

Office of the  
Privacy Commissioner  
of Canada

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à la protection de  
la vie privée du Canada

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NOV 13 2009

Mr. Michael Richter  
Deputy General Counsel  
Facebook Inc.  
1601 S. California Avenue  
Palo Alto, California 94304  
U.S.A.

Dear Mr. Richter:

Thank you for your letter of November 4<sup>th</sup>, 2009 which addresses the questions I raised with the previous version of Facebook's new Privacy Policy. Your letter and our recent teleconference call have adequately answered those questions.

My staff and I have had an opportunity to review the latest version of Facebook's Privacy Policy and Privacy Tool page, which you sent to us just prior to our call on October 26. We appreciate that you have expanded the description of the use of cookies by Facebook.

However, we do have some concerns with the changes made and would like to discuss each of these below:

**"Facebook-enhanced" applications and websites**

We note that Facebook has referred to third party applications and websites that use the Facebook Platform as "Facebook-enhanced applications and websites". While I find the term "Facebook-enhanced" to be unclear, the Privacy Policy does explain that these applications and websites are not owned or operated by Facebook. I am uncertain as to how the new term is intended to clarify what is meant by applications, but the rest of the explanation seems to be clear.

**Location of your computer or access device and age**

The new version of the Privacy Policy added the following bullet point:

- We may make information about the location of your computer or access device and your age available to Facebook-enhanced applications and websites in order to help them implement appropriate security measures and control the distribution of age-appropriate content.

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I would appreciate clarification of this section. Would the permissions model not require that users provide their consent to the use and disclosure of this information to applications?

### Publicly Available Information

Under Section 3 of the Privacy Policy, the bullet concerning what categories of information are considered publicly available information is confusing. The section states:

- Certain categories of information such as your name, profile photo, list of friends and pages you are a fan of, gender, and networks you belong to are considered publicly available, and therefore **do not have privacy settings**. (We will soon stop using regional networks, but your geographic region will still be considered publicly available). In practice, however, **you can limit the ability of others to find this information on the site and third party search engines through your search privacy settings**. (Our emphasis added)

On the one hand, it states that these categories do not have privacy settings, yet it then states that you can limit some of the information through your privacy settings. This leaves it unclear whether the user has control over limiting these categories of information or not. Also, what is the difference between regional networks and your geographic region?

Another example of this lack of clarity with regard to these categories of information can be found on the bottom of the page from the new Privacy Tool. It reads:

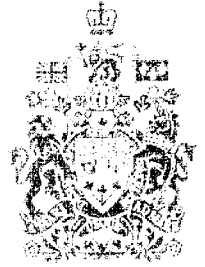
Information you choose to share with Everyone is available to everyone on the internet. Publicly available information (such as your name, profile, photo, gender, networks, friends, and pages) is **always** treated as if set to Everyone.

**You can change your settings at any time from your Privacy and Application Settings Page and those changes will take effect immediately.** (Our emphasis added.)

Again, the wording is unclear whether the user can control "publicly available" information or not.

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At the time of the investigation, only names, profile photos, friends and networks were made available to public search engines by default. Now this list of information has been expanded to include gender, pages the user is a fan of and geographic region, which will be available to "everyone" on the Internet by default, including search engines, third party applications and websites.

Without knowing for certain whether users can control this information using settings, given the current confusing language in both the privacy policy and sample privacy tool, it is difficult to us to understand how this is in keeping with the spirit of our findings. I would refer you to paragraph 94 of the letter of finding in this regard.

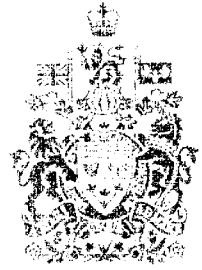
#### **Privacy Setting and Privacy Tool**

I realize that the Privacy Tool is still under development, but I have concerns that I believe you should be made aware of now before you continue further. My comments are based on the one page screen shot you provided us on October 26, 2009. Facebook has preselected four categories of information as having been set to "everyone". Your definition of "everyone" now is no longer everyone on Facebook, but rather everyone on the Internet (at the time of our investigation, "everyone" meant everyone on Facebook). In my view, current users would not expect their settings to be preselected to settings different from those they have already selected. As for new users, we have not viewed the Privacy Tool but I do have concerns about the pre-selection of everyone for these broad categories of information if Facebook is considering that route. We appreciate that users expect to share their information with others; however, Facebook is no longer the closed community that it once was. My concerns are amplified by the fact that the categories preselected (for current users) to everyone are vague ("about me" for example). If this issue about preselection is not addressed, users, in my view, could not be considered to be making an informed choice about who they want to see this information.

When I concluded in my findings that the default privacy setting section of the complaint was resolved, it was on the basis of a privacy wizard and per-object privacy tool. Based on what I have seen so far, and I recognize that we have not seen the full tool or privacy tour. I am concerned that what Facebook is proposing may not be consistent with my recommendations and Facebook's subsequent undertakings to meet those recommendations. However, we will be in a better position to assess this once we have reviewed the tool and tour flows.

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We look forward to reviewing the privacy tool flow and the tour for new users, as well as any pages to which the tool links and the logic model you are using, and would appreciate seeing the mock-ups for them as soon as they are ready so that we can provide more substantive comments in this regard.

Lastly, in our teleconference call, you mentioned that progress was being made on the permissions-based model for third-party applications. I would appreciate knowing when you expect to be able to make it available to us for review and testing.

I look forward to receiving your written response to the issues I have raised in this letter. Thank you again for your continuing cooperation.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'E. Denham'.

Elizabeth Denham  
Assistant Privacy Commissioner

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