



HUMAN RIGHTS FIRST COMMENT ON FACEBOOK, FILE NO. 092-3184

This submission responds to the Federal Trade Commission's request for comment on the proposed consent order regarding Facebook, File No. 092-3184, published in 74 Fed. Reg. 75883 (December 5, 2011). As requested, this comment is focused specifically on the proposed order; it does not encompass Human Rights First's broader concerns about Facebook's policies and implications for the human rights of its users worldwide.

The Internet is this century's virtual town square. It provides citizens online the ability to express and exchange views, organize and assemble. As a result, the freedom to connect, also termed Internet freedom, is vital to realizing core human rights of privacy and freedom of expression, as well as the related rights of assembly and association. Facebook provides one of the most popular and easy ways to connect online.

But as the Commission's investigation has shown, that ease of communication carries with it an unacceptable risk - which users forfeit their privacy and control over the information they post. Because Facebook has no significant competition, and because its platform is global and largely seamless, its approach to privacy is the de facto standard for users everywhere. The Commission needs to take steps to ensure that its proposed consent agreement is adequate to ensure that Facebook's privacy policies respect, rather than erode, Internet freedom and the fundamental freedoms of privacy, expression, association and assembly that Internet freedom enables.

Human Rights First commends the Commission for investigating claims that Facebook's user privacy policies and practices are deceptive, and for preparing to enter into a consent agreement with Facebook that would require significant changes to Facebook's privacy policies and practices, including subjecting them to periodic evaluations by an independent assessor. As a founding member of the Global Networks Initiative, we think such assessments by independent third parties drive company accountability. We anticipate that the Commission will carefully oversee the scope and independence of each assessment to safeguard its integrity. We question, though, if the consent agreement goes far enough to protect the privacy of Facebook's 750 million users. Toward that end, we urge the Commission to consider the following:

1. How transparent are Facebook's disclosures concerning user privacy and user control over information?

Facebook has several policies, rather than a single policy, that address user information, and the same or similar words have different meanings in those policies. The words "information" and "your information," for instance, have very

different meanings. "Your information" is limited to users' registration information and the comments and pictures they post to their Facebook page. "Information," by contrast, also includes "facts and other information" about users, including the actions they take on Facebook, such as the friends a user adds or deletes, the groups a user is invited to join or joins, pictures a user is tagged in by another user and websites a user visits that have a Facebook plug-in. Under Facebook's existing policies, those two categories of data are treated very differently when it comes to user privacy, knowledge and control over how that data is shared.

How is a user supposed to understand those critical differences? Those two terms are not even defined in the same policy. "Your information" is defined at the very beginning of the Data Use Policy, while "information" is defined at the tail end of the Statement of Rights and Responsibilities.

Facebook should be required to adopt a single, all-inclusive policy concerning user privacy that discloses, in simple and clear language, what data users have control to make private, what other data is obtained by Facebook, and under what circumstances that data is stored and shared. And when the policy uses a term with a specific, defined meaning, Facebook should be required to define the term in the policy and then capitalize the first letter of the term every time it is used in the policy, to remind users that it has a defined meaning.

2. How accessible are Facebook's privacy policies to users?

Facebook's Data Use Policy and Statement of Rights and Responsibilities appear designed to inform users (as opposed to developers or other third parties) as to user privacy issues and user control over information. Yet those policies are hard to locate on Facebook's site. The direct links to those policies use different names for them and do not remain in a stationary location on users' homepages. To access the policies through a drop-down menu, users must navigate through a series of at least six different pages, each containing several links to choose from.

Facebook should be required to refer to and identify its privacy policies in a clear and consistent way throughout its site. Facebook also should be required to provide its users with visible, direct links to the Data Use Policy and the Statement of Rights and Responsibilities that remain in the same place from session to session.

3. How effectively does Facebook notify users of changes to its privacy policies?

Facebook says it notifies users of changes to the Statement of Rights and Responsibilities and Data Use Policy by posting changes on the Facebook Site

Governance Page, a page that users must “like” (or become a “fan” of) to receive the page’s notifications. We wonder if that is effective notice, as only approximately 2 million of Facebook’s 750 million users (or 0.26%) currently “like” that page. Facebook says it also notifies users of changes to the Data Use Policy by posting changes directly on the Data Use Policy. That notification also seems questionable. How would a user even know to check the Data Use Policy for news of a change? And once they locate the Data Use Policy, how would they identify what change was made? When printed out, the Data Use Policy consists of six single-spaced pages in six-point font. How could a user even see the change? Under the consent agreement, Facebook is to provide users with “additional, prominent notice as appropriate under the circumstances” when a change in the Data Use Policy is “material.” On its face, that requirement does not go far enough.

Facebook should be required to give all users clear, actual notice of changes to its policies affecting user privacy. Since Facebook requires users to supply a valid e-mail address, it has the ability to send out mass notices by e-mail to its users. It also can send a message through Facebook’s internal system or place an update on users’ screens at the time of login. Facebook’s notices should inform users of the specific changes made by identifying the previous policy terms, the new policy terms, and how the changes impact users.

4. How does Facebook ensure that service providers don’t disclose user information in violation of Facebook’s own policies?

Even if Facebook’s privacy policies were clear, comprehensive and accessible, user privacy would be compromised if third party service providers Facebook hired to perform services for Facebook had access to users’ private information and failed to protect it. Recognizing the need to extend Facebook’s privacy policies to third party service providers to ensure protection for Facebook’s users, the consent agreement requires Facebook to select and retain service providers that are capable of protecting users’ private information. Such service providers must commit to implement and maintain their own privacy protections commensurate with Facebook’s, to avoid indirect disclosures of user information. The Commission should ensure that each independent assessment of Facebook includes a review of Facebook’s efforts to monitor third party service providers.

At the same time that Facebook is strengthening its own internal privacy controls, it must take steps, and establish policies and procedures, to ensure that the service providers it retains have their own established policies and procedures for safeguarding the private information they come into contact with in the course of their routine business dealings. Facebook should review the privacy policies of service providers prior to hiring them, monitor their practices throughout the time the services are being rendered, and hold them accountable for any violations

that result in unauthorized disclosure of private user information.

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We urge the Commission to consider these questions, so that Facebook, as a result of entering into the consent agreement, will finally deliver what it has promised its users for years: a real, workable and clear set of privacy choices and protections.

Respectfully submitted,

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