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Amid TikTok ban, Canadians left 'to their own devices' as feds dither on updating privacy rules: Geist

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Following the decision to ban TikTok from government-issued devices, internet law expert Michael Geist says the Liberals' lack of action to strengthen Canada's own "legal regime" protecting citizens' online data suggests they're more interested in profiting from tech companies' data-collection policies than regulating them.

Treasury Board President Mona Fortier (Ottawa-Vanier, Ont.) announced the decision to ban TikTok from government-issued devices on Feb. 27, following a review by Canada's chief information officer, who determined the app "presents an unacceptable level of risk to privacy and security." The government's move was quickly followed by similar bans from the House and Senate regarding parliamentary issued devices. The Bank of Canada has also moved to prohibit TikTok from its devices, and various political parties suspended or deleted their accounts on the platform.

In her announcement, Fortier said the ban is a precaution due to concerns about the "legal regime" governing the

information TikTok collects from mobile devices and that the app's "data collection methods provide considerable access to the contents of the phone," but said there was no evidence that government information had been compromised.

As for the general public, Fortier wrote that the decision over whether to continue using TikTok will remain a personal choice, but pointed to guidance from the Communications Security Establishment's Canadian Centre for Cyber Security which "strongly recommends that Canadians understand the risks and make an informed choice on their own before deciding what tools to use."

At a press conference shortly after the announcement, Prime Minister Justin Trudeau (Papineau, Que.) told reporters that while the ban could have an effect on businesses and private individuals who may re-evaluate their own data security and decision to use TikTok, freedom of expression and the personal choice of how to engage online should be respected.

"This may be a first step, it may be the

The popular social media app TikTok was banned from government-issued devices over security concerns, but critics have accused the Liberals of targeting it as a response to the growing tensions with China rather than concern over the 'legal regime' governing the collection of data. Unsplash photograph by Solen Feyissa

only step we need to take, but every step of the way, we're going to be making sure we're keeping Canadians safe," Trudeau said.

The ban follows a Feb. 23 announcement by federal privacy commissioner Philippe Dufresne that, alongside his provincial counterparts in Quebec, British Columbia, and Alberta, he would be launching an investigation into TikTok. In a joint statement, the commissioners said they would be investigating whether the app complies with Canadian privacy legislation, including the federal Personal Information Protection and Electronic Documents Act (PIPEDA) and specifically whether "valid and meaningful consent" is being obtained for the collection and use of personal information.

Canada's decision to ban TikTok was

preceded by similar bans in the United States and by the European Commission, and amid increasing concerns over its China-based parent company, ByteDance, and heightened geopolitical tensions with the country's government, including the alleged spy balloon the U.S. shot down last month after it had flown through Canadian airspace and recent news reports over China's alleged interference in the last two federal elections.

At a time when there is no shortage of controversies involving the Chinese government, Geist, a law professor and Canada Research Chair in Internet and E-commerce law at the University of Ottawa, told *The Hill Times* he finds it difficult not to conclude that Canada is targeting TikTok in response to those controversies, and not because of concerns over data collection, as there are numerous social media platforms that engage in similar practices, including Twitter and Meta, the company that owns both Facebook and Instagram.

"It may be that the Chinese government has some influence in a way that may not be true for some other apps, but the core privacy-related concerns for individuals, in many respects, are pretty consistent," Geist said. "It's hard to avoid the sense that this is an attempt for the government to say they're gonna get tough on China without actually dealing with some of the core issues that have been raised over the last couple of weeks."

More notably, however, Geist said he was surprised by Fortier's reference to "the legal regime" governing how information is collected from mobile devices as part of the government's rationale for the ban.

"I was surprised because that's their responsibility," Geist said, pointing to PIPEDA, which governs how private-sector organizations can collect, use, and disclose Canadians' personal information, adding that the Liberals have shown "no urgency whatsoever" on updating and modernizing those rules.

In a March 1 letter addressed to Fortier, TikTok also noted that PIPEDA was the "legal regime" governing how Canadian's personal information is collected by the platform, noting that no other specific concerns had been cited as to why a review of the company had determined it posed an "unacceptable level of risk to privacy and security."

In the letter, which was posted to social media, TikTok's chief operating officer Vanessa Pappas wrote that she was "disappointed" by the ban and had not been provided the opportunity to respond to any of the government's specific concerns prior to the ban.

"TikTok welcomes questions about how we safely protect the safety and privacy of Canadians, but these are questions that should be posed to all digital platforms," wrote Pappas, citing a University of Toronto Citizen Lab report that found TikTok had similar levels of data collection when compared to other social media platforms and found "no overt data transmission to the Chinese government" by the company.

"Singling out TikTok does nothing to advance the privacy and security of Canadians," Pappas wrote, adding that the timing, impetus, and standards applied to the decision to impose the ban remain unclear. She questioned what threshold was used to justify a ban on TikTok from government devices and no

other platform.

"It's inexplicable to think that we have spent years and years and years waiting for the government to move on this when the irony is Canada's own privacy and data governance lies at the heart of many of the concerns," Geist said. "To see the government say that part of the problem [with Tiktok] are the rules that they have neglected to fix is pretty striking."

During the previous Parliament, then-innovation minister Navdeep Bains introduced the former Bill C-11 on Sept. 23, 2020, which aimed to repeal parts of PIPEDA and replace it with the proposed Consumer Privacy Protection Act to improve the rules for the collection, use, and disclosure of personal information for commercial activity in Canada. The bill reached second reading in the House but died on the Order Paper in August 2021 when Parliament was dissolved for that September's federal election.

The Liberals' second attempt, Bill C-27, was introduced by current Innovation Minister François-Philippe Champagne (Saint-Maurice—Champlain, Que.) in June 2022, but the bill has only made it to its second reading during the intervening nine months, with debate having resumed on March 7. While the kinds of information that companies would be allowed to collect wouldn't change under Bill-C-27, organizations would have to provide Canadians with information in plain language about the handling of their personal details and require "meaningful consent" from users before collecting any data. The bill would also provide better "data mobility" to allow Canadians more control over the transfer of their information from one organi-

zation to another as well as the right to request the deletion of their data when they withdraw consent or when it is no longer necessary for an organization to handle the information.

Geist told The Hill Times that rather than prioritizing Bill C-27 to safeguard Canadians' private data, the Liberals seem much more interested in profiting from the collection policies of social media giants like TikTok through its Online Streaming Act, the current Bill C-11. The bill, which passed its third reading in the Senate last month with 26 amendments, would create a framework to regulate digital streaming platforms like Netflix, Disney+, and Spotify to contribute to the creation of Canadian content and allow the CRTC to create discoverability rules for user-generated content on YouTube and TikTok.

Geist said that Heritage Minister Pablo Rodriguez (Honoré-Mercier, Que.) structured a digital policy agenda that seems to treat tech companies as what he describes as "policy ATMs" from which Heritage Canada can make withdrawals, noting that it is the same data collection tools used by sites like TikTok that would ensure Canadian content is promoted to the right users as would be required under Bill C-11.

"[The government] has structured their bill—the most controversial element involving the regulation of user content—around services like TikTok, while at the same time, they say it's too dangerous for their own employees to use," Geist said. "They have structured laws around the ability to profit—for policy purposes— from Canadians' usage of these apps while neglecting to address the underlying legal framework that the government has acknowledged is a source

of concern and we're leaving Canadians to their own devices."

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Figure:

University of Ottawa professor Michael Geist says Liberals have neglected modernizing Canada's own 'legal regime' governing the collection of personal data online. Photograph courtesy of Twitter