

OFFICE OF LEGAL AFFAIRS

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Via Email & First Class Mail

Andrea Kirkpatrick
Associate General Counsel, Security
Facebook, Inc.
18 Hacker Way
Menlo Park, CA 94025
andreak@fb.com

Dear Ms. Kirkpatrick,

As you may be aware, Facebook, Inc. (Facebook) and the Office of Victim and Survivor Rights and Services at the California Department of Corrections and Rehabilitation (CDCR) have been working together to deactivate Facebook accounts when it is clear that inmates are accessing these accounts through contraband cell phones or by illegitimate access to the internet. We appreciate how cooperative Facebook has been in the past and we look forward to continuing to work together in the future to ensure the safety of the public, especially the safety of survivors and victims of crime. Our intent with this letter is to ensure that you have the legal basis under which inmates are not permitted to access the internet, in any way, absent express permission.

The California Legislature has made it a misdemeanor for an individual to possess, with the intent to deliver, or to deliver to an inmate a cell phone or a wireless communication device.¹ Accordingly, inmates who are found in possession of a wireless communication device are subject to disciplinary action.² CDCR has also promulgated regulations, located in Title 15, Division 3 of the California Code of Regulations, restricting inmates' access to certain communications and devices. CDCR regulations have the full force and effect of state law.³ Specifically, section 3006 of Title 15 states that "[i]nmates may not possess or have under their control or constructive possession . . . cellular telephones or wireless communication devices or any component thereof including, but not limited to, a subscriber identity module (SIM card) or memory storage devices and cellular phone chargers." Furthermore, inmates are not allowed to possess a computer as their personal property.⁴ Similarly, "[i]nmates shall not access any

¹ California Penal Code section 4576, subdivision (a).

² *Id.* at subdivision (c).

³ "A regulation adopted by an administrative agency pursuant to its delegated rulemaking authority has the force and effect of law." (*Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 401; see also *In re Lomax* (1998) 66 Cal.App.4th 639, 643; *Homan v. Gomez* (1995) 37 Cal.App.4th 597, 601.)

⁴ California Code of Regulations, title 15, section 3041.3, subdivision (h).

computer connected to a local area network (LAN), or which has any type of direct, outside communication capability . . .” (i.e. internet access) except with express prior authorization.⁵ The California Penal Code also makes it a public offense for an individual to “[k]nowingly and without permission [use] or [cause] to be used computer services.”⁶ “Computer services” includes, but is not limited to, “computer time, data processing, or storage functions, Internet services, electronic mail services, electronic message services, or other uses of a computer, computer system, or computer network.”⁷

Given that inmates are not permitted access to the internet, inmates are only able to access Facebook accounts either through prohibited contraband cell phones or by illegitimate access to the internet. This not only violates the law, but it also threatens the security of the institutions, the safety of the public, and the safety of survivors and victims of crime. We appreciate Facebook’s assistance and cooperation so far and we hope to continue to work together towards a safer community.

If you have any questions or concerns regarding this letter, please do not hesitate to contact me by telephone at (916) 322-9647 or by email at Shirley.Tang@cucr.ca.gov.

Sincerely,



SHIRLEY TANG

Attorney

Office of Legal Affairs

cc: Notice Edwards, Director, Office of Victim and Survivor Rights and Services

⁵ *Id.* at subdivision (b).

⁶ California Penal Code, section 502, subdivision (c)(3).

⁷ *Id.* at subdivision (b)(4).