



December 23, 2009

BY FACSIMILE – (202) 326-2477
Freedom of Information Act Request
Office of the General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

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Suite 200

Washington DC 20009

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www.epic.org

Re: Freedom of Information Act Request

Dear Sir/Madam:

This letter constitutes a request to the Federal Trade Commission (FTC) under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted on behalf of the Electronic Privacy Information Center (“EPIC”).

Background

Facebook changed the privacy settings available to Facebook users on November 19, 2009 and again on December 9, 2009.¹ On December 17, 2009, EPIC, along with nine other privacy organizations, filed a complaint with the Commission, alleging that Facebook violated Section 5 of the FTC Act by engaging in unfair and deceptive practices.² The complaint urged the FTC to investigate Facebook and seek appropriate injunctive and compensatory relief.

After EPIC filed the December 17, 2009 complaint, Facebook made several public statements. In an e-mailed statement, Facebook spokesperson Barry Schnitt said that the company “discussed the privacy program with many regulators, including the FTC, prior to launch.”³ Another Facebook spokesperson Andrew Noyes stated that the company had

¹ Facebook, *Facebook Asks More Than 350 Million Users Around the World To Personalize Their Privacy* (Dec. 9, 2009), available at <http://www.facebook.com/press/releases.php?p=133917>.

² EPIC Complaint, *In re Facebook*, available at <http://epic.org/privacy/inrefacebook/EPIC-FacebookComplaint.pdf> (Dec. 17, 2009).

³ Brad Stone, *Privacy Group Files Complaint on Facebook Changes*, N.Y. Times (Dec. 17, 2009), available at <http://bits.blogs.nytimes.com/2009/12/17/privacy-group-files-complaint-on-facebook-privacy-changes/>; Alexei Oreskovic, *Facebook Privacy Backlash in FTC's Hands*, Reuters (Dec. 18, 2009), available at <http://blogs.reuters.com/mediafile/2009/12/18/facebook-privacy-backlash-in-ftcs-hands/>; Jessica A. Vascellaro, *Groups File Facebook Complaint*, Wall Street Journal at B7 (Dec. 18, 2009), available at

“productive discussions with dozens of organizations around the world about the recent changes,” including the FTC.⁴

EPIC seeks agency records concerning Facebook’s representations of its communications with the Commission.

Documents Requested

EPIC requests the following agency records (including but not limited to electronic records):

1. all communications and/or correspondence between the FTC and Facebook prior to December 9, 2009, regarding the November 19, 2009 and December 9, 2009 changes to Facebook’s privacy policies and settings.

Request for “News Media” Fee Status

EPIC is a non-profit, educational organization that routinely and systematically disseminates information to the public. This is accomplished through several means. First, EPIC maintains a heavily visited website (<http://www.epic.org/>) that highlights the “latest news” concerning privacy and civil liberties issues. The site also features scanned images of documents EPIC obtains under the FOIA. Second, EPIC publishes a bi-weekly electronic newsletter that is distributed to nearly 20,000 readers, many of whom report on technology issues for major news outlets. The newsletter reports on relevant policy developments of a timely nature (hence the bi-weekly publication schedule). It has been published continuously since 1996, and an archive of

<http://online.wsj.com/article/SB20001424052748704238104574602262735234366.html>; Jacqui Cheng, *FTC Complaint Says Facebook's Privacy Changes are Deceptive*, Ars Technica (Dec. 21, 2009), available at <http://arstechnica.com/tech-policy/news/2009/12/ftc-complaint-says-facebooks-privacy-changes-are-deceptive.ars>; Robert McMillan, *Privacy Groups Bring Facebook Complaints to FTC*, ComputerWorld (Dec. 17, 2009), available at <http://news.idg.no/cw/art.cfm?id=9E5BB9A6-1A64-67EA-E40759B3AFCD4AC7>.

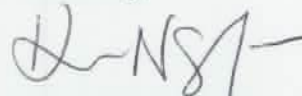
⁴ Barbara Ortutay, *Privacy Watchdog Files Complaint against Facebook*, Washington Post (Dec. 17, 2009), available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/17/AR2009121702842.html>; Peter Kafka, *Next Step in Facebook Privacy Blowback: The FTC Complaint. The Real Question: Will Advertisers Care?*, All Things Digital (Dec. 17, 2009); available at <http://mediamemo.allthingsd.com/20091217/next-step-in-the-facebook-privacy-blowback-the-ftc-complaint-will-advertisers-care/>; John Letzing, *Privacy Groups file FTC Complaint against Facebook*, MarketWatch (Dec. 17, 2009), available at <http://www.marketwatch.com/story/privacy-groups-file-ftc-complaint-against-facebook-2009-12-17>; Ryan Singel, *Facebook Privacy Changes Break the Law, Privacy Groups Tell FTC*, Wired (Dec. 17, 2009), available at <http://www.wired.com/epicenter/2009/12/facebook-ftc-complaint/>; Katherine Noyes, *Privacy Groups Take Facebook Quarrel to the Feds*, Tech News World (Dec. 18, 2009), available at <http://www.technewsworld.com/story/68939.html>; JC Raphael, *Facebook Ignites War of Worlds*, PC World (Dec. 17, 2009), available at http://www.pcworld.com/article/185033/facebook_privacy_complaint_ignites_war_of_words.html.

past issues is available at our website. Finally, EPIC publishes and distributes printed books that address a broad range of privacy, civil liberties, and technology issues. A list of EPIC publications is available at our website.

For the foregoing reasons, EPIC clearly fits the definition of “representative of the news media” contained in the FOIA.⁵ Indeed, the U.S. District Court for the District of Columbia has specifically held that EPIC is “primarily engaged in disseminating information” for the purposes of expedited processing,⁶ and is a “representative of the news media” for fee waiver purposes.⁷ Based on our status as a “news media” requester, we are entitled to receive the requested records with only duplication fees assessed. Further, because disclosure of this information will “contribute significantly to public understanding of the operations or activities of the government,” as described above, any duplication fees should be waived.

Thank you for your consideration of this request. As the FOIA provides, I will anticipate your determination on our request within twenty (20) working days. Should you have any questions about this request, please feel free to contact Kimberly Nguyen at (202) 483-1140, ext. 123.

Sincerely,



Kimberly Nguyen
Consumer Privacy Counsel



John Verdi
Senior Counsel

⁵ 5 U.S.C. § 552(a)(4)(a)(ii).

⁶ *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004).

⁷ *Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).