

November 27, 2012

Mark Zuckerberg, CEO,  
Facebook, Inc.  
1601 Willow Road  
Menlo Park, CA 94025

RE: Facebook's Proposed Changes to its Data Use and Site Governance Policies

Dear Mr. Zuckerberg:

On November 21, 2012, Facebook proposed three significant changes to Facebook's governing documents.<sup>1</sup> These changes include a proposal to "end the voting component" of the site governance process; to "replac[e] the "Who can send you Facebook messages" setting with new filters for managing incoming messages," and to integrate users' Instagram information into their Facebook profiles.<sup>2</sup> Facebook proposed to incorporate these changes into its Statement of Rights and Responsibilities<sup>3</sup> and into its Data Use Policy, which is also the company's privacy policy.<sup>4</sup> Because these proposed changes raise privacy risks for users, may be contrary to law, and violate your previous commitments to users about site governance, we urge you to withdraw the proposed changes.

Facebook's first major proposed change is the elimination of the user-voting component of the site governance process. In 2009, in the wake of privacy complaints filed by EPIC and other privacy and consumer groups, you announced Facebook's decision to open proposed changes to its governing documents to a user vote.<sup>5</sup> As *USA Today* wrote about your announcement in 2009:<sup>6</sup>

Facebook is giving its 175 million-plus members an unprecedented voice in helping dictate the social networking giant's future governing direction.

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<sup>1</sup> Elliot Schrage, *Proposed Updates to Our Governing Documents*, FACEBOOK (Nov. 21, 2012), <https://www.facebook.com/notes/facebook-site-governance/proposed-updates-to-our-governing-documents/10152304935685301>.

<sup>2</sup> *Id.*

<sup>3</sup> See *Redline of Proposed Statement of Rights and Responsibilities*, FACEBOOK, <http://www.facebook.com/legal/srrredline> (last visited Nov. 26, 2012).

<sup>4</sup> See *Redline of Proposed Data Use Policy*, FACEBOOK, <http://www.facebook.com/legal/dupredline> (last visited Nov. 26, 2012).

<sup>5</sup> Mark Zuckerberg, *The Voting Begins on Governing the Facebook Site*, THE FACEBOOK BLOG (Apr. 16, 2009), <http://blog.facebook.com/blog.php?post=76815337130>.

<sup>6</sup> Edward C. Baig, *In Democratic Move, Facebook Seeks User Input on Policies*, USA TODAY (Feb. 27, 2009), [http://usatoday30.usatoday.com/tech/news/2009-02-26-facebook\\_N.htm](http://usatoday30.usatoday.com/tech/news/2009-02-26-facebook_N.htm); see also *JR Raphael, Facebook Opens the Polls for Privacy Policy Vote*, PCWORLD (Apr. 17, 2009), [http://www.pcworld.com/article/163322/facebook\\_opens\\_the\\_polls\\_for\\_privacy\\_policy\\_vote.html](http://www.pcworld.com/article/163322/facebook_opens_the_polls_for_privacy_policy_vote.html); Brad Stone, *Facebook Tries to Become a Democracy*, N.Y. TIMES (Feb. 26, 2009), <http://bits.blogs.nytimes.com/2009/02/26/facebook-remakes-itself-as-a-democracy/>.

Founder and CEO Mark Zuckerberg made the announcement Thursday in the aftermath of last week's firestorm over controversial changes to Facebook's terms of use agreement.

The purpose of Facebook is to make the world more open and transparent by giving people the power to share information," he said on a conference call. "We really took last week as a strong signal about how people cared about Facebook and wanted to be involved in helping to govern it."

The voting process was structured as a notice-and-comment rulemaking: Facebook would create a blog post announcing a proposed change to its governing documents, and allow 30 days for comments. If 7,000 users commented on the post, the proposed change would be subjected to a user vote. If fewer than 7,000 users commented, Facebook would be free to adopt its proposed change without a user vote.<sup>7</sup> In this way, Facebook hoped to demonstrate its commitment "to an open and transparent system of governance."<sup>8</sup>

However, on November 21, 2012, Facebook informed its users that it will be proposing a change to the governing documents that would end the system of user voting.<sup>9</sup> The announcement stated, "We deeply value the feedback we receive from you during our comment period but have found that the voting mechanism created a system that incentivized quantity of comments over the quality of them. So, we are proposing to end the voting component in order to promote a more meaningful environment for feedback."<sup>10</sup>

The second proposed change would eliminate the "Who can send you Facebook messages" mechanism, which allows users to control who may send them email through Facebook messaging.<sup>11</sup> This control, nested within the "How You Connect" subsection of the "Privacy Settings" tab, gives users a more granular control over the kinds of messages they will allow Facebook to transmit to their associated email addresses. As it exists now, the Data Use Policy grants users the right to "control who can start a message thread" with users, with the provision that "[i]f they include others on that message, the others can reply too."<sup>12</sup> The proposed revision would eliminate that language altogether, stating instead, "Anyone on a message thread can reply to it."<sup>13</sup>

Finally, Facebook added a section to its Data Use Policy entitled "Affiliates."<sup>14</sup> That section states, "We may share information we receive with businesses that are legally part of the same group of companies that Facebook is part of, or that become part of that group (often these

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<sup>7</sup> *Statement of Rights and Responsibilities*, FACEBOOK, <http://www.facebook.com/legal/terms> (last visited Nov. 26, 2012).

<sup>8</sup> Mark Zuckerberg, *Governing the Facebook Site in an Open and Transparent Way*, THE FACEBOOK BLOG (Feb. 26, 2009), <http://blog.facebook.com/blog.php?post=56566967130>.

<sup>9</sup> See Schrage, *supra* note 1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Information We Receive About You*, FACEBOOK, <https://www.facebook.com/about/privacy/your-info> (last visited Nov. 26, 2012).

<sup>13</sup> See *Redline of Proposed Data Use Policy*, *supra* note 4.

<sup>14</sup> See *id.*

companies are called affiliates). Likewise, our affiliates may share information with us as well.”<sup>15</sup> This addition will most notably affect users of Instagram, a photo-sharing company that Facebook purchased in April 2012.<sup>16</sup>

When Facebook first announced its acquisition of Instagram, it also announced its commitment “to building and growing Instagram independently,” rather than integrating the two sites.<sup>17</sup> With the addition of the “Affiliates” section however, Facebook could alter its practice of maintaining Instagram and Facebook user information separately. It could combine user profiles and freely share user data between the two sites.

Facebook’s proposed changes implicate the user privacy and the terms of a recent settlement with the Federal Trade Commission. The settlement prohibits Facebook from misrepresenting the extent to which it maintains the privacy or security of covered information.<sup>18</sup> Additionally, prior to any sharing of users’ personal information with a third party, Facebook must make a clear and prominent disclosure and obtain the affirmative express consent of its users.<sup>19</sup>

By removing users’ ability to prevent strangers from sending unwanted messages, the proposed changes are likely to increase the amount of spam that users receive. Facilitating spam violates users’ privacy and security, as many Facebook scams are accomplished through the messaging feature.<sup>20</sup> Furthermore, Facebook’s decision to combine personal information from Facebook and Instagram raises privacy issues. Earlier this year, a similar data consolidation by Google prompted objections from privacy organizations, members of Congress,<sup>21</sup> European data protection authorities,<sup>22</sup> and IT managers in the government and private sectors.<sup>23</sup> Thirty-six state attorneys general sent a letter to Google claiming that the data consolidation “invade[d] consumer privacy by automatically sharing personal information consumers input into one Google product with all Google products” and that it made “more of [consumers’] personal information vulnerable to attack from hackers and identity thieves.”<sup>24</sup>

Finally, the proposed changes to Facebook’s site governance are troubling for different reasons. Although Facebook’s existing voting mechanism set an unreasonably high

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<sup>15</sup> *Id.*

<sup>16</sup> Post of Mark Zuckerberg to FACEBOOK (Apr. 9, 2012), <http://www.facebook.com/zuck/posts/10100318398827991>.

<sup>17</sup> *Id.*

<sup>18</sup> *Facebook, Inc.*, FTC Docket No. C-4365 (2012) (Decision and Order) § I, <http://www.ftc.gov/os/caselist/0923184/120810facebookdo.pdf> [hereinafter FTC Facebook Consent Order].

<sup>19</sup> FTC Facebook Consent Order, § II.

<sup>20</sup> *See Scams*, FACEBOOK, <https://www.facebook.com/help/344403945636114/> (last visited Nov. 26, 2012).

<sup>21</sup> Letter from Edward J. Markey et al., to Jon Leibowitz, Chair, Federal Trade Commission (Feb. 17, 2012), <https://epic.org/privacy/ftc/google/Congress-Ltr-FTC-Google-2-17-12.pdf>.

<sup>22</sup> Letter from Isabelle Falque-Pierrotin, CNIL, to Larry Page, CEO, Google (May 22, 2012), <https://epic.org/privacy/ftc/google/Ltr-CNIL-Google-22-05-2012.pdf>.

<sup>23</sup> Karen Evans and Jeff Gould, *Google’s New Privacy Policy Is Unacceptable and Jeopardizes Government Information in the Cloud*, SAFEGOV (Jan. 25, 2012), <http://safegov.org/2012/1/25/google%E2%80%99s-new-privacy-policy-is-unacceptable-and-jeopardizes-government-information-in-the-cloud>.

<sup>24</sup> Letter from Douglas F. Gansler et al., to Larry Page, CEO, Google, (Feb. 22, 2012), <https://epic.org/privacy/google/20120222-Google-Privacy-Policy-Final.pdf>.

participation threshold, scrapping the mechanism altogether raises questions about Facebook's willingness to take seriously the participation of Facebook users. As one blogger put it, "[b]y repealing Facebook Suffrage, Facebook abandons a fundamental norm--that its users are citizens in a community, and not simply datapoints on an advertising algorithm."<sup>25</sup>

Facebook has been receptive to its users in the past. In 2010, you unveiled a set of simplified privacy controls in response to public criticism.<sup>26</sup> And in 2009, you agreed to back-off proposed changes to the Terms of Service and establish the procedures for user input.<sup>27</sup>

Now, we ask that Facebook be similarly responsive to the rights of Facebook users to control their personal information and to participate in the governance of Facebook. We ask that you withdraw the proposed changes to the Data Use Policy and the Statement of Rights and Responsibilities.

Sincerely,

/s/

Marc Rotenberg, President  
Electronic Privacy Information Center (EPIC)

/s/

Jeffrey Chester, President  
Center for Digital Democracy

Cc:

Honorable Jon Leibowitz, Chairman, Federal Trade Commission  
Honorable Maureen Ohlhausen, Commissioner, Federal Trade Commission  
Honorable J. Thomas Rosch, Commissioner, Federal Trade Commission  
Honorable Edith Ramirez, Commissioner, Federal Trade Commission  
Honorable Julie Brill, Commissioner, Federal Trade Commission

Douglas F. Gansler, President, National Association of Attorneys General

Senator John D. Rockefeller, Chairman, Committee on Commerce, Science, and Transportation  
Senator Kay Bailey Hutchison, Ranking Member, Committee on Commerce, Science, and Transportation  
Senator John Kerry, Committee on Commerce, Science, and Transportation  
Senator Jim DeMint, Committee on Commerce, Science, and Transportation

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<sup>25</sup> Michael Phillips, *The End Of The Facebook Democracy*, BUZZFEED (Nov. 22, 2012), <http://www.buzzfeed.com/mtpiii/the-end-of-the-facebook-democracy>.

<sup>26</sup> Miguel Helft & Jenna Wortham, Facebook Bows to Pressure Over Privacy, N.Y. TIMES (May 26, 2010), <https://www.nytimes.com/2010/05/27/technology/27facebook.html>.

<sup>27</sup> Baig, *supra* note 6.

Congressman Fred Upton, Chairman, House Energy and Commerce Committee  
Congressman Henry A. Waxman, Ranking Member, House Energy and Commerce Committee  
Congresswomen Mary Bono Mack, House Energy and Commerce Committee  
Congressman G.K. Butterfield, House Energy and Commerce Committee