

THE ADVISER ANA

A weekly roundup from ANA's Government Relations team

July 12, 2019



Highlights this week include a marathon hearing on CCPA in California, the end of the census fight, and important court decisions affecting advertisers and marketers.

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Press Releases

ANA issued the following press release following our victory in a lawsuit to stop the Department of Health and Human Services mandatory advertising price disclosure rule:

- [ANA Hails Court Ruling Blocking HHS Price Disclosure Rule](#)

News of Interest

- [British Airways faces \\$230 million fine. It would be a record under Europe's tough data privacy law](#), *CNN*, July 8, 2019
- [Marriott Faces \\$123 Million Fine For 2018 Mega-Breach](#), *Forbes*, July 9, 2019
- [Tech Giants to Testify at House Antitrust Hearing](#), *The Hill*, July 9, 2019
- [California Lawmakers Reject Key Revision To Privacy Law](#), *MediaPost*, July 10, 2019
- [France adopts controversial tech tax, despite U.S. disapproval](#), *Considerable*, July 10, 2019

Word on the Street

From Politico...

- Keep an eye on [...] prospects for Capitol Hill's privacy efforts, which have still not produced legislation going into mid-July despite a long-expressed sense of urgency to move quickly on the issue this Congress. Negotiations to develop a Senate bill are still undergoing a shake-up as Senate Commerce Chairman Roger Wicker (R-MS) and ranking member Maria Cantwell (D-WA) talk one-on-one, a shift from efforts to craft legislation through a broader committee working group. "We're going to have a go at it, Maria and I, for a little while" and "then probably we'll be getting back to some people," Wicker told reporters this week. During a Commerce markup session Wednesday, he said he hopes "to preview a bipartisan product in the coming weeks."

Upcoming ANA Events

- [Legal Affairs Committee meeting](#) - July 24, 2019, New York, N.Y.
- [Government Relations Committee meeting & Capitol Hill Day](#) - September 11, 2019, Washington, D.C. - featuring FTC Commissioner **Rebecca Kelly Slaughter**
- [ANA/BAA Marketing Law Conference](#) - November 4-6, 2019, San Diego, Ca.

Federal Affairs

Citizenship Question for Census Finally Dies

After months of continuously escalating political posturing and legal battles it appears that we can now say for certain that a citizenship question will not be included in the 2020 Census. From the outset, ANA has been vocal in its opposition to the inclusion of a citizenship question in the 2020 census due to the negative impact it would have on advertising. Research demonstrated that ANA members overwhelmingly agreed that a citizenship question would lead to a major distortion of data that is critical to advertisers.

In late June, the Supreme Court ruled that the Department of Commerce had not provided adequate justification for the inclusion of the citizenship question and sent it back to a lower court for review and further justification by the Commerce Department, which never materialized.

It was thought that President Trump would issue an executive order calling on the Department of Commerce to include the question. In a late Thursday afternoon press conference, however, the President instead urged the Commerce Department to use other means to determine citizenship levels

in the U.S.

House Judiciary Subcommittee Schedules Second Hearing on Online Platforms and Market Power

On July 9, the House Committee on the Judiciary's Subcommittee on Antitrust, Commercial and Administrative Law scheduled the [second hearing](#) of the series "Online Platforms and Market Power." The hearing will take place on July 16. ANA will track this hearing and keep you apprised of any major developments.

Ninth Circuit Rules Against CTIA in Disclosure Case

On July 2, the U.S. Court of Appeals for the Ninth Circuit issued a [long-awaited opinion](#) in the CTIA cell phone disclosure case. The court's opinion affirmed the lower court's denial of an injunction of a Berkeley, California ordinance that requires disclosures related to cell phone radio frequency exposure at the point of sale. The U.S. Supreme Court had returned the case to the Ninth Circuit in light of its 2018 decision in National Institute of Family and Life Advocates (NIFLA) v. Becerra. The circuit court held that, based on the Supreme Court's longstanding standards for evaluating restrictions on advertising (which is protected speech under the First Amendment), that the disclosures were factual and did not violate the First Amendment. This case is seemingly in conflict with another decision by the Ninth Circuit enjoining mandatory disclosures in ads for pre-sweetened beverages, so we anticipate there will be further action in this case. ANA filed [amicus briefs](#) with the court in both cases.

State Affairs

Marathon Session Leads to Substantial Developments in California

On Tuesday, July 9, the California Senate Judiciary Committee held a marathon hearing that started at 9:30 am PDT and lasted past 11:00 pm PDT. It involved votes on several proposed amendments to the California Consumer Privacy Act (CCPA). The hearing covered 60+ bills, most of which were unrelated to the CCPA.

ANA's Senior Vice President of Government Relations, Chris Oswald, was in Sacramento for over two weeks along with our two permanent California lobbyists actively promoting CCPA "fix it" bills affecting the advertising and marketing industry prior to Tuesday's committee hearing. Action by the committee on those bills is summarized below.

ANA tracked five relevant bills amending the CCPA at the hearing. Four of the bills passed, and one proposed amendment to the CCPA failed.

Below we provide brief summaries of all five bills. The California Legislature is scheduled to adjourn for its summer recess on July 12 and will reconvene on August 12, after which the amendments will continue to proceed through the legislative process. The California Legislature is scheduled to end its session on September 13. Therefore, final action must be taken on these bills prior to that date.

The following four bills passed in the Committee:

[AB 25](#) – This legislation passed the committee and would amend the act to make clear that employee data is not within the scope of the CCPA and would allow companies to request additional information to authenticate consumers if the personal information in question is particularly sensitive. Specifically, Assembly Member Chau accepted amendments to AB 25 prior to the hearing that:

1. Clarifies that the CCPA's definition of 'consumer' does not include an employee acting within the scope of their employment;
2. Authorizes a business to require authentication of a consumer making a request under the CCPA that is reasonable in light of the nature of the personal information requested; and
3. Authorizes a business to require consumer requests under CCPA be made through an account that the consumer already has with the business.

AB 25 also contains a one-year sunset clause that makes these provisions inoperable on or after

January 1, 2021.

The amendments and sunset clause to AB 25 were agreed to by the author and industry to overcome late opposition by labor groups that arose following the bill's passage by the Assembly.

[AB 846](#) – This bill passed the committee and would make clear that voluntary loyalty programs are allowed to operate under the CCPA. However, the bill was amended by the committee during the hearing to include a provision that prohibits the “sale” of information gathered by the loyalty program. This limitation could hamper the use of information gathered through programs for advertising purposes.

[AB 874](#) – This bill passed the committee by unanimous consent. This amendment to CCPA would clarify that publicly available information that is made available from federal, state, or local government records is not “personal information” for CCPA purposes.

[AB 1564](#) – This bill passed the committee after the committee amended the bill to narrow its scope. AB 1564 would remove the requirement for those companies that operate only online to provide a toll-free number for consumers to make rights requests, allowing those online-only companies to offer email address instead. This change would provide some flexibility for implementation of the CCPA for certain companies.

An additional amendment, [AB 873](#), failed to pass the committee. AB 873 would have clarified the definition of “personal information” in the CCPA by adding “reasonably” to the “capable of being associated with” language and would have excluded deidentified data from the CCPA's definition of personal information. The amendment failed due to opposition from consumer advocates and the Chair of the Committee.

Amending the CCPA is still a major work in progress. As mandated under the act, regulatory action to clarify provisions of the CCPA will continue under the direction of the California Attorney General Office. ANA is actively engaged in efforts to clarify and determine the CCPA's requirements, and we will keep working to clean up the CCPA's serious problems. We also will maintain our strong advocacy for a federal nationwide privacy regime through the Privacy for America coalition which seeks to provide uniformity in state privacy regulation and by preempting inconsistent state laws.

ANA and Other Ad Trades Launch “FixCCPA” Website

The ANA, along with the 4A's, AAF, IAB, NAI, and the DAA have launched a [website](#) and featured an ad in the Sacramento Bee to speak out against the CCPA provision that would require companies to link online identities with real names.

Governor Vetoes Location Data Bill in Hawaii

Hawaii Governor David Ige (D) recently vetoed [HB 702](#), which would have banned the offering or sale of any location data collected by satellite navigation technology without first having the explicit consent of the device's primary user. This bill included but “was not limited to” the Global Positioning System (GPS).

State Legislative Weekly Tracker

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

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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