

WHITE PAPER

The GDPR Applied to Brain Corporation Robot Data





I. Introduction

Brain Corporation (“**Brain Corp**”) is a technology company that engages with original equipment manufacturers to enable autonomous mobile machines. The Brain Corp BrainOS® software platform (“**Software**”) currently enables certain floor cleaning and delivery robots (each a “**Robot**”) by providing autonomous navigation, operational support, development, and fleet management. This paper discusses the manner and type of data collected by Robots, whether this data constitutes “personal data” under the EU General Data Protection Regulation 2016/679 (“**GDPR**”), and what measures Brain Corp has taken to protect this data from misuse and identifiability.



II. Personal Data

The GDPR defines “personal data” as “any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier. . . .” (GDPR, Art. 4(1)). For an image of a natural person to constitute personal data under the GDPR, a natural person must be identifiable. “[A] natural person is ‘identifiable’ when, although the person has not been identified yet, it is possible to do it” (WP136 - [Opinion 4/2007 on the concept of personal data](#), p. 12). However, “a mere hypothetical possibility to single out [an] individual is not enough to consider the person as ‘identifiable’” (WP136, p. 15). “To determine whether an individual is identifiable, account should be taken of all the means reasonably likely to be used, such as singling out, either by the controller or by another person to identify the natural person directly or indirectly” (GDPR, Recital 26). “Further, to ascertain whether means are reasonably likely to be used to identify the natural person, account should be taken of all objective factors, such as the costs of and the amount of time required for identification, taking into consideration the available technology at the time of the processing and technological developments”. *Id.* “If, taking into account ‘all the means likely reasonably to be used by the controller or any other person’, that possibility does not exist or is negligible, the person should not be considered as ‘identifiable’, and the information would not be considered as ‘personal data’”. *Id.* “The particular context and circumstances of a specific case play an important role in this analysis” (WP136, p. 25).





III. Brain Corp Robot Data

Robots utilize a combination of sensors and cameras to identify and avoid obstacles, map routes, and facilitate safe operation throughout complex environments (“**Autonomous Navigation**”). For example, the Software may combine sensor data with known images of hazards (e.g., an escalator) to use these hazards to improve the effectiveness and safety of the Robot navigation. The Software on the Robots processes telemetry from these sensors, as well as images from the cameras, to generate a series of event data streams (collectively, “**Robot Data**”). The Robots store all Robot Data onboard in an encrypted format and no third parties have physical access to the image data. As Robots operate autonomously and acquire Robot Data, the Robots store Robot Data associated with these events on the local hard drive storage that is routinely overwritten based on the usage of the Robots, which under normal use would occur approximately every thirty days.

Robots may transfer limited Robot Data directly to Brain Corp to support performance, operational quality, feature development, and safety (collectively, “**Operational Support**”). The limited Robot Data transmitted for Operational Support generally consists of non-image data related to Autonomous Navigation, such as mapping information and odometry, that enable Brain Corp to review routes run by Robots and provide support to customers. However, from time to time, Robots may depend upon assistance for operation from a customer’s onsite personnel or remotely from Brain Corp, such as when the Robots detect obstacles or other unanticipated environmental features (each, an “**Operational Assistance**”). When a Robot has Operational Assistance, its onboard cameras take images of the surroundings, which are then transmitted to Brain Corp personnel (along with other Robot Data) to facilitate the Operational Assistance and to provide Operational Support. The image data includes the time and date the Robot captured the image along with the provided customer site name where the Robot was operating at that time and date.



IV. Identifiability Analysis

A. AUTONOMOUS NAVIGATION

A camera that is constructed or adjusted in a way not to collect any information relating to a natural person, falls outside of the GDPR’s purview ([EDPB Guidelines 3/2019 on processing of personal data through video devices](#), paragraph 8, example 2). That is, to the extent sensors do not capture any information relating to a natural person, the data is out of scope of the GDPR. As a threshold matter, the sensor and camera placements on the Robots are tuned specifically to each form factor with the intent of supporting Autonomous Navigation and are not positioned to collect information of a natural person.

However, in the case where the sensors and cameras of the Robots incidentally collect information of a natural person while supporting Autonomous Navigation, such image data resides only onboard the Robots and Brain Corp does not have reasonable access to it except remotely in limited scenarios for Operational Support. Such image data onboard the Robots is purged quickly enough such that no identification, due to misuse, is anticipated to be possible during the “lifetime” of the data (See WP136, p.15, “If the data are intended to be stored for one month, identification may not be anticipated to be possible during the ‘lifetime’ of the information, and they should not be considered as personal data”).

Moreover, if Brain Corp desired to identify an individual within the image data used for Autonomous Navigation, the cost and amount of time required for identification would be exorbitant: Brain Corp would likely need to travel to the customer location, physically pull the Robot’s hard drive, decrypt the Robot Data, manually browse and identify the image data to locate individuals for identification, and then combine the image data with other sets of data provided by the customer (e.g., customer sales databases, customer employee databases, interviews with customer personnel) which may or may not lead to identifying the individual depicted within the image. Needless to say, even though these steps are a **hypothetical possibility**, they are not reasonable. Brain Corp has no desire to perform these steps and this process would prove to be even more complicated by the fact that Brain Corp has taken the additional step of configuring the Robots to blur irreversibly the faces of individuals in images captured by the onboard cameras.



B. OPERATIONAL SUPPORT

When a Robot transmits Robot Data (which includes image data taken for Operational Assistance) for Operational Support, the Robot Data is stored within Brain Corp’s cloud-based operations’ environment. In this environment, Brain Corp is unable to identify natural persons in such Robot Data. When Brain Corp personnel review the Robot Data, they are seeking to ascertain why Robots required Operational Assistance or provide other Operational Support. They do not have means available to identify any individuals incidentally captured within images in the Robot Data because they are not physically located at a customer site, have no insight into the comings and goings of individuals at the customer site, and do not have any access to customer databases or any customer information that could be combined with the image to identify individuals. As a result, a Brain Corp personnel is unable to recognize and identify any individuals captured within an image in Robot Data. Further, such an attempt would not align with the business of Brain Corp, personnel roles at Brain Corp, or be permitted under Brain Corp’s own Autonomous Navigation Software End User License Agreement (EULA) for Robots.



V. Differentiation from Surveillance

Some may incorrectly argue that images taken by the cameras of Robots are personal data because cameras are used for video surveillance in other contexts. Opinions on video surveillance indicate its purpose is to identify persons in video images breaking the law and, therefore, the whole surveillance application is considered processing data about identifiable persons, even if some persons recorded are not identifiable in practice (WP136, p. 16). However, supervisory authority guidance provides for situations where information may be personal data to one entity but not to another entity with the determining issue being the purpose in which the information is being processed. For example, the ICO states that: “[i]t is possible that although data does not relate to an identifiable individual for one controller, in the hands of another controller it does,” “[t]his is particularly the case where, for the purposes of one controller, the identity of the individuals is irrelevant and the data therefore does not relate to them,” and “[h]owever, when used for a different purpose, or in conjunction with additional information available to another controller, the data does relate to the identifiable individual” (ICO, “[What is personal data?](#)”). Moreover, where identification of the data subject is not included in the purpose of processing and an organization implements technical precautions to avoid identifiability, the data is not personal data (WP136, p. 17). In the case of Robot Data, Brain Corp does not process image data with the intent of identifiability (surveillance) and does not possess any additional data sources which would lead to identifiability. The Robot’s purpose for collecting data from cameras is for Autonomous Navigation and Operational Support. The identity of any individual who may be incidentally captured by an image is irrelevant and unrelated to the purpose for which the Robot captures Robot Data, and Brain implements technical precautions, such as onboard image facial blurring, to avoid identifiability.



VI. Conclusion

This paper provided an overview of Brain Corp’s Software and the image data collected by Robots. Further, this paper described how the sensors and cameras that reside on the Robots are positioned to enable safe Autonomous Navigation and Operational Support and not to collect personal data. Additionally, the paper described the inability of Brain Corp to identify a natural person within Robot Data. Therefore, when applying the GDPR to the Robot Data and the related processing by Brain Corp, such data does not constitute personal data that is subject to the GDPR.



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