

Class Action Brought Against Facebook

A class action against the social network could become Europe's largest data privacy suit. Any Facebook user can participate through 'Assignment App'.

An extensive civil suit has been brought at the relevant Court for Vienna against the Irish subsidiary of the stock exchange-listed US company. The claimant is Viennese lawyer and data privacy activist Max Schrems. Other affected users can join the class.

'Our aim is to make Facebook finally operate lawfully in the area of data protection', says Schrems. Injunctions under EU data protection law will be applied for and damages sought.

In order to give the action the necessary public pressure, all other Facebook users have been called on to join the case as part of an Austrian class action. 'Each additional participant also increases the pressure on Facebook', says Schrems. This will occur in the next few months through 'assignments' of claims of other Facebook users from all over the world to the primary claimant. Unlike in a US class action, participants must therefore actively come forward, but can be joined at any time. The necessary assignment can be carried out within a few minutes at www.fbclaim.com through a specially developed 'assignment app' for computers and smart phones connected to Facebook. All adult non-commercial Facebook users outside Canada and the USA can take part.

The suit is essentially based on the following unlawful acts of Facebook Ireland:

- Data use policy which is invalid under EU law
- The absence of effective consent to many types of data use
- Support of the NSA's 'PRISM' surveillance programme
- Tracking of Internet users on external websites (e.g. through 'Like buttons')
- Monitoring and analysis of users through 'big data' systems
- Unlawful introduction of 'Graph Search'
- Unauthorised passing on of user data to external applications

While European data protection law applies, the claims for damages in accordance with Facebook's conditions of use will have to be assessed under Californian law. 'In the case of Facebook Ireland we have a very interesting situation, as both European data protection law and US tort law are applicable. This is obviously helpful for the enforcement of the users' rights', says Schrems. The claim for damages has been deliberately set low, at a token €500 per user. 'We are only claiming a small amount, as our primary objective is to ensure correct data protection. However, if many thousands of people participate we would reach an amount that will have a serious impact on Facebook', explains Schrems, who is organising and running the action without consideration.

There is no risk of costs for participants of the class action, as only Schrems will figure as a claimant. The suit is being financed entirely by ROLAND ProzessFinanz AG. If it is successful, ROLAND will receive 20% as legal funding provider. 'Because of our long history as a litigation funding company we are used to levelling the playing field in the fight between David and Goliath. In this case it is particularly necessary', says Arndt Eversberg, CEO of ROLAND ProzessFinanz AG. All the damages

awarded will be paid to the participants, less the costs and the legal funding provider's share. The class action is therefore not oriented towards making a profit.

With regard to the proceedings still running in parallel before the data protection authorities in Ireland Schrems says: 'In the beginning we made great progress in Ireland. As a result of our complaints, Facebook had to delete data and deactivate its facial recognition all over the world. However, over time it became clear that the Irish authorities had no interest in enforcing substantial changes. The proceedings will soon reach the end of their third year and we are still being promised a decision "in the near future". Many voices in Ireland are saying that this is due to political pressure not to drive away the IT industry, which is very important in Ireland. We shouldn't have that problem in Austria. We are therefore transferring the focus of our activities here.'

Schrems' attorney Wolfram Proksch (PFR Rechtsanwälte – attorneys at law) says: 'We have reviewed the matter in detail and made careful preparations. For the time being the action is only directed against Facebook's obvious violations of the law, which affect virtually all users. Every Facebook consumer outside the USA and Canada has a contract with Facebook Ireland. Within the EU, consumer contract cases are handled by the competent court for the claimant's place of residence. Because Max Schrems is bringing the action as a consumer, his place of residence is in Vienna and Facebook Ireland is a European company, the Court in Vienna is competent.'

'We love to complain constantly about data protection problems in Europe, now it's also time for us to enforce our fundamental rights. Within the framework of this class action individuals can also make a contribution to this effort', Schrems concludes.

Further information, photographs and all the documents on the suit are available now at <http://www.europe-v-facebook.org/EN/Media/media.html>.

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