



December 31, 2019

VIA EMAIL (erinegan@fb.com)

Erin Egan
Chief Privacy Officer, Policy
Facebook, Inc.

Dear Ms. Egan,

The News Media Alliance (the “Alliance”) writes seeking revision of Facebook’s recently posted “State-Specific Terms” for California, available at <https://www.facebook.com/legal/terms/state-specific> (the “California Terms”), to address the concerns detailed below and to align with the law.

The Alliance is the leading voice for the news media industry. It represents over 2,000 media outlets and is composed of nationally recognized organizations, international organizations, and hyperlocal organizations. Publishers like the members of the Alliance are the intended counterparties to the California Terms in situations where publishers use Facebook Business Products. In such situations, the publisher is the “Business” for purposes of the California Consumer Privacy Act (the “CCPA”).

The CCPA allows for a publisher Business to share personal information with Facebook in at least two situations: (1) where the contract between the Business and Facebook contains specific terms restricting use of the personal information by Facebook as a “Service Provider” (discussed in detail below); or (2) where Facebook is a “Third Party”, subject to the consumer’s right to opt out of the “Sale” of their personal information from the publisher Business to Facebook if the sharing is for “valuable consideration.”

Facebook’s California Terms state that Facebook will process personal information of California residents it receives from a publisher Business as a “Service Provider.” However, Facebook fails to include the required contractual restrictions in the California Terms as explicitly delineated in the CCPA, California Civil Code § 1798.140(w). Specifically, and conspicuously, the California Terms do not prohibit Facebook from selling the personal information of California residents or from retaining, using, or disclosing such personal information outside of the direct business relationship between Facebook and a publisher. In addition, the California Terms lack the required certification that Facebook understands the restrictions required by this Section of the CCPA and will comply with them.

In the absence of such provisions in the California Terms, Facebook may not be a “Service Provider” despite its conclusory declarations to the contrary – it may be a “Third Party” and the sharing of personal information with Facebook through its Business Products may be a “Sale” as defined under the CCPA for the reasons explained above. Facebook completely fails to account for the possibility that such sharing could be a Sale. Instead, the California Terms specifically state in Section 3 that “[y]ou and Facebook agree that the existence of these State-Specific Terms does not constitute an admission that sharing of Personal Information constitutes a Sale.”

Facebook nonetheless states in Section 2 that the publisher will “be solely liable for your compliance with the” CCPA. This puts the publisher Business in the untenable position of being forced to agree to the noncompliant California Terms, but remain solely liable in the event the Attorney General determines that (1) its sharing with Facebook is a Sale; or (2) the California Terms are noncompliant with the restrictions required of a Service Provider agreements.

Facebook’s heavy-handed contractual posturing is unacceptable given the new paradigm required for protection of consumer personal information in California. Facebook’s position in the California Terms is not legally accurate – but more importantly, it puts Facebook on the wrong side of history, yet again, when it comes to transparency and accountability for data practices.

The Alliance calls on Facebook to revise the California Terms to add the Service Provider language required by the CCPA, Section 1798.140(w), referenced above, effective January 1, 2020, if it indeed will be abiding by such restricted processing parameters. Alternatively, if the reality of Facebook’s data processing is otherwise, the Alliance respectfully requests that Facebook own up to its true role in the data ecosystem and honor “Do Not Sell” opt-out requests transmitted by publishers and treat personal information consistent with the requirements of the CCPA.

Sincerely,

A handwritten signature in black ink, appearing to read "David Chavern". The signature is written in a cursive style with a large, looped initial "D" and a trailing flourish.

David Chavern
President & CEO
News Media Alliance