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BELGIUM

Guidelines on Use of Dashboard Cameras Published by Belgian Privacy Commission

By Wim Nauwelaerts, of Hunton & Williams LLP, Brussels, a member of the World Data Protection Report Editorial Board.

In January 2014, the Belgian Privacy Commission published a set of guidelines¹ on the privacy implications of using dashboard mounted cameras in vehicles (“dash cams”) and the processing of video footage and images captured by dash cams.

The Privacy Commission decided to issue these guidelines in response to the increasing dissemination of dash cam videos and images through various media (including social media such as Facebook).

As retail prices of dash cams have significantly dropped in recent years, more and more vehicle owners are installing fixed or removable dash cams for different purposes, such as collecting evidence in the case of traffic-related incidents. This trend appears to have started in certain urban areas in Russia, where the rise in road traffic accident scams has prompted vehicle owners to have dash cams as their silent witnesses.

In this context, the Privacy Commission is particularly concerned about the public dissemination of dash cam videos and images without the observance of Belgian privacy and data protection rules.

Its January 2014 guidance focuses on the three main purposes for which dash cams are often used, and sets out the dos and don'ts for each of these purposes.

Dash Cams for Recreational Use

Dash cams can be used, for example, to make (home) videos about family road trips. If these videos are used purely for personal or “household” activities,² such as showing them to family members and friends, Belgian privacy and data protection rules, in principle, will not apply. However, if the same videos are made public, for example, by posting them on the Internet or showing them to a large audience at an event sponsored by a travel company, Belgian privacy and data protection law will be applicable. In that case, the person who made the video and/or displays it will be considered as the data controller. In that capacity, he or she will need to comply with a number of requirements under Belgian privacy and data protection law, including the proportionality principle, the duty to inform the relevant persons, the obligation to implement data security measures, and the duty to register with the Belgian Privacy Commission.

In practice, complying with these requirements can be cumbersome for data controllers who initially captured video footage and images for purely personal and household purposes, but eventually decided to share them with a larger public — possibly several years after the video or images were made. For example, under the proportionality principle, personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected or further processed.³ In order to comply with this principle, users of dash cams making “home videos” may need to blur the faces of persons appearing in their videos to prevent these persons from being recognized and identified. Complying with a duty to inform the relevant persons can also be problematic if the maker of the video does not have the contact details of the persons ap-

pearing in his or her video, or if such a large number of persons were filmed that informing them individually is not a realistic option. As far as the duty to register with the Belgian Privacy Commission is concerned, it appears disproportionate to expect makers of “home videos” to comply with this formality, especially if only a relatively small number of persons are potentially affected, or if the video is used in a one-time event only.

Dash Cams as Evidence in Traffic Cases

Dash cams can also be installed with the intention of gathering evidence in the event of a road traffic accident. If dash cams are used for that particular purpose, the Belgian Privacy Commission takes the view that a special category of personal data, namely judicial data, is being processed.

The processing of judicial data is, in principle, prohibited under the Belgian Privacy Act,⁴ and there are only limited exceptions to this prohibition. Users of dash cams may be able to invoke one of those limited exceptions if they are able to demonstrate that the processing of judicial data is necessary for managing their own disputes. In that case, the user of the dash cam will be the data controller, and, in that capacity, he or she will have to comply with the proportionality principle. In practice, this means that the video footage and images will have to be erased systematically, *e.g.*, at the end of each day, when no incidents were recorded. According to the Belgian Privacy Commission, dash cam users should also comply with the duty to inform persons who have been filmed in the context of a road traffic incident, in principle, immediately following the incident (*e.g.*, when exchanging contact details). In addition, dash cam users will also be required to implement data security measures and register with the Belgian Privacy Commission.

However, it may not always be feasible or advisable to inform other persons involved in a road traffic incident immediately after that incident — in particular if initially those persons reacted aggressively to the incident. In those cases, it should be possible to postpone the data controller’s duty to inform about the dash cam recording. Also, the legal exception that the processing must be necessary for managing own disputes raises the question of whether dash cams can provide evidence for third parties, for instance, if the dash cam recorded a traffic accident involving others, or in the context of police investigations.

Dash Cams in Taxis

Taxi companies may decide to install dash cams in their taxis to film the passenger area, for example, to increase taxi drivers’ safety or to combat theft and vandalism. In those cases, the Belgian Privacy Act will not be applicable. As this type of activity is considered camera surveillance, the Belgian Camera Act⁵ will apply instead.

The Belgian Camera Act imposes specific requirements and obligations in terms of, for example, data retention, purpose limitation and the right to access. In addition, the data controllers — in this case the taxi companies — will have to register the camera surveillance with the Belgian Privacy Commission. Moreover, they will be required to post signs in the passenger areas of their taxis to inform passengers about the camera surveillance. However, the guidelines from the Belgian Privacy Commission do not specify whether these signs should be posted inside the taxi, or whether they should (also) be visible from the outside, so that persons who do not want to be filmed are aware of the camera surveillance before they enter the taxi.

Dash Cams and Portrait Rights

In addition to requirements under Belgian privacy and data protection law, users of dash cams must also take into account that natural persons in Belgium can exercise their portrait rights. The right to his or her own portrait has been developed by Belgian case law and legal doctrine and constitutes a standalone right, irrespective of privacy and data protection rules.

Pursuant to this portrait right, consent must be obtained prior to capturing a person’s image, for example, before taking that person’s photograph. The consent is specific to capturing images; for publishing or otherwise disseminating images, additional consent may be required. In this context, consent must not always be obtained in writing. There is large consensus in Belgian case law and legal doctrine that, when a person is coincidentally captured on video or his/her picture is taken in a public area (*e.g.*, standing in front of a monument), that person’s (tacit) consent can be assumed. Consent therefore can often be derived from the factual circumstances. However, specific consent remains required, in principle, for the use and reproduction of videos and pictures taken on the basis of tacit consent.

NOTES

¹ <http://www.privacycommission.be/nl/dashcams>.

² Article 3 § 2 Privacy Act (Act of Dec. 8, 1992, on the protection of privacy in relation to the processing of personal data).

³ Article 4 § 1 Privacy Act.

⁴ Article 8 § 1 Privacy Act.

⁵ Act of March 21, 2007, on the installation and use of surveillance cameras.

The Belgian Privacy Commission’s guidelines on the use of dashboard cameras are available at <http://www.privacycommission.be/nl/dashcams>.

Wim Nauwelaerts is a Partner in the Brussels office of Hunton & Williams LLP and a member of the firm’s Global Privacy and Cybersecurity practice group. He is also a member of the World Data Protection Report Editorial Board. He may be contacted at wnauwelaerts@hunton.com.