How the Trump administration could ‘ban’ TikTok



The Trump administration is apparently considering a ban on Chinese social media apps, including the popular video app TikTok. Secretary of State Mike Pompeo mentioned the possibility on July 7th, saying it was “something we’re looking at” in a Fox News interview with Laura Ingraham — and on July 31st, President Trump told reporters aboard Air Force One that he planned to personally ban the app using his own authority, instead of potentially forcing its Chinese owner to divest it.

The comments could easily have been bluster. But Pompeo also compared TikTok to Huawei and ZTE, two companies that have suffered very real consequences after drawing US government ire. With tension rising between the US and China, Trump trying to ban TikTok isn’t out of the question — and while it’s not nearly as simple as Trump, Pompeo and Ingraham make it sound, it could still cause trouble for the company and its users.

The most intense app bans happen at the network level,

blocking any communication between the targeted servers and users in the country. That's the approach taken by China's Great Firewall, and it's how India enforces its recently implemented TikTok ban. (Australia, which is considering a similar ban, would likely take the same approach.) But American law doesn't have any precedent for blocking software in that way, so it seems unlikely that the White House would be able to follow through on that kind of heavy-handed network censorship.

TikTok doesn't have the same vulnerabilities as Huawei or ZTE
Pompeo compared the administration's TikTok plans to its crackdown on Huawei and ZTE, which included locking them out of government contracts. It's true that TikTok has been banned from many government employees' work phones, including members of the US military, and some lawmakers are pushing for an even broader restriction. But Huawei and ZTE sold components to telecom operators who, in turn, worked with government agencies. TikTok is a consumer app, so that's a much less serious punishment. "Huawei and ZTE are used by enterprises," says Samm Sacks, a senior fellow at Yale Law School's Paul Tsai China Center. "TikTok is used by so many people in the US."

A more likely target is the Committee on Foreign Investment in the United States (CFIUS), which oversees mergers and investments involving non-US companies. CFIUS opened a national security investigation into TikTok last year, citing similar concerns to Pompeo, and there's enough evidence against the company to build a plausible case.

TikTok is a subsidiary of Beijing-based company ByteDance, and critics have raised several issues around both its overall privacy practices and its potential ties to the Chinese government. Leaked moderation guidelines discouraged criticism of events like the Tiananmen Square protests. Although TikTok says it stores American user data in the US, there's a persistent concern that it could pass information to Chinese

state agencies. (TikTok has repeatedly denied that it shares information this way, and it says the moderation guidelines are no longer used.) “The Chinese government has a history of gaining control over nodes in the information system,” Freedom House analyst Sarah Cook told *The Verge* in an interview last year.

If CFIUS decides Chinese ownership is a problem, the council could cause a lot of trouble for TikTok. In recent years, CFIUS has rejected some high-profile merger and acquisition plans — including a Chinese company’s purchase of gay hookup app Grindr, which it nixed on national security grounds. The council could make TikTok restructure in a way that further separates its US presence from its Chinese one, or even make ByteDance sell off Musical.ly, a Chinese company whose American app helped TikTok launch in in the US. It’s still not precisely a “ban,” though — and it certainly doesn’t generalize to all Chinese social media apps.

Even if the government can’t ban TikTok, it could try to deplatform it

To really take TikTok off Americans’ phones, the government would have to do something like make Apple and Google sever their ties with ByteDance (along with any other Chinese app makers). Getting removed from the iOS App Store and Google Play Store would vastly reduce TikTok’s appeal, even if you could still access it through a sideloaded app or website. Apple, in particular, keeps tight control over iOS devices; its App Store policy is so restrictive that it’s spurred antitrust lawsuits. The government would essentially be ordering companies to deplatform TikTok — and deplatforming can be extremely powerful.

To do this, the Trump administration could repeat a tactic it used with Huawei: have the Commerce Department put TikTok on the “entity list” that limits its commercial ties to US companies. The administration doesn’t need congressional approval to do this, and it can cite any US company that does

business with them (barring special exemptions) for violating sanctions. The entity list has stopped Google from working with Huawei on Android phones, and if TikTok were successfully added to the list, Apple and Google would have a hard time keeping them in the App Store.

James Lewis, director of technology policy at the Center for Strategic and International Studies, says putting TikTok on the list would be extreme, unusual, and legally dubious. “They could sanction them, but usually the sanction is tied to trade violations or espionage or proliferation or intellectual property theft. You can’t just do it because you’re mad at a company,” says Lewis. Unlike TikTok, Huawei is facing actual US criminal charges for racketeering and trade secret theft. The claims about TikTok are still suspicions, not legal complaints. Even an unrelated lawsuit for unlawfully collecting children’s data was settled almost immediately.

Trump often isn’t overly concerned with whether his orders are lawful. If he issues an executive order that purports to “ban” TikTok or other Chinese apps, it will probably get challenged immediately in court, but it will still create uncertainty and reputational damage. The White House is already trying to warn investors away from Chinese companies, and even intermittent app store problems would slow its user growth and hurt advertising revenue. And many users might not realize Trump can’t legally shut down TikTok — so they could abandon it before anything even happens.

None of these options would constitute a literal banning of TikTok — that is, a block that cuts US users off from TikTok’s network. Similar to President Trump’s threats of shutting down Facebook and Twitter, Pompeo’s discussion of banning TikTok obscures the real limits of US government power. Even so, it could foreshadow genuinely troubling attempts to limit how Americans can use the internet.

Update, August 1st, 12:12 AM ET: *Added that President Trump*

has now personally threatened to ban the app using presidential authority.

Correction: *An earlier version of this piece referred to Musical.ly as an American app but did not note that the company itself was Chinese. This has been updated for clarity.*

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