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FACEBOOK: HARD QUESTIONS (A)

In April 2018, Facebook co-founder and CEO Mark Zuckerberg traveled to Capitol Hill to be the star witness at congressional hearings. As hundreds of cameras clicked, Zuckerberg—who had shed his trademark grey tee-shirt for a dark suit and tie—took his seat at a desk on which multiple bottles of mineral water were lined up. Representative Greg Walden, chairman of the House Energy and Commerce Committee, told Zuckerberg:

We've called you here today for two reasons. One is to examine the alarming reports regarding breaches of trust between your company—one of the biggest and most powerful in the world—and its users. And the second reason is to widen our lens to larger questions about the fundamental relationship tech companies have with their users.¹

Invited to make a five-minute opening statement, Zuckerberg noted somberly, “We face a number of important issues around privacy, safety, and democracy, and you will rightfully have some hard questions for me to answer.”² But first, said Zuckerberg, he wanted to talk about how his company had reached its current point. “Facebook is an idealistic and optimistic company,” he explained. “For most of our existence, we focused on all the good that connecting people can bring. As Facebook has grown, people everywhere have gotten a powerful new tool to stay connected to the people they love, make their voices heard, and build communities and businesses.” But, he added:

...it's clear now that we didn't do enough to prevent these tools from being used for harm as well. That goes for fake news, foreign interference in elections, and

¹ The full House hearing can be viewed here: <https://www.youtube.com/watch?v=CMZTbMFK5eA>

² See Zuckerberg testimony here: <https://docs.house.gov/meetings/IF/IF00/20180411/108090/HHRG-115-IF00-Wstate-ZuckerbergM-20180411.pdf>

Sheila Melvin and Professors Ken Shotts and Neil Malhotra prepared this case as the basis for class discussion rather than to illustrate either effective or ineffective handling of an administrative situation.

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hate speech, as well as developers and data privacy. We didn't take a broad enough view of our responsibility, and that was a big mistake. It was my mistake, and I'm sorry. I started Facebook, I run it, and I'm responsible for what happens here.³

BACKGROUND

The Founding Story

Mark Zuckerberg and his cofounders launched Facebook on February 4, 2004 in Zuckerberg's Harvard dorm room. Within two weeks, half of Harvard's undergrads had joined Facebook; three weeks later, it was opened to students at a handful of other elite universities. In June, Zuckerberg and early Facebook employees went to Palo Alto and lived in "Casa Facebook," working 16-hour days at a kitchen table.⁴ He was introduced to venture capitalist Peter Thiel, who invested \$500,000 in the young company in exchange for a seat on its board and the option to purchase an ownership stake.⁵ By the end of 2004, Facebook had a million users at educational institutions and in September 2006, Facebook was opened to anyone over 13 with an email address.

Zuckerberg's Facebook profile at this time stated his interests as: meditation, information flow, exponential growth, minimalism, driving, making things, social dynamics, and domination.⁶

Expanding Features, Growing Users

Facebook added new features at a rapid pace. In September 2006, Facebook began News Feed, which allowed users to get a quick glimpse of what their friends were up to—relationship changes, photos, groups joined—in a streaming news format. News Feed appeared automatically on every user's homepage and the updates were also automatic. While some reviewers, including *Tech Crunch*,⁷ gave it a "thumbs up," there was an immediate uproar from others who saw this as a privacy violation and decried News Feed as "creepy" and "stalker-esque."⁸ Zuckerberg's initial response to the criticism was, "Calm down. Breathe. We hear you."⁹ Soon thereafter, however, he issued a formal apology that began, "We really messed this one up," and continued:

When I made Facebook two years ago my goal was to help people understand what was going on in their world a little better. I wanted to create an environment where people could share whatever information they wanted, but also have

³ Nash Jenkins, "Mark Zuckerberg Tells Congress He's Sorry," *Time*, April 10, 2018, <http://time.com/5235181/mark-zuckerberg-facebook-congress-testimony-sorry/> (September 7, 2018).

⁴ John Cassidy, "Me Media," *The New Yorker*, May 15, 2016, <https://www.newyorker.com/magazine/2006/05/15/me-media> (September 7, 2018).

⁵ Ibid.

⁶ Ibid.

⁷ Michael Arrington, "Facebook Users Revolt, Facebook Replies," *TechCrunch*, September 6, 2006, <https://techcrunch.com/2006/09/06/facebook-users-revolt-facebook-replies/> (September 7, 2018).

⁸ John Leyden, "Users Protest Over 'Creepy' Facebook Update," *The Register*, September 7, 2006, https://www.theregister.co.uk/2006/09/07/facebook_update_controversy/ (September 7, 2018).

⁹ Michael Arrington, op. cit.

control over whom they shared that information with. I think a lot of the success we've seen is because of these basic principles.¹⁰

He then promised to give users better privacy controls, enabling them to choose what went into their News Feed.¹¹

In 2007, the company introduced Beacon, a service to let users share information from Facebook's partner shopping sites with their Facebook friends. Whenever someone made a purchase through a Facebook partner, the information posted automatically on their News Feed; it was possible to opt out, but only on a case-by-case basis. Some Facebook users objected that they did not want to share all their purchase details with all their friends, and demanded a universal opt-out option. Facebook made some adjustments, but Zuckerberg continued trying to persuade users to accept Beacon and did not provide a universal opt-out. However, after two months of continued opposition, Facebook changed the feature to opt-in and Zuckerberg issued an apology that said, in part, "We've made a lot of mistakes building this feature, but we've made even more with how we've handled them. We simply did a bad job with this release, and I apologize for it."¹² (Facebook shut Beacon down in 2009 to resolve a class-action lawsuit filed by a group of Facebook members.¹³)

Facebook introduced the iconic "Like" button on February 9, 2009. And by this time many people were, indeed, liking Facebook—which had 30 million members in July 2007 and 300 million in July 2009.¹⁴ Also in 2009, Facebook's corporate counsel for commercial transactions announced a change to the company's terms of service on the Facebook blog, billing them as consolidation, simplification, and clarification. However, a writer at the consumer advocacy blog *The Consumerist* noted the removal of two key sentences involving users' right to remove their content at any time.¹⁵ *The Consumerist*'s post, entitled "Facebook's New Terms of Service: 'We Can Do Anything We Want With Your Content. Forever,'"¹⁶ drew negative attention to the change. Facebook pushed back, insisting "Facebook does not, nor have we ever, claimed ownership over people's content. Your content belongs to you."¹⁷ But, in the face of a

¹⁰ Mark Zuckerberg, "An Open Letter from Mark Zuckerberg," September 8, 2006, <https://www.facebook.com/notes/facebook/an-open-letter-from-mark-zuckerberg/2208562130/> (September 7, 2018).

¹¹ Mark Zuckerberg, "An Open Letter from Mark Zuckerberg," September 8, 2006, <https://www.facebook.com/notes/facebook/an-open-letter-from-mark-zuckerberg/2208562130/> (September 7, 2018).

¹² Mark Zuckerberg, "Thoughts on Beacon," December 5, 2007, <https://www.facebook.com/notes/facebook/thoughts-on-beacon/7584397130/> (September 7, 2018).

¹³ "Facebook Shuts Down Beacon," *The Telegraph*, September 21, 2009, <https://www.telegraph.co.uk/technology/facebook/6214370/Facebook-shuts-down-Beacon.html> (September 8, 2018).

¹⁴ Joshua Boyd, "The History of Facebook: From BASIC to Global Giant," Brandwatch, <https://www.brandwatch.com/blog/history-of-facebook/> (September 8, 2018).

¹⁵ The removed sentences read: "You may remove your User Content from the Site at any time. If you choose to remove your User Content, the license granted above will automatically expire, however you acknowledge that the Company may retain archived copies of your User Content."

¹⁶ "Facebook's new terms of service: WE can do anything we want with your content. Forever," *The Consumerist*, February 15, 2009, <https://consumerist.com/2009/02/15/facebooks-new-terms-of-service-we-can-do-anything-we-want-with-your-content-forever/index.html> (September 8, 2018).

¹⁷ Anita Ramasastry, "Facebook Follies: Why Facebook's Recent Change to its User Agreement Was A Bad Move, and Will Likely Be Unenforceable," <https://supreme.findlaw.com/legal-commentary/facebook-follies-why-facebooks-recent-change-to-its-user-agreement-was-a-bad-move-and-will-likely-be-unenforceable.html> (September 8, 2018).

threatened complaint to the Federal Trade Commission (FTC) alleging that the changes to Facebook's terms of service amounted to a deceptive trade practice, the company reverted to the old terms of service.¹⁸

In December 2009, Facebook made changes that included making public information users had designated as private, including Friends lists. It did so without giving warning or obtaining users' permission. This led the FTC to file a complaint against Facebook, which was settled in 2011.¹⁹ Also in 2009, the American Civil Liberties Union (ACLU) released a warning about Facebook quizzes—in the form of a quiz, called “What do Facebook Quizzes Know About You!”²⁰ Warned the ACLU:

Even if your Facebook profile is “private,” when you take a quiz, an unknown quiz developer could be accessing almost everything in your profile: your religion, sexual orientation, political affiliation, pictures, and groups. Facebook quizzes also have access to most of the info on your friends' profiles. This means that if your friend takes a quiz, they could be giving away your personal information too. (But, again, don't just take our word for it: take our quiz and see for yourself!)²¹

In 2011, the company introduced Facebook Subscribe (subsequently called “follow”) which allowed users to see anyone's public status updates and posts.²² In 2012, Facebook opened its app center and acquired Instagram for \$1 billion; it also reached the milestone of 1 billion users.²³ That year, it adjusted News Feed to incorporate more actual news from media sources, rather than mostly personal news, a move many analysts viewed as an effort to compete with Twitter.²⁴

The IPO

In 2012, Facebook went public, an event that Investopedia called “one of the largest and most anticipated IPOs in history.”²⁵ Just before the opening bell rang, Zuckerberg declared, “Going public is an important milestone in our history. But here's the thing: our mission isn't to be a

¹⁸ Ibid.; Brad Stone and Brian Stelter, “Facebook Withdraws Changes in Data Use,” *The New York Times*, February 19, 2018 <https://www.nytimes.com/2009/02/19/technology/internet/19facebook.html> (September 8, 2018).

¹⁹ “Facebook Settles FTC Charges That It Deceived Consumers By Failing To Keep Privacy Promises,” FTC Press Release, November 29, 2011, <https://www.ftc.gov/news-events/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep> (September 10, 2018).

²⁰ Chris Conley, “Quiz: What Do Facebook Quizzes Know About You?” ACLU, June 11, 2009, <https://www.aclu.org/blog/national-security/quiz-what-do-facebook-quizzes-know-about-you> (September 10, 2018).

²¹ Ibid.

²² “The Evolution of Facebook,” *Forbes*, 2011, <https://www.forbes.com/pictures/eimh45klhg/2011-hello-timeline-2/#50459754f6e3> (September 10, 2018).

²³ James Peckham, “History of Facebook: All The Major Updates & Changes From 2004-2016,” Know Your Mobile, February 2, 2016, <http://www.knowyourmobile.com/apps/facebook/21807/history-facebook-all-major-updates-changes-2004-2016> (September 10, 2018).

²⁴ Nicholas Thompson and Fred Vogelstein, “Inside the Two Years that Shook Facebook – And the World,” *Wired*, February 12, 2018, www.wired.com/story/inside-facebook-mark-zuckerberg-2-years-of-hell/ (September 10, 2018).

²⁵ Justin Walton, “When did Facebook Go Public?” Investopedia, <https://www.investopedia.com/ask/answers/111015/when-did-facebook-go-public.asp> (September 10, 2018).

public company. Our mission is to make the world more open and connected... So let's do this!"²⁶

The company's S-1 filing with the Securities and Exchange Commission listed its business as primarily advertising-display, with a net profit of \$1 billion in 2011 from total revenue of \$3.7 billion.²⁷ However, during the road show that preceded the IPO, Facebook made changes to three pages of the 170-page document; the changes disclosed challenges it faced in delivering ads to mobile users, which was in turn affecting revenue.²⁸ Neither precedent nor law required it to include its lower revenue estimates in the S-1, although these were revealed by telephone to research analysts at major investment banks. Analysts shared the information with major clients, word spread, and some hedge funds decided to short the stock. After opening at \$38 per share—belatedly, due to serious technical glitches at NASDAQ—the stock closed at the end of the day at \$38.23; on the one-year anniversary of its listing, the stock was priced at \$26.25.²⁹ The *Atlantic* called it “the biggest IPO flop ever,” *Fortune* said it was “disastrous,”³⁰ and the *Wall Street Journal* labeled it a “fiasco.”³¹

However, by the end of 2013, more than half of Facebook's revenue came from mobile ads and the stock price had begun to rise. The same publications that had condemned it now praised it, with *Fortune* explaining, in 2015, “How Facebook Overcame its Disastrous IPO.” Facebook, meanwhile, continued to add features that quickly became popular.

By 2015, Facebook referred 13 times as many readers to published news sites as Twitter and had also surpassed Google in this measure.³² In May 2015, Facebook introduced Instant Articles, which hosted content from major publishers with whom it signed partnerships so users did not have to click out of their news feeds and wait for articles to load.

By the autumn of 2017, Pew Research reported that “Overall, Facebook outstrips all other social media sites as a source of news.”³³ It further stated that almost 45 percent of American adults got news on Facebook. By May 2017, five years following its IPO, Facebook shares had risen by 297 percent;³⁴ and by March 2018 Facebook had over 2 billion active monthly users.³⁵ The

²⁶ Kahdeejia Safdar, “Facebook, One Year Later: What Really Happened in the Biggest IPO Flop Ever,” *The Atlantic*, May 20, 2013, <https://www.theatlantic.com/business/archive/2013/05/facebook-one-year-later-what-really-happened-in-the-biggest-ipo-flop-ever/275987/> (September 10, 2018).

²⁷ Safdar, op. cit.

²⁸ Ibid. See the S-1 filing here:

<https://www.sec.gov/Archives/edgar/data/1326801/000119312512034517/d287954ds1.htm> (September 10, 2018).

²⁹ Safdar, op. cit.

³⁰ Erin Griffith, “How Facebook Overcame Its Disastrous IPO,” *Fortune*, May 18, 2015,

<http://fortune.com/2015/05/18/facebook-ipo-3-year/> (September 10, 2018).

³¹ David Weidner, “Facebook IPO Facts, Fiction and Flops,” *The Wall Street Journal*, May 30, 2012, <https://www.wsj.com/articles/SB10001424052702304821304577436873952633672> (September 10, 2018).

³² Nicholas Thompson and Fred Vogelstein, “Inside the Two Years that Shook Facebook – And the World,” *Wired*, February 12, 2018, <https://www.wired.com/story/inside-facebook-mark-zuckerberg-2-years-of-hell/> (September 10, 2018).

³³ Elisa Shearer and Jeffrey Gottfried, “New Use Across Social Media Platforms,” Pew Research Center, September 7, 2017, <http://www.journalism.org/2017/09/07/news-use-across-social-media-platforms-2017/> (September 10, 2018).

³⁴ Caitlin Huston, “Facebook Has Quadrupled Five Years After Maligned IPO,” *Marketwatch*, May 18, 2017, <https://www.marketwatch.com/story/facebook-has-quadrupled-five-years-after-maligned-ipo-2017-05-18> (September 10, 2018).

London Review of Books commented on this milestone: “No human enterprise, no new technology or utility or service, has ever been adopted so widely so quickly. The speed of [Facebook] uptake far exceeds that of the internet itself, let alone ancient technologies such as television or cinema or radio.”³⁶

THE MANY FACES OF FACEBOOK

In the spring of 2017, *New York Magazine* ran an article called, “Does Even Mark Zuckerberg Know What Facebook Is?” Asked the article:

What is Facebook? We can talk about its scale: Population-wise, it’s larger than any single country; in fact, it’s bigger than any continent besides Asia... the single largest non-biologically sorted group of people on the planet after Christians...³⁷

Facebook, it noted, could soon encompass one-third of the world’s population; with the exception of China, where Facebook was banned since 2009, Internet users the world over spent one out of every five Internet minutes on Facebook. It continued:

Facebook has grown so big, and become so totalizing, that we can’t really grasp it all at once... In one context, it looks and acts like a television broadcaster, but in this other context, an NGO... Over the past year I’ve heard Facebook compared to a dozen entities and felt like I’ve caught glimpses of it acting like a dozen more. I’ve heard government metaphors (a state, the E.U., the Catholic Church, *Star Trek*’s United Federation of Planets) and business ones (a railroad company, a mall); physical metaphors (a town square, an interstate highway, an electrical grid) and economic ones (a Special Economic Zone, Gosplan). For every direct comparison, there was an equally elaborate one: a faceless Elder God. A conquering alien fleet. There are real consequences to our inability to understand what Facebook is.³⁸

These consequences were widely addressed by critics in articles with headlines including “Facebook is a tool for evil;”³⁹ “We are Facebook’s guinea pigs;”⁴⁰ “Facebook’s Algorithms

³⁵“Our History,” Facebook, <https://newsroom.fb.com/company-info/> (September 10, 2018).

³⁶ John Lanchester, “You Are the Product,” *London Review of Books*, August 17, 2017, <https://www.lrb.co.uk/v39/n16/john-lanchester/you-are-the-product> (September 10, 2018).

³⁷ Max Read, “Does Even Mark Zuckerberg Know What Facebook Is?” *New York Magazine*, October 2017, <http://nymag.com/selectall/2017/10/does-even-mark-zuckerberg-know-what-facebook-is.html> (September 11, 2018).

³⁸ Ibid.

³⁹ “Facebook is a ‘tool for evil’, says judge as mother trolled over fake claims she tried to kill a baby is found dead,” *The Telegraph*, February 7, 2017, <https://www.telegraph.co.uk/news/2017/02/07/facebook-tool-evil-says-judge-mother-trolled-fake-claims-tried/> (September 10, 2018).

⁴⁰ Tomas Chamorro-Premuzic, “We are Facebook’s digital guinea pigs: the web as a real-life experiment,” *The Guardian*, July 4, 2014, <https://www.theguardian.com/media-network/media-network-blog/2014/jul/04/facebook-emotion-social-psychology-experiment> (September 10, 2018).

Are Destroying Democracy;”⁴¹ “Facebook knows a ton about your health. Now they want to make money off it;”⁴² “Why Facebook is public enemy number one for newspapers, and journalism;”⁴³ and “Facebook, Cambridge Analytica, and the Regulator’s Dilemma: Clueless or Venal?”⁴⁴ These headlines referenced multiple, widely reported incidents and events involving Facebook.

Emotional Contagion Experiment

In 2014, it was revealed that Facebook had conducted an “emotional contagion” experiment by tweaking the News Feeds of 700,000 users. The abstract of the study, which was published in the *Proceedings of the National Academy of Sciences*, explained:

In an experiment with people who use Facebook, we test whether emotional contagion occurs outside of in-person interaction between individuals by reducing the amount of emotional content in the News Feed. When positive expressions were reduced, people produced fewer positive posts and more negative posts; when negative expressions were reduced, the opposite pattern occurred. These results indicate that emotions expressed by others on Facebook influence our own emotions, constituting experimental evidence for massive-scale contagion via social networks.⁴⁵

News of the experiment, which was done without the users’ knowledge or permission, led to an uproar. As the *New York Times* explained,

The company says users consent to this kind of manipulation when they agree to its terms of service. But in the quick judgment of the Internet, that argument was not universally accepted.

⁴¹ Jack Samler, “Facebook’s Algorithms Are Destroying Democracy,” *Huffington Post*, March 30, 2017, https://www.huffingtonpost.com/entry/why-facebooks-algorithms-are-destroying-democracy_us_58d9cba6e4b04f2f07927278 (September 10, 2018).

⁴² “Facebook Knows a Ton About Your Health, Now they Want to Make Money Off It,” *The Washington Post*, April 18, 2018, https://www.washingtonpost.com/news/posteverything/wp/2018/04/18/facebook-knows-a-ton-about-your-health-now-they-want-to-make-money-off-it/?utm_term=.03e6dff3306c (September 10, 2018).

⁴³ Roy Greenslade, “Why Facebook is public enemy number one for newspapers, and journalism,” *The Guardian*, September 20, 2016, <https://www.theguardian.com/media/greenslade/2016/sep/20/why-facebook-is-public-enemy-number-one-for-newspapers-and-journalism> (September 10, 2018).

⁴⁴ David C. Vladeck, “Facebook, Cambridge Analytica, and the Regulator’s Dilemma: Clueless or Venal?” *Harvard Law Review*, April 4, 2018, <https://blog.harvardlawreview.org/facebook-cambridge-analytica-and-the-regulators-dilemma-clueless-or-venal/> (September 10, 2018).

⁴⁵ Adam D. I. Kramer, Jamie E. Guillory, and Jeffrey T. Hancock, “Experimental evidence of massive-scale emotional contagion through social networks,” *Proceedings of the National Academy of Sciences*, June 17, 2014, <http://www.pnas.org/content/111/24/8788> (September 10, 2018).

“I wonder if Facebook KILLED anyone with their emotion manipulation stunt. At their scale and with depressed people out there, it’s possible,” the privacy activist Lauren Weinstein wrote in a Twitter post.⁴⁶

The *Times*, along with CNN, NPR, *Forbes*, and *Huffington Post* accused Facebook of treating users like “lab rats.” Facebook subsequently acknowledged being “unprepared for the reaction” and said that it wanted to do future research “in a way that honors the trust you put in us by using Facebook every day.”⁴⁷

Privacy Issues⁴⁸

Perceived privacy issues dogged Facebook for most of its history, including the aforementioned introduction of News Feed and Beacon, and the settlement with the FTC. In 2018, Facebook and other data companies began complying with the European Union’s General Data Protection Regulation, or GDPR,⁴⁹ which went into effect on May 25.

The GDPR, as Facebook explained, “applies to all companies that process personal data about individuals in the EU, regardless of where the company is based. Processing is defined broadly and refers to anything related to personal data, including how a company handles and manages data, such as collecting, storing, using and destroying data.”⁵⁰ Failure to comply could result in maximum fines of 20 million Euros or 4 percent of a company’s global turnover, whichever was higher.⁵¹ Facebook rolled out a new set of privacy tools to comply with the GDPR and established a “privacy center” which, said Facebook COO Sheryl Sandberg, “will put the core privacy settings for Facebook in one place and make it much easier for people to manage their data.”⁵² Facebook also promised to double to 20,000 the number of people working on safety and security by the end of 2018.⁵³

The GDPR strengthened privacy rights by enabling people to demand that companies reveal or delete their personal data and obliging companies to seek their consent before storing their data. But critics, like Larry Downes, writing in the *Harvard Business Review*, suggested “users will be barraged with interruptions to the flow of their online lives, forced to review,

⁴⁶Vindu Goel, Facebook Tinkers With Users’ Emotions in News Feed Experiment, Stirring Outcry,” *The New York Times*, June 30, 2016, <https://www.nytimes.com/2014/06/30/technology/facebook-tinkers-with-users-emotions-in-news-feed-experiment-stirring-outcry.html> (September 10, 2018).

⁴⁷Mike Schroepfer, “Research at Facebook,” October 2, 2014, <https://newsroom.fb.com/news/2014/10/research-at-facebook/> (September 10, 2018).

⁴⁸For a timeline of privacy issues, see: <https://www.nbcnews.com/tech/social-media/timeline-facebook-s-privacy-issues-its-responses-n859651> (September 10, 2018).

⁴⁹“Data Protection,” European Commission, https://ec.europa.eu/info/law/law-topic/data-protection_en (September 10, 2018).

⁵⁰“What is the GDPR?” Facebook, <https://www.facebook.com/business/GDPR> (September 10, 2018).

⁵¹Alex Hern, “What is GDPR and how will it affect you?” *The Guardian*, May 21, 2018, <https://www.theguardian.com/technology/2018/may/21/what-is-gdpr-and-how-will-it-affect-you> (September 10, 2018).

⁵²Alex Hern, “Facebook to roll out new tools in response to EU privacy laws,” *The Guardian*, January 23, 2018, <https://www.theguardian.com/technology/2018/jan/23/facebook-new-privacy-tools-response-to-eu-privacy-laws-sheryl-sandberg> (September 10, 2018).

⁵³Ibid.

decide, and reconsider each element of information they enter.”⁵⁴ They also noted that costs associated with implementation of GDPR could hurt small companies, and thus benefit large ones, and that even the giants might be forced to change their business models if the collection, analysis, and marketing of user-provided data were to be rendered economically unsustainable.

In June 2018, California passed the California Consumer Privacy Act, which was set to come into effect in 2020. The law, which could be amended, gave California residents the right to be informed about what sort of personal data companies had collected on them and why. It also gave California consumers the right to opt out of the sale of personal information, request the deletion of personal data, and to access it in a “readily useable format.” The law was expected to have impact far beyond California since most consumer data companies had customers in the state and would either have to abide by the California regulations globally or offer different rights to different customers.⁵⁵ However, it was also reported that Facebook and other companies were lobbying the U.S. government to begin drafting a federal privacy law which would supersede the California law; some privacy advocates saw such industry efforts as an explicit attempt to nullify the California law and, said the *New York Times*, “put into place a kinder set of rules that would give the companies wide leeway over how personal digital information was handled.”⁵⁶

Targeted Ads

Targeted ads were an essential element of Facebook’s business model. The company touted its “Ads Manager” to advertisers, saying:

Two billion people use Facebook every month. With our powerful audience selection tools, you can target the people who are right for your business. Using what you know about your customers—like demographics, interests and behaviors—you can connect with people similar to them. There are three options for choosing your audience on Facebook.⁵⁷

Advertisers, it explained, could select a core audience manually based on characteristics like age, location, interests, and behaviors; upload their contact list to connect with customers on Facebook; or use their customer information to find “Lookalike audiences” similar to their customers. Ad targeting, however, came under criticism for enabling bias, notably by *Pro Publica*, which took out ads in Facebook’s housing category and successfully requested not to have the ad seen by African Americans, Asian Americans, or Hispanics.⁵⁸ As the investigative

⁵⁴ Larry Downes, “GDPR and the End of the Internet’s Grand Bargain,” *Harvard Business Review*, April 9, 2018, <https://hbr.org/2018/04/gdpr-and-the-end-of-the-internets-grand-bargain> (September 10, 2018).

⁵⁵ Dipayan Ghosh, “What You Need to Know About California’s New Data Privacy Law,” *Harvard Business Review*, July 11, 2018, <https://hbr.org/2018/07/what-you-need-to-know-about-californias-new-data-privacy-law> (September 10, 2018).

⁵⁶ Cecilia Kang, “Tech Industry Pursues a Federal Privacy Law, on Its Own Terms,” *The New York Times*, August 26, 2018, <https://www.nytimes.com/2018/08/26/technology/tech-industry-federal-privacy-law.html> (September 10, 2018).

⁵⁷ “Choose Your Audience,” Facebook, <https://www.facebook.com/business/products/ads/ad-targeting> (September 10, 2018).

⁵⁸ Julia Angwin and Terry Parris, Jr. “Facebook Lets Advertisers Exclude Users by Race,” *ProPublica*, October 28, 2016, <https://www.propublica.org/article/facebook-lets-advertisers-exclude-users-by-race> (September 10, 2018).

journalism organization reported in 2016, “The ubiquitous social network not only allows advertisers to target users by their interests or background, it also gives advertisers the ability to exclude specific groups it calls ‘Ethnic Affinities.’ Ads that exclude people based on race, gender and other sensitive factors are prohibited by federal law in housing and employment.” In September 2018, Facebook was further accused of helping employers to discriminate on the basis of sex by enabling them to exclude females from targeted employment recruiting ads.⁵⁹

Political campaigns, too, used targeted ads to reach individual voters. In 2017, Stephen K. Bannon, a former executive chairman of the far right-leaning Breitbart News and a one-time adviser to President Donald Trump, told journalists, “I wouldn’t have come aboard, even for Trump, if I hadn’t known they were building this massive Facebook and data engine. Facebook is what propelled Breitbart to a massive audience. We know its power.”⁶⁰ Targeted political ads, like targeted commercial ads, could not be seen by others and were thus sometimes called “dark ads” because they were impossible to track or monitor. Such ads, critics claimed, could be used to encourage voting—or to suppress it. In the U.K., for instance, targeted Facebook ads came under scrutiny in the wake of the successful 2016 Brexit campaign; Facebook revealed that AggregateIQ (AIQ) a consulting firm based in Victoria, Canada, had spent \$2 million on pro-Brexit ads in the UK.⁶¹ It further noted that AIQ shared “certain billing and administration connections” with Cambridge Analytica.⁶² Funding for the ads came primarily from the “Vote Leave” camp, which spent 40 percent of its nearly \$9 million budget on AIQ.⁶³

In September 2017, Facebook disclosed that the St. Petersburg-based Internet Research Agency—widely labeled a Russian “troll farm” or “troll factory”⁶⁴—had purchased more than 3,000 ads, for which Facebook had been paid \$100,000. It had also placed 80,000 unpaid posts seen by 126 million people⁶⁵ on Facebook as part of what Facebook’s general counsel called “an insidious attempt to drive people apart.”⁶⁶ Zuckerberg argued that the amount of “problematic content” discovered was “relatively small” but also announced a nine-point plan intended to

⁵⁹ Noam Scheiber, “Facebook Accused of Allowing Bias Against Women in Job Ads,” *The New York Times*, September 18, 2018, <https://www.nytimes.com/2018/09/18/business/economy/facebook-job-ads.html>, (October 1, 2018).

⁶⁰ Joshua Green and Sasha Issenberg, “Inside the Trump Bunker, With Days to Go,” Bloomberg News, October 27, 2016, <https://www.bloomberg.com/news/articles/2016-10-27/inside-the-trump-bunker-with-12-days-to-go> (September 10, 2018).

⁶¹ Aliya Ram, “Facebook says AggregateIQ spent \$2m on Brexit-related ads,” *The Financial Times*, April 26, 2018, <https://www.ft.com/content/a48536e0-493b-11e8-8ee8-cae73aab7ccb> (September 11, 2018).

⁶² Ibid.

⁶³ Patrick Foster and Martin Evans, “Exclusive: How a tiny Canadian IT company helped swing the Brexit vote for Leave,” *The Telegraph*, February 24, 2017, <https://www.telegraph.co.uk/news/2017/02/24/exclusive-tiny-canadian-company-helped-swing-brexit-vote-leave/> (September 11, 2018).

⁶⁴ Sonam Sheth, “Facebook takes down over 200 accounts and pages run by the IRA, a notorious Russian troll farm,” *Business Insider*, April 2, 2018, <https://www.businessinsider.com/facebook-removes-accounts-pages-tied-to-russia-internet-research-agency-2018-4> (September 11, 2018).

⁶⁵ Alex Pasternack, “The Most Outrageous Ads Russia Bought On Facebook,” *Fast Company*, November 21, 2017, <https://www.fastcompany.com/40490204/the-most-outrageous-russian-propaganda-that-appeared-on-facebook> (September 11, 2018).

⁶⁶ Mike Isaac and Daisuke Wakabayashi, “Russian Influence Reached 126 Million Through Facebook Alone,” *The New York Times*, October 30, 2017, <https://www.nytimes.com/2017/10/30/technology/facebook-google-russia.html> (September 11, 2018).

prevent sovereign states from using Facebook to interfere in each other's elections.⁶⁷ The plan included greater transparency in political advertising. "Not only will you have to disclose which page paid for an ad," Zuckerberg explained in 2017, "but we will also make it so you can visit an advertiser's page and see the ads they're currently running to any audience on Facebook. We will roll this out over the coming months, and we will work with others to create a new standard for transparency in online political ads."⁶⁸

Facebook turned over to Congress the political ads placed by Russia's Internet Research Agency and these were made available to the public in 2018. *USA Today* read and analyzed all 3,517 ads and wrote that, while some ads were banal, the Russians:

...consistently promoted ads designed to inflame race-related tensions. Some dealt with race directly; others dealt with issues fraught with racial and religious baggage such as ads focused on protests over policing, the debate over a wall on the U.S. border with Mexico and relationships with the Muslim community.⁶⁹

Ads that made express reference to race were said to have garnered 25 million ad impressions.⁷⁰ Representative Adam Schiff (D-CA 28th District) and Minority Leader of the House Intelligence Committee, told the paper:

These ads broadly sought to pit one American against another by exploiting faults in our society or race, ethnicity, sexual orientation and other deeply cynical thoughts. Americans should take away that the Russians perceive these divisions as vulnerabilities and to a degree can be exploited by a sophisticated campaign.⁷¹

Fake News

On November 3, 2016, just days before the U.S. presidential election, *BuzzFeed* reported that it had discovered well over 100 pro-Trump websites operating in the town of Veles in Macedonia that were spreading their stories on Facebook. The sites were run by young Macedonians who appeared to have strictly economic motives: a U.S. Facebook user was worth four times as much as a non-U.S. Facebook user in terms of ad-click revenue. So, explained *BuzzFeed*, the Macedonian entrepreneurs "learned the best way to generate traffic is to get their politics stories to spread on Facebook—and the best way to generate shares on Facebook is to publish sensationalist and often false content that caters to Trump supporters."⁷² Some of the sites that deliberately published fake political news had Facebook pages with hundreds of thousands of

⁶⁷ Mahita Gajanan, "'I Care Deeply About the Democratic Process.' Mark Zuckerberg Reveals Facebook Election Meddling Plan," *Time*, September 21, 2017, <http://time.com/4952391/mark-zuckerberg-facebook-russia-meddling-congress/> (September 11, 2018).

⁶⁸ Ibid.

⁶⁹ Nick Penzenstadler, Brad Heath, Jessica Guynn, "We read every one of the 3,517 Facebook ads bought by Russians. Here's what we found," *USA Today*, May 11, 2018, <https://www.usatoday.com/story/news/2018/05/11/what-we-found-facebook-ads-russians-accused-election-meddling/602319002/> (September 11, 2018).

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Craig Silverman and Lawrence Alexander, "How Teens In The Balkans Are Duping Trump Supporters With Fake News," *BuzzFeed News*, November 3, 2016, <https://www.buzzfeednews.com/article/craigsilverman/how-macedonia-became-a-global-hub-for-pro-trump-misinfo#.op95xv35M> (September 11, 2018).

followers. Four of the five most successful stories were completely made up, including one that falsely alleged the Pope had endorsed Trump for president.

In the days after Trump's surprise victory on November 8, Facebook came under widespread criticism for not doing enough to stop the spread of rumors and hoaxes that supported the Trump campaign. Internally, the *New York Times* reported, many Facebook employees questioned their company's influence and the role it might have played in swaying voters.⁷³ Zuckerberg initially resisted this criticism, saying, on November 10, "Personally, I think the idea that fake news on Facebook, which is a very small amount of the content, influenced the election in any way is a pretty crazy idea."⁷⁴ Then, in a November 12 blog posting,⁷⁵ he acknowledged that "many people are asking whether fake news contributed to the [election] result" but said that "Of all the content on Facebook, more than 99 percent of what people see is authentic: and only "a very small amount" was fake. While pledging to improve Facebook's ability to flag fake news, Zuckerberg also said he would tread carefully. "Identifying the 'truth' is complicated," he wrote, adding, "I believe we must be extremely cautious about becoming arbiters of truth ourselves."

On November 16, 2016 *BuzzFeed* reported that, "In the final three months of the US presidential campaign, the top-performing fake election news stories on Facebook generated more engagement than the top stories from major news outlets such as the *New York Times*, *Washington Post*, *Huffington Post*, NBC News, and others."⁷⁶ Nonetheless, Facebook continued to perceive itself as a technology, rather than a media, company. On August 30, 2016, Zuckerberg had addressed a group of students in Rome and when asked if he intended for Facebook to become a news editor, replied, "No, we are a tech company, not a media company."⁷⁷ Facebook, Zuckerberg added, was "a technology company, we build the tools, we do not produce any content." By December 2016, however, Zuckerberg had somewhat modified this statement, saying, in a Facebook Live video chat with Sandberg, "Facebook is a new kind of platform. It's not a traditional technology company... It's not a traditional media company. You know, we build technology and we feel responsible for how it's used."⁷⁸ Then, in the April 2018 congressional hearings, Zuckerberg explained, "When people ask us if we're a media company—or a publisher—my understanding of what the heart of what they're really getting at is, 'Do we feel responsibility for the content on our platform?' The answer to that, I think, is clearly yes."⁷⁹

⁷³ Mike Isaac, "Facebook, in Cross Hairs After Election, Is Said to Question Its Influence," *The New York Times*, November 12, 2016, <https://www.nytimes.com/2016/11/14/technology/facebook-is-said-to-question-its-influence-in-election.html> (September 11, 2018).

⁷⁴ Max Read, op. cit.

⁷⁵ Mark Zuckerberg, Facebook, November 12, 2016, <https://www.facebook.com/zuck/posts/10103253901916271> (September 10, 2018).

⁷⁶ <https://www.buzzfeednews.com/article/craigsilverman/viral-fake-election-news-outperformed-real-news-on-facebook> (September 11, 2018).

⁷⁷ Giulia Segreti, "Facebook CEO says group will not become a media company," Reuters, August 29, 2016, <https://www.reuters.com/article/us-facebook-zuckerberg-idUSKCN1141WN> (September 7, 2018).

⁷⁸ Josh Constine, "Zuckerberg Implies Facebook is a Media Company, just 'not a traditional media company,'" *TechCrunch*, December 21, 2016, <https://techcrunch.com/2016/12/21/fbnc/> (September 10, 2018).

⁷⁹ Mary Louise Kelly, "Media or Tech Company? Facebook's Profile is Blurry," NPR, April 11, 2018, <https://www.npr.org/2018/04/11/601560213/media-or-tech-company-facebooks-profile-is-blurry> (September 7, 2018).

Cambridge Analytica

Cambridge Analytica was a British consulting firm that specialized in using data for marketing and political campaigns. Its slogan was “data drives all we do” and its promise for political campaigns was “By knowing your electorate better, we achieve greater influence while lowering overall costs.”⁸⁰

The company, which was funded largely by the American Republican donor Robert Mercer and cofounded by Bannon, the former Trump adviser,⁸¹ micro-targeted ads on an individual level. As its former CEO, Alexander Nix told *TechRepublic* in August 2016, “We use nearly five thousand different data points about you to craft and target a message. The data points are not just a representative model of you. The data points are about you, specifically.” Cambridge Analytica then used predictive analytics and audience insight tools to understand what might motivate individual voters and targeted ads accordingly. In November 2016, the company said it held data on 230 million Americans.⁸²

In March 2018, it was revealed that Cambridge Analytica had used data harvested from Facebook by Aleksandr Kogan, a Russian-American psychology professor at Cambridge University. Kogan had placed his personality prediction app, “thisisyourdigitallife” on Facebook with permission from the company and 270,000 people signed up to it; in so doing, they gave their consent for Kogan to access information on their respective Facebook profiles. However, Kogan then used these profiles to access the data of as many as 87 million Facebook users who had not given him consent; of these, at least 30 million profiles contained enough information to build psychographic profiles. Kogan was not legally permitted to sell or transfer the data to “any ad network, data broker or other advertising or monetization-related service,”⁸³ but nonetheless sold it to Cambridge Analytica. When Facebook learned of Kogan’s violation in 2015, it removed his app. Kogan, Cambridge Analytica, and Christopher Wylie, a former Cambridge Analytica employee, certified to Facebook that they had destroyed the data, but in fact had not done so.

When several news organizations, including the *New York Times*, reported in March 2018 that the data had not been deleted—and in fact had been used to help the Trump campaign—Facebook came under significant criticism.⁸⁴ The *Times* called it “one of the largest data leaks in the social network’s history,”⁸⁵ a description Facebook adamantly rejected. Facebook initially

⁸⁰ “Data Drives All We Do,” Cambridge Analytica, <https://cambridgeanalytica.org/> (September 25, 2018).

⁸¹ “Facebook and Cambridge Analytica: What You Need to Know as Fallout Widens,” Kevin Granville, *The New York Times*, March 19, 2018, <https://www.nytimes.com/2018/03/19/technology/facebook-cambridge-analytica-explained.html> (September 25, 2018).

⁸² Kate Brannelly, “Trump Campaign Pays Millions to Overseas Big Data Firm, NBC News, November 4, 2016, <https://www.nbcnews.com/storyline/2016-election-day/trump-campaign-pays-millions-overseas-big-data-firm-n677321>

⁸³ Kurt Wagner, “Here’s how Facebook allowed Cambridge Analytica to get data for 50 million users,” Recode, March 17, 2018, <https://www.recode.net/2018/3/17/17134072/facebook-cambridge-analytica-trump-explained-user-data> (September 27, 2018).

⁸⁴ Matthew Rosenberg, Nicholas Confessore, and Carole Cadwalladr, “How Trump Consultants Exploited the Facebook Data of Millions,” *The New York Times*, March 17, 2018, <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> (September 27, 2018).

⁸⁵ Ibid.

threatened to sue the *Guardian* over the story⁸⁶ and Zuckerberg personally responded to the news stories only after five days, calling it a “breach of trust,”⁸⁷ which he pledged to fix. He subsequently agreed to testify before Congress.

In a July 2018 interview with Recode, Zuckerberg stated that he believed his company had taken all the right steps in the wake of the scandal. These included cutting ties with data brokers, rewriting its terms of service, and undertaking to audit third-party developers that could access Facebook user data. “I think it’s a big issue, but look, I designed the platform, so if someone’s going to be fired for this, it should be me,” Zuckerberg told Recode. “And I think that the important thing going forward is to make sure that we get this right.”⁸⁸

Accusations of Liberal Bias and Censorship

Facebook had also been dogged by criticisms of liberal bias and of censorship of conservative viewpoints.

In May 2016, Gizmodo reported that the “curators” of Facebook’s trending news section claimed they had been instructed to “blacklist” conservative news stories and “inject” liberal stories into the feed.⁸⁹ Facebook denied the allegations and Zuckerberg met with conservative leaders. The company subsequently automated its trending news section, explaining in an August 2016 posting that it had found “no evidence of systematic [political] bias” but was nonetheless making the changes so that Facebook team members would “make fewer individual decisions about topics.”⁹⁰ However, the absence of human intervention led the algorithm to promote trending topics that were parodies or outright falsehoods and caused critics to claim that “Facebook’s reaction to claims of anti-conservative bias led the company to take a more lax approach to the Russian disinformation campaign.”⁹¹ In June 2018, Facebook discontinued the trending feature.

Conservatives continued to claim that Facebook, and other big tech companies, were censoring or shadow-banning their voices. These cries escalated in August 2018 when Facebook, explained the *New York Times*, removed “Infowars, the notorious far-right news site, and Alex Jones, Infowars’ choleric founder, who became famous for his spittle-flecked rants and far-fetched conspiracies, including the idea that the Sandy Hook massacre was an elaborate hoax

⁸⁶ James Sanders and Dan Patterson, “Facebook data privacy scandal: A cheat sheet,” *TechRepublic*, September 12, 2018, <https://www.techrepublic.com/article/facebook-data-privacy-scandal-a-cheat-sheet/> (September 27, 2018).

⁸⁷ Mark Zuckerberg, Facebook, March 21, 2018, <https://www.facebook.com/zuck/posts/10104712037900071?pnref=story> (September 27, 2018).

⁸⁸ Kurt Wagner, “I designed Facebook, ‘so if someone’s going to be fired for this, it should be me,’” Recode, July 18, 2018, <https://www.recode.net/2018/7/18/17585918/facebook-cambridge-analytica-mark-zuckerberg-responsibility-fired> (September 27, 2018).

⁸⁹ Michael Nunez, “Former Facebook Workers: We Routinely Suppressed Conservative News,” Gizmodo, May 9, 2016, <https://gizmodo.com/former-facebook-workers-we-routinely-suppressed-conser-1775461006> (September 27, 2018).

⁹⁰ “Search FYI: An Update to Trending, Facebook Newsroom,” August 26, 2016, <https://newsroom.fb.com/news/2016/08/search-fyi-an-update-to-trending/> (September 27, 2018).

⁹¹ Hamza Shabam, “Facebook to Scrap ‘Trending’ Feature after Outcry over Fake News,” *The Independent*, June 2, 2018, <https://www.independent.co.uk/life-style/gadgets-and-tech/news/facebook-trending-feature-shuts-down-algorithm-mark-zuckerberg-social-media-a8380681.html> (September 27, 2018).

promoted by gun-control supporters.”⁹² (Other companies, including Apple and YouTube, also removed Infowars.) This led to criticism, including this tweet from Republican Senator Ted Cruz:

Am no fan of Jones—among other things he has a habit of repeatedly slandering my Dad by falsely and absurdly accusing him of killing JFK—but who the hell made Facebook the arbiter of political speech? Free speech includes views you disagree with. #1A

On August 28, President Trump tweeted allegations that Google was skewing search results and then later, in response to a reporter’s question, expounded further:

I think Google is really taking advantage of a lot of people, and I think that’s a very serious thing, and it’s a very serious charge. And I think what Google and what others are doing, if you look at what’s going on at Twitter, if you look at what’s going on in Facebook, they better be careful, because you can’t do that to people. You can’t do it. We have tremendous, we have literally thousands and thousands of complaints coming in, and you just can’t do that. So I think that Google and Twitter and Facebook, they’re really treading on very, very troubled territory, and they have to be careful. It’s not fair to large portions of the population, okay?⁹³

INTO THE FUTURE

Facebook and its founder, meanwhile, focused on steering the company forward. As Zuckerberg told investors when Facebook stock fell in mid-July 2018, causing him to personally lose about \$15 billion in one day, “We run the company for the long term, not just for this quarter.”⁹⁴ To be sure, looking forward involved looking back. “In retrospect,” Zuckerberg told Recode in July 2018, “I do think it’s fair to say that we were overly idealistic and focused on more of the good parts of what connecting people and giving people a voice can bring... we were too focused on just the positives and not focused enough on some of the negatives.”⁹⁵

But, argued Zuckerberg, not everything could be predicted and unforeseen challenges were inevitable. Facebook’s responsibility was “to learn as quickly as we can as an organization,” but some missteps were inevitable. Said Zuckerberg:

⁹² Kevin Roose, “Facebook Banned Infowars. Now What?” *The New York Times*, August 10, 2018, <https://www.nytimes.com/2018/08/10/technology/facebook-banned-infowars-now-what.html?module=inline> (September 27, 2018).

⁹³ Thomas Barrabi, “Trump warns Google, Twitter, Facebook: ‘They better be careful,’” August 28, 2018, Fox Business, <https://www.foxbusiness.com/technology/trump-warns-google-twitter-facebook-they-better-be-careful> (September 27, 2018).

⁹⁴ Elizabeth Dwoskin and Hayley Tsukayama, “Facebook shares tank on slowing growth, wiping out billions in value,” *The Washington Post*, July 25, 2018, https://www.washingtonpost.com/technology/2018/07/25/facebook-shares-fall-percent-revenue-miss/?utm_term=.d017b0456542 (September 27, 2018).

⁹⁵ Kara Swisher, “Full transcript: Facebook CEO Mark Zuckerberg on Recode Decode,” July 18, 2018, <https://www.recode.net/2018/7/18/17575158/mark-zuckerberg-facebook-interview-full-transcript-kara-swisher> (September 27, 2018).

if we don't move forward, a lot of good that should happen won't happen, either. And it's hard to know what the moral equivalence of those things is, because a lot of the good is diffuse and not things that get in the news, but I can't tell you how many times I walk down the street in some city and people come up and say that they got married because of Facebook... People have stories about how the communities that they form on Facebook are the most meaningful thing in their life, that got them out of bad situations that they were in, and I think if you don't move forward, you lose all that stuff, too.

So I mean, these are hard trade-offs... But I do think that there is a benefit and virtue to continue making progress, and I think with progress means that you get some things wrong... our responsibility is to accept when we get things wrong and not be in denial about it, which sometimes we can be too slow on, but in general I think, if we mess something up, we better damn well make sure we don't make that same mistake again if it's a serious thing.⁹⁶

⁹⁶ Ibid.