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

Response to Complaint(s) Number: 8 & 16

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".**

COMPLAINTS 8 and 16 – CONSENT and OPT-OUT

1. BACKGROUND

FB-I takes extensive steps to ensure that it has obtained specific, freely given and informed consent to the processing of user data.

FB-I's Data Use Policy provides Facebook users with extensive information as to how their personal data is processed by FB-I. Facebook's Help Center contains additional highly detailed information about all aspects of FB-I's data collection and use.

In addition, Facebook's privacy settings, inline privacy controls and activity log offer its users specific and granular control over the processing of their personal data. These tools offer Facebook users an unrivalled degree of precise control over their data.

2. FACTUAL ASSERTIONS MADE BY COMPLAINANT

The Complainant objects generally to the functionality of the privacy controls which FB-I offers its users and makes the following allegations:

    a) *Links to the FB-I Privacy Policy are concealed on www.facebook.com and what appears to be a link to the Privacy Policy is actually a link to a privacy guide.*

    b) *The Facebook Privacy Policy is unduly complex, spread over multiple documents and vague and contradictory.*

    c) *FB-I does not obtain the lawful consent of its users for the use of their data.*

    d) *Personal data of individuals is received by FB-I before users have been given the opportunity to agree to the Privacy Policy of Facebook.*

    e) *The Facebook website is designed so as to discourage users from changing privacy settings or from opting-out of certain Facebook features.*

3. AUDIT PROCESS

3.1. 2011 Audit Report

The DPC devoted considerable time and resources to examining the issue of consent and privacy controls in the course of the audit process.

The DPC began its consideration of this issue by noting the challenges of obtaining consent online:

> *Obtaining – or assessing – meaningful consent is particularly challenging in the online environment. In the online environment, a user is often seeking to access a service as quickly as possible, and the presentation of lengthy privacy policies or terms and conditions which must be agreed to before proceeding may not create an effective means of capturing consent. This is even more difficult in situations where consent is collected via a tiny screen on a mobile device.[1]*

The DPC accepted that new Facebook users could not sign up to Facebook without first consenting to the Data Use Policy and the Statements of Rights and Responsibilities:

> *In the case of a social network, a user provides consent upon registering to the service. While the challenges outlined above are present, there is nevertheless an opportunity for a person to read the information provided prior to providing his or her personal data. Facebook, via its two page sign-up page outlined below, collects basic*

---

[1] Page 30 of the 2011 Audit Report

information and states to the user that by signing up they are indicating they have read and agree to the Privacy Policy and the terms of use which is more commonly known as the Statement of Rights and Responsibilities.[2]

The DPC noted the data protection concerns which had been expressed in this area:

> **Complaints Received**
> **Norwegian Consumer Council**
>
> *The complaint highlights a number of changes made by Facebook to privacy settings functionality. In one instance in December 2009, the Council considers that the new privacy settings recommended by Facebook would allow certain information, for example 'posts by me' and 'religious views' to be available to a wider use audience and that "members were urged to accept the new privacy settings". Facebook's 2009 privacy changes, including the way in which Facebook communicated the new settings to users, were a substantial focus of the recent FTC complaint and settlement with Facebook.*
>
> *The Council also takes issue with another change, stating that, formerly, it was possible for a user to block all third party applications with a simple click, but now they had to be removed individually. FB-I noted that the single-click opt out was returned a year ago.*
>
> *In Complaint 8 – __Consent and Privacy Policy__, Europe-v-Facebook contended that Facebook bases the processing of all personal data on the consent of the user to its Privacy Policy. The complaint set out two broad issues to be addressed in relation to the Privacy Policy, the first in relation to the access to and content of the policy and the second in relation to consent. On accessibility the complainant contended that Facebook's Privacy Policy is not easily accessible – the link 'privacy' provided at the bottom of the user's Facebook page is merely a link to a privacy guide, containing limited information. There is a link within this document to the actual Privacy Policy[3].*
>
> *The issue of consent is also addressed in* **Complaint 16 – Opt Out** *from "Europe-v-Facebook". This complaint covers a number of areas relating to the set up of a new Facebook account. The first issue raised by the complainant is that there is no specific consent when signing up to Facebook. The complainant argued that Facebook collects a range of data (import of email addresses, education information, photograph, etc.) from the new user before that user is provided with an opportunity to change his security settings and that a link to privacy information is only provided once the sign up process is complete (the link is available on the second page as demonstrated above).[4]*

The DPC noted that FB-I disputed the assertion that the Data Use Policy was difficult to access or that it was in any way unclear:

> *FB-I did not share the complainant's view in relation to the accessibility of the Data Use Policy since the Data Use Policy is accessible from virtually every page of Facebook except for the user's profile page. Moreover, its visibility will be soon increased. A link will be added on the left-hand side of the newsfeed page for every user. FB-I also considered that it has gone to great lengths to ensure that it is available and easy to understand by users. The new Data Use Policy launched in September 2011 provides a clear view of the type of data collected, the privacy settings that users are encouraged to use to control their data, the information that is shared with other websites and applications, how the data is used in the context of the advertising services and also a specific section about minors. The Data Use Policy is constantly amended to ensure that it captures FB-I's practices and provides users with the most accurate, precise and clear information.[5]*

The DPC further noted that the Complainant had raised objections with respect to the identity of the data controller:

---

[2] Page 30 of the 2011 Audit Report
[3] Pages 36-37 of the 2011 Audit Report
[4] Page 38 of the 2011 Audit Report
[5] Page 36 of the 2011 Audit Report

> **Role of FB-I and the User:** *the complainant stated that the user is not provided with any clear information on who is the data controller (Facebook Ireland or Facebook Inc.) and that, if the identity of the data controller is unclear to the data subject, then the data subject cannot be considered to have provided his consent to the processing of his data.[6]*

The DPC noted that FB-I had rejected this allegation in the following terms:

> *FB-I stated that there is no confusion in relation to the identity of the data controller, stating that any non-US or Canadian user can see the following information:*

>> *The website under www.facebook.com and the services on these pages are being offered to you by: Facebook Ireland Limited, Hanover Reach, 5-7 Hanover Quay, Dublin 2 Ireland*

>> *However, FB-I is willing to provide clearer information to its users. Therefore, it has decided to add in the Data Use Policy the contact details of FB-I and a clarification about where FB-I is the data controller.[7]*

The DPC noted that the Complainant objected to the level of privacy information provided by FB-I

> **Extent of Privacy Information:** *the complainant was dissatisfied that, in order to get a grasp of Facebook's privacy policies, a user must deal with multiple documents and links, with many specific provisions difficult to locate.[8]*

The DPC noted FB-I's response to this allegation:

> *FB-I indicated that it updated its Data Use Policy in September 2011 to make it more user friendly.[9]*

The DPC further noted that the Complainant had alleged that FB-I's Data Use Policy was contradictory:

> **Contradictions:** *the complainant highlighted contradictions he has identified within the Privacy Policy. He states that the contradictions identified run to 6 pages and has provided some sample issues in the complaint in relation to the deletion of data, for example, "If you are uncomfortable with sharing your profile picture, you should delete it." While elsewhere in the policy he points to the fact that "Even after you remove information from your profile or delete your account, copies of that information may remain viewable elsewhere…"[10]*

The DPC noted that FB-I rejected this allegation:

> *FB-I disagreed with the complainant that the Data Use Policy contains contradictions. In the above-noted example, in particular, FB-I discloses to users that information shared on Facebook can be re-shared, and, in the second quoted part of the policy, stresses that one's profile photo may be shared so if the user feels uncomfortable with that, he or she should delete it.[11]*

The DPC noted that the Complainant further alleged that the Data Use Policy was unduly vague:

> **Vague Provisions:** *the complainant highlighted a number of provisions in the Privacy Policy which he considers to be vague and general in nature, for example, "We use the information we collect to try to provide a safe, efficient, and customized experience."[12]*

FB-I did not accept the Complainant's assertion that the provisions of the Data Use Policy were too vague to properly inform users of the purposes for which their information is received by FB-I:

---

[6] Page 36 of the 2011 Audit Report
[7] Page 36 of the 2011 Audit Report
[8] Page 36 of the 2011 Audit Report
[9] Page 36 of the 2011 Audit Report
[10] Page 36 of the 2011 Audit Report
[11] Pages 36 and 37 of the 2011 Audit Report
[12] Page 37 of the 2011 Audit Report

FB-I disagreed that provisions in the Data Use Policy are vague and general. General statements in the policy are followed by more specific statements, along with explanation and/ or examples.[13]

The Complainant also asserted that FB-I did not obtain unambiguous consent:

Unambiguous Consent: *the Complainant highlighted a number of issues with the process of consenting to the Privacy Policy including the use of small text and lack of a checkbox to be ticked.[14]*

The 2011 Audit Report recorded FB-I's rejection of this allegation:

FB-I provided a number of legal arguments in support of its view that Facebook is not required to provide a specific opt-in and stated that users, through their continued use of Facebook's services, "continually manifest an unambiguous desire that their personal data be processed". That said, users are clearly informed in the Data Use Policy that Facebook may obtain personal information as a result of all interactions they have on Facebook. In addition, users are fully informed of the purposes of the data processing, including the customisation of the services offered and the protection of other users: "We may use the information we receive about you in connection with the services and features we provide to you [and] … as part of our efforts to keep Facebook safe and secure.[15]

The Complainant further alleged that FB-I did not obtain freely given or specific consent:

Freely Given Consent: *this aspect of the complaint is in relation to the lead position Facebook has in the social networking business at present and that there should be a high bar in terms of privacy terms and conditions given Facebook's position in the marketplace.*

Specific Consent: *the complainant contended that there is no specific consent being provided by users for the use of their personal data.[16]*

Again, FB-I rejected the allegation that it does not obtain specific consent:

FB-I disagreed with the complainant's assertion and pointed to the fact that specific consent is provided by the user agreeing to the Data Use Policy and through the user's on-going use of Facebook, including the opportunity to review and comment upon any revisions to the Policy (and possibly vote on them) prior to the Policy going into effect.[17]

The Complainant also claimed that FB-I did not obtain informed consent:

Informed Consent: *the complainant considered that the purpose for which personal data is being processed is not being properly explained.[18]*

This allegation was refuted by FB-I in the following terms:

FB-I did not share the complainant's view that the processing of personal data is not being clearly explained. The Data Use Policy describes the type of data collected, the privacy settings that users are encouraged to use to control their data, the information that is shared with other websites and applications and how the data is used in the context of the advertising service. The information is provided in a clear and understandable format. That said, Facebook is always willing to improve the format of its Data Use Policy to lead the efforts of the industry with regard to privacy education.[19]

The Complainant further alleged that FB-I obtained consent through "*deception or misinterpretation*":

---

[13] Page 37 of the 2011 Audit Report
[14] Page 37 of the 2011 Audit Report
[15] Page 37 of the 2011 Audit Report
[16] Page 37 of the 2011 Audit Report
[17] Page 37 of the 2011 Audit Report
[18] Page 37 of the 2011 Audit Report
[19] Page 37 of the 2011 Audit Report

Consent obtained by deception or misinterpretation: *this related to how Facebook used personal data and the complainant highlighted a number of examples where he considered Facebook to be providing false or misleading information, for example, the fact that users are told they can remove posts, pokes, etc, but that they are not, in fact, being deleted but being held in the background. He also complains that some functions, such as deleting your account, are hidden from view. These aspects of the complaint are dealt with separately in the Report.[20]*

The 2011 Audit Report noted FB-I's response to these assertions:

> FB-I *categorically denied that it engaged in any deception, although recognized that "remove" could have been interpreted by users to mean that the data was deleted.[21]*

In Complaint 16 – Opt Out, the Complainant also argued that:

> *Facebook collects a range of data (import of email addresses, education information, photograph, etc.) from the new user before that user is provided with an opportunity to change his security settings and that a link to privacy information is only provided once the sign up process is complete (the link is available on the second page as demonstrated above).[22]*

In response FB-I noted that:

> *The account is not set up until the potential user has successfully transmitted a Captcha phrase (this is a code sought on many websites to counter malicious automated computer processes from gaining access to services),which is not done until the potential user has seen the links to the Data Use Policy and the Statement of Rights and Responsibilities. FB-I also indicated that if an individual does not complete the registration process, the registration form data is deleted.[23]*

Finally, the DPC concluded its account of the Complainant's various claims by setting out its assertion that the default privacy settings on FB-I are too liberal and that some important privacy settings are not accessible from a user's main page:

> *The complainant also contended that the default security settings themselves are too liberal in nature in that the initial user content may be seen by most people and can be indexed by search engines. Finally the complainant considered that the settings pages and links provided discourage the new user from applying certain security settings and points out that some important settings cannot be edited on a user's main page, for example, access by third party applications and search engines.[24]*

FB-I's clear position was that it did receive specific consent from its users and that its privacy settings were accessible and logically ordered:

> FB-I *contended that it does receive the specific consent of Facebook users. In relation to the collection of data when signing up for an account, Facebook stated that it was not possible for a user to adjust their security settings prior to the account being created, but highlighted that once it is created, the user can make whatever amendments he wishes. FB-I highlighted that only name, email and date of birth are required to create an account – any other information is optional.*
>
> FB-I *stated that the Complainant's contention that users are deliberately discourage from applying certain security settings and that some settings are 'hidden' to be unfounded. The security centre and Data Use Policy encourages users to practice judgment when sharing content and data on the site. FB-I considered that the content*

---

[20] Page 38 of the 2011 Audit Report
[21] Page 38 of the 2011 Audit Report
[22] Page 38 of the 2011 Audit Report
[23] Page 38 of the 2011 Audit Report
[24] Page 38 of the 2011 Audit Report

of its privacy settings are presented in logical order and that detailed explanations of the settings are also provided[25]

Having set out the numerous different points raised by the Complainant, the DPC proceeded to consider FB-I's obligations in this area. In its analysis of the issue, the DPC approached the matter in a general way seeking to ascertain whether, as a whole, FB-I had struck the appropriate balance between the inherently social nature of the platform and the privacy interests of its users:

> *However, the concern of this Office is not focused on specific issues such as these but rather the bigger picture around appropriately informing, in a meaningful way, a new or current user and then providing easy to use and accessible tools to users.[26]*

While the DPC recognised that FB-I had made efforts to simplify its privacy controls, it found that their operation remained complex:

> *In the assessment of this Office the operation of the privacy controls available to users within Facebook are complex. This is despite efforts by Facebook to simplify the settings in order to make them more easily understandable and usable.[27]*

In response to comments made by the DPC that the lack of uniform privacy controls, together with the liberal default settings, failed to strike an appropriate balance for users, FB-I highlighted its new inline privacy settings:

> *FB-I indicated that it believes it has made great improvements in providing users better control over their privacy settings by moving most of the settings inline. This means that users with every new post or comment can see the audience with whom they are sharing at the precise moment that information is most relevant and choose precisely the audience they want rather than having to refer back to a setting page.[28]*

In light of its findings, the DPC made the following broad recommendation to FB-I to enhance user control over their privacy settings, leaving FB-I to determine the nature of any changes to its privacy functionality:

> *This Office therefore recommends that FB-I undertake a thorough re-evaluation of the process by which it empowers its users both new and current to make meaningful choices about how they control the use of their personal information. This Office does not wish to be prescriptive at this point as to the eventual route chosen but expects FB-I to take full account of the suggestions outlined above. This is clearly an issue which will form part of an ongoing engagement with FB-I and which will be thoroughly reviewed in July 2012.[29]*

FB-I recognised that it shared a mutual interest with the DPC in reaching a common solution:

> *Although FB-I indicated that not only has it endeavoured to make its Data Use Policy as simple to read and understand as possible, and offers a notice, comment and voting period on material changes to its policies, it is committed to reaching an agreement with this Office on a solution that will satisfy the concerns expressed in relation to enhancing user awareness and control over their privacy settings. The agreed shared objective in this respect is to ensure that users are provided with ample opportunity to express, in a fully informed manner, their choices as to how their information is used and shared on the site.[30]*

In summary, the DPC made two recommendations to the FB-I to further enhance its approach to obtaining user consent.

First, the DPC recommended that:

---

[25] Page 38 of the 2011 Audit Report
[26] Page 40 of the 2011 Audit Report
[27] Page 39 of the 2011 Audit Report
[28] Page 40 of the 2011 Audit Report
[29] Page 40 of the 2011 Audit Report
[30] Page 41 of the 2011 Audit Report

MHC-8575383-4

FB-I must work towards:

- *simpler explanations of its privacy policies*

- *easier accessibility and prominence of these policies during registration and subsequently*

- *an enhanced ability for users to make their own informed choices based on the available information[31]*

In response to this, FB-I noted that it will:

FB-I will work with the Office to achieve the objectives of simpler explanations of its Data Use Policy, identify a mechanism to provide users with a basis to exercise meaningful choice over how their personal data is used, easier accessibility and prominence of these policies during and subsequent to registration, including making use of test-groups of users and non-users as appropriate.[32]

Second, the DPC recommended that:

The relative size of the links to the privacy policy and statement of rights and responsibilities on the second page of the sign up process must be aligned with the other information presented on that page.[33]

FB-I accepted this recommendation in the following terms:

Agreed. Furthermore, FB-I has agreed to take the additional step of moving the links to the Data Use Policy and other policy documents, as well as the Help Center, to the left side of the user's homepage.[34]

3.2. Update Report

FB-I provided the DPC with a comprehensive overview of the modifications it had made to the Facebook platform in its Update Report in advance of the 2012 audit. Particular emphasis was placed on the changes made to the Data Use Policy to enhance users' understanding of FB-I's privacy policies:

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.[35]

FB-I also refined its registration process so that prospective users were obliged to consent to the Data Use Policy and the terms of use of the site, before any personal information was received by FB-I:

In response to the DPC's examination of new-user registration on Facebook and general recommendation that FB-I could make enhancements, FB-I changed the process in order to present the Data Use Policy and Statement of Rights and Responsibilities to users before they submitted any personal data. Previously there was a two-step process, and the policies were not presented until after the user had completed the first step and submitted some initial personal data. FB-I has moved the links to the policies to the first step of the sign-up process, increased the size of the links, and has placed them more prominently above the sign-up button.[36]

---

[31] Page 42 of the 2011 Audit Report
[32] Page 42 of the 2011 Audit Report
[33] Page 42 of the 2011 Audit Report
[34] Page 42 of the 2011 Audit Report
[35] Page 6 of the Update Report
[36] Page 6 of the Update Report

FB-I also increased the prominence of the links to the Data Use Policy[37]:

> FB-I *also added links to the Data Use Policy and Statement of Rights and Responsibilities, along with a link to our Cookies Use Statement, to the right hand side of the homepage of users; therefore, users have easy access to the policies directly from the homepage without having to scroll far down the screen. See screenshot below*


FB-I's emphasis on educating its users in respect of privacy issues is shown by the prompts which are generated when a new user signs up to Facebook:

> FB-I *has also modified the screens that a new user sees when first joining the site so that relevant privacy information is highlighted contextually on each screen. The first screen a user sees after registering for an account prompts the user to find friends on Facebook by importing their contacts. FB-I added a prominent "lightbulb" icon at the bottom of the screen, providing users with information about how Facebook uses contacts and providing a link for users to learn more about the contact-importing process. See screenshot below:[38]*

---

[37] Page 7 of the Update Report
[38] Pages 7 to 11 of the Update Report

MHC-8575383-4
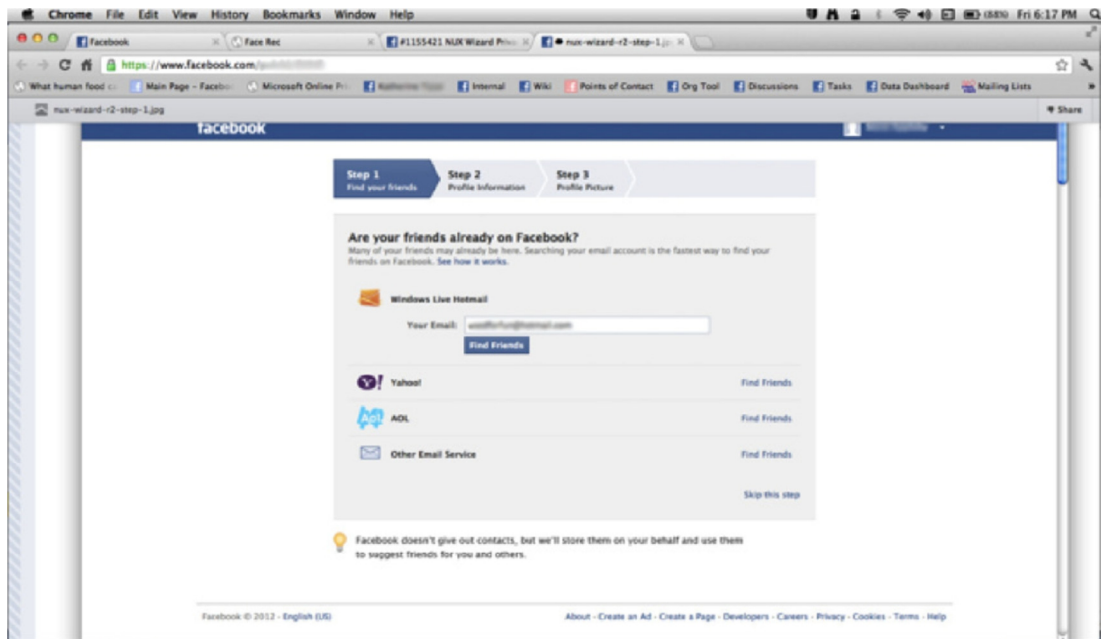
The second screen prompts the user to fill in some initial profile fields — the schools they attended and their employer— information that increase the chances of the user finding friends more quickly. Because these fields are defaulted to public for adult users, FB-I has included a prominent light bulb icon with the text informing the user why it defaults the fields to public and lets users know they can change the setting right there and then if they wish. FB-I also added a visibility-selector next to each of the fields so that users can change the setting right away. This also begins the process of assisting users to understand the meaning of the icons used for audiences on the site. See screenshot below:


The third screen prompts the user to upload a profile photo. FB-I has included a prominent lightbulb icon with text informing users that the profile photo is public but that other photos the user uploads can be set to any privacy the user wants. See screenshot below:

9
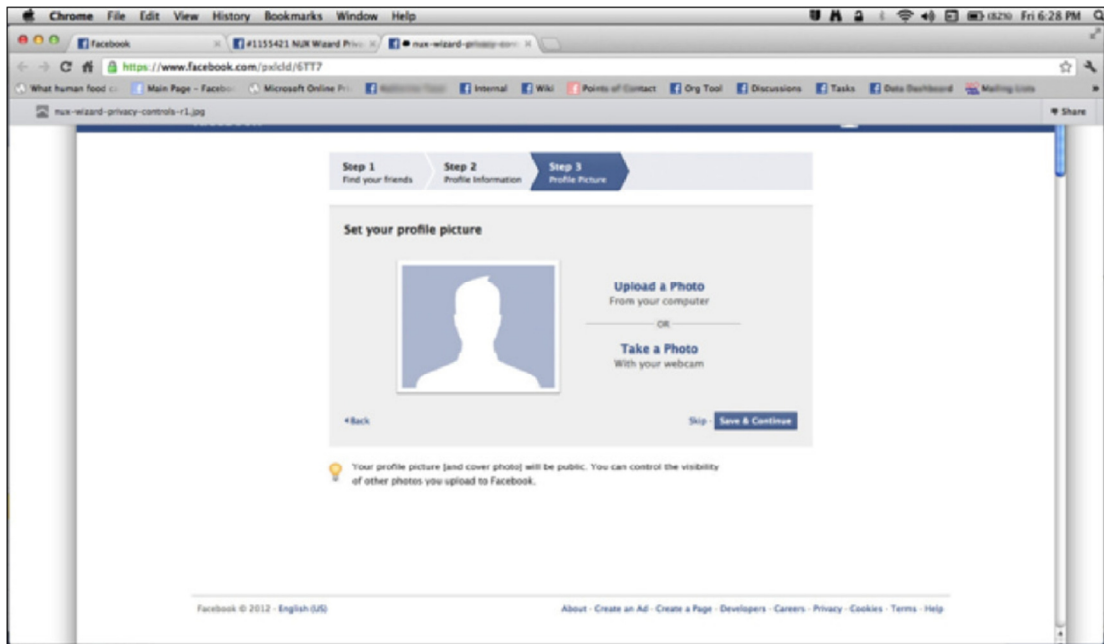
FB-I has tested two alternative additional steps for further new user education, which are described in section 2.6.

After uploading a photo, or skipping that step, the user lands on the "welcome dashboard", which will provide a link for users to learn about their privacy settings. See screenshot below:
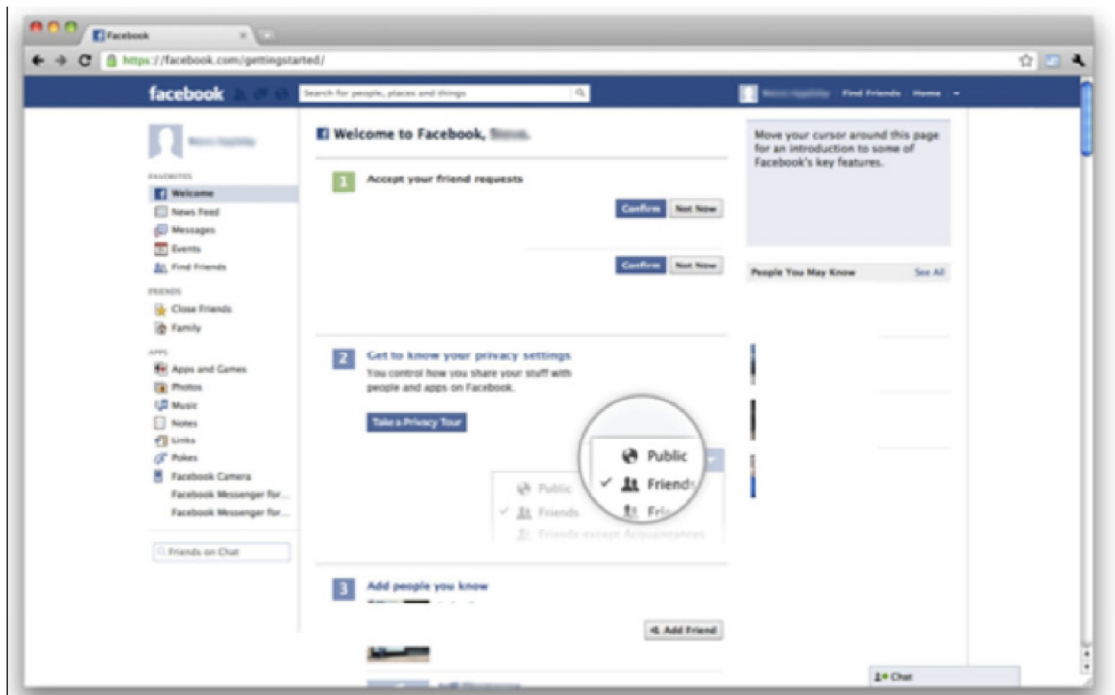
The link will pop up a modal, which will take the user through some key features of Facebook and the controls around them. See section 2.6 for screenshots

Finally, when a user finishes the initial steps of setting up their account, FB-I offers a short tour of timeline to help users navigate the features. This includes the status update tour discussed below. See screenshots below.
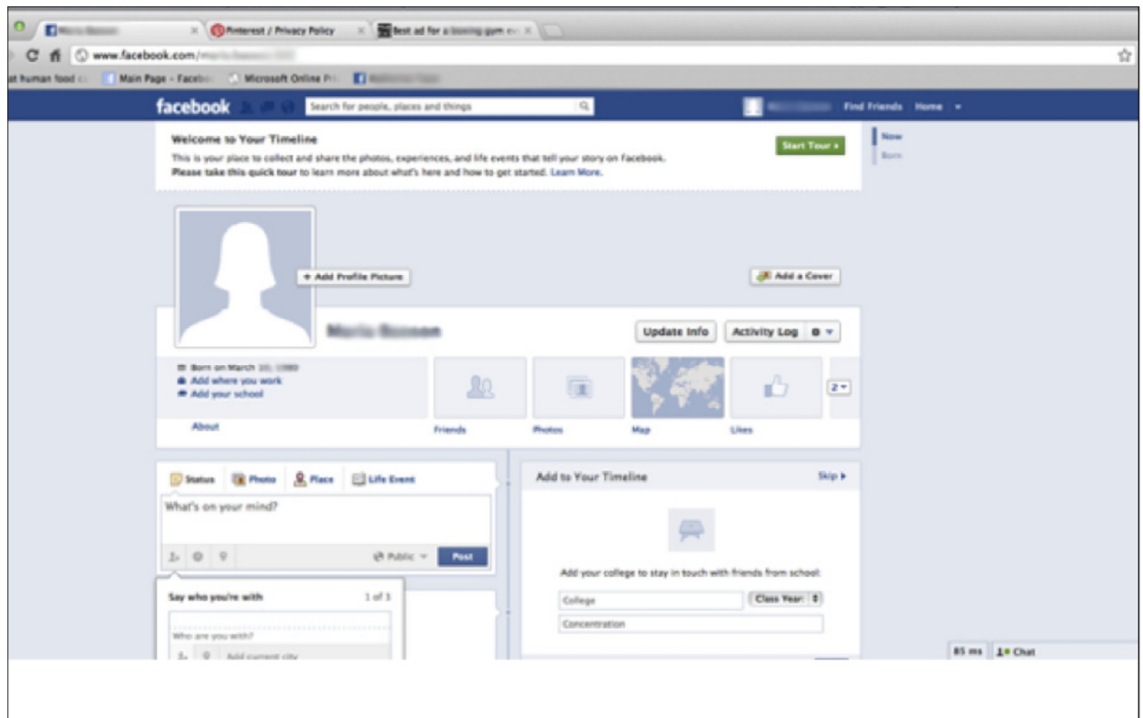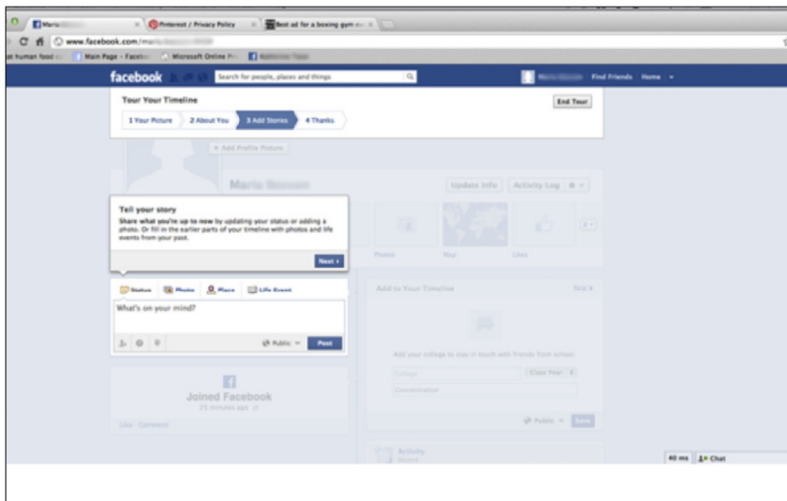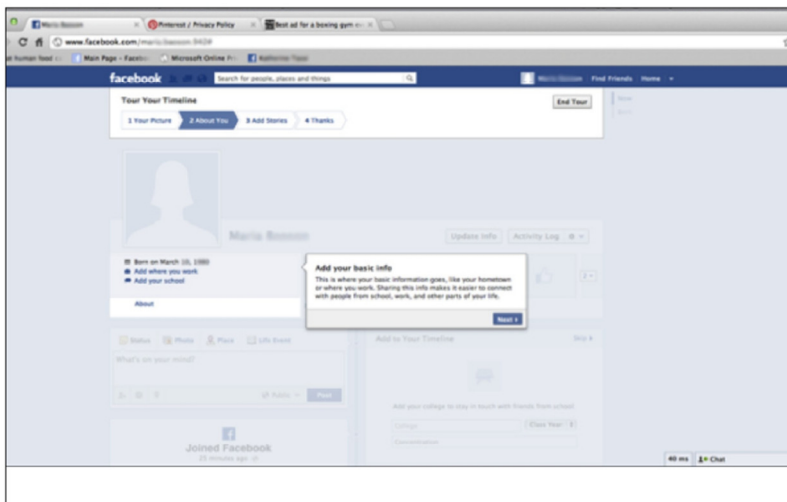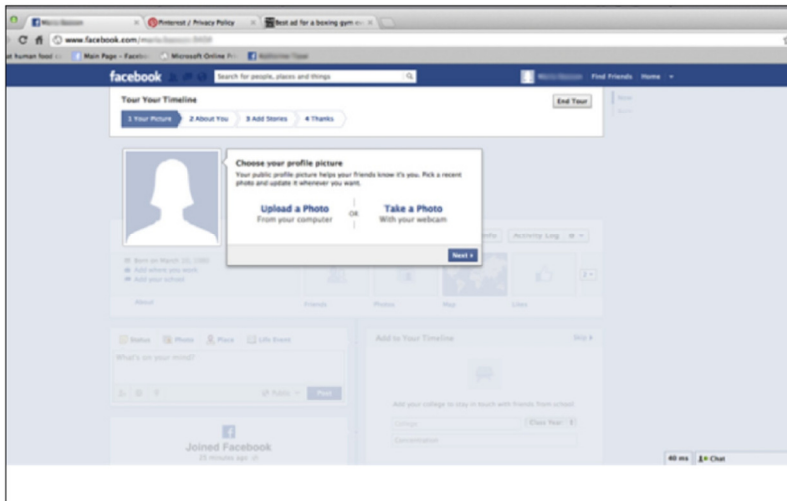
MHC-8575383-4

Along with new user education, FB-I is committed to providing education, contextual where appropriate, to users about new products and features, including reference to privacy and/ or visibility controls associated with the new product or feature, as well as periodically refresh users' knowledge of existing privacy and visibility controls through various means.

MHC-8575383-4

As well as increasing the transparency and accessibility of the privacy controls and policies on the Facebook platform, FB-I also introduced greater flexibility for users in the manner they control the privacy settings of the different categories of data they share with Facebook:

Facebook's privacy model has increasingly moved to one of inline, contextual control. FB-I has kept a minimum of settings that are not inline, and has moved most privacy settings to be contextual, beginning with the most important ones: status updates, which may contain text, location, photos, tags of people, places, or things, and shared information, like links to articles; and profile (timeline) information. The first time a user posts a status update, the user is given a tour of the settings and features in status updates, including the icons for the visibility options of public, friends of friends, friends, only me, and custom. See screenshots below:[39]
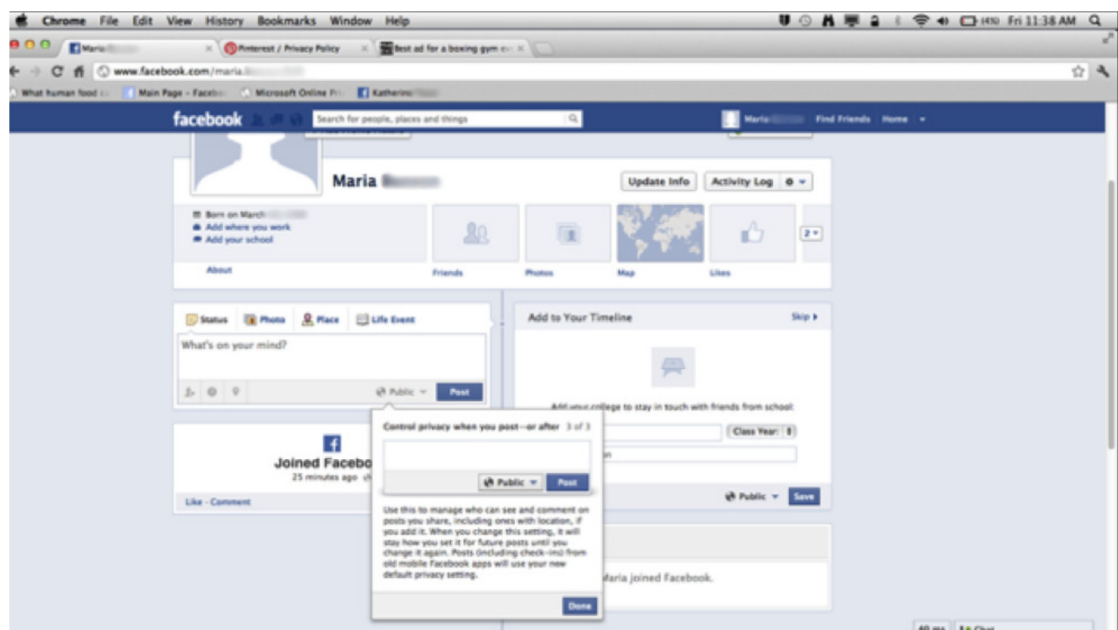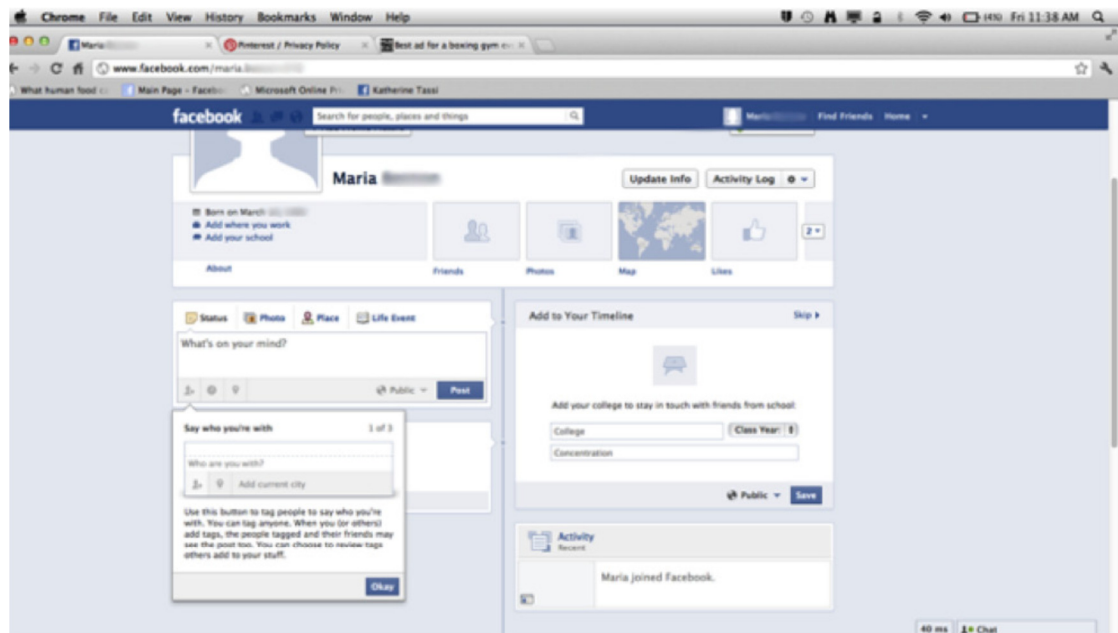
Second, FB-I added inline privacy settings for each field of information that a user can add to his or her profile. See screenshots below:
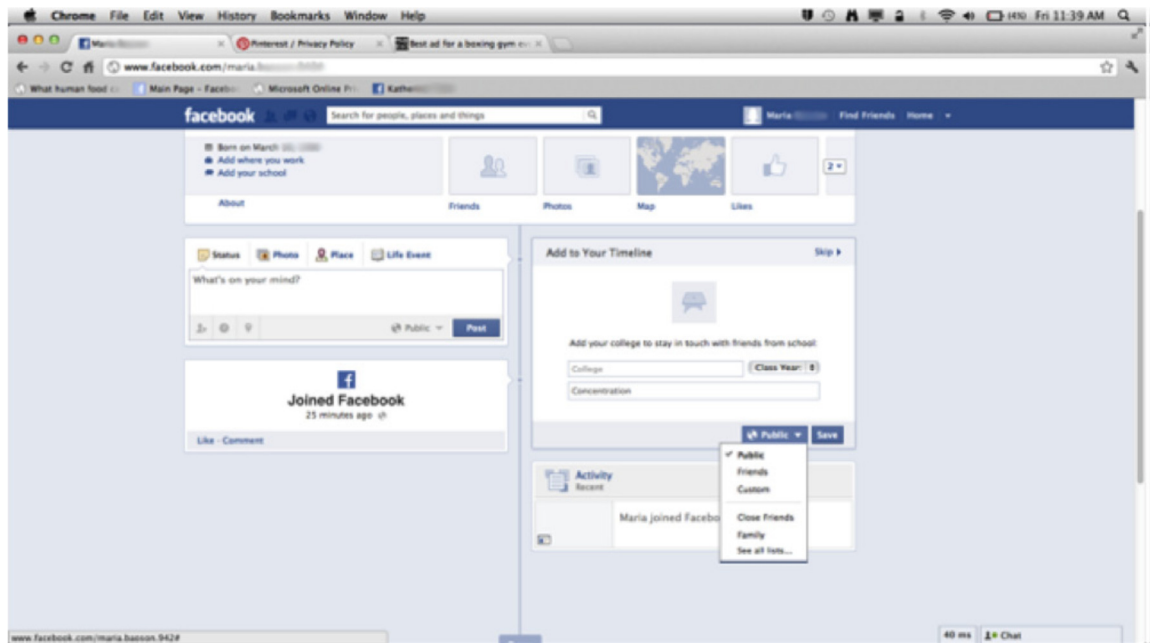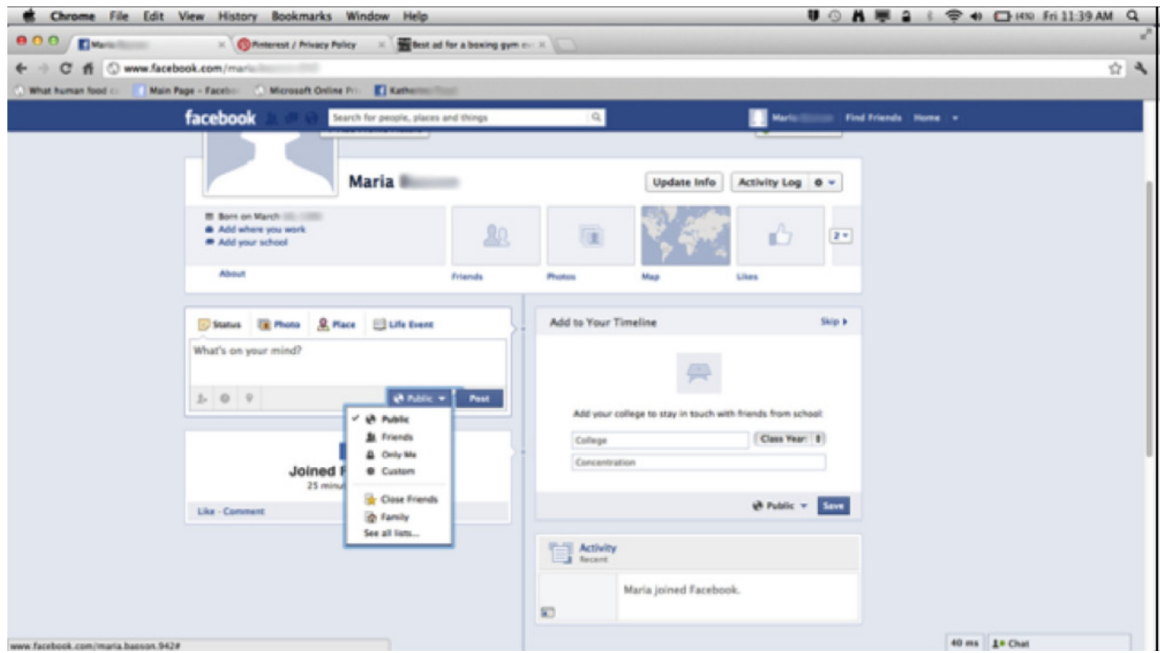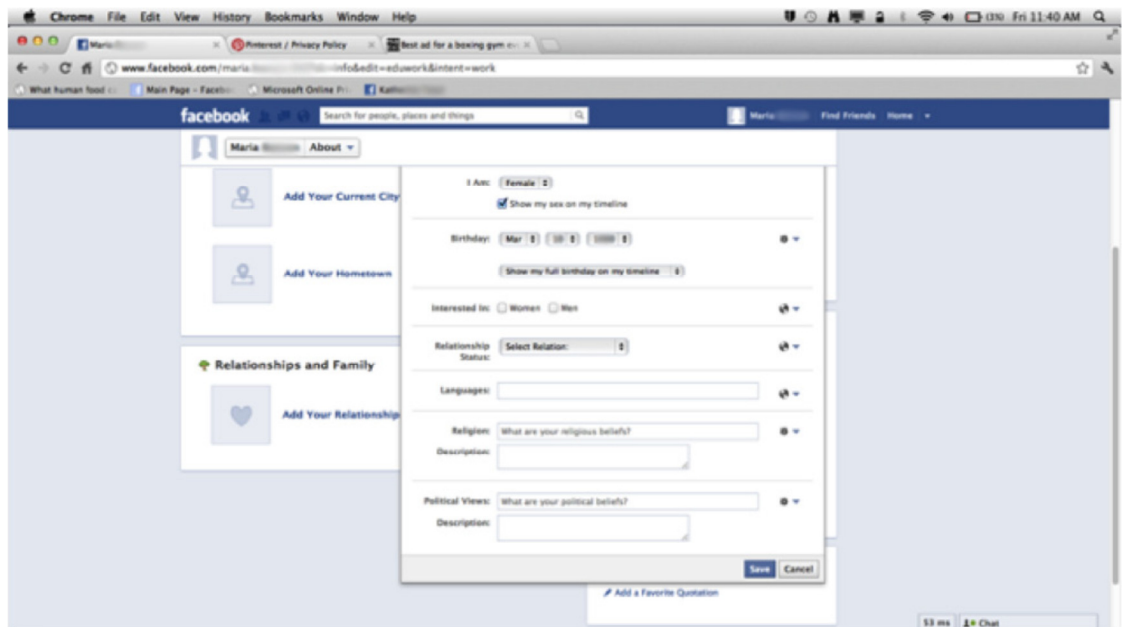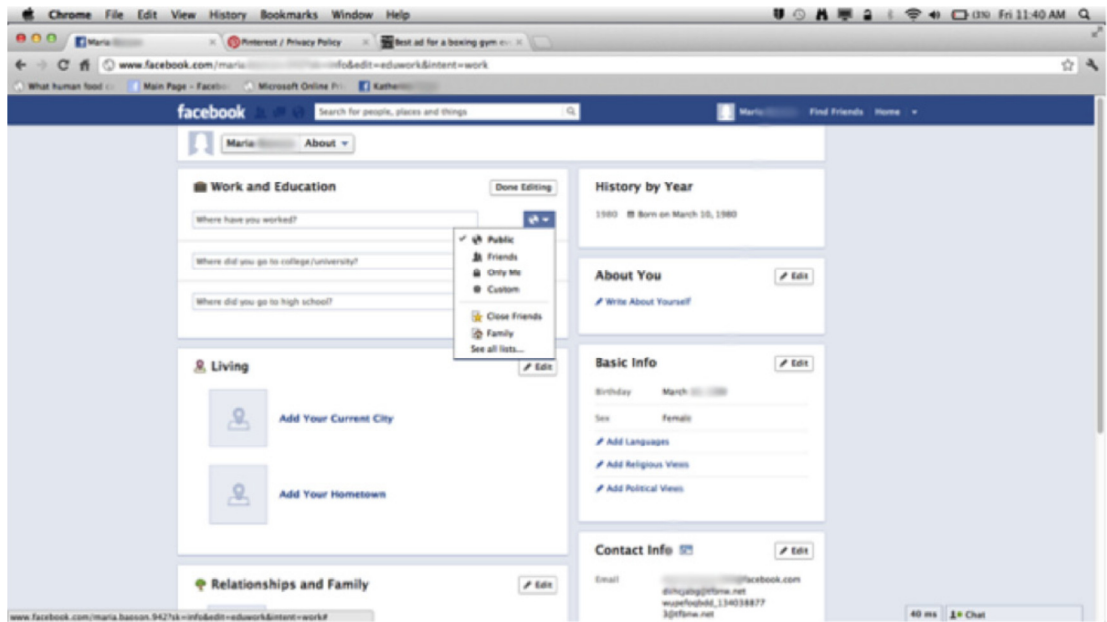
As well, if a user has not uploaded a profile photo during the new user experience but chooses to upload one later, FB-I added another reminder that the photo will be public. See screenshot below:

MHC-8575383-4
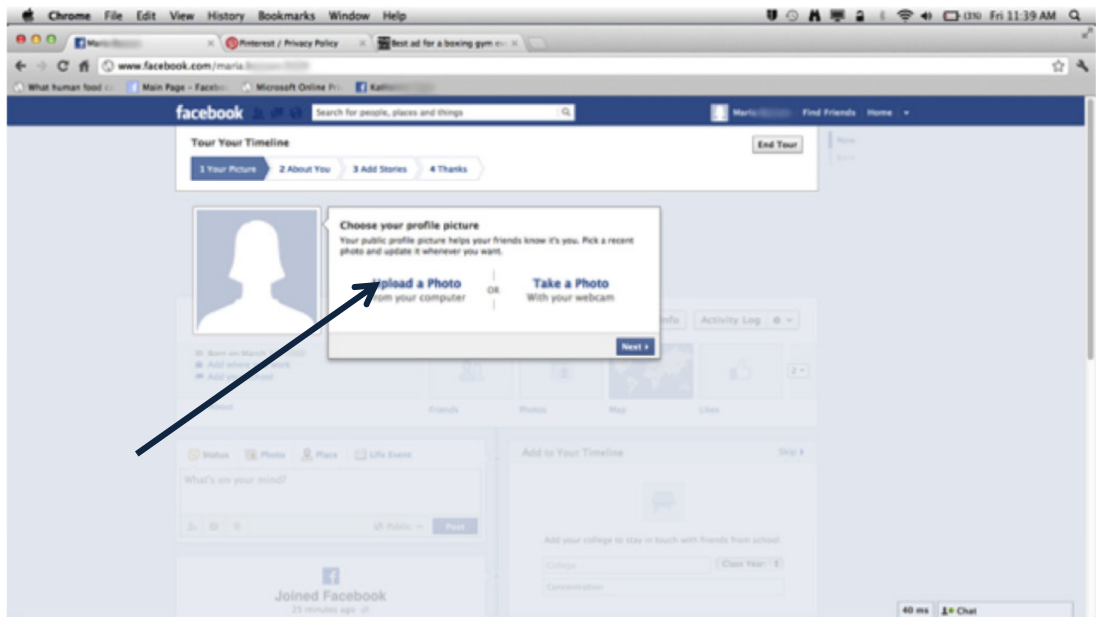
Another feature that FB-I offers new users is the ability to preview their timeline before they publish it. By using the "view as" control, users can test whether they have set the privacy controls as they wanted by viewing their timeline as if they were a stranger, or a specific friend. See screenshots below:

16
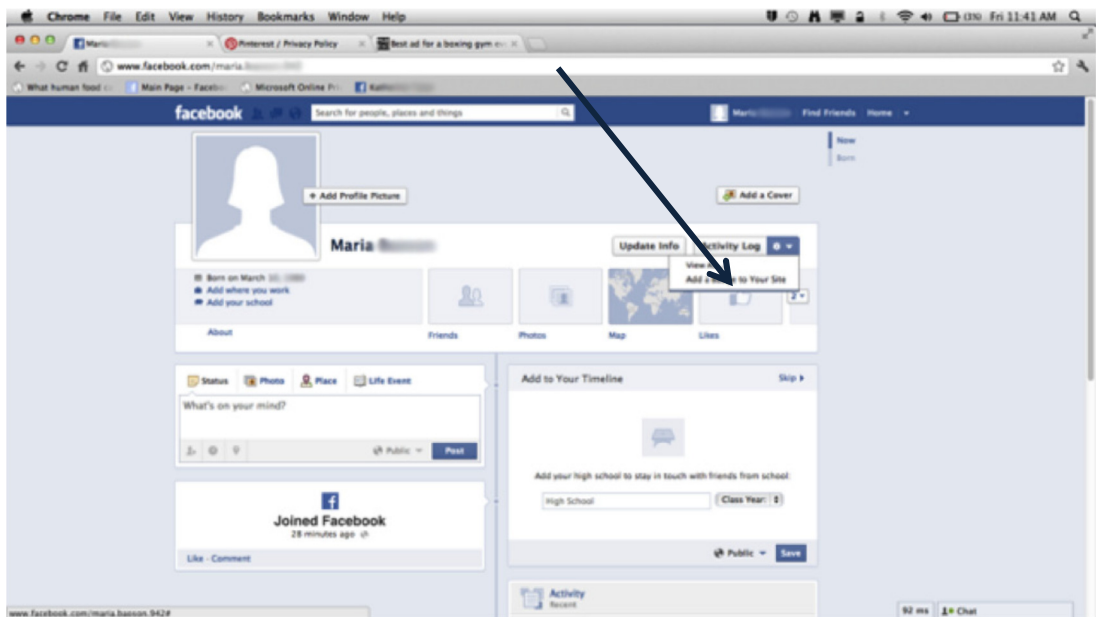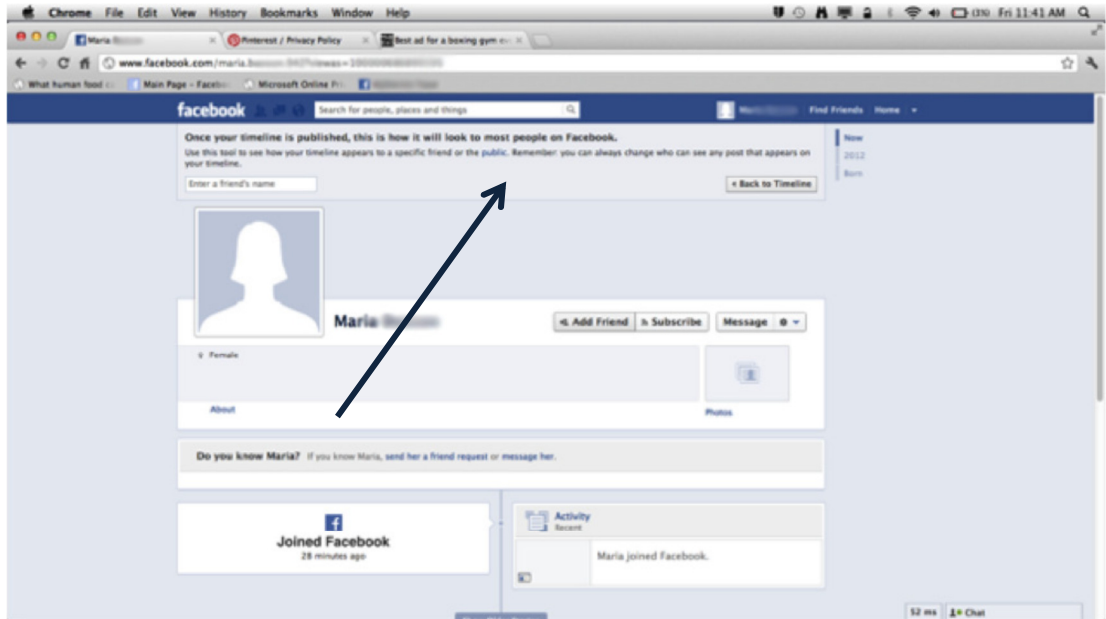
FB-I promotes the "view as" tool by showing a flyout on users' timelines after the user has been on the site for up to 30 days. See screenshot below.

In addition, a user's privacy settings are easily accessible through a link in the top righthand corner of every page. See screenshot below.

MHC-8575383-4
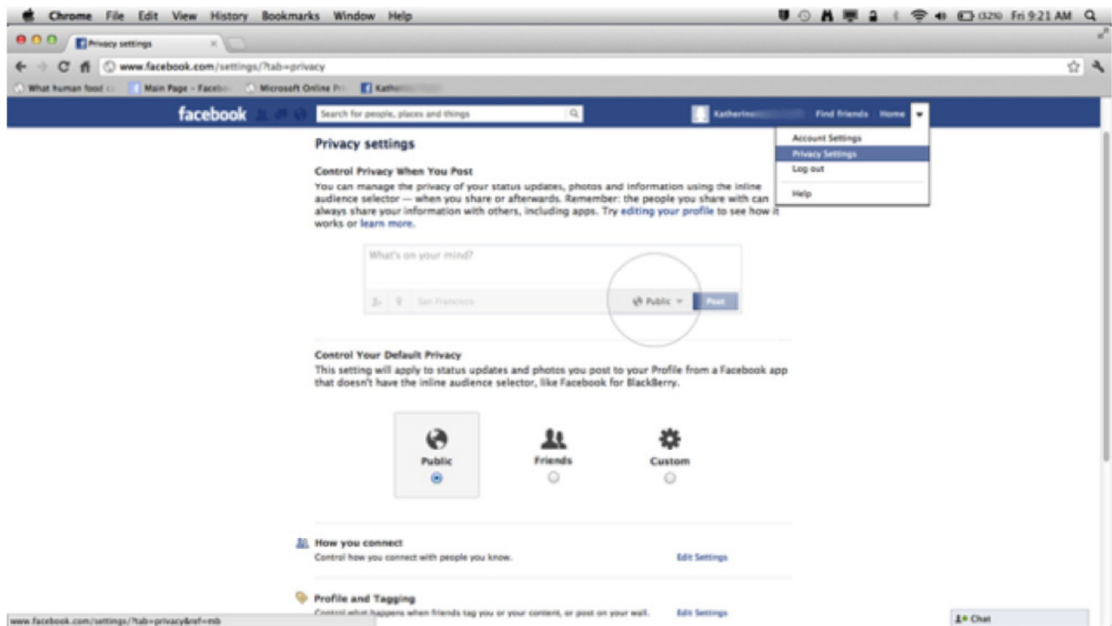
Further, in response to the DPC's recommendation that the settings related to ads be accessible from the privacy settings rather than the account settings, FB-I moved the ads settings to the privacy settings. See screenshots below.

MHC-8575383-4
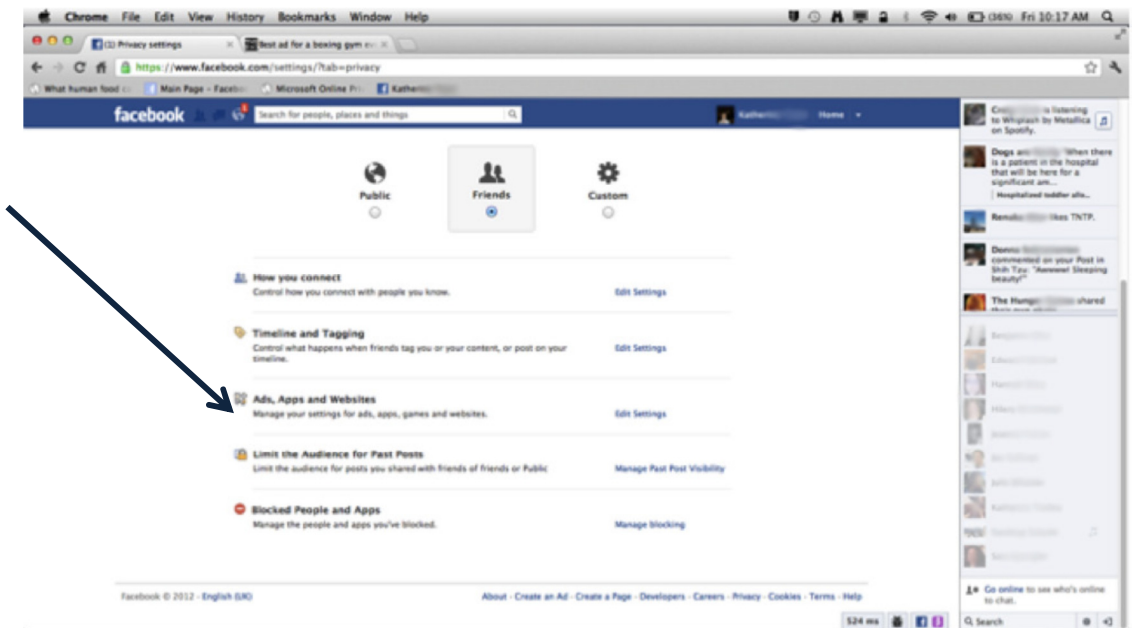
Perhaps the most innovative and empowering feature introduced by FB-I was the "activity log" which had been referred to in the 2011 Audit Report when it had only been partially introduced at the time. The main features of the activity log are as follows:

> *The transparency and control offered by Facebook's Activity Log feature is a major accomplishment. This is one of the most innovative and unparalled offerings in the social media industry and clearly demonstrates FB-I's commitment to integrating transparency and control over data into the Facebook experience … 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.[40]*

The following screenshots demonstrate the functionality of the activity log for Facebook users[41]:

---

[40] Page 17 of the Update Report
[41] Pages 17 to 21 of the Update Report

MHC-8575383-4
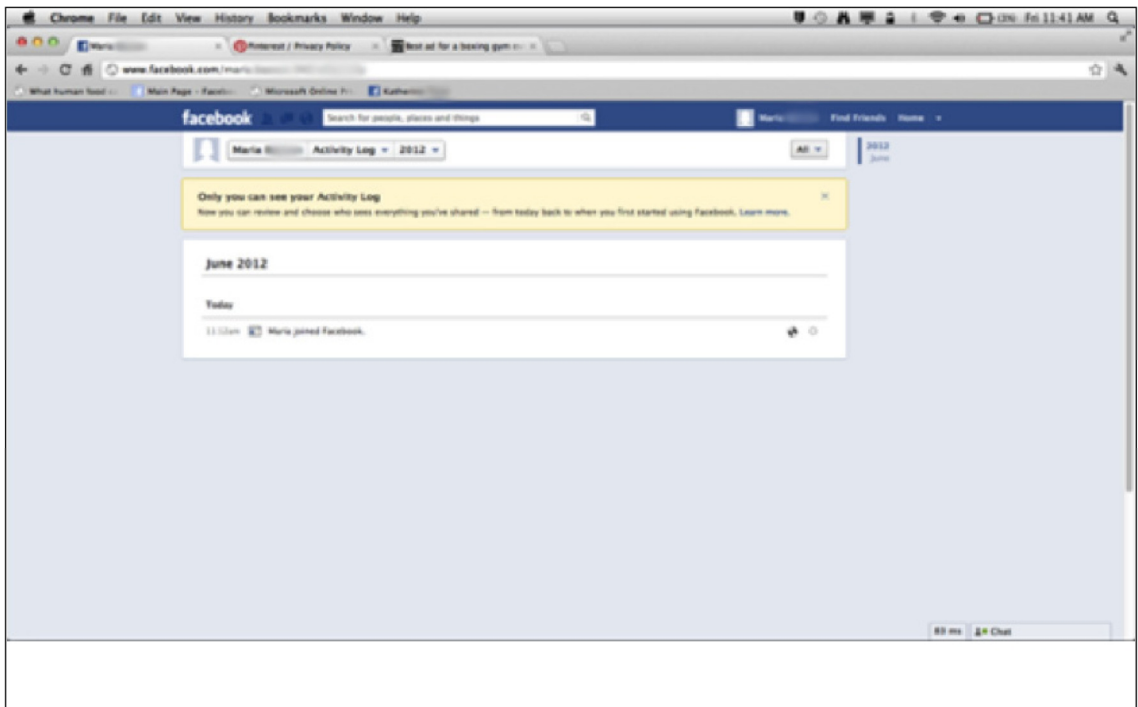
(new user's first time in Activity Log)
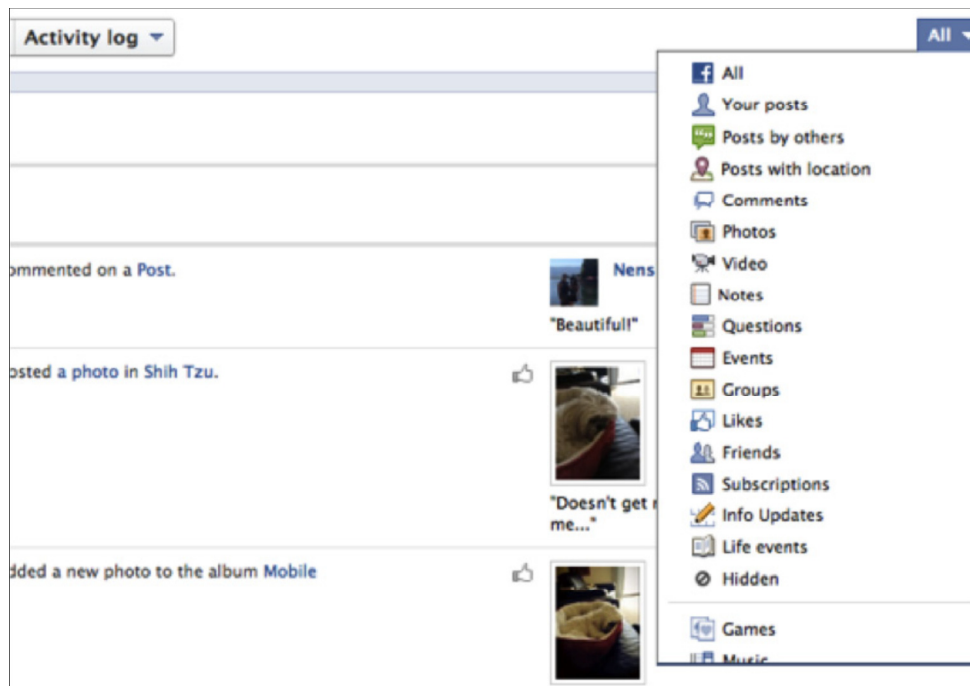
(Sort by activity)

(Visibility of third-party object user liked)

MHC-8575383-4

(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.

21

facebook HELP CENTRE — Search the Help Centre — Back to Facebook

Basics
- Learn About Facebook
- Manage Your Account
- **Explore Popular Features**
- Use Mobile

Something's Not Working

Report Abuse or Policy Violations

Adverts and business solutions

Apps, Games and Credits

Safety Centre

Community forum

Explore Your Activity Log
Basics » Explore Popular Features » Timeline

Please Select a Language

Expand all · Share

FB only · Request Content Change · Edit this (if you have permission)

See Your Activity
Your activity log is a list of your posts and activity, from today back to the very beginning. You'll also see stories and photos you've been tagged in, as well as the connections you've made – like when you liked a Page or added someone as a friend.

Control What Goes on Your Timeline
You'll see two dropdown menus next to each story in your activity log. The first lets you adjust the privacy of your posts, or it shows you the privacy setting if it's a story created by a friend like when someone writes on your timeline or tags you in a post. The second dropdown menu controls the visibility of the story on your timeline and gives you the option to hide, allow or star the story on your timeline. You also have the option to permanently delete anything you post on Facebook.

On some stories, like posts from applications, you can report the post as spam, turn off publishing from the app or remove the app from your timeline altogether.

How to Add Apps To
- ✓ Public
- Friends
- Friends except Acquaintances
- Only Me
- Custom
- Close Friends
- family
- See all lists...

How to Add Apps To Your
- ★ Featured on Timeline
- ✓ Allowed on Timeline
- Hidden from Timeline
- Delete Post...
- Add Location...
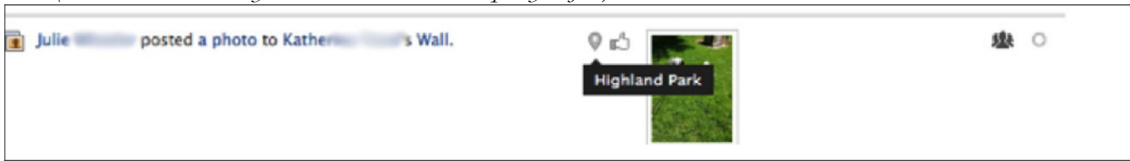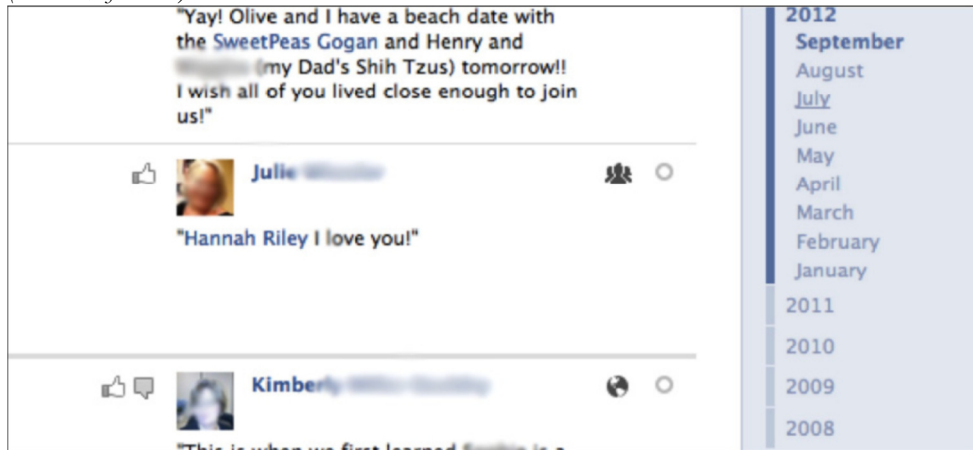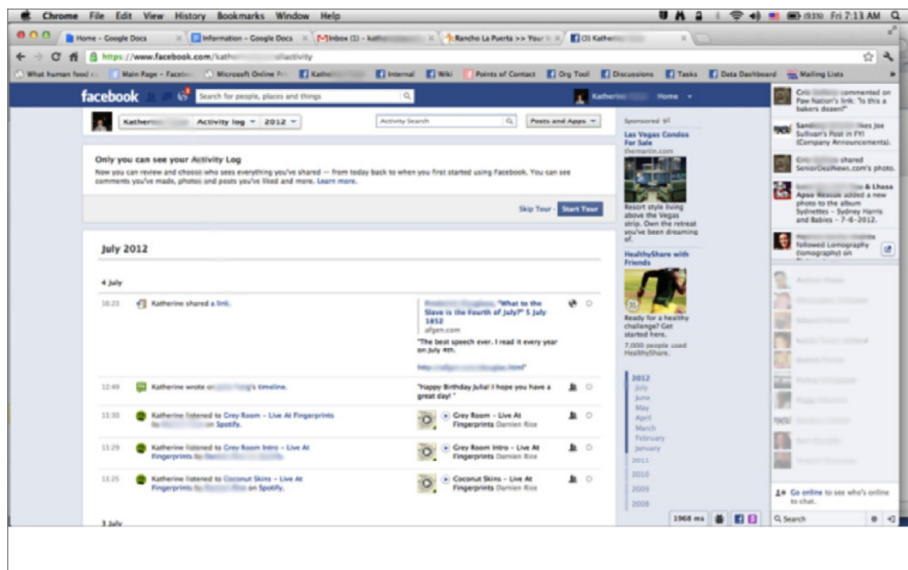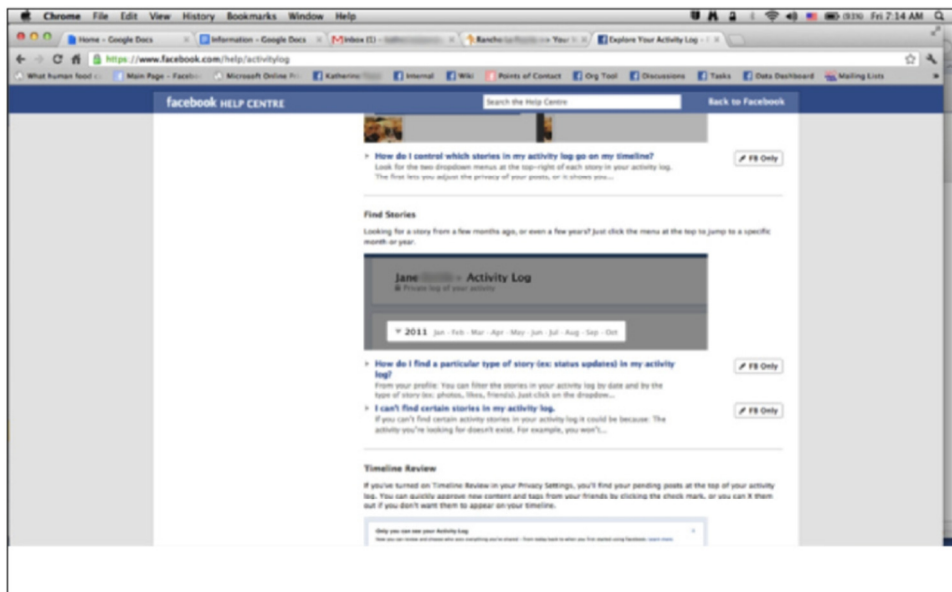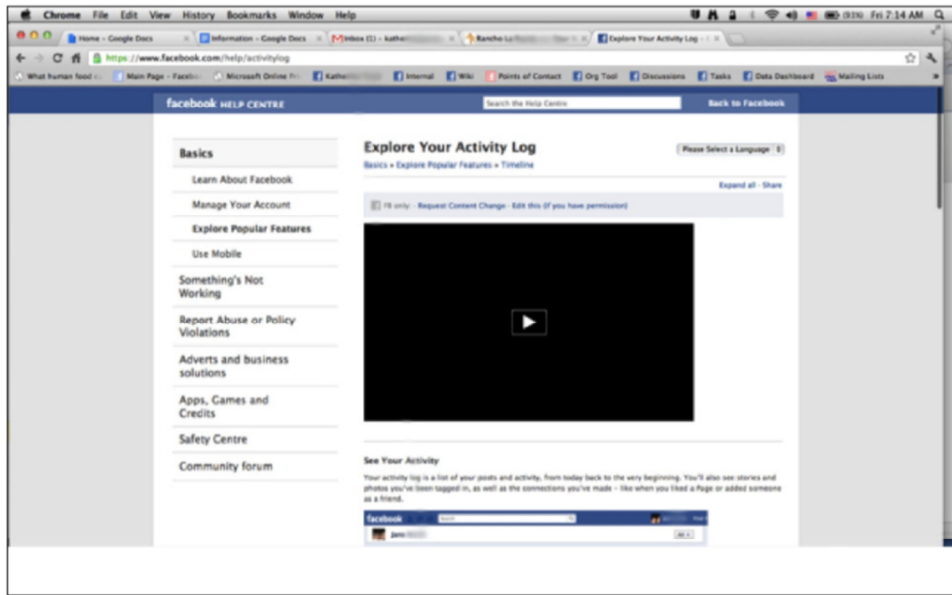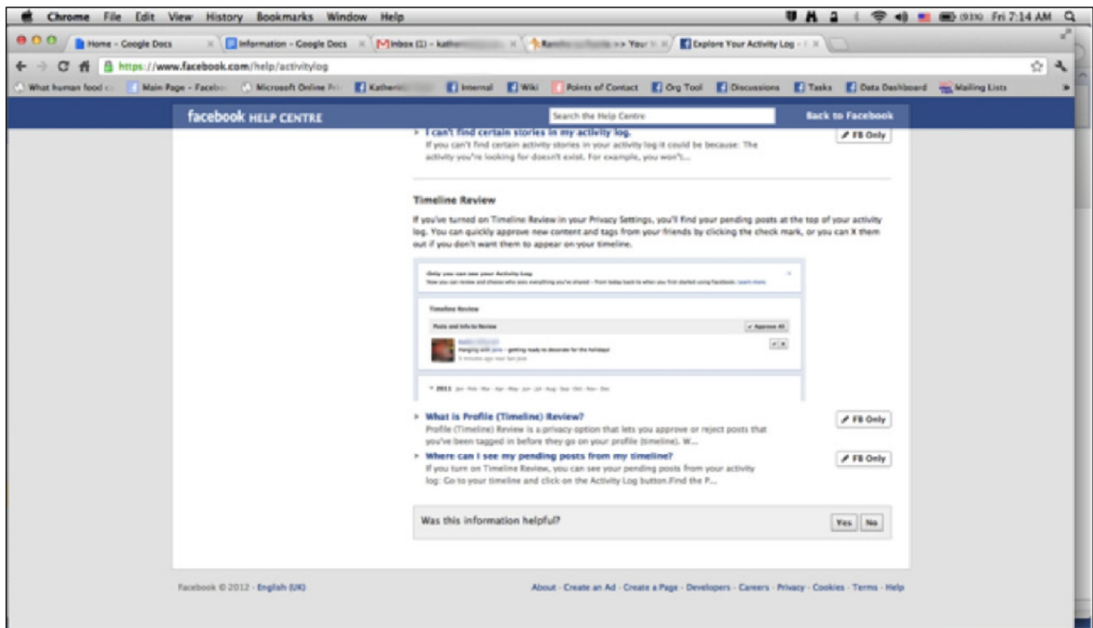- Change Date...

› **How do I control which stories in my activity log go on my timeline?**
Look for the two dropdown menus at the top-right of each story in your activity log. The first lets you adjust the privacy of your posts, or it shows you...
FB Only

Find Stories
Looking for a story from a few months ago, or even a few years? Just click the menu at the top to jump to a specific month or year.

› **How do I control which stories in my activity log go on my timeline?**
Look for the two dropdown menus at the top-right of each story in your activity log. The first lets you adjust the privacy of your posts, or it shows you...
FB Only

Find Stories
Looking for a story from a few months ago, or even a few years? Just click the menu at the top to jump to a specific month or year.

Jane ___ ▸ Activity Log
Private log of your activity

▾ 2011 Jan · Feb · Mar · Apr · May · Jun · Jul · Aug · Sep · Oct

› **How do I find a particular type of story (ex: status updates) in my activity log?**
From your profile: You can filter the stories in your activity log by date and by the type of story (ex: photos, likes, friends). Just click on the dropdown...
FB Only

› **I can't find certain stories in my activity log.**
If you can't find certain activity stories in your activity log it could be because: The activity you're looking for doesn't exist. For example, you won't...
FB Only

Timeline Review
If you've turned on Timeline Review in your Privacy Settings, you'll find your pending posts at the top of your activity log. You can quickly approve new content and tags from your friends by clicking the check mark, or you can X them out if you don't want them to appear on your timeline.

Only you can see your Activity Log

22

New users were also offered comprehensive and intuitive guidance to the privacy features on Facebook:

> *The DPC recommended that FB-I evaluate the totality of its guidance to new users about privacy features. In doing so, FB-I made the enhancements described above, but also Expanded new user privacy education by introducing resources available to users to learn more about various aspects of the Facebook service and platform and the controls available to users. On the "welcome dashboard", which is the page new users land on after going through the three steps shown above in section 2.3, the user is introduced to some of the key features and privacy controls on Facebook. See screenshot below:[42]*

---
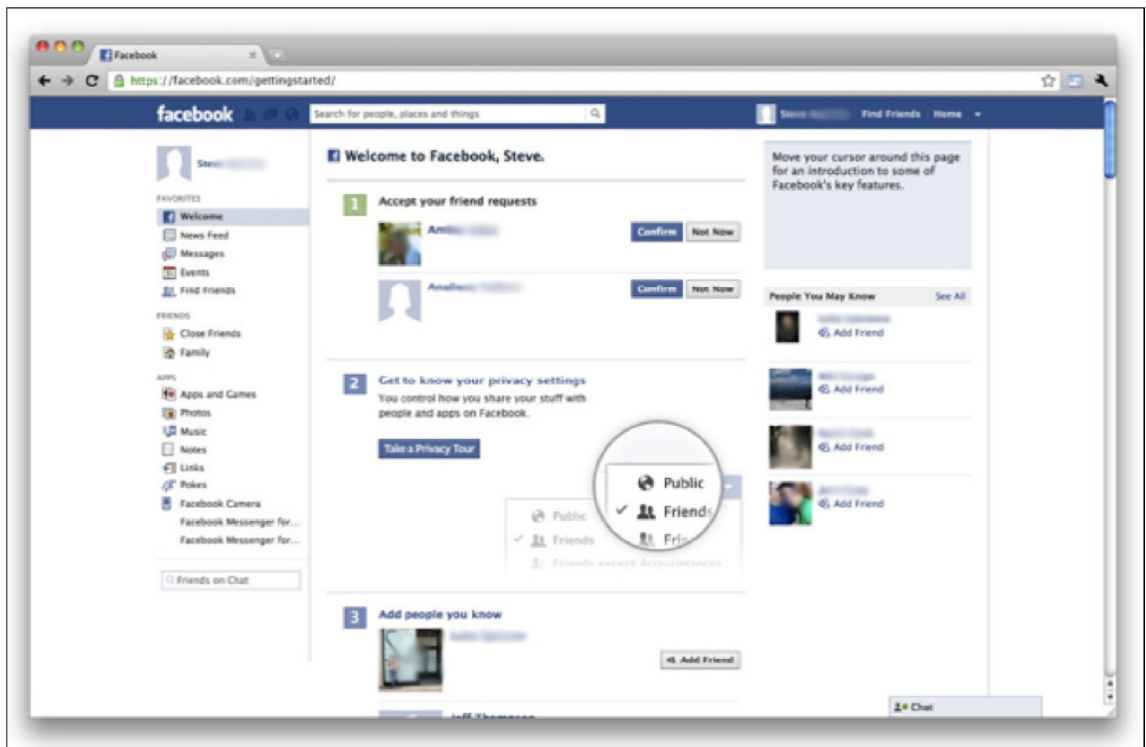
[42] Pages 22 to 24 of the Update Report

By clicking on "Take a Privacy Tour", the user is introduced to the core parts of the Facebook service via a four-step modal: (1) Who Sees What You Share, (2) How Tagging Works, (3) How You Connect With Friends, and (4) Sharing With Apps, Websites, and Games. See screenshots below:

25
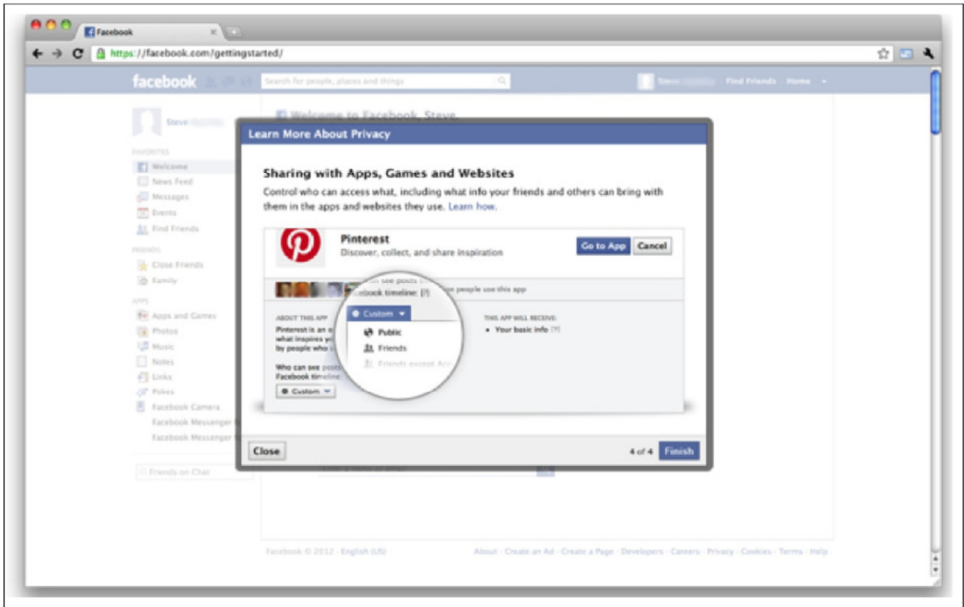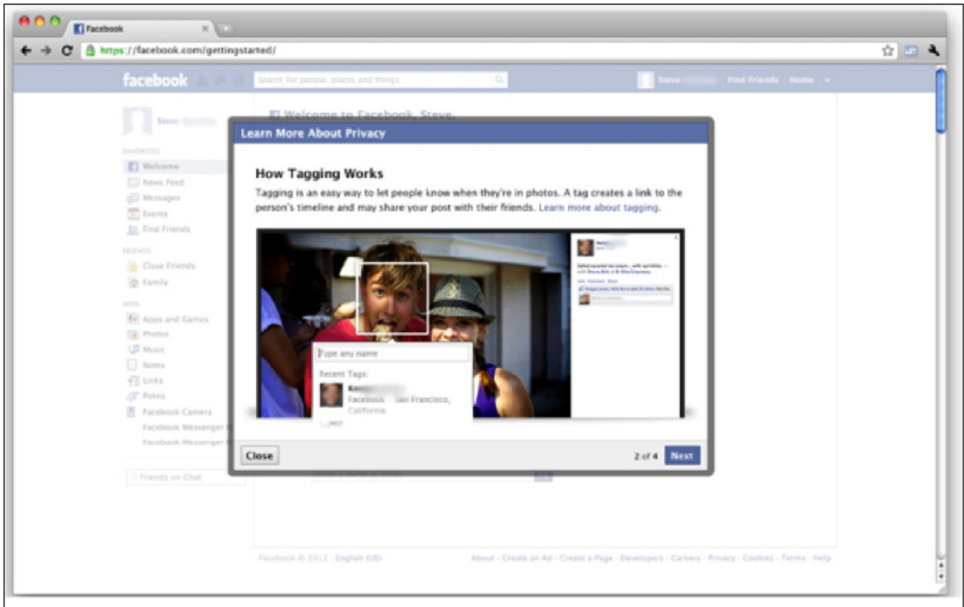
Each of these sections contains a link to a page on Facebook that provides detailed information about that feature, including links to the privacy controls associated with the feature. See [https://www.facebook.com/about/sharing,](https://www.facebook.com/about/sharing) [https://www.facebook.com/about/timeline,](https://www.facebook.com/about/timeline)

3.3.   2012 Audit Report

The 2012 Audit Report considered, and approved of, the various changes made by FB-I since the first audit.

The DPC first considered its recommendation that FB-I provide "*simpler explanations of its privacy policies*" and noted that FB-I had introduced a revised Data Use Policy. This revised policy had been produced with considerable input from the DPC:

> *FB-I has implemented a revised data use policy which was brought forward following intensive consultation and negotiation with this Office.[43]*

In addition, the DPC noted that a privacy policy, such as FB-I's Data Use Policy, ought to be routinely re-evaluated and refined as appropriate:

> *We also recognise that approaches to what should be contained in a privacy policy are developing and clearly therefore this is an area in which we expect FB-I and all other data controllers established in Ireland to be closely monitoring and iterating their policies to reflect best practice. Conversely, such continuous refinement must also take account of the fact that constantly updating such policies can be annoying for users and potentially confusing. Data controllers need to take account of such considerations before revising privacy policies.[44]*

In relation to the changes FB-I has made to the user registration process, the DPC observed that:

> *FB-I has amended the user registration process considerably in close consultation with this Office. Firstly it has re-engineered the initial user registration screens so as to ensure that no user personal data is collected before an opportunity arises for a new user to read the terms of service, data use, and cookies policies. The prominence of this information was increased and it was placed before the "Sign Up" button. Additionally in a small but significant step FB-I agreed to remove the phrase "and understand" in the agreement language. It was the view of this Office that due to the nature of social networking, a new user may benefit from some hands-on experience before they will fully understand the implications of a privacy policy.[45]*

Further changes to the new user experience designed to educate users in respect of the Facebook privacy environment were also noted:

> *FB-I has also amended the subsequent registration screens by including for the first time contextual information which informs users what specific use will be made of uploaded contacts, their profile photo and their education and employment information. For the first time users are also allowed to amend the visibility of the education and employment information on the registration screen itself. While the initial default setting on screen is set to public for adult users, as a non-public setting does not allow Facebook to suggest existing users with those characteristics, it can be changed at a click of a button.*

> *These screens are also now supplemented by a "welcome dashboard" which gives specific prominence to the privacy settings on the site and encourages the user to take a tour which focuses on the areas which this Office considered give rise to potentially the greatest privacy risk and the greatest need for education: the use of timeline, sharing on Facebook, Tagging and Apps.*

> *These screens as the key initial means by which new users engage with Facebook are critical in terms of incubating and developing the notion of privacy and control of privacy in new users. We will therefore*

---

[43] Page 13 of the 2012 Audit Report
[44] Page 13 of the 2012 Audit Report
[45] Pages 13 to 14 of the 2012 Audit Report

MHC-8575383-4

continue to keep this process under close review to ensure that new users are empowered to make informed choices in relation to their privacy.[46]

To avoid a scenario where new users simply ignored the privacy prompts and options, it was noted that FB-I was implementing *"a privacy prompt for all new users after they have used the site for 30 days."*[47]

Facebook's migration to integrated, inline privacy controls was commended by the DPC:

> *During the course of the audit and indeed before it had begun, FB-I had increasingly moved towards a model of providing "inline" controls to users. This reflects this Office's preference in this area that when a user is making a choice or asked to make a choice about how they wish their personal data to be used that they are presented with relevant understandable information at that time on which to base their choice. This will principally arise in relation to proposed new uses of their personal data.*[48]

The DPC also considered the issue of *existing* (rather than new) users of FB-I and noted that:

> *We had also asked that efforts be directed towards the education of existing users on the site. It is clear that the focus of FB-I was directed principally at new users and that this area did not therefore receive the same attention. FB-I has indicated that "along with new user education, FB-I is committed to providing education, contextual where appropriate, to users about new products and features, including reference to privacy and/or visibility controls associated with the new product or feature, as well as periodically refresh users' knowledge of existing privacy and visibility controls through various means. We therefore expect to receive precise proposals from FB-I in this area within four weeks of today's date.*[49]

This was done to the DPC's satisfaction as noted in the 2012 Annual Report:

> *A deadline of 4 weeks for those matters to be brought to a satisfactory conclusion was set and FB-I progressed those matters to our satisfaction within the four week period.*[50]

In summary, during the audit process the DPC considered at length the various claims made by the Complainant in relation to FB-I's approach to obtaining user consent. In the 2012 Audit Report, the DPC concluded that, in light of the modifications made by FB-I, the vast bulk of these issues had been satisfactorily resolved. The one outstanding issue (existing user education) was subsequently resolved to the DPC's satisfaction.

4. APPLICATION TO CURRENT COMPLAINT

As noted above, the DPC accepted the inherently social nature of Facebook and social networking, and noted that its focus was on the "*bigger picture [of] appropriately informing, in a meaningful way*"[51] the manner in which their data will be processed by FB-I. Against this backdrop, FB-I would respond to the factual assertions of the Complainant as follows:

    a)   *Links to the FB-I Privacy Policy are concealed on www.facebook.com and what appears to be a link to the Privacy Policy is actually a link to a privacy guide.*

The Data Use Policy is accessible from any page on www.facebook.com. The privacy link brings users to Facebook's Data Use Policy page where users can either view the Data Use Policy by subject matter (apps, cookies, etc.) or they can choose to view the complete Data Use Policy. The approach adopted by FB-I represents best practice and increases the accessibility of the Data Use Policy.

---

[46] Page 14 of the 2012 Audit Report
[47] Page 14 of the 2012 Audit Report
[48] Page 14 of the 2012 Audit Report
[49] Page 15 of the 2012 Audit Report
[50] Page 19 of the 2012 Annual Report
[51] Page 40 of the 2011 Audit Report

b)   The Facebook Privacy Policy is unduly complex, spread over multiple documents and vague and contradictory.

This assertion was refuted by FB-I in the 2011 Audit Report and the DPC made no finding that any aspect of the Data Use Policy was vague or contradictory. In the 2012 Audit Report the DPC concluded that FB-I had satisfactorily implemented the DPC's recommendation that it work towards simpler versions of its privacy policies.

c)   FB-I does not obtain the lawful consent of its users for the use of their data.

Since the 2011 audit, FB-I has made a number of modifications to its platform which have been commended by the DPC. As described above in Section 3.2, the registration process for Facebook now requires prospective users to accept the terms of use and read the Data Use Policy before any information is received by FB-I.

Other enhancements include educating new users in respect of the privacy features of the Facebook platform, introducing inline privacy control for the majority of Facebook's features, and introducing the activity log to provide users with ultimate control over the information they share. There is therefore no basis for the assertion that users' consent is obtained unfairly. As noted above, the 2012 Audit Report expressed satisfaction with FB-I's approach to obtaining user consent.

d)   Personal data of individuals is received by Facebook before users have been given the opportunity to agree to the Privacy Policy of Facebook.

As described above in Section 3.2, the registration process for Facebook now requires prospective users to accept the terms of use and read the Data Use Policy before any information is received by FB-I.

e)   The Facebook website is designed so as to discourage users from changing privacy settings or from opting-out of certain Facebook features.

The DPC found that FB-I had increased the size and prominence of the privacy buttons on the registration screen. Inline privacy settings and the activity log were designed so as to give users more access to and control over their information and data, and privacy controls which had previously not been found with the general privacy settings on the website – such as the "apps" settings – were moved to the general privacy settings. There is no basis for the assertion that FB-I seeks to discourage users from using the privacy settings as they wish or from opting out of features offered by Facebook. On the contrary, many recent modifications on Facebook have both simplified and consequently provided greater encouragement for users to use such settings.