



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

Brendan Carr  
Commissioner

December 2, 2022

The Honorable Jonathan Kanter  
Assistant Attorney General  
Antitrust Division  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Assistant Attorney General Kanter,

Apple and Google are facing an increasing number of claims that they are operating their businesses in ways that violate antitrust and competition laws. In many instances, plaintiffs are arguing that Apple and Google are engaged in anticompetitive, exclusionary, or otherwise illegal conduct when it comes to the distribution of apps and their running of the Apple App Store and Google Play Store. In response to these claims, Apple and Google have consistently argued that they have legitimate, procompetitive reasons for engaging in the challenged conduct—namely, that their near total control over apps promotes trust, safety, and privacy. As a result, the companies argue, they cannot be held liable under antitrust or competition laws for their actions.

But as Apple's and Google's own conduct makes clear, those justifications are merely pretextual. Accordingly, they do not operate as valid defenses to any legitimate claim that they are violating antitrust or competition laws. This is confirmed by my own experience with these companies in my capacity as a Commissioner at the Federal Communications Commission. So I wanted to share that context with you.

Take TikTok as an example. Earlier this year, I wrote a letter to Apple and Google because they hold themselves out as operating their app stores as safe and trusted places to discover and download apps.<sup>1</sup> Nonetheless, Apple and Google have reviewed and approved the TikTok app for inclusion in their respective app stores—jeopardizing the trust, safety, and privacy of millions of Americans. Indeed, statistics show that TikTok has been downloaded in the U.S. from the Apple App Store and the Google Play Store nearly 24 million times in the second quarter of 2022 alone.

As I wrote in my letter earlier this year, TikTok is owned by Beijing-based ByteDance—an organization that is beholden to the Chinese Communist Party and required by Chinese law to comply with the regime's surveillance demands. Through leaked audio recordings, a BuzzFeed News report revealed that ByteDance officials in Beijing have repeatedly accessed the sensitive data that TikTok has collected from Americans after those U.S. users downloaded the app through Apple's and Google's app

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<sup>1</sup> Letter from Commissioner Brendan Carr, Federal Communications Commission, to Mr. Tim Cook, Chief Executive Officer of Apple Inc. and Mr. Sundar Pichai, Chief Executive Officer of Alphabet Inc. and Google LLC (June 24, 2022), available at <https://www.fcc.gov/sites/default/files/carr-letter-apple-and-google.pdf>.

stores.<sup>2</sup> “Everything is seen in China,” a TikTok official said in the recordings, despite the fact that TikTok has repeatedly represented that the data it gathers about Americans is stored in the United States and, according to at least one representation, “[t]he data doesn’t even exist in China.”<sup>3</sup>

As I wrote in my letter to Apple and Google, TikTok’s conduct and pattern of misrepresentations regarding the unfettered access that persons in Beijing have to sensitive U.S. user data puts it out of compliance with the policies that Apple and Google purport to require every app to adhere to as a condition of remaining available in their app stores. Therefore, I called on Apple and Google to apply the plain text of their app store policies to TikTok and remove it from their app stores for failure to abide by those terms.

After all, TikTok is not what it appears to be on the surface. It is not just an app for sharing funny videos or memes. That’s the sheep’s clothing. At its core, TikTok functions as a sophisticated surveillance tool that harvests extensive amounts of personal and sensitive data. Indeed, TikTok collects or reserves the right to collect everything from search and browsing histories to keystroke patterns and biometric identifiers, including faceprints and voiceprints. It collects location data as well as draft messages and metadata, plus it has collected the text, images, and videos that are stored on a device’s clipboard. The list of personal and sensitive data it collects goes on from there. This should come as no surprise, however. Within its own borders, the Chinese Communist Party has developed some of the most invasive and omnipresent surveillance capabilities in the world to maintain authoritarian control.

As I explained in my letter to Apple and Google, the BuzzFeed News report only added to an overwhelming body of evidence that TikTok has not been forthright about data access and data flows. It also underscored TikTok’s failure to comply with the data security requirements and other terms set forth in the Apple App Store and Google Play Store policies.

Indeed, I explained that numerous provisions of the Apple App Store and Google Play Store policies are relevant to TikTok’s pattern of surreptitious data practices—a pattern that runs contrary to TikTok’s repeated representations. For instance, Section 5.1.2(i) of the Apple App Store Review Guidelines states that an app developer “must provide access to information about how and where the data [of an individual] will be used” and “[d]ata collected from apps may only be shared with third parties to improve the app or serve advertising.” Subsection (ii) clarifies that “[d]ata collected for one purpose may not be repurposed without further consent unless otherwise explicitly permitted by law.” Similarly, the Google Play Developer Policy Center includes provisions covering user data, and it states that developers must disclose an app’s access, collection, use, and sharing of data. The Google policies also limit use of data to the purposes disclosed.

As I wrote in my letter, removing TikTok from the Apple and Google app stores would align with relevant precedent. In 2018, for instance, Apple removed an app titled Adware Doctor from the Mac App Store because it collected user data and sent it to a server located in China without user consent. Similarly, Google pulled dozens of apps from the Google Play Store after concluding that they used a software element that surreptitiously harvested data.

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<sup>2</sup> Emily Baker-White, *Leaked Audio From 80 Internal TikTok Meetings Shows That US User Data Has Been Repeatedly Accessed From China*, BuzzFeed News (June 17, 2022), <https://www.buzzfeednews.com/article/emilybakerwhite/tiktok-tapes-us-user-data-china-bytedance-access>.

<sup>3</sup> Jeff Stone, *TikTok’s security boss makes his case. Carefully.*, CyberScoop (Aug. 27, 2020), <https://www.cyberscoop.com/tiktok-lawsuit-security-questions-roland-cloutier/>.

Removing TikTok from the Apple and Google app stores would also align with the principles that the two companies point to in antitrust cases as the guiding lights of their app store conduct—protecting consumer privacy and safeguarding their data while promoting trust. Indeed, one of Apple’s attorneys recently defended the company’s “walled garden” against claims that Apple is violating antitrust or competition laws, stating “what’s kept out by walled gardens is . . . spyware and foreign governments who wish to hijack the phone[.]”<sup>4</sup> Hardly true in Apple’s case.

In fact, after I wrote my letter, Forbes reported that a China-based team at TikTok’s parent company, ByteDance, planned to use the TikTok app to monitor the personal location of specific American citizens.<sup>5</sup> In September, TikTok’s COO stated in congressional testimony that she could not speak to whether TikTok is sharing sensitive, non-public data from U.S. consumers with members of the CCP.<sup>6</sup> Just last month, FBI Director Christopher Wray testified that the Bureau has national security concerns with TikTok, including “the possibility that the Chinese government could use it to control data collection on millions of users or control the recommendation algorithm . . . for influence operations . . . or to control software on millions of devices which gives the opportunity to potentially . . . compromise personal devices.”<sup>7</sup> And just this week, Treasury Secretary Janet Yellen responded to a question about TikTok by stating that “I think there are legitimate national security concerns.”<sup>8</sup> On top of all of this, Senator Mark Warner and Senator Marco Rubio—the Chair and Vice Chair of the Senate Select Committee on Intelligence—wrote a bipartisan letter to the Federal Trade Commission on TikTok “in response to public reports that individuals in the People’s Republic of China (PRC) have been accessing data on U.S. users, in contravention of several public representations[.]”<sup>9</sup>

Against this backdrop, the decisions by Apple and Google to keep TikTok in their app stores despite the clear violation of app store policies and risks to consumers shows that the companies are not operating those lines of businesses to promote trust, safety, or privacy. Rather, Apple and Google are engaged in conduct that they have determined will advance their own economic interests—even in cases when doing so puts consumers at risk.

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<sup>4</sup> Mark Perry at 1:01, Oral Argument in *Epic Games, Inc. v. Apple, Inc.*, United States Court of Appeals for the Ninth Circuit (No. 21-16506) (Nov. 14, 2021), available at <https://www.youtube.com/watch?v=NGLm3kfcUKY>.

<sup>5</sup> Emily Baker-White, *TikTok Parent ByteDance Planned To Use TikTok To Monitor The Physical Location Of Specific American Citizens*, Forbes (Oct. 20, 2022), <https://www.forbes.com/sites/emilybaker-white/2022/10/20/tiktok-bytedance-surveillance-american-user-data/?sh=462b9ae36c2d>.

<sup>6</sup> Social Media’s Impact on Homeland Security, Hearing Before the U.S. Senate Committee on Homeland Security and Governmental Affairs, 117 Cong. (Sept. 14, 2022) (Remarks of Vanessa Pappas at 03:13), <https://www.hsgac.senate.gov/hearings/social-medias-impact-on-homeland-security>.

<sup>7</sup> Worldwide Threats to the Homeland, Hearing Before the U.S. House Committee on Homeland Security, 117 Cong. (Nov. 15, 2022) (Remarks of Christopher Wray at 02:27), <https://homeland.house.gov/activities/hearings/11/04/2022/worldwide-threats-to-the-homeland>.

<sup>8</sup> Brooke Singman, *TikTok poses ‘legitimate national security concerns’*: Treasury Secretary Yellen, Fox Business (Nov. 30, 2022), <https://www.foxbusiness.com/politics/tiktok-poses-legitimate-national-security-concerns-treasury-secretary-yellen>.

<sup>9</sup> Letter from Sens. Mark R. Warner and Marco Rubio, Chair and Vice Chair of U.S. Senate Select Committee on Intelligence, to Chairwoman Lina Khan, Federal Trade Commission, at 1 (July 5, 2022) available at [https://www.warner.senate.gov/public/\\_cache/files/3/e/3eeb87b3-e9b5-4aa4-8ea1-361a8472ff46/A42795C63518B32671F9ACCF82B1E26A.khan-ssci-tiktok-letter.pdf](https://www.warner.senate.gov/public/_cache/files/3/e/3eeb87b3-e9b5-4aa4-8ea1-361a8472ff46/A42795C63518B32671F9ACCF82B1E26A.khan-ssci-tiktok-letter.pdf).

And TikTok is just one example. In April, I wrote Apple a separate letter regarding its decision to remove the Voice of America app from its App Store in China.<sup>10</sup> Apple’s conduct in that regard is deeply troubling and inconsistent with Apple’s representation that it operates the App Store in a manner that promotes privacy and protects people against surveillance activities. Voice of America is part of the U.S. Agency for Global Media, which is funded by Congress. Voice of America operates by statute as an objective, independent voice when it comes to its reporting and content. Its first principle says it all: “VOA will serve as a consistently reliable and authoritative source of news.”

Indeed, Voice of America, which began its operations in 1942, now operates as a multiplatform news service—offering both online and broadcast content—that provides news and information in more than 40 languages to hundreds of millions of people across the globe. The Voice of America mobile app is one of its most recent innovations, which allows smartphone users to access unfiltered news content. The Voice of America app also safeguards user privacy by including built-in support for circumvention technologies. As such, it can be an important tool for those that want access to news and information uncensored by authoritarian regimes—unless, of course, you are an iPhone user in China.

At bottom, the line that connects Apple’s and Google’s gatekeeper decisions regarding apps—from TikTok to Adware Doctor to Voice of America—is not a line that can be defined or explained by reference to trust, safety, and privacy. Instead, it is a line that one can only draw by reference to Apple’s and Google’s decisions to advance their own economic interests.

There is a lot of additional evidence, too, that Apple and Google are not exercising their ironclad control over apps for the altruistic or procompetitive purposes that they put forward as defenses to existing antitrust or competition claims. Instead, their conduct shows that those rationales are merely pretextual—talismanic references invoked to shield themselves from liability. I believe that this is an important consideration for the Antitrust Division to bear in mind to the extent that it assesses the reasonableness of Apple’s and Google’s anticompetitive actions.

I would welcome the chance to work with you or your team and provide any information that may be helpful to the Division. For now, I am attaching to this letter the relevant correspondence that I have had with Apple and Google on the issues covered in this letter.

Sincerely,



Brendan Carr

Attachment

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<sup>10</sup> Letter from Commissioner Brendan Carr, Federal Communications Commission, to Mr. Tim Cook, Chief Executive Officer of Apple Inc. (Apr. 20, 2022), available at <https://www.fcc.gov/document/carr-challenges-apple-privacy-human-rights-china>.