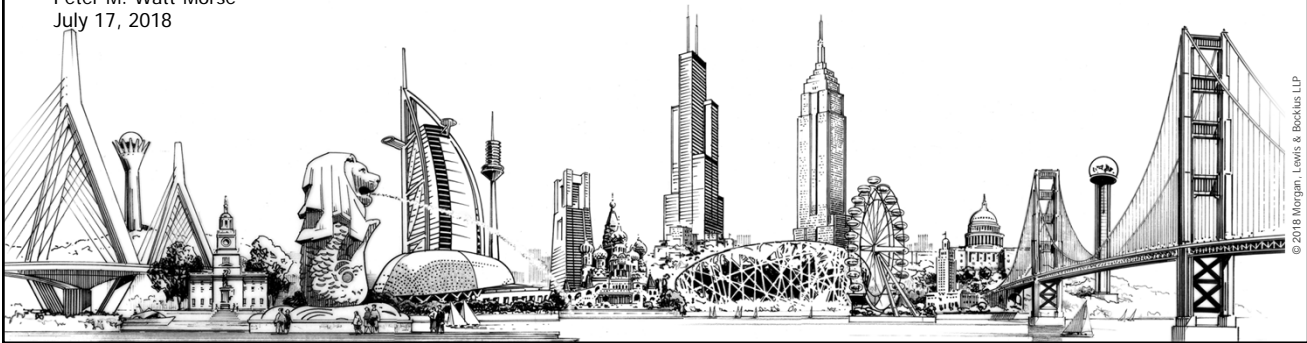


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# **PRIVACY POLICIES AND SOCIAL MEDIA – PERMISSIONS AND PROTECTIONS**

PBI Cyberlaw Update 2018  
Peter M. Watt-Morse  
July 17, 2018



## **INTRODUCTION**

1. Cambridge Analytica
  - (i) What Happened
  - (ii) Applicable Policies
2. Permissive Policies
3. Potential Protections

# CAMBRIDGE ANALYTICA

## WHAT HAPPENED?

- App by research scientist – “*This is Your Digital Life*” – developed in 2013 - obtained by Cambridge Analytica
- CA creates survey “for academic use” and 270,000 sign up through Facebook providing informed consent allowing access to personal data on Facebook.
- Facebook permitted the research app to access personal data of all friends, giving CA access to personal data for 87 million people

## WHAT HAPPENED?

- Using data, CA created profiles of individual voter and political ads that were targeted to be most effective for each voter
- CA sold data to Trump and Cruz campaigns and pro-Brexit organizers
- March 17, 2018: NY Times and Guardian expose data breach based on report of former CA employee whistleblower

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## FACEBOOK

## FACEBOOK

- 2003 – (Facemash) Launched for friends
- 2004 – (The Facebook) Launched to Harvard (50% of campus)
- 2005 – (Facebook) – Move to Palo Alto – 2,000 colleges/ 25,000 high schools – 6 million users
- 2006 – 2007 - Open to public– 58 million users - open to developers (“Sign In”)

## FACEBOOK

- 2009 – Cash flow positive – new advertising model – more permissive data use with user controls
- 2012 – Profits \$1 billion - IPO (\$104 billion valuation) – grants self blanket right to all data
- 2015 - Disclosure of NSA use of Facebook data – begin limiting use of “friends” data
- 2018 - Cambridge Analytica disclosures – Announce GDPR compliance - 2 billion users

## FACEBOOK POLICIES

Original (2005):

*"No personal information that you submit to Thefacebook will be available to any user of the Web Site who does not belong to at least one of the groups specified by you in your privacy settings."*

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## FACEBOOK POLICIES

Permissive with user controls (2007):

*"Profile information you submit to Facebook will be available to users of Facebook who belong to at least one of the networks you allow to access the information through your privacy settings (e.g., school, geography, friends of friends). Your name, school name, and profile picture thumbnail will be available in search results across the Facebook network unless you alter your privacy settings."*

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## FACEBOOK POLICIES

Default is open with user controls (2009):

*"Information set to "everyone" is publicly available information, may be accessed by everyone on the Internet (including people not logged into Facebook), is subject to indexing by third party search engines, may be associated with you outside of Facebook (such as when you visit other sites on the internet), and may be imported and exported by us and others without privacy limitations. The default privacy setting for certain types of information you post on Facebook is set to "everyone." You can review and change the default settings in your privacy settings."*

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## FACEBOOK POLICIES

Current – Still very broad use rights with privacy controls:

*"We collect the content, communications and other information you provide when you use our Products, including when you sign up for an account, create or share content, and message or communicate with others. This can include ...*

- ... information in your Facebook profile fields or Life Events about your religious views, political views, who you are "interested in," or your health. This and other information (such as racial or ethnic origin, philosophical beliefs or trade union membership) could be subject to special protections under the laws of your country)...*
- ... information about the people, Pages, accounts, hashtags and groups you are connected to and how you interact with them across our Products, such as people you communicate with the most or groups you are part of...*
- ... Things others do and information they provide about you."*

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## FACEBOOK POLICIES

Con't:

*"Public information can be seen by anyone, on or off our Products, including if they don't have an account. This includes your Instagram username; any information you share with a public audience; information in your public profile on Facebook; and content you share on a Facebook Page, public Instagram account or any other public forum...*

*...Learn more about what information is public and how to control your visibility on Facebook and Instagram."*

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## FACEBOOK POLICIES

Con't:

*"You should consider who you choose to share with, because people who can see your activity on our Products can choose to share it with others on and off our Products, including people and businesses outside the audience you shared with.*

*When you choose to use third-party apps, websites, or other services that use, or are integrated with, our Products, they can receive information about what you post or share.*

*Apps and websites you use may receive your list of Facebook friends if you choose to share it with them. But apps and websites you use will not be able to receive any other information about your Facebook friends from you, or information about any of your Instagram followers ...*

*Note: We are in the process of restricting developers' data access even further to help prevent abuse"*

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## FACEBOOK POLICIES

### Con't:

*"We work with third-party partners who help us provide and improve our Products or who use Facebook Business Tools to grow their businesses, which makes it possible to operate our companies and provide free services to people around the world. We don't sell any of your information to anyone, and we never will..."*

*We provide advertisers with reports about the kinds of people seeing their ads and how their ads are performing, but we don't share information that personally identifies you (information such as your name or email address that by itself can be used to contact you or identifies who you are) unless you give us permission..."*

*We also provide information and content to research partners and [academics](#) to conduct research that advances scholarship and innovation that support our business or mission, and enhances discovery and innovation on topics of general social welfare, technological advancement, public interest, health and well-being."*

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## FACEBOOK PRIVACY SETTINGS

### Extensive / Complex:

- Expanded each time privacy crisis – now over 170 steps can take to limit access to data
- Separate steps for limiting access to data (either no one, friends and public) including posts, old posts, app use, personal information (including contact information and real names), status, location, tags, timeline, photos, blocking specific users, search engines, etc.)
- Facebook created lengthy tutorials and videos to show how use; multiple independent apps created to help users implement controls

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# FORM PRIVACY POLICIES

## FORM PRIVACY POLICY - PERMISSIVE

Strategy for U.S. Privacy Policies:

- Provide flexibility for future data use
- Do not commit to privacy restrictions that could violate
- Obtain consent for future protection

## FORM PRIVACY POLICY - PERMISSIVE

*" This Privacy Policy discloses our privacy practices and how we may use the information that we gather on our website (the "Site") or that you provide to ABC ("ABC") through other means. By using the Site or voluntarily providing personal information to us, you consent to the terms of this Privacy Policy."*

*"We may collect personal information from you and about you in a variety of ways in connection with your use of the site and activities, services, features or resources we make available on our Site. This information may include your name, address, email address, phone number, cell phone number, and demographic and use information. In certain circumstances, we may collect information from you automatically, such as your IP address or information about the ways you browse and interact with our Site."*

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## FORM PRIVACY POLICY - PERMISSIVE

*"ABC may collect and use your personal information for the following purposes: (i) To improve the Site, (ii) To notify you about updates to the Site, (iii) To let you know about products and services you may be interested in, (iv) Internal business analysis or other business purposes consistent with our mission, and (v) To contact you."*

*"We do not sell your personal information to others. We may share generic information not directly linked to any personal information regarding visitors and users with our business partners, services providers, trusted affiliates and advertisers for the purposes outlined above."*

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## FORM PRIVACY POLICY - PERMISSIVE

*"Do Not Track (DNT) is a privacy preference that users can set in some web browsers, allowing users to opt out of tracking by websites and online services. At the present time, the World Wide Web Consortium (W3C) has not yet established universal standards for recognizable DNT signals and therefore, ABC and the Site do not recognize DNT"*

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## FORM PRIVACY POLICY - RESTRICTIVE

### *Permissive:*

*"We adopt appropriate and industry standard data collection, storage and processing practices and security measures to protect against unauthorized access, alteration, disclosure or destruction of your personal information and data stored on our Site."*

### *Restrictive:*

*"We maintain reasonable and appropriate measures designed to maintain information we collect in a secure manner. We have taken certain physical, electronic, and administrative steps to safeguard and secure the information we collect from visitors to the Sites. Even though we follow reasonable procedures to try to protect the information in our possession, no security system is perfect and we cannot promise, and you should not expect, that your information will be secure in all circumstances."*

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## FORM PRIVACY POLICY - RESTRICTIVE

### *Permissive:*

*"ABC may update this Privacy Policy from time-to-time in our sole discretion and will post the current version on the Site. It is your responsibility to review the Privacy Policy for any changes when you use the Site."*

### *Restrictive:*

*"We may change this privacy policy from time to time, including as required to keep current with rules and regulations, new technologies and security standards. When we do, we will post the change(s) on our Sites. If we change the policy in a material and retroactive manner, we will provide appropriate notice to you."*

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## FORM PRIVACY POLICY - RESTRICTIVE

### *Permissive:*

*"ABC is concerned about the privacy and safety of children when they use the Internet. We do not knowingly collect any personal information from children under the age of 13 without verifiable parental consent. Our products and services are for purchase by adults only and our Site is not directed at children."*

### *Restrictive:*

*"The Sites are not directed to children, nor do we knowingly collect any personal information from children under the age of thirteen without verifiable parental consent. If you believe that a child has provided personal information to us, please contact us promptly as described below, and we will endeavor to investigate and delete such information from our systems."*

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## FORM PRIVACY POLICY - RESTRICTIVE

### *Permissive:*

*"Your California Privacy Rights. This Privacy Policy describes how we may share your information for marketing purposes. You may contact us with any questions and, to the extent applicable, to request a list of third parties to whom we may disclose information for marketing purposes and the categories of information we may disclose."*

### *Restrictive:*

*"Your California Privacy Rights. California law permits our customers who are California residents to request certain information about our disclosure of personal information to third parties for their own direct marketing purposes during the preceding calendar year. This request is free and may be made once a year. To make such a request, please write to us at the following address: [ABC Address] - ATTN: Customer Service Department—California Privacy Info.*

*If you are under 18 years of age, reside in California, and have a registered account with us, you have the right to request removal of unwanted information that you publicly post on the Sites. To request removal of such information, you can contact us as provided below. Upon receiving such a request, we will make sure that the information is not publicly available on the Sites, but the information may not be completely or comprehensively removed from our systems and databases.*

## FORM PRIVACY POLICY - RESTRICTIVE

*"Visitors from Outside the United States—Cross-Border Transfer. The Sites are hosted in the United States. If you are visiting the Sites from outside the United States, your information may be transferred to, stored and processed in the United States or other countries in accordance with this Privacy Policy. The data protection and other applicable laws of the United States or other countries may not be as comprehensive as those laws or regulations in your country or may otherwise differ from the data protection or consumer protection laws in your country. Your information may be available to government authorities under lawful orders and law applicable in such jurisdictions. By using the Sites and/or providing personal information to us, you consent to transfer of your information to our facilities as described in this Privacy Policy."*



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