CLIENT ALERTS & INSIGHTS

Texas Attorney General Targets Music Streaming "Payola": What the Civil Investigative Demands Signal for Digital Platforms

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Featured Practices: State Attorneys General Investigations & Enforcement, White Collar, Government Investigations & Regulatory Compliance, Litigation

Key Takeaways:

- **Texas is applying "payola" rules to modern streaming algorithms**. The Texas Attorney General's investigation adapts the traditional concept of undisclosed payments for radio airplay ("payola") to digital music platforms. It focuses on whether paid influence is shaping playlists, rankings, or recommendations without user disclosure.
- **Consumer protection law provides a powerful and flexible enforcement tool**. The investigation relies on the Texas Deceptive Trade Practices Act ("DTPA"), which has relatively low legal thresholds for enforcement. Authorities may not need to prove intent or consumer reliance, making it easier to pursue claims based on alleged failure to disclose material information.
- **The implications have the potential to extend far beyond music streaming**. This case signals potential broader scrutiny of algorithmic platforms across industries as regulators may treat undisclosed paid influence in recommendation systems as deceptive, an early warning sign that any company monetizing rankings or visibility could face similar investigations.

On April 22, 2026, Texas Attorney General Ken Paxton announced that he has issued Civil Investigative Demands ("CIDs") to five major music streaming platforms-Spotify, Apple Music, Pandora, Amazon Music, and YouTube Music-launching an investigation into alleged "payola" schemes.[1] According to the Attorney General's office, the investigation "will examine whether streaming services have entered into undisclosed financial arrangements with record labels, promoters, or third parties to boost visibility, playlist placement, or recommendation rankings in violation of Texas law."

The investigation appears to invoke the payola concept as a novel consumer protection theory against the modern digital music streaming business-applying traditional principles to undisclosed promotional consideration within algorithmic recommendation systems. This novel application of consumer protection laws could extend well beyond music streaming as regulators continue to expand their regulatory framework to digital technology.

A New "Payola"

Historically, "payola" refers to the practice of record companies paying broadcasters or DJs to play particular songs without disclosure. The Federal Communications Commission treats such conduct as a violation of the Sponsorship Identification Rules, which require broadcasters to disclose when content is aired in exchange for compensation.[2] The animating principle behind these rules is marketplace transparency: guarding against undisclosed influence and allowing merit, rather than payments, to drive consumer choice. Texas invokes a similar theory here, stating that "music artists deserve to compete on a level playing field, not one distorted by bribes, and listeners deserve transparency in what they are being recommended."

The Texas CIDs appear to be part of an investigation into potential violations of the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA").[3] The DTPA prohibits "false, misleading, or deceptive acts or practices" in the conduct of trade or commerce and authorizes enforcement actions by the Texas Attorney General. Section 17.46(b) of the DTPA provides a non-exhaustive "laundry list" of 24 acts or practices constituting "false, misleading, or deceptive acts or practices." Claims brought under the DTPA's "laundry list" provisions are subject to comparatively lenient pleading requirements. The Attorney General is generally not required to plead or prove the defendant's intent or state of mind, nor must he establish reliance on the alleged misrepresentation or omission, lowering the threshold for enforcement actions at the pleading stage.[4] One such "laundry list" provision targets the failure to disclose material information concerning goods or services, when the omission is alleged to have induced a consumer to enter into a transaction they otherwise would have avoided.[5] That theory maps closely onto Attorney General Paxton's "payola" framing, which treats undisclosed financial incentives influencing playlists, rankings, or recommendations as material information that consumers would consider important in deciding whether to use a streaming service or rely on its purportedly organic recommendations.

Potential federal preemption looms over algorithmic consumer protection enforcement, as is frequently the case for state attorneys general investigations. While consumer protection enforcement generally provides for dual federal and state enforcement, it can face federal preemption limitations.[6] That risk could materialize if the Federal Trade Commission ("FTC") adopts a detailed regulatory regime around the use of algorithmic promotions on online platforms and state consumer protection laws pose an obstacle to federal objectives.[7] Here, if the FTC were to promulgate rules addressing paid promotion or recommendation transparency in this space, those federal regulations could preempt state consumer protection laws to the extent such laws conflict with, stand as an obstacle to, or impose requirements inconsistent with federal objectives. For now, preemption remains only a hypothetical constraint on this and other similar investigations-but the issue warrants close attention from affected companies.[8]

Broader Implications for Algorithmic Platforms

The Texas investigation illustrates the aggressive approach of state attorneys general using consumer protection statutes-with comparatively low pleading thresholds-to investigate and potentially penalize consumer harm in cutting-edge products, such as algorithmic systems.[9] Consumer protection enforcement has long focused on consumer harm from undisclosed information. This raises a potential problem for platforms whose recommendation ecosystems hide paid or incentivized promotion behind ostensibly "organic" or "personalized" outputs.

This approach has implications far beyond music streaming. As regulators increasingly treat algorithmic opacity itself as a consumer protection risk, companies operating recommendation-driven products in video, retail, social media, and adjacent sectors may face similar scrutiny. Companies should be cautious when promoting algorithmic responses based on hidden commercial considerations, as State AGs on both sides of the aisle may use state consumer protection laws as an enforcement tool against such practices.

What Can You Do?

Companies that monetize ranking, visibility, or recommendation placement should consider assessing their exposure to state consumer protection scrutiny. Early engagement with counsel experienced in state attorneys general investigations can help identify disclosure risks, evaluate response strategies, and mitigate enforcement exposure before inquiries escalate.

Benesch's White Collar and State Attorneys General groups continue to monitor these developments and advise clients on proactive mitigation, risk assessment, and disclosure requirements. If you have questions regarding how the DTPA affects your company, or would like assistance in specific areas, please contact your Benesch attorney.

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[1] Office of the Attorney General of Texas, *Attorney General Ken Paxton Launches Investigation Into Major Music Streaming Platforms, Including Spotify and Apple Music, Over Potential Bribery Scheme* (Apr. 22, 2026), https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-launches-investigation-r
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[2] 47 U.S.C. § 317; FCC, *Sponsorship Identification Rules* (Jan. 13, 2021), https://www.fcc.gov/consumers/guides/sponsorship-identification-rules.

[3] Tex. Bus. & Com. Code §§ 17.41 *et seq*.

[4] *See* A. Michael Ferrill & Charles A. Japhet, *Deceptive Trade Practices-Consumer Protection Act*, 51 SMU L. Rev. 909, 921 (1998).

[5] Tex. Bus. & Com. Code § 17.46(b)(24).

[6] *See Head v. New Mexico Bd. of Examiners in Optometry*, 374 U.S. 424, 429 (1963). *See also* Verkuil, *Preemption of State Law by the Federal Trade Commission*, 1976 Duke L.J. 225, 240-247.

[7] Recently, the FTC highlighted its adoption and early enforcement of the Consumer Review Rule, 16 C.F.R. § 465, which prohibits certain deceptive or unfair conduct related to the use of product reviews in advertising and marketing. Although the Consumer Review Rule does not address

algorithmic recommendations specifically, the FTC's action reflects an emerging federal regulatory approach to transparency around paid promotion and influence that could lead to future guidance or rulemaking on recommendation or ranking systems. FTC, *FTC Warns 10 Companies About Possible Violations of the Agency's New Consumer Review Rule*, (Dec. 22, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/12/ftc-warns-10-companies-about-possible-vi .

[8] It is possible that such analysis could vary industry by industry depending on the vehicle for federal regulation.

[9] *See, e.g.*, Office of the New Attorney General, *Attorney General James and Multistate Coalition Sue Meta for Harming Youth, N.Y. State Attorney General* (Oct. 24, 2023), https://ag.ny.gov/press-release/2023/attorney-general-james-and-multistate-coalition-sue-meta-harming-yo .