



Consumer Rights in the terms & conditions

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Activity trackers

An assessment of the terms & conditions of 4 connected wristbands

Fitness wristbands: what?

- Track work-outs, number of steps, heart rate, etc.
 - = Lifestyle- and health-information
- Connected to a smart phone and controlled through an app
- Data is collected and used for analytics, development, and commercial purposes (marketing)
- **720 000 wristbands** (including smart watches) sold in Norway during 2015



 **fitbit**
Charge HR



GARMIN
VivoSmart HR



Mio
Fuse

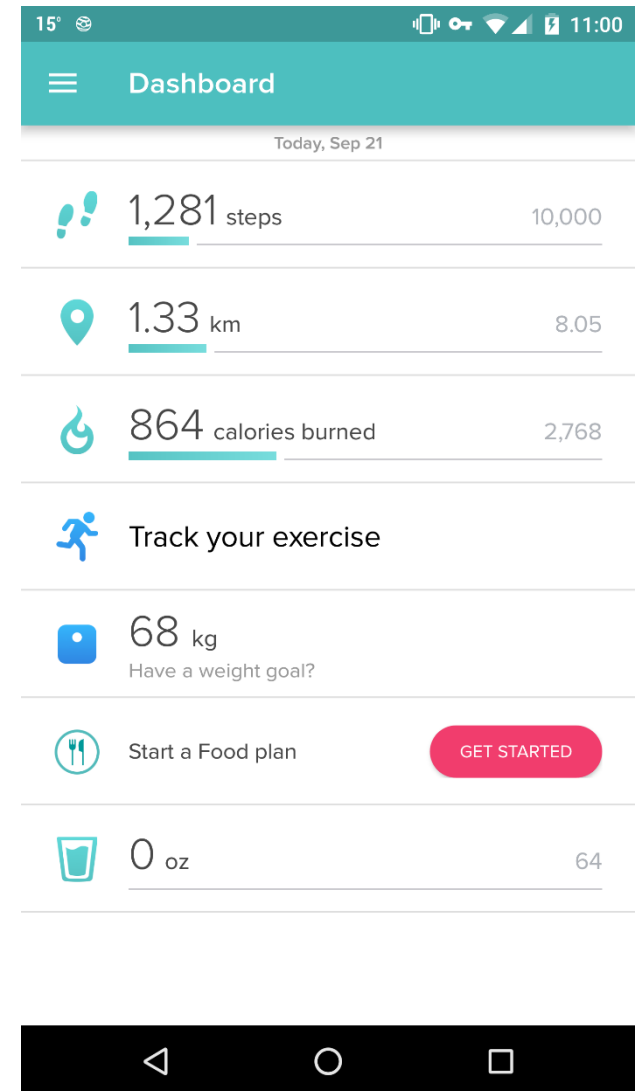


JAWBONE
UP3




Why?










- What happens to user data?
- How is the user informed of their rights?
- How much control does the user have over their data?
- Is sensitive data used for marketing purposes?



North American services targeting European consumers

JAWBONE

Change country 


-  Malaysia
-  México
-  Nederland
-  New Zealand
-  Norway
-  Saudi Arabia
-  Singapore
-  South Africa
-  Sweden

fitbit

-  Danmark (engelsk)
-  Deutschland
-  España
-  Suomi (englanti)
-  France
-  Italia
-  Nederland (Engels)
-  Norge (engelsk)
-  Sverige (engelska)
-  Schweiz
-  Suisse

MIO

SELECT YOUR LANGUAGE PREFERENCE

-  ENGLISH (US)
-  ENGLISH (UK)
-  ENGLISH (AU)
-  FRANCAIS (CA)
-  FRANCAIS (FR)
-  ITALIANO
-  NEDERLANDS
-  DEUTSCH
-  ESPANOL


GARMIN











KJØP ▾ KART SUPPORT ▾

Personvernerklæring

Sist oppdatert: 11. januar 2016

Personvernet ditt er svært viktig for Garmin. Vi har

▼ Your Account  Norge

-  New Zealand
-  Norge
-  Polska
-  Portugal
-  Singapore
-  Trkiye
-  United Kingdom
-  United States
-  Ελλάδα
-  Блгария



Methodology

- Read terms & conditions and privacy policies
- Criteria based on laws, the European Commission's code of conduct for mobile health apps, and our understanding of consumer protection
- Install relevant apps and record required permissions, default settings, required information, etc.
- Visual representation where red is negative, green is positive, and yellow means questionable

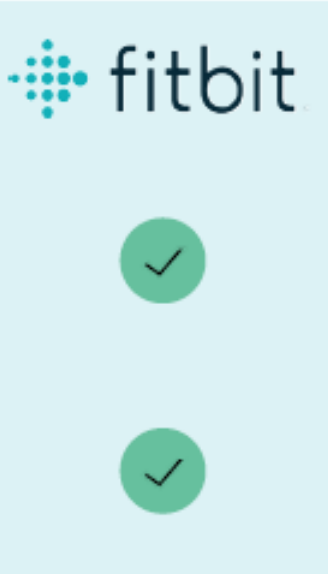
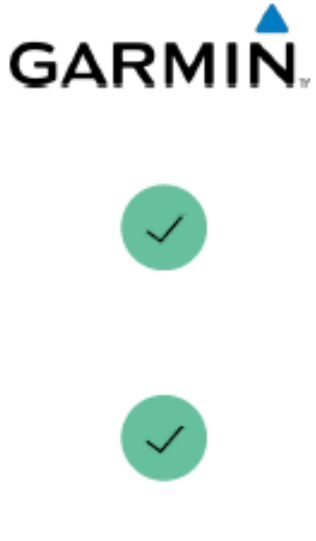
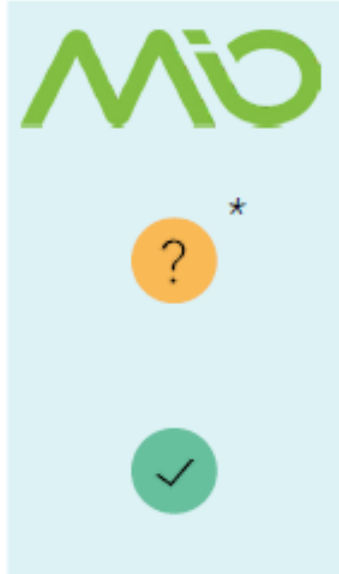
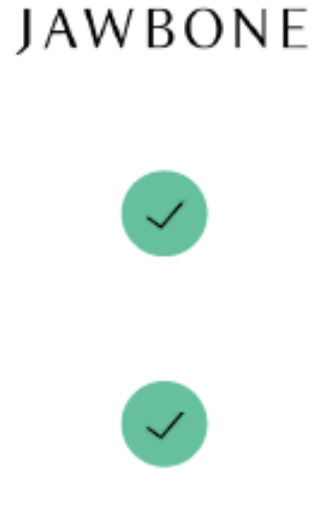










Recent surveys

- 2016 survey from the Chartered Institute of Marketing
 - 9 in 10 people have no idea what companies do with their personal data.
 - 57% do not trust companies to handle this data responsibly.
- 2016 study from European Commission
 - Simpler and clearer terms → more people reading ToS and PP.














Accessibility: Are the terms easily available?

				
The terms are available online				
I get the opportunity to read the terms before accepting them				

* The terms are only available through the app store, not on their website.



Readability: Are the terms written in clear language, and with a user-friendly layout?

	 fitbit	 GARMIN	 Mio	JAWBONE
Word count	7522	6671	4915	6136
Use of word “may” or “can”:				
Terms of service	25	10	49	25
Privacy policy	17	48	for both	10
Total	42	58	49	35
The service uses clear language				
The service have made an effort to make the terms readable (layout, etc.)				



- “We **may combine** the personal information and/or the location information that you provide via your Account with information from other Services or third parties in order to enhance your experience and/or to improve the overall quality of the Services. For certain Services, **we may give you an opportunity** to opt out of the combination of such information.” (emphasis added)
- Mio Privacy Policy



Advance notice: Will the service notify me in *advance* if they change their terms?

I will be given notice if terms are changed



«We may update this Privacy Statement from time to time without prior notice.»

- Mio Privacy Policy



Notice: Will the service notify me by appropriate means?

The service will provide me with appropriate notice if the terms are changed in a way that changes functionality, rights, or user interface.



* State that «we may notify you», but it is unclear whether this actually happens.

«You are bound by any such modification and should therefore visit this page periodically to review these Terms of Use.»

- Garmin Terms of Service



Definition of personal data:

Is data collected about me categorized according to Norwegian and European law?

My personal data is defined according to European privacy regulations



Garmin does not define location data as personal data.



Data minimization: Does the service limit the amount of required personal information to what's necessary to provide the service?

The collection of my personal data is strictly necessary in order to provide the service

A screenshot of a mobile app registration form. The form has a dark background with white text. It includes fields for Height, Weight, Birthday, and Gender, each with a green circular indicator to its right. Below these fields is a section titled "Terms of Use" with two checkboxes: one checked and labeled "I accept the Terms & Conditions.", and one unchecked and labeled "I agree to share my workout data with Mio". At the bottom, there is a "Newsletter" section with an "Email" field. A grey validation error message is overlaid on the bottom of the form, stating "You must complete all your personal information!".

Permissions and privacy by default: Are the required permissions of the app necessary to provide the service, and does it respect privacy by default?

The permissions are properly explained and justified

The settings respect my right to privacy by default

fitbit	GARMIN	MiO	JAWBONE
✓	✓	✓	✗
✗	✓	✓	✗

Jawbone requires access to the microphone and flashlight-functions. This is not explained, although the other permissions are.

Visible when viewed by:	You	Friends	Anyone
Last 30 Days			
Calorie Intake vs Burn	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Steps and Distance	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Floors Climbed	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Weight vs Target Weight	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>



Third parties: am I informed about who the service shares my information with?

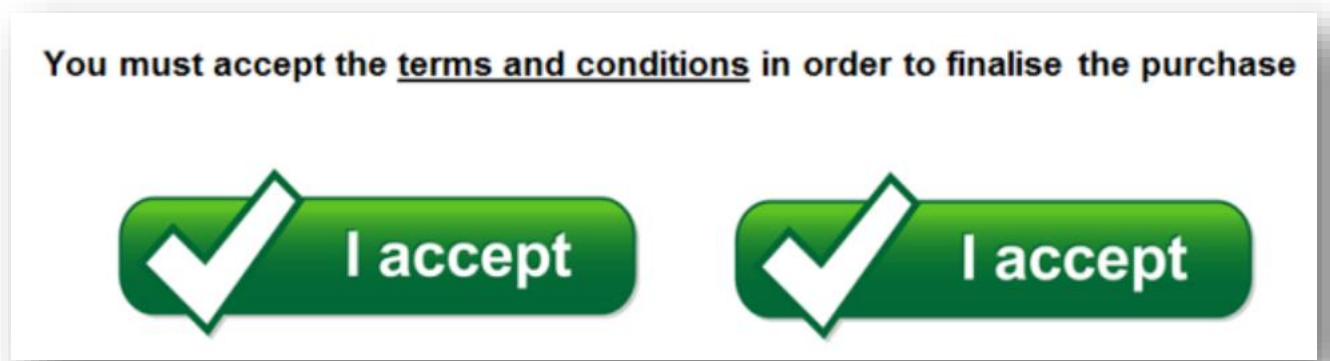
The service informs me about which commercial third parties my data can be shared with



Our technical test (forthcoming) revealed that Garmin and Jawbone transmit data to graph.facebook.com upon starting the apps. This is not mentioned in either set of terms.

Explicit and informed consent: will the service ask me for separate consent if they want to share my data with commercial third parties?

Separate consent will be asked for if my data will be shared with commercial third parties.



Source: European Commission



Sharing with the service provider: does the service allow me to opt out of sharing my fitness data with the service provider?

The app lets me opt out of sharing my fitness data with the service provider.



Terms of Use

- [I accept the Terms & Conditions.](#)
- I agree to share my workout data with Mio



Data portability: can I easily move my data from and to the service?

I can export my fitness- and health data (data portability)

I can upload data from another service

				
I can export my fitness- and health data (data portability)				
I can upload data from another service		 *		

* Lets users upload their data, but in a different file format than the other services export data to.



Data retention : is my data deleted when I delete my account?

My data are deleted when I delete my account



Is my data deleted if I have stopped using the service or have been inactive for a while?

My data are deleted after a set period of inactivity



Deleting an account: can I delete my account, and if so, can I do it directly in the app?

	fitbit	GARMIN	MiO	JAWBONE
I can delete my user account	✓	✗	? [*]	✓
I can delete my user account inside the app	✗	✗	✗	✗

** States that you can «delete certain personal information». It is unclear what exactly this entails.*

«There is no way to delete a myGarmin or Garmin Connect account.»

- Garmin FAQ



Termination: Will the service notify me if my account is blocked or terminated?

The service will provide me with notice if my account is blocked or terminated



** Does not mention termination of account. Because of the lack of a social function, it is unclear whether this is relevant.*

If you violate these Terms, we reserve the right to **deactivate your account** or terminate these Terms **at our sole discretion, at any time and without notice** or liability to you

- Fitbit Terms of Service (emphasis added)



Main findings

- Definitions of personal data are either broad or unclear.
- Hard to know what happens to user-generated data.
- Users are not properly informed about changes in terms.
- Purpose limitation is not sufficiently respected.
- It is always easier to create an account than deleting it.
- It is hard or impossible to move user data between services.



Demands from the NCC

1. Users should be notified about changes in the terms that amends functionality, user rights, or user interface.
2. The service should process and define personal data according to **European data protection legislation.**
3. If user-generated content is **shared with third-parties**, the nature of this content should be clearly defined and restricted to functional purposes. The user should be able to see **which third parties** will receive their personal data.



Demands from the NCC

4. The user should be able to change **privacy settings** in the app itself.
5. The user should be able to **download and move their data**.
6. User data should **not be stored for longer than necessary**.
Data retention periods should be specified.
7. It should not be more difficult to **delete an account** than it was to create it.

