



December 27, 2011

Honorable Jon Leibowitz, Chairman
 Honorable William E. Kovacic, Commissioner
 Honorable J. Thomas Rosch, Commissioner
 Honorable Edith Ramirez, Commissioner
 Honorable Julie Brill, Commissioner
 The Federal Trade Commission
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Dear Mr. Chairman and Members of the Commission:

Recently, the Federal Trade Commission announced a landmark settlement with the social networking company, Facebook. According to the Commission, “The social networking service Facebook has agreed to settle Federal Trade Commission charges that it deceived consumers by telling them they could keep their information on Facebook private, and then repeatedly allowing it to be shared and made public.”¹ We write now to urge the Commission to determine whether Facebook’s deployment of “Timeline” complies with the Commission’s recent order *In the Matter of Facebook, Inc.* (Nov. 29, 2011).

Having just reached a settlement with the Commission in which the company is required “to take several steps to make sure it lives up to its promises in the future, including giving consumers clear and prominent notice and obtaining consumers’ express consent before their information is shared beyond the privacy settings they have established,”² Facebook is changing the privacy settings of its users in a way that gives the company far greater ability to disclose their personal information than in the past. With Timeline, Facebook has once again taken control over the user’s data from the user and has now made information that was essentially archived and inaccessible widely available without the consent of the user.

As part of the Commission’s evaluation of the proposed settlement with Facebook, the Electronic Privacy Information Center (“EPIC”) recommends that the Commission investigate whether “Timeline” is consistent with the terms of the settlement.

Factual Background

¹ Press Release, Federal Trade Comm’n, Facebook Settles FTC Charges That It Deceived Consumers By Failing To Keep Privacy Promises (Nov. 29, 2011), <http://www.ftc.gov/opa/2011/11/privacysettlement.shtm>.

² *Id.*

Facebook is easily the largest social network service provider in the world. More than 800 million people³ now use Facebook worldwide, 150 million⁴ of which fall under the FTC's jurisdiction. Fifty percent of active users log on to Facebook in any given day.⁵ The amount of social activity on Facebook is staggering: there are over 900 million objects (pages, groups, events) with which users can interact, and the average user is connected to 80 of those objects.⁶

At the 2011 f8 development conference⁷, Facebook announced a new change called Timeline. Until December 24, Timeline will be deployed on an opt-in basis for users who wish to make use of this new technology. However, after December 24, Facebook will automatically force all users into Timeline, regardless of the user's preferences.

Timeline acts as a user's profile page and automatically summarizes the user's life, from birth to the present day.⁸ Facebook selectively takes user information to display the Timeline summaries from every piece of information that has ever been shared with Facebook. The information that Facebook chooses to display is not, of course, the information that users might choose to display. Hence, users are warned to clean up the Timeline display *that Facebook has constructed*.

This level of exposure is vastly different from that of the old Facebook Profile. ZDNet's David Meyer explains that "[u]ntil now, Facebook has allowed a certain amount of obscurity for older content, but that is no longer the case."⁹ In Facebook's eyes, this abundance of readily-available personal information is actually one of the *benefits* of Timeline:

The way your profile works today, 99% of the stories you share vanish. The only way to find the posts that matter is to click "Older Posts" at the bottom of the page. Again. And again. With Timeline, now you have a home for all the great stories you've already shared. They don't just vanish as you add new stuff.¹⁰

Nor is Timeline limited to the types of information shared in the past. As users connect to social apps, Timeline will contain new categories of information regarding media consumption

³ Facebook, *Statistics*, <https://www.facebook.com/press/info.php?statistics> (last visited December 27, 2011).

⁴ *Facebook Statistics, Stats & Facts For 2011*, DIGITAL BUZZ BLOG, (Jan. 18, 2011), <http://www.digitalbuzzblog.com/facebook-statistics-stats-facts-2011/>.

⁵ Facebook, *Statistics*, <https://www.facebook.com/press/info.php?statistics> (last visited December 27, 2011).

⁶ *Id.*

⁷ F8 DEVELOPERS CONFERENCE 2011, <https://f8.facebook.com/> (last visited September 27, 2011).

⁸ See Mark Tonkelowitz, *Interesting News Any Time You Visit*, THE FACEBOOK BLOG (Sept. 20, 2011, 3:30 PM), <https://blog.facebook.com/blog.php?post=10150286921207131>.

⁹ David Meyer, *Facebook May Have Taken A Privacy-Busting Step Too Far*, ZDNET (Sept. 26, 2011), <http://www.zdnet.co.uk/blogs/communication-breakdown-10000030/facebook-may-have-taken-a-privacy-busting-step-too-far-10024425/>.

¹⁰ Samuel W. Lessin, *Tell Your Story With Timeline*, THE FACEBOOK BLOG (Sept. 22, 2011 1:30PM), <https://blog.facebook.com/blog.php?post=10150289612087131>.

and lifestyle habits. Timeline's new "Health and Wellness" item, for example, encourages users to disclose medical data, turning Facebook into "an actuarial goldmine."¹¹

In fact, Facebook is already used by the leading pharmaceutical companies to market drugs and medical treatments.¹² The use of Facebook by health advertising companies led the Center for Digital Democracy to file a complaint with the Commission last year.¹³ The complaint discussed Facebook applications such as HealthSeeker, which was designed to help people with diabetes make informed lifestyle choices, but which neglected to mention "how users are tracked and monitored or what kinds of data are collected."¹⁴

Security experts have said that Timeline makes it "a heck of a lot easier" for computer criminals to unearth personal details that can be used to craft attacks.¹⁵ "Because people often use personal information to craft passwords or [in] the security questions that some sites and services demand answered before passwords are changed, the more someone adds to Timeline, the more they put themselves at risk."¹⁶ Timeline's treasure trove of personal information can also provide a tempting target for stalkers, government agents, or employers. As a writer for the Vancouver Sun commented, "the kind of people who would want to spend hours digging through the minutiae of your life are not your friends . . . but those who don't know you that well and are really motivated to find out."¹⁷

The new wealth of consumer information also increases the opportunities for intrusive and problematic advertising. Facebook has shown an increased willingness to cash in on the personal data of its users by constantly seeking new ways for advertisers to target the company's broad and rapidly expanding user base, which includes children as young as thirteen. In April 2011, Facebook created a new website designed to show advertisers how to best exploit the wealth of consumer data that Facebook holds.¹⁸ Recently, Facebook announced that it would

¹¹ David Meyer, *Facebook May Have Taken A Privacy-Busting Step Too Far*, ZDNET (Sept. 26, 2011), <http://www.zdnet.co.uk/blogs/communication-breakdown-10000030/facebook-may-have-taken-a-privacy-busting-step-too-far-10024425/>.

¹² Scott Roberts, *Digital Pharma Meets Facebook*, DIGIPHARM, <http://blogs.terrapinn.com/digipharm/2011/09/02/pharma-facebook/>.

¹³ See Center for Digital Democracy et al FTC Complaint, *In re Online Health and Pharmaceutical Marketing that Threatens Consumer Privacy and Engages in Unfair and Deceptive Practices*, November 23, 2010, <http://www.democraticmedia.org/sites/default/files/2010-11-19-FTC-Pharma-Filing.pdf>.

¹⁴ See *id.* at 94-95.

¹⁵ Gregg Keizer, *Facebook's Timeline will be boon for hackers*, COMPUTERWORLD (Sept. 23, 2011 3:32 PM), https://www.computerworld.com/s/article/9220240/Facebook_s_Timeline_will_be_boon_for_hackers_.

¹⁶ *Id.*

¹⁷ Chad Skelton, *Facebook Timeline: The privacy settings it should have, but doesn't*, CURIOUS DAD (Dec. 20, 2011, 1:34 PM), <http://blogs.vancouversun.com/2011/12/20/facebook-timeline-privacy-settings/>. Skelton goes on to ask for a privacy setting that allows users to restrict everything on Timeline to "only me" or, alternatively, a setting that allows them to set viewer-specific controls.

¹⁸ See Irina Slutsky, *Facebook to Ad Agencies: Let's Be 'in a Relationship'*, AD AGE DIGITAL (April 18, 2011), <http://adage.com/article/digital/facebook-ad-agencies-a-relationship/227051/>.

allow advertisers to place ads directly in users' news feeds, giving these ads the same status as updates from friends and family members.¹⁹

One government has already warned consumers about the dangers presented by Timeline. Australia's Privacy Commission warned consumers to be careful what information they share with Facebook, stating that the company is "trying to change how people think and encourage them to normalize over-sharing and abandon any restraint on storage and use and exposure of private information."²⁰

Request for Investigation

The Commission's settlement prohibits Facebook from "materially exceed[ing]" users privacy settings without obtaining their "affirmative express consent."²¹ With Timeline, Facebook is increasing the exposure of users' personal information without seeking their consent.

EPIC respectfully requests the Commission to determine whether Facebook's deployment of Timeline complies with the Commission's recent order *In the Matter of Facebook, Inc.*

Sincerely,

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¹⁹ April Dembosky, *Facebook to allow advertising in news feed*, FINANCIAL TIMES, (Dec. 21, 2011) <http://www.ft.com/cms/s/2/a6e33c1a-2b7a-11e1-9fd0-00144feabdc0.html#axzz1hCUI7eoR>.

²⁰ Andrew Colley, *Every click you make, Facebook tracker will be watching you*, THE AUSTRALIAN (Sept. 24, 2011, 12:00 AM), <http://www.theaustralian.com.au/australian-it/exposure-warning-as-facebook-wheels-out-web-usage-tracker/story-e6frgakx-1226144921037>.

²¹ Facebook, Inc., FTC File No. 092-3184, (2011) (Agreement Containing Consent Order), <http://www.ftc.gov/os/caselist/0923184/111129facebookagree.pdf>.