EXHIBIT
D

From: Tim Sweeney <tim.sweeney@epicgames.com>
Subject: Consumer Choice & Competition
Date: June 30, 2020 at 4:00:09 PM PDT
To: Tim Cook <tcook@apple.com>, Phil Schiller <schiller@apple.com>, Craig Federighi <federighi@apple.com>, Matt Fischer <matt.fischer@apple.com>

Dear Tim, Phil, Craig, Matt,

Because of restrictions imposed by Apple, Epic is unable to provide consumers with certain features in our iOS apps. We would like to offer consumers the following features:

1) Competing payment processing options other than Apple payments, without Apple's fees, in Fortnite and other Epic Games software distributed through the iOS App Store;

2) A competing Epic Games Store app available through the iOS App Store and through direct installation that has equal access to underlying operating system features for software installation and update as the iOS App Store itself has, including the ability to install and update software as seamlessly as the iOS App Store experience.

If Epic were allowed to provide these options to iOS device users, consumers would have an opportunity to pay less for digital products and developers would earn more from their sales. Epic is requesting that Apple agree in principle to permit Epic to roll out these options for the benefit of all iOS customers. We hope that Apple will also make these options equally available to all iOS developers in order to make software sales and distribution on the iOS platform as open and competitive as it is on personal computers.

As you know, Epic was required to accept your standard, non-negotiable contracts, like the Apple Developer Program License Agreement, in order to offer products on iOS devices through the iOS App Store. Epic is also required to comply with Apple's unilateral standards documents to obtain app approval, like Apple's App Store Review Guidelines. Apple's contracts and standards documents contain restrictive provisions that prohibit Epic from offering a competing app store and competing payment processing options to consumers. Apple would need to provide a side letter or alter its contracts and standards documents to remove such restrictions to allow Epic to provide a competing app store and competing payment processing option to iOS customers.

Please confirm within two weeks if Apple agrees in principle to allow Epic to provide a competing app store and competing payment processing, in which case we will meet with your team to work out the details including Epic's firm commitment to utilize any such features diligently to protect device security, customer privacy, and a high-quality user experience. If we do not receive your confirmation, we will

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understand that Apple is not willing to make the changes necessary to allow us to provide Android customers with the option of choosing their app store and payment processing system.

Best Regards,

Tim Sweeney
Founder & CEO
Epic Games

EXHIBIT

E

July 10, 2020

<u>Via Email: canon.pence@epicgames.com</u>

Canon Pence
General Counsel
Epic Games, Inc.
620 Crossroads Blvd
Cary, NC 27518

Dear Mr. Pence:

I am counsel in the Apple Legal Department and I am writing in response to Mr. Sweeney's email to Tim Cook, Phil Schiller, Craig Federighi, and Matt Fischer on June 30, 2020. The email was disappointing and requires a formal response.

The App Store is not simply a marketplace -- it is part of a larger bundle of tools, technologies and services that Apple makes available to developers to develop and create great applications for iPhone, iPad and other Apple products. We know Epic knows this. Epic has been a major beneficiary of this investment and support. Epic has made great use of Apple-provided tools, such as TestFlight, VOIP, Stickers, iCloud document storage, ARKit, Messages Extension, ReplayKit, and Push Notifications. To highlight one example, for years now, Epic has used Apple's groundbreaking graphics technology, Metal. When Apple launched Metal for Mac at WWDC in 2015, Mr. Sweeney's colleague Billy Bramer stood on stage and explained how Metal "revolutionized graphic design" and "enable[d] developers like us to create richer 3D worlds." *Apple – WWDC 2015*, Youtube (June 15, 2015), <u>https://www.youtube.com/watch?v=_p8AsQhaVKI</u>. Epic, like countless developers, continues to use Metal to make its games sharper, faster, and more responsive. Apple doesn't charge separately for the use of Metal or any of the other tools that Epic has used to develop great games on iOS.

Not only has Apple supplied tools and technologies for Epic to build its apps, but it also provided a marketplace—the App Store—to help make them a success. Because of the App Store, Epic has been able to get Fortnite and other apps into

the hands of millions instantly and at no cost, as Apple charges nothing upfront to distribute apps that are free to download. This exposure has earned Epic hundreds of millions of dollars from sales of in-app content, and brought with it lucrative brand partnerships and paid product placement. *See Fortnite Emerges as a Social Media Platform for Gen Z, AdAge* (June 10, 2019), https://adage.com/article/digital/fortnite-emerges-social-media-platform-gen-z/2176301. Of course, Epic could not have achieved this success without great apps, but it nonetheless underscores the value Apple brings to developers like Epic.

Still, Epic has many ways to reach consumers, including through Android stores, PC-based platforms, consoles (Xbox, Nintendo, Play Station) and its very own app marketplace. Public reports indicate that Fortnite alone "generated $1.8 billion in revenue in 2019," *Fortnite Creator Epic Games Raising $750M at $17B Valuation: Report*, The Street (June 15, 2020), https://www.thestreet.com/investing/fortnite-creator-epic-games-raising-750m-at-17b-valuation, or over seven times the $245 million yielded by App Store receipts for all Epic apps. Epic made its own decision to utilize the App Store as another one of its channels and can hardly be surprised that this entails acceptance of a license agreement and related policies since Epic's own developers must do the same. *See* Epic Online Services Developer Agreement https://dev.epicgames.com/en-US/services/terms/agreements ("If you do not or cannot agree to the terms of this Agreement, do not download or use the SDK or access any Services.").
Apple has hundreds of thousands of developers distributing apps on the App Store, and Apple is proud that it offers them all, from the student in her living room to some of the largest companies in the world, the same terms and opportunities.

That brings us to the demands in Mr. Sweeney's email. Epic requests the right to offer a "competing Epic Games Store app" through the App Store that would seemingly allow iOS device users to install apps from Epic directly. And Epic wants to offer "competing payment processing options" in Fortnite and other Epic apps instead of using Apple's in-app purchase (IAP) system. As you know, Apple has never allowed this. Not when we launched the App Store in 2008. Not now. We understand this might be in Epic's financial interests, but Apple

strongly believes these rules are vital to the health of the Apple platform and carry enormous benefits for both consumers and developers. The guiding principle of the App Store is to provide a safe, secure and reliable experience for users and a great opportunity for all developers to be successful but, to be clear, when it comes to striking the balance, Apple errs on the side of the consumer.

Epic Store Within The App Store. As for the first request, Apple designed the App Store to be a secure and trusted place for consumers to discover and download software. Central to this is Apple's requirement that every iOS app undergo rigorous, human-assisted review. Apple invests significant resources to ensure that apps meet high standards for privacy, security, content, and quality; we have reviewers located on three continents, representing 81 languages, and reviewing on average 100,000 submissions per week.

That investment has paid off not just for Apple, but also for app developers large and small, including Epic. Because of Apple's rules and efforts, iOS and the App Store are widely recognized as providing the most secure consumer technology on the planet. And as a result, consumers can download and pay for an app and in-app content without worrying that it might break their device, steal their information, or rip them off. This level of security benefits developers by providing them with an active and engaged marketplace for their apps.

One way Apple helps maintain the confidence of its users is by not approving apps that create "an interface for displaying third-party apps, extensions, or plug-ins similar to the App Store or as a general-interest collection." App Store Review Guideline § 3.2.2. Absent this guideline, Apple would have no reliable way of delivering on its commitment to consumers that *every* app available via the App Store meets Apple's exacting standards for security, privacy, and content. Consumers rightly rely on that commitment in buying Apple devices and in purchasing from the App Store. They will quite properly hold Apple to account for any shortfall in performance. The health of Apple's ecosystem and the strength of its reputation as a maker of high-quality hardware accordingly depend upon rules like Guideline § 3.2.2.

Although Mr. Sweeney represented that, if Epic offered its own iOS app store, Epic would "protect device security, consumer privacy, and a high-quality user

experience," we cannot be confident that Epic or any developer would uphold the same rigorous standards of privacy, security, and content as Apple. Indeed, since Apple treats all developers according to the same terms, Epic is essentially asking Apple to outsource the safety and security of Apple's users to hundreds of thousands of iOS developers. Even if such a model were feasible (and it is not), we are simply unwilling to risk our users' trust in such a way. Incorporating third party app stores into iOS would undermine Apple's carefully constructed privacy and security safeguards, and seriously degrade the consumer experience and put Apple's reputation and business at risk.

Circumventing IAP. Epic also requests to offer payment processing options within Epic's apps other than via IAP. IAP is the App Store's centralized payment system. It lets users purchase digital goods and services within apps without the inconvenience and security risks of registering their payment information with each developer. As you note, Apple's App Review Guidelines require that apps use IAP to unlock additional features and functionalities. *See* App Store Review Guideline § 3.1.1.

Again, this rule is central to the App Store's business model and successes. IAP supports the seamless consumer experience and is the means by which Apple gets paid for the valuable services and consumer base that it provides. To take advantage of Apple's App Store, the bargain is simple: if you charge for software purchased through the App Store, Apple takes a percentage of the charge as commission. This business model has remained unchanged since the App Store launched.

Mr. Sweeney does not take issue with that model in his email—perhaps because Epic takes full advantage of it. Apple takes no cut from Epic's in-app advertising, nor from sales of items, like skins and currency, that iOS app users obtain outside of the App Store. And, as already discussed, Apple charges nothing for enabling millions of iOS users to play Fortnite for free. Without IAP, however, Apple would have no practical or reliable way of collecting its commission on in-app digital sales. Indeed, the IAP requirement applies equally for the very same reason to the Mac App Store, which you regard as "open and competitive."

* * *

Mr. Sweeney recently stated that "[i]t's up to the creator of a thing to decide whether and how to sell their creation." Tim Sweeney (@TimSweeneyEpic), Twitter (June 16, 2020, 11:53 PM), https://twitter.com/TimSweeneyEpic/status/1273101468875329537. We agree. It seems, however, that Epic wishes to make an exception for Apple and dictate the way that Apple designs *its* products, uses *its* property and serves *its* customers. Indeed, it appears that Mr. Sweeney wants to transform Apple's iOS devices and ecosystem into "an open platform… like the first Apple computers, where users had the freedom to write or install any software they wished." https://twitter.com/TimSweeneyEpic/status/1273090414476738567.

In the first place, this ignores the fundamental reality that the iPhone operates in an entirely different environment than a laptop or desktop computer and meets wholly different user expectations. As Steve Jobs explained in 2007, "[y]ou don't want your phone to be like a PC. The last thing you want is to have loaded three apps on your phone and then you go to make a call and it doesn't work anymore. These are more like iPods than they are like computers." Steve Jobs Walks the Tightrope Again, N.Y. Times (Jan. 12, 2007), https://www.nytimes.com/2007/01/12/technology/12apple.html.

The App Store is not a public utility. Epic appears to want a rent-free store within the trusted App Store that Apple has built. Epic wants "equal access" to Apple's operating system and "seamless" interaction between your store and iOS, without recognizing that the seamlessness of the Apple experience is built on Apple's ingenuity, innovation, and investment. Epic wants access to all of the Apple-provided tools like Metal, ARKit and other technologies and features. But you don't want to pay. In fact you want to take those technologies and then charge others for access. Apple has invested billions of dollars to develop technologies and features that developers like Epic can use to make great apps as well as a safe and secure place for users to download these apps. Apple designs its products and services to make developers successful through the use of custom chips, cameras, operating system features, APIs, libraries, compilers, development tools, testing, interface libraries, simulators, security features, developer services, cloud

services, and payment systems. These innovations are properly protected by intellectual property laws and Epic has no right to use them without a license from Apple. As a signatory to the Apple Developer Agreement and the Apple Developer Program License Agreement, Epic has acknowledged these IP rights (just as Epic's developers do the same with respect to Epic's intellectual property). *See* Apple Developer Program License Agreement § 2.5.

Surely Epic must understand that Apple is entitled to a return on its investment and the use of its property. After all, Epic takes great pains to protect *its own* investments and intellectual property. Epic rightly demands royalties from games built using its development software. *See* Unreal Engine End User Agreement § 5, https://www.unrealengine.com/en-US/eula/publishing. And it tightly controls how its games, designs, and content may be used, because, in its own words: "we spend a lot of time, thought, and money creating our intellectual property and need to protect it." Fan Content Policy, https://www.epicgames.com/site/en-US/fan-art-policy. Plus, Mr. Sweeney recently suggested that it's reasonable for other industry players, such as console manufacturers, to charge for distributing software. Tim Sweeney (@TimSweeneyEpic), Twitter (June 17, 2020, 11:29 AM), https://twitter.com/TimSweeneyEpic/status/1273276548569841667. And Epic's major investor, China's Tencent, also charges developers to take advantage of its platform. *See Tencent opens up WeChat Mini-Games Platform to External Devs*, Pocket Gamer (Apr. 11, 2018), https://www.pocketgamer.biz/asia/news/67901/tencent-opens-up-wechat-mini-games-platform-to-external-devs/.

Yet somehow, you believe Apple has no right to do the same, and want all the benefits Apple and the App Store provide without having to pay a penny. Apple cannot bow to that unreasonable demand. We must therefore respectfully decline to make the changes you request.

Sincerely,

Douglas G. Vetter
Vice President & Associate General Counsel

EXHIBIT
F

From: Tim Sweeney <tim.sweeney@epicgames.com>
Date: July 17, 2020 at 1:49:23 PM PDT
To: Tim Cook <tcook@apple.com>, Phil Schiller <schiller@apple.com>, Craig Federighi <federighi@apple.com>, Matt Fischer <matt.fischer@apple.com>, Douglas Vetter <vetter@apple.com>
Cc: Canon Pence <canon.pence@epicgames.com>
Subject: Re: Response to June 30 Email

Hi Tim, Phil, Craig, Matt, Douglas,

It's a sad state of affairs that Apple's senior executives would hand Epic's sincere request off to Apple's legal team to respond with such a self-righteous and self-serving screed -- only lawyers could pretend that Apple is protecting consumers by denying choice in payments and stores to owners of iOS devices. However, I do thank you for the prompt response and clear answer to my two specific requests.

If Apple someday chooses to return to its roots building open platforms in which consumers have freedom to install software from sources of their choosing, and developers can reach consumers and do business directly without intermediation, then Epic will once again be an ardent supporter of Apple. Until then, Epic is in a state of substantial disagreement with Apple's policy and practices, and we will continue to pursue this, as we have done in the past to address other injustices in our industry.

Tim Sweeney

On Fri, Jul 10, 2020 at 5:02 PM Douglas Vetter <vetter@apple.com> wrote:

   Mr. Pence, please find attached Apple's response to Mr. Sweeney's email to Apple of June 30, 2020.

EXHIBIT
G

From: Tim Sweeney <tim.sweeney@epicgames.com>
Date: August 13, 2020 at 2:08:53 AM PDT
To: Tim Cook <tcook@apple.com>, Phil Schiller <schiller@apple.com>, Craig Federighi <federighi@apple.com>, Matt Fischer <matt.fischer@apple.com>, Douglas <vetter@apple.com>
Subject: Fortnite payments

Dear Tim, Phil, Craig, Matt, Douglas,

I'm writing to tell you that Epic will no longer adhere to Apple's payment processing restrictions.

Today, Epic is launching Epic direct payments in Fortnite on iOS, offering customers the choice of paying in-app through Epic direct payments or through Apple payments, and passing on the savings of Epic direct payments to customers

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in the form of lower prices.

We choose to follow this path in the firm belief that history and law are on our side. Smartphones are essential computing devices that people use to live their lives and conduct their business. Apple's position that its manufacture of a device gives it free rein to control, restrict, and tax commerce by consumers and creative expression by developers is repugnant to the principles of a free society.

Ending these restrictions will benefit consumers in the form of lower prices, increased product selection, and business model innovation.

Henceforth, all versions of Fortnite that Epic submits to the App Store will contain these two payment options, side by side, for customers to choose among.

We hope that Apple will reflect on its platform restrictions and begin to make historic changes that bring to the world's billion iOS consumers the rights and freedoms enjoyed on the world's leading open computing platforms including Windows and macOS. In support of this path, Epic's public explanation of our payment service will be neutral and factual to provide Apple with a chance to consider taking a supportive route and communicating it in a way of Apple's choosing.

If Apple chooses instead to take punitive action by blocking consumer access to Fortnite or forthcoming updates, then Epic will, regrettably, be in conflict with Apple on a multitude of fronts - creative, technical, business, and legal - for so long as it takes to bring about change, if necessary for many years.

Tim Sweeney
Epic Games

EXHIBIT H

From: Apple
Date: 8/13/20, 2:22 PM

Hello Epic Games team,

We have determined that your app is in violation of the App Store Review Guidelines detailed below.

For these reasons, your app has been removed from the App Store until we receive an update that is compliant with the App Store Review Guidelines. Customers who have previously downloaded this app will continue to have access to it on their devices and will have access to any available in-app purchase products.

Specifically, we found your app is in violation of the following:

Guideline 3.1.1 - Business - Payments - In-App Purchase
Your app unlocks or enables additional functionality with mechanisms other than the App Store, which is not appropriate for the App Store.

Specifically, we found that users are able to purchase digital goods with external purchase mechanisms in your app with the "Epic direct payment" feature.

See the attached screenshots for details.

Next Steps

To resolve this issue, please remove the "Epic direct payment" feature from your app.

Guideline 2.3.1 - Performance

We discovered that your app contains hidden features. Attempting to hide features, functionality or content in your app is considered egregious behavior and can lead to removal from the Apple Developer Program.

Specifically, we found that your app includes an "Epic direct payment" feature, which provides access to external payment mechanisms and enables the purchase of content, services, or functionality by means other than the in-app purchase API.

Next Steps

- Review the Performance section of the App Store Review Guidelines.
- Ensure your app, as well as any third-party code and SDKs implemented in your app, are compliant with all sections of the App Store Review Guidelines and the Terms & Conditions of the Apple Developer Program.
- Revise or remove the hidden features from your app. Once your app is fully compliant, resubmit your app for review.

Guideline 2.5.2 - Performance - Software Requirements

During review, your app downloaded, installed, or executed code which introduced changes to features and functionality in your app, which is not permitted on the App Store.

Specifically, your app enabled the "Epic direct payment" feature.

Next Steps

- Review the Software Requirements section of the App Store Review Guidelines.
- Ensure your app is compliant with all sections of the App Store Review Guidelines and the Terms & Conditions of the Apple Developer Program.
- Once your app is fully compliant, resubmit your app for review.

Guideline 2.3.12 - Performance - Accurate Metadata

We noticed you have included nondescript, temporary, or incomplete information in your app's "What's New" text.

Specifically, the last six "What's New" text submissions are identical and do not describe new features and product changes present in your app.

Aside from simple bug fixes, security updates, and performance improvements, apps must clearly describe new features and product changes in their "What's New" text.

Next Steps

To resolve this issue, please revise your app's "What's New" text to include clear descriptions of any significant changes, including new features or product changes.

Using a generic statement such as, "We're always improving our app to bring you the best experience" is not an appropriate use of your app's "What's New" text. Instead, you should highlight what has changed within your app, such as new features or significant changes. If your update simply addresses bug fixes, security updates, or performance updates, stating so generically in your app's "What's New" text is sufficient. For example, "Bug fixes and performance improvements."

In order to return your app to the App Store, you will need to submit an updated version for review which addresses all these issues.

Submitting apps designed to mislead or harm customers or evade the review process may result in the termination of your Apple Developer Program account. Review the Terms & Conditions of the Apple Developer Program to learn more about our policies regarding termination.

If you have any questions about this information, please reply to this message to let us know.

Best regards,

App Store Review

EXHIBIT

I

From: Apple
Date: 8/14/20, 3:04 AM

Hello,

Upon further review of the activity associated with your Apple Developer Program membership, we have identified several violations of the Apple Developer Program License Agreement. Therefore, your Apple Developer Program account will be terminated if the violations set forth below are not cured within 14 days.

We found that your app is in direct violation of the Apple Developer Program License Agreement, which states:

Section 6.1: "If You make any changes to an Application (including to any functionality made available through use of the In-App Purchase API) after submission to Apple, You must resubmit the Application to Apple. Similarly all bug fixes, updates, upgrades, modifications, enhancements, supplements to, revisions, new releases and new versions of Your Application must be submitted to Apple for review in order for them to be considered for distribution via the App Store or Custom App Distribution, except as otherwise permitted by Apple." Your app violates Section 6.1 by introducing new payment functionality that was not submitted to or reviewed by App Review. As you know, Apple reviews every app and app update to ensure that apps offered on the App Store are safe, provide a good user experience, adhere to our rules on user privacy, and secure devices from malware and threats. You must submit your app to App Review in order to cure this breach.

Section 3.2.2: "Except as set forth in the next paragraph, an Application may not download or install executable code. Interpreted code may be downloaded to an Application but only so long as such code: (a) does not change the primary purpose of the Application by providing features or functionality that are inconsistent with the intended and advertised purpose of the Application as submitted to the App Store, (b) does not create a store or storefront for other code or applications, and (c) does not bypass signing, sandbox, or other security features of the OS." Your app violates Section 3.2.2 by downloading new code that changes the purpose of your app by adding an unauthorized payment system. This payment model is not authorized under the App Store Review Guidelines, and must be removed from your app in order to cure this breach.

Section 3.3.3: "Without Apple's prior written approval or as permitted under Section

3.3.25 (In-App Purchase API), an Application may not provide, unlock or enable additional features or functionality through distribution mechanisms other than the App Store, Custom App Distribution or TestFlight." Your app violates Section 3.3.3 by allowing end users to purchase digital items within the app without using the In-App Purchase API. This payment model is not authorized under the App Store Review Guidelines, and must be removed from your app in order to cure this breach.

As of now, your membership in the Apple Developer Program is suspended. When you accepted the Apple Developer Program License Agreement, you expressly agreed in Section 3.1(c) to "comply with the terms of and fulfill Your obligations under this Agreement…" and in Section 3.2(f) to "not, directly or indirectly, commit any act intended to interfere with the Apple Software or Services, the intent of this Agreement, or Apple's business practices including, but not limited to, taking actions that may hinder the performance or intended use of the App Store, Custom App Distribution, or the Program." As you have breached your obligations under the Apple Program Developer License Agreement, Apple will exercise its right to terminate your Developer Program membership under Section 11.2 if the violations described above are not cured within 14 days.

If your membership is terminated, you may no longer submit apps to the App Store, and your apps still available for distribution will be removed. You will also lose access to the following programs, technologies, and capabilities:

- All Apple software, SDKs, APIs, and developer tools
- Pre-release versions of iOS, iPad OS, macOS, tvOS, watchOS
- Pre-release versions of beta tools such as Reality Composer, Create ML, Apple Configurator, etc.
- Notarization service for macOS apps
- App Store Connect platform and support (for example, assistance with account transition, password reset, app name issues)
- TestFlight
- Access to provisioning portal for certificate generation, and provisioning profile generation
- Ability to enable Apple services in-app (i.e. Apple Pay, CloudKit, PassKit, Music Kit, HomeKit, Push Notifications, Siri Shortcuts, Sign in with Apple, kernel extensions, FairPlay Streaming)
- Access to Apple-issued keys for connecting to services such as MusicKit, DeviceCheck, APNs, CloudKit, Wallet
- Access to Developer ID signing certificates and Kernel Extension signing certificates
- Developer Technical Support

- Participation in Universal App Quick Start Program, including the right to use the Developer Transition Kit (which must be returned to Apple)
- Engineering efforts to improve hardware and software performance of Unreal Engine on Mac and iOS hardware; optimize Unreal Engine on the Mac for creative workflows, virtual sets and their CI/Build Systems; and adoption and support of ARKit features and future VR features into Unreal Engine by their XR team

We hope that you are able to cure your breaches of the Apple Program License Agreement and continue to participate in the program. We value our developers and we want to see them all achieve success on the App Store. The breaches outlined above, however, if not cured, will force us to terminate your membership in the program.

You can appeal this decision with the App Review Board App Review Board at any time over the next 14 calendar days. When submitting your appeal, be sure to select "I would like to appeal an app rejection or app removal" from the drop-down menu on the Contact the App Review Team page.

Best regards,

App Store Review