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CHALLENGES AND PROSPECTS OF LEGAL REGULATION OF ADVERTISING ON ONLINE PLATFORMS

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Abstract

Online advertisement provides marketers with a low-cost way of reaching large and diverse customers. Some of the spaces utilised by businesses to advertise products include Facebook, Google, and other social networking platforms. Like traditional media, online advertisement is subject to legal regulation. The paper aimed to critically evaluate the challenges and prospects of legal regulation of ads on online platforms. Through a well-conducted literature review of 20 scholarly sources, the article identified the primary challenges as the dynamic nature of technology, false advertising, data privacy issues, and problems related to safeguarding firms from defamatory interviews. Despite the challenges, the research found opportunities such as strengthening privacy laws, detecting false advertisements, and regulating the online marketing of unethical or potentially harmful products. Policymakers, particularly in Congress, must remain aware of the borderless nature of the Internet and the opportunities and threats it avails to regulatory authorities. Moreover, the research underscores the significance of training and capacity-building to guarantee compliance.

Key words: online advertising; laws; policies; Federal Trade Commission; data privacy.

1. Introduction

The rise of the digital age has transformed how businesses communicate with consumers, with online platforms like Facebook and Google becoming central to advertising strategies. These platforms offer unparalleled reach and cost-effectiveness, enabling marketers to target diverse audiences with precision. However, this shift to digital advertising has brought about new regulatory challenges, necessitating a reevaluation of existing legal frameworks. Unlike traditional media, the rapid evolution of technology and the global nature of the internet create complexities in ensuring that online advertisements adhere to legal standards.

As the online advertising ecosystem has grown, so too have concerns about its regulation. The borderless nature of the internet, coupled with the rapid pace of technological innovation, has made it increasingly difficult for existing legal frameworks to keep up. Unlike traditional forms of media, which are often subject to well-established regulatory regimes, online platforms operate in a more fluid and dynamic environment. This has given rise to a range of issues that are unique to the digital age, including challenges related to data privacy, the spread of false or misleading information, and the potential for defamatory content to be amplified through social networks.

In conclusion, while the regulation of online advertising presents numerous

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challenges, it also offers opportunities for creating a safer and more transparent digital environment. As technology continues to evolve, so too must the legal frameworks that govern it, ensuring that online platforms can continue to be a force for good in the global marketplace.

This article delves into the intricate landscape of legal regulation for online advertising, exploring the challenges and opportunities that have emerged. By conducting a comprehensive review of scholarly literature, the paper identifies key issues such as the fast-paced technological changes, the prevalence of false advertising, data privacy concerns, and the risks of defamatory content. At the same time, it highlights potential advancements in policy and regulation that could address these issues, emphasizing the need for robust privacy laws, effective detection of misleading advertisements, and tighter control over the marketing of unethical products. The discussion extends to the role of policymakers, particularly in navigating the borderless nature of the internet, and the importance of ongoing education and training to ensure compliance in this dynamic environment.

The article aims to explore issues such as technological advancements, false advertising, data privacy concerns, and the potential for defamatory or unethical content, all of which complicate regulatory efforts. Additionally, the article seeks to examine the prospects for improving regulation in this field, including opportunities to strengthen privacy laws, enhance detection of misleading advertisements, and develop strategies for managing the marketing of harmful products. Through this analysis, the article intends to provide insights and recommendations for policymakers on how to effectively regulate online advertising in a way that balances innovation with consumer protection and legal compliance.

2. Materials and Methods

The article was grounded in a comprehensive collection of scholarly materials. The research incorporated theoretical analysis to explore how traditional legal doctrines, such as contract law, tort law, and intellectual property law, are being applied and adapted to the digital context. This analysis helped in understanding the foundational legal principles that underpin the regulation of online advertising. This method was used to gather and synthesize current knowledge, theories, and findings on the subject, providing a foundation for understanding the challenges and prospects in this area. Through the literature review, the research critically examined various legal frameworks, regulatory challenges, and potential solutions. This method involved evaluating the effectiveness of existing laws, identifying gaps, and analyzing how technological advancements impact the regulation of online advertising.

The study examined significant case law where regulatory bodies or courts have ruled on issues related to online advertising. This included landmark cases that set important precedents in areas such as data privacy, deceptive advertising, and cross-border jurisdiction. he impact of these rulings on the development and enforcement of online advertising regulations was assessed, providing practical insights into how legal principles are applied in practice. The research likely involved comparing different legal approaches and regulations across various jurisdictions, such as comparing the GDPR in the European Union with U.S. regulations. This method helped identify best practices and potential areas for improvement in global and national regulatory frameworks. The study may have employed theoretical analysis to explore underlying legal principles, doctrines, and concepts relevant to online advertising. This approach would allow for a deeper understanding of how existing legal theories apply to the rapidly evolving digital environment.

The research also involved analyzing current policy proposals and discussions within legislative bodies, particularly in areas like data privacy and consumer protection. This helped in identifying future regulatory trends and potential legislative changes. The views and positions of various stakeholders, including regulators, industry representatives, and consumer advocacy groups, were considered to provide a balanced perspective on the prospects of legal regulation.

These methods collectively enabled the researchers to identify the key challenges in regulating online advertising, assess the effectiveness of current legal frameworks, and propose future regulatory strategies. While the research methodology was comprehensive, it is important to acknowledge certain limitations. The fast-evolving nature of technology and online advertising means that some of the legal challenges identified may evolve rapidly, potentially affecting the relevance of the findings. Additionally, the comparative analysis was limited to major jurisdictions, which may not fully capture the global diversity of regulatory approaches.

3. Results and Discussion

3.1. Challenges of legal regulation of advertising on online platforms

Online platforms have become instrumental sources of advertisement due to their cost-effectiveness and ease of use. Virtually any well-established company today uses social media or the Internet in general to reach customers. However, compared to traditional platforms like television and radio, the Internet has minimal regulations or restrictions. In this regard, legal regulators such as the Federal Trade Commission (FTC) might experience challenges tracking falsehood in ads or the protection of data and enhancing its security. Despite the obstacles, policymakers in federal and state governments have many opportunities to improve effectiveness and efficiency in the regulation of advertisements on online platforms. The article will critically evaluate the outstanding issues in legal regulations of online ads and some of the areas that authorities can capitalise on in the near and long-term future.

Since most advertising occurs on the online platform, guided by dynamic technology, regulation by authorities can become extremely difficult. The Internet is one of the most significant attributes of globalisation. The platform has enabled individuals to connect regardless of their geographical locations (Foley, 2020). Despite its usefulness in advertising, national authorities have found it increasingly challenging to regulate advertising in online spaces. Dommett and Zhu (2022) argued that it is extremely challenging to exercise national control over the Internet. Furthermore, many governments, including the United States, face logistical barriers in their quest to control online advertising due to the complex and dynamic nature of digital technology (Dommett & Zhu, 2022). Some of the giant online advertisers in the market today include Facebook and Google. Although these companies originated in the United States, the borderless nature of the Internet means that online advertisers cannot adopt the specific laws and policies of a country (Chapdelaine & Manzerolle, 2021). The ubiquitous and often clandestine nature of the web makes it almost impossible for regulators like the FTC to police what happens on the Internet as far as marketing tactics are concerned. Furthermore, with the advancement of new and sophisticated technologies such as artificial intelligence and machine learning, online advertising has become more efficient and personalised (Zarouali et al., 2022). Accordingly, regulators might not have the privilege to evaluate everything that online advertisers do to market their products.

Implementing policies on false advertising remains another significant challenge facing regulators of online advertisement in the US market. The Lanham Act is one of the legal frameworks that prohibits false advertising by allowing civil lawsuits against

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perpetrators who misrepresent the qualities, characteristics, and nature of products and services (Ullrich, 2021). As a result, the Lanham Act is vital in protecting consumer rights. One of the most significant areas that have frustrated FTC's efforts in combating deceptive practices in advertising is the aspect of online reviews. Changchit et al. (2022) argued that online reviews are instrumental in guiding purchase decisions. A business with more positive reviews listed on an online platform like Google, Yelp, and TripAdvisor is likely to attract many new and existing customers (Tayeen et al., 2021). Despite the significance of these platforms, many organisations have reverted to dishonest reviews aimed at promoting subpar or mediocre products. Some organisations have gone to the extent of rating their products as five-star in order to attract unsuspecting customers. Besides undermining the customers' collective power, such practices have severe legal ramifications. However, the FTC finds it increasingly challenging to crack down on these predatory behaviours because it is difficult to differentiate between genuine and dishonest reviews.

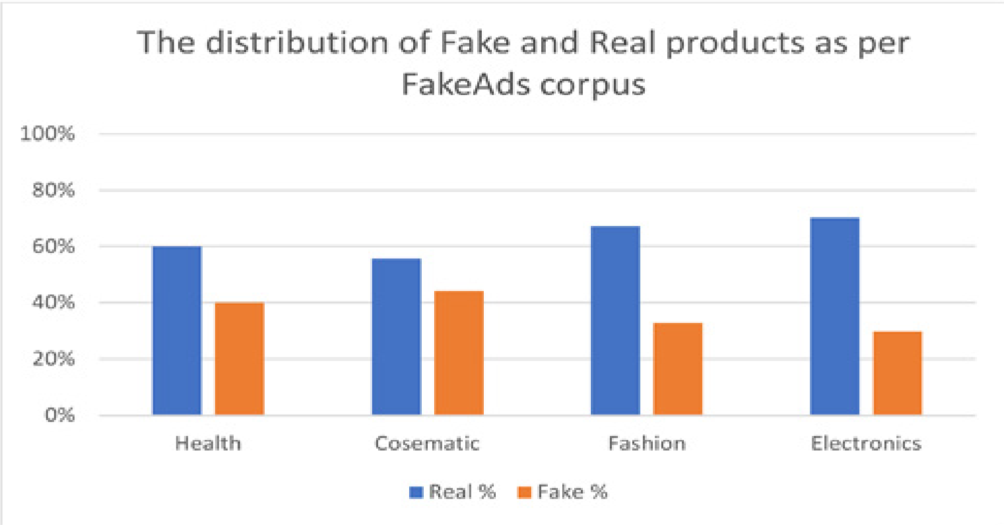

Figure 1. Proportion of fake ads in different fields in the american market[1]
Retrieved from: Alnazzawi, N., Alsaedi, N., Alharbi, F., & Alaswad, N. (2022). Using social media to detect fake news information related to product marketing: The FakeAds Corpus. Data, 7(4), 44.

Another significant challenge affecting online advertising relates to the enhancement of data privacy and user protection. The advancement and growth of the Internet have seen a rise in personalised advertisement (Zarouali et al., 2022). Marketers use sophisticated technologies to gather personal data related to geographical location, consumer preferences, behaviour, and patterns (Casas-Rosal et al., 2023). Such data is essential in ensuring that marketers provide consumers with specific marketing messages that align with their values and perspectives, increasing the likelihood of purchasing. However, the intrusive behaviour associated with the personalised marketing scheme can violate the data privacy and user protection policies and laws (Chandra et al., 2020). Each state in the US has created privacy policies aimed at safeguarding the interests of consumers. An example is the California Consumer Privacy Act (CCPA). The CCPA provides consumers with broad control over the personal data that enterprises collect about them (Mulgund et al., 2021). The FTC is in charge at the federal level. In 2019, the FTC was embroiled in a case with Facebook for its practices that jeopardised consumer privacy. According to FTC, Facebook used deceptive settings and disclosures that undermined the privacy of consumers, including allowing third-party apps to access their information (Hazlett,

1 the cosmetic industry has the highest proportion of fake ads, followed by health

2023). Such cases demonstrate the difficulties of controlling online advertising, especially when it violates the privacy of the clients. Thus, the FTC must ensure that businesses balance their needs for accurate advertising and protection of customer privacy.

Furthermore, regulatory authorities have significant challenges safeguarding the reputation of companies that might rely on online advertising to market their products. In the age of the Internet, companies are increasingly using social media platforms to market products, including Facebook, X.com, YouTube, and Instagram. Legal frameworks such as the Consumer Review Fairness Act of 2016 protect consumers in their quest to provide honest reviews and feedback about products and services (Martínez, 2021). However, in some instances, negative reviews can harm or even de-market a product, wasting the efforts and the resources that organisations have placed in the advertisement endeavour. Consumers can do this through comments, reviews, feedback, and dislikes, which other potential users can see. Most companies have expressed fear that some malicious consumers can weaponise the customer review and feedback mechanism, causing potential defamation. Besides suffering severe damage, these companies might find it challenging to sue the consumer due to overly protecting policies such as the Consumer Review Fairness Act of 2016 (Martínez, 2021). In this regard, policymakers need to clearly delineate between negative review and defamation to prevent malicious actors from taking advantage of the meaningful provision. Accordingly, this will ensure that consumers advertise their products without the fear that ill-intentioned people will take advantage of the process.

3.2. Future directions in legal regulation of online advertising

The future of legal regulation in online advertising is a critical issue, particularly as digital marketing continues to evolve and become more deeply embedded in the everyday experiences of consumers. With the rise of personalized advertisements driven by big data, there is a pressing need for robust privacy policies and laws that can keep pace with technological advancements. The US government has the opportunity to strengthen privacy policies and laws in the wake of increasing personalised advertisements. Big data has risen to become an integral part of marketing (Gupta et al., 2021). The explosion of big data has transformed how businesses approach marketing. Companies are investing billions of dollars into data collection and analysis to ensure their advertising strategies are as targeted and effective as possible. Companies are now investing billions of dollars in gathering data that is helpful in ensuring that their marketing endeavour is as accurate as possible. However, this comes at the expense of the individual's privacy. The FTC has made concerted efforts to ensure that the consumer is protected from predatory and unethical ventures by marketers and advertisers. However, the current regulatory landscape in the U.S. is fragmented, with individual states developing their own privacy laws that vary in scope and effectiveness. This patchwork approach creates inconsistencies in consumer protection and complicates compliance for businesses operating across state lines. For example, while California's Consumer Privacy Act (CCPA) offers comprehensive protections, other states have far less stringent regulations, leaving many consumers unprotected. (Quach et al., 2022). Online trade occurs across states and countries and knows no boundary. In this regard, there is a need to harmonise these laws to create consistency in accountability and responsibility. Although the autonomy of states to make policies and laws is sacred and must be respected, lawmakers need to realise the globalised nature of online advertising and its borderless ramifications. Thus, there is an opportunity for state and federal governments to work together to guarantee the uniform application of privacy laws to prevent the unethical collection of personal data by marketers and advertisers.

The government can work closely with social media platforms to ensure that the

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advertisements aired on the platforms reflect the values of truthfulness, accuracy, and honesty. Fake advertisement has severe implications for the overall well-being of the buyers (Allami et al., 2021). For instance, using deception to advertise food or cosmetic products could have negative ramifications on an individual's well-being or life. With social media ads increasingly becoming ubiquitous, marketers will benefit from social media algorithms powered by machine learning and automation to detect inauthentic advertising (Abdallah et al., 2021). To combat this, there is a growing opportunity to leverage technology, particularly artificial intelligence (AI) and machine learning, to detect and prevent false advertising. For instance, X.com, formerly Twitter, has a powerful algorithm that detects fake news and allows readers of a post to provide context for posts that promote falsehood (Guimarães et al., 2021). The same concept could apply to marketing strategies that use falsehood to gain traction. Using technology in this way is essential because it enhances compliance with the law. FTC can easily take action against perpetrators of falsehood in their marketing endeavours. More importantly, this strategy directly empowers the consumers to know the authenticity behind a specific ad on social media pages.

By integrating these technological solutions into the regulatory framework, the FTC and other regulatory bodies can more effectively enforce advertising standards. This approach not only improves compliance but also empowers consumers by providing them with the tools and information needed to discern the authenticity of online advertisements. Moreover, such a system would place the onus on advertisers to ensure the truthfulness of their claims, knowing that their ads will be subject to rigorous scrutiny by both automated systems and regulatory authorities.

The government should strengthen regulations that prevent companies from misusing online advertisements to promote unethical business practices. A business can be legal but has moral implications for society, especially if it fosters addiction and threatens to destroy the moral fabric of society. Beyond privacy and false advertising, another critical area for future regulatory attention is the use of online advertising to promote unethical business practices. Certain industries, such as gambling and alcohol, pose significant risks to public health and social well-being. While these industries are legal, their advertising practices can have profound moral implications, particularly when they target vulnerable populations. One example is the gambling industry. Gambling has grown in the US at a very rapid rate over the last few years. Under the federal law, gambling is legal. However, each state has the freedom to develop further restrictions depending on the type of advertisement (Torrance et al., 2021). Research shows that excessive consumption of gambling content could lead to addiction, leading to psychological and financial problems for an individual (Allami et al., 2021). The federal government has the opportunity to play a more active role in regulating such advertising. This could involve setting national standards that limit the frequency and content of ads for products like gambling, alcohol, and tobacco. For example, regulations could prohibit advertisements that glamorize gambling or make misleading claims about the likelihood of winning. Additionally, there could be caps on the number of gambling-related ads that a consumer is exposed to within a given timeframe, reducing the risk of developing addictive behaviors.

These regulatory efforts could extend to other risky products, ensuring that advertising practices align with public health objectives and social responsibility. By doing so, the government would strike a balance between the economic benefits of these industries and the need to protect society from the negative consequences of their advertising practices.

Although most legal frameworks seek to safeguard the interests of the consumer, the government must also ensure that companies are equally protected. Businesses depend on the ads to reach a wider market audience and compete fairly with their counterparts (Trachuk et al., 2021). Quality ads on and off social media platforms are expensive and require heavy investments. In this regard, the government must strengthen the Consumer Review Fairness Act of 2016 and remove loopholes that might prevent a company from suing an individual whose feedback or review of a business results in defamation or damage to the brand's reputation (Narciso, 2022). The law should clearly delineate between constructive criticism and negative review with potential defamatory remarks that de-market an organisation and prevent it from capitalising on its advertisement endeavours in the online space (Martínez, 2021). Another way to safeguard the interests of the companies is through training and capacity-building on the legal framework. With the advent and expansion of online advertising marketplaces, many small and medium enterprises have joined the bandwagon, utilising the Internet to meet consumers worldwide. Thus, FTC and other authorities can conduct frequent training using resources such as webinars to educate companies on the strict regulatory environment of online advertisement.

In addition to legal protections, businesses could benefit from increased training and capacity-building initiatives that help them navigate the complex regulatory environment. As more small and medium-sized enterprises (SMEs) enter the online advertising space, there is a growing need for education on legal compliance. The FTC, along with other regulatory bodies, could offer webinars, workshops, and other resources to help businesses understand their rights and responsibilities in the digital marketplace. Such efforts would not only protect businesses from legal pitfalls but also promote fair competition and high standards in online advertising.

In conclusion, the future of legal regulation in online advertising holds both challenges and opportunities. By strengthening privacy laws, leveraging technology to combat false advertising, regulating ads for unethical practices, and protecting businesses, governments can create a more balanced and effective regulatory framework. As digital advertising continues to evolve, it is crucial that legal frameworks adapt to ensure that the online marketplace remains a safe, fair, and trustworthy environment for all stakeholders.

Conclusions

The regulation of online advertising presents a complex and evolving challenge in the digital age, where the rapid pace of technological advancements has outstripped the capacity of traditional legal frameworks to keep up. As the analysis in this article demonstrates, the current regulatory model has significant weaknesses that undermine its effectiveness in protecting consumers' rights and ensuring fair advertising practices. These shortcomings are particularly evident in the areas of data privacy, the proliferation of false advertising, and the fragmented regulatory environment, especially in markets like the United States, where state-level inconsistencies further complicate enforcement.

One of the most pressing issues identified in this research is the failure of existing regulations to adequately safeguard consumer privacy in the era of big data and personalized advertising. The ability of online platforms to collect and analyse vast amounts of personal information has enabled highly targeted advertising strategies that, while effective from a marketing perspective, often infringe on individuals' privacy rights. The lack of robust legal protections in this area has left consumers vulnerable to exploitation, with their data being used in ways they may not fully understand or consent to. This is compounded by the fact that many consumers are unaware of the extent to which their data is being harvested and utilized for advertising purposes, highlighting the need for greater transparency and stricter regulatory oversight.

Another significant challenge is the pervasive issue of false advertising on online

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platforms. The internet's global reach and the ease with which information can be disseminated make it an ideal breeding ground for deceptive marketing practices. From fake ads to misleading product claims, these practices not only harm consumers but also erode trust in digital advertising as a whole. The current legal framework has struggled to keep pace with the innovative tactics used by bad actors, resulting in a regulatory environment that is often reactive rather than proactive. The inability to effectively curb false advertising has serious implications, not only for consumer protection but also for the integrity of online markets.

The borderless nature of the internet exacerbates these regulatory challenges. Inconsistent regulations across different jurisdictions create loopholes that can be exploited by companies looking to bypass stricter legal requirements. This is particularly evident in the United States, where varying state laws create a patchwork of regulations that are difficult to enforce uniformly. The lack of a cohesive, nationwide approach to online advertising regulation makes it easier for companies to engage in practices that might be illegal in one state but permissible in another, further complicating efforts to protect consumers and ensure fair competition.

Despite these significant challenges, there are also promising opportunities for improving the regulation of online advertising. One of the most critical areas for future development is the enhancement of data protection laws. Strengthening these regulations will be essential in addressing the privacy concerns associated with big data and personalized advertising. By establishing clear guidelines on data collection, storage, and usage, and by enforcing stringent penalties for violations, regulators can help ensure that consumers' personal information is handled responsibly and ethically.

Another key opportunity lies in the development of more sophisticated mechanisms for detecting and preventing false advertising. Advances in technology, particularly in artificial intelligence and machine learning, offer the potential to create automated systems that can identify inauthentic ads with greater accuracy and efficiency. By leveraging these technologies, regulators can move from a reactive to a proactive stance, intervening before false advertisements have a chance to cause harm.

Furthermore, there is a growing recognition of the need to regulate advertisements that promote harmful or unethical products and behaviors. Governments should focus on strengthening laws that prevent predatory advertising practices, particularly those that target vulnerable populations. For example, stricter regulations could be implemented to curb ads related to gambling, smoking, or other activities that pose significant social and health risks. By doing so, regulators can help protect consumers from being lured into potentially destructive behaviors by manipulative marketing tactics.

In addition to protecting consumers, there is also a need to consider the rights of businesses in the regulatory framework. Companies must be shielded from defamatory content and malicious campaigns that can damage their reputation and brand. This requires a balanced approach that safeguards free speech while also providing legal recourse for businesses that are unfairly targeted by false or derogatory claims.

In conclusion, while the current legal framework for regulating online advertising has significant gaps, these challenges also present opportunities for reform. By enhancing data protection, improving the detection of false advertising, and strengthening laws against predatory practices, regulators can create a more effective and equitable system. This will not only protect consumers but also foster a healthier and more trustworthy online advertising ecosystem. As technology continues to evolve, it is imperative that legal frameworks adapt in tandem, ensuring that the digital marketplace remains a space where both consumers and businesses can thrive securely and fairly.

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