In the

# Supreme Court of the United States

APPLE INC.,

Petitioner,

v.

ROBERT PEPPER, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## BRIEF OF ACT | THE APP ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITIONER

Brian Scarpelli
Counsel of Record
Joel Thayer
ACT | The App Association
1401 K Street, NW, Suite 501
Washington, DC 20005
(517) 507-1446
bscarpelli@actonline.org
jthayer@actonline.org

 $Counsel\ for\ Amicus\ Curiae$ 

283125



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ACT   The App Association, The Symbiotic Relationship Between App Developers and Platforms: A Ten-Year Retrospect, Website (last checked, August 7, 2018)	1
Adam Jaffe & Benjamin Jones, The Changing Frontier: Rethinking Science and Innovation Policy, National Bureau of Economic Research (2015)	9
Dan Russell-Pinson, OMG! Someone Copied My App. What Do I Do Now?, ACT   The App Association (August 30, 2017)1	4
Deloitte, The App Economy of the United States: A Review of the Mobile App Market its Contribuiton to the United States, Report (forthcoming 2018)	0



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