

No. 25-2935

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

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EPIC GAMES, INC.,

*Plaintiff-Appellee,*

*v.*

APPLE INC.,

*Defendant-Appellant.*

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On Appeal from the United States District Court  
for the Northern District of California,

No. 4:20-cv-05640-YGR

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## MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE NETCHOICE AND COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION IN SUPPORT OF APPELLANT

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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 Appellant. *See* Fed. R. App. P. 29(a)(3); Cir. R. 29-2, 29-3.<sup>1</sup> Amici's counsel conferred with counsel for the parties. Appellant Apple consents to this request. But Appellee Epic Games does *not* consent to this request. This Court previously granted Amici leave to file an amicus brief in support of Apple's motion to stay. *See* ECF 11, 40.

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

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<sup>1</sup> 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).

for the application of First Amendment protections for lawful online speech.

A list of CCIA members 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 potentially requiring "Apple to carry any and all developer speech, even if misleading or disparaging to Apple, in connection with links to external purchases" in In-App Purchasing. Apple Br.40. In particular circumstances, these requirements could compel Apple itself to disseminate speech on its own interface against its will. For example, "when customers arrive at the checkout aisle of the platform Apple built, Apple must permit unlimited advertisements for purchases elsewhere." Apple Br.2.

Accordingly, this Court's consideration of this appeal 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 at an earlier stage in this appeal, previous appeals in this case, and other appeals involving the parties in this case. *E.g.*, ECF 11, 40; 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, *Alive-Cor, 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 Appellant.

Dated: June 30, 2025

Respectfully submitted.

/s/ Scott A. Keller

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## **CERTIFICATE OF SERVICE**

On June 30, 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 898 words according to Microsoft Word.

/s/ Scott A. Keller  
Scott A. Keller