

Office of the Data Protection Commissioner.
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AUSTRIA

Vienna, 15th of September 2011

Complaint against Facebook Ireland Ltd. – Update

Since I filed our initial 16 complaints, Facebook Ireland Ltd. has updated its privacy policy and changed some features on facebook.com. The old privacy policy was in force for only 9 months and has not been amended but totally changed. We have now reviewed these features and do not think that they make any substantial difference to our complaints, other than the following complaints:

Complaint 03 ("Tagging"):

Users now get the option for a little more control over "tags" in pictures, at the same time everyone on facebook.com can now tag a user in a picture. I am unable to understand the technical system and have filed another access request to get a clearer picture.

It has to be clear that "tags" that were not accepted by a user within a reasonable time or tags that were removed have to be deleted and not only "hidden" from the user, as it was the case before these changes. Tags should also not be processed for Facebook Ireland's purposes as long as the user has not accepted it and therefore had an option to consent to the tag (section 2A DPA and Article 7(a) of Directive 95/46/EG).

Complaint 06 ("Posting on other People's Pages"):

Facebook Ireland has changed its systems towards giving users information on what content of other users is visible to what group of people. We are welcoming this development, but if the new system is observed closely there are three major drawbacks:

- Users can change the privacy setting after other users have commented on content to a more liberal level (e.g. user A has commented on a picture of user B that was visible only to "friends" of B. This setting was shown to A when the user commented on it. Now user B, that uploaded the picture, can change the setting any time to "public" which makes also the comment of user A "public"). I believe that once a user has commented on an object, there should be only the option to change the privacy settings to a smaller group of people. Otherwise there is no consent (section 2A DPA and Article 7(a) of Directive 95/46/EG), no fair use of the data (section 2(1)(a) DPA and Article 6(1)(a) of Directive 95/46/EG) and no proper information (section 2D DPA and Article 10 of Directive 95/46/EG).

Note: Users that make personal data of other users "public" without their consent are also breaching the European data protection laws (see Case C-101/01 *Lindqvist*).

- The users do not get informed about the standard setting when posting something on other users pages. The information is only given if there is an existing element on a page. This seems absurd because new postings are handled by a standard setting that could easily be displayed. There is no specific and informed consent (section 2A DPA and Article 7(a) of Directive 95/46/EG) and no proper information (section 2D DPA and Article 10 of Directive 95/46/EG).
- Sometimes there is only rather vague information given (e.g. "costume settings" or "friends of friends"). Whenever information is not "public" the user should be given a clear idea of the circle of people they are sharing with. This could be done by displaying the (approximate) number of people that can access it. If this information is not given there is no specific and informed consent (section 2A DPA and Article 7(a) of Directive 95/46/EG) and no proper information (section 2D DPA and Article 10 of Directive 95/46/EG).

For all other complaints I was unable to see that Facebook Ireland has made any changes that would improve data protection on its platform. Whenever I have specifically quoted a provision of the privacy policy I kindly ask the DPC to look for the same information in the new policy (see Attachment 01). If you are unable to find something you can always contact me and I will change the complaint in a way that it is easy to process for the DPC.

For Complaint 08 ("Privacy Policy and Consent") I would say that the information is even harder to find in the new privacy policy and some information is now totally missing. The provisions are as unclear, vague and contradictory as they were before the changes. There has not been any proper information or even consent to these new policies and until today they are not even accessible from any version of facebook.com other than the English version.

We are planning to file a complaint that targets this change of the privacy policy along with about five more complaints that target other problems we have found within the past month.

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

Sincerely,

[REDACTED]