

A weekly roundup from ANA's Government Relations team

January 29, 2021



Federal Affairs

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News of Interest

- [Apple CEO Calls For Reform To 'Data Exploitation' Industry, *Mediapost*, January 28, 2021](#)
- [Grindr Fined in Europe Over Sharing of User Data, *New York Times*, January 28, 2021](#)
- [McConnell relents on Senate rules, signals power-sharing deal with Democrats, *Washington Post*, January 25, 2021](#)

New FTC Leadership Likely to Put Consumer Privacy in Crosshairs, *Bloomberg Law*, January 22, 2021

- Census delay sends redistricting ripples nationwide, *Roll Call*, January 29, 2021
- Democratic Congress Prepares to Take On Big Tech, *New York Times*, January 26, 2021
- Facebook Reportedly Weighs Antitrust Lawsuit Against Apple, *Mediapost*, January 28, 2021

Word on the Street

- Saint Louis Zoo penguins take snowy 'field trip'

Save the Date

- Brand Activation Legal Webinar – February 2, 2021
- Government Relations Committee Meeting (Virtual) – March 3, 2021

Federal Affairs

House Energy and Commerce Member Announces Section 230 Discussion Draft

On January 28, 2021, Rep. Yvette Clarke (D-NY), a member of the House Committee on Energy and Commerce, issued a [press release](#) requesting public comment on her discussion draft of the [Civil Rights Modernization Act of 2021](#). The press release noted that the draft would amend Section 230 to “ensure that civil rights laws apply to the targeting of advertisements.” According to the press release, the Committee’s Subcommittee on Communications and Technology Chair Mike Doyle (D-PA) expressed support for the draft, adding that the Committee is working towards a legislative package to address content on online platforms. The press release stated that comments are due to Rep. Clarke’s office by February 5, 2021.

Rep. Schakowsky Announces Bicameral Public Health Data Privacy Legislation

On January 28, 2021, Rep. Jan Schakowsky (D-IL) [announced](#) that she had introduced the Public Health Emergency Privacy Act along with House Committee on Energy and Commerce colleagues Reps. Anna Eshoo (D-CA) and Suzanne DelBene (D-WA). The press release noted that a companion measure was introduced in the Senate by Sens. Mark Warner (D-VA) and Richard Blumenthal (D-CT). Among other provisions, the press release outlined that the bill would establish use limitations for public health data, including prohibiting the use of such data for e-commerce and advertising, would require opt-in consent for the collection of such data, would increase data collection transparency, and would establish data security safeguards. According to the press release, the bill will recognize “the continuing role of states in legislation and enforcement.”

Acting FTC Chair Slaughter Announces Interim Leadership Appointments

On January 25, 2021, Federal Trade Commission (FTC) Acting Chair Kelly Slaughter [announced](#) interim appointments to FTC leadership positions. Among other appointments, the press release noted that Daniel Kaufman will be appointed to serve as Acting Director of the Bureau of Consumer Protection. Mr. Kaufman was previously the Deputy Director of the BCP since 2012. According to the press release, Mr. Kaufman will assume the role on January 30, 2021.

Senate Commerce Holds Nomination Hearing for Department of Commerce

Secretary

On January 26, 2021, the Senate Committee on Commerce, Science, and Transportation held a [Nomination Hearing](#) to consider President Joe Biden's nomination of Rhode Island Governor Gina Raimondo to be the U.S. Department of Commerce (DOC) Secretary. Gov. Raimondo and Committee Members discussed Section 230, the European Union-United States Privacy Shield and net neutrality among other things.

Department of Commerce Announces Appointees Under the Biden Administration

On January 25, 2021, the U.S. Department of Commerce (DOC) [announced](#) 17 new appointments to the agency under the Biden administration. The press release noted that, among others, Mike Harney will be appointed to serve as Chief of Staff and Cynthia Aragon will be appointed to the position of White House Liaison. In the press release, Mr. Harney stated that President Biden's team will work to promote economic growth for businesses, among other priorities.

State Affairs

California AG Endorses Global Privacy Control

Yesterday, the California Attorney General [tweeted](#) that any business subject to the regulations of CCPA must treat a 'user-enabled' global privacy control as a valid consumer request to opt out of the sale of their data. This is consistent with the position he had embraced when publishing CCPA regulations last year. The CA AG also stated that he believes the [Global Privacy Control \(GPC\)](#) meets this legal requirement.

ANA has previously filed [comments](#) that oppose this approach as we believe that since the GPC was not passed as a part of the CCPA, the CA AG does not have the authority to impose this approach through regulatory means.

Ad Industry Sends Letter on North Dakota Privacy Bill

This week ANA and other industry associations sent a [letter](#) to North Dakota legislators outlining numerous problems with a proposed privacy bill, [HB 1330](#). ANA's Dan Jaffe wrote a [blog](#) on this important topic.

ANA State Legislative Report

It was yet another busy week in the states with several additional privacy and ad tax bills becoming active. See below for a detailed report from the states.

Taxes

Connecticut [HB 5645](#), sponsored by House Finance Revenue and Bonding Committee Ranking Member Holly Cheeseman, R-East Lyme, was referred to that committee on January 27. The bill would establish a tax on social media providers based on the annual gross revenue derived from social media advertising services in the state. The tax rate is not specified in the current bill language.

Nebraska [LB 422](#) has been scheduled for a hearing in the Revenue Committee on February 3 at 9:30 AM. The bill would impose the state sales tax on the gross income received for providing a service. A service would be presumed taxable unless specifically exempted. The sales tax rate would be set at five percent beginning October 1, 2022 but the rate would be recalculated each of the following four quarters.

Data Privacy

Washington [SB 5062](#) passed the Senate Environment, Energy and Technology Committee with a

substitute on January 21. The bill is now pending in the Senate Ways and Means Committee. The bill, to be known as the Washington Privacy Act, would grant a consumer the right to:

- Confirm whether a controller is processing their personal data and access that data.
- Correct inaccurate personal data, taking into account the nature of the personal data and the purposes of the processing of that data.
- Delete their personal data.
- Obtain their personal data from a controller in a way that allows the consumer to transmit the data to another controller.
- Opt-out of the processing of their personal data for the purposes of targeted advertising, the sale of personal data or profiling in furtherance of decisions that produce legal effects concerning a consumers.

Controllers would be required to:

- Provide consumers with a meaningful privacy notice.
- Limit collection of personal data to what is required or relevant for a specified purpose.
- Establish and implement data security practices.
- Prohibit processing that violates state or federal law.
- Obtain consumer consent in order to process sensitive data.

The bill would require controllers to provide consumers with a secure and reliable way to submit a request to exercise a consumer's right. It would apply to entities that conduct business in Washington that controls or processes the data of 100,000 consumers or more or derives over 25 percent of its gross revenue from the sale of personal data and processes the data of 25,000 consumers or more. The bill would not apply to nonprofit corporations until July 31, 2026. The bill does not contain a private right of action except for specific provisions relating to contact tracing. The substitute adds intent language encouraging the state privacy office to monitor the effectiveness of allowing a consumer to designate a third party to exercise a consumer right on their behalf and would also:

- Exempt air carriers and the judicial branch from the personal data privacy regulations.
- Specify that controllers and processors are responsible only for the measures allocated to them when meeting obligations under security breach laws and data protection assessments.
- Clarify that the responsibility regarding sensitive data applies to the processing of sensitive data concerning a known child.

A similar bill, [Virginia SB 1392](#), has been scheduled for a hearing in the Senate General Laws and Technology Committee on January 27 upon the adjournment of that days floor session. Another similar bill [HB 2307](#), passed the House Communications, Technology and Innovation Committee with a substitute following a 13-8 vote on January 25. The substitute adds exemptions for 501(c)3, 501(c)6 and 501(c)12 organizations. During the hearing the committee indicated that a private right of action could be added to the bill via a floor amendment.

Virtual Coffee?



The ANA Government Relations team would like to invite you to join us for virtual coffee in order to better get to know you and the issues you face everyday. To schedule your virtual coffee please reach out to Travis Frazier (tfrazier@ana.net) or any of the ANA DC Staff.

- Dan Jaffe, Group Executive Vice President, Government Relations (djaffe@ana.net)
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You can also reach the D.C. office at any time at 202.296.1883

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