

Notice issued against Clearview AI

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Clearview

The Hamburg Commissioner for Data Protection and Freedom of Information (HmbBfDI) has issued a formal notification to the US-based company Clearview AI to provide it with information on a number of questions regarding the processing of personal data there.

Clearview AI offers a facial recognition app that allows customers, after uploading a photo of a person, to identify and compile all publicly available photos in which this person can be recognized - for example from profiles on social networks and other websites and evaluate. To do this, the company apparently copied billions of photos from users worldwide from the Internet and expanded this data into a gigantic, easily searchable archive of faces. The lawfulness of this processing is extremely doubtful with regard to European data subjects given the lack of consent to the processing of biometric data in particular. Based on a complaint against Clearview, which was filed with the HmbBfDI in February 2020, the latter has already contacted the company several times. So far, Clearview has only given evasive answers to questions about the business model and the circumstances underlying the complaint. The legal position was taken that the General Data Protection Regulation (GDPR) is not applicable to the processing by Clearview as a whole, so that there is no obligation to answer the matter.

The HmbBfDI opposes this view. The territorial scope of application of the GDPR is opened up by Art. 3 (2) b, since the subsequent observation of behavior affects not only those affected, but also Clearview's customers. App users in particular, who ultimately work for Clearview customers, such as security authorities or private companies, as part of their employment relationship, are monitored for various purposes by setting cookies, e.g. to check their user activities or to improve the user experience. Employees who are located in the European Union also enjoy the protection of the GDPR and are therefore affected by this provision.

The company is now obliged to provide the supervisory authority with comprehensive and meaningful information by

mid-September. In the event that the required information was not provided, a penalty payment of €10,000 was threatened for each individual case of the seventeen sets of questions.

Johannes Caspar, Hamburg's representative for data protection and freedom of information: "Business models that consist of collecting masses of images on the Internet without cause and making people's faces identifiable through biometric analysis endanger privacy on a global scale. To protect those affected under the EU Charter of Fundamental Rights, they must be controlled, regulated and, if necessary, stopped using the General Data Protection Regulation. In Europe, there must be no room for gloomy digital dystopias in which the use of facial recognition software and biometric databases gives both state and private bodies a new, almost uncontrollable form of domination over people. The data protection supervisory authorities have the task of monitoring this. This also applies to companies that pursue corresponding business purposes from outside the EU and thus question the privacy and informational self-determination of people in the EU. In order to enable data protection control, I assume that Clearview will answer the questions asked of the company or at least appeal against the notice of appeal in order to enable a legal decision.

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