



Recommendation nr. 05/2010 of 15 December 2010

Re: Recommendation of the Commission's own accord concerning mobile mapping (CO-AR-2010-007)

The Commission for the Protection of Privacy;

Whereas the Act of 8 December 1992 *on the protection of privacy in relation to the processing of personal data* (hereafter "Privacy Act"), particularly article 30;

Whereas the report of Mr President;

Issues the following recommendation on 15 December 2010:

I. SCOPE OF THE RECOMMENDATION

1. This recommendation of the Commission's own accord relates to the use of mobile mapping applications implying a processing of personal data.
2. The Commission issues the recommendation taking into account the current knowledge of mobile mapping technology. It reserves itself the possibility to adapt its position in the future, based on the evolution of technology and its experience in the field. The current recommendation consists of a global analysis of mobile mapping application, which does obviously not prevent the Commission from issuing an opinion in specific cases.¹

II. MOBILE MAPPING: GENERAL

A. Definition and importance of mobile mapping

3. **Mobile mapping** *is the technology that uses a vehicle² equipped with cameras and/or scanners that can record all data pertaining to a specific road, among others by taking 360° photographs.*
4. Mobile mapping is already used in many sectors for various purposes. The technology is relatively new, but there is a wide range of application possibilities. A few examples have been listed below:
 - *official authorities*: 360° photographs enable official authorities to look at the situation in the field at any time using a computer³. Pictures of a certain location can be retrieved directly through an internet application, providing a detailed image of the location of a complaint about illegal waste dumps, of the traffic situation to assess a reported traffic safety problem or of the direct environment of a plot of land/building when a building permit is requested. In certain cases 360° images can thus offer sufficient information to assist citizens or to postpone a site visit;
 - *real estate*: property evaluations, determining the location of certain premises, ...;
 - *tourism*: online exploration of a certain city, neighbourhood, ...;
 - *navigation*: drawing up road maps, ...

¹ See the Google Street View case, in which the Commission addressed specific recommendations to Google, as well as the case regarding the Flemish government's road sign database.

² This recommendation is based on the use of a vehicle, and not of any other means, which could be discussed in a specific recommendation if necessary.

³ Cf. the Flemish authorities' road sign database.

B. Technique

5. Mobile mapping uses a vehicle equipped with cameras and/or scanners to record all possible data of a certain road or route (with 360° photographs, an inventory can be made of traffic infrastructure, i.e. road signs, traffic lights, ... and elements such as petrol stations, restaurants, speed cameras can be registered, etc.). This data can be linked among others to a positioning and orientation system.

C. Possible privacy impact

6. As described above, mobile mapping often uses cameras to obtain a 360° digital image. If the images are recorded on a public road, they will inevitably show individuals, vehicles, houses, ... If these individuals, vehicles and houses are recognizable, which is definitely possible for digital images considering the possibility to edit the pictures and zoom in, the images must be considered as personal data. Moreover, it cannot be excluded that sensitive information may be deduced from some of the images (for example a topless woman sunbathing, a patient at a medical practice, ...).

III. APPLICABILITY OF THE ACT ON THE PROCESSING OF PERSONAL DATA (PRIVACY ACT)

A. The use of mobile mapping implies a data processing

7. The Privacy Act defines "processing" as "*any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by means of transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction of personal data.*"⁴
8. The use of a mobile mapping system supposes the collection, registration and storage of data (personal or other data not) using automated means.

B. Mobile mapping may process personal data

9. Pursuant to article 1, § 1 of the Privacy Act "*personal data*" means "*any information relating to an identified or identifiable natural person, hereinafter the "data subject"; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification*

⁴ Article 1, § 2 of the Privacy Act.

number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity."

10. In several opinions⁵ the Commission issued in the past it confirmed that the Privacy Act is applicable to the processing of images, provided that the images relate to identified or identifiable individuals or their goods. If this condition is met, in principle the Commission considers the mobile mapping application as a processing of personal data.

C. The mobile mapping application may imply a processing of sensitive data⁶

11. Certain image recordings can be sensitive in nature, which will often depend on the context, for example the entrance to a shelter, a specialised physician's practice, a row of individuals waiting at prison gates, ...
12. If the mobile mapping application can be used to deduce information relating to an individual's state of health for instance, the data must be considered as sensitive data.

IV. APPLICATION OF THE PRINCIPLES OF THE PRIVACY ACT

A. Legitimacy and proportionality⁷

13. All personal data must be processed for specified, explicit and legitimate purposes and not be further processed in a way incompatible with those purposes.
14. Taking into account article 4, § 1, 2° of the Privacy Act, the purposes for which the data is processed must be specified, explicit and legitimate. With a view to transparency towards the data subject whose data is processed, these purposes must be determined prior to the actual data collection (art. 9 of the Privacy Act).
15. Moreover, art. 4, § 1, 2° provides that, considering all relevant factors, i.e. the data subject's reasonable expectations and the applicable statutory and regulatory provisions, the images must not be further processed (for example by third parties/buyers/users) in a way that is incompatible with the original purposes.

If based on the abovementioned relevant factors it can be decided that the purpose for which the images will be used at a later stage is compatible with the original purposes of the data

⁵ Including opinions nr. 14/95, 34/99, 08/2006 and 31/2006.

⁶ In the context of privacy protection sensitive data is the data referred to in articles 6, 7 and 8 of the Privacy Act.

⁷ Articles 4 and 5 of the Privacy Act.

processing, then processing the images for this new purpose complies entirely with the Privacy Act and no new obligations must be fulfilled.

If it is observed, however, that using the images for a purpose determined at a later stage is *a priori* incompatible with the original purposes of the data processing, the images can nevertheless be used for this new purpose, provided that all provisions of the Privacy Act have been complied with (duty to inform the data subjects about the new purpose, compliance with the proportionality principle mentioned in art. 4, § 1, 3° of the Privacy Act, a basis for the processing can be found in art. 5 of the Privacy Act, duty to notify the processing).

It can be deduced from the above that it is essential to determine all purposes as precisely as possible prior to the processing, among others when making the notification to the Commission, because the assessment of the compatibility of a future image processing with the original purposes will depend on this description.

16. To be *legitimate* each purpose must meet, among others, one of the conditions of article 5 of the Privacy Act.
17. In principle, processing personal data with a mobile mapping application is possible when the data subjects have *consented*⁸. For mobile mapping this appears difficult to achieve, taking into account the large number of data subjects involved, the fact that is difficult to predict how the images will be registered (uncertain location and time), and the practical impossibility to obtain every individual's consent. The processing will also be authorised if it *has been provided for by law*⁹ or when the controller can invoke *a legitimate interest* which outweighs the data subject's interests or fundamental rights and freedoms¹⁰. It must be ensured, however, that the individual's human dignity is not compromised. In the context of mobile mapping especially this last option will be invoked.
18. The Commission wishes to emphasize that such processing operations, at any rate, must take into account the interests of data subjects who are accidentally photographed in their vehicle or in the street, whether or not this happens in a sensitive context. The degree of protection of these interests will furthermore depend on the purposes of the mobile mapping application. If the purpose is drawing up a map, on which the individuals or vehicles cannot be found, the level of protection will be different from that of a processing in which the registered images, including

⁸ Article 5 a) of the Privacy Act.

⁹ Article 5 c) of the Privacy Act.

¹⁰ Article 5 f) of the Privacy Act.

individuals and vehicles, will be made available through an online consultation system, for instance.

19. This protection of interests, depending on the case, can be obtained with "privacy by design", for example by blurring (i.e. making unrecognizable) individuals' faces and number plates. Other possibilities are adapting the camera position so that the installation violates privacy as little as possible (only camera angles similar to the perspective of a passer-by looking in on somebody or something), registering the images of busy places at calmer moments, avoiding the registration sensitive places, ...
20. It must also be observed that the *legitimate* interest of the controller does not justify an excessive processing. The controller must ensure the proportionality of the planned processing: a weighing must be carried out between the general interest or the legitimate interest of the controller and the data subjects' right to protection of their privacy. A risk analysis is therefore recommended prior to the application of the mobile mapping system. When invoking a *legitimate interest* it must be observed that the purpose for which the personal data is processed can reasonably not be achieved in a different way that is less disadvantageous to the data subject, as provided among others by article 4, § 1, 3° of the Privacy Act, pursuant to which personal data must be adequate, relevant and not excessive. Under normal circumstances a mobile mapping application will not be used to collect personal data, but rather to obtain an exact digital image of a road for instance, in order to draw up a road map. This will necessarily include processing personal data, which is why the processing must be avoided and/or eliminated using reasonably available means.

B. Providing information to the data subjects

21. In any data processing operation the data subjects must be informed about the purposes of the processing, the identity of the controller and the recipients (or categories of recipients) of the data, as well as the existence of the right to access and rectification¹¹. This information can be provided through notices in the local press, and on the controller's website. Moreover, the vehicle used for the mobile mapping application must also provide the necessary information concerning the controller and the processing operation. Citizens asking the camera car operator questions, should also be able to obtain an information leaflet (*cf. infra*, point 22) including a description of

¹¹ Article 9 of the Privacy Act, §§ 1 and 2, with a possible exception in article 9, § 2, 2nd paragraph, b), if the processing is carried out with a view to the application of a provision from an act, decree or ordinance.

the objectives of the project and the different channels that can be used to contact the controller (online, by letter, by telephone, ...).

22. In every mobile mapping application processing personal data a comprehensible information leaflet must be offered (both online and offline), which could include the following elements:

- the controller's identity and address;
- the purpose of the processing;
- which personal data are processed;
- a summary of the "assessment" of the impact on privacy and the protection of personal data (*cf. infra*, point 27);
- the measures data subjects can take to limit privacy risks (for an online application, for example, the possibility to indicate which personal data should be blurred);
- how to contact the controller (telephone, address, website, e-mail).

23. The duty to provide information also relates to the notification of the processing to the Commission. If an automated processing of personal data is carried out, in principle a prior notification must be made to the Commission.

C. Data retention term

24. The personal data obtained using a mobile mapping application must not be kept any longer than necessary to achieve the planned purpose¹².

25. The registered images must therefore be destroyed when they are no longer useful for the desired purpose, such as drawing up a road map.

D. Security measures

26. The controller and his processor, if any, must take the necessary technical and organisational security measures¹³ to protect the mobile mapping application and the data it has processed from destruction (whether or not accidental), as well as from loss, access and any other illegitimate processing of personal data. In this context, by way of information, the Commission refers to the

¹² Article 4, § 1, 5° of the Privacy Act.

¹³ Article 16 of the Privacy Act.

security standards it has drawn up, which, according to the Commission – depending on the case – must be applicable to a processing of personal data¹⁴.

27. The Commission furthermore recommends controllers to:

- carry out a "privacy assessment" regarding the implications of the mobile mapping application for privacy and the protection of personal data. The greater the risks of a certain application, the higher the level of the assessment should be;
- designate individuals in charge of follow-up of the assessments and of an efficiency check of the technical and organisational security measures; it is essential that controllers closely follow technological evolutions in order to adapt their security measures accordingly¹⁵;
- make the assessment available to the supervisory authority, at least six weeks prior to the first use of the application.

28. Pursuant to article 15*bis* of the Privacy Act controllers can be held liable for any damage due to non-observance or inefficiency of their security measures.

29. In conclusion, the Commission wishes to point out that the industry has a major part to play regarding security measures and privacy facilities. When applying so-called "security and privacy by design" it will be much simpler for controllers to choose a privacy-compliant system. The Commission is prepared to consult with the sector at any time to provide further advice.

On behalf the administrator on leave of absence,

The President,

(sign.) Patrick Van Wouwe

(sign.) Willem Debeuckelaere

¹⁴ <http://www.privacycommission.be/en/static/pdf/referentiemaatregelen-vs-02eg-en-input-website-090.pdf>.

¹⁵ Article 16 of the Privacy Act.