Casey Hutchinson

ITEC 4205

Research Paper

TikTok is up for banning.

Due 4/28/2024

The social media platform ‘TikTok’ has been a hot button topic for several years for both the public and for government officials. Claims around TikTok’s security and links to the Chinese government have drawn many detractors to the social media company, and privacy concerns have kept many people from downloading the app on their own devices. Those who have expressed concern have been successful in their efforts over the years to get their views heard, to the point where local governments and now the federal government have decided they needed to act. Some states have already passed bills to create their own TikTok bans on government devices or enacted statewide bans, and over the course of writing this paper the U.S. congress has passed their own bill to enact a national TikTok ban if the company is not sold by the current China based ownership - which President Biden has now officially signed into law.

TikTok bans on federal devices began as early as August 2020, with Florida chief financial officer Jimmy Patronis becoming the first to officially ban the app by prohibiting the download, installation, or use of TikTok on any devices belonging to the Department of Financial Services and within DFS facilities (Office of Comm. Florida CFO, 2020). Congress passed a similar ban on federal devices in 2022 (Roush, 2022). The common concern behind these bans that has now been voiced among legislators in support of a national TikTok ban is that its current majority owners, ByteDance Ltd - headquartered in Beijing (He, 2024), represents a national security risk (Freking et al., 2024). Mike Gallagher, at the time a house representative for Wisconsin and author of the original congressional ban bill, expressed concern that TikTok “could be weaponized to inject disinformation into our system” (Freking et al., 2024). This is a legitimate concern in my opinion, and we saw how impactful disinformation and misinformation could be during the height of the COVID-19 pandemic. According to report done by Morgan Lundy, one of the reason’s TikTok is ripe for the spread of misinformation is the way automated flagging systems are setup: “Most automated misinformation flagging and online health research are predominately and limitingly text-based” (2023). Although TikTok’s own community guidelines does “not allow inaccurate, misleading, or false content that may cause significant harm to individuals or society, regardless of intent” (TikTok, 2023), it’s hard to argue that misinformation was an especially tricky problem during the COVID-19 pandemic. Some lawmakers in recent months have also begun targeting TikTok for spreading anti-Israeli propaganda. Speaking to Jewish News Syndicate, Representative Josh Gottheimer (Democrat – New Jersey) claimed that “Using social media, including China-owned TikTok, Russia, Iran and China have the ability to control what an entire generation of American children see and consume every day… they’re boosting disinformation, hate, Holocaust-denial conspiracy theories” (Swindle, 2023). Given what I learned from Morgan Lundy’s report and how TikTok can be susceptible to misinformation, it’s difficult to argue that bad actors would want to flood the platform with their own agenda. I believe it’s also fair to discuss whether the government and our representatives are necessarily concerned for our data privacy and wellbeing, or if they are using the current situation to boost their own political agendas given that current data protections in the U.S. are still behind many countries in the world.

The concern that has prompted federal action towards a nationwide ban, however, is the suggestion that the current ownership structure would be obligated to turn over the data of U.S. consumers if requested from the Chinese government. This concern is largely based on a set of national security laws in China that “compel organizations to assist with intelligence gathering” (Freking et al., 2024). This was the premise behind former president Donald Trump’s attempted ban in 2020. Donald Trump’s ban was issued by executive order citing his powers under the International Emergency Economic Powers Act (IEEPA), but the former president had his ban shot down in court after TikTok filed a sued to enjoin the ban. The U.S. District Court ruled in favor of TikTok citing that the executive order exceeded the president’s authorities under the IEEPA for two reasons: 1) because “TikTok’s data transmissions constituted ‘personal communications which do not involve anything of value’ and 2) TikTok content amount to protected ‘informational materials’” (Horowitz & Check, 2022).

At the original time of writing, congresses most recent action had occurred on April 20th, 2024, where the U.S. House of Representatives passed a bill – included as part of a larger bill centered on foreign aid for Ukraine and Israel – that sets in motion the potential ban of TikTok nationwide (Jalonick & Hadero, 2024). Just four days later, on April 24th, President Biden signed the bill into law (Picciotto, 2024). This bill, however, was not the original version of the TikTok ban that the house had previously passed in late March. The original version of the bill was held up in the senate because of a six-month selling deadline for the current owners, ByteDance, to sell its shares of the company or face a national ban. Some senators argued that the timeline was too short to allow for what would be a prolonged sales process. The newer version of the bill granted the company nine months to sell its shares, and even a provision to add three more months if a sale was in progress (Jalonick & Hadero, 2024). Although the bill has passed through the House, it still needed senate approval. Although some prolonged deliberation was expected, given that this version of the TikTok ban is attached to the larger foreign aid package, it was ultimately passed by the senate quicker than a standalone bill would have and moved on for President Biden’s signature of approval. The senate technically could have moved to separate the TikTok ban from the foreign aid bill, but my understanding is that it would have required both of the “new bills” to go back to the house for approval, something that congress was apparently not willing to do.

My original position was that senate approval was not necessarily the greatest hurdle left for a national TikTok ban, and I think the series of events that has transpired has backed up those beliefs. The legal challenges that will inevitably follow the signing of this bill into law will be much larger hurdles, and TikTok’s CEO Shou Zi Chew has already posted videos confirming they plan to challenge this case. While they haven’t explicitly ruled out a sale of the platform, it does not appear from the CEO’s post that they are inclined to go that route. If we take what we’ve learned from other court cases involving TikTok bans, we could certainly reason that they may be successful with their challenges. As mentioned previously regarding Donald Trump’s attempted TikTok ban, TikTok successfully sued in court and that ban was unsuccessful. Given that the ruling was brought down citing a misuse of the then president’s executive powers, this current version of the ban enacted by congress won’t face the same legal precedent if challenged. A more suitable precedent would likely be found in Montana. In May 2023, Montana governor Greg Gianforte signed into law the first statewide TikTok ban that would have gone into effect on January 1st of this year, saying in a statement “The Chinese Communist Party using TikTok to spy on Americans, violate their privacy, and collect their personal, private, and sensitive information is well-documented” (Montana Governor’s Office, 2023). Many states supported Montana’s passing of this law hoping to pass similar TikTok bans of their own if the law was eventually upheld and allowed to go into effect. Ultimately, Montana’s statewide ban was preliminarily shot down by a federal judge in November 2023, citing First Amendment violations, with an official determination likely coming sometime in 2024 (Allyn, 2023). It’s important to note the language used by the Governor is his statement. In the official ruling handed down by U.S. District Judge Donald Malloy, the judge was pointed in his assessment of the actual basis for Montana pushing the ban. Despite Montana claiming security and privacy concerns for its citizens are the primary concern, the judge wrote, “the current record leaves little doubt that Montana’s legislature and Attorney General were more interested in targeting China’s ostensible role in TikTok than with protecting Montana consumers” (Malloy, 2023). A similar position is also held by those who feel lawmakers are claiming TikTok is being used to push anti-Israeli propaganda to further their own political agendas. Malloy also challenged whether Montana as a state had authority of issues regarding foreign affairs – this was likely the portion of the judge’s ruling that was of most interest to other states interested in enacting their own versions of the bill. State authority will not be a hurdle if congress ultimately passes the current TikTok ban, but the Montana case does provide interesting insight into what a legal battle would entail on freedom of speech grounds. Judge Malloy points out that “TikTok users voluntarily provide their personal data, despite suggesting the app was stealing the data of users” and that Montana justified its ban under a “paternalistic argument” (Allyn, 2023). Several TikTok users have also voiced their own first amendment concerns pertaining to the ban, and many could put together a lawsuit of their own to fight against the ban.

With the national TikTok ban now officially enacted, we must look at what it will mean if it is ultimately upheld after legal challenges. Users would be forced to find other social media platforms to consume content – which could be tricky depending on what type of content they typically engage with. In a study conducted by Pew Research Center, it was found that in 2023 some 32% of young adults between the ages of 18-29 get most of their news from TikTok (Matsa, 2023). Some might argue that given TikTok’s reputation for being a hotbed of misinformation that this might ultimately be a good thing but given the growing distrust around traditional media many people in this age group might not feel like they have any trustworthy options. Even in looking towards other social media platforms, there aren’t particularly appealing options. Twitter is still a relatively popular platform for news consumption but following the takeover by Elon Musk and a change in community guidelines, trust in the validity of posts and those who post it has decreased among its users. Content creators face a similar problem of having to find a new home, but their search could be much more complicated – if not impossible. I spoke to a local content creator about the potential ban and how it would influence what she currently does. She currently manages the Instagram and TikTok social media accounts for a local business, but also uses TikTok as a content creator to promote and sell beauty products and clothing of her own as a source of additional income. Her biggest concern was losing the reach that TikTok and its unique algorithm gives her. She says that her work TikTok account doesn’t accumulate traffic at a significant rate (according to her, the work she does has a very specific target audience), but she says that her personal TikTok videos go viral on a semi-regular basis. She says that one of her more viral videos garnered her over 20,000 followers in a just a couple of days – many of whom were then able to connect to her other platforms like Instagram, Shopify, or Snapchat where she ultimately finds her more reliable sales. She’s worried about her ability to find new customers without TikTok’s reach, and states that the ability to go viral on other platforms just doesn’t exist on other social media platforms. While content creators are worried about their own financial implications, it’s fair to point out that other social media platforms may lose valuable content if TikTok were banned in the U.S. TikTok videos are regularly re-posted on other platforms like Twitter or YouTube, both of whom allow their content to be monetized. Regulators face their own issues if a national ban is enacted. The aforementioned first amendment arguments are likely to be at the forefront of TikTok’s legal arguments, but it could be difficult to altogether wipe TikTok off the proverbial map. India enacted their own TikTok ban in 2020, but many users turned to VPN’s or altering the location on their phone to bypass regional restrictions (Guynn, 2024).

As IT professionals we can learn many things from the TikTok ban and what led us here. I think firstly, whether you are in support of or against this ban, the importance of data privacy and security should be prioritized. We have learned in other modules in this class about several broad protections that exist, like the European Union’s GDPR. Those who are familiar with GDPR like me, wonder why the U.S. doesn’t take a similar approach to data privacy across the board. Second, I think given what we know and have learned about disinformation and misinformation, we know that we must take an active approach in finding ways to combat them before they become a problem. Perhaps it’s unfair to point specifically at TikTok in this situation, as there was no way to know a global pandemic was on the horizon or how the ensuing infodemic would take rise on their platform because of it, but they likely did know about the tools currently available to combat misinformation. Since most of these tools are text-based, and knowing the difficulty already established social media platforms have had, perhaps the ethical decision would have been to delay a release of the app until a more thorough avenue for combating misinformation in video form was established. Current IT professionals and we as future IT professionals remain uniquely placed to push for this kind of practice to ensure that current and future generations have better tools in place than we did, while also pushing for greater reform from the government to combat data privacy concerns from the top, instead of taking reactionary steps – like banning one of the most popular social media platforms in the world.

References:

Lundy, M. (2023). TikTok and COVID-19 Vaccine Misinformation: New Avenues for Misinformation Spread, Popular Infodemic Topics, and Dangerous Logical Fallacies. *International Journal of Communication, 17*, 3364-3387.

Horowita, B. & Check, T. (2022). TikTok v. Trump and the Uncertain Future of National Security-Based Restrictions on Data Trade. *Journal of National Security Law & Policy, 13(1)*, 61-111.

Office of Communications, Florida Chief Financial Officer. (2020). *CFO Jimmy Patronis Bans TikTok From DFS Devices & Facilities*. <https://myfloridacfo.com/news/pressreleases/prior-press-releases/archive-details/2023/09/20/cfo-jimmy-patronis-bans-tiktok-from-dfs-devices-facilities>

Roush, T. (2022, December 23). Congress Passes Bill To Ban TikTok From Federal Devices. *Forbes*. <https://www.forbes.com/sites/tylerroush/2022/12/23/congress-passes-bill-to-ban-tiktok-from-federal-devices/?sh=36429f325bf3>

He, L. (2024, March 28). Wait, is TikTok really Chinese? *CNN*. <https://www.cnn.com/2024/03/18/tech/tiktok-bytedance-china-ownership-intl-hnk/index.html#:~:text=The%20LLC%20is%20controlled%20by,CEO%20is%20Singaporean%20Shou%20Chew>.

Freking, K., Hadero, H., & Jalonick, M. (2024, March 13). House passes a bill that could lead to a TikTok ban if Chinese owner refuses to sell. *AP News*. <https://apnews.com/article/tiktok-ban-house-vote-china-national-security-8fa7258fae1a4902d344c9d978d58a37>

TikTok. (2023, March). *Integrity and Authenticity*. <https://www.tiktok.com/community-guidelines/en/integrity-authenticity/> (2024, April 20)

Swindle, D. (2023, November 9). Congress targets TikTok to counter social-media propaganda against Israel. *Jewish News Syndicate*. <https://www.jns.org/congress-targets-tiktok-to-counter-social-media-propaganda-against-israel/>

Jalonick, M., & Hadero, H. (2024, April 20). The House votes for possible TikTok ban in the US, but don’t expect the app to go away anytime soon. *AP News*. <https://apnews.com/article/tiktok-us-ban-sale-china-congress-de12b4d22aa8095e62cb0982a6e62235>

Picciotto, R. (2024, April 24). Biden signs Israel, Ukraine, TikTok bill into law. *CNBC*. <https://www.cnbc.com/2024/04/24/biden-signs-israel-ukraine-tiktok-bill-into-law.html>

Montana Governor’s Office. (2023, May 17). Governor Gianforte Bans TikTok in Montana. *State of Montana Newsroom*. <https://news.mt.gov/Governors-Office/Governor_Gianforte_Bans_TikTok_in_Montana>

Allyn, B. (2023, November 30). Federal judge blocks Montana’s TikTok ban before it takes effect. *NPR*. <https://www.npr.org/2023/11/30/1205735647/montana-tiktok-ban-blocked-state>

Malloy, D. (2023, November 30). *TikTok Inc. v Knudsen*. <https://www.documentcloud.org/documents/24179554-tiktok-inc-v-knudsen>

Matsa, K. (2023, November 15). *More Americans are getting news on TikTok, bucking the trend seen on most other social media sites*. <https://www.pewresearch.org/short-reads/2023/11/15/more-americans-are-getting-news-on-tiktok-bucking-the-trend-seen-on-most-other-social-media-sites/>

Guynn, J. (2024, April 19). Is the US banning TikTok? What a TikTok ban would mean for you. *USA Today*. <https://www.usatoday.com/story/money/2024/04/19/tiktok-ban-bill-law/73377253007/>