



Facebook
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Attention: Chief Privacy Officer Chris Kelly

Sent to: [udeladt her]

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Facebook's processing of personal data

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The use of Facebook in Denmark is increasing, as well as the general interest in Facebook's privacy policy is. The Danish Data Protection Agency (DPA) therefore finds it appropriate to look into Facebook's processing of personal data on Danish citizens and how it complies with the Danish Act on Processing of Personal Data¹. The relevant rules are attached in an annex to this letter.

For this reason, the DPA would be grateful for information on some of the most frequently raised questions.

One specific question being raised concerns the users' options to delete a Facebook profile. Other questions concerns whether the Danish Act on Processing of Personal Data applies to Facebook, and the sharing of users' information with third parties.

The Danish Consumer Council has published their advice on the use of Facebook, including a link where the user should be able to permanently delete a Facebook profile, on the following URL:

http://www.facebook.com/help/contact.php?show_form=delete_account

It has occurred, that users are having problems with deleting their profiles using this link, consisting in entering their password, but when entering they get a message that the password is incorrect, even though it is not. The DPA has as an experiment tried to delete a profile for itself with the same result as the other users. We would therefore like to know whether the link is for the wrong URL or if there is or has been a malfunction in the system for requests on deleting Facebook profiles?

Another specific question that has been raised is how to delete a profile of a deceased family member. We would like to know what requirements Facebook has for documentation etc. in such a case.

¹ An English version of the Danish Act can be found on
<http://www.datatilsynet.dk/english/the-act-on-processing-of-personal-data/>

Regarding disclosure of information, we consider the user consent to be extensive. We would therefore like to know, which information is being disclosed to a third party when a user adds a third party application. We would like to know if Facebook intends to improve transparency and make the user consent more specific and limited.

In general, we would like to know more about which categories of personal data Facebook shares with third parties. We would also like to know whether third part search engine crawlers have access to users' personal information, and if so, whether Facebook allows the users to make choices about access to their information in this context.

Furthermore, we would like to know what measures Facebook takes in order to assure that third party applications published in the Facebook framework does not contain malicious code.

Based on cases with social-network sites in Denmark it is our experience, that some sites monitor and store the content of the communication on the site. This is done with the purpose of establishing a safe environment for the users (usually including children) and to supply information to the police in criminal cases. The Danish DPA has received notifications and given authorizations under the condition that the processing is based on an explicit consent. We would therefore like to know if Facebook as well monitor and store the content of the communication on the site, and if Facebook keeps a copy of the user-postings even after deletion by the user. If so, we would like to know the purpose of the processing and for how long such data is kept by Facebook.

In relation to jurisdiction we would like to know whether Facebook is established as a data controller in the European Community and if so, in which country? If not, we would like to know whether Facebook is using equipment situated in Denmark or if Facebook is collecting personal data in Denmark for the purpose of processing in a country which is not a member of the European Community.

The Article 29-Data Protection Working Party² has adopted a working document on the international application of EU data protection law to the processing, in particular the collection, of personal data by web sites, which are based outside the European Union (WP 56)³.

In this working paper, the Article 29-Data Protection Working Party has set up some practical examples on the data controller making use of equipment. This includes the data controller deciding to collect personal data by placing cookies on users' computers, as well as JavaScript, banners and other applications are considered as making use of equipment.

² The Working Party has been established by Article 29 of Directive 95/46/EC. It is the independent EU Advisory Body on Data Protection and Privacy. Its tasks are laid down in Article 30 of Directive 95/46/EC and in Article 14 of Directive 97/66/EC

³ http://ec.europa.eu/justice_home/fsj/privacy/workinggroup/wpdocs/2002_en.htm

The Working Party is of the opinion that the national law of the Member State where the user's personal computer is located applies to the question under what conditions his personal data may be collected by placing cookies on his hard disk.

The DPA shall hereafter kindly request that Facebook answer the following questions:

- Is it properly understood, that Facebook is not yet established as a data controller in a European country?
- Can Facebook agree that you process data with the use of equipment in Denmark and that the Danish Act on Processing of Personal Data therefore applies to Facebook, compare section 4.3.1? If so, the DPA would like to draw your attention to section 4.4 and request that Facebook appoints a representative established in the territory of Denmark.

If Facebook does not process data with the use of equipment in Denmark, the DPA is of the understanding that based on section 4.3.2 the Danish Act applies to Facebook. This subsection does not require Facebook to appoint a representative established in Denmark, yet the Act on Processing of Personal Data in general applies to Facebook. This implies that data must only be collected for specified, explicit and legitimate purposes, as well as the data collected may not be kept in a form which makes it possible to identify the data subject for a longer period than is necessary for the purposes for which the data are processed, compare section 5 of the Act. All processing of personal data, including disclosure, must comply with the rules on processing of data in title II, chapter 4 of the Act. Furthermore, the data subject's rights in title III of the Act must be observed, as well as the rules on security of processing in title IV, chapter 11 of the Act must be complied.

The DPA will be at Facebook's disposal if Facebook wishes the DPA to elaborate on the Danish Act on Processing of Personal Data. The DPA will also be very interested in more knowledge on Facebook.

The DPA looks forward to a positive dialogue and hereby appeals for Facebook to respond to this enquiry as soon as possible, preferably within a month.

Kind regards

Janni Christoffersen
Director

Annex

The Act on Processing of Personal Data includes the following rules:

Section 4.1: "This Act shall apply to processing of data carried out on behalf of a controller who is established in Denmark, if the activities are carried out within the territory of the European Community."

Section 4.3: "This Act shall also apply to a controller who is established in a third country, if

1. the processing of data is carried out with the use of equipment situated in Denmark, unless such equipment is used only for the purpose of transmitting data through the territory of the European Community; or
2. the collection of data in Denmark takes place for the purpose of processing in a third country."

Section 4.4: "A controller who is governed by this Act by rule of paragraph 1 of subsection (3) must appoint a representative established in the territory of Denmark. This shall be without prejudice to legal actions which could be initiated by the data subject against the controller concerned."