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Administrative order on Information issued against Clearview AI - Transparent answers on Data Protection required!

The Hamburg Commissioner for Data Protection and Freedom of Information (HmbBfDI) has issued an administrative order on information instructing Clearview AI, a company based in the USA, to provide answers on a number of questions regarding their processing of personal data.

Clearview AI offers a facial recognition app that allows customers to upload a photo of a person and then identify, compile and analyze all publicly available photos that identify that person, such as those from social networking profiles and other websites. To this end, the company has apparently copied several billion photos of users worldwide from the Internet and expanded this data into a gigantic, easily searchable archive of facial images. The lawfulness of this processing is highly questionable in relation to European data subjects with respect to the lack of consent to the processing of biometric data.

Based on a complaint against Clearview filed with the HmbBfDI in February 2020, the HmbBfDI has already contacted the company on several occasions. Clearview has so far only given evasive answers to questions about its business model and the circumstances underlying the complaint. It took the legal position that the General Data Protection Regulation (GDPR) is not applicable to the processing by Clearview as a whole, so that there was no obligation to answer in substance.

The HmbBfDI opposes this view. The GDPR is applicable by Art. 3 (2) b, since the subsequent monitoring of behaviour not only affects the parties concerned but also Clearview's customers. In particular, app users who work for Clearview customers, such as security authorities or private companies, are being observed by means of cookie placement for various purposes, e.g. to monitor their user activities or to improve the user experience. Employees of such users who are located in the European Union also fall under the scope of the GDPR and are therefore affected in accordance with this regulation.

The company is now obliged to provide the supervisory authority with comprehensive and meaningful information by mid-September. In the event of failure to provide the requested information, the company was threatened with a penalty payment of €10,000 for each of the seventeen sets of questions.

Johannes Caspar, Hamburg's Commissioner for Data Protection and Freedom of Information, says: "Business models that consist of collecting images on the Internet on a massive scale and 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, such companies must be monitored, regulated and, if necessary, stopped on the basis of the GDPR. In Europe, there must be no room for dull digital dystopias in which the use of facial recognition software and biometric databases gives public authorities and private agencies a new, almost unlimited form of control over people. The data protection supervisory authorities have a mandate to monitor this. This also applies

to companies establishing corresponding business purposes from outside the EU and questions the privacy and informational self-determination of people in the EU. In order to enable monitoring under data protection law, I assume that Clearview will answer the questions put to the company or at least appeal against the administrative order to enable a legal decision to be made. “

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