



Highlights this week include a new privacy bill from Reps. Eshoo and Lofgren, as well as, recently released guidance on influencers from the FTC.

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### News of Interest

- [Facebook is being investigated by California for privacy violations, \*CNN\*, November 6, 2019](#)
- [What the 2019 Election Means for 2020, \*New York Times\*, November 6, 2019](#)

- [AT&T to pay \\$60 million to resolve FTC allegations it misled consumers with 'unlimited data' promises](#), *ABC News*, November 5, 2019
- [Advocates Blast IAB Over 'Bad Faith' Interpretation Of California Privacy Law](#), *Mediapost*, November 7, 2019

## Word on the Street

- Over 850 of the advertising world's leading legal minds met in San Diego this week for the 2019 ANA/BAA Marketing Law Conference. Group EVP Dan Jaffe delivered remarks during the conference focusing on privacy and the mandatory disclosure threat. To read those remarks please click [here](#).

## Upcoming ANA Events

- [ANA Legal & Regulatory Webinar: Marketing and Advertising of Cannabis 101](#) - November 12, 2019

## Federal Affairs

### [Reps. Eshoo and Lofgren Introduce Data Privacy Legislation](#)

On November 5, 2019, Reps. Anna Eshoo (D-CA) and Zoe Lofgren (D-CA) introduced [H.R. 4978](#), the Online Privacy Act of 2019. According to a [press release](#) issued by Rep. Lofgren, the bill would give consumers the right to access, correct, or delete personal information. The bill, according to the [Section-by-Section Summary](#), would also establish the following rights for consumers: (1) portability of personal information; (2) opt-in to collection of personal information for “behavioral personalization”; (3) informed about data collection when there is no prior relationship between the user and covered entity; (4) determine the length of time personal information is stored; and (6) request a human review of decisions made by an automated process.

The press release states that the bill outlines company obligations, such as the data minimization and non-discriminatory data use. The press release notes that the bill would establish a “Digital Privacy Agency” with over 1,200 employees (rivaling the size of the FTC) that would investigate alleged privacy abuses and take enforcement action when necessary. The bill also lacks a preemption clause meaning that this would be a massive federal program, on top of numerous privacy regulations coming from the states. According to the press release, the bill would grant state attorneys general enforcement authority and would allow for nonprofits to represent individuals in private class action litigation.

### [FTC Issues Social Media Sponsorship Disclosure Guidance](#)

On November 5, 2019, the Federal Trade Commission (FTC) issued a [press release](#) announcing that it has published [guidance](#) entitled “Disclosures 101 for Social Media Influencers” that explains how and when social media influencers are required to disclose their sponsorships to followers. According to the press release, the guidance includes information regarding what actions mandate sponsorship disclosure, and what constitutes effective and ineffective disclosure in various cases.

The guidance notes that if individuals on their social media accounts endorse products where they have “material connections,” they must indicate such connections. The guidance states that “material connections” include financial, employment, personal, and family relationships to products or brands. Additionally, the guidance notes that disclosures should be easily noticeable and understandable for consumers.

### [ANA To File as Co-Plaintiff in HHS Case](#)

In July the Department of Health and Human Services (HHS) issued a [rule](#) that would require pharmaceutical drug makers to include the wholesale acquisition price for drugs in their advertisements if the price exceeds \$35 for a one-month supply. ANA joined Merck, Eli Lilly, and Amgen in suing to stop the HHS rule which violates the First Amendment. A District Court judge stopped implementation of the rule, saying that HHS did not have the authority to issue such a mandated disclosure.

Following the decision, HHS appealed the ruling to the United States Court of Appeals for the District of Columbia. Next week ANA will join co-plaintiffs Merck, Eli Lilly, and Amgen in submitting our filing to the Court of Appeals, asking them to uphold the lower Court's ruling.

## **Multiple Upcoming Deadlines Loom on the Horizon**

In July the FTC launched a review of its COPPA rule. The public comment period for this review will end on December 9. The FTC is simultaneously seeking input as it looks at ways in which it could improve current requirements for negative option marketing. Those comments are due no later than December 2. To provide the best comments possible to the FTC, feedback from our members is critical.

## **Sen. Durbin Looks to Push Bill Requiring Drug Pricing in Ads Again**

Sen. Dick Durbin (D-IL) has resumed pushing for a vote on his bill that would require the list price of pharmaceutical drugs to be included in DTC advertisements. He is seeking bipartisan support for the measure. For a more detailed summary of the situation, please click [here](#).

## **State Affairs**

### **CCPA Rule-making Hearings and Comment Period Fast Approaching**

Public hearings on the California Attorney General's [proposed rule-making](#) mandated by the CCPA will take place December 2 (Sacramento), 3 (Los Angeles), 4 (San Francisco), and 5 (Fresno). ANA will testify.

ANA also plans to submit comments to the California AG and needs input from our members to help us develop them. Final rule-making comments are due by December 6th at 5:00 PM PT.

### **Mactaggart Publishes Further Changes to His Proposed 2020 Ballot Initiative**

Alastair Mactaggart, the wealthy real estate investor behind the CCPA, continues to make changes to his proposed 2020 ballot initiative. To see the newest version of the initiative, please click [here](#). As always, ANA encourages input from our members on these issues and appreciates any thoughts or comments.

## **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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