

Digital Content Next

Legal and Legislative Committee
April 14, 2020

Agenda

Discussion of How Public Policy Agenda Has Changed for
Remainder of 2020

Outline of DCN comments on the FTC Endorsement Guidelines

Update on CCPA Regulations

Update on Maryland and New York Digital Advertising Tax
Legislation

Apple/Amazon Deal re Payments

Keyword Blocking of COVID-19 Impacting Publishers

COVID-19 now the top priority

- Other policy issues moved to back burner in legislative bodies
- Agencies might still have bandwidth for other issues

Congress and State Legislatures will be limited

- Limited legislative days
- Committee hearings, debate, votes hindered

Already small window in a Presidential election year

- Political parties are trying to draw distinctions, not compromise

Congressional Response re: COVID 19

- Phase 1: Coronavirus Preparedness and Response Supplemental Appropriations Act
- Phase 2: Families First Coronavirus Response Act
- Phase 3: Coronavirus Aid, Relief, and Economic Security (CARES) Act
 - SBA, Treasury, and Federal Reserve financial relief programs (grants, loans, and loan guarantees)
- What's Next?
 - Phase 3a: interim emergency relief?
 - Phase 4: CARES 2 – further relief and stimulus?
 - Phase 5?: additional stimulus?

Likely Not Moving:

Federal Consumer Privacy Legislation
Section 230 Reform

Likely Moving Forward (albeit slowed):

Anti-Trust Investigations
CCPA Enforcement
Appropriations
Pandemic preparedness legislation?

COVID-19 Response:

Paycheck Protection Program Supplemental

Phase 4 – CARES 2

Phase 5?

Publisher-specific requests re COVID 19?

funding for local news

tax credit for businesses to advertise with companies
with less than \$10b cash on hand

Other?

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FTC may update Endorsement Guidelines

- Efficacy of current guidelines?
- New social media platforms/social influencers
- Comments now due June 22
- FTC could issue new regulations (early 2021?)

FDA to conduct research

- 4 types of endorsers: Celebrity, physician, patient, influencer
- 2 types of disclosures: “paid ad...” and “#sp”

DCN Comments:

Current guidelines/framework are working

- Trusted, premium publishers have established good best practices for various media (tv, print, digital)
- push back against radical change
- argue for targeted enforcement on new entrants (social media, etc)

Thanks to FTC efforts, consumers are much more aware of “social media influencers”

- Kim Kardashian, etc

DCN Comments (cont'd):

Guidelines appear to suggest that any appearance by a celebrity or seemingly qualified person (aka doctor, plumber) would qualify as an endorsement

- Needs more nuance
- Consumers are generally aware that actors (famous or not) are paid to be in an advertisement
- Require disclosure in “organic” social media posts where it may not be clear that the post is an ad

Free ticket to movie in exchange for testimonial seems a low bar (what about movie premieres?)

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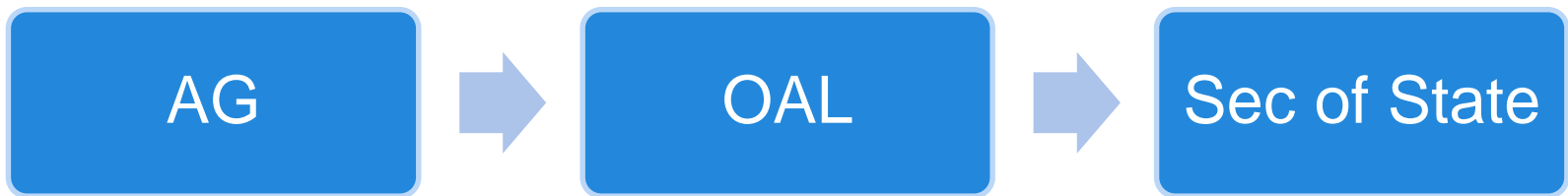
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AG Becerra aiming for July 1 enforcement

- Issued 3rd version of regulations on 3/11, comments by 3/27
- Denied request for delay from advertisers/ad tech groups
- Next Steps:
 - AG submits final regulations to Office of Administrative Law (OAL)
 - OAL has ~~30~~ 60 days to review, must submit final regulations to Secretary of State by:
 - May 31 for a July 1 enforcement;
 - August 31 for a November 1 enforcement



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MD Legislature approved HB 732

- Would impose a tax on digital ads in MD
 - Sliding scale by global revenue
 - \$100m - \$1b = 2.5%
 - \$1b - \$5b = 5%
 - \$5b - \$15b = 7.5%
 - \$15b and up = 10%
- MD Governor expected to veto bill
- MD Legislature could try to override veto if/when it resumes session (May?)
 - Requires 3/5 majority, both chambers had bare minimum in final vote

Nearly identical bill introduced in NY

- Unclear if it will move, could be folded into budget

Both likely to be challenged in court as violations of:

- Commerce Clause of the Constitution
- Internet Tax Freedom Act
 - Prohibits “discriminatory” taxes on “electronic commerce”

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- Appeared to take effect in early April
- *Existing* Amazon Prime subscribers can now use Amazon's payment system in Apple ecosystem
 - Avoids Apple's 30% fee
 - New subscribers pay via Apple payment system
- Amazon content now available via Apple TV
- Opportunity to pressure Apple for similar terms for publishers

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Advertisers/Ad Tech blocking advertisements from appearing next to COVID-19 content

- Default buying behaviors managed by Google, etc
- Treats all sites as equal
- DCN news publishers seeing 15-65% of impressions blocked across exchanges

DCN Letter

- Understand need for advertisers to protect brands
- But blocking ads from showing next to all COVID-19 content is huge overreaction
- Doubly important as trusted news organizations have dramatically increased coverage of COVID-19

IAB, NMA voiced concerns

Working with ANA, 4As, others to highlight issue

Questions?

Other Issues?