

Democracy Theatre: Comments on Facebook's Proposed Governance Scheme

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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 the existing Terms of Service: the Facebook Principles² (the Principles) and a Statement of Rights and Responsibilities³ (the Statement), which have been made available for public review and comment. We have reviewed 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.

It may be that Facebook started this process with truly democratic ideals in mind, only to be confronted with a litany of legal and business complications as they actually drafted the Statement. Whatever the reason, despite the lofty rhetoric introducing it,

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>

the proposed Statement provides few 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 Statement is full of vague terms, loopholes, and legal jargon, and contains many contradictions, both internally and with the Principles. Furthermore, 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 they may be used. Fortunately, important aspects of this statement may not be legally enforceable in some jurisdictions, including many within Europe. In sum, Facebook has made many promises which their proposed documents fail to live up to.

We fear that many users will simply assume the new documents are satisfactory based on Facebook’s frequent mentions of openness, transparency, and user involvement. Security engineers are familiar with “security theatre” – measures designed to give reassurance rather than real protection. We consider the Statement, in its current form, to be “democracy theatre,” providing the appearance of user involvement to assuage user’s feelings of powerlessness without giving users any actual control.

2 Comment Process

Facebook’s request for commentary gives the impression that users have some control without binding Facebook to incorporate inconvenient user desires. For starters, the discussion format is closed to outside experts. Facebook has initiated its request for comments within the Facebook network itself, thus one needs to sign up to comment on the documents. To comment on the future terms, users are first bound to the current terms. As comments have to relate to “specific terms in the Statement,” meta-comments on the process or the overall organisation of the documents are precluded from the outset.

The user interface for discussion also hampers the process for those who do get involved. 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, 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. A few days of rapid commenting with little follow-on discussion is insufficient for the review of a complicated document. Thus, we are not satisfied that the prescribed user feedback process will provide substantial review of the Statement or other proposed changes.

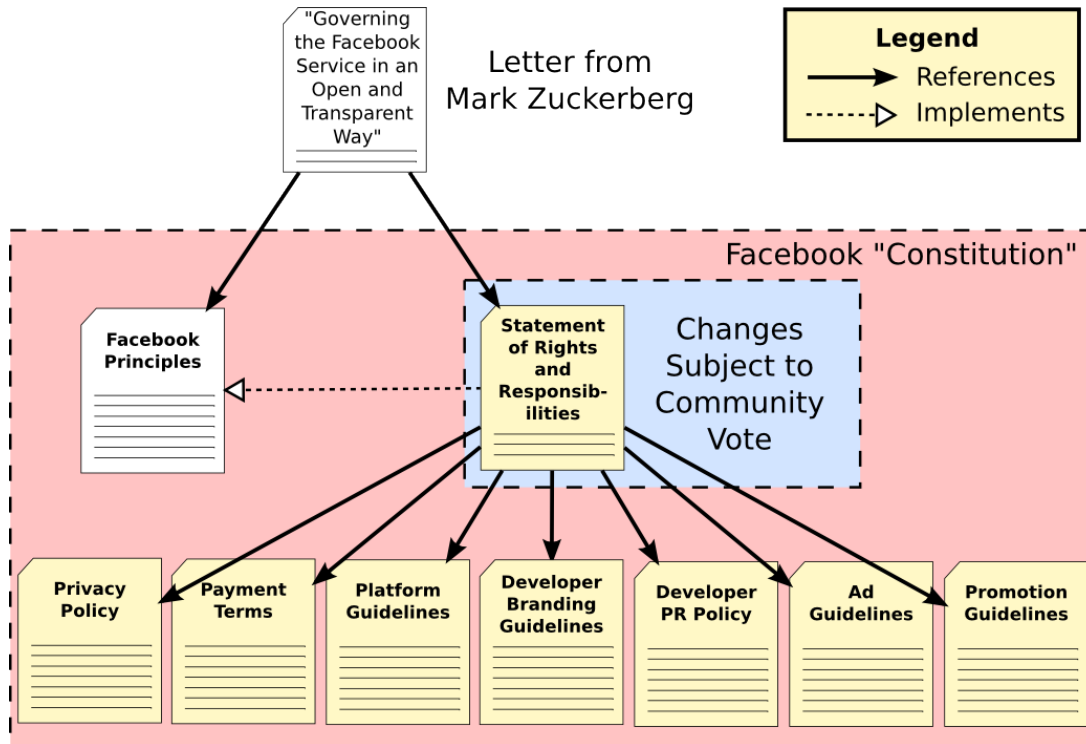


Figure 1: Proposed Facebook Governance Documents

3 Voting Process

In diction such as “town hall” and “voting process,” Facebook has started to use the language of democracy, and the fundamental principle of democracy 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.

There are many avenues for Facebook to introduce future changes that ignore public sentiment. 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 “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.

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 some time 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. This also conflicts with Facebook's Principle 10 of transcending national boundaries.

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 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 typed in all capital letters, limiting readability, and contains technical phrases such as "NON-INFRINGEMENT," "DAM-

AGES, KNOWN AND UNKNOWN,” and “MATERIALLY AFFECTED.” Finally, §16, “Other,” adds several more critical disclaimers of responsibility in a set of seven disorganised sentences. It is troubling that the Principles – which outline high-level goals – are written in accessible English, but the Statement reverts to increasingly arcane legal formalisms after most users will have stopped reading.

The Privacy Policy and several other documents are referenced by the Statement but not included in it, and must be accessed separately despite §16.1, which says, “This Statement makes up the entire agreement between the parties regarding Facebook, and supersedes any prior agreements.” The privacy policy is glossed over with the platitude “Your privacy is very important to us,” which might re-assure users who will then skip over reading it, despite it carrying the same legal weight as the Statement.

The pleasant introductory text and the Principles 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 something of a misnomer, as it obscures the fact that the document is a binding legal contract.

Mark Zuckerberg’s original blog post said, “we tried hard to simplify the language so you have a clear understanding of how Facebook will be run.” Although there has been notable progress in simplifying some sections, a great deal of the current version is still too obscure to be understandable for the vast majority of users.

5 Contradiction of Stated Principles

The Principles document outlines many high-minded principles that advance Facebook’s 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, and §4.4 bars registered sex offenders.

Principle 6, “Open Platforms and Standards,” says that users “should have programmatic interfaces for sharing and accessing the information available to them,” but Facebook has opposed such measures in the past. For instance, the OpenSocial project allows inter-operation 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, consisting primarily of rights for Facebook and responsibilities for users, developers, and advertisers. Many of these obligations are unrealistic and impose an impossible burden on users.

Facebook’s treatment of users is particularly asymmetric. 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 for 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, including “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 any 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 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. Indeed, Facebook 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 vague and permit myriad uses of user data which the “owners” (Facebook users) are unlikely to support. The “public display” right may be included 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 infringement of author rights well beyond the “clipping and resizing” that is needed to make 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 (data protection), only controls over which other users of the site may see it (personal privacy). Facebook also does not make a commitment as to the functionality of these controls, and if the privacy controls fail – or are de-implemented – then users would lose the 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 existence of shared data and activity logs means there is a loophole in the Statement. 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 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 agreement.⁴

9 Recommendations

Facebook purports that its new governance scheme is "open and transparent," but the recent suite of documents from Facebook is democracy theatre, making little more than empty promises about user involvement. 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 present the following recommendations as suggestions of how Facebook can become more truly "open and transparent."

Democracy Facebook must firmly decide if it wants to be governed democratically. There are legitimate arguments against democracy: the proposed Statement recognises

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

some of Facebook’s legal obligations, and their CEO’s article “Governing the Facebook Service in an Open and Transparent Way” recognises that innovative development of new products cannot always depend on user demands. The Principles, however, skate over these problems. If Facebook is going to become a democracy, it should do so wholeheartedly. If not, it must stop using the language of democracy. Similarly, Facebook should stop using rhetoric about open standards and access 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.

Language Facebook should also change the language that it uses to refer to its principles and intentions. Users can 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 legal documents with misleading prosaic introductions, it is to be open 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.

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.

10 Conclusion

We mostly agree with Facebook’s proposed Principles and the goal of an open, transparent, user-driven process for governing a social network. However, the currently drafted Statement fails to fulfill these goals, and we feel that well-stated but empty promises are even worse for users than the obfuscated Terms of Use currently in place. Therefore, we do not support the adoption of the proposed documents without fundamental changes.