No. 25-7916

United States Court of Appeals for the Ninth Circuit

IN RE: GOOGLE PLAY STORE SIMULATED CASINO-STYLE GAMES LITIGATION,

IN RE: FACEBOOK SIMULATED CASINO-STYLE GAMES LITIGATION

KATHLEEN WILKINSON; NANCY URBANCZYK; LAURA PERKINSON; MARIA VALENCIATORRES; MARY AUSTIN; PATRICIA MCCULLOUGH; ALLISON KODA; GLENNA WIEGARD; CLOTERA ROGERS; CAROL SMITH; HANNELORE BOORN; JANICE WILLIAMS; JENNIFER ANDREWS; DAWN MEHSIKOMER; DENICE WAX; FRANCES LONG; SANDRA MEYERS; STEVE SIMONS; VANESSA SOWELL SKEETER; DONNA WHITING; SHERI MILLER; PAUL LOMBARD; BEN KRAMER; ELEANOR MIZRAHI; JANICE WILSON; RICK LARSEN; AMANDA KLOTZ; ERICA MONTOYA; EDGAR SMITH; MICHAEL BROWN; JOHN SARLEY; JOHN SPARKS; SHELLIE LORDS; TERRI BRUSCHI; JOYCE JERNIGAN,
Plaintiffs-Appellees,

v.

META PLATFORMS, INC.; GOOGLE LLC; GOOGLE PAYMENT CORP.,
Defendants-Appellants.

On Appeal from the U.S. District Court for the Northern District of California, Nos. 5:21-md-03001-EJD, 5:21-cv-02777-EJD (Hon. Edward J. Davila)

BRIEF OF *AMICUS CURIAE* COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION IN SUPPORT OF DEFENDANTS-APPELLANTS

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FED. R. APP. P. 26.1 CERTIFICATE OF INTERESTED PARTIES

Pursuant to Fed. R. App. P. 26.1, amicus curiae Computer & Communications Industry Association ("CCIA") states that it is a trade association operating as a 501(c)(6) nonprofit, non-stock corporation organized under the laws of Virginia. CCIA has no parent corporation and no publicly held corporation owns 10% or more of its stock.

April 17, 2026

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes and Codes

Other Authorities

INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae Computer & Communications Industry Association ("CCIA") is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms. For more than fifty years, CCIA has promoted open markets, open systems, and open networks. CCIA members 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.

CCIA and its members have been involved in developing ways of organizing internet content, including third-party content, since the days of the first websites. CCIA thus has a strong interest generally in the correct application of Section 230 of the Communications Act, 47 U.S.C. § 230, to today's technology and specifically in when an online service can be treated as the publisher or speaker of third-party content. Accordingly, CCIA respectfully submits this brief to explain: (1) why tools that allow individuals to pay for third-party content are an integral part

[1] No party or party's counsel authored this brief in whole or in part. No party, party's counsel, or person other than amicus curiae, its members, and its counsel made a monetary contribution to fund the preparation or submission of this brief. Counsel for amicus represents Apple in other, unrelated litigation. All parties have consented to the filing of this brief.

of the overall infrastructure of any of the many online marketplaces, subscription platforms, digital storefronts, and other applications that make third-party content available for a fee, (2) why a rule imposing liability on such entities would gut Section 230, and (3) why the district court's unprecedented decision, if upheld, would apply to virtually any online service that makes third-party content available for a fee, causing, as the district court itself recognized, "dramatic"—and entirely unnecessary—upheaval. Nothing in the statute or this Court's precedent permits, let alone requires, such a sea change in how courts and parties conceive of or apply Section 230.[2]

INTRODUCTION AND SUMMARY OF ARGUMENT

Today, consumers rely on apps for information, entertainment, and a wide range of services. Consumers use apps to stay in touch with friends and family through communications and media-sharing apps, plan trips through travel apps, buy products through online retail apps,

[2] *Wilkinson, et al. v. Meta Platforms, Inc., et al.*, Case No. 25-7916 and *Custodero, et al. v. Apple Inc.*, Case No. 25-7917 are both pending before this Court and are both on appeal from the same order of the district court, which was filed in each of the underlying actions. Substantively identical versions of this brief (with different caption pages) are being filed in both appeals.

and, as here, entertain themselves with gaming apps. To facilitate these interactions between third-party apps and their customers, digital services like Apple, Meta, and Google enable third-party creators to make their apps available to consumers. Because many of these third-party apps either require consumers to purchase the apps before downloading them or let consumers make in-app purchases, many digital services provide systems for taking payment from consumers in exchange for content from third-party app creators as part of their overall infrastructure.

All of this development has occurred against the backdrop and as a result of Section 230's intentionally broad grant of immunity to any interactive computer service for claims stemming from their publication of information created by third parties. Congress enacted Section 230 to, *inter alia*, "promote the continued development of the Internet," ensure a "vibrant and competitive free market" for the internet, and "promote the development of e-commerce." 47 U.S.C. § 230(b)(1)–(2); *Batzel v. Smith*, 333 F.3d 1018, 1027 (9th Cir. 2003), *overruled in other part by Gopher Media LLC v. Melone*, 154 F.4th 696 (9th Cir. 2025). Accordingly, Section 230 provides that "[n]o interactive computer service shall be treated as

the publisher or speaker of any information provided by" someone else, and bars claims against (1) a "provider or user of an interactive computer service" (2) that a plaintiff seeks to "treat[] as the publisher or speaker" (3) of "any information provided by another information content provider." 47 U.S.C. § 230(c). That bar applies to the distribution of third-party content whether that distribution is done for free or for profit.

Despite Congress's clear mandate in Section 230 barring digital services from being held liable as the publisher or speaker of third-party content, Plaintiffs in this case are trying to evade that bar by claiming that various digital services' provision of payment-for-content services transforms the allegedly illegal acts of third parties into acts of the digital services themselves and that doing so in turn takes them outside of Section 230's scope. It does not.

The payment-for-content services that digital services provide as part of their app store's or website's infrastructure are merely "tools meant to facilitate the communication and content of others"—in this case, between third-party apps and their consumers. *Dyroff v. Ultimate Software Grp.*, 934 F.3d 1093, 1098 (9th Cir. 2019). In providing these services to facilitate buying third-party content, digital services are not

endorsing or otherwise adopting the content of those third-party apps as their own, but instead choosing, curating, and displaying content—activities that are the hallmarks of "interactive computer services" that Section 230 protects. What Plaintiffs want to do here is to disaggregate the payment for that content from its provision—but that would effectively eviscerate Section 230's application to any third-party content that a consumer pays for. And by allowing their claims to proceed, that's exactly what the district court did.

The hole that the district court carved in Section 230 would force digital services into an impossible choice between independently monitoring and attempting to determine the legality of millions of digital apps under the varying laws of fifty different states and thousands of local jurisdictions on the one hand, and giving up on providing most internet content on the other. The only possible exception to being treated as a publisher (or not purveying paid third-party content at all) would be if, under the district court's new, atextual, and unadministrable proposal, the digital service could prove that termination is not an acceptable option because the consequences would be existential. Indeed, even if digital services could accurately and reliably analyze the legality

of millions of third-party apps of all kinds under potentially thousands of laws, the sheer burden of doing so would make providing paid-for-third-party-content services impracticable. 1-ER-13–14 (Meta); 1-ER-14–15 (Google); 1-ER-13–14 (Apple). And that in turn would run counter to the aims of Section 230—"promot[ing] the continued development of the Internet" and "preserv[ing] the vibrant and competitive free market." 47 U.S.C. § 230(b)(1)–(2).

In sum, the district court's decision that Plaintiffs' claims in these cases do not treat online services like Meta, Google, or Apple "as a publisher or speaker" of some third-party content (games and virtual chips)—because they could simply choose to quit the field and stop processing payments for *all* third-party content—is entirely at odds with Section 230's plain language, its statutory purposes, and this Court's case law. If upheld, the consequences of that decision will sweep far beyond the particular parties in this litigation to encompass virtually any online service that makes content available for a fee, including many of CCIA's members. And that hurts content creators, consumers, and the digital services that allow them to connect with each other. The district court's decision to deny Defendants Section 230 immunity should be reversed.

ARGUMENT

I. As part of publishing third-party apps and their content, digital services providers help third-party creators get paid for their content.

Consumers worldwide have access to millions of applications, ranging from the simple to the complex.[3] And consumers make billions of downloads to their smartphones and other devices every day.[4] Many of those downloads occur through app stores, which help bring a degree of organization to a vast digital marketplace. Digital services like Meta, Google, and Apple let content creators and consumers find one another in that marketplace. Third-party app creators offer their products for download on these virtual storefronts,[5] and consumers use them to

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[3] APPLE APP STORE, The apps you love. From a place you can trust., https://www.apple.com/app-store/ (last visited Apr. 16, 2026) ("Nearly 2M apps available worldwide."); GOOGLE PLAY, How Google Play works, https://google.play/howplayworks/ (last visited Apr. 16, 2026) ("Google Play is a global digital content store that makes it easy for more than 2.5 billion monthly users across 190+ markets worldwide to discover millions of high-quality apps, games, books, and more.").

[4] The apps you love. From a place you can trust., *supra* n.3 ("More than 5B apps distributed each day."); How Google Play works, *supra* n.3 ("150B+ [d]ownloads on Google Play in the last year [as of November 2024.]").

[5] APPLE APP STORE, Submit your apps and games today, https://developer.apple.com/app-store/submitting/ (last visited Apr. 16, 2026) (explaining how creators can submit their apps for review and distribution); GOOGLE PLAY CONSOLE HELP, Publish your app,

search for, download, and (in some instances) pay for apps that they want, and that are compatible with their device.[6] That makes the task of connecting far more manageable, facilitates administration of app distribution on behalf of creators, and benefits both consumers and creators alike.

Because app stores are marketplaces, not all apps are free. Third-party creators can choose whether consumers may download their apps for free, purchase the app for a one-time price, or buy a subscription.[7] App stores help creators by shouldering the challenges of distribution, including currency conversion, collecting sales tax or VAT depending on

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https://support.google.com/googleplay/android-developer/answer/9859751 (last visited Apr. 16, 2026) (explaining how creators can publish their app).

[6] The apps you love. From a place you can trust., *supra* n.3 ("Discover amazing apps with a rich search experience. Our comprehensive search feature uses natural language to offer suggestions and helpful hints, and provides results with inline video previews, editorial stories, tips and tricks, and lists."); GOOGLE PLAY APPS, http://play.google.com/store/apps (showcasing apps available across Google Play).

[7] GOOGLE PLAY, Power your growth with Google Play Commerce, https://play.google.com/console/about/guides/play-commerce/ (last visited Apr. 16, 2026); APPLE APP STORE, Choosing a business model, https://developer.apple.com/app-store/business-models/ (last visited Apr. 16, 2026).

region, and meeting payment thresholds.[8] They also protect consumers from fraudulent transactions and credit card theft.[9] Consumer spending on apps reflects the robust app economy, with approximately $166.8 billion spent across apps and games in 2025 alone.[10] And the revenue from that spending, in turn, is used by digital services providers "to improve platform quality and security, redounding to the benefit of consumers."[11]

Many apps also offer "in-app purchases"—the ability to transact with the app creator while using the app. For example, the NYTimes app is free to download, with users seeking unlimited access able to purchase

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[8] David Barnard, *Understanding App Store Payments and Revenue Reporting*, REVENUECAT (June 5, 2024), https://www.revenuecat.com/blog/growth/understanding-app-store-payments-and-revenue-reporting/.

[9] APPLE NEWSROOM, *The App Store Prevented More Than $9 Billion in Fraudulent Transactions Over the Last Five Years* (May 27, 2025), https://www.apple.com/newsroom/2025/05/the-app-store-prevented-more-than-9-billion-usd-in-fraudulent-transactions/.

[10] *See* David Curry, *Consumer Spending on Apps Surpassed Games for the First Time in 2025*, BUSINESS OF APPS (Feb. 5, 2026), https://www.businessofapps.com/news/consumer-spending-apps-surpassed-games-first-time-2025/ (noting $166.8 billion spent across apps and games in 2025).

[11] Alden Abbott, *A Tale of Two App Stores*, FORBES (Oct. 10, 2024), https://www.forbes.com/sites/aldenabbott/2024/10/10/a-tale-of-two-app-stores/.

a subscription as an in-app purchase. Some of these purchases allow customers to buy a premium level of service and/or additional content in the app itself. A customer might, for example, pay to remove advertisements, unlock bonus game levels, or buy game extras such as gems or magical swords.[12] This allows third-party app creators to offer their basic product to everyone for free, but paid upgrades to their most robust or dedicated users. The app, its premium levels, and the transactions that enable them are all part of the online digital offering—that is, part of the content that, under Section 230, is attributable to the third-party developers, not the platforms.

Enabling these in-app purchases is also an integral part of the infrastructure that these platforms provide. Although the purchases themselves take place within the app, the digital services Defendants provide, as part of their overall app store and website infrastructure, include tools to pay for third-party content that, among other things,

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[12] APPLE SUPPORT, Buy additional app features with in-app purchases and subscriptions, https://support.apple.com/en-us/102383; GOOGLE PLAY HELP, Make in-app purchases in Android apps, https://support.google.com/googleplay/answer/1061913; FACEBOOK HELP CENTER, Making an in-game purchase on Facebook, https://www.facebook.com/help/226504034029906/.

enable the creators to complete transactions, be paid for content by app users, and activate or enable additional content that the payments cover.[13] Given the sheer volume of transactions in the digital app ecosystem, these tools that allow customers to pay (and creators to get paid) for third-party content are necessary to consumers' interactions and experiences with these apps, and to the internet as we know it.

By contrast, if each app creator had to hawk its own product from the digital equivalent of its own roadside stand, the digital universe would look very different. Consumers would face an extraordinary challenge in finding the products they are looking for, and creators would face additional and expensive barriers to entry that could (and would) deter the creation of content. That serves no one's interests—not consumers, and not creators.

II. Section 230 immunity protects Defendants' offering of content-payment tools for third-party content.

Plaintiffs seek to tie Meta, Google, and Apple to the content of the third-party apps using the tools that permit consumers to purchase additional in-app content, but none of those companies provide any of

[13] *See supra* n.7.

that content—third parties do. Accordingly, "[t]he crux of the statutory claims in these cases is that Defendants were prohibited from processing in-app payments for social casino apps." 1-ER-12 (Meta); 1-ER-13 (Google); 1-ER-12 (Apple). And the crux of the issue whether Section 230 barred those claims was whether Plaintiffs' claims sought to treat Defendants "as a publisher or speaker." (Plaintiffs do not dispute that the other requirements of Section 230 were met, including that the social casino apps and virtual chips constitute "information provided by another information content provider" under Section 230(c)(1).)

Even though, as the district court acknowledged, "payment processing activities may be an important part of publishing activity," and even though Plaintiffs' claims center on players' purchases of third-party content offered by third-party casino apps, the district court concluded that Plaintiffs' claims did not treat Defendants as publishers. It did so because, in its opinion, "[p]ayment processing is not an act of publishing" but rather "a generic business activity common to virtually all companies, publishers or not." 1-ER-12 (Meta); 1-ER-13 (Google); 1-ER-12 (Apple). The district court thus held that because Defendants include the ability to pay for third-party content in the digital services

they provide, Section 230 did not apply because those companies have the "option" of eliminating their content-payment tools altogether by no longer allowing third-party content to be made available for a fee. *See* 1-ER-13–14 (Meta); 1-ER-14–15 (Google); 1-ER-13–14 (Apple).

What the court failed to recognize, however, is that digital services' offering of these tools falls squarely within the scope of Section 230's ambit: namely, the organization and display of third-party content for the benefit of digital-service users. Treating Defendants as if they themselves created the online gaming content is exactly what Section 230 forbids—and exactly what the court did here.

A. Plaintiffs' theory of liability seeks to hold digital services liable for the content of third-party apps

Plaintiffs seek to hold digital services liable for providing app stores that curate and display third-party apps for consumer download because they also process in-app transactions that pay for that content. While the district court tried to carve out the tools that allow consumers to pay for content, there is no valid way to do so. Providing those tools to facilitate the distribution of content between apps and their users is part and parcel of the app stores' and websites' overall infrastructure. As

such, it falls squarely within Section 230's protection, and no amount of creative pleading by Plaintiffs should be allowed to take it out.

Section 230 "establish[ed] broad federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." *Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102, 1118 (9th Cir. 2007) (quoting *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006)) (cleaned up). Under Section 230, providers of "interactive computer service[s]" cannot be sued on any theory that seeks to hold them liable "as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1); *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 681 (9th Cir. 2019); *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100–01 (9th Cir. 2009).

That came as a congressional response to cases holding that, so long as a website exercised "editorial control over the content of messages posted on its" site, it could be held liable for publishing third-party speech that the editor did not exclude. *Stratton-Oakmont v. Prodigy Servs. Co.*, 1995 WL 323710, at *2 (N.Y. Sup. Ct. May 24, 1995); *see* S. Rep. No. 104-230, at 194 (1996); *cf. Cubby, Inc. v. CompuServe Inc.*, 776 F. Supp. 135

(S.D.N.Y. 1991) (applying the standard of "whether it knew or had reason to know of the allegedly defamatory … statements"); *see generally* JEFF KOSSEFF, THE TWENTY-SIX WORDS THAT CREATED THE INTERNET 10 (2019). Simply put, Section 230 "protects websites from liability for material posted on the website by someone else." *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 850 (9th Cir. 2016).

As this Court has consistently held, as part of Section 230's "broad federal immunity," *Perfect 10*, 488 F.3d at 1118, plaintiffs "cannot plead around Section 230 immunity by framing ... website features as content," *Dyroff*, 934 F.3d at 1098. Accordingly, this Court held in *Dyroff* that Section 230 protected a digital service's use of "features and functions, including algorithms," "emails[,] and push notifications." *Id.* As this Court has observed, "what matters is not the name of the cause of action ... [W]hat matters is whether the cause of action inherently requires the court to treat the defendant as the 'publisher or speaker' of content provided by another." *Barnes*, 570 F.3d at 1101–02.

In turn, "publication involves reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content." *Id.* at 1102. But those are not the only decisions Section 230 shields. It

also sweeps in tools "meant to facilitate the communication and content of others." *Dyroff*, 934 F.3d at 1098.

This Court has repeatedly confirmed that Section 230 immunity extends to digital services that facilitate transactions, even when someone claims that the transactions are allegedly illegal because of the underlying third-party content passing through the defendant's digital infrastructure. For instance, one of the digital services in *Perfect 10* provided "webhosting and related Internet connectivity services" to several websites, while the other "allow[ed] consumers to use credit cards or checks to pay for subscriptions or memberships to e-commerce venues." 488 F.3d at 1108. Although the plaintiff there alleged that one of the digital services had only processed transactions for photographs that third parties posted online that allegedly infringed the plaintiffs copyright, *id.*, this Court held that Section 230's immunity extended to both of the digital services, *id.* at 1118–19.

Since *Perfect 10*, this Court has continued to treat Section 230 immunity as distinguishing between theories of liability that depend on the third-party content and those that do not. In *HomeAway*, 918 F.3d 676, the digital services operated websites that allowed third parties to

post listings for vacation rentals that consumers could then book. *Id.* at 679, 679 n.1. This Court rejected the digital services' preemptive challenge to a city ordinance largely prohibiting short-term vacation rentals because the ordinance only "prohibit[ed] processing transactions for unregistered properties" and "d[id] not require the [digital services] to review the content provided by the hosts of listings on their websites." *Id.* at 679, 682. Liability turned on whether a rental was registered with the city, and that did not turn on what the listing said. In relying on this distinction, this Court emphasized that Section 230 immunity applies when the duty "would necessarily require an internet company to monitor third-party content," *id.* at 682; but that particular city regulation created no such duty.

Likewise, this Court has affirmed that digital services are entitled to Section 230 protection unless they do more than "merely ... augment[] the [third-party] content generally, [and instead] ... materially contribut[e] to its alleged unlawfulness." *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1167–68 (9th Cir. 2008). Roommates.com was not entitled to Section 230 immunity to the extent that it did more than "merely provide a framework that could

be utilized for proper or improper purposes." *Id.* at 1172. In that case, it had "develop[ed] the discriminatory questions, discriminatory answers and discriminatory search mechanism [that were] directly related to the alleged illegality of the site" and was ultimately "directly involved with developing and enforcing a system that subjects subscribers to allegedly discriminatory housing practices."[14] *Id.* But Section 230 immunity *did* protect Roommates.com for allegedly discriminatory content in the "Additional Comments" section of profile pages that were "essays ... visible only to paying subscribers" because Roommates.com was "not responsible, in whole or in part, for the development of this content, which [came] entirely from subscribers." *Id.* at 1173–74. In reaching this conclusion, this Court emphasized that "[w]ithout reviewing every essay, Roommate[s.com] would have no way to distinguish unlawful discriminatory preferences from perfectly legitimate statements." *Id.* at 1174.

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[14] This Court similarly concluded that a digital service could be sued for allegedly discriminatory housing advertising practices because co-developed content, specifically a tool that the plaintiffs alleged was itself "patently discriminatory," independent of any published third-party content. *Vargas v. Facebook, Inc.*, No. 21-16499, 2023 WL 6784359, at *2–3 (9th Cir. Oct. 13, 2023) (quoting *Roommates.com*, 521 F.3d at 1168). Not so here.

More recently, this Court reaffirmed that Section 230 was "meant to bring traditional 'distributor' immunity online." *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 739 (9th Cir. 2024). *Calise* explained that "courts must ask whether the duty that the plaintiff alleges the defendant violated derives from the defendant's status or conduct as a 'publisher or speaker,'" or another source "for example, a contract." *Id.* at 740. Applying that test, this Court determined that Section 230 barred plaintiffs' non-contract claims based on scam ads on the digital service provider's website because, "to avoid liability here, Meta ... would need to actively vet and evaluate third party ads." *Id.* at 744.

In so doing, this Court was—and remains—clear that all these principles apply regardless of whether the digital services provider benefits from the distribution of the purportedly illegal conduct. *Id.* at 743; *Doe 1 v. Twitter, Inc.*, 148 F.4th 635, 643 (9th Cir. 2025) (monetizing content did not make digital services provider responsible for removing child pornography posted by a third-party). For-profit publication or dissemination of third-party content still falls within the meaning of Section 230.

B. The tools customers use to pay for third-party content cannot be disaggregated from that content

The district court here went well beyond existing caselaw by holding that digital services could potentially be liable for allowing third-party apps to use the pay-for-content services available through the app store's or website's infrastructure to charge for app content. But these services are merely "tools meant to facilitate the communication and content" between the third-party creators and consumers of the third-party apps. *Dyroff*, 934 F.3d at 1098. Meta, Google, and Apple simply provide infrastructure—the app stores or websites—that facilitates communications between third-party creators and their consumers, in part by allowing customers to pay for that content.

That this infrastructure includes systems to pay for content changes nothing: many third-party apps offer in-app transactions to enhance consumers' experiences, *see supra* pp. 7–9, and these are just the tools that third-party creators and consumers can use to that end. *Calise,* 103 F.4th at 745–46; *Doe 1*, 148 F.4th at 643. In other words, what the consumer is purchasing is content—and, as acknowledged by the district court and as Plaintiffs do not dispute here, that content comes from third parties (1-ER-69 (Meta); 2-ER-196 (Google); 1-ER-69 (Apple)), not from

the digital service that delivers it in exchange for payment. Indeed, when offering these pay-for-content services for third-party creators' use, the digital services do not even endorse the third-party content involved. *Roommates.com*, 521 F.3d at 1172 (website operator "could not be held liable for failing to detect and remove" defamatory content). For purposes of Section 230, courts cannot separate payment functionality from the content that the payments enable because the two are inextricably intertwined.

Furthermore, accepting Plaintiffs' claim that digital services can be sued for third-party apps' use of these tools for allegedly illegal transactions would necessarily require digital services to monitor the content of each and every third-party app. And that comes with sweeping consequences for the publication of third-party content on the internet. The district court erroneously thought otherwise even though it recognized that, because Plaintiffs challenged solely processing payments for a specific kind of third-party content (virtual chips) in a specific kind of third-party video game (social casinos), the "only way" for Defendants to determine whether they should process those transactions was to consider the underlying content. 1-ER-13 (Meta); 1-ER-14

(Google); 1-ER-13 (Apple). But the court held that Defendants "need not" monitor content at all because they could just "choose to stop offering [their] own payment processing" for all apps. 1-ER-13 (Meta); 1-ER-14 (Google); 1-ER-13 (Apple). In other words, Defendants could avoid any liability for third-party content on their sites or app stores (and thus eliminate any Section 230 issue) provided they ceased the activity involving that third-party content. But that is no solution at all. *See Doe 1*, 148 F.4th at 643. Indeed, the district court seemed to realize the impact of its error and walk it back when it suggested there might be an exception to its Section 230 exception for activities that posed "existential threat[s] to Defendants" or "prevent[ed] Defendants from engaging in their publishing activities." 1-ER-14 (Meta); 1-ER-15 (Google); 1-ER-14 (Apple).

The consequences of this decision for consumers, creators, and digital services will be sweeping and profoundly negative. Digital services will no longer be able to provide "tools meant to facilitate the communication and content" to buy or sell any third-party content, *Dyroff*, 934 F.3d at 1098, without independently reviewing and determining the legality of all such content posted on their app store or

website. Section 230 was created to avoid this outcome: requiring "an internet company to monitor third-party content," *HomeAway*, 918 F.3d at 682, "is precisely the kind of activity for which Congress intended to grant absolution with the passage of section 230," *Roommates.com*, 521 F.3d at 1171–72 (referring to claim in earlier case that digital service "failed to review each user-created profile to ensure that it wasn't defamatory").

This case is not *Roommates.com*—nor *HomeAway*. In *HomeAway*, compliance with the local ordinance did not effectively require the digital service to monitor third-party content. 918 F.3d at 682. Here, digital services would have to scrutinize all the content delivered by each app in their app store following an in-app purchase to determine whether the payments were, for example, for getting the app to generate virtual magical swords, unlock access to paywalled news articles (undisputedly lawful), or buy virtual casino tokens (allegedly unlawful). *HomeAway*, 918 F.3d at 682. And it would have to assess the legality of that content against a wide range of potentially applicable laws covering the vast universe of available content. And, unlike *Roommates.com*, Plaintiffs here concede that the digital services here have not developed in whole

or in part any of the third-party apps at issue. Instead, they have "merely provide[d] a framework that could be"—and allegedly was—"utilized for proper or improper purposes" by the third-party creators. *Roommates.com*, 521 F.3d at 1167, 1172. The alleged misuse of the digital services' payment infrastructure does not make those services complicit in the allegedly "improper purposes."

The district court's proposed alternative—that digital services providers remove all such services as part of their infrastructure as an alternative to monitoring every app's content to determine which must be demonetized—is also deeply problematic and threatens to fundamentally destabilize the world of digital third-party content. As a textual matter, Section 230 directs how a "a provider … shall be treated." That analysis requires looking at the provider as it actually is, not asking how a hypothetical state law would treat a different provider with a fundamentally different business model. *Calise*, 103 F.4th at 736; *Doe 1*, 148 F.4th 640.

Moreover, halting distribution altogether is not a reasonable alternative to monitoring. Otherwise, a distributor—including a digital services provider—always has an alternative to monitoring: shuttering

its services altogether. Section 230 does not force digital services like Defendants into such an impossible choice; indeed, the statute was enacted to prevent such an intolerable situation and instead to foster a flourishing and innovative online ecosystem. 47 U.S.C. § 230(a)(3)–(4), (b)(1); *Batzel*, 333 F.3d at 1027 (with Section 230, "Congress wanted to encourage the unfettered and unregulated development of free speech on the internet, and to promote the development of e-commerce."). If accepted more widely, the district court's approach would bring all of that to a screeching halt.

A pre-internet analogy to such a crabbed view of Section 230 would require, for example, a newspaper to wholly cease printing ads so as to avoid distributing any ads that violate the law. *Calise*, 103 F.4th at 738–39. This cannot be the intended consequence of Section 230 and is inconsistent with how courts, including this one, have applied the statute. *Amicus* is unaware of a single case in which a Court has determined that, as an alternative to monitoring, a distributor should halt the provision of services instead. The relevant question is whether the alleged duty would "oblige[] the defendant to 'monitor third party

content'—or else face liability"—i.e., the necessity test. *Calise,* 103 F.4th at 740.

That test requires considering the provider's services as they are (here, an interface for distribution of content, including for pay, and paid add-on content), not as they could be (an interface for distribution of content that does not allow add-on content to be purchased). Under that view, the district court is wrong to say that the state laws here didn't make moderation necessary because providers hypothetically could stop taking payments, just like it couldn't be that a state law doesn't make content moderation "necessary" whenever a provider could choose to cease operating altogether.

Setting aside the Hobson's choice posed by the district court's approach, that approach is also fundamentally incorrect. "We generally do not think that internet or cell service providers incur culpability merely for providing their services to the public writ large," even if "bad actors" may use them "for illegal—and sometimes terrible—ends." *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 499 (2023). But ascribing third parties' allegedly illegal conduct to digital services purely because the third parties used the app store's or website's infrastructure and content-

payment tools for their allegedly illegal conduct would be akin to holding that "internet or cell service providers incur culpability merely for providing their services to the public writ large." *See id.*; *Roommates.com*, 521 F.3d at 1172.

Finally, this decision provides a road map for plaintiffs who wish to make an end run around Section 230. But this Court has already rejected tactics that "push[] the envelope of creative pleading in an effort to work around § 230." *Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1265 (9th Cir. 2016). Digital services neither create nor develop the third-party apps they host on their app stores and websites. That is no less true when those apps' third-party creators use the digital services' systems to facilitate payment for third-party content. This Court should not permit parties to circumvent Section 230's broad federal immunity by attributing third-party content to the app stores or websites that merely facilitate communication for profit between those third parties and their customers.

C. The District Court's decision will have sweeping and negative consequences and serves no one's interests

Since the beginning of the internet, users have been willing to pay for content they value—just as consumers have historically been willing

to pay for that content.[15] But content creators, including app developers, are more likely to earn a return on their creative effort if customers can find them in the marketplace—and they know as much. The digital infrastructure at issue in this case reduces barriers to entry and enables creators to develop and make available digital content, to sell it to their consumers, and to be paid for it. Having the marketplace offer this service, rather than having to build a separate payment solution into each and every app (and then operate and maintain it), has freed content creators to focus on producing content that users want to buy. *See also Perfect 10*, 488 F.3d at 1108, 1118–19 (Section 230's immunity extended to digital service that "allow[ed] consumers to use credit cards or checks" to pay for content).

Where monetization is provided as part of a larger content distribution infrastructure, that monetization cannot be used as grounds to carve out that content distribution from Section 230's scope. For that

[15] Indeed, even under a voluntary payment model, users have shown a willingness to pay for online content. Yuejun Wang et al., *You Are Worth My Tipping: Why Do People Voluntarily Pay for User-Generated-Content on Social Media Platforms?*, SCIENCEDIRECT (Apr. 7, 2025) https://www.sciencedirect.com/science/article/abs/pii/S1567422325000262.

reason, the district court's attempt to treat those tools as a standalone feature makes no sense and the fact that some specialized service providers provide *only* payment services (for example, PayPal, Square, and Stripe) does not alter the analysis for content distributors that facilitate payments between publishers and consumers as part of that distribution. Nor is there any reason to draw a distinction between facilitating consumer purchase of the initial distribution of content in the first instance (the initial app download) and the distribution of add-on content (the in-app purchase).

Excluding these third-party-content-payment tools from Section 230's protection would threaten digital services' ability to offer these systems to everyone. Digital services are not courts and cannot determine on their own whether any or all of the vast range of third-party content they make available would be considered illegal in any of the thousands of states and localities. *Perfect 10*, 488 F.3d at 1119 n.5 (variations in state laws mean "no litigant will know if he is entitled to immunity for a state claim until a court decides the legal issue").

And even if digital services could reliably detect illegal third-party content, the threat of liability would chill many digital services' ability to

offer content monetization because of the sheer cost of monitoring and analyzing the legality of millions of third-party apps under myriad local laws, that vary over time, topic, and jurisdiction. As this Court has recognized, where Section 230 is weakened, the practical effects are a torrential downpour of litigation: "Websites are complicated enterprises, and there will always be close cases where a clever lawyer could argue that something the website operator did encouraged the illegality. Such close cases, we believe, must be resolved in favor of immunity, lest we cut the heart out of section 230 by forcing websites to face death by ten thousand duck-bites, fighting off claims that they promoted or encouraged—or at least tacitly assented to—the illegality of third parties." *Roommates.com, LLC*, 521 F.3d at 1174; *Coffee v. Google, LLC*, 2022 WL 94986, at *8 (N.D. Cal. Jan. 10, 2022) ("[E]ven if a service provider knows that third parties are using such tools to create illegal content, the service's [sic] provider's failure to intervene is immunized.") (citation omitted).

Because even one such mistake could prove costly, *cf. Perfect 10*, 488 F.3d at 1119 n.5 (noting "costs of litigation under a wide variety of state statutes"), few entities will be willing to shoulder that risk. Faced

with potential liability for app or worse yet, each in-app purchase, interactive computer service providers might choose to severely restrict the number and type of third-party content they make available. *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997). This would be particularly true for startups and smaller platforms, which are particularly vulnerable to increased liability exposure, which in turn can deter entry and suppress innovation. *See* Evan Engstrom, *Primer: Value of Section 230*, ENGINE https://www.engine.is/news/primer/section230costs (last visited Apr. 16, 2026) ("Section 230 allows startups to end [frivolous] lawsuits at an early stage, avoiding ruinous legal costs."). That "obvious chilling effect" results in a collective impoverishment when it comes to third-party content. *Zeran,* 129 F.3d at 331 ("Congress considered the weight of the speech interests implicated and chose to immunize service providers to avoid any such restrictive effect."); *Smith v. People of the State of California*, 361 U.S. 147, 153–54 (1959) ("If the contents of bookshops and periodical stands were restricted to material of which their proprietors had made an inspection, they might be depleted indeed.... The bookseller's self-censorship, compelled by the State, would be a

censorship affecting the whole public, hardly less virulent for being privately administered.").

That cost is not just measured in terms of content, but economic impact. One study from NERA Economic Consulting and the Internet Association "found that if liability protections for services are weakened, $440 billion in GDP and 4.25 million jobs could be lost every decade."[16] Absent liability protections, such as Section 230, companies have trouble securing investments necessary for growth and success and are vulnerable to ruinous legal costs from meritless lawsuits.[17] In fact, some commentators attribute Section 230 with having "made Silicon Valley."[18]

Consumers' privacy also suffers under such a scheme. Plaintiffs' theory runs contrary to the policy judgment, increasingly reflected in state legislation, that protecting consumers' privacy considerations

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[16] Ethan Wham, *An Economic Case for Section 230*, DISRUPTIVE COMPETITION PROJECT (Sept. 6, 2019), https://project-disco.org/innovation/090619-an-economic-case-for-section-230/.

[17] *Id.*

[18] Alan Z. Rozenshtein, *Interpreting the Ambiguities of Section 230*, 41 YALE J. ON REGUL. 60, 61 (2024) (citing Anupam Chander, *How Law Made Silicon Valley*, 63 EMORY L.J. 639, 650-57 (2014)).

requires minimizing the collection of their personal data.[19] Despite many states' attempts to ensure that the "collection, use, retention, and sharing of a consumer's personal information [are] reasonably necessary and proportionate to achieve the purposes for which the personal information was collected or processed," *e.g.*, Cal. Civ. Code § 1798.100(c) (2023), Plaintiffs would have every app store and website both track and store the age, credit card, and location information of any person playing a casino game—or any game at all if the district court's suggestion that digital services providers can just stop monetizing content period—in the app store's or website's online space. This could in turn increase the collection, use, retention, and sharing of Plaintiffs' (and more broadly, consumers') personal data.

Congress did not write Section 230 to shield only third-party content that is provided free of charge. 47 U.S.C. § 230. As the U.S.

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[19] *See, e.g.*, Cal. Civ. Code§ 1798.100(c) (2023); Conn. Gen. Stat. § 42-520(a) (2023) (requiring controllers to "[l]imit the collection of personal data to what is adequate, relevant and reasonably necessary in relation to the purposes for which such data is processed"); Ind. Code § 24-15-4-1 (2026) (similar); Mont. Code Ann. § 30-14-2812 (2025); Or. Rev. Stat. Ann. § 646A.583 (2024); Tex. Bus. & Com. Ann. § 541.101; Va. Code Ann. § 59.1-578(A)(1) (2025); *see also* Colo. Code Regs. § 904-3:6.07 (2023) (requiring controllers to "determine the minimum Personal Data that is necessary, adequate, or relevant for the express purpose or purposes").

economy has increasingly relied on the internet to conduct commercial transactions, payment tools for third-party content have become an integral part of digital applications and online transactions more generally. *See supra* pp. 2–3, 4–8. Forcing digital services to make this type of choice—between getting sued for third parties' use of their pay-for-content systems and not providing monetization at all—would severely hamper the "preserv[ation] [of] the vibrant and competitive free market" and the "promot[ion] [of] the continued development of the Internet and other interactive computer services" that Section 230 was intended to promote. 47 U.S.C. § 230(b)(1)–(2). The district court's opinion—if permitted to stand—encourages digital service providers to preemptively opt out of providing services that could open them up to litigation as an "alternative" to monitoring, leaving the marketplace of ideas with dearth of easily available content. That may serve the interests of these particular Plaintiffs. It does not serve anyone else's.

CONCLUSION

This Court should reverse the district court's decision.

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure Rule 32(a)(7)(C), I certify that this brief complies with the length limitations set forth in Ryle 32(a)(7)(B)(i) because it contains 6,797 words, as counted by Microsoft Word, excluding the items that may be excluded under Rule 32(a)(7)(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared using Microsoft Word 365ProPlus in Century Schoolbook 14-point font.

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Respectfully submitted,

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