No. 25-521

In the Supreme Court of the United States

GOOGLE LLC, ET AL.,

Petitioners,

v.

EPIC GAMES, INC.,

Respondent.

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

BRIEF OF *AMICI CURIAE* FORMER NATIONAL SECURITY OFFICIALS AND SCHOLARS IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Amici are former officials and scholars with decades of experience in cybersecurity and national security. They have served at senior levels for Presidents of both parties and played an outsized role in the creation of modern national security law and policy. They have devoted decades to protecting national security and ensuring that cybersecurity threats are minimized to the greatest extent possible consistent with the laws of the United States. *Amici* write to offer the Court their informed perspective on the national security disruptions that would result from the permanent injunction Google asks this Court to review.

SUMMARY OF ARGUMENT

Two decades ago, Justice Scalia's opinion for this Court set a limit for courts' powers to order remedies in antitrust cases: "No court should impose a duty to deal that it cannot explain or adequately and reasonably supervise. The problem should be deemed irremediable by antitrust law when compulsory access requires the court to assume the day-to-day controls characteristic of a regulatory agency." *Verizon Commc'ns Inc.* v. *Law Offs. of Curtis V. Trinko, LLP*, 540 U.S. 398, 415 (2004) (alteration marks omitted)

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[1] No party's counsel authored this brief in whole or in part; no party's counsel contributed money for this brief's preparation or submission; and no person or entity—other than amici and their counsel—contributed money for this brief's preparation or submission. Because this brief is being filed more than ten days in advance of the deadline for filing *amicus curiae* briefs in support of Google's petition, the filing of this brief serves as timely notice to counsel of record for all parties of *amici*'s intent to file this brief.

(quoting Phillip Areeda, *Essential Facilities: An Epithet in Need of Limiting Principles*, 58 ANTITRUST L.J. 841, 852-853 (1989)).

The district court's injunction, upheld by the Ninth Circuit, flies in the face of *Trinko*. It places the district court at the center of managing day-to-day operations of a platform with millions of apps used by millions of people every day, including making the district court responsible for ensuring the cybersecurity of all of those apps and users. The district court is woefully ill-equipped to fill that role: Judges are selected for their legal expertise, not their cybersecurity skills. And forcing Google to collaborate with respondent Epic Games to create a "Technical Committee" that is supposed to assist the district court with the day-to-day management of the Google Play Store only makes things worse. A camel is a horse designed by a committee.

The injunction would result in a flood of look-alike third-party app stores that would never have come into existence in a real-world marketplace. With those new app stores would come complex, numerous, and dynamic cybersecurity threats arising at lightning speed that the district court, even with the "help" of the Technical Committee, will be unable to manage effectively. Google, with state-of-the-art cybersecurity practices and a trusted app ecosystem, is best positioned to address those security risks—not the district court and not the Technical Committee.

But the injunction would hamstring Google's ability to secure its platforms by requiring it to allow developers to provide links directly to users, to distribute third-party app stores, and to allow third-party app stores access to the Google Play Store

catalog. Even one mis-clicked link or one nefarious downloaded app can have catastrophic results, allowing malicious actors to access Android devices and data.

As national security experts, *amici* can shed light on the injunction's impact on national security, cybersecurity, and the public interest to show why the Court should grant Google's petition to ensure that the district court's injunction does not put the cybersecurity of millions of Americans at risk.

ARGUMENT

I. The Injunction Would Create National Security Risks

The injunction in part requires Google to give third-party app stores access to the entire Google Play catalog and to distribute third-party app stores through the Google Play Store itself. Pet. App. 69a-70a (¶¶ 11-12). Although the injunction permits Google to "take reasonable measures to ensure that the platforms or stores, and the apps they offer, are safe from a computer systems and security standpoint," Google must show that its security measures are "strictly necessary and narrowly tailored." Pet. App. 70a (¶ 12). Those determinations can be vetoed by a three-person Technical Committee or the district court. Though Google and *amici* raised concerns that the Technical Committee's oversight was insufficient to protect users' security, the Ninth Circuit declined to engage meaningfully with this issue and upheld the injunction. Pet. App. 63a & n.19. And it then denied Google's motion to stay the mandate and petitions for rehearing without engaging with those national security concerns any further. See Pet. App. 145a-146a.

That was incorrect, and the injunction could be catastrophic for the Nation's security. Under the injunction, Google will have to distribute third-party app stores through the Google Play Store, and Google's ability to screen those app stores for security concerns is limited by the injunction. Given the speed at which app stores could appear and the complex and varied security risks apps in those stores could pose, the Technical Committee—which may be predisposed to view any measures as a potential threat to competition—and district court are unlikely to be able to move quickly enough to protect users from grave threats.

These threats are far from hypothetical. Hostile nations and other malicious actors increasingly target Americans through app-based attacks. By limiting Google's ability to protect Android users, the injunction would leave users more vulnerable to cyberattacks, threatening both their and the Nation's security.

A. App-based security threats are more acute than ever before

Americans are constantly and increasingly on their phones.[2] Much of that time is spent on mobile apps.[3] Each app is a new opportunity for attackers. Our Nation's adversaries—China, Russia, North Korea, Iran, and others—know this and so have

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[2] Risa Gelles-Watnick, *Americans' Use Of Mobile Technology And Home Broadband*, PEW RSCH. CTR. (Jan. 31, 2024), https://perma.cc/27TZ-C2PX.

[3] *Mobile App Download Statistics And Usage Statistics (2025)*, BUILDFIRE, https://perma.cc/D9G2-QF56.

devoted substantial resources to targeting apps.[4] Because the injunction would prevent Google from adequately securing apps for Android users, sophisticated hackers can conceal malware in legitimate-looking apps, leaving unsuspecting users to click on an app that looks innocuous but enables access to their device or personal information.[5]

There are three primary methods of malware cyberattacks:

a. Traditional Malware: Spyware enables hackers to observe and extract data on a mobile device. For instance, last year, it was reported that Chinese hackers had breached the cellphone of President Donald Trump's personal attorney, obtaining voice recordings and text messages.[6] And the U.S. government has become increasingly concerned that apps like TikTok could be used by China to inject malware onto Americans' phones en masse.[7] Malware can compromise sensitive or secure information on government employees' devices[8] (a threat based on

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[4] See generally Office of the Director of National Intelligence, *Annual Threat Assessment Of The U.S. Intelligence Community* at 4 (Mar. 18, 2025), https://perma.cc/TS4U-V226.

[5] See, *e.g.*, Lily Hay Newman, *Hundreds Of Scam Apps Hit Over 10 Million Android Devices*, WIRED (Sept. 29, 2021), https://perma.cc/4R69-BRWA.

[6] Paula Reid et al., *Trump Attorney's Phone Tapped By Chinese Hackers, Sources Tell CNN*, CNN (Nov. 8, 2024), https://perma.cc/36H5-K824.

[7] James Andrew Lewis, *TikTok And National Security*, CSIS (Mar. 13, 2024), https://perma.cc/2L9E-R2V9.

[8] Ellen Nakashima & Tim Starks, *At Least 50 U.S. Government Employees Targeted With Phone Spyware Overseas*, WASH. POST

both the content of the information and blackmail potential), infiltrate apps designed for the U.S. armed forces,[9] or surveil U.S. government officials' movements.[10] Malware can jeopardize critical physical infrastructure, including major sources of water, electricity, telecommunications, gas, and industrial plants.[11]

b. Ransomware: In a ransomware attack, an adversary freezes access to the user's files in exchange for a ransom. If not paid, the adversary may permanently delete the data. Ransomware's threat extends beyond just one user's data, because ransomware may be transferred to a networked system via a shared wireless connection. Ransomware attacks have targeted U.S. hospitals, an oil pipeline, and more.[12]

(Mar. 27, 2023), https://tinyurl.com/wuw54wm4; Ben Schreckinger, *How Russia Targets The U.S. Military*, POLITICO (June 12, 2017), https://perma.cc/ZUV9-VHN7.

[9] Ellyne Phneah, *Military Mobile Apps Useful, But Security Threats Loom*, ZDNET (July 26, 2012), https://perma.cc/SVR8-PZD9.

[10] Byron Tau & Dustin Volz, *NSA Warns Cellphone Location Data Could Pose National-Security Threat*, WALL ST. J. (Aug. 4, 2020), https://perma.cc/4T4V-D7VW.

[11] Will Carless & Michael Loria, *Cyberattacks On Critical US Infrastructure Keep Happening. How Worried Should We Be?*, USA TODAY (Oct. 25, 2024), https://perma.cc/SKJ4-ZS8Z.

[12] Bree Fowler, *Ransomware Rises As A National Security Threat As Bigger Targets Fall*, C-NET (Oct. 18, 2021), https://perma.cc/X3ET-H5UQ; Barbara Booth, *The Government Is Getting Fed Up With Ransomware Payments Fueling Endless Cycle Of Cyberattacks*, CNBC (Oct. 18, 2024), https://perma.cc/TAL2-VXDX.

c. Man-in-the-Middle Intrusions: In a Man-in-the-Middle attack, an adversary positions itself "between two communicating parties in order to intercept and/or alter data traveling between them."[13] Usually, a phone's operating system will verify that apps have the proper certificates to authenticate their identity as a trusted entity.[14] But a malicious app can tamper with the phone's database of trusted entities and so subvert the verification process.

Man-in-the-middle attacks can lead to data theft, exposure of sensitive data, data manipulation, unauthorized eavesdropping, and more. A single attack can spread to other devices or infect multiple devices. At scale, a man-in-the-middle attack can have national implications. Those implications raise serious national security concerns where, for example, an attack enables a malicious actor to gain access to or compromise critical infrastructure systems.

B. The injunction would limit Google's ability to protect national security

Outside of litigation, the government has recognized that it cannot protect the Nation's cybersecurity alone. It must rely on the private sector to identify and neutralize cyber threats.[15] Google has long been an able partner in protecting Americans'

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[13] Man-in-the-middle-attack (MitM), NAT'L INST. STANDARDS & TECH., https://perma.cc/K9UZ-WC6X.

[14] David Cooper et al., *RFC 5280, Internet X.509 Public Key Infrastructure Certificate And Certificate Revocation List (CRL) Profile* § 3.2 (May 2008).

[15] Statement of Christopher A. Wray, Director, FBI, Before the U.S. Senate Comm. on Homeland Sec. & Governmental Affs., "Threats to the Homeland" at 7 (Oct. 31, 2023), https://perma.cc/KSS3-83S9.

cybersecurity. But the district court's injunction would hamstring its ability to do so by requiring Google to provide increased access to third-party app stores while limiting its ability to impose sufficient security screening and imposing a Technical Committee to review Google's security measures.

Because Android is not a walled garden, users can peruse the Google Play Store—which carries stringent security standards—or more than 400 third-party app stores. Some third-party app stores are "vectors for an elevated volume of pirated apps, malware, or inappropriate content."[16] Third-party app stores that lack the same stringent security processes as the Google Play Store can be especially potent vectors of malware.

Examples of these types of attacks abound, and more threats arise every day. For instance, a few years ago, Meta announced that more than 400 apps on Android and iOS were seemingly mundane photo editing or gaming apps but obtained users' Facebook login information for nefarious purposes.[17] Earlier this year, it was reported that a North Korean hacking group had placed on the Google Play Store so-called "KoSpy" apps, which were utility apps that surreptitiously collected users' data, including text messages and screenshots, until Google removed the

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[16] *In re Google Play Store Antitrust Litig.*, No. 3:21-md-02981 (N.D. Cal.), Declaration of Edward Cunningham (Dkt. 981-3) ¶ 71.

[17] Michael Kan, *Meta Uncovers 400 Malicious Android, iOS Apps Designed To Steal Logins*, PC MAG (Oct. 7, 2022), https://perma.cc/2RB9-9A9D.

apps.[18] And just a few months ago, Iranian-affiliated hackers were found to have used spyware disguised as VPN and banking apps to seize users' data.[19]

These attacks can also be specifically targeted at military personnel, undermining national security even more directly. For example, Hamas operatives created an app store that was targeted to Israeli soldiers and had a number of seemingly innocuous apps, including a chat app.[20] When downloaded, the chat app gave Hamas operatives almost entire control over the user's phone and data.[21]

Although well-capitalized companies with years of experience managing cybersecurity risks, like Apple and Google, can quickly identify and remove these apps (as Google promptly did with the KoSpy apps), smaller third-party app stores may not be willing or able to do so. For example, one app that was publicly reported to be malicious in November 2022 remained available in a prominent third-party app store in June 2024.[22] That is why numerous

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[18] Michael Kan, *Suspected North Korean Hackers Infiltrate Google Play With 'KoSpy' Spyware*, PC MAG (Mar. 12, 2025), https://perma.cc/TJK5-BG63.

[19] *Lookout Discovers Iranian APT MuddyWater Leveraging DCHSpy During Israel-Iran Conflict*, LOOKOUT (July 21, 2025), https://perma.cc/7DHN-FP63.

[20] Netanel Flamer, THE HAMAS INTELLIGENCE WAR AGAINST ISRAEL 84-90 (2024).

[21] *Ibid.*

[22] *In re Google Play Store Antitrust Litig.*, No. 3:21-md-02981 (N.D. Cal.), Declaration of Edward Cunningham (Dkt. 981-3) ¶ 73.

government agencies uniformly caution against the use of third-party app stores.[23]

The injunction would undermine users' security by transferring the security burden from Google to the user, who is inherently less equipped to detect and evade sophisticated malware traps set by experienced malicious actors.

First, requiring Google to allow developers to provide links directly to users would create inherent security risks, since Google does not have the capability to monitor linked websites for security, and users would be left to trust app developers of varying sophistication.[24] Doing so also hinders the ability to identify and respond to threats because Google would lose visibility into activity at the app level, hindering integrated cybersecurity risk management.

Second, requiring Google to distribute third-party app stores would increase the risk of similar security threats. See Pet. App. 70a (¶ 12). In an illustrative example, a cyberhacking group flooded the Google Play Store, and other app stores, with seemingly harmless apps such as translators and calculators, which turned out to be malicious.[25] While

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[23] National Security Agency, *Mobile Device Best Practices* at 2 (Oct. 2020), https://perma.cc/VWM2-PYAD; see also *Government Experts In The U.S.: Don't Sideload*, TRUSTED FUTURE, https://perma.cc/UHY5-M22G (compiling reports from the NSA, FTC, SBA, GSA, DHS, CISA, FBI, and NIST emphasizing reliance on "trusted" sources like Google, and recommending against sideloading and downloading from third-party app stores).

[24] *In re Google Play Store Antitrust Litig.*, No. 3:21-md-02981 (N.D. Cal.), Declaration of David Kleidermacher (Dkt. 1020-3) ¶ 6.

[25] Newman, *supra*.

Google quickly identified and removed the offending apps, many remained available on third-party app stores.[26] Under the injunction, Google could well be required to distribute app stores containing the very same apps it banned from its platform. Alternatively, Google would have to create a product to review every single app uploaded onto every single third-party app store, which Google conservatively estimates would take a year to build.[27] And rushing an essential security product to market could have catastrophic consequences.

Third, requiring Google to allow third-party app stores access to the Google Play Store would allow malicious actors to set up third-party app stores populated with the Google Play Store library of apps, providing a veneer of legitimacy. But a malicious actor can then easily "clone" those apps with realistic-seeming thumbnails linked to malicious code instead of trusted Google Play Store apps.[28] A mere warning that a user is leaving the Google Play Store platform—on the way to a third-party app store designed to look like the Google Play Store—does not nearly address the severity and sophistication of the possible threats.

Finally, the Technical Committee cannot adequately safeguard users from these threats because of its purpose and structure. Even leaving

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[26] *Ibid.*

[27] *In re Google Play Store Antitrust Litig.*, No. 3:21-md-02981 (N.D. Cal.), Declaration of David Kleidermacher (Dkt. 981-5) ¶ 22. The injunction contemplates Google creating this product within eight months. See Pet. App. 70a (¶ 12).

[28] *In re Google Play Store Antitrust Litig.*, No. 3:21-md-02981 (N.D. Cal.), Declaration of David Kleidermacher (Dkt. 1020-3) ¶ 16; see also *id.* at Ex. A.

aside the challenges endemic to the work of virtually all committees—which exist to ensure proper deliberation before a decision is reached, not to address issues speedily[29]—*this* Committee exists to monitor whether Google's measures threaten competition, not to ensure that app stores are safe for the millions who use them. And Epic Games has influence over appointing two of the three people who will comprise the Committee—Epic Games and Google can each select one Committee member and the third member is selected by the other two. That gives a single app developer an outsized influence to determine cybersecurity requirements for hundreds of thousands of app developers. There is no guarantee that Epic Games will appoint members with the appropriate technical expertise and qualifications to maintain users' security. Its incentives are to protect its own commercial interests, with cybersecurity being at best a coordinate concern and more likely a subordinate one.

There are also no requirements for how active the Committee must be, how long it may take to make decisions about whether Google's measures are appropriate, and so on. If the Committee dawdles, or if disputes must go to the district court, security threats will proliferate in the meantime. That is why this Court cautioned against judicial antitrust remedies that require "day-to-day controls." *Trinko*, 540 U.S. at 415. Indeed, even the district court recognized that "[t]here is a complicated world of

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[29] Consider, for example, the advisory committees created by the Rules Enabling Act, which report to the Standing Committee, which reports to the Judicial Conference, which reports to this Court, which reports to Congress.

security that, as a district judge, I should not be involved in."[30]

Though the panel identified other arrangements it contends involve a level of specialized expertise similar to that required of the Technical Committee, those examples are inapposite. Pet. App. 56a-57a. None involves the creation of what is essentially a regulatory body to govern an area as complex, dynamic, and fraught as real-time cybersecurity for an ecosystem touching millions of users where a coordinated, immediate response to active threats is critical. Indeed, the risk of this task is extraordinary and without precedent.

But the injunction would place the district court and Technical Committee at the center of managing security for millions. Even one misstep could have disastrous consequences for individuals' and the Nation's cybersecurity.

II. The Injunction Exceeds The Permissible Scope Of Antitrust Remedies

This Court explained in *Verizon Communications Inc.* v. *Law Offices of Curtis V. Trinko, LLP*, relying on the work of Professor Phillip Areeda, that courts' power to remedy antitrust violations is limited. If a court "cannot explain or adequately and reasonably supervise" the remedy because it "requires the court to assume the day-to-day controls characteristic of a regulatory agency," then the "problem should be deemed irremediable by antitrust law." 540 U.S. 398, 415 (2004) (alteration marks omitted) (quoting Phillip Areeda, *Essential Facilities: An Epithet in Need of*

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[30] *In re Google Play Store Antitrust Litig.*, No. 3:21-md-02981 (N.D. Cal.), May 23, 2024 Hearing Tr. (Dkt. 977) at 82:2-3.

Limiting Principles, 58 ANTITRUST L.J. 841, 852-853 (1989)). The Court further emphasized the limitations of court-ordered antitrust remedies by noting that "[a]n antitrust court is unlikely to be an effective day-to-day enforcer of these detailed sharing obligations" under the "equitable decree" that the plaintiff sought in that case. 540 U.S. at 415; see also *Nat'l Collegiate Athletic Ass'n* v. *Alston*, 594 U.S. 69, 102 (2021) (when it comes to antitrust remedies, "[j]udges must be sensitive to the possibility that the 'continuing supervision of a highly detailed decree' could wind up impairing rather than enhancing competition," be "cognizant that they are neither economic nor industry experts," and "have a healthy respect for the practical limits of judicial administration" and so avoid being "'central planners'" (quoting *Trinko*, 540 U.S. at 408, 415)).

Contrary to the position consistently taken by respondent, there can be no serious doubt that *Trinko* is about remedies, not just liability. Professor Areeda's article addressed both antitrust liability *and* remedies. See 58 ANTITRUST L.J. at 853. And the Court was quoting with approval language from the article about remedies when it said that "Professor Areeda got it exactly right." 540 U.S. at 415.

The injunction imposed by the district court here is exactly the kind of remedy that this Court in *Trinko* and Professor Areeda said exceed a court's proper role because the injunction would require the district court to manage the day-to-day controls to ensure that the app stores available to Android users are safe.

CONCLUSION

The Court should grant Google's petition.

Respectfully submitted.

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NOVEMBER 2025

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Tatyana Bolton leads the cybersecurity practice at Monument Advocacy. She has also served as the Managing Senior Fellow at the R St Institute for Cybersecurity and National Security and the cyber policy lead at the Cybersecurity and Infrastructure Security Agency.

Joel Brenner is a Senior Research Fellow at the MIT Center for International Studies. He has also served as Inspector General and Senior Counsel at the National Security Agency and as head of counterintelligence at the Office of the Director of National Intelligence.

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David R. Shedd served as Director (Acting) and Deputy Director for the Defense Intelligence Agency and as Special Assistant to the President and Senior Director for Intelligence Programs and Reform on the National Security Council.

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