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## **Data Privacy Is Not Meta: Why Facebook's Foray Into the Metaverse Could Be Flawed From the Start**

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# Data Privacy is not Meta: Why Facebook's Foray Into the Metaverse Could be flawed From the Start

*By: Markus Wieshofer*



Facebook, now Meta,[1] has recently released its plans to develop and release its so-called metaverse: an immersive digital environment wherein users will be able to interact, play virtual games, buy things in virtual stores, go to virtual concerts, or attend virtual meetings.[2] While Facebook initially planned to release the metaverse through its Oculus VR platform, it claims that it is currently developing advanced body sensors that people will wear to interact in the company's digital world.[3] Facebook has already staffed more than 10,000 employees to work on this project and plans on hiring 10,000 more people in Europe to build its metaverse.[4] While this groundbreaking idea seems exciting and innovative, on its face, two important questions have to be asked: why is Facebook doing this? And what does this mean for our privacy?

There are a few ideas around the question of why. The more conspiracy-laden answer lies in Facebook's recent and ongoing scandals.[5] This is evidenced mainly through the company's sudden change in name to Meta, which some have suggested is a move meant to distract users from Facebook's recent round of scandals, namely the so-called "Facebook

Papers,” thousands of pages of documents that detail how the social media company incited violence during the Capitol attacks of January 6, 2021, Instagram’s toxic effect on teenage girls, and even how human traffickers use Facebook to exploit people.[6] Scandal is nothing new to the company as it has dealt with everything from data privacy, content censorship (or lack thereof), and unfair competition.[7] However, some have labeled this most recent whistleblower scandal as the most “intense and wide-ranging crisis in the company’s 17-year history.”[8] This is mainly due to the combination of whistleblowers, PR skepticism, and Congressional inquiry that have all fallen on Facebook’s lap in recent weeks. A change in name and the announcement of such a cutting-edge idea could, at least, Facebook hopes, distract the average user from its many ongoing public issues.

Other, less conspiracy-driven answers to the question of why now have to do with the identity crises that Facebook is facing.[9] The core premise of Facebook is aging and is at risk of falling to the wayside in the wake of newer, “cooler” apps such as TikTok and Snapchat, whose younger client bases suggest that Facebook is slowly becoming the social media platform for older consumers.[10] If this trend continues, Facebook could become a quagmire of boomer-dominated activity, something that no social media company wants as its main product. While Facebook has not yet been hit financially from this turn of events, its lagging ad revenue could be indicative of future events.[11] In fact, Facebook’s CEO Mark Zuckerberg recently stated that gaining younger users was of the utmost importance.[12] The implementation of a different reality wherein users can virtually interact with each other may encourage a more youthful audience to come back to the platform.

Another answer to the why question lies in an issue that Facebook has been trying to solve for at least half a decade: how to extricate themselves from the icy grip of the two platforms Facebook is currently forced to interact with: Apple and Google.[13] For example, it is estimated that Apple’s recent “app tracking transparency” feature in iOS 14 could cost Facebook around \$8 billion in ad revenue,[14] which is one of its largest revenue streams.[15] By developing and releasing the metaverse, Facebook may be able to get users off of Apple and Google devices and onto its own, such as the Oculus, effectively cutting out the middle-man. It wouldn’t have to worry about complying with those companies’ regulations around privacy or censorship, and it wouldn’t have to pay a fee to Apple or Google for everything purchased on its app.[16]

While the new metaverse will not solve these problems overnight, it could help Facebook come out from under the weight of its constant scandals and help spread Facebook to new corners of the market untouched by its current slate of products. However, there is an even more pressing issue that Facebook will have to find an answer for, which has hounded the company since its creation: data privacy.

The metaverse is undoubtedly on the cutting edge of technology. While certain augmented reality offerings have been created in the past, e.g., Google Glasses, their very public, and almost comical downfalls have made tech giants hesitant to foray into the space since.[17] However, Facebook’s new metaverse could change that script; that is, if it can get off the ground first. One of the most significant issues facing the development and implementation of the metaverse are questions regarding how Facebook, a company known for its data mining and privacy breaches,[18] can overcome these issues and assure its users that they are not being exploited for Facebook’s financial gain. During the Connect event in which Mark Zuckerberg announced the new platform, Zuckerberg stated that “[i]nteroperability, open standards, privacy, and safety need to be built into the metaverse from day one...everyone who’s building for the metaverse should be focused on building responsibly from the beginning.”[19] This comment can be seen as ironic coming from the CEO of a company that has been a part of things like the Cambridge Analytica scandal of 2018, in which a political consulting firm improperly obtained the personal data of approximately 87 million Facebook users.[20] Facebook settled that case with the FTC (Federal Trade Commission) for \$5 billion and promised to “improve user data privacy.”[21] This promise was not kept, however. In 2020,

just two years later, Facebook paid one of the largest privacy settlements in U.S. history, \$650 million, for violating an Illinois state law regarding the storage of users' biometric data, namely the data that matches a user's identity to their facial scan.[22] Moreover, in April of 2021, data that contained the names, locations, and emails of approximately 500 million users was leaked online.[23]

All these controversies have sparked debate regarding the genuine desire behind the development of the metaverse. Some experts have said that "Facebook's VR push is about data, not gaming." [24] This data is not limited to what regular consumers would think it would be, namely advertising; it can also be used to mine crucial data such as movement data.[25] Movement data comes from how a user moves through a VR world and can be used to identify people through their unique "movement fingerprint." [26] This well-spring of information can be used by Facebook and third parties to target advertisements to users and even identify them in the real world using only the way they move.[27] In fact, a Stanford study shows that VR users can be identified in the real world using only five minutes of motion data.[28] This movement data is especially worrisome from a legal perspective. Federal law does not yet recognize movement data as a form of personally identifying data and thus does not protect it as such.[29]

The newly-founded Meta is apparently already collecting massive amounts of data on its users through its preexisting VR products such as Oculus.[30] And even though Zuckerberg has claimed that Facebook will be especially cognizant of the myriad of privacy issues surrounding his new venture, taking into account the recommendations of various privacy experts, only he will be able to make a decision of whether or not to follow these recommendations.[31] With so much at risk, Facebook is asking its users to "trust it" when it comes to protecting their personal data. Based on its track record in the almost twenty years since its founding, it is hard to see how protecting users' privacy over its own financial gain will be important for Facebook.

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[1] *Introducing Meta: A Social Technology Company*, Facebook, (Oct. 28, 2021), <https://about.fb.com/news/2021/10/facebook-company-is-now-meta/>

[2] *Id.*

[3] John Horgan, *Should Big Tech's Plan for a Metaverse Scare Us?*, *Sci. Am.* (Oct. 27, 2021), <https://www.scientificamerican.com/article/should-big-techs-plan-for-a-metaverse-scare-us/>

[4] *Facebook to Hire 10,000 in EU to Work on Metaverse*, BBC (Oct. 18, 2021), <https://www.bbc.com/news/world-europe-58949867>

[5] Elizabeth Dwoskin & Craig Timberg, *Apologies were Once Staples After Facebook Scandals. Now the Company Offers Defiance*, *Wash. Post* (Oct. 4, 2021, 10:00 AM), <https://www.washingtonpost.com/technology/2021/10/04/zuckerbergs-apologies-have-been-staple-facebook-scandals-now-company-offers-defiance/>

[6] Claire Duffy, *The Facebook Papers may be the Biggest Crisis in the Company's History*, *CNN* (Oct. 25, 2021, 7:57 AM), <https://www.cnn.com/2021/10/25/tech/facebook-papers/index.html>

[7] *Id.*

[8] *Id.*

[9] Alex Heath, *Facebook's Lost Generation*, *The Verge* (Oct. 25, 2021, 7:00 AM), <https://www.theverge.com/22743744/facebook-teen-usage-decline-frances-haugen-leaks>

[10] *Id.* ("employees estimated that teens spend 2-3x more time on TikTok than on Instagram and that Snapchat is the

preferred method of communicating with best friends for young people.”).

[11] *Id.* (“Teenage users of the Facebook app in the US had declined by 13 percent since 2019 and were projected to drop 45 percent over the next two years, driving an overall decline in daily users in the company’s most lucrative ad market.”).

[12] Shira Ovide, *Facebook Wants the Young People Back*, N.Y. Times (Oct. 26, 2021), <https://www.nytimes.com/2021/10/26/technology/facebook-young-people.html>.

[13] *See generally* Alex Kantrowitz, *Apple’s Power Move to Kneecap Facebook Advertising is Working*, CNBC (Sep. 24, 2021, 8:54 AM), <https://www.cnbc.com/2021/09/24/apples-ios-changes-hurt-facebooks-ad-business.html>; Ross Rubin, *Facebook vs. Google: Similar Models, Diverging Perspectives*, ZD Net (Mar. 30, 2021), <https://www.zdnet.com/article/facebook-vs-google-similar-models-diverging-perspectives/>.

[14] John Koetsier, *Apple Privacy Change May Cost Facebook, Google \$25 Billion Over Next 12 Months*, Forbes (Jan. 22, 2021, 1:14 PM), <https://www.forbes.com/sites/johnkoetsier/2021/01/22/apple-privacy-change-may-cost-facebook-google-25-billion-over-next-12-months/?sh=30be0be5695f>.

[15] *Id.* (“Facebook itself estimated personalization [through data mining] accounts for 50% of the value of its advertising.”).

[16] Alex Heath, *Facebook Skirts Apple’s App Store Fees with Custom Subscription Links for Creators*, The Verge (Nov. 3, 2021, 1:47 PM), <https://www.theverge.com/2021/11/3/22761620/facebook-apple-app-store-fees-subscription-links-creators>.

[17] Samantha Subin, *Is 2021 finally the Year for Smart Glasses? Here’s why Some Experts still say No*, CNBC (Jan. 23, 2021, 10:00 AM), <https://www.cnbc.com/2021/01/23/why-experts-dont-expect-smart-glasses-to-surge-in-2021.html>.

[18] Dwoskin & Timberg, *supra* note 5.

[19] *Founder’s Letter, 2021*, Facebook (Oct. 28, 2021), <https://about.fb.com/news/2021/10/founders-letter/>.

[20] Jonathan Vanian, *Facebook Doesn’t Believe Recent Scandals Will Hurt Its Business*, Fortune (Apr. 13, 2018, 4:19 PM), <https://fortune.com/2018/04/13/facebook-cambridge-analytica-data-business/>

[21] *FTC Imposes \$5 Billion Penalty and Sweeping New Privacy Restrictions on Facebook*, Fed. Trade Comm’n (Jul. 24, 2019), <https://www.ftc.gov/news-events/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions>.

[22] Robert Channick, *Nearly 1.6 Million Illinois Facebook Users to get about \$350 Each in Privacy Settlement*, Chi. Trib. (Jan. 14, 2021, 8:04 PM), <https://www.chicagotribune.com/business/ct-biz-facebook-privacy-settlement-illinois-20210115-2gau5ijyjf4xd2wfiiow7yl4m-story.html>; *see also* In re Facebook, Inc. Biometric Information Privacy Litigation, 185 F.Supp.3d 1155 (N.D. Cal. 2016).

[23] Aaron Holmes, *533 Million Facebook Users’ Phone Numbers and Personal Data have been Leaked Online*, Bus. Insider (Apr. 3, 2021, 10:41 AM), <https://www.businessinsider.com/stolen-data-of-533-million-facebook-users-leaked-online-2021-4>.

[24] Marcus Carter, *Facebook and the Metaverse: Should we be Worried About Privacy?*, Univ. of Sydney (Oct. 29, 2021), <https://www.sydney.edu.au/news-opinion/news/2021/10/29/facebook-and-the-metaverse-should-we-be-worried-about-privacy.html>.

[25] *Id.*

[26] *Id.*

[27] Mark Roman Miller, Fernanda Herrera, Hanseul Jun, James A. Landay & Jeremy N. Bailenson, *Personal identifiability of User Tracking Data During Observation of 260-degree VR Video*, 10 Sci. Rep. 17404 (Oct. 15, 2020), <https://www.nature.com/articles/s41598-020-74486-y>.

[28] *Id.*

[29] Makenzie Holland, *Calls for Federal Data Privacy Law Grow Alongside AR, VR Use*, TechTarget (Oct. 22, 2021), (stating that congress members such as Suzan DelBene (D-Wash.), Maria Cantwell (D-Wash.), and Roger Wicker (R-Miss.) have “introduced legislation to set federal data privacy and security standards that protect consumer data online.” The proponents of a federal data privacy law in the realm of VR and AR is important because “[a] patchwork of state laws won’t work in our digital world.”).

[30] *Supplemental Oculus Data Policy*, Oculus, <https://www.oculus.com/legal/privacy-policy/> (last visited Oct. 11, 2020).

[31] Jonathan Vanian, *Mark Zuckerberg's Metaverse may be as Privacy Flawed as Facebook*, Fortune (Oct. 29, 2021, 4:50 PM), <https://fortune.com/2021/10/29/mark-zuckerberg-metaverse-privacy-facebook-meta/>.