Office of the Data Protection Commissioner.
Canal House, Station Road
Portarlington , Co. Laois
IRELAND

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AUSTRIA   Vienna, 18th of August 2011

<u>Complaint against Facebook Ireland Ltd. – 15 "Excessive"</u>

To whom it may concern,

This is a formal complaint against "Facebook Ireland Ltd." under section 10 of the Irish DPA. I am convinced that "Facebook Ireland Ltd." breaches the Irish DPA and the underlying Directive 95/46/EG and I kindly ask you to investigate the following complaint.

I am a user of "facebook.com". The contract is governed by the "terms" used by Facebook (attachment 01). They state in section 18.1. that all users that live outside of the United States of America or Canada, have a contract with Facebook Ireland, while all users within the United States of America and Canada have a contract with Facebook Inc., based in California, United States of America (further called "Facebook USA").

Therefore I do have a contract with "Facebook Ireland Limited, Hanover Reach, 5-7 Hanover Quay, Dublin 2, Ireland" (further on called "Facebook Ireland"). For preforming my contract with them, Facebook Ireland is processing my personal data in different means. Since this controller is established in Ireland, I understand that according to section 3B(a)(i) DPA the Irish Data Protection Act (DPA) applies.

Because facebook.com is similar to a "cloud" service, I want to distinguish between the mere "hosting" of my data and all further processing of my data. For the purpose of hosting my data I see Facebook Ireland as a processor and myself as the controller. For any form of further processing of my data for Facebook Ireland's own purposes (e.g. analytics or advertisement) I see Facebook Ireland as the sole controller (see graphic in attachment 02).
Generally all my hosted personal data is also used for Facebook Ireland's purposes, which is why Facebook Ireland must always be seen as a controller. Whenever Facebook Ireland processes data that was "removed" by the user, it is obvious that the user is not in control of the data; therefore Facebook Ireland is the sole controller at this time. Facebook USA must be seen as the sub-processor or the processor in each case.

Unfortunately Facebook Ireland does not have a certain structure in its processing that would make it easy to distinguish certain forms of processing. In order to make the handling of my complaints easier for you, I decided to split them into individual cases. I want to inform you that some cases are overlapping to a certain extent.

Case 15: "Excessive Processing"

Facebook Ireland is gathering excessive amounts of personal data of an unbelievable mass of people worldwide. It is very likely that no government or cooperation has ever managed to gather such a huge amount of personal (and often highly sensible) data.

After using facebook.com for 3 years, Facebook Ireland gathered more than 1.200 pages of personal information about me (in fact Facebook Ireland might hold a much bigger amount of data, see Complaint 10), even though I have deleted just about everything I could (e.g. all my posts, all messages, and many friends) See a compressed version of the PDF as attachment 03. If Facebook Ireland goes on like this for another couple of years, it will have gathered even more personal data about even more people.

All this information is not only hosted by Facebook Ireland (in its role as a processor) but it is also continuously processed in the company's role as controller (see attachment 02). Facebook Ireland is using this information in order to show advertisements and suggest friends or aggregate information on its "news feed".

If this practice continues, the masses of data will clearly be excessive for the limited purpose of the secondary use of Facebook Ireland (as indicated in attachment 02).

I doubt that Facebook Ireland really needs access to all data it is hosting in order to conduct its own purposes. In fact, information that is only a couple of days old will not show up in news feeds, after a while Facebook Ireland's "friend suggestions" will have been shown 10 times without response and a page a user visited one year ago will not be relevant for today's advertisements.

Another aspect that justifies the limitation of excessive processing of data is the question of data security (see also complaint 12). The central processing of private data of more than 700 million users bears significant risks for data security. Data that the user processes on Facebook Ireland's servers might never be 100% safe, which makes raises the question if all the data is really necessary in the first place. It is undisputed that the best form of data security is data minimization.

Considering all these arguments I think that Facebook Ireland's processing of all hosted data for its own purposes is a prime example of excessive processing of personal data and therefore illegitimate under section 2(1)(c)(iii) DPA and Article 6(1)(c) of Directive 95/46/EG.

I therefore kindly ask you to take the necessary steps to change this illegal practice by Facebook Ireland.

I think there can be many practicable solutions to this problem. Two solutions which might need to be combined to make the processing by Facebook Ireland non-excessive would be the following:
   a) The user needs to get reasonable options to delete old data that he/she does not need anymore (e.g. a setting that deletes old postings, comments and other data after a couple of weeks automatically – "digital forgetting")
   b) There has to be a limitation on the use by Facebook Ireland of the user's old data.
      Google for example deletes old IP-addresses after 9 months, even though they might not even constitute "personal" data and they are not necessarily subject to European law.
      On facebook.com this could e.g. be done by "archiving" them, which would mean that Facebook Ireland would not be allowed to use them anymore and is only "hosting" them.

I decided to send you just the relevant parts of the original documents as attachments to this complaint, the original files can be sent any time by airmail, if necessary. I can be reached at ██████████ or ████████████ if you have any further questions.

Sincerely,

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