Apple loses contempt appeal in Epic case

Apple has lost its appeal of a massive district court ruling in its ongoing antitrust dispute with Epic Games.

That April ruling from Judge Yvonne Gonzalez Rogers said that Apple "willingly" failed to comply with a 2021 order allowing mobile app developers to link to payment options outside of Apple's, and she barred Apple from charging a commission on in-app purchases using external payment links, among other restrictions. In today's opinion, the three-judge Ninth Circuit Court of Appeals panel largely affirmed Gonzalez Rogers' contempt findings and the limits on Apple. But it asked the judge to consider options that would let Apple charge reasonable fees for external link purchases.

Gonzalez Rogers' ruling took issue with a series of moves Apple made to discourage developers from using external payment methods, including adding a 27 percent fee for external payments, requiring developers to restrict links to plain text instead of allowing them to make buttons, and showing users a fullscreen warning when they tapped an external link. The appeals court agreed that "Apple claimed to comply with the injunction, but it instead prohibited developers from using buttons, links, and other calls to action without paying a prohibitive commission to Apple, and it restricted the design of the developers' links to make it difficult for customers to use them."

But the appeals court ruling said Gonzalez Rogers had gone too far in one area: prohibiting Apple from collecting *any* fee on in-app purchases from developers. "Rather than coercing Apple to comply with the spirit of the Injunction with a reasonable,

non-prohibitive commission, the district court used blunt force to ban all commissions, abusing its discretion," according to the opinion.

The panel has recommendations about an "appropriate commission or fee limitation," including that Apple charge based on the necessary costs for "its coordination of external links for linked-out purchases."

The opinion also says that while Apple can't force developers to make their own options less visible or appealing than Apple's default, it can restrict developers from placing buttons, links, or "other calls to action" in "more prominent fonts, larger sizes, larger quantities, and more prominent places than Apple uses for its own buttons, links, or other calls to action."

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