

**Commissioner for Information of Public
Importance and Personal Data Protection**

Bulevar kralja Aleksandra 15
11 000 Belgrade
Republic of Serbia

Pursuant to Article 180 of the Law on Misdemeanors ("Official Gazette of RS", no. 65/2013, 13/2016, 98/2016 - Constitutional Court decision), SHARE Foundation, Kapetan Mišina 6a, Office 31, 11000 Belgrade submits:

MISDEMEANOR COMPLAINT

against **Facebook, Inc.** 1601 Willow Road Menlo Park, CA 94025, United States of America (hereinafter: Facebook, Inc.) **for breaching mandatory obligation to appoint a representative in the Republic of Serbia provisioned by Article 44 of Law on Personal Data Protection.**

Previously mentioned mandatory provision according to Article 3, Paragraph 4 of the Law on Personal Data Protection applies to Facebook, Inc. because applications owned by Facebook Inc., such as Facebook, Instagram i WhatsApp, are processing personal data of persons residing on the territory of the Republic of Serbia. Also, offering goods and services of Facebook, Inc. includes processing personal data and monitoring activities of data subjects with Serbian residence, since the mentoned activities are occurring on the territory of Serbia.

Furthermore, applications such as Facebook, Instagram and WhatsApp can be used entirely in Serbian. Also, advertisements and marketing content on Facebook, Inc. sites target Serbian natural persons. Moreover, Facebook, Inc. monitors the behaviour of Serbian users by using cookies, behavioural advertising, tracking geolocation for advertising, etc. Finally, by using integrated features, the user's personal data information is shared with various companies and other partners Facebook, Inc. cooperates with.

Exceptions provisioned by Article 44, Paragraph 1, Point 1 of Law on Personal Data Protection do not apply to Facebook, Inc. These exceptions apply to occasional processing of user's personal data or one that does not include processing in high volume of special categories of data provisioned by Article 17, Paragraph 1 of the mentioned Law. Previously mentioned exceptions cannot be applied to the processing of user's personal data information done by Facebook, Inc. First, processing done by Facebook, Inc. is continuous and constant (not occasional). Second, applications owned by Facebook, Inc. process in high volume data according to which racial or ethnic origin, political opinion, religious and philosophical belief, health status or sexual life or sexual orientation of a natural person is or can be determined.

In accordance with the above mentioned, the company, against which the misdemeanour complaint is hereby submitted, completes regulatory requirements for compliance with the mandatory obligation of appointing a representative in the Republic of Serbia provisioned by Article 44 of Law on Personal Data Protection.

In a letter sent on October 17, 2019 (of which we notified you on October 23, 2019 - in appendix), in which a mandatory provision on appointing a representative in the Republic of Serbia is

emphasised, it was requested from Facebook, Inc. to notify SHARE Foundation with 10 days if the representative in Serbia had been appointed and, if so, to provide us with contact information - since according to publicly accessible data it had not been possible to determine whether the representative had been appointed. Also, in this letter, Facebook, Inc. has been informed that SHARE Foundation is considering submitting a misdemeanor complaint for breaching the obligation to appoint a local representative.

Bearing in mind that Facebook, Inc. has not responded in the mentioned period nor by this day provided information of compliance with the mandatory provision of appointing a representative, SHARE Foundation hereby submits a misdemeanour complaint upon which the Commissioner for Information of Public Importance and Personal Data Protection can commence an inspection procedure of the company in accordance with Article 79, Paragraph 1, Point 9 of the Law on Personal Data Protection and Article 180, Paragraphs 5 and 6 of the Law on Misdemeanors.

If the Commissioner in the inspection procedure establishes that the company has not appointed a representative for data protection in the Republic of Serbia, SHARE Foundation proposes imposing a misdemeanor fine to Facebook, Inc. based on a misdemeanor warrant:

- 1) in the amount of 100.000,00 RSD according to Article 95, Paragraph 2, Point 4 of the Law on Personal Data Protection and
- 2) to the responsible person in the legal entity or to the person responsible for the representative office of the company or to the responsible person in the business unit of a foreign legal entity in the amount of 20.000,00 RSD according to Article 95, Paragraph 7 of the Law on Personal Data Protection.

In Belgrade,

December 4, 2019

A handwritten signature in black ink, appearing to read "D. Krivokapić", written in a cursive style.

For SHARE Foundation

Danilo Krivokapić, Director

Appendix:

1. *Representative letters sent to Facebook, Inc. by SHARE Foundation*
2. *Letter sent to the Commissioner for Information of Public Importance and Personal Data Protection on October 23, 2019*