{ DEVELOPERS ALLIANCE }

Developers Alliance Open App Markets Act Assessment

The Open App Markets Act, S.2710 is intended to "promote competition and reduce gatekeeper power in the app economy, increase choice, improve quality, and reduce costs for consumers." We find that the proposal focuses on reducing gatekeeper power at the expense of its other objectives.

- **Developers do not support reducing app store competition by mandating a common business model.**

- **Ecosystem owners must not be punished or disincentivized for attempting to safeguard consumers.**

- **We welcome measures that promote transparency and encourage greater access to OS innovations.**

- **Developers cannot support the bill without a clear statement of federal preemption.**

At the outset, we find the abstract category of "general-purpose computing device" unnecessary and legally confusing. Any computing ecosystem that includes an app store of appropriate scale supporting 3rd party applications for user download should fall within the rules, regardless of how the end device is characterized. We would not support carve-outs for any device category that uses app stores. Developers, much less lawmakers, cannot always interpret what kind of device might be used with their app, and should not be required to parse the law to determine their rights and obligations. To call a mobile device "general purpose" belies the fact that its primary function is regulated under the FCC's rules - a burden no other general-purpose computer must bear.

Sec. 3. (a) Exclusivity and Tying

While we see the competitive benefit of allowing payment systems other than those of the app stores, consumers could be negatively impacted by the confusion of app-by-app commercial relationships. Today, consumers often perceive that they've purchased an app "from the store", similar to shopping in a brick and mortar store. They might not appreciate that every product in the app store may lead them outside the store to complete the transaction and that the app store has no power to prevent fraud or assist them with the 3rd party transactions after the fact. In addition, the vast majority of developers prefer to avoid the burden of establishing and managing payment systems of their own, and see this capability as a valuable service. We fear this prohibition will reduce consumer trust in apps and app stores generally, and would ask that off-store systems provide clear and conspicuous consumer notices to prevent user confusion.

"Most favored nation" clauses that prevent 3rd party app developers from offering prices and terms that are better than the covered app stores, are generally targeted at large development houses with established brands. The fact that this prohibition pre-supposes the mandated existence of 3rd party stores, however, means that we cannot support it. Our

opposition to market controls that severely restrict competing app store business models means we cannot support penalties that assume the former either.

Sec. 3. (b) Interference With Legitimate Business Communications, and Sec 3. (c) Non-public Business Information

We have consistently endorsed the foundational concept that rights in online data are more often shared than held by a single entity or individual. We also believe that the place to address online data is a comprehensive federal privacy bill. Since data rights are often shared by users, developers, and app stores, we would support the premise that parties who share rights to common data should be prohibited from using that data to harm other rights holders.

Sec. 3. (d) Interoperability

Sideloading of apps and app stores is already a feature of one competing mobile ecosystem. Market support for alternative ecosystem business models (more-open vs less-open) is the foundation for the app store and operating system competition. Mandating a single business model will radically reduce competition in mobile ecosystems - in direct opposition to the bill's stated intentions. Consumers today can choose a more open ecosystem with fewer developer and application restrictions, or a less-open one with stronger safeguards. Mandating all ecosystems adopt the more-open model removes a user's ability to prioritize trustworthiness over wider app choice. Even in today's more-open systems, users have demonstrated that they prefer the default app store over 3rd party rivals because of perceptions of security, privacy, and trust.

Beyond this obvious harm to competition, we anticipate that the marketplace will respond in unpredictable and potentially catastrophic ways to the elimination of app store business model differentiation. One worrisome path would be the complete closure of an ecosystem to 3rd party developers as a mechanism to maintain competitiveness under the proposed law by severing the link between 3rd party developers and users. This would radically reduce competition in the app market, and particularly harm small developers without established brands, as ecosystems struggle to re-differentiate their offer.

In general, we support the ability for users to download and select the default apps of their choice. Some default applications, however, are used as common resources for 3rd party apps as a means to simplify app development. Fundamental services such as web access, mapping, communications functions, or contact lists (for example) are regularly accessed by 3rd party apps. Rather than coding and re-coding mapping capabilities inside each app, for example, developers simply call on the default mapping app to perform that supporting function. Developers rely on a base set of feature APIs to core apps and need these APIs to perform consistently for apps to function. Any user-driven change to app defaults must maintain the integrity of this critical system.

We are unclear as to the purpose of mandating app deletion, and for the same reasons, we support limits on default app substitution we oppose this measure as well. The ability to "hide" apps by pushing them to the bottom of app lists or placing them in folders already exists. The deletion of foundational apps risks breaking many 3rd party apps that rely on them and leaving consumers with devices that are non-functional or crippled. Imagine deleting all app stores (how does one recover?) or all web browsers, or the "phone" app in a phone such that it no longer meets FCC regulations or calls 911.

Sec. 3. (e) Self-Preferencing in Search

Transparency and neutrality in-app preference and ranking, and a prohibition on unreasonable self-preferencing, is broadly supported by the developer community. The ability for 3rd parties to contract for better placement, however, should remain in place as

long as all similarly placed 3rd parties are given the ability to compete for position on equitable terms.

Sec. 3. (f) Open App Development

Developers rely on ecosystem stewards to firewall new capabilities open to exploitation by bad actors. While most would welcome more generous access to new features, developers recognize that maintaining the integrity and security of devices falls on device and OS providers. At the same time, developers rely on ecosystem brands to promote user trust as a proxy for the 3rd party apps that use their stores and channels. Ceding control of this stewardship role would harm users, harm developers, and discourage the development of breakthrough capabilities in devices and OS software. Developers would welcome the ability to challenge unreasonable restrictions on knowledge, sharing, or access, however, if it goes beyond that necessary to safeguard the OS or device.

Sec. 4. Protecting the Security and Privacy of Users

We believe that it is critical to encourage covered companies to promote security and privacy throughout the ecosystems they underwrite. We strongly oppose shifting the burden from proof of harm to proof of necessity. Ecosystem owners must not be punished for attempting to safeguard consumers. As proposed, the law eliminates any incentive for responsible stewardship, replacing it with strong incentives for abdication to avoid liability. This single principle makes the entire proposal unsupportable and mischaracterizes commercial actors as public utilities.

Sec. 5. (b) Suits by Developers Injured

Support for private rights of action under the proposal risks opening the app approval process to court appeal. A bad actor whose app is rejected by an app store could litigate under these rules and effectively shake down app stores who would then bear the burden of rationalizing their actions in litigation. Coupled with incentives elsewhere in the proposal to abdicate responsibility for ecosystem safety, consumers and honest developers will suffer as app quality falls and fraud increases.

Sec. 6. Rule of Construction

Finally, developers cannot support this proposal without a clear statement of state pre-emption. Developers already struggle to comply with overlapping and contradictory privacy laws. We fear that this proposal encourages states to draft their app store laws that compel unique behavior in every jurisdiction.