Brussels, 20 October 2017

Alan Mamedi
True Software Scandinavia AB
Kungsgatan 15 111 43
Stockholm
Sweden

By e-mail: grievance@truecaller.com

Dear Mr Mamedi,

The Article 29 Working Party is writing to you in relation to the activities of your company, True Software Scandinavia AB ('True Software'), specifically concerning the service known as 'Truecaller'. The Working Party notes that True Software is based in Sweden.

The Working Party understands that True Software provides a reverse look-up facility for telephone numbers on its website, www.truecaller.com, 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 Truecaller app on their mobile device, incoming calls are filtered through the Truecaller 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 True Software's processing of personal data in relation to the above services have been raised in the media and 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 Truecaller 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 True Software and the associated Truecaller application. True Software appears to be processing personal data of non-users of the service, specifically the contacts of individuals who sign up to the service. Furthermore, True Software appears to be sourcing personal data both from Truecaller 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 Truecaller website and mobile app.

Basis on which the data is processed

True Software's users provide information about third party non-users to True Software 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.

True Software 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 True Software 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 True Software 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 True Software. Given the specific consent requirement for reverse search, True Software 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 True Software 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 True Software'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 Truecaller 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 True Software is making non-users aware that their data are being processed in the Truecaller 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 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.

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[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 True Software described here.

[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).

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 True Software. 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 obligations in Directive 95/46/EC for data controllers to ensure that personal data they process is not excessive (Article 6(1)(c)), is accurate, and, where necessary, kept up to date (Article 6(1) (d)).

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