

5 July 2022



**TikTok**

10 Earlsfort Terrace  
Dublin, D02 T380  
Ireland

**Re: Halting TikTok's upcoming changes to personalised advertising settings in the EEA, UK, and Switzerland**

We, Access Now, are writing to urge you to halt your announced changes to personalised advertising in the EEA, UK, and Switzerland set to take effect on 13 July 2022.<sup>1</sup>

As a global organisation with the mission to defend and extend human rights in the digital age, we fight to advance robust, rights-respecting, and user-centric data protection policies and frameworks. TikTok's proposed changes to personalised advertising settings stand at odds with data protection and privacy principles.

You seek to change the legal basis for the serving of personalised ads to people over the age of 18. The announcement reads as follows:

*“Historically, TikTok asked you for your “consent” to use your on-TikTok activity and off-TikTok activity to serve you personalised ads. From 13 July 2022 TikTok will rely on its “legitimate interests” as its legal basis to use on-TikTok activity to personalise the ads of users who are 18 or over.”*

In practice, this means that TikTok users who previously did not consent to personalised ads will now receive such ads based on their on-TikTok activity collected on or after 13 July 2022.

Your announced changes serve only you and your clients from the advertising industry, at the expense of your community. You seek to profit from people's personal information by reducing their choices and rights. These changes are not only wrong in principle but they are also a clear abuse of the law. They are in violation of several measures established in the ePrivacy Directive, the General Data Protection Regulation, and the soon-to-be adopted Digital Services Act. These changes are in conflict with your own [stated commitment](#) to “respect human rights throughout our business” and to “comply with applicable laws and regulations intended to promote human rights.”

**We urge you to stop the announced changes to personalised advertising settings.**

Additionally, to better understand and get clarity on your legal assessments regarding the proposed changes, we would appreciate your providing us with detailed answers to the following questions:

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<sup>1</sup> <https://www.tiktok.com/legal/changes-to-personalised-advertising-in-the-eea?lang=en>

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- **How did you consider the European Data Protection Board Guidelines on consent when deciding to modify the legal basis from “consent” to “legitimate interests?”<sup>2</sup>**
    - In particular, the Guidelines note that *“the controller cannot swap from consent to other lawful bases. For example, it is not allowed to retrospectively utilise the legitimate interest basis in order to justify processing, where problems have been encountered with the validity of consent. Because of the requirement to disclose the lawful basis, which the controller is relying upon at the time of collection of personal data, controllers must have decided in advance of collection what the applicable lawful basis is.”*
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- **What legal assessments did you undertake to determine that Tiktok can rely on legitimate interest as a valid legal basis for this processing? Please provide information on such assessments. If you did not undertake any, why not?**
    - Such assessment is, for instance, referred to in Recital 47 of the GDPR: *“At any rate the existence of a legitimate interest would need careful assessment including whether a data subject can reasonably expect at the time and in the context of the collection of the personal data that processing for that purpose may take place.”*
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- **How do your practices, including the foreseen processing to deliver personalised ads, comply with obligations under the ePrivacy Directive?**
    - This would, in particular, require that TikTok does not, at any point of the processing, store information or gain access to information stored in a user's terminal equipment. Otherwise, TikTok would have to, among other obligations, provide people with the right to refuse such processing, which is not the case under the announced change (see Article 5.3 ePrivacy). Relatedly, it is also unclear how TikTok could rely on other legal basis than consent.
      - **Concretely, how does TikTok deliver personalised ads without storing information or gaining access to information stored in a users' phone or computer?**
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- **What, if any, human rights assessments were conducted on this decision? Which stakeholders and experts did you consult with to determine the impact these changes would have on those who use your platform?**
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TikTok has taken important steps in recent years towards greater respect of the human rights of your users, including by releasing transparency reports. Implementing these changes would undermine the proactive work you've undertaken to-date, and would be a step backwards for the rights of your users and for TikTok.

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<sup>2</sup> [https://edpb.europa.eu/sites/default/files/files/file1/edpb\\_guidelines\\_202005\\_consent\\_en.pdf](https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_202005_consent_en.pdf)

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We would greatly appreciate a public response by **12 July 2022**.

Finally, we inform you that we also wrote today to the European Data Protection Board to raise questions regarding the legality of your announced changes.

Sincerely,

**Estelle Massé**, Global Data Protection Lead, Access Now

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