



November 20, 2020

Dear Ms. del Fierro and Mr. Sherman,

Re: Facebook Cease and Desist Letter to Friendly App Studios LLC

The Electronic Frontier Foundation (“EFF”) writes as an interested third party in regard to an August 7, 2020 letter sent on behalf of Facebook to the developers of the Friendly Social Browser (“Friendly”). Friendly is an alternative browser available for Apple iOS and Google Android that allows users to access Facebook’s website. Facebook asserts that Friendly violates Facebook’s terms of use as well as federal and state law, and demands that Friendly cease its operations.

EFF urges Facebook to withdraw its broad, unfounded threats. Facebook appears to reserve the right to take down any tool that modifies the experience of visiting Facebook’s website in any manner that Facebook deems inappropriate. That position goes against the very principles of the World Wide Web. It would give Facebook the power to forbid the use of common tools like password managers, screen readers, and accessibility features for users with visual impairments, among many other commonly used tools. These tools are legitimate and lawful regardless of whether they may alter the look or function of Facebook.

Your claim that Friendly violates federal and state anti-hacking laws¹ is baseless. An essential element of a violation of both statutes is knowing “access” to a computer *by the defendant*.² California law defines “access” as “to gain entry to, instruct, cause input to, cause output from, cause data processing with, or communicate with” a computer.³ Friendly is a web browser, so it is our understanding that Friendly does not itself “gain entry to” or “communicate with” Facebook in any way. Like other popular browsers such as Google Chrome or Mozilla Firefox, therefore, Friendly does not “access” Facebook; Facebook users do. But presumably Facebook knows better than to directly accuse its users of being malicious hackers if they change the colors of websites they view.

¹ Computer Fraud and Abuse Act (“CFAA”), 18 U.S.C § 1030; Comprehensive Computer Data Access and Fraud Act (“CCDAFA”), Cal. Penal Code § 502(c).

² See 18 U.S.C. § 1030(a)(2)(C); Cal. Penal Code § 502(c)(2).

³ Cal. Penal Code § 502(b)(1). The CFAA does not define “access,” but a common dictionary definition parallels the CCDAFA’s definition: “to get at... to open or load (a computer file, an Internet site, etc.). Merriam Webster, *Access*, <https://www.merriam-webster.com/dictionary/access>.

It is bad enough that Facebook has misused these statutes in the past to block would-be competitors and innovators from directly accessing its services.⁴ But invoking them here would sweep even further, creating the risk of near-universal liability for the developers of any tool that allows users to browse the Web.

Facebook's threats to Friendly are bullying and unwise. They also appear to be part of a worrying trend of asserting Facebook's terms of use against tools that serve users' desire to modify their own user experience and share their own data with others.⁵ We urge you to reconsider.

Sincerely,

/s/ Andrew Crocker

Andrew Crocker
Senior Staff Attorney

Mitch Stolz
Senior Staff Attorney

⁴ See Corynne McSherry, *Want More Competition in Tech? Get Rid of Outdated Computer, Copyright, and Contract Rules*, EFF (Dec. 20, 2018), <https://www.eff.org/deeplinks/2018/12/want-more-competition-tech-get-rid-outdated-computer-copyright-and-contract-rules>.

⁵ Andrew Crocker, Cory Doctorow & Naomi Gilens, *Facebook's Election-Week War on Accountability is Wrong, Wrong, Wrong*, EFF (Oct. 27, 2020), <https://www.eff.org/deeplinks/2020/10/facebooks-election-week-war-accountability-wrong-wrong-wrong>.