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Review of "Content Confusion", a Book by Michelle A. Amazeen

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Abstract: With the advent of social media, authors in law, sociology, and political science have widely addressed the topic of fake news. In her book *Content Confusion. News Media, Native Advertising and Policy in an era of Disinformation*, Michelle A. Amazeen makes a very important argument in this debate. She argues that native advertising is "purposefully created to blur the lines between advertising and editorial in order to mislead audiences". The author adopts a comprehensive methodology to understand native advertising. She offers a comprehensive perspective on the legal factors that explain the proliferation of native advertising and the ineffectiveness of regulation. Her interdisciplinary methodological framework is particularly effective for studying this phenomenon. After discussing each chapter in detail, this review returns to two main arguments: the commercial speech doctrine as interpreted by the Supreme Court today, and the impact of the author's argument on the platform sector.

Keywords: native advertisement, digital news, news consumption, First Amendment, media regulation

1. Introduction

With the advent of social media, the topic of fake news has been addressed widely by authors in law, sociology and political science (Hasen 2007; Rosenfeld 2019). A majority of the authors take for granted that it is the democratisation of expression that has led to the increase in the circulation of false news, thereby calling into question the assumptions underlying the unfettered marketplace of ideas (Napoli 2018; Ho and Schauer 2015).

In her book *Content Confusion. News Media, Native Advertising and Policy in an Era of Disinformation*, Michelle A. Amazeen makes a very important argument in this debate. In the first chapter, she argues that native advertising, defined as "the use of textual, pictorial and audiovisual material that supports the aims of an advertiser while it mimics the format and editorial style of the publisher that carries it", is "purposefully created to blur the lines between advertising and editorial in order to mislead audiences" (p. 25). While she rejects (rightfully so) the term "fake news", she offers to see native advertisement as a form of 'information pollution' or "information disorder" that has a profound impact on the way information is received by readers and their trust towards journalists and newspapers (p. 25).

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This argument has deep implications for the debate on fake news. First, by shifting the focus from the recipients to the professional creators of information, she shows that it is not only speech democratisation that is to blame for the proliferation of misleading information. The same argument was made in the context of broadcasting by Yochai Benkler and his co-author (Benkler et al. 2018). Second, while the debate has often focused on unidentified actors with political goals, the book shows that inaccurate information starts with these institutions that are entrusted with the mission of creating accurate information, for economic reasons. Third, her argument leads to a reflection on the nature of advertising and its overall impact on the public sphere. Fourth, her argument, made in the context of newspapers, can easily be applied to social media, where the blurring of the lines between editorial content and advertisement is even more widespread.

I'll start by a summary of what appears to me as the most important arguments of the book (Sections 1, 2 and discuss in more details some aspects of them (Sections 3 and 4).

2. How Native Advertising has Colonised the Press and the Internet

While there are several forms of native advertising (on which we'll come back in Section 4), the book focuses on native advertising made in the context of digital news, where a brand pays the newspaper to publish an ad in the same format as an editorial on the publisher's site.

Chapter 1 gives several examples of the issue: for example, an ad designed as an article of Teen Vogue, called "How Facebook is helping ensure the integrity of the 2020 election". Even Teen Vogue's verified Twitter account could not identify what it was. The chapter traces back the history of native advertising to the 19th century, when publishers were disguising ads as editorial content. In the 1970s, the New York Times and the Washington Post reserved one-quarter of their "op-ed" page for a "premium-paid advertisement". However, what distinguishes native advertising today from these previous examples is that these advertising used to be designed by advertisers and newspapers were responsible only for selling the space. Today, many news organisations possess an in-house content studio that allows them to generate revenue from the creation of advertising itself (p. 23). The wall that used to separate the newsroom from the business has also been weakened. After defining native advertising, the book starts by explaining the reasons for its dissemination, even amongst elite newspapers.

Chapter 2 addresses journalism motivation for publishing native advertising. The chapter first comes back to the history of press-funding. The author explains that in the 18th century, the postal system was subsidised by the government in order to ensure the circulation of newspapers. The Postal Act of 1792 set lower postal rates for transporting newspapers. By 1830, up to 95 per cent of the mail was newspapers (p. 31). Thus, by the beginning of the 20th century, the US federal government was subsidising newspapers more than it subsidises today the space agency. The essential function of the press for democracy was regarded as too important to be left to the forces of the

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market. Newspapers were also subsidised by political parties, and advertising was seen as a means to break free from the dependence on political sponsors (p. 33). The development of radio and television based on private and commercial broadcasters at the beginning of the 20th century enshrined the growing reliance on private parties for funding the development of communication systems. This was only accentuated throughout the 1980's, with the deregulation of Telecommunications, and in 2010, with the Supreme Court case *Citizens United*[1], which rendered unconstitutional any regulation of political advertising. With the advent of the commercial internet, the redirection of advertising revenues to platforms, driven by the rise of targeted advertising, has plunged the print media into an existential financial crisis, which can explain the extensive recourse to native advertising.

As Chapter 3 explains, the advertising business is also facing crises in regard to their (contentious) goal that is to maintain control "over the persuasive influence of their messages" (p. 45). While they control how their products are portrayed, they have less control over how audiences receive their messages. The history of advertisement that Chapter 3 retraces is thus a history of the reinforcement of advertisers' control over the conditions of distribution of their ads, that is, control over the editorial environment (p. 46). It is well known, however, that the expansion of cable television in the 1980s and the related fragmentation of audiences weakened advertisers' business model, as they lost their captive audience (p. 53). The necessity of personalisation and automation explains the development of data collection and optimisation that has produced the so-called "surveillance capitalism" in the sector of platforms (McGuigan 2023; Zuboff 2019). However, some studies put in question the effectiveness of targeted-ads to maintain control over people (Farahat and Bailey 2012). On the contrary, native advertising gives advertisers control over where and how their ads appear. It also gives them control over the pervasive influence of their message "by leveraging the authority and trust associated with journalism".

While the reasons why advertisers pursue native advertising are quite clear, the reasons why journalists and newspapers agree to deal with native advertising are less clear. As Chapter 4 shows, viewed from the perspective of journalistic ethics, native advertising increases the risks of conflicts of interest. In many cases, it reduces journalistic freedom: the author shows that "the quantity of genuine reporting related to those who purchase native advertisement is affected" in 50% of the cases, a phenomenon called "agenda cutting" (p. 68). It also leads to potential contradictions between editorial content and native advertising content that risks undermining the impact of the investigation. The author gives clear examples: The New York Times had created a native advertisement for Exxon Mobile, presenting itself as an environmentally responsible company, while the newsroom revealed at the same time that the company's energy wasting had increased. In this case, the native ad undermines the credibility and the impact of the journalists' investigation.

[1] *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010)

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The impact of advertising on the content produced thanks to its revenue is well-known (Baker 2014; Habermas 1962). Advertisements, even when separate from editorial activities, distort the content of such activities by subjecting them to audience pressure and advertiser pressure. Native advertising, the author argues, goes further "since the distortion of the news produced comes from within the industry itself". That is, not only does the industry undergo the pressure of advertising, but it creates it (p. 70).

This chapter is also interesting because it returns to the discourse from those (small number of) people in the industry who support the development of native advertising. Those people deny any erosion of the wall between advertising and editorial, but also make the burden weight on readers to understand the distinction. One of the book's most striking quotes comes from Gerard Butler, former editor-in-chief of *The Wall Street Journal,* who described native advertising as a "Faustian pact". When the WSJ announced the creation of an in-house content studio, he stated that he was "confident that our readers will appreciate what is sponsor-generated content and what is content from our global news staff" (p.72).

Despite these good intentions, the author illustrates in Chapter 5 how, by accepting to blur the lines between editorial and advertising content, newspapers agree to submit themselves to the game of who will "blur the lines the most". Despite the FTC requirement that advertisements would be disclosed clearly, they accept to amplify this content as "editor choices" on their websites, or to reduce the size of the disclosure and adopt less explicit language to designate native advertising. Expressions such "From our partner" (p.85) replace the more explicit "advertisement". This is because audience reception to native advertising is bad. The author shows, by her empirical research, that one-third of people interrogated "offered an array of negative reaction involving credibility and trustworthiness" when confronted to native ads. Furthermore, when people recognise native advertisements, they are more likely to view the message negatively because of the label. This is why, when newspapers decide to engage in native advertising, they also have an interest in making the disclosure less evident, since the disclosure can affect the advertisement's negative reception (p. 89). This illustrates, in my view, one of the book's most important contributions: the hypocrisy of newspapers claiming, on the one hand, that their readers will appreciate sponsor-generated content while, on the other hand, reducing the possibility that readers will notice the difference.

In Chapter 6, the author addresses the broader impact of native advertising on democracy. She rightly notes that native advertising gives entrée to a disinformation order, defined as a "systemic disruption of authoritative information flows due to a strategic deception". Because readers have been deceived by the confusion native advertising creates, they lose their ability to trust the real news presented to them by journalists.

Chapter 7 comes back to the regulation of native advertising in the US. It traces the history of regulation back to the 1912 Newspaper Publicity Act, which was intended to reduce unfair business practices. In the context of government subsidy of the press

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through lower postal rates (see Chapter 2), the act prohibited publications composed primarily of advertising from benefiting from these subsidies. The act also forced publishers to label advertisements, because it considered that masked advertising had "a competitive advantage over advertising that employs overt promotional messages" (p. 119). Enforcement of this Act soon became selective, however: it was mainly based on investigations of complaints filed by competitors, highlighting that the impact of advertising and false information on consumers was seen as a secondary concern compared to protecting competition. In 1938, the negative impact of deceptive advertising on consumers was first acknowledged through a modification of the Federal Trade Commission Act that gave the FTC the power to protect consumers from "unfair or deceptive acts or practices". However, deceptive practices were only defined precisely 45 years later, in a 1983 Commission policy as "a representation, omission, or practice that is likely to mislead the consumer acting reasonably in these circumstances, to the consumer's detriment". The author highlights that this definition emphasises harm to "consumers" in the market for goods, while setting aside the reader's environment and what she calls "content confusion".

In 2015, with the emergence of digital technologies, the Commission issued a new statement called "Statement on deceptively formatted advertisement". The statement emphasises that "messages that are not identifiable as advertising to consumers are deceptive if they mislead consumers into believing they are independent, impartial or not from the sponsoring advertiser itself". While the statement suggests that, when republished by others, the disclosure should subsist. The author's research shows that more than half of the time, "the disclosure disappears when native ads from a news publisher are shared on Facebook or Twitter" (p. 122).

Native advertising is also addressed by self-regulation adopted by industry actors. In particular, the American Society of Magazine Editors insists in its formal guidelines on the necessary distinction between editorial content and marketing messages that should be clear to the reader regardless of platform or format. On the one hand, the guidelines seem to consider that native advertising is, by essence, bad. It states that "advertisements that mimic the 'look and feel' of the print or digital publication in which they appear should be avoided". On the other hand, the guidelines recommend that "native advertisement should be clearly labelled", which seems to legitimise its existence (p. 131).

The contradiction that appears here is representative of the entire author's message: while everyone (readers, publishers, journalists) seems to acknowledge that native advertising is bad for journalism's credibility and journalism's ethics, and, *in fine*, for democracy, the economic interests at stake are such that those people who should be the gatekeepers of journalism's ethics resign themselves to its widespread use.

In Chapter 8, the author discusses the legal framework beyond the United States. As a legal scholar working on media law, I particularly enjoyed her discussion of the Universal Declaration of Human Rights and its implications for native advertising, although it should be noted that the Declaration has no binding mechanism (such as a

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Court of Law). The author argues that freedom of information provided by Article 19 is infringed by native advertising, because freedom of information involves a duty for the State to regulate manipulative actors and their deceptive behaviour. But native advertising, the author argues, is misleading by design, and publishers who engage in native advertising could be considered manipulative actors.

This argument is quite important. As mentioned in the introduction, most of the political discourse surrounding manipulative actors concerns 1) foreign actors 2) who pursue a political goal and 3) who are generally difficult to identify. However, as news consumers, we are, in our day-to-day lives, more frequently exposed to disinformation coming from advertisers that is from 1) local actors 2) who pursue an economic goal and 3) who are quite easy to identify. It's striking that the political discourse surrounding manipulative actors focuses on foreign actors with a political goal, as if economic-based misinformation were less dangerous – or economic issues at stake too high.

Such a legal reasoning finds some sort of concretisation, however, in the European Union's Unfair Commercial Practices Directive, which prohibits hidden advertisements in media. Article 6 of the so-called e-commerce Directive (from 2000) also requires that advertisements and their sponsor should be disclosed. Canada represents another interesting example. As in the US, government regulation, such as the Competition Act of 1985, prohibits false or misleading representations to the public that involve influencing consumer purchase decisions. As in the US, governmental regulations are supplemented by a self-regulatory code of conduct. A code of Canadian advertising standards was published in 1963 and sets criteria by which advertising is evaluated when consumers or competitors submit a complaint (p. 159). Despite several judgements from the Ad Standards Council, the body enforcing the code, some publishers keep on concealing the sponsors behind native advertisements. Which leads the author to affirm unambiguously that "Voluntary codes seem to do little to deter stealth advertising practices that continue to generate revenue, particularly when enforcement involves nothing more than a compilation of annual reports listing violators and their infraction" (p. 159). The Quebec Charter of Rights and Freedom gives room for hope, however. It provides explicitly for freedom of information, which led l'Union des consommateurs (Consumers' Union) to state that native advertising affects citizens' right to independent and quality information as protected by the Charter of Rights.

Chapter 9 proposes some form of regulation to mitigate the harm caused by native advertising. The main argument of the Chapter is that the ineffectiveness of the regulation is consistent with "the ascendence of a market-driven media system" that goes in contradiction with the public interest. Regulatory efforts should be addressed at different stages of the creation process. At the level of *content production*, regulatory frameworks should request transparency more aggressively regarding sponsored content, including information about who is paying for it. Based on a requirement from the European Union's Digital Services Act, the author offers to create an efficient and searchable repository containing the ads, their creators and their funders. Regarding *content distribution*, the author notes that when native ads migrate from a newspaper

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website to platforms, their labelling tends to disappear. She suggests that platforms' terms of service should require publishers to clearly label advertisements when they are published on their platforms. Regarding *content consumption*, the author suggests that media literacy initiatives are essential, as they foster "an understanding not just that content may be commercial in nature, but also of who created it and for what motives" (p. 173). Therefore, people with stronger media literacy background are more likely to identify native advertising and other forms of misleading information. But the author also warns of external negative consequences of media literacy, which could increase scepticism towards all media content, even accurate content. The methodology used to teach media literacy is crucial to mitigate these risks (p. 177).

In my opinion, the last mitigation measures that the author proposes, what she calls *content context*, are the most important: they regard the larger political economy of media and aim at reducing the reliance of media organisations on the market altogether. This, of course, requires other sources of funding. The author focuses in particular on the Journalism Competition and Preservation Act introduced in 2019 (but not yet adopted), which aims at "facilitating the ability for news organisations to jointly negotiate fair compensation for access to their content by Google, Facebook and other dominant platforms" (p. 178). The author highlights that the bill, like the regulation subsidising newspapers through lower postal rates, is content-neutral. This means that advertising disguised as news may benefit from the compensation. She also notes that the largest newspaper chains may be the main beneficiaries of the compensation. Unfortunately, they are also the ones responsible for the process of concentration and job suppression in the press sector. Furthermore, she argues that it rests on a fundamental misunderstanding of how platforms are leveraging news content. The links posted on the platforms, when clicked, take the users to the news outlet where the article is published. As a result, it is contradictory to make platforms pay when they send users away and redirect them to the news website (p. 181). The author argues that we should focus on regulatory measures that would subsidise the creation of news, especially at the local level. She places trust in particular in the non-profit media sector which reinvests excess revenue into the creation of news (p. 183). Overall, she argues, and I think this is a pretty convincing statement, that the best way to mitigate content confusion is to reinforce public media structures and their independence, and to safeguard them from the pressure of commercial or governmental interest (p. 184).

3. Commercial Speech Doctrine and the Legal Legitimation of Content Confusion

The author, a professor of mass communication, adopts a comprehensive methodology to understand the phenomenon of native advertising. From a sociology of communication perspective, she is interested both in the creators of information (Chapters 2, 3, 4) and in the receptors of information (Chapters 5 and 6). She is also interested in the regulation of native advertising (Chapters 7,8 and 9). Although she's not a law researcher, she presents a comprehensive perspective on the legal factors explaining the proliferation of native advertising and the ineffectiveness of regulation. Such an

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interdisciplinary methodology is essential to understand the factors leading to the existence of a widespread journalistic practice, and this methodology is, in itself, one of the great contributions of the book.

I'd like to come back to one legal aspect that the author touches on briefly, and that is the focus of my own work, as a legal scholar (Trouillard 2027): changes of the doctrine of "commercial speech" in the Supreme Court's case law. The author mentions that some aspects of native advertising are difficult to regulate because they "borrow from both product and institutional advertising and are considered a paid commercial announcement designed to present ideas about controversial issues" (p. 126). Because they engage issues of the public debate, these types of ads (such as editorial advertising) are considered to fall into the values that the First Amendment aims to protect, and are thus protected by the First Amendment. The distinction between purely commercial ads and editorial ads, which were considered to fulfil the goals that the First Amendment aims to protect, stemmed from a 1942 Supreme Court's ruling *Valentine vs Chrestensen*[2]. However, this distinction between political speech and commercial has been largely undermined. In *Virginia State Board of Pharmacy* (1976)[3], the Supreme Court uses the right of the listeners to receive commercial speech in order to declare the incompatibility of a State regulation that aimed to regulate advertisement with the First Amendment. This is a considerable departure from the previous doctrine that used to protect commercial speech to a lesser extent. The previous doctrine used to consider that commercial speech did not further the values that the First Amendment aims to protect, that is, discussion of public interest.

On the contrary, with the new commercial speech doctrine, the possibility for individual consumers to make choices on the market (thanks to advertising) is seen as a First Amendment goal. While the listeners used to be considered through the lens of the public that is a collective group that had an interest in self-governance or self-determination (Weiland 2022; Weiland 2017), they are now perceived as mere consumers, whose main role in society is to make informed choices in the market. To do so, they have to be exposed to as much information as possible, regardless of the quality of such information: "People will perceive their own best interests if only they are well enough informed, and that the best means to that end is to open the channels of communication rather than to close them"[4]. Any attempt at state regulation is considered by the Court as "paternalistic". The new commercial speech doctrine refuses to see consumers as potentially vulnerable when they are exposed to "content confusion": they can only benefit from this speech.

As noted by legal scholars, this new doctrine confuses the right of the listeners with the right of corporations. Listener rights and corporate interests are presented by the Court as aligned (because listeners are considered as always benefiting from

[2] Valentine v. Chrestensen (316 U.S. 52, 1942)

[3] Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc., 425 U.S. 748 (1976).

[4] Va. State Bd. of Pharmacy, at 770

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corporations' speech). As the book we are currently commenting on shows, it is not always the case. In many cases, listeners might benefit from legislative enactment based on public welfare determinations that might reduce corporations' speech. In his dissent in another case involving corporations' spending for referendum campaigns, Justice White argued that "the right to hear or receive information to protect the exchange of ideas […] does not establish that the right of the general public to receive communications financed by means of corporate expenditures is of the same dimension as that to hear other forms of expression"[5]. He added that "It is clear that the communications of profitmaking corporations are not 'an integral part of the development of ideas, of mental exploration and of the affirmation of self.' They do not represent a manifestation of individual freedom or choice"[6]. The Supreme Court did not retain his argument. Chapter 4 of the book, which focuses on readers' reception of native advertising, presents compelling arguments that call into question the validity of the Court's reasoning based on empirical research.

Overall, I argue that the commercial speech doctrine has only legitimised the content confusion that the author is describing in her book. If the Supreme Court presents commercial speech as furthering the First Amendment goal as much as political speech, there is no justification for limiting it, or even for strictly separating commercial speech from political speech.

4. Content Confusion as Platforms' Mere Business Model

Another point I would like to comment on is the implications of the author's research for the platform sector. As the author explains in the introduction (p. 11), there are several forms of native advertising. While the focus of the book is "native content" that takes the appearance of a newspaper article, the type of native advertising that appears the most on social media platforms is "in-feed-ads" that appear as promoted posts in a user's social media feed. While there is no set number of ads shown per user on Instagram, as the algorithm adjusts the frequency based on your activity, my own experience is that there are ads shown every 4 to 5 posts in the feed and every 3 or 4 in stories. Ads in the feed can be particularly deceiving. As the user scrolls quickly through her feed, it can be difficult to tell the difference between a post from a real person and an ad. Like native content described by the author in the context of newspapers, in-feed ads can copy the appearance of the post. The name of the brand is presented as the name of the Instagram profile, with the same "reaction" section below the post. The conditions of enunciation of an Instagram post as well can be copied as well. The person represented in the ad can sometimes tell a (fake) story about her (fake) life to try to sell the product, which can be difficult to distinguish from an influencer. In the context of native content, a disclaimer is required by law (Article 26 of the Digital Services Act). However, this disclaimer is usually written in very small

[5] Bellotti, 435 U.S. at 804-05 (White, J., dissenting)

[6] Id, at 805

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characters which, in the context of scrolling, can make the identification difficult. With the flowering of influencers whose posts are now widely amplified by platforms (boyd 2026), the blurring of the line between cultural discourse (Balkin 2004) and commercial discourse has gone a step further. In the influencers' thread, product placement (by definition, a financial transaction between the influencer and the brand) is woven into the influencer's posts about their everyday life (Riefa and Clausen 2019). The Digital Fairness Act, whose proposal was published by the European Commission on November 11th 2026, targets these practices directly[7]. Article 11, called "Influencer marketing", states that "traders carrying out influencer marketing shall disclose the commercial intent of communication in a clear, prominent and unambiguous manner". Such disclosure shall be made explicit, for each commercial communication, through the term "advertisement" or "commercial collaboration". It forbids traders carrying out influencer marketing to "create the impression that they are not acting for commercial purposes when they are". The Digital Fairness Act thus seems to respond directly to the author's critics, especially regarding the diverse language newspapers use to euphemistically qualify "advertisement". However, I doubt these transparency measures will be sufficient to mitigate the fundamental risks arising from the proliferation of advertising and other commercial placements to our right to information as citizens. Indeed, as put by danah boyd, platforms which used to be social media are now "para-social media", because most of us have become passive scrollers of content professionally curated in order to sell products. The issue is not only that we are placed in a condition where our brains can hardly distinguish between commercial products and cultural content. It also overwhelms users' attention with trivial information, leaving little room for reflection as citizens (Habermas 2023; Sunstein 2009). A more structural reform, inspired by the limitations on advertising in broadcasting[8], would be to limit the number of ads shown to an individual user per day on a platform.

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[7] Digital Fairness Act proposal, November 11th 2026, COM(2026) 1100 final (2026/0356 (COD)

[8] See article 18 Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities limiting to 20% per hour the proportion of advertisement within a given clock hour.

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