

# Congress of the United States

Washington, DC 20515

February 8, 2024

Gina Raimondo  
Secretary  
U.S. Department of Commerce  
1401 Constitution Ave NW  
Washington, DC 20230

Secretary Raimondo,

We write to express our grave concern regarding the ongoing operation of ByteDance Ltd. products in the United States, and request action to address critical vulnerabilities created by the company's access to U.S. software. The most popular ByteDance application licensed in the United States is TikTok, a short-form, video-sharing app that enables users to create 15-second videos with built-in music, filters, and background.<sup>1</sup>

There are serious issues with access to U.S. user data, and the relationship between ByteDance and the Chinese Communist Party (CCP). Despite misrepresenting their relationship in sworn testimony before multiple Congressional committees, TikTok's software engineering personnel ultimately report to ByteDance leadership in the People's Republic of China (PRC).<sup>2 3</sup> Moreover, any ByteDance data that is viewed, stored, or that passes through China is subject to the laws of China, a one-party authoritarian state hostile to American democracy. China's court system reports to and falls under the CCP, and China's 2017 National Security Law, National Intelligence Law, and Data Security Law require citizens to hand over data at the government's order. It should also be noted that TikTok's proposed self-regulation via Project Texas does not confront this issue head-on. In fact, China's 2021 Anti-Foreign Sanctions Law prohibits Chinese (and non-Chinese) entities – wherever they are located – from complying with foreign restrictions that impede the ability of Chinese businesses to operate in ways that advance the Chinese government's interests. This law, of course, prohibits TikTok and ByteDance from complying with all U.S. Government and state regulations that regulate its collection and use of data.<sup>4</sup>

This includes U.S. data, which is made available to employees in China through ByteDance applications and their interaction with software on U.S. devices. For countries with a privacy standard, such as the European Union (EU), this is already apparent. TikTok, which is legally specified as a subsidiary of ByteDance, updated its EU privacy policy in November 2022 to confirm that its staff in China have access to user data outside China to perform “important functions.”<sup>5</sup> From a security standpoint, this means that TikTok provides the CCP with the ability to weaponize the platform by

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<sup>1</sup> <https://www.tiktok.com/legal/page/eea/transferee-countries/en>

<sup>2</sup> <https://www.congress.gov/event/117th-congress/senate-event/330808?q=%7B%22search%22%3A%5B%22Protecting+Kids+Online%3A+Snapchat%2C+TikTok%2C+and+YouTube%22%5D%7D&s=1&r=2>

<sup>3</sup> <https://www.congress.gov/118/meeting/house/115519/documents/HHRG-118-IF00-Transcript-20230323.pdf>

<sup>4</sup> <https://www.akingump.com/en/insights/alerts/the-new-prc-anti-foreign-sanctions-law>

<sup>5</sup> <https://www.tiktok.com/legal/page/eea/transferee-countries/en>

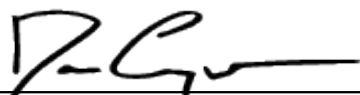
suppressing, magnifying, and otherwise constructing narratives to target specific audiences abroad. Altogether, applications from ByteDance are an accessory to the soft power and propaganda of the CCP, and we must mitigate the role of software access in facilitating this capability.

U.S. Congress continues to consider different legislative solutions for addressing this challenge, but we must acknowledge the role of domestic software in the development and growth of this app. To that end, we call on the U.S. Department of Commerce to add ByteDance Ltd. to the Bureau of Industry Security's (BIS) Entity List. As you know, the BIS Entity List restricts U.S. exports of goods, software, and technology to the listed company of concern. The statutory standard for inclusion on the Entity List is engagement in "activities contrary to U.S. national security and [our] foreign policy interests."<sup>6</sup> At a recent Senate Commerce Committee hearing, you testified under oath that, "...TikTok poses national security risks to be clear..."<sup>7</sup> Therefore, you are well within your legal and regulatory authority to designate TikTok to the Entity List.

The addition of ByteDance to the BIS Entity List would be an important step in shielding U.S. users from the worst excesses of these applications, while preventing the further development and proliferation of these security concerns. Most notably, your department took similar action with Huawei Technologies Co., Ltd. (Huawei) and many of its non-U.S. affiliates in 2019. This imposed a license requirement on Huawei in accordance with the Export Administration Regulations (EAR). Therefore, the export, reexport, or transfer (in-country) of any item subject to the EAR to Huawei or any of its listed affiliates now requires a license.<sup>8</sup> This step would be instrumental in applying licensing restrictions to the export of software from the U.S. to ByteDance for its applications. If American users are not able to upgrade their app with software updates, which involves the export of U.S. software, then the operability of the applications of concern will be weakened.


In light of this very clear threat to U.S. interests, we are asking that you take urgent action to protect the personal and national security of the American people.

Sincerely,



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Dan Crenshaw  
Member of Congress




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Josh Gottheimer  
Member of Congress

<sup>6</sup> <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/entity-list>

<sup>7</sup> <https://www.reuters.com/technology/us-commerce-head-hopes-make-first-chips-funding-awards-this-fall-2023-10-04/#:~:text=%22Certainly%20TikTok%20poses%20national%20security,security%20risks%2C%22%20Raimondo%20said.>

<sup>8</sup> <https://www.bis.doc.gov/index.php/federal-register-notices/17-regulations/1541-federal-register-notices-2019>



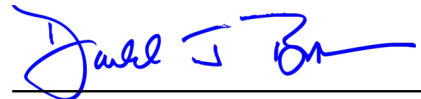
Richard Hudson  
Member of Congress



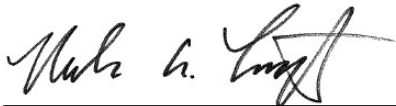
Barry Loudermilk  
Member of Congress



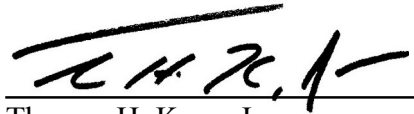
Derrick Van Orden  
Member of Congress



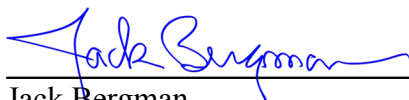
Don Bacon  
Member of Congress



Nicholas A. Langworthy  
Member of Congress



Thomas H. Kean, Jr.  
Member of Congress



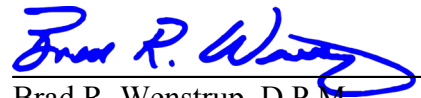
Jack Bergman  
Member of Congress



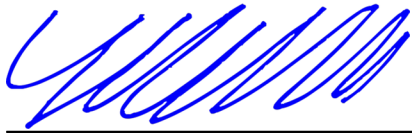
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Brad R. Wenstrup, D.P.M.  
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Earl L. "Buddy" Carter  
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