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INSIGHT

TikTok: Proposed Legislation and Implications

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On March 13, 2024, the House of Representatives passed the Protecting Americans from Foreign Adversary Controlled Applications Act (H.R. 7521). This bill would make it unlawful for any entity "to distribute, maintain, or update" a "foreign adversary controlled application" (hereinafter referred to as a "covered app") within U.S. jurisdiction, unless a "qualifying divesture" occurs. The bill specifically identifies those operated by ByteDance, Ltd., and TikTok as foreign controlled applications. On April 20, 2024, the House passed an amended version of H.R. 7521 as Division D of H.R. 8038, the "21st Century Peace through Strength Act," which is discussed in below sections.

Background on TikTok

The People's Republic of China (PRC) government holds an equity stake and a board seat in the entity that conducts ByteDance's core business in China, Beijing ByteDance Technology. Due to this, TikTok has faced scrutiny from policymakers for potential privacy and national security risks. Critics allege the PRC influences ByteDance's content policy or may compel it to turn over user data in accordance with PRC laws that codify the government's ability to compel data access and require data localization in China. Shou Chew, Chief Executive Officer, TikTok Inc., has denied these allegations his March 23, 2023, testimony before the U.S. House Committee on Energy and Commerce.

TikTok is banned on federal executive agency devices under the Consolidated Appropriations Act, 2023 (P.L. 117-328). Many states have banned the app on some or all state-owned devices. In May 2023, Montana passed a state-wide ban on TikTok, but the ban was blocked by a district court in November 2023.

First Amendment and other legal issues associated with a forced divestiture or ban of TikTok and similar platforms are discussed in other CRS products.

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Overview of Division D of H.R. 8038

Forced Divestiture

Division D of H.R. 8038 would subject any entity that distributes, maintains, or updates a covered app to civil penalties unless a "qualifying divestiture" takes place within 270 days of the bill's enactment (it had been 180 days in H.R. 7521); and added the ability for the President to grant a one-time extension of 90 days if certain requirements are met. For TikTok to continue to operate within U.S. jurisdiction through divestiture, ByteDance would likely need to sell its U.S. operating subsidiaries to an entity that is outside PRC jurisdiction.

PRC officials have stated the PRC government would oppose a forced sale of TikTok, with China's Ministry of Foreign Affairs asserting on March 13, 2024, that legislative proposals that would prohibit a "foreign adversary controlled application" from operating in the United States use national security as a pretext "to willfully suppress other countries' superior companies." Several analysts observe that such comments are at odds with the PRC government's own policies that prohibit U.S. and other foreign social media companies from operating in China. The PRC government could leverage a wide range of tools, including export controls (social media algorithms are a controlled technology under China's Export Control Law), its equity stake in ByteDance's China operations, or China's Data Security Law, to exert pressure on ByteDance to avoid a sale.

A divestiture consideration may be who would be willing and able to purchase the platform. TikTok would likely be sold at a high price, given its large number of users and potential for future growth in revenue. ByteDance was reportedly valued at $268 billion in a company share buyback in December 2023; however, the value of the U.S. version of TikTok is uncertain.

A high selling price may limit the entities that are able to purchase TikTok. Some large technology companies—such as Apple, Google, and Meta—might be able to purchase TikTok, although any proposals to do so might raise antitrust concerns.

Technical Requirements and Uncertainties of U.S. Ban

Section 2 of Division D of H.R. 8038 creates technical requirements for several types of online service providers. Violations could lead to civil penalties as enforced by the Attorney General.

1. **Entities distributing software apps through an online marketplace.** For example, a mobile app store operated by Apple Inc. or Google LLC would need to remove the covered app or inhibit U.S. users from finding, downloading, installing, or updating the app.
2. **Entities hosting the covered app.** For example, a cloud computing provider or a content delivery network (CDN) provider would need to stop hosting or delivering the covered app's content or inhibit U.S. users from accessing the app's content and services.
3. **Entities that own or control the covered app.** For example, TikTok Ltd. would be required to provide "all the available data related to" a U.S. user's account (including posts, photos, and videos) to the requesting user before the user loses access to the app. Such data is intended to enable the user to transfer the content to "alternative applications."

Division D of H.R. 8038 does not address the implications of U.S. users accessing a covered app through various services that may bypass geographic restrictions. For example, if a user physically located in the United States uses an IP address masking technology (e.g., a Virtual Private Network) to access a covered app by appearing to be located outside of the United States or through services outside the United States, it is unclear what entities, if any, could be held liable for app distribution.

Additionally, if individuals request their user data from a covered app operator, some might not have sufficient equipment to handle and secure the requested information, which may create privacy or data security risks if the released data contains personally identifiable information.

Users and Competition

The effect Division D of H.R. 8038 on users and competition would depend on a covered company's response. If a company chooses to pursue a divesture, it might not affect users or competition. The effects would depend on the purchasing entity. For example, if the purchasing entity operates an app similar to the divested app, it could reduce competition. The purchasing entity could also stop offering certain services, affecting users.

If a company chooses not to divest its app, prohibiting the app from providing U.S. services might have a financial effect on U.S. businesses that use the platform to advertise products, and individuals who are paid to sponsor products because they have a large number of followers (i.e., influencers). Prohibiting the app from providing services might also reduce competition, depending on the app's market share. TikTok estimates that there are 7 million U.S. businesses and 170 million active U.S. users on its platform. Some influencers are reportedly lobbying Congress to reject Division D of H.R. 8038. Some TikTok users might switch to other social media platforms, particularly those that offer short-form videos similar to TikTok, such as Meta's Instagram Reels and Google's YouTube Shorts, potentially increasing their respective market shares.

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