

Advertising + Marketing

As Federal and State Governments Take Action Against TikTok, What Should Brands and Agencies Know?

The Bottom Line

- In light of increased federal and state regulatory oversight, the potential reach of TikTok may begin to shrink.
- Brands and agencies should take steps to prepare for a government ban of TikTok.

Trendy social media app TikTok gained popularity during the COVID-19 pandemic and has been on a meteoric rise ever since. Despite its popularity with users and increased spending from marketers, the app, owned by China-based ByteDance has faced immense scrutiny over the last couple of years due to concerns over its data collecting practices and its impact on America's youth. ByteDance's alleged entanglements with Chinese government intelligence agencies and the Chinese Communist Party (CCP) have led U.S. government officials to question whether use of the app threatens national security.

At least part of the national security concerns are directly connected to a 2017 Chinese law requiring companies to give their government any personal data relevant to the country's national security. While TikTok denies allegations that it has relinquished any personal information to the Chinese government, both the FBI and FCC have issued warnings that personal data could be shared.

To address concerns around data collection and use, TikTok CEO Shou Chew stated in a recent congressional hearing that TikTok planned to contract with an American staple, Oracle, to store TikTok data in the U.S. This action would presumably prevent potential Chinese interference on the platform. However, it is not clear whether federal or state governments would consider those steps to be sufficient.

Federal Action

To date, the federal government has made several attempts to place restrictions on TikTok, including trying to force ByteDance to sell off its U.S. assets, banning TikTok from app stores and granting authority to the Biden administration to ban the app on national security grounds.

In December 2022, Congress passed the “No TikTok on Government Devices Act” that required deletion of the app from official government devices. This action signified that, while it determines how to address its concerns with private citizens using private devices, the federal government is taking intervening measures with respect to those devices and situations that are within its control.

State Action

Although the federal government has not yet implemented any restrictions preventing private citizens from using TikTok, many states have considered taking matters into their own hands. Most recently, the Montana House of Representatives passed a first-of-its-kind law (Senate Bill 686, the “Restricting the Emergence of Security Threats that Risk Information and Communications Technology Act”) that bans TikTok for personal use. This bill, which is awaiting the Montana governor’s signature, would prohibit app stores from offering Montana users the option to download TikTok. While entities that violate this new legislation could face fines, the financial penalties do not extend to the app’s end-users.

In addition to Montana, 29 other states have taken steps through executive orders or legislative action to restrict TikTok in one form or another by banning the platform across government agencies and state-owned devices.

These actions are in addition to others that individual states are taking to protect consumers online, such as [Utah’s recent laws](#) that impose protections for kids and teens on social media.

What Proactive Steps Can Brands and Agencies Take?

While we wait to see TikTok’s ultimate fate, brands and agencies should be proactive in the event that TikTok is banned throughout the country or in larger markets. Brands and their agencies should begin discussing contingency plans, including re-allocating advertising dollars and re-considering long-term TikTok ad buys.

On the influencer front, brands and agencies should update their existing influencer agreements to include provisions that address the potential ban, such as termination rights, force majeure and make goods. When updating these agreements, brands and agencies

should consider whether the influencer has a comparable following on other social media platforms, such as Instagram or YouTube, or whether they are better off terminating the agreement in the event of a ban.

For More Information

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