

## **Background and Summary of the *Banning Surveillance Advertising Act***

Surveillance advertising has been called the Internet's Original Sin<sup>1</sup> and a "time bomb at the heart of the Internet" that could harm society on the scale of the subprime mortgage crisis.<sup>2</sup> The *Banning Surveillance Advertising Act* goes after this problem by banning the practice, which goes by various names (e.g., targeted, behavioral, programmatic, personalized ads) but is always premised on unseemly data collection and tracking to enable advertising. This pernicious practice is at the root of disinformation, discrimination, and privacy abuses.

Scholars have shown how surveillance capitalism undermines human autonomy and subverts democracy.<sup>3</sup> Companies collect unseemly amounts of data to maximize user engagement because that increases ad revenue.<sup>4</sup> Personal data is abused to target ads with major societal harms, including voter suppression,<sup>5</sup> racist housing discrimination,<sup>6</sup> sexist employment exclusions,<sup>7</sup> political manipulation,<sup>8</sup> and threats to national security.<sup>9</sup> Surveillance advertising also invades privacy and threaten civil liberties, such as by tracking which place of worship individuals attend and whether they participated in protests and then selling this information to advertisers.<sup>10</sup>

Prohibiting explicit targeting to protected class attributes is insufficient because proxy attributes abound and opaque algorithms chase engagement over fairness even when advertisers haven't explicitly made discriminatory targeting decisions.<sup>11</sup> Prohibiting certain sensitive ads (e.g., political) is important but insufficient because such topics are difficult to ringfence.<sup>12</sup> For this reason, dozens of public interest groups, privacy advocates, internet rights activists, consumer advocates, civil rights champions, and others are [calling for a ban on surveillance advertising](#).

The *Banning Surveillance Advertising Act* does what its title suggests. The legislation prohibits advertising facilitators (e.g., Facebook, Google DoubleClick, data brokers) from targeting ads with the exception of *broad* location targeting to a recognized place (e.g., municipality). The bill makes explicit that contextual advertising is allowable. The bill also prohibits advertisers from targeting ads based on protected class information and any information they purchase. Violations can be enforced by the Federal Trade Commission, state attorneys general, or private lawsuits.

Advertising enables many of the "free" internet products that exist today, and it enables small businesses, nonprofits, and challenger politicians to cheaply reach customers, funders, and voters. It is for this reason, the *Banning Surveillance Advertising Act* clarifies that contextual ads (i.e., ads based on the content a user is currently engaging with) are allowable. Research shows that targeted ads only yield a 4% bump in efficacy for advertisers over contextual ads.<sup>13</sup>

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- <sup>1</sup> Ethan Zuckerman, “The Internet’s Original Sin,” *The Atlantic*, August 14, 2014, <https://www.theatlantic.com/technology/archive/2014/08/advertising-is-the-internets-original-sin/376041/>.
- <sup>2</sup> Tim Hwang, *Subprime Attention Crisis: Advertising and the Time Bomb at the Heart of the Internet* (FSG Originals, 2020).
- <sup>3</sup> Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (PublicAffairs, 2019).
- <sup>4</sup> Gilad Edelman, “Why Don’t We Just Ban Targeted Advertising?,” *Wired*, March 22, 2020, <https://www.wired.com/story/why-dont-we-just-ban-targeted-advertising/>.
- <sup>5</sup> Spencer Overton, “State Power to Regulate Social Media Companies to Prevent Voter Suppression,” *U.C. Davis Law Review* 53 (April 2020): 1796, [https://lawreview.law.ucdavis.edu/issues/53/4/feeney\\_symposium/53-4\\_overton.html](https://lawreview.law.ucdavis.edu/issues/53/4/feeney_symposium/53-4_overton.html); Joshua Green and Sasha Issenberg, “Inside the Trump Bunker, With Days to Go,” *Bloomberg*, October 27, 2016, <https://www.bloomberg.com/news/articles/2016-10-27/inside-the-trump-bunker-with-12-days-to-go>.
- <sup>6</sup> 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>.
- <sup>7</sup> Matt O’Brien and Barbara Ortutay, “Study: Facebook Delivers Biased Job Ads, Skewed by Gender,” *AP News*, April 20, 2021, <https://apnews.com/article/discrimination-f62160cbbad4d72ce5250e6ef2222f5e>; Anja Lambrecht and Catherine Tucker, “Algorithmic Bias? An Empirical Study of Apparent Gender-Based Discrimination in the Display of STEM Career Ads,” *Management Science* 65, no. 7 (July 1, 2019): 2966–81, <https://pubsonline.informs.org/doi/abs/10.1287/mnsc.2018.3093>.
- <sup>8</sup> Anthony Nadler, Matthew Crain, and Joan Donovan, “Weaponizing the Digital Influence Machine: The Political Perils of Online Ad Tech” (Data & Society, October 17, 2018), <https://datasociety.net/library/weaponizing-the-digital-influence-machine/>.
- <sup>9</sup> Joseph Cox, “The NSA and CIA Use Ad Blockers Because Online Advertising Is So Dangerous,” *Vice Motherboard*, September 23, 2021, <https://www.vice.com/en/article/93ypke/the-nsa-and-cia-use-ad-blockers-because-online-advertising-is-so-dangerous>.
- <sup>10</sup> Byron Tau, “Lawmakers Urge FTC Probe of Mobile Ad Industry’s Tracking of Consumers,” *Wall Street Journal*, July 31, 2020, <https://www.wsj.com/articles/lawmakers-urge-ftc-probe-of-mobile-ad-industrys-tracking-of-consumers-11596214541>.
- <sup>11</sup> Muhammad Ali et al., “Discrimination through Optimization: How Facebook’s Ad Delivery Can Lead to Biased Outcomes,” *Proceedings of the ACM on Human-Computer Interaction* 3, no. 199 (November 7, 2019): 1–30, <https://doi.org/10.1145/3359301>; Dipayan Ghosh, “Banning Micro-Targeted Political Ads Won’t End the Practice,” *WIRED*, November 22, 2019, <https://www.wired.com/story/banning-micro-targeted-political-ads-wont-end-the-practice/>.
- <sup>12</sup> Carissa Véliz, *Privacy Is Power: Why and How You Should Take Back Control of Your Data* (Bantam Press, 2021).
- <sup>13</sup> Veronica Marotta, Vibhanshu Abhishek, and Alessandro Acquisti, “Online Tracking and Publishers’ Revenues: An Empirical Analysis,” May 2019, [https://weis2017.econinfosec.org/wp-content/uploads/sites/6/2019/05/WEIS\\_2019\\_paper\\_38.pdf](https://weis2017.econinfosec.org/wp-content/uploads/sites/6/2019/05/WEIS_2019_paper_38.pdf).