Epic needs to tarnish Apple's App Store halo



At the beginning of this week's *Epic v. Apple* trial, Apple described Epic's lawsuit as an "assault" on the entire iOS philosophy. One of the iPhone and iPad's defining features is a curated ecosystem (or, from a different perspective, a walled garden). A loss for Apple could require it to allow side-loaded apps and alternative app stores, potentially including Epic's own Epic Games Store. Apple says that would damage the privacy and security that iOS is known for, making Apple spend more money to fix new problems that crop up.

Epic spent the fourth day of trial offering its counter-narrative: the iOS App Store isn't actually very good. Calling two Apple executives to the stand, Epic's attorneys took jabs at everything from the update review process to Apple allegedly leaking Marshmello's *Fortnite* concert playlist. They pushed Apple to justify its claims about privacy and security by producing hard research demonstrating threats and breaches — which Apple largely didn't do.

Epic is making the case that the app store just isn't very

good

After a short examination of Epic's online business strategy head Thomas Ko, Epic called on Matt Fischer, App Store vice president and the first witness employee from Apple. Epic's attorney peppered Fischer with anecdotes from frustrated developers — calling the iOS in-app payment system a "joke," the refund policies "awful," the review process "arbitrary and unpredictable," and the entire store "plagued with outdated, low-quality apps."

Apple's App Store has some clear problems. As my colleague Sean Hollister wrote last month, you can find ridiculous stories about iOS apps that appear to swindle users yet maintain unbelievably high review stories — and aren't removed even months after a formal complaint. Eric Friedman, an Apple employee who is set to testify, has been quoted saying the app review team is "more like the pretty lady who greets you with a lei at the Hawaiian airport than the drug sniffing dog" or "bringing a plastic butter knife to a gun fight."

But Epic's questioning today didn't capture the kind of drama that implies. The attorneys spent much of their time trying to catch Apple executives in contradictions, and while they quoted disgruntled developers like the ones above, they rarely delved into the substance of their complaints. Judge Yvonne Gonzalez Rogers became audibly irritated with Epic repeatedly producing documents to establish a "state of mind" about the App Store rather than hard facts, since the files would be uploaded for public viewing. "Non-lawyers don't understand the difference between something being admitted for its truth and being admitted for some other evidentiary purpose," she told an attorney. Apple countered one negative review snippet simply by having Fischer read the line above it, where the writer said they were still giving the App Store a high rating.

Epic has vividly established the consequences of getting banished from the App Store

There’s one plausible reason Epic doesn’t have more specific stories: many developers are reportedly scared to criticize Apple. That’s been a running theme in congressional scrutiny of Apple, and Epic has vividly established the consequences of getting banished from the App Store — even if developers try to return via Apple’s Safari browser, they’ll be denied access to things like push notifications and AR features.

Epic also still has witnesses who could poke holes in Apple’s narrative. Friedman is scheduled to appear over the next two weeks, and so is an executive from Match Group, which spoke critically of Apple in front of Congress. Epic’s attorneys left a big question hanging about whether Apple offers special terms to some developers — something Fischer denied, but wasn’t heavily pressed on. In any case, this trial hinges on much more than the precise quality of Apple’s developer support.

But today demonstrates the difficulty of discussing large-scale moderation without opening yourself up to charges of dealing in mere anecdotes. Judge Rogers made clear that she’s interested in whether Apple is better or worse than its alternatives, not simply whether it’s ever had problems. And while Epic can point to individual screwups, Apple will try to argue that it’s doing its best.

“It’s a human process. We do make mistakes,” said Apple’s marketing manager Trystan Kosmynka, the day’s last witness. “But we certainly try to rectify those mistakes when we learn of them.”

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