



May 28, 2010

**VIA EMAIL**

Adam Kardash  
Heenan Blaikie LLP  
Bay Adelaide Centre  
Suite 2900, 333 Bay Street  
Toronto, ON., M5H 2T4

Dear Mr. Kardash,

**Re: Facebook, Inc. – Global Privacy Tool**

We write you today with respect to the proposed privacy fixes announced Wednesday, May 26, 2010, by Facebook Inc., your client.

As a starting point, we would like to commend your client on its decision to attempt to address some of the multiple privacy concerns CIPPIC and others have raised with respect to the operation of its site. We are particularly pleased to see it has reconsidered adopting the global privacy tool it had initially planned to implement last summer.

At this time, however, we continue to have concerns with respect to your client's compliance with PIPEDA. In particular, we wish to note that the privacy screen it intends to present its users is not, in our view, an adequate basis for curing the concerns we raised with your client in respect to its December privacy transition. Our position is that Facebook does not have the meaningful informed consent of its users for privacy changes resulting from that transition. The new controls your client plans to introduce will not remedy that. As we have noted in past correspondence to your client,<sup>1</sup> and as the Assistant Privacy Commissioner held in her Report of Findings<sup>2</sup> in response to our initial complaint, PIPEDA requires both transparency and privacy sensitive defaults in line with user expectations.

The new privacy control your client has introduced clearly fails, in our view, to meet these standards. While users are presented with a somewhat centralized and accessible means of

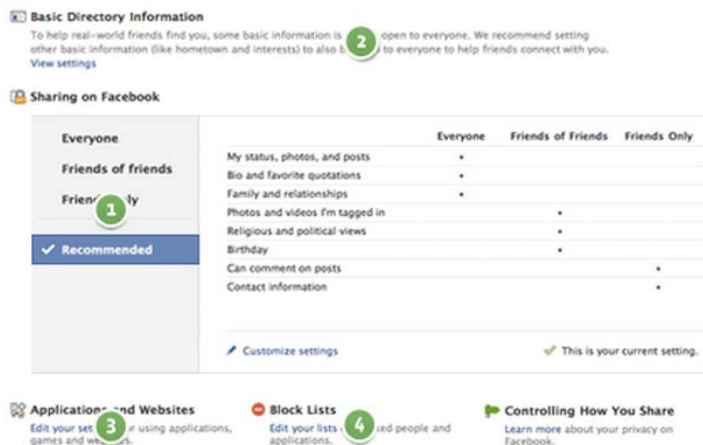
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<sup>1</sup> CIPPIC, "LT Facebook: Statement of Concern", February 20, 2010, available online at: <[http://www.cippic.ca/uploads/Facebook-Statement\\_of\\_Concern-FINAL.pdf](http://www.cippic.ca/uploads/Facebook-Statement_of_Concern-FINAL.pdf)>, at pp. 26-27.

<sup>2</sup> PIPEDA Case Summary #2009-008, *Report of Findings into the Complaint Filed by the Canadian Internet Policy and Public Interest Clinic (CIPPIC) against Facebook Inc.*, [Finding] July 15, 2009, available online at: <[http://www.priv.gc.ca/media/nr-c/2009/let\\_090827\\_e.cfm](http://www.priv.gc.ca/media/nr-c/2009/let_090827_e.cfm)> at paras. 90, 92:

Since Facebook is structured upon the "friend" concept, I think it reasonable to assume that users expect their personal information to be shared with the people they have "friended"...with regard to the ["Everyone"] setting for photo albums, I commend Facebook for its privacy-sensitive practice of automatically presenting users uploading photos with...an easy means of changing the privacy setting if they wish. This seems at odds, however, with making the default privacy setting "Everyone".

selecting the ‘only friends’ option for some of their privacy settings, they nonetheless in many cases remain defaulted to your client’s previously applied ‘recommended settings’:



<http://www.facebook.com/privacy/explanation.php>, screenshot taken May 26, 2010

In addition, while we have no objection to recommended settings and believe they have a role to play in providing guidance to users on privacy settings, it is our firm belief that such recommendations must also be reasonable and must reflect common sense and the reasonable expectations of *users*.<sup>3</sup> Recommending that users share sensitive information such as ‘interests’ or ‘likes’ (which will often reflect deeply held religious or political beliefs), status updates (which will typically involve conversations perceived as occurring between friends) and ‘interested in’ (your clients’ description for sexual orientation) with ‘Everyone’ is not, in our view, acceptable under the circumstances.

Before sensitive personal information of this nature can be disclosed by your client, meaningful and express consent is required by PIPEDA.<sup>4</sup> While Facebook’s latest privacy screen does somewhat improve accessibility of some controls on Facebook, it retains many of the same problematic features that plagued your client’s December 2009 transition attempt. We would remind your client of correspondence sent to it by the Assistant Privacy Commissioner warning of these problems prior to the release of its December transition attempt:

In my letter of finding of July 15, 2009, I approached the question of settings from the perspective of the average Facebook user and what his/her reasonable expectations might be. I accepted that *certain settings that Facebook preselects would be acceptable as long as they met the user’s reasonable expectations*.

In changes that are about to be implemented, for new users and those current users who have never changed their settings, you are preselecting *Everyone* for categories of information such as About Me, Family & Relationships, Work & Education Information, Website as well as every post created such as status updates and photo albums. With respect to current users, as I understand it, Facebook reasons that since users may have been comfortable with sharing their information with what was previously, in some cases, fairly large networks, they would now be comfortable with sharing that information with everyone on the internet. It is unclear what you are basing that reasoning on especially since many of those categories of information can be considered sensitive.<sup>5</sup>

<sup>3</sup> *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5 (Canada), Principles 4.3.2, 4.3.4, 4.3.5.

<sup>4</sup> *Ibid.*, Principle 4.3.6. See also section 5(3) of PIPEDA.

<sup>5</sup> E. Denham, “Letter to Mr. Michael Richter, Deputy General Counsel, Facebook Inc.”, December 7, 2009, obtained by CIPPIC under Access to Information Request, emphasis in original.

If your client intends to address the serious privacy issues raised by the December transition and changes made since then, we ask that this time it heeds these concerns and default its users to ‘friends only’ privacy settings. We also reiterate our request that your client ensure its ‘recommendations’ reflect the often sensitive nature of the information in question. This will ensure that user privacy is protected by allowing any user wishing to share more broadly to do so with ease. This same approach should be adopted for any future settings Facebook introduces – for features such as geolocation – where these settings are to be relied upon as consent for the disclosure of sensitive personal information. Nothing less can meet requirements under PIPEDA for gaining the meaningful, informed and express consent of its users.

In addition, we firmly believe that a user taking the trouble to select an ‘Only Friends’ or ‘Friends of Friends’ global setting should have her expressly stated intentions applied globally. This means it should apply to directory listings, to instant personalization websites, to public search, and so on. It must additionally apply to photos, which should not by default be visible to friends of individuals tagged in these photos. It should also, in our view, apply to information your client currently does not allow users to hide as well as to website and application developers/advertisers collecting user information through the API – except and until granular consent is provided. It is our understanding that your client no longer intends to provide such granular control.

We once again commend your client for its attempt to provide a simpler method for selecting some of its privacy settings. We further applaud your client for its recognition that the pace of change on its site has contributed to confusion and upset many of its customers. However, PIPEDA, our federal privacy legislation, places obligations on your client that it must meet with respect to the collection, use, disclosure and retention of its customers’ personal information. Simply slowing down the pace at which your client is making changes to its site is not sufficient to meet those obligations. We ask that it comply with these legal requirements in a forthcoming privacy transition by pre-selecting ‘only friends’ for its users and adopting reasonable ‘recommendations’ to its users on where one might wish to deviate from such defaults. We further ask that user intentions to limit information sharing to ‘only friends’ be honoured globally with respect to disclosures made by your site, including disclosures made to third party developers/advertisers as well as to public search engines such as Google.

Feel free to contact me as above if you have any questions or concerns

Yours truly,

*[original signed]*

Tamir Israel  
Staff Lawyer, CIPPIC

CC: Office of the Privacy Commissioner of Canada  
Elizabeth Denham, Assistant Privacy Commissioner  
Arthur Dunfree, Director General, Investigations and Inquiries