

## TikTok No More: A Look at How (and Why) TikTok's Time Could Come to an End

*In early 2019, Trump attempted to ban social media phenomenon, TikTok, claiming that the platform represented a “national emergency” under IEEPA and posed a significant threat to “national security,” subjecting it to CFIUS review and possible divestiture. While such statutory authority has existed for decades, in recent years, its reach has expanded to encompass regulation of “new” sectors that dominate the modern world, such as social media networks and the likes of TikTok.*

The clock was ticking. Over the span of 90 days, America would either see its beloved app, TikTok, take on new ownership or disappear from users' phones nationwide.<sup>1</sup> Unless the country found a way to hit snooze, the social media phenomenon would become a thing of the past in well under fifteen seconds.<sup>2</sup> Although the battle over TikTok took the country by storm, let's rewind to the start of TikTok's time to understand how it met its fate—albeit, still undecided—and what this means for the future of social media platforms alike.

TikTok's roots trace back to a lesser-known app, previously called Musical.ly.<sup>3</sup> Betting on its potential in the US market, Chinese tech company ByteDance unveiled a similar platform, Douyin, in China.<sup>4</sup> As Douyin's popularity quickly skyrocketed, ByteDance saw money signs in a global expansion, deciding to engulf Musical.ly into what we now know as TikTok.<sup>5</sup> However, following its sudden rise to the top, TikTok became the target of national security concerns.<sup>6</sup> Specifically, fear mounted over the amount of data TikTok collected on users and the possibility that TikTok's US counterpart shared data with the company's owner, or worse, the Chinese government.<sup>7</sup> Thus, President Trump set out on a journey to end TikTok's time.

In order to do so, the Administration issued two executive orders over the span of a week to limit the app's operations.<sup>8</sup> Initially, Trump issued an International Emergency Economic Powers Act (IEEPA) sanction against TikTok to ban “all transactions” on the basis that TikTok presented a “national emergency.”<sup>9</sup> The emergency was allegedly justified by data collection, censorship, and privacy concerns.<sup>10</sup> Although this Order would allow *existing* users to continue their TikTok reign, it banned any software updates and all future TikTok downloads.<sup>11</sup>

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<sup>1</sup> <https://www.npr.org/2020/08/14/902764797/trump-TikTok-must-be-sold-in-90-days-cites-credible-evidence-of-security-threat>.

<sup>2</sup> <https://www.digitaltrends.com/mobile/what-is-TikTok/>.

<sup>3</sup> <https://www.bbc.com/news/technology-53640724>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> <https://www.cnn.com/2020/07/09/tech/TikTok-security-threat/index.html>.

<sup>7</sup> <https://www.nytimes.com/2020/08/03/technology/TikTok-bytedance-us-china.html>.

<sup>8</sup> <https://www.federalregister.gov/documents/2020/08/11/2020-17699/addressing-the-threat-posed-by-tiktok-and-taking-additional-steps-to-address-the-national-emergency>;  
<https://www.federalregister.gov/documents/2020/08/19/2020-18360/regarding-the-acquisition-of-musically-by-bytedance-ltd>.

<sup>9</sup> <https://www.federalregister.gov/documents/2020/08/11/2020-17699/addressing-the-threat-posed-by-tiktok-and-taking-additional-steps-to-address-the-national-emergency>.

<sup>10</sup> <https://www.insideedition.com/is-TikTok-safe-concerns-about-data-privacy-and-censorship-abound-59360>.

<sup>11</sup> <https://www.businessinsider.com/how-the-TikTok-ban-in-the-us-works-2020-9>.

Shortly thereafter, Trump issued another Order, throwing TikTok a lifeline.<sup>12</sup> Citing authority under the Defense Production Act and CFIUS, the Committee on Foreign Investment in the United States, Trump demanded TikTok completely unwind its 2017 acquisition of Musical.ly.<sup>13</sup> Again, the reasoning—TikTok posed a “national security” threat.<sup>14</sup> Thus, the company had 90 days to either sell, spin-off its US business, or be done for good.<sup>15</sup> Essentially, if TikTok did not abide, the orders would render its application nonexistent.

Frustrated with its pending demise, TikTok fired back, filing suit against Trump in the US District Court for the District of Columbia to block the Administration’s ban of new downloads and updates.<sup>16</sup> TikTok contended that Trump’s reasoning to retaliate against the platform was pretextual—his goal was simply to ban his virtual enemy.<sup>17</sup> TikTok had sparked boycotts of Trump’s rallies during his presidential campaign, and the company was adamant that his real motivation was political, a part of his broader campaign against China.<sup>18</sup> Even more concerning, TikTok argued the restrictions infringed upon free speech, deprived TikTok of their due process rights, overreached presidential authority under IEEPA, and violated the APA.<sup>19</sup>

To Trump’s dismay, TikTok was granted reprieve. The day the preliminary ban was to take effect, Judge Nichols granted TikTok’s Motion for Preliminary Injunction to halt the app’s ban. The Court reasoned that TikTok fell under an exception to IEEPA, stripping a president of any authority over “informational materials” and “personal communications.” Later, the Court issued another preliminary injunction with regards to the remaining transactions prohibited by the bans, finding that that TikTok was likely to succeed on the merits of its IEEPA *and* APA claims.

Now, with new President Joe Biden, the case remains in limbo. However, commentators continue to speculate as to the illegality of a TikTok ban and the ramifications the ensuing dilemma has for other social media platforms, like Facebook, Twitter, and other networks that similarly amass immense amounts of data on users.<sup>20</sup> Although TikTok is owned by a Chinese company, its data storage looks no different than endless other platforms we use every day.<sup>21</sup>

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<sup>12</sup> <https://www.federalregister.gov/documents/2020/08/19/2020-18360/regarding-the-acquisition-of-musically-by-bytedance-ltd>; <https://www.theverge.com/2020/8/14/21369753/bytedance-TikTok-trump-china-app-privacy-90-days>.

<sup>13</sup> <https://www.federalregister.gov/documents/2020/08/19/2020-18360/regarding-the-acquisition-of-musically-by-bytedance-ltd>.

<sup>14</sup> *Id.*

<sup>15</sup> <https://www.theverge.com/2020/8/14/21369753/bytedance-TikTok-trump-china-app-privacy-90-days>.

<sup>16</sup> TikTok Inc. v. Trump, No. 20-cv-02658, 2020 WL 5763634 (D.D.C. Sept. 27, 2020).

<sup>17</sup> <https://variety.com/2020/digital/news/TikTok-sues-trump-administration-exceeds-legal-authority-1234747191/>.

<sup>18</sup> *Id.*

<sup>19</sup> <https://www.theverge.com/2020/8/10/21358505/trump-TikTok-wechat-tencent-bytedance-china-ban-executive-order-legal-sanctions-rules>; <https://www.engadget.com/trumps-threat-to-ban-tik-tok-might-be-legal-but-its-super-shady-203026097.html>; TikTok Inc. v. Trump, No. 20-cv-02658, 2020 WL 5763634 (D.D.C. Sept. 27, 2020).

<sup>20</sup> <https://www.wsj.com/articles/TikTok-user-data-what-does-the-app-collect-and-why-are-u-s-authorities-concerned-11594157084>; <https://www.bloomberg.com/news/articles/2020-07-14/TikTok-s-massive-data-harvesting-prompts-u-s-security-concerns>.

<sup>21</sup> <https://www.wsj.com/articles/TikTok-user-data-what-does-the-app-collect-and-why-are-u-s-authorities-concerned-11594157084>; <https://www.bloomberg.com/news/articles/2020-07-14/TikTok-s-massive-data-harvesting-prompts-u-s-security-concerns>.

Does this mean they are up next for scrutiny? Will this unprecedented expansion of presidential authority under IEEPA and CFIUS continue to regulate our beloved social networks? Or, will we find that storing names, relationship statuses, and 15-second clips of one dancing isn't enough to implicate national security? Only time will tell. But, for now, we are free to TikTok away.

-- *Alex Pearson*

Alex Pearson is a 2L from Orlando, Florida. After graduation, she hopes to practice law in the sunny state of Florida. In her free time, she has a passion for golf and fashion.