

Press information

europa-v-facebook.org

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Irish Boomerang. Facebook USA founded a subsidiary in Dublin, Ireland and is thereby benefiting from a tax loophole (see [here](#)). According to Facebook's terms, all users outside of the US and Canada have a contract with this subsidiary in Ireland. This means that Facebook is subject to European privacy and consumer law, which is generally tougher than US laws. Every EU member state has its own privacy legislation (e.g. the 'Data Protection Act' in Ireland), but all of these laws are based on the European Directive 95/46/EG.

Unbelievable masses of Data. Every citizen in the EU has the right to get a full copy of all personal data a company holds about them ("access request"). Three students from Vienna, Austria have done so recently and got a CD with a PDF of 780, 1,142 and 1,222 pages. In all data sets you could find sensitive information such as political and religious beliefs, psychological problems or sexual orientation of the user. You can find the blackened files, a detailed explanation about all data sent and a guide on how to request personal data [here](#). So far more than 40 000 users have requested a copy of their raw data, but Facebook denies full access and redirects users to different "download tools" that do not deliver all data.

Removed Data still held. Facebook makes the users believe that they can delete information if they want to. In our data sets we found massive amounts of "deleted" data that Facebook still held after deletion. It is unclear what extent of data is undeleted because Facebook did not grant access to all personal data held. Some examples of removed data that was still held can be found [here](#).

22 Complaints against Facebook. Now we filed 22 complaints against Facebook Ireland with the Irish Data Protection Commission (DPC). The DPC investigated the complaints and decided if they are justified. A list of all 22 complaints can be found [here](#). Most of the complaints center around two issues: user control and transparency. We believe there is a lack of both on facebook.com, which makes Facebook's data processing illegal under EU law. It was crucial to us that all complaints are based on solid evidence and only cover the most basic principles of EU data protection law. We wanted to ensure that these are "easy" cases.

It's not about data users willingly shared. It is crucial that these complaints are not about data users willingly shared, but about data that Facebook is generating in the background or holding after deletion by the user. We even found that Facebook is collecting data of non-users. Many people believe that they can protect themselves – our research showed that in fact this is not possible.

Additional "Audit" Procedure. After receiving the complaint, the Irish Data Protection Commissioner started an additional public and non-binding "audit" of Facebook's practices. A first non-binding report ([Link](#)) was issued in December 2011. The report named a number of "suggestions" for Facebook. The report misses a sound legal reasoning and does not cover many issues brought before the DPC. This view was shared openly (e.g. by a [German DPC](#)) and by other DPCs in the EU behind the scenes (see [Interview with the Irish DPC](#)). Despite many shortcomings this first report turned out to be the most massive intervention into Facebook's data gathering so far: Facebook had to limit retention periods, rewrite their privacy policy and change the sign-up process. According to the Irish ODPC Facebook had to start implementing the most basic principles. It is said that Facebook Ireland has hired a large amount of staff and lawyers to cope with this procedure. Consequently the ODPC has focused on "selling" these achievements instead of fully enforcing EU laws.

“Fair” Procedure? While Facebook was even allowed to redact the exact wording of the reports before they were published, we were left out of the proceeding. This is despite the fact that the report is mainly based on our complaints. In the following months the ODPC has subsequently rejected any meaningful engagement with us, despite us being the second party in the two-party complaints proceeding.

The ODPC has denied us all access to evidence, arguments or files of the case, while Facebook has access to all these documents. We therefore see the Irish ODPC in breach of Irish and European laws that guarantee a “fair procedure” and an effective enforcement of the EU laws. It is unclear if political reasons are involved.

Negotiations with Facebook. After rejecting the “first report” as a final solution we were asked to find an “amicable solution” with Facebook directly. Therefore we have had a meeting with Facebook representatives from the US and Ireland on February 6th 2012 in Vienna.

In a six hour long discussion it became clear to us that Facebook lacks sound legal counter arguments and is unwilling to make changes. The company is “reinterpreting” the European laws in absurd ways until the laws fit their product. A detailed summary of arguments by us and Facebook can be found [here](#).

Since many questions could not be answered by Facebook they agreed to send us follow up documents to clarify many issues. This promise was breached soon later by not answering our questions appropriately. Until today Facebook was unable or unwilling to deliver proper counterarguments.

Review of “Audit”. The Irish DPC has informed us that we will have to make a “request for a formal decision” in order to receive a legally binding decision. Such requests were rejected by the ODPC until it has published a “review” ([PDF](#)) in September 2012. After the ODPC has asked us for a response to this “review” we have delivered a detailed 70-page analysis of the “audit” procedure on December 4th 2012 ([PDF](#)). The document has outlined many shortcomings of the non-binding “audit” procedure. It was ignored by the ODPC without reasons. All requests and submissions in this document were factually rejected.

Binding Decision. Since the ODPC has prolonged the procedure for 1.5 years, we are currently planning to force the ODPC to make a formal decision as soon as possible. Unfortunately we have to expect that such a decision will repeat the findings of the first report from December 2012, which are not in line with EU laws. If this is the case we are determined to appeal before the Irish courts as well as on the European level. Since the costs for this were estimated to reach € 100.000 to € 300.000 (an amount that makes it impossible for a normal citizen to claim his/her rights) we have started our crowd funding platform called [crowd4privacy.org](#) on December 4th 2012. So far people have donated € 20 on average. If we find 5.000 users that support us this would amount to € 100.000 and we would be able to appeal wrong decision by the ODPC. If we do not reach this goal, supporters can choose if they want their donation back or have it donated to similar NGOs.

David versus Goliath. europe-v-facebook.org is organized by a small group of about 10 Facebook users. The starting point was an article Max Schrems (Law Student, University of Vienna) wrote during his semester abroad at Santa Clara University, California, where a Facebook representative held a talk about European privacy laws. After finding that Facebook was breaching these laws and after returning to Vienna, Max and his friends decided that someone had to take action against these obvious breaches of European laws. Our loose group of students is not aiming for any financial gain or other personal interest. In spring 2012 we funded an Austrian NGO that manages financial support to keep our fight against Facebook running.

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