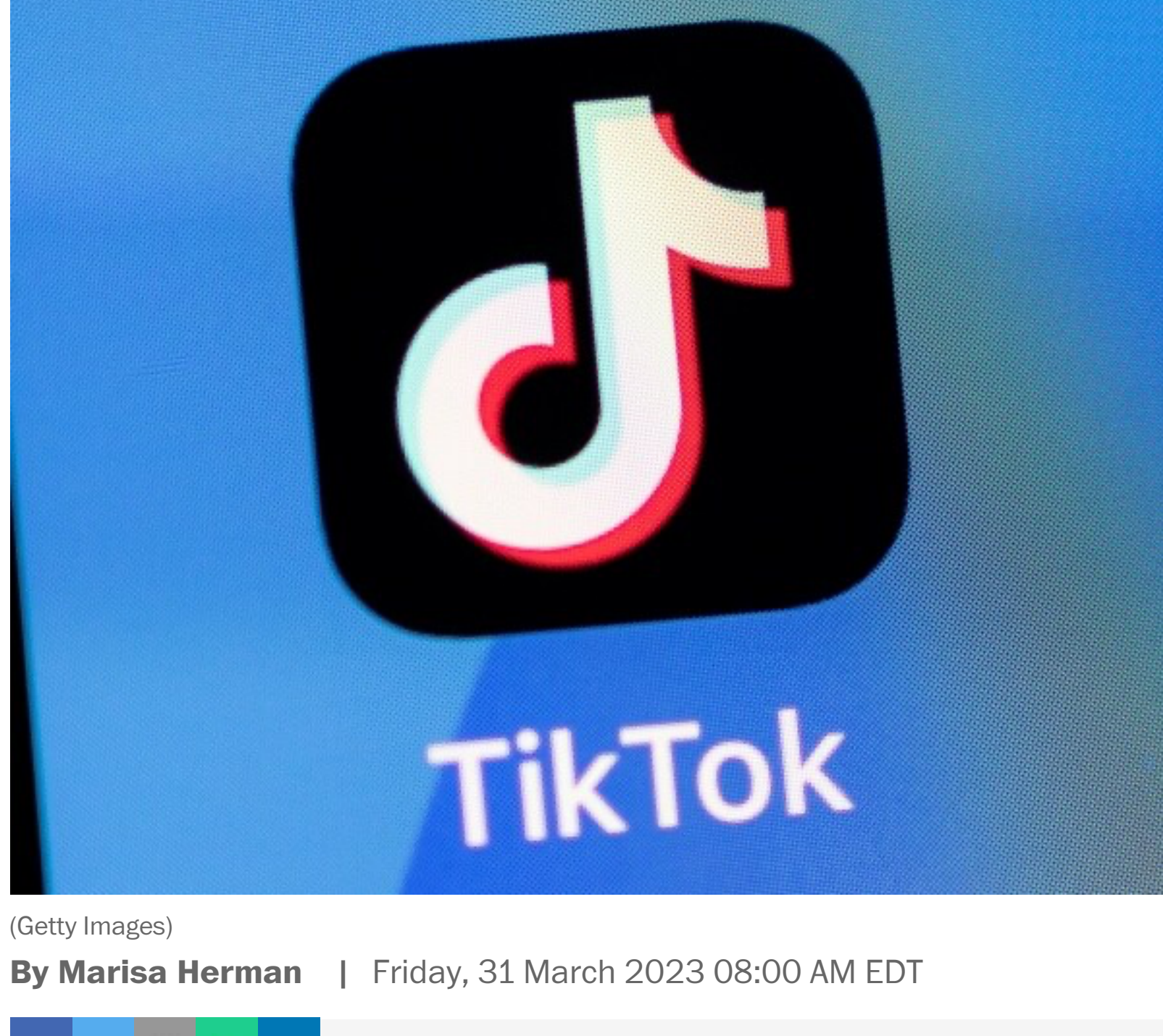


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Does Proposed 'TikTok Ban' Go Too Far?



(Getty Images)

By **Marisa Herman** | Friday, 31 March 2023 08:00 AM EDT

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Despite the myriad privacy and national security concerns prompting lawmakers in both parties to scrutinize popular social media app TikTok and its ties to the Chinese Communist Party, legal experts say that one of the leading bills under consideration is a Trojan Horse, using increasing public anxiety about the app to expand the government's reach.

The Senate's bipartisan RESTRICT Act, which already has been endorsed by the White House, would give the secretary of commerce sweeping power to regulate tech produced by adversarial countries, raising fears that the bill may go too far in expanding already pervasive federal powers.

Though the proposal for RESTRICT – which stands for Restricting the Emergence of Security Threats that Risk Information and Communications Technology – is popularly being billed as the "TikTok ban," critics say the intent of the legislation is more about allowing government to gain control over what people do on the internet, instead of simply seeking to eliminate an app that poses a national security threat.

Attorney and Newsmax insider Michael Abramson notes that the bill is "very broad" and doesn't even mention TikTok or parent company ByteDance by name.

"If Congress wants a bill to ban TikTok, then it should write a bill which actually bans TikTok," he said.

Entrepreneur and GOP presidential hopeful Vivek Ramaswamy cautioned against the passage of the Restrict Act as it's currently written.

"As opposed as I am to the Chinese infiltration of our economy, I think we have to be very careful not to become more like China in the process," he said in an online video addressing the bill.

Because the proposal "expands the scope of national security" powers possessed by the executive branch, he said he would only support the legislation if the Patriot Act was repealed.

"If Congress expands power of the national security establishment, it must rescind a previously granted power at the same time," he tweeted.

Some of the proposal's biggest critics have derided the bill as the Patriot Act for the internet. The Patriot Act, signed into law by President George W. Bush in the aftermath of the 9/11 attacks, weakened privacy rights by allowing the government vastly increased spying powers, ostensibly to combat terrorism but inevitably used for other ends.

Civil liberties advocates contend that the Restrict Act could impinge on online privacy, giving the government the legal ability to access everything from laptops to smart doorbells.

Abramson said the bill gives "great power to the secretary of commerce to affect transactions and technologies."

Under the proposal, the secretary of commerce would be accorded the power to decide if TikTok – or another app or technology – is problematic and should be banned. The bill also seemingly limits judicial review of these decisions and curtails Americans' abilities to challenge bans in court or file FOIA requests for information.

Another controversial measure affects anyone using a Virtual Private Network, or VPN, to bypass banned apps.

Some have questioned if TikTok fans who use a VPN to access a prohibited app, such as TikTok if it were banned, would suffer the ban's criminal penalties, which include a fine of up to \$1 million and up to 20 years in prison.

Rachel Cohen, the communications director for one of the bill's Democrat co-sponsors, Virginia Sen. Mark Warner, told Newsweek that individual users would not be prosecuted.

"Under the terms of the bill, someone must be engaged in 'sabotage or subversion' of communications technology in the U.S., causing 'catastrophic effects' on U.S. critical infrastructure, or 'interfering in, or altering the result' of a federal election in order for criminal penalties to apply," Cohen said.

She added that the bill is "squarely aimed at companies like Kaspersky, Huawei, and TikTok that create systemic risks to the United States' national security. Not individual users."

Paul Kamenar, senior counsel at the National Legal and Policy Center, a conservative nonprofit that promotes ethics in public life, called the proposal "complicated."

While Kamenar said he believes that it is "in the public interest to ban TikTok for a number of reasons," parts of the RESTRICT bill "may be unnecessary."

If the ultimate endgame is to ban TikTok, he said, "perhaps this bill goes too far."

"Any time the government starts to regulate anything, they can obviously overstep privacy," Kamenar said. "We are all concerned about the invasion of our privacy whenever we use the internet."

But Kamenar added that the bill is designed to go after people who pose a national security risk and handle classified information, not the average American surfing the web looking to be entertained.

"The average person with a game console isn't dealing with classified information," he said.

In addition to privacy concerns, free speech advocates argue the proposal raises First Amendment issues.

While it's primarily been progressives, such as New York Reps. Alexandria Ocasio-Cortez and Jamaal Bowman, leading the charge for politicians opposing the elimination of the platform – which is reportedly used by 150 million Americans – the Democrat lawmakers have support from at least one Republican.

Sen. Rand Paul, R-Ky., has come out against the ban, arguing in an opinion piece published Wednesday by the Courier-Journal, that banning TikTok would mimic the censorship moves of the Chinese government.

"I hope saner minds will reflect on which is more dangerous: videos of teenagers dancing or the precedent of the U.S. government banning speech," Paul wrote. "For me, it's an easy answer, I will defend the Bill of Rights against all comers, even, if need be, from members of my own party."

He added: "If you don't like TikTok or Facebook or YouTube, don't use them. But don't think any interpretation of the Constitution gives you the right to ban them."

House Speaker Kevin McCarthy, R-Calif., has stated that lawmakers "will be moving forward" with legislation to address TikTok, however, he did not specify what legislation the lower chamber would be taking up.

"It's very concerning that the CEO of TikTok can't be honest and admit what we already know to be true – China has access to TikTok user data," McCarthy tweeted. "The House will be moving forward with legislation to protect Americans from the technological tentacles of the Chinese Communist Party."

If the House and Senate do pass the RESTRICT act, which was introduced earlier this month by a group of lawmakers led by Sens. John Thune, R-S.D., and Mark Warner, D-Va., it is expected to get the president's signature.

The White House has signaled its support for the RESTRICT Act, with national security adviser Jake Sullivan urging lawmakers to "act quickly" to send the bill to President Joe Biden's desk.

"This legislation would provide the U.S. government with new mechanisms to mitigate the national security risks posed by high-risk technology businesses operating in the United States," Sullivan wrote in a statement. "Critically, it would strengthen our ability to address discrete risks posed by individual transactions and systemic risks posed by certain classes of transactions involving countries of concern in sensitive technology sectors."

Leading TikTok critic Sen. Josh Hawley, R-Mo., had his attempt on Wednesday to pass a separate bill banning the app by unanimous consent thwarted by Paul.

Paul argued: "Speech is protected whether you like it or not."

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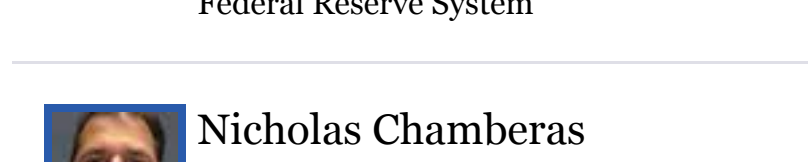
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