



Virginia Business Lawyers

Google and Facebook Hit Privacy Wall

By: Thomas L. Bowden, Sr. *Wednesday, July 6th, 2011*

Oh when will they ever learn?

([Pete Seeger](#) – [Where Have All the Flowers Gone](#), Copyright 1961 (renewed) Fall River Music Inc.

It seems that internet and social media titans [Google](#) and [Facebook](#) have once again, to no one's surprise, gotten themselves in some hot water with the [FTC](#) and some privacy watchdogs again. They just can't seem to get the hang of this "privacy" thing. Hence the start of this post.

Google has settled with the FTC over a little faux pas concerning its fabulously fizzled [BUZZ](#) service. Trying to combine the best of Facebook and Twitter, they announced BUZZ with typical Google style and fanfare, and just to be hip, they phrased their sign up options thusly:

"Sweet! Check out Buzz"

Or

"Nah, go to my inbox"

Minor problem: The "Sweet!" option gave less than a full and transparent statement of the degree to which users' information would become public. In essence, Buzz capitalizes on all those emails you never deleted, scanning them for connections that you have or might want to make, or something like that. In other words, they use your private information to build a public social network. I'm sure they studied the 2009 Facebook Privacy policy fiasco in detail, but apparently concluded that Google and BUZZ were somehow "different" as in not subject to the same rules and regulations as their competitors. When folks started to realize that their private information was being shared far more than the casual "Sweet – Check out Buzz" message indicated, they were less than amused, but then, as they dug further they discovered that checking the "Nah" box did not have the effect one might have expected either. Notwithstanding a clearly checked "Nah" box, Google dutifully went right ahead and collected all sorts of information about the non-subscribers, perhaps with the thought that they would be pleased to see all that information stored and ready to go once they finally decided to join the flood of ecstatic BUZZ users, now measuring in the hundreds, or even thousands.

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For its thoughtful and condescending violation of its users' privacy expectations, Google was invited to discuss their philosophy of privacy with the FTC in court, leading to a proposed consent order that requires Google to submit to rigorous FTC audits for the next 20 years.

Facebook's latest gaffe was to introduce its facial recognition capability as an "Opt Out" feature in June. Described by PC Magazine as "Creepy" and "terrifying," Facebook's tool works in the background scanning and analyzing the 200 million or more pictures uploaded every day by its 600 million users. By comparing faces in the pictures in its database with pictures in which your friends have "tagged" you, or you have tagged yourself, Facebook develops an incredibly powerful capability to analyze your movements, your activities, and your associations. Of course, by participating in Facebook in the first place, you already give them a lot of raw material, but this new tool goes one step farther. And it's a big step.

Even if you opt out, how can you know whether Mr. Zuckerman's elves won't continue to analyze your photos with this capability. Or, having opted out, what if being tagged in one photo with one "suspect" and in another with a different "suspect" might provide a link that law enforcement officials would just about do anything to know. Did I say 'suspect'? Sorry – I meant "subject." Facebook is not a government agency of course. But then, what, if any, new surveillance capability has not eventually been commandeered by law enforcement, with or without a warrant? I'm not sure I would want to count on Facebook not to give up the goods if the [FBI](#) or Homeland Security brought enough pressure to bear. In fact, their privacy policy pretty much makes it a foregone conclusion:

6. How We Share Information

Facebook is about sharing information with others — friends and people in your communities — while providing you with privacy settings that you can use to restrict other users from accessing some of your information. We share your information with third parties when we believe the sharing is permitted by you, reasonably necessary to offer our services, or when legally required to do so. For example:

.....

To respond to legal requests and prevent harm. We may disclose information pursuant to subpoenas, court orders, or other requests (including criminal and civil matters) if we have a good faith belief that the response is required by law. This may include respecting requests from jurisdictions outside of the United States where we have a good faith belief that the response is required by law under the local laws in that jurisdiction, apply to users from that jurisdiction, and are consistent with generally accepted international standards. We may also share information when we have a good faith belief it is necessary to prevent fraud or other illegal activity, to prevent imminent bodily harm, or to protect ourselves and you from people violating our Statement of Rights and Responsibilities. This may include sharing information with other companies, lawyers, courts or other government entities.

Time will tell whether Facebook and Google use these powerful capabilities for good or evil, but they are here to stay, and growing everyday. Even if there is little you can do to block their intrusive reach, you owe it to yourself to actually read the privacy policies of Facebook and any other site to which you submit personal information.

How carefully are you reading the Terms of Service and Privacy Policies of the online sites you frequent?

Related articles

- [The FTC's Proposed Settlement With Google Over Buzz Privacy Breaches](#) (ericgoldman.org)

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