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The Role of Targeted Advertising In Supporting First Amendment Principles

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INTRODUCTION

One can scarcely remember the time, only a few short decades ago, when life moved along without the array of personal digital devices that have come to define today's culture. The first personal computers in the early 1980s (remember the Apple Macintosh?) were novelties touted as tools for organizing recipes and household bills. Without a way of connecting to the outside world, however, it would be an understatement to say those early Macs had their limitations.

All of that changed, of course, with the advent of the Internet and the ability to access a burgeoning number of websites (which themselves were rapidly evolving), even if it meant enduring the seemingly endless bleeps and boings of dial-up service to get there. Portable laptop computers and tablets were years away. Cellular phones were also a novelty at first, and were only good for making and receiving phone calls. It was

not until 2007 that Apple introduced the first iPhone, and other manufacturers would follow suit with their own "Android" smart phones. Who could imagine that someday one's phone, tablet, and computers would all be synchronized into a seamless whole. Or that millions of Americans would spend vast amounts of time engaging each other via something called "social media."

Along with this rapid evolution in technology came another development that would have far-reaching implications for society and the economy: the growth of digital advertising. Starting from zero at the dawn of the digital age, Internet advertising has grown to account for more than half of all advertising in the United States, fueling an Internet ecosystem that contributes \$1.1 trillion to the U.S. economy.¹ In 2019, two companies alone earned a total of \$204.47 billion

in digital advertising revenue: Google received \$134.81 billion, while Facebook took in \$69.66 billion. By comparison, in 2012 these two companies received a combined total of \$47.97 billion in advertising revenue.²

MAGNITUDE OF TARGETED ADVERTISING

The exponential growth in Internet advertising revenue has not been merely a result of Internet growth itself. Rather, it is due to the fact that more than 80 percent of Internet advertising today is “targeted,” that is, addressed to viewers whom advertisers believe have a higher-than-average probability of buying their product or service. But it was not always so. As a study published in 2020 by the Interactive Advertising Bureau (IAB) states:

“The first digital ads ran in 1994, and for almost two decades thereafter advertisers bought digital publications just as they had bought analog publications. Instead, what drove the shift was the recognition that browser cookies could identify people, and buying people was often less expensive and more efficient than buying publications. As people browsed the web, a profile of each person could be assembled to say whether the person was of interest to the advertiser. Advertisers could then bid for particular profiles. In about 2009 the first ads began to be bought by real-time bidding for the opportunity to reach people profiled by means of cookies.”³

The effect of this shift was two-fold: (1) It made targeted advertising more efficient than non-targeted advertising; and (2) targeted advertising became more valuable to advertisers and thus

tended to command higher prices. According to the IAB study:

“In under a decade the browser cookie, and other closely analogous tracking tools such as mobile device identifiers have fundamentally changed advertising efficiency. Advertisers can buy access to the people they want to reach because they have the data to find them and are able to do so without having to pay for access to unwanted people who often make up a large part of a publication’s audience.”⁴

The impact of targeting on advertising prices was addressed by Marotta, et al., in 2019.⁵ The researchers noted the difficulties in trying to arrive at a definitive answer via empirical means about the economic value added by browser cookies owing to a number of factors. These included, for example, the complexity of the digital ad-buying ecosystem and the variability in cookie value depending on the age of the cookie and how much information it contained. In the dataset they used, they found publishers’ revenues increased by 4 percent for displaying cookie-targeted ads compared to cookie-less ads. However, they offered the following observation about the higher prices paid by buyers of targeted ads:

“Both anecdotal evidence and industry reports indicate that advertising merchants can pay substantial premiums in online auctions to behaviorally target ads for their products. For instance, a recent article published in The American Prospect claimed that ‘an online advertisement without a third-party cookie sells

for just 2 percent of the cost of the same ad with the cookie.’”⁶

Thus, while it remains difficult to quantify the added value of targeted ads in every circumstance, there can be little doubt that the growing prevalence of targeted ads has been a decisive force in the growth of online digital advertising and the revenue it generates.

TARGETED ADVERTISING AND FREEDOM OF THE PRESS

Digital advertising has made possible the Internet as we know it today. From its early beginnings, the Internet has become a vast network through which consumers access videos, sports, music, social media, and much more. The Internet is also, and importantly, a major source of news and information – and for many consumers, their primary source of news. Much has been written about the decline of print newspapers and how their demise has been hastened by the growth of the Internet. But what has happened is that, to a large extent, news organizations have moved their operations online.

In the early days of the transition to digital, the online platforms of most traditional news organizations suffered from two economic weaknesses: (1) They tended to offer their digital content for free; and (2) the digital advertising they offered was not targeted or data-driven, but was essentially the online equivalent of print advertising. Over time, however, the profitability of online publishers increased on both counts. More and more publishers moved to a subscription model and became more efficient at monetizing their news content. Publishers like the Wall Street Journal and

New York Times were among the first to restrict content to subscribers, perhaps allowing non-subscribers access to a very limited number of stories before requiring a subscription. Other papers followed. However, even online news outlets using a subscription model rely on advertising as a critical revenue stream. Nonetheless, there is still a vast amount of news and information available from online media outlets without charge.

What makes that possible, of course, is advertising – and targeted advertising, to be specific. Today, consumers can get news from websites run by the gamut of traditional media organizations: newspapers, broadcast networks, cable networks, local TV and radio stations. Digital-only media outlets have proliferated as well, including well-known names like BuzzFeed, Yahoo-ABC News Network, Huffington Post, The Drudge Report, Facebook News, and Google News. On another level we have the blogosphere, where individuals and organizations offer their own mix of information and opinion with varying degrees of adherence to journalistic standards. Some online media outlets offer original content by their own reporters, while others are “aggregators” that repackage the original content of other outlets.

While methods and journalistic standards may vary among classes of outlets, and even within classes, one fact is unmistakable: Consumers have access to vast amounts of news and information online and without charge thanks to digital advertising, most of which is data-driven and targeted to individual consumers. Digital advertising, far more than subscription revenue, has driven the growth of online news media and made possible the huge number of outlets available today. Because of digital advertising,

consumers can get their news and information from more sources and a wider range of sources than ever before. Digital advertising thus promotes a core First Amendment principle: freedom of the press. By providing a primary revenue stream to online publishers, advertising allows the multiplicity of media voices reaching consumers today. This point cannot be overstated. While the cost of entry to digital publishing is extremely low (at the most basic level, one needs only a digital device plus Internet access), the costs of running a full-fledged digital media outlet are substantial – especially for outlets engaged in original reporting, which means significant salary costs for reporters and editors. These digital outlets could not survive without advertising. But because they do exist, Americans enjoy a stronger, more robust press, consistent with the goals of the Founders. Advertising revenue, and especially the higher revenue associated with targeted advertising, makes it possible for more online media outlets to reach more consumers with more news and information.

DIGITAL ADVERTISING HAS HELPED DISSEMINATE COVID-19 NEWS TO THE PUBLIC

The robust online news market enabled by targeted advertising played a crucial role throughout 2020 by disseminating news about the COVID-19 pandemic to the public. Never before have digital news media played such a critical role in informing the public about the nature of a deadly pandemic – how it spreads, statistics on the number of cases, positivity rates, hospitalizations, and deaths – and steps people could take to minimize their risk. Digital media

coverage of information from scientific experts in government and the private sector has provided an evidence-based approach for helping people cope with the pandemic and keep their families safe.

As the Interactive Advertising Bureau (IAB) noted in testimony before the U.S. Senate Committee on Commerce, Science, and Transportation in April 2020, digital advertising has provided the financial means for digital news media outlets to cover the pandemic and has been a vehicle itself for disseminating vital information:

“Advertising, and particularly advertising through digital media, has subsidized and delivered the wide proliferation of public health alerts, announcements, and other messages individuals receive about the virus that educate them and supply them with important insights.

“In response to the pandemic, the advertising industry has stepped forward. Industry members have donated ad inventory for important public health messaging about the virus, contributing millions in media dollars as well as graphic design and marketing expertise in collaboration with the Centers for Disease Control (‘CDC’) and the White House.”⁷

Revenue from digital advertising has allowed online publishers to make vital information available to the public at little or no cost. This is especially important because the pandemic cuts across all social and economic lines – and low-income individuals most likely would receive far less information if it were not available for free.

Thus, the role of digital and especially targeted advertising in supporting digital news coverage of the pandemic cannot be underestimated. Freedom of the press in the digital realm has been well served by targeted advertising.

TARGETED ADVERTISING AND FREEDOM OF SPEECH

In addition to providing copious amount of news and information, the digital realm also advances First Amendment principles by facilitating freedom of speech, perhaps on a scale never before seen.

Facebook, Inc., which began in a dorm room as a way for college students to meet, today owns four of the world's largest social media and messaging services: Facebook, WhatsApp, Instagram, and Messenger. Around the world, 4.5 billion people per month use Facebook and WhatsApp alone.⁸

The Voting Information Center on Facebook and Instagram has attracted more than 140 million visitors since it was created, with more than 33 million visitors on Election Day alone. Facebook CEO Mark Zuckerberg told the U.S. Senate Judiciary Committee in November 2020 that Facebook sought to run “the largest voting information campaign in American history” and said the effort helped 4.5 million people register to vote.⁹

Twitter, another hugely popular social media platform, counts more than 330 million active users monthly and more than 145 million active users daily. As Adonis Hoffman notes: “Twitter has gone from being a novel curiosity in 2006 to an indispensable element

of free speech, democracy, and human expression in 2020.”¹⁰ In other words, Twitter might be considered an embodiment of First Amendment principles.

Debate has intensified in recent months, however, over approaches taken by various social media platforms regarding “content moderation,” or attempts by the platforms to create and enforce internal policies for user-posted content. Platforms have come under attack for engaging in content moderation (or “censorship” as critics call it) at all; for targeting ideological speech too strictly – or not strictly enough; and for not being transparent enough in disclosing how criteria for flagging or disallowing speech are determined. Social media CEOs have been summoned to testify before Congress with increasing regularity and calls for government intervention of one sort or another continue to mount.

How the issues surrounding content moderation are resolved remains to be seen. However, the fact that this debate has become so intense illustrates just how pervasive social media have become as a means of expression for hundreds of millions and even billions of people around the world.

Once again, as seen with digital news media outlets, the extraordinary degree of free expression enabled by social media has been made possible by digital advertising and especially data-driven advertising. Social media advertising is a global market expected to exceed \$98 billion in 2020.¹¹ Social media users would not be able to enjoy the variety of features, ease of connecting with others, or sheer breadth of scale without the wherewithal provided by digital

advertising. Ad-supported social media platforms give everyone with a cell phone, from any socio-economic group, from anywhere in the United States or around the world, the ability to make their voices heard in ways never imagined. Digital advertising has enabled a communications phenomenon that has taken freedom of expression to new heights.

DIGITAL ADVERTISING AND THE FIRST AMENDMENT

As we have tried to show here, the explosion in news, information, entertainment, and personal expression the United States has experienced in the last three decades has been driven by the exponential growth of the Internet and the personal technologies to access it. And, without question, the driving force behind the growth in Internet content has been digital advertising. Over time this advertising has become more sophisticated at identifying and targeting potential customers, to the point today where data-driven ads comprise the vast majority of online advertising – more than 80 percent of digital ads in the United States as of 2019, according to one estimate.¹² Because advertisers are willing to pay more for targeted ads, online publishers and platforms have benefited from a larger pool of ad revenue and thus been able to maintain a robust flow of free or low-cost content to the public.

Therefore, it's not a stretch by any means to say that targeted advertising has come to play a significant role in furthering First Amendment principles of freedom of speech and freedom of the press. Underlying these principles are the foundational beliefs that the free

flow of information is critical to the functioning of a democracy, and that speech has value because it reflects the inherent dignity of the human person. The First Amendment is limited to preventing government restrictions on speech, but the beliefs that animate this constitutional guarantee extend beyond government censorship to the wider realm of free expression. Targeted advertising has fueled the private-sector websites and platforms that have brought about this explosion in the free flow of information and personal expression.

As the debate intensifies about how social media platforms should moderate content, First Amendment principles must be staunchly front and center. Much has been written about possible attempts in Congress to rewrite Section 230. This provision of the Communications Act was also the subject of a hotly disputed executive order issued by the president in May 2020. Any attempts by legislators or other government officials (even a president) to restrict online speech or the advertising that makes it possible cannot stand unchallenged. On the contrary, government actions that have the effect of limiting speech directly or indirectly must answer to the First Amendment.

Digital publishers and the online advertisers that support them have given the United States – and the world – access to more news, information, entertainment, and personal expression than ever before in history. This is a triumph for freedom of speech and freedom of the press. It is something we should be quick to celebrate – and extremely hesitant to rein in.

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The Digital Media Center is a program of The Media Institute that brings clarity to key issues at the heart of today's digital revolution.

ENDNOTES

¹ John Deighton, Leora D. Kornfeld, and Marlon Gerra, "Economic Value of the Advertising-Supported Internet Ecosystem," Interactive Advertising Bureau, March 2017.

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⁴ *Ibid.*

⁵ Veronica Marotta, Vibhanshu Abhishek, and Alessandro Acquisti, "Online Tracking and Publishers' Revenues: An Empirical Analysis," preliminary draft, May 2019.

⁶ *Ibid* at 7, citing Laura Bassett, "Digital Media Is Suffocating – and It's Facebook and Google's Fault," *The American Prospect*, May 6, 2019.

⁷ David F. Grimaldi, Jr., Testimony Before the Senate Committee on Commerce, Science, and Transportation, Hearing on Enlisting Big Data in the Fight Against Coronavirus, April 9, 2020, at 5.

⁸ Adonis Hoffman, "Facebook, Twitter and 2020 Election – Top Takeaways From Tuesday's Big Tech Senate Hearing," FoxNews.com, Nov. 18, 2020, at <https://www.foxnews.com/opinion/facebook-twitter-2020-election-senate-hearing-adonis-hoffman>.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

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