**No. 25A354**

In the
# Supreme Court of the United States

GOOGLE LLC; GOOGLE IRELAND, LTD.; GOOGLE COMMERCE, LTD.; GOOGLE ASIA PACIFIC PTE, LTD.; GOOGLE PAYMENT CORP.,

*Applicants*,

v.

EPIC GAMES, INC.,

*Respondent.*

## BRIEF OF *AMICUS CURIAE* ACT | THE APP ASSOCIATION IN SUPPORT OF APPLIACTION FOR A STAY

On Application To the Honorable Elena Kagan,
Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Ninth Circuit

BRIAN E. SCARPELLI
*Counsel of Record*
CHAPIN K. GREGOR
ACT | THE APP ASSOCIATION
1401 K St. NW
Suite 501
Washington, DC 20854
(517) 507-1446
bscarpelli@actonline.org

October 1, 2025

## TABLE OF CONTENTS

**Page**

## TABLE OF AUTHORITIES

**Page(s)**

### Cases



### Other Authorities

**TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

On behalf of the ACT | The App Association hereby submits this amicus curiae brief supporting an application for stay filed by Google requesting that this Court enter a stay pending certiorari of Paragraphs 11-12 and Paragraphs 9-10 of the permanent injunction entered by the District Court in this case, by October 17, 2025.

## INTEREST OF *AMICUS CURIAE*[1]

Founded in 1998, ACT | The App Association ("App Association") is a not-for-profit advocacy and education organization representing the small business developer, innovator, and entrepreneur community that creates countless software applications (apps) used on mobile devices and in enterprise systems. The U.S. software application economy represented by the App Association is valued at approximately $1.8 trillion and is responsible for 6.1 million U.S. jobs.[2]

Curated online marketplaces like the Google Play store (Play store) have created immense value for app developers and end users, as the App Association has consistently explained—in comments to the Federal Trade Commission,[3]

---

[1] No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund preparing or submitting the brief; and no person, other than the *amicus*, its members, or its counsel, contributed money that was intended to fund preparing or submitting this brief.

[2] State of the App Economy, ACT | The App Association (2023), *available at* https://actonline.org/wp-content/uploads/APP-Economy-Report-FINAL-1.pdf.

[3] Comments of ACT | The App Association to the Federal Trade Commission on Competition and Consumer Protection in the 21st Century (Question 3) (Aug. 20, 2018), at 3-4 ("App Association FTC Comments"), *available at* https://actonline.org/wp-content/uploads/Q3-ACT-Comments-re-FTC-2018-Consumer-Protection-Hearings-082018-FINAL.pdf.

testimony before Congress,[4] and in merits amicus briefs both in this appeal and in *Epic Games v. Apple*. Before online marketplaces, app developers engaged in time-consuming production logistics and marketing campaigns to reach users with a physical disc. These costs imposed formidable barriers to entry, resulting in higher prices, less adoption, and fewer apps being developed in the first place. Now, online marketplaces provide one-stop shops where developers and end users transact directly. This has significantly lowered barriers to entry and freed up capital that developers now use to improve their apps and expand their offerings.

The relationship between developers and online marketplaces, like the Play store and Apple's App Store (App Store), is mutually beneficial.[5] Developers provide digital content, which draws consumers to the online marketplaces, while the marketplaces provide developers with low overhead costs, simplified market entry, consumer trust, dispute resolution, data analytics, flexible marketing and pricing models, and strengthened intellectual property (IP) protections.

Because of its members' reliance on curated online marketplaces, the App Association has a deep interest in ensuring that the antitrust laws are properly applied to these marketplaces to promote competition and increase output. This interest is longstanding. One of the first amicus briefs the App Association ever filed was in *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001) (en banc),

---

[4] Testimony of Morgan Reed, President, ACT | The App Association, Before the U.S. House of Representatives Judiciary Committee, Subcommittee on Antitrust, Commercial and Administrative Law (2019), at 3-6 ("App Association Congressional Testimony"), *available at* https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-Wstate-ReedM-20190716.pdf.

[5] *See* App Association FTC Comments, at 2.

where the Department of Justice sought to break up Microsoft and the Court discussed Microsoft's "platform[] for software applications," *id.* at 53. More recently, the App Association closely followed Epic's litigation against Apple that parallels this case and filed an amicus brief before this Court that explained the ways in which the App Store is important to developers and end users. The App Association then also filed an amicus brief during the panel's consideration of the merits of this appeal.

The App Association writes here to highlight the risk that the trial court's remedy would pose to the App Association's member developers (and their millions of users) and to explain why the public interest supports a further stay of that remedy at least until this Court has an opportunity to review it.

## INTRODUCTION AND SUMMARY OF ARGUMENT

The district court entered an unprecedented injunction requiring Google to give other Android online marketplaces access to the Play store's entire catalog of apps and to otherwise redesign the Play store to benefit what are essentially knock-off Play stores. Google well explains why certiorari of the panel's decision affirming that injunction is likely and why the panel's decision is unlikely to be affirmed. The App Association respectfully agrees with those arguments. We write to emphasize why a stay of the injunction—at least while Google seeks further review—is strongly supported by the interests of the App Association's members and "the public interest" more generally. *Al Otro Lado v. Wolf*, 952 F.3d 999, 1007 (9th Cir. 2020) (internal quotation marks omitted).

*First*, the trial court's novel remedy affirmed by the panel creates real security risks in the app ecosystem on which the app developers depend. That

endangers app developers, and everyone who uses their apps—*i.e.*, the public. *Second*, the trial court's remedy inverts app developers' contractual rights and defaults app developers into relationships with sketchy, knock-off Play stores, with which they want no business. *Third*, a stay is in the public interest because it will preserve the existing competition between Google, Apple, Amazon, Samsung, and other online marketplaces, which redounds to the benefit of app developers. *Finally*, even assuming that the district court's remedy is eventually affirmed, a stay is in the public interest to ensure predictability with respect to any implementation of the seismic shifts to the app economy proposed by the trial court.

The Court should thus grant the stay.

## ARGUMENT

### I. The Trial Court's Remedy Creates Security Risks for App Developers.

The trial court's remedy will push app developers' apps to hundreds of knock-off Play stores. Some of these knock-off Play stores will almost certainly have inadequate resources and lack the experience to screen for safety, security, and inappropriate content. Indeed, in the past, entire knock-off Play stores have been created by hackers to steal sensitive information. *See, e.g.*, Google LLC, Emergency Application for a Partial Stay Pending Consideration of Certiorari, No. 25A354 (U.S. Sept. 24, 2025), at 11 (citing example of a state-sponsored hacking group that built a seemingly legitimate third-party app store, with the sole purpose of concealing spyware). The trial court's directives related to providing users to provide links are likewise vulnerable to "[s]ophisticated malicious actors" and malware. *Id.* at 22 (citation omitted).

These risks inherent in the trial court's remedy create real burdens and harms not only for Google but perhaps even more so for app developers and their customers. There is significant expense and effort required to continuously monitor for threats, which smaller upstart app stores may not be able to adequately resource.[6] These risks are exacerbated by the limits the Court imposed on Google's ability to screen the knock-off Play stores—app developers will now bear that screening burden.

If an app developer does not have the resources to monitor adequately the various knock-off Play stores for threats, they and their customers will likely suffer even more harm. A user whose security is compromised will face the expensive and unsettling experience of trying to re-secure their digital identity. App developers are also at risk because a user who is hacked or who is simply dissatisfied when downloading an app from a knock-off Play store may not know enough to assign blame to the store, rather than the app developer. App developers will be harmed by these security risks. Those harms justify the stay.

## II. The Trial Court's Remedy Will Default App Developers into Commercial Relationships They Do Not Want.

The remedy established by the district court also works an egregious violation of App Association members' rights. The court's remedial order directs

---

[6] *See, e.g.*, App Association Congressional Testimony at 9 ("[T]he game of cat-and-mouse between cybersecurity professionals and hackers will never end, and security must continue to evolve to meet and beat the threats. . . . [D]evelopers want the platform's security features to work seamlessly with any relevant hardware and that they account for all attack vectors. Platforms should continue to improve their threat sharing and gathering capabilities to ensure they protect developers across the platform, regardless of where threats originate. Moreover, they should approve and deploy software updates with important security updates rapidly to protect consumers as well as developers and their clients and users.").

Google to make the apps on the Play store available to new, would-be competitors. Developers who do not want their apps shared on the knock-off Play stores must take yet-to-be-determined affirmative steps to "opt out" from that default rule. This perversely disregards the wishes, interests, rights, role, and autonomy of app developers.

Currently, developers contract with Google to distribute their apps through the Play store. When they do so, they grant *Google* a nonexclusive license to use their intellectual property. *See, e.g.*, 2-ER-399 (granting Google license to "display Developer Brand Features … for use solely within Google Play"). This license granted to Google neither provides parallel grants to other online marketplace operators nor grants Google the right to sublicense the developers' intellectual property out to others. *See* 2-ER-397-99. By instructing Google to make developers' apps available on other online marketplaces, the district court's order entirely disregards developers' intellectual property and rights.

To be sure, the district court ordered Google to create a procedure whereby developers can opt out of the default rule established by the court. 1-ER-5. But this gets it backwards—no knock-off Play store should have access to developers' apps until the developer licenses their apps to that store. The court's order effectively requires developers to license their apps to *all* knock-off Play stores unless they take affirmative steps to prevent it. 1-ER-5. Practically, and importantly, many small developers that the App Association represents may not have the resources to monitor every new knock-off Play store and then take the requisite steps to opt out.

App developers should be allowed to choose which stores they do (and do not) offer their apps through, and the district court's novel remedy ignores those rights. The proposed invasion of non-party app developers' intellectual property and associational rights supports a stay.

## III. A Stay Is in the Public Interest Because It Will Maintain Competition.

A stay is also in the public interest because it will maintain the existing vigorous competition between curated online marketplaces that benefits app developers.

The most pointed example is Google and Apple's non-stop close competition. App developers have repeatedly witnessed Apple and Google responding to innovations in the other's store. *See, e.g.*, 5-ER-1003-06; 5-ER-1107-09; 6-ER-1313-18; 6-ER-1351-57; 6-ER-1411. Google's early and extensive investments to improve upon, rebrand, and ultimately relaunch its "Android Market" as the Play store were a direct result of this competition. *See* 6-ER-1309-11. Developers benefit from competition between the Play store and the App Store on several vectors, including:

- **Developer support**: Both Google and Apple have invested *billions* of dollars in their app stores to attract developers and their end user customers. These investments come in the form of customer support services; secure payment processing; robust options for building, testing, and gathering pre-release feedback for apps; tools to manage updates and distribution; and game performance insights. When working on improvements like these, Google is "very regularly speaking with developers" in order "to understand what developers [are] most looking for"

and "to stay competitive relative to Apple's app store." 6-ER-1316. The rationale for these investments is clear. Google and Apple provide and continuously improve their services because, if they did not, developers would gravitate to the other store.

- **Safety and security**: Relatedly, Google and Apple also compete on the safety and security of their stores. Google "deeply invested" in its parental controls as part of its efforts to compete against Apple. 5-ER-1107-08. Also as part of its competition with Apple, Google reviews all apps on the Play store for malware before they are published. 5-ER-1107-08; 5-ER-1233. Google informs itself about Apple's security and privacy efforts and tries to make sure its security is as good or better than Apple's. 5-ER-1138-39.
- **Price**: Google lowered service fees on subscriptions in response to a reduction made by Apple. *See* 6-ER-1317-19. More generally, both Google and Apple charge a service fee on digital gaming transactions like those in Epic's games. *See* 6-ER-1274. Google and Apple pay close attention to the prices the other is charging and respond accordingly. In other words, they compete on price.

In each of these ways, the Play store and the App Store compete to attract developers and thereby offer more content to consumers.

The trial court's remedy will harm and artificially reshape competition between curated online marketplaces. The district court's remedy will divert Google from this competition by requiring it to expend significant resources and time supporting knock-off Google Play stores that almost certainly will provide a weaker constraint on other curated online marketplaces, including the App Store,

than Google Play itself. App developers do not want more, worse versions of the Play store—they want the existing intense competition between curated online marketplaces to continue. The court's order not only gives Apple a competitive leg up against Google (by allowing Apple to defend against Epic's suit against the backdrop of a larger market), but the order also threatens to shift the balance of power in the market to the detriment of developers and the consuming public. This Court should stay that result, which counterintuitively harms competition.

## IV. A Stay Would Enhance Predictability.

Finally, a stay is in the public interest because it will contribute to predictability and stability while judicial review is completed. For all the reasons described above, the trial court's remedy orders fundamental changes to the app ecosystem. App developers will need to take steps to prepare for the changes ordered by the district court. Moreover, app developers should not be forced to move back and forth between regimes as any further review unfolds. At best, doing so would be disruptive and confusing for app developers and their customers. But it also could introduce complexities that are harder to unwind—for example, if the remedy is reversed, would the knock-off Play stores be able to keep apps on their stores even if the app developers never licensed them? Resolving these issues has the potential to be expensive and burdensome. There is no reason to impose those harms on the public while there remains the possibility that the Supreme Court will grant further review of the consequential issues presented in this matter.

## CONCLUSION

A stay is in the public interest. Google has also demonstrated that it satisfies the other requirements for a stay, for the reasons detailed in Google's motion to stay. The Court should thus grant the stay.

Dated: October 1, 2025

Respectfully submitted,

*/s/Brian E. Scarpelli*
Brian Scarpelli
ACT | The App Association
1401 K St. NW
Suite 501
Washington, DC 20854
(517) 507-1446
bscarpelli@actonline.org

*Counsel for Amicus Curiae*