

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

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AUSTRIA

Vienna, 18th of August 2011

Complaint against Facebook Ireland Ltd. – 06 “Posting on other People’s Pages”

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 performing 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 06: Posting on other Peoples Pages

Like many other platforms facebook.com allows users to comment on other users' objects (e.g. posts, photos, videos). On most platforms the user can comment anonymously, but therefore knows that his/her comment will be visible to anyone accessing the page.

Facebook Ireland is doing this differently: All postings are shown with the user's real names and at the same time it is possible to limit the visibility to other people. This makes the user believe that he/she is sharing the information only with his/her friends. In fact the user has no idea who he is sharing the information with:

*"When you post information on another user's profile or comment on another user's post, that information will be subject to the other user's privacy settings."* (Facebook Ireland's privacy policy)

There is no symbol or information that would show the user the settings that would control the posting (see attachment 03). The user is blindly posting something, not knowing if it will only show up at the other users "friends" (130 people), "friends of friends" (16.900 people) or "everyone" on the internet, including search engines.

1. There is no transparent notice that indicates the group of people that will be able to see the post. This breaches the principle of fairness in section 2(1)(a) and section 2D DPA and Article 6 (1)(a) of Directive 95/46/EG.
2. It seems that there has never been an informed consent by the user to the use of these posts since the user has no idea of the extent of people he is sharing information with. Without an informed consent any processing is illegitimate under Section 2A(1)a DPA and Article 7(a) of Directive 95/46/EG.

I therefore kindly ask you to take the necessary steps to change this illegal practice by Facebook Ireland. A solution would be a little icon that indicates the group of people the user is sharing information with, just like the icon that is shown if a user is posting content on his/her own page.

I can be reached at [REDACTED] or [REDACTED] if you have any further questions.

Sincerely,

[REDACTED]