

June 13, 2022

The Honorable Chuck Schumer
Majority Leader
United States Senate
Washington, District of Columbia 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, District of Columbia 20510

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, District of Columbia 20515

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, District of Columbia 20515

Re: Small App Companies Urge You to Oppose Open App Markets Act (S. 2710/H.R. 7030) and American Innovation and Choice Act (S. 2992/H.R. 3816)

Dear Majority Leader Schumer and Minority Leader McConnell,

As small companies from states across the nation, we applaud Congress for a bipartisan focus on enhancing privacy and security protections for American consumers. Unfortunately, you are being asked to give the Open App Markets App (S. 2710/H.R. 7030) and the American Innovation and Choice Online Act (S. 2992/H.R. 3816) floor time despite serious privacy and security concerns that have been raised by Senators on both sides of the aisle. The bills would force open doors for cyber attackers and prevent platforms from performing management functions, including stopping malware, fraud, and other content that threatens our businesses and your constituents. The bills' prohibitions on these key management functions would eliminate the central benefits we derive from major mobile app stores: the measures they take to protect mobile devices and consumers from security and privacy threats. Therefore, we urge you to oppose the bills, decline to advance them, and focus on privacy and data security legislation instead.

S. 2710/H.R. 7030 and S. 2992/H.R. 3816 would mandate that software platforms stop providing certain services that benefit small app companies and diminish their value as a distribution option. Each of us has a choice when it comes to distributing software; most of us make apps for Google Play or the App Store or both. We do this while also creating HTML websites, progressive web apps, or distributing software through other more specialized platforms. Each of the distribution options has its benefits over others. When we choose to make apps for distribution through major app stores, it is often because the app stores are trusted marketplaces that actively remove harmful content like malware and fraudulent apps, a set of gating activities that are generally not a feature of distributing software over the open internet. In order to benefit from what the software platforms offer, we pay registration fees of \$25 per year for Android or \$99 per year for iOS, and in return, we get a bundle of distribution services and tools that lower overhead, increase security, and enhance privacy. By mandating that all apps must be carried on major app stores, the legislation would destroy their value separate and apart from distributing software over the internet. In other words, the bills would homogenize software distribution by bringing the largest app store options down to the lowest common denominator, or otherwise create a "race to the bottom on American privacy," as Senator Patrick Leahy (D-VT) put it during the markup of S. 2992. Instead of limiting our options to a single approach, Congress should instead work on making other software distribution options *more* attractive for us, our clients, and consumers by enacting a federal privacy framework. Congress should strive to improve the security and privacy of the riskiest software

distribution options—not worsen security and privacy protections where Americans are most secure, on their mobile devices.

When IBM and America Online (AOL) were dominant platforms, some in Congress worried that they would never be beaten. Now that their feared hegemony is a problem of the past, we know that if Congress had written permanent rules designed specifically for them, those rules may have had the perverse effect of preserving the status quo. Today, some of the largest companies that have taken advantage of the key benefits of mobile platforms are asking you to support legislation that creates a presumption that fundamental mobile security and privacy measures are illegal. Such legislation cannot be the answer. These same companies, which sell digital-only goods and services on major app stores, support S. 2992/H.R. 3816 and S. 2710/H.R. 7030 because they want cost-free distribution, and they may even benefit from a marketplace that does nothing to protect security. For example, while Spotify can continue to sell in a threat-ridden environment with fewer problems because of its name recognition, smaller companies in the app economy will find it much more difficult and more costly to acquire consumers. As a result, smaller versions of Spotify have a much tougher time taking on the market leader on the app stores, further cementing Spotify's position. The bills therefore directly shift distribution costs from the largest companies on software platforms down to the smallest, and we do not think this is a worthwhile policy outcome for your constituents, who would continue to benefit from our ability to gain a foothold and grow.

We appreciate this opportunity to weigh in with our perspectives on the antitrust legislation Congress is actively considering and look forward to further engaging with you through the App Association and directly going forward.

Sincerely,

Homnick Systems
Dogtown Media
Qi-Fense
SouthernDNA
Colorado Technology Consultants
Vemos
Cavu
Sigao Studios
GlobalForce Tech Consulting
Fresco Capital
GiveBlack App
FMS, Inc.
HealthDatix