No. 25-1311

In the Supreme Court of the United States

APPLE INC.,

Petitioner,

v.

EPIC GAMES INC.,

Respondents.

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

BRIEF OF *AMICI CURIAE* PUBLIC KNOWLEDGE AND ELECTRONIC FRONTIER FOUNDATION SUPPORTING RESPONDENTS

Margaret C. MacLean
Counsel of Record
Lowey Dannenberg, P.C.
44 South Broadway,
Suite 1100
White Plains, NY 10601
(914) 733-7250
mmaclean@lowey.com

LEGAL PRINTERS LLC ● Washington, DC ● 202-747-2400 ● legalprinters.com

QUESTION PRESENTED

Whether a party may be held in contempt only when the injunction's text prohibits the precise conduct challenged, or also when a reasonable person reading the injunction's terms in light of its context and purposes would understand that conduct to be prohibited, including when the party seeks to circumvent the injunction through alternative means.

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INTEREST OF *AMICI CURIAE*[1]

Amicus Curiae Public Knowledge ("PK") is a non-profit public interest organization that works at the intersection of technology, law, and policy to defend consumer rights and promote competition, innovation, and access to knowledge. PK regularly advocates before Congress, the courts, and agencies to ensure that consumers are protected from unfair practices in digital markets.

Amicus Curiae Electronic Frontier Foundation ("EFF") is a member-supported, nonprofit civil liberties organization that has worked for over 35 years to ensure that technology supports freedom, justice, and innovation for all people around the world. EFF and its more than 33,000 members have a strong interest in promoting strong, effective antitrust and consumer protection laws, recognizing privacy, free expression, cybersecurity, and innovation as elements of consumer welfare. To that end, EFF advocates for judicial remedies for anticompetitive conduct that are meaningful and effective.

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[1] No counsel for any party authored this brief in whole or in part, and no person or entity other than *amici curiae* or their counsel made a monetary contribution intended to fund the brief's preparation or submission.

Amici curiae Public Knowledge and Electronic Frontier Foundation respectfully submit this brief in support of Epic Games, Inc. ("Epic").

INTRODUCTION AND SUMMARY OF ARGUMENT

Amici curiae submit this brief as advocacy groups dedicated to promoting consumer interests to present the Court with the views of economic victims of Apple's restrictive practices relating to the use of apps on its iOS system. The district court made factual findings that supported Epic's case that Apple's conduct violated long-standing principles of unfair competition law, correctly concluding that app developers paid billions of dollars of supracompetitive commissions to Apple and properly enjoining Apple from blocking app developers from presenting alternative payment options. And it correctly held Apple in contempt when Apple engineered an elaborate scheme to evade compliance. The Ninth Circuit's decision upholding the district court's order should be affirmed.

In this brief, *amici* seek to alert the Court to the magnitude of the harm to consumers, developers, and competition itself caused by Apple's misconduct. The district court's contempt order provided critical relief to consumers that Apple should not be permitted to circumvent. Apple's limitations on alternative payment options (whether achieved by its original restrictions prohibiting linked-out purchases, or its post-injunction commission and design restrictions engineered to lead to the same result) increase consumer costs; reduce consumer choice; reduce the quality of the consumer experience; and reduce innovation. Apple's policies prohibiting app developers from communicating with

consumers about alternative payment options inflict staggering damage on the market. And that damage is just the same regardless of the means Apple uses to "prohibit" linked-out transactions.

BACKGROUND

The digital economy. The success of Apple's popular iPhone hinges largely on the availability of apps and third-party content. Consumers spent an estimated $85.1 billion in 2021 alone on in-app purchases, subscriptions, and premium apps on iOS—apps and content that Apple does not create itself.[2]

This is a particularly impressive feat considering that approximately 80% of apps can be downloaded for free, and most digital content used on Apple's iPhones can be obtained without Apple's involvement. Digital products such as subscriptions, e-books, or game items are not tied to a particular device, any more than a physical book is tied to a particular bookshelf. Consumers may purchase these items via a website or a different phone and still use them on an Apple iPhone. Apple's own rules acknowledge this, by permitting "reader" apps (such as Kindle) to give users access to "previously purchased content or content subscriptions," and other multiplatform apps to give users access to "content, subscriptions, or features they have acquired in your app on other platforms or your web site." J.A. 35-36 (App Store Review Guidelines 3.1.3(a), (b)).

Prior to the injunction, Apple did not take a commission on any of those off-app purchases of digital content. That is how "Epic Games was able to transact with

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[2] Lionel Ceci, *Worldwide Gross App Revenue of the Apple App Store from 2017 to 2021*, Statista, (December 13, 2021)

86.8% of paying Fortnite users without paying any commissions to Apple." J.A. 105; *see also* JA-97 n.50, 98, 100. Nor does Apple take a commission on purchases of physical goods through iOS apps, or restrict developers' ability to refer consumers to off-app purchase options for physical goods. Pet. App. 3a n.1; J.A. 137.

In other words, prior to the injunction, in-app purchases of digital goods were the exception—the one kind of purchase with Apple's commission built into the price, and the one kind for which the seller could not point users to the commission-free web price. The injunction asked only that Apple stop preventing digital content sellers from providing information about commission-free web transactions that consumers were already free to, and did routinely, make.

Apple's injunction-evading policies reach into new transactions. Told to stay out of the interactions between digital content sellers and their customers, Apple instead wedged itself deeper *in.* A consumer who tapped a link in an app to a developer's website would saddle the seller with a new 27% commission to Apple on the price of the purchase on that website—even if the purchase took place as long as a week after the consumer initially tapped the link. In the district court's words, Apple chose to "charge a *27 percent commission* (again tied to nothing) on off-app purchases, where it had previously charged nothing." Pet. App. 51a.

In reality, the developer would pay over 30% on such purchases, between the 27% commission to Apple and more than 3% to cover the external costs of processing payments. Pet. App. 5a, 82a, 136a. That commission was, of course, high enough to dissuade developers from

placing such links in their apps—just as Apple intended. Pet. App. 77a-78a.

If a developer did choose to brave the 27% commission and provide links to off-app purchase options, Apple required those links to be off-putting and difficult to use for consumers, in multiple respects. First, it adopted a "plain button" requirement that made buttons invisible—they became nothing more than links. Pet. App. 23a, 96a-99a. The image below demonstrates the difference between standard buttons that consumers would readily recognize as being something to click (in the red box) and what Apple permitted (the green box).



JA-534. Second, Apple barred developers from using "dynamic URLs" that would carry over the user's information saved within the app, such that a user would have to re-enter everything to make a purchase on an external website. Pet. App. 106a. Third, Apple required developers to use only the below pre-approved bland phrases to direct users to external websites:

Purchase template:
Purchase from the website at www.example.com

Special offer template:
For special offers, go to www.example.com
For a special offer, go to www.example.com

Lower price template:
Lower prices offered on www.example.com
Lower price offered on www.example.com

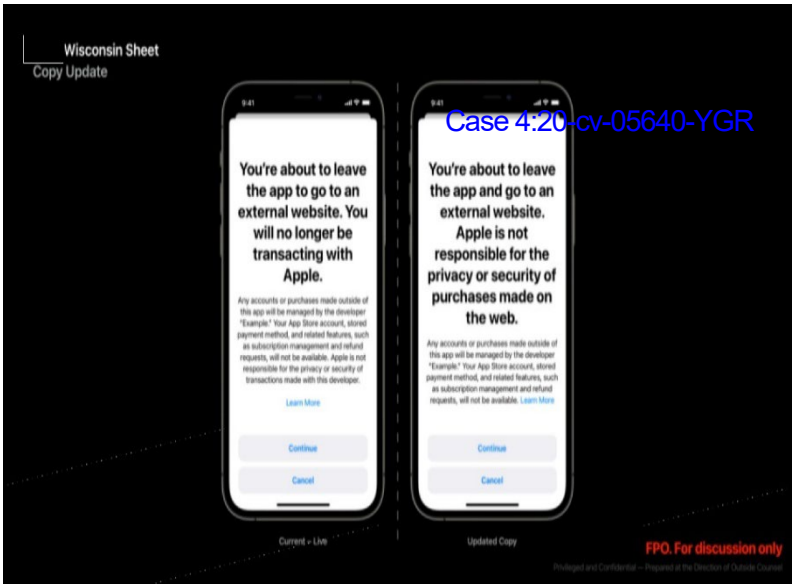
Percent off template:
To get XX% off, go to www.example.com

Specific price template:
Buy for $X.XX at www.example.com

JA-534. Consumers are accustomed to seeing much more enthusiasm from sellers who actually *want* them to follow a specific link, along the lines of "Visit our website for the best possible deal!" The vagueness of the generic language "special offer" (with no description permitted of what that offer might be) and "lower price" (as opposed to something like "best prices!" or "$5 cheaper!") is so different from what consumers expect to see that it feels off-putting or suspicious. Further, developers are unable to describe promotions like bundles or discounted longer-term subscriptions that would also interest consumers.

Fourth, a consumer who did choose to click on one of the blandly advertised links would be met with a "scare screen" designed to give users the impression that the website they are traveling to is unsafe and likely to misuse

their personal information. Apple initially considered using the left-hand image below, and ultimately adopted the right-hand image to even further emphasize that users' "privacy" and "security" would be at risk if they went to the external website:

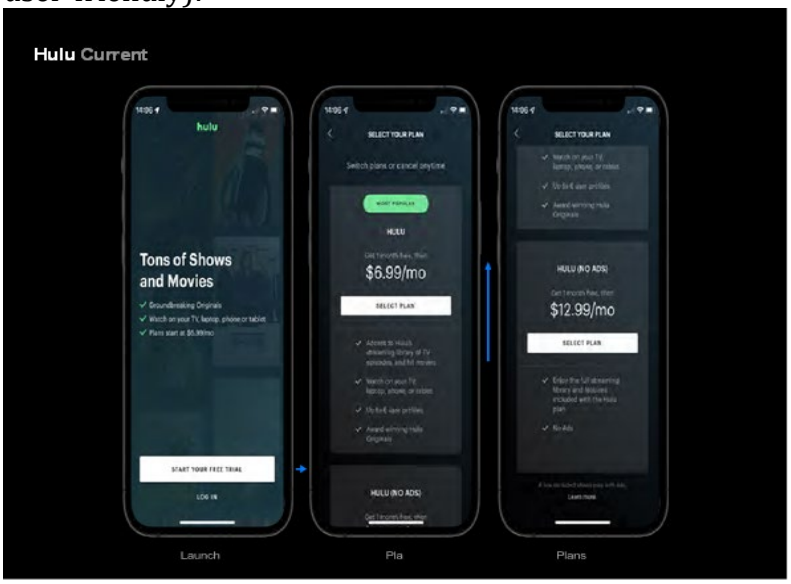


2-ER-353. The "scare screen" perpetuates the false impression that only Apple is capable of protecting users' security,[3] a misconception that is at odds with both

[3] *See* Bruce Schneier, "You Have No Control Over Security on the Feudal Internet", Harvard Business Review (June 6, 2013), https://hbr.org/2013/06/you-have-no-control-over-s.

history[4] and the policy behind our competition laws.[5] This false impression is a direct consequence of the harm that the injunction at issue was meant to remedy.

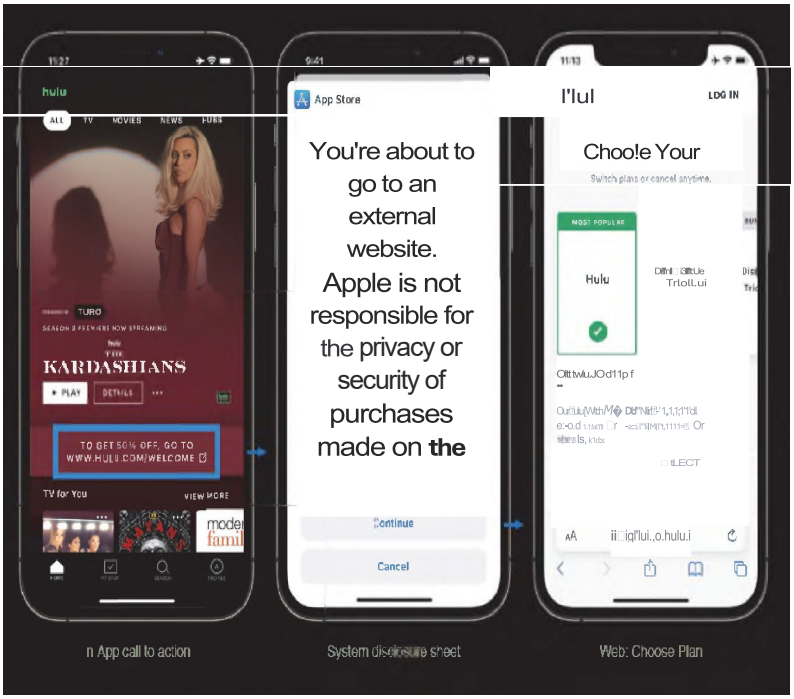
Finally, Apple restricted the locations in which developers could place links to external payment options. Below is the purchase flow for the Hulu app within IAP (which uses Apple's own payment system, designed to be user-friendly):



[4] *See* Kurt Opsahl, "If You Build It, They Will Come: Apple Has Opened the Backdoor to Increased Surveillance and Censorship Around the World", EFF Deeplinks Blog (Aug. 11, 2021), https://www.eff.org/deeplinks/2021/08/if-you-build-it-they-will-come-apple-has-opened-backdoor-increased-surveillance (describing how Apple proposed to weaken the security and privacy protections on its devices).

[5] *Nat'l Soc'y of Prof'l. Eng'r. v. United States*, 435 U.S. 679, 696 (1978) (holding that public safety concerns do not provide "a reason…for doing away with competition").

3-ER-451. A developer wishing to offer a link to an alternative payment option was not permitted to place the link on the payment screens where the consumer would expect to see it. *See* Pet. App. 24a, 93a-94a (Apple witness acknowledging that "the most useful time for a user to know their purchase options" is when the user is reviewing prices in the app). Instead, the link had to be placed on a screen that had nothing to do with payment, and lead directly to the scare screen, as illustrated below (link highlighted in blue box on left-hand screen):



2-ER-106.

Developers were left with the Hobson's choice of keeping consumers in the dark about alternative payment options, or informing them within Apple's parameters,

which would undermine the consumer's trust in the legitimacy of the app and make the customer's payment process more difficult. Between this and the punitive 27% commission on off-app transactions, it is no surprise that virtually no developers offered links to external payment options. *See* Pet. App. 114a & n.50 ("[O]nly 34 developers out of the approximately 136,000 total developers on the App Store applied for the program, and seventeen of those developers had not offered in-app purchases in the first place."). Apple's evasion of the injunction left consumers exactly where they were before the injunction. The district court's contempt order (and the Ninth Circuit's upholding of that order) offered consumers critical relief.

ARGUMENT: APPLE'S CONDUCT HARMS CONSUMERS

Apple's policies deliberately disrupt and complicate interactions between app developers and consumers. The district court got it exactly right when it first observed that "Apple's anti-steering provisions hide critical information from consumers and illegally stifle consumer choice." J.A. 85. Apple's circumvention of the injunction against its anti-steering provisions has the identical effect.

Apple's evasion of the district court's injunction increases consumer costs.

Cost of course is a crucial consideration for consumers. When consumers are made aware of lower priced options, they use them. For instance, the fitness app Down Dog offered a cheaper price for subscriptions on its website (as opposed to through its app). Ninety percent of Down Dog's Android users availed themselves of that cheaper price—but only fifty percent of its iOS users, blocked by Apple's anti-steering provisions from learning

about it, did. J.A. 241; *see also* J.A. 486 (Ninth Circuit stating "[i]f consumers can learn about lower app prices, which are made possible by developers' lower costs, and have the ability to substitute to the platform with those lower prices, they will do so.")

The district court's injunction and subsequent contempt order allowed iOS consumers to take advantage of the same lower prices that Android users had been getting all along. For instance, in the wake of the district court's injunction, Epic "dropped V-Bucks [its in-game currency] pricing by 20% for purchases made through Epic Games' direct payment option." J.A. 101. Proton announced that it would lower prices by even more—up to 30%.[6]

The magnitude of the savings to consumers is significant, or rather, the magnitude of the supracompetitive profits Apple had previously been extracting from consumers is significant. *See* J.A. 336, 451-52 (district court finding that Apple "chose the 30% commission [on in-app payments] without regard to or analysis of the costs to run the App Store," the rate "has barely budged in over a decade," and it produced operating margins that "have exceeded 75% for years," which the court called "extraordinarily high"); *see also* European Commission, Apple – App Store Practices (music streaming), Case AT.40437 (Mar. 4, 2024) ¶ 213 (finding Spotify passed 90 to 95% of Apple's IAP commission on to consumers). Apple should not be permitted to circumvent

[6] Chiara Castro, "'No Apple tax means we will lower prices'—Proton promises price drop after US ruling against Apple," (May 8, 2025), https://www.techradar.com/vpn/vpn-privacy-security/no-apple-tax-means-we-will-lower-prices-proton-promises-price-drop-after-us-ruling-against-apple.

the district court's order to impose these costs on consumers once again.

A few of the very best-known apps like Spotify and Netflix do not even offer in-app purchasing on their iOS apps to avoid forcing Apple's commission onto users. J.A. 241; J.A. 295 n.571. But this approach only works where the developer is confident consumers already know how to purchase their content on the web, and it degrades the user experience. For instance, after Epic's successful legal challenge and the resulting injunction and enforcement order, Amazon was able to add a "Get Book" button to the Kindle app that opens an easy-to-use browser purchase flow for consumers.[7] Similarly, Spotify updated its app to enable consumers to "see pricing, buy individual audiobooks, and purchase additional "Top Up" hours for audiobook listening."[8] Freed from Apple's restrictions, consumers are no longer forced to choose between overpaying for digital products and sifting through an awkward and confusing array of screens.

In short, the increased costs to consumers arising from Apple's restrictions are not just theoretically logical: they are real. And given the enormous volume of consumers and sums of money involved (recall consumers

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[7] Andrew Liszewski, "Amazon now has a 'Get book' button in its iOS Kindle app", The Verge (May 6, 2025), https://www.theverge.com/news/661719/amazon-app-ios-apple-iphone-ipad-kindle-buy-books.

[8] Press Release, "Following Landmark Court Ruling, Spotify Submits New App Update to Apple to Benefit U.S. Consumers", May 1, 2025, https://newsroom.spotify.com/2025-05-01/following-landmark-court-ruling-spotify-submits-new-app-update-to-apple-to-benefit-u-s-consumers/ (last visited Nov. 18, 2026)

spent $85 billion on in-app iOS purchases in 2021 alone)[9], the damage done by those increased costs is correspondingly enormous.

Apple's policies restrict innovation and reduce consumer choice.

The increased costs that Apple's provisions impose on app developers (to then pass on to consumers) represent wasted funds that could otherwise be used to improve product offerings for consumers. News of the district court's injunction on Apple's anti-steering provisions immediately led developers to make plans to use "any potential savings from the payment changes to invest in new products or hire more people."[10]

And beyond cost alone, Apple's restrictions constrain developers' business strategies and sustainable business models. As app developer Spotify explained in connection with Apple's motion for a stay, the new freedom to communicate with customers that the district court's contempt order paves the way for has enabled Spotify to introduce new features to its users. *See supra* p.12 & n.8.[11] Everyone suffers from the artificial

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[9] *See supra* n.4.

[10] *Id.*

[11] To take another example, because the App Store does not allow developers to offer the option of paid upgrades in-app, developers are nudged toward subscriptions or ads instead—even when a one-time purchase plus occasional paid upgrades would be more consumer-friendly and privacy-preserving. Developers and commentators have complained about this structural gap for years. *See* Michael Tsai, *Phil Schiller on App Store Upgrade Pricing*, (May 6, 2017),

restrictions Apple imposes on communications and payment methods in apps absent the relief the district court's contempt order offers.

Apple's policies damage the consumer experience—and the inability to steer users to alternatives traps them in this broken system.

The problems with Apple's IAP demonstrate precisely why (real, not limited by Apple) steering is essential: developers need the ability to inform users about alternative payment options where they can provide better customer service, more flexible pricing, and direct support. By prohibiting app developers from informing users of alternative payment options, Apple reduces the quality of the customer experience—to the consumers' own detriment and to the detriment of the app developers, who would like to compete to earn customer goodwill by providing the best service.

Apple's IAP restrictions force app developers to outsource several aspects of consumer support to Apple. If users have any issues related to billing, such as needing a refund or a payment cancellation, they are forced to speak with an Apple employee, who necessarily has less familiarity with the goods and services involved than the app developer would—not to mention less incentive to impress the customer with the quality of service. Apple's employees also have less access to the underlying transaction than the developer has: they can neither verify delivery of a digital good nor take action to correct a digital good-related issue other than offering a refund. The district court acknowledged these difficulties when it

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https://mjtsai.com/blog/2017/05/06/phil-schiller-on-app-store-upgrade-pricing/.

found that "Apple does a poor job of mediating disputes between a developer and its customer. Consumers do not understand that developers have effectively no control over payment issues . . . or even access to consumers' information. Consequently, it can be frustrating for both sides when issues arise relating to the inability to issue and manage the legitimacy of requests for refunds." J.A. 149-150. Jason Fried, CEO of app developer Basecamp, describes how Apple's policies block developers from helping users with a variety of issues, including "[r]efunds, credit card changes, discounts, trial extensions, hardship exceptions, comps, partial payments, nonprofit discounts, educational discounts, downtime credits, tax exceptions, etc."[12] When approached by users, the developer can only answer "Go Ask Apple." Simply put, Apple's policies undermine the experience of app users and the relationship between users and developers.

This results in a complex and poor user experience, as well as additional inefficiencies. For instance, app developers have no visibility into the reason why a customer stops paying a subscription, a crucial piece of information (*e.g.*, if the customer has failed to make a payment because her credit card has expired, the developer might wish to make a new offer).[13] In addition, developers are precluded from offering customers extra services (*e.g.*, allowing them to carry over unused credits to subsequent months).

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[12] Jason Fried, "*Our CEO's take on Apple's App Store payment policies*", (Jun. 19, 2019), https://hey.com/apple/iap/.

[13] Report, *Market study into mobile app stores*, (2019), The Netherlands Authority for Consumers and Markets, at 94, https://www.acm.nl/sites/default/files/documents/2019-04/marktstudies-appstores.pdf

As Basecamp's CEO has explained, Apple's IAP is about so much more than simply money: it is about Apple inserting itself between businesses and their customers.[14] At its core, Apple's IAP forcibly separates the provision of a good or service (for which the app developer is responsible) and the provision of customer support (which is handed over to Apple), resulting in a diminution in quality of the customer's experience with the good or service in question. Without the ability to effectively steer users to web-based alternatives where developers control the entire customer relationship, consumers remain trapped in this inferior experience—which is why meaningful steering is essential to restore competition and consumer choice.

CONCLUSION

The decision of the Ninth Circuit should be affirmed.

Respectfully submitted,
Margaret MacLean
Counsel of Record
Lowey Dannenberg, P.C.
44 South Broadway,
Suite 1100
White Plains, NY 10601
(914) 733-7250
mmaclean@lowey.com

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[14] Fried, *supra* n.12.