

Times Up for TikTok –
Implications of the
Prohibition on
ByteDance Covered
Application
[FAR 52.204-27]

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COGR

Speakers



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Webinar Topics

- Background
- Regulatory Perspective
- Perspective from IT/CISO
- Institutional Examples
- Q&A

Poll Question #1

What percentage of your sponsored projects are subject to the TikTok ban?

- A. Less than 10%
- B. Greater than 10% but less than 50%
- C. Greater than 50% but less than 100%
- D. All sponsored projects (statewide ban)
- E. I don't know

Background & Regulatory Perspective

No TikTok on Government Devices Act

FAR 52.204-27, Prohibition on a ByteDance Covered
Application

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The TikTok Surge

Operated by
ByteDance
Limited

ByteDance is a
privately held
company in
Beijing

ByteDance
valued at \$300
billion 2022

Over 1 billion
active global
users of TikTok

Launched in 2016



Also known as
“Douyin” in China

TikTok is a
platform for
online video
content

The U.S. National Security issue

TikTok allegedly participates in Chinese intelligence gathering operations

Trump and Biden Administrations both raised material concerns

Trump executive order would have banned TikTok from US app stores

Biden Administration seeking a negotiated agreement with ByteDance

No TikTok on Government Devices Act

Limited opportunity for exceptions

Agencies must conform contracts to the prohibition

OMB Memorandum M-23-13 (February 27, 2023)
“No TikTok on Government Devices Implementation Guidance”

Instructs OMB and agencies to remove TikTok from Federal IT

Consolidated Appropriations Act, 2023

Interim FAR Rule

June 2, 2023 | 88 Fed. Reg. 36430

“This interim rule is being implemented as a national security measure to protect Government information and information and communication technology systems.”

FAR 52.204-27, Prohibition on a ByteDance Covered Application

“The Contractor is prohibited from having or using a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the Contractor under this contract, including equipment provided by the Contractor’s employees; however, this prohibition does not apply if the Contracting Officer provides written notification to the Contractor that an exception has been granted in accordance with OMB Memorandum M-23-13.”

Interim FAR Rule

Presence or use of any “covered application” in information technology used by government contractors and their employees in performing government contracts

Extends to information technology used by a contractor under a government contract “that requires the use—
(i) Of that equipment; or (ii) Of that equipment to a significant extent in the performance of a service or the furnishing of a product.”

Scope of ban

Applies to devices regardless whether they are owned by the Government, contractor, or contractor’s employees (including employee-owned devices)

“A personally-owned cell phone that is not used in the performance of the contract is not subject to the prohibition.”

“Does not include any equipment acquired by a Federal contractor incidental to a Federal contract.”

Interim FAR Rule

Scope of ban

- Applies to all federal contracts (not grants and cooperative agreements)
- Contractor must flow down the clause -- all subcontracts, including subcontracts for acquisition of commercial products/services

Timing: Contracting officers must

- Include clause in all solicitations issued on or after June 2, 2023
- Amend previously issued solicitations to comply with the new rule
- Modify existing indefinite-delivery contracts
- Incorporate the FAR clause when exercising an option or modifying an existing contract/order to extend the period of performance

FAR Rule Commentary

“The changes made in this rule are less complex than other prohibitions that have been incorporated into the FAR...”

“[t]here is no reporting requirement by a contractor...”

“It is expected that contractors already have technology in place to block access to unwanted or nefarious websites, prevent the download of prohibited applications (apps) to devices, and remove a downloaded app.”

The rule “is not expected to have a significant economic impact on businesses.”

What is “to a significant extent” and “incidental”?

The availability of exceptions

IT/CISO Perspective

Mary Ann Blair
Chief Information Security Officer
Carnegie Mellon University



Perspective from IT/CISO

- There are currently more questions than answers.
- What seems easy on the surface can be difficult in practice.
- This is a people issue, not just a technology issue.
 - Personal use of university resources; Business use of personal devices

We Take Compliance Seriously

- Institutions of higher education are unique.
- We maintain IT environments and business processes that must also support academic, administrative, and residential functions.
- We support people who wear many hats and operate in a variety of contexts.
- To effectively meet the spirit of the law and goals behind it (e.g., to secure research and intellectual property) we must be clear on the letter of the law.

“Covered Application”

“the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited.”

- What’s a successor application or service?
- Is this limited to TikTok?
- Does this encompass all 11+ ByteDance applications?

“EDUCAUSE asks that the final rule state explicitly...”

“Information Technology”

“Means any equipment or interconnected system or subsystem... used by a contractor under a contract with the executive agency that requires the use...to a significant extent in the performance of a service...Does not include any equipment acquired by a Federal contractor incidental to a Federal contract”

- Required use? Significant extent? Incidental? Interconnected?

**“...provide a practical description of what constitutes “incidental”
...define the “performance” threshold...exclude general purpose
network infrastructure ”**

Expected Impact

“The changes made in this rule are less complex than other prohibitions that have been incorporated into the FAR, such as the prohibition on contracting for certain telecommunications and video surveillance services or equipment...”

- Variations on TikTok and other ByteDance applications could present the same challenges for embedded and relabeling.

“...final rule should be clearer about what it intends covered entities to bar...”

Expected Implementation

“It is expected that contractors already have technology in place to block access to unwanted or nefarious websites, prevent the download of prohibited applications (apps) to devices, and remove a downloaded app.”

- This implies a technology solution and control over devices in all campus use cases.
- Many don't have technology in place on devices.

“...makes it clear that affected entities have discretion”

Policy Considerations

- Big 'P' little 'p' policy
 - Define “significant extent”
 - Are reading a contract related email or taking a call from personally-owned cell phone significant?
 - Are indirect activities ‘significant’?
 - Consider BYOD policy impacts
- Training and awareness
 - Consider best fit communication strategy
- Technology control plan sign-offs & project on-boarding
 - Consider opportunities to acquire acknowledgement

Technical Considerations to Explore

- Monitoring & Enforcement Capabilities
 - Network blocks
 - Scanning and banning from certain enclaves
- Segmentation and isolation
 - Networks
 - Containers and virtualized endpoints
- Endpoint/mobile device management
- Application whitelisting

Contracting Considerations

- Applies to Commercial-Off-The-Shelf (COTS) product and services
 - Assess impact to 3rd party risk management processes
- Assess Standard T's & C's

Expect Inconsistent Guidance

"Commercial prime contractors and subcontractors with minimal amounts of federal work have strong arguments that a complete ban of the use of TikTok within the corporation is not required or necessary to meet the requirements of this clause. It would be equally **unnecessary for companies to require employees to remove TikTok from personal devices if these employees are not using their devices to a significant extent to perform federal contracts.**" [1]

"Of course, **the safest approach** is for government contractors and subcontractors to institute a workplace social media policy which **prohibits employees working on or in connection with a federal government contract from having the TikTok app on any computers or mobile devices, unless the device is used for purely personal reasons and not used at all for company business.**" [2]

"Contractors: **Direct Employees to Remove TikTok from Personal Cell Phones, Other Devices**" [3]

[1] <https://www.akingump.com/en/insights/alerts/no-tiktok-on-government-devices-actimplementation-for-federal-contractors-and-subcontractors>

[2] <https://www.williamsmullen.com/news/us-governments-tiktok-ban-leaves-open-questions-contractors>

[3] <https://www.hklaw.com/en/insights/publications/2023/06/contractors-direct-employees-to-remove-tiktok>

CISO PERSPECTIVE SUMMARY

- Take a risk-based approach aligned with current capabilities and risk tolerance for now.
- Unless your strategy is set, prepare now for a cross-functional approach when the final rule drops.
 - Sponsored Projects, IT, HR, Legal, Procurement, ...
- Consider this practice for a potential ever-growing list of bans.
 - Is this an opportunity to design once and comply many times?

University of Wisconsin–Madison

Institutional Example

Jennifer Rodis
Policy & Planning Analyst



COGR

University of Wisconsin–Madison

Institutional Profile

- Public Land-Grant University in Wisconsin founded in 1848
- Part of University of Wisconsin System (13 universities, 26 campuses)
- Over 400 degree programs and certificates offered
- 11,345 degrees awarded in 2021-2022
- Over 49,000 undergraduate, graduate, special, and professional students enrolled in Fall 2022
- 2,292 faculty members
- FY2021 research expenditures = \$1.38 billion
- Nearly half of sponsored research funding is federal, with top sponsors as DHHS, NSF, and Dept. of Energy
- Approximately 250 agreements potentially impacted by TikTok ban

Institutional Example

| Institutional Impact | Strategic Planning | Communication Plan | Implementation |
|--|---|---|--|
| <p>State of Wisconsin/Office of the Governor & Dept. of Administration/Div. of Enterprise Technology: Prohibition on certain vendors and/or software including TikTok</p> | <p>State Chief Information Officer & Chief Information Security Officer</p> | <p>Executive Order #184</p> <p>290 – Removal of Prohibited Foreign Products Standard</p> | <p>Prohibitions applicable to State of Wisconsin Executive Branch agencies</p> <p>Board of Regents of the University of Wisconsin System <u>excluded</u> from policy</p> |
| <p>UW System: TikTok banned on university-owned mobile devices</p> | <p>Working group comprised of campus representatives</p> | <p>Communications from campus representatives to individual campuses</p> | <p>All UW campuses instructed to ensure removal of TikTok app from university-owned mobile devices</p> |
| <p>UW–Madison: TikTok banned on university-owned mobile devices</p> | <p>Partnership between Chief Technology Officer, Chief Information Security Officer, College/School-level IT staff, and department-level IT staff</p> | <p>Articles distributed by Division of Information Technology and University Relations</p> <p>Bimonthly meetings of Central and College/School IT directors</p> | <p>Review of university-owned mobile devices for TikTok app presence; dialogue between researchers & administrators</p> <p>App uninstalled or removed (unless research exemption granted)</p> <p>Prevention of installation of TikTok app on university-owned mobile devices</p> |
| <p>UW–Madison: Prohibition of TikTok on IT equipment used in Federal contract performance</p> | <p>Collaboration between Research Security Team and Communications staff</p> | <p>Emergency policy</p> <p>Targeted emails</p> <p>Newsletter articles</p> | <p>Employees directed to uninstall TikTok app from university-owned or personal devices used in performance of a federal contract (any federal contract-related work, e.g., email, calls, texts, data collection)</p> |

Massachusetts Institute of Technology

Institutional Example

Vivian Holmes
Executive Director



Massachusetts Institute of Technology

Institutional Profile

- Private, non-profit, educational institution located in Cambridge, Massachusetts
- Founded in Boston in 1861; moved to Cambridge in 1916
- 50 departments & programs offering graduate degrees; 65+ research centers, labs & programs.
- 3,825 degrees awarded from July 1, 2021 to June 30, 2022
- 4,657 total undergraduate students; 7,201 graduate & professional students as of Oct. 2022
- 1,080 full-time faculty as of October 2022
- FY23 campus research expenditures - \$952M
- Sponsored projects primarily funded by federal dollars (64% in FY23).
- Top three federal sponsors:
 - NIH/HHS (19% in FY2022)
 - DOD (17% in FY2022)
 - NASA (11% in FY2022)

Institutional Example

Institutional Impact

Strategic Planning

Communication Plan

Implementation

MIT:
Project-specific – impacted sponsored projects

Involved Research Administration, VPR Compliance, and the Office of General Counsel

PI Notification/Certification

Project personnel

Communication plan

Subrecipient notification

Other Implementation Recommendations:
Administrative staff restriction
Information Technology
Procurement

Clarifications:
Terminology
i.e. Required Use
Policy development
Proof of compliance