

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

Response to Complaint(s) Number: 21

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 additional 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 than 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 complaints 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 21 – GROUPS

1 BACKGROUND

1.1 What are groups?

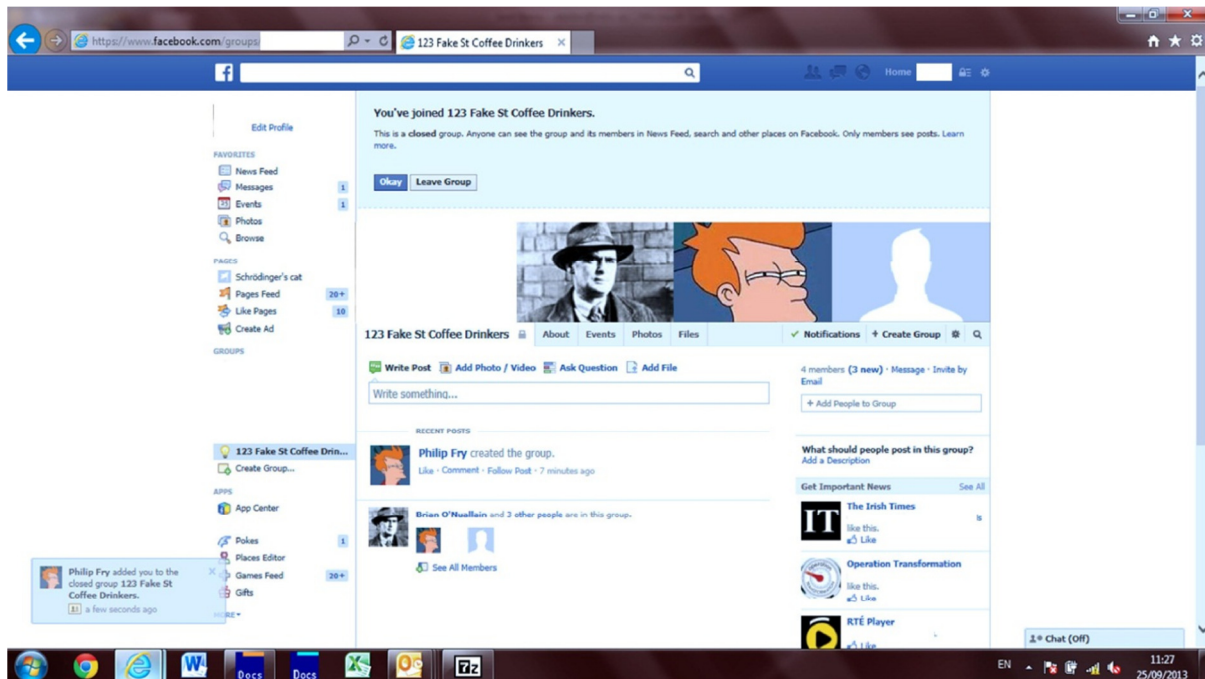
Groups are communities on Facebook in which users communicate about their common interests or work towards common goals. Group members can participate in chats, host group events, have shared albums and collaborate on group documents.

Currently, groups can be established with one of three privacy settings. Groups can be “open”, which means that the group, its members, and its content are all public. Groups can be “closed”, which means that the content in the group is only available to group members, but the group is visible for other users to ask to join and its members are visible. Users must ask to join a closed group and another member of the group must accept the user into the group before that user can become a member. Members of a group can also invite other users to the group. Groups can also be “secret”, which means that the existence of the group is not disclosed to non-members and only members can see the content.

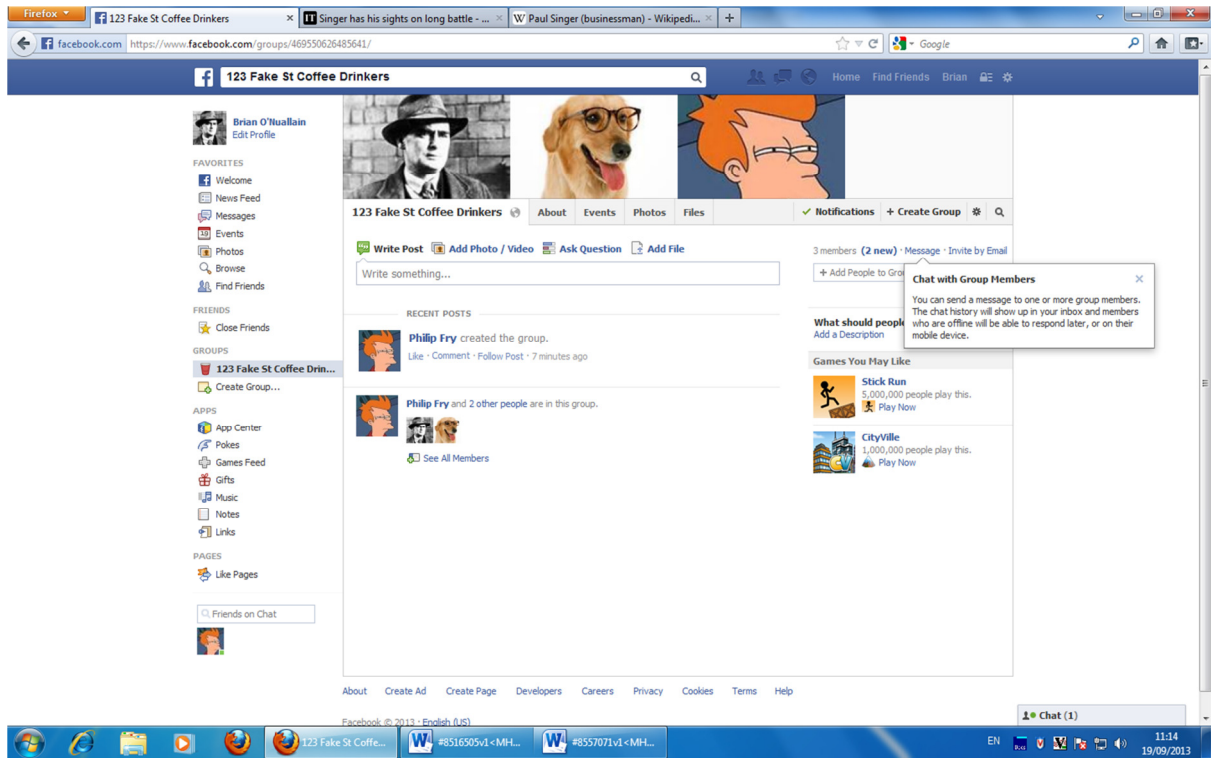
1.2 Can a user be added to a group?

Users can invite their friends to join groups to which they belong. A user cannot invite non-friends to a join a group.¹

If a user invites a friend to a join a group, other members can see that the latter user has been invited to join the group. However, the invited user will not become a member of that group until they visit the group page (at which point they have the opportunity to leave the group).

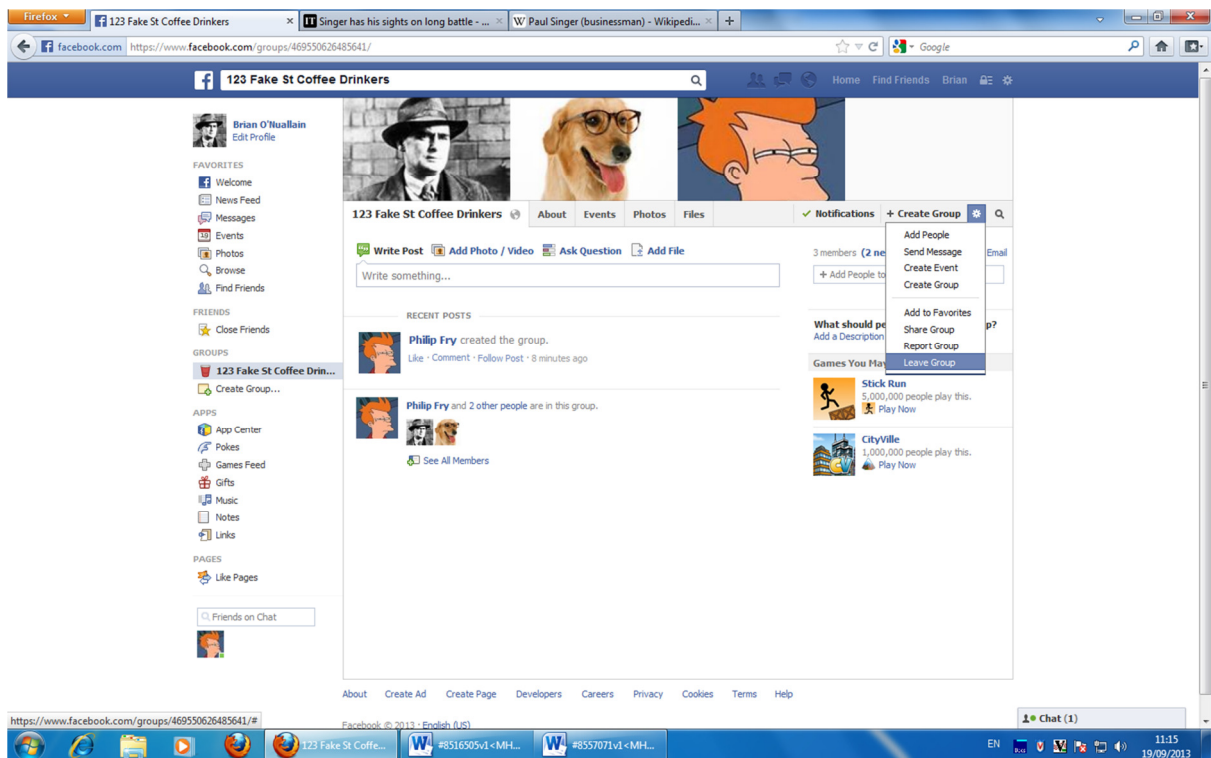


¹ There is an exception for groups that are created within a school's Facebook group. This exception allows everyone in the school to be invited to the school group without being Facebook friends first.

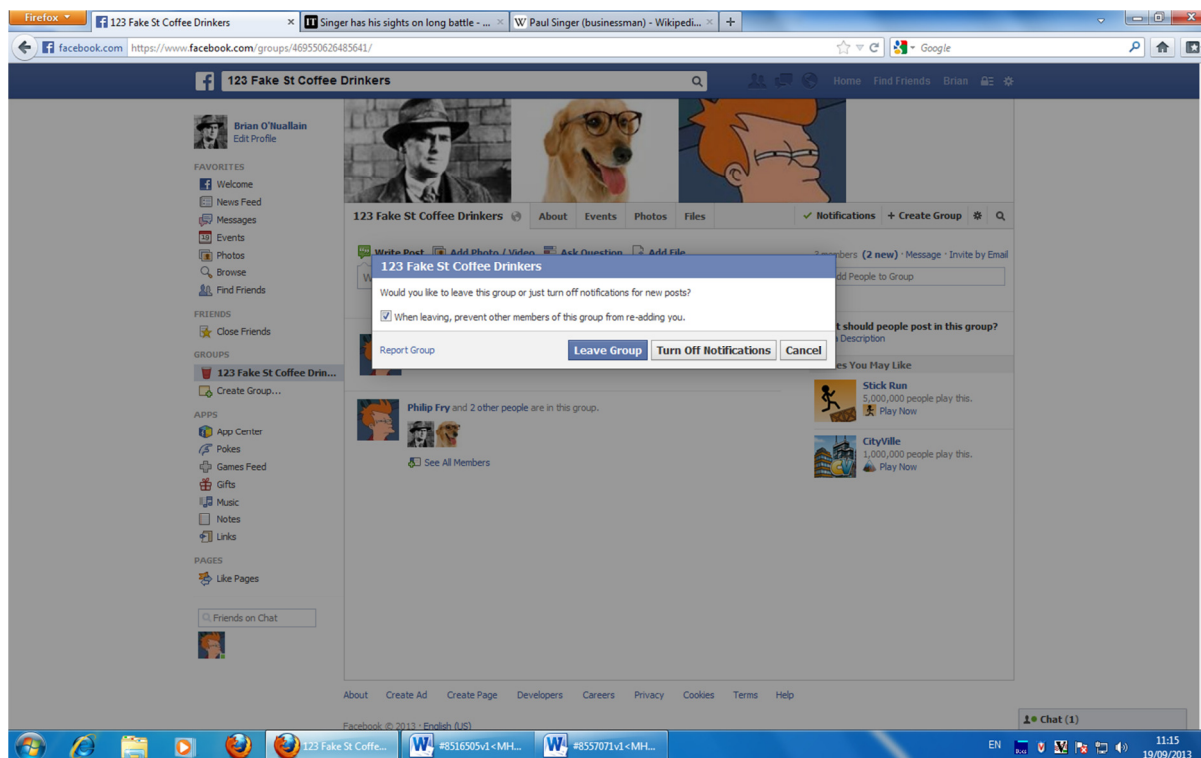


1.3 How can a user leave a group?

A user can leave a group by selecting a drop down menu from the group page on Facebook



When leaving a group, a user is presented with various options, including the ability to prevent members of that group from readding the user. This is indicated in the popup box illustrated by the screenshot below:



1.4 Data Use Policy

FB-I's Data Use Policy explains this process in the following terms:

Information others share about you

We receive information about you from your friends and others, such as when they upload your contact information, post a photo of you, tag you in a photo or status update, or at a location, or add you to a group.

Groups

Once you are in a Group, anyone in that Group can add you to a subgroup. When someone adds you to a Group, you will be listed as "invited" until you visit the Group. You can always leave a Group, which will prevent others from adding you to it again.

1.5 Help Center

FB-I's [Help Center](#) provides further detailed information in relation to groups. In particular, the Help Center [specifically explains](#) how users can be added to groups by their friends:

How do I join a group?

*To join a group, click **Join Group** in the top-right corner of the group's page. You can also join any Open group that you see on the About page of someone's timeline by clicking **Join**.*

You may have to wait for a group admin to approve your request. In some groups, you can also be added by someone who's already a member.

Some things to keep in mind when you join a group:

- *People may see when you join an [Open or Closed group](#), or that you're a member of that group, such as in news feed or search.*
- *When someone adds you to an [Open or Closed group](#), others may see that you've been invited (ex: in news feed or search). Once you visit a group you're invited to, you'll become a member and other people may see you joined.*
- *Certain groups on Facebook are [Secret](#) and may not appear in search results. You can see them once a group member adds you.*

2 FACTUAL ASSERTIONS MADE BY COMPLAINANT

The Complainant objects to the manner in which users are added to groups and FB-I's retention of former group membership. In the Original Complaint, the Complainant alleges the following:

- (a) *"Data subjects do not have any possibility to prevent other "friends" from adding them to groups, other than not having friends at all. The membership in the group is fully active before the data subject even knows about its existence. There is no functionality that prevents unwanted adding to groups."*
- (b) *"To prevent other users from "adding" the data subject to the same group again, Facebook Ireland keeps the information that the user was a member of the group. This information is given when the user leaves a group ... This means that the user can in fact never fully remove the relation to the group on the Facebook platform. All members are kept by Facebook Ireland, even if the user left the group."*

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

- (c) *"Users now have an 'invited' status, but as soon as they click on the Group for the very first time, they are turned into 'members'."*²
- (d) *"The 'invited' user is displayed in the head of the group, just like a normal member. There is no distinction that could prevent third parties that some user has something to do with the group."*³
- (e) *"When users have left a group, FB-I stores this fact to prevent them from being invited again. This was done without proper information to the user. Now there is some sort of information, but FB-I is not clearly saying to users that their former membership stays recorded when this box is not deselected."*⁴

3 AUDIT PROCESS

3.1 Introduction

The DPC considered FB-I's approach to groups during the audit process. As a result of the discussions between the DPC and FB-I on this point, FB-I made a number of refinements to the way in which groups operate.

3.2 Invitation to groups

3.2.1 2011 Audit Report

In the 2011 Audit Report, the DPC characterised the Complainant's complaint concerning group invitations in the following terms:

² Page 150 of the Request for Formal Decision

³ Page 150 of the Request for Formal Decision

⁴ Page 151 of the Request for Formal Decision

3.4.4 Complaint 21 – Groups

Facebook allows users to add friends to groups, a Facebook feature that allows users to form communities around shared interests, among other things. The issue raised in the complaint is that a user can be added to a Group without the user's prior consent. The complainant contended that a user may be unaware that they have been added to a Group and that Groups can be 'public' meaning anyone can see that the user is a group member.⁵

The DPC set out its consideration of the addition of users to groups by their friends. It noted that:

While it is accepted that the adding of users to Groups is confined to their friends, it is the case that a small minority of users on Facebook have an extensive network of friends in many cases in excess of 500. While that, of course, is a matter of personal choice it does bring with it a risk that a person could be added to a Group with an ethos that might offend them or others and for the time that they appear as such this could be a cause of significant embarrassment.⁶

Following the DPC's review of group membership, FB-I agreed to consider its approach to inviting users to join groups:

Additionally, to address this Office's concern that the current operation of the Groups product may in certain situations work to imply that a user shares the views of a particular group before the user has an opportunity to leave the group in question, FB-I has also agreed to review and revise the news story that is created when a user's friend invites the user to join a group to avoid the suggestion that the user has in fact joined the group, until the user has been given an opportunity to leave the group. FB-I has also agreed to introduce a mechanism to identify, when viewing the group itself, which listed users are members, as compared to which users have merely been invited. The user status will change from "invited to the group" to "member" only after the user visits the group for the first time. The user will be able to check the content of the group and make a decision about whether or not he/she wants to be associated with this group. If a user does not want to be part of the group, he/she will be able to click on the option to leave the group.⁷

In light of the above, the DPC specifically recommended that:

Users must be provided with a means to exercise more control over their addition to Groups.⁸

3.2.2 Update Report

In its Update Report, FB-I detailed the changes it had made to group membership and invitations

13.4 Groups

In the Report of Audit, the DPC recommended that FB-I give users more control over deciding whether to join Groups. In response, FB-I changed the way users add their friends to Groups. Previously, any user could add a friend to a Group, and the story that would go into the newsfeed of their friends would be that User A added User B to Group C. The DPC expressed the concern that, to members of and visitors to Group C, it might appear that User B had taken an affirmative step to become a member. Now, User A invites User B to Group C, and the story that appears in the newsfeeds of their friends is that User A invited User B to join Group C. Until User B visits Group C and has the opportunity to leave the Group, to members of and visitors to Group C, it only appears that User B was invited to the Group. In this way, an inference cannot be drawn that User B has taken an affirmative step to join Group C simply because User B was invited. See screenshot below:⁹

⁵ Page 70 of the 2011 Audit Report

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 70 of the Update Report



3.2.3 2012 Audit Report

In the 2012 Audit Report, the DPC repeated its best practice recommendation from the 2011 Audit Report and, noting the response of FB-I, accepted that the recommendation had been satisfactorily dealt with:

Recommendation: Users must be provided with a means to exercise more control over their addition to Groups FB-I has agreed that it will no longer be possible for a user to be shown as being a member of a group without that user's consent. A user who receives an invitation to join a group will not be shown as being a member until s/he visits the group and will be given an easy method of leaving the group

In response to this recommendation, FB-I changed the way users add their friends to Groups. Previously, any user could add a friend to a Group, and the story that would go into the newsfeed of their friends would be that user A added their friend (user B) to a group. Also any other friend viewing that group would see user B listed as a member even though they had taken no positive or genitive step in relation to the Group. Now, when User A invites User B to Group C, the story that appears in the newsfeeds of their friends is that User A invited User B to join Group C. Until User B visits Group C and has the opportunity to leave the Group, to members of and visitors to Group C, it only appears that User B was invited to the Group. In this way, an inference cannot be drawn that User B has taken an affirmative step to join Group C simply because User B was invited. We are satisfied that this resolves the issue and we have received no further complaints in relation to this feature since those received last year.¹⁰

3.3 Retention of group data

3.3.1 2011 Audit Report

¹⁰ Page 24 of the 2012 Audit Report

In the 2011 Audit Report, the DPC characterised the Complainant’s complaint regarding retention of group memberships in the following terms:

3.4.4 Complaint 21 – Groups

...

The complainant indicated that a user can remove himself from a Group, but only after he has been made aware that he was added as a group member in the first place. The complainant contended that, even when the user has removed himself, Facebook retains the data that links the user with the Group.¹¹

The DPC considered the matter of data retention in relation to a number of categories of data. In terms of groups, the DPC set out the understanding of FB-I’s retention of group data, noting the reasoning provided by FB-I in that regard:

Additionally, even where a user leaves a Group, this fact is retained by Facebook at present to ensure they are not added to the Group again. This is similar to the complaints in relation to pokes, friend requests and tags in that essentially it is a matter of transparency and control.

...

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; FB-I saves rejected friend requests so that the same user cannot continue to send friend requests; FB-I uses removed friends data to ensure that the removed friend isn’t surfaced as a friend suggestion to the user; and FB-I uses removed tags to prevent the user from being re-tagged in the photo. FB-I has pointed out that this has been developed based on the comments and requests from their users. FB-I points to its Data Use Policy to demonstrate that it is transparent about the purposes for which it uses the data it receives.¹²

The DPC recommended that Facebook provide additional information to users in relation to what happens to deleted or removed content, such as groups.¹³ This recommendation was subsequently implemented to the satisfaction of the DPC.¹⁴

3.3.2 2012 Audit Report

In the 2012 Audit Report, the DPC reviewed the best practice recommendation provided in the 2011 Audit Report. It noted there had been a satisfactory response regarding the recommendation that:

The information provided to users in relation to what happens to deleted or removed content, such as friend requests received, pokes, removed groups and tags, and deleted posts and messages should be improved.¹⁵

In addition, as noted above, FB-I specifically gives users the option, when they are leaving a group, to have this fact stored to prevent them from being re-added to the group again.

4 APPLICATION TO CURRENT COMPLAINT

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

- (a) *“Data subjects do not have any possibility to prevent other “friends” from adding them to groups, other than not having friends at all. The membership in the group is fully active before the data subject even knows about its existence. There is no functionality that prevents unwanted adding to groups.”*

¹¹ Page 70 of the 2011 Audit Report

¹² Pages 71 to 72 of the 2011 Audit Report

¹³ Page 78 of the 2011 Audit Report

¹⁴ Page 27 of the 2012 Audit Report

¹⁵ Page 27 of the 2012 Audit Report

This issue was addressed during the audit process and the DPC has expressed its satisfaction with FB-I's current processes. Users can still invite their friends to join a group, but an invited user will not be added to a group until they visit the group page. At this point the user can consider the nature of the group and immediately leave the group if he or she dislikes the group.

- (b) *To prevent other users from “adding” the data subject to the same group again, Facebook Ireland keeps the information that the user was a member of the group. This information is given when the user leaves a group This means that the user can in fact never fully remove the relation to the group on the Facebook platform. All members are kept by Facebook Ireland, even if the user left the group.”*

FB-I gives users leaving a group the opportunity to prevent themselves from being re-invited to join that group. If a user chooses to avail of this option, FB-I retains a log of the previous group membership to implement the user's direction that they not be again invited to join that group.

- (c) *“Users now have an ‘invited’ status, but as soon as they click on the Group for the very first time, they are turned into ‘members’.”¹⁶*

This is correct, and in line with the approach recommended by the DPC. As can be seen from the screenshots above, when a user first visits a group to which they have been invited they are given the option to immediately leave the group.

- (d) *“The ‘invited’ user is displayed in the head of the group, just like a normal member. There is no distinction that could prevent third parties that some user has something to do with the group.”¹⁷*

In line with the DPC's recommendations, a story is not posted to a user's timeline saying that they have joined a group (as opposed to being invited to the group) prior to visiting the group.

If someone who is not a member of the group views the group page, an invited member is not shown to that person as a member of the group.

An invited user is only shown in the head of the group when the group page is viewed by its members. In addition, the “member” section of a group page distinguishes between those users who have been invited and those who have joined the group.

- (e) *“When users have left a group, FB-I stores this fact to prevent them from being invited again. This was done without proper information to the user. Now there is some sort of information, but FB-I is not clearly saying to users that their former membership stays recorded when this box is not deselected.”¹⁸*

FB-I provides a clear notification to users that the fact of their former membership will be saved, should they choose not to be re-invited to join the group. FB-I needs this information in order to prevent a user from being re-added to the group.

¹⁶ Page 150 of the Request for Formal Decision

¹⁷ Page 150 of the Request for Formal Decision

¹⁸ Page 151 of the Request for Formal Decision