

The Manipulation of Images, as Personal Data, by Facebook – a Case Study for Ethical Approach

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Article history

Received 02 June 2022 | Accepted 07 April 2023 | Published online 21 April 2023.

Abstract

The purpose of this paper was to explore whether the use of images, by the social platform Facebook, presented ethical concerns, and whether a user was sufficiently aware when he consented to the use, of the ways in which his images could be manipulated by the platform. It is a common practice for a person to open a social media account, and to start uploading content, in order to make it available to his family, friends, clients or larger groups. However, it is not obvious, when opening such an account, that these images escape, in a sense, from the hand of the account owner. This article has reviewed the underlying relationship between a user and a platform, by analyzing the Meta (former Facebook) data privacy policy and some additional texts, underwent a step further and looked at the possible use done by the platform, and finally tried to understand how the user was given the information needed to control such use. Although the documents were clear enough for a person skilled in the legal field, the paper discussed the finding of an intent to keep a certain technical vocabulary, thus barring a non-specialized user from the clear understanding of the rights transferred to the platform. Also, there was a non-obvious differentiation of the levels of explanation, when trying to summarize a friendly approach to a new user, while the following real explanation of the rights granted to that user were highly technical. This paper tried to bring, finally, some solutions about the way the users should be informed and brought to a clearer understanding of the use of their personal data, by a social media platform.

Keywords: personal data, images rights, social media, ethical marketing.

JEL classification: M31.

Literature review and preliminary considerations

The company Facebook has been rebranded as Meta. The stated purpose of this rebranding is to bring the metaverse to life and help people connect, find communities, and grow businesses (Meta, 2023a). For the purpose of this paper, Facebook and Meta will be used each time within the same signification.

Several studies have reviewed the necessary ethical standards related to marketing in the social media networks. Extensive literature is available in relation to multiple issues raised by scholars in this field (Sharma, G. and Baoku, L., 2012). However, the purpose of this brief article is to focus on a very limited scope of activity of Facebook, namely the explanation given

to its users concerning the use of images, during the very recent rebranding from Facebook to Meta.

When opening an account on Meta, the new user must agree to a number of documents. One of such documents is critical for this paper, and is called Data Policy, hereinafter called Data (Meta, 2023b). Another one, discussed in this paper, is called Terms of Service, hereinafter called Terms (Meta, 2023c). Once agreed to the documents requested by Meta, the user can upload information, including text, media files, images. The focus of this paper is on images, therefore there will be no, or insignificant discussion of other types of information.

Images can be considered personal data, as long as they include a clear representation of a face of a person (*Law on the Protection of Individuals 2018*). For instance, the *Law on the Protection of Individuals 2018* considers facial images as biometric data, including them therefore in a specific category of personal data. Therefore, one can assume that, because the name of a platform is called “Facebook”, an important part of the content vehiculated on such a platform will include a significant number of images containing persons’ faces.

A relevant publication addressing links between business and legal and ethical aspects while collecting consumers’ data can be found in Weber, R. H. and Thouvenin, F. 2017. Another author lists almost exhaustively the relevant literature and case-law in the intellectual property field, including here the personal image of a private person (Romitan, 2018). The use of the representation of a person (including a picture used on Facebook) is regulated, in its main aspects, by the *Law on Copyright 1996*.

Following on this and other similar publications, the purpose of this paper will be to better understand the way Meta explains the use of the images, especially the images representing the user and therefore being considered personal data. The focus here will be on possible ethical issues, related also to the business activity of Facebook.

The revenues of Meta based on users’ images

Meta is not explaining the fact that images, once posted by a user, will be used to generate revenues from the advertisers. The link between the images and the ads is not detailed. However, a careful reading allows one to understand that any personal data, including therefore images, is used to determine which ads will be shown to that user. Meta terms state: “By using our Products, you agree that we can show you ads that we think will be relevant to you and your interests. We use your personal data to help determine which ads to show you.” (Meta, 2023c)

The Terms start with a generous statement, saying: “We don't charge you to use Facebook or the other products and services covered by these Terms. Instead, businesses and organizations pay us to show you ads for their products and services”. (Meta, 2023c). Once this statement is presented, Facebook goes further and requests the user to agree to several things, and this agreement becomes effective at any use of a product or service covered by the Terms. The user has to accept the fact that he will be shown advertising. The statement used by Meta 2023c reads the mild words: “we can show you”, suggesting the fact that, maybe, the user will not be shown adds at all. However, there is a matter of evidence that adds are omnipresent on Facebook products. Facebook is not clear on the algorithm used, nor is it explicit on the possibility to refuse adds, even ones of interest. On the contrary, Facebook reserves its right to determine unilaterally the degree of relevancy, by saying: “We can show you ads that we think will be relevant to you and your interests” (Meta, 2023c). It is at least questionable what would this syntagm “we think will be relevant” mean. From an ethical point of view, it might be at least a need for a choice, or validation, of the centers of interest on behalf of the user.

Moreover, and this is of interest for the purpose of this paper, personal data comes into account in order for Facebook to determine the relevancy of the ads, when Meta says: “We use your personal data to help determine which ads to show you.” (Meta, 2023c). It is without question that images posted by the user, for example the ones containing the representation of his figure, are considered personal data. Therefore, these pictures can be used, according to the Terms, for any purpose decided upon unilaterally by Facebook, as long as Facebook “thinks” such pictures or their use is needed to determine the relevancy of an add, or of an interest of a user.

It is unclear whether images are considered information that directly identifies a user. This is particularly important, because Facebook claims to refrain from sharing information which directly identifies a user, unless a specific permission is given, by declaring: “We don't share information that directly identifies you (such as your name, email address or other contact information) with advertisers unless you give us specific permission.” (Meta, 2023c). However, from an ethical point of view, the options to express one's permission should be identifiable at this very moment, when it is mentioned. However, the user has no clue about the place and extent where such a permission is given, and thus he can only rely on the statement made by Facebook.

Another ethical constraint would imply a clearer separation in the following explanation, stating: “We don't sell you personal data, and don't share information (...) unless you give us specific permission” (Meta, 2023c). Is it that Facebook requests a specific permission to sell personal data, and to share information that directly identifies a user, in which case again, an ethical behavior would be to indicate where and how such permission is requested, or is it that Facebook never sells personal data, and just shares upon approval from user? As long as this is not clear, an average user needs to do an effort in order to locate the approval, the context and particulars of such approval, in order to understand clearly how its personal data is sold or shared.

A last point here, it is not clear whether a sale is understood as a price for a direct transmission of certain information, or something more subtle, which seems to be the case here: Facebook receives money from the advertisers (sometimes called businesses or organizations), and it declares: “businesses and organizations pay us to show you ads for their products and services” (Meta, 2023c) in order to access the visual field of a certain user and, in fact, in order for an add to be displayed to a specific user having a specific personal data, for instance a certain profile picture. As long as someone is paid to give access to a specific person, by means of images representing that person, we can talk about a sale of personal data which directly identifies the user. This situation goes against the statement “we don't sell your personal data” (Meta, 2023c), and an ethical approach would require more transparency at this level.

Terminology and users' knowledge – a matter of ethical concern

The Terms start with a statement which hardly allows one to think he can lose something, when, in the section 3.2. Permissions you give us, they state: “You own the intellectual property rights (things such as copyright or trademarks) in any such content that you create and share on Facebook and other Meta Company Products you use. Nothing in these Terms takes away the rights you have to your own content. You are free to share your content with anyone else, wherever you want.” (Meta, 2023c).

This statement is problematic both from a legal point of view, and an ethical marketing point of view. First, it is not always the case that the intellectual property rights over a creation belongs to the creator. This can happen, for instance, if the creator has created under an agreement whereby he assigns such creation to another person. Or, if the creator has worked under a work for hire agreement. Or, if the creator worked in a team, where several co-creators

own the rights. Therefore, this statement can be considered incomplete and, partially, misleading.

From an ethical marketing point of view, the statement presents an untrue claim, when stating: “Nothing in these Terms takes away the rights you have to your own content.” (Meta, 2023c). However, a couple of lines below, in the section 3.3 of the Terms, called Permissions you give us, Meta excludes from its responsibility and from other users’ duties, the need to delete images which have been expressly deleted by a certain owner, declaring: “Your content has been used by others in accordance with this licence and they have not deleted it (in which case, this licence will continue to apply until that content is deleted).” (Meta, 2023c). In other words, although the holder of the copyright owns the intellectual property rights, and is free to share his content with anyone else, wherever he want, he is not allowed anymore to delete images which have been reshared by others. In this case, the user who reshared these images can continue to use them, as a lawful licensee.

An ethical approach would require showing more transparency for these two situations towards the users. First, Meta should explain that, under certain conditions, the images posted by their lawful owner can no longer be deleted. For example, if a user has a public account, and publishes there his picture, and a friend takes that picture and shares it further to other users, the initial user is no longer allowed to stop that picture being shared. This happens because the initial user agreed to licence his friend to sub-licence other users. Second, Meta should explain that a user is allowed to share its own copyrighted material, but a clearance is highly recommended, as most of the times, images hold rights of other persons than the initial user.

It is difficult for a person untrained in the legal jargon to understand legal wording like the one in the section 3.3. of the Terms, Permissions you give us, which states: “However, to provide our services, we need you to give us some legal permissions (known as a ‘licence’) to use this content.” (Meta, 2023c). First, the formulation is unclear: “*we need you to give us*”. This should be formulated in a simpler way: “*you must agree to*”. A too fast reading would have as result the skipping of the true meaning, which is a very extensive agreement. This is why it is questionable, and at least needs review from an ethical perspective, the fact that a company mentions: “we need you to give us some”, whereas the true meaning comes just one paragraph below and represents not “some permissions”, but a complete and unlimited royalty-free licence which states: “Specifically, when you share, post or upload content that is covered by intellectual property rights on or in connection with our Products, you grant us a non-exclusive, transferable, sub-licensable, royalty-free and worldwide licence to host, use, distribute, modify, run, copy, publicly perform or display, translate and create derivative works of your content (consistent with your privacy and application settings). This means, for example, that if you share a photo on Facebook, you give us permission to store, copy and share it with others (again, consistent with your settings) such as service providers that support our service or other Meta Products you use. This licence will end when your content is deleted from our systems.” (Meta, 2023c)

There is no clear explanation of the connection between the full free licence and the need to provide and improve the Products. The Terms mention: “This is solely for the purposes of providing and improving our Products and services as described in Section 1 above.” (Meta, 2023c). A clear and complete explanation would link such a royalty-free licence to the fact that Meta is using the content of the user to display to such user an adapted advertising, which, in turn generates revenues for Meta.

There is another important thing to clarify and explain, otherwise the terms do not address enough ethical concerns. The licence is not explained as being granted for an unlimited period of time, unless terminated by the user through the deletion of the content. Each new upload of content by the user, on a public account, generates a new worldwide unlimited licence, and

each such content needs to be deleted, in order to terminate the unlimited licence over that specific content. The wording of the Terms is insufficiently clear in this respect, because it treats the content as a whole, although such content is uploaded day after day, moment after moment, during weeks, months, years. The text states: “This licence will end when your content is deleted from our systems. You can delete content individually or all at once by deleting your account.” (Meta, 2023c).

Loss of control and loss of rights over the images

It is not enough explained another essential consequence that follows once content is willingly uploaded by the user. When a user uploads an image on his public account, the above mentioned licence enters into force and, at that moment, the respective image can be used no longer exclusively by the user, but by Meta, or by any other user that is part of the user’s friends group. These are, in turn, allowed to use the respective image and to keep it as long as they want. They are even allowed to reshare that image to their respective group of friends, thus making the image available and reusable, potentially, without any further approval by the initial user.

If one carefully reads the Terms, he will remark the fact that such loss of control occurs in two steps. As a first step, the user uploads an image on his account, which is accessible whether to the large public, or to a selected group of friends. Based on this first step, Meta is given a licence to use, reshare etc. this image. At this moment, the entire group of friends, or the public at large, receive in their own name, from Meta, a sub-licence which in lay terms means the right of several persons to use, reshare etc. the image of the initial user, all this based on the first licence given to Meta and the subsequent sub-licence given by Meta to these several persons.

In a second step, the initial user terminates the licence to Meta, by deleting the image from this account. Although the initial licence between the initial owner and Meta is immediately terminated, the sub-licence between Meta and the group of friends remains in force, and such group is allowed to further use, reshare etc. such image.

The specific text which allows this two-steps technique for loss of control is based on the two following texts, both found in section 3.3. Permissions you give us, of the Terms. The first one states: “Specifically, when you share, post or upload content that is covered by intellectual property rights on or in connection with our Products, **you grant us** a non-exclusive, transferable, sub-licensable, royalty-free and worldwide licence to host, use, distribute, modify, run, copy, publicly perform or display, translate and create derivative works of your content (consistent with your privacy and application settings). This means, for example, that if you share a photo on Facebook, you give us permission to store, copy and share it with others (again, consistent with your settings) such as service providers that support our service or other Meta Products you use. This licence will end when your content is deleted from our systems” (Meta, 2023c).

The second text, on the contrary, indicates that a licence continues in fact to apply, at the will and discretion of other users. Such text mentions: “When you delete content, it’s no longer visible to other users; however, it may continue to exist elsewhere on our systems where: (...) your content has been used by others in accordance with this licence and they have not deleted it (in which case, this **licence will continue to apply** until that content is deleted);” (Meta, 2023c).

In fact, there is a contradiction in the two explanations, since it is not clear which content has to be deleted, and by whom, in order for a content to stop existing. For instance, when one reads: “This licence will end when your content is deleted from our systems.” (Meta, 2023c), one has to understand “this licence will end when **you** delete the content and such content is

deleted by **all your friends** and **their successive friends up to the last one**, and **all our partners** to whom we have shared it with your approval.” And in fact, there should be made clear from the beginning that an uploaded image has the risk to become publicly available and usable without any further control by the initial owner, for decades after the initial upload.

A last point is, again, technical in terms of legal language, which language is insufficiently described for the easy understanding by a user. The word is hidden in the long list of rights granted to Meta, and is represented by the technical syntagm “create derivative work”. Such a right, once granted, allows Meta to modify the initial image in such a way, that the modified image represents a new work. Such a new work is in its entirety owned by Meta and does no longer represent a licenced work, but an independent work, on which the initial user has absolutely no rights anymore.

Let’s suppose the user sends a picture representing himself in colors, in a certain place in town. Based on the licence, Meta is allowed to cut such picture, turn it black and white, and add some text and some graphical elements to it. Such modifications allow in principle Meta to claim that the resulting image is a derivative work, and although the user can be recognized in the new image, he has no more copyrights on this derivative work. At this moment, Meta can use at his own discretion the new image, regardless if it is for a commercial or non-commercial use. An ethical marketing would require at least to break down into elements the various components of such a licence granted to Meta, and to explain the real extent of such a licence, with appropriate examples.

What if the user would think “money”

The commercial use of the image of the user is extensively detailed by Meta, and this is a good point. The use of personal data like name and profile picture is linked to the various commercial actions taken by the user, in order for Meta to present similar advertisement to friends of the user. However, such use, which in principle is intended to generate more revenues for Meta, based on the social resemblance among the friends of a user, could generate revenues also for the user. The fact that no revenue can be expected by the user is mentioned in a somehow secondary place, and extremely briefly: “without any compensation to you”. The lack of compensation is mentioned at the end of the paragraph, which states:

“Permission to use your name, profile picture and information about your actions with ads and sponsored content: You give us permission to use your name and profile picture and information about actions that you have taken on Facebook next to or in connection with ads, offers and other sponsored content that we display across our Products, without any compensation to you” (Meta, 2023c)

The question is now double: how clear are the Terms, when stating: “*without any compensation*” for an average user, not having enough legal knowledge about the fair pricing of a licence. And the second question is: how clear is it for a user that Meta is generating a revenue which, at some point, could contribute to a different approach by the user? In other words, would the user agree to renounce to any compensation if he knew that, for instance, Meta would generate revenues of 100.000 USD by using his behavior, name and picture? In any case, an ethical approach would require more clarity on the fact that such use is effectively generating revenues for Meta and, under such conditions, the user could reconsider his approval for such specific use.

What is also questionable, is that Meta details the fact that the user gives for free the right to use its own profile picture. However, a couple of lines below, Meta explains a somehow contradictory statement, writing: “We don’t sell your personal data to advertisers, and we don’t share information that directly identifies you (such as your name, email address or other contact information) with advertisers unless you give us specific permission.” (Meta, 2023c). It is quite

obvious that Meta does not mention direct sale of the profile picture to advertisers, however it is not clear for which purpose is intended the free licence of such picture to Meta, when it is stated: “you give us permission to use your name and profile picture... without any compensation to you.” (Meta, 2023c).

Updates – an ethical improvement is needed

It is always difficult to improve and keep running a large platform like Meta. There are many users and, for sure, there are many things to improve. It is therefore complicated to generate one-by-one approval and it is understandable that Meta will try to obtain the most efficient way of approval of its updates. However, there might be more explanations on the fact that simple use of the Meta products could immediately imply agreement with any update of the Terms.

An ethical approach would require the making sure that the user has been offered the opportunity to review, before agreeing to the terms. For instance, blocking an access to the account, unless a check-box is ticked mentioning that the user has read and has agreed to the new version of the terms. Otherwise, the user can continue using the products, without being even aware that a new version of the Terms has just been agreed-upon by his action. This happens, for instance, when the user continues to use the Products. In this respect, the section 4 of the Terms mentions: “Once any updated Terms are in effect, you will be bound by them if you continue to use our Products.” (Meta, 2023c).

Conclusions

The above analysis allowed the identification of several issues, which present several ethical concerns. It is, for instance, about vague terms used several times (“we”, “we need you to give us”). It is not clear under which laws the Terms and the Data are drafted, and therefore which laws can be followed when the use of a picture by others becomes questionable. Finally, the unilateral modification of the terms is balanced in the large favor of Meta. This happens, again, due to a lack of clarity in the explanations related to the user’s agreement to such modifications.

More important is the fact that the user does not understand easily, from the beginning, that his rights over the pictures uploaded on his account can be lost, and could be used by third parties without financial compensation. Although Meta explains that you can at any time withdraw and delete your content, in fact this is not effective, as long as you have agreed to sub-licence.

The financial advantage of Meta is not clearly explained. There is a sort of discrepancy between the right to sub-licence granted to Meta, for commercial use, and the renunciation to any compensation by the user, although the user can decide on the choice of a limited list of friends. It is at least difficult to say you don’t sell data of users, like images, whereas you are paid by vendors to send them analytics of the relation between users’ behavior and their images.

A framework for possible solutions would imply several things. First and most important, a clear explanation at the beginning of any account opening, of the fact that many terms in the agreement are technical and, for a full understanding, should be reviewed by a specialized person, with skills or experience in the intellectual property field.

Another solution is to give more explanations and examples when a legal definition is involved, for example the grant of the non-exclusive licence to Meta, or close to the mechanism of approval of the updated terms by the user.

There is a clear lack of sufficient explanation of the fact that uploaded pictures can no longer be controlled either by the user who posted them, or by Meta who allowed the users’

friends to re-share them. Here there is a real need for pointing-out this aspect, especially because many users share personal or family pictures, and are not aware of this loss of control.

A last possible solution is to warn users in a friendly way, before any upload of images, and also to think about a training quiz, in order to evaluate the understanding of the risks involved by sharing the pictures. This could be a fair and ethical way for Meta to keep its clients aware of the way pictures can be handled on the platform.

Acknowledgement

This work was supported by a grant of the Romanian Ministry of European Funds, POC program, project number P_40_382/119598– ASECOMP.

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