

## Facebook - Privacy and data protection

### Identity theft

For many current users of the internet regular concerns are identity theft and how their privacy may be compromised.

Facebook users will be familiar with seeing profiles which set out in proud detail the user's name, sex, address, date of birth, email address, employer, religion and any number of other useful pieces of information which might be of interest to those with a bent for identity theft.

The Facebook "closed model" does however offer slightly more protection for those users who act sensibly by limiting who can see their profile and by reducing the amount of personal data they put onto their profile.

Facebook recently hit the headlines when it was announced that profiles would soon be accessible to the world at large via regular internet search engines such as Google. This sent a shiver down the spine of most of us who are primed not to make our personal details freely available to anyone unless (i) they either know us in the first place or (ii) we owe them money.

However, the best advice remains that Facebook users should make their profiles private and only accessible by their existing Facebook friends.

### Privacy and data protection

But it is not just Facebook friends who have access to and can collect data from users' profiles. Users are able to subscribe to "applications" such as the "Scrabulous" program, a electronic version of the word game Scrabble. However, how many of us stop and think who may be behind the applications and to what extent users' personal information is collected when signing up to an application?

The principal purpose of writing the application and having it available on Facebook may well be as a commercial enterprise to generate revenue from hits on advertising attached to the application or merely as a bit of fun to see how many people across the world sign up to it.

Whilst the casual Facebook user will view using such applications as a harmless pastime, issues regarding privacy and data protection should be at the forefront of our minds.

Facebook was recently threatened with investigation by the information commissioner's office for refusing to enable a user to delete his profile. The profile was deactivated but without actually being deleted remained stored on Facebook's servers. Whilst Facebook has said that it does not use information retained in deactivated profiles, it raises a serious concern about who may be able to tap into our personal information at a future date

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and whether this is being stored to be used in targeted advertising (based on users' online activities) in the future. Facebook has, however, denied that users' data is stored for this purpose.

Facebook has only recently changed its default settings in order to stop automatically telling a user's friends of his or her online activities under its "Beacon" system. Users can now opt in to the system rather than opt out. The question remains, if you do opt in, how much of our information is able to be collected by Facebook's partner websites.

Under the Data Protection Act 1998 a "data subject" (that's you and us) can require a data controller (Facebook) to correct or remove personal data it is holding and to prevent "processing" information (basically doing anything with the data other than just storing it) and to stop a data controller from using the data for direct marketing.

Facebook said that it's aim is to comply fully with UK data protection laws, however in a Channel 4 interview it said that in order to remove all information from a profile the user would need to log in and delete everything on their profile and everything they had posted on other user's profiles, however, for regular Facebookers this could take hours.

### **Commercial activity**

For any readers who may be thinking of using Facebook for their own commercial benefit, there are of course potential benefits from advertising as the number of Facebook users continues to grow and through pay-as-you-use applications. For instance, Facebook users can sign up to an application to send cyber-gifts to their "friends" such as a pint of lager, flowers, a birthday cake etc. Some of these gifts are free, others require the user to sign up with their credit card details to pay.

However, there are also legal and regulatory pitfalls to avoid in terms of the rights of the user regarding their personal information and issues regarding infringement of existing intellectual property rights. For example, the Scrabulous application which was invented by two brothers in India mentioned earlier hit the headlines recently when Mattel and Hasbro (who own the Scrabble brand) threatened legal proceedings for copyright infringement

### **Conclusion**

Advice for Facebook users remains to be cautious about putting too much personal information on your profile and to review your privacy settings regularly to ensure that you are protected from third party websites receiving information. Given the recent interest shown in Facebook by the Information Commissioner's Office there may well be further developments.

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If you in any doubt as to your rights or responsibilities under data protection legislation or your rights to privacy you should seek legal advice. Teacher Stern LLP are able to provide you with up to date advice regarding data protection, both for the individual whose information is being used and the business who is using or storing personal data.

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