



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
600 Pennsylvania Avenue NW  
WASHINGTON, DC 20580

Bureau of Consumer Protection  
Division of Enforcement, Mailstop M-8102B  
Direct Dial: (202) 326-2272

September 20, 2013

*Via Federal Express and electronic mail (ABeringer@gibsondunn.com)*

Ashlie Beringer  
Gibson, Dunn & Crutcher LLP  
1881 Page Mill Road  
Palo Alto, CA 94304-1211

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

Dear Ms. Beringer:

Thank you for your recent response to our inquiries regarding Facebook's proposed changes to its Data Use Policy (DUP) and Statement of Rights and Responsibilities (SRR). Pursuant to Part IX of the Federal Trade Commission's Decision and Order ("Order"), we ask that Facebook provide, within ten (10) days, a true and accurate written report that affirms the information provided in your September 12, 2013 email, and additionally addresses the following:

1. Section 10.1 of the proposed SRR states: "You give us permission to use your name, profile picture, content, and information in connection with commercial, sponsored, or related content (such as a brand you like) served or enhanced by us."

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.

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.

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 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.

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.

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

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

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.

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 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.

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.

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.”

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

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.

\* \* \* \* \*

Please have a responsible corporate officer or manager of Facebook certify under penalty of perjury that the report and information produced or identified in response to this demand letter are complete and accurate, and that the report and information represent all information responsive to this letter. Please send your responses via overnight courier (e.g., FedEx, UPS) to:

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Associate Director  
Division of Enforcement  
Federal Trade Commission  
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In lieu of overnight courier, you may send your response by first-class mail, but only if you contemporaneously send an electronic copy to the Commission at [DEBrief@ftc.gov](mailto:DEBrief@ftc.gov), with a courtesy copy to us at [lkoss@ftc.gov](mailto:lkoss@ftc.gov) and [rkim1@ftc.gov](mailto:rkim1@ftc.gov).

If you have any questions, please do not hesitate to contact us at 202-326-2272 (Reenah Kim) or 202-326-2890 (Laura Koss).

Sincerely yours,



Reenah L. Kim  
Laura D. Koss  
Attorneys

cc: Mr. Edward Palmieri  
Mr. Daniel Li