

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

Response to Complaint(s) Number: 5

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 5 – DELETED POSTS

1. BACKGROUND

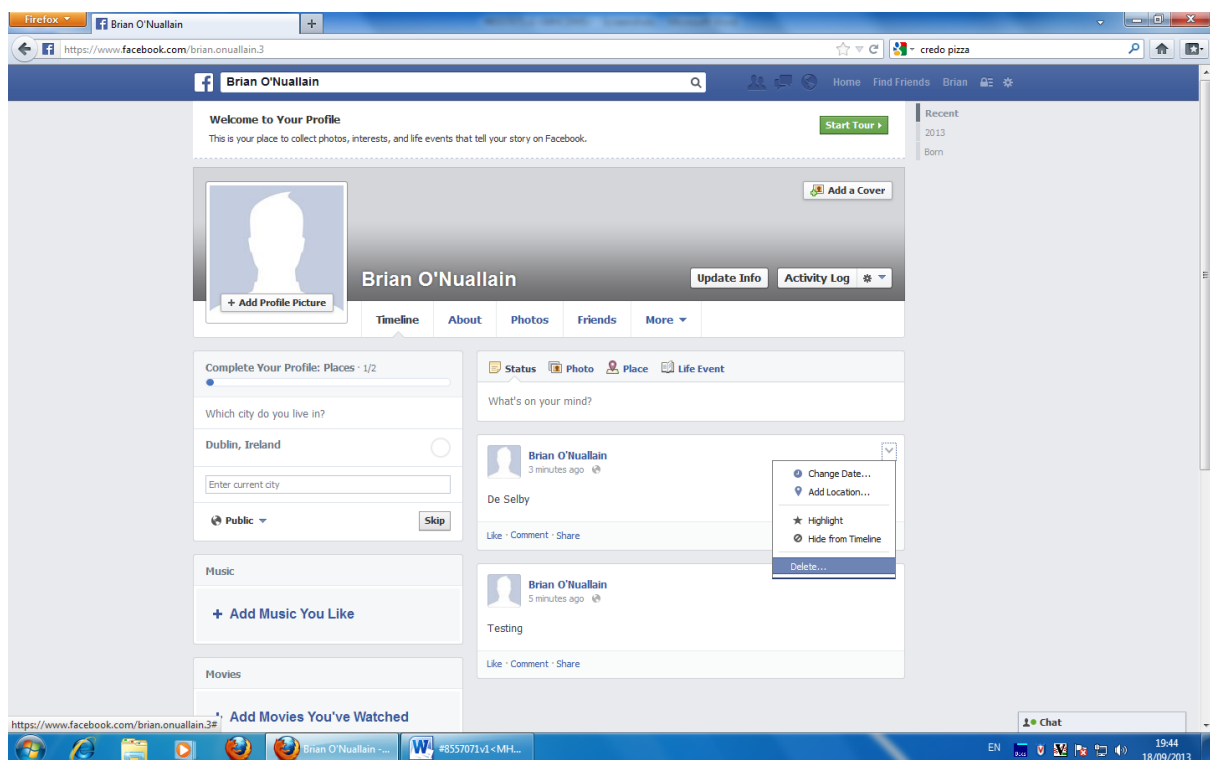
1.1 What are posts?

Facebook users can post comments in various places on the platform, including on their own timelines, their friends' and others' timelines, groups, events, and pages.

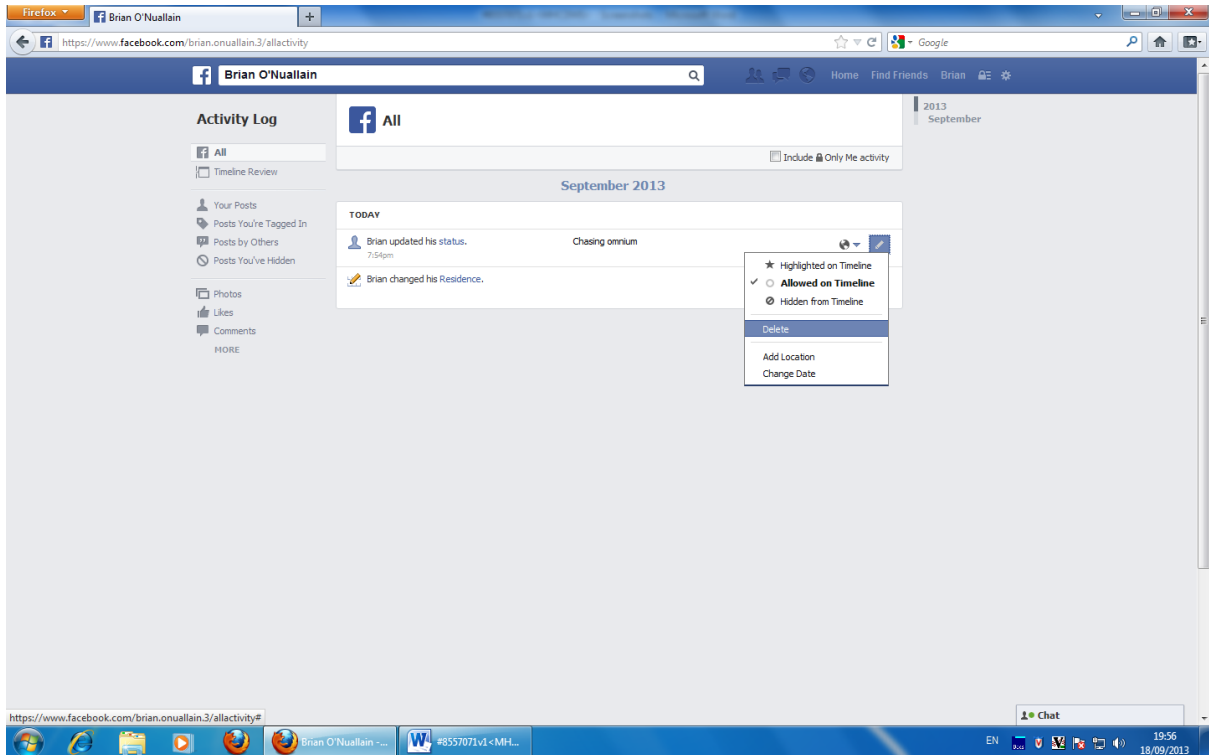
1.2 Can posts be deleted?

Posts can be deleted in several ways.

First, users can delete their and sometimes others' posts by clicking on the drop down menu in the post and by selecting "delete". See screenshot below:



Alternatively, a user can delete their posts via their activity log. This is shown in the screenshot below. The activity log also allows a user to filter posts into categories such as "Your posts" or "Posts to others" (these options are located in the left-hand column). This provides significant control and ease of access. The right-hand column also allows a user to quickly locate posts by date.



If a user chooses to delete a post it is immediately made unavailable on the site. FB-I's systems then begin a process of deleting that post from FB-I's servers. Fully removing the post from FB-I's systems can take up to 90 days. This process was reviewed by the DPC during the audit.

1.3 Data Use Policy

The Facebook Data Use Policy provides users with considerable information regarding control over and deletion of posts on their timeline and via their activity log. In the section entitled 'Control over your timeline', the user is informed of the distinction between 'hiding' and 'deleting' posts on their timeline.

When you hide things on your timeline, like posts or connections, it means those things will not appear on your timeline. But, remember, anyone in the audience of those posts or who can see a connection may still see it elsewhere, like on someone else's timeline or in search results. You can also delete or change the audience of content you post.

The Data Use Policy describes the functions of the activity log. It also explains the difference between hiding and deleting posts for those who wish to avail of the feature:

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.

When you hide something from your timeline, you are not deleting it. This means that the story may be visible elsewhere, like in your friends' News Feed. If you want to delete a story you posted, choose the delete option.

2. FACTUAL ASSERTIONS MADE BY COMPLAINANT

The Complainant objects to his understanding of FB-I's retention policies with respect to posts. In the Original Complaints, the Complainant appears to make the following main factual allegation, which is reiterated in the 2013 Request for Formal Decision:

- (a) *That Facebook either (i) retains deleted wall posts, denies this practice and unlawfully refuses to disclose deleted wall posts in response to subject access requests; or (ii) has a policy of selectively retaining certain wall posts without providing any notification to users.*

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

- (b) *“While [he] cannot recall the exact times” he is satisfied that the posts he deleted, but which were later provided in response to a subject access request, were “deleted repeatedly and long times before the 90 day period that FB-I relies on”. This position is based on the use of an “iMacros” Firefox plug-in.*

FB-I rejects both of these assertions, which are inconsistent with the facts as established by the DPC during the audit process.

3. AUDIT PROCESS

3.1 2011 Audit Report

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

3.4.5 Complaint 5 – Deleted Posts

The complaint indicates that Facebook provides a facility whereby a user can delete items such as old posts from their Facebook page. The complainant stated that he used the ‘remove post’ option, applying it to virtually all posts he had made going back over a three year period. When he completed this exercise he indicated that a message at the foot of his Facebook page stated that there were no more posts to show.

On foot of the access request made by the complainant to Facebook, the information he received in response included a random number of items, including posts, which he stated were deleted by him. He contended that some of his original posts must have been deleted, but some – going back as far as three years ago - were retained in the background by Facebook.

The complainant considered that there was no legitimate purpose for the retention of data which a user might reasonably expect to have been deleted. In addition, he stated that there was no transparent notice provided by Facebook to inform users that data, which they would have presumed to have been deleted, had been retained by Facebook.²

These allegations were investigated, and found to be lacking factual support, during the 2011 Audit.

In the 2011 Audit Report, the DPC considered the time lag between a user clicking the “delete” button and the data being expunged from FB-I’s systems:

FB-I explained that content that is deleted is immediately removed from the site and can no longer be viewed by third parties, and that it then begins the process of deleting the content from all of the places it exists on their servers.

This process can take up to 90 days, as is disclosed in the Data Use Policy and described in the technical analysis report and the section on deletion in this report. In response to the random posts provided in the subject access request. FB-I stated that some posts had not yet been purged by the time a response to the request had issued and that some information may remain in servers for up to 90 days.³

The DPC further noted the technical reason why deletion took this period of time:

¹ Page 61 of Request for Formal Decision

² Page 70 of the 2011 Audit Report

³ Page 72 of the 2011 Audit Report

The consequence of using distributed architecture is that information users post on Facebook is often stored in multiple physical locations at once. This creates a significant engineering challenge because, when FB-I deletes information, it often has to do this not just in one place but in multiple locations.⁴

Notwithstanding this delay, the DPC noted, with satisfaction, that FB-I did delete posts after they had been marked for deletion by the user:

This Office is satisfied that FB-I does delete old posts from a user's own Profiles and from other user's Profiles which are marked for removal.⁵

The DPC went on to directly, and specifically, apply its findings to this specific complaint.

The appearance of these in the response to the complainant is that they were only marked for deletion at the beginning of July of this year approx 12 days before the date of the access request. Therefore regardless of the date on which the post was made the relevant date for deletion was the date on which the deletion request was made.⁶

It is important to recall that the DPC made this finding having been satisfied that it had full access to the data held by FB-I:

We are satisfied that we had full access to all data relating to users and non-users held by FB-I.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 posts.⁸ This recommendation was subsequently implemented to the satisfaction of the DPC.⁹

Separately, the DPC also recommended that users should be given an enhanced ability to delete, among other things, posts.¹⁰ 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.¹¹

This is a reference to the activity log which, as noted above, provides users with an enhanced ability to delete many of their posts by gathering posts from multiple places where users make posts and placing them in one location, making it easy for users to find, review and delete current and old posts.

3.2 2012 Audit Report

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

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

The 2012 Audit Report further noted that Facebook's new activity log provided users with additional control over their posts:

⁴ Page 72 of the 2011 Audit Report

⁵ Page 72 of the 2011 Audit Report

⁶ Page 72 of the 2011 Audit Report

⁷ Page 64 of the 2011 Audit Report

⁸ Page 78 of the 2011 Audit Report

⁹ Page 27 of the 2012 Audit Report

¹⁰ Page 78 of the 2011 Audit Report

¹¹ Page 71 of the 2011 Audit Report

¹² Page 43 of the 2012 Audit Report

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.¹³

4. APPLICATION TO CURRENT COMPLAINT

In light of the above, we would respond to the Complainant's specific factual allegations which are:

- (a) *That Facebook either (i) retains deleted wall posts, denies this practice and unlawfully refuses to disclose deleted wall posts in response to subject access requests; or (ii) has a policy of selectively retaining certain wall posts without providing any notification to users.*

This is untrue. As the DPC has previously confirmed, FB-I deletes posts within 90 days of such posts being marked for deletion by the user.

In the Request for a Formal Decision¹⁴, the Complainant further alleges that:

- (b) *That "while [he] cannot recall the exact times" he is satisfied that the posts he deleted, but which were later provided in response to a subject access request were "deleted repeatedly and long times before the 90 day period that FB-I relies on". This position is based on the use of an "iMacros" Firefox plug-in.*

The imprecise factual allegations made by the Complainant are inconsistent with the facts as ascertained by the DPC following an extensive examination of FB-I's systems and policies with respect to the retention of posts.

¹³ Page 43 of the 2012 Audit Report

¹⁴ Page 61 of Request for Formal Decision