Congress of the United States
Washington, DC 20515

January 26, 2022

The Honorable Lina M. Khan, Chair
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Petition for Rulemaking by Accountable Tech (Docket No. FTC-2021-0070)

Dear Chair Khan,

We're writing in support of the Petition for Rulemaking by Accountable Tech of the Federal Trade Commission (FTC)[1] to prohibit surveillance advertising due to its overwhelming harm to individuals and society, especially to the fundamental right to privacy.

Surveillance advertising has been called the Internet's Original Sin[2] and a "time bomb at the heart of the Internet" that could harm society on the scale of the subprime mortgage crisis.[3] The surveillance advertising business model is premised on the unseemly collection and hoarding of personal data to enable ad targeting. Companies collect huge amounts of data to maximize user engagement because it increases ad revenue.[4] The FTC should evaluate the harms to society and individuals as we believe they vastly outweigh the benefits.

Significant research has shown how surveillance capitalism undermines human autonomy and subverts democracy.[5] In particular, leading academics and journalists have documented societal harms from surveillance advertising including voter suppression,[6]

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[1] "Petition for Rulemaking by Accountable Tech," 86 Fed. Reg. 73206 (December 27, 2021).

[2] 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/.

[3] Tim Hwang, *Subprime Attention Crisis: Advertising and the Time Bomb at the Heart of the Internet* (FSG Originals, 2020).

[4] 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/.

[5] Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (PublicAffairs, 2019).

[6] 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; 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.

political manipulation,[7] and threats to national security. For example, propagandist ads from the Russian government-linked Internet Research Agency (IRA) disproportionately targeted and aimed to suppress the vote of African Americans during the 2016 election.[8] State adversaries may use surveillance advertising to collect sensitive data on Americans and target specific individuals in the government to install malware on their devices or collect intelligence about their locations.[9]

Surveillance advertising is also linked to individual harms that have broader impacts for society such as discrimination in jobs,[10] housing,[11] and pricing for products and services.[12] For example, research has shown that females receive fewer ads for high-paying jobs than men,[13] an outcome that further perpetuates the existing gender wage

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[7] Anthony Nadler et al., "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/.

[8] 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; Robert S. Mueller, III, "Report on the Investigation into Russian Interference in the 2016 Presidential Election" I (March 2019): pp. 4, 14, 25, https://www.justice.gov/archives/sco/file/1373816/download; "Russian Active Measures Campaigns and Interference in the 2016 U.S. Election: Volume 2: Russia's Use of Social Media With Additional Views" (U.S. Senate Select Committee on Intelligence, October 2019), p. 37, https://www.intelligence.senate.gov/sites/default/files/documents/Report_Volume2.pdf.

[9] 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.

[10] *See, e.g.,* 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 Ava Kofman and Ariana Tobin, "Facebook Ads Can Still Discriminate Against Women and Older Workers, Despite a Civil Rights Settlement," *ProPublica*, December 13, 2019, https://www.propublica.org/article/facebook-ads-can-still-discriminate-against-women-and-older-workers-despite-a-civil-rights-settlement; 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), https://pubsonline.informs.org/doi/abs/10.1287/mnsc.2018.3093.

[11] *See, e.g.,* 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; 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.

[12] *See, e.g.,* Alex P. Miller and Kartik Hosanagar, "How Targeted Ads and Dynamic Pricing Can Perpetuate Bias," *Harvard Business Review,* November 8, 2019, https://hbr.org/2019/11/how-targeted-ads-and-dynamic-pricing-can-perpetuate-bias.

[13] *See, e.g.,* Amit Datta et al., "Discrimination in Online Advertising: A Multidisciplinary Inquiry," In *Proceedings of Machine Learning Research* 81, 1–15, 2018.

gap. Research has also demonstrated how advertisements for predatory rent-to-own programs are shown to African American users significantly more than any other racial group.[14]

Americans' privacy and civil liberties are also drastically hampered by surveillance advertising. Some firms have been found to be tracking individuals' places of worship, whether they participated in protests, and then selling this information to advertisers.[15] Data brokers have also sold lists of individuals who regularly visit mosques or use Muslim prayer apps to advertisers, enabling possible discrimination toward religious minorities.[16] Law enforcement can also purchase data implying immigrant status and use it along with location data to skirt Fourth Amendment protections.[17]

These harms are not justified by the benefit of ad revenue to the companies, and alternatives to surveillance advertising can be nearly as commercially effective. Research shows that micro-targeted ads only yield a four percent bump in efficacy for advertisers over contextual ads.[18] This negligible value is not enough to justify the widespread societal and individual harms that the business model causes.

Importantly, the petition does not ban all advertising. Advertising enables many internet products and it enables small businesses, nonprofits, and politicians to reach customers, funders, and voters. It is for this reason that contextual advertising (i.e., ads based on the content a user is currently engaging with) and advertisements provided in response to relevant user search queries should be allowable, as the petition recommends.[19] Further, while granular location may provide incremental value to advertisers, the harms associated with this kind of location targeting are countless, however, broad location

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[14] Imana, Basileal et al., "Auditing for Discrimination in Algorithms Delivering Job Ads," In *Proceedings of the Web Conference*, 3767–3778, 2021.

[15] 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.

[16] Joseph Cox, "Leaked Location Data Shows Another Muslim Prayer App Tracking Users," *Vice Motherboard*, January 11, 2021, https://www.vice.com/en/article/xgz4n3/muslim-app-location-data-salaat-first; "Time to Ban Surveillance-Based Advertising" (Forbrukerradet, June 2021), https://www.forbrukerradet.no/wp-content/uploads/2021/06/20210622-final-report-time-to-ban-surveillance-based-advertising.pdf.

[17] Rani Molla, "Law Enforcement Is Now Buying Cellphone Location Data from Marketers," *Vox*, February 7, 2020, https://www.vox.com/recode/2020/2/7/21127911/ice-border-cellphone-data-tracking-department-homeland-security-immigration.

[18] Veronica Marotta et al., "Online Tracking and Publishers' Revenues: An Empirical Analysis" (In *Workshop on the Economics of Information Security*, May 2019), https://weis2017.econinfosec.org/wp-content/uploads/sites/6/2019/05/WEIS_2019_paper_38.pdf.

[19] "Re: Petition for Rulemaking to Prohibit Surveillance Advertising," (Accountable Tech, December 3, 2021), https://www.regulations.gov/document/FTC-2021-0070-0002.

targeting to 'recognized places' (e.g., municipalities) can be permitted to provide users value without inviting the worst harms of granular location tracking.

Importantly, banning surveillance advertising is also widely popular. An astonishing 81 percent of American voters support banning companies from collecting people's personal data and using it to target them with ads, according to a recent poll by Accountable Tech.[20] A coalition of over fifty public interest groups, privacy advocates, internet rights activists, consumer advocates and civil rights champions have also called for the ban of surveillance advertising.[21]

To combat the harms posed by surveillance advertising and protect Americans' privacy, we recently introduced H.R. 6416 and S. 3520, the *Banning Surveillance Advertising Act*, which prohibits advertising networks and facilitators from using personal data to target advertisements, with the exception of broad location targeting. The bill makes explicit that contextual advertising and ads based on user search queries are allowable. Our legislation also prohibits advertisers from targeting ads based on protected class information (e.g., race, gender, religion) and any information they purchase (e.g., from a data broker). Lastly, this legislation clarifies that the FTC has existing authority to ban surveillance advertising and strengthens its enforcement capacity. We've worked several months drafting the legislation and urge the FTC to examine the legislative language which can be instructive to its rulemaking.

For all the reasons we've stated, we support the Petition for Rulemaking to the FTC and commit to working with the agency to ensure that it has all the resources it needs to protect consumers from harmful data collection and surveillance business models such as surveillance advertising.

Most gratefully,
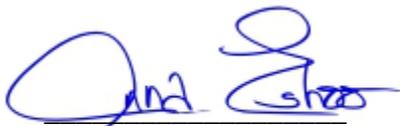
Anna Eshoo
Member of Congress
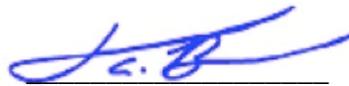
Cory Booker
United States Senator

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[20] "Frequency Questionnaire" (Accountable Tech, January 28–31, 2021), https://accountabletech.org/wp-content/uploads/Accountable-Tech-013121-FQ-Methodology.pdf.

[21] "Ban Surveillance Advertising" (Accountable Tech), https://www.bansurveillanceadvertising.com/.