



ACT | The App Association's EU Policy Guide



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Key policy issues:

We identified the following key issues areas app developers in the European Union must be aware of today:

1. Competition and regulatory balance
2. Privacy, lawful access, and encryption
3. Intellectual property
 - a. Copyrights and trademarks
 - b. Patents
 - c. Standard-essential patents (SEPs)
4. Artificial intelligence
5. Digital/connected health

1) Regulatory Balance and Competition



Why it matters for your business:

With coding skills and an internet connection, an app maker should be able to succeed from anywhere. Due to its low barriers to entry, the app marketplace sees high growth in many areas outside the traditional tech hubs. The combination of the app store model and the proliferation of cloud services gives SMEs unprecedented access to consumers and markets abroad, allowing an ecosystem worth €830 billion to emerge. This app economy is made up of thousands of businesses just like yours that leverage the connectivity of smart devices to create innovative solutions that have become integral to how we live, work, play, shop, and stay healthy. While the app economy is currently thriving, it is crucial to ensure that SMEs can continue to grow and compete, and don't become collateral damage in regulations targeting big tech. Your ability to create jobs and growth depends on appropriate enforcement of antitrust laws based on demonstrated harms and policies that foster competition and market dynamics.

What we advocate for:

The overall goal of the App Association is the success of our members. We advocate for a competitive environment that both inspires and rewards innovation while providing resources to help you utilize your intellectual assets to raise capital, promote growth, and create jobs. Policymakers should encourage competition, rather than limit it based on theoretical harms, and allow the market to resolve issues on its own unless an actual market failure exists.



SMEs are able to operate on a level playing field and have the same negotiating power as big tech companies when it comes to app stores, as platforms' guidelines apply to all developers equally. Platforms help SMEs be successful by enabling them to easily access consumers around the world, establish trust with those consumers, lower their overhead costs, absorb the costs of financial transactions, and strengthen IP protection. Platforms enable SMEs to operate on a level playing field and have the same negotiating power as big tech companies when it comes to app stores/platforms, as their guidelines apply to all developers equally. Government intervention into platforms must be based on demonstrated harms, not hypotheticals or activist assumptions. We strongly opposed the European Union's initial platform-to-business (P2B) proposal because it failed to recognize the value of platforms to the app economy and was not founded on demonstrated harms to consumers. Although the EU ultimately adopted a more tempered approach, the final, modified P2B Regulation is still subject to interpretation by the courts and EU Member States, and it is critical that we continue to emphasize the SME voice. Moving forward, we will continue our engagement with the European Commission's (EC) expert group on online platforms, set up to measure and assess the dynamics of the market and practices concerning platform-business relations. We will continue to ensure that the EC understands that the relationship between apps and platforms created a powerful ecosystem that continues to benefit consumers and must be preserved.

Further EC tranches of activity present similarly themed threats to your ability to compete and innovate. For example, we are working to ensure that the EC does not move forward with a common/standard charger mandate. This proposed mandate would seriously jeopardize your ability to be competitive and design the most efficient versions of your products. Forcing manufacturers to make all mobile handsets and IoT devices USB-C compatible locks in a specific technology and removes the ability to design the most efficient and functional version of a tech product, precluding use case-specific form factor and charging needs. The inability to use the newest, most innovative, and efficient charging solutions due to EU requirements would significantly hinder the ability of the SMEs that the App Association represents to compete as they often rely on selling only one product/device as opposed to larger firms that release products in tiers and families.

[Our work related to competition and regulatory balance:](#)

The App Association filed comments and sent letters to both the European Commission and the European Parliament in order to influence the future of the P2B Regulation based on our concerns with the proposal. Similarly, we have engaged with the French and British governments to advocate for the preservation of the symbiotic relationship between platforms and app developers. On the issue of platforms, we also released a [whitepaper on the impact of platforms on software distribution and a retrospective analysis of the relationship between app developers and platforms](#). Our advocacy also includes ongoing engagement with the EC to shape its proposed common charger mandate. Overall, the App Association regularly engages with policymakers to prevent market intervention where it is inappropriate, as demonstrated by our efforts to express concerns about the Commission's mandated common charger proposal.

2) Data Privacy, Lawful Access, and Encryption

Why it matters for your business:

Your business handles data every day, and the need to earn and maintain customer trust puts you at the forefront of protecting the confidentiality, integrity, and access to this data. In the European Union, consumer data protection and data privacy are considered fundamental rights. Consequently, the EU has very stringent privacy laws—namely, the General Data Protection Regulation (GDPR)—that may expose you to liabilities including devastating non-compliance fines. We seek to improve your understanding of key regulations like the GDPR, how it affects you, and what you need to do to comply.

Despite the fact that businesses are still struggling with GDPR compliance, the EU continues to work towards further regulation related to privacy and lawful data access (e.g., the e-Privacy and e-Evidence regulations). Proposals that effectively weaken data protection, demand backdoors to encryption algorithms, or require websites, app stores, and even open source projects to face unprecedented liability for activity on their platforms all hurt your company's ability to protect consumers and retain their trust. For example, if backdoors to encryption for law enforcement are mandated, you will face significant threats of criminals illegally using the same backdoors, putting your products and customers at risk.

Small and medium businesses often become collateral in the development of such regulations designed to target big tech firms, making it essential that your voice is heard. The ways in which you are able to use and share consumer data impacts how consumers engage with your products and services. Having good privacy and lawful access policies that comply with regulations helps to build a level of consumer trust that helps you succeed.

What we advocate for:

The App Association advocates for a balanced and scalable approach to privacy regulation that provides SMEs with the ability to appropriately tailor their approaches to the unique requirements of their customers and partners, enabling the most efficient approach to establishing and maintaining consumer confidence. For example, we continue to push the EC to provide for realistic application of the GDPR that will not preclude the use of new artificial intelligence-driven tools and services.

Further, while demands for backdoors may appear to be a solution for law enforcement, we believe that the technical risk is too high – it's a matter of when, not if, such backdoors will be exploited by unauthorized parties. The consequences of bad actors gaining access to your technology and/or customer data would be disastrous and could open you to liability under regulations like the GDPR and related EU member state domestic laws and regulations.



We support strong privacy and lawful access regulations that are scalable in a way that preserves the ability of small innovators to compete, to develop better privacy practices and better communication methods with their customers, while also focusing on the consumer experience. For SMEs, transparency and allowing customers a reasonable level of control over data collection and use is essential and allows them to build trust. We support the policy concept of “privacy by design” in which privacy is built into the design and functionality of products and services. This not only makes companies accountable for sound privacy practices, but it also allows them to innovate on the details of those practices. While the GDPR embraces the “privacy by design” approach, small companies are still coming to grips with what the GDPR means for them on an EU member state-by-EU member state basis.

After dealing with the burdensome moving target of GDPR compliance, SMEs face the potential of having to start over on product innovation and compliance due to additional regulations proposed at the EC level addressing e-privacy and lawful access to data. The possibility of new regulatory burdens being layered onto those already faced by SMEs threatens their limited resources even more, thus hindering their ability to develop better products and create new features. Both proposals currently lack scalability and could have serious impacts on app developers’ ability to provide services within the EU. We also strongly support the EU-U.S. Privacy Shield as it provides a much-needed mechanism for secure transatlantic data transfers.

Our work related to privacy and lawful access:

The App Association provided guidance on how to comply with the GDPR and the EU-U.S. Privacy Shield. We also held meetings with EU officials in Brussels to discuss the e-Evidence regulation to ensure it would include scalable requirements for SMEs and submitted formal comments to various EU bodies to express concerns over the provisions of the proposed e-Evidence regulation. On our blog, we have written about the effects e-Privacy and e-Evidence would have on you and other small businesses. The App Association continues to play an integral role in shaping laws involving data privacy and governments’ access to data to ensure both scalability for small businesses and the integrity of our member companies’ customers’ data and trust.

3) Intellectual Property

a. Copyright and Trademarks

Why it matters for your business:

When you create and license software and content, it becomes valuable intellectual property (IP) for your business. Proactive protection of IP is essential for success and continued innovation in the digital economy. Copyright and trademark infringements can significantly hurt your ability to compete, innovate, invest, and hire. Even if your app is free and ad-supported, your content can be pirated, putting your software and reputation at risk. Bad actors may also want to appropriate your success through brand confusion by offering similar (but usually much lower quality) apps that look similar to yours and trick customers into thinking they've installed your app. A strong IP framework that adequately protects your innovations is thus essential for your success and enables you to continue creating jobs, developing software, and generating growth.



What we advocate for:

Members of the App Association depend on a strong IP framework to protect their creativity and innovations. We continuously encourage our members to be proactive about copyright and trademark registration and to help them to navigate the process. We also share best practices on how to deal with copyright and other IP infringements, how to avoid costly litigation, and how to resolve the issue within the framework of platforms' terms of service. We also work with app stores to expedite the removal of pirated content because protecting the integrity of our members' IP is a top priority for us, along with ensuring that app makers are able to license their content and to appropriately reduce their liability when including user-generated content. Laws and regulations governing copyrights and trademarks must strike a fair balance between the obligations of rights holders and service providers to detect infringement and appropriate actions in response to it. If this balance is struck, legal systems will become more accessible and responsive to smaller companies that rely on fair IP protections to grow their businesses and create new jobs.

Our work related to copyright and trademarks:

The App Association is the leading industry voice on the app economy for our members and policymakers and provides resources and tools to help app makers and software engineers understand the IP-related rules, regulations and best practices that are essential for their success. We engage in key multistakeholder fora, such as the Internet Corporation for Assigned Names and Numbers (ICANN) policy development process and in the International Trademark Association (INTA), to advance our members' interests in protecting copyrights and trademarks on the internet. As part of our effort to help our members understand best practices around IP, we also released the App Association IP Licensing Guide.

b. Patents

Why it matters for your business:

Covering novel inventions, including those that are computer-implemented, attaining patent grants can be essential for App Association members to protect their innovations. Further, as SMEs build new products, they may license patented technologies. Finally, App Association members may also be accused of patent infringements. Because our members rely on a variety of patents, the existence of overly broad patents is an important issue. Being a patent licensee raises concerns about unreasonable licensing practices for many of our members, which is why we advocate for high patent quality and measures that reduce the harassment of SMEs by unreasonable patent licensors.



Your innovations are often built on top of standardized technologies in order to ensure interoperability with existing products and solutions. If you are building or integrating hardware products that incorporate standards, your business likely faces liability related to your use of standard-essential patents (SEPs). Because SEPs are necessary to the successful use of a standard, SEP owners usually have much more leverage over their potential licensees than other patent owners; at the same time, SEP holders volunteer to make access to their SEPs on fair, reasonable, and non-discriminatory (FRAND) terms to any willing licensee, and this is a promise on which App Association members should be able to rely. If SEP holders disregard their FRAND commitments, innovators like you are unable to use technical standards and are essentially locked out from competition.

What we advocate for:

Members of the App Association rely on a balanced patent system to protect their ingenuity and to protect them from unfair patent claims. We strongly oppose practices of unreasonable licensing behavior (“patent trolling”) and believe that it is essential to preserve a mechanism to invalidate patents that should never have been granted. Thus, in order to ensure continuous growth of the app economy, SMEs must be able to pursue IP claims affordably and to challenge unreasonable patents. We are a longtime and vocal supporter of the Unitary European Patent that was finally agreed to in 2012 as we believe the patent process should be as streamlined and easy as possible for any size company to complete.

The App Association also works to ensure that a balanced approach is taken to the licensing of SEPs, which, unlike other patents, must be made available to any willing licensee on FRAND terms. Open standards are the foundation for innovation, and SEP owners’ commitment to FRAND licensing is crucial to the success of entrepreneurs. We work to promote reasonable, transparent, and predictable SEP licensing frameworks that advance innovation and make standards accessible to small businesses, consistent with established legal and policy norms in the EU and elsewhere. The App Association is the leading small business advocate before the EC to advance transparent and predictable SEP licensing practices to level the playing field for businesses like yours.

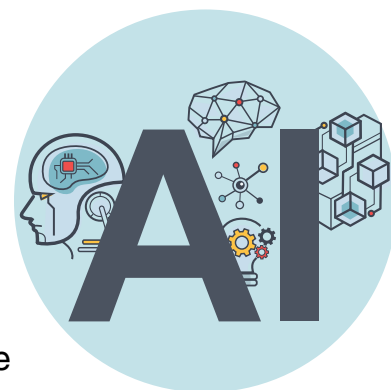
Our work related to patents:

We regularly engage with policymakers on relevant IP policy development processes, at the European Parliament, European Commission, and across key EU Member States. Specific to SEPs, the App Association continues to serve as the leading voice for SMEs on SEP law and policy. We created the All Things FRAND website as a repository for judicial cases, administrative cases, and agency guidance on FRAND related issues, and routinely develop regulatory filings and amicus filings for courts on issues relevant to App Association members. The App Association also founded a leading effort to develop SEP licensing guidance, which was released in the summer of 2019. Several ongoing policy development processes, including the EC's comprehensive review of its competition law guidelines, will be priorities for the App Association moving forward.

4) Artificial Intelligence (AI)

Why it matters for your business:

App Association members are continually developing, and finding new ways to leverage, AI to provide vital services to companies on the backend and consumers on the front-end. Your business may develop AI or use AI to create innovative features for consumers, such as health data analytics, facial recognition add-ons, and personalized educational plans. Because of its disruptive effects, AI presents numerous challenges and opportunities for policymakers: while the potential benefits are undeniable, many risks also underlie the increased role of AI across various sectors and use cases. Realizing the potential of AI requires regulation that incents the development of innovative AI tools, balanced with protections against harms related to data bias and others.



What we advocate for:

The App Association proactively works to advance the use of AI in key use cases across a variety of industries such as agriculture, health, manufacturing, and others. Our members both use and develop solutions that include AI, and we believe that AI offers immense potential for widespread societal and economic benefits. Key concepts the App Association seeks to advance include:

- *Advocating for prioritizing and providing sufficient EU and national funding and incentives to encourage both private and non-profit sector research and development in AI, given the amount of research and development required to progress AI efforts. We appreciate that the EU has asked all Member States to develop national AI strategies, as we believe a harmonized EU-wide approach to AI will be vital to achieving the promises AI offers for our economies.*
- *Ensuring that the use of AI aligns with the recognized standards of safety, efficacy, and equity. We fully support that the EU and member governments bolster AI and AI-standards-related knowledge, leadership, and coordination among regulatory agencies to maximizing effectiveness and efficiency.*

- *Establishing a policy framework for AI design that includes ethical considerations and centers on the human aspects of the applications in question.*
- *Properly protecting individual's information and privacy, while allowing the responsible and necessary flow of data to provide and promote high-quality AI-enabled services. Similarly, data access and data-sharing, as well as explicit communication of appropriate data use, are crucial to maximize the positive impacts of AI.*

As AI develops, policymakers will have to define a regulatory framework that provides targeted support without impeding your innovative/technological progress. Slowing down AI development with overregulation or underinvestment could devalue it even before government agencies can adopt it. The result would be technology at the speed of government and legislative gridlock that can block AI's path to success. As society moves to adopt these technologies on a greater scale, it is of utmost importance to ensure that developers of all sizes and anywhere in the world can contribute to this important trend and to preserve a regulatory environment in which AI can flourish. The App Association will continue to find opportunities to secure a level playing field for the most innovative companies in artificial intelligence, machine learning, and similar technologies.

Our work related to AI:

The App Association has released overarching AI policy recommendations for EU policymakers in 2019, and we are working to build on this work to influence the policy trajectory in the EU through such fora as the European AI Alliance to which the App Association has been appointed. We also continue to explore AI's role in specific sectors. For example, in 2019 we released the Connected Health AI Policy Guidelines that encourage policymakers to provide a framework of healthcare AI policy principles that address the range of opportunities and challenges associated with AI in healthcare and advocate for the appropriate role of government regulation.

5) Connected Health

Why it matters for your business:

Combining devices and apps to seamlessly connect patients with caregivers in an affordable manner is now more common than ever. Digital tools will be necessary as general medicine fights a physician shortage and ageing populations across the EU. Our members manufacture devices and provide apps that empower patients to receive continuous care and monitoring outside of the doctor's office, to stay engaged with their own health, and to securely share their data with caregivers. Policymakers should craft laws and provide incentives to ensure that patients can effectively use these technologies.



Because health and healthcare are part of a highly regulated policy space, tech-driven tools have been limited in their ability to provide assistance in healthcare management – even if consumers want them to. Laws and regulations are often outdated for the mobile health environment and don't correspond to the connected world we live in now, as it is difficult for regulators to keep up with the pace of innovation.

Educating legislators about new technologies and how they fit into the health ecosystem is an essential step for creating a better environment for mobile health tools and is necessary to effect meaningful policy changes that will enable you to reach new customers and patients. Communicating and illustrating these efforts to policymakers is important to prevent unnecessarily restrictive regulatory action and allows you to continue working to reach your mobile health app's full potential.

What we advocate for:

The App Association's Connected Health Initiative (CHI) is a dedicated effort of the App Association to advance pro-digital health policy and law. CHI firmly believes, based on a robust evidence base, that connected health tools improve patient outcomes and reduce costs for providers and patients. We support the idea of a seamless European healthcare system that provides citizens with secure access to electronic health records (EHR), e-Prescriptions, and continuous access to caregivers who can interact across large distances to replace in-person interactions, and to monitor patient-generated health data (PGHD) to identify trends early and make appropriate interventions. The European Commission should leverage every opportunity to work towards a connected health system by removing barriers to advanced technologies in healthcare and clarifying the legislative and regulatory issues impacting digital health and care. More specifically, we advocate on key issues including:

- *The security and privacy concerns related to medical IoT apps and products;*
- *The need for legal and policy changes that enable clinicians to be reimbursed for adopting connected health innovations;*
- *The promotion of interoperability across the health information ecosystem.*

EU-level coordination in cooperation with Member States is needed to optimize the use of different funding instruments and approval processes to advance the state of connected health in Europe. We want to increase predictability, transparency, and clarity for our members in legal and regulatory responsibilities related to connected health and care so that they can reach the full potential of their mobile applications and continue to innovate.

Our work related to connected health:

CHI is an active advocate to the EC, and to key Member States' governments, to advance pro-digital health laws and policies. We help our members have timely information on policy developments and regulatory actions, connect with industry leaders, platform providers, and policymakers, navigate the legislative landscape, and advocate for an innovation-friendly marketplace. We continue to create, promote, and improve industry best practices around medical and mobile health devices and applications. Our Policy Principles for Artificial Intelligence in Health, for example, were designed to address the role of AI in healthcare and guide policymaker action in this space. In the EU specifically, we've participated in multiple consultations such as the public stakeholder consultation on the next phase of EU-U.S. cooperation in eHealth/Health IT and the consultation on the "Communication on Digital transformation of health and care in the context of the DSM."