

# Copyright, Patents, Trademarks, and Trade Secrets: The Foundations of the App Economy

Strong intellectual property (IP) protections safeguard the creativity and innovation of ACT | The App Association members. As the \$1.3 trillion billion app ecosystem expands globally, our members' ability to create jobs and develop innovative software depends on strong IP protections. In order to ensure the growth of the app economy, the small innovators that create jobs in your states and districts must be able to pursue IP claims affordably and challenge patents that should not have been granted in the first place.



## Copyright

App developers are both content creators and users. Software and creative content are protected by copyright and are a valuable part of an intellectual property portfolio. Developers also license software and content for use in their own products and services. Software piracy jeopardizes the success of our members and threatens digital content creators' ability to innovate, invest, and hire. Even free, ad-supported applications have their content stolen and new ad networks embedded, making honest developers bear the cost of distributing content while not seeing a dime of ad revenue. Other free apps are pirated to create botnets and commit crimes where the use of the reputation of the legitimate developer lures unsuspecting victims. App developers have several tools at their disposal to protect their work, including the notice-and-takedown procedures set forth in Sec. 512 of the Copyright Act, which enable them to ask platforms and website hosts to remove content that apparently infringes their copyrights. Developers may also need to comply with Section 512 notice-and-takedown requests where their app allows for uploads of third-party content.

The Copyright Office is currently engaged in a study of Section 512 and recently held a roundtable to review domestic and international developments in Section 512 litigation. The debate around Section 512 focuses on striking the right balance between obligations of rights holders and service providers to detect infringement and appropriate actions in response to it.



## Patents

Our members value patents, but many encounter difficulties navigating the United States Patent and Trademark Office (USPTO) patent application process. Delays in prior art reviews are frustrating, and our members often recount the difficult decision-making process when trying to determine whether to protect their novel inventions by patenting them. Similarly, our members rely on strong competition law enforcement to ensure that they can innovate on top of standardized technologies. This requires competition authorities like the Federal Trade Commission to hold owners of standard-essential patents (SEPs) to their promises to license SEPs to innovators on terms that are fair, reasonable, and non-discriminatory.



## Trademarks

Trademarks are an essential part of branding and are key to building trust with customers. As cutting-edge creators, our members rely on trademarks to conduct their business every day. Unfortunately, bad actors want to appropriate the success of our members' businesses through brand confusion. The App Association works with our members to advance their understanding of trademark rights and to encourage their trademark registration before a problem arises. We actively engage in key international policy fora like the Internet Corporation for Assigned Names and Numbers (ICANN) to ensure our members can protect themselves in the global digital economy.



## Trade Secrets

Our members also rely on trade secrets, or practices used by businesses that allow them to maintain a competitive advantage. In particular, trade secrets are essential for software that uses machine learning or artificial (or augmented) intelligence (AI). As Congress considers transparency requirements for such algorithms, they should be mindful that trade secrets are integral to the software developer business model, and without trade secrets, the incentive to create is lost.

## To support copyright protections for small businesses, we urge Congress to:

- Pass measures that would make the legal system more accessible to smaller companies that seek to press copyright infringement claims. For example, we urge you to support legislation like the Copyright Alternative in **Small-Claims Enforcement (CASE) Act (H.R. 3945)** from last Congress which would establish a voluntary small claims board at the Copyright Office, a less-expensive alternative for companies with important infringement claims but fewer resources.
- Ensure that any changes to copyright laws be in response to measurable harms and that they carefully consider and understand the impact on stakeholders and their views. Congress should resist calls for sweeping changes to U.S. copyright law based on speculative legal theories and undemonstrated harms.

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## To support patent protections for small businesses, we urge Congress to:

- Oppose measures that would degrade the current patent system's mechanisms for strengthening good patents and weeding out low-quality patents. For example, we oppose the **STRONGER Patents Act (H.R. 5340 / S. 1390 115th)** and the **Inventor Protection Act (H.R. 6557 115th)**, both of which would decrease patent owners' ability to challenge infringement actions by owners of patents that should never have been granted. Although we support legislation to authorize USPTO's authority to set fees for patent applications, these bills would weaken strong patents while strengthening bad patents, providing a disincentive for innovators to create beneficial products and services for Americans.

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