

**Online Platforms and Market Power Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google**

**Questions for the Record from the Honorable David N. Cicilline, Chairman, Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary**

**Questions for Mr. Tim Cook, CEO, Apple, Inc.**

**1. You testified that Apple’s apps “go through the same rules” that third-party apps are required to follow.**

The App Store Guidelines (“Guidelines”) are designed to ensure that the App Store remains a safe and trusted place for consumers to discover and download software for their Apple devices. The Guidelines apply to any app, Apple or third-party, that is available on the App Store in the first instance.

**a. How many Apple apps are pre-loaded on current iPhone models?**

The first iPhone included 13 integrated Apple apps. There were no third-party apps available for that iPhone. Apple’s subsequent decision to open the iPhone to third-party app development unleashed a wave of innovation and competition. Thirteen years later, there are more than *1.8 million third-party apps* available through the App Store and only about 40 Apple apps integrated into the current iPhone models.

Apple’s focus has always been to deliver a great consumer experience out of the box. That is why the iPhone comes with Apple apps like Phone, Notes, Settings, Files, Clock, Tips, Measure, and Reminders to provide basic functionality. In addition, apps like FaceTime, iMessage, Apple Music, TV, and others help differentiate the iPhone in a competitive smartphone market.

The few apps that Apple has integrated into the iPhone are a drop in the bucket of the overall app ecosystem. Since 2016, Apple has integrated six new apps into the iPhone: Shortcuts, Measure, Clips, Files, Home, and TV. Hundreds of thousands of new third-party apps have launched on the App Store during that same time. In every category in which our software competes today, we face strong competition from very successful apps.

**b. How many third-party apps are pre-loaded on current iPhone models?**

Apple has never pre-installed third-party apps on the iPhone. Apple wants to ensure the best overall user experience out of the box (e.g., maximize performance, optimize battery life, and/or fix bugs). It would be difficult, if not impossible, to integrate third-party applications that would be consistent with Apple’s exacting standards for quality, security, performance, and privacy. Third-party developers do not share the same focus on iOS. In addition, third-party developers have their own release timetables and schedules that do not align with Apple’s internal development cycle. The logistical and technical challenges would make it very difficult to integrate third-party apps with the iPhone.

Apple opened iOS to third-party app development in 2008. Since that time, Apple has licensed an ever-increasing suite of proprietary software, technology, and services to allow third parties to build great apps for iOS and then distribute those apps through the App Store. The App Store started with only 500 apps at launch, and today it has more than 1.8 million apps.

**c. Which Apple apps are set as the default apps on current iPhone models?**

Apple has long embraced a holistic product development approach from hardware to software to services. From the very first Macintosh that launched in 1984, Apple has built software applications that are fully integrated with the rest of its products. This approach allows Apple to design products so that the user experience is seamless across devices, from the user’s Mac to iPhone to iPad.

Most pre-installed apps can be deleted by the user. A small number have historically been “operating system apps”—integrated into the phone’s core operating system—that are part of the combined experience of iOS and iPhone. These have included the Safari browser, Mail, Messages, and Apple Maps, although with iOS 14, customers will have the option to select a third-party web browser and mail client as their default apps.

Users have a number of choices available to them. Third-party developers have created more than 1.8 million apps using Apple’s development tools and software and distribute them through the App Store. A user can find alternatives—often many alternatives—to the Apple applications. There are dozens of browser apps, mail apps, music apps, television apps, cloud apps, news apps, and other apps that consumers download. For example, the App Store offers American consumers more than two dozen third-party mail apps. And consumers have downloaded those apps more than 60 million times in the last twelve months alone. Each and every day consumers can, and do, download third-party apps that compete with each and every Apple app that we make available to consumers.

**d. Which third-party apps are set as the default apps on current iPhone models?**

There are no third-party apps set as default apps on iPhone. However, in iOS 14, customers will have the option to select a third-party default web browser and mail client.

**e. Are users able to rate and review Apple apps the same way they rate and review third-party apps? If not, why not?**

Apple apps that are available only through the App Store are rated and reviewed by users, just like other apps on the App Store. The apps that are integrated into the iPhone are not reviewable by users on the App Store.

**f. Describe any differences between the default permissions set for Apple apps versus the default permissions for third-party apps, including privacy permissions;**

Apple has made strong, public commitments to its users on privacy and data protection. Apple holds itself to exacting standards that often go above and beyond what Apple applies to third parties.

In large part, Apple uses the same consent mechanism to request access to private user data from its own apps that third-party apps do using our standard APIs. In cases where Apple does not utilize the same mechanism to request access to private user data, Apple designs its implementation to provide extensive transparency and control, which accomplishes the same purpose. This is the case, for example, when data does not leave the device without an action on the part of the user (e.g., on-device intelligence analyzes a user’s use of their device and apps to provide a more personalized experience without any information leaving the user’s device), or the use of a particular sensitive data type is inherent to the function of the app (e.g., the Camera app needs access to the Camera).

**g. Describe any differences between access to private application programming interfaces (APIs) that Apple grants its own apps versus third-party apps;**

Apple has invested and continues to invest heavily in creating tools and services that enable app developers to provide high-quality apps on iOS. For example, Apple created the Swift coding language to level the playing field for developers. Swift makes it easy for anyone—from the student at home to the individual entrepreneur to the small business—to create great iOS apps.

Apple made 10,000 APIs available to developers when it first opened iOS to third-party development in 2008. Apple has invested significant engineering time and resources to make more APIs available to third-party developers, and each year Apple has opened more and more APIs to developers. To that end, there will be more than 250,000 APIs available to developers in iOS 14.

Some sensitive APIs, however, are not made available if doing so would compromise the security or privacy of Apple’s users. For example, Apple has invested heavily in accessibility features to make its products and technology available to all of its users. Apple offers VoiceOver, a built-in screen-reading feature, as an accessibility tool for the visually impaired. VoiceOver lets you know what is happening on your iPhone, even if you cannot see the screen. You can touch the screen to hear what is under your finger, then use gestures to navigate and interact with every built-in app. However, Apple cannot give third-party developers unfettered access to the VoiceOver APIs. This would grant those third parties unfettered access to all of the content available on a user’s screen.

**h. Describe any differences between access to iPhone device features and functionality (such as the near-field communication chip) granted to Apple apps versus third-party apps;**

As described in the response to Question 1(g), Apple provides numerous APIs for developers to access the functionality of the iPhone, including APIs that use the sensors of the device, such as the microphone, camera, GPS, Bluetooth, and the NFC chip. These APIs enable a wide array of uses. However, there are some limits on third-party access to features and functionality to safeguard security or privacy, or where access could compromise the user experience.

**i. If third-party apps employ robust privacy practices that meet or exceed Apple’s own privacy practices, are those apps granted the same user interface access and permissions as native Apple apps? If not, why not?**

Apple has 27 million registered developers and 1.8 million apps on the App Store. It would be logistically impossible to review the privacy practices of each and every third-party developer to determine whether their practices meet or exceed Apple’s own privacy practices. Nor would it be realistic for Apple to monitor those third parties on an ongoing basis to ensure that the developers are adhering to Apple’s privacy practices.

Apple provides app developers significant latitude in developing apps with access to more than 250,000 APIs. As mentioned in the response to Question 1(g), we add thousands of new APIs every year. Apple cannot provide the same access to third parties that it provides to its own integrated development teams. The privacy, security, and logistical challenges are insurmountable. For example, Apple is unaware of a way to validate, with complete confidence, that a particular third party is not abusing an interface access or permission. For this reason, we develop APIs with built-in safeguards to ensure the privacy and security of our customers.

## **2. App developers have complained that the App Store Review Guidelines and review processes are opaque.**

Apple works hard to make the App Store a great opportunity for developers and to create a fair process. We provide developers with a robust set of tools, compilers, languages, APIs, software frameworks, and SDKs. And we have created programs that help not only current developers, but anyone who wants to learn to code and ultimately become a developer. These investments reflect the reality that Apple must compete for developers' mindshare in a marketplace with an ever-growing number of choices for developers. We are proud of the fact that we now have more than 1.8 million apps on our App Store.

Apple's focus is first and foremost on the consumer. Our rules, and our review process, are driven by Apple's desire to protect our customers. We created the Guidelines to provide clear guidance to developers on building the best apps for our customers. The five pillars of the guidelines—Safety, Performance, Business, Design, and Legal—require that apps offered on the App Store are safe, provide a good user experience, adhere to our rules on user privacy, secure devices from malware and threats, and use approved business models. For example, with respect to COVID-19-related apps, Apple is evaluating apps to ensure data sources are reputable and that developers presenting these apps are from recognized entities.

Apple has done its best to ensure its rules and decision-making are as transparent as possible. Apple was the first software distributor to make its distribution requirements publicly available when it published the Guidelines in 2010. The Guidelines reflect this commitment to transparency and act as a practical guide to help developers better understand the app approval process.

Apple's commitment to fairness and transparency extends to the review process. Our app review process is ongoing seven days a week, in three global time zones, in order to review more than 100,000 apps *every week*. Together, our reviewers speak 81 different languages. We provide the developer the reason for any app that is rejected. All developers have the opportunity to have a rejection reviewed by the App Review Board. And the App Review team makes about 1,000 calls a week to developers to help them diagnose and resolve any issues that led to the rejection—so they can get their app onto the App Store.

We have built a developer portal with tools for developers to check the status of their reviews. We host developer programs all around the world, including our annual worldwide developer program, which specifically includes sessions to assist developers with the App Store submission and review processes. At the end of the day, we want the developer to be able to release their app on our store.

We are constantly working to improve. In June, we announced changes to address some concerns that have been raised by developers. For example, developers now have the ability to challenge our Guidelines. Our process is not perfect, and we sometimes make mistakes, but we believe in the system we have built, and the results speak for themselves.

- a. Describe all modifications to Apple’s App Store Review Guidelines from 2015 to 2020, including any changes in interpretation, prioritization, or emphasis on enforcement;**

Apple reviews and approves apps submitted by developers to the App Store, applying technical, content, and design criteria outlined in the Guidelines. This helps protect privacy, security, and reliability by curating the App Store as a safe and trusted place for customers.

The Guidelines provide transparency and act as a practical guide to help developers better understand the app approval process. The Guidelines provide information to developers about what is and is not appropriate for the App Store. Apple attempts to apply the Guidelines uniformly to all developers and all types of apps.

The Guidelines have been updated 16 times since the start of 2015 to address new technical or commercial issues, clarify ambiguities, address new business models, or reflect developments in technology. Major updates to the Guidelines are announced at Apple’s Worldwide Developer Conference (“WWDC”).

- b. Identify all “unwritten rules” that app developers are expected to comply with in addition to Apple’s App Store Review Guidelines. Describe all modifications to these “unwritten rules” from 2015 to 2020, including any changes in interpretation, prioritization, or emphasis on enforcement.**

Apple does not maintain “unwritten rules” to the Guidelines. As described in response to Question 2(a), the Guidelines are not static; rather, they articulate broad principles that are to be used in the review of all apps. As a result, Apple interprets and at times revises the Guidelines, often in response to developer feedback, to ensure the Guidelines are appropriate as new apps emerge and new technologies are introduced. Apple then works to ensure that the Guidelines are fairly and consistently applied to all developers. When the App Review team rejects an app based on an interpretation of those rules, it sends the developer a message that includes the specific guideline (or guidelines) that the app violates, along with an explanation of the factual circumstances of the violation.

- 3. App developers have explained they often see disruptions to their apps and incur significant costs when Apple makes changes or updates to iOS. Apple’s Developer Agreement explicitly disclaims any liability that Apple may cause third-party app developers.**

Apple relentlessly innovates day after day, month after month, year after year to improve its products and the consumer experience. Apple innovates at the component level, the hardware level, and the software level. This innovation can have an impact on software applications—both Apple apps and third-party apps. For example, Apple recently announced a transition from Intel CPUs to Apple silicon for its Mac lineup. This will have a significant impact on Apple and third parties who create software for the Mac. Apple also regularly introduces new privacy features to give consumers greater transparency and control over their data. These changes can also have an impact on Apple and third parties alike.

As explained in greater detail in response to Question 3(b), Apple holds an annual developer conference to introduce upcoming changes to iOS and its product line-up. Apple also engages with the developer community throughout the year to respond to questions, discuss changes, and work with

developers to take advantage of the new features and technologies Apple makes available through iOS.

- a. Identify the type of communications that Apple’s app product teams have with relevant iOS teams regarding changes to iOS that may affect app performance, including advance notice of iOS updates.**

From the very first Macintosh launched in 1984, Apple has built software applications that are fully integrated with the rest of the product. This allows Apple to design products so that the user experience is seamless across devices, from the user’s Mac to iPhone to iPad. This would be very difficult to accomplish with third parties in accordance with Apple’s demanding standards of quality, security, and privacy.

The benefits of Apple’s long-standing integrated approach to product development are enabled by regular collaboration between teams. Apple’s engineering teams work side-by-side in many cases. The teams share ideas, collaborate on projects, and work together to develop the best possible experience for consumers.

- b. Do third-party app developers receive the same communications and have the same access to relevant iOS teams regarding changes to iOS that may affect app performance?**

It would be very difficult, if not impossible, to replicate Apple’s product development philosophy with third parties. Apple’s teams work together each and every day to create the best possible Apple products. Third-party developers cannot make the same level of commitment or focus as Apple can. Third-party developers are creating apps for multiple computing environments such as Android, Windows, Playstation, and Nintendo (to name a few).

Apple has invested significant resources to support third-party developers. It is in Apple’s interest to ensure that all third-party app developers have the latest information on upcoming changes to iOS that could affect their apps. This information helps ensure an optimal experience for users of Apple products who use third-party apps.

Apple announces the changes and updates to iOS publicly each year at Apple’s WWDC. The changes are described in detail in live and recorded presentations that are then made available to the public free of charge on Apple’s WWDC website (available at <https://developer.apple.com/wwdc20/>) along with hundreds of documents, pieces of sample code, and other supplemental materials. Apple’s Developer Relations team provides guidance to third-party developers on how to implement these changes, provides information on how they may impact app performance, and addresses developer questions. Developers are provided ample time to conform their apps to any changes before the changes are implemented in iOS.

#### **4. You testified that Apple currently offers 60 Apple-owned applications:**

Apple has integrated approximately 40 of its own apps into the iPhone. Apps like Phone, Notes, Settings, Files, Clock, Tips, Measure, and Reminders provide basic functionality, while apps like FaceTime, iMessage, Apple Music, TV, and others help differentiate the iPhone in a competitive smartphone market. Apple also makes an additional two dozen apps available solely through the App Store. Apps like App Store Connect, Apple TV Remote, Apple Events, Apple Support and TestFlight are examples. The approximately 60 Apple applications are a drop in the bucket when compared to the more than *1.8 million third-party apps* available through the App Store today.

- a. Identify all paid Apple apps that pay the traditional 30% commission for distribution by the App Store, including subscriptions that pay a 30% commission for the first year and a 15% commission for subsequent years;**

The vast majority of apps that Apple makes available to consumers, either out of the box or through the App Store, are free of charge. There are a very small number of apps that sell digital products or services to consumers to which this rule would apply. Apple TV+, Apple News+, Apple Books, and Apple Music are examples. Apple does not apply a 30% commission to these services as this would be an artificial accounting exercise that would make little economic sense.

Apple creates its own services and apps to provide an even broader and unique range of options to enhance the desirability of its devices and differentiate itself from an increasingly competitive smartphone market.

- b. Identify all paid Apple apps that pay a reduced commission or no commission. Explain what conditions those apps meet in order to qualify for a reduced commission or no commission; and**

See response to Question 4(a).

- c. Identify all paid third-party apps that currently pay a reduced commission or no commission because they meet these conditions.**

The vast majority of apps on the App Store—84%—pay 0% of what they make to Apple. Apple has introduced new rules that allow developers to avoid or reduce transactions that are subject to a commission, rules like the Reader Rule and the Multi-Platform Rule. And there are thousands of other apps that pay a reduced commission of 15% for subscriptions that have been renewed for a second year, or because they participate in our Video Partner Program for Apple TV. Apple’s unflinching practice over the last 12 years has been to consistently reduce commissions.

- 5. The United States District Court for the Southern District of New York found evidence during the eBooks litigation that Apple used its control over the App Store to pressure Random House to join Apple’s iBookstore.<sup>1</sup> As the court noted, Eddy Cue, Apple’s Senior Vice President Internet Software and Services, wrote to Steve Jobs that he “prevented an app from Random House from going live in the app store this week,” and attributed Random House’s decision to join the Apple iBookstore to Apple’s rejection of Random House’s eBook apps from the App Store.**

- a. Has Apple rejected or removed any other apps from the App Store, or threatened to do so, to pressure app developers to participate in other Apple services? If yes, please provide a list of all such instances.**

No. I am not aware of a situation whereby Apple rejected or removed apps from the App Store, or threatened to do so, to pressure app developers to participate in other Apple services.

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<sup>1</sup> *United States v. Apple Inc.*, 952 F.Supp. 2d 638, 686 (S.D.N.Y. 2013), *aff’d*, 791 F.3d 290 (2d Cir. 2015).

- 6. You testified that Apple’s App Store treats every developer the same, and that Apple does not favor some developers over others. Documents Apple has produced to the Committee indicate that you negotiated partnership agreements between Baidu and Apple that included an “App Review Fast Track” that you indicated would speed the review process for a developer’s app,<sup>2</sup> or that included reduced commissions for in-app subscriptions.<sup>3</sup>**

Every developer, whether they are large multi-billion dollar corporation or a student who creates apps in her dorm room, is subject to the same contractual terms and must comply with the App Store Review Guidelines. There are no exceptions. Apple frequently gets requests from developers for specific terms or support. We listen to these requests and accommodate them if we can, consistent with our values of safety, security, and privacy. We do so in the same manner for all developers who wish to participate in the program or are similarly situated.

The question takes the two emails out of context. As reflected in the email exchange with Baidu, Apple was exploring a number of different opportunities with Baidu. There is no partnership agreement that provides for a unique Baidu “App Review Fast Track.” Baidu is subject to the same process and the same rules as every other developer.

The suggestion that Apple granted unique terms to the Amazon Prime Video app that allows it to pay a lower commission is false. Apple does not play favorites in this manner. That would be counter to our goal of attracting the highest-quality developers to the App Store.

The negotiations with Amazon, and a number of other video-streaming providers, were difficult and challenging on a number of levels. Apple ultimately developed a set of standard terms for Amazon, and every other video-streaming service that met the criteria, to launch their service on Apple TV and iOS. The Video Partner Program allows third-party premium video apps to integrate with a variety of Apple services and features that enhance the consumer experience of watching premium subscription video entertainment on Apple TV and tvOS, and across their other devices. Today, there are over 130 apps that participate in this program. The reduced 15% commission is available to all developers offering premium video content on the same terms as Amazon Prime Video, with the same qualification criteria.

- a. Has Apple provided other app developers with similar treatment? If yes, list all other app developers that have or had access to the “app review fast track” or have been assigned “key contacts” for the purpose of helping to “manage through Apple.”**

Apple provides a number of developers, both large and small, with additional support as part of its partnership management program. Apple supports developers who have questions about technical issues, or require assistance integrating new technology into their apps. A developer’s size or prominence is not what drives support from Apple—there are many developers with hundreds or even thousands of apps that have not received this support, and there are sole proprietors with only a handful of apps that have benefitted from this support.

There is no “fast track” for App Review special to Baidu, as was requested by Baidu in the referenced email. In fact, any developer can request expedited review from App Review by submitting a formal expedite request at <<https://developer.apple.com/contact/app-store/?topic=expedite>>. The beta app review process I referenced in my email has been available to developers since 2009.

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<sup>2</sup> HJC-APPLE-011083-85, <https://judiciary.house.gov/uploadedfiles/011083.pdf>.

<sup>3</sup> HJC-APPLE-015111, <https://judiciary.house.gov/uploadedfiles/015111.pdf>.



The key contacts referenced in my email were focused on the other strategic opportunities outlined by Baidu. Neither individual had responsibility for App Store review.

**b. Does Apple make other exceptions to its traditional 30% commission for paid digital goods and services apps? If yes, describe those exceptions and provide a list of all app developers that paid reduced commission rates.**

Apple has never increased the commission or its fees for the Developer Program. Apple has time and again introduced flexibility in its commission structure with rules like the Reader Rule and the Multi-Platform Rule. These rules, and others like them, have resulted in a marketplace where 84% of the apps pay nothing for all of the benefits available from Apple, other than the \$99 program fee.

Apple has also reduced the commission for certain transactions. For example, Apple reduced its commission on subscription purchases to 15% after the first year of a subscription. The Video Partner Program is another example of Apple reducing its commission. There are nearly 130 developers in this program. Premium subscription video entertainment providers earn a lower commission if they agree to integrate their apps with Apple TV.

**7. In March Apple acquired Dark Sky, a popular weather app. Apple announced it will be shutting down Dark Sky Android and no longer making its API available for new third-party apps.**

**a. Why did Apple decide to shut down Dark Sky Android and to stop allowing new third parties from signing up to access the API?**

Apple has a long history of developing groundbreaking technological innovations that deliver significant benefits to consumers. These innovations are made possible through significant investments in internal research and development, as well as acquisitions of complementary niche technologies and “acqui-hires,” or acquisitions of personnel.

Apple acquired Dark Sky for the app’s unique engineering talent, to help innovate and improve Dark Sky’s technology so that we can make it accessible to more developers and more consumers by expanding its functionality and reach. It would be difficult to achieve these improvements if Dark Sky’s very small team were engaged on other projects at the same time.

**b. What plans, if any, does Apple have to shut down API access for third-party apps who already have API access?**

When Apple announced the acquisition on March 31, 2020, we explained that Dark Sky would continue to make its API available to Dark Sky’s existing customers until the end of 2021. But even without access to Dark Sky’s API, third-party apps have a number of alternatives for weather data, including services like AccuWeather, AerisWeather, the Weather Channel, ClimaCell, Meteomatics, and WeatherBit.

There are thousands of weather apps currently available on the App Store.