

Submission by „Facebook Ireland Ltd“ to the Office of the Irish Data Protection Commissioner

Response to Complaint(s) Number: 22

The following submission by “Facebook Ireland Ltd” is a response to complaints filed by “europe-v-facebook.org” before the Irish Data Protection Commissioner as amended by our “request for a formal decision”. It was received by “europe-v-facebook.org” on September 30th 2013.

The submission starting on page 2 of this PDC does only reflect the view of “Facebook Ireland Ltd” and was not changed or amended. The submissions were likely drafted by Facebook Ireland’s law firm “Mason, Hayes & Curran”. We did not receive any addition documents from “Facebook Ireland Ltd”. All other documents of this procedure can be downloaded on “europe-v-facebook.org”.

After we took a first look at the submissions by “Facebook Ireland Ltd” we want to mention the following points, to ensure that any reader will get the full picture of the procedure:

1. In the submissions Facebook Ireland Ltd does in many cases **not responded to our complaints**, but produced arguments and submissions that are irrelevant to the complaints filed. It seems that Facebook Ireland Ltd is trying to “bypass” the arguments we entertained.
 2. In the submissions Facebook Ireland Ltd does in many cases **summarize our complaints** in a way that does not reflect the content of our complaints. We do not know why Facebook Ireland Ltd has chosen this approach other then again “bypassing” the core of the complaints.
 3. In the submission Facebook Ireland Ltd does not respond to the **legal arguments** that were submitted by us, but only focus on facts. The law is not cited in any of the submissions.
 4. In the past 2 years Facebook Ireland Ltd has changed many functions. In the submissions Facebook Ireland Ltd does in many cases **mix the factual situation** throughout this time period. Our complains are usually separating facts and consequences before and after such changes.
 5. In the submission Facebook Ireland Ltd does in many cases refer to the “**audit reports**”. The basis for these reports is not public or independently verifiable. In many cases the DPC has only relied on unverified arguments by Facebook Ireland Ltd when making its assessment. Facebook Ireland Ltd is now relying on these findings, as if they were independently verifiable facts.
- **Therefore we recommend to consult our original complains, as amended by the “request for a formal decision” [[DOWNLOAD](#)] when analyzing the submissions from “Facebook Ireland Ltd”.**

COMPLAINT 22 – NEW POLICY

1. BACKGROUND

The Data Use Policy explains how FB-I obtains and uses users' data. Despite the challenges of conveying the complexities of the Facebook service to a diverse audience of over a billion users, it is structured in a friendly and intuitive manner, augmented with visual aids and embedded links.

Facebook has developed its Data Use Policy over many years since the platform's inception. Like most other businesses, particularly those operating online, FB-I keeps its Data Use Policy under consideration. The DUP is occasionally refined and updated to reflect new features and current regulatory guidance, including that provided by the DPC and the US Federal Trade Commission ("FTC"). The Data Use Policy has evolved to provide greater simplicity and accessibility to users, with sections highlighted in a logical way, written in plain, easy-to-understand language.

1.1. Facebook Governance Page

The Facebook Site Governance Page is the main source of information for users for governance documents and proposed changes. It also provides users with the option of providing feedback regarding the proposed changes. Facebook users can ensure that they receive early notice of proposed changes to FB-I's terms by liking the Facebook Site Governance Page.

1.2. Notification of Changes

The Data Use Policy contains a section detailing how users will be informed of changes to its provisions. Changes are announced to users on the Data Use Policy and the Facebook Site Governance Page. In some instances, we may also augment the site governance communications and experience with additional notice, such as email or a notice shown to users when they are using Facebook.

Notice of Changes

If we make changes to this Data Use Policy we will notify you (for example, by publication here and on the Facebook Site Governance Page). If the changes are material, we will provide you additional, prominent notice as appropriate under the circumstances. You can make sure that you receive notice directly by liking the Facebook Site Governance Page.

Users are provided with considerable information on proposed updates to the Data Use Policy. Users are also invited to provide comments to FB-I on the proposed changes, which are considered before the final implementation occurs.

FB-I takes extensive steps to ensure that its users understand proposed changes to its Data Use Policy. Not only are such proposed changes notified to users in advance (in contrast to the common online practice of changing a privacy policy without giving users advanced notice) but FB-I endeavours to ensure that its users understand any proposed changes and their impact. For example, the context and objectives of updates are explained in online posts. Section-by-section summaries of updates are also often provided and, for users who wish to dig deeper into the proposed changes, Facebook provides other materials, such as a tracked changes document showing the intended modifications.

2. FACTUAL ASSERTIONS MADE BY COMPLAINANT

The Complainant objects to manner of renewal and notification of FB-I's Data Use Policy. In the original Complaint, the Complainant makes the following allegation, which is reiterated in the 2013 Request for Formal Decision:

- a) *Users are not informed of, and have not consented to, changes to the Data Use Policy.*

In the Request for Formal Decision¹, the Complainant further alleges that:

b) *Facebook Inc's agreement with the FTC has nothing to do with the Complaint against FB-I.*

3. AUDIT PROCESS

3.1. 2011 Audit Report

In the 2011 Audit Report, the DPC set out the Complainant's Complaint in the following terms, noting that it did not consider it necessary to review the issue:

Complaint 22 – New Policy from “Europe-v-Facebook” related to what are stated as recent changes made to Facebook's Privacy Policy. The complainant contends that it is difficult to understand the changes in conjunction with the previous policy and that users have not had any opportunity to consent to the changes made. In light of the recent comprehensive FTC settlement with Facebook in this area, the question of consent in relation to the new Privacy Policy will not be considered in this report.²

3.2. Update Report

In its Update Report, FB-I set out the manner in which users were notified of its revision to the Data Use Policy in mid-2012. This provides an illustration as to how FB-I informs its users of proposed revisions to the Data Use Policy:

Most notably, in May 2012, FB-I proposed revisions to its Data Use Policy that substantially increased transparency in its data use practices by including more explanations, examples, and links to additional information. FB-I displayed prominent notice of the proposed revisions on users' homepages, as well as sent messages to all users who "like" the Facebook Site Governance Page. After the seven-day notice and comment period expired, FB-I considered all of the comments it received. FB-I addressed user comments by making some further revisions to the SRR reflecting user comments. For example, we rewrote Section 2.3 to clarify how sharing works with apps; rewrote Section 2.9 to clarify the proposed updates to our language on tagging; and removed our proposed addition of Section 17.4. Even where FB-I did not make revisions, FB-I provided further explanations of the original change. In fact, many of the user comments asked for explanations rather than for changes. Therefore, FB-I provided responses to the topics that sparked the most discussion. In light of the volume of comments received and as per FB-I's site governance policy, FB-I held a vote on the proposed revisions. FB-I adopted the revised policy on June 8, 2012.³

4. APPLICATION TO CURRENT COMPLAINT

In light of the above, FB-I responds to the Complainant's specific factual allegations as follows:

a) *Users are not informed of, and have not consented to, changes to the Data Use Policy.*

As set out above in Section 1 of this Response, FB-I provides users with a number of sources of information for details on proposed changes, including providing redline and summary documents to best explain any proposed changes. Where material changes to the Data Use Policy are being contemplated, users will receive prominent notice of such changes.

b) *Facebook Inc's agreement with the FTC has nothing to do with the Complaint against FB-I.*

As stated above, the DPC did not consider it necessary to review the consent issues relating to Data Use Policy changes in light of the FTC agreement, which regulates modifications to the Data Use Policy that entail the sharing of user data in new ways. While the FTC agreement was concluded by Facebook Inc., and not FB-I, FB-I follows this agreement in its own operations. Consequently, this agreement is directly

¹ Pages 152 to 153 of the Request for Formal Decision

² Page 39 of the 2011 Audit Report

³ Page 6 of the Update Report

relevant to FB-I. Additionally, as explained above, FB-I provides robust notice (on Facebook and through other means, such as email) to its users when proposing updates to its terms or Data Use Policy. Those communications not only provide access to the updated terms or policies, but also provide summaries and examples to help users understand the proposal.