

11. Terms of Service

Cambridge Analytica, a British based data analytics consulting firm co-founded by Steve Bannon, was at the heart of a scandal surrounding the 2016 Brexit vote and the US Presidential election. During the campaigns Cambridge Analytica acquired personal data on approximately 87 million Facebook users through a third-party app called “This is Your Digital Life.” This data was subsequently used to target voters with advertising and engagement tailored to user specific psychographic data. Users never consented to provide this information to Cambridge Analytica and some watchdogs worry that voter manipulation skews the democratic process. The Former president of Facebook says the platform was “designed to exploit human vulnerabilities.”⁵¹ In response to criticism Facebook maintains that developers behind “This Is Your Digital Life” breached Facebook’s terms of service by sharing personal data with an outside consulting firm. However, in British Parliamentary hearings Facebook’s chief technical officer reported that Facebook had only limited vetting of third-party apps; saying “We did not read all the terms and conditions.”⁵² Following up on promises to crackdown on malicious users and fake accounts Facebook has disabled over 1.3 billion accounts in the last six months. At the same time Facebook has seen significant user decline and has lost approximately 120 billion dollars—around 20% of its market value.

Despite recent losses in revenue Facebook continues to have an enormous amount of personal information about users and seemingly little in the way of regulation on the use of that information. Some have suggested regulating Facebook in ways similar ways to media companies such as radio and television stations. Facebook has publicly responded to calls for regulation by emphasizing that it is not a media company but, rather, a technology company. It has also voluntarily introduced political advertising disclosure rules which will “require all election-related ads and many issue-related political ads placed on its platform and on Instagram to disclose the buyer’s identity, the advertising budget, how many people saw the advertisement and their demographic information — age, location and gender.”⁵³

Facebook’s internal guidelines go farther toward disclosing “soft-money” contributions than is required by campaign finance laws. However, some worry that entrusting private entities with campaign finance disclosure and personal information gives tech giants like Facebook too much power. Worries about the monopolistic power of tech companies have also been discussed at the highest levels of government. In this environment the General Data Protection Regulation has provided some data privacy protections for EU users but does little to secure fair elections. One wonders what terms of service might be necessary for safeguarding democracy?

⁵¹ <https://www.axios.com/sean-parker-facebook-was-designed-to-exploit-human-vulnerability-1513306782-6d18fa32-5438-4e60-af71-13d126b58e41.html>

⁵² Erica Pandey, “Sean Parker: Facebook was designed to exploit human “vulnerability” Axios, Nov. 9th 2017. https://www.washingtonpost.com/news/the-switch/wp/2018/04/26/facebook-didnt-read-the-terms-and-conditions-for-the-app-behind-cambridge-analytica/?noredirect=on&utm_term=.cd8934703ebc

⁵³ Paul Blumenthal, “Facebook’s New Ad Rules Prove It’s Basically In Charge Of Regulating Elections Now” Huffpost, May 25th 2018. https://www.huffingtonpost.com/entry/facebook-ad-disclosure_us_5b070d61e4b05f0fc8463453