No. 25-1311

In the Supreme Court of the United States

APPLE INC.,

Petitioner,

v.

EPIC GAMES, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR AMICI CURIAE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION, CHAMBER OF PROGRESS, NETCHOICE, AND SOFTWARE & INFORMATION INDUSTRY ASSOCIATION IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE

Computer & Communications Industry Association ("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.[1] 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. A list of CCIA members is available at https://perma.cc/947S-DSUX.

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

[1] Pursuant to Supreme Court Rule 37.6, amici curiae state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from amici curiae, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Although Petitioner Apple is a CCIA member, Apple did not contribute money that was intended to fund preparing or submitting the brief. Amici filed this brief more than 10 days before the deadline, so the brief's filing constitutes the notice required by Supreme Court Rule 37.

speech, to promote innovation and economic growth, and to empower technology customers and users. Chamber of Progress's work is supported by its corporate partners, but its partners do not sit on its board of directors and do not have a vote on, or have veto power over, its positions. Chamber of Progress does not speak for individual partner companies, and it remains true to its stated principles even when its partners disagree.

NetChoice is a national trade association of e-commerce and online businesses that share the goal of promoting convenience, choice, and commerce on the internet. For over two decades, NetChoice has worked to increase consumer access and options via the internet, while minimizing burdens on small businesses that are making the internet more accessible and useful.

Software & Information Industry Association ("SIIA") is a global trade association representing nearly 400 firms involved in the business of information. Through its divisions, events, and advocacy, SIIA engages industry leaders and policymakers to ensure a vibrant information ecosystem: one that fosters creation, dissemination, and productive use. SIIA and its members work to proactively address issues and challenges that impact their industry segments with the goal of driving innovation and growth of the information economy.

* * *

Amici and their respective members have a substantial interest in this case. The district court here

exceeded the scope of its authority to issue two injunctive orders that would fundamentally reshape how Apple's App Store disseminates speech and speech-enabling tools to users nationwide. If not corrected by this Court, the lower courts' reasoning would permit any district court in the country to similarly disrupt how other online services operate.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court should grant the petition because this case presents important questions about the limits of judicial power. Using an injunction and a contempt order, the district court imposed sweeping, platform-wide mandates governing the relationship between Apple and millions of third-party app developers.

The district court here issued two injunctive orders that would fundamentally reshape how Apple's App Store disseminates apps to its users. These apps both contain and enable enormous amounts of fully protected speech. The orders therefore implicate Apple's free-speech rights by dictating how Apple can present the third-party apps it disseminates through its service. Pet.8-12.[2] Those First Amendment implications only underscore the need for this Court to review the two questions presented by this case.

First, the injunctive orders contravene limits on federal courts' equitable authority by attempting to fundamentally alter Apple's online service. The district court transformed a single case brought by a single plaintiff into judicial supervision of a global digital marketplace. The resulting order regulates Apple's conduct toward every developer and every Apple App Store user, not merely Respondent Epic Games—or developers or users of Epic's online store.

Second, the district court's contempt order

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[2] *E.g.*, *Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n of Cal.*, 475 U.S. 1, 9, 16 (1986) (plurality op.).

violates core notice protections in Federal Rule of Civil Procedure 65 and settled contempt doctrine. Neither lower court concluded that Apple violated the *text* of the district court's original injunction. Instead, the district court concluded—and the Ninth Circuit agreed—that Apple violated the original injunction's "spirit." Pet.App.12a, 34a n.9 (citations omitted). This purpose-based approach untethers contempt liability from the crucial limitation that Rule 65 and settled precedent place on courts' exercise of that authority. This replaces objective notice with after-the-fact judgments about whether a party sufficiently complied with unstated purposes. That is no basis to reshape the operations of large online services.

Each of these problems independently justifies this Court's review.

ARGUMENT

I. The district court's injunctive orders impose platform-wide changes instead of party-specific and injury-specific relief, which exceeds the federal courts' equitable authority.

The district court's injunctive orders require massive, platform-wide changes to Apple's App Store. This kind of universal relief exceeds limits on federal courts' equitable authority.

A. The facts and allegations in this case support only narrow, party-specific relief and not the platform-wide restructuring ordered by the district court—which applies to any and all of the millions of developers that use Apple's service.

This case concerns a lawsuit brought by a single company alleging a particular injury. Specifically, Epic challenged Apple's policy prohibiting app developers from using Apple's App Store to direct potential users to separate online app stores, such as Epic's online store. The district court found that Apple's practices imposed an informational injury that prevented consumers from receiving information about alternative purchasing options of Epic's apps outside of the Apple App Store. *Epic Games, Inc. v. Apple Inc.*, 559 F. Supp. 3d 898, 1055 (N.D. Cal. 2021) ("*Epic I*"); *see* Pet.App.32a n.8, 34a n.9 (Ninth Circuit noting that district court found that Apple was "preventing informed choice among users" (citation omitted)).

The proper remedy (if any) for this harm should have been correspondingly narrow—to require Apple to permit Epic and developers that use Epic's store to inform prospective Epic Game Store users about outside purchasing options. That is not what the district court did.

Instead, the district court first "enjoin[ed] Apple from prohibiting developers to include in their . . . [a]pps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to [In-App Purchasing]." *Epic I*, 559 F. Supp. 3d at 1058. Then, the district court's subsequent contempt order went even further. It imposed sweeping regulations of speech, design, and commercial conduct across Apple's entire platform. Among other things, it prohibits Apple from setting *any* restrictions on (1) *all*

"developers' style, language, . . . flow or placement of links for purchases outside an app"; and (2) "the content, . . . language, . . . flow or placement" of "calls to action" for *any* "purchases outside an app." Pet.App.27a-28a (citation omitted).

The district court's injunctive orders extend far beyond allowing Epic, or developers that use Epic's store, to inform Epic's prospective users of purchasing alternatives. These orders regulate how every developer on the Apple App Store may communicate with every App Store user about transactions occurring outside Apple's platform. Plus, they prohibit Apple from charging commissions for all those developers using its products.[3]

B. The district court transformed this case brought by a single plaintiff into judicial supervision of a global digital marketplace.

In general, the remedies in the district court's injunctive orders are not properly tethered to the underlying parties and violation. Here, a single plaintiff (Epic) asserted an injury from its asserted inability to communicate with users about external purchasing options. An injunction allowing Epic, and developers that use Epic's store, to include links or

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[3] Although the Ninth Circuit reversed and remanded the district court's total prohibition on commissions, the Ninth Circuit still affirmed the district court's ability to place limits on the commissions Apple could collect, despite no such limits in the original injunction. Pet.App.35a-36a. That is addressed in further detail below in Part II.

calls to action to their prospective consumers would have afforded Epic complete relief.

Yet, the district court's orders apply to all developers, all apps, and all transactions—not just those involving Epic and its consumers. These orders require platform-wide changes, governing millions of application developers' speech, interface design, link formatting, and purchasing communications across the entire Apple App Store.

C. These problems are especially acute here because the orders implicate expression. They dictate what Apple may say on its service and how it may say it.[4] Courts apply heightened scrutiny before imposing broad equitable decrees affecting speech and expressive design choices. *See Moody v. NetChoice, LLC*, 603 U.S. 707, 731 (2024) (explaining that the First Amendment does not permit any governmental actor to "direct[]" a private entity "to accommodate messages it would prefer to exclude," without satisfying heightened First Amendment scrutiny). Yet the injunction here imposes categorical prohibitions

[4] That the Ninth Circuit limited the contempt order to prevent developers from using oversized fonts that "muzzle[d] Apple's messaging" and to allow Apple to apply "its general content standards" to "limit[] offensive language and similar portrayals," does not change the fact that Apple is otherwise barred from limiting "developers' style, language, formatting, quantity, flow or placement of links for purchases outside an app," or the "content, style, language, formatting, flow or placement" of buttons and calls to action. Pet.App.8a-9a, 27a-28a (citation omitted).

untethered to the narrow informational injury identified or the single plaintiff that suffered it.

II. The decisions below violate Federal Rule of Civil Procedure 65's specificity requirements for injunctions.

The decisions below also warrant this Court's review because they permit contempt liability for violating the perceived "spirit" of a judicial order. *See* Pet.App.12a, 34a n.9. Here, the party held in contempt complied with the initial order's actual terms, and that order never addressed the conduct later deemed contemptuous. Pet.9-10. This conflicts with basic limits on the contempt power, and the free speech interests at stake make this particularly troublesome. Furthermore, the Ninth Circuit's "spirit"-based approach squarely conflicts with the views of the First, Second, Third, and Fifth Circuits. Those courts correctly hold that contempt must be based on findings that a party violated the clear and unambiguous text of a judicial order. *See* Pet.15-18.

As Apple explains, courts must find a violation of a specific and definite order before they can impose sanctions. *See* Pet.25. Conversely, this Court has explained that courts may not impose contempt sanctions based on "implication or intendment beyond the meaning of [the order's] terms"; "the facts found must constitute a plain violation of the decree so read." *Terminal R.R. Ass'n of St. Louis v. United States*, 266 U.S. 17, 29 (1924). That is because judicial contempt "is a potent weapon." *Int'l Longshoremen's Ass'n v. Phila. Marine Trade Ass'n*, 389 U.S. 64, 76 (1967). These principles have been codified in Federal Rule of Civil

Procedure 65, which requires injunctions to "state [their] terms specifically" and describe the restrained conduct "in reasonable detail." Fed. R. Civ. P. 65(d)(1)(B).

The district court concluded that Apple violated "the spirit" of the court's original injunction, not its text. Pet.App.34a n.9. That original injunction prohibited Apple from doing one specific thing: Apple could not preclude developers from displaying their own buttons, external links, or other calls to action. Pet.App.166a. Apple complied with that restriction. Pet.9-10. Nevertheless, the district court found that Apple violated "the spirit" of the original injunction. Pet.App.34a n.9. The Ninth Circuit then affirmed this additional contempt order and injunction. In the Ninth Circuit's view, too, a party "may be held in contempt for violating *the spirit* of an injunction," even when, as here, the party complied with the order's actual terms. Pet.App.12a.

The Ninth Circuit's reasoning would convert contempt from an objective, notice-based doctrine into a wide-ranging inquiry about whether a court later believes a party complied with the injunction's unstated purposes. Nearly every dispute over compliance with an injunction involves disagreement about purpose and effect. Rule 65's specificity requirements are intended to ground those disputes in the plain meaning of the text of the orders. They do not allow courts to impose contempt based on unstated purpose.

The danger of undermining Rule 65's specificity requirement is acute when the injunction regulates

expression, as this order does. The district court's contempt order regulates how Apple may present purchasing options on its online platform, down to what buttons should look like, what language developers may use, and what messages Apple must display to users. These conditions directly affect Apple's expressive activity. Courts have never held that the "spirit" of an injunction can substitute for clear notice—especially when First Amendment interests are involved. This Court should grant review and reverse that holding here.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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