

**In the Matter of Facebook, Inc.  
FTC File No. 092 3184  
Letters to Commenters**

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Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Janet Aldrich  
Commonwealth of Massachusetts

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Ms. Aldrich:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comment notes that Facebook provides a valuable service. You also note that Facebook should inform its users who will have access to their information, including their posts. We agree. The intent of the consent agreement is to allow Facebook to continue to innovate, but in a truthful and forthcoming manner, consistent with the privacy choices its users have made.

The complaint alleges that Facebook shared information in ways that were inconsistent with its statements to consumers. Thus, the complaint alleges that Facebook engaged in unfair and deceptive acts or practices in violation of Section 5 of the FTC Act. In particular, we allege that Facebook deceived consumers and subjected them to unfair treatment when it made material, retroactive changes to the privacy of their information, without their consent. Further, we allege that Facebook deceived consumers regarding numerous other privacy practices, including the protections provided by their privacy settings, access to their information by third-party Apps, sharing of users' information with advertisers, and access to users' information following deletion of their Facebook accounts.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Barnet Alpert  
State of Florida

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Alpert:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comment urges the Commission to impose monetary penalties on Facebook, Inc. ("Facebook"). The complaint in this matter alleges violations of Section 5 of the FTC Act, under which the Commission does not have authority to seek civil penalties. However, as a result of the order, Facebook can be subject to civil penalties should it violate the terms of the order. The order requires Facebook to establish and maintain a comprehensive privacy program, and to obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s); this requirement will prohibit the type of material, retroactive privacy changes that we allege Facebook made in December 2009. In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

Act). It is our hope that the prospect of such substantial civil penalties – which Facebook does not face absent this order and did not face in December 2009 – will have a significant deterrent effect on the company.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Anonymous

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

The Commission appreciates your support of the proposed settlement. The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook, Inc. ("Facebook") will advance this objective. You ask about enforcement of the proposed order. The proposed order will become final once the Commission has considered the public comments and approved a final order, and it is served upon Facebook. Beginning then, for a period of 20 years, Facebook will be required to comply with the order and the Commission will work assiduously to enforce it. As you know, the order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the proposed order mandates that Facebook file true and accurate written reports with the Commission describing its compliance with the order, and imposes recordkeeping requirements on the company regarding, among other things, consumer complaints that relate to conduct prohibited by the order and documents that call into question Facebook's compliance with the order. These requirements will enable the Commission to ascertain whether Facebook is in violation of any term of the final order, in which case it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

You also ask whether the Commission will provide consumers with "right to sue" letters to allow them to pursue private litigation related to the allegations made in the proposed complaint. Individuals have no right to sue to enforce Section 5 of the FTC Act, the law at issue in this case. Accordingly, the Commission does not issue right to sue letters in cases, such as this one, that seek to enforce Section 5. Please note that the proposed order is not intended to address any right that individuals may have to sue under other federal or state laws.

It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary





Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

David Argentar  
State of Delaware

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Argentar:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook, Inc. ("Facebook") will advance this objective. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the proposed order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the proposed order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

You raise several suggestions in your comment. First, you ask the Commission to subject Facebook to random, unannounced audits. The Commission believes that the biennial privacy assessments described above will provide an important means to monitor Facebook's compliance with the order. Each assessment will involve a detailed, written evaluation of

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<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

Facebook's privacy practices over a two-year period, and will require the auditor to certify that Facebook's privacy controls have adequately protected the privacy of "covered information" throughout the relevant two-year period. In addition, we note that the audit is not the only check on Facebook's conduct. We regularly monitor compliance with our orders, and if Facebook deceives consumers or does not provide sufficient control to its users, as required by the order, we can seek civil penalties without waiting for the next audit. We believe these tools will require Facebook to demonstrate its compliance with the order throughout its 20-year duration.

You also ask that the Commission require Facebook to provide users, upon request, with a copy of the information Facebook maintains about them, so they will have assurances that Facebook is in compliance with the order. Although users' own access to their information did not form the basis of an allegation in the proposed complaint, the proposed order is designed to provide assurance of compliance. For example, in addition to the comprehensive privacy program and biennial audits described above, the proposed order mandates that Facebook file true and accurate written reports with the Commission describing its compliance with the order. The proposed order also imposes recordkeeping requirements on the company regarding, among other things, consumer complaints that relate to conduct prohibited by the order and documents that call into question Facebook's compliance with the order. Thus, the proposed order is designed to enable the Commission to ascertain whether Facebook is in violation of any term of the final order and, if so, bring an appropriate enforcement action. In the future, if you have specific questions about your Facebook account, you may wish to contact Facebook through its Help Center at [https://www.facebook.com/help/contact\\_us.php?id=173545232710000](https://www.facebook.com/help/contact_us.php?id=173545232710000) for information.

Next, you suggest that the Commission require Facebook to provide users with a written list of any information about them that was sent to third parties and the identity of such third parties. The Commission's proposed complaint contained allegations regarding the unauthorized sharing of a user's information with third parties and the proposed order contains provisions designed to address it going forward. In particular, as described above, the proposed order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent in certain circumstances. As part of these requirements, Facebook must disclose both the categories of nonpublic user information that it will share with the third parties and the identity or specific categories of such third parties. In addition, the proposed order prohibits Facebook from making deceptive statements on this subject, as described above.

Your comment also notes a concern that Facebook users are not adequately able to delete their information. This is an issue also raised in the proposed complaint, and the proposed order contains appropriate provisions to address it. For example, the proposed order requires Facebook to (1) implement reasonable procedures to ensure that deleted data cannot be accessed by third parties after a reasonable period of time, not to exceed thirty days, following its deletion and (2) as part of its comprehensive privacy program, consider and address any reasonably foreseeable, material privacy risks related to its retention of users' covered information.

Finally, you suggest that the Commission require the company to provide users with thirty-day advance notification of any proposed changes to their privacy policy. As you know, the proposed complaint alleges that Facebook violated Section 5 of the FTC Act by, among other

things, making material, retroactive changes to users' privacy settings without users' consent. Accordingly, the proposed order goes further than requiring advance notice alone, and requires Facebook to obtain users' affirmative express consent before sharing information more broadly than users' privacy settings allow. The Commission believes these provisions will protect consumers from material retroactive changes going forward.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Michelle B.  
State of Colorado

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comment notes a concern that users of Facebook, Inc. ("Facebook") are not adequately able to delete their information. This is an issue raised in the proposed complaint, and the proposed order contains provisions designed to address it going forward. In particular, the proposed order requires Facebook to implement reasonable procedures to ensure that deleted data cannot be accessed by third parties after a reasonable period of time, not to exceed thirty days, following its deletion. In addition, the order prohibits Facebook from misrepresenting the privacy of users' covered information, including, but not limited to, the extent to which information that users have deleted from their account is accessible to third parties. Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Ball  
State of Texas

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

The Commission appreciates your interest in this matter. The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook, Inc. ("Facebook") will advance this objective. In particular, the order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the proposed order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

Accordingly, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of

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<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Barrett  
Commonwealth of Massachusetts

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You ask about the provision in the proposed order related to deletion of user information. This provision requires Facebook, Inc. ("Facebook") to implement reasonable procedures to ensure that deleted data cannot be accessed by third parties after a reasonable period of time, not to exceed thirty days, following its deletion. In other words, when a user deletes his or her information, Facebook will be required to ensure that this information is inaccessible to third parties within a reasonable period of time, and that time may not exceed thirty days. Should Facebook violate this or any other term of the final order, it will be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act). Thus, the Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook will further this objective.

The Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Bell  
State of Georgia

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

The Commission agrees with you that privacy is paramount to securing users' trust. The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook, Inc. ("Facebook") will advance this objective. In particular, the order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

Accordingly, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

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website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Bessette  
State of Illinois

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook, Inc. ("Facebook") will further this objective. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

Your comment raises concerns about user awareness of Facebook's actions as alleged in the proposed complaint. The Commission recognizes the importance of consumer outreach regarding its law enforcement efforts, and when it announced the proposed complaint and order against Facebook, it issued a press release (<http://www.ftc.gov/opa/2011/11/privacysettlement.shtm>) that provided a description of the

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unlawful conduct alleged in the complaint. The Commission also has issued educational materials for consumers regarding the settlement, including two blog posts on the FTC's website, one providing a count-by-count walk through of the proposed complaint, *see* <http://business.ftc.gov/blog/2011/11/ftcs-settlement-facebook-where-facebook-went-wrong>, and the other describing what the FTC's order means for consumer privacy, *see* <http://business.ftc.gov/blog/2011/12/facebooks-future-what-ftc-order-means-consumer-privacy>.

We recognize that some users may have more specific questions about their information and how it may have been affected by Facebook's conduct. Such users should contact Facebook through its Help Center ([https://www.facebook.com/help/contact\\_us.php?id=173545232710000](https://www.facebook.com/help/contact_us.php?id=173545232710000)) to raise any such questions. Further, in the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

\_\_\_\_\_ In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

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Donald S. Clark  
Secretary

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Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Mike Bielski  
State of Ohio

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Bielski:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You highlight your concerns with Facebook's new "ticker" feature, which you state causes users' comments to be shared, without their consent, with other users who are not their friends. You also urge that the order should let users block Facebook from sharing their information with third parties, absent such users' approval. Finally, you state that, unless Facebook openly discloses that it "owns" users' information, it should be required to provide better privacy for users' information.

Although the proposed complaint does not contain allegations specifically addressing the ticker feature, it does allege that Facebook violated Section 5 of the FTC Act by falsely representing to users the protections provided by their privacy settings, by making other false promises regarding privacy, and by making material, retroactive changes to users' privacy settings without users' consent. As a result of the broad allegations in the proposed complaint, the proposed order contains provisions designed to prevent Facebook from engaging in similar practices involving any Facebook product or service. In particular, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). This provision is significant. Going forward, Facebook cannot share your information more broadly than your privacy settings allow without your consent. This requirement should help to address your concerns. The proposed order also requires Facebook to establish and maintain a comprehensive privacy program, and obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the order prohibits Facebook from misrepresenting the extent to which it maintains the

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

privacy or security of “covered information.”<sup>2</sup> Importantly, should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

The Commission is committed to protecting consumer privacy and believes the order will substantially protect Facebook users. If you have specific questions about the “ticker” feature or other Facebook features, or their implementation, you may wish to contact Facebook through its Help Center <https://www.facebook.com/help/contact.us.php?id=173545232710000> for information. Further, in the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC’s Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary

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<sup>2</sup> “Covered information” is defined as “information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol (“IP”) address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above.”



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Alex Bieser  
State of Illinois

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comment notes that Facebook provides a valuable service. We agree. The intent of the order is to allow Facebook to continue to innovate, but in a truthful and forthcoming manner, consistent with the privacy choices its users have made.

The complaint alleges that Facebook shared information in ways that were inconsistent with its statements to consumers. Thus, the complaint alleges that Facebook engaged in unfair and deceptive acts or practices in violation of Section 5 of the FTC Act. In particular, we allege that Facebook deceived consumers and subjected them to unfair treatment when it made material, retroactive changes to the privacy of their information, without their consent. Further, we allege that Facebook deceived consumers regarding numerous other privacy practices, including the protections provided by their privacy settings, access to their information by third-party Apps, sharing of users' information with advertisers, and access to users' information following deletion of their Facebook accounts.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Blake  
State of Colorado

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comment urges the Commission to impose stronger penalties on Facebook, Inc. ("Facebook"), by putting the company out of business. The Commission is committed to protecting consumer privacy and believes the proposed order will substantially protect Facebook users and promote effective deterrence. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program, and to obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the proposed order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s); this requirement will prohibit the type of material, retroactive privacy changes that we allege Facebook made in December 2009. In addition, the proposed order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

Thus, the relief contained in the order is significant, and will provide strong protections

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."



for consumers' privacy. The Commission believes that putting Facebook out of business would be unwarranted in light of the benefits that Facebook provides to users and the facts and circumstances of the case. In the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Boehlert  
State of New York

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You suggest in your comment that Facebook, Inc. ("Facebook") should be prohibited from making any changes to its privacy settings unless users opt-in to these changes. This is an issue raised in the proposed complaint, and the proposed order contains provisions designed to address it going forward. In particular, the proposed order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). This will ensure that your privacy settings remain intact unless you decide to change them.

In addition, the proposed order contains other provisions designed to protect users' privacy. In particular, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Further, the proposed order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Should Facebook violate any term of the final order, it could be liable for civil

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Bonita Brown  
California

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Ms. Brown:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

The Commission appreciates the gravity of your situation and agrees it is critical that you be able to control the privacy of your sensitive information. The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook, Inc. ("Facebook") will advance this objective. In particular, the order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

Accordingly, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

William Carleton  
State of Washington

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Carleton:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You suggest that rather than finalizing the proposed order, the Commission should bring a lawsuit against Facebook. The Commission is committed to protecting consumers' privacy through its law enforcement work. When considering whether to enter into a settlement as opposed to seeking relief through litigation, the Commission carefully evaluates whether the proposed settlement order will provide appropriate relief for all of the conduct that is alleged in the complaint. In this case, the order will protect Facebook users from future unlawful conduct by the company, and promote effective deterrence. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program, and to obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s); this requirement will prohibit the type of material, retroactive privacy changes that we allege Facebook made in December 2009. In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup>

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act). The Commission believes the proposed order provides strong relief that will benefit consumers immediately. In contrast, litigation would require the expenditure of significant taxpayer resources and would likely delay any potential relief or protections for consumers for a substantial period of time.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Carpenter  
Washington

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You suggest in your comment that Facebook, Inc. ("Facebook") should be required to fully explain all privacy options to users. Similar issues were raised in the proposed complaint, and the proposed order contains provisions designed to address them going forward. In particular, the proposed order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the proposed order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Further, the proposed order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

In addition, you ask that Facebook be required to set all default settings at the most restrictive level. Although the order does not specify the level of default settings, the Commission believes the restrictions described above will adequately serve users' interests in selecting privacy settings of their choosing.

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."



In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

D. Chen  
State of California

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comment urges the Commission to impose monetary penalties on Facebook, Inc. ("Facebook"). The complaint in this matter alleges violations of Section 5 of the FTC Act, under which the Commission does not have authority to seek civil penalties. However, as a result of the order, Facebook can be subject to civil penalties should it violate the terms of the order. The order requires Facebook to establish and maintain a comprehensive privacy program, and to obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to sharing any of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s); this requirement will prohibit the type of material, retroactive privacy changes that we allege Facebook made in December 2009. In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act). It is our hope that the prospect of such substantial civil penalties – which Facebook does not face absent this order and did not face in December 2009 – will have a significant deterrent effect on the company.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Ms. Rocker Chick  
State of Texas

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

The Commission appreciates your support of the proposed settlement. The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook, Inc. ("Facebook") will advance this objective. In particular, the order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

The Commission is committed to protecting consumer privacy and believes the order will substantially protect Facebook users. If you have specific questions about your Facebook account, you may wish to contact Facebook through its Help Center,

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

[https://www.facebook.com/help/contact\\_us.php?id=173545232710000](https://www.facebook.com/help/contact_us.php?id=173545232710000), for information. Further, in the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

Accordingly, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Donny Daniels  
State of California

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Daniels:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You highlight your concerns about your ability to manage your shared information on Facebook, including by deleting unnecessary or historical data. Although the proposed complaint does not contain allegations specifically addressing users' ability to manage their information, it does allege that Facebook violated Section 5 of the FTC Act by making false statements to users about their ability to delete their profile information. In addition, the proposed complaint alleges that Facebook falsely represented the protections provided by users' privacy settings, made other false promises regarding privacy, and made material, retroactive changes to users' privacy settings without users' consent.

As a result of the broad range of allegations contained in the proposed complaint, the proposed order contains provisions designed to prevent Facebook from engaging in similar practices involving any Facebook product or service. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program, and obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Lastly, regarding the deletion of users' information, the

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address,

proposed order requires Facebook to (1) implement reasonable procedures to ensure that deleted data cannot be accessed by third parties after a reasonable period of time, not to exceed thirty days, following its deletion and (2) as part of its comprehensive privacy program, consider and address any reasonably foreseeable, material privacy risks related to its retention of users' covered information. Importantly, should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

The Commission is committed to protecting consumer privacy and believes the order will substantially protect Facebook users. If you have specific questions about how Facebook manages or retains your information or other features, you may wish to contact Facebook through its Help Center at <http://www.facebook.com/help/contactus.php?id=1735452327100000> for information. Further, in the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Michael Devine  
State of Washington

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Devine:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You state that you are an application ("App") developer and are concerned that Facebook makes it too difficult for users to apply privacy settings to their data. You also express concern that Facebook fails to provide adequate means for users to automatically delete their content, including by using Apps that assist with deletion. Although the proposed complaint does not contain allegations specifically addressing the capabilities that Facebook provides to Apps for deleting content, it does allege that Facebook violated Section 5 of the FTC Act by making false statements to users about their ability to delete their profile information. In addition, the proposed complaint alleges that Facebook falsely represented the protections provided by users' privacy settings, made other false promises regarding privacy, and made material, retroactive changes to users' privacy settings without users' consent.

As a result of the broad allegations contained in the proposed complaint, the proposed order contains provisions designed to prevent Facebook from engaging in similar practices involving any Facebook product or service. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program, and obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."



security of “covered information.”<sup>2</sup> Lastly, regarding the deletion of users’ information, the proposed order requires Facebook to (1) implement reasonable procedures to ensure that deleted data cannot be accessed by third parties after a reasonable period of time, not to exceed thirty days, following its deletion and (2) as part of its comprehensive privacy program, consider and address any reasonably foreseeable, material privacy risks related to its retention of users’ covered information. Importantly, should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act). Thus, the order provides substantive privacy protections for Facebook users.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary

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<sup>2</sup> “Covered information” is defined as “information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol (“IP”) address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above.”



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Marc Rotenberg, Executive Director  
Lillie Coney, Assistant Director  
David Jacobs, Consumer Protection Fellow  
Electronic Privacy Information Center  
1718 Connecticut Ave., NW  
Suite 200  
Washington, DC 20009

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Rotenberg, Ms. Coney, and Mr. Jacobs:

Thank you for your comment on behalf of the Electronic Privacy Information Center (“EPIC”) on the Federal Trade Commission’s consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission’s Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

The Commission thanks EPIC for its petitions and other correspondence about Facebook, Inc.’s (“Facebook”) privacy practices, and appreciates its support of the proposed complaint. The Commission is committed to safeguarding consumer privacy and believes that the proposed order will advance this objective. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the proposed order requires Facebook to give clear and prominent notice and obtain a user’s affirmative express consent prior to any sharing of the user’s “nonpublic user information”<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user’s privacy setting(s). In addition, the proposed order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of “covered information.”<sup>2</sup> Should Facebook violate any term

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<sup>1</sup> “Nonpublic user information” is defined as “covered information that is restricted by one or more privacy setting(s).”

<sup>2</sup> “Covered information” is defined as “information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol (“IP”) address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above.”

of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

Your comment focuses on five key concerns, which we address, in turn, below:

(1) You ask the Commission to require Facebook to restore its privacy settings to those available in December 2009.

The Commission believes such a change could cause significant consumer confusion. The site has evolved substantially since December 2009, and it is not clear that users would understand how their settings had been altered. Accordingly, the Commission believes that under these circumstances the most sensible approach is to ensure that Facebook does not misrepresent the privacy of user information going forward, that Facebook obtains affirmative consent from users prior to sharing information in a manner that materially exceeds their privacy settings, and that it establishes and maintains a comprehensive privacy program.

(2) You urge the Commission to prohibit Facebook from creating facial recognition profiles without users' express consent.

The comprehensive privacy program described above will require Facebook to implement practices that are appropriate to the sensitivity of the "covered information" in question, which is very broadly defined in the order and would include biometric data. Moreover, the biennial audits of its privacy practices will help ensure that Facebook lives up to these obligations. Although the order does not specifically require that Facebook obtain a user's consent for the creation of facial recognition data, the order's broad prohibition on deception is designed to ensure that Facebook will be truthful with users about such practices. Likewise, the affirmative express consent requirement, described above, is designed to ensure that Facebook upholds privacy settings that it offers to users to protect such information.

(3) You ask the Commission to make public the assessments required by the proposed order to the maximum extent permitted by law.

The Commission recognizes the public interest in understanding and evaluating a company's compliance with the law. The public may seek access to the third-party assessments required by the order by making a request under the Freedom of Information Act.<sup>3</sup> However, the third-party assessments may contain trade secrets or other confidential commercial or financial information, or information about consumers or other third parties that the Commission may not publicly disclose.<sup>4</sup> Upon receipt of a request for confidential treatment of all or part of the third-party assessments, the Commission will conduct a careful review to determine whether confidential treatment is warranted. We will make every effort to be transparent regarding these

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<sup>3</sup> 5 U.S.C. § 552 *et seq.*

<sup>4</sup> *See* 15 U.S.C. § 46(f) ("the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential"); Commission Rule of Practice § 4.10.

assessments, consistent with the applicable law. If the FTC determines that the assessments have been frequently requested or are likely to be frequently requested because of the their subject matter, the agency will post such portions as may be released to the public on the FTC's website.<sup>5</sup>

(4) You request that the Commission require Facebook to give its users the right to access the data Facebook keeps about them.

Although the order does not contain an access requirement, it does provide users with meaningful rights to control their data. In particular, regarding the deletion of users' information, the proposed order requires Facebook to (1) implement reasonable procedures to ensure that deleted data cannot be accessed by third parties after a reasonable period of time, not to exceed thirty days, following its deletion and (2) as part of its comprehensive privacy program, consider and address any reasonably foreseeable, material privacy risks related to its retention of users' covered information.

(5) Finally, you highlight your concerns with several of Facebook's current features and business practices, including Timeline, tracking of logged-out users, behavioral tracking and analysis, and tagging.

Although the proposed complaint does not contain allegations specifically addressing these specific issues, it does allege that Facebook violated Section 5 of the FTC Act by falsely representing to users the protections provided by their privacy settings, by making other false promises regarding privacy, and by making material, retroactive changes to users' privacy settings without users' consent. Accordingly, the proposed order contains provisions, described above, designed to prevent Facebook from engaging in similar practices involving any Facebook product or service. These provisions are broad enough to address misconduct beyond that expressly challenged in the complaint.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary

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<sup>5</sup> See 5 U.S.C. § 552(a)(2)(D).



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Emergency Personnel  
District of Columbia

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You suggest that the Commission should require Facebook, Inc. ("Facebook") to restore its default privacy settings to those offered in 2007, and also highlight your concerns with Facebook's Timeline feature. Although the proposed complaint does not contain allegations regarding the Timeline feature, it does allege that Facebook violated Section 5 of the FTC Act by, among other things, making material, retroactive changes to users' privacy settings without their consent in December 2009, by falsely representing to users the protections provided by their privacy settings, and by making other false promises regarding privacy, including the privacy of information that users had deleted from their profiles.

The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook will advance this objective. The proposed order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through

order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

The Commission has considered the request to restore privacy default settings to an earlier state, but is concerned that such a change could cause significant consumer confusion. The site has evolved substantially since 2007, and it is not clear that users would understand how their settings have been altered. Accordingly, the Commission believes that under these circumstances the most sensible approach is to ensure that Facebook does not misrepresent the privacy of user information going forward, that Facebook obtains affirmative consent from users prior to sharing information in a manner that materially exceeds their privacy settings, and that it establishes and maintains a comprehensive privacy program.

As a result of the broad allegations contained in the proposed complaint, the proposed order contains provisions designed to prevent Facebook from engaging in similar practices involving any Facebook product or service, as described above. If you have specific questions about the Timeline feature or its implementation, you may wish to contact Facebook through its Help Center at <http://www.facebook.com/help/contactus.php?id=1735452327100000> for information. Further, in the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Michaela Zinke  
Federation of German Consumer Organizations

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Ms. Zinke:

Thank you for your comment on behalf of the Federation of German Consumer Organizations on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

We thank you for your description of recent law enforcement activities conducted by the Federation of German Consumer Organizations related to Facebook, Inc. ("Facebook"). In addition, you suggest that Facebook implement the concepts of "privacy by default" and "privacy by design." You also suggest that the Commission make publicly available the assessments required by the proposed order.

The Commission appreciates the work of consumer protection organizations around the world. We are committed to safeguarding consumer privacy and believe that the proposed order will advance this objective. In particular, the proposed order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>1</sup> The proposed order also requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>2</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). We believe this requirement of affirmative express consent addresses your concern regarding "privacy by default," because Facebook will not be able to materially expand sharing without the express consent of its users.

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<sup>1</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

<sup>2</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

In addition, the order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. The privacy program and audits serve to implement “privacy by design” by requiring Facebook to consider privacy at every stage of its product development and implementation. Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

With respect to your suggestion that the Commission make public the assessments required by the proposed order, we note that the Commission recognizes the public interest in understanding and evaluating a company’s compliance with the law. The public may seek access to the third-party assessments required by the order by making a request under the Freedom of Information Act.<sup>3</sup> However, the third-party assessments may contain trade secrets or other confidential commercial or financial information, or information about consumers or other third parties that the Commission may not publicly disclose.<sup>4</sup> Upon receipt of a request for confidential treatment of all or part of the third-party assessments, the Commission will conduct a careful review to determine whether confidential treatment is warranted. We will make every effort to be transparent regarding these assessments, consistent with the applicable law. If the FTC determines that the assessments have been frequently requested or are likely to be frequently requested because of their subject matter, the agency will post such portions as may be released to the public on the FTC’s website.<sup>5</sup>

Finally, you suggest that making the assessments public will provide support for your view that Facebook is a data controller of European Union consumer data. As you know, the proposed complaint alleged that Facebook failed to comply with the substantive provisions of notice and choice set forth in the U.S.-EU Safe Harbor Framework. To address these allegations, the proposed order’s prohibition on misrepresentations specifically prohibits Facebook from deceiving users with respect to its compliance with and participation in the Safe Harbor Framework. Although the Commission’s action is not dependent on whether Facebook is a “data controller” under EU law, it is consistent with the conclusion that Facebook is a data controller.

Accordingly, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

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<sup>3</sup> 5 U.S.C. § 552 *et seq.*

<sup>4</sup> *See* 15 U.S.C. § 46(f) (“the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential”); Commission Rule of Practice § 4.10.

<sup>5</sup> *See* 5 U.S.C. § 552(a)(2)(D).



By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Ferguson  
New York

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You highlight your concerns with Facebook's new Timeline feature and suggest that Facebook be prohibited from implementing such new features, unless users opt-in to these changes. Although the proposed complaint does not contain allegations specifically addressing the Timeline feature, it does allege that Facebook violated Section 5 of the FTC Act by falsely representing to users the protections provided by their privacy settings, by making other false promises regarding privacy, and by making material, retroactive changes to users' privacy settings without users' consent. As a result of the broad allegations in the proposed complaint, the proposed order contains provisions designed to prevent Facebook from engaging in similar practices involving any Facebook product or service. In particular, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). Thus, Facebook will be required to get your opt-in consent before it shares your information more broadly than your privacy settings allow.

The proposed order also requires Facebook to establish and maintain a comprehensive privacy program, and obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Importantly, should

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address,

Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

The Commission is committed to protecting consumer privacy and believes the order will substantially protect Facebook users. If you have specific questions about the Timeline feature or its implementation, you may wish to contact Facebook through its Help Center at <https://www.facebook.com/help/contact-us.php?id=173545232710000> for information. Further, in the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

\_\_\_\_\_ In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary

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User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above.”



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Eric Fort  
State of California

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Fort,

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook, Inc. ("Facebook") will advance this objective. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the proposed order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the proposed order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

Your comment focuses on five key concerns, which we address, in turn, below:

(1) You ask the Commission to require Facebook to restore its privacy settings to those available in December 2009.

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

The Commission believes such a change could cause significant consumer confusion. The site has evolved substantially since December 2009, and it is not clear that users would understand how their settings had been altered. Accordingly, the Commission believes that under these circumstances the most sensible approach is to ensure that Facebook does not misrepresent the privacy of user information going forward, that Facebook obtains affirmative consent from users prior to sharing information in a manner that materially exceeds their privacy settings, and that it establishes and maintains a comprehensive privacy program.

(2) You urge the Commission to prohibit Facebook from creating facial recognition profiles without users' express consent.

The comprehensive privacy program described above will require Facebook to implement practices that are appropriate to the sensitivity of the "covered information" in question, which is very broadly defined in the order and would include biometric data. Moreover, the biennial audits of its privacy practices will help ensure that Facebook lives up to these obligations. Although the order does not specifically require that Facebook obtain a user's consent for the creation of facial recognition data, the order's broad prohibition on deception is designed to ensure that Facebook will be truthful with users about such practices. Likewise, the affirmative express consent requirement, described above, is designed to ensure that Facebook upholds privacy settings that it offers to users to protect such information.

(3) You ask the Commission to make public the assessments required by the proposed order to the maximum extent permitted by law.

The Commission recognizes the public interest in understanding and evaluating a company's compliance with the law. The public may seek access to the third-party assessments required by the order by making a request under the Freedom of Information Act.<sup>3</sup> However, the third-party assessments may contain trade secrets or other confidential commercial or financial information, or information about consumers or other third parties that the Commission may not publicly disclose.<sup>4</sup> Upon receipt of a request for confidential treatment of all or part of the third-party assessments, the Commission will conduct a careful review to determine whether confidential treatment is warranted. We will make every effort to be transparent regarding these assessments, consistent with the applicable law. If the FTC determines that the assessments have been frequently requested or are likely to be frequently requested because of their subject matter, the agency will post such portions as may be released to the public on the FTC's website.<sup>5</sup>

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<sup>3</sup> 5 U.S.C. § 552 *et seq.*

<sup>4</sup> See 15 U.S.C. § 46(f) ("the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential"); Commission Rule of Practice § 4.10.

<sup>5</sup> See 5 U.S.C. § 552(a)(2)(D).

(4) You request that the Commission require Facebook to give its users the right to access the data Facebook keeps about them.

Although the order does not contain an access requirement, it does provide users with meaningful rights to control their data. In particular, regarding the deletion of users' information, the proposed order requires Facebook to (1) implement reasonable procedures to ensure that deleted data cannot be accessed by third parties after a reasonable period of time, not to exceed thirty days, following its deletion and (2) as part of its comprehensive privacy program, consider and address any reasonably foreseeable, material privacy risks related to its retention of users' covered information.

(5) Finally, you ask the Commission to prohibit Facebook from secretly tracking its users across the web.

Although the proposed complaint does not contain allegations specifically addressing the tracking of Facebook users across the web, it does allege that Facebook violated Section 5 of the FTC Act by falsely representing to users the protections provided by their privacy settings, by making other false promises regarding privacy, and by making material, retroactive changes to users' privacy settings without users' consent. Accordingly, the proposed order contains provisions, described above, designed to prevent Facebook from engaging in similar practices involving any Facebook product or service. These provisions are broad enough to address misconduct beyond that expressly challenged in the complaint.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Jason Fruge  
State of Texas

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Fruge:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You highlight your concerns with Facebook's implementation of the Timeline feature, which you state caused more than 1,500 posts and comments that you had deleted to be restored to your profile. Although the proposed complaint does not contain allegations specifically addressing the Timeline feature, it does allege that Facebook violated Section 5 of the FTC Act by making false statements to users about their ability to delete their profile information. In addition, the proposed complaint alleges that Facebook violated Section 5 by falsely representing to users the protections provided by their privacy settings, by making other false promises regarding privacy, and by making material, retroactive changes to users' privacy settings without users' consent.

As a result of the broad allegations contained in the proposed complaint, the proposed order contains provisions designed to prevent Facebook from engaging in similar practices involving any Facebook product or service. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program, and obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Lastly, regarding the deletion of users' information, the

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or

proposed order requires Facebook to (1) implement reasonable procedures to ensure that deleted data cannot be accessed by third parties after a reasonable period of time, not to exceed thirty days, following its deletion and (2) as part of its comprehensive privacy program, consider and address any reasonably foreseeable, material privacy risks related to its retention of users' covered information. Importantly, should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

The Commission is committed to protecting consumer privacy and believes the order will substantially protect Facebook users. If you have specific questions about the Timeline feature or its implementation, you may wish to contact Facebook through its Help Center <http://www.facebook.com/help/contactus.php?id=1735452327100000> for information. Further, in the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary

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screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."





Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Gilman  
State of New York

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comment urges the Commission to impose stronger penalties on Facebook, Inc. ("Facebook"). The Commission is committed to protecting consumer privacy and believes the proposed order will substantially protect Facebook users and promote effective deterrence. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program, and to obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the proposed order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s); this requirement will prohibit the type of material, retroactive privacy changes that we allege Facebook made in December 2009. In addition, the proposed order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

Your comment also urges the Commission to impose monetary penalties on Facebook. The complaint in this matter alleges violations of Section 5 of the FTC Act, under which the

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

Commission does not have authority to seek civil penalties. However, as a result of the order, Facebook can be subject to civil penalties should it violate the terms of the order. It is our hope that the prospect of such substantial civil penalties – which Facebook does not face absent this order and did not face in December 2009 – will have a significant deterrent effect on the company.

In the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Deron Giscombe  
State of Connecticut

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You highlight your concern with what you describe as Facebook, Inc.'s ("Facebook") tracking of logged-out users across the internet. Although the proposed complaint does not contain allegations specifically addressing the tracking of logged-out users, it alleges that Facebook violated Section 5 of the FTC Act by falsely representing to users the protections provided by their privacy settings, by making other false promises regarding privacy, and by making material, retroactive changes to users' privacy settings without users' consent.

As a result of the broad allegations contained in the proposed complaint, the proposed order contains provisions designed to prevent Facebook from engaging in similar practices involving any Facebook product or service. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program, and obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Importantly, should Facebook violate any term of the final

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

You also raise concerns about data mining companies in general. The Commission agrees that the practices of data brokers deserve attention. These companies often collect and sell a wide variety of personal information in a manner that is not transparent to consumers. The Commission's recent final privacy report discussed this issue and made recommendations to improve the transparency of data broker practices, including giving consumers the option, where appropriate, to access and correct information about them held by data brokers.<sup>3</sup> The Commission believes that implementation of these recommendations will help address concerns, like yours, about data broker practices.

The Commission is committed to protecting consumer privacy and believes the order will substantially protect Facebook users. If you have specific questions about Facebook's current privacy practices, or any particular Facebook feature, you may wish to contact Facebook through its Help Center at <http://www.facebook.com/help/contactus.php?id=1735452327100000> for information. Further, in the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary

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<sup>3</sup> Fed. Trade Comm'n, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers* (March 2012), available at <http://www.ftc.gov/os/2012/03/120326privacyreport.pdf>.



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Jeffrey Harris  
State of New York

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Harris:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You suggest that Facebook, Inc. ("Facebook") should be restricted from using its users' personal information without first obtaining their consent. The proposed complaint contains allegations regarding a similar issue – the material, retroactive changes that Facebook made to users' privacy settings in December 2009 without their consent. Thus, the proposed order contains provisions that will require users' consent for certain sharing of their information going forward. In particular, the proposed order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). The order also prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Further, the proposed order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

You also raise concerns about Facebook's practice of tracking people across the internet.

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

Although the proposed complaint does not contain allegations specifically addressing the tracking of Facebook users across the web, it does allege that Facebook violated Section 5 of the FTC Act by falsely representing to users the protections provided by their privacy settings, by making other false promises regarding privacy, and by making material, retroactive changes to users' privacy settings without users' consent. Accordingly, the proposed order contains provisions, described above, designed to prevent Facebook from engaging in similar practices involving any Facebook product or service. These provisions are broad enough to address misconduct beyond that expressly challenged in the complaint.

You also suggest that the Commission provide consumers with a private cause of action to allow them to pursue private litigation related to the allegations made in the proposed complaint. Individuals have no right to sue to enforce Section 5 of the FTC Act, the law at issue in this case. Accordingly, the Commission does not issue right to sue letters in cases, such as this one, that seek to enforce Section 5. Please note that the proposed order is not intended to address any right that individuals may have to sue under other federal or state laws.

The Commission is committed to protecting consumer privacy and believes the order will substantially protect Facebook users. If you have specific questions about Facebook tracking users across the internet, you may wish to contact Facebook through its Help Center at <http://www.facebook.com/help/contactus.php?id=1735452327100000> for information. Further, in the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

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In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary

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Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Noreen Cooper Heavlin  
State of California

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Ms. Heavlin:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You highlight your concerns with Facebook's "in-mail" feature, which you state does not allow users to delete messages permanently, but only to archive them. You also highlight your concerns with Facebook's new "ticker" feature, which you state causes users' comments to be shared, without their consent, with other users who are not their friends. Although the proposed complaint does not contain allegations specifically addressing these particular features, it does allege that Facebook violated Section 5 of the FTC Act by falsely representing to users the protections provided by their privacy settings, by making other false promises regarding privacy, and by making material, retroactive changes to users' privacy settings without users' consent.

As a result of the broad allegations contained in the proposed complaint, the proposed order contains provisions designed to prevent Facebook from engaging in similar practices involving any Facebook product or service. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program, and obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Lastly, regarding the deletion of users' information, the

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address,

proposed order requires Facebook to (1) implement reasonable procedures to ensure that deleted data cannot be accessed by third parties after a reasonable period of time, not to exceed thirty days, following its deletion and (2) as part of its comprehensive privacy program, consider and address any reasonably foreseeable, material privacy risks related to its retention of users' covered information. Importantly, should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

The Commission is committed to protecting consumer privacy and believes the order will substantially protect Facebook users. If you have specific questions about Facebook's "in-mail" services or other features, you may wish to contact Facebook through its Help Center <http://www.facebook.com/help/contactus.php?id=1735452327100000> for information. Further, in the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary

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User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."





Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Chris Hoofnagle  
U.C. Berkeley School of Law  
State of California

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Hoofnagle:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook, Inc. ("Facebook") will advance this objective. In particular, the order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

You urge the Commission to require Facebook to disgorge – *i.e.*, pay to the federal government – any money that Facebook made as a result of the allegedly unlawful changes it made to the privacy of users' information in December 2009. In support, you note that the Commission obtained disgorgement in its 2004 settlement with Gateway Learning Corp.

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

(“Gateway”). Further, you urge that, absent such disgorgement, Facebook will have reaped gains from a “clearly unfair” business practice.

We appreciate your concern that the settlement does not require Facebook to give up any monetary gains from the conduct challenged in the Commission’s proposed complaint. In deciding whether to accept this or any other consent order that does not impose monetary relief, the Commission carefully considers a variety of factors, including the time and expense to litigate a dispute and the type of monetary relief authorized by law. The Commission also takes into account that, as soon as the order becomes final, the respondent will risk civil penalties of up to \$16,000 per violation per day, as noted above, for violations of the terms of the order. It is our hope that the prospect of substantial civil penalties – which Facebook does not face absent this order and did not face in 2009 – will have a significant deterrent effect on Facebook’s future conduct.

You also urge that the Commission modify the proposed order to require Facebook to restore the privacy settings that were in place “when the user enrolled” in the site, in order to help place users in the same position they would have occupied, absent the allegedly unlawful changes to users’ privacy that it made in December 2009. The Commission has considered the request to restore privacy settings to an earlier state, but is concerned that such a change could cause significant consumer confusion. The site has evolved substantially since December 2009 and it is not clear that users would understand how their settings had been altered. Accordingly, the Commission believes that under these circumstances the most sensible approach is to ensure that Facebook does not misrepresent the privacy of user information going forward, that Facebook obtains affirmative consent from users prior to sharing information in a manner that materially exceeds their privacy settings, and that it establishes and maintains a comprehensive privacy program.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Meg Roggensack  
Senior Advisor for Business and Human Rights  
Human Rights First  
100 Maryland Ave  
Washington, D.C. 20036

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Ms. Roggensack:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You urge the Commission to ensure that the proposed order is sufficient to protect consumers adequately. Specifically, you express concern that Facebook, Inc.'s ("Facebook's") users are not adequately informed or protected because its privacy policies are confusing and difficult to locate, it does not clearly notify users of privacy changes, and it may not adequately monitor the privacy practices of its service providers.

The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook will advance this objective. With respect to the clarity of Facebook's privacy policies, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>1</sup> In evaluating whether a company's representations may be deceptive, the Commission consistently considers the perspective of a "reasonable consumer." Therefore, a company makes confusing or contradictory statements to consumers at its peril. In this case, should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

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<sup>1</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

As for whether the order protects consumers in situations involving changes to privacy practices, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>2</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). We believe this will give consumers adequate notice of – and an opportunity to avoid – certain changes to their privacy.

Finally, the order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. We believe that the biennial privacy assessments will provide an effective means to monitor Facebook's compliance with the order, including with respect to its relationship with its service providers. Each assessment will involve a detailed, written evaluation of Facebook's privacy practices over a two-year period, and will require the auditor to certify that Facebook's privacy controls have adequately protected the privacy of "covered information" throughout the relevant two-year period. Thus, we believe these requirements will require Facebook to demonstrate its compliance with the order throughout the 20-year duration of the order.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary

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<sup>2</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Lisa Jarvis  
State of Ohio

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Ms. Jarvis:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You request that several requirements be added to the proposed order. Specifically, you request that Facebook, Inc. ("Facebook"): (1) be prohibited from sharing any user information without a user's opt-in consent; (2) restrict third-party Application ("App") developers on its site to those it reviews and approves; (3) turn on HTTPS by default; and (4) restrict the download of user photos and videos from its site to instances where a user gives permission for the download to occur.

The Commission is committed to safeguarding consumer privacy and believes that the proposed order will advance this objective. In particular, the order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

Section 5(l) of the FTC Act).

We believe these requirements will provide strong protections for Facebook users going forward. In particular, although the order does not require Facebook to obtain a user's opt-in consent for all sharing on the site, it does require Facebook to give advance notice of – and obtain users' affirmative express consent for – certain changes to their privacy, as described above. Moreover, the order's broad prohibitions on deception will help ensure that users receive accurate information regarding the privacy of their data. Similarly, although the proposed order does not impose specific requirements regarding Facebook's vetting of App developers, use of HTTPS, or policies regarding the downloading of user photos, it will require Facebook, as part of its comprehensive privacy program, to take reasonable and appropriate steps to consider and address all reasonably foreseeable, material risks to the privacy and confidentiality of covered information that could result in Facebook's unauthorized collection, use, or disclosure of covered information.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Bill Johnson  
Jubilee Association of Maryland

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Johnson:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

In your comment, you raise several concerns about Facebook's current practices. In particular, you express concern that Facebook is sharing your information without your knowledge or consent, notifying your friends of your birthday without your permission, and emailing you after you have attempted to close your account. With respect to your overarching concern that Facebook is sharing your information without your knowledge or consent, the proposed complaint contains broad allegations. Specifically, it alleges that Facebook violated Section 5 of the FTC Act by falsely representing to users the protections provided by their privacy settings, by making other false promises regarding privacy, and by making material, retroactive changes to users' privacy settings without users' consent.

As a result of the broad allegations contained in the proposed complaint, the proposed order contains provisions designed to prevent Facebook from engaging in similar practices involving any Facebook product or service. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program, and obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Importantly, should Facebook violate any term of the final

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or

order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act). Thus, the order provides substantial privacy protections to Facebook users going forward.

As for your concern regarding birthday notifications, although this conduct was not at issue in our investigation, we understand that Facebook gives users the option to hide their birthdate from other users, which would eliminate birthday notifications. Further, Facebook's practices regarding emailing its users was not at issue in our investigation, which focused on the sharing of user information with others. As noted, we believe the order addresses the conduct that was the subject of the investigation.

If you have specific questions about Facebook's current privacy practices, or any particular Facebook feature, you may wish to contact Facebook through its Help Center <http://www.facebook.com/help/contactus.php?id=1735452327100000> for information. Further, in the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary

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screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."





Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Pierce Jones  
State of Arizona

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Jones:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You suggest in your comment that Facebook, Inc. ("Facebook") should be prohibited from making any changes in its privacy practices unless Facebook receives its users' consent to make these changes. This is an issue raised in the proposed complaint, and the proposed order contains provisions designed to address it going forward. In particular, the proposed order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the proposed order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Further, the proposed order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Jones  
State of Georgia

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comment urges the Commission to impose stronger penalties on Facebook, Inc. ("Facebook"), by putting the company out of business. The Commission is committed to protecting consumer privacy and believes the proposed order will substantially protect Facebook users and promote effective deterrence. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program, and to obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the proposed order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s); this requirement will prohibit the type of material, retroactive privacy changes that we allege Facebook made in December 2009. In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day per day (pursuant to Section 5(l) of the FTC Act).

Thus, the relief contained in the order is significant, and will provide strong protections for consumers' privacy. The Commission believes that putting Facebook out of business would

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

be unwarranted in light of the benefits that Facebook provides to users and the facts and circumstances of the case. In the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Paula Kissick  
Commonwealth of Kentucky

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Ms. Kissick:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

The Commission appreciates your support of the proposed settlement. The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook, Inc. ("Facebook") will advance this objective. The order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

Accordingly, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Love  
Commonwealth of Pennsylvania

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your letter raises two concerns with the proposed order against Facebook, Inc. ("Facebook") which we address, in turn, below. First, you suggest that the Commission should impose monetary penalties on Facebook. The proposed complaint in this matter alleges violations of Section 5 of the FTC Act, under which the Commission does not have authority to seek civil penalties. However, as a result of the order, Facebook can be subject to civil penalties should it violate the terms of the order. The order requires Facebook to establish and maintain a comprehensive privacy program, and to obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s); this requirement will prohibit the type of material, retroactive privacy changes that we allege Facebook made in December 2009. In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any the term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act). It is our hope that the prospect of such substantial civil penalties – which Facebook does not face absent this order and did not face in December

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

2009 – will have a significant deterrent effect on the company.

Second, you raise concerns about the frequency of the audits required under the proposed order. We believe that the biennial privacy assessments will provide an important means to monitor Facebook’s compliance with the order. Each assessment will involve a detailed, written evaluation of Facebook’s privacy practices over a two-year period, and will require the auditor to certify that Facebook’s privacy controls have adequately protected the privacy of “covered information” throughout the relevant two-year period. In addition, we note that the audit is not the only check on Facebook’s conduct. We regularly monitor compliance with our orders, and if Facebook deceives consumers or does not provide sufficient control to its users, as required by the order, we can seek civil penalties, without waiting for the next audit.

The Commission is committed to protecting consumer privacy and believes the order will substantially protect Facebook users. If you have specific questions about how Facebook manages or retains your information or other features, you may wish to contact Facebook through its Help Center <http://www.facebook.com/help/contactus.php?id=1735452327100000> for information. Further, in the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC’s Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary





Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

David Lustig  
State of Washington

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Lustig:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

The Commission appreciates your support of the proposed settlement. The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook, Inc. ("Facebook") will further this objective. In particular, the order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

Accordingly, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of

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<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Mallet  
State of Washington

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You express concern that, unless certain changes are made to the proposed order, it may not adequately protect consumers. Specifically, you suggest that the proposed order should be modified such that (1) users can access and request deletion of any information that Facebook, Inc. ("Facebook") has about them and (2) users can access a complete record of all disclosures Facebook makes of their information. In addition, you urge that the biennial, third-party audits that the order requires Facebook to obtain should be random and unannounced, to prevent Facebook from trying to hide evidence of its noncompliance from the auditor.

The Commission is committed to safeguarding consumer privacy and believes that the proposed order will advance this objective. In particular, the order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

We believe these requirements will provide strong protections for Facebook users going forward, including by ensuring that they receive accurate information regarding the privacy of their data, and advance notice of – and an opportunity to avoid – certain changes to their privacy, as described above. Thus, Facebook will not be permitted to misrepresent the extent to which third parties may access user information.

Further, we believe that the biennial privacy assessments will provide an important means to monitor Facebook’s compliance with the order. Each assessment will involve a detailed, written evaluation of Facebook’s privacy practices over a two-year period, and will require the auditor to certify that Facebook’s privacy controls have adequately protected the privacy of “covered information” throughout the relevant two-year period. In addition, we note that the audit is not the only check on Facebook’s conduct. We regularly monitor compliance with our orders, and if Facebook deceives consumers or does not provide sufficient control to its users, as required by the order, we can seek civil penalties, without waiting for the next audit. These tools are designed to expose any issues that may exist with Facebook’s compliance with the order.

Lastly, regarding the deletion of users’ information, the proposed order will require Facebook to (1) implement reasonable procedures to ensure that deleted data cannot be accessed by third parties after a reasonable period of time, not to exceed thirty days, following its deletion and (2) as part of its comprehensive privacy program, consider and address any reasonably foreseeable, material privacy risks related to its retention of users’ covered information. In addition, the order prohibits Facebook from misrepresenting the privacy of users’ covered information, including, but not limited to, the extent to which information that users have deleted from their account is accessible to third parties. Thus, we believe that the order satisfactorily addresses users’ interests in deleting content.

In the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC’s Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Phillip Moelter  
State of Utah

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Moelter:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

The Commission appreciates your comment noting that the proposed settlement is "very cool." The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook, Inc. ("Facebook") will further this objective. In particular, the order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Kevin O'Neil  
State of California

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. O'Neil:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook, Inc. ("Facebook") will advance this objective. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the proposed order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the proposed order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

Your comment raises five key concerns, which we address, in turn, below:

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."



(1) You ask the Commission to require Facebook to restore its privacy settings to those available in December 2009.

The Commission has considered the request to restore privacy settings to an earlier state, but is concerned that such a change could cause significant consumer confusion. The site has evolved substantially since December 2009, and it is not clear that users would understand how their settings had been altered. Accordingly, the Commission believes that under these circumstances the most sensible approach is to ensure that Facebook does not misrepresent the privacy of user information going forward, that Facebook obtains affirmative consent from users prior to sharing information in a manner that materially exceeds their privacy settings, and that it establishes and maintains a comprehensive privacy program.

(2) You urge the Commission to prohibit Facebook from creating facial recognition profiles without users' express consent.

The comprehensive privacy program described above will require Facebook to implement practices that are appropriate to the sensitivity of the "covered information" in question, which is very broadly defined in the order and would include biometric data. Moreover, the biennial audits of its privacy practices will help ensure that Facebook lives up to these obligations. Although the order does not specifically require that Facebook obtain a user's consent for the creation of facial recognition data, the order's broad prohibition on deception is designed to ensure that Facebook will be truthful with users about such practices. Likewise, the affirmative express consent requirement, described above, is designed to ensure that Facebook upholds any privacy settings that it offers to users to protect such information.

(3) You ask the Commission to make public the assessments required by the proposed order to the maximum extent permitted by law.

The Commission recognizes the public interest in understanding and evaluating a company's compliance with the law. The public may seek access to the third-party assessments required by the order by making a request under the Freedom of Information Act.<sup>3</sup> However, the third-party assessments may contain trade secrets or other confidential commercial or financial information, or information about consumers or other third parties that the Commission may not publicly disclose.<sup>4</sup> Upon receipt of a request for confidential treatment of all or part of the third-party assessments, the Commission will conduct a careful review to determine whether confidential treatment is warranted. We will make every effort to be transparent regarding these assessments, consistent with the applicable law. If the FTC determines that the assessments have been frequently requested or are likely to be frequently requested because of their subject matter, the agency will post such portions as may be released to the public on the FTC's

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<sup>3</sup> 5 U.S.C. § 552 *et seq.*

<sup>4</sup> *See* 15 U.S.C. § 46(f) ("the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential"); Commission Rule of Practice § 4.10.

website.<sup>5</sup>

(4) You request that the Commission require Facebook to give its users the right to access the data Facebook keeps about them.

Although the order does not contain an access requirement, it does provide users with meaningful rights to control their data. In particular, regarding the deletion of users' information, the proposed order requires Facebook to (1) implement reasonable procedures to ensure that deleted data cannot be accessed by third parties after a reasonable period of time, not to exceed thirty days, following its deletion and (2) as part of its comprehensive privacy program, consider and address any reasonably foreseeable, material privacy risks related to its retention of users' covered information.

(5) Finally, you ask the Commission to prohibit Facebook from secretly tracking its users across the web.

Although the proposed complaint does not contain allegations specifically addressing the tracking of Facebook users across the web, it does allege that Facebook violated Section 5 of the FTC Act by falsely representing to users the protections provided by their privacy settings, by making other false promises regarding privacy, and by making material, retroactive changes to users' privacy settings without users' consent. Accordingly, the proposed order contains provisions, described above, designed to prevent Facebook from engaging in similar practices involving any Facebook product or service. These provisions are broad enough to address misconduct beyond that expressly challenged in the complaint.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. Finally, we thank you for your submission of your thoughtful papers regarding information use and marketing. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary

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<sup>5</sup> See 5 U.S.C. § 552(a)(2)(D).



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Powers  
Commonwealth of Massachusetts

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You highlight your concerns with Facebook's new "ticker" feature, which you state causes users' comments to be shared, without their consent, with other users who are not their friends. Although the proposed complaint does not contain allegations specifically addressing this particular feature, it does allege that Facebook violated Section 5 of the FTC Act by falsely representing to users the protections provided by their privacy settings, by making other false promises regarding privacy, and by making material, retroactive changes to users' privacy settings without users' consent.

As a result of the broad allegations contained in the proposed complaint, the proposed order contains provisions designed to prevent Facebook from engaging in similar practices involving any Facebook product or service. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program, and obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Importantly, should Facebook violate any term of the final

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through

order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

The Commission is committed to protecting consumer privacy and believes the order will substantially protect Facebook users. If you have specific questions about Facebook's "ticker" feature, or its implementation, you may wish to contact Facebook through its Help Center <http://www.facebook.com/help/contactus.php?id=1735452327100000> for information. Further, in the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary

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(g) above."



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Bob Ptaszek  
State of Illinois

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Ptaszek :

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You express concern with Facebook's failure to assist you in filtering pornographic SPAM. Although the proposed complaint does not contain allegations specifically addressing this issue, the Commission is committed to fighting SPAM, and encourages you to report any SPAM that you receive by forwarding the unwanted message, in its entirety, to the Commission at [spam@uce.gov](mailto:spam@uce.gov). Further, you may find the Commission's consumer education regarding SPAM to be useful, see [www.ftc.gov/bcp/edu/microsites/onguard/articles/spam.shtml](http://www.ftc.gov/bcp/edu/microsites/onguard/articles/spam.shtml).

Although the proposed complaint does not specifically address the issue you cite, it does allege that Facebook violated Section 5 of the FTC Act by falsely representing to users the protections provided by their privacy settings, by making other false promises regarding privacy, and by making material, retroactive changes to users' privacy settings without users' consent. As a result of the broad allegations contained in the proposed complaint, the proposed order contains provisions designed to prevent Facebook from engaging in similar practices involving any Facebook product or service.

The proposed order requires Facebook to establish and maintain a comprehensive privacy program, and obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

extent to which it maintains the privacy or security of “covered information.”<sup>2</sup> Importantly, should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act). Thus, the order provides substantial privacy protections to Facebook users. In the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC’s Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

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Donald S. Clark  
Secretary

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<sup>2</sup> “Covered information” is defined as “information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol (“IP”) address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above.”



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Max Rhinesmith  
State of Florida

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Rhinesmith:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

The Commission appreciates your support of the proposed settlement. The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook, Inc. ("Facebook") will further this objective. In particular, the order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

Accordingly, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary





Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Leif Rudd  
State of Colorado

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comment urges the Commission to impose stronger penalties on Facebook, Inc. ("Facebook"). You also suggest that Facebook be required to delete user information immediately upon a consumer's request.

The Commission is committed to protecting consumer privacy and believes the proposed order will substantially protect Facebook users and promote effective deterrence. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program, and to obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s); this requirement will prohibit the type of material, retroactive privacy changes that we allege Facebook made in December 2009. In addition, the proposed order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Lastly, regarding the deletion of users' information, the proposed order requires Facebook to (1) implement reasonable procedures to ensure that deleted data cannot be accessed by third parties after a reasonable period of time, not to exceed thirty days,

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

following its deletion and (2) as part of its comprehensive privacy program, consider and address any reasonably foreseeable, material privacy risks related to its retention of users' covered information. The Commission believes that these deletion requirements are appropriate given the facts and circumstances of the case, including technological limitations. Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(1) of the FTC Act).

Thus, the relief contained in the order is significant, and will provide strong protections for consumers' privacy. In the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Donna Saliter  
State of Connecticut

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Ms. Saliter:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You urge that Facebook, Inc. ("Facebook") be prohibited from asking its users for their date of birth, because the compromise of this information may lead to identity theft. The Commission has a long history of taking action to prevent identity theft and to help consumers respond to it when it does occur. *See* <http://www.ftc.gov/bcp/edu/microsites/idtheft/consumers/consumer-publications.html>. As part of its efforts, the Commission frequently has brought law enforcement actions where a company has failed to safeguard consumers' personal information.

In this instance, the Commission believes that the proposed order will provide consumers with strong protections going forward. Although the order will not prohibit Facebook from collecting date of birth information from its users, it will prohibit Facebook from misrepresenting the privacy or security of such information, and will require Facebook to take appropriate steps to protect the privacy of this information. In particular, the comprehensive privacy program mandated by the order will require Facebook to implement practices that are appropriate to the sensitivity of the information it collects. Moreover, the biennial privacy audits that the order requires Facebook to obtain from an independent third-party professional will help ensure that Facebook lives up to those obligations. Further, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)." "Covered Information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

restrictions imposed by the user's privacy setting(s). Nonpublic user information includes date of birth for those users who have restricted access to such information through their privacy settings. Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

In the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Michael Schiffer  
State of Illinois

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Schiffer:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You express concern that the proposed order may not adequately protect consumers seeking to control their information and to learn what information Facebook, Inc. ("Facebook") has shared about them and with whom. You also state that users should have the right to delete their information from the Facebook site, and that Facebook should be required to announce any privacy policy changes thirty days in advance of their implementation. Lastly, you state that the biennial, third-party audits that the order requires Facebook to obtain should be random and unannounced, to prevent Facebook from hiding evidence of its noncompliance from the auditor.

The Commission is committed to safeguarding consumer privacy and believes that the proposed order will further this objective. In particular, the order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

We believe these requirements provide strong protections for Facebook users going forward, including by ensuring that they receive accurate information regarding the privacy of their data, and advance notice of – and an opportunity to avoid – certain changes to their privacy, as described above. Likewise, we believe that the proposed order will address users’ ability to delete their information by, for example, requiring Facebook to (1) not misrepresent the privacy or security of “covered information” and (2) implement reasonable procedures to ensure that deleted data cannot be accessed by third parties after a reasonable period of time, not to exceed thirty days, following its deletion. Finally, we believe that the biennial privacy assessments will provide an important means to monitor Facebook’s compliance with the order. Each assessment will involve a detailed, written evaluation of Facebook’s privacy practices over a two-year period, and will require the auditor to certify that Facebook’s privacy controls have adequately protected the privacy of “covered information” throughout the relevant two-year period. In addition, we note that the audit is not the only check on Facebook’s conduct. We regularly monitor compliance with our orders, and if Facebook deceives consumers or does not provide sufficient control to its users, as required by the order, we can seek civil penalties, without waiting for the next audit. Thus, we believe these measures will require Facebook to demonstrate its compliance with the order throughout its 20-year duration.

In the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC’s Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

It helps the Commission’s analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Shaw  
State of Iowa

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comment urges the Commission to impose stronger penalties on Facebook, Inc. ("Facebook") by seizing the company's domain name and revoking its business licenses. The Commission is committed to protecting consumer privacy and believes the proposed order will substantially protect Facebook users and promote effective deterrence. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program, and to obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the proposed order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s); this requirement will prohibit the type of material, retroactive privacy changes that we allege Facebook made in December 2009. In addition, the proposed order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

Thus, the relief contained in the order is significant, and will provide strong protections

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

for consumers' privacy. The Commission believes that the additional relief you suggest would be particularly draconian and unwarranted in light of the benefits Facebook provides to users and the facts and circumstances of the case. In the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary





Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Ryan Smith  
State of California

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Smith:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comment urges the Commission to impose monetary penalties on Facebook, Inc. ("Facebook"). The complaint in this matter alleges violations of Section 5 of the FTC Act, under which the Commission does not have authority to seek civil penalties. However, as a result of the order, Facebook can be subject to civil penalties should it violate the terms of the order. The order requires Facebook to establish and maintain a comprehensive privacy program, and to obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s); this requirement will prohibit the type of material, retroactive privacy changes that we allege Facebook made in December 2009. In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

Act). It is our hope that the prospect of such substantial civil penalties – which Facebook does not face absent this order and did not face in December 2009 – will have a significant deterrent effect on the company.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Stuart Toland  
State of Michigan

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Toland:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You express strong concerns regarding Facebook, Inc.'s ("Facebook's") conduct and the extent to which Facebook may have shared your information with third parties. You state that Facebook's actions may have imposed financial costs on you and indicate that you may file a lawsuit. While we have no comment on your desire to file a lawsuit, we do believe that our proposed order contains strong measures to remedy the violations of law alleged in the FTC's complaint and to protect consumer privacy going forward.

In particular, the order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act). Thus the order provides substantial privacy protections to Facebook users going forward.

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

In the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Jonathan Traum  
Commonwealth of Massachusetts

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Traum:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comment urges the Commission to impose stronger penalties on Facebook, Inc. ("Facebook"). The Commission is committed to protecting consumer privacy and believes the proposed order will substantially protect Facebook users and promote effective deterrence. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program, and to obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the proposed order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s); this requirement will prohibit the type of material, retroactive privacy changes that we allege Facebook made in December 2009. In addition, the proposed order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act). Thus, the relief contained in the order is significant, and will provide strong protections for consumers' privacy.

In the future, if you have specific information suggesting that Facebook is not

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Todd Ward  
State of California

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Ward:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You express concern that Facebook requires users to provide their personal phone numbers to log into their accounts, which you state violates privacy and could undercut the protections of the Commission's National Do Not Call Registry. You also state your general concern that the order may not sufficiently protect consumers. Although the proposed complaint does not contain allegations specifically addressing Facebook's collection or handling of users' phone numbers, it does allege that Facebook violated Section 5 of the FTC Act by falsely representing to users the protections provided by their privacy settings, by making other false promises regarding privacy, and by making material, retroactive changes to users' privacy settings without users' consent.

As a result of the broad allegations contained in the proposed complaint, the proposed order contains provisions designed to prevent Facebook from engaging in similar practices involving any current or future Facebook product or service. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program, and obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Importantly, should Facebook violate any term

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or

of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation (pursuant to Section 5(l) of the FTC Act). Thus, the order provides substantial privacy protections to Facebook users going forward.

In the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftc.complaintassistant.gov](http://www.ftc.complaintassistant.gov). In addition, if you believe you have received a phone call that you believe was prohibited by your participation in the Do Not Call Registry, you may file a complaint online at <https://complaints.donotcall.gov/complaint/complaintcheck.aspx?panel=2>.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary

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screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."





Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Welton  
State of California

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

You highlight your concerns with Facebook's implementation of its "subscribe" feature, which you state will allow users who are not your "friends" on the site see your friends' comments on your posts, and your posts themselves, in their news feed. As you are aware, when you share content with your "friends" on the site, those "friends" may still share your content with other users who are not your "friends." Although the proposed complaint does not contain allegations specifically addressing this feature, it does allege that Facebook violated Section 5 of the FTC Act by falsely representing to users the protections provided by their privacy settings, by making other false promises regarding privacy, and by making material, retroactive changes to users' privacy settings without users' consent.

As a result of the broad allegations contained in the proposed complaint, the proposed order contains provisions designed to prevent Facebook from engaging in similar practices involving any Facebook product or service. In particular, the proposed order requires Facebook to establish and maintain a comprehensive privacy program, and obtain biennial privacy audits by an independent third-party professional for twenty years. Further, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Under these provisions, Facebook may not misrepresent the

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or

operation of its subscribe feature or the extent to which a user's friends may share the user's information with other users. Importantly, should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

The Commission is committed to protecting consumer privacy and believes the order will substantially protect Facebook users. If you have specific questions about the "subscribe" feature or its implementation, you may wish to contact Facebook through its Help Center <http://www.facebook.com/help/contactus.php?id=1735452327100000> for information. Further, in the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary

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screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Jessica White  
State of Florida

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Ms. White:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

The Commission appreciates your support of the proposed settlement. The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook, Inc. ("Facebook") will further this objective. In particular, the order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

Accordingly, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Wiebe  
Outside of U.S.

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Sir or Madam:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

The Commission appreciates your support of the proposed settlement. The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook, Inc. ("Facebook") will further this objective. In particular, the order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

Accordingly, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of

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sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

David Wise  
State of Utah

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Wise:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comment notes that Facebook provides a valuable service. We agree. The intent of the order is to allow Facebook to continue to innovate, but in a truthful manner, consistent with the privacy choices its users have made.

The complaint alleges that Facebook shared information in ways that were inconsistent with its statements to consumers. Thus, the complaint alleges that Facebook engaged in unfair and deceptive acts or practices in violation of Section 5 of the FTC Act. In particular, we allege that Facebook deceived consumers and subjected them to unfair treatment when it made material, retroactive changes to the privacy of their information, without their consent. Further, we allege that Facebook deceived consumers regarding numerous other privacy practices, including the protections provided by their privacy settings, access to their information by third-party Apps, sharing of users' information with advertisers, and access to users' information following deletion of their Facebook accounts. The Commission is duly authorized by Congress to enforce Section 5 of the FTC Act to address such practices, and its action against Facebook is consistent with this authority. *See* 15 U.S.C. §§ 45(a)(2), 45(b); *see also* *FTC v. American National Cellular, Inc.*, 810 F.2d 1511 (9th Cir. 1987). Our proposed order aims to address the alleged unlawful conduct in this case.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary





Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

David Wojciechowski  
State of Michigan

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Mr. Wojciechowski:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

The Commission appreciates your support of the proposed settlement. The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook, Inc. ("Facebook") will further this objective. In particular, the order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the order requires that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

The Commission is committed to protecting consumer privacy and believes the order will substantially protect Facebook users. If you have specific questions about your Facebook account, you may wish to contact Facebook through its Help Center, [https://www.facebook.com/help/contact\\_us.php?id=173545232710000](https://www.facebook.com/help/contact_us.php?id=173545232710000), for information on this subject. Further, in the future, if you have specific information suggesting that Facebook is not maintaining reasonable privacy or security for user information, you may contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov).

Accordingly, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 27, 2012

Pam Dixon  
Executive Director  
World Privacy Forum  
[www.worldprivacyforum.org](http://www.worldprivacyforum.org)

*Re: In the Matter of Facebook Inc., File No. 0923184*

Dear Ms. Dixon:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

The Commission appreciates your support of the proposed settlement, as well as your thoughtful suggestions concerning the proposed order, discussed below. The Commission is committed to safeguarding consumer privacy and believes that the proposed order with Facebook, Inc. ("Facebook") will advance this objective. In particular, the order requires Facebook to establish and maintain a comprehensive privacy program for all its products and services, and obtain biennial privacy audits by an independent third-party professional. Further, the order requires Facebook to give clear and prominent notice and obtain a user's affirmative express consent prior to any sharing of the user's "nonpublic user information"<sup>1</sup> with any third party, which materially exceeds the restrictions imposed by the user's privacy setting(s). In addition, the order prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of "covered information."<sup>2</sup> Should Facebook violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

Your comment focuses on seven key concerns, which we address, in turn, below.

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<sup>1</sup> "Nonpublic user information" is defined as "covered information that is restricted by one or more privacy setting(s)."

<sup>2</sup> "Covered information" is defined as "information from or about an individual consumer, including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above."

(1) You suggest that the order’s definition of “covered information” should be amended to include “financial information” among its examples.

The order’s definition of “covered information” encompasses any “information from or about an individual consumer.” The scope of this term is in no way limited to the examples set forth in the definition. Thus, the definition of “covered information” would cover a user’s financial information in full. Accordingly, the Commission believes that the order, as written, would fully protect consumers’ financial information.

(2) You ask that the settlement require Facebook to host a “dedicated, formal and prominent” consumer privacy complaint mechanism for its users.

Although the proposed order does not specifically require Facebook to maintain such a mechanism, we note that the comprehensive privacy program, described above, would require Facebook to identify and implement reasonable controls and procedures to address all reasonably foreseeable, material risks that could result in the company’s unauthorized collection, use, or disclosure of users’ covered information, and to assess the sufficiency of any safeguards in place to control these risks. Accordingly, Facebook must adopt reasonable measures to learn of risks to covered information and weaknesses in its existing safeguards, including any risks and weaknesses that its users identify through complaints made to the company.

(3) You request that the Commission lengthen the time period for which the order requires Facebook to retain consumer complaints from six months to two years.

In designing the recordkeeping requirements that accompany an order, the Commission must balance a number of considerations, including its need for the records, any burden imposed on the company by the requirement, and the privacy interests of any consumer whose records are to be retained. In light of these considerations, the Commission believes that the proposed recordkeeping requirements are appropriate.

(4) You urge the Commission to require Facebook to disgorge – *i.e.*, pay to the federal government – any money that the company made as a result of its allegedly unlawful practices. In support, you note that the Commission obtained disgorgement in its settlement with Gateway Learning Corp. (“Gateway”).

We appreciate your concern that the settlement does not require Facebook to give up any monetary gains from the conduct challenged in the Commission’s proposed complaint. In deciding whether to accept this or any other consent order that does not impose monetary relief, the Commission carefully considers a variety of factors, including the time and expense to litigate a dispute and the type of monetary relief authorized by law. The Commission also takes into account that, as soon as the order becomes final, the respondent will risk civil penalties of up to \$16,000 per violation per day, as noted about, for violations of the terms of the order. It is our hope that the prospect of substantial civil penalties – which Facebook does not face absent this order and did not face in 2009 – will have a significant deterrent effect on Facebook’s future conduct.

(5) You ask that the Commission return its user' profile settings to what they were prior to the privacy changes that Facebook made in December 2009, which the complaint alleges were unlawful.

The Commission has considered the request to restore privacy settings to an earlier state, but is concerned that such a change could cause significant consumer confusion. The site has evolved substantially since December 2009, and it is not clear that users would understand how their settings had been altered. Accordingly, the Commission believes that under these circumstances the most sensible approach is to ensure that Facebook does not misrepresent the privacy of user information going forward, that Facebook obtains affirmative consent from users prior to sharing information in a manner that materially exceeds their privacy settings, and that it establishes and maintains a comprehensive privacy program.

(6) Your comment notes that the proposed settlement does not refer to Facebook Payments, which you identify as an important Facebook subsidiary. You express concern that, if Facebook Payments is not mentioned explicitly, the order may not apply to it, or to any financial data that consumers provide to Facebook through it.

The Commission notes that the order defines "Respondent" to include not only Facebook, but also Facebook acting "through any corporation, subsidiary, division, website, or other device." As a result, key injunctive provisions in the order will expressly apply to such subsidiaries. For example, the order's prohibition on misrepresentations regarding the extent to which Facebook maintains the privacy or security of "covered information," described above, would apply, as would the requirement that Facebook give clear and prominent notice and obtain a user's affirmative express consent prior to certain sharing of the user's "nonpublic user information." In addition, we note that, to the extent that Facebook handles or controls "covered information" that it obtains from Facebook Payments or another subsidiary, Facebook must include protections for the data in the comprehensive privacy program that the order requires.

(7) You state that the biennial audits that the order requires Facebook to obtain from a qualified, independent third party should be made "affirmatively public without undue redaction," and not just available in response to Freedom of Information Act ("FOIA") requests, "which are subject to numerous exceptions."

The Commission recognizes the public interest in understanding and evaluating a company's compliance with the law. The public may seek access to the third-party assessments required by the order by making a request under the FOIA.<sup>3</sup> However, the third-party assessments may contain trade secrets or other confidential commercial or financial information, or information about consumers or other third parties that the Commission may not publicly disclose.<sup>4</sup> Upon receipt of a request for confidential treatment of all or part of the third-party assessments, the Commission will conduct a careful review to determine whether confidential

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<sup>3</sup> 5 U.S.C. § 552 *et seq.*

<sup>4</sup> See FOIA, 5 U.S.C. § 552 *et seq.*, and Commission Rule 4.10; see also Section 6(f) of the FTC Act, 15 U.S.C. § 46(f).

treatment is warranted. We will make every effort to be transparent regarding these assessments, consistent with applicable law. If the FTC determines that the assessments have been frequently requested or are likely to be frequently requested because of their subject matter, the agency will post such portions as may be released to the public on the FTC's website.<sup>5</sup>

For the reasons discussed above, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Rosch dissenting and Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary

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<sup>5</sup> See 5 U.S.C. § 552(a)(2)(D).