



TikTok Legislation and the Hidden Motives

A bill that could ban TikTok in the United States if the social media platform's Chinese parent company does not divest from it was recently passed last week by the U.S. House of Representatives. Its fate in the U.S. Senate remains unclear, however, as leadership in the upper chamber of Congress has expressed that it will review the text but without committing to a vote timeline. If enacted, the legislation would force ByteDance – the Chinese technology company which owns TikTok – to sell the popular platform before app stores would otherwise begin prohibiting access to it in the United States. The bill passed in the U.S. House by a vote of 352-65, and President Biden has expressed that he would sign the bill if it goes through both chambers of Congress. Proponents of the legislation argue that under its current ownership, TikTok poses a national security threat to the United States as it could allow the Chinese Communist Party (CCP) to spy on and manipulate Americans. However, on the other hand, opponents of the bill contend that it violates the First Amendment rights of users when it comes to freedom of speech and the access of information.

Lawmakers and others who support the potential ban insist that ByteDance is beholden to the Chinese government, and that the latter could demand access to the data of TikTok's consumers in the United States whenever it wants to spy on Americans, push propaganda, or use the service to interfere in U.S. elections. TikTok has 170 million U.S. users, amounting to over half of the population using the platform, a fact that has elicited concerns over the app's coercive capacity. This fear stems from Chinese national security laws that compel organizations to assist with intelligence gathering. TikTok has long denied that it could be used as a tool of the Chinese government, and has stated that it has never shared U.S. user data with Chinese authorities and would not do so even if it is asked. To date, there is no evidence to show that the social media platform has shared any such information with Chinese authorities, yet proponents of the bill are of the opinion that TikTok should not continue to operate in the United States under its current ownership structure.

Rights and civil liberty groups have come out against the proposed TikTok ban, saying that it would curtail freedom of speech and access to information, while undermining U.S. credibility as a defender of digital freedom. They point out how the social media platform allows both individuals and organizations to interact with others, disseminate information, and reach a wide audience – particularly when it comes to the younger demographic of U.S. adults. For many of these groups themselves like Amnesty International, Human Rights Watch, and the American Civil Liberties Union (ACLU), TikTok has become a space where they can interact with people on important issues and provide them with a means to engage in social and political activism. Opponents of the legislation also emphasize that the concerns regarding national security which are behind it can be addressed with measures short of a full-blown ban that would hinder free speech and set a dangerous precedent which could grant legitimacy to authoritarian regimes to shut down services that they do not support. For example, instead of a complete ban, a consumer data privacy bill would improve online data security. Domestically, the First Amendment includes the right to obtain information without government interference, and so the federal government banning the platform in the United States would prevent citizens from communicating through a method of their choosing.

Legal experts have highlighted that even if a TikTok ban was to be instituted, something that would require a number of steps first – the legislation to be passed in both houses of Congress, it to be signed into law by President Biden, and for the six-month period of time to come and go without it being sold – the ban could still be prolonged by court challenges as well. This is precisely what happened back in 2020, when then-President Donald Trump issued an executive order declaring a national emergency that would have shut down the platform. In response to this, TikTok sued the Trump administration, arguing that the executive order violated due process and First Amendment rights. The courts proceeded to block the ban on the grounds that Trump’s executive order exceeded statutory authority by targeting forms of personal communication and informational materials. According to analysts, a potential future attempt to ban TikTok would likely be countered by a First Amendment challenge from the social media platform and its content creators and users, and the case may even end up before the United States Supreme Court. Additionally, experts contend that shutting down a social media platform for purported national security concerns is something that can only be realistically accomplished if the threat is overwhelming. In the absence of this, it will probably be deemed an infringement on the First Amendment rights of millions of Americans.

Ultimately, by contemplating the potential ban, lawmakers in Congress are trying to balance security concerns with a desire to not infringe on freedom of speech protections. Whether the bill will pass in the U.S. Senate is difficult to predict, as it will likely be a long and rigorous process. Deliberation on the issue is a tricky task for lawmakers, and only time will tell what transpires in the U.S. Senate and beyond moving forward.