



Insight

TikTok Legal Purgatory

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Executive Summary

- Last week, President Trump announced a third enforcement deferment of a federal law banning the social media application TikTok, despite the law lacking provisions granting the president the authority to do so more than once.
- The deferment of enforcement, and Congress' acquiescence to that deferment, presents two very troubling possibilities: a) The national security risks TikTok presented that justified the infringement of free speech were either fake or overblown, and the application is safe to use, or b) The security concerns are legitimate and ongoing, but Congress is too afraid to contradict the president.
- In the meantime, TikTok, the companies that host the app, and American consumers are left with the uncertainty created by the fact that the decision could be suddenly reversed, especially if the company takes any action the president dislikes, leading to the type of jawboning and government censorship conservatives attacked during the Biden Administration.

Introduction

In June, 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 legislation required the divestment to occur by January 2025, but allowed for the deadline to be extended once upon determination that a path to divestment of TikTok by ByteDance was underway. The president has already deferred enforcement of the law twice, notably not through the procedure outlined by the statute, and has now extended the deadline for 90 more days.

The problem for the president, however, is that the law does not allow this type of extension. Fortunately for the president, no one seems to care. This suggests two troubling possibilities. First is the possibility that the national security risks, which justified the restrictions on TikTok, are [not as serious as indicated by the Supreme Court](#), which upheld the law despite its restrictions on speech. Alternatively, the application continues to be a serious security risk, but Congress is unwilling or unable to compel the president to enforce the bill.

Meanwhile, companies and users face an uncertain future for the application. App stores such as Apple and Google are currently in violation of the law but are relying on the president's promises to not enforce it. Content creators cannot plan for a future on the app because they don't know if it will be taken offline. All the while, President Trump can exert tremendous influence over how TikTok manages and moderates its platform, as any moderation decisions the president doesn't like could lead to its immediate ban without further legislation or judicial review. This proverbial sword of Damocles can cause the exact type of jawboning many conservatives found issue with during the Biden Administration.

Regardless of the merits of the decision to defer enforcement, Congress should step in to make a decision. It should either take action to compel the White House to enforce the law, or it should repeal it.

Protecting Americans from Foreign Adversary Controlled Applications Act

The Protecting Americans from Foreign Adversary Controlled Applications Act, signed into law in 2024 by President Biden, was designed to prevent social media platforms owned or controlled by foreign adversaries such as the Chinese Communist Party (CCP) from operating in the United States. To achieve this, the law requires such apps to either be sold, forcing the foreign adversary to relinquish control of the app, or be banned from operation. In addition to restrictions on the apps, the law also places large sanctions on app stores and hosting services for allowing access to the apps that have been banned. After the 270-day timeline is passed, the law does allow for a one-time, 90-day extension before divestment if a path to the execution of a qualified divestiture has been identified with evidence of significant progress and binding legal agreements are in place.

Despite the significant First Amendment concerns, the Supreme Court upheld the law [earlier this year](#). Specifically, the Court held that the law was content neutral in nature, with the law's security goals - preventing China from collecting vast amounts of sensitive data from 170 million U.S. TikTok users - justifying the restriction on speech. Further, the Court explained that specifically identifying TikTok in the law didn't raise additional scrutiny because "TikTok's scale and susceptibility to foreign adversary control, together with the

vast swaths of sensitive data the platform collects, justify differential treatment to address the Government’s national security concerns.” Despite the Court’s ruling on data security, a potentially larger concern with TikTok is the ability to spread propaganda and affect public discourse.

Despite the law’s clear language and extension processes, President Trump has deferred its enforcement three times, a total of an additional 240 days, bypassing existing procedures entirely. And because the deferment of enforcement does not comply with the law, this forces both TikTok and the services hosting it to operate in violation of the law and rely on assurances from the president that the ban will not be enforced against them.

Decision To Extend Implications

Regardless of the merits of the original legislation and Supreme Court decision, the continued deferral of enforcement of the bill without any congressional response suggests two troubling possibilities.

The first possibility is that the national security concerns of a CCP-controlled TikTok were overblown. As perhaps the better of the two possibilities, this would indicate that allowing continued operation would not create unique or substantial risks to American users, many of whom rely on the application for their businesses and social connectivity. This possibility would indicate, however, that the Supreme Court likely erred when examining the First Amendment implications of the Act. Despite finding the law was content neutral, the Court relied heavily on the national security risks of the app, and particularly the collection of information on American users, to justify the restrictions on speech. If these concerns were not valid or as serious as claimed, the infringement on both the First Amendment rights of TikTok and its users would likely be unconstitutional.

Second, as an alternative possibility, the security concerns posed by TikTok continue to put Americans at risk, and the White House and Congress are willfully allowing that risk. This could be for a variety of reasons. One possibility is that, over time, the president’s impression of TikTok has changed from critical to approving. Indeed, after the election, [President Trump explained](#) that he had a “warm spot in [his] heart for TikTok” and that it helped him win the 2024 election. On the other hand, it could simply be that the president seeks to use TikTok as a [tool for ongoing tariff negotiations](#). Congress, for its part, might be reluctant to enforce the ban against TikTok now, as doing so may push the app’s users to move to other problematic apps such as Rednote, or lawmakers sense their constituents do not support the ban.

Regardless of the reasons for the lack of enforcement, the law is clear. If the executive

branch doesn't wish to enforce the Act, Congress should act to either compel enforcement or repeal the law.

Implications Moving Forward

Again, regardless of the reasons, the lack of enforcement results in a variety of harms.

First, creators, consumers, and advertisers face uncertainty about their future investments in the platform. For example, if content creators design their content to maximize exposure on TikTok's algorithms, they may have less success on rival platforms such as Instagram, YouTube, or a variety of other platforms, especially if they are deciding about the best type of content to produce. For these creators, they must now weigh future uncertainty against other factors such as the rate at which TikTok creators are compensated by the platform. Users, likewise, may not want to get invested in a TikTok community if it could be banned without much notice. And for advertisers, making brand deals with content creators on the platform has less value because passive income from views on old video ads could end abruptly, even if the creator they partner with has a presence on other platforms on which they could repost the videos.

Second, despite the promise of enforcement delay, service providers such as Apple and Google are currently in violation of the law and could face significant penalties if the president changes his mind. Currently, the only thing protecting these companies is the president's promise, and previous statements from app store providers indicate a reluctance to continue hosting the applications while the law is in effect.

Finally, despite the concerns about [government jawboning of social media companies](#) during the Biden Administration, this administration now has more ability to control the speech of a private platform. 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.

Congress should take action. It should either repeal the law, making it legal for TikTok to continue its operation in the United States, or hold the Trump Administration accountable for the lack of enforcement. As it stands, TikTok exists in a regulatory purgatory, and American consumers and businesses are worse off for it.