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Keeping an eye on CCTV legislation

IP & IT analysis: What are the data protection implications of the preliminary ruling in Rynes for individuals using video surveillance systems outside their own homes? Jocelyn Ledward, barrister at QEB Hollis Whiteman Chambers, examines the potential implications for householders and businesses.

Original news

Rynes v Urad pro ochranu osobnich udaju. C-212/13 [2014] All ER (D) 124 (May)

The Court of Justice of the European Union (CJEU) made a preliminary ruling, deciding that the second indent of the Data Protection Directive 95/46/EC, art 3(2) (on the protection of individuals with regard to the processing of personal data and on the free movement of such data) (the Directive) should be interpreted as meaning that the operation of a camera system, as a result of which a video recording of people was stored on a continuous recording device such as a hard disk drive, installed by an individual on his family home for the purposes of protecting the property, health and life of the home owners, but which also monitored a public space, did not amount to the processing of data in the course of a purely personal or household activity, for the purposes of that provision.

What were the key issues before the court?

Frantisek Rynes and his family were subjected to a number of attacks on their home by unknown persons. As a result, Mr Rynes installed a surveillance camera outside the family home, which covered the entrance, public footpath and entrance to the house opposite. When his house was attacked again, the recorded footage enabled the identification of the perpetrators, who were prosecuted in the criminal courts.

One of the suspects complained to the Czech Office for the Protection of Personal Data about the legality of the processing of that data, as he had been recorded without his consent while he was on the public footpath. That body found Mr Rynes had infringed data protection laws and fined him. He appealed to the Supreme Administrative Court of the Czech Republic, who asked the CJEU to determine a preliminary question--namely, whether the recordings made by Mr Rynes for the purposes of protecting the life, health and property of his family constituted a category of data processing that fell outside the provisions of the Directive, on the grounds that the recording was made by a natural person 'in the course of purely personal or household activities' (the art 3(2) or 'domestic' exemption).

What is the significance of this decision?

Previously, many member states had construed the domestic exemption widely, such that surveillance cameras set up by householders were considered to be outside the scope of the Directive and (in the UK) the Data Protection Act 1998 (DPA 1998). But in this case, the court concluded that where a public space was covered by the camera, such surveillance could not be regarded as a purely personal or household activity--even if the sole purpose was to protect the property, health and life of the householders. Such activity is, therefore, not exempt from the requirements of the Directive and national legislation.

How did the court approach the balance between data protection rights and criminal law?

The court was not asked to determine that balance. However, it did observe that the art 7(f) of the Directive made it possible for the 'legitimate interests' being pursued by the data controller to render the processing of such data lawful, when balanced against the privacy and other rights of the data subject.

What is likely to be considered 'legitimate interests' under the Directive, art 7? Will there be situations where data protection law does not permit CCTV to be used at all?

The CJEU gave the example of the protection of the property, health and life of the data controller and that of his family as a potential 'legitimate interest', consistent with their fundamental rights to property and to family life. Other purposes which fall within the limited exemptions in the DPA 1998, Pt IV (eg the prevention and detection of crime, journalistic, artistic or literary purposes, research etc) may well be considered legitimate interests, but they do not take the user outside the scope of data protection legislation. If a recording camera is set up in pursuit of a hobby such as bird-watching, and if it covers (in part) a public space, there is a real risk that the user will be found to be in breach of data protection laws, when balanced against the privacy rights of those who might inadvertently be filmed.

How are the notice requirements under the Directive, arts 11, 13 likely to be applied in practice?

The Information Commissioner's Office (ICO) has published guidance on the use of CCTV specifically, in which it anticipated having to amend or issue supplementary guidance depending upon the outcome of this case. The most likely outcome is that the ICO will say those with CCTV cameras trained on public spaces will have to put up notices informing the general public of the presence of a camera.

What does this mean for the use of CCTV in the UK?

We shall have to await revised guidance from the ICO as to the use of CCTV cameras in the domestic context, but it is unlikely the ICO will favour issuing guidance that will impose onerous burdens upon individuals and itself. In many cases, the householder will be able to take themselves out of the scope of the data protection legislation by focusing the cameras so they do not cover public spaces. In other cases, it is unlikely private householders would be subjected to measures exceeding those that currently apply to small businesses (not all of which are required to register with the ICO as data controllers).

Are there any unresolved issues from this decision?

Because the judgment emphasises the need to balance competing rights, there are many scenarios which were once thought to fall outside the scope of data protection legislation which need to be re-evaluated. For example, it is unclear the extent to which householders would be able to justify installing CCTV cameras without falling foul of the DPA 1998 or the Directive if this was done purely as a preventative measure.

What impact is this judgment likely to have on emerging technologies such as wearables or drones?

By their very nature, body worn video and unmanned aerial systems are likely to capture images of people in public spaces. The ICO has anticipated the issues that are likely to arise with these emerging technologies in its CCTV guidance and provides clear guidance on the data protection pitfalls that are likely to affect their use.

However, the guidance focuses on the use of these devices by businesses and organisations. Guidance--to the effect that a hobbyist using a drone device would be considered to be engaging in a 'purely' personal activity--will require revision in light of this case.

Other exemptions may apply (such as intended publication of photographs for artistic purposes), or the nature of the footage may mean that individuals cannot be identified, such that no personal data is processed. Public bodies, businesses and technology fans would be well advised to consult that guidance before venturing out in public to try out their new toys.

Jocelyn Ledward specialises in all matters of criminal and regulatory law. She regularly advises corporate and director clients, as well as prosecuting the most complex and serious cases as Junior Treasury Counsel at the Central Criminal Court.

Interviewed by Kate Beaumont.

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