

The Trans-Pacific Partnership, Small Businesses, and the App Economy



ACT | The App Association represents more than 5,000 small- and medium-sized app development companies and technology firms around the globe. As the world has quickly embraced mobile technology, our members have been creating innovative solutions that drive the global digital economy by improving workplace productivity, accelerating academic achievement, and helping people lead more efficient and healthier lifestyles.

In existence less than a decade, the mobile app industry has experienced explosive growth alongside the rise of smartphones. As the most rapidly adopted technology in human history, these devices have revolutionized the software industry. ACT | The App Association's 2016 *State of the App Economy* report provides information and statistics on this innovative industry that continues to grow while creating jobs and revolutionizing how consumers work, play, and manage their health. Notably, this report details how the small- and medium-sized app companies and startups that ACT | The App Association represents continue to flourish in the mobile marketplace. These companies currently represent 82% of the top app makers, dominating revenue rankings and driving innovation in the larger mobile economy.ⁱⁱ

In order to continue to grow and to meet customer demands, companies must engage in the global digital economy, which represents approximately \$8 trillion of commerce annually.

ⁱⁱⁱ The arrival of the app store model and the rise of cloud services have permitted small- and medium-sized app companies to access overseas markets. In the mobile marketplace, app stores use the cloud to connect app makers with customers around the globe while managing transactions in many different currencies. Cloud-based resources also allow early stage companies to scale swiftly to meet demand in a global marketplace.



While the global digital economy holds great promise for small- and medium-sized app development companies, our members face a diverse array of challenges entering new markets, commonly referred to as “trade barriers,” which are broadly defined as “government laws, regulations, policies, or practices that either protect domestic goods and services from foreign competition, artificially stimulate exports of particular domestic goods and services, or fail to provide adequate and effective protection of intellectual property rights.”^{iv} These barriers take many forms but have the same net effect: impeding U.S. exports and investment.

A key mechanism for the removal of trade barriers is through the negotiation of trade agreements. ACT | The App Association supports the negotiation of international agreements to facilitate greater trade, and actively partners with U.S. government agencies, including the United States Trade Representative and the Department of Commerce, and governments and stakeholders around the globe to promote policies that will do so.

In late 2015, the United States, along with 11 other countries in the Asia-Pacific including Canada and Mexico, successfully concluded negotiating the Trans-Pacific Partnership (TPP), an agreement that delivers new and significant market access for each signatory's exports of goods and services and establishes the most comprehensive package of rules to support digital trade of any trade agreement in history, including rules prohibiting barriers to cross-border data flows. The TPP places a number of key requirements on its signatories that remove obstacles for app innovators and entrepreneurs looking to do business in new markets, such as prohibitions on data localization, tariffs on electronic transmissions, and mandatory disclosure of proprietary source code to import authorities.

By opening these important Asia-Pacific markets and setting groundbreaking rules of the road for digital trade, the TPP will not only benefit the American app industry and the American people generally, but it represents an invaluable template for how the United States can proactively use cutting-edge trade policy to modernize the international economy.

ACT | The App Association has carefully reviewed the text of the TPP since its public release. We are pleased to support this agreement and strongly advocate for its passage in Congress based on, among others, the following provisions:

Ensuring Cross-Border Data Flows^v

The seamless flow of data between economies and across political borders is essential to the functioning of the global economy. Assurance of these data flows is a needed certainty for innovative small app development companies seeking access to new markets abroad. The TPP provides for the cross-border transmission of data for business purposes, with very limited exceptions.



Prohibition on Data Localization Policies^{vi}

Companies looking to grow in new markets too often face regulations that force foreign providers to build and/or use local infrastructure in-country. These data localization requirements cause serious declines in imports and exports, reduce an economy's international competitiveness, and undermine domestic economic diversification.^{vii} Small app development companies do not have the resources to build or maintain unique infrastructure in every country they may do business in and are effectively excluded from commerce by such requirements. The TPP recognizes this by prohibiting the practice of data localization, subject to very limited exceptions.

Prohibition on Customs Duties on Digital Content^{viii}

The internet is global in nature and provides a means to potentially reach billions of new customers for small American app development companies. However, the "tolling" of data crossing political borders in order to collect customs duties directly contributes to the balkanization and reduced efficiency of the internet and effectively blocks these innovative products and services from market entry. The TPP includes a provision prohibiting the imposition of tariffs on e-commerce for crossing borders.

Prohibition on Requirements to Provide Source Code for Market Entry^x

Some governments have put policies into place, or have proposed, requiring companies to give access to or even transfer proprietary source code before being able to legally enter that country's marketplace. For small app development companies, intellectual property is the lifeblood of their innovation and transfer of source code to a government presents an untenable risk to theft and piracy. The TPP recognizes such requirements as serious disincentives to international trade and a barrier to the digital economy by prohibiting this practice for mass-market software.

Preserving the Ability to Use Encryption Techniques to Protect End User Security and Privacy^x

Global digital trade depends on technical data protection methods such as the use of encryption to keep users safe from identity theft and other harms. However, some interests persist in demanding that “back doors” be built into encryption for the purposes of government access without qualification. These policies would degrade the safety and security of data as well as the trust of end users and would create vulnerabilities that are certain to be exploited by unauthorized parties. The viability of a small app development company's product from a security and privacy standpoint hangs on the trust of its end users, and no greater use case exists to demonstrate encryption's necessity than that of ACT | The App Association's members.



Protection of Intellectual Property^{xi}

The infringement on and theft of intellectual property and trade secrets presents a major threat to the success of ACT | The App Association members and, in turn, the billions of consumers who rely on these app-based digital products and services. These intellectual property violations can lead to customer data loss, interruption of service, revenue loss, and reputational damage – each alone a potential “end-of-life” occurrence for a small app development company. Further, with the rise of enterprise mobile app development, apps are being used as a means to attack mobile users of an entire enterprise. The TPP contains strong, but fair, protection of intellectual property by providing a harmonized approach to, among other key areas, copyright, patents, trademarks, and trade secrets.

Endnotes

ⁱ <http://actonline.org/2016/01/04/act-the-app-association-releases-latest-app-industry-report/>.

ⁱⁱ <http://actonline.org/2016/01/04/act-the-app-association-releases-latest-app-industry-report/>.

ⁱⁱⁱ <http://actonline.org/2016/01/04/act-the-app-association-releases-latest-app-industry-report/>.

^{iv} <https://ustr.gov/sites/default/files/2015%20NTE%20Combined.pdf> at 1-2.

^v Article 14.11.

^{vi} Article 14.13.

^{vii} Stone, S., J. Messent and D. Flaig (2015), “Emerging Policy Issues: Localisation Barriers to Trade”, OECD Trade Policy Papers, No. 180, OECD Publishing, Paris. <http://dx.doi.org/10.1787/5js1m6v5qd5j-en>.

^{viii} Article 14.3.

^{ix} Article 14.17.

^x Annex 8-B.

^{xi} Chapter 18.