

April 9, 2018

TO: Members, Committee on Energy and Commerce

FROM: Committee Majority Staff

RE: Hearing on “Facebook: Transparency and Use of Consumer Data.”

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## **I. INTRODUCTION**

The Committee on Energy and Commerce will hold a hearing on Wednesday, April 11, 2018, at 10:00 a.m. in 2123 Rayburn House Office Building. The hearing is entitled “Facebook: Transparency and Use of Consumer Data.”

## **II. WITNESS**

- Mark Zuckerberg, Co-Founder, Chairman and CEO, Facebook, Inc.

## **III. BACKGROUND**

### **A. Facebook**

Facebook, Inc. (“Facebook”) is a Menlo Park, California based company that operates a variety of social networking and other computerized technology companies. Facebook was started in Cambridge, Massachusetts in 2004 by Mark Zuckerberg, Dustin Moskovitz, and Eduardo Saverin while the trio were students at Harvard University. In 2012, the company publicly listed its shares on the NASDAQ market place. With over 21,000 employees, the company has grown to become the world’s largest social networking website; as of December 31, 2017, the company counts 1.4 billion daily active users, and 2.13 billion monthly active users.<sup>1</sup> The company derives most of its revenue from advertising sales; in 2017, the company generated almost \$40 billion in advertising-derived revenue.<sup>2</sup> It is reported that Facebook and Google receive more than 63 percent of total U.S. digital advertising spending.<sup>3</sup> The company has acquired several other enterprises since its founding, including Instagram, WhatsApp, Masquerade, and Oculus. The company also operates Facebook Payments.<sup>4</sup> Facebook is one of the largest and most successful companies in the world as measured by market capitalization.<sup>5</sup>

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<sup>1</sup> “Company Info,” Facebook Newsroom, <https://newsroom.fb.com/company-info/>

<sup>2</sup> “Facebook Reports Fourth Quarter and Full Year 2017 Results,” Facebook Investor Relations, <https://investor.fb.com/investor-news/press-release-details/2018/Facebook-Reports-Fourth-Quarter-and-Full-Year-2017-Results/default.aspx>

<sup>3</sup> “Google and Facebook Tighten Grip on US Digital Ad Market,” emarketer.com (September 21, 2017). <https://www.emarketer.com/Article/Google-Facebook-Tighten-Grip-on-US-Digital-Ad-Market/1016494>

<sup>4</sup> “The Facebook Companies,” Facebook, <https://www.facebook.com/help/111814505650678>

<sup>5</sup> For instance, according to Forbes magazine’s “List of the World’s Biggest Companies,” Facebook was the sixth largest company in the world at the end of 2017. See [https://www.forbes.com/global2000/list/#header:marketValue\\_sortreverse:true](https://www.forbes.com/global2000/list/#header:marketValue_sortreverse:true)

## **B. Evolution of the Facebook Platform**

***News Feed and Mini-Feed.*** In 2006, Facebook debuted the “news feed,” a curated feed showing what a user’s “Friends” were posting and discussing.<sup>6</sup> The purpose of the feature was to provide users with a centralized destination to minimize the need for a user to browse through every “Friend” profile.<sup>7</sup> However, the feature generated concerns leading to approximately one million Facebook users joining “Facebook News Feed protest groups,” which argued that the new feature was too intrusive.<sup>8</sup> In response, Facebook announced additional privacy controls for the news feed and mini-feed that allowed users to “control...who sees what information.”<sup>9</sup> Additionally, Facebook developed a “privacy page” that gave users “granular control of how information is integrated into” the news feed and mini-feed.<sup>10</sup>

***The Beacon Feature.*** In 2007, Facebook launched the Beacon online ad system that would “report back to Facebook on members’ activities on third-party sites that participate in Beacon even if the users are logged off from Facebook and have declined having their activities broadcast to their Facebook friends.”<sup>11</sup> Initially, users were not informed that data on their activities at third-party sites was flowing back to Facebook and users were not given the option to block that information from being transmitted to Facebook. In response to objections, the company changed Beacon “to be an opt-in system” and gave users a “privacy control to turn off Beacon completely.”<sup>12</sup>

***Developer Platform and Privacy Updates.*** On May 24, 2007, Facebook launched a Facebook Platform for developers to “build the next-generation of applications with deep integration into Facebook, distribution across its ‘social graph’ and an opportunity to build new businesses.”<sup>13</sup> On November 6, 2007, Facebook introduced Facebook Ads, an “ad system for businesses to connect with users and target advertising to the exact audience they want.”<sup>14</sup> Further, on July 23, 2008, Facebook introduced advancements to Facebook Platform calling on “its more than 400,000 developers to connect their Websites with Facebook through Facebook Connect.”<sup>15</sup> Facebook Connect created a “developer sandbox” whereby users could “bring their Facebook account information, friends and privacy to any third party website, desktop application or device.”<sup>16</sup>

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<sup>6</sup> <https://www.nbcnews.com/tech/social-media/can-you-even-remember-how-you-coped-facebook-s-news-n641676>

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> <https://newsroom.fb.com/news/2006/09/facebook-launches-additional-privacy-controls-for-news-feed-and-mini-feed/>

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

<sup>11</sup> <https://www.pcworld.com/article/140182/article.html>

<sup>12</sup> *Id.*

<sup>13</sup> <https://newsroom.fb.com/news/2007/05/facebook-unveils-platform-for-developers-of-social-applications/>

<sup>14</sup> <https://newsroom.fb.com/news/2007/11/facebook-unveils-facebook-ads/>

<sup>15</sup> <https://newsroom.fb.com/news/2008/07/facebook-expands-power-of-platform-across-the-web-and-around-the-world/>

<sup>16</sup> *Id.*

On May 26, 2010, Facebook responded to privacy concerns by announcing it would “introduce simpler and more powerful controls for sharing personal information.” Specifically, Facebook committed to offering “easier opt outs” whereby users could “completely turn off Platform applications and websites, so that [users’] information [was] not shared with applications, even information available to everyone.”<sup>17</sup> Additionally, Facebook highlighted “new controls users have over information shared with applications and websites on Facebook Platform” that were intended to require applications to obtain specific approval before gaining access to any personal information that a user has not made available to “Everyone.”<sup>18</sup>

On November 13, 2014, Facebook updated their terms and policies and introduced “Privacy Basics,” which gave users tips and a “how-to guide for taking charge” of the Facebook experience.<sup>19</sup> The new feature offered interactive guides designed to answer the most commonly asked questions about how users can control information on Facebook.<sup>20</sup>

On January 26, 2017, Facebook introduced a new version of “Privacy Basics” with a stated goal of making it easier for people to find tools for controlling their information.<sup>21</sup> According to the company, the tool was designed based on users’ most frequently asked questions about privacy and security.<sup>22</sup> Using the tools purportedly provided an easier way for allowing a user to control the user’s account, finding out who can see a user’s post, and seeing what a user’s account looks like to others.<sup>23</sup> The exact number of apps accessible via the Facebook platform is constantly changing; reports say the number exceeds nine million.<sup>24</sup>

After public reports of the use of Facebook data by the political strategy firm Cambridge Analytica the company has announced further privacy changes; these are discussed below.

### C. Issues

**FTC Consent Order.** On November 29, 2011, the Federal Trade Commission (FTC) announced that Facebook and the agency had reached an agreement on a consent order relating to the FTC’s charges that the company had “deceived consumers by telling them they could keep their information on Facebook private, and then repeatedly allowing it to be shared and made public.”<sup>25</sup> According to the FTC’s Complaint (Complaint), the company had allegedly failed to disclose to Facebook users that “a user’s choice to restrict profile information to ‘Only Friends’

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

<sup>18</sup> *Id.*

<sup>19</sup> <https://newsroom.fb.com/news/2014/11/updating-our-terms-and-policies-helping-you-understand-how-facebook-works-and-how-to-control-your-information/>

<sup>20</sup> *Id.*

<sup>21</sup> <https://newsroom.fb.com/news/2017/01/introducing-the-new-privacy-basics/>

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> See, e.g., Josh Constantine, *10 years of hope and hard lessons on the Facebook Platform*, Techcrunch.com (April 17, 2017), <https://techcrunch.com/2017/04/17/bizarre-dev-triangle/>; Brittany Darwell, *Facebook platform supports more than 42 million pages and 9 million apps*, Adweek (April 27, 2012) <http://www.adweek.com/digital/facebook-platform-supports-more-than-42-million-pages-and-9-million-apps/>

<sup>25</sup> Facebook Settles FTC Charges That It Deceived Consumers By Failing To Keep Privacy Promises, FTC.gov (November 29, 2011), <https://www.ftc.gov/news-events/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep>

or ‘Friends of Friends’ would be ineffective as to certain third parties;” that the company’s “Privacy Wizard” tool for controlling access to user information “did not disclose adequately that users no longer could restrict access to their newly-designated (publicly available information) via their Profile Privacy Settings, Friends’ App Settings, or Search Privacy Settings, or that their existing choices to restrict access to such information via these settings would be overridden;” and that, after making changes to its privacy policy, Facebook “failed to disclose, or failed to disclose adequately, that the December Privacy Changes overrode existing user privacy settings that restricted access to a user’s Name, Profile Picture, Gender, Friend List, Pages, or Networks.”<sup>26</sup>

In response to the Complaint, Facebook and the FTC entered into a Consent Agreement whereby Facebook agreed that it will not “misrepresent in any manner, expressly or by implication, the extent to which it maintains the privacy or security of covered information,” including “the extent to which [Facebook] makes or has made covered information accessible to third parties;” that prior to sharing of a user’s nonpublic information, the company will “obtain the user’s affirmative express consent;” and the company would “establish and implement, and thereafter maintain, a comprehensive privacy program that is reasonably designed to (1) address privacy risks related to the development and management of new and existing products and services for consumers, and (2) protect the privacy and confidentiality of covered information,” among other stipulations.<sup>27</sup>

**2012 Election.** In 2012, the Obama for America presidential election campaign worked with the company to allow users to sign into the campaign’s website via Facebook.<sup>28</sup> According to accounts at the time, the Facebook application gave the campaign access to both those that signed into the campaign, as well as the “Friends” of such persons—“the more than 1 million Obama backers who signed up for the app gave the campaign permission to look at their Facebook friend lists.”<sup>29</sup> This gave the Obama for America campaign access to “hidden voters” for which they otherwise lacked contact information.<sup>30</sup> Carol Davidsen, Director of Integration of Media Analytics for Obama for America, via Twitter, stated that “Facebook was surprised we were able to suck out the whole social graph, but they didn’t stop us once they realized that was what we were doing.”<sup>31</sup> This in turn allegedly allowed one political party to download and retain individual user data which was not provided to other political organizations.<sup>32</sup>

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<sup>26</sup> United States Federal Trade Commission, *In the Matter of Facebook, Inc.*, Complaint,

<https://www.ftc.gov/sites/default/files/documents/cases/2011/11/111129facebookcmpt.pdf>

<sup>27</sup> United States Federal Trade Commission, *In the Matter of Facebook, Inc.*, Agreement Containing Consent Order,

<https://www.ftc.gov/sites/default/files/documents/cases/2011/11/111129facebookagree.pdf>

<sup>28</sup> Kaleve Leetaru, *Why Are We Only Now Talking About Facebook And Elections?*, Forbes.com (March 19, 2018), <https://www.forbes.com/sites/kalevleetaru/2018/03/19/why-are-we-only-now-talking-about-facebook-and-elections/#32e92afb4838>

<sup>29</sup> Michael Scherer, *Friended: How the Obama Campaign Connected with Young Voters*, Time Magazine (Nov. 20, 2012) <http://swampland.time.com/2012/11/20/friended-how-the-obama-campaign-connected-with-young-voters/>

<sup>30</sup> *Id.*

<sup>31</sup> Carol Davidsen via Twitter, (March 18, 2018), <https://twitter.com/cld276/status/975564499297226752>

<sup>32</sup> “Where this gets complicated is, that freaked Facebook out, right? So they shut off the feature. . . (w)ell, the Republicans never built an app to do that. So the data is out there, you can’t take it back, right? So Democrats have this information”- Carol Davidsen, as reported by Jason Howerton, *Ex-Obama Campaign Director: It’s ‘Unfair’ Facebook Let Us ‘Ingest Entire Social Network of US,’* Independent Journal Review (IJR), (March 19, 2018), <https://ijr.com/2018/03/1077208-former-obama-campaign-facebook-data/>

**2016 Election.** In addition to concerns regarding false news stories and fictitious user accounts,<sup>33</sup> concerns have arisen regarding the use of Facebook user data for campaign purposes in the 2016 presidential campaign. According to multiple reports, in 2014, researchers at Cambridge University's Psychometrics Center developed an app that acquired Facebook user data, as well as the data of "Friends" of such users on the social network.<sup>34</sup> Cambridge Analytica, a political consulting firm, allegedly requested the University's assistance in obtaining such data. After Cambridge University refused, the company then approached Mr. Aleksandr Kogan, a professor of psychology at the institution, for help. Mr. Kogan agreed and developed his own app under the auspices of his company Global Science Research (GSR). This application, called "thisisyourdigitallife," similarly harvested the data of users of the social network as well as that of their connections, or "Friends," on the service.<sup>35</sup>

According to reports, over 300,000 users consented to allowing their data to be harvested in exchange for using the "thisisyourdigitallife" app. Consistent with Facebook's policies at the time, use of the app gave Mr. Kogan and Cambridge Analytica access to the data of over 87 million other, non-consenting Facebook users. Cambridge Analytica then used this information to develop and market political messaging services.<sup>36</sup>

According to Facebook, Mr. Kogan's initial access to user data was acquired "in a legitimate way and through the proper channels."<sup>37</sup> However, by subsequently passing on Facebook user data to a third party, the company alleges that Mr. Kogan violated Facebook "platform policies."<sup>38</sup> Additionally, the company received reports that not all Facebook user data had been deleted, as allegedly certified by Mr. Kogan and Strategic Communication Laboratories (SCL)/Cambridge Analytica to Facebook in 2015. In response the company announced it had suspended the parties from Facebook.<sup>39</sup>

Subsequent to the widespread reporting around the incident, Facebook announced several measures it will be implementing to "prevent future abuse."<sup>40</sup> These include investigating apps that had access to large amounts of user data prior to 2014, and auditing any such apps that evince "suspicious activity;" further restricting access for app developers by, among other things, requiring them to sign a contract before asking users for access to posts or other private data; and

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<sup>33</sup> For background, see Open Hearing: Social Media Influence in the 2016 U.S. Elections, Senate Select Committee on Intelligence (November 1, 2017) <https://www.intelligence.senate.gov/hearings/open-hearing-social-media-influence-2016-us-elections>

<sup>34</sup> See, e.g., See Kevin Granville, *Facebook and Cambridge Analytica: What You Need to Know as Fallout Widens*, New York Times, (March 19, 2018). <https://www.nytimes.com/2018/03/19/technology/facebook-cambridge-analytica-explained.html>

<sup>35</sup> *Id.*

<sup>36</sup> David Pierson, *Facebook says user data of 87 million was shared with Cambridge Analytica*, Los Angeles Times (April 4, 2018), <http://www.latimes.com/business/technology/la-fi-tn-facebook-zuckerberg-20180404-story.html>

<sup>37</sup> Paul Grewal, *Suspending Cambridge Analytica and SCL Group from Facebook*, Facebook Newsroom, (March 16, 2018), <https://newsroom.fb.com/news/2018/03/suspending-cambridge-analytica/>

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Cracking Down on Future Abuse*, Facebook Newsroom (March 21, 2018) <https://newsroom.fb.com/news/2018/03/cracking-down-on-platform-abuse/>

creating a tool that allows users to more readily see which apps have access to a user's data, and how to limit such access.

#### **D. FTC Action**

On March 26, 2018, the FTC announced that it was opening a non-public investigation into the privacy practices of Facebook. In a press release, the Acting Director of the Commission's Bureau of Consumer Protection stated that "the FTC takes very seriously recent press reports raising substantial concerns about the privacy practices of Facebook."<sup>41</sup> If the FTC finds that a party to a previous consent order has violated the terms of that order, it may impose various penalties including fines of up to \$41,484 per day, per violation.<sup>42</sup> The Commission can also seek to modify the existing consent order with additional terms and obligations.

#### **IV. ISSUES**

The following issues may be examined at the hearing:

- Did Facebook allow the harvesting and sale of user data without their consent?
- Did Facebook violate its own policies with respect to the sharing of user data?
- How have Facebook's policies regarding consumer privacy changed since the launch of the Facebook platform?
- What changes has Facebook made or plan to make regarding its use of user information and how that information is made available to third parties?

#### **V. STAFF CONTACTS**

If you have any questions regarding this hearing, please contact Melissa Froelich, Gregory Zerzan, or Bijan Koohmaraie of the Committee staff at (202) 225-2927.

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<sup>41</sup> Statement by the Acting Director of FTC's Bureau of Consumer Protection Regarding Reported Concerns about Facebook Privacy Practices, FTC.gov (March 26, 2018) <https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection>

<sup>42</sup> 15 U.S.C. § 45(l)