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16 **Attorneys for *Amicus Curiae* ACT | The App Association**

17 UNITED STATES DISTRICT COURT  
18 CENTRAL DISTRICT OF CALIFORNIA  
19 EASTERN DIVISION

20 IN THE MATTER OF THE SEARCH  
21 OF AN APPLE IPHONE SEIZED  
22 DURING THE EXECUTION OF A  
23 SEARCH WARRANT ON A BLACK  
24 LEXUS IS300, CALIFORNIA  
25 LICENSE PLATE 35KGD203

26 ) Case No. 5:16-CM-00010 SP  
27 )  
28 ) **NOTICE OF MOTION AND**  
 ) **MOTION OF ACT | THE APP**  
 ) **ASSOCIATION FOR LEAVE TO**  
 ) **FILE AN *AMICUS CURIAE* BRIEF**  
 ) **IN SUPPORT OF APPLE INC.'S**  
 ) **MOTION TO VACATE ORDER**  
 ) **COMPELLING ASSISTANCE**

)  
 )  
 )  
 ) Date: March 22, 2016  
 ) Time: 1:00 p.m.  
 ) Place: Courtroom 3 or 4  
 ) Judge: The Hon. Sheri Pym  
 )  
 )  
 )

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT ACT | The App Association (“ACT”) re-  
3 spectfully requests leave to participate in this action as *amicus curiae* supporting Ap-  
4 ple Inc.’s (“Apple”) Motion to Vacate the Order Compelling Apple to Assist Agents  
5 in Search, and Opposition to the Government’s Motion to Compel Assistance (filed  
6 Feb. 25, 2016) [ECF Docket Entry 16]. *Amicus* requests leave to help explain the ex-  
7 traordinary burdens that the Government’s position would impose, and to discuss the  
8 disruption it threatens for a significant sector of the economy.

9 **I. STANDARD FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE***

10 “[A] district court has broad discretion to appoint *amici curiae*.” *Hoptowit v.*  
11 *Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982). “There are no strict prerequisites that must  
12 be established prior to qualifying for *amicus* status although an individual or organi-  
13 zation seeking to participate as *amicus curiae* must make a showing that his partici-  
14 pation is useful to or otherwise desirable to the court.” *Congregation Etz Chaim v.*  
15 *City of Los Angeles*, No. CV 97-5042 CAS(EX), 2009 WL 1293257, at \*5 n.4 (C.D.  
16 Cal. May 5, 2009) (quoting *Infineon Techs. N. Am. Corp. v. Mosaid Techs., Inc.*, No.  
17 C 02-5772 JF(RS), 2006 WL 3050849, at \*3 (N.D. Cal. Oct. 23, 2006)). “An *amicus*  
18 brief should normally be allowed” when, among other considerations, “the *amicus*  
19 has unique information or perspective that can help the court beyond the help that the  
20 lawyers for the parties are able to provide.” *Cnty. Ass’n for Restoration of the Env’t*  
21 *(CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999) (cita-  
22 tion omitted). “District courts frequently welcome *amicus* briefs from non-parties  
23 concerning legal issues that have potential ramifications beyond the parties directly  
24 involved[.]” *Sonoma Falls Developers, LLC v. Nevada Gold & Casinos, Inc.*, 272 F.  
25 Supp. 2d 919, 925 (N.D. Cal. 2003).

26 As explained below and in ACT’s brief, the ramifications of the order to com-  
27 pel assistance obtained by the Government extend far beyond the parties directly in-  
28 volved and the issue of encryption. The Government’s position and the order’s

1 sweep should concern any company that uses proprietary methods to protect data pri-  
2 vacy and security, and ACT counts numerous such companies among its members.

3 **II. STATEMENT OF IDENTITY AND INTEREST OF *AMICUS CURIAE***

4 ACT (formerly known as the Association for Competitive Technology) is an  
5 international grassroots advocacy and education organization representing more than  
6 5,000 small and mid-size app developers and information technology firms. It is the  
7 only organization focused on the needs of small business innovators from around the  
8 world. ACT advocates for an environment that inspires and rewards innovation  
9 while providing resources to help its members leverage their intellectual assets to  
10 raise capital, create jobs, and continue innovating. To this end, ACT has been closely  
11 monitoring recent developments in this case and others like it because of the signifi-  
12 cant implications for the interests of its members. In light of the critical role that  
13 technological innovation plays in enhancing competition and improving the welfare  
14 of consumers, ACT has a special interest in ensuring that federal law is properly ap-  
15 plied to dynamic industries and innovative technologies.

16 ACT has participated as *amicus curiae* in a number of cases involving techno-  
17 logical innovation. *See, e.g., United States v. Apple, Inc.*, No. 15-565 (U.S.) (pending,  
18 ACT’s brief filed Dec. 2, 2015); *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct.  
19 1962 (2014); *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23 (2003);  
20 *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001) (en banc) (per curiam).

21 **III. *AMICUS CURIAE*’S EXPERTISE WILL BENEFIT THE COURT**

22 Based on its strong interest in fostering innovation and protecting the interests  
23 of app developers and information technology firms, ACT believes that its perspec-  
24 tive will aid this Court in evaluating the motions filed by the Government and Apple.  
25 The Government has premised its All Writs Act arguments on the proposition that  
26 “compan[ies] that write[ ] software code as part of [their] regular business” can be  
27 compelled to “modify[ ] an operating system” or “writ[e] software code.” *Ex Parte*  
28 Application for Order Compelling Apple Inc. to Assist Agents at 15 (C.D. Cal. Feb.

1 16, 2016). ACT has substantial knowledge and a unique perspective regarding those  
2 issues, and submits that its participation as an *amicus* would assist the Court in as-  
3 sessing the “potential ramifications beyond the parties directly involved,” *Sonoma*  
4 *Falls Developers*, 272 F. Supp. 2d at 925, and in particular would highlight the poten-  
5 tially devastating impact that the Government’s order may have for software devel-  
6 opers and across a number of critical industries.

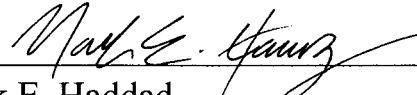
7 **IV. CONCLUSION**

8 Accordingly, ACT respectfully requests that the Court grant this Motion for  
9 Leave to Participate as *amicus curiae*, and to file the accompanying Brief in Support  
10 of Apple’s Motion to Vacate the Order Compelling Apple Inc. to Assist Agents in  
11 Search, and Opposition to the Government’s Motion to Compel Assistance.

12 ACT brings this motion after conferring with the parties’ counsel. Counsel for  
13 Apple and the United States indicated that they have no opposition to ACT | The App  
14 Association’s motion for leave to file its *amicus curiae* brief in support of Apple.

15 Dated: March 2, 2016

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18 By:   
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ACT | The App Association