



## CFPB: CERTAIN DIGITAL MARKETERS ARE SUBJECT TO UDAAP

Recently the CFPB released an interpretative rule providing that certain digital marketers may be considered “service providers” under the Consumer Financial Protection Act (“CFPA”) and thus subject to the CFPA’s prohibition on unfair, deceptive or abusive acts or practices (“UDAAP”). The CFPA is applicable to service providers who provide a material service to “covered persons” under the CFPA.

In the interpretative rule, the CFPB determined that digital marketers engage in a material service when they assist in developing content strategies through identifying and selecting prospective customers or assisting in selecting or placing content to influence customer engagement. The CFPB also noted that digital marketers also may provide a material service when they identify customers and attempt to acquire those customers because it is a significant component of offering a consumer financial product.

Digital marketers may be excluded from the definition of a service provider under CFPA’s time or space exception. Under the time or space exception, digital marketers who only provide the time or space for a covered person to advertise are not considered service providers. For example, marketers that only provide ministerial time or space such as newspapers and websites that are not materially involved in the development of content strategies are not service providers. By contrast, the CFPB concluded that when digital marketers materially assist in developing content strategies they perform activities usually done by a covered person and thus fall outside of the time and space exception.

Under the CFPB’s new interpretation, certain digital marketers will be deemed service providers under the CFPA and will be subject to UDAAP. Thus, the CFPB is signaling that it is prepared to interpret the term service provider and its authority broadly.

The key to the interpretation is the meaning of “material assistance.” Digital marketers who may fall under the expanded interpretation of a service provider should consider their practices against UDAAP principles. □

✧ *Elizabeth Anstaett and Nathan Copeland*

### LOOKING FOR A MARKETING AND PRIVACY COMPLIANCE

**RESOURCE?** We publish an easy-to-use reference, our **MARKETING AND PRIVACY DIGEST**, that compiles the state laws governing financial privacy, fair credit reporting, telemarketing/automatic dialing and announcing devices, telephone monitoring and recording, electronic signatures and restrictions on the use of social security numbers by financial service providers. Creditors, marketers and servicers should find this resource invaluable to marketing and privacy program development and regulatory compliance. **Contact us for details.**

Darrell L. Dreher  
[ddreher@dtlaw.com](mailto:ddreher@dtlaw.com)

Elizabeth L. Anstaett  
[eanstaett@dtlaw.com](mailto:eanstaett@dtlaw.com)

Nathan D. Copeland  
[ncopeland@dtlaw.com](mailto:ncopeland@dtlaw.com)

Susan L. Ostrander  
[sostrander@dtlaw.com](mailto:sostrander@dtlaw.com)

2750 HUNTINGTON CENTER  
41 S. HIGH STREET  
COLUMBUS, OHIO 43215  
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600  
[WWW.DTLAW.COM](http://WWW.DTLAW.COM)

To see previously sent ALERTS, visit our website at [www.dtlaw.com](http://www.dtlaw.com)

To decline future ALERTS, please contact us at [ALERTS@DLTAW.COM](mailto:ALERTS@DLTAW.COM).  
This ALERT has been prepared for informational purposes only. It does not constitute legal advice and does not create an attorney-client relationship.

Michael C. Tomkies  
[mtomkies@dtlaw.com](mailto:mtomkies@dtlaw.com)

Benjamin J. Hurford  
[bhurford@dtlaw.com](mailto:bhurford@dtlaw.com)

Mercedes C. Ramsey  
[mramsey@dtlaw.com](mailto:mramsey@dtlaw.com)

Judith M. Scheiderer  
[jscheiderer@dtlaw.com](mailto:jscheiderer@dtlaw.com)

Robin R. De Leo  
[robin@deher-la.com](mailto:robin@deher-la.com)