

06-27-2024

AI training with personal data on Instagram and Facebook

Fuchs: „Object before June 26.“

Update: *Following a meeting with the Irish Data Protection Authority (IDPC), which is responsible for Meta in the EU, on June 13, 2024, the company has postponed the use of user data to train AI applications until further notice. A new date for the start of training and the launch of Meta's AI applications in Europe is not yet known.*

Meta modified its privacy policy on June 26, 2024. The company has announced that it will inform users before Meta starts using their data for AI training. It will then also provide information on how users can exercise their right to object. Currently, the privacy policy only links to the form that data subjects can use to object to the use of their data for AI training that is stored on third-party websites, for example information that is publicly available on the internet. Irrespective of this, the question of the legal basis for the use of personal data for AI training remains open.

The Hamburg Commissioner for Data Protection and Freedom of Information (HmbBfDI) has received numerous inquiries and several complaints recently. These were directed against a new [privacy policy](#) due to the planned processing of data from Facebook, Instagram and Threads users. Meta wants to use this data to further develop its own AI technologies.

Billions of users worldwide are affected: Last week, Meta announced its plans to use personal data from Facebook, Instagram and Threads to develop and improve its AI services. Meta has also

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pointed out the possibility of objecting to this. From June 26, 2024, posts, photos and captions on Facebook and Instagram will be used to train Meta's AI services.

1 What can users do?

If you do not want this to happen, you should exercise your legal right to object before June 26, 2024. Users should be aware that once a large language model has been trained with personal data, this cannot simply be reversed.

You can object to this in the settings on the profile page under Privacy Policy. Anyone who has received a notification from Meta can follow the instructions contained therein.

Anyone who is concerned about the processing of his or her data in an AI service can indicate this in the objection and express personal concerns.

Thomas Fuchs comments: "Users who are concerned about a large AI model being trained with personal data from their profiles should - also in view of many unresolved legal and factual questions - better object now."

Persons who do not have an account with a Meta service may also be affected by the processing of personal data by Meta for AI training purposes: Meta also uses data from so-called third-party providers, which the Group purchases in order to use it to train its AI models. This data may already have been used in the training of AI models, so Meta only offers the option of subsequently objecting to its use [here](#).

2 What does Meta want to achieve with its new privacy policy?

Based on its new privacy policy, Meta wants to use all public posts, comments and photos from its users to train its own AI applications. The company is only very vague about what exactly is behind the AI technology. According to its own statements, it is about the entirety of "generative AI features and experiences, including Meta AI and the AI-supported Creative Tools as well as the models on which these functions are based". It is clear from the explanations that the AI-supported features will not only be available for users, but also for companies.

When using personal data for AI training, Meta wishes to rely on legitimate interests in accordance with Art. 6 (1) (f) GDPR as the legal basis and refers briefly to the purposes of developing and improving its products. The European data protection supervisory authorities are currently clarifying whether the legitimate interest serves as a legal basis and whether the explicit consent of the data subjects would be required. Overall, Meta's plans raise numerous legal questions, including with regard to transparency, which need to be resolved uniformly across Europe.

3 What happens next?

The Hamburg Data Protection Authority has already contacted the lead European supervisory authority in Ireland (IDPC), not least because of the complaints received. The IDPC can take measures against Meta that apply to the entire European Union and the European Economic Area, such as suspending or completely prohibiting the planned processing, as long as compliance with the GDPR cannot be fully demonstrated.

Due to the millions of data subjects in all member states, a uniform Europe-wide assessment of the processing of personal data for AI training at Meta is preferable and urgently required. The Hamburg Data Protection Authority is coordinating closely with its European colleagues, especially the IDPC.

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