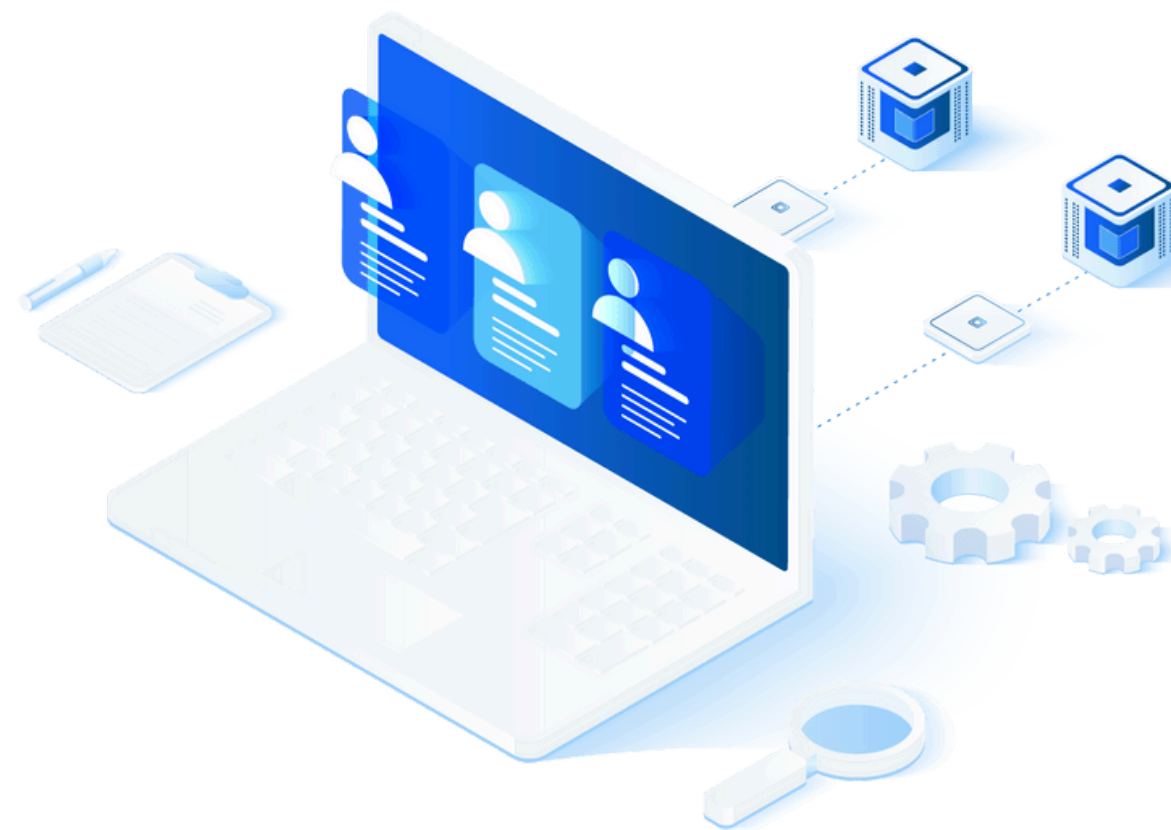


Fabio Chiarini, Giovanni D'Ambrosio, Sergio Vittorio Zambelli



CLEARVIEW AI

A case of mass surveillance and
violations of fundamental rights

CONTENTS



1

What is Clearview AI?

2

Accusations

3

Response

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Violations

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Future implications

WHAT IS CLEARVIEW AI

According to Clearview AI

- Cutting-edge Technology for Public Safety
- Massive Database of Facial Images
- Collaboration in Solving Crimes



Clearview.ai

WHAT IS CLEARVIEW AI

In reality

- From public sources to private database
- Creation of biometric features linked with metadata
- No notification to individuals involved



COMPLAINTS HISTORY AGAINST CLEARVIEW



February 22 2021

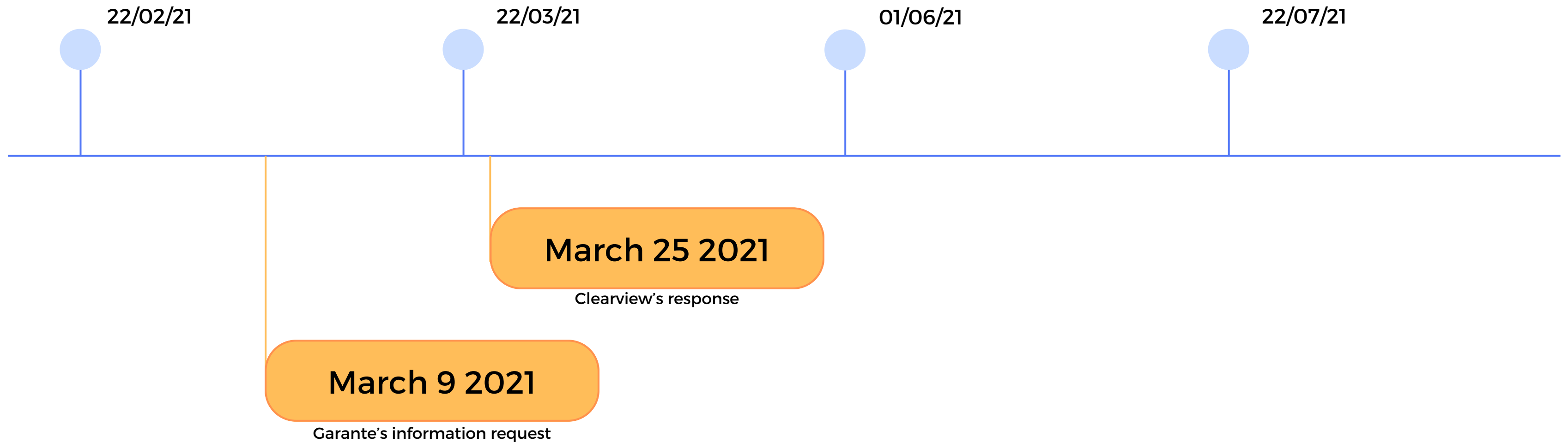
March 22 2021

June 1 2021

July 22 2021

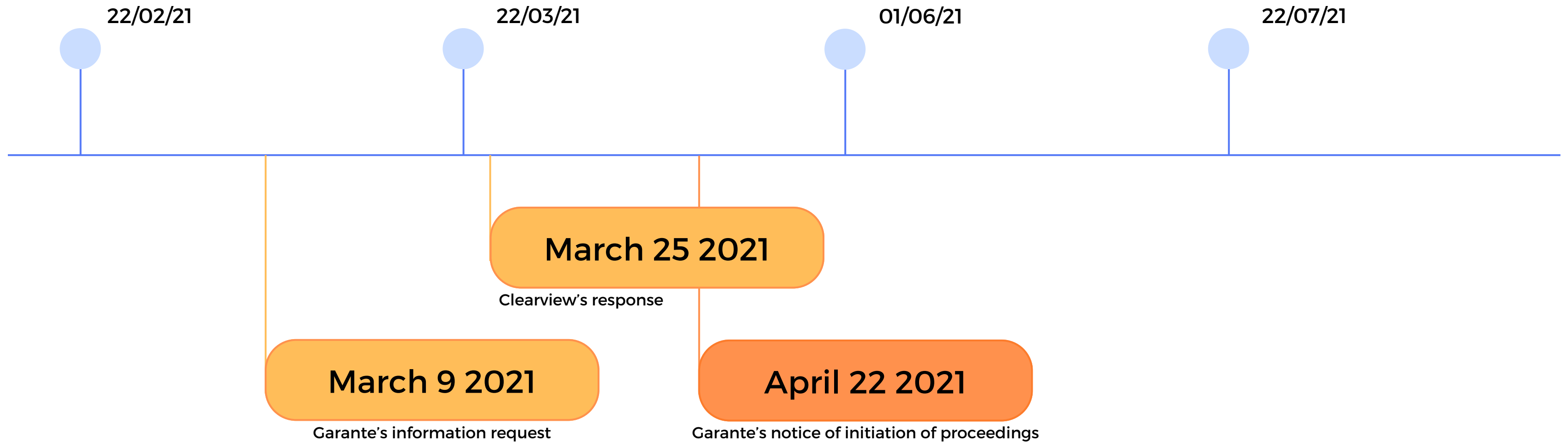
- Processing without consent
- Request of an identity document to process requests
- Lack of response to requests (even after follow-up reminders)

COMPLAINTS HISTORY AGAINST CLEARVIEW



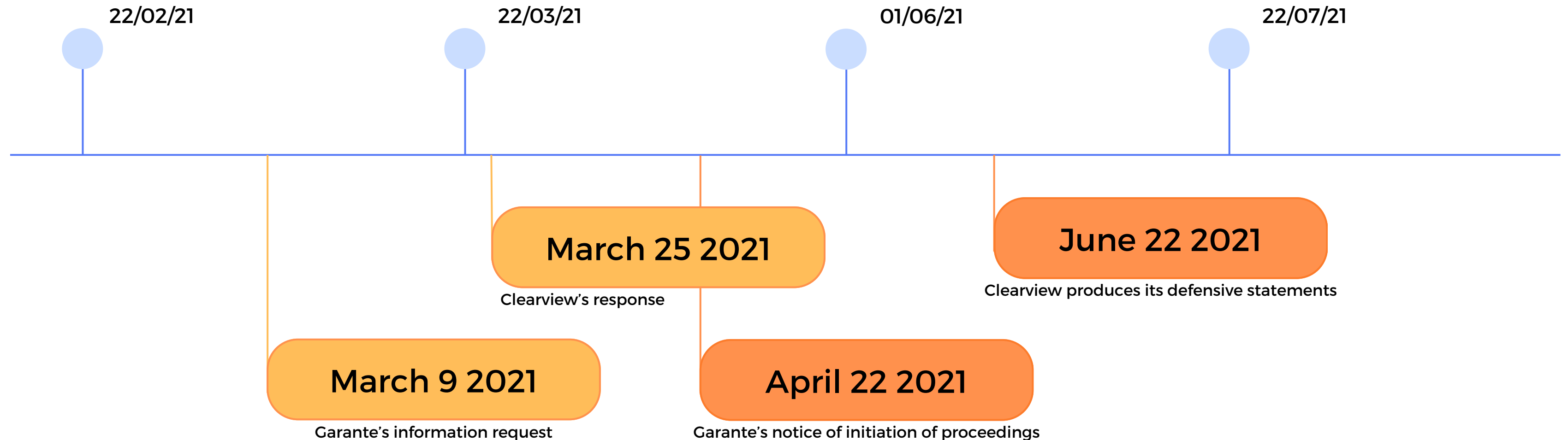
Clearview's response in one key point: lack of jurisdiction by the Italian DPA

COMPLAINTS HISTORY AGAINST CLEARVIEW



Alleged violations: articles 5, 6, 9, 12, 13, 14, 15, 22

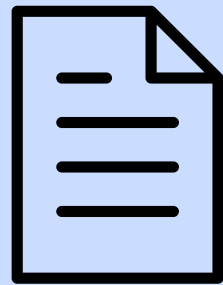
CLEARVIEW'S DEFENSIVE STATEMENTS



Alleged violations: articles 5, 6, 9, 12, 13, 14, 15, 22

CLEARVIEW'S FIRST DEFENSIVE STATEMENTS

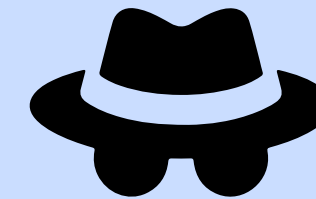
Article 3 is not applicable



**No presence in
the EU**



**European IPs
blocked**



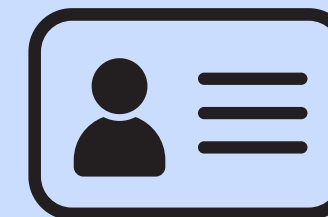
**Activity not
considerable
as monitoring**



**Biometric
data is not
linked to
personal
identifiers**



**The GDPR
targets
behavioural
patterns and
not profiling**



**Official
documents
to access
information**

CLEARVIEW'S FIRST DEFENSIVE STATEMENTS



No presence in the EU



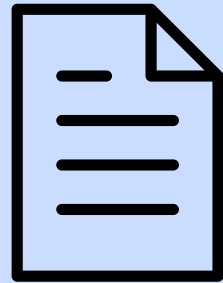
Biometric data is not linked to personal identifiers

Article 3, par 2

This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where **the processing activities are related to:**

- a) The **offering of goods or services**, irrespective of whether a payment of the data subject is required, **to such data subjects in the Union**; or
- b) The **monitoring of their behaviour** as far as their behaviour takes place within the Union.

CLEARVIEW'S FIRST DEFENSIVE STATEMENTS



**No presence in
the EU**

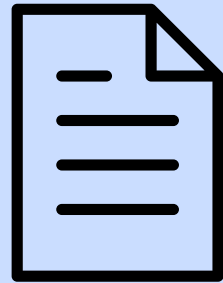


**Biometric
data is not
linked to
personal
identifiers**

Recital 24

(...) it should be ascertained whether natural persons are tracked on the internet including potential subsequent **use of personal data processing techniques** which consist of profiling a natural person, particularly **in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes.**

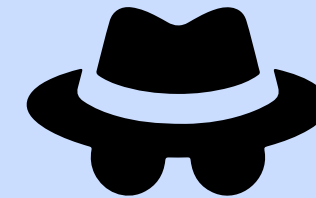
CLEARVIEW'S FIRST DEFENSIVE STATEMENTS



**No presence in
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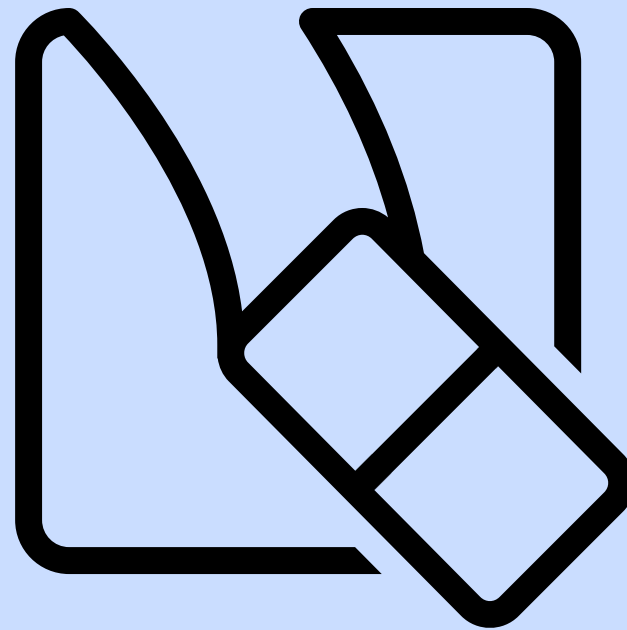
Article 3(2)(b) - Swedish Authority

Article 12(6)

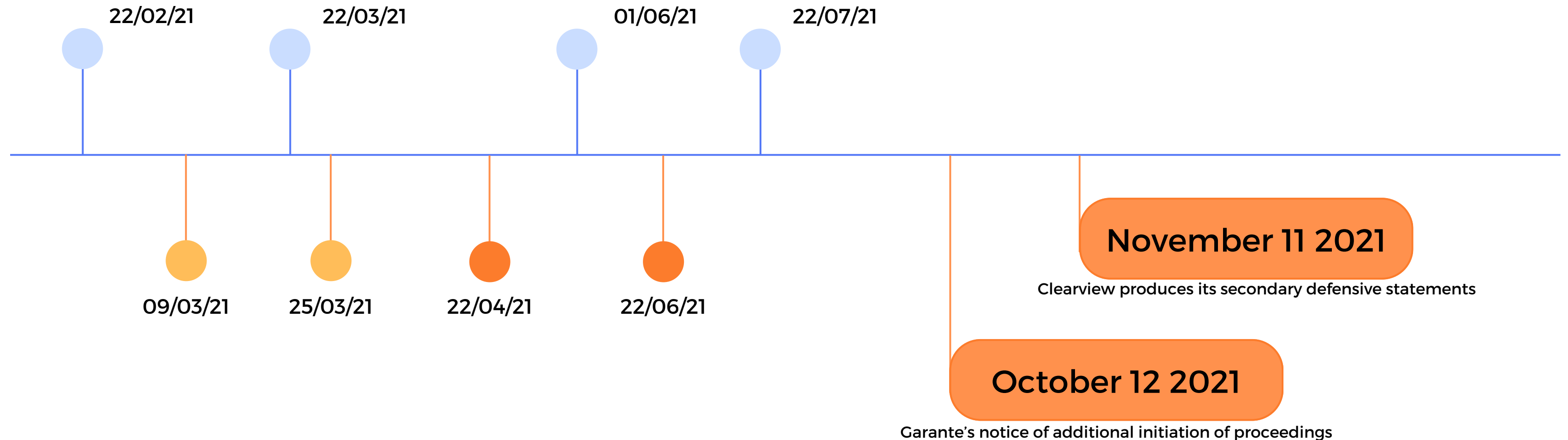
nevertheless

Deletion of data

- Offered to delete images and links from searches as a goodwill gesture to all EU residents.
- Denies Italian jurisdiction and GDPR applicability.



GARANTE'S ADDITIONAL INITIATION OF PROCEEDINGS



Alleged violations: articles 5, 6, 9, 12, 13, 15, 27

Clearview's response in one key point: "We are no worse than Google!"

CLEARVIEW'S SECONDARY DEFENSIVE STATEMENTS



therefore



INVESTIGATIVE ACTIVITY

GOOGLE SEARCH COMPARISON

Article 4 Definition number 14

1. 'biometric data' means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images;

- **Limited Access**
- **Persistent Data Storage**
- **Advanced Processing Technologies**

INVESTIGATIVE ACTIVITY

INFRINGEMENT OF ARTICLE 3

Article 3, par 2

This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where **the processing activities are related to:**

- a) The **offering of goods or services**, irrespective of whether a payment of the data subject is required, **to such data subjects in the Union**; or
- b) The **monitoring of their behaviour** as far as their behaviour takes place within the Union.

INVESTIGATIVE ACTIVITY

INFRINGEMENT OF ARTICLE 3

Recital 23

(...)

In order to determine whether such a controller or processor is offering goods or services to data subjects who are in the Union, it should be ascertained whether it is apparent that the controller or processor **envisages offering services to data subjects in one or more Member States in the Union.**

(..).

INVESTIGATIVE ACTIVITY

INFRINGEMENT OF ARTICLE 3

Independent Recourse

Residents of the European Economic Area or of Switzerland who wish to submit a complaint or seek resolution of a dispute related to Clearview AI's processing of personal data may seek appropriate recourse free of charge by contacting the appropriate Data Protection Authority (DPA) in their respective country.

International Transfers

The personally identifiable information we receive in the computers and systems of our offices in the United States is processed by us in the United States, where laws regarding data protection may be less stringent than the laws in your country. When personal data is transferred outside the EEA, we will put in place suitable safeguards to ensure that such transfer is carried out in compliance with applicable data protection rules. Clearview deeply values user privacy and data security controls; our cybersecurity infrastructure includes technical and policy controls that are consistent with the requirements of General Data Protection Regulation.

INVESTIGATIVE ACTIVITY

INFRINGEMENT OF ARTICLE 3

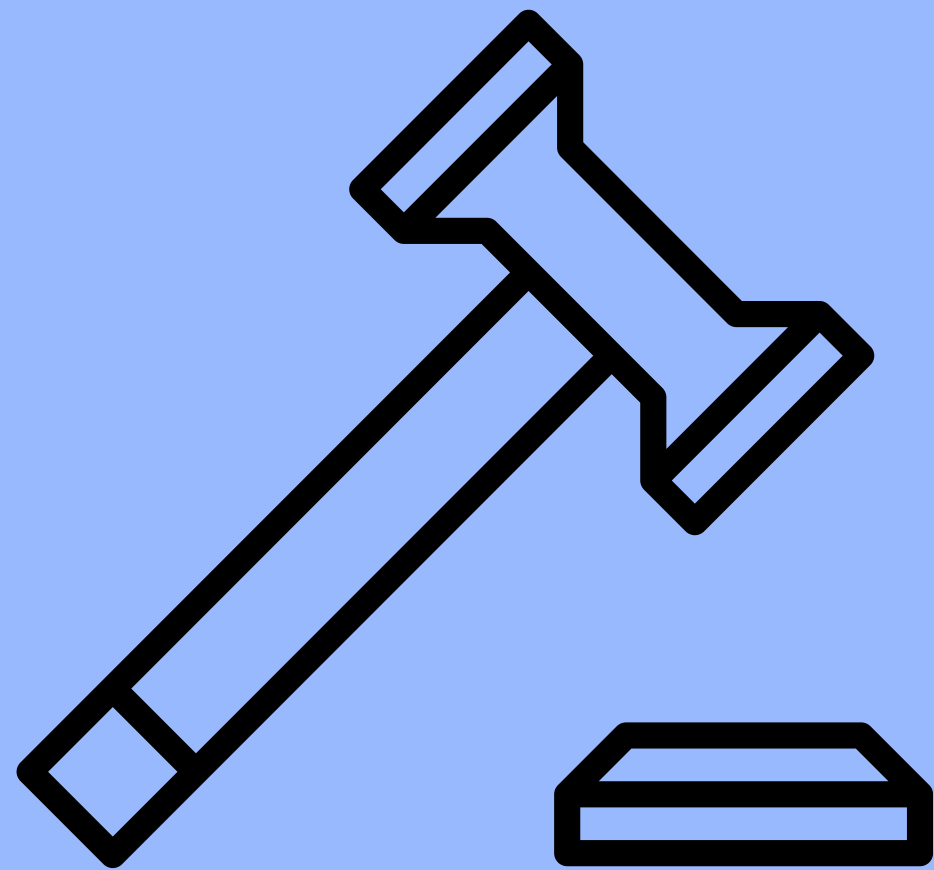
Article 3, par 2

This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where **the processing activities are related to:**

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INVESTIGATIVE ACTIVITY

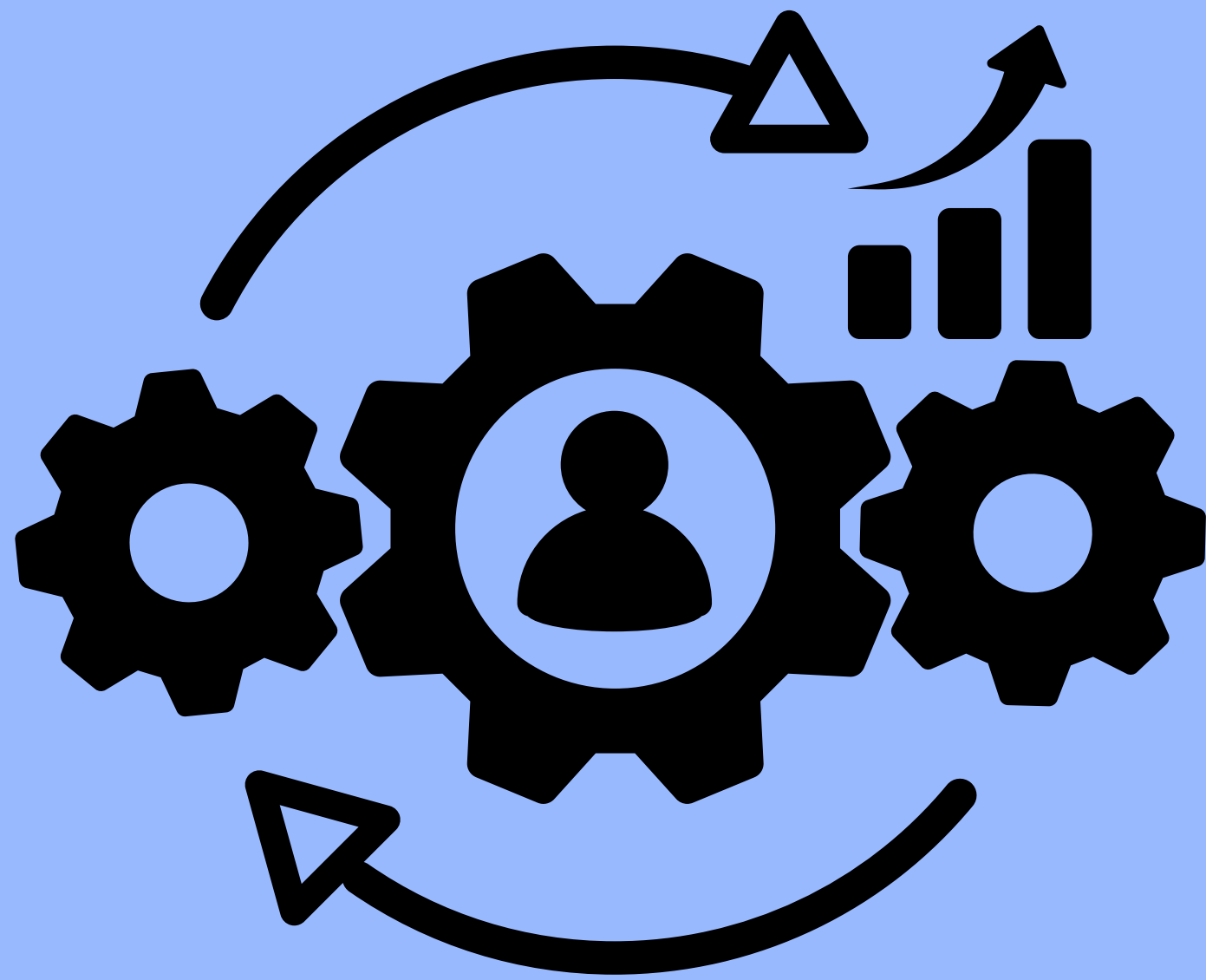
COMPETENCE OF THE ITALIAN DPA



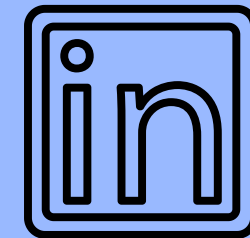
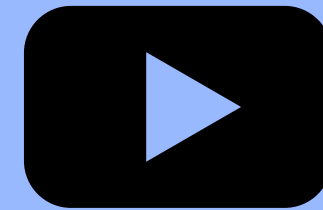
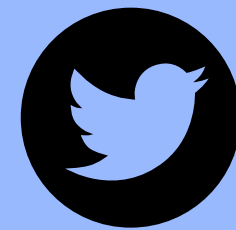
Article 55, par. 1

Each supervisory authority shall be competent for the performance of the tasks assigned to and the exercise of the powers conferred on it in accordance with this Regulation on the territory of its own Member State.

WHY CLEARVIEW'S ACTIVITY CONSTITUTES PROCESSING



The mere publication of personal data does not legitimize its reuse by third parties without a legal basis.



Not just collection:

- from images to biometric data
- metadata association

INVESTIGATIVE ACTIVITY

DATA CONTROLLERSHIP

Article 4 Definition number 7

1. 'controller' means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; [...]

Core Processing Activities

- Collecting facial images
- Storing in proprietary database
- Processing biometric data

Evidence from old Privacy Policy

- Data Subject's Request Channel
- Legal Framework
- Data Subject's Rights Management

ARTICLE 5 INFRINGEMENT

Principles relating to processing of personal data

- Principles of legality, fairness, and transparency
- Principle of purpose limitation
- Principle of storage limitation



ARTICLE 6 INFRINGEMENT

Lawfulness of processing

The data processing is:

- For profit
- Intrusive to individuals' privacy
- Involves biometric processing
- Concerns a large number of people



ARTICLE 9 INFRINGEMENT

Processing of special categories of personal data

- Biometric data falls under the umbrella of sensitive data
- Hence, Article 6 alone is not sufficient to ensure the appropriate level of protection



ARTICLE 12, 13, 14, 15 INFRINGEMENT

- Inadequate or lack and delays of responses

Article 15: Right of access by the data subject

1. The data subject shall have the right to obtain from the controller [...] access to the personal data and the following information: [...]

Article 12: Transparent information

1. **The controller shall take appropriate measures to provide any information** referred to in Articles 13 and 14 and any communication under Articles 15 to 22 and 34 relating to processing **to the data subject in a concise, transparent, intelligible and easily accessible form** [...].

ARTICLE 12, 13, 14, 15 INFRINGEMENT

- Excessive data requested for the exercise of rights

Article 12, par. 6

6. [...] **where the controller has reasonable doubts concerning the identity of the natural person** making the request referred to in Articles 15 to 21, **the controller may request the provision of additional information necessary to confirm the identity of the data subject.**

ARTICLE 12, 13, 14, 15 INFRINGEMENT

Information to be provided to the data subject

- Provision of general information about the processing carried out
- Change in the privacy policy



ARTICLE 22, 27 INFRINGEMENT

Article 22: Automated individual decision making, including profiling

1. The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.

No violation found - the final decision-making responsibility lies with service users

ARTICLE 22, 27 INFRINGEMENT

Article 27: Representatives of controllers or processors not established in the Union

1. Where Article 3(2) applies, the controller or the processor shall designate in writing a representative in the Union. [...]

Clearview AI failed to appoint an EU representative

VIOLATED GDPR ARTICLES

5

Principles of processing

6

Lawfulness of processing

9

Special categories of data

12

Transparency and data
subject's rights

13

Information provision (direct)

14

Information provision (indirect)

15

Right of access

27

Representatives of
controllers not in EU

Article 58 - Powers of Supervisory Authority

"Each supervisory authority shall have all of the following corrective powers:

[...]

(c) to order the controller or processor to comply with the data subject's requests [...];

[...]

(f) to impose a temporary or definitive limitation including a ban on processing;"

Article 83 - Administrative fines

"Administrative fines shall, depending on the circumstances of each individual case, be imposed in addition to, or instead of, measures referred to in Article 58(2) [...]"

FINANCIAL PENALTIES...

Nature of the
processed data

Severity of the
violation

Number of data
subjects involved

Measures
adopted

Degree of
cooperation

Degree of
responsibility

FINANCIAL PENALTIES...

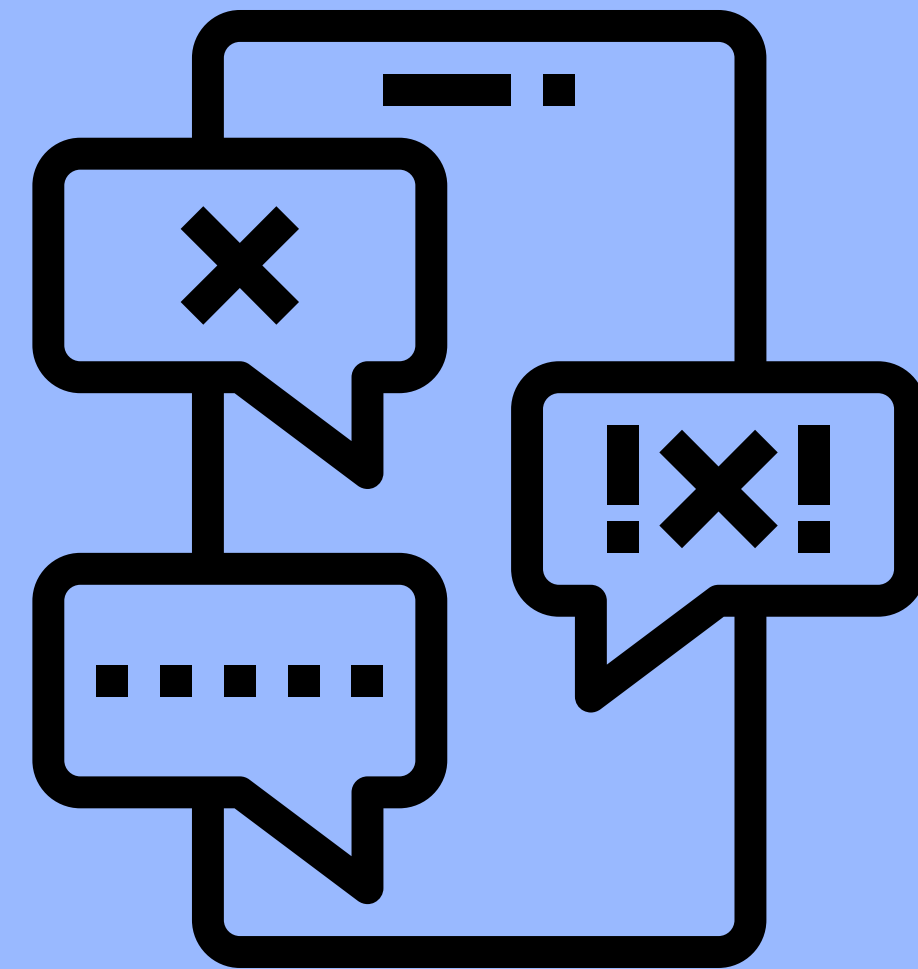


20 MILLION EUROS

...AND EXPOSURE



20 MILLION EUROS



ONLINE PUBLISHPMENT

THE END...

OR IS IT?

THE FUTURE OF CLEARVIEW - AI ACT

Article 5, par. 1 (Prohibited AI Practices)

The following AI practices shall be prohibited:

[...]

e) the placing on the market, the putting into service for this specific purpose, or the use of AI systems that create or expand facial recognition databases through the untargeted scraping of facial images from the internet or CCTV footage;

THE FUTURE OF CLEARVIEW - AI ACT

Recital 43

“[...] the putting into service [...] should be prohibited because that practice adds to the feeling of mass surveillance and can lead to gross violations of fundamental rights, including the right to privacy.”

THE END!

REFERENCES

[1] Clearview AI's Website: <https://www.clearview.ai/>

[2] Investigation Report: <https://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/9751323#english>

[3] General Data Protection Regulation: <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

[4] WayBackMachine's old privacy policy snapshot: <http://web.archive.org/web/20210310120621/https://www.clearview.ai/>

[5] AI Act: <https://eur-lex.europa.eu/eli/reg/2024/1689/oj>