March 20, 2024 / Can Congress ban TikTok?

[HALF SECOND OF SILENCE]

[BILLBOARD]

SCORING <Bang Lime>

SEAN RAMESWARAM (host): Back in 2020 the former president said he wanted to ban TikTok.

*<CLIP> FORMER PRESIDENT DONALD TRUMP: China!*

SEAN: It didn’t happen.

SCORING OUT

SEAN: People continued to TikTok.

SCORING BACK IN

SEAN: Back in May of last year, Montana tried to ban TikTok.

*<CLIP> NBC NEWS: Montana’s governor just signed the country’s first law completely banning TikTok.*

SEAN: It didn’t happen.

*<CLIP> YAHOO FINANCE: A federal judge in Montana has blocked a statewide ban on TikTok from going into effect next year.*

SCORING OUT

SEAN: People continued to TikTok.

SCORING BACK IN

SEAN: Last week the United States House of Representatives passed a bill that could ban TikTok!

*<CLIP> C-SPAN: Two thirds being in the affirmative, the rules are suspended, the bill is passed, and without the objection, the motion to reconsider is laid on the table. <gavel>*

SEAN: And on *Today, Explained* we’re gonna tell you why it’s not gonna happen. Why TikTok will once again prevail, coming up on the show.

SCORING OUT

[THEME]

*<CLIP> TIKTOK VOICE: You’re listening to Today, Explained.*

SEAN: Sean Rameswaram. Back with a BBL. Andrew Desiderio is here with me. He’s a senior reporter at Punchbowl News, where he’s been covering a bill in the House of Representatives that would pump the brakes on TikTok. A bill that seemingly came out of nowhere.

ANDREW DESIDERIO (*Punchbowl* senior reporter): There's been a lot of classified briefings on Capitol Hill that members of Congress have sat in on over the last year-plus about, you know, the threat to national security posed by TikTok. They've heard a lot about this in public as well. But nobody really knew, aside from these members on the House Select Committee on China, that they were even working on this particular piece of legislation. And I suspect it was so that TikTok would be caught off-guard, in a sense, and wouldn't have the time to, you know, get its lobbying operation up and running and make sure that they were getting out ahead of this, of this issue and trying to kill it. And I'd say they were largely successful, not just because the bill passed, but because TikTok had to resort to some really desperate tactics to try to lobby against this piece of legislation.

*<CLIP> REP. MIKE GALLAGHER (R-WI): …when TikTok forced a pop-up on all of its users, asking for their zip code information and then calling members of Congress….*

*<CLIP> TIKTOK: So I got this message on TikTok about ‘call your representative’, right – and I typed in my area – my zip code and it gave me a phone number, and surprisingly, they answered the phone.*

*<CLIP> TIKTOK: …and I want to share it with all of you, even though it is a little embarrassing: I called my representative.*

*<CLIP> TIKTOK: <phone call> Hi, I’m calling to ask about the TikTok ban.*

*<CLIP> GALLAGHER: That’s just a taste of how this app could be weaponized. Imagine a more consequential vote going forward about trying to authorizing force to defend Taiwan, or altering a trade agreement with China. That’s the risk we’re trying to guard against.*

ANDREW: That was ultimately what made this go so fast. In addition to the fact that you had buy-in from House Republican leadership, you had buy-in from House Democratic leadership, and then you had even a statement of support from the president of the United States and from the White House press secretary as well.

*<CLIP> WHITE HOUSE PRESS SECRETARY KARINE JEAN-PIERRE: And so what we see is this bill is important, we welcome this step on ongoing efforts to deal with that, to address that, and we appreciate the bipartisan work.*

ANDREW: The Administration has been giving classified briefings to members of Congress on this particular issue for many, many months, right? They've been telling Congress that TikTok can be used and is being used by the Chinese Communist Party, to advance Beijing's malign intentions and their, their efforts to sort of undermine the American political system, American democracy, and potentially interfere in our elections as well. And the more that the American intelligence community has learned about TikTok and its connections to its parent company, ByteDance, the more worried they have become about its possibility to be used as an espionage tool in a, a war of some sort between the United States and China.

SEAN: So what does this bill do to address that problem? What exactly is the House of Representatives proposing here?

*<CLIP> REP. NANCY PELOSI (D-CA): This is not an attempt to ban TikTok. This is an attempt to make TikTok better – Tic Tac Toe. A winner. A winner.*

ANDREW: So this bill is, you know, they don't like to call it a ban. They call it a forced divestiture, which does not roll off the tongue as easily as the word ban.  
  
SEAN: <chortles>   
  
ANDREW: But basically what it does is it gives TikTok's parent company, ByteDance, 180 days to be sold to a US company, a British company, a whatever company. Right. As long as it's not connected to ByteDance in any other way. And if that's not done within 180 days, then the TikTok app is banned in the United States. It's removed from the App Store, and then people suddenly cannot use it anymore. You know, the national security argument here for this forced divestiture legislation is that ByteDance is a Chinese company. And under Chinese –

*<CLIP> SEN. JOHN CORNYN (R-TX): – national intelligence laws, all information accumulated by companies in the People’s Republic of China are required to shared with the Chinese intelligence services.*

*<CLIP> REP. RAJA KRISHNAMOORTHI (D-IL): Your location would be known. Any personal identifiable information. Any messages. Any sensitive data that you entrust to the apps on your phone…*

ANDREW: Everything that TikTok has on Americans basically is accessible by the Chinese government. And I think that's what is worrying folks the most about this and how this works. But what folks keep saying – the tech experts on this at least – is that it is virtually impossible that ByteDance would agree to sell TikTok because they would be giving up…

SEAN: Hm.

ANDREW: … so much proprietary information. They would be giving up so much information about this algorithm, which members of Congress have said is – really is the best social media algorithm in the world.

SEAN: Hm!  
  
ANDREW: So, you know what the argument that's been thrown out there by people who are calling this a ban is that there is no way – at all – that ByteDance would sell TikTok.

SEAN: How many Democrats and Republicans voted in favor of this let’s-not-call-it-a-ban forced divestiture – <laughs> forced divestiture. Forced – was that it? Forced divestiture?

ANDREW: Yeah. Forced divestiture. Yeah. So you're basically forcing ByteDance to divest from TikTok– or, you know, the other way around.

SEAN: Say it three times fast. I dare ya.

ANDREW: Forced divestiture. Forced divestiture. Forced divestiture. How's that? <laughs>

SEAN: Oh my gash! What a pro!  
  
ANDREW: <laughs>   
  
SEAN: What a pro!

ANDREW: So to answer your question, it got 352 votes in the House of Representatives. And in a body that has 435 voting members – right now, they have around 430 with all of the vacancies that they have – 352 is just a massive blowout of a number.   
  
SEAN: Hm.   
  
ANDREW: So it is really at this point, it's impossible for the Senate to ignore it. But I think Senate leaders will do their best to try to ignore it without igniting, you know, a firestorm of criticism from the bill's proponents.

SEAN: Yeah, do we have any idea how the Senate might vote here? I mean, in the House, you have what, Nancy Pelosi agreeing with Jim Jordan. What's going to happen in the Senate?

ANDREW: Right. You've certainly got some strange bedfellows there when it comes to the ideological battle lines here on this legislation. So the key thing to look out for in the Senate is the fact that the chairman of the Senate Intelligence Committee, Mark Warner, supports the legislation.

*<CLIP> SEN. MARK WARNER (D-VA): Manipulating that algorithm–   
SEN. MARCO RUBIO (R-FL): Right.   
WARNER: – can mean what kinda information you’re gonna see. And if you don’t think that could be used as the most powerful propaganda tool ever –   
REPORTER: In an election year.   
WARNER: In an election year. Then you don’t get the fight.*

ANDREW: And of course, as a member of the Senate Intelligence Committee, he gets the same classified briefings as the president of the United States. So he's the most aware …   
  
SEAN: Mmm.  
  
ANDREW: … of the national security threats that TikTok poses in the United States. On the other side, you've got the chair of the Senate Commerce Committee, Maria Cantwell, a Democrat from Washington state Senator Cantwell does not support this legislation, and her committee is technically the committee of jurisdiction for something like this because it is technically a commerce issue, right? So when somebody says that a bill has been referred to her committee on this subject, that's basically a euphemism for saying that you're killing it because that bill will never go anywhere under Maria Cantwell’s chairmanship of that committee, right? And it's actually come out recently that a number of Senator Cantwell’s former staffers, both in her personal office as well as on the committee, either work for or lobby for TikTok…

SEAN: Hm.

ANDREW: … which I think is an important thing for people to understand here because the, you know, the lobbying money that's being thrown at this effort is just, it's very intense. So Senate Majority Leader Chuck Schumer has to make a decision. Does he go with his Intelligence committee chair or does he go with his Commerce Committee chair? I think at the end of the day, what he's going to end up doing is soliciting feedback from different members of the Democratic caucus and seeing what they prefer in terms of an avenue to address TikTok. But I think the fact that this bill got 352 votes in the House of Representatives sends a message to the Senate, and to Majority Leader Chuck Schumer in particular, that it is just not tenable for the Senate to simply ignore this bill.

SEAN: What about the former president? Somehow still calling shots in Congress. Famously not a fan of TikTok.

ANDREW: Yeah. And it's truly bizarre. I mean, Donald Trump was pretty much the reason why the federal government started evaluating TikTok as a national security threat in the first place.

*<CLIP> TRUMP, 2020: We’re looking at TikTok. We may be banning TikTok. We may be doing… some other things. There are a couple of options.*

ANDREW: It was his executive order …  
  
SEAN: Hm!  
  
ANDREW: …in 2018 that kind of set all of this into motion and got people thinking about, hey, maybe we do need to ban TikTok. So the fact that he's walking away from it now is not necessarily surprising because, you know, I guess in the era of Donald Trump, flip flops, on political issues don't mean as much as they used to.

SEAN: Poor John Kerry.

ANDREW: Yeah, exactly. Right.

*<CLIP> 2004 BUSH AD: John Kerry: whichever way the wind blows.*

ANDREW: So I think the way he's looking at this is just through a purely political lens, right. He can if this legislation passes the Senate and the president signs it into law, he can use it to his advantage in the election and say, Joe Biden took away your TikTok. I won't do that as president.  
  
SEAN: Hm.

*<CLIP> TRUMP, CNBC 2024: There are a lot of young kids on TikTok who, who will go crazy without it. There are a lot of – uh – users. You know, there’s a lot of good and a lot of bad with TikTok. But the thing I don’t like is that you're going to make Facebook bigger. And I consider Facebook to be an enemy of the people, along with a lot of the media.*

SEAN: So we've talked about the former president. We've talked about the current president. We've talked about the Senate. We've talked about the House. What about the Supreme Court? Is there a constitutional question here at play?

ANDREW: Yeah. So the – one of the main arguments against this piece of legislation is that it's unconstitutional to single out a private, a single private company, in a piece of legislation–

SEAN: And this is doing exactly that.

ANDREW: And this is doing exactly that, right? But the proponents argue, again, I'm not a constitutional lawyer. I'm not even a lawyer at all.  
  
SEAN: <laughs>   
  
ANDREW: <chuckles> But the proponents argue that the bill has been crafted in a way that it will withstand judicial scrutiny.  
  
SEAN: Hm.  
  
ANDREW: You know, that is their opinion. Obviously, if this were to pass and get signed into law by the president, there would immediately be litigation on it. And it could very well go up to the Supreme Court at a given point. So there could be a number of issues at play here. There could be First Amendment issues at play. It's very it's very unclear how that would shake out, because the sort of partisan divide – or the ideological divide, I should say – on the court, does not necessarily dictate how things will shake out on this particular issue, because, as you mentioned before, you've got Nancy Pelosi and Jim Jordan on the same page on this.  
  
SEAN: Mm-hm.  
  
ANDREW: Right? It is a very, very odd issue where you have these strange-bedfellows-type of alliances. And if anybody's going to try to predict which way the Supreme Court is going to go on this, you know, good luck. <laughs>

SCORING <Sunken Cruiseship Lobby Song>

SEAN: Andrew Desiderio. Punchbowl dot News on the world wide web.

Coming up on *Today, Explained*: a lawyer!

[BREAK]

*<CLIP> PELOSI: This is not an attempt to ban TikTok. This is an attempt to make TikTok better. Tic Tac –*

SEAN: *Today, Explained*. You wanted a lawyer so we got you a lawyer. Kate Ruane is the director of the Free Expression Project at the Center for Democracy and Technology. And she has strong feelings about this potential ban on TikTok.

KATE RUANE (Center for Democracy and Technology): I do. I do not like it for many, many reasons. <laughs>

SEAN: We asked her why.  
  
KATE: TikTok has estimated that it has about 150 million users in the United States right now, and this bill, if it passes, will first and foremost, harm all of TikTok's users who use the application, uh, to create, to exchange information, to get their news, to organize campaigns.

*<CLIP> TIKTOK: The message that I really wanna get home to the American government and everybody that is trying to pass this bill is that you will be destroying small businesses like us. This is our livelihood. You will be destroying the American Dream that we really believe in.*

KATE: While this bill, if it’s passed, might to some small degree lessen China's access to American data, it far from eliminates it. So the bill doesn't even solve one of the big issues that it is being posed as being necessary to solve. The United States is one of the leading countries advocating for freedom online. The United States frequently criticizes authoritarian regimes, including China, Pakistan, Russia, and Uganda when those countries restrict access to the open Internet. We have also criticized Nigeria, uh, for example, when it banned Twitter back in 2021. We condemned the ban and reiterated that, you know, the fundamental human right of free expression and access to information is a pillar of democracy and urged the country of Nigeria to reverse its decision. If the U. S. were now to put its statutory imprimatur on wholesale – what is essentially going to wind up being a wholesale ban of TikTok, because we do not like its ownership, we are going to see copycat measures around the world pretty quickly.

SEAN: Okay, so it's not just not gonna work. It's not just gonna infringe on freedom of expression in the United States. But it also makes us no better than authoritarian regimes around the world that clamp down on free speech or technology.

KATE: And that's before we get to the fact that it probably has – raises significant constitutional concerns.

SEAN: Lawmakers obviously didn't consult you before they wrote this bill, did they? Sorry, I'm assuming. <chortles>

KATE: <laughs> Lawma– I don't know who they consulted, but it could not have been many people. Because this bill was introduced on a Tuesday, and it was marked up in committee in the House on a Thursday, and then passed on a, on the, the very next Wednesday. So this thing was on a rocket ship through the, the House of Representatives.

SEAN: And this rocket ship is evidently fueled by a fear of whether China might be manipulating American public opinion or whether TikTok might be collecting Americans’ data and sharing it with the Chinese government. Are those concerns at least valid? Do we have receipts that this stuff is actually happening?

KATE: Not that I'm aware of. There is essentially no existing public evidence that we are experiencing a serious and immediate harm to national security as a result of TikTok's ownership structure and its operation within the United States. We do know that TikTok does collect Americans’ data. Just about every social media company does. That is how they make their money.

*<CLIP> SEN. ORRIN HATCH (R-UT): How do you sustain a business model in which users don’t pay for your service?  
META CEO MARK ZUCKERBERG: Senator, we run ads.*

KATE: We also know that Chinese ownership over ByteDance may, under Chinese law, provide a greater access to TikTok's data, but there is no evidence that TikTok has ever provided that data to the Chinese government. TikTok says that they have not. And then the other concern that you raised is, the one in which the United States government is concerned that the Chinese government is somehow controlling the speech of TikTok. And we have absolutely no evidence of that either.

SEAN: And this bill that's working its way through Congress doesn't do much to even address these concerns, since there is no evidence that there's any credibility to these concerns?

KATE: This bill does nothing but raise those concerns. It does not resolve the national security concerns surrounding China's access to American's data, because China can still buy it from data brokers. China can still use its own surveillance and its allies’ surveillance apparatuses. And other online entities do this as well. Other online entities like Meta and Google and X – which used to be Twitter – collect, keep and capitalize off far more data than they need to provide the services that their users are asking for. And they use that data to make money. And sometimes in ways that cause our devices to leak data every time we're served an ad online.

*<CLIP> CBS: …The federal government is buying your data from data brokers. Most of it is sold by vendors claiming the data is anonymous. But experts argue: in today’s digital world, it is easy to reveal personal information.*

KATE: So this bill does nothing to address that concern. It also does nothing to address the concern that – of Chinese propaganda. If China is indeed using TikTok to try to get its message out there, it is using other social media services in The. Same. Way.  
  
SEAN: Hm.   
  
KATE: It is using Meta, it is using Google, it is using all of those social media services in an attempt to manipulate public opinion.  
SEAN: If this law went into effect, it feels like there's going to be a lot of TikTok users in this country who would be very angry if they could no longer update or even download the app. If the law is passed, is it likely to get challenged in the courts?

KATE: If history is our guide here, yes, the law will be immediately challenged. TikTok, when it was banned in Montana, sued the state of Montana, along with a number of TikTok's users in Montana.

*<CLIP> CBS: A federal judge has temporarily blocked the state of Montana’s ban on the social media app, TikTok.*

KATE: I would expect the same thing to happen here, either by TikTok itself or by a group of its users. A court is going to have to determine that a forced sale is necessary to prevent extremely serious immediate harm to national security. However, there is no public evidence of a national security threat that rises to this level. So the government will have to somehow offer that evidence to a court, and one of my concerns with that is that the government will offer those concerns to the court, but not make those concerns in any way public. And we're seeing something very similar right now, where members of Congress are getting confidential briefings about the dangers of TikTok, but the information isn't being made public. So there is no way for the public to evaluate whether this is true or not. When it comes to suppressing speech, that is not how this is supposed to work. We are supposed to understand what the government's compelling interests are, and how its responses to those compelling interests are tailored to addressing them.

SEAN: Had Congress called you up last week, the week before, and said, ‘We really want to do something here, we're really concerned about American privacy’, what would you have said? What would you have had them do instead?

KATE: I would have had them pass the American Data Privacy and Protection Act. It is comprehensive, bipartisan consumer privacy legislation.

*<CLIP> REP. LARRY BUCSHON (R-IN): I believe today’s aims on the American Data Privacy Protection Act does include common sense data and privacy measures.*

KATE: It would meaningfully address many of the concerns that are being raised about TikTok right now by preventing TikTok from collecting more data than it needed to collect to provide its service and preventing TikTok from sharing it with unauthorized sources, including the Chinese government without authorization. Those are two things that are meaningful protections for Americans, for our data, that would apply not just to TikTok, but to every other company that engages in these concerning data-collection and -use practices.

SEAN: So why didn't Congress get together and pass that bill instead of this one?

KATE: That's a question for them!

SCORING <Sunken Cruiseship Lobby Song>

KATE: I don't really understand what is taking so long. There is consensus about the need for comprehensive consumer privacy legislation. There is bipartisan support in both the house and the Senate for the ADPPA. I am baffled by what the delay here is. We have known this is a security risk, a privacy risk for Americans for 10 years now.

SCORING BUMP

SEAN: That was Kate Ruane of the Center for Democracy and Technology. Kate told us to ask Congress why they hadn’t passed the American Data Privacy and Protection Act. So we called up the bill’s co-sponsor, Representative Jan Schakowsky, and asked her why we’re trying to ban TikTok instead of passing broader privacy protections for Americans.

CONGRESSWOMAN JAN SCHAKOWSKY (D-IL): I'll tell you why: China. China. China.

SCORING OUT

SCHAKOWSKY: There is this great fear that is being used – and I'm not going to contradict that – about the role of China, that this is somehow of an urgent national security issue. This is the most important thing that we do to protect ourselves from China. So there was the ‘scare’ aspect there. And so that bill, which is, you know, pretty narrow against our adversaries, does nothing to really move the Big Tech companies – the Meta, the Twitter – and we need to go further. We need to act right now!

SCORING BACK IN

SEAN: Congresswoman Jan Schakowsky. Thanks, Jan. She, by the way, voted NAY on the TikTok bill.

Today’s episode was produced by Amanda Lewellyn and Jesse Alejandro Cottrell. It was edited by Amina Al-Sadi and mixed by David Herman. Laura Bullard fact checked with help from Matthew Collette and Hady Mawajdeh.

*<CLIP> PELOSI: This is not an attempt to ban TikTok. This is an attempt to make…*

SEAN: *Today, Explained.  
  
 <CLIP> PELOSI: ... better – Tic Tac Toe. A winner.*

SCORING OUT

[10 SECONDS OF SILENCE]