

Clearview AI and the GDPR

Freedom not Fear

November 7, 2020

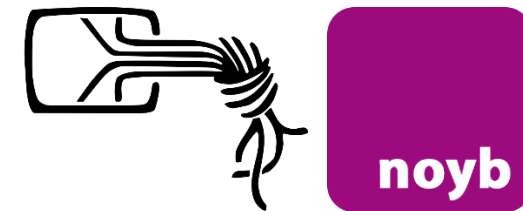
WS 2 by Matthias Marx (CCC) and Alan Dahi (noyb)

Clearview AI and the GDPR

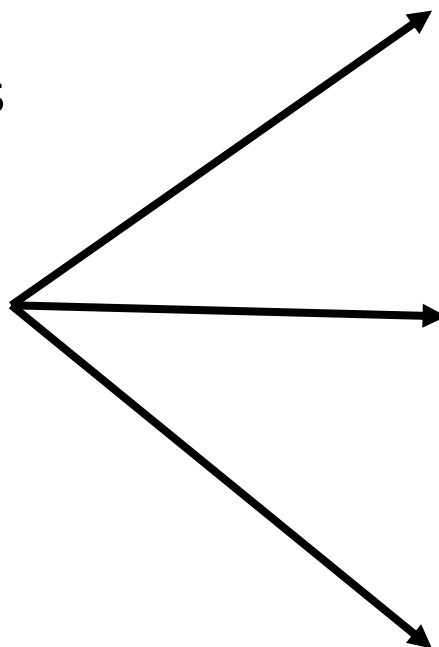
Agenda

1. What is Clearview AI?
2. The complaint and the Hamburg Data Protection Authority's first reply
3. Applicability of the GDPR
4. Similar cases in the EU and elsewhere

What is Clearview AI?



A search engine for faces



<https://social-network.url/profilepage>

- Name
- Political opinion
- ...



<https://dating-platform.url/I-like-BDSM>

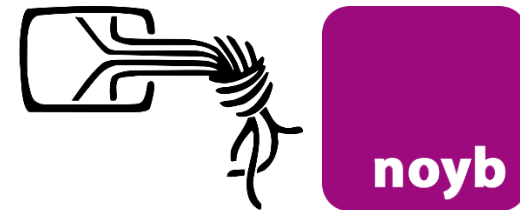
- Sexual orientation



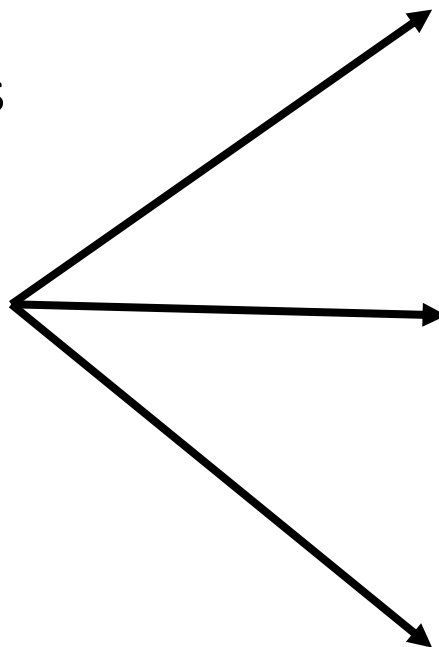
<https://company.url/team>

- Name
- Employer

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What is Clearview AI?



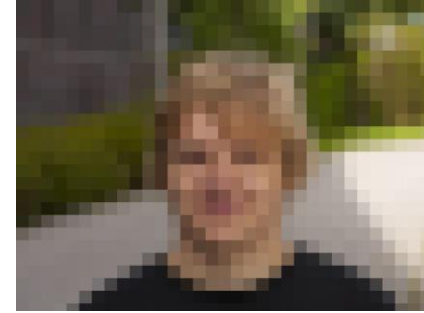
A **biometric** search engine for faces



The data access request



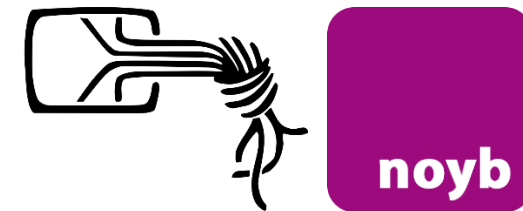
2020-01-20 **Data access request**, including a photo of mine
*“Please provide access to my personal data,
and the following information: ...”*



2020-01-29 Clearview AI requested a clear photo and a government issued ID
“we need to confirm your identity to guard against fraudulent access requests”
... I did not respond

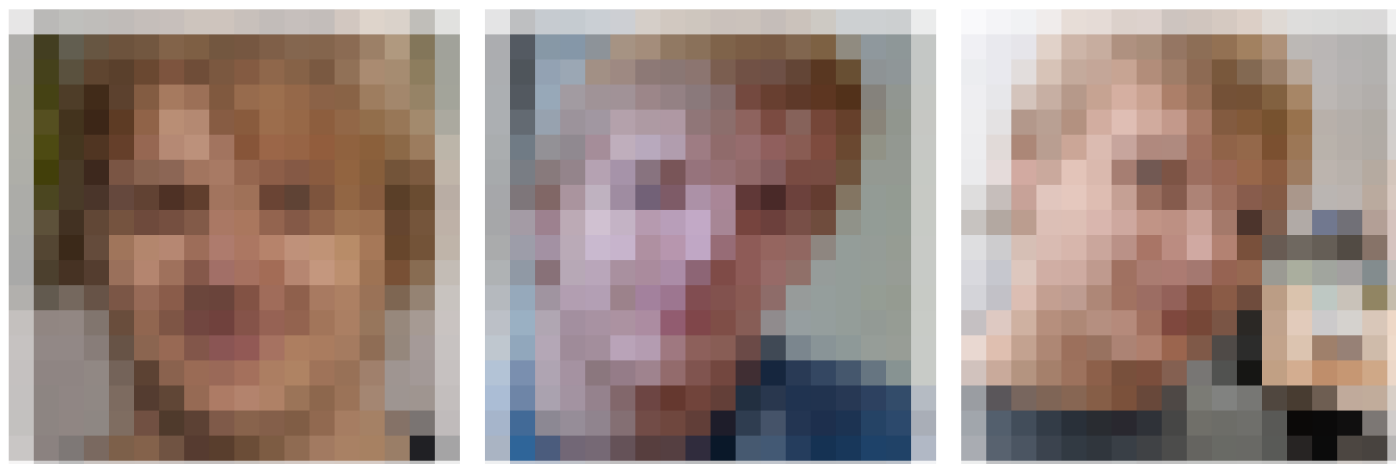
2020-02-18 Data access request is complete
“The images you shared to facilitate this request have been deleted.”

Face Search Results



Report prepared Feb 18, 2020

In order to complete your request, we have generated this report containing Clearview search results for the image that you shared with us, which is labelled “Original Search Image” below. Search result images are enumerated with corresponding public web page titles and URLs below.



Original Search Image

1

2

Image Index

1. Students Henning Stock Photos & Students Henning Stock Images - Alamy. <https://www.alamy.com/stock-photo/students>
2. (FILE) An archive photo dated 28 November 2012 shows students Henning Stock Photo: 52583329 - Alamy. <https://www.alamy.com/stock-photo-filean-archive-photo-dated-28-november-2012-shows-students>



Face Search Results



Download preview  Save to lightbox  Add to cart 

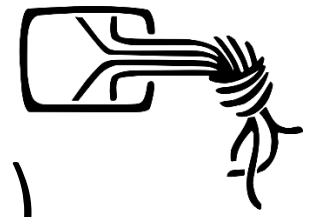
(FILE) An archive photo dated 28 November 2012 shows students (L-R) presenting three model vehicles in Hamburg, Germany. They are testing control circuits for their lunar rover Asimov. They are taking part in the Google Lunar X Prize for a privately-funded landing on the moon. Photo:



Download preview  Save to lightbox  Add to cart 

(FILE) An archive photo dated 28 November 2012 shows students (L-R) presenting a model vehicle in Hamburg, Germany. They are testing control circuits for their lunar rover Asimov. They are taking part in the Google Lunar X Prize for a privately-funded landing on the moon. Photo:

“The images you shared to facilitate this request have been deleted.” (2020-02-18)



Report prepared May 18, 2020

Disclaimer: In order to complete your request, we have generated this report containing Clearview search results for the image that you shared with us, which is labelled “Original Search Image” below. Search result images are enumerated with corresponding public web page titles and URLs below.

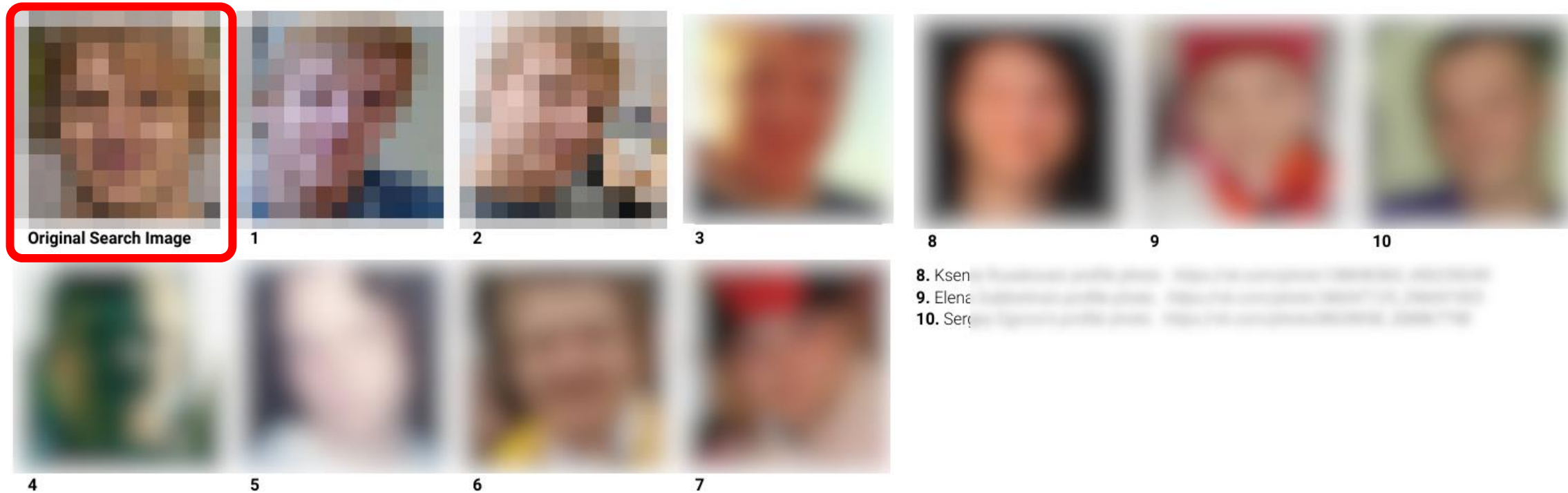
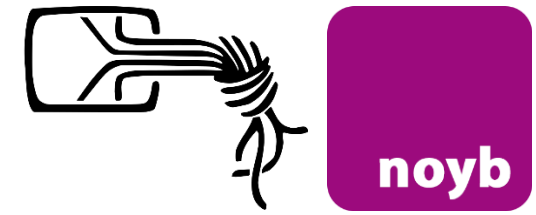


Image Index

1. Student
students

8. Ksen
9. Elena
10. Serg

The complaint and the Hamburg Data Protection Authority's first reply



2020-02-18 **Data access request** is complete

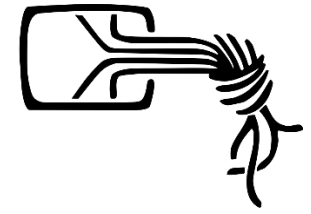
Electronic complaint to Hamburg data protection authority

1. ... processing of personal and **biometric data** without consent ...
2. Clearview AI's answer is incomplete

2020-03-05 Hamburg DPA: **GDPR is not applicable**

- no EU-based branch
- no targeting of European users
- no monitoring of behaviour of data subjects ... within the Union
- *"The applicability of the GDPR would only have to be checked if Clearview AI were to be used in the Union. ... We are not yet aware of such cases."*

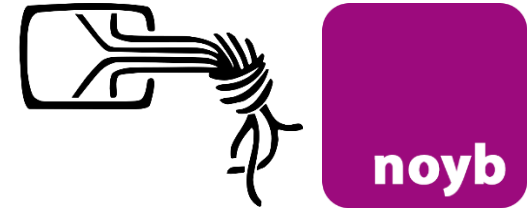
The complaint and the Hamburg Data Protection Authority's first reply



- 2020-03-05 Hamburg DPA: **GDPR is not applicable**
- Response: Please check applicability again
- 2020-03-25 Spiegel article: Hamburg DPA launched **preliminary investigation**



The development of the complaint



- 2020-03 **Questionnaire to Clearview AI about the processing**
 - Available: <https://fragdenstaat.de/a/195578>

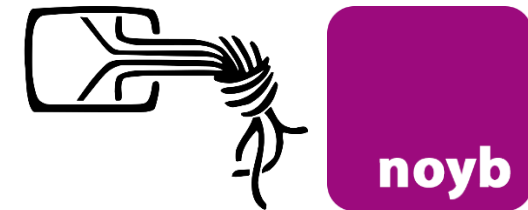
- 2020-04 **Clearview AI's (non-)reply**
 - More or less ignored the questionnaire, claims no jurisdiction

- 2020-05 **New questionnaire to Clearview AI**
 - Also Illinois law suit → Clearview AI ends all contracts except with law enforcement

- 2020-08 **Order to answer under threat of penalties**
 - € 10K per each of the 17 questions

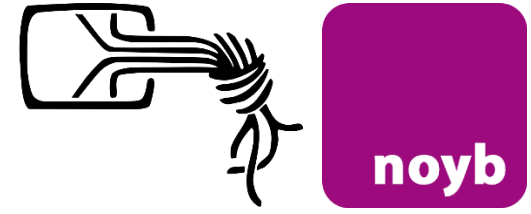
- 2020-09 **Clearview AI replies**

Hamburg Data Protection Authority's Questionnaire



1. Es ist öffentlich bekannt geworden, dass eine Reihe von Unternehmen und Behörden in Europa die Dienste von Clearview AI in Anspruch nehmen oder bereits genommen haben. Damit wir ermitteln können, welche dieser Verantwortlichen sich in unserem Zuständigkeitsbereich befinden, übermitteln Sie uns bitte die vollständige Kundenliste von Clearview AI. Kunden, die offensichtlich außerhalb des Geltungsbereichs des europäischen Datenschutzrechts liegen (z.B. US-amerikanische Behörden) sind ausgenommen.
2. Aus welchen Datenbeständen stammen die Fotos, die Clearview AI verwendet? Bitte beschreiben Sie auch, auf welche Datenbanken außerhalb der sozialen Netzwerke zurückgegriffen wird. Gibt es vertragliche Beziehungen zu den Anbietern, auf deren Datenbestand Clearview AI zugreift?
3. Wie oft werden Bildausschnitte aus Gruppenfotos entnommen und woher stammen diese Fotos regelmäßig?
4. Berücksichtigt Clearview AI beim Durchsuchen des Internets nach solchen Fotos technische Beschränkungen in Form von robots.txt-Hinweisen?

Applicability of the GDPR



Territorial scope (Art. 3 GDPR)

Scenario 1: Company established in the Union?

Scenario 2: Not established in the Union, but processing activities **related to**

a) the offering of goods and services to data subjects in the Union;

b) the monitoring of behavior of data subjects as far as their behavior takes place within the Union.

Applicability of the GDPR



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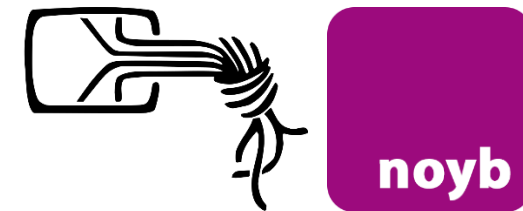
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Does Clearview AI have customers in the EU?

Clearview AI's European customers



2020-02-27 Leaked documents reveal more than **2,200 customers**
including law enforcement agencies, companies, and individuals in at least 27 countries

| Country | Who | When | What | Reply | Further Information | 1 | 2 |
|---------|----------------|---------|---|---|---|-------------------|-------------------|
| Belgium | | | | | | x | x |
| Denmark | | 2020-04 | parliamentary question about use of CV to Ministry of Justice | Danish National Police attended a conference in September 2019 hosted by Intelligence Support Systems for Electronic Surveillance, Social Media/Dark Web Monitoring and Cyber Crime Investigation (ISS World), where a demonstration of the Clearview system was offered (along with other vendors). After the conference, some of the Danish attendees entered contact information on the Clearview website in order to access information from the company. The Danish National Police denies that they are using Clearview facial recognition systems. | https://www.ft.dk/ | x | |
| Finland | | | | | | x | |
| France | | | | | | x | |
| Germany | FragDenStaat | 2020-06 | FOI request to the Ministry of Interior | unknown if government had contact to Clearview AI | https://fragdenstaat.de | | |
| Greece | Homo Digitalis | 2020-04 | official query to the Hellenic Police | they do not use Clearview AI | https://www.homodigitalis.gr/ | | x |
| Ireland | | | | | | x | |

- 2020-03 - ... Parliamentary questions + FOI requests in DE, DK, GR, IT, NL, SE, SI, UK
- “... no live or historic contracts ...”, “... not aware of the use ...”
 - Denmark: National Police entered contact information
 - Sweden: **Police tested Clearview AI** @ operational meeting with Europol

Clearview AI's European customers



2020-01

Questions for written answer to the Commission

by MEPs Sophia in 't Veld et al., Stelios Kouloglou, Bettina Vollath

2020-07

"The Commission is not aware of the use of the Clearview AI application by law enforcement authorities in the EU and whether the application is processing data of European citizens."

2020-09

MEPs furious over Commission's ambiguity on Clearview AI scandal

By Samuel Stolton | [EURACTIV.com](https://euractiv.com)

Applicability of the GDPR



Territorial scope (Art. 3 GDPR)

Scenario 2: Not established in the Union, but processing activities related to

b) the monitoring of behavior of data subjects as far as their behavior takes place within the Union.

Monitoring?

Applicability of the GDPR



Lawfulness (Articles 6 and 9 GDPR)

Biometric data enjoys special protection because of the risks it presents.

Clearview argues all photos are ‘manifestly made public by the data subject’ (Article 9 (2) (e) GDPR).

Who made the photos public?

Purpose limitation principle (Article 5 (1) (b) GDPR) still applies.

Applicability of the GDPR



Lawfulness (Articles 6 and 9 GDPR)

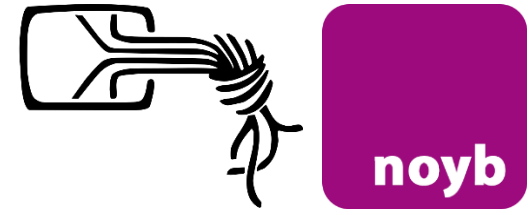
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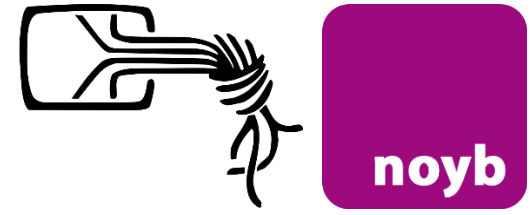
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Similar cases in the EU and elsewhere



- France** Data access and deletion request. Clearview was uncooperative
- Poland** has its own Clearview AI: pimeyes, which suddenly moved to the Seychelles
- Switzerland** Experiment by a broadcasting company: Build your own face search engine
- USA** ACLU took Clearview AI to court
ICE failed to respond to FOIA requests sent by EPIC

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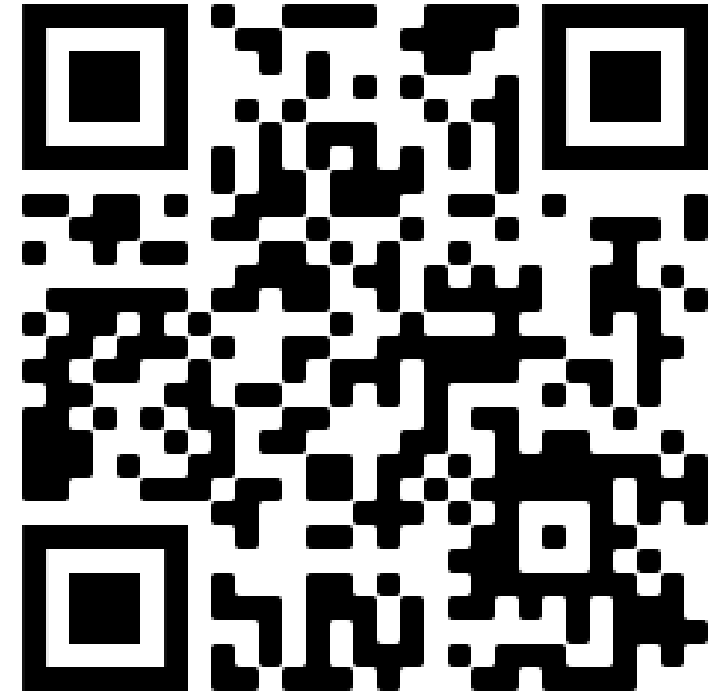
Matthias Marx

matthias@marx.hamburg

Alan Dahi

ad@noyb.eu

<https://noyb.eu/>



<https://marx.wtf/2020-11-FnF-Clearview.pdf>