

Dear Member of Congress,

We, the undersigned organizations, write to express our concern about federal legislation and proposals that seek to impose a wholesale ban on TikTok in the United States. If passed by Congress and enacted into law, a nationwide ban on TikTok would have serious ramifications for free expression in the digital sphere, infringing on Americans' First Amendment rights and setting a potent and worrying precedent in a time of increased censorship of internet users around the world. A ban on TikTok by means of executive action would have a similar impact.

We recognize the grave concerns that TikTok and other social media platforms pose for the privacy of individual users. We are also aware and we recognize that U.S. government officials have cited serious concerns with respect to the threat that TikTok may pose to U.S. national security. ByteDance's prevarication in response to repeated queries about its handling of American users' data is unacceptable. But solutions short of a full-scale ban can address these vulnerabilities without resorting to an ill-advised, blanket approach that would impair free speech and set a troubling precedent that could curtail free expression worldwide.

The rise of apps like TikTok poses novel challenges to the digital commons. Nearly 150 million Americans use TikTok¹ to connect, and to create and share content. Whether they use the app to live stream, promote a small business, share their creative work, connect with family, or find information on how to vote, their speech is protected by the First Amendment. The Supreme Court has long recognized that the First Amendment encompasses the right to receive information, irrespective of its source, free from government interference.² If the government were to intervene to ban TikTok entirely, it would impair the rights of citizens to communicate in a manner of their choosing, giving rise to significant First Amendment concerns.

The Supreme Court has recognized that the digital realm is currently "one of the most important places to exchange views."³ People in the U.S. have a constitutional right to speak via the internet, and to do so on the platform of their choosing. For citizens, and particularly the tens of millions of young Americans who use TikTok, to witness a popular social media platform summarily shut down by the government will raise serious questions in the minds of a rising generation about the sanctity of free speech in our system of governance. Moreover, the enforcement of such a ban could force major changes in the operation of the internet in the United States, including potential requirements on service platforms to police and censor the traffic of users, or even a national firewall to prevent users from downloading TikTok from sources across our borders.

¹ TikTok [@tiktok], *Our CEO, Shou Chew, shares a special message on behalf of ...* [TikTok video], <https://www.tiktok.com/@tiktok/video/7212953186724842795>, March 21, 2023.

² *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) ("It is now well established that the Constitution protects the right to receive information and ideas."); *Red Lion Broadcasting Co., Inc v. FCC* 395 U.S. 367, 390 (1969) ("It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences ...").

³ *Reno v. ACLU*, 521 U. S. 844, 870 (1997).

In addition to the implications of a ban on domestic free expression, a legislative ban on TikTok in the U.S. would set an alarming global precedent, lending legitimacy to authoritarian regimes in shutting down and excluding services they disfavor. Major American digital platforms have been banned or severely restricted by governments, including the Chinese Communist Party,⁴ Pakistan,⁵ and Uganda,⁶ among others,⁷ seeking to silence dissent and opposition and obstruct the open flow of communication and information. When Nigeria banned Twitter for seven months in June 2021, the U.S. condemned the ban, reiterating its support for “the fundamental human right of free expression and access to information as a pillar of democracy in Nigeria.” Last year, the U.S. similarly denounced “Russia’s shuttering of independent media and technology platforms,”⁸ and when mass protests erupted in Iran after the killing of Mahsa Amini, the U.S. government strongly condemned the actions of the Iranian regime and called on the Iranian authorities to refrain from the “blocking or filtering of services.”⁹ In 2018, the Department of the Treasury’s Office of Foreign Assets Control designated individuals responsible for the blocking of social media applications in Iran as “engaging in censorship activities that prohibit, limit, or penalize the exercise of freedom of expression or assembly by citizens of Iran.” If the U.S. were to now put its statutory imprimatur on wholesale banning as a means of redressing its security concerns about digital platforms, other governments will follow suit, insisting that their own security concerns are equally pressing. A ban on TikTok would sorely undermine U.S. credibility as a defender of digital freedom, and invite copycat measures that could lead to severe constriction of expression worldwide.

Measures short of an outright ban may address potential security concerns raised in relation to TikTok. A proposal by Senators Blumenthal and Moran to expedite the investigation by the Committee on Foreign Investment in the United States (CFIUS) into TikTok could yield a plan that would mitigate security risks without denying users access to the platform.¹⁰ A comprehensive consumer privacy bill would limit data commodification, thereby dramatically increasing users’ security online. A robust privacy bill could address concerns not just at TikTok but across the multiple social media platforms—current and future—that have proven to be

⁴Eglé Juodytė, *Which websites and apps are blocked in China?*, <https://nordvpn.com/blog/blocked-sites-china/> (noting blocked sites include Western media sources, social media applications, and search engines), January 3, 2023.

⁵Abid Hussain, *Wikipedia ban in Pakistan over alleged blasphemous content lifted*, <https://www.aljazeera.com/news/2023/2/7/wikipedia-ban-in-pakistan-over-alleged-blasphemous-content-lifted>, February 7, 2023.

⁶Arthur Arnold Wadero, *Facebook to remain shut as govt talks with tech giant stall*, <https://www.monitor.co.ug/uganda/news/national/facebook-to-remain-shut-as-govt-talks-with-tech-giant-stall-3912172>, August 12, 2022.

⁷Martin Armstrong, *Where Social Media is Suppressed*, <https://www.statista.com/chart/23804/countries-blocking-social-media/>, January 17, 2022.

⁸*Statement by NSC Spokesperson Emily Horne on Russian Disinformation and Efforts to Undermine Free Press*, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/05/statement-by-nsc-spokesperson-emily-horne-on-russian-disinformation-and-efforts-to-undermine-free-press/>, March 5, 2022.

⁹*Joint Statement on Internet Shutdowns in Iran*, <https://www.state.gov/joint-statement-on-internet-shutdowns-in-iran/>, October 20, 2022.

¹⁰Letter from Senators Richard Blumenthal and Jerry Moran to Secretary of the Treasury Janet Yellen (February 16, 2023), <https://www.blumenthal.senate.gov/imo/media/doc/20230216cfiustiktok.pdf>.

vulnerable to intrusion by the CCP and other foreign governments.¹¹ It could also mitigate concerns not just of foreign data mining but also hacking, ransomware and other security vulnerabilities.

Current legislative and administrative proposals to ban TikTok risk violating First Amendment rights, and setting a dangerous global precedent for the restriction of speech. More effective, rights-respecting solutions are available and provide a viable alternative to meet the serious concerns raised by TikTok.

Sincerely,

PEN America
Access Now
Advocacy For Principled Action In Government
American Civil Liberties Union
Authors Guild
Center for Democracy & Technology
Fight for the Future
Free Press Action
Knight First Amendment Institute at Columbia University
National Coalition Against Censorship
New America's Open Technology Institute
Organization for Identity & Cultural Development
Public Knowledge
Surveillance Technology Oversight Project
Tully Center for Free Speech
Woodhull Freedom Foundation

¹¹Twitter, *Disclosing state-linked information operations we've removed*, https://blog.twitter.com/en_us/topics/company/2021/disclosing-state-linked-information-operations-we-ve-removed, December 2, 2021; Twitter Safety, *Disclosing networks of state-linked information operations we've removed*, https://blog.twitter.com/en_us/topics/company/2020/information-operations-june-2020, June 12, 2020; Ben Nimmo and David Agranovich, *Removing Coordinated Inauthentic Behavior From China and Russia*, <https://about.fb.com/news/2022/09/removing-coordinated-inauthentic-behavior-from-china-and-russia/>, September 27, 2022; Taylor Hatmaker, *Former Twitter employee found guilty of spying for Saudi Arabia*, <https://techcrunch.com/2022/08/09/twitter-spy-convicted-saudi-arabia/>, August 9, 2022.