No. 25-7917

United States Court of Appeals for the Ninth Circuit

IN RE: APPLE INC. APP STORE SIMULATED CASINO-STYLE GAMES LITIGATION,

FRANK CUSTODERO, ET AL.,
Plaintiffs-Appellees,
v.
APPLE INC.,
Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of California,
No. 5:21-md-02985-EJD (Hon. Edward J. Davila)

PRINCIPAL BRIEF FOR APPLE INC.

Marina A. Masterson
WEIL, GOTSHAL & MANGES LLP
1395 Brickell Avenue
Suite 1200
Miami, FL 33131
(305) 577-3168
Marina.Masterson@weil.com

Mark A. Perry
Zachary D. Tripp
Crystal L. Weeks
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW
Washington, DC 20036
(202) 682-7000
Mark.Perry@weil.com

Counsel for Apple Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitution, Statutes, and Rules

Miscellaneous

INTRODUCTION

This Court should reverse the order denying in part Apple's motion to dismiss because all remaining claims against Apple are barred by Section 230 of the Communications Decency Act, 47 U.S.C. 230(c)(1).

Plaintiffs' core complaint is that some third-party developers use Apple's App Store platform to distribute and sell content that Plaintiffs allege is illegal. Specifically, developers created "social casino" apps that include video games simulating slot machines, and they sell virtual "chips" for playing the games. But unlike real slot machines at a real casino, the chips can never be redeemed for money or anything outside the app. Even though there are no payouts, Plaintiffs assert that the games violate anti-gambling laws in some states. And even though third parties created those games and sold the chips, Plaintiffs seek to hold Apple liable for the money they spent playing those games.

Section 230 forecloses that effort. To foster innovation and free expression online, Congress provided that Internet platforms cannot be held liable for publishing third-party content—in the terms of the statute, "information provided by another information content provider." 47 U.S.C. 230(c)(1). And although Congress has created several exceptions to Section 230, there is no video game exception, no gambling-law exception, and no exception for content distributed for pay rather than for free. Developers who create and sell content on the App Store might be liable under state law, if the content is actually illegal; but Apple is not.

The district court nonetheless held that Section 230 did not bar the claims because Plaintiffs alleged that Apple's conduct included "payment processing," which the court said was "generic business activity" rather than publishing conduct. 1-AppleER-12. That holding ignores the actual substance of the Complaint, which makes clear that the alleged duty not to process payments depends on published third-party content. Every payment at issue is *for published content* distributed on Apple's platform, whose lawfulness depends on additional content within apps that are also distributed on Apple's platform.

Plaintiffs do not dispute that "payment processing" for in-app content is ordinarily lawful. They allege Apple's conduct becomes unlawful *only if* the transaction is for virtual chips used to play certain games within certain apps—and the chips, games, and apps are all published content third parties created and use the App Store to distribute and sell. Indeed, Plaintiffs have admitted that if Apple processed a payment for any other in-app content—say, a subscription to the New York Times—it would be perfectly lawful. Plaintiffs' "payment processing" allegations thus inextricably depend on Apple's publication of third-party content on its platform. Far from circumventing Section 230, those allegations confirm the statute's applicability.

All three of this Court's tests for Section 230 lead to the same result. First, a duty not to process payments for this specific third-party content would treat Apple as a publisher because it derives from Apple's status and conduct as a publisher. The Complaint explains that Apple engages in "payment processing" when it (1) "collects the money players spend on virtual chips"; (2) "takes a cut for itself"; and (3) "remits the rest to the" app developer. 3-AppleER-255. That duty describes publishing activity. Like Apple, a traditional publisher (1) collects money for a published work; (2) takes a cut for distributing it; and (3) remits the balance to the creator. Plaintiffs have thus affixed the label "payment processing" to the core business model of publishing—distributing content for pay. Seeking to hold Apple liable for engaging in the publishing business necessarily treats Apple as a publisher.

Second, the only way for Apple to determine whether it is lawful to process a payment for in-app content would be to monitor third-party content to see what is being sold and how it can be used in an app. If the apps were different or the chips were used in different ways, the so-called "payment processing" would be perfectly legal. Such monitoring duties are precisely what Congress sought to avoid in enacting Section 230.

Third, Apple's in-app purchase mechanisms are content-neutral tools for facilitating the communication and content of others. Apple therefore does not become liable when third-party developers use those tools to distribute and sell content that happens to be illegal. This Court has long recognized, and established principles of secondary liability confirm, that a platform does not lose Section 230 protection by providing neutral publishing tools and then failing to block third parties from using them.

Allowing Plaintiffs' claims to proceed would threaten innovation and creativity online, and would seriously chill constitutionally protected speech. Those problems can be averted by applying the plain terms of Section 230, which protects the distribution of third-party content—whether that distribution is for free or for pay. This Court accordingly should reverse the order under review and direct the district court to dismiss the remaining claims against Apple with prejudice.

STATEMENT OF JURISDICTION

The district court had jurisdiction under 28 U.S.C. 1331, 1332(d)(2), and 1367. This Court has jurisdiction of this certified interlocutory appeal under 28 U.S.C. 1292(b). *See* 3-AppleER-384. The certified order was entered on September 30, 2025. 1-AppleER-2. The petition for review was timely filed on October 10, 2025, No. 25-6437, Dkt. 1.

STATUTE

Section 230 (47 U.S.C. 230) is attached as an addendum.

STATEMENT OF THE ISSUE

Whether Section 230 bars Plaintiffs' claims against Apple, each of which seeks to hold the provider of an interactive computer service liable because third-party developers use the platform to distribute and sell video-game content that Plaintiffs allege violates state anti-gambling laws.

STATEMENT OF THE CASE

A. Section 230 protects platforms from liability for third-party content

Congress enacted Section 230 "to promote the continued development" of platforms, "to preserve the vibrant and competitive free market that presently exists for the Internet … unfettered by Federal or State regulation," and "to remove disincentives for the development and utilization of blocking and filtering technologies." 47 U.S.C. 230(b)(1), (2) & (4).

Section 230(c)(1) provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. 230(c)(1). And Section 230 expressly preempts state-law claims that are "inconsistent with this section." 47 U.S.C. 230(e)(3). Congress has enacted several exceptions to Section 230. *E.g.*, 47 U.S.C. 230(e)(1)-(5). It is undisputed that none applies here.

B. Apple's App Store platform

Apple operates the App Store, a groundbreaking platform that allows developers to distribute apps and in-app content to users of iPhones and other iOS devices. 3-AppleER-260. "'There's an app for that' has become part of the 21st-century American lexicon[,]" as the App Store contains millions of apps, the vast majority of which third parties created and developed. *Apple Inc. v. Pepper*, 587 U.S. 273, 276 (2019).

The App Store includes content-neutral tools to help developers create apps, market them, and sell apps and in-app content. 2-AppleER-215 (developer guidelines regarding the in-app purchase system).[1] Apple provides the same in-app purchase tools to all licensed iOS developers. 2-AppleER-215. Those tools can be used to sell digital content such as subscriptions, "premium content," and virtual currency within apps. 2-AppleER-215. Unlike mobile-payment services like Apple Pay, Apple's in-app purchase tools cannot be used for the sale of physical goods or services. *Compare* 2-AppleER-218 (in-app purchase), *with* Pay the Apple Way, Apple, https://www.apple.com/apple-pay/ (last visited Apr. 10, 2026) (Apple Pay). Apple's in-app purchasing tools thus are only for in-app content.

---

[1] The district court properly took judicial notice of Apple's "Developer Program License Agreement," as well as the publicly available App Store posting for the Paperless Post app, referenced in this Brief. *See* 1-AppleER-6.

When developers use the App Store to sell apps or in-app content, Apple generally takes a commission. 3-AppleER-249. Many app developers opt for a "free-to-play" model, where the app is free and the developer sustains its business by selling in-app content, including virtual currency to be used within the app. 3-AppleER-247. As a familiar example, a game developer might allow players to purchase extended gameplay through added time, extra "lives," or access to additional levels.

C. Third-party "social casino" apps offer virtual chips for purchase

Among the millions of apps on the App Store are so-called "social casino" apps that third-party developers created, like "Doubledown Casino" created by "Doubledown Interactive Co." 3-AppleER-247-48, 3-AppleER-254. The apps include multiple video games—including bingo, card games, and slot machines—with some apps offering hundreds of titles. 3-AppleER-254. This case focuses on virtual slots, which simulate "the experience of playing slot machines at physical casinos." 1-AppleER-3. A person uses simulated "virtual chips" to spin simulated slots; if they win, they win more simulated chips. 3-AppleER-254. Plaintiffs assert that "[s]ubstantially all" chips are used for spins. 3-AppleER-255. Developers provide virtual chips for free—typically with "an initial allotment," 3-AppleER-254, or after a player "wait[s] for some period of time," 3-AppleER-255. Developers also use the

App Store to sell virtual chips, allowing the user to skip the wait and play immediately. 3-AppleER-255.

But virtual slots differ from real slots in a fundamental way: players cannot cash out. "Virtual chips cannot be used outside of any individual [social casino] app." 3-AppleER-255; *see* 3-AppleER-247. The only thing players can win (or purchase) is more virtual chips so they can play more games sooner rather than later. 3-AppleER-255. Thus, every transaction at issue is exclusively for in-app content.

D. Plaintiffs sue Apple to recover the money Plaintiffs spent playing the third-party games

Plaintiffs are 29 individuals who allegedly bought virtual chips from third-party developers to play these video games. This lawsuit was brought against Apple along with parallel actions against Google and Meta (together "the Platforms"). All three actions demand return of the money Plaintiffs allegedly spent buying virtual chips, notwithstanding that the developers (not the Platforms) sold the chips and Plaintiffs received exactly what they paid for (the chips). The district court coordinated the three suits. 3-AppleER-376-78, 3-AppleER-383.

Plaintiffs allege that, even though the games do not offer payouts, the Platforms are liable because the simulated slots violate the anti-gambling laws of 16 states. 3-AppleER-250. They seek to represent 16 statewide classes and 1 nationwide class of purchasers who spent money playing virtual slots "through the Apple platform." 3-AppleER-272-74; *see* 3-AppleER-277-330. Plaintiffs brought claims under state gambling loss-recovery statutes, state unfair competition statutes, the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. 1961-1968, and for unjust enrichment.

The Complaint alleges that Apple "host[ed]" the apps on the App Store. *E.g.*, 3-AppleER-249, 3-AppleER-251, 3-AppleER-263, 3-AppleER-277, 3-AppleER-279, 3-AppleER-328-29. The Complaint alleges that Apple knew the apps were available because Apple closely monitors content on the App Store, but "did not remove social casinos from [its] offerings" and instead "continue[s] to offer" them. 3-AppleER-260-62.

Each of the surviving counts in the Complaint includes allegations about Apple distributing the apps or games, as well as allegations that Apple is liable for its "own conduct" including its role acting as the "payment processor" for the developers' sales of the chips. *See* 3-AppleER-282-83, 3-AppleER-286-87, 3-AppleER-289-90, 3-AppleER-293-94, 3-AppleER-303-04, 3-AppleER-307-08, 3-AppleER-322-24, 1-AppleER-30-31. Plaintiffs explain that Apple acts "as the payment processor" when Apple "collects the money players spend on virtual chips, takes a cut for itself, and remits the rest" to the developers. 3-AppleER-255.

Plaintiffs do not contest that Apple's in-app purchase tools can be lawfully used to sell virtual currencies in ways unrelated to depictions of casinos or chips. 2-AppleER-242-44 (example of Paperless Post selling in-app virtual coins that can be used to buy customized virtual invitation cards).

E. Procedural history

1. Initial decision and appeal

The district court limited initial motions to dismiss to whether Section 230 barred liability. Apple moved to dismiss, reserving its other bases for dismissal. No. 5:21-md-02985, (N.D. Cal. Apr. 8, 2022), Dkt. 92. In response, Plaintiffs abandoned any contention that Apple was liable solely for distributing the apps or in-app content (the games and virtual chips) without blocking or removing them. *See* 3-AppleER-347.

The court found there was "no dispute" that the App Store qualified as an "interactive computer service" and that the apps and in-app content were "information provided by another information content provider," namely, the third-party developers. 1-AppleER-46-47. The court then found that Section 230 foreclosed Plaintiffs' theories relating to Apple's alleged "promotion" of the apps and its sharing of data with the developers, but did not bar Plaintiffs' theory involving Apple's alleged processing of payments for "gambling chips." 1-AppleER-70-73.

Recognizing that "reasonable minds could differ" and that further litigation was potentially "waste[ful]," the district court *sua sponte* certified its order for interlocutory appeal under 28 U.S.C. 1292(b). 1-AppleER-73-74.

This Court granted Apple's petition for review and Plaintiffs' cross-petition. Order, *In re Apple Inc. App Store Stimulated Casino-Style Games Litig.*, No. 22-80099, (9th Cir. Dec. 13, 2022), Dkt. 11.

After briefing and oral argument, the Court dismissed the appeals for lack of jurisdiction. Memorandum, *In re Apple*, No. 22-16914, (9th Cir. May 21, 2024), Dkt. 102. The Court found that the district court had not issued an "order," as Section 1292(b) requires, because it ruled on theories of liability but "did not apply its ruling to each of the 125 causes of action to determine which, if any, should be dismissed." *Id.* at 6. The Court remanded for the district court to "examin[e] each individual claim" by "consider[ing] what the underlying legal duty 'actually requires.'" *Id.* at 8 (citation omitted). The Court directed that, "[o]nce the district court has done so, it may certify its order for interlocutory appeal." *Id.* at 8.

2. Decision on remand and this appeal

On remand, Plaintiffs amended the Complaint. 3-AppleER-246. The Complaint now includes an identical allegation under every count that "Apple's liability … arises from its own conduct, including processing and profiting from unlawful transactions for virtual chips and providing development assistance to social casino app developers." 3-AppleER-277-330. The state consumer-protection claims also all include allegations about Apple hosting the apps. *E.g.*, 3-AppleER-283 (¶ 199) (alleging Apple's "operation of social casinos"), 3-AppleER-304 (¶ 362) ("Apple is responsible for making social casinos available to the public in trade and commerce.").

The Platforms again moved to dismiss, raising Section 230 as well as additional grounds (again reserving other arguments for later). The district court granted in part and denied in part those motions. 1-AppleER-37-38. First, the court held that Section 230 "does not render [the Platforms] immune from Plaintiffs' claims." 1-AppleER-16. As this Court instructed, the district court identified "the source of [the] duty" Plaintiffs alleged, in order to determine whether the "claims invoke duties that derive from Defendants' status or conduct as a publisher." 1-AppleER-12.

The alleged duty implicated by Plaintiffs' claims, the district court concluded, was for Apple to refrain "from processing in-app payments for social casino apps." 1-AppleER-12. The court recognized that "payment processing activities may be an important part of publishing activity." 1-AppleER-12. But, relying on *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 682 (9th Cir. 2019), the court found that payment processing "is not an act of publishing" but rather "generic business activity"—even when the payment is for the distribution of virtual content. 1-AppleER-12.

The court next considered whether the alleged duty "require[s] monitoring of third-party content," because if so, Section 230 applies. 1-AppleER-13. The court recognized that "[t]he only way [Apple] can determine if [it] may or may not process a payment transaction is to cross-reference that transaction against the app it originated in." 1-AppleER-13. The court observed however, that Apple could "stop offering" payment processing services for *all* content, which it found sufficient to make Section 230 inapplicable. 1-AppleER-13. The court noted that such an alternative "would no doubt cause dramatic upheaval in [Apple's] business." 1-AppleER-13-14. But it reasoned, without citation, that such upheaval is acceptable so long as it does not amount to an "existential threat" to Apple or prevent it from "engaging in … publishing activities." 1-AppleER-14.

Finally, the court agreed that Apple's in-app payment services "are neutral tools" for facilitating the communication and content of others, but found that "irrelevant" to whether the claims treated Apple as the publisher of the third-party content here. 1-AppleER-14. The court therefore found that Section 230 did not apply to any of the counts in the Complaint.

Next, after rejecting the Section 230 defense, the district court proceeded to the merits of Plaintiffs' various claims. Going count-by-count, it dismissed all of Plaintiffs' claims under California law, all loss-recovery claims against Apple, all unjust enrichment claims, and all RICO claims. 1-AppleER-37. The court denied the motion to dismiss, however, as to the consumer-protection claims under the laws of seven states (Alabama, Connecticut, Georgia, Illinois, Missouri, New Mexico, and Washington), noting that the briefing on these claims was underdeveloped. 1-AppleER-30-31.

The court once again *sua sponte* certified its order, as well as its prior order on Section 230. 1-AppleER-35-36. Apple timely filed a petition for permission to appeal pursuant to 28 U.S.C. 1292(b). *In re Apple*, No. 25-6437, (Oct. 10, 2025), Dkt. 1. This Court granted the petition. 3-AppleER-384.

STANDARD OF REVIEW

This Court reviews de novo a district court order granting or denying a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *Dyroff v. Ultimate Software Grp.*, 934 F.3d 1093, 1096 (9th Cir. 2019). A complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A motion to dismiss must be granted when "the allegations, taken as true, show the plaintiff is not entitled to relief" because of the applicability of a defense. *Jones v. Bock*, 549 U.S. 199, 215 (2007).

This Court has repeatedly held that Section 230 bars claims at the pleading stage. *E.g.*, *Dyroff*, 934 F.3d at 1101; *Doe v. Grindr Inc.*, 128 F.4th 1148, 1156 (9th Cir. 2025); *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 736 (9th Cir. 2024). Section 230 "is generally accorded effect at the first logical point in the litigation process." *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 254-55 (4th Cir. 2009); *see Fair Hous. Council* *of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1175 (9th Cir. 2008) (explaining Section 230 "must be interpreted to protect websites … from having to fight costly and protracted legal battles").

SUMMARY OF THE ARGUMENT

I. Section 230 generally bars any claim that would "treat[]" an interactive computer service "as the publisher" of "information provided by another information content provider." 47 U.S.C. 230(c)(1). The App Store is an interactive computer service, and the apps, games, virtual chips, and virtual winnings of which Plaintiffs complain are "information provided by another information content provider," namely, the third-party developers. *Id.* The question is therefore whether the Complaint treats Apple as a publisher of that third-party content. Because the answer is yes, Section 230 bars every surviving claim against Apple.

The first step is to identify the substance of the alleged duty. Here, Plaintiffs assert that Apple is liable because it "processed payments" for specific third-party content that developers used the App Store to distribute and sell to iOS users. That duty treats Apple as a publisher of that third-party content because the subject matter of the published content is the basis of the duty and the dividing line between lawful and unlawful conduct.

Notably, Plaintiffs admit Apple would not be liable for "payment processing" if developers distributed and sold different content using Apple's platform. For example, if developers used Apple's platform to distribute and sell newsletters, accessories for an avatar, or virtual currency to be used for any other purpose, Apple would not be liable for processing the payment. The difference between liability and non-liability therefore is the published third-party content itself that is the subject of the transaction, not any difference in Apple's conduct.

Plaintiffs are thus, at bottom, complaining that Apple has allowed third parties to use Apple's platform to distribute and sell specific content without blocking or removing it. That is quintessential publishing activity. Every claim therefore necessarily treats Apple as a publisher. It is that simple.

II. Even if the Court zooms in on Plaintiffs' allegations about "payment processing," they change nothing. The Complaint defines "payment processing" as (1) "collect[ing] the money" for these virtual chips; (2) "tak[ing] a cut for itself"; and (3) "remit[ting] the rest" to the creator. *See* 3-AppleER-255. Those steps simply affix the label "payment processing" to the business of distributing content in exchange for pay: collecting money for a work and keeping a cut for distributing it. That is quintessential publishing activity.

Section 230's text forecloses Plaintiffs' position that Apple can be held liable for distributing this content for pay, when Apple is immune for distributing the very same content for free. Congress has included (and added) a limited number of exceptions to Section 230, but it has created no "payment processing" exception, for-pay exception, for-profit exception, or transaction exception. Section 230 thus protects distribution of third-party content to the same extent whether it is distributed for free or for pay.

All three of this Court's Section 230 tests confirm the point. First, the so-called "payment processing" duty itself derives from Apple's status and conduct as a publisher. Those same three "payment processing" steps are the heart of the publishing business. Publishers, like publishing houses and bookstores, have always (1) collected money for distributing content; (2) taken a cut; and (3) remitted the balance to the creator. That is not "generic business activity"; it *is* the business of publishing. Holding Apple liable for third-party content because Apple has distributed it for pay plainly treats Apple as a publisher. That is what publishers do.

Second, Plaintiffs' so-called "payment processing" duty independently triggers Section 230 because it would require Apple to monitor (and block or remove) third-party content, which is publishing activity. Plaintiffs assert a duty that only applies depending on the subject matter of third-party content being sold and how it is used inside an app. There are millions of apps on the App Store, and countless kinds of in-app content sold for use in countless ways. For Apple to know whether a transaction for in-app content is illegal, Apple would need to monitor all of that content to determine what is being sold, how it is being used within third-party apps, and whether all those uses comply with all laws of all 50 states. That is exactly the kind of content-based monitoring obligation that Section 230 shields against.

The district court reasoned that the alleged duty did not require monitoring because Apple could entirely cease processing payments for published content. But that affirmatively proves Section 230 applies. If the only alternative to monitoring is to get out of the business of publishing, then the duty clearly treats the platform as a publisher. It also focuses on the wrong duty. Plaintiffs do not assert a duty to entirely stop processing payments for in-app content. They assert a narrower duty to stop processing such payments if, but only if, the in-app content consists of these virtual chips used in these video games. And under that duty, monitoring is the only way to differentiate lawful from unlawful conduct.

Third, this Court's "neutral tools" precedents reinforce that Section 230 applies. They hold that a platform is not liable when third parties allegedly misuse the platform's "[neutral] tools meant to facilitate the communication and content of others." *Dyroff*, 934 F.3d at 1098. That describes this case perfectly. Apple provides content-neutral tools, on an arms-length basis, to licensed App Store developers to sell apps or in-app content to iOS users. If a developer uses those tools to publish and sell illegal content, the developer is potentially liable. But Apple is not. That result is required by Section 230 and reinforced by bedrock rules of secondary liability that apply even without Section 230.

The district court reached a contrary result by relying on *HomeAway.com*, 918 F.3d 676. But the alleged duty in *HomeAway*, unlike here, did not depend on published third-party content. The ordinance there imposed liability for processing transactions for *real estate*. Real estate is not content. In the words of the statute, it is not "information provided by another information content provider." 47 U.S.C. 230(c)(1). By contrast, Plaintiffs seek to impose liability based on the subject matter of certain apps, games, and simulated currency, which are all "information" third parties created. *Id.* And publishers distribute content, not real estate.

The duty in *HomeAway* also did not require monitoring content because the platforms could comply without ever consulting published content: they could compare the address of a rental to a government-issued list of lawful rentals. But there is no government-issued list of in-app content that, under Plaintiffs' theory, Apple would be barred from distributing for pay. So to comply, Apple would need to consult the published content itself and make an independent judgment about its legality under the laws of 50 states. That is exactly the kind of monitoring obligation Congress enacted Section 230 to prevent.

III. The district court's ruling that Section 230 is inapplicable not only is wrong, but also would lack any limiting principle. Allowing Plaintiffs' claims to proceed would mean that Section 230 does not protect transactions for the sale of apps or subscriptions to apps, a result that even Plaintiffs have disclaimed. It would also mean that Section 230 would not apply in cases involving defamatory content distributed for pay, even though protecting platforms from defamation liability was the originating concern of Section 230. And it would seriously undercut Section 230's goals in promoting innovation and free expression online. This Court accordingly should hold that Section 230 bars all of the counts in the Complaint.

ARGUMENT

Section 230 bars claims against: "(1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to treat, under a state law cause of action, as a publisher or speaker (3) of information provided by another information content provider." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100-01 (9th Cir. 2009). "Plaintiffs do not dispute that the first and third prongs of this test are met, so only the second prong is at issue." 1-AppleER-8-9. Because Plaintiffs' claims would treat Apple as a publisher, they are barred by Section 230.

I. Section 230 Bars Plaintiffs' Claims Because Apple's Liability Inextricably Depends on the Subject Matter of Published Third-Party Content

To determine whether a claim treats a platform as a publisher, courts start by looking past the claim's label to identify the substance of the legal duty alleged. *Calise*, 103 F.4th at 742 (citing *Barnes*, 570 F.3d at 1107). If the duty, in substance, "springs" from the "defendant's status as a publisher," then Section 230 applies. *See id.* at 742. For purposes of the statute, publishing activity includes "reviewing, editing, [or] deciding whether to publish or to withdraw from publication third-party content." *Barnes*, 570 F.3d at 1102. In simplest terms, Section 230 "immunizes providers of interactive computer services against liability arising from content created by third parties." *Roommates.com*, 521 F.3d at 1162.

A plaintiff cannot "chang[e] the name of the theory" or mislabel "an action that is quintessentially that of a publisher" to circumvent Section 230. *Barnes*, 570 F.3d at 1102-03. Courts ignore "artful skirting" of Section 230 and focus instead on what "basic argument" the claims actually "advance." *Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1265-66 (9th Cir. 2016); *see, e.g.*, *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1094 (9th Cir. 2021) (instructing courts to focus on whether the duty, "at bottom, depended on a third party's content, without which no liability … exist[s]").

The district court committed reversible error by failing to recognize that the duty Plaintiffs assert treats Apple as a publisher because it inextricably depends on the subject matter of published third-party content and Apple's failure to block or remove that content from its otherwise lawful platform. The only claims that survived Apple's motion to dismiss are the state-law consumer protection claims in counts 4, 7, 10, 13, 22, 25, and 38.[2] Each of those counts alleges Apple is liable because of its "operation" of these specific games and/or for making them "available to the public." *E.g.*, 3-AppleER-283 (¶ 199) ("operation of social casinos"), 3-AppleER-286 (¶ 226) (same), 3-AppleER-290 (¶ 254) (same), 3-AppleER-294 (¶ 283) (same), 3-AppleER-323 (¶ 513) (similar), 3-AppleER-304 (¶ 362) ("Apple is responsible for making social casinos available to the public in trade and commerce."), 3-AppleER-307 (¶ 391) (same), 3-AppleER-323 (¶ 514) (same).

Making apps "available to the public" plainly involves publishing them. And in substance, "operation of social casinos" means the same thing. Plaintiffs allege the developers, not Apple, create the apps and sell the in-app content. *E.g.*, 3-AppleER-256, 3-AppleER-260-61. The only way Plaintiffs suggest Apple "operates" these apps or games is by distributing them to iOS users on its platform and thereby publishing them. For example, if a real-

[2] 3-AppleER-282-83, 3-AppleER-286-87, 3-AppleER-289-90, 3-AppleER-293-94, 3-AppleER-303-04, 3-AppleER-307-08, 3-AppleER-322-24, 1-AppleER-30-31, 1-AppleER-37.

money casino allowed customers to use a credit card to buy chips to play games for actual money, nobody would describe the credit card company as "operating" the casino. The reference to "operation" thus can only be understood to refer to Apple's publication of the apps to iOS users without blocking or removing them.

Those allegations echo page after page of allegations about publishing the apps. The Complaint alleges, in detail, that these third-party apps include games that amount to illegal gambling in certain states, and asserts Apple is liable because those games are hosted on the App Store. *See* 3-AppleER-263-64 ("Players Are Harmed By the Illegal Slots Hosted by Defendant."). It repeatedly alleges that Apple "host[s]" and "distribut[es]" the third-party apps. 3-AppleER-249, 3-AppleER-251. It also alleges that Apple "did not remove social casinos from [its] offerings" but instead "continue[s] to offer" them. 3-AppleER-262.

And critically, the virtual chips, games, and apps are all "information provided by another information content provider." 47 U.S.C. 230(c)(1). The developers, not Apple, created these apps and games and decided to use the App Store to distribute them to iOS users. The developers, not Apple, likewise decided to use Apple's platform to distribute and sell chips to users. And the developers, not Apple, decided to allow people to use those chips to play "spins" in an effort to win yet more chips that can never be used outside the app. That is all third-party content.

Attempting to circumvent Section 230, Plaintiffs also added a uniform allegation to every count in their amended Complaint: "Apple's liability … arises from its own conduct, including processing and profiting from unlawful transactions for virtual chips and providing development assistance to social casino app developers." 3-AppleER-277-330. The district court understood this allegation to mean the substance of the asserted duty is to forbear from "processing in-app payments for social casino apps." 1-AppleER-12.

That "payment processing" duty, on its face, is barred by Section 230 because published content is an element of the duty and Apple's liability inextricably depends on what that content is. The duty extends *only* to "payment processing" for this particular third-party content published on Apple's platform. Plaintiffs have admitted that, if developers distributed and sold different content, then Apple could lawfully "process payments" for it. For example, Plaintiffs have admitted that Apple can lawfully process payments for something like an in-app subscription to the New York Times, heralding such conduct as "quintessential publishing conduct." Pl.-Appellee Br., *In re Apple*, No. 22-16914, (Oct. 25, 2023), Dkt. 44 ("Pl.-Appellee Br.") at 30-31. What is proscribed is thus defined by published third-party content.

Plaintiffs have also never disputed that Apple can process payments for in-app currencies used in other ways in other apps, like in-app currency used to create digital invitations in Paperless Post, 2-AppleER-242-44, or to purchase new lives in a game of Pac-Man, *see* Pl.-Appellee Br. 20. As Plaintiffs put it, Apple's conduct as a platform operator only "*become[s]* unlawful when [the platform is] used to book illegal gambling transactions." 3-AppleER-369 (emphasis added). That means the legality of Apple's conduct inextricably depends on what content developers are using Apple's platform to distribute and sell to iOS users.

Further reinforcing that the duty springs from Apple's publishing conduct, developers can *only* use Apple's in-app purchasing tools to sell content published on Apple's platform. 2-AppleER-215, 2-AppleER-218. Those are thus publishing tools. And the only reason a gambling-related duty even arguably applies to Apple's neutral publishing platform is because third parties have used it to distribute and sell video games that simulate gambling and are allegedly illegal. At every level, the duty thus springs from Apple's status and conduct as a publisher.

Plaintiffs' effort to skirt Section 230 by referencing a "payment processing" duty further fails because Plaintiffs did not plausibly allege that any such duty even exists. Plaintiffs have never identified any case—from any court under state or federal law—holding that a third party could be held liable merely for processing a payment for a virtual chip used to play a so-called "social casino" game that does not even provide payouts. *But see In re Mastercard Int'l Internet Gambling Litig.*, 313 F.3d 257, 262 (5th Cir. 2002) (rejecting such a claim even for real-money gambling); *Reuter v. MasterCard Int'l, Inc.*, 397 Ill. App. 3d 915, 923 (2010) (same).

That is likely why Plaintiffs have expressly *denied* that their claims against Apple seek to impose any duty solely on the basis of financial conduct like that of a credit-card company or similar financial intermediary. 2-AppleER-128. Instead, as explained above, Plaintiffs have always linked liability for "payment processing" with Apple's operation of the App Store platform to distribute content to iOS users. *See, e.g.*, 3-AppleER-249 ("promotion, distribution, and payment processing"), 3-AppleER-250 (alleging Apple's commission is "for hosting the app," bringing in customers, "and processing the payments"), 3-AppleER-251 ("access consumers, host their games, and process payments"), 3-AppleER-258 ("marketing, distribution, and payment processing"). Plaintiffs thus recognized that their claims need something more than payment processing to be legally cognizable, and the "something more" they pleaded is hosting and distributing third-party content. That necessarily means, under Plaintiffs' claims, Apple would be held liable because it is a publisher.

This appeal is therefore straightforward. At bottom, Plaintiffs seek to hold Apple liable for the subject matter of the content that third-party developers created, distributed, and sold to Plaintiffs. Third-party content is not merely a but-for cause of liability; it is the defining element of the duty and what transforms Apple's otherwise lawful operation of the platform into an alleged tort. The alleged duty thus "springs" from Apple's status and conduct as a publisher. *See Calise*, 103 F.4th at 742. And an asserted failure to block or remove third-party content from a platform is quintessential publishing activity. *Barnes*, 570 F.3d at 1102.

The Court could stop there, find that every count treats Apple as a publisher of third-party content, and decline to address any further question about Section 230.

II. The "Payment Processing" Allegations Do Not Circumvent Section 230

Even looking beyond the fact that Plaintiffs' claims inextricably depend on third-party content, the asserted "payment processing" duty on which the district court relied treats Apple as a publisher under the statute's text and all three of this Court's Section 230 tests.

A. The so-called "payment processing" duty is to forbear from distributing specific content for pay

Again, the first step is to identify the substance of the duty. What is the substance of the so-called "payment processing" duty asserted in the

Complaint? What does that even mean? In the very next sentence after asserting that Apple acts as a "payment processor," the Complaint answers the question. It explains that Apple does so when it: (1) "collects the money players spend on virtual chips" in these apps; (2) "takes a cut for itself"; and (3) "remits the rest" to the developers of the so-called "Illegal Slots," *i.e.*, these particular apps. 3-AppleER-255.

That three-part duty amounts, in substance, to a duty not to distribute this specific content to iOS users in exchange for pay. Under that duty, Apple can lawfully distribute these exact same works to iOS users for free. But what it cannot do is collect payment for those works, keep a cut for distributing them, and remit the balance to the developer. Apple thus can distribute this content for free, but not for pay.

B. Section 230's text forecloses any exception for "payment processing"

Section 230's text forecloses Plaintiffs' contention that Apple loses its protection because of allegations it distributed this third-party content for pay rather than for free. Section 230 generally bars any claim treating a platform "as the publisher" of information created by a third party. 47 U.S.C. 230(c)(1). Its first iteration had four discrete exceptions, including for federal criminal prosecutions and intellectual property laws. Pub. L. No. 104–104, § 509, 110 Stat. 138-39. In 2018, in response to court decisions, Congress added an additional exception for certain child sex trafficking claims. *Does 1-6 v. Reddit, Inc.*, 51 F.4th 1137, 1143-45 (9th Cir. 2022) (describing history).

Notably, despite Congress's demonstrated willingness to recognize and add exceptions, Congress has provided no exception that even arguably applies here. There is no "payment processing" exception, for-pay exception, for-profit exception, transaction exception, credit-card exception, or anything remotely similar. And when a statute has "express exception[s]," that "implies that there are no *other* circumstances under which" an exception exists. *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018).

Instead, Section 230 clearly protects the distribution of content for pay to the same extent as distribution of content for free. Congress acted "to promote the development of e-commerce," *Batzel v. Smith*, 333 F.3d 1018, 1027 (9th Cir. 2003), *overruled on other grounds by Gopher Media LLC v. Melone*, 154 F.4th 696, 704 (9th Cir. 2025), and to ensure a "vibrant and competitive free market" on the Internet, 47 U.S.C. 230(b)(2). Commerce and markets obviously involve transactions for pay. And this Court has repeatedly applied Section 230 where the challenged content was monetized or the platform earned revenue from it. *See, e.g.*, *Calise*, 103 F.4th at 745 (paid advertisements); *Doe 1 v. Twitter, Inc.*, 148 F.4th 635, 643 (9th Cir. 2025) (paid advertisements and data-licensing revenue), *petition for cert. filed*, No. 25-949 (U.S. Feb. 10, 2026).

This Court has also previously applied Section 230 to foreclose claims based on processing payments for third-party content—confirming Section 230 protects the distribution of content for pay and, at a minimum, that no exception applies. In *Perfect 10, Inc. v. CCBill LLC*, the Court considered whether CCBill—a business that "allow[ed] consumers to use credit cards or checks to pay for subscriptions or memberships to e-commerce venues"—could be held liable for completing transactions for subscriptions to websites that unlawfully hosted copyrighted content. 488 F.3d 1102, 1108 (9th Cir. 2007). Though *Perfect 10* focused on the scope of Section 230's intellectual-property exception, the Court applied Section 230 to bar the claims against the payment processor. *Id.* at 1118-19.

Other courts have likewise recognized that "there is no 'for-profit exception to § 230's broad grant of immunity.'" *Fed. Agency of News LLC v. Facebook Inc.*, 432 F. Supp. 3d 1107, 1119 (N.D. Cal. 2020) (citation omitted); *Hinton v. Amazon.com.dedc, LLC*, 72 F. Supp. 3d 685, 690 n.9 (S.D. Miss. 2014) (explaining that a website's "receipt of profits from online sales [does not] control[] the immunity determination under § 230").

Section 230's text is therefore properly read to foreclose the position that a platform can be liable for distributing content for pay when it is immune for distributing that same content for free. Section 230 protects both equally.

C. All three of this Court's tests confirm that Apple's "payment processing" conduct is protected by Section 230

Unsurprisingly, all three of this Court's Section 230 tests confirm that result. First, courts ask whether the duty "derives from the defendant's status or conduct as a 'publisher or speaker.'" *Calise*, 103 F.4th at 740. If the answer is yes, then Section 230 applies. *Id.* at 742. Second, courts consider whether the alleged duty would "oblige[] the defendant to 'monitor third-party content'—or else face liability." *Id.* (citation omitted). If the answer is yes, then again, Section 230 applies. *Id.* Third, courts assess whether the claims seek to impose liability on a platform for providing "[neutral] tools meant to facilitate the communication and content of others," where a third party uses those tools to commit a tort or crime. *Dyroff*, 934 F.3d at 1098. Again, if the answer is yes, then Section 230 applies. *See id.* Here, all three tests confirm that each claim would treat Apple as the publisher of the third-party content at issue.

1. The alleged "payment processing" duty derives from Apple's status and conduct as a publisher because it would hold Apple liable for engaging in the publishing business

Even beyond the fact that the asserted duty inextricably depends on published content (the virtual chips and apps), *see* Section I, *supra*, Plaintiffs' asserted payment-processing duty further derives from Apple's status or conduct as a publisher because it would hold Apple liable for engaging in the business of publishing. *See Barnes*, 570 F.3d at 1102. In particular, the publishing business involves (1) collecting payment for works; (2) taking a cut for distributing them; and (3) remitting the balance to the author. Those amount to distributing content for pay—and that is the heart of the publishing business. The alleged "payment processing" duty therefore treats Apple as a publisher because it would hold Apple liable for engaging in the publishing business. The Court "need not perform any intellectual gymnastics to arrive at this result, for it is rooted in the common sense and common definition of what a publisher does." *Id.*

Notably, distributing content for pay is part of the dictionary definition of a "publisher." At the time Section 230 was enacted and today, a "publisher" means "one whose business is publishing," which is "the business or profession of the commercial production and issuance of literature especially in book form *for public distribution or sale*." Webster's Unabridged Dictionary (emphasis added); *see Publisher,* Oxford English Dictionary (3d ed.) ("A person or company whose business is the preparation and issuing of printed or documentary material *for distribution or sale*.") (emphasis added); *see also, e.g.*, *Publish,* American Heritage Dictionary (3d ed. 1992) ("To prepare and issue (printed material) for public *distribution and sale*.") (emphasis added).

Legal dictionaries at the time Congress enacted Section 230 similarly identified collecting money for distributing works as definitional publishing conduct. A "publisher" is "[o]ne whose business is the manufacture *and sale* of books … or other literary productions. One who publishes, especially one who issues, or causes to be issued, from the press, *and offers for sale* or circulation matter printed, engraved, or the like." *Publisher*, Black's Law Dictionary (6th ed. 1990) (emphasis added). And in the Copyright Act, Congress defined "publication" as the "distribution of copies … of a work to the public *by sale* or other transfer of ownership, or by rental, lease, or lending." 17 U.S.C. 101 (emphasis added).

Section 230's historical backdrop further confirms that distributing content for pay is traditional publishing activity. Section 230 arose in response to decisions that had exposed platforms to potential liability for third-party defamatory content. *See Barnes*, 570 F.3d at 1101. And under defamation law, publishers distributed works for pay. In particular, defamation law recognized that both publishing houses and bookstores qualified as "publishers." *E.g., W. Page Keeton et al., Prosser and Keeton on the Law of Torts* § 113, at 803 (5th ed. 1984). As the leading treatise put it, "primary publishers" like publishing houses are "those who print *and sell* newspapers, magazines, journals, and the like." *Id.* (emphasis added). And "secondary publishers" like bookstores are those who "play a secondary role in delivering and transmitting the possession of a physical embodiment of the defamatory matter, including *selling and renting*." *Id.* (emphasis added).

All such publishers distribute content for pay. Since at least the nineteenth century, the predominant business model of primary publishers like publishing houses has been (1) to collect money from purchasers of works; (2) to retain a fee for distributing them; and (3) to remit the balance (called the "royalty") to the author. *See* Samuel Squire Sprigge, *The Methods of Publishing* 71-82 (1890); *see also Royalty*, Oxford English Dictionary (3d ed.) (dating to 1856 use of the term in the publishing industry).

Secondary publishers similarly (1) collect payment for works; (2) take a cut; and (3) remit payment to the creator (there, the primary publisher). For example, bookstores generally purchase books from publishing houses at a wholesale price; sell the works to consumers at retail; then return any unsold works to the publishing house for credit. Albert N. Greco, *et al.*, *The Book Publishing Industry* 85-86, 196 (3d ed. 2014). The bookstore thus "remits" payment (the wholesale price) to the publishing house; "collects" payment from buyers; and "takes a cut" (the delta between the wholesale and retail price). *See id.* They too thus distribute content for pay.

The "payment processing" duty Plaintiffs assert accordingly derives from Apple's status or conduct as a publisher because it would hold Apple liable for being in the publishing business: Distributing works in exchange for pay is the core of the publishing business and implicit in the statute's use of "publisher." Indeed, it is well-settled that Congress barred treating a platform as *any* kind of "publisher," without needing to determine whether it is a primary or secondary publisher. *See Barnes*, 570 F.3d at 1101, 1104-05; *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 333 (4th Cir. 1997). Because publishers of all stripes distribute content for pay, Section 230 must protect online platforms that do the same.

The district court appeared to view "payment processing" as solely the technical acts of collecting money from the customer via a credit-card transaction. 1-AppleER-12. But as set forth above, that mischaracterizes the Complaint. The Complaint nowhere alleges that a freestanding financial intermediary would be liable merely for processing a buyer's credit card to collect payment, and nowhere asserts that any state law would impose liability solely for such innocuous conduct. Instead, Plaintiffs have distinguished Apple from a credit-card company, asserting Apple's role is "far more involved" and is "inextricably entwined" with the developer's operation of the social casino apps. 2-AppleER-128. As noted above, Apple's only additional involvement is *as a publisher*. *See* p.26, *supra*; *e.g.*, 2-AppleER-113 (Plaintiffs emphasizing that the games are "available to play via third-party Platforms").

The district court's premise is also unfounded because a publisher does not cease to be a publisher when it runs a credit card or otherwise accepts payment for a third-party work. A publisher cannot engage in the business of publishing—collecting money for a work, keeping a cut for distributing it, and remitting the balance to the creator—*unless the publisher actually collects the money*. For example, a bookstore continues to act as a publisher when it charges a customer's credit card to pay for a book: the bookstore is still distributing that work for pay. The same is true for Internet platforms. Online distribution of works to the public continues to involve publishing when the distribution is for pay, and distribution for pay necessarily involves collecting payment.

Beyond *Perfect 10*, 488 F.3d at 1119, where this Court applied Section 230 to bar claims against a payment processor, lower courts have repeatedly applied Section 230 where plaintiffs target a platform's role in distributing content for pay. For example, in *Coffee v. Google, LLC*, 2022 WL 94986 (N.D. Cal. Jan. 10, 2022), plaintiffs sought to hold Google liable for apps on its Play Store in which users could purchase virtual currency and later use the currency within the app to obtain "Loot Boxes." *Id.* at *1-2. Plaintiffs alleged Google processed the payment for virtual currency and that Loot Boxes were illegal gambling devices. The court held that Section 230 barred the claims because they were "grounded entirely in the content" of third-party apps. *Id.* at *6. *See also YZProds., Inc. v. Redbubble, Inc.,* 545 F. Supp. 3d 756, 769 (N.D. Cal. 2021) (holding Section 230 applied to claims alleging a platform "facilitate[d] various online transactions between third parties" and retained a profit); *Courtright v. Epic Games, Inc.*, 795 F. Supp. 3d 1156, 1162-63 (W.D.

Mo. 2025) (holding Section 230 barred claims against a platform for processing payments within allegedly addictive apps because that involved the platform's role as "publishers facilitating the use of third-party content"). This Court should reach the same result.

2. Plaintiffs' claims would require Apple to monitor published content

This Court's monitoring test confirms that Section 230 bars holding Apple liable. When the alleged duty requires the defendant "to 'monitor third-party content'—or else face liability," that claim "is barred." *Calise*, 103 F.4th at 742 (citation omitted); *see Twitter*, 148 F.4th at 643 (similar); *Grindr*, 128 F.4th at 1153 (similar); *HomeAway*, 918 F.3d at 682 (similar).

Apple would clearly need to monitor published content to comply with the "payment processing" duty. Under Plaintiffs' theory, processing a payment for in-app content is unlawful if—but only if—it is for virtual chips when "substantially all" of those chips are used to play allegedly illegal slot-machine-styled games in these third-party apps. 3-AppleER-255, 3-AppleER-351. If a developer uses Apple's platform to distribute and sell different apps and in-app content—including simulated currency used for different games or, as Plaintiffs concede, something like a newsletter—then processing the transaction would be lawful. Pl.-Appellee Br. 30-31. Determining whether any given transaction is lawful in turn would require Apple to monitor third-party content on its platform.

The required monitoring would go far beyond screening transaction information to see if they involve in-app virtual currency. Plaintiffs do not dispute developers can and do sell virtual currencies for lawful purposes, like to create digital invitations in Paperless Post or to play video games that do not simulate gambling. 2-AppleER-242-44. The Complaint also recognizes each relevant app "contain[s] multiple games," sometimes more than 200. 3-AppleER-254. Yet Plaintiffs' theory of liability focuses only on slot-machine-styled games. 3-AppleER-254-55. The only way to know if a transaction for virtual chips is unlawful under Plaintiffs' theory is thus to monitor the content within these apps to see how the chips are actually used. And because developers constantly change their apps, that monitoring would have to be continuous and all-encompassing.

Still more, under the laws of each of the 50 states, Apple would be required to make judgment calls about whether slot-machine-styled games that offer no actual payout meet the varying and often indeterminate elements of any state gambling law. Apple next would need to assess whether the sale of the chips is itself illegal even though the buyer gets exactly what they paid for (chips). Plaintiffs have not identified any court that has ever held it was illegal to process the sale of a chip that might be used to play such a game. And because Plaintiffs admit the games are lawful in most States, Apple would need to track the user's location when purchasing and using the chips.[3] The required monitoring would thus be pervasive and extraordinarily burdensome.

The district court reasoned that the alleged duty nonetheless would not require monitoring because Apple could instead stop "processing payments" for third-party content entirely. 1-AppleER-13-14. That extreme position is reversible error for two independent reasons.

First, that is like telling a bookstore that it can keep distributing books but needs to stop collecting payment for them. Or like telling a publishing house it can keep printing books but can only distribute them to bookstores for free. That must be wrong. If the alternative to monitoring is to exit the business side of the publishing business, then the duty treats the platform as a publisher.

Indeed, the district court itself recognized that "termination of [Apple's] payment processing services" may "not be an acceptable alternative to

---

[3] It remains an open question whether the games here constitute illegal gambling under *any* state law. This Court held, based on allegations accepted as true at the motion-to-dismiss stage, that one "casino" app could constitute gambling under Washington state law. *Kater v. Churchill Downs Inc.*, 886 F.3d 784, 788 (9th Cir. 2018). But the list of "[t]he Illegal Slots" in the Complaint does not include the game in *Kater*. 3-AppleER-258-59. Moreover, the allegations in *Kater* were meaningfully different. The Court relied on an allegation that players "must buy more chips" to continue playing the game after running out. 886 F.3d at 787. But the Complaint here alleges players have another option: they can simply "wait for some period of time before receiving more free chips." 3-AppleER-255.

monitoring" if it would "prevent Defendants from engaging in their publishing activities." 1-AppleER-14. But the district court overlooked that its proposed "alternative to monitoring" *would* prevent Apple from "engaging in … publishing activities" because distributing content for pay is itself the defining feature of the publishing business. *See* Section II(C)(1), *supra*. Under the district court's own reasoning, Section 230 therefore should apply.

Second, this Court's precedents independently foreclose the district court's recharacterization of the Complaint. Plaintiffs assert a duty to forbear from "processing payments" only for *some* content for pay; not a sweeping duty to halt *all* payments for *all* in-app content. And this Court's monitoring precedents require focusing on the specific duty asserted—not a different and broader one.

For example, in *Grindr*, the Court held that Section 230 barred claims based on a platform's use of tools allowing users to share content because the alleged duty—which was to "prevent the harmful sharing of messages between users" that had been matched using geolocation tools—"would require [the platform] to monitor third-party content and prevent" certain communications. 128 F.4th at 1153. The platform in *Grindr* could have stopped providing geolocation matching entirely. But this Court focused on the narrower duty that was actually asserted, found that it required monitoring, and therefore held that Section 230 applied. Likewise, the platform in

Twitter could have stopped offering hashtags, search tools, or ad space entirely. 148 F.4th at 646-47 (finding instead that, under the asserted duty, "Twitter would be required to monitor"). And the platform in *Calise* could have stopped selling ads entirely. *See* 103 F.4th at 744 (finding instead that Meta would need "to actively vet and evaluate third party ads" to avoid liability).

In each case, this Court examined the specific duty asserted. And in each case, this Court found that it required monitoring because it targeted only certain uses that depended on third-party content: to halt *some* geolocation data, *some* hashtags, and *some* ads. So too here. The asserted duty is to halt *some* payments for in-app content, depending on what the app contains. Because Apple must monitor published content to determine which payments to block, Section 230 applies.

3. Plaintiffs' claims challenge Apple's "neutral tools" for in-app purchases of third-party content

a. This Court's "neutral tools" caselaw provides another independent basis to hold that Section 230 forecloses liability. This Court has repeatedly held that Section 230 prevents a platform from being held liable when third parties commit a wrong using the platform's "[neutral] tools meant to facilitate the communication and content of others." *Dyroff*, 934 F.3d at 1098. A claim against a platform for failing to prevent third-party misuse of content-neutral publishing tools is a claim, "in effect, that it failed to review" each third-party use of the platform "to ensure that it wasn't" unlawful. *Roommates*, 521 F.3d at 1171. "That is precisely the kind of activity for which Congress intended to grant absolution with the passage of section 230." *Id.* at 1171-72. For example, this Court held in *Twitter* that the platform was "immune from liability for … alleged third-party abuses of its hashtag and search functions," even when used to connect users with unlawful content, because those were content-neutral tools for facilitating third-party communication. 148 F.4th at 646.

Plaintiffs have never disputed that Apple's in-app purchase tools are content-neutral. *See* 3-AppleER-369 (admitting "the Platforms' various payment-processing … tools" are "available to all app developers"). And those tools clearly "facilitate the communication and content of others" by enabling developers to distribute and sell in-app content to iOS users. *Dyroff*, 934 F.3d at 1098. Accordingly, Apple is not liable when developers use its in-app purchase tools to distribute and sell content that is allegedly illegal. Otherwise, Apple would be required "to monitor and act when its users adapt [those tools] to illicit ends," and that is publishing activity. *Twitter*, 148 F.4th at 646-47.

The district court agreed that Apple's in-app purchase tools are "neutral tools," but found that "irrelevant" to whether a claim treats the platform as a publisher, which is the second prong of the *Barnes* test and only prong at issue. 1-AppleER-14-15. Again, that was reversible error. This Court's precedents confirm that the neutral-tools inquiry is relevant to the second *Barnes* prong as well. *See, e.g.*, *Est. of Bride v. YOLO Techs., Inc.*, 112 F.4th 1168, 1181 (9th Cir. 2024) (recognizing that this Court has found "the second *Barnes* prong satisfied" based on the neutral-tools analysis).

For example, in *Twitter*, this Court relied on "neutral tools" to hold that a claim arising from abuse of Twitter's hashtag tools treated the platform as a publisher. The Court explained that "[d]istinguishing between innocent #ParisOlympics-type hashtags and the more nefarious ones *would require Twitter to act as a publisher*." *Id.* at 646-47 (emphasis added). The choice of "when to take th[e] step" of blocking third-party use of such a tool "is a publisher decision." *Id.*

Similarly, in *Grindr*, this Court relied on "neutral tools" to hold that Section 230 foreclosed claims against a dating app based on misuse of its geolocation-matching and communication tools by adults to lure minors into sexual assault. The Court explained the claims "necessarily implicate[d]" the platform's "role as a publisher of third-party content, because discharging the alleged duty would require [it] to monitor third-party content and prevent adult communications to minors," 128 F.4th at 1152-53, and that is publishing activity. *See also Dyroff*, 934 F.3d at 1098 (applying the neutral-tools analysis to *Barnes*'s second prong); *Roommates*, 521 F.3d at 1171 (similar).

Plaintiffs themselves have recognized that "when a website provides tools that are 'meant to facilitate the communication and content of others,'" it "*is engaged in publishing*." 2-AppleER-106 (quoting *Dyroff*, 934 F.3d at 1098) (emphasis added). Several district courts have likewise applied the "neutral-tools" analysis to foreclose claims against a platform based on third-party use of its payment-related tools to sell in-app content. *See Coffee*, 2022 WL 94986, at *6; *Courtright*, 795 F. Supp. 3d at 1162-63. This Court should do the same.

b. The conclusion that Section 230 bars these claims is consistent with bedrock principles of civil secondary liability that apply even without Section 230. Plaintiffs' claims all sound in secondary liability because they seek to hold Apple liable for "facilitating" the conduct of third-party developers who created these apps and use Apple's platform to distribute them to iOS users and sell content Plaintiffs allege is illegal. *See e.g.*, 3-AppleER-263. Secondary liability principles are set forth in the Restatement (Second) of Torts § 876 (1979). The seven remaining states have embraced the Restatement[4] or

[4] *Krawshuk v. Hollaway*, 2017 WL 715585, at *2 (Conn. Super. Ct. Jan. 12, 2017); *Reuben H. Donnelley Corp. v. Brauer*, 655 N.E.2d 1162, 1170 (Ill. App. Ct. 1995); *Matthews v. Harley-Davidson*, 685 S.W.3d 360, 369 (Mo. 2024); *GCM, Inc. v. Ky. Cent. Life Ins. Co.*, 947 P.2d 143, 147 (N.M. 1997); *Washington Constr., Inc. v. Sterling Sav. Bank*, 163 Wash. App. 1027, n.8 (Wash. Ct. App. Sep. 13, 2011).

appear to have narrower rules further limiting civil aiding-and-abetting claims.[5]

In *Twitter Inc. v. Taamneh*, 598 U.S. 471 (2023), the Supreme Court examined this "common-law tradition" and concluded—without Section 230 and at the motion-to-dismiss stage—that Twitter, Facebook, and YouTube were not liable for aiding and abetting an ISIS terrorist attack under the federal Anti-Terrorism Act, when they knew ISIS was using their platforms for recruitment. *Id.* at 485, 506-07. The Court emphasized that "both tort and criminal law" have "long been leery" of imposing liability for "passive nonfeasance." *Id.* at 500. Civil secondary liability requires "conscious, voluntary, and culpable participation in another's wrongdoing." *Id.* at 493. Providing neutral recommendation tools—algorithms that were "agnostic as to the nature of the content"—was insufficient, where the platforms' relationship with the wrongdoers was similar to their "arm's length, passive, and largely indifferent" relationship with their other users. *Id.* at 499-500. The Court observed that a contrary rule "could sweep in innocent bystanders as well as those who gave only tangential assistance." *Id.* at 488.

The Supreme Court relied on those principles to resolve similar claims against Google based on ISIS's use of YouTube for terrorist recruiting.

---

[5] *Siavage v. Gandy*, 829 S.E.2d 787, 790 (Ga. Ct. App. 2019); *Physiotherapy Assocs., Inc. v. ATI Holdings, LLC*, 2019 WL 4415567, at *6-8 (N.D. Ala. Sep. 16, 2019).

Gonzalez v. Google LLC, 598 U.S. 617, 619-22 (2023). Notably, although the Supreme Court granted review in *Gonzalez* to address Section 230, it resolved the case on secondary-liability grounds without deciding any Section 230 question. *Id.* at 622. And in *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 292 (2025), the Court further examined those same principles. It emphasized that an "ordinary merchant[]" does not become liable for all "'misuse[s] of [his] goods,' even if he knows that in some fraction of cases misuse will occur." *Id.* (citation omitted).

Consistent with those principles, courts have routinely rejected efforts to hold financial intermediaries liable when a third-party customer uses their tools to sell something illegal. In particular, courts have consistently rejected efforts to hold payment companies liable for processing payments for online "chips"—even when those were used for illegal real-money gambling. *In re Mastercard*, 313 F.3d at 262; *Reuter*, 397 Ill. App. 3d at 923.

Those principles powerfully support applying Section 230's "neutral tools" rule—and would foreclose liability even without Section 230. As in *Taamneh*, Apple's payment tools are "agnostic as to the nature of the content." 598 U.S. at 499. Apple "take[s] no initiative in developing the social casinos themselves or in steering the business of social casinos." 1-AppleER-33. Plaintiffs have admitted that Apple makes these same tools "available to all app developers." 3-AppleER-369. Apple thus treated these developers "just like everyone else" and treated the content "just like any other content." *Taamneh*, 598 U.S. at 498.

Apple therefore did not have "conscious, voluntary, and culpable participation" in the developers' alleged wrongdoing. *Id.* at 493. To the contrary, the Complaint recognizes that Apple instructs developers to "fully vet[]" their "legal obligations everywhere [they] make [their] app available." 3-AppleER-260. "At best," the district court found, Apple was a "passive contributor[]" to the alleged harms. 1-AppleER-33. Accordingly, the developers might be liable to Plaintiffs, but Apple is not.

D. The district court misinterpreted *HomeAway* and this Court's other precedents, which support application of Section 230

1. In adopting what amounts to a broad "payment processing" exception to Section 230, the district court relied primarily on *HomeAway*. But *HomeAway* is about real estate, not published content, and is readily distinguishable. In *HomeAway*, short-term rental platforms challenged a Santa Monica city ordinance that prohibited them from booking units that were not "licensed and listed on the City's registry." 918 F.3d at 680. This Court held that Section 230 did not preempt the ordinance. "On its face," this Court explained, "the Ordinance [did] not proscribe, mandate, or even discuss the content of the listings that the Platforms display on their websites." *Id.* at 683. The duty to forbear from "completing any booking transaction for

properties not licensed and listed on the City's registry" in turn did not require the platforms "to review the content provided by the hosts of listings on their websites." *Id.* at 681-82. Instead, they could monitor "incoming requests to complete a booking transaction" to determine the address of the unit, then cross-reference that address against the City's registry of lawful rentals. *Id.* at 682-83. The Court explained that the address of the unit they were booking may have "*result[ed] from*" published third-party content but was "distinct, internal, and nonpublic." *Id.* at 682.

HomeAway is inapposite for multiple reasons. First, unlike here, in *HomeAway* the duty did not derive from the platforms' status or conduct as publishers. The duty did not "proscribe, mandate, or even discuss" third-party content on the platforms. *Id.* at 683. In contrast, here, third-party published content—virtual chips within certain apps—is the element that defines the line between what is proscribed and what is not. Moreover, completing transactions for brick-and-mortar real estate is not publishing activity because it does not involve distribution of content: real-estate transactions do not involve "delivering and transmitting the possession of a[n] … embodiment of [a work]." *Prosser and Keeton*, § 113, at 803. Real estate is not "information provided by another information content provider." 47 U.S.C. 230(c)(1). By definition, *real* estate is not information at all.[6]

Unlike *real* estate, the *virtual* casinos, *virtual* games, *virtual* currency, *virtual* spins, and *virtual* payouts here are all published content: they are "information provided by another information content provider." 47 U.S.C. 230(c)(1). And Plaintiffs' theory of liability depends entirely on what that third-party information communicates. Further, a duty to forbear from distributing that specific content for pay derives from Apple's status or conduct as a publisher because that is the publishing business. *See* Section II(C)(1), *supra*. *HomeAway* is thus fundamentally different: Section 230 protects transactions for content, not transactions for housing.

Second, *HomeAway*'s monitoring analysis supports Apple. There, this Court held that the rental platforms did not need to monitor third-party postings because they could instead compare the address of the rental in any booking they completed to a government-maintained "registry" of lawful rentals. 918 F.3d at 680. But Apple has no such alternative. There is no

[6] The duty in *HomeAway* similarly did not depend on neutral "tools meant to facilitate the communication and content of others," *Dyroff*, 934 F.3d at 1098, because real-estate transactions are not "communication" or "content."

government-maintained "registry" of apps, video games, or in-app content that are lawful or unlawful to sell under state gambling laws.[7]

Because there is no such registry, there is no way for Apple to avoid liability by consulting any source exogenous to the apps themselves. Apple could comply *only* by monitoring their content to determine, under varying state laws and legal theories, whether the transaction can be lawfully completed. And unlike in *HomeAway,* the information Apple would need to monitor to make those judgment calls is not "distinct, internal, and nonpublic." 918 F.3d at 682. Apple would need to monitor published content itself: every transaction is *for* published content, and legality turns on content (the developer's app) that is external and published on Apple's platform.

2. The district court's reliance on *Gonzalez v. Google LLC*, 2 F.4th 871, 894 (9th Cir. 2021), *vacated*, 598 U.S. 617 (2023), was similarly misplaced. In dicta within that since-vacated decision, the *Gonzalez* panel stated that Section 230 would not apply to claims that YouTube violated federal law by knowingly giving money to a designated foreign terrorist organization (ISIS), before dismissing those claims on the merits. *Id.* at 898-99. The panel reasoned that those claims did "not depend on the particular content ISIS places on YouTube" or the source of the funds (ad revenue), but were "solely

[7] When the government has enacted laws requiring that specific apps be taken down, Apple has complied. *See* Sapna Maheshwari, *TikTok Goes Dark in the U.S.*, N.Y. Times, Jan. 18, 2025.

directed" to the platform's "unlawful payments of money to ISIS." *Id.* at 898. That is, the duty derived solely from the knowing payment of money to a designated terrorist group, and the platform could comply without monitoring published content by comparing the payee's identity to the list of designated terrorist groups—a source exogenous to the content at issue.

By contrast, the state-law claims here *do* "depend on the particular content" the developer distributes and sells via the App Store. The "particular content" is an element of the duty and the source of liability. There is also no government-issued list of designated app developers whose in-app content cannot lawfully be sold. *Id.* If these same developers changed their apps, or changed the in-app content they sold, the transactions would be lawful. And none of the developers are alleged to be on the list of designated terrorist groups. Apple therefore would need to monitor published content, so Section 230 applies.

3. The district court similarly erred in viewing the duty as involving "generic business activity" applicable even to "dedicated payment processors such as PayPal, Square, and Stripe." 1-AppleER-12. Apple's in-app payment services are not "generic business activity" because developers can only use those tools for selling virtual in-app content distributed to iOS users on Apple's platform. 2-AppleER-215-18. In other words, they are publishing-specific tools. They are exclusively for selling published content.

The district court essentially relied on the label "payment processing." But this Court's precedents require it to look to the substance, not the label. *E.g.*, *Kimzey*, 836 F.3d at 1265-66. After all, virtually any publishing activity could be labeled in terms that sound like generic business activity. For example, instead of distributing books to customers, a bookstore could be described as selling "goods or services." That kind of artful pleading is no basis to circumvent Section 230. *See id.*

Here, the substance of the duty is not actually targeted at "generic business activity." Rather, it reaches the distribution of content for pay, which describes the publishing business. *See* Section II(C)(1), *supra*. Plaintiffs have argued Apple's role "is far more involved than the role of a credit card company." 2-AppleER-128. And each of the state-law consumer protection claims—the only claims that survived the motion to dismiss—reinforces the point by including allegations about Apple allegedly "operat[ing]" the games or making them "available to the public." *See* pp. 22-23, *supra*. Only publishers do that.

The district court further erred because the asserted duty would not even apply to a "dedicated payment processor." Unlike Apple, those businesses do not distribute content. They do not play any "role in delivering and transmitting the possession of [an] embodiment" of a work. *Prosser and Keeton*, § 113, at 803. As a result, they never engage in the three steps of

(1) collecting money for content they distribute; (2) keeping a cut for distributing it; and (3) remitting the balance to the creator. In defamation law, a financial intermediary would be considered a mere conduit; a supplier of equipment or services that others use "for the publication of defamatory matter." *Id.* at 804. Such conduits "are not publishers" and therefore are not responsible for the content at all. *Id.*

The asserted duty is also strikingly different from typical duties that derive from status or conduct as a pure financial intermediary. For example, a payment card company has a duty to complete 1099-K tax forms to report income, 26 U.S.C. 6050W, and a duty to print credit card receipts in particular ways, *e.g.*, 15 U.S.C. 1681c(g)(1). But unlike those *content-neutral* duties, Plaintiffs assert a *content-based* duty that would hold Apple liable for distributing specific works for pay because of what they communicate.[8] That duty treats Apple as a publisher by holding it liable for the content of the works it distributes. Section 230 therefore applies.

* * *

In sum, Section 230 applies because Plaintiffs' so-called "payment processing" duty includes published content as an element and Apple's liability inextricably depends on third-party content published on its platform. If the

---

[8] If a state were to hold the intermediary liable for its indirect and incidental connection to distribution of wrongful content, that would treat the company as a publisher. *See Prosser and Keeton*, at 803-04.

transaction were for the publication of different content, Apple would not be liable. There is no exception to Section 230 for conduct that includes "payment processing" when the claims, at bottom, treat a platform as a publisher. Even digging a step further to consider what "payment processing" means, Section 230 still applies. All three tests this Court employs to determine if a platform is being treated as a publisher independently confirm that Section 230 bars the asserted "payment processing" duty. And the district court's reliance on *HomeAway* and *Gonzalez* was misplaced. No matter the label, the "payment processing" duty treats Apple as a publisher by holding it liable because third parties use its platform to distribute and sell content Plaintiffs allege is illegal. Section 230 therefore precludes the claims here.

III. The District Court's Ruling Lacks a Limiting Principle and Would Create the Very Chilling Effect Congress Sought to Prevent

The district court's interpretation of Section 230 is not merely wrong, but also lacks a limiting principle. Plaintiffs have offered no basis to distinguish sales of in-app content (as here) from sales of apps, subscriptions to apps, or advertisements for apps, which are obviously publishing activity. Indeed, Plaintiffs themselves admitted in the first appeal that Section 230 immunizes platforms for "offer[ing] app[s] for sale" and "charg[ing] … a fee" for advertisements, and admitted that "[o]ffering a subscription or selling a newsletter" are "quintessentially publishing conduct." Pl.-Appellee Br. 30-31.

Plaintiffs were right on that point. And just like apps, in-app content is "information provided by another information content provider." 47 U.S.C. 230(c)(1). Apple thus is equally engaged in "quintessentially publishing conduct" when it distributes an app *and* in-app content for pay.

Under the district court's rule, Section 230 also would not apply to defamatory content distributed for pay. But Section 230 cannot be reasonably understood to exclude protection for such transactions when it was a "specific purpose" of Congress to protect platforms from defamation liability. H.R. Rep. No. 104-458, at 194 (1996). That would effectively create a for-profit exception to Section 230 that Congress has conspicuously declined to create and that courts have consistently rejected. *See* pp. 28-29, *supra*.

The district court's ruling could cause serious harm to innovation, creativity, and free expression. A rule that Section 230 does not protect distributing content for pay would severely undercut Congress's goals of "promot[ing] the continued development of the Internet and other interactive computer services"; "preserv[ing] the vibrant and competitive free market that presently exists for the Internet" "unfettered by Federal or State regulation"; and "remov[ing] disincentives for the development and utilization of blocking and filtering technologies." 47 U.S.C. 230(b)(1)-(4).

The district court acknowledged that its holding leaves the Platforms in a position where they must cease distributing content for pay entirely or risk litigation exposure, which could cost the Platforms "millions if not billions" of dollars in lost revenue. 1-AppleER-14. That would in turn seriously undercut the incentive to create new platforms or to invest in monitoring. Under that regime, a platform would be hamstrung in recouping those substantial investments because it would be protected from liability only if it distributed content for free, not for pay. Such an outcome is antithetical to the free market and innovation Section 230 sought to protect.

The district court's ruling additionally creates a powerful incentive for platforms to engage in private censorship—culling third-party content—to avoid the risk of liability. As explained above, there is no government registry listing which apps and in-app content qualify as illegal gambling, or even any bright-line test for Apple to make the determination. Instead, Plaintiffs apparently demand Apple to predict with perfect certainty what content a court will eventually determine is unlawful and screen it from sale on the App Store. *See* Section II(C)(2), *supra*. When a publisher is faced with such a risk of liability, "he will tend to restrict the [works] he sells to those he has inspected," and the publisher's "burden would become the public's burden, for by restricting him the public's access to reading matter would be restricted." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 278 (1964). The publisher's "self-censorship, compelled by the State, would be a censorship affecting the whole public, hardly less virulent for being privately administered." *Id.* at 279.

Congress enacted Section 230 to avoid that kind of censorship and, in turn, to protect and enhance free expression online. *See* 47 U.S.C. 230(a)(3) (finding Internet platforms "offer a forum for a true diversity of political discourse" and other speech activity); *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 29 (1st Cir. 2016) (acknowledging the "First Amendment values" that "drive [Section 230]"). As this Court has put it, "[t]he specter of tort liability in an area of such prolific speech would have an obvious chilling effect." *Carafano v. Metrosplash.com*, 339 F.3d 1119, 1124 (9th Cir. 2003) (citation omitted). "Faced with potential liability for each message republished by their services, interactive computer service providers might choose to severely restrict the number and type of messages posted. Congress considered the weight of the speech interests implicated and chose to immunize service providers to avoid any such restrictive effect." *Id.*

Avoiding the risk of self-censorship—and the resulting harm to First Amendment values—strongly supports interpreting Section 230 to apply to distributing third-party content for pay. Notably, the "degree of First Amendment protection is not diminished merely because the ... speech is sold rather than given away." *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 756 n.5 (1988). For example, in *Brown v. Entertainment Merchants Ass'n*, the Supreme Court struck down a law prohibiting the "sale or rental" (not mere creation or possession) of violent video games. 564 U.S. 786, 789 (2011); *see also, e.g.*, *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 116 (1991) (profiting from books about real crime).[9]

The "payment processing" exception to Section 230 urged by Plaintiffs thus would give rise to serious private censorship problems and would require courts to address difficult First Amendment issues in this case (and many others). By contrast, interpreting Section 230 according to its terms—to protect the distribution of third-party content equally whether it is for free or for pay—would avoid those First Amendment problems entirely. And "where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988).

Accordingly, while Apple submits that Section 230 clearly applies for multiple independent reasons, any doubt "must be resolved in favor of

[9] These concerns of self-censorship apply fully to video-game content. *Brown* squarely holds the First Amendment protects paid transactions for video-game content, even when the content simulates criminal activity. 564 U.S. at 790-98. And the apps, games, chips, and winnings here are all video-game content.

immunity, lest we cut the heart out of section 230 by forcing websites to face death by ten thousand duck-bites." *Roommates.com*, 521 F.3d at 1174.

This Court thus need not break any new ground to hold in favor of Apple. *Perfect 10*, *Barnes*, *Calise*, *Grindr*, and *HomeAway* all support Section 230's application. By contrast, the appropriate body for deciding whether to add a gambling exception or payment-processing exception to Section 230 is Congress. Congress has created several exceptions to Section 230, including in response to court decisions. But it has not done so here. This Court should simply apply its precedents, which require the entire suit to be dismissed.

CONCLUSION

For the foregoing reasons, this Court should reverse the order certified for interlocutory review to the extent it denied the motion to dismiss in part, and remand with instructions to dismiss the Complaint in full.

Respectfully submitted,

/s/ Mark A. Perry

Mark A. Perry
Zachary D. Tripp
Crystal L. Weeks
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW
Washington, DC 20036
(202) 682-7000
Mark.Perry@weil.com

Marina A. Masterson
WEIL, GOTSHAL & MANGES LLP
1395 Brickell Avenue, Suite 1200
Miami, FL 33131
(305) 577-3168
Marina.Masterson@weil.com

April 10, 2026

STATEMENT OF RELATED CASES

Under Circuit Rule 28-2.6, Defendant-Appellant Apple Inc. identifies *Wilkinson, et al. v. Meta Platforms, Inc., et al.*, No. 25-6436, No. 25-7916, as a related appeal that was coordinated in the district court and raises the same or closely related issues.

/s/ Mark A. Perry

Mark A. Perry
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW, Suite 600
Washington, DC 20036
(202) 682-7000
mark.perry@weil.com

April 10, 2026

CERTIFICATE OF COMPLIANCE

The undersigned counsel of record certifies pursuant to Fed. R. App. P. 32(g) that the Brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i) because, excluding the parts of the Brief exempted by Fed. R. App. P. 32(f), this document contains 13,255 words.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Century Schoolbook font in 14 point size.

/s/ Mark A. Perry

Mark A. Perry
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW, Suite 600
Washington, DC 20036
(202) 682-7000
mark.perry@weil.com

April 10, 2026

ADDENDUM

47 U.S.C. § 230

Protection for private blocking and screening of offensive material

(a) Findings

The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) Policy

It is the policy of the United States-

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) Protection for "Good Samaritan" blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

(d) Obligations of interactive computer service

A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) Effect on other laws

(1) No effect on criminal law

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute.

(2) No effect on intellectual property law

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) State law

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) No effect on communications privacy law

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(5) No effect on sex trafficking law

Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit-

(A) any claim in a civil action brought under section 1595 of title 18, if the conduct underlying the claim constitutes a violation of section 1591 of that title;

(B) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 1591 of title 18; or

(C) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of title 18, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.

(f) Definitions

As used in this section:

(1) Internet

The term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) Interactive computer service

The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) Information content provider

The term "information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

(4) Access software provider

The term "access software provider" means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.