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Colin Stretch
General Counsel
Facebook
1 Hacker Way
Menlo Park, California 94025

Dear Mr. Stretch:

We hereby request that you make available for our inspection the final minutes of all meetings of Facebook’s institutional review board. Facebook is required under Maryland law to have an IRB review all human subjects research,¹ and to make the minutes of that IRB’s meetings available “within 30 days of receipt of a request for the minutes from any person.”² Maryland law allows Facebook to “redact confidential or privileged information,”³ but makes no other exceptions.

Facebook performs extensive research. Examples include an experiment that induced “emotional contagion” in Facebook users by selectively withholding posts from their News Feeds,⁴ one that showed sixty million users messages encouraging them to vote,⁵ and one that removed seventy-five million links from some News Feeds.⁶ Indeed, Facebook carries out so much research on its users that it has developed its own programming language for running randomized experiments on them.⁷

¹ See MD. CODE ANN., HEALTH-GEN. § 13-2002(a).

² *Id.* § 13-2003(a).

³ *Id.* § 13-2003(b).

⁴ Adam D.I. Kramer, Jamie E. Guillory, and Jeffrey T. Hancock, *Experimental Evidence of Massive-Scale Emotional Contagion Through Social Networks*, 111 PROC. NAT’L ACAD. SCI. USA 8788, 8788 (2014), <http://www.pnas.org/content/111/24/8788.full.html>.

⁵ Robert M. Bond et al., *A 61-Million-Person Experiment in Social Influence and Political Mobilization*, 489 NATURE 295 (2012), *available at* http://cameronmarlow.com/media/massive_turnout.pdf.

⁶ Eytan Bakshy et al., *The Role of Social Networks in Information Diffusion*, WWW: INT’L WORLD WIDE WEB CONF. 2012, *available at* http://cameronmarlow.com/media/bakshy-the_role-2012b.pdf.

⁷ See Eytan Bakshy, Dean Eckles, and Michael S. Bernstein, *Designing and Deploying Online Field Experiments*, WWW: INT’L WORLD WIDE WEB CONF. 2014, *available at* <http://hci.stanford.edu/publications/2014/planout/planout-www2014.pdf>.

Doing research on people brings with it ethical⁸ and legal⁹ obligations. All federally funded “research involving human subjects”¹⁰ is subject to regulations known as the Common Rule, which require informed consent from participants¹¹ and ethical review by an IRB.¹² The Common Rule does not itself regulate private research, but it invites the states to do so.¹³ In 2002, Maryland took up the invitation.¹⁴ House Bill 917 was passed in response to several serious ethical breaches in research conducted on Maryland residents.¹⁵ It requires all research, regardless of funding source, to comply with the Common Rule’s requirements, i.e. informed consent and IRB review.¹⁶ To provide accountability for IRBs, House Bill 917 further requires that they make their minutes available for inspection.¹⁷

Facebook engages in “research using a human subject” subject to House Bill 917.¹⁸ First, House Bill 917 incorporates by reference the Common Rule’s definition of “research”¹⁹ as “a systematic investigation . . . designed to develop or contribute to generalizable knowledge.”²⁰ The emotional contagion study produced “experimental evidence to support the controversial claims that emotions can spread throughout a network,”²¹ the voting study produced evidence “that strong ties are instrumental for spreading both online and real-world behaviour in human social networks,”²² and the link-removal study produced evidence “that weak ties may play a more dominant role in the dissemination of information online than currently believed.”²³ These are

⁸ See generally NATIONAL COMMISSION FOR THE PROTECTION OF HUMAN SUBJECTS OF BIOMEDICAL AND BEHAVIORAL RESEARCH, ETHICAL PRINCIPLES AND GUIDELINES FOR THE PROTECTION OF HUMAN SUBJECTS OF RESEARCH (1979).

⁹ See 45 C.F.R. pt. 46.

¹⁰ *Id.* § 46.101(a).

¹¹ See *id.* § 46.116.

¹² See *id.* § 46.109.

¹³ See *id.* § 46.101(f).

¹⁴ See MD. CODE ANN., HEALTH-GEN. §§ 13-2001 to -2004.

¹⁵ See Bette-Jane Crigger, *What Does It Mean to “Review” a Protocol? Johns Hopkins & OHRP, IRB*, July-Aug. 2001, at 13 (describing experiment that led to the death of Ellen Roche, a healthy 24-year-old); *Grimes v. Kennedy Krieger Inst., Inc.*, 782 A.2d 807 (Md. 2001) (describing experiment in which young children were deliberately exposed to apartments containing lead paint).

¹⁶ See MD. CODE ANN., HEALTH-GEN. § 13-2002(b); Letter from J. Joseph Curran Jr., Attorney General of Maryland, to Parris N. Glendening, Governor of Maryland, May 2, 2002, at 2, available at <http://www.oag.state.md.us/Healthpol/hb917letter.pdf>.

¹⁷ MD. CODE ANN., HEALTH-GEN. § 13-2003.

¹⁸ *Id.* § 13-2002(a).

¹⁹ *Id.* § 13-2001(e).

²⁰ *Id.* § 46.102(d).

²¹ Kramer, *supra* note 4, at 8789.

²² Bond et al. *supra* note 5, at 295.

²³ Bakshy et al, *supra* note 6, at 1.

contributions to generalizable knowledge developed by systematically investigating user behavior on Facebook: they are “research.”

House Bill 917 also incorporates by reference the Common Rule’s definition of “human subject”²⁴ as “a living individual about whom an investigator ... obtains (1) Data through intervention or interaction with the individual ...”²⁵ Facebook users are “living individual[s],” the authors of the studies are “investigators,” and they obtained “data” “about” those users, in the form of statistical information about the users’ posts and actions on Facebook. Moreover, this data was obtained “through intervention or interaction with the individual.” The Common Rule defines “intervention” to include “manipulations of the subject or the subject’s environment that are performed for research purposes.”²⁶ Altering a user’s experience on Facebook is a “manipulation[] ... of the subject’s environment.”²⁷ And finally, these manipulations were carried out “for research purposes”: these are changes that Facebook would not otherwise have made to users’ experiences. Facebook engaged in research on “human subjects.”

Facebook has almost certainly experimented on Maryland residents. The emotional contagion study involved over 689,000 English-speaking users selected at random,²⁸ the voting study involved every user over 18 in the United States who logged into Facebook on Election Day,²⁹ and the link-hiding study involved more than 253 million users.³⁰ Statistically, it is overwhelming likely that the experimental groups have included hundreds of thousands of Maryland residents.

Under House Bill 917, then, Facebook is required to obtain approval from an IRB for all of its human subjects research.³¹ In some cases, it clearly has. The voting study was reviewed by the University of California, San Diego Human Research Protections Program.³² In other cases, the process followed is less clear. The emotional contagion study was presented to Cornell’s IRB, which expressly declined to review it.³³ Instead, the Cornell IRB characterized the emotional contagion study as “research ... conducted

²⁴ MD. CODE ANN., HEALTH-GEN. *Id.* § 13-2001(b)(1).

²⁵ 45 C.F.R. § 46.102(f).

²⁶ *Id.*

²⁷ See, e.g., Kramer, *supra* note 4, at 8788 (“The experiment *manipulated* the extent to which people (N = 689,003) were exposed to emotional expressions in their News Feed.”) (emphasis added).

²⁸ *Id.*

²⁹ Bond et al., *supra* note 5 at 295.

³⁰ Bakshy et al., *supra* note 6, at 3.

³¹ 45 C.F.R. § 46.109(a).

³² See *Supplementary Information* [to Bond et al., *supra* note 5], NATURE, <http://www.nature.com/nature/journal/v489/n7415/extref/nature11421-s1.pdf>.

³³ See *Media Statement on Cornell University’s Role in Facebook ‘Emotional Contagion’ Research*, CORNELL UNIV. MEDIA RELATIONS OFFICE (June 30, 2014), <http://mediarelations.cornell.edu/2014/06/30/media-statement-on-cornell-universitys-role-in-facebook-emotional-contagion-research/>.

independently by Facebook,”³⁴ so that it was Facebook’s responsibility to provide IRB review.

We are of course happy to discuss with you the manner in which you make the Facebook IRB’s minutes available to us. Our recommendation is that Facebook create a website to which it regularly uploads its IRB minutes for review by the public. If you would prefer some other means (e.g. sending a DVD by registered mail), please do not hesitate to reach out to us.

We await your prompt reply.

Sincerely,

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³⁴ *Id.*

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