

No. 25-2935

**In the United States Court of Appeals
for the Ninth Circuit**

EPIC GAMES, INC.,

Plaintiff-Appellee,

v.

APPLE INC.,

Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of California,
No. 4:20-cv-05640-YGR

**MOTION FOR LEAVE TO FILE BRIEF OF
AMICI CURIAE NETCHOICE AND COMPUTER &
COMMUNICATIONS INDUSTRY ASSOCIATION IN SUPPORT OF
APPELLANT'S MOTION FOR PARTIAL STAY PENDING APPEAL**

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CORPORATE DISCLOSURE STATEMENT

No. 25-2935

EPIC GAMES, INC.,
Plaintiff-Appellee,

v.

APPLE INC.,
Defendant-Appellant.

Under Federal Rule of Appellate Procedure 26.1, NetChoice and CCIA certify that they have no parent corporation, and that no publicly held company owns 10% or more of their stock.

/s/ Scott A. Keller

Scott A. Keller

Counsel for Amici Curiae

Amici NetChoice and CCIA respectfully move for leave to file the accompanying amicus brief in support of Apple's pending motion for a partial stay pending appeal. *See* Fed. R. App. P. 29(a)(3); Cir. R. 29-2, 29-3.¹ Amici's counsel conferred with counsel for the parties. Appellant Apple consents to this request. But Epic Games does *not* consent to this request.

NetChoice is a national trade association of online businesses that share the goal of promoting free enterprise and free expression on the Internet. A list of NetChoice's members is available at: <https://tinyurl.com/yuwv2eat>. NetChoice fights to ensure the internet remains innovative and free. Toward those ends, NetChoice engages in litigation, amicus curiae work and political advocacy.

CCIA is an international, not-for-profit association that represents 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, including as a party to or amicus in litigation. In addition, CCIA regularly advocates for the application of First Amendment protections for lawful online speech.

¹ Apple is a member of CCIA's trade association. But no counsel for a party authored this brief in whole or in part, and no party made a monetary contribution intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

A list of CCIA members, which includes Appellant Apple, is available at <https://www.ccianet.org/members>.

Particularly relevant here, Amici litigated the Supreme Court’s landmark case on the First Amendment’s protections for online editorial discretion: *Moody v. NetChoice, LLC & NetChoice, LLC v. Paxton*, 603 U.S. 707 (2024). Accordingly, Amici are uniquely qualified to explain how that decision—and the Supreme Court’s other First Amendment precedent—protects against any governmental action that “direct[s]” any private entity “to accommodate messages it would prefer to exclude.” *Id.* at 731.

That experience is especially relevant here because the district court’s new injunction in this case implicates Apple’s free-speech rights by prohibiting “Apple from setting conditions for link placement and language” in In-App Purchasing (IAP). Mot.3. This requirement, in effect, compels Apple to disseminate speech against its will. For example, it will have the effect of “enabling disparagement of IAP and links within the IAP buy-flow—allow[ing] developers to divert customers away from IAP from within the App Store’s proverbial checkout aisle.” Mot.15.

Accordingly, this Court’s consideration of the pending motion will be aided by Amici’s unique perspective on the First Amendment issues in this case.

Amici have filed amicus briefs in this Court numerous times, including in previous appeals in this case and other appeals involving the parties in this case. *E.g.*, ECF 49, *Republican Nat’l Comm. v. Google Inc.*, 9th Cir. No. 24-

053508 (May 5, 2025); ECF 65, *Epic Games, Inc. v. Google LLC*, 9th Cir. No. 24-06256 (Dec. 4, 2024); ECF 45, *AliveCor, Inc. v. Apple Inc.*, 9th Cir. No. 24-01392 (Oct. 22, 2024); ECF 107, *Briskin v. Shopify, Inc.*, No. 22-15815 (Aug. 2, 2024); ECF 36, *Alario v. Knudsen*, 9th Cir. No. 24-00034 (May 6, 2024); ECF 35, *Diep v. Apple, Inc.*, No. 22-16514 (Oct. 10, 2023); ECF 235, *Epic Games, Inc. v. Apple, Inc.*, 9th Cir. Nos. 21-16506, 21-16695 (June 20, 2023); ECF 58, *Twitter, Inc. v. Paxton*, 9th Cir. No. 21-15869 (April 11, 2022); ECF 27, *Taleshpour v. Apple, Inc.*, 9th Cir. No. 21-16282 (Jan. 1, 2022).

CONCLUSION

Amici respectfully requests leave to file the accompanying amicus brief in support of Apple's pending motion for a partial stay pending appeal.

Dated: May 12, 2025

Respectfully submitted.

/s/ Scott A. Keller

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CERTIFICATE OF SERVICE

On May 12, 2025, this Motion was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court.

/s/ Scott A. Keller

Scott A. Keller

CERTIFICATE OF SERVICE

I certify that this Motion complies with Fed. R. App. P. 32(a)(5) and (6) because it was prepared in 14-point Palatino Linotype, a proportionally spaced font. I further certify that this Motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(a) because it contains 604 words according to Microsoft Word.

/s/ Scott A. Keller

Scott A. Keller