

Email sent on the use of Photographs and recorded images in relation to Data Protection.

11<sup>th</sup> May 2018

Good afternoon all

I hope to give you some advisement on the use of photographs and recorded images pertaining to data protection and the rights of individuals. While DP legislation itself is clear about the need to gain consent about collecting and maintaining biometric data such as photos, the practical applications of how we get that consent for photos etc is absent from the legislation and for the moment from our umbrella organisations. As GDPR progresses and settles into our day to day work life more detail will emerge on this and I suspect I will be issuing you with further guidance in the future however for the moment we need to issue some guidance on how you deal with photos you have already collected and those you intend to collect going forward so that we can attempt to be compliant with the new legislation when it comes into being on May 25<sup>th</sup>.. I hope you find this useful.

*I would point out that the advice I give to management and staff in regard to Data Protection and GDPR issues and queries is that – advice – and is in my capacity as Freedom of Information Officer while assisting the Institute by currently working on Data Protection/GDPR unofficially. It is up to the appropriate managers and staff to act upon it or not as they see fit.*

As an Institute/staff member we do from time to time have cause to take photographs of individuals and record events.

You should note that all processing of personal information is required to meet a legal justification in the impending new DP legislation GDPR. In relation to photographs and recorded images this will often mean that consent is required from the individual.

Public event: Generally speaking if someone is attending a public event and when these events are being recorded, it would not require consent as by attending the data subject is manifestly making public their attendance so video coverage capturing a group of people at an event, match, graduation etc is ok.

You can take photos at an event but you are not always necessarily allowed to use photos from that event. If the person can objectively be identified from a picture (eg someone else other than the subject of the photograph can identify them) you should have consent for any commercial use of that photo. The photos can then be used as editorial material by our press / communications office for example as long as the photos are related to the article subject. At the event registration you could mention that there will be a photographer at the event, explain how the photos will be used and ask for consent for further use of said photos.

The following is some further guidance you may find useful:

- First of all I would stress that not following this current advisement could cause risk to the Institute in the form of a legal claim or damage of reputation so it is important to note your obligations in the safe use of such materials. I would further advise that if you do not have the consent of the subject then you should consider using a different image where you know that you have obtained the appropriate consent from the individual(s).
- DP procedures re photos apply to still and moving images and recordings created or commissioned by Institute employees, contractors or volunteers in the course of their day to day activities for the Institute. DkIT is the data controller for all such images and recordings that feature people regardless of where those recording take place. The Institute determines the purpose of the recordings (why they are needed) and is legally responsible and accountable for its use. (This would not apply to images or recordings created by members of the DkIT Community or visitors for their own *Private* use on their own personal equipment. Do be aware though that any such images or recordings used to harass or cause distress to others may be subject to disciplinary sanctions if found to be in breach of various DkIT policies/procedures).
- So when is an image personal data?
  - Where an individual is the focus of an image the image is likely to be personal data. Examples will include photographs of individual particularly those that are stored with personal details eg identity cards
  - Photos of staff or students published on notice boards or websites along with some biographical details
  - Individual images published in newsletters or marketing materials

- Images that would not be considered personal data:

Where people are incidentally included in an image or are not the focus, the image is unlikely to contain personal data for example: at Open Day or Careers Day – the image is unlikely to be classed as personal data.

Images of people who are no longer alive – GDPR only applies to living people so these images are not classed as personal data.

- Small Groups  
You should obtain consent if taking photos or recordings of small groups of individuals. This is the easiest and safest way to demonstrate that you have obtained the image fairly and in accordance with legislation and the individuals rights. There are only a small number of exceptions to this when there is an alternative legal basis for processing such as graduation ceremonies where a prior notice of this will be issued – see below.
- Large groups  
Normally it will be sufficient for the photographer to verbally ask permission to take the photograph to ensure compliance under GDPR. Anyone not wishing to appear in the group photo will then have the opportunity to opt out. This approach can be used when photographing at a seminar or conference for example. **However** if you intend to post such images on our website explicit consent will be required due to the image being available to be viewed outside

of the EU. Consent would also need to be gained if you were to envisage using such photos for any other purpose than that related to the seminar or conference.

#### Consent

I attach some information on consent in general. The format you use to gain consent is up to you however in seeking this consent you should include details of what the images will be used for, any third parties the images will or may be shared with, whether they will be transferred outside the EU (including posting on webpages) how the information will be held securely and for how long it will be held. Finally you should include details of the individuals rights on how they can withdraw their consent and the right to lodge a complaint with either the Institute (direct them to your office or the DkIT DP page for further details) or the Data Protection Commissioners Office.

You should retain consent form as long as you retain the images.

#### Special categories of Personal Data

GDPR states that photographs are not normally considered to be processing of special categories of personal data (eg health information, ethnicity) unless they are being processed by technical means that enables the unique identification of an individual. However care should be taken if images reveal sensitive personal information such as those taken in a medical context.

#### Graduation

You should inform all students and guests attending graduation ceremonies in advance that photographs and videos will be taken at the ceremony and that official photographers are likely to be in and around the campus taking photos and / or videos. As part of accepting the invitation to attend the graduation ceremony and agreeing to the terms and conditions of graduation, students and their visitors are in effect entering into a contract with the Institute. This contract makes it clear that there is a possibility that they will be photographed and videoed and that these images will be used by the Institute. Students who do not wish to be photographed or videoed have the option to graduate in absentia.

Notices should be placed at the graduation venue so people are aware of the recordings and the likelihood of them being used as official photos on the Institute's website and promotional material.

Kind regards  
Loretto

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