



Trump Treads Into Murky Waters With TikTok Gambit

This article is published online at [Law360](#)

By [Alex Lawson](#)

Law360 (January 24, 2025, 1:35 PM EST) -- Nearly five years after he sought to kill the social media platform [TikTok](#), President Donald Trump has opened his second term with a legally questionable bid to save it, cloaking the app's future in the U.S. market in even more uncertainty.

The popular video service lies at the center of a law passed by Congress last year, which gave it a Jan. 19 deadline — the day before Trump's inauguration — to sell off its U.S. operations to an approved buyer or be banned from the market. The law was upheld by the [U.S. Supreme Court](#) on Jan. 17, and TikTok briefly went dark as the deadline neared.

But Trump [threw the company a lifeline](#), issuing an executive order shortly after taking office extending the deadline for 75 days, saying that his administration needed more time to facilitate a deal. That brought the app back online for existing users, though as of Friday, [Apple](#) and [Google](#) were still not offering TikTok for download in their app stores and are not processing updates to the app on existing devices.

Their reluctance to follow Trump's lead reflects the legally murky means Trump used to save the app, according to Duke University School of Law professor Timothy Meyer.

"The president does not have the ability to override that statute," Meyer told Law360.

"What's fascinating about the executive order is that it is a continued extension of the

president's desire to claim that economic regulation is within the president's constitutional authority because it implicates national security."

While Trump is now leading the charge to keep TikTok afloat, the idea to initially strip it from the market originated with him. He issued a similar sale-or-ban order from his desk as his first term wound down in 2020, which was roundly rejected in court.

That opened the door for Congress to fill the gap by passing its own version of the sale-or-ban edict, which withstood quick legal challenges while TikTok looked to broker a deal that could keep its operations running.

Trump's order does not cite any authority he has to extend the deadline, and in fact criticizes the law by saying it "interferes with my ability to negotiate a resolution" for TikTok, and goes on to order the attorney general not to take any action to enforce the law with regard to TikTok.

That lack of citation is another hint at the order's likely illegality, according to [Freshfields Bruckhaus Deringer LLP attorney Colin Costello](#), who previously served as deputy director of the Investment Security Group at the [Office of the Director of National Intelligence](#).

"The law is very clear about the circumstances under which an extension can be granted," Costello said. "What the president is saying here is that 'I can countermand a piece of legislation that was duly passed by both houses, signed by the president and upheld by a unanimous Supreme Court.' So that, to me, is sort of the more worrying aspect of this, and frankly the more perplexing aspect of this."

But even if Trump's order is indeed illegal, it may ultimately be academic. The law has no private cause of action, and Meyer said it would either take some "creative" plaintiff lawyers or adventurous state attorneys general to hold Trump to account.

Trump's invoking of national security also raises a hurdle for potential litigants, as Brown University professor Timothy Edgar wrote in a post on X on Wednesday.

"Trump's order delaying the TikTok ban ignores the law, but by using national security arguments he makes it harder for anyone outside the executive branch to challenge his

failure to enforce it," Edgar wrote.

With his order on the books, Trump is openly courting U.S. companies to intensify their bidding for TikTok. Specifically, the president mused at a White House summit of tech CEOs that Oracle would be a suitable company to take over TikTok, to which the company's chairman, Larry Ellison, responded, "Sounds like a good deal to me, Mr. President."

While Apple and Google have removed TikTok from their app stores, Oracle has taken Trump's reprieve to heart by continuing to provide cloud computing services for TikTok.

The effort to find a buyer for TikTok remains underway, and it remains to be seen whether anyone will attempt to mount a legal challenge if they view that sale and reactivation of the app as a violation of the law that banned it.

Along with potential legal blowback, Trump would also be wise to consider the political ramifications, as the TikTok law had broad bipartisan support in Congress, explained Freshfields' Costello.

"In the minds of some people who wrote this legislation, TikTok was something of a white whale that they've been chasing for four or five years now," he said. "And this is kind of a broadside against the Chinese government in this technology competition that they have taken down, basically, the first Chinese internet company to make any kind of significant penetration in the U.S. market."