

June 6, 2016

Ministry of Industry and Information Technology Information Communications
Management Bureau
13 Xi Chang'an Jie
Beijing 100804
China

RE: Interim Administration Regulation for Mobile Smart Terminal Application Software
Pre-installation and Distribution

ACT | The App Association writes to the Ministry of Industry and Information Technology (MIIT) on its Interim Administration Regulation for Mobile Smart Terminal Application Software Pre-installation and Distribution, which was notified to the World Trade Organization's (WTO) Technical Barriers to Trade (TBT) Committee on April 7, 2016 (G/TBT/N/CHN/1171). The App Association thanks MIIT for providing these interim regulations transparently and for soliciting stakeholder feedback.

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 and offers incredible opportunity and value to Chinese consumers. As the most rapidly adopted technology in human history, these devices have revolutionized the software industry, creating jobs and revolutionizing how consumers work, play, and manage their health. Small companies and startups have thrived in the mobile marketplace—they currently represent 82 percent of the top app makers—where they continue to drive innovation in the mobile economy.

Today, billions of people around the world—and hundreds of millions of Chinese end users in both the consumer and enterprise contexts—use internet-enabled apps to do business, work, learn, and connect.

The App Association appreciates MIIT's decision to notify the interim regulations through the WTO's TBT Committee, which demonstrates the Chinese government's commitment to the aims of the TBT Agreement – to ensure that technical regulations,

standards, and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to trade while, at the same time, recognizing WTO members' right to implement measures to achieve legitimate policy objectives.

Below, The App Association raises concerns with several specific areas of the interim regulations. Generally, we are concerned that the definitions and overly-prescriptive approach taken for pre-installed apps risks restraining the highly-competitive and innovative mobile phone and app marketplace in China and will negatively affect the global digital economy in which China plays an essential role.

In addition, MIIT proposes further key definitions and aspects of the interim regulation which are to be defined at a later time. We respectfully request that MIIT initiate further WTO notifications and public consultations, with adequate time for review by stakeholders, as these definitions, process, etc., are developed in detail.

The App Association's specific concerns with the proposed regulations include the following:

Article 7 proposes that “manufacturers and Internet service providers shall ensure mobile smart terminal application software, except basic functional software, are able to be uninstalled.” The App Association urges MIIT to recognize that for operating systems, the use of pre-installed apps for basic device functionality are very important to the customer experience. From the technical perspective, such apps are part of the operating system's code itself which can only be altered by the platform owner for system functionality and security purposes.

The innovative app developer community at large heavily relies on the certainty that the platforms on which they offer their apps are functional and secure and that the ubiquity of that platform across devices can universally eliminate bugs and security vulnerabilities. It is therefore crucial that this regulation does not cause platforms to permit software changes to operating system software through the uninstallation of pre-installed apps. Such a regulation would negatively affect the integrity of both the manufacturer and internet service provider platforms directly and the larger innovative app development ecosystem.

Article 8 proposes that internet information service providers and manufacturers implement “management responsibilities” that would include registering the true identity, contact information and other related information of application software operators and developers. Today, app developers work with internet information service providers, manufacturers, and app platforms to meet their rigorous registration, transparency, quality, and functionality requirements. App developers take these obligations seriously and dedicate resources to meeting them. We believe that MIIT can protect consumers by reasonably applying Article 8 and relying on the thorough platform requirements that app developers must

already meet where possible. We urge MIIT to refrain from imposing unnecessary or unrealistic app developer registration requirements that would add new barriers and costs to entering a platform's market, which would ultimately reduce the availability of apps for Chinese consumers.

Article 9 proposes that “specialized testing organizations” organized by the Chinese government will carry out supervision and inspection of pre-installed apps and that “related enterprises shall cooperate and provide convenient access to their application software.” The App Association requests that this supervision and inspection process does not include a requirement that companies must give access to, or require the transfer of, proprietary source code in order to attain approval before being allowed to legally enter the Chinese marketplace. For small app development companies, intellectual property is the lifeblood of their innovation, and transfer of source code to a government presents high risks to product security. Should this practice be put into place for pre-installed apps, it would create an unfortunate precedent for the mobile app space in China and incentivize innovative app developers to avoid the Chinese market, ultimately limiting competition and consumer choice.

Article 10, Section (3) proposes that social organizations “establish blacklists of malicious application software” and share such lists among other stakeholders. The App Association notes that without established and maintained trust between an app developer, their business relationships (including manufacturers and internet service providers), and their end users, any app offered by such a developer would fail in the market. While trust is important to an app developer's success, it is also fragile and can easily be damaged. For this reason, the App Association requests that any social organizations which undertake app blacklisting exercises be required to adhere to reasonable accessibility and process fairness principles. Namely, these social organizations should be open to participation by any affected stakeholder, and the process should include a notification to and objective assessment of any party that may be subject to placement on a blacklist.

Article 10, Section (2) proposes that mobile smart terminal application software “use digital certificates issued by lawfully established electronic authentication service agencies for signature” and that enterprises “use digital certificates for signed mobile smart terminal application software, to verify and mark clearly.” For the mobile app economy at large, digital certificates are essential to the application of public key infrastructure and underpin the functioning of the digital economy at large by helping provide authentication, confidentiality, data integrity, and appropriate accessibility. Further, these digital certificates are issued by a range of trusted Certificate Authorities which operate internationally consistent with relevant international standards.

The viability of a small app development company's product from a security and privacy standpoint depends on the trust of its end users, and no greater use case exists to demonstrate encryption's necessity. The App Association strongly urges MIIT to ensure that this proposed Section of this regulation is not interpreted to limit allowable digital certificate authorities to only those required by the Chinese government, as it would create substantial barriers to both the entry into and export from China of mobile smart terminal application software. Instead, we ask that MIIT confirm that the text at issue in Article 10, Section 2 be interpreted to mean that mobile smart terminal application software use digital certificates issued by any Certificate Authority that follows relevant international standards.

Article 14 currently leaves the timeframe for implementation open. Given the direct impact on manufacturers and internet service providers and the downstream impact on the app developer community at large, we urge MIIT to provide adequate time for the industry to comply with this regulation once it is finalized and notified. The App Association believes that one (1) year at minimum should be provided for this transition period.

We therefore respectfully urge MIIT to carefully consider the App Association's input on its interim regulations and alter its proposal consistent with these views. We are committed to working with MIIT to bring the benefits of the mobile app economy to consumers across China and offer ourselves to meet with you to further the goals of MIIT. If you have any concerns or questions, please do not hesitate to contact ACT | The App Association using the information below.

Sincerely,

A handwritten signature in black ink that reads "Morgan Reed". The signature is written in a cursive, flowing style.

Morgan Reed
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