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Complying with Facebook's Terms of Use in Academic Research: A Contractual, Regulatory, and Ethical Perspective on Data Mining

The use of social networking sites like Facebook and Twitter to conduct academic research is increasing in fields ranging from the biomedical sciences to political science. One popular method of data collection is via data mining on social networking sites, where researchers gather and analyze information that individuals post on these sites. No direct interaction with site users need be involved, and such data collection is often done without the consent – or even knowledge – of the site users.

When pursuing this method of data collection, researchers must comply with the terms of use imposed by the sites. Facebook has over one billion users, and researchers use it frequently to mine data. In its terms of use, Facebook requires individuals who "collect" users' information to obtain the users' consent and post a privacy notice that describes the information that is being collected and how it will be used. However, how consent should be obtained and where the privacy notice should be posted are not specified.

Additionally, the definitions that Facebook includes in its terms of use do not include the term "collect". Mining data for academic research purposes therefore may not be what Facebook contemplated as "collecting" information, and the requirement arguably is inapplicable to these researchers. However, the recent release of Facebook's program called Graph Search will greatly facilitate any data mining efforts and is likely to call Facebook's requirement into question for academic researchers.

The elements of informed consent enumerated in 45 C.F.R. §46, the federal regulations that govern human subjects research, would provide researchers with a guide to complying with Facebook's requirement. However, compliance with these regulations is only required if Facebook users have a reasonable expectation of privacy in the information collected. Because these regulations remain materially unchanged since the 1980s, they do not account for the use of the Internet in research and interpretation of reasonable expectations of privacy under them is difficult. Courts, however, are consistently holding that social networking site users have no reasonable expectation of privacy in the information they post, and these holdings are a good basis for interpreting 45 C.F.R. §46.

If compliance with 45 C.F.R. §46 is therefore not required to mine data on Facebook, then perhaps Facebook need not require that user consent be obtained prior to the collection of any information for academic research purposes. Ethical norms and codes in a given field may provide for a researcher's need to obtain informed consent prior to recording information posted on a social networking site; however, this does not mean that a researcher should be contractually obligated to obtain it.

This session (paper) will explore Facebook's consent requirement; examine in detail whether it really applies to academics who are mining data for research purposes; assess whether Facebook's consent requirement, if applicable to academic researchers, is reasonable in light of the fact that this type of research is arguably not subject to 45 C.F.R. §46; and examine the ethical considerations when data mining without obtaining informed consent.