NetChoice *Promoting Convenience, Choice, and Commerce on the net*

Carl Szabo, Vice President and General Counsel
1401 K St NW, Suite 502
Washington, DC 20005
202-420-7485
www.netchoice.org

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Senate Judiciary Committee
Illinois Senate
Springfield, IL

NetChoice Opposition to SB 3417

We ask you **not** advance SB 3417 as it:

- Interferes with private parties and right to contract;
- Represents government picking winners and losers;
- There are multiple payment options for consumers and developers outside of the app stores;
- Increases costs to App Developers;
- Increases costs to Illinois consumers; and
- Puts Illinois consumers at risk.

Interference with private contracts

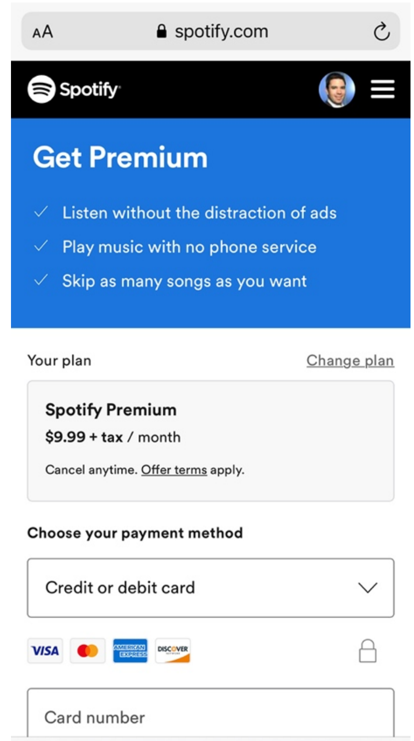
Suppose someone decides to build a shopping mall. They build the structure. They build the roads. They advertise the existence of the mall to potential customers. And rather than charging a monthly rental for space in the mall, they enter into a service fee agreement where the mall collects a percentage of each sale. If the business has no sales or gives away its wares, the mall makes no money. If the business makes lots of sales the mall earns its percentage.

We would balk if the government decided to interfere with this private agreement between a mall and the businesses within. But SB 3417 does just that -- the only difference is that that mall is virtual. Not only is this antithetical to our system of private property and limited government, but it is also ultimately harmful to consumers.

Today, app stores on Apple and Android devices are funded by the service fee agreements between the apps and the app stores. These service fees pay for the data storage of the developer's apps. These service fees pay for the internet infrastructure to deliver these apps to the customers. These service fees pay for the advertising to potential customers about the app stores. And these service fees are used to offset the costs of the devices making it easier for more customers to access the app stores.

App distributors earn their revenue primarily by entering into fee-sharing agreements with app developers that give them the right to a portion of the price of the app as well as a portion of any microtransactions offered through the app. As the vast majority of apps are now offered at a price point of zero, distributors make the bulk of their income through microtransactions. App distributors then use this money to improve their services, scan for malware, cover operational costs, engage in marketing, and provide customer service, all of which ultimately benefit the app developers themselves.

Currently, many contracts between these parties have provisions that allow app developers to access these digital marketplaces so long as they use the distributor's payments processing system and share a small portion of the revenue from each transaction. App developers are familiar with this system. In fact, Epic actually launched its own app distributor called Epic Store, which–like other app distributors–charges third-party developers for a percentage of their transactions.



Users can signup at Spotify.com on their mobile device.
But Spotify does not allow users to create subscriptions though the app.

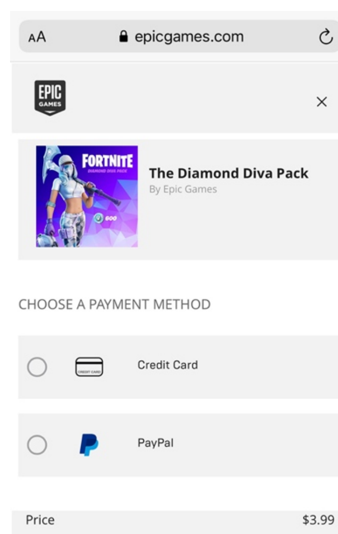
SB 3417 is Government Picking Winners and Losers

Today, these contract issues are being fought in the courts and on the negotiating table between multi-billion-dollar businesses. Some of the chief supporters of the bill represent some of the most well-established app developers like Spotify, Epic Games, and Match Group, owner of Tinder.

These are not small businesses. Spotify is the largest music streaming service and has a market cap of $50 billion. Match Group, parent company of some of the largest online dating services, is worth $40 billion. And Epic Games, one of the largest video game companies, was valued at over $17 billion in its most recent funding round.

These are not down-on-their-luck businesses pushing SB 3417 because they want greater fairness in their fee-sharing agreements, they are powerful players trying to get the state government to enable them to avoid paying the service fees to which they agreed.

SB 3417 is about benefiting these well-established third-party app developers by forcibly preventing digital application distribution platforms like the Apple App store and Google Play store from creating contracts that limit the extent to which these app developers can offer their own in-app payments processing systems.



Epic Games can do transactions with users on mobile devices without engaging the store's app payment systems

There are multiple payment options for consumers and developers

Contrary to what billion-dollar companies like Spotify and Epic Games that are pushing SB 3417 say, there are multiple ways for consumers to make purchases without going through the App Stores of Google or Apple.

For example, right on the iPhone's web browser, Spotify users can purchase subscriptions directly from Spotify – without going through the app stores. Users can even listen to music via the Spotify webpage without ever having to install the app. And Spotify doesn't allow subscribing in app.

Likewise, Epic Games makes micro-transitions for Fortnite available without ever having to download the game nor the Epic Store. In fact, users can, once again, go directly to the Epic Store webpage on their mobile device and buy V-Bucks or other microtransactions.

At the same time, corporations like Match.com, Spotify and Epic Games make gift cards available for purchase at local drug stores and shopping centers. Here citizens can use essentially whatever payment form they want to buy these gift cards and then redeem them at Match.com, Spotify.com, and EpicGames.com.

This can all be done without any involvement of the Apple and Google stores, so the argument that there is a "monopoly" on payments is false.

Consumers can buy Match.com gift cards at local retailers using the payment form they want

Increasing costs to App Developers

Since SB 3417 would make today's contracts illegal, it would force stores to allow app developers to use their own payments processor. As a result, app developers would be able to collect as much money as they please through in-app transactions without sharing any of the revenue with app stores. Considering that app stores make a substantial portion of their revenue through in-app purchases, this would significantly undermine the economics of app distribution.

Increasing costs to Illinois consumers

SB 3417 harms consumers too. Today, the price of consumer devices is partly subsidized by the expectation of service fees from in-app purchases – a loss-leader model akin to razors. With the loss of revenue from in-app transactions, app stores would need to find another way to cover their costs for development and operations. They would have to reduce costs, increase prices for devices, and/or begin charging to distribute free apps – leaving consumers worse off.

Putting Illinois consumers at risk

Criminals are trying to con Americans into disclosing banking and credit information for potentially fraudulent purposes. Today, app stores can immediately suspend an App for such behavior. But SB 3417 would prohibit app store from what could be termed "retaliating" against the app, which would expose Illinois citizens to potential fraud.

We appreciate your consideration of our views, and please let us know if we can provide further information.

Sincerely,

Carl Szabo
Vice President and General Counsel, NetChoice