

Congress of the United States
House of Representatives
Washington, DC 20515-2201

May 2, 2024

The Honorable Lina Khan
Chair, Federal Trade Commission
600 Pennsylvania Ave NW
Washington, DC 20580

Dear Chair Khan,

We write to request that the Federal Trade Commission (FTC) examine whether TikTok violated the Children’s Online Privacy Protection Act (COPPA)¹ or Section 5 of the FTC Act² when it pushed intrusive and deceptive pop-up messages to a reportedly large number of users, including children, that requested personal information and prompted them to contact Congress in opposition to the Protecting Americans from Foreign Adversary Controlled Applications Act (“the Act”), prompting users’ phones to call offices of Members of Congress to lobby Congress on TikTok’s behalf to stop an alleged “TikTok shutdown.”

On March 7, 2024, TikTok pushed a message containing verifiably false information to a reportedly large number of its users regarding the legal implications of the Act. TikTok’s deceptive pop-up message provided a generalized script and asked its users to call Congress to lobby on its behalf. Some users reported that the only way to gain access to TikTok content was either to call Congress on TikTok’s behalf or to completely shut down and restart the application.³ Upon clicking the “call now” button, TikTok asked for personal information (i.e., their zip code).⁴ TikTok used this zip code to then target the prompted user’s phone call to a specific Member of Congress’ office.

Notably, there is public reporting that TikTok’s campaign impacted “young children in classrooms” and others who appeared to be under the age of 13.⁵ The solicitation of children using

¹ COPPA places specific notice and parental consent requirements on websites and online services directed to children under the age of 13 and websites and online services that knowingly collect personal information from children under the age of 13. *See* 15 U.S.C. §§ 6501, 6502.

² Section 5 of the FTC Act prohibits a range of entities from engaging in “unfair or deceptive acts or practices in or affecting commerce.” *See* 15 U.S.C. § 45. Under the FTC’s Policy Statement on Deception, an act may be “deceptive if there is a misrepresentation, omission, or other practice, that misleads the consumer acting reasonably in the circumstances, to the consumer’s detriment.” *See* 1983 FTC Policy Statement on Deception, <https://www.ftc.gov/legal-library/browse/ftc-policy-statement-deception>. Violations of a company’s Terms of Service may violate the prohibition on deceptive acts or practices. “For example, the FTC has brought actions against companies that disclosed people’s data for ad targeting despite assuring them in privacy policies or during the registration process that it would keep their data private. And if companies choose to retain or use consumer data for other purposes without providing clear and conspicuous notice and obtaining affirmative express consent—for example, by surreptitiously changing its terms of service or privacy policy, or burying a disclosure behind hyperlinks, in legalese, or in fine print—they risk running afoul of the law.” *See* Fed. Trade Comm’n, *AI Companies: Uphold Your Privacy and Confidentiality Commitments* (Jan. 9, 2024), <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2024/01/ai-companies-uphold-your-privacy-confidentiality-commitments> (citations omitted).

³ Christianna Silva, *Why TikTok Wants You to Call Your Representatives*, MASHABLE (Mar. 7, 2024), <https://mashable.com/article/tiktok-call-your-representatives-ban-shutdown> (“The only button on the screen is “Call Now,” so if a user doesn’t want to do that, they have to quit the application and reopen it to keep scrolling. When users click “Call Now,” a prompt asks users to enter their zip code to find local representatives in their area. Once you do that, the app gives the user their local representative’s phone number and encourages them to call and “tell them to stop a TikTok shutdown.”).

⁴ 15 U.S.C. § 6501(8).

⁵ *See* Morgan Phillips, *Thousands of children call Congress to save TikTok: Crying users ‘hammer’ lawmakers’ phones from school and tell them to vote against bill that could ban the app because of links to China*, DAILY MAIL (Mar. 7, 2024), <https://www.dailymail.co.uk/news/article->

deceptive and inflammatory information resulted in at least one instance of threatened self-harm, with a Congressional office reporting a call from a child threatening suicide.⁶

TikTok has previously violated children's data privacy laws.⁷ In fact, TikTok is subject to a 2019 consent decree with the FTC regarding precisely such matters. We are gravely concerned that an app controlled by the Chinese Communist Party appears to have the unfettered ability to manipulate the American public, including America's children.

We therefore request that the FTC examine:

1. Whether TikTok pushed deceptive pop-up messages to children under the age of 13 in violation of COPPA, including whether TikTok sent the message on its "TikTok for Younger Users" application and, if not, how TikTok's controls failed to prevent seemingly large numbers of children receiving a prompt that TikTok alleges it only targeted toward adult users; and
2. Whether TikTok pushed deceptive pop-up messages to minors and others on its platform in violation of its Terms of Service and Section 5 of the FTC Act.⁸

In addition, we would welcome the opportunity for Select Committee staff to be privately briefed regarding the FTC's consent decree with TikTok regarding its past violations of COPPA.

Sincerely,



John Moolenaar
Chairman



Raja Krishnamoorthi
Ranking Member

13170197/children-call-congress-save-tiktok-bill-ban-app-china.html; Matthew Foldi, *Inside the Surprise Effort to Force TikTok's Divestiture*, THE SPECTATOR (Mar. 9, 2024), <https://thespectator.com/topic/surprise-effort-tiktok-divestiture-congress/>.

⁶ See Matthew Foldi (@MatthewFoldi), TWITTER (Mar. 7, 2024, 1:05 P.M.), <https://www.web.archive.org/web/20240308184354/https://twitter.com/MatthewFoldi/status/1765800848829923783?s=20> ("Another office is reporting to me that they have gotten suicide threats by American children who called to try to prevent @tiktok_us from being owned by an American company").

⁷ See Julia Alexander, *TikTok will pay \$5.7 million over alleged children's privacy law violations*, THE VERGE (Feb. 27, 2019), <https://www.theverge.com/2019/2/27/18243312/tiktok-ftc-fine-musically-children-coppa-age-gate>; April Rubin, *TikTok fined over \$368 million for children's data privacy violations in Europe*, AXIOS (Sep. 15, 2024), <https://www.axios.com/2023/09/15/tiktok-fine-europe-children-data-privacy>; Natasha Singer, *TikTok Is Fined \$15.9 Million Over Misusing Kids' Data in Britain*, N.Y. TIMES (Apr. 4, 2023), <https://www.nytimes.com/2023/04/04/business/media/tiktok-fine-uk-kids-privacy.html>.

⁸ See generally Press Release, Fed. Trade Comm'n, *FTC Charges Tech Support Companies With Using Deceptive Pop-Up Ads to Scare Consumers Into Purchasing Unneeded Services* (Oct. 12, 2016) ("The ads often included loud alarms or recorded messages warning of the apparent dire threat to consumers' [...] [and] leaving consumers unable to navigate around the ads or close them. The ads prompted consumers to contact a toll-free number"); FED. TRADE COMM'N, *BRINGING DARK PATTERNS TO LIGHT* 1 (2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf (summarizing recent FTC enforcement actions against companies that engage in deceptive "dark pattern" manipulation constituting "design practices that trick or manipulate users into making choices they would not otherwise have made and that may cause harm").