

25 August 2025

Intellectual Property, Digital Economy and Innovation Division  
Global Affairs Canada  
Lester B. Pearson Building  
125 Sussex Drive  
Ottawa, Ontario, K1A 0G2

**RE: Comments of ACT | The App Association, *Consulting Canadians on a possible Canada-European Union Digital Trade Agreement***

ACT | The App Association hereby provides written comments to Global Affairs Canada to inform Canada's exploratory discussions for a digital trade agreement (DTA) with the European Union (EU), including its potential scope and content, as well as identifying potential areas of interest or concern.<sup>1</sup>

The App Association is a global policy trade association for the small business technology developer community. 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. App developers like our members also play a critical role in developing software and connected devices that drive innovation across consumer and enterprise markets. The value of the ecosystem the App Association represents—which we call the app ecosystem—is approximately CAD 2.6 trillion and is responsible for over 385,000 Canadian jobs, while serving as a key driver of the \$8 trillion internet of things (IoT) revolution.<sup>2</sup>

While the digital economy holds great promise for App Association member companies, our members face a diverse array of challenges when entering new markets. Commonly referred to as “trade barriers,” these challenges are reflected in the laws, regulations, policies, or practices that protect domestic goods and services from foreign competition, artificially stimulate exports of certain domestic goods and services, or fail to provide adequate and effective protection of intellectual property rights. These barriers take many forms but have the same net effect: impeding imports and exports, while stifling investment. The Canadian government can and should normalize an open and competitive digital economy that will further small business growth and job creation.

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<sup>1</sup> <https://www.international.gc.ca/trade-commerce/consultations/dta-acn/index.aspx?lang=eng>

<sup>2</sup> ACT | The App Association, State of the App Economy (2022), <https://actonline.org/wp-content/uploads/APP-Economy-Report-FINAL.pdf>.

Generally, we support efforts to address trade barriers to goods and services, foreign direct investment, and intellectual property rights. We are committed to working with stakeholders to reduce or eliminate trade barriers that will inhibit the growth of the app economy. With respect to digital trade, the small business innovators we represent prioritize the following principles:

- ***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.
- ***Prohibiting Data Localization Policies:*** Canadian 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.
- ***Prohibiting Customs Duties and Digital Service Taxes on Digital Content:*** Canadian 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.
- ***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.
- ***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.
- ***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 is critical to the digital economy innovation and growth.

- ***Avoiding the Misapplication of Competition Laws to New and Emerging Technology Markets:*** Various regulators, including the EU, are currently considering or implementing policies that would put mandates on nascent and developing emerging technology markets, jeopardizing small businesses’ ability to compete and the functionality of mobile operating systems and software distribution platforms that have enabled countless Canadian small businesses to grow. As a prime example, small businesses in the app economy broadly benefit from their relationship with digital platforms that lower overhead costs, provide greater consumer access, simplify market entry, and strengthen intellectual property protections. Governments intervening into this pro-competitive dynamic (e.g., the EU’s Digital Markets Act) are upending the mutually beneficial relationship between small-business developers and digital platforms, undermining consumer privacy, cybersecurity, intellectual property protections, and investment in platform-level features (e.g., disability access) that developers can leverage, ultimately serving as significant trade barriers.

In drafting a DTA with the EU, the Canadian government should consider mirroring several provisions in the United States-Mexico-Canada Agreement’s (USMCA) digital trade chapter that have enabled the app economy to grow and create new jobs across Canada. To the extent possible, the digital trade agreement procured by the Canadian government should leverage a range of provisions to advance harmonized policies across trading partners, enabling the app economy to grow by:

- (1) Prohibiting customs duties from being applied to digital products (software);
- (2) Ensuring cross-border data flows and reducing the potential of onerous data localization requirements, including by codifying protections into domestic laws as a valid basis for transfers of personal data;
- (3) Preserving the ability to use technical protection mechanisms, including encryption, to secure data transactions;
- (4) Limiting governments’ ability to require forced local partnerships or the disclosure of proprietary source code as a condition of market entry;
- (5) Providing for the protection of the range of intellectual property that small business innovators rely on to start and grow their businesses;
- (6) Discouraging the misapplication of competition laws in nascent and emerging sectors, such as digital platforms;
- (7) Promoting World Trade Organization Informational Technology Agreement expansion;

- (8) Developing good regulatory practices for digital trade in alignment with those developed in the Organisation for Economic Co-operation and Development (OECD); and
- (9) Furthering harmonized reliance on international technical standards for the satisfaction of domestic regulatory requirements.

The App Association appreciates the opportunity to provide our views to the Canadian government and to assist in the development of a digital trade agreement that promotes economic growth and leadership.

Sincerely,



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