

## To Ban Biometric Mass Surveillance European Citizen Initiative

### Statement of The Center for AI and Digital Policy (CAIDP) 3 March 2021

Among all applications of Artificial Intelligence (AI), facial recognition for mass surveillance is the most controversial. It diminishes the individual, expands state authority, and offends democratic values. Our report *Artificial Intelligence and Democratic Values* as well as recent developments in France, Germany, Sweden and Germany make clear the need to prohibit the use of biometric identification for mass surveillance. For these reasons, the Center for AI and Digital Policy (CAIDP) supports the European Citizens Initiative (ECI), launched by the “Reclaim Your Face” coalition, to ban biometric mass surveillance practices.

In November 2020, the European Digital Rights Initiative (EDRi) launched the “Reclaim Your Face” campaign.<sup>12</sup> The coalition demands transparency for facial recognition systems, a ban on biometric mass surveillance, and respect for fundamental rights.<sup>3</sup> The launch of the European Citizen Initiative (ECI) to Ban on Biometric Mass Surveillance enables European citizens to express support for this new law and for the European Commission to propose new laws to protect fundamental rights.<sup>4</sup>

The ECI specifically calls on the Commission “to permanently end indiscriminate and arbitrarily-targeted uses of biometric data in ways which can lead to mass surveillance or any undue interference with fundamental rights.” The Initiative calls “for a targeted and binding legislative proposal in secondary European law to provide stronger and more specific provisions based upon and with full respect for the general prohibition of biometric processing in the General Data Protection Regulation (GDPR) and the LED (which must remain the key instruments for protecting Europeans’ biometric data).” This would explicitly “prohibit the use of biometric data for identification, recognition (including of emotions), profiling, prediction and any related purpose, in public or publicly- accessible spaces (including online spaces) on the grounds that this leads to inherently unnecessary and disproportionate mass surveillance.”<sup>56</sup>

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<sup>1</sup> Reclaim your face, *News*, <https://reclaimyourface.eu/news/>

<sup>2</sup> EDRi, *Campaign “Reclaim your face” calls for a Ban on Biometric Mass Surveillance* (12 Nov. 2020), <https://edri.org/our-work/campaign-reclaim-your-face-calls-for-a-ban-on-biometric-mass-surveillance/>

<sup>3</sup> Reclaim your face, <https://reclaimyourface.eu>

<sup>4</sup> Reclaim your face, <https://reclaimyourface.eu>

<sup>5</sup> *Civil society initiative for a ban on biometric mass surveillance practices - Draft legal act* (7 Jan. 2021), <https://register.eci.ec.europa.eu/core/api/register/document/5367>

<sup>6</sup> European Citizens Initiative, *Civil society initiative for a ban on biometric mass surveillance practices*, [https://europa.eu/citizens-initiative/initiatives/details/2021/000001\\_en](https://europa.eu/citizens-initiative/initiatives/details/2021/000001_en)

EDRi and over 60 civil society organisations have urged the European Commission to establish redlines for AI. Specifically, they propose:

1. An explicit ban on the indiscriminate or arbitrarily-targeted use of biometrics in public or publicly-accessible spaces which can lead to mass surveillance;
2. Legal restrictions on uses that contravene fundamental rights, such as the use of AI at the border, for predictive policing, in systems for social rights and benefits, and in risk-assessment tools in the criminal justice context;
3. The explicit inclusion of marginalised and affected communities in the development of EU AI legislation and policy moving forward.”<sup>7</sup>

The Center for AI and Digital Policy supports this European Citizen Initiative. In our 2020 report *Artificial Intelligence and Democratic Values*, an extensive review of AI policies and practices in 30 countries, we found that “facial surveillance,” i.e. the use of facial recognition for mass surveillance, was the among the most controversial applications of AI.

For example, the *AI and Democratic Values* report noted the use of facial recognition technology without clear legal basis in Israel;<sup>8</sup> concerns about the unregulated use of facial recognition in Japan;<sup>9</sup> concerns about the absence of robust measures to limit surveillance and protect human rights, coupled with the rapid adoption of facial recognition in public places in Russia;<sup>10</sup> and the absence of protections for fundamental rights for national identification with facial recognition in Thailand.<sup>11</sup>

Further, the *AI and Democratic Values* report stressed that “the use of facial recognition on a general population has raised widespread controversy with many NGOs stating it should be prohibited.”<sup>12</sup> Our report also highlighted the declaration, endorsed by more than a hundred organizations and 1,200 experts, presented to the 2019 Global Privacy Assembly for a ban on facial surveillance. Consequently, two of our key recommendations for governments are that “Countries must halt the use of facial recognition for mass surveillance” and “Countries must commit to these principles in the development, procurement, and implementation of AI systems for public services”.<sup>13</sup>

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<sup>7</sup> EDRi et al., Open letter: Civil society call for the introduction of red lines in the upcoming European Commission proposal on Artificial Intelligence, 12th January 2021, <https://edri.org/wp-content/uploads/2021/01/EDRi-open-letter-AI-red-lines.pdf>

<sup>8</sup> CAIDP, *Artificial Intelligence and Democratic Values* at 131 (Country Report, Israel) (2020) (the “CAIDP Report”), <https://caidp.dukakis.org/aisci-2020/>

<sup>9</sup> CAIDP Report at 152 (Country Report Japan).

<sup>10</sup> CAIDP Report at 197 (Country Report, Russia).

<sup>11</sup> CAIDP Report at 272 (Country Report, Thailand)

<sup>12</sup> CAIDP Report at 2 (Findings)

<sup>13</sup> CAIDP Report at 4 (Recommendations)

Recent CAIDP AI policy updates have also shown growing support to regulate facial recognition, particularly across the European Union. In January 2021, the Council of Europe called for “strict limits on facial recognition technologies,” and said that “certain applications of facial recognition should be banned altogether to avoid discrimination.”<sup>14</sup><sup>15</sup> Investigations into Clearview AI, a company that specializes in mass surveillance, are underway in France and other European countries.<sup>16</sup> <sup>17</sup> Recently, the Swedish Authority for Privacy Protection found that the Swedish Police Authority had illegally used Clearview AI technology and fined the police agency 250.000 Euros.<sup>18</sup><sup>19</sup> The Data Protection and Freedom of Information Commissioner of Hamburg also ordered Clearview AI to delete a citizen’s biometric template.<sup>20</sup> The European Data Protection Board has stated that it is “particularly concerned by certain developments in the European Union and around the world regarding facial recognition technologies, which raise unprecedented issues from the point of view of data protection.”<sup>21</sup> The European Parliament has called for a moratorium on the use of certain facial recognition systems.<sup>22</sup>

Because facial surveillance diminishes fundamental rights and freedoms and relies upon AI techniques, the CAIDP supports the European Citizen Initiative to Ban Biometric Mass Surveillance.

We urge European citizens to support this Initiative. We ask the Commission to act promptly on the proposal and to adopt the legislative recommendations from the ReclaimYourFace campaign. Finally, we express support for EDRi and the other NGOs that have launched this campaign. Their work has helped to strengthen democratic institution and democratic values.

**Next Steps- Sign the Initiative (for EU citizens): <https://reclaimyourface.eu>**

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<sup>14</sup> Council of Europe, *Guidelines on Facial Recognition* (28 Jan. 2021), <https://rm.coe.int/guidelines-on-facial-recognition/1680a134f3>

<sup>15</sup> CAIDP, *Council of Europe proposes ban on facial recognition technologies*, CAIDP Update 2.05 (31 Jan. 2021), <https://dukakis.org/center-for-ai-and-digital-policy/council-of-europe-proposes-ban-on-facial-recognition-techniques/>

<sup>16</sup> Jumbo Privacy, *Jumbo Privacy brings a formal GDPR complaint against Clearview* (July 14, 2020) <https://blog.jumboprivacy.com/jumbo-privacy-brings-a-formal-complaint-against-clearview.html>

<sup>17</sup> Information Commissioner’s Office, *The Office of the Australian Information Commissioner and the UK’s Information Commissioner’s Office open joint investigation into Clearview AI Inc.*, (9 July 2020), <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2020/07/oaic-and-ico-open-joint-investigation-into-clearview-ai-inc/>

<sup>18</sup> Integritetsskyddsmyndighetens, *Beslut efter tillsyn enligt brottsdatalogen – Polismyndighetens användning av Clearview AI*, (10 Feb. 2021), 1, <https://www.imy.se/globalassets/dokument/beslut/beslut-tillsyn-polismyndigheten-cvai.pdf>

<sup>19</sup> Integritetsskyddsmyndighetens, *Police unlawfully used facial recognition app*, (11 Feb. 2021), <https://www.imy.se/nyheter/police-unlawfully-used-facial-recognition-app/>

<sup>20</sup> Hamburgische Beauftragte für Datenschutz und Informationsfreiheit, *Anhörung vor Erlass einer Anordnung gemäss Art. 58 Abs. 2 lit. g) EU Datenschutz- Grundverordnung (DSGV)* (27 Jan. 2021), [https://noyb.eu/sites/default/files/2021-01/545\\_2020\\_Anhörung\\_CVAI\\_DE\\_Redacted.pdf](https://noyb.eu/sites/default/files/2021-01/545_2020_Anhörung_CVAI_DE_Redacted.pdf)

<sup>21</sup> EDPB Chair Andrea Jelinik, *Letter to Members of the European Parliament from* (10 June 2020), [https://edpb.europa.eu/sites/edpb/files/files/file1/edpb\\_letter\\_out\\_2020-0052\\_facialrecognition.pdf](https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_letter_out_2020-0052_facialrecognition.pdf)

<sup>22</sup> European Parliament, *European Parliament Resolution, Artificial intelligence: questions of interpretation and application of international law* (20 Jan. 2021), [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0009\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0009_EN.html)