

June 20, 2022

Re. Policing facial recognition technology

Dear Minister,

The undersigned experts in computer science, artificial intelligence, human rights, law, and social sciences write to express our concern about recent announcements that An Garda Síochána will use Facial Recognition Technology (FRT). We understand that Gardai use will be enabled through an amendment to the Garda Síochána (Recording Devices) Bill.ⁱ We reiterate and expand, below, on our position in our 2nd June 2022 [Open Expert letter to The Irish Times](#) that significant risks require a full moratorium.ⁱⁱ

Mass surveillance

1. FRT enables the identification and tracking of individuals without warranted suspicion. It has the ability to scan large amounts of publicly captured visual data so it can draw powerful inferences about people,ⁱⁱⁱ the vast majority of whom would be of no interest whatsoever to the gardaí. The manner in which this technology enables forms of ‘systems on systems’ analysis permits and enlarges the scope of the surveillance concern.^{iv} Such surveillance can create a broad mosaic of a person’s activities, including their interests, movements, employment, religious practices, health issues, and social relationships.^v
2. This technology threatens to have a chilling effect on behaviour.^{vi} It can harm our rights guaranteed under EU Charter of Fundamental Rights and related laws and instruments including human dignity, freedom of thought, conscience and religion, expression, assembly and association.^{vii} The presence of mass surveillance FRT for policing purposes can change the fabric of our society and the way people operate within it.^{viii} FRT can make it impossible for anyone to move through public spaces and remain ‘just a face in the crowd’.^{ix}
3. The consequences of policing FRT strains principles of necessity and proportionality so significantly that experts say its use may not be possible in a free and democratic society given the substantial impact on rights like privacy which ‘may never be proportional to the benefits gained’.^x

Bias and discrimination

4. FRT has been established by independent researchers to be biased and discriminatory, particularly for anyone who is not a white man. The now infamous UK’s Metropolitan Police FRT was found to have an error rate of 81 percent.^{xi} Similarly, the Gender Shades audit identified racial and gender biases in several facial-recognition systems.^{xii} Studies tend to locate prominent gender and skin shade biases in commercial systems, with black and brown people bearing the brunt of these technology failures.^{xiii}

5. Improving accuracy in the lab won't necessarily improve performance in public. FRT that seems free of bias in lab settings, can then reintroduce bias and discrimination through deployment.^{xiv} Scrapping audits that are cleared for bias within a lab setting can then be used for commercial algorithms which reintroduce the same bias concerns.

Data protection risks

6. Data protection risks abound according to leading European authorities. The European Parliament has rejected the use of this technology, voting for an outright ban on biometric surveillance for law enforcement purposes that leads to mass surveillance in publicly accessible spaces^{xv} while the European Data Protection Board and European Data Protection Supervisor have also called for a ban on the use of FRT in public spaces.^{xvi} These calls at the EU level correspond with the move at other jurisdictions to ban use of FRT for law enforcement.^{xvii}
7. The Data Protection Commission has previously found issues surrounding the surveillance of citizens by An Garda Síochána.^{xviii} It is not clear to us that these issues have been fully resolved. We are not confident that full accountability measures for the collection and processing of personal data are in place at An Garda Síochána in advance of further investment and deployment of newer, more powerful data based surveillance technologies such as FRT.

Democratic process and regulatory coherence

8. We acknowledge the need to resource the guards and that the Commission of Future of policing report (2018) prioritises digital transformation and investment in technologies.^{xix} We support the Report's findings in this regard. However, it is important to note that the report doesn't specifically recommend uptake of FRT for policing. Such a move would be premature given unresolved concerns itemised here for this specific surveillance technology.
9. It would also be premature to enable through legislation policies which may come into conflict with EU law. The EU Artificial Intelligence Act to regulate the use of artificial intelligence (AI) across Europe is still being drafted^{xx} and suggested use cases for the FRT in Ireland conflict with the draft.^{xxi} We would caution against developing domestic legislation for use by police while the EU framework is still being developed.
10. We believe that research and consultation in respect of this proposal has been inadequate. We understand police use of FRT will be enabled via an amendment to the Garda Síochána (Recording Devices) Bill at the committee stage. We question the absence of published preliminary cross jurisdictional research and public consultations reports which would normally inform the pre-legislative phase of a law's development.
11. We are concerned that the recommendations in the Joint Committee on Justice's Report on the pre-legislative scrutiny of the Bill are apparently not being followed. The Joint Committee specifically recommends that FRT not be used by members of An Garda Síochána.^{xxii} We wonder why these recommendations are not being followed and important steps in the democratic process for such risky technology have been bypassed.

The undersigned signatories recognise the opportunity Ireland has at this moment to align with the pillars of our national AI strategy.^{xxiii} Ireland can work to maintain public trust by safeguarding

transparent and accountable technology governance. Cabinet Members have the opportunity to require democratic due process by choosing *not* to permit hasty Bill amendments at the committee stage enabling police use of FRT. Due process would enable Ireland to first analyse and learn lessons from independent evaluations of these systems conducted in other countries. Ireland's criminal justice system has been praised for being progressive and proportionate^{xxiv} - and we believe Ireland should continue to lead the way by limiting unnecessary levels of surveillance as well.

Yours sincerely,

- Assistant Professor Elizabeth Farries, Co-Director UCD Centre for Digital Policy
- Olga Cronin, Policy Officer, Irish Council for Civil Liberties
- Assistant Professor Ciara Bracken-Roche, School of Law and Criminology, Maynooth University
- Professor Rob Kitchin, Director, Maynooth University Social Sciences Institute
- Professor Aphra Kerr, Department of Sociology, Maynooth University
- Professor Barry O'Sullivan, School of Computer Science & IT, University College Cork. Fellow of the Association for the Advancement of Artificial Intelligence, Fellow and past president of the European Artificial Intelligence Association, Vice Chair of the European Commission's High-Level Expert Group on Artificial Intelligence (2018-2020), Member of the Royal Irish Academy

ⁱ Permission would come via an amendment to the Garda Síochána (Recording Devices) Bill.

Parliamentary Question, May 31, 2022, <https://www.justice.ie/en/JELR/Pages/PQ-31-05-2022-587>

ⁱⁱ Garda use of facial recognition technologies unnecessary and disproportionate (Jun 2 2022) Irish Times Not paywalled at <https://digitalpolicy.ie/ireland-experts-red-line-on-garda-facial-recognition-tech/>

ⁱⁱⁱ Jay Stanley, A Scary Demonstration of What Unchecked Face Recognition Could Look Like, ACLU, 8 February 2022,

<https://www.aclu.org/news/privacy-technology/a-scary-demonstration-of-what-unchecked-face-recognition-could-look-like>

^{iv} Katina et al., 2019, A Governance Perspective for Systems-of-Systems, <https://www.mdpi.com/2079-8954/7/4/54>

^v Andrew Guthrie Ferguson, Facial Recognition and the Fourth Amendment (2021) Minnesota Law Review at 1123, <https://scholarship.law.umn.edu/mlr/3204>

^{vi} Elizabeth Stoycheff (2016), Under Surveillance: Examining Facebook's Spiral of Silence Effects in the Wake of NSA Internet Monitoring, <https://journals.sagepub.com/doi/abs/10.1177/1077699016630255>.

^{vii} European Data Protection Board. Guidelines 05/2022 on the use of facial recognition technology in the area of law enforcement https://edpb.europa.eu/system/files/2022-05/edpb-guidelines_202205_frtlawenforcement_en_1.pdf at 4

^{viii} Garfield Benjamin, Facial Recognition is Spreading Faster Than You Realise,

<https://theconversation.com/facial-recognition-is-spreading-faster-than-you-realise-132047>.

^{ix} Brenda McPhail maps the experience of INCLC member countries with FRT and the right to privacy at 17 in See: In Focus Facial Recognition Technologies and Rights Harms from Around the World January 2021 INCLC, <https://files.inclc.net/content/pdf/19/in-focus-facial-recognition-tech-stories.pdf>

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- ^x Office of the Privacy Commissioner, Privacy guidance on facial recognition for police agencies, May 2022, https://priv.gc.ca/en/privacy-topics/surveillance/police-and-public-safety/gd_fr_202205/#toc3-1-8 at para 65
- ^{xi} [81% of 'suspects' flagged by Met's police facial recognition technology innocent](#), independent report says, Sky News, July 2019; see Fussy, P. & Murray, D. (2019) Independent Report on the London Metropolitan Police Service's Trial of Live Facial Recognition Technology. Human Rights Centre, University of Essex. Retrieved from <https://48ba3m4eh2bf2sksp43rq8kk-wpengine.netdna-ssl.com/wp-content/uploads/2019/07/London-Met-Police-Trial-of-Facial-Recognition-Tech-Report.pdf>
- ^{xii} Buolamwini, J., Gebru, T. (2018). 'Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification.' Proceedings of the 1st Conference on Fairness, Accountability and Transparency, PMLR 81:77-91. <https://proceedings.mlr.press/v81/buolamwini18a.html>
- ^{xiii} See further discussion and studies in Elizabeth Farries and Olga Cronin, Submission on the right to privacy in the digital age, Human Rights Council adopted resolution 48/4, INCLC (4 June 2022), [https://files.inclc.net/content/pdf/72/FINAL_20Right%20to%20privacy%20in%20the%20digital%20age,%20HRC%2048_4%20\(1\).pdf](https://files.inclc.net/content/pdf/72/FINAL_20Right%20to%20privacy%20in%20the%20digital%20age,%20HRC%2048_4%20(1).pdf)
- ^{xiv} Ada Lovelace. People, risk and the unique requirements of AI. 18 recommendations to strengthen the EU AI Act (31 March 2022) <https://www.adalovelaceinstitute.org/wp-content/uploads/2022/03/Policy-briefing-People-risk-and-the-unique-requirements-of-AI-18-recommendations-to-strengthen-the-EU-AI-Act.pdf>
- ^{xv} Lomas, N., European Parliament backs ban on remote biometric surveillance, TechCrunch, October 6, 2021, <https://techcrunch.com/2021/10/06/european-parliament-backs-ban-on-remote-biometric-surveillance/>
- ^{xvi} European Data Protection Board and European Data Protection Supervisor call for ban on use of AI for automated recognition of human features in publicly accessible spaces, and some other uses of AI that can lead to unfair discrimination, June 21, 2021, https://edpb.europa.eu/news/news/2021/edpb-edps-call-ban-use-ai-automated-recognition-human-features-publicly-accessible_en
- ^{xvii} Facial Recognition Laws in the United States #ProjectPanoptic, Internet Freedom Foundation. <https://internetfreedom.in/facial-recognition-laws-in-the-united-states-projectpanoptic/>; See also Chris Burt, Morocco extends facial recognition moratorium to year-end, proposes biometric authentication service, biometricupdate.ie (Apr 9, 2020), <https://www.biometricupdate.com/202004/morocco-extends-facial-recognition-moratorium-to-year-end-proposes-biometric-authentication-service>
- ^{xviii} DPC Ireland 2018 - 2020 Regulatory Activity Under GDPR, June 2020 at 66, <https://www.dataprotection.ie/sites/default/files/uploads/2020-06/DPC%20Ireland%202018-2020%20Regulatory%20Activity%20Under.pdf>
- ^{xix} Commission on the Future of Policing in Ireland. The Future of Policing in Ireland. (September 2018), [http://policereform.ie/en/POLREF/The%20Future%20of%20Policing%20in%20Ireland\(web\).pdf/Files/The%20Future%20of%20Policing%20in%20Ireland\(web\).pdf](http://policereform.ie/en/POLREF/The%20Future%20of%20Policing%20in%20Ireland(web).pdf/Files/The%20Future%20of%20Policing%20in%20Ireland(web).pdf)
- ^{xx} Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on Artificial Intelligence (Artificial Intelligence Act) and amending certain union legislative acts, COM(2021) 206 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206>
- ^{xxi} Conor Gallagher, Gardaí will be able to use real-time facial recognition under planned legislation, The Irish Times, June 2, 2022, <https://www.irishtimes.com/crime-law/2022/06/02/gardai-will-be-able-to-use-real-time-facial-recognition-under-planned-legislation/>.
- ^{xxii} Joint Committee on Justice's Report on Pre-Legislative Scrutiny of the General Scheme of the Garda Síochána (Digital Recording) Bill, page 8, December 2021, https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_justice/reports/2021/2021-12-17_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-garda-siochana-digital-recording-bill_en.pdf
- ^{xxiii} Department of Enterprise, Trade and Employment, AI - Here for Good: National Artificial Intelligence Strategy for Ireland, Gov.ie, (8 July 2021) <https://www.gov.ie/en/publication/91f74-national-ai-strategy/>.
- ^{xxiv} Claire Hamilton, 2022, Crime, justice and criminology in the Republic of Ireland, <https://journals.sagepub.com/doi/full/10.1177/14773708211070215>