IRS may put cryptocurrency question at the top of 1040 to catch cheaters



reader comments

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The Internal Revenue Service is considering adding a question to Form 1040—America's primary income tax form—asking tax filers if they dealt in virtual currency in 2020. It would be the agency's latest attempt to crack down on underreporting of cryptocurrency profits.

If an American buys bitcoin, ether, or another cryptocurrency and then sells it later at a profit, she or he will typically

owe capital gains tax on the difference. But blockchains do not have the tax reporting infrastructure that has become standard for conventional financial institutions. So the IRS doesn't have an easy way to figure out who has received a cryptocurrency windfall. In the early years of the bitcoin boom, many taxpayers failed to report large bitcoin-related profits.

In recent years, the IRS has increased pressure on cryptocurrency traders to comply with tax laws. A 2014 bulletin laid out the basic rules for paying taxes on virtual currency price gains. In 2016, the IRS sought transaction data about thousands of users of Coinbase, a popular US-based cryptocurrency exchange. Coinbase complied with the request in 2018 after some legal wrangling.

But chasing down individual cryptocurrency investors after the fact is a lot of work for the IRS. The agency would much prefer American taxpayers voluntarily comply with the law. And that's where the new question on Form 1040 would come in.

In the past, it was easy for taxpayers to leave out cryptocurrency earnings and then claim ignorance if the IRS catches them. It was hard for the IRS to prove that this was deliberate tax evasion rather than an honest oversight.

Last year, The Wall Street Journal reports, the IRS added a question about cryptocurrency to tax forms. But it was in a part of the return that not every taxpayer had to fill out.

On the 2020 version of the 1040, the cryptocurrency question could be the very first one taxpayers answer after giving their name and other identifying information. A draft of the 1040 posted to the IRS website asks taxpayers: "at any time during 2020, did you receive, sell, send, exchange, or otherwise acquire any financial interest in any virtual currency?"

If taxpayers check "yes," the agency can double-check that

virtual currency transactions were reported correctly. If taxpayers check “no,” they could be prosecuted for tax evasion if the IRS later discovers they were lying. The prominent placement of the question will make it harder for a taxpayer to convince a jury that a failure to report cryptocurrency profits was an honest mistake.

Ed Zollars, a CPA with Kaplan Financial Education, told The Wall Street Journal that this strategy helped the IRS crack down on the use of offshore bank accounts a decade ago. Adding an explicit question about offshore bank accounts to tax forms increased compliance with reporting rules and has added billions of dollars to the federal treasury.

https://arstechnica.com/?p=1710158

Nikola founder bought truck designs from third party



Enlarge / A 2018 Nikola video showed the Nikola One prototype rolling down a shallow hill in Utah. Nikola now says it never claimed the truck was driving under its own power.

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The original design for Nikola’s flagship truck was purchased by founder Trevor Milton from a designer in Croatia, according to two people with knowledge of the matter, despite company claims in a 2018 lawsuit that the vehicle was initially designed by Mr. Milton “in his basement..”

The truck, the Nikola One, is at the centre of a $2 billion lawsuit with Tesla, in which Nikola alleges its rival infringed on its patents. Nikola claims in that lawsuit that Mr. Milton began designing the model in 2013, with other company staff later working on it.

In a rebuttal to the lawsuit filed last week, Tesla alleged

that Nikola could not protect the designs because they did not originate from the company itself, but from Adriano Mudri, a designer based in Croatia.

Two people with knowledge of the transaction told the Financial Times that the Nikola founder bought the designs in 2015 after meeting Mr. Mudri while visiting electric supercar maker Rimac in Croatia.

While Tesla's filing identifies the designer as the source of the original truck drawings, it does not contain details about the transaction, explain that money was exchanged, or that Mr. Milton himself orchestrated the purchase.

The latest twist comes with Nikola still reeling from accusations earlier this month that it passed off purchased technology as its own, covering supplier names on key components with stickers when making promotional videos. Nikola said it never claimed it made the components.

In a report that sent Nikola's shares tanking, Mr. Milton was accused of spreading an "ocean of lies" about the company's technology and its products by short seller Hindenburg Research.

A little over a week later, Mr. Milton decided to leave the company, telling staff he planned to defend himself "against false allegations levelled against me by outside detractors." The 39-year-old founder has repeatedly insisted that he has not lied to or deceived anyone about the trucks.

The lawsuit with Tesla, filed during Mr. Milton's tenure, centers on the origins of the designs for the "Nikola One" truck.

The company claims that Mr. Milton worked for two years on the truck before, unsatisfied with his designs, he hired designer Steve Jennes in 2015. The lawsuit says the pair then crafted the final design between them in a lengthy process.

When it was finished, Nikola had spent “several million dollars developing the Nikola One,” according to the lawsuit.

In its rebuttal, Tesla said that the designs for the model originated from Mr. Mudri, a designer at Rimac, who had dubbed it the “Road Runner.” The design’s origins could raise further questions about Nikola’s intellectual property.

“Trevor Milton chose not to disclose the Road Runner concept truck to the [US Patent and Trademark Office] with deceptive intent,” Tesla said in its filing.

Nikola said: “The Nikola One truck was designed and patented by Nikola. It is commonplace to license third party designs during vehicle development, and although early in the process Nikola purchased a license to Adriano Mudri’s designs, he was not part of the design team and his designs are materially different from the design invented by Nikola for the Nikola One.”

According to several people with knowledge of the deal, Mr. Milton sought, unsuccessfully, to collaborate with Rimac on a range of projects in 2015.

On a trip to Rimac’s headquarters on the outskirts of Zagreb, he met Mr. Mudri, the company’s designer, who had designed a futuristic truck as part of an earlier diploma project.

Mr. Milton purchased the computer drawings and virtual 3D model of the vehicle for several thousand dollars from Mr. Mudri, according to two people.

The Road Runner name lingered for months. A person familiar with the development of the Nikola One said that “Road Runner… was the internal name for Nikola’s project the entire time we worked on it.”

A screenshot of a Nikola document seen by the Financial Times shows 13 people being invited to collaborate on the “Nikola

Roadrunner Prototype Project.”

Another screenshot shows an early version of Nikola’s website depicting a truck that appears identical to the Road Runner in Tesla’s court filing.

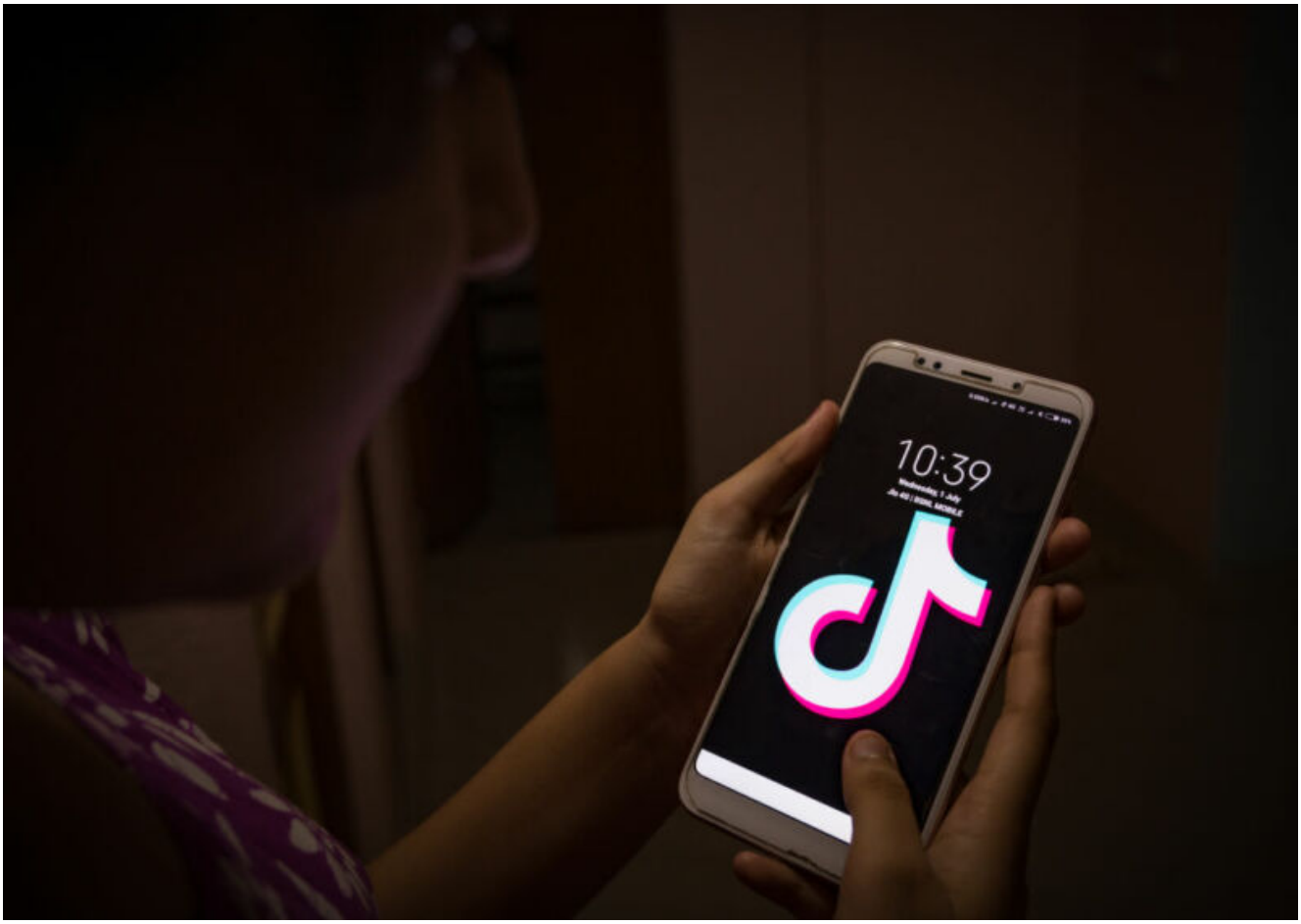
Nikola did not mention Mr. Mudri, or Rimac, or say that the designs were purchased, in its 2018 filing against Tesla.

Representatives for Mr. Milton declined to comment. Rimac also declined to comment.

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TikTok’s fate to go down to the wire; judge will rule before midnight



Getty Images

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TikTok will be gone from app stores tomorrow morning unless a federal judge acts to block the Trump administration’s ban on the app before midnight tonight.

Judge Carl Nichols of the US District Court for DC said today that he will determine whether to grant or reject TikTok’s request for an injunction on the ban before the deadline hits at the stroke of 12.

In a hearing on Thursday, Nichols gave the administration until Friday afternoon either to delay or defend the ban. The administration chose to file a response defending the ban but did so under seal, so the filings are not available to the

public.

The judge set a hearing on the matter for 9:30 today. After spending more than 90 minutes Sunday morning listening to attorneys for both sides, Nichols said he would rule later in the day.

During the hearing, an attorney representing TikTok called the proposed ban “irrational” and “unprecedented,” asking, “How does it make sense to impose this app store ban tonight when there are negotiations underway that might make it unnecessary?”

President Donald Trump banned TikTok and another China-based app, WeChat, in a pair of executive orders he signed on August 6. The executive orders declared the apps to be a “national emergency” and said that certain “transactions” would be prohibited, but the orders did not specify what those transactions might be until September 18, about 48 hours before the bans were first scheduled to take effect.

TikTok filed its request for an injunction (PDF) a few hours after the Commerce Department described what form the ban would take. Last weekend, the administration granted a one-week reprieve on the ban, extending the deadline to midnight (EDT) tonight, after the president gave his conditional “blessing” to a proposed deal between TikTok and Oracle.

The proposed ban would become unnecessary if China, the US Department of the Treasury, and the White House all agree to approve Oracle’s proposed investment in TikTok. Oracle is not offering to buy TikTok in that deal, but instead would take over cloud hosting services as TikTok’s “trusted technology partner” and take a 12.5-percent stake in a newly formed spinoff company, TikTok Global.

The fate of that transaction, however, is very much unknown. Oracle and ByteDance don’t seem to agree on who will hold majority control of the new company after the proposed deal is

complete. Trump has threatened to withdraw his approval if he does not find that US, rather than Chinese, investors end up with sufficient control of TikTok. Editorials in several Chinese state-run media outlets over the past week have also expressed opposition to the transaction, calling it a “dirty and underhanded trick.”

https://arstechnica.com/?p=1710011

FBI offers $10,000 reward for GirlsDoPorn mastermind Michael Pratt



reader comments

91 with 78 posters participating

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The FBI is intensifying its worldwide search for Michael James Pratt, the New Zealand-born pornographer who created the controversial GirlsDoPorn website while living in the San Diego area. This week the FBI announced a $10,000 reward for information leading to his arrest.

Nearly two dozen women sued Pratt and his associates for using fraud and coercion to get them to appear in pornographic videos. The women won a $13 million judgment in January, but by the time the ruling was announced, Pratt had apparently fled the country.

Meanwhile, the federal government charged Pratt with conspiracy to commit sex trafficking by force, fraud, and coercion. Prosecutors later added child pornography charges because at least one of his victims was under 18.

Pratt lured his victims by posting ads for clothed modeling gigs on Craigslist and other platforms. Once a woman responded, Pratt or one of his associates would offer the women $3,000 to $5,000 to fly to San Diego for a one-day pornography shoot. They promised, falsely, that videos would only be sold on DVD to wealthy clients outside the United States.

Some of the women said that once they reached San Diego, they were physically coerced to stay and shoot their scenes. Here's how we described it back in January:

> *Women were picked up at the airport by a GirlsDoPorn staffer and chaperoned throughout their visit. During shooting, they were alone with two or more men they didn't know. The men would become agitated if the women didn't cooperate; some*

> *women testified that they feared for their safety. Women testified that men stacked equipment in front of the door to prevent them from leaving the room.*

Three of Pratt's associates, Matthew Wolfe, Andre Garcia, and Valerie Moser, were charged with conspiracy to commit sex trafficking last October along with Pratt. Only Pratt has evaded capture.

https://arstechnica.com/?p=1709802

Alphabet, shareholders settle in lawsuits over sexual harassment at Google



Enlarge / Google’s corporate headquarters.

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42 with 31 posters participating

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Alphabet, Google’s parent company, said today it has settled a set of shareholder lawsuits related to the company’s handling of sexual harassment claims. Alphabet will commit $310 million to corporate diversity programs over the next decade, and the company agreed to allow its board to take on a greater oversight role in misconduct cases.

As part of the new agreement, Alphabet will expand on its current policy of “prohibiting severance for anyone terminated for any form of misconduct,” to include anyone who is currently under investigation for “sexual misconduct or retaliation,” Google VP of People Operations Eileen Naughton said in a company blog post.

The settlement is the outcome of a consolidated set of lawsuits investor groups filed against Alphabet in California in 2018, alleging that the company breached its fiduciary duty to shareholders when it retained, and handsomely paid off, male executives credibly accused of sexual harassment. (Other shareholder suits, in federal court and in Delaware, are still in progress, according to the New York Times.)

The lawsuits followed reports finding that three top Google executives who left the company amid allegations of misconduct got to leave quietly with *massive* compensation packages. Android creator Andy Rubin was given a $150 million stock grant, as well as a $90 million severance package, when he was ushered out of the company in 2014 after Google determined a sexual misconduct complaint against him was credible.

Thousands of Google employees staged a walkout in 2018 in protest over the way the company handled the cases of Rubin and others. Protest organizers demanded more transparency from Google over reports of harassment and pay inequity, as well as a new process for safely and anonymously reporting misconduct and an end to forced arbitration.

As part of the settlement, arbitration will now be optional, rather than mandatory, not only for full-time Alphabet employees but also for "temporary staff, vendors, and independent contractors" who have harassment, discrimination, or retaliation disputes with Alphabet—an expansion of its 2018 pledge not to require arbitration in sexual harassment cases. Employees will also not be required to agree to nondisclosure agreements to settle claims of sexual harassment or retaliation.

Alphabet also promised to "enhance investigations processes," including "how we escalate concerns, how quickly we respond, how we reopen cases, and more." Complaints involving company senior leadership will also have a "specialist team" assigned, which will report its results to the board of directors.

Google will also officially prohibit personal relationships (“romantic, physical, familial”) in direct reporting or management chains, instead of just “strongly discouraging” them, which was apparently company policy until this point.

“Together, [CEO] Sundar [Pichai], the [Diversity, Equity, and Inclusion] Advisory Council, and the Board will uphold Alphabet’s unwavering commitment to prohibit and respond effectively to complaints of sexual harassment, discrimination, and retaliation and promote diversity, equity, and inclusion in the workplace,” Naughton said. “’m grateful to everyone, especially our employees and shareholders, for providing us with feedback, and for making sure that the way we tackle these vital issues is better today than it was in the past.”

https://arstechnica.com/?p=1709728

Apple backs down on taking 30% cut of paid online events on Facebook



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Facebook has temporarily shamed Apple out of taking a 30 percent cut of paid online events organized by small businesses and hosted on Facebook—things like cooking classes, workout sessions, and happy hours. Demand for these kinds of online events has soared during the COVID-19 pandemic.

Apple says that it has a longstanding policy that digital products must be purchased using Apple's in-app payments system—and hence pay Apple's 30 percent tax. In contrast, companies selling physical goods and services are not only allowed but required to use other payment methods (options here include Apple Pay, which doesn't take such a big cut).

For example, an in-person cooking class is not a digital product, so a business selling cooking class tickets via an iPhone app wouldn't have to give Apple a 30 percent cut. But if the same business offers a virtual cooking class, Apple

considers that to be a digital product and demands a 30 percent cut—at least if the customer pays for the class using an iOS device.

Last month, Facebook announced it would start offering a new feature for small businesses to host paid online events. Facebook has waived any fees for the first year, allowing small businesses to pocket 100 percent of the revenue. But Apple refused to budge on its 30 percent take.

The issue came to a head in late August when Facebook revealed that Apple wouldn't even allow Facebook to inform users about Apple's 30 percent take. Facebook wanted to have a message on the checkout screen that said "Apple takes 30 percent of this purchase." But Apple deemed this message "irrelevant" and forced Facebook to remove it before approving Facebook's update.

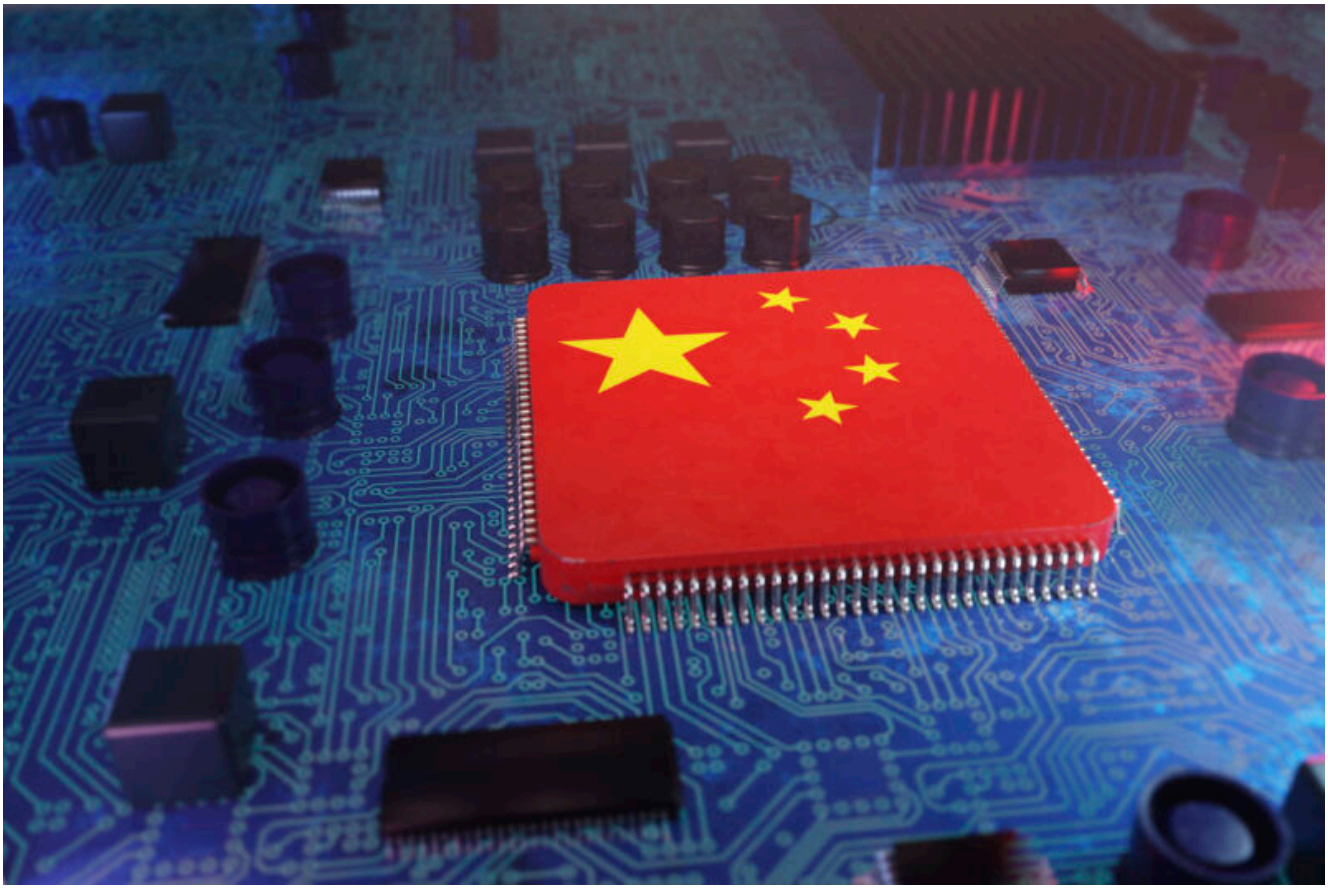
The reprieve is only temporary. Apple says it has given Facebook until the end of the year to switch from Facebook Pay to in-app purchases—and hence start paying Apple 30 percent—for online events. Apple is extending the same courtesy to Airbnb and ClassPass.

However, this grace period isn't available for Gaming Creators, which Apple argues are not brick-and-mortar businesses that have been affected by COVID-19.

https://arstechnica.com/?p=1709773

Microsoft boots apps out of

Azure used by China-sponsored hackers



Enlarge / Computer chip with Chinese flag, 3d conceptual illustration.

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23 with 20 posters participating

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Fortune 500 companies aren’t the only ones flocking to cloud services like Microsoft Azure. Increasingly, hackers working on behalf of the Chinese government are also hosting their tools in the cloud, and that’s keeping people in Redmond busy.

Earlier this year, members of the Microsoft Threat Intelligence Center suspended 18 Azure Active Directory applications after determining they were part of a sprawling

command-and-control network. Besides the cloud-hosted applications, the members of the hacking group Microsoft calls Gadolinium also stored ill-gotten data in a Microsoft OneDrive account and used the account to execute various parts of the campaign.

Microsoft, Amazon, and other cloud providers have long touted the speed, flexibility, and scale that comes from renting computing resources as needed rather than using dedicated servers in-house. Hackers seem to be realizing the same benefits. The shift to the cloud can be especially easy thanks to free trial services and one-time payment accounts, which allow hackers to quickly get up and running without having to have an established relationship or even a valid payment card on file.

At the same time, Gadolinium has embraced another trend found in organized hacking circles—the move away from custom malware and the increased use of open source tools, such as PowerShell. Because the tools are so widely used for benign and legitimate tasks, their malicious use is much harder to detect. Rather than rely on custom software for controlling infected devices, Gadolinium has recently begun using a modified version of the open source PowerShell Empire post-exploitation framework.

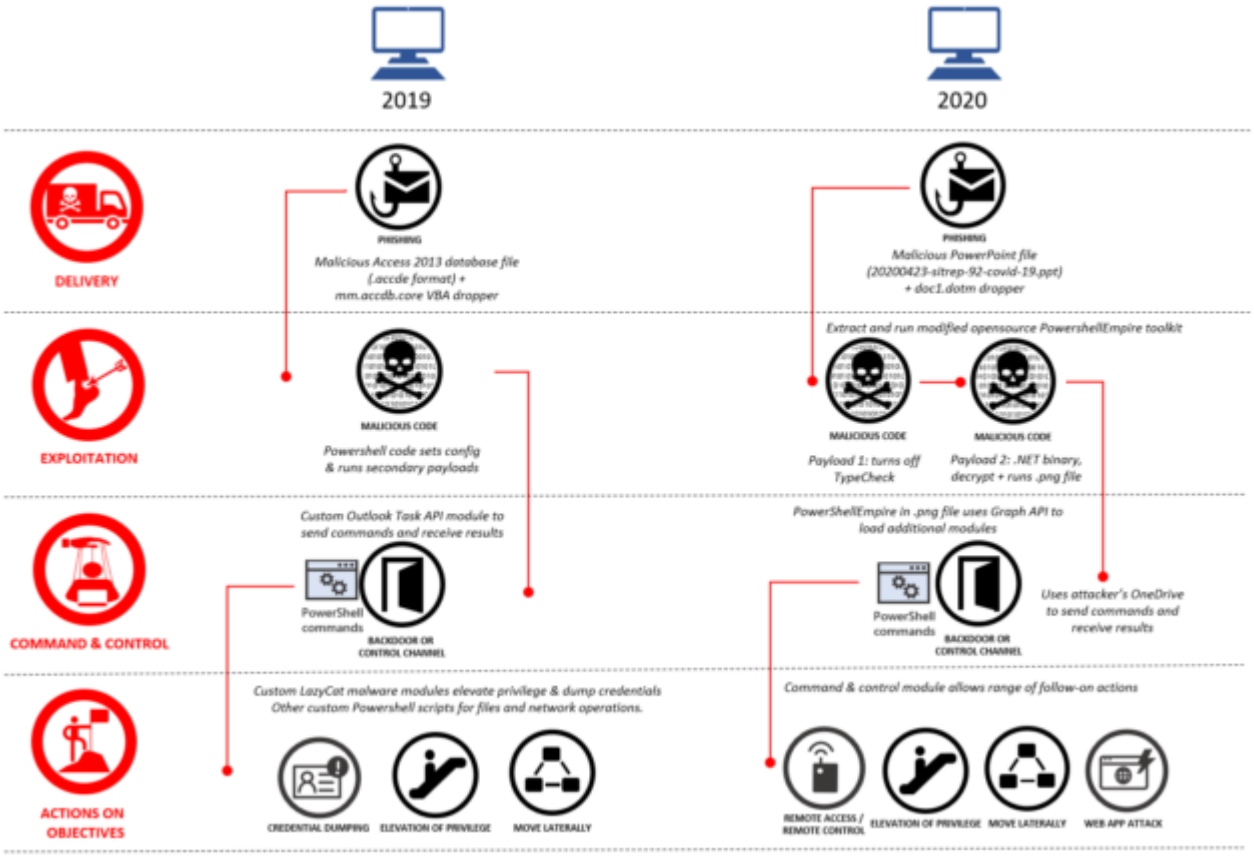
In a post published on Thursday, Microsoft Threat Intelligence Center members Ben Koehl and Joe Hannon wrote:

> *Historically, GADOLINIUM used custom-crafted malware families that analysts can identify and defend against. In response, over the last year GADOLINIUM has begun to modify portions of its toolchain to use open-source toolkits to obfuscate their activity and make it more difficult for analysts to track. Because cloud services frequently offer a free trial or one-time payment (PayGo) account offerings, malicious actors have found ways to take advantage of these legitimate business offerings. By establishing free or PayGo accounts, they can*

> *use cloud-based technology to create a malicious infrastructure that can be established quickly then taken down before detection or given up at little cost.*

Gandolinium's PowerShell Empire toolkit lets the attack group seamlessly load new modules using Microsoft programming interfaces. It also allows attacker-controlled OneDrive accounts to execute commands and receive the results sent between attacker and victim systems.

"The use of this PowerShell Empire module is particularly challenging for traditional SOC monitoring to identify," the researchers wrote, referring to the systems operation centers where security teams monitor customer networks for signs of cyberattacks. "The attacker uses an Azure Active Directory application to configure a victim endpoint with the permissions needed to exfiltrate data to the attacker's own Microsoft OneDrive storage."



Enlarge / A summary view of how Gadolinium attack techniques have evolved.

Agility and scale work both ways

But while the cloud provides benefits to the attackers, those benefits work both ways. Because the attacks were delivered using spear-phishing emails containing malicious attachments, they were detected, blocked, and logged by Microsoft Defender. And eventually, they were linked back to infrastructure hosted in Azure.

“As these attacks were detected, Microsoft took proactive steps to prevent attackers from using our cloud infrastructure to execute their attacks and suspended 18 Azure Active Directory applications that we determined to be part of their malicious command & control infrastructure,” Thursday’s post continued. “This action helped transparently protect our customers without requiring additional work on their end.”

Microsoft said it also took down a GitHub account Gadolinium used in similar attacks in 2018.

Microsoft is now releasing digital signatures and profile names known to have been used by Gadolinium. People and organizations can use them to tell if they or customers were victims or intended victims of any hacking by the group.

“Gadolinium will no doubt evolve [its] tactics in pursuit of its objectives,” the post concluded. “As those threats target Microsoft customers, we will continue to build detections and implement protections to defend against them.”

https://arstechnica.com/?p=1709604

Judge gives Trump admin. Friday deadline to delay or defend TikTok ban



Enlarge / A stand of TikTok (Douyin) at The First International Artificial Products Expo Hangzhou on October 18, 2019, in Hangzhou, China.

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78 with 55 posters participating

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A federal judge today gave the Trump administration until Friday to either defend its planned ban of short-form-video app TikTok in court or hold off on it, adding one more wrinkle to the seemingly endless on-again, off-again saga.

If the government doesn’t voluntarily postpone the planned TikTok ban by 2:30pm EDT on Friday, then it will have to show up for a hearing on Sunday morning, where he will rule on TikTok’s request for an injunction on the ban, Judge Carl Nichols of the US District Court for DC said today.

Nichols said that the ban, if it takes effect, could prevent potentially hundreds of thousands of new users per day from signing up for TikTok. “I don’t think [a ban] merely preserves the status quo,” he said, according to The Wall Street Journal.

President Donald Trump signed an executive order banning TikTok and another China-based app, WeChat, on August 6. The executive orders declared the apps to be a “national emergency,” but they did not specify what would be banned or how. TikTok filed suit against the administration within a week, arguing the proposed ban was both unconstitutional and politically driven.

TikTok filed its request for an injunction on the ban (PDF) on September 18, the day the administration finally made clear what a ban would actually involve. That injunction is what Nichols will rule on this Sunday, unless the administration agrees to postpone the ban.

The administration’s ban on TikTok was initially scheduled to go into effect at 11:59pm on Sunday, September 20. On Saturday evening, the Department of Commerce extended that deadline by one week to Sunday, September 27, after President Trump gave his conditional “blessing” to a deal between TikTok and Oracle.

The fate of that transaction, however, is anything but certain. Not only do Oracle and TikTok parent company ByteDance not seem to agree on what the terms of the deal actually *are*, but approval does not seem to be forthcoming from Chinese authorities.

An editorial in the state-run China Daily yesterday described the White House's efforts to force a transaction as a "dirty and underhanded trick."

"What the United States has done to TikTok is almost the same as a gangster forcing an unreasonable and unfair business deal on a legitimate company," the government-sponsored paper wrote. "China has no reason to give the green light to such a deal, which is dirty and unfair and based on bullying and extortion. If the US gets its way, it will continue to do the same with other foreign companies. Giving in to the unreasonable demands of the US would mean the doom of the Chinese company ByteDance."

It is unclear what the fate of TikTok will be inside the United States if the Chinese government does *not* approve the transaction. The president is also threatening to revoke his approval of the deal if he does not find it sufficiently spins off control of TikTok and its assets to US owners.

https://arstechnica.com/?p=1709436

California bans new internal combustion engines, starting in 2035



reader comments

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On Wednesday, California Governor Gavin Newsom signed an executive order requiring that all new passenger cars and trucks sold in the state from 2035 be zero-emissions vehicles. Additionally, all drayage trucks—the ones that move containers around at places like the Port of Los Angeles—must also go emissions free by this date, as well as off-road vehicles and equipment. Medium- and heavy-duty vehicles get an extra decade to comply, but by 2045 these too must ditch internal combustion engines.

Although this is the first such ICE ban in the United States, Governor Newsom is following in the footsteps of policymakers in Europe, China, and elsewhere. In 2016, Paris, Madrid, Athens, and Mexico City announced bans on new diesel vehicles from 2025. The same year, Germany's Bundesrat voted to outlaw new ICE vehicles from 2030, although this was not a binding resolution.

The following year, France announced that new ICE vehicles would be banned from 2040. The UK also picked 2040 as the end of new gasoline and diesel vehicles within its borders, a timeline that in February was brought forward by five years to 2035, then this past Monday it was brought forward another five years, to 2030. And China is also phasing out internal combustion vehicles, albeit over a longer timeline.

We should note that California's ban will only apply to new gasoline- or diesel-powered vehicles sold in the state after it goes into effect. Cars and trucks already on the road and registered before 2035 will remain road-legal.

"This is the most impactful step our state can take to fight climate change," said Governor Newsom. "For too many decades, we have allowed cars to pollute the air that our children and families breathe. Californians shouldn't have to worry if our cars are giving our kids asthma. Our cars shouldn't make wildfires worse—and create more days filled with smoky air. Cars shouldn't melt glaciers or raise sea levels threatening our cherished beaches and coastlines."

https://arstechnica.com/?p=1709196

Justice Department sends its Section 230 rewrite to Congress



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The Department of Justice today dropped a proposed "recalibration" of one of the most important laws governing the US Internet into Congress' lap and urged legislators to act to remove a liability protection on which nearly every website and app currently relies.

Attorney General Bill Barr sent the proposed legislation—an extension of his June wish list—to Speaker of the House Nancy Pelosi and Vice President Mike Pence (in his role as president of the Senate) this morning.

"For too long Section 230 has provided a shield for online platforms to operate with impunity," Barr said in a written statement. "Ensuring that the Internet is a safe, but also vibrant, open, and competitive environment is vitally important to America," he added. "We therefore urge Congress to make these necessary reforms to Section 230 and begin to

hold online platforms accountable both when they unlawfully censor speech and when they knowingly facilitate criminal activity online."

What is Section 230?

"Section 230" is the nickname for a very short part of the law under which Internet companies have been regulated since 1996. The key part of § 230 of the Communications Decency Act currently reads:

> *No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.*

Those 26 words are included under the subheading, "Protection for 'Good Samaritan' blocking and screening of offensive material," which allows Internet platforms to moderate user content shared on those platforms more or less however they wish—heavily, moderately, or not at all. Broadly speaking, it means that if you use an Internet service to say something obscene or unlawful, then you, not the Internet service, are the one responsible for having said the thing, and the Internet service has legal immunity from whatever you said. (That's the short version. For the long version, give Ars' own Tim Lee's explanation of the law and its history a read.)

What does the DOJ propose changing?

While the proposal (PDF) leaves the core principle of Section 230 unaltered, it immediately applies a big honking qualifier.

That qualifier says that the existing law won't apply "to any decision, agreement, or action by a provider or user" of an Internet service "to restrict access to or availability of material provided by another information content provider." That seems to mean that a service such as Twitter or Facebook

would not be permitted to block users from sharing URLs to, for example, hate sites.

The proposed new bill legislation also adds several explicit carve-outs to the law. The first is a "bad Samaritan" carve-out, exempting a platform from qualifying for section 230 immunity if it "acted purposefully with the conscious object to promote, solicit, or facilitate material or activity… that the service provider knew or had reason to believe would violate Federal criminal law."

"Criminal material" also has an explicit carve-out that would require platforms to remove or restrict access to that material and report it to law enforcement as soon as they received notice of it—a mechanism seemingly inspired by the way copyright takedown requests work today.

The last carve-out applies to "judicial decisions." If a court rules that any content posted to a service is "Defamatory under state law or unlawful in any respect," platforms would have to remove that content as well.

The last page of the proposed legislation adds a list of "good faith" requirements. In order to be considered to be acting in good faith, a platform must have a publicly available terms of service that includes its moderation rules; must moderate content "consistent with" those terms of use; must *not* block content on "deceptive or pretextual grounds"; and must supply the entity being moderated with "reasonable factual basis for the restriction of access and a meaningful opportunity to respond."

"A platform that chooses not to host certain types of content would not be required to do so," is how Barr described it to Pelosi and Pence, "but it must act in good faith and abide by its own terms of service and public representations. Platforms that fail to do those things should not enjoy the benefits of Section 230 immunity."

Companies are already required to adhere to the terms of service they provide to customers, for what it's worth. The FTC is responsible for enforcing consequences against companies it finds to have used misleading or deceptive terms of service, including, in 2011, both Facebook and Twitter.

Why now?

Barr's line about platforms "unlawfully censoring" speech is the true crux of the issue: the Trump administration has for several years claimed that social media platforms such as Facebook and Twitter have an anti-conservative bias and unlawfully stifle right-wing content. The administration has been seeking ways to alleviate the alleged "bias" by changing the laws that apply to the social media sector, including Section 230.

These assertions of bias are not supported by any evidence to date. A cursory look at the evidence, in fact, tends to support the opposite conclusion. President Donald Trump himself has more than 86 million followers on Twitter—not the most-followed account, but comfortably within the top 10. Over on Facebook, the top 10 highest-traffic posts on any given day are almost all from conservative sources. Facebook itself tried to identify anti-conservative bias on its platform but did not find any. Stories from several organizations, including a recent Bloomberg cover story, find exactly the opposite, reporting that Facebook has instead worked to accommodate the Trump campaign and conservative outlets.

Nonetheless, Trump signed an executive order in May targeting online platforms. That order has a three-pronged approach, asking the Federal Communications Commission, Federal Trade Commission, and Department of Justice each to undertake some part of the enforcement.

Is the proposed law… legal?

If Congress were to pass the law, it would almost certainly face near-immediate legal challenge.

The proposal is not far off the FCC's "must-carry" rules for broadcasters, said Gautam Hans, a professor of law at Vanderbilt University and director of the Stanton Foundation First Amendment Clinic.

"My biggest concern is that it seems to be proscribing the platform's ability to take down content," Hans added. "In effect, this is attempting to create 'must carry' obligations for certain kinds of speech." Hans added that the proposal amounts to "hypocrisy" on the part of conservatives, as compared to the Fairness Doctrine getting axed during the Reagan administration.

"There is much to criticize about Section 230, how platforms have responded to its framework, and the way it has played out in the courts—but this is hardly the path forward we should take," Hans concluded. "I suspect that the platforms would have some good First Amendment arguments if this legislation went into effect."

Consumer-advocacy group Free Press also had a withering take on the proposal. "The draft legislation from the Department of Justice is a naked attempt to silence anyone who attempts to correct or criticize Trump, his allies, and fellow travelers," Free Press senior policy counsel Gaurav Laroia said. "It would incentivize platforms to host content created by racists, sexists, propagandists, and trolls. This legislation would also open the door to those who want to drown the Internet in an ocean of disinformation and toxicity."

Aside from the content, the proposed recalibration also may not be a particularly well-crafted piece of legislation. Blake Reid, a professor of technology and telecom law at the

University of Colorado at Boulder observed in a series of tweets that the proposal, as structured, doesn't particularly hold together as a legal argument. "I have no idea how courts would interpret this because it just doesn't make any sense," Reid wrote. "This is not a long statute. But after trying to parse this proposal for half an hour I'm left with major questions about what it's even trying to accomplish."

Still just a wish list

Now, the House and Senate can take the draft legislation under consideration and probably do exactly nothing with it, just as Congress has done with the last several tech-related bills. This particular proposed bill has the weight of the White House behind it, but the chances of it becoming law at this time are slim at best.

The administration's proposed text is, in fact, similar to a bill that Sens. Roger Wicker (R-Miss.), Lindsey Graham (R-S.C.), and Martha Blackburn (R-Tenn.) introduced earlier this month in the Senate. Their version (PDF), called the Online Freedom and Viewpoint Diversity Act, is shorter but more directly targets Internet companies' ability to moderate content on their platforms.

"The contentious nature of current conversations provides perverse incentive for these companies to manipulate the online experience in favor of the loudest voices in the room," Blackburn said about that bill at the time. "There exists no meaningful alternative to these powerful platforms, which means there will be no accountability for the devastating effects of this ingrained ideological bias until Congress steps in and brings liability protections into the modern era."

That bill is now sitting with the Senate Commerce Committee, where it is likely to languish until the current session of Congress expires in January. That, too, is almost certainly

the fate of Barr’s proposal. As little appetite as both the House and Senate seemed to have for moving on tech legislation in 2019, the extraordinary maelstrom of circumstances created in 2020 by the confluence of the COVID-19 pandemic, the impending presidential election, and the recent passing of Supreme Court Justice Ruth Bader Ginsburg make lawmakers even *less* likely to take up any such bill in the immediate term.

That said, however: Section 230 is now almost 25 years old, and the Internet has changed significantly since its adoption. The DOJ’s proposal is not the first attempt to amend it, and it will not be the last.

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