



July 20, 2020

The Honorable David N. Cicilline

Chairman, Subcommittee on Antitrust, Commercial and Administrative Law

U.S. House of Representatives

**Subject: House Judiciary Committee's July 27 hearing of Apple's CEO Tim Cook**

Chairman Cicilline,

GreatFire is a China-based, anti-censorship organization that has been working since 2011 to bring transparency to online censorship in China and to help Chinese citizens to freely access information. We would like to draw to your attention Apple's current policy of censorship of its App Store, which constitutes a serious abuse of its dominant position in the digital marketplace as well as a violation of human rights.

On July 27, the Subcommittee on Antitrust, Commercial and Administrative Law of the U.S House of Representatives Judiciary Committee will question Apple Inc. CEO Tim Cook, along with the CEOs of Amazon, Google and Facebook, as part of the Committee's ongoing investigation into competition in the digital marketplace. The "*Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Facebook, Google and Apple*" hearing will conclude an investigation which began last year and has already covered Apple's anti-competitive practices and their impact, most notably on a "Free and Diverse Press".

We believe that one crucial consequence of Apple's dominant position in the digital market has not been covered by the investigation: **Apple's opaque and arbitrary management of its China App Store**. In China, currently Apple's biggest market worldwide, Apple directly collaborates with the Chinese authorities to censor apps that the government does not want its population to use. This seriously harms Chinese people and Chinese civil society in a country led by a repressive and totalitarian regime. Apple's actions contribute to the weakening of the human rights movement in China and directly undermines the democratic aspirations of the Chinese people.

We understand that we may be raising issues that go beyond the scope of the Subcommittee's work. However, since the Subcommittee has focused on how Apple's actions have impacted "The Free and

Diverse Press” in the U.S., we believe that it is also important to highlight the company’s impact in China. Apple’s political censorship has had a vast impact on hundreds of millions of Chinese citizens and on the international human rights community. This impact is a direct result of Apple’s absolute control over its operating ecosystem. Indeed, while Apple may use its "walled garden" operating ecosystem for anti-competitive practices, the same system is also being used to trample on the human rights of citizens all around the world, especially those in China. Understanding the negative consequences of Apple’s actions also helps to shed light on what other repressed populations in the world could face in the future if nothing changes. Challenging Apple over its anti-competitive business practices is an opportunity to challenge the company over its commitment to human rights.

## **1. Apple’s unique position in China**

Apple claims that it holds no dominant position in the Chinese digital market and therefore cannot be accused of abusing a dominant position to violate human rights. Such an argument is inadmissible for several reasons:

First, Apple’s situation in China is unique and cannot be compared to that of Facebook, Google and Amazon. These companies are virtually absent from the China market. Facebook has been blocked in China since 2009, Google search since 2010, and other Google products since 2014. Amazon’s market share in China was so negligible that it shut down its China e-commerce business last year. **This makes Apple the only foreign tech giant offering its full range of products and services in China.**

Second, although Apple is far behind the market leader, Huawei, it does rival the next three largest Chinese companies selling mobile devices in the country: Vivo, Oppo, and Xiaomi.

Third, around 200 million iPhones are in use in China, more than in the U.S. Overlooking Apple’s actions in China amounts to ignoring a market which drives many of Apple’s decisions. We also cannot ignore how Apple manipulates the public into believing it is a champion of freedom when it is in fact actively collaborating with the Chinese authoritarian regime to safeguard its unique presence in the China market.

## **2. Apple’s “illegal content” argument**

GreatFire started monitoring Apple’s censorship in November 2013, when Apple decided to remove GreatFire’s “FreeWeibo” application from the Chinese App Store. The FreeWeibo app allowed users in China to access the government-blocked “FreeWeibo.com” website, which re-publishes messages that have been censored on the Chinese social network Sina Weibo.

The reason we originally chose to develop an iOS app for Apple users was that we believed that Apple was the kind of company that would support our goals. However, less than two months after uploading our app to the App Store, it was deleted by Apple, at the request of the Chinese authorities. Apple said FreeWeibo included “content that is illegal in China, which is not in compliance with the App Store Review Guidelines”. All of the time and money we spent on developing and promoting the app was wasted because of a simple demand from the Chinese government. No Chinese judicial authority was ever involved to determine if our app had actually broken any Chinese law.

2013 saw numerous similar cases in which Apple deceptively used the pretext of complying with local laws to remove apps from its Chinese App Store. “JingDian ShuCheng”, an app providing nonfiction books including several from multiple award-winning writer and scholar Wang Lixiong

was censored. A few months later, Apple removed “OpenDoor”, a free app that provided users a randomized IP address to keep their browsing habits anonymous and shielded from Chinese government censors. Again, the unsubstantiated reason was “illegal content”. These examples closely follow the removal of apps of independent media such as the Hong Kong-based iSun Affairs and U.S based NTDTV.

Apple has since continued to censor apps on its China App Store, on most occasions without offering the developers any further reason than “your app contains illegal content”. The scale of the removal of apps has continuously grown to reach a level of mass censorship by 2017, when the firm removed more than a thousand VPN apps from its China App Store.

A recent example of censorship by Apple is the removal of HKmap.live, a crowdsourced mapping application that was used by pro-democracy protestors and Hong Kong citizens in 2019. No specific local law was given to justify the removal of the app.

Recently, as Proton Technologies AG (ProtonMail, ProtonVPN, etc) founder and CEO Andy Yen, wrote in an [article](#) published on June 22, 2020, Apple tried to force Proton to remove from its description of its VPN service any part mentioning the ability of the VPN to circumvent governments’ censorship, a request in direct contradiction with Apple official approval guidelines:

*“In January 2020, ProtonVPN submitted an update of its iOS app description in the App Store. The new description highlighted ProtonVPN’s features, including the ability to ‘unblock censored websites’ with the app.*

*Even though ProtonVPN had been in the App Store since 2018 and the basic functionality of our VPN has not changed, Apple abruptly rejected the new app version and threatened to remove ProtonVPN entirely. They demanded that we remove this language around anti-censorship on the grounds that freedom of speech is severely limited in some countries. The options are comply or be removed from the App Store. What is most troubling is that Apple requested the removal of the language around censorship in ALL countries where our app is available, in effect doing the bidding of authoritarian governments even in countries where freedom of speech is protected.”*, wrote Andy Yen on Proton’s website.

This serves to illustrate that Apple’s actions concerning its so-called “curation” of the App Store not only raise questions from an antitrust point of view but also from an ethical and human rights perspective.

In justifying this censorship, Tim Cook again reiterated his catch-all phrase “*we follow the law wherever we do business*”. But Tim Cook should know better. In 2016, Cook rejected an FBI request to gain access to an iPhone. **Adhering to a government’s requests is very different from following the law.** The vast majority, if not all, of Apple’s removals of apps from the China App Store were made without any intervention from a legal authority. Apple’s censorship in China is extra-legal.

### **3. AppleCensorship.com**

In the years following the removal of FreeWeibo, we paid particular attention to Apple’s actions regarding its App Store, out of a concern for how this might impact Chinese civil society and Chinese citizens. In 2019, GreatFire launched a website called [AppleCensorship.com](#), which allows anybody to check for instances of the removal of apps and censorship in every Apple App Store around the world. After only 3 months of existence, visitors to [applecensorship.com](#) had identified over 1100

apps which are unavailable in the China App Store alone. Today, the website indexes **3183 apps which are unavailable** in China's App Store. 158 of these apps are news apps.

Last year, when Mr. Kyle Andeer, Vice President, Corporate Law at Apple, was asked about Apple's treatment of apps that were competing with Apple, Mr. Andeer replied by providing a list of apps from its competitors that were available in the App Store.

Mr. Andeer claimed that applications like Yandex Browser, Gmail, Yahoo Search, Line, Discord, Hangouts, Verizon Cloud, Spotify, iHeartRadio, Google Keep, Evernote, YouTube, Netflix, Hulu, Amazon Prime, Sling TV, Tubi, Deezer, Google Play, SoundCloud, Pandora, Tidal Music, Amazon Music, Yahoo Maps, Naver Maps, Yandex.Navi, were all available in the App Store, serving to illustrate Apple's fair play with its competitors. However, Mr. Andeer failed to mention that every single one of these apps are not available in China, Apple's primary market.

#### **4. Where antitrust regulations and human rights meet**

While Apple regularly claims to value press freedom, free speech and human rights, it does not hesitate to deny its Chinese customers access to crucial services such as free and independent news as well as privacy and secure communication tools.

Apple's success as a foreign company in China cannot be attributed to a supposed superiority of its products and services compared to Google, Amazon, or Facebook. Apple has flourished in China because the company accepted early on what its rivals have so far refused: to work directly with the Chinese authorities to censor apps crucial to freedom of expression and the development of Chinese civil society.

In the U.S as well as in the E.U, antitrust laws contribute to securing access to innovative and affordable medicines for patients and healthcare systems. These laws also allow governments to intervene in individual cases against specific market conduct by pharmaceutical companies. Why? Because access to medicines is a universally recognized fundamental right protected by international legal instruments and by the United Nations.

The same way anticompetitive practices within the pharmaceutical sector may endanger patients' access to affordable and innovative medicines, anticompetitive practices within the digital market can and will imperil access to information free of censorship, privacy, and secure communication.

We believe those fundamental rights should be respected by Apple. We have created a set of recommendations for Apple to end censorship of the App Store and have offered suggestions on how Apple can implement a fair, equal and ethical policy so that everybody can access content on its platform. These recommendations are attached as an annex to this letter.

#### **During the July 27th hearing, we urge you to ask Tim Cook the following questions:**

1. How would you describe Apple's position in China's digital market compared to Google, Facebook and Amazon?
2. Do you agree that any decision to remove a privacy or anti-censorship app from the China App Store has a significant impact on the fundamental rights of Chinese citizens?

3. Is it true that more than 3000 apps, including dozens that were mentioned last year by Mr. Kyle Andeer as illustrations of competitors' apps being present in Apple's App Store, are currently unavailable in China?
4. What leads to app removals from the App Store? Are these apps removed through Apple's own initiative or are they removed following requests by the Chinese government?
5. What are the reasons for app removals? If these reasons are legal, how does Apple verify that removed apps were indeed infringing on Chinese Law?
6. Does Apple take into account international instruments such as the UN Guiding Principles on Business and Human Rights or the Global Network Initiative's Principles on Freedom of Expression when taking a decision? If yes, how?
7. Does Apple systematically offer a possibility to app developers to modify and/or update their app before their apps are removed from the App Store?
8. Does Apple suggest to developers that they modify the description of their apps in order to avoid attention from the Chinese government?
9. Why are the Times of India, the New York Times, Quartz, Radio France International, The Washington Post, and other media apps unavailable in the App Store in China? It is our understanding that these news organizations operate legally in China and have legally employed correspondents working in China. In what way are their apps deemed to be illegal?

We thank you in advance for the consideration you will give to this letter and we remain at your disposal should you require more information from us.

Sincerely,

GreatFire

A copy of this letter is sent to:

- The Honorable David Cicilline, Subcommittee's Chairman,
- The Honorable Joe Neguse, Subcommittee's Vice-Chairman,
- The Honorable Henry C. Johnson, Member of the Subcommittee,
- The Honorable Jamie Raskin, Member of the Subcommittee,
- The Honorable Pramila Jayapal, Member of the Subcommittee,
- The Honorable Val Butler Demings, Member of the Subcommittee,
- The Honorable Mary Gay Scanlon, Member of the Subcommittee,
- The Honorable Lucy McBath, Member of the Subcommittee,
- The Honorable F. James Sensenbrenner, Ranking Member of the Subcommittee,
- The Honorable Matt Gaetz, Member of the Subcommittee,
- The Honorable Ken Buck, Member of the Subcommittee,
- The Honorable, Kelly Armstrong, Member of the Subcommittee,
- The Honorable W. Gregory Steube, Member of the Subcommittee,

## ANNEX: GreatFire's recommendations for Apple

In order for Apple to stop depriving its users of their fundamental rights and, at the same time, to end the company's unethical and unfair practices violating antitrust regulations, we strongly recommend that Apple carefully review and immediately integrate into its business activities the 21 "**Guiding Principles on Business and Human Rights**" set out by the United Nations. These principles provide companies with a clear framework to respect human rights while conducting business, including in sensitive environments like China.

These Guiding Principles should be implemented in a non-discriminatory manner, "*with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized [...]*".

We ask that Apple pay particular attention to the situation in China when reviewing and integrating these principles. Taking this Principles into account, we ask that Apple:

- Immediately cease the censorship of apps in its App Stores globally.
- Rewrite the company's "App Store Review Guidelines", to end opaque and arbitrary curation of content and services on the App Store. These new guidelines should be clear, non-discriminatory and objective, in order to ensure fair and equal access to the App Store to developers worldwide and in China.
- Produce and publish new internal procedures for reviewing Apps submitted by developers.
- Produce and publish new internal procedures for reviewing appeals from developers, should their apps be refused for inclusion in the App Store.
- Clearly and transparently publish the company's policy with regards to removal of apps from China's App Store.
- When justifying the removal of an app by the company's obligation "to adhere to local laws", clearly state which local laws have been taken into account for every app which has been removed from one of its App Stores, including in China.