

WHITEPAPER

The GDPR Applied to Brain Corporation Robot Data

BrainOS® Clean Suite



I. Introduction

Brain Corporation is a technology company that engages with original equipment manufacturers to enable autonomous mobile machines. Brain Corporation's BrainOS® software platform (**Software**) currently enables certain floor cleaning robots using Brain Corporation's technology (each a **Robot**) by providing autonomous navigation, operational support, development, and fleet management services. Brain Corporation aims to provide safe and courteous navigation of Robots within our customers' spaces. While the Robots may at times incidentally detect individual human beings, Brain Corporation has no interest or incentive in identifying any individual and is not able to do so. To our Robots, an individual is just another object it detects during its navigation, like a pallet, wire, or shopping cart. 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 Corporation and its affiliates, supplier companies, and authorized distributors of its technology (**Brain Corp**) has taken to protect this data from misuse and identifiability. Additionally, this paper describes the inability of Brain Corp to identify a natural person within Robot Data and concludes that such data does not constitute personal data that is subject to the GDPR.



II. Personal data

The GDPR defines "personal data" as "any information relating to an identified or identifiable natural person ('data subject'); 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, not just detected. "[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, referenced by the **European Commission's What is personal data?**). 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

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III. Brain Corp robot data

Robots utilize a combination of sensors and cameras to detect and avoid obstacles and to 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 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 on the Robots. 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 in less than a month.

Robots may transfer, in an encrypted manner, Robot Data directly to Brain Corp to support performance, operational quality, development of new features or other technology, optimization, and safety (collectively, **Operational Support**). This Robot Data transmitted for Operational Support generally consists of data related to Autonomous Navigation that enables the review of the performance of the Robots and the provision of support to customers. Robots may also depend upon assistance for operation from a customer's onsite personnel or remotely from Brain Corp, such as when the Robots are training, detect obstacles, or other unanticipated environmental features (each, an **Operational Assistance**). When a Robot requires Operational Assistance, its onboard cameras take

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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 3). That is, to the extent sensors and cameras 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 an identifiable person.

However, in the case where the sensors and cameras of the Robots incidentally collect information of an individual 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 designed to be purged quickly enough such that no identification of any particular individual, 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"). The image data onboard the Robots is designed to be overwritten when the storage space on the Robots is needed (i.e., if the Robots are regularly used, the image data would be deleted in less than a month).

Moreover, Brain Corp has no desire or incentive to identify an individual detected by a Robot and 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 particular individuals for identification, and then combine the image data with other sets of data



V. Detection is not 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 the purpose of surveillance is to identify persons in video images breaking the law and not about detecting an unidentifiable person (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 data processing authority in the United Kingdom (**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 likely 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). The Robot's purpose for collecting data from cameras is for Autonomous Navigation, Operational Assistance 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 Software captures Robot Data, and Brain Corp implements technical precautions, such as facial blurring in certain situations, to avoid identifiability.

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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, Operational Assistance and Operational Support and not to collect personal data. Additionally, the paper described that Brain Corp has no interest in identifying a natural person within Robot Data and is not able to do so. Therefore, when applying the GDPR to the Robot Data and the related processing, Brain Corp maintains that such data does not constitute personal data that is subject to the GDPR.

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