

Ninth Circuit Affirms Facebook Beacon Settlement Award

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Facebook launched its “beacon” program in 2007. The program is intended to let members share with friends information about what they do elsewhere on the Internet. The program operated by updating a member’s personal profile to reflect certain actions the member had taken on websites belonging to companies that had contracted with Facebook to participate in the beacon program. Although Facebook initially designed the Beacon program to give members opportunities to prevent the broadcast of any private information, it never required members’ affirmative consent for program participation. As a result, many members complained that beacon was causing publication of otherwise private information about their outside web activities to their personal profiles without their knowledge or approval. A group of individuals filed a class action against Facebook, alleging that Beacon had violated Facebook members’ privacy rights by gathering and publicly disseminating information about their online activities without permission, including violations of Electronic Communications Privacy Act, the Computer Fraud and Abuse Act, the Video Privacy Protection Act, California’s Consumer Legal Remedies Act, and California’s Computer Crime Law. The parties agreed to settle the case, and the court approved a \$9.5 million settlement. Some from the class objected to the settlement, claiming that the amount was too low, and that it was not fair because a Facebook employee sits on the board of the organization distributing the award. The Court of Appeals for the Ninth Circuit rejected these claims, and determined that the settlement was sufficiently substantial.

TIP: This settlement is a reminder that companies should examine online features that give users control over sharing information with others. Are there adequate disclosures? Are consumer choices appropriate? In addition, companies may take comfort in this decision, which suggests that mere dissatisfaction by certain class members with an outcome, had they assume the role of class representative, is not sufficient to overturn the settlement.

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