

FILED UNDER SEAL

EXHIBIT 38

Message

From: Joel Kaplan [/O=THEFACEBOOK/OU=EXTERNAL (FYDIBOHF25SPDLT)/CN=RECIPIENTS/CN=████████████████████]
Sent: 2/8/2020 11:58:36 AM
To: ██████████@fb.com]; Nick Clegg ██████████@fb.com]
Subject: Re: Age Management Decisions
Attachments: image001.png; image002.png

Thanks ██████████—this is helpful additional background/clarification. I assumed based on prior experience on this one that Molly's approach was aggressive and that you were judicious in characterizing it, which is why I led with point 1 and only responded to you two—so I could be less judicious! I did misunderstand which prioritization effort you were suggesting though. I thought it was limited to the “policy responsive” product work (per Molly's direction), which is what I really think should be resisted. Sounds like we are all aligned on that. . .

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From: ██████████@fb.com>
Sent: Saturday, February 8, 2020 1:34 AM
To: Nick Clegg; Joel Kaplan
Subject: Re: Age Management Decisions

I think there is some misunderstanding here. I agree with all your comments Joel. I tried to phrase my email judiciously, but Molly was in aggressive mood and I had just spent 10 minutes resisting what were effectively demands that I advise Nick to abandon our position. It may have sounded like I agree with Molly's perspective or am advocating for delay - I am not, and am determined that we win this argument and make progress. But product are fixated on prioritization as we know from other recent discussion. My suggestion is that we actually get them to set out what they believe the trade-offs are, which is information that is currently missing from the paperwork. We can try to argue that there are no trade-offs to make here - if that works, great, but I'm not hopeful. Like you I am skeptical of the claim that product's resources are stretched to capacity, which is why I want to flush out whether this is really true by asking them to justify their position. On the UK point, again I am not advocating for delay but rather seeking to marshal the legal evidence to show we don't have the luxury of waiting because the UK has already made its move, so compliance is inevitable. This was a line of argument that seemed to make some impact with Molly, and I think it would help our case to develop it.

██████████

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From: Nick Clegg <██████████@fb.com>
Sent: Friday, February 7, 2020 9:59:56 PM
To: Joel Kaplan <██████████@fb.com>; ██████████@fb.com>
Subject: Re: Age Management Decisions

You read my mind Joel - I really cannot imagine why Molly's steer on this should prevent us from making those judgements re trade offs ourselves. And I think this is vital work - politically, ethically, reputationally. N

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From: Joel Kaplan <[REDACTED]@fb.com>
Sent: Friday, February 7, 2020 7:33:07 PM
To: Nick Clegg <[REDACTED]@fb.com>; [REDACTED]@fb.com>
Subject: Re: Age Management Decisions

Just responding to you two.

3 points:

1. Molly has been personally skeptical of the importance of this work since the very beginning and I frankly think has been quite unhelpful on it, for reasons that have never been clear to me.
2. If we are convinced that this work is important for reputational and policy reasons—let alone because it's actually the right thing to do—I'm unclear why it has to trade off against other work we think is important for reputational and policy reasons. Maybe it should trade off against the most marginal product work the other 20,000 people we are hiring next year are going to do. We are in a deep reputational hole as a company, and I'm afraid this type of thinking is going to make it difficult to ever get out of it.
3. The team's whole argument is that if we wait till legal compulsion kicks in, a) we are likely to face worse policy outcomes elsewhere, b) it undermines the strength of our e2e arguments, and c) we risk significant reputational harm from bad experiences for U13s in the meantime.

Rant over. Have a good weekend!

From: [REDACTED]@fb.com>
Date: Friday, February 7, 2020 at 7:32 PM
To: Rob Sherman <[REDACTED]@fb.com>, Nick Clegg <[REDACTED]@fb.com>
Cc: Joel Kaplan <[REDACTED]@fb.com>, Erin Egan <[REDACTED]@fb.com>, [REDACTED]
[REDACTED]@fb.com>, [REDACTED]@fb.com>
Subject: Re: Age Management Decisions

Molly just came to speak to me about this. She is extremely skeptical that the product teams will be able to find space for this work in the next 12 months, and questioned whether we were really prepared to see other work displaced. She made the point that much of the existing roadmap is taken up with legal compliance work (FTC, CCPA) which cannot be moved.

I think there are 2 missing pieces of information that we need if we're going to make progress:

1. **Prioritization.** We need to understand what the choices really are in terms of sacrificing or delaying other priorities to make way for this work. Once we have that information we can go through the list and work out what the trade-offs are.
 - @Rob do you have this from Product? If not can we ask for it and include in the pre-read?

2. **Legal compulsion.**

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- @Rob do we have clarity from Legal on the point at which the UK Code will bite? Or what the chances of the AVMS revision imposing similar obligations this year are?

■

From: Rob Sherman <[REDACTED]@fb.com>
Date: Friday, February 7, 2020 at 3:17 PM
To: Nick Clegg <[REDACTED]@fb.com>
Cc: Joel Kaplan <[REDACTED]@fb.com>, Erin Egan <[REDACTED]@fb.com>, [REDACTED]@fb.com>, [REDACTED]@fb.com>, [REDACTED]@fb.com>
Subject: Re: Age Management Decisions

Thanks so much, Nick – I really appreciate the quick feedback on this. We'll get the paper you suggest below pulled together in the early part of next week, and will also get time for the four of us on the schedule so that we can discuss this promptly.

Hope everyone has a good weekend.

From: Nick Clegg <[REDACTED]@fb.com>
Date: Friday, February 7, 2020 at 6:06 PM
To: Rob Sherman <[REDACTED]@fb.com>
Cc: Joel Kaplan <[REDACTED]@fb.com>, Erin Egan <[REDACTED]@fb.com>, [REDACTED]@fb.com>, [REDACTED]@fb.com>, [REDACTED]@fb.com>
Subject: Re: Age Management Decisions

Rob

Javi and I just spoke:

- Initial step should be meeting betw you, Alex S, Javi and myself to align on next steps. Javi is keen to do this because of crossed wires on the subject in the past.
- Paper for that meeting should include: i) public policy pressure (as per [REDACTED]'s paper); what competitors esp Tik Tok are doing; iii) how/whether we treat feed apps and messaging apps differently and; iv) range of short, medium and long term steps we could take to become industry leading on age management.
- After the meeting we will decide how/when to escalate to Mark.

Grateful if you could pursue as above.

THx

N

From: Rob Sherman <[REDACTED]@fb.com>
Date: Friday, February 7, 2020 at 7:45 AM
To: Nick Clegg <[REDACTED]@fb.com>
Cc: Joel Kaplan <[REDACTED]@fb.com>, Erin Egan <[REDACTED]@fb.com>, [REDACTED]@fb.com>, [REDACTED]@fb.com>, [REDACTED]@fb.com>
Subject: Re: Age Management Decisions

That seems sensible – thanks. I think the most useful background on what's been happening in this space / why this is likely to be an increasing pressure point is this policy landscape document that [REDACTED] created. Just let me know if you need anything else for the conversation with Javi or if you'd like to get together to discuss ahead of time.

In parallel we'll prepare the more structured escalation but will hold off on scheduling the meeting with you/Javi/product leads until after you and Javi talk and give guidance on next steps. Fidji and Vishal had both want to be kept in the loop on this, so I'll also drop them a note early in the week to let them know the status.

Thanks again – really appreciate your support in getting this done.

From: Nick Clegg <[REDACTED]@fb.com>
Date: Thursday, February 6, 2020 at 8:13 PM
To: Rob Sherman <[REDACTED]@fb.com>
Cc: Joel Kaplan <[REDACTED]@fb.com>, Erin Egan <[REDACTED]@fb.com>, [REDACTED]@fb.com>, [REDACTED]@fb.com>
Subject: Re: Age Management Decisions

Surely I should first discuss with Javi – he's personally supportive of action on this, and just needs to be armed by us with info on why we think the policy making pressure is only going to grow so making action on our part unavoidable? N

From: Rob Sherman <[REDACTED]@fb.com>
Date: Thursday, February 6, 2020 at 5:10 PM
To: Nick Clegg <[REDACTED]@fb.com>
Cc: Joel Kaplan <[REDACTED]@fb.com>, Erin Egan <[REDACTED]@fb.com>, [REDACTED]@fb.com>, [REDACTED]@fb.com>
Subject: Re: Age Management Decisions

Nick-

[REDACTED] and [REDACTED] suggested we check in with you about the process you'd prefer for raising Age Management Decision 1 below (whether we should proactively enforce age) with Mark.

The normal process for this – and the one we'd been following – is to evaluate this decision through the Privacy Review process, which involves [REDACTED]'s org and the relevant product leads. [REDACTED] and I spoke yesterday with [REDACTED], who felt strongly that it would be better to cut past the process and just have you raise this with Mark directly in an upcoming Product and Brand meeting. Her view is that the key input we need is Mark's – since the product team won't prioritize this without his support – so it's better to just ask him for his perspective.

We don't think it's reasonable for Mark to make the ultimate decision on this without the product teams being involved, etc., so if you raised this in Product and Brand we'd suggest the question be focused on whether in principle this is a problem that we should invest in; if so we'd come back to Mark with a specific workplan and timeline.

Here's our take on these options:

- **Product and Brand** -- quickest path to feedback from Mark; doesn't require a lot of prep; but key stakeholders won't all be in the room (you'd need to drive the discussion) and this isn't our normal process to decide this type of issue
- **Privacy Review** – standard process that includes all of the relevant stakeholders; but will require a series of meetings before this gets to Mark and we know ultimately he'll have to decide – so more work needed to get to that point

Do you have a preference on this?

Thanks.

- **Question:** Should we insist on proactive enforcement of under-13s who lie about their age to create FB/IG accounts?
 - **Policy recommendation:** Yes.
- **Context:**
 - We've been pushing for the past year to build AI and Community Operations capacity to proactively detect if under-13s are falsifying their age.
 - If we detect this using AI, we propose that Community Operations would manually review the account and, if the concern is verified, ask the person to produce documentation of their age. [More info: proposed protocol]
 - It will likely take us a year to launch this capacity once we start building it.
 - The product organization objects to prioritizing this because they believe there are other issues that are more important and that it's not feasible to staff this without compromising in another area.
 - At the same time, we continue to face increased pressure from policy audiences and advertisers to do more in this area -- including recommendations to Parliament from the UK privacy regulator this past week, which propose meaningful restrictions if we don't more proactively assess age, and a proposal in India to require age verification + parental consent for under-18s. And other companies are beginning to adopt more proactive efforts in this space. [More info: memo on policy context, FB impact analysis for UK ICO proposal]
- **Next steps:** Because of the concern that this request involves deprioritizing other work, if you support pushing on this area we would schedule discussions with Javi, and then potentially Mark, to discuss prioritization. If we decide not to push on this, the product organization would not prioritize this proactive work until we're legally required to do it (or until we decide to revisit it).

2. Age Collection at Registration [Decision Memo]

- **Question:** Should we allow Growth to test age gates that lead the user to select the "right" answer to "Are you 13?"
 - **Policy recommendation:** No.
- **Context:**

- This past year, we launched improved age gates on FB and IG, which align with industry recommendations by asking people to state their age without indicating that they must say they're over 13 to use our services.
 - Because initial testing showed that people in developing markets struggled to understand this age gate, you agreed that Growth could test versions that ask explicitly "Are you 13," which doesn't align with best practices but may help people more accurately answer the question.
 - Further tests showed that even "Are you 13" doesn't improve people's ability to pass the age gate, so the Growth team wants to use new design variations that use color to suggest the "right" answer. (See *below*.)
 - These prompts would be shown only in cases where a person twice indicates that they are younger than 5, which the Growth team believes reflects an inability to use the interface as opposed to actually being underage. This testing would happen only in developing countries, since we don't see the same pattern in other parts of the world. (As mentioned above, India will soon adopt legislation requiring some form of age verification, and we can expect any standards developed to be responsive to the approaches we take.)
 - We assess that using color to "steer" toward the "right" option is too far from neutral, and that this treatment undermines our ability to say that the age gate is meaningfully protecting against underage users joining FB/IG.
- **Next steps:** If you agree, we'll recommend against allowing these variants to be tested. We're agreeing to some other, less aggressive, tests, which are ongoing. But if those are unsuccessful and there is a significant dropoff of people being able to access our services, we'll meet with Javi to discuss next steps but anticipate he'll want to involve Mark in the decision – potentially in combination with Issue 1, above.

1. Birthday Default To Today's Date

Join Facebook

What's your birthday?

Choose your date of birth. You can always make this private later.

Birthday

October 29 2019

Next

2. Birthday Error
(user says they're <5yrs old)

Join Facebook

What's your birthday?

Choose your date of birth. You can always make this private later.

Birthday

October 29 2019

Please enter a valid birthday

Next

3. Age Fallback Triggered After 2 Sequential Errors

2A

Join Facebook

How old are you?

Choose your age.

Under 13 13+

2B

Are you 13 years or older?

Choose your age.

Under 13 13+

Use Date of Birth

4. Confirmation [Unchanged]

Join Facebook

How old are you?

Choose your age.

Under 13 13+

Use Date of Birth

1. Birthday Default To Today's Date

Join Facebook

What's your birthday?

Choose your date of birth. You can always make this private later.

Birthday

October 29 2019

Next

2. Birthday Error
(user says they're <5yrs old)

Join Facebook

What's your birthday?

Choose your date of birth. You can always make this private later.

Birthday

October 29 2019

Please enter a valid birthday

Next

3. Age Fallback Triggered After 2 Sequential Errors

3A

Join Facebook

How old are you?

Choose your age.

13 Years or Older Under 13 Years

3B

Are you 13 years or older?

Choose your age.

You're 13 or older No, I'm Under 13

Use Date of Birth

4. Confirmation

Join Facebook

How old are you?

Choose your age.

13 Years or Older Under 13 Years

Use Date of Birth

Thanks so much for your guidance on these points.

Rob