

Office of the Data Protection Commissioner.
Canal House, Station Road
Portarlinton , Co. Laois
IRELAND

██████████
██████████
██████████
AUSTRIA

Vienna, 18th of August 2011

Complaint against Facebook Ireland Ltd. – 05 “Deleted Posts”

To whom it may concern,

This is a formal complaint against “Facebook Ireland Ltd.” under section 10 of the Irish DPA. I am convinced that “Facebook Ireland Ltd.” breaches the Irish DPA and the underlying Directive 95/46/EG and I kindly ask you to investigate the following complaint.

I am a user of “facebook.com”. The contract is governed by the “terms” used by Facebook (attachment 01). They state in section 18.1. that all users that live outside of the United States of America or Canada, have a contract with Facebook Ireland, while all users within the United States of America and Canada have a contract with Facebook Inc., based in California, United States of America (further called “Facebook USA”).

Therefore I do have a contract with “Facebook Ireland Limited, Hanover Reach, 5-7 Hanover Quay, Dublin 2, Ireland” (further on called “Facebook Ireland”). For performing my contract with them, Facebook Ireland is processing my personal data in different means. Since this controller is established in Ireland, I understand that according to section 3B(a)(i) DPA the Irish Data Protection Act (DPA) applies.

Because facebook.com is similar to a “cloud” service, I want to distinguish between the mere “hosting” of my data and all further processing of my data. For the purpose of hosting my data I see Facebook Ireland as a processor and myself as the controller. For any form of further processing of my data for Facebook Ireland’s own purposes (e.g. analytics or advertisement) I see Facebook Ireland as the sole controller (see graphic in attachment 02).

Generally all my hosted personal data is also used for Facebook Ireland’s purposes, which is why Facebook Ireland must always be seen as a controller. Whenever Facebook Ireland processes data that was “removed” by the user, it is obvious that the user is not in control of the data; therefore Facebook Ireland is the sole controller at this time. Facebook USA must be seen as the sub-processor or the processor in each case.

Unfortunately Facebook Ireland does not have a certain structure in its processing that would make it easy to distinguish certain forms of processing. In order to make the handling of my complaints easier for you, I decided to split them into individual cases. I want to inform you that some cases are overlapping to a certain extent.

Case 05 - "Deleted Posts"

About half a year to a year ago I decided that I wanted to delete as much of my personal data as possible on my facebook page. I used an automatic routine that automatically clicked on all "X"-buttons (labeled "remove post") on my Facebook page. The following prompt clearly states that the content gets "deleted" (see attachment 03). After the routine was running for a while, all content was gone. From this point on I was continuously deleting all new content manually. In two or three cases old content kept coming back to my wall after I deleted it weeks earlier.

See attachment 04: A screenshot taken on the 1st of July 2011 (10 days before the file for the access request was crated) where only two posts can be seen: one new (date: June 26th) and one old post that appeared again (date: April 23rd). This proofs that all old posts were deleted, except the one post that came back. At the end of my Facebook page the system said clearly: "There are no more posts to show."

After making an access request at Facebook Ireland, I got a 1.222 page PDF-File that listed personal information, including 11 random old "wall posts", "shares" and "status updates" (see attachment 05). All of them have been deleted by me previously. It is unclear why only this random selection of posts still exists. Even today, these posts are not shown when I visit my facebook page, but apparently they still exist on Facebook Ireland's databases.

These bits of personal data are rather old and should have been deleted by now even if the process of deleting may take some days or even weeks. The oldest piece of information is form the 21st of September 2008 (about 3 years old) and the most recent information is from the 10th of October 2011 (about half a year old). All of them were clearly deleted on the 1st of July as it can be seen on the screenshot in attachment 04. According to Facebook Ireland's privacy policy data is only saved for 90 days as a backup copy, all posts in question are older than 90 days.

This information leaves me with two possible interpretations:

- a) Facebook Ireland is not deleting removed posts at all and sent me only some of my old posts by mistake. The fact that I deleted them must be saved in some way since the old posts do not show up on my wall anymore.
- b) Facebook Ireland is not deleting some removed posts and is only making them "invisible", while most other posts were actually removed.

I think that this processing by Facebook Ireland is illegal under the following provisions:

1. There is no transparent notice that these bits of data are still held. In contrast to that the user is told that the content is "removed", which breaches the principle of fairness in section 2(1)(a) DPA and Article 6 (1)(a) of Directive 95/46/EG.
2. There is no information in Facebook Ireland's privacy policy that would substitute an accurate information of this process, as needed to comply with section 2D DPA and Article 10 of Directive 95/46/EG. This constitutes another breach of the principle of fairness in Section 2(1)(a) of the DPA.
3. There is no longer a legitimate purpose for holding on to these bits of data. There is no other purpose specified by Facebook Ireland. The data would have to be deleted according to section 2(1)(c)(i) DPA and Article 6(1)(b) of Directive 95/46/EG.

4. The further processing of these bits of data is no longer relevant for the purpose of the processing and seems to be also excessive, which constitutes a breach of 2(1)(c)(iii) DPA and Article 6(1)(c) of Directive 95/46/EG
5. The processing of the data seems to be longer than necessary to fulfill the purpose and therefore seems to be no longer necessary. This would constitute a breach of section 2(1)(c)(iv) DPA and Article 6(1)(d) of Directive 95/46/EG.
6. It seems that there has never been an informed consent by the user to the use of these bits of data since the user just agreed to the processing with having the option to "remove" this content later. If Facebook Ireland does not remove this content, the consent is neither *informed* nor *unambiguous* and therefore void under Section 2A(1)a DPA and Article 7(a) of Directive 95/46/EG.

I therefore kindly ask you to take the necessary steps to change this illegal practice by Facebook Ireland. Users have to be certain which content is "invisible" or "deleted" and "deleted" content has to be fully removed from the systems.

I decided to send you just the relevant parts of the original documents as attachments to this complaint, the original files can be sent any time by airmail, if necessary. I can be reached at [REDACTED] or [REDACTED] if you have any further questions.

Sincerely,

[REDACTED]