

Helsinki Information Law Moot Court 2021 Clarifications

Substantive questions

1. The Privacy Policy mentions that the app will keep record of your exact location. Does it mean that it keeps the exact location of users at all times or only when the app recognizes contact with positive cases of COVID-19?

The app keeps a record of the exact location of users at all times so that it will be able to compare past location data between users to determine exposure risks and for the Whiffin AI's machine learning protocols.

2. Is CoombesBrain a company from a Member State within the EU?

Yes, CoombesBrain and its servers are all based in Newtonland and most of the relevant processing takes place within the Newtonland. However, backups are also stored in Leibnizland, a neighbouring EU country.

3. Should the Coronavirus Emergency Response Act 2020 s.34 be understood as the specific requirements for the processing laid down by the Newtonland as mentioned in Article 6 (2) of the GDPR?

The privacy policy states that the processing is justified under that Act. Anything beyond this is for mooters to argue.

4. What is the exact moment at which the data processing by CoombesBrain begins?

Data is begun to be processed as it is gathered by the app, although it does not gather any information until the app has been downloaded, installed, activated and configured by the user.

5. Can the National Medical Service share the data of positive confirmed cases to CoombesBrain? And if that is the case, what is the procedure followed?

The National Medical Service will inform CoombesBrain if any testing kits which are dispatched as part of the app's procedure are returned positive through an API. However, they will not share any other information (e.g. names).

6. What is the exact technique used in the tracing app? (Finnish corona application: decentralized privacy-preserving proximity tracing)

CoombesBrain use their own technique as described in the problem question.

7. How does Whiffin AI get access to publicly available demographic and socioeconomic data and what does this data comprehend?

The Whiffin AI system has access to the public census records, which includes information about, *inter alia*, the average socio-economic breakdown of local regions within Newtonland, as well as data describing whether certain areas are rural or urban and the zoning of areas within urban areas (e.g. residential vs commercial). It uses this information to determine whether users are likely to be in particularly risky areas (e.g. a populated street or an enclosed public building).

8. Is there any further specific legal framework in relation to processing data related to health at a national level, or related to processing data in the interest of public, minors' age consent?

While general frameworks do exist, they all relate to specific other cases (e.g. the processing of data when visiting a GP) and are not relevant.

9. What is the legal stand of Newtonland in relation to ECHR?

Newtonland has signed and ratified the Convention.

10. Does CoombesBrain use significant technical security measures when processing data?

CoombesBrain encrypts all of its data, utilises end-to-end encryption and employs state-of-the-art network security.

11. Is the tracking app voluntary to download?

Yes. Citizens are, however, heavily encouraged to download the app and there is a strong advertising campaign for the app.

12. Is there any further legal frameworks enacted by Newtonland's parliament in relation to the processing of special categories of personal data Art. 9 GDPR, national identification number Chapter IX of GDPR?

Nothing that is relevant here.

13. Does the government send data before or after someone has downloaded the app?

There are no information transfers about a specific individual between CoombesBrain and any of the other parties until the app has been downloaded.

14. To what extent were Newtonian health authorities involved in the creation of the application and how did they contribute?

The Newtonian health authorities and CoombesBrain held several design meetings over the development of the app. They provided expert advice on what would be necessary to provide an efficient and effective tracking system. The resulting app can fairly be described as representative of their advice.

15. In the contract between the government and CoombesBrain, what are the responsibilities of the Newtonian Government, the National Medical Service and those of Coombesbrain?

The responsibilities for each party as set out under the contract are to do everything that is necessary to process the information in line with the Coronavirus Emergency Response Act 2020, s.34.

16. Is Whiffin AI audited and if the answer to this question is in affirmative, who are the auditors, what do they audit and how often does the audit take place?

CoombesBrain regularly audits its own systems using the consulting firm Matt & Lee Ltd. Any issues flagged in the audit are addressed and resolved within the identified time frames.

17. Is registration to the app limited to the residents of Newtonland?

The app cannot currently function unless the user has a Newtonland SecureID System account, which is only available to residents and citizens of Newtonland. However, there is discussion about extending the app to other nearby EU countries, using their local secure sign-in systems, if sufficient political and technical agreements can be reached.

18. Are there any reservations or derogations to the application of the GDPR in Newtonland?

There are no relevant reservations or derogations.

19. What is the method of collection of the user's location data (Bluetooth, GPS, etc.)?

Location data is gathered through GPS at regular intervals.

20. What is the source of a home address? Is it a permanent residing address or any address also for the short stays or contacts with the public authorities?

The home address is the permanent residing address as registered by the relevant individual with the national registry.

21. What type of training model is used for developing the Whiffin AI?

The Whiffin AI uses CoombesBrain's proprietary and self-developed training model.

22. How are the testing kits delivered and by whom?

Testing kits are delivered through the national post service.

23. Is there any human involvement at any point of the process? If yes, at what point and what kind of intervention is performed by humans.?

The test is performed, and the results registered, by human doctors.

24. As the Whiffin AI system is the property of CoombesBrain, do they use it in other apps or systems and where? If yes, what type of data is shared between them?

The Whiffin AI system was originally developed to track the movement and spread of viral infections in marmots. Currently, CoombesBrain has no plans to use it anywhere else.

25. Does the application's page provide any information about the AI's methods of operation and clarify the reasoning behind it in an understandable and user-friendly way? If yes, what information is provided?

The application's page contains the same information provided in the moot problem.

26. Are there any data security safeguards in place before dispatching testing kits to the users?

The National Medical Service follows its own internal data security procedures, including duties of confidentiality for all staff, limiting information disclosure to situations where it is strictly necessary for the purposes of the processing, disposal or deletion of data once it is no longer necessary and appropriate encryption of digital data.

27. As the agreement between the National Medical Service and CoombesBrain or the Privacy Policy have not been disclosed, could you clarify who is acting as the Controller and the Processor?

This question is for mooters to determine.

28. Has anybody carried out a data protection impact assessment and if they have, what were the results. Conversely, if no DPIA has been conducted, why is this? Was the usage of Whiffen AI known at the time of the DPIA?

Several DPIAs were performed during the development of the system and ongoing DPIAs are performed as the system continues to operate.

29. What were the exact activities that Mr. McEbon described as institutional disregards for privacy and security of users? Does Mr. McEbon have any proof for these occurrences other than his word?

Mr. McEbon alleges to have seen those within the National Medical Service gossip about interesting cases that they saw and disregarding internal technical and organisational measures where they were considered inconvenient (e.g. reusing password, sharing account details between users and accessing work systems through personal devices). He has no proof other than his word.

30. Could you provide any clarification as to what exactly should the parties put to dispute in question 2, as the agreement between the parties or the selection process of CoombesBrain remain disclosed? As the question is, “is the partnership permitted”, is there something in particular that the participants should argue about that could render the partnership prohibited?

This question is for mooters to determine.

Procedural questions

1. Is there a cut-off date for new decisions/sources (for example, if a major decision or rulemaking event on contact tracing apps occurred right before the deadline, can that be incorporated into the briefing)?

The cut-off date is the deadline for submission of written memos, although the organisers may invite mooters to expand their arguments to include new legal developments after this point if they deem it sufficiently significant. However, such invitation would only be made if the organisers were confident that it would be fair to do so in the specific circumstances.

2. Please provide more detail on what level of involvement is appropriate and inappropriate from coaches.

The rules of conduct state:

“As the moot is a student competition, over coaching and unfair strategies must be avoided at all stages. Coaches should avoid contributing to the development of substantive legal points and should limit themselves to a general discussion of the issues and helping to guide students through procedural issues.”

The purpose of this rule is to ensure that the students are the ones who develop and drive the argument. Coaches can, for example, provide abstract teaching about data protection law in general, help to highlight weaknesses and ask questions which prompt students to find the answers on their own, but should avoid providing focused teaching that simply provides answers and substantive solutions to problems.