



April 18, 2023

The Office of The Honorable Governor Greg Gianforte
PO Box 200801
Helena, MT 59620-0801

RE: SB 419 - “An Act Banning TikTok in Montana” VETO REQUEST

Dear Governor Gianforte:

CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.¹ Proposed regulations on the interstate provision of digital services therefore can have a significant impact on CCIA members. Recent sessions have seen an increasing volume of state legislation related to the regulation of what digital services host and how they host it. While recognizing that policymakers are appropriately interested in the digital services that make a growing contribution to the U.S. economy, these bills require study, as they may raise constitutional concerns,² conflict with federal law, and risk impeding digital services companies in their efforts to restrict inappropriate or harmful content on their platforms.

We appreciate your consideration of CCIA’s concerns about how implementing the bill’s provisions could result in unintended consequences should SB 419 become law in Montana. We respectfully urge you to veto SB 419.

SB 419 would require the collection of geographical location information from every user in the United States.

As written, the bill penalizes intermediaries that give the option to “download the TikTok mobile application by a mobile application store.” It is important to note that mobile application stores do not work differently on a state-by-state basis. This means that they offer the same apps via the same online store to their users regardless of the physical U.S. location the consumer is in at a given time. Moreover, consumer data is often not collected on the app store page. Thus, to further align with other emerging privacy regimes that require such information, including information about consumer’s personal data rights, data collection usually occurs within the mobile application after a user has downloaded it and accepted certain terms and conditions. Therefore, holding mobile application stores accountable for giving users access to TikTok is not feasible or practicable.

Currently, some applications, such as online gambling providers that operate across jurisdictions with varying laws, use specific mechanisms to determine where a user is located when trying to use the application at a given time.³ In these cases, the onus to abide by state-by-state regulations is on the application itself, not the mobile application store.⁴ If this law were to go into effect, businesses that offer mobile application stores

¹ For over 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.ccianet.org/members>.

² Eric Goldman, *The Constitutionality of Mandating Editorial Transparency*, 73 *Hastings L.J.* 1203 (2022), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=3985&context=hastings_law_journal.

³ Apple Inc, *App Store Review Guidelines* (last updated Oct. 24, 2022), <https://developer.apple.com/app-store/review/guidelines/>.

⁴ Google, *Real-Money Gambling, Games, and Contests* (last accessed Mar. 27, 2023), <https://support.google.com/googleplay/android-developer/answer/9877032?hl=en>.



would have to collect geographic location information from every user in the United States to verify if they are or are not in Montana before providing them the allowable applications to download. Such unintended location verification requirements then raise questions about potential conflicts with data minimization principles and other consumer data privacy protection measures. Businesses may be forced to collect personal information they don't want to collect and consumers don't want to give, and that data collection creates extra privacy and security risks for everyone.

To avoid this, CCIA requested that the House Judiciary Committee remove the term "mobile application store" from the definition of "entity" to ensure that SB 419 does not inadvertently create new privacy concerns or impose infeasible technical requirements on businesses. We believe that the government should not compel a private business to host or remove certain applications on their mobile application stores as this practice raises First Amendment concerns along with the inability of businesses to comply with the proposed requirements. Further, we recommended merging the definitions of "mobile application" and "TikTok" to ensure that the compliance burden focuses on the application itself rather than the mobile application store.

Unfortunately, the House Judiciary Committee did not address these concerns prior to passing SB 419, so we are urging you now to please veto this measure to avoid additional security and privacy risks to consumers.

Ambiguous and inconsistent regulation at the state level risks undermining business certainty, deterring new entrants, and harming competition and consumers.

If enacted, SB 419 would create a new and different regulatory regime in Montana than the rest of the country. Companies seeking to conduct business in Montana would need app stores that are uniquely tailored to the state's regulations. This may encourage companies to avoid conducting business in the state altogether, leaving Montana app developers with fewer options to reach software consumers.

CCIA recognizes the importance of this issue, however, given the consequences of piecemeal solutions in different jurisdictions, it is preferable that solutions adopt a uniform, national approach. This will ensure that Montana's app developers are not at risk of being removed from the national market.

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We appreciate your consideration of these comments and respectfully request that you veto SB 419. CCIA is happy to provide additional information as Montana considers proposals related to technology policy.

Sincerely,

Jordan Rodell
State Policy Manager
Computer & Communications Industry Association