

September 18, 2020

Erich Andersen
General Counsel
TikTok Inc.
5800 Bristol Pkwy
Culver City, CA 90230

Dear Mr. Andersen:

We write in regards to Oracle Corporation’s proposed partnership with, and shareholder interest in, TikTok Inc. We represent the Electronic Privacy Information Center (“EPIC”), a public interest research center located in Washington, D.C., focused on emerging privacy and civil liberties issues. EPIC is one of the leading consumer protection organizations in the country specializing in privacy and data protection. Our members include experts in law, technology, and public policy.¹

This letter serves as notice that Oracle’s proposal to “independently process TikTok’s US data”² as a “U.S. technology partner”³ poses serious privacy risks to TikTok users. Absent strict privacy safeguards, which to our knowledge Oracle has not established, this collection, processing, use, and dissemination of TikTok user data would constitute an unlawful trade practice. This letter also serves as notice of EPIC’s intent to bring an action against both Oracle and TikTok for violations of the D.C. Consumer Protection Procedures Act (“DCCPPA”) if the companies move forward with the partnership and fail to adequately protect the privacy of TikTok users.⁴ The DCCPPA protects residents of the District of Columbia—including tens of thousands of TikTok users—from unfair and deceptive trade practices⁵ and empowers organizations like EPIC to bring suit on behalf of the public.⁶ Any misuse of personal data resulting from an Oracle-TikTok partnership may separately subject both companies to enforcement actions by the Federal Trade Commission and state attorneys general. We are also forwarding this letter to the FTC and the D.C. Office of the Attorney General.

On August 6, 2020, President Donald Trump issued an executive order purporting to ban U.S. persons from engaging in transactions with ByteDance Ltd., TikTok’s parent company, after a 45-day period.⁷ On August 14, the President issued a second executive order requiring ByteDance

¹ EPIC, *EPIC Advisory Board* (2020), https://epic.org/epic/advisory_board.html.

² James Fontanella-Khan & Miles Kruppa, *TikTok set to become a standalone US company to satisfy White House*, *Fin. Times* (Sep. 15, 2020), <https://www.ft.com/content/58eb7c26-2154-477f-af19-19157ae29261>.

³ Kate Davidson, Georgia Wells, & Michael C. Bender, *China’s ByteDance to Keep Majority TikTok Stake in Oracle Deal Under U.S. Consideration*, *Wall Street J.* (Sep. 15, 2020), <https://www.wsj.com/articles/national-security-panel-to-meet-on-oracle-tiktok-deal-tuesday-11600187547>.

⁴ D.C. Code §§ 28-3901–3913.

⁵ D.C. Code § 28-3904.

⁶ D.C. Code § 28-3904(k)(1)(C).

⁷ Exec. Order No. 13,942, 85 Fed. Reg. 48,637 (Aug. 6, 2020), <https://www.federalregister.gov/documents/2020/08/11/2020-17699/addressing-the-threat-posed-by-tiktok-and-taking-additional-steps-to-address-the-national-emergency>.

within 90 days to divest from its U.S. TikTok holdings and delete its copies of data acquired from U.S. users.⁸ On September 13, media outlets reported that ByteDance had chosen Oracle to serve as TikTok’s U.S. “technology partner,” rejecting competing bids.⁹ The deal has yet to receive the necessary approval from the Committee on Foreign Investment in the United States; however, some details are publicly known. Under the proposed arrangement, “ByteDance will place TikTok’s global business in a new US-headquartered company with Oracle investing as a minority shareholder.”¹⁰ Oracle, in turn, would “independently process TikTok’s US data and possibly data from across the globe[.]”¹¹

The “oddball alliance” of Oracle and TikTok, if approved, is cause for alarm.¹² Though Oracle “has no consumer business,”¹³ the company “owns and works with more than 80 data brokers who funnel in an ocean of data from their own range of sources, including consumer shopping behaviour at brick-and-mortar stores, financial transactions, social media behaviours and demographic information.”¹⁴ Oracle “claims to sell data on more than 300 [million] people globally, with 30,000 data attributes per individual, covering ‘over 80 percent of the entire US internet population[.]’” In 2018, Privacy International filed a complaint detailing how Oracle’s “extensive aggregation and tracking” of personal data—particularly through Oracle Data Cloud—violates the European Union’s General Data Protection Regulation.¹⁵ Just last month, Oracle was named in a €10 billion class action lawsuit alleging that the company’s “mass surveillance of Internet users to carry out real-time bidding ad auctions cannot possibly be compatible with” the GDPR.¹⁶

TikTok’s privacy record is also checkered. In 2019, TikTok entered into a consent decree with the FTC and “agreed to pay \$5.7 million to settle . . . allegations that the company illegally

⁸ Exec. Order No. _____, 85 Fed. Reg. 51,297 (Aug. 14, 2020), <https://www.federalregister.gov/documents/2020/08/19/2020-18360/regarding-the-acquisition-of-musically-by-bytedance-ltd>.

⁹ E.g., David E. Sanger, David McCabe, & Erin Griffith, *Oracle Chosen as TikTok’s Tech Partner, as Microsoft’s Bid Is Rejected*, N.Y. Times (Sep. 13, 2020), <https://www.nytimes.com/2020/09/13/technology/tiktok-microsoft-oracle-bytedance.html>; see also Oracle, *Oracle Confirms Statement*, Cision PR Newswire (Sep. 14, 2020), <https://www.prnewswire.com/news-releases/oracle-confirms-statement-301130173.html>.

¹⁰ Fontanella-Khan & Kruppa, *supra* note 2.

¹¹ *Id.*

¹² Georgia Wells, Aaron Tilley, & John D. McKinnon, *How Dark Horse Oracle Became TikTok’s Leading Suitor*, Wall Street J. (Sep. 14, 2020), <https://www.wsj.com/articles/oracle-tiktok-deal-trump-politics-microsoft-11600129980>; see also *id.* (noting that “Oracle was originally brought into the negotiations to provide an alternative to Microsoft” because it has “close ties to the administration”).

¹³ Jay Greene, *TikTok Proposes to Add New U.S. Headquarters and 20,000 Jobs to Win Over Trump*, Wash. Post (Sep. 16, 2020), <https://www.washingtonpost.com/technology/2020/09/14/tiktok-us-headquarters-oracle/>.

¹⁴ Aliya Ram & Madhumita Murgia, *Data Brokers: Regulators Try to Rein in the ‘Privacy Deathstars’* (Jan. 7, 2019), <https://www.ft.com/content/f1590694-fe68-11e8-aebf-99e208d3e521>.

¹⁵ Privacy International, *Submission to the Information Commissioner: Request for an Assessment Notice of Data Brokers Acxiom & Oracle* ¶ 21 (Nov. 8, 2018), <https://privacyinternational.org/sites/default/files/2018-11/08.11.18%20Final%20Complaint%20Acxiom%20%26%20Oracle.pdf>.

¹⁶ Natasha Lomas, *Oracle and Salesforce Hit with GDPR Class Action Lawsuits Over Cookie Tracking Consent*, TechCrunch (Aug. 14, 2020), <https://techcrunch.com/2020/08/14/oracle-and-salesforce-hit-with-gdpr-class-action-lawsuits-over-cookie-tracking-consent/>.

collected personal information from children.” Barely a year later, the Campaign for a Commercial-Free Childhood, the Center for Digital Democracy, EPIC, and a coalition of consumer groups filed an FTC complaint highlighting TikTok’s continued collection and retention personal data from users under 13 in violation of the FTC consent decree and the Children’s Online Privacy Protection Act (“COPPA”).¹⁷ The FTC has reportedly launched a new investigation.¹⁸ In January of this year, researchers discovered that TikTok was “vulnerable to hacking attacks that could expose personal details such as private and email addresses and personal information like sensitive videos.”¹⁹ And in March, TikTok was forced to make changes to the app after researchers discovered that TikTok “was checking content from the clipboard every few keystrokes, even when the app was running in the background.”²⁰

Given that Oracle’s business model rests on the exploitation of personal data, and considering the long history of privacy violations by both firms, the proposed partnership would likely involve unlawful business practices. In particular, the partnership would likely involve the unfair and deceptive collection, processing, use, and dissemination of TikTok users’ personal data. This could include, but would not be limited to, the integration by Oracle of personal data from TikTok users into its existing databases—despite the fact that users provided their information to TikTok for the sole purpose of using a social networking app. It could also include the marketing or distribution by Oracle of TikTok user data for commercial gain despite TikTok’s representation that it “does not sell personal information to third parties.”²¹ In addition, unless TikTok immediately cures its unlawful collection and retention of data from users under 13, Oracle would become engaged in the unlawful collection and use of children’s personal data in violation of the COPPA.

These business practices, if undertaken by Oracle or TikTok, would constitute violations of the DCCPPA, including but not limited sections 28–3904 (unfair or deceptive trade practices generally), 28-3904(e) (misrepresentation as to a material fact), 28-3904(f) (failure to state a material fact), and 28-3904(f-1) (use of innuendo or ambiguity as to a material fact). Accordingly, EPIC and affected consumers would be entitled to injunctive and monetary relief, in addition to any enforcement action taken by the Attorney General for the District of Columbia.²² These practices would also constitute violations of Section 5 of the FTC Act²³ and the COPPA, exposing Oracle and TikTok to potential FTC enforcement proceedings.

In order to avoid litigation between EPIC, Oracle, and TikTok and to protect the privacy of TikTok users, EPIC hereby demands that TikTok commit in writing to:

¹⁷ 15 U.S.C. §§ 6501–6506.

¹⁸ Diane Bartz, *Exclusive: U.S. probing allegations TikTok violated children's privacy – sources*, Reuters (July 7, 2020), <https://www.reuters.com/article/us-tiktok-privacy-children-exclusive/exclusive-u-s-probing-allegations-tiktok-violated-childrens-privacy-sources-idUSKBN248373>.

¹⁹ Shoshanna Solomon, *Israeli cyber-researchers find security flaws in popular Chinese app TikTok*, Times of Israel (Jan. 8, 2020), <https://www.timesofisrael.com/israeli-cyber-researchers-find-security-flaws-in-popular-chinese-app-tiktok/>.

²⁰ Kim Lyons, *TikTok says it will stop accessing clipboard content on iOS devices*, The Verge (June 26, 2020), <https://www.theverge.com/2020/6/26/21304228/tiktok-security-ios-clipboard-access-ios14-beta-feature>.

²¹ *Id.*

²² D.C. Code § 28–3905(i)(3)(B).

²³ 15 U.S.C. § 45(a).

1. Maintain strict separation between TikTok user data and all other Oracle databases;
2. Refrain from using any TikTok user data for Oracle's other data services and products;
3. Refrain from selling any TikTok user data to third parties;
4. Refrain from transferring or providing access to any TikTok user data to third parties outside the context of the TikTok platform;
5. Refrain from collecting, using, retaining, or disclosing personal data of TikTok users under 13 absent verifiable parental consent, including but not limited to any user information currently held by TikTok;
6. Abide by all promises and representations made to TikTok users in TikTok's Privacy Policy²⁴ and Privacy Policy for Younger Users,²⁵ and
7. Submit to an annual audit by an independent third party of Oracle-TikTok operations, the results of which shall be publicly reported.

If TikTok does not comply with the requests set forth in this letter, EPIC reserves all of its rights and remedies, including legal action. Accordingly, EPIC requests that TikTok take steps to preserve all records, communications, and other evidence potentially relevant to such litigation, including but not limited to evidence concerning the collection, use, retention, and disclosure of TikTok user data.

EPIC would prefer to resolve this matter amicably, and we look forward to your response by September 25, 2020. This letter is not a recitation of all of the facts pertaining to this matter or all of EPIC's possible claims. Accordingly, EPIC is not waiving any of its rights and remedies, all of which EPIC expressly reserves.

Sincerely,

/s/ Alan Butler

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Christine Wilson, Commissioner, Federal Trade Commission

²⁴ TikTok, *Privacy Policy* (Jan. 1, 2020), <https://www.tiktok.com/legal/privacy-policy>.

²⁵ TikTok, *Privacy Policy for Younger Users* (Jan. 2020), <https://www.tiktok.com/legal/privacy-policy-for-younger-users>.