

# THE ADVISER ANA

A weekly roundup from ANA's Government Relations team

June 28, 2019



Highlights this week include a major Supreme Court decision on the census, an upcoming court hearing for the suit against the HHS prescription drug ad rule, and a difficult road ahead for CCPA fixes in California.

Past issues of the ADviser can now be found on our [Government Relations news page](#).

*Please note that the ADviser will not publish next week due to the Independence Day holiday. Our next newsletter will arrive in your inboxes on July 12. Enjoy your 4th!*

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## Press Releases

- [Association of National Advertisers Urges Strong Support for Federal Data Privacy Legislation and Strengthened Privacy Enforcement by the Federal Trade Commission](#), June 27, 2019

## News of Interest

- [Trump Says Google, Facebook Should Be Sued Over Bias Allegations](#), *The Hill*, June 26, 2019
- [When Marketers Win, 'Everybody Wins': ANA's Lidice](#), *Beet.TV*, June 25, 2019
- [Proposed New York Bill Expands Scope of Data Privacy Debate](#), *Brookings*, June 24, 2019
- [US Pharmaceuticals File Lawsuit Against TV Ad Laws](#), *Market Tactic*, June 24, 2019
- [Progress on federal data privacy bill slows in both chambers](#), *Roll Call*, June 25, 2019

## Upcoming ANA Events

- [Webinar: How to Use Social Influencers in New Media Marketing](#) - July 9, 2019
- [Webinar: Brand Activation Legal Committee](#) - July 11, 2019
- [Legal Affairs Committee Meeting](#) - July 24, 2019, New York, N.Y.
- [Government Relations Committee Meeting & Capitol Hill Day](#) - September 11, 2019, Washington, D.C.
- [ANA/BAA Marketing Law Conference](#) - November 4 - 6, 2019, San Diego, Ca.

## Federal Affairs

### Senator Thune Working to Allow Consumers to Stop Algorithms from Influencing Their Behavior

On June 25, the Senate Committee on Commerce, Science, and Transportation's Subcommittee on Communications, Technology, Innovation and the Internet held a hearing entitled, "Optimizing for Engagement: Understanding the Use of Persuasive Technology on Internet Platforms." During the hearing, Senator John Thune (R-SD), former Chair of the Committee and current Senate Majority Whip, showed unease about the algorithms which internet platforms use to engage consumers saying "the powerful mechanisms behind these platforms meant to enhance engagement also have the ability - or at least the potential - to influence the thoughts and behaviors of literally billions of people [...] Without safeguards, such as real transparency, there is a risk that some internet platforms will seek to optimize engagement to benefit their own interests, and not necessarily to benefit the consumer's interest."

Further discussion at the hearing concerned data privacy, potential regulation of algorithms and artificial intelligence (AI), the "explain-ability" of algorithms and AI, how emerging technologies and Internet platforms' conduct affect children, online political advertising and concerns that algorithms and platforms feature political biases, and civil rights matters associated with emerging technologies and Internet

platforms. Witnesses at the hearing included Tristan Harris, Co-Founder and Executive Director for the Center for Humane Technology, Rashida Richardson, Director of Policy Research at the AI Now Institute, Maggie Stanphill, Director of User Experience at Google, and Dr. Stephen Wolfram, Founder and Chief Executive Officer of Wolfram Research.

For a detailed summary of the hearing please click [here](#).

## **Supreme Court Says No to the Census Question...For Now**

ANA was an outspoken critic of the inclusion of a citizenship question in the 2020 census due to the negative impact it would have on advertising. This was supported by a survey ANA sent to its members inquiring as to how they believed a citizenship question would affect the advertising community. The overwhelming conclusion was that such a question would lead to a notable distortion in marketing research. Marketers, who often rely on and utilize census data, would be misled by the inaccurate census count and would misguidedly allocate resources and investments away from millions of members in underreported communities, leading to skewed budgets, skewed strategies, and an overall lack of interaction with multicultural consumers.

In the latest development the Supreme Court ruled, with multiple concurring opinions, that the Trump administration cannot include a citizenship question in the 2020 census. According to the Court, in a [decision](#) written by Chief Justice John Roberts Jr., the Department of Commerce did not provide an adequate justification for adding the question with Roberts saying that the Department of Commerce must have "genuine justifications for important decisions." The Court sent the case back to the lower courts for further review. President Trump called on his administration to delay the Census to provide time to respond to the Court's challenge to develop adequate justification for the question.

## **Hearing on HHS Prescription Drug Advertising Lawsuit Set for July 2nd**

As noted [last week](#), ANA has joined 3 major pharmaceutical companies (Merck, Eli Lilly, and Amgen) in a lawsuit to stop the Department of Health and Human Services' mandatory price disclosure rule.

Arguments for this lawsuit will be held on July 2 and the judge presiding over the case has said there will be a decision before July 9, when the rule is scheduled to take effect. ANA continues to work with its prescription drug company partners on the lawsuit and pending arguments.

## **State Affairs**

### **Bills Fixing CCPA Face Rocky Road with Tough Senate Committee Hearing Looming**

This week, the Chairman of the California Assembly Privacy Committee, Ed Chau, indicated that proposed amendments to the California Consumer Privacy Act in his sponsored bill, AB 25, would be limited to the issues of Employer/Employee data and authentication of a consumer's access request.

The news is disappointing, as ANA and other industry stakeholders sought to include in the bill amending language on many other issues of concern raised by the CCPA, including Online Advertising.

AB 25, as well as other bills focused on clarifying CCPA's provisions: AB 846 on Loyalty and Discounts; AB 873 on Personal Information and De-identified data; AB 874 on Publicly Available information; are likely to be heard by the Senate Judiciary committee on July 9. Passage of any legislation amending the CCPA will be extremely difficult, as the committee Chair, Hannah-Beth Jackson, has signaled that she would oppose any amendments she believes weakens the act's provisions.

ANA's SVP of Government Relations, Chris Oswald, arrived in Sacramento this week to advocate for language that would greatly improve the ability for companies to advertise online, while avoiding the CCPA's requirement to link non-identifiable cookie and device identifiers with an individual. Chris has met with the Senate Pro Tem and Majority Leader's offices, as well as members of the Senate Judiciary committee. He will remain in Sacramento to advocate on behalf of the Advertising and Marketing industry until the California Legislature's scheduled summer recess on July 12.

## **ANA Signs Letter Asking Maine Governor to Veto Data Breach Notification Bill**

ANA, as a part of DLA Piper's State Privacy and Security Coalition, has signed onto a [letter](#) requesting that Maine Governor Janet Mills veto ME SP 209, which requires companies to notify consumers of data breaches within 30 days of "becoming aware of" the breach, thus creating the most restrictive time limit on data breach notification in the country. Furthermore, there are ambiguities in the law regarding when a company will be deemed to have become aware of a data breach.

ANA will continue to monitor this legislation and push for its veto.

## **State Legislative Weekly Tracker**

Click [here](#) for a summary report of this week's legislative activity in the states.

## **Global Affairs**

### **UK Data Protection Authority Report Puts Ad Tech on Notice to Change Practices**

Last Thursday, the UK's Data Protection Agency released a [report](#) which raises concerns regarding the profiling and capturing of personal data of unaware consumers. Initiated by a GDPR complaint, the report focuses on the various data processing practices which the Information Consumer's Office (ICO) believes fail to comply with EU's General Data Protection Regulation (GDPR). In the report, the ICO suggests that "legitimate interest" should not be used as a legal basis for collecting and using data (which many companies are accused of doing). Additionally, the ICO suggests that sensitive personal data is being used to target users without their explicit consent. Throughout the entire report the ICO affirms that the information provided to both consumers and organizations participating in real-time bidding is unclear and overly complex.

The ICO has stated that they will continue to look into the ad tech industry, and more specifically, the processing of sensitive consumer data without consent. They also want to examine the complexity of the data supply chain. Furthermore, the ICO will review its position towards the end of 2019 and assess whether further action is required. If so, another report could potentially be published in 2020.

### **Canada: No Final Agreement on Senate Bill Banning 'HFSS' Marketing to Under 13s**

Canadian Senators failed to agree on the Child Health Protection Act (S-228) before the Canadian Senate adjourned for the summer. The bill, which aimed at limiting TV and online advertising of "HFSS" products to children under 13, will not be enacted for now because the Senate parliamentary session has ended.

The bill had been introduced in the Senate in the fall of 2016 and passed to the Senate for a final vote in September 2018. Despite having had parliamentary support, Senators have held off with concurrence as a number of them have raised concerns over the term "unhealthy" and a spill-over effect on adult-oriented products and marketing. The Association of Canadian Advertisers (ACA) is leading efforts to agree on an industry approach for responsible food marketing in Canada.

## **Contact Us**

If you have questions on any of the issues mentioned in the ADviser, please feel free to contact ANA's Government Relations team in Washington, D.C.:

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You can also reach the D.C. office at any time at 202.296.1883

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