#SNS #Google Glass #Video Surveillance #Quadcopter #Natural person - Will the future EU Regulation be applicable?

Presented By

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1| Introduction

• A natural person may engage in digital image processing with no commercial purpose through the usage of Social networks, Google Glass, video surveillance, quadcopters, etc..

• Is a natural person liable according to EU Data Protection Law?

• Both the Directive 95/46/CE as well as the Future Regulation approved by the EU Parliament are not applicable to the processing of personal data by a natural person in the course of its own exclusively personal or household activity,

• What does it mean “exclusively personal” or “household activity” if we think in public spaces?
1 | Introduction

The present analysis is extremely important to understand role and responsibilities of companies.

- Co-controllers
- Processors
2| Social Network System

• SNS – “*small world*” (Watts and Strogatz, 1998)

  • “*web-based services that allow individuals to*
  • *Construct a public or semi-public profile within a bounded system*
  • *Articulate a list of other users with whom they share a connection and*
  • *View and traverse their list of connections and those made by others within the system*”

  (Nicole B. Ellison, 2007)
2| Social Network System

- Purposes
  - Professional,
  - Charity,
  - Political,
  - Religion,
  - Cultural, etc.

- Several actors:
  - Family
  - Friends
  - Accountancies
  - Strangers
  - Colleagues

“Over a hundred million people have uploaded personally sensitive information to Facebook, and many of them have been badly burnt as a result. Jobs have been lost, reputations smeared, embarrassing secrets broadcast to the world.” (J. Grimmelmann, 2009)
Google Glasses already raise some ethical and legal concerns since this technology would allow for observations and shooting pictures secretly (...). Already existing services which make it possible to search for pictures in the internet and to identify persons.”

(Karsten Weber, 2012)

The sentence is not only applicable to Google Glasses but also to

• Quadcopters
• Smart wigs
• Any other technology that allows observation/shooting pictures secretly, even Kodak

The risk is higher due to face recognition systems

(Blackman J. 2009)
4| Private life and technology

“Technology in general and information and communication technology in particular have a huge impact on privacy and data protection.”

(Weber, 2012)

“Equiveillance doctrine says that as long as surveillance is present in the environment, that a person ought to have a moral and ethical right to engage in sousveillance.”

(Mann, 2006)

Abandon of the idea of privacy
• Jeff Jarvis
• David Brin

Protection of privacy - threats
• Totalitarian regimes
• Danger for freedom of expression and information
• Absence of a right to be alone
4| Directive 95/46/EC

Material scope of the present EU Data Protection Law

“2. This Directive shall not apply to the processing of personal data: (…) - by a natural person in the course of a purely personal or household activity.”

Directive 95/46/EC, Article 3(2)(2)

Is usage of SNS, quadcopters, video surveillance, 3D printing etc. a purely personal or household activity?
4| Directive 95/46/EC

Concept of private life
- Decision 6 November 2003 (case Lindqvist)
- Article 29 WPG Opinion 5/2009 regarding “online social networking”
- EDPS Opinion 18 March 2010
- General Attorney Opinion 25 June 2013 JCEU, (case Google Spain SL and Google Inc. v. AEsPD and Mario Costa González)

Private life does not comprehend

Public sphere
- Unlimited diffusion
- Purposes related to political, charitable, professional or commercial activities

Any sphere
processing of personal data of third parties whose rights prevail before the right of the natural person, specially if sensitive data. (Lipton, J. 2010)
4| Directive 95/46/EC

The company that owns the Social Network/Glass/Wig/Quadcopter may be considered a controller jointly with the user

- Article 29 WPG Opinion 5/2009 regarding “online social networking”
- EDPS Opinion 18 March 2010

In this light

- If the user processes personal data of third parties without consent when it is necessary and he/she is considered a controller, the Social Network/Glass/Wig/Quadcopter may be considered liable for the absence of consent.

  - (26) whereas, to determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the said person
“Whereas:

(…)

(15) This Regulation should not apply to processing of personal data by a natural person, which are exclusively personal, family-related, or domestic, such as correspondence and the holding of addresses or a private sale and without any connection with a professional or commercial activity. (…)"

“(…) this Regulation should apply to controllers and processors which provide the means for processing personal data for such personal or domestic activities.
“Article 2 (2)(d) – “This Regulation does not apply to the processing of personal data:
(…)
“by a natural person in the course of an exclusively personal or household activity. This exemption also shall apply to a publication of personal data where it can be reasonably expected that it will be only accessed by a limited number of persons;”
“Article 10 (1) - “If the data processed by a controller do not permit the controller or processor to directly or indirectly identify a natural person, …

or consist only of pseudonymous data, …

…the controller shall not process or acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation.”

Exemption of obtaining consent from the data subject
New
• Evidences to interpret the meaning of *purely personal or household activity*:
  • “*a private sale*” (Whereas 15)
  • “*without any connection with a professional or commercial activity*” (Whereas 15).

• Question:
  • What does “*This exemption also shall apply to a publication of personal data where it can be reasonably expected that it will be only accessed by a limited number of persons;*” (Article 2. (2)(d)) mean?
    • Is it another evidence to interpret *purely personal or household activity* or is it a autonomous case of exemption.
5| EU Proposal for a General Data Protection Regulation

- What does “This exemption also shall apply to a publication of personal data where it can be reasonably expected that it will be only accessed by a limited number of persons;” mean?

- May a natural person use, for example, video surveillance in public places if images recorded are uploaded to his/her “cloud service” that can be accessed only through his/her password?

- “Limited number of persons” – can that person be the security guard?

There are 3 theories
First theory

- The exemption mentions “publication” because EU legislator was thinking in SNS. We cannot interpret an exemption with a wider scope, including other forms of processing.

- Nonetheless, if “publication” is substituted for “collection” or “record”, the exemption will only be applicable where it can be reasonably expected that it will be only collected a limited number of personal data.

- In this light
  - The usage of video surveillance, Google Glass or any other devices in public spaces for purposes of collecting images (personal data) of unlimited number of data subjects is subject to General Data Protection Regulation.
Second theory

• The exemption is applicable in all cases
  • *where it can be reasonably expected that [personal data] will be only accessed by a limited number of persons;* and
  • There are not commercial or professional purposes;

Because: there is no law that determines the applicability of the law according public or private place.

• In this light
  • The collection of personal data through video surveillance, Google Glass or any other devices in **public spaces** is not subject to General Data Protection Regulation if *it can be reasonably expected that [personal data] will be only accessed by a limited number of persons.*
My suggestion of interpretation

The exemption:
• should be read and interpreted in accordance with the previous sentence “This Regulation does not apply to the processing of personal data by a natural person in the course of an exclusively personal or household activity”

• clarifies and adds another evidence to determine what is purely personal or household activity

• Determines that even if the right of the data subject prevails over the right of the user, the General Data Protection Regulation is not applicable, if the personal data is disclosed only to a limited number of persons.
5| EU Proposal for a General Data Protection Regulation

When in the slide before we mention that

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The concept of private life considered to interpret the household exception comprehends now only what it is not considered in the public sphere.
5| EU Proposal for a General Data Protection Regulation

My suggestion of interpretation: the law is not applicable

- Even if the right of the data subject prevails,
- If personal data is disclosed to a limited number of persons
- There is no commercial or professional purpose
- The activity is considered in the **normal social relationship** that people establish with friends and acquaintances (to control the purpose of the processing)
5| EU Proposal for a General Data Protection Regulation

Therefore:

• The collection and other forms of processing personal data by natural person through the usage of Google Glass, Quadcopters, smart wigs will be subject to General Data Protection Regulation if the

• The activity is considered in the normal social relationship that people establish with friends and acquaintances

Purposes of surveillance in public spaces of:

• people that are not our family or friends
• assets that are not our property

Recreational purposes - taking photos or making videos in public places with a Kodak or Google Glass
Conclusion

Natural person
• The publication of data where it can be accessed by a limited number of persons is exempt of the EU data protection legislation but only if such activity is related to private life

• Therefore General Data Protection Regulation is not applicable to processing of personal data through Google Glass, Quadcopters, Smart wigs, etc. if it is qualified as an activity within the normal social relationship established with friends and acquaintances
| Conclusion

Companies

• The General Data Protection Regulation will always be applicable to
  • controllers and
  • processors
  which provide the means for processing personal data for personal or domestic activities (whereas 15)

• However there is an exemption of compliance
  • Companies are not required to acquire additional information in order to identify the data subject for the sole purpose of complying with the Regulation (for example obtaining consent)

• If the data processed by a controller does not permit the controller or processor to identify a natural person (or is only pseudonymous data)
Conclusion

Companies

• Less situations of processing of personal data by natural person will be subject to EU Regulation – meaning less controllers

• Therefore and according EU Regulation, there will be less situations for sharing the responsibility

Increased need for companies to regulate/establish their terms of use/privacy policy in order to share the risk and liability with clients that are not considered controllers according to EU Regulation.
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Thank you