

Working paper on Privacy and processing of images and sounds by multimedia messaging services

- adopted at the 35th meeting, 14-15 April 2004 in Buenos Aires -

New generation mobile phones and camera phones are rapidly becoming commonplace, partly on account of their ever improving image quality.

Although the technology underlying these devices is not basically different from that implemented, for instance, in standard cameras, and therefore the relevant legal issues are in principle the same, the portability and discreet nature of camera phones, also in connection with the possibility of recording sounds, make them especially liable to being used without the photographed being aware.

This circumstance carries enhanced risks as regards not only the privacy of individuals, but also the possible breach of industrial and commercial secrecy. Indeed, a ban on the use of camera phone has been issued with regard to certain premises and/or areas inside factories and workplaces.¹

It should be pointed out that this type of processing may fall within the scope of provisions related to criminal (e.g., dissemination of obscene materials) and civil law (e.g., protection of a person's rights to his/her own image, copyright issues).

Images and sounds may contain personal data, including sensitive data, insofar as they are related to identified or identifiable natural persons. In this case it has to be considered, which data principles apply, in particular the need for an information notice and consent, except where it is for purely personal or household activity.²

In the light of the above considerations as well as of the specific difficulties related to enforcement in this sector on account of the basic features of the technology involved (quickness, digitalisation, easy of use) which were referred to above, the working group would like to draw the attention of all the entities concerned to the advisability of enhancing public awareness on the risks for privacy implied in the use of camera phones.

In order to achieve this end, the Working Group recommends a number of options:

- Improvement of education of the users, particularly taking into account their youth and inexperience;
- improvement of the information given by manufacturers about the appropriate use of camera phones;
- implementation of technological supports to facilitate application of the relevant principles of data protection and enhance awareness. Possible means to achieve this target might include the issue of a sound signal³ whenever the camera function is

¹ As for these considerations, see ITU, "Social and Human Considerations for a More Mobile World – Background Paper", February 2004, available at <http://www.itu.int/osg/spu/ni/futuremobile/SocialconsiderationsBP.pdf>, p 17.

² See the decisions issued by some European data protection authorities (Italy, 12th March 2003; Hungary, December 2003). See also the Information Sheet 05.03, Mobile phones with cameras, published by the Office of the Victorian Privacy Commissioner, Australia, available at <http://www.privacy.vic.gov.au>.

³ This is already the case in Japan based on industry self regulation whilst in South Korea legislation was passed in November 2003 requiring at least 65-decibel beeping to be activated on camera phones independently of the settings.

operated and developing technologies allowing the camera function to be disabled in certain marked area (“safe havens”, e.g. health club)⁴

⁴ See ITU, *Id.*, p.18.