

# The Legal Regulation on Facial Recognition.

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# Summary

1. Definition and issues
2. AI technology for people and progress
3. The legal regulation in force
4. The proposal for a European Intelligent Artificial Act



# 1. Definition and issues

- **Definition**

- Facial Recognition technology is used to automatically identify individuals based on his/her face using artificial intelligence such as machine learning technologies

- **Issues**

- Technical issue (Cognitive bias, statistical bias)
- Ethical issue (fundamental rights, privacy protection)
- Legal issue (the national sovereignty, control of personal data)



# 2. AI technology for people and progress

- INTERPOL, UNICRI, Politie, and the World Economic Forum White Paper, *A Policy Framework for Responsible Limits on Facial Recognition, 2021*
  - The importance of the role of law enforcement agencies in ensuring mutual assistance between States.
  - Facial Recognition is used for identification and authentication purposes.



- Proposed principles for the responsible use of Facial Recognition:
  - Respect for human and fundamental rights
  - Necessary and proportional use
  - Transparency
  - Human oversight and accountability
  - System performance
  - Risk-mitigation strategies
  - Training of facial examiners
  - Use of probe images and reference databases
  - Image and metadata integrity



# 3. The EU Legal Regulation in force

- General Data Protection Regulation n°2016/679 (« GDPR »)
  - Article 9 (Processing of special categories of personal data)
  - Article 35 (Data Protection Impact Assessment)
- Directive 2016/680 (the « Police and Criminal Justice Directive »)

Pursuant to Article 10, Biometric data processing is permitted only:

- where strictly necessary, and
- when it is authorised by the law of the Member State, or to protect the vital interests of the data subject or of another natural person, or where such processing relates to data which are manifestly made public by the data subject



# 3. The Legal Regulation in force

- CNIL, Decision 16 December 2021
  - CLEAVIEW AI company has developed a facial recognition software with a database of public videos and photos
  - The CNIL issues a formal notice to CLEARVIEW AI company to stop reusing photographs available on the Internet
- European Data Protection Board (« EDPB »), Guidelines 05/2022 on the use of Facial Recognition technology in law enforcement
  - A strict framework for the use of Facial Recognition technology (limited to the Police and Criminal Justice Directive)
  - A suggestion of 4 prohibitions of the use of Facial Recognition technology in law enforcement context:
    - 1) a remote biometric identification of individuals in publicly accessible spaces;
    - 2) facial recognition systems that classify individuals on the basis of their biometric data into groups on discriminatory grounds;
    - 3) recognition of people's emotions;
    - 4) processing of personal data which would rely on a database collected on a large scale and in an indiscriminate manner



# 4. The Proposal for a European AI Act

- Not enacted yet
- **The purpose** of this Regulation is to improve the functioning of the internal market by laying down a common legal framework
- **A classification** of artificial intelligence practices according to the risk they generate
- **4 prohibited artificial intelligence practices**
  - AI systems that subliminally influence the behaviour of a person with a view to causing harm to that person/third party;
  - AI systems that exploit the vulnerability of a group of people in order to distort the behaviour of one of them and cause harm;
  - AI social rating systems marketed, commissioned or used by or on behalf of public authorities;
  - Real-time remote biometric identification systems in publicly accessible spaces, with some exceptions.



# Your contact



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