From Banning to Regulating TikTok: Addressing concerns of national security, privacy, and online harms

Dr Jufang Wang
Executive Summary

- TikTok, the viral video-sharing platform owned by the Chinese company ByteDance, is under threat of being banned in the US and several other countries on ‘national security’ grounds (India has already banned TikTok). Meanwhile, the platform has been under regulatory scrutiny in some countries over issues including data privacy and ‘immoral’ content.

- While China has blocked most overseas social media platforms through its ‘Great Firewall’, democratic countries’ banning of TikTok will lead to a more fractured Internet and a more authoritarian Internet governance model, under which national governments can simply ban any global media platforms citing vague ‘national security’ reasons. This ‘splinternet’ effect is against the interest of consumers and businesses around the world.

- As the first non-US social media platform that has gained global popularity, TikTok’s fate has significant implications for the wider tech industry. The exclusion of TikTok, which has become a competitor to the US-based social media giants like Facebook and YouTube, will undermine the much-needed competition within the industry. Banning TikTok will not be good for technology innovation.

- TikTok has become one of the world’s most vibrant online communities, providing channels for many people, including under-privileged groups and independent musicians and artists to express themselves and/or to make a living. Banning TikTok is seen by many as a violation of the free speech rights of TikTok’s hundreds of millions of users. This point has been largely overlooked by Western mainstream media.

- Regulatory pressure on TikTok is a much more desirable way to bring about a safer online environment than outright banning of a popular social media platform. A regulatory approach can provide a more stable, rule-based operating environment for all online media platforms, regardless of their national origins. Indeed, regulation has brought about some positive changes regarding TikTok’s data protection and content moderation policies, such as increasing its transparency around user data and distancing itself from China’s content censorship policy.
Introduction

TikTok, the viral video-sharing platform owned by the Chinese company ByteDance, is facing an uncertain future under the threat of being banned in the United States. The Trump administration has cited ‘national security’ threats to target the platform, accusing it of sharing American user data with the Chinese Communist Party (CCP), spreading disinformation that benefits the CCP, and censoring content that displeases Beijing.

Meanwhile, politicians and lawmakers in several other countries including Australia, Japan, and the UK have also voiced concerns about TikTok’s Chinese origin and raised the possibility of a future ban (Australia ruled out a possible ban after a security review on TikTok this August).

In addition, India banned TikTok among dozens of Chinese apps amid border conflicts with China in June. TikTok is also under regulatory scrutiny in a number of countries for issues including data privacy and hosting ‘immoral’ content. In October, Pakistan temporarily banned the platform for immoral videos.

While China has blocked many overseas social media platforms like Facebook and Twitter through its so-called “Great Firewall”, it is a rare and unexpected action for democracies to ban or threaten to ban a globally popular platform. This new development raises serious questions about the future of the Internet: Is an open Internet still a goal pursued by the Western democracies? Given that TikTok is the first non-US social media platform that has achieved global popularity, is banning the platform detrimental to the much-needed competition within the social media market that has been dominated by a few US companies like Facebook and Google?

Additionally, is banning TikTok a violation of the freedom of speech of its hundreds of millions of users?

This policy brief report analyses the implications of two different approaches in addressing the concerns over TikTok: an outright ban and regulatory measures. It argues that, while Western democracies may have legitimate concerns towards TikTok, resorting to regulatory measures, rather than a ban, to address them has obvious benefits. Such benefits include maintaining a more open Internet, fostering competition and innovation in the technology sector, and honouring TikTok users’ freedom of speech and their rights of monetization through content creation. This policy brief will first discuss the negative implications of banning TikTok, before examining the existing or potential regulatory measures relating to concerns over TikTok, including data security, privacy, disinformation, content censorship, and online harms. Given that not all these concerns are particular to TikTok, the regulatory measures discussed are largely applicable to other global platforms.

The wider impact of banning TikTok

For Western democracies, while banning TikTok may solve their ‘national security’ concerns over the platform, it is only a short-sighted solution to long-term issues such as data security, privacy and disinformation. Also, such an approach could have a profound impact on the future of an open Internet, technology innovation, and TikTok users’ freedom of speech.
Leading to a ‘splinternet’

A possible TikTok ban in the US and other democracies may lead to a more fractured online world. Here, the logic is that if the US can ban TikTok on ‘national security’ grounds without providing evidence, then other countries may also cite this reason to ban any social media platforms or any tech companies. This is why even TikTok’s competitor Facebook has voiced concerns over the long-time implications of a TikTok ban for all social media platforms. An article from Harvard Business Review even warned that the TikTok ban ‘should worry every company’, as there has been an increase in the cases of countries banning products or services over alleged cybersecurity concerns.

Banning TikTok over national security concerns is also reminiscent of the authoritarian Internet governance model. Countries like China and Russia have advocated the so-called ‘Internet sovereignty’ policy, which allows national governments to exert more control over the Internet within their borders, as an alternative to the West’s ‘Internet freedom’ agenda. In recent years, this ‘Internet sovereignty’ idea has gained some momentum. For example, in Turkey, a new law requires social media platforms to appoint a local representative in the country, to store user data of Turkish citizens within the country, and to obey local court orders to remove offensive content within 48 hours; otherwise, they will face a heavy fine and a de facto ban (90 per cent of offenders’ bandwidth is blocked). If Western democracies join such efforts by banning a globally popular social media platform, Internet governance around the world will move further towards an authoritarian model.

It is worth noting that threatening to ban TikTok is only part of the Trump administration’s sweeping ‘Clean Network’ programme, which aims to cut out almost all technological links between US and China (covering telecommunication carriers, apps, cloud services, mobile stores, and undersea cables). The United States has been pressuring other countries to join this programme. If this ‘Clean Network’ programme is fully implemented, a digital wall will rise along the ideological divide. Such a ‘splinternet’ will bring substantial disruption and hazards to our world. For example, users of Huawei phones around the world have already felt the disruption caused by the US sanction on Huawei, as they are now unable to use the basic services from Google such as Google Maps.

Inhibiting competition and innovation

TikTok is an innovative social video-sharing platform, which has popularized a new form of online content around the world: 15 to 60 seconds short-form videos with soundtracks (usually popular music). While the platform is most famous for its fun and creative videos, it is becoming one of the most popular social media platforms for political expression (such as the Black Lives Matter movement and US presidential election) and expanding its user base from young users to a wider demographics.

TikTok has become a serious competitor to American social media platforms like Facebook, Instagram, and YouTube. Before TikTok, non-US social media platforms like WeChat (China), Line (Japan), VKontakte (Russia), and Kaokao Talk (South Korean) have not achieved global popularity, although they are very successful at home and in some overseas countries. In this sense, the success of TikTok in global expansion is exceptional. Since 2018, TikTok has witnessed a meteoric rise: it has been downloaded over 2 billion times globally and was the most downloaded app across the App Store and Google Play in the first quarter of 2020.

Banning TikTok will further solidify the dominance and monopoly of American social media platforms globally. Through acquisitions and mergers, the Facebook company already owns four top social media platforms including Facebook, Instagram, WhatsApp, and Facebook Messenger. Google not only dominates the online search market, it also owns YouTube, the world’s largest video-sharing platform. This situation has caused concerns even within the US. Facebook’s CEO Mark Zuckerberg and Google’s CEO Sundar Pichai, together with CEOs from Apple and Amazon, testified at the US House of Representatives’ antitrust subcommittee in late July.
The dominance of a few American social media platforms in the world has made it difficult for new entrants to attract users, partly due to the ‘network effects’ witnessed in social media markets. In the meantime, tech start-ups around the world may lose the inspiration from the success story of TikTok.

**Violating freedom of speech**

It may not be obvious that banning TikTok will violate the freedom of speech of TikTok users, given that there are alternative platforms for them to express themselves. This might be true for celebrities and famous brands. However, for unknown content creators, especially many underprivileged social groups, TikTok is a unique and important platform for them to be discovered and heard. As three TikTok content creators, who filed a lawsuit requesting an American court to block the Trump administration’s TikTok ban, pointed out in their court document, in contrast with other social media platforms, TikTok’s algorithm allows ‘little-known creators to show their content to a large audience’. This is an important point that has been largely overlooked by Western mainstream media.

TikTok’s AI-powered algorithm, which recommends personalized content based on users’ interest, has been dubbed the ‘secret sauce’ of its success. The algorithms of most major social media platforms like Facebook, Instagram and Twitter mainly prioritize content posted by users’ friends and/or subscribed accounts. However, according to TikTok, ‘neither follower count nor whether the account has had previous high-performing videos are direct factors in the recommendation system.’ In other words, content creators without a large number of followers on TikTok can reach a massive audience as long as their content is enjoyed by others. This explains why on TikTok, most popular users are not necessarily celebrities, but people previously unknown.

For the above reason, TikTok’s algorithm has created a more equal online space for its users than most popular platforms. As a result, when TikTok was banned in India, the most affected groups were those disadvantaged people, including rural housewives and the unemployed who relied on the platform to express themselves and earn extra income. This situation also applies to independent musicians, artists, and comedians, who have flocked to TikTok in hope of gaining an audience and making a living. Banning TikTok will be a violation of their freedom of speech and rights to monetise their content.

**Addressing concerns through regulatory measures**

Compared to banning TikTok, regulatory schemes provide a long-term and rule-based approach to address concerns around social media platforms. In recent years, some countries or regions, especially the EU, have stepped up their efforts in regulating platforms in areas including data protection and tackling online harms. Here, regulatory measures refer to laws, regulations, public-private agreements, and self-regulatory framework initiated by states or inter-governmental bodies (e.g., Code of Practice on Disinformation in the EU).

**Data security and privacy**

The main ‘national security’ concern regarding TikTok expressed by the Trump administration is that the platform may share user data of American users with the Chinese government. However, even the CIA has concluded that there is ‘no evidence’ showing that TikTok has done so. TikTok has repeatedly denied such accusations and emphasized that its user data are stored in the United States, with a backup in Singapore, and therefore are not subjected to Chinese laws.

It is not uncommon for national governments to harbour concerns over their citizens’ data being controlled by foreign companies. China itself required Apple to store iCloud data of mainland China users within the country in 2018, which is why Apple iCloud service in China is operated by GCBD, an iCloud service in Guizhou, China. According to GCBD’s terms of service, both Apple and the company have the right to access all user data of Chinese mainland users, and GCBD may disclose user data to Chinese law enforcement authorities, government officials, and/or a relevant third party.
when it believes ‘reasonably appropriate’. The proposed TikTok-Oracle-Walmart deal offered a similar solution: Oracle would become TikTok’s ‘trusted technology provider’, with TikTok’s user data of American users being stored in Oracle iCloud and managed by Oracle.

For many Western countries, such an arrangement to ensure data security may not be necessary. In the EU, the General Data Protection Regulation (GDPR) that came into effect in 2018 provides a framework for personal data protection and cross-border data transfer. Currently, TikTok is under regulatory scrutiny in several European countries (Netherlands, France, Italy, Denmark, and the UK) for privacy issues, rather than national security concerns. If TikTok is found to have breached GDPR, the company will face a fine up to €20 million or 4 per cent of its global turnover, whichever is higher (in each country). To avoid being fined in several EU countries, TikTok has announced a plan to launch a data centre in Dublin and make TikTok Ireland the data controller of its European users.

Outside Europe, some other countries also raised privacy concerns over TikTok, especially over its handling of user data of children, given that the platform has a very strong user base among young people (over 40 per cent users aged between 16 and 24), some of whom being under the age of 13. For example, in July, South Korean data watchdog fined TikTok around £123,000 for collecting data of thousands of children under 14 years old without the consent of legal guardians.

While TikTok may be issued heavy fines if found to have breached privacy rules in Europe or elsewhere, the company, at least, understands what is expected regarding data protection policies and practices. This is exactly why a regulatory approach is better than a ban, as it provides a more stable environment for platforms, their users and advertisers.

Under regulatory pressure, TikTok has tried to increase transparency of its privacy policies, including disclosing what types of user data it collects and how they are used. Meanwhile, in common with major American platform companies such as Google and Facebook, TikTok started to publish semi-annual transparency reports since the second half of 2019, disclosing information regarding the volume and nature of governmental requests for its users’ account information and other legal notifications. The response from TikTok shows that regulatory scrutiny (with heavy fines) is effective in pressuring global social media platforms to be more responsible in handling user data.

**Disinformation and censorship**

Apart from data security, another type of national security concern over TikTok in Western democracies is that the platform can be used to spread disinformation and to censor content displeasing to Beijing. Some media reports revealed that leaked TikTok documents instructed its moderators to suppress content that Beijing deemed politically sensitive, such as videos mentioning Tiananmen Square (i.e., the 1989 political turmoil in Beijing) and Tibetan independence. TikTok claims that the leaked moderation guidelines were outdated and it does not censor content displeasing China. According to TikTok, its content moderation is conducted by teams outside China following local laws and culture. In March 2020, ByteDance dismantled the entire Beijing team who was responsible for overseas content moderation.

While TikTok’s localization of content moderation may alleviate, to some degree, concerns over the platform in relation to disinformation and censorship, such concerns will not die down as long as ByteDance is in charge of TikTok’s algorithm—the source code that decides what content each user consumes. Microsoft, the earlier potential buyer of TikTok’s American business, demanded that a sale deal should include TikTok’s algorithm. However, China’s Ministry of Commerce updated its list of controlled exports to include recommendation algorithms that powered TikTok in August 2020. The later proposed TikTok-Oracle-Walmart deal provided another option: Oracle will get full access to TikTok’s source code and updates to ensure that there are no back doors used by the platform. Source code reviews are not unusual practices to alleviate security concerns. Microsoft launched its
Government Security Program (GSP) in 2002 that allows some 40 nations to review its source code and later opened several transparency centres, including one in Beijing that allow manual review of Microsoft products by government IT experts. In 2018, Huawei, the Chinese telecommunication giant, opened a Security Innovation Lab in Germany that enables source code reviews, with the intention of winning the confidence of German regulators in its 5G equipment. It is not known yet whether the Oracle-TikTok source code inspection arrangement will satisfy the Trump administration. However, source code reviews may be a potential regulatory solution if other countries also have security concerns regarding TikTok’s recommendation algorithm. This summer, TikTok opened a Transparency and Accountability centre in Los Angeles, where invited journalists, experts, and government officials can learn more about its data storage, content moderation policies, and even monitor its algorithm.

Apart from concerns over TikTok’s China origin, wider concerns in relation to disinformation and censorship have also been raised with TikTok, along with other major social media platforms. Since the 2016 American presidential election, there are wide concerns around the world, from both governments and the public, over the role of social media platforms in spreading disinformation to influence elections.

In the EU, the Code of Practice on Disinformation is a self-regulatory set of standards on fighting disinformation signed by platforms including Google, Facebook and Twitter in 2018, which aims to achieve the objectives, set by the European Commission, such as increasing transparency in political advertising, closure of fake accounts and demonetization of purveyors of disinformation. TikTok joined the code in June 2020. Since 2019, TikTok (joined later by Twitter) has banned all paid political ads on its platform.

In addition, TikTok, which celebrated the Pride Month for its LGBTQ+ community in June 2020, has been accused of shadow-banning (meaning content can be posted but not recommended by TikTok’s algorithm) LGBT-related content in countries in Eastern Europe and the Middle East like Russia, Bosnia, and Jordan. TikTok acknowledged that this practice was partly due to its ‘localized’ approach to content moderation, but sometimes due to ‘mistakes’. This revelation demonstrates the different approaches between TikTok and American platforms regarding content moderation. TikTok’s Community Guidelines state that it considers ‘the cultural norms and local regulations of the countries’ in which the platform operates. In contrast, YouTube states that its ‘Community Guidelines are enforced consistently across the globe, regardless of where the content is uploaded.’ While American platforms’ ‘globalized’ approach may fit well in democracies, TikTok’s ‘localized’ approach may be plausible in more conservative countries but is more vulnerable to accusations of censorship.

Online harms and content moderation
Another major concern over TikTok (as well as other platforms) around the world is the spread of harmful content, although countries may have different definitions and understandings about what constitutes ‘harmful’ content. TikTok was temporarily banned in Indonesia in 2018 and in Pakistan in 2020 for hosting ‘immoral’ or ‘inappropriate’ content. In Western democracies, the focus on harmful content or online harms has mainly been on issues like hate speech, child protection, terrorism propaganda, and copyright infringement. For TikTok, child protection and user safety have become a prominent issue, as it has a large proportion of young users.

In recent years, many countries have strengthened their measures to fight online harmful content by introducing heavy fines and even prosecution of social media executives if they fail to remove content within certain time limits. Australia passed the Sharing of Abhorrent Violent Material Act in 2019, introducing possible jail sentences for tech executives for up to three
years and penalties up to 10 per cent of a company’s global turnover. The EU and several European countries including Germany have also taken regulatory measures in fighting online harmful content. For example, the EU’s proposed Terrorist Content Regulation requires tech companies to remove extremist content from their platforms within one hour. Germany’s Network Enforcement Act (NetzDG) that took effect in 2018 obliges social networks to remove ‘manifestly unlawful content’ within 24 hours, and systemic failure may lead to fines up to €50 million. These legislation developments have put pressure on platforms to step up their own self-regulatory efforts in content moderation.

**Conclusion**

While it may seem plausible to hold platforms accountable for infringing data protection, spreading disinformation, and hosting harmful content, there is also a fine line to walk between the need on one hand to safeguard freedom of speech and to facilitate innovation, and on the other hand, the urgency to maintain a safe online environment, as platforms may over-censor content or be over-cautious regarding innovations to avoid heavy fines. Overall, given that platforms have become the main channels for global connection, civic participation, and individual expression, it is absolutely essential that we strengthen the regulation of these powerful platforms, whilst giving full consideration to freedom of speech.
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Dr Jufang Wang is deputy director of the Platforms, Governance, and Global Society (PGG) programme based at Wolfson College, University of Oxford. Her research focuses on digital media platforms, media policy and Internet governance, and wider issues concerning China. She is working on a book about China’s online public opinion control in the platform age. She can be contacted at: wangjufang01@gmail.com

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The Foundation for Law, Justice and Society
Wolfson College
Linton Road
Oxford OX2 6UD
T • +44 (0)1865 284433
F • +44 (0)1865 284434
E • info@fljs.org
W • www.fljs.org

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