ARTICLE 29 Data Protection Working Party

Brussels, 11th April 2018

Stephen Deadman
Global deputy Privacy Chief
Facebook

Subject: request for information regarding facial recognition on Facebook

Dear Mr Deadman

I am writing to you concerning Facebook's consent flows which are currently being tested in some EU Member States, and which concerns both facial recognition and special categories of data.

In the announcement Facebook made on this subject[1], it is indicated that using facial recognition shall be entirely optional and will require an opt in. Nevertheless, a few questions have arisen on the practical and technical modalities of this technology, on which we would be grateful if you could enlighten us.

The announcement indicates that facial recognition shall be used to support the following features: tag suggestion, photo review and profile photo review. However, it is not clear if the data subject can choose for which of the three above-mentioned products he/she would like to grant permission to rely on facial recognition. In this regard, WP29 would welcome further clarification as to whether Facebook seeks to obtain the explicit consent for each of aforementioned features, or whether a "global consent" is envisaged.

For what concerns the image used by the facial recognition technology, WP29 would welcome further information as whether the technology is applied to all of the images already uploaded on Facebook or whether the scope of application is more limited narrower and only involves analysing images uploaded after the beginning of testing. Does the technology take into account the privacy settings pre-defined by the user, in particular if the latter has limited the visibility of the images he/she uploads and if so, how?

On the operational aspects of the processing, WP29 would welcome further information as to whether the technology requires, in order to recognize a specific data subject, to analyse and/or create biometric templates of all the individuals who appear on the pictures uploaded on Facebook, including those who may have not been informed of this new feature or who did not choose to opt in to facial recognition. If not, please clarify for which individuals biometric

[1] Facebook Newsroom, "Preparing for the General Data Protection Regulation", 28 February 2018, available at https://newsroom.fb.com/news/h/preparing-for-gdpr/

templates will be created (and for which individuals no such templates will be created). Please also specify what happens to those templates, regardless of whether the data subjects have allowed Facebook to carry out such processing or not. Furthermore, are the templates immediately deleted once the comparison is achieved or are they kept in Facebook's database? If they are retained beyond the comparison, what would be the purpose of such continued retention?

In addition, does the technology systematically compare every single picture uploaded on the social network to its entire biometric templates database, or only to pre-defined sections of the database? In this context, how does Facebook reduce the margin of error?

For what concerns Facebook's transparency obligations, could you provide us with details on the information that is given to the data subjects? Is Facebook also providing this information to the users who have not been selected for this phase test, as well as non-Facebook users who appear on the images uploaded on the social network?

Regarding the rights of data subjects, please specify how you envisage to facilitate the exercise of each of those rights.

In addition, in the context of the exchange of data with WhatsApp, is the personal data processed in the context Facebook's use of facial recognition shared in any way with WhatsApp? If so, for what purpose is the exchange taking place? Is it done on a controller to controller basis or on a controller to processor basis?

Finally, kindly note that we may come back to you in a further letter regarding the consent flows for special categories of data. In any event, the questions raised here are without prejudice to additional questions or inquiries which may made by the WP29 or its members at a later date.

Sincerely,

On behalf of the Article 29 Working Party

Andrea Jelinek
Chairperson