone,  
18 to confirm that the media room line is disconnected.

19 THE WITNESS: Thank you.

20 MS. BELLSHAW: Thank you.

21 THE WITNESS: No more Rosetta Stone?

22 MS. BELLSHAW: No more Rosetta Stone.

23 (Pause)

24 THE COURT: We've also set up an overflow room  
25 today, so I think that's the reason for the extra time today

1 to get connected.

2 (Pause)

3 THE COURT: Ready to go?

4 MS. BELLSHAW: Thank you, Your Honor.

5 ( [REDACTED] proceedings)

6 BY MS. BELLSHAW:

7 Q Mr. Cue, since signing the 2016 amendment to the  
8 ISA, has the total amount of search revenue that Google  
9 sends to Apple in absolute dollars increased?

10 A It has.

11 Q I'd ask you to please turn to UPX1109 in your  
12 binder.

13 Is it -- is UPX1109 an internal email to you and  
14 others at Apple?

15 A That's correct.

16 Q Dated September 18th, 2021?

17 A That's correct.

18 Q And the subject of the email is "Google revenue  
19 share - August 2021"?

20 A That's correct.

21 Q Do you receive monthly reports of the payments  
22 that Google splits with Apple under the ISA?

23 A Yes, our finance team does an analysis of the  
24 amount of money that they pay us and looks at overall  
25 Google's numbers to ensure that we feel like we're getting

1 paid fairly.

2 Q The email starts with the headline, "Google  
3 reported [REDACTED]." Is that approximately [REDACTED] billion?

4 A That's correct.

5 Q So Google report [REDACTED] billion revenue share for  
6 the month of August of '21 -- August 2021.

7 Do you see that?

8 A I do.

9 Q So in 2021, Google paid Apple approximately  
10 [REDACTED] billion in revenue share for the month of August of  
11 2021?

12 A That's correct.

13 Q Do you see the parentheses in that first sentence,  
14 (plus [REDACTED] percent Y/Y)?

15 A I do.

16 Q Somewhat does that refer to?

17 A It means that if you compare the month of August  
18 in 2020 to August 2021, it was up by [REDACTED] percent.

19 Q [REDACTED]  
20 [REDACTED]

21 Was [REDACTED] billion for the month of August 2021 the

22 [REDACTED]  
23 [REDACTED]?

24 A I believe it was.

25 Q And was that t [REDACTED]

1 [REDACTED]?

2 A That's correct.

3 Q [REDACTED]?

4 A It's continued to grow, so I would assume it's --  
5 I don't know of every single month since then has been the  
6 case, but overall it's continued to grow.

7 Q If you would please turn to the third --

8 MS. BELLSHAW: Oh, and is this one in evidence?

9 Your Honor, just for the Court, UPX1109 has been  
10 admitted into evidence.

11 BY MS. BELLSHAW:

12 Q If you would please turn to the third attachment,  
13 which starts on page 8. It's the page ending in Bates stamp  
14 0033.

15 As part of your monthly email with Google's  
16 revenue share payment information, do you receive one of  
17 these search revenue monthly reports?

18 A Yes.

19 As I've stated, our finance team tries to do an  
20 analysis looking at Google's overall numbers versus our  
21 numbers to see if the numbers sort of jive up, making sure  
22 that they're living up to the agreement that we have.

23 Q If you would turn forward a few pages to page 11  
24 of UPX1109, which ends in Bates number 0036.

25 It's a slide entitled "Apple total search

1 revenue." It's also on your screen if that's helpful.

2 Looking at the graph on page 11 of UPX1109, is the  
3 Y axis here the revenue share dollars in millions, starting  
4 at 0 and going up to [REDACTED] billion?

5 A That's correct.

6 Q And then along the Y axis are the months starting  
7 in January 2017 and going up through August of 2021?

8 A That's correct.

9 Q And then does each of the bars on this chart  
10 represent Apple's split of Google's revenue for the  
11 particular corresponding month?

12 A That's correct.

13 Q Overall, would you agree that these revenue  
14 payments have been on a pretty steady upward trajectory?

15 A They have been.

16 I would -- we expected them to be. We've done  
17 very well selling iPhones, Macs and iPads. Our business has  
18 grown as well, and Google, as I said, has done a very good  
19 job of growing their business as well.

20 Q So the payments start in January of 2017 with a  
21 monthly revenue share of [REDACTED] million?

22 A That's correct.

23 Q And then they go all the way up to the last  
24 payment in August of 2021 at [REDACTED] billion?

25 A That's correct.

1 Q If you would please turn to page 13, that's two  
2 pages ahead, the slide, "Apple revenue share," it's the one  
3 ending in Bates number 38.

4 Does page 13 of UPX1109 list out Apple's split of  
5 Google's monthly revenue from January 2019 to August of  
6 2021?

7 A That's correct.

8 Q If you look all the way on the right, there's a  
9 column, "Total rev share in millions."

10 Do you see that?

11 A I do.

12 Q And then each of the numbers in this column is the  
13 total revenue share payment that -- made to Apple for each  
14 month, right?

15 A That's correct.

16 Q So to add up the total payments to Apple in fiscal  
17 year 2020, would you look to the months from October 2019 to  
18 September of 2020?

19 A Okay.

20 Q Is that correct based on the fiscal year dates  
21 that we saw earlier, you would look from --

22 A That's correct.

23 Q Okay.

24 So based on this chart, Google paid Apple over  
25 \$█ billion in fiscal year 2020?



1           A     I haven't done the exact math but that sounds  
2 about right.

3           Q     So if I did the math and it added up to  
4 █████ million, which turns out -- I'm sorry, █████ billion,  
5 if my math is correct based on this chart, that means that  
6 Apple's share of the Google revenue payments for fiscal year  
7 '20 was █████ billion?

8           A     I would agree with that.

9           Q     And then for fiscal year 2021, do you see that  
10 UPX1109 shows that payments from October 2020 to August  
11 2021?

12          A     I do.

13          Q     So it's one month short of the full fiscal year?

14          A     That's correct.

15          Q     In the first 11 months of fiscal year 2021, I'll  
16 represent to you that those columns -- or those rows add up  
17 to █████ billion.

18                   If my math is correct, would you agree that in the  
19 first 11 months of fiscal year 2021, Google had already paid  
20 Apple nearly \$████ billion?

21          A     I would agree.

22          Q     Do you know the total amount that Google paid  
23 Apple under the ISA in fiscal year 2021?

24          A     I believe it was arou █████ billion, but I'm not,  
25 you know -- plus or minus a little bit.

1 Q If you look at the fourth column from the right,  
2 there's one identified as [REDACTED].

3 A I apologize.

4 I believe when I said the [REDACTED] billion was for 2022.

5 Q 2022. Thank you for the clarification.

6 A So I apologize for that.

7 Q Do you see the colu [REDACTED]?

8 A I do.

9 Q What do the figures in this column represent?

10 A These are [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 Q [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 A [REDACTED]

18 Q [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 A [REDACTED]

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[REDACTED]

Q

[REDACTED]

A

[REDACTED]

Q In terms of -- okay.

THE COURT: Sorry.

Mr. Cue, can I ask you a follow-up, and that is, why do you say that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

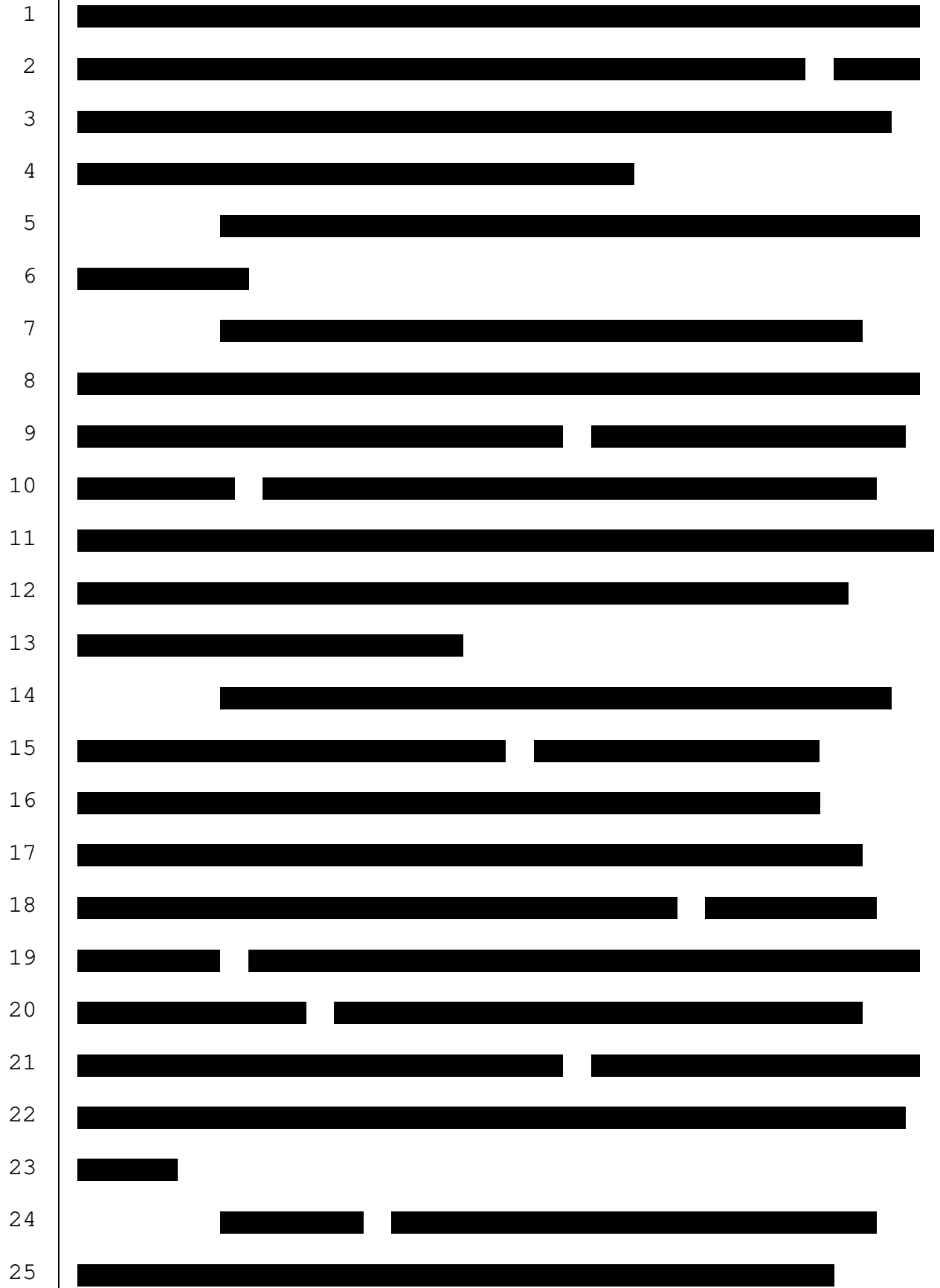
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1 [REDACTED] [REDACTED]

2 [REDACTED] [REDACTED]

3 [REDACTED] [REDACTED]

4 [REDACTED] [REDACTED]

5 BY MS. BELLSHAW:

6 Q So was it -- did you think that a downloaded  
7 search app didn't provide as good of an experience as the  
8 Safari browser for Apple customers conducting searches?

9 A I did.

10 And I do.

11 Q Mr. Cue, what is Siri?

12 A It is an assistant, an audio assistant for your  
13 iPhone and also for the Mac.

14 It tries to help you get things done.

15 Q Does Apple run ads on Siri?

16 A We do not.

17 Q And what is Spotlight?

18 A Spotlight is a way to search within your device.  
19 In particular, if you use your finger on any screen on the  
20 phone, like the home screen on the phone and you slide down,  
21 you get a search field. And you can search for things on  
22 your device and things that you've done with your device.

23 Q And does Apple show ads in Spotlight?

24 A We do not.

25 Q If you would please turn to tab -- back to tab

1 JX33, which is the 2016 ISA.

2 I'd like to direct your attention to the fourth

3 page, [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

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11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

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15 [REDACTED] [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18 Q Mr. Cue, under the 2016 amendment to the ISA, did  
19 the parties have the option to mutually agree to extend the  
20 agreement until [REDACTED]

21 A We did.

22 Q And despite options to extend the ISA unt [REDACTED]  
23 at some point, did you approach Google about extending it  
24 early?

25 A I did. I wanted to extend it early.

1 Q And when did you reach out to Google?

2 A I don't recall the exact date. It's sometime  
3 maybe in 2020, but I don't know the exact date.

4 Q And who at Google did you reach out to?

5 A Philipp Schindler.

6 Q And who is Mr. Schindler?

7 A Mr. Schindler -- after I'd completed the deal in  
8 2016, Sundar had introduced me to Philipp, and he was the  
9 person that we dealt with from then on on the extension, and  
10 he also was the business representative on the Google side  
11 to the deal.

12 Q Is Mr. Schindler the chief business officer at  
13 Google?

14 A He may be. Actually, I don't know the answer to  
15 that, but that wouldn't surprise me.

16 Q What kind of extension did you propose to  
17 Mr. Schindler in 2020?

18 A A very simple one: Let's extend the deal out for  
19 [REDACTED]

20 Q So you wanted to extend the agreement without  
21 re-negotiating any of the key terms?

22 A Yeah, that's a simple way to say it, but the  
23 reality is, this is a very complicated deal. It took me a  
24 year to do it the last time. The last thing that I wanted  
25 to do was to go through that process again. It would open



1 up discussions around every issue.

2 Things were working well between us. Customers  
3 were getting great search results. It seemed like the work  
4 that we were doing was very positive. And so I didn't see a  
5 need to start opening up all the negotiations again.  
6 I was -- I was okay continuing the deal as it was.

7 Q And what was Mr. Schindler's response to your  
8 proposal that the parties extend out the existing ISA  
9 in 2020?

10 A As I recall it, and I don't know if it was the  
11 first one or not, but he had said that this wasn't a good  
12 time to do it because of the investigations going on in  
13 the U.S.

14 Q And by "the investigations in the U.S.," did you  
15 understand Mr. Schindler to be referring to the Department  
16 of Justice's investigation of Google?

17 A I believe that was the case. I don't recall. We  
18 didn't have any discussions specifically about it, but  
19 I believe that's the case.

20 Q And we talked about this briefly earlier, but  
21 Apple and Google did ultimately negotiate an extension of  
22 the ISA, correct?

23 A That's correct.

24 Q And when does the current contract expire?

25 It's not a memory test. If you'd like to look at

1 it, I can tell you.

2 A Sure.

3 Q In your binder, it's --

4 A I believe it [REDACTED] and it can be extended to  
5 [REDACTED] or something like that, but I want to look exactly to  
6 give you the right date.

7 Q It's JX97.

8 A Thank you.

9 MS. BELLSHAW: And, Your Honor, JX97 has been  
10 admitted into evidence.

11 BY MS. BELLSHAW:

12 Q So, Mr. Cue, pointing you to the Section 1, "Term  
13 and Termination," the fourth paragraph, did the -- do Apple  
14 and Google have the ability to extend the ISA on its current  
15 terms until [REDACTED]?

16 MR. SCHMIDTLEIN: Objection. She's misstating it.

17 THE WITNESS: Yeah, again, we have to go through  
18 each one. [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED] [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

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[REDACTED]

[REDACTED]

Q Focusing [REDACTED], if both Apple and Google exercised their options to extend, as set out in JX97, the current agreement that requires Apple to set Google as the default search engine and Safari could remain in place until [REDACTED]?

A That's correct. You know, just to be clear here, I don't look at it as that Google requires. It's the agreement that we like and that we think is great for our customers. So it's not a "We're doing something because we don't want to and the agreement requires us to."

So, yes, the agreement does require that Google be the default, but it's something we're very comfortable with, we think it's the best choice for our consumers.

MS. BELLSHAW: And, Your Honor, just a quick housekeeping matter before I forget. I ended up not showing the witness UPX586. It's one of the exhibits that we talked about this morning, and I just would like to move it into evidence.

THE COURT: Okay. So 586 will be admitted.

MS. BELLSHAW: Thank you, Your Honor.

(Plaintiffs' Exhibit UPX586  
received into evidence.)

1 BY MS. BELLSHAW:

2 Q Mr. Cue, moving away from the ISA, are you  
3 familiar with DuckDuckGo?

4 A I am.

5 Q Do you know DuckDuckGo's CEO, Gabriel Weinberg?

6 A I met him once. He called me and we had a  
7 discussion, and I set him up with meetings with my teams.

8 Q Did Mr. Weinberg reach out to you in 2021?

9 A I believe that's correct.

10 Q Do you recall what you and Mr. Weinberg discussed?

11 A We did.

12 One of the things we're always trying to do is  
13 help our developers. Mr. Weinberg is a developer on our  
14 platform.

15 We were already helping him in DuckDuckGo because  
16 we were giving him our maps capabilities. So that, for  
17 example, when you search something on DuckDuckGo, you got  
18 map tiles that came from us.

19 And I initiate -- I said, you know, We'd love to  
20 hear more about how we can help make your product better.

21 And so I had brought a whole litany of my team  
22 from music to payments to see if there were any other  
23 opportunities to make DuckDuckGo better.

24 Q Mr. Cue, could you please turn to UPX631 in your  
25 binder.

1           Is UPX631 a meeting invitation from you -- or  
2 you're listed as the organizer, to various attendees at  
3 Google and individuals at DuckDuckGo?

4           A     That's correct.

5           Q     Is this the meeting that you're referring to that  
6 you set up between DuckDuckGo and some people on your team  
7 at Apple?

8           A     That's correct.

9           Q     If you would, please, if I could direct your  
10 attention to sort of the middle of the page on UPX631,  
11 do you see there's -- in the "Notes" section, there are  
12 discussion points?

13          A     Okay.

14          Q     Does this list out topics for the meeting.

15          A     That's correct.

16          Q     And the first topic is "Privacy Overlap: Are  
17 there more areas we can work together to provide more  
18 privacy to users?"

19                   Do you see that?

20          A     I do.

21          Q     And then the second topic is "Apple Integrated  
22 Search: Is there content beside maps that Apple can  
23 leverage DuckDuckGo search to highlight to users with the  
24 goal to create a more holistic search experience together?"

25                   Was that the second topic of discussion for this

1 meeting with DuckDuckGo in March of 2021?

2 A That's correct.

3 Q So in 2021, was Apple considering ways to partner  
4 with DuckDuckGo on privacy-related projects?

5 A Again, we were -- as I stated earlier, we were  
6 interested in helping any developer. DuckDuckGo was a  
7 developer. We wanted to make them -- help them in any way  
8 we can to be better. And so that was certainly of interest  
9 to us.

10 One thing that is a problem with DuckDuckGo and  
11 one of the other reasons, again, we were trying to be  
12 helpful, is DuckDuckGo's back-in basically searches Bing, so  
13 it doesn't have its own search engine. And so they're  
14 dependent on Bing. Bing certainly wasn't anywhere near as  
15 good as Google. And so we wanted to help DuckDuckGo get  
16 better.

17 Q If you would like at No. IV, Roman numeral IV, it  
18 says, "Joint A/B testing in Safari to optimize  
19 privacy-centric search monetization. Should DuckDuckGo and  
20 Apple collaborate on A/B testing various approaches to  
21 privacy-centric search monetization."

22 Do you see that?

23 A I do.

24 Q Do you understand what that refers to?

25 A Yeah, DuckDuckGo still did advertising on their

1 platform, so it wasn't that it was ad free.

2

3 [REDACTED] I don't know the specifics of it. I  
4 wasn't involved in that part of it.

5 But, again, this all relates to the same issue,  
6 which is, we're trying to help DuckDuckGo be a better  
7 product.

8 And so the discussion we wanted to have with them  
9 was, How can Apple help you be a better product?

10 Q Do you consider DuckDuckGo to be a privacy --  
11 friendly search engine?

12 A I do, but as I stated, unfortunately, it is not a  
13 great search engine. The search results that you get are  
14 from Bing, not DuckDuckGo. And so I think they've done a  
15 good job of what they have with them, but it's not good  
16 enough.

17 Q Do you view's DuckDuckGo's approach to privacy as  
18 generally consistent with Apple's?

19 A I haven't looked at every feature of DuckDuckGo  
20 from a privacy point to make that.

21 I -- I'd like the fact that DuckDuckGo is talking  
22 about privacy and is interested. So, yes, that was of  
23 interest to us. We like that. We like app developers out  
24 there trying to innovate and do new things.

25 Q Would you consider DuckDuckGo as an option to be

1 set as the default in the Safari browser?

2 A No, I would not. That would not be a good thing  
3 for our customers.

4 Q And did you consider DuckDuckGo as an option to be  
5 set as the default in the Safari browser in 2016?

6 A No, we did not.

7 Again, that is not a good choice for customers.

8 We do have DuckDuckGo as a choice so they can  
9 switch if they'd like, but, again, the quality of the search  
10 results of DuckDuckGo are not up to par. And so one of the  
11 things we've been very clear on from an Apple point of view  
12 is, privacy is of utmost importance, but you can't to  
13 privacy by providing an inferior product.

14 And so for us, it has to be the best product and  
15 it has to have privacy. And those are things that are very  
16 difficult to do. It's hard to do. That's what Apple does.

17 In the case of DuckDuckGo, they were doing some --  
18 you know, trying to be innovative and trying to push  
19 privacy. But unfortunately they didn't have the goods on  
20 search. And so the problem that you have is customers are  
21 not going to give up their primary function they're going  
22 for, which is to search for something, and not get the best  
23 results and get good results because it had some privacy  
24 features.

25 So I don't think it was a good choice to make as a



1 default then, and certainly not a good choice -- it's an  
2 even worse choice today.

3 Q Mr. Cue, I'd like now to switch gears to ask you  
4 about discussions between Apple and Microsoft in the 2015,  
5 2016 time period.

6 A Yes.

7 Q In 2015, did Microsoft approach Apple about the  
8 possibility of a search partnership?

9 A Yes.

10 Satya reached out to Tim about it.

11 Q And is Satya, Satya Nadella, the CEO of Microsoft?

12 A That's correct.

13 Q Did you attend a meeting with Mr. Cook,  
14 Mr. Nadella, and other executives from Microsoft in August  
15 of 2015?

16 A I did.

17 Q If I could refer you to UPX613 in your binder.  
18 That's an email from Mr. Nadella dated August 12th, 2015.

19 At the bottom.

20 Or, I'm sorry, that one's in the middle, the email  
21 from Mr. Nadella is in the middle of UPX613.

22 Do you see that?

23 A On page 1?

24 Q Yes, on page 1.

25 A Yes.

1 Q And Mr. Nadella writes, "Thanks for meeting today.  
2 Attached is the slides we took you through."

3 Do you see that?

4 A I do.

5 Q And the email is dated August 11th, 2015?

6 A That's correct.

7 Q And Mr. Cook forwards these slides to you and  
8 others at Apple?

9 A That's correct.

10 Q And is this the meeting that you attended with  
11 Mr. Cook and executives from Microsoft?

12 A It is.

13 Q If you would please turn to 614.

14 And 613 and 614 have been admitted into evidence.

15 Are these -- do you recognize 614 as the slides  
16 that Microsoft presented during that meeting in August 2015?

17 A That's correct.

18 Q And at that meeting, was Microsoft proposing that  
19 Apple set Bing as the default search engine in Safari?

20 A Microsoft was proposing that and proposing the  
21 fact that they were incredibly great at search and all kinds  
22 of things. So they talked a big game, yes.

23 Q If I could direct your attention to the first  
24 bullet on the first page of UPX614, it says, "There is  
25 natural alignment between Microsoft and Apple in search.

1 The combination of the large search volumes on Apple devices  
2 with Microsoft's global search platform enables a high  
3 quality search platform that will be an asset for both  
4 companies."

5 Microsoft told you that access to Apple's search  
6 query volume would allow Microsoft to make improvements to  
7 Bing's quality; is that right?

8 A That's correct, but they already thought they had  
9 great quality and they said that with our search volume,  
10 they could be even better. But not an accurate statement,  
11 but they said that, yes.

12 Q If you would please turn to page 2 of UPX614.  
13 Do you see the proposed structure?

14 A I do.

15 Q Is this summary consistent with the proposal  
16 Microsoft made to Apple during this meeting in 2015?

17 A Yeah, this is a presentation they made to us, and  
18 this was a slide of what they thought a structure could be.

19 Q If you look at the third bullet, it says, "TAC  
20 rate equal to ■ percent of Microsoft contribution margin  
21 from search on Apple devices."

22 What did you understand Microsoft to be offering  
23 Apple?

24 A Apple was offering -- sorry, Apple was offering.  
25 Microsoft was offering Apple a margin, there

1 again, net revenue of ■ percent versus the ■ percent that  
2 we were getting from Google, but -- which sounds very  
3 promising and exciting if you're looking at it from a  
4 financial point of view, certainly ■ is bigger than ■

5 But that's not the way to look at it. The  
6 question with Microsoft was, were they able to really  
7 monetize advertising.

8 We already had a deal with Microsoft as a search  
9 provider, and they were horrible at monetizing advertising.  
10 And so giving you ■ percent of something that small is not  
11 really that interesting, but that's what that is.

12 Q And did Microsoft later increase its offer to  
13 ■ percent of revenue share?

14 A As they got more desperate, they increased their  
15 offer to ■ percent. They offered to have us invest in  
16 Bing. And at one point, offered to us to buy Bing. And  
17 then ultimately offered to basically give us Bing.

18

19

20

21

22 Q Even ■ ■ percent revenue share,  
23 Microsoft's financial offer was lower than Google's?

24 A Well, again, Microsoft, in order -- Microsoft  
25 search quality, their investment in search, everything was

1 not significant at all. And so everything was lower. So  
2 the search quality itself wasn't as good. They weren't  
3 investing at any level comparable to Google or to what  
4 Microsoft could invest in. And their advertising  
5 organization and how they monetize was not very good either.

6 Q And, Mr. Cue, even [REDACTED] [REDACTED] percent revenue  
7 share that Microsoft was offering, Microsoft couldn't come  
8 close to the finances that Google was able to put on the  
9 table; is that fair?

10 A Not with an inferior search engine, no. If you  
11 have an inferior search engine, customers wouldn't use it,  
12 and so, therefore, I don't know how you could monetize it  
13 well.

14 That leaves out the fact that they weren't very  
15 good at monetizing as well. And so their advertising team  
16 monetized very poorly.

17 So, sure, there's no way. If they had a great  
18 search engine and they knew how to monetize, then, sure,  
19 they could have done that and more.

20 Q And, Mr. Cue, you don't have any personal  
21 knowledge of the amount of investment that Microsoft had  
22 made in Bing, correct?

23 A No, that's not true.

24 I don't know the dollars, I wasn't in Microsoft to  
25 know the dollars. But I can see the investments they were

1 making by, you know, were -- how many engineers they claim  
2 they had.

3           When we looked at the search results and were they  
4 getting better over time, they did not get better over time.  
5 They've gotten worse over time.

6           We looked at how they were monetizing on  
7 advertising. Again, that didn't get better, that was  
8 getting worse.

9           They didn't introduce any new countries.

10           They, when we first met with them, they did not  
11 have -- you know, one of the most important things for  
12 search is you have to go and find all of the information  
13 that's available on the Internet. So you're basically  
14 crawling the Internet, as they call it, to find as much  
15 information as possible.

16           And Microsoft was investing a significant amount  
17 less in doing that. So, you know, it was clear that, you  
18 know, they -- ultimately it was clear to us that there's no  
19 way they were an alternative or a choice that we could make  
20 for our customers.

21           Q     Mr. Cue, you don't have any personal experience  
22 developing a web-based general search engine, right?

23           A     That's correct. I've worked on search engines but  
24 not general ones.

25           Q     And you've never personally developed a web



1           Q     Did you personally conduct an assessment of Bing's  
2 search results?

3           A     I did.

4           Q     And what did you personally do to conduct an  
5 assessment of Bing's search results?

6           A     I went to Safari on my iPad, my Mac, and my iPhone  
7 and I set the default search engine to Bing.

8                     I downloaded the Bing. Bing had an iOS app  
9 similar to the Google GSA app, and I downloaded that.

10                    And then I used it as my primary search engine for  
11 weeks.

12                    So one of the best ways to test something like  
13 that, made it easy, right, it's easy to switch the default.  
14 And so I was able to use Bing for weeks on end using just my  
15 everyday usage of the Internet.

16                    And one of the things that you find as you search  
17 quite a bit when you're using the web and the Internet. And  
18 so I would use it and then at times when I looked at and ran  
19 into issues or did assessment, I would go to Google and open  
20 up Google and compare and do the same search results on  
21 Google and see what the results were.

22           Q     Mr. Cue, I'd like to direct your attention to  
23 UPX273.

24                    Or, I'm sorry, it's directing your attention for  
25 the first time to UPX273.



1           And this email is in evidence.

2           This is an email from you to Mr. Cook and others  
3 at Apple dated April 27th, 2016.

4           Do you see that?

5           A     I do.

6           Q     And how long had Apple and Microsoft been in  
7 discussions about Bing at the time of this email?

8           A     Many months. I don't remember the exact amount  
9 but...

10          Q     If you would look at page 2 of UPX273, there's an  
11 email from Mr. Schiller to Mr. Cook and you and others at  
12 Apple dated April 17th, 2016.

13          Do you see that?

14          A     I do.

15          Q     And the top of Mr. Schiller's email says, "Here is  
16 an updated search revenue share analysis based on our latest  
17 discussions."

18          So Mr. Schiller is circulating as revised  
19 financial analysis of a potential deal with Bing?

20          A     He's doing an analysis based on the proposal that  
21 Bing made.

22          And to be fair, he didn't do the analysis,  
23 somebody on the finance team did the analysis and he's  
24 forwarded it on to us.

25          Q     And the analysis prepared by your finance team

1 include a revenue share analysis for both Google and Bing?

2 A That's correct.

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

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[REDACTED]

[REDACTED]

And so my view around this was, at the time,  
it's like, okay, Let's propose a guarantee that's  
reasonable. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Q And just to be clear, if Microsoft had agreed to

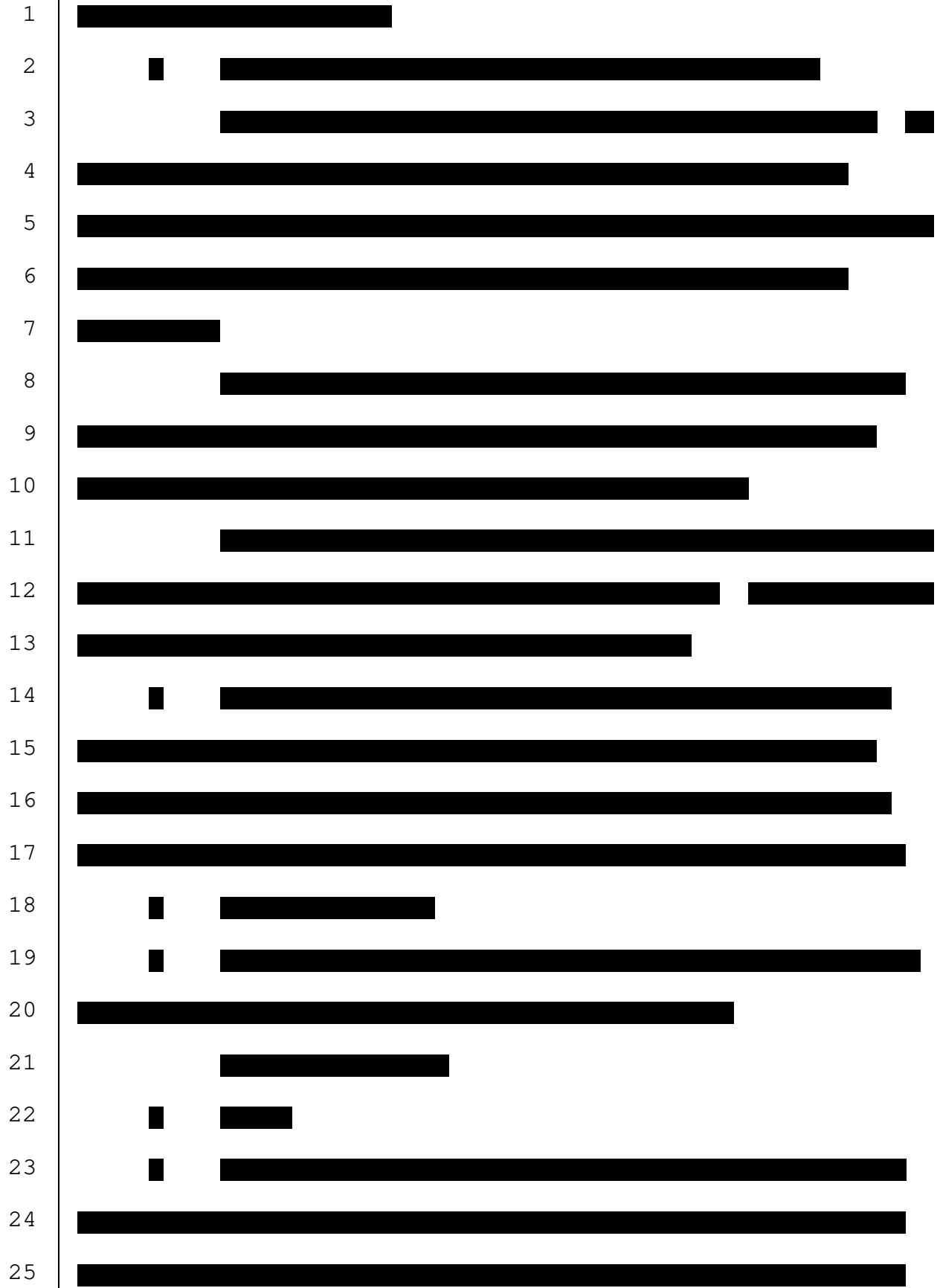
1 pay Apple a guarantee, that's money that Microsoft would owe  
2 Apple regardless of the amount of revenue that Microsoft  
3 itself generated on searches on Apple devices?

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12 Q And Google's contract with Apple didn't have a  
13 guarantee, right?

14 A We didn't need a guarantee. We've been doing  
15 business with Google for years, and so we knew what it was.

16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
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 A I don't recall the exact number that Microsoft was  
15 proposing. So that wasn't important to us. Again, we knew  
16 what the -- Microsoft didn't know what we were making from  
17 Google. We never shared numbers with Microsoft of the deal  
18 that we had with Google or what the search results were. So  
19 we knew the numbers, Microsoft didn't.

20 What we did is, we assessed, if Microsoft was, "as  
21 good as Google" and we were to drive customers to Bing from  
22 that standpoint, what did we think the economics would look  
23 like around it.

24 And so it's -- you know, it's an estimation based  
25 on what we know.



1 things out or itemizing or here's what we've agreed to. We  
2 never did a draft of an agreement or anything like that. We  
3 were still in conversations going back and forth around it.

4 And it's very difficult for us to ultimately  
5 assess what they could do.

6 Now we were comfortable that we knew what they  
7 were, we had done enough assessment on that. But then they  
8 were making, you know, big claims of what they could do, and  
9 I didn't think they were capable of doing it. And I know  
10 I'm right about that, as we've seen post that.

11 Microsoft is a large company. They're certainly  
12 of equal of our size, equal of Google's size. So if they  
13 wanted to invest and they wanted to do something, I  
14 certainly believe they had resources to do that. But they  
15 didn't seem to.

16 You know, their product wasn't as good. They  
17 didn't see the investment in it. And I didn't think their  
18 engineers were very good. You know, our experience with  
19 Microsoft is, you know, we beat them on Mac versus Windows,  
20 we beat them on versus theirs. We meet them on iPod versus  
21 Zune. So our view is we were comfortable with competing and  
22 knowing what it's like to work with them, and so ultimately,  
23 we never reached a point where we were discussing a deal.

24 BY MS. BELLSHAW:

25 Q Mr. Cue, I'd like to direct your attention back to



1 UPX614. It's the presentation that Microsoft made to Apple  
2 in August of 2015. We looked at it a moment ago.

3 A Sure.

4 Q And I'd like to direct your attention to the third  
5 page of UPX614.

6 Do you see the slide entitled "Economics"?

7 A I do.

8 Q And then at the bottom, the second-to-last row is  
9 "Apple's Share of Profit." And that's Microsoft's proposal  
10 that it would pay Apple ■ percent of any revenue generated  
11 on Apple devices?

12 A That's correct.

13 Q And then if you look underneath, it says Apple's  
14 Share of Profit in Billions."

15 Do you see that?

16 A I do.

17 Q Do you understand this to be the amount that  
18 Microsoft was projecting that a ■ percent revenue share, it  
19 would pay Apple in each of these years 1 through 5?

20 A Again, Microsoft had no idea the volume, the rates  
21 of advertising, et cetera, so they put this up here without  
22 any knowledge of what Apple had.

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[REDACTED]

Q So Microsoft's initial projections were that at a [REDACTED] percent revenue share, it would pay Apple [REDACTED] billion in the first year and then increase until it got to [REDACTED] billion in the fifth year; is that right?

A Again, based on their numbers that have nothing to do with our numbers, that's correct, but it's not -- it's not an accurate portrayal.

Q And that adds up to approximatel [REDACTED] billion?

A That's correct.

Q If you would turn back to UPX273.

You would agree that the \$[REDACTED] billion guarantee that you're proposing in your email in UPX273 is a significant increase over Microsoft's initial estimates of what it would pay Apple at [REDACTED] percent revenue share, right?

A Yes.

[REDACTED]

Q In the next paragraph of your email, you write,

[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           Obviously, we felt the product as it existed was  
16 not. And so we would have had to gone -- if we were doing  
17 something like that, what I would have expected we would  
18 have done is then said, Okay, let's go through a much more  
19 detailed plan over the next two, three years, of all the  
20 things that you're going to do and why you think you will be  
21 competitive with having a search engine as good or better  
22 than Google.

23 [REDACTED]  
24 [REDACTED]

25           Q     In the last paragraph of your email you write,

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

21           So you viewed sticking with Google as as close to  
22 a sure thing as can be that Apple would receive the revenue  
23 that it was anticipating?

24           A     Well, again, Google has the best search engine.  
25           You have to remember, advertising and the revenue

1 doesn't just come in. It doesn't quite work that way. That  
2 would be easy if it were true.

3 The way that it works is customers have to go and  
4 search on Google or search on Bing, in this example, and  
5 then they have to provide great results so the customers  
6 keep doing it and customers want to keep doing it and using  
7 it, otherwise, it's very easy to switch. If you don't have  
8 the best one, it's easy to switch over to another one.

9 And, secondarily, you have to know how to do  
10 advertising. So you have to be, understand how to sell ads,  
11 how to put ads, all the UI elements that go along with that.  
12 Microsoft was not good at that.

13 And so Google's a sure thing. They have the best  
14 search engine, they know how to advertise, and they're  
15 monetizing really well.

16 And so for Apple, yeah, I viewed it as a sure  
17 thing.

18

19

20

21

22 Q And you concluded that it was a sure thing that  
23 Google would remain the best search engine in the  
24 United States for the duration of Apple's ISA agreement with  
25 Google?

1           A     Yeah, I believe that to be the case. We've been  
2 working with Google for over 20 years. They've continued to  
3 invest and improve the product in a significant way.

4                     And ultimately, these agreements, as we shared  
5 together earlier, they end up having expiration dates, they  
6 have an expiration date in one country or another. At the  
7 end of the day, if Google, over time, for some reason  
8 somebody else came in and was better, we'd have the ability  
9 to switch. And in the short term, customers would have the  
10 ability to switch.

11                    And my experience with this is really clear. I've  
12 always believed the best product always wins. And when you  
13 look at Microsoft, Microsoft had 80 percent, 90 percent of  
14 the PC market. Apple was very, very small, we owned about  
15 10 percent of the market. Microsoft had Windows, had  
16 Internet Explorer, which was the browser that was the  
17 default and came with Microsoft, they made it very difficult  
18 to switch, and they had Bing. And so they controlled the  
19 whole environment. They had 80 percent market share of  
20 every PC in the world, 90 percent really, of every PC in the  
21 world. They had Windows, they had Internet Explorer and  
22 they had Bing the search engine. And over time, they lost  
23 the market share, because it's easy for people to switch  
24 off. If you don't have the best product, you will lose.

25                    And so our viewpoint around this is if Google

1 didn't have the best product, you know, it wasn't going to  
2 happen in a year, but if somehow somebody, and you could  
3 see -- if we go through other emails that I have, I was  
4 always interested in hearing what anybody else was doing to  
5 develop any new product around search and around anything  
6 that makes a better experience for our customers, a better  
7 product for our customers.

8           And so I called all these other search providers,  
9 I did things to look at that. But I didn't see anything on  
10 the horizon that was going to be better than Microsoft --  
11 than Google's, and Microsoft certainly wasn't it. And so,  
12 sure, I didn't have a problem with agreeing to the terms  
13 that we did.

14           ■ [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17           ■ [REDACTED]  
18 [REDACTED] [REDACTED]  
19 [REDACTED] [REDACTED] We're not

20 going to take something that isn't as good and provide that  
21 to our customers. Our customers are too important to us.

22           One of the reasons Apple's been so successful is  
23 the fact that we treat the customer as the most important  
24 thing in the world. Much more important than the revenue.  
25 It's not to say, and I don't want to belittle the revenue,

1 it's a significant amount of money. I understand that. But  
2 we deviate searches from Google that would monetize because  
3 it's in the best interest of the customer. So we're after  
4 what's best for the customer. And if we do the best thing  
5 for the customer, Apple wins.

6 So taking some check or something from Microsoft,  
7 yeah, sure, it's a short-term thing. We're not interested  
8 in that. We're after the long-term of this. I've been at  
9 Apple for 34 years. We want to do what's best. We want to  
10 make the best product. We don't want to make the most, but  
11 we want to make the best product in the world.

12 Sorry, I'm very adamant about that. This is near  
13 and dear to my heart and what we do at Apple.

14 Q Mr. Cue, I'd like to switch gears now and ask you  
15 about a different topic.

16 THE COURT: Counsel, if I could interrupt you.  
17 It's now 12:30. How much longer do you think you'll be in  
18 closed session?

19 MS. BELLSHAW: Maybe about 20 minutes, Your Honor.

20 THE COURT: Everybody hang with us for 20 minutes  
21 so we can then break at that time.

22 Let's go for another 20, and then we'll break for  
23 lunch. Thank you.

24 BY MS. BELLSHAW:

25 Q Mr. Cue, are you familiar wi [REDACTED] at Apple?



1           A     I am.

2           Q     Did you have responsibility f [REDACTED] when you  
3 oversaw the Siri team?

4           A     I did.

5           Q     And what period of time did you oversee Siri?

6           A     I think -- and I'm going to give you some rough  
7 estimates.

8                     Between like 2012, 2017, in that area.

9           Q     And the Siri team now reports to Mr. Giannandrea?

10          A     That's correct.

11          Q     If you would please look at UPX626.

12                     UPX626 is an email chain reflecting emails between  
13 you and Bill Stasior on July 13, 2014. Do you see that?

14          A     That's correct.

15          Q     And who is Mr. Stasior?

16          A     Mr. Stasior ran Siri for me.

17                     MS. BELLSHAW: Your Honor, we would move to admit  
18 UPX626 into evidence.

19                     MR. SCHMIDTLEIN: No objection.

20                     THE COURT: All right. It will be admitted.

21                                     (Plaintiffs' Exhibit 626  
22                                     received into evidence.)

23

24

25

1 BY MS. BELLSHAW:

2 Q Did you see that the subject line of your email  
3 is -- or of Mr. Stasior's email is, "Re: ET  
4 off-site-search"?

5 A That's correct.

6 Q What does ET refer to?

7 A It's the executive team, the executive team with  
8 Apple was having an off-site and I was going to present.

9 Q Is the executive team Mr. Cook's direct reports?

10 A It's a subset of his direct reports.

11 Q And what is an off-site?

12 A It's a meeting, but we were -- instead of doing it  
13 inside of Apple, we were doing it at an outside location.

14 Q If I could direct your attention to the bottom of  
15 UPX626, do you see your email to Mr. Stasior?

16 A I do.

17 Q You write, "I need to give an update on search at  
18 the ET off-site."

19 And then you ask a few questions about Parsec.

20 Do you see that?

21 A I do.

22 Q And you ask in the middle of the second row, "What  
23 are the future plans for search in the next year?"

24 Do you see that?

25 A I do.

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 And you sent this email on July 10th of 2014?

5 A That's correct.

6 Q And was that approximately one year before you  
7 began negotiating the 2016 ISA with Mr. Pichai?

8 A I think that's correct.

9 Q If you look at the top of UPX626, you'll see  
10 Mr. Stasior's -- am I pronouncing that correctly?

11 A You are.

12 Q Mr. Stasior's email back to you.  
13 And he starts by giving you some stats about  
14 Parsec.

15 Do you see that?

16 A I do.

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

We still have that. We're trying to answer more questions on Siri today. So it's still a goal today.

6

[REDACTED]

7

[REDACTED]

8

[REDACTED]

9

[REDACTED]

10

[REDACTED]

11

[REDACTED]

12

[REDACTED]

13

[REDACTED]

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[REDACTED]

15

[REDACTED]

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[REDACTED]

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[REDACTED]

18

[REDACTED]

19

[REDACTED]

20

And let me explain what Siri is again, we talked about this earlier. It's a voice assistant.

22

And so when you ask a voice assistant for a question like, for example, what's the weather, what's the score, what meeting do I have today, call my mom, you know, general facts, what's Tim Cook's birthday, you want Siri to

1 respond with an answer, not with search results. And so the  
2 goal of Siri is to answer as much as possible of what  
3 customers ask.

4 And so as you can see from here, and we've  
5 continued to do this, we want to expand Siri's knowledge as  
6 much as possible to be able to answer questions, rather than  
7 do the fallback. And the fallback is if we don't know the  
8 answer, then we just drop you into a list of search results.

9 But that's not a great experience for the  
10 customer. If you think about it logically, I'm saying  
11 something to my device, you want an answer, you don't really  
12 want to go scrolling through and clicking on things to go.

13 And so that's the goal of Siri then and still the  
14 goal today.

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 The privacy concerns that we have around this is,  
24 again, we don't like the idea of taking people's searches  
25 and using them for something else. People assume that when

1 they're searching and using our products, we're not taking  
2 those search terms and doing something else with them.  
3 That's not the search itself.

4 And so I agree that that was a privacy concern  
5 around it. And this is something we never decided to  
6 proceed. And so we never did this.

7 Q If I could direct your attention back up to where  
8 we were looking at the future plans for search for the next  
9 year in UPX626, this was part of Mr. Stasior's response.

10 So we talked about the first one, "[REDACTED]  
11 [REDACTED]."

12 And if you look at the fourth one, it says, [REDACTED]  
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 [REDACTED]  
2 [REDACTED]  
3 [REDACTED] [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED] [REDACTED]  
7 [REDACTED]  
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12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED] [REDACTED]  
15 [REDACTED] [REDACTED]  
16 [REDACTED]  
17 [REDACTED] [REDACTED]  
18 [REDACTED]  
19 [REDACTED] [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED] [REDACTED]  
23 [REDACTED]

24 Q Mr. Cue, if you would please turn to UPX625 in  
25 your binder.

1           This is an email from you to Mr. Stasior  
2 three days later on July 13th, 2014.

3           Do you see that?

4           A     I do.

5           MS. BELLSHAW: And, Your Honor, UPX625 has already  
6 been admitted into evidence.

7 BY MS. BELLSHAW:

8           Q     The subject of your email i [REDACTED]

9           Do you see that?

10          A     It is.

11          Q     And you write [REDACTED]

12 [REDACTED]."

13                   Are these the updates you were planning to give at  
14 the executive team off-site?

15          A     They are.

16          Q     The first update that you identify i [REDACTED]

17 [REDACTED]"

18           Do you see that?

19          A     I do.

20          Q     And then there are a list of goals?

21          A     I do.

22          Q     And one of Apple's goals wa [REDACTED]

23 [REDACTED]"?

24          A     It's our number one goal, as I've stated before.

25          Q     And another goal wa [REDACTED]



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Q You can set that one aside.

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Mr. Cue, we've talked about how Bing and DuckDuckGo were not viable options for Apple to set as the Safari default in the 2015/2016 time period. Did Apple consider setting any other search engines as the default in Safari in 2015, 2016?

14

A No, we did not.

15

16

Q If you were unable to reach a deal with Google in 2016, what would Apple have done?

17

18

19

A It's a lot of speculating. It's not something I spent any time thinking about in any significance because I thought that I would be able to do a deal with Google.

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Ultimately -- I don't know the answer, but I'm going to speculate a little bit, and that is, it wasn't a choice to pick any of the existing search engines, so we probably would have been left with no other choice than potentially building our own. But, again, not something we went off and investigated.

1           You have to understand that even as successful and  
2 as big as Apple is, we have limited resources, and we want  
3 to spend our resources in the areas that we think we can  
4 make a material difference for our customers.

5           In the case of search, we have somebody that we're  
6 working with who is the best in the world at it, is  
7 investing significant amounts of money, and we have found a  
8 way to work with them on that.

9           We don't want to take our resources and do that  
10 and invest in there because I'd rather spend our resources  
11 building, you know, the Apple watch I'm wearing, Vision Pro  
12 that we just announced, iOS 17.

13           And so if we took all of our resources and started  
14 spending them on search, sure, we could have competed with  
15 Google and -- you know, look, I believe Apple can do all  
16 kinds of things. But that meant we wouldn't have done other  
17 things. And at the end of the day, the customer was getting  
18 a great experience with Google. So it would be idiotic for  
19 us to do that.

20           So we chose, and continue to choose, and that's  
21 why I was -- I wanted to have the deal done with Google,  
22 which is, Let's keep providing the best search results for  
23 customers and let's make sure we continue to invest and  
24 innovate in the areas that we were really good at.

25           And so I viewed it as a perfect way to work

1 together, in particular for our customers.

2 Q So if you had been unable to reach a deal with  
3 Google in 2016, in your view, Apple's next-best option would  
4 have been to develop its own search engine?

5 A Again, I said I was speculating because I haven't  
6 spent a lot of time thinking about that.

7 What I do know is that search engines that were  
8 out there weren't good enough. And so that makes it very  
9 difficult to pick one of those. So that's not a choice.

10 So I don't know. You know, that's -- that would  
11 be my guess right now. If we had to do that, that's  
12 probably my guess.

13 MS. BELLSHAW: If I could have just a moment,  
14 Your Honor.

15 Thank you, Your Honor. We pass the witness.

16 MR. CAVANAUGH: Your Honor, I have two or three  
17 questions. I could probably ask them in public session.  
18 It's based on the confidential testimony he gave, but  
19 I don't think I'm going to elicit anything that is  
20 confidential. Do you want me to ask them now?

21 THE COURT: How long do you think you'll be?

22 MR. CAVANAUGH: Five minutes.

23 THE COURT: Why don't you just go ahead and take  
24 the five minutes, Mr. Cavanaugh.

25



1 in 2022, that would reduce revenue share payments from  
2 Google to Apple, would it not?

3 A I have no idea. That's a -- the ad market for  
4 online is growing, so I have no idea what you mean by that,  
5 but tell me where you want to go.

6 MR. CAVANAUGH: Nothing further, Your Honor.

7 THE COURT: Okay. Thank you.

8 All right. Let's go ahead and take our lunch  
9 break. It is now just a little past 12:45. We will resume  
10 a little after 1:45.

11 Mr. Schmidtlein, any sense of length of time?

12 MR. SCHMIDTLEIN: Certainly less than an hour, and  
13 I'm going to see if I can pare it back as much as I can.

14 THE COURT: All right. Thank you, all. We'll see  
15 you shortly. Thank you, everybody.

16 THE WITNESS: Thank you, Your Honor.

17 COURTROOM DEPUTY: All rise. The Court stands in  
18 recess.

19 (Recess from 12:47 p.m. to 1:47 p.m.)  
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21  
22  
23  
24  
25

C E R T I F I C A T E

I, William P. Zaremba, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter.

Date: September 26, 2023



William P. Zaremba, RMR, CRR