

Emerging Legal Issues in Social Gaming: The Re-Appearence of the ~~Gamekeeper~~ Gatekeeper

Dr. Andreas Lober & Olivier Oosterbaan

Users & User Data

Marketing & Advertising

Privacy

Platform Dominance

Virtual Goods

(Virtual) Money

<Animal> Ville
City
Tank
Club
Grotto
Farm

Facebook
Facebook
Facebook
Facebook
Facebook
Facebook



Lucas Jr Cranach
Mijn profiel bewerken

Who Owns the User and
Who Owns User Data?

Facebook
Facebook

Facebook
Facebook
Facebook

Facebook Principles

Facebook Statement of Rights and
Responsibilities

Facebook Developer Principles & Policies

Facebook Privacy Policy

Facebook Additional Policies Governing
Facebook Connect

Facebook Principles

Facebook Statement of Rights and
Responsibilities

Facebook Developer Principles & Policies

Facebook Privacy Policy

Facebook ~~Additional Policies Governing
Facebook Connect~~

“You will only request data you need to operate your application.”

“You will delete all data you received from us relating to any user who deauthorizes, disconnects, or otherwise disassociates from your application unless otherwise permitted in our Developer Principles and Policies.”

~~“You will delete all data you received from us relating to any user who deauthorizes, disconnects, or otherwise disassociates from your application unless otherwise permitted in our Developer Principles and Policies.”~~

“You will delete all data you receive from us concerning a user if the user asks you to do so, and will provide a mechanism for users to make such a request.”

“You will delete all data you receive from us concerning a user if the user asks you to do so, and will provide a mechanism for users to make such a request. We may require you to delete data you receive from the Facebook API if you violate our terms.”

“Be Trustworthy”
(FB Principle)

“Because We Own Your Ass”
(FB Terms of Service paraphrased)

“And We Own Their Ass Too”
(FB Terms of Service paraphrased)

Go get the users (and their data)!

Platform Dominance:
Fighting Goliath?

Today* on



An antitrust app

Apple may be in the eye of regulatory storm

(* well, almost)

Tomorrow?



An antitrust app

 Facebook | in the eye of regulatory storm

Dominant Companies
must not abuse their position.
(Universal principle of antitrust law.)

Article 102 TFEU (Ex. Art. 82):

Any abuse of a dominant position is prohibited. This can mean,

- (a) unfair prices or other unfair trading conditions;
- (b) limiting production, markets or technical development;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which have no connection.

Dominant Companies
must not discriminate.

Dominant Companies must grant
access to the Essential Facilities
they control.
(APIs can be essential facilities!)

Investigations
Fines
Bad Press

Microsoft v. Commission:
EUR 497,000,000

Is Facebook dominant?

What to do in the meantime?

Facebook is not a game-master.

Who has to Comply with
What Privacy Law?

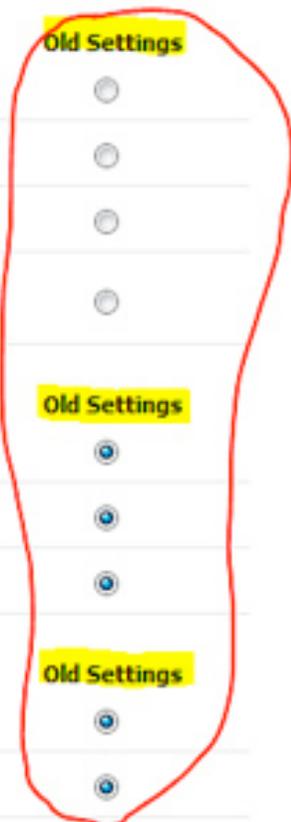
Please update your privacy settings

Facebook's new, simplified privacy settings give you more control over the information you share. We've recommended settings below, but you can choose to apply your old settings to any of the fields.

WTF does "Old Settings" mean?!

About me [?]	Everyone	<input checked="" type="radio"/>	Old Settings	<input type="radio"/>
Family and Relationships [?]		<input checked="" type="radio"/>		<input type="radio"/>
Work and Education		<input checked="" type="radio"/>		<input type="radio"/>
Posts I Create <small>Status Updates, Links, Photos, Videos, and Notes</small>		<input checked="" type="radio"/>		<input type="radio"/>
	Friends of Friends		Old Settings	<input checked="" type="radio"/>
Photos and Videos of Me [?]		<input type="radio"/>		<input checked="" type="radio"/>
Birthday [?]		<input type="radio"/>		<input checked="" type="radio"/>
Religious and Political Views		<input type="radio"/>		<input checked="" type="radio"/>
	Friends		Old Settings	<input checked="" type="radio"/>
Email Addresses and IM		<input type="radio"/>		<input checked="" type="radio"/>
Address		<input type="radio"/>		<input checked="" type="radio"/>

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“You will have a privacy policy or otherwise make it clear to users what user data you are going to use and how you will use, display, or share that data.”

~~“You will have a privacy policy or otherwise make it clear to users what user data you are going to use and how you will use, display, or share that data.”~~

“You will have a privacy policy that tells users what user data you are going to use and how you will use, display, share, or transfer that data.”

“You must provide a link to your privacy policy and any other applicable policies in the Info section of your application’s Profile page and on every page of your application.”

“You must explain clearly to users, in a privacy policy or elsewhere in a conspicuous place, how you will use their email addresses.”

~~“You must explain clearly to users, in a privacy policy or elsewhere in a conspicuous place, how you will use their email addresses.”~~

“You must give users control over their data by posting a privacy policy that explains what data you collect, and how you will use, store, and/or transfer their data.”

EU Regulation

Safe Harbor programme since: 2001.
First enforcement action: 2009.

U.S. Regulation: COPPA.

Get a policy and registration.

Viral Marketing and Misleading Advertising

SPAMville?

Directive 2005/29/EC concerning unfair business-to-consumer commercial practices

- * Misleading commercial practices: if it contains untruthful information or is likely to deceive the average customer, even if the information is factually correct.
- * Aggressive commercial practices: harassment, coercion, including the use of physical force, or undue influence.
- * Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.

Class Action against Zynga, Facebook et. al: The 5 million dollar question.

Virtual Goods

T I T I
LUCRETII CARI

DE

RERUM NATURA.

LIBER I.

AENEADUM genetrix, hominum divumque vo-
luptas,

Alma Venus, caeli subter labentia signa

Quae mare navigerum, quae terras frugiferentis

Concelebras; per Te quoniam genus omne animan-
tum

Concipitur, visitque exortum lumina solis:

Te, Dea, te fugiunt venti, te nubila caeli,

Adventumque tuum: tibi suavis daedala tellus

Summittit flores, tibi rident aequora ponti,

Placatumque nitet diffuso lumine caelum.

Nam simul ac species patefacta est verna dici,

Et referata viget genitabilis aura Favoni;

Aeris primum volucres te, diva, tuumque

Significant initum percussae corda tua vi.

Inde ferae pecudes perfulsant pabula leta,

A

Et



“Zynga has the absolute right to manage, regulate, control, modify and/or eliminate such Virtual Currency and/or Virtual Goods as it sees fit in its sole discretion [...].”



© BCE ECB EZB EKT EKP 2002

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20 EURO
ΕΥΡΩ

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Henry M. Jackson
Secretary of the Treasury

SERIES 2006

JACKSON

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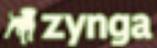
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(Virtual) Money

FARMVILLE 

1) Select Currency **NEW** GBP, EUR, CAD, AUD + 20 Currencies

2) Select Package

Farm Cash		Farm Coins	
Get Farm Cash to buy special items!		Need more coins? Buy some now!	
<input checked="" type="radio"/>	310 \$50.00 USD Best Value!	<input type="radio"/>	70,600 \$40.00 USD Best Value!
<input type="radio"/>	240 \$40.00 USD	<input type="radio"/>	33,300 \$20.00 USD
<input type="radio"/>	115 \$20.00 USD	<input type="radio"/>	15,800 \$10.00 USD
<input type="radio"/>	55 \$10.00 USD	<input type="radio"/>	7,500 \$5.00 USD
<input type="radio"/>	25 \$5.00 USD		

3) Select Payment Method

- Facebook Credits     
- Credit Card    
- PayPal 

Continue > or [Sign into Your Zynga Account](#)

zynga  **Secure Payment**

Banking and gambling

Cash in
+ Cash out

= Virtual money (banking license, tax)

Cash in (or equivalent)
+ Luck
+ Cash out (or equivalent)

= Gambling
= Jail?

“Assumption is the mother of”

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