

**Subcommittee on Innovation, Data, and Commerce**  
**Hearing entitled “The Fiscal Year 2025 Department of Commerce Budget”**  
**[June 26, 2024]**

**Documents for the record**

At the conclusion of the meeting, the Chair asked and was given unanimous consent to include the following documents into the record:

1. A letter from the App Association to Chairs Rodgers and Bilirakis and Ranking Members Pallone and Schakowsky regarding recommendations for the Department of Commerce to better support American small businesses, submitted by the Majority.

June 25, 2024

The Honorable Cathy McMorris Rodgers  
Chair  
House Committee on Energy  
and Commerce  
Washington, District of Columbia 20515

The Honorable Frank Pallone  
Ranking Member  
House Committee on Energy  
and Commerce  
Washington, District of Columbia 20515

The Honorable Gus M. Bilirakis  
Chairman  
House Committee on Energy  
and Commerce  
Subcommittee on Innovation, Data,  
and Commerce  
Washington, District of Columbia 20515

The Honorable Janice D. Schakowsky  
Ranking Member  
House Committee on Energy  
and Commerce  
Subcommittee on Innovation, Data,  
and Commerce  
Washington, District of Columbia 20515

Dear Chair Rodgers, Ranking Member Pallone, Chairman Bilirakis, and Ranking Member Schakowsky:

Thank you for the opportunity to provide a statement for the record for the Subcommittee's June 26, 2024, hearing titled "The Fiscal Year 2025 Department of Commerce Budget." ACT | The App Association (the App Association) is the leading trade group representing small businesses in the app economy. Today, the App Association represents an ecosystem valued at approximately \$1.8 trillion and is responsible for 6.1 million American jobs.<sup>1</sup> Our members are innovators that create the software bringing your smart devices to life. They also make all the connected devices that are revolutionizing healthcare, agriculture, public safety, financial services, and virtually all other industries. They propel the data-driven evolution of these industries and compete with each other and larger firms in a variety of ways, including on privacy and security protections.

We welcome the Subcommittee's focus on providing American businesses with the environment and resources necessary to innovate, grow, and compete. The U.S. Department of Commerce (DOC) plays a crucial role in facilitating these objectives. We write to urge the Subcommittee to consider the following recommendations for the DOC to better support American small businesses.

**Advancing a Strong, Fair, Open Standards System That Supports Innovation by U.S. Small Business Entrepreneurs**

Standards developed in industry-led, open, and consensus-based processes are essential for the responsible and successful development of critical and emerging technologies (CETs) across consumer and enterprise use cases. These standards are particularly crucial for small business innovators, providing them with the opportunity to compete and grow. The National Institute of Standards and Technology's (NIST) participation in these processes, though not setting the standards themselves, is vital as a convener, contributor, and facilitator of metrology.

---

<sup>1</sup> ACT | The App Association, *State of the U.S. App Economy: 2023*, <https://actonline.org/wp-content/uploads/APP-Economy-Report-FINAL-1.pdf>

A strong CET standards ecosystem is essential to help eliminate disparities and inequities that affect startup costs for businesses through its policies and collaborations. In turn, NIST plays a central role in supporting this ecosystem, including as a facilitator and coordinator of federal agency participation. However, although NIST is outside the Subcommittee's jurisdiction, we urge you to keep in mind that the agency is currently underfunded.<sup>2</sup> As the Subcommittee discusses other DOC subagencies' roles in CET standards and policies related to artificial intelligence (AI), it should account for NIST's central function in standards development.

### **Addressing Standard-Essential Patent (SEP) Licensing Abuses to Support Innovation and Fair Competition for Small Technology Businesses**

Small technology businesses rely heavily on a robust, fair, and predictable patent system to drive growth and job creation. However, App Association members' ability to innovate and compete through the adoption of voluntary, collectively developed industry standards is increasingly threatened by standard-essential patent (SEP) licensing abuses. These abuses, both domestically and in key international markets, occur despite SEP holders' voluntary commitments to provide licenses on fair, reasonable, and non-discriminatory (FRAND) terms.

The current global licensing ecosystem for SEPs is opaque, unpredictable, and imbalanced. SEPs, integral to voluntary technical standards developed collaboratively among competitors, confer significant market power to patent owners. This power is intended to be balanced by FRAND commitments made by SEP holders during the standard-setting process. Unfortunately, some SEP holders misuse their market power, disregarding their FRAND commitments and harming companies, distorting the pro-competitive benefits of standards, and undermining the United States Government National Standards Strategy for Critical and Emerging Technology.<sup>3</sup>

To address these issues, the DOC can take several actions. Firstly, the DOC should support efforts to bring transparency, predictability, and fairness to the SEP licensing ecosystem by adopting an interagency policy statement clearly condemning known SEP abuse. This support is crucial for fostering a healthy environment for U.S.-based innovation and business growth. Secondly, the DOC should engage with international efforts, particularly by supporting the European Union's initiatives to create a fair, transparent, and predictable SEP licensing environment or at least remain neutral on the proposed SEP Regulation.

Further, we request that DOC recognize and address well-documented SEP licensing abuses in its efforts to advance U.S. commerce supply chains in trade negotiations, enforcement, and other initiatives. Long-standing evidence shows that a minority of well-resourced SEP holders, including non-practicing entities (NPEs), exploit their positions by disregarding their FRAND commitments, demanding unreasonable terms, and imposing excessive royalty rates.

Furthermore, the DOC should acknowledge SEP licensing abuse as a significant barrier to critical sectors and key goods, including those covered under the Indo-Pacific Economic Framework for Prosperity (IPEF). This recognition is essential to mitigate established bottlenecks in FRAND licensing that impede trade and threaten commerce supply chains. If

---

<sup>2</sup> <https://www.washingtonpost.com/technology/2024/03/06/nist-ai-safety-lab-decaying/>

<sup>3</sup> <https://www.nist.gov/standardsgov/usg-nss>

U.S. stakeholders cannot develop technologies domestically without fear of litigation from opportunistic SEP holders, many inventors may choose to forgo production altogether.

To illustrate the broad reach of SEP abuses and their impacts on supply chains, we urge DOC (and other policymakers) to carefully consider a new cross-sectoral letter reflecting broad consensus across key U.S. stakeholders, which have submitted to the U.S. Trade Representative (USTR) as a multi-association response to the agency's request for comments on Promoting Supply Chain Resilience (USTR-2024-0002).

### **Addressing Trade Barriers to Foster Innovation and Growth for Small Technology Businesses**

Small technology businesses face significant challenges when entering new markets due to various trade barriers, including laws, regulations, policies, or practices that protect domestic goods and services from foreign competition, artificially stimulate exports, or fail to provide adequate intellectual property protection. These barriers impede innovation and economic growth for small businesses in the app economy, which depend on tech platforms for reduced overhead, instantaneous trust, and access to a global market. Moves by the USTR to deprioritize digital trade barriers in favor of traditional trade barriers further exacerbate these challenges.

Small business innovators prioritize several key principles to navigate these barriers. **Enabling cross-border data flows** is essential for the global economy's function, as small technology developers rely on unrestricted data flows to access new markets. **Prohibiting data localization policies** is crucial because regulations forcing companies to use local infrastructure hinder imports, reduce competitiveness, and impede economic diversification. Small businesses often lack resources to meet these requirements, effectively excluding them from commerce.

Furthermore, **prohibiting customs duties and digital service taxes on digital content** is necessary to maintain the global reach and efficiency of the internet. Tolling data crossing borders to collect duties fragments the internet and blocks innovative products and services from market entry. Ensuring that market entry is not contingent on source code transfer or inspection is also vital, as policies requiring the transfer or inspection of proprietary source code pose significant risks of theft and piracy, discouraging international trade.

**Preserving the ability to utilize strong encryption techniques** is critical for protecting users from identity theft and other harms. Demands for backdoors in encryption keys compromise data security and end-user trust. **Securing intellectual property protections** is equally important, as intellectual property violations threaten app developers by causing data loss, service interruptions, revenue loss, and reputational damage. Effective protection and enforcement of intellectual property rights are critical for digital economy growth.

Additionally, **avoiding the misapplication of competition laws** to new and emerging technology markets is essential. Misapplied regulations on mobile operating systems and software distribution platforms disrupt the beneficial agency-sale relationship that supports small-business app developers. These regulations can undermine consumer privacy and create significant trade barriers.

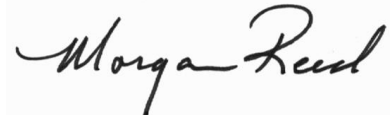
The DOC should recognize these impacts and address them in trade negotiations, enforcement, and other initiatives. Furthermore, in the context of DOC supply chain security rules, the App Association has requested that parties who attest to adherence to such standards be provided with safe harbor from enforcement; in the alternative, use of such standards should provide a strong presumption of compliance with the rule.

Addressing these challenges and supporting a balanced digital trade environment is crucial for the growth and innovation of small technology businesses, ultimately contributing to a more resilient and competitive global economy.

### **Conclusion**

In conclusion, we urge the Subcommittee to prioritize the needs of small technology businesses by ensuring DOC has the necessary resources to support industry-led, open, consensus-based standards development, calling for DOC to condemn SEP abuse, and recognizing the broader impacts of digital trade barriers. We appreciate your consideration of these recommendations and look forward to continued collaboration to support American small businesses in the rapidly evolving global market.

Sincerely,

A handwritten signature in black ink that reads "Morgan Reed". The signature is written in a cursive, flowing style.

Morgan Reed  
President

ACT | The App Association