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8 *News/Media Alliance*

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11

12 DAWN FREGOSA, individually and on
behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 MASHABLE, INC.,

16 Defendant.
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Case No. 3:25-CV-01094-CRB

**AMICUS CURIAE BRIEF OF
NEWS/MEDIA ALLIANCE IN
SUPPORT OF MASHABLE,
INC.'S MOTION TO CERTIFY
FOR INTERLOCUTORY APPEAL**

Date: December 19, 2025
Time: 10:00 a.m.
Ctrm: 6, 17th Floor

Complaint Filed: December 17, 2024
Action Removed: February 3, 2025

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1 News/Media Alliance (“N/MA”) respectfully submits this brief in support of
2 Mashable, Inc.’s Motion to Certify for Interlocutory Appeal. Dkt. No. 56.

3 **STATEMENT OF INTEREST**

4 N/MA is a nonprofit organization representing over 2,200 publishers in the
5 United States, ranging from the largest news and magazine publishers to hyperlocal
6 newspapers, and from digital-only outlets to papers who have printed news since the
7 nation’s founding. Covering all subject matter and political viewpoints, N/MA’s
8 membership accounts for nearly 90 percent of the daily newspaper circulation in the
9 United States, over 500 individual magazine brands, and dozens of digital-only
10 properties. Recent conflicting interpretations of the California Invasion of Privacy
11 Act (CIPA) and a crushing wave of litigation threatens news media publishers with
12 significant costs of defending against nuisance litigation and a fear of civil and
13 criminal liability for nothing more than the routine and necessary aspects of having
14 an online presence. Several media organizations have been on the receiving end of
15 CIPA lawsuits, with many more organizations having received one (if not several)
16 demand letters threatening litigation absent a quick payout. In the face of the large
17 monetary penalties imposed by CIPA and the unclear scope of its liability, N/MA’s
18 members have a strong interest in the clarification and stability that can only be
19 provided by the Ninth Circuit.

20 **PRELIMINARY STATEMENT**

21 Every day, millions of individuals take to the internet to engage with news
22 media and find trusted and curated coverage of national and international
23 developments, culture, entertainment, sports, and community affairs. Publishers of
24 all sizes, ranging from the world’s largest digital providers to small, local publishers,
25 maintain an online presence to meet their consumers where they are. Their ability to
26 do so, and to provide the communities they serve with content that keeps them
27 informed, engaged, and entertained, a bedrock of democracy, is undermined by a rash
28 of litigation and litigation demands invoking CIPA. Threatening massive liability,

1 CIPA is being wielded against thousands of businesses for deploying commonly
2 available technologies to benefit users by making the internet work the way one
3 would expect, including through tools facilitating session authentication, security,
4 and fraud prevention.

5 As noted by Judge Chhabria, CIPA “is a total mess” that keeps getting worse.
6 *Doe v. Eating Recovery Ctr. LLC*, 2025 WL 2971090, at *1 (N.D. Cal. Oct. 17, 2025).
7 In thousands of CIPA lawsuits, plaintiffs have sought to weaponize the confusion
8 surrounding CIPA and extract massive and undeserved paydays from companies
9 using common and essential internet tools. Unfortunately, news media organizations
10 are caught up in the dragnet of CIPA demands, with plaintiffs demanding companies
11 make nuisance payments else risk millions, if not billions, in damages. The civil
12 liability threatened by CIPA—\$5,000 per violation—is enough to severely hamper
13 the continued ability of news media companies to operate on ever decreasing
14 margins.

15 These penalties may be reasonable for the type of misconduct CIPA was
16 designed to address: illegal wiretaps and corporate espionage, but that is not the
17 conduct plaintiffs seek to apply the statute to. Here, for example, Plaintiff’s theory
18 is that common IP address identifiers, like pixels or tracking technologies (routine
19 tools used for permission tracking, fraud prevention, cybersecurity, ad delivery, and
20 personalizing content, among other legitimate business functions), violate CIPA.

21 The impenetrable ambiguities that infect CIPA, a statute with both civil and
22 criminal penalties, do not allow for an interpretation that criminalizes routine online
23 activities under the rule of lenity. Moreover, the legislature certainly did not (and
24 could not) conceive that CIPA would be used to threaten everyday news media
25 organizations providing personalized journalism recommendations using ordinary
26 and customary internet advertising and web publishing practices with billions of
27 dollars in damages when it outlawed “pen registers.” Indeed, the legislature’s
28 targeted online privacy statute—the California Consumer Privacy Act, amended by

1 the California Privacy Rights Act (collectively, “CCPA”)—instructs businesses to
2 use *opt-out* practices for data collection that plaintiffs now contend violate CIPA.

3 District Courts across the country, as well as California state courts, have
4 provided diverging instructions on what actions subject businesses and individuals to
5 massive civil and criminal liability. This uncertainty demands clarification that only
6 the Ninth Circuit can provide—either by providing its own understanding of CIPA
7 or by certifying the question to the California Supreme Court. This case represents
8 an opportunity for the Ninth Circuit to provide the guidance that N/MA’s members
9 and countless other businesses operating in California need. The Court should
10 accordingly grant Mashable’s request to certify the appeal of the denial of its motion
11 to dismiss under 28 U.S.C. § 1292(b).

12 ARGUMENT

13 **I. The Wave of CIPA Lawsuits Represent an Unsustainable Threat for** 14 **Media Organizations**

15 Businesses, along with California state and federal courts, are facing a flood
16 of lawsuits invoking CIPA. According to one tracker, between April 1, 2022 and
17 November 13, 2025, there were 2,642 “wiretapping” cases brought in California.¹ A
18 June 2025 article noted that over 1,500 businesses have faced CIPA claims related to
19 advertising technology since the beginning of 2024.² This is just the tip of the
20 iceberg. For every suit actually filed there are others that settled before the case was
21 brought to court. Media companies across the country have not been exempted from
22 the tidal wave of CIPA suits. *See, e.g., Khamooshi v. Politico LLC*, 3:24-cv-07836
23 (N.D. Cal.); *Xu v. Reuters News & Media Inc.*, 1:24-cv-02466 (S.D.N.Y.); *Lesh v.*

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26 ¹ *Digital Wiretapping Litigation Map*, FISHER PHILLIPS (last visited November 15, 2025),
[https://www.fisherphillips.com/en/services/trending/us-privacy-hub/wiretapping-litigation-
map.html](https://www.fisherphillips.com/en/services/trending/us-privacy-hub/wiretapping-litigation-map.html)

27 ² Justin Donoho, *CIPA May Not Be Necessary to Protect Ad Tech Plaintiffs*, LAW360 (June 6,
28 2025), [https://www.law360.com/articles/2349440/cipa-may-not-be-necessary-to-protect-ad-tech-
plaintiffs](https://www.law360.com/articles/2349440/cipa-may-not-be-necessary-to-protect-ad-tech-plaintiffs).

1 *CNN, Inc.*, 1:24-cv-03132 (S.D.N.Y.); *Gabrielli v. Insider, Inc.*, 1:24-cv-01566
2 (S.D.N.Y.).

3 For many defendants, but particularly news media organizations, CIPA
4 litigation represents an “existential threat.” See Testimony of Chris Argentieri,
5 Senate Public Safety Committee Hearing, April 29, 2025.³ News media companies
6 are having to rapidly adapt to a changing media ecosystem, while continuing to
7 shoulder the burdens associated with producing original journalism in the face of
8 various business and legal challenges. Many smaller publishers have shuttered as a
9 result.⁴ Now, even where a publisher faithfully complies with the CCPA and invests
10 (at great cost) in implementing the opt-out consent mechanisms the law requires, the
11 publisher still faces legal costs and the risk of exorbitant liability under CIPA. See
12 *id.* As Mr. Argentieri explained during his testimony before the California Senate,
13 for smaller websites, even the cost to defend against these suits can be “catastrophic.”
14 *Id.*

15 **II. IP Address Tracking is Necessary, Commonplace, and Outside CIPA**

16 The overbroad reading of CIPA promoted by Plaintiffs directly implicates
17 innocuous and, in many cases, essential internet functions. In this case, for example,
18 Plaintiffs’ claim that recording incoming IP addresses is prohibited by CIPA.

19 An IP address is a number assigned to a device (often an internet router) to
20 allow connection to the internet. Dkt. 30 ¶ 34; *United States v. Vosburgh*, 602 F.3d
21 512, 517 n.3 (3d Cir. 2010). “When internet users visit a website, their devices
22 automatically send their IP addresses to the website’s server as part of the
23 communication process.” *Khamooshi v. Politico LLC*, 786 F. Supp. 3d 1174, 1179

24 _____
25 ³ Available at <https://www.senate.ca.gov/media/senate-public-safety-committee-20250429>.

26 ⁴ Angela Fu, *An alarming number of independent publishers and small chains closed papers last*
27 *year, new Medill study finds*, POYNTER (Oct. 20, 2025), <https://www.poynter.org/business-work/2025/medill-report-local-news-closures-independent-papers-news-deserts/#:~:text=The%20United%20States%20has%20lost,deserts%20behind%20in%20their%20wake;David%20Bauder,Newspapers%20closing,news%20deserts%20growing%20for%20beleaguered%20news%20industry,AP%20NEWS> (Oct. 20, 2025), <https://apnews.com/article/newspapers-closing-media-industry-report-traffic-b0a3a14510ffe104da836d46432c2678>

1 (N.D. Cal. 2025). Given this, IP addresses “are broadcast far and wide in the course
 2 of normal internet use,” *United States v. Cairra*, 833 F.3d 803, 806 (7th Cir. 2016)
 3 (internal quotation marks and citation omitted), and “it is normal for websites to
 4 track the IP addresses of their visitors,” *Aviles v. Liveramp, Inc.*, 2025 WL 487196,
 5 at *3 (Cal. Super. Ct. Jan. 28, 2025). PACER, for example, collects and stores “[t]he
 6 IP address from which you accessed the website.”⁵ As do the websites of the
 7 California Governor,⁶ Legislature,⁷ and Judiciary.⁸ Notably, public IP addresses—
 8 the type of IP addresses that Plaintiff alleges Mashable tracks, Dkt. 30 at 7 n.2—can
 9 be the same for several devices (and users) in a given area. *See Malibu Media LLC*
 10 *v. Does 1-10*, 2012 WL 12884460 (C.D. Cal. Oct. 10, 2012) (“[S]ubscriber
 11 information is not a reliable indicator of the actual infringer’s identity. Due to the
 12 proliferation of wireless internet . . . it is commonplace for internet users to share the
 13 same internet connection, and thus, share the same IP address.”). Hundreds, for
 14 example, can share an IP address by virtue of logging on from the same university
 15 internet connection. *See id.*; *Strike 3 Holdings, LLC v. Doe*, 2019 WL 10787748, at
 16 *1 (M.D. Fla. May 23, 2019).

17 Beyond advertising—a source of revenue enabling many publishers to provide
 18 their readers with free or low-cost content—websites use the IP addresses of their
 19 visitors for several important reasons. For example, Plaintiff alleges that Mashable
 20 uses a content delivery network (“CDN”) to speed up the delivery of the site’s content
 21 by sending it from servers located closer to the users’ location. Dkt. 30 at ¶ 199.⁹ To
 22 reduce latency by matching users with the closest geographic server, CDNs look to
 23 IP addresses, which give an indication of “a device’s state, city, zip code, and
 24 approximate latitude and longitude.” *Id.* at ¶ 39. Similarly, publishers use the general

25 ⁵ <https://pacer.uscourts.gov/privacy> (last visited Nov. 15, 2025).

26 ⁶ <https://www.gov.ca.gov/conditions-of-use/> (last visited Nov. 15, 2025).

27 ⁷ <https://leginfo.legislature.ca.gov/faces/home.xhtml>, Privacy and Conditions of Use Policy (last
 visited Nov. 15, 2025).

28 ⁸ <https://courts.ca.gov/privacy-statement> (last visited Nov. 15, 2025).

⁹ *See also* Dkt. 30 at 55 n.127 (citing WHAT IS A CDN (CONTENT DELIVERY NETWORK)?,
<https://www.akamai.com/glossary/what-is-a-cdn>)

1 geographic information provided by IP addresses to comply with territorial content
2 license restrictions: for example, US-based internet users will often be geofenced
3 from accessing films only licensed for European markets.¹⁰ IP addresses are also
4 used by content management tools, like paywalls, to determine whether a user has
5 already received their free trial sample and to engage in fraud detection. They also
6 enable businesses to bolster their cybersecurity by isolating and rejecting web traffic
7 from bots or nefarious actors.¹¹ IP addresses can also be used to recommend
8 personalized content to readers: for example, an IP address originating from Boston
9 might see an article about the Red Sox as the first news story on a homepage whereas
10 an IP address originating from San Francisco sees a story about the Giants. *See* Dkt.
11 30 ¶ 41 (“For example, for a job fair in [a] specific city, companies can send
12 advertisements to only those in the general location of the upcoming event.”).

13 These legitimate uses of IP addresses to engage in beneficial web publishing
14 activities were never intended to (and do not) violate the anti-wiretapping protections
15 of CIPA. Rather, the sharing and use of IP addresses is part of the expected and
16 voluntary exchange of information to operate websites, and does not reveal the
17 underlying content of user communications or impinge on user expectations of
18 privacy. *See Xu v. Reuters News & Media, Inc.*, 2025 WL 488501, at *5 (S.D.N.Y.
19 Feb. 13, 2025). Both the legislative history and multiple courts have confirmed that
20 the definitions of “pen register” and “track and trace devices” should not be stretched
21 to cover IP address-collecting software used by a website to improve its user
22 functionality and the effectiveness of its marketing. *See Sanchez v. Cars.com*, 2025
23 WL 487194, at *3 (Cal. Super. Ct. Jan. 27, 2025) (“[T]he legislative history of the
24 CIPA suggests that ‘pen register’ and ‘track and trace devices’ refers to devices or
25 processes that are used to record or decode dialing, routing, addressing, or signaling

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27 ¹⁰ *See* Noah Hertz-Bunzl, *A Nation of One? Community Standards in the Internet Era*, 22
FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 145, 187-88 (2011).

28 ¹¹ *Cf.* David Atkinson, *Putting GenAI on Notice: GenAI Exceptionalism and Contract Law*, 120
NW. U. L. REV. ONLINE 27, 43 (2025).

1 information from *telephone numbers*, not internet communications such as
2 websites.” (emphasis added)); *Aviles*, 2025 WL 487196, at *3 (“Plaintiff at most
3 alleges that Defendant’s Website collects the IP addresses and other information of
4 visitors incoming to the website – the equivalent of if Defendant had used a trap and
5 trace device on its *own* website, rather than on Plaintiff’s device.”).

6 Plaintiffs’ expansive interpretation of a law burdened with ambiguity
7 “attach[es] criminal penalties to a breathtaking amount of commonplace computer
8 activity” and converts “millions of otherwise law-abiding” businesses and
9 individuals into criminals. *Van Buren v. United States*, 593 U.S. 374, 392-93 (2021).
10 The criminalization of routine conduct and the extreme criminal penalties threatened
11 if CIPA was interpreted as plaintiffs suggest (one year in jail for each site visitor),
12 cries out for application of the rule of lenity. *See Eating Recovery Ctr.*, 2025 WL
13 2971090, at *1 (rule of lenity applies even where criminal statute is being invoked in
14 civil case). Given the inherent difficulties squaring the criminal statute, which on its
15 face applies to information from telephones, with the challenged conduct, courts
16 should not interpret the text of CIPA so as to radically expand its scope. *Id.* at *6.

17 **III. The Uncertainty Regarding CIPA Requires Appellate Guidance**

18 As Judge Chhabria recently and concisely explained: “The language of CIPA
19 is a total mess. It was a mess from the get-go, but the mess gets bigger and bigger as
20 the world continues to change and courts are called upon to apply CIPA’s already-
21 obtuse language to new technologies.” *Eating Recovery Ctr.*, 2025 WL 2971090, at
22 *1. This “mess” has led to conflicting decisions among courts within the Ninth
23 Circuit and California (and beyond). In this case, the Court found that CIPA’s pen
24 register provision applied to IP address tracking. *Fregosa v. Mashable, Inc.*, 2025
25 WL 2886399, at *1 (N.D. Cal. Oct. 9, 2025). Other courts have found that CIPA is
26 not applicable to IP tracking. *See, e.g., Casillas v. Transitions Optical, Inc.*, 2024
27 WL 4873370, at *4-5 (Cal. Super. Ct. Sept. 9, 2024); *Sanchez*, 2025 WL 487194, at
28 *3-4; *Licea v. Hickory Farms LLC*, 2024 WL 1698147, at *4 (Cal. Super. Ct. Mar.

1 13, 2024). Moreover, other courts have dismissed CIPA cases (including claims
 2 brought under different CIPA provisions) on other grounds. *See, e.g., Eating*
 3 *Recovery Ctr.*, 2025 WL 2971090, at *1 (rule of lenity); *Gabrielli v. Insider, Inc.*,
 4 2025 WL 522515, at *8 (S.D.N.Y. Feb. 18, 2025) (standing). Given the wildly
 5 diverging judicial opinions, “companies have no way of telling whether their online
 6 business activities will subject them to liability,” *Eating Recovery Ctr.*, 2025 WL
 7 2971090, at *1, until the Ninth Circuit (or the California Supreme Court) provides
 8 binding guidance.

9 This case offers an ideal opportunity for the Ninth Circuit to resolve CIPA’s
 10 applicability to emerging and new technologies, giving guidance to the dozens of
 11 district court judges that have had their desks filled by cases promoting similar
 12 theories. The pen register prohibition’s application to these circumstances has been
 13 thoroughly briefed by the parties. An appeal from a motion to dismiss presents a
 14 purely legal question. As the CIPA claim is the only claim present in this litigation,
 15 it would be the sole focus of the interlocutory appeal.

16 CONCLUSION

17 For the foregoing reasons *amicus curiae* News/Media Alliance respectfully
 18 urges the Court to grant Mashable’s Motion to Certify for Interlocutory Appeal.

19
 20
 21 Dated: November 17, 2025

Respectfully submitted,

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