

## **Facebook could face Hong Kong prosecution over failure to hand over information on racist users**

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*Equality watchdog weighs taking case to Department of Justice for prosecution  
Embattled company says its request needs to comply with law in Ireland, where data is held*

Facebook could fall foul of Hong Kong law if it continues to withhold data needed for an investigation into online racial hatred, the city's equality watchdog has said.

The Equal Opportunities Commission (EOC), which has the power to enforce anti-discrimination laws, said Facebook had declined to hand over the contact details of users who made posts vilifying ethnic minorities on the official Facebook page of a local NGO.

The EOC noted that, under Hong Kong's Race Discrimination (Investigation and Conciliation) Rules, failure to comply with their notice to provide information was a crime punishable by a fine of up to HK\$25,000 (US\$3,200).

It confirmed it was weighing whether to take the case to the Department of Justice. If it did so, and the department took it to court, it would be the first prosecution of a social media provider under Hong Kong's race discrimination laws.

The case came about after Hong Kong Unison, an organisation which promotes racial equality in the city, reported to the EOC several abusive comments left on the NGO's Facebook page in 2017.



They included derogatory words aimed predominantly at South Asians, and in some cases called for violence against ethnic minorities in Hong Kong.

The statements, posted in Chinese, included:

- “Damn South Asian dogs, why do they come to Hong Kong? They rob Hong Kong’s resources. Execute lazy greedy South Asian dogs, all of them should die!”
- “We Hongkongers don’t welcome you South Asian dogs.”
- “You f\*\*\*ing immigrants have no money, no skills, no contribution. You have come to Hong Kong to be idlers. What opportunities should we give you? We can give you a chance to die.”

Unison initially made 37 formal complaints based on posts from 15 separate Facebook accounts, but reduced the complaints to cover nine respondents who the EOC believed met the criteria for offences under Hong Kong law.

According to the Race Discrimination Ordinance, inciting hatred towards an ethnic group can be categorised as a civil offence and, in more serious cases, a criminal one.

“In normal situations you know who is committing the act of vilification,” Peter Reading, an EOC lawyer, said. “But people using social media can be anonymous, so where the threshold [for committing an act of vilification] was met, we asked Facebook for the data.”

But the EOC said that, in written responses, Facebook Hong Kong and Facebook Ireland stated that all data of Facebook users in Hong Kong was held and controlled by Facebook Ireland. The company has a major data centre in Ireland.

Facebook stated that, for it to provide the data to the EOC, the EOC would need to comply with Irish law – specifically the Data Protection Act – and get an order from an Irish court to release the information.

But, referring to the responses, Reading said: “We don’t think their understanding of the law is correct, because the Irish laws and the EU laws, from our interpretation of them, only apply to people in the EU and people in Ireland.”



If they are providing some data to some government

The implication of accepting Facebook’s response, Reading said, was serious.

“If Facebook and other social media providers are considered to hold their data in another jurisdiction,” he said, “that could create a huge gap in trying to enforce Hong Kong laws.”

Facebook does provide data to governments in some circumstances. Its transparency report, which shares data on how the company interacts with governments and corporations, showed that from January to June this year the government in Hong Kong – where platform has 3.67 million users – requested data from it 174 times. The report stated that in 56 per cent of cases it handed over “some data”.

In a statement about the EOC’s requests, Facebook said: “We do not tolerate hate speech and harassment on Facebook. We have clear rules against this and will remove content and accounts that violate our policies when we’re made aware of them. We appreciate the [EOC] bringing this content and [these] accounts to our attention. We have also worked with many NGOs to raise public awareness of our policy against hate speech, particularly race equality.”

Peter Reading, EOC lawyer

It said it handled data requests “extremely carefully” and tested them against proper legal standards.

“If a request does not meet these strict standards, we would refer the authorities to other formal, lawful government-to-government channels of cooperation, such as the MLAT process.”

MLAT refers to mutual legal assistance treaties, agreements made between two or more countries to share information for law enforcement. Hong Kong has MLATs with many countries, including the US, where Facebook is headquartered, and Ireland.

Reading said that, according to its own policies, Facebook ought to comply with the EOC’s request.

### [Foreigners accused of racial slurs and insults in China WeChat group](#) [1]

“If they are providing some data to some government agencies, such as the police, then why are they not providing it to the EOC, which is a government-funded statutory body with enforcement powers?” he asked.

Reading said that, should Facebook agree to provide the data, it would be operating within Hong Kong law. Hong Kong’s Personal Data (Privacy) Ordinance states that personal data is “exempt from the provisions of data protection” if it is required in connection with legal proceedings in Hong Kong.

“There’s nothing legally preventing Facebook from giving this data to us,” Reading said.

Puja Kapai, an associate professor of law and convenor of the Women’s Studies Research Centre at University of Hong Kong and vice-chair of Unison, said the case went beyond social media in its importance, and urged the EOC to do more to educate the public on issues faced by ethnic minorities in Hong Kong.

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Puja Kapai called on the EOC to do more against online hate speech. Photo: Felix Wong

“This is the result of pleas to the EOC to step up, say something, condemn actions, and to use their powers ... all the way to lining up individuals to file a complaint, which EOC said was necessary before they could do anything about this,” she said.

Kapai, who made the initial complaints to the EOC about the comments, said Unison’s position was that social media was just one element of a bigger picture when it came to society’s tolerance for vilifying minorities.

“We think the EOC could do more by taking a public position to educate people about the wrongs of using social media as a platform for hate speech,” she said.

The news comes as Facebook finds itself besieged by multiple controversies over its platform being used to incite violence and manipulate political processes, as well as damaging accusations about the company’s use of its users’ data.

Earlier this year, the UN special rapporteur on human rights in Myanmar said Facebook had been used to incite hatred against the minority Rohingya people in that country. Subsequent media reports found more than 1,000 examples of posts and images on the site attacking the Rohingya, who according to the UN have been the targets of ethnic cleansing and crimes against humanity. In August, Zeid Ra’ad al-Husseini, then UN High Commissioner for Human Rights, called on Facebook to do more to prevent hate speech.

Also this year, researchers at the University of Warwick in Britain revealed they had found compelling links between the use of Facebook and violent attacks on refugees in Germany. Looking into the circumstances surrounding 3,335 attacks on refugees in the country, the researchers found attacks increased by 50 per cent in towns where residents had a higher-than-average use of Facebook.



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Puja Kapai, HKU

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