

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

Response to Complaint(s) Number: 1

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 1 – ‘POKES’

1. BACKGROUND

1.1. What are pokes?

A “poke” is a lightweight form of communication among Facebook users. When a user pokes someone, the recipient user receives a notification that he or she has been poked. People poke their friends on Facebook for a variety of reasons. For instance, people can poke their friends just to say hello. Pokes are visible only to the sender and recipient.

1.2. The activity log

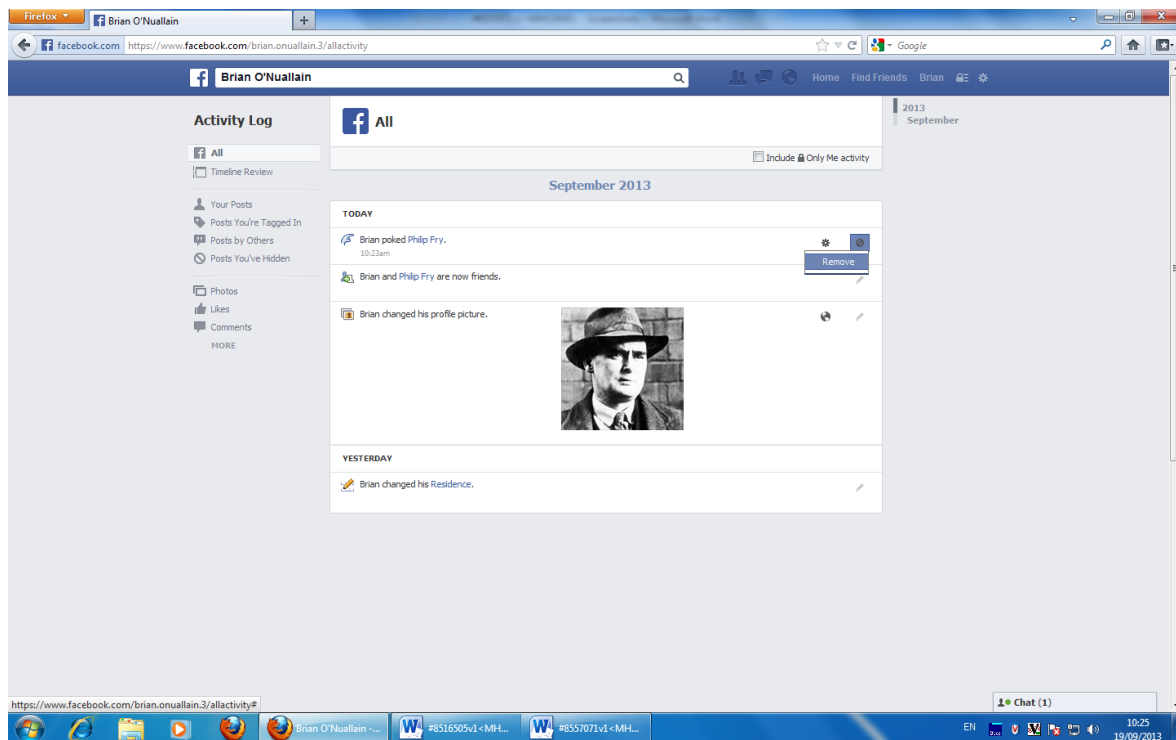
The activity log enables users to review and manage what they share on Facebook. This is a means for users to access, review and delete their own data on a per-item basis and is only viewable by the user. Users can sort their activity log by activity or by time period.

1.3. Can pokes be deleted?

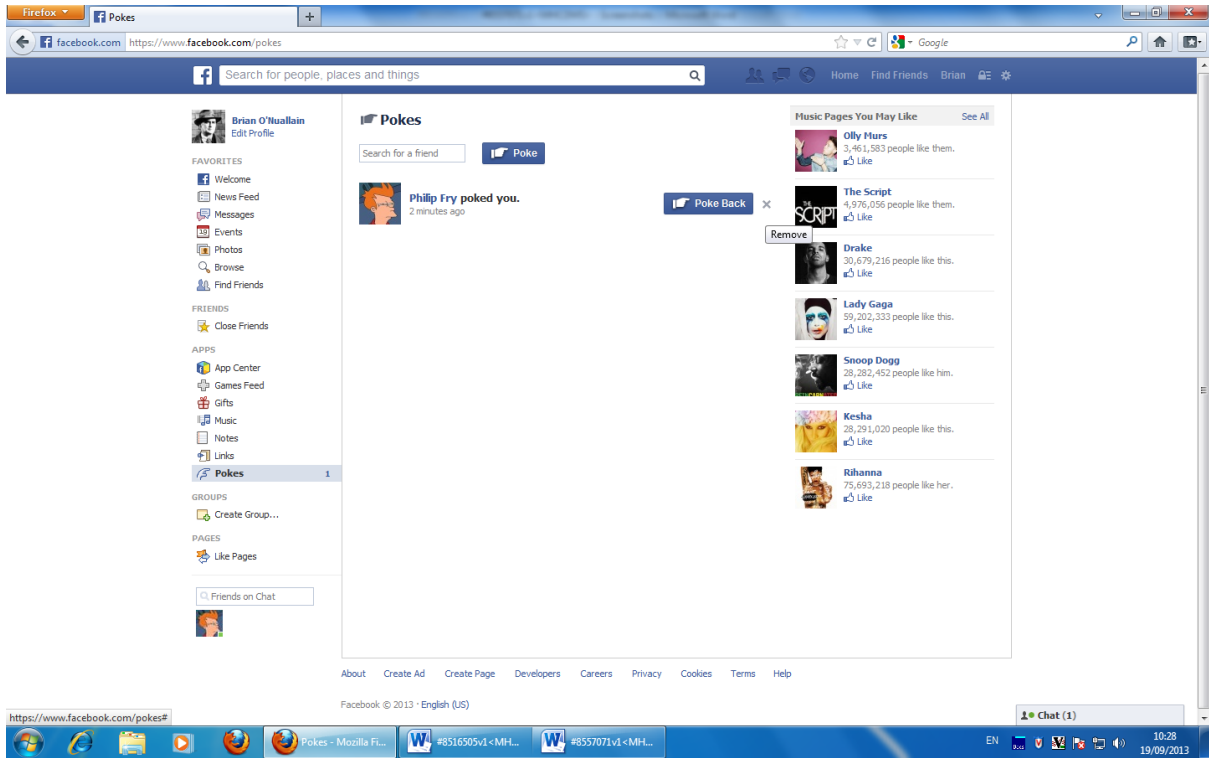
Users can delete pokes. The method of deletion depends on whether the user is the sender or recipient of the poke.

First, the sending user can remove the poke from their activity log. Pokes, like messages, are two-way communications; therefore, the removal of a poke by the sender will not remove notification of the poke from the recipient’s account. FB-I will delete a poke after it has been removed by all relevant users.

The screenshot below illustrates how a user can delete a sent poke from their activity log:



Second, the recipient user can delete a poke from the ‘incoming pokes’ notification in the “apps” section of their account. This is illustrated in the screenshot below:



The data is retained by FB-I where the recipient user has not responded to or removed the poke. This provides the ability to prevent harassment of the user (particularly a user being spammed with further pokes).

1.4. Data Use Policy

The Data Use Policy describes the functions of the activity log:

Your activity log is a place where you can go to view most of your information on Facebook, including things you've hidden from your timeline. You can use this log to manage your content. For example, you can do things like delete stories, change the audience of your stories or stop an application from publishing to your timeline on your behalf.

1.5. Help Center

The Facebook [Help Center](#) clearly sets out what happens to content that is deleted from Facebook:

When you choose to delete something you shared on Facebook, we remove it from the site. Some of this information is permanently deleted from our servers; however, some things can only be deleted when you permanently delete your account.

The reason for this is that we need certain data to give you the best experience on Facebook possible. For example, we save information about the friend requests you reject so that we know not to surface those people as a people you might want to connect with. We also save information about the tags you remove to make sure that you aren't re-tagged in the same photo.

The [Help Center](#) also deals with the question of what happens to pokes once you remove them:

Once you remove a poke from your homepage, you can't get it back. But you can still poke back. Removing a poke also allows the other person to poke you again.

2. FACTUAL ASSERTIONS MADE BY COMPLAINANT

The Complainant objects to Facebook’s retention policies with respect to pokes. In the Original Complaint, the Complainant alleges the following, which is reiterated in the 2013 Request for Formal Decision:

- (a) *That FB-I retains deleted pokes, has a policy of marking ‘removed’ pokes as ‘viewed’ without actually removing them and does not explicitly state in the Privacy Policy what it does with pokes.*

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

- (b) *That (i) poke information is still available in the ‘notifications’ menu following deletion, (ii) on the basis that he alleges there is a lack of evidence, he has to “assume” that FB-I is still holding ‘pokes’ after they have been deleted and (iii) from his testing it “seems like ‘pokes’ are still only ‘hidden’ from users, but not deleted.”*

FB-I rejects both these allegations, which are inconsistent with the findings of the DPC’s 2011 Audit Report. FB-I does not retain pokes that have been deleted by the sender and the recipient.

3. AUDIT PROCESS

3.1. 2011 Audit Report

In the 2011 Audit Report², the DPC set out the Complainant’s allegations in the following terms:

3.4.1 Complaint 1 – Pokes

In the complaint it was stated that a ‘poke’ is a type of short message sent from one Facebook user to another. If the user to whom the ‘poke’ is sent wishes to remove that ‘poke’, they may click on a small ‘x’ provided next to it. The complainant stated that while Facebook allows for this removal of old pokes, they were not, in fact, being deleted.

As part of an access request made to Facebook, the complainant was provided with a copy of all pokes ever sent or received going back over a 2 year period to the time when he first set up his Facebook account. From the data provided, the complainant contended that Facebook marks ‘removed’ pokes as ‘viewed’ but is not, in fact, deleting them.

The DPC reviewed the transparency and control of data retention by FB-I. The DPC made best practice recommendations based on its review of Facebook pokes:

From the control perspective, at present there is no facility for a user to delete friend requests, pokes and tags.³

In light of this observation, the DPC recommended that users should be given an enhanced ability to delete, among other things, pokes.⁴ In response to this recommendation FB-I agreed to implement:

[A] policy of allowing users maximum control over their data and to the maximum extent possible will be extending an ability to delete on a per item basis individual data items.⁵

Following discussions with FB-I, the DPC recognised that FB-I would soon introduce the activity log feature alongside the move to Facebook’s new timeline profile. FB-I was in the process of phasing in this functionality during the 2011 audit to provide greater transparency and control to users:

FB-I noted that it has already made changes to its service to improve visibility to users of data that previously was not visible. Facebook’s new profile, called “Timeline”, has a feature called “Activity Log,” on which many of the user’s actions around Facebook can now be viewed privately by the user. Since “Activity log” is only visible

¹ Pages 29 to 31 of the Request for Formal Decision

² Pages 69 to 72 of the 2011 Audit Report

³ Page 71 of the 2011 Audit Report

⁴ Page 78 of the 2011 Audit Report

⁵ Page 71 of the 2011 Audit Report

to the user, FB-I has proposed to use this feature as a means for users to access, review and delete their own data. Building the Activity Log was, according to FB-I, an involved and lengthy engineering task, but FB-I is committed to add further data to the log and to give users the ability, where appropriate, to delete, if not all, then most of the data. However, as stated in the Section on Access, "transparency is a core value of FB-I. FB-I believes that our users are entitled to have easy and effective access to their personal information. To achieve this goal, we shall endeavour not to unnecessarily use or retain the personal data of users where such data cannot be made easily available to the user." FB-I has also in this respect undertaken a policy of allowing users maximum control over their data and to the maximum extent possible will be extending an ability to delete on a per item basis individual data items. Given the size of the engineering task, FB-I has agreed to begin working on the project during Quarter 1 of 2012. FB-I has committed to showing demonstrable progress by our July 2012 review.⁶

The response of FB-I concerning the saving of removed pokes for bullying and harassment purposes was noted by the DPC in the 2011 Audit Report:

FB-I's response on these complaints highlighted that it retained such information for what it termed various important purposes to provide the best possible experience to users. For example, it stated it needs to save removed pokes in order to assist in identifying instances of bullying and harassment.⁷

For the sake of completeness, FB-I notes that the DPC also separately recommended that FB-I provide additional information to users in relation to what happens to deleted or removed content, such as pokes.⁸ This recommendation was subsequently implemented to the satisfaction of the DPC.⁹

3.2. Update Report

In July 2012, FB-I provided its Update Report containing, among other things, an in-depth review of changes to its data retention practices, particularly with regard to the enhanced control provided to users by the activity log¹⁰:

2.5 Transparency and Control

The transparency and control offered by Facebook's Activity Log feature is a major accomplishment. This is one of the most innovative and unparalleled offerings in the social media industry and clearly demonstrates FB-I's commitment to integrating transparency and control over data into the Facebook experience. This feature was introduced prior to the audit, but has been further developed and elaborated over the past six months in response to the audit, including adding the feature to the profiles of users who still have not transitioned to timeline. Activity Log, which is visible only to the user herself, presents users with a detailed and comprehensive look at all of their activity on Facebook since the beginning of their accounts. Users can sort by activity type, e.g., "comments", "status updates", "likes", or can search the Activity Log using keywords. Users can also jump to any month and year to view the activity during that time period. Further, the Activity Log provides users the ability to see in one place the visibility setting of their activity and the objects they interacted with, as well as the ability to change the visibility, remove from timeline, or delete the activity. The Activity Log shows whether a user added location to a post and whether the post received comments. The Activity Log is extremely easy and intuitive to navigate—a user need only hover with his cursor over any part of the log to learn what it means. See screenshots below:

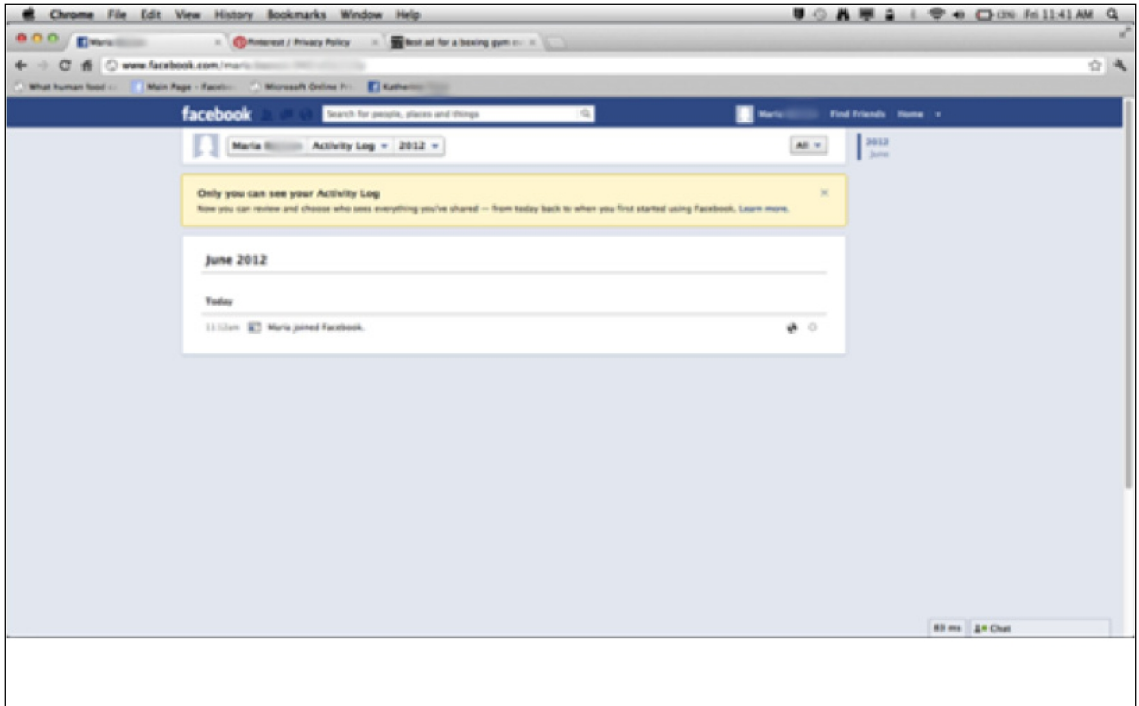
⁶ Page 71 of the 2011 Audit Report

⁷ Page 71 of the 2011 Audit Report

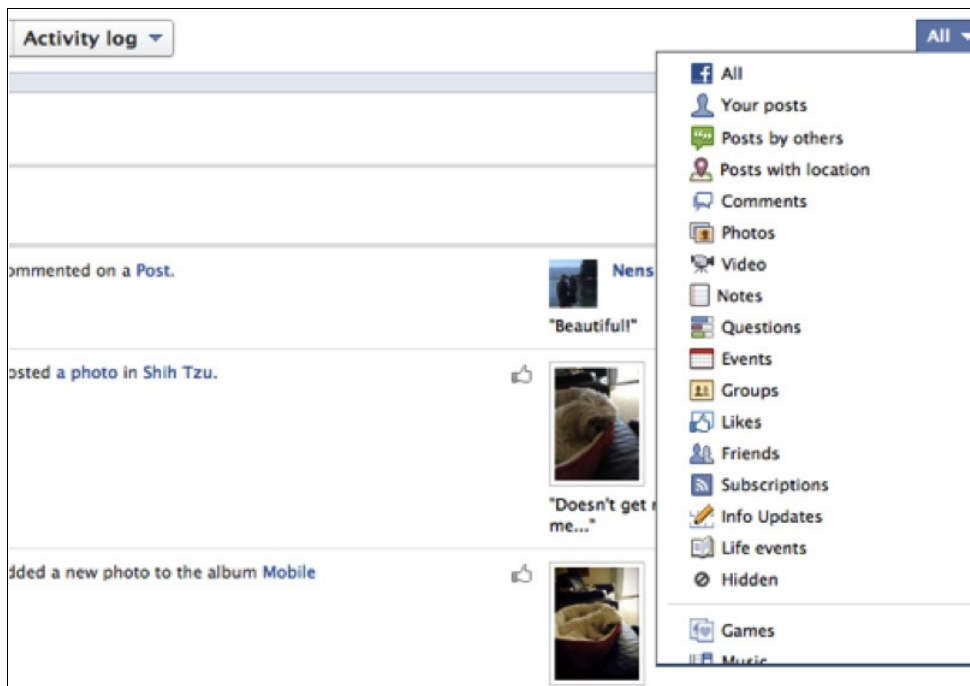
⁸ Page 78 of the 2011 Audit Report

⁹ Page 27 of the 2012 Audit Report

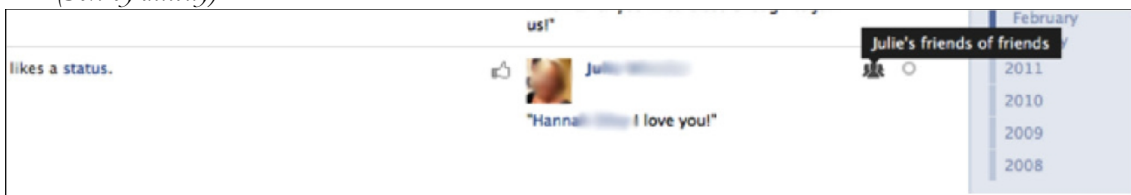
¹⁰ Page 17 to 21 of the Update Report



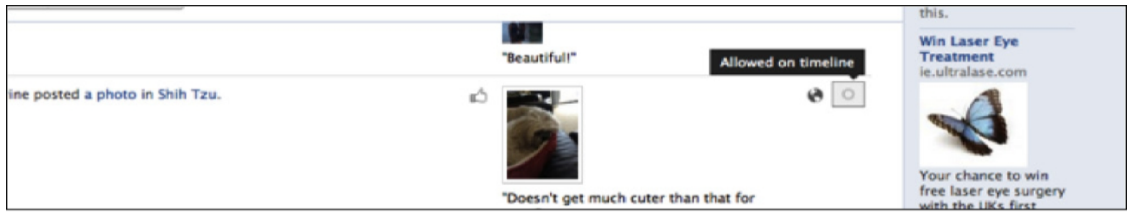
(new user's first time in Activity Log)



(Sort by activity)



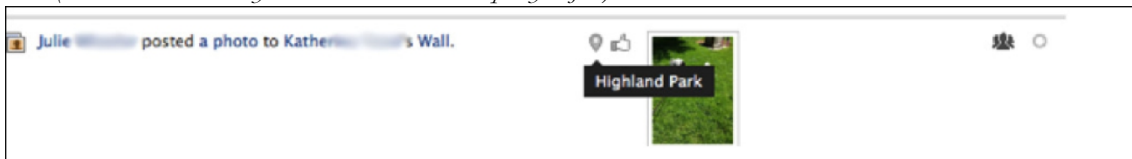
(Visibility of third-party object user liked)



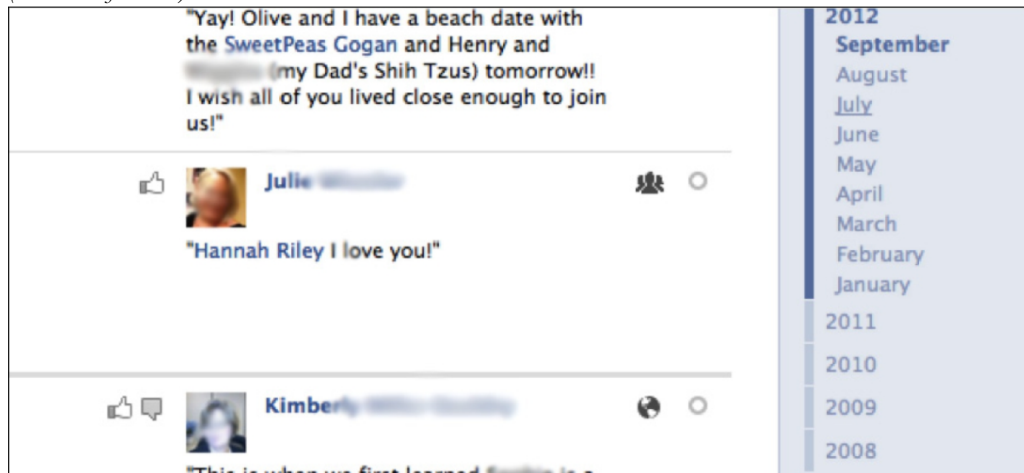
(whether action appears on user's timeline)



(whether there are any comments on the third-party object)

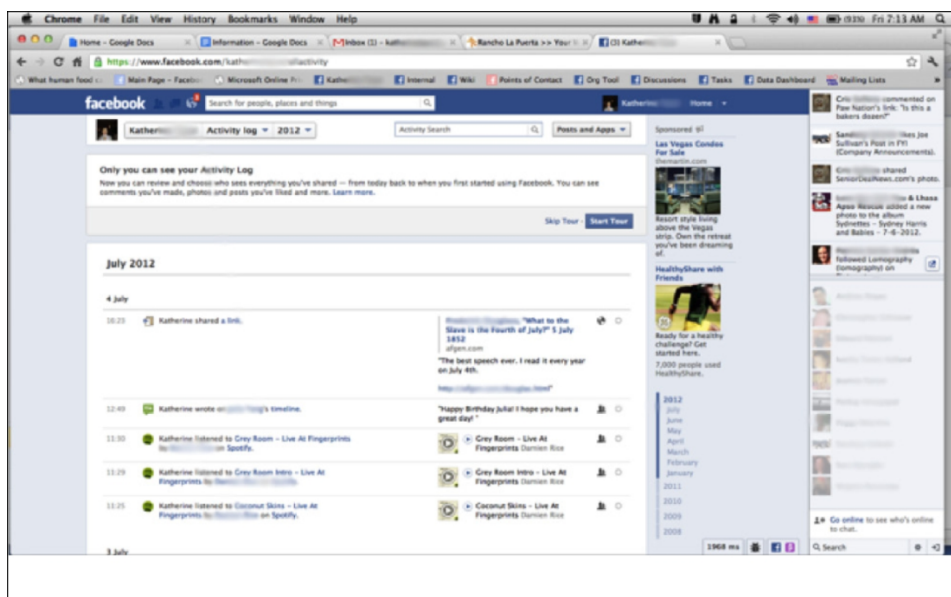


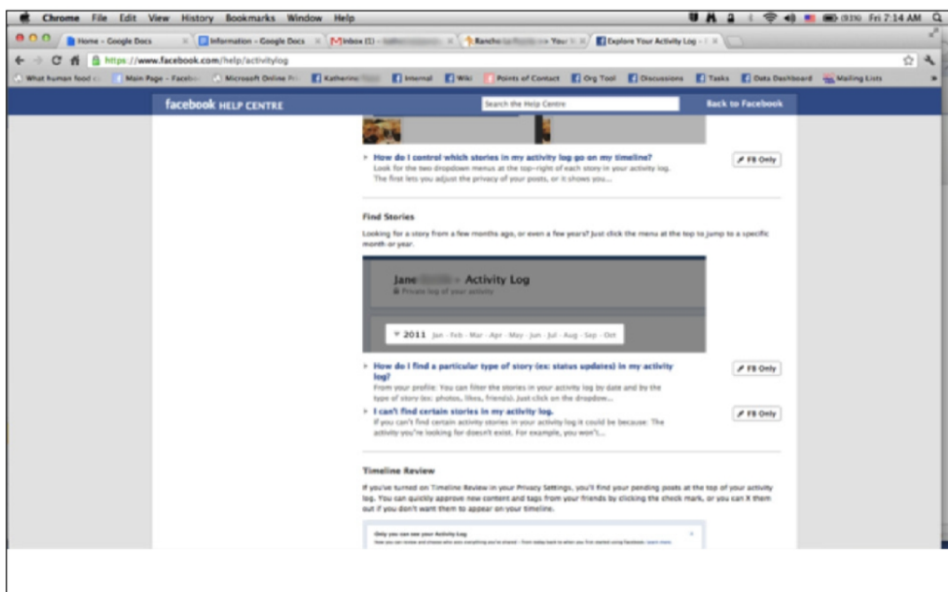
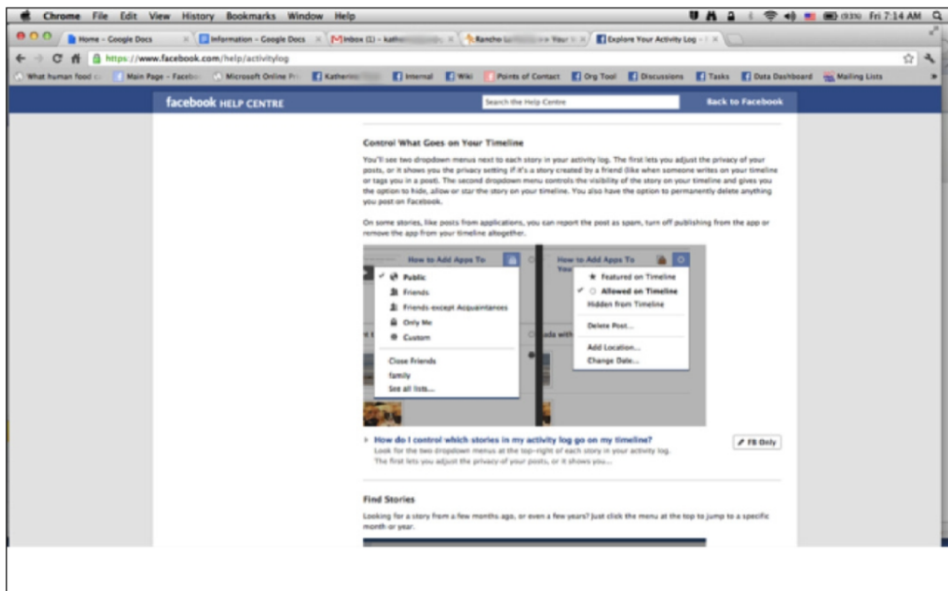
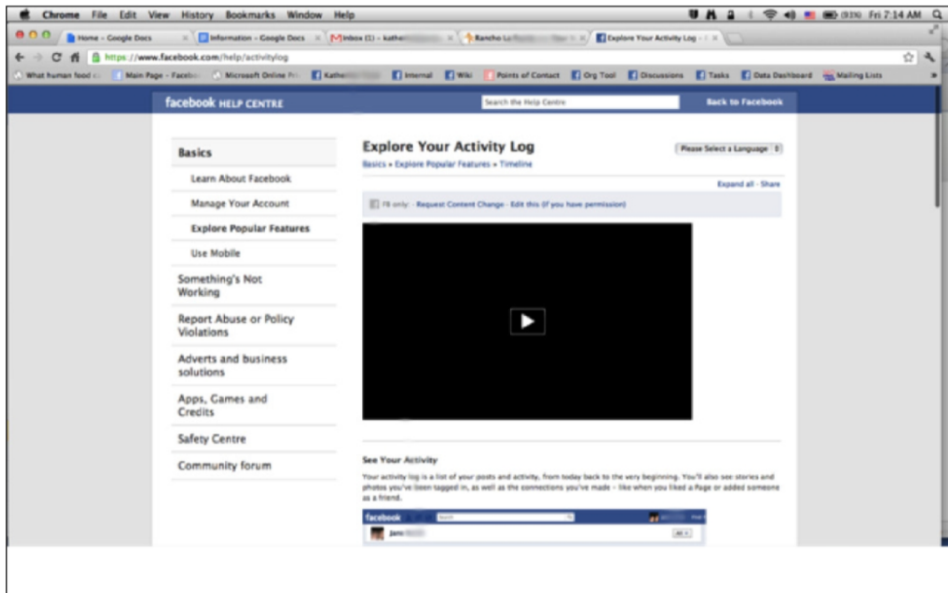
(location, if added)

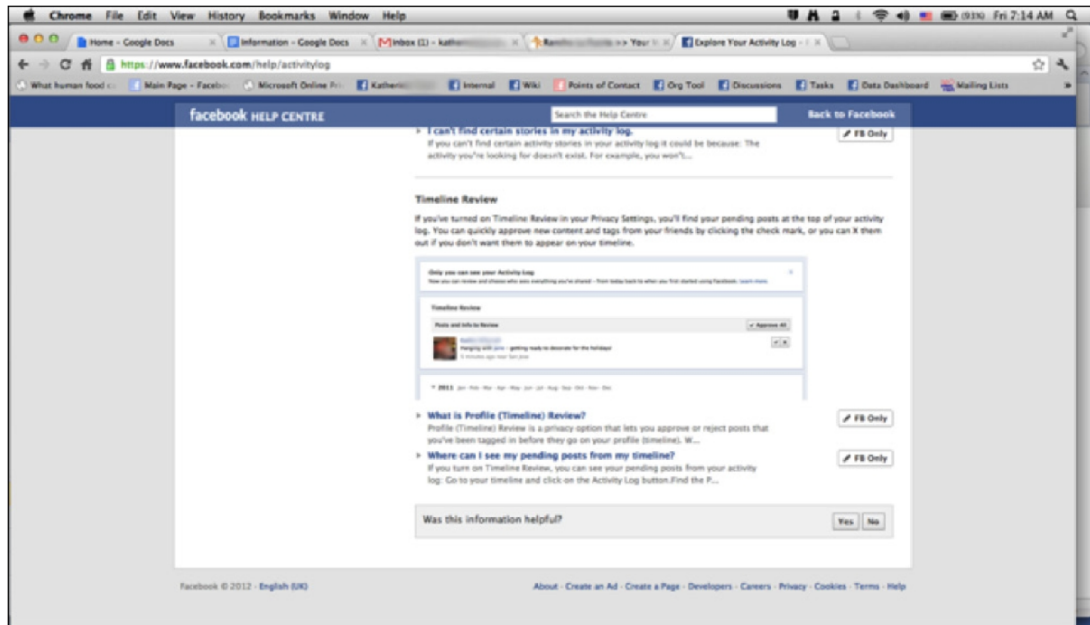


(can easily jump to a period earlier in time)

Additionally, users who first visit the Activity Log are provided an Activity Log educational tour. See screenshots below.







The Update Report further noted developments since the 2011 Audit Report:¹¹

Chapter 5 — Data Retention

The Report of Audit stated: "Data retention is a standard issue considered during the course of all audits conducted by this Office. Section 2(1)(c) of the Data Protection Acts 1988 & 2003 provides that a data controller shall not retain personal data longer than is necessary for the purpose or purposes it was obtained. In determining appropriate retention periods for personal information, data controllers can have due regard to any statutory obligations to retain data. However, if the purpose for which the information was obtained has ceased and the personal information is no longer required for that purpose, the data must be deleted or disposed of in a secure manner. Full and irrevocable anonymisation would achieve the same objective. Given the nature of the retention obligation which can be subjective in many respects, the identification of acceptable retention periods is one of the more discussed and debated issues in the conduct of audits and investigations by this Office."

The DPC further noted, "The complexity of an information society service such as FB-I makes it a continuing challenge for it to define and identify data which can be considered to be personal data and apply appropriate retention periods to each category of such data. FB-I has committed to do so on an ongoing basis."

"FB-I has noted that its success depends upon constantly innovating and constantly providing better and better experiences for users. At its most basic formulation, this includes showing users the information that they most are interested in, whether it be content from their friends or others or music or news shared by others or advertisements that are most relevant to them. It also includes shielding users from negative experiences like multiple unwanted friend requests, or harassment or bullying of any kind."

FB-I has highly complex systems to provide such positive experiences and block negative ones. Most of these systems require that FB-I retain user data. Such data is used for the purpose of providing the service users expect when they come to Facebook. FB-I expresses this explicitly in its Data Use Policy:

We use the information we receive about you in connection with the services and features we provide to you and other users like your friends, the advertisers that purchase ads on the site, and the developers that build the games, applications, and websites you use. For example, we may use the information we receive about you:

- *as part of our efforts to keep Facebook safe and secure;*

¹¹ Pages 38 to 40 of the Update Report

- *to provide you with location features and services, like telling you and your friends when something is going on nearby;*
- *to measure or understand the effectiveness of ads you and others see;*
- *to make suggestions to you and other users on Facebook, such as: suggesting that your friend use our contact importer because you found friends using it, suggesting that another user add you as a friend because the user imported the same email address as you did, or suggesting that your friend tag you in a picture they have uploaded with you in it.*

Granting us this permission not only allows us to provide Facebook as it exists today, but it also allows us to provide you with innovative features and services we develop in the future that use the information we receive about you in new ways.

FB-I's policy is to make data retention decisions in conformity with Irish law based on its understanding of the expectations of the people who use Facebook as well as the length of the time that it needs the data to provide a quality experience on Facebook and to understand and improve the service it offers.

FB-I noted that its retention policies in any of these contexts may be over-ridden by a legal requirement, a regulatory obligation, or an ongoing investigation into abuse, but only for as long as that reason lasts."

Indeed, FB-I has spent the past six months evaluating all of the personal data of users that it receives precisely to determine whether a set retention period is appropriate or whether retention should be approached more flexibly—something to be evaluated on a regular basis to ensure that the purposes for which FB-I has the consent of users to use the data still exist.

5.1 Retention of Log of "Removed" Data

In the Report of Audit, the DPC noted the specific complaints by the "Europe v. Facebook" group to the retention of data that appeared to the group to have no purpose after a user "removed" the data from his or her profile. Such data included: removed tags, removed friends, former groups, and deleted posts. FB-I's response noted that it saved removed pokes, tags, groups and friends for user experience reasons, but agreed that it could provide greater transparency to users and greater control where possible over the deletion of data.

FB-I still regards it as a necessity to retain data related to actions users take, like removing tags and removing friends—this enables FB-I to prevent re-tagging after a user has expressed a desire not to be tagged and prevent the suggestion to a user to friend someone he or she has removed as a friend. However, FB-I now provides users with access to this stored data, as well as other actions, such as "unliking" a page the user previously liked. From the Activity Log, where this data is displayed, users can also delete the data if they so wish albeit in doing so they may be re-tagged in the content.

3.3. 2012 Audit Report

In the 2012 Audit Report, the DPC confirmed that, contrary to the Complainant's allegations, it was satisfied that deleted pokes are not being retained by FB-I and are, in fact, deleted.

As noted earlier in this Report, a user's activity log provides them with a means to control individual items of content associated with their Facebook account. This control also allows for the deletion of individual items of content. As previous concern had arisen as to whether items marked for removal were in fact deleted, specific items were selected from an Activity Log and the delete option was selected. We assessed whether such items were in fact deleted. This was done by way of functional testing using DYI to verify what had been deleted, and it was confirmed that the deletion framework applied to account information is also applied to such data items.¹²

¹² Page 43 of the 2012 Audit Report

The DPC noted that FB-I has provided enhanced control to users, allowing the deletion of specific items of data. The DPC accepted that should a user choose to delete pokes, some of the protections given by the stored content, such as protection against poke spamming, may be lost.

Individual deletion of specific items of data associated with a user perhaps go to the core of the need to identify an appropriate balance between data protection views as to what would be acceptable periods to hold personal data that would meet the requirement to only hold it for as long as is necessary and the desire on the part of FB-I to serve what it perceives to be its users' needs. FB-I retains friend requests and tags after a user has removed them for the reason that it is seeking to protect the user from re-tagging, re-poking, and re-friending. Following extensive engagement, this Office and FB-I agreed that user control in this area could be extended so as to enable users to delete such items on a per-item basis. Such deletion may remove some of the protections and functionality which retaining this information provided to an individual user. From the Activity Log, where this data is displayed, users can now delete the data if they so wish.¹³

4. APPLICATION TO CURRENT COMPLAINT

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

- (a) *That FB-I retains deleted pokes, has a policy of marking 'removed' pokes as 'viewed' without actually removing them and does not explicitly state in the Privacy Policy what it does with pokes.*

This is untrue. As detailed above, users have the ability to delete both sent and received pokes. FB-I does not retain pokes where both the sender and the recipient of the pokes have marked the pokes for deletion.

- (b) *That (i) poke information is still available in the 'notifications' menu following deletion, (ii) on the basis that he alleges there is a lack of evidence, he has to "assume" that FB-I is still holding 'pokes' after they have been deleted and (iii) from his testing it "seems like 'pokes' are still only 'hidden' from users, but not deleted."*

As explained above, FB-I, in consultation with the DPC, has rolled-out its activity log since the Original Complaints were made. Users are afforded the ability to delete both sent and received pokes, and FB-I deletes a poke after both the sender and the recipient have marked it for deletion. The Complainant persists in his assertions that FB-I is unquestionably retaining pokes despite the contrary findings of two technical reports prepared by the technical expert together with the 2011 and 2012 Audit Reports of the DPC.

The Complainant also complains about the display of pokes in the "Notification Centre". Facebook provides users with notifications of recent activity that involves the user over the past number of days. This data is displayed on a rolling basis, based on activity on the site, and is periodically refreshed over time. Regardless of whether a user retains their pokes, the notification will 'drop off' this feed following the passing of a number of days.

¹³ Page 23 of the 2012 Audit Report