



Highlights this week include a new ballot initiative on privacy in California as well as a new rulemaking from the FTC on negative option marketing.

In this issue:

Federal Affairs

- [Antitrust Remains at Top of Senate Judiciary's Mind](#)
- [FTC Seeks Public Comment on Negative Option Marketing Regulations](#)
- [House Appropriations' Subcommittee on Financial Services and Consumer Rights Holds First FTC Hearing in 7 Years](#)

State Affairs

- [Potential Second California Privacy Ballot Initiative on the Horizon](#)
- [\\$55 Billion Price Tag: California Attorney General Releases Initial Analysis of Projected CCPA Compliance and Regulatory Costs](#)
- [Multiple States Hold Privacy Hearings](#)
- [State Legislative Weekly Tracker](#)

News of Interest

[ANA Asks CA Governor to Veto AB 1202](#), *Regulatory Rumblings*, September 25, 2019

- [Google wins landmark right to be forgotten case](#), *BBC*, September 24, 2019
- [FTC May Loosen Children's Privacy Rules](#), *MediaPost*, September 23, 2019

Word on the Street

- The House of Representatives has launched a formal impeachment inquiry into the President. This threatens to derail or slow other legislative initiatives for the foreseeable future.

New Bills

- [S. 2532](#) - A bill to require the Federal Trade Commission to promulgate regulations requiring manufacturers to give notice to consumers whether internet-connected devices contain cameras or microphones.

Upcoming ANA Events

- [Brand Activation Legal Webinar](#) - October 8, 2019
- [Legal Affairs Committee Meeting](#) - October 16, 2019, New York, N.Y. (**agenda now posted**)
- [Brand Activation Legal Committee Webinar](#) - October 17, 2019
- [ANA/BAA Marketing Law Conference](#) – November 4 – 6, 2019, San Diego, Ca.

Federal Affairs

[Antitrust Remains at Top of Senate Judiciary's Mind](#)

On September 24, the Senate Committee on the Judiciary's Subcommittee on Antitrust, Competition Policy, and Consumer Rights convened a hearing entitled, "Examining Acquisitions of Nascent or Potential Competitors by Digital Platforms." Serving as witnesses at the hearing were Bruce Hoffman (Director of the Bureau of Competition, Federal Trade Commission), Dr. Diana Moss (President, American Antitrust Institute), John Yun (Director, Economic Education at the Global Antitrust Institute and Professor, Antonin Scalia Law School, George Mason University), and Patricia Nakache (General Partner, Trinity Ventures).

Over the course of the hearing, Subcommittee Members and witnesses discussed a number of issues pertaining to tech companies including FTC and DOJ antitrust enforcement, U.S. antitrust laws, federal agency remedies, merger retrospectives, and tech industry innovation. The hearing followed a September 17 Subcommittee hearing on "Oversight of the Enforcement of the Antitrust Laws." A summary of the September 24 hearing is [here](#).

[FTC Seeks Public Comment on Negative Option Marketing Regulations](#)

On September 25, the Federal Trade Commission (FTC) issued a [press release](#) announcing that it has published an [Advance Notice of Proposed Rule Making](#) (ANPRM) regarding the FTC's regulations for "negative option marketing." The press release defined negative option marketing as a form of marketing where "the absence of affirmative consumer action constitutes consent to be charged for goods or services." The press release noted that the FTC's current Negative Option Rule addresses "prenotification plans," and does not address other types of negative option marketing.

The press release stated that the FTC uses other statutes, such as the Restore Online Shoppers'

Confidence Act, or regulations, such as the Telemarketing Sales Rule, to address negative option marketing cases, which the press release said can lead to a lack of regulatory consistency for businesses.

According to the press release, the ANPRM seeks comment on how the FTC's current negative option rules may be improved. The press release noted that public comments must be received within 60 days of the ANPRM's publication in the Federal Register. **ANA is looking for input from our members on this issue. Please feel free to reach out to anyone on the Government Relations team with your views.**

House Appropriations' Subcommittee on Financial Services and Consumer Rights Holds First FTC Hearing in 7 Years

On September 25, the House Committee on Appropriations' Subcommittee on Financial Services and General Government convened a hearing entitled "Federal Trade Commission: Protecting Consumers and Fostering Competition in the 21st Century." Witnesses included Federal Trade Commission Chairman Joseph Simons and FTC Commissioner Rohit Chopra.

During the hearing participants discussed, among other topics, developing a federal consumer privacy law, children's privacy, location privacy, the California Consumer Privacy Act (CCPA), antitrust investigations into tech companies, Internet platforms, identity theft and other scams, and robocalls. A summary of the hearing is [here](#).

State Affairs

Potential Second California Privacy Ballot Initiative on the Horizon

On September 25, 2019, Alastair Mactaggart, the individual who launched the ballot initiative that preceded California's passage of the California Consumer Privacy Act (CCPA), [announced](#) that he plans to introduce a new, broad ballot initiative entitled, the "California Privacy Rights and Enforcement Act" to be included on California's November 2020 ballot.

According to Mr. Mactaggart's announcement, if passed, the California Privacy Rights and Enforcement Act would: (1) establish new data rights for consumers; (2) triple the CCPA's penalties for violating the law as it pertains to the collection and sale of children's information; (3) require covered entities to obtain opt-in consent before collecting information from consumers younger than 16; (4) create requirements "around automated decision-making and profiling"; (5) create a new privacy oversight entity with the authority to enforce California privacy laws and provide guidance to businesses and consumers; (6) amend California election disclosure laws; and (7) protect data rights by mandating that "future amendments be in furtherance of the law." Please click [here](#) to read the over 50-page initiative.

55 Billion Price Tag: California Attorney General Releases Initial Analysis of Projected CCPA Compliance and Regulatory Costs

The California Attorney General's office released a new [report](#) on the potential impacts of the CCPA. The report covered immediate impacts of the CCPA, the projected cost of compliance with the CCPA mandated Attorney General rulemaking, costs to small businesses, and other concerns. ANA issued a [press release](#) concerning this study yesterday.

Multiple States Hold Privacy Related Hearings

Massachusetts [SB 120](#) has been scheduled for a hearing in the Joint Consumer Protection and Professional Licensure Committee on October 7. The broad privacy bill would provide that every consumer has the right to request a company to disclose the categories and specific pieces of personal information that the business has collected about the consumer.

In Ohio, two hearings, one in Cleveland and another in Cincinnati, have been scheduled to

examine antitrust issues regarding large tech companies.

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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