



Minister for Justice, Helen McEntee, TD

By Email

23 November 2022

Ireland's ongoing plans to legislate for policing facial recognition technologies

Dear Minister McEntee

We are grateful to members of the Department of Justice and An Garda Síochána for briefing the undersigned on 10 November regarding the ongoing plans to legislate for and deploy policing facial recognition technologies (FRT) for real time and retrospective use. We agree that keeping children safe is of the utmost importance. We believe that protecting children also means protecting them from the dangerous and disproportionate consequences of policing facial recognition technologies.

We note in particular concerns stemming from our 10 November briefings regarding:

1. **The legislative process.** Policing FRT will be addressed in the forthcoming EU [AI Act](#), which Ireland will be subject to. We appreciate the assurance from Department of Justice members that Ireland will amend any policing FRT law to comply with the Act; however, we question why Ireland is investing money and resources in building and implementing a law that may need to be significantly amended in the near future.
2. **The consultation process.** As the processing of biometric data under all circumstances constitutes a [serious interference](#),¹ governments should engage in a

¹ 'The processing of biometric data under all circumstances constitutes a serious interference in itself. This does not depend on the outcome, e.g. a positive matching. The processing constitutes an interference even if the biometric template is immediately deleted after the matching against a police database results in a no-hit', European Data Protection Board, *Guidelines 05/2022 on the use of facial recognition technology in the area of*

process of consultation before deciding to use policing FRT - not after. At the time of writing, we understand that the Department of Justice has not yet formally consulted the Office of the Data Protection Commissioner. Nor have community groups at risk from the technologies' established accuracy and bias problems been contacted. Our meetings on 10 November were briefings and not formal consultations.

3. **Unacknowledged accuracy and bias risks.** In the briefing, we were particularly concerned to hear members of An Garda Síochána deny the significant and robust scientific evidence demonstrating accuracy and bias concerns - in [research](#),² [development](#),³ [deployment](#),⁴ and [decision making](#).⁵ The risks for vulnerabilised groups, particularly darker skin toned individuals, were not only unacknowledged, members stated repeatedly that accuracy was not a concern.
4. **Independent testing and auditing.** Risky policing technologies should be independently vetted and the datasets independently audited prior to legislating for their use.⁶ We did not receive clear answers how this tech will be independently tested, assessed, evaluated or audited before decisions are made about whether it satisfies legal and ethical criteria. There is no clarity around how independent audits will be facilitated with third-party commercial vendors whose technology and datasets tend to be proprietary secrets.⁷

law enforcement Version 1.0 Adopted on 12 May 2022, para 3 <https://edpb.europa.eu/system/files/2022-05/edpb-guidelines_202205_frtlawenforcement_en_1.pdf>

² Abeba Birhane, 'The unseen Black faces of AI algorithms' (2002) 610 *Nature* 7932 <<https://www.nature.com/articles/d41586-022-03050-7>> accessed 16 November 2022

³ Joy Buolamwini and Timit Gebru, 'Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification' (2018) 81 *Proceedings of Machine Learning Research* 81 <<http://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf>> accessed 16 November 2022

⁴ A recent audit testing three British police deployments, for example, found that all three FRT deployments failed to meet minimum ethical and legal standards. Evani Radiya-Dixit, *A Sociotechnical Audit: Assessing Police Use of Facial Recognition* (Cambridge: Minderoo Centre for Technology and Democracy, 2022) <<https://doi.org/10.17863/CAM.89953>> accessed 16 November 2022

⁵ For example, a former Shamrock Rovers mascot who was held in a detention centre in Bulgaria because faulty FRT was compounded by police nonetheless decided to follow the tech. Human review was insufficient in this space. Beau Donnelly, Shamrock Rovers Fan Released After Being Held in Bulgaria Over Fake Passport *The Times UK* (22 July 2022) <<https://www.thetimes.co.uk/article/shamrock-rovers-fan-released-after-being-held-in-bulgaria-over-fake-passport-n9nc6djkf>> accessed 16 November 2022

⁶ Ada Lovelace Institute, AI Now Institute and Open Government Partnership. (2021). *Algorithmic Accountability for the Public Sector*. <<https://www.opengovpartnership.org/documents/algorithmic-accountability-public-sector/ICO>> accessed 17 November 2022; ICO, Information Commissioner's Opinion, *The use of live facial recognition technology by law enforcement in public places 2019/01* (31 October 2019) <<https://ico.org.uk/media/about-the-ico/documents/2616184/live-frt-law-enforcement-opinion-20191031.pdf>> accessed 17 November 2022

⁷ Ada Lovelace Institute, and DataKing UK. (2020). *Examining the Black Box: Tools for assessing algorithmic systems*. <<https://www.adalovelaceinstitute.org/wp-content/uploads/2020/04/Ada-Lovelace-Institute-DataKind-UK-Examining-the-Black-Box-Report-2020.pdf>> accessed 17 November 2022

5. **This technology is banned in other jurisdictions.** We do not accept comments from the Department of Justice that this technology is safe, ethical, or legal because it is being used by policing organisations in different jurisdictions. These comments bely the fact the technology is increasingly being [banned](#) or [suspended](#) around [the world](#) for policing.⁸ It ignores that [200 civil society organisations](#) across the globe and [13 NGOs and 7 universities in Ireland](#) have also called for bans. We don't want to replicate the autocratic character of regimes where this technology gradually becomes normalised in all areas of public life.
6. **Technological capacity of our officials to regulate and deploy this tech.** We also worry about the technological capacity of police and other policy organisations in Ireland to safely manage this tech. We understand that training will be provided. However, given the recent significant concerns of the Data Protection Commission regarding [Garda capacity to implement data protection law](#),⁹ and reports of [poor investment in data protection training](#)¹⁰ of members of An Garda Síochána, we are not reassured.
7. **Resourcing.** We acknowledge the Commission of Future of Policing Report (2018) which states that resources are needed for policing and supports investment in technologies.¹¹ Significant resources will be required to vet, audit, train for, and implement this tech. We question the allocation of these resources for FRT specifically given the possibility that independent evaluation will find, as others have,¹² that this tech is inappropriate for policing or that using this technology could be banned at EU level in the near future.
8. **Justice risks.** The risks to the right to a fair trial and the right to privacy, as well as the potential for miscarriages of justice, require a clear demonstration that this tech is necessary, and that it is the least intrusive way to achieve what it aims to achieve. We are not convinced that these tests have been met. Trials of FRT in other police services highlight these human rights law concerns.¹³

⁸ In Belgium, Luxembourg, and Morocco, for example, [FRT](#) is banned or greatly restricted. In the US, cities that have [banned](#) police use of FRT include Boston, Oakland, Portland, and San Francisco. See also Facial Recognition Laws in the United States. See #ProjectPanoptic, Internet Freedom Foundation, <https://internetfreedom.in/facial-recognition-laws-in-the-united-states-projectpanoptic/>. See also, Team AI regulation, Suspension of Buenos Aires' Facial Recognition System (10 June 2022) <<https://ai-regulation.com/suspension-of-buenos-aires-facial-recognition-system/>>

⁹ DPC Ireland 2018-2020 Regulatory Activity Under GDPR, June 2020, pages 63-73, <https://www.dataprotection.ie/sites/default/files/uploads/2020-06/DPC%20Ireland%202018-2020%20Regulatory%20Activity%20Under.pdf>; see also ICCL, *An Garda Síochána unlawfully retains files on innocent people who it has already cleared of producing or sharing of child sex abuse material*, 19 October 2022, <https://www.iccl.ie/news/an-garda-siochana-unlawfully-retains-files-on-innocent-people-who-it-has-already-cleared-of-producing-or-sharing-of-child-sex-abuse-material/>

¹⁰ Supported by figures obtained by ICCL under a Freedom of Information request in February 2022

¹¹ Commission on the Future of Policing in Ireland, *The Future of Policing in Ireland* (2018) <[http://policereform.ie/en/POLREF/The%20Future%20of%20Policing%20in%20Ireland\(web\).pdf/Files/The%20Future%20of%20Policing%20in%20Ireland\(web\).pdf](http://policereform.ie/en/POLREF/The%20Future%20of%20Policing%20in%20Ireland(web).pdf/Files/The%20Future%20of%20Policing%20in%20Ireland(web).pdf)> accessed 16 November 2022

¹² See footnote 4

¹³ See footnote 4; Pete Fussey and Daragh Murray, *The Human Rights, Big Data, and Technology Project*. (2019). Independent Report on the London Metropolitan Police Service's Trial of Live Facial Recognition

To keep children, and everyone in Ireland, safer, we have an opportunity to demonstrate global leadership. We should adhere to the principles of Ireland's [National AI strategy](#) for inclusive and responsible decision making about adopting AI technologies. Responsible stewardship means making the correct decision to abandon technologies like risky policing FRT that come into conflict with our strategy.

Your sincerely

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Encl

- [Open Letter to the Irish Times](#): Experts' Red Line on Policing Facial Recognition Technologies
- [Expert Letter to Oireachtas Cabinet Members](#): Policing FRT, 20 June 2022