

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. – 14 “Removed Friends”

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 14: "Removed Friends"

Facebook Ireland gives its users the possibility to "add" and "unfriend" other users as "friends".

Surprisingly, Facebook Ireland does not delete "unfriended" users totally but saves specific information about "removed friends" such as time, date of the removal and the user that "unfriended" the other user (see attachment 03). After using Facebook for 3 years, Facebook Ireland already lists 13 (!) pages of removed friends for my account.

The data subject does not suspect in any way that these former friendships are still saved and not fully deleted. The user experience is that the former friend is "gone". It is questionable if users are always comfortable that former relationships are still held by Facebook Ireland. For example, it might not be in the interest of the user that government agencies or other subjects can find out that a certain relationship has existed before. The user "adds" friends with the knowledge that they can "unfriend" them at any time and therefore removes this information at her/his own liking, this raises the question if a user is really giving an informed consent if the option to delete a relationship is in fact not available.

Facebook Ireland might use this information for its "friend" suggestions but it seems that the sole purpose of Facebook not suggesting "removed" friends later on is disproportionate, especially if we suspect that at some later point these friends might want to contact each other again.

I 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 this personal data is still held. In contrast to that, the user is told that the friend 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 this personal data. There is no other purpose specified by Facebook Ireland. The data would have to be deleted according to section 2(1)(i) DPA and Article 6(1)(b) of the Directive 95/46/EG.
4. The further processing of this personal data is no longer relevant for the purpose of the processing, which constitutes a breach of 2(1)(iii) DPA and Article 6(1)(c) of Directive 95/46/EG
5. The processing of former friends becomes excessive if you think that Facebook Ireland does not have a final date of deleting the information. If all former friendships get saved for an indefinite time, this clearly is excessive as defined in section 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 and therefore seems to be no longer necessary. This would constitute a breach of section 2(1)(iv) DPA and Article 6(1)(d) of Directive 95/46/EG.

7. It seems that there has never been an informed consent by the user to the use of this personal data since the user only agreed to the processing including having the option to remove this information later. If Facebook Ireland does not remove any of this content, the consent seems to be not informed and not 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. The only solution to this in my perspective is that Facebook Ireland deletes this information immediately.

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]