
Blocking Advertisement Blocking: The War over Internet Advertising and the Effect on Intellectual Property

By Jordan L. Walbesser

The mute button on a television remote is a powerful tool. Pressing it reduces the high-decibel barrage of a used car salesman's sales pitch to a whimper. The fast forward button on a digital video recorder plows through the content that destroys a program's artistic delivery and is blatantly inserted during your favorite shows. Engineers have developed methods that allow the same function to be done on the Internet, banishing loud ads, bandwidth hungry animations, and pop-ups that can slow a computer to a crawl. Software that blocks Internet advertising enjoys solid legal protection, but efforts to prevent its use lack enforceability on technical and legal levels. In turn, creators of intellectual property (IP) will need to develop new business models in order to generate revenue from online activity.

Advertisement Blocking

Advertisement blocking can be defined as "[the] blocking of Web advertisements, typically the image in graphical Web advertisements."¹ A number of technical solutions exist and perform advertisement blocking. Adblock Plus, a downloadable plug-in for the Mozilla Firefox Web-browser² is one of the most well known and used advertisement blocking programs.³ "The Adblock Plus add-on consists of two parts: a utility program to block images, scripts, and Flash; and a subscription component that automatically updates its list of what to block."⁴ The software allows a user to manually select which ads to block, to select a constantly updating pre-existing list of ads to block, and allows the user to disable advertisement blocking (known as *whitelisting*) for specific Web sites.⁵ Adblock Plus is far from the first tool to allow users to block advertisements while browsing the Internet. Advertisement blocking

software has existed from as early as 1999 in response to reduced browsing speeds caused by the heavy transmission cost of online advertisements.⁶

Many users have complained about advertisements that are distracting or degrade the user's browsing experience. Some advertisements are so cumbersome that the entire computer runs slower, affecting not just Internet browsing but other concurrent applications. "[T]here are musical advertisements that will not turn off, pop-up advertisements that open new windows in the browser, 'interstitial' ads that take control of the browser between loading other pages and animated pitches that shake, rattle and roll on the screen."⁷

Recently, Web advertisements are becoming a delivery system of choices for hackers. "In May [2007], a virus in a banner ad on tomshardware.com automatically switched visitors to a Web site that downloaded 'malware'—malicious software designed to attack a computer—onto the visitor's computer."⁸ At one point, 6.9 percent of sponsored links led to suspicious sites that could have downloaded malicious software.⁹ In some sense, advertisement blocking software grew out of necessity rather than preference.

In addition, privacy advocates are concerned that data collection from online advertisements will cause discrimination in the financial services and health care fields. "The fear, they say, is discrimination by statistical inference. Your race, gender, sexual orientation and political beliefs, they say, can be inferred by tracking your online behavior."¹⁰ By blocking advertisements, the Web experience is more effectively anonymized.

How Is Advertisement Blocking Accomplished?

Blocking advertisements can be done through a number of technical means, but the majority of the work is generally done at the user's computer. A Web site is a document, typically written in plain

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text interspersed with formatting instructions. A Web page may incorporate elements from other Web sites with suitable HTML anchors. For each element, information is transferred via HTTP (hypertext transfer protocol). The client submits an HTTP *request* message to the server. The server, which stores content or provides *resources*, such as images and advertisements, returns a response message to the client. A response contains completion status information about the request and may contain any content requested by the client in its message body.¹¹ Any time the Internet browser begins to download an element of the Web page, the advertisement blocker first compares the source address to a list of known advertisement addresses and makes a decision on whether to proceed with the download.¹² To be technically accurate, the advertisements are not truly blocked; instead, the computer simply does not ask for them. This way no unnecessary bandwidth is wasted, yet the meaningful content of the Web site is displayed thus reducing transmission costs for both the viewer and site owner.

Since our tastes change, advertisements change as well, including the servers from which they are hosted.¹³ A static advertisement blocker would quickly become obsolete and ineffective. To counteract this, the list of advertisement addresses is continually updated through a number of different methods including adaptive learning,¹⁴ user interaction, and volunteers. The advertisement list that most Adblock Plus users use is updated through the efforts of a small dedicated team of people that freely donate their time by finding and recording the addresses of new advertisements.¹⁵ In general, filtering lists are created in a decentralized fashion and are almost always distributed free.

Indeed, most developers create advertisement blocking software for altruistic means and therefore release the software to the public free. For instance, Adblock Plus is an open-source¹⁶ project allowing anyone to contribute to the design.¹⁷ The licensing of open-source software insures that, unlike TiVo, no one person can decide to forge a deal with prominent Web sites and businesses to change the way the program operates.¹⁸ Other programs create revenue through donations or advertisement replacement. One such program, DoGooder, replaces normally displayed advertisements with other approved advertisement campaigns that

support green initiatives, charitable causes, and non-profit organizations.¹⁹ Despite all the positive manifestations of advertisement blocking software, Web site owners and creators of online IP are often vehemently against the practice.

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In fact, most large, high traffic Web sites are paid by advertisers on a per-view basis.²⁰ A number of other factors can influence the amount paid for an online advertisement, including placement,²¹ location, and size.²² Users with advertisement blocking software installed choose not to download these advertisements, thus the Web site owner cannot receive payment for an advertisement that was never seen. Like a traditional newspaper, many sites have paid positions for writers and need professional publication resources.²³ Web-based companies have not altered their business methods from the traditional print media model and salaries come primarily from online advertising or a private subscription method.²⁴ One of the larger and arguably more respectable technology news sites that protests to the practice of advertisement blocking is Ars Technica. Executives at the Web site claim that they have been forced to reduce staff and benefits because a large portion of readers block their advertisements.²⁵ Some commentators and authors on the Web site have gone so far to compare advertisement blocking to theft. "Accessing the content while blocking the ads therefore would be no less than stealing. Millions of hard working people are being robbed of their time and effort by this type of software."²⁶

The complaints also go beyond monetary reasons. Sometimes, advertisement blocking may cause a perfectly legitimate site to function improperly.²⁷ Although most advertisement blockers can be easily disabled by the user, those lacking technical savvy and patience may simply navigate to a different, better working site. (One argument is that Web site owners should be mindful of this practice and test their sites accordingly.) The aesthetics of a site

can also be negatively altered when advertisements are removed that were being used as buffer space between content. Regardless of the reason, some creators of IP are discouraged and even infuriated over the use of advertisement blocking software. Some resort to technical solutions,²⁸ others consider legal action.²⁹

As owners of their Web sites, technical solutions are up to their own discretion. Instead, the question now comes to whether the practice of advertisement blocking is legal. As mentioned earlier, some site owners have tried to compare the use of advertisement blocking software to theft.³⁰ In comparison to the crime, this is a poor argument, as the practice hardly falls under any classic definition of theft.³¹ By nature of the HTTP architecture, a Web site creator authorizes content to be transmitted to any computer that properly requests it.³² When a computer using an advertisement blocker requests the data from the Web site's address, the server willingly replies with the data,³³ thus no theft occurs. If the advertisement blocker believes an item to download is an advertisement, it will not contact the server for a download and nothing is taken.

Theft may be plausible analogy when a content owner blocks certain http requests, through a paywall³⁴ or other technical means, and when a blocked reader circumvents these structures to fool the Web site to deliver the data to an unintended user. However, this is not how advertisement blocking software functions.

Advertisement Blocking and the Law

To date, there have been few legal actions involving advertisement blocking that have made their way to the courts. In *Zango v. Kaspersky Lab*, Zango brought suit against a distributor of software (Kaspersky) designed to help block or filter potentially malicious software. The Kaspersky software blocked Zango's software.³⁵ The court used § 230 of the Communications Decency Act of 1996 to protect Kaspersky.³⁶ Section 230(c)(2)(B) provides "protection for 'good samaritan' blocking and screening of offensive material."³⁷ The court pointed to legislative history to show that protections are extended to any "provider of software . . . or enabling tools that . . . filter, screen, allow or disallow content."³⁸ In fact, one of the policy objectives behind the bill is "to encourage

the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services[.]"³⁹ Advertising blocking software seems to fall squarely within the Good Samaritan protection. It screens Web pages for content to disallow (some of which may be offensive)⁴⁰ and maximizes user control of what they want to see.

Regardless, some authors and IP owners still maintain that the practice is illegal. In fact, one author suggests that Web site owners claim tortious interference with contractual relations against the programmers, distributors, and users of advertisement blocking software.⁴¹ One who intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise causing the third person not to perform the contract is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract.⁴²

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However, it is highly unlikely that the action of advertisement blocking would be deemed improper.⁴³ No US court has addressed whether advertisement blocking software authors would be liable for tortious interference with a contract.⁴⁴ Furthermore, the idea that the software interferes with the advertisements greatly overstates the actual mechanics of the Internet.

It has also been claimed that blocking advertisements may be a breach of copyright law.⁴⁵ In *WGN Continental Broadcasting Co. v. United Video, Inc.*,⁴⁶ the court provided a method to classify stripping information from a transmission as a violation of copyright:

It [UVI] may not even delete commercials; an important part of the scheme set up in section 111 is the requirement that any cable system that wants to retransmit a broadcast signal without negotiating with the broadcast

station or copyright owner transmit intact any commercials it receives from that station.⁴⁷

Despite legislative history,⁴⁸ this decision could stretch to Web sites and advertisement blocking software. If it does, the deletion of the teletext from United Video's retransmission was an alteration of a copyrighted work and hence an infringement under familiar principles.

A copyright licensee who "makes an unauthorized use of the underlying work by publishing it in a truncated version" is an infringer, and any "unauthorized editing of the underlying work, if proven, would constitute an infringement of the copyright in that work similar to any other use of a work that exceeded the license granted by the proprietor of the copyright."⁴⁹

Although no legal action has been taken, content providers have fought against consumers with a number of different tactics.

A case for contributory copyright infringement is generally straightforward. The elements for copyright infringement are "(1) that the Plaintiff owned the copyrighted material; and (2) that the Defendant infringed on at least one of the five exclusive rights set out in 17 U.S.C. § 106."⁵⁰ In order for this legal theory to hold water, the entire Web site must be a copyrightable work. However, a Web site will generally be unable to be copyrighted. Likewise, it is unlikely that the advertisements themselves would qualify for copyright protection, as if advertisements are copyrightable subject matter, advertisement blockers neither truncate nor edit the advertisements.

There are many counterarguments that validate advertisement blocking software. One such argument is the practice of "whitelisting." Many programs, including Adblock Plus, allow users to control which sites display advertisements. If a user feels motivated, the user can select which sites display advertisements, rewarding the content providers for their work, relevant advertising, and use of tasteful design.

Even if a user continues to block advertisements on a Web site, the quality of the Web site content

will drive greater advertising gains in the long term. For instance, a reader may refer a Web site or a particularly insightful article to five friends. Now, five people view the site instead of just one and some of these additional viewers may view the ads or purchase products, a net total gain driven from excellent content. Preventing advertisements from downloading also speeds up the process of viewing content on the Internet, thereby creating a more favorable experience. In locations where bandwidth and speeds are less than optimal, these advertisements can make or break the utility of a site. Mobile phones, for instance, often operate on limited bandwidth when the user has to pay per kilobyte downloaded. Removing advertisements actually saves the user money and time.

Although no legal action has been taken, content providers have fought against consumers with a number of different tactics. Ars Technica conducted a "12 hour experiment" to see if it was possible to block visitors who used advertising blocking software.⁵¹ They claim that the test was successful and that only those that blocked advertisements were unable to see the site. Even more extreme, some authors have blocked their sites to entire browsers in protest of the blocking applications.⁵²

Other sites have expanded their terms of service to extend beyond statutorily granted copyright protection.⁵³ Although courts have found a Web site's terms and conditions to be enforceable even if users were never forced to actually view or accept them,⁵⁴ it is unlikely that these additions would be viewed as reasonable. For instance, the Ars Technica terms of service seem to disallow resizing your browser window or using browser functionality that increases text size for those with disabilities. In addition, the user has no way to reject these terms. One could argue that, if a user disagreed with certain terms while fetching the Web site, the Web site still delivers the content despite the disagreement, thus waiving the clause.

These actions have often caused backlash with a site's users. During Ars Technica's 12 Hour Experiment, many voiced their complaints about the lack of warning and notification in addition to the bewilderment that a Web site would actively prevent readers from viewing their publicly and freely posted material.⁵⁵

Not all methods to prevent advertisement blocking are as confrontational. Some sites have shifted

to serving advertisements from their own servers. These addresses would generally escape common filtering rules,⁵⁶ however “annoying” advertisements still make their way to user-maintained blacklists.⁵⁷

Due to the increasingly intrusive nature of certain advertisement methods, Congress and the Federal Trade Commission are in discussions regarding online data collection, disclosure, and use.⁵⁸ In addition, concerns over privacy issues have prompted marketers to reduce online behavioral advertising by more than 75 percent.⁵⁹

Businesses have been aware since at least 2001 that ad revenue is decreased by the presence of advertisement blocking software.⁶⁰ Instead of making more subtle advertisements, marketers have traditionally fought back with “bigger, more intrusive ads” that make them harder to ignore.⁶¹ Despite this back and forth, online advertising revenues hit nearly \$6 billion in the first quarter of 2010, dealing out a record 1.1 trillion advertisements to US Internet users.⁶²

Instead of fighting against the advertisement blockers, other business models have been suggested, including text-link advertisements,⁶³ affiliate links,⁶⁴ and selling products on the site. All of these options have minimal start up costs and higher quality returns.⁶⁵

Not all major companies are against the advertisement blocking movement. In fact, Microsoft was originally going to include advertisement blocking in its Internet Explorer product before backing out due to advertiser concerns.⁶⁶ Despite this, in a statement Microsoft remained positive toward applications.

It would not be appropriate for Microsoft to comment on the merits or demerits of a specific add-on, or group of add-ons. Provided they have not been designed with malicious intent and do not compromise a user’s privacy or security, Microsoft is pleased to see new add-ons that add to the range of options that users have for customizing their browsing experience.⁶⁷

Conclusion

In conclusion, “[t]here is only one reliable way to make sure your ads aren’t blocked—make sure the users don’t want to block them. Don’t forget

about the users. Use ads in a way that doesn’t degrade their experience.”⁶⁸ Internet advertisements do not magically give content providers money solely through their existence. Instead, they are funded by Internet purchases and investments by companies that want their products to sell better. Blocking advertisements allows these funds to be better distributed to reach people that want to see them. Marketing statistics will be more accurate and meaningful, as there would be no need to estimate how many viewers would refuse to click on any advertisement.⁶⁹

All too often, opponents of advertisement blocking claim that users access “free” content in exchange for having to view advertisements.⁷⁰ This is false. Quite simply, advertisements began to appear on the Internet because users were there. Content came first; the advertisements were just a way to cash in on the popularity of one’s content. As an analogy, if billboards alongside the highway were to disappear, there still would be no need to charge the drivers for using it. Push too long or too hard and the advertisements may even become detrimental to the products that they promote. As one user wrote, “So, let me turn off [advertisement blocking], so I can watch them still wither into nothingness. I’m no longer a free-rider, they just bought something with their advertising that wasn’t ever going to pay off, my eyeballs.”⁷¹

Notes

1. Ad Blocking, http://www.marketingterms.com/dictionary/ad_blocking (last visited May 11, 2010).
2. Firefox is an Internet browser available free at www.mozilla.org. Firefox is an open-source application and users are encouraged and licensed to write and/or modify the program to create applications like Adblock Plus.
3. The application has been downloaded more than 80 million times with nearly 10.5 million active daily users, the author included. *Adblock Plus Statistics*, May 20, 2010, <https://addons.mozilla.org/en-US/firefox/statistics/addon/1865>.
4. Erik Larkin, “Adblock Plus Hides Ads in Firefox,” *PCWorld*, May 12, 2010, http://www.pcworld.com/article/194641/adblock_plus_hides_ads_in_firefox.html.
5. http://www.pcworld.com/article/194641/adblock_plus_hides_ads_in_firefox.html.
6. See Ashley Dunn, “Ad Blockers Challenge Web Pitchmen,” *L.A. Times*, Mar. 2, 1999, at A1.

7. See Ashley Dunn, "Ad Blockers Challenge Web Pitchmen," *L.A. Times*, Mar. 2, 1999, at A1.
8. Emily Steel, "Hackers Can Now Deliver Viruses via Web Ads," *Wall St. J.*, July 19, 2007, <http://online.wsj.com/article/SB118480608500871051.html>.
9. Emily Steel, "Hackers Can Now Deliver Viruses via Web Ads," *Wall St. J.*, Jul. 19, 2007, <http://online.wsj.com/article/SB118480608500871051.html> (compiled by McAfee, a leading anti-virus research and prevention firm).
10. Steve Lohr, "Privacy Concerns Limit Online Ads, Study Says," *NY Times*, May 19, 2010, <http://bits.blogs.nytimes.com/2010/04/30/privacy-concerns-limit-online-ads-study-says/>.
11. See generally R. Fielding, J. Gettys, J. Mogul, H. Frystyk, L. Masinter, P. Leach, T. Burners-Lee, *RFC 26 –Hypertext Transfer Protocol–HTTP/1.1*, June 999.
12. Frequently Asked Questions—Adblock Plus internals, http://adblockplus.org/en/faq_internal (last accessed May 18, 2010).
13. "Ad Blocking with Ad Server Hostnames," <http://pgl.yoyo.org/adserver/> (last accessed Sept. 27, 2010).
14. Babak Esfandiari and Richard Nock, "Adaptive Filtering of Advertisements on Web Pages," Int'l World Wide Web Conf., 2005, available at <http://delivery.acm.org/10.1145/1070000/1062796/p916-esfandiari.pdf?key1=1062796&key2=6344234721&coll=GUIDE&dl=GUIDE&CFID=88972375&CFTOKEN=28091733>.
15. A majority of the work for "EasyList" was done by one man, a 50-year-old machinist in his spare time. Peter Whoriskey, "One Man, One Long List, No More Web Ads," *Wash. Post*, June 25, 2008.
16. Open source software is very often developed in a public, collaborative manner. Open-source software is the most prominent example of open-source development and often compared to (technically defined) user-generated content or (legally defined) open content movements. See Open Source Initiative, <http://www.opensource.org/index.php> (last accessed Sept. 27, 2010).
17. Noam Cohen, "Whiting Out the Ads, but at What Cost?," *N.Y. Times*, Sept. 3, 2007, <http://www.nytimes.com/2007/09/03/technology/03link.html?em&ex=1188964800&en=f852a56f2cee4fa5&ei=5087%0A>.
18. <http://www.nytimes.com/2007/09/03/technology/03link.html?em&ex=1188964800&en=f852a56f2cee4fa5&ei=5087%0A>.
19. Lee Mathews, "DoGooder Bring Its 'Advertising With a Conscience' to Google Chrome," *Download Squad*, May 8, 2010, <http://www.downloadsquad.com/2010/05/08/dogooder-brings-its-advertising-with-a-conscience-to-google-ch/>.
20. Ken Fisher, "Why Ad Blocking is Devastating to the Sites You Love," *Ars Technica*, Mar. 19, 2010, <http://arstechnica.com/business/news/2010/03/why-ad-blocking-is-devastating-to-the-sites-you-love.ars>.
21. Lawrence M. Hertz, "Advertising Transactions on the Internet," 686 *Practising L. Inst.* 467, 475 (2002).
22. See Standards and Guidelines, <http://www.iab.net/standards/adunits.asp> (last visited May 17, 2010).
23. Joshua Topolsky, "Want to Write for Engadget?," <http://www.engadget.com/2010/01/21/want-to-write-for-engadget/> (last accessed Sept. 27, 2010).
24. <http://www.engadget.com/2010/01/21/want-to-write-for-engadget/>.
25. <http://www.engadget.com/2010/01/21/want-to-write-for-engadget/>. Ars Technica is owned by Condé Nast, a company with an estimated \$5 billion in annual revenue. Johnnie L. Roberts, "Magazine Publisher Conde Nast May Lose \$1 Billion," *Newsweek*, Oct. 8 2009, <http://www.newsweek.com/2009/10/07/just-how-much-did-conde-nast-lose.html>. How much advertisement blocking on the Ars Technica site contributed to these layoffs is difficult to determine, especially in light of excessive spending in Condé Nast. See Stephanie Clifford, "Cuts Meet a Culture of Spending at Condé Nast," *NY Times*, Sept. 27, 2009, <http://www.nytimes.com/2009/09/28/business/media/28conde.html?r=1>.
26. Jeremy Kirk, "Firefox Ad-Blocker Extension Causes Angst," *Infoworld*, Aug. 23, 2007, <http://www.infoworld.com/t/applications/firefox-ad-blocker-extension-causes-angst-900>.
27. See "Watching Newsround and Sportsround," *BBC News*, Nov. 12, 2008, <http://news.bbc.co.uk/cbbcnews/hi/newsid7680000/newsid7684600/7684614.stm>.
28. Oli Warner, "How to Block Adblock," http://thepecpy.com/read/how_to_block_adblock/ (last accessed Sept. 27, 2010).
29. Anne Borache and Declan McCullagh, "Web Ad Blocking May Not be (Entirely) Legal," http://news.cnet.com/Web-ad-blocking-may-not-be-entirely-legal/2100-1030_3-6207936.html (last accessed Sept. 27, 2010).
30. Jeremy Kirk, "Firefox Ad-Blocker Extension Causes Angst," *Infoworld*, Aug. 23, 2007, <http://www.infoworld.com/t/applications/firefox-ad-blocker-extension-causes-angst-900>.
31. See Model Penal Code § 223 (1962).
32. <http://pgl.yoyo.org/adserver/>.
33. <http://pgl.yoyo.org/adserver/>.
34. "paywall is a digital mechanism to separate content that one has to pay for from the rest of the content on the net." Jon Radoff, "A Brief History of Paywalls," <http://radoff.com/blog/2009/11/30/a-brief-history-of-paywalls/>.
35. The Zango software has been classified by a number of companies as adware that "monitors the contents

- of Internet browser windows. It opens the Web pages of partner sites when certain keywords are detected in Internet search or shopping browser windows. This program also installs files" *Adware.ZangoSearch*, http://www.symantec.com/security_response/writeup.jsp?docid=2005-050416-3519-99 (last accessed Sept. 27, 2010).
36. *Zango, Inc. v. Kaspersky Lab, Inc.*, 568 F.3d 1169, 1173 (2009).
37. 47 U.S. § 230(c)(2)(B).
38. 141 Cong. Rec. H8470 (Aug. 4, 1995).
39. 47 U.S. § 230(b)(3).
40. Jeff Atwood, "How Not to Advertise on the Internet," <http://www.codinghorror.com/blog/2009/07/how-not-to-advertise-on-the-Internet.html>.
41. See generally Andrew Saluke, "Ad-Blocking Software as Third-Party Tortious Interference with Advertising Contracts," 7 *Fla. St. U. Bus. Rev.* 87 (2008).
42. Restatement (Second) of Torts § 766 (2007).
43. To determine whether interference is improper, the following factors are considered: (a) the nature of the conduct, (b) the actor's motive, (c) the interests of the other with which the actor interferes, (d) interests sought to be advanced by the actor, (e) the social interests in protecting the freedom of action of the actor . . . Restatement (Second) of Torts § 767 (2006). Since the social interests (the use and enjoyment of one's own property) and motive of the actor (protecting his property) outweigh the costs, courts would likely rule that the interference is not improper.
44. Andrew Saluke, "Ad-Blocking Software as Third-Party Tortious Interference with Advertising Contracts," 7 *Fla. St. U. Bus. Rev.* 87 (2008).
45. John L. Hemmer, Comment, "The Internet Advertising Battle: Copyright Laws Used to Stop the Use of Ad-Blocking Software," 24 *Temp. J. Sci. Tech. & Envtl. L.* 479 (2006). But see "Rethinking Copyright for Advertisements," 119 *Harv. L. Rev.* 2486 (2006) (advocating that advertisements are not presumptively copyrightable subject matter).
46. *WGN Continental Broadcasting Co. v. United Video, Inc.*, 693 F.2d 622 (7th Cir. 1982).
47. 693 F.2d at 623. See also 17 U.S.C. § 111(c)(3).
48. The legislative history is clear that this exemption protects only passive carriers of television signals: "The general exemption under Section 111 extends to secondary transmitters that act solely as passive carriers. Under clause (3), a carrier is exempt if it 'has no direct or indirect control over the content or selection of the primary transmission" S. Rep. No. 94-473, 94th Cong., 1st Sess. (1975) at 78; H. R. Rep. No. 94-1476, 94th Cong., 2d Sess. (1976) at 92 (emphasis supplied), U.S. Code Cong. & Admin. News 1976, pp.5659, 5706.
49. *Id.* at 625 (quoting *Gilliam v. Am. Broadcasting Cos.*, 538 F.2d 14, 20 (2d Cir. 1976)).
50. *Perry v. Sonic Graphic Sys., Inc.*, 94 F.Supp.2d 616, 618 (E.D. Pa. 2000).
51. Ken Fisher, "Why Ad Blocking is Devastating to the Sites You Love," *Ars Technica*, Mar. 19, 2010, <http://arstechnica.com/business/news/2010/03/why-ad-blocking-is-devastating-to-the-sites-you-love.ars>.
52. Jeremy Kirk, "Firefox Ad-Blocker Extension Causes Angst," *Infoworld*, Aug. 23, 2007, <http://www.infoworld.com/t/applications/firefox-ad-blocker-extension-causes-angst-900> (blocking the Firefox browser. It should be noted that the Web site is no longer in service).
53. "The copying, reproduction, publication, display, rearrangement, redistribution, modification, revision, alteration, cropping, re-sizing, reverse engineering, movement, removal, deletion, or other use or change by you, directly or indirectly, of any such Website Content, including but not limited to the removal or alteration of advertising, is strictly prohibited." User Agreement, *Ars Technica*, <http://arstechnica.com/site/user-agreement.ars>, last visited May 20, 2010.
54. *Major v. ServiceMagic*, 2009 WL 4959941 (Mo. App. Dec. 23, 2009).
55. The article had more than 2,000 user comments, overwhelming critical of the decision. Ken Fisher, "Why Ad Blocking is Devastating to the Sites You Love," *Ars Technica*, Mar. 19, 2010. <http://arstechnica.com/business/news/2010/03/why-ad-blocking-is-devastating-to-the-sites-you-love.ars>.
56. Most advertisement blocking software use filtering to determine which addresses serve advertisements. By serving advertisements from the content site, filters are unable to easily block the advertisement without also blocking the content.
57. Noam Cohen, "Whiting Out the Ads, but at What Cost?," *NY Times*, Sept. 3, 2007, <http://www.nytimes.com/2007/09/03/technology/03link.html?em&ex=1188964800&en=f852a56f2cee4fa5&ei=5087%0A>.
58. <http://www.nytimes.com/2007/09/03/technology/03link.html?em&ex=1188964800&en=f852a56f2cee4fa5&ei=5087%0A>.
59. Steve Lohr, "Privacy Concerns Limit Online Ads, Study Says," *NY Times*, May 19, 2010, <http://bits.blogs.nytimes.com/2010/04/30/privacy-concerns-limit-online-ads-study-says/>.
60. Brian Wheeler, "Marketeers Prefer Email to Banners," *BBC News*, Mar. 20, 2001, <http://news.bbc.co.uk/2/hi/business/1229478.stm>.
61. <http://news.bbc.co.uk/2/hi/business/1229478.stm>.

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62. Robin Wauters, "U.S. Online Ad Revenues Hit Nearly \$6 Billion in the First Quarter," *TechCrunch*, May 13, 2010, <http://techcrunch.com/2010/05/13/u-s-online-ad-revenues-hit-nearly-6-billion-in-the-first-quarter/>.
63. Text-link advertisements are links that are procedurally created on words in the content. They often appear as a double underline and when hovered over with the cursor and produce a small advertisement. See David Kesmodel and Julia Angwin, "Is It News . . . or Is It an Ad?," *Wall St. J.*, Nov. 27, 2006, http://online.wsj.com/public/article/SB116412309878729621-1mr_uV3L7-Bc8GGLks5qCcsusmyw_20071127.html.
64. Affiliate marketing—using one Web site to drive traffic to another—is a form of online marketing that is frequently overlooked by advertisers. Evgenii Prussakov, *A Practical Guide to Affiliate Marketing*, pp.16-17, 2007.
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