

The (i)llegality of Ad Blocking

UNITED STATES

- Currently legal
- No legal precedent against ad blockers

MAIN LEGAL ARGUMENTS

- Piracy & Theft
- Antitrust
- Unfair and Deceptive to Consumers
- Censorship (public policy)
- Unethical (public policy)

PIRACY (COPYRIGHT INFRINGEMENT) + THEFT

- Most common arguments against ad blocking
- Publishers generate content and earn money by selling the content through ads
- Consuming copyrighted content without ads = unauthorized reproduction = **piracy**
- Analogous to music industry
 - Copyrighted content = copyrighted content:
 - Form doesn't matter – music, text, or images
 - Reminiscent of Limewire/Napster → iTunes
 - Will news content sites → Apple News?
- Consuming content without “paying” = **theft**

ANTITRUST

- Sherman Act, Clayton Act, FTC Act
 - Restrict collusive practices that result in the restraint of trade
 - Restrict M&A that could substantially lessen competition
 - Prohibit creation of monopoly and abuse of power

ANTITRUST

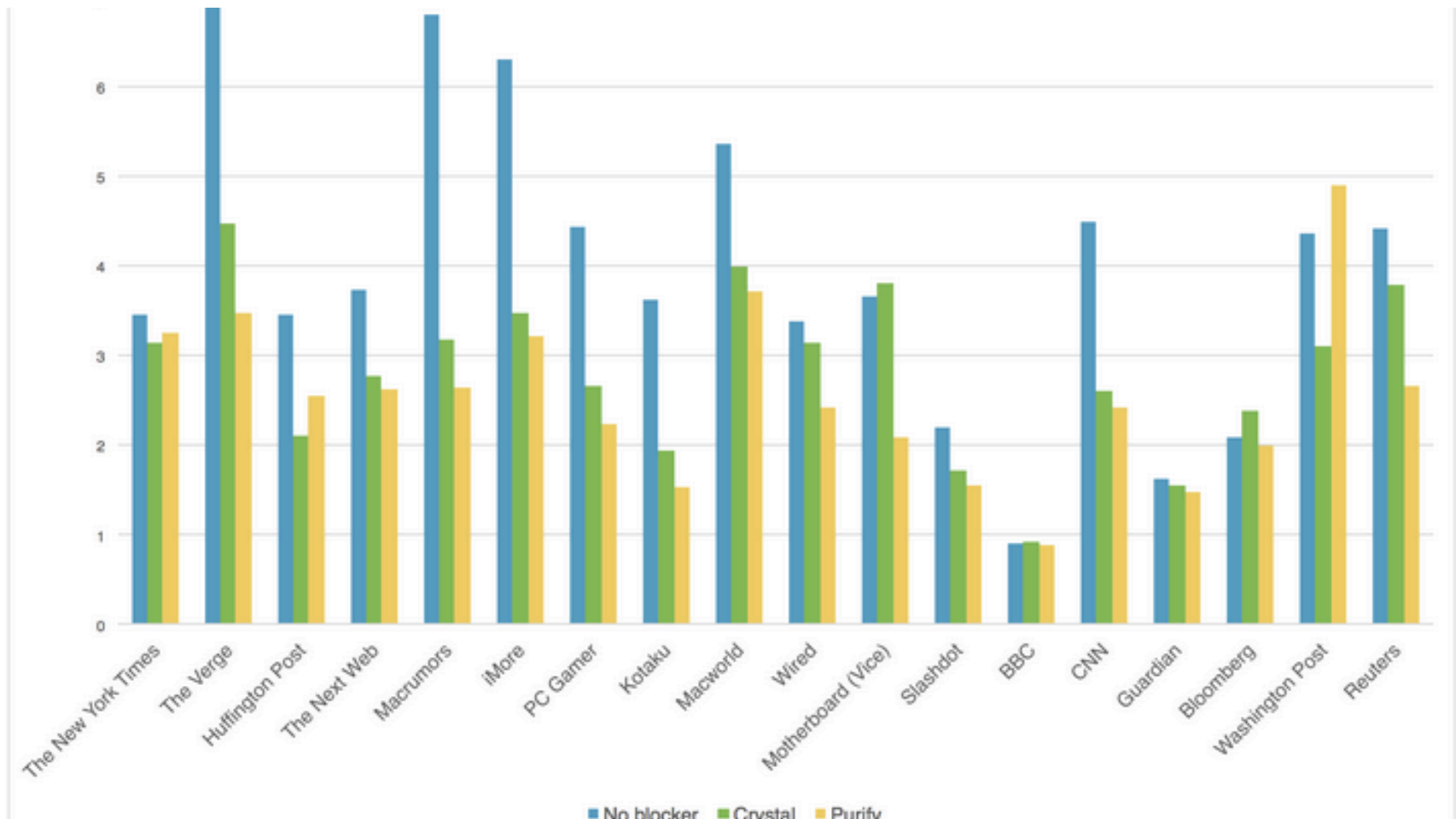
- No known cases in the US based on this cause of action
- May see an action in the future
 - Possibilities
 - Ad Blocking or Acceptable Ads standard becomes a requirement imposed by a group rather than a consumer-based option
 - Ex. If big players part of Acceptable Ads board, could create platform/browser based controls for other ad networks, but exempt themselves for specific situations
 - If “Independent Board” of Acceptable Ads colludes to allow Acceptable Ads profitable for that group, but restrain trade by making unacceptable ads by players outside of board
 - Could come from ad tech competitors that feel restricted (e.g. Google antitrust investigation in EU lobbied for by OpenX and AppNexus)*

*<http://recode.net/2015/07/22/google-may-face-another-eu-case-this-one-is-about-ads/>

UNFAIR + DECEPTIVE / FTC ACT

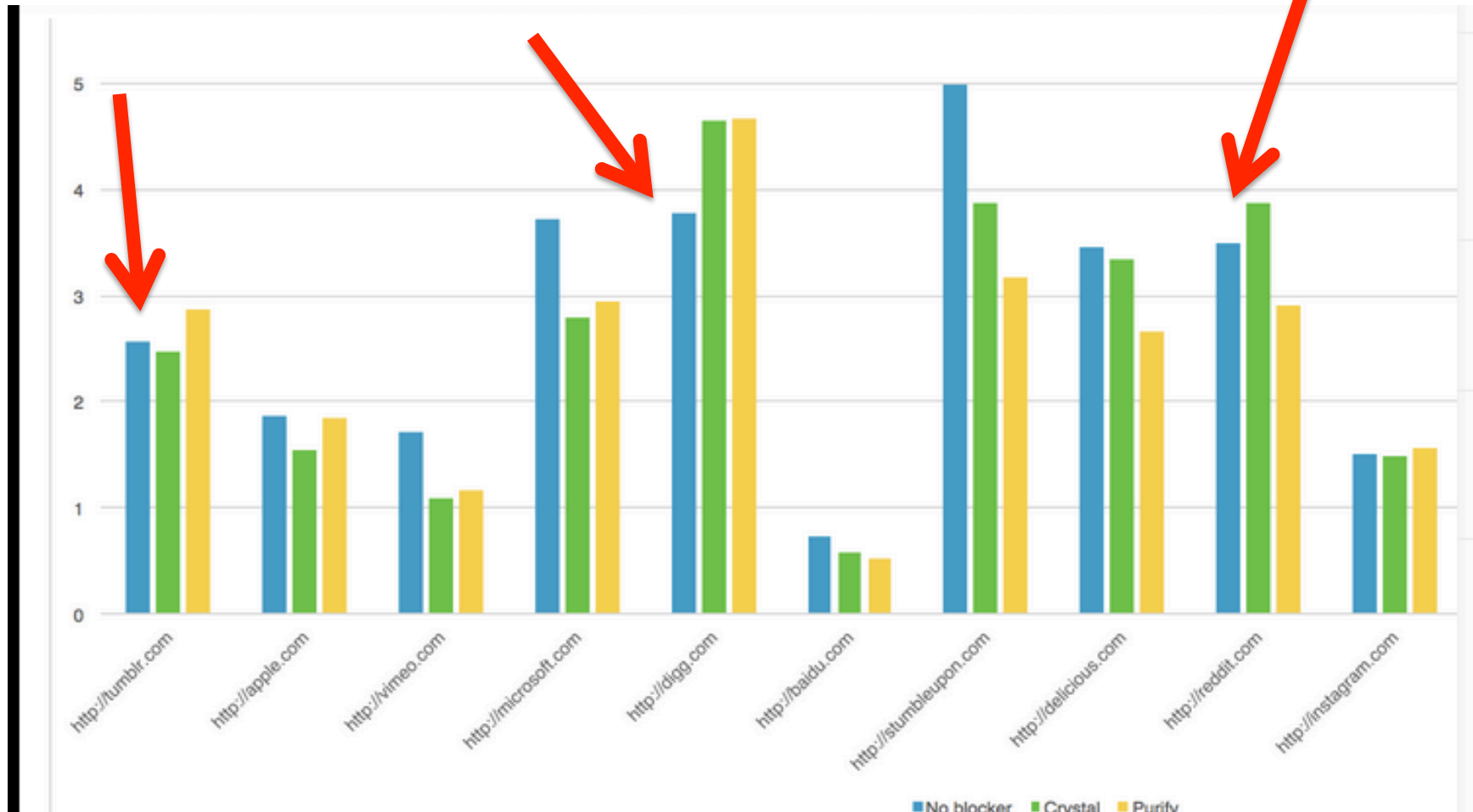
- Consumer protection action, based on Section 5 of the FTC Act
- Prohibits *unfair or deceptive acts or practices in or affecting commerce*.
- FTC would bring action on behalf of consumers based on Ad Blocker claims that may be *unfair or deceptive*
 - Ex. Performance of Ad Blockers – Ad Blocker claims to save data, but actually uses more data, thus costing a consumer more money

IOS9 AD BLOCKER PERFORMANCE NEWS WEBSITES (MOSTLY TEXT BASED)



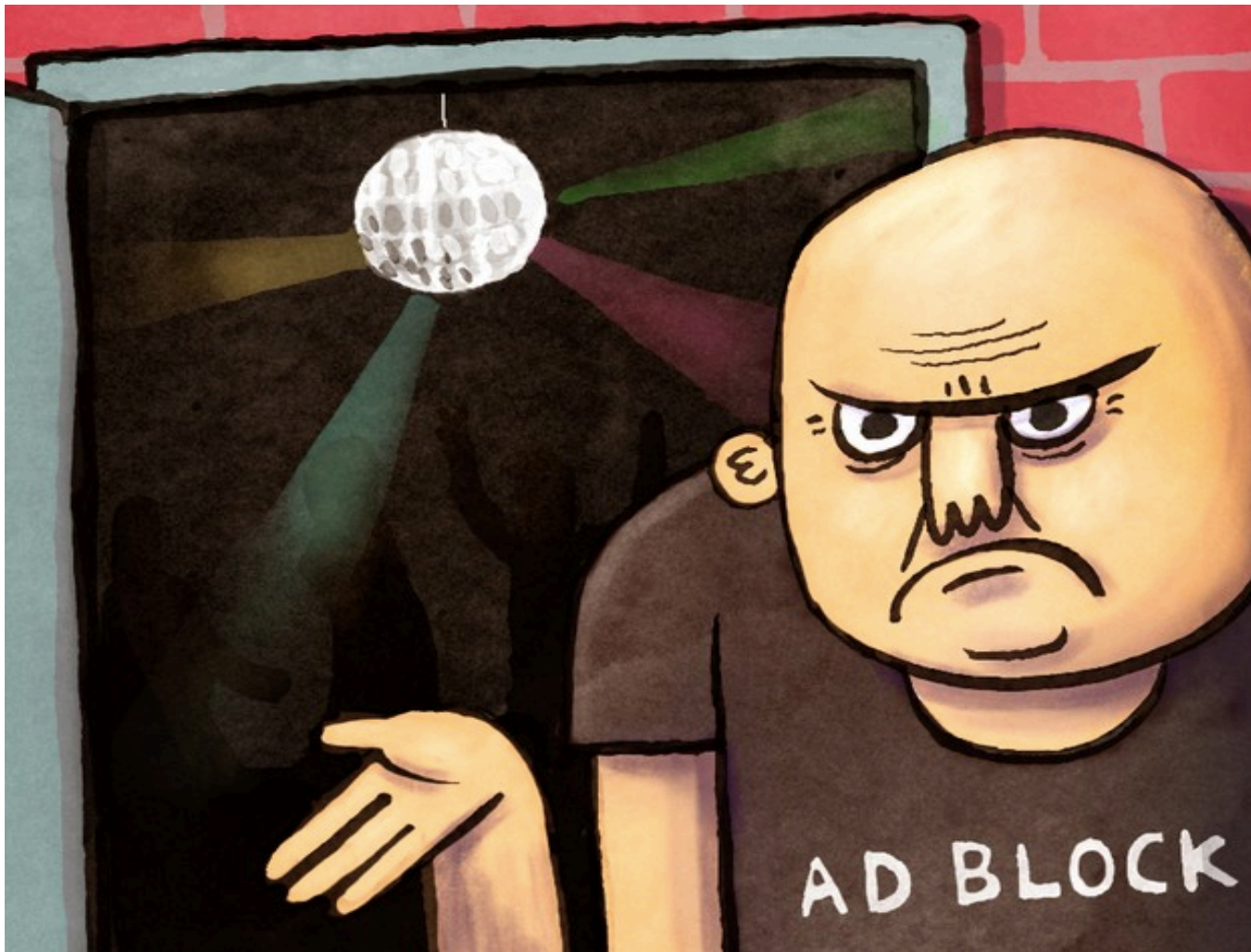
<http://thenextweb.com/apple/2015/09/02/ios-9-ad-blocking-will-hurt-publishers-more-than-any-other-websites/>

iOS9 AD BLOCKER PERFORMANCE ACROSS WEB (TEXT + IMAGES)



CENSORSHIP

- A public policy-based argument
- Empowering ad blocking companies to censor content across the web and determine what is “acceptable”
- Takes away from a free and open Internet
- Browser based choices already exist
- Can choose not to accept tracking cookies via browser or device or signal DNT and still see ads
- Mobile environment - platform-based rules already exist for advertising
 - Apps: Google Play policies evolved for ads in past years
 - No browser setting, homescreen shortcuts or icons
 - No system level notifications



Cartoon from <https://pando.com/2015/02/04/adblock-plus-uses-its-free-software-to-blackmail-google-and-other-large-advertising-companies/>

UNETHICAL

- A policy-based argument
- Forced to pay a third party to unblock ads based on what that third party (+ its “friends”) deems appropriate
 - Diverting ad spend into own pockets is similar to extortion or blackmail
 - Leads to creation of “clickbait” text ads = ads may become even more distracting and less interest-based OR it may be unclear they are ads
 - Some ad blocking companies “let publishers choose which ads to show”
 - Already a viable option with many ad networks and advertisers, so an ad block company would still divert profits from the publisher
- Adverse Effect on Everybody:
 - Publisher loses revenue, no incentive to create content
 - Advertiser has a smaller pool of users to show interest-based ads
 - Consumer is flooded with irrelevant ads and may miss ads they want

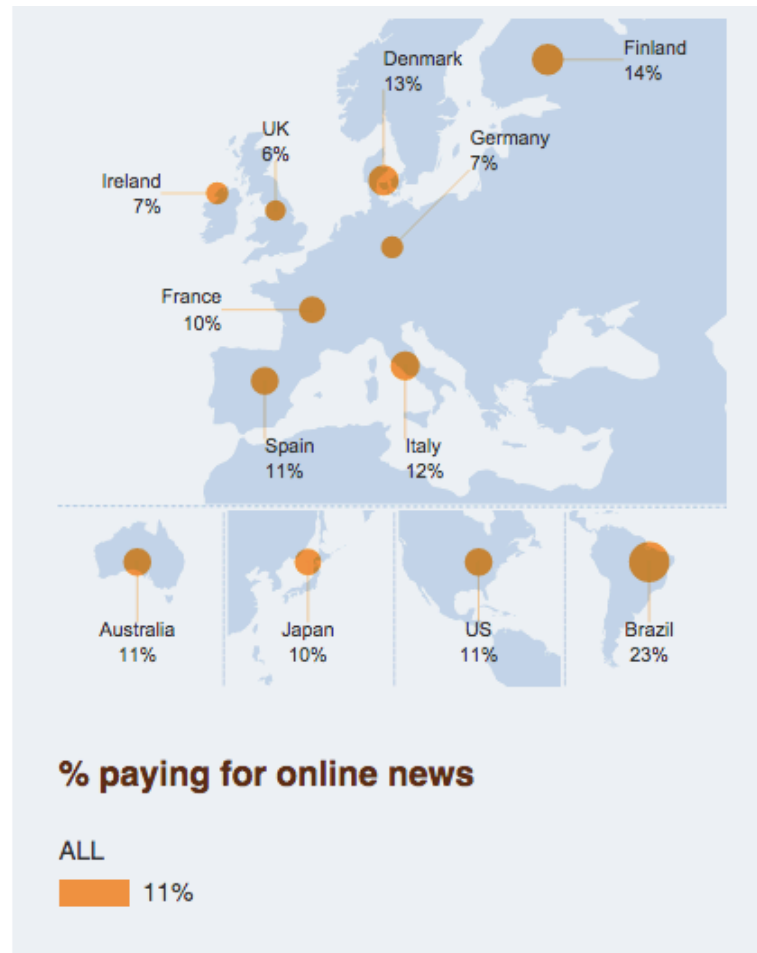


Advertisers & Ad Networks

CONSUMERS DON'T WANT TO PAY FOR CONTENT

US = 11%
ALL = 11%

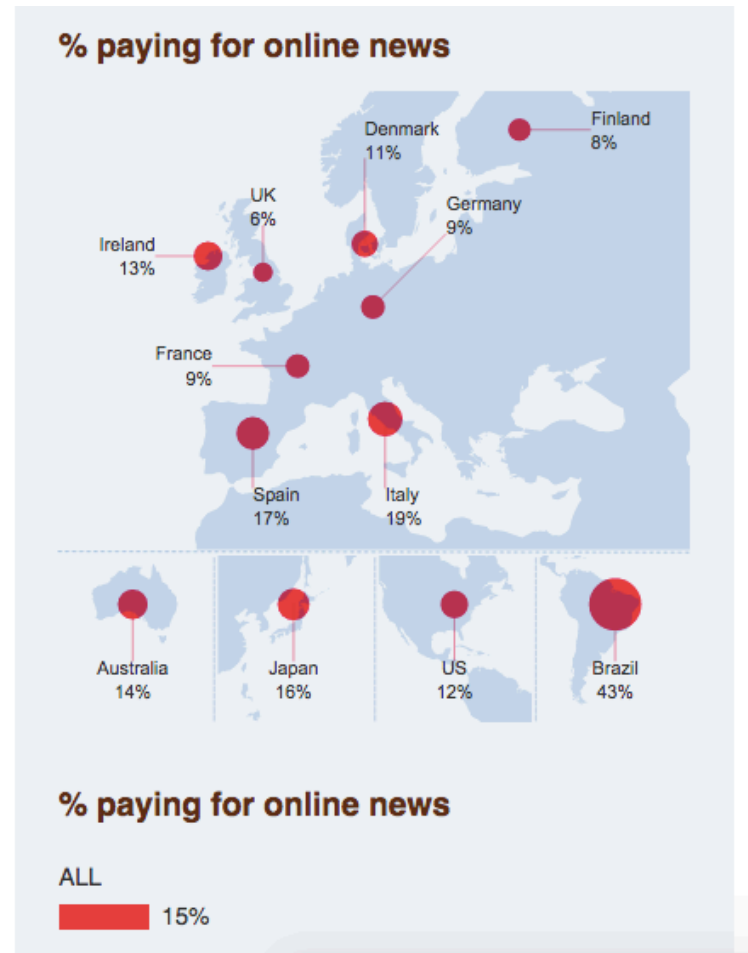
% PAID FOR ONLINE
NEWS IN LAST YEAR



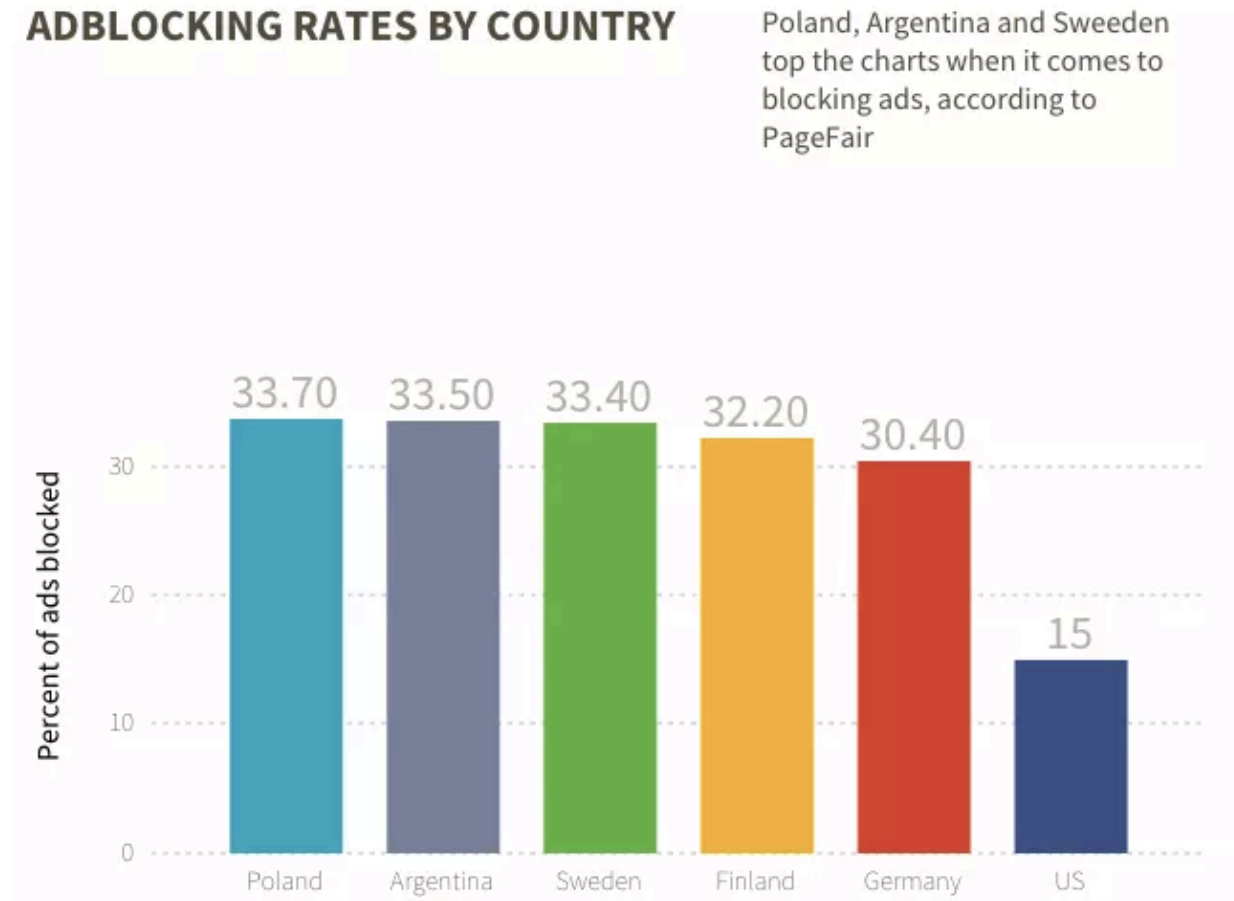
FUTURE LIKELIHOOD TO PAY

US = 12%
ALL = 15%

% PLANNING TO PAY
FOR ONLINE NEWS



US CONSUMERS LESS LIKELY TO BLOCK ADS



Digiday, *The Global Rise of Ad Blocking in 4 Charts*, <http://digiday.com/publishers/global-rise-ad-blocking-4-charts/>, numbers by PageFair

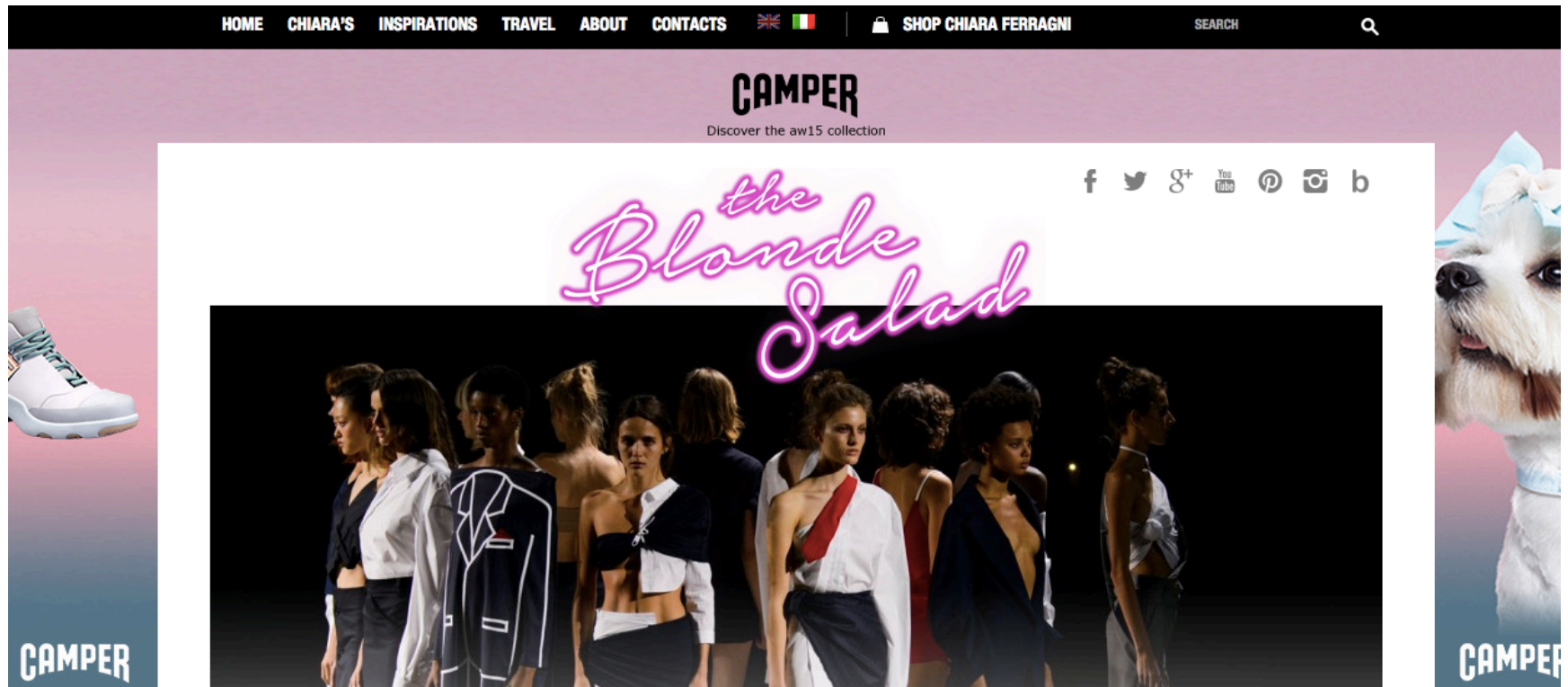
main goal

is to reach a relevant audience and enable publishers to create content.

Ad Unit Innovation

- Ad Unit Innovation
 - Display Ads Past
 - Typically when you see a system notification ad, it's probably spam – most of the industry doesn't display those types ad units
 - For mobile, platforms have already put limits on “acceptable ad units”
 - Ex. Google Play Developer Content Policy
 - “Must not simulate or impersonate the user interface of any app, or notification and warning elements of an operating system”
- “Acceptable” standards have changed in the past and the industry has adapted
- **New legal issues will arise for new “acceptable” ad units:**
 - Clickbait v. Legitimate text based native advertising for news
 - Clickable background image that someone likes - labeling
 - How/when will an ad be appropriately identified as an ad?

Example - Blog background = Ad



Data Based Innovation

- Utilize Data in New Ways
 - Better targeting of consumers
 - Ex. Advertiser may have permission to use data and will now have incentive to innovate on its use
- Increased Data Sharing
 - Recent collective announced with companies utilizing advertiser data to better match audiences
- **New legal issues will arise out of new data use**
 - Less data with greater prevalence v. requiring opt-in to data collection for greater targeting = privacy/DNT debate will expand

Thank You

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