



Regulatory Shifts for Advertisers and Marketers Under the Second Trump Administration

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Navigating Policy Shifts Under a Second Trump Administration

As we look ahead to a new political landscape, join us for a series of webinars that will offer insights into the key regulatory and policy changes expected under a second Trump presidency.

We'll explore how leadership transitions, executive actions, and congressional dynamics will shape the future of industries ranging from healthcare and financial services to energy, trade, and beyond.

Each session will feature analysis from Venable attorneys and senior policy advisors, providing actionable guidance on how businesses and organizations can navigate the evolving policy landscape. Join us for a comprehensive look at the changes coming to Washington in 2025 and beyond.

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A code will be announced at the end of the session for those attending, and a certificate will be sent via email to participants.



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The FTC

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February 18, 2025, Executive Order on Independent Agencies

- White House issues order asserting that independent agencies, including FCC, FTC and others are subject to the President's supervision.
- White House maintains that previously agencies exercised power without Presidential oversight, including:
 - Issue rules and regulations that cost billions of dollars and implicate some of the most controversial policy matters, and they do so without the review of the democratically elected President.
 - Spend American tax dollars and set priorities without consulting the President, while setting their own performance standards.



Executive Order on Independent Agencies (cont.)

Under the Order:

- All agencies must: (1) submit draft regulations for White House review—with no carve-out for so-called independent agencies, except for the monetary policy functions of the Federal Reserve; and (2) consult with the White House on their priorities and strategic plans, and the White House will set their performance standards.
- The Office of Management and Budget will adjust so-called independent agencies' apportionments to ensure tax dollars are spent wisely.
- The President and the Attorney General (subject to the President's supervision and control) will interpret the law for the executive branch, instead of having separate agencies adopt conflicting interpretations.

End of the Khan Era

- The FTC pursued an aggressive rulemaking agenda under former Chair Lina Khan
- New rules and major substantive amendments to existing rules attempted to regulate diverse sectors of the economy
- The success of these rules, including some of the most high-profile ones, has varied;
 - Major amendments to the Negative Option Rule, including a Click-to-Cancel requirement, face legal challenges.
 - The Noncompete Rule, which would have rendered most employment-related noncompete agreements unenforceable, was set aside by a federal judge.
 - The Combating Auto Retail Scams Trade Regulation (CARS Rule) was similarly struck down in federal court (after the FTC itself had delayed implementation).
- The FTC engaged in a flurry of rulemaking activity in the waning days of the Administration;
 - Between January 1 and the inauguration, the FTC voted on three notices or advanced notices of proposed rulemaking and one final rule.

Project 2025

- Shows an openness to leveraging the FTC on behalf of conservative priorities.
- Embraces—or at least takes seriously—a more expansive view of antitrust:
 - Sees economic dominance as facilitating collusion with government actors and threatening democratic institutions like free speech.
 - Accepts the preeminence of the consumer-welfare standard but advocates for its expansion beyond price considerations “in appropriate situations.”
- Views the FTC as critical to protecting children online;
 - Thinks the statutory mandate in COPPA should be expanded.
 - Advocates for unfair trade practices proceedings against entities contracting with children without parental consent.
- Remains wary of Big Tech;
 - Sees Big Tech as innovative without causing *traditional* consumer harms.
 - Believes traditional economic models don’t capture Big Tech’s harmful effects.
- Denounces social responsibility factors like ESG influencing corporate decision-making.

Andrew Ferguson, New FTC Chair

- Appointed to the FTC in July 2023 (confirmed in March 2024).
- Served as Virginia’s Solicitor General and Senator Mitch McConnell’s Chief Counsel
- Has advocated for the FTC to adopt a forceful but focused regulatory stance;
 - Views the FTC as preventing private aggregations of power that impede individual flourishing but sees unpredictable enforcement as stifling innovation.
 - Stresses the FTC’s role in protecting children online.
 - Feels that the FTC has overstepped its delegated authority.
 - Emphasizes the importance of resource-allocation decisions;
 - Wrote in a recent dissent that the FTC “must exercise sound judgment in deciding when to enforce the Act” since “[b]y bringing this case, we are necessarily trading off other enforcement actions that may protect consumers, competitors, and the vibrancy of our markets all at once.”
- Accepts the idea that market concentration leads to collusion with government and erosion of democratic institutions.



Melissa Holyoak, FTC Commissioner

- Appointed to the FTC in July 2023 (confirmed in March 2024).
- Served as Utah’s Solicitor General and as President and General Counsel of a consumer-protection-oriented public-interest firm.
- Favors a robust role for the FTC, especially on the consumer-protection side;
 - Has underscored the FTC’s need to regain the trust of Congress and the people through focused, high-impact enforcement actions.
 - Referred to decisions about how to devote scarce resources as “the most important decisions that the Commission makes.”
 - Sees the opportunity costs of “unforced errors” as failing to adequately protect consumers and attracting public scrutiny.
 - Thinks the FTC should prioritize enforcement actions rather than devoting resources to rulemakings.
- Supports a targeted regulatory approach based on clear indications of harm.
- Shares concerns about Big Tech and dominant firms’ harm to democratic institutions.

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Mark Meador, Nominated FTC Commissioner

- Nominated to fill the vacant seat left by former Chair Khan’s departure from the FTC.
- Served as Senator Mike Lee’s Deputy Chief Counsel for Antitrust and Competition Policy before working as a partner at the antitrust firm Kressin Meador Powers.
- Aligns with the more populist, pro-regulatory wing against the more libertarian approach;
 - Has voiced antipathy for Big Tech
 - Appears wary of concentrated corporate power
 - Drafted a bill for Senator Lee—the Advertising Middlemen Endangering Rigorous Internet Competition Accountability Act—that would have forced the breakup of Google’s ad tech business.

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Chris Mufarrige, New Director of the Consumer Financial Protection Bureau

- Appointed by Chair Ferguson on February 10
- Formerly at CFTC and CFPB
- Worked at FinTech firms
- Served most recently as Commissioner Holyoak's Chief of Staff and Attorney Advisor.
- Appears to prefer a more traditional deregulatory approach;
 - Worked on a team that revised the CFPB's Payday Lending Rule during the first Trump Administration.
- Has come around to Ferguson and Holyoak's suspicion of Big Tech.

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The Future of Self-Regulation

- The FTC under the previous administration had signaled reticence to rely on self-regulation in the data-privacy and generative-AI spaces.
- The new FTC appears poised to reverse course, with a greater role for self-regulation moving forward;
 - Ferguson and Holyoak have both objected to the FTC's more hands-on involvement with online advertising, data privacy, and generative AI (at least absent a more focused approach).
 - The new FTC majority appears more circumspect about targeted advertising;
 - Ferguson and Holyoak have voiced concern that FTC regulation might harm consumers more than it protects them.
 - Both have also expressed a fear that regulation in this space could inadvertently stifle competition.
 - Meador may be more inclined to regulation, but that's far from clear.



The FCC

Changes at the FCC



New chairman, Brendan Carr, who was appointed hours after Trump's inauguration on January 20. As a sitting commissioner, Carr did not require Senate confirmation. He was also formerly the FCC's general counsel.



Vocal conservative force focused on deregulation, competition, infrastructure development, and national security.



How fast this change occurs will depend on how quickly Congress can confirm a third Republican commissioner.



Full-throated Trump warrior on social issues.



Chairman Carr's Policy Vision

- Economic Regulation – Carr will shift the agency to a much lighter regulatory approach based on promoting competition and innovation instead of regulation to protect consumers, as well as a narrower view of the scope of the FCC's authority.
- Content Regulation – Carr already aggressively moved the FCC to a more proactive, muscular stance on media content, particularly content politically or socially biased to the left.



Broadband Policy

- Carr has been a vocal opponent of recent FCC efforts regulating broadband providers, particularly net neutrality regulation and broadband discrimination rules.
- Net neutrality looks like a non-issue over the next four years. Carr will likely oppose state efforts to regulate net neutrality obligations, but it remains to be seen whether that would include FCC preemption of such efforts.
- Likely to push Republican legislators to streamline and consolidate federal broadband funding programs.
- Accelerate opening spectrum for commercial use.



Content Moderation

- Carr has been very critical of social media companies, accusing them of suppressing speech.
- Congress and Carr will likely attempt to reform and limit the scope of Section 230 of the Communications Decency Act, which is key liability protection given to online platforms, social media, and website operators.
- Will push for a narrow interpretation of the immunity conferred by Section 230.

Media Content

- Carr has been critical of several broadcasters' activities that he saw as favoring one political or policy position over another, so his moves to break up what he sees as the "censorship cartel" may well extend to traditional media activities as well as those by online tech companies.
- Carr has reopened a number of complaints against the major broadcast networks and stations, which were dismissed just days before the inauguration;
 - A complaint against CBS, in connection with a 60 Minutes interview with then-Vice President Harris, and how it was edited.
 - NBC's complaint centers on an equal-time debate between Harris and Trump stemming from her appearance on "Saturday Night Live."
 - ABC's complaint knocks the network over how it conducted a presidential debate between Trump and Harris.
 - Opened enforcement action into NPR/PBS and affiliated stations targeting their sponsorship identifications and cloaked illegal advertisements.
- Carr will likely initiate a review of the FCC's "public interest" standard that governs much of its media regulatory activity, including whether there should be a renewed focus on that standard "to restore the public's trust in broadcast media."



Diversity

- Carr shut down the FCC’s diversity, equity, and inclusion advisory group and task force, rescinded its DEI action plan, and eliminated the topic from the agency’s strategic plan and budget.
- The FCC chair said he expects every single entity overseen by the agency to end any discriminatory DEI policies and hinted that companies that fail to do so could face regulatory hurdles, enforcement actions, and dealmaking approvals.
- Carr has initiated an enforcement action against Comcast centered around all sorts of diversity initiatives.
- Carr said the agency was starting with Comcast because the company “touches so many of our sectors.” The company operates cable, wireless, cell phone, and internet services and owns television stations, networks, film production, and streaming services.

TCPA

- The Eleventh Circuit in *Insurance Marketing Coalition Ltd v. FCC* found that the FCC overstepped its statutory authority in implementing robocall and robotext ‘one-to-one consent’ and ‘logically and topically related’ requirements under the Telephone Consumer Protection Act (TCPA). The challenged rules required consumers to provide separate consent for each company and limit communications to subjects logically and topically related to the initial interaction. The court vacated the rules and remanded the matter back to the FCC for further proceedings.
- On that same day, the FCC issued an order postponing the effective date for the new 1:1 consent requirement. The order postponed the effective date by 12 months to January 26, 2026.
- FCC Chairman Brendan Carr has not stated how he intends to proceed from an enforcement perspective.
- Not a fan of robocalls, but not a TCPA warrior.



Consumer Financial Services Advertising Update

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Changes at the Consumer Financial Services Regulators

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Who Are Your Regulators? Overview of Federal, State & Industry Regulation

Federal Trade Commission (FTC)	Federal Communications Commission (FCC)	Consumer Financial Protection Bureau (CFPB)	Banking Regulators Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board, Office of the Comptroller of Currency (OCC), National Credit Union Administration (NCUA)
State Attorneys General and State Regulatory Authorities (state financial regulators, ex. New York Department of Financial Services)	Quasi-Governmental Bodies Better Business Bureau (BBB), National Advertising Division (NAD)	Trade Associations Digital Advertising Alliance, Mobile Marketing Association, Mortgage Brokers Association, Online Lenders Association, many others	Private Right of Action/Class Action Lawsuits (TCPA)

Regulatory Landscape Changes – Federal Deregulation

The New York Times

36 Hours After Russell Vought Took Over Consumer Bureau, He Shut Its Operations

The agency had been one of Wall Street's most feared regulators, with the power to issue rules on mortgages, credit cards, student loans and other areas affecting Americans' financial lives.

By Stacy Cowley
Feb. 9, 2025

The day before Linda Wetzel closed on her retirement home in Southport, N.C., in 2012 — a cozy place where she could open the windows at night and catch an ocean breeze — the bank making the loan surprised her with a fee she hadn't expected. Ms. Wetzel scoured her mortgage paperwork and couldn't find the charge disclosed anywhere.

Trump Names 2 New Top Financial Regulators

Jonathan McKernan has been nominated to lead the Consumer Financial Protection Bureau, which has been in turmoil for days and has fired a number of probationary employees.



Jonathan McKernan, left, has been nominated to be the director of the CFPB, while Jonathan Gould is the nominee for comptroller of the currency.

By Stacy Cowley and Matthew Goldstein


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POLITICS

Russ Vought orders Consumer Financial Protection Bureau to stop work


By Jim Gines, Jennifer Jacobs
February 9, 2025 / 8:06 PM EST / CBS News



Reuters World Business Markets Sustainability Legal Breakingviews Technology Investigations

Trump officials agree in court not to ax more US consumer finance watchdog jobs for now

By Douglas Gillison
February 14, 2025 6:36 PM EST - Updated 3 days ago



Bloomberg Law News 2025-02-17T22:58:41241432553-05:00

Trump's Washington Is Opening Its Doors to Eager Fintechs (1)

By Paige Smith and Kate Clark 2025-02-14T18:39:20819-05:00

After struggling to win much sway in a Biden-era Washington, some of the biggest fintech firms are now getting a lot more facetime on Capitol Hill.

Groups that lobby for fintech companies have significantly ramped up their meetings with lawmakers, White House officials and financial regulators since Donald Trump won the election, according to people familiar with the matter.

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U.S. Consumer Financial Services Laws & Advertising Compliance

Law/Regulation	Key Advertising Requirements	Primary Enforcement Authority
Consumer Financial Protection Act (CFPA) - UDAAP	Prohibits Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) in advertising. Bans misleading representations about financial products.	CFPB, State AGs, Private Lawsuits
Fair Debt Collection Practices Act (FDCPA)	Prohibits false or misleading representations in debt collection advertisements, including misrepresentation of legal status or consequences of non-payment.	CFPB, FTC, State AGs, Private Lawsuits
Fair Credit Reporting Act (FCRA) & Regulation V	Governs marketing based on consumer credit reports. Requires "firm offer of credit" disclosures in pre-screened credit offers.	CFPB, FTC, State AGs, Private Lawsuits
Federal Trade Commission Act (FTCA) - Section 5	Bans deceptive advertising practices, including false claims about financial products and services.	FTC, State AGs
CAN-SPAM Act	Requires truthful subject lines and sender identification in marketing emails for financial services. Prohibits misleading or deceptive email content.	FTC, State AGs
Telephone Consumer Protection Act (TCPA)	Restricts telemarketing and SMS financial promotions. Requires prior express written consent for autodialed marketing messages.	FCC, FTC, State AGs, Private Lawsuits
Telemarketing Sales Rule	Protects consumers from deceptive telemarketing practices, including several enumerated financial services, e.g., credit repair, advance fee loans, credit card loss protection. Also, covers service providers.	FTC, State AGs,, Private Lawsuits (limited)

U.S. Consumer Financial Services Laws & Advertising Compliance (cont'd)

Law/Regulation	Key Advertising Requirements	Primary Enforcement Authority
Electronic Fund Transfer Act (EFTA) & Regulation E	Governs advertising of electronic fund transfers (EFTs). Prohibits misleading claims about fees or protections for prepaid accounts and debit cards.	CFPB, State AGs, Private Lawsuits
Gramm-Leach-Bliley Act (GLBA) - Privacy Rule	Limits the use of consumer financial data in targeted advertising without opt-out options. Requires privacy notices in marketing materials.	FTC, CFPB, State AGs
Truth in Lending Act (TILA) & Regulation Z	Requires clear disclosure of APR, terms, and costs in credit advertisements. Prohibits misleading "no interest" or "low-rate" claims without full disclosure.	CFPB, FTC, State AGs, Private Lawsuits
State Mini-CFPB Laws (e.g., California, New York)	Expanding state-level enforcement of misleading financial advertising, including fintech and mortgage marketing practices.	State AGs, State Regulators, Private Lawsuits
State Licensing Laws (e.g., Money Transmission, Debt Adjusting, Mortgage, Consumer Lending, Sales Finance, etc.)	Licensing/registration, operational requirements, restrictions, consumer disclosures, supervision and examination, etc.	State Regulators (some private rights of action)
SEC Marketing Rule	Prohibits misleading claims and requires disclosure of performance for investment advisers (registration needed).	SEC
Mortgage Acts and Practices (MAP) Rule/Mortgage Assistance Relief Services (MARS) Rule	Targeted regulations on advertising mortgages, and mortgage relief services.	CFPB, FTC, State AGs



Consumer Financial Services Compliance Risks – A Few Examples

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Advertising Payment Services – Compliance Risks

Key Considerations for Advertising Payment Services

- Clear and accurate disclosures
- Compliance
- Protection against deceptive, misleading, or abusive marketing claims.

Issue	Risk	Regulatory Concern
Hidden Third-Party Fees	Advertising "free" payments without disclosing fees imposed by intermediaries (e.g., card networks, P2P services).	UDAAP (CFPB, FTC), EFTA/Reg. E, State Laws
Misleading Speed Claims	Promising "instant" or "same-day" transfers without noting processing delays, cut-off times, or third-party dependencies.	UDAAP, Reg. E, State AG Actions
Cross-Border Transfer Disclosures	Failing to disclose exchange rate markups or third-party fees in international payments.	Remittance Rule (Reg. E), FTC Act
Failure to Identify All Costs	Omitting fees for credit card funding, expedited transfers, or network-specific charges.	FTC Act, UDAAP, State Consumer Protection Laws
"Zero Fees" or "No Cost" Claims	Advertising "free" services when users must pay intermediary fees (e.g., bank overdraft fees, out-of-network ATM fees).	FTC Act, UDAAP, Reg. E

Advertising Payments in Apps – Compliance Risks & Pitfalls

Key Considerations for Advertising In-App Payments

- Transparency
- Compliance
- Clear and accurate descriptions of features and user responsibilities
- Protection against deceptive, misleading, or abusive marketing claims.

Issue	Risk	Regulatory Concern
Hidden Transaction Fees	Advertising “free” transfers without disclosing service charges, currency conversions, or partner bank fees.	FTC Act, UDAAP, State Consumer Protection Laws
Misleading Payment Speed Claims	Stating that transactions are “instant” or “real-time” without accounting for processing delays or banking cut-off times.	FTC Act, Reg. E, State Consumer Protection Laws, App Store Policies
In App Purchase Disclosures	Failing to clarify when users are making purchases within an app rather than direct bank transactions.	App Store policies, FTC Act, UDAAP, State Consumer Protection Laws
Failure to Disclose Payment Limits	Promoting large transfers while imposing undisclosed transaction limits or daily caps.	FTC Act, UDAAP, State Regulations, State Consumer Protection Laws
Data Privacy & Consent Issues	Not clearly informing users how their payment data is collected, stored, and shared.	FTC Act, UDAAP, GLBA, App Store Data Policies, State Consumer Protection Laws

Advertising Payments in Apps – Compliance Takeaways

- App Stores generally require financial services apps to comply with their payment and subscription policies.
- Inaccurate or misleading advertising in-app payments can lead to app suspensions or regulatory actions.
- Disclosure of third-party payment processors, and differentiation, often required and helpful. Distinguish between traditional banking and nonbank services, and disclose relevant terms.
- Full-Fee Transparency – including processing, conversion, and third-party fees.
- No misleading speed claims.
- Third-party disclaimer – when are external networks and services utilized?
- Consumer data protection – requirements, best practices, and app store guidelines.



Advertising Deposits – Compliance Risks & Pitfalls

- Avoid misleading information about the nature of the products and FDIC insurance.
- Identify third-party companies selling investment products.
- If the ad is for a product sold by a third-party company has the ad been approved by their compliance group?
- Are terms, conditions, interest (if any), disclosed?



Adapting to Regulatory Change

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Industry Self-Regulation and Best Practices

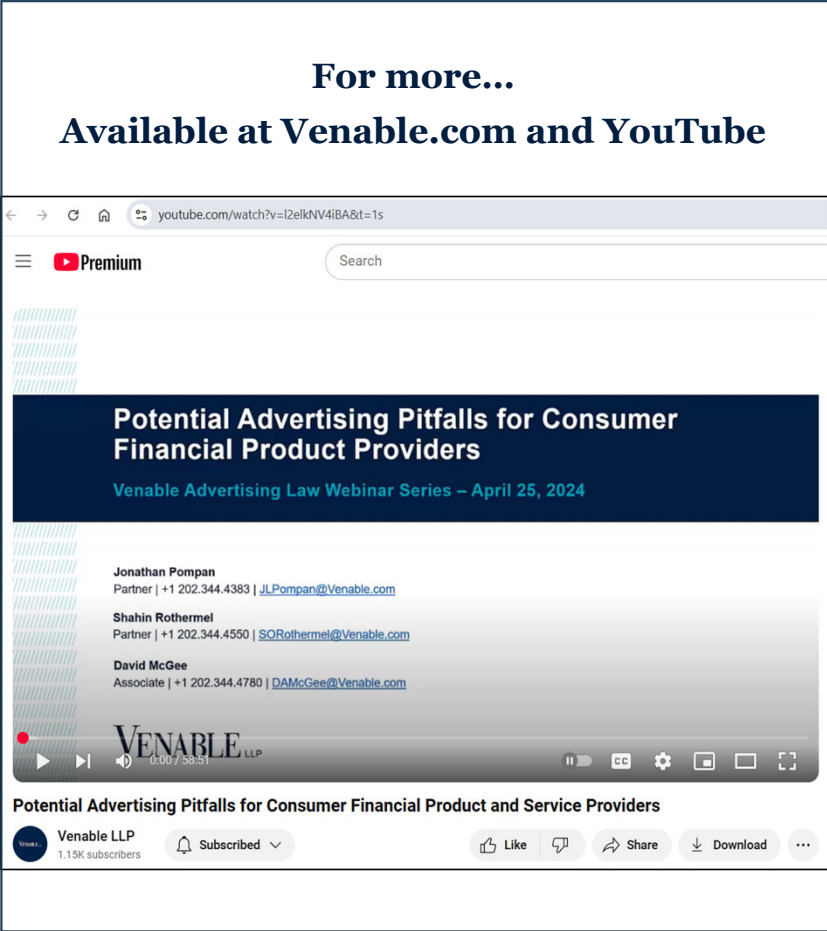
- Clear and Transparent Advertising
- Stronger Internal Compliance
- Firms should review marketing materials through a legal and compliance lens
- Establish internal review process for marketing campaigns and product development.
- Be mindful of the value of industry self-regulation, e.g., Online Lenders Alliance, Electronic Transactions Association, Consumer Data Industry Association, Better Business Bureau, Network Branded Prepaid Card Association, Mortgage Banker Association Best Practices, The Clearing House, Financial Health Network, and more.

Observations and Next Steps

- Monitor the Regulatory Landscape
- Internal compliance and in-house counsel remain critical
- Tech-driven advertising challenges in consumer financial services
- Assess risks, policies, and procedures
- Third-Party Vendor/Customer Risk Remain
- Consider Self-Regulation
- Consumer-Focused Compliance - good business and consistent with legal requirements

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Available at Venable.com and YouTube



The screenshot shows a YouTube video player interface. At the top, there is a navigation bar with the YouTube logo and a search bar. Below the navigation bar, the video title is displayed in a dark blue banner: "Potential Advertising Pitfalls for Consumer Financial Product Providers". Underneath the title, it says "Venable Advertising Law Webinar Series – April 25, 2024". The video player itself shows a dark interface with a play button, a progress bar at 0:00 / 58:31, and various control icons. Below the video player, the channel name "Venable LLP" is visible, along with a subscriber count of "1.15K subscribers" and a "Subscribed" button. There are also buttons for "Like", "Share", and "Download".

youtube.com/watch?v=l2elkNV4iBA&t=1s

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Potential Advertising Pitfalls for Consumer Financial Product Providers
Venable Advertising Law Webinar Series – April 25, 2024

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