

FLAC Briefing Note: *Data Protection Commissioner -v- Facebook Ireland Ltd & Anor* 2016/4809 P

Introduction -----

[FLAC \(Free Legal Advice Centres\)](#) is an independent human rights organisation and law centre dedicated to the realisation of equal access to justice for all. FLAC is legally representing a US non-profit body, [EPIC \(Electronic Privacy Information Center\)](#) which will act as *amicus curiae* in a case of significant public and international importance due to commence before the Irish High Court in February.

The case, *Data Protection Commissioner -v- Facebook Ireland Ltd & Anor*, concerns a complaint to the Irish [Data Protection Commissioner](#) that an individual's personal data is being transferred to the US by Facebook in the absence of adequate protections as required by EU law. The case is about the fundamental rights and freedoms of individuals in Europe, in particular the right to privacy and protection of personal data, and raises issues as to the interpretation of the [EU Directive](#) on Data Protection and the application of the [EU Charter of Fundamental Rights](#).

The Data Protection Commissioner, in its role as "guardian of fundamental rights", has issued the proceedings against two parties: the Dublin-based European headquarters of social media network Facebook, and the Austrian digital privacy campaigner and lawyer [Max Schrems](#). This case opens in the High Court on 7 February 2017 and has been scheduled to run for three weeks. The case may result in a number of questions regarding EU law and data protection being referred to the Court of Justice of the EU (CJEU).

This case is complex and arises against a background of previous litigation at domestic and European level where the then agreement between the EU and US for the transfer of data (Safe Harbour) was stuck down as concerns about mass surveillance by the US government and data protection had not been addressed in the agreement. The current proceedings again raise the issue of the adequacy of US data protection law and the mass surveillance of those in the European Union. Given the complexity of the issues in the case, in July 2016 the High Court appointed four *amici curiae* to provide expert perspectives. Along with EPIC, these are:

- The US government

- [BSA Business Software Alliance](#) (an international trade association representing large software firms)
- [Digital Europe](#) (described as one of the most substantial and representative groups for the digital technology industry in Europe).

The High Court appointed EPIC as *amicus* on the basis that “it would be in a position to offer a counterbalancing perspective from the US on the position in the US and could bring to bear an expertise which might not otherwise be available to the court.”

What is EPIC? -----

EPIC is a public interest research centre based in Washington, DC, Established in 1994, EPIC focuses public attention on emerging privacy and civil liberties issues and seeks to protect privacy, freedom of expression, and democratic values in the information age. An independent organisation with no state funding, EPIC routinely files *amicus* briefs in federal courts, pursues open government cases, defends consumer privacy, organizes conferences and speaks before Congress and judicial organisations about emerging issues. More at www.epic.org

What is an *amicus curiae*? -----

Amicus curiae translates as ‘friend of the court’. The *amicus* is not a party to the case. Its role is to provide expertise to the court as an impartial third party and assist the Court in arriving at its decision. There has been limited use of the *amicus* mechanism in the Irish courts, although the practice is growing. This case is notable in that the appointment of an NGO as *amicus* is rare, and rarer still is the appointment of a non-Irish *amicus*.

In its submission to the court, EPIC will provide expert evidence on whether personal data transferred by Facebook Ireland to Facebook US receives adequate legal protection. EPIC will provide the High Court with a comprehensive assessment of the strengths and weakness of the US legal system for the personal data of people resident in the EU, including Ireland, a perspective that might not otherwise be available to the court.

Why is FLAC acting for EPIC? -----

The right to privacy and data protection is now of global significance. This case is particularly significant as it concerns the large scale export of personal data from Europe to the United States, and whether the legal framework is sufficient to ensure adequate protection for the data. The capacity to send personal data around the globe is seen as crucial for many multinational corporations that rely on such data flows for their business, but the export of such data also raises serious concerns if the data is subject to use by foreign governments or enables mass surveillance.

The present proceedings reflects FLAC's approach to litigation; providing representation in cases that have strategic value and that may effect positive social change, whether to vindicate human rights or to improve access to justice in Ireland. This case has the potential to affect a very large number of people in Ireland and the wider EU and may have ramifications beyond the issues directly involved in the case. In addition the issue of access to justice is a significant feature of the case, including what constitutes an effective remedy as required by [Article 47 of the EU Charter of Fundamental Rights](#).

FLAC's concern with access to justice is also reflected at another level in the case, by providing representation to a non-governmental human rights organisation with limited resources seeking to make its expertise available to the Courts as an *amicus*. EPIC has been joined to the case as a counter balance to large business and state interests with almost unlimited legal resources. Given EPIC's track record in advocating for data privacy at domestic and international levels, FLAC, through its law centre, is facilitating an important voice to be heard in the court process.

Finally, FLAC seeks to foster public interest law mechanisms such as the use of *amicus curiae* in appropriate cases. This case will mark one of the first times an NGO such as EPIC has been given leave to appear as an *amicus curiae* in an Irish court.

Contact details -----

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FLAC is an independent, not-for-profit organisation which uses the law for social change and aims to promote the fundamental human right of equal access to justice for all.

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