

WHAT IS UP WITH WHATSAPP?

3 FEBRUARY 2021



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Just as we kickstarted the new year, WhatsApp rolled out its updated Terms of Service and Privacy Policy. Many are confused by what the changes actually mean and what are the associating impact. Whilst the update primarily deals with the expansion of practices around how WhatsApp business users can store their communications, it also touches on WhatsApp's "integration" with Facebook, and it is the latter that is causing a lot of hoo-ha in the community. In this article, we are going to look at what changes WhatsApp is making in its data sharing practices.

1. Terms of Service and Privacy Policy update

Fellow WhatsApp users would have probably received a notification from the popular instantaneous messaging application regarding the updates, which were originally slated to come into force on 8 February 2021 (the implementation has been postponed to 15 May 2021 due to widespread confusion among users).

What alarmed most users is the paragraph on how WhatsApp is going to partner with Facebook to offer integrations across the Facebook Company Products. It is clearly stated on the notification that failure to accept the updated Terms and Privacy Policy means that a user will be forced to abandon the application altogether after 8 February (now 15 May 2021).



Before we move on, it would be apt to first provide some background on WhatsApp's practice of sharing users' information with Facebook. Most people would know that Facebook acquired WhatsApp at \$19 billion in 2014, and since 2016 WhatsApp has been sharing users' account information with Facebook. WhatsApp's existing users at that point in time were given a 30 days' timeframe to opt out of having their WhatsApp account information shared with Facebook.

The relevant paragraph of this opt-out option can still be seen on WhatsApp's current Privacy Policy, although the 30 days' window has long expired. Essentially, those who did not opt-out of the information sharing, as well as users that signed up for WhatsApp after 2016, have been having their account information shared between WhatsApp and Facebook. For those of you who wish to check if you have opted out of data sharing in 2016, you may do so via WhatsApp's Settings > Account > Request Account Info.

In WhatsApp's latest Privacy Policy, the "opt-out option" paragraph has been removed. In light of this and coupled with a plain reading of the update notification, it is only natural that users would think that the sharing of users' account information with Facebook is now compulsory across board – including those who have opted out of it in 2016. This is where most users are mistaken – or so claimed by WhatsApp.

To stop the spread of misinformation, WhatsApp has clarified that they have every intention to continue to honour the decision of users who have opted out of the information sharing with Facebook in 2016, thus nothing in the updated Privacy Policy will affect this. In fact, nothing in the Privacy Policy regarding sharing of information between WhatsApp and Facebook should have any concern with those who have opted out of this feature in 2016.

So, what has changed in terms of WhatsApp's information sharing practices? Nothing apparently. WhatsApp maintains that the updated Terms of Service and Privacy Policy do not actually impact its existing practices or behaviour around sharing data with Facebook. The updated Terms and Privacy Policy merely provide more elaborated information on how WhatsApp partners with Facebook. In other words, WhatsApp is merely indicating more precisely on paper its data sharing practices with Facebook that has been going on for years.

2. What are the data collected by WhatsApp and how they may share these data with Facebook?

WhatsApp takes great pride in its end-to-end encryption feature – it is an encryption where only the sender of a message and the recipient have the key to decrypt the encrypted message. In practice, only the parties involved in a messaging thread can view the content of the messages and not even WhatsApp, being the service provider, can see these messages. WhatsApp has repeatedly stressed that the end-to-end encryption is still, and will continue to be in place, and the updated Terms and Privacy Policy have no impact over the same. So, if WhatsApp cannot see our messages sent using the application, what are the data / information collected and shared between WhatsApp and Facebook?

The answer is found in WhatsApp's Privacy Policy. It is stated in the updated Privacy Policy that WhatsApp collects information from users directly and automatically through users' usage of the application. The majority of these information include:

(i) **Account information:** mobile phone number, profile name, profile picture, status message;

(ii) **Transactions and payments data:** WhatsApp has launched its digital payment service in several countries including Brazil and India. When a user uses WhatsApp's payment service, WhatsApp may collect information on payment account, transaction, payment method, shipping details, transaction amount, etc. This category of data would only be relevant to Malaysian users when the digital payment service is made available here;



(iii) **Usage and log information:** information about user's activity (e.g., how you use WhatsApp's services, your services settings on WhatsApp, how you interact with others using WhatsApp's services), the time, frequency, and duration of user's activities and interactions, etc.;

(iv) **Device and connection information:** device model, operating system information, battery level, signal strength, app version, browser information, mobile network, mobile operator or ISP, language, time zone, IP address, etc.;

(v) **Location information:** Note that WhatsApp does not collect information on the location that you share with your contacts via the location sharing feature, due to end-to-end encryption which prevents WhatsApp from reading these shared locations. That said, WhatsApp may still collect information on users' general location through (1) users' IP addresses and phone number area codes; and (2) the "Nearby Places" feature available while sending location (WhatsApp automatically detects and show you a list of nearby places when you are pinpointing your location for location sharing purposes).



“ The choices you have. If you are an existing user, you can choose not to have your WhatsApp account information shared with Facebook to improve your Facebook ads and products experiences. Existing users who accept our updated Terms and Privacy Policy will have an additional 30 days to make this choice by going to Settings > Account. ”

Although the above information may not be as sensitive and private as compared to the content of your messages, they nevertheless form invaluable metadata which corporations can harvest further information about the users. These metadata would be crucial to Facebook in monetising the \$19 billion investment they have made in 2014 in acquiring WhatsApp. At this day and age where big data is king, a particular user's or set of users' preferences, patterns, trends, associations, behaviour, interactions, etc., can be predicted or identified through analysis of big data.



Hence, with the trove of information Facebook has already collected about you through your usage of Facebook over the years, coupled with the metadata that WhatsApp may feed Facebook with, Facebook will be able to push out specific advertisements or contents to you, tailored according to your profile - which is what we called targeted advertising.

Undeniably, this is what Facebook is doing. WhatsApp in its Privacy Policy also confirms that it may share collected information with Facebook to “operate, provide, improve, understand, customize, support and market our (WhatsApp's) Services and their (Facebook's) offerings, including the Facebook Company Products”, which includes, amongst others, improving Facebook's services and users' experiences using them, such as making suggestions for you (e.g., of friends or group connections, or of interesting content), personalizing features and content, helping users complete purchases and transactions, and showing relevant offers and ads across the Facebook Company Products..”

Of course, targeted advertising in itself may not be a bad thing. Some would even be happy to have curated content delivered to them. It is only an issue when targeted advertising is used in the wrong way, for example, to deliver curated contents and advertisements to users to sway or cement their political opinion prior to election (sounds familiar? Remember the Facebook – Cambridge Analytica data scandal?). High risk of unethical use of data is why data privacy advocates are so against data sharing between a messaging giant and a social networking giant.

3. Data Privacy Law in Malaysia

The Personal Data Protection Act 2010 (the “PDPA”) is often cited as the data privacy law in Malaysia. Although it does not regulate the processing of all form of data, it specifically addresses the processing of “personal data”, which is defined under the act as any information that relates directly or indirectly to a data subject, who is identified or identifiable from that information or in combination with other information in the possession of the data user. In other words, if a particular information identifies you or can be used to identify you, be it on its own or in combination with other existing information, that particular information will be considered as personal data.

The PDPA sets out seven personal data protection principles which have to be complied with by data users when processing personal data, the non-compliance of which would constitutes offence under the PDPA. The act also provides for certain statutory rights of a data subject with regards to the collected personal data. Although the PDPA does not prohibit the sharing of data such as the case between WhatsApp and Facebook (according to the principles set out under the PDPA, the sharing and processing of data between WhatsApp and Facebook are allowed as long as data subjects’ consents are obtained), data subjects have rights under the PDPA to request the data user not to process the personal data for purposes of direct marketing, and “direct marketing” here is defined as the *communication by whatever means of any advertising or marketing material which is directed to particular individuals*.

This specific provision has not been tested in the Malaysian legal system, it is however arguable that it may be invoked by a user to stop Facebook from processing the metadata collected and shared by WhatsApp for purposes of targeted advertising and thereby minimises risk of unethical use of data.

Unfortunately, the PDPA is not applicable to WhatsApp or Facebook. In order for the act to apply, apart from the requirement of there being processing of personal data, the personal data must also be processed in Malaysia or uses equipment in Malaysia for processing, and the processing must be in respect of commercial transaction. Facebook and WhatsApp, both being corporations based in the U.S. would most likely be processing the personal data in their home country or other countries where their data centres are located. Further, WhatsApp is also not charging any subscription fees for its services and hence, the “commercial transaction” requirement would most likely not be fulfilled as well.



The above being said, users do not have to worry despite the PDPA not being applicable to WhatsApp or Facebook. WhatsApp and Facebook are most likely still bound by the data protection or data privacy law of the countries where the processing of user information is taking place, albeit these foreign laws may not provide data subjects with the right to prevent data users from processing data for direct marketing purposes.

All in all, the objective of this article is not to convince anybody to stop using WhatsApp, but rather to educate on the type of information that WhatsApp is collecting from users and how the information may be used. At the face of things, it would not be possible to prevent WhatsApp from sharing the collected metadata with Facebook and we can only hope that there will be no unethical or unauthorised usage of these metadata by Facebook or WhatsApp. For risk-averse users, the only way to avoid this conundrum is simply to delete the WhatsApp account and migrate to another messaging platform. Even then, who can guarantee that budding messaging platforms (e.g., Signal, Telegram) will never fall under the temptation of big data when their user base grows to the scale of WhatsApp?



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