

Benesch Partner Michael Stovsky Discusses Impact of Potential U.S. TikTok Ban With NBC Cleveland

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Benesch Intellectual Property Chair Michael Stovsky recently spoke with WKYC 3News, the NBC affiliate in Cleveland, regarding the legal implications of a potential U.S. Ban on Chinese-owned app TikTok. Read the full story from 3News below, and watch the news clip here.

President Joe Biden signed legislation that included language ordering TikTok's parent company, ByteDance, to divest and find an American buyer or face a U.S. ban.

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CLEVELAND - Local TikTok content creator Riley Gaynor has successfully turned producing videos for the popular social media platform into cash. However, that could change if the Chinese-owned app isn't sold in the next nine months to an approved buyer.

"I'm definitely nervous about the possibility of TikTok being gone just because it is the platform that I do have the most followers on and have built a community around," said Gaynor, who has amassed a following of more than 335,000 TikTok users during the four years she's been active on the site.

"I just think it's important that the government realizes the lives and the people that they're going to be impacting behind the screen," Gaynor says.

President Joe Biden signed legislation Wednesday that included language ordering TikTok's parent company, ByteDance, to divest and find an American buyer or face being banned in the U.S. The president has the option of pushing back the deadline 90 days after the nine-month deadline.

"This is something that I make my income off of and having that be gone, having that completely disappear, would definitely hurt my business," Gaynor says.

The college student, who also works as a model, says she can make anywhere between \$1,000 and \$5,000 per video for branded content she produces.

"Obviously I would like them not to ban TikTok," she says. "I think it is really going to affect so many creators and so many businesses."

In a video posted to TikTok, the company's CEO Shou Chew guarantees users like Gaynor that they have nothing to worry about.

“Rest assured, we aren't going anywhere,” Chew says in the two-minute video. “We are confident, and we will keep fighting for your rights in the courts. The facts and the Constitution are on our side.”

Michael Stovsky chairs the intellectual property and technology practice at Benesch Law Firm in Cleveland. He says he cannot remember any time where a company was ordered to be sold because of privacy and security concerns.

“The government is taking the position that what they're doing serves a compelling interest for U.S. citizens,” Stovsky tells 3News. “Their position is it really has nothing to do with free speech, or any speech, but it's about protecting data security and privacy, in particular, protecting data from being transmitted outside the United States to China and potentially other countries.”

Stovsky believes the law will be questioned in court. He says either TikTok itself, a user or content provider will have “to make an argument that the ban is so heavily restrictive of First Amendment rights that it does not deserve to survive scrutiny by the court, [and] it should be struck down as unconstitutional.”

Stovsky says the competing interest a court would need to decide is whether the government's interest in protecting U.S. citizens' privacy, security and data trumps First Amendment issues.

"Probably the best argument they (TikTok users and content creators) have at the moment that I'm seeing is the First Amendment argument," he says.

According to Stovsky, the court will also look at if the statute is tailored sufficiently to accomplish the government's goal without going too far.

“It's a pretty novel case, very unique,” Stovsky says. “I think all of us our anxious to see what actually happens over the next nine months.”