

Comments on Facebook’s Proposed Governance Scheme

Joseph Bonneau, Sören Preibusch, Jonathan Anderson, Richard Clayton, Ross Anderson
University of Cambridge
Computer Laboratory

March 30, 2009

1 Introduction

In February of this year, Facebook suffered widespread negative media coverage and user complaints following an unannounced change in the site’s terms and conditions regarding intellectual property. On February 26, Facebook’s founder and CEO responded with a blog posting entitled “Governing the Facebook Service in an Open and Transparent Way,”¹ which included the following statement:

Our main goal at Facebook is to help make the world more open and transparent. We believe that if we want to lead the world in this direction, then we must set an example by running our service in this way.

Claiming that “the conventional business practices around a Terms of Use document are just too restrictive to achieve these goals,” Facebook simultaneously released two documents with which it proposed to replace existing Terms of Service: the Facebook Principles (the Principles²) and a Statement of Rights and Responsibilities (the Statement³). These documents were made available for public review and comment.

We have analysed these documents and the associated commenting process, and find them both unsatisfactory. They fail to meet not only our own wishes for how a social network like Facebook might be governed, but Facebook’s self-professed goal to “lead the world” in openness and equality. Despite the lofty rhetoric introducing it, the proposed Statement provides virtually no meaningful guarantees for users about how the site will be governed. Facebook has also failed at its goal “to simplify the language so you have a clear understanding of how Facebook will be run.” The primary document is full of vague terms, loopholes, and legal jargon, and contains many contradictions, both internally and with the Principles.

The Statement outlines a pervasive asymmetry of power: Facebook prescribes unrealistic obligations to its users and developers but does not accept any responsibilities itself. Facebook also makes aggressive claims on the intellectual property rights of content associated with the platform without providing effective limits on how it may be used. Fortunately, important aspects of this statement may not be legally enforceable in many jurisdictions, including Europe.

Security engineers are familiar with “security theatre” – measures designed to give reassurance rather than real protection. We consider the Statement to be “democracy theatre,” providing the appearance of user involvement without giving users any real say. Users and the media shouldn’t be fooled by the appearance of user involvement – Facebook is not a democracy, and is only truly

¹<http://blog.facebook.com/blog.php?post=56566967130>

²<http://www.facebook.com/topic.php?uid=54964476066&topic=7960>

³<http://www.facebook.com/topic.php?uid=67758697570&topic=7569>

influenced by the threat of bad publicity causing users to leave the site. In sum, Facebook has made many promises which their proposed documents fail to live up to. There may be legitimate legal and business reasons why these promises cannot be fulfilled; if so then Facebook should not be making them.

2 Comment Process

We believe that Facebook's requests for commentary and references to voting are primarily designed to give the impression that users have some control, without actually incorporating user desires in places where they are inconvenient. Facebook has initiated its request for comments within the Facebook network itself, thus one needs to sign up to make a comment on the documents. To comment on the future terms, users are first bound to the current terms.

The interface for discussion is also unsatisfactory. The discussions are spread over at least 17 discussion boards. At the same time, the operator requests that the users do not start discussion threads themselves. Facebook has recycled their existing groups infrastructure, which is lacking many features of a normal discussion forum. It is hard for users to have a continuing conversation, as posts are displayed statically in chronological order. The discussion threads are fairly high traffic, generating up to 30 messages per day, but there is no interface for sorting or searching posts, and there is no threading based on individual topics. Reading the discussion requires wading through posts 30 at a time. The posts include outright spam and non-informational statements such as "Woohooo! front page comment. I'm awesome!" which are not moderated.

The unsuitability of Facebook's group interface for in-depth discussion is illustrated by the volume of postings: of 872 postings as of March 26, 822 were posted within the first three days of the posting of the proposed Statement. This is a minuscule time frame which is insufficient for the review of a complicated document. Finally, as comments have to relate to "specific terms in the Statement", meta-comments on the process, on the overall organisation of the documents are precluded from the outset.

Thus, we are not satisfied that the user feedback process will provide substantial review of the Statement or other proposed changes. Facebook will eventually introduce new terms when it wants to.

3 Voting Process

The fundamental democratic principle which Facebook affects to espouse is the right to vote. There is, however, very little that Facebook users will have the opportunity to vote on: only changes to the Statement itself are subject to voting, not the collection of other policies referenced in the Statement. This corpus of documents, pictured in Figure 1, includes Facebook's Privacy Policy and several other contract documents (pictured in yellow), not all of which can be found via links or even targeted Google searches such as *"developer branding guidelines" site:Facebook.com*'. Collectively, these documents are Facebook's Constitution, most of which may be changed without any need to consult the community.

Even if a vote is actually taken, the alternatives on which the users can vote are decided at Facebook's discretion, so it can give users confusing or meaningless choices and thus mould the consequences of the vote. Similarly, there is no restriction on the frequency of votes, meaning Facebook can repeatedly propose changes until users are tired of voting and changes go through without hitting the minimum quorum. Even worse, Facebook reserves complete freedom to make changes for

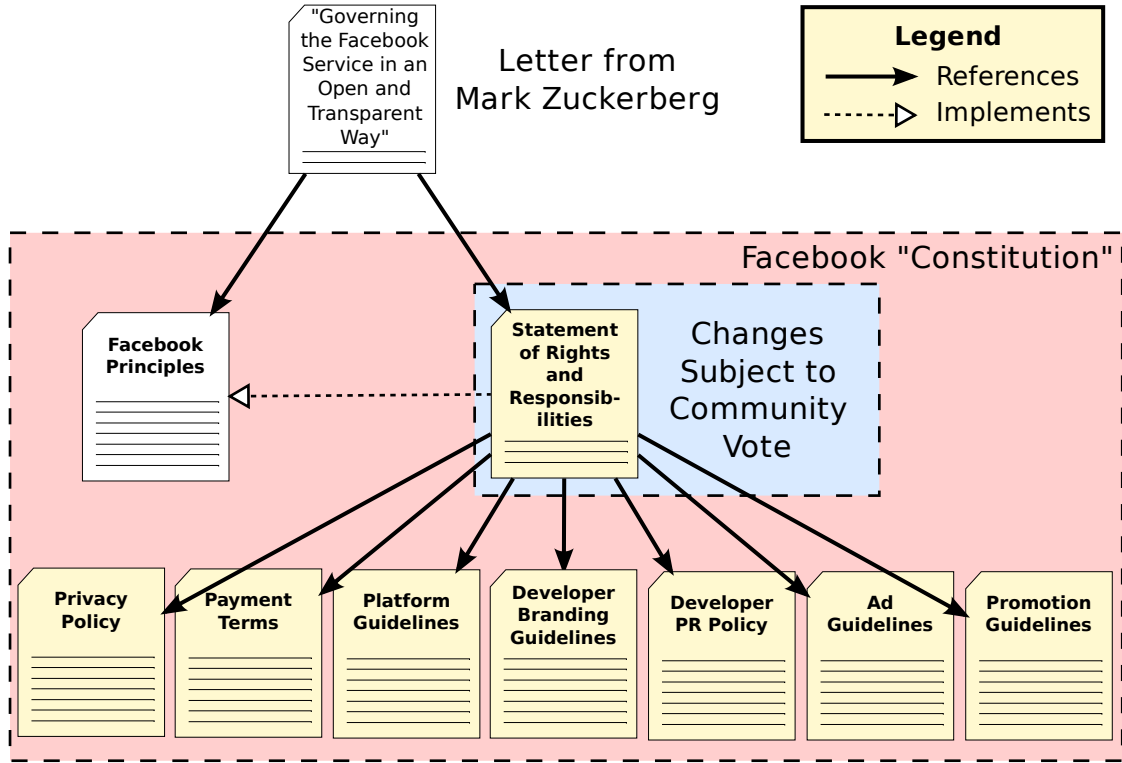


Figure 1: Proposed Facebook Governance Documents

“administrative reasons” with no opportunity for users to comment or vote, where “administrative” is an undefined term that may encompass functional additions to the platform.

There are many other avenues for Facebook to introduce future changes that ignore public sentiment. A vote will be organised only “if more than 7,000 users comment on the proposed change” of the terms and “the vote shall be binding ... if more than 30% of all “active registered users” as of the date of the notice vote”.

The threshold of 30% is specified with no justification, and is likely to be unrealistically high given that Facebook can manipulate both voter turnout and the minimum required turnout. It is under Facebook’s sole discretion to define which users are “active.” Based on the rest of the Statement (notably §4.5), the operator can well argue that an active user is whoever has signed up at sometime even if no activity has been recorded since then, pushing the required proportion of current users needed for a binding vote much higher. Facebook is also responsible for implementing and promoting a ballot. A ballot given prominent space on all users’ home pages will have a far higher turnout than one users must actively search for, as they must do for the current town hall forums. The length and timing of elections is also unspecified.

There are also serious localisation problems with the proposed process. The Statement is provided with translations only in English, Spanish, French, Italian, and German. This excludes millions of users, as Facebook is now available in 53 languages; there is no guarantee that proposed changes will be provided in all languages. This could make informed voting impossible for many users and make the 30% quorum even harder to achieve.

There are minimum time periods before future changes can take effect, but they are very short (three or seven days depending on the section under consideration). A reasonable period of review

would be a minimum of one month, as Facebook has done for the Statement. This short notice period conflicts with Principle 7, which declares that all users can use the service regardless of their level of participation. The short ballot periods effectively require a weekly log-in to be able to participate in the site's governance.

Given the unsatisfactory nature of the comment process and the loopholes in the proposed voting process, these features may simply have been designed as a shield against media criticism. Future complaints about the terms may be dismissed with reference to a seemingly democratic decision process. We also fear that users may misinterpret the engagement and assume that their concerns have been heard, whilst their concerns have just been articulated and then ignored.

User participation in setting the procedures on a social networking platform might be a useful check on the network operator's power, but will user participation eventually result in implementation of the majority of users' concerns, even if they conflict with the network's desires? Facebook has yet to commit to this. To do so will require a much more well-specified voting process that guarantees ease of voting and meaningful choices, and removes loopholes which allow the vote to be manipulated and bypassed.

4 Accessibility

Facebook has failed by its own standards by not providing a Statement that is clear and free from "legalese." The introductory blog posting by CEO Mark Zuckerberg proved very readable and outlined many laudable goals. The Principles then elaborated on these, adding more well-intentioned goals. The Statement, however, begins with clear and simple English and gradually devolves into vagueness and deceptive legal jargon. §14, Disputes, is a particularly bad example, as the Statement contains many loaded legal terms such as "indemnify and hold harmless" which most users will not be able to properly interpret. §14.3 then provides a long disclaimer of responsibility, which is inexplicably typed in all capital letters, limiting readability, and containing legalese phrases such as "NON-INFRINGEMENT," "DAMAGES, KNOWN AND UNKNOWN," and "MATERIALLY AFFECTED." Finally, §16, "Other," tacks on several more critical disclaimers of responsibility in a set of seven disorganised sentences.

It is troubling that Facebook has chosen to start with accessible English to outline its high-level goals, and then reverts to arcane legal formalisms to strongly limit its responsibilities to enforce the preceding promises, after most users will have stopped reading. Similarly, the Privacy Policy and seven other documents are referenced but not included, and must be accessed separately. The privacy policy is glossed over with the platitude that "Your privacy is very important to us," the goal seeming to be to re-assure users who will then skip over reading this document, despite it carrying the same legal weight as the Statement.

Perhaps the pleasant introductory text and the Principles are designed to give the impression of a Statement that is beneficial for users and discourage a careful reading of the fine print in the back of the document. Even the name "Statement of Rights and Responsibilities" is misleading, as it obscures the fact that the document is designed as a binding legal contract. Despite notable progress in simplifying many sections of the document from previous versions, much of the current version is still too obscure to be useful for the vast majority of users. Facebook cannot truthfully claim to "simplify the language so you have a clear understanding of how Facebook will be run."

5 Contradiction of Stated Principles

The Principles document outlines many high-minded principles that advance Facebook’s ostensible goal “to make the world more open and transparent.” Many of these principles are admirable, but are plainly contradicted by the Statement itself.

Principle 3, “Free Flow of Information,” states that people should be free to collect information about others, and that they should have tools which make this collection “easy, quick, and efficient.” §5.7 of the Statement, however, imposes a ludicrous requirement on users: before collecting information about others, one must obtain consent and post a privacy policy.

Principle 4, “Fundamental Equality,” and Principle 7, “Fundamental Service,” imply that everyone should have the right not to be discriminated against by Facebook, and Principle 10, “One World,” brings this non-discrimination to the international level. §4.3 of the Statement, however, bars users from countries that have been embargoed by the United States of America, §4.4 bars registered sex offenders, and the choice to offer the Statement only in English may exclude many other users.

Principle 6, “Open Platforms and Standards,” says that users “should have programmatic interfaces for sharing and accessing the information available to them,” but has opposed such measures in the past. For instance, the OpenSocial project allows interoperation between such major social networks as MySpace, orkut, Hi5, Netlog, and Friendster. Facebook has refused to participate. §3.2 of the Statement specifically forbids users from using any automated means to access Facebook, and Facebook has fought vehemently against social network “aggregators” that allow users to access multiple social networks via one web page – a web page which does not display Facebook advertisements.

6 Asymmetric Rights and Responsibilities

The Statement fosters an asymmetry of power between the operator and its users. It primarily consists of rights for Facebook and responsibilities for users, developers, and advertisers. Many of these obligations are unrealistic and impose an impossible burden on users, giving Facebook a convenient method of nullifying the contract.

Facebook’s treatment of users is particularly unequal. In §16.5, users are barred from transferring their rights or obligations, while in §16.6, Facebook is specifically given the right to do so, having already reserved the right to transfer user content in §2.3. Even worse, users are required to comply with the complete Statement or else their account may be revoked and the Statement terminated (§13), while §16.3 states that Facebook’s failure to enforce any of the Statement will not constitute a waiver. Facebook may decide to stop providing all or part of their services to a user without obligation of notification, which is a troubling situation given the long list of obligations users must follow to comply fully.

Users are required by §4 to provide their “real names and information,” and keep their contact information accurate and up-to-date. They are specifically barred from providing misleading personal information on Facebook, which is inconsistent with the social norm of being able to represent oneself as one chooses, which can include “white lies” to cover embarrassing information. §5.7 requires that “if you collect information from users, you will obtain their consent.” This seems to be targeted at application developers, but as written applies to all users (must they request access every time they view another user’s photos?). §3.7 provides another dubious requirement, as users are required to not promote “alcohol-related content,” without age-specific restrictions, despite the fact that Facebook currently provides no interface to limit access to content to users over 21, the minimum drinking age in the United States. §4.6 requires users to not share their password, let

others access their account, or “do anything else that might jeopardise the security of your account,” while Facebook itself only claims “we do our best” to keep the site safe, but “cannot guarantee it.”

Advertisers and developers are given a similarly one-sided contract. Advertisers must pay based on Facebook’s tracking mechanisms (§11.2), and Facebook specifically refuses to accept responsibility for click-fraud (§11.6) and user response (§11.5), the latter of which is unfair because Facebook determines placement and location. Facebook gives itself a seven day window to stop running ads on the site (§11.8), although changes to §11, which regulates advertising, only require three days’ notice.

Application developers are curiously required to not display or share data in a way inconsistent with a user’s privacy settings (§9.2.3), although they are not given access to these settings. Facebook itself ought to be (and is in practice) the entity enforcing privacy controls on applications. Application developers are not allowed to place advertisements inside their applications (§9.7), but Facebook may place any advertisements alongside applications. Facebook may keep backup copies of any user data even after account deletion, but neither users nor application developers are permitted to create and keep such backups beyond their activity period (§9.2.4 and §3.2). Applications must make it easy for users to remove their application, make it easy for users to contact them, and provide “customer support” (§9.4, §9.5, and §9.6). These requirements seem reasonable, except that Facebook is under no obligation to do the same, makes it moderately difficult to remove accounts, and provides limited customer service.

7 Intellectual Property Rights

Facebook’s attempt to claim “perpetual” and “irrevocable” ownership of content on the site was the most unpopular feature of the previously proposed terms. Facebook declared these concerns their top priority when introducing the proposed Statement, and included user ownership of information as their second guiding principle. Despite the re-assuring proclamation in the Statement that “You own all of the content and information you post on Facebook,” there remain fundamental problems with the new Statement. Facebook still aggressively absorbs the intellectual property rights of content that is made available to the network, the primary change being the termination of Facebook’s license upon account deletion.

The Statement indicates in §2.3 that users give permissions to Facebook that include: public display, modification, and creation of derivative work. While it may be arguable that these permissions cover normal operation of the site, they are unacceptably vague and permit myriad uses of user data which users are unlikely to support. The “public display” right may be necessary to enable Facebook’s Public Search listings feature, but this would also enable the projection of user images onto public billboards. Modification of a user’s image allows for major infringement of author rights well beyond the “clipping and resizing” that is needed for an appealing web layout. Facebook should make clear what usage rights are being transferred, instead of acquiring a blanket license to do what they wish with user content.

Similarly, Facebook’s license is declared to be transferable and sub-licensable. These terms are both vague and confusing, and grant too much power for Facebook to give user content to third parties. The Statement should include a specific enumeration of under what circumstances and with what limitations user content can be transferred to third parties.

Facebook’s license is “subject to your application and privacy settings,” as described in §2.1, yet this protection is misleading, as the current settings contain no controls over what Facebook is permitted to do with user data, only controls over which other users of the site may see it. Facebook also does not make a commitment as to the functionality of these controls. Henceforth, if the privacy

controls fail (or get de-implemented), so will the users' ability to control the release of their data. The license is also limited by account deletion, as described in §2.2, but there is an interesting interaction with another feature: Facebook retains the right to remove content (§5.2), but also to "disable" a user account (§5.5 and §13), which would prevent a user from logging in to delete their personal information.

Worse, the Statement creates a loophole using shared data and activity logs. In §2.2, it is declared that "content shared with others may remain until they delete it." This is vague and unsettling as almost all content uploaded onto a social network is shared with a large number of people. This clause prevents Facebook from having to keep reference counts to all user data that is linked or displayed in other user's profile walls or streams, but also means that Facebook maintains the right to store user data until all users who may have viewed it have deleted it. This is particularly problematic given Facebook's recent move to a live streaming structure where users are notified of all changes in friends' accounts. In terms of user activity, Facebook slyly maintains a right to store activity logs in §2 by defining "the actions you take" as "content." User activity, such a frequency of log-in, viewing of other user's profiles, etc, can thus be indefinitely stored by Facebook, since there are no privacy controls for this data, and no interface for a user to "delete" it. A fair Statement would require that any user data stored by the network must be viewable and deletable by the user.

In addition to problems with control of user content, Facebook makes imposing claims on other content on the site. Third-party content can be sucked into Facebook: the operator is given permission to use content that has only been linked to the network via the Share Link button (§8.1 and §8.2). Advertisers must grant Facebook the right to use their ads for marketing and promotional purposes (§11.10). Content created by application developers can be analysed for any purposes by Facebook (including commercial) and it can be freely framed by advertisements or put anywhere in the platform (§9.15 and §9.16).

The rights of application developers are also limited by §9.2.6, §9.2.7, and §9.2.8. Most ominously, Facebook specifically reserves the right in §9.18 to copy developers' applications and produce a competing version. Advertisers are banned from making public statements about their relationship with Facebook, effectively preventing the discussion of Facebook's advertiser interface. These restrictions are against the spirit of Facebook's proposed Principles, specifically Principle 4 which promotes "fundamental equality" between all users of the site.

8 Legal Enforceability

While we are not legal experts, we do question the legality of some provisions of the Statement for many jurisdictions. For instance, the Statement insists that any legal action involving Facebook must take place in the courts of Santa Clara County, California. A European consumer may, however, have the right to sue Facebook for redress in their local court under the 2000 Brussels Regulation, and under the 1980 Rome Convention, they may be able to sue under their national law. In particular, the "mandatory rules of the law" trump contractual agreement⁴.

9 Recommendations

Facebook proports that its new governance scheme is "open and transparent," but the recent spate of documents from Facebook is democracy theatre, making little more than empty promises. It features an undemocratic dialogue and voting system, inaccessible language, contradictory principles and terms of use, asymmetric rights and draconian subversion of intellectual property rights. We

⁴<http://www.berr.gov.uk/whatwedo/consumers/consumer-support/resolving-disputes/Jurisdiction/rome>

present the following recommendations in the event that Facebook someday wishes to be truly “open and transparent.”

Democracy Facebook must decide whether or not it actually wants to be governed democratically, not provide democracy theatre. The proposed Statement recognises some of Facebook’s legal obligations, and their CEO’s article “Governing the Facebook Service in an Open and Transparent Way” recognises the innovator’s dilemma – development of new products cannot always depend on user demands.

If Facebook is going to become a democracy, it should do it properly. If not, it should stop using the language of democracy.

Language Facebook should also change the language that it uses to refer to its principles and intentions. Users will accept that a legal contract must have legal language; the problem arises when Facebook promises a contract that will be understandable to all. The solution is not to draft bad legal documents, it is to be open and transparent about the fact that the average user will not understand all of their provisions. It might follow the example of the Creative Commons and have separate – but consistent – human-readable and lawyer-readable versions.

Similarly, Facebook should stop using rhetoric about open standards and equality unless they are actually prepared to back it up with actions such as implementing OpenSocial support and the ability for users to export information *en masse* into formats that other social networks could import.

User Rights Facebook should provide users with assurances that their personal information will be safe, both from Facebook itself and from application developers. With regard to the former, Facebook should specify tight bounds on what they can do with users’ intellectual property, rather than the *carte blanche* that they currently give themselves. For the latter, Facebook should recognise that most end users have no means to seek redress from application developers; Facebook itself must acknowledge its intermediary role, taking responsibility for the personal data that Facebook gives to applications.