

Apple is appealing the Epic Games ruling it originally called a ‘resounding victory’

With potentially billions of dollars and some control over the App Store at stake, Apple has filed for an appeal of the ruling in its major trial against Epic. While Apple largely won that case (the company went so far as to call the ruling a “resounding victory”) with Judge Gonzalez Rogers ruling in favor of Apple in nine of the ten claims Epic brought against the company, it did lose in one important way: the judge found that Apple violated California’s anti-steering rules, and demanded that Apple let developers link to outside payment systems. That policy would have taken over in December, but it may be pushed out beyond that – and it seems that’s the point.

As part of the appeal, Apple is asking for a stay to prevent the company from having to implement the new anti-steering rules, arguing that it “will allow Apple to protect consumers and safeguard its platform while the company works through the complex and rapidly evolving legal, technological, and economic issues.” And the company’s arguments there are pretty revealing if we’re reading the document right.

For instance, Apple claims that the new anti-steering rule is unnecessary because the company had already agreed to delete the offending section of its App Store Guidelines in the *Cameron v. Apple* settlement, but that’s news to us: at the time, Apple only agreed to “clarify” that app developers were allowed to communicate with consenting customers, not link to outside payment systems. That clarification was widely seen by developers as a red herring. At the time, Apple didn’t say

anything about deleting a section of its App Store Guidelines entirely.

It also seems like Apple is genuinely afraid that the court order *would* force them to open up the App Store to alternate payment mechanisms, despite what some Apple pundits have claimed. A button might actually be a button:

Links and buttons to alternate payment mechanisms are fraught with risk. Users who click on a payment link embedded in an app—particularly one distributed through the curated App Store—will expect to be led to a webpage where they can securely provide their payment information, email address, or other personal information.

Apple goes on to argue that if it were forced to allow app developers to link to external payment systems, it wouldn't be able to protect users from fraud:

While Apple could examine the links in the version of the app submitted for review, there is nothing stopping a developer from changing the landing point for that link or altering the content of the destination webpage. Additionally, Apple currently has no ability to determine whether a user who clicks on an external link actually received the products or features she paid for. Apple already receives hundreds of thousands of reports each day from users, and allowing links to external payment options would only increase this burden. In essence, the introduction of external payment links, particularly without sufficient time to test and evaluate the security implications, will lead to the very same security concerns that Apple combats with the use of IAP more generally, which the Court agreed were legitimate, procompetitive reasons for the design of the App Store.

There are a number of open questions about how well Apple protects App Store users – it was only this past week that the

company added a feature to easily report obvious App Store scams.

The company even cites a blog post from (and *The Verge's* story about) Paddle, a would-be rival to Apple's in-app payments that emerged after the *Epic v. Apple* ruling, using it to illustrate one possible threat to consumers. Not because of its lower fees, of course, but because "In contrast to Apple's strict rules surrounding privacy, that developer intends to provide access to user email addresses."

Other arguments are raised as well, which you can read in full in the document embedded at the bottom of this post. Overall, the company says that the "precipitous implementation of this aspect of the injunction would upset the careful balance between developers and customers provided by the App Store, and would irreparably harm both Apple and consumers."

Apple also cites a previous case, *Ohio v. AmEx*, as evidence that transaction platforms like the App Store can promote competition despite steering restrictions. (AmEx doesn't double as a software marketplace, though.)

It's important to note that Apple has only filed for appeal; we don't know if the court will grant the appeal – and the stay– just yet. When the ruling originally hit in in September, Apple said at the time that it hadn't decided whether to appeal.

For its part, Epic announced its intent to appeal on the same day Judge Gonzalez Rogers issued her order and permanent injunction against Apple. It was clear from the beginning that Epic wasn't happy.

Epic CEO Tim Sweeney issued his response to the appeal, and it's pretty much what you'd expect:

<https://www.theverge.com/2021/10/8/22717271/apple-appeals-epic-games-ruling-anti-steering>