

# Better social media for European consumers: overview of changes

February 2018



The authorities of EU countries teamed up to tackle unfair terms and conditions identified on social media.

The table below presents the outcome of the dialogue held between the authorities and the social media companies.

<b>Concerns raised by Consumer Protection Cooperation Authorities</b>	<b>facebook</b> [effective date: 31.1.2018]	<b>twitter</b> [estimated effective date: March 2018]	<b>Google+</b> [effective date: 1.3.2018]
<b>Jurisdiction and applicable law</b>			
<p><b>Concern:</b> Social media operators cannot stop EU consumers from bringing proceedings against them in their Member State of residence and EU consumer law must apply.</p> <p><b>Explanation:</b> Consumers residing in the EU may bring proceedings against the other party to a (business-to-consumer) contract before the Courts of the Member State where they are domiciled, provided the contract lies in the scope of the other party's commercial or professional activities in the Member State of the consumer's domicile. Accordingly, the contract concluded by a consumer with a social network operator shall be governed by the law of the country where the consumer has his habitual residence.</p>	<p>Facebook agreed to:</p> <ul style="list-style-type: none"> <li>- modify its term on jurisdiction and applicable law to put it in compliance with EU legislation</li> <li>- remove the reference to the laws and jurisdiction of the State of California in relation to EU consumers.</li> </ul> 	<p>No issues were identified in the terms of service of Twitter.</p> 	<p>Google+ agreed to:</p> <ul style="list-style-type: none"> <li>- modify its term on jurisdiction and applicable law to put it in compliance with EU legislation.</li> </ul> 

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<b>Waiver of mandatory consumer rights</b>			
<p><b>Concern:</b> Social media operators cannot deny consumers their rights under EU consumer law.</p> <p><b>Explanation:</b> The consumer should not be deprived of rights that arise from the non-performance or the inadequate performance by the operator of its contractual or statutory obligations under EU law, such as the consumer's right to cancel the contract. Any term that requires the waiver of the aforementioned category of rights can be found in breach of EU consumer legislation.</p>	<p>Facebook agreed to remove the term that deprived users of the protections of EU consumer law.</p> 	<p>No issues were identified in the terms of service of Twitter.</p> 	<p>No issues were identified in the terms of service of Google+.</p> 
<b>Failure to identify commercial communications</b>			
<p><b>Concern:</b> The commercial nature of communications and sponsored content cannot be hidden from consumers but should be identifiable as such.</p> <p><b>Explanation:</b> Contractual terms must be drafted in a clear manner and not give rise to doubts about their meaning, especially in relation to the right of consumers to be presented with identifiable commercial content. Consumers must understand the eventual commercial nature of the content they may be exposed to when using social media services as with any other online content.</p>	<p>Facebook agreed to remove the term that released the platform from the duty to identify commercial communications and sponsored content.</p> 	<p>No issues were identified in the terms of service of Twitter.</p> 	<p>No issues were identified in the terms of service of Google+.</p> 

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<b>Consumer's obligation to indemnify the provider and the waiver by the provider of all liability</b>			
<p><b>Concern:</b> Social Media operators cannot limit or totally waive responsibility in relation to their services while holding consumers fully responsible for their actions.</p> <p><b>Explanation:</b> Any term that creates a significant imbalance of rights between the operators and consumers can be considered as a breach of EU consumer law. Consumers should be able to exercise their rights that relate to the non or partial performance of the social media operator's contractual and other legal obligations.</p>	<p>Facebook agreed to:</p> <ul style="list-style-type: none"> <li>- remove the limitations of its liability towards EU consumers</li> <li>- clarify the grounds for exclusion of liability pursuant to EU consumer law.</li> </ul> <p>Facebook still needs to:</p> <ul style="list-style-type: none"> <li>- clarify that the limitation to the amount of a possible compensation applies only to professionals.</li> </ul> 	<p>Twitter agreed to:</p> <ul style="list-style-type: none"> <li>- remove the total exclusion its liability.</li> </ul> <p>Twitter still needs to:</p> <ul style="list-style-type: none"> <li>- remove the existing limitation of its liability to the maximum extent permissible under applicable law.</li> </ul> 	<p>Google+ agreed to:</p> <ul style="list-style-type: none"> <li>- remove the limitations of its liability towards users</li> <li>- clarify the grounds for exclusion of liability pursuant to EU consumer law.</li> </ul> 
<b>Removal of user generated content</b>			
<p><b>Concern:</b> Social media operators cannot remove posts or other user generated content, such as pictures, without providing a clear justification and without giving consumers the possibility to appeal.</p> <p><b>Explanation:</b> A contract clause cannot confer unlimited and discretionary power to social media operators to determine the suitability of user-generated content, which is part of the remuneration provided by the consumer for the service. As the storage and display of such content is the main element of the social media service, consumers must have a clear understanding of which content is allowed. The absence of any criteria for the determination thereof, creates a significant imbalance vis-à-vis consumers.</p>	<p>Facebook agreed to:</p> <ul style="list-style-type: none"> <li>- clarify the grounds that can lead to the removal of user generated content.</li> </ul> <p>Facebook still needs to:</p> <ul style="list-style-type: none"> <li>- acknowledge its obligation for a prior notification of the user</li> <li>- clarify the procedure for an appeal against such a removal.</li> </ul> 	<p>Twitter agreed to:</p> <ul style="list-style-type: none"> <li>- foresee a procedure for an appeal against such a removal.</li> </ul> <p>Twitter still needs to:</p> <ul style="list-style-type: none"> <li>- acknowledge its obligation for a prior notification of the user</li> <li>- remove any other term that confers unlimited power to remove user generated content.</li> </ul> 	<p>Google+ agreed to:</p> <ul style="list-style-type: none"> <li>- clarify the grounds that can lead to the removal of user generated content</li> <li>- acknowledge its obligation for a notification of the user</li> <li>- provide for an appeal procedure against such a removal.</li> </ul> 

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<b>Power to unilaterally change terms and conditions</b>			
<p><b>Concern:</b> Social media operators cannot unilaterally change the terms and conditions, without clearly informing the consumer of the justification and without giving, under reasonable notice to the consumer, the possibility to cancel the contract.</p> <p><b>Explanation:</b> Any change in the terms of a contract that has not been given with a reasonable notice and that binds the consumer may be considered unfair.</p>	<p>Facebook agreed to:</p> <ul style="list-style-type: none"> <li>- notify the users 30 days in advance of any change in its terms</li> <li>- clarify the way that it will notify its users.</li> </ul> 	<p>Twitter agreed to:</p> <ul style="list-style-type: none"> <li>- notify the users 30 days in advance of any change in its terms.</li> </ul> <p>Twitter still needs to:</p> <ul style="list-style-type: none"> <li>- better clarify the derogations from the general obligation to notify its users</li> <li>- acknowledge that an invalid or unenforceable provision may affect the validity of the contract as a whole</li> <li>- remind the users of their right to cancel their subscription when they do not accept the changes in the terms and conditions.</li> </ul> 	<p>No issues were identified in the terms of service of Google+.</p> 
<b>Power to unilaterally determine the scope and application of the terms and conditions</b>			
<p><b>Concern:</b> Social media operators cannot unilaterally decide to apply separate or new standard terms to some of their services, without informing consumers and without asking for their consent.</p> <p><b>Explanation:</b> It must be clear what the terms applicable to a contract are, as well as the content of the contract itself, before the consumer is bound by it and suppliers must not have unlimited power to decide the scope of application of a contract during its execution.</p>	<p>Facebook agreed to:</p> <ul style="list-style-type: none"> <li>- notify its users and to ask for their consent when separate terms apply, in relation to specific products or services of the company.</li> </ul> 	<p>No issues were identified in the terms of service of Twitter.</p> 	<p>No issues were identified in the original terms of Google+.</p> 

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<b>Power to unilaterally terminate the contract, for any reason</b>			
<p><b>Concern:</b> Social media operators should always provide clear grounds for closing down an account and should notify consumers accordingly.</p> <p><b>Explanation:</b> The consumer, before signing the contract, must be informed of the conditions that can lead to its termination. Those conditions should be explained in clear and intelligible manner and they must not allow for termination of the contract subject to a condition whose realisation depends on the operators alone. Reasonable notice must be given to consumers.</p>	<p>Facebook agreed to:</p> <ul style="list-style-type: none"> <li>- clarify the grounds for the termination of the contract</li> <li>- acknowledge its obligation for a notification to its users</li> <li>- provide the consumer with the possibility to challenge the decision to terminate the contract.</li> </ul> 	<p>Twitter agreed to:</p> <ul style="list-style-type: none"> <li>- better define the grounds for a termination of the contract</li> <li>- clarify the procedure for an appeal against the decision to terminate the contract.</li> </ul> <p>Twitter still needs to:</p> <ul style="list-style-type: none"> <li>- remove any term that provides the company unlimited power to terminate the contract with no clear justification</li> <li>- clearly acknowledge its obligation for a prior notification to its users</li> <li>- specify when there can be derogations from this obligation.</li> </ul> 	<p>Google+ agreed to:</p> <ul style="list-style-type: none"> <li>- clarify the grounds for the termination of the contract</li> <li>- acknowledge its obligation for a notification to its users</li> <li>- foresee a procedure for an appeal against the decision to terminate the contract.</li> </ul> 
<b>Notice and action procedure</b>			
<p>As information society service providers, social media operators are required by EU legislation, to make easily and permanently accessible to the recipient of the service and to national competent authorities and/or designated bodies within the meaning of the CPC regulation, adequate contact information, including an email address, so that they can be “contacted rapidly and communicated with in a direct and effective manner”.</p> <p>This requirement is in the interests of fair trading in electronic communications, as it provides consumer protection authorities with means to rapidly signal to social media operators any practices on social media which may infringe consumer or other legislation.</p> <p>To make the exchange of information efficient and mutually beneficial between consumer authorities and social media operators, acting as host providers, CPC authorities proposed the establishment of a standardised communication format which should contain deadlines for the various exchange of information so as to address the issues raised by illegal content rapidly.</p>	<p>Facebook agreed to establish a “notice and action” procedure reserved for communications with CPC authorities.</p> <p>However, it has not provided more information on the procedure or the deadlines that will apply to it.</p> 	<p>Twitter agreed to establish a “notice and action” procedure reserved for communications with CPC authorities.</p> <p>However, it has not provided more information on the procedure or the deadlines that will apply to the procedure.</p> 	<p>Google+ agreed to establish a new “notice and action” procedure to rapidly process issues raised by CPC authorities, in compliance with the CPC requirements.</p> <p>More specifically: when content is reported through an email address dedicated to the CPC authorities, Google+ will acknowledge receipt of the email within one (1) business day. Within three (3) business days, Google+ will proceed with the action (i.e. request further information, take down the content or refuse providing justifications), for the majority of cases.</p> 