TechND

PO Box 2599
Bismarck, ND 58502
701.355.4458
office@technd.org
www.technd.org

Testimony of Kyle Martin
Executive Director
Technology Council of North Dakota

In Support of SB 2333
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Mr. Chairman and members of the Senate Industry, Business and Labor Committee:

My name is Kyle Martin, executive director of the Technology Council of North Dakota (TechND). I am here today to voice support of SB 2333.

TechND was created in 2000 by North Dakota business, government and education leaders who recognized the need to strengthen the state's information technology infrastructure and reposition the state as a national leader in IT. The organization has since expanded its focus to include members from the technology industry as a whole. TechND has over 60 member organizations, with representatives from both the public and private sector.

Nearly 13 years ago, Apple launched the App Store, a relatively small online marketplace to download software on Apple's newest hardware, the iPhone. At its time of launch, 500 different applications were made available through the app store, providing software developers with a new platform to sell mobile software that we've all come to know today simply as "apps." The App Store disrupted traditional software supply chain models by selling software directly to consumers through their devices. The trade-off however was Apple would collect 30 percent off the sale of all applications or in-application digital purchases.

Today, the App Store is one of the world's largest platforms of mobile digital commerce, offering nearly two million apps that generate nearly a half trillion dollars in sales each year. Today, the iPhone accounts for nearly 53 percent of the mobile phone market in the United States. Yet Apple today still demands developers yield 30 percent of their profits to its company, including all microtransactions, digital goods and in-app subscriptions. Apple's practice set forth a standard which was later adopted by Google who today also imposes a 30 percent transaction fee on app purchases.

These practices have led to considerable headaches and lost revenue for software developers and companies wishing to sell digital goods or subscriptions, forcing them to raise their prices, limit their software's functionality, implement cumbersome solutions to process transactions or even abandon their ambitions to launch their own apps. In some instances, developers who have implemented their own in-app payment solutions that bypassed Apple's payment processing mandates, have been banned entirely from the App Store or are prohibited from advertising alternative subscription payment options.

Companies wishing to sell digital goods and services on the internet can choose who processes their transactions because the internet is a broad, robust platform not regulated by a singular entity. However, mobile devices are an entirely different ecosystem, largely controlled by two key players, Apple and Google, who can unfairly decide its winners and losers by choosing who does and doesn't pay their extraordinarily high transaction fees.

Mobile app stores have been likened to a digital mall where an agreement is set in place between the retailers and a landlord who agree that in exchange for access to a digital marketplace (or in this example, a mall), merchants must yield a portion of their profits to the landlord. However, this simplistic model omits that broadly speaking, there are only two digital malls in existence: the Google Play Store and Apple's App Store. Because Apple develops its own software and hardware, its own app store is the only mall authorized to operate on its hardware. While other platforms exist on the Android operating system, the Google Play marketplace accounts for a staggering 73 percent of Android's market share. In other words, a developer wishing to be successful simply cannot abandon a digital mall in search of another because either no alternative exists, or the alternatives are impracticable at best.

While large developers and technology companies have been impacted, these practices negatively impact small developers and companies alike here in North Dakota. Local newspapers or magazines for example, wishing to sell subscriptions are forced to pay Apple or Google's high transaction fees, forcing subscription-based services to raise fees that are ultimately passed onto their subscribers. If a local fitness club or yoga studio were to try selling their courses online due to the impacts of the pandemic through their own gym or studio application, their courses would also be subject to Apple and Android's policies. If North Dakota, for example, were to render services through the app store such as implementing a digital driver's license, theoretically, Apple or Google could impose a high transaction fee resulting in lost revenue for the state or higher fees for residents. OnSharp, a TechND member located in Fargo, will share with the committee today its own experience on how Apple and Google's policies have impacted its business and clients, forcing its company to scale back software features or in some instances, discouraging companies from launching an app of their own.

Typically, the free market determines how business is conducted. If a user is unhappy, they are free to take their business elsewhere. Yet in today's mobile universe, both consumers and developers are limited largely to two digital marketplaces.

Recently, users discovered the ability to rent or buy movies on the Amazon Prime Video app made available through the Apple App Store. Previously these options didn't exist. Apple later disclosed it had established a program, dubbed the "Apple Tax Credit." Apple contends this program is for premium subscription video entertainment providers that offers a variety of customer benefits. One of these benefits allows Amazon to bypass Apple's high processing fees. In exchange however, Amazon was forced to ensure its services integrated core Apple components including AirPlay 2, tvOS apps, universal search and Siri Support, encouraging users to utilize Apple devices and bolstering its own subscription service alternatives such as Apple

TV. Further, if someone opts to use Amazon's video streaming service on an Apple device and is not already an Amazon Prime Video subscriber, the sign-up flow forces the user to process their subscription payment through Apple's payment system.

TechND acknowledges that app stores serve two very distinct and powerful purposes: first, to widely distribute software to enrich or benefit the lives of its users and secondly, to safeguard users from downloading malicious or harmful software. When a developer submits a software application for distribution on Google Play or Apple's App Store, they are thoroughly vetted and reviewed to ensure their applications meet both accessibility, usability, security and quality standards meant to protect consumers from data breaches, identity theft or malware. Alternative app stores could also negatively impact software developers and threaten intellectual property by encouraging digital piracy. Therefore, TechND concedes that forcing tech companies to adopt app distribution platforms other than their own could lead to unintended, negative consequences, and would like to see this portion of SB 2333 removed.

However, it is not unreasonable to suggest app stores should give developers a choice in choosing a payment processing platform. Google and Apple for example do not impose a fee on in-app purchases of physical goods, merchandise or food. Instead, retailers and food vendors are free to processes their own transactions, bypassing Apple and Google's 30 percent processing fees. Why should software developers be treated differently? Given the profits both Apple and Google generate from developers and merchants, they bear a burden of responsibility to treat iOS and Android developers fairly and consistently. While some may argue today that passage of this legislation could lead to a gap in services by forcing companies to implement alternative payment systems, these arguments are unfounded given both Apple and Google currently provide these options to thousands of merchants including Walmart, Target, Amazon and Starbucks.

In recent weeks, Apple has rolled out a program titled the "Small Business Developer Program" that reduces its fees to 15 percent from 30 percent for applications that earn less than $1 million per year. This is a step in the right direction, however, small developers and businesses should still be allowed to choose who processes their payments.

Ideally, TechND would like to see legislation passed at the federal level that addresses the concerns brought forth in SB 2333 to prevent a patchwork of state laws. However, Congress has failed to address these issues that are impacting thousands of software developers and businesses. This bill would send a powerful message that technology companies should treat software developers fairly.

TechND asks the committee to consider an amended version of this bill that gives software developers the choice to choose their own payment processing solution - a choice that Apple and Google currently extend to select developers. This solution would be a win-win for both consumers and developers by reducing subscription fees and creating a platform more accessible to small businesses and software developers.