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## The Online App Store Ecosystem

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### App stores help make smartphones smart

**D**igital Application Distribution Platforms, or app stores, are used by consumers to purchase and download apps for smartphones and other mobile devices. The main platforms are Google Play and Apple's App Store, but Amazon, Samsung, Sony and others operate app stores as well. App stores have transformed the way consumers purchase apps for smartphones and other mobile devices. The combination of security and convenience provided by app stores facilitated the transformation from cell phones to smartphones, providing consumers easy access to the apps that make their smartphones useful: email, social media, gaming, video and music streaming, online shopping and much more.

### App stores introduced a more efficient model to reach consumers

Apple launched the first distribution platform, the App Store, in [2008 with 500 apps](#). Today, there are more than [2 million apps](#) in the App Store, with over [30 billion downloads in 2019](#). Google Play has [almost 3 million apps](#), with over [108 billion downloads in 2020](#). The App Store was a revolutionary new approach to selling software that significantly reduced the transactions costs for users while providing a host of services for developers to make it easier to distribute and market their products to consumers. App stores provide an alternative marketing channel, avoiding a trip to a brick-and-mortar store or to various websites for downloads.

Digital application distribution platforms provide both developers and consumers a convenient and secure marketplace. App stores scan for malware, provide secure transactions and payments systems, have marketing tools, as well as the tools and infrastructure required for developers to reach their customers. These stores allow developers to reach a global marketplace with potentially billions of customers. App stores compete among themselves and across platforms, as well as with developer websites, and brick-and-mortar distribution models.

The benefits of these digital application distribution platforms are underscored by the rapid growth and size of the market for apps. With over 2 million apps available on each of the major app distribution platforms, a lucrative market has emerged for future sales. Globally, consumers spent [\\$32 billion on in-app purchases in the first quarter of 2021](#) alone. Forecasts suggest continued growth, with the global market for app store purchases reaching [\\$270 billion by the year 2025](#).

### App Store Fee Structure

In exchange for the services provided to app developers, app stores charge a [commission of 30 percent](#) when a consumer downloads a paid app and for in-app purchases of services, digital content and subscriptions. This fee structure is common across the major application distribution platforms. In both Google Play and the App Store, [the commission drops to 15 percent](#) of annual follow-on revenue. In 2020, Apple announced that it would [lower the commission to 15 percent](#) for developers earning less than \$1 million in annual revenue. [Google Play soon followed suit](#), lowering its commission to 15 percent for developers with less than \$1 million in revenues.

Without app stores, developers would be required to invest in their own distribution and marketing systems, and, indeed, some do offer their apps on their own websites. But app stores provide developers access to a global customer base who shop at app stores with greater confidence because they trust that their app store purchases will be safe and secure. Distribution platforms like Google Play and the App Store set guidelines with respect to safety, performance and design, and all apps are vetted prior to be added to the app store.

### Opposition to App Store Practices

In recent years, there has been an effort by some companies to challenge the 30 percent commission. The effort is being led not by small developers; rather, billion-dollar companies such as Epic Games, Spotify and the Match Group (parent

company of Tinder) are using legal and political tactics to impose prices more to their liking. Epic Games has [filed a complaint](#) against Apple in the European Union and against both [Apple](#) and [Google](#) in Australia. In 2019, Spotify lodged [anticompetitive charges](#) against Apple with the European Union, and antitrust regulators are now in the process of finalizing a charge sheet on the complaint. In the United States, Epic Games has filed [separate lawsuits](#) against both Google and Apple after both companies removed the game Fortnite for violating their respective terms of service with respect to payments.

In addition to legal challenges, [several states have introduced legislation](#) that would make significant changes to the current structure of digital application distribution platforms. The legislation targets two specific changes: (1) The ability to use third-party payment systems to avoid fees charged by the App store and; (2) The ability to “side-load” apps onto devices without going through the App store.

Third-party payment systems are prohibited by the major app stores on the grounds that it would allow developers to sidestep the 30 percent commission collected by the app store. In effect, this would grant companies access to the benefits provided by an app store while sidestepping payment for those services. Similarly, side-loading refers to the practice of loading apps onto a mobile device from a source other than an app store. This is more common on Android devices; to do so on an iPhone typically requires “jailbreaking” the phone first. But again, the goal of sideloading is to avoid paying app store’s commission. Unfortunately, sideloading comes with the added security risk of adding apps that have not been fully vetted by the app store.

### **Problems with the Legislation**

The proposed state-level legislation would require profound changes to the apps store ecosystem. These changes raise the prospect of increased security risks and higher costs on both consumers and developers. Sideloading presents concerns over malware and privacy risks, while the ability to avoid payments can have adverse effects on both consumers and developers. As companies evade the commission and revenues are lost to alternative payment systems, app stores will either need to reduce the benefits they provide to the remaining developers or increase their commission. In either event, this may lead to consumers facing higher prices when making purchases in the app store.

Additionally, state-level mandates on a market that is inherently global are not practical. App stores cater to billions of consumers in [175 countries](#). Creating a patch quilt of state regulations will do more harm than good, given the nature and scope of the app store ecosystem. There are, in fact, serious constitutional concerns with such state mandates, particularly with respect to their impact on interstate commerce. Specifically, state-level mandates regulating how app stores operate may run afoul of the dormant commerce clause by unduly burdening interstate commerce. It is not obvious that state regulations are appropriate for a market that operates in all 50 states and across the world.

Finally, there is a fundamental concern with the states interfering in private contracts between app developers and the application distribution platforms. Having states put their thumb on the scale for the benefit of one party to a transaction raises serious questions about the freedom of contract, imposing new conditions on the voluntary arrangements between app stores and developers. These private parties have agreed on the terms and conditions for being included in an app store and the resulting contract governs the outcomes. Any changes should be left to negotiations between the contracting parties.

### **Conclusion**

App stores pioneered a new method for marketing and distributing apps for mobile devices that has proved beneficial to both consumers and developers. They replaced earlier distribution models by providing a safe, secure and convenient way for consumers to download the apps they need. Consumers have access to millions of apps, while developers have access to a global market with billions of smartphones. The rapid growth of the app store model suggests it is functioning well. New state level mandates would disrupt this ecosystem while providing few, if any, consumer benefits. Rather, this appears to be a contractual dispute between private parties and should be treated as such.

### **CONTACT US**

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