Official Authority and Private Interests: The TikTok Ban in the United States

A Sociotechnical Research Paper
presented to the faculty of the
School of Engineering and Applied Science
University of Virginia

by

Leo Wang

April 8, 2021

On my honor as a University student, I have neither given nor received unauthorized aid on this assignment as defined by the Honor Guidelines for Thesis-Related Assignments.

Leo Wang

Sociotechnical advisor: Peter Norton, Department of Engineering and Society
Official Authority and Private Interests: The TikTok Ban in the United States

TikTok, the short-form video application, is a relatively new internet platform compared to platforms such as YouTube and Facebook. Over the past several years, TikTok has experienced rapid growth around the world. In 2019, it was reported as the third-most downloaded non-game app of the year, and today it is estimated to have approximately 800 million active users globally (Singh & Bagchi, 2020; Singh & Blase, 2020). ByteDance, a Chinese private technology firm, was the owner and creator of this famous application. Founded in 2012 by tech entrepreneur Yiming Zhang, the Chinese giant is now one of the most valuable companies in the world, reportedly worth 75 billion dollars, and owns a variety of apps from news aggregators to social media services (Kharpal, 2020). The company has set it sights on overseas markets, and TikTok, one of its international products, has become a successful attempt in the United States.

In 2020, the fast and wide spread of TikTok in the United States has aroused not only attention but also sanction from the Trump administration. On August 6, 2020, the former president Donald J. Trump invoked his emergency economic powers and signed an executive order to impose broad sanctions against TikTok. According to the order, TikTok automatically captured vast swaths of information from its users, including location data and browsing and search histories, and thus allowed the Chinese Communist Party access to Americans’ personal and proprietary information. TikTok also reportedly censors content that the Chinese Communist Party deems politically sensitive, and may further be used for disinformation campaigns that benefit the Chinese Communist Party. Because of these reasons, the order hereby prohibited any transaction by any person, or with respect to any property, subject to the jurisdiction of the
United States, with ByteDance or its subsidiaries, beginning 45 days after the date of it (The White House, 2020). Such a prohibition was regarded by the Trump administration as an aggressive action against the owners of TikTok to protect the national security.

Threatened by the executive order, ByteDance had to quickly respond protect either TikTok’s legitimacy in the United States or the benefits of itself. On August 7, 2020, only one day after the executive order had been issued, a statement was released by the company, saying the executive order was issued without any due process, and the Administration paid no attention to facts, dictated terms of an agreement without going through standard legal processes, and tried to insert itself into negotiations between private businesses. The statement also claimed that TikTok had never shared user data with the Chinese government, nor censored content at its request, and suggested the intention to challenge the order in the U.S. courts (TikTok, 2020).

While fighting back the order, ByteDance also had discussions on TikTok sale with other corporations. On August 2, 2020, even before the order was officially released, Microsoft had prepared for the discussions to explore a purchase of TikTok in the United States, and planned to have them completed no later than September 15, 2020. However, two days before this deadline, a Microsoft statement announced that Microsoft will not acquire TikTok’s U.S. operations after ByteDance rejected the company’s offer, and Oracle then became the new potential buyer to continue the negotiations with the Chinese firm (Microsoft Corporate Blogs, 2020).

In the United States, users and employees also raised their opposition towards the TikTok ban. TikTok was home to thousands of social media influencers, many of whom had built entire successful businesses on the app. Due to the executive order, TikTokers had been urging their followers to find them on other social media sites just in case, but they said they did not want to
the leave the app unless they were forced to. “If TikTok did shut down, it would be like losing a bunch of really close friends I made, losing all the progress and work I did to get a big following,” said Ashleigh Hunniford, 17, who had more than 400,000 followers on the app. “It has put food on our table,” said Hootie Hurley, 21, who had more than 1.1 million followers on the app. The Covid-19 pandemic in 2020 also allowed TikTok to demonstrate its value and importance as a social platform. As some user commented, “TikTok has been such a big part of everyone’s quarantine and helping everyone get through this pandemic” (Lorenz, 2020). The ban had great influence on the TikTok U.S. employees as well. Since a transaction often means exchanging money for a service, it is possible those employees would be barred from working from TikTok if the order goes into effect (Lerman, 2020). To prevent such situation, Patrick Ryan, a US-based program manager at TikTok, took the Trump administration to court in a separate suit. “The prohibition of transactions means that after September 20, myself and 1,500 of my colleagues won't be able to receive a paycheck, because it will be illegal for the company to pay us,” Ryan said in a TikTok video posted to a GoFundMe campaign created to finance the suit. “This is a step too far” (Fung, 2020).

Review of Research

There have been a large number of researches on the TikTok ban in the United States, performing analysis from different aspects. One of the most significant perspectives is the legitimacy of the executive order. Goldsmith (2020) points out that in 2020, U.S. District Judge Carl Nichols had granted two preliminary injunctions: the first one in late September and the second in early December, to prevent the federal government from effectively shutting TikTok
down and allow consumers to continue downloading TikTok from U.S. app stores. Judge Nichols argued in his ruling that the government had exceeded the express limitations of the Emergency Economic Power Act it used to bring the suit. Similarly, in October a Pennsylvania federal judge had also stopped the service from shutting down in a ruling on a separate lawsuit brought by three TikTok creators. These rulings and injunctions have shown the negative attitudes expressed by some U.S. judge representatives, but they still fail to substantially support or disprove the order’s legitimacy. In contrast, Pierce (2020) provides a deep background research in order to understand the chances of the Trump administration to get rid of TikTok in the U.S. markets.

Although there is no model for an out-and-out ban on an app in the U.S history, the case Bernstein v. United States in 1995 may serve as the closest legal precedent, in which the source code was ultimately ruled as speech protected by the First Amendment. The EFF, the organization previously argued for Bernstein, strongly believes that the case still applies now, and the First Amendment will be a powerful weapon for ByteDance to defend against the TikTok ban in the possible following lawsuits.

It is also important to consider about the real purposes and motivations of the Trump administration to issue the executive order. Lanteigne (2020) suggests the Sino-American trade war could be a major reason. In July 2018, the United States announced the tariffs on Chinese goods, evoking retaliative steps from Beijing and thus setting off the trade war. The situation was even exacerbated by the Covid-19 pandemic, but the effect was briefly paused in January 2020 with the signing of a “phase one” agreement. Over these two years, this trade conflict was an overt competition and has left great pressure on the Trump’s government. Even before the outbreak of the pandemic, warning signs were appearing that the U.S. would be unable to sustain
economic growth while fighting a trade war of this magnitude. In this situation, TikTok ban could be a simple action for Trump administration to extend the adversarial policy against China. Besides, Segev (2020) discusses the struggle of U.S. against China spreads to Apps, which include not only TikTok but also WeChat, an instant messaging application with over one billion downloads, and PUBG, an action game with some 600 million downloads. The block of Chinese Apps would favor the expansion of the Clean Network program, which was launched as an attempt to create a coalition of countries on securing communications infrastructure and guarding information from intrusions by malign actors. The Chinese Communist Party was undoubtedly considered untrusted, and it would be unsurprising that the spread of Chinese Apps were suppressed in the U.S. market.

**Data Censorship of TikTok**

Data censorship in TikTok keeps to one of the most significant concerns in recent years. It even punctuated the rapid expansion of TikTok around the world. Content moderation approaches used by TikTok’s owners and operators were doubted that whether it helped maintain an apolitical stance or in fact suppressed the freedom of speech. Recent examples exacerbated the controversy, and TikTok has struggled to explain away.

Most of the data censorship in TikTok focuses on keywords, and hashtags are one of the major fields. First proposed by Chris Messina in a 2007 tweet and soon became popular on microblogging and photo-sharing services, hashtags are able to help users find content similar interest. But such functionality also favors the data censorship practices to search and categorize contents by these keywords, and these measurements would not be restricted by neither topic nor
languages. Researchers have revealed that hashtag suppression in TikTok would more likely to occur in sensitive materials, and politics and LGBTQ are two strictly censored areas. In the early days of the George Floyd protests, a popular hashtag #acab, which is the acronym for “all cops are bastards”, was suppressed in TikTok. Even though #acab, together with some other protest-related hashtags, were back available on May 29, 2020, it became censored again after an anti-racism and anti-police-brutality protests took place three months later in Kenosha, Wisconsin. In contrast to the censorship, the hashtag #acab had garnered 96.5 millions views once it was back online for the George Floyd protests, reflecting both the existence and the effectiveness of the hashtag suppression (DFRLab, 2020). In the area of LGBTQ, an example of banned hashtag was #GayArab, which had 118,000 tagged images as the search results on Instagram but only a “Couldn’t find this hashtag” result page on TikTok. Hashtags with similar meanings were banned in multiple languages as well, including Arabic, Russian, Thai, Estonian, and Bosnian (Assunção, 2020).

At the center of controversies, TikTok was forced to explain to the public its measurements and motivations. The spokespeople repeatedly stated that the platform was not influenced by any foreign government, including the Chinese government, and TikTok would not moderate content due to political sensitivities. According to the statements, initial instances of censorship in TikTok were admitted as the result of a “blunt approach” to content moderation that they deployed in early days of the app, but recent apparent examples, including #BlackLivesMatter and #GeorgeFloyd, were attributed to a “technical glitch” (Ryan, Fritz, & Impiombato, 2020). Nevertheless, TikTok expressed very different attitudes on LGBTQ contents. Although spokespeople earlier explained the censorship in this area was mainly due to local
laws, Theo Bertram, TikTok’s director of public policy in Europe the Middle East and Africa, apologized in a British parliamentary committee when referred to the practice of curtailing the reach of some posts. Bertram said in the future the company would do so only upon receiving a specific request from law enforcement agencies in countries (Bacchi, 2020).

**TikTok Data Security and Executive Order’s Necessity**

Apart from data censorship, data collection and security is another major concern of TikTok, and was also the most important reason for the executive order to ban the TikTok in U.S. After the order was issued, two senior members of the U.S. Congress requested an official investigation into the app to see if it poses national security risks to the U.S. They questioned if sensitive information, including a user’s location, were collected during TikTok’s data-collection practices. TikTok officials stated in response that all U.S. users’ data is stored within the country: "Our data centers are located entirely outside of China, and none of our data is subject to Chinese law” (Yu, 2020). The result of this debate would eventually determine the validity of the executive order and the fate of this social media app.

The first concern among the data security in TikTok is the data abuse. According to its privacy policy, TikTok does collect registration information such as email and age, profile information such as name and image, user-generated content posted such as photos and videos, payment information, GPS position, and phone and social-network contacts but only with user’s permission (TikTok, 2020). Compared to other social-media apps, TikTok has not been shown to collect any more data. “Further investigation is needed before any bans are enacted,” said Chris Hauk, consumer privacy champion at Pixel Privacy, “Banning an app due to unproven suspicions
is censorship, plain and simple” (Seals, 2020). Another privacy concern of TikTok is China’s access on its data. As a Chinese-owned social media, its owner ByteDance has admitted that data was sent to and processed in China in early years of operations. The political background of China and Chinese Community Party evokes the conjecture that usage information are sent to the Chinese government. Fiercest opponents of TikTok even further argued that the app should be viewed as a dangerous Trojan horse for CCP espionage (Matsakis, 2020). However, evaluations on TikTok privacy and security concerns found no concrete evidence that TikTok is collecting user data and sending it to China. At the same time the company is also taking efforts to prove its privacy and data security. As Roland Cloutier, TikTok’s Chief Information Security Officer, said in an April 2020 blog post, TikTok’s goal was to minimize China-employee access to TikTok user data. TikTok has also stated that it had erected software barriers around U.S. user data stored outside China to separate the data from other ByteDance products (Ryan, Fritz, & Impiombato, 2020). Still like other apps, security researches have found bugs inside TikTok: some users were alarmed when they learned TikTok was requesting access to their clipboards, which could potentially expose sensitive data like passwords. But more substantiate evidences now seem to be necessary to make the executive order convincing in the aspect of data security.

Business between ByteDance, Microsoft, and Oracle

The executive order issued by the Trump administration accused TikTok of being a threat to national security and gave ByteDance 90 days to sell up or face a shutdown. While facing a dilemma, ByteDance realized a sale would avoid some costs but a shutdown would lose all the profits and quickly start to operate on selling TikTok to an American owner. This hence started
the business and cooperations between ByteDance, Microsoft, and Oracle. As giant companies in the industry, all of them tended to maximize their profits for their own interests on this stage.

Though Microsoft was the first potential buyer of TikTok, its acquisition of TikTok seemed a little unusual. In recent years Microsoft favored its enterprise softwares and sought to transition its services to be productivity-focused. TikTok should be hardly able to fit with Microsoft’s business demographic. But in fact, the valuable resources that TikTok could offer to Microsoft were the users and data. These valuable data could be used in a variety ways. It would be helpful for either software researches or game developments in Microsoft services. The abundant user resources may also serve as the samples of consumer behaviors and therefore elevate the consumer services, which had not been successful for Microsoft in recent years (Warren, 2020).

Nevertheless, Microsoft failed to reach an agreement with ByteDance, where the latter eventually reject the bid and Oracle became the new potential buyer. Similar to Microsoft, Oracle was attracted by the data resources within TikTok as well. In fact, Oracle did not have a social media app that it could integrate TikTok with, but the company could theoretically use customer data collected by TikTok to improve its marketing products. Abishur Prakash, a geopolitical futurist at a strategy consulting firm called Center for Innovating the Future, believed that this would be an opportunity to reveal new markets and industries for TikTok. “By putting TikTok’s data on Oracle servers, Oracle may be able to build in-roads into new industries,” he said (Shead, 2020). But it would be too early to call the winner, and may still be too early even after a buyer truly acquires the TikTok. It always takes time for companies to turn resources into real profits and then decides to whether tell the story of the winner or the loser.
Individual Interests and Patrick Ryan’s Lawsuit

In this case of the TikTok ban, individuals were also involved and had played critical roles. Users were missing one of their favorite mobile apps, and U.S. employees of TikTok were even losing their jobs. All these individuals, though did not look for exactly same interests, formed a community and started to speak out their voices. The majority became to represent the group and express mainly negative attitude towards the executive order.

The term “TikTok users” in fact fails to precisely cover and describe every single individual in the user group. Instead, it can be further divided into two subgroups: users and creators. Though they are not mutually exclusive, the trivial differences between them may lead to different interests. Most users were not creators or only part-time creators, but similar to YouTuber, some videographers or entertainers produced and shared their videos on TikTok. They may even view this as their full-time job and depend on the earnings from it to support their lives (Haynes, 2020). In contrast, normal users’ feeling of sad and angry about the shutdown of TikTok were primarily because they missed the time they had spent and enjoyed on it. The COVID-19 pandemic assisted to amplify such emotions as well. Twitter had recorded the disappointment from many users over the executive order. “We are in the middle of a pandemic that has killed 200k Americans, the economy is trash, and there are mass protests against police brutality but Trump wants to focus on banning TikTok?” one person tweeted. Another said: “So TikTok is a national emergency but a global pandemic is not” (Ritschel, 2020).

Employees of TikTok in U.S. were pursuing similar interests but facing even worse situations of TikTok creators, and the law was one of their powerful tools against the government. Patrick S. Ryan accused Trump of violating his Constitutional rights and defaming
and disgracing U.S.-based TikTok Inc. employees and attempted to save his job. The lawsuit stated that the accusations in the executive order could only occur through the actions, cooperation, and collaboration of U.S.-based TikTok employees. Though arguing against the executive order, Ryan was always able to pinpoint the conflict and minimize possible side effects by wisely clarifying his intentions. “I am a patriot,” said Ryan, “I am not building dossiers of personal information to blackmail federal officials for the Chinese government. That's an unbelievable accusation in the executive order” (Abdollah, 2020).

Conclusion

In recent years, TikTok has experienced both rapid expansion in U.S. markets and sudden shutdown ordered by the Trump administration. The former has laid solid foundations for its development, while the latter has offered an opportunity for everyone, including supports, opponents, and bystanders, to reconsider about its position and influence. It has been such a successful mobile app since it was created, and meanwhile it has created so much interests and profits for multiple groups and parties. Currently, the intervene of external factors in the market is making TikTok’s fate unpredictable. Challenges and risks appear, but chances may also evolve. Among these interest groups, winner can hardly be told. Instead, the competitions may be wisely interpreted as a process of shaping rules and balancing the profits. They together decide not only the fate of TikTok in the future, but also the fate and development of themselves.
References


