

## **Irish Data Protection Authority was unable to resolve Privacy Dispute. Austrian Students are preparing to fight “Facebook”<sup>1</sup> in courts.**

**Response published.** The Austrian student group “europe-v-facebook.org” takes the next step in the legal procedure against Facebook, because of alleged violations of European Data Protection Laws. The complaints procedure has now been running since August 2011. The group has now published a „counter report“ that analyses in detail all alleged violations of the law.

Die Irish Data Protection Authority (ODPC) has previously held back the complaints procedure of the students against Facebook to have its own „audit“ procedure, this has previously led to two “reports” and multiple non-binding “suggestions” for Facebook. Following this step, the student group was asked by the Irish watchdog to comment on this process, which it has done now with a 70 page document.

Max Schrems (Speaker of „europe-v-facebook.org“): *„The audit, which was triggered by our complaints, has led to many achievements, Facebook had to disclose more data it holds on each user, it had to turn off facial recognition in the EU and it had to limit retention periods for certain data. Even the worldwide privacy policy needed to be changed.“* and: *„The work by the Irish authority has led to many important steps in the right direction, which we very much honor“*, says Schrems. The response is now going deeper below the surface:

**Not precise and miles away from the law.** After a detailed analysis of the “audit” documents it became clear that the authority has taken very important first steps, but that it has not always delivered accurate and correct results. Schrems: *„A non-binding audit might not need such accuracy, but we expect that the authority goes into every detail when deciding about our complaints. In some cases we also had to wonder if the authority has really checked Facebook’s claims, or if they have blindly trusted Facebook.“*

In many cases the Irish authority is massively departing from the common understanding of the underlying EU law. Schrems: *„We have strictly followed the opinions of the comity of the EU data protection authorities (“Article 29 Working Party”). The Irish authority’s interpretation is often contrary to the rest of the EU.“* Many other authorities are criticizing their Irish colleagues. Some have even publicly criticized the “audit”. The German ULD e.g. has questioned the interpretation and fact finding methods of their colleagues ([Link](#)). Many US tech companies have their headquarters in Ireland, because of tax loopholes. The Irish authority does not have a single legally trained official and no technical expert. Schrems: *„We have to understand the position of the Irish authority: They had to deal with a whole armada of lawyers from Facebook. On the other hand we have a fundamental right to privacy and data protection in the EU. When it comes to basic freedoms and fundamental rights our understanding for the situation of the authority comes to an end.“*

**Halfhearted Solutions.** The non-binding audit has led to improvements, but many are just going half the way to compliance with the law. For example the more than 40.000 users that have exercised their right to get a copy of all data Facebook is holding still have not received all their data. The legal deadline of 40 days

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<sup>1</sup> We are preparing to appeal against the Irish DPC, but the factual counterpart is of course Facebook. We also expect Facebook to join on the DPC’s side and therefore shortened this to “Facebook”.

to deliver all data has passed 13 times. In our test the tools which allow to access all data have often times just produced white pages ([Photo](#)). Schrems: „*You wonder if anyone has ever reviewed these tools.*”

In relation to the facial recognition it is unclear why this was only deactivated for EU citizens, because Ireland is responsible for all users outside of the US and Canada. In addition, the technical implementation of this ban is unclear. Schrems: „*Swiss or South American users will not understand why they are not protected by the Irish. In addition it is unclear how they will implement their solution technically: First I have to recognize people in order to then find out if people are EU citizens and if they have activated the feature.*” Concerning data security at Facebook the „external expert” which helped the Irish authority was only relying on unproven submissions by Facebook. The expert says, if Facebook has implemented the features it has submitted, Facebook would be secure. But the implementation was never checked or tested. The expert claims that since there have not been widely reported data breaches at Facebook, there is no reason to question the security. Schrems: „*This is like an engineer, that says that as long as he hasn't read about a bridge collapsing it should be perfectly safe. In addition there actually were many cases where Facebook had major data breaches which were widely reported.*”

It was impossible to find the company that conducted the external analysis (“FTR Solutions”). The web page does not have a physical address and the URL is registered in Jacksonville, Florida. In the Irish register we were able to find the address where the company is registered - a residential home ([Photo](#)).

**Next Steps.** We will ask the Irish authority again to deliver all necessary files and evidence. So far we were not allowed to even see the counterarguments by Facebook. After this we will ask for a formal, legally binding decision on all 22 complaints. Schrems: „*After more than a year we have to come to a binding decision one way or another.*”

**Court Procedure expected.** Even though we hope for a positive outcome on all complaints, our experience tells us that we have to expect that the authority might not decide in the interest of users, on all complaints. Schrems: „*We have only 21 days to appeal against any decision by the Irish authority and the financial risk is at € 100.000 to € 300.000. There is no limit on court costs, no legal aid and no option to have a class action. Citizens that don't have a Swiss bank account have to get prepared or they have no chances.*” At the same time a decision against Facebook would be a landmark decision. Schrems: „*If we get these things before the courts, it is very likely that it goes all the way to the European Court of Justice. Such a case would be a landmark for the whole IT industry, equally to the anti-trust cases against Microsoft. If this would be only about Facebook such a procedure would rather not make sense.*”

**Spendenplattform eingerichtet.** To finance these extremely high court costs the Austrian NGO “europe-v-facebook.org” has started a “crowd funding” platform. On [www.crowd4privacy.org](http://www.crowd4privacy.org) users can support the cause. If we do not raise enough money, or if we do not need all of it, we will refund donations. In addition we also publish all payments made from the donated money. Schrems: „*We wanted to have the most transparent fund raiser ever. This is also to protect ourselves and make clear that we are not making any money off of this.*” The target of € 100.000 to € 300.000 is very ambitious. Schrems: „*On average people have so far donated a bit more than € 20. If we get 5.000 supporters, we can get the most important things before the courts. If we even get 15.000 supporters, we should be able take all necessary actions. And if we don't make it, we can at least say that we have tried everything we could.*”

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**Further Information, Photos and Files:** [Media Page of europe-v-facebook.org](http://Media Page of europe-v-facebook.org)

**Questions and Feedback:** [media@europe-v-facebook.org](mailto:media@europe-v-facebook.org) or +43 660 1616-327