



## Don't Tag Me!



Facebook users upload more than 250 million photos every day, with a record-breaking 750 million photos uploaded over New Year's weekend in 2010.

If you haven't had a negative experience related to your Facebook photos, you most likely know someone who has. Often these experiences cause serious consequences for the person whose photo was uploaded. Take, for example, Ashley Payne, who lost her teaching job because of a Facebook photo that showed her drinking at a Guinness brewery while on vacation in Dublin. Or teacher's aide, Kimberly Hester, who lost her job after a parent and Facebook "friend" found one of her photos offensive. Hester had merely uploaded a playful image with the intention of amusing one of her co-workers.

Similarly, Nathalie Blanchard, a 29-year-old Canadian, was cut off from insurance benefits after being diagnosed with major depression because the company found pictures of Blanchard on Facebook in which she appeared to be having fun. A South Carolina police officer was fired for a Facebook photo of women in bikinis posing with his squad car at a charity car wash.

### Presentation Anxiety

Facebook is "like being in a play. You make a character," one teenager tells MIT Professor Sherry Turkle in her new book on technology, *Alone Together*. Turkle writes about the exhaustion felt by teenagers as they constantly tweak their Facebook profiles for maximum cool. She calls this, "presentation anxiety," and suggests that the site's element of constant performance makes people feel alienated from themselves.

This presentation anxiety also stems from the fact that many students believe that they have no other choice but to join Facebook. They fear that, if they do not take control of their online reputations, others will do it for them. One college grad watched his future at a prestigious law firm go up in flames after the firm found a Facebook photo of him using illegal substances while still in college. Although the grad claimed that he had no knowledge of the picture's existence, he nonetheless had no legal claims against his friend who posted it. According to basic copyright law, the person who takes the photograph — not the subjects of the photo — is the owner of his/her intellectual property.

Stories of employers and college administrators asking individuals for access to their social networks, often during an interview, abound. Young people, who are eager to make a good impression or land a job, usually hand over their password information. Indeed, one downside to the technology boom is that policy makers and government officials are struggling to play catch-up.

Recently, California Gov. Jerry Brown signed two privacy bills making it illegal for employers and colleges to demand access to social media accounts. Brown says the legislation will protect Californians from "unwarranted invasions." We can only hope that the California bills will set a nationwide precedent to protect employees' and students' privacy.

### **The Illusion of Privacy**

One section of the Digital Millennium Copyright Act (DMCA) covers anticircumvention provisions, which make it illegal to "circumvent" a technological measure protecting access to or copying of a copyrighted work. Another section gives web hosts and Internet service providers a "safe harbour" from copyright infringement claims if they implement certain notice and takedown procedures. If someone posts your image without your explicit permission, the web host must implement the "notice and takedown procedures," and remove the image.

But despite the DMCA, users are agreeing to license their images to social network sites everyday. Most of us don't even read the terms of service or, if we do, we feel safe clicking on "agree" after reading a sentence like this: "We (your social network or other) respect your copyright, acknowledge that you are the owner of your copyright and have in no way asked you to sign your copyright over to us."

But we aren't safe. As blogger Ed Kashi explains:

*In the next line or in the ensuing text usually you'll find something like this: You grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed).*

While this example comes from Twitter, Facebook's terms of use state:

*For content that is covered by intellectual property rights, like photos and videos, you specifically give us the following permission, subject to your privacy and application*

*settings: you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (“IP License”). This IP License ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it.*

Simply put, Facebook can sell your pictures (“transferable”); license them to anyone (“sub-licensable” & “worldwide”) and do so without providing you compensation (“royalty-free”). They can do this even if you have deleted your photos – forever! Deleting or deactivating your Facebook account does not remove your images permanently. Instead, users must manually delete each individual photo. Therefore, not only does Facebook use convoluted language and legalese hidden in the terms of service, but users are also required to go through tedious and time-consuming processes in an attempt to safeguard or remove their content.

### **Facebook Ads & Sponsored Stories**

Facebook has long been criticized for a cavalier attitude toward privacy. In 2009, users found images of themselves showing up in Facebook advertisements. One woman’s profile picture was featured in an ad for hot singles. She was not single, nor did she knowingly consent to having an image of herself featured in an advertisement. Apparently, users were required to opt-out of having their photos used in advertisements on the site.

Facebook responded to the firestorm of criticism saying, “The advertisements that started these rumors were not from Facebook but placed within applications by third parties.” Still, the Facebook blog states that the site can use your photos for anything in which you have expressed interest:

*You can use your privacy settings to limit how your name and profile picture may be associated with commercial or sponsored content. You give us permission to use your name and profile picture in connection with that content, subject to the limits you place.*

In a *New York Times* technology piece entitled, “On Facebook, ‘Likes’ Become Ads,” Eric Goldman, an associate professor at the Santa Clara University School of Law, took aim at one of Facebook’s advertising policies. As he expressed in a blog post, Facebook has been putting words in its users’ mouths by interpreting a “like” as a statement of a user’s attitude and a “green light” to create an ad. According to the *Times*, a sponsored story is a potentially lucrative tool that turns a Facebook user’s affinity for something into an ad delivered to his or her friends.

“Because sponsored stories are just stories from the news feed, you cannot opt out of them,” Facebook explains in its help center. The only way users can exert any control over this is by simply not liking anything.

Along these lines, one Facebook user, Nick Bergus, found himself the unwitting spokesperson for a 55-gallon barrel of personal lubricant. Bergus came across a link to the product on Amazon.com. He shared the link to Facebook, commenting, “For Valentine’s Day. And every day. For the rest of your life.” Within days, Bergus’ friends and colleagues saw him featured in a Facebook advertisement for the lube.

Writing about the incident on his blog, Bergus said:

*I'm partially amused that Amazon is paying for this, but I'm also sorta annoyed. Of course Facebook is happily selling me out to advertisers. That's its business. That's what you sign up for when make an account. But in the context of a sponsored story, some of the context in which it was a joke is lost, and I've started to wonder how many people now see me as the pitchman for a 55-gallon drum of lube.*

Two years later, Facebook introduced its facial recognition tool, one of the touchiest subjects in online privacy. Google Executive Chairman (and former CEO), Eric Schmidt, said publicly that mobile facial recognition is something he personally worked to stop at Google, even after it had already been developed. Also in 2011, CNN reported that “the news sparked a small brushfire of media hostility. Bloggers characterized the tool—and Facebook’s decision not to ask before including everyone—as unsettling while others urged readers to opt out.”

The Facebook tool scans all photos uploaded to Facebook and suggests names of people who appear in the frame. Facebook’s more than 500 million users were automatically included in the database. Once again, users had to opt-out of the feature, which was automatically activated on users’ accounts by default and without notice. The toggle option is called “suggest photos of me to friends” and is found on the “customize settings” page.

The tool was also controversial in Europe, and prompted an investigation by the European Union. In addition, Facebook’s opt-out system violates EU Law, which requires an opt-in protocol. Europe versus Facebook has filed similar complaints against Facebook’s tagging and privacy settings. “The privacy settings only regulate who can see the link to a picture. The picture itself is ‘public’ on the Internet. This makes it easy to circumvent the settings.”

### **The Tag of Terror**

Blogger Ben Patterson, describing what he calls The Tag of Terror, writes:

*You're having an innocent cocktail at the office Halloween party, when suddenly a fiendish trickster puts a lampshade on your head—and someone snaps a picture at that exact, fateful moment. The next thing you know, the incriminating photo is up on your Facebook wall, tagged with your name, and a flurry of cruel comments are piling up—including a testy one from your boss.*

Users may try to avoid situations like these by turning on Facebook’s “Profile Review” feature, which enables users to approve tags before they show up on their timelines. But this feature won’t stop people from tagging embarrassing photos of you on Facebook, or having those images show up elsewhere on Facebook and the Internet. Compromising Facebook pictures of a spouse with a different partner can also assist the other party’s case in divorce and child custody hearings, particularly when the spouse claims that they aren’t cohabiting.

Manchester, England-based family lawyer Amanda McAlister explains:

*If they can turn up photographs of the other parent in a compromising position, or lots of different pictures of them obviously drunk on a number of separate occasions, even if it's years earlier, they could be presented as evidence that the child's best interests would best be served by limiting contact with that 'unfit' parent.*

Finally, Facebook has more than 83 million fake profiles. Gabriela Cezar, a stem cell researcher from Wisconsin, discovered that she had two Facebook pages—one she had created herself and another made by someone using her identity, including her photos. Regarding the incident, Cezar said, "On a more personal level, it's very uncomfortable for us to imagine people being able to access [our] information under a fake profile."

### **Facebook and Instagram: A Marriage Made in Hell?**

Earlier this year, Facebook announced that it had purchased the popular and free photo-sharing start-up, Instagram, for \$1 billion. This alarmed disapproving users who once again expressed dismay, concern and even fear about what it would mean for their privacy. Tech bloggers wrote about how to save and delete Instagram photos from the service fearing that Facebook would make them more visible under its different privacy policy.

So what does this new Facebook integration mean? Mark Zuckerberg made a statement on his own Facebook Timeline that included, "...we're committed to building and growing Instagram independently."

But given Facebook's history, many users just aren't buying it. And they may have good reason. If a private user shares a photo to a social network (such as Photobucket, Twitter, Facebook, Foursquare, etc.) using Instagram, the image will be visible on that network and the permalink will be active; in other words, the photo will be publicly accessible by anyone who has access to the image's direct link/URL.

You can now access your sharing preferences in Instagram through Profile > Sharing settings > Facebook, and choose to share your likes on Facebook. If you don't enable this option, however, your photos can still be shared on Facebook by others who did enable it. There's currently no way to prevent that from happening. So, at least for now, it's probably better not to post photos to Instagram if you don't want them to end up on other people's Facebook profiles.