TikTok Divestiture Deal Revolves Around IP Considerations

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On Sept. 15, the U.S. and China **reached** a framework agreement to resolve the long-standing national security dispute over TikTok's U.S. operations.

Ten days later, President Donald Trump **issued** an executive order declaring the arrangement a qualified divestiture under the Protecting Americans from Foreign Adversary Controlled Applications Act. The order delayed enforcement of the divestiture law for 120 days to allow the transaction to close, and outlined a new ownership structure aimed at safeguarding U.S. national security.

Although the deal is seen as a diplomatic breakthrough, its success hinges on the treatment of intellectual property. Ownership and control of TikTok's recommendation algorithm, source code and user data raise complex legal and operational questions. The agreement also sets a precedent for how governments may regulate digital platforms amid growing geopolitical competition.

Key Terms of the Proposed Structure

The executive order outlines a U.S.-based joint venture to operate TikTok's American business, with several critical provisions:

- Equity split: ByteDance Ltd.'s stake is capped below 20%, while U.S. investors will hold a controlling interest.
- Board composition: ByteDance may appoint one of seven board members but is excluded from the security committee.
- Algorithm and code control: The U.S. venture will assume operational control over TikTok's algorithm, source code and content moderation.
- Data localization: All U.S. user data must be stored in a trusted U.S.-based cloud, operated by Oracle, with no foreign access.
- Operational separation: ByteDance is barred from any operational cooperation, including algorithm sharing or data integration.
- Implementation window: A 120-day grace period allows time to finalize technical and contractual separation.

Intellectual Property Challenges

Algorithm and Source Code Ownership

TikTok's recommendation algorithm is arguably its most valuable intangible asset. The executive order grants control to the U.S. entity, but it remains unclear whether this is through full ownership or a long-term license.

A full assignment would give the U.S. venture broad rights, but ByteDance's obligations to transfer updates or improvements would need to be clearly defined.

A license — even if perpetual and exclusive — could leave ByteDance with residual control, such as update rights or restrictions on derivative works. If future iterations or retrained models are not included, ByteDance could retain leverage over TikTok's evolution.

Licensing Risks and Contractual Loopholes

Even with minimized contractual roles, licensing terms can reintroduce dependencies. Restrictions on sublicensing, modification or reverse engineering could limit the U.S. entity's autonomy. Jurisdictional clauses favoring Chinese courts or ambiguous language around operational relationships could undermine the divestiture's intent.

Precision in drafting is essential to prevent inadvertent violations of statutory requirements.

Data and Trade Secret Protection

User data and derivative datasets are central to the IP debate. The executive order mandates that U.S. data remain onshore, inaccessible to foreign entities.

However, Chinese intelligence and export laws could still compel disclosures from ByteDance affiliates abroad. The agreement must also clarify ownership of derived assets — such as trained models and analytics — to ensure trade secret protections are enforceable.

Export Control Complications

China's export control regime may restrict the transfer of TikTok's algorithm. If Beijing classifies the technology as restricted, the U.S. entity may only receive a licensed version, subject to revocation or geographic limitations. This could result in a scenario where the U.S. venture controls TikTok in name but not in substance.

Verification and Compliance

Ensuring that the U.S. entity receives what it bargained for is critical. The U.S. may require source code to be escrowed domestically and mandate independent audits of version control systems.

Forensic inspection rights will be essential to detect hidden call-home functions or covert modifications. Without robust verification, claims of ownership may lack credibility with regulators and users.

International Trade Implications

Though framed as a national security issue, the TikTok deal intersects with global trade law and digital governance. The Committee on Foreign Investment in the United States led the review, focusing on control rather than formal ownership. This reflects a broader shift in how the U.S. defines foreign influence in tech transactions.

Chinese firms often use tax haven jurisdictions — such as the Cayman Islands or British

Virgin Islands — for initial price offerings and profit sheltering. These structures complicate due diligence and obscure beneficial ownership. Other countries may follow the U.S. lead, expanding investment screening to cover intangible assets like algorithms.

The U.S. may invoke Article XXI of the General Agreement on Tariffs and Trade, which allows national security exceptions. However, frequent use of this clause risks undermining World Trade Organization norms. If TikTok is treated differently from other foreign-owned apps, the U.S. could face accusations of discrimination.

China has already responded by tightening its own export and investment controls. The TikTok precedent may embolden Beijing to further restrict U.S. access to Chinese digital markets or impose retaliatory licensing requirements.

U.S. companies with operations in China should prepare for increased scrutiny, including investigations under China's Anti-Monopoly Law or placement on China's unreliable entity list.

Strategic Takeaways for Global Companies

The TikTok case offers broader lessons for multinational firms:

- Algorithms are strategic assets. Governments now treat them as national security tools, not just business IP.

- Licensing is inadequate. Residual control undermines sovereignty. Full assignment and rigorous verification are becoming the norm.

- Data is trade power. Data localization and cross-border restrictions are reshaping global compliance strategies.

- Expect retaliation: Firms operating across U.S. and Chinese markets should anticipate reciprocal regulatory measures.

- Compliance must be holistic. Legal, technical and geopolitical strategies must align. A proactive government affairs approach is essential to navigate evolving enforcement priorities.

Conclusion

The TikTok divestiture deal, formalized by Trump's executive order on Sept. 25, is more than a corporate restructuring. It is a landmark case in the global contest over digital sovereignty and IP control.

By embedding algorithm ownership, source code transfer and data governance into national security policy, the U.S. has redefined the rules of digital trade.

For global businesses, the message is clear: Cross-border transactions will increasingly be judged not only on commercial merit, but also on their alignment with national interests and geopolitical strategy.

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Disclosure: The author's firm may have clients who would be affected by the issues discussed in this article; however, neither the authors nor the firm has been retained to advocate the positions discussed here.