**Comments of the Software & Information Industry Association (SIIA) on the
Petition for Rulemaking by Accountable Tech
Docket Number FTC-2021-0070**

Submitted to the Federal Trade Commission

January 26, 2022

On behalf of the Software & Information Industry Association (SIIA), we write to provide comments on the Petition for Rulemaking to Prohibit Surveillance Advertising (the Petition), submitted by Accountable Tech to the Federal Trade Commission (FTC) focused on the scope of the proposed rulemaking and the FTC's authority under the Federal Trade Commission Act (the FTC Act). SIIA is the principal trade association for the software and digital information industries worldwide. Our members include over 450 companies reflecting the broad and diverse landscape of digital content providers and users in academic publishing, education technology, and financial information, along with creators of software and platforms used by millions worldwide, and companies specializing in data analytics and information services.

We are concerned that the Petition proposes a remedy—the complete or partial ban of "surveillance advertising"—without adequately defining the harms or offering a solution that is sufficiently targeted to withstand legal scrutiny or provide meaningful guidance to business or consumers.

The Petition defines surveillance advertising as "consist[ing] of two major elements: 1) an information or communication platform collecting personal data and 2) targeting advertisements at users, based on that personal data, as they traverse the internet, including other digital platforms."[1] The Petition also proposes carve outs from this definition, including "search advertising," "contextual display advertising," and "the ability of publishers and content creators to generate revenue on their sites."[2] A definition of this scope is ill-advised and unworkable.

First, the internet of today and the free online services made available to consumers are reliant on advertising, including personalized or targeted advertising. Targeted advertising is a widespread practice and not one that is the exclusive domain of the large technology companies identified in the Petition. Indeed, numerous U.S.-based retailers have their own ad networks and ad tech.[3] Disruption of that advertising will not unsettle existing business expectations based around widespread and accepted activity.

Second, the proposal's vagueness will damage small and medium-sized publishers and negatively affect consumer welfare. It is virtually impossible to distinguish among these various categories of online advertising. To the extent "surveillance" means personalized or targeted, an

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[1] Petition at 60.
[2] Petition at 60.
[3] *See, e.g.*, Allison Schiff, *Dollar Tree Launches Its Media Retail Network*, Ad Exchanger (Apr. 15, 2021).

outright ban would effectively restrict or eliminate all online advertising—even those proposed to be exempted—except for generic, billboard-style advertising that is of limited use to businesses in both the online and brick-and-mortar worlds. In a contextual-only world where advertisers are looking for the right context to target ads, publishers with the largest and most varied web presence will have the biggest range of context for advertisers to target. The inevitable result would be less revenue for smaller publishers and creators (such as bloggers, newsletter publishers, and video content creators) and developers who rely on ads for funding. This will in turn reduce the diversity of content available online as they find it difficult to find contextually relevant advertisers. The effect of what Accountable Tech is proposing would be to shut down large swaths of the internet, increase costs of consumers who would be forced to pay subscription fees to access services that they now enjoy for free, and require small and medium sized businesses to develop entirely new means to reach consumers.

Third, consumers both seem to be aware of the existence of targeted advertising and in some cases to welcome it. For example, there is data indicating that users prefer personalized advertising because it shows them ads relevant to their interests. A study by Infogroup found that 90% of consumers say that messages from companies that are not personally relevant to them are "annoying."[4]

We do not see any of these consumer and business concerns addressed in the Petition, much less an effort to address the need for or impact of the proposed ban on individuals and small and medium sized businesses.

In addition, as a legal matter, we are concerned that issuing the legislative-style competition rules sought by the Petition would exceed the authority that Congress has entrusted to the FTC under the FTC Act. The subject matter covered by the Petition raises questions of "vast economic or political significance" that should be addressed, if at all, by Congress.[5]

Much of the personalized or targeted advertising on the internet results from user-identified preferences and consent. To the extent that there is a concern about targeted advertising that occurs without transparency or user consent, the appropriate means to address that issue is through focused rulemaking or legislation around privacy and to prevent specific abuses. We encourage the FTC to continue to support ongoing, bicameral efforts to pass a comprehensive privacy law. Such a law would address concerns about how consumer data is used, provide needed clarity for businesses and consumers alike, and foster a stronger innovation environment in the United States while maintaining our global competitiveness.

Thank you for your consideration of our views on this matter. Please direct any inquiries regarding this submission to Paul Lekas, SIIA Senior Vice President for Global Public Policy (plekas@siia.net).

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[4] *See* Rimma Kats, *How's that Personalization Going?,* Insider Intelligence (Jun. 13, 2019).
[5] *See King v. Burwell*, 576 U.S. 473, 485-86 (2015).