

PRESS RELEASE

10th November 2011

Facebook's biometric database continues to be unlawful

The data protection authority prepares to take legal action

Facebook has not complied with the demand made by the Hamburg Commissioner for Data Protection and Freedom of Information (HmbBfDI) to bring their automatic face recognition function in line with European and German data protection regulations. The preliminaries for legal action are now being prepared.

Using automatic face recognition, Facebook can identify people in uploaded photos and attribute these to the user in question. This function requires a comprehensive database containing the biometric characteristics of all users. Facebook has introduced this function in Europe without informing users and acquiring the necessary consent. Unambiguous consent from those affected is required by the European as well as the German data protection law.

Instead of fulfilling these requirements, the most recent communication from Facebook now proposes the introduction of a so-called check box. Users are supposed to give their consent to all of the network's conditions of use, including the guidelines on data usage, by using this check box.

However, this referral to the terms and conditions of use is insufficient to provide a substantive legitimation to the collection of users' biometric face profiles. That is because it is unclear whether and to what extent these guidelines on data usage will inform users about the face recognition function and the biometric database. Furthermore this procedure is to apply only to users registering on Facebook in future. This suggestion does not provide a solution for the more than 20 million German Facebook users whose biometric data have already been stored. In the previous discussions, Facebook seemed to suggest a function, which would explicitly inform users and subsequently prompt them to provide their consent. However, according to the latest communication from Facebook, this path is no longer being pursued. Under these circumstances further negotiation seem futile.

Johannes Caspar, the Hamburg Commissioner for Data Protection and Freedom of Information, states: "Lawful use of face recognition software by Facebook requires free and informed consent. For users whose biometric facial characteristics have already been incorporated into the database operated by Facebook, this consent needs to be acquired retrospectively. Facebook is obviously not prepared to take this step. After the months of negotiations we have conducted with Facebook, this result is a disappointing one. Facebook continues to be in breach of European and German data protection law. This breach must now be remedied. In order to ensure that new face recognition technologies are in future

implemented in a way that respects users' right of privacy and informational selfdetermination, we will make use of the legal avenues available to us. This may mean to impose a fine or issue a prohibition order.”

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