

Facebook forced to amend privacy practices



**PETER
RUBY**


**VICTORIA
PETHERBRIDGE**



The Office of the Privacy Commissioner of Canada (OPC) has strong-armed Facebook — the world’s most popular social networking site with over 200 million users — into changing its worldwide policies and practices.

On July 16, the OPC released the results of its investigation of Facebook’s privacy practices. It found that while many of Facebook’s practices were compliant with the federal *Personal Information Protection and Electronic Documents Act*, on eight subjects it was not. By the time the OPC’s findings were issued, four of these subjects had already been addressed by Facebook to the OPC’s satisfaction. However, the OPC remained unsatisfied in another four respects and gave Facebook 30 days to achieve compliance or risk facing litigation in the Federal Court of Canada.

On Aug. 27, after further discussions with Facebook, the OPC announced that it was satisfied that Facebook was on the right path to addressing the OPC’s remaining concerns.

Facebook has agreed to make the following changes, all accepted by the OPC:

1. Third-party applications: Approximately one million third parties develop applications for Facebook. To add an application (for example, a game), users must consent to giving the developer access to their personal information and that of their friends.

Facebook did not monitor the developers’ use or retention of the personal information. This concerned the OPC. In response, Facebook stated that it will retrofit its

Facebook will launch a 'privacy wizard' allowing users to customize their privacy sensitivity

Facebook

Continued From Page 9

application platform so that users must expressly consent to access by developers for each category of personal information. A link will explain how developers will use the information. Users will be able to choose whether to share their friends' data. Facebook will provide information explaining this new model so that users will know how to limit the data provided to developers when a friend chooses to share the users' information.

2. Facebook advertising: Facebook is free to users and, therefore, advertising is essential to Facebook in generating revenue. However, the OPC recommended that Facebook's privacy policy should outline how users' information is used for targeted advertising and should

better explain the role of advertising on the site and users' ability to opt out of advertising practices. Facebook agreed to amend its policy in this regard.

3. Account deactivation and deletion: The OPC found that the distinction between account deactivation (Facebook retains the user's account information but makes it inaccessible) and account deletion (Facebook expunges the user's account information) was not clear. Facebook agreed to provide more detailed online explanations of the two options. Further, it will clarify that by choosing to deactivate, users are requesting that Facebook store the users' information until they reactivate.

4. Collection of birthdates: To register for a Facebook account, users must provide their name, e-mail address, gender and birth date.

The OPC felt that Facebook did not adequately explain the purpose of requiring users to submit their birthdates. Facebook agreed to better explain the purposes for which birthdates are collected.

5. Default privacy settings: The OPC took particular issue with the default privacy settings for Facebook photo albums (set to "everyone") and for the search function (set so that users over 18 years old are searchable on public search engines). In response, Facebook plans to launch a "privacy wizard" that will allow users to select a low, medium or high privacy setting so that they can customize their privacy sensitivity. It will also introduce a per-object privacy tool so that users will be able to configure the setting on every piece of content that they upload or share.

6. Monitoring activity: Face-

book monitors its site for anomalous behaviours and may suspend a user's account on the basis of his or her behaviour. The OPC found that Facebook did not adequately inform users of this practice. Facebook will amend its privacy policy to explain its practice.

7. Accounts of deceased users: The OPC was satisfied that Facebook's practice of memorializing accounts of deceased users (keeping the deceased's account active for a period of time) met the reasonable expectations of users, but recommended that Facebook better inform users of this practice.

8. Personal information of non-users: Users can invite friends to join Facebook by providing the site with non-users' e-mail addresses, to which an invitation will be sent. Facebook does not ensure that these non-users have

consented to this use of their e-mail address, which concerned the OPC. In future, Facebook will inform its users that they are obligated to obtain consent from non-users before providing non-users' email addresses to Facebook.

Canada's extensive investigation into Facebook's privacy practices is the first of its kind and Facebook's response will have an impact on Facebook users worldwide. The findings of the OPC have made an important change to how Facebook does business, particularly with respect to third-party applications. ■

Peter Ruby is a litigation partner with a practice focused on the IT industry, and Victoria Petherbridge is a student-at-law. Both are with Goodmans LLP in Toronto.