

# Ad Law News and Views - November 7, 2020

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LATEST UPDATES

## 2020 Election Analysis

As we have done for every U.S. national election since 2004, we are pleased to share with you [Kelley Drye's 2020 Election Analysis](#), prepared by the firm's Government Relations and Public Policy team.

We are closely monitoring election results nationwide and should the trajectory of any key national races change, we will follow with an update to this report.

## It's Here: California Voters Approve the CPRA

On Tuesday, November 3, 2020, California voters passed ballot Proposition 24, the California Privacy Rights Act of 2020 ("CPRA"). Also known as CCPA 2.0, CPRA brings a number of changes to the CCPA, the majority of which will become operative on January 1, 2023. In addition to revising some of the definitions that are fundamental to commercial relationships under the CCPA (e.g., the definition of "sale" and "service provider"), CPRA provides additional consumer rights, incorporates data minimization and certain other principles from the General Data Protection Regulation, and establishes a new California Privacy Protection Agency to replace the attorney general's office as the statute's enforcer.

## The "Un-Sprung Bear Trap": The Resurrection of the FTC's Penalty Offense Authority As One Possible Solution to the 13(b) Problem

On October 29, [FTC Commissioner Rohit Chopra](#) (D) and his Attorney Advisor Samuel Levine released a paper entitled "[The Case for Resurrecting the FTC Act's Penalty Offense Authority](#)." In it, Commissioner Chopra and Mr. Levine argue that the Commission should "resurrect one of the key authorities it abandoned in the 1980s: Section 5(m)(1)(B) of the FTC Act, the Penalty Offense Authority." The principal objective, according to the paper's authors, is to increase "the agency's ability to deter and correct wrongdoing," but the authors also assert that "resurrecting the Penalty Offense Authority would mitigate the ongoing gamesmanship around Section 13(b), showing the marketplace that the FTC has more than one trick up its sleeve, regardless of how the Supreme Court rules."

## FTC Commissioners Appeal to Hill on Section 13(b)

All five FTC Commissioners – Chairman Joseph Simons (R), and Commissioners Christine Wilson (R), Noah Phillips (R), Rebecca Slaughter (D), and Rohit Chopra (D) – sent a letter to the Chairs and Ranking Minority members of the Senate Commerce and House Energy & Commerce Committees

urging the Committees to pass legislation that would “restore Section 13(b) to the way it has operated for four decades.” The full letter and analysis appear in the post.

## [Ad Law Access Podcast: Comparative Advertising 101](#)

### 8 QUESTIONS WITH ALYSA HUTNIK

**1. Where were you born/where did you grow up?**

Los Angeles, CA (with an 8 year stint in San Antonio, TX, as a kid)

**2. What did you want to be when you “grew up?”**

An actress or newscaster

**3. How are you handling working from home?**

I have a good home set up and while the work days don’t have much separation from one to the next, I do love getting to see my kids more, not spending so much time in airports, and getting to exercise a lot more.

**4. What music are you listening to?**

Obsessively listening to political podcasts; I should be listening to music instead

**5. What are you reading?**

Too many newspapers and political twitter feeds

**6. What’s your favorite website or online newsletter?**

Washington Post

**7. What’s the best thing that you’ve watched recently?**

The Queen’s Gambit, followed by Tehran

**8. Favorite Quote!**

“We are a little piece of continual change, looking at an infinite quantity of continual change.” B.K.S. Iyengar.

### WHAT PEOPLE ARE READING

A collection of our top reads this past week, old and new:

[Videoconferencing and Potential Security, Confidentiality and Discovery Issues](#)

[NAD Considers Context in Puffery Argument](#)

[CCPA 2.0 Gets Closer to Reality: CPRA Eligible for November 2020 Ballot; How Does it Compare to CCPA](#)

[California AG Proposes Changes to CCPA Regulations](#)

[Second Circuit Limits Copyright Damages To Those Incurred Within Three Years Prior to Suit](#)

[Does the NAD's Capillus Decision Baldly Contradict the FDA?](#)

[The Pink Tax: Discrimination or Actual Differentiation?](#)

[New Decision Warns Against Reposting Photos on Social Media](#)

[TCPA Tracker – October 2020](#)

Find these and other stories on the [Ad Law Access blog](#) and [podcast](#). Also see the [Advertising and Privacy Law Resource Center](#), available via [KelleyDrye.com](#), our online repository of our thought leadership and resources on subjects that affect our clients day-to-day.

## UPCOMING EVENTS

### [Nuts and Bolts of Basic Advertising: Substantiation, Disclosures and Social Media](#)

November 10, 2020", "Webinar

2020 ANA/BAA Marketing Law Conference: A Virtual Experience

**Gonzalo Mon**

### [The Future of Consumer Protection and Privacy - What to Expect from the FTC](#)

November 10, 2020", "Webinar

California Lawyers Association: Shelter In Place Institute

**Christie Thompson, John Villafranco**

### [CCPA Compliance: An In-Depth Survey of the Advertising Industry](#)

November 12, 2020", "Webinar

2020 IAB Policy Summit

**Alysa Hutnik**

### [Made in USA claims – Navigating FTC's 'All or Virtually All' Standard](#)

December 3, 2020", "Webinar

Lexology Webinar

**Christie Grymes Thompson**

## OTHER KELLEY DRYE NEWS

### Real Estate Industry Alerts Tracker

The Kelley Drye [Real Estate practice group](#) is carefully monitoring across all facets of the real estate industry developments and opportunities arising out of the disruptions to the economy caused by coronavirus. In this newsletter you will find what we hope is a useful summary of some of the more significant legal and regulatory developments together with intelligence on emerging market and practice trends as real estate industry professionals begin to develop responses to the fallout from the wide spread economic disruption.

### Kelley Drye Content Digest October 2020

Each month, Kelley Drye compiles all the articles, blogs, and digital content produced in that month into the Content Digest.

### AgTech 2021: Opportunities & Challenges

The agriculture industry is facing some of its biggest challenges of the last decade, from technology-enabled productivity improvements to shifts in consumer preferences to turmoil in domestic and international markets, particularly as the industry manages the disruption in the food supply chain during the COVID-19 pandemic and uncertainties of global trade.

Join us on November 19th for a webinar that will explore the opportunities and challenges across the AgTech landscape, along with a discussion of funding and investment activity for AgTech companies with PitchBook senior analyst, [Alex Frederick](#), Open Prairie founder, [Jim Schultz](#), Open Prairie partner [Lee Strom](#) and chair of the Kelley Drye & Warren Corporate Practice, [Tim Lavender](#).

- [PitchBook](#) is a financial data and software firm offering VC, PE and M&A comprehensive private market data.
- [Open Prairie](#) is a multi-faceted private equity (PE) fund management firm with deep roots in agriculture and rural America.

**Register [here](#).**

### Labor and Employment WORKing Lunch Webinar Series

Multiple Dates

Following last year's success and starting in November, the L&E team will host the 2020/2021 WORKing Lunch, a webinar series focused on bringing in-house counsel, management, and HR professionals the latest trends and developments in workplace law. Topics will include: Survey Of In Vogue Lawsuits: COVID EDITION; Wage & Hour 101; Employee Leave Laws: Managing the Intersection of FMLA, ADA, and FFCRA; Employment Law in the New Administration, and more.

CLE, SHRM and HRCI available. Visit our [website](#) in the forthcoming weeks for more information or email [erochefort@kelleydrye.com](mailto:erochefort@kelleydrye.com) if you'd like to be added to our invite list.

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