Evolving Legal Frameworks in the Post-Generative AI Era: User Data, AI Training Permissions, and Platform Policies at Google, Meta, and X

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Abstract

The contemporary technology landscape is increasingly defined by entities ('dual-role companies') that occupy a unique position. They are: 1) the owners of massive social media platforms and online ecosystems while, 2) simultaneously the developers of many state-of-the-art artificial intelligence (AI) systems or 'frontier models'. This report examines how the legal frameworks and agreements governing user data organized by these dual-role companies have evolved over time, particularly since the widespread proliferation of generative artificial intelligence (generative AI) technology. Through a comparative analysis of the Terms of Service (ToS) and Privacy Policies of three such companies: Google (Gemini/YouTube), Meta (Llama/Facebook), and X (Grok/X), the study identifies a clear trend towards fortifying legal permissions for AI data use, albeit through distinct strategies. The analysis reveals a strategic re-interpretation of historically broad clauses, like "improving services", to encompass the novel and data-intensive requirements of training modern AI models, raising critical questions about the nature and limits of informed consent and data rights in the post-generative AI era.

1 Introduction: The Dual Role of Tech Giants in the Generative AI Era

Historically, broad licenses granted by users allowed social media sites and digital platforms to operate and improve services. But with the advent of data-intensive generative AI, these dual-role companies have increasingly relied on expansive interpretations of existing clauses (e.g. "improving services", "developing new technologies"), as well as more explicit language regarding AI and machine learning (ML) model training to reduce legal exposure.

This evolution is occurring amidst significant legal and regulatory challenges. Companies face copyright infringement lawsuits over the use of publicly accessible internet content as training data, [1] [2] as well as scrutiny from data regulation authorities regarding compliance with privacy laws like the EU's *General Data Protection Regulation* (GDPR).[3] These external pressures are forcing greater transparency and driving changes in how platforms articulate their data usage rights, highlighting a dynamic tension between the drive for AI development and innovation against the protection of user data and intellectual property rights.

The emergence of powerful generative AI models, which require enormous and diverse datasets for training, has brought this dynamic into sharp focus. These companies possess unparalleled access

[1] Blake Brittain, "Google Defeats Class Action over AI Training Data for Now," Reuters, June 6, 2024.

[2] "Meta Faces Legal Challenge by French Publishers Over AI Training," BNN Bloomberg, March 12, 2025.

[3] Scripps News Group, "Meta Faces New Lawsuit for Making EU Users Repeatedly Opt Out of AI Data Training," KSBY, May 14, 2025.

to precisely the kind of data—text, images, videos, interaction patterns—needed to build and refine their own in-house models like Gemini, Llama, and Grok. This raises a critical question: how have these technology giants navigated and potentially modified their contractual agreements with users—specifically their Terms of Service and Privacy Policies—to establish a legal basis for utilizing user-generated and publicly available data for the purpose of training their proprietary AI models?

This report examines whether these companies have altered user agreements to subtly or explicitly permit such data use, or if pre-existing, broadly worded clauses have since been reinterpreted or strengthened to improve their legal position regarding using their users' data.

In particular, it looks at the evolution in legal language to provide greater clarity for companies seeking to mitigate potential liability. This may also force a re-examination of related issues like: 1) the interpretation of user consent, 2) whether the legal definitions of terms like "service improvement" or "product development" is strategically expanding to include foundational AI training, and whether 3) older agreements signed by earlier users implicitly cover the use of their data as raw material for building transformative AI technologies.

2 Evolution of User Data Policies: A Company-by-Company Analysis

This section focuses on the evolution of data-usage policies by three of the largest 'dual-role companies' in the United States (Google, Meta, and X) that are leading developers of frontier AI models, as well as owners of some of the largest social media platforms and digital ecosystems today. While there are presently other companies developing frontier models, particularly large language models (LLMs), that have a significant market share—like OpenAI and Anthropic—because they are not direct owners of any social media sites or online platforms, they have been excluded from this analysis.

Overall, this report finds that while all three of the companies studied leverage their access to vast datasets to improve their models, their approaches to public-facing policy, legal language, transparency, and user control show notable variations.

2.1 Google (Gemini/Youtube)

Google's approach appears layered, utilizing broad permissions in its core Terms of Service while offering more specific statements, particularly regarding publicly available data, in its Privacy Policy and service-specific controls for platforms like YouTube.

2.1.1 Current Policies for AI Data Use

Google Terms of Service As of May 22, 2024, the core Google ToS state that users retain intellectual property rights to their content but grant Google a worldwide, non-exclusive, royalty-free license.[4] The explicit purpose of this license includes "operating and improving the services", "developing new features", and significantly, "**developing new technologies and services** for Google consistent with these terms". Their ToS further mention the use of automated systems to analyze content for purposes including "recognizing patterns in data". These clauses provide a broad legal basis for using user-generated content for AI development, framing it as part of service improvement and technological advancement.

Google Privacy Policy The Privacy Policy, last updated September 16, 2024, reinforces the use of data for developing new services but also contains a more direct reference to AI training, stating: "Google may collect information that's publicly available online or from other public sources to help **train Google's AI models** and build products and features like Google Translate, Gemini Apps, and Cloud AI capabilities" (emphasis added).[5] This explicitly links data collection (specifically public data) to the training of models like Gemini.

[4]Google. *Terms of Service*. Effective May 22, 2024. `https://www.gstatic.com/policies/terms/pdf/20240522/ks8shls0/google_terms_of_service_en.pdf`

[5]Google. *Privacy Policy*. Effective September 16, 2024. `https://www.gstatic.com/policies/privacy/pdf/20240916/pe84lsmf/google_privacy_policy_en.pdf`.

YouTube Terms of Service As a Google service, users on YouTube are arguably covered to an extent under the umbrella of the main Google ToS. YouTube's own ToS grants YouTube a broad "worldwide, non-exclusive, royalty-free, sublicensable and transferable license to use [a user's] Content (including to reproduce, distribute, prepare derivative works, display and perform it) in connection with the Service and YouTube's (and its successors' and Affiliates') business".[6] While the YouTube ToS do not explicitly mention training data for foundation models, the overarching Google ToS clause regarding "developing new technologies" would still seem to apply.

YouTube Specific AI Training Control That said, YouTube has introduced a specific policy titled "Your content & third-party training".[7] It allows creators to opt-in to permit third-party companies (selected from a list or all) to use their public videos for AI model training. By default, this setting is off. The policy also emphasizes that the main YouTube ToS prohibit unauthorized scraping or downloading of content, a measure possibly targeted at other AI developers.

2.1.2 Identifiable Changes and Historical Context

Google's policy language appears to have evolved from general service improvement clauses to encompass broader technological development. Early privacy policies (e.g. the 2004 Privacy Policy) mentioned using information to "operate, develop and improve our services".[8] While their 2005-2007 ToS focused more on user conduct, it contained some information about users' data rights, explicitly stating that users retained all intellectual property rights over content they submit to Google:

> "9.4 Other than the limited license set forth in Section 11, Google acknowledges and agrees that it obtains no right, title or interest from you (or your licensors) under these Terms in or to any Content that you submit, post, transmit or display on, or through, the Services, including any intellectual property rights which subsist in that Content (whether those rights happen to be registered or not, and wherever in the world those rights may exist)."[9]

Interestingly, while this language does not appear to have been directly weakened in Google's current ToS—which still states that "your content remains yours, which means that you retain any intellectual property rights that you have in your content"—it has been significantly qualified by a small addition buried at the bottom of the section which gives permission to use content for "developing new technologies and services for Google consistent with these terms".[10] This represents a significant expansion over the earlier, more general language of the document as this phrasing is particularly well-suited to legally cover foundational and generative AI development.

The explicit mention of training AI models using "publicly available online or from other public sources" in the current Privacy Policy is also a notable clarification that likely emerged directly in response to the increased prominence and data needs of generative AI.[11]

However, the historical grant of using private users' data for service improvement evidently has precedent. As early as 2018, an archived copy of the Privacy Policy mentioned using voice/audio data to improve audio features, as well as data from third party sites and apps to "improve Google's services".[12] In some sense then, the permission structure appears to have existed for a while, and the current policies merely extend this more directly to modern, generative AI models.

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[6] Youtube. *Terms of Service*. Effective January 5, 2022. `https://www.youtube.com/static?template=terms`.

[7] Youtube. *Your content & third-party training*. Undated. Accessed May 27, 2025. `https://support.google.com/youtube/answer/15509945?hl=en`.

[8] Google. *Privacy Policy*. Archived version dated July 1, 2004. `https://www.google.com/intl/en/policies/privacy/archive/20040701/`.

[9] Google. Terms of Service. Archived version in effect from November 5, 2005, to April 16, 2007. `https://policies.google.com/terms/archive/20051105-20070416?hl=en`.

[10] Google, *Terms of Service*, Effective May 22, 2024, at 6, 9.

[11] Google. *Privacy Policy*. Effective September 16, 2024, at 29

[12] Google. *Privacy Policy*. Effective May 25, 2018. `https://archive.org/stream/takeout-20180930T174816Z-001/google_privacy_policy_en_djvu.txt`.

2.1.3 Analysis of License and AI Training Implications

At a glance, Google's current legal framework provides substantial latitude for using user data in AI development.

- The primary Google ToS license is sufficiently broad to cover the use of user-generated content from across its services (including YouTube) for internal AI training under the "developing new technologies and services" clause.
- The Privacy Policy's focus on "publicly available data" for AI training may serve as a public communication strategy, emphasizing less sensitive data sources, while the ToS retains Google's broader rights to train over user-generated content.
- The YouTube opt-in system for third-party AI training is a distinct mechanism. It grants creators control over external use but does not appear to limit Google's own rights under its main ToS to use YouTube data for developing its internal AI systems like Gemini.

2.1.4 Evaluation of Google's Approach

Google employs a strategy that combines broad, potentially ambiguous contractual rights with more specific, but sometimes narrower, public disclosures. The core Google ToS provides a powerful legal basis for using user-generated content under the umbrella of "developing new technologies." This phrase, while an evolution from earlier terms like "improve services", conveniently encompasses modern AI development. Simultaneously, the current Privacy Policy's explicit mention of using publicly available data for AI training might be intended to reassure users by highlighting less controversial data sources. This dual approach allows Google to maintain extensive data usage rights contractually while managing public perception through more targeted disclosures.

YouTube presents a particularly interesting case. As a vast repository of multimodal content, it is a prime source of data for AI training. The introduction of an opt-in mechanism for third-party AI training gives creators a degree of control and potentially opens avenues for future compensation, addressing creator concerns about external exploitation.

However, this specific control does not explicitly restrict Google's first-party use of that same YouTube data for its own AI initiatives (like Gemini), which remains governed by the broader Google ToS. This 'rules for thee, but not for me' approach suggests that dual-role companies have already begun leveraging their unique role as owners of digital platforms to give themselves an advantage over other competitors in the space. It also suggests a strategy to manage external relationships, while preserving internal data access for core AI development, leveraging the historical precedent of interpreting broad service improvement clauses expansively.

2.2 Meta (Llama/Facebook/Instagram)

Meta's policies reflect a history of broad data licenses, now increasingly overlaid with specific communications and controls regarding AI training, particularly influenced by regulatory environments like the EU.

2.2.1 Current Policies for AI Data Use

Meta Terms of Service Meta's main Terms of Service mention that they "use and develop advanced technologies to provide safe and functional services for everyone [...] such as artificial intelligence" and "machine learning systems".[13]

Supplemental Meta Platforms Technologies Terms of Service The Supplemental Meta Platforms Technologies ToS[14] (applicable for products like the Quest virtual reality headset) establish that users grant Meta a license to use the content they create and share. For MPT Products, this license permits

[13] Meta. *Terms of Service*. Effective January 1, 2025. `https://mbasic.facebook.com/legal/terms/plain_text_terms/`.

[14] Meta. *Supplemental Meta Platforms Technologies Terms of Service*. Last updated 29 April, 2025. `https://www.meta.com/ca/legal/supplemental-terms-of-service/`.

Meta to "store, copy, and share" content for "providing and improving Meta Company Products and services".[15]

Instagram Terms of Use Instagram's Terms of Use ('Terms') grants Meta a "non-exclusive, royalty-free, transferable, sub-licensable, worldwide license to host, use, distribute, modify, run, copy, publicly perform or display"[16] user content posted on the service. The stated purpose is tied to generally providing the Instagram service itself. Under the bullet for "Developing and using technologies that help us consistently serve our growing community", the Terms do specifically mention "artificial intelligence and machine learning". However, the reference is arguably ambiguous, framed in a sentence about technologies which "give [Meta] the power to apply complex processes across [their] Service."[17]

Meta Privacy Policy & Public Statements While the formal Privacy Policy describes general data use for product improvement and research, Meta's recent public communications and actions, especially in the EU, are more revealing about AI training.[18] Meta has now explicitly stated it uses "public posts and comments from Instagram and Facebook", information from interactions with Meta AI, and "publicly available and licensed information from across the internet" to train and improve its AI models.[19] Crucially, Meta asserts it "did not train their Llama 3.2 models using posts or comments with an audience other than public" and provides opt-out mechanisms for EU users.

Meta AIs Terms of Service The Meta AIs Terms of Service describes, among other things, (i) acceptable uses for Meta's AI products, (ii) users' rights to content, (iii) permission to use personal information that users share in their prompts, and (iv) Meta's rights to use "Content and related information [...] To provide, maintain and improve Meta services and features" and "To conduct and support research".[20]

Llama Community License The license for Llama 3 permits developers to use the model to train and distribute derivative AI models, including competing LLMs. However, it does not mention any downstream rights or obligations developers might have to the original users of Meta's services whose data was used to pretrain the foundation models. Rather, the license seems more narrowly focused on obligation incurred to Meta, like the imposition of specific branding requirements such as including "Llama 3" at the beginning of any derivative model's name and prominently crediting Meta with phrases like "Built with Meta Llama 3."[21]

2.2.2 Identifiable Changes and Historical Context

Meta historically gave itself broad permissions to use its users' data, even before the generative AI boom. Early Facebook ToS already granted a very broad license to use their user's intellectual property (IP) and content.[22] Analysis from the time of Instagram's acquisition (late 2012) suggested its ToS were implicitly designed to give Facebook/Meta extensive rights over user photos, particularly

[15] *Ibid.*, at s3.1.

[16] Instagram, *Terms of Use*, Undated. Accessed May 27, 2025. At s4.3.`https://help.instagram.com/termsofuse`.

[17] *Ibid.* For an older version on a static PDF (and not a web page) see: Meta. *Terms of Service Report*. Effective October 1, 2024, at 13. `https://oag.ca.gov/sites/default/files/Meta%20California%20AB%20587%20Terms%20of%20Service%20Report%20-%20Q1_Q2%202024.pdf/Meta%20California%20AB%20587%20Terms%20of%20Service%20Report%20-%20Q1_Q2%202024.pdf`

[18] Ravie Lakshmanan, "Meta Resumes E.U. AI Training Using Public User Data After Regulator Approval," The Hacker News, April 15, 2025.

[19] Meta. Connect 2024: The responsible approach we're taking to generative AI. September 25, 2024. `https://ai.meta.com/blog/responsible-ai-connect-2024/`.

[20] Meta. *Meta AIs Terms of Service*. Undated. `https://www.facebook.com/legal/ai-terms`.

[21] Meta. *Meta Llama 3 Community License Agreement*. April 18, 2024. `https://www.llama.com/llama3/license/`.

[22] Facebook. *Facebook Terms of Service (Statement of Rights and Responsibilities)*. Archived version dated November 15, 2013. `https://www.tldrlegal.com/license/facebook-terms-of-service-statement-of-rights-and-responsibilities`.

for advertising.[23] [24] Similarly, the earliest-accessible version of Facebook's Privacy Policy (from 2016) already gave Facebook (now Meta) the permission to use "all of the information [they] have" to "evaluate and improve products and services," and "develop new products or features".[25]

However, it appears that Meta has made changes to its policies more recently to adapt its public posture and specific policies in the post-generative AI era, seemingly in response to regulatory scrutiny from European regulators and privacy advocates,[26] as well as regulatory frameworks like the GDPR. In that same vein, there have now been some explicit discussions of using user data (specifically public posts) for AI training.[27]

Reports suggest Meta may have also rewritten its privacy policy prior to these public announcements to more broadly cover AI data use without explicit consent, drawing criticism from consumer groups.[28] This approach strengthens underlying legal language before public announcements are made and trades opacity for reduced, immediate scrutiny.

Meta's attempt to license books for AI training—which reportedly stalled in early 2023 due to publisher reluctance and issues over negotiations[29]—may have also potentially been a factor that pushed the company towards greater reliance on platform data, publicly available web data, and synthetic data.

2.2.3 Analysis of License and AI Training Implications

- The sole, singular mention of AI and machine learning in Meta's main ToS is explicitly separated from any words like "data" or "training" and is instead framed in pro-social terms of accessibility and safety.

  > "**1.6 Use and develop advanced technologies to provide safe and functional services for everyone**: We use and develop advanced technologies - such as artificial intelligence, machine learning systems, and augmented reality - so that people can use our Products safely regardless of physical ability or geographic location. For example, technology like this helps people who have visual impairments understand what or who is in photos or videos shared on Facebook or Instagram [...]"[30]

- General clauses about "providing and improving Meta Company Products and services" likely form the underlying legal basis Meta relies upon for interpreting its right to use users' data on its platforms for AI development.[31]

- The recent, explicit declaration on using publicly shared data for Llama 3.2 training, and the provision of opt-outs in the EU,[32] likely represent significant concessions and compliance with measures driven by GDPR requirements for lawfulness, fairness, transparency, and user control.

- Ongoing lawsuits alleging the use of copyrighted books from pirated sources[33] underscore the immense data needs for training models like Llama and the legal risks associated with data acquisition, which further influence how Meta frames its use of user data.

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[23] Instagram. *Instagram Terms of Use*. Archived version dated January 19, 2013. `https://www.millparkhtsps.vic.edu.au/wp-content/uploads/2013/09/Instagram-Terms-of-Use.pdf`

[24] "What Instagram Really Changed in Their Terms of Service," *Social Media Today*, December 18, 2012.

[25] Meta. *Privacy Policy*. Archived version dated September 29, 2016. `https://www.facebook.com/privacy/policy/version/20160929/.`

[26] Alexandra Kuimova, "Data Protection Digest 18.04.2025: Meta AI Training Restarts in Europe, Virtual Assistants vs Data Privacy," *TechGDPR*, April 18, 2025.

[27] Meta, *Connect 2024: The responsible approach we're taking to generative AI*, September 25, 2024

[28] National Legal and Policy Center, "Notice of Exempt Solicitation (Form PX14A6G): Meta Platforms, Inc.", filed May 7, 2025, *U.S. Securities and Exchange Commission*.

[29] "Meta Halts Book Licensing for AI Training", *Just Think AI*, March 27, 2025, `https://www.justthink.ai/blog/meta-halts-book-licensing-for-ai-training.`

[30] Meta. *Terms of Service*. Effective January 1, 2025.

[31] Meta, *Supplemental Meta Platforms Technologies Terms of Service*.

[32] Kuimova, "Meta AI Training Restarts in Europe".

[33] Alex Resiner, "The Unbelievable Scale of AI's Pirated-Books Problem," *The Atlantic*, March 20, 2025.

2.2.4 Evaluation of Meta's Approach

Meta's strategy appears significantly shaped by external legal and regulatory forces, particularly in Europe. While its ToS have long granted extensive licenses, the specific application of these to large-scale AI training has prompted significant pushback. Consequently, Meta's recent moves—explicitly stating the use of public Facebook and Instagram data for AI training, providing notifications of such use, and offering opt-out mechanisms in the EU—seem less like proactive transparency and more like necessary steps to comply with the GDPR and appease regulators after initial plans were stalled. Without the stringent requirements of the GDPR, Meta might have well continued to rely on the implicit permissions arguably contained within its broad historical ToS clauses like "improving services.

The emphasis on using 'public' data appears to be a key element of this strategy. It aims to position the practice as less intrusive than using private data. However, the definition of "public" on platforms with complex sharing controls can be ambiguous, and the underlying ToS potentially still grant Meta broad rights over all content shared on its platforms for the purpose of "improving services", which could be interpreted internally to include AI development that benefits the platform ecosystem. This "public data" pivot might primarily address the most pressing regulatory concerns while preserving broader interpretive possibilities under the general ToS.

Furthermore, the backdrop of lawsuits concerning the alleged use of pirated books for training highlights the intense pressure to acquire vast datasets for AI development. The legal and reputational fallout from these copyright cases could make Meta more determined to solidify its rights over the data it can arguably access legally—namely, user data governed by its ToS—and to frame that usage carefully, as seen in its recent EU communications.

Also, in the course of compiling this report, some notable inconsistencies in Meta's transparency practices became apparent. Unlike Google, which maintains accessible archives of its historical Terms of Service and privacy policies, Meta's documentation is more limited, with no available records predating 2016 - even though the company (then Facebook) was founded in 2004. In many cases, it was necessary to rely on third-party sources to access earlier versions of Meta's agreements. This lack of institutional archiving complicates efforts to evaluate the evolution of its data practices and raises broader questions about its commitment to transparency in the governance of user data. Several key public announcements on their first-party web pages—including those most relevant to AI policy developments, such as the "Privacy Progress Update"—also lack basic context like publication dates, rendering it difficult to establish when such changes were made or what regulatory context they were responding to.

2.3 X Corp. (Grok/X)

X Corp., or "X", has adopted arguably the most direct and explicit stance among the three companies regarding the use of their users data for AI training. This is clear from the choice of terms in their latest user agreements.

2.3.1 Current Policies for AI Data Use

X Terms of Service The ToS effective as of October 15, 2024, grant X Corp. an extremely broad "worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit [...] and distribute" user-submitted content "in any and all media or distribution methods [...] for any purpose".[34] Critically, this license explicitly states it includes the right for X to use content for "**training of our machine learning and artificial intelligence models**, whether generative or another type" (emphasis added). This unambiguously covers models like Grok.

X Privacy Policy The Privacy Policy, last updated September 29, 2023, corroborates the ToS, stating, "We may use the information we collect and publicly available information to help **train our machine learning or artificial intelligence models** for the purposes outlined in this policy"

[34] X, *X Terms of Service*, 15 October, 2024, at 4. https://cdn.cms-twdigitalassets.com/content/dam/legal-twitter/site-assets/terms-of-service-2024-11-15/en/x-terms-of-service-2024-11-15.pdf.

(emphasis added).[35] It also permits using collected information for research, which presumably includes improving their in-house AI models.

2.3.2 Identifiable Changes and Historical Context

The explicit focus on AI training appears to be a significant change implemented after the platform's acquisition and rebranding from Twitter to X. Twitter's old ToS ("User Agreement") from 2016 granted the company a broad "worldwide, non exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute" any content a user submits, posts, or displays "on or through [their] Services",[36] similar to other social media sites. The license included "the right for Twitter to [. . .] improve the Services and to make Content submitted to or through the Services available to other companies, organizations or individuals who partner with Twitter".[37] However, it also went further to state that "Such additional uses by Twitter, or other companies, organizations or individuals who partner with Twitter, may be made with no compensation" to the user.

Historically, Twitter's rules focused primarily on platform conduct like spam, harassment, and impersonation, rather than detailed data usage rights for advanced AI development. This is not surprising as Twitter largely pre-dated the start of the generative AI era (as marked by the public release of Chat-GPT in late 2022).[38]

The explicit language of the current ToS for X, ("Your content can be used by X for AI training, without compensation") clearly highlight the company's position that is has the authority to train on data hosted on its servers. This aligns perfectly with X's identity as a dual-role company that both develops in-house AI models, and the host of a major, online social media platform.

2.3.3 Analysis of License and AI Training Implications

X's current legal framework leaves little room for interpretation regarding AI training data. What is perhaps notable is how clearly they spell things out. Unlike the language of the user agreements for the other two companies (Google and Meta), X does not rely on an appeal to improving services or user experience to justify training its models on user data.

- X's ToS explicitly permit the use of user content for training AI models like Grok.
- X's Privacy Policy reinforces this, going so far as to include the use of both collected and publicly available information.
- The license granted is exceptionally broad ("for any purpose") and comes with no user compensation beyond access to the service (although this policy was notably adopted from, and present in, Twitter's original ToS).
- While a Swiss *Federal Data Protection and Information Commissioner* (FDPIC) investigation led to X implementing an opt-out mechanism for users regarding Grok training, the default position under the ToS is permission.[39] It is also unclear whether this opt-out mechanism exists only for Swiss users, all EU users, or all users worldwide as, beyond news articles, there is currently no direct mention of this in either X's ToS or Privacy Policy.

2.3.4 Evaluation of X's Approach

The shift in X's policies towards explicit permission for AI data use seems directly linked to the change in ownership and the strategic priority placed on developing Grok. Unlike Google and Meta, which have evolved their language somewhat more gradually or in response to specific regional

[35] X, *X Privacy Policy*, September 29, 2023, at 3. `https://cdn.cms-twdigitalassets.com/content/dam/legal-twitter/site-assets/privacy-policy-2024-03-13/en/x-privacy-policy-2024-03-13.pdf`.

[36] Twitter. *Twitter Terms of Service*, January 27, 2016, at 4. `https://cdn.cms-twdigitalassets.com/content/dam/legal-twitter/asset-download-files/TheTwitterUserAgreement_1.pdf`.

[37] Twitter. *Twitter Terms of Service*, at 5.

[38] Twitter. *Twitter Terms of Service*, at 23-24.

[39] "Data protection on X: What users need to know about AI training with their data", HÄRTING Rechtsanwälte AG, April 29, 2025, `https://haerting.ch/en/insights/ki-training-x-grok-datenschutz/`.

pressures, X implemented clear, unambiguous terms stating its right to use user content for AI training. This directness minimizes legal ambiguity from the company's perspective, making it difficult for users to claim they were unaware or did not consent to this specific use, given the clickwrap nature[40] of ToS acceptance.

This marked divergence from the general approach of the other two companies surveyed may have several explanations. One might be that the demographics of X's userbase contain a higher proportion of groups who are inclined to care less about such issues, making it unnecessary to dress the practice in subtle language.

Data from the Pew Research Center (2024) that studied social media use in the United States suggests that men make up a higher proportion of the users on X (26% men vs 19% women).[41] A 7% gap is not itself unusual. However, users on X also simultaneously tend to have slightly higher household incomes and be younger (between the ages of 18-29),[42]. Another survey showed that right-leaning users (54%) felt significantly more welcome expressing their views on the site than left-leaning ones (33%).[43] Still, this is highly speculative as there is no immediate theory or evidence for why intellectual property rights or data privacy concerns would be a left-right political issue.

In theory, this legal clarity is open to moral interpretation. The explicit and broad nature of the permission ("for any purpose," "without compensation") could lead to greater backlash and mistrust from users compared to the more nuanced communications sometimes employed by Google and Meta. While legally advantageous for X Corp., this transparency about its intentions might alienate users concerned about the commodification of their public content for training a commercial AI product. However, this could also be argued as a rare instance of transparent disclosure by a platform over training their AI models on users' data.

Furthermore, even explicit ToS clauses do not provide bulletproof immunity from regulatory oversight. X is already facing investigations by data protection authorities in Ireland (and previously in Switzerland) concerning its use of personal data for training Grok.[44] [45] These investigations underscore that contractual permissions granted by users must still comply with statutory data protection laws like the GDPR. Regulators are examining whether X's practices meet requirements for lawfulness, fairness, transparency, purpose limitation, and the effective exercise of user data rights, demonstrating the ongoing tension between platform-defined terms and legally mandated protections.

3 The Content of User Agreements: From Operating Services to AI Training

The legal mechanism enabling platforms like Google, Meta, and X to utilize user data for training AI models hinges significantly on the scope of the license users grant when they agree to the companies' Terms of Services and Privacy Policies. While the analysis shows that these agreements have always been sweeping, these licenses are now being re-interpreted, modified, or explicitly defined to cover the novel and data-intensive requirements of generative AI development.

Historically, the content licenses embedded in platforms' user agreements have been remarkably broad, granting companies extensive rights over user-generated content. These provisions were justified primarily on operational grounds: hosting, displaying, reformatting, and distributing content across global infrastructures.

[40] Davis, "Presumed Assent: The Judicial Acceptance of Clickwrap".

[41] Jeffrey Gottfried, "Americans' Social Media Use", *Pew Research Center*, January 31, 2024, at 8. https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2024/01/PI_2024.01.31_Social-Media-use_report.pdf

[42] Gottfried, "Americans' Social Media Use", at 10.

[43] Colleen McClain, Monica Anderson, and Risa Gelles-Watnick, "How Americans Navigate Politics on TikTok, X, Facebook and Instagram," Pew Research Center, June 12, 2024, at 32. https://www.pewresearch.org/wp-content/uploads/sites/20/2024/06/PI_2024.06.12_Politics-Across-Platforms_REPORT.pdf.

[44] "Irish privacy watchdog investigates Elon Musk's X's use of personal data to train Grok AI chatbot", AP News, April 11, 2025, https://apnews.com/article/ireland-data-privacy-elon-musk-6458d4cc70f6b77af8034e64f45e752f.

[45] "Data protection on X", HÄRTING Rechtsanwälte AG.

For instance, an early version of Facebook's Terms granted a "non-exclusive, transferable, sub-licensable, royalty-free, worldwide license" to use any IP content users posted.[46] Similar language appeared in early versions of Instagram's ToS, which some commentators noted effectively allowed the company to "do whatever it wanted" with user photos.[47] Twitter's earlier agreements likewise provided for the right to "use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute"[48] user content - an expansive formulation aligned with the needs of a global media-sharing platform. Even Google, while historically more restrained in tone, granted itself rights to use user information to "operate, develop and improve our services,"[49] a clause that justified a wide array of internal processing and service enhancements.

With the rise of generative AI, however, the language in these agreements have now either been implicitly or explicitly expanded to include AI model training. Google now frames its data usage under the language of "developing new technologies and services,"[50] and its Privacy Policy further specifies that publicly available data may be used to train AI systems such as Gemini.[51]

Meta, while continuing to lean on longstanding ToS clauses like "providing and improving Meta Company Products and services,"[52] has taken steps to clarify its intentions in response to regulatory scrutiny - particularly in the EU, where it has begun explicitly notifying users that their public posts and comments may be used for AI training.

X Corp. represents the clearest example of an overt transition: whereas its older ToS contained general license provisions, the platform's current agreement now unambiguously states that content may be used for "training of our machine learning and artificial intelligence models."[53] Across all three cases, the evolution of these agreements reflects not just legal adaptation to new technological capabilities, but also a shifting strategy for legitimizing corporate access to massive volumes of user data under the expanding scope of AI development.

3.1 Comparative Analysis of Legal Language

Phrases like "developing new technologies" (Google) or "improving services" (Meta) serve as crucial legal anchors for justifying using user data for AI training. Google's inclusion of "new technologies" is particularly potent, as frontier AI models clearly fit this description. Meta's "improving services" can also be interpreted broadly, as one might argue that better AI models ultimately enhance platform features like content recommendation, moderation, or user assistance tools.

However, a central question arises: did users, when agreeing to older ToS with such general clauses, truly provide informed consent for their data to be used in training large-scale generative AI models? These models represent a use case far beyond the incremental service improvements previously envisioned. The platforms' reliance on these pre-existing, broad terms forms a critical, though potentially contestable, legal foundation.

One presumes they would argue the right was always implicit and clearly inherited from the broad language of earlier agreements. At the same time, critics would likely say that the scale and nature of generative AI training constitute a fundamentally new type of data use requiring more specific consent. This tension highlights how the practical meaning and legal weight of established ToS clauses are being tested and stretched by the rapid advancement of AI technology.

The strategy also appears to be somewhat adaptive. *Dual-role* companies initially leverage the broad ambiguity of their historical ToS agreements. But as AI becomes more central to their operations, or as scrutiny increases, they gradually introduce more specific language, often starting in privacy policies or public statements before potentially codifying it directly in the ToS, as X has done. This allows for continuous AI development under existing legal frameworks while incrementally

[46] Facebook. *Facebook Terms of Service (Statement of Rights and Responsibilities)*.

[47] "What Instagram Really Changed in Their Terms of Service", Social Media Today.

[48] Twitter. *Twitter Terms of Service*.

[49] Google. *Privacy Policy*. Archived version dated July 1, 2004.

[50] Google. *Terms of Service*. Effective May 22, 2024, at 3. `https://www.gstatic.com/policies/terms/pdf/20240522/ks8shls0/google_terms_of_service_en.pdf`.

[51] Google. *Privacy Policy*. Effective September 16, 2024, at 29. `https://www.gstatic.com/policies/privacy/pdf/20240916/pe84lsmf/google_privacy_policy_en.pdf`.

[52] Meta. *Supplemental Meta Platforms Technologies Terms of Service*.

[53] X. *X Terms of Service*, at 4.

normalizing the practice and strengthening defenses against future legal challenges, representing a dynamic legal adaptation rather than a single, abrupt policy shift.

Table 1: Comparison of Current User-Agreement Terms Relevant to AI Development

Company (Platform/Model)	**AI/ML Training Mentioned in ToS?**	**Scope of Licence**	**Stated Data-Use Purposes Relevant to AI**	**User Control for AI Training**
Google (YouTube/Gemini)	Yes. "developing new technologies and services"	Worldwide, non-exclusive, royalty-free	Operating and improving services; developing new features; developing new technologies and services.	General privacy controls; YouTube opt-in for *third-party* AI training; account deletion
Meta (Facebook, Instagram/Llama)	Yes. "use and develop advanced technologies... such as artificial intelligence, machine learning systems"; explicit in public statements	Worldwide, non-exclusive, royalty-free, transferable, sub-licensable	Allowing people to use their products "safely regardless of physical ability or geographic location"; providing safe and functional services.	EU-only opt-out form (public data); account deletion
X (X Platform/Grok)	Yes. "training of our machine learning and artificial intelligence models"	Worldwide, non-exclusive, royalty-free (sublicensable)	"For any purpose" including providing/promoting the service and AI-model training.	Privacy-setting opt-out (jurisdiction unclear); account deletion

4 Strengthening Legal Language: Enhancing Clarity and Mitigating Liability

As generative AI shifts from a niche technology to a core line of business alongside social-media operations, so-called *dual-role* tech companies have markedly strengthened the legal language in their user agreements and privacy policies. Their goals are (i) to clarify the legitimacy of using user data for model training and (ii) to mitigate the liability risks that practice entails. The strengthening of legal language manifests in several ways.

1. **Explicit Additions:** The most direct technique involves inserting specific terminology related to AI into policy documents. X Corp.'s current ToS now explicitly state the license granted by users includes the right to use content for "training of our machine learning and

artificial intelligence models". Similarly, Google's Privacy Policy explicitly mentions using "publicly available" data to "train Google's AI models". These additions remove ambiguity about whether AI development falls under permitted uses.

2. **Broadening of General Purpose/Use Clauses:** Where explicit AI terms are not used in the core license grant (or were not initially), companies rely on broadening the interpretation of existing clauses. Google's shift in its main ToS from primarily "develop and improve our services" to include "developing new technologies and services" is a prime example. This broader language is more readily interpreted to cover foundational AI model training, which constitutes a "new technology", even though its applications may potentially go far beyond the original service a user interacted with.

3. **Reinforcement Across Multiple Documents:** Companies create a layered legal defense by reinforcing their data usage rights across various documents. The core permissions might be in the Terms of Service, elaborated on or clarified in the Privacy Policy, and potentially further supported by specific AI ethics statements or public statements. This creates a web of interconnected policies that collectively support the company's position on AI data use. Although internally consistent, this web of documents forces users to consult numerous sources to understand how their content will be handled.

4.1 Mitigating Liability

Strengthening the legal language in user agreements serves a further, critical risk management function. By explicitly mentioning AI training in binding agreements like the ToS, companies reduce ambiguity and make it significantly harder for users to claim that they did not consent to such specific uses of their data. 'Clickwrap agreements', where users consent by using the service after being presented with the terms, are generally considered legally binding (despite the fact that most users do not ever read them).[54]

At the same time, clearer terms strengthen the basis of consent by allowing companies to argue that they have a valid legal basis for processing data for AI training, particularly under regulations like the GDPR which require transparency and a lawful basis (like legitimate interests).

Lastly, companies include broad disclaimers of warranties and limitations of liability in their ToS, aiming to shield themselves from responsibility for issues arising from the service, which could potentially extend to aspects of AI performance or data handling, although the enforceability of such sweeping disclaimers can be limited (and may differ depending on jurisdiction).

4.2 'Always Been the Case' vs. Newly Explicit

One interesting question is whether companies have always had the right to use data for training AI models under older terms, or if policies were changed to explicitly allow it. The evidence suggests a nuanced reality containing elements of both. Under the argument for the former, companies could plausibly argue that historically broad licenses to use content and clauses permitting data use for "improving services" or "developing new products" have always implicitly covered research and development, including early forms of machine learning (ML) and now advanced, generative AI.

This is partly supported by the fact that early forms of "AI" were already implemented in many of the social media sites and digital ecosystems prior to the generative AI boom. For example, since the move away from chronological feeds/timelines,[55] platforms like Facebook and Instagram have used proprietary content recommendation algorithms powered by ML techniques like matrix factorization to decide what users should see.[56] Similarly, Google has used some version of artificial neural

[54]Nathan J. Davis, "Presumed Assent: The Judicial Acceptance of Clickwrap," *Berkeley Technology Law Journal* 22 (2007): 577–598, at 579.

[55]Arvind Narayanan, *Understanding Social Media Recommendation Algorithms* (2023), at 10.

[56]Rachana Mehta and Keyur Rana, "A Review on Matrix Factorization Techniques in Recommender Systems," in *2017 2nd International Conference on Communication Systems, Computing and IT Applications (CSCITA)*, 269–74 (IEEE, 2017).

networks (ANNs) for machine translation in services like Google Translate since at least 2016,[57] although there seems to be some disagreement among online sources on the exact date this began.[58]

On the other hand, critics might argue that training large-scale generative AI models represents a fundamentally different kind and scale of data use compared to previous services (e.g., spam filtering, basic recommendations). Generative AI involves processing vast amounts of data to create new, powerful systems with potentially unforeseen applications and capabilities, like general intelligence. Users agreeing to general terms years ago could not reasonably have anticipated or consented to this specific, transformative use. Therefore, the introduction of explicit language about AI training (as seen with X, Google's Privacy Policy, and Meta's EU communications) may constitute the addition of a new permission, or at least a necessary clarification to ensure informed consent for a novel practice.

However, whether viewed as clarification or addition, the very act of strengthening the language in user agreements stands as a significant development. It signals a recognition by these companies that the previous level of ambiguity surrounding data use for AI training was becoming legally and reputationally risky. Increased user awareness, mounting regulatory pressure, and the threat of litigation (specifically targeting AI data practices) likely compelled companies to move towards greater explicitness to bolster their legal standing. This shift may also serve an internal governance function, by providing clearer guidelines for development teams and reducing the risk of internal practices exceeding publicly stated permissions.

5 Conclusion: Current Legal Challenges and the Regulatory Landscape

The efforts by Google, Meta, and X to adapt their legal frameworks for AI training are unfolding against a backdrop of significant legal challenges and intensifying regulatory scrutiny. There is evidence that external pressures are shaping policies in at least some way for dual-role companies as they identify the boundaries of permissible data practices in the generative AI era.

The changes are symptomatic of a broader societal reckoning over the immense power wielded by the dominant 'tech companies' today, who are particularly concentrated in the United States. Companies which operate social media sites and public digital spaces have unique access to, and control over, vast datasets of human activity. This inherently positions them with a strong advantage to build cutting-edge, frontier AI models. It also amplifies amplifies concerns about user rights, fair competition, and the ethical development of AI.

The FTC's ongoing antitrust lawsuit against Meta, for instance, seeking divestiture of Instagram and WhatsApp due to alleged anti-competitive acquisitions, is part of this wider landscape.[59] While the case is focused on market structure, it nonetheless underscores the linkage between platform dominance, data control, and the ability to shape the future trajectory of generative AI technology.

These developments provide evidence that we might be at a critical juncture where the rules governing data use and rights are being actively contested and defined for the foreseeable future. The outcomes of legal battles over training data could establish crucial precedents for the entire AI industry. If courts or regulators impose significant restrictions or penalties based on current data-acquisition practices, it could compel a fundamental shift towards more transparent and ethical approaches to sourcing AI training data.

This might involve stricter, statutorily-defined licensing schemes for datasets, or enhanced privacy standards for all data collection (not just medical or personally identifiable information). But it may also mean potentially altering the competitive dynamics of AI development towards greater reliance on synthetic data, favoring the entities which already have a first mover advantage in the best generative models. At the same time, many companies would presumably argue that increased regulation would stifle innovation, ultimately hindering policy goals like increased economic productivity or global technological superiority.

[57] "Google Launches Neural Machine Translation," Intonation, 20 December 2016, https://www.intonation.com/google-launches-neural-machine-translation/.

[58] "The Surprising History of Machine Translation", Acutrans, December 1, 2020. https://acutrans.com/history-of-google-translate/

[59] Matt Growcoot, "Meta to Restart AI Training on Europeans' Public Facebook and Instagram Posts," PetaPixel, 15 April 2025, https://petapixel.com/2025/04/15/meta-to-restart-ai-training-on-europeans-public-facebook-and-instagram-posts/.

In either case, the current legal and regulatory friction could result in a move away from broad, non-specific language in platforms' user agreements towards clearer, explicit mentions of AI and training on user data. Of course, it may not ultimately matter much if no one reads their contracts.[60]

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