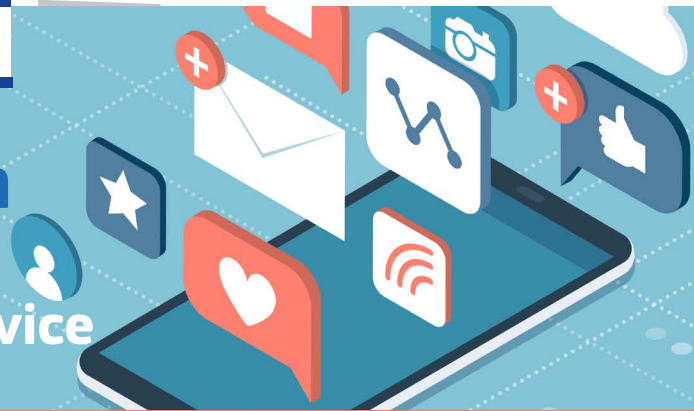




European
Commission

Consumer Protection Cooperation Action on Facebook's Terms of Service



Factsheet | April 2019

OUTSTANDING CONCERNS RAISED BY CONSUMER PROTECTION AUTHORITIES

Facebook's commitments

Presentation of Facebook's services

Concern: Facebook failed to clarify that their business model and main source of revenue are based on the commercial use of data and generated content that users give in exchange of using Facebook's services.

Under EU rules: A trader must inform consumers upfront about the main characteristics of the services offered and the counterpart expected from the consumer. Terms of service must be clear and easy to understand.

Facebook agreed to:

- clarify that it does not charge users for its services, but that users will be shown commercial content, based on their profile and their data
- explain its business model in further detail and, in particular:
 - how the company makes money by providing targeted advertising services to traders using data from users' profiles;
 - the fact that the company also reports on the performance of those ads by providing traders with aggregated user data but that it does not sell consumers personal data to advertisers and it does not share information that directly identifies users (such as name, email address or other contact information) with advertisers, unless users give Facebook specific permission;
- explain in further detail the nature of the research activities conducted by Facebook itself or with third parties business partners.



Permissions granted by the users

Concern: Permissions users gave Facebook in relation to the content they upload on the platform were unclear.

Under EU rules: Contractual terms must be clear and easily understandable. Any term that creates a significant imbalance of rights between the operators and consumers can be considered as unfair and thus void.

Facebook agreed to:

- clarify that the licence users give to Facebook with regard to the content they share and create is limited in time. It only relates to their intellectual property rights and can only be used by Facebook to provide and improve its services.

Removing user-generated content

Concern: Users' rights related to removal of contents were unclear.

Under EU rules: A contract clause cannot grant unlimited and discretionary power to operators to determine the suitability of user-generated content, as the managing of content is the main service provided to consumers.

Facebook agreed to:

- clarify in which instances it will notify consumers that their content was removed;
- inform consumers on their right to appeal against such a decision.

Changing the terms of service

Concern: Facebook claimed the right to change one-sidedly its terms of service, with no limitations.

Under EU rules: Consumers are entitled to terminate a contract whenever an operator modifies substantially its terms of service one-sidedly.

Facebook agreed to:

- limit its right to modify its terms of service to cases where the changes are reasonable and taking into due account of the users' interests.
- give users advance warning about the decision to change the terms of service, unless those changes were made in order for Facebook to comply with legal provisions.

Suspending or terminating an account

Concern: Facebook's obligation to inform users that their accounts were suspended or closed was not clear. Neither was the fact that certain clauses of the contract continue to apply after the termination of an account.

Under EU rules: Before they sign a contract, consumers must know about the conditions that can lead to its termination or suspension. Those conditions must be clear and easily understandable and their implementation cannot depend on the operator alone. Reasonable notice must be given to consumers.

Facebook agreed to:

- acknowledge its obligation to notify the user in advance of the suspension or termination of an account;
- clarify that users may not be notified of the termination of their accounts only in specific cases, for example when this could compromise an ongoing law enforcement investigation;
- reduce the number of clauses which continue applying after termination of the account and clearly inform consumers of these cases

Retaining deleted content

Concern: Facebook was not clear about the cases and the maximum time during which it would retain user-generated content after its deletion, for example in cases where users delete their accounts. It did not acknowledge the users' right to retrieve or delete their data after deletion of their account.

Under EU rules: Terms must be clear about the possible consequences of terminating a contract.

Facebook agreed to:

- clarify and justify the specific cases in which content deleted by users can temporarily be retained, for instance to comply with a law enforcement request;
- indicate that the maximum time for deleting users' content due to technical reasons is 90 days.

Limitations of liability

Concern: Facebook's liability limitations were not clear. Moreover, Facebook did not clarify its liability for actions carried out by third parties, with whom Facebook had shared users' data.

Under EU rules: Platforms should not decline all liability for actions from third parties with whom they have shared users' content and data (e.g. when wrongdoings happen as in the Cambridge Analytica case). Users should always be in a position to seek redress for these actions. Any term limiting this principle may be considered unfair under EU Consumer Law.

Facebook agreed to:

- clarify that Facebook can be held liable in cases where it has not acted with due professional diligence, for example in its dealings with third parties.