



March 20, 2023

TO: Members
FROM: Committee Majority Staff
RE: Hearing Entitled “TikTok: How Congress Can Safeguard American Data Privacy and Protect Children from Online Harms”

I. INTRODUCTION

On Thursday, March 23, 2023, at 10:00 a.m., the Committee on Energy and Commerce will hold a hearing in 2123 Rayburn House Office Building entitled “TikTok: How Congress Can Safeguard American Data Privacy and Protect Children from Online Harms.”

II. WITNESS

- Shou Chew, CEO, TikTok Inc.

III. BACKGROUND

Beijing ByteDance Technology is a Chinese internet technology company headquartered in Beijing and operating in the United States through a holding company (“ByteDance Ltd.”) incorporated in the Cayman Islands.¹ Beijing ByteDance Technology was formed in 2012 and launched a number of applications and products which became extremely popular in the Chinese market. Among these products is Douyin, a short-form video hosting service that launched in 2016. It attracted 100 million users in China and Thailand in less than a year.²

In 2017, ByteDance launched Douyin internationally under the name TikTok. A year later, ByteDance acquired and merged Musical.ly – a social-media app with roughly 100 million users mainly in the U.S. – with TikTok, which at the time had approximately 500 million users outside China. This merger allowed ByteDance to consolidate its audiences on both apps and obtain a global reach, with Douyin in China and TikTok everywhere else.³

¹ Beijing ByteDance Technology and its Cayman Island holding company, ByteDance Ltd., will interchangeably be referred to as “ByteDance.”

² Joe Tidy and Sophia Smith Galer, *TikTok: The story of a social media giant*, BBC News (5 August 2020). <https://www.bbc.com/news/technology-53640724>

³ Jon Russell, *Short video service Musical.ly is merging into sister app TikTok*, Tech Crunch (August 2, 2018). <https://techcrunch.com/2018/08/02/musically-tiktok/>

TikTok is now one of the most popular social media platforms in the world. It is available in over 150 countries and serves over 1 billion users. In the United States, TikTok has been downloaded over 210 million times and is especially popular among teenagers and young adults.⁴ The *Washington Post* reports that 2 out of 3 American teens have used the platform.⁵ On average, American viewers spend 80 minutes per day watching TikToks.⁶

a. Consumer Privacy and Data Security

TikTok's surveillance capacity and practices require scrutiny given the platform's ties to the Chinese Communist Party (CCP). Despite numerous claims by TikTok executives that it does not share U.S. user data with the CCP, from 2014 to 2017 the CCP passed several laws requiring all Chinese tech companies to allow CCP officials access to user data.⁷ ByteDance is no exception – all Chinese tech companies must comply with the demands of the CCP, which in some cases is a “require[ment] to build [their] networks in such a way as where the Chinese government has access.”⁸

The ambitious data collection goals of the CCP and the documented lack of transparency from TikTok and their executives over data and moderation practices has prompted governments, including the United States, the European Union, Canada, India and several U.S. States⁹ to ban the use of the application on government devices.¹⁰ Past violations by TikTok and other Chinese-owned applications to protect user data, and China's record of abuses in accessing Americans' information,¹¹ led to the inclusion of restrictions on collection and use of data, increased data security obligations, further protections of children's personal information, and disclosures on transfers and storage in China in the committee's comprehensive privacy and data security legislation.

⁴ Drew Harwell, *How TikTok ate the internet*, The Washington Post (October 14, 2022).

https://www.washingtonpost.com/technology/interactive/2022/tiktok-popularity/?itid=lk_inline_manual_2; Heather Kelly, *Teens have fled Facebook but are loyal to YouTube, poll shows*, The Washington Post (August 10, 2022).

<https://www.washingtonpost.com/technology/2022/08/10/teens-social-pew/>; Brandon Doyle, *TikTok Statistics – Updated Feb 2023*, Wallaroo (February 16, 2023). <https://wallaroomedia.com/blog/social-media/tiktok-statistics/>

⁵ Heather Kelly, *Teens have fled Facebook but are loyal to YouTube, poll shows*, The Washington Post (August 10, 2022). <https://www.washingtonpost.com/technology/2022/08/10/teens-social-pew/>

⁶ Drew Harwell, *How TikTok ate the internet*, The Washington Post (October 14, 2022).

https://www.washingtonpost.com/technology/interactive/2022/tiktok-popularity/?itid=lk_inline_manual_2

⁷ China Law Translate, *PRC National Intelligence Law (as amended in 2018)*, (March 17, 2021).

<https://www.chinalawtranslate.com/en/national-intelligence-law-of-the-p-r-c-2017/>

⁸ Marc A. Thiessen, *TikTok, Not Twitter, Is the Real Menace*, American Enterprise Institute (December 3, 2022).

<https://www.aei.org/op-eds/tiktok-not-twitter-is-the-real-menace/>

⁹ Zen Soo, *These Are the Countries That Have Bans on TikTok*, Time (March 2, 2023).

<https://time.com/6259718/countries-tiktok-banned/>

¹⁰ Kari Paul, “Should You Delete Tiktok? Here's What Experts Say About the App Trump Wants to Ban,” *The Guardian*, July 16, 2020, at <https://www.theguardian.com/technology/2020/jul/16/tiktok-video-sharing-app-should-you-delete-it>.

¹¹ Ellen Nakashima, *Chinese breach data of 4 million federal workers*, The Washington Post (June 4, 2015).

https://www.washingtonpost.com/world/national-security/chinese-hackers-breach-federal-governments-personnel-office/2015/06/04/889c0e52-0af7-11e5-95fd-d580f1c5d44e_story.html

b. Algorithmic Manipulation

More than other platforms, TikTok's popularity is due to its aggressive recommendation algorithm that, unlike other western social media platforms, does not rely on a social graph¹² of a user's friends, but instead recommends content based on a user's previous engagement and personalized data the platform has already collected. This allows TikTok to pull content from a global pool rather than, simply, people already in a user's network.¹³ This unique algorithmic design, pulling from a global pool of content regardless of your social graph, increases the possibility of "going viral" in a way previously impossible.

c. Project Texas and Committee on Foreign Investment in the U.S. (CFIUS)

On August 6, 2020, President Trump signed Executive Order 13942, aimed at preventing TikTok from conducting business in the U.S.¹⁴ On August 14, 2020, President Trump issued a follow-up Executive Order, which required ByteDance to divest fully from TikTok and sell its assets and operation to an American entity.¹⁵

On September 14, 2020, Oracle announced it reached an agreement with ByteDance to operate as a "trusted technology provider." This arrangement would allow ByteDance to continue to control TikTok's algorithm but store user-data in the United States. Despite numerous statements from senior executives that the CCP has no role in governing TikTok, in 2020, ByteDance stated that any sale would need approval from Chinese authorities.¹⁶

More than two years later, TikTok remains in negotiations with CFIUS over its ability to operate in the U.S. TikTok calls the ongoing negotiations "Project Texas," with the main goal being to move American user data from over-seas to domestic servers. These new servers would be owned and operated by Oracle as TikTok's trusted technology partner.¹⁷

g. Related Committee Action

- In May 2020, Ranking Members Greg Walden (retired) and McMorris Rodgers sent a letter to ByteDance regarding compliance with their consent decree ([link](#)).

¹² A social graph is a diagram that illustrates interconnections among people, groups and organizations in a social network. Facebook's success is largely attributed to its social graph. See <https://stratechery.com/2018/the-facebook-brand/>

¹³ Stratechery, *Instagram, TikTok, and the Three Trends* (August 16, 2022). <https://stratechery.com/2022/instagram-tiktok-and-the-three-trends/>

¹⁴ President Donald J. Trump, "Executive Order on Addressing the Threat Posed by TikTok," August 6, 2020, at <https://www.whitehouse.gov/presidential-actions/executive-order-addressing-threat-posed-tiktok/>.

¹⁵ President Donald J. Trump, "Executive Order Regarding the Acquisition of Musical.ly by ByteDance Ltd.," August 14, 2020, at <https://home.treasury.gov/system/files/136/EO-on-TikTok-8-14-20.pdf>.

¹⁶ Liza Lin and Eva Xiao, *China Has to Approve TikTok-Oracle Deal Too, ByteDance Says*, The Wall Street Journal (September 17, 2020). https://www.wsj.com/articles/china-has-to-approve-tiktok-oracle-deal-too-bytedance-says-11600354975?mod=article_inline

¹⁷ Emily Baker-White, *Inside Project Texas, TikTok's Big Answer To US Lawmakers' China Fears*, BuzzFeed News (March 10, 2022). <https://www.buzzfeednews.com/article/emilybakerwhite/tiktok-project-texas-bytedance-user-data>

- Energy and Commerce Republicans sent letters to Snap, TikTok, and YouTube requesting internal research on teen mental health ([link](#)).
- A December 7, 2022, letter to TikTok requested a briefing to respond to reports that the company is serving as a platform for the sexual exploitation and predation of children, and to outline what measures you are taking to quash it ([link](#)).
- A May 13, 2022, letter to TikTok requested communications with the Biden administration's Disinformation Governance Board ([link](#)). A May 13, 2022, letter to TikTok requested communications with the Biden administration's Disinformation Governance Board ([link](#)).
- Innovation, Data, and Commerce Subcommittee held a February 1, 2023, hearing titled "Economic Danger Zone: How America Competes to Win the Future Versus China," which focused on technological competition with the Chinese Communist Party ([link](#)).

h. Related Committee Legislation

- On July 20, 2022, Rep. Pallone's, cosponsored by Reps. Rodgers, Schakowsky, and Bilirakis, American Data Privacy and Protection Act (ADPPA) ([H.R.8152](#)), was favorably reported by the Committee by a vote of 53-2. The bill would establish requirements for how companies handle personal data, with specific provisions regarding disclosing when one's covered data is transferred to, processed in, stored in, or otherwise accessible to the People's Republic of China, Russia, Iran, or North Korea.
- On March 9, 2023, Rep. Cammack's CAUTION Act ([H.R.750](#)) was favorably reported by the Committee by a vote of 47-1. This legislation would require a prominent notice when an app was banned on government devices.
- On March 9, 2023, Rep. Fulcher's Internet Application I.D. Act ([H.R.784](#)) was favorably reported by the Committee by a vote of 28-22. This legislation would require a prominent notice when an internet website is owned, wholly or partially, by the Chinese Communist Party or by a non-state-owned entity located in the People's Republic of China.
- On March 9, 2023, Rep. Duncan's TELL Act ([H.R.742](#)) was favorably reported by the Committee by a vote of 28-22. This legislation would require internet platforms to disclose when data is being transferred or stored in China.

I. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Tim Kurth or Michael Cameron of the Committee staff.