

LEGAL AND PRIVACY

Trump's Washington: Marketing in the new political landscape

March 29, 2017



President Trump signing unrelated legislation March 27 at the White House

By [Daniel L. Jaffe](#)

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Daniel L. Jaffe, group executive vice president for government relations at the Association of National Advertisers, delivered this address March 28 at the ANA Advertising Law and Public Policy Conference in Washington. Here are the prepared remarks in their entirety.

The marketing community faces an extraordinary new political environment. Even the most seasoned and savvy political hands in Washington have to admit they haven't seen political shifts this dramatic before.

This is a true 8.7 on the political Richter upheaval scale. This period of substantial political uncertainty creates major opportunities and risks for the ad community.

Today is the 68th day of the Trump presidency yet the political crystal ball is still extremely murky. Nevertheless several things have become clear. First, there will be no political honeymoon. Instead of throwing bouquets and rice, both sides immediately began throwing political hand grenades at each other. Second, because of the extremely close election, there is no political mandate. Therefore virtually every issue is going to be forcefully contested. Third, and most importantly, Republican control of the White House and the Congress means the long period of Congressional political gridlock is likely over. Major initiatives can be rammed through, greatly raising the political stakes for all parties.

One other thing is already crystal clear, however. Those who thought President Trump would stop tweeting or forcefully pushing the agenda he laid out during the campaign were completely wrong.

In fact, the one safe prediction that can be made about President Trump and the new administration is that they will be highly unpredictable.

The political acrimony between the two parties has rarely been higher. Last month, Senator Elizabeth Warren (D-MA) was rebuked, censored, and silenced for "impugning" the character of Senator Jeff Sessions (R-AL) during the debate on his confirmation to be Attorney General, an action that is virtually unprecedented only 10 Senators had been censored previously in U.S. history.

The leaders of the Trump team have publicly stated that they plan to flood the zone with so many major initiatives that their political opponents won't be able to organize or respond effectively to counter their agenda.

But we must not let ourselves get distracted. We need to keep our eye on the ball. There is just too much at stake for the ad community.

The Trump Administration generally has signaled a very pro-business orientation by nominating a series of anti-regulatory leaders chosen from the business community for key cabinet positions.

As one of his first initiatives, the president signed an Executive Order stating that for every new regulation promulgated by the executive agencies, two existing regulations must be eliminated. In addition, the Executive Order states that the net incremental costs of all regulations in 2017 should be zero.

President Trump, on the other hand, has shown a willingness, even eagerness, to personally single out and attack a whole range of companies and industries, who he believes are not placing American interests first. This so-called "tweet risk" already has cost a number of these companies, at least initially, billions of dollars in stock value. Therefore, businesses in general, and more importantly for our purposes, their advertising, legal and public relations arms are going to have to take this risk seriously into account as part of their overall business planning.

What is creating major challenges for all political participants is how to digest and respond to this enormously ambitious and complex agenda.

Here is just a very partial list of key proposals:

Repeal and replacement of Obamacare

Tax reform

Immigration reform and building the wall

Numerous cabinet confirmations

The Supreme Court nomination

Budget agreement, reconciliation and spending bills

Major regulatory reforms

And let's be clear about the magnitude of this potential effort. We are talking about dramatic major simultaneous changes to both the total health care and tax systems of the U.S. to be pursued, while all these other issues also are in play.



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To move this agenda will require enormous levels of political cohesion.

In the Senate, Republicans have to walk an extremely narrow political tightrope. If they lose just three of their members' support their proposals can be blocked by the Democrats. That almost happened last month when Senators Lisa Murkowski (R-AK) and Susan Collins (R-ME) refused to support Betsy DeVos, the president's nominee for Secretary of Education. This required the vice president, for the first time in history, to break a tie vote for a presidential nominee.

But the Senate Democrats, and this is something not receiving sufficient focus, are likely to have an even harder time managing their coalition. Twenty-five of their members the highest in 48 years will be up for election in 2018. Many

of these Democrats are running in deep-red states won by both Mitt Romney and Mr. Trump. So keep a very close eye on these shifting and unstable alliances.

Let's take a look at the key issues on the agenda that will clearly impact us in the immediate future.

The health care debate could become unhealthy for marketers

At the top of the political agenda clearly is health care policy. President Trump in his first Executive Order immediately put a major torpedo into Obamacare by stating that:

"To the maximum extent permitted by law, the Secretary of Health and Human Services (Secretary) and the heads of all other executive departments and agencies (agencies) with authorities and responsibilities under the Act shall exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the Act that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications."

By undermining the penalty provisions of the Affordable Care Act, President Trump assured that Congressional Republicans would have to speed up their efforts to repair or replace it. The House Republicans' replacement bill was released on March 6 and was immediately attacked from both the left and the right. The House leadership, however, has firmly stated that they would like to pass a replacement bill in the House by the time of the Easter recess.

In all-night sessions, they passed this bill through both the House Ways and Means and House Energy and Commerce Committees. Speaker Paul Ryan several times has forcefully emphasized that Republicans now have a "once in a lifetime" opportunity to repeal and replace Obamacare and they want to move quickly, to limit the opportunity for opponents to derail the legislation. The recent findings by the Congressional Budget Office (CBO) that this proposal would lead to millions of present recipients losing government-funded health care, however, has placed further major hurdles in the way of rapid movement of this legislative effort.

Nevertheless these proposed changes in the health arena clearly could impact the advertising of insurance companies, hospitals, other health providers, prescription drug companies and many others including potentially food advertisers whose products are claimed to be of "low nutritional value."

Already we are seeing signals that direct to consumer (DTC) prescription drug advertising will come under serious attack. The American Medical Association (AMA) has called for a total ban of this advertising. When the Affordable Care Act was being considered in the Congress in 2009, we helped defeat a proposal from the House Ways and Means Committee to eliminate the tax deductibility of all DTC advertising.

During debate in the Senate in January over the budget resolution, Senator Al Franken (D-MN) published an amendment to totally disallow the tax deduction for DTC ads. We were able behind the scenes to get other Democratic Senators to convince him to withdraw his amendment, but probably only temporarily.

Although he has not mentioned DTC advertising directly, President Trump consistently has been very critical about high prescription drug prices and has promised to bring these costs down. In this environment, further attacks on DTC advertising should not be unexpected.

DTC advertising is also under attack in the Oregon Legislative Assembly. Senate Bill 792 would require manufacturers to "clearly and conspicuously" disclose in all DTC ads the wholesale or manufacturer's net price for the product that was paid by pharmacies located in the state. There are a number of serious legal and constitutional defects with this proposal, and we are working closely with our members and allied industry groups to oppose it. Our letter opposing the bill is available at: <http://www.ana.net/content/show/id/43627>

DTC advertising clearly is a high risk area. ANA continues to believe that DTC ads provide major benefits to consumers and we will fight hard to maintain the legitimate protections for this category, which already is one of the most regulated advertising sectors.

Will the taxman cometh?

The most complex and potentially serious threat to advertisers' bottom line, however, is an outgrowth of the tax reform fight. All of the plans presently being put forward in the Congress would create the largest tax changes since the Tax Reform Act of 1986.

However, the House tax committee's so-called "Better Way" proposes the most far reaching changes.

Championed by House Speaker Ryan (R-WI) and House Ways and Means Committee Chairman Kevin Brady (R-TX), it would replace the corporate income tax approach that has been in place since 1913 with a destination-based cash flow consumption tax, now affectionately known in Washington circles as the (DBCFCT) tax.

This proposal imposes a flat 20% tax only on earnings from sales of output consumed within the United States. All business investments can be immediately written off including buildings and heavy equipment but without any deduction for net interest.

Critically, under the so-called border adjustment provision, the cost of imported supplies would no longer be deductible from taxable income while all exports would be. How this would impact advertising for imported goods has still not been determined.

The border adjustment proposal has been highly controversial with the powerful Koch brothers, the retail industry, car dealers, toy manufacturers, and oil importers all strongly opposing this provision. They claim it will severely injure their businesses and impose major new costs on consumers for basic goods and services.

President Trump has made clear that he has concerns about the border adjustment approach describing it as "too complicated" but he has not dismissed it as an option.

And the House leadership is digging in for a major fight for their plan. Important segments of the business community also are organizing to support the border adjustment proposal.

Bottom line, we have an extremely fractured business community in regard to tax reform. Everyone wants to lower corporate rates but beyond that there is not yet a clear consensus. ANA is laser-focused on making sure that whether there is a consumption tax or income tax approach ultimately selected, that no tax reform plan imposes a new cost or additional burden on the effort of companies to market their products or services to consumers. Our major international economic competitors generally do not place tax burdens on advertising and we should not hobble the advertising selling effort with these types of taxes either.

The House leadership already has announced that tax reform will not be considered until this summer, after they complete action on health care reform.

If the border adjustment provision meets too much political opposition and is scrapped by the House, it would blow a trillion-dollar hole in the plan that would have to be filled somehow. This is one of the ways advertising deductibility could be swept back into the debate. As always, advertising deductions continue to be seen as a potential pot of gold and Congressional revenue estimates have stated that amortizing 50 percent of advertising expenses would bring in \$169 billion to \$200 billion in additional taxes within either five or ten years.

We are presently holding meetings with key lawmakers in their states and districts and we need ANA companies to participate in these meetings to explain the importance of advertising to their successful operations if we want to stave off these threats. We have never been presented any legitimate tax or economic policy basis that would justify increasing taxes on advertising to reach the goal of lower taxes. More importantly, studies by several Nobel Laureates in economics have demonstrated that advertising is the most efficient way to market products and that advertising generates trillions of dollars in economic activity and almost 20 million jobs in the U.S. annually.

In whatever way the tax reform debate plays out, we need to make sure that advertising deductibility and advertising effectiveness is not undermined by unreasonable new tax burdens. Remember, if we are not at the table throughout this negotiations process, we are almost certain to be on the menu.

State ad tax threats reappear

In the meantime, after a quiet year in 2016, state ad tax advertising threats once again appear to be on the increase. While corporate tax reform is in the very early stages with Congress and the Trump Administration, state governments across the country are hard at work on adopting their budgets for the new fiscal year which begins on July 1st. Several states are still struggling to recover from the recession and face budget shortfalls. Unfortunately, taxing advertising by eliminating service tax exemptions has been proposed or discussed in several of those states.

West Virginia faces a \$500 million budget shortfall for the 2017-2018 fiscal year. Governor Jim Justice (D) recently proposed a budget that would increase the state sales tax (currently 6 percent) by one-half percent and eliminate the current sales tax exemptions for professional services and advertising.

Oklahoma also faces a budget shortfall and Governor Mary Fallin (R) released a budget proposal that calls for more than \$800 million in new revenue through "sales tax modernization" by taxing more than 164 new services, including "Radio, TV, Publisher Representatives." Governor Fallin had proposed taxing advertising last year but the legislature rejected that approach.

In addition, Kentucky faces a serious funding shortfall in their state pension system. In his "State of the Commonwealth" speech, Governor Matt Blevin (R) said that he would be calling a special session later this spring to reform the tax code. He urged lawmakers to examine every aspect of the tax code and warned that there will be "sacred cows that are turned into hamburger." Several commissions have examined tax reform in Kentucky in the last several years and have called for expanding the sales tax base to tax more services.

Finally, Illinois has entered the second year without a formal budget and continued gridlock between Governor Bruce Rauner (R) and the Democrats who control both houses of the General Assembly. While he has not recently specifically called for an advertising tax, the Governor has stated that he would accept a package with new revenues if it also contained several government reforms.

We are working closely with our member companies, the broadcasters, publishers and other allied groups in all of these states to oppose any tax on advertising. For example, we helped provide funding for the coalition in Illinois, which has a Web site at: <http://noadtaxillinois.com>

Over the last 25 years, ANA has helped defeat over 120 ad tax proposals in more than 40 states. These successful efforts have saved the ad community potentially billions of dollars in additional tax burdens. Through The Advertising Coalition (TAC), we have produced the IHS Economics and Country Risk study, which demonstrates the benefits of advertising to the national economy and to each of the fifty states. The study demonstrates that advertising is one of the major engines of economic activity and jobs throughout the U.S. This report is a powerful tool in contacts with both federal and state lawmakers. Clearly, burdening the selling effort of advertising would be highly counterproductive.

State ad taxes are not a new idea, just a bad one.

If Congress passed fundamental reform of the federal corporate tax code, such as the House Republican plan that could also have major impacts on state tax bases. Most states that impose a corporate income tax rely on federal rules, definitions and calculations. Any major changes in the federal corporate tax code could have very significant implications on state taxation, so stay tuned.

We will continue our efforts to oppose taxes on advertising both in Congress and the state legislatures.

The privacy puzzle

Of all the issues facing the advertising community, online privacy and data security are certainly the most complex and maybe the most controversial. We are facing increasing challenges in these areas at the federal, state, and international levels.

The ability to collect and store information has exploded in just the last decade with the proliferation of automatic license plate readers, in-store cameras, facial recognition technology, the ability to track online behavior and the rapidly increasing connectivity of an ever-growing range of digitally Internet-connected products and devices.

In this regard, it is estimated that as part of an expanding Internet of Things (IoT) environment that there will be more than 6 billion connected things this year, and that more than 5 million new connected devices are being added each day. Clearly, these developments can provide enormous societal benefits, but they have also generated growing public concern about both what government and business know about each of us and how that data will be used. The recent WikiLeaks disclosure of CIA programs to utilize targeted computers and smart phones and TVs for surveillance purposes has only increased the spotlight on the privacy arena.

ANA always has believed that there should be sharp distinctions drawn between government and marketing privacy issues. Therefore, we have worked hard to assure that marketing data is used only for marketing purposes and that individuals will have the power to make privacy choices for themselves.

ANA has been a leader in efforts to preserve self-regulation and encourage best practices in the use of customer information. We have worked with other industry groups to oppose onerous privacy legislation, both federal and state, that would impose unreasonable burdens on electronic commerce.

To address the privacy concerns about interest-based advertising, the marketing community has built one of the

most rapidly-growing and successful self-regulatory programs in history the Digital Advertising Alliance (DAA). ANA and four other industry groups were founding members of the DAA, which features an icon alerting consumers to the fact that they have been served ad-based online behavioral advertising (OBA).

When a consumer clicks on this icon, they can access detailed information about interest-based ads and learn how to exercise choice about how to opt-out of targeted ads if they wish to do so.

Since its launch in 2010, the DAA has rapidly brought enhanced notice and choice to consumers:

The AdChoices Icon is now served globally trillions of times each month

More than 68 million unique visitors have visited our two program sites, www.aboutads.info and www.youradchoices.com, where consumers can exercise choice over whether they are willing to have interest-based advertising served to them

The vast majority have opted to continue to receive interest-based ads

These are compelling numbers which show that consumers are coming to rely on the DAA program for meaningful choice.

We have urged all ANA members to join the program.

We believe that strong industry self-regulation is a far superior alternative to restrictive new laws and regulations. One of the most important benefits of self-regulation is the flexibility to adapt to the extraordinary rapidly changing technological environment. In mid-2013, the DAA principles were substantially expanded to cover interest-based ads delivered across mobile applications and the mobile Web.

The DAA self-regulatory program has been adopted in 35 countries including the EU, Australia and Canada. The DAA guidance also addresses location-based data and personal directory data use. Finally, the DAA program explicitly forbids the use of materials collected for interest-based advertising purposes to be used for job, insurance, mortgages and other similar sensitive data usages.

The DAA recently launched two new mobile tools for consumers "AppChoices" and the "DAA Consumer Choice Page for Mobile Web" to supplement the choice mechanism already used by millions of consumers for their desktop browsers.

The FCC joins the privacy debate

The Federal Communications Commission (FCC) stepped forcefully into the privacy arena last year with a live hand grenade in the form of a sweeping, highly restrictive privacy proposal for Internet service providers (ISPs). The final order was adopted on October 27 on a 3-2 party line vote.

The order treats all browser and app use data as "sensitive" and requires an opt-in for the collection and use of this data.

This is a radical departure from the approach of the Federal Trade Commission (FTC) and the DAA, which allow an opt-out for all non-sensitive data. Until the FCC privacy rulemaking, data was treated as sensitive only in regard to its specific content rather than on who collected it. To treat all browser and app data as sensitive and needing equal regulation is like pretending that rattlesnakes and flowers are equally dangerous because they both can be found in the same field. ANA and other industry groups opposed this proposal at every step of the process. We filed a formal Petition for Reconsideration with the FCC and signed on to an industry letter urging the Congress to overturn the order under the Congressional Review Act.

On March 1, the FCC issued a temporary stay of the online privacy and data security regulation which would have subjected ISPs to a different standard than that applied to other companies in the Internet ecosystem by the FTC. The regulation would have gone into effect on March 2 and the Commission voted 2-1 on party lines to stay the rule.

The Commission's rationale for issuing the stay focused on the stark differences between the FCC rule which singled out ISPs and the FTC's standard for all other actors in the online space. In a press release, the FCC stated, "The FTC had proven to be an effective cop on the beat for safeguarding digital privacy. But in 2015, the FCC stripped the FTC of its authority over ISPs' privacy and data security practices when it adopted the Title II Order."

Acting FTC Chair Maureen Ohlhausen, who raised serious concerns about the FCC rulemaking prior to its adoption, weighed in positively on the stay. In a joint statement, Ms. Ohlhausen and FCC Chairman Ajit Pai noted that the online privacy of American consumers would best be protected through a comprehensive and consistent

framework. They stated, "We still believe that jurisdiction over broadband providers' privacy and data security practices should be returned to the FTC, the nation's expert agency with respect to these important subjects. All actors in the online space should be subject to the same rules, enforced by the same agency."

The FCC's rule would be very harmful, not only for businesses but consumers as well who would be faced with a drumbeat of onerous opt-in and data breach notices. We agree that the FTC, not the FCC, should be the key regulator in charge of online privacy, and we are very pleased that the Commission will be taking the time to thoroughly review this critical area.

In the meantime, Senator Jeff Flake (R-AZ) and Congresswoman Marsha Blackburn (R-TN) have introduced resolutions in the Senate and House to begin the process of using the Congressional Review Act (CRA) to repeal the FCC's privacy rule. We support their effort strongly.

We continue to advocate forcefully for this onerous regulation to be completely overturned, either by the FCC or the Congress.

Pushback from the EU

It is also very important that advertisers be aware and prepare for major privacy changes in the EU. These proposals deal with the new Privacy Shield Program, the General Data Protection Regulations (GDPR), and the EU ePrivacy Directive. The latter two programs are scheduled to go into effect in 2018. If these proposals continue as presently constituted, they could severely undermine our Digital Advertising Alliance (DAA) Self-Regulatory Program because they would vastly increase the requirements for opt-in collection, as opposed to our traditional opt-out approach.

The Supreme Court pick

Another issue that will affect us directly and immediately is the battle to fill the Supreme Court vacancy left open by the death of Justice Scalia. This seat is very important because many key advertising cases in the past were decided on 5 to 4 votes with Scalia voting in the majority to increase advertising protections. President Trump has nominated Judge Neil Gorsuch, who has served for over a decade on the U.S. Court of Appeals for the Tenth Circuit. Judge Gorsuch's views on advertising protections are still unknown, but he has shown pro-business proclivities so we are hopeful.

How this will turn out will largely depend on whether the Democrats can mount and sustain a filibuster. Already they are threatening to block the nomination because of their opposition to Judge Gorsuch's jurisprudence and also as payback for what they claim is a stolen seat due to the refusal of Senate Republicans to consider President Obama's nomination to the Court of Judge Merrick Garland.

In response, President Trump and some Republican leaders threaten to utilize the so-called legislative "nuclear option" to change Senate rules to severely limit the filibuster, and require only a majority vote for virtually all Senate business including Supreme Court nominations.

The stakes are particularly high for us right now as there are an unusually large number of advertising cases already in the courts or likely to be there soon.

ANA already has filed "friend of the court" briefs in San Francisco and Berkeley in two key mandatory advertising disclosure cases. The next argument in the San Francisco case is due before the 9th Circuit Court of Appeals on April 4th. Bob Corn-Revere of Davis Wright Tremaine LLP will be covering these issues in detail later in the conference. With 30,000 cities and counties in the U.S., the threat of a proliferation of mandatory advertising disclosure requirements continues to be a severe one.

New leaders at the regulatory agencies

President Trump is shaking up the membership and priorities of the three major regulatory agencies in our industry, the FTC, the FCC and the CFPB.

In one of his many Executive Orders, the president has designated Commissioner Maureen Ohlhausen to be the Acting Chair of the FTC. We are proud to have her as a speaker at this year's conference. She has served on the Commission since 2012 and has been very supportive of our various industry self-regulatory programs such as the Digital Advertising Alliance (DAA). There are currently three vacancies on the FTC so President Trump will be able to appoint three new members, one of which must be a Democrat. Commissioner Terrell McSweeney's seat also becomes open this year.

Republicans now have a 2-1 majority at the FCC and President Trump has designated Commissioner Ajit Pai as the

new Chairman. Mr. Pai has stated that he wants to "take a weed whacker" to much of the FCC's previous regulatory actions. The president will also fill two current vacancies, one a Democratic seat and the other a Republican one.

The changeover in partisan control of the FCC has already led to one important victory for our industry. Last year, the FCC announced a Notice of Proposed Rulemaking (NPRM) to "open up" the market for set top boxes, the receivers that the vast majority of subscribers use to watch their pay television signals. While we are agnostic in regard to the technological means of delivering programming to consumers, there were major copyright, contract and piracy concerns surrounding the FCC's proposal that would have left advertisers virtually unprotected. Therefore, we filed detailed initial comments and reply comments in opposition. Those comments are available at: www.ana.net/content/show/id/41256

The FCC recently announced that they are shelving the set top box proposal.

The Consumer Financial Protection Bureau (CFPB), which has enormous jurisdiction over financial advertising, also will be under severe scrutiny. The Republican Party has long felt that the CFPB should be transformed into a commission model rather than a single director-led agency.

Also, they want to gain control over the CFPB's appropriations, which presently are automatically provided under a fixed unchangeable formula from funds drawn from the Federal Reserve. These changes are likely to be strongly opposed and filibustered, however, by Senators Elizabeth Warren (D-MA) and Bernie Sanders (I-VT), who played major roles in the CFPB's formation.

A regulatory revolution

In remarks at the Conservative Political Action Conference last month, White House chief strategist Stephen Bannon stated that the new administration is engaged in an unending battle for "the deconstruction of the administrative state." While cutting regulations and lowering taxes are typical Republican talking points, Mr. Bannon and some in the White House seem to be pushing for a much more protectionist "economic nationalism."

How we deal with the rest of the world could have major implications in the privacy arena, tax and trade policy and others. For example, EU leaders could push back even harder on an American privacy regulatory system that they already find insufficient. If Congress passes a tax reform bill that taxes all imports this could lead to challenges at the World Trade Organization (WTO) or other attempted retaliatory steps.

President Trump in furthering his regulatory agenda already has signed numerous Executive Orders. They have called for a freeze of all federal hiring and put a temporary freeze on all pending regulations, while rolling back several rules that were adopted during the Obama Administration.

He has proposed serious cuts to several federal programs and on March 13 he published a new Executive Order calling for a comprehensive plan for reorganizing the executive branch, requiring each agency head to report within 180 days with a "proposed plan to eliminate unnecessary agencies, components of agencies and agency programs, and to merge functions." As part of this report, agency heads are to determine "whether some or all of the functions of an agency, a component, or a program are appropriate for the Federal Government or would be better left to state or local governments or to the private sector through free enterprise."

As noted earlier, the president signed another Executive Order which states that for every new regulation promulgated by an executive agency, two existing rules must be eliminated. While this order does not apply to the FTC or FCC, there is a clear strong signal from the White House that it plans to be highly engaged in assuring that there will be fewer regulatory activities or oversight.

In addition and concomitantly, there is a whole list of major initiatives that have been put forward to provide Congress dramatically increased power over the regulatory agencies. In essence, these procedural changes taken together would give the Congress the ability to block any new major rules going into effect unless they explicitly approved them. This would alter the present situation where major new rules would automatically go into effect unless they were explicitly overturned by Congress through the Congressional Review Act or subsequently by Congress passing a new law overturning an existing rule.

Also, the recently reinstated Holmes rule now allows Congress through amendments to appropriations bills the ability to cut the individual salaries of specific executive branch employees and to cut out specific programs as well. This is an enormous further potential legislative hammer over the heads of the regulators now in the hands of the Congress.

Politics abhors a vacuum

While the business community generally supports self-regulatory options first, the ad community has always supported reasonable regulation to assure that the marketplace is fair and competitive.

We must be careful what we wish for. We have learned from past hard experience that in the absence of adequate balanced federal regulatory activity, that state legislatures, state attorneys general, other state agencies, class-action lawyers and even international regulatory bodies will try to move to fill the void.

We have long believed that both consumers and businesses are best protected through a single regulator, primarily the FTC, and a single regulatory approach. We are very encouraged by remarks from Acting FTC Chair Ohlhausen that at the core of her agenda for the agency is what she has described as "regulatory humility." In a recent speech to an American Bar Association consumer protection conference she said: "I will work to reduce unnecessary regulatory burdens and provide transparency to businesses. Consumers benefit greatly from free and honest markets, and free and honest markets depend on entrepreneurs and their businesses. We can and should protect consumers while reducing burdens on legitimate business."

Even more importantly, in deregulatory periods, strong, effective visible selfregulatory activities become particularly crucial and fortunately our industry has a very positive story to tell. The Advertising Self-Regulatory Council (ASRC), the Children's Advertising Review Unit (CARU), the Children's Food and Beverage Advertising Initiative (CFBAI) and the Digital Advertising Alliance (DAA) are all respected by policymakers from across the political spectrum. We must all support them and work together to enhance them.

Advancing diversity in marketing

We must continue working to assure that we keep improving and strengthening advertising's role in the marketplace. As part of this effort, ANA launched two important initiatives last year to address the changing demographics of the country and the need for more diversity in marketing and media.

Despite the strides made to accurately portray women and women's issues in the media, more still needs to be done. ANA's Alliance for Family Entertainment launched the #SeeHer initiative in June 2016 in a joint partnership with the Girl's Lounge in an event at the White House. The mission of the #SeeHer initiative is to accurately portray all women and girls in media by 2020, the 100th anniversary of women winning the right to vote.

In December, ANA in a partnership with the A&E Network awarded the first-ever #SeeHer award to actress Viola Davis at the 22nd annual Critics' Choice Awards. She was recognized for her role as a seminal figure in the effort to change gender stereotypes.

A number of ANA members are actively participating in the program. For more information, visit: www.SeeHer.com

In October, ANA announced the formation of a new, wide ranging alliance designed to create a powerful, unified voice for the advancement of multicultural marketing. The initiative is called the Alliance for Inclusive & Multicultural Marketing (AIMM). Its goal is to bring together senior thought leaders from the African-American, Hispanic, Asian, LGBTQ and general market communities to create a unified blueprint for the evolution of multicultural and diverse-segment marketing in America. More information is available at: www.ana.net/content/show/id/41623

A response to ad blocking

There has been considerable discussion about how to improve the advertising environment to reduce consumer annoyance with online ads that disrupt their experience, interrupt content and slow browsing. Ad blocking has been estimated to cost the ad community more than \$30 billion annually worldwide.

Last September, ANA and a large number of other groups including the 4A's, DMA, IAB, WFA, Google, Facebook, Procter & Gamble and Unilever, came together to establish the Coalition for Better Ads (CBA). The Coalition on March 21 announced the creation of consumer-based, data-driven standards that companies can use to improve consumer ad experience, along with the technology to implement these standards and encourage awareness among consumers and businesses. The Coalition is actively working to develop a more consumer-friendly digital marketplace and to enlist a broad range of the ad community to support these efforts.

The development of the CBA is being led by Stu Ingis and his colleagues at Venable LLP, who also helped to develop the DAA. ANA is on the Board and the Executive committee of the CBA and we are very fortunate to have a breakout session at this conference to provide an update on the Coalition. More information about the CBA is available at: www.betterads.org

Conclusion

Our industry clearly faces very serious threats impacting an unprecedented range of issues. We continue to be confronted by an extremely volatile and challenging political environment. It is more important than ever for advertising lawyers to ensure that their companies and agencies are meeting all of the current legal and regulatory requirements that continue to proliferate.

A former colleague of mine paraphrasing Lewis Carroll used to say that if you don't know where you are going, any road will get you there. Here are some rules of the road that we all should strive to uphold as an industry:

We want a fair, predictable, competitive marketplace, both nationally and internationally, no matter who is in charge of the government.

We want to continue to preserve and strengthen the First Amendment protections for advertising.

We want to make sure that tax reform does not place any new cost or other burdens on the advertising our members use to market their products and services.

We want to continue to build, strengthen, and adhere to the mandates of our self-regulatory programs.

We want advertising that is more inclusive, user-friendly and respectful of consumers.

We need your help to respond to these various threats and challenges we face. It is critical that members of Congress hear from you and your company's lobbyists about how these proposals would affect your businesses. The ad community can determine its own fate in regard to these issues, but only if it acts in a forceful, unified, and proactive manner.

There have been two bottom-line lessons we have learned over the years.

First, most of the policy threats we face are bipartisan. We have critics from across the political spectrum, from conservative Republicans to liberal Democrats. Fortunately our supporters also cross the whole political spectrum and we need to work hard to assure they substantially outnumber our opponents.

Second, we are most effective in responding to these threats when the entire marketing ecosystem works together. There is too much at stake for anyone to sit on the sidelines. Advertisers, agencies and media companies all must work together to protect our industry. As Benjamin Franklin put it so well many years ago, "We must all hang together or surely we will hang separately."

Daniel L. Jaffe is Washington-based group executive vice president for government relations at the [Association of National Advertisers](#). He delivered this address March 28 at the ANA Advertising Law and Public Policy Conference in Washington. Reproduced with permission.



Daniel L. Jaffe, a senior executive at the Association of National Advertisers, warned attendees of the sweeping changes in the political landscape and what it means for advertisers, agencies and media companies

*Each year, ANA's Washington office prepares a *Compendium of Legislative, Regulatory and Legal Issues* which describes its efforts on behalf of the marketing community. The compendiums are available at: www.ana.net/content/show/id/advocacy-compendium.*

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