



WHAT YOU NEED TO KNOW ABOUT The Fight Over TikTok

PRO POINTS

- **Cracking down on Chinese technology companies** has been a cornerstone of President Donald Trump's tough tone toward Beijing. The high-profile targets include Huawei, ZTE, WeChat and ByteDance, TikTok's parent company.
- **The Trump administration has cited national security** as the reason for its actions, specifically the concern that Chinese companies must be willing to share data with the country's government. But the president has suggested restrictions could be relaxed in exchange for trade concessions.
- **In August, Trump signed an executive order that, if fully implemented, would effectively bar TikTok from operating in the United States, where the video-sharing app has more than 100 million users.**
- **But the administration's efforts to cripple TikTok have repeatedly been overturned in the courts.** Now, President-elect Joe Biden will likely be the one to decide how much of a threat TikTok poses and what to do about it.

HOW WE GOT HERE

The 117th Congress will include at least 51 freshman representatives and seven freshman senators, including gains for Republican women and a record-breaking 24 Black women elected.

President Donald Trump issued two executive orders targeting TikTok in August, both designed to address concerns that its alleged ties to the Chinese government pose a national security threat.

His first order, on Aug. 6, directed the Commerce Department to impose restrictions on TikTok's business operations in the U.S. In September, the department moved to ban TikTok from U.S. app stores, preventing users from downloading the app. The department also announced restrictions that curtailed TikTok's access to internet hosting services, content delivery services and other technologies necessary for the app to function.

But federal courts have prevented all those restrictions from taking effect. TikTok successfully sued to suspend the app store ban. A group of TikTok creators filed a separate lawsuit against the remaining restrictions and a judge hit pause on those as well.

Trump's TikTok takedown

The president signed a pair of executive orders in August that targeted video-sharing app TikTok and its Chinese parent company ByteDance. Here's the breakdown on those orders:

'Executive Order on Addressing the Threat Posed' by TikTok

- This order called for the Commerce Department to develop restrictions on ByteDance's business operations in the U.S.
- Commerce later determined that TikTok should be banned from U.S. app stores and cut off from vital technologies and services.
- Those penalties have been temporarily blocked by the courts and further legal action is pending.

'Executive Order Regarding the Acquisition of Musical.ly' by ByteDance Ltd.

- This order compelled ByteDance to divest its U.S. operations, essentially forcing it to sell TikTok U.S. to an American buyer.
- A deal that would give Oracle, Walmart and other U.S. investors ownership in TikTok's U.S. business has been proposed but not yet approved.
- The divestiture deadline was extended from Nov. 12 to Nov. 27, and a legal challenge is pending in court.



In the second executive order, on Aug. 14, Trump instructed ByteDance to divest its U.S. operations no later than Nov. 12. The move essentially forced TikTok U.S. to line up an American buyer and set off speculation about who would snap up the popular app.

Microsoft and Oracle emerged as the most likely suitors. Ultimately, ByteDance chose a deal that would give Oracle and Walmart a chunk of its business. Trump voiced initial support for the deal, but walked that back a few days later, saying the deal would only be approved only if Oracle and Walmart have “total control” of TikTok.

Most recently, TikTok sued to stop Trump’s second executive order from being enforced. The company said the Trump administration has been unresponsive in recent weeks to its attempts to strike a deal and that a 30-day extension offered in the executive order has not been activated. The Trump administration responded by shifting the deadline from Nov. 12 to Nov. 27.

WHAT’S NEXT

Trump could still take action on TikTok before the end of his term. The Trump administration is currently appealing the court rulings that halted the president’s first executive order. And it continues to negotiate the sale of TikTok’s U.S. business, with the looming threat of unspecified enforcement action from the Justice Department if it doesn’t work out.

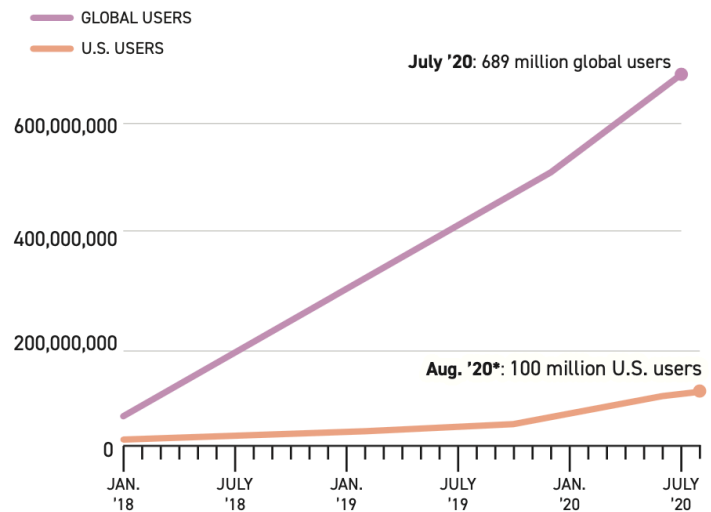
For its part, TikTok has continued to pursue a resolution to the Trump administration’s security concerns. In a legal filing last week, attorneys for TikTok noted that its parent company put forth its latest proposal on Nov. 6. It called for “creating a new entity, wholly owned by Oracle, Walmart and existing U.S. investors that would be responsible for handling TikTok’s U.S. user data and content moderation.” Treasury Secretary Steven Mnuchin subsequently said the sides still have not come to an agreement but talks are ongoing.

There’s still time for such a deal to get done, at least with U.S. approval. The Trump administration could give the deal its blessing before leaving office, ending the months-long ordeal that has kept TikTok’s future in doubt. Whether Chinese regulators will sign off is another question. Officials in Beijing have viewed the entire ordeal as a strong-arm tactic by Trump and may not be inclined to relinquish one of their global tech success stories.

If current trends continue, however, actions against TikTok will continue to get punted pending court decisions and President-elect Joe Biden will ultimately decide the country’s strategy on the company. He will have to decide whether to maintain, modify or revoke Trump’s executive orders.

The rapid rise of TikTok

The video-sharing app has added tens of millions of monthly active users in the U.S. since 2018 and even more around the globe.



*The number of users in August is based on a quarterly usage number. All other numbers are based on monthly active users.

Source: TikTok legal filing, Sept. 2020



He could call on federal agencies to rescind penalties placed on the company or decline to defend them in court. A spokesman for the incoming president declined to comment.

On the campaign trail, Biden expressed concern about China as an economic and technological competitor. “What I’d make China do is play by the international rules,” Biden said during the last presidential debate. He lambasted Beijing’s practice of forcing American companies into joint partnerships and harvesting their intellectual property.

Unlike Trump, Biden has pledged to counteract China with help from other foreign governments, rather than through unilateral action.

POWER PLAYERS



Vanessa Pappas,
interim global head,
TikTok

Pappas was promoted to interim global head of TikTok after the company’s still-new American CEO, Kevin Mayer, resigned in August. The former YouTube executive has since been tasked with navigating the political turmoil while keeping the app’s users and creators calm.

Erich Andersen, *global general counsel,* **TikTok**

Andersen is TikTok’s chief attorney at the table when hammering out a deal to sell the company or interfacing with regulators in Washington about national security concerns. He joined TikTok in January after 25 years as a lawyer for Microsoft.

John Hall, *partner,* **Covington & Burling**

In TikTok’s myriad lawsuits, Hall is the one making the case. Chair of Covington & Burling’s global litigation practice, Hall has successfully persuaded a federal judge to put part of Trump’s first executive order on hold.



Sen. Marco Rubio
(R-Fla.)

Congress has plenty of TikTok critics. But Florida’s senior senator may have the most powerful perch from which to take aim at the company as the acting (and likely permanent) chair of the Senate Intelligence Committee — so long as Republicans keep control.



Steven Mnuchin,
Treasury secretary

Whether TikTok can resolve its issues before the Trump administration leaves Washington hinges in large part on Mnuchin. He sits at the helm of the inter-agency Committee on Foreign Investment in the U.S. and has had Trump’s ear throughout this saga.



The Biden
administration

The makeup of Biden’s cabinet will have significant influence on TikTok’s future. The people installed at the top of the Commerce, Treasury and Judiciary departments, not to mention Biden himself, will pick up wherever the current crew stops.