

Is TikTok's Time Up on College Campuses?

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TikTok is a short-form video sharing app that is popular with both students and institutions of higher education. [i] On March 23rd, Shou Zi Chew, C.E.O. of TikTok - which is a wholly-owned subsidiary of Chinese technology firm ByteDance Ltd. and has dual headquarters in Beijing and Los Angeles - testified at a congressional hearing over concerns about the app's data privacy[ii] and content moderation practices.[iii] Several lawmakers called for the app to be banned nationwide, leading to a debate on whether TikTok, which has over 150,000,000 active monthly users in the U.S., should be removed from campus Wi-Fi networks and institution-owned devices.

U.S. officials believe that TikTok poses national security concerns.[iv] Because TikTok is owned by ByteDance, Ltd., the parent Chinese technology firm appoints its executives. Many have raised questions on whether ByteDance, Ltd. is required by Chinese law to turn over sensitive data on American TikTok users to the Chinese government. [v] During the congressional hearing, Mr. Chew denied these allegations as "emphatically untrue." [vi]

As a result of growing U.S. government concerns, in the weeks leading up to the TikTok congressional hearing, both Congress and the White House began taking steps to address the data security issues. On February 24th, Rep. Michael McCaul (R-Texas) introduced the Detering America's Technological Adversaries ("DATA") Act, which "would provide the president with more authorities to block transactions associated with the import or export of Americans' 'sensitive data' where there are national security risks." On March 1st, the US Foreign Affairs Committee voted to advance the bill.[vii] On March 7th, the bipartisan Restricting the Emergence of Security Threats that Risk Information and Communications Technology ("RESTRICT") Act was introduced in the Senate, which would give the Secretary of Commerce authority to review and prohibit transactions involving information and communications technology in which a foreign adversary has any interest and poses an unacceptable risk to national security.[viii] Unconvinced by Mr. Chew's testimony, congressional lawmakers announced that they would push forward with the proposed legislation to address the national security concerns posed by TikTok.[ix]

On February 27th, the White House issued guidance requiring all Federal agencies to delete the app from government devices within thirty days. Further increasing the pressure, the Biden administration threatened to ban TikTok from the U.S. unless TikTok's Chinese owners sell or divest their interests in the app.

More than two dozen states have banned TikTok on government-issued devices. The U.S. government is not alone in its concerns about TikTok. Outside of the U.S., the United Kingdom, France, New Zealand, Canada, Norway, Australia[x] and other countries have also banned the app from official devices and India has completely banned TikTok for all users. [xi]

While many college and university marketing teams have successfully used TikTok to recruit and highlight on-campus activities, facilities, events, and student achievements on official student accounts,[xii] several public colleges and universities have restricted access to TikTok on institution-owned devices and networks.[xiii] For example, in December 2022, the University System of Georgia banned TikTok on computers and phones owned by the System or any of its 26 universities and colleges. Also in December 2022, the Texas Tech University System announced a similar ban and required official university TikTok accounts to be deactivated. In early March 2023, Florida A&M University blocked TikTok from its campus Wi-Fi networks and school devices[xiv] and, a few weeks later, Florida State University announced a TikTok ban, which was effective immediately.[xv] Most recently, on April 3rd, Arizona State University, Northern Arizona University, and the University of Arizona banned TikTok on university-managed devices. Arizona State University also announced plans to eliminate its official TikTok account.[xvi] Other public institutions of higher education are actively considering banning the app amidst data privacy and content safety concerns.[xvii]

At this time, no private institutions have announced steps to remove TikTok from institution-owned devices or to stop using TikTok for marketing purposes. While the question of whether TikTok will be, or legally can be,[xviii] banned on private-user devices in the U.S. remains to be determined, private colleges and universities may want to consider identifying additional or alternative apps to post official content. Colleges and universities should ensure that their social media policies are in line with their institution's mission and values and encourage responsible use both on and off campus by all in the campus community.

Please note this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions about the impact of this updated guidance on your institution, please contact Deirdre Mitacek (dmitacek@cullenllp.com) at (516) 296-9136.

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Footnotes

[i] TikTok, *About TikTok*, <https://www.tiktok.com/about?lang=en>.

[ii] Cecilia Kang, David McCabe and Sapna Maheshwari, *Lawmakers Blast TikTok's C.E.O. for App's Ties to China, Escalating Tensions*, N.Y. Times, Mar. 23, 2023, <https://www.nytimes.com/2023/03/23/technology/tiktok-hearing-congress-china.html?searchResultPosition=3> .

[iii] In addition to concerns about data privacy, concerns have also been raised about TikTok's content moderation practices. A lawsuit was recently filed in New York Supreme Court, Suffolk County, alleging TikTok promoted videos that glorified self-harm and suicide, leading to a sixteen-year-old Long Island teen's death in February 2022. The teen's parents traveled to Washington D.C. to attend the TikTok congressional hearings and their presence was acknowledged by lawmakers. During the congressional hearing, lawmakers questioned Mr. Chew on the app's content moderation practices for young users.

- [iv] Rachel Treisman, *The FBI alleges TikTok Poses National Security Concerns*, NPR, Nov. 17, 2022, <https://www.npr.org/2022/11/17/1137155540/fbi-tiktok-national-security-concerns-china>.
- [v] Joe McDonald and Zen Soo, *Why Does US See Chinese-Owned TikTok as a Security Threat?*, ABC News, Mar. 24, 2023, <https://abcnews.go.com/Business/wireStory/us-chinese-owned-tiktok-security-threat-98098015>.
- [vi] Todd Spangler, *TikTok CEO Defends App's Practices in Congressional Hearing and Argues Against Ban: Company 'Is Not an Agent of China'*, Variety, Mar. 23, 2023, <https://variety.com/2023/digital/news/tiktok-ceo-congressional-hearing-us-ban-company-agent-of-china-1235562390/>
- [vii] H.R. 1153 – DATA Act, Congress.gov, <https://www.congress.gov/bill/118th-congress/house-bill/1153/all-actions>.
- [viii] *Senators Introduce Bipartisan Bill to Tackle National Security Threats from Foreign Tech*, Mar. 7, 2023, <https://www.warner.senate.gov/public/index.cfm/2023/3/senators-introduce-bipartisan-bill-to-tackle-national-security-threats-from-foreign-tech>.
- [ix] Kari Paul, *US Moves Forward Plan to Ban TikTok as AOC Joins Protests Supporting App*, The Guardian, Mar. 27, 2023, <https://www.theguardian.com/technology/2023/mar/27/us-tiktok-ban-aoc-joins-protest>.
- [x] Chris Lau, *Australia Bans TikTok on Federal Government Devices*, CNN, Apr. 4, 2023, <https://www.cnn.com/2023/04/03/business/australia-tiktok-government-ban-intl-hnk/index.html>
- [xi] Kelvin Chan, *Here Are the Countries That Have Bans on TikTok*, AP News, Mar. 23, 2023, <https://apnews.com/article/tiktok-ban-privacy-cybersecurity-bytedance-china-2dce297f0aed056efe53309bbcd44a04>.
- [xii] Johanna Alonso, *Despite TikTok Bans, Colleges Are Thriving on the App*, Inside Higher Ed, Mar. 20, 2023, <https://www.insidehighered.com/news/2023/03/20/universities-use-tiktok-attract-gen-z-students>.
- [xiii] Daysia Tolentino, *These Are All the Public Universities that Have Instituted TikTok Bans*, Jan. 24, 2023, <https://www.nbcnews.com/tech/tiktok-bans-public-universities-list-rcna66185>.
- [xiv] Madison Glaser, *FAMU Bans TikTok from College Campus*, WCTV.com, Mar. 17, 2023, <https://www.wctv.tv/2023/03/17/famu-bans-tiktok-college-campus/>.
- [xv] Tarah Jean, *FSU Bans TikTok, Other Apps from Campus After Statewide Regulation from Board of Governors*, Tallahassee Democrat, Apr. 3, 2023, <https://www.tallahassee.com/story/news/local/fsu-news/2023/04/03/florida-state-officially-bans-tiktok-wechat-other-apps-from-its-campus/70077152007/>.
- [xvi] Sasha Hupka, *Arizona Public Universities Ban TikTok on School-Managed Devices*, AZ Central, Apr. 3, 2023, <https://www.azcentral.com/story/news/local/arizona-education/2023/04/03/asu-bans-tiktok-on-university-managed-devices/70077379007/>

[xvii] Colin Fuller, *FASU Undecided on TikTok Following Ban on FAMU's Campus*, FSUNews.com, Mar. 20, 2023, <https://www.fsunews.com/story/news/2023/03/20/fsu-undecided-on-tiktok-following-ban-on-famus-campus/70025897007/>.

[xviii] Jameel Jaffer, *There's a Problem with Banning TikTok. It's Called the First Amendment*, NY Times, Mar. 24, 2023, <https://www.nytimes.com/2023/03/24/opinion/tiktok-ban-first-amendment.html?searchResultPosition=5>

Practices

- Higher Education

Attorneys

- Deirdre M. Mitacek