No. 25-7916

In the United States Court of Appeals For the Ninth Circuit

IN RE: GOOGLE PLAY STORE SIMULATED CASINO-STYLE GAMES LITIGATION

IN RE: FACEBOOK SIMULATED CASINO-STYLE GAMES LITIGATION

KATHLEEN WILKINSON; NANCY URBANCZYK; LAURA PERKINSON; MARIA VALENCIA-TORRES; MARY AUSTIN; PATRICIA MCCULLOUGH; ALLISON KODA; GLENNA WIEGARD; CLOTERA ROGERS; CAROL SMITH; HANNELORE BOORN; JANICE WILLIAMS; JENNIFER ANDREWS; DAWN MEHSIKOMER; DENICE WAX; FRANCES LONG; SANDRA MEYERS; STEVE SIMONS; VANESSA SOWELL SKEETER; DONNA WHITING; SHERI MILLER; PAUL LOMBARD; BEN KRAMER; ELEANOR MIZRAHI; JANICE WILSON; RICK LARSEN; AMANDA KLOTZ; ERICA MONTOYA; EDGAR SMITH; MICHAEL BROWN; JOHN SARLEY; JOHN SPARKS; SHELLIE LORDS; TERRI BRUSCHI; JOYCE JERNIGAN,

Plaintiffs-Appellees,

v.

META PLATFORMS, INC.; GOOGLE LLC; GOOGLE PAYMENT CORP.,

Defendants-Appellants.

On Appeal from the from the
United States District Court for the Northern District of California
The Honorable Edward J. Davila, District Judge
Nos. 5:21-md-03001, 5:21-cv-02777

OPENING BRIEF OF DEFENDANTS-APPELLANTS GOOGLE LLC AND GOOGLE PAYMENT CORP.

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Defendants-Appellants state as follows:

Google LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company. No publicly traded company owns 10% or more of Alphabet Inc.'s stock.

Google Payment Corp. is a subsidiary of Google LLC. Google LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company. No publicly traded company owns 10% or more of Alphabet Inc.'s stock.

Dated: April 10, 2026

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INTRODUCTION

Section 230 of the Communications Decency Act (CDA), 47 U.S.C. § 230, "protect[s] internet-based publishers of third party content from liability." *Doe 1 v. Twitter, Inc.*, 148 F.4th 635, 640 (9th Cir. 2025). By its terms, Section 230 bars claims that "treat[]" online platforms as "the publisher" of "any information provided by another information content provider." 47 U.S.C. § 230(c)(1). As relevant here, that prohibition applies to claims that seek to hold an online platform liable for distributing a third party's virtual content in exchange for money. A contrary rule would substantially hinder the free flow of information on the Internet, in contravention of Section 230's text, structure, and purpose.

Google Play is an online platform where developers upload apps that users can download. While some developers provide the content in their apps for free, many sell content within their apps. Google enables users to purchase and access that content through a payment-processing service that is integrated into many of the apps available on Google Play.

Plaintiffs' claims focus on apps that allow users to play virtual versions of classic casino games using content designed to look like casino chips. Plaintiffs allege that after an initial allotment of free virtual chips, users can continue playing social-casino games only if they purchase additional virtual chips. Plaintiffs allege that by selling such content, social-casino apps have violated federal and state gambling laws. And Plaintiffs allege that by processing payments for such content, Google has violated various state gambling laws and the Racketeer Influenced and Corrupt Organizations Act (RICO).

For thirty years, Section 230 has shielded online platforms from these kinds of claims. In the mid-1990s, it became clear that lawsuits seeking to hold online platforms liable for content that third parties posted on the platforms threatened the growth of the Internet. Congress enacted Section 230 to mitigate that threat. And this Court has repeatedly interpreted Section 230 as barring two types of claims: (1) claims that arise from an online platform's "status or conduct as a 'publisher,'" *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1102 (9th Cir. 2009), and (2) claims that would require an online platform "to act as a publisher" "to avoid liability," including by "monitoring third-party content," *Twitter*, 148 F.4th at 642-43.

Here, Section 230 bars Plaintiffs' claims twice over. First, to avoid liability under Plaintiffs' claims, Google would need to monitor the content of third-party apps. Specifically, it would need to determine, for every app on Google Play, which of the apps meet Plaintiffs' definition of a social casino, and then review each in-app transaction within those social casinos to determine what type of virtual content is being purchased and evaluate whether those purchases violate state gambling laws. The district court below nonetheless held that content monitoring is not necessary because Google could simply "choose to stop offering [its] own payment processing" altogether. 1-GoogleER-14. But the court cited no authority for its view that Section 230 does not apply so long as an online platform could eliminate a vital platform-wide service—thus fundamentally restructuring its business—to avoid content monitoring. In fact, this Court's precedents foreclose that interpretation of Section 230.

Second, Section 230 also bars Plaintiffs' claims because they arise from Google's publishing conduct—namely, its distribution of content for pay. Facilitating the exchange of content for money is a core function of publishing businesses. Indeed, for centuries, the common law has treated booksellers and newsstands as publishers—and Congress enacted Section 230 against that common-law backdrop. Under this Court's precedents, moreover, a payment-processing service is the kind of neutral content-distribution tool that qualifies as publishing activity. Yet the district court categorically ruled that "[p]ayment processing is not an act of publishing." 1-GoogleER-13. In so doing, the court focused on companies—"such as PayPal, Square, and Stripe," *id.*—that process payments for ordinary commercial transactions unrelated to content. The court thus disregarded that when, as here, Google processes payments for in-app virtual content, it fulfills a publishing role.

An affirmance of the decision below would produce destabilizing consequences for the online services that form the backbone of the digital economy.

Class-action plaintiffs could simply frame their suits as challenges to "payment processing" as a means of avoiding Section 230 while seeking to hold platforms liable for the third-party content that is purchased on them—from ebooks, to newsletters, to podcasts, to music. That result would contravene Congress's objectives in enacting Section 230: to "promote the development of e-commerce," *Batzel v. Smith*, 333 F.3d 1018, 1027 (9th Cir. 2003), and to ensure a "vibrant and competitive free market" for the Internet, 47 U.S.C. § 230(b)(2). This Court should reverse.

STATEMENT OF JURISDICTION

The district court had jurisdiction under 28 U.S.C. §§ 1331, 1332(d), and 1367. This Court has jurisdiction under 28 U.S.C. § 1292(b). On September 30, 2025, the district court certified for interlocutory appeal its order granting in part and denying in part Google's motion to dismiss. 1-GoogleER-36-37, 39. On October 10, 2025, Google timely petitioned this Court for permission to appeal. Pet. for Permission to Appeal, *Wilkinson v. Meta Platforms, Inc.*, No. 25-6436 (9th Cir. Oct. 10, 2025), Dkt. 1.1. On December 16, 2025, the Court granted Google's petition. 3-GoogleER-303.

STATEMENT OF ADDENDUM

47 U.S.C. § 230 is attached as an addendum.

ISSUE PRESENTED

Whether Section 230 bars Plaintiffs' claims against Google, all of which seek to hold Google liable for facilitating the distribution of allegedly unlawful third-party virtual content in exchange for pay.

STATEMENT OF THE CASE

A. Legal Background

With the explosion of the Internet in the 1990s, the "amount of information communicated via interactive computer services" became "staggering." *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1123-24 (9th Cir. 2003) (citation omitted). In turn, Congress was concerned that "[t]he specter of tort liability in an area of such prolific speech would have an obvious chilling effect" and lead websites to "severely restrict" the content they facilitated rather than face a flood of litigation. *Id.* at 1124.

In 1996, Congress enacted Section 230 to "promote the free exchange of information and ideas over the Internet." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1099 (9th Cir. 2009) (citation omitted). Section 230 provides that "[i]t is the policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet" and "to encourage the development of technologies which maximize user control over what information is received by individuals." 47 U.S.C. §§ 230(b)(2), (b)(3).

To that end, Section 230 states 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 it further states that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with" Section 230. *Id.* § 230(e)(3). In short, Section 230 "immunizes providers of interactive computer services against liability arising from content created by third parties." *Fair Hous. Council of San Fernando Valley v. Rommates.com, LLC*, 521 F.3d 1157, 1162 (9th Cir. 2008) (en banc).

A defendant invoking Section 230's protections must satisfy three preconditions. *First*, the defendant must use or operate "an interactive computer service," 47 U.S.C. § 230(c)(1), which includes websites and mobile applications. *See Doe v. Grindr Inc.*, 128 F.4th 1148, 1151 (9th Cir. 2025); *Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1268 (9th Cir. 2016). *Second*, the defendant must establish that the plaintiff's claim seeks to treat the defendant as "the publisher or speaker" of the content at issue. 47 U.S.C. § 230(c)(1). *Third*, the content at issue must have been "provided by another information content provider." *Id.*; *see id.* § 230(f)(3).

B. Factual Background

Google owns and operates an interactive computer service platform called Google Play. 2-GoogleER-49 (¶ 47).[1] Third parties develop and upload apps to Google Play for consumers to view on and download to their phones and tablets. *See* 2-GoogleER-50 (¶ 53). Google provides all app developers the same suite of tools to facilitate the delivery of content to users. One such tool is a payment-processing service that allows app developers to sell virtual content to consumers within their apps. 2-GoogleER-51 (¶ 61). Google allegedly retains a 30% commission for all sales of virtual content that it processes. 2-GoogleER-53-54 (¶ 73).

Social casinos are one genre of app available on Google Play. 1-GoogleER-4. Although there is no standard definition of a "social-casino app," such apps typically allow users to play virtual versions of traditional casino games—such as slot machines, card games, and bingo—using virtual content designed to look like casino chips. 2-GoogleER-50 (¶¶ 54-55). The developers of the social-casino apps create and sell the virtual chips within the game. 2-GoogleER-50-51 (¶¶ 58-60). The chips are a form of online content, akin to a game player's avatar or the weapons a virtual character uses within a digital game. The apps offer an "initial allotment

[1] This factual background draws from the allegations in Plaintiffs' complaint, which are accepted as true for purposes of resolving Google's motion to dismiss. *See, e.g.*, *D'Augusta v. Am. Petrol. Inst.*, 117 F.4th 1094, 1100 (9th Cir. 2024).

of virtual chips for free." 2-GoogleER-50-51 (¶ 58). If players run out of virtual chips, they can "wait for some period of time before receiving more free chips" or "purchase virtual 'chips' in exchange for real money." 2-GoogleER-43 (¶ 3); *see* 2-GoogleER-51 (¶¶ 59-60). Players can use the virtual chips they purchase to play any of the games that the social-casino app offers. 2-GoogleER-50 (¶¶ 54-55). Google processes the sale of virtual chips by social-casino apps to consumers—just as it does with any other in-app purchase of content for any other app offered on Google Play. 2-GoogleER-51 (¶ 61).

Unlike chips a player might purchase in a real-world casino, virtual chips cannot be cashed out. 1-GoogleER-4. So, if a player were to pay $10 to purchase 100 virtual chips and then use those chips to win 100 additional chips, the player could not redeem the 200 chips for $20. Instead, virtual chips can be used only to play games within a specific social-casino app or to "gift" to other players using that app. 2-GoogleER-51 (¶ 63). The chips are thus virtual content that is inextricably intertwined with the social-casino app itself.

C. Procedural History

1. Plaintiffs are individuals who allegedly spent money playing games in social-casino apps. 2-GoogleER-61-68 (¶¶ 104-30). In late 2020 and early 2021, Plaintiffs filed multiple putative class actions around the country based on Google's hosting of social-casino apps in the Google Play Store. 3-GoogleER-299. Those

actions were centralized for pretrial purposes in the Northern District of California as a multidistrict litigation (MDL). 3-GoogleER-301. That Google MDL, along with a similar MDL against Apple and two similar class actions against Meta, were assigned to Judge Davila, who coordinated the cases. *Id.*

Plaintiffs assert four categories of claims: (1) loss-recovery claims under state gambling statutes, *e.g.*, 2-GoogleER-77-78 (¶¶ 173-81); (2) state unfair-competition law claims, *e.g.*, 2-GoogleER-73-76 (¶¶ 140-64); (3) state unjust-enrichment claims, *e.g.*, 2-GoogleER-76-77 (¶¶ 165-72); and (4) RICO claims based on Defendants' alleged involvement in an illegal "gambling enterprise," 2-GoogleER-124-129 (¶¶ 548-74). The district court limited initial motion practice in the coordinated cases to the question of immunity under Section 230, 2-GoogleER-204, recognizing that Section 230 could "completely preempt[] Plaintiffs' claims," 2-GoogleER-207.

The district court granted Defendants' motions to dismiss in part and denied them in part. 2-GoogleER-201. The court explained that "[t]he dispositive question in this case is whether the Platforms were 'publishers or speakers' within the meaning of 47 U.S.C. § 230(c)(1)." 2-GoogleER-177. In analyzing that issue, the court identified three distinct "theories of liability" underpinning Plaintiffs' claims and determined Section 230's applicability separately as to each theory. 2-GoogleER-196-97.

The district court held that Section 230 barred two of Plaintiffs' theories—namely, that Defendants "promoted the illegal casino applications in their App Stores," and "work[ed] with developers to increase user engagement" by providing advertising tools. *Id.* But the court also held that Section 230 did not bar Plaintiffs' third theory that Defendants processed "*unlawful* transactions for *unlawful* gambling" involving virtual chips. 2-GoogleER-198. The court did not apply its Section 230 holding to any of Plaintiffs' claims or determine whether Plaintiffs' complaints could survive based only on their payment-processing allegations. *See* 2-GoogleER-200.

The district court "*sua sponte*" certified its "order for immediate interlocutory appeal" under 28 U.S.C. § 1292(b). 2-GoogleER-200-01. The court explained that the "case presents exceptional circumstances that are sufficient to justify an interlocutory appeal." 2-GoogleER-201. And it found that "reasonable minds could differ" as to whether Section 230 bars Plaintiffs' payment-processing theory. *Id.*

2. This Court then granted Defendants' petitions for interlocutory appeal under Section 1292(b). 2-GoogleER-157. But after briefing and oral argument, the Court vacated its prior order granting permission to appeal, dismissed the appeal for lack of appellate jurisdiction, and remanded to the district court. 2-GoogleER-161.

The Court determined that "the district court's certified order does not qualify as an 'order' under § 1292(b)," 2-GoogleER-157, because it only "present[ed] the district court's opinion on an abstract question of law without finally and definitively dismissing any claims," 2-GoogleER-159. The Court observed that the district court "did not apply its ruling" on Section 230 "to each of the [Plaintiffs'] causes of action to determine which, if any, should be dismissed." *Id.* Thus, the Court concluded that if it were "to rule on the merits of the district court's dismissal of certain theories of liability" alone, it "would be issuing an advisory opinion." *Id.*

At the same time, the Court recognized that "in complex cases involving many claims, a district court may decide to address pivotal threshold issues—such as the viability of certain legal theories—before applying its reasoning to specific claims." 2-GoogleER-161. The Court emphasized that "[t]here is nothing wrong with such an approach." *Id.* And the Court made clear that "[o]nce the district court" had applied its analysis of the Section 230 "legal theories" to "the claims at issue" on remand, it could again "certify its order for interlocutory appeal." *Id.*

3. On remand, the district court ordered Plaintiffs to submit a chart listing all claims and identifying which of the three theories of liability applied to each claim. 2-GoogleER-150-51. In response, Plaintiffs indicated that "all of [their] claims are brought under a 'processing virtual chip payments' theory" and that "none of [their] claims are brought under a 'promotion of social casino apps' theory." 2-GoogleER-135. Plaintiffs filed an amended complaint. 2-GoogleER-42. The amended complaint describes Google's allegedly unlawful payment-processing

conduct as "collect[ing] the money players spend on virtual chips, tak[ing] a cut for itself, and remit[ting] the rest to the" app developer. 2-GoogleER-51 (¶ 61).

The district court followed this Court's instructions by addressing Defendants' Section 230 arguments, ruling on Plaintiffs' specific claims, and again certifying its order for interlocutory appeal under Section 1292(b). The court explained that the only disputed issue was whether Plaintiffs' claims sought to impose a duty that treated Defendants "as a publisher" of third-party content. 1-GoogleER-9-10 (citation omitted). And the court stated that this element "is satisfied *either* when a [legal] duty springs from status or conduct as a publisher *or* that duty compels monitoring" of third-party content. 1-GoogleER-10.

The district court "conclude[d] that none of the Plaintiffs' claims invoke duties that derive from Defendants' status or conduct as a publisher." 1-GoogleER-13. The court explained that "[t]he crux" of Plaintiffs' claims "is that Defendants were prohibited from processing in-app payments for social casino apps." *Id.* And the court asserted that "[p]ayment processing is not an act of publishing," even when the payments being processed are for sales of virtual content. *Id.* Instead, in the court's view, payment processing is "a generic business activity common to virtually all companies, publishers or not, just like hiring workers or paying taxes." *Id.*

The district court rejected Defendants' argument that they cannot be held liable for "provid[ing] 'neutral tools'"—like payment processing—that facilitate the exchange of content. 1-GoogleER-15. Though acknowledging that "the Ninth Circuit has recognized a neutral tools analysis for Section 230," the court maintained that such an analysis applies only to "the third prong of the immunity test—whether content is provided by a third party." *Id.* "So," according to the court, "the fact that Defendants' payment processing services are neutral tools does not satisfy the second prong of Section 230 immunity"—whether the claims would treat Defendants as the publisher of the virtual content at issue. 1-GoogleER-16.

The district court also concluded that the duties invoked by Plaintiffs' claims do not "require" Defendants to "monitor[] . . . third-party content." 1-GoogleER-14. The court recognized that because "there is no independently maintained list of social casino apps," "[t]he only way [Defendants] can determine if they may or may not process a payment transaction is to cross-reference that transaction against the app it originated in." *Id.* But the court opined that "Defendants need not" "continue offering their own payment processing services" at all and could instead "allow app developers to use the services of dedicated third-party processors." *Id.* "In this way," the court stated, "Defendants can avoid all the issues raised by Plaintiffs' claims without so much as glancing at any app's content." *Id.*

The district court recognized that "[t]aking such a course of action would no doubt cause dramatic upheaval in Defendants' businesses," and "could cost each Defendant millions if not billions in revenue." 1-GoogleER-14-15. Nonetheless, because payment processing is not literally "the *only* option," the court viewed third-party content monitoring as "[un]necessary" to avoid liability. 1-GoogleER-15 (citation omitted). The court opined that "[p]erhaps if the termination of their payment processing services would pose an existential threat to Defendants, or if it would prevent Defendants from engaging in their publishing activities, then such termination would not be an acceptable alternative to monitoring." *Id.* But the court determined that "the pleadings do not contain facts supporting those circumstances." *Id.* Accordingly, the court held that "Section 230 does not apply" to Plaintiffs' claims. *Id.*

The district court then "turn[ed] to the merits of Plaintiffs' claims." 1-GoogleER-17. The court granted Defendants' motions to dismiss Plaintiffs' California claims, 1-GoogleER-19, "loss recovery claims" under several States' laws, 1-GoogleER-30, "unjust enrichment claims," 1-GoogleER-33, and "RICO claims," 1-GoogleER-36. In contrast, the court denied Defendants' motions to dismiss Plaintiffs' claims under "Kentucky's loss recovery statute," 1-GoogleER-30, as well as their claims under several States' "consumer protection laws," 1-GoogleER-32.

The district court "sua sponte certifie[d] [its] Order, and its prior order on Section 230, for immediate appeal under 28 U.S.C. § 1292(b)." 1-GoogleER-36. The court noted that this Court's initial grant of interlocutory review "indicat[es] that the issues involved [are] significant enough to warrant the Circuit's immediate consideration." *Id.* And the court emphasized that "[a]nother court may well have come out differently" on the Section 230 issue. 1-GoogleER-37.

5. Google and Meta filed a joint petition requesting that this Court grant interlocutory review under Section 1292(b) on the Section 230 issue. Pet. for Permission to Appeal, *Wilkinson v. Meta Platforms, Inc.*, No. 25-6436 (9th Cir. Oct. 10, 2025), Dkt. 1.1. Apple filed its own petition. Pet. for Permission to Appeal, *Custodero v. Apple Inc.*, No. 25-6437 (9th Cir. Oct. 10, 2025), Dkt. 1.1. Plaintiffs opposed the petitions, while conditionally seeking the Ninth Circuit's review of the district court's dismissal of their California state-law claims. Pet. Answer 22, *Wilkinson v. Meta Platforms, Inc.*, No. 25-6436 (9th Cir. Oct. 30, 2025), Dkt. 7.1. On December 16, 2025, this Court granted all Defendants' Section 1292(b) petitions and denied Plaintiffs' conditional cross-petitions. *See* 3-GoogleER-303; Order Granting Petition for Permission to Appeal, *Custodero v. Apple Inc.*, No. 25-7917 (9th Cir. Dec. 17, 2025), Dkt. 2.1.

SUMMARY OF THE ARGUMENT

This Court's Section 230 framework asks two questions relevant here. First, does the duty underlying a plaintiff's claim "derive[] from the defendant's status or conduct as a 'publisher'"? *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1102 (9th Cir. 2009). Second, does the duty "oblige[] the defendant to 'monitor third-party content'—or else face liability"? *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 742 (9th Cir. 2024) (citation omitted). If the answer to either question is yes, then Section 230 applies. Here, the answer to *both* questions is yes—so Section 230 is triggered twice over.

I. Section 230 bars Plaintiffs' claims because they necessarily require Google to monitor third-party content.

A. Under this Court's precedents, Section 230 applies where a plaintiff's claims would impose a duty on a defendant to monitor third-party content. In *Calise*, for example, Section 230 immunity attached where Meta could avoid liability only by "actively vet[ting] and evaluat[ing] third-party ads." 103 F.4th at 744. And in *Doe 1 v. Twitter, Inc.*, 148 F.4th 635 (9th Cir. 2025), Section 230 immunity was triggered where Twitter could avoid liability only by monitoring use of its "hashtag and search tools" and "act[ing] when its users adapt[ed] them to illicit ends." *Id.* at 647.

Here, Plaintiffs' claims seek to impose a similar content-monitoring duty on Google. Plaintiffs seek to hold Google liable for processing certain transactions within social-casino apps that allegedly violate anti-gambling laws. But Plaintiffs do not dispute that Google may lawfully process all other sales of virtual content in apps that do not qualify as social casinos—which is the vast majority of all content sales. Thus, the only way for Google to fulfill the duty underlying Plaintiffs' claims is to monitor the content provided by all apps in the Google Play store to determine which apps—and which transactions within those apps—violate anti-gambling laws. Section 230 shields Google from such a content-monitoring obligation.

B. The district court's contrary reasoning lacks merit. The court agreed that Google could fulfill the duty underlying Plaintiffs' claims only if it "cross-reference[d]" sales of virtual content "against" the particular third-party "app[s]" in which the transactions occurred. 1-GoogleER-14. But the court concluded that such monitoring is not "necessary" because Google could "choose to stop offering [its] own payment processing" to *all* app developers writ large. *Id.* While the court acknowledged that such an action could cost Google "millions if not billions in revenue," 1-GoogleER-15, it asserted that the theoretical availability of that change in operations precluded Section 230 immunity.

This Court's precedents, including *Calise* and *Twitter*, foreclose the district court's theory. In neither of those cases did this Court ask whether the platform could avoid content monitoring by fundamentally changing its business—for instance, by refraining from selling all third-party ads or disabling its search or hashtag functionality altogether. Nothing in Section 230's text supports the court's theory. And that theory would be practically unworkable.

Nor does this Court's decision in *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676 (9th Cir. 2019), assist Plaintiffs. As a threshold matter, *HomeAway* is inapposite because it did not involve a duty related to *content* at all. In addition, the platform in *HomeAway* did not need to monitor the details of particular listings because the city had an external registry of licensed properties. This Court explained that under Section 230, monitoring a government list is fundamentally different from monitoring third-party content. Here, because there is no such registry of social-casino apps, Google would need to review the content of all apps published in its Play Store to determine which qualify as social casinos—precisely what Section 230 is meant to prevent. Finally, *HomeAway* does not support the district court's assertion that a platform has no content-monitoring duty so long as it may avoid content monitoring by eliminating a critical platform-wide service like payment processing for all customers.

II. Section 230 also bars Plaintiffs' claims because distributing content in exchange for money is a publishing function. Because Plaintiffs seek to hold Google liable for such paid content distribution, their claims "spring[] from" Google's "status or conduct as a 'publisher.'" *Calise*, 103 F.4th at 740 (citation omitted).

A. Google's distribution of content for pay is publishing activity. Dictionaries define "publisher" to include those who offer works for sale and whose business is publishing. And at common law, content vendors, such as booksellers and newsstands, were regarded as publishers. Congress drafted Section 230 against that settled common-law backdrop.

Here, Google's processing of virtual-content sales is the modern equivalent of booksellers' and newsstands' processing of printed-content sales. Google hosts content, collects payments from app users who want that content, distributes the content to users' phones or tablets, and remits a portion of the payments to app developers. That is the same basic publishing conduct that booksellers and newsstands have engaged in for centuries.

B. This Court's neutral-tools precedents confirm that Google's payment processing is a publishing activity. The Court has repeatedly held that a platform "act[s] as a publisher of others' content" by offering neutral "tools meant to facilitate the communication and content of others." *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1098 (9th Cir. 2019). Here, Google's in-app payment-processing service is precisely such a tool. That service facilitates the delivery of virtual content—including virtual casino chips—to app users. After all, users and developers alike depend on the fact that Google's payment-processing service is secure and trustworthy—thus enabling the seamless exchange of content for money.

C. The district court's contrary reasoning does not withstand scrutiny. The court observed that Google could still "publish apps without offering payment processing services [itself]." 1-GoogleER-16. But the test is not whether the challenged action is indispensable to publishing third-party content; it is whether the challenged action "derives from the defendant's status or conduct as a 'publisher.'"

Calise, 103 F.4th at 740 (citation omitted). The court also deemed payment processing "a generic business activity common to virtually all companies, publishers or not." 1-GoogleER-13. But unlike Google, most companies do not process payments for *content* specifically. And it is Google's distribution of content for pay that makes it a publisher. Plaintiffs make no allegations that this tool is itself illegal or designed to facilitate illegal activity. Plaintiffs claim only that third parties use the tool for allegedly unlawful activities. That type of claim is exactly what Section 230 forecloses.

III. Affirming the decision below would contravene Section 230's objectives and threaten sweeping liability for publishers. Congress enacted Section 230 to promote the development of e-commerce and ensure a "vibrant and competitive free market" for the Internet. 47 U.S.C. § 230(b)(2). The decision below contravenes those objectives by pressuring Google to forgo a key part of its business—processing payments for in-app purchases of virtual content. Indeed, countless platforms distribute third-party content for a fee—including those that process subscriptions for podcasts, newsletters, or ebooks. Affirming the district court's decision could invite a wave of new lawsuits against such platforms claiming that they processed sales of allegedly unlawful content. That result would chill the very flow of information that Section 230 is designed to safeguard.

STANDARD OF REVIEW

This Court reviews *de novo* the district court's order on Google's motion to dismiss and its interpretation of Section 230. *Dyroff v. Ultimate Software Grp., Inc.,* 934 F.3d 1093, 1096 (9th Cir. 2019). To survive a motion to dismiss for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). "When a plaintiff cannot allege enough facts to overcome Section 230 immunity, a plaintiff's claims should be dismissed." *Dyroff*, 934 F.3d at 1097.

ARGUMENT

Section 230 immunizes "(1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to treat . . . 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). That test governs both Plaintiffs' state-law claims, *id.* at 1000, and their federal RICO claims, *see, e.g.*, *Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1164 (9th Cir. 2008) (en banc).

As the district court correctly noted, "Plaintiffs do not dispute that the first and third prongs of this test are met." 1-GoogleER-9. Plaintiffs have therefore conceded that Google is an "interactive computer service," 47 U.S.C. § 230(f)(2), and that the virtual-casino content at issue is "provided by another information content provider," *id.* § 230(c)(1)—meaning that Google is *not* "responsible, in whole or in part, for the creation or development" of that content, *id.* § 230(f)(3). That content is instead entirely attributable to third-party developers who designed the social-casino apps and provided the in-game option to purchase virtual chips. Plaintiffs argue only that their claims do not "seek[] to treat" Google "as a publisher" of the virtual-casino content. *Barnes*, 570 F.3d at 1100-01. Thus, "only the second prong" of the Section 230 test "is at issue." 1-GoogleER-9-10.

This Court's precedents establish the framework governing "what it means to 'treat[]' an interactive computer service 'as [a] publisher or speaker.'" *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 740 (9th Cir. 2024) (alterations in original) (quoting 47 U.S.C. § 230(c)(1)). Under that framework, the Court "inspect[s] the alleged legal duty" underlying the plaintiff's claims and asks two independent questions to determine whether the claims impermissibly treat the defendant as a publisher. *Doe 1 v. Twitter, Inc.*, 148 F.4th 635, 642 (9th Cir. 2025). *First*, does "the duty that the plaintiff alleges the defendant violated derive[] from the defendant's status or conduct as a 'publisher'"? *Barnes*, 570 F.3d at 1102. *Second*, does the duty "oblige[] the defendant to 'monitor third-party content'—or else face liability"? *Calise*, 103 F.4th at 742. If the answer to either of those questions is yes, then Section 230 "immunity applies." *Twitter*, 148 F.4th at 642.

Here, the alleged legal duty underlying each of Plaintiffs' claims is the same: Google must not provide payment-processing services for purchases of virtual chips in social-casino apps. 1-GoogleER-3-4; *see* 2-GoogleER-135 ("[A]ll of Plaintiffs' claims are brought under a 'processing virtual chip payments' theory."). And Section 230 bars those claims for two independent reasons. First, Google would need to "monitor" which third-party apps provide allegedly unlawful social-casino content "to avoid liability." *Twitter*, 148 F.4th at 642. Second, Plaintiffs' claims arise from Google's status and conduct as a publisher—namely, its distribution of virtual content in exchange for money. Allowing Plaintiffs' claims to proceed would contravene this Court's precedents and substantially undermine Section 230's protections.

I. SECTION 230 BARS PLAINTIFFS' CLAIMS BECAUSE THEY NECESSARILY REQUIRE GOOGLE TO MONITOR THIRD-PARTY CONTENT

Under this Court's precedent, when a plaintiff's claims would require the defendant to monitor third-party content to avoid liability, Section 230 immunity attaches. That is the case here. The district court's contrary conclusion—that Google could refrain from monitoring content by eliminating its payment-processing service altogether—defies precedent and common sense.

A. Section 230 Applies Where, as Here, a Plaintiff's Claims Would Impose a Duty on a Defendant to Monitor Third-Party Content

Monitoring and reviewing third-party content are core publishing activities. "[A] claim that 'obliges the defendant to "monitor third-party content"' to avoid liability" thus "treats the defendant as a publisher" and is barred by Section 230. *Twitter*, 148 F.4th at 640 (quoting *Calise*, 103 F.4th at 742); *see Calise*, 103 F.4th at 746 (Nelson, J., concurring) ("Following precedent, we hold that if the threat of liability requires an internet company to 'monitor third-party content,' this is barred by 47 U.S.C. § 230(c)(1).").

This Court's recent decisions illustrate what it means for a claim to depend on a content-monitoring obligation. In *Calise*, this Court held that Section 230 barred certain claims by Facebook users who responded to fraudulent third-party advertisements. 103 F.4th at 737. While "Meta does not charge users" to access Facebook, it "makes money" by charging "third parties" to "post their ads on [Facebook]." *Id.* at 736. The *Calise* plaintiffs' claims were based on an alleged "duty to prevent fraud by third parties" in their ads. *Id.* at 743. For instance, the plaintiffs asserted an unjust-enrichment claim, alleging that Meta had to return any profits that it obtained from "fraudulent third-party ads." *Id.* at 743-44. But the only way Meta could avoid liability under the plaintiffs' asserted duty was to "actively vet and evaluate third-party ads" to determine which contained fraudulent content and then avoid profiting from them. *Id.* at 744. Thus, "§ 230(c)(1) bar[red] Plaintiffs' unjust enrichment claim" and other similar claims. *Id.*

Likewise, in *Twitter*, this Court held that Section 230 barred two claims by minors whose nude photos were published on Twitter by a child-pornography trafficker. 148 F.4th at 641. The first claim was asserted under the Trafficking Victims Protection Reauthorization Act (TPVRA) and focused on Twitter's display of ads adjacent to "sought-after or popular posts, including those that depict pornographic content featuring minors." *Id.* The plaintiffs alleged that the TVPRA imposed on Twitter a "duty not to 'knowingly benefit' from participation in a sex-trafficking venture," such as by monetizing posts that depict child pornography. *Id.* at 643. But because Twitter's "advertising structure" monetized *every* post on its platform, this Court held that the alleged duty necessarily "impose[d] a monitoring obligation"—the "only way" for Twitter to avoid liability was to review all posts and identify those with child-pornography content. *Id.*

The Court also held that Section 230 applied to a second claim focused on Twitter's "hashtag and search functions," which allow users to amplify and find content—including child-pornography content. *Id.* at 646. The plaintiffs alleged that those features violated California laws that impose a "duty to design a reasonably safe product" that does not "aid[] consumers of child pornography." *Id.* But under the plaintiffs' theory, "Twitter would be required to monitor" use of its "hashtag and search tools" and "act when its users adapt them to illicit ends." *Id.* at 647. This Court thus held that Twitter was "immune from liability for the alleged third-party abuses of its hashtag and search functions." *Id.* at 646.

The principles applied in *Calise* and *Twitter* are longstanding. For instance, in *Roommates.Com*, this Court considered a claim alleging that a home-rental platform violated housing discrimination laws by allowing users to post essays expressing discriminatory preferences. 521 F.3d at 1161, 1173. The Court held that Section 230 barred that claim because the defendant could avoid liability only by "reviewing every essay . . . to distinguish unlawful discriminatory preferences from perfectly legitimate statements." *Id.* at 1174. In reaching that conclusion, the Court relied on *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119 (9th Cir. 2003), which found a dating site immune from a claim that would have imposed a duty to "review each user-created profile." *Roommates.com*, 521 F.3d at 1171-72. "Fail[ing] to review" such third-party content, this Court explained, "is precisely the kind of activity for which Congress intended to grant absolution with the passage of section 230." *Id.*

Plaintiffs' claims here seek to impose a similar duty on Google to monitor third-party content. As noted above, all of Plaintiffs' claims seek to hold Google liable for processing certain transactions within social-casino apps that allegedly violate anti-gambling laws. 1-GoogleER-3-4; *see* 2-GoogleER-135. At the same time, Plaintiffs do not dispute that Google may lawfully process sales of virtual content in apps *other than* social-casino apps, or even sales of virtual content *in* social-casino apps that are not used for virtual slot machines. Thus, the "alleged legal duty" underlying Plaintiffs' claims, *Twitter*, 148 F.4th at 642, is a duty to refrain from processing payments for certain kinds of virtual content used for certain purposes in social-casino apps alone. Plaintiffs maintain that to satisfy that duty, Google could deny payment-processing services to social-casino apps, "remove social casinos from [its] offerings," or "geo-restrict[] games such that they can only be played in certain states." 3-GoogleER-229 (¶¶ 95-96).

By asserting that Google must review third-party apps and remove or restrict those with social-casino content, Plaintiffs' claims "oblige[] [Google] to 'monitor third-party content' to avoid liability." *Twitter*, 148 F.4th at 640 (quoting *Calise*, 103 F.4th at 742). Google "would need to actively vet and evaluate" the content provided by the millions of apps in its store, and the millions of transactions within those apps, to determine which transactions qualify as a purchase of a virtual chip for a virtual slot machine. *Calise*, 103 F.4th at 744. Although Plaintiffs provide an (unofficial) list of apps with names suggesting that they offer social-casino content, 3-GoogleER-223-25 (¶ 74, fig. 4), Google could not simply limit its review to those apps or even assume that those apps meet Plaintiffs' definition.

Instead, Google would need to determine whether every app offered on Google Play contains content resembling a virtual-casino game and sells virtual-casino chips that are used to play virtual slot machines. Making those determinations would not be straightforward. For instance, some apps offer content resembling casino games but do not charge users to play, instead making money by selling ads. *See, e.g.*, Google Play, About This Game, *CAsh Blender – Fruit Machine*, https://bit.ly/4ti5UhM (last visited Apr. 9, 2026) (displaying a slot-machine game where "there are no in app purchases"). And as Plaintiffs acknowledge, many social-casino apps that sell virtual chips offer both games of chance that allegedly violate state gambling laws (*e.g.*, slot machines) and games of skill that do not. *See* 2-GoogleER-50 (¶¶ 54-55); *see, e.g.*, Wash. Rev. Code § 9.46.0237 (defining "gambling" as a "contest of chance or a future contingent event not under the person's control or influence"). Other apps offer social-casino content as a small part of a larger experience, including roleplaying games that allow users to take their characters to in-game casinos. *See, e.g.*, *Mason v. Mach. Zone, Inc.*, 851 F.3d 315, 317 (4th Cir. 2017) (describing "Game of War," a "game of strategy in which players build virtual towns and armies" but can also "obtain virtual 'chips' for use during one facet of the game called the Game of War casino"). Thus, Google would need to analyze the specific content provided by every app in its store—content that is constantly changing—just to satisfy Plaintiffs' "alleged legal duty." *Twitter*, 148 F.4th at 642.

Google's "monitoring obligation" would not stop there. *Twitter*, 148 F.4th at 643. In addition to identifying the apps that meet Plaintiffs' definition of a "social casino," Google would need to determine whether those apps violate state anti-gambling laws, and if so, which ones. To do so, Google would need to first identify the gambling laws that potentially apply to social-casino apps. Those laws vary significantly from state to state. For instance, some laws prohibit games in which users may "lose[] money or anything of value." Wash. Rev. Code § 4.24.070. Courts have interpreted such laws to cover social-casino apps that allegedly allow users to buy (but not sell) virtual chips because those chips allow users to "extend gameplay" when they would otherwise be required to pay for that opportunity, thereby giving them "value." *Kater v. Churchill Downs Inc.*, 886 F.3d 784, 787 (9th Cir. 2018). But other laws only prohibit games in which users may "lose[] money." Md. Code Ann., Crim. Law § 12-110(a). And courts have interpreted those laws not to cover social-casino apps because virtual chips that cannot be exchanged for real-world currency do not qualify as "money." *Mason*, 851 F.3d at 319-20.

After identifying those laws that arguably cover social-casino apps, Google would need to review whether the specific content provided by each social-casino app meets the criteria set forth in those laws. Even the laws that cover some social-casino apps may not cover others. For instance, a statute that covers games requiring users to buy virtual chips to "extend gameplay" may not cover games where "users receive free chips throughout gameplay, such that extending gameplay costs them nothing." *Kater*, 886 F.3d at 787. "Without reviewing every" social-casino app, and every transaction within those apps, Google "would have no way to distinguish unlawful [content] from perfectly legitimate [content]." *Roommates.com*, 521 F.3d at 1174.

In sum, Plaintiffs' claims would "oblige [Google] to 'monitor third-party content'"—the content provided by social-casino apps—"or else face liability." *Calise*, 103 F.4th at 742 (citation omitted). Those claims are thus "barred by § 230(c)(1)." *Id.*

B. The Contrary Reasoning of the District Court and Plaintiffs Lacks Merit

The district court agreed that "[t]he only way [Google] 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-GoogleER-14. And the court did not doubt that such an act would entail "monitor[ing of] third-party content." *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 682 (9th Cir. 2019). Yet the court concluded that such monitoring is not "necessary" because Google could simply "choose to stop offering [its] own payment processing" to *all* app developers "and allow app developers to use the services of dedicated third-party processors." 1-GoogleER-

14. In the court's view, the theoretical availability of that change in Google's operations—which the court recognized "could cost each Defendant millions if not billions in revenue"—precluded Section 230 immunity. 1-GoogleER-15. So long as that "course of action" would not pose "an existential threat" to Google, or "prevent [Google] from engaging in [its] publishing activities," the court deemed it "an acceptable alternative to monitoring." 1-GoogleER-14-15.

The district court's reasoning is flawed in many respects. To begin, the court ignored that "terminat[ing]" Google's "payment processing services" *would* "prevent [Google] from engaging in [its] publishing activities," 1-GoogleER-15, because distributing content for pay is a publishing activity. *See infra* at 38-42. Beyond that, the court cited no meaningful support for its theory that third-party content monitoring is not "necessary" so long as an online platform has the alternative option of fundamentally restructuring its business by eliminating a platform-wide function. 1-GoogleER-14. In fact, this Court's precedents refute that theory. Under those precedents, a court must "inspect the alleged legal duty underlying a plaintiff's claim." *Twitter*, 148 F.4th at 642. Here, that alleged duty is to deny payment-processing services to social casinos specifically—not to all apps generally. *See supra* at 27. And because that duty is tied to a particular type of content, fulfilling it would require Google to monitor all content on its platform to discern which apps might qualify as unlawful social casinos and which transactions might qualify as unlawful gambling.

Nor can the district court's rationale be reconciled with the holdings in *Calise* and *Twitter*. As already explained, *Calise* held that Section 230 immunity attached because the duty implicated by certain claims would have required Meta "to actively vet and evaluate third-party ads." 103 F.4th at 744. In so holding, the Court did not ask whether Meta could have avoided that duty by simply choosing to stop selling third-party ads altogether—though presumably that would at least theoretically have been an option that allowed Meta to avoid liability without monitoring third-party content.

Likewise, in *Twitter*, this Court held that Section 230 barred claims that would have required Twitter to identify and remove posts that contained child pornography. 148 F.4th at 643. The Court did not ask whether Twitter could have avoided that duty by redesigning its "advertising structure" or eliminating it entirely. *See id.* And the Court also held that Section 230 barred claims that would have required Twitter to "monitor" use of its "hashtag and search tools" and "act when its users adapt them to illicit ends." *Id.* at 647. Again, the Court did not suggest that monitoring was unnecessary because Twitter could have eliminated hashtag and search tools entirely. *See id.* Instead, the Court took Twitter's business "structure" and "revenue-generating activities" as a given. *Id.* at 643.

The district court's contrary approach lacks any sound textual or practical justification. Under that approach, courts would need to distinguish between actions that would "cause dramatic upheaval in [an online platform's] business[]"—which the court deemed "acceptable alternative[s] to monitoring"—and actions that would "pose an existential threat" to a platform's business—which are "[p]erhaps" not acceptable alternatives. 1-GoogleER-14-15. But nothing in Section 230's text supports a distinction based on the economic burdens a platform would face in avoiding liability on a claim. Rather, the text categorically states that "no liability may be imposed" for a claim that "treat[s]" a platform as a "publisher" of third-party content. 47 U.S.C. §§ 230(c)(1), (e)(3).

The district court's approach would also be unworkable in practice. Courts would be required to draw an amorphous line between content-monitoring alternatives that are onerous but acceptable and those that would threaten a platform's business or publishing activities. But courts are ill-equipped to conduct that analysis—particularly because it would depend heavily on the practical realities of a platform's finances. Thus, the proper question under Section 230's text and this Court's precedents is whether, in light of a plaintiff's allegations about an online platform's *current* structure, the relevant duty would "oblige[] the defendant to 'monitor third-party content'—or else face liability." *Calise*, 103 F.4th at 742.

For their part, Plaintiffs contend that this Court's decision in *HomeAway* is "controlling" and requires judgment in their favor here. Pet. Answer 17, *Wilkinson v. Meta Platforms, Inc.*, No. 25-6436 (9th Cir. Oct. 30, 2025), Dkt. 7.1. That is wrong. In fact, *HomeAway* illustrates why Plaintiffs' claims *do* require Google to monitor third-party content to avoid liability in contravention of Section 230.

In *HomeAway*, a city ordinance prohibited online platforms from executing transactions for short-term home rentals except for licensed "home-share[s]" listed on the city's "registry." 918 F.3d at 680. This Court concluded that the ordinance did "not require the Platforms to monitor" "third-party content" because they could simply "keep[] track of the city's registry" of licensed properties and refrain from "processing transactions for unregistered properties." *Id.* at 682-83.

As an initial matter, *HomeAway* is inapposite because it did not involve a duty related to *content* at all. Liability did not turn on any of the content that the platforms published, or on whether the platforms facilitated transactions for certain kinds of online content. Instead, the asserted duty there was to refrain from completing rental transactions for certain kinds of real-world properties. Holding a platform liable for processing unlawful real-estate transactions does not "treat[]" the platform as a "publisher" of content. 47 U.S.C. § 230(c)(1). Here, by contrast, the allegedly unlawful transactions involve the exchange of online content—virtual currency featuring distinct visual displays. What makes some transactions allegedly unlawful in this case is the nature of the virtual content and how it is used within the online apps. *See supra* at 27. And as elaborated below, processing sales of content has long been deemed a publishing function.

In addition, *HomeAway* is fundamentally distinct because the city there maintained an official registry listing licensed properties. That registry alleviated any need (actual or theoretical) for the platforms to monitor third-party content they published. But no similar external registry would allow Google to determine which third-party apps qualify as social casinos, or which content within those apps qualifies as allegedly unlawful gambling. That is precisely why Plaintiffs' claims *would* "require [Google] to monitor" whether certain apps provide allegedly unlawful "content." *HomeAway*, 918 F.3d at 682; *see also Gonzalez v. Google LLC*, 2 F.4th 871, 898 (9th Cir. 2021) (finding no Section 230 immunity because platform could satisfy duty to avoid sharing advertising revenues with designated terrorist organizations by referring to governmental list of such organizations without needing to monitor "any third-party content"), *vacated on other grounds*, 598 U.S. 617 (2023); *see Gonzalez v. Google LLC*, 598 U.S. 617, 622 (2023) (per curiam) ("We . . . decline to address the [Ninth Circuit's] application of § 230.").

HomeAway also does not bolster the district court's conclusion that Google could simply "choose to stop offering [its] own payment processing" instead of monitoring third-party content. 1-GoogleER-14-15. *HomeAway* states that a law does not trigger Section 230 based on a monitoring duty unless it "would necessarily require an internet company to monitor third-party content." 918 F.3d at 682. And the Court rejected the platforms' argument that they would in "operation and effect" be forced to monitor and "*remove* third-party content" because they could not "'leave in place a website chock-full of un-bookable listings.'" *Id.* at 683. But *HomeAway* does not address the situation here—where a platform would need to entirely eliminate a platform-wide service for *all* customers (payment processing) to avoid content monitoring. Nor does *HomeAway* address a scenario where the supposed alternative to content monitoring would cost a platform "millions if not billions in revenue." 1-GoogleER-14-15; *see HomeAway*, 918 F.3d at 683 (noting only that "removal of the[] listings would be the best option 'from a business standpoint'"). Thus, *HomeAway* is of no help to Plaintiffs—and subsequent decisions like *Calise* and *Twitter* clarify that the question under *HomeAway* cannot be (as the district court asserted) whether monitoring is literally "'the *only* option.'" 1-GoogleER-15 (quoting *Estate of Bride v. Yolo Techs., Inc.*, 112 F.4th 1168, 1777 n.3 (9th Cir. 2024)).[2] After all, as discussed above, the defendants in *Calise* and

[2] In *Estate of Bride*, the Court used the phrase "only option" in a passing footnote, without analyzing or applying that formulation. 112 F.4th at 1777 n.3. Nor did the Court suggest that Section 230 immunity cannot attach so long as a platform could avoid content monitoring by eliminating a platform-wide function. To the contrary, the Court expressly stated that "nothing" in its decision "extend[ed] legal exposure" beyond what "already existed under . . . *Calise*," *id.* at 1182—and *Calise* forecloses the district court's reasoning here.

Twitter had the option of eliminating third-party ads or hashtag and search tools entirely, and yet this Court still held that Section 230 immunity attached. *See supra* at 32. The same result is warranted here.

II. SECTION 230 ALSO BARS PLAINTIFFS' CLAIMS BECAUSE DISTRIBUTING CONTENT IN EXCHANGE FOR MONEY IS A PUBLISHING FUNCTION

Section 230 also bars Plaintiffs' claims because they "spring[] from" Google's "status or conduct as a 'publisher.'" *Calise*, 103 F.4th at 740 (quoting *Barnes*, 570 F.3d at 1102). Plaintiffs' claims rest on Google's supposed duty to refrain from "processing in-app payments for social casino apps." 1-GoogleER-13. According to Plaintiffs, Google's payment processing consists of the following steps: (1) "Google collects the money players spend on virtual chips," (2) "takes a cut for itself," and (3) "remits the rest to the [app developers]." 2-GoogleER-51 (¶ 61). And Plaintiffs allege that, "[i]n exchange for . . . distributing the social casino apps and collecting money from consumers, Google and the other Platforms take a 30 percent commission off of every in-app purchase." 2-GoogleER-54 (¶ 73). In essence, then, Plaintiffs challenge Google's distribution of third-party content (social-casino apps and virtual chips within those apps) to users' phones and tablets in exchange for money (a commission).

Plaintiffs' claims "treat[]" Google as a "publisher." 47 U.S.C. § 230(c)(1). Under both dictionary definitions and common-law principles, distributing content in exchange for money is a core publishing activity. And this Court's case law confirms that Section 230 protects a platform's use of a "content-neutral" payment-processing "tool[]" to "facilitate" the exchange of content. *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1096 (9th Cir. 2019).

A. Google's Distribution of Content For Pay Is Publishing Activity

Distributing content in exchange for money is publishing activity. Common dictionaries define "publisher" as "one that makes [something] public," including "one whose *business* is publishing." *Publisher*, 2 Webster's Third New International Dictionary 1837 (1993) (emphasis added); *see Barnes*, 579 F.3d at 1102 (relying on same definition in earlier edition). Likewise, Black's Law Dictionary defines the term to include "[o]ne who . . . offers for *sale* or circulation matter printed, engraved, or the like." *Publisher*, *Black's Law Dictionary* (6th ed. 1990) (emphasis added).

Common-law understandings of publishing are in accord. At common law, the term "publisher" encompassed everyone in the chain of content dissemination, including not only editors and printers, but also booksellers and newsstands. *See Barnes*, 570 F.3d at 1104 ("[E]veryone who takes part in the publication, as in the case of the owner, editor, printer, vendor, or even carrier of a newspaper is charged with publication." (alteration in original) (quoting Prosser & Keeton on the Law of Torts § 113, at 799 (5th ed. 1984) (Prosser))); *accord Zeran v. Am. Online, Inc.*, 129 F.3d 327, 332 (4th Cir. 1997). And under the common law of defamation, one "who reprints and *sells* a libel already published by another becomes himself a publisher and is subject to liability." Restatement (Second) of Torts § 578 (1977) (emphasis added). Indeed, distributors of speech have long been subject to liability for republishing defamatory content. *See Day v. Bream*, 174 Eng. Rep. 212 (1837) (holding courier liable for delivering libelous handbills). Common law courts regularly extended such liability to entities who distributed printed content in exchange for money, such as booksellers and newsstands. *See, e.g.*, *Dunn v. Hall*, 1 Ind. 344, 354-55 (1849) (bookseller); *Staub v. Van Benthuysen*, 36 La. Ann. 467, 469 (1884) (newsstand). As the Supreme Court explained, "a retail bookseller plays a most significant role" in "the distribution" and "*publication*" of books. *Smith v. California*, 361 U.S. 147, 150 (1959) (emphasis added).

To be sure, writers, newspapers, and book publishers were often categorized as "primary publishers," whereas newsstands and booksellers were categorized as "secondary publishers." Prosser § 113, at 803-804; *see* Dan B. Dobbs et al., Hornbook on Torts § 37.4, at 942 (2d ed. 2016). But everyone who played a part in disseminating the content—whether primary publishers or secondary publishers—was "considered to have *published* the material." *Church of Scientology v. Minn. State Med. Ass'n Found.*, 264 N.W.2d 152, 156 (Minn. 1978) (emphasis added). In the words of Section 230, they were all "treated as . . . publisher[s]." 47 U.S.C.

§ 230(c)(1); *see Zeran*, 129 F.3d at 332 ("[D]istributors are considered to be publishers").

And while courts limited the scope of republication liability for secondary publishers by applying a higher *mens rea* standard, that did not alter their status as publishers. Whereas primary publishers were held to a strict liability standard, secondary publishers like bookstores were held liable only if they knew or had reason to know of the defamatory content. *See Calise*, 103 F.4th at 739; Prosser § 113, at 803, 810-11; Restatement (Second) of Torts § 581(1) & cmt. B. In *Smith*, for example, the Supreme Court held that the First Amendment precluded a bookseller from being held liable for obscene materials it sold unless the State proved "knowledge of the contents of the book on the part of the seller." 361 U.S. at 152-53. But that distinction in *mens rea* requirements "signifies only that different standards of liability may be applied *within* the larger publisher category," *Zeran*, 129 F.3d at 332—not that distributors of content fall outside the publisher category.

This Court "presume[s] that when Congress uses 'common-law terms,' it intend[s] to incorporate their 'well-settled meaning[s].'" *Calise*, 103 F.4th at 738 (quoting *Neder v. United States*, 527 U.S. 1, 23 (1999)). Thus, when Congress used the term "publisher" in Section 230, it naturally referenced all entities that would have been deemed publishers at common law. *See Barnes*, 570 F.3d at 1104 (explaining that Section 230 "precludes courts from treating" platforms "as publishers not just for the purposes of defamation law, with its particular distinction between primary and secondary publishers, but in general"). And that includes entities that distribute content for pay, such as newsstands and booksellers—as well as their digital equivalents, such as online platforms that process payments for virtual content that they transmit to users' phones and tablets.

Here, Google's processing of virtual-content sales is the modern analog of booksellers' and newsstands' processing of printed-content sales. A bookseller buys books at a wholesale price from a publishing house, collects a higher retail price from customers who want those books, and then distributes the books to the customers. Similarly, Google hosts app content, collects payments from app users who want that content, distributes the content to those users' phones or tablets, and remits a portion of the payments to the app developer. Just as booksellers and newsstands throughout history have acted as publishers when engaging in that same basic conduct, Google acts as a publisher when engaging in that conduct today. Indeed, Amazon is no less a publisher than Barnes & Noble simply because it sells ebooks through an online platform rather than physical books in a brick-and-mortar store. And Google is equally a publisher when distributing virtual content to app users in exchange for pay.

The virtual-casino chips that Google distributes within social-casino apps qualify as "information." 47 U.S.C. § 230(c)(1); *see id.* § 230(f)(3) (referencing "information content provider"). They are visual figments of the game, similar to the gold coins that Mario collects in "Super Mario Bros" or the gems available for purchase in Scrabble GO. And they are depicted differently depending on the particular social-casino game: For example, in at least one game within DoubleDown Casino, the virtual chips take the form of gold coins stored in a cartoon piggy bank. *See* 2-GoogleER-43 (¶ 3); 2-GoogleER-44 (figs. 1 & 2). Meanwhile, in the Game of War casino, the virtual "gold" is depicted as gold coins, while the virtual chips are depicted as poker chips. *See Mason*, 851 F.3d at 317.

The only function of virtual chips is to enable gameplay within the social-casino apps—they can be used only within those apps and cannot be redeemed or exchanged for real money. 2-GoogleER-43 (¶ 3) ("[S]ocial casinos do not allow players to cash out their chips."); 2-GoogleER-51 (¶ 63) ("Virtual chips cannot be used outside of any individual [social-casino] app."). The virtual chips are thus content that unlocks further content within the apps. And ultimately, the chips are not materially different from other third-party content available for purchase within apps hosted by Google—from digital avatars, to premium articles, to ad-free videos. Thus, when Google distributes virtual chips to users' phones or tablets in exchange for money, it engages in "quintessential publishing conduct" within the scope of Section 230. *Calise*, 103 F.4th at 744.

B. This Court's Neutral-Tools Precedents Confirm That Google's Payment Processing Is a Publishing Activity

This Court's precedents lead to the same conclusion. The Court has repeatedly held that a platform "act[s] as a publisher of others' content" by offering "tools meant to facilitate the communication and content of others." *Dyroff*, 934 F.3d at 1098.

In *Dyroff*, for instance, the Court held that Section 230 barred claims challenging the defendant's neutral recommendation and notification tools. The plaintiff's son—a user of a social-networking website—died after purchasing drugs from a member of a drug-related group on the website. 943 F.3d at 1095. The plaintiff sought to hold the website operator liable for her son's death because its recommendation tool "steered users to additional groups dedicated to the sale and use of narcotics" and its notification tool alerted users about new posts within those groups. *Id.* This Court held that Section 230 immunized the website operator from liability "because its functions, including recommendations and notifications, were content-neutral tools used to facilitate communications." *Id.* at 1096. The Court explained that "[b]y recommending user groups and sending email notifications," the website operator "was acting as a publisher of others' content." *Id.* at 1098. Thus, the plaintiff's claims—which hinged on an alleged duty to refrain from recommending content—would "inherently require[] the court to treat" the website operator "as the 'publisher or speaker' of content provided by another," in contravention of Section 230. *Id.* (quoting *Barnes*, 570 F.3d at 1102) (alteration in original).

Similarly, *Twitter* held that Section 230 protects Twitter's offering of "neutral hashtag and search tools," even when users employ those tools for "illicit ends." 148 F.4th at 647. As explained above, the plaintiffs alleged that Twitter's hashtag and search functions facilitated the distribution of child pornography. *See id.* at 646. This Court noted its "skeptic[ism]" about claims that seek to hold platforms "liable for developing 'content-neutral tools used to facilitate communications.'" *Id.* (quoting *Dyroff*, 934 F.3d at 1096). And it held that Section 230 barred the plaintiffs' claims premised on Twitter's alleged duty to "prevent[] its search feature from responding to hashtags used solely to identify child pornography and from providing search suggestions that enable users to find such content." *Id.* at 646-47.

Likewise, in *Doe v. Grindr Inc.*, 128 F.4th 1148 (9th Cir. 2025), the Court held that Section 230 immunized Grindr, a dating app, from a claim premised on its design of neutral romantic-matching and geolocation tools. *Id.* at 1152-53. The plaintiff alleged that, when he was a minor, Grindr connected him with adult men who sexually abused him. *Id.* at 1152. He brought defective-design claims, asserting that Grindr's matching and geolocation functions facilitated illegal sexual activity. *Id.* This Court held that Section 230 barred the plaintiff's claims because they "necessarily implicate[d] Grindr's role as a publisher of third-party content."

Id. Specifically, the claims impermissibly faulted Grindr for "features and functions" that "'were meant to facilitate the communication and content of others'" and were "'content neutral' on their own." *Id.* at 1153 (quoting *Dyroff*, 934 F.3d at 1098, 1100).

This Court and others have reached the same conclusion in cases involving neutral payment-processing tools specifically. For example, in *Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102 (9th Cir. 2007), one of the defendants, CCBill, "allow[ed] consumers to use credit cards or checks to pay for subscriptions or memberships to e-commerce venues." *Id.* at 1108. Perfect 10, a website providing paid access to images of models, sued CCBill for facilitating copyright infringement, on the ground that third parties were selling images pirated from Perfect 10 using CCBill's payment-processing service. *Id.* This Court held that Section 230 barred Perfect 10's claims against CCBill. *Id.* at 1118-19.

Additionally, the court in *Coffee v. Google, LLC*, No. 20-cv-03901, 2022 WL 94986 (N.D. Cal. Jan. 10, 2022), held that Section 230 applied on facts substantially similar to those here. In *Coffee*, the plaintiffs alleged that Google violated state gambling laws by "processing . . . virtual currency sales [that] facilitate[] Loot Box sales." *Id.* at *6. Loot Boxes are a form of virtual content that "offer[] the player a randomized chance to receive an item designed to enhance the gaming experience, such as a better weapon, faster car, or more desirable player experience." *Id.* at *1.

Just as the plaintiffs here seek to hold Google liable for processing payments for virtual chips that can be used to obtain additional spins of an animated slot machine, the plaintiffs in *Coffee* sought to hold Google liable for processing payments for virtual currency that could be used to obtain additional Loot Boxes. The court held that Section 230 barred the plaintiffs' claims because "the conduct alleged"—processing payments for virtual content—"amount[ed] to Google's . . . provision of neutral tools and services to all developers across the Google Play platform." *Id.* at *6.

Other similar district court decisions abound. *See, e.g.*, *Courtright v. Epic Games, Inc.*, 795 F. Supp. 3d 1156, 1162-63 (W.D. Mo. 2025) (holding that platforms' "process[ing]" of "payments" for content sales "that occur in video game[]" apps was "done within the Platform Defendants' roles as publishers facilitating the use of third-party content"); *YZ Prods., Inc. v. RedBubble, Inc.*, 545 F. Supp. 3d 756, 769 (N.D. Cal. 2021) (holding that claims alleging that a platform unlawfully "facilitat[ed] various online transactions between third parties" would "require the Court to treat [the] [d]efendant as a publisher," in violation of Section 230); *L.W. ex rel. Doe v. Snap Inc.*, 679 F. Supp. 3d 1087, 1097-98 (S.D. Cal. 2023) (holding that Section 230 barred claims seeking to hold Google liable for "facilitat[ing] [the] sale" of allegedly dangerous apps).

Here, Google's in-app payment-processing service is a "tool[] meant to facilitate the communication and content of others." *Dyroff*, 934 F.3d at 1098. As explained above, virtual chips are third-party content. And by offering a tool to process payments for those chips, Google "facilitate[s]," *id.*, the delivery of that content to app users. Specifically, Google's built-in and universal payment-processing tool provides considerable protections for app users and developers. *See* Br. of Chamber of Progress & NetChoice 12-13, *In re Andrews v. Google LLC*, No. 22-16921 (9th Cir. July 31, 2023), Dkt. 32. For users, the tool offers security, removing risks associated with sharing personal and financial information with less established app developers and saves them from needing to vet every developer with which they would like to transact. *Id.* at 13-16. For developers, the tool provides a safe and efficient system for receiving payments from customers—thus allowing developers to profit from the content they create. In those ways, Google's payment-processing tool enables users to more easily obtain the content they want and developers to more easily deliver that content to users—just like the recommendation, notification, hashtag, and search tools that this Court has previously deemed to be protected neutral tools. *See Dyroff*, 934 F.3d at 1098; *Twitter*, 148 F.4th at 646-47.

C. The District Court's Contrary Reasoning Lacks Merit

The district court acknowledged that "[a] party . . . acts as a publisher when it facilitates communication between third parties." 1-GoogleER-11 (citing *Grindr*, 128 F.4th at 1153). And the court agreed with Google that it "provide[s] 'neutral tools' to social casino apps." 1-GoogleER-15. The court nonetheless concluded that Google does not act as a publisher because, in its view, "[p]ayment processing is not an act of publishing." 1-GoogleER-13. That conclusion conflicts with the longstanding meaning of publishing and with this Court's precedents.

As an initial matter, the district court incorrectly concluded that a defendant's offering of neutral content-distribution tools relates only to "the third prong of the immunity test—whether content is provided by a third party," and therefore has no bearing on the second prong—whether the plaintiff's claims seek to treat the defendant as a publisher. 1-GoogleER-15. Although the court cited *Dyroff* for that proposition, *see id.*, *Dyroff*'s second-prong analysis expressly focused on the platform's offering of tools to facilitate the distribution of content, 934 F.3d at 1097. Specifically, this Court concluded that the website operator "was acting as a publisher of others' content" because the functions it provided—"recommendations and notifications"—"are tools meant to facilitate the communication and content of others." *Id.* at 1098.

The district court also stated that "when [*Grindr*] discussed neutral tools, [it] cited those portions of *Dyroff* addressing the third prong." 1-GoogleER-16 (citing *Grindr*, 128 F.4th at 1153). That too is wrong. The section of *Grindr* discussing neutral tools begins: "Each of Doe's state law claims necessarily implicates Grindr's role as a publisher of third-party content." 128 F.4th at 1152. The Court then concluded that Section 230 barred the plaintiff's claims because he "used 'features and functions' of Grindr that were 'meant to facilitate the communication and content of others.'" *Id.* at 1153 (quoting *Dyroff*, 934 F.3d at 1098). As the district court noted, *Grindr* cited page 1098 of *Dyroff* for that proposition. *See* 1-GoogleER-16. And the cited portion of that page in *Dyroff* falls under the heading corresponding to the second prong: "2. Plaintiff Treats [The Defendant] as a Publisher or Speaker of Other's Information/Content."

To be sure, a neutral-tools analysis can *also* be relevant to the third prong because a tool's neutrality bears on whether information is being "provided" by the platform itself or "by another information content provider." *Barnes*, 570 F.3d at 1101. In *Dyroff*, for instance, the Court concluded that the website operator did "not become a developer of content" on the website because it only "provid[ed] neutral tools that a user exploits to create a profile or perform a search." 934 F.3d at 1099. And in *Grindr*, the Court concluded that Grindr simply "facilitate[d] the communication and content of others" because "the features and functions" of its platform "were 'content neutral' on their own." 128 F.4th at 1153 (citation omitted). But just because the neutrality of a content-distribution tool matters for prong three does not suggest that the defendant's use of the tool does not also matter for prong two. The district court thus erred in asserting that the neutral-tools analysis relates exclusively to the third prong.

The district court further asserted that Google's payment-processing service is not a publishing function because Google "can publish apps without offering payment processing services themselves." 1-GoogleER-16. But the test is not whether the challenged action is indispensable to publishing third-party content. It is whether the challenged action "derives from the defendant's status or conduct as a 'publisher.'" *Calise*, 103 F.4th at 740 (citation omitted). And as discussed earlier, Google acts as a publisher when it processes payments for third-party content that it distributes to users on their phones and tablets.

Under the district court's logic, a bookstore's processing of customer payments for books would not be a publishing function. After all, a bookstore can sell books "without offering payment processing services," 1-GoogleER-16—for instance, by hiring a third party to operate its cash register while the bookstore employees stock the shelves. But as already explained, booksellers have long been deemed publishers. The court's reasoning thus contravenes the established meaning of publishing.

Moreover, if conduct had to be indispensable to publishing to qualify for Section 230 immunity, then multiple cases of this Court would have come out differently. In *Dyroff*, for instance, the recommendation and notification tools were not indispensable to the social-networking website's ability to publish third-party content. In the words of the district court here, the website operator could still "publish" content "without offering [the recommendation and notification] services themselves." 1-GoogleER-16. Likewise, in *Twitter*, Twitter could have still published its users' tweets without also offering hashtag and search tools. Nonetheless, in both *Dyroff* and *Twitter*, the Court found that the claims sought to treat the defendants as publishers. The same logic applies here: it is immaterial whether Google's payment-processing services are absolutely essential to its ability to publish apps or in-app content; instead, what matters is that those services derive from Google's status and conduct as a publisher.

The district court also concluded that payment processing cannot be a publishing function because it is supposedly "a generic business activity common to virtually all companies, publishers or not, just like hiring workers or paying taxes." 1-GoogleER-13. But of course, not all companies distribute third-party content. And Google's payment-processing service is a publishing function because it specifically facilitates such content distribution. As discussed, Plaintiffs assert that Google's payment processing is unlawful here only because of the nature of the third-party content it helps disseminate. *See supra* at 27. Indeed, Plaintiffs' allegations repeatedly tie Google's payment-processing service to its distribution of content. *See* 2-GoogleER-45 (¶ 8) (emphasizing that social casinos "utiliz[e] Google for promotion, distribution, and payment processing"); 2-GoogleER-47 (¶ 18) (alleging that social casinos "need" Google to "access consumers, host their games, and process payments"). By contrast, "hiring workers or paying taxes" are activities unrelated to the distribution of content—and if those things are done unlawfully by an online publisher, it is not likely to be because of the kind of third-party content that entity publishes.

Contrary to the district court's suggestion, it is immaterial that other businesses process payments *without* distributing content. In *Dyroff*, for instance, the plaintiffs could have similarly argued that providing recommendations and notifications are "generic business activit[ies]" that many companies engage in, whether "publishers or not." 1-GoogleER-13. For instance, when a clothing-store employee recommends a jacket that might fit a customer's taste, the store is obviously not acting as a publisher. Nor is a restaurant when it notifies customers by text message that their table is ready. But in *Dyroff*, this Court held that a website operator's recommendation and notification tools were publishing functions. Thus, the question is not whether the relevant tool is *exclusive* to publishers; it is whether plaintiffs challenge the platform's use of the tool to distribute third-party content.

Relatedly, the district court equated Google's payment-processing tool to the activities of "dedicated payment processors such as PayPal, Square, and Stripe." 1-GoogleER-13. But there is a critical difference: Those dedicated payment processors do not distribute *content* for pay; instead, they facilitate ordinary commercial transactions, such as sales of food or clothing. And when they process those transactions—which do not involve the sale of content—they plainly do not engage in a publishing function. Here, by contrast, Plaintiffs challenge only Google's processing of payments for *content*—virtual chips within social-casino apps. And Plaintiffs do not dispute that virtual chips—unlike a cup of coffee or a pair of jeans—qualify as "information provided by another information content provider." 47 U.S.C. § 230(c)(1). Under this Court's precedents, when Google facilitates the distribution of virtual content through payment processing, it engages in publishing activity.[3]

Ultimately, what the district court viewed as payment processing is no different than publishing allegedly illegal content for money—which "is precisely the kind of activity for which Congress intended to grant absolution with the passage of section 230." *Roommates.com*, 521 F.3d at 1171-72. Indeed, in enacting Section

[3] Dedicated payment processors may also fall outside Section 230's scope for other reasons—for instance, because they may not "provide[] . . . an interactive computer service." 47 U.S.C. § 230(c)(1). In addition, because dedicated payment processors typically do not host or distribute content, they are unlikely to face liability for publication-based torts in the first place.

230, Congress sought not only to immunize platforms that passively hosted third-party content for free but also to protect platforms that facilitated the distribution of that same content for pay.

III. AFFIRMING THE DECISION BELOW WOULD CONTRAVENE SECTION 230'S OBJECTIVES AND THREATEN SWEEPING LIABILITY FOR PUBLISHERS

As already explained, the statutory text and this Court's precedents make clear that Section 230 bars Plaintiffs' claims. But if there were any doubt, Congress's objectives in enacting Section 230—which are codified expressly in Section 230(b)—confirm that result.

Section 230 "protect[s] websites against the evil of liability for failure to" monitor and "remove" allegedly harmful "content." *Roommates.com*, 521 F.3d at 1174. Congress enacted that protection "to promote the development of e-commerce," *Batzel v. Smith*, 333 F.3d 1018, 1027 (9th Cir. 2003), and to ensure a "vibrant and competitive free market" for the Internet, 47 U.S.C. § 230(b)(2). This Court has thus consistently interpreted Section 230 in a manner that effectuates Congress's "intent" to "preserve the free-flowing nature of Internet speech and commerce." *Roommates.com*, 521 F.3d at 1175.

The decision below contravenes Congress's objectives. As explained above, the district court's holding places Google in an untenable position: it must either monitor all third-party content on its platform to avoid processing allegedly unlawful gambling transactions or "stop offering [its] own payment processing" to *any* app. 1-GoogleER-14. Neither option is consistent with Section 230's design—and a holding that forces a platform to choose between monitoring content or fundamentally altering its business cannot be correct.

To start, the "specter" of liability for failing to adequately monitor third-party content "would have an obvious chilling effect" on the free exchange of information on Google's platform. *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1124 (9th Cir. 2003) (citation omitted). "It would be impossible" for platforms like Google "to screen" all of the voluminous third-party content "for possible problems." *Id.* (citation omitted). And "[f]aced with potential liability for each" allegedly unlawful piece of third-party content, platforms like Google "might choose to severely restrict" the availability of that content. *Id.* (citation omitted). "Congress considered the weight of the speech interests implicated and chose to immunize service providers to avoid any such restrictive effect." *Id.* (citation omitted).

The district court did not deny that Plaintiffs' theory would require Google to monitor third-party content to "determine if [Google] may or may not process a payment transaction." 1-GoogleER-14. And Plaintiffs themselves fault Google for "not remov[ing] social casinos from [its] offerings." 2-GoogleER-60 (¶ 95). Nonetheless, the court maintained that Google could "avoid" potential liability for inadequate monitoring by no longer "offering [its] own payment processing services" at all. 1-GoogleER-14. In essence, the court posited that Google could simply distribute third-party content for free—even though "[t]aking such a course of action would no doubt cause dramatic upheaval in [Google's] business[]" and cost Google "millions if not billions in revenue." 1-GoogleER-14-15.

The district court's proposed "course of action" cannot be squared with the express findings and policies codified in Section 230. 1-GoogleER-14. Finding that the Internet has "flourished, to the benefit of all Americans, with a minimum of government regulation," Congress sought "to preserve the vibrant and competitive free market that presently exists for the Internet." 47 U.S.C. §§ 230(a)(4), (b)(2). And nothing in Section 230's text or context suggests that Congress wanted to hamper the ability of platforms to earn a profit for distributing the content that makes the Internet vibrant. Yet under the district court's holding, class-action plaintiffs can effectively require platforms to restructure their business models and cost them "millions if not billions in revenue" merely by alleging that the platforms processed certain unlawful transactions involving third-party content. 1-GoogleER-15. Such an interpretation of Section 230 would chill the very flow of information that the statute is designed to safeguard.

That interpretation would also raise significant First Amendment concerns. The social-casino apps at issue here include content that is protected expression, and offering it for sale makes no constitutional difference. *See Brown v. Ent. Merchs.*

Ass'n, 564 U.S. 786, 789-90 (2011) (holding that video games "qualify for First Amendment protection" and striking down law regulating "sale or rental" of such games); *303 Creative LLC v. Elenis*, 600 U.S. 570, 594 (2023) (explaining that much expression is "created with an expectation of compensation"). Applying gambling laws to Google, based on its distribution of protected social-casino content for pay, would "impose[] a financial disincentive only on speech of a particular content." *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 116 (1991). And in turn, that would "ha[ve] a chilling effect" on this and other protected "Internet speech." *Zeran*, 129 F.3d at 333. Section 230 properly guards against that result—but the district court's interpretation would gut the statute's protections.

Indeed, if adopted, the district court's logic would have consequences extending well beyond the facts and parties of this case. Most glaringly, it would lead to the threat of liability for any online service that distributes third-party content for a fee. Consider, for instance, platforms that process subscriptions for podcasts (such as Spotify) or newsletters (such as Substack) produced by third parties. Even platforms' processing of sales of apps themselves would appear to fall within the district court's purported "payment processing" exclusion from Section 230. Affirming the court's order would invite a wave of lawsuits against platforms claiming that they processed sales of allegedly unlawful content. To avoid liability, such platforms would need to listen to every podcast or review every newsletter—an impossible task given platforms' breadth.

That result would eviscerate Section 230's core protections for countless platforms. It would make Section 230 immunity turn on whether a platform distributes content for free or for a fee, even though Section 230 is intended to "promote the development of *e-commerce*." *Batzel*, 333 F.3d at 1027 (emphasis added). And it would license "clever lawyer[s]" to evade Section 230 by simply framing their theories in terms of payment processing rather than publishing, *Roommates.com*, 521 F.3d at 1174, even though this Court has consistently rejected "effort[s] to circumvent" Section 230 "through 'creative' pleading," *Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1266 (9th Cir. 2016). The Court should reject such an effort again here, enforce the plain statutory terms, and vindicate Section 230's design.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's order denying in part Google's motion to dismiss.

Dated: April 10, 2026

Respectfully submitted,

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STATEMENT OF RELATED CASES

Defendants-Appellants Google LLC and Google Payment Corp. identify *Custodero, et al. v. Apple Inc.*, No. 25-7917, as a related appeal that was coordinated in the district court and raises the same or closely related issues. *See* 9th Cir. R. 28-2.6.

Dated: April 10, 2026

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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