Brussels, 20 October 2017

Ken Vinner
Sync.ME Ltd
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Tel Aviv
Israel 6473921

By e-mail: ken@sync.me

Dear Mr Vinner,

The Article 29 Working Party is writing to you in relation to the activities of your company, Sync.ME Ltd ('Sync.ME'), specifically concerning the reverse search service known as 'Sync.ME'. The Working Party notes that Sync.ME is based in Israel.

The Working Party understands that Sync.ME provides a reverse look-up facility for telephone numbers on its website, www.sync.me, and within its mobile application. The facility can be searched to identify an individual solely by means of a telephone number. Further, once an end-user installs the Sync.ME app on their mobile device, incoming calls are filtered through the Sync.ME database so that names and pictures are added to callers in real time even where those callers are not already known to the call recipient (and are not in their existing contacts list). The app can also be used as an alternative dialler.

Concerns about Sync.ME's processing of personal data in relation to the above services have been raised directly to some EU national data protection authorities ('DPAs') by individuals. In light of these, a number of those authorities have conducted research into the Sync.ME service and have established that it is processing personal data relating to data subjects in their countries. Collaboration between the DPAs is being coordinated by the Information Commissioner's Office in the UK.

The Working Party has concerns regarding the manner and purposes for which personal data is collected by Sync.ME and the associated application. Sync.ME appears to be processing personal data of non-users of the service, specifically the contacts of individuals who sign up to the service. Furthermore, Sync.ME appears to be sourcing personal data both from Sync.ME users' contact lists and, in some circumstances, their social media pages (including name, telephone number, email address and, where available, demographic information and additional contact information). This information is then made publicly available via reverse search on the Sync.ME website and mobile app.

Basis on which the data is processed

Sync.ME's users provide information about third party non-users to Sync.ME when they sign up and the Working Party questions the basis on which this data processing is being undertaken. Article 7 of the Data Protection Directive 95/46/EC requires that personal data only be processed by a data controller in accordance with one of a number of legitimate bases, which include: consent, compliance with a legal obligation, and the performance of a contract.

Sync.ME is processing personal data for the purpose of offering a reverse search directory, which is an intrusive activity from the perspective of data subjects. Additionally, Article 12 of the e-Privacy Directive 2002/58/EC requires that data controllers obtain additional consent from subscribers[1] before including their data in directories searchable solely on the basis of telephone number (known as 'reverse search').

It is not apparent whether Sync.ME obtained consent of non-users prior to the processing of their personal data in the context of the reverse search directory. It is also unclear how Sync.ME provided these non-user individuals with information that would enable them to be aware of the collection, publication and reverse search use of their personal data. This would represent an infringement of Article 12 of the e-Privacy Directive, as enacted by the Member State law of each DPA.

Data protection law (both the Data Protection Directive and the ePrivacy Directive) is imperative law. This means that its applicability cannot be excluded by a unilateral declaration or signed away by a user accepting contractual terms of Sync.ME. Given the specific consent requirement for reverse search, Sync.ME can only base this processing on the individual consent of each individual natural person. Users cannot give consent on behalf of non-users of the service.[2]

We therefore request Sync.ME to explain the basis on which this intrusive processing is being undertaken.

Information to be given to the data subject

As data is indirectly collected from Sync.ME's users rather than directly from the individuals themselves, the Working Party is concerned that the requirements of Article 11 of Directive 95/46/EC are not being met.

Where personal data relating to individuals is collected from third parties (in this case, from information on the mobile devices of Sync.ME users' contacts as well as other third party sources including telephone directories and social media), Article 11 requires a data controller to give those individuals certain information to let them know who is processing their data and in what context. This information must be given before any disclosure of that data is made. Enabling third parties to access this data, whether via an app or a website, constitutes such a disclosure.

There is no indication that Sync.ME is making non-users aware that their data are being processed in the Sync.ME app or website search, unless those individuals actively engage with the website or download the app. It is entirely possible that individuals do not have any

[1] As defined by Article 2 of the Directive (EU) 2002/21/EC (the 'Framework Directive')

[2] There may be some very limited exceptions, such as if a parent consents on behalf of a child, but such an exception generally does not apply to the processing by Sync.ME described here.

knowledge of this use of their data at all. This means that they are being denied their rights[3] under Directive and that their privacy is being infringed.

Accuracy

The Working Party is also concerned about the accuracy of the data being collected from app users about their third party (non-user) contacts and processed by Sync.ME. This personal data does not appear to be subject to any verification process and, because the data is collected indirectly, the data subject has no opportunity to identify inaccuracies. It is also possible that the way in which users have described their contacts in their personal phone contact directories may reveal additional information about those contacts (for example, labelling a person according to their relationship or interaction with the individual user).

This conflicts with the obligation for data controllers to ensure that personal data they process is accurate, not excessive, and, where necessary, kept up to date as set out in Article 6(1)(d) of Directive 95/46/EC.

Next steps

The data protection authorities in the Article 29 Working Party want to ensure that data subjects' data is processed with their appropriate consent and awareness, and that data subjects have the ability to exercise their rights.

We welcome your proposals to ensure that this is the case.

Whilst we have framed our concerns under current legislation, we note that these will continue to persist once the General Data Protection Regulation 2016/679 comes into full force.

Yours sincerely,

On behalf of the Article 29 Working Party,

Isabelle FALQUE-PIERROTIN
Chairwoman

[3] For example, the rights to obtain access to their data (Article 12), to object to certain processing of their data (Article 14), and rights in respect of automated decisions taken about them (Article 15).