



The Trump Administration and the Washington Regulatory and Legislative Environment— What Can We Expect?

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Trump Administration's views on the digital/internet economy, advertising technology and privacy, and data use

- Focused on creating new economic and employment opportunities for Americans
- Technological innovation disrupting traditional industries
- Has held a few meetings with technology/internet industry CEOs and executives to reinforce his commitment to industry priorities
- Also has launched the Office of American Innovation, led by Jared Kushner to examine three large priorities -- modernizing government, building infrastructure, and

The Republican FTC

- **STATUS:**
- Senate Minority Leader Chuck Schumer announced his pick for the open Democratic seat on the FTC: Obama administration consumer protection official **Rohit Chopra** (former Assistant Director of the Consumer Financial Protection Bureau; seen as having close ties to Sen. Elizabeth Warren, who was instrumental in setting up the CFPB).
- The president traditionally respects the choice of the highest-ranking opposing-party Senator in filling vacant commission seats, but is not required to do so by law.
- The FTC's minority seat has been open since the resignation of Democratic Chairwoman Edith Ramirez shortly after President Donald Trump took office. The FTC currently has two sitting commissioners of five possible seats: acting Chairman Maureen Ohlhausen, a Republican, and Democrat Terrell McSweeney.
- The Senate is unlikely to move on a potential Chopra nomination until Trump selects at least one Republican nominee.

The Republican FTC

- **Substance:**
- Focus enforcement on tangible and substantial harms
- Discern what those are through FTC's economic analysis initiative
- Reduce burdens on companies by streamlining CIDs
- More FTC guidance on what constitutes "reasonable security" under Section 5, by looking at investigations the FTC has closed.

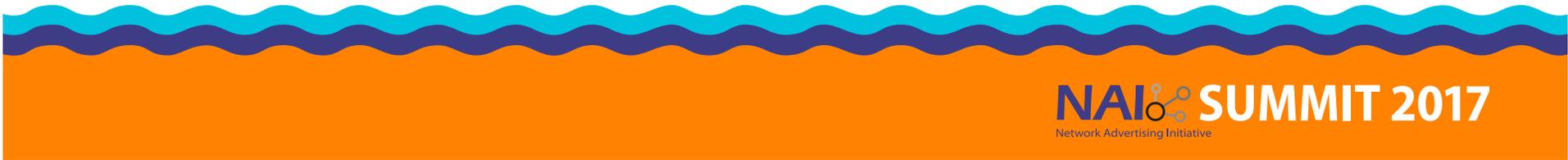
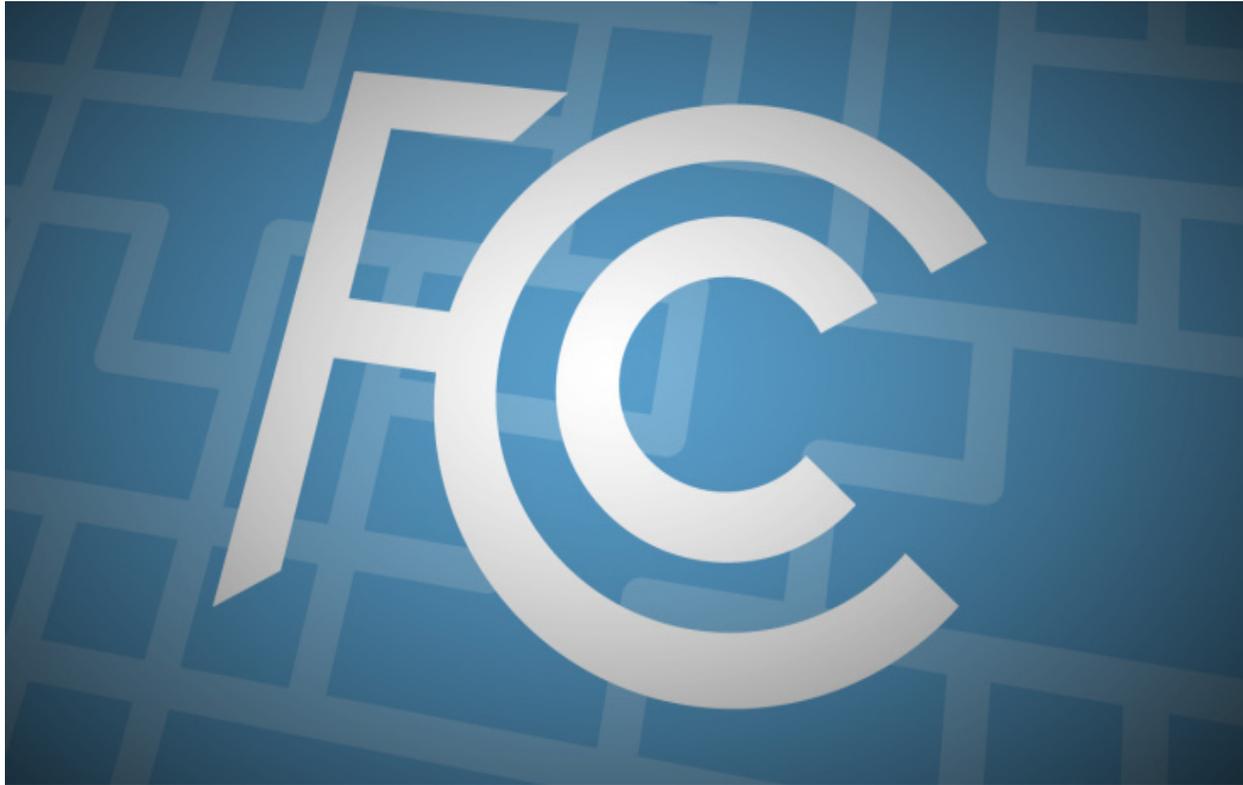
Executive Orders

President Trump has signed 34 Executive Orders (EO)

- [Executive Order on cybersecurity \(May 11\)](#)
- [Executive Order Protecting The Nation From Foreign Terrorist Entry Into The United States \(March 6\)](#)
- [“Buy American and Hire American” \(April 18\)](#)
- [EO Promoting Free Speech and Religious Liberty \(May 4\)](#)

Impact on Privacy Shield?





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Top Priorities for Congress for 2017

- HEALTHCARE
- TAX REFORM
- GOVERNMENT FUNDING
- TRADE
- FINANCIAL SERVICES

Advertising Tax

Congress of the United States
Washington, DC 20515

April 27, 2017

- Currently, tax treatment of advertising as a fully and immediately deductible business expense.
- Worry that this could change under tax reforms.
- Bipartisan group of more than a quarter of the membership of the House of Representatives called on congressional leadership not to institute tax reforms that "threaten the impacts on jobs and the economy."

The Honorable Paul Ryan
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker and Madame Leader:

The 115th Congress holds the promise of streamlining the corporate tax code in order to achieve lower rates for America's businesses and eliminate tax loopholes and special preferences. We look forward to working with you on these efforts to bolster job creation, stronger wages, and economic growth, and respectfully ask that you maintain the current tax treatment of advertising as a fully and immediately deductible business expense. The potential for strengthening our economy through tax reform would be jeopardized by any proposal that imposes an advertising tax on our nation's manufacturing, retail, and service industries.

Advertising has been accorded the same treatment as all other regularly occurring business expenses, such as employee wages, rent, utilities and office supplies, throughout the 114-year life of the tax code. Any measure that would tax advertising – and therefore would make it more expensive – cannot be justified as a matter of tax or economic policy. Moreover, such a proposal would run counter to a major goal of tax reform agreed upon by virtually all policymakers: to simplify the tax code. For example, promoting a tax on advertising while pursuing full and immediate expensing of buildings and equipment furthers the irregularities and confusion present in our current tax system.

Must Pass....

1. **Government Funding** – Expires September 30, 2017.
2. **Debt Limit** – The US Treasury will hit the debt ceiling later this year (likely in fall of 2017) and Congress will need to address raising the limit to prevent the US from defaulting on its financial obligations.
3. **National Defense Authorization Act (NDAA)** – Annual reauthorization bill that is viewed as must pass. Rarely is this annual authorization bill not signed into law. Expires September 30, 2017.
4. **FY 2018 Budget Resolution** – Essential to provide reconciliation instructions for tax reform legislation.
5. **FAA Reauthorization** – The current reauthorization expires in September 2017.
6. **Children’s Health Insurance Program (CHIP)** – This program is designed to cover uninsured children in families with modest incomes, but too high to qualify for Medicaid. The program is authorized through 2019, but funding expires September 30, 2017.
7. **National Flood Insurance Program** – Expires September 30, 2017.
8. **Foreign Intelligence Surveillance Act (FISA)** – This national security law is set to expire in December 2017. While it has a lot of Congressional support, some privacy hawks would not view this as “must pass” would prefer to see it expire.
9. **Tax Extenders** – Set to expire on December 31, 2017. These may not be considered “must pass” but there will be a push to do them by the end of the year if tax reform has not happened by then.

Mixed Messages Around Privacy

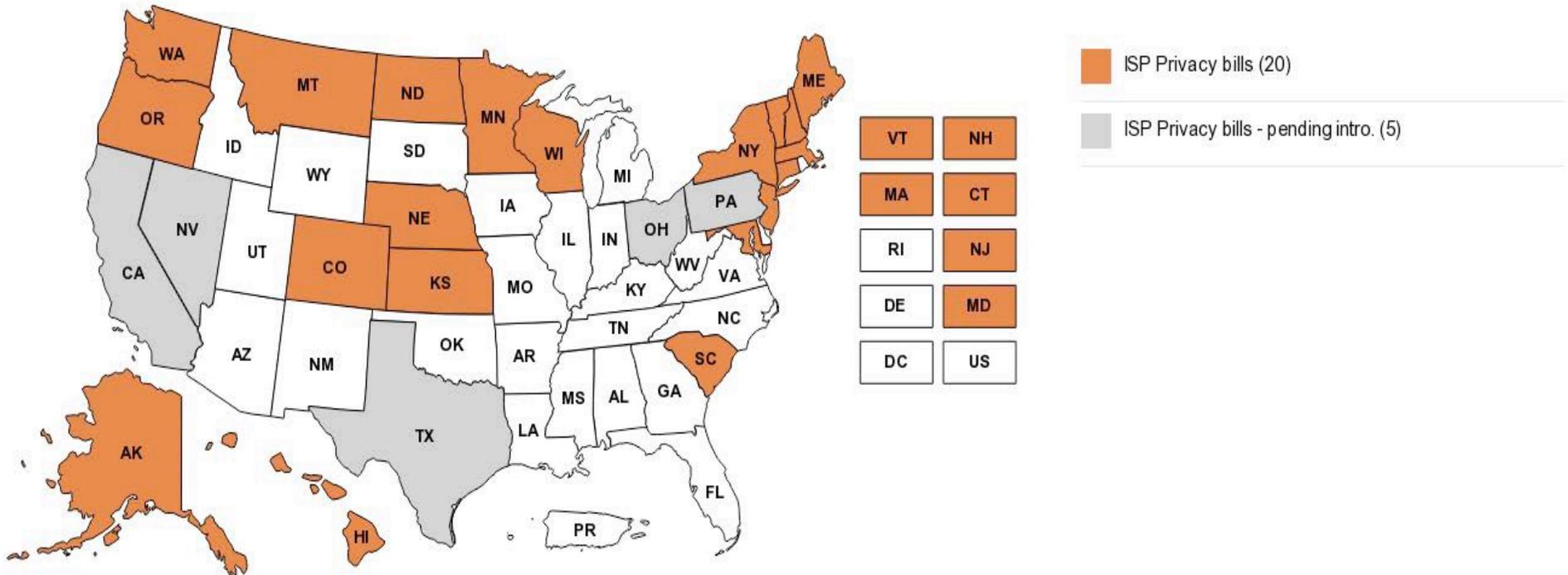
- [Email Privacy Act](#)
- [Foreign Intelligence Surveillance Act](#): Expires Dec. 31.
- [Protecting Data at the Border Act](#)
- [GPS Act](#)

Proposed “MY DATA Act”

Senators Richard Blumenthal (D-CT) and Tom Udall (D-NM) introduced the [Managing Your Data Against Telecom Abuses \(MY DATA\) Act](#).

- Would grant the FTC jurisdiction over broadband providers the same way it regulates the rest of industry.
- Mentions “edge provider” any person who:
 - (A) provides any content, application, or service over the Internet; or
 - (B) provides a device used for accessing any content, application, or service over the Internet.

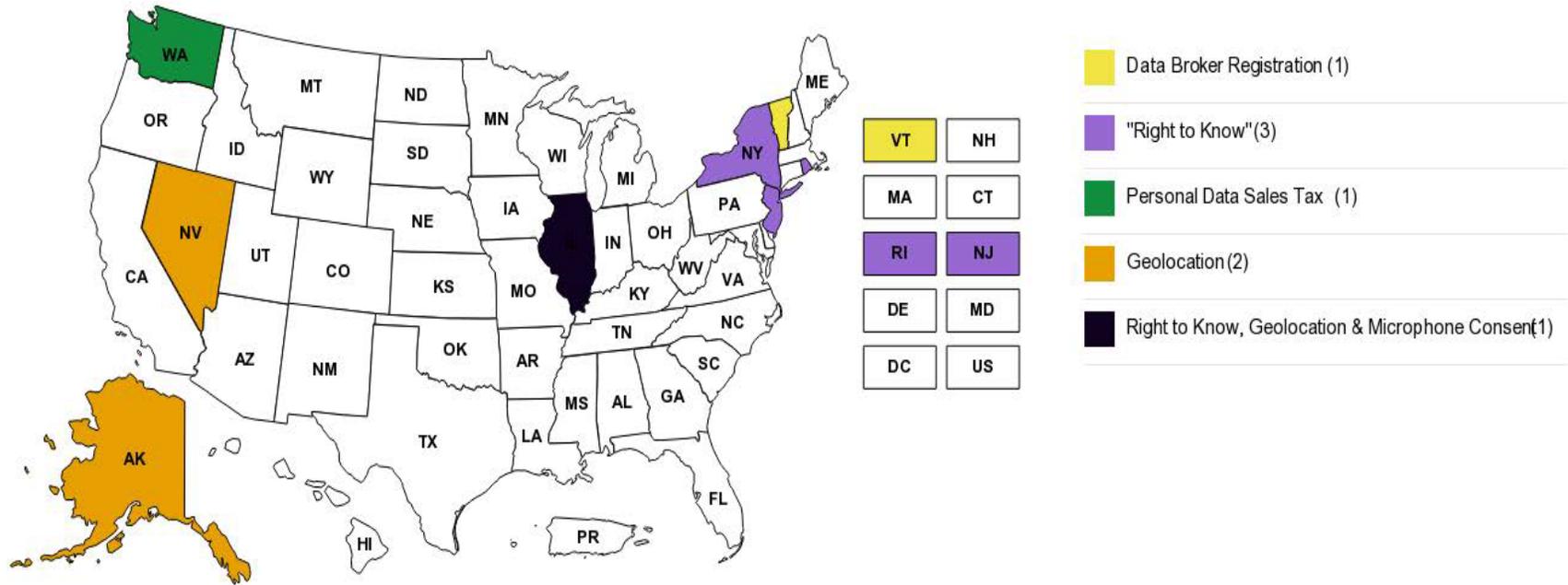
State ISP privacy bills (as of 5/16)



Seattle IT Rule (ITD Director's Rule 2017-01)

- Significance is that a city is now proposing an ISP bill
- Mayor Ed Murray said the new regulation is a direct response to the privacy rollbacks instated by Congress and the Trump administration.
- The Rule requires Cable Operators to obtain opt-in consent before sharing a customer's web browsing history or otherwise use such information unless certain exemptions are met.

Precedent Privacy bills _2017



Vermont Data Broker Bill (H.467)

- “Data broker” means a commercial entity that collects, assembles, or maintains personal information concerning individuals residing in Vermont who are not customers or employees of that entity for the purposes of selling or offering for sale, or other consideration, the personal information of a third party.
- “Personal information” means the following information that identifies, relates to, describes, or is capable of being associated with a particular individual:
 - (G) profile that includes personality, characteristics, or mental health;
 - (I) Internet usage history;

Illinois Right to Know (HB2774)

“ The General Assembly hereby finds and declares that the right to privacy is a personal and fundamental right protected by the United States Constitution.”

Basic premise: “An operator of a commercial website or online service that collects PII through the internet about individual customers residing in Illinois who use or visit its commercial website or online service shall notify those customers of certain specified information pertaining to its personal information sharing practices” and gives basic data access rights.

Personal Information includes “location information” or “internet or mobile activity information”

Operator of a website needs to disclose “the names of all third parties that received the customer’s personal information.”

Washington State (HB 1904)

- Impose a tax of 3.3% on the sale of personal information and related data.
- Preamble: “The legislature finds that there are various businesses engaged in accumulating the personal data that is available to be collected on Washingtonians, aggregating or compiling that information, and reselling it without any compensation to the people of the state.”
- Personal information means information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including
 - physical address or other location information;
 - internet provider address;
 - physical characteristics or description.
- "Personal information" also includes browser habits, consumer preferences and any other data that can be attributed to an individual and can be used for marketing, or determining access and costs related to insurance, credit, or health care.

Nevada Geolocation Privacy Bill

(AB313)

- This bill prohibits “a person from collecting, using, storing or disclosing geolocation information” from an app unless the other person has given his or her express consent after certain disclosures are made.
- Geolocation Information is “sufficient to determine the geographic location of the device.”
- The app must disclose that the person’s geolocation information will be collected, used, stored or disclosed; (b) Of the **specific purposes** for which his or her geolocation information will be collected, used, stored or disclosed; and (c) Of a hyperlink or comparably easily accessible means to access the information specified in paragraphs (a) and (b).



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GDPR and ePrivacy Regulation



What can you do?

1. Pay attention to the NAI Legislative Updates.
2. Send in bills you are concerned about to the NAI so that they can help with the analysis and spreading the news.
3. Consider what role the NAI should play policy-wise
 - Working with other industry groups?
 - Setting up a lobbying arm?
4. Start getting alerts on these bills
5. Read the bills carefully

Dear NAI Member,

Thank you for taking the time to read the first in our new series of NAI Updates eNewsletters! NAI Updates will be sent at regular intervals and include important and exciting news ranging from legislative, technology & international updates to NAI organizational news & upcoming events. We hope that you will enjoy reading and that you find the content we produce valuable. If you have any suggestions for items you would like to see included on future newsletters please feel free to get in touch!

LEGISLATIVE UPDATE

Right to Know Act

Illinois has proposed a bill (HB2774) that would require companies to disclose their data sharing activities, including the categories of personal information shared with third parties. These disclosures must be made available to individuals upon request and be capable of being audited. The law would also provide individuals with a private right of action against any company found to be in violation.



States proposing similar bills: *Rhode Island (H 6087)*