

**Case No. 24-6256**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

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EPIC GAMES, INC.  
*Plaintiff-Appellee,*

v.

GOOGLE LLC; GOOGLE IRELAND, LTD.; GOOGLE COMMERCE,  
LTD.; GOOGLE ASIA PACIFIC PTE, LTD.; GOOGLE PAYMENT  
CORP.,  
*Defendants-Appellants.*

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On Appeal from the United States District Court  
for the Northern District of California  
The Honorable James Donato, Presiding

Case Nos. 3:20-cv-05671-JD, 3:21-md-02981-JD

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**PROSPECTIVE AMICI CURIAE CHAMBER OF  
PROGRESS, COMPUTER & COMMUNICATIONS  
INDUSTRY ASSOCIATION, NETCHOICE, AND  
CONSUMER TECHNOLOGY ASSOCIATION'S  
MOTION FOR LEAVE TO FILE BRIEF**

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Computer & Communications Industry Association, NetChoice, and  
Consumer Technology Association

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## I. INTRODUCTION

Pursuant to Fed. R. App. Proc. 29(a) and Ninth Cir. R. 29-3, prospective amici curiae Chamber of Progress, Computer & Communications Industry Association, NetChoice, and Consumer Technology Association respectfully seek this Court's leave to file the accompanying amici curiae brief. Prospective amici sought consent of all parties to file the brief. No parties objected and Defendants-Appellants gave their consent. Counsel for Epic indicated that Epic takes no position one way or another on the motion for leave to file.<sup>1</sup>

Pursuant to Fed. R. App. P. 27(a)(2)(B)(i) and 29(a)(6), the proposed amici brief is submitted as an exhibit accompanying this motion.

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<sup>1</sup> Epic refused to give consent to file unless each prospective amicus would agree to “disclose any money it has received in the past 12 months from a party or amicus or their affiliates.” Email from Gary Bornstein to Sara Fitzpatrick (Nov. 25, 2024, 15:12 PST) (on file with author). This request goes far beyond the disclosure requirements of the Federal Rules of Evidence, *see* Fed. R. App. P. 29(a)(4)(E), and it is not possible for prospective amici to comply. Among other things, complying with that request would require prospective amici to predict the identities and affiliates of all other amici in this case. When prospective amici declined Epic's demand, Epic informed prospective amici that it would take no position on the motion for leave to file.

## II. INTEREST AND IDENTITY OF AMICI CURIAE

**Identity of Prospective Amici.** Chamber of Progress is a tech-industry coalition devoted to a progressive society, economy, workforce, and consumer climate. Chamber of Progress backs public policies that will build a fairer, more inclusive country in which the tech industry operates responsibly and fairly, and in which all people benefit from technological leaps. Chamber of Progress seeks to protect Internet freedom and free speech, to promote innovation and economic growth, and to empower technology customers and users.

Computer & Communications Industry Association (“CCIA”) is an international, not-for-profit trade association representing a broad cross-section of communications, technology, and Internet-industry firms that collectively employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA believes that open, competitive markets are the best guarantors of consumer welfare and vibrant innovation.

NetChoice is a national trade association of online businesses that

share the goal of making the internet safe for free enterprise and free expression. NetChoice’s members operate a variety of popular websites, apps, and online services. NetChoice’s guiding principles are promoting consumer choice, continuing the successful policy of “light touch” internet regulation, and fostering online competition to provide consumers with an abundance of services.

The Consumer Technology Association (“CTA”) represents the \$505 billion U.S. consumer technology industry, which supports more than 18 million U.S. jobs. CTA’s membership is over 1,300 American companies—80% of which are small businesses and startups. CTA also owns and produces CES®, the world’s most powerful technology event.

**Interest of Prospective Amici.** Prospective amici have a strong interest in a thriving mobile-app economy, which drives innovation in the technology sector and creates hundreds of thousands of jobs every year. Prospective amici believe that free and open competition incentivizes technology companies to provide the best and most secure experience for consumers. The district court’s injunction attempts to re-engineer the mobile-app economy, resulting in warped competition, less innovation, and worse services for consumers and developers.

### **III. THE PROPOSED BRIEF WILL EXPLAIN HOW THE DISTRICT COURT'S EXPANSIVE INJUNCTION WILL UPEND THE MOBILE-APP ECONOMY.**

The district court issued a sweeping injunction that would upend the mobile-app economy. Prospective amici's brief explains how that injunction would upend the mobile-app economy, harming the consumers and small businesses that depend on it.

The brief has two parts. In the first part, prospective amici show that the injunction's expansive scope flouts precedent, harms third-party app developers, and extends beyond the court's ability to administer. In the second part, prospective amici explain how the injunction warps competition by encouraging free-riding at the expense of innovation and tilting the competitive playing field in the app-market economy.

### **IV. CONCLUSION**

For the foregoing reasons, movants Chamber of Progress, Computer & Communications Industry Association, Netchoice, and Consumer Technology Association respectfully request leave to file the accompanying amici curiae brief.

DATED: December 4, 2024

/s/Steven A. Hirsch

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate ACMS system on December 4, 2024. All participants in the case are registered ACMS users, and service will be accomplished by the appellate ACMS system.

DATED: December 4, 2024

/s/ Steven A. Hirsch  
STEVEN A. HIRSCH