



September 26, 2024

The Honorable Adrian Smith  
Chair  
Subcommittee on Trade  
Committee on Ways and Means  
Washington, District of Columbia 20515

The Honorable Earl Blumenauer  
Ranking Member  
Subcommittee on Trade  
Committee on Ways and Means  
Washington, District of Columbia 20515

The Honorable Jason Smith  
Chair  
Committee on Ways and Means  
Washington, District of Columbia 20515

The Honorable Richard Neal  
Ranking Member  
Committee on Ways and Means  
Washington, District of Columbia 20515

**RE: Submission for the Record for the Trade Subcommittee Hearing *Protecting American Innovation by Establishing and Enforcing Strong Digital Trade Rules on Behalf of Morgan Reed, President of ACT | The App Association***

Dear Chairman Smith, Ranking Member Blumenauer, Chairman Smith, and Ranking Member Neal:

Thank you for the opportunity to discuss the importance of protecting American innovation through our trade policies. ACT | The App Association supports your goal of maintaining and expanding United States leadership on digital trade to ensure a strong economy and a favorable market for American small businesses. We believe that the keys to a strong digital trade policy remain opposition to digital trade barriers like the European Digital Markets Act (DMA), Digital Services Act (DSA), and other barriers like digital services taxes, as well as clear rules on cross-border data flows, source code transfer, and data localization.

The App Association is a global trade association for small and medium-sized technology companies. Our members are entrepreneurs, innovators, and independent developers within the global app ecosystem that engage with verticals across every industry. We work with and for our members to promote a policy environment that rewards and inspires innovation while providing resources that help them raise capital, create jobs, and continue to build incredible technology.

Further, as explained in a multi-association stakeholder letter led by the App Association to the Biden Administration,<sup>1</sup> our community of small business innovators is deeply concerned with the United States Trade Representative's (USTR's) October 25, 2023,

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<sup>1</sup> <https://actonline.org/wp-content/uploads/Small-Business-Ltr-re-USTR-Digital-Trade-3-Nov-2023-w-cosigners-1.pdf>.

announcement of its withdrawal of support for foundational digital trade policies, including those that enable cross-border data flows, avoid forced data localization mandates, protect source code, and ensure that digital products are not unduly discriminated against. The USTR's position significantly impacts U.S. leadership across various global industries and platforms, enabling countries like China to secure their position in and dictate matters on global trade. We are concerned that stepping back on crucial digital trade priorities that support U.S. businesses will set a harmful precedent for other U.S. trade interests. We urge the USTR to reinstate their position for crucial digital trade priorities that allow small and large businesses alike to reliably operate and strengthen the United States as a global powerhouse for important and emerging trade objectives.

The global digital economy holds great promise for small app development companies, but our members face a diverse array of trade barriers when entering new markets. These barriers may take the form of laws, regulations, policies, or practices that protect domestic goods and services from foreign competition, artificially stimulate exports of domestic goods and services, or fail to provide adequate and effective protection of intellectual property rights. While these barriers have different forms, they all have the same net effect: impeding U.S. exports and investments at the expense of American workers, and particularly of small businesses. In your efforts to support U.S. growth through digital trade policies, we urge for your prioritization of the following:

### **Cross-Border Data Flows and Data Localization**

Many businesses rely on cross-border data flows, and not just those that are considered to be in technology industries. These kinds of entities are often clients and customers of App Association members. For example, a wide range of healthcare entities conduct trials in multiple countries and bring their findings back to their U.S.-based labs. Multinational manufacturers and retailers need to send data from their customers' location to their warehouses during an online order, and small businesses of all kinds rely on cross-border exchange to reach their customers. Forcing businesses to store data inside the borders of a country where they conduct business requires them to either build data centers locally or contract with cloud firms to redirect and send their data on circuitous paths in ways that are needlessly duplicative, expensive, and insecure.

For businesses whose apps are available for download worldwide from the major app stores or the internet, much of their business comes from spontaneous downloads by people who have a need the app fills. If the developer acquires a single user in a country with a data localization requirement, they may need to pay for separate storage and processing of that data in the country, while ensuring that any data pertaining to the single user stays within that country's borders. Requiring this level of data management adds an unnecessary layer of complexity and is often beyond the technical and financial capacities of businesses.

The United States has historically supported cross-border data flows and opposed data localization mandates in other countries. These positions have allowed American businesses—and especially small businesses—to thrive in global competition through continuous innovation. Upending decades of support for cross-border data flows and opposition to data localization mandates will leave American businesses in the lurch and unable to continue providing strength to our economy. Congress must continue its support of American small businesses by opposing data localization requirements and supporting cross-border data flows.

## Digital Trade Tariffs

American App Association members take advantage of the internet's global nature to reach the large portion of their customers who are outside the United States. However, collecting customs duties on digital services directly contributes to the balkanization of the internet and prevents small business digital economy innovators from entering new markets.

Members of the World Trade Organization (WTO) have supported a moratorium on e-commerce tariffs since 1998 and extended the moratorium regularly since then,<sup>2</sup> including most recently at this year's WTO Ministerial Conference. App Association members and other small businesses need protection from e-commerce tariffs to continue to do business. E-commerce tariffs are trade barriers that give preferential treatment to the narrow set of companies whose digital supply chains stop at national borders. We applaud the U.S. government's contributions to efforts leading to the preservation of the e-commerce moratorium.

Many countries are considering or implementing digital services taxes (DSTs). Canada, for example, recently finalized its version of a DST, which applies to "certain digital services that rely on engagement, data, and content contributions of Canadian users," as well as "certain sales or licensing of Canadian user data,"<sup>3</sup> and will charge a three percent tax on those revenues retroactively. For small businesses that rely on licensing of data or user contributions, this could represent a huge portion of their operating expenses. Digital services taxes, like many current barriers to trade, attempt to target large tech companies but will almost certainly sweep in small tech as well. We urge Congress to support the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework that continues to work addressing taxation.

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<sup>2</sup> Safo, Nana Ama. "A Guide to the WTO E-Commerce Moratorium Debate." Available at <https://www.taxnotes.com/featured-analysis/guide-wto-e-commerce-moratorium-debate/2024/03/01/7j877>

<sup>3</sup> "Digital services tax," Canadian government website. Available at <https://www.canada.ca/en/services/taxes/excise-taxes-duties-and-levies/digital-services-tax.html>

## **Intellectual Property and Source Code Protection**

The infringement and theft of intellectual property (IP) jeopardizes the success of App Association members and hurts the billions of consumers who rely on their app-based products and services. Each kind of IP (copyrights, trademarks, patents, and trade secrets) represents distinct utilities upon which App Association members depend. IP violations lead to customer data loss, interruption of service, revenue loss, and reputational damage – each alone is a potential “end-of-life” occurrence for a small app development company. Strong and fair protection of intellectual property for copyrights, patents, trademarks, and trade secrets is essential to their businesses.

Notably, some governments have proposed or implemented policies that make legal market entry contingent upon the transfer of proprietary source code. For app developers and technology companies, the transfer of source code presents an untenable risk of theft and piracy. These requirements present serious disincentives for international trade and are non-starters for the App Association’s members.

## **Technical Protection Mechanisms, Such as Encryption**

Global digital trade depends on technical protection mechanisms, such as strong encryption techniques, to keep users safe from harms like identity theft. However, some governments and companies insist that “backdoors” be built into encryption for the purposes of government access. These policies would degrade 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 security and privacy standpoint, the viability of app developers’ products depends on the trust of end users.

## **Misapplication of Competition and Consumer Protection Laws to Digital Markets**

Various regulators, including key trading partners, are currently considering or implementing policies that jeopardize the functionality of nascent and emerging technology markets—most famously, including “digital platforms”—that have enabled countless American small businesses to grow. Since its inception, the app economy has successfully leveraged digital platforms, enabled by lower overhead costs, greater consumer access, simplified market entry, and strengthened intellectual property protections for developers, among other benefits. Foreign governments regulating digital platforms inconsistent with U.S. law will upend this harmonious relationship enjoyed by small-business app developers and mobile platforms, undermine consumer privacy, and ultimately serve as significant trade barriers.

In the context of digital platforms and other markets, proposed and implemented changes to competition laws present an increasing threat to our members’ growth and job creation.

For example, we remain concerned with a global trend by regulators in both developed and developing trading partners to alter their approach to mergers and acquisitions.<sup>4</sup> Our members and fellow innovators must be able to look to acquisitions as a key part of building their future through competing in the global digital economy.

## Conclusion

Right now, digital trade looks like the Autobahn. Companies can deliver their data and products where they are needed quickly and efficiently. The process is mostly frictionless, and it means companies can compete from a level playing field. Erecting barriers to free digital trade would be like adding toll plazas to the road. It causes jams, slows everyone down, and makes it harder for companies to conduct business. But some companies—large ones with big compliance teams—have an EZ Pass. It's going to be small businesses stuck fishing change out of the cupholder while industry titans, especially those based overseas, sail right through.

I urge you to continue your support for strong digital trade protections for small businesses. The Committee can help small businesses by holding hearings like this one to highlight the importance of strong digital trade protections, working with the United States Trade Representative to continue longstanding support for digital trade, and ensuring small business voices are heard on this issue. I thank the Committee for your strong support of small business.

Sincerely,



Morgan Reed  
President

ACT | The App Association

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<sup>4</sup> See our recent open letter regarding recent international trends in competition regulations, available at <https://actonline.org/2024/08/12/an-open-letter-regarding-recent-international-trends-in-competition-regulation/>