B350578

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

VARIETY MEDIA, LLC,

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent.

Los Angeles Superior Court Case No. 25STCV01865
Honorable David S. Cunningham, III, Judge

Application for Leave to File Amicus Curiae Brief; Amicus Curiae Brief of News/Media Alliance and Digital Content Next in Support of the Petition of Variety Media, LLC

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CERTIFICATE OF INTERESTED PARTIES

This is the initial certificate of interested entities or persons submitted on behalf of News/Media Alliance and Digital Content Next as amicus curiae in the case number listed above.

The undersigned certify that there are no interested entities or persons that must be listed in this Certificate under California Rules of Court, Rule 8.208, for News/Media Alliance or Digital Content Next.

Dated: April 8, 2026

By: */s/ Lauren J. Fried*
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APPLICATION TO FILE AMICUS BRIEF

News/Media Alliance ("N/MA") and Digital Content Next ("DCN") hereby request that this Court accept the attached amicus curiae brief in support of Petitioner Variety Media, LLC ("Variety") under California Rules of Court, Rule 8.487(e).

N/MA is a nonprofit organization representing over 2,200 publishers in the United States, ranging from the largest news and magazine publishers to hyperlocal newspapers, and from digital-only outlets to papers that have printed news since the nation's founding. N/MA's membership accounts for nearly 90 percent of the daily newspaper circulation in the United States, over 500 individual magazine brands, and dozens of digital-only properties, all of which depend on the internet to reach readers.

Founded in 2001, DCN is a trade organization dedicated to serving the needs of digital content companies that enjoy trusted, direct relationships with consumers and advertisers. Together, DCN's members have an unduplicated audience of 259 million unique visitors and reach 95 percent of the U.S. online population. DCN's member list[1] is a "who's who" of the American media and publishing industry.

Amici are interested in the issues presented in Variety's Petition for Writ of Mandate because it could have direct and immediate consequences

[1] https://digitalcontentnext.org/membership/members/.

for digital publishers. Amici's members rely on their websites to develop consumer audiences and fund the creation of trusted, original content. The Court's resolution of this petition will have lasting and fundamental ramifications for the publishers amici represent as they report critical stories and provide relevant, timely content.

Counsel for N/MA and DCN is familiar with all of the briefing filed with respect to this petition to date. This brief will assist the Court by providing additional perspective on and supplementing the arguments made by the parties as well as exploring issues neither party has fully addressed.

Certification

Pursuant to California Rule of Court, Rules 8.487(e)(5) and 8.200(c), no party to this action has provided support in any form regarding the authorship, production, or filing of this brief.

Dated: April 8, 2026

By: */s/Lauren J. Fried*
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INTRODUCTION

Media publishers of all sizes, ranging from the world's largest digital providers to small, local organizations, maintain an online presence to meet their consumers where they are, providing trusted and curated coverage of news, culture, entertainment, and economic issues and conducting the essential functions of their business on the internet. The ability of publishers to serve their communities with content that keeps our citizenry informed, engaged, and entertained—a bedrock of democracy—is at risk. News media publishers and other businesses are facing a flood of nearly identical lawsuits, arbitration filings, and settlement demands (made by a small and often repeating group of plaintiffs) challenging routine and innocuous online business activity under the California Invasion of Privacy Act ("CIPA"). Invoking CIPA—a 1967 criminal statute—plaintiffs are asking courts to find that the law prohibits tools and technologies that form the bedrock of the internet, including by facilitating session authentication, monitoring security, and preventing fraud. The Court should take this opportunity to clarify that the law does not extend to such claims.

As one Federal District Court observed, "[t]he state of affairs with CIPA is untenable." *Doe v. Eating Recovery Ctr. LLC*, 806 F. Supp. 3d 1109, 1112 (N.D. Cal. 2025). Confusion regarding the language in statute has caused "a total mess" that just keeps getting worse as courts have struggled to apply it to new technologies. *Id.* This confusion has resulted

in conflicting decisions among and between superior courts throughout the State and Federal district courts across the country regarding the types of conduct that subject businesses to civil (and criminal) liability under CIPA. In thousands of CIPA cases, plaintiffs have sought to weaponize this confusion to extract massive and undeserved paydays from companies that use nothing more than garden variety internet tools.

Unfortunately, news and entertainment media organizations have not been spared from claimants that seek to exploit the cudgel of CIPA's statutory penalties ($5,000 per violation) to force businesses to settle or risk millions, if not more, in potential damages. These claims are particularly harmful to news companies operating on ever decreasing margins, as the threat of prolonged and costly litigation jeopardizes their continued ability to perform a vital public function: providing trusted, curated news.

These penalties may be reasonable for the type of misconduct CIPA was designed to address—illegal wiretaps, corporate espionage, and the use of unpermitted pen registers by law enforcement—but that is not the conduct the statute is now being applied to. Here, for example, the Plaintiff's theory is that the use of commonly available technologies that identify public IP addresses and device metadata (which are used for content delivery, fraud prevention, cybersecurity, content personalization, advertising, and more), constitutes the use of an illegal "pen register."

No reasonable interpretation of CIPA should extend its application to routine online business activities. The legislature certainly did not (and could not) conceive that CIPA, *a criminal law*, would be used to threaten media organizations whose websites and mobile apps provide digital news, entertainment, and content recommendations using ordinary and expected online practices when it outlawed warrantless "pen registers".

Contradictorily, plaintiffs claim that CIPA requires users to opt in to the use of the tools required for the internet to work as expected, despite the fact that the legislature's targeted online privacy statute—the California Consumer Privacy Act, amended by the California Privacy Rights Act (collectively, "CCPA")—instructs businesses to use ***opt-out*** practices for data collection.[2] As a result, publishers employing opt-out practices carefully designed to comply with the CCPA find themselves facing CIPA claims arising out of those very efforts. In other words, the expansive reading of CIPA being promoted by plaintiffs would make the CCPA's opt-out regime superfluous – further demonstrating that the legislature did not (and does not) understand CIPA to reach same conduct.

No appellate court has had the opportunity to provide much-needed guidance on CIPA's application to internet technologies, despite the influx

[2] The California state legislature passed the Consumer Privacy Act in 2018 and the California Privacy Rights Act in 2020 (collectively, "CCPA") establishing an opt-out regime for online data collection.

of diverging decisions from trial courts. This case presents the opportunity for the Court of Appeal to do just that, giving N/MA and DCN's members (and countless other businesses operating in California) the answers they desperately need. The Court should grant Variety's petition and issue a writ of mandate in its favor.

ARGUMENT

I. The Flood of CIPA Claims Represents an Unsustainable Threat to Media Organizations

Courts and businesses alike have faced a veritable flood of CIPA claims in the past few years that shows no sign of stopping. By one account, there have been more than 3,000 wiretapping cases brought in California since February 5, 2022.[3] Another article estimates tens of thousands of claims when individual demand letters and arbitration filings are included.[4] Media companies across the country—including Variety, in the instant case—have not been spared. *See, e.g.*, *Niu v. Penske Media Corp.*, Case No. 25SCV146938 (Cal. Super. Ct.) (*see* Variety's Petition for Writ of Mandate at 16); *Fregosa v. Mashable*, Case No. 3:25-cv-01094 (N.D. Cal.); *Mirmalek v. Los Angeles Times Communications LLC*, Case No. 3:24-cv-01797 (N.D. Cal.); *Khamooshi v. Politico LLC*, Case No. 3:24-

[3] Digital Wiretapping Litigation Map, FISHER PHILLIPS (last visited April 6, 2026), https://www.fisherphillips.com/en/services/trending/us-privacy-hub/wiretapping-litigation-map.html

[4] *CIPA suits: Why a 60-year-old law makes your website a target*, CONSTANGY BROOKS SMITH & PROPHETE (Feb. 18, 2026), https://www.constangy.com/newsroom/newsletters/cipa-suits-why-a-60-year-old-law-makes-your-website-a-target; *see also* Justin Donoho, *CIPA May Not Be Necessary to Protect Ad Tech Plaintiffs*, Law360 (June 6, 2025), https://www.law360.com/articles/2349440/cipa-may-not-be-necessary-to-protect-ad-tech-plaintiffs; *see also* John M. Jackson & Shannon Wright, *CIPA Claims Surge: What Every Company With A California-Facing Website Must Know*, JACKSON WALKER (Dec. 3, 2025), https://www.jw.com/news/insights-california-invasion-privacy-act-claims-surge/ (noting that "the last three years have seen an explosion of data privacy claims related to" CIPA)..

cv-07836 (N.D. Cal.); *Deivaprakash v. Condé Nast Digital*, Case No. 3:25-cv-04021 (N.D.Cal).[5]

For many defendants, but particularly news organizations, CIPA claims represent a potential "extinction level event." *See* Testimony of Chris Argentieri, Senate Public Safety Committee Hearing, April 29, 2025 at 6:56:55.[6] News companies are rapidly adapting to a changing media ecosystem, while continuing to shoulder the burdens associated with producing original journalism in the face of significant business and legal challenges. Many small publishers have shuttered as a result.[7] Now, even when a publisher faithfully complies with the CCPA and invests (at great cost) in implementing the opt-out consent mechanisms the law requires, the publisher still faces legal costs and the risk of exorbitant liability under CIPA. *See id.* As Mr. Argentieri explained during his testimony before the

[5] These cases are being filed nationwide, with courts in other jurisdictions being asked to interpret CIPA without any guidance from this State's Court of Appeal. *See Xu v. Reuters News & Media Inc.*, Case No. 1:24-cv-02466 (S.D.N.Y.); *Lesh v. CNN, Inc.*, Case No. 1:24-cv-03132 (S.D.N.Y.); *Gabrielli v. Insider, Inc.*, Case No. 1:24-cv-01566 (S.D.N.Y.).

[6] Available at https://www.senate.ca.gov/media/senate-public-safety-committee-20250429.

[7] *See* Angela Fu, *An Alarming Number of Independent Publishers and Small Chains Closed Papers Last 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 Bauder, *Newspapers Closing, News Deserts Growing for Beleaguered News Industry*, AP NEWS (Oct. 20, 2025), https://apnews.com/article/newspapers-closing-media-industry-report-traffic-b0a3a14510ffe104da836d46432c2678.

California Senate, for smaller news organizations, even the cost to defend against these suits can be "catastrophic." *Id.* at 6:57:13. Realistically, the technological nature of these claims may make courts reluctant to dismiss claims at the pleading stage, meaning that publishers risk significant discovery and expert costs before vindication. The *in terrorem* effect of CIPA demands and the possible damages forces many publishers to settle, which, in turn, only incentivizes the bringing of additional CIPA claims.

The financial strains that come with responding to CIPA claims directly detract from the important work news organizations seek to do. Every forced settlement or year tied up in litigation over commonly used internet tools means less time and resources available to devote to news gathering, journalist retention and hiring, and vital public safety alerts. *Cf. id.* at 6:57:32. The net effect is a less informed, less safe, and less engaged populace.

II. IP Address Tracking and Metadata Validation are Necessary, Commonplace, and Outside CIPA

The overbroad reading of CIPA promoted by plaintiffs directly implicates innocuous and, in many cases, essential internet functions. Here, for example, Plaintiff claims that recording the incoming IP address and device metadata[8] from website visitors is prohibited by CIPA. *See*

[8] Plaintiff identifies the "device type," e.g., a Macintosh and the "browser type," e.g. Firefox, as the "Device Metadata" that is captured by Variety. FAC ¶¶ 4, 71 & Figure 5.

Petitioner's Appendix, A134-195 ("FAC"). But the exchange of this type of information is necessary for the internet to operate in the way the public expects, and that was never intended to (and does not) violate the anti-wiretapping protections of CIPA.

"An IP address is an identifier assigned to a device on a network, such as a router, computer, or printer. The IP address allows the device to be identified and located by other devices. When a user connects to the Internet through a router, the user's Internet service provider (e.g., Comcast) assigns an IP address to the user's router." *People v. Nguyen*, 12 Cal. App. 5th 574, 577 (2017). As part of that connection process, a user's device "automatically send[s] their IP address[] to the website's server." *Khamooshi v. Politico LLC*, 786 F. Supp. 3d 1174, 1179 (N.D. Cal. 2025). Necessarily then, IP addresses "are broadcast far and wide in the course of normal internet use." *United States v. Caira*, 833 F.3d 803, 806 (7th Cir. 2016) (internal quotation marks and citation omitted). Because public IP addresses—the type of IP addresses at the heart of Plaintiff's claim—are assigned by routers, they can be the same for several devices or users in a given area. As the United States Supreme Court recently explained, "[m]any users can share a particular IP address. For example, a household, coffee shop, or college dormitory ordinarily has one IP address, but has multiple individual users." *Cox Comm's v. Sony Music Ent.*, 607 U.S. __, 2026 WL 815823, at *4 (2026).

Publishers rely on IP addresses for a range of operational, security, and editorial purposes. IP addresses are used to ensure fast and reliable content delivery through CDN routing. They are also used by content management tools, like paywalls, to determine whether a user has already received their free trial sample, and help drive subscription conversions, one of the most sustainable (and essential) sources of revenue for publishers that allow them to continue to serve their communities. IP addresses also enable businesses to engage in fraud detection and defend against cybersecurity threats by isolating and rejecting web traffic from nefarious actors and bots.[9] They are used to comply with content licensing and syndication restrictions tied to geography. And they allow publishers to understand regional readership patterns that inform editorial decisions and content recommendations, such as a sports page to a Los Angeles based IP address leading with a story about the Dodgers and a San Francisco based IP address with a story about the Giants.

These are not incidental uses—they are foundational to the modern digital publishing infrastructure.

Similarly, device metadata identifies the type of device and browser being used by a website visitor. This allows the website to display

[9] *Cf.* David Atkinson, *Putting GenAI on Notice: GenAI Exceptionalism and Contract Law*, 120 NW. U. L. REV. ONLINE 27, 42-43 (2025).

compatibly on the visitor's device.[10] For example, when a mobile device is used to visit a publisher's website, a version of the page optimized for touch interactions, smaller screens, and less processing power may be displayed, whereas someone using a desktop computer may get a larger screen optimized for perusing with a mouse.[11] Metadata identification also allows website operators to screen out bots or web scrapers, allowing publishers to protect their content and their users.[12] Put differently, website operators can utilize basic technical information about a visitor's connection or device (*e.g.*, metadata) to tell the difference between real human users and automated traffic. By doing that, publishers can block or limit the automated actors, which helps prevent content theft, reduce abuse, and protect users from fraud or security risks.

These legitimate uses of IP addresses and metadata to engage in beneficial web publishing activities were never intended to (and do not) violate the anti-wiretapping protections of CIPA. Rather, the sharing and use of these metrics is part of the expected and voluntary exchange of information to operate websites and do not reveal the underlying content of the user's communications or impinge on the user's expectations of

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[10] *See* Alejandro Loyola, *What Is a User Agent? A Complete Guide for 2025*, BROWSERLESS (Aug. 4, 2025), https://www.browserless.io/blog/what-is-a-user-agent

[11] *Id.*

[12] *Id.*

privacy. *See Xu v. Reuters News & Media, Inc.*, 2025 WL 488501, at *5 (S.D.N.Y. Feb. 13, 2025). Publishers—particularly small publishers—do not have the capability or resources to develop and operate the tools necessary to make such beneficial uses of IP addresses and metadata possible on their own. Just as courts use tools like Microsoft Word or Adobe Acrobat to draft their opinions, publishers rely on internet security and other providers to ensure their websites work safely and as expected.

The split decisions from superior courts include several that have found that CIPA should not be stretched to cover the types of internet tools at issue. *See, e.g.*, *Sanchez v. Cars.com,* 2025 WL 487194, at *3 (Cal. Super. Ct. Jan. 27, 2025) ("[T]he legislative history of the CIPA suggests that 'pen register' and 'track and trace devices' refers to devices or processes that are used to record or decode dialing, routing, addressing, or signaling information from ***telephone numbers***, not internet communications such as websites." (emphasis added)); *Aviles v. Liveramp, Inc.*, 2025 WL 487196, at *3 (Cal. Super. Ct. Jan/ 28, 2025) ("Plaintiff at most alleges that Defendant's Website collects the IP addresses and other information of visitors incoming to the website – the equivalent of if Defendant had used a trap and trace device on its *own* website, rather than

on Plaintiff's device.").[13] These courts, that have looked to legislative history and other tools of statutory interpretation, have it right.

Plaintiffs expansive interpretation of a law burdened with ambiguity "attach[es] criminal penalties to a breathtaking amount of commonplace computer activity" and converts "millions of otherwise law-abiding" businesses and individuals into criminals. *Van Buren v. United States*, 593 U.S. 374, 393-94 (2021). The criminalization of routine conduct and the extreme criminal penalties threatened if CIPA was interpreted as plaintiffs suggest, warrants application of the rule of lenity. *See Wooten v. Superior Court*, 93 Cal. App. 4th 422, 439 (2001) ("The defendant is entitled to the benefit of every reasonable doubt as to the true interpretation of words or the construction of a statute." (citation omitted)); *Harrott v. County of Kings*, 25 Cal. 4th 1138, 1154 (2001) (rule of lenity applies "even though this is not a criminal prosecution because the statute we are construing imposes criminal penalties"). Given the inherent difficulties squaring the criminal statute, which on its face applies to information from telephones,

[13] *See also Rodriguez v. Ink America Intern. Group LLC*, 2025 WL 4034985, at *4 (Cal. Super. Ct. Dec. 10, 2025) ("The pen register statute did not, and does not, criminalize the process by which websites communicate with users who choose to access them."); *Schallert v. Orkin LLC*, 2025 WL 4332757, at *6-7 (Cal. Super. Ct. Dec. 15, 2025) ("[P]recisely because it is a difficult and important issue, the Court cannot conclude that the Legislature *sub silentio* intended to establish a regulatory regime over web tracking through the cryptic reference to a 'trap and trace device…'")

with the challenged conduct, courts should not interpret the text of CIPA to radically expand its scope. *See Eating Recovery Ctr.*, 806 F. Supp. 3d at 1118-19.

III. This Court's Guidance is Necessary

As one Federal Court explained, "[t]he language of CIPA is a total mess. It was a mess from the get-go, but the mess gets bigger and bigger as the world continues to change and as courts are called upon to apply CIPA's already-obtuse language to new technologies." *Eating Recovery Ctr.*, 806 F. Supp. 3d at 1112. This "mess" has led to a rash of conflicting decisions among courts addressing CIPA's application to internet technologies. In this case, for example, the Court found that CIPA's pen register provision applied to so-called "trackers" that capture information like IP addresses. *Rose v. Variety Media, LLC*, 2025 WL 2794920, at *2-4 (Cal. Super. Ct. Sept. 24, 2025). As discussed, several other courts have disagreed and found that CIPA does not apply on analogous facts. *See, e.g.*, *Sanchez,* 2025 WL 487194; *Aviles*, 2025 WL 487196; *Casillas v. Transitions Optical, Inc.*, 2024 WL 4873370, at *4-5 (Cal. Super. Ct. Sept. 9, 2024); *Licea v. Hickory Farms LLC*, 2024 WL 1698147, at *4 (Cal. Super. Ct. Mar. 13, 2024); *Rodriguez*, 2025 WL 4034985; *Schallert*, 2025 WL 4332757. Given the wildly diverging judicial opinions, "companies have no way of telling whether their online business activities will subject

them to liability," *Eating Recovery Ctr.*, 806 F. Supp. 3d at 1112, until a higher court provides further guidance.

This case offers an ideal opportunity for this Court to resolve CIPA's applicability to emerging and new technologies, giving guidance to the many superior court judges that have had their desks filled by cases promoting similar theories and the many businesses that are facing CIPA claims or demands. That guidance, and the stability a decision from this Court will bring, is much needed, particularly by the various media organizations facing tens of millions of dollars in liability for maintaining a web presence.

CONCLUSION

For the foregoing reasons, *amicus curiae* News/Media Alliance and Digital Content Next respectfully urge the Court to grant Variety's petition and issue a writ of mandate in Variety's favor.

Dated: April 8, 2026

Respectfully submitted,

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By: */s/ Lauren J. Fried*
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Attorneys for Amicus Curiae News/Media Alliance and Digital Content Next

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief contains 2964 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare this brief.

By */s/ Lauren J. Fried*
Lauren J. Fried

CERTIFICATE OF SERVICE

I, Erica K. Embray-Redd, am employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to this action. My business address is 10100 Santa Monica Blvd. Suite 2200, Los Angeles, CA 90067.

On April 8, 2026, I served the forgoing **Application for Leave to File Amicus Curiae Brief in Support of the Petition of Variety Media, LLC; Amicus Curiae Brief of News/Media Alliance and Digital Content Next in Support of the Petition of Variety Media, LLC**, on all counsel of record via the Court's electronic filing system, operated by TrueFiling.

On the same date, I served a copy of the brief only by first class U.S. mail on the trial court as follows:

Judge David S. Cunningham, III – Dept. 11
Spring Street Courthouse
312 North Spring Street
Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 8, 2026, at Los Angeles, California

/s/Erica K. Embray-Redd
Erica K. Embray-Redd