



RANKING DIGITAL RIGHTS

Comment in support of Accountable Tech’s rulemaking petition to ban surveillance advertising

January 26, 2022

Federal Trade Commission
Washington, D.C. 20580

Re: Docket No. FTC-2021-0070

Honorable members of the Federal Trade Commission:

Ranking Digital Rights (RDR) is a non-profit research and advocacy program at New America that works to advance freedom of expression and privacy on the internet by establishing global standards and incentives for companies to respect and protect the human rights of internet users and their communities. We carry out this mission by researching and analyzing the commitments, policies, and practices of major global digital platforms and telecommunication firms based on international human rights standards.¹ In addition to our research, we also advocate for laws and public policies that safeguard the fundamental rights of online users and their communities.² This includes reforms to corporate activities that undermine individual autonomy and agency in the digital environment. RDR welcomes the opportunity to submit a comment to the Federal Trade Commission (FTC) in support of Accountable Tech’s petition for rulemaking to ban surveillance advertising.

The negative externalities associated with the operation of “Big Tech” platforms are well documented. Data privacy violations,³ rampant surveillance,⁴ discriminatory algorithmic

¹ For more on our corporate accountability index please visit <http://rankingdigitalrights.org>.

² *Our Principles*, Ranking Digital Rights (last accessed January 26, 2022), <https://rankingdigitalrights.org/about/principles/>.

³ Nicholas Confessore, *Cambridge Analytica and Facebook: The Scandal and the Fallout So Far*, The New York Times (April 4, 2018), <https://www.nytimes.com/2018/04/04/us/politics/cambridge-analytica-scandal-fallout.html>.

⁴ Will Evans, *Amazon’s Dark Secret: It Has Failed to Protect Your Data*, Wired (November 18, 2021), <https://www.wired.com/story/amazon-failed-to-protect-your-data-investigation/>; Mike Isaac and Sheera Frenkel, *Facebook Security Breach Exposes Accounts of 50 Million Users*, The New York Times (September 28, 2018), <https://www.nytimes.com/2018/09/28/technology/facebook-hack-data-breach.html>.

systems,⁵ and anticompetitive practices by the ad tech sector's largest players⁶ illustrate the range of issues under examination at this time. In responding to the industry's various dysfunctions, the FTC should focus on structural factors that facilitate these forms of corporate abuse, specifically ubiquitous user surveillance, exploitative industry advertising practices, and the associated algorithmic systems that shape people's online experiences. After extensive research, stakeholder consultations and policy analysis, RDR has concluded that the surveillance advertising business model is inherently at odds with civil and human rights, liberal democracy, and the public interest. To this end, we urge the FTC to ban surveillance-based advertising through rule-making.

In 2020 we produced a set of reports titled "*It's the Business Model*," a comprehensive analysis on the subject.⁷ Using empirical evidence from our previous study of the targeted advertising and algorithmic systems of major technology and telecommunications firms,⁸ in addition to years of data from our annual Corporate Accountability Index,⁹ we argued that "the companies' failure to staunch the flow of problematic content and disinformation online is rooted in these systems and the surveillance-based business models that they serve." This is a business model that Harvard Business School Professor Shoshanna Zuboff has notably referred to as "surveillance capitalism," an extractive corporate logic characterized by the never-ending drive to collect and monetize user data.¹⁰

Our first report in the *It's the Business Model* series detailed the relationship between surveillance-based business models and the healthy functioning of democracy, explaining how digital platforms reliant on algorithmically-driven advertising systems contributed to civic dysfunction during the early months of the 2020 presidential election.¹¹ The second report

⁵ Ariana Tobin, *HUD Sues Facebook Over Housing Discrimination and Says the Company's Algorithms Have Made the Problem Worse*, ProPublica (March 28, 2019), <https://www.propublica.org/article/hud-sues-facebook-housing-discrimination-advertising-algorithms>.

⁶ Lauren Feiner, *Google, Facebook CEOs Oversaw Illegal Ad Auction Deal that Gave Facebook an Advantage, States Allege*, CNBC (January 14, 2022), <https://www.cnbc.com/2022/01/14/google-facebook-ceos-oversaw-a-2018-ad-auction-deal-states-allege.html>; Daisuke Wakabayashi and Tiffany Hsu, *Behind a Secret Deal Between Google and Facebook*, The New York Times (January 17, 2021), <https://www.nytimes.com/2021/01/17/technology/google-facebook-ad-deal-antitrust.html>.

⁷ *It's the Business Model: How Big Tech's Profit Machine is Distorting the Public Sphere and Threatening Democracy*, Ranking Digital Rights (last accessed January 26, 2022), <https://rankingdigitalrights.org/its-the-business-model/>.

⁸ Jessica Dheere, *RDR Pilot Study Underscores the Need for Rights-based Standards in Targeted Advertising and Algorithmic Systems*, Ranking Digital Rights (March 16, 2020), <https://rankingdigitalrights.org/2020/03/16/rdr-pilot-study-underscores-the-need-for-rights-based-standards-in-targeted-advertising-and-algorithmic-systems/>.

⁹ *2020 Ranking Digital Rights Corporate Accountability Index*, Ranking Digital Rights (last accessed January 26, 2022), <https://rankingdigitalrights.org/index2020/>.

¹⁰ Shoshanna Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*, Public Affairs (2019); John Laidler, *High Tech is Watching You*, The Harvard Gazette (March 4, 2019), <https://news.harvard.edu/gazette/story/2019/03/harvard-professor-says-surveillance-capitalism-is-undermining-democracy/>.

¹¹ Nathalie Maréchal and Ellery Roberts Biddle, *It's Not Just the Content, It's the Business Model: Democracy's Online Speech Challenge*, New America (March 17, 2020), <https://www.newamerica.org/oti/reports/its-not-just-content-its-business-model/>.

expanded this research to the context of the coronavirus pandemic, identifying how digital platforms' quest for user growth and engagement facilitated the spread of misinformation and limited their willingness and ability to fully address the issue.¹² The corrosive effects of platform operations on democracy, social cohesion, and user privacy become clearer with each passing day as prominent scholars¹³ and non-governmental organizations (NGOs) increasingly sound the alarm.¹⁴ Summarizing these concerns in recent testimony given to the House of Representatives' Energy and Commerce Committee on "Holding Big Tech Accountable,"¹⁵ Dr. Nathalie Maréchal, Senior Policy and Partnerships Manager at RDR, underlined that a "business model that relies on the violation of rights will necessarily lead to products/behaviors that create and amplify harms."

RDR's position on this issue is emblematic of a growing global movement to rein in the surveillance advertising business model. In an expansive 2019 report, Amnesty International laid out the human rights costs of Big Tech's economic model, underlining that "the surveillance-based business model is incompatible with the right to privacy and poses a serious threat to a range of other human rights."¹⁶ Other NGOs, including Human Rights Watch,¹⁷ European Digital

¹² Nathalie Maréchal, Rebecca MacKinnon, and Jessica Dheere, *Getting to the Source of Infodemics: It's the Business Model*, New America (May 27, 2020), <https://www.newamerica.org/oti/reports/getting-to-the-source-of-infodemics-its-the-business-model/>.

¹³ Francis Fukuyama, *Making the Internet Safe for Democracy*, *Journal of Democracy* Volume 32, Issue 2 at 37, (April, 2021), <https://www.journalofdemocracy.org/articles/making-the-internet-safe-for-democracy/>; Robert Faris and Joan Donovan, *The Future of Platform Power: Quarantining Misinformation*, *Journal of Democracy* Volume 32, Issue 3 at 152, (July, 2021), <https://www.journalofdemocracy.org/articles/the-future-of-platform-power-quarantining-misinformation/>; Dipayan Ghosh and Ramesh Srinivasan, *The Future of Platform Power: Reining in Big Tech*, *Journal of Democracy*, *Journal of Democracy* Volume 32, Issue 2 at 163, (July, 2021) <https://www.journalofdemocracy.org/articles/the-future-of-platform-power-reining-in-big-tech/>; Matthew Crain, *Profit over Privacy: How Surveillance Advertising Conquered the Internet*, University of Minnesota Press.

¹⁴ Jinyan Yang, *Solving the Problem of Racially Discriminatory Advertising on Facebook*, The Brookings Institute (October 19, 2021), <https://www.brookings.edu/research/solving-the-problem-of-racially-discriminatory-advertising-on-facebook/>; Avaaz, *Facebook: From Election to Insurrection* (March 18, 2021), https://secure.avaaz.org/campaign/en/facebook_election_insurrection/; Camden Carter, *Facebook is Profiting Off Ads Promoting Fringe Platforms Known for Spreading Disinformation and Conspiracy Theories*, *Media Matters* (August 6, 2021), <https://www.mediamatters.org/facebook/facebook-profiting-ads-promoting-fringe-platforms-known-spreading-disinformation-and>; Kayla Gogarty, *Experts Warned that Facebook's Ad Bans Wouldn't Stop Election Misinformation. They Were Right.*, *Media Matters* (November 18, 2020), <https://www.mediamatters.org/facebook/experts-warned-facebooks-ad-bans-wouldnt-stop-election-misinformation-they-were-right>; *Surveillance Giants: How the Business Model of Google and Facebook Threatens Human Rights*, Amnesty International (November 21, 2019), <https://www.amnesty.org/en/documents/pol30/1404/2019/en/>.

¹⁵ House Committee on Energy & Commerce, *Hearing on "Holding Big Tech Accountable: Legislation to Build a Safer Internet,"* United States House of Representatives (December, 2021), <https://energycommerce.house.gov/committee-activity/hearings/hearing-on-holding-big-tech-accountable-legislation-to-build-a-safer>.

¹⁶ *Surveillance Giants: How the Business Model of Google and Facebook Threatens Human Rights*, Amnesty International (November 21, 2019), <https://www.amnesty.org/en/documents/pol30/1404/2019/en/>

¹⁷ Deborah Brown, *Big Tech's Heavy Hand Around the Globe*, Human Rights Watch (September 8, 2020), <https://www.hrw.org/news/2020/09/08/big-techs-heavy-hand-around-globe>.

Rights,¹⁸ and Fairplay¹⁹ have also drawn attention to the issue. In March 2021, RDR joined more than 50 other civil society organizations calling for a ban on surveillance advertising.²⁰ More recently, in the European Union, members of the European Parliament voted to curb surveillance advertising practices as part of negotiations surrounding the Digital Services Act.²¹ An international coalition of more than 100 civil society groups applauded the measures.²²

There is also a public constituency for reform. In a 2019 survey of citizens from nine countries, Amnesty International showed that “Seven in ten people (73%) want[ed] governments to do more to regulate Big Tech, with a clear majority (71%) worried about how tech companies collect and use their personal data.”²³ A November 2021 Washington Post poll of American adults similarly revealed that 64% of respondents thought the government should do more to regulate privacy issues. In addition, 74% felt that the data collection practices of social media companies were “an unjustified use of people’s private information.”²⁴ Business leaders in Europe also disfavor the surveillance advertising of Big Tech firms. In January 2022, Amnesty International and Global Witness polled small and medium-sized business owners in France and Germany, finding that “79% of respondents felt that large online platforms – such as Facebook and Google – should face increased regulation of how they use personal data to target users while advertising online.”²⁵

To understand how the business models of digital platforms facilitate online harms, it is necessary to describe how economic incentives for platform scale and user engagement lead to problematic platform design choices, lax platform policy enforcement, and privacy-infringing surveillance practices.

¹⁸ Diego Naranjo, *Move Fast and Break Big Tech’s Power*, EDRi (September 8, 2021), <https://edri.org/our-work/move-fast-and-break-big-techs-power/>.

¹⁹ Elena Yi-Ching Ho and Rys Farthing, *How Facebook Still Targets Surveillance Ads to Teens*, Fairplay (November, 2021), <https://fairplayforkids.org/wp-content/uploads/2021/11/fbsurveillancereport.pdf>.

²⁰ Natasha Lomas, *US Privacy, Consumer, Competition and Civil Rights Groups Urge Ban on ‘Surveillance Advertising,’* TechCrunch (March 22, 2021), <https://techcrunch.com/2021/03/22/us-privacy-consumer-competition-and-civil-rights-groups-urge-ban-on-surveillance-advertising/>.

²¹ Natasha Lomas, *European Parliament Back Big Limits on Tracking Ads*, TechCrunch (January 20, 2022), <https://techcrunch.com/2022/01/20/meps-vote-to-limit-tracking/>.

²² *DSA Reactive: European Parliament Stands up to Big Tech - Votes to Restrict Abusive Business Model*, People vs Big Tech (January 20, 2022), <https://peoplevsbig.tech/press/dsa-reactive-european-parliament-stands-up-to-big-tech-votes-to-restrict-abusive-business-model>.

²³ *New Poll Reveals 7 in 10 People Want Governments to Regulate Big Tech Over Personal Data Fears*, Amnesty International (December 4, 2019), <https://www.amnesty.org/en/latest/news/2019/12/big-tech-privacy-poll-shows-people-worried/>.

²⁴ *Nov. 4-22, 2021, Washington Post-Schar School Tech Poll*, The Washington Post (December 22, 2021), https://www.washingtonpost.com/context/nov-4-22-2021-washington-post-schar-school-tech-poll/1f827037-688f-4030-a3e4-67464014a846/?itid=lk_interstitial_manual_10.

²⁵ *France/Germany: Small Businesses Want EU to Get Tough on Google and Facebook’s Invasive advertising – new research*, Amnesty International (January 17, 2022), <https://www.amnesty.org/en/latest/news/2022/01/france-germany-small-businesses-want-eu-to-get-tough-on-google-and-facebooks-invasive-advertising-new-research/>.

Despite public-minded missions to create “a global community,”²⁶ advertising-supported digital platforms justify their quest for scale on the basis that more users lead to higher advertising revenues. The largest services boast staggering numbers of users. Facebook itself has nearly 3 billion global users²⁷ with almost 300 million located in the United States.²⁸ YouTube is the next-biggest with a world-wide user base of nearly 2.3 billion.²⁹ Once a platform company establishes a base of active users, it must keep them engaged. There is a simple economic explanation for this: the more time a user spends on the service, the more ads that can be delivered to them, and the more money a platform makes. Generally, platforms increase the time a user spends on a service by modifying the platforms’ design and tweaking the artificial intelligence (AI) systems that curate content. Attention to this practice came to a head in fall of 2021 when Facebook Whistleblower Frances Haugen leaked internal company documents to the Wall Street Journal.³⁰ As reporting detailed, in 2018 Facebook made policy and design changes to the platform in order to boost engagement among users. Publicly, Facebook gave a different reason for the updates, explaining that the changes were meant to facilitate “meaningful social interactions,” a poorly defined company metric.³¹ Problematically, the updates increased the visibility of “misinformation, toxicity, and violent content.”³² Despite this outcome, CEO Mark Zuckerberg was loath to correct course for fear it would reduce user engagement—and advertising revenue. This example, perhaps more than any other, illustrates how advertising incentives shape platform design and policy decisions.

After establishing plans for growth and engagement, platform companies monetize their audiences. For services like Facebook and YouTube, this occurs through the sale of advertising space on their services. Advertisers are drawn to these firms for their microtargeting capabilities, the practice of using “people’s data... to segment them into small groups for content targeting.”³³ Far from a benign marketing strategy, microtargeting depends on systematic and pervasive violations of user privacy. This harmful business model now supports a significant portion of the industry. As media scholar Sarah Myers West (now an advisor to FTC Chair Lina Khan) underlines, an entire sector of the economy is “premised on the collection

²⁶ Abigail Abrams, *Mark Zuckerberg Shares Facebook’s Plan to Bring the Global Community Together*, Time (February 16, 2017), <https://time.com/4674201/mark-zuckerberg-facebook-letter/>.

²⁷ Meta Investor Relations, *Facebook Reports Fourth Quarter and Full Year 2020 Results*, Meta (January 27, 2021), <https://investor.fb.com/investor-news/press-release-details/2021/Facebook-Reports-Fourth-Quarter-and-Full-Year-2020-Results/default.aspx>.

²⁸ Statista Research Department, *Number of Facebook Users in the United States from 2017 to 2026*, Statista (August 23, 2021), <https://www.statista.com/statistics/408971/number-of-us-facebook-users/>.

²⁹ Statista Research Department, *Most Popular Social Networks Worldwide as of October 2021, Ranked by Number of Active Users*, Statista (January 7, 2022), <https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/>.

³⁰ *The Facebook Files*, The Wall Street Journal (Last accessed January 25, 2022), <https://www.wsj.com/articles/the-facebook-files-11631713039>.

³¹ Adam Mosseri, *News Feed FYI: Bringing People Closer Together*, Meta (January 11, 2018), <https://www.facebook.com/business/news/news-feed-fyi-bringing-people-closer-together>.

³² Keach Hagey and Jeff Horwitz, *Facebook Tried to Make Its Platform a Healthier Place. It Got Angrier Instead*, The Wall Street Journal (September 15, 2019), <https://www.wsj.com/articles/facebook-algorithm-change-zuckerberg-11631654215>.

³³ Dipayan Ghosh, *What is Microtargeting and What is it Doing in our Politics?* Mozilla (October 4, 2018), <https://blog.mozilla.org/en/products/firefox/microtargeting-dipayan-ghosh/>.

and commoditization of user data—one in which user privacy is the price of entry for all online experiences...”³⁴ There can be no targeting without surveillance.³⁵ Microtargeting has also been implicated in several federal lawsuits against tech platforms.³⁶ Federal Election Commissioner Ellen L. Weintraub has previously called for a ban on microtargeting for political ads, explaining how such restrictions would enhance political transparency and accountability, and curb misinformation.³⁷ Ultimately, banning microtargeting for political ads is a weak intervention beset with its own limitations. In particular, it is extremely difficult to define what, exactly, is a political ad, and enforcing such distinctions is fraught.³⁸ Additionally, a narrow ban on microtargeting political advertising overlooks both the risks associated with commercial advertising and the fact that the bulk of misinformation comes from “organic” or unpaid content.

Surveillance advertising is harmful to users, distorts the effective functioning of the technology sector (as evidenced in Accountable Tech’s petition), and threatens democracy itself. While regulation short of a full ban, as has been proposed in the EU’s Digital Services Act, would be preferable to the status quo, we believe that only a full ban on surveillance advertising will protect consumers, eliminate perverse incentive structures for very large online platforms, and correct market failures in the online advertising industry.

For these reasons we support Accountable Tech’s petition for rulemaking calling for a ban on surveillance advertising. Their petition rightly calls attention to the troubling set of market-oriented harms that arise from the business models of the sector’s largest players. Banning surveillance-based advertising is an urgent public policy concern in need of remedy. Whether this comes through FTC rulemaking or legislation (such as the Banning Surveillance Advertising Act introduced earlier this month),³⁹ the time to act is now.

³⁴ Sarah Myers West, *Data Capitalism: Redefining the Logics of Surveillance and Privacy*, Business & Society Volume 58, Issue 1 at 20 (January, 2019), <https://doi.org/10.1177/0007650317718185>.

³⁵ Nathalie Maréchal and Ellery Roberts Biddle, *It’s Not Just the Content, It’s the Business Model: Democracy’s Online Speech Challenge*, New America (March 17, 2020), <https://www.newamerica.org/oti/reports/its-not-just-content-its-business-mode>; Jeff Gary and Ashkan Soltani, *First Things First: Online Advertising Practices and their Effects on Platform Speech*, The Knight First Amendment Institute at Columbia University (August 21, 2019), <https://knightcolumbia.org/content/first-things-first-online-advertising-practices-and-their-effects-on-platform-speech>.

³⁶ Katie Benner, Glenn Thrush, and Mike Isaac, *Facebook Engages in Housing Discrimination With Its Ad Practices, U.S. Says*, The New York Times (March 28, 2019), <https://www.nytimes.com/2019/03/28/us/politics/facebook-housing-discrimination.html>; Emily Dreyfus, *Facebook Changes Its Ad Tech to Stop Discrimination*, Wired (March 19, 2019), <https://www.wired.com/story/facebook-advertising-discrimination-settlement/>.

³⁷ Ellen L. Weintraub, *Opinion: Don’t Abolish Political Ads on Social Media. Stop Microtargeting*, The Washington Post (November 1, 2019), <https://www.washingtonpost.com/opinions/2019/11/01/dont-abolish-political-ads-social-media-stop-microtargeting/>.

³⁸ Kate Conger, *What Ads are Political? Twitter Struggles with a Definition*, The New York Times (November 19, 2019), <https://www.nytimes.com/2019/11/15/technology/twitter-political-ad-policy.html>.

³⁹ Eshoo, Schakowsky, *Booker Introduce Bill to Ban Surveillance Advertising*, The Office of Congresswoman Anna G. Eshoo (January 18, 2022), <https://eshoo.house.gov/media/press-releases/eshoo-schakowsky-booker-introduce-bill-ban-surveillance-advertising>.

Thank you for your consideration. We look forward to engaging with the FTC on this matter, and can be reached via email at policy@rankingdigitalrights.org.

Jessica Dheere
Director
Ranking Digital Rights

Nathalie Maréchal, PhD
Senior Policy & Partnerships Manager
Ranking Digital Rights

Alex Rochefort
Policy Fellow
Ranking Digital Rights