

Privacy & Data Security Law News

EU Guidance May Curb Facial Recognition Use, Attorneys Say

By Stephen Gardner

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- Companies will face multiple constraints
 - EU privacy authorities will use guidance
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The European Union guidance on video surveillance will limit use of technologies such as facial recognition, data privacy lawyers said.

The European Data Protection Board's guidance issued Jan. 30 allows video surveillance only in limited circumstances, such as when crimes are committed.

"Companies that want to implement video surveillance that is fully in line with the EDPB's opinion will face substantial limitations and costs," said Peter Van Dyck, a partner with Allen & Overy LLP in Brussels.

Privacy-rights groups are likely to welcome the guidance, which echoes their calls for limits on surveillance and facial recognition technologies that have been controversial in the EU. The guidance may prompt court clashes, attorneys said.

The guidance ensures compliance with the EU's data protection law, the board said. Video technology use has "massive" privacy implications and risks "a change in cultural norms," it said.

The data protection authorities of individual EU nations will apply the guidance when advising companies and adjudicating privacy complaints. The authorities have the power to assess fines in privacy breaches.

Companies can use surveillance on the basis of their legitimate interests but must offer specific justifications, the board said.

Shop owners can't surveil areas beyond their property, or people as they enter and exit in general to prevent crimes, according to the guidance. They may be justified, however, in monitoring an area where there have been incidents, the guidance said.

The board position is "rather bold" and might not stand up in court if challenged, said Anja Dekhuijzen, a privacy lawyer with Whitebridge Advocatuur in Amsterdam.

The position appears to contradict a December EU Court of Justice ruling that found evidence of crime wasn't "necessarily required" to install a video surveillance system, Dekhuijzen said.

The guidance also said facial recognition system operators need people's permission before creating "biometric templates" of them.

A system that doesn't identify individuals but tracks their movements within a supermarket would trigger the consent requirement, the guidance said. However, operators of billboards that carry out one-off categorizations of passers-by as male or female, or within a certain age range, for the purpose of tailoring advertisements to them would not require permission.

If a company wants to use facial recognition for employees to enter a building, it must have an alternative means for workers who don't give consent for the technology, the guidance said.

"A blanket requirement for an alternative solution to facial recognition as a backup is a step backwards for businesses that are required to conduct various verifications, such as the financial sector," said Anna Pateraki, an associate with Hunton Andrews Kurth in Brussels.

"This is a restrictive interpretation" of Europe's General Data Protection Regulation, she said.

Curbing facial recognition in the EU "would limit the ability for European companies developing these systems to compete with foreign counterparts," said Eline Chivot, senior policy analyst with the Center for Data Innovation think tank.

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