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Written Testimony to the United States Trade Representative

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Hearing: Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement with Canada and Mexico

Prepared by:  
ACT | The App Association

Thank you for holding this hearing. This is an important opportunity to establish a template for future bilateral and multilateral trade agreements, particularly with respect to the digital trade economy. We are pleased to provide our recommendations regarding negotiation priorities in a revised North American Free Trade Agreement (NAFTA), consistent with our detailed comments filed with United States Trade Representative (USTR) on June 12, 2017.<sup>1</sup>

ACT | The App Association represents more than 5,000 app makers and connected device companies throughout the mobile economy. In a world where the number of smartphones outnumbers people, our members use mobile technologies to produce innovative solutions that drive the \$143 billion<sup>2</sup> app ecosystem and global digital economy. We are proud to note that the dynamic app ecosystem is led by U.S. companies, the majority of which are small businesses.

While the global digital economy holds great promise for small app developers, our members face an array of challenges when entering markets overseas. These challenges may take the shape of laws, regulations, or policies that exclude U.S. goods and services from foreign markets, artificially stimulate domestic exports, or fail to provide adequate protection of intellectual property rights. While these trade barriers use different means, they have the same end: impeding U.S. exports and investment.

We urge USTR to consider the implications of these barriers and update our trade agreements to address modern realities. We urge USTR to include a standalone digital trade chapter in a modernized NAFTA to reflect the advent of the global digital economy, and provide a standard on which to base future trade agreements.

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<sup>1</sup> See [http://actonline.org/wp-content/uploads/061217\\_ACT-NAFTA-Renegotiation-Letter-FINAL.pdf](http://actonline.org/wp-content/uploads/061217_ACT-NAFTA-Renegotiation-Letter-FINAL.pdf).

<sup>2</sup> See [http://actonline.org/wp-content/uploads/App\\_Economy\\_Report\\_2017\\_Digital.pdf](http://actonline.org/wp-content/uploads/App_Economy_Report_2017_Digital.pdf).

The App Association is committed to working with USTR to eliminate digital trade barriers in all trade negotiations. With respect to digital trade, we urge USTR to adopt the following negotiation priorities:

- **Facilitate Cross-Border Data Flows:** The seamless flow of data is essential to the functioning of the global economy. To support American businesses' growth in international markets, app developers must be able to rely on unfettered data flows. NAFTA's new digital trade chapter should unambiguously preserve this ability.
- **Prevent Data Localization:** Increasingly, American tech companies doing business overseas face regulatory pressure to build and/or use local data infrastructures. Data localization requirements hurt our exports and our international competitiveness. Our members do not have the resources to build or maintain unique infrastructure in every country in which they do business. We strongly support a modernized NAFTA that includes a reasonable prohibition on data localization policies to signal U.S. leadership on this issue in North America, and around the globe.
- **Prohibit Customs Duties on Digital Content:** American app developers and technology companies leverage the internet to reach the 95 percent of consumers that are outside of the United States. However, the "tolling" of data across borders results in the balkanization of the internet, and prevents innovative products and services from entering international markets. We strongly encourage the modernized NAFTA to include a permanent prohibition of customs duties on electronic transmissions, consistent with the WTO.
- **Prohibit Source Code Transfer for Market Entry:** Some governments have implemented harmful policies that make market entry contingent upon the transfer of proprietary source code. Intellectual property is the lifeblood of app developers' innovation, and the transfer of source code presents an untenable risk of theft and piracy. These requirements are a serious disincentive to digital trade, and we strongly urge a modernized NAFTA to prohibit the disclosure of source code as a condition of market entry.
- **Promote Strong Encryption Techniques:** Consumers rely on app developers to use strong encryption techniques to protect the integrity of their data. However, some countries continue to demand that "backdoors" be built into encryption techniques for the purposes of government access. These policies degrade the security of data by creating known vulnerabilities that unauthorized parties can exploit. The viability of an app developer's product depends on the trust of its end users. We believe a modernized NAFTA should maintain the ability to use advanced encryption techniques to protect data.

- **Protect Intellectual Property (IP):** The infringement or theft of IP – copyrights, trademarks, patents, and trade secrets – threatens our members, as well as their customers. Intellectual property violations can lead to customer data loss, interruption of service, revenue loss, and reputational damage -- consequences that can kill a small app developer's business. Strong and fair IP protection for copyrights, patents, trademarks, and trade secrets is essential, and a modernized NAFTA should include these principles.

Our proposed negotiating priorities are essential to ensuring that the U.S. leverages the digital economy to create greater prosperity for American businesses and more jobs here at home. Our members share their apps, platforms, and digital products around the world,<sup>3</sup> therefore, we hope a modernized NAFTA that incorporates the above principles will serve as an example for trade agreements to come.

As the U.S. Trade Representative formulates its priorities for the modernization of NAFTA, digital trade is an integral component to the current state of trade. The App Association asks that you prioritize digital trade and recognize the huge opportunities it brings to the American economy. We look forward to being a resource throughout these negotiations.

Sincerely,



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<sup>3</sup> We have offered details on these country- specific digital trade barriers publicly, most recently in written testimony to the United States International Trade Commission on April 21, 2017. See <http://bit.ly/2sgrJTU>.