

United States Senate

May 29, 2020

The Honorable Joseph Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Noah Phillips
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Rohit Chopra
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Rebecca Slaughter
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Christine Wilson
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Simons, Commissioner Phillips, Commissioner Chopra, Commissioner Slaughter, and Commissioner Wilson:

We write to call upon your agency to investigate new evidence suggesting that the popular video social media platform TikTok is violating legal obligations to protect kids' privacy and urge you to hold the company accountable for any illegal activity. As the coronavirus pandemic continues to keep kids at home and young people's screen time skyrockets,¹ it is imperative that the Federal Trade Commission (FTC) upholds its obligation to protect children's privacy and enforce the Children's Online Privacy Protection Act (COPPA).

TikTok has a clear record of failing to adequately protect young users' privacy. On February 27, 2019, the FTC fined TikTok (previously Musical.ly) and negotiated a consent decree after finding that the company had repeatedly violated COPPA. According to the FTC, TikTok

¹ Sara Fischer, *Kids' Daily Screen Time Surges During Coronavirus*, Axios (Mar. 31, 2020), <https://www.axios.com/kids-screen-time-coronavirus-562073f6-0638-47f2-8ea3-4f8781d6b31b.html>.

collected information about children without receiving the requisite consent from parents.² The Commission also found that TikTok had not provided parents with notice of its data collection, as COPPA requires, and failed to delete children's information from the platform at the request of their parents.³ These alleged violations showed a blatant contempt for COPPA's fundamental tenets, and laid bare a dangerous disregard for children's privacy in today's online ecosystem. As part of a settlement mandating the institution of new privacy safeguards, TikTok agreed to pay a then-record \$5.7 million penalty.

On May 14, 2020, however, a coalition of over 20 children's advocacy groups filed a 55-page complaint with the FTC over TikTok's continuing privacy abuses. This investigation – conducted by leading children's privacy legal experts – found damaging evidence to suggest that TikTok likely violated the FTC consent decree and may have further infringed upon child users' privacy.

First, the researchers presented evidence suggesting that TikTok has failed to delete all personal information collected about all the platform's users or delete all information collected about users under age 13, two options stipulated under the consent decree. TikTok does not appear to have deleted the personal information of all its users, and screenshots taken directly from the TikTok platform show that children's data, including video and images of children who are clearly under age 13, were still available on the application months after the FTC's consent decree took effect.⁴ This evidence suggests that TikTok has not fulfilled its legal obligations to protect children's privacy, as mandated under the company's settlement with the FTC.

Second, TikTok still fails to follow multiple legally binding regulatory transparency requirements, according to researchers' findings. The FTC's regulations under COPPA require TikTok to provide "direct notice" to parents about its data practices before collecting information about children.⁵ However, researchers found that TikTok does not at any point contact a child's parent when that young user signs up to use the app.⁶ Additionally, the COPPA Rule requires TikTok to have a "prominent and clearly labeled" link to its privacy policy on its homepage, but TikTok's policy is by no means easily found within the app. The policy also appears to lack essential information, including a description of the data that the app collects about children, an omission which leaves parents in the dark on whether they can opt-out of objectionable data surveillance practices.⁷

² Press Release, Federal Trade Commission, Video Social Networking App Musical.ly Agrees to Settle FTC Allegations That it Violated Children's Privacy Law (Feb. 27, 2019).

³ *Id.*

⁴ *Complaint and Request for Investigation of TikTok for Violations of the Children's Online Privacy Protection Act and Implementing Rule*, Submitted to the Federal Trade Commission by Campaign for a Commercial-Free Childhood et al. (May 14, 2020), https://commercialfreechildhood.org/wp-content/uploads/2020/05/tik_tok_complaint.pdf.

⁵ Children's Online Privacy Protection Rule, 16 C.F.R. § 312 (2013).

⁶ *Complaint and Request for Investigation of TikTok for Violations of the Children's Online Privacy Protection Act and Implementing Rule*, Submitted to the Federal Trade Commission by Campaign for a Commercial-Free Childhood et al. (May 14, 2020), https://commercialfreechildhood.org/wp-content/uploads/2020/05/tik_tok_complaint.pdf.

⁷ *Id.*

Finally, TikTok does not appear to give parents the option to review and delete their children's data from the platform. The FTC order mandates that TikTok let parents remove their children's information from the app.⁸ The COPPA Rule itself requires TikTok's privacy policy to clearly communicate to parents that they may "review or have deleted" their children's information.⁹ Yet researchers have demonstrated that TikTok's general notice to all users on how they may seek data deletion does not offer information about how parents specifically may ask the company to delete child users' data.¹⁰ These findings cast further doubt on TikTok's compliance with important children's privacy safeguards.

Federal privacy laws, regulations promulgated under those laws, and consent decrees resulting from privacy violations are effective only if they are vigorously enforced. As the ongoing public health crisis continues to catalyze children's increased tech use, the FTC must increase its attention to the dangers that minors encounter online, including the manipulation of kids' attention and their data for advertising dollars. Already this year, the TikTok app has been downloaded 307 million times, surpassing any other app in the world, and has many young users hooked.¹¹ Faced with compelling evidence that this wildly popular social media platform is blatantly flouting binding U.S. privacy rules, the FTC should move swiftly to launch an investigation and forcefully hold violators accountable for their conduct.

Thank you for your attention to these important matters.

Sincerely,

Edward J. Markey
United States Senator

Josh Hawley
United States Senator

Richard Blumenthal
United States Senator

Marsha Blackburn
United States Senator

⁸ United States v. Musical.ly, Case No. 2:19-cv-1439 Proposed Order (filed Feb. 27, 2019), available at https://www.ftc.gov/system/files/documents/cases/musical.ly_proposed_order_ecf_2_-27-19.pdf.

⁹ Children's Online Privacy Protection Rule, 16 C.F.R § 312 (2013).

¹⁰ *Complaint and Request for Investigation of TikTok for Violations of the Children's Online Privacy Protection Act and Implementing Rule*, Submitted to the Federal Trade Commission by Campaign for a Commercial-Free Childhood et al. (May 14, 2020), https://commercialfreechildhood.org/wp-content/uploads/2020/05/tik_tok_complaint.pdf.

¹¹ Brooks Barnes and Jack Nicas, *Disney's Head of Streaming is New TikTok CEO*, N.Y Times (May 18, 2020), <https://www.nytimes.com/2020/05/18/business/media/tiktok-ceo-kevin-mayer.html>.