

TESTIMONY
BY
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ASSISTANT COMMISSIONER
NEW YORK CITY
DEPARTMENT OF SMALL BUSINESS SERVICES
BEFORE
THE COMMITTEE ON SMALL BUSINESS JOINTLY WITH THE COMMITTEE
OF TECHNOLOGY
OF THE
NEW YORK CITY COUNCIL
FRIDAY, OCTOBER 30, 2020

Good afternoon Chair Gjonaj, and Chair Holden, and members of the Committee on Small Business and Technology. My name is Donald Giampietro, Assistant Commissioner at the New York City Department of Small Business Services ("SBS"), and I am accompanied by Gary Johnson, Director of Strategy & Operations at the Mayor's Office of the Chief Technology Officer. I am also joined by Edward Ubiera, Assistant Commissioner of Business Programs at the New York City Department of Small Business Services. I hope that each of you and your loved ones are staying safe and healthy during these difficult times. It is my pleasure to testify before the City Council today on how technology can assist small businesses during the pandemic, with our partners in service, MOCTO.

The **NYC Department of Small Business Services (SBS)** helps unlock economic potential and create economic security for all New Yorkers by connecting New Yorkers to good jobs, creating stronger businesses, and building thriving neighborhoods across the five boroughs. At the onset of the pandemic, we worked quickly to ensure that our physical

NYC Business Solutions and Workforce1 Career centers continued to offer services remotely. As a City and as a nation, we quickly learned the importance of navigating and utilizing technology to ensure the continuation of services and production. SBS worked quickly to ensure no gaps in services; we reimagined and redeveloped our service delivery quickly and effectively to provide access to our small businesses and job seekers. Our centers immediately started providing services remotely online and over the phone. We quickly expanded our online business course offerings to meet relevant challenges faced by small business owners and helped them take part in e-commerce; for example, such courses included "Google Analytics: Improve & Maximize Website Results and Building Your Own Business Website," and many more. To date, SBS has hosted two hundred and seventeen webinars connecting over forty-eight thousand attendees to our virtual services since March. Businesses needed guidance in understanding new and ever-changing regulations at a local and state level. We created plain language resource guides in multiple languages for

each industry as they reopened, easily accessible information online via our website. We offered information online but also understood that businesses needed a direct line of contact to help answer and navigate new information. To that end, we launched the SBS Hotline, which has now received over forty-three thousand calls, assisting businesses to navigate new regulations and reopening phases, and has connected four thousand three hundred small businesses to over seventy-eight million dollars in local state, federal, and philanthropic funding.

SBS worked with our sister agency, EDC, to launch the PPE marketplace, where thirty-four percent of suppliers are MWBE's. The marketplace gives small businesses, nonprofits, and other organizations throughout the five boroughs the opportunity to purchase, via the website, medical and non-medical supplies to operate safely and efficiently. In addition, SBS worked with eighty community partners to distribute over seven million face coverings to small businesses. SBS has worked hard to be nimble and adaptable in addressing the challenges faced by our

constituents. The City rapidly made available a self-certification process that made it possible for restaurants to begin serving customers outdoors right away. The program continues to exceed our expectations, with over ten thousand six hundred participating restaurants supporting an estimated one-hundred-thousand jobs for a diverse group of workers throughout the five boroughs.

The results of the Open Restaurants program have been inspiring – restaurants all over the City have created beautiful, welcoming outdoor spaces, bringing a sense of hope and vibrancy back to our corridors. Here at SBS, we launched a no-cost compliance consultation program to educate and help businesses comply with the program. We have been creative and have used new-age technology such as zoom, facetime, and Instagram to connect with businesses, ensuring our business owners and their customers' safety.

Building on the Open Restaurant Program's success, Mayor Bill de Blasio announced this past Wednesday the Open Storefronts Program,

allowing storefront businesses to use a portion of the sidewalk directly in front of their businesses. By filling out a simple attestation, business owners can commence operating immediately. We know that technology before the pandemic and more so now plays a critical role in business operations, and we are proud of the services we deliver through our online platform.

In closing, equity of access and inclusion are at the core of the work we do. We will continue to think creatively and work collaboratively with the Council, city agencies, and our community partners to find ways to further assist our small businesses and job seekers during these times. Thank you again for the opportunity to testify today. I am happy to take your questions.



**Testimony Before the New York City Council
Committees on Technology and Small Business
October 30, 2020**

Good afternoon, my name is Ryan Naples and I am the Deputy Director of Tech:NYC, a nonprofit coalition of more than 800 technology companies in New York. We work with our members, governments, and community partners to foster a dynamic ecosystem so that New York remains the best place in the country to start and grow a business.

The tech industry in New York City currently employs 330,000 people and 10 percent of the nation's developers. Since the onset of the COVID-19 crisis, our ecosystem has been well-positioned to assist small businesses in innovative ways.

Below is just a sampling of how tech companies have supported and continue to support small businesses in New York and beyond during this global pandemic. To be clear, this list is not intended to be comprehensive, but instead to cover a wide variety of ways that technology companies have supported our city's small businesses.

Exposure Notification: Tech:NYC partnered with Bloomberg, Goldman Sachs, Apple, and Google to develop the COVID Alert NY app, which is New York State's exposure notification app for mobile phones. Using privacy-protecting bluetooth technology, the app alerts users who have been in close proximity to someone who reports testing positive for COVID-19, and offers instructions for what to do next to stop the spread. The app has been downloaded more than 500,000 times. A robust contact tracing program, of which this app is a crucial element, will be key to getting New Yorkers back out and about, supporting their local businesses.

Large Employer Investment: During this pandemic, major employers in the tech industry are announcing long-term post-COVID commitments in New York City. Specifically, Facebook recently announced that it will expand its New York City flagship offices at Hudson Yards and in Midtown Manhattan, making it one of the city's largest tech industry employers by 2022. Amazon committed in August to adding an additional 2,000 employees to its New York workforce after recently acquiring the 660,000 square foot Lord & Taylor building on Fifth Avenue. That's on top of Google's sustained commitment to build out its Hudson Square Campus and double its New York workforce. These actions will directly benefit surrounding small businesses in the neighborhoods where these large employers are located.

Accenture: Accenture is actively involved with a nonprofit organization called Sky's the Limit that connects small businesses and entrepreneurs from underrepresented communities with mentorship, training, specialized business advice, and start-up grant funding. These services



and the more than 500 Accenture employees who serve as mentors are crucial to small business survival and success at this time. Accenture built this nonprofits' digital platform and is its largest funder. Sky's The Limit is free for those who sign up. It's also an innovative way for the tech industry to provide hands-on guidance to early stage business ventures. This nonprofit is also presently expanding their reach by partnering directly with cities to create platforms specific to an individual city. Tulsa, Oklahoma, for instance is using the platform to create a curated program of services for small businesses. It is Tech:NYC's recommendation that New York City should consider doing this as well.

Airbnb: In New York, individual live performers are themselves small business entities. In collaboration with The Actors Fund, Airbnb is helping artists earn income while the entertainment industry remains closed. Airbnb has created new "Online Experiences" that feature Broadway stars, and the cast and crew members from countless Broadway and West End musicals. With 22 percent of Airbnb hosts reporting that they or a member of their household are an artist or musician, hundreds of artists will tap into this new Online Experience to support their creative and economic endeavors through 2020.

Amazon: This year, Amazon introduced new features to make it easier for customers to shop for items from small businesses on Prime Day which took place on October 13th and 14th. This included their new Support Small site which allows customers to shop regional, women-owned, Black-owned, Military family-owned, etc. small businesses. Selling in Amazon's stores for the first time has enabled hundreds of thousands of smaller companies to sustain and even grow their sales despite the COVID-19 crisis, allowing them to reach hundreds of millions of new customers and helping Amazon provide customers with even greater selection and convenience. Last week, Amazon supported and celebrated its small business partners during Prime Day by delivering the two biggest days ever for third-party sellers, nearly all of which are small and medium-sized businesses. Sellers saw record-breaking sales that surpassed \$3.5 billion, a nearly 60% increase over Prime Day 2019, growing even more than Amazon's retail business.

CLEAR: Recently, the secure identity company CLEAR developed a new mobile app called Health Pass, which securely connects a person's digital identity to multiple layers of COVID-related insights to help reduce public health risk and restore peace of mind. The company is partnering with a number of businesses and organizations, such as Union Square Hospitality Group and 9/11 Memorial and Museum, to confirm employees are COVID symptom free before starting a shift. Just this week, CLEAR announced a pilot program through the Partnership for NYC in which they will be offering 1 million Health Pass enrollments for free to companies across NYC, with a specific percentage reserved for small businesses and restaurants, women-and minority-owned business, hospitals, cultural and civic institutions

across each of the boroughs. Once a vaccine is available, individuals will be able to link their vaccination record to their Health Pass profile.

Cross River: At the beginning of the pandemic, many of our financial services members helped ensure eligible businesses could participate in the Paycheck Protection Program (PPP). By utilizing their technology, Cross River was one of the only banks in the country offering PPP loans without requiring a pre-existing banking relationship. With an average loan size of \$33,000, the lowest among the nation's leading lenders, Cross River supported nearly one million employees and their families while providing virtual financial literacy programming around COVID-19 relief and recovery.

Delivery Network Companies: Clearly, the restaurant industry has been one of the hardest hit by the pandemic. Since COVID began impacting New York, online delivery companies have provided tens of millions of dollars in direct restaurant support and have spent millions more providing free meals to healthcare workers, seniors, school children, and other vulnerable groups. Additionally, before an initial commission cap in May, all of the delivery network companies in our membership froze or reduced commission rates in response to the pandemic, in some cases by as much as 50 percent.

In addition, **UberEats** has waived activation fees for new restaurants, and expedited the onboarding process to be under 24 hours. It also launched a daily pay out feature to ease cash flow concerns. **DoorDash**, in partnership with the NYC Hospitality Alliance, is offering \$5,000 grants to assist restaurants with outdoor winterization in New York City. DoorDash also implemented next-day payment disbursement to improve cash-flow for restaurants, created new non-commission based tools for restaurants, offered no-fee delivery on Saturdays and helped small restaurant owners access PPP loans. **Grubhub** temporarily suspended collection of up to \$100 million in commission payments from independent partner restaurants nationwide, and **Postmates** partnered with Womply, a registered loan agent, to help its merchants and fleet workers unlock federal funds available through the CARES Act. Through this partnership, Postmates helped hundreds of small businesses prepare applications to unlock nearly \$10 million in PPP loans. **Delivery.com** encouraged all of its users to spend locally by purchasing Delivery.com Gift Cards to select restaurants. By signing up to receive Gift Cards, they enabled direct sales to local businesses from local customers.

Facebook: In addition to its existing efforts, Facebook created several free tools to help small businesses stay connected during COVID disruptions. Workplace tools for remote workers, portals for customer interaction, and a recruitment system for finding qualified local candidates were offered at no cost. In terms of direct support, Facebook partnered with the United Way and the iconic Washington Heights bar Coogan's to raise money for struggling small businesses and nonprofits in Washington Heights and other surrounding communities. Facebook matched all

donations up to \$100,000. So far, Facebook has awarded a total of \$6.5 million in cash grants and ad credits to New York small businesses.

Google: Google has funded \$100,000 to seed and create the West Side Community Fund which totalled \$230k in grants distributed to small- and medium-sized businesses in the Chelsea Neighborhood where the Google NY office is located, and that were economically hurt by COVID-19 and unable to access federal stimulus funds. Google has also created a grant program for Latino-owned businesses and small- and medium-sized journalism organizations hard hit by the pandemic. In addition to these direct funding programs, Google continues to offer Grow with Google private digital skills workshops and one-on-one coaching for grant recipients. It has also created a pilot program that will assign graduates from the COOP program to 150 businesses to help them build e-commerce sites.

Justworks: Justworks, an NYC-based company that provides human resources tools and access to high-quality health insurance for small businesses, created a number of free COVID-related functions in April. Among other things, it launched a PPP reporting tool used by 2,646 New York small businesses to substantiate their average monthly payroll calculation, which was required to apply for and successfully obtain a PPP loan.

Mastercard: Mastercard committed \$250 million in financial, technology, product and services support over the next five years to small businesses in the United States and other markets where they operate, supporting the vitality of businesses and the financial security of their workers.

OnDeck: Another financial services company, OnDeck, provided similar PPP services and in September, this online lender surpassed \$1 billion in financing to small businesses across the state.

Persado: Persado, an AI digital marketing company, helped small business entrepreneurs with mentoring and coaching sessions on marketing techniques to help sustain and grow their businesses.

Salesforce: Website functionality and continued connectivity is also now more important than ever for small businesses as New Yorkers remain cautious about returning to brick and mortar stores. In order to help small businesses continue to interact with their customers and employees, the cloud-based software company Salesforce launched *Salesforce Care Rapid Response Solutions for Small Businesses*. This suite of online tools allowed companies to stay connected to their communities through AI customer service functionality and were free of charge for 90 days. Over 60,000 companies nationwide took advantage of these tools to maintain connectivity.



Splice: Some musicians who are also themselves small business entities have been able to continue to earn income thanks to technology companies like Splice, a digital music sampling library. After any downloads, Splice pays the musicians who created the samples. This company started in 2015 but COVID has led to an increase in downloads and subsequent payouts. Over \$30 million has been paid to individual musicians since 2015 and \$9 million was paid from March through September of this year. Artists live primarily in NYC and California.

Squarespace: Squarespace is an all-in-one platform for websites and marketing tools has been supporting their small business customers during this difficult time by offering 1:1 financial support, making premium features like gift cards available at no cost to all merchants, enabling other features at discounted prices, and providing resources through their content channels.

We know that for small businesses in this city, surviving a pandemic and thriving afterwards requires collaboration and innovation. Our industry can be a resource and we are committed to working with small businesses in New York during these uncertain times. Tech:NYC stands ready to connect anyone from your districts to tech partners and are grateful for the opportunity today to provide the above examples.

Thank you for your time, and I would be happy to take any questions.



Asian American Federation

Written Testimony for New York City Council Oversight Hearing on How Technology can Assist Small Businesses during the Pandemic

**Submitted to the New York City Council Committee on Small Business and Technology
October 30, 2020**

Thank you, Chair Mark Gjonaj and Robert Holden, and the Committee on Small Business and the Committee on Technology, for convening this hearing.

My name is Ahyoung Kim, and I am the Associate Director of Small Business Programs at the Asian American Federation (AAF). AAF's mission is to raise the influence and well-being of the pan-Asian American community through research, policy advocacy, public awareness, and organizational development. We represent a network of nearly 70 member and partner agencies that support our community through their work in health & human services, education, economic development, civic participation, and social justice. Through our Small Business Program, we directly serve nearly 100 Asian-owned small businesses in Flushing and work together with groups that support thousands of Asian small business owners across the city, such as the Korean American Business Council of New York.

In our rapid response efforts in the face of this pandemic, we have facilitated the distribution of over 320,000 masks and hundreds of thermometers to small business owners all over New York City. We also set up an in-language resource web page for policy changes and government assistance programs, and continue to provide direct services for business owners who need marketing and administrative assistance. From July to August this year, we conducted a survey¹ to assess the impact of the pandemic on Asian small business owners across the State, through which we collected over 400 responses.

The majority of survey respondents answered that their businesses were operating in limited capacity at the time of the survey, and over 31% of them said their business was temporarily closed. Almost all business owners reported a decrease in revenue—55% of them suffering from over 75% loss in revenue.

In this time of crisis, we have seen an unprecedented increase in the unemployment claims in the Asian community. In some weeks, the year-to-year increase in Asian UI applications in NYS were over 6,000%. Many Asian small business owners have been largely let down and left in the dark in the fight against COVID-19.

¹ AAF conducted a survey of Asian American small business owners in New York, from July 14 to August 31, 2020. A brief report summarizing the findings from this survey will be published in the near future.

As you well know, Asian small businesses started seeing a dramatic decline in their revenue from as early as January this year as anti-Asian sentiment was fueled by politically motivated racism. While all sectors are desperately searching for ways to pivot and secure revenue, the immigrant small business community is left behind due to digital divide, language access and lack of support.

The COVID-19 pandemic and its associated limitations on business practices are forcing small businesses to pivot to a new business model at an unprecedented speed. Immigrant small business owners, however, find it especially difficult to make this transition because their businesses traditionally depend on their regular clientele that rely on their storefronts. To make things worse, the cost and pain of introducing e-commerce by using mainstream tech companies that do not support their languages is too great, compared to the perceived short-term gains.

To understand the needs of immigrant small business owners, one needs to understand the special circumstances they face. Many immigrant small businesses in retail cater to a culture-specific community that is spread across the whole City and the Tri State region. Under regular circumstances, this is not a problem, as customers flock to the City to visit their favorite restaurants as a special event or to use professional and personal services that cater to their community.

In the time of the pandemic during which travel is greatly limited, immigrant small businesses saw a dramatic drop in their revenue—partly due to lack of access for their regular community customers, and worsened by the sudden drop in tourist visits to the area thanks to race-based fear mongering.

While other business owners are actively seeking for ways to diversify revenue sources through e-commerce and better online presence, immigrant small business owners find their businesses unable to find a market fit in the fast-changing business scene for the following reasons.

Digital Divide Worsened by Language Barrier:

The biggest barrier for immigrant small businesses to benefit from technology is the digital divide. For new immigrants who already face difficulty in communicating or obtaining information due to language barrier, it is near impossible to engage in the mainstream marketing and e-commerce efforts. To make things worse, they face a great cultural barrier when engaging with big tech companies whose businesses are filled with jargons and uninviting customer service for those who need language assistance.

It is virtually impossible for immigrant small business owners with limited English proficiency (LEP) to understand the intricate details of new marketing technology, such as customer relations management (CRM) or search engine optimization (SEO). On the contrary, big tech companies are not incentivized to cater to the needs of such small business owners, because their businesses do not have the economy of scale for tech companies to benefit from.

Predatory Business Practice in Name of Tech Support

Left in the dark with the desperate need to participate in online commerce and marketing, many LEP small business owners end up hiring predatory service providers. These service providers approach business owners with the attractive proposal to set up their business entity on big search engines such as Google and to manage the account at a set fee, these service providers charge hundreds of dollars to business owners who do not realize that setting up a business account on Google does not cost anything.

As a result, immigrant small business owners often sign with such service providers thinking they are entering a contract with Google. Worse yet, such service providers often do not deliver on their promises to set up a functioning business account and to manage it—leaving small business owners instead with an ineffective account they have no control over.

Information Dissemination and Outreach

For many immigrant small business owners, finding information about available assistance and grant opportunities was a big challenge in the time of this economic difficulty. In our small business survey on Asian American small business owners, 40.8% of respondents said they did not get enough information about such opportunities in their language, and 35.5% said they could not connect with a service provider.

Even for those who successfully connected with a service provider, it was difficult for them to stay engaged regarding their application status or required documents through conventional methods of communication, such as email, with loan officers.

One of AAF's member organization reaped success in engaging with business owners who face such difficulties by educating their clients how to use cloud services for a faster and socially distanced application process. Efforts such as this, with meaningful language assistance, can contribute to better dissemination of information and outreach to the hard-to-reach communities.

Another challenge for LEP small business owners coping with the pandemic was the difficulty in finding relevant information as regulations and guidelines from the City and State governments changed rapidly. The way information is posted and distributed by City agencies at this time is inconsistent and confusing—making it difficult for business owners to follow with or without language barrier.

For LEP small business owners, it is virtually impossible for them to navigate the City agency websites for the information they need. Also, City agencies have not provided crucial information such as new guidelines or assistance programs in the major languages of New York City, adding to the confusion and difficulty to stay informed.

To reach new immigrant small business owners, in-language information should be disseminated through platforms and organizations familiar to the specific community. In our survey, 93.3% of small business owners answered that they are not a part of Business Improvement Districts(BID)

or Chambers of Commerce. On the contrary, City agencies largely focus on BIDs and Chambers for outreach and information dissemination—effectively leaving immigrant small business owners out in this difficult time.

How Technology Can Help Immigrant Small Businesses

To close the gap between the level of engagement on the technology front for the immigrant small businesses community, City should encourage more attempts to diversify revenues for an existing business from within the community. Immigrant small business owners who have been able to expand or pivot their business successfully often have help from their children or the community.

New startups, such as Asian Veggies² have successfully found a way to increase outreach to Asian customers spread throughout New York City while keeping operational costs low. The founder, a child of a produce wholesaler, jumped into creating this platform for the failing produce business when his father lost major clients in the pandemic, most of them Chinatown restauranteurs. With the online presence, Asian Veggies now delivers produce to Asian clients all over the city.

GoHive, a food delivery system run by a local immigrant has opened up the delivery model for Chinese and Korean speaking restauranteurs who were unable to engage with other delivery companies that do not provide language assistance.

For technology to provide meaningful assistance to immigrant small businesses, there should be more funds and encouragement for such entrepreneurial endeavor within the ethnic communities.

RECOMMENDATIONS:

In light of this state of Asian small businesses and technology in New York City, AAF recommends the following:

- **Protect immigrant small business owners from predatory service providers**
 - Provide basic online marketing and e-commerce programs for immigrant small business owners, in all major languages of New York City
 - Launch a campaign against predatory service providers and offer assistance to LEP business owners in reporting such behavior
- **Invest in increasing meaningful language access engagement**
 - Mandate same-day release of in-language material introducing new policies and regulation on all City agency websites
 - Increase funding for community-based organizations that offer direct services and language access to immigrant small business owners with limited English

² <https://asian-veggies.com/pages/about-us>

proficiency, specifically to invest in technological adjustment in outreach to their clients

- **Increase culturally appropriate outreach to immigrant small business owners**
 - Fund community-based organizations that offer direct services to small business owners in areas where BID or Chambers of Commerce are not present
 - Explore the use of social media platforms widely used by the immigrant community for outreach and information dissemination
 - Increase media buys from ethnic media outlets, using their online presence and social media, to disseminate crucial information regarding policy changes
- **Invest in startups that aim to cater to immigrant businesses**
 - Offer financial incentives or assistance for immigrant startups that aim to close the gap in digital divide and language barrier
 - Increase outreach about startup opportunities to LEP communities
- Support the creation of a **culturally and linguistically appropriate small business support centers** to provide immigrant small businesses with the in-language technical support they need to thrive in New York City.

Example: AAF plans to establish an Asian Small Business Center in East Queens with staff who can provide in-language assistance to pan-Asian small business owners in the region. The City's small business assistance centers need to be decentralized and located in areas where immigrant small businesses are heavily concentrated. Currently, owners are unable to take advantage of any City services because they are located too far from where they work, and such services provide no meaningful language access.

Our Center will provide:

- Seminars – Provide informational seminars and technical assistance which reflects the specific needs of different Asian business communities and the industries they work in
- Civic Engagement – Inform small business owners of regulation and policy changes from the get-go to minimize any negative impact at the implementation stage. We would reach out to owners in a systematic manner to inform them of policy changes and invite feedback through ongoing discussions.
- Education about Regulations – Provide in-language materials to guide immigrant small business owners through inspections. These materials would inform owners of what their responsibilities are and what to expect during inspections, which will help them understand how to be in compliance.
- Business Trainings – Create in-language guides for how to start and run a small business in New York City. These guides will establish a common ground of understanding as well as reflect specific needs of different Asian business communities and the industries they work in.
- Build Capacity – Build the capacity of Asian community-based organizations to provide small business assistance to community members. While a few of our

member agencies have a small business program, many of the emerging Asian communities in New York City are not receiving the small business assistance they need. Community-based organizations are the first place that Asian small business owners go to for help, and the City must ensure that these organizations are properly prepared to offer assistance.

Thank you!

Guy Yedwab
Board of Directors
League of Independent Theater
October 30th, 2020

Testimony to City Council on how Technology can Assist Small Businesses

Thank you to the committee for the opportunity to testify before you today. I am on the board of directors of the League of Independent Theater, an advocacy organization representing the interests of those who create theater performances in or run 99 seat or less theaters, and non-traditional theater. Our members are the grassroots, creating new theater across all five boroughs, from every cultural community of this city. We estimate roughly 60,000 theatermakers work in theater in New York, and virtually every single one passes through the small, independent venues. We are also a member of the United for Small Business NYC coalition, fighting to defend small businesses across the city, who are also offering testimony today.

In 2019, before the COVID crisis, the Mayor's Office of Media and Entertainment issued a report on the economic impact of Small Theater in New York City, documenting how we generate \$1.3B in economic input and 8,400 full-time jobs.¹ The report also highlighted that one of the top challenges impacting the industry is a shortage of working space. As commercial rents climb higher and landlords turn towards luxury apartment spaces to maximize revenue, we already were fighting closures of rehearsal and performance space.

In 2020, the crisis has intensified. We may be a year or more away from live performance indoors returning to the way things were. In the meantime, a Center for an Urban Future study found as small to mid-size organizations have lost between 17

¹ Mayor's Office of Media and Entertainment. 2019. "All New York's A Stage: New York City Small Theater Industry Cultural and Economic Impact Study."
<https://www1.nyc.gov/site/mome/news/11202019-small-theater-study.page>

Guy Yedwab
Board of Directors
League of Independent Theater
October 30th, 2020

percent to 50 percent or more of their operating budgets. As such, we've seen a rash of key rehearsal and performance venues close permanently – not only impacting their own organizations, but having a ripple effect on the hundreds of companies and individual artists who rent those spaces over the course of a year.

The top way that City Councilmembers here can address this crisis is by using City Council's power over commercial rents to provide rental relief.

However, there are some ways in which technology can mitigate the impact of this crisis. Technology has the potential to make the spaces that exist today more equitably accessible to the performing artists, both during this crisis and into the longer-term future. By creating web-sites to make available space more transparently accessible and searchable, the City can help unlock resources that are already at hand.

First, we call upon this committee to support Councilmember Laurie Cumbo Intro 2034, requiring the Department of Information Technology and Communication to create a mobile application to coordinate use of open space for cultural programming, and providing the public with information about free or low cost public programs in public spaces. We have all seen the success of the Open Streets initiative in providing dining establishments with a lifeline during the crisis, and bringing the public some measure of joy during these hard times. With the proposal for Open Culture, Intro 2034 would enable public performance – providing it meets all of the COVID public safety and permitting requirements – to be easily accessible to performing artists and to the public.

Guy Yedwab
Board of Directors
League of Independent Theater
October 30th, 2020

Second, we call on City Council to provide funding to IndieSpace to create a searchable database for performance and rehearsal space. Our community has for a long time relied on a database to find spaces to work, and unfortunately the company that operated the database was forced to shut it down due to budget cuts in the face of COVID-19. IndieSpace, a non-profit with a goal of creating long-term solutions to working space for culture, has taken on the task of recreating this database on its own. This database could be an invaluable resource for the city. During this crisis, the League has been contacted by government agencies to identify spaces that the Department of Education can use as school overflow space; as well as to identify spaces that the Board of Elections could use for training centers. Theaters have also donated their space in the past for use by Community Boards and other community gatherings. This crisis has underscored the potential of the cultural community and government to collaborate to meet the needs of the neighborhood.

In these ways, a minimal investment in technology could reap huge social and economic dividends. Unlocking public performance with Councilmember Cumbo's Intro 2034 and supporting IndieSpace's directory of small-sized cultural rehearsal and performance space will provide more equitable access to space during a time when COVID is deepening inequities.



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**STATEMENT OF
ALBERT FOX CAHN, ESQ.
EXECUTIVE DIRECTOR
SURVEILLANCE TECHNOLOGY OVERSIGHT PROJECT (“S.T.O.P.”)
BEFORE COMMITTEE ON TECHNOLOGY AND COMMITTEE ON SMALL
BUSINESS, THE NEW YORK CITY COUNCIL
FOR A HEARING CONCERNING
HOW TECHNOLOGY CAN ASSIST SMALL BUSINESSES DURING THE PANDEMIC
PRESENTED
October 30, 2020**

1. Introduction

Good afternoon, my name is Albert Fox Cahn, and I serve as the Executive Director of the Surveillance Technology Oversight Project (“S.T.O.P.”). S.T.O.P. advocates and litigates for New Yorkers’ privacy, fighting discriminatory surveillance. Thank you, Chairmen Holden and Gjonaj, for holding this hearing today and for the opportunity to testify.

The COVID-19 pandemic has forced businesses of all sizes to rethink how they keep employees and customers safe. Sadly, many New York businesses are being taken for a ride, as vendors sell invasive and unproven medical technologies that may prove to be little better than high-tech snake oil. Businesses spend millions on tools like thermal imaging, proximity detection, and immunity passports, often without any peer-reviewed evidence they are effective, let alone FDA approval.

Many of these systems risk creating a false sense of security, undermining evidence-based measures, and eroding civil rights. Of course, where technology can actually keep New Yorkers safe, rather than creating an illusion of safety, we support it; but these systems are sadly the exception and not the rule.

2. Thermal Temperature Scans

Many restaurants and businesses use thermal scans to detect an elevated temperature. While some medical-grade thermal systems are able to take a reliable temperature, commercial systems vary widely in their accuracy.¹ Many of these systems extrapolate skin temperature to determine internal body temperature, but the results can be mixed.² In recent days, I’ve seen restaurants scan my own temperature with devices that measure the temperature of my inner wrist, rather than my forehead or ear. Fluctuation in the temperatures of extremities could easily lead to a false positive or false negative.

Even if these devices could detect internal temperatures accurately, simply scanning for fevers is a highly ineffective method for determining if someone has COVID-19: a fever is only one of several symptoms, many carriers are asymptomatic, and many people will have elevated temperatures for unrelated reasons.³ Body temperatures fluctuate throughout the day, impacted by environmental factors,⁴ menstruation,⁵ and mere inflammation.⁶ Many people also routinely take common medications, like aspirin, which reduce temperatures.⁷

¹ See Philippa Roxby, *Can Thermal Cameras Help Spot Coronavirus?*, BBC (June 9, 2020), <https://www.bbc.com/news/health-52940951>.

² *Id.*

³ *Id.*

⁴ Ace et al., *supra* note 11.

⁵ *Body Temperature: What Is (and Isn't) Normal?*, Cle. Clinic (Mar. 31, 2020), <https://health.clevelandclinic.org/body-temperature-what-is-and-isnt-normal>.

⁶ Hannah Schaller et al., *Thermal Imaging as Pandemic Exit Strategy: Limitations, Use Cases and Privacy Implications*, Future of Privacy Forum (June 3, 2020), <https://fpf.org/2020/06/03/thermal-imaging-as-pandemic-exit-strategy-limitations-use-cases-and-privacy-implications>.

⁷ John P. Cunha, *Aspirin vs. Acetaminophen (Tylenol)*, RxList, https://www.rxlist.com/aspirin_vs_acetaminophen_tylenol/drugs-condition.htm (last visited Oct. 28, 2020).

3. Wide-Area Thermal Scans / Computer Vision

Wide-Area Thermal Scans and Computer Vision products amplify many of these concerns. First, the cameras used for these systems are generally not designed for medical use.⁸ But unlike the handheld devices, which are typically used to scan only a single person, computer vision systems analyze live video feeds of a large area.

Unfortunately, the technology is ineffective for detecting elevated body temperatures where multiple individuals are moving in different directions in a single frame.⁹ Additionally, the accuracy rate plummets as the distance between the camera and the target increases.¹⁰ Rather than acknowledging that these devices have significant accuracy issues,¹¹ several companies have buried the evidence and made exaggerated and unproven marketing claims.¹²

4. Air Filtration Technology

Air filtration is indispensable to safely reopening indoor spaces, including stores and restaurants. Sadly, right now we are in the wild west of air filtration, with far too little guidance on how to effectively safeguard the air we breathe indoors. These systems filter pollutants or contaminants from the air, including the COVID-19 virus.¹³ However, some of these systems may not provide the volume and quality of air filtration to make even low-density indoor activity safe.¹⁴ We need to provide businesses the resources to understand how these systems work and what their limits are. Above all, we need to ensure that businesses don't waste funds on systems that are more hype than help.

5. Immunity Passports & Registration Requirements

Several countries have either discussed or implemented “immunity passports,”¹⁵ which are backward-looking documents “certifying” that the holder previously had COVID-19 and will not carry or contract the virus again, enabling them to return to some sense of normalcy.¹⁶ These raise numerous concerns. First, there is a dearth of evidence that a previously infected person cannot later be reinfected,¹⁷ thus creating a false sense of security that may lead to increased infection numbers. There are also inequity concerns that these solutions will create tiers of first- and second-class New

⁸ Roxby, *supra* note 1; Schaller et al., *supra* note 6.

⁹ Schaller et al., *supra* note 6. *See generally* LS Chan et al., *Utility of Infrared Thermography for Screening Febrile Subjects*, 19 H.K. Med. J. 109 (2013), <https://www.hkmj.org/abstracts/v19n2/109.htm>.

¹⁰ Schaller et al., *supra* note 6.

¹¹ Ethan Ace et al., *Detecting Coronavirus Fevers With Thermal Cameras*, IPVM (Mar. 15, 2020), <https://ipvm.com/reports/thermal-wuhan>.

¹² *See, e.g.*, John Honovich & Charles Rollet, *Faked Coronavirus Fever Detection, Athena Used Hikevision; Responds – Selling NDAA Compliant Cameras, Pledging 50% of Profits to Victims*, IPVM (Mar. 24, 2020), <https://ipvm.com/reports/faked-corona>.

¹³ *Air Cleaners, HVAC Filters, and Coronavirus (COVID-19)*, U.S. Evtl. Protection Agency, <https://www.epa.gov/coronavirus/air-cleaners-hvac-filters-and-coronavirus-covid-19> (last updated July 16, 2020).

¹⁴ *Id.*

¹⁵ “Immunity Passports” in the Context of COVID-19, World Health Org. (Apr. 24, 2020), <https://www.who.int/news-room/commentaries/detail/immunity-passports-in-the-context-of-covid-19>.

¹⁶ *Id.*

¹⁷ *Id.*

Yorkers based on a person's access to healthcare, exacerbating the racial, age, gender, and wealth disparities already prevalent in New York City.¹⁸

6. Tracking through Bluetooth, GPS, and Facial Recognition

Some businesses have also begun tracking their employees to enforce compliance with social distancing guidelines. Some employers have used GPS or Bluetooth functionality, through employees' cell phones or company-issued badges,¹⁹ while others have deployed camera systems equipped with facial recognition software to monitor and enforce compliance with social distancing guidelines.²⁰

While it's unclear if this technology meaningfully helps contact tracing efforts, it also can be—and has been—used for nefarious purposes. For example, when Amazon developed its Distance Assistant system to monitor whether employees were following social distancing rules,²¹ the company then immediately used this information to discipline and fire workers.²² Additionally, several former Amazon employees have alleged that they were fired for organizing protests over safety conditions and attempting to unionize.²³ Tracking employees' whereabouts and activities—even outside of work, as Amazon has done²⁴—is coercive,²⁵ suppresses employee organizing, and ultimately leads to their increased exploitation.²⁶ This is especially true in an economic downturn, where employment options are much more limited.²⁷

¹⁸ Andrew Webb & Business Daily, *Coronavirus: How 'Immunity Passports' Could Create an Antibody Elite*, BBC (July 2, 2020), <https://www.bbc.com/news/business-53082917>.

¹⁹ Jason Beaubien, *More Companies Are Using Technology to Monitor for Coronavirus in the Workplace*, NPR (Oct. 13, 2020, 5:05 AM), <https://www.npr.org/2020/10/13/918315238/more-companies-are-using-technology-to-monitor-for-coronavirus-in-the-workplace>.

²⁰ E.g., Annie Palmer, *Amazon Is Rolling Out Cameras that Can Detect if Warehouse Workers Are Following Social Distancing Rules*, CNBC (June 16, 2020, 6:00 AM), <https://www.cnbc.com/2020/06/16/amazon-using-cameras-to-enforce-social-distancing-rules-at-warehouses.html>.

²¹ *Id.*

²² See Brian Fung, *Amazon Says It May Fire Workers Who Violate Social Distancing Guidelines*, CNN (Apr. 7, 2020, 2:48 PM), <https://www.cnn.com/2020/04/07/tech/amazon-social-distancing-enforcement/index.html>.

²³ See, e.g., *id.*; Annie Palmer, *Amazon Fires Warehouse Worker Who Led Staten Island Strike for More Coronavirus Protection*, CNBC (Mar. 30, 2020, 8:43 PM), <https://www.cnbc.com/2020/03/30/amazon-fires-staten-island-coronavirus-strike-leader-chris-smalls.html>.

²⁴ Lauren Kaori Gurley & Joseph Cox, *Inside Amazon's Secret Program to Spy on Workers' Private Facebook Groups*, Vice (Sept. 1, 2020, 6:51 PM), <https://www.vice.com/en/article/3azegw/amazon-is-spying-on-its-workers-in-closed-facebook-groups-internal-reports-show>.

²⁵ Jason Del Rey & Shirin Ghaffary, *Leaked: Confidential Amazon Memo Reveals New Software to Track Unions*, Vox: Recode (Oct. 6, 2020, 10:00 AM), <https://www.vox.com/recode/2020/10/6/21502639/amazon-union-busting-tracking-memo-spo> (“Open surveillance is illegally coercive even if managers do not directly threaten to retaliate or take action based on the information obtained. There is an implied message that the company people will be rewarded and the union adherents will suffer.”).

²⁶ Peter Skott & Frederick Guy, 95 Econ. Letters 124 (2007), <https://www.sciencedirect.com/science/article/abs/pii/S0165176506003363>.

²⁷ See, e.g., Press Release, N.Y. Dep't of Labor, NYS Economy Added 75,300 Private Sector Jobs in September 2020 (Oct. 15, 2020), <https://labor.ny.gov/stats/pressreleases/pruistat.shtm> (“New York State's seasonally adjusted unemployment rate decreased from 12.5% to 9.7% in September 2020. In September 2020, the number of unemployed New York State residents decreased by 302,000, while labor force levels decreased by 362,900.”).

7. Customer Registration

Some businesses have also considered or implemented registration requirements, under which anyone who visits a business must register for contact tracing purposes.²⁸ This type of data collection is potentially indispensable to public health officials, but it also creates a potent threat to New Yorkers. Currently, there is no law to prevent the NYPD or ICE from accessing this data or other contact tracing data to arrest and deport our neighbors. We renew our calls on Governor Cuomo to sign S8450 / A10500 into law immediately, preventing misuse of contact tracing data. But we must go further at the city level, banning retention or misuse of contact tracing data held by small businesses and restaurants.

* * *

We must help small businesses recover from this pandemic and economic downturn. But at the same time that we harness technology to help New Yorkers through this crisis, we must also push back on technology that can be misused to harm our city. Thank you for the opportunity to testify and for your consideration.

²⁸ Kathryn Vasel, *Contact Tracing Could Become a Regular Part of Office Life. Here's How It Will Work*, CNN (June 10, 2020, 4:35 PM), <https://www.cnn.com/2020/06/10/success/employee-contact-tracing/index.html>.