

**From:** Daniel Li  
**Sent:** 12 Jul 2013 16:04:09 +0000  
**To:** Berger, Laura  
**Cc:** Edward Palmieri  
**Subject:** FTC Ads Presentation  
**Attachments:** FTC Ads Presentation 07122013.pdf

Hi Laura,

Attached is the presentation we'll be running through later today.

Best,  
Daniel

Daniel Li | Product Counsel | Facebook Legal

(b)(6)

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July 15, 2013

Laura D. Koss  
Reenah L. Kim  
Division of Enforcement  
Federal Trade Commission  
Washington, DC 20580

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

Dear Reenah and Laura,

This letter is in response to your letter dated June 26, 2013, requesting information regarding a software bug that caused certain contact information (email or phone number) to be inadvertently disclosed to users employing the "Download Your Information" tool ("DYI"). Please note that material contained in this response constitutes Facebook's confidential business information, and we ask that it 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).

### **Background and Discovery of DYI Bug**

As we have previously discussed with you, the unforeseen technical bug addressed in your letter was the unintended consequence of Facebook's implementation of a contact-matching system intended to improve the contact-importer feature and reduce unwanted email invitations to Facebook users.

#### *Facebook's Contact Importer: "friend-finder"*

To make it easier for users to find and connect with people they know on Facebook, we offer a contact-importer tool as part of our "friend-finder" service. This tool makes it possible for Facebook to provide users with friend suggestions: once a user consents to upload his or her contacts,

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

If an imported email address matches the email address of an existing user, we present the user with a button to add the existing user as a friend. In the case of contacts that cannot be matched to existing users, we instead offer users the ability to send email invitations to join and connect through Facebook.

#### *Contact Matching To Reduce Unwanted User Invitations*

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

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

## *DYI Tool Bug*

As part of our industry-leading efforts to enhance users' access to their personal data, in October 2010 Facebook began offering users a privacy-friendly automated tool, known as "Download Your Information," or "DYI." As the name suggests, DYI allows users to download their personal information as stored by Facebook in a user-friendly format that is easy to review and manage. [REDACTED]

[REDACTED] (b)(4); (b)(3):6(f)

Facebook users can download a ZIP file of their content to their computer. The files are easily accessible and browsable and include a comprehensive copy of the information users have shared on Facebook, like their profile information, list of friends, photos, videos, events, and inbox messages. For more information about the DYI tool, including how users can access over sixty categories of information from their account, please visit our help center. *See Accessing Your Facebook Data*, <https://www.facebook.com/help/www/405183566203254>.

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

## *Discovery, Fix, and Notification by Facebook*

In June 2013, Facebook learned of the inadvertently exposed contact information from a security researcher who reported the issue. Once the report was validated, we disabled the DYI tool and, after investigating the source of the bug, corrected the code that was causing the additional data to be included in downloads from DYI. Our investigation analyzed the full scope of the issue to ensure that there were no unintended consequences of the aforementioned code. We then re-enabled the DYI tool. In addition, we individually notified each of the 6.2 million users whose contact information was inadvertently exposed through the DYI tool, and publicly disclosed the issue in a blog post. *See Facebook Security Blog, Important Message From Facebook's White Hat Program*,



<https://www.facebook.com/notes/facebook-security/important-message-from-facebooks-white-hat-program/10151437074840766>.

### Requests for Information

In addition to seeking general background about this incident, your letter contains a series of requests for specific information relating to the bug “[p]ursuant to Part IX of the Federal Trade Commission’s Decision and Order” (“Consent Order”). As a threshold matter, we note that the information requested in your letter falls outside the scope of Facebook’s obligations under that provision of the Consent Order. Part IX requires Facebook to submit written reports that address “the manner and form of [Facebook’s] compliance with [the] order,” such as information regarding the implementation of Facebook’s comprehensive privacy program. This incident involved an unforeseen software bug that was unconnected to Facebook’s privacy settings and originated in May 2012—well before the Consent Order was finalized. Nonetheless, we are eager to continue the open and cooperative dialogue we proactively initiated regarding this issue, and have provided herein additional information to the extent available. Should you have additional questions, we would be happy to further discuss at your convenience.

With respect to your questions concerning the numbers of affected downloads and contact information, our investigation has confirmed that as a result of this unforeseen technical bug, approximately 1.1 million downloads from DYI (from May 2012 to June 2013) contained an email address or phone number not contained in the downloading user’s contacts, and approximately 6.2 million unique users had a piece of contact information downloaded by another user in this manner.

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

Your letter also asks a series of questions relating to the requirements of Part II of the Consent Order, which requires Facebook to provide notice and obtain affirmative express consent from users “prior to any sharing of a user’s nonpublic user information by [Facebook] with any third party, which materially exceeds the restrictions imposed by a user’s privacy setting(s).” As explained above, Facebook did not plan or intend to share the email addresses or telephone numbers with anyone. The tool was designed to match contact information in the background, help friends find one another easily and efficiently, and reduce the number of email addresses unnecessarily contacted by the tool. As such, this issue did not involve Facebook’s “sharing” of nonpublic information as contemplated by Part II. The term “sharing” refers to a deliberate and intentional act: a purposeful decision “to divide and distribute” or “to grant or give a share.” See <http://www.merriam-webster.com/dictionary/share>. It does not encompass the unpremeditated exposure of data at issue here, which was precipitated by an unforeseen software bug.

Additionally, the bug also did not result in any “material” sharing beyond a user’s privacy settings. Most basically, there are no privacy settings applicable to contacts that users upload to take advantage of the friend-finder feature. And, as discussed above, in the overwhelming number of cases (approximately



97%), only one user received unintended contact information. Users also are expressly advised in our Statement of Rights and Responsibilities and Data Use Policy that Facebook is unable to guarantee a bug- and error-free service—a reality in the software space. We work hard to prevent bugs and to detect and remedy them as quickly as possible when they happen. Our commitment to keeping our site as protected from bugs as possible is reflected in our industry-leading White Hat program. In this case, the bug was corrected very quickly and, for each impacted email address or telephone number, the disclosure was extremely limited.

\* \* \*

Facebook remains deeply committed to providing users with access to and control over their information, to safeguarding their privacy settings, and to fulfilling its mission of empowering users to share and to connect with their friends and the world around them. In this case, we acted swiftly to investigate and address the bug, we proactively engaged with the Commission staff regarding this incident, and we will continue to seek the Commission staff's guidance in navigating this and other unforeseen issues. Please do not hesitate to contact us should you have any additional questions.

Kind regards,

A handwritten signature in black ink, appearing to read 'EP', is positioned above a horizontal line.

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Edward Palmieri  
Associate General Counsel, Privacy  
Facebook, Inc.  
1155 F. Street, NW Suite 475  
Washington, DC 20004

## Koss, Laura

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**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**

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**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  
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**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

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**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  
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Federal Trade Commission | Division of Enforcement  
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**Koss, Laura**

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**From:** Beringer, S. Ashlie <ABeringer@gibsondunn.com>  
**Sent:** Thursday, September 12, 2013 8:48 PM  
**To:** Koss, Laura; Edward Palmieri; Daniel Li (b)(6)  
**Cc:** Kim, Reenah; Kohm, James A.; Wolfe, Douglas; Hall, Jennifer  
**Subject:** RE: Additional Questions

Dear Laura, James, and Reenah,

Thank you for your time, both in speaking with us on Tuesday and in reviewing our answers to your questions. We appreciate your feedback.

As requested, below we are providing written responses to your questions regarding Facebook's proposed amendments to its Data Use Policy ("DUP") and Statement of Rights and Responsibilities ("SRR"). As we discussed during our call on Tuesday, the updates to the DUP and SRR do not reflect a change in Facebook's information collection or disclosure practices or a change to or removal of any user's privacy settings; instead, these revisions are intended to clarify pre-existing practices that were disclosed in previous versions of the DUP and SRR.

For ease of review, we have copied the questions from Laura's September 9 email below and have provided responses and additional information requested during our call inline.

**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?

No, the updated language was not designed to reflect that Facebook is collecting new data from mobile users. The update clarifies the realities of modern mobile technology. For example, it is common that mobile apps will continue "running" even when users aren't actively using the app. Facebook proposed this update to ensure users understand this practice, especially as more users access Facebook on mobile devices.

**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.

No, Facebook does not share personally identifiable information with advertisers under the existing policy, nor does it contend that it could do so under the revised policy (without permission). Instead, the above-referenced statement is consistent with Facebook's policy and intended to clarify existing practices. In particular, Facebook added the explicit reference to "your name" in an effort to provide a user-friendly example of personally identifying information.

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

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

We have shared this feedback with our client, and Facebook will make that change to avoid possible confusion about the revised

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

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

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)

Facebook's existing policy repeatedly discloses that Facebook may provide access to information that users have shared publicly on its service. In particular, Facebook's Data Use Policy describes "public information" at length. For example, in the Public information section of Facebook's policy, it states "When we use the phrase 'public information' (which we sometimes refer to as 'Everyone information'), we mean the information you choose to make public, as well as information that is always publicly available." (b)(4); (b)(3):6(f)

(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.

This reference to "service providers" also does not reflect a change in Facebook's existing practices. This edit is a cross-reference to an existing section entitled "Service Providers." That section explains that Facebook "give[s] your information to the people and companies that help us provide, understand and improve the services we offer." The section continues "For example, we may use outside vendors to help host our website, serve photos and videos, process payments, analyze data, conduct and publish research, measure the effectiveness of ads, or provide search results."

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

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

We have discussed this issue with our client, and Facebook will be revising the proposed DUP to break these concepts into separate sentences, as follows:

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

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.

Facebook's photo tag suggest tool is not a new feature, although Facebook has not previously included profile pictures in the photo set that is used to implement the tool (currently, all photos in which a user has been tagged). (b)(4); (b)(3):6(f)

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

As always, users have the ability to control whether the tag suggest tool will suggest that their friends tag them in photos. If the user selects "no one" in the tag suggest setting, the tool will not generate tag recommendations for that user and also will delete the template used to make the suggestions. (In other words, in response to your follow up question, no template is maintained or created for users who have opted out of

the tag suggestion feature). In addition to the tag suggest setting, users also may remove tags from photos, by viewing the photo itself or using their Activity Log to select multiple photos at once. Users may also delete their profile picture at any time. None of the tag suggestion tool's functionality or the setting associated with the tool will change.

**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?**

No. This proposed update does not change the applicability, operation or existence of this setting. As such, there is no need for any user to change the applicable privacy settings, regardless of whether he or she is using the "No one" or "Only my friends" setting.

**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?**

No. The proposed revisions do not institute a change to users' privacy 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.

No, this does not reflect a change in the type of information Facebook collects, uses, or shares. Instead, this is intended to conform to industry practice by spelling out the inherent fact that Facebook may receive information when you contact them. For example, as with any company, if you email Facebook with a question or problem, Facebook may have your email address as part of the records for those communications.

### 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)

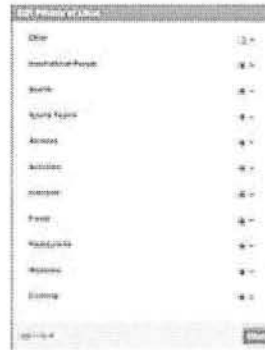
(b)(4); (b)(3):6(f) Please explain what information is covered by "content and information" and whether this reflects a change in the types of information that Facebook collects, uses, or shares.

Content and information are defined terms in the SRR. In particular, information is defined to mean "facts and other information about you, including actions taken by users and non-users who interact with Facebook," such as clicking "Like" to share that action on Facebook. Content is "anything you or other users post on Facebook that would not be included in the definition of information," such as including a comment when sharing a link on Facebook.

No, there has not been a change in the types of information that Facebook collects, uses, or shares. Instead, this language was mandated by the settlement agreement approved by a federal court in the putative class action *Fraleigh, et al. v. Facebook*, No. 3:11-cv-01726 (N.D. Cal.), and was intended to clarify the types of actions a user shares on Facebook that may be published in a sponsored or commercial context. This practice has long been disclosed in the SRR, the Data Use Policy, and elsewhere on Facebook's site. As always, when users choose to "Like" a product or company or to take other actions that may relate to commercial or sponsored content, the resulting "content" and "information" may only be seen by the specific audience selected by the user when he or she chose to share it on Facebook.

You asked whether and how a user can control how his or her "likes" and other social actions are published in connection with sponsored or commercial content. To control the audience for a users' Likes, the user can visit

his or her "Likes" page (Timeline > More > Likes) and can customize the audience eligible to view these actions by clicking on the pencil icon and selecting "Edit Privacy." The user then can designate a specific audience ("Public," "Friends," "Only Me," or "Custom") for each category of "Likes" (e.g., sports teams, restaurants, etc.). A screenshot of this process – which will not change upon adopting the revised SRR – is included below.



In addition, in connection with the court-approved settlement of the *Fraley* action, Facebook has agreed to develop a mechanism that will enable users to view the content they have shared on Facebook that has been displayed in a Sponsored Story. Facebook will also engineer a setting that will then enable users to prevent further use of individual actions in sponsored contexts. This tool will give users an additional mechanism to control how social actions are republished in connection with sponsored or commercial content.

As reflected in both the current and proposed versions of the SRR, Facebook does not share a user's content or information with advertisers without the user's consent. SRR at 10.2. For example, an audience designated by the user - such as his or her friends - might see that the user "Liked" a certain brand or product in a Sponsored Story, but Facebook would not identify the user receiving or featured in the Sponsored Story to the advertiser.

In addition to the questions posed above, you also asked for clarification with respect to the following proposed change to the "Cookies, pixels, and other similar technologies" section of the Data Use Policy: (b)(4); (b)(3):6(f)

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

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

In a follow

up to the call, you asked:

- 9) Explain whether Facebook considers information obtained through the use of cookies, pixels, and similar technology to constitute personally identifying information;
- 10) 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; and
- 11) Explain whether Facebook shares user data such as device IDs and IP addresses with third parties such as advertisers and developers.

Again, this proposed revision does not refer to any change in the information shared by Facebook with advertisers. Instead, the language was revised to conform to other, related language in the DUP. See, e.g., Revised DUP at IV (b)(4); (b)(3):6(f)

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

(b)(4): Under both the current and proposed policies, Facebook does not share personally identifying information with advertisers without permission.

On the question of information collected through the use of cookies, pixels, and similar technology, Facebook's Data Use Policy does not classify all such information as either personally identifying information or non-personally identifying information. Facebook receives a range of information using these technologies, rendering such categorical classification infeasible. For example, when people load a web page that includes a Facebook social plugin, Facebook receives the type of web browser (for example, Internet Explorer or Firefox)



that they use, and (b)(4); (b)(3):6(f)

(b)(4); Typically, personally identifying information is not collected through these technologies.

With respect to the second question noted above, Facebook may use the information that it collects through cookies, pixels, and similar technologies to provide advertisers with aggregated reports that measure the performance of their advertisements. In addition, Facebook shares certain data that it receives through its app software development kit with a small number of partners who use that data to prepare measurement reports. Again, however, Facebook does not provide personally identifiable information to advertisers (without permission).

For websites and applications that integrate the Facebook platform (including social plugins), Facebook uses cookies and similar technology to identify unique users for reporting purposes. Facebook uses this data to prepare reports containing aggregate demographic information for its partners, as well as aggregate reports measuring their interactions with its social plugins (e.g., the number of likes, comments, shares, etc.).

Finally, you asked whether Facebook shares device IDs and IP address with third parties such as developers and advertisers. We do not share device identifiers with advertisers or developers. 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. These partners use this information to ensure that they bid in the correct currency and that they are in compliance with the applicable jurisdiction's regulations. 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.

\* \* \*

Facebook takes its users' privacy very seriously and appreciates your feedback in connection with the process of updating its SRR and Data Use Policy, which Facebook plans to finalize next week. We hope that this information is helpful and believe that we have answered your questions, but please feel free to contact me if you have any further questions.

Best regards,

Ashlie Beringer

GIBSON DUNN

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**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, Facebook (b)(4);  
(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](mailto:lkoss@ftc.gov)

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This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

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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  
600 Pennsylvania Ave. NW  
Mailstop M-8102B  
Washington, DC 20580  
Re: *In the Matter of Facebook, Inc.*, Docket No. C-4365

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

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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Reenah Kim  
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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)

\* \* \*

# GIBSON DUNN

Laura Koss  
Reenah Kim  
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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

## Berger, Laura

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**From:** Olsen, Christopher  
**Sent:** Monday, October 21, 2013 2:58 PM  
**To:** Berger, Laura  
**Subject:** Fw: Facebook Update

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**From:** Rob Sherman [mailto:(b)(6)]  
**Sent:** Monday, October 21, 2013 05:29 PM  
**To:** Mithal, Maneesha; Olsen, Christopher  
**Cc:** Erin Egan; Edward Palmieri  
**Subject:** FW: Facebook Update

Maneesha and Chris,

We wanted to be sure that you'd seen the update below, which Ed sent to Laura and Reenah earlier today. Now that your team is back and hopefully things are starting to return to normal, Ed has suggested getting together with Laura and Reenah on Wednesday morning to talk through these points and some other things we'll be working on over the next few weeks. We'd be happy for you to join us (or to talk separately, if that's more convenient) if you'd like more information about any of this — just let us know.

Best,

Rob

Rob Sherman

**Facebook** | Manager, Privacy and Public Policy  
1299 Pennsylvania Avenue, NW | Suite 800 | Washington, DC 20004  
(b)(6)

---

**From:** Edward Palmieri (b)(6)  
**Date:** Monday, October 21, 2013 4:59 PM  
**To:** "Koss, Laura" <LKOSS@ftc.gov>, "Kim, Reenah" <rkim1@ftc.gov>  
**Cc:** Daniel Li (b)(6), Megan Alvarez (b)(6)  
**Subject:** Facebook Update

Dear Laura and Reenah,

Welcome back.

As part of our continuing efforts to maintain an open dialogue with you, we wanted to provide information on some recent developments. As you'll see, the first two updates are reminders of things we've already discussed and the third is an acquisition we announced last week. We're happy to discuss any or all of these with you at any time.

Additionally, we have a few other product updates coming in October that we'd be happy to come in and tell you about. If your schedule permits, perhaps we can schedule something for Wednesday morning? At your convenience, please let us know.



## Facebook Updates

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

### 3. Onavo Acquisition

On October 14<sup>th</sup>, Facebook announced its intention to acquire Onavo, Inc. Onavo offers mobile utility apps that help consumers save money by allowing them to understand and reduce their mobile data usage. For example, after a user installs Onavo's flagship Extend app, the app connects the mobile device to Internet services through Onavo's systems, thereby allowing Onavo to analyze, compress, and make more efficient the device's access to data services. By holistically compressing mobile data, Extend allows people to access websites and enjoy apps as they always have, but without using as much data—so their mobile charges are reduced. And, by providing users with a breakdown of their data usage, users can see how much data is being consumed by the things they do from their device and make informed data usage choices. Facebook believes these capabilities will be extremely valuable to the critical goal of [Internet.org](http://Internet.org) by improving the efficiency of mobile data usage and allowing more people around the world to connect and share.

\* \* \*

We are available to address any questions you may have and please do let us know if you are available for an in-person meeting on Wednesday AM to discuss some upcoming updates.

As always, thank you for your time.

Best,  
Edward



(b)(6)