

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

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AUSTRIA

Vienna, 18th of August 2011

Complaint against Facebook Ireland Ltd. – 02 “Shadow Profiles”

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.

Complaint 02: "Shadow Profiles"

Facebook Ireland uses many functions that are targeted at getting more information than the actual data subjects are sharing on the facebook platform. Therefore Facebook Ireland collects as much information of users and non-users as possible. Facebook Ireland is mainly collecting e-mail addresses but it also collects names, telephone numbers, addresses or work information about its users and non-users.

This is done by different functions that encourage users to hand personal data of other users and non-users to Facebook Ireland (e.g. "synchronizing" mobile phones, importing personal data from e-mail providers, importing personal information from instant messaging services, sending invitations to friends or saving search queries when users search for other people on facebook.com).

Even commercial users that have a "page" on facebook.com have the option to import their costumers' e-mail-addresses to promote their page (see attachment 03).

By gathering all this information, Facebook Ireland is creating extensive profiles of non-users and it is also enriching existing user profiles (see attachment 04). This is done in the background without notice to the data subject ("shadow profiles"); the user or non-user is only experiencing some of the result of these shadow profiles: There are "friend" suggestions by Facebook Ireland based on the information or non-users get invitations showing many users that they actually know in real life.

This means that Facebook Ireland is gathering excessive amounts of information about data subjects without notice or consent by the data subject. In many cases these information might be embarrassing or intimidating for the data subject. This information might also constitute sensitive data such as political opinions, religious or philosophical beliefs, sexual orientation and so forth.

Even in the answer to my access request, there was no information that would disclose this information to me, such as which people uploaded my e-mail-address or disclosed my personal data when they "synced" their phone with facebook.com.

I do think this processing by Facebook Ireland is illegitimate under the Irish Data Protection Act and the Directive 95/46/EG for the following reasons:

1. There is no transparent notice that these shadow profiles are held, to what extent they are used and which data is gathered, 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) DPA.
3. Facebook Ireland can in no way secure that these shadow profiles are accurate, kept up to date and complete. Which breaches section 2(1)(b) DPA and Article 6(1)(d) of Directive 95/46/EG.
4. There is no longer a legitimate purpose for holding on to most of the information. After the initial use of the "friend finder" or other such tools, the data is not needed anymore for its purpose. 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.

5. The further processing of this 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
6. The processing of the data seems to be longer than necessary to fulfill the purpose. This would constitute a breach of section 2(1)(c)(iv) DPA and Article 6(1)(d) of Directive 95/46/EG.
7. The data subjects have never given a specific and informed consent to the processing of the information gathered by Facebook Ireland. There are general provisions in the privacy policy that give a hint towards these "shadow profiles", but the user has no way of finding out exactly which information is gathered. Non-users have not even consented to the privacy policy of Facebook Ireland. This means that there has never been a specific and informed consent as necessary under section 2A(1)(a) DPA or 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 and make Facebook Ireland comply with Irish and European law.

I decided to only send you the relevant parts of the original documents as attachments to this complaint. All 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]