

Nos. 21-16506 & 21-16695

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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EPIC GAMES, INC.,  
*Plaintiff/Counter-Defendant,*  
*Appellant/Cross-Appellee,*

v.

APPLE, INC.,  
*Defendant/Counter-Claimant,*  
*Appellee/Cross-Appellant.*

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On Appeal from the United States District Court for the  
Northern District of California, Case No. 4:20-cv-05640-YGR-TSH  
Honorable Yvonne Gonzalez Rogers

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**BRIEF OF ROBLOX CORPORATION AS *AMICUS CURIAE* IN SUPPORT  
OF DEFENDANT-APPELLEE/CROSS-APPELLANT APPLE INC.**

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March 31, 2022

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Roblox Corporation states that it does not have a parent corporation and that no publicly held corporation holds 10% or more of its stock.

Dated: March 31, 2022

Respectfully submitted,

*s/ Paul T. Llewellyn*

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## INTEREST OF AMICUS CURIAE<sup>1</sup>

The issues presented in this litigation concern Roblox Corporation because it believes that there are important safety and security benefits to users of a platform when that platform is able to set standards for, review, and approve software enhancements, user-generated content, or apps that appear on its platform.

Roblox Corporation created and runs the popular online experience platform called Roblox. The Roblox platform provides tools for anyone to create 3D experiences (like a simulated theme park or playing as a superhero), and daily connects millions of users with those experiences. An average of 49.5 million people a day around the globe create and enjoy immersive experiences on Roblox. Roblox is also—though not only—an app. Users can access Roblox on a wide range of devices through the Roblox Client, including on iOS devices through the App Store, Android devices through Google’s Play Store, PCs, Macs, gaming consoles, and virtual reality devices. Roblox is thus a “developer” in the sense relevant to this litigation. With respect to each device on which Roblox can be experienced, Roblox operates like any other developer, subject to the terms set by the distribution platforms through which the Roblox Client can be accessed.

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<sup>1</sup> In accordance with Federal Rule of Appellate Procedure 29(a)(4)(E), no party’s counsel has authored this brief in whole or in part, or contributed money to fund its preparation or submission, and no person other than amicus or its counsel contributed money intended to fund this brief’s preparation or submission. Additionally, the parties have consented to the filing of this brief.

Roblox can attest to the benefits it has experienced vis-à-vis Apple's particular approach to the App Store: Many Roblox users are minors, so safety and security is a paramount concern. Apple's process for review and approval of apps available on the App Store enhances safety and security, and provides those apps greater legitimacy in the eyes of users. This is an important benefit that all apps, including Roblox's, enjoy by choosing to be a part of Apple's ecosystem.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

Since the debut of the iPhone in 2007 and the App Store in 2008, Apple has maintained an ecosystem where iPhone (and later, iOS) apps can be distributed and downloaded only through the App Store. 1-ER-31; 2-SER-577-78. As part of this integrated ecosystem, Apple has always provided a suite of services, including vetting and reviewing apps submitted for inclusion in the App Store for security and safety, among other things.

The App Store, however, represents just one vision among many other platform models. Many of these other models provide little or no control by the platform over the programs, games, or applications that developers distribute. It is argued in this case that the antitrust laws outlaw one particular model—i.e., the one employed by Apple (and some others)—and that only those platforms that allow relatively unrestricted access should be legally permitted. That contention is misplaced. The antitrust laws are meant to protect and promote competition, and

should not be used in a way to potentially rid the market of one approach simply because it requires a review process. Courts can and should evaluate the application of those policies to assure that they are promoting a legitimate goal, such as safety and security, rather than suppressing competition.

Roblox has a unique perspective on these issues, drawn from the fact that it is both a developer with a popular app (distributed through the App Store, among other channels), as well as a platform where millions of users create and enjoy experiences and where Roblox strives to create a safe and secure environment that enables and encourages creativity and civility.

As a developer, Roblox has experienced growth and success by distributing the Roblox Client through the App Store, as well as through other distribution platforms. Roblox is also intimately familiar with the crucial role that platforms can play in preserving the safety, security, and privacy of users, and the particular benefits that users experience when their fundamental concerns are addressed. Many Roblox users are minors, so privacy and safety concerns are paramount for Roblox and central to its appeal to users and their parents. Roblox believes that the App Store offers privacy and safety benefits, making the iOS and App Store ecosystem one of the market's most secure and safe distribution platforms.

## ARGUMENT

### THE SAFETY AND SECURITY BENEFITS AFFORDED BY THE APP STORE PLATFORM ARE REAL

The creation of new platforms over the last several decades has given rise to entirely new digital economies centered around online apps and experiences. A little over a decade ago, there was no such thing as an app economy. Yet by 2020, the app economy had a total value of \$1.7 trillion and consumers spent more than \$120 billion globally on app stores.<sup>2</sup> Central to this innovative force has been the freedom for companies to design new digital services and products and structure those products how they saw fit.

Apple has chosen to create an ecosystem for developers that provides enhanced safety, security and privacy. The district court properly found that Apple’s security concerns were “a valid and nonpretextual business reason for restricting app distribution,” as those restrictions enable “Apple to conduct app review” and help to protect security, safeguard privacy, and prevent “objectionable content beyond levels achievable by purely technical measures.” 1-ER-148. The same restrictions also protect “against scams and other fraud,” which in turn “encourages both users and developers to transact freely.” 1-ER-112–13; *see also* 1-ER-148; Apple Br. 75.

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<sup>2</sup> ACT | The App Association, *State of the U.S. App Economy: 2020* at 4, <https://actonline.org/wp-content/uploads/2020-App-economy-Report.pdf> (last visited Mar. 29, 2022).



The attacks on these findings, on appeal, are not in line with Roblox’s own, real world experiences. Safety, security, and privacy are central to the operation of any platform. Indeed, for Roblox these concerns are the most important factors in any decision relating to platform structure and policy. *Cf.* 1-ER-108 (discussing security concerns when an app targeted to children asks for a home address); 1-SER-164 ¶ 18 (same). And of course, the same is true for consumers, particularly parents, in selecting platforms for themselves or their children.

There are those who believe that other methods can be used to achieve the requisite safety and security for apps. But the evidence in the case (as the district court found), and consistent with Roblox’s experience, is that there are real and incremental safety and security benefits to Apple’s ecosystem. For instance, as to the argument that Apple could prevent the introduction of security-harming malware through technical measures, the “evidence show[ed], however, that this may not be enough to protect security because users often grant permission by mistake,” and malware may use social engineering techniques “to trick the user into granting access and evade operating system defenses.” 1-ER-109. Thus, malware might present itself as a dating app to ask for photo access to hold photos for ransom—and the evidence in the case did not demonstrate that “the operating system can protect against this type of behavior,” which can much more readily be caught through human review. *Id.* Similarly, human review is adept at catching red flags such as a

Tic-Tac-Toe game that asks for camera access, which might well be missed by automated processes. *Id.* And the preferred “less restrictive” alternative presented at trial—a notarization model—omitted human review. 1-ER-150–51.<sup>3</sup>

None of this is to say that Apple necessarily has it right whereas other platform models have it wrong, or that all decisions Apple might make regarding its App Store platform and related policies are sacrosanct or should be *de facto* protected from antitrust scrutiny. But the key point is that Apple’s model *does* provide real benefits to security and privacy. No platform is going to be perfect in its efforts to rid an ecosystem of bad actors, but it is core to Roblox’s beliefs that real, tangible results can be obtained where there is an enhanced focus on safety and security. The evidence at trial did not show that all of these benefits necessarily can be retained while eliminating the platform model that has allowed for them. Roblox’s experience, consistent with the evidence presented here, is that these particular procompetitive aspects of the App Store are real and intertwined with the way Apple

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<sup>3</sup> There are now suggestions that human review could be added to a notarization model, but at trial no proposal was presented as to how this would work in practice or how it could be scaled to achieve the same protections offered by Apple’s current model, much less do so without dramatically increasing costs. *See* Apple Br. 83-84. The only proposal offered at trial—that the district court itself head up a council of experts to decide who could distribute apps and under what security and trustworthiness conditions—is plainly unworkable and would run headlong into established antitrust doctrine. *See id.* (collecting citations).

structures its platform. The district court was right not to cast them aside as mere “pretext,” and neither should this Court.

### CONCLUSION

Roblox respectfully suggests that this Court should affirm the district court’s judgment regarding the federal antitrust claims in this case.

Dated: March 31, 2022

Respectfully submitted,

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**Form 8. Certificate of Compliance for Briefs**

**9th Cir. Case Numbers 21-16506 & 21-16695**

I am an attorney for Roblox Corporation.

**This brief contains 1,530 words**, excluding the items exempted by Fed. R. App. P. 32(f).

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**Signature** s/ Paul T. Llewellyn

**Date** March 31, 2022