

The Problems With The TikTok Bill



By Paul Engel

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- TikTok is spyware, but it's not alone.
- Congress has come up with Protecting Americans from Foreign Adversary Controlled Applications Act, but does it do more harm than good?
- What if the American people simply stopped their children from using TikTok?

I have a lot of issues with TikTok, and it's one social media platform I refuse to use. However, when I look at how Congress plans to deal with this platform, I see even more problems. I've also read and listened to several commentators about the bill, and find even more problems with their suggestions. So what do we the People do when our representatives in Congress have a personal vendetta against a foreign company?

Like most social media and mobile applications, TikTok is a data vacuum. Yes, though TikTok is one of the worst abusers of its user's trust, it's by no means alone. So why has this particular social media company drawn such bipartisan ire from the members of Congress?

TikTok

I freely admit I have never used TikTok, and I have no plans to do so in the future. Why you ask? After all, it could be quite beneficial in getting the message of The Constitution

Study out, especially among young people. The answer is quite simple: Treason. I'm not saying anyone who uses TikTok is committing treason, but it seems to be pretty close, especially for those who support its infrastructure here in the United States.

TikTok has been shown to be spyware, but then again, that's true for just about every app on your phone and every website you visit. There have been reports of the TikTok app listening on your microphone, watching via your camera, tracking your location, and reading every keystroke you type. That makes TikTok one of the worst spyware apps on the market, right up there with Google's Android Operating System, Chrome browser, Gmail, Google Docs, and Google Maps. (By the way, I do all I can to avoid these applications as well.) So what makes TikTok different? TikTok is owned by ByteDance, which is a Chinese company. By Communist Chinese law, not only is ByteDance required to turn over any information the government asks for, but I believe they are required to propagandize for that government as well. I'm pretty sure that all app companies that operate in China are turning over data as well, but mostly data it collects from the Chinese people. I could be wrong, and if evidence comes to light that apps are sharing my data with governments, foreign or domestic, without my permission, I'll drop those as well. (I guess that means my phone's home page is getting pretty bare.) Yes, every app on your phone and every website you visit tries to collect data about you. Yes, many if not most of the companies that develop these apps sell their data to data brokers, who may sell that information to governments foreign and domestic, and that is a problem. There's more. TikTok manipulates the information they show its audience in the United States to promote their own agenda, but they're not alone in that either. Today however, we are talking about H.R.7521, commonly known as the TikTok Ban.

Protecting Americans from Foreign Adversary Controlled

Applications Act

Formally known as the Protecting Americans from Foreign Adversary Controlled Applications Act, H.R. 7521 claims to protect you from foreign spying and influence. I took a closer look at the legislation, and it seems more like a political stunt than something designed to protect the American people.

Let's start with the title. It sounds pretty good, doesn't it? The Protecting Americans from Foreign Adversary Controlled Applications Act. Good, except, this bill does not protect you from foreign adversary controlled applications.

PROHIBITION OF FOREIGN ADVERSARY CONTROLLED APPLICATIONS.—It shall be unlawful for an entity to distribute, maintain, or update (or enable the distribution, maintenance, or updating of) a foreign adversary controlled application by carrying out, within the land or maritime borders of the United States, any of the following:

(A) Providing services to distribute, maintain, or update such foreign adversary controlled application (including any source code of such application) by means of a marketplace (including an online mobile application store) through which users within the land or maritime borders of the United States may access, maintain, or update such application.

(B) Providing internet hosting services to enable the distribution, maintenance, or updating of such foreign adversary controlled application for users within the land or maritime borders of the United States.

1. [R. 7521 Protecting Americans from Foreign Adversary Controlled Applications Act](#)

This bill, should it become law, would make it unlawful to host one of these applications on an application marketplace or store, but only within the United States. It does not

prohibit anyone from having the application or from using it. I don't know if the members of Congress realize this, but the Internet is international. So while this bill would make it unlawful for Apple or Google to host TikTok on their U.S. based marketplaces, it does not prevent them from hosting it on their foreign ones. Which I suppose means they could list the app on their stores, but the link to download or update the app would go to a server in a foreign country. The other option would be for users to simply get a VPN that would direct their traffic to a foreign country, then search their app store for TikTok. In either case, people will still have and be able to update the app. Since this law only prohibits hosting the applications, TikTok would simply have to redirect TikTok.com to a server in a foreign country and their website will still work. So this bill would have little impact on a foreign adversary either collecting data on or influencing Americans.

Then there's the ownership requirement for an app to be controlled by a foreign adversary.

CONTROLLED BY A FOREIGN ADVERSARY.—The term “controlled by a foreign adversary” means, with respect to a covered company or other entity, that such company or other entity is—

(A) a foreign person that is domiciled in, is headquartered in, has its principal place of business in, or is organized under the laws of a foreign adversary country;

(B) an entity with respect to which a foreign person or combination of foreign persons described in subparagraph (A) directly or indirectly own at least a 20 percent stake; or

(C) a person subject to the direction or control of a foreign person or entity described in subparagraph (A) or (B).

1. [R. 7521 Protecting Americans from Foreign Adversary](#)

[Controlled Applications Act](#)

All a person or company would have to do is own less than 20 percent of the app to get around this. But as a stake holder, would they not still have access to all of the data? Could they not influence the development of the algorithms used to influence their audience? After all, the United States doesn't own Twitter or Facebook, but they've been able to influence both companies and impact both elections and the response to COVID.

At that point there's the question of what is a foreign adversary country?

FOREIGN ADVERSARY COUNTRY.—The term “foreign adversary country” means a country specified in section 4872(d)(2) of title 10, United States Code.

[1. R. 7521 Protecting Americans from Foreign Adversary Controlled Applications Act](#)

What countries are specified in 10 USC §4872(d)(2)?

(2) Covered nation.—The term “covered nation” means—

- (A) the Democratic People's Republic of North Korea;
- (B) the People's Republic of China;
- (C) the Russian Federation; and
- (D) the Islamic Republic of Iran.

[10 USC §4872\(d\)\(2\)](#)

Then there's the question of what companies are covered by this bill?

(A) **IN GENERAL.**—The term “covered company” means an entity that operates, directly or indirectly (including through a parent company, subsidiary, or affiliate), a website, desktop

application, mobile application, or augmented or immersive technology application that—

(i) permits a user to create an account or profile to generate, share, and view text, images, videos, real-time communications, or similar content;

(ii) has more than 1,000,000 monthly active users with respect to at least 2 of the 3 months preceding the date on which a relevant determination of the President is made pursuant to paragraph (3)(B);

(iii) enables 1 or more users to generate or distribute content that can be viewed by other users of the website, desktop application, mobile application, or augmented or immersive technology application; and

(iv) enables 1 or more users to view content generated by other users of the website, desktop application, mobile application, or augmented or immersive technology application.

1. [R. 7521 Protecting Americans from Foreign Adversary Controlled Applications Act](#)

While The Constitution Study doesn't have a million monthly active users yet, I would like to one day. Users can create accounts, and one day I would like them to share information with other users. Does that make The Constitution Study a "covered company"? This bill would require us to be 20% owned by a citizen of one of these foreign adversary countries. And we all know that Congress would never slip an amendment into some huge omnibus bill to change those requirements, would they?

While there are plenty of issues with this legislation, we haven't even covered the question of constitutionality.

Is It Constitutional?

The first question that should be asked about any legislation is, "Is it constitutional?" Congress does have the power:

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

[U.S. Constitution, Article I, Section 8](#), Clause 3

Congress can regulate commerce with foreign nations, and TikTok is a commercial app owned by a foreign company. However, Congress goes too far with this bill, making it a Bill of Attainder.

a legislative act which declares a named person guilty of a crime, particularly treason.

[Bill of Attainder – The Free Legal Dictionary](#)

How does this rise to a bill of attainder? Because it declares a specific party as guilty without a trial.

(3) FOREIGN ADVERSARY CONTROLLED APPLICATION.—The term "foreign adversary controlled application" means a website, desktop application, mobile application, or augmented or immersive technology application that is operated, directly or indirectly (including through a parent company, subsidiary, or affiliate), by—

(A) any of—

(i) ByteDance, Ltd.;

(ii) TikTok;

(iii) a subsidiary of or a successor to an entity identified in clause (i) or (ii) that is controlled by a foreign adversary; or

(iv) an entity owned or controlled, directly or indirectly, by an entity identified in clause (i), (ii), or (iii);

1. [R. 7521 Protecting Americans from Foreign Adversary Controlled Applications Act](#)

Now if you're worried about other apps, well, you have a good reason. You see, in addition to targeting TikTok, there's another clause that allows the President to decide if a foreign company is a significant threat to national security.

(B) a covered company that—

(i) is controlled by a foreign adversary; and

(ii) that is determined by the President to present a significant threat to the national security of the United States following the issuance of—

(I) a public notice proposing such determination; and

(II) a public report to Congress, submitted not less than 30 days before such determination, describing the specific national security concern involved and containing a classified annex and a description of what assets would need to be divested to execute a qualified divestiture.

1. [R. 7521 Protecting Americans from Foreign Adversary Controlled Applications Act](#)

We've never seen a President declare someone or some company as a national security threat without probable cause, have we? And since this clause doesn't require the President to go through due process before depriving a company the ability to be available within the United States, that would make this bill a violation of the Fifth Amendment's Due Process Clause.

No person ... be deprived of life, liberty, or property, without due process of law;

[U.S. Constitution, Amendment V](#)

Is anyone surprised Congress can pack so many ineffective and unconstitutional acts into such a short piece of legislation?

Conclusion

I understand the desire to “get” TikTok, but we shouldn’t let our emotions lead us into making bad law. And there is a lot of bad in this bill. In addition to all of the problems I’ve already identified, there is a major hole in this legislation. Not only would it not be effective in preventing foreign governments from spying on the American people, it completely ignores the spying that other applications have been doing for decades. With all of the media focus on this bill, does anyone else wonder why all of the other apps vacuuming up and selling our data have been ignored?

I alluded earlier to the idea of treason, which is defined in Article 3, Section 3 of the Constitution.

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort.

[U.S. Constitution, Article III, Section 3](#)

If China is an enemy of the United States, and TikTok is not only collecting data for them but spreading propaganda as well, then wouldn’t helping them do so be giving them aid and comfort? I don’t think China is technically an enemy of the United States yet; after all, Congress has only listed them as a foreign adversary. What is the difference between a foreign adversary and an enemy? And if the plan we keep hearing about China has come true, wouldn’t they then be a full-blown enemy?

If Congress were competent, and truly concerned about applications spying on the American people, they would draft legislation that actually protected us. Instead, we see a bipartisan stand to screw up this situation even more. I cannot read minds, but my guess is this political

grandstanding is more about votes this November than the title of the bill suggests. How often have I said if you want to know the purpose of a bill, assume it's the exact opposite of its title.

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