



Mental Integrity in the Attention Economy: in Search of the Right to Attention

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Abstract Is it wrong to distract? Is it wrong to direct others' attention in ways they otherwise would not choose? If so, what are the grounds of this wrong – and, in expounding them, do we have to at once condemn large chunks of contemporary digital commerce (also known as the attention economy)? In what follows, I attempt to cast light on these questions. Specifically, I argue – following the pioneering work of Jasper Tran and Anuj Puri – that there is a right to attention, and that its existence underlies some of our claims regarding the wrongness of distractions. However, I depart from both these authors in two respects: first, I present a new way of deriving the right to attention, grounding it in the more fundamental right to mental integrity. Second, I remain agnostic on whether the contemporary business practices of capturing attention in exchange for a variety of digital products and services are plagued by routine violations of the right.

Keywords Right to attention · Attention economy · Mental integrity · Internet ethics · Attention ethics

Introduction

Is it wrong to distract? Is it wrong to direct others' attention in ways they otherwise would not choose? If so, what are the grounds of this wrong – and, in expounding them, do we have to at once condemn large chunks of contemporary digital commerce (also known as the attention economy)?

In what follows, I attempt to cast light on these questions.

Specifically, I argue – following the pioneering work of Jasper Tran [1] and Anuj Puri [2] – that there is a right to attention, and that its existence underlies some of our claims regarding the wrongness of distractions. However, I depart from both these authors in two respects: first, I present a new way of deriving the right to attention, grounding it in the more fundamental right to mental integrity. Second, I remain agnostic on whether the contemporary business practices of capturing attention in exchange for a variety of digital products and services are plagued by routine violations of the right.

In Tran's and in Puri's framework, the right to attention is postulated as a remedy to the predations perpetrated by the so-called *attention merchants* [3]. The attention merchants are those (primarily digital) businesses that trade in human attention – they're the central players in the attention economy: a nexus of economic transactions where attention plays the role of a scarce commodity, supplied by users/consumers (whom we might call attention payers) and

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demanding by a variety of companies. As Adam Pham and Clinton Castro [4] put it, the attention economy is “constituted by two types of transactions: those in which consumers give new media developers their literal attention in exchange for a service (such as a news feed or access to pictures of friends), and those in which developers auction off consumer attention to advertisers” (p. 2). I adopt their definition in what follows.

This way of doing business, though arguably pre-dating the Internet [3], has become one of the dominant models of digital commerce, and, after more or less sweeping the world, has attracted much academic attention. The scholars’ verdict has been mostly critical – at least in more recent years.

Accusations against the attention economy are legion: from the deleterious effects its products have on their users’ mental health [5] and cognitive capacities [6], through the exploitation of users’ private data [7], to fostering addictive behavior [8]. The effects of the *attention* economy on the eponymous mental capacity have also been discussed – again, of course, with a critical bent. In the process, a particularly intriguing solution to (some of) the alleged problems that the attention economy is causing has emerged: to advocate for the recognition of the so-called “right to attention,” and consequently, perhaps, for the need to protect it through legislation. As a first approximation, the right to attention would be, roughly, the right to direct our attention, when subject to voluntary control, as we see fit, and, further, the right to be free from distractions (i.e. attempts to redirect our attention against our will) imposed on us by others. Tran argues that a legal right to attention can be derived from US law, whereas Puri argues that the right to attention is justified because it is a right that protects our fundamental interests.

Though there are similarities between Tran’s and Puri’s lines of argument, they also exhibit significant differences (in addition to the fact that Tran’s analysis is from both a legal and moral perspective, whereas Puri’s sticks to moral arguments alone). As Puri explains, Tran defends a broader version of the right to attention, as opposed to Puri’s narrower “right to attentional privacy”: while Tran talks in addition about the right to attention as encompassing the right of an individual to deploy their attention as they will, Puri’s focus is on the right to attentional privacy as “protecting attention from the onslaught of intrusive,

addictive, immersive and persuasive technologies” [2], p. 208). Finally, Puri thinks of the right to attentional privacy as both a negative and a positive right, while Tran is primarily focused on defending the negative right to attention.

The paper proceeds as follows. In the next section, I present the argument from the right to bodily integrity to the right to attention. In Sect. 3, I further specify what the right to attention amounts to, within the contemporary philosophical framework of thinking about rights. Section 4 presents Tran’s and Puri’s bleak assessment of the ethics of the attention economy and offers – without arguing for it – an alternative portrayal. Section 5 concludes.

From Bodily Integrity to Right to Attention

The argument in this section is as follows: (1) there is a (*pro tanto*)¹ right² to bodily integrity; (2) if there is a right to bodily integrity, then there is a right to mental integrity; (3) if there is a right to mental integrity, then there is a right to attention; (4) therefore, there is a *pro tanto* right to attention.

I take (1) to be true. I will restate the (to my mind) most compelling arguments for (2) in what follows (in so doing, I will be relying on Tom Douglas and Lisa Forsberg’s [9] recent work on this topic). I will argue for (3) by claiming that attention is central to the capacities that the right to mental integrity is supposed to protect. The crucial terms used in the argument will be further clarified in what follows.

From Bodily Integrity to Mental Integrity

According to Douglas and Forsberg [9], the right to bodily integrity is the “right against (certain kinds of) significant, nonconsensual bodily interference” (p. 180). Correspondingly, the right to mental integrity

¹ People who doubt the existence of the right to bodily integrity (maybe due to a general skepticism about rights) could simply drop the first premise, and replace the categorical conclusion with the conditional: If there’s a right to bodily integrity, then there is a right to attention.

² *Pro tanto* rights are those that can be overridden under exceptional circumstances. This qualification is to be understood as applying to all mentions of “right” in the argument, unless otherwise specified.

would be “a right against (certain kinds of) [significant] nonconsensual interference with the mind” (p. 182). Why think the latter right exists? Douglas and Forsberg catalog three types of rationales for it – here I will focus on the idea that the right to mental integrity should be endorsed as a matter of “justificatory consistency.” In other words, we should recognize the right to mental integrity because it is supported by the same kinds of justifications that support the right to bodily integrity.

Douglas and Forsberg canvass a number of such justifications, beginning with the appeal to the notion of self-ownership, advocated by Jan Bublitz and Reinhard Merkel [10]. The idea is that, first, we have the right against bodily interference *because we own ourselves*, and this, of course, includes our bodies. However, Bublitz and Merkel claim, “what is even more constitutive of a subject than her body is her mind. So, whoever grants self-ownership of persons over their bodies has a compelling reason to concede self-ownership over minds” (p. 62). Thus, one reason to endorse the right to mental integrity is due to the principle of self-ownership, originally used to support the right to bodily integrity. If we own our bodies, and hence have corresponding rights over them, then we also own our minds, and have the corresponding rights over them as well.

Douglas and Forsberg maintain that arguments for mental integrity could also be advanced using other, related, rights, such as that of “personal sovereignty.” The idea here is that rights of self-ownership and personal sovereignty³ are rights against *interference with the self*. Such rights ground, as a result, the right against interference in a person’s body – because my body is in some relevant sense a part of myself. But, by the same token, they also ground the right against interference in the person’s mind – minds are as much parts (in some sense) of persons as bodies are.

Lastly, Douglas and Forsberg suggest, to the extent that rights against bodily interference protect our important interests, the protection of those very interests also justifies rights against mental interference.

³ As Douglas and Forsberg put it, the right to personal sovereignty is to be “understood on analogy with the rights of states over their territory. Both types of rights [i.e. self-ownership and personal sovereignty] attach to the self or person ... and both are normally taken to include or imply rights against interference with the self” (p. 191).

The interest they focus on in their article is autonomy, which they take to mean, roughly, the ability to control one’s life free from undue influences by others. Interference with one’s body undermines autonomy – but, as Douglas and Forsberg point out, “interferences with the mind can be just as threatening to autonomy as interferences with the body” (p. 192). For example, being forced onto a train track because someone pushed you is as much a violation of your autonomy as being brainwashed against your will into believing a conspiracy theory. Both violations include loss of autonomous control over one’s life. Consequently, if one thinks that the right to bodily integrity is justified because it protects our autonomy interests, one should likewise think that the right to mental integrity is justified in virtue of protecting those interests as well.

This concludes the restatement of what I take to be a compelling argument for premise (2): if there’s a right to bodily integrity, then there is a right to mental integrity. I will now argue that attention is essential for maintaining mental integrity.

From Mental Integrity to the Right to Attention

Premise (3) is true because attention, on major theories thereof, is a central, indispensably important aspect of the mind – specifically, it is central to carrying out various important functions the mind does. According to these theories, attention is essential for a variety of crucial aspects of our mental lives, from enabling accurate perception of objects to being constitutive of our personhood. Thus, in order to protect our mind from interference, we need to protect its central “structural” component from interference as well.

And so, onto the more specific theories of attention (for an overview, see [11]): on Sebastian Watzl’s view, attention is responsible for structuring the entire mental sphere in terms of what to prioritize – i.e. what to pay attention to [12] – so, what our conscious mental lives are like (what it’s like to be us, from one moment to the next) is, in large part, due to how attention structures our minds. On Wayne Wu’s theory, attention is required for agency [13]. By John Campbell’s lights, attention is required for demonstrative reference [14]. According to Jesse Prinz, attention is required to enable the processing of content in working memory, and hence (in Prinz’s view), to enable

such content to become conscious [15]. Anne Treisman [16] holds that attention is necessary for solving the binding problem – that is to say, in essence, necessary for accurately perceiving properties of objects. Jonardon Ganeri’s [17] position on attention is that.

Attention ... has an explanatory role in understanding the nature of mental action in general and of specific mental actions such as intending, remembering, introspecting, and empathizing. It has a central role in explaining the structure of the phenomenal and of cognitive access, the concept of the intentionality or directedness of the mental, the unity of consciousness, and the epistemology of perception. And attention is also key to an account of the nature of persons and their identity, to the distinction between oneself and others, and to the moral psychology that rests upon it (p. 1).

It thus seems undeniable that attention is a central mental capacity, “a mental phenomenon that dramatically shapes human agency and experience, including scientific and moral inquiry – at least as much as perception, belief, and desire” (Watzl, forthcoming[18], p. 1). Attention seems to play a crucial role in consciousness and cognition, perception and action, and perhaps identity and personhood.

Consequently, if we are to protect our minds from undue interference, then we need especially to protect the capacities central to the workings of our minds – that is to say, we need to protect our attention.⁴ Indeed, if theorists like Ganeri are correct, protecting attention is crucial to protecting almost everything that is valuable about ourselves. In this way, the right against interference with our minds leads us to the right against interference with how we attend.

⁴ To see this, consider the following scenario: imagine a futuristic technology that allows one person to control what another perceives, what she believes, and what she desires. Suppose such technology used against some person, A. It would be absurd to say to A, ‘sure, all these mental capacities are controlled by this technology, but your *mind* is still protected’. Hence, to protect the mind, we need to protect the capacities central to its workings. Attention, in turn, is *on a par* with these capacities when it comes to how our minds work (or, alternatively, it might underlie the deployment of these capacities). In any event, as a result, to protect the mind, we need to protect attention.

This concludes the argument for the right to attention, constructed, on the one hand, from intuitively appealing normative premises, and, on the other, from the near-consensus view about the importance of attention to our mental lives (and beyond).

What Kind of Right is the Right to Attention?⁵

Form and Function

The right to attention, so understood,⁶ may be thought of as both a liberty right and a claim right. For starters, it seems that we could say that what it means for us to have the right to attention is for us to have *no duty not to* direct our (top-down⁷) attention to whatever we want (there are exceptions to this, however, to be mentioned below) – hence, a *liberty right*. But this reading seems incomplete, as it does not capture the full spirit of Tran’s or Puri’s position on the right to attention, nor Douglas & Forsberg’s claims about rights to bodily and mental integrity. So, in stronger terms, we could say that what it means for us to have the right to attention is for *others to have a duty not to interfere* with how we allocate our attention⁸ (again, with exceptions) – we would thus think of the right to attention as both a liberty right *and a claim-right*.⁹ Correspondingly, since the right to attention is alienable, we have the *power-right* to waive it, and make

⁵ This section follows the standard understanding of contemporary philosophy of rights, as laid out in Wenar [19] and Fagan [20].

⁶ I.e. on analogy with the right to bodily integrity.

⁷ The distinction between top-down and bottom-up attention is standard in cognitive science. Generally, top-down attention is under voluntary control, while bottom-up attention is not. So, if bottom-up attention is not subject to voluntary control, then we can’t have the right to direct it as we like. (See Dicey Jennings & Tabatabaiean, [21], for a longer discussion of this distinction).

⁸ Both top-down and bottom-up attention can be protected by this right. Others may have a duty not to force us to direct our voluntary attention towards some stimulus, and the duty not to distract our top-down attention by attracting our bottom-up attention.

⁹ I have a liberty right to ϕ iff I have no duty not to ϕ . I have a claim-right against some other person (or persons) that they ϕ iff some other person (or persons) have the duty to ϕ . The duty could be negative, i.e. to not interfere with my actions. I have the power right if I have the right to change others’ duties. For more, see Wenar [19] and Fagan [20].

it so that others may permissibly interfere with our attention (i.e. distract us).

The liberty right to attention would then be the right to direct our attention as we please. The claim right would be the right to be free from distractions imposed on our attention by others.

What could the right to attention do for us? As with other rights, theories of the function of the right to attention may point either to (a) securing our important interests (the interest theory), or (b) protecting our own sovereignty with respect to our minds (the will theory) in answer to this question.

Attention, in light of subsection 2.1, is crucial for perceiving, remembering, acting on, and otherwise occupying ourselves with items in the world. We have an obvious interest in being able to perceive, remember, and navigate the world around us. It is good for us to be able to do these things. Thus we have an interest in our attention working unperturbed.

More basically, consider the following list of fundamental human interests, courtesy of a prominent interest theorist: “life and its capacity for development; the acquisition of knowledge, as an end in itself; play, as the capacity for recreation; aesthetic expression; sociability and friendship; practical reasonableness, the capacity for intelligent and reasonable thought processes; and finally, religion, or the capacity for spiritual experience” [20], np., summarizing Finnis [22]. It appears that all or almost all of these interests presuppose the ability to direct and sustain our attention – upon the ludic, the beautiful, the rational, and the divine.

And so, the right to attention is provisionally supported by the interest theory of rights.¹⁰

In virtue of protecting our ability to be sovereign over our minds, the right to attention is also provisionally supported by the will theory of rights. The right to attention protects our ability to choose where we allocate it, and hence, what and how we perceive, what we remember, and what we do. It protects what we might call our mental liberty to structure our mental lives as we see fit. It’s *our* mind and we alone get to decide what – if anything – others may do to it.

¹⁰ This is also the route that Puri takes towards defending the right to attention – by identifying important interests that the right would protect. Tran strikes me as leaning more towards the will theory-based justification.

(It is probably no coincidence that Douglas and Forsberg appeal both to sovereignty and to interests in their account quoted earlier, paralleling the two main rationales for rights.)

Limiting, Waiving, and Overriding the Right to Attention

As with the rights to bodily and mental integrity, and in line with Douglas and Forsberg, the right to attention should be thought of as a right against *significant, nonconsensual interference*. Consequently, not every distraction will count as a violation, because not every interference will meet both these conditions (both Tran and Puri also make this point). For instance, it is odd to think of displaying “attention-grabbing” headlines (say in a newspaper on a newsstand) or wearing garish clothes as rights violations, even though they seem – or are – designed to be distracting. This is because these distractions don’t seem *significant*. I will refrain from attempting an account of the threshold of significance – I doubt a satisfactory one can be given in any event.¹¹ Hard cases are sure to arise, as with every other right, and are probably best dealt with on a case-by-case basis. This is, obviously, not to deny that clear violations, and clear non-violations, exist. Consider, for instance, an obnoxious theatergoer who talks loudly throughout the performance of a play, distracting both the audience and the actors. Her actions are wrong, on this account, not just in virtue of spoiling others’ enjoyment of the play. They also violate their right to attention (specifically, the right to be free from distractions).

Yet, we are not always at liberty to pay attention to whatever we want. Some obligations to pay attention in specific ways may arise as a result of the roles we occupy (in other words, others have the power to alter our liberty right to allocate our attention however we want). For example, the bus driver has the duty to pay attention to the road; the kindergarten teacher has the duty to pay attention to the children in her care;

¹¹ But some circumstances make it likely that an interference doesn’t pass the threshold of significance: if the distraction is very short-lived, if it is rare rather than persistent, if it does not cause harm, if it’s easily avoided, if the distracted person doesn’t mind it much etc., then it’s likely that the distraction is insignificant.

members of the jury have the duty to pay attention to the evidence presented.

While, in previous examples, the duty to pay attention to something implies the duty *not to* pay attention to something else (divided attention notwithstanding), the latter duty could arise independently. Suppose I happen to notice, by accident, that the person sitting next to me on the train is looking over her medical records on her phone. It seems that in this case I have a duty *not to* pay attention to what she's reading (there is not, however, a correlative duty to pay attention to *anything but* the person's message; I may simply let my mind wander or close my eyes and doze off for a bit).

We may also waive our own right to be free from distractions as a consequence of taking on some responsibilities. Imagine Bilal, a basketball player, trying to shoot an important free throw. As is his wont, the hostile crowd is doing a lot to distract him from this task, by, say, booing very loudly. But we don't think this violates Bilal's right to attention, presumably because trying to withstand the rival fans' attempts to distract is understood to be part of the game. By becoming a professional basketball player, Bilal waives his right to shoot free throws at away games undistracted.¹²

Finally, the right to attention is not absolute; it can be overridden. In other words, it's a *pro tanto* right. Some acts of significant, non-consensual interference with how we direct our attention are, therefore, permissible. Suppose you're sitting on a park bench on a quiet day, reading a book or playing a game on your phone, completely immersed. Suddenly you notice a commotion, flashing lights, loud sirens, and a lot of shouting – all very distracting, making it impossible for you to focus. It turns out that some small distance from you, paramedics are tending to a severely injured person. In the process, they are significantly, and without asking for your consent, interfering with your attention. Still, it doesn't seem impermissible for them to do this. So, there are circumstances where violations of the right to attention are permissible.

¹² Interestingly, other sports have different implicit rules about this. In tennis, for instance, players are not expected to “battle” hostile crowds, and attempts to distract them are generally frowned upon.

What does this Say About the Ethics of the Attention Economy?

Let us summarize some key points from the preceding section: first, not every demand for attention is a rights violation. Second, we have the normative power to waive the right to attention – that is, to waive the right to direct our attention as we please, free from distractions. Third, others may sometimes have the normative power to impose on us the duty (not) to pay attention in certain ways. This could be either due to voluntary arrangements (like taking on a specific role through employment) or general obligations (e.g. to respect others' privacy or to avoid disaster). Our right to attention may be overridden when circumstances justify it.

The Bad of the Attention Economy

For the attention economy to facilitate or even rest upon some persistent violations of the right to attention, our typical interactions within this ecosystem would have to include persistent, significant, unconsented-to and unjustified interferences with how we pay attention. Do they?

Tran and Puri say so. They take themselves to identify a number of ethically problematic issues with some of the practices deployed by attention merchants to capture a chunk of the users' attention. For starters, Puri takes the attention economy to task for operating through a combination of “hypernudges” and “supernormal stimuli” to undermine consumer autonomy. “Hypernudges,” a concept pioneered by Karen Yeung [23], are, as the name suggests, highly personalized versions of “traditional” nudges (interventions aimed at changing behavior by exploiting decision-making heuristics, without banning any options or making them too costly). By carefully personalizing each user's online experience with the help of Big Data algorithms, attention merchants can nudge them into making decisions favorable to the companies themselves (i.e., maximizing engagement) – and not necessarily ones the users would autonomously have made.

Supernormal stimuli, in turn, are designed to exploit our evolutionarily hardwired instincts (instincts that prompt animals to pay special attention to some salient patterns in nature) by supplying stimuli that are more attractive than what the original response evolved for. Though initially contained

within evolutionary theory (see [24], the concept of supernormal stimuli has found application in the social sciences as well, especially in media analysis [25]. Supernormal stimuli, if the proponents of applying the idea to the social realm are to be believed, are characteristic of a broad variety of everyday phenomena aside from the digital goods and services: from food, through movies, paintings, and TV shows to news, sports broadcasts and serialized novels. All these products, so the claim goes, are designed in such a way as to exploit our evolved propensities (e.g. for nutritious food) by having features (e.g. sweetness) to which our hardwired desires are especially responsive – even more responsive than what was originally selected for.

Puri's worry seems to be that attention merchants rely on supernormal stimuli to capture and hold their users' attention (presumably, for longer than is morally permissible) by bypassing their rational capacities. Indeed, he views the act of exposing people to supernormal stimuli through a Kantian lens, as a threat to their autonomy. Says Puri:

micro-behavioural targeting aimed at constantly surveilling and distracting a consumer, as she browses through the Web, for commercial purposes undermines her autonomy. The constant hypernudging and supernormal stimulation for commercial goals metamorphizes an individual into a means for an end. (p. 214)

This phrasing assumes that individuals have little choice but to respond to the hypernudges and superstimuli in the way expected by attention merchants. This is because treating someone as a mere means to an end amounts to, to simplify, manipulating or coercing them (see especially [26]. Consequently, intentional exposure of another person to hypernudges and superstimuli would have to be a form of either coercion or manipulation.

The impression that Puri views superstimuli as serious threats to individual autonomy is reinforced later on in the paper. Here, Puri approvingly cites Yogi Hale Hendlin's [27] claims that.

[s]upernormal stimuli are "imperious" because they seek to grab the attention of those encountered in a violent, commanding way;... The element of *force and coercion* is lacking in encounters with regular stimuli, whereas supernormal

stimuli marionette our emotions, *not giving us a choice* [emphasis added] (p. 220).

Puri thus appears to take literally the suggestion that people exposed to supernormal stimuli are not simply manipulated or coaxed into fulfilling the attention merchants' ends. Rather, they are quite literally under some form of coercion.

Puri then argues that the combination of hypernudges and supernormal stimuli helps make attention-grabbing more intrusive and addictive, further eroding our autonomy and causing us harm by supplying stimuli that, most of the time, are not worthy of our attention. All the while, the suppliers of these stimuli register commercial gain. In other words: most of the time not only is our autonomy undermined through assaults on our attention – we receive little of value for it, whereas the tech companies pocket almost all the profit from the exchanges. Establishing and enforcing the right to attention would, on this picture, help us stave off coercive and manipulative practices of profit-focused attention merchants – because such practices would constitute rights violations, and thus, potentially, call for a forceful state response.

The essence of Tran's criticism, in turn, seems to be twofold: first, on his view, in the attention economy, user attention can be freely demanded by anyone (especially by advertisers for commercial purposes, but also spammers and scammers); second, these demands are unwanted and should be prohibited. Tran summarizes his case thus:

Today, new technology intensifies *the assaults* on our personal zones of existence not through physical proximity, but through more subtle intrusions that either compete with each other for notice (e.g., pop-up ads) or take the form of *commands* that we prioritize particular messages ... over others we might choose. The idea of a right to attention is a necessary counterpoint to these technological changes that take the form of demands for our attention. It addresses the imbalance between companies' ability to use technology to *command* greater portions of our attention for profit and our *inability to avoid those commands*. It thus aids the "little guy" who may not otherwise be able to fight back. It also preserves for the individual the freedom to assemble the inputs that allow the construction of a coherent self capable

of making appropriate decisions on the basis of chosen, rather than imposed, values (p. 1042, emphasis added).

As we can see, Tran worries primarily about “intensified” demands on our attention that can be effected through contemporary digital technologies, in the form of intrusively imperative ads. Moreover, he thinks it is impossible to avoid such ads, and, hence, impossible to keep our attention intact. This, he avers, we need to be protected from through legal means, i.e. by recognizing and enforcing the legal right to attention.

Both Tran and Puri claim that rather than being a result of rational free choice, as legitimate as any in a market (presumably because we judge that we will benefit by exchanging our attention for the services we’re obtaining), our continued use of the attention merchants’ products is instead driven primarily by coercion and manipulation.

This is not, however, the only way to think of the attention economy. In contrast to the bleak picture offered by Tran and Puri, one can raise a series of empirically-supported counterpoints to paint a more rosy portrayal. While any defender of the attention economy must contend with the objections championed by both these authors, they, in turn, have to contend with the way of looking at the attention economy presented below. What the results of this contending turn out to be is beyond the scope of this paper to speculate.

The Good of the Attention Economy

The attention economy isn’t all bad.

Start with the enormous value (to consumers) of zero-priced products and services offered by the much maligned “Big Tech.”¹³ Secondly, consider that there is some dispute over whether superstimuli and hypernudges are as effective at modifying user

behavior as Puri alleges,¹⁴ so to think of them as coercive – or as serious impediments to autonomous choice – might be an overstatement. Thirdly, note that serious empirical work casts doubt on the addictiveness¹⁵ of attention-consuming services, weakening Tran’s claims that assaults on our attention are unavoidable and, taken all together, that interacting with the attention economy is almost uniformly bad for us on balance.

Overall, armed with these findings, a defender of the attention economy could make the following argument: by and large, people who use digital products and services in the attention economy, such as CNN.com, YouTube, Spotify, or Gmail, do so voluntarily, in the expectation that it will provide them with greater value than the attention that they give up. Thus, the consumers’ (revealed) preferences seem clearly to show that they are happy with momentary distractions, for example in the form of ads, as a price to pay for an otherwise free service. That billions of people continue using these services is strong evidence therefor. Moreover, if people judge such a “price” to be too high, they aren’t necessarily forced to stop using the service altogether. Instead, they often could spend money on the premium, ad-free version, or, indeed, install ad blocking software (interestingly, such an option is not available for consumers of traditional media; you can’t pay more for an ad-free print copy of the *New York Times* or the *Jacobin*). Worries about addiction, manipulation, or other non-voluntary means to capture and retain users’ attention, are overstated in light of the evidence cited above.¹⁶ Ours is not the world of *Infinite Jest*.

¹³ According to one estimate from economist William Rinehart [28], an average consumer values annual Facebook use at more than \$4,500, with figures for Snapchat, TikTok and Twitter in a similar ballpark. Interestingly, as Rinehart points out, the annual revenue these companies generate from an average user ranges between around \$200 and \$5. So, in his words, “it is clear that consumers get the vast majority of the value in social media” (2021, np.). This hardly sounds exploitative.

¹⁴ There seems to be little empirical evidence either way on the efficacy of hypernudges; it’s mostly speculation. However, the real-world effectiveness of good old fashioned nudges has been scrutinized and generally found to be less than lab experiments suggest. For details, see DellaVigna & Linos [29] and Lin, Osman & Ashcroft [30]. For a defense of the idea that human beings are capable of resisting the pull of superstimuli, see De Block and Du Laing [31].

¹⁵ Research by Thomson et al. [32] has found, for example, that social media users do not display one of the main behavioral markers of addiction – that is, attentional bias towards social-media related stimuli. See also Brodwin [33] and John & Graff [34] for pushback against the concept of social media addiction.

¹⁶ I am not endorsing, nor arguing for, the soundness of this line of reasoning. Nevertheless, each claim strikes me as one that reasonable people can make in light of the evidence. For artful, sustained defenses of the attention economy – though

It is beyond the scope of this paper to attempt to settle the dispute between such wildly divergent ways of looking at the contemporary digital economy. It seems that a full treatment would have to reconcile the data presented by Tran and Puri with the considerations raised immediately above, as well as much more new and existing research. We shouldn't hold our breath for a resolution coming anytime soon.

Nonetheless, the right to attention – which we have independent reasons to endorse – gives us new ways of understanding the normative nature of the full spectrum of types of participation in digital commerce. Whether one thinks that *in accessing digital services we waive our right to attention, so distractions are permissible*, or that *in distracting us, digital service providers violate our rights by intruding on our mental sovereignty and frustrating our interests*, the rights discourse helps make precise what sorts of reasons for moral condemnation or exoneration we have – and it also dampens the temptation to judge the attention economy merely in terms of value generated or suffering caused.

Enforcing the Right to Attention

It is in large part an empirical question whether the distractions offered to us – or forced upon us – in our everyday commerce with the attention economy are significant and non-consensual to a high enough degree to count as violations of the right to attention. The same can be said about the question of whether, and which, violations should be enforced. After all, not every violation of a right necessitates or justifies a coercive response – much (though not everything!) depends on how impactful it is. This is relevant to the question of whether there ought to be a legal right to attention. Part of it being a legal right would mean that its violations justify a coercive response (from the state).

Consider, for instance, a student focusing on a difficult problem in preparation for class. Suppose the student's roommates attempt to get her to join in playing a board game instead. In so doing, they distract her from what she's trying to pay attention to, by, for

example, unnecessarily loudly extolling the virtues of the game while she is trying to study. It is, quite clearly, a violation of her right to attention (she has not relieved the roommates of their duty not to distract her). But it seems excessive to have this become a concern of the state. So, not all attention rights violations call for a coercive response.

On the other hand, we may conceptualize certain types of nuisance laws¹⁷ (e.g. noise ordinances) as laws against violations not only of property rights but also of the right to attention; violations that perhaps justify coercive enforcement action. Such laws have traditionally covered interference with the use and/or enjoyment¹⁸ of one's land, and, after all, "enjoyment" is at least in part a psychological state (or a complex of psychological states)¹⁹ that nuisances such as noise distract from.

Whether the attention economy routinely casts our way the digital equivalent of noise (or worse) is, again, at least in large part an empirical question, to be guided by the ever growing pile of research on its impacts. So, granting the existence of an enforceable right to attention does not automatically translate into concrete policy recommendations.

Conclusion

This paper has sought to derive the right to attention from a more fundamental right to mental integrity (itself ultimately grounded in the right to bodily integrity). In so doing, it supplements the existing literature on the right to attention by sketching a (partially) new route towards grounding it. On the view defended here, the right to attention is a *pro tanto* liberty right to direct attention as we please, and a *pro tanto* claim right against interference with how we direct our attention. It imposes a defeasible duty on others not to distract us against our will. It protects an

Footnote 16 (continued)
not in these exact terms – see Robbie Soave [35] and Tyler Cowen ([36], ch. 6).

¹⁷ Tran briefly mentions nuisance laws in his paper as well.

¹⁸ To the extent that noise counts as nuisance, it must be experienced; secondly, it must be in some sense distracting to a large enough extent that it makes the normal use of property impossible or very difficult. So, it has to be in some way related to making it hard to focus on what one wants to focus on.

¹⁹ While not the most popular jurisprudential meaning of the term, "enjoyment" in the psychological sense also has its place in legal contexts. See Legal Information Institute [37].

important interest we have in maintaining the ability to perceive, to remember, and to structure our mental lives. It is also a means of protecting the sovereignty we have over our minds.

The account offered leaves open some important questions: are our attention rights routinely violated by Big Tech? If so, should there be a policy response? Answering these questions requires serious engagement with a fractious empirical literature and remains a fruitful topic of further study, beyond the scope of this paper. My goal has been more modest.

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Declarations

Competing Interests The author declares no conflict of interest.

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