

**Before the
Federal Trade Commission
Washington, DC**

In the Matter of)
)
Facebook, Inc.)
)
_____)

**Supplemental Materials in Support of Pending Complaint and Request for
Injunction, Request for Investigation and for Other Relief**

INTRODUCTION

1. On December 17, 2009, the Electronic Privacy Information Center (“EPIC”), the American Library Association (“ALA”), The Center for Digital Democracy (“CDD”), the Consumer Federation of America (“CFA”), FoolProof Financial Education, Patient Privacy Rights, Privacy Activism, Privacy Rights Now Coalition, The Privacy Rights Clearinghouse, and the U.S. Bill of Rights Foundation (the “Petitioners”), filed a Complaint with the Federal Trade Commission (“FTC” or “Commission”) requesting an injunction and investigation.¹ The Complaint concerned the practices of Facebook.com, specifically the recent changes to the company’s privacy settings and privacy policy. As Petitioners stated in the original complaint:

This complaint concerns material changes to privacy settings made by Facebook, the largest social network service in the United States, which adversely impact users of the Facebook service. Facebook’s changes to users’ privacy settings disclose personal information to the public that was previously restricted. Facebook’s changes to users’ privacy settings also disclose personal information to third parties that was previously not available. These changes violate user expectations, diminish user privacy, and contradict Facebook’s own representations.²

2. The Petitioners stated that “Facebook’s representations regarding its changes to users’ privacy settings and associated policies are misleading and fail to provide users clear

¹ EPIC et al FTC Complaint, *In re Facebook* (Dec. 17, 2009), available at <http://epic.org/privacy/inrefacebook/EPIC-FacebookComplaint.pdf>.

² *Id.* at 1.

and necessary privacy protections.”³ Furthermore, “[w]ide opposition by users, commentators, and advocates to the changes to Facebook’s privacy settings and associated policies illustrate that the changes injure Facebook users and harm the public interest.”⁴

3. The Petitioners described the importance of privacy protection, the impact of Facebook in the social networking context, the privacy practices of Facebook, user opposition to the recent changes in Facebook’s privacy settings and privacy policy, the violations of Section 5 of the FTC Act, including Facebook’s deceptive and unfair trade practices, as well as the consumer injury that would result from continuing to expose user information to the public and to third-party application developers. The Petitioners concluded:

Facebook’s actions injure users throughout the United States by invading their privacy; allowing for disclosure and use of information in ways and for purposes other than those consented to or relied upon by such users; causing them to believe falsely that they have full control over the use of their information; and undermining the ability of users to avail themselves of the privacy protections promised by the company.⁵

4. The Petitioners requested the Commission to provide relief and specifically to:

Compel Facebook to restore its previous privacy settings allowing users to choose whether to publicly disclose personal information, including name, current city, and friends;

Compel Facebook to restore its previous privacy setting allowing users to fully opt out of revealing information to third-party developers;

Compel Facebook to make its data collection practices clearer and more comprehensible Facebook users meaningful control over personal information provided by Facebook to advertisers and developers; and

Provide such other relief as the Commission finds necessary and appropriate.⁶

³ *Id.* at 28.

⁴ *Id.*

⁵ *Id.* at 25.

⁶ *Id.* at 28.

5. The Petitioners stated, “Absent injunctive relief by the Commission, Facebook is likely to continue its unfair and deceptive business practices and harm the public interest.”⁷ Further, “Absent injunctive relief by the Commission, the privacy safeguards for consumers engaging in online commerce and new social network services will be significantly diminished.”⁸
6. EPIC received a letter from Mr. David Vladeck, head of the FTC Bureau of Consumer Protection, regarding Petitioners’ complaint on January 14, 2010. In that letter, Mr. Vladeck stated, “Your most recent complaint raises issues of particular interest for us at this time.”
7. In the original complaint, Petitioners reserved the right to “supplement this petition as other information relevant to this proceeding becomes available.”⁹
8. This supplement to the original Complaint presents new evidence that Facebook is engaging in unfair and deceptive trade practices.

ADDITIONAL FACTS

Facebook’s Public Statements Demonstrate Unfair and Deceptive Trade Practices.

9. Over 100 million Americans signed up for Facebook accounts while the default setting for user information was private.¹⁰
10. On January 9, 2010, Facebook founder and CEO Mark Zuckerberg announced that Facebook had determined that privacy is no longer a “social norm.” He further said:

We view it as our role in the system to constantly be innovating and be updating what our system is to reflect what the current social norms are.¹¹

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 29.

¹⁰ Facebook, *Statistics*, <http://www.facebook.com/press/info.php?statistics> (last visited Dec. 14, 2009); see also Eric Eldon, *Facebook Reaches 100 Million Monthly Active Users in the United States*, InsideFacebook.com, Dec. 7, 2009, <http://www.insidefacebook.com/2009/12/07/facebook-reaches-100-million-monthly-active-users-in-the-united-states> (last visited Dec. 15, 2009).

¹¹ Marshall Kirkpatrick, *Facebook’s Zuckerberg Says the Age of Privacy is Over*, N.Y. Times (Jan. 10, 2010), available at <http://www.nytimes.com/external/readwriteweb/2010/01/10/10readwriteweb-facebooks-zuckerberg-says-the-age-of-privac-82963.html?pagewanted=1>.

11. In a recently published interview, an anonymous Facebook employee described Facebook's ability to access users' account information. She stated:

See, the thing is — and I don't know how much you know about it — it's all stored in a database on the backend. Literally everything. Your messages are stored in a database, whether deleted or not. So we can just query the database, and easily look at it without every logging into your account. That's what most people don't understand.¹²

12. The employee went on to describe Facebook's data retention practices: "We track everything. Every photo you view, every person you're tagged with, every wall-post you make, and so forth."¹³

Facebook's Policies and Practices for Access to Users' Passwords are Unfair and Deceptive.

13. As detailed in Petitioners' original Complaint, Facebook transfers users' data to third-party application developers without the knowledge or consent of the user.¹⁴

14. Recently, two third-party developers have launched applications to help users deactivate their Facebook accounts. Seppukoo.com, a site produced by an Italian group called Les Liens Invisibles, helps Facebook users commit "virtual suicide."¹⁵ A second site, called the Web 2.0 Suicide Machine, performs a similar function with Facebook and other social networking sites.¹⁶

15. Both of these applications allow users to input login credentials, at which point the sites log in to the users' accounts and make various changes and posts to users' profiles before disabling the accounts.¹⁷

16. These applications are a way for Facebook users to (1) deactivate their accounts and (2) publicly express their decision to close a Facebook account. As such, they allow a more robust expression of consumer preference than Facebook otherwise permits.

¹² Phil Wong, *Conversation About the Internet #5: Anonymous Facebook Employee*, The Rumpus (Jan. 11, 2010), <http://therumpus.net/2010/01/conversations-about-the-internet-5-anonymous-facebook-employee/?full=yes>.

¹³ *Id.*

¹⁴ Petitioners' FTC Complaint, *supra* note 1.

¹⁵ Seppukoo, *About*, <http://www.seppukoo.com/about> (last visited Jan. 12, 2010).

¹⁶ Web 2.0 Suicide Machine, <http://suicidemachine.org> (last visited Jan. 12, 2010).

¹⁷ Seppukoo, *How it Works*, <http://www.seppukoo.com/how-it-works> (last visited Jan. 12, 2010); Web 2.0 Suicide Machine, *FAQ*, <http://suicidemachine.org/#faq> (last visited Jan. 12, 2010).

17. In December 2009, Facebook took legal and technical action against these third-party account-deactivation sites, claiming that their operation was in violation of Facebook's Statement of Rights and Responsibilities. Facebook stated that these Terms exist to protect "its users' privacy and the security of their data."¹⁸
18. However, Facebook requests the email passwords of Facebook users to enable the transfer of users' personal information to Facebook.¹⁹ Facebook also encourages users to provide screen names and passwords to Facebook for AOL Instant Messenger, ICQ Chat, and Windows Live Messenger.²⁰
19. Facebook's concern about "its users' privacy and the security of their data" is not uniform; it favors Facebook's commercial interests over the privacy and security of users.

**Facebook's Representations Regarding Facebook Connect
are Unfair and Deceptive Trade Practices.**

20. Facebook Connect is a way for Facebook users to log in to third party websites using their Facebook credentials.²¹
21. After Facebook users login to a third-party Facebook Connect site, developers can access a user's identity, including names, photos, and events; social graphs, including friends and connections; and stream, including activity within Facebook.²²
22. On December 21, 2009, Caroline McCarthy of CNET News wrote an article regarding the privacy controls for Facebook Connect. She stated, "you can't modify privacy controls for a Facebook Connect app."²³ McCarthy wrote that Facebook Connect activity is automatically posted to a user's wall and news feed, without the ability to control who views the information.²⁴

¹⁸ Letter from Leota Bates on behalf of Facebook to Seppukoo.com (Dec. 16, 2009), *available at* http://www.seppukoo.com/docs/seppukoo_cease_desist.pdf.

¹⁹ Facebook, *Find your Friends on Facebook*, <http://www.facebook.com/find-friends/> (last visited Jan. 12, 2010).

²⁰ *Id.*

²¹ Facebook Connect, <http://developers.facebook.com/connect.php>.

²² *Id.*

²³ Caroline McCarthy, *Big Facebook Privacy Void: Controls on Connect*, CNET News (Dec. 21, 2009), http://news.cnet.com/8301-13577_3-10419950-36.html.

²⁴ *Id.*

23. Facebook has offered conflicting accounts of the amount of control users have over their information, with respect to wall posts.
24. Facebook claims the recent privacy changes offer “even greater control over the information you share.”²⁵ Furthermore, Facebook stated that users will have control over *everything* they post on their walls: “Once you’ve completed the transition tool, you’ll be able to choose an audience for each piece of content you post at the time that you post it.”²⁶
25. On December 22, 2009, after discussions with Facebook, McCarthy wrote a second article about the Facebook Connect privacy controls.²⁷ The article clarifies that even after Facebook’s privacy changes, the privacy settings for Facebook Connect do not allow for granular control of such activity, as is the case with other types of wall posts. Users must either choose to share Facebook Connect activity with everyone or with no one:

Everything on the wall [is] treated as a single unit. Except not quite: With status messages and content posted directly through Facebook, as part of Facebook’s new privacy controls there’s now a drop-down menu that lets me choose exactly who can see that message – the public Web, friends of friends, only my friends or “networks,” or stratified groups of friends. . . . For third-party apps, I’m not so lucky. But when it comes to information that’s local, sensitive, or otherwise private, I’d like to be able to restrict it.²⁸

Facebook’s Representations Regarding its iPhone Syncing Application are Unfair and Deceptive Trade Practices.

26. Facebook publishes an application for the iPhone that transfers data between a user’s iPhone and Facebook. The application has over 23.5 million active users monthly, and more than one million active users daily.²⁹

²⁵ Ruchi Sanghvi, Facebook Blog Post, *New Tools to Control your Experience* (Dec. 9, 2009), <http://blog.facebook.com/blog.php?post=196629387130>.

²⁶ *Id.*

²⁷ Caroline McCarthy, *Facebook App Privacy: It’s Complicated*, CNET News (Dec. 22, 2009), http://news.cnet.com/8301-13577_3-10420499-36.html.

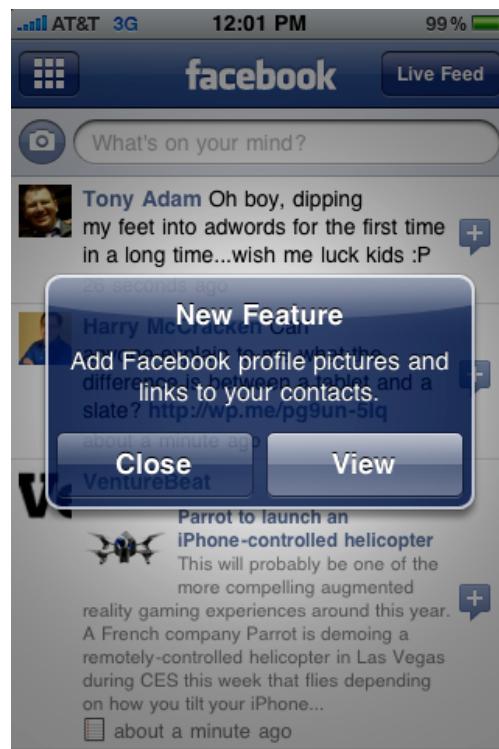
²⁸ *Id.*

²⁹ Nick O’Neill, *New Facebook iPhone Application Launches, Adds Notifications and Contact Sync*, All Facebook (Jan. 6, 2010), <http://www.allfacebook.com/2010/01/new-facebook-iphone-application-launches-adds-notifications-and-contact-sync/>.

27. On January 6, 2010, Facebook introduced Version 3.1 of its iPhone application. The application contains a function that

examines the contacts that you already have on your iPhone, trying to match it to a Facebook user. If it finds a match it pulls down that person's profile picture, making [that] his or her photo on your iPhone. It also adds other information, such as a link that takes you to that person's profile in Facebook's app.³⁰

28. When the user first runs the updated application, a notification appears, alerting the user to the sync function. This notification does not disclose to the user that it will transfer the user's iPhone contact list to Facebook:

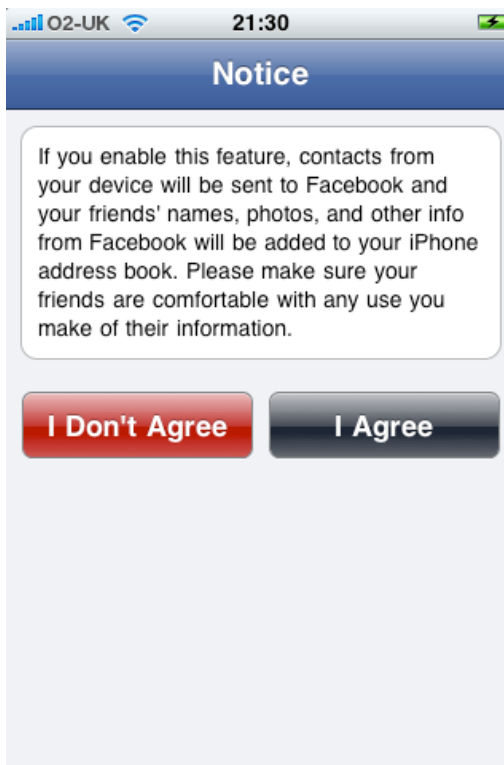


29. If the user clicks the “View” button, the next screen, allowing the option to activate the sync functionality, also fails to disclose this transfer of information:

³⁰ Harrison Hoffman, *Facebook iPhone app gets address sync, push*, CNET News (Jan 6, 2010), available at http://news.cnet.com/8301-13515_3-10427058-26.html.



30. Only after the user has elected to activate the syncing functionality does the application finally disclose the transfer:



31. This notice does not provide information on how contact information will be used or retained by Facebook.
32. The application transfers information without the knowledge or consent of the phone contacts or Facebook users whose information is being synced. The application will sync Facebook information even if a phone contact is not Facebook friends with the iPhone owner. CNET reports, “if one of your phone contacts is not your Facebook friend, it will (in most cases) still pull down their info from Facebook if it finds a match.”³¹
33. In the process of syncing iPhone contacts with Facebook users, users have reported that the application has matched the wrong Facebook profile picture with a phone contact. In other words, random Facebook users’ profile pictures are being downloaded to an iPhone device without their knowledge. In a review of Facebook for iPhone on the application’s Facebook fan page, user Ingvar Moseley complains, “Im getting random peoples pictures in my address book. Im not even friends with some of them.”³² Another user, Dave Lamothe-Gagnon commented, “I just sync and a certain number of pictures appeared in my contact list that don’t match the actual person!”³³
34. Graphic designer and Apple enthusiast Aaron Hirst, who runs technology website 148apps.com, describes the functionality of the new sync function: “This new sync function allows you to add both profile pictures and link data (which already resides on Facebook) to contacts that already exist on your iPhone. In order to do this the app will take contact information from your iPhone, and upload it to Facebook”³⁴
35. One software developer, Kien Tran explains how the transfers of data actually occur from a user’s iPhone to Facebook, when using the application’s sync function:

Facebook simply takes your entire contact list and matches it first name-last name to your Facebook contacts. . . . The app . . . compare[s] registered phone numbers in your contact lists, even if the name is totally wrong. What this means is it will link contacts based on phone numbers registered with Facebook mobile, *even if you are not friends!* So beware

³¹ *Id.*

³² Facebook for iPhone Reviews, http://www.facebook.com/iphone#/iphone?v=app_6261817190.

³³ *Id.*

³⁴ Aaron Hirst, *Facebook 3.1 Arrives for iPhone. Brings Push Notifications and Contact Sync.*, 148apps.com (Jan. 6, 2010), <http://www.148apps.com/news/facebook-31-arrives-iphone-brings-push-notifications-contact-sync/>.

giving out fake or wrong numbers because you can link to someone else!³⁵

36. One user described the questionable benefit of syncing with non-Facebook friends:

Anyone else noticed that it ran the rest of your phone numbers through facebook and associated them with a profile, picture, and alt-numbers, even if you're not their friend? I didn't mind it. Helped me get the names and photos of girls I had hit on years ago³⁶

37. Blogger Drake Martinet posted about the sync function and the implications of the warning notice iPhone users must agree to before enabling the function:

Syncing grants Facebook full access to your address book. If you already sync your Gmail contacts with your iPhone address book, that means you will also be handing over the email addresses and names of everyone you have ever emailed.

. . . .

They don't tell you what they might be doing with all this new data, just that you should make sure its cool with your friends. That's like asking your friend to lend someone they don't know their car. But don't worry, this guy is cool. He'll either wash it for you or **sell it**.³⁷

38. Social media expert Dean Browell discussed his problem with Facebook's lack of transparency and the inadequacy of the application's warning notice:

That warning is where I have a problem. While I know the concept of "syncing" means I'll have to share information between at least two points what this warning suggests, without any explanation, is that my Contacts on my iPhone will be sent up to Facebook. It doesn't just say, "your contacts who you are currently friends with" but broadly just says, "contacts from your device." That's a little odd and potentially disconcerting. If they aren't my friends on Facebook but I have them in

³⁵ Kien Tran, Blog Post, *Facebook iPhone App 3.1 Push Notification, Contact Syncing* (Jan. 6, 2010), <http://blog.kientran.com/facebook-iphone-app-31-push-notification-cont.> .

³⁶ Rosa Golijan, *Facebook 3.1 iPhone App Brings Push Notifications and Contact Sync*, Gizmodo (Jan. 6, 2010), <http://gizmodo.com/5441863/facebook-31-iphone-app-brings-push-notifications-and-contact-sync.>

³⁷ Drake Martinet, Blog Post: "What Fresh New Hell is This? – Facebook Adds Pickpocketing Feature to its iPhone App" (Jan. 7, 2010), <http://www.withdrake.com/newsite/media/facebooktheft/>.

my Contacts, does it suggest them as friends? Does it ping or bug them? Does it try and contact people who are friends to tell them their phone number is wrong? The truth is it may do none of those things and might just harmlessly confirm that yes, they are my friends but *I don't know that for sure* and with just that simple phrasing in there, I'm not inclined to try it just to have some people tapped on the shoulder by me when I don't mean them to.³⁸

39. Some Facebook users and non-Facebook users have consciously chosen *not* to provide Facebook with their contact information. This choice is rendered meaningless with the sync function of the application, because information from all phone contacts will be transferred to Facebook if the sync function is enabled on an iPhone. Not only will information be transferred, but the phone contacts are left unaware of the information transfer, unless the iPhone user personally notifies his contacts.
40. There is no privacy setting on Facebook that allows Facebook users to prevent having their information shared in this way. In a review of the application, Patrick Radin decided to remove the application from his phone because of the failure to provide privacy settings: "I am also disappointed in the lack of privacy and how this app does not offer privacy settings and assumes all users are aware of what it is doing. I am removing it right after this posting."³⁹
41. Other users have expressed frustration over the inability to control whether their information is uploaded to an iPhone. One user, Andrew Guzman explained, "Ok. I am sure that there are some people out there that have me as a iphone contact but not as a [Facebook] friend. How can I make sure that NO ONE can sync my contact info? I do not want my coworkers, neighbors, parents of kids I coach to even THINK about sending me a friend request. I do not want them on my list and I also want to avoid the awkwardness of running into them after rejecting their request."⁴⁰ Another user, Emma Paaer exclaims, "I really don't want anybody to load my contact info to fb! Unacceptable!!!"⁴¹
42. In a comment post to a TechCrunch article detailing the application changes, reader Jane expressed her opinion about "syncing" and described why she was unwilling to enable the function:

³⁸ <http://feedbackagency.com/blog/facebook-3-1-iphone-app-update-explained/> (Jan. 7, 2010).

³⁹ See *supra* note 30.

⁴⁰ *Id.*

⁴¹ *Id.*

I didn't choose to sync FB friends info to my contacts. This function gives more to FB than to its users. FB has always been criticized for its privacy policy. I don't want to give out hundreds of my contacts' personal info, since it's hard to ask for permission from each of them. Meanwhile, the likelihood of my info given out by my friends without my permission also freaks me out.⁴²

43. TechCrunch reader Scott commented, "I don't know that I'm comfortable sending my contacts to Facebook after their recent privacy changes. What happens to that data?"⁴³

44. Commenter Espen Antonsen expressed confusion on the TechCrunch website over why Facebook needed to transfer so much information from the iPhone:

Contact sync: Give all my contacts to Facebook, no thank you. I really do not see why they need to send that information from the phone. Apparently all it does it update contacts with photo and birthday. Im sure that could be accomplished by matching facebook contacts and phone contacts on the iPhone instead of doing it on Facebook servers.⁴⁴

Many Experts Support the Claims Set Out in Petitioners' Complaint that Facebook has Engaged in Unfair and Deceptive Trade Practices.

45. Subsequent to the filing of Petitioners' original Complaint, many privacy experts, journalists, security specialists, and Facebook users have expressed similar concerns. Within the first day of the Complaint's filing, hundreds of news stories appeared.

46. Brad Stone of the New York Times wrote:

The Electronic Privacy Information Center, or E.P.I.C., says that Facebook's recent changes "violate user expectations, diminish user privacy, and contradict Facebook's own representations."

I wrote about those changes last week. The most controversial among them is that a Facebook user's photo, gender, geographic region, the pages they are a fan of and their lists of friends are now open and available to the entire Web public. Facebook made these changes partly to make

⁴² MG Siegler, *Facebook's iPhone App Finally Gets Push Notifications, Contact Syncing*, TechCrunch (Jan. 6, 2010), <http://www.techcrunch.com/2010/01/06/facebook-iphone-push-notifications/>.

⁴³ *Id.*

⁴⁴ *Id.*

individual users more findable among the massive haystack of 350 million users.⁴⁵

47. Ryan Singel of Wired reported on the potential impact the Complaint has on Facebook and the FTC:

The challenge raises the stakes for Facebook, the world's largest social-networking site, which has been trying to ride out a vocal backlash against what some see as a blatant attempt to push users into sharing publicly and often. It will also serve as a test case for the FTC under the Obama Administration, forcing the agency to show whether it will remain focused on scams with provable harms, or become a more interventionist player in the market as the FCC has become with telecommunications companies.⁴⁶

48. Tim Jones, Activism and Technology Manager for the Electronic Frontier Foundation (EFF), one of the first groups to provide detailed criticisms of Facebook's privacy changes, recognized the importance of Petitioners' Complaint in a blog post. Jones wrote, "Considering the many tens of millions of American consumers who use Facebook, we hope and expect that the FTC will seriously consider the important questions raised by today's complaint."⁴⁷

49. Mashable editor-in-chief Ben Parr wrote,

There's been a lot of ruckus about [Facebook] being deceptive about the changes, but until now it's just been ruckus. That changed today when a group of ten Internet privacy groups, led by the Electronic Privacy Information Center, filed a complaint with the U.S. Federal Trade Commission (FTC), requesting an investigation into Facebook's actions.⁴⁸

50. One Facebook user commented on a Slashdot post about the Complaint, expressing the importance of EPIC and the FTC as a voice for users:

⁴⁵ Brad Stone, Privacy Group Files Complaint on Facebook Changes, N.Y. Times (Dec. 17, 2009), available at <http://bits.blogs.nytimes.com/2009/12/17/privacy-group-files-complaint-on-facebook-privacy-changes/>.

⁴⁶ Ryan Singel, Facebook Privacy Changes Break the Law, Privacy Groups Tell FTC, Wired (Dec. 17, 2009), <http://www.wired.com/epicenter/2009/12/facebook-ftc-complaint/>.

⁴⁷ Tim Jones, The World Reacts to the New Facebook, EFF News Roundup (Dec. 17, 2009), <http://www.eff.org/deeplinks/2009/12/world-reacts-new-facebook>.

⁴⁸ Benn Parr, *FTC Asked to Investigate Facebook's New Privacy Changes*, Mashable, Dec. 17, 2009, <http://mashable.com/2009/12/17/ftc-asked-to-investigate-facebooks-new-privacy-settings/>.

I'm glad that EPIC, FTC, etc., are interested in our privacy, as they can exert pressure to change things in ways that we as users cannot. What I'd really like to see out of all this might be some kind of formal privacy impact review before changes to social networking policies are made. Any change that degrades privacy would need to be identified by third parties, justified or mitigated by the social network, then reviewed again until it's clear that users will be better off after the change than they were before. I think that expecting users to flee a service following troublesome changes is unrealistic. The users are caught between a rock and a hard place, and Facebook will continue twisting their arms as long as the users are paying more attention to their friends and apps than they are to their privacy.⁴⁹

51. On December 18, 2009, Reuters published an article detailing Petitioners' complaint, entitled Facebook Privacy Backlash in FTC's Hands. The author, Alexei Oreskovic stated, "The big question now is how the FTC will treat the complaint and what kind of power it has to act on such Internet privacy issues."⁵⁰

52. Analyst Greg Sterling of Sterling Market Research recognizes the Complaint as a catalyst for change: "We've seen this movie before. They do something aggressive around disclosure of information, and then people come out of the woodwork and there's some response of 'We hear you.' It has to rise to a certain level, such as this complaint, before there's any action." He adds, "There's absolutely no benefit to sharing your personal information with the whole web."⁵¹

Facebook Continues its Unfair and Deceptive Trade Practices and Even Misrepresents the Role of the Commission in this Matter.

53. On December 17, 2009, following the filing of the Complaint with the FTC, Facebook made several public statements. Spokesperson Barry Schnitt asserted, "We discussed the privacy program with many regulators, including the F.T.C., prior to launch and expect to continue to work with them in the future."⁵² Another

⁴⁹ Commenter Valderost, *Formal Review of Changes would Benefit Everyone*, Slashdot, Dec. 17, 2009, <http://yro.slashdot.org/comments.pl?sid=1482434&cid=30480696>.

⁵⁰ Alexei Oreskovic, *Facebook Privacy Backlash in FTC's Hands*, Reuters (Dec. 18, 2009), <http://blogs.reuters.com/mediafile/2009/12/18/facebook-privacy-backlash-in-ftcs-hands/>.

⁵¹ Greg Sterling, Sterling Market Research, *as quoted in* Richard Koman, *FTC Complaint Escalates Facebook's Privacy Woes*, Newsfactor (Dec. 17, 2009), http://www.newsfactor.com/story.xhtml?story_id=70684.

⁵² See, e.g., Brad Stone, *Privacy Group Files Complaint on Facebook Changes*, N.Y. Times (Dec. 17, 2009), available at <http://bits.blogs.nytimes.com/2009/12/17/privacy-group-files-complaint-on-facebook-privacy-changes/>; Alexei Oreskovic, *Facebook Privacy Backlash in FTC's Hands*, Reuters (Dec. 18, 2009),

spokesperson, Andrew Noyes, also stated that the company spoke with the FTC before the changes. He explained, “We’ve had productive discussions with dozens of organizations around the world about the recent changes”⁵³

54. On December 23, 2009, EPIC filed a Freedom of Information Act request with the FTC.⁵⁴ EPIC requested documents pertaining to the communications Facebook spokespersons alleged the company had with the federal agency.
55. On January 4, 2010, FTC Chairman Jon Leibowitz responded to Facebook’s public comments concerning the company’s privacy changes. Chairman Leibowitz clarified that the agency does not approve privacy policies:

We aren’t generally in the business of giving general advisory opinion in advance. I certainly don’t think anyone would suggest that we would pre-clear their new privacy policy. It may be good. It may be better or it may

available at <http://blogs.reuters.com/mediafile/2009/12/18/facebook-privacy-backlash-in-ftcs-hands/>; Jessica A. Vascellaro, *Groups File Facebook Complaint*, Wall Street Journal at B7 (Dec. 18, 2009), *available at* <http://online.wsj.com/article/SB20001424052748704238104574602262735234366.html>; Jacqui Cheng, *FTC Complaint Says Facebook’s Privacy Changes are Deceptive*, Ars Technica (Dec. 21, 2009), *available at* <http://arstechnica.com/tech-policy/news/2009/12/ftc-complaint-says-facebooks-privacy-changes-are-deceptive.ars>; Robert McMillan, *Privacy Groups Bring Facebook Complaints to FTC*, ComputerWorld (Dec. 17, 2009), *available at* <http://news.idg.no/cw/art.cfm?id=9E5BB9A6-1A64-67EA-E40759B3AFCD4AC7>.

⁵³ See, e.g., Barbara Ortutay, *Privacy Watchdog Files Complaint against Facebook*, Washington Post (Dec. 17, 2009), *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/17/AR2009121702842.html>; Peter Kafka, *Next Step in Facebook Privacy Blowback: The FTC Complaint. The Real Question: Will Advertisers Care?*, All Things Digital (Dec. 17, 2009); *available at* <http://mediamemo.allthingsd.com/20091217/next-step-in-the-facebook-privacy-blowback-the-ftc-complaint-will-advertisers-care/>; John Letzing, *Privacy Groups file FTC Complaint against Facebook*, MarketWatch (Dec. 17, 2009), *available at* <http://www.marketwatch.com/story/privacy-groups-file-ftc-complaint-against-facebook-2009-12-17>; Ryan Singel, *Facebook Privacy Changes Break the Law, Privacy Groups Tell FTC*, Wired (Dec. 17, 2009), *available at* <http://www.wired.com/epicenter/2009/12/facebook-ftc-complaint/>; Katherine Noyes, *Privacy Groups Take Facebook Quarrel to the Feds*, Tech News World (Dec. 18, 2009), *available at* <http://www.technewsworld.com/story/68939.html>; JC Raphael, *Facebook Ignites War of Worlds*, PC World (Dec. 17, 2009), *available at* http://www.pcworld.com/article/185033/facebook_privacy_complaint_ignites_war_of_words.html.

⁵⁴ Electronic Privacy Information Center, FOIA Request to FTC, FOIA-2010-00283 (filed Dec. 23, 2009), *available at* http://epic.org/privacy/inrefacebook/FTC_Facebook_FOIA.pdf.

not be better. But we aren't the film industry; we don't greenlight like the film industry does.⁵⁵

CONCLUSION

56. Petitioners incorporate by reference the Requests for Relief set forth in the Complaint.⁵⁶

57. Further, Petitioners request the Commission investigate the issues raised by the comments of the anonymous Facebook employee.

Respectfully submitted,

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⁵⁵ Cecilia Kang, *FTC to Facebook: We aren't in the movie business, we don't greenlight privacy policies*, Wash. Post (Jan. 4, 2010), available at

http://voices.washingtonpost.com/posttech/2010/01/jon_leibowitz_chairman_of_the.html.

⁵⁶ *Supra* note 1, at 28.