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Legal regulation of the use of dashboard cameras: Aspects of privacy protection

Darius Štītis, Marius Laurinaitis *

Mykolas Romeris University, Vilnius, Lithuania

A B S T R A C T

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This study aims to analyse and compare the legal regulations of selected countries related to the use of dashboard cameras (dashcams) in vehicles and to publish the corresponding recordings of dashboard cameras in the context of privacy protection. Researchers used empirical analysis of legal documents and case law, as well as the analysis of the decisions and opinions of the institutions in charge of data protection in selected countries to identify the legal regulation of dashcam use. The study selected countries in Europe that either banned the use of dashcams, or that have enacted specific prohibitions or court decisions, as well as those that do not prohibit their use and where the dashcams are in widespread use. The article presents the authors' position on the legal regulation and assessment of dashcam use, i.e. that, according to the authors, dashcam use and/or publication of their recordings should not be forbidden in the EU. The results of this research may be applied to the regulation of corresponding relations as well as for assessment of situations connected with the use of dashcams and/or publication of recordings made with dashcams and related violations of the right to privacy and when interpreting various situations on the use of dashcams and/or publications of their recordings.

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1. Introduction

The development of information technologies and the transfer of information into cyberspace increase the quality of information processes and activities and ensure better competitiveness and efficiency. But sometimes this creates negative outcomes or controversial situations. The use of dashcams in vehicles and the publication of dashcam recordings may be mentioned as one of such areas. The publications of the recordings raise questions and discussions in the process of privacy protection.

Certain general privacy protection norms and principles are applied in the EU. EU reform of data protection¹ has been

prepared and is being discussed at the moment. When assessing the application of these norms and principles to situations when dashcams are used and when the material recorded with the help of this equipment is publicly published in social networks or other public platforms (e.g. Youtube), questions arise about if people's right to privacy is ensured in all cases and what the limits of privacy are.

Most often in practice, data collected with the help of dashcams are published after a certain incident or violation. However, there are several questions that arise from this practice. Does a certain violation outweigh a person's right to privacy? Another question is how to assess the publication of images of accidentally filmed people? Is publication on the whole possible in certain cases? If the answer to these

* Corresponding author. Mykolas Romeris University, Ateities str. 20, Vilnius, LT-08303, Lithuania. Tel.: +370 61257973.

E-mail address: laurinaitis@mruni.eu (M. Laurinaitis).

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¹ Commission, 'Proposes a comprehensive reform of the data protection rules' (2012) <http://ec.europa.eu/justice/newsroom/data-protection/news/120125_en.htm> accessed 10 February 2015.

questions is yes, what should be the length of the published recording (e.g. can a recording taking place before the incident and after the incident of any scope be published)? Therefore, the situation needs to be analysed in the selected countries by applying the principles of privacy protection and IT law and corresponding case law, and by defining the guidelines for the legal regulation of the analysed situations.

This topic is important because citizens increasingly value their privacy in several different areas, including the recording of their activities.²

Currently legal regulation in the use of dashcams is developing in several directions:

- Some countries have special legal norms that forbid the use of dashcams;
- Other countries attempt to regulate the use of dashcams with special legal norms;
- Still, other countries attempt not to interfere in the use of dashcams with legal tools leaving the freedom to the general legal norms in force to solve the arising situations in the context of privacy protection.

The authors intend to reveal the most suitable approach through this research.

2. Historical background, possibilities and tendencies of the use of dashcams

According to most sources, the beginning of dashcams can be traced to the state of Texas in the United States in the 1980s.³ Texas installed video cameras in police cars and image and sound were recorded onto VHS-type cassettes. Such video recordings increased the safety of officers working in remote areas. The first attempts to install video recording equipment in US police cars were expensive and inconvenient. In the early 1990s, the use of dashcams in police cars became an occurrence. The necessity to control the behaviour of police officers and the prevention of officer misuse could be named as the main reasons for the use of dashcams. Based on dashcam recordings, it became easier for police institutions to represent officers charged with inappropriate behaviour while on duty.

As the technology became cheaper, dashcams became accessible also to ordinary consumers and the number of vehicles with dashcams increased rapidly. In no other country dashcams were as popular as in Russia.⁴ In the late 2000s, active scams

in the area of car insurance started in Russia when people often became victims of staged car accidents. Seeking to protect themselves from such frauds, drivers in Russia began massively using dashcams. It must be mentioned that in Russia, dashcams are manufactured and distributed legally. This is a widespread method to protect drivers' rights when solving all kinds of disputes related with road accidents.

Dashcams are becoming more and more popular in many countries. Video recording helps to view traffic accidents in an objective way: the investigation of which is often difficult and not always objective (due to witness testimonies and misleading experts). In Europe, insurance companies may offer discounts on insurance premiums to drivers who have installed dashcams in their cars.⁵ Recorded video material helps insurance companies solve questions of damage compensation faster. But dashcams (like CCTV) could also become a source of illegal profit when a driver, who has made a violation, may be forced to pay so that the recording does not reach the police.⁶ But apart from all possible hypothetical threats, of which the threat to personal privacy is considered to be the biggest one, dashcams may help reach other good aims⁷ and help to defend a private citizen:⁸ investigation of traffic accidents, protection from fraud, parking accidents, record of road crimes, recording in-car driver activity, capturing the unexpected, and not valid or illegal fines.

Methods of using dashcams have spread. After the resounding death of Michael Brown in the USA, police officers are starting to wear body cameras,⁹ which are attached to uniforms of police officers and allow the recording of everything that is happening around them. The special Body-Worn Camera Program¹⁰ prepared in the USA reasonably explains when, how and why the body-worn cameras should be used to record videos. As mentioned in the beginning of this article, the use of dashcams started in US police cars. Now video recording has

² Special Eurobarometer 431, 'Data Protection' (June 2015) <http://ec.europa.eu/public_opinion/archives/ebs/ebs_431_en.pdf> accessed 26 February 2015.

³ Earnest Pettie, 'A Brief History of Dash Cam Insanity' (18 March 2013) <<http://www.break.com/article/a-brief-history-of-the-dash-cam-2425146>> accessed 26 February 2015. Bruce Goldfarb, 'HoCo Police: Dash Cams Not Used in 'Daily Patrol Activities'' (17 April 2012) <<http://patch.com/maryland/laurel/hoco-police-dash-cams-not-used-in-daily-patrol-activi712cd2d148>> accessed 26 February 2015.

⁴ Damon Lavrinc, 'Why Almost Everyone in Russia Has a Dash Cam' (2013) <<http://www.wired.com/2013/02/russian-dash-cams>> accessed 26 February 2015.

⁵ Chris Torney, 'Cheaper cover for drivers with dashcams' (May 2014) <<http://www.confused.com/car-insurance/articles/the-insurer-offering-discounts-to-drivers-with-dashcams>> accessed 26 February 2015.

⁶ Martin Robinson, 'Corrupt policewoman who seized CCTV film of a street bust-up to be used to blackmail Steven Gerrard is jailed for 22 months' (March 2015) <<http://www.dailymail.co.uk/news/article-2982837/Corrupt-policewoman-seized-CCTV-film-street-bust-used-blackmail-Steven-Gerrard-jailed-22-months.html#ixzz3r4hF39h1>> accessed 06 November 2015.

⁷ Michael Jones, 'Dash Cams – What Are The Benefits?' (Jun 2014) <<http://blog.extended-vehicle-warranty.com/blog/dash-cams>> accessed 26 February 2015.

⁸ Penny Gusner, '7 reasons to use a dashboard camera' (2014) <<http://www.insurance.com/auto-insurance/claims/7-reasons-to-use-a-dash-cam.html>> accessed 26 February 2015.

⁹ Dina Demetrius, 'Meet the first U.S. police department to deploy body cameras' (December 2014) <<http://america.aljazeera.com/watch/shows/america-tonight/articles/2014/12/17/body-cams-california.html>> accessed 26 February 2015.

¹⁰ Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum, 'Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned' (2014) Washington <<http://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2015/public-safety-body-camera-report.pdf>> accessed 26 February 2015.

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