



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
ATTORNEY GENERAL

EXECUTIVE OFFICE

September 24, 2007

By Facsimile and Federal Express

Mr. Mark Zuckerberg, Chief Executive Officer
Facebook, Inc.
156 University Avenue, 3rd Floor
Palo Alto, CA 94301

Re: Facebook.com

Dear Mr. Zuckerberg:

The Office of the Attorney General (“OAG”) is investigating the representations that Facebook makes to its users and parents of users about the safety and security measures in place on the Facebook.com website. The OAG is concerned that Facebook’s public statements and advertising may be materially misleading and may constitute violations of New York General Business Law §§ 349 and 350 and Executive Law § 63(12).

As described below, Facebook represents to users and parents that Facebook is a safe environment for people to interact, with little inappropriate content and with very limited interactions between underage users and adults. However, after a preliminary review of Facebook.com, the OAG has uncovered evidence demonstrating that:

- Underage users are targeted by sexual predators on Facebook
- There is widespread pornographic and obscene content on Facebook
- Facebook’s response to user and parental complaints is slow, sporadic and inconsistent

The OAG is especially concerned these problems are not being adequately addressed and will worsen over time. Prior to September 2005, Facebook justifiably promoted the exclusivity and safety of the site, which at the time served only verified university students. Since that time, Facebook has dramatically expanded its user base, first by allowing high school students to host profiles and use the site, and then more recently by abandoning its traditional closed network

altogether and allowing anyone at all to use Facebook. In spite of these changes, it appears that Facebook has not significantly altered its representations about safety and inappropriate content on the site. Nor is it evident that Facebook has improved its security and safety measures to reflect the presence of a significant community under the age of 18 — especially considering Facebook’s subsequent decision to end any membership restrictions on the site. The OAG is concerned that in Facebook’s efforts to grow, the company may be giving a lower priority to the safety and welfare of its users, and in particular, underage users. To be clear, within the constraints of the law, Facebook has the right to operate any type of website it deems fit. However, it does not have the right to represent that its site is safe and that it promptly responds to complaints when such statements are not accurate.

Facebook’s Representations

Facebook prominently advertises and promises to users that Facebook is a “trusted environment for people to interact safely,” has “invested heavily in building safety controls,” and “quickly takes down any objectionable material that may be posted to the site.” Facebook makes these representations on a “Safety” page on its website specifically created to address the security and safety concerns of Facebook users and parents.

On its “Safety” page, Facebook specifically tells parents of Facebook users that inappropriate or illegal content will be quickly removed from the website:

What if my child sees inappropriate content or offensive material?

Facebook takes the safety of its users very seriously and quickly takes down any objectionable material that may be posted on the site. We encourage users to report offensive profiles, messages, groups, or photos. Reported items are then reviewed by customer support representatives and removed if deemed in violation of our Terms of Use.¹ Users may also block others from finding them in searches, viewing their profile, or sending them messages.

Facebook also repeatedly uses its “Safety” webpage to encourage users to report unwanted messages, posting, profiles, photos, videos, or groups to Facebook and to represent that Facebook will “act accordingly” in response.

In addition to the statements Facebook makes on its website, Facebook executives have regularly touted the safety and security protocols in place on Facebook.com. For example, in a recent New York Times article, Chris Kelly, the Chief Privacy Officer, repeated the assertion that Facebook “quickly” removes obscene and pornographic content from its website:

¹ Facebook’s Terms of Use provide that users cannot “upload, post, transmit, share, store or otherwise make available any content that we deem to be harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically or otherwise objectionable.”

Mr. Kelly of Facebook said the company strictly prohibits depictions of nudity of the site and groups that encourage pornography and online sexual activity. 'Those people aren't welcome on our service, and they never have been,' he said.

He also said that such images are quickly removed from Facebook, since customer service representatives monitor the site and other users are encouraged to flag inappropriate content.

Facebook executives have also advertised the "segmenting" of Facebook among school and community lines as an important security measure. For example, in one recent article, Kelly was cited as claiming that a minor under the age of 18 cannot be contacted by adults unless those adults are affiliated with the minor's school:

Chief Privacy Officer Chris Kelly said Facebook's privacy features separate it from other services. In particular, Facebook protects users under 18 by preventing adults from contacting them if the adults are not affiliated with a specific school network, Kelly said.²

Overall, Facebook representatives have portrayed the site as a safe community where wrongdoing rarely occurs, and where any inappropriate content or behavior is swiftly addressed. Mr. Kelly's testimony before Congress last year cogently summarizes that image that Facebook has tried to create for itself to the public:

On those rare occasions where someone has attempted to misuse our network, we engage rapidly with the relevant authorities. Because the system is built for accountability with its email validation requirement and segmentation of communities, misuse is both deterred and generally detected quickly. We quickly launch an internal investigation and step in where we received reports of the misuse of Facebook in any way.³

The OAG's Review

Recently, the OAG has conducted a review of the state of the Facebook website. This review has demonstrated a reality that seems to differ materially from the image that Facebook has portrayed to the public.

2 "Facebook Faces Challenge From Sex Predators," ZDNet.com, August 1, 2007, *available at* <http://government.zdnet.com/?p=3338>.

3 Testimony of Chris Kelly, Chief Privacy Officer, Facebook, before the Oversight and Investigations Subcommittee, House Energy and Commerce Committee, June 28, 2006, *available at* <http://energycommerce.house.gov/reparchives/108/Hearings/06282006hearing1955/Kelly.pdf>.

- *Inappropriate solicitation of minors by adults*

Despite Facebook's representation that adults are prohibited from contacting high school users, in fact any member of Facebook has the ability to send private messages to any other member of Facebook — including to underage users. Moreover, all users are free to interact with each other in public or private "groups" without any restriction or supervision by Facebook.

During the course of our review, the OAG set up several undercover Facebook profiles representing users between twelve and fourteen years old. Consistent with its current open policy, Facebook did not require verification of a high school email address or any other identifying information in order to register the account.

Within days of opening these accounts, the OAG received numerous sexual solicitations from adults sent to several of the underage profiles, including:

- "u look too hot..... can i c u online (webcam)? im avl at . . ."
- "i'd love to get off on cam for you hun ; P"
- "do you like sex?"
- "if u want call me [number deleted] or u can give me ur number?"
- "call me if u want to do sex with me [number deleted] ok"

Underage profiles set up by the OAG received several other solicitations of a more graphic nature.

As discussed below, when undercover OAG investigators lodged complaints with Facebook regarding the inappropriate — and illegal — solicitation of the underage users, Facebook in many instances ignored the complaints and took no action against the reported sexual predators.

- *Widespread pornographic and obscene content*

OAG investigators also found a wide range of pornographic content on the Facebook site with a minimal amount of effort. This content appeared both in individual profiles and in Facebook groups set up by various users.

For example, a number of individuals on the site have graphic pornographic images as their profile picture, which is available to all users of the site. Others only have obscene pictures and videos posted on their Facebook page for their friends to see.

There are also a large number of Facebook groups dedicated solely to hosting or promoting pornographic content, such as "Best Wet T-shirt or best boobie pic contest" and "*For girls that love to share naked pics*". Underage users are free to view or join any of these groups without restriction.

There are even Facebook groups devoted to soliciting users to appear in pornography, such as the Facebook groups “Porn Star Trials” and “TPG Trailer Park Girls 1.” These groups actively recruit members of the Facebook community to “try out” for pornographic films. The OAG’s own observations were recently confirmed by a parent of a Facebook user who recently complained in an on-line forum: “I recently discovered my daughter looking at pornography and communicating with a pornographer on Facebook. I thought this site was supposed to be safe!”

– *Systematic failure to address user complaints on a timely basis*

During the course of the OAG’s review, we lodged several complaints with Facebook about inappropriate content or communications on the website. Several complaints reporting user groups that hosted hardcore pornography were ignored by Facebook, and the content remains available to all users — including underage users — to this day. On the other hand, Facebook took down many inappropriate images within a week of receiving our complaints.

Perhaps most alarmingly, Facebook ignored several — and repeated — complaints from our undercover investigators concerning persons who made inappropriate sexual advances to underage users. The OAG made these complaints to Facebook both as underage users as well as parents of underage users.

For instance, on August 30, an OAG investigator created a profile for a fourteen-year-old female high school student from New York. Approximately a week later, she received a Facebook message from a 24 year old man, asking “do you have any nude pics?” The investigator lodged a complaint with Facebook as the student’s mother from a Hotmail account complaining that her daughter was being solicited by older men. The next day, Facebook sent a response saying that Facebook “will review the reported material and remove anything that violates our Terms of Use.” To date, however, Facebook has taken no further action, and the 24-year old’s profile is still available on the Facebook site.

In another example, OAG investigators created both a profile for a thirteen-year old girl as well as a fake profile for an adult sexual predator. The investigators sent a message on September 12 to the underage account reading “love your pic. you've got quite a hot little bod — must be the dancing. i see you're in nyc like me. where do you like to hang out?”

On the same day, OAG investigators sent a complaint to Facebook as the underage girl's parent reading: “My 13 YEAR OLD received this extremely inappropriate message from a local NYC man. Please take action IMMEDIATELY!” (sic). Facebook did not respond to the complaint.

The next day, September 13, OAG investigators sent a second message to the underage account reading “hey baby, haven't heard from you. do you have any fun pics to share? or maybe we can cam 2 cam later?” The investigators then sent a second complaint as the mother reading “My 13 year old daughter continues to receive messages from this man who is now asking for 'fun pics.' Do something please!”

As of today, September 23, there has been no response from Facebook.

Subpoena

In light of the concerns raised in his letter, the OAG requires additional information from you. We are attaching a *subpoena duces tecum* for the production of documents related to Facebook’s safety and security representations and complaint resolution mechanism. We appreciate your prompt response to this request.

Sincerely,

Andrew M. Cuomo
Attorney General of the State of New York

Attachment