

Advertising + Marketing

TikTok is Back! But for How Long? President's Actions Raise Even More Questions

The Bottom Line

- On January 18th, TikTok briefly went dark in compliance with the *Protecting Americans from Foreign Adversary Controlled Applications Act*.
- Shortly following his inauguration on January 20th, President Trump issued an executive order that restored TikTok for U.S. users, at least temporarily.
- The long-term future of TikTok remains uncertain, leaving the users, creators, marketers and media companies in the TikTok ecosystem with more unanswered questions.

Following the U.S. Supreme Court's decision in [*TikTok v. Garland on January 17th*](#) to uphold the *Protecting Americans from Foreign Adversary Controlled Applications Act*, TikTok went dark late on January 18th, with an appeal to President-elect Trump to do something – *anything* – that would save the social media platform from a permanent shutdown.

The President-elect responded by issuing a vague promise to sign an executive order that would extend the period of time before the ban takes effect, and by early afternoon on January 19th (the first day the law took effect), TikTok was live again and serving the videos its creators and users love.

Shortly following his inauguration on January 20th, President Trump fulfilled that promise and issued an executive order that:

1. Directs the Attorney General not to take any action to enforce the law for 75 days;
2. Directs the Department of Justice not to take any enforcement action for any activity that occurs during the 75-day period or occurred prior to the signing of the executive order (i.e., on January 19th);
3. Directs the Attorney General to notify all service providers that they are not in violation of the law; and
4. Prohibits enforcement of the law by states or private individuals.

So, for the time being, it seems that TikTok is back. Yet its long-term viability remains in question and this uncertainty will continue to impact the users, creators, marketers and media companies in the TikTok ecosystem for at least the next 75 days.

Questions Answered

If your head is spinning from all the activity over the weekend, you're not alone. As we digest the full implications of the events of the past few days, here are some additional questions on the minds of marketers and other users of the platform.

Can the president do this?

While presidents have discretion in determining how to prioritize enforcement of the laws passed by Congress, there is precedent that blanket announcements such as this one exceed the executive branch's authority. There is a strong likelihood that the order will be challenged in court on this basis.

But will the executive order keep TikTok going?

For a while, at least, it should. Even if the order is challenged, it will likely take more than 75 days to make it through the courts and the appellate process. When TikTok petitioned the Supreme Court for an emergency hearing, its very existence was being threatened. Now, a delay in the courts will only impact whether TikTok and its service providers will be fined or not. Moreover, the current case presents a much more complex separation of powers issue than the national security issue addressed in TikTok's petition to overturn the law. Expect this to take some time to be resolved.

I've heard TikTok is still not available on app stores. Why is that?

Each of the businesses supporting TikTok make their own risk assessment regarding potential liability under the law. The app stores may be waiting for the formal notice from the Attorney General before reinstating TikTok. Others may wait for Congressional action. Other apps owned by ByteDance, such as Lemon8 and CapCut, also remain off the app stores. In the short term, this likely will have little impact on TikTok, since it only affects new users attempting to access the app, not the 170 million U.S. users who already have TikTok accounts and the app downloaded on their devices.

How will media buys be affected?

The law was never aimed at users or advertisers on the platform, so advertising on TikTok in the short term should be unaffected. TikTok has advised advertisers that any campaigns that were paused while TikTok was dark between January 18th and 19th have been automatically restarted.

What if I want to cancel a media buy?

Cancellation rights are dependent on the specific terms of a media buy, but TikTok is likely to take the position that the executive order precludes any termination based on “force majeure” or similar disruptions.

What about long-term campaigns?

For any campaigns that are designed to extend beyond the 75-day window, advertisers should evaluate their media mix based on the uncertain status of TikTok following this period. TikTok could go dark again, or it could be sold, which may impact a desire to advertise on the platform.

What about influencer programs?

For marketers who haven't already done so, this window offers an opportunity to include terms which allow influencer programs to be cancelled or shifted to other platforms should TikTok experience another disruption or change in status.

Can I continue to post organically on the platform?

While there was a flurry of activity over the weekend on alternative platforms, TikTok users and audience rejoiced at news of the executive order. So the expectation is that the audience will largely remain with the platform, at least in the short term. As previously noted, the law (whether or not enforced) was not aimed at users of the platform, so continued organic posting should not be affected.

Next Steps

Despite the executive order temporarily halting the TikTok ban, the long-term future of the app is far from settled. While the specifics of enforcement remain uncertain, businesses should stay proactive and ready to adjust their strategies. We will continue to monitor developments.

For More Information

Please contact the attorney listed below or the Davis+Gilbert attorney with whom you have regular contact.

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