The Daily Dish

TikTok Tango

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The *Financial Times* is reporting: "President Donald Trump says he has found a 'group of very wealthy people' to buy the US operations of TikTok as part of efforts to separate ownership of the social media platform from China." It quotes the president as saying: "I'll tell you in about two weeks…It's a group of very wealthy people,"

This is the latest step in a very strange policy dance between TikTok and the United States. And it is probably not the final step. First of all, any sale would have to be approved by TikTok's owner, ByteDance, and the Chinese government. Previously, China had indicated that it would not approve a sale, a position that has not been softened by the trade war launched by President Trump.

Second, there is the issue of the algorithm underlying TikTok. The algorithm determines what users see – it is the value of TikTok – and it is unclear whether a buyer can meet the legal terms of acquiring TikTok without control of the algorithm. ByteDance has made it clear that it will continue to control the algorithm.

This is just more of the same. AAF's Jeff Westling has been following the saga. As he writes in TikTok Legal Purgatory: "President Donald Trump announced another enforcement deferment of the Protecting Americans from Foreign Adversary Controlled Applications Act, which in part required Beijing-based ByteDance to divest ownership of the popular social media application TikTok." The key word in that sentence is "another." The law allowed a single deferment; this is now number three and lasts until September 17.

This is incredibly problematic, because the law not only prevents the Chinese Communist Party (CCP) from operating social media in the United States, it also sanctions app stores and hosting services if they allow access to TikTok. Westling notes that "the continued deferral of enforcement of the bill without any congressional response suggests two troubling possibilities."

"The first possibility," Westling observes, "is that the national security concerns of a CCP-controlled TikTok were overblown." Recall that the law was litigated in front of the Supreme Court, which upheld it on the grounds that national security considerations were great enough to outweigh problematic infringement of First Amendment rights. But what if there were no real national security consideration? Why do we have this law?

The second possibility, Westling notes, is that "the security concerns posed by TikTok continue to put Americans at risk, and the White House and Congress are willfully allowing that risk." One can speculate as to why that might be the case, but it is unsettling. Either way, the president's willful non-enforcement of the law simply cannot be easily justified. There is a problem of one sort or another.

As an ironic twist, the state of play trumps (pun intended) even the Biden Administration's jawboning of social media companies.

> *If TikTok wants to ban an account that the president wants to defend, the application will face significant pressure not to take action. If it does, the president could simply start enforcing the law without any further judicial review or action from Congress. This gives the White House tremendous power over the content moderation decisions of the service, and is a major First Amendment concern for both the application and its users.*

This dance has gone on long enough. The president needs to enforce the law.