



HELLENIC DATA PROTECTION
AUTHORITY

Athens, 29/12/2009

Ref. No.: G/OUT/1435-2/29-12-2009

DECISION 91/2009

The Hellenic Data Protection Authority, consisting of the President Mr C. Yeraris, the members Mr L. Kotsalis, Mr A.Papaneofitou, Mr A-I. Metaxas, Mr. A. Roupakiotis and the alternate members Mrs G. Pantziou and Mr P. Tsantilas, substituting the regular members Mr A. Pombortsis, and Mr A. Prassos respectively, who could not be present due to an impediment, although they were formally invited, convened on 28/09/2009, following an invitation by the President in order to examine the case that is reported herein below. Mrs Z. Kardasiadou, lawyer, and Mr I. Lykotrafitis, informatics auditor, appointed as rapporteurs, and Mrs M. Giannaki, employee of the Administration & Economics Department, as secretary, were also present without the right to vote.

The authority took under consideration the following:

As a result of the application-complaint with ref. no. G/IN/1435/05-03-2009, addressed to the Hellenic Data Protection Authority, the later found out that the company "KAPOU S.A. GEOINFORMATICS" is taking pictures of areas of Athens with a specially equipped vehicle. The purpose of taking pictures is the provision of a three-dimensional virtual navigation in the streets of different regions around Greece, firstly for the cities of Thessaloniki, Athens and Trikala, through the website of the company www.kapou.gr. On its website, the company stated that it is in the process of developing an automated artificial blurring system of faces and license plates in order to

render their identification impossible. Until the aforementioned system is fully operational, the company has reduced the resolution of the pictures taken, for data protection purposes. Furthermore, the company also mentioned that if someone notifies the company that he/she or a relative, his/her vehicle or his/her home is depicted in one of the images, then, within 24 hours this will be replaced or the part of the picture in question will be artificially covered.

With the document with ref. no. G/OUT/1435-1/30-04-2009 addressed to the company, the DPA reserved its decision in judging the legality of the provided service, until the company submits the required notification. Moreover, the DPA put forward specific measures for the protection of personal data that the company ought to adopt and up to then the company shall suspend the provision of the service to the public,. In short, the DPA considered, for reasons that will be presented in detail below, in the assessments of this decision, that a) the collection, storing, publication on the internet of pictures that show persons, license plates and houses is considered as processing of personal data, b) the processing could be legitimate pursuant to art. 5 par.2 item e) of the Law 2472/1997, if all the necessary measures are taken regarding the blurring of the images, the retention of raw data, meaning the data before the blurring has been applied, the adoption of specific measures for any disclosure of sensitive data, the exercise of the right of access and the right to object and finally, the information to be given to the data subjects.

The company then stopped the provision of the service to the public, and notified its service (see document ref. no. GN/IN/507/11-05-2009), as it was finally completed with the document with ref. no. GN/IN/1060/12-09-2009, accompanied with a description of the information systems of the company (ref. no. GN/IN/514/12-05-2009), as well as the security policy and plan (ref. no. GN/IN/515/12-05-2009).

It should be noted that the DPA previously examined the notification (ref. no. GN/IN/1205/22-12-2008) that was submitted by the company "Google Inc." for the similar service "Street View", a service already available for many cities around the world. The Authority requested from Google, with the document with ref. no. GN/OUT/374/14-04-2009, clarifications and measures for the protection of personal

data. These two services, insofar as they have similar features, call for a common treatment. Because of this, as well as for the harmonized application of the Directive in the Member States of the European Union, during the examination of the present case, the views of the Working Group of the Article 29 Directive 95/46/EC in the case of "Google Street View" are taken into consideration.

The DPA, following the examination of the aforementioned facts, and after thorough discussions, and having heard the rapporteurs,

THOUGHT ACCORDING TO THE LAW

1. The specific service leads to personal data processing as per the meaning of art. 2 item a), c) and d) of the Law 2472/1997, insofar as the taking of pictures of the streets involves images of persons' faces, vehicle license plates and houses, that is information relating directly or indirectly to natural persons and characterizing their identity from different aspects, here, mainly from a physical, economic or social aspect. Moreover, these are not anonymous data, since the persons or the information concerning the persons depicted may not be known to the data controller, nonetheless, their identification is still possible from users of the service through means likely reasonably to be used from them or others (recital 26 Directive 95/46/EC). This applies also to houses, insofar as that the combination of internet geographical mapping applications (e.g. Google Maps, Microsoft Bing Maps) and the information available in publicly accessible directories, such as the addresses in telephone directories, can lead to the identification of the person who resides in a specific building, and also allows for possible conclusions concerning the economic and social status of the identified person. In any case, depicting persons, license plates and houses does not constitute an intrusion of equal intensity. The face of a person renders him directly identifiable and even provides information about the person's presence in a specific place and under specific circumstances, furthermore without him knowing that. That is also the case for the vehicle of the owner, who becomes identifiable through the license plate. On the contrary, depicting homes leads to partial, but not with certainty, accurate conclusions

about the living conditions of a person. In addition, the pictures of the houses are part of a public space and therefore the same level of protection is not justified.

By "processing" it is meant any operation performed upon personal data, from the point of collection to the erasure of these, whether or not by automatic means. Here, personal data are being processed, since, for example, the taking of pictures is considered as a data collection method, the retention of images for the purposes of the service provision is considered as storage, use and alteration, finally, the publication on the internet is considered as dissemination or transmission (see also Court of Justice of the European Communities, decision of the 6th November 2003, C-101/01- Lindqvist, par. 25-27). The dissemination of these images through the internet bears particular risks, because the relevant data are accessible to any interested user without any time or space limitation, unless the service provider for other reasons withdraws the images, suspends or cancels the service, while additionally another inherent risk of internet is the possibility of extracting and combining personal data from various internet services.

Finally, the company "KAPOU S.A. GEOINFORMATICS" is according to art. 2 item f) of the Law 2472/1997 a data controller of the said service, as it determines the purpose and the means of the processing of personal data.

2. The lawfulness of the processing of the aforementioned personal data should be examined on the basis of the provision of art. 5 par.2 item e) of the Law 2472/1997, insofar as that the prior consent for the depiction or not of a person or other information, that determine the person, is not possible and there is no other purpose of processing than the ones mentioned in the art. 5 of the same law. The provision of art. 5, par.2 item e) determines that processing is allowed, only if it is absolutely necessary for the purposes of the legitimate interests pursued by the controller, if such interests clearly override the interests or fundamental rights of the persons, whom the data relate to, and if the fundamental freedoms of them are not affected. As legitimate interest it is in principle considered the development of economic activity, as a particular expression of the fundamental right to the free development of personality (art. 5, par.1 Hellenic Constitution). The provision of the specific service constitutes consequently a legitimate purpose, with benefits for the users of the service as well, i.e. the capability of

navigation and familiarization with places without the need of going there. The processing of personal data that is involved with the provision of this service will have to be *absolutely* necessary or at least necessary, pursuant to art. 7 item f) of the Directive 95/46/EC, that is, it has to conform to the principle of proportionality, from which the more specific principle of data minimisation is also derived. In order to specify the necessity of processing for the purposes of the service provision, it has to be taken into account that the persons, whose personal data are processed, do not have prior contractual or any other relationship with the data controller that would justify that processing. Therefore, specific conditions will have to be met in order to minimize the processing of personal data and to safeguard the data subjects' rights.

3. As far as depicting faces and vehicle license plates is concerned, the method of "blurring" will have to be applied before the provision of the service to the public on the internet and also in such a way so as to deter reverse engineering. When the identification of persons and vehicle license plates is not possible any more, the relevant data are rendered anonymous to the users of the service.

The company "KAPOU S.A. GEOINFORMATICS" stated that the collected pictures have undergone processing with the method of Gaussian blurring, which leads to technically non-reversible results. The same technique shall be applied to any future taking of pictures. Initially, the blurring is performed automatically by a special software and then with human intervention, during which the results of the automatic blurring are reviewed and enhanced.

4. Furthermore, as far as the depiction of houses is concerned, given that it does not constitute an intrusion of equal intensity to the right of protection of personal data, their depiction on the internet does not require the prior blurring of all buildings. Moreover the buildings are not always used as houses/homes and such a requirement, i.e. for the prior blurring of all buildings, would drastically diminish the quality of the provided service.

5. Finally, regarding the retention of raw data, this should be justified on the basis of the legitimate interest of the controller, meaning there should be sufficient reasons for the retention of the data, particularly in relation to a specific time period that

is necessary for achieving the purposes for which the data were collected. Furthermore, the appropriate organizational and technical measures will have to be taken for the protection of these data.

The company "KAPOU S.A. GEOINFORMATICS" stated that the retention of raw data is necessary for the proper execution/operation of the blurring process, the additional manual blurring wherever required, and the replacement of any potential problematic depiction (false positives or negatives). Furthermore, it stated that raw data, i.e non-blurred images, will be deleted, at the latest, six (6) months after the day that the pictures were taken, and as the blurring techniques improve, this period may be shortened in the future. Additionally, the raw data will not be transmitted to third parties. As far as the organizational and technical security measures are concerned, the company stated the following: a) for the minimization of the risk of taking pictures that contain personal data, the taking of pictures will be done very early in the morning and preferably during public holidays, b) the information system, where the raw data is stored, is not connected to the internet, c) access to this system is restricted to three authorised persons, while there is password protection, d) there is anti-virus software installed, e) at the central entrance of the company premises there is a security door installed, and f) the offices are located in a space with 24-hour security service. The DPA considers that the retention of raw data for the purpose of improving the results of the blurring procedure applied in relation with the six month time period, and the above mentioned security measures in relation to the size of the controller meet the conditions set out in the art. 4 par.1 item b) and c), art. 5 par.2 item. d) and art. 10 of the Law 2472/1997. In case of an increase in size of the controller, the organizational and technical security measures will have to be revised, so that the controlled access to data is guaranteed.

6. The Authority however considers that the processing of sensitive personal data would breach the principle of proportionality in relation to the provision of the specific service and measures will have to be taken in order to avoid the collection and further processing of images that might reveal sensitive personal data, e.g. in relation to religious places/places of worship, hospitals/clinics, brothels etc. The company stated

that as a general preventive measure for minimizing this risk, the taking of pictures will be scheduled in very early hours and preferably during public holidays. Furthermore, in cases of places relating to sensitive data, the company will immediately blur the faces and vehicle license plates and by priority delete the respective raw data, i.e. the retention period of sensitive raw data will be shorter. Additionally, no pictures will be taken of places prohibited by law (i.e. military camps).

7. The controller will have to fulfil in a suitable manner, in accordance with the characteristics of the service, the data subjects' rights pursuant to the Law 2472/1997, i.e. the right of access and the right to object according to articles 12 and 13.

For the service in question, the right of access is of a particular importance in relation to the raw data, because the images that are published on the internet can be accessed freely, and, by default, any personal data published will have previously been blurred. The right of access constitutes in many cases the necessary condition for the data subject to be able to request the rectification, erasure or blocking of the data according to art. 12 par.2 item e), as well as to exercise the right to object according to art. 13.

For the effective protection of the data subject, the DPA considers that the right of access has to be granted already during the stage following the taking of pictures from a specific area and before the publication of the service on the internet, nevertheless only if the data subject provides adequate information for enabling the identification of the data relating to him (pictures of faces, vehicle license plates, houses).

The right to object is of particular importance in cases that a processing is allowed on the basis of art. 5 par.2 item. e) and f) of the Law 2472/1997, in this case on the basis of item e), because these provisions require the balancing of opposing lawful interests (see recital 45 and art. 14 item a) of Directive 95/46/EC). Consequently, the in principle lawful processing of raw data allows for exercising the right to object already at the stage before the publication of the service on the internet and, taking into consideration the characteristics of the service and the purpose pursued by the data controller, the addressing of objections should be able to lead to the deletion or the

blurring of the data relating to the individual.

After the publication of the service on the internet, in case of non blurring or inadequate blurring of pictures of faces and license plates, the data subject, but also any other third party, should be able to report this and the company should then proceed to the blurring.

Insofar as that any third party, user of the service, may request the blurring, this does not actually constitute a right to object but a measure for improvement of the quality control of the personal data processing. In relation to homes/houses, this right shall be provided only to the data subject for the reasons mentioned above, in paragraphs 1 and 4 of this decision.

Regarding particularly the images of faces, in case that the data subject itself explicitly requests it either before or after the publication of the service on the internet, the deletion or blurring will have to cover a larger region than the face, because in some cases the data subject could be identified from its body type.

The company stated that it will satisfy the right of access and the right to object, as per above. More specifically, the objections will be satisfied within one working day. Regarding homes, the data subject will have to submit information that will prove his/her relation with the property or to make a telephone call to the company without elimination of calling line identification from a landline phone registered to that property. Finally, the controller stated that the aforementioned rights can be exercised via any means of communication.

8. The right to information and the respective obligation of the data controller according to art. 11 of the Law 2472/1997 during the stage of personal data collection, which in this case is the stage of taking of pictures, constitutes a fundamental condition for the lawful processing, as in this way the data subject is informed about the processing and is able to exercise his other rights.

Information provided to the subject, according to art. 11 par. 1 of the Law 2472/1997, should contain all the necessary information mentioned in that provision and should be provided in an appropriate and clear manner. More specifically, art. 3 par.2 of the regulatory decision 1/1999 of the DPA lists indicative means for providing adequate

and unhindered information. Information to the data subjects provided only through the marking (i.e. with the company logo) of the vehicles collecting the images is not considered as adequate. The data controller has the obligation to adopt additional measures, in order to ensure that the information is complete vis-à-vis all the points mentioned in art. 11 of the Law 2472/1997.

Appropriate ways for informing could be through the press or through other mass media. Information taking place through the press will have to be done through a daily nation-wide high-circulation newspaper published in Athens, as well as in a daily local high-circulation newspaper published at the place of establishment of the Region, where the municipalities to be photographed belong to. Given that in the case in question the processing can not be based on data subjects' prior consent, the publication of the relevant text in a wide circulation newspaper constitutes an appropriate means of providing information according to art. 3 par. 2 of DPA's regulatory Decision 1/1999. This kind of means does not constitute "information through the press" in the meaning of art. 3 par. 3 of the same Decision. Therefore, in the present case, a previous permit by the Authority is not necessary for providing information by publication in newspapers. In any case, information should also be provided via the company's website, in an easily identifiable place. The areas that will be photographed and the schedule for each region (including dates), will have to be mentioned on the website as well.

An indicative text for providing information may be as follows:

"The company KAPOU S.A. is announcing that during the period from .../.../... until .../.../... will proceed to a three dimensional mapping of the streets, pedestrian ways, pavements and facades of the relevant buildings situated in the area of (city) in the Region of by means of a car clearly marked with the name of our company and equipped with a camera on its roof. The purpose of the mapping is the virtual navigation on the internet. The mapping (photograph collection) will be taking place during morning hours and mainly during public holidays in order to minimize the possibility of personal data being captured. The faces and vehicles license plates will be adequately blurred, so as to render identification infeasible, in a non-reversible manner,

before the publication of the mapped area on our website (www.kapou.gr). The data subject or any other third party can report the lack of or the inadequate blurring of any face or vehicle license plate. The data subject may also request the blurring of the picture of his house/home. The data subject has, according to art. 12 of the Law 2472/1997, the right of access to his personal data in the raw data, as well as the right to object, pursuant to art. 13 of the Law 2472/1997, which entitles the data subject to request the removal of the relevant pictures (i.e. the data are blurred or erased). The right to object can also be exercised before the publication of the mapped area on our website. Blurring is done within one working day from the submission of the request. Raw data are not transmitted to third parties.”

The company stated that it will comply with the obligation of the art. 11 of the Law 2472/1997 (obligation to inform).

ON THOSE GROUNDS THE DPA HEREBY RULES

The service provision of the virtual three-dimensional navigation of the streets of Greek areas, by the company “KAPOU S.A. GEOINFORMATICS”, as data controller of this service, is in accordance with the Law 2472/1997, if the controller observes to the terms stated in the assessments of this decision.

The President

The Secretary

Christos Yeraris

Melpomeni Giannaki

(Signatures)