Nos. 25-7916 and 25-7917

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re Apple Inc. App Store Simulated Casino-Style Games Litigation

In re Google Play Store Simulated Casino-Style Games Litigation

In re Facebook Simulated Casino-Style Games Litigation

On Appeal from the
United States District Court for the Northern District of California
Nos. 5:21-md-2985, 5:21-md-3001, 5:21-cv-2777
Hon. Edward J. Davila

Plaintiffs-Appellees' Response Brief

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INTRODUCTION

In 1996, Congress passed Section 230 of the Communications Decency Act to allow online computer services that operate virtual discussion forums to "perform some editing on user-generated content without thereby becoming liable for all defamatory or otherwise unlawful messages that they didn't edit or delete." *Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1163 (9th Cir. 2008) (en banc). In the quarter-century since Congress passed Section 230 of the Communications Decency Act, the internet has become ubiquitous, and technology companies now speak of an "embodied internet" where "you'll be able to do almost anything you can imagine—get together with friends and family, work, learn, play, shop, [and] create[.]" Founders Letter, 2021, from Mark Zuckerberg, Meta (Oct. 28, 2021), https://about.fb.com/news/2021/10/founders-letter/.

As it turns out, you can also gamble. The defendants in these three cases—Apple, Google, and Meta—each act as the cashier's cage for a bevy of online casinos that offer slot machine gambling, complete with spinning reels and flashing lights. They broker the transfer of billions of dollars from eager gamblers to the slot machine operators, keeping a 30% cut for themselves. And although "the power of the state to enact laws to suppress gambling cannot be doubted," *Marvin v. Trout*, 199 U.S. 212, 224 (1905), the defendants insist that Section 230 immunizes them from the liability they would face if they engaged in the exact same conduct offline.

This tactic is nothing new for these companies, who have been asking courts to stretch Section 230 far beyond what Congress intended for years. *See Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13, 14-15, 17-18 (2020) (statement of Thomas, J.). This Court, however, has "consistently eschewed an expansive reading of the statute that would render unlawful conduct magically lawful when conducted online." *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 683 (9th Cir. 2019) (cleaned up). The district court correctly refused to confer immunity for the act of brokering illegal gambling transactions, and this Court should do the same.

STATEMENT OF JURISDICTION

1. The district court has jurisdiction over these actions under 28 U.S.C. § 1332(d) because (1) they are class actions; (2) the defendants are corporations that have their principal places of business

in California and are organized under the laws of either California (Apple, Inc.) or Delaware (Meta Platforms, Inc. f/k/a Facebook, Inc. and Google LLC[1]); (3) one of the class members in each action is Jennifer Andrews, a natural person and a citizen of Minnesota; and (4) the amount in controversy is greater than $5,000,000 in each action. 3-AppleER-253; 2-GoogleER-49–50; 2-MetaER-175.[2] The district court also has jurisdiction under 28 U.S.C. § 1331 because Plaintiffs allege violations of 18 U.S.C. § 1962(c)–(d) and can exercise supplemental jurisdiction over the state-law claims pursuant to 28 U.S.C. § 1367. *Id.*

2. This Court's jurisdiction over these interlocutory appeals depends on 28 U.S.C. §§ 1292(b) and (e). The district court certified the orders entered in these cases for interlocutory appeal on September 30, 2025. GoogleER-39. Defendants each filed a petition for interlocutory review, and a motions panel of this Court granted the petitions over

[1] *See* 28 U.S.C. § 1332(d)(10) ("For purposes of this subsection and section 1453, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.").

[2] As at the petition stage, Plaintiffs respond to the defendants' briefs in a consolidated fashion. For references to the district court's order, entered in all three cases in identical form, only Google's excerpts of record are cited.

Plaintiffs' objection. Plaintiffs asserted at the petition stage that the Court lacked jurisdiction over Defendants' interlocutory appeals, on the basis that the district court (1) failed to make the express findings required by 28 U.S.C. § 1292(b); and (2) allowed Plaintiffs to amend their complaint, which precludes a decision that is controlling or will materially advance the termination of the litigation. Generally, the panel reviewing the merits "defer[s] to the ruling of the motions panel granting an order for interlocutory appeal," *Reese v. BP Expl. (Alaska) Inc.*, 643 F.3d 681, 688 (9th Cir. 2011), so Plaintiffs assume the matter has already been adjudicated. *But see In re Facebook Simulated Casino-Style Games Litig.*, No. 22-16888, 2024 WL 2287200, at *1 (9th Cir. May 21, 2024) ("Although a motions panel granted the parties permission to appeal and cross-appeal under § 1292(b), we have an independent obligation to confirm that we have jurisdiction under § 1292(b).").

3. The defendants in each case filed petitions for interlocutory appeal on October 10, 2025, as required by Federal Rule of Appellate Procedure 4(b)(2).

ISSUE PRESENTED FOR REVIEW

Whether an online service acts as a "publisher or speaker" under 47 U.S.C. § 230(c)(1) when it brokers gambling transactions for a social casino in violation of state law.

STATEMENT OF THE CASE

I. Factual Background

Defendants Meta (formerly Facebook), Apple, and Google (together, the "Platforms") are three of the largest technology companies in the world. As part of their many-tiered business models, each operates some version of an online app store, which permits independent app developers to offer applications for use within the Platforms' online ecosystem. The Platforms operate the app stores, allowing users to browse the different offerings by third-party developers and choose which ones to download (either for free or for payment). Many of these apps are *only* available for use through the Platforms, and the Platforms typically serve as the exclusive brokers and payment processors for all in-app purchases.

Many of these applications are innocuous—think the New York Times crossword puzzle. The ones at issue in this case, however, are illegal, unlicensed casinos, known in the industry as "social casino" games. Just as in brick-and-mortar establishments, these virtual casinos allow players to exchange real money for virtual "chips" and gamble those chips at slot machines in hopes of winning still more chips to keep gambling. While third-party developers are the ones running the slots, the Platforms happily sit behind the virtual glass in the cashier's cage—booking and processing every transaction, collecting real money from consumers, keeping a 30% cut, and remitting the rest to the developers. These unlawful transactions for virtual chips form the basis of Plaintiffs' claims against the Platforms.

A. Social Casino Games Offer Illegal Gambling.

Social casino games have been before this Court before, first in *Kater v. Churchill Downs Inc.*, which held that a social casino was, indeed, illegal gambling. 886 F.3d 784, 785 (9th Cir. 2018) ("[D]espite collecting millions in revenue, Churchill Downs, like Captain Renault in *Casablanca*, purports to be shocked—shocked!—to find that Big Fish Casino could constitute illegal gambling. We are not."). Plaintiffs allege that the social casino games at issue in these cases (including roughly 50 specifically identified in the pleadings) operate in the same manner, in all material respects, as the game at issue in *Kater*. 3-AppleER-250, 254–55, 258–59; 2-GoogleER-46, 50–51, 54–57; 2-MetaER-171–72, 176–77, 179–81.

Social casino apps are designed to look and feel like the electronic slot machines found in traditional casinos. 3-AppleER-254; 2-GoogleER-50; 2-MetaER-175. And like in traditional casinos, social casinos operate on a system of "chips" (some games call them "coins" or use other similar names), which "are a credit that allows a user to place another wager or re-spin a slot machine." *Kater*, 886 F.3d at 787; *see also* 3-AppleER-254–55; 2-GoogleER-50–51; 2-MetaER-176. After players burn through a small allotment of free chips, they put up real money to get more. *Id.* "[I]f a user runs out of virtual chips and wants to continue playing . . . she must buy more chips to have the 'privilege of playing the game.' Likewise, if a user wins chips, the user wins the privilege of playing . . . without charge." *Kater*, 886 F.3d at 787; *see also* 3-AppleER-254–55; 2-GoogleER-50–51; 2-MetaER-176. These characteristics are what make the social casinos illegal gambling games in at least one state—and Plaintiffs allege many more—even though the chips are not redeemable for cash. *See, e.g.*, *Kater*, 886 F.3d at 787 (rejecting argument that whether social casino was an illegal gambling game depended on whether players can redeem chips "for money or merchandise").

B. Social Casinos Bring in Massive Profits by Targeting and Exploiting Addicted Players.

States ban unlicensed gambling for good reason: it's addictive and extraordinarily pernicious, regardless of whether the winnings are cash or additional chances to spin the wheel. *See* 3-AppleER-248–50; 2-GoogleER-44–46; 2-MetaER-169–71; *see generally* Natasha Dow Schüll, *Addiction by Design: Machine Gambling in Las Vegas* 19 (2014) ("[I]t is not the chance of winning to which [slot machine gamblers] become addicted; rather, what addicts them is the world-dissolving state of subjective suspension and affective calm they derive from machine play."). The losses are staggering. In a single year alone, consumers gamble away an estimated *$6 billion USD* in social casino chips, and just one of these social casinos takes in approximately $400 million. 3-AppleER-249–50; 2-GoogleER-45–46; 2-MetaER-170–72.

Worse, the losses are not evenly distributed among players. Social casinos target and exploit what they call "whales"—their highest spending users. Some of the plaintiffs are among them. Plaintiff Ben Kramer has lost approximately $220,000 at social casinos, devastating his financial future and nearly ending his marriage. 3-AppleER-264. Ashley Honeysuckle has lost about $30,000, causing her to fall behind on her rent and car payments. *Id.* Sheri Miller and Jennifer Andrews have each lost at least $50,000 gambling on social casinos. 2-MetaER-191; 2-GoogleER-63. Eleanor Mizrahi, twice that amount. 2-MetaER-192.

In the states that are at issue in this litigation, victims of illegal gambling can sue the winner, stakeholder, transferee, or proprietor of the game to recoup their losses. Those states also make it unlawful to broker or profit from unlawful gambling transactions and offer injured people a remedy. And here, Plaintiffs seek relief from the Platforms that profit handsomely from their business decision to enter into financial relationships with the developers of social casino apps and to book countless gambling transactions with consumers. *See* 3-AppleER-277–331; 2-GoogleER-73–130; 2-MetaER-197–249.

C. The Platforms Act as the Cashier's Cage for Social Casino Apps.

The Platforms play several roles with respect to the virtual casinos. One of those roles is to operate the app stores, which allow developers to make their apps available to the public. Each of the

Platforms has their own app store. And for many innocuous free apps, making the app available through the app store is the extent of the relationship between app developer and platform.

For social casinos, however, the Platforms play an additional role: that of exclusive broker, payment processor, and banker. As discussed above, when users run out of chips, they in fact exchange real money to get more. At a traditional casino, this would happen at the cashier's cage. In social casinos, however, the Platforms operate the cashier's cage, not the app developers. 3-AppleER-254–55; 2-GoogleER-50–51; 2-MetaER-176. The Platforms have entered into agreements with each of the social casino app developers to act as the *sole* broker and payment processor for all users on that platform. *Id.* That means that if a player downloads a social casino app onto her iPhone, the only way to exchange money for chips is through Apple. If she's on an Android phone, she has to go through Google, and if she's playing through Facebook, then Meta brokers the exchange.

The Platforms demand such agreements from all app developers because it is an extraordinarily lucrative business model. 3-AppleER-250–51; 2-GoogleER-46; 2-MetaER-171–72. While a credit card processor might take a few percent as a transaction fee, the Platforms take a whopping 30% of all chip transactions. *Id.* That means that of one social casino app's $400 million in illegal gambling revenue, the Platforms kept $120 million. *Id.* And to be clear, there's nothing secret about what the transactions in these games are for. *Id.* As all of the Platforms know, substantially all of the chips they're selling are for the purpose of gambling. 3-AppleER-255; 2-GoogleER-51; 2-MetaER-176–77.

While Plaintiffs allege a number of claims against each defendant under the laws of various states, the claims each ultimately boil down to the contention that Platforms are liable because they conducted illegal gambling transactions or themselves engaged in harmful and unfair business practices by virtue of conducting those transactions. *See* 3-AppleER-277–331; 2-GoogleER-73–130; 2-MetaER-197–249. More specifically, Plaintiffs allege that it is illegal for the Platforms to broker the gambling transactions or to profit from gambling activity, and that they are entitled to redress for the injuries caused by that unlawful conduct.

II. Procedural Background

The actions against the three defendants are separate from each other, but each is pending before the same district judge, who is coordinating certain pretrial matters for efficiency, including motions to dismiss. After master complaints were filed in each of the cases in 2021, the district court permitted Defendants to file initial motions to dismiss regarding only the issue of immunity under Section 230 of the Communications Decency Act, before discovery and before any other issues were reached.

After briefing and argument, the district court granted the motions to dismiss in part and denied them in part. In the order, the district court applied Section 230 to limit the scope of Plaintiffs' claims to those related to "processing of *unlawful* transactions for *unlawful* gambling." 2-GoogleER-198. This is the theory that Plaintiffs primarily argued in their opposition to Defendants' motion to dismiss. On this revenue-based theory, the district court held that "the requested relief is grounded in the Platforms' own bad acts, not in the content of the social casino apps that the Platforms display on their websites." *Id.*

The district court then sua sponte certified the question for interlocutory review and stayed the cases pending that review. 2-GoogleER-200–01. A motions panel of this Court granted Defendants' petitions for leave to appeal over Plaintiffs' objection that jurisdiction was lacking. After briefing and argument, during which the cases were stayed in the district court for over a year, the merits panel dismissed for lack of jurisdiction. *In re Facebook Simulated Casino-Style Games Litig.*, No. 22-16888, 2024 WL 2287200 (9th Cir. May 21, 2024).

After remand, Plaintiffs filed first amended master complaints in each action, which made minimal changes to the substantive allegations. Each defendant then filed another motion to dismiss that re-raised Section 230 as to the payment processing theory only and made additional arguments regarding the sufficiency of Plaintiffs' pleading. GoogleER-6.

The district court, in a single consolidated order, again declined to dismiss any claims under Section 230. Because none of the Platforms addressed "whether the games offered in social casino apps constitute illegal gambling," the district court assumed that "the games in social casinos are illegal gambling" under relevant state laws. GoogleER-19.

Based on *Calise v. Meta Platforms, Inc.*, 103 F.4th 732 (9th Cir. 2024) and other relevant precedent, the district court concluded that "none of the Plaintiffs' claims invoke duties that derive from Defendants' status or conduct as a publisher" and that, under the facts as alleged, Plaintiffs did not seek to impose a duty on Defendants to monitor third-party content. GoogleER-13–15. The district court additionally rejected defendants' other Section 230 arguments, including that payment processing conduct is protected under Section 230 because it is a "neutral tool" that the Platforms offer to all apps on the app store, regardless of content. GoogleER-15–17. Neither this nor any other of Defendants' arguments, the court found, justified dismissal on Section 230 grounds. GoogleER-17.

Considering Defendants' other arguments in the motions, the district court dismissed two of the state law claims with prejudice (those under California law), dismissed other state law claims and the federal racketeering claims without prejudice and with leave to replead, and denied the motion to dismiss with respect to the remainder of the state law claims. GoogleER-38–39. The district court then once again certified the order for interlocutory appeal under 28 U.S.C. § 1292(b) on the basis that it "has now addressed specific claims, and the importance of the Section 230 issues has not changed." GoogleER-36–37. These appeals followed, and the district court again stayed proceedings pending the outcome.

SUMMARY OF THE ARGUMENT

Despite the Platforms' attempts to cast doubt on whether social casino apps truly count as gambling, repeated (albeit vague) invocations of the First Amendment, and lengthy professions that they are innocent of aiding-and-abetting liability, this narrow appeal raises none of those issues. The Platforms appeal only on the grounds that holding them liable for acting as the cashier's cage for social casinos would treat them as publishers of third-party content, and that they are therefore immune from liability under Section 230 of the Communications Decency Act. The district court correctly applied the two-part analysis set forth in *Calise v. Meta Platforms, Inc.*, 103 F.4th 732 (9th Cir. 2024) to conclude that the Platforms are not immune here, and this Court should do the same.

The first step of the *Calise* analysis requires identifying the duties that a plaintiff's claim imposes on a defendant and determining the right from which that duty arises. If the right springs from the defendant's status as a publisher, then imposing the duty treats the defendant as a publisher. Here, although there are many claims, the relevant duty is simple: the Platforms cannot act as the broker for illegal gambling transactions. That duty arises from the Plaintiffs' right to obtain restitution and damages from persons who engage in illegal gambling transactions. Because gambling, no matter how it is dressed up, is not a traditional publishing activity, this right does not spring from the Platforms' status or conduct as publishers. That remains true even if the Platforms conduct other activities that might be viewed as publishing, and even though the Platforms offer payment processing services to apps other than social casino apps.

In the second step of the *Calise* analysis, the Court considers whether a plaintiff's claims impose a duty on a defendant to moderate or exercise editorial control over a third-party's content, in the manner of a publisher. If a claim would require a defendant to monitor and remove content before publication to avoid liability, then it is barred. Here, the Platforms can avoid liability without making any changes at all to any third-party content, including the social casino apps available in their app stores. They can allow those apps to be published on their platforms freely, without needing to conduct any monitoring or moderation. The Platforms are liable only if they agree to broker an unlawful gambling transaction, which they can avoid a number of ways, including by monitoring the requests to process those transactions as they come in. Because those requests are internal, non-public, and not published, imposing a duty to monitor them does not offend Section 230.

Because the district court correctly applied the *Calise* test and concluded that Section 230 does not bar Plaintiffs' claims, the Court should affirm the order on those grounds.

ARGUMENT

I. Plaintiffs' Claims are Not Barred by Section 230 Because They Do Not Assert a Right Springing from the Platforms' Status as Publishers or Impose Any Duty to Moderate Third Party Content.

Section 230 of the Communications Decency Act "protects certain internet-based actors from certain kinds of lawsuits." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1099 (9th Cir. 2009). "The statute is designed at once 'to promote the free exchange of information and ideas over the Internet and to encourage voluntary monitoring for offensive or obscene material.'" *Id.* at 1099–1100 (quoting *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1122 (9th Cir. 2003)). However, "Congress has not provided an all purpose get-out-of-jail-free card for businesses" that operate online, *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 853 (9th Cir. 2016), and this Court has repeatedly warned of the need to "be careful not to exceed the scope of the immunity provided by Congress," *id* (quoting *Roommates.Com*, 521 F.3d at 1164 n.15).

The operative portion of the statute here is 47 U.S.C. § 230(c)(1), which 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." "Though somewhat jargony, this provision shields from liability those individuals or entities that operate internet platforms, to the extent their platforms publish third-party content." *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1090–91 (9th Cir. 2021). Its main purpose is to permit websites "to self-regulate offensive third party content without fear of liability." *Internet Brands,* 824 F.3d at 852. Without the immunity provided by Section 230, Congress was concerned that websites who removed some offensive content posted by their users might wind up liable for all of the other offensive content that they didn't remove. *Id.*

The Court has "held repeatedly, however, that this immunity is not limitless" and that Section 230 "does not provide blanket general immunity from liability deriving from third-party content." *Calise*, 103 F.4th at 739 (internal quotation marks omitted). Rather, to determine whether Section 230(c)(1) bars a cause of action, the Court applies "the three-prong test set forth in *Barnes v. Yahoo!, Inc.*," under which a defendant "enjoys CDA immunity only if it is (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." *Lemmon*, 995 F.3d at 1091 (quotation marks omitted).

The first prong grants Section 230 immunity to a relatively broad range of entities, since the definition of "interactive computer service" includes effectively anyone who runs a website or internet platform. *See Carafano*, 339 F.3d at 1123 (9th Cir. 2003). Inquiries into the third prong consider whether the content is actually someone else's or whether it is the website's own. *See, e.g.*, *Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1266 (9th Cir. 2016) (explaining that Section 230's "grant of immunity applies only if the interactive computer service provider is not also an 'information content provider,' which is defined as someone who is 'responsible, in whole or in part, for the creation or development of' the offending content.'") (citing *Roommates.com*, 521 F.3d at 1162).

The Platforms' appeals relate to the second prong, which requires courts to "ask whether the duty that the plaintiff alleges the defendant violated derives from the defendant's status or conduct as a 'publisher or speaker'" of someone else's content. *Barnes*, 570 F.3d at 1102. The Court's "opinion in *Calise v. Meta Platforms* . . . clarified the required duty analysis that originated in *Barnes v. Yahoo, Lemmon v. Snap, Inc.*, and *HomeAway.com, Inc. v. City of Santa Monica*":

> First, we examine the "right from which the duty springs." *Id.* (quotations omitted). Does it stem from the platform's status as a publisher (in which case it is barred by § 230)? Or does it spring from some other obligation, such as a promise or contract (which, under *Barnes*, is distinct from publication and not barred by § 230)? Second, we ask what "this duty requir[es] the defendant to do." *Id.* If it *requires* that [the platform] moderate content to fulfill its duty, then § 230 immunity attaches.

Est. of Bride by & through Bride v. Yolo Techs., Inc., 112 F.4th 1168, 1177 (9th Cir. 2024). As discussed in detail below, the right Plaintiffs seek to vindicate does not stem from the Platforms' status as publishers, and Plaintiffs do not seek to impose any duty to moderate or otherwise exercise editorial control over third-party content. Accordingly, Section 230 does not bar their claims.

II. The Right Asserted by Plaintiffs Does Not Stem from the Platforms' Status as Publishers.

The first step in the *Calise* analysis requires identifying the relevant duty, then determining "the 'right' from which the duty springs." 103 F.4th at 742. If that right "springs from something separate from the defendant's status as a publisher," such as "obligations the defendant has in a different capacity," then § 230(c)(1) does not apply. *Id*. Here, as the district court correctly concluded, the rights at issue spring from obligations the Platforms have as the brokers of gambling transactions, not as publishers, and § 230(c)(1) therefore does not apply.

A. The District Court Correctly Held that the Relevant Duty Is to Avoid Brokering Illegal Gambling Transactions.

The analysis begins with identifying the duty and the right that arises from it. In the previous appeal of this matter, the Court suggested that evaluating the Section 230 question here could "require examining each individual claim." *In re Facebook Simulated Casino-Style Games Litig.*, No. 22-16888, 2024 WL 2287200, at *2 (9th Cir. May

21, 2024). If each individual claim truly does need to be examined on its own, then there is little point in resolving this interlocutory appeal at all, given that many of the claims have been dismissed with leave to replead.

Assuming the Court is inclined to resolve the matter, even though there is no way to tell which claims will remain live in this case, Plaintiffs submit that they can be divided into several categories for the purposes of determining the relevant duties: loss recovery statutes, consumer protection statutes, federal RICO, and unjust enrichment.

Loss recovery statutes. Plaintiffs allege claims under the gambling loss recovery statutes of twenty-one states. While the specifics of the statutes vary, they all permit a person who has lost money at illegal gambling to sue to get that money back.[3] Plaintiffs allege that the Platforms have violated these laws by brokering illegal gambling

[3] Ala. Code § 8-1-150; Ark. Code § 16-118-103; Conn. Gen. Stat. § 52-554; Ga. Code § 13-8-3; 720 Ill. Comp. Stat. 5/28-8; Ind. Code § 34-16-1-2; Ky. Rev. Stat. § 372.020; Minn. Stat. § 541.20; Miss. Code § 87-1-5; Mo. Rev. Stat. § 434.030; Mont. Code § 23-5-131; N.J. Stat. § 2A:40-5; N.M. Stat. § 44-5-1; N.Y. Gen. Oblig. Law § 5-419; Ohio Rev. Code § 3763.02; Or. Rev. Stat. § 30.740; S.C. Code § 32-1-10; Tenn. Code § 29-19-104; Va. Code § 11-15; Wash. Rev. Code § 4.24.070; W. Va. Code § 55-9-2.

transactions for illegal gambling games. The duty Plaintiffs seek to impose, therefore, is the duty not to broker illegal gambling transactions.

Consumer protection statutes. Like their loss recovery act claims, Plaintiffs' state consumer protection act claims all depend on the legal theory—uncontested below—that the social casino games at issue here are illegal gambling in their states.[4] They allege their state consumer protection statutes prohibit brokering transactions for illegal gambling games, and that those statutes provide a remedy for consumers who are harmed by violations. 2-GoogleER-71; 2-MetaER-195; 3-AppleER-275. Again, the duty Plaintiffs seek to impose is the duty not to broker illegal gambling transactions.

RICO. The federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*, is a complex statute that imposes a narrower duty than the state gambling loss recovery statutes and consumer protection statutes. "RICO makes it a crime for a person

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[4] Ala. Code § 8-19-1, *et seq.*; Ark. Code § 4-88-101, *et seq.*; Conn. Gen. Stat. § 42-110a, *et seq.*; Ga. Code § 10-1-390, *et seq.*; 815 Ill. Comp. Stat. 505/1, *et seq.*; Ky. Rev. Stat. § 367.110, *et seq.*; Mo. Rev. Stat. § 407.020(1); N.J. Stat. § 56:8-2; N.M. Stat. § 57-12-3; Wash. Rev. Code § 19.86.020; W. Va. Code § 46A-6-104

employed by or associated with an enterprise to conduct or participate in the conduct of the enterprise's affairs through a pattern of racketeering activity[.]" *Children's Health Def. v. Meta Platforms, Inc.*, 112 F.4th 742, 765 (9th Cir. 2024). The statute, 18 U.S.C. § 1961(1) specifically defines "racketeering activity" to include violations of 18 U.S.C. § 1955, which prohibits "conduct[ing], financ[ing], manag[ing], supervis[ing], direct[ing], or own[ing] all or part of an illegal gambling business[.]" An "illegal gambling business" is one that violates state law, involves five or more persons, and operates continuously for more than thirty days. 18 U.S.C. § 1955(b)(1). Plaintiffs allege that the Platforms participated in illegal gambling enterprises, in violation of RICO, by brokering gambling transactions in the social casinos. The duty imposed, therefore, is a subset of the duty imposed by the state statutes: not to broker gambling transactions as part of an unlawful criminal enterprise.

Unjust enrichment. Finally, Plaintiffs allege that they are entitled to restitution under equitable principles of unjust enrichment. The duty here, imposed by equitable principles, is not to retain the proceeds of an illegal gambling transaction. GoogleER-13–14.

Although the duties imposed by these four categories of claim differ somewhat, they have, as the district court correctly identified, a common thread: refraining from brokering transactions for illegal gambling. GoogleER-13. If the Platforms were to comply with this duty, they would not face liability under any of Plaintiffs' causes of action. The loss recovery act, RICO, and unjust enrichment claims would all disappear because they allow recovery only from someone who is involved in illegal gambling transactions. *See* 2-GoogleER-71; 2-MetaER-195; 3-AppleER-275. The consumer protection act claims are based on whether brokering payment transactions for illegal gambling apps "constitutes an unfair and/or unlawful business practice" under those laws and thus are also actionable only if the Platforms brokered transactions for illegal gambling. *Id.*[5]

[5] While the complaint might be read to imply other duties, the district court previously determined that only a legal theory related to payment processing complied with Section 230, and Plaintiffs accepted that ruling for the purposes of briefing the motion to dismiss. *See* GoogleER-199–200. Because Plaintiffs need to identify only one viable legal theory to survive a motion to dismiss, there is no need to consider other possible theories. *See* Fed. R. Civ. P. 8(d)(2).

B. Plaintiffs' Right to Recover Does Not Spring from the Platforms' Status as Publishers.

Having identified the relevant duty, the corresponding right is simple to extract: to recover either restitution or damages to remedy the loss the Plaintiffs incurred in connection with the Platforms' brokering of unlawful gambling transactions. The question that remains is whether that right springs from the Platforms' status as publishers. It does not. Contrary to the Platforms' arguments, the fact that they may engage in some activities that could be viewed as publication does not mean that Plaintiffs' right to recover necessarily springs from those activities. The right at issue here springs from the Platforms' decision to broker illegal gambling transaction, not from any conduct that could fairly be described as publishing.

1. Conducting Some Publisher-Like Activities Does Not Confer Broad Immunity on All of a Defendant's Online Conduct.

"In this particular context, 'publication' generally 'involves reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content.'" *Lemmon*, 995 F.3d at 1091 (quoting *HomeAway*, 918 F.3d at 681) (alteration omitted). While a subset of an internet company's activities may constitute publishing, that does not mean that it automatically has immunity from liability for any tort that results from its online activities. *Doe 1 v. Twitter, Inc.*, 148 F.4th 635, 642 (9th Cir. 2025) ("A defendant is not immune from liability simply because its status as a publisher is a 'but-for' cause of a plaintiff's injuries."). For Section 230 to bar a cause of action, the *right* asserted by the plaintiff in the lawsuit must spring from the defendant's status as a publisher. *Calise*, 103 F.4th at 742.

This Court's decision in *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676 (9th Cir. 2019), is instructive here. In *HomeAway*, the plaintiff platforms operated websites that were essentially "online marketplaces that allow[ed] 'guests' seeking accommodations and 'hosts' offering accommodations to connect and enter into rental agreements with one another." *Id.* at 679. These hosting platforms displayed vacation rental listings supplied by the hosts and facilitated the bookings, collecting a fee for each successful one. *Id.* To combat the social ills caused by a proliferation of unlicensed vacation rentals, a city passed an ordinance requiring that hosting platforms "refrain[] from completing any booking transaction for properties not licensed and listed on the City's registry." *Id.* at 680. The hosting platforms sued the city, alleging that Section 230 preempted the ordinance.

This Court rejected the hosting platforms' argument that the ordinance treated them as the publishers of the third-party listings. The challenged ordinance, the Court explained, did not force the hosting platforms to alter, review, monitor, or perform any other publishing activity with respect to the third-party listings *Id.* at 682–83. Rather, it "require[d] only that transactions involve licensed properties." *Id.* at 683. Any liability faced by the hosting platforms under the ordinance could arise "only from [the] unlicensed bookings" themselves, not from the content of any listing or booking the hosting platform published. *Id.* at 684; *cf. Force v. Facebook, Inc.*, 934 F.3d 53, 84 (2d Cir. 2019) (Katzmann, C.J, concurring in part and dissenting in part) ("Plaintiffs' material support and aiding and abetting claims premise liability, not on publishing *qua* publishing, but rather on Facebook's provision of services and personnel to Hamas. It happens that the way in which Facebook provides these benefits includes republishing content, but Facebook's duties . . . arise separately from the republication of content.").

To put *HomeAway* in the rights-based language of *Calise*, the duty imposed on the hosting platforms was the duty not to broker a financial transaction for an unlicensed vacation rental. The corresponding right was the city's right to regulate transactions for short-term property rentals within its borders. The hosting platforms did engage in some publication activities, such as allowing third parties to put up the rental listings on their sites. But the city's right to regulate transactions for vacation rental properties did not spring from those activities, and therefore did not spring from the hosting platforms' status as publishers, because brokering a financial transaction for a vacation rental property is not something that publishers do.

2. Describing Casino Chips as "Content" Does Not Transform Gambling into Publishing.

The Platforms in this case are in the same position as the hosting platforms in *HomeAway*. Like the hosting platforms, they allow third parties (social casino app developers) to post content (social casino apps) using the Platforms' online services (the app stores). And like the hosting platforms, that is not the only facet of the Platforms' business. On top of hosting social casino apps in their app stores, the Platforms *also* act as the cashier's cage for the apps by brokering all transactions between players and app developers for the gambling tokens that the players feed into the slot machines. The Platforms then "collect a fee from each successful" gambling transaction. *See HomeAway*, 918 F.3d at 679 n.1. The right that Plaintiffs assert here springs from this second part of the Platforms' business, conducting financial transactions in a highly regulated context without the required license and in violation of state law. Accordingly, their claims are barred under the first step of the *Calise* analysis only if brokering unlicensed gambling transactions constitutes publishing activity.

As the district court correctly held, brokering gambling transactions is not publishing. GoogleER-13. ("Of course, payment processing activities may be an important part of publishing activity. But that does not make payment processing a publishing activity."). 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." *See Barnes*, 570 F.3d at 1102. "[P]ublication involves reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content." *Id.*; *see also Publish*, *Black's Law Dictionary* (11th ed. 2019) ("To distribute copies (of a work) to the public."). And while gambling will always involve some combination of words, numbers, and pictures, that does not turn brokering slot machine transactions into something that resembles publishing a book or a magazine. *Cf. There to Care, Inc. v. Comm'r of Ind. Dep't of Revenue*, 19 F.3d 1165, 1167 (7th Cir. 1994) (Easterbrook, J.) (holding that bingo is conduct, not speech, because the words used "do not convey ideas"). Users are not paying the Platforms to "access third-party content" when they ask them to complete a gambling transaction; they are asking a cage cashier to allow them "to purchase virtual chips for gambling." 3-AppleER-263; 2-MetaER-185; 2-GoogleER-60. Taking money that will be used to wager on a slot machine is not quintessentially publishing conduct.

The Platforms nevertheless attempt to shoehorn their non-publishing conduct into Section 230 by describing the chips or tokens used for gambling in the social casino game as "content," then arguing that when they broker the gambling transactions for the social casino apps, what they are *really* doing is publishing more or different content. *See* Meta Br. at 47 (arguing that Plaintiffs "assert that otherwise-lawful payment-processing activities (*i.e.*, accepting money in exchange for content) become unlawful when an online service allows a person to purchase and access a *particular kind* of third-party content—namely, virtual chips used in social casino games") (emphasis in original); Google Br. at 38–42 ("[W]hen 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.").

This strategy, recasting gambling as something else to skirt state law, is nothing new. This Court and others have been seeing through similar ruses for nearly a century. *See, e.g.*, *Kater*, 886 F.3d at 785; *Bullseye Distrib. LLC v. State Gambling Comm'n*, 110 P.3d 1162, 1166 (Wash. Ct. App. 2005) (rejecting argument that would mean "one could combine the operation of any slot machine with the sale of a product, thus separating the consideration from the gambling device and marrying it to the product sale"); *Green v. Hart*, 41 F.2d 855, 856 (D. Conn. 1930) (holding that machine offered gambling where winning players received tokens that entitled them to "readings of witty sayings or prophecies" because "the number of readings which a player receives is dependent upon the number of tokens received"). Meta may be right to say that "[n]o one would argue that movie theaters cease to be 'publishers' when they sell tickets using cash registers, simply because grocery stores and other retailers have checkout lines." Meta Br. at 49. But if a device that functioned as slot machine dispensed tokens that "were made 'good' for admission to a movie or other place of amusement, their character as a gambling device would be readily recognized." *State v. Marvin*, 211 Iowa 462 (1930). Gambling, in other words, does not turn into publishing just because some kind of content is involved.[6]

3. The Court Should Reject the Platforms' Attempts to Revive the Long-Rejected "But-For" Test.

Despite the command in *Calise* to focus on the right at issue, the Platforms all advocate for some version of a "'but-for' test that would provide immunity . . . solely because a cause of action would not otherwise have accrued but for the third-party content." *HomeAway*, 918 F.3d at 682. The Court has repeatedly and emphatically rejected this legal theory and should decline the Platforms' attempts to revive it.

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[6] Nor, for that matter, does the presence of "content" transform gambling into speech that is protected by the First Amendment. *See There to Care*, 19 F.3d at 1168–69. The Platforms' insinuations that this case raises vague but serious First Amendment issues can be safely disregarded.

See id.; *Yolo*, 112 F.4th at 1176 n.2 ("[W]e have explicitly disclaimed the use of a "but-for" test because it would vastly expand § 230 immunity beyond Congress' original intent"); *Doe v. Grindr Inc.*, 128 F.4th 1148, 1153 n.3 (9th Cir. 2025) (same); *Calise*, 103 F.4th at 742; *Internet Brands*, 824 F.3d at 853.

Most transparently, Apple argues 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." Apple Br. at 22. The phrase "inextricably depends"—which has never been used in any federal court decision involving Section 230—is just another way to describe but-for causation. *Cf. Morongo Band of Mission Indians v. F.A.A.*, 161 F.3d 569, 579 (9th Cir. 1998) ("Because the timber sales could not proceed without the road, and the road would not have been built *but for* the timber sales, the two were 'inextricably intertwined.'") (emphasis added).

Slightly more subtly, all three Platforms insist that the Court's decision in *Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102 (9th Cir. 2007), overrides reason and compels the conclusion that brokering gambling transactions is publishing. *See* Google Br. at 45; Meta Br. at 40, 48–49, 61; Apple Br. at 30, 36. In that case, the Court did apply Section 230 immunity to a defendant who processed payments, but it did not consider whether that defendant had acted as the publisher of third-party content. Instead, the panel merely relied on *Carafano v. Metrosplash.com, Inc.* for the proposition that Section 230 "establish[es] broad federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service," assumed that was sufficient to apply Section 230 to the defendants' conduct, and moved on to another part of the statute. *See id.* at 1118–19 (internal quotation marks omitted). That is precisely the but-for test that the Court subsequently rejected. *See Calise*, 103 F.4th at 742 ("Putting these cases together, it is not enough that a claim, including its underlying facts, stems from third-party content for § 230 immunity to apply."); *Roommates.Com*, 521 F.3d at 1171 n.31 (expressly "disavow[ing] any suggestion that *Carafano* holds an information content provider *automatically* immune so long as the content originated with another information content provider" in en banc opinion) (emphasis in original). *Perfect 10* is no longer good law on this point.

4. The Purported Neutrality of a Tool Does Not Shed Light on Whether the Right at Issue Springs from the Platforms' Status as Publishers.

Finally, Meta and Apple insist that the purported "neutrality" of their payment processing services somehow relates to the question of whether the right Plaintiffs assert springs from their status as a publisher.

While it is true that the Court has been "skeptical of . . . efforts to hold internet content providers liable for developing 'content-neutral tools used to facilitate communications,'" *Twitter*, 148 F.4th at 646 (quoting *Dyroff v. Ultimate Software Grp., Inc.,* 934 F.3d 1093, 1096 (9th Cir. 2019)), it has never used the neutrality of a tool to determine whether a particular right springs from publishing. Rather, neutrality is relevant to the third prong of the *Barnes* analysis—determining whether a particular statement can be fairly attributed to the internet company itself rather than a third party.

For example, in *Dyroff*, the defendant's social networking website "recommended groups for users to join, based on the content of their posts and other attributes" and sent email notifications to members of groups when new content was posted. 934 F.3d at 1095. The Court held that when a website's functions merely "facilitate the communication and content of others" such as by "recommending user groups and sending email notifications," it is engaged in publishing. *Id.* at 1098. It then further concluded that when those tools are neutral—that is, when the tools "facilitate" communication of content without "materially contribut[ing] to the content"—the provider of the tools is not considered to have created or developed the content. *Id.* at 1099. Accordingly, the defendant's conduct would have been publishing regardless of whether the tools involved were neutral, because they were recommending and displaying particular content. Under circuit precedent, "if algorithms that provide users with suggestions of some third-party posts over others," that "constitute[s] publishing conduct" without regard to neutrality. *Doe 1 v. Meta Platforms, Inc.*, 174 F.4th 1159, 1168 (9th Cir. 2026).[7]

[7] All three members of this panel joined in separate opinions disagreeing with the holding that they found they were bound to reach.

This right asserted here has nothing to do with recommendation algorithms or any editorial decision, neutral or otherwise. The tools at issue are the Platforms' payment processing services, which are not communication or content delivery functions. The Platforms, after all, would have the same relationship to the app developer's communications and content if someone else were brokering the gambling transaction, or if there were no broker at all.

Nevertheless, Apple and Google argue that because they describe social casino chips as "content," their payment processing infrastructure is the equivalent of a recommendation algorithm that facilitates that "content," turning the entire enterprise into publishing. If this theory were correct, the housing platforms in *HomeAway* could have manufactured Section 230 immunity by permitting the property owners to sell tokens ("content"), which users could then redeem directly with the property owners for nights at unlicensed properties. Plainly, adding in the extra step of buying the token would not transform a housing rental transaction into protected publishing. So too for gambling. Indeed, a district court considering claims that Google brokered gambling by processing an app developer's transactions came to exactly that conclusion. *See Coffee v. Google, LLC*, No. 20-CV-03901-BLF, 2022 WL 94986, at *7 (N.D. Cal. Jan. 10, 2022) ("Claims based on Google's processing of Loot Box sales, and retaining a 30% cut of those sales, would not be based solely on publication of third-party apps and provision of neutral tools.").

In sum, while the Platforms accuse Plaintiffs of "creative" pleading, it is the Platforms who are engaged in creative recharacterization of gambling transactions as innocent display of content to grant themselves "a free-wheeling immunity . . . that is not enjoyed by other players in the economy." *Yolo*, 112 F.4th at 1182. Under the correct analysis, the right Plaintiffs seek to vindicate stems from the Platforms' decision to broker illegal gambling transactions, not from any type of publishing or speaking. Accordingly, under the first step of the *Calise* analysis, Section 230 is no bar to recovery.

III. The Duty Not to Broker Illegal Gambling Transactions Can Be Satisfied Without Moderating Third-Party Content.

The second step of the *Calise* analysis "ask[s] what is this duty requiring the defendant to do? If it obliges the defendant to 'monitor third-party content'—or else face liability—then that too is barred by § 230(c)(1)." 103 F.4th at 742. The Platforms argue for a broad interpretation of the term "monitoring" that would extend protection to nearly any circumstance that involves even looking at third-party content. But this Court's precedent sets out a far narrower standard, finding a claim to be barred by Section 230 only when it requires a defendant to moderate content or otherwise exercise editorial control over what is published to avoid liability.

Here, the Platforms can avoid liability without exercising any control over what third parties publish using their services. They need only avoid brokering illegal gambling transactions themselves. That may require referring to some third-party content, but it requires no moderation or editorial control and therefore imposes no monitoring duty for the purpose of Section 230.

A. "Monitoring" in the Section 230 Context Refers to Exercising Editorial Control, Not Merely Considering or Referring to Third Party Content.

The term "monitoring" in the context of Section 230 refers only to reviewing third-party content as part of an editorial function, in the manner that a publisher exercises editorial discretion over the content of a publication. *See HomeAway,* 918 F.3d at 682 (referring to "monitoring or other publication activities"); *Internet Brands*, 824 F.3d at 852 (holding that a claim was not barred by Section 230 because it had "nothing to do with [the defendant's] efforts, or lack thereof, to edit, monitor, or remove user generated content"). Indeed, in a recent case, the Court explained that under the second step of the *Calise* analysis, § 230 immunity attaches if the duty requires that the defendant "*moderate* content to fulfill" it. *Yolo*, 112 F.4th at 1177 (emphasis added). The use of "moderate" in place of "monitor" indicates that for these purposes, the terms are intended to mean the same thing. *Cf. Twitter*, 148 F.4th at 643 (holding that theory of liability "impose[d] a monitoring obligation" because "the only way for [the defendant] to avoid the unlawful benefit from hosting child pornography would be to remove third-party posts—a quintessential publishing activity"); *Grindr*, 128 F.4th at 1153 (holding that duty required monitoring because it would require the defendant to moderate user messages so as to "prevent adult communications to minors").

The Court has "emphasize[d]" that the second step of the *Calise* test "does not mean immunity attaches anytime [a defendant] *could* respond to a legal duty by removing content." *Yolo*, 112 F.4th at 1177 n.3; *accord Twitter*, 148 F.4th at 645 ("[A] claim alleging a duty that does not treat a defendant as a publisher is not barred by § 230, even if that legal duty 'might lead a company to respond with monitoring or other publication activities.'") (quoting *HomeAway,* 918 F.3d at 682). The Court "look[s] instead to what the duty at issue *actually requires*: specifically, whether the duty would necessarily require an internet company to monitor"—that is, moderate—"third-party content." *Twitter*, 148 F.4th at 645. "For immunity to attach at this second step, moderation must be more than one option in [the defendant's] menu of possible responses; it must be the only option." *Yolo*, 112 F.4th at 1177 n.3. It does not encompass situations where monitoring and removing third-party content would be the "best option 'from a business standpoint'" or even the "most practical . . . option." *HomeAway*, 918 F.3d at 683.

The Court has also repeatedly held that the prohibition on imposing a duty to moderate published third-party content does not mean that internet companies are completely free of any duty that involves monitoring other "content . . . *resulting from*" that published content. *Id.* at 682. Again, *HomeAway* is instructive. The hosting platforms in that case argued that the city's ordinance was preempted by Section 230 because it would require them "monitor the content of a third-party listing and compare it against the City's short-term rental registry before allowing any booking to proceed." *Id.* The Court agreed that under the ordinance, the hosting platforms would have to monitor every single "incoming request[] to complete a booking transaction," and that those requests could be described as "content." *Id.* However, the Court explained that unlike "the content provided by the hosts of listings on their websites," a request to process a booking transaction "is distinct, internal, and nonpublic." *Id.* Because that duty does not involve moderation of published content or another form of editorial control, it is not the type of monitoring that offends Section 230. *See id.* at 682–83.

The Platforms urge the Court to depart from circuit precedent and adopt the rule the Court has repeatedly rejected: "that CDA immunity follows whenever a legal duty 'affects' how an internet company 'monitors' a website." *Calise*, 103 F.4th at 741 (quoting *HomeAway,* 918 F.3d at 682). Meta, in particular, accuses the district court of misapplying circuit precedent, arguing that instead, this Court should ignore *Yolo*'s recitation of the legal standard on the basis that

"*HomeAway* is irrelevant when a claim would require the defendant 'to review the content provided by third parties.'" Meta Br. at 59. According to Meta, Section 230 did not apply in *HomeAway* because the hosting platforms in that case "could cross-reference proposed transactions against the City's database of registered properties before allowing a booking to proceed—all without taking down any third-party listing or considering the content of that listing." *Id.* at 48; *see also* Google Br. at 18 ("*HomeAway* . . . did not involve a duty related to *content* at all."); Apple Br. at 19 ("The duty in *HomeAway* also did not require monitoring content because the platforms could comply without ever consulting published content . . . .").

Meta made a nearly identical argument in *Calise*, albeit with respect to *Internet Brands* rather than *HomeAway*. As the Court explained, this argument is no more than another version of the long rejected "'but for' test":

> Put differently, Meta argues that in each case where we rejected immunity, we did not need to consider the content posted on the defendant's website, yet here, finding Meta liable would require consideration of whether third-party ads are deceptive. As an example, it differentiates *Internet Brands* from this case because requiring the defendant in that case to warn about the perpetrators using its website to identify and recruit victims would not require it to "remove any user

> content or otherwise affect how it publishes or monitors such content." 824 F.3d at 849. True. But it is not true that "providing a warning" would not require "considering the content posted." How could Internet Brands warn about certain harmful content without considering what it was? Such a rudimentary fact-bound inquiry quickly falls apart and runs up against our precedent.

103 F.4th at 742. The Court's reasoning applies equally to *HomeAway*. To comply with the ordinance in *HomeAway*, a hosting platform could not broker a vacation rental transaction unless it considered which listing its customer was trying to book. It then had to use the published, third-party content within that listing to determine whether the property was licensed before completing the transaction. None of that is problematic under Section 230, because the ordinance did not require the hosting platforms to moderate the third-party content they published, such as by refraining from publishing listings for unlicensed properties.

There is no basis in this Court's Section 230 precedent for the conclusion that Section 230 bars any cause of action that might lead an internet company to even *consider* third-party content. The correct rule for the second step of the *Calise* analysis is that Section 230 bars a claim where the duty imposed would necessarily require the defendant

—with no other option available—to moderate or otherwise exercise editorial control over third-party content published on its platform.

B. Defendants Have Options Other than Content Moderation to Avoid Liability.

The Platforms offer two broad categories of monitoring they say they would be required to undertake if they had to follow the same state gambling laws as everyone else: (1) reviewing apps to identify social casinos and determine how virtual chips are used in gameplay; and (2) monitoring the laws of multiple jurisdictions to determine the legality of social casino apps. However, the first category is not *required* to fulfill the duty not to broker illegal gambling transactions, and second does not involve the type of monitoring that offends Section 230. If the Platforms—three of the largest, richest companies in the world—truly do not wish to undertake the obligations that come with running a nationwide payment processing business in a highly regulated area like gambling, then they can stop offering payment processing services without any effect on their bona fide publishing activities.

1. The Platforms Can Fulfill Their Duty Not to Broker Gambling Transactions by Monitoring Nonpublic Requests.

Primarily, each platform argues that Plaintiffs seek to impose the duty to review and monitor their entire catalog of apps to flag the ones that offer illegal gambling. Google Br. at 27 ("Google 'would need to actively vet and evaluate' the content provided by the millions of apps in its store . . . ."); Meta Br. at 53 ("Meta would first have a duty to identify social casino video games."); Apple Br. at 38 (arguing that Apple would have to engage in "continuous and all-encompassing" monitoring of all apps in order not to broker illegal gambling transactions).

Certainly that is one option, and it may make the most sense from a business perspective. But that does not mean it is the *only* option available. Most obviously, Plaintiffs' claims do not imply any duty to review, vet, or monitor anything at all when app developers make social casino games, or any other app, available on the Platforms' app stores. Nor do Plaintiffs suggest that any duty arises when a user selects an app from the Platform's app store and downloads it, whether for free or for a fee. Rather, a duty only arises when the Platform is faced with the decision about whether it will agree to broker a *subsequent* transaction for chip packages that are used as part of a slot machine game. *See* 2-GoogleER-51; 3-AppleER-254–55; 2-MetaER-175–76.

Thus, as the hosting platforms in *HomeAway* did not need to monitor every listing on their websites and take down the ones that feature unlicensed vacation rentals, the Platforms do not need to monitor every single app proactively and take down the ones that feature unlicensed gambling. Rather, the Platforms need only monitor "incoming requests to complete a . . . transaction," then decide whether to process that transaction. *See HomeAway*, 918 F.3d at 682. These requests are "distinct, internal, and nonpublic," so reviewing them does not constitute content monitoring, even if they may be "content . . . *resulting from*" the third-party published casino apps. *Id. And* if the Platform decides to block the transaction, there is no effect on any third-party published content. The app remains available in the app store, entirely unchanged, and with no publisher-like obligation on the part of the Platforms to remove, modify, or otherwise change it.

This Court has found no fault with requiring websites to monitor every user transaction, but to comply with their duties here, the

Platforms do not even need to go that far. They need only monitor a much smaller set of incoming requests: those from social casino app developers, asking that the Platforms enter into a financial relationship to process transactions and take a 30 percent cut. While those requests certainly result from the app developers' content, they are also distinct, internal, and nonpublic—precisely the type of request to broker a financial transaction that the Court found not to offend Section 230 in *HomeAway*. The Platforms could review if the request is to broker transactions that are legal or transactions that are illegal in some or all areas, then decide if they want to enter into the relationship. Whether the answer is yes or no is not an editorial decision and has no impact on publication, because apps can remain published and available on the Platforms' app stores, regardless of whether the Platforms agree to enter into a payment processing relationship with the developers of those apps.

The Platforms insist that imposing an obligation to review transactions or financial relationships is equivalent to a content-moderating obligation. They argue that Section 230 precludes liability because they would need to review the games themselves to decide whether to process a particular transaction. Meta Br. at 53; Apple Br. at 37; Google Br. at 34–35. The Court has long rejected this line of reasoning, which boils down to saying that Section 230 prohibits imposing any obligation that might require a defendant to *use* third-party content. *See HomeAway*, 918 F.3d at 682 ("To provide broad immunity every time a website uses data initially obtained from third parties would eviscerate the CDA.") (cleaned up).

In an attempt to avoid this straightforward application of *HomeAway*, the Platforms argue that because bookstores can charge money for books, financial transactions are actually publishing. *See* Meta Br. at 49–50; Apple Br. at 39; Google Br. at 41, 50 (arguing that "processing of customer payments for books" is a "publishing function"). But the question in the second step of the *Calise* analysis is not whether publishers sometimes engage in the challenged conduct. After all, a bookstore may have a cafe, but it does not publish croissants. The question is whether liability turns on the internet company's decision not to moderate a message published by a third party. *See, e.g.*, *Calise*, 103 F.4th at 743–44 (claim imposed a duty on Meta refrain from publishing fraudulent advertisements); *Yolo*, 112 F.4th at 1180 (claim sought to hold defendant liable for "the sharing of messages between users"); *Twitter*, 148 F.4th at 643 (claim barred because the only way for defendant to avoid liability was by removing posts containing child pornography); *Grindr*, 128 F.4th at 1152–53 (claim barred because it would require defendant to "prevent adult communications to minors"). Here, liability turns on the nature of the financial transaction (i.e., whether it is part of a wager), not the content of any message.

2. Section 230 Does Not Protect the Platforms from Interstate Federalism.

The Platforms next argue that Plaintiffs seek to impose the duty to monitor different gambling laws in different states, as well as monitoring the locations of users who sought to complete in-app transactions that were potentially illegal. *See* Google Br. at 29; Apple Br. at 38–39; Meta Br. at 53–54. While the Platforms may find that inconvenient, it has nothing to do with moderating third-party content published on their platforms. Barring states from requiring internet companies to know about and monitor their laws would conflict with circuit precedent, the will of Congress, and basic principles of interstate federalism.

Despite the Platforms' "concerns about the difficulties of complying with numerous state and local regulations, the CDA does not provide internet companies with a one-size-fits-all body of law." *HomeAway*, 918 F.3d at 683. "Like their brick-and-mortar counterparts, internet companies must also comply with any number of local regulations concerning, for example, employment, tax, or zoning." *Id.* A requirement to monitor and understand local regulations, might be "'monitoring' third-party content in the most basic sense, [but] such conduct cannot be fairly classified as 'publication' of third-party content." *Id.* at 682–83.

The Platforms' discontent relates less to Section 230 than to our federalist system generally. "Federalism secures the freedom of the individual. It allows States to respond, through the enactment of positive law, to the initiative of those who seek a voice in shaping the destiny of their own times without having to rely solely upon the political processes that control a remote central power." *Bond v. United States*, 564 U.S. 211, 221 (2011). Thus "[n]onuniformity is, in fact, an unavoidable reality in a federalist system of government." *Danforth v. Minnesota*, 552 U.S. 264, 280 (2008). That is particularly true with respect to gambling regulations, which "lie[] at the heart of a state's police powers." *Flynt v. Bonta*, 131 F.4th 918, 927 (9th Cir. 2025) (quoting *Artichoke Joe's Cal. Grand Casino v. Norton*, 353 F.3d 712, 737 (9th Cir. 2003)).

Viewed through this lens, the Platforms' argument that they should not be required to follow state laws because there is no simple "registry" that they can cross-check makes little sense. Some countries do have a legal system based on the theory that all of a person's duties are cataloged in a registry, or code, of regulations. *See Ace Am. Ins. Co. v. Wattles Co.*, 930 F.3d 1240, 1260 (11th Cir. 2019) ("[T]he French Civil Code of 1804 was envisioned as a kind of popular book that could be put on the shelf next to the family Bible or, perhaps, in place of it. It would be a handbook for the citizen, clearly organized and stated in straightforward language that would allow citizens to determine their legal rights and obligations by themselves.") (quoting John Henry Merryman & Rogelio Pérez-Perdomo, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* 29 (3d ed. 2007)). Neither the United States nor any of Plaintiffs' home states have ever had such a system. *See id.* If the Platforms wish to do business in the United States, they must contend with the complexities of the legal system we do have, which often requires hiring attorneys to analyze legal duties and provide advice on how to comply with them.

Compliance with state and local gambling laws may indeed be made more difficult or more expensive due to the Platforms' nationwide operation, but that is a feature, not a bug, in our federalist system. *See Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 338 (2008) ("The essence of our federal system is that within the realm of authority left open to them under the Constitution, the States must be equally free to engage in any activity that their citizens choose for the common weal.") (quoting *Garcia v. San Antonio Metro. Trans. Auth.,* 469 U.S. 528, 546 (1985)). There is no indication that Congress intended to upend the basic underpinnings of American government by way of Section 230. *See HomeAway,* 918 F.3d at 684 ("We do not discount the Platforms' concerns about the administrative burdens of state and local regulations, but we nonetheless disagree that § 230(c)(1) of the CDA may be read as broadly as they advocate, or that we may ourselves expand its provisions beyond what Congress initially intended.").

3. If the Platforms Do Not Want to Comply with the Law, They Should Not Broker Highly Regulated Transactions.

If the Platforms truly do not wish to hire lawyers to keep track of the legality of their financial relationships then, as the district court points out, there is the nuclear option. The Platforms could simply "stop offering their own payment processing and allow app developers to use the services of dedicated third-party processors. In this way. Defendants can avoid all the issues raised by Plaintiffs' claims without so much as glancing at any app's content." GoogleER-14; *see also Force*, 934 F.3d at 83 (Katzmann, C.J, concurring in part and dissenting in part) ("The duty not to provide material support to terrorism, as applied to Facebook's use of the algorithms, simply requires that Facebook not actively use that material to determine which of its users to connect to each other. It could stop using the algorithms altogether, for instance.").

Predictably, the Platforms dislike this idea. *See* GoogleER-15 ("Given how big the app industry has grown, relinquishing this commission by halting app processing services could cost each Defendant millions if not billions in revenue."). They are unable, however, to explain, on this record, why Section 230 categorically protects their right to offer any type of in-app payment processing service whatsoever without fear of liability. They complain vaguely that ceasing to offer payment processing services would be akin to "telling a bookstore that it can keep distributing books but needs to stop collecting payment for them," Apple Br. at 39, or being required to cease selling third-party advertisements, Google Br. at 32; Meta Br. at 57. They do not, however, identify any allegation in the complaint to support the premise that they are publishing *anything* when they broker in-app transactions for either casino or non-casino apps. Google and Meta offer nothing more than their say-so, and Apple refers to a document that the district court judicially noticed only for its existence and not for its truth. *See* GoogleER-7.

The Platforms have several options that allow them to comply with the duty not to broker illegal gambling transactions without having to moderate the content of the apps published in their app stores. These options may require monitoring of requests to complete individual transactions or of requests to enter into financial relationships with app developers, but neither of those requires content moderation in the manner that offends Section 230. If those options are too burdensome, then the Platforms should not engage in gambling-related conduct that, for any other business, would require licensure. They cannot, however, rely on Section 230 to immunize them from a lawsuit to vindicate a right that does not spring from their status as publishers and does not seek to impose a content-monitoring or other editorial duty.

CONCLUSION

The Court should affirm the district court's denial of the motions to dismiss with respect to Section 230.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 25-7916 and 25-7917

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