August 16, 2024

Nguyen Manh Hung
Minister
Ministry of Information and Communications
18 Nguyen Du Str.
Hanoi, Vietnam

RE: Comments of ACT | The App Association Regarding the Draft Law on Digital Technology Industry

Pursuant to the National Assembly's public consultation on the Draft Law on Digital Technology Industry, ACT | The App Association hereby submits comments to the Ministry of Information and Communications to assist in the development of legislation that could bolster the digital economy of Vietnam through increased interconnectivity and opportunity, both in general and with respect to artificial intelligence (AI).

The App Association represents small business innovators and startups in the software development and high-tech space located around the globe. App Association members create innovative software and hardware technology solutions and are at the forefront of incorporating AI into their products and processes.

The App Association shares the Government's objectives of promoting the development of the internet and digital economy in Vietnam while ensuring data security and the protection of Vietnamese internet users. Vietnam can most easily accomplish these objectives through the use of outcome-driven and technology-neutral approaches that scale requirements for harm mitigation based on the harms presented by intended and anticipated use cases, while also providing maximum certainty as to the responsibilities of regulated entities.

To inform updates to the Draft Law, the App Association is providing its general principles for fostering beneficial digital technology regulation and trade facilitation, as well as our recommendations on ways to advance responsible and pro-innovation governance, innovation, and risk management for the use of AI, including discussions of how to consider AI bias, ethical issues, and privacy and security of individuals' data. We encourage the Government to align its updated Law on Digital Technology Industry with these recommendations, and further encourage additional consultation by the Government with impacted small businesses that the App Association represents before its law is finalized.

The App Association appreciates the opportunity to provide comments to assist the Ministry's work on these important matters.

Sincerely,

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General Principles of the App Association on Promoting Prosperous Interconnected Digital Economies and Avoiding Digital Trade Barriers

While the global digital economy holds great promise for small businesses in terms of growth and competition, many entrepreneurs face a diverse array of challenges entering new markets. These barriers include laws, regulations, policies, or practices that either exclude international goods and services from certain markets, artificially stimulate exports of particular domestic goods and services to the detriment of certain companies, or fail to provide adequate and effective protection of intellectual property rights. While these challenges take many forms, they have the same net effect: impeding international investment and depriving entrepreneurs and consumers in Vietnam and around the world of access and opportunity.

In the interest of improving interconnectivity between the digital economy of Vietnam with other markets around the world while also expanding opportunities for innovators in Vietnam, the App Association supports following principles:

1. ***Enabling Cross-Border Data Flows:*** The seamless flow of data between economies and across political borders is essential to the functioning of the global economy. Small business technology developers must be able to rely on unfettered data flows as they seek access to new markets.

2. ***Prohibiting Data Localization Policies:*** Companies looking to expand into new markets often face regulations that force them and other foreign providers to build and/or use local infrastructure in the country. Data localization requirements seriously hinder imports and exports, reduce an economy's international competitiveness, and undermine domestic economic diversification. Our members do not have the resources to build or maintain unique infrastructure in every country in which they do business, and these requirements effectively exclude them from commerce.

3. ***Prohibiting Customs Duties on Digital Content:*** App developers and technology companies must take advantage of the internet's global nature to reach the 95 percent of customers who live outside of the United States. However, the tolling of data crossing political borders with the purpose of collecting customs duties directly contributes to the balkanization of the internet. These practices jeopardize the efficiency of the internet and effectively block innovative products and services from market entry.

4. ***Ensuring Market Entry is Not Contingent on Source Code Transfer or Inspection:*** Some governments have proposed policies that require companies to transfer, or provide access to, proprietary source code as a requirement for legal market entry. Intellectual property is the lifeblood of app developers' and tech companies' innovation; the transfer of source code presents an untenable risk of theft and piracy. Government policies that pose these requirements are

serious disincentives to international trade and a non-starter for the App Association's members.

5. ***Preserving the Ability to Utilize Strong Encryption Techniques to Protect End User Security and Privacy:*** Global digital trade depends on the use of strong encryption techniques to keep users safe from harms like identity theft. However, some governments continue to demand that backdoors be built into encryption keys for the purpose of government access. These policies jeopardize the safety and security of data, as well as the trust of end users, by creating known vulnerabilities that unauthorized parties can exploit. From a privacy and security standpoint, the viability of an app company's product depends on the trust of its end users.

6. ***Securing Intellectual Property Protections:*** The infringement and theft of intellectual property and trade secrets threatens the success of the App Association's members and hurts 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. The adequate and effective protection and enforcement of intellectual property rights (and the global adoption and full implementation of the WIPO Digital Treaties) is critical to the digital economy innovation and growth.

7. ***Avoiding the Misapplication of Competition Laws to New and Emerging Technology Markets:*** Various regulators, including key trading partners, are currently considering or implementing policies that jeopardize the functionality of mobile operating systems and software distribution platforms that have enabled countless small businesses to grow. Since its inception, the app economy has successfully operated under an agency-sale relationship that has yielded lower overhead costs, greater consumer access, simplified market entry, and strengthened intellectual property protections for app developers with little-to-no government influence. Different governments regulating digital platforms in inconsistent ways will upend this harmonious relationship enjoyed by small business app developers and mobile platforms, undermine consumer privacy, and ultimately serve as significant trade barriers.

General Views of the App Association on Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence

The App Association represents small business innovators and startups in the software development and high-tech space located across the globe.[1] As the world embraces mobile technologies, our members create the innovative products and services that drive the global digital economy by improving workplace productivity, accelerating academic achievement, and helping people lead more efficient and healthier lives. Today, that digital economy is worth more than $1.8 trillion annually.[2] App Association members create innovative software and hardware technology solutions and are at the forefront of incorporating AI into their products and processes.

AI is an evolving constellation of technologies that enable computers to simulate elements of human thinking – learning and reasoning among them. An encompassing term, AI entails a range of approaches and technologies, such as machine learning (ML) and deep learning, where an algorithm based on the way neurons and synapses in the brain change due to exposure to new inputs, allowing independent or assisted decision making.

AI-driven algorithmic decision tools and predictive analytics are having, and will continue to have, substantial direct and indirect effects. Some forms of AI are already in use to improve consumers' lives; for example, AI is used to detect financial and identity theft and to protect the communications networks upon which people around the world rely against cybersecurity threats.

Moving forward, across use cases and sectors, AI has incredible potential to improve consumers' lives through faster and better-informed decision making enabled by cutting-edge distributed cloud computing. As an example, healthcare treatments and patient outcomes stand poised to improve disease prevention and conditions, as well as efficiently and effectively treat diseases through automated analysis of X-rays and other medical imaging. AI will also play an essential role in self-driving vehicles and could drastically reduce roadway deaths and injuries. From a governance perspective, AI solutions will derive greater insights from infrastructure and support efficient budgeting decisions.

[1] ACT | The App Association, *About*, *available at* http://actonline.org/about.

[2] ACT | The App Association, *State of the U.S. App Economy: 2023*, https://actonline.org/wp-content/uploads/APP-Economy-Report-FINAL-1.pdf

Today, consumers encounter AI in their lives incrementally through the improvements they have seen in computer-based services they use, typically in the form of streamlined processes, image analysis, and voice recognition (we urge consideration of these forms of AI as "narrow" AI). The App Association notes that this "narrow" AI already provides great societal benefit. For example, AI-driven software products and services revolutionized the ability of countless people with disabilities to achieve experiences in their lives far closer to the experiences of those without disabilities.

Nonetheless, AI also has the potential to raise a variety of unique considerations for policymakers. The App Association appreciates the efforts to develop a policy approach to AI that will bring its benefits to all, balanced with necessary safeguards to protect consumers.

1. Harmonizing and Coordinating Approaches to AI

Many jurisdictions at the national and local level have existing laws that prohibit unfair or deceptive commercial practices. The use of AI does not shield companies from these prohibitions. However, federal and state agencies alike must approach the applicability of these laws in AI contexts thoughtfully and with great sensitivity to the novel or evolving risks AI systems present. Legislators and other policymakers must first understand how existing frameworks apply to activities involving AI to avoid creating sweeping new authorities or agencies that awkwardly or inconsistently overlap with current policy frameworks.

2. Quality Assurance and Oversight

Policy frameworks should utilize risk-based approaches to ensure that the use of AI aligns with any relevant recognized standards of safety, efficacy, and equity. Small software and device companies benefit from understanding the distribution of risk and liability in building, testing, and using AI tools. Policy frameworks addressing liability should ensure the appropriate distribution and mitigation of risk and liability. Specifically, those in the value chain with the ability to minimize risks based on their knowledge and ability to mitigate should have appropriate incentives to do so. Some recommended areas of focus include:

- Ensuring AI is safe, efficacious, and equitable.
- Encouraging AI developers to consistently utilize rigorous procedures and enabling them to document their methods and results.
- Encouraging those developing, offering, or testing AI systems intended for consumer use to provide truthful and easy-to-understand representations regarding intended use and risks that would be reasonably understood by those intended, as well as expected, to use the AI solution.

3. Thoughtful Design

Policy frameworks should encourage design of AI systems that are informed by real-world workflows, human-centered design and usability principles, and end-user needs. AI systems should facilitate a transition to changes in the delivery of goods and services that benefit consumers and businesses. The design, development, and success of AI should leverage collaboration and dialogue among users, AI technology developers, and other stakeholders to have all perspectives reflected in AI solutions.

4. Access and Affordability

Policy frameworks should enable products and services that involve AI systems to be accessible and affordable. Significant resources may be required to scale systems. Policymakers should also ensure that developers can build accessibility features into their AI-driven offerings and avoid policies that limit their accessibility options.

5. Bias

The bias inherent in all data, as well as errors, will remain one of the more pressing issues with AI systems that utilize machine learning techniques in particular. Regulatory agencies should examine data provenance and bias issues present in the development and uses of AI solutions to ensure that bias in datasets does not result in harm to users or consumers of products or services involving AI, including through unlawful discrimination.

6. Research and Transparency

Policy frameworks should support and facilitate research and development of AI by prioritizing and providing sufficient funding while also maximizing innovators' and researchers' ability to collect and process data from a wide range of sources. Research on the costs and benefits of transparency in AI should also be a priority and involve collaboration among all affected stakeholders to develop a better understanding of how and under which circumstances transparency mandates would help address risks arising from the use of AI systems.

7. Modernized Privacy and Security Frameworks

The many new AI-driven uses for data, including sensitive personal information, raise privacy questions. They also offer the potential for more powerful and granular privacy controls for consumers. Accordingly, any policy framework should address the topics of privacy, consent, and modern technological capabilities as a part of the policy development process. Policy frameworks must be scalable and assure that an individual's data is properly protected, while also allowing the flow of information and responsible evolution of AI. A balanced

framework should avoid undue barriers to data processing and collection while imposing reasonable data minimization, consent, and consumer rights frameworks.

In addition, government entities should avoid requirements that may have the effect of eroding end-to-end encryption in AI-powered services. The potential erosion of end-to-end encryption could create a disproportionate advantage for larger entities with the resources to comply with new regulations while maintaining user trust. Meanwhile, smaller businesses might struggle to navigate the trade-offs between compliance and maintaining their competitive edge based on privacy and security. In this regard, small app companies' interests are aligned with those of end users and children, who benefit immensely from the protections end-to-end encryption. The goal of facilitating investigation and content filtering must be weighed against the twin imperatives of empowering people to benefit from end-to-end encryption and fostering an environment conducive to innovation and growth. Sacrificing these latter aims in service of the former would result in a reduction in online safety for minors; undermined privacy and security protections for consumers, leading to undue financial and reputational harms; and weaker business prospects for small business innovators.

8. Ethics

The success of AI depends on ethical use. A policy framework must promote many of the existing and emerging ethical norms for broader adherence by AI technologists, innovators, computer scientists, and those who use such systems. Relevant ethical considerations include:

- Applying ethics to each phase of an AI system's life, from design to development to use.
- Maintaining consistency with international conventions on human rights.
- Prioritizing inclusivity such that AI solutions benefit consumers and are developed using data from across socioeconomic, age, gender, geographic origin, and other groupings.
- Reflecting that AI tools may reveal extremely sensitive and private information about a user and ensure that laws require the protection of such information.

9. Education

Policy frameworks should support education for the advancement of AI, promote examples that demonstrate the success of AI, and encourage stakeholder engagements to keep frameworks responsive to emerging opportunities and challenges.

- Consumers should be educated as to the use of AI in the service(s) they are using.

- Academic education should include curriculum that will advance the understanding of and ability to use AI solutions.

10. Intellectual Property

The protection of intellectual property (IP) rights is critical to the evolution of AI. In developing approaches and frameworks for AI governance, policymakers should ensure that compliance measures and requirements do not undercut safeguards for IP or trade secrets.