

Koss, Laura

From: Beringer, S. Ashlie <ABeringer@gibsondunn.com>
Sent: Wednesday, September 11, 2013 2:55 PM
To: Kim, Reenah; Edward Palmieri; Daniel Li (b)(6)
Cc: Kohm, James A.; Wolfe, Douglas; Koss, Laura; Hall, Jennifer
Subject: RE: Additional Questions

Reenah –

We are surprised and concerned by the suggestion that we were not thorough in addressing your questions during our call yesterday. We provided detailed answers to each of the questions in Laura's email, and accurately relayed that Facebook is not changing any practices, audiences or privacy settings as part of the update to its Data Use Policy. While we were not in a position to address a handful of new questions that you raised for the first time during the call, we advised that we would follow up on the answers to those questions as soon as possible.

We also agreed to provide written responses to your questions tracking our discussion yesterday, which we plan to provide by tomorrow, before Facebook launches the revised DUP and SRR. Facebook is likely to launch the revised DUP and SRR on Friday.

As we discussed, we do not believe there is any credible basis to assert that your questions relate to Facebook's obligations under the Consent Order, since there is no change at all to users' existing settings or to the audience that may access information users share on Facebook, and as the changes to the DUP and SRR are merely intended to clarify and provide more detailed explanations for practices that already were in place and previously were disclosed to users. While we are happy to work cooperatively with you to provide the information you need to confirm this, we would hope that our continued dialogue would reflect this.

Please let me know if you have any further questions before we provide written responses tomorrow.

Best regards,
Ashlie

Ashlie Beringer

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1881 Page Mill Road, Palo Alto, CA 94304-1211
Tel +1 650.849.5219 • Fax +1 650.849.5019
ABeringer@gibsondunn.com • www.gibsondunn.com

From: Kim, Reenah [mailto:rkim1@ftc.gov]
Sent: Wednesday, September 11, 2013 11:35 AM
To: Beringer, S. Ashlie; Edward Palmieri; Daniel Li (b)(6)
Cc: Kohm, James A.; Wolfe, Douglas; Koss, Laura
Subject: RE: Additional Questions

We write to follow up on our teleconference yesterday with Ashlie and Jenny. They expressed Facebook's desire to have a cooperative relationship with the Commission. However, we are greatly disappointed they

did not provide us the information we requested to assess Facebook's compliance with the Commission's Order.

Having sent our questions by email in advance, we expected counsel to be fully prepared to answer those questions and explain in detail Facebook's proposed changes to its Data Use Policy and Statement of Rights and Responsibilities. This did not happen. Instead, counsel merely reiterated what Facebook has already said to the press. Counsel also claimed the proposed changes are consistent with the Order – despite acknowledging they had not actually reviewed the Order in quite some time. Their lack of familiarity with key terms (for example, to explain what constitutes “content” and “information” as those terms are used in Facebook's policies, and to clarify whether Facebook considers device IDs, IP addresses, and other data obtained through the use of cookies, pixels, and similar technologies to be personally identifying information) hindered their ability to discuss the answers to our questions, essentially making the call a waste of time.

While counsel characterized yesterday's call as a precursor to written responses, they have not given a date certain for when Facebook will provide those written responses to our questions as requested. Moreover, they were unable to state when Facebook expects to implement the proposed policy changes. This is unacceptable.

Please provide us promptly with complete written responses to the questions we previously sent by email and those discussed during yesterday's call, including the following:

- (1) Explain whether Facebook considers information obtained through the use of cookies, pixels, and similar technology to constitute personally identifying information;
- (2) Explain whether Facebook shares any information it obtains through the use of cookies, pixels, and similar technology with third parties such as advertisers and developers and, if so, specify (a) what information is shared, and (b) for what purpose;
- (3) Explain whether Facebook shares user data such as device IDs and IP addresses with third parties such as advertisers and developers.

Thank you.
-Reenah

Reenah L. Kim
Federal Trade Commission
Bureau of Consumer Protection | Division of Enforcement
600 Pennsylvania Avenue NW | Mail Drop M-8102B | Washington, DC 20580
t:202.326.2272 | f:202.326.2558 | rkim1@ftc.gov

From: Beringer, S. Ashlie [<mailto:ABeringer@gibsondunn.com>]
Sent: Tuesday, September 10, 2013 1:51 AM
To: Koss, Laura; Edward Palmieri; Daniel Li (b)(6)
Cc: Kim, Reenah; Kohm, James A.; Wolfe, Douglas
Subject: RE: Additional Questions

Laura and Jim-

Are you available to speak tomorrow during the window I proposed last Friday or, alternatively, on Wednesday between 11-1 ET? We're happy to answer your questions, but we believe much of the confusion surrounding Facebook's proposed changes to the Data Use Policy can be addressed in a call. There is no contemplated change to any user's existing privacy settings or controls or any other change that implicates the consent order. I hope to have an opportunity to speak to you about this soon before any additional misinformation circulates, so I would be grateful if you could let me know when you have time for a brief call.

Best regards,
Ashlie
Ashlie Beringer

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1881 Page Mill Road, Palo Alto, CA 94304-1211
Tel +1 650.849.5219 • Fax +1 650.849.5019
ABeringer@gibsondunn.com • www.gibsondunn.com

From: Koss, Laura [<mailto:LKOSS@ftc.gov>]
Sent: Monday, September 09, 2013 1:00 PM
To: Edward Palmieri; Daniel Li (b)(6)
Cc: Beringer, S. Ashlie; Kim, Reenah; Kohm, James A.; Wolfe, Douglas
Subject: Additional Questions

Following up on Jim Kohm's email last Friday, we ask that you respond to the following:

Data Use Policy

1. The proposed Data Use Policy states: (b)(4); (b)(3):6(f)

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

(b)(4); Please state whether Facebook collects new data from people who are logged into, but are not actively using, Facebook. If so, what data does Facebook collect?

2. The proposed Data Use Policy states: (b)(4); (b)(3):6(f)

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

As Jim Kohm stated in his September 6, 2013 email to Ashleigh Beringer, under this language, (b)(4); (b)(3):6(f)

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

(b)(4); If so, the change appears to implicate Part II of the Order. If you contend that the change does not implicate the Order, please explain why.

3. The proposed Data Use Policy states: (b)(4); (b)(3):6(f)

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

(a) Please explain what Facebook means by (b)(4); (b)(3):6(f)

(b) Please specify who the "service providers" are and explain whether such service providers would access information that the user did not make public.

4. The proposed Data Use Policy states: (b)(4); (b)(3):6(f)

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

Please clarify

whether using users' profile pictures for tagging suggestions is a new practice.

5. Under the original Data Use Policy, Facebook users can use a setting to select whether to "pair social actions with ads" for "No one" or "Only my friends." If a user has chosen the "No one" setting, will the user have to take any additional steps to maintain this setting after the changes to the Data Use Policy and the Statement of Rights and Responsibilities go into effect?

6. Under the proposed changes, will users be required to reset any privacy settings or take any additional steps to ensure that information is not shared beyond their current settings?

7. Under "Your Information," the proposed Data Use Policy states: (b)(4); (b)(3):6(f)

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

Please clarify if this

reflects a change in the type of information Facebook collects, uses, or shares.

Statement of Rights and Responsibilities

8. The proposed revision to Section 10 states: (b)(4); (b)(3):6(f)

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

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

Please explain what information is covered by "content and information" and whether this reflects a change in the types of information that Facebook collects, uses, or shares.

We look forward to hearing from you.

Laura Koss
Senior Attorney
Federal Trade Commission | Division of Enforcement
600 Pennsylvania Ave., N.W. | Mail Drop M-8102B | Washington DC 20580
t: 202.326.2890 | f: 202.326.2558 | lkoss@ftc.gov

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