

June 14, 2018

The Honorable Robert Latta, Chairman  
The Honorable Janice Schakowsky, Ranking Member  
U.S. House Committee on Energy and Commerce  
Subcommittee on Digital Commerce & Consumer Protection  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Latta and Ranking Member Schakowsky:

We write to you regarding the hearing on “Understanding the Digital Advertising Ecosystem.”<sup>1</sup> We appreciate your interest in this important issue. For many years, the Electronic Privacy Information Center (“EPIC”) has worked with the House Energy & Commerce Committee to help protect the privacy rights of Americans.<sup>2</sup> EPIC was also the first organization to examine the structure of internet-based advertising.

Today’s digital advertising techniques are very different from traditional advertising models. In the analog world, consumers could readily identify the placement of an ad, the source and its purpose. There was little need for advertisers to gather personal data from users. Perhaps most critically, advertising supported editorial content. Advertising made possible the publication of daily news. Traditional advertising sustained a healthy ecosystem that also made possible the production of news without government subsidy. Much of that has changed.

There are many problems today with the Digital Advertising Ecosystems – profiling and tracking of Internet users, increasing concentration of providers (Google and Facebook), the loss of support for editorial content, discriminatory practices and redlining, preferencing the advertiser’s products over competitor’s, and political ads purchased by foreign advertisers intended undermine

---

<sup>1</sup> *Understanding the Digital Advertising Ecosystem*, 115<sup>th</sup> Cong. (2018), H. Comm. on Energy & Commerce, Subcomm. on Digital Commerce and Consumer Protection, <https://energycommerce.house.gov/hearings/understanding-the-digital-advertising-ecosystem/> (June 14, 2018).

<sup>2</sup> See, e.g. Marc Rotenberg, EPIC Executive Director, Testimony before the House Comm. on Energy & Commerce, Subcomm. on Communications and Technology, *Examining the EU Safe Harbor Decision and Impacts for Transatlantic Data Flows* (November 13, 2015), <https://epic.org/privacy/intl/schrems/EPIC-EU-SH-Testimony-HCEC-11-3-final.pdf>; Marc Rotenberg, EPIC Executive Director, Testimony before the House Comm. on Energy & Commerce, Subcomm. on Communications and Technology, *Communications Networks and Consumer Privacy: Recent Developments* (April 23, 2009), [https://epic.org/privacy/dpi/rotenberg\\_HouseCom\\_4-09.pdf](https://epic.org/privacy/dpi/rotenberg_HouseCom_4-09.pdf); Letter from EPIC to the House Comm. on Energy and Commerce on FCC Privacy Rules (June 13, 2016), <https://epic.org/privacy/consumer/EPIC-FCC-Privacy-Rules.pdf>.

democratic elections in the United States. All of these issues require careful examination by this Committee. The threats to innovation, competition, and democracy are real.

But it didn't have to be this way. More active regulation by the government could have sustained digital advertising models that were good advertisers and businesses, and good also for consumers, journalism, and democracy.

In the early days of the commercial Internet, EPIC favored the development of digital advertising techniques and explained that online advertising could both safeguard privacy and promote new forms of revenue.<sup>3</sup> We expressed support for the digital advertising firm DoubleClick when it first announced that it would develop an advertising model that did not require the collection of personal information.<sup>4</sup> Among the first privacy policies on the Internet were those developed by websites that partnered with DoubleClick. They assured users that no personal data would be collected.<sup>5</sup> As DoubleClick explained in 1997:

DoubleClick does not know the name, email address, phone number, or home address of anybody who visits a site in the DoubleClick Network. All users who receive an ad targeted by DoubleClick's technology remain completely anonymous. Since we do not have any information concerning names or addresses, we do not sell or rent any such information to third parties. Because of our efforts to keep users anonymous, the information DoubleClick has is useful only across the DoubleClick Network, and only in the context of ad selection.<sup>6</sup>

But then, in 1999, DoubleClick proposed to merge with Abacus, a large customer database firm that collected detailed information of Internet users' offline purchases. EPIC immediately objected and launched a national campaign to block the Abacus-DoubleClick merger.<sup>7</sup> We filed one of the first privacy complaints with the FTC.<sup>8</sup> Many agreed that the proposed merger was unlawful and deceptive, and the case also provided one of the first opportunities for the FTC to address new challenges to consumer privacy.<sup>9</sup>

Eventually, DoubleClick backed off the deal, stating that it had made a "mistake by planning to merge names with anonymous user activity across Web sites in the absence of government and industry privacy standards."<sup>10</sup> But the message was clear: Internet advertisers, even those who began

---

<sup>3</sup> Marc Rotenberg, EPIC Executive Director, Testimony before the Senate Commerce Committee, *On Internet Privacy and Profiling* (June 13, 2000), <https://epic.org/privacy/internet/senate-testimony.html>.

<sup>4</sup> Marc Rotenberg, EPIC Executive Director, Testimony before the Senate Commerce Committee, Subcomm. on Communications, *Hearing on S. 809, The Online Privacy Protection Act of 1999* (July 27, 1999), [https://www.epic.org/privacy/internet/EPIC\\_testimony\\_799.pdf](https://www.epic.org/privacy/internet/EPIC_testimony_799.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> In the Matter of DoubleClick, Inc., EPIC Complaint, Request for Investigation, Injunction, and Other Relief (Feb. 10, 2000) at 4, [https://epic.org/privacy/internet/ftc/DCLK\\_complaint.pdf](https://epic.org/privacy/internet/ftc/DCLK_complaint.pdf) [hereinafter "EPIC DoubleClick Complaint"].

<sup>7</sup> EPIC, *DoubleTrouble*, <https://epic.org/privacy/doubletrouble/>.

<sup>8</sup> EPIC DoubleClick Complaint, *supra* note 6.

<sup>9</sup> *Privacy advocates rally against DoubleClick-Abacus merger*, CNET (Jan. 2, 2002), <https://www.cnet.com/news/privacy-advocates-rally-against-doubleclick-abacus-merger/>.

<sup>10</sup> *Statement of DoubleClick CEO Kevin O'Connor re: Online Privacy Practices* (Mar. 2, 2000), available at <http://techlawjournal.com/privacy/20000302.htm>.

with good business models, would seek to expand their reach and build their profiles of Internet users.

And when a Google later proposed to acquire DoubleClick, EPIC went to the FTC with an extensive complaint and warned of the danger to online privacy, competition, and innovation if the leading search engine also became the Internet's primary advertiser.<sup>11</sup> EPIC said at the time, "Google's proposed acquisition of DoubleClick will give one company access to more information about the Internet activities of consumers than any other company in the world. Moreover, Google will operate with virtually no legal obligation to ensure the privacy, security, and accuracy of the personal data that it collects."<sup>12</sup> On December 21, 2007, the FTC approved the proposed merger without conditions in a 4-1 opinion, saying that the proposed acquisition is "[u]nlikely to lessen competition."<sup>13</sup>

Much of what we predicted happened. Google broke many of the agreements to protect privacy that DoubleClick had established.<sup>14</sup>

And then in 2009, Google took a dramatic step with online advertising that has diminished journalism and contributed to the growth of fake news. Google moved from contextual advertising to behavioral advertising, a change it said it would not make and which its founders knew could bring great damage to the Internet.<sup>15</sup> And it has.

In most simple terms, contextual advertising is the advertising that is placed in the newspaper or magazine or the TV show. It is the ad in the radio show. It is the ad on a website that reflects the content of the site. It is tied to content and it is targeted toward individuals not because of data about them, but rather because of their interest in a particular magazine, tv show, or web site. Contextual advertising allows the advertiser to reach the customer without the deep intrusion into private life and it is effective. The original DoubleClick model relied on contextual advertising to provide revenue to support websites. And it was a good model.

The behavioral model is entirely different. It targets the consumer directly. It relies on deep profiles. It provides no benefit to content providers, such as news organizations. In fact, the

---

<sup>11</sup> *In the Matter of Google, Inc. and DoubleClick, Inc.*, EPIC, Center for Digital Democracy, and U.S. Public Interest Research Group Complaint, Request for Investigation, Injunction, and Other Relief (April 20, 2007), [https://epic.org/privacy/ftc/google/epic\\_complaint.pdf](https://epic.org/privacy/ftc/google/epic_complaint.pdf).

<sup>12</sup> *Id.* at 10.

<sup>13</sup> Statement of the Federal Trade Commission Concerning Google/DoubleClick, FTC File No. 071-0170 (Dec. 20, 2007), [https://www.ftc.gov/system/files/documents/public\\_statements/418081/071220googledc-commstmt.pdf](https://www.ftc.gov/system/files/documents/public_statements/418081/071220googledc-commstmt.pdf).

<sup>14</sup> Press Release, Federal Trade Comm'n, Google Agrees to Change Its Business Practices to Resolve FTC Competition Concerns In the Markets for Devices Like Smart Phones, Games and Tablets, and in Online Search (Jan. 3, 2013), <https://www.ftc.gov/news-events/press-releases/2013/01/google-agrees-change-its-business-practices-resolve-ftc>.

<sup>15</sup> Scott Gilbertson, *Google's New Ad Network Knows Where You've Been, What You Do*, WIRED (Mar. 11, 2009), <https://www.wired.com/2009/03/googles-new-ad/>; Letter from the Founders, N.Y. Times, Apr. 29, 2004, <https://www.nytimes.com/2004/04/29/business/letter-from-the-founders.html> ("founders Larry Page and Sergey Brin. The letter is located in Google's registration statement filed with the Securities and Exchange Commission.")

behavioral models attack the revenue model that has sustained news organizations in the United States since the early days.

Not only does behavioral advertising rely on the personal data of the individual consumers, it also follows a series of rules that target some people – and exclude others – based on factors from zip code and age to race, religion, and nationality. Online platforms use algorithms to target ads with a level of granularity that has not been possible before. Political actors are able to target users with such precision that they can sow discord and undermine our democracy. During the 2016 election, Russian operatives bought ads from Facebook targeted at “professed gun lovers, fans of Martin Luther King Jr., supporters of Trump, supporters of Clinton, residents of specific states, and Southerners who Facebook’s algorithms concluded were interested in ‘Dixie.’”<sup>16</sup>

Greater accountability for this advertising technique can be achieved with “Algorithmic Transparency.” Advertisers should disclose how they targeted specific individuals, including the precise data collected and the targeting techniques deployed. EPIC recently advised the Federal Election Commission to require Algorithmic Transparency for online political ads,<sup>17</sup> and several Senators have proposed the Honest Ads Act, which would also require more transparency for online political ads.<sup>18</sup>

The Internet Advertising System today is not healthy. Advertising should provide consumers with information about products. Instead the big Internet firms – Google and Facebook -- are providing advertisers information about consumers who have become the product. Journalism, sustained by traditional advertising, is dying. Democracy is under attack from fake news. And the problems are growing worse. As *The Boston Globe* explained today:

Along with Facebook, Google owns sites and services that, by some estimates, influence 70 percent of all Internet traffic. Not coincidentally, the two companies also form a duopoly that gets 73 percent of all digital advertising in the United States, and virtually all the growth in ad spending, on the Internet. Once the lifeblood of a vital free press, and later of a vast array of independent sites serving every possible interest, ad dollars increasingly flow to two tech giants that organize information produced at other people’s expense.<sup>19</sup>

### Conclusion

The “Digital Advertising Ecosystem” today is not healthy. Two companies dominate the market. The privacy of Internet users is under assault. The revenue model that sustained journalism is broken. The ad platforms are manipulated by foreign adversaries. Secrecy and complexity are

---

<sup>16</sup> Craig Timberg, Elizabeth Dwoskin, Adam Entous and Karoun Demirjian, *Russian ads, now publicly released, show sophistication of influence campaign*, Washington Post (Nov. 1, 2017), [https://www.washingtonpost.com/business/technology/russian-ads-now-publicly-released-show-sophistication-of-influence-campaign/2017/11/01/d26aead2-bf1b-11e7-8444-a0d4f04b89eb\\_story.html](https://www.washingtonpost.com/business/technology/russian-ads-now-publicly-released-show-sophistication-of-influence-campaign/2017/11/01/d26aead2-bf1b-11e7-8444-a0d4f04b89eb_story.html).

<sup>17</sup> Comments of EPIC, *Internet Communication Disclaimers*, Fed. Elec. Comm’n., 76 Fed. Reg. 63567, (Nov. 3, 2017), <https://epic.org/algorithmic-transparency/EPIC-FEC-PoliticalAds-Nov2017.pdf>.

<sup>18</sup> Honest Ads Act, S. 1989, 115th Cong. (2017), <https://www.congress.gov/bill/115th-congress/senate-bill/1989>.

<sup>19</sup> Editorial, *Break Up Google*, Boston Globe (June 14, 2018), <https://apps.bostonglobe.com/opinion/graphics/2018/06/break-google/>.

increasing as accountability is diminished. It would be foolish to imagine that the current model is sustainable.

We ask that this letter be entered in the hearing record. EPIC looks forward to working with the Committee on these issues of vital importance to the American public.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg  
EPIC President

/s/ Caitriona Fitzgerald

Caitriona Fitzgerald  
EPIC Policy Director

/s/ Christine Bannan

Christine Bannan  
EPIC Administrative Law Fellow

/s/ Sam Lester

Sam Lester  
EPIC Consumer Privacy Fellow