

TikTok on the Clock: Proposed Legislation to Unwind TikTok from Ownership Group

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On March 13, 2024, the U.S. House of Representatives passed the [Protecting Americans from Foreign Adversary Controlled Applications Act](#) (the Act) in a bipartisan vote, which would require the popular social media site TikTok to be sold or it would be banned in the U.S. President Biden has stated that he will sign the Act into law if it passes both houses of Congress. However, the Act faces an uncertain future in the Senate. Also, former President Trump has recently expressed opposition to the Act, which may encourage Senate Republicans to oppose it.

Roots of the Anti-TikTok Legislation

The genesis of the Act, which would ban or force the sale of TikTok, dates back to the Trump administration when TikTok initially rose to popularity in the U.S. For years, U.S. government officials have had concerns that several laws passed by the Chinese government potentially exposed the data of Americans collected by TikTok to the Chinese government.[1] Specifically, these Chinese laws could require information and data to be turned over to the Chinese government by Chinese-based entities, including TikTok. TikTok's parent company, ByteDance, Ltd., is a privately held company founded and headquartered in China. As a Chinese company, ByteDance (and TikTok as its subsidiary) is subject to those laws.

Representatives of ByteDance and TikTok have repeatedly stated that they have no interest in sharing user data with the Chinese government, but that has done little to quell the concerns of U.S. government officials. In fact, since 2020, approximately 36 states and the U.S. federal government have enacted partial or total bans on the downloading and use of TikTok on government-issued electronic devices.

The Congressional Committee on Energy and Commerce analogized this Act to the Communications Act of 1934, which was partly crafted to prevent foreign propaganda from being broadcast in the U.S. during wartime by restricting foreign ownership of radio stations and media networks. More recently, U.S. regulators used a similar tactic in 2019 with the dating app "Grindr" by requiring it to be sold to an entity outside of China.

Legislation's Key Provisions and Requirements

The Act gives TikTok's parent company ByteDance (and other qualifying entities) 180 days to sell or otherwise divest TikTok to an entity based in a non-foreign adversary country (i.e., China, Iran, North Korea, and Russia, as defined by 10 U.S.C. Section 4872(d)(2)). However, if ByteDance fails to sell TikTok to a non-foreign adversary-

based entity within 180 days, the Act's text currently provides for a nationwide ban on the distribution, maintenance, and update of TikTok. That would essentially kill the app in its current form.

Enforcing the Act's Provisions

The Act also requires TikTok and any other qualifying app or website to make all user data and account information available to the user upon request by the user prior to any ban on the distribution, maintenance, or update of the app or website.

The Act does not provide for a private right of action for violations but instead requires the U.S. Attorney General to investigate and bring enforcement actions against violating entities. The Act also does not permit enforcement actions against individual users of a banned app or website.

Advocates' Perspective: Championing National Security and User Autonomy

The Act's proponents say that it would allow American consumers to continue to enjoy popular apps and websites that are currently owned by entities based within foreign adversary countries and that it would remove the potential for the Chinese government or other foreign adversary governments to obtain and use American users' data.

Further, advocates of the Act claim that it creates a roadmap for future U.S. presidents to use with other popular apps or websites controlled by entities based within foreign adversary countries.

Critics' Counterpoint: Free Speech Concerns and Political Repercussions

Conversely, opponents say that the Act raises free speech concerns because TikTok allows for the communication of constitutionally protected speech, and that a ban on TikTok could unconstitutionally limit protected speech.

Additionally, the Act could give President Biden a dreaded election season headache with young voters. Reportedly, 170 million Americans use or have used TikTok—more than the number of Americans who have voted in any single election in U.S. history.

The Takeaway

With TikTok being one of the most popular and well-known social media platforms, a total ban of the app seems unlikely, especially in an election year when young Americans are some of the most frequent users of TikTok and a key to the Biden reelection coalition. Regardless, the Act faces an uphill battle in the Senate, especially given former President Trump's recent opposition.

[1] Tanner, [Beijing's New National Intelligence Law: From defense to offense Lawfare](#) (2017)

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