



# Arnold & Porter

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Clearview wins appeal  
against £7.5m ICO  
fine, but AI firms are  
not in the clear

# Session participants

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# Background – Clearview AI

- Delaware-incorporated company, no EU or UK establishment;
- Clients in US, Panama, Brazil, Mexico and Dominican Republic; no EU or UK clients;
- Only offered services to government agencies or government agency contractors;
- Exclusively for law enforcement / national security purposes and did not provide services outside this context;
- Clearview AI has not offered services to commercial clients since 2020, following a settlement with the American Civil Liberties Union.

# Background – Clearview AI (2)

- Clearview AI created a database of over 20 billion facial images, collected from the internet, along with the URL, link to social media page and name of the profile;
- Using machine learning, faces were grouped by similarities and assigned specific vectors
- So similar looking faces were digitally stored closer together;
- Clearview AI provided an identification service that enabled its clients to identify individuals;
- Clients upload a ‘probe image’ of an individual to the Clearview AI database, which then provides a list of individuals’ faces that bear a close resemblance;
- Clearview AI does not say whether or not the images are the same person; this decision is made by the client.

# ICO Investigations

- The ICO announced a joint investigation with the Office of the Australian Information Commissioner (“**OAIC**”) on 3rd November 2021;
- The ICO took the view that, given the vast number of images collected, some would be from the UK;
- In addition, at least 5 UK law enforcement agencies had used the services on a trial basis, which returned numerous matches involving UK residents;
- Images of individuals’ faces, metadata and URLs constituted ‘personal data’;
- Facial vectors constituted biometric data, one of the ‘special categories’;
- Collecting, storing, applying vectors and comparing to ‘probe’ images amounts to ‘processing’.

# Application of the UK GDPR / GDPR

- Clearview AI's processing took place both before and after the end of the Brexit implementation period (11pm, 31st Dec. 2020), so both the GDPR and UK GDPR applied;
- Clearview AI came within the scope of Art. 3(2)(b) of both the GDPR and the UK GDPR, since it concerned 'monitoring' the behaviour of individuals in the UK;
- The ICO noted that the CNIL had taken a similar position regarding jurisdiction / Art. 3(2)(b);



# Breaches of the UK GDPR / GDPR

- Clearview AI's processing breached the following principles:
  - Fairness, Lawfulness & Transparency
  - Storage Limitation
  - No lawful basis for processing personal data
  - No lawful basis for processing special categories of personal data
  - No transparency information
  - Failure to uphold data subjects' rights
  - Failure to carry out a data protection impact assessment
- The ICO issued Clearview AI with a fine of £7,552,800 in May 2022; and
- An enforcement notice ordering Clearview AI to:
  - Stop collecting UK citizens' data; and
  - Delete any UK citizens' data within 6 months.

# Clearview AI's appeal

- Clearview AI appealed to the First Tier Tribunal on the basis that it is a foreign company, providing services to *“foreign clients, using foreign IP addresses, and in support of the public interest activities of foreign governments and government agencies, in particular in relation to their national security and criminal law enforcement functions”*.
- The Tribunal agreed that Clearview AI's activities fell within the territorial scope; but
- Clearview AI's processing fell outside the material scope of the GDPR / UK GDPR, as it concerned the acts of foreign governments;
- The GDPR and UK GDPR provisions are constructed differently:
  - The acts of foreign governments fall outside the material scope of the GDPR; and
  - Do not constitute 'relevant processing' for the purposes of Art. 3 UK GDPR



# Implications for companies

- The decisive factor was that Clearview AI provided services to government agencies and their contractors for law enforcement and national security purposes; narrow grounds that are unlikely to be available for most commercial businesses;
- However, the decision affirms the extra-territorial reach of the UK GDPR; and
- The ICO will take enforcement action against foreign companies engaged in non-compliant “data scraping”;
- Businesses that develop or use AI models using UK citizens’ personal data, wherever they are located, should be aware of the Clearview case and should follow the ICO’s AI Guidance.

# TELUS International AI

## TELUS International AI Data Solutions

- Creating and enhancing the world's data to enable better AI via human intelligence
- We help companies test and improve machine learning models via our global AI Community of 1 million+ annotators and linguists.
- Our services include: Data collection and creation, Data annotation, Data validation and relevance, linguistic annotation, Gen AI Services: dataset engineering, content generation, model validation.

# TI AI: AI training – general considerations

- What our Legal team asks before starting a project:
  - What data are you collecting?
  - What for?
  - Where from?
  - How are you obtaining the data?
- If the purpose is to harvest personal data from the internet, our general advice is not to do it
- Data scraping from other sources (books/newspapers):
  - What are you borrowing?
  - The intrinsic value of the author's production? Or: check punctuation / other uses related to the use of words?
  - Are you making the site unable to operate due to the amount of traffic? Be mindful of automated means: site disruption.
  - Anti-scraping provisions in YouTube and other sites: TCs

# TI AI: Contributors' data

- The data that TI AI obtains comes from the Community of 1 million+ annotators and linguists.
- The data is targeted, comes from the person directly and we ensure we have the appropriate consent forms in place.
- For non-sensitive data, the legal basis is the performance of a contract with the Community member.
- Always informed: transparency is key to maintaining the trust of our Community.

# TI AI: Automated driving algorithm

- Cars with cameras and lidar sensors collect images of people on the street.
- The objective is to train the algorithms of self-driving cars.
- Not for the purpose of publication, unlike Google Streetview.
- License plates and faces may inadvertently be collected but this collection is incidental.

# TI AI – Thumbnail search outputs

- Collect thumbnails of search outputs on two major client platforms.
- The objective of this was to see how accurate the voice search function was on both platforms.
- We provided the Community of people who tested the voice search function in several languages, then offered insights on the results.
- TI AI didn't collect any videos, only the search results: video names, and the image (Thumbnail) of the video.



# TELUS International Call recording data

- TELUS International: Next-generation, digitally-led customer experiences.
- There are large data sets of call recordings in our client systems.
- Purpose limitation of the processing of personal data.
- If requested by the client as the data controller, we would be able to provide AI Data Solution services related to these datasets.

# Questions?