

ONE HUNDRED FIFTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

MEMORANDUM

June 12, 2018

To: Subcommittee on Digital Commerce and Consumer Protection Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on “Understanding the Digital Advertising Ecosystem”

On **Thursday, June 14, 2018, at 10:15 a.m. in room 2322 of the Rayburn House Office Building**, the Subcommittee on Digital Commerce and Consumer Protection will hold a hearing titled “Understanding the Digital Advertising Ecosystem.”

I. BACKGROUND

Digital advertising supports much of the commercial content, services, and applications available on the internet, particularly those available for free.¹ Digital advertising comprises a complex ecosystem of publishers (websites, apps, and social media publishers), advertisers, and third-party advertising companies, which may include advertising exchanges, advertising agencies, and social media platforms.²

Digital advertising is increasingly targeted at individuals based on their behavior and preferences, which are derived from vast amounts of information collected about them and inferences made using machine-learning algorithms.³ This type of advertising is known as behavioral advertising.

¹ New America and Harvard’s Shorenstein Center on Media, Politics, and Public Policy, *Digital Deceit: The Technologies Behind Precision Propaganda on the Internet* (Jan. 2018).

² *Id.*; Network Advertising Initiative, *Understanding Online Advertising* (www.networkadvertising.org/understanding-online-advertising/how-does-it-work) (accessed June 9, 2018).

³ See note 1.

Consumers' information is collected on browsers, for advertising and other purposes, through online tracking methods, including cookies, flash cookies, and device fingerprinting.⁴ Cookies are unique codes saved by a user's web browser that identify a user's particular computer or device so that the user can be recognized on return visits to the website. Cookies can be placed by the website itself or third-parties, such as ad networks and analytics companies. Flash cookies are cookies that can also store settings and preferences, but may not be deleted when a user clears other cookies off their browser. Device fingerprinting tracks users based on their browser's configurations and settings and can be used on computers as well as smart phones and tablets. Device fingerprinting also cannot be deleted by clearing the cookies on users' computers or devices.

While cookies are not used in mobile apps, device fingerprinting and device identifiers monitor the different applications used on a device.⁵ Companies throughout the digital advertising ecosystem can also collect and aggregate consumers' data across their connected devices, including smartphones, tablets, personal computers, smart televisions, and wearable devices.⁶ That data is also being combined with data about offline behavior collected by data brokers and others.⁷

II. TARGETED ADVERTISING ISSUES

Advertising is at the center of the privacy debate. Much of the personal information collected about consumers is shared, sold, and used to target advertising to consumers. At the same time, the advertising ecosystem is complex and opaque, and most consumers are unaware of just how many companies—many they have never heard of—are tracking their actions online.

Consumers have very little control over the collection or use of such data. For example, the Network Advertising Initiative, an industry-based self-regulatory association, offers a mechanism that purports to enable consumers to opt-out of targeted advertising from its member companies.⁸ The opt-out only allows users to choose not to receive targeted advertisements; it does not allow consumers to opt out of tracking and data collection.⁹

Targeted advertising has also led to discrimination and predatory advertising practices. For example, targeting options allow housing advertisers to exclude minorities and individuals of

⁴ Federal Trade Commission, *Online Tracking* (June 2016) (www.consumer.ftc.gov/articles/0042-online-tracking).

⁵ *Id.*

⁶ Federal Trade Commission, *Cross-Device Tracking: An FTC Staff Report* (Jan. 2017).

⁷ *Id.*

⁸ Network Advertising Initiative, *Opt Out of Interest-Based Advertising* (optout.networkadvertising.org) (accessed June 9, 2018).

⁹ Briefing by Network Advertising Initiative to House Committee on Energy and Commerce Committee Staff (June 8, 2018).

certain religious backgrounds from seeing their ads.¹⁰ Employers advertising job openings have been permitted to specify the age of people who are able to see their ads, excluding older workers and encouraging age discrimination.¹¹

III. WITNESSES

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Global Chief Privacy Officer
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¹⁰ *Facebook (Still) Letting Housing Advertisers Exclude Users by Race*, Pro Publica (Nov. 21, 2017) (www.propublica.org/article/facebook-advertising-discrimination-housing-race-sex-national-origin).

¹¹ *Dozens of Companies Are Using Facebook to Exclude Older Workers from Job Ads*, Pro Publica (Dec. 20, 2017) (www.propublica.org/article/facebook-ads-age-discrimination-targeting).