

## Research Note

# Facebook and Google Data, Privacy and Transparency

**Catherine Bahn**

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*Abstract: Facebook and Google are preparing for compliance with the European Union’s General Data Protection Regulation, as are all other global companies, which will begin to be enforced in May 2018. The purpose of this new legislation is to “harmonize data privacy laws across Europe”; however, the implications are likely to reach beyond the geopolitical borders of Europe and change the direction of corporate transparency. Facebook and Google have the opportunity to be leaders in building dynamic corporate transparency and considering new economic models with the vast amount of customer data they have and will continue to gather.*

### Introduction

Facebook and Google’s current dominance in the digital advertising marketplace should come as no surprise. In 2017, total U.S. digital advertising spending reached \$83 billion with Google and Facebook making up most of the market at 42.2% and 20.9%, respectively.<sup>1</sup> According to the *Financial Times*, this “digital duopoly” makes up 84% of the global digital advertising market, excluding China.<sup>2</sup> This growth came despite both companies having been questioned by the U.S. Congress last year about Russian operatives using their respective platforms to meddle in the 2016 U.S. presidential election.<sup>3</sup> Due to this market dominance, this paper argues for Facebook and Google to proactively take more responsibility for data and user privacy through transparency efforts. Advertising regulation is out of scope of this discussion, as much of the regulation that exists today is about protecting the consumer against dishonest claims and what kind of products can be advertised, and the U.S., the Federal Trade Commission (FTC) drives this regulation. Instead, the conversation here concerns the contemporary issues of data, privacy, and transparency.

Based on their dominance in the market, Facebook and Google are powerful institutional gatekeepers. Nahon and Hemsley define gatekeepers as “people, collectives, companies, or governments that...can promote or suppress the movement of information from one part of a network to another.”<sup>4</sup> As consumers, using these platforms for their variety of services, we agree to their terms of use policy. These policies are to encourage proper use of their products and services, but also benefit the company more than the consumer<sup>5</sup>. In terms of privacy, not much has changed federally in the U.S., but the European Union (EU) Parliament is forcing private institutions to take responsibility with a new directive known as the General Data Protection Regulation (GDPR). This will be covered more in the privacy section of the essay. The potential impact of this regulation on Facebook and Google businesses has been considered seriously, with both companies identifying the GDPR as a risk factor in their annual *Form 10-K* filings with the U.S. Securities and Exchange Commission (SEC).<sup>6,7</sup> The impact of this regulation on Facebook and Google’s advertising business model - and other global corporations - will begin to show once GDPR enforcement begins on May 25, 2018. The ripple effects go beyond businesses - the GDPR will likely impact governments, law, technology solutions, and ultimately human interaction with technology and online communities and services.

## Data

The formats and business model of digital advertising has come a long way as has the amount of data and information now available to target and to customize for optimal return on investment. The first banner advertisement appeared in 1994 sold for a \$30,000 12-week placement, and the Internet increasingly grew as an attractive medium to advertisers for its global reach and lower cost<sup>8</sup>. With Facebook's over 2 billion monthly active users<sup>9</sup> and Google's search engine dominance,<sup>10</sup> the products, services and reach offered by Facebook and Google are global and rich in the amount of data and information collected.

Lawrence Lessig states in *Code, v2.0*, "Everything you do on the Net produces data. That data is, in aggregate, extremely valuable, more valuable to commerce than it is to the government."<sup>11</sup> The rich data sets that Facebook and Google services collect and have allow for flexible and customizable advertising products that make them specifically attractive to advertisers of all categories and budget sizes.<sup>12,13</sup> The majority of revenue for Facebook and Google is driven by their business in advertising making it their primary business model. Based on the information in their 2017 10-K forms submitted to the Securities and Exchange Commission (SEC), 86% of total revenues for Google came from advertising.<sup>14</sup> For Facebook, 98% of total revenues came from advertising.<sup>15</sup> This makes their businesses highly dependent and vulnerable to their relationship with their users, advertisers, and market conditions, among other things.<sup>16</sup> Examining data in just two companies does not over exaggerate the value of information. Looking at information as value economics, Birchler and Butler state, "Knowledge itself is power." They argue, "In economic terms, knowledge or information has a value. By reducing uncertainty it helps us to take the right action."<sup>17</sup>

The legal enforceability of different electronic terms is something not covered in this essay; however, what follows is a summary of "terms of use." When users visit many of the web sites online today, they will find "terms" or "terms of use" linked to, often in the footer. What today is called "terms" or "terms of use" online actually predates the Internet. Companies put contract terms on the back of purchase orders or shipment invoices; when software was boxed, you agreed to terms once you opened the box.<sup>18</sup> Pause to think of how you or those you know use Facebook and Google products and services today: the likes, posts, shares, friends, searches, life moments, voice commands, signing into another service with a Facebook or Google account – the list goes on and on. Facebook and Google - and to a certain extent their partners – track, record, and analyze the accumulation of uncountable online actions.

Facebook and Google do provide users some mechanisms to control select types of data and implement privacy restrictions for accounts and profiles. Much of this is stated in the terms of use, so it should become good practice to know what your terms are. After all, "...in the long run, terms of use may have their most significant impact not on customers, but on businesses."<sup>19</sup> While defining appropriate usage behavior and content guidelines, at the core of Facebook and Google terms, you are allowing them to gather data in exchange for the usage of their collection of products and services.<sup>20,21</sup> This kind of barter has become a customary practice on the Internet. As online users become more aware, research by Rapp et al. suggest that consumers do not do this blindly; consumers leverage a decision-making calculus to weigh personal exposure with the perceived value of the service.<sup>22</sup>

## Privacy

Referring specifically to marketing on the Internet, Jef Richards states, "Never before has a medium been the catalyst of such a wide range of criticisms regarding privacy invasion."<sup>23</sup> Digital technologies and companies will continue creating a complex relationship with information and privacy as technology around products and services continue to advance, e.g. artificial intelligence, mixes/virtual/augmented reality, etc. The U.S. and the EU have differing approaches to privacy and has become part of the technology conversation today. After years of preparation, the EU Parliament passed the GDPR in 2016 to "harmonize data privacy laws across Europe" that will begin enforcement May 25, 2018.<sup>24</sup> Unlike the EU, the U.S. does not have a central governing law-defining privacy. Instead, we have separate legislation and policies across federal and state agencies and businesses.<sup>25</sup>

Bennett believes there is a path forward to the EU and U.S. to reconcile perspective and states, “Regulators and legal theoreticians on both sides of the Atlantic...recognize that harmonizing international data protection laws may be key to maintaining the health of the world’s Internet-based economy.”<sup>26</sup> Anderson argues that in legal circles, “[privacy’s] vexatious nature is due to the inconsistent comparisons that are sometimes drawn between the various flavors of privacy in the public discourse.”<sup>27</sup> What does this mean for Facebook and Google, not to mention all other U.S. companies doing business in European nations? They must all have systems in place to honor the EU GDPR by May 25, 2108 or face heavy fines. Both companies have mentioned the impact of the EU GDPR and other foreign and domestic laws as risks to their business in their 2017 Form 10-K SEC filing.<sup>28,29</sup> Essentially, the EU GDPR directive is putting the onus on businesses and corporations to comply to protect EU citizens regardless of where the data servers live or how the information is passed; if the information belongs to an EU citizen, they have the right to be forgotten.<sup>30</sup>

Personal privacy and the right to be forgotten are also distinctly different from some current cases regarding email and search and seizure. Zittrain refers to a person’s “reasonable expectation of privacy for e-mail stored on their behalf”<sup>31</sup> and he points to a 2007 case *Warshak v U.S.* that upholds personal privacy search and seizure based on the Fourth Amendment that authorities violated by going directly to the ISP. Interestingly, the outcome of the current case of *U.S. v Microsoft*<sup>32</sup> will be compelling as it is a comparable situation where authorities want Microsoft to provide email content of U.S. citizen; however, the email content of this user is hosted on a server based in Ireland.

There are those who also feel Europe is leading the way with the GDPR as “a starting point for international standards and a trustworthy digital market.”<sup>33</sup> Steven Bennett argues the tensional perspectives of the EU and U.S. encouraging an inevitable convergence.<sup>34</sup> However, Bamberger and Mulligan present an argument against the common critique that “...the existing patchwork of privacy statutes as weak, incomplete, and fractured.”<sup>35</sup> To clarify, they agree that the privacy policies in the U.S. are incongruent “on the books,” but in this study, they found U.S. corporations taking the initiative to prioritize and build consumer privacy protection frameworks “on the ground.” They conclude, “If privacy is to be protected in an increasingly connected world, debates over its formal regulation must increasingly be informed by the ways that today’s frameworks operate on the ground.”<sup>36</sup>

## Transparency

To be open and transparent is the antonym of being private. Yet, these opposing views are what society wants from ICTs. Evgeny Morozov states, “Our Internet debates...tend to be dominated by a form of openness and fundamentalism, whereby ‘openness’ is seen as a fail-safe solution to virtually any problem.”<sup>37</sup> However, the ideas of openness and transparency have become conflated in the technology discussion. To simply say that for Facebook and Google or any company to become open and transparent about their practices and what they do with our data would suddenly resolve data privacy issues would be presumptuous.

In Morozov’s book, *To Save Everything, Click Here: The Folly of Technological Solutionism*, he refers to the danger of this conflation with “open government.” He argues that governments claiming they release and re open with data - even if it is just a train schedule - are not suddenly fully transparent that allows them to be held accountable. Morozov states, “...both ‘transparency’ and ‘openness’ have their limits, and taken too far, can easily reduce the democratic process to a sham.”<sup>38</sup> Further clarifying his argument, he is not against information being collection and shared, but that it should be done “...in full awareness of the social and cultural complexity of the institutional environment in which it is gathered.” Researchers have studied the impact of ICTs and social media on e-government initiatives to foster transparency and accountability.<sup>39</sup> By leveraging social media tool sets such as Facebook, blogs, and wikis, they found this combination of transparency and social collaboration to be “...an essential element of the primary approaches that governments have employed to promote openness and reduce corruption.”<sup>40</sup> However, thinking of Nahon and Hemsley’s work in *Going Viral*, the governments in this case are the

gatekeepers and still have power and control over the narrative.<sup>41</sup>

Other research take the idea of transparency a little deeper and introduce the concept of dynamic corporate transparency whereby there is a two-way exchange between the company and their constituents that accrue to their right to know about activities that "...affect their quality of life."<sup>42</sup> The researchers theorize that by applying a dynamic corporate transparency strategy will force others in the market to also put this into practice and produce "...a new conceptualization of corporate transparency as an ICT-driven, dynamic process of dialogue and co-evolution between firm and its socio-economic environment."<sup>43</sup>

Facebook and Google are doing a few things that can be perceived as transparency. First, they offer transparency reports.<sup>44,45</sup> Facebook offers transparency reports for government requests and intellectual property that began in 2013.<sup>46</sup> Google offers transparency reports in the following three areas – security and privacy, content removal and service disruptions that began in 2010.<sup>47</sup> Facebook further provides you control over your activity log<sup>48</sup> and you can download a copy of all your data.<sup>49</sup> Google also offers activity tools to view and manage.<sup>50</sup> While they are providing ways for users to get a report on their personal usage and content, what seems to be lacking and may be useful for improved accountability is overall easier access to these toolsets and for Facebook and Google to offer more precise reporting and control tools for user data they share with advertisers and partners.

It is common for modern businesses today to also have some codes of conduct to provide a public level of transparency, accountability, and expectation for users. Some argue the efficacy of businesses having codes of conduct, and it can have a wide range of definition.<sup>51</sup> Kaptein and Schwartz define a business code, aka. code of conduct, as follows, "...a distinct and formal document containing a set of prescriptions developed by and for a company to guide present and future behavior on multiple issues of at least its managers and employees toward one another, the company, external stakeholders and/or society in general"<sup>52</sup> and examined existing empirical studies with a variety of mixed results. Of the 79 studies examined, 35% found codes effective and 33% found no significance; they do conclude codes are not effective in isolation but how it has developed and implemented is significant. Table 1 below provides the current company mission and tagline that captures the essence of the code of conduct for Facebook and Google, respectively. Some questions that arise from these include: Do these give you, as a user, more confidence in the company? Do you have a more meaningful perception of transparency, accountability, and value for their products and services?

**Table 1: Company Mission Statements**

Company	Mission	Code of Conduct tagline
<b>Facebook</b>	"To give people the power to build community and bring the world closer together" <sup>53</sup>	"...expected to act lawfully, honestly, ethically, and in the best interests of the company while performing duties on behalf of Facebook" <sup>54</sup>
<b>Google</b>	"To organize the world's information and make it universally accessible and useful" <sup>55</sup>	"Don't be evil" <sup>56</sup>

## Conclusion

Talking about data from a digital advertising and privacy perspective does not even capture the complexity of the relationship of technology companies like Facebook and Google and their users. Nahon and Hemsley capture modern digital activity well by stating, "Every activity we engage in while we are online – every link we follow, every page we download, every video we watch – has passed through some sort of gatekeepers."<sup>57</sup> These gatekeepers have a lot of data and knowledge that have implications on the economy<sup>58</sup> and it will continue to build upon itself as we are out in the world consuming. Balkin states that "the production and distribution of information [is] a key source of

wealth... [creating] a new set of conflicts over capital and property rights that concern who has the right to distribute and gain access to information.”<sup>59</sup> Facebook’s main products and services are based on social media content and networks. This model is dependent on content users post and share amongst their network and network extensions thereof. Based on the information Facebook collects about you, the deeper you are, the more they know – not just about you but about your network, and their network and so on.<sup>60</sup> Google’s main services are productivity based - email, search, document – so they collect information based on your Google account activity.<sup>61</sup> For both corporations, their primary business model is based on digital advertising from the wealth of data they have on us as individuals and our extended networks and their extensive properties and partnerships.

Facebook and Google are preparing for compliance with the EU GDPR, as are all other global companies. Facebook and Google have the opportunity to be leaders in building dynamic corporate transparency and considering new economic models with the vast amount of customer data they have and will continue to gather.<sup>62</sup> They are certainly motivated by their profits and dominance in the marketplace to be innovative with their transparency, accountability and expanding their corporate social responsibility portfolio, respectively. It will certainly get more interesting with privacy when compliance with the EU GDPR activates in just a few months. According to July 2017 data from the Pew Research Center, the American public still remains split on government regulation on business; however, Democrats are 35 points higher in favor of government regulation than Republicans.<sup>63</sup> Time will tell sooner rather than later what the next moves for U.S. regulation might be and how corporations and private citizens can participate.

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<sup>1</sup> “Google and Facebook Tighten Grip on US Digital Ad Market.” *eMarketer*. Sep. 21 2017. Accessed Feb. 2018 <emarketer.com>.

<sup>2</sup> Garrahan, M. “Google and Facebook Dominance Forecast to Rise.” *Financial Times*. Dec. 3 2017. Accessed Feb. 13 2018 <www.ft.com>.

<sup>3</sup> McCarthy, T. (2017, October 31). “Facebook, Google and Twitter grilled by Congress Over Russian Meddling – As It Happened.” Oct. 31 2017. *The Guardian*. Accessed Feb. 13 2018. <www.theguardian.com>.

<sup>4</sup> Nahon, Karine and Hemsley, Jeff. *Going Viral*. Polity. Nov. 2013.

<sup>5</sup> Lemley, Mark. “Terms of Use.” *Minnesota Law Review*. Dec. 22 2006. Accessed Feb. 2018 <www.minnesotalawreview.org>.

<sup>6</sup> *Form 10-K: For the Fiscal Year Ended December 31, 2017*. Facebook. Feb. 2018. Accessed Feb. 2018 <www.facebook.com>.

<sup>7</sup> *Form 10-K: For the Fiscal Year Ended December 31, 2017*. Alphabet. Feb. 2018. Accessed Feb. 2018 <www.abc.xyz>.

<sup>8</sup> Kaye, Barbara and Medoff, Norman. *Just a Click Away: Advertising on the Internet*. Allyn and Bacon. Nov. 2000.

<sup>9</sup> *Form 10-K*, Facebook.

<sup>10</sup> *Search Engine Market Share Worldwide*. StatCounter. N.D. Accessed Feb. 2018. <www.gs.statcounter.com>.

<sup>11</sup> Lessig, Lawrence. *Code v2*. Creative Commons Attribution-ShareAlike. Dec. 5 2006. Accessed Feb. 2018 <www.codev2.cc>.

<sup>12</sup> “Facebook Ad Targeting.” Facebook. N.D. Accessed Feb. 2018 <www.facebook.com>.

<sup>13</sup> “Google Ads.” Google. N.D. Accessed Feb. 2018 <www.google.com>.

<sup>14</sup> *Form 10-K*, Alphabet.

<sup>15</sup> *Form 10-K*, Facebook.

<sup>16</sup> *Ibid*.

<sup>17</sup> Birchler, Urs and Büttler, Monika. *Information Economics*. Routledge, Jul. 2007.

<sup>18</sup> Lemly, Mark.

<sup>19</sup> *Ibid*.

<sup>20</sup> “Facebook Terms.” Facebook. Jan. 30 2015. Accessed Feb. 2018 <www.facebook.com>.

<sup>21</sup> “Google Privacy & Terms.” Google. Oct. 25 2017. Accessed Feb. 2018 <www.google.com>.

<sup>22</sup> Justine Rapp, Ronald Paul Hill, Jeannie Gaines & R. Mark Wilson. “Advertising and Consumer Privacy: Old Practices and New Challenges.” *Journal of Advertising Volume 38, 2009 Issue 4*. 2009.

<sup>23</sup> Richards, Jef I. “Legal Potholes on the Information Superhighway.” *Journal of Public Policy & Marketing, Vol. 16, No. 2*. Sep. 1997.

<sup>24</sup> “EU GDPR Site Overview.” EUGDPR.org. N.D. Accessed Feb. 2018 <www.edugdpr.org>.

<sup>25</sup> Jolly, Ieuan. “Data Protection in the United States: Overview.” Loeb & Loeb LLP, Thomson Reuters. Jul. 2017. Accessed Feb. 2018 <www.content.next.westlaw.com>.

<sup>26</sup> Bennett, Steven C. “The Right to Be Forgotten: Reconciling EU and U.S. Perspectives.” *Berkeley Journal of International Law Volume 30, Issue 1*. 2012. Accessed Feb. 2018 <www.scholarship.law.berkeley.edu>.

<sup>27</sup> Anderson, Horace E. “The Privacy Gambit: Toward a Game Theoretic Approach to International Data Protection.” *Vanderbilt Journal of Entertainment and Technology Law Review*. Jan. 2006. Accessed Feb. 2018 <www.digitalcommons.pace.edu>.

<sup>28</sup> *Form 10-K*, Facebook.

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<sup>29</sup> Form 10-K, Alphabet.

<sup>30</sup> “GDPR Regulation.” EUGDPR.org. N.D. Accessed Feb. 2018 <ww.eugdpr.org>.

<sup>31</sup> Zittrain, Jonathan. “The Future of the Internet and How to Stop It.” Yale University Press & Penguin UK. 2008. Accessed Feb. 2018 <nrs.harvard.edu>.

<sup>32</sup> “United States v. Microsoft Corp.” SCOTUSBlog. 27 Feb. 2018. Accessed Mar. 2018 <www.scotusblog.com>.

<sup>33</sup> Albrecht, Jan Philipp. “How the GDPR Will Change the World.” *European Data Protection Law Review*. 2016. Accessed Feb. 2018 <www.lexxion.eu>.

<sup>34</sup> Bennett, Steven.

<sup>35</sup> Bamberger, Kenneth and Mulligan, Deirdre. “Privacy on the Book and on the Ground.” *Berkeley Law Scholarship Review*. Jan. 2010. Accessed Feb. 2018 <www.scholarship.law.berkeley.edu>.

<sup>36</sup> Ibid.

<sup>37</sup> Morozov, E. (2013). *To Save Everything, Click Here: The Folly of Technological Solutionism*. New York: Public Affairs.

<sup>38</sup> Ibid.

<sup>39</sup> Bertot, John Carlo, Paul T. Jaeger and Justin M. Grimes. “Promoting Transparency And Accountability Through Icts, Social Media, And Collaborative Government.” *Transforming Government: People, Process and Policy*. 2012.

<sup>40</sup> Ibid.

<sup>41</sup> Nahon and Hemsley.

<sup>42</sup> Vaccaro, Antonio, and Peter Madsen. “Corporate Dynamic Transparency: The New ICT-Driven Ethics?” *Ethics and Information Technology*. Apr. 3 2009.

<sup>43</sup> Ibid.

<sup>44</sup> “Facebook Transparency Report.” Facebook. N.D. Accessed Feb. 2018 <www.transparency.facebook.com>.

<sup>45</sup> “Google Transparency Report.” Google. N.D. Accessed Feb. 2018 <transparencyreport.google.com>.

<sup>46</sup> Stretch, Colin. “Global Government Requests Report.” Aug. 27 2013. Accessed Feb. 2018 <www.newsroom.fb.com>.

<sup>47</sup> “Google Transparency Report.” Google.

<sup>48</sup> “Explore Your Activity Log.” Facebook. N.D. Accessed Mar. 2018 <www.facebook.com>.

<sup>49</sup> “How Can I Download A Copy Of My Facebook Data?” Facebook. N.D. Accessed Mar. 2018 <www.facebook.com>.

<sup>50</sup> “My Activity.” Google. N.D. Accessed Mar. 2018 <myactivity.google.com>.

<sup>51</sup> Kaptein, Muel and Schwartz, Mark S. “The Effectiveness of Business Codes: A Critical Examination of Existing Studies and the Development of an Integrated Research Model.” Jan. 2008. *Journal of Business Ethics*.

<sup>52</sup> Ibid.

<sup>53</sup> “FAQs.” Facebook Investor Relations. Accessed Mar. 2018 <investor.fb.com>.

<sup>54</sup> “Facebook Code of Conduct.” Facebook. N.D. Accessed Mar. 2018 <www.facebook.com>.

<sup>55</sup> “Google: Our Company.” Google. N.D. Accessed Feb. 2018 <www.google.com>.

<sup>56</sup> “Google Code of Conduct.” Alphabet, Inc. Oct. 12 2017. Accessed Feb. 2018 <www.abc.xyz>.

<sup>57</sup> Nahon and Hemsley.

<sup>58</sup> Birchler and Büttler.

<sup>59</sup> Balkin, Jack. “Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society.” *New York University Law Review*. Apr. 2004. Accessed Feb. 2018 <www.nyulawreview.org>.

<sup>60</sup> “Facebook Privacy,” Facebook.

<sup>61</sup> “Google Privacy & Terms,” Google.

<sup>62</sup> Porter, Eduardo. “Your Data Is Crucial to a Robotic Age. Shouldn’t You Be Paid for It?” *New York Times*. 6 Mar. 2018. Accessed Mar. 2018 <www.nytimes.com>.

<sup>63</sup> “Government, Regulation and the Social Safety Net.” Pew Research Center. Oct. 5 2017. Accessed Mar. 2018 <www.people-press.org>.