NEWSLETTER

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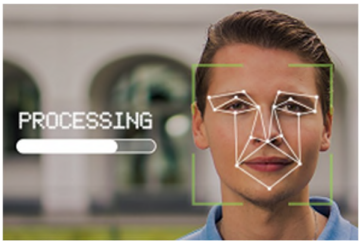
Foodstuffs' facial recognition trial

Foodstuffs North Island (FSNI), has recently begun trialling facial recognition technology as part of its response to increased retail crime. Although this may seem somewhat extreme, statistics on retail crime released by FSNI may help put this in perspective.



Figures released in November 2022 for FSNI stores revealed that 'serious incidents' had risen 246% since 2020. These incidents have continued to rise, with the quarter October – December 2023 recording 4,719 incidents; up 34% on the previous quarter.

Repeat offenders comprise around one third of all incidents in FSNI stores – and addressing these will be a primary focus of the facial recognition (FR) technology being employed. FSNI Chief Executive Chris Quin stated, "All too often it's the same people, coming back to our stores despite having already been trespassed, committing more crime, and often putting our team members and customers at risk of abuse and violence."

The use of FR technology to curb crime is already well underway globally. FR uses software to create a unique template (facial signature) of a person's face. An individual's facial signature can then be compared with those in a database to determine if there is a match.

The FSNI trial, which began February 8, will involve up to 25 of its supermarkets and will be conducted over a period of up to 6 months. FSNI plans to use the trial data to help decide whether to roll-out the technology further.

FSNI stores in the trial will display signage at the entrance informing people of the trial, and to not enter if they do not want their image taken. On entering the store, the FR system will compare a person's image to the database of previous offenders and accomplices.

Where there is a match, “appropriate action will be taken.” If there is no match, the image will be automatically deleted. A trial store may also collect and save the image of a ‘person of interest’ from its CCTV system to its FR system. A person of interest includes someone who has stolen store property, been violent or threatening towards staff or customers, or has been an accomplice to such actions.

Images of offenders and their accomplices will be retained - for up to two years for offenders and three months for their accomplices. A person of interest can apply to be deleted from a store’s FR system, as outlined in FSNI’s privacy policy.

According to the Office of the Privacy Commissioner, FSNI has been working closely with them, and “have made a significant number of changes to the trial that aim to mitigate both privacy risk and give better insights into customer impacts and perspectives.” However, Privacy Commissioner Michael Webster emphasised that this does not mean FSNI’s use of FR has been endorsed. Rather, the trial is taking place because the Commissioner asked FSNI to “provide evidence that FR was a justified way to reduce retail crime.”

The Commissioner also expressed concern that there are known problems with the bias and accuracy of FR technology, and that people could be incorrectly banned or accused. He pointed out, “There are other options in place to deal with retail crime and therefore Foodstuffs North Island needs to find hard data that it works and is necessary.”

As the FSNI trial progresses the Commissioner will use his inquiry powers to keep a close eye on whether “any further action is necessary to protect New Zealanders’ privacy.”

E-waste and the right to repair

A topic that regularly surfaces in the context of working towards a more circular economy, is the issue of e-waste and what can be done about our throw away practices.

E-waste covers all types of electrical and electronic equipment, from commonly used household and personal items to IT communications equipment. A review on e-waste will reveal that it is considered to be one of the fastest growing waste streams globally.

Reducing e-waste through recycling has been one focus, however, another solution that has been gaining traction, particularly in the US and Europe, is that of extending the life of a product through the principle of ‘right to repair’. This encompasses the observation that not only do products not last as long, as a result of inferior components or planned obsolescence, but that it can be costly or difficult to repair products owing to the lack of spare parts, manuals and diagnostic information.

Right to repair initiatives are well underway in Europe. A 2022 briefing paper for the European Parliament outlines a raft of EU-wide initiatives that have been and are being implemented. Measures include laying down eco-design requirements for a range of electric/electronic products, to ensure spare parts are available for a specified number of years, and to make maintenance information available to professional repairers.

France enacted law in 2021 requiring manufacturers of mobile phones, front-loading washing machines, electric lawnmowers, laptops and televisions to provide a repairability score (index) for their products. The index assesses 5 criteria: availability of repair documentation, ease of disassembly, parts availability, price of parts, and product specific criteria. It is hoped the index will encourage more sustainable consumption patterns and put pressure on manufacturers to design longer lasting and more repairable products.

In New Zealand, WasteMINZ, in their report ‘Pathways for Right of Repair in Aotearoa New Zealand’ state, “Policies that enable an items repair (over replacement) would better ensure an item is used for its original purpose for as long as possible, before eventually being recycled.”

Consumer NZ has also been advocating in this space. Research they have carried out would indicate there are barriers to repair in New Zealand; which consumers care about. Consumer NZ has also begun to include France’s repairability scores in their product test reports, beginning with mobile phones.

Both Consumer NZ and WasteMINZ see that on the path to unlocking the right to repair in New Zealand the Consumer Guarantees Act (CGA) would need to be amended. As it stands, Section 12 of the CGA provides that the manufacturer is to take reasonable action to ensure that facilities for repair and parts are available for a reasonable period after the goods are supplied. However, Section 42 then allows for manufacturers to be exempted from this requirement where the consumer has been notified that repair facilities and parts will not be made available.

In a circular economy repair plays an important role

in slowing down the use of resources, resulting in fewer greenhouse gas emissions, and reducing waste. For those that want to join Consumer NZ in appealing to the Government, Consumer has a running petition on their website.

De facto relationship or not?

The Working for Families Tax Credit (WFFTC) is a notoriously complex scheme when it comes to determining eligibility and quantifying entitlement. This leads you to wonder how well the scheme is policed, and whether fraud is able to 'fly under the radar'. Accordingly, it was reassuring to see a case brought before the Taxation Review Authority in October of last year regarding a taxpayer making false claims about their de facto relationship.

The Disputant had claimed $39,740 of WFFTC's for the years 2015 to 2018 on the basis that she was a single parent. However, at the time she was living with a Mr X, with whom the Commissioner considered the taxpayer to be in a de facto relationship.

Support was given by the woman, her sister, and Mr X claiming that no de facto relationship existed. However, evidence to the contrary was extensive. They lived together; evidenced by Mr [X] recording their address as his home address with various third parties. They went on holidays together, had social media profiles that indicated they were a couple, attended work functions as a 'couple' and were financially interdependent. As a result, the income of Mr X was deemed to be included in the WFFTC calculation and the Disputant's actual entitlement for the four years was reduced to nil.

If the Disputant was not satisfied with this, the Commissioner went on further to say that regardless of whether a de facto relationship existed or not, her entitlement would have been reduced anyway due to the Disputant stealing from her workplace. The stolen money would count as income towards the calculation of their WFFTC and her entitlements should have been reduced in 2016 and 2018, and no entitlement would have existed in 2017.

The woman claimed that the Commissioner should exercise their discretion to not collect tax, given that the stolen money was used to fund a gambling addiction, and that she had already been convicted of theft, lost her job, lost the stolen money gambling, and had to repay some of the stolen money.

In considering whether the Disputants gambling addiction should, on a discretionary basis, allow her to retain the WFFTC, if she had in fact been entitled to it, the Commissioner held that the Disputant's circumstances were "far from justifying the exercise of such a discretion. A taxpayer who has stolen money to gamble cannot expect to be relieved of tax consequences that would apply to another taxpayer in otherwise identical circumstances."

Although this case demonstrates some absurd circumstances, it is good to know that schemes such as WFFTC are policed and that their exploitation is met with appropriate action.

Noisy neighbours – what can you do?

What can you do when a neighbour decides that Thursday nights are all night party nights, or you work from home and your next-door neighbor operates some serious machinery throughout the day? If an amicable rational discussion with the neighbour doesn't remedy the situation, what are your rights and what recourse do you have to rectify the situation.

In the first instance, the Resource Management Act 1991 (RMA) sets out that every occupier of land, and every person carrying out an activity in, on, or under a water body or the coastal marine area has the duty to ensure that noise does not exceed a reasonable level. With respect to this, the RMA uses the term 'excessive noise' to mean any noise, under our control, that unreasonably interferes with the peace, comfort and convenience of another person. Excessive noise includes noise that exceeds a national environmental standard; and may include noise from a musical instrument, electrical appliance, machine (however powered), a person or group, or an explosion or vibration. It does not include noise from trains, aircraft, or vehicles being driven on a road.

Under the RMA, managing the effects of noise is a function of territorial authorities. Local councils have rules on the acceptable levels and hours of noise for zones contained in their district plan. This means that what may be considered a reasonable noise level in a city centre zone may not be in a residential one.

As part of their responsibility to manage the effects of noise, councils have a duty to investigate noise complaints. Where a noise control officer (enforcement officer) investigating a noise complaint is of the opinion that the noise is excessive, they can direct the person responsible to immediately reduce it to a reasonable level (termed an 'excessive noise direction'). The direction lasts for 72 hours from the time it is issued.

If during the 72 hour period in which the direction is in force the person does not comply with the direction, an enforcement officer accompanied by a police officer may enter the premises and seize and remove equipment from the place, or render it inoperable, or lock or seal it so as to make the equipment unusable.

In the case where property has been seized, the owner of the property can apply to have it returned. However, the RMA allows for a council to refuse to return the property if they believe it is likely to lead to a repeat of the same problem.

If the noise issue relates to a tenanted property, an alternative can be to contact the landlord or property manager. Under the Residential Tenancies Act, the tenant has a responsibility to not "interfere with the reasonable peace, comfort, or privacy of any other person residing in the neighbourhood." A landlord can issue a tenant with a 14-day notice to remedy.

Working with a neighbour to resolve an issue is always preferable, however, where this is not possible it is comforting to know help is available.

Snippets

EC affirms our privacy protections

In January this year the European Commission (EC) completed its review of the existing adequacy decisions of 11 countries and territories; of which New Zealand is one.

An adequacy decision, in brief, affirms that the EC has found that personal data transferred from the European Union to the country or territory, continues to benefit from adequate data protection safeguards, and that data can continue to flow freely to these jurisdictions.

Our Privacy Commissioner Michael Webster said: "This is good news for trade and ease-of-doing business in the digital age and helps ensure smooth cross-border data transfers. … Adequacy means that New Zealand is a good place for the world to do business; we have strong privacy protections in our legislation and are an empowered regulator." He intimated that to remain one of the safest places to process personal information, we need to continue to strengthen our privacy and data protection laws.

In support of this his office recommended the following amendments to the Privacy Act 2020:

- A set of specific amendments to make the Privacy Act fit-for-purpose in the digital age.
- A civil penalty regime for major non-compliance alongside new privacy rights for New Zealanders to better protect themselves.
- Stronger requirements for automated decision making and agencies demonstrating how they meet privacy requirements.

In the words of the Commissioner, "Only a small number of countries have achieved EU adequacy status, and this recognition is important for New Zealand in a global business environment."

IRD's trust disclosures report

After the introduction of the Trust Disclosure rules in March 2022, in November 2023 Inland Revenue released a high-level summary of insights from the first year of reporting.

The stated purpose of the trust disclosure rules was to provide insights on how trusts are used, and to ensure compliance with the 39% individual tax rate.

A recurring theme in the report was the level of errors; not surprising given the complexity of the disclosure rules and it being the first year. Of the 226,000 trust settlor details received, errors included:

- 49,000 trusts that provided no settlor details;
- 450 instances of beneficiary distributions to minors that exceeded $1,000;
- 300 trust beneficiaries who owe student loans that failed to disclose their trust distributions, understating their repayment obligations;
- 1,400 Working for Families recipients that failed to disclose distributions from trusts;
- 500 instances where income had been allocated to tax-exempt beneficiaries even though the distribution had not been paid; and
- 3,500 trusts that retained trustee income despite having ceased in the same year.

As a result of the information gathered greater scrutiny of trust tax affairs is expected, especially as the Government has provided additional funding to complete audits and investigations.

If you have any questions about the newsletter items, please contact us, we are here to help.