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His profit, your problem

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On Friday, Mark Zuckerberg and his fellow Facebook founders reaped the benefits of the company’s stock offering — but it’s Facebook’s users whose lives have truly been transformed in the last five years, as the little company that could became a global behemoth, one that in many cases knows more about you than you know about yourself.

The good news: People start relationships, find jobs, keep in touch with family members, learn new skills and figure out what products to buy, all thanks to an unprecedented and exhilarating ability to connect.

But Facebook has a dark side as well. The permanent, indelible record of people’s posted triumphs and foibles — photos, reflections and opinions people often presumed to be semi-private when they revealed them to family and friends — increasingly come back to haunt them.

Employers, law enforcement officials, landlords, lovers, spouses, stalkers, universities and other third parties make judgments about us based on what we post. For some of us, our online selves now matter more than our offline selves.

According to a study sponsored by Microsoft, 75% of companies now require human resource officials to check out a job applicant’s online presence before making a job offer. An April 2012 study by CareerBuilder found that one-third of the hiring managers who looked at a person’s online profile found a reason not to hire him or her — for example, photos of perfectly legal behavior such as a woman wearing provocative clothes or drinking alcohol.

A 24-year-old high school teacher from Atlanta took a summer vacation in Ireland and Italy and posted 700 photos. The teacher was forced to quit her job because of vacation photos that showed her sampling a beer during the Guinness factory tour and drinking wine in Italy.

And when, earlier this month, a Virginia worker was fired for “liking” his boss’s competitor on Facebook, a judge held that “likes” weren’t protected by the First Amendment.

In a troubling trend, more and more employers are asking job applicants for their Facebook passwords, so they can view what people post on their private pages and perhaps even see who their virtual friends and acquaintances are. Other prospective employers “shoulder surf,” making the job applicant log in to view his private page over his shoulder.

By peeking at an applicant's posts and photos, employers do an end run around federal employment laws. The Pregnancy Discrimination Act prohibits an employer from asking a job applicant if she is planning to get pregnant. Yet she might have posted, "Getting married in July, thrilled to be starting a family."

Although an employer can't discriminate against a job applicant or current employee based on a medical condition that doesn't affect the person's ability to do the job, a Facebook post might reveal related information — and the job applicant would then never know that the employer turned him down based on the erroneous view he had a health problem. A 2012 Consumer Reports poll found that an estimated 4.7 million Americans "liked" a Facebook page about health conditions or treatments.

Some people may be tempted to take down their Facebook pages altogether when they go on the job market. But by then, it's too late. Your college drinking photos may still be tagged on your friends' pages.

And a background-checking company called Social Intelligence accumulates Facebook photos and posts that were previously public and keeps them for seven years, marketing this information from social networks to potential employers. So even if you delete that photo of you in a "Free Mumia" shirt, or scrub the details of that innocuous trip to Pakistan, you still might wind up having a hard time getting a job.

Virtually every interaction a person has in the offline world can be tainted by social networking information.

People are losing custody of their children to the other parent because of ill-advised posts about their thoughts or their lifestyles, such as sexy photos or long-ago posts in which they said they didn't want children. In many cases, the judges aren't seeking additional evidence to see if the child is in danger. But does poor judgment about what you post mean that you would necessarily be a bad parent?

And almost every personal injury case now has a social network connection. When a hospital clerical worker's chair collapsed, she suffered such extensive injuries that she underwent four operations to insert rods in her spine and screws in her neck. The defendant chair company won a court order for access to her present and past Facebook posts. The judge held that if photos showed her smiling or traveling, that would indicate she could still enjoy life and could not have been injured that badly. But why shouldn't someone with a horrible injury still be able to show a brave face on the Web?

The underlying structure of Facebook — the impression that you are speaking to only your friends — is what provides the impetus for people to provide more intimate, personal and revealing details than have ever before been shared on the Web. People reveal their emotions, their likes and dislikes, their feelings about the people in their life, their goals for their families, their sex lives, their laudatory and blameworthy acts.

Call them stupid, but it's what the culture and the company increasingly expect of those who log on.

Facebook turns people's private information into its own income stream. The company makes about 85% of its income, over \$3 billion a year, as an advertising platform.

Facebook sells ad space on its site and delivers products and services with a never-before-seen level of personalization by using the information from the Facebook member's profile and entries. Advertisers choose keywords or details — such as relationship status, location, interests, activities, favorite books, demographics, employment information — and then Facebook runs the ads for the targeted users.

Facebook's profits grow as people disclose more. And to be sure, plenty of users are perfectly happy being open books to marketers, friends and prospective employers.

But the risks have grown as well, in ways many reasonable people never anticipated.

We need stronger privacy protections for Facebook users. The company has made halting moves to give people more control over who sees what and when, but by and large users are still at risk.

The Maryland legislature has enacted a law prohibiting employers from asking for job applicants' social network passwords. A bill is pending in Congress to forbid employers and universities from similarly snooping into what people post on their Facebook pages. And a New York law passed in 1992 to prevent companies from firing people who smoked cigarettes at home could protect Facebook users. The law says that an employee can't be discriminated against for his or her "legal recreational activities" outside the office, including "sports, games, hobbies, exercise, reading and the viewing of television, movies and similar material."

Under the law, the intern at a fashion magazine who posts that her favorite movie is "The Devil Wears Prada" or the young priest whose favorite book is "American Psycho" could not be fired based on those social network postings.

Facebook sees these laws as a threat; its IPO materials listed the potential enactment of new privacy protections for people using social networks as a possible liability, because they could cut into the company's bottom line.

But privacy has been an important value of the United States. With every other transformative technology — from portable cameras in the 1880s to wiretapping in the 1960s to genetic testing in the past decade, judges and legislators initially threw up their hands and declared privacy to be dead.

But eventually, the law stepped in and evolved.

People's social network pages should be viewed as their online homes. If a woman invites 20 or 40 or 250 people into her home, the police would not be able to enter without a warrant based on probable cause. If her boss was not invited to the party, he would not be permitted to eavesdrop electronically on the conversations there. Why should it be any different if a woman has 20 or 40 or 250 Facebook friends?

Courts and legislatures should protect the privacy of people's Facebook posts and photos. It's time to ensure that, like Vegas, what happens on Facebook stays on Facebook.

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