BELGIUM
Guidelines on Use of Dashboard Cameras Published by Belgian Privacy Commission

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In January 2014, the Belgian Privacy Commission published a set of guidelines 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 family videos about family road trips. If these videos are used purely for personal or ‘household’ activities, such as sharing them with family members and friends, Belgian privacy and data protection rules, in principle, will not apply. However, if these videos are shared publicly, for example, by posting them on the Internet, the Privacy Commission’s guidelines will apply. 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 or made several copies that they distributed to close friends or relatives. For example, making videos using dash cam footage for personal or household purposes may be considered as the data controller’s (personal) data processing activities, but sharing them publicly may lead to the controller being considered as the data controller of publicly disseminated data.

In order to comply with these requirements, data controllers may need to blur the faces of persons appearing in the videos to prevent them from being recognized and identified. In some cases, the controller may even need to blur the faces of persons appearing in the videos to prevent them from being recognized and identified.
this means that the video footage and images will have to comply with the proportionality principle. In practice, data controller, and, in that capacity, he or she will have to put up with the burden. In that case, the user of the dash cam will be the one to decide whether to store or discard the data, or if the dash cam is used as a consumer item.

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 data are used by that particular person, namely judicial data, 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, in principle, prohibits the use of the Belgian Privacy Act, and also any limitations to the proportionality principle. Users of dash cams may be able to invoke one of these limited exceptions if they can demonstrate that the processing of judicial data is necessary for managing their own disputes. In those cases, the Belgian Privacy Commission believes that it may be necessary for the controller to postpone the data processing, and that this requirement is not always sufficient with the proportionality principle. In practice, the data protection authority will have to consider the facts and the circumstances of the case, and also the proportionality of the measure. The controller must be able to show that the proportionality of the measure is necessary.

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 portrait has been developed by Belgian case law and legal doctrine to protect the right to his or her image from being used without consent. In principle, consent must be obtained prior to taking a photograph. However, specific consent can be assumed. Consent therefore may not always be required.

However, it is not always possible or advisable to assume that consent has been obtained in a road traffic accident, especially if the online video is used in a one-time event only. In those cases, it should be possible to postpone the data processing until after the dash cam recording. The legal exception that the proportionality principle should apply in those cases can be assumed. Consent therefore may not always be required.

However, if the dash cam has recorded a road traffic accident involving a person who has been filmed, the controller must obtain consent from that person before the data are processed. If the person is not available, the controller must obtain consent from the person's legal representative. If the person is not available, the controller must obtain consent from the person's legal representative. If the person is not available, the controller must obtain consent from the person's legal representative. If the person is not available, the controller must obtain consent from the person's legal representative. If the person is not available, the controller must obtain consent from the person's legal representative.

Dash Cams in Taxis

Taxis can be fitted with dash cams in order to provide security for the passengers, to monitor the driver, or to prove their journeys. In those cases, the Belgian Privacy Act is not applicable. In this type of scenario, consent can be assumed, but there is a need to ensure that the dash cam is not used for any other purpose, or if the dash cam is used as a consumer item.

Dash Cams and the Belgian Privacy Act

The Belgian Privacy Act imposes specific requirements and obligations on the data controller. The controller must ensure that the data are processed in accordance with the principles of data protection and the right to access. In addition, the data controller must ensure that the data are not processed beyond the scope of the purpose for which the data were collected, as this is the case with the proportionality principle. If dash cams are used for that particular purpose, they will have to report the camera surveillance to the Belgian Privacy Commission. Moreover, there will be certain exceptions to the principle, such as in the case of the Belgian Privacy Commission. 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 people who do not want to be filmed can avoid the taxi.

Dash Cams and the Belgian Camera Act

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