

September 30, 2013

VIA ELECTRONIC MAIL AND OVERNIGHT DELIVERY

Laura Koss  
Reenah Kim  
Division of Enforcement  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Mailstop M-8102B  
Washington, DC 20580

Re: In the Matter of Facebook, Inc., Docket No. C-4365

Dear Ms. Koss and Ms. Kim:

This responds on behalf of Facebook to your letter dated September 20, 2013. Facebook values its relationship with the Commission and its Staff and appreciates your feedback in connection with its Statement of Rights and Responsibilities (“SRR”) and Data Use Policy (“DUP”) update. The information below reflects Facebook’s continued commitment to cooperation and collaboration with Staff.

Please note that the material contained in this response constitutes Facebook’s confidential business information and should be treated with the highest degree of confidentiality pursuant to 5 U.S.C. §§ 552(b)(3) & (b)(4) and 15 U.S.C. § 46(f).<sup>1</sup>

Please see below for Facebook’s specific answers to your questions.

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<sup>1</sup> Your letter requests a response within 10 days, pursuant to Part IX of the Facebook Consent Order. Part IX, however, contemplates the submission of reports regarding “the manner and form” of Facebook’s compliance with the Order; it does not contemplate or require Facebook’s response to interrogatories. Moreover, a significant portion of the inquiries involve matters that fall outside the scope of the Order. Facebook responds to the questions you have raised within the timeframe you requested in the spirit of a cooperative dialogue, but in so doing reserves all rights.

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1. Section 10.1 of the proposed SRR states: (b)(4); (b)(3):6(f)  
(b)(4); (b)(3):6(f)

**In your September 12 email, you stated that the addition of “content and information” in this provision “does not reflect that there has been a change in the type of information that Facebook collects, uses, or shares.” You also stated that this practice “has long been disclosed” in the SRR and DUP.**

**a) Please identify with specificity the provisions in the current SRR and DUP that disclose this practice.**

Facebook’s existing disclosures cover this practice. Section 10 of the SRR relates to “advertisements and other commercial content served or enhanced by Facebook” and provides disclosures related to the right of publicity. In particular, Section 10.1 provides that “[y]ou can use your privacy settings to limit how your name and profile picture may be associated with commercial, sponsored, or related content (such as a brand you like) served or enhanced by us. You give us permission to use your name and profile picture in connection with that content, subject to the limits you place.” The language provides an explicit exemplar of how a user’s content and information could be collected, used, or shared in commercial contexts. (b)(4); (b)(3):6(f)

(b)(4); (b)(3):6(f)

In addition, Section IV of the DUP, entitled “How advertising and Sponsored Stories work,” contains a detailed description of how a user’s content and/or information may be published in a sponsored or commercial context. For example, it explains that a restaurant might sponsor a user’s RSVP to an event scheduled to take place at the restaurant, thereby boosting distribution of that story on Facebook. Facebook has also created user-friendly explanations of Sponsored Stories, including the type of content and information eligible to appear in them, in numerous locations throughout the site.<sup>2</sup> In all such cases (as made clear by Facebook in both its SRR and DUP), the audience eligible to see the user’s content or information remains the same and is determined solely by the user.

<sup>2</sup> See, e.g., <https://www.facebook.com/about/ads/#types>.

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As explained in my email dated September 12, 2013, this language does not reflect a change in the types of information that Facebook collects, uses, or shares. Nor does it relate to the privacy or security of information shared on Facebook. Instead, this change was intended to clarify existing practices concerning the pairing of user information with branded content, as mandated by a federal court in the putative class action *Fraleley, et al. v. Facebook*, No. 3:11-cv-01726 (N.D. Cal.).

Relatedly, under Section 2.1 of Facebook's current SRR, users grant Facebook a license to distribute content that they upload that is covered by intellectual property rights to an audience of their choosing. In particular, that section provides that users "specifically give [Facebook] the following permission, subject to your privacy and application settings: you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License)."

**b) Is it Facebook's position that the proposed language would allow Facebook in the future to expand or make other changes to the types of user information it collects, uses, or shares? If so, please explain the basis for this contention.**

No. The proposed language addresses the potential for information to appear in a sponsored context (e.g., our Sponsored Stories product). As noted in the previous response, it does not reflect a change to Facebook's right to collect, use or share data as set forth under the existing language. (b)(4); (b)(3):6(f)

(b)(4); (b)(3):6(f)

Importantly, as with the existing language, users authorize Facebook to use the content and information they share – including in connection with advertising. Facebook's right to use and share content is limited by the audience people designate and expires when all instances of the content are deleted.

**2. Your email also stated that, pursuant to the class action settlement in *Fraleley, et al. v. Facebook*, No. 3:11-cv-01726 (N.D. Cal.), Facebook will develop a setting that will "enable users to prevent further use of individual actions in sponsored contexts," and also "give users an additional mechanism to control how social actions are republished in connection with sponsored or commercial content."**

**Does Facebook contend that users do not currently have a setting that enables them to control how their social actions are republished in connection with sponsored or commercial content – i.e., controlling the manner or context in which their social**

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**action is republished (as distinguished from simply selecting the audience for the sponsored or commercial content)? If so, please explain the basis for this contention.**

No. As described in my email dated September 12, 2013, Facebook provides users with multiple methods to control how their social actions are paired with sponsored or commercial content. For example, a user can change the audience he or she has selected for a social action or may delete the social action entirely (in which case it will no longer be published). In addition, users can change how their social actions are paired with certain types of sponsored or commercial content through the Ads & Friends setting under the Facebook Ads menu.

**3. It has come to our attention that mobile users do not appear to have the same access to settings for Facebook ads provided for desktop users. Specifically, desktop users can utilize a “Facebook Ads” setting, which allows them to opt out of having their social actions paired with ads (through the “Ads & Friends” section), or having their name or picture used by third-party applications or ad networks (through the “Third Party Sites” section). Desktop users can access this setting through the “Edit social ads” hyperlink in the current DUP, or through their individual account settings. The account settings for mobile users, however, do not include an “Ads” menu - much less sections addressing “Ads and Friends” or “Third Party Sites.” Moreover, mobile users reviewing the DUP cannot link directly to the “Edit social ads” setting from the policy – even though the same DUP applies to both desktop and mobile users.**

**The failure to include these ads settings for mobile users appears to implicate Part I.B of the Order, which prohibits Facebook from misrepresenting the extent to which a consumer can control the privacy of any covered information maintained by Facebook and the steps a consumer must take to implement such controls. If Facebook contends this discrepancy does not implicate the Order, please explain the basis for this contention.**

Every Facebook user has access to the “Facebook Ads” setting through his or her web browser. The DUP does not suggest or represent that all controls and features will be available in Facebook’s mobile apps. As Staff has recognized, the mobile environment is new and differs significantly (in terms of technology and the consumer experience) from traditional web-browser models. Indeed, not only has Staff recognized the complexity that comes with the mobile space, Staff also has recognized that it should encourage proactive

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disclosures from apps and the development of mobile-friendly privacy models.<sup>3</sup> (b)(4);

(b)(4); (b)(3):6(f)

(b)(4); (b)(3):6(f) Should any Facebook user desire to opt out of Facebook Ads, he or she can do so by accessing the above-described setting.

(b)(4); (b)(3):6(f)

(b)(4); As you know, Facebook has worked over the last year to enhance its mobile apps to offer a range of privacy controls and features (including access to in-line notice, audience selectors, and activity log) (b)(4); (b)(3):6(f)

(b)(4); (b)(3):6(f)

**4. The proposed DUP states:** (b)(4); (b)(3):6(f)

(b)(4); (b)(3):6(f)

**In your September 12 email, you claimed this proposed change “does not refer to any change in the information shared by Facebook with advertisers.” You also stated that, “[u]nder both the current and proposed policies, Facebook does not share personally identifying information with advertisers without permission.” You further stated that, “[t]ypically, personally identifying information is not collected” through**

<sup>3</sup> The FTC has on multiple occasions expressed the importance of addressing privacy in the mobile context, as well as the new challenges presented by the mobile environment. *See, e.g.*, FTC, Mobile Privacy Disclosures: Building Trust Through Transparency, p. 29 (Feb. 2013) (“...FTC staff strongly encourages companies in the mobile ecosystem to work expeditiously to implement the recommendations in this report. Doing so likely will result in enhancing the consumer trust that is so vital to companies operating in the mobile environment. Moving forward, as the mobile landscape evolves, the FTC will continue to closely monitor developments in this space, including evolving business models, and consider additional ways it can help businesses effectively provide privacy information to consumers.”); FTC, Protecting Consumer Privacy in an Era of Rapid Change, Recommendations for Business and Policymakers, p. v (Mar. 2012) (“The Commission calls on companies providing mobile services to work toward improved privacy protections, including the development of short, meaningful disclosures.”).

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**Facebook's use of cookies, pixels, and similar technologies. In addition, you stated that Facebook "does not share device identifiers with advertisers or developers," and that, "as part of Facebook's Ad Exchange program, Facebook does make partial IP addresses available to Exchange partners so that they can identify the jurisdiction where the ad will be displayed . . . . We redact these IP addresses so that they are not unique and constitute less information than the partner would receive if it was serving the ad directly, as occurs on other platforms."**

**a) Does Facebook contend that, under the current DUP language, it could share with advertisers or developers information "associated with" a user, even if it does not "personally identify" that user? If so, please identify the language that permits this.**

No. Under the existing DUP, which states that Facebook may "provide data to our advertising partners after we have removed your name or any other personally identifying information from it, or have combined it with other people's data in a way that it is no longer associated with you," Facebook can share with advertisers certain information pertaining to an individual user so long as that information does not personally identify him or her. For example, when a user clicks on an ad, he or she is redirected to the destination set by the advertiser, and the advertiser may receive information about the ad that was served on the user's browser or device. Facebook could also provide aggregate analytics and reports that are not personally identifiable. These types of industry standard analytics are fundamental to ad measurement and enable advertisers to understand the effectiveness of the ads they run. The phrase "associated with" in the DUP was intended to modify the last clause of this sentence and clarify that, after data have been aggregated ("combined . . . with other people's data"), we may share the aggregation in a way that is not personally identifiable.<sup>4</sup>

**b) Is it Facebook's position that this proposed revision to the DUP would allow Facebook in the future to expand or make other changes to the types of user**

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<sup>4</sup> The language referenced relates to information Facebook may share with advertisers, but the question posed by Staff also asks about sharing non-personally identifiable, user-level data with developers. As Facebook discussed with staff in May 2012, in some circumstances – such as when a user is presented with a granular data permissions dialog – a developer may receive geographic and/or age range information, so the developer can render information in the appropriate language and to implement any age-gating restrictions it has adopted. This disclosure is addressed in the DUP in Section III ("Other websites and applications") in the sub-section entitled "Controlling what information you share with applications" ("When you first visit an app, Facebook lets the app know your language, your country, and whether you are in an age group, for instance, under 18, between 18-20, or 21 and over.").



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**information it collects (e.g., through the use of cookies, pixels, or similar technologies), uses, or shares (e.g., such as with advertisers or developers)? If so, please explain the basis for this contention.**

No. The proposal provides more robust notice of the types of information Facebook would not share, and on its face does not speak to collection or usage of such information. Furthermore, as we have previously explained, Facebook’s proposed change is not intended to reflect a change in our practices – *i.e.*, in *how or when* Facebook shares information – but rather is intended to provide an even clearer explanation of practices that have long been disclosed. For example, one of the ways we attempt to accomplish this is by adding relevant examples to help people understand our statements and put them in context.

**c) Does Facebook contend that, under the proposed DUP language, it could in the future share with advertisers or developers information “associated with” a user, even if it does not “personally identify” that user? If so, please explain the basis for this contention.**

No. The current and proposed DUP allow Facebook to share data regarding users with advertisers where that data does not personally identify the user, such as aggregated statistics concerning users’ interaction with a page (e.g., 27% of users were female) or user-level data that does not personally identify a user (e.g., a particular ad campaign was displayed on this browser or device). As explained above, Facebook uses the term “associated with” in its DUP to refer to information that is personally identifiable data – specifically, in the context of describing data aggregation. This description is part of a statement that user-level data may not be shared with advertisers if it includes personally identifiable information.

**5. Among other things, the proposed DUP states:** (b)(4); (b)(3):6(f)  
(b)(4); (b)(3):6(f)

**In your September 12 email, you claimed the proposed changes to the DUP are “not designed to reflect that Facebook is collecting new data from mobile users.”**

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**a) Please identify with specificity the provisions in the current DUP that disclose that Facebook collects this data.**

Facebook’s current DUP discloses that it may collect data from “mobile phone[s], or other devices you use to access Facebook,” including IP address, pages you visit and location. Accordingly, the proposed language change is not necessary to provide notice of the collection of this data. Rather, the update is a reflection of the fact that, since Facebook last revised its DUP, Facebook users have increasingly accessed the service through mobile devices. (b)(4); (b)(3):6(f)

(b)(4); (b)(3):6(f)

(b)(4); (b)(3):6(f)

In this respect, one distinguishing feature of mobile operating systems is that applications often run in both the foreground and background, and utilize different standards and models for mobile development to facilitate network communication. The existing DUP already explains to users that Facebook receives a variety of technical information from the browsers *and* devices (including mobile devices) used to access Facebook services. By adding examples, particularly those related to the mobile experience, Facebook is striving to ensure that its disclosures keep pace with technological innovation.

Respectfully, this goal – of ensuring that disclosures keep pace with technological innovation and the shift to mobile – is worthy of attention from the entire industry. Many online companies that offer both website access and mobile apps explain their practices to users without providing a robust explanation of how and when information is collected from mobile devices. Indeed, many popular services (such as those offered by Pandora, Google, LinkedIn, Twitter, Yahoo!, Spotify, Skype, and Yelp) are offered on mobile devices but do not explicitly address the fact that their app may be running on a user’s device even when the user is not actively engaging with it. The Commission has emphasized that “[c]ompanies should disclose details about their collection and use of consumers’ information” in the mobile environment, and applauds where “companies in the mobile ecosystem have already begun addressing the challenge of developing effective privacy disclosures.”<sup>5</sup> While, as noted, the change we proposed is not legally required, we believe clarification on this point is helpful to users and consistent with our commitment to transparency. Our proposed edits follow the Commission’s guidance and we encourage the Commission to discuss with industry more broadly how the Commission and industry can best educate users to ensure that consumer awareness and disclosures keep pace with the transition to mobile.

<sup>5</sup> See FTC, *Mobile Privacy Disclosures Building Trust Through Transparency*, pp. iii, 6 (Feb. 2013).



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**b) Is it Facebook's position that the proposed language would allow Facebook in the future to expand or make other changes to the types of data it will collect from mobile users, disclose, or make accessible to third parties? For example, does Facebook contend the proposed DUP would allow Facebook to collect data or other information from mobile users who are logged into – but not actively using – Facebook that Facebook does not currently collect? If so, please explain the basis for this contention. In addition, please specify what new or additional data Facebook would collect.**

As a technical matter, mobile operating systems generally enable apps to access a device when the app is running, even if a user is not actively using the app. For example, users on most smartphone operating systems can run multiple apps at the same time and easily switch between them. Apps running in the background can periodically retrieve updated content so that the latest information is available when the user navigates back to the app.

As noted above, Facebook's existing DUP explains that Facebook receives a variety of information from browsers and devices (including mobile devices) used to access Facebook services. By adding examples and providing additional detail regarding the technical aspects of a mobile user's experience, Facebook is updating its disclosures to ensure that they remain clear as users increasingly transition to the mobile environment. The proposed changes address and clarify existing mobile practices and do not reflect a change to Facebook's data practices. (b)(4); (b)(3):6(f)

(b)(4); (b)(3):6(f)

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We hope this information is helpful. Facebook is planning to adopt the proposed SRR and DUP language shortly. If you have any additional questions or additional suggested language changes, we would appreciate you letting us know within the next few days.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Ashlie Beringer', with a long horizontal line extending to the right.

S. Ashlie Beringer  
SAB/ln