

Disqus Responses to Norway DPA inquiry

Please note that the following responses are being provided as a courtesy. Neither Disqus nor its parent Zeta Global have any business operations in Norway, and as such, do not believe that the Datatilsynet has established legal jurisdiction to conduct an investigation of or take adverse action against Disqus. But, because the processing in question was the result of a good-faith error by Disqus which was promptly corrected upon its discovery, in the interests of transparency we have elected to respond to this inquiry. We maintain, however, that Disqus is not subject to the jurisdiction of the Datatilsynet.

1. What types of personal data did Disqus collect about Norwegian residents? When did the collection start, and when did it stop?

Disqus has two models for data collection, one designed to be GDPR compliant, and one for countries where the GDPR does not apply. During Disqus' preparations for GDPR in early 2018, Norway was not included in its GDPR configuration because it is not an EU country and the California-based team that was doing the configuration was unaware that Norway is also covered by the GDPR. So, between the effective date of the GDPR (May 25, 2018) and the date Disqus became aware of and corrected the error (December 12, 2019), data collection in Norway proceeded under the non-GDPR model.

What this meant in practice was:

- (a) Norwegian visitors to pages that are running the Disqus widget were cookie'd by Disqus. For GDPR countries, only registered users who consent are cookie'd. Disqus cookies log visits to certain web pages (e.g., other pages where the Disqus widget is running), for the purpose of creating aggregated interest groups, which is then used for decisioning in online behavioral advertising. This practice was in effect in Norway between the effective date of the GDPR and December 12, 2019, when Norway was added to Disqus' GDPR configuration. The data collected consisted primarily of urls and time and date stamps for when those urls were accessed, but also included data automatically sent by browsers, including IP address.
- (b) Norwegian data subjects who registered as users of Disqus between the effective date of the GDPR and December 12, 2019 (when the error was corrected) were required to check boxes consenting to marketing in order to register for and use the Disqus service. Because consent is the lawful basis on which Disqus bases its processing of data subject to the GDPR, we recognize that this "required consent" mechanism may not meet the GDPR requirement for consent to be freely given, although users came to the service voluntarily and are able to delete their account (and thereby cease data collection associated with their use of the service) at any time. Further, a recent decision in France by the Conseil D'Etat overruled the CNIL, holding that the GDPR does not prohibit "cookie walls" we believe is relevant here. While recognizing that this precedent is not binding on the Datatilsynet, we believe it is likely that other courts in EEA countries may reach similar conclusions, and the case is relevant to whether the Disqus registration process violated the GDPR in this case. A "required consent" to access an online service is similar to a

cookie wall in all material respects. Finally, because all users voluntarily registered as users of the Disqus service, and have expressly indicated assent to data collection by checking boxes, they can thereby be said to have freely given their consent to data processing by Disqus subject to its privacy policy.

Note that Disqus did not intentionally target Norwegian data subjects for data collection and does not advertise in Norway. Disqus did not know it had the data, did not knowingly use it to advertise to Norwegian data subjects, did not otherwise profit from use of the data, did not sell or otherwise transfer the data to third parties (other than making it available to Zeta Global, Disqus' parent company), immediately changed Disqus' configuration for Norway upon being informed of the error, and promptly deleted the data that had been collected via inappropriately placed cookies.

2. How many Norwegian residents did you process personal data about?

We are unable to provide an answer with respect to data collected via cookies that were placed in error because we have deleted the relevant data, and we did not count records prior to deleting. 10,377 currently active Norwegian Disqus users registered to use the service during the relevant period.

3. Did you share the personal data with third parties? If so, with whom?

The data was made available to Zeta Global, the parent company of Disqus, for advertising purposes. For the avoidance of doubt, Disqus did not share the data with any third-party advertising partners of Disqus or of Zeta Global as indicated by the DPA, and further, because Zeta does not operate in Norway or intentionally target Norwegian users for ads, we believe that any use by Zeta of data collected via cookies placed in error by Disqus would have been minimal, if it occurred at all. If there was any use, it would have been in the context of online display advertising (e.g. to a Norwegian visitor to a U.S. website) where data collected by Disqus would help inform which users were shown which online advertisements. Because of the way that Disqus is technically integrated with Zeta, data sharing with Zeta does not involve a copy or transfer of the data, but rather making Disqus data available for access by Zeta on a real-time basis. We cannot confirm that any data was processed for this purpose, however, because the data has been deleted.

4. What lawful basis did you have for collecting this personal data, and for sharing it with third parties?

Disqus' basis for processing generally under the GDPR is consent of the data subject, and the Disqus GDPR configuration includes a process to obtain consent as it is defined by GDPR (a screen shot of the user registration path is provided in the response to question 10). The process for obtaining GDPR consent was not followed in this case, but we believe that there was still a lawful basis for processing in the case of registered users, because the users voluntarily registered themselves to use the service, had adequate notice of Disqus' data processing activities, and at all times had the ability to exercise their privacy rights. We believe under such circumstances Disqus can assert that such users' data was processed on the basis of its legitimate interest in providing its service to data subjects who had

requested it, and whose privacy rights had been provided for. Further, with respect to anonymous site visitors who were cookie'd by Disqus, the identity of these users was never known to Disqus and it was able to recognize such users only by an anonymous cookie ID, not by name, email, or other directly identifying personal data. In addition, such data was not used for commercial purposes, sold to third parties, or used to harm data subjects in any way. We therefore believe it was in Disqus' legitimate interest to process this data because the processing produced effectively no privacy risks to data subjects. It is also arguable that the data processed in that case was not personal data at all, because Disqus had no means of identifying individuals from their cookie IDs. But in an abundance of caution, Disqus deleted all such data in December, 2019.

5. What information did you provide to Norwegian residents about your processing of their personal data?

The Disqus [privacy policy](#) is available at www.disqus.com and has been publicly available for several years prior to the effective date of the GDPR. Note that the current version of the privacy policy is dated June 10, 2020, however, the only material changes to the policy since the effective date of the GDPR relate to requirements under the CCPA (a new law in California), clarification of data sharing relationships used in Disqus' non-GDPR configuration, and the process by which individuals may make requests to exercise their privacy rights. It has not changed in any material respect with regard to GDPR since early 2018.

6. Have you erased the personal data about Norwegians residents?

We have erased data collected by cookies that were placed in error. 10,377 Norwegian users registered during the affected period, and their data has not been deleted because their accounts are currently active. These users are able to delete their accounts at any time or request to have their data deleted by Disqus, and have chosen not to exercise these options.

7. Have you notified the Norwegian users pursuant to Article 34 GDPR that their data was shared with third parties without a lawful basis? If yes, explain how you notified them. If no, explain why not.

No. Because Disqus has erased the data we collected by virtue of cookies placed in error have no way of knowing which data subjects' data was processed, and no means of contacting them. We have not contacted the active users who registered during the affected period because (a) their activity suggests they wish to continue using the service, and (b) they have the ability to delete their accounts at any time, and some users do exercise this right.

8. Please explain why you have not notified the Norwegian Data protection Authority about the unlawful processing pursuant to Article 33 GDPR.

Disqus is a California-based U.S. company with no business operations in Norway or any EU member State. As such it is not subject to the jurisdiction of the Norwegian Data Protection Authority.

9. Have you notified any third parties with whom you may have shared this data pursuant to Article 19 GDPR? If so, please explain how you notified them. If not, please explain why.

Disqus did not share the data with third parties other than its parent, Zeta Global, which has been directly involved in the remediation efforts to correct the error.

10. In the article, Rose states that Norwegian users were soon to be included in Disqus, GDPR compliant layout. Are Norwegian users now included in this layout? If so, please demonstrate the changes you have made to ensure this, including how Norwegian residents may now give and withdraw their consent pursuant to the GDPR.

There are several differences in how Disqus now functions in Norway. First, we no longer cookie every visitor to a page running the Disqus widget, but only Disqus users who consent. Second, users are able to register to use the Disqus service without consenting to advertising. Screen shot of the registration interface below.

In addition, even during the affected period, any individual from any country has been able (and is still able) to request a copy of their data, delete their account, opt out from cookie-based data collection, or request to have data deleted.

Signup

Login

Sign up for Disqus with your social media account or email address



Name

Email

Password



I'm not a robot



reCAPTCHA
Privacy - Terms

- I agree to Disqus' [Terms of Service](#)
- I agree to Disqus' processing of email and IP address, and the use of cookies, to facilitate my authentication and posting of comments, explained further in the [Privacy Policy](#)
- I agree to additional processing of my information, including first and third party cookies, for personalized content and advertising as outlined in our [Data Sharing Policy](#)

Signup

DISQUS

11. Please inform us of any other relevant measures Disqus has taken to remedy the unlawful processing.

We immediately updated our country lists for GDPR-eligible countries to include Norway, deployed the change to stop further tracking, and deleted the data that had been collected in error.